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CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH

Original Application No. 484 of 1993

Cuttack this the 6th day of March, 1995

R.N.Nisank & Another Applicant(s)

Versus

Union of India & Others Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? No.
2. Whether it be circulated to all the Benches of the No. Central Administrative Tribunals or not ?

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(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

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CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH

Original Application No. 484 of 1993

Cuttack this the 6th day of March, 1995

C O R A M:

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

1. Shri R.N.Nisank, son of J.M.Nisank, Senior Clerk, Office of the Deputy Chief Engineer (Constrn)-III, S.E.Railway, PO:Laxmipur, Dist:Koraput
2. Smt.R.Lelavathy, W/o. late R.Eswara Rao Senior Clerk, Office of the Deputy CEE (C) Visakhapatnam, under CAO/C/Visakhapatnam

By the Advocate : M/s. Y. Mohanty
B.N. Mohanty

Applicants

Versus

1. Union of India represented by General Manager, S.E.Railway, Garden Reach, Calcutta-43
2. Chief Personnel Officer, S.E.Rly. Office of the Chief Personnel Officer Garden Reach, Calcutta-43
3. Chief Administrative Officer (Constrn) S.E.Railway, Vizagapatnam, Andhra Pradesh
4. Divisional Railway Manager, Waltair Division Waltair, Andhra Pradesh
5. Divisional Railway Manager, S.E.Railway, Khurda Road Vision, Khurda
6. Chief Engineer (Constrn) S.E.Railway, Cuttack
7. Chief Engineer (Constrn) S.E.Railway, Visakhapatnam, Waltair-530004

Respondents

By the Advocate : Mr. Ashok Mohanty

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O R D E R

MR .H.RAJENDRA PRASAD, MEMBER (ADMN) : The applicant, Shri R.N.Nisank, was working as Junior Clerk under the control of Chief Engineer (Construction), S.E.Railway, Visakhapatnam, since 18.2.1987. The applicant No.2, Smt. Leelavati was similarly working under the control of Chief Engineer

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(Construction), S.E.Railway, Cuttack, since 19.10.1984.

Both the applicants applied for a mutual transfer on 12.11.1989.

On 9.10.1990, the Chief Personnel Officer, S.E. Railway, Calcutta, asked Divisional Railway Manager, Khurda Road, to process applicant No.1's inter Departmental transfer at his own request on condition that he accepts the lowest seniority in Khurda Division to which Nishank wanted transfer. By then he was already officiating as Senior Clerk at Visakhapatnam. Nevertheless, Nisank accepted the condition and gave his willingness for transfer to Khurda Road Division on 30.10.1990, thereby facilitating the processing of his request for inter-Departmental transfer.

On 4.1.1991, the Chief Engineer (Construction) Headquarters, S.E.Railway, addressed a DO letter to the Chief Personnel Officer, S.E.Railway (Res.2) to inform the latter that Nisank could not be relieved before December, 1991.

On 22.2.1991, approval was accorded for Nisank's transfer from Visakhapatnam to Khurda Road and he was released from the Office of the Deputy Chief Engineer (Construction I), Lalligumma, on 29.5.1991 itself. As a follow-up, the Deputy Chief Engineer, (Construction-I) Lalligumma, issued the reversion order of Nisank, who was by then officiating as Senior Clerk (Adhoc), to Junior Clerk, and directed him to report to D.R.M., Khurda Road. The D.R.M., Khurda Road, issued his posting in

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the recruitment cell of his office on 3.6.1991 with a stipulation that he will rank juniormost to all temporary/permanent and officiating junior clerks and that he will not be eligible for joining time, transfer-grant, railway-pass, etc., since the transfer from Visakhapatnam to Khurda Road was at Nisank's own request.

2. The grievance of the applicant in this case is that although his request for a mutual transfer with applicant No.2 had been made as early as November, 1989, no action was taken on this despite reminders from CAD, Visakhapatnam and Chief Engineer(Construction), Headquarters, and he was made needlessly to accept very unfavourable conditions as late as in October, 1990, for an inter Departmental transfer at own request.

The applicants claim that if their request for mutual transfer had been processed and acceded to in the usual course and with normal despatch, both of them would have escaped considerable agony, and avoidable inconvenience, or uncertainty, or adverse terms of transfer. In this connection the applicants cite the cases of: C.R.Nayak, Jr.Clerk, DCE (C), Visakhapatnam and J.Kumari, Jr.Clerk, SPO(C) Khurda; SVS Veerabhadra Rao, Jr.Typist (DCEE (C)), Visakhapatnam and Sanjaya Raha, Jr.Typist, DCE (C); and Kum.N.Padmini, Jr.Clerk,DCEE (C),Visakhapatnam. The cases of all these officials were settled promptly between 20.3.1992 and 5.11.1992, and their mutual transfers were agreed to and ordered speedily. Only in the case of the present (joint-)applicants, their

