


CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No.753 of 2013

Cuttack this the 27th day of August, 2014

CORAM

THE HON'BLE MR. A.K. PATNAIK, MEMBER (JUDL.)
THE HON'BLE MR.R.C.MISRA, MEMBER (ADMN.)

.....

Shri Subas Chandra Pattanaik, aged about 58+ years, Son of Late Ramchandra Pattanaik a permanent resident of Village Balidia, Post-Paradeep Lock, District-Jagatsinghpur, Odisha at present working as Assistant Director, Handicraft, Office of the Development Commissioner, Handicrafts, Ministry of Textiles, Government of India, 39 Budhanagar, Bhubaneswar, Dist. Khurda, PIN-751 006.

...Applicant

(Advocates: M/s.J.M.Pattanaik, C.Panigrahi)

VERSUS

Union of India represented through

1. The Secretary, Government of India, Ministry of Textiles, Udyog Bhawan, New Delhi.
2. The Development Commissioner of Handicrafts, West Block No.7, R.K.Puram, New Delhi-110066.
3. The Deputy Director and Incharge, Eastern Regional Office, D-F Block, A Wing, 3rd Floor, CGO Complex, Salt Lake, Kolkata-700064.
4. Shri A.K.Panigrahi, Assistant Director Handicrafts, Ranchi, Jharkhand.

... Respondents

(Advocate: Mr.S.Barik&R.K.Sarangi)

ORDER

A.K. PATNAIK, MEMBER (JUDICIAL):

The Applicant, Shri Subas Chandra Pattanaik, presently working as Assistant Director, Handicraft, Office of the Development Commissioner, Handicrafts, Ministry of Textiles, Government of India,



23

Bhubaneswar being aggrieved by the order dated 06/07.11.2013 posting him to M&SEC, Sambalpur on transfer, has filed this Original Application to quash the same and to allow him to continue in his present place of posting. As it appears, he has challenged his order of transfer on the grounds that he will retire from service, on reaching the age of superannuation on 30th June, 2015 and as such, the present order of transfer will disrupt his post retirement settlement. Secondly, it has been alleged that his wife had undergone a major surgery and is still under treatment. As such she cannot be taken to Sambalpur and on the other hand she cannot be allowed to remain alone at Bhubaneswar unattended to. Further it has been alleged that his son is also studying in Kendriya Vidyalaya -3 Mancheswar Bhubaneswar and, therefore, the transfer of the applicant will disrupt and adversely affect the education of his son. He has also alleged that the present order of transfer was not due to any administrative exigency or public interest but to accommodate Respondent No.4 which is per se illegal and arbitrary.

2. The Respondent-Department have filed their counter in which it has been stated that out of 24 years of service, the applicant had spent 17 years in the State of Odisha and has been continuing as AD (H) since three years and seven months. It has been stated that posting of officers at one station for long time that too in sensitive post like the AD (H) is against the Circular issued by the CVC dated 11.09.2013. It is not obligatory on the part of the Respondents to allow any opportunity to an employee before being

Allex

24

transferred from one station to other in public interest. The transfer and posting are made as per the convenience of the administration from time to time by taking into consideration the factual need. As such while reviewing the administrative conveniences, long duration of the stay of the officers at one place in public dealing seats the transfer of the applicant was ordered in public interest. They have also denied the allegation that the present transfer is made to accommodate Respondent No.4. As regards the representation of the applicant dated 18.10.2013 is concerned, the stand of the Respondents is that the said representation being made before the order of transfer dated 06/07.11.2013 is like seeking anticipatory bail due to unforeseen events like transfer and transfer/posting is effected keeping in mind the administrative convenience and as such there is no provision under the law to entertain such kind of representation before hand as well as the same is also not permissible under rule. As regards the education of his son is concerned by placing reliance on the decision of the Hon'ble High Court of Madras rendered in the case of **Palanisamy Vrs General Manager, Tamil Nadu State Transport Corporation Ltd** reported in 2006 (6) SLR 155 it has been stated that the same cannot be a ground not to obey the order of transfer when the same has been issued in administrative exigency. The Tribunal being not the appellate forum cannot decide who should be transferred where the Respondents have also relied on the decision of the Hon'ble Apex Court in the cases of **State of MP Vrs S.S.Kourav**, reported in (1995) 3

Wiley

SSC 270 and to substantiate their stand that the transfer made in public interest/administrative exigency cannot be interfered with, they have also relied on the decisions of the Hon'ble Apex Court rendered in the case of **Union of India Vrs S.L.Abas**, reported in (1993) SCC 357 and **Mohd. Masood Ahmad Vrs State of UP and others**, Civil Appeal No. 4360 of 2007. Accordingly, the Respondent-Department have prayed for dismissal of this OA being devoid of any merit.

