

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

**OA No. 34 of 2019 &
CP No. 1 of 2019**

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

Taruna Kumar Gadabad, aged about 42 years, S/o Khetrabasi Gadabad, working as Accounts Officer, BSNL, Odisha Telecom Circle, Bhubaneswar, presently residing at Qrt. No.4, Block-1, Type-III, BSNL Colony, Palaspalli, Bhubaneswar – 751020.

.....Applicant

VERSUS

- | | |
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| OA 34 of 2019 | <ol style="list-style-type: none"> 1. Bharat Sanchar Nigam Limited (BSNL), represented through its Chairman-cum-Managing Director, At- Bharat Sanchar Bhawan, Harishchandra Mathur lane, Janapath, New Delhi -110001. 2. The Chief General manager (CGM), Odisha Circle, BSNL Bhawan, Ashok Nagar, Unit-II, Bhubaneswar-751009, Dist. – Khurda. 3. The Senior General manager, BSNL, Telecom District, Door Sanchar Bhawan, Unit-IX, Bhubaneswar-751022, Dist. – Khurda. 4. Deputy General Manager (F&A)-cum-Circle IFA, O/o The CGM, BSNL, Odisha Circle, Bhubaneswar-751009, Dist. – Khurda. 5. Executive Engineer (E), BSNL, Electrical Division, Bhubaneswar-751022, Dist. – Khurda. |
| CP 1 of 2019 | <ol style="list-style-type: none"> 1. Anupam Shrivastava, Chairman-cum-Managing Director, At- Bharat Sanchar Bhawan, Harishchandra Mathur lane, Janapath, New Delhi – 01. 2. Satyananda Nayak, The Chief General manager (CGM), Odisha Circle, BSNL Bhawan, Ashok Nagar, Unit-II, Bhubaneswar-751009, Dist. – Khurda. 3. Joseph John, Deputy General manager (F&A)-cum-Circle IFA, O/o The CGM, BSNL, Odisha Circle, Bhubaneswar-751009, Dist. – Khurda. 4. Deba Prasad Halder, Ex-Executive Engineer (E), BSNL, Electrical Division, Bhubaneswar-751022, Dist. – Khurda. 5. Sudhansu Sekhar Panda, Executive Engineer (E), BSNL, Electrical Division, Bhubaneswar – 751022, Dist. – Khurda. |

.....Respondents.

For the applicant : Mr.S.Rath, counsel

For the respondents: Mr.K.C.Kanungo, counsel

Heard & reserved on : 30.4.2019

Order on : 14.5.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The CP No. 1/2019 has been filed alleging violation of the interim order dated 25.10.2018 of this Tribunal in OA No. 1622/2018 filed before Calcutta Bench, which was filed by the applicant being aggrieved by his transfer from Bhubaneswar to Baripada vide order dated 6.1.2017 (Annexure-A/3 to the OA) and the order dated 15.5.2018 (Annexure-A/7 to the OA) by which the applicant was ordered to be relieved as from Bhubaneswar to report at Baripada on transfer. By the order dated 25.10.2018, the order dated 15.5.2018 was stayed. Then the OA was transferred to this Bench after which it was re-numbered as OA No. 34/2019. Since both the matters in the OA as well as the CP are interconnected, both were taken up together for hearing and both matters are being disposed of by this common order.

2. The OA has been filed seeking the following reliefs:-

- “(a) The recommendation for shifting of applicant from the service area under Annexure A/1 be declared as illegal.
- (b) The orders dtd. 6.1.2017 and 15.5.2018 so far it relates to the transfer of the applicant under Annexures A/3 & A/7 respectively be quashed.
- (c) Pass any other order/orders as would be deemed just and proper.”

