IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:
CUTTACK BENCH
CUTTACK

Original Application Nos.350,354,379,393,394,397,414,423, 427,435,441,442,450,452,453,459, 460 and 473 of 1994:

Date of Decision: 13.9.1994

IN O.A.350/94	P.Radhakrishna & 20 others	Applicants
	Versus	
	Union of India & Others	Respondents
IN O.A.354/94	S.N.Panda & 38 others	Applicants
	Versus	
	Union of India & Others	Respondents
IN O.A.379/94	Chandramani Nayak & 60 others	Applicants
	Versus	
	Union of India & Others	Respondents
IN O.A.393/94	V.D.Vincent & 10 others	Applicants
	Versus	
	Union of India & Others	Respondents
IN O.A.394/94	Achyutananda Sahoo & 42 others	Applicants
	Versus	
	Union of India & Others	Respondents
IN O.A.397/94	B.K.Mahapatra & 6 others	Applicants
	Versus	
	Union of India & Others	Respondents
IN O.A.414/94	Biswanath Swain & 45 others	Applicants
	Versus	
	Union of India & Others	Respondents

IN O.A.423/94	Sk.Kadiruddin & 60 others	Applicants
	Versus	
	Union of India & Others	Respondents
IN O.A.427/94	Hari and 5 others	Applicants
	Versus	
	Union of India & Others	Respondents
IN O.A.435/94	Ananda Chandra Swain & 43 others	Applicants
	Versus	
	Union of India & Others	Respondents
IN O.A.441/94	B.Samantray & 2 others	Applicants
	Versus	
	Union of India & Others	Respondents
IN O.A.442/94	Harihar Pradhan & 4 others	Applicants
	Versus	
	Union of India & Others	Respondents
IN O.A.450/94	Bisia & 60 others	Applicants
	Versus	
	Union of India & Others	Respondents
IN O.A.452/94	Charan & 5 others	Applicants
	Versus	
	Union of India & Others	Respondents
IN O.A.453/94	Nata Sahoo & 68 others	Applicants
	Versus	
	Union of India & Others	Respondents
IN O.A.459/94	Ekadasi Singh	Applicants
	Versus	
	Union of India & Others	Respondents

IN O.A.460/94	Balakrishna Barik & another		Applicants
		Versus	
	Union of India & Others		Respondents
IN O.A.473/94	Akuli Das		Applicant
		Versus	
	Chief Administrative Officer		Respondents

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(FOR INSTRUCTIONS)

1. Whether it be referred to reporters 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)
13 SEP 94

CENTRAL ADMINISTRATIVE TRIBUNAL:CUTTACK BENCH

Original Application Nos.350,354,379,393,397,414,423, 427,435,441,450,452,453,459, 460 and 473 of 1994:

Cuttack this the 15th day of September, 1994

C O R A M:

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

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IN O.A.350/94 P.Radhakrishna & 20 others Applicants

By the Advocate :M/s.G.A.R.Dora
V.Narasingh Vs.

Union of India & Others Respondents

By the Advocate:Mr.D.N.Mishra,
Standing Counsel (Railway)

IN O.A.354/94 S.P.Nanda & 38 others Applicants

By the Advocate:M/s.G.A.R.Dora
V.Narasingh Vs.

Union of India & Others Respondents

By the Advocate:Mr.L.Mohapatra,
Standing Counsel (Railway)

IN O.A.379/94 Chandramani Nayak & 60 others Applicants

By the Advocate:M/s.G.A.R.Dora,
V.Narasingh Vs.

Union of India & Others Respondents

By the Advocate:Mr.L.Mohapatra,
Standing Counsel (Railway)

IN O.A.393/94 V.D.Vincent & 10 others Applicants

By the Advocate:M/s.G.A.R.Dora,
V.Narasingh Vs.

