

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 44 of 2019

Date of order : 23.1.2019

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

Dhirendra Rout, aged about 49 years, S/o Sri Duryodhan Rout, presently working as Accounts Officer (Plg.), O/o PGMT, Unit-9, Bhubaneswar, Pin – 751002.

.....Applicant.

VERSUS

1. Bharat Sanchar Nigam Limited (BSNL) represented through its Chairman-Cum-Managing Director, At. BSNL Bhawa, Harishchandra Mathur Lane, Janapath, New Delhi – 110001.
2. The Chief General Manager, Odisha Circle, BSNL Bhawa, Ashok Nagar, Unit-II, Bhubaneswar, Pin – 751009.
3. The Principal General Manager, BSNL, Telecom District, Door Sanchar Bhawan, Unit-IX, Bhubaneswar – 751022.
4. The Internal Finance Advisor, O/i the CGM, BSNL, Odisha Circle, Bhubaneswar – 751009.
5. Executive Engineer (E), BSNL Electrical Division, Bhubaneswar, Pin – 751022.

.....Respondents.

For the applicant : Mr.S.K.Ojha, counsel

For the respondents: Mr.J.K.Nayak, counsel

O R D E R (ORAL)

Per Mr.Gokul Chandra Pati, Member (A)

The present OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

- (i) To quash the order of transfer of the applicant dated 31.7.2018 (Annexure 5) and office order dated 9.10.2018 (Annexure 13) holding the same as illegal and contrary rules and policy;
- (ii) To direct the respondents to allow the applicant till end of March, 2019;
- (iii) And further be pleased to pass any other order/orders as deemed fit and proper."

2. Earlier the applicant had filed the OA No. 1476/2018, which was disposed of by Kolkata Bench of this Tribunal vide order dated 28.9.2018 (Annexure A/12 to the OA), by which the respondents were directed to dispose of the representation by a speaking order taking into account the decision taken in the case of another employee Mr.H.N.Behera, whose case was claimed

to be similar as the applicant. In compliance, the respondents have passed the order dated 9.10.2018 (Annexure A/13 to the OA), stating that the case of Mr.H.N.Behera is in a different footing compared to the applicant, for which Sri Behera was retained in the present station till March 2019. This order dated 9.10.2018 has been challenged in this OA on various grounds.

3. We have heard Mr.S.K.Ojha, learned counsel for the applicant. He submitted that the applicant has requested for being retained in Bhubaneswar till March 2019 because of his personal difficulties as mentioned in his representation at Annexure A/10 to the OA. He further submitted that after 31.3.2019 the applicant will proceed to the place of posting. It was further submitted by the applicant's counsel that the transfer order has been issued during the current academic year and he cited a judgment of Hon'ble Supreme Court in the case of Director of School Education, Madras & Others. -vs- O.Karuppathevan & Another [1994 Supp (2) SCC 666] justifying the applicant's prayer for being allowed to be retained till end of academic year i.e. March 2019.

4. Heard Mr.K.C.Kanungo, learned counsel for the respondents who stated that the applicant has been transferred to Dhenkanal vide order dated 31.7.2018 (Annexure A/5 to the OA). It is also stated that Dhenkanal post against which the applicant has been posted, is an important post which is vacant and hence, his joining in that post would be very much essential. He further submitted that the applicant has stayed in Bhubaneswar for about 25 years before issue of the transfer order. It was further submitted that regarding education of the applicant's son, he has taken admission in Class XI and two years are required to complete his Class XII.

5. We have perused the pleading and considered the submissions. It is seen that the post against which the applicant has been posted is a vacant post as stated in para 4 of the order dated 9.10.2018 and the difficulties faced by the respondents for continuing the vacancy so long have been indicated. Although we are not inclined to interfere in the impugned transfer order, and in view of the position of the settled law in the subject as it has been issued in public

interest, but the case of the applicant deserves some consideration because of the difficulties pointed out by the learned counsel for the applicant, taking into account other cases like the case of Sri H.N.Behera are being considered by the respondents for being retained till 31.3.2019.

6. In view of the submissions above, the OA is disposed of with a direction to the respondent No.2/competent authority to consider retaining the applicant at Bhubaneswar till 31.3.2019 in view of the difficulties of the applicant as pointed out by the learned counsel for the applicant. The applicant will also be at liberty to file a fresh representation to the respondent No.2/competent authority explaining his difficulties within a week and if such a representation is submitted, then his case for being retained at Bhubaneswar till 31.3.2019 shall be considered on merit by the respondent No.2/competent authority and the decision taken shall be communicated to the applicant. Till such a decision is communicated by the respondents to the applicant, no disciplinary action shall be initiated against the applicant for enforcing the transfer order dated 11.7.2018 in respect of the applicant. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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