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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.176 OF 1998

Cuttack, this the 18th day of August, 1998

Shri M.C.Rao

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)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

18-8-98

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.176 OF 1998
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CORAM:

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

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Shri M.C.Rao,
son of Shri M.Dharma Raju,
of Berhampur Town, P.O.-Berhampur,
District-Ganjam,
at present serving as the Lower Division Clerk (LDC),
in the office of Sambalpur Central Sub-Division of the
Central Public Works Department,
At/PO-Sambalpur, Dist.SambalpurApplicant

By the Advocate - **Mr.Sushil K.Patnaik**

Vrs.

1. Union of India, Ministry of Urban Development, through
Secretary,
New Delhi-110 001.
2. Superintending Engineer, Co-ordination Circle(EZ),
Central Public Works Department,
Nizam Palace,
Calcutta-20.
3. Superintending Engineer,
Bhubaneswar Central Circle,
Central Public Works Department,
Bhubaneswar-3.
4. Executive Engineer,
Bhubaneswar Central Division-I
(BCD-I), Central Public Works Department,
Bhubaneswar.
5. Executive Engineer,
Bhubaneswar Central Division-II,
(BCD-II), Central Public Works Department,
Bhubaneswar
6. Assistant Engineer,
Sambalpur Central Sub-Division,
Central Public Works Department
Sambalpur, Dist.SambalpurRespondents

By the Advocate - **Mr.Ashok Mohanty,
Sr.C.G.Standing Counsel**

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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 dated 18.3.1998 (Annexure-7) issued by Superintending Engineer, Bhubaneswar Central Circle, C.P.W.D., transferring the petitioner from Sambalpur Central Sub-Division, C.P.W.D., Sambalpur, to Bhubaneswar Central Division-II, C.P.W.D., Bhubaneswar.

2. Facts of this case, according to the petitioner, are that on 6.9.1985 he joined C.P.W.D. as L.D.C. in Sambalpur Sub-Division of C.P.W.D. In 1991 he was transferred to Bhubaneswar Central Division-II as Cashier. This order was passed by Superintending Engineer (Co-ordination), Calcutta Central Circle-I, C.P.W.D., Calcutta. In pursuance of the above order, Executive Engineer, Bhubaneswar Central Division-II, C.P.W.D., Bhubaneswar, in his order dated 21.8.1991 (Annexure-1) posted the applicant as Cashier in his office. Accordingly, the petitioner joined in Bhubaneswar Central Division-II on 19.9.1991. According to him, the climate of Bhubaneswar did not suit him and his health deteriorated. He, therefore, filed a representation for transfer from Bhubaneswar to any other place on medical ground. His representation was forwarded in letter dated 10.1.1992 of Executive Engineer, Bhubaneswar Central Division-II. This letter is at Annexure-3. In consideration of his representation, in order dated 14.5.1992 (Annexure-4) he was transferred from Bhubaneswar to the office of Assistant Engineer, Central Sub-Division, C.P.W.D., Sambalpur. The order at Annexure-4 specifically mentions that this transfer was at his own request. Accordingly, the petitioner joined at Sambalpur Central Sub-Division on 21.5.1992. The petitioner's case is that during his earlier spell of duty

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at Bhubaneswar he found that the climate of Bhubaneswar is not suitable for him and that is why on medical ground he was transferred to Sambalpur at his own request and again in the impugned order at Annexure-7 he has been transferred by Superintending Engineer, Bhubaneswar Central Circle, C.P.W.D., Bhubaneswar, from Sambalpur Central Sub-Division to Bhubaneswar Central Division-II. In the context of the above facts, the petitioner has come up with the prayers referred to earlier.

3. The respondents in their counter have pointed out that the petitioner was transferred from Sambalpur to Bhubaneswar in 1991 on his giving option to work as a Cashier. Initially, after his joining in Bhubaneswar Central Division in 1991, he was attached to Accounts Section and papers were processed for his appointment as Cashier. The respondents have stated that immediately after joining at Bhubaneswar in September 1991 the applicant started avoiding to work and made several representations for his transfer back to Sambalpur Central Sub-Division. Copy of his representation dated 2.1.1992 has been enclosed at Annexure-A to the counter. In consideration of his representation, the applicant was transferred back to Sambalpur. The respondents have stated that from the O.A. it is clear that the applicant continued at Sambalpur for his entire service career except for a brief spell of eight months. If the applicant is allowed to continue at Sambalpur after completion of his normal tenure of five years, there would be resentment amongst other members of staff, and accordingly, he was transferred to Bhubaneswar in the impugned order. On the above grounds, the respondents have opposed the prayer of the petitioner.