Union of India & Others Respondents

By the Advocate:M/s.B.Pal
A.K.Mishra
P.C.Panda

IN O.A.394/94 Achyutananda Sahoo & 42 others Applicants

By the Advocate M/s.P.Palit
B.Mohanty
B.K.Rout Vs.

Union of India & Others Respondents

By the Advocate:B.Pal
A.K.Mishra
P.C.Panda

IN O.A.397/94 B.K.Mohapatra & 6 others — Applicants
By the Advocate: M/s.P.Palit
B.Mohanty
B.K.Rout
vs.
Union of India & Others — Respondents
By the Advocate: M/s.B.Pal
A.K.Misra
P.C.Panda

IN O.A.414/94 Biswanath Swain & 45 others — Applicants
By the Advocate: M/s.J.K.Rath
S.K.Das
R.N.Mishra
vs.
Union of India & Others — Respondents
By the Advocate: Mr.R.C.Rath

IN O.A.423/94 Sk.Kadiruddin & 60 others — Applicants
By the Advocate M/s.J.K.Rath
R.N.Mishra
S.K.Das
vs.
Union of India & Others — Respondents
By Advocate: Mr.Ashok Mohanty

IN O.A.427/94 Hari and 5 others — Applicants
By the Advocate: M/s.R.N.Misra
S.K.Das
vs.
Union of India & Others — Respondents
By the Advocate: M/s.B.Pal
A.K.Misra
P.C.Panda

IN O.A.435/94 Ananda Chandra Swain & 43 others — Applicants
By the Advocate: M/s.P.Palit
B.K.Rout
vs.
Union of India & Others — Respondents
By the Advocate: Mr.L.Mohapatra

IN O.A.441/94 B.Samantray & 2 others — Applicants
By the Advocate: M/s.P.Palit
B.K.Rout
A.Das
vs.
Union of India & Others — Respondents
By the Advocate: Mr.L.Mohapatra

IN O.A.442/94 Harihar Pradhan & 4 others — Applicants
By the Advocate: M/s.C.A.Rao
S.K.Purohit
S.K.Behera
P.K.Sahoo
vs.
Union of India & Others — Respondents
By the Advocate: M/s.B.Pal
L.Mohapatra
A.K.Mishra

IN O.A.450/94 Bisia & 60 others — Applicants
By the Advocate: M/s.G.A.R.Dora
V.Narasingh
vs.
Union of India & Others — Respondents
By the Advocate: Mr.L.Mohapatra

IN O.A.452/92	Charan & 5 others	Applicants
	By the Advocate:M/s.G.A.R.Dora, V.Narasingh vs.	
	Union of India & Others	Respondents
	By the Advocate:Mr.L.Mohapatra	
IN O.A.453/94	Nata Sahoo & 68 others	Applicants
	By the Advocate:Mr.Niranjan Panda Vs.	
	Union of India & Others	Respondents
	By the Advocate:Mr.L.Mohapatra	
IN O.A.459/94	Ekadasi Singh	Applicant
	By the Advocate:M/s.P.Palit B.K.Rout vs.	
	Union of India & Others	Respondents
	By the Advocate:Mr.L.Mohapatra	
IN O.A.460/94	Balakrishna Barik & another	Applicants
	By the Advocate:M/s.B.C.Jena S.K.Rath P.K.Nayak K.C.PRadhan P.K.Patra B.K.Sahoo vs.	
	Union of India & Others	Respondents
	By the Advocate:Mr.L.Mohapatra	
IN O.A.473/94	Akuli Das	Applicant
	By the Advocate:Mr.Niranjan Panda vs.	
	Chief Administrative Officer	Respondents
	By the Advocate: Mr.D.N.Mishra Standing Counsel (Railway)	

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O R D E R

MR.H.RAJENDRA PRASAD, MEMBER (ADMN) : In all of these cases, personnel working in construction projects under Chief Administrative Officer (Projects) S.E.Railway, Bhubaneswar, have been redeployed to work on other projects elsewhere under the Chief Project Managers, Sambalpur and Keonjhar, or to serve on monsoon patrol duty under the Divisional Engineer (Coord), within the jurisdiction of South Eastern Railway.

