

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

ORIGINAL APPLICATION NO:451 of 1990

Date of decision: 19.11.1992

Versus

Union of India and others Respondents

For the Applicants : M/s Deepak Mishra,
A.Deo,
B.S.Tripathy,
P.Panda, Advocates

For the Respondent :Mr. G.A.R.Dora, Advocate
(No.5)

For the Respondents : Mr. L. Mohapatra, Advocate

CORAM:

THE HONOURABLE MR. K. P. ACHARYA, VICE CHAIRMAN

AND

THE HONOURABLE MR. C. S. PANDEY, MEMBER (ADMN.)

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1. Whether reporters of local papers 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.

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JUDGMENT

K.P.ACHARYA, V.C.

In this application under section 19 of the Administrative Tribunals Act, 1985, the Petitioner prays for a direction to Opposite Party Nos 1 to 4 to sponsor and send the names of applicants in accordance with their serial ^{number} and not in violation thereof for the purpose of regularisation.

2. Shortly stated the case of the Petitioners (three in number) is that they were appointed to the Post of Electrical Chargeman B and in course of time they have been functioning in the promotional post of Electrical Chargeman A for a considerable period. According to the Petitioners, in Annexure 1 which is the provisional Seniority list, it has been mentioned that Opposite Party No.5 Shri S.C.Nayak has come on transfer to Electrical Department of Mancheswar Carriage Workshop on his own request. When regular vacancies arose in the cadre of Electrical Chargeman A in the pay scale of Rs.1600-2660/-, M/s L.C.patra and A.K.Jena (Petitioner No.1) were supposed to be sent for suitability test to be held at Calcutta on 23rd November, 1990. All of a sudden on 20th November, 1990 the Workshop Personnel Officer, Mancheswar announced that Opposite Party No.5 would be sent in place of Shri A.K.Jena, having been held by the Chief Workshop Manager that Shri S.C.Nayak, Opposite Party No.5 is senior to Shri A.K.Jena. Being aggrieved by this Order, the Petitioners have filed this Original application with the aforesaid prayer.

3. In their counter, the Opposite Parties maintained that Opposite Party No.5 was transferred on administrative grounds and hence his seniority list was modified and was rightly placed in the second position just below Shri L.C.Patra and above Shri A.K.Jena. Therefore, instead of Shri A.K.Jena Shri S.C.Nayak is fit to be sponsored and accordingly he was rightly sponsored. The case being devoid of merit is liable to be dismissed.

4. We have heard Mr. Deepak Mishra learned Counsel for the Petitioner & Mr. L.Mohapatra, learned Standing Counsel for the Railway Administration and Mr. G.A.R.Dora learned counsel appearing for the Opposite Party No.5.

5. The admitted case of the parties is that Opposite Party No.5 was transferred to Mancheswar. The only disputed question is whether Shri Nayak was transferred on administrative grounds or on his own request. Further admitted case of the parties is that if one would come by way of transfer on own request his seniority has to go down below the list. Therefore, while deciding this important disputed fact, one has to peruse several documents. In Annexure 1 i.e. the Provisional Seniority list, where the name of O.P.No.5 appears against Sl.No.5/it has been mentioned against Column 12 that 'Party has come on transfer on own request'. In annexure 3 to the rejoinder filed on behalf of the Petitioner, it is found that in his representation dated 'nil', Opposite Party No.5

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Shri Suresh Chandra Nayak has mentioned all his personal difficulties and has requested the Chief Electrical Engineer, Garden Reach, Calcutta to transfer him to the Carriage Repair Workshop, Mancheswar and on perusal of the relevant file, we have found no specific order to have been passed mentioning about the said representation, but after receipt of the said representation, the transfer order was passed. Of course in Annexure R/3 dated 24.9.1986 nothing has been mentioned that the transfer was made on request of Shri Nayak but from Annexure R/2 it is found that the Chief Workshop Manager (P) , Mancheswar addressing a letter to the Senior Personnel Officer, S.E. Railway, Calcutta stated as follows:

" Further this office has been intimated vide DEE G/VSKP's letter No.DEE/P/Qrs/88 dt. 12.4.1988 that Shri Nayak has been transferred on own request".

Vide Annexure R/1 dated 13th November, 1990 , the Chief Personnel Officer addressing a letter to the Chief Workshop Manager, Mancheswar stated as follows:

"The transfer of the above named CMS may be treated as on administrative interest".

6. At the cost of repetition, it may be stated that in the transfer order, it has neither been stated that the transfer is on own request nor on the ground of administrative interest. But the fact remains that at one point of time a communication was made as disclosed from Annexure 2 stating therein that the transfer was on own request . Reasons have not been assigned either in the counter or in any correspondence as to why the

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Chief Personnel Officer said that the transfer may be treated as on administrative interest. Further the undisputed fact is soonafter the representation was received from the Petitioner the transfer order has been passed and admittedly no TA and DA has been drawn by the Petitioner on account of the transfer. which is another significant point to be noted. Thus we have no hesitation in our mind to hold that the transfer of Shri S.C.Nayak was on own request and accordingly the seniority position of the Petitioner vis-a-vis Opposite Party No.5 should be determined according to rules and name should be sponsored according to the seniority. for the said application.

7. Thus, the application is accordingly disposed of leaving the Parties to bear their own costs.

G. Banerjee
MEMBER (ADMINISTRATIVE)

K. Mohanty
19-XI-92
VICE CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack/K.Mohanty/

19-11-1992

