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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.629 OF 1994
Cuttack, this the 26th day of 1 9 9 5

Sri Krushna Chandra Rout ... Applicant

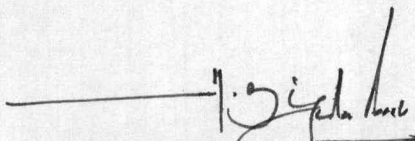
-versus-

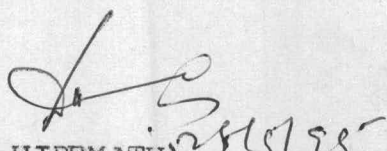
Union of India and others ... Respondents.

(FOR INSTRUCTIONS)

1. Whether it be referred to the Reporters or not? *no*

2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *no*


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)


(D.P. HIREMATH)
VICE-CHAIRMAN

26 MAY 95

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.629/94

Cuttack, this the 26th day of May, 1995

CORAM:

THE HONOURABLE SHRI JUSTICE D.P.HIREMATH, VICE-CHAIRMAN
AND
THE HONOURABLE SHRI H.RAJENDRA PRASAD, MEMBER (ADMN.)

...

Sri Krushna Chandra Rout,
aged about 54 years,
s/o late Birabar Rout,
at present serving as
S.G.Motor Driver under S.D.O.,
Phone-I, Cuttack

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Applicant.

By the Advocates

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M/s A.K.Bose,
P.K.Giri &
A.K.Jena.

-versus-

1. Union of India, represented
through Secretary, Ministry of
Telecommunications,
Sanchar Bhawan, New Delhi.
2. Chief General Manager (Telecom),
Orissa Circle, Bhubaneswar-751 001,
Dist.Khurda.
3. Telecom District Manager, Cuttack,
15 Cantonment Road, Dist.Cuttack.
4. Sub-Divisional Officer, Phone-I,
Cuttack, C.T.O.Compound,
Cuttack-753001

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Respondents.

By the Advocate

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Mr.Ashok Misra,
Sr.C.G.Standing
Counsel.

...

O R D E R

D.P.HIREMATH, VICE-CHAIRMAN

The applicant working as the S.G.Motor Driver at Cuttack has challenged his order of transfer to Bolangir dated 3.10.1994 (Annexure-4). He was required to report to the T.D.E., Bolangir for posting particulars. It is mainly challenged on the ground of mala fides, arbitrariness and contravention of Rule 37 of the P. & T. Manual. He claims to be the Circle Secretary of Bharatiya Telecom Employees Union, Line Staff and Group-D, Orissa Circle and to have taken part in a strike and agitation against the conduct and behaviour of the Telecom District Manager. A Joint Action Committee of three recognised Unions in the State including his own Union considered deterioration of public service in general and misuse and misutilisation of departmental revenues and misappropriation of store materials by some corrupt officers and the vindictive attitude of higher officers. By a Fax message ~~dated~~ dated 22.8.1994 the decision of the Joint Action Committee of these Unions was conveyed to respondent no.2, the Chief General Manager, Telecom, Orissa Circle, Bhubaneswar.

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As nothing came out of this representation to him, the agitation was intensified into "Work to Rule" from 30.9.1994 to 2.10.1994 and pen down/tool down with effect from 3.10.1994. Though the agitation was peaceful it was declared as illegal by a letter of the Welfare Officer on behalf of respondent no.2. On 11.10.1994 the agitation was called off under an agreement entered into by the agitating staff and the representatives of the administration.

2. In view of his participation in this agitation programme, he has been transferred mala fide by the order Annexure-4. He could not have been transferred to another Telecom District as the Rules in the P.&T. Manual do not approve of such transfer.