The petitioners in Original Application Nos.350, 354, 379, 393, 394, 397, 414, 423, and 427 of 1994 have been shifted to Projects under the Chief Project Managers, Keonjhar and Sambalpur. The applicants in Original Application Nos.435, 441, 442, 452, 453, 459, 473, of 1994 have been diverted to perform Mansoon Patrol Duties. None appears to have been physically relieved because of the stay granted by this Tribunal from time to time in all these cases. The affected persons, whether redeployed to work on other projects or ordered to perform patrol duties, challenge the action of the respondents on any or all of the following grounds :

i) Some of the similarly placed employees who are junior to them have been left undisturbed while the applicants have been shifted despite their seniority.

ii) Many surplus Open Line lien-holders who are on deputation to Construction Line have been retained in the place(s) of their earlier deployment - notwithstanding the fact that some of them had opted to be repatriated to their parent Open Line units.

iii) The tasks which were being performed by them in projects/works of their original deployment are as yet

unfinished and are now discharged through private contract labour, which merely confirms the continuing availability of work in these place.

iv) The move of the applicants from the original projects/work-places clearly denotes a curtailment of their cadre-strength, whereby they have been rendered surplus (owing to such curtailment), a contingency which necessitates the shifting of such employees in an ascending order of seniority - a settled procedure which has been violated in the present instance.

v) No departmental or private accommodation is available in new places of their deployment.

vi) The possibility of physical assault in the new places of their deployment is apprehended owing to the resentment of local roughnecks at the presence of outsiders.

Applicants in Original Application Nos.393, 394, 397, 450, 452, 459, 460 and 473 of 1994 have raised the point mentioned at No. (ii) above.

2. Counters-affidavits have been filed in all cases by the concerned Respondents, except in Original Application Nos. 423, 473, and 491 of 1994, where no counter-affidavits are available. Since, however, the defence advanced by respondents in all but three of these nineteen cases duly covers the (identical) facts in the remaining three, it is decided to dispense with counters in atleast two of these cases and, instead, to take cognisance of the oral submissions and arguments by the concerned learned counsels. There was none to represent the respondents in Original Application No.491 of 1994 nor was any counter-affidavit filed.

3. On behalf of the respondents, Shri B.Pal was

heard in O.A. Nos. 393, 394, 397, 427, and 441 of 1994; Shri L.Mohapatra in O.A. Nos.354, 379, 435, 442, 450, 452, 453, 459 and 460 of 1994; Shri Ashok Mohanty, in O.A.Nos.423 of 1994; Shri D.N.Mishra in O.A.Nos.350 and 473 of 1994; and Shri R.C.Rath in O.A. No.414/94. None appeared on behalf of the respondents in O.A. 491/94, and, since, also, no counter was filed in this case, the same remains undisposed and is not covered by this judgment.

4. The arguments advanced by the applicants will be taken up in the reverse order as they appear in Para 1(i) to (vi) above, in the light of the counters filed and arguments advanced by the learned counsels on behalf of the parties.

5. First, the anticipated threat of physical attack on the applicants in their new work places. The respondents state that, if true or necessary, this is a situation which needs to be tackled by the local police. I do not disagree with this. Transfers and deployment of workers cannot be issued or altered merely on the basis of a subjective perception of threat or apprehensions of vague and unprovable nature. If it is the case of the applicants that the locals are likely to resent their presence on the ground that their own employment gets snatched away by these 'outsiders', it does not sound logical in the face of the statement made by the respondents that the Railways had long since stopped recruiting local labour on casual basis after the creation of the Permanent Construction Reserve Force. In any case, such unproven

fears cannot form a basis for a legal intervention.

