

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

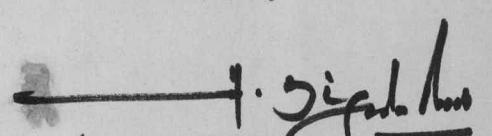
ORIGINAL APPLICATION NO: 277 of 1994

date of decision: 6.10.94

Bijay Kumar Das ... Applicant
Versus
Union of India & Others ... Respondents

(FOR INSTRUCTIONS)

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


(H. RAJENDRA PRASAD)

MEMBER (ADMINISTRATIVE)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO: 277 OF 1994

Cuttack this the 6th day of October 1994.

CORAM:

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

...

BILJOY KUMAR DAS,
S/o-Dinabandhu Das,
resident of Nuagarh,
Po-Chaumuhani,
Paradeep at present
working as Assistant
in the office of the
DET Rourkela.

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Applicant

By the Advocate ... Mr. J.R. Dash, Mrs. K.L. Dash,

Ad

Vs.

- 1) Union of India represented through
Chief General Manager, Telecom,
Orissa, Bhubaneswar, Dist-Khurda.
- 2) Telephone District Manager, Cuttack,
At/Po-Cantonment Road, Cuttack.
- 3) Sub Divisional Officer, Telegraphs, Paradeep.
- 4) Shri G.K. Sutar, A.D.T., Telecom Installation
Orissa, the then S.D.O. Paradeep now working
under C.G.M.T., Bhubaneswar, Dist-Khurda.

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Respondents

By the Advocate ... Mr. P.N. Mohapatra, ASC.

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O R D E R

H. RAJENDRA PRASAD, MEMBER (ADMN.) While the applicant, Shri Bijaya
Kumar Das, was working as Cashier in the office of the

T. S. J. L.

Sub-Divisional Officer, Telecommunications, Paradeep, a shortage of Rs. 1,870/- was detected in the office cash on 10. 3. 1993. The official was called upon to make good the shortage. He did so. On 3. 5. 1993, he was transferred out of Paradeep and posted to the Telecom Divisional Engineering Division, Rourkela, under the provisions of Rule 37 of P & T Vol-IV. The applicant duly complied with the order. On 3. 9. 1993, a notice was served on him to vacate the quarters at Paradeep which had continued to be under his occupation failing which, he was cautioned, penal rent would be levied from him from 1st September, 1993.

2. The applicant disowns all responsibility for the shortage of cash and alleges that the shortfall had occurred due to irregular payments made by the Sub-Divisional Officer, (who, incidentally, was a probationer/trainee holding temporary charge of the S. D. O. as a part of his).

3. The applicant further submits that he had to accept responsibility for the shortage under intense pressure from his official superiors, and that he agreed to make good the amount under duress. He complains that he has suffered a four-fold loss on account of (what he perceives to be) the vindictive actions and decisions of his superiors - viz., (i) loss of Cashier's allowance (ii) transfer to a distant place

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(iii) attempted eviction from the quarters at Paradeep and (iv) imposition of penal rent. The applicant has produced a paper purported to be a statement of temporary advances outstanding with the staff of SDOT's office on 20. 1. 1993, in support of his claim. According to him there were a number of outstanding advances ^{un} supported by any corresponding vouchers. The paper bears a purported signature of the then SDOT.

4. The Respondents in their counter-affidavit state that the official was extremely shoddy and careless in his work, was given to not maintaining proper account of cash handled by him and not keeping even elementary records or taking any precautions. They add that the applicant was actually trying to take advantage of the inexperience of the probationer then holding charge of SDOT. According to them, the applicant had admitted that he was not in the habit of counting cash while handing over or taking over charge to others, and that he was in the habit of making several unauthorised, irregular and unsupported payments. They cite atleast two instances where the applicant had recorded entries in the cash-book of

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payments made in excess of the actual cash disbursed, and of making unauthorised payment of bills. The respondents deny any grudge or undue pressure and say and that the inquiry was made in the presence of the entire office staff where the applicant had openly admitted his guilt.

5. As regards the transfer, the respondents do not deny a direct connection between the applicant's failure as cashier and his posting to Rourkela. On the contrary, they confidently assert that this transfer was found necessary in the departmental interests in view of his ~~proved~~ lapses and failure as Cashier. As regards the penal rent, the respondents mention that, as per rules the official was entitled to retain the quarters for only two months after being posted out, and was ~~not~~ therefore, liable to pay penal rent thereafter.

6. The allegations of the applicant about coercion and intimidation by his official superiors is not borne out by any evidence other than his bald, unsubstantiated assertions. What ^{is} undeniable is the statement owning up the entire responsibility for the irregularities and shortage of cash. In the face of such unambiguous confession, and in the absence of any positive proof of intimidation or coercion, it is not

T. Gopalakrishna

possible to hold with any degree of certainty that the applicant was subjected to any unfair pressures.

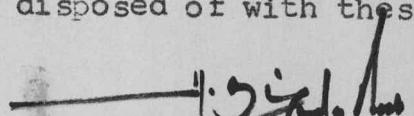
7. The transfer of the applicant has been ordered under a rule which empowers the authorities to post officials out of an office/station in public interest. As regards his retransfer and posting to the place of his earlier duty (which is prayed for by the applicant) this again depends on the needs and suitability of an official for a particular post/place. Such assessment has to be made by the concerned officers and this Tribunal has no means to make such assessment or to issue directions of this kind. The applicant should represent, once again, if necessary, to the concerned authorities and abide by their decision in this regard.

8. As regards the penal rent, here too this Tribunal has no power to waive, reduce, or otherwise to interfere in the matter unless a convincing and acceptable proof of mala fides is alleged or convincingly established. What is evident at this stage is the position of rules quoted by the authorities. Under the circumstances, it would be appropriate for the applicant to submit a detailed representation to Respondent No.1 explaining his difficulties and

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extenuating circumstances, if any. It is for the said Respondent to consider such representation and take a suitable decision on the overall circumstances of the case. All that can be said by this Tribunal is that, inasmuch as the applicant has already suffered enough, and in several ways, for ^{might} his proven lapse(s) it ^{be} desirable to consider his representation as sympathetically as possible in the matter of retransfer and levy of rent and ~~that~~ discretion vested in him, if any, is exercised to the extent merited or permissible. Any decision that may be communicated to the applicant thereafter shall have to be carried out by him. If the imposition of any penal rent is, however, eventually found inescapable and reimposed, it is directed that the same should be restricted to the period preceding 10.5.1994. From 10.5.1994 till this day, only normal rent will be recovered from the official. The question of retention or vacation of the quarters by the applicant will also be decided by the authorities themselves as per rules, availability or feasibility, as the case may be.

9- The application is disposed of with these directions. No costs.


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

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