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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

Original Application No.894 of 1996
Cuttack this the 1st day of March, 1998

Swapan Sarkar

Applicant(s)

-VERSUS-

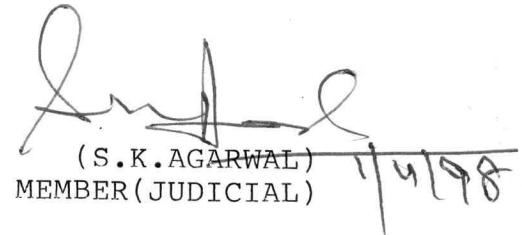
Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? No

Somnath Som.
(SOMNATH SOM)
VICE-CHAIRMAN


(S.K. AGARWAL) 1/4/98
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

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April

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THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

AND

THE HON'BLE SHRI S.K.AGARWAL, MEMBER (JUDICIAL)

...

Swapan Sarkar,
S/o.Tarapada Sarkar
P.W.I.Grade I/SLP,
South Eastern Railway,
At/PO/Dist:Cuttack
residing at Qr.No.E/52/
Railway Colony, Cuttack

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Applicant

By the Advocate:

M/r.D.P.Dhalasamant

-VERSUS-

1. Union of India, represented through General Manager, South Eastern Railway Garden Reach, Calcutta-700043
2. Divisional Railway Manager(P) South Eastern Railway, Khurda Road, Dist:Khurda
3. Sr.D.E.N.(Co-ordination) South Eastern Railway, Khurda Road, Dist:Khurda

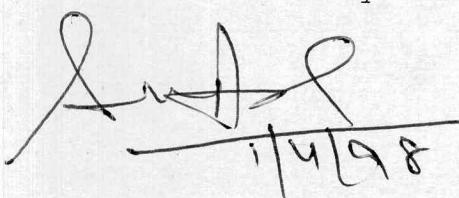
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Respondents

By the Advocate:

M/s.B.Pal
P.C.Panda
S.K.Ojha
P.Das

...


1/4/98

ORDER

MR.S.K.AGARWAL, MEMBER(J):This is an application under Section 19 of the Administrative Tribunals Act, 1985, with the prayer that the applicant vide order dated 13.8.1996 was directed to work at a Depot at Tapang under the administrative control of A.E.N.(S) Khurda. The applicant. The applicant being aggrieved with the said order moved an Original Application which was registered as O.A. No.661/96. The Hon'ble Tribunal disposed of the said application with the direction to Respondent No.2 to dispose of the representation dated 28.8.1996 which was pending within four weeks from the date of receipt of copy of the order and the Tribunal further directed that the order dated 13.8.1996 be stayed till the representation is disposed of. Respondent No.2 after receiving the order dated 11.9.1996 disposed of the representation in a very vague and arbitrary manner stating that there is nothing to be considered and the applicant was directed to proceed to Tapang with immediate effect. It was stated by the applicant that a P.W.I.Gr.I was never posted in-charge of the Depot. A Division Stores Clerk who happens to be a person of ministerial cadre is posted in charge of Depot and the P.W.I. Gr.I is to verify the stores and tools and does not hold the charge of the stores as Division Stores clerk holds. It is also stated that that from the said order it appears that there is a curtailment/reduction of

Signature
17/9/98

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posts at Cuttack, but the rules/provisions relating to curtailment have not been followed. It is also stated that the persons have stayed at Cuttack for more than 15 years have been allowed to continue at Cuttack and the impugned order will change the service conditions of the applicant as duties of P.W.I.Gr.I is not to be incharge of any Depot as hasbeen denied in the Indian Railway Manual. Therefore, by this application, the applicant has requested to quash the orders passed under Annexures-1 and 2.

