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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL; CUTTACK BENCH

Original Application No. 668 of 1994

Cuttack this the 18th day of May, 1995

Biswanath Sahoo

...

Applicant(s)

Versus

Union of India & Others

...

Respondent(s)

(FOR INSTRUCTION)

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 ?


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

18 MAY 95

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CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH

Original Application No. 668 of 1994

Cuttack this the 18th day of May, 1995

C O R A M:

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

...

Biswanath Sahoo, aged about 43 years
S/o. Raghunath Sahoo,
At: Jhimirpali, PO: Dimiria,
Via: Pallaahada, Dist: Angul

- at present working as
Centre-in-charge,
Multipurpose Institute,
At: Jagar, PO: Suakati,
Dist: Keonjhar

Applicant

By the Advocate: M/s. D.S. Mishra
S. Behera
K.K. Mishra

Versus

1. Union of India, represented through
its Secretary to Government of India,
Ministry of Labour and Welfare,
New Delhi
2. Welfare Commissioner,
Government of India, Ministry
of Labour, 33-Ashok Nagar
At/PO: Bhubaneswar-9
Dist: Khurda
3. Asstt. Welfare Commissioner,
Govt. of India, Ministry of Labour
Kalyan Bhawan, At/PO: Barbil
Dist: Keonjhar

Respondents

By the Advocate: Mr. Ashok Mishra,
Sr. Standing Counsel
(Central Government)

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O R D E R

MR. H. RAJENDRA PRASAD, MEMBER (ADMN): Multi-Purpose Institutes are established by the Ministry of Labour and Welfare in the mining areas of the country to cater to the educational needs of the children of miners in the vicinity of the work-spots where they are de~~lo~~ed. One such institute exists at Barbil in Keonjhar district under the administrative control of the Assistant Welfare Commissioner, Ministry of Labour, Barbil. The petitioner, Shri Biswanath Sahoo was appointed the Centre incharge of the institute at Barbil in February, 1969. His duties were akin to a primary school teacher. During his service, he has served in different institutes[†]. He was posted as Centre incharge of the institute at Gandhamardana base camp in 1987.

1.1. On 31st December, 1993, the institute at Gandhamardana, where the applicant was posted at the time, was shifted to Jagar in the interests of the mine-workers and their families in consultation with Orissa Mining Corporation Ltd., (Annexure 1 to the application). On 17th January, 1994, the petitioner was asked to take necessary steps to effect this shift. (Annexure 2). It would, however, appear that until 23rd March, 1994, the order to shift the institute to Jagar had not been implemented, and it was said that the applicant had not handed over the charge of the institute except the Children and Staff-Attendance Registers. (Annexure 3).

† of the type at various places in the mining regions of Orissa.

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1.2. It is the grievance of the petitioner that he was ^{needlessly} shifted to Jagar and the so-called shift was *itself* merely a ruse to shift, not the institute, but only him, from Gandhamardana to Jagar, inasmuch as the institute at the former site continued to function as before and that the person to whom he was asked to hand over charge was junior to him.

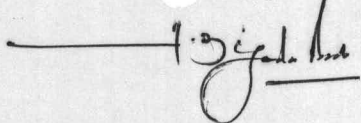
1.3. On 6th October, 1994, Shri Sahoo was again transferred from Jagar to Jaribahal and posted as Additional Centre incharge, and one Dhananjaya Mohanta was posted in his place at Jagar. It is stated that the distance between Jagar and Jaribahal is approximately 65km.

1.4. The petitioner complains that such frequent and successive transfers have had an unsettling effect on him and his family, specially since his wife has some health problems. He therefore submitted two representations, one on 11.6.1994 and another on 10.10.1994, projecting his difficulties which were mainly about his wife's illness, the education of his children and lack of family accommodation at Jagar.

The request was not considered.

2. The applicant complains that his transfer from Jagar to Jaribahal is motivated by malafides and ordered on grounds other than public interest. He prays, therefore, that the impugned order be quashed.

