

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.21242 of 2022

Shyam Sundar Shee

....

Petitioner

Mr.Bhakta Ranjan Barik, Advocate

-versus-

State of Odisha and others

....

Opposite Parties

Mr.P.K.Rout, AGA

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER
21.12.2022

Order No.

- 07.
1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
 2. Heard learned counsel for the Petitioner as well as learned Additional Government Advocate for the State-Opposite Parties. Perused the writ application as well as the documents annexed thereto.
 3. The present writ application has been filed by the Petitioner with a prayer to quash the order dated 11.05.2022 under Annexure-10 on the ground of illness of the Petitioner as pr the policy decision of the Government for transfer and posting of Government Services under Annexure-11 as well as instruction dated 10.02.2022 issued by the Opposite Party No.1 under Annexure-7 and further he has prayed for a direction to Opposite Party No.1 to reconsider the Petitioner's grievance for transfer from the Office of the Assistant Director, Soil Conservation, Bhadrak to the Office of Project Director, Watersheds & Soil Conservation, Keonjhar against existing vacancy on the

ground of ill health as per the Policy decision of the Government as well as instruction dated 10.02.2022 issued by the Opposite Party No.1 under Annexure-7 in conformity with the OMS Rules, 2019.

4. The factual background of the case in short is that pursuant to a recruitment conducted to fill up the post of Junior Clerk under the Odisha Ministerial Services (Method of Recruitment to the Posts of Junior Clerks in the District Offices) Rules, 1985 the Petitioner's name was sponsored by the Collector and District Magistrate Keonjhar vide letter dated 07.11.1988 by the District Employment Exchange Keonjhar. After the Petitioner was duly selected he was appointed as Junior Clerk vide Office Order No.4394 dated 16.11.1988 in Soil Conservation Office, Northern Division, Keonjhar and the Petitioner joined in the said post on 21.11.1988.

5. While continuing in the aforesaid post of Junior Clerk, the Petitioner was promoted to the post of Senior Clerk vide Office Order No.15235 dated 31.12.1997 of the Director, Soil Conservation Office, Machhkund, Sub-division, Koraput. Thereafter he was again promoted to the post of Head Clerk vide Office Order dated 07.02.2004 of the Director, Soil Conservation, Orissa, Bhubaneswar and posted in the Office of the Project Director, Watersheds, Phulbani. While working as such, he was transferred to the Office of the Project director, Watershed, Keonjhar in the year 2010. By that time, the post of Head Clerk was redesignated as Section Officer.

6. While continuing as such, the Director, Soil Conservation, Orissa, Bhubaneswar and vide Office Order dated 12.06.2018 transferred the Petitioner to the Office of the Assistant Director, Soil Conservation, Bhadrak and in place of the Petitioner one Ajaya Kumar Barik has been posted. In the year 2019 i.e. on 03.07.2017 the Petitioner suddenly fell ill due to cardiac arrest and he was

immediately admitted in the CARE hospital, Bhubaneswar. An emergent surgery was conducted to save the life of the Petitioner and as a result of which he had to remain on leave for two months. While the matter stood thus, on 14.09.2019 the wife of the Petitioner namely Geetanjali Kahali submitted an application for transfer of her husband to the Office of the Project Director, Watersheds, Keonjhar where the family of the Petitioner was residing and it was further stated that in the event the Petitioner is transferred to Keonjhar as has been requested in the representation, the entire family would have taken care of health of the Petitioner.

7. Learned counsel appearing for the Petitioner submitted that Sub-Rule-3 of Rule-11 of the Orissa Ministerial Services (Method of Recruitment to the Posts of Junior Clerks in the District Offices) Rules, 1985 clearly provides that once appointed as a ministerial officer in a district Office, a candidate shall not be transferred outside the jurisdiction of his appointing authority, except for administrative reasons or in public interest. He further contends that since the Petitioner was appointed as Junior Clerk in Keonjhar district in the year 1998, in view of Rule 11(3) of the Rule, 1985 the Petitioner should not have been transferred outside his parent district. However, the authorities violating the aforesaid Rules transferred the Petitioner outside his parent district i.e. Keonjhar.

