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OA No.290/2013

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

OA No.290 of 2013
Cuttack, this the 13th day of May, 2013

Dr.Bikartan Das,
Aged about 54 years,
S/o.Late Bimbadhar Das,
Vill-Bhagi Chakuraia,
Po-Dhoba Chakurei,
PS-Basta,
Dist.Balasore,
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

(Advocate(s) -M/s.Bikram Senapati,Subha Ku Mishra)

-VERSUS-

1. Governing Body of 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,
represented though its Member Secretary.





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2. 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 Dehi-110 058
Through its Director General.
 3. Assistant Director in charge,
National Research Institute
of Ayurvedic Drug Development,
Bhubaneswar,
At-Bharatpur near Kalinga Studio,
Po.Khandagiri,
Bhubaneswar,
Dist.Khurda.
 4. Dr.M.V.Acharya,
Assistant Director,
Ayurvedic Contraceptive Drug Research Institute,
Block 0/3 Building,
Mental Hospital Campus,
Leghani Nahr,
Ahmedabad.
 5. Dr.Ramesh Babu Devalla,
Director General,
Central Council for Research
in Ayurvedic Sciences,
Anusandhan Bhawan,
61-65, Institutional Area,
Opp. 'D' Block,
Janakpuri,
New Delhi-110 058.
-Respondents

(Advocate(s) -)



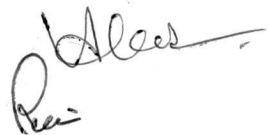

O R D E R

(Oral)

A.K.PATNAIK, MEMBER (JUDICIAL):



The Applicant (Dr.Bikartan Das), a Research Officer (S.4) in the National Research Institute of Ayurvedic Drug Development, Bhubaneswar in this Original Application challenges his transfer/posting to North Eastern India Ayurveda Research Institute, Guwahati ordered vide OR No.3703/2011-12 dated 9th March, 2012 vis-à-vis the order dated 10th April, 2013 at Annexure-26 rejecting the prayer for cancellation of order of transfer and his retention at Bhubaneswar.

2. Heard Mr.Bikram Senapati, Learned Counsel appearing for the Applicant and perused the records. Mr.Senapati, Learned Counsel for the Applicant at the out set has submitted that though the Department accepted the request of Dr.M.M.Padhi and Dr.M.V.Achary and retained them at the places wherefrom they were transferred, similar request of the applicant was rejected. Hence Mr.Senapati, Learned Counsel for the applicant by taking us through the pleadings and materials placed in support thereof has contended that as the order of transfer is actuated with *mala fide*



exercise of power and the order of rejection at Anenxure-26 being unreasoned both the orders are liable to be set aside.

3. It is needless to state that against the order of transfer the applicant submitted representation on 12.3.2012 requesting his retention at Bhubaneswar till 30.6.2012 on the ground of education of his children but when such request of the applicant was rejected he filed OA No. 241/2012 before this Tribunal. The said OA was disposed of on 27.3.2012 with liberty to the applicant to make a fresh representation to the competent authority within three days which shall be considered and disposed by the said authority within fifteen days and till then no coercive action shall be taken against him. On 29.3.2012 applicant submitted fresh representation. The said representation was rejected vide order dated 4.4.2012. Applicant again filed OA No. 293/12 challenging the order of rejection. The said OA was dismissed by this Tribunal on 20.4.2012 which order was challenged by the Applicant before the Hon'ble High Court of Orissa in WP (C) No. 7499/2012. On 4.5.2012 the WP (C) No.7499/2012 was disposed of by the Hon'ble High Court of Orissa holding that in the event the applicant makes fresh representation the same shall be disposed of

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within seven days and till then no disciplinary action shall be taken against the applicant for not joining at his place of transfer. Applicant was allowed to continue at Bhubaneswar till 30.6.2012 vide order dated 8.5.2012. Again applicant submitted representation dated 28.5.2012 requesting cancellation of his transfer/posting to Guwahati. Thereafter, applicant filed OA No. 478/2012 challenging his order of transfer but there was already a direction from the Hon'ble High Court of Orissa to allow the Applicant to continue at Bhubaneswar till 30.6.2012 the said was dismissed by this Tribunal. The said order of this Tribunal was challenged by the applicant in WP (C) No. 13951/2012. The Hon'ble High Court disposed of the matter on 13.8.2012 directing the Respondents to dispose of the representation after allowing the applicant an opportunity of hearing. Alleging non compliance of the order the applicant filed CONTC No. 2878/2012 before the Hon'ble High Court of Orissa which was disposed of on 15.1.2013 directing the Governing Body to dispose of the representation of the applicant after allowing him personal hearing. It was also directed that meanwhile there shall be no coercive action against the applicant. The Committee rejected the representation and



communicated vide letter dated 10th April, 2013 at Annexure-26.

