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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 628 OF 1996
Cuttack, this the 22nd day of April, 1997

BHAGIRATHI PATNAIK & OTHERS APPLICANTS

VERSUS

UNION OF INDIA & OTHERS RESPONDENTS

(FOR INSTRUCTIONS)

- 1) Whether it be referred to the Reporters Yes .
or not?

- 2) Whether it be circulated to all the Benches Yes .
of the Central Administrative Tribunal or
not?

Somnath S. Som
(S. SOM) 22.4.97
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 628 OF 1996

Cuttack, this the 22nd day of April, 1997

CORAM:

HONOURABLE SRI S.SOM, VICE-CHAIRMAN

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1. Bhagirathi Patnaik, aged about 50 years, s/o late Jagannath Patnaik, Divisional Secretary, All India Postal Employees Union, Postman Group 'D' and E.D.As., Sundargarh Division, Rourkela and working as Group 'D' Rourkela H.O., At/P.O-Rourkela, Dist. Sundargarh, for himself and also representing the following Employees who are also members of the aforesaid Employees' Union.
2. Luhura Kua, Postman Sundargarh H.O
3. Sunil Kumar Dash, Postman Rangadhipa S.O
4. Sukra Gram, Postman, Rourkela H.O
5. M.M.Nath, Postman Rourkela H.O.
6. R.P.Mallick, Postman, Rourkela H.O.
7. Mohan Kissan, Postman, Rourkela-11
8. Ranjit Singh, Postman Rourkela - 3
9. Fagu Sethi, Postman, Rourkela-5
10. B.B.Patel, Postman, Rourkela-12
11. Pyarilal Mistry, Group 'D', Divisional Office, Sundargarh

*Summons issued
22.4.97*

12. Nrupa Ch. Gour, Group-D
Divisional Office, Sundargarh
13. Upendra Roul, Group-D,
Rourkela-10
14. D.D. Patra, Group-D,
Rourkela H.O.
15. Akrura Behera, Group-D,
Sundargarh H.O.
16. Pankaj Dandse, Group-D,
Rourkela-11
17. Jagadish Sa, Group-D,
Rourkela-6
18. Tarachand Pasayat, Group-D,
Rourkela-10
19. Biranchi Gour, Group-D,
Rourkela-2
20. D.K. Dixit, Group-D,
Rajgangpur
21. Ramji Patel, Group-D,
Liploy

.... Applicants.

-versus-

*Somnath JOM
22.4.97*

1. Union of India, represented by the Director General (Posts), Dak Bhawan, New Delhi.
2. Chief Post Master General, Orissa Circle, Bhubaneswar, At/P.O-Bhubaneswar, Dist. Khurda.
3. Post Master General, Sambalpur Region, At/P.O/Dist. Sambalpur.
4. Director, Postal Services, Sambalpur Region, At/P.O/Dist-Sambalpur.
5. Senior Superintendent of Post Offices, Sundargarh Division, At/P.O/Dist. Sundargarh-770 001

.... Respondents.

H
X

Advocates for applicants - M/s Pradipta Mohanty,
D.N.Mohapatra, G.Sahoo &
J.Mohanty.

Advocate for respondents - Mr.Ashok Mohanty,
Sr.Central Govt.Standing
Counsel.

O R D E R

S.SOM, VICE-CHAIRMAN

In this application under Section 19 of the Administrative Tribunals Act, 1985, applicant no.1, who is working as Group 'D' employee in Rourkela Head Post Office and is the Divisional Secretary, All India Postal Employees Union, and twenty others have prayed for quashing of the transfer order dated 24.5.1996, which is at Annexure 1 to the Original Application. The case of the applicants in brief is as follows.