3. The applicant had joined as Junior Accounts Officer in BSNL on 9.2.2004 and was transferred to Odisha on 1.9.2009. On 25.8.2011, he joined the office at Bhubaneswar. He was promoted as Accounts Officer (in short AO) on 15.1.2015 and continued at Bhubaneswar. He was transferred on 6.1.2017 (A/3) to Baripada. He submitted a representation on 7.1.2017 (Annexure-A/2). On 14.3.2017 (Annexure-A/5), the Circle Secretary of the Union requested the BSNL authorities to post the applicant at Bhubaneswar. Then on 29.4.2017 (Annexure-A/6) the transfer order of the applicant was modified to adjust him at Bhubaneswar upto 31.7.2017. Then vide order dated 15.5.2018 (A/7), the applicant was ordered to be relieved from Bhubaneswar to report at Baripada as per the order dated 6.1.2017.

4. The impugned orders have been challenged by the applicant mainly on the following grounds taken in the OA:-

- (i) It is the case of the applicant that the applicant has been transferred because of the letter dated 1.6.2016 (Annexure-A/1) by the respondent no.3 suggesting transfer of the applicant in the interest of the BSNL. It is the case of the applicant that this letter has been issued before giving any advice to the applicant or without giving any opportunity of hearing in accordance with the principles of natural justice. Further, the said letter is without any evidence as would be revealed by the letter dated 1.2.2017 (Annexure-A/4). It is stated that the applicant has got outstanding APAR.

(ii) The impugned orders are bad in law as these were passed on the basis of biased report vide letter dated 1.6.2016.

5. Counter has been filed by the respondents stating that his transfer has been ordered after considering the letter dated 1.6.2016 of the respondent No.3 in administrative exigency and to fill up the vacancy created in the office of the TDM, Baripada to consider the request of the incumbent AO at Dhenkanal for transfer to Bhubaneswar since he had three years of service left before superannuation. It is stated that after receipt of the letter dated 14.3.2017 of the Union secretary, the applicant was retained at Bhubaneswar in the office of the respondent no.5 till further order subject to review of his performance from time to time. Then basing on the report that the applicant was not suitable for being posted in Bhubaneswar office, the impugned order dated 15.5.2018 (A/7) was passed. It is stated that the applicant went on leave w.e.f. 28.4.2018 for a long period for which the authority had to post another officer (Sri D. Rout, JAO) in his place as a temporary measure in order to handle the accounts closure work. It is further stated that Sri D. Rout, JAO was later promoted to AO vide order dated 29.6.2018 and posted in the same post at Bhubaneswar. Vide order dated 31.7.2018, Sri D. Rout was transferred to Dhenkanal and Sri AK Das was posted as AO in the office of the respondent no.5, who joined there on 11.10.2018.

6. It is further stated in the Counter that in view of the above, the interim order dated 25.10.2018 of the Tribunal staying the order dated 15.5.2018 was unimplementable since the post in the office of the respondent no.5 was already filled up by Sri AK Das w.e.f. 11.10.2018. Hence, a prayer has been made in the Counter for vacating the interim order dated 25.10.2018.

7. The applicant has filed Rejoinder, reiterating the point that the order at Annexure-A/1 is bad in law as no opportunity of hearing was given to the applicant. It is stated that the posting of Sri DK Rout to work on additional duty was illegal and there is violation of the interim order dated 25.10.2018 of the Tribunal. It is stated that Sri AK Das was posted as AO for both Civil and Electrical wings which is not permissible as there are two sanctioned posts. The applicant also contested the fact of urgency on account of Accounts closure as mentioned in the Counter. He also stated that the performance report should be ignored. Copy of the APAR of the applicant for the period in question has been enclosed at Annexure-A/18. He also filed

8. We heard learned counsel for the applicant who argued that the letter dated 1.6.2016 (A/1) was stigmatic. It was further stated that the transfer of Sri DK Rout to Dhenkanal was modified to adjust him at Bhubaneswar vide order dated 11.3.2019 (Annexure-A/23). The judgment of Hon'ble Apex Court in the case of Prithwai Nath Ram vs. State of Jharkhand AIR 2004 Supreme Court 4277 and of Hon'ble Orissa High Court in the case of Uttam Prasad

Gupta vs. Orissa State Financial Corporation reported in 2009(Supp-II) OLR-830 were filed by applicant's counsel to strengthen the applicant's case.

