

11
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 137 OF 1998
Cuttack, this the 22th day of April 1999

Nabin Bihari Mohanty 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.*

(G. NARASIMHAM)
(G. NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
(SOMNATH SOM)
VICE-CHAIRMAN
22.4.99

12
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.137 OF 1998

Cuttack, this the 22nd day of April, 1999

CORAM:

**HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)**

.....

Nabin Bihari Mohanty, 55 years,
son of late Gurucharan Mohanty,
Pandiri, PS|Dist.Kendrapara, at present serving as Chief
Permanent Way Inspector (Special)
S.E.Railway,Kalupadaghat, Dist.Khurda....Applicant

Advocates for applicant - M/s A.K.Misra
J.Sengupta
B.B.Acharya
D.K.Panda
PRJ Dash
C.Mohanty
G.Sinha

Vrs.

1. Union of India, represented through
General Manager, S.E.Railway, Garden Reach,
Calcutta-43.
2. Chief Track Engineer, S.E.Railway,
Garden Reach, Calcutta-43.
3. Chief project Manager, Construction,
S.E.Railway, Chandrasekharapur, Bhubaneswar.
4. Sr.Divisional Engineer (Co-ordination),
S.E.Railway, Khurda Road, Dist.Khurda...Respondents
Advocate 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 petitioner has

prayed for quashing the order 9.3.1998 at Annexure-2 directing the applicant, who was working as Chief Permanent Way Inspector, Kalupadaghat, to report before Chief Project Manager (Construction), Chandrasekharpur, Bhubaneswar and also the letter dated 11.3.1998 at Annexure-3 issued by the Chief Project Manager directing the applicant to work under Senior Project Manager - III, Sambalpur.

2. The case of the applicant is that he was initially appointed as Assistant Permanent Way Inspector and in due course was promoted as Chief Permanent Way Inspector and posted at Kalupadaghat. According to the applicant, with regard to the construction work of the Railways, more particularly South Eastern Railway, two distinct and separate units are there. One is called Open Line and the other is Construction. The Open Line is headed by Principal Chief Engineer and assisted by Chief Track Engineer and other officers. The Construction organisation is headed by Chief Project Manager. The applicant states that Open Line and Construction belong to different units and different cadres and an incumbent who is continuing in Open Line cannot be transferred to Construction unit unless he exercise his option. It is also stated that chances of promotion in Open Line and Construction Organisation are limited to those working in the respective Unit. The applicant states that Chief Track Engineer has laid down that posting order of Chief Permanent Way Inspector in the grade of Rs.2375-3500/- against pin pointed post will henceforth be issued by Railway headquarters and such posting order should not be changed by the Division. The petitioner's case is

S. J. M.

he is continuing in the scale of Rs.2375-3500/- and as such his transfer and posting orders have to be issued only by the Chief Track Engineer, Garden Reach. Notwithstanding this on 9.3.1998 the petitioner was issued a letter from Assistant Engineer, South, Khurda, addressed to Chief Project Manager (Construction) in which it was directed that the petitioner should report to Chief Project Manager, Construction immediately for further direction of Chief Project Manager (Construction). From this letter, it appears that the Assistant Engineer was directed by Senior Divisional Engineer (Co-ordination), Khurda Road, that the petitioner should report before Chief Project Manager (Construction). After the petitioner showed the letter to Chief Project Manager (Construction), the latter directed that the petitioner should work under Senior Project Manager-III, Sambalpur. The applicant has stated that in view of his earlier submissions, such order of transfer is without jurisdiction. It is also not clear from the order if it is an order of transfer. The applicant has also stated that his children are studying at Kalupadaghat and his first son would be taking the Board Examination in April 1998 and the second son would appear at the Board Examination in May 1998. The applicant has further stated that the Hon'ble Supreme Court have deprecated mid-academic session transfer. He has also stated that his second son has met with an accident and his wife is keeping indifferent health and is under treatment of a Specialist at Cuttack. In view of this, the applicant has come up with the aforesaid prayer.

S. S. M.

3. Respondents in their counter have denied the averment of the applicant that an incumbent who is continuing in Open Line cannot be transferred to Construction Wing and vice versa unless he exercises option. They have pointed out that in Construction Organisation two groups of people mainly work. They are Permanent Construction Reserve post holders and Open Line lien holders. PCR posts holders are permanent staff of the Construction Organisation and the Open Line lien holder staff are posted as per requirement in the Construction Organisation. The staff are bound to work either in Open Line or in Construction organisation as per the requirement. They have denied that any option is necessary for posting of an Open Line staff in Construction Organisation and vice versa. The respondents have also stated that the instruction dated 12.8.1997 at Annexure-1 of the OA has no relevance to the facts of this case. That order has been issued with regard to one Shri S.K.Pati, CPWI, ADTP, because Chakradharpur Division had modified the order of Chief Personnel Officer, Garden Reach, in respect of him. But the applicant's order has been issued by the Division and there is no illegality involved. There is no rule or provision debarring the Division from issuing orders with regard to CPWI. There is also no rule or instruction that transfer order of CPWI will be issued by Headquarters only. They have further stated that according to the instruction dated 9.3.1998 at Annexure-2 the applicant has reported to Construction Organisation on 11.3.1998, and on 12.3.1998 orders have been issued for his journey from Bhubaneswar to Sambalpur. But till date the applicant has not reported at Sambalpur and is unauthorisedly absenting himself from duty. The respondents have also