2. It is alleged that the impugned transfer order has been passed without properly following the Director-General, Posts, circular dated 14.1.1990. According to the application, the applicants are holding non-transferable posts and in the impugned order dated 24.5.1996 they were transferred for the first time. The applicants claim that according to the circular dated 14.1.1990 the tenure of Mailman and S.G.Mailman in R.M.S.Divisional Offices and Group 'D' staff in the Postal Divisional Offices should be for five years and rotation for Mailman and S.G.Mailman should be prescribed from the office of the Divisional Superintendent, R.M.S., to the H.R.O. or any other office at the same station where the Divisional Office is located. Similarly, rotation for Group 'D' officials in

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the Postal Divisional Office is prescribed from the office of the Divisional Superintendent to the Head Office or any other office at the same station where the Divisional Office is located. The claim of the applicants is that some of them are Postmen and some are Group 'D' employees. In the circular dated 14.1.1990, the tenure of Postman has not been laid down and therefore, they cannot be transferred. As regards Group 'D' employees, the applicants claim that they are liable to be transferred in terms of the circular only in those places where a Divisional Office is situated and also only from Divisional Office to other offices at the same station, but the impugned order has been passed with regard to Postmen and Group 'D' employees working in the Department at Rourkela and this, according to the applicants, is violative of the circular dated 14.1.1990 of the Director-General, Posts. Apparently, after the issue of the impugned order, the Union took up the matter with the Chief Post Master General and higher authorities, but were unsuccessful in their efforts. The applicants have also alleged that the transfers are vindictive in nature because in letter dated 12.2.1996 (Annexure 16), respondent no.3 has unfairly and without any basis held that applicant no.1 and two other Union officials had instigated a mob to go and demonstrate with respondent no.3 at Room No.4, Inspection Bungalow, Rourkela, on 7.2.1996, while he was on tour to Rourkela and was staying there. It is alleged in paragraph 5(5) of the application that respondent no.3 faced a gherao by the general public on 7.2.1996 and this was wrongly attributed by him to the Union employees, and as a result, out of vindictive attitude, the impugned order has been passed.

*Journalist JMM
22.4.97*

3. The respondents in their counter have alleged that applicant no.1 has been the motive force behind the the general indisciplined conduct of some of the employees at Rourkela and in order to improve the work culture, he has been transferred in the impugned order. The respondents have also asserted in their counter that the transfer order is in accordance with the departmental rules and regulations and no violation of the circular dated 14.1.1990 has been committed.

4. I have heard Sri Pradipta Mohanty, the learned lawyer for the applicants, and Sri Ashok Mohanty, the learned Senior Standing Counsel for the respondents at length. The first point to be considered is whether the impugned transfer order is in accordance with the departmental rules or if it is in violation of the circular dated 14.1.1990. The applicants in this case come under two categories, namely, Postmen and Group 'D' officials. The case of Group 'D' officials can be taken up first. In the circular dated 14.1.1990 which, as it appears from the circular, was issued after discussion with the employees in the Joint Consultative Committee meeting, the tenure of Group 'D' staff has been fixed for five years and it has been ordered that their transfer order should be issued from the office of Divisional Superintendent and they should be transferred to the Head Office or any other office in the same station. It is not the case of the applicants that those of them who are Group 'D' officials have stayed in their present places of posting prior to the issue of the impugned order for any period less than five years. They only claim that only Group 'D' staff of Divisional Office should be transferred after five years and since there is no Divisional Office at Rourkela, they should not have been transferred.

*Sanmukhi J.M.
22.4.97*

I am afraid the above contention is without any merit. What has been laid down in the circular dated 14.1.1990 regarding Group 'D' staff is that their transfer order should be issued from the Divisional Office and not that only Group 'D' staff of Divisional Office would be liable to be transferred. It has been submitted by the respondents in paragraph 9.1 of the counter that there is no unit for Group 'D' staff in Divisional Office and as such Group 'D' staff of Head Office or S.D.I.(P) units are attached to Divisional Office. Therefore, it is clear that what is meant in the above circular is that Group 'D' staff of different offices would be liable to be transferred after five years, but such transfer order should be issued from the Divisional Office and transfer should be made within the same station. In the impugned order, the Group 'D' staff have been transferred from different offices at Rourkela to other offices at Rourkela and order has been issued by Senior Superintendent of Post Offices, Sundargarh. As such, this transfer order of Group 'D' staff cannot be held to be illegal or violative of the above circular on this ground. There is also no support in the circular to the contention of the applicants that such transfer can be made only in a station where the Divisional Office is situated. Such a restriction would be patently absurd because in that case only some of the Group 'D' staff in a station where the Divisional Office is situated would be liable to be transferred and the other Group 'D' staff working for long years in the offices in a station where no Divisional Office is situated would be held to be non-transferable. Therefore, this contention of the applicants is held to be without any merit and is rejected.

