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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.110 of 2016

Cuttack this the 16th day of October, 2017

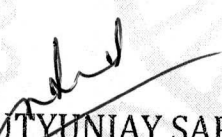
Shri Narayan Mohanty...Applicant


-VERSUS-

Union of India & Ors.....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? ✓
2. Whether it be referred to CAT, PB, New Delhi for being
circulated to various Benches of the Tribunal or not ? ✓


(DR.MRUTYUNJAY SARANGI)
MEMBER(A)


(S.K.PATTNAIK)
MEMBER(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
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O.A.No.110 of 2016

Cuttack this the 16th day of October, 2017

CORAM:

HON'BLE SHRI S.K.PATTNAIK, MEMBER(J)
HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

Shri Narayan Mohanty, aged about 58 years, S/o. late Dhadeswar Mohanty, resident of Vill-Damadharanali, PO-Beltikiri, Dist-Dhenkanal, at present working as Driver Grade-I, O/o. Executive Engineer, Investigation Division, NWDA, F-24, BJB Nagar, Bhubaneswar-751 014, Dist-Khurda, Odisha

...Applicant

By the Advocate(s)-M/s.K.C.Kanungo
Ms.C.Padhi
S.Pradhan

-VERSUS-

Union of India represented through:

1. The Secretary to Government of India, Ministry of Water Resources, River Development and Ganga Rejuvenation, Shramashakti Bhawan New Delhi-66
2. Director General, NWDA, Community Centre, SAKET, New Delhi-17
3. Chief Engineer (North), NWDA, 193-F, Vishal Khand Gomati Nagar, Nucknow-226 010, UP
4. Superintendent Engineer, Investigation Circle, NWDA, F-24, BJB Nagar, Bhubaneswar-751 014, Dist-Khurda, Odisha.
5. Executive Engineer, Investigation Division, NWDA, F-24, BJB Nagar, Bhubaneswar-751 014, Dist-Khurda, Odisha
6. Executive Engineer, Investigation Division, NWDA, 601, 6th Floor, Estate Plaza, Estate Timber Premises, Old H.B.Road, Kantatoli, Ranchi-834 001, Jharkhanda

7. Shri N.M.Bhutia, Driver Grade-I, O/o. Executive Engineer, Investigation Division, NWDA, F-24, BJB Nagar, Bhubaneswar-751 014, Dist-Khurda, Odisha

...Respondents

By the Advocate(s)-Mr.S.B.Jena

ORDER

DR.MRUTYUNJAY SARANGLMEMBER(A):

Applicant, who works as Driver, Gr.I in the Office of the Executive Engineer, Investigation Division, National Water Development Agency (NWDA), Bhubaneswar is aggrieved by the order of his transfer to Investigation Division, Ranchi. He had earlier approached this Tribunal in O.A.No.825 of 2015. The said O.A. was disposed off on 20.11.2015 with a direction to the Director General, NWDA, New Delhi (Res.No.2) to dispose off the representation of the applicant dated 17.11.2015 through a reasoned and speaking order within a period of two months. The applicant has challenged the Memorandum dated 15.1.2016 which is a speaking order passed by the Respondent No.2 in compliance with the direction of this Tribunal, rejecting his representation for cancellation of the transfer order. In the present O.A. he has prayed for quashing the transfer order dated 9.11.2015 at A/4 in so far as it relates to him and also the speaking order dated 15.1.2016(A/7). He has also prayed for a direction to Respondent No.2 to retain him at the Bhubaneswar office. The records show that on his prayer, an interim order was passed on 26.2.2016 to maintain status quo as on date so far as continuance of the applicant at Bhubaneswar is concerned. The interim order was continued from time to time.

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2. Applicant has based his prayer on the following grounds:

- i) Applicant is due to retire on 30.6.2018 and the order of transfer is in violation of the transfer guidelines which provide that an employee who has already attained 57 years of age should be given a place of posting of his choice.
- ii) Respondent No.7, who is a private respondent is having a longer period of stay exceeding 20 years compared to the applicant. The transfer guidelines under A/1 stipulate that officials having longest stay of the place shall be transferred except in case of individual who may be required at the new station by virtue of his expertise, knowledge, etc. in a particular field. The retention of Respondent No.7 at Bhubaneswar is a clear violation of the transfer guidelines.
- iii) Clause-5(xiii) of the transfer guidelines at A/1 prescribes that the total tenure of choice posting at a station of an employee/official in all the grades/posts counted together normally should not exceed more than 20 years. But the total tenure of respondent No.7 is about 26 years whereas the applicant's stay in Bhubaneswar in toto is about 11 years. Therefore, the transfer of the applicant and retaining of Respondent No.7 at Bhubaneswar is in violation of Clause-5(xiii) of the transfer guidelines.
- iv) There is flexibility in the number of drivers who work in the NWDA and although the sanctioned strength is 3, more number of drivers work due to wide field duty and survey work. In the year 2012-13, 2013-14 and 2014-15, there were five drivers in position.
- v) Respondent No.7 had requested for keeping his transfer order dated 21.5.2014 in abeyance for three months so that he could complete his daughter's marriage on 24.6.2015, but Respondent No.2 has ordered retention of Respondent No.7 much beyond the period prayed for by him.
- vi) Respondent No.7 had submitted a representation on 3.6.2014 and although he had not pleaded for cancellation of transfer order on medical ground, the Respondent No.2 has cited medical ground to

retain him, which is actually wrong and colourable exercise of power.

