

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A. NO. 381 OF 1996

Cuttack this the 2nd day of August, 1996.

BANA BEHARI SWAIN

...

...

APPLICANT

VRS.

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 Tribunals or not? No

N. Sahu
(N. SAHU)
MEMBER (ADMINISTRATIVE)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH;CUTTACK.

O. A. NO. 381 OF 1996

Cuttack this the 2nd August, 1996.

CORAM;

THE HONOURABLE MR. N. SAHU, MEMBER (ADMINISTRATIVE)

IN THE MATTER OF;

SHRI BANA BEHARI SWAIN,
aged about 42 years,
Son of Jagannath Swain at present
serving as Station Master,
At- Patpur Railway Station,
Bada Bandha, PO-Chatua, Via-Kuraja,
Dist. Jagatsinghpur.

... Applicant

By the Applicant : Miss. Sanjoo Panda Deepali Mohapatra,
Advocates.

Versus

1. Union of India represented through its
Secretary, Ministry of Railways, New Delhi.
2. Division Railway Manager,
South Eastern Railway,
Khurda Road, Division, PO Jatni,
Dist. Khurda.
3. Additional Divisional Railway Manager,
South Eastern Railway, Khurda Road
Division, PO:Jatni, Dist. Khurda.
4. Senior Divisional Personnel Officer,
SE Railway, Khurda Road Division,
PO, Jatni, Dist. Khurda.
5. Chief Divisional Traffic Inspector,
SE Railways, At/PO/Dist. Cuttack.
6. Md. Jawed Anjum posted as Pro. ASM,
At. B.D.B.A., Dist. Jagatsinghpur.

... Respondents.

By the Respondents : Mr. Ashok Mohanty, Standing Counsel.

PRONOUNCED IN OPEN COURT

O R D E R

MR. N. SAHU, MEMBER (ADMINISTRATIVE): Heard Ms. Sanjoo Panda, learned Counsel for the applicant and Shri Ashok Mohanty, learned Senior Standing Counsel for the Union of India. This application was admitted on 30-05-1996. On the representation of the Advocate, the following orders were passed :

" 1. 30.5.96 : The applicant was promoted as Station Master and posted at Badabandha in the district of Jagatsinghpur with effect from 26-11-1990. Respondent No.4, the Sr. D.P.O. issued an order of transfer on 22-4-1994. He was immediately asked to hand over charge, but the applicant made a representation requesting continuance for domestic problems. The applicant came before this Tribunal in OA No.344/94 challenging the orders under Annexures-1 and 2. Interim orders were passed on 14-6-1994 staying the transfer of the applicant and the Original Application was finally disposed of in favour of the Applicant with a direction that he shall continue in the said post till November, 1994. He accordingly continued and functioned as Station Master.

(Emphasis supplied)

Respondent No.4, Sr. D.P.O., S.E.Railway, Khurda Road Division, on 20-5-96 transferred Respondent No.6 Mr. Jawed Anjum, Pro.A.S.M. without giving any transfer order to the applicant. The grievance is that without issuing any transfer order to the applicant, Respondent No.6 has been posted and it is mentioned in Annexure-4 that Mr. Jawed Anjum is posted as A.S.M. at Badabandha against existing higher grade vacancy. According to Miss. Sanju Panda learned counsel for the applicant, this higher grade vacancy can only be that of the applicant's post of Station Master. Obviously, there can not be a transfer without a transfer order. Miss. Panda submits that the applicant has been orally told that he has been transferred. Status quo, to be maintained, namely, the applicant shall continue as Station Master, Badabandha until further orders."

This is supported para 4(8) of the petition which runs thus;

"4(8) That this Hon'ble Tribunal was pleased to pass interim order on 23-6-1994 staying the transfer of the applicant and finally disposed of the application with a direction that the applicant shall continue in the said post till November, 1994".

In the counter filed by the Respondents the above statements were contradicted. This very matter of transfer from Badabandha to Radhakishorepur was the subject matter of adjudication. In its order dated 30th November, 1994 at para 4 ^{this Court} observed "xx xx xx. It can not therefore, be held that the petitioner has been calculatedly moved out to make way and adjust any of the other four. What with the delay in the filing of the counter-affidavit by the Respondents and the subsequent adjournment of hearing sought for by the learned counsels and accepted by this Tribunal, the applicant has in fact stayed longer than the two months deferment which he had initially sought from the respondents". At para-5, it further observed that "under the circumstances, the quashing of the impugned order, as prayed for by the applicant, is not warranted. There is no need or justification to interfere in this matter. The said order is upheld. It shall now be complied with by Shri Bana Bihari Swain".

2. Ms. Panda, learned counsel for the applicant states that this order pronounced on 30th November, 1994 in O.A.No. 344/94 was not communicated to the applicant and therefore, he did not know the contents of this order. On this plea, the

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applicant states that he continued to stay at Badabandha and therefore, he has made the averments at para 4(8) of the application which is contrary to this Tribunal's order.

3. It appears to me that this is an abuse of the process of the Court by the petitioner. Once an order is pronounced in the open court, the applicant is supposed to know the contents of the order. Since he is the aggrieved party, he has also the right to know. Once an order is pronounced, the presumption is that parties know about the contents. Communication of a copy of the order ^{is} at a later stage from the Registry. The applicant is directed to show cause as to why Contempt Proceedings for abuse of the process of the Court shall not be initiated for filing a false averment at para 4(8) of this application. Because of this averment, on 30.5.96, the Court was led to believe that the applicant was permitted to continue till November, 1994 and admitted the petition. In view of the findings given by this Court in OA No.344/94 and as the orders were passed on representation which was contrary to the order passed in OA 344/94, the entire position has materially changed. In fact the final orders disposing of the OA 344/94 is to confirm the transfer order and dismiss the application. The applicant, therefore, ^{has} furnished apparently a wrong statement of fact. It has not been substantiated before me as to on what basis he made this statement.

4. This application stands dismissed for two reasons;

(1) The applicant had not approached the Court with clean hands and had not disclosed the complete truth and back ground of the case;

(2) On the ground that the matter having been finalised in an earlier order, this application is hit by the principle of resjudicata. Obviously the order of status quo as station master Badabanda stands vacated.

5. Notice to go from the Registry for show cause in the Contempt Proceedings suo motu initiated in this case.

Manasimohan
(N. SAHU)
MEMBER (ADMINISTRATIVE)

KN Mohanty.