

3

OA No.383/2010  
Niranjan Rana .... Applicant  
-Versus-  
Union of India & Others .... Respondents  
.....

Order dated: the 23<sup>rd</sup> July, 2010.

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

This case is taken up today on being mentioned by Mr. D.K.Mohanty, Learned Counsel for the Applicant. Applicant at present working as SPM Sainkul Sub Post Office under Superintendent of Post Offices, Keonjhar Division in this Original Application assails the order of his transfer posting him as SPM Rajnagar SO under Annexure-A/4, dated 24.4.2010 basically on the grounds that he has not completed four years at his present place of posting as provided under Annexure-A/1, his case ought not to have been considered for transfer in term of instruction under Annexure-A/12 and that his transfer from his present place would be prejudicial to the education of his children. It is also the stand of the Applicant that though he made representation seeking cancellation of his order of transfer the same was rejected by the Respondents under Annexure-A/6 dated 21.6.2010 without meeting/answering the points raised by him in support of his prayer for cancellation of the order of transfer in other words in a cryptic/ bald order. On the above ground while he is praying for annulling the order of transfer, insists for stay of the order of transfer as the same has not been given effect to till date.

2. Heard Mr.D.K.Mohanty, Learned Counsel for the Applicant and Mr. S.Mishra, Learned ASC for the Union of India appearing on notice for the Respondents and perused the materials placed on record. It was contended by Mr. Mishra that transfer being

an incidence of service and admittedly the applicant is holding a transferable post he should not have hesitated to obey the order of transfer which has been made in public interest/administrative reasons. Similarly it was contended by him that if at all the applicant was aggrieved by his order of transfer made representation which was rejected in a non-speaking order instead of approaching this Tribunal he should have agitated the same by making representation to next higher authority. Having not done so and this Tribunal being not the appellate authority to sit over the decision of the competent authority in matter of transfer, this Tribunal should not interfere in it and this OA is liable to be rejected. I do not fully agree with the contentions advanced by Mr. Mishra as referred to above. Time without numbers, it is the consistent view that the authority should resist from effecting the transfer during mid academic session unless continuance of the employees concerned in the post even for a day is not desirable. Similarly, when a representation is submitted by an employee it is incumbent on the part of the Authorities concerned to pass a reasoned order in compliance of the principles of natural justice. In the instant case the applicant does not intend to continue in his present place for eternity. As it is gathered he seeks to stay till the end of the current academic session or completion of his tenure as provided in Annexure-A/1. From the order of rejection of the representation it does not reveal that while rejecting the case of the applicant the authority has taken into consideration the order under Annexure-A/1, A/2 and children's study.

3. In the said premises instead of sitting over the order of transfer by issuing notice and meanwhile staying the order of transfer it

5

is felt desirable to dispose of this OA at this admission stage with liberty to the applicant to make a representation to Respondent No.1 pointing out his difficulties and incorporating the points raised in this OA within a period of seven days and the Respondent No. 1 is directed to consider the representation of the Applicant keeping in mind the instruction under Annexures-A/1 & A/2 and the decision of 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 and pass a reasoned order within a period of fifteen days therefrom. Ordered accordingly.

4. It is the specific case of the applicant that neither the applicant has been relieved from his post nor his successor has joined. Hence till final decision is taken on the representation of the applicant as directed above, the applicant shall not be relieved, if not already relieved.

5. In the result, without expressing any opinion on the merit of this matter this OA stands disposed of in the aforesated terms. Send copies of this order along with OA to the Respondent No.1 for compliance and free copies of this order be furnished to Learned Counsel for both sides.

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