

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 167 OF 1998  
Cuttack this the 18th day of February, 2000

(PRONOUNCED IN THE OPEN COURT)

Khalia Das

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 Tribunal or not ? *NO*.

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN  
*18.2.2000*

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 167 OF 1998  
Cuttack this the 18th day of February, 2000

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

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**Khalia Das**  
T.S. (O), Office of the  
A.F. Phones  
Berhampur (Ganjam)

...

Applicant

By the Advocates : M/s.Ashok Ku.Mishra-3

-Versus-

1. The Union of India  
represented by Secretary,  
Department of Telecommunications  
Govt. of India, Ministry of  
Communications, New Delhi
2. Chief General Manager, Telecom  
Orissa Circle, Department of  
Telecommunications, Govt. of India  
Door Sanchar Bhawan, Unit - IX,  
Bhubaneswar
3. Telecom District Manager,  
Berhampur, Department of Telecommunications,  
Govt. of India, At/Po: Berhampur  
Dist: Ganjam

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Respondents

By the Advocates : Mr.U.B.MOhapatra  
Addl.Standing Counsel  
(Central)

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ORDER

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MR. SOMNATH SOM, VICE-CHAIRMAN: In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing the order dated 10.2.1998 at Annexure-1 transferring him from Berhampur to Chhatrapur and also quashing the relieve order dated 4.4.1998. The second prayer is for direction to Telecom authorities not to transfer the applicant from Berhampur as long as his junior officers are retained at Berhampur.

2. Respondents have filed counter opposing the prayer of the applicant and applicant has also filed rejoinder. These have been taken note of.

3. For the purpose of deciding of this Original Application it is not necessary to go into too many facts of this case. The applicant was originally appointed as Telephone Operator on 1.2.1981 and was in due course promoted as Telephone Supervisor. Applicant has stated that while he was working as Telephone Supervisor at Berhampur Trunk Exchange, Telecom District Manager, Berhampur declared some of the Trunk positions at Berhampur surplus and redeployed Telephone Operators and Telephone Supervisors against the sanctioned strength. The applicant has stated that such redeployment was done in accordance with seniority and in the seniority list his position was at Sl. No. 43. While he was working at Berhampur in order dated 8.1.1997 he was transferred and posted in the Office of the S.D.E., Phones, Berhampur where he joined (Annexure-III). Again in order dated 10.2.1998 at Annexure-1 he has been transferred from Berhampur to Chhatrapur. Applicant has stated that he has been subjected to frequent transfer. He has also mentioned

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that education of his school going children will be adversely affected by going on transfer from Berhampur to Chhatrapur. It is further stated that while transferring the applicant instruction to the effect that junior most should be transferred first has been ignored. Applicant has also stated that as he is a member of a particular Union, Telecom District Manager, who is in favour of the other Union has discriminated against <sup>him</sup> <sub>him</sub>. On the above grounds the applicant has come up in this petition with the prayers referred to earlier.

4. Respondents in their counter have stated that the applicant has worked for 11 years at Berhampur and that is why he has been transferred. To the averment of the applicant that some persons who have stayed longer period than the applicant have been retained at Berhampur the respondents have stated that in the meantime those persons have also been transferred out of Berhampur. Respondents have further stated that the applicant is not a surplus staff and the transfer of the applicant has been done in exigency of public service.

5. Applicant in his rejoinder has reiterated his averment that the order of transfer has been issued in violation of Departmental instructions. He has further stated that some officers who have been transferred out of their existing station get themselves retransferred to their own stations and he has been discriminated against because of union activities. The rest of the averments made in the rejoinder are more or less based on Original Application and these have been taken note of.

6. To day when the matter was called for hearing, learned counsel for the applicant Shri Ashok Kumar

Mishra-3 wanted a short adjournment. As this is a transfer matter where pleadings have been completed and the stay is continuing for about two years, the prayer for adjournment has been rejected. Thereafter, I have heard Shri Ashok Kumar Mishra-3, learned counsel for the petitioner and Shri U.B.Mohapatra, learned Addl. Standing Counsel appearing for the respondents and have prsued the records.

7. The first contention of the applicant that he has been transferred because of malice due to union activities cannot be accepted, because law is well settled that when malice is alleged person against whom allegation of malice is brought has to be arraigned as Opposite Party by name, so that he will have an opportunity to refute the allegation, if <sup>he</sup> so choses. In this case malice has been alleged against the Telecom District Manager (Res.3) who has not been arraigned as Opposite Party by name and therefore, allegation of malice against him cannot be taken into consideration and the same is rejected.

8. The second submission of the learned counsel is that the applicant has been subjected to frequent transfer. In support of his contention he has referred to order dated 8.1.1997 at Annexure-4 and stated that notwithstanding this order at Annexure-4 within one year in order dated 10.2.1998 the applicant has been transferred outof Berhampur. This contention is without any merit, because in order dated 8.1.1997 applicant has been redeployed from the Office of T.D.M., Berhampur in the Office of S.D.F.(Phones), Berhampur. Thus he has been transferred from one office to another office in the same

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station and in effect this is not a transfer. The petitioner has not indicated any other transfer in support of his contention that he has been subjected to frequent transfers. This contention of the learned counsel for the applicant is therefore, held to be without any merit and the same is rejected.

9. The third contention of the learned counsel that several juniors to the applicant have been retained in their existing place of postings and he has been subjected to transfer. Even though there are instructions that juniors should be transferred first, but there is no rule to that effect. This contention is therefore held to be without any merit and the same is rejected. The next contention of the learned counsel for the petitioner is that some other persons who <sup>are</sup> put in longer years of service than the applicant have been retained at Berhampur. Law is well settled that just because some persons have been continuing in a station for a longer period than the petitioner, the petitioner cannot claim that he should be retained in the same station like those persons. Transfer is an incident of service and the applicant having worked for about 11 years at Berhampur — cannot claim that he cannot be transferred from Berhampur to Chhatrapur, which is ~~even~~ a very short distant <sup>away</sup> place <sup>from</sup> Berhampur. The applicant has prayed that a direction be issued to respondents to allow him to continue at Berhampur so long as persons junior to him have been retained at Berhampur. In view of the submissions of learned Addl. Standing Counsel that his juniors have already been transferred out this prayer is held to be without any merit and the same is rejected. In

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any case, transfer and posting are not done on the basis of seniority. As regards the main prayer for cancellation of the order of transfer, in view of the fact that the applicant has remained at Berhampur for about 11 years and has been transferred to Chhatrapur, which is <sup>at</sup> a short <sup>^</sup> <sup>John</sup> distant ~~place~~ from Berhampur, this prayer is held to be without any merit and the same is rejected. The petitioner has prayed cancellation of transfer order on the ground of education of his children. I find that order of transfer has been issued in February, 1998 and in the meantime two academic sessions are already over, therefore, this contention of the learned counsel for the applicant is held to be without any merit and is rejected.

10. In the result, the application is held to be without any merit and the same is rejected, but without any order as to costs.

Interim order staying operation of the order of transfer is hereby vacated.

B.K.SAHOO

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN *rio*