8. Learned counsel for the Petitioner also relied upon General Administration & Public Grievance Department notification dated 08.03.2019 which was issued in supersession of OMS Rules, 1985 and a new Rule was introduced i.e. The Odisha Ministerial Services (Method of Recruitment and Conditions of Service of Junior Assistants, Senior Assistants and Session Officers in the District Offices and Offices Subordinate thereto) Rule 2019. Referring to 9(6)

of the aforesaid Rule 2019, learned counsel for the Petitioner contended that once appointed in the post in a District Office, a candidate shall not be transferred outside the jurisdiction of his appointing authority except for administrative reasons or in public interest. He further contended that although the petitioner approached the competent authority on 09.07.2021 to reconsider his case and give him a posting in the district Office, Keonjhar on his health ground along with all supporting medical documents. The Opposite Party No.1 vide letter dated 23.11.2021 along with Note sheet of G.A. & P.G. Department dated 10.02.2022 directed the Director, Soil Conservation and Watersheds Development Odisha, Opposite Party No.2 was to follow the provisions of the Odisha Ministerial Services (Method of Recruitment and Conditions of Service of Junior Assistants, and Senior Assistants and Section Officers in the District Offices and Offices Subordinate thereto) Rules 2019. Accordingly the Director, Soil Conservation & Watersheds development Odisha in letter dated 02.03.2022 directed all the Project Directors, Watersheds to take appropriate steps at their level to fill up the vacant post of Senior Assistant and Section Officer in conformity with the government instruction dated 08.03.2019.

9. Learned counsel for the Petitioner further contends that the Petitioner is a cardiac patient and he has undergone a cardiac surgery. His family is residing at Keonjhar. Accordingly the Petitioner approached the Commissioner-cum-Additional Chief Secretary to Government Department of Agriculture and Farmers Empowerment on 07.03.2022 along with his medical reports with a copy thereof to the Director, Soil Conservation and Watersheds Development Odisha to transfer him as Section Officer in the Office of the Project Director, Watersheds and Soil Conservation, Keonjhar against the

existing vacancy on health ground as well as on the ground that he being a district cadre employee should not have been transferred outside district at the first place. Since the representation was not considered by Opposite Party No.1 the Petitioner approached this Court by filing W.P.(C) No.7842 of 2022 and this Court disposed of the writ application by order dated 04.04.2022 directing the Opposite Party no.1 to consider the representation of the Petitioner dated 07.03.2022 in accordance with law within a period of four weeks and further direction was issued to consider the representation keeping in view the order under Annexures-6 and 7 and to dispose of the same by passing a speaking and reasoned order.

7. After receiving a copy of the order dated 04.04.2022 passed in W.P.(C) No.7842 of 2022 the Additional Chief Secretary to Government A & FE department, Opposite Party No.1 by ignoring the provisions of the Rule and policy decision of the Government as well as critical health condition of the Petitioner passed an order on 11.05.2022 thereby rejecting the grievance petition of the Petitioner to transfer him to the Office of the Projector Director, Watersheds, Keonjhar against the existing vacancy on the ground that transfer of the Petitioner was made on administrative reasons due to inadequacy of ministerial staff in the Office of the Assistant Director, Soil Conservation, and there is no violation of Rule 6(9) of the OMS Rules, 2019. Accordingly, challenging the rejection order dated 11.05.2022 under Annexure-10 passed by the Opposite Party No.1 the present writ application has been filed.

8. It is submitted by the learned counsel for the Petitioner that the Petitioner has completed more than four years at his present place of posting i.e. in the Office of Assistant Director, Soil Conservation, Bhadrak. It is further contended by the learned counsel for the

Petitioner that the Petitioner has undergone a major heart surgery. As such he requires constant care and supervision by the family members as well as Doctors. It is further contended by the learned counsel for the Petitioner that on the basis of instruction received in course of hearing that the Petitioner has recently been admitted in the Capital Hospital, Bhubaneswar for his ailment where he is likely to undergo another surgery. In such view of the matter learned counsel for the Petitioner submits that the conduct of the Opposite Parties in rejecting the representation of the Petitioner under Annexure-9 vide his order under Annexure-10 is not sustainable in law and the same is liable to be quashed.

