

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA 108/2019

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Sudhansu Kumar Kanungo, aged about 54 years, S/o Late Prana Krushna Kanungo, presently working as Asst. Section Officer, ARC (Aviation Research Centre), Charbatia, Cuttack. At-Qtr. No. 2RB/125, ARC, Charbatia, Cuttack,

.....Applicant

VERSUS

1. Union of India e[resented through the Director General of Security, Aviation Research Centre (ARC), Cabinet Secretariat, Government of India, East Block – V, R.K.Puram, New Delhi – 110066.
2. Special Secretary, ARC, Director General of Security, Cabinet Secretariat, Government of India, East Block – V, R.K.Puram, New Delhi – 110066.
3. Deputy Director (Personnel), ARC Head Quarters, ARC, Directorate General of Security, Cabinet Secretariat, Government of India, East Block – V, R.K.Puram, New Delhi – 110066.
4. Joint Deputy Director (Personnel), ARC Head Quarters, ARC, Directorate General of Security, Cabinet Secretariat, Government of India, East Block – V, R.K.Puram, New Delhi – 110066.
5. Joint Director, ARC, Charbatia, At/PO – Charbatia, PS – Choudwar, Dist. – Cuttack, Odisha – 754028.

.....Respondents

For the applicant : Mr.A.Kanungo, counsel

For therespondents: Mr.C.M.Singh, counsel

Heard & reserved on : 26.2.2019

Order on : 11.3.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed the Original Application (in short OA) with the prayer for the following reliefs:-

- “(a) The order under Annexure A/9 be quashed declaring the same illegal, arbitrary, malafide and against the true order and spirit of the direction issue in OA No. 237 of 2018 decided on 12.12.2018.
- (b) Direction/directions be issued to allow the applicant to continue in the present place at ARC/Charbatia till end of the academic session.

- (c) Any other direction/directions be issued under the circumstances as this Hon'ble Court would deem fit and proper."

2. The facts, in brief, are that the applicant is continuing under the respondent No.5 at Charbatia since May, 2015. Vide order dated 8.3.2018 (Annexure-A/2) the applicant was transferred to Headquarters at New Delhi and the date of relief is shown to be 12.5.2018 after completion of three years. Being aggrieved, the applicant had filed the OA No. 237/2018 mainly on the ground that he had not completed the tenure of three years. The OA No. 237/2018 was disposed of by the Tribunal vide order dated 12.12.2018 (Annexure-A/7) with direction to the respondents to consider and dispose of a fresh representation to be filed by the applicant to be retained at the present station till March, 2019 and till a decision of the representation is taken, the applicant will not be relieved from the present place of posting.

3. In pursuance to the order 12.12.2018, the applicant submitted a representation which was rejected vide order dated 22.1.2019 (Annexure-A/9). This order stated as under:-

"7. On examining the request of the applicant as aforesaid, it is observed that at present, organization is facing shortage of 17 Assistant Section Officer at Delhi (ARC HQ & SFF HQ) as per the authorized strength. Whereas at ARC DDM and HQ Est. No. 22, the stations for which the applicant has given 1st and 2nd choice of posting vide representation dated 20.12.2018 (whereby he reiterated option for transfer during 2019-20 given vide representation dated 19.11.2018), only one post each is vacant./ Thus, it could be gauged that official was transferred to ARC HQ, new Delhi to meet the organizational requirements. Besides, his reliever at CBT has already joined the station and thus, there is urgent requirement of his services at ARC HQ.

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10. The applicant can seek retention of his Government accommodation at ARC, CBT from the competent authority till March 2019 to facilitate his son for appearing in 10th class examination."

4. We heard learned counsels for both the sides. It was submitted by the respondents' counsel that the reliever for the applicant has joined and in reply, the applicant's counsel submitted that the reliever after joining at Charbatia has already taken V.R.S. as a result of which the post is vacant.

5. Learned counsel for the respondents has cited the judgment of Hon'ble High Court in the case of Binod Kumar Jena vs. State of Odisha and others [2018(1) OLR-1005, in which the dispute related to the authority of the Director Higher Education to issue the transfer order in question in that case. It was held that the Director had the jurisdiction and hence, the transfer order was upheld. There is no such dispute in this OA relating to the authority of the officer who has issued the transfer order. Hence, the cited judgment will not cover the present OA before us.

6. It is noticed that the impugned order dated 22.1.2019 (A/7) the reason mentioned for rejecting the representation pertain to the shortage of personnel in the headquarters in Delhi. Admittedly, the applicant had given his option to be posted in Delhi from April, 2019 and requests for being retained till 31.3.2019 on the ground of his son's examination. The reason for not allowing him till 31.3.2019 at Charbatia has not been mentioned by the respondents although the shortage of personnel in Delhi has been mentioned in the impugned order. However, the shortage of personnel at Delhi is a general problem and it is not explained how joining of the applicant before 31.3.2019 instead of after 31.3.2019 will mitigate the situation. Moreover, if there is shortage of personnel at any particular station, then the rationale for continuing with the practice of asking for option regarding place of posting from the employees as per the Transfer policy, is not clear to us.

6. For the reasons as discussed above, we dispose of the OA with a direction to the respondents to allow the applicant to continue in his present place of posting in Charbatia till 31.03.2019, if the said post against which the applicant was posted prior to issue of the transfer order dated 8.3.2018, is vacant as on date. If the said post is not vacant, then the applicant will be permitted leave as due till 31.3.2019 if he submits an application for the purpose in accordance with the rules since it is expected that after 31.3.2019, the applicant will join at Delhi as per the transfer order dated 8.3.2018 in accordance with the option already furnished by the applicant for his posting in Delhi for the year 2019-20. The OA stands disposed of accordingly with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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