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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.332 OF 1995
Cuttack, this the 4th day of December, 1997

Shri S.Sanyasi Rao Applicant.

Vrs.

Union of India and 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? No.

Somnath Som
(SOMNATH, SOM)
VICE-CHAIRMAN
11/12/97

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.332 OF 1995

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

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Shri S.Sanyasi Rao, 48 years,
son of late Shri Pydithalli,
at present residing at Rly Qrs No.L/29/8, Rly Loco Colony,
Rayagada, Pin-765 00 and working as
Khalasi-Helper, S.E.Railway,
Rayagada

Applicant.

Vrs.

1. Union of India, represented through its
General Manager, S.E.Railway,
Garden Reach,
Calcutta-43.
2. Divisional Railway Manager,
S.E.Railway, Waltair.
3. Sr.Divisional Personnel Officer,
S.E.Railway, Waltair.
4. Senior Divisional Mechanical Engineer (Diesel),
S.E.Railway, Waltair.
5. Shri S.Laxman Rao, Khalasi-Helper,
O/o Loco Foreman, S.E.Railway,
Rayagada

Respondents.

Advocates for applicant - M/s A.K.Misra, S.K.Das,
S.B.Jena & J.Sengupta.

Advocates for respondents - M/s D.N.Misra & S.K.Panda.

O R D E R

Somnath Som, Vice-Chairman

In this application under Section 19 of
Administrative Tribunals Act, 1985, the applicant has prayed for
quashing the order dated 19.10.1994 transferring him from Rayagada
to Waltair and to allow him to continue in his present post of

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Khalasi-Helper at Rayagada. There is also a prayer to direct respondent nos.1 to 4 to transfer respondent no.5 to Waltair who has come and joined in the place of the applicant at Rayagada.

2. The case of the applicant is that he has been working as Khalasi-Helper under Loco Foreman, S.E.Railway, Rayagada. Earlier he had worked at Waltair for about five years and his children are studying in Oriya medium school at Rayagada in 5th,6th and 10th Class. In order dated 19.10.1994 the applicant has been transferred from Rayagada to Waltair and respondent no.5 has been transferred from Waltair to Rayagada in his place. From the transfer order itself, it appears that the transfer of respondent no.5 to Rayagada is at his own request and no T.A. and D.A. have been allowed to him. The applicant has further stated that the copy of the transfer order was not given to him or to his immediate superior authority Loco Foreman. Respondent no.5 reported for duty at Rayagada on 28.12.1994. The applicant on coming to know of the transfer order submitted a representation to the authorities stating that his daughter is going to appear at the 10th Class Examination and his transfer order should be cancelled. In response to this, the applicant was asked to appear before Senior Divisional Mechanical Engineer (Diesel) on any working day. The applicant met the Senior Divisional Mechanical Engineer (Diesel) on 27.1.1995 and according to him, he was given to understand that his transfer order has been cancelled. He went on medical leave and on 17.4.95

*Om Prakash Jaiswal
H.12.97*

he came to join, but he was not allowed to join on the ground that he has been relieved. In view of the above facts the applicant has come up with the aforesaid prayer.

3. Respondent nos.2 to 4 in their counter have pointed out that the applicant is holding a transferable post and he has no right to continue at Rayagada on the ground that his children are studying in Oriya medium or he had previously worked at Waltair. In any case, considering his representation dated 3.1.1995 he was allowed to continue at Rayagada till the end of scholastic year. He went on medical leave after 31.3.1995 and resumed his duties on 16.4.1995 when he was relieved from the post on 17.4.1995. The respondents' case is that the applicant has been transferred from Rayagada to Waltair on compelling administrative grounds and not for accommodating respondent no.5, who, in any case, had represented to post him at Rayagada due to personal problems. The respondents have stated that the applicant was not told that his transfer order would be cancelled. The applicant went on leave to avoid getting relieved and when he reported for duty, he was relieved on the next day, i.e. on 17.4.1995. On the above grounds, the respondents have stated that in consideration of his difficulties, he was allowed to continue at Rayagada till the end of scholastic year and no further consideration can be shown to him.

*Commission
H.12.97*

4. I have heard the learned lawyer for the applicant and the learned counsel appearing on behalf of the respondents and have also perused the records.

5. In a series of cases, the Hon'ble Supreme Court have laid down that a transferable employee has no vested right to continue at a particular place and a transfer order can be challenged only on the ground of mala fide or violation of statutory rules. Learned lawyer for the applicant has submitted that the very fact that the transfer order was not communicated to him or to his immediate superior shows that the transfer order has been passed mala fide. He has also submitted that he is a Group-D employee and according to the Railway Manual, Group-D employee should be transferred only on rare occasions and that too for compelling administrative reasons. According to the learned lawyer for the applicant, no compelling administrative reason has been mentioned by the respondents in the counter. It has also been submitted that the transfer order of the applicant has been passed only to accommodate respondent no.5 at Rayagada.

6. It is well settled that the allegation of mala fide has to be specifically made against a particular authority by name. In this case, the applicant has not done so in his application. In view of this, it cannot be held that the transfer order has been passed mala fide. It does appear, however, that the departmental authorities have transferred the applicant to Waltair in order to accommodate respondent no.5 at Rayagada for which respondent no.5 had made a representation. But this will not make

*Onwards from
H.12.97*

the transfer order mala fide and the allegation of mala fide cannot, therefore, be accepted. As regards the contention of the applicant that as a Group-D Government servant, he should not have been transferred from Rayagada, it is found from the application itself that the applicant is in a transferable job. He himself says that earlier he had worked at Waltair for about five years and therefore, it cannot be said that his transfer to Waltair is in violation of the statutory rules. The respondents have submitted in the counter that the transfer of the applicant to Waltair has been done on compelling administrative reasons. They have of course not indicated what those compelling administrative reasons are. But, in any case, when the applicant is in a transferable job, it is not possible for him to claim that he should remain at Rayagada for all times to come because his children are studying in Oriya medium school. Learned lawyer for the petitioner has referred me to the case of N.K.Singh v. Union of India and others, AIR 1995 SC 423. In N.K.Singh's case (supra) the Hon'ble Supreme Court have laid down that it is for the departmental authorities to decide amongst different employees who should be posted where and the Tribunal cannot take over the function of the departmental authorities in that regard. In consideration of all the above, I hold that the prayer of the applicant for quashing the order of his transfer to Waltair is without any merit

the same is rejected.

7. It, however, has to be noted that the applicant has certain genuine difficulties. He is a Group-D employee and his children are studying in Oriya medium school. In course of hearing, it was submitted by the learned lawyer for the petitioner that there are vacant posts at Rayagada in which he can be adjusted. If this be so, then the applicant should make a representation to the departmental authorities within 10(ten) days from the date of receipt of copy of this order. The departmental authorities are directed to consider his representation, take into account his personal difficulties, pass appropriate orders on his representation, and communicate the same to the applicant within a period of 30 (thirty) days from the date of receipt of the representation.

8. In the result, therefore, the application is disposed of in terms of the observation and direction contained in paragraphs 6 and 7 of this order. No costs.

Somnath Som.
(SOMNATH SOM)
VICE-CHAIRMAN
12/12/97

AN/PS