9. Learned counsel for the respondents was also heard who argued that the impugned transfer order of the applicant was not stigmatic and that the applicant was continuing at Bhubaneswar since 25.8.2011 as stated in para 4.1 of the OA.

10. In the Contempt petition, the show cause reply furnished by the respondents are in the same line as furnished in the Counter in the OA. The contention of the applicant is that in spite of the interim order dated 25.10.2018, the applicant is not allowed to join at Bhubaneswar in compliance of the stay order, which is a deliberate violation of the order of the Tribunal.

11. With regard to the submissions by both the parties, it is noted that the relevant issues in this case are (i) whether there is deliberate violation of the order dated 25.10.2018 of the Tribunal and (ii) whether the impugned transfer of the applicant is stigmatic and not sustainable under the facts and circumstances of this case.

12. Regarding the issue no. (i), it is seen that the order dated 15.5.2018 (A/7) involves three officers who have been posted/relieved. The applicant has been ordered to be relieved as per the order dated 6.1.2017 posting him to Baripada. Sri DK Rout has been posted at the office of the respondent no. 5 as JAO since the applicant was continuing on leave as stated in the Counter, which has not been contradicted by the applicant. Sri Rout had already joined immediately after issue of the order dated 15.5.2018. The other officer transferred in order dated 15.5.2018 is Sri AK Pradhan who was posted as JAO in the office of the Executive Engineer (Civil) and he is not involved in this case. The applicant proceeded on leave w.e.f. 28.4.2018 as stated in para 7 of the Counter which has been confirmed in para 4 of the Rejoinder in which it was stated that the applicant remained on leave from 28.4.2018 till 28.10.2018 on medical ground. The respondents stated that since the applicant was on leave from 28.4.2018 and was extending it from time to time, hence to manage urgent accounts works, Sri DK Rout was posted vide order dated 15.5.2018. By the time the interim order was passed on 25.10.2018, Sri DK Rout had already joined in the office of the respondent no.5 as the applicant was remaining on medical leave. The OA was filed by the applicant on 22.10.2018 before Calcutta Bench which had the jurisdiction in absence of a Bench at Cuttack and on 22.10.2018, the applicant was on medical leave. The fact that the applicant was on medical leave from 28.4.2018 till the date of filing the OA was not disclosed in the OA or before the Bench on 25.10.2018 when the interim order was passed staying the order dated 15.5.2018. On the other hand, the applicant has tried to mislead the Tribunal by stating the following in para 4.6 of the OA:-

"4.6. That, while the applicant was discharging his duties as AO/IFA under the Executive Engineer (Electrical), Bhubaneswar to the best satisfaction of the authorities, all of a sudden vide Office Order No. FC/147-05/2016-17 (Part)/440 dtd. 15.05.2018 issued by the Respondent No. 4, the applicant was transferred and directed to report for duty to the O/o The TDM, Baripada as per original Order

It is incorrect to aver that the applicant was discharging duty till the order dated 15.5.2018 was issued suddenly, since the applicant was already on medical leave from 28.4.2018 and had continued on medical leave till 28.10.2018 as stated in para 4 of the Rejoinder.

13. In view of the facts discussed in para 12 above, we are of the opinion that the applicant has not disclosed the fact that he was continuing on medical leave from 28.4.2018. Further, since Sri DK Rout is also affected by the order dated 15.5.2018 as he was posted in place of the applicant, he should also have been made a party in the OA. But the applicant has not impleaded Sri DK Rout as a party in the OA and from that angle, the OA is defective on the ground of non-joinder of essential parties.

