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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

OA 112 of 2013
Cuttack, this the 24th day of January, 2014

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

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Shri Pramod Kumar Nath,
aged about 48 years,
S/o. Late Bhabani Sankar Nath,
Vill-Sindurpank, PO-Dhanupali,
Dist-Sambalpur, presently working as
MTS Sambalpur H.O., At/PO/Dist-Sambalpur

....Applicant

(Legal Practitioner: M/s. D.P. Dhalsamant, N.M. Rout


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Union of India Represented through

1. Director General of Posts, Govt. of India,
Ministry of Communications,
Department of Posts,
Dak Bhawan, Sansad Marg,
New Delhi, Pin-110001.
2. Chief Post Master General,
Odisha Circle, Bhubaneswar,
Dist:Khurda, Pin-751001.
3. Director Postal Services,
Sambalpur Region,
At/Po/Dist-Sambalpur-768001.
4. Superintendent of Post Offices,
Sambalpur Division,
At/Po/Dist-Sambalpur-768001.
5. Assistant Superintendent of Post Offices (I/C),
Baragarh Sub-Division,
At/Po/Dist-Baragarh.
6. Sri Nimei Charan Patel,
Post Master Sambalpur H.O.
At/Po/Dist-Sambalpur-768001.

... Respondents

(Legal practitioner: M/s. U.B. Mohapatra, D.K. Mallik



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O R D E R**A.K.PATNAIK, MEMBER (JUDICIAL):**

The case in nut shell is that the Applicant who is working as an MTS in Sambalpur HO was re-allotted to Unit of ASP (I/C) Bargarh Sub Division vide order No.B4/50 dated 21.01.2013. He has preferred representation challenging such re-allotment. Thereafter, he has filed OA No.37 of 2013 challenging the said order of re-allotment. As his representation was still pending by them, the OA was disposed of by this Tribunal at the admission state with direction to the Director of Postal Services to take a decision on the pending representation and till consideration of his representation status in respect of the continuance of the applicant was directed to be maintained. Thereafter, the representation of the applicant was considered but the same was rejected and communicated to the applicant vide letter dated 13.02.2013. Hence this OA with prayer to quash the order of re-allotment dated 21.01.2013, rejection of his representation dated 13.02.2013 and to direct the Respondents to allow him to continue in Sambalpur HO Unit, for the same being illegal, arbitrary and contrary to Rule 37 of the P&T Manual Vol.IV in which it has been provided that a Govt. Servant should not be transferred from one District to another except for special reasons with the request of the applicant.



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2. Respondents have filed their counter in which it has specifically been stated that the Applicant while working as MTS-I, Sambalpur HO committed an offence grave in nature inasmuch as the applicant while working at Sambalpur HO on 12.09.2012 was required to receive Mails from Sambalpur RMS for Sambalpur HO at 1600 hrs and instead of attending the work himself he engaged one Shri Raju Mukhi, an outsider for the said purpose. One of the parcel bags containing No.1/3 was also received along with other baggage on the said date i.e. on 12.09.2012 but was not handed over to the Mail Postal Assistant of Sambalpur HO on the same day as per the Rules. The said Parcel Bag was kept un-disposed till 11.11.2012 in which two parcels containing 10th class Supplementary Answer Sheets addressed to Deputy Secretary, Board of Secondary Odisha Sambalpur Zone were there. Due to such action, the said Parcel Bags remained unattended for more than two months and were found only on 11.11.2012 inside a polythin bag which was delivered on 14.11.2012 instead of 12.09.2012 causing serious public complaints. As the said parcels contained the HSC (supplementary) examination answer papers and were highly sensitive in nature to save the image of the department, the SPOs, Sambalpur Division transferred the Applicant to the ASP (I/C), Bargarh and the later posted him as MTS Barpali SO on administrative ground and in the interest of service, as per Rule 37 of Postal Manual Vol. IV. Furthermore, the Respondents have contended in their counter that prior to

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instant OA, the Applicant filed OA No. 37 of 2013 challenging his order of transfer dated 21.01.2013 which was disposed of by this Tribunal on 30.01.2013 directing the Respondents to maintain status in respect of the Applicant till 08.03.2013 besides, consideration of his representation which was pending and to communicate the result thereof by 20.02.2013. In compliance of the said direction, the representation of the Applicant was considered by the DPS, Sambalpur and the same was rejected and communicated to the Applicant in a well reasoned order vide letter dated 13.02.2013. Accordingly, the Respondents have stated that there being no illegality in the order of transfer of the Applicant, this OA is liable to be dismissed.

