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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NOS. 828 TO 833 OF 1994, 836 OF 1994 & 120/95
Cuttack, this the 30th day of April, 1997

CORAM:

HONOURABLE SRI S. SOM, VICE-CHAIRMAN

....

In OA 828/94

Sri Fakir Hati,
aged about 34 years,
son of Bhikari Hati,
Qr. No. C-17, Block No. A-17, At/PO/PS-Jatni,
District-Khurda.

In OA 829/94

Mr. D. Naidu, aged about 52 years,
s/o D. Appana, Boiler Maker,
Locoshed, Khurda Road Division,
S.E. Railway,
Traffic Colony,
Khurda Road,
At/P.O/PS-Jatni,
District-Khurda,
Orissa, at present
Diesel Trouble Shooting Gang
at Cuttack Railway Station,
Cuttack.



In OA 830/94

*W.W.W. J.M
30.4.97*
Sri Hemanta Kumar Majhee,
aged about 46 years,
s/o late Daitari Majhee,
Vill/PO-Kusumati, P.S-Jatni,
District-Khurda, Fitter Gr.III
Locoshed, Khurda Road,
S.E. Railway, At/PO-Jatni,
now working as Diesel Trouble Shooting Gang,
at Cuttack Railway Station,
Cuttack.

In OA 831/94

Sri Shyam Sundar Parida,
aged about 50 years, s/o Kulamani Parida,
At/PO-Kusumati, P.S-Jatni, District-Khurda,
Boiler Maker Gr.II, Locoshed, Khurda Road,
SE Railway, at present Diesel Trouble Shooting Gang,
Cuttack Railway Station, Cuttack.

In OA 832/94

Sri Damodar Majhee,
aged about 31 years, s/o Jairam Majhee,
Village-Delki Sahi,
P.O-Naranpur,P.S-Raj Berhampur,
District-Balasore, Call Boy Group 'C' Staff,
Locoshed Khurda Road, S.E.Railway,
Jatni,District-Khurda,Orissa,
at present working as Diesel Trouble Shooting Gang,
Cuttack Railway Station,
Cuttack.

In OA 833/94

Sri Biswambar Harichandan,
aged about 49 years,
son of Bina Harichandan of vill/PO-Kudiary,
PS-Jatni,Dist.Khurda, Fitter Gr.III,
Locoshed,Khurda Road, S.E.Railway,
now working as Diesel Trouble Shooting Gang,
Cuttack Railway Station,Cuttack.

In OA 836/94

Sri Amar Chandra Nanda,
aged about 46 years,
son of late Kanhu Charan Nanda,
At-Raja Bazar,
PO/PS-Jatni,
District-Khurda, Orissa,
Fitter Grade III Loco
Khurda Road Division,
S.E.Railway, at present
working as Diesel Trouble Shooting Gang
at Cuttack Railway Station,
Cuttack,
Orissa.



In OA 120/95

Shri Shankar Sahoo,
aged about 50 years,
son of Bhamar Sahoo,
residing at Railway Colony,
Jatni,S.E.Railway,Khurda Road Division

..... Applicants

-versus-

In all the cases:

The Senior Divisional Mechanical Engineer,
S.E.Railway,Khurda Road Division,
At/PO/PS-Jatni,District-Khurda

..... Respondent



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Advocates for applicants - M/s U.K.Nanda & CR Behera
Advocates for respondents - M/s B.Pal & O.N.Ghosh.

ORDER

1. VICE-CHAIRMAN

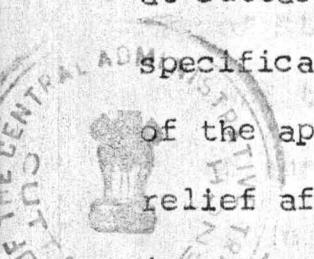
This is a batch of eight applications which have been heard analogously. The facts are similar and the issues raised are the same. Therefore, these are being disposed of by a common order.

2. For the purpose of this order, reference is being made to the facts alleged in O.A.No.828 of 1994 and the counter filed in that case. The facts in other applications, as already mentioned, are almost the same, the only change being that the designations of some of the applicants are different, though most of them are Boiler Maker Grade-I.

3. The applicant in OA No.828 of 1994 has stated that he is Boiler Maker Grade-I and was working in Locoshed in Khurda Road Division of S.E.Railway. He had received training in Loco Diesel Trouble Shooting and was transferred to Cuttack to work in Diesel Trouble Shooting Gang with effect from 13.4.1991. From that day he has been working at Cuttack, but he is coming every day from Khurda Road because his headquarters have not been changed from Khurda Road to Cuttack. He has retained his quarters at Khurda Road. According to the applicant, the departmental authorities have taken his posting at Cuttack neither as transfer nor as tour. So, for coming from Khurda Road to Cuttack for working

