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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 609 of 1994

Cuttack this the 8th day of December, 1995.

E. Sankar Rao

...

Applicant

Vrs.

Union of India & Others ...

Respondents

(FOR INSTRUCTIONS)

1. whether it be referred to the reporters or not? *yes*
2. whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *yes*

P. V. Venkatakrishnan
(P. V. VENKATAKRISHNAN)
MEMBER (ADMINISTRATIVE)

D. P. Hiremath
(D. P. HIREMATH)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 609 of 1994
Cuttack this the 8th day of December, 1995.

C O R A M:-

THE HONOURABLE MR. JUSTICE D.P. HIREMATH, VICE CHAIRMAN
A N D
THE HONOURABLE MR. P.V. VENKATAKRISHNAN, MEMBER (ADMN.)

....

E. Sankar Rao,
son of late Satyanarayan,
O.S. Gr. I, Office of the
Dy. C.E.E. (Construction),
S.E. Railway,
Visakhapatnam (AP).

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Applicant

By the Applicant

...

M/s. G.A.R. Dora, V. Narasingh,
G.P. DORA, Advocates.

Versus

1. Union of India through the
Chief Administrative Officer,
Project, S.E. Railway,
At/ Chandrasekharapur,
PO. Bhubaneswar,
Dist. Khurda.

2. Chief Project Manager,
(Construction) S.E. Railway,
Visakhapatnam (AP).

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Respondents

By the Respondents

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Mr. D.N. Mishra, Standing
Counsel (Railways)

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ORDER

JUSTICE D.P. HIREMATH, VICE-CHAIRMAN :

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The petitioner challenges his order of transfer by way of Annexure-6 wherein it is stated that he has been transferred from Visakhapatnam (A.P.) to Bhubaneswar. It is stated therein that consequent upon the reduction of cadre in Personnel Branch, this transfer order has been made. This Tribunal disposed of some of the Original Applications including the application of the petitioner namely Original Appl. No. 628 of 1993 on 17.8.1994 holding that the Railway are re-thinking ^{of} ~~for~~ keeping in abeyance the transfer made and challenged in that application in view of the Railway Board's statutory orders that the juniors shall be transferred and the seniors shall continue in the Survey and Construction Department. While passing that order, it was directed that the transfers~~x~~ which were challenged in that applications were cancelled and the respondents might effect the transfers in pursuance of the policy that was evolved. It is not disputed that keeping the juniors, seniors shall not be transferred and it was only during the arguments, the¹ respondents' counsel made a submission that there were two separate cadres i.e. personnel and non-personnel ~~in~~ the section and that

the cadre list would be produced. Today he comes forward with a clear plea that there are no such orders directing preparation of separate cadres at all. It is worthwhile to note from the Annexures, produced by the petitioner, especially Annexures 7 to 10, that he was working in both the cadres, namely, personnel and non-personnel, as the case may be, implying thereby that perhaps due to exigencies of work, an employee working in a personnel cadre ^{would} ~~should~~ also be asked to work in the non-personnel cadre. That being so, ^{conceivably} ~~concededly~~, there could not have been any separate cadres of personnel and non-personnel which stand is not clearly made out. Our attention was drawn to Annexures 11 and 12 in which the service particulars of the O.S., i.e. personnel and non-personnel cadres were prepared.

2. Admittedly, Sl.Nos. 3 and 4, namely, H. Koteswara Rao and K.S. Patnaik, in Annexures A/11, are junior in O.S. cadre to the present petitioner who was working in that cadre ^{from} ~~on~~ 3.11.1937. In our considered view, taking all the materials on record, ^{we find,} these annexures 11 and 12 make an artificial compartment of personnel and non-personnel staff for the reasons best known to them and if there can be no such separate seniority list of personnel and non-personnel staff, then ^{certainly} in one seniority list applying to both

^{types} nature of the ^{staff} ~~case~~, the petitioner would rank senior to Shri H.K. Rao and Shri K.S. Patnaik.

3. The applicant has invited our attention to the contentions raised by the Respondents in the earlier application at para 2 to the following effect:

" In case of ministerial staff of a vehicle driver, the seniority maintained in Survey and Construction Department at Visakhapatnam is combined".

Perhaps for that reason, the respondents are now not in a position to support the belated contention that there are two separate cadres of personnel and non-personnel staff.

4. That being so, in view of the Railway Board's statutory orders that when ^{it} comes to the question of transfer, the senior should not be touched in preference to juniors. In addition, the petitioner's counsel has also invited our attention to the certificate issued by the Medical Supdt. S.E. Railway Waltair dated 2.2.1987 in which he has advised that the Petitioner may be allotted a quarters near the office in view of his acute 'myocardial infar^{vac}ction' that he was suffering and could not be compelled to walk a long distance. That, of course, is only an incidental matter, but though opportunity was given to the respondents

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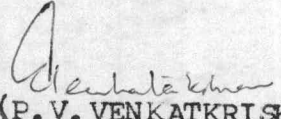
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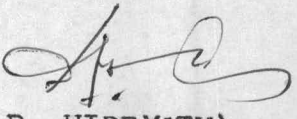
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to show that there were two separate cadres so that the placing of Shri H.K.Rao and Shri K.S.Patnaik and that of the present petitioner should not be mixed up. ^{none is coming for it.} We do not appreciate the stand taken by the Respondents. We are ^{adverting to} ~~admitting~~ the Railway Board's Circular and it was only proper that the petitioner ought not to have been transferred from Visakhapatnam (A.P.) to Bhubaneswar keeping his juniors, namely, H.K. Rao and K.S. Patnaik at Visakhapatnam. Accordingly, we cancel the impugned order and direct the respondents to retain the petitioner at Visakhapatnam and he shall be entitled to all the monetary benefits to which he is entitled in that position. The period of absence shall be treated as such kind of leave as is due to his credit.

5. The application is allowed. No costs.


(P.V. VENKATKRISHNAN)
MEMBER (ADMINISTRATIVE)


(D.P. HIREMATH)
VICE-CHAIRMAN

KN Mohanty.