

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 4378 of 2015

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1. The Union Of India through Secretary, Department of Posts, Ministry of Communication and IT, Govt. of Bihar, Dak Bhawan , New Delhi.
 2. The Secretary, Department of Posts, Ministry of Communication and IT, Govt. Of Bihar, Dak Bhawan, New Delhi.
 3. Chief Engineer, Head Quarter, Department of Posts, Ministry, of Communication and IT, Govt. of Bihar, Dak Bhawan , New Delhi.
 4. The Superintending Engineer (P&A), Department of Posts, Ministry of Communication and IT, Govt. of Bihar, Dak Bhawan, New Delhi.
 5. The Superintending Engineer, (C), Postal Civil Circle, GPO Complex, Patna.

.... Petitioner/s

Versus

Rajesh Kumar son of Shri B.N. Prasad, resident of Flat No. 202, Block - B, Om Nirmalaya Apartment, Nageshwar Colony , Police Station Budha Colony, District- Patna.

.... Respondent/s

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For the Petitioner/s : Mr Sanjay Kumar, ASG

For the Respondent/s : M/s Mrigank Mauli & Samir Kumar, Advocates

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE MR JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 07-04-2015

Having heard learned counsel for the Union of India, the appellant and counsel for the private respondent who was the applicant before the Central Administrative Tribunal (For brevity, *the Tribunal*), being the sole respondent here and with their consent, this writ petition has been heard for its final disposal at this stage itself.

2 The applicant before the Tribunal belongs to the Higher Administrative Grade and is of the rank of Executive Engineer in the

Department of Posts. He had moved the Tribunal against his order of transfer from Patna to Dharwar in the State of Karnataka. The ground was that the frequent transfers being made in respect of the applicant was more punitive in nature. The Tribunal agreed with the appellant and set aside the order of transfer. Hence, this writ petition by the Department.

3 Upon consideration of facts, we are unable to uphold the order of the Tribunal. Transfer is an incidence of service and is the prerogative of the employer. So long as transfers are made in status compatible to the officer, it cannot be said that transfers are punitive or without administrative exigency. State cannot be asked to justify administrative exigencies in every case. It is the prerogative of the employer, as stated above.

4 Therefore, we have no option but to set aside the order of the Tribunal but while doing so, Shri Mrigank Mauli, learned counsel for the applicant before the Tribunal, the sole respondent before us has brought to our notice the Office Memorandum No 4 – 9/2011 – SPG issued by Government of India in the Ministry of Communications & IT, Department of Posts (Personnel Division) dated 29.03.2012 whereby it has clearly been provided that on completion of Post tenure, extension upto six years in a Station may be granted, if administratively feasible, to officers on ground of, inter alia, the



children studying between Class IX to Class XII. This is in recognition to the humane need that a person works for his family and education to children is an utmost importance. The applicant was transferred from Patna, all the way, to Karnataka. He states that his daughter is studying in Class IX in Mount Carmel High School, Patna which is following Indian School Certificate Course. Taking her to Dharwar would totally dislocate her studies for she will not get admission in any School at Dharwar for they are all following the CBSE Curriculum, apart from their being no admission in mid session and that too in Class IX. Consequently, she would lose more than a year and that trauma for a child is not what is expected to be given.

5 Be that as it may, we direct the authorities concerned that upon representation by the applicant/respondent to the appropriate authority made within a period of seven days from today, only in respect of this ground, they would consider the same and take an appropriate decision in regards to transfer.

6 In the meantime, as the petitioner was continuing at Patna, pursuant to orders of the Tribunal and there has been no stay, he would continue till disposal of his representation.

7 Let it be noted that it is not the case of the petitioner that is the Department that the post has already been filled by any other person duly transferred to the post at Patna.

8 With the aforesaid observation and direction, this writ
petition stands disposed of.

(Navaniti Prasad Singh, J)

(Jitendra Mohan Sharma, J)

M.E.H./-

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