V. S. M.

stated that Senior Divisional Engineer is the local Engineering head over all Permanent Way Units besides Civil Engineering works. The respondents have further stated that the arrangement with regard to the applicant has been done purely because of exigency of work. They have also stated that there is no competent staff for permanent way works at Sambalpur and there is no illegality in deputing him to Sambalpur. They have also stated that the employer has every right to post an employee where work is required and there is no violation of any statutory rule. On the above grounds, the respondents have opposed the prayer of the applicant.

4. The applicant in his rejoinder has admitted that CPWI from Open Line could be transferred to Construction Organisation without option when electrification work was going on in 1997 and in that event Chief Personnel Officer, Garden Reach was the competent authority to transfer from Open Line to Construction organisation. But in the instant case proper procedure has not been followed. He has also stated that on 9.1.1998 in a meeting taken by Chief Administrative Officer (P), Bhubaneswar, with Chief Engineer, Garden Reach and Chief Track Engineer, Garden Reach, a policy decision was taken that only PWI Grade I and Grade II with sufficient experience in track linking should be sent for completion of project work. This instruction has also not been followed. It is also submitted that CPWI posts were created in Open Line depending upon track maintenance workload and it is controlled by only Headquarters, as is clear from the order dated 5.8.1992 at Annexure-7. It is also submitted that ~~for~~ persons holding pin pointed posts in the Division, transfer order can be issued only by

J. Som.

for J. Som.

the headquarters. The applicant has made further averment that he is not on unauthorised absence but he is on sick leave, ^{but} ~~and~~ it is not necessary to ^{go} ~~into~~ that aspect any further. ^{Sam -}

5. At the time of admission of the O.A., stay was asked for and refused. But in consideration of the personal difficulties of the applicant, it was ordered that the applicant should not be asked to vacate his quarters at his present place of posting till the disposal of the OA and the post from which he has been transferred should not be filled up for a period of 15 days. It was also made clear that in case the applicant succeeds in his OA, he would be entitled to be considered to come back to his earlier place of posting.

6. We have heard Shri A.K.Misra, the learned counsel for the petitioner and Shri D.N.mishra, the learned Standing Counsel appearing for the Railways. Learned counsel for the petitioner has filed a brief note of submission in the form of a memo with copy to the other side. He has also referred the decision of the Full Bench of the Hon'ble High Court of Orissa in the case of Kishore Chandra Samal and 39 others v. State of Orissa and others, 1992(I) OLR 544, and the decision of the Patna Bench of the Tribunal in the case of Smt.Saroj Kumari Singh v. Union of India and others, (1989)9 ATC 55. The written submissions and the decisions cited have also been taken note of. The petitioner has filed a further affidavit with copy to the other side indicating that he was continuing on medical leave. After he became fit he reported before the Senior Divisional Personnel Officer (Co-ordination), Khurda, but no order was issued in

Sam

favour of the applicant. Along with the affidavit the applicant has enclosed a copy of the order dated 31.3.1998 in which the applicant has been transferred from Kalupadaghat in his existing capacity and grade and has been directed to report to Senior Divisional Engineer (Co-ordination), Khurda for his further posting. We have taken note of this affidavit and the accompanying annexure.

7. The first ground of challenge of the applicant is that he is working in Open Line and he cannot be sent to the Construction Organisation without his option because Construction Organisation belongs to a different cadre. The applicant has not quoted any rule or provision which lays down that for sending a Railway servant from Open Line to Construction and vice versa his option is required. The respondents, on the other hand, have clearly stated that there is no such rule. The normal deputation rules also provide that only in case of deputation to foreign service option of the employee is required. When an employee is sent on transfer within the same Department from one wing to another wing no requirement of obtaining option is there. The learned counsel for the petitioner has relied on Kishore Chandra Samal's case (supra) decided by the Full Bench of the Hon'ble High Court of Orissa. The facts of that case were that Government of Orissa issued a notification in August 1976 grouping different posts in the Municipalities within a cadre and transferred the petitioners from one post to another within the cadre. That notification was challenged and the challenge was upheld in another earlier case and the transfer order of the petitioner in that case from the post of Octroi Inspector to Lower Division Clerk was quashed. In Kishore Chandra Samal's case (supra) the legality of formation of cadre of Municipal employees was under consideration and the transfer of the petitioners flowing

from such encadrisation was challenged before the Hon'ble High Court of Orissa. The issue in the present case is whether the applicant can be transferred from Open Line to Construction Organisation which are admittedly two different Wings without his option. In **Kishore Chandra Samal's case (supra)** the Full Bench laid down that for encadrisation posts with similar nature of duties have to be grouped together. More specifically their Lordships held that the post of Octroi Inspector can be encadred and clubbed together with other posts connected with collection of revenue and not, for example, with posts connected with maintenance of accounts. This decision has no application whatsoever to the facts of this case. Even granting for argument's sake that Open Line and Construction Organisation belong to two different cadres, the applicant has not shown any rule requiring that transferring a person from Open Line to Construction Organisation or vice versa, his option has to be called for. This contention of the learned counsel for the petitioner is, therefore, held to be without any merit and is rejected.

