

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

Original Application No. 430 of 1992

Date of Decision: 30.10.1992

Subash Chandra Padhy

Applicant

Versus

Union of India & Others

Respondents

For the applicant

M/s. Debasis Panda &
Miss. D. R. Nanda,
Advocates

For the respondents

Mr.D.N.Mishra,
Standing Counsel
(Rly. Administration)

C O R A M

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

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1. Whether the reporters of local newspapers may be allowed to see the judgment ? Yes
2. To be referred to reporters or not ? M
3. Whether His Lordship wishes to see the fair copy of the judgment ? Yes

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JUDGMENT

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K.P.ACHARYA, V.C.

In this application under section 19 of the Administrative Tribunals Act, 1985, the Petitioner prays to quash the orders contained in Annexures 1 3 and 4 transferring the Petitioner to Bandomunda .

2. Shortly stated the case of the Petitioner is that he was serving as a Trained Graduate Teacher in the Railway Mixed High School, Khurda Road. Vide order dated 9th July, 1992, contained in Annexure 1, the Petitioner Shri Subhas Chandra Padhy has been transferred in the same capacity to Bandomunda Railway Mixed High School which is under challenge and sought to be quashed. Hence this application has been filed with the aforesaid prayer.

3. In their counter, the Opposite Parties maintained that the transfer being in public interest and for exigency of service, it should not be interfered with -rather it should be sustained.

4. Before I proceed to express my opinion on the merits of the contention, raised on behalf of both sides, it is worthwhile to mention that in this application relief was not only claimed in respect of quashing the order of transfer but for a direction to Opposite Party Nos. 1 to 5 to quash the order of promotion of Opposite Party No. 6 and promote the Petitioner to the existing PGT Post at Khurda Road. Vide order dated 2nd September, 1992, prayer No. 2 was deleted on the submission made by the learned Counsel for the Petitioner. Hence at present the Bench is confined, ^{now itself} to prayer No. 1.

5. I have heard Mr. Devashis Panda learned Counsel for the Petitioner and Mr. D.N.Mishra learned Standing Counsel for the Railway Administration..

6. Mr. Devashis Panda learned counsel appearing for the Petitioner strenuously urged before me that though the petitioner is a rightful person to get promotion it has been illegally given to others whose names are mentioned in Annexure 1, yet the claim of the Petitioner has been completely overruled and this transfer has been ordered to jeopardise the interest of the Petitioner. During the course of argument, Mr. Panda, learned counsel for the Petitioner had also argued that the reliever of the Petitioner not having joined at Khurda Road ^{for} teaching of the subject which was being taught by the Petitioner ^{in the interest of the students} will be seriously hampered and therefore, the transfer order should be quashed.

7. On the other hand Mr. D.N.Mishra learned Standing Counsel for the Railway Administration submitted that the latest pronouncement of the Hon'ble Supreme Court in the case of Mrs. Shilpi Bose and others Vs. State of Bihar and others reported in AIR 1991 SC 532 has specifically laid down that besides malafide and bias and violation of Mandatory Statutory Rules, the Court should not interfere with the order of transfer. Therefore, it was submitted by Mr. Mishra that in the absence of any malafide pleaded by the Petitioner and in the absence of violation of any mandatory, statutory rules, the case

is completely devoid of merit and is liable to be dismissed.

8. I have given my anxious consideration to the arguments advanced at the Bar. Actually there is no case setup showing any malafide or bias. There is also no case setup indicating violation of mandatory statutory rules. Therefore, I find there is substantial force in the contention of Mr. Mishra learned Standing Counsel.

9. As regards the points urged by Mr. Devashis Panda learned counsel for the Petitioner that the substitute of the Petitioner has not joined at Khurda Road, I am of opinion, that this aspect should not be bothered by the Petitioner, it is the botheration of the Administrative authority ^{who is} ~~in~~ charge of the school as to who ^{should} teach the subject taught by the Petitioner. The only duty of the Petitioner ^{is} to carry out the order of transfer.

10. Lastly it was submitted by Mr. Panda that travel of the Petitioner from Khurda Road to Bandhamunda on 1st November, 1992 or during the course of this month will immensely inconvenience ~~to~~ the Petitioner and members of his family. The educational facilities of the children of the Petitioner will be indisrupted. Therefore, Mr. Panda submitted that transfer should be made effective in June, 1993. Mr. D.N. Mishra learned Standing Counsel also vehemently opposed ~~to~~ the submission made by the learned counsel for the Petitioner and stated that teaching of the subject which is being taught by the Petitioner will be seriously affected in respect of the

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school at Bandhamunda, and therefore, the Petitioner should join at Bandhamunda forthwith. The court cannot lose the sight of the fact that half yearly examination in different schools are in progress or would shortly start. At this juncture it would be a problem for the parent to get admission ^{of their children} in a New school. Therefore, for the ends of justice I think it would be just and proper to allow the petitioner to remain at Railway Mixed High School at Khurda Road till 30th December, 1992 and he should hand over the charge on 31st December, 1992 and would join at Bandhamunda after availing the joining time as per rules.

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

for a. D.M.B.
30.10.92
VICE CHAIRMAN



Central Administrative Tribunal,
Cuttack Bench, Cuttack/K. Mohanty/
30.10.1992.