

**(2000) 01 OHC CK 0029**

**In the Orissa High Court**

**Case No :** Original Jurisdiction Case No. 10017 of 1999

Narmada Deo

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

**Date of Decision :** 28-01-2000

**Acts Referred:**

**Citation :** (2000) 1 OLR 193

**Hon'ble Judges :** R.K. Patra, J;P.K. Patra, J

**Bench :** Division Bench

**Advocate :** D.R. Pattnayak, M.K. Khuntia, N.S. Panda, A. Routray and K.C. Pradhan, for the Appellant; Y. Das, N.C. Mohanty, D. Patra, P.N. Sahoo and P.K. Patra for O.P. 4 and A.G.A. for O.P. Nos. 1 to 3, for the Respondent

**Final Decision :** Allowed

## Judgement

1. The petitioner Narmada Deo being felt aggrieved by the order dated 5. 8. 1999 (Annexure-12) passed by the Orissa Administrative Tribunal, Bhubaneswar in O. A. No. 1320 of 1999 has filed this writ petition. By the said order the Tribunal has quashed the order of transfer of the petitioner Narmada Deo as well as opposite party No. 4 Swarna Manjari Nayak with certain observation.

2. It appears that by office order No. 10828/WCD dated 16. 6. 1999 (Annexure-1), opposite party No. 4 Swarna Manjari Nayak was transferred from Khaira to Phulbani as Child Development Project Officer (for short, "CD. P. O. ") and in her place petitioner Narmada Deo was posted on being transferred from Oupada. Opposite party No. 4 Swarna Manjari Nayak filed O. A. No. 1320 of 1999 before the Orissa Administrative Tribunal, Bhubaneswar assailing the aforesaid order of her transfer from Khaira to Phulbani. The Tribunal on 25. 6. 1999 while issuing notice on admission directed stay of her transfer. After the parties appeared and filed counter affidavit, the Tribunal by the impugned order dated 5. 8. 1999 disposed of the case by observing as follows:

"The respondent 4 (writ petitioner) will have no difficulty at all if she goes to her

former place which is not far off from Khaira. There is no special advantage for her nor is there any difficulty for her to continue at Oupada. She too has not completed a period of three years. Hence, the transfer of both calls for a review and the following order is passed. The orders of transfer of the applicant (opp. party No. 4 Swarna Manjari Nayak) and respondent 4 (writ petitioner) are quashed. Respondent 4 is directed to take over charge at Oupada and respondent 2 the Director, Social Welfare is directed to pass appropriate orders to adjust Indurekha Nayak at a proper place."

3. Law is now fairly settled that a transfer which is an incidence of service is not to be interfered with by the Court unless it is shown to be arbitrary or vitiated by mala fides or infraction of any pronounced norm or principle governing the transfer. The scope of judicial review in the matter of transfer is limited and in purported exercise of such power the Court cannot go into the question of relative hardship of a transferee and it is for the administration to consider such question and mitigate the hardship in the interest of good and efficient administration.

4. The petitioner has enclosed an extract of the order of transfer relating to her and that of opp. party No. 4 Shri Y. Das has produced before us the entire order from which it appears that as many as 50 C. D. P. Os. have been transferred by the said order. In the said order against some of the officers it has been indicated that the transfer was on administrative ground. So far as the petitioner Narmada Deo and opp. party No. 4 Swarna Manjari Nayak are concerned, no such remark has been indicated. That would go to show that transfers of both of them was a routine one. From the impugned order (a portion of which has been extracted above), it may be seen that the Tribunal has assumed many things to itself by observing "there is no special advantage for her (writ petitioner) nor is there any difficulty for her to continue at Oupada. She has not completed a period of three years". The Tribunal accordingly observed that transfer of both "calls for a review". The Tribunal is not definitely running the administration to sit in appeal over the orders of transfer. Even with regard to one Indurekha Nayak the Tribunal observed that the Director, Social Welfare should pass appropriate order by posting her at "appropriate place". Indurekha was not a party in the case. No observation could have been made against her without giving her an opportunity of hearing. The reasons ascribed by the Tribunal for quashing the orders of transfer of the petitioner Narmada Deo and opp. party No. 4 Swarna Manjari Nayak cannot be supported in law.

5. In the result, the impugned order of the Tribunal dated 5. 8. 1999 passed in O. A. No. 1320 of 1999 as at Annexure-12 is quashed and the writ petition is accordingly allowed.

There would be no order as to costs.