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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.288 of 2010
Gouro Chandra Tripathy Applicant
Versus
Union of India & Others Respondents

ORDER DATED: 24.05.2010

CORAM:
THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (ADMN.)

On being mentioned by Mr. S.K.Ojha, Learned Counsel for the Applicant in presence of Mr. S.Mishra, Learned Additional Standing Counsel appearing for the Respondents on notice, this matter is taken up today. Heard Learned Counsel for both sides and perused the materials placed on record.

2. The grievance of the Applicant, as it appears, is against the order of transfer under Annexure-A/5 dated 27.11/09.12.2009 transferring him in his present capacity as PEX from AIR, Jeypore to AIR, Bolangir. Secondly, he has also raised grievance in the manner of disposal of representation submitted by him time and again requesting for his posting at his place of choices viz; either at CB, Cuttack, AIR, Cuttack, AIR, Bhubaneswar/Doordarshan [where several PEXs (named in the OA) have been continuing for years together either having no transfer or transfer other than difficult stations] whereas he has already served six years in the difficult stations. In this connection he has relied on the transfer policy framed by the Respondents under Annexure-A/1 and the instructions issued under Annexure-A/2. Also it is the positive case of the applicant that he is a chronic patient of Hyper-Thyroidism and is under treatment and his posting either at Cuttack or Bhubaneswar will facilitate his treatment. Be that as it may, it is trite law that transfer being an incident of service is within the prerogatives of the authority to decide and

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at the same time the Respondents cannot deviate from the principles decided to follow while transferring an employee from one station to another. It is also trite law that discretion cannot be used discriminatorily or in pick and choose manner. It is noticed that the representations referred to in this OA are all prior to his order of transfer and *prima facie* it appears that the order of rejection of the representations submitted by the Applicant is not sustainable being bereft of any reasons. It has been admitted by the Applicant that meantime he has been relieved from AIR, Jeypore but not reported in his place of posting at AIR, Bolangir and is continuing on leave.

3. In the circumstances, without expressing any opinion on the merit of the matter, as agreed to by Learned Counsel for both sides, this Original Application is disposed of at the admission stage with liberty to the Applicant to make an exhaustive representation by taking all the points raised in this Original Application within a period of 10(ten) days hence to the Respondent No.1 and the Respondent No.1 is hereby directed to consider and dispose of the said representation of the applicant within a period of 30(thirty) days from the date of receipt of the representation with a reasoned order by strictly taking into consideration the transfer policy and instruction issued governing the transfer and posting of the PEXs under Annexure0A/1 & A/2 and communicate the same to the Applicant. Since the Applicant has already been relieved from his post, I am not inclined to grant the interim relief prayed for in this Original Application. However, it is made clear that joining of the applicant in his new place of posting shall not prejudice his claim in any manner and in case the applicant would like to remain on leave till a decision is taken on his representation, the same may be permitted by the Respondents.

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4. Send copies of this order along with OA to Respondent Nos.1&2 at the cost of the Applicant who shall furnish the postal requisite as undertaken by Learned Counsel for the Applicant for the above purpose within a period of three days hence.

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