14. In the case of Prithwi Nath Ram (supra), cited by the applicant's counsel, it was held that the interim order passed by the Court has to be complied, even if ultimately the interim order is vacated and relief is not granted and that cannot be taken as a defence for violation of the interim order. The other case of Uttam Kumar Gupta (supra) cited by the applicant's counsel related to takeover of the mortgaged assets under section 29 of the State Financial Corporation Act, 1951 and there is an observation that any order passed in contravention of the interim order is a nullity. In this case, the order dated 15.5.2018 was stayed vide the interim order dated 25.10.2018 of this Tribunal based on the information by the applicant in the OA, which did not disclose all relevant facts. By the time the order dated 25.10.2018 was passed, Sri D.K.Rout had already joined in compliance of the order dated 15.5.2018.

15. In the facts and circumstances as discussed above, we have no hesitation to hold that there is no deliberate and wilful violation of the order dated 25.10.2018 on the part of the respondents as the order in respect of Sri D.K.Rout whose transfer was also involved in the order dated 15.5.2018 in respect of the applicants, had already joined and the applicant was continuing to remain on medical leave. Hence, the issue No. (i) of para 11 is decided accordingly. No contempt is made out against the respondents in the CP.

16. Regarding the issue no.(ii), we have gone through the letter dated 1.6.2016 (Annexure-A/1) which mentions specific problems in that business area which is being addressed. Without any adverse comment on any of the staffs, it mentions the following in third para:-

".....In this backdrop, it will be better to shift the following executives from this Business Area in the larger interest of BSNL service and post suitable executives against them

1.....

2. Sri Tarun Kumar Gadbad, AO(TR)

3....."

We do not find anything stigmatic against the applicant from the above letter. The head of a Business Area should have the liberty to inform the authorities if some of his staffs are to be shifted from his area in the larger interest of the organization. It is a settled law that transfer is an incidence of service and if a proposal is initiated for transfer of an officer based on performance or otherwise, it cannot be said to be vindictive or stigmatic unless there are supporting facts to prove that the transfer was vindictive or punitive. In this case, the applicant has not furnished any document to show that he is being transferred as a measure of punishment. In fact, on the suggestion of the Circle Secretary of the Association, the respondents have retained the applicant in another post at Bhubaneswar. In that post also his performance was not upto the level expected by the authorities, for which his superior officer again suggested for his transfer from his office. The applicant's stand that just because he has very good or outstanding APAR entries, he should be continued at Bhubaneswar is not tenable.

17. We also take note of the fact that the applicant had filed this OA while remaining on medical leave and challenged the order dated 15.5.2018 without impleading Sri DK Rout as an essential party since he was posted in his place after the applicant had proceeded on leave from 28.4.2018 and remained on leave till 28.10.2018. It is noted that the applicant became fit to join duty at Bhubaneswar on 29.10.2018 shortly after the interim order dated 25.10.2018 was passed by the Tribunal staying the order dated 15.5.2018 based on incorrect information furnished by the applicant in the OA as discussed in para 12 of this order.

18. We take note of the fact that the applicant has tried to advance his case for continuing at Bhubaneswar through the Circle Secretary of the Executive Association as stated in para 4.5. We also take adverse notice of the situation where the applicant, being an officer of the BSNL, has mobilized the Executive Association for his posting in a particular place and that the suggestion of the Association for the place of posting of the applicant was accepted by the BSNL authorities. It is an undisputed fact that the applicant is continuing at Bhubaneswar since 25.8.2011 as mentioned in the OA and has tried to continue at Bhubaneswar by taking help of the Executive Association of the BSNL.

19. In the facts and circumstances as discussed above, we answer the issue No. (ii) with the finding that the impugned transfer order of the applicant is not

stigmatic or punitive and there is no illegality in the said transfer order. We, therefore, are of the considered opinion that this OA is devoid of merit and it is liable to be dismissed. Further, the interim order dated 25.10.2018 was obtained by the applicant by not disclosing all relevant facts before the Tribunal, for which, we also vacate the interim order dated 25.10.2018.

20. Both the CP No. 1/2019 and the OA No. 34/2019 are dismissed accordingly. The notices issued to the respondents in the CP are discharged. The interim order dated 25.10.2018 stands vacated.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath