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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK


OA No. 293 of 2012  
Cuttack, this the 20<sup>th</sup> day of April, 2012

Dr. Bikartan Das ..... Applicant  
Versus  
Union of India & Ors. .... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not?

  
(A.K. PATNAIK)  
Member(Judl)

  
(C. R. MOHAPATRA)  
Member (Admn.)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

OA No. 293 of 2012

Cuttack, this the 9<sup>th</sup> day of April, 2012

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THE HON'BLE MR.C.R.MOHAPATRA, MEMBER, (ADMN.)

And

THE HON'BLE MR.A.K.PATNAIK, MEMBER (JUDL.)

.....  
Dr. Bikartan Das, aged about 54 years, Son of Late Bimbadhar Das, Village-Bhagi Chakurai, PO-Dhoba Chakurei, PS-Basta, Dist. Balasore at present working as Research Officer (S.4), National Research Institute of Ayurvedic Drug Development, Bhubaneswar, At-Bharatpur near Kalinga Studio, PO-Khandagiri, Bhubaneswar, Dist. Khurda.

....Applicant

By legal Practitioner -M/s.B.Senapati,M.K.Panda,  
S.K.Mishra,Counsel.

-Versus-

1. Director General, Central Council for Research in Ayurvedic Science, J.L.N.B,C.A.H, Anusandhan Bhawan, 61-65, Institutional Area, Opposite 'D' Block, Janakpuri, New Delhi-110 058.
2. Assistant Director in-charge, National Research Institute of Ayurvedic Drug Development, Bhubaneswar at Bharatpur near Kalinga Studio, Po.Khandagiri, Bhubaneswar, Dist.Khurda.
3. Union of India represented through its Secretary, Department of Ayursh Ministry of Health and Family Welfare, Government of India, New Delhi.

....Respondents

By Legal Practitioner - Mr.U.B.Mohapatra, SSC

ORDER

C.R.MOHAPATRA, MEMBMER (ADMN.):

The applicant who is working as Research Officer (S.4) under the Respondent No.2 has filed this Original Application seeking direction to allow him to

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continue at his present place of posting till 30.06.2012 to facilitate his children to complete their academic sessions. It has been stated that he does not challenge the power and authority of the Respondents in transferring him to North Eastern India Ayurveda Research Institute Guwahati vide Annexure-A/1 dated 9<sup>th</sup> March, 2012 but his grievance is that out of three persons transferred in the same order while retaining two of them, on their own request, in their present post of posting, his request to defer his order of transfer till 30.06.2012 was rejected in Annexure-A/7.

2. The applicant had earlier approached this Tribunal in OA No.241 of 2012 which was disposed of by this Tribunal on 27.03.2012. The operative portion of the order is quoted herein below:

“5. Ld. Counsel for the applicant submits that though the applicant had approached the concerned authority his request was rejected without appreciating his personal problems. Be that as it may, since transfer is an incidence of service and the applicant has since been relieved and the academic session of the children **according to the applicant is already over on 26.03.2012**, we do not want to interfere in the matter. The Ld Counsel for the applicant, however, seeks to make a comprehensive representation to RespondentNo.2 within a

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period of 03 days hence and prays for direction of this Tribunal to the Respondent No.2 to consider the same. Accordingly, we allow the applicant to approach the Respondent No.2 by making a comprehensive representation within a period of 03 days hence and thereafter within 15 days the Respondent No.2 shall issue a reasoned order after giving due consideration to the said representation. During this period no coercive action shall be taken against the applicant.