6. The position relating to accommodation is likewise in the realms only of apprehension. The respondents say that House Rent Allowance at settled rates is paid to all applicants and it is primarily for the officials themselves to scout around and secure suitable residential accommodation. It is nobody's case that all the applicants in these case have been or can be provided with Government accommodation. Even in their present place(s) of work, very many of these officials could be depending only on private accommodation. There can be no substantial change in this situation whether they remain where they are at present, or deployed or posted to a new station. Availability of accommodation, or lack of it, can at best be a peripheral factor in such matters and cannot certainly form a substantive ground.

7. The applicants assert that there is a reduction in the cadre-strength of the construction personnel. The respondents deny this. The applicants claim that because of a reduction in the cadre setrngth, they have been rendered surplus. This too is contested by the respondents. The applicants proceed to emphasise that, as per the policy guidelines of the Railway Board, the junior most of workers so rendered surplus should move out first. It is explained by the respondents that the strength of the cadre - the Permanent Construction Reserve - has remained in tact and none has been rendered or declared to be surplus, since new projects are taken up on a continuing basis throughout

the zone with their own recurring needs for experienced construction staff. The principle of 'last come, first go' invoked by the applicants is applicable really to inter - Divisional transfers in the event of reduction in the strength of any particular cadre. That principle is not applicable here because, firstly, the Construction Reserve is not a divisional cadre, secondly, there has been no reduction in any cadre or trade-strength within the Construction Reserve, and lastly, because none has been declared to have become surplus to actual requirements of the ever-increasing project work.

7.1 To follow the main plank of arguments on this score, it is necessary to understand the genesis and rationale of the Permanent Construction Reserve - a cadre to which the applicants admittedly belong. It is explained that, until not long ago, the work on railway projects was got done through casual labourers employed temporarily from local resources. These were not transferable from one project to another according to successive or continuing requirements of manpower in different work-spots. They were strictly casual, temporary and local. The result was that a large force of able-bodied workers had to be necessarily retrenched no sooner than a particular slice of work, or project, was completed, - a practice which caused considerable hardship to persons who were thus repeatedly hired and discharged frequently. To overcome the problem, a policy decision was taken to

(a) completely stop fresh outsider-recruitment and (b) organise a permanent work force to tackle various project works from place to place or from site to site. So was born the Permanent Construction Reserve, which has, over the years, tackled all project construction works in the railways. It was not envisaged to be a Divisional asset but designed to be a Zonal resource. In the very nature of its work, the staff comprising the Reserve had to move out from one site to other, as projects got completed. Thus, redeployment was a vital, in-built characterstic and inherent to the personnel making up this force. It is in fact what the Railways call a 'floating' cadre, denoting its mobility and lack of fixity to a place or site. The Reserve is meant to cater to the project needs of the entire S.E.Railway and is not earmarked to a particular Project Manager, or for a Division. While this is so, the authorities have also repeatedly and duly stressed, time and again, that the Permanent Construction Reserve is a floating-cadre.

7.2 Viewed against this background, it is indeed true that the applicants do not have a claim on any one place of work. From their very applications it is seen that in the past too they have moved from Mahanadi to Kuakhai to Kathajodi to Brāpa to Brahmani bridges, as the work got gradually completed at each of these sites. So it is now, with the only difference that, whereas earlier there was one single Project Management Authority headquartered at Cuttack, there are three now, at

Bhubaneswar, Keonjhar and Sambalpur. The area of operations remains the same. Only the focus has shifted to three different sub-areas for better management.

7.3 Except asserting that there has been curtailment of cadre, the applicants are unable to show where and how this curtailment has occurred. The respondents, on the other hand, deny that there has been any reduction at all. Under the circumstances the claim of the respondents that the impugned orders are merely for adequately redistributing or redeploying the available manpower, and not really for 'transferring' them in the conventional sense, deserves credence. The two basic conditions attached to transfers, (contained in the Railway Board's Circular which is relied upon by the applicants) - viz., curtailment of cadres and consequent inter-Divisional shifts - are not attracted by the present impugned orders : there has been no reduction of strength, nor can these be called inter-Divisional transfers. What is apparently attempted is an intra-Reserve reorganisation of available manpower along the required trade/category/experience lines within the cadre.