3. The Respondents explain the background of the decision to shift the institute from Gandhamardana



to Jagar and add that the distance between the two places is only 5 or 6 km. They do not regard the move of the applicant from Gandhamardana to Jagar as transfer at all, and argue that he had continued to work at Gandhamardan-Jagar general area for more than six years at a stretch. He, along with six other officials, was therefore shifted in ordinary course and in the interests of service. The respondents claim that he stood relieved at Jagar on 15.11.1994 and that his successor, Dhananjaya Mahanto, has joined in his place on the next day, i.e., 16.11.1994. It is also said that the respondents have duly disposed of the applicant's representation as directed by this Tribunal on 23.11.1994 and given him a reply on 30.11.1994. They add that since the official was relieved of his duties at Jagar on 15.11.1994, the stay granted by this Tribunal on 23.11.1994 became infructuous and could not be acted upon. The applicant, they say, was never asked to ^{hand} over charge to Smt. Labanya Devi, who is said to be his junior, but she was merely asked to continue at Gandhamardana institute to look after the institute's properties therein like ^{the} furniture and educational equipment. She had not in fact been brought in place of the applicant at all but had been posted to Gandhamardana much earlier and had been continuing to work there, along with him, much before the decision was taken

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to shift the institute to Jagar.

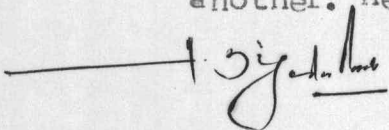
Based on these pleas, the respondents assert that the application is not maintainable and should be dismissed.

4. In a rejoinder to the counter affidavit, the applicant states that the institute was not shifted from Gandhamardana to Jagar at all, and, in support of this, he has produced a copy of the sanction memo dated 4th August, 1994, for the purchase of confectionery items for distribution among the pupils of Gandhamardana MPI on the occasion of the ensuing independence day. The applicant also produced a 'staff attendance register' to show that he has been continuing to work at Jagar institute since 15.1.1994. He denies that he was relieved on 15.11.1994, saying that he was actually on leave from 11.11.1994 to 26.11.1994. In support of this, he states that he was actually paid his salary as usual for the month of November, 1994. It is his case that he could not have been relieved while he was on duly-sanctioned leave. He has also produced an 'Acquittance Roll' stating that he was paid his salary for the month of November, 1994.

5. The facts revealed by the records of this case have been scrutinised closely and the arguments of both the parties have also been noted. The relevant issues which have a close bearing on this case are discussed below.

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6. The applicant insists that he was 'transferred' from Gandhamardana Base Camp MPI to Jagar, in December, 1993. The respondents do not deny this but merely point out that the school had had to be shifted to Jagar in order to cater to the arising needs of miners' children near and around the place. It is noted in that context that the phased progress of mining in a general mine area necessitates the gradual movement of labour from one spot to another, and with it the concentration of workers alters from place to place within the area. Old sites lose their importance and the strength of labour diminishes quite radically necessitating the abandonment of earlier locations and setting up of new ones. Institutes, which are really no different from schools, necessarily move from one neighbourhood to nearby locations in keeping with the movement of the labourers' families and households. Such moves are orchestrated in consultation with the mine-managements and are not ordered or decided upon lightly or whimsically. The shifting of the institute from Gandhamardana to Jagar was one such move coordinated by the Mining authorities, an advisory committee, and the respondents. The very fact that the applicant continued to reside in the Gandhamardana base camp complex even after the institute was shifted to Jagar bears out the fact that the two locations are situated close to one another. He has been ^{duly} permitted to retain the

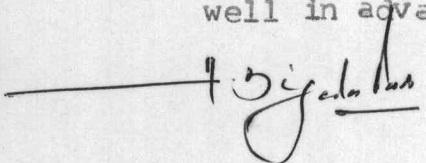


accommodation allotted to him in Gandhamardana.

