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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No. 345 of 2013
Cuttack, this the 09th day of July, 2014

CORAM

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

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

.....

Manoranjan Sahoo,
aged about 43 years,
Son of Trilochan Sahoo,
At- Nuasasan, PS- Gurudijhatia, Dist: Cuttack,
Present place of posting as S.D.E. (U.S.O),
O/o CGMT, BSNL, Odisha, Bhubaneswar.

...Applicant

(Advocates: M/s. A.K.Sarangi, A.C.Sarangi, P.Sarangi, Ms. K. Panda)

VERSUS

Union of India Represented through

1. Secretary,
Ministry of Personnel, Public Grievances & Pensions,
Deptt. of Personnel and Training,
New Delhi.
2. Asst. General Manager (HR & Adm.),
BSNL, Odisha Circle, BSNL Bhawan,
Bhubaneswar, Dist- Khurda.
3. Chief General Manager, (T),
Bharat Sanchar Nigam Ltd., Odisha Circle,
BSNL Bhawan, Bhubaneswar, Dist. Khurda.
4. G.M. (HR & Admn.),
O/o CGM, BSNL, Odisha Telecom Circle,
BSNL Bhawan, Bhubaneswar.

... Respondents

(Advocate: Mr. S.B.Jena)

ORDER

A.K.PATNAIK, MEMBER (JUDL.):

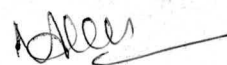
The gist of the case is that while the applicant was continuing as SDE (USO), CO, BBSR, vide order dated 10.04.2013 he was transferred to SDE, G.Udayagiri under TDE, PBN vice one



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Shri P.C.Naik. Applicant submitted his representation praying for cancellation of the said order of transfer which was considered and rejected by the authorities. Being aggrieved, he filed O.A.No. 309/13. The said O.A. was heard and on the submission made by Mr. S.B.Jena, Ld. Counsel appearing for Respondents, that the order dated 07.05.2013 was an outcome of the decision taken by the competent authority which has not been communicated to the applicant and applicant has in the meantime been relieved from his present place of posting on 09.05.2013, which was refuted by the Ld. Counsel for the applicant, therefore, without going into the controversy this Tribunal vide order dated 23.05.2013 disposed of the O.A. with the following direction:

“.....Therefore, without going into the merit of this case, while quashing Annexure-A/8 so far as the applicant's case is concerned, we remand it back to Respondent No.3 to reconsider the case of the applicant taking into account the guidelines applicable to the physically challenged employees and communicate the result thereof by way of reasoned and speaking order within a period of one month from the date of receipt of this order.”

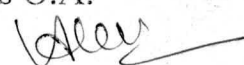
Thereafter, respondents issued an order dated 01.06.2013 rejecting the prayer of the applicant. Being aggrieved, he has filed this O.A. in which he has prayed to quash the order of transfer dated 10.04.2013 and order of rejection dated 01.06.2013. The main ground of challenge of the order of transfer is that he being a physically handicapped employee he should not have been transferred to such a distance place, which is in violation of the Govt. of India instruction



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and Section 47(1) of the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

2. Respondents have filed their counter in which it has been stated that the applicant has been staying at Bhubaneswar for more than 14 years and as per the transfer guidelines of BSNL, in case of the transfer of physically handicapped employee request for transfer near to the native place is to be given preference. As no request for posting nearer to home town was received prior to issuance of such order, the applicant was posted on transfer in public interest as SDE, G.Udayagiri under TDE, Phulbani. Transfers are made for organizational need and tenure rules as fixed by the Corporate Office. The administration is fully aware of the fact that the applicant is a physically handicapped employee but physically handicapped employees are not immune to transfer. After introduction of soft tenure within Odisha Circle, the administration decided to post the applicant in the nearest soft tenure station, i.e. G.Udayagiri to extend him the benefit of Circle bearer to avoid hard tenure posting in future. The representation of the applicant was duly considered but the same was rejected in a reasoned order and communicated to the applicant. In pursuance of the order of transfer, the applicant was relieved and struck off from duty w.e.f.10.05.2013 with instruction to hand over he charge of SDE (USO). The sum and substance of the stand taken in the counter is that as the transfer of the applicant is made in public interest, the same needs no interference and, accordingly, the Respondents have prayed for dismissal of this O.A.