8. It is complained by the applicants that the work on the projects of their present employment has not really ceased or been completed, that there is still work to be done at those places, and that this work is being actually got done through contractors. The respondents clarify that the work entrusted to contractors is in the area of "P.Way linking", doubling of railway-track, miscellaneous repair work and construction or repairs to small or minor

bridges. These items are not required to be attended to by the applicants nor are they specially trained or utilised for such work, - their entire orientation being in the area of regirdiring of bridges. The respondents finally insist that no work is available for the applicants under the Chief Projects Manager, Bhubaneswar.

8.1 These are matters which can be authoritatively pronounced upon by experts in the field, and I have no reason to disbelieve their statements on this score. It is conceded, therefore, that there is not enough work of the type capable of being performed by the applicants in their present work-places, and that their services can be more fruitfully and productively utilised elsewhere.

9. There remain two more arguments projected by the applicants in support of their pleas :

(i) seniority, and

(ii) status of open-line lien holders in the Construction Wing.

10. The Construction Wing of the Railways has in its ranks a good number of workers who originally belonged to the Open Line, hold liens in it, but were declared to be surplus there. These are known as Surplus Open-Line Lien-Holders. In order to utilise their services continually, they were either asked or permitted to work in the Construction Wing. These officials

were required or expected to get back to the Open Line as and when vacancies needing their particular skills could be found for them. Recently, however, such officials were given a choice either to be considered for absorption on the construction side, or to go back to the original line of their recruitment. The applicants in some of the present cases aver that a very large number of such Open-Line lien-holders have opted to be absorbed in the construction wing. They also assert that the Railway Board, through a number of circulars, has laid down that such Open-Line Surplus Lien-Holders are to be moved first and utilised for all new projects. They are unable to show any such circulars because, according to them, those circulars are in the custody of the respondents and not available to them. The Respondents deny the existence of any such circulars or instructions. They explain that very few, - only 20, of which 17 were Inspectors of Works, - and not hundreds, opted for absorption in the construction wing, that all options have been duly forwarded to the Zonal headquarters for necessary further action, and that no final decision has yet been communicated in the matter. They also state that there are not only no instructions to move such optees first, but that no distinction is to be made between the two groups. It is their claim that some of the open-line lien-holding staff is also being shifted, along with the applicants, depending on the type of 'trade' where workers are required on the new projects.

10.1. The lone document produced on behalf of the applicants in support of their contention is a circular calling for options from the so-called Surplus Open Line Lien-holders. This is, understandably, an open document and does not speak of deploying the optees first in preference to others. If there are any circulars specifying such precedence, as asserted by the petitioners, one imagines that such circular or circulars should also be open documents since there cannot possibly be any kind of confidentiality in matters of policy regarding the future and/or the work-conditions(like deployment or deputation) of a large number of workers. It is difficult to believe that any department of the Goverhment, or a large labour-oriehted organisation like the Railways, would issue secret instructions in such matters thereby keeping sizeable segments of their employees in the dark about their own working terms. For this reason I cannot accept the assertion of the applicants regarding the existence of any circulars or instructions of confidential nature. For the same reason, I have to accept the explanation of the respondents in this regard. Also, I cannot find any immediate link between the options exercised, or not exercised, by the Open Line Lien-Holders and the present impugned redeployment Both are separate and unrelated matters and a new policy, if any, or if required, regarding the deployment or deputation of such optees will have to be taken at

an appropriate time in future, when their options are considered, accepted or acted upon. In the meanwhile, I do not see any basic connection between these two at this juncture of time.

