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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

Original Application No.260/00852 of 2015
Cuttack, this the 13th day of May, 2016

F.M. RoutApplicant

-Versus-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? *no*

2. Whether it be referred to PB for circulation? *no*


(R.C. MISRA)
MEMBER(A)

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CUTTACK BENCH, CUTTACK

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

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Shri Fakir Mohan Rout, aged about 46 years, S/O-Late Prahalad Rout, Qr. No. F/2, CPWD Colony, Unit-4, Bhubaneswar, Dist-Khurda, Odisha, at present working as Assistant Engineer, Office of the Executive Engineer, Bhubaneswar Central Division-III, CPWD, Nayapalli, Bhubaneswar-12, Dist-Khurda, Odisha.

.....Applicant

By the Advocate(s)-M/s. K.C. Kanungo, C. Padhi

-Versus-

Union of India, represented through

1. Director General, Central Public Works Department, Nirman Bhawan, New Delhi.
2. Special Director General(ER), Central Public Works Department, 5th Floor, 1st MSO Building, Nizam Palace, 234/4, A.J.C. Bose Road, Koldata-20, West Bengal.
3. Deputy Director General (HQ Cum BD), ER, Central Public Works Department, 5th Floor, 1st MSO Building, Nizam Palace, 234/4, A.J.C. Bose Road, Koldata-20, West Bengal.
4. Superintending Engineer, CPWD, Guawahati Central Circle-II, Garchuk, NH-37, Guawahati-781035, Assam.
5. Executive Engineer, Bhubaneswar Central Division HQ, CPWD, Nayapalli, Bhubaneswar-12, Dist-Khurda, Odisha.
6. Dibyuendu Karjee, at present working as Assistant Engineer, Under Additional Director General (ER-I), CPWD, 1st MSO Building, Nizam Palace, 234/4, A.J.C. Bose Road, Koldata-20, West Bengal.

.....Respondents

By the Advocate(s)- Mr. S. Behera

ORDER

R.C. MISRA, MEMBER (A)

In this O.A., applicant, an Assistant Engineer (A.E.), working in the Office of the Executive Engineer, Bhubaneswar Central Division-III, CPWD has approached this Tribunal with a prayer that the Office Order dated 17.07.2015 issued by the Office of the Special Director General (ER), CPWD, Kolkata to the extent it concerns his transfer to the office of Respondent No.4 (Superintending Engineer, CPWD, Guawahati Central Circle-II, Assam may be quashed for the



ends of justice. A further prayer has been made to also quash the letter dated 21.09.2015 issued by the Office of the Special Director General (ER), CPWD, Kolkata rejecting the representation made by the applicant in compliance of the orders of this Tribunal dated 21.07.2015 passed in O.A. No.447/2015 and ^{to} the ² ~~applicant may be allowed~~ to continue in his present capacity in the office of the Executive Engineer, Bhubaneswar.

2. The facts involved in this O.A. are that the applicant was initially appointed as Junior Engineer (J.E.) in the year 1991 at Silchar Central Division, CPWD, Assam. He continued to work there till 16.07.1997 and thereafter he was transferred to Charbatia in Odisha where he joined in the month of August, 1997. Thereafter, in November 2003 he was transferred as J.E. to Bhubaneswar. Subsequently, by an order dated 08.06.2012 he was transferred to Puri; but this order of transfer was not given effect to by the authorities and therefore, applicant continued to work at Bhubaneswar Office. In the meantime, he was promoted to the post of Assistant Engineer (A.E.), by an order dated 07.05.2013, being posted at Bhubaneswar. While continuing as such, applicant was transferred from Bhubaneswar to Guwahati in the month of July, 2015 vice Sri Dibyendu Karjee, (Respondent No.6) who was posted in his place at Bhubaneswar. This order of transfer dated 17.07.2015 is at Annexure-A/3 of this O.A. Being aggrieved by the order under Annexure-A/3, applicant submitted a representation dated 18.07.2015 to Respondent No.2 to allow him to continue at Bhubaneswar by cancelling the order of transfer. In the representation, applicant had pointed out various family difficulties and also alleged that the order of transfer was in violation of the extant transfer guidelines of the Department. After ² filing of this representation, applicant approached this Tribunal in O.A. No. ² 47/15. The Tribunal took note of the fact that the representation of the applicant was still