Hence this OA with the aforesaid prayer.

4. It transpires from the order at Annexure-26 that as per Rule 48(1) of the Bye Laws of CCRAS all Group A and B Officers are liable to be transferred from one place to another on completion of five years of service and the present transfer of the applicant has been effected after more than 25 years of his stay at Bhubaneswar. Further it reveals from the order that the present order of transfer has been made in administrative exigency/public interest. Interference in the order of transfer of an employee made in administrative exigency/public interest has been deprecated by Hon'ble Supreme Court of India/Hon'ble High Courts in very many cases and suffice to rely on the observations of the Hon'ble Apex Court in some of the decisions which are quoted herein below:

1. Mrs. Shilpi Bose and others Vrs State of Bihar and others, AIR 1991 SC 532

In our opinion, the courts should not interfere with a transfer order which are 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 mala fide. A Government 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 Government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest.

2. Union of India Vrs N.P.Thomas 1993 SC 1605 / 1993 SCC (L&S) 237

In the present case, it cannot be said that the transfer order of the respondent transferring him out of Kerala Circle is violative of any statutory rule or that the transfer order suffers on the ground of mala fide. The submissions of the respondent that some of his juniors are retained by Kerala Circle and that his transfer is against the policy of the Government posting the husband and wife in the same station as far as possible cannot be countenanced since the respondent holding a transferable post and no vested right to remain in the Kerala Circle itself and cannot claim, as a matter of right, the posting in that Circle even on promotion.

.....For all the aforementioned reasons, we hold that the Tribunal was not justified in quashing the order of transfer of the Respondent and accordingly, we set aside the order ;of the Tribunal”

3. Rajendra Roy v. Union of India AIR 1993 SC 1236 / (1993) 1 SCC 148

“....It is true that the order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employees but on that score the order



of transfer is not liable to be struck down. Unless such order is passed mala fide or in violation of the rules of service and guidelines for transfer without any proper justification, the court and the Tribunal should not interfere with the order of transfer. In a transferable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the Department”.

4. Union of India & others v. S. L. Abbas AIR 1993 SC 2444

Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right.

5. N.K. Singh v. Union of India (1994) 6 SCC 98

Transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved, at times. The only realistic approach is to leave it to the wisdom of the hierarchical superiors to make the decision. Unless the decision is vitiated by mala fides or infraction of any professed

Praveen *Alex*

norm of principle governing the transfer, which alone can be scrutinized judicially, there are no judicially manageable standards for scrutinizing all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated.

6. State of M.P. v. S.S. Kourav (1995) 3 SCC 270

The courts or tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous consideration without any factual background or foundation.

7. Airports Authority of India v. Rajeev Ratan Pandey (2009) 8 SCC 337

In a matter of transfer of a government employee, [the] scope of judicial review is limited and the High Court would not interfere with an order of transfer lightly, be it at interim stage or final hearing. This is so because the courts do not substitute their own decision in the matter of transfer.

5. We find that the Governing Body after taking into consideration all aspects of the matter rejected the prayer for his retention at Bhubaneswar in a well discussed order at Annexure-26. The applicant had earlier specifically requested for his




retention at Bhubaneswar till 30.6.2012 which was allowed by the Hon'ble High Court of Orissa. For the above reason, the OA No. 478/2012 earlier filed by the Applicant was dismissed by this Tribunal on 24.7.2012. Operative part of the order is quoted herein below:

“8. In the above context, after having heard learned counsel for both sides, perused the records. The order passed by the Hon'ble High Court is binding on this Tribunal. As it appears the order of the Hon'ble High Court was based on the unconditional submission of the applicant to continue at Bhubaneswar only till the end of June, 2012. In compliance of the order of the Hon'ble High Court of Orissa, Respondents allowed the applicant to continue at Bhubaneswar till June, 2012 after which the applicant ought not to have challenged his original order of transfer on any of the grounds. Hence this OA is held to be misconceived and is accordingly dismissed. There shall be no order as to costs.”

6. We also do not find any such substantiating material except bald allegation, to hold that the order of transfer is actuated with malice or mala fide exercise of power.

7. In view of the facts and law discussed above, we find no reason to deviate from the view already taken in order dated 24th July, 2012 in OA No. 478/2012. Hence entertaining this OA is

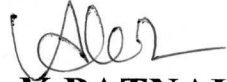
 

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declined and the same is accordingly dismissed. There shall be no order as to costs.



(R.C.MISRA)
Member(Admn.)



(A.K.PATNAIK)
Member (Judl.)