

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH

10

ORIGINAL APPLICATION No.318 OF 1988.

Date of decision : December 14, 1988.

Y. Govinda Rao, s on of Y. Adi Narayana  
Token Porter, Office of the Station Superintendent,  
Balugaon Railway Station, P.O. Balugaon, Dist- Puri.

... Applicant.

Versus

1. Union of India, represented through  
General Manager, S.E. Railway, Garden Reach,  
Calcutta- 43.
2. Divisional Railway Manager (s), S.E. Railway,  
Khurda Road, P.O. Khurda Road, Dist- Puri.
3. Sri B. Burman, Station Superintendent,  
Balugaon Railway Station, S.E. Railway,  
At/P.O- Balugaon, Dist- Puri.

... Respondents.

M/s J. Das, B.K. Sahoo,  
B.S. Tripathy & S.K. Purohit,  
Advocates

... For Applicant.

Mr. R.C. Rath, Standing Counsel  
(Railways)

... 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 local reporters of local paper may  
be allowed to see the judgment ? Yes.
  2. To be referred to the Reporters or not ? No
  3. Whether Their Lordships wish to see the  
fair copy of the judgment ? Yes.
-

J U D G M E N T

K.P. ACHARYA, MEMBER (J), In this application under section 19 of the Administrative Tribunals Act, 1985, the petitioner prays to quash the order passed by the competent authority transferring the petitioner- Y. Govinda Rao from Balugaon to Jajpur- Keonjhar Road as a Token Porter.

2. Shortly stated, the case of the petitioner is that he was serving as Token Porter at Balugaon in the South Eastern Railway. Vide Annexure-1 dated 9/12.9.1988 he has been transferred to Jajpur- Keonjhar Road in the same cadre. Hence this application with the aforesaid prayer.

3. In their counter, the Opposite Parties maintain that no illegality having been committed in the order passed by the competent authority transferring the petitioner on administrative grounds, the case is devoid of merit and is liable to be dismissed.

4. We have heard Mr. J. Das, learned counsel for the petitioner and Mr. R.C. Rath, learned Standing Counsel for the Railway Administration at some length. Complaint of Mr. Das was that despite the stay order passed by this Bench on 3.10.1988 and despite the order passed by this Bench in Misc. Case No. 293 of 1988 on 6.12.1988 directing disbursement of the salary in favour of the petitioner, respondent No.3- Sri B. Burman, Station Superintendent, Balugaon Railway Station, has not only

12 ✓

passed an unilateral order relieving the petitioner from duty at Balugaon but refused to accept the order passed by this Bench on 6.12.1988 directing disbursement of the salary. According to Mr. Das this is a clear case of gross indiscipline on the part of the Station Superintendent for having flouted the orders of this Bench. A petition for contempt has also been filed on behalf of the petitioner by Mr. Das. We donot like to enter into a roving inquiry regarding truth or otherwise of the statement made on instructions of the petitioner. In case the Station Superintendent avoided to receive a copy of our order, it cannot be appreciated- on the contrary- it is to be deprecated. Bad blood flows between the petitioner on one side and the Station Superintendent Sri Burman on the other side because we are told that a police case has been registered against the station Superintendent which is at the instance of the petitioner. We feel that this fight between the two incumbents should be nipped in the bud by keeping both these incumbents apart from each other. Therefore, we are of opinion that the petitioner was justifiably transferred from Balugaon. Now the question arises as to whether the petitioner should join at Jajpur- Keonjhar Road or should be transferred to any other station. Mr. R.C. Rath, learned Standing Counsel for the Railway Administration heavily pressed before us that for the sake of maintenance of discipline the petitioner should be directed to carry out the order of his higher authorities, otherwise the Administration

*[Signature]*

13

would be at a chaos. While appreciating the vehement contention of Mr. Rath that administrative discipline should be maintained we cannot lose sight of the fact that at the same time convenience of a particular Railway employee should be of paramount consideration because it would give him an incentive to discharge his duties sincerely, faithfully and with loyalty. One has to bear in mind that the petitioner is a low paid Government servant. It was told to us by Mr. Das that there are leave reserve posts lying vacant in the office of the Chief D.T.I. Berhampur where the petitioner could be posted. This would facilitate discharge<sup>of</sup> duty by the petitioner without any woe or misery and it would ultimately work out for the better interest of the Government. Therefore, we desire that the Divisional Railway Manager, South Eastern Railway, Khurda Road should consider this case sympathetically and in case there is any vacancy at Berhampur, the petitioner should be transferred to Berhampur instead of Jajpur- Keonjhar Road. Since it was told to us for the first time today that there is a vacancy at Berhampur, naturally there was no time for Mr. Rath to take instructions from the Divisional Railway Manager. However, we leave this matter to the Divisional Railway Manager to sympathetically consider the case of the petitioner and post him to Berhampur if there is any vacancy. In case there is no vacancy at Berhampur, we hope the competent authority would consider the posting of the petitioner to a Station further south near about Berhampur.

14

5. Last contention of Mr. J. Das, learned counsel for the petitioner was that the petitioner should be made entitled to all his arrear salary from the alleged date of relief till today which should be paid to him immediately. This contention of Mr. Das was stiffly opposed by Mr. Rath, learned Standing Counsel for the Railway Administration on the ground that before the stay order was passed, the petitioner had already been relieved by the Station Superintendent and therefore non-performance of duty by the petitioner at Jajpur-Keonjhar Road should be treated as unauthorised absence and therefore he is not entitled to any emoluments. We have given our anxious consideration to this argument advanced at the Bar and we would say that the petitioner was under a bonafide belief in good faith that the stay order having been passed by this Bench he would be treated as on duty at Balugaon especially when no successor has yet joined. In view of the belief of the petitioner in good faith, we are unable to accept the contention of Mr. Rath and we would direct that all the arrear salary of the petitioner from the alleged date of relief till today should be paid to the petitioner within one month from the date of receipt of a copy of this judgment and we would further direct that the Divisional Railway Manager would personally look into the matter and will ensure payment within the stipulated period. Consideration of the case of the petitioner to be transferred to Berhampur and final orders thereon should be passed by the competent

15

authority within one month from the date of receipt of a copy of this judgment and since no successor has yet joined at Balugaon , the petitioner be permitted to discharge his duties at Balugaon till final order is passed by the competent authority. In view of the above, the transfer order contained in Annexure-1 posting the petitioner to Jajpur- Keonjhar Road is hereby quashed. Misc. Case No.339 of 1988 is automatically disposed of .

6. Thus, the application is allowed leaving the parties to bear their own costs .

*[Signature]*  
14.12.88  
.....  
Member ( Judicial)

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



*[Signature]*  
14.12.88  
.....  
Vice Chairman.

Central Administrative Tribunal,  
Cuttack Bench.  
December 14, 1988/Roy, Sr.P.A.