2. Counter has been filed by the respondents. In the counter it has been stated that by the impugned order the applicant will aholds independent charge of Depot at Tapang. It is further stated that the applicant had earlier filed an OA.661/96 before the Hon'ble Tribunal with the prayer to quash the order of transfer from Cuttack to Tapang and the matter was disposed of at the admission stage and the Hon'ble Tribunal passed orders on 11.9.1996 directing Respondent No.2 to dispose of the representation of the applicant within four weeks from the date of receipt of the order. It is also stated that as per Hon'ble Tribunals's direction, the representation dated 28.8.1996 filedby the applicant has been examined

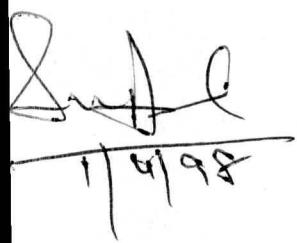
R. N. S.
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and disposed of by Res.2 on 14.11.1996 with an advice to the applicant to carryout the transer order dated 13.8.1996 to join at Tapang immediately. It is stated in the counter that P.W.I. is supposed to be overall incharge of the Section of men materials allotted to the particular jurisdiction.

3. It is submitted that the Railway Administration has thoroughly examined the representation of the applicant and passed the detailed orders and communicated the same to the applicant. It is also submitted that by this impugned order nature and duties of the applicant are not changed and the impugned order has been made in the interest of the administration. Therefore, on the basis of the counter filed by the respondents, it is submitted that the application filed by the applicant has no merit and is liable to be dismissed.

4. We have heard the learned counsel for both the parties and perused the whole record as also the written note of submissions filed by the applicant.

5. Learned counsel for the applicant has argued that by the impugned order of transfer, nature of the applicant's job is changed. He has also submitted that those who are staying for more than 15 years at Cuttack have been allowed to

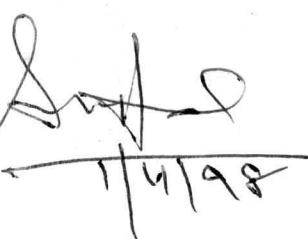

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continue at Cuttack, the applicant has been transferred. It is also stated that wife of the applicant is suffering from cardiac problem. Therefore, the impugned order of transfer be quashed. A reference has been made to Indian Railways Permanent Way Manual where the duties of PWIs have been mentioned.

6. On the other hand learned Senior Counsel has opposed the above arguments and submitted that nature of duties of the applicant does not change by the impugned order and the applicant has been transferred by the impugned order in the interest of the administration. It has also been submitted that in representation all the aspects have been considered and the applicant, after considering the representation in detail, has been advised to proceed on transfer.

7. We have given our thoughtful consideration for both sides to the contentions of learned counsels and perused the Manual. Rule 121 of the Manual provides:- Permanent Way Inspector shall see to the security of rails, chairs sleepers and other materials in his charge and ensure that unused materials are stacked properly clear of the line, so as not to interfere with the safe running of trains.

8. The cases referred to by the learned counsel for the applicant do not help the applicant as by the impugned order of transfer his status/designation has not been changed. The impugned



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order of transfer is said to have been passed in public interest. No malafides of any kind have been imputed by the applicant against the transferring authority or any other person. It is now well settled in S.A.Khan v. Chaudhary Bhajan Lal(1993) 3 SCC 151 which is as under:

"It is now fairly well settled, on the basis of the dictum of the Apex Court, that a court or tribunal should be slow in interfering with an order of transfer unless it is shown to have been passed mala fide or in violation of the rules of service and guidelines for transfer without any proper justification."

9. On the basis of the dictum of the Apex Court ~~that~~ a Court or Tribunal should be slow in interfering with the order of transfer unless it is shown to have been passed mala fide or violation of rules of service or guidelines with no proper justification.

10. In the instant case it appears that the applicant has been transferred to the cadre post and his salary by this impugned order has also been protected. No mala fides have been imputed by the applicant and it is also not proved that this impugned order has been passed in violation of any executive instructions or guidelines. We are, therefore, unable to interfere with the impugned order of transfer which has been passed in the interest of the administration.

11. We, therefore, reject this application and vacate the interim order of stay passed by this

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Tribunal on 31.12.1996.

In the circumstances of the case no order
as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
16/98

S.K. Agarwal
(S.K. AGARWAL)
MEMBER (JUDICIAL) 174798

B.K. Sahoo, C.M.