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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 661/2015
this the 2nd day of December, 2016

CORAM
HON'BLE SHRI R.C.MISRA, MEMBER(A)
HON'BLE SHRI S.K.PATTNAIK, MEMBER (J)

Bhikari Charan Nayak aged about 46 years S/o Late Shri Subala Nayak permanent resident of At/PO/PS Fategarh, Via Bhapur, District Nayagarh, Odisha.

...Applicant

By the Advocate : Ms. K. Mohanty
-VERSUS-

- 1-Union of India represented by the Secretary, Ministry of Culture, Government of India, Sastri Bhawan, New Delhi-1.
- 2-The Director General, Archaeological Survey of India, Janpath, New Delhi - 110 011.
- 3-The Director (Horticulture), Archaeological Survey of India, Gate No.3, Mall Road, Agra - 282 001.
- 4-Dy.Superintending Horticulturist, Archaeological Survey of India, Puratattva Nivas, Toshali Apartment, Block-VI, 1st Floor, Satya Nagar, Bhubaneswar-07.

...Respondents

By the Advocate : Shri S. Behera

O R D E R

PER R.C.MISRA, MEMBER(A) :

The applicant who is working as MTS (Sweeper) in the Horticulture Division of Archaeological Survey of India, has filed this O.A. making a prayer that the order of transfer dated 15.05.2015 (Annex.A/5), and the order of rejection dated 08.06.2015 (Annex.A/8) of representation of applicant, passed by respondent No. 4, i.e. Deputy Superintending Horticulturist, Bhubaneswar may be quashed by the Tribunal, and he may be allowed to continue in his present place of posting at Bhubaneswar.

2. The facts in brief relating to this O.A. are that the applicant in 1994 joined service as a Sweeper in the office of respondent No. 4. In the year 2013, there was an unpleasant

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incident between applicant and the Assistant Superintending Horticulturist of the Office. In fact, applicant had filed a complaint against the officer alleging misbehavior, which the officer had denied. Thereafter, respondent No. 4 by an order dated 15.05.2015 transferred the applicant to the office of Horticulture Assistant Grade- I , Murshidabad, Garden Sub-office, Hazarduari Palace, in the State of West Bengal. Applicant is a Group-D employee; he has health problems, and being aggrieved with the transfer outside the State of Odisha, made a representation to respondent No. 2. He, thereafter, approached the Tribunal by filing OA No. 277/2015, which was disposed of on 20.05.2015 with a direction to the respondents to consider the representation of applicant. The respondent No. 4 disposed of the representation by rejecting the prayer of applicant by O.M. dated 08.06.2015 which is challenged by the applicant in this O.A.

3. The respondents in filing their counter-affidavit have given justification for the order of transfer. They have mentioned that applicant had earlier served in the Garden Sub-office at Vishnupur in West Bengal in the year 2000. He has suppressed this fact and made a false claim that he has not worked outside the State of Odisha. Hazarduari Palace Garden is under the jurisdiction of Horticulture Division No. IV, Bhubaneswar, and is declared as Adarsh Monument. The applicant's services are more required at that monument, than at Bhubaneswar.

4. In the rejoinder, the applicant submitted that he being a Group D employee, is not liable to be transferred out of the State. The respondent No. 4 should not have disposed of the representation addressed to respondent No. 2, i.e. Director General, Archaeological Survey of India. The respondent No. 4 did not have administrative competence to transfer him. The

order of transfer was issued with a vindictive attitude, since the applicant had filed complaint against an officer of the Horticulture Division. The allegation made in the rejoinder is that applicant has been physically, mentally and financially harassed by the order of transfer, and also by the rejection of his representation in a mala fide manner.

5. Having heard learned counsels for both sides, we have perused the records. In the counter-affidavit of the respondents, it is submitted that applicant has been transferred to Hazarduari Palace Garden which is under the jurisdiction of the Bhubanedswar Horticulture Division and that respondent No. 4 is competent to issue the order of transfer. We also have to consider that employees of Archaeological Survey of India are liable for transfer anywhere in India, and there appears to be no restriction on transfer of an Archaeological Survey of India employee, be it of Group-D, out side the State.

6. Moreover, the law as settled through various pronouncements of the Hon'ble Apex Court on the subject of transfer is crystal clear. Transfer is an incident of Government service, and Government Departments are competent to make transfer of employees, provided such transfer is not violative of any rules, and is not motivated by mala fide considerations. In the present case, allegedly, there was some unpleasant incident, and there was some animosity between applicant and an officer in the office of respondent No. 4. However, the picture regarding this incident is not conclusive, and a direct nexus with the order of transfer cannot be established.

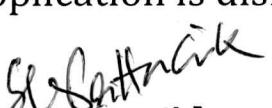
7. In the case of *S.C. Saxena Vs. Union of India and Ors.* (2006)9 SCC 583, the Hon'ble Apex Court has observed that "a Government servant cannot disobey a transfer order by not

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reporting at the place of posting and then go to Court to ventilate his grievance. It is his duty to first report for work where he is transferred and make a representation on his personal problems." As per the Office Memorandum at Annex.A/5, the applicant was relieved of his duties on 15.05.2015, and his representation was rejected on 08.06.2015 as per the Office Memorandum at Annex.A/8. There is no information about whether the applicant joined his duties at Hazarduari Palace, in West Bengal.

8. We do not find justifiable ground to quash the order of transfer. The applicant should join his new place of posting, and thereafter he may, if advised, make his representation for a transfer to the earlier place of posting, submitting his personal problems for consideration of respondents. If such a representation is received, respondents are directed to consider the same sympathetically taking into account his personal and health difficulties, and pass appropriate orders. We do not intend to make inroads into an executive domain. But, respondents may bear in mind that applicant is a Group 'D' employee, placed in the lowest rung of the ladder in the hierarchy and he may face difficulties that senior officials may not comprehend. It is, therefore, directed that respondents will consider the representation if it is filed, after the applicant joins his new place of posting, with sympathy and with a humane approach before taking a decision.

9. With the above directions to respondents, Original Application is dismissed. No costs.


[S.K.Pattnaik]
Member(J)


[R.C.Misra]
Member (A)