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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

Original Application No.102 of 2010  
Cuttack, this the 11<sup>th</sup> March, 2010

Achutananda Nayak	....	Applicant
Versus		
Union of India & Ors.	....	Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? *yes*
2. Whether it be circulated to all the Benches of the CAT or not? *yes*

(M.R. MOHANTY)  
VICE-CHAIRMAN(J)



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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

O.A.No.102 of 2010  
Cuttack, this the 11<sup>th</sup> day of March, 2010

C O R A M:

THE HON'BLE MR.M.R.MOHANTY, VICE-CHAIRMAN (J)

.....

**Achutananda Nayak**, aged about 49 years, son of Late Shri Dharanidhar Nayak residing at Plot No.4D/1452, Sector 9, CDA, Cuttack 753 014 working as Principal Private Secretary, Central Administrative Tribunal, Cuttack Bench, 4<sup>th</sup> floor, Rajaswa Bhavan, Cuttack 753 002 (Orissa) (under orders of transfer).

.....Applicant

Legal practitioner:M/s.Bhagaban Mohanty, B.Moharana, Counsel

- Versus -

1. Union of India, represented through the Secretary to Government of India, Department of Personnel & Training, Ministry of Personnel Public Grievance & Pension, North Block, New Delhi-110 001.
2. Central Administrative Tribunal, through its Principal Registrar, Principal Bench, 61/35, Copernicus Marg, New Delhi-110 001.
3. Central Administrative Tribunal, Cuttack Bench represented by Registrar/Deputy Registrar, 4<sup>th</sup> Floor, Rajaswa Bhavan, Cuttack 753 002.

....Respondents

Legal Practitioner :Mr.S.B.Jena,ASC

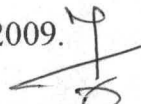
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O R D E R

[oral]

MR. M.R.MOHANTY, VICE-CHAIRMAN (J):-

Applicant, on promotion as Principal Private Secretary was posted as such at Cuttack Bench of Central Administrative Tribunal. An order, transferring him (from CAT/Cuttack Bench) to CAT/Jabalpur Bench, was issued on 16.04. 2009 (Annexure-A/1) by the order of the Hon'ble Chairman of the Tribunal. He was asked to be relieved on 24.04.2009.



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2. On 20.04.2009, he addressed a representation (Annexure-A/2) to the Hon'ble Chairman of the Tribunal pointing out about his personal difficulties like having an old ailing mother and College going children etc. He also pointed out to the following effect in his said representation:-

“....although **I am having the all-India transfer liability**, there should be a set of guidelines/transfer policy regulating transfer of officers/officials on completion of certain tenure, and there being no such transfer guidelines/transfer policy, my transfer to Jabalpur Bench is a bolt from the blue and cannot be said to be ethical. I may crave leave to mention here that not only in Cuttack Bench but also in most of the Benches, including Principal Bench, officers/officials even after getting two/three promotions are continuing in same stations in the absence of Transfer Policy/Guidelines and I have been singled out.”

3. On the same day 20-04-2009, as is seen at Annexure-A/3, the then Hon'ble Judicial Member of CAT/Cuttack Bench (who was then the HOD of CAT/Cuttack Bench) apparently wrote a DO letter to the Hon'ble Chairman of the Tribunal seeking cancellation of the order of transfer of the Applicant.

4. As it appears from Annexure-A/4, the Applicant also filed an Original Application (No.163 of 2009) under section 19 of the Administrative Tribunals Act, 1985 challenging the order of transfer, and the said case came up for consideration on 22.04.2009; when the Hon'ble Judicial Member (who, apparently dealt with the matter in administration side by writing a D.O. letter

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under Annexure-A/3 dated 20.04.2009) admitted the case and, while awaiting Respondents' counter, granted ad-interim order of stay of the transfer order, in question, for a period of 45 days.

5. On the same day 22.04.2009, the Hon'ble Chairman of the Tribunal in administration side, was pleased to keep the operation of the said order of transfer in abeyance, until further orders; as is seen under Annexure-A/5.

