

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260/00168 OF 2017
Cuttack, this the 28th day of March, 2017

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

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Sri Sanjay Kumar Mahapatra, aged about 45 years, Son of Sri Dhruba Charan Behera, permanent resident of Vil./P.O. Lamtaput, P.S. Machhakund, dist.Koraput, Pin-764081, residing in Qrs. No.2RB, 112, Road-02, Unit IX, Bhubaneswar-22 & presently working as Senior Technical Assistant (Mining Engg.), Indian Bureau of Mines, Regional Office, Pokhariput, Bhubaneswar, Dist. Khurda.

...Applicant

(By the Advocate-M/s. S.K. Ojha, S. K. Nayak)

-VERSUS-

Union of India Represented through

1. Secretary to Government of India, Ministry of Mines, Shastri Bhawan, 3rd Floor, A- Wing, New Delhi-110 001.
2. Controller General, Indian Bureau of Mines, Indira Bhawan, Civil Lines, Nagpur-440 102.
3. The Regional Controller of Mines, Indian Bureau of Mines, Regional Office, 149, Pokhariput, Bhubaneswar, Dist. Khurda.

...Respondents

By the Advocate- (Mr. G.R. Verma)

ORDER(Oral)

R.C. MISRA, MEMBER(A):

Heard Mr. S.K. Ojha, Ld. Counsel appearing for the applicant and Mr.

G.R. Verma, Ld. ACGSC appearing for the Respondents on the question of admission and perused the records.

2. The applicant is working as Senior Technical Assistant in the Indian Bureau of Mines, Regional Office at Bhubaneswar. He has approached this Tribunal by challenging the order dated 28.02.2017 issued by the Respondents authorities transferring him to Guwahati. He alleges that the order of transfer has been issued in violation of the transfer policy as also various guidelines issued by the Government of India from time to time. Ld. Counsel for the applicant pointed out that the transfer orders of eight persons working under the Respondents made vide Office Orders dated 15.11.20156 and 09.12.2016,

O.A.No.260/0168 of 2017

S.K. Mohapatra -Vs- UOI

were cancelled vide office order dated 28.02.2017 due to severe crunch of availability of funds under operating head DTE during 2016-2017. It was decided that only applications of persons who are willing to be transferred at their own cost without any payment of T.A. and D.A. shall be considered by the Annual Transfer Committee. But shortly thereafter the applicant has been transferred to Guwahati. The applicant had joined at Bhubaneswar Office on 05.03.2010 and is discharging his duties in the office to the satisfaction of the authorities. The wife of the applicant is a regular employee under the Government of Odisha and is posted at Bhubaneswar. The applicant has also two daughters and one son who are going to School. Therefore, the applicant pleads at this juncture that he will have a severe personal dislocation if the order of transfer is given effect to. By order dated 28.02.17 applicant has been posted at Guwahati in public interest, whereas no one has been posted in his place. The Ld. Counsel for the applicant has drawn the attention of the Tribunal to the fact that according to the guidelines if the Central Government servant and his or her spouse are working under the Government of India and the State Government the spouse employed under the Central Government may make an application to the authorities for his posting in the same station where the spouse is posted. Therefore, the order of transfer is also violative of these guidelines. There are several senior Technical Assistants who have already completed their residency period in one place but they have not been transferred. But for reasons best known to the authorities applicant has been transferred to Guwahati, which is a set back to his interest and the interest of his family.

3. Mr. G.R. Verma, Ld. ACGSC appearing for the Respondents has however submitted that the transfer has been effected in public interest and since the transfers are a normal incidence of service the order of the authorities should be carried out by the applicant.

4. There is no doubt that transfer is an incidence in Government service. The Hon'ble Apex Court in the well known Silpi Bose case has already observed that in the normal course the Courts and Tribunals should not interfere with the orders of transfer which are passed on administrative grounds or in public interest. The Hon'ble Apex Court has further observed that if the Courts and Tribunals interfere without any justification with the orders of transfer, there will be chaos in the administrative system. Who is to be posted where is the prerogative of the concerned Government Department. However, the applicant here has made a representation dated 01.03.2017 to the Secretary, Ministry of Mines (Respondent No.1) and the Controller General, Indian Bureau of Mines, Nagpur (Respondent No.2). On perusal I find that the applicant has described his various family difficulties and also agitated the point that his wife is working under the State Government of Odisha being posted at Bhubaneswar, and that his children are school going. It is the settled position that the transferring authority shall consider any personal and family difficulties of the officer under the orders of transfer and pass appropriate orders taking into account the personal and family difficulties as well as the requirements of the administration. However, it is brought to my notice that the representation dated 01.03.2017 is still pending before the authorities for consideration. I therefore, consider it appropriate to pass a direction to the said authorities to consider the pending representation

O.A.No.260/0168 of 2017
S.K. Mohapatra -Vs- UOI

and pass appropriate orders which should be communicated to the applicant. While considering the representation the authorities are directed to take into account all the submissions made by the applicant in his representation before taking a decision in the matter. Therefore, at the stage of admission without going into the merit of the matter I direct the Respondent No.1 & 2 to consider the representation if pending with them within a period of three weeks from the receipt of this order and communicate the decision to the applicant in a reasoned and speaking manner. It is also directed that the status quo in respect of the applicant shall continue until the decision on the representation is communicated to the applicant.

5. With the aforesaid observation and direction, this O.A. is disposed of at the stage of admission itself. No costs.

6. On the prayer made by Mr.S.K. Ojha, Ld. Counsel appearing for the applicant, copy of this order along with paper book be communicated to the Respondent Nos.1, 2 & 3 by Speed Post at the cost of the applicant, for which Mr. Ojha undertakes to file the postal requisites by 30.03.2017.

(R.C.MISRA)
MEMBER(A)

K.B.