- vii) There is no public interest involved either transferring the applicant or the retaining Respondent No.7 at Bhubaneswar.
- viii) Applicant's wife is suffering from old age related ailments and his transfer to Ranchi at this juncture will pose difficulty in his wife's treatment.
- ix) Although CAT had directed Respondent No.2 to dispose of the representation of the applicant as per rules, the Memorandum dated 15.1.2016 has been issued in clear violation of the transfer guidelines at A/1.

3. Respondents in their counter reply filed on 25.5.2016 have submitted that the NWDA has its own transfer guidelines which permit transfer of the employees on administrative grounds as well as in exigency of work. Applicant was transferred out since there were six Drivers in position at NDWA against the sanctioned strength of only three Drivers for the offices of the Investigating Circle and Investigation Division. There are six Drivers working with only three vehicles available for them. There has been objection by the Audit Team for the continuation of six drivers. The services of the applicant are required at Ranchi. Respondents have sympathetically considered applicant's representation, but after careful consideration had rejected the request of the applicant. The illness mentioned by the applicant is general in nature and not necessarily prolonged. Ranchi has also good medical facilities and therefore, applicant's prayer deserves no consideration. The appointment in NWDA carries the liability to serve in any

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part of India. Transfer guidelines do not have statutory force and the applicant's transfer has been made in public interest. Respondents have also cited the judgment of the Hon'ble Supreme Court in ***Rajendra Singh & Ors. vs. State of U.P. & Ors. reported in (2009) 15 SCC 178***, in which it has been held by the Hon'ble Apex Court that a Government servant has no vested right to remain posted at a place of his choice nor can he insist that he may be posted at one place or the other. He is liable to be transferred in the administrative exigency. It has also been held by the Hon'ble Apex Court in ***Shilpi Bose & Ors. vs. State of Bihar & Ors. in AIR 1991 SC 532*** that Courts should not interfere with the orders of transfer of an employee unless such transfer orders have been made in violation of any mandatory statutory rules or on the ground of mala fide. The fact that there is a very limited scope of judicial review in the matters of transfer has also been reiterated by the Hon'ble Apex Court in ***N.K. Singh vs. Union of India & ors. (1994) 6 SCC 1998***.

The competent authority had accepted the request of Shri N.M.Bhutia (Res.No.7) for retention at Bhubaneswar since he was a widower having three children studying at Bhubaneswar and also had dependent old parents to look after. Mere attaining 57 years does not confer any right on a Government employee for continuous posting at one place. Therefore the impugned orders do not violate any guidelines for transfer in

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the organization of NWDA. The applicant's case is not covered under any clause of the transfer guidelines and therefore, there is no illegality in the order.

4. Applicant has filed his rejoinder on 19.8.2016, in which he has reiterated that since he is to retire shortly, transferring him out and retaining Respondent No.7 is an act of discrimination. The transfer of the applicant also is not in public interest as made out by the respondents.

5. We have heard the learned counsel for both the sides and perused the documents submitted by them.

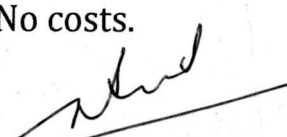
6. The scope of judicial inference in the matter of transfer has been dealt with by the Hon'ble Supreme Court in a number of cases. We have taken into account the decisions of the Hon'ble Supreme Court in ***Union of India vs. S.L.Abas*** reported in ***(1993) 4 SCC 357***, ***Kendriya Vidyalaya Sangathan vs. Damodar Prasad Pandey*** ***(2004) 12 SCC 299***, and ***Abani Kanta Ray vs. State of Orissa*** ***1995 Suppl (4) SCC 169***. We have also taken into account the respondents' citation of the judgments in ***Rajendra Singh & Ors. vs. State of U.P. & Ors.*** reported in ***(2009) 15 SCC 178***, ***Shilpi Bose & Ors. vs. State of Bihar & Ors.*** in ***AIR 1991 SC 532*** and ***N.K. Singh vs. Union of India & Ors.*** ***(1994) 6 SCC 1998***.

7. Although the judicial pronouncements are overwhelmingly clear that the Courts and Tribunal should not interfere with the orders of transfer unless the transfer orders

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have been made in violation of mandatory statutory rules or on the ground of mala fide, in the present case, we find that the applicant has only less than nine months of service before he retires. The applicant has also established certain degree of mala fide since the retention of Shri N.M.Bhutia (Respondent No.7) has been despite his asking for extension of time only for three months upto 30.9.2014. We are not inclined to go into the merits of the retention of of Res.No.7 at this stage. It is for the respondents to arrange the posting of Drivers at their different field offices. But the transfer guidelines (A/1) very clearly state that efforts will be made not to transfer official/employee who already attained the age of 57 years. The applicant being very close to his retirement, his dislocation to Ranchi will be an act of gross inhumanity. It will also create difficulties in processing the necessary documents for his pensionary benefits. Only on this ground at this belated stage, we allow the O.A. filed by the applicant. Transfer order dated 9.11.2015(A/4) and the speaking order dated 15.1.2016(A/7) are quashed. The respondents are directed to retain the applicant in his present place of posting till his superannuation.

In the result, the O.A. is allowed to the extent indicated above. No costs.


(DR.MRUTYUNJAY SARANGI)
MEMBER(A)


(S.K.PATTNAIK)
MEMBER(J)

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