3. Respondent No.4 has filed separate counter opposing the prayer of the applicant. Though Respondent No.4 attribute anything against the Applicant we do not think the same are necessary for adjudication of the present dispute and therefore, such of the stand which are relevant for the purpose of taking decision in the matter has been taken into consideration and the same are that the applicant has been continuing in the State of Odisha since 18 years and except for a brief period, he (Respondent No.4) has spent almost 16 years outside the Odisha. As the transfer has been made in public interest which is in accordance with the Circular issued by the CVC there is little scope for this Tribunal to interfere on the same. The applicant has approached this Tribunal without making any representation against the order of transfer. Accordingly, by placing reliance on various decisions of the Hon'ble Apex Court Respondent No.4 has prayed for dismissal of this OA.

4. Mr. Patnaik, Learned Counsel for the Applicant submitted that the applicant will retire on reaching the age of superannuation on 30th June, 2015. The DoP&T guidelines clearly provides that officers left with less than two years of service may not normally be transferred/disturbed from their place of posting. This has been issued keeping in mind the provision of Rule 56 of CCS (Pension) Rules in which it has been provided that a list of officers who are to retire in two years are to be prepared and updated for every six months and Rule 58 of the Pension Rule clearly provides that for preparation of pension papers in Form 7 two years before the retirement of an employee showing leave, promotion etc and, therefore, unless there are compelling reasons ordinarily an officer may not be disturbed or posted to faraway place on the verge of retirement. This is the minimum legitimate expectation of an employee who has served the department for a major part of his life. In order to strengthen the above arguments he has placed reliance on the decision of the Principal Bench of this Tribunal rendered in the case of **Ram Swaroop Meena Vrs Union of India**, 2013 (2) AISLJ 323, **S.K.Chopra & Anr Vrs UOI and Others** in OA No. 2965 of 2010 disposed of on 1st September, 2010 and in the case of **S.Bharathi Vrs Secretary, Ministry of Labour and Employment** [4/2014, Swamynews 110 (Bombay). By stating so Mr.Patnaik submitted that as the applicant has only few months of service left to retire the present order of transfer is liable to be set aside.

On the other hand, Mr.Barik Learned Additional CGSC appearing for Respondent-Department and Mr.Sarangi, Learned counsel appearing for Respondent No.4 have vehemently opposed the contentions advanced by the Learned counsel for the applicant, as above, on the ground that as the applicant has less than two years to retire cannot be a ground that he should not at all be transferred irrespective of the fact that he has been continuing in one post for a long time that too in public/administrative interest. It has been contended that if the applicant has any grievance against such order of transfer he should have joined in his new place of posting and thereafter, ventilated his grievance before the authority through representation prior to filing the instant OA. The applicant is holding a transferable post and as such he cannot claim as a matter of right to continue till retirement in his present place at Bhubaneswar especially after spending 18 years continuously. It has been contended that as the transfer has been made in public interest by applying the law laid down by the Hon'ble Apex Court, this OA is liable to be dismissed.

5. We have considered the rival contentions of the parties and perused the materials placed on record including the decisions relied on by the Respective parties. The scope for interference in the order of transfer by the Courts/Tribunal made in public/administrative exigency/interest is no more *res integra*. But we find in the instant case the main ground for which the applicant prays for interference in the order of transfer is his ensuing date



28

of retirement. It is not in dispute that the applicant will retire on 30th June, 2015, on reaching the age of superannuation. In none of the decisions relied on by the Learned Counsel for the Respondents deals with regard to the transfer made on the verge of retirement. Rather we find that the decisions relied upon by the Learned Counsel for the Applicant specifically deal with regard to transfer made on the verge of retirement and can be said to have some help to him. At the same time we find that taking into consideration the stay of the Respondent No.4 outside the State for a long time he has been brought to the place of the applicant and in turn the applicant has been disturbed to Sambalur. The present litigation could have been avoided had the Respondent No.4 been posted at Sambalpur and could have been brought to Bhubaneswar after the retirement of the Applicant. However, we are in agreement of the Respondent-Department that who should be posted where and at what point is within the domain of the authorities manning the department. Considering all aspects of the matter, since the representation of the applicant dated 18.10.2013 praying therein that as he will be retiring shortly (30.06.2015), his son is prosecution his study in KV, Bhubaneswar and his wife's recent major surgery and, therefore, his case needs sympathetic consideration which as admitted by the Respondents has not been considered as the said representation has been treated as anticipatory bail. In view of the above, liberty is granted to the applicant to make another representation to the Respondent No.2 within a period of fifteen days from



89

the date of receipt of copy of this order and we hope and trust the Respondent No.2 will consider the same sympathetically as per law taking into consideration the ensuing date of retirement of the applicant as 30.06.2015, education of his children and wife's major surgery and intimate the result thereof in a well reasoned order to the applicant within another period of 60(sixty) days from the date of receipt of such representation. Till such time the order of transfer of the applicant and Respondent No.4 shall be kept in abeyance. In the result, with the aforesaid observation and direction this OA stands disposed of. No costs.



(R.C.Misra)
Member (Admn.)



(A.K.Patnaik)
Member (Judicial)