3. The Applicant in his rejoinder has submitted that he was no way responsible for the alleged offence. However, if there was any irregularity, the Respondents should have initiated departmental proceedings or Criminal Case against him but certainly not resorting to transfer to other Unit which is bar as per the Rules and against the principles of *audi alterem partem*. Accordingly, it has been contended that this being a punitive transfer without giving him any opportunity, the same is not sustainable in the eyes of law.

4. Heard Mr. D.P. Dhalsamanta, Learned Counsel for the Applicant and Mr. U.B. Mohapatra, Learned Senior CGSC appearing for the Respondents and perused the materials placed on record. Mr. Dhalsamanta in order to

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substantiate that the said order of re-allotment/transfer of the applicant is tainted with mala fide exercise of power has brought to the notice of this Tribunal that when Government of India Offices were closed on 25th to 27th January, 2013 how the Memo No. PF/MTS-BPL/2013 was issued on 27.01.2013 in pursuance of which successive orders were passed. Besides, reiterating the stand taken in the OA in support of his prayer that the order of re-allotment/transfer of the Applicant is not sustainable by placing reliance on the decision of the Hon'ble High Court of Orissa in the case of **Manasi Mishra -Vrs-Union of India and others** reported in 2013 (II) ILR-CUT-377 it was contended by him that as the present transfer is punitive in nature the same is liable to be quashed.

5. On the other hand Mr. Mohapatra opposed the stand taken by Mr. Dhalsamanta by stating that the very action of the Applicant in not attending his duty in person and thereby causing undue harassment and public humiliation resulting in tarnishing the image of the department cannot be ignored or excused and, therefore the authorities in order to restore the public faith have no other alternative but to reallot/transfer the applicant to Bargarh Sub Division in the interest of service. However, he fairly submitted that no departmental or criminal case has been initiated against the applicant for such lapses against the Applicant. Accordingly, Mr.Mohapatra prayed for dismissal of this OA.



6. It is seen that in the order dated 21.01.2013 the applicant was re-allotted/transferred to Bargarh Sub Division in the interest of service whereas in the counter the Respondents have justified such order by stating that as the Applicant committed an offence which is grave in nature and to save the image of the Department there was no other option but to re-allot/transfer him to Bargarh Sub Division. In the above view of the matter, on examination of the facts of the instant case vis-à-vis the Rule position as well as the judicial pronouncements on which reliance was placed by the Learned Counsel for the Applicant, I find substantial force in the arguments advanced by Mr. Dhalsamanta that the order being punitive in nature is not sustainable. To fortify the view, relevant portion of the judgment rendered in the case of Manasi Mishra (supra) is extracted herein below:

“ The Hon’ble apex Court allowing the appeal with costs assessed at Rs.50,000/- and modifying the order of the High Court held that an order of transfer is an administrative order. Transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fides on the part of the authority is proved. Mala fides are of two kinds, first, malice in fact and second, malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane to passing of an order of transfer and based on an irrelevant ground, i.e. on the allegations made against the appellant in an anonymous complaint. The Hon’ble apex Court further held that it is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies, but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal. It may be noted that no vigilance enquiry was initiated against the appellant and the transfer order was passed on material which was non-existent. Thus the order suffers not only from non application of mind but

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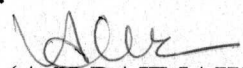
also from malice in law. Thus holding, the Hon'ble apex Court modified the judgment of the High Court by concluding that the order of transfer was passed on material which was non-existent and, therefore, the said order not only suffers from total non-application of mind on the part of the authorities but also suffers from malice in law.

Applying the ratio of the aforesaid decision to the facts of the present case, it is clear that in the instant case also even though show cause notices were issued to the petitioner, but no enquiry whatsoever was conducted therein by giving opportunity to the petitioner and in the other hand, basing on the same allegations, the order of transfer was passed.

This Court, therefore, finds that the order of transfer was punitive in nature, which is ipso facto illegal and unsustainable."

7. Hence by applying the above ratio of the decision the orders dated 21.01.2013 and 13.02.2013 are hereby quashed and resultantly the Respondents are directed to allow the Applicant to continue in his present place of posting i.e. at Sambalpur. But quashing the order will not prejudice the Respondents for taking action against the applicant for such irregularity as per Rules.

8. In the result this OA stands allowed to the extent stated above. There shall be no order as to costs.


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