3. The respondents by their counter have contended that at the outset the application has become infructuous since the applicant has been relieved of the charge on 3.10.1994 itself. The High Court of Orissa has restrained him from functioning as the Circle Secretary and when the matter was pending before the High Court, he used to pressurise the officers to issue some letters in such a way that would amount to giving him recognition

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as the Circle Secretary. When he did not succeed in his efforts in this behalf, he masterminded the illegal strike to show his muscle strength to the administration and terrorise the officers and put the entire administration in jeopardy. The Joint Action Committee about which he is so vocal is an unrecognised body and has no constitutional basis. Out of six signatories to Annexure-R-1 of the Joint Action Committee, two main signatories of Bharatiya Telecom Employees Union (BTEU) and National Union of Telecom Engineering Employees (NUTEE) Class III withdrew from it. The said Joint Action Committee is not a recognised forum to take up issues involving interests of staff members, etc., with the Department of Telecommunication, because D.O.T. has provided the forum of periodical meetings with the staff Unions to resolve all issues involving the interest of staff members at different levels like the District level, Circle level and Telecom Commission level, etc. by the Divisional Secretary, Circle Secretary, General Secretary, etc. respectively. Though the last meeting of the Local Joint Consultative Machinery was held on 10.8.1994 for the Cuttack Telecom District, none of the items of the charter of demand, dated 29.8.1994 was ever discussed in the meeting. The applicant, however, was restrained by the High Court by the interim order

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passed in Misc. Case No. 2420/94 arising out of O.J.C. No. 2202 of 1994.

4. On 15.9.1994 the applicant persuaded some of the staff members to wear black badges and a procession was organised on 20.9.1994 under the banner of the said Joint Action Committee passing through various streets of Cuttack town shouting indecent and defamatory slogans against individual officers of the Department. Some of the letters written by the applicant show that the Committee was functioning without any authority and holding out threats to the administration under the leadership of the applicant. Hand-bills were printed containing plagiarised story regarding various departmental officers. The said Joint Action Committee organised a Dharana in front of the office of the Chief General Manager, Telecom, Orissa Circle, Bhubaneswar on 26.9.1994 and raised indecent slogans against him and other officers. The agitation continued upto 11.10.1994. The intimidation perpetrated by the applicant to the general staff ~~xxxx~~ members who were loyal and were interested in doing their normal work resulted in stoppage of work by the Clerks, Telephone Operators and the Line Staff in the Cuttack Telecom District putting the public and Government in embarrassing situation and disruption of service to a large extent.

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5. The Chief General Manager, Telecom, Orissa Circle, appealed to the concerned Circle Secretaries to refrain themselves from such action and delink themselves from illegal forums of the so called Joint Action Committee by staying away from them. This illegal action of the Joint Action Committee incurred wrath of the Press and the public. Departmental action has been taken against various staff members including the applicant who participated in the illegal strike and the agitational programme. He was also chargesheeted under Rule 16 on 15.9.1994 and punished. As he was instrumental in creating an untoward situation in Cuttack in an attempt to upset the administrative set-up and paralyse the Telecom network motivating the staff of the Telecom district and acted in excess of his own individual official capacity, he was transferred from Cuttack to Bolangir in the best interest of public service and as his continuance at Cuttack was extremely prejudicial to the telecom service in the Cuttack Telecom District administration. Various Annexures have been appended in support of these averments in the counter. The order does not in any way violate Rule 37 of the P.&T. Manual. There are no mala fides. The order is never intended to curtail the Union activities. Whether he works at Cuttack or in

some other place, he can function as leader of the Union provided he gains trust of his staff members. No staff leader is expected to continue in a particular station for executing leadership. They also maintain that the action transferring him to another Telecom District is within the ambit of Rules and has been issued after due consideration.

6. During arguments, memo has been filed by the respondents that the applicant was relieved on 3.10.1994 afternoon by the S.D.O., Phone-I, Cuttack and a copy of the order passed is annexed to the memo. For this reason, according to the respondents, the application has become infructuous as it was filed on 26.10.1994 long after he was relieved. The applicant's counsel though stated that it is only a make-believe order, we have nothing to doubt its truth. It was also stated by the applicant's counsel that the applicant has not joined his new post. There is also no controversy that he has not drawn his salary on either of the establishments. That only reflects on his attitude. It was, however, not canvassed that he still continues to be borne on the establishment at Cuttack.

7. Most of the facts are not disputed as could be seen from the averments extracted briefly from the application of the applicant and the counter of the respondents. With regard to Misc. Case No. 2420/94 before the High Court, in the

rejoinder filed by the petitioner, he stated that the High Court denied both the groups which were contending as separate Unions the trade union facilities available under Annexure-3 to the writ petition, but the order did not restrain the applicant from functioning within the Union or from representing the grievances of the employees. Another Misc. Case No.6755/94 was filed against him for contempt alleging that he was representing himself as the Circle Secretary of the Union and prayer was made to punish him for contempt of the Court's order. This rejoinder only highlights that even before the District Judge,Cuttack, some matters regarding dispute among the Union members are pending.