*Journalist Jom
22.4.97*

5. As regards the other applicants covered by the impugned transfer order, who are Postmen, it is seen from the

circular dated 14.1.1990 that only for Mailmen and S.G. Mailmen a tenure of five years has been prescribed. The applicants have contended that since they are not Mailmen, their posts must be held to be non-transferable. On the other hand, the respondents have claimed that the above circular only lays down a tenure for Mailmen and S.G. Mailmen and therefore, it must be held that for Postmen there is no such tenure and they can be transferred even before completion of five years. It is not the case of the applicants that those of them who are Postmen have been transferred after a short period of staying in their existing offices and, therefore, this contention of the applicants cannot be upheld. The Government servants are liable to be transferred except when it is specifically provided in the rules and instructions that posts are non-transferable. No departmental rules or instructions have been brought to my notice by the learned counsel for the applicants that Postmen are not transferable under the departmental instructions and therefore, the transfer order cannot be impugned on this ground. In any case, the Postmen transferred in the impugned order have also been transferred within the same station, i.e., Rourkela. It cannot be said that they will suffer any inconvenience because of their transfer from one office to another office in the same city and therefore, this contention is rejected.

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6. In consideration of the above, I hold that the impugned transfer order is not violative of the departmental rules and instructions as also the circular dated 14.1.1990.

7. The second ground on which the transfer order is challenged is that it has been issued mala fide and the

applicants have been subjected to victimisation. The applicants base their contention on the letter of the Post Master General, at Annexure-16. From this it appears that on 7.2.1996 twentyfive youngmen, aged between 25 and 35, knocked at the door of the Post Master General while he was staying in Room No.4 of Inspection Bungalow at Rourkela, introduced them as students and immediately demanded that certain demands made by them should be discussed at once. They intruded in the room where the Post Master General was staying and threatened to bring another 2000 men in support of the demand. At that time, Hon'ble Minister, Law, Government of Orissa, ^{the} local M.L.A., the Executive Engineer and the Additional District Magistrate were sitting in the lawn of the Inspection Bungalow. The Khansama/Caretaker of the Inspection Bungalow was also there. On examining the copy of the demand brought in by those people it was found by the Post Master General that the demands related to departmental issues and not complaints of general public. Ultimately, with the intervention of the Additional District Magistrate, Rourkela, those people were persuaded to disperse. On the above basis, the Post Master General in his letter at Annexure-16 felt that the Union had instigated those outsiders to come and pressurise the Post Master General in the above fashion. In the concluding part of the letter, the Post Master General advised the Union representatives, which include applicant no.1, to desist from such improper approach and to come for discussion on any item in accordance with the practice prevailing in the Department. The applicants claim that they had no hand in the ^{of transfer} gherao of the Post Master General and the impugned order/has been passed on the wrong premise that

*Somnath Jha
22.1.97*

they had instigated those outside people to pressurise the Post Master General with departmental demands. As the demands raised by the outsiders relate to departmental matters and not complaints of general public, it is not unreasonable to presume that departmental employees were at the back of the mob approaching the Post Master General in the above fashion to press upon him demands relating to departmental issues in which the outsiders styling themselves as students have no locus standi. The applicants have also failed to bring any evidence on record that the impugned order of transfer is relatable to the above incident on 7.2.1996 and the letter at Annexure-16. In the letter at Annexure-16 the Post Master General has merely expressed his opinion that the Union representatives including applicant no.1 could be behind the gherao, but it cannot be said that the impugned transfer order is the result. It is easy to make allegation of mala fide, but it is difficult to prove. Nonetheless, a strict level of proof is required if mala fide is alleged in respect of any action of the departmental authorities, more so when the impugned action is a routine order of transfer. In consideration of the above, I hold that the applicants have failed to prove that the impugned order of transfer has been issued mala fide and with a view to victimise them. This contention is, therefore, also rejected.

8. In the result, therefore, the application is held to be without any merit and is rejected, but there shall be no order as to costs.

Vennath Jim
(S.SOM)
VICE-CHAIRMAN
22.4.97