*Grwth Sam.
30.4.97*

at Cuttack, he is not getting T.A., but is spending money on his to and fro journey. He is getting his salary from Khurda Road, and for getting the salary every month he has to take leave. The case of the applicant is that his posting at Cuttack should be taken as regular transfer in which case he would get quarters at Cuttack as per seniority or house rent allowance. He would also get transfer allowance, city compensatory allowance, and monthly salary at Cuttack. The applicants in these cases had represented to the departmental authorities to treat this as regular transfer or give them regular T.A. for coming to Cuttack, but no orders were passed. They had also given notice on 27.11.1993 to the Hon'ble Minister of State, Railways, for going on hunger strike to press their demand (Annexure-5). As their grievances have not been attended to, they have come up in these O.As. The applicants have also claimed that one Sri Ratnakar Das, a Loco Diesel Trouble Shooting staff, who is similarly placed like the applicants, has been given travelling allowance throughout from May, 1991 to July, 1993 when Sri Das worked at Cuttack. The respondent in paragraph 6 of the counter has not specifically denied this beyond a bald assertion that the contentions of the applicants are not correct. This is also a ground on which the relief aforesaid has been claimed.



The respondent in his counter has taken the preliminary objection that as the General Manager, S.E.Railway, representing Union of India, has not been made party to these applications, the same are not maintainable and are liable to be dismissed due to non-joinder of necessary party. On the facts of the matter, it has been asserted in the counter filed in OA No.828/94 that the applicant was a Khalasi Helper and not a Boiler Maker Grade-I. He was working at Khurda Road under Loco Foreman, S.E.Railway, Khurda Road. With effect from 1.11.1990 Steam Locomotives were eliminated in Khurda Road Division and the applicant and other staff were rendered surplus. They were then temporarily transferred to Cuttack to work in Diesel Trouble Shooting Points, because there were no vacancies at Khurda Road

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to accommodate the Loco surplus staff. It is also said that the applicants were temporarily transferred to Cuttack, but as there were no vacancies at Cuttack, they could not be regularly transferred to Cuttack and were allowed to retain their quarters at Khurda Road. In consideration of this, they were allowed to retain their quarters at Khurda Road for a period of two years or till they are provided with Railways quarters at Cuttack. It is stated that the applicants' headquarters are at Cuttack on temporary basis. Therefore, they are required to get their salary at Khurda Road.

5. From the above recital of facts as alleged in the application and the counter in OA No.828 of 1994, it is clear that the facts of these cases are not in dispute. The applicants were working in Locoshed at Khurda Road. Because of elimination of Steam Locomotives in Khurda Road Division, they became surplus and their services were utilised by sending them on temporary transfer to Cuttack Diesel Trouble Shooting Gang. But the point to note here is that the applicants must be either taken to be on transfer to Cuttack, or they must be taken to be coming on duty to Cuttack on tour. In the first case, they would get quarters at Cuttack, monthly salary at Cuttack, transfer allowances and city compensatory allowance, if it is taken that they have been transferred to Cuttack on regular basis. If, on the other hand, their headquarters are taken to be at Khurda Road and they are taken to be on tour on duty to Cuttack, then they would get their travelling allowance for to and fro journey from Khurda Road to Cuttack. It is not reasonable for the Railways administration

*Om Prakash Jaiswal
30.4.97*





to deny both to the applicants. From the counter it is clear that their assignment at Cuttack is by way of regular transfer, because in paragraph 7 of the counter it has been mentioned that they have been allowed to retain their quarters at Khurda Road for two years or till they get quarters at Cuttack. They can obviously get quarters at Cuttack only if they are taken to be transferred to Cuttack. It is also to be noted that the so called temporary transfer effected in 1991 cannot continue for long six years upto 1997. I have, therefore, no hesitation in holding that the applicants must be taken to have been regularly transferred to Cuttack from the beginning of their working at Cuttack. It is submitted in the counter that they could not be regularly posted at Cuttack because there were no vacancies there. At the same time, it has been asserted in the counter that these applicants could not be retained at Khurda Road because after elimination of Steam Locomotives they became surplus at Khurda Road. Here again it cannot be both ways. If because of absence of posts they became surplus at Khurda Road, then obviously in the absence of any posts at Cuttack, as alleged in the counter, they could not have been posted at Cuttack. It is a pity that their repeated representations including one notice for going on hunger strike have remained unattended to. It must be appreciated by the departmental authorities that a contented work force is the first pre-requisite for greater efficiency.

*W.M.D. S.M.
30.4.97*

6. As regards the respondent's contention that the applications should be dismissed, because General Manager, S.E.Railway, has not been impleaded as a respondent, it has to

be noted that the point is rather technical in nature. Moreover, the respondent in these eight applications is the authority under whom the applicants were working. The Railways have also filed counters in all these cases. In view of this, I hold that non-joinder of General Manager, S.E.Railway, should not be a ground for dismissing the applications out of hand.

7. In consideration of the above, I hold that the applicants in these cases should be taken to be on regular transfer to Cuttack from the beginning of their working at Cuttack and they would be entitled to all the benefits of such transfer in accordance with Rules. The applications are, therefore, allowed, but the parties are left to bear their own costs.

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H. S. Som
(S. S. Som)
VICE-CHAIRMAN 30.4.97

Section Officer,
Central Administrative Tribunal,
Cuttack Bench, Cuttack.