8. Annexure-R-3 is a copy of the order of the High Court which does not specifically name the applicant as the office bearer restrained from functioning in whatever capacity he was, but it only stated that both the groups should be denied of the removal facilities. Nothing more could be made out from it. At any rate, even from the rejoinder of the applicant, there appears to be some dispute among the office bearers of the Union divided into two groups. It may also be stated at the outset that the

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applicant's counsel made it clear that he was not claiming immunity from transfer on the ground of the applicant being a Secretary of the Union. Therefore, nothing further need be said in this behalf.

9. The applicant's counsel invited our attention to the decision of the Principal Bench of C.A.T. in the case of Shri K.K.Jindal v. General Manager, Northern Railway & org (ATR 1986 C.A.T.304) which prohibited discriminatory or arbitrary transfers. The Bench pointed out that it cannot be gainsaid that transfer is an exigency of service and may be ordered for administrative reasons and the employer is the best judge in this regard. Transfers when effected by way of punishment, though on the face of it may bear the insignia of innocence, are quashed by Courts. This is human aspect of the matter. However, they added, exigencies of administration and public interest must take precedence over individual inconvenience or hardship. Though the State is not bound to enunciate a policy in this regard, in which case each individual transfer when questioned would have to be considered on its merits, once a policy is enunciated, any action not conforming to it would prima facie be unsupportable. A very strong case would have to be made out to justify the deviation from the declared policy. On the facts of that case,

the Principal Bench pointed out that when the respondents in their counter themselves stated that the applicant was transferred because he was indulging in undesirable activities, that amounts to arriving at a positive conclusion as regards his conduct. Transfer ordered upon reaching such a conclusion cannot be one made merely because of bad reputation but one based on a finding as to the conduct of the applicant which conclusion is not based on any inquiry conforming to Article 311(2) and the provisions governing disciplinary proceedings. Such a conclusion cannot be reached behind the back of the applicant. They also added that since the applicant was occupying a sensitive post with public dealings, the respondents could perhaps have legitimately transferred him on administrative grounds on receipt of complaints. If the transfer could be said to be punitive, then that cannot be sustained.

10. This decision came to be clarified in the case of Shri Kamlesh Trivedi v. Indian Council of Agricultural Research & anr. (1989(1) ATJ(Vol.6)545) by a Full Bench in the Principal Bench of C.A.T. In that case, the Full Bench made it clear that transfer ordered on account of allegations without giving any finding on such allegations would not be vitiated. Where

chargesheet or statement regarding imputation of misconduct has not been issued but concerned official's statement with regard to the allegations has been recorded that would more than satisfy the principles of natural justice. They also made it clear that any transfer made in violation of the transfer policy by itself would not be a ground for quashing the order of transfer as observed by the Supreme Court in the case of B.Varadha Rao v. State of Karnataka and others ((1986) 4 SCC 131). Referring to the transfer policy, the Full Bench pointed out that if a person is appointed to a transferable post, the competent authority may transfer him. The Government or the employer, however, issues instructions or enunciates transfer policy to guide the competent authority in the exercise of this administrative discretion. Obviously, every exigency of service cannot be governed by instructions or policies. It has to be left to the discretion of the administrative head who may delegate this power to any other subordinate authorities. The fact that it causes hardship by itself may not be determinative of the order of transfer being penal. They further pointed out that a bona fide decision taken in exercise of administrative discretion after the disciplinary proceedings have ended in the imposition of some penalty cannot be quashed either as

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contravening any principles of natural justice or as amounting to double jeopardy. Any such transfer cannot be said to be arbitrary either.