8. The second ground of attack of the applicant is that he could be transferred only by the Chief Track Engineer of the Railway Headquarters at Garden Reach and not by the Senior Divisional Engineer (Co-ordination), Khurda Road. In support of his contention, the applicant has relied on order dated 12.8.1997 of the Deputy Chief Engineer on behalf of General Manager (Engineering), which is at Annexure-1. From this letter it appears that one S.K.Pati was posted as CPWI, ADTP. But this posting order was changed by the Division and Shri Pati was posted as CPWI, Sini. General Manager (Engineering) laid down in this letter that the Chief Track Engineer, the competent authority has decided that the posting order of CPWI in the grade of Rs.2375-3500/- against the pin-pointed post will

henceforth be issued by the headquarters only and the same should not be changed by the Division. On the basis of this letter, it is submitted that the Senior Divisional Engineer (Co-ordination) had no authority to transfer the applicant who is a CPWI in the scale of Rs. 2375-3500/- and working at Kalupadaghat, to work in Construction Organisation. The respondents in their counter have stated that this instruction at Annexure-1 relates only to the case of Shri S.K.pati. We are unable to accept this proposition because it has been specifically mentioned in the latter part of this order that the posting order of CPWI in the above scale against pin-pointed post will henceforth be issued by Headquarters only and the same should not be changed by the Division. This is an instruction of general nature and not confined to the case of Shri S.K.Pati only. This contention of the respondents is, therefore, held to be without any merit. The respondents have further stated that the above instruction is in the nature of advice to the Division. Whether it is an advice from a higher authority or an order, the distinction is really of academic interest only. But the import of this order dated 12.8.1997 will have to be clearly understood. In the case of Shri S.K.Pati, he was posted as CPWI, ADTP, but the posting order was changed and he was posted as CPWI, Sini. This was objected to and deprecated by the higher authorities. In the instant case, the applicant was working as CPWI, Kalupadaghat and because of urgent nature of work he was transferred to Construction Organisation and was ordered to work under Senior Project Manager-III, Sambalpur. The respondents have stated that in Sambalpur there is no competent person to look after the permanent way work. We have already held that for transferring a person from Open Line to Construction Organisation his option is not required to be taken. The

J. J. M.

employer has also the right to post an employee to another station in the same Department, may be in another working unit, in the exigency of work. The applicant has not gone and joined under Senior Project Manager-III, Sambalpur. He has remained on leave and in order dated 31.3.1998 at Annexure-9 he has been transferred from Kalupadaghat in his existing capacity and grade, and directed to report to Senior Divisional Engineer (Co-ordination), Khurda Road, for further posting. Obviously, therefore, the earlier order dated 9.3.1998 at Annexure-2 directing him to report before Chief Project Manager (Construction) is no longer in force. The prayer for quashing the order at Annexure-2 and the consequent order at Annexure-3 has therefore become infructuous. In **Smt. Saroj Kumari Singh's case (supra)** it was decided that if transfer was ordered by an officer not competent to do so, subsequent approval by the competent officer would not make it valid. The facts of that case are quite different. In that case the admitted position between the parties was that it was a transfer from one cadre to another. It was also the admitted position that Chief Personnel Officer, Eastern Railway, Calcutta, is the competent authority. The petitioner claimed that his transfer order has been issued by Senior Divisional Personnel Officer. The Tribunal held that the transfer order has been issued by Senior Divisional Personnel Officer and subsequent approval of Chief Personnel Officer would not validate the transfer. In this case, the petitioner has been transferred to Construction Organisation because of urgent requirement of work. This is not a case where the transfer order issued to the petitioner from Headquarters has been changed by the Division. In accordance with the transfer order issued by the Headquarters he had been working as CPWI, Kalupadaghat and because of urgent administrative requirement he has been transferred to Construction Organisation. Therefore,

Smt.Saroj Kumari Singh's case (supra) has no application to the facts of this case.

9. The applicant in his rejoinder has stated that in a meeting held on 9.1.1998 a policy decision was taken that only PWI Grade I and Grade II with sufficient experience in track linking should be sent for completion of project work. He has stated that this instruction has not been followed. It is for the employer to decide as to the type of persons and the grade of employees who should be sent for completion of urgent nature of work. The petitioner can have no say in the matter. This contention of the petitioner is, therefore, held to be without any merit and is rejected.

10. In consideration of all the above, we hold that the applicant has not been able to make out a case for the relief claimed by him. The Application is, therefore, held to be without any merit and is dismissed but, under the circumstances, without any order as to costs.

22.4.99.
(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
22.4.99