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CENTRAL ADMINISTRATIVE TRIBUNAL : CUTTACK BENCH : CUTTACK.

ORIGINAL APPLICATION NO. 787 OF 1996.

Cuttack this the 10th day of March, 1997.

P.L. Prabhakar Rao. ... Applicant.

Versus.

Union of India and others. ... Respondents.

(FOR INSTRUCTIONS)

1. whether it be referred to the reporters or not ?
2. whether it be referred to other Benches of the Central Administrative Tribunal or not ?

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL ; CUTTACK BENCH; CUTTACK.

ORIGINAL APPLICATION NO.787 OF 1996.

Cuttack this the 10th day of March, 1997.

CORAM :

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN.

...

P.L. Prabhakar Rao, aged about 54 years,
Son of P. Narasingha Rao, Gajapatnagar
P.O. Jatni, District-Khurda, At present
serving as P.G.T. Economics Gr.I in
S.E.Railway, M.H.S.S. Khurda Road,
P.O. Jatni, District-Khurda.

... Applicant.

Versus.

1. Union of India, represented through
the General Manager, S.E.Railway,
Garden Reach, Calcutta-43 (West Bengal).
2. Chief Personnel Officer, S.E.Railway,
Garden Reach, Calcutta-43, (West Bengal).
3. Senior Personnel Officer (W),
Garden Reach, Calcutta-43 (West Bengal).
4. Divisional Railway Manager, S.E.Railway,
Khurda Road, Jatni, District-Khurda.
5. Senior Divisional Personnel Officer,
S.E. Railway, Khurda Road, Jatni,
District-Khurda.

.... Respondents.

ADVOCATES :

For the Applicant : :- M/s. B.L.N. Swamy,
A.K. Rath, and
M.K. Sahoo.

For the Respondents : :- Mr. Bijoy Pal and
P.C. Panda.

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O R D E R.

SOMNATH SOM, VICE- CHAIRMAN : This is a petition under section 19 of the Administrative Tribunals Act, 1985, filed by P.L. Prabhakar Rao, Post-Graduate Teacher (Economics) in South Eastern Railway Mixed Higher secondary school, Khurda Road, praying for quashing the order dated 30.8.1996 (Annexure-5) transferring him from Khurda Road to the Mixed Higher Secondary School, Bondamunda against an existing vacancy. He has also made a prayer for interim relief of stay of operation of the order at Annexure-5. On 30.12.1996 it was noted in the order sheet that the petitioner had been relieved in pursuance of the impugned order and there was no question of staying the order of transfer. The petitioner indicated that he had some personal problems in moving to Bondamunda and he was advised by the Tribunal to approach the Senior Divisional Personnel Officer, Khurda Road (respondent No.5) to consider his grievances.

2. Facts of the case are that the petitioner is a Post-Graduate Teacher in Economics having been promoted from the post of Trained Graduate Teacher in 1991. While working at Mixed Higher Secondary School, Khurda Road as Trained Graduate Teacher, he was promoted to the post of Post-Graduate Teacher and transferred to Bilaspur in 1991. After joining at Bilaspur, he made a representation to transfer him to Khurda Road. In letter dated 22.9.1992 vide Annexure-1 he was intimated by the Senior Divisional Personnel Officer, Bilaspur that his prayer has been registered for consideration against future vacancies in his turn. Consequent upon retirement of Smt. Suniti Banerjee from the post of Post-Graduate Teacher in

