

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK  
**O. A. No. 260/640 OF 2017**  
**Cuttack, this the 25<sup>th</sup> day of May, 2018**

CORAM  
**HON'BLE MR. S. K. PATTNAIK, MEMBER(J)**  
**HON'BLE DR. M. SARANGI, MEMBER (A)**

.....  
Sri BaleswarBariha, aged about 50 years, S/o-Manohar Bariha, At/PO-Atabira, Dist-Baragarh, presently working as PA Burla MDG(Offtg SPM Burla MDG), Sambalpur.

...Applicant  
(By the Advocate- M/s. D. P. Dhalsamant, N. M. Rout)

-VERSUS-

**Union of India Represented through**

1. Director General of Posts, Govt. of India, Ministry of Communication, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110001.
2. The Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist-Khurda, 751001.
3. Post Master General, Sambalpur Region, At/ PO/Dist-Sambalpur-768001.
4. Director Postal Services, O/of Post Master General, Sambalpur Region, At/PO/Dist-Sambalpur, 768001.
5. The Superintendent of Post Offices, Sambalpur Division, At/PO/Dist-Sambalpur, 768001.

...Respondents

(By the Advocate- Mr. S. B. Mohanty)

**ORDER**

**Dr. Mrutyunjay Sarangi, Member(A):**

The applicant who works as Postal Assistant at Burla MDG, Sambalpur had filed this O.A challenging the order of deputation dated 10.11.2017 from the post of Officiating SPM Burla MDG to the Post of SPM, JagrutiVihar. He has prayed for cancellation of the said order. As an interim measure he has also prayed for stay of the impugned order dated 10.11.2017 till the disposal of the O.A.

2. This Tribunal heard this matter on 16.11.2017 for admission and passed the following order:

*"Heard Ld. Counsels for both the parties on the interim prayer.*

*Admit. Issue notice to the Respondents, returnable in four weeks. Counter to be filed within four weeks. Rejoinder in two weeks thereafter.*

*Heard on the interim prayer. There is considerable force in the submission of Mr. D.P. Dhalsamant, Ld. Counsel for the applicant that in view of the decision of the Hon'ble Supreme Court passed in the case of **Umapati Choudhary Vrs. State of Bihar and Another 1999 Supreme Court Cases (L&S) 902** there cannot be a deputation within the same Department. Since the order of deputation dated 10.11.2017 seems to be vulnerable in view of earlier transfer order passed on 04.04.2017, the same is stayed till further order. Respondents are directed to file short reply to the interim order within 14 days, so also regular counter on the Original Application. List this matter on 29.11.2017."*

3. The applicant again filed an M.A 79/18 on 08.03.2018 and submitted that although this Tribunal on 16.11.2017 had stayed the order of deputation dated 10.11.2017. On the same day the applicant was placed under suspension by Respondent No.5 on contemplation of departmental proceedings . One of the three articles of charges was that the applicant did not obey and carry out the orders of transfer on deputation and willfully did not get himself relieved exhibiting gross insubordination of higher authority which is a serious misconduct and unbecoming on the part of the Govt. Servant. The suspension was revoked by the order dated 14.02.2018 but on the same date the applicant was transferred as Postal Assistant to Budharaja, S.O while the present O.A was still pending with this Tribunal for disposal. The respondents have not filed any short reply to the interim order. The matter was adjourned on 11.12.2017, 12.12.2017 and again on 18.01.2018. On that date Ld. Counsel for the official respondents sought time to file short reply to the interim prayer. Prayer was allowed and the matter was listed on 09.03.2018. On 09.03.2018 Ld. Counsel for the official respondents again sought time to file short reply and the matter was posted to 14.03.2018. On 27.03.2018 he again prayed for further time to file a reply to the M.A No. 79/18 filed by the applicant. On 05.04.2018 he sought for

one more weeks time to get instructions. On 13.04.2018 the matter was adjourned.

On 08.05.2018 this Tribunal passed the following order:

The matter was taken up today since a Memo has been filed for urgent listing of the matter.

Mr. D.P. Dhalsamant, Ld. Counsel for the applicant submitted that the applicant's deputation was stayed by the order of this Tribunal. Subsequently on the day the orders of the Tribunal were passed, the applicant was placed under suspension and the suspension was revoked before completion of 90 days. On 14.02.2018, the day of revocation of suspension the applicant was again posted to another place on the same date, when the stay granted by the applicant's original deputation was still in operation. The applicant is not getting any salary after the revocation of suspension. The Respondents have taken extension of time to file short reply on three occasions. Today also when the matter was taken up the Ld. Counsel for the Respondents was not present, his proxy Mr. S.S. Mohapatra prayed for further time to file short reply.