3. As it appears from the record, the Respondents considered the comprehensive representation submitted by the applicant on 29.3.2012 but rejected the request of his retention at his present place of posting for the reasons stated in Annexure-7 which are quoted herein below:

“Whereas it was felt an urgent administrative exigency on public interest to post Dr.Bikartan Das, Research Officer (S.IV) to North Eastern India Ayurveda Research Institute, Guwahati from NRLADD, Bhubaneswar. It was decided to transfer the Officer with immediate effect with the approval of Competent Authority of the Council due to administrative exigencies;

And whereas the transfer order was issued on 9.3.2012 with the instructions to relieve Dr.Bikartan Das, immediately to enable him to join the new place of posting. Accordingly, the incharge of NRLADD, Bhubaneswar relieved Dr.Bikartan Das w.e.f. 12.3.2012 (afternoon);

And whereas, Dr. Bikartan Das vide his application dated 12.3.2012 requested the Director General, CCRAS to allow him to

continue at NRLADD, Bhubaneswar till the completion of the entrance examination of his son/daughter for All India/State Level Medical/Engineering and Veterinary course after their 12<sup>th</sup> final exam. As per the transfer policy of the Council the transfers are generally made at the end of academic session and in the present case the transfer was made at the end of academic session only;

As such after due consideration of the request of Dr. Bikartan Das, the Competent Authority has decided to regret the same with the direction to join the new place of posting urgently due to the administrative exigency and if he desires to present at his home town during the entrance examination of his son/daughter he may avail the leave at his credit to do so;

Accordingly, his fresh comprehensive representation dated 29.3.2012 to allow him to continue at NRLADD, Bhubaneswar till his son/daughter appear in all the Medical/Engineering/Veterinary entrance examination has been reconsidered by the Competent Authority of the Council and decided to direct Dr. Bikartana Das to join the new place of posting immediately since the transfer has been made on urgent administrative exigency as well as in public interest. He may avail his own leave to be present at Bhubaneswar during the entrance examination of his son/daughter.

The order of the Hon'ble Administrative Tribunal, Cuttack Bench dated 27.3.2012 is complied with accordingly."

4. The Applicant has no school going children. It is not the case of the Applicant that the transfer would necessitate shifting of the family which would cause change of the pattern of education of his children.

Appearing at entrance examination by the son/daughter of the applicant cannot be a ground to seek quashing of the order of transfer which has been made in public interest. In this connection we may observe that almost every one has children and if such kind of request is entertained, no transfer order can ever be effected. Every transfer order causes some hardship but if one wants to remain in service he has to obey the transfer order as transfer order is a purely administrative order and is not a punishment. Transfer is an incidence of service. Be that as it may, we find that the authority took into consideration this aspect of the matter but as public interest demands the posting of the applicant at Guawhati, regretted to annul the order of transfer and, therefore, this Tribunal being not the appellate authority over the decision of the authority manning the administration is not inclined to interfere as the transfer of the applicant would cause difficulty for his son/daughter to appear at the entrance examination.


5. It is not the case of the applicant that his transfer is in violation of the transfer policy/guidelines. However, he has raised the point that the transfer is

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actuated with mala fide exercise of power. It is trite law that people are prone to make allegation of bias/mala fide exercise of power therefore, the Tribunal should not draw any conclusion unless allegations are substantiated beyond doubt. As we find, in the instant case except, bald allegation the applicant has not produced any such unimpeachable document so as to give any credence to such allegation or draw adverse inference on the same. It is beyond comprehension as to how and why the authority who issued the order of transfer and the authority considered the representation developed bias and for what reason.

6. It is well settled law that transfer is an incidence of service. Who should be transferred and posted where is a matter for the administrative authority to decide. Unless the order of transfer is shown to be clearly arbitrary or is vitiated by mala fides or is made in violation of any statutory and mandatory rules governing the transfer the Tribunal should not interfere with it.


7. For the reasons discussed above, after having heard the Learned Counsel for both sides, we find no

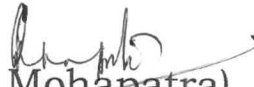


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merit in this OA. This OA is accordingly dismissed by leaving the parties to bear their own costs.

  
(A.K. Patnaik)  
Member (Judicial)

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

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