10.2 In the light of the preceding discussion, I hold that the presence of Open-Line Lien-Holders, their options for absorption/repatriation, and their redeployment, do not have a direct bearing on the issues in the present batch of applications.

11. Finally, the question of seniority. It is the applicant's grievance that they are senior to some of the officials who have been left undisturbed or retained in their old positions while ordering the present wave of transfers.

12. The applicants base their claim on the dates of their original (initial) appointment on various regirdering works. Thus, they trace their seniority back to different preceeding years from 1972 to 1975. While this is so, the applicants furnish the names of certain other officials who, they say, were similarly(initially) appointed later than themselves. It is the argument of the applicants that they are to be treated as senior by virtue of earlier initial appointment. The respondents counter this by stating that it is not the date of initial appointment but the date of absorption in the Permanent Construction Reserve from which the seniority flows and sustains. They explain that screening committees had been formed

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to consider the absorption of all casual labourers into the Reserve. The number of working days put in by a candidate was adopted as the main criterion for determining seniority, not the date of initial engagement. It is entirely possible that a worker may have been engaged earlier but may have had less number of working days to his credit than an other official who, even though engaged later, may have had put in more working days. Based on this mode of absorption, the seniority-lists had been duly published on the basis of the recommendation of the screening committees. The same seniority, as originally fixed, has been followed even now in re-distributing the available manpower among the Project Managers at Bhubaneswar, Sambalpur and Keonjhar. The respondents add that it is too late for the applicants to raise the question of seniority long after it had been duly determined and notified.

12.2 Elaborating on the method of redeployment it is explained that category/designation-wise availability of staff was the basis for their redistribution. The respondents are said to have followed a policy where the required number of senior-most PCR officials belonging to a particular category/designation were retained under CPM, Bhubaneswar, those below them in seniority were diverted to Keonjhar, and the junior-most to Sambalpur. This was done according to the actual requirements in each trade in the projects where they have been sent now. Where the date of absorption was same in respect of such officials, the date of earlier appointment was adopted as the criterion for redeployment. When

the dates of absorption and initial appointment were the same, the date of birth of officials was taken as the deciding factor. And where all the above-mentioned dates were found to be the same, then mere inter se seniority was taken into consideration.

13. The procedure as explained by respondents is not unconvincing, nor does it appear to be unjust in any way. The basic consideration is that of requirement in a particular trade/specialisation. The PCR evidently consists of personnel belonging to different trades, and the authorities have necessarily to choose the kind of persons, belonging to particular trades, who may be wanted in the projects. In such a situation, it is possible that persons, belonging to a particular trade group may be found scattered throughout the Reserve, depending on the date of their absorption in it. Thus, the condition of seniority can be said to be satisfied so long as the seniority of tradesman in his particular specialisation is taken as the yardstick for for redeployment(regardless of his position in PCR) vis-a-vis those below him. In view of this explanation no discrimination can be held to have been made against any of the petitioners.

13.2 Regarding applicants who have been deployed on patrol duties, it has been clarified that the same has had to be done in view of the urgent necessity for adequate manpower for patrolling duties during the current monsoon season. It is explained that the monsoon patrolling work is for a limited period. It is clearly indicated that

once this requirement is over, the applicant may well return to the construction side as before. This is considered to be a reasonable explanation and assurance.

The respondents have raised two other points:

i) The General Manager, S.E.Railway has not been impleaded as one of the responding parties; and

ii) the applicants have not exhausted all alternate remedies prior to their filing these applications before the Tribunal.

These objections are more of a technical nature and are not discussed at length, since I have dealt with the applications on merits.

Against the backdrop of what has been discussed in the preceeding pages, it is held that the various grounds adduced by the applicants have not been found to be totally acceptable. The applications are, therefore, disposed of by upholding the orders of redeployment issued by the respondents in all these cases. No costs.

(H.RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)
13 SEP 94

B.K.Sahoo//