11. We have to consider the grievances made by the applicant in the light of these decisions keeping in view firstly that an order of transfer made even after disciplinary inquiry finding him guilty does not amount to double jeopardy and secondly if it is punitive in nature, it cannot be sustained. We have also to see if exigency of service required his transfer and if it was in public interest. It appears that the Joint Action Committee, as contended by the applicant himself, was training its guns against Shri Goel who was the T.D.M. (Telecom District Manager). Annexure-R-6 dated 28.9.1994, the Fax message went from what they called J.A.C. (Joint Action Committee of Cuttack Telecom District) and it is stated that on 20th and 26th of that month, all the three Telecom staff Unions went on strike, mass Dharana was held in T.D.M.'s office and mass rally in Cuttack city was taken with the slogans "GALI GALI MAIN SHORE HAI, M.K.GOEL CHOR HAI, GOEL KO HATAO, CUTTACK KO BACHAO" and more than 250 staff participated in it. They warned that atmosphere was heading to a tension. There were also some Oriya pamphlets at Annexure-R-7 series showing

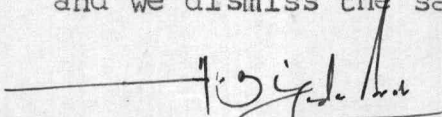
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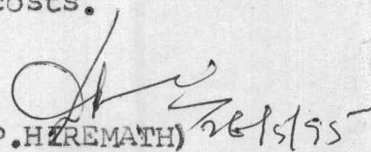
formation of a Joint Action Committee by the three trade Unions. The applicant's counsel admitted that the formation of the Joint Action Committee to take a concerted action is not conceived anywhere and it may also be stated that later some of them withdrew themselves from this Committee. At Annexure-R-8 was the appeal of the Chief General Manager, Telecom, Orissa Circle, Bhubaneswar, dated 5.10.1994 calling upon the staff members of the Cuttack Telecom District to desist from agitation declaring the strike as illegal. It also called upon them to delink themselves from the Joint Action Committee. One of the newspapers as per Annexure-R-9/A voiced doubt if there was personal interest of Telecom trade unionists behind the stir. At Annexures-R-15 and R-15/A are the letters from the office bearers of the two unions BTTU and NUTEE Group-C withdrawing their support to Joint Action Committee. At Annexure-R-16 is a detailed report from the District Telecom Manager with regard to the allegations made against him.

12. The respondents have contended that inquiry was held under Rule 16 of the C.C.S. Rules and the applicant was duly punished. This part of the averment is not denied or challenged. This only goes to show the requirement in K.K.Jindal's case (supra) that if at all a misconduct was alleged against the

Government servant, inquiry be held against him and the transfer could not be punitive on that score alone. We have also gone through Rule 37 and the provisions thereof could be relaxed in deserving cases. The applicant in this case has been serving as a Driver and has indulged in disputes with regard to his office bearership with some others and took active part in forming a Joint Action Committee which is squarely admitted by him in his application which even according to his counsel could not be justified. Various documents filed by the respondents clearly show that there was disruption of telecom service for many days at Cuttack and the applicant who was leading the agitation was unmindful to the inconvenience caused to the public. It cannot be denied that strikes are the effective means ~~for~~ of espousing common cause, but it appears ~~as~~ the Telecom District Manager was targetted by the applicant by forming a Joint Action Committee and there was no common cause espoused on the demands for the welfare of the workers. The rally that was taken ⁱⁿ ~~to~~ the town and which was uttering defamatory slogans against Shri Goel clearly exhibited its aggressive attitude coupled with indecency which cannot be said ^{to be} as permissible. Thus if under these circumstances the concerned respondent felt that it was not in the public interest that the applicant should continue any longer at Cuttack, wherein he has been serving for considerable

length of time, it cannot be mala fide. If inquiry under Rule 16 was held and he was punished and if it was in the public interest and for smooth functioning of the Department at Cuttack, the transfer is effected, even though it does not strictly conform to the transfer policy, as held in B.Varadha Rao's case (supra) by the Supreme Court, the transfer policy being only a guideline, in the exigency of service and in exceptional circumstances, deviation could be made. As we have already pointed out earlier, it is the case of the respondents that the applicant was relieved soon after the order was made. If he has not joined at the place where he is transferred, the Rules concerning the conditions of service in this context would take care of it. In our view, it cannot be said that the transfer is actuated with malice or is punitive in nature. We find no merit in this application and we dismiss the same. No order as to costs.


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)


(D. P. H. REMATH)
VICE-CHAIRMAN

26 MAY 95

A. Nayak, P. S.