

OA No.269/2010
Dr.Kshirod Chandra Sahoo Applicant
-Versus-
Union of India & Others Respondents
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Order dated: the 29th July, 2010.

C O R A M:

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

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Applicant is at present working as Senior Divisional Medical Officer (Surgeon), Waltair Divisional Railway Hospital, Viakhapatnam. He seeks to quash the order under Annexure-A/1 dated 0405.2010 by which he has been transferred and posted as senior DMO (Surgery) at KUR Divisional Hospital. It is not in dispute that he has been continuing in his present place of posting for last nine years. In this Original Application he has challenged the present order of his transfer on various grounds but in course of submission he confines his ground of challenge that as his son will be appearing final year Class X examination, shifting his family/son to his new place of posting will seriously jeopardize the education of his son. In other words his stand is that transfer during mid academic session being bad in law, the same is liable to be set aside. The stay of the Applicant at his present place of posting has strongly been opposed by the Respondents on the ground that the surgeon available at KUR due to physical deficiency is unable to meet the need and, therefore, in public interest and exigency of service it was thought incumbent by the competent authority to post the applicant from Waltair Divisional Railway Hospital to KUR Hospital to meet urgent need. Further stand of the Respondents is that the applicant has been continuing in Visakhapatnam for last nine years and that considering his son's education he will be allowed to retain

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the quarters allotted in his favour there, in the normal rent. In support of their stand that transfer being an incidence of service and the applicant since is holding transferable post there need no interference by this Tribunal, Respondents' counsel relied on the decision of the Hon'ble High Court of Orissa in the case of **Premal Panda and Anr - vrs- Union of India and six others** (copy filed). Accordingly, Respondents prayed for dismissal of this OA.

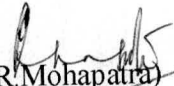
2. After giving due consideration to the rival contentions of the parties, perused the materials placed on record. Power and jurisdiction to interfere in the order of transfer made in public interest is no more *res integra* and in various decisions the Hon'ble Apex Court has made it clear that such interference in the order of transfer by the Court/Tribunal can only be where the order of transfer is made other than public interest/administrative exigency in other words on the ground of *mala fide*/in colourable exercise of power or if it is in gross violation of statutory and mandatory Rules governing the transfer and posting of the employees. It is not the case of the Applicant that his present order of transfer suffers from any one of the conditions stipulated by the Hon'ble Apex Court. The only ground canvassed by the Applicant against the present order of transfer is the education of his children and in this regard, Learned Counsel for the Applicant undertakes that the applicant will come and join in his transfer post after the final examination of his son is over. On the other hand Learned Standing Counsel for the Respondents submits that in absence of any surgeon immediate joining of the Applicant at KUR Hospital is necessary. In the above back ground, though mid-academic session transfer has been deprecated by the Hon'ble Apex Court in the

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case of **Director of School Education, Madras and Another v O.Karuppa Thevan and another**, 1995 (1) AT (SC) 21, this Tribunal being not the appellate authority over the decision of the competent authority manning the department, **I entirely leave the matter to the Respondent No.1's consideration to decide whether in the circumstances especially on the basis of the undertaking furnished by the Applicant that he shall report at his new place of posting at the end of the current academic session the order of transfer of the applicant under Annxure-A/1 can be kept in abeyance and pass a reasoned order within a period of fifteen days hence. Till a decision is taken as stated above, the order of transfer of the Applicant under Annexure-A/1 shall not be given effect to.**

3. With the aforesaid observation and direction, this OA stands disposed of. There shall be no order as to costs.


(C.R. Mohapatra)
Member (Admn.)