6. In the above premises, the Applicant drew a Memo under Annexure-A/6 dated 24.04.2009 seeking permission to withdraw the case/OA No.163 of 2009 and, on 24.04.2009, the Advocate for the Applicant submitted before the Division Bench that "in view of the decision of the Hon'bel Chairman, CAT, PB, New Delhi, conveyed vide PB's Office Order dated 22.04.2009, the order transferring the Applicant to Jabalpur Bench having been kept in abeyance, the OA has become infructuous." The Division Bench, on 24.04.2009, dismissed the case as withdrawn; while allowing the prayer of the Applicant to withdraw the OA without prejudice to the right of the Applicant to move the Tribunal, as and when he feels aggrieved. Copy of the order dated 24.04.2009 of the Division Bench is placed as Annexure-A/7 to this OA.

7. By Office Order under Annexure-A/8 dated 04.03.2010, the order of transfer in question (that was issued under Annexure-A/1 dated 16.04.2009 and kept in abeyance under

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Annexure-A/5 dated 24.04.2009) was asked to be given effect to (by the order of Hon'ble Chairman) and the Applicant was asked to be relieved immediately. Accordingly, the Applicant was relieved from CAT/Cuttack Bench under Annexure-A/9 dated 08.03.2010,

8. Being aggrieved, the Applicant has, again, approached this Tribunal with the present Original Application filed (on 10.03.2010) under section 19 of the Administrative Tribunals Act, 1985; wherein he has prayed as under:

“(1) The Hon'ble Tribunal may graciously be pleased to quash the orders under Annexures A1, A/8 and A/9 OR direct the Respondents to keep Annexures A/1, A/8 and A/9 in abeyance till an appropriate transparent Transfer Policy/Guideline regulating transfer of officers/officials is framed by them and implemented rationally, with a declaration that the impugned orders, in the absence of appropriate Tare bad in stigmatic.

(2) The Hon'ble Tribunal may further be pleased to direct the Respondents to frame Transfer Policy/Guideline regulating transfer of officers/officials of the Central Administrative Tribunal within a period to be stipulated and then effect the transfer of the applicant if his turn comes.”

9. In this Original Application, the following interim prayers have also been made:-

“The Hon'ble Tribunal may graciously be pleased to stay operation of the orders under Annexures A/1, A/8 and A/9 and direct the Respondents to allow the applicant to continue in Cuttack Bench till final disposal of the Original Application and/or pass any other appropriate order/orders.”

10. When this matter came up before the Division Bench today/11-03-2010, the Hon'ble Member (Admn.) of CAT/Cuttack



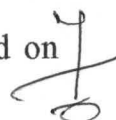
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Bench expressed his desire not to hear this matter; as he dealt with the case in the administrative side (at the stage of relieving the Applicant under Annexure-A/9 dated 08.03.2010 from CAT/Cuttack Bench; pursuant to the Office Order under Annexure-A/8 dated 04.03.2010 of CAT/Principal Bench) and, in the said premises, this matter has come before the Single Member Bench; as this matter (relating to the grievances pertaining to transfer) is available to be adjudicated by a Single Member Bench.

11. Heard Mr. B.Mohanty, Learned Counsel appearing for the Applicant and Mr.S.B.Jena, Learned Additional Standing Counsel for the Government of India (to whom a copy of this OA has already been supplied) and perused the materials placed on record.

12. It is argued by Mr.Mohanty, Learned Counsel appearing for the Applicant, that, in absence of a guideline drawn for transfer, the impugned order of transfer (of the Applicant) needs to be stayed till formation of a **“Transfer Guideline”**; as unbridled powers may lead to arbitrariness. Mr. Jena, Learned Additional Standing Counsel for Government of India, on the other hand argued that **“transfer being an incident of Service”**, the Applicant (who has, admittedly, all India transfer liability) has faced an order of transfer that has been passed by the highest administrative authority (Chairman) of the Tribunal. He relied on



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the views of the Hon'ble Apex Court rendered in the case of **Rajendra Singh v State of UP and others** [reported in 2010 (1) SLR 632 (SC)]; in which it was held that "a government servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in administrative exigencies from one place to other. Transfer of an employee is not only an incident inherent in terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary". He also relied upon the views expressed by the Hon'ble Apex Court rendered in the case of **Kendriya Vidyalaya Sangathan v Damodar Prasad Pandey and others** (reported in [(2007) 2 SCC (L&S) 596] wherein it was held that "transfer is an incidence of service and who should be transferred and posted where is a matter for administrative authority to decide". He relied on the case of **Premal Panda and another v Union of India and six others** (reported in ILR 2009 Orissa 492} to say that Courts and Tribunal should not interfere in the order of transfer made in exigency of administration". He prayed for dismissal of this case by informing that the Applicant has already been relieved from CAT/Cuttack Bench since 08.03.2010.



