
(2010) 04 OHC CK 0004
In the Orissa High Court
Case No : Writ Petition (C) No. 14330 of 2009

Manoj Kumar Das

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 07-04-2010

Acts Referred:

Citation : (2011) 1 OLR 508 Supp

Hon'ble Judges : S. Panda, J;L. Mohapatra, J

Bench : Division Bench

Judgement

L. Mohapatra, J.—This writ application has been filed by the petitioner challenging the order dated 17.9.2009 passed by the Central Administrative Tribunal, Cuttack Bench, in O.A. No. 236 of 2009.

2. The petitioner approached the Tribunal in the aforesaid Original Application challenging the order dated 15.5.2009 transferring him from the post of Senior Divisional Accounts Officer, in the office of the Chief Engineer, Rural Works, Orissa, Bhubaneswar to the office of the Executive Engineer, Mahanadi South Division, Cuttack on the ground that he can only be transferred against a post categorized as "Very Heavy" and not to a post which has been categorized as "Heavy". According to the petitioner, four categories of posts have been identified, namely, "Very Heavy", "Heavy", "Medium" and "Light". In Annexure-4 different posts have been categorized into the aforesaid four categories and 43 posts have been identified as "Very Heavy" post. It is the case of the petitioner that as Senior Divisional Accounts Officer in the office of the Chief Engineer, Rural Works, Orissa, Bhubaneswar, he was occupying a "Very Heavy" post and therefore, on his representation for a transfer to Khurda, he could have been posted against a "Very Heavy" post out of 43 identified and not against a "Heavy" post at Cuttack. Reliance was also placed by the petitioner on the Transfer Policy annexed to the writ application and it was stated that a person in the higher grade may be allowed to remain in the lower grade if only he gives in writing and therefore without consent of the petitioner he could not have been

posted to a lower grade while working in a higher grade.

3. A counter affidavit was filed before the Tribunal wherein it was stated that the Transfer Policy only lays down the Guidelines and these Guidelines have no statutory force. It was also contended in the counter affidavit that the post against which the petitioner has been posted does not affect him in any manner and he shall continue to get the same scale of pay and the same benefits and therefore, no prejudice has been caused to the petitioner by such transfer.

4. The Tribunal in the impugned order found that the petitioner had opted for a transfer from the post he was holding at Bhubaneswar and Cuttack was one of the places opted for. The Committee constituted for consideration of such transfer with reference to the norms evolved by the Department for such transfer decided to post the petitioner in the post at Cuttack as stated earlier and therefore, it was not open for the Tribunal to interfere with the order of transfer in absence of any allegation of mala fides or violation of any statutory rules.

5. Shri Mishra, the learned counsel appearing for the petitioner submitted that the posts having been categorized into four categories and the petitioner having worked against a post categorized as "Very Heavy", he could not have been posted against a post categorized as "Heavy". Admittedly, on transfer the petitioner shall get the same scale of pay and the benefits but the quantum of responsibility may vary. It is true that 43 posts have been identified as "Very Heavy" posts and the petitioner could be adjusted against any one of such posts, but Cuttack being one place of posting chosen, he has been considered by the Committee for a posting at Cuttack against a post having less responsibility/work load but with the same scale of pay and benefits. This being a transfer in administrative interest and on the request of the petitioner, there is hardly any scope for this Court to interfere with the same. Shri K.P. Mishra, the learned counsel appearing for the petitioner submitted that the transfer of the petitioner suffers from mala fides solely on the ground that the officer who has been posted at Bhubaneswar against the post held by the petitioner is the President of the Association and in order to accommodate him, the order of transfer has been passed. We are unable to accept such a contention considering the fact that the petitioner himself has opted for a transfer and therefore, there cannot be any mala fides behind his transfer. Cuttack being one of the places opted for by the petitioner, he has been transferred to post with lesser responsibility/work load. Merely because the post against which the petitioner has been posted is identified as a "Heavy" post, it does not amount to reversion and therefore, we find no reason to interfere with the order of the Tribunal impugned before us. However, 43 posts having been identified as "Very Heavy" post, the case of the petitioner may be considered in future for posting against one of such "Very Heavy" post in the event he submits a representation to that effect.

6. With the above observation, the writ application is disposed of.

S. Panda, J.

7. I agree.