pending consideration by the Respondent No.2 and therefore, without going into the merit disposed of the said O.A. vide order dated 21.07.2015 with direction to Respondent No.2 to dispose of the pending representation with a reasoned and speaking order by taking into account the rules and provisions of law as applicable to this case. This Tribunal while disposing of the O.A. has also directed status quo as on date in respect of the applicant to be maintained. It is to be noted that in obedience to the orders of this Tribunal, the Respondents passed a speaking order dated 21.09.2015 in which based upon various reasons the applicant's request for retention at Bhubaneswar was not acceded to. This order dated 21.09.2015 is the subject matter of challenge in this second round of litigation filed by the applicant.

3. The crux of the second round of litigation is that the points raised by the applicant in his representation were not considered in its proper perspective and that the order dated 21.09.2015 is contrary to the provisions of the transfer guidelines formulated by the Respondents. First of all applicant has alleged that a humane approach was not adopted regarding serious family problems to the effect that his old and aged mother is suffering from various ailments and his daughter's academic session is going on. As per para-12.1 of the transfer guidelines, all transfers are to be carefully planned within a reasonable space of time. As far as possible the transfers should take effect after the end of financial year/academic year. The transfers in the rest of the year should be confined to taking into account the administrative exigencies whereas in the present case the order of transfer was issued in July, 2015 by which time the applicant's daughter had already taken admission in Class-X and was continuing her studies at Bhubaneswar. Therefore, applicant's transfer at this point of time would hit the academic interest of his daughter. Para-12.5 (ii) of the transfer

guidelines stipulates that the tenure in North Eastern Region and other declared hard areas shall be two years. Officers posted to such station shall be allowed to exercise choice of station of posting and same will be considered subject to availability of vacancy at the station chosen and other administrative factors. The applicant's case is that he had completed six years of stay in the North Eastern Region i.e., Assam which is a hard station. Therefore, he should not be transferred for the second time to the hard area, in the present case Guwahati. Additionally another point raised by the applicant is that consequent upon his promotion he had joined as A.E. on 17.05.2013 at Bhubaneswar. Therefore, he should have been allowed to complete the normal tenure of four years since the transfer guidelines provide that the normal period of continuous stay of an A.E. shall be four years only at any Station except Delhi, Mumbai, Chennai & Kolkata and in the circumstances, he is due for transfer on 16.05.2017 ^h were-as ^l he has completed only 2 & ½ years of service as A.E. Another submission made by the applicant is that there are number of vacancies as per the sanctioned strength of A.E. at Bhubaneswar and therefore, there is no reason for his untimely transfer during mid-academic session to a hard Station like Guawahati. The serious family problems, i.e., illness of his old mother who is suffering from cancer and study of his daughter who was to appear in the CBSE Annual Examination were not duly considered by the Respondents-Authorities while rejecting the representation, applicant had added.

4. On perusal of records, it reveals that on 27.11.2015 this O.A. was admitted and notice was directed to be issued to the Respondents. Having regard to the submissions made by the Ld. Counsel for the applicant as well as the Ld. SCGPC appearing for the Respondents, as an interim measure, order dated 17.07.2015 (A/3) in so far as transfer of the applicant is concerned along with

order dated 21.09.2015 (A/6) was stayed till 15.01.2016, to which date the matter stood posted for considering further continuance or otherwise of the interim order. The Respondents had been given liberty to file objection to the interim order. The SCGPC had filed his objection. On 19.02.2016, Ld. SCGPC submitted that this objection should be treated as counter to O.A. so that the matter could be decided finally, as interim order was in force. On the other hand, Mr. K.C. Kanungo, Ld. Counsel for the applicant submitted that his reply to stay vacation petition to be treated as rejoinder. This being the situation, the pleadings were taken to be complete and the matter was finally heard on 21.03.2016 and the orders were reserved on 29.04.2016 after filing of written notes of submissions by Ld. Counsels for both the sides.

5. In the counter filed by the Respondents it has been submitted that applicant has continuously been staying in different offices located at Bhubaneswar from 28.08.1997 and he is also having ^{the} a longest stay amongst all Assistant Engineers stationed at Bhubaneswar. The Department has not issued the order of transfer overnight. In terms of the transfer and posting guidelines, a readiness list was circulated among all the officers in response to which the present applicant had requested for his continuance at Bhubaneswar. However, this was not acceded to. As per the guidelines of transfer, the maximum tenure of A.E's in case of Kolkata will be six years, for hard area two years and for other areas, it is four years. It is further laid down in the transfer guidelines that the period of continuous stay in a station shall be counted by taking into account the posting of officer in all grades and levels. As per the CVC guidelines dated 18.06.1999, the period of posting in the sensitive posts and locations shall not be more than three to four years. Therefore, the present applicant falls within the purview of this provision and therefore his transfer is justified. Transfer of the

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applicant being over due as per the transfer guidelines, the same has been effected by issuing the orders of transfer and therefore, the grounds of challenge by the applicant are not sustainable.

6. In the rejoinder to counter applicant has stated that the tenure of stay of an A.E. in a station is four years in terms of provisions under para-12.06(b)(i) of transfer guidelines, and the applicant should be allowed to complete his tenure of four years in terms of the said provision. It is also submitted that the important issues, i.e., ensuing CBSE Examination of his daughter as well as the ill health of his old mother have been completely ignored by the Respondents-Authorities. There is a specific provision in the transfer guidelines under para-12.5(vi) that cases of medical ground shall constitute terminal diseases and case of mentally challenged. The Respondents have chosen to remain completely silent on this matter. Applicant has alleged that the Respondents have made false averments regarding his continuance in Bhubaneswar with effect from 28.08.1997. The fact is that the applicant after completion of six years at hard station at Silchar, Assam was posted at Charbatia, Odisha on 16.07.1997. After completing six years at Charbatia, he was transferred and posted at Bhubaneswar in November, 2003. Thereafter, he was promoted as A.E. and joined as A.E. in the Office of the Executive Engineer, Bhubaneswar on 17.05.2013. Therefore, the submission of the Respondents that applicant has continuously been staying at Bhubaneswar for a number of years is denied by the Ld. Counsel of the applicant.

7. Having heard the Ld. Counsels for both sides, I have also perused the records. It is a well-accepted ^{position} ~~provision~~ of law that transfers are incidental to Government service and the Courts and Tribunals should not normally interfere in the orders of transfer unless transfer orders have been passed by the authorities who are not competent or while issuing transfer orders, statutory rules in this

regard have been completely thrown to the wind. ^lEven if a case is established that transfer has been made with malafide motive in order to harass the applicant, the Courts and Tribunals will also step in to rectify such mistakes. Otherwise, transfers are within the prerogative of the executive authorities, who are expected to make orders of transfers on the basis of administrative exigencies and also by following the various rules and guidelines governing such transfers. In the case of Mrs. Shilpi Boss & others Vs. State of Bihar and others AIR 1991 SC 532

Case No. 5418 of 1990 ^lwith the following observations have been made by the Hon'ble Apex Court in the matter of transfer:-

“ In our opinion, the courts should not ^linterfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of malafide. A Govt. servant holding a transferable post has no vested right to remain posted at one place or the other; he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order, instead affected party should approach the higher authorities in the Department. If the courts continue to interfere with day to day transfer orders issued by the Govt. and its subordinate authorities there will be complete chaos in the Administration which would not be conducive to public interest”.

8. I have to therefore examine the present case under the broad ratio that is decided by the Hon'ble Apex Court with regard to the scope of interference by the Tribunal in the matters of transfer. First of all, transfer order is dated 17.07.2015 whereas the transfer guidelines make a mention that the transfer orders should normally be issued in the month of March/April so that the officers can move before the commencement of the academic year. In the present case, applicant is having a daughter who is in Class-X and is going to appear in the CBSE Examination. Therefore, ^labsolutely he has a grievance with regard to the period of transfer. Regarding the other personal difficulties, and

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health problems stated to be faced by his old mother, these are the matters to be considered by the Respondents authorities. There is no law that a transfer cannot be made if the concerned officer is having personal difficulties. However, the concerned authorities are supposed to consider these factors along with other administrative exigencies to decide on the matter of transfer. In the present case the applicant had made a representation to the Respondent No.2 on 18.07.2015 urging three grounds. The first ground is that he had already served six years in the hard station and further posting at hard station is not permissible in the absence of his ^{tion} ~~opinion~~. The second ground was the tenure of his posting at Bhubaneswar in the post of A.E. is for four years and he has not completed his tenure so far. The 3rd ground advanced was that his daughter is studying in Class-X and would appear the final Board Examination in the month of February/March, 2016 and as such in the mid academic session transfer is against the policy of transfer. The Tribunal in the earlier O.A. No.447/15 disposed of on 21.07.2015 directed the concerned authorities to consider the representation. By order dated 21.09.2015, the Respondent No.2 has disposed of the said representation. On perusal of this order which is impugned in this O.A., it is found that the grounds advanced by the applicant have not been specifically considered by the Respondents authorities. It is mentioned that as per the service record placed on the website, applicant has been staying at Bhubaneswar since 08.07.1997 for a period of over 18 years including the period of posting as J.E. However, applicant has brought to the notice of the Tribunal that on completion of tenure at Silchar, he was transferred to Charbatia and thereafter, he was transferred to Bhubaneswar in the year 2013. Such a claim regarding his posting is not specifically denied by the Respondents, who have simply mentioned that the information is based on the website that he has been staying at Bhubaneswar for a period of over 18 years.

This is a factual aspect and could have been specifically replied to by the Respondents and therefore, it is a case of non-application of mind. From 1997 to 2003 if the applicant was at Charbatia, it cannot be taken as his continuous service at Bhubaneswar. With regard to the posting to the grade of A.E., it has been mentioned by the Respondents in the impugned order that for A.E., the maximum tenure for areas other than Kolkata and hard areas will be four years. When the Respondents themselves admit this provision, they have not explained what were the administrative exigencies which compelled them to transfer the applicant before completion of his normal tenure of four years as A.E. With regard to the other family difficulties including the continuance of education of the daughter of the applicant, the order is completely silent. It is mentioned in the impugned order that the applicant in response to the readiness list requested for his continuance at Bhubaneswar. But because of transfer guidelines and CVC guidelines, his request could not be acceded to and therefore, he was transferred to Guwahati against a non-sensitive post. It is quite evident on perusal of the impugned order that this has not been passed after taking into account all the grounds urged by the applicant in his representation so as to pass a fair and objective order.

9. The ratio of judgment in Mrs. Shilpi Boss & others Vs. State of Bihar and others (supra) is that the Tribunal should not interfere in a transfer which is made in public interest and on administrative reasons, unless the transfer order is made in violation of any mandatory statutory rules or on the ground of malafide. The transfer guidelines issued by the CPWD however, are not in the nature of statutory rules. The guidelines are principles decided by the authorities according to which the transfers are to be regulated. In the absence of policy and principles, there is a danger that the orders of transfer will become arbitrary and

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personal considerations will dominate such orders of transfers. A department is completely free to make orders of transfer in public interest and on administrative reasons having regard to the transfer guidelines to ensure transparency. In a case where the applicant has raised certain genuine grievances against the order of transfer, the authorities are duty bound to consider the grievances in an objective manner and thereafter pass an order. In the present case, from the perusal of the facts given above and the claims and counter claims of the parties, it is quite evident that the Respondents – Department have failed to give an objective consideration to the grounds taken by the applicant challenging the orders of transfer. With regard to the various stations served as claimed by the applicant, Respondents without giving a proper reply have simply mentioned that he has been continuing at Bhubaneswar for a very long time as per the information placed in the website. It is also evident that there is no reason given out by the Respondents for not allowing the applicant to complete his normal tenure of four years as A.E. at Bhubaneswar. If there were administrative exigencies for his transfer before completion of four years tenure, those also could have been stated by the Respondents before the Tribunal. There is lack of transparency in disposing of the representation of the applicant.

10. Transfer guidelines are not made in order to be flouted by exercise of any arbitrary discretion. These also assume the nature of a statute. Following these guidelines in letter and spirit is a sine qua non of transparent administration. There is clear evidence in this case that the transfer guidelines have been observed in the breach while ordering the transfer of the applicant.



11. In the facts and circumstances of the case, therefore, I find justifiable ground to intervene in the order of transfer dated 17.07.2015 in so far as the applicant is concerned. Hence the order dated 21.09.2015 in which the Respondent No.2 has rejected the representation of the applicant for cancelling the order of transfer to Guwahati and the order of transfer dated 17.07.2015 in so far as the applicant is concerned are hereby quashed and set-aside. In the result, the O.A. is allowed. No costs.


(R.C. MISRA)
MEMBER(A)

K.B.