List this matter on 17.05.2018 since Mr. Mohapatra submits that para-wise comments have already been received and the short reply will be filed positively by that date.

Copy of this order be made over to Ld. Counsel for both the sides.

4. On 17.05.2018 the following observation was made by the Tribunal:

" When the matter was taken up today, Shri S. B. Mohanty, Ld. Counsel for the respondents prayed for 03 more days to file shorty reply. Prayer is allowed. Let this matter be posted on 23.05.2018. If the short reply is not field by that date, decision will be taken on available record".

5. Matter was finally heard today. In spite of several opportunities given to the respondents it is found that they have not filed any counter or short reply, Ld. Counsel for the applicant pleaded that the department acted contrary to the stay order passed by this Tribunal and intentionally put him under suspension and though it was revoked, the applicant was again transferred from Burla MDG to Budharaja, S.O by the order dated 14.02.2018.

6. Since the respondents have not filed any reply despite a number of opportunities given to them, we have heard the Ld. Counsel for the respondents to day in detail. From the facts of the case it is clear that despite the stay granted by this Tribunal on the deputation of the applicant from Burla MDG to Jagruti Vihar on deputation, he was placed under suspension on 17.11.2017 the very day this Tribunal passed the order granting stay to the applicant. Just one day prior to completion of 90 days when the suspension was to be reviewed, the applicant's suspension was revoked. But instead of allowing him to work at Burla MDG as ordered by this Tribunal in the interim order dated 17.11.2017, the respondent No. 5 transferred him to Budharaja SO.

7. The applicant belongs to the Scheduled Tribe Category and submits that his daughter suffers from mental sickness. The speaking order dated 07.09.2016 passed by the Post Master General, Sambalpur Region(Respondent No.3) pursuant to the order passed by this Tribunal in O.A No. 558/16 filed by the applicant earlier, mentions certain acts of omission and commission by the applicant. However, this Tribunal had admitted the Present O.A No. 640/17 and after granting interim relief to the applicant by way of stay of his deputation, we had directed to the respondents to file a short reply but despite number of opportunities granted to the respondents no reply was filed by them. On the other hand prima-facie it appears to be a case of arbitrary and colourable exercise of power by the respondents in subjecting the applicant to an order of suspension , revoking the suspension just one day prior the statutory and obligatory review of the suspension order and again posting him out of Burla MDG to Budharaja, S.O. No explanation has been given by the respondents for this bizarre action. Copy of the charge

memo has not been made available to us and we do not know on what ground disciplinary proceedings are contemplated against the applicant. But from the facts of the case it is clear that by not obeying the stay order passed by this Tribunal on the deputation of the applicant and again transferring him to Budharaja, S.O on revocation of his suspension the respondents have shown willful disobedience and scant regard to law.

8. Ordinarily the transfer order is not to be interfered by a Court of Law. It is a settled principle of law that a Tribunal or Court of Law should not interfere with transfer which is made for administrative reasons unless the transfer order is made in violation of mandatory statutory Rules or made out of malafide {Union of India Vrs. S.L. Abbas (1993) 4 SCC 357, Rajendra Singh Vrs. State of U.P. (2009) 15 SCC 178, Abanikanta Ray Vs.State of Odisha (1995) (Supp) (4) SCC 169}. In the present O.A. it is quite obvious that the Respondents have exhibited a substantial degree of arbitrariness and malafide by subjecting the applicant to transfer despite a stay granted by this Tribunal and as a matter of further harassment and vindictiveness they have placed him under suspension, revoking it exactly one day prior to completion of 90 days.

9. The action of the Respondents being arbitrary and coloured by malafide, the deputation order dated 10.11.2017 and the transfer order dated 14.02.2018 are quashed and set aside. The Respondent No.5 is directed to issue orders retaining the applicant at Burla MDG till the completion of his tenure as prescribed under the Rules within a period of four weeks from the date of receipt of this order. No costs.

(DR. M. SARANGI)  
MEMBER (A)

( S. K. PATTNAIK)  
MEMBER (J)