

OA No.301/2010

Prashanta Chandra Panda .... Applicant  
-Versus-  
Union of India & Ors. .... Respondents

Order dated: the 23rd July, 2010.

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

The order under Annexure-A/6 dated 04.06.2010 transferring the Applicant from AIR, Cuttack to AIR, Berhampur in the same capacity as Upper Division Clerk and the order under Annexure-A/7 ordering relieve of the Applicant in the afternoon of 04.06.2010 are under challenge in this Original Application filed u/s.19 of the A.T. Act, 1985 with prayer to quash the orders under Annexures-A/6&A/7 and to direct the Respondents to allow the Applicant to continue in his present place of posting at AIR, Cuttack till his retirement/31.10.2012. His grounds of challenge are that as he is having less than three years of service to retire on attaining the age of superannuation of sixty years, in terms of the transfer policy under Annexure-A/1 he ought not to have been transferred to such far away place and that if at all transfer was necessitated he should have been transferred/posted to a place according to his choice in other words, order of transfer should not have been effected without giving him an opportunity to have his say; that in the transfer order made under Annexure-A/2 on the recommendation of the DPC held in May, 2010 his name did not find place in view of his ensuing date of retirement whereas in spite of making known to the Respondents that the applicant is settled at Cuttack and his daughter will be appearing her final examination of Class-X in 2011 he has been transferred which according to the Applicant is not sustainable in the eyes of law.

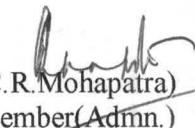
2. Counter has been filed by the Respondents rebutting the stand of the Applicant and praying for dismissal of this OA by relying on some of the decisions of the Hon'ble Apex Court.

3. Applicant has also filed rejoinder more or less reiterating some of the stand taken in the Original Application as also trying to justify the order of transfer void.

4. Heard Learned Counsel appearing for both sides and perused the materials placed on record. That the Applicant is holding transferable post is not in dispute. It is also not in dispute that he is to retire from Government service on attaining the age of 60 years in the afternoon of 31.10.2012 and that the daughter of the applicant will be appearing at the final examination of Class X in the year 2011. Applicant while furnishing his retirement papers has made it clear that he will be residing at Cuttack. In the transfer policy framed and circulated by the Respondents under Annexure-A/1, a premium has been allowed to the employees who are to retire within three years not to be shifted if posted at their home town; however, if it becomes necessary to post them elsewhere, efforts will be made to shift them to or near their home towns to the extent possible and the Applicant seeks to avail the benefit of such concession by stating that he declared his permanent address New Delhi by taking into consideration the situation prevailing then and there but now he expressed his permanent address to be Cuttack. Be that as it may, transfer of an employee whose sons/daughters are prosecuting in schools during mid academic session has been deprecated by the Hon'ble Apex Court in the case of **Director of School Education, Madras and Another v O.Karuppa Thevan and another**, 1995 (1) AT (SC) 21. Following the aforesaid

decision of the Hon'ble Supreme Court, this Tribunal in several cases where transfer order has been effected during mid academic session thereby causing dislocation of the study of the children of such employees have directed the concerned authority to defer the relieve of the said applicant till the end of the current academic session. Irrespective of the saving clause of the policy of transfer, as the daughter of the applicant will be appearing final year Class X examination, if the Respondents are asked to defer the transfer of the present applicant till the end of the current academic session, he will be hardly 16/17 months service left to retire and in my opinion transferring a Government servant who is having such short period of service, is not only a burden for the Exchequer but also prejudicial to the interest of the employee concerned especially for preparing himself for post retirement settlement. Therefore, I find this case to be a deserving and exceptional one for interference in the order of transfer of the applicant. It is also a fact that none is posted in place of the Applicant and in case the order of transfer is quashed there will be no prejudice caused to any individual. Hence, the order under Annexure-A/6 in so far as the applicant is concerned and the order under Annexure-A/7 are hereby quashed.

5. In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs.

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