9. Learned Additional Government Advocate on the other hand submits that the transfer of the Petitioner is well within the OMS Rule, 2019. He further submits that normally district cadre employees are not transferred outside their parent district. There is an exception to the Rule whereby an employee of the District cadre can very well be transferred outside the district on administrative reasons or in public interest. He further submits that since there is a shortage of staff at Bhadrak the Petitioner has been transferred to Bhadrak and such transfer is for administrative reason. Therefore, the transfer order which has been assailed in the present writ application has been passed in conformity with the OMS Rule, 2019 and the Rule relied upon by the Petitioner i.e. Rule 6(9) of the OMS Rules, 2019 has been followed by the Opposite Parties while transferring the Petitioner to Bhadrak. On such ground learned counsel for the State submits that the writ application challenging the order of transfer is devoid of merit and as such the same should be dismissed.

10. Upon hearing the learned counsel for the parties and upon a careful consideration of the factual background of the present case,

prima facie it appears that transfer beyond the district cadre is permissible in view of the Rule 6(9) of the OMS Rule 2019 on two grounds i.e. for administrative reasons and the other one is in public interest. In the present writ application, the Petitioner has assailed the order of transfer vide Order No.3450/SC&WD dated 12.06.2018 under Annexure-2. Upon perusal of the transfer order, it appears that six persons have been transferred including the Petitioner. The name of the Petitioner finds place at sl.no.4. In the column “in office he is working” written P.D.W/S Keonjhar and in the column “Office in which posted on transfer” it is written A.D.S.C., Bhadrak and in the “remarks” column, it is mentioned Vice Ajaya Kuma Barik transferred. However, on a careful scrutiny of the order under Annexure-2 nowhere it has been stated that the order of transfer has been passed for administrative reason or such transfer is in public interest. At the bottom of the box under Annexure-2, it has been mentioned that no TTA will be admissible to employees at Sl.No.1,2 & 3 as they have been transferred basing on their representation. Therefore, while transferring the Petitioner under Annexure-2 the authorities have also transferred some of the employees considering their representations. Although the specific ground on which the representations were made have not been disclosed in the order. On a careful consideration of letter under Annexure-2, this Court is of the considered view that by no stretch of imagination the same could be construed to be an order passed for administrative reason or the same is in the public interest. Therefore, the same appears to be order passed in routine course of official business. At this juncture, it would be relevant to mention that the matter was first taken up on 09.09.2022. Thereafter the matter suffered adjournments on 28.10.2022, 15.11.2022, 30.11.2022, 06.12.2022 and 12.12.2022.

Despite all the adjournments no counter affidavit could be filed considering the urgency of the matter. Submission of the learned Additional Government Advocate upon instruction that the order has been passed for administrative reason is not borne out from the order under Annexure-2. This Court is also reminded of the position of law that no amount of explanation can be supplemented to a order which has been passed by the authority once the order has been passed. Therefore the order under Annexure-2 is to be read in the context of the order beyond the words used in the said order. After a careful consideration of the order under Annexure-2, this Court is of the considered view that in absence of the reason that the same has been passed on administrative reason or in public interest, the same is in violation of Rule 6(9) of OMS Rules. Additionally, this Court is also of the view that the Petitioner who is a Keonjhar district cadre employee was posted for a period of four years at Bhadrak and considering the health exigency of the Petitioner and considering the fact that he has undergone a surgery and at present admitted in the CARE hospital and likely to undergo another cardiac surgery, the Opposite Party No.2 should have considered the representation of the Petitioner and allowed the Petitioner to continue in the parent district cadre. In such view of the matter, this Court has no hesitation in quashing the order under Annexure-2 dated 12.06.2018 and Annexure-10 dated 11.05.2022. Accordingly the same are hereby quashed. Further the matter is remanded to Opposite Party No.1 to consider the matter afresh and pass necessary orders keeping the aforesaid analysis in view within a period of two weeks from the date of production of certified copy of this order. It is needless to mention here that the Opposite Party No.1 shall do well to adjust the Petitioner in his parent cadre Keonjhar district against any of the

vacancies available and befitting to the Petitioner's eligibility and seniority.

11. With the aforesaid observation/direction the writ application stands disposed of.

12. Issue urgent certified copy of this order as per Rules.

RKS

(A.K. Mohapatra)
Judge