7. The move of the applicant from Gandhamardana to Jagar is not really the issue in contention in this case except insofar as the applicant cites it as a 'transfer' prior to another transfer from Jagar to Jaribahal. However, in view of the explanation offered by the respondents in this regard, the issue of his initial shift between the two can be regarded as settled as far as this case is concerned and does not need further comment except to observe that it not a regular "transfer" in the accepted sense.

8. The respondents assert that the applicant was relieved at Jagar on 15.11.1994. The applicant denies this by stating that he was on leave from 14th to 26th November, 1994. But despite opportunity being provided to him, he could neither produce any evidence of such leave having been sanctioned, nor could he produce any other satisfactory proof of his continued presence at Jagar after 15.11.1994. Instead, the applicant has produced some papers relating to what he claims to be (i) a T.A.Claim (ii) a pay cheque for November, 94 and (iii) an 'absentee' statement. However, these papers either do not have any relevance, or do not adequately explain the developments in any proper sequence.

8.1. As regards the pay received by him for November, 1994, it is explained by the Respondents that pay bills for a particular month are prepared well in advance during the preceding month itself



and do not therefore reflect the actual duration of an official's presence on duty, or his absence, during roughly the second half of the succeeding month to which the entitlement pertains. Adjustments, if any, are made in the pay-bill of the month following the one in which an official was authorisedly absent for a part thereof. This is as much to prepare the bills in time for ^{timely} payment/encashment as to obviate any break or continuity in payments to the staff. Thus, the actual entitlements of the applicant for the month of November, 1994, can be reflected only in the pay bill and pay-cheque for ^{December payable on 1st} January, 1995, after making necessary adjustments for absences, if any, against the payment made ^{on 1st} December, 1994. This is a reasonable explanation which approximates to the actual procedure in vogue in various departments and offices wherever the drawing and disbursing officers have the responsibility of controlling payments in a number of subordinate offices away from their own location. The explanation is accepted.

9. The applicant has produced what he claims is an attendance register. This is in a manuscript form on sheets of white paper stitched together and cannot be regarded as an authentic or authorised document. It has all the appearance actually of a parallel unauthorised Register. The Respondents, on the other hand, have filed a proper printed Attendance Register, duly filled-in in form M.N.A.1. It is

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equally clear that the copies of Monthly Performance Reports submitted by him for November and December, 1994, and January, 1995, and the absentee statements for December, 1994 and January, 1995, do not reflect the ground reality. It is also beyond doubt that Shri D. Mohany is discharging the duties of centre incharge at Jagar Camp MPI. All facts on record thus go to prove that the applicant, Shri Biswanath Sahoo, is not actually performing the duties of the Centre incharge from at least 16th November, 1994.

9.1. It was suggested on behalf of the applicant in the concluding stages of the hearing of this case that a report as to whether the applicant is actually working at Jagar be called for from an independent source, say, from the mining authorities. I did indeed ponder over this suggestion, and at one time actually contemplated such a course. On reconsidering the matter, it was, however, felt that calling for such a report would neither be correct nor indeed necessary in the face of overwhelming facts borne out by the records of the case. There was hardly any need to take the enquiry into areas and realms beyond the decisive facts revealed by the record before the Tribunal.

10. The only remaining aspect of the case is of validity or the need of that the applicant's transfer from Jagar to Jarabahal. It has been explained that the (impugned) transfer orders

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were issued because the applicant ~~was~~ stayed in Gandhamardana - Jagar for a certain number of years and that it was a case of routine transfer. Under the ~~circumstances~~, I do not feel inclined or called upon to interfere in the matter. Transfers, as has been repeatedly stressed, are incidents of service and no employee may claim any ~~right~~ to continue in a particular post ^{or place.} If an employee has any personal difficulties in complying with the orders of transfer it is for him to represent his problems to his superiors and it is for the latter to examine and solve the problems of their employee as best as they might. No intervention is called for from this Tribunal in this matter, since no extraordinary facts or reasons exist for such interference.

The application is disallowed. No costs.


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

18 MAY 95.

B.K. Sahoo//