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Economics at Khurda Road, the petitioner was transferred to Khurda Road. He accordingly joined his post and had been discharging his duties till the impugned transfer. Prior to joining of the petitioner at Khurda Road, one N. Jayasree, who is petitioner in O.A.No.623/92 and intervenor in this case and who was a Trained Graduate Teacher, was given officiating ad hoc promotion to the post of Post-Graduate Teacher in Economics till the joining of a regular incumbent. As the applicant was transferred to Khurda Road as a regular incumbent, the order of ad hoc promotion of the intervenor N. Jayasree was cancelled. She filed the aforesaid O.A.No.623/92 before this Tribunal and obtained a stay order. After securing the stay, she has been discharging her duties against the post of Post-Graduate Teacher in History and thereafter against the post of Post-Graduate Teacher in Mathematics. The case of the petitioner is that subsequently in order dated 28.6.1993 N. Jayasree was empanelled for appointment as Post-Graduate Teacher and on 3.8.1993 she was promoted to the post of Post-Graduate Teacher in Economics against a vacancy existing in the school at Bilaspur. It is relevant to note that because of the stay order given by the Tribunal on the order cancelling her ad hoc appointment in the post of Post-Graduate Teacher in Economics and the order of the Tribunal to continue her at Khurda Road, an order was passed vide Annexure-A/6 to the counter filed by the intervenor in this case allowing her to continue on ad hoc basis against the existing vacancy as Post-Graduate Teacher in Economics until such time that the final orders are passed in O.A.No.623/92. It has been submitted by the

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petitioner that the Tribunal did not pass any orders preventing the authorities to transfer her from Khurda Road. This is not correct because in order dated 15.12.1992 it has been clearly mentioned that N. Jayasree should not be transferred from her present post. In accordance with the direction of the Tribunal on 10.10.1996 the representation of the petitioner against the transfer to Bondamunda was considered by the Senior Divisional Personnel Officer vide Annexure-8 to the application. In this order it has been clearly stated that because of the Tribunal's order staying the transfer of N. Jayasree, two Post-Graduate Teachers in Economics are continuing at Khurda Road and one of them is N. Jayasree against the post of Post-Graduate Teacher in Mathematics. Thereby the students are deprived of the benefit of the instructions of the Post-Graduate Teacher in Mathematics. As N. Jayasree cannot be transferred because of the stay order of the Tribunal, the departmental authorities have transferred the petitioner in the interest of the students. The petitioner has also prayed that he has personal and family difficulties which make it difficult for him to move to Bondamunda.

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3. Law is well settled that a transfer order of a Government servant for the purpose of accommodating another is an order passed for collateral purpose and cannot be sustained. Normally for transferable Government servants transfer is an incidence of service and such orders are generally outside the purview of the examination by the courts of law. But a transfer made for collateral purpose can be examined by the

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Court of law and struck down if it is not sustainable. I refer to the case of Dr. Pushpita Chatterjee v. State of West Bengal reported in Vol- 7 1972 SLR page 910 and Prakash Chandra Saxena v. State of M.P. reported in Vol-23 1980 SLR page 788. In the present case, the transfer of the petitioner to Bondamunda has in essence been done to accommodate the intervenor N. Jayasree. But the departmental authorities had no other option except to transfer the petitioner because of the stay order on the transfer of N. Jayasree given by this Tribunal. In the judgment delivered today in O.A.No.623/92 I have rejected the prayer of N. Jayasree, petitioner in O.A.No.623/92 for quashing the order of cancelling her officiating appointment and the stay order has been vacated. [In view of that, it would be proper for the departmental authorities to take a view on the question of transfer of the petitioner de novo. It is clear that a Post-Graduate Teacher in Economics cannot continue against the post of Post-Graduate Teacher in Mathematics. But between N. Jayasree, the intervenor and P.L. Prabhakar Rao, the petitioner in this case, whom to transfer is a matter which is left to the departmental authorities. It is also to be noted that N. Jayasree, intervenor in this case and the petitioner in O.A.No.623/92 had continued as Post-Graduate Teacher in Economics in a post to which she had no legal claim till her empanelment for regular appointment. Both N. Jayasree and P.L. Prabhakar Rao have urged personal problems in going out of Khurda Road. The departmental authorities will no doubt consider all personal difficulties

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of both these persons, their period of stay at the places of their convenience; their behaviour in carrying out the transfer orders of the departmental authorities and pass a speaking and reasoned order transferring either N.Jayasree or P.L. Prabhakar Rao from Khurda Road where both of them cannot continue. In terms of the above, the order at Annexure-5 is quashed so far as the transfer of P.L. Prabhakar Rao is concerned and the matter is remitted back to the respondents for taking a reasonable and just view in the matter.

4. With the aforesaid observations, the Original Application is allowed. No costs.

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(SOMNATH SOM) 10.3.97
VICE- CHAIRMAN.

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