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3. Applicant has filed rejoinder in which it has been stated that applicant is a 52% disabled person and, therefore, it would be difficult on his part to travel all the way to G.Udayagiri. His transfer to G.Udayagiri is in violation of the transfer guidelines in which it has been provided that the physically handicapped employee will be given preference in posting nearer to his native place and the native place of the applicant being Cuttack in case of his transfer he should have been posted at Cuttack. There is no fixed tenure for physically handicapped employees working in the BSNL rather the guidelines clearly provides that the physically handicapped employees will be given preference in posting. The applicant stated that he has not been relieved till date and the stand taken by the Respondents that the applicant has been relieved is inflicted with malafide. He fell ill on 08.05.2013 and, therefore, he is continuing on leave from 09.05.2013 and that he has not been instructed to hand over the charge of SDE (USO). On the above grounds, he has prayed for the relief claimed in this O.A.

4. Mr. A.K.Sarangi, Ld. Counsel for the applicant, and Mr. S.B.Jena, Ld. Panel Counsel for the BSNL, have reiterated in course of the hearing the stand taken in their respective pleadings. We have considered the arguments with reference to the pleadings and materials placed in support thereof.

5. The sole question that arises for consideration in this O.A. is as to whether the transfer of the applicant is in violation of the guidelines with regard to the transfer and posting of the disabled employee working in the BSNL. Law is well settled in plethora of decisions that transfer being an incidence of service, the Court and

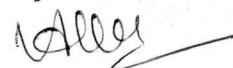


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Tribunal should not ordinarily interfere with the same unless the order of transfer is actuated with malafide exercise of power or is in violation of the statutory and mandatory rules.

6. Admittedly, the applicant is a 52% disabled employee. Further, admitted fact of the matter is that the applicant is posted at Bhubaneswar for last 14 years. The transfer guidelines for providing certain facilities in respect of persons with disability who are already employed provides that as far as possible the persons with disability may be exempted from rotational transfer policy but at the same time we cannot close our eyes that administrative exigency is the paramount consideration in the matter of transfer and posting of the employee. On the specific stand of Mr. Sarangi that there are vacancies near to the applicant's home town, i.e. at Cuttack, and the applicant can be adjusted against one of such vacancies instead of transferring him to G.Udayagiri. Mr. Jena was asked to take instruction on 04.04.2014 whether any vacancy exists at Cuttack or at Bhubaneswar where the applicant can be adjusted, Mr. Jena, on instruction, has submitted that at present there is no vacancy where the applicant can be adjusted but he assures that whenever such a vacancy either at Bhubaneswar or Cuttack will arise and if the applicant represents, his case will be considered for his posting against one of such vacancy.


Admittedly, when there is no vacancy either at Bhubaneswar or at Cuttack or nearer to any of those places and the transfer of the applicant has been made in public interest and the representation submitted by the applicant was duly considered and he

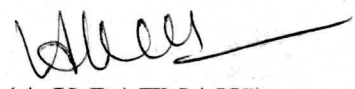


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has been communicated the reason for not canceling the order of transfer, this Tribunal being not the Appellate Authority, especially in the matter of transfer, is not inclined to interfere on the same. However, we find the transfer of the applicant is a chain transfer and the persons those who will be affected, in the event the transfer of the applicant is quashed, have not been made as parties in this O.A.

7. For the discussions made above, we find no merit in this O.A. This O.A. is, accordingly, dismissed. There shall be no order as to costs.


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


(A.K.PATNAIK)
Member (Judicial)

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