

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

ORIGINAL APPLICATION No. 301 OF 1987.

Date of decision ... March 28, 1988.

Shri B. Bhima Rao, son of B. Adinarayana,
Qrs. No. 146, Unit I- Palasa R.S.,
P.O. Kasibugga, Dist- Srikakulam (A.P) ... Applicant.

Versus

1. Union of India, represented by General Manager, South Eastern Railway, Garden Reach, Calcutta- 43.
2. Divisional Railway Manager, S.E.Railway, Khurda Road, P.O. Jatni, Dist- Puri.
3. Divisional Electrical Engineer, S.E.Railway, Khurda Road, P.O. Jatni, Dist- Puri.
4. Divisional Personnel Officer, Khurda Road, P.O. Jatni, Dist- Puri.
5. Sri T.K.S. Reddy, Electrical Foreman, S.E.Railway, Palasa Railway Station, P.O. Kasibugga, Dist-Srikakulam (A.P.).
6. Sri S. Sreeramulu, Line man-cum-Wireman, Office of the Electrical Foreman, Palasa Railway Station, P.O. Kasibugga, District-Srikakulam.

... Respondents.

M/s C.V. Murty & C.M.K.
Murty, Advocates ... For Applicant.
Mr. R.C. Rath, Standing Counsel,
Railway Administration ... For Respondents

C O R A M :

THE HON'BLE MR. B.R. PATEL, VICE CHAIRMAN

A N D

THE HON'BLE MR. K.P. ACHARYA, MEMBER (JUDICIAL)

1. Whether reporters of local papers have been permitted to see the judgment ? Yes .
2. To be referred to the Reporters or not ?
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes .

JUDGMENT

K.P.ACHARYA, MEMBER (J). In this application under section 19 of the Administrative Tribunals Act, 1985, the order of transfer passed by the competent authority transferring the applicant from Palasa to Bhubaneswar, vide Annexure-2 is under challenge.

2. Shortly stated, the case of the applicant is that he is an Electrical Lineman Grade I posted at Palasa and after serving as such at Palasa for a considerable period, the applicant has been transferred to Bhubaneswar as Lineman Grade I. Being aggrieved by this order of transfer, the applicant has invoked the jurisdiction of this Bench praying to quash the same.

3. In their counter, the respondents maintained that Respondent No.6 was transferred to Palasa on his own request and consequently the applicant had been transferred to Bhubaneswar and the next cause of his transfer was that he (the applicant) was an indisciplined and insubordinate officer and was not faithfully discharging his duties properly and further more since the applicant was stationed at Palasa for a considerable period, he was transferred in usual course and therefore, there being no merit in this application it does not warrant any interference by the Bench.

4. We have heard Mr. C.V.Murty, learned counsel for the applicant and Mr. R.C. Rath, learned Standing Counsel for the Railway Administration at some length. Mr. Murty vehemently contended that the order of transfer is malafide and it is by way of punishment and it is therefore liable to be struck down. In order to make out a case of malafide,

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Mr. Murty emphasised that the applicant had been allotted with a quarters at Palasa and after the applicant had made the quarters to be habitable, Respondent No.5 approached the applicant to temporarily allow him to occupy the quarters as no quarters had been allotted to him by then and Respondent No.5 being a senior officer to the applicant, there was no other alternative available to the applicant but to concede to the request of Respondent No.5 and even though Respondent No.5 occupied the quarters, yet the rent of the quarters was being deducted from the applicant which was of course according to rules but when the applicant approached Respondent No.5 to pay the amount, Respondent No.5 got angry and in order to feed fat his grudge against the applicant he (Respondent No.5) had manœuvred to get a posting for Respondent No.6 at Palasa so that Respondent No.5 could achieve his success. All these facts though find place in the averments of the application, there is no proof of the same. In such circumstances, we are unable to accept the contention of Mr. Murty that this is a case of malafide.

5. It was next contended by Mr. Murty that the order of transfer is by way of punishment and this contention is sought to be substantiated by the own admission of respondents in para 3 of the counter submitted on behalf of the respondents. In para-3 it is stated by the respondents that the applicant was an indisciplined and insubordinate officer who was liable for a proceeding to be initiated against him but the authorities instead of initiating a proceeding transferred him to Bhubaneswar to keep him under strict watch. On the basis of this averment, it was vehemently

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contended by Mr. Murty that this amounts to punishment. We are unable to agree with Mr. Murty because no doubt a disciplinary proceeding could have been initiated against the applicant but the authorities wanted to give a further opportunity to the applicant to rectify himself if the facts in para-3 are true and correct. We cannot deprecate this attitude of the respondents. On the contrary, we are prepared to say that it was the real attitude of the employer to give opportunity to his employee to rectify himself. In such circumstances, we do not agree with Mr. Murty that the order of transfer amounts to punishment.

6. Lastly it was submitted by Mr. Murty that Respondent No.5 is since dead and there may not be any axe to grind against the applicant. Hence Mr. Murty submitted that the authorities be directed to re-consider the matter. We do not feel inclined to give any specific direction on this point but we have no objection if the authorities re-consider on their own for a re-posting of the applicant at Palasa.

7. After hearing learned counsel for both sides, we are of opinion that ~~the~~ transferring the applicant in the mid academic session is a punishment awarded to the children of the employee. We think there is considerable force in the contention of Mr. Murty that transfer of the applicant at this stage from Palasa to Bhubaneswar may jeopardise the interest of the children of the applicant so far as their education is concerned. Therefore, we would direct that the order of transfer contained in Annexure-1 be kept in abeyance till 30.5.1988 and the applicant is directed to handover charge

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of the office to the officers selected by the authorities positively on 30.5.1988, if no other arrangement is done in the meanwhile by the authorities concerned.

8. Thus, the application is accordingly disposed of leaving the parties to bear their own costs.

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28.3.88.

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Member (Judicial)

B.R. PATEL, VICE CHAIRMAN, I agree.

B. R. Patel
28.3.88.
.....
Vice Chairman.



Central Administrative Tribunal,
Cuttack Bench.
March 28, 1988/Roy, SPA.