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request, although made in 1989, was not processed or acted upon. What is more, applicant no.1 was left with no choice except to accept very unfavourable terms in order to gain a transfer to a unit of his choice. Even so, he was released from Visakhapatnam unit only in May, 1991, i.e. seven months after he had given his consent for an inter-Departmental transfer. While this was so in his case, all other cases of mutual transfers (mentioned above) were forwarded, processed and agreed to within a short of time from the time submission of their applications. It is also pointed out that, eventually, while agreeing to the unilateral move, on inter-Departmental transfer, of applicant no.1, on these adverse terms, the request of the 2nd applicant, - a widow, who moreover, was appointed on compassionate ground - has been left hanging till this date.

3. Applicant No.1 thereafter submitted an appeal to the Chief Personnel Officer on 15.12.1992 to reconsider his case in terms of the mutual transfer applied for by him earlier. This appeal was, however, not forwarded but returned to the said applicant on the ground that the transfer had already been effected at his own request.

4. Based on the above facts, the applicant seeks a direction setting aside the orders of Nisank's reversion to Jr.Clerk consequent on his transfer to Khurda Road, as well as the order returning their

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application of 15th/18th December, 1992, instead of forwarding it to the Chief Personnel Officer, S.E.Railway.

5. The present application was admitted on 6th October, 1993. The counter has been filed after a delay of several months, i.e. only on 22.4.1994.

6. In their counter-affidavit the respondents draw attention to the fact that the applicant, Nisank, was released from his earlier unit in May, 1991, whereas he has filed the present original application on 1.9.1993. The application, according to them, is, therefore, barred by limitation and should not be entertained.

7. Briefly, it is the stand of the railways that the order of Nisanks' transfer from Visakhapatnam to Khurda Road was ordered based on his own request. They point out that, even prior to the application for mutual transfer submitted by the present joint-applicants, Nisank had already applied for his transfer to Khurda Road. They also add that the applicant had been reviving his request repeatedly in some form or the other between March, 1989, and October, 1990. They finally submit that it is too late to interfere with those orders and the applicants' contentions to the contrary are in the nature of after-thoughts to regain an advantage which he had willingly relinquished in his eagerness to secure his move to the place of his choice.

8. It is seen from the record that Shri Nisank was rather desperate for a transfer from Lalligumma to

1.5.1994

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Khurda Road. Initially he applied for his own unilateral transfer and continued to pursue the same on number of occasions. The application for mutual transfer submitted by the co-applicants was a later event. Also, Nisank himself gave acceptance for inter-Departmental transfer in early December, 1990, even when his application for mutual transfer was still pending consideration. Thus it is seen that in his anxiety to move to a chosen unit he has himself been pursuing the case. It is also seen from some of the records that he had been approaching certain elected representatives of the people, besides applying directly to the General Manager himself. It was against this back-ground that the case of his transfer from Visakhapatnam to Khurda Road appears to have been processed.

9. There is doubtless some delay on the part of the respondents in taking a suitable decision in the matter of mutual transfer of the applicants. However, it is also seen that the applicant No.1, even, while keeping his request for a mutual transfer alive, was also pursuing his own transfer case. Thus it cannot be said that the inter-Departmental transfer was wholly at the instance or the initiative of the respondents; rather, it was the result of the applicant's own persistent requests for such a transfer. Under the circumstances, I do not see how he can now claim the benefits of move which he had willingly and consciously forgone while accepting the transfer. The cases of some other officials cited by the applicants,

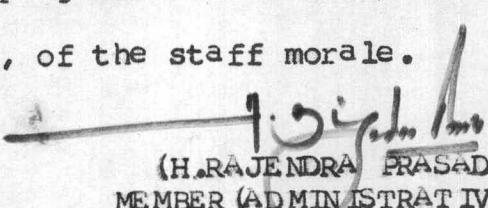
T. S. J.

even if true, are surely different from the present one in view of the fact that in all those cases the requests were confined to mutual transfers only, whereas in the present case, the applicant Nishank was chasing two different avenues of transfer at the same time, simultaneously.

10. In the light of the circumstances and facts brought out and discussed above, I do not see how this Tribunal can interfere in the matter. Strictly in the face of the record, I find nothing which would support the case of Nisank at this belated stage. The application is disallowed. No costs.

11. Having said this, it would be necessary for the respondents to consider if there is any way of coming to the help of applicant no.2 who is also, in a way, affected by the outcome of this case, inasmuch as she is still waiting for a transfer to a unit of her choice. ^{In view of} the fact that she is a widow, and an appointee on compassionate grounds, her requirement of a transfer to a unit of her choice would surely seem to deserve urgent attention. The respondents shall examine how best she could be helped in keeping with the rules but in the larger interests, also, of the staff morale.

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(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

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