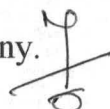


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13. Applicant, having all India transfer liability faced the order of transfer on 16.04.2009 requiring him to be relieved on 24.04.2009. He represented on 20.04.2009, as aforesaid. The transfer order was kept in abeyance on 24.04.2009 and, on 04.03.2009, the said order stood revived, by asking to relieve the Applicant, immediately, to join at new station/CAT-Jabalpur. Accordingly, the Applicant stood relieved on 08.03.2010. By filing this case, the Applicant has raised a point that, **'in absence of any guideline (for transfer), he has been singled out'**. Law is well settled by now that transfer being an incidence of service; 'who should be transferred and posted where' is a matter for the administrative authority to decide and, unless the order of transfer is shown to be clearly arbitrary or is done by *mala fide* or is made in violation of any operative guidelines or rules governing the transfer, the Court should not ordinarily interfere with an order of transfer of a Government Servant. In the case of **Silpi Bose v State of Bihar** (reported in AIR 1991 SC 532) it was held that **'where a competent authority issued an order transferring an employee with a view to accommodate another employee, then also the said transfer order cannot be interfered with by the Court'**. In the case of **Union of India v S.L. Abbas** (reported in AIR 1993 SC 2444) it has been decided that **'who should be transferred where'** is a matter for the appropriate authority to decide. In the case of



**Union of India v H.K.Kirtania** (reported in 1989 (3) SCC 445) and **Gujarat Electricity Board v Atmaram Sungomall Pashani** (reported in AIR 1989 SC 1443) the Apex Court took the view that transfer of an officer holding a transferable post cannot be objected to and that the Authority is the best judge to decide to distribute and utilize the services of an employee. In the case of **State of Orissa v Kishore Chandra Samal** (reported in 1992 (2) SCALE 251) it has been held that where transfer is within the cadre with the identical responsibility, no objection can be raised against the transfer order. In the case of **State of Madhya Pradesh v S.S.Kourav** ( reported in AIR 1995 SC 1056) it was held that Courts and Tribunals, not being the Appellate Authority to decide on transfer of the officers (made on administrative grounds); it should allow the wheels of the administration to run smoothly and that Courts/Tribunals are not to interfere in working of the administration. In the case of **Union of India v N.P.Thomas** (reported in AIR 1993 SC 1605) it was made clear that if the transfer is not in violation of any statutory rule there should not be any vested right available to an employee to continue in his original post. Law is also well settled by now (vide **S.C.Saxena v UOI and Others-2006 SCC 583**) to the extent that on transfer, one should report at new station and, thereafter only h/she can raise his grievance, if any.



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14. In the case in hand there was no violation of statutory or administrative guidelines. Applicant must know that, in absence of any guideline the discretion of the authority is wider and for the reason of repeated warning (given in various judicial pronouncements as aforesaid) there is no scope for this Tribunal to interfere with such administrative discretion of the competent authority.

15. Similarly law is well settled that people are prone to making the allegation of *mala fide*/usually raised by an interested party (as in the instant case) and, therefore, in very many cases, the Hon'ble Apex Court cautioned that the Courts/Tribunal should not draw any conclusion unless such allegations are substantiated beyond reasonable doubt.

16. On perusal of records, it is seen that except making bald allegation of *mala fide*, the Applicant has filed no substantiating/incriminating materials even to draw the presumption that the power exercised by the Hon'ble Chairman in transferring the Applicant in any manner suffers the vice of *mala fide*.

17. In the above premises, I find no reason and scope to interfere with the impugned orders; by which the Applicant has faced the transfer (and relieved on 08.03.2010 from CAT/Cuttack Bench) to CAT/Jabalpur Bench in the same status of Principal



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Private Secretary with all service protections. Accordingly, this case is dismissed. No costs.

18. Send copies of this order to the Applicant and the Respondents (along with copies of this OA) by Regd. Post in the address given in the Original Application.

19. Free copies of this order be also supplied to the Learned Counsel appearing for the parties,

(M.R. MOHANTY)  
VICE-CHAIRMAN(J)