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4. The applicant in his rejoinder has submitted that in the past there is not a single instance in the entire Eastern Region of C.P.W.D. for transferring one particular staff, as has been done in the instant case. It has been submitted by the applicant that the assertion of the respondents in their counter that the applicant is the only person who has completed his tenure of five years in the present station is wrong and there are many L.D.Cs. and U.D.Cs. in Cuttack and Bhubaneswar stations of C.P.W.D. who have completed more than ten years and some even twenty years. It is further submitted that in the impugned order of transfer, one Z.Kujur, U.D.C. has been posted in his place at Sambalpur. In that office, there is no sanctioned strength for U.D.C. It is also submitted that the Superintending Engineer, Co-ordination, Eastern Region, Calcutta, is the competent authority to transfer the applicant, but in this case he has never been consulted. The applicant has further stated that in the instant case, taking the worst possible view, the applicant is ready and willing to go anywhere in India except Bhubaneswar because of his health problems. It is also stated that there is a vacant post at Ranchi where he is willing to go on transfer. In the alternative he may be considered to be transferred to Gauhati or Siliguri.

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5. To this rejoinder of the applicant, the respondents have filed a Memo in which they have stated that according to paragraph 21 of Section 8 of C.P.W.D. Manual, Vol.I, inter-change of staff between Accounts and Correspondence Branches is done every three years. As a large number of U.D.Cs. and L.D.Cs. are stationed at Bhubaneswar, the persons mentioned by the applicant in the rejoinder have been rotated between Accounts and Correspondence Branches. They have also stated that as in

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 Sambalpur office there is only one L.D.C., the applicant was taken to be continuing in Accounts Branch which deals with payment of bills of Contractors, etc., and therefore, he has been transferred to Correspondence Branch in Bhubaneswar in the impugned order. It is further stated that Superintending Engineer, Co-ordination, Calcutta, has approved the transfer by implication since the counter filed by the respondents has been approved by him. It is also submitted that Superintending Engineer of the Circle cannot transfer the applicant to Ranchi, Gauhati or Siliguri, but he has no objection to recommend the applicant's transfer to Superintending Engineer, Co-ordination, Calcutta. It is also submitted that the applicant has been relieved from Sambalpur Central Sub-Division on 26.5.1998 and Z.Kujur has joined in his place on 25.5.1998.

6. To the above Memo filed by the respondents, the applicant has filed a further Memo with copy to the other side, in which he has reiterated his earlier assertions and stated that he is on medical leave since 26.5.1998 and has no knowledge if Z.Kujur has assumed charge without the same having been handed over by the applicant.

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 7. We have heard Shri Sushil K.Patnaik, the learned lawyer for the petitioner and Shri Ashok Mohanty, the learned Senior Standing Counsel appearing for the respondents, and have also perused the records.

8. The first point raised by the learned counsel for the petitioner is that Superintending Engineer, Bhubaneswar Central Circle, is not the competent authority to transfer the applicant from Sambalpur to Bhubaneswar. According to Rule 19 of C.P.W.D. Manual, Vol.I, such transfer has to be ordered by Superintending Engineer, Co-ordination, and as the transfer has been made by an authority who is not

competent to issue the order of transfer, it is submitted that the order of transfer should be held illegal and should be quashed. It is also submitted that in the impugned order of transfer in place of the petitioner one Z.Kujur, U.D.C. has been posted to Sambalpur and the sanctioned staff of Sambalpur do not have a post of U.D.C. Thirdly, it is submitted that even though in the impugned order of transfer it is mentioned that the transfer is made in public interest, no public interest is involved in the impugned order of transfer and the subsequent assertion in the counter that the transfer has been made in administrative exigencies should not be accepted. It is also submitted that the petitioner has been singled out for transfer. It is submitted by the learned Senior Standing Counsel that the petitioner has spent his entire service career at Sambalpur except for a spell of eight months at Bhubaneswar and his transfer has been done in public interest. It is submitted that Superintending Engineer, Bhubaneswar Central Circle is competent to transfer the applicant. It is also submitted that in Sambalpur office in place of the petitioner one U.D.C. can be posted and there is no illegality involved in this.

9. We have considered the submissions made by the learned counsels of both sides. On a reference to Rule 19 of C.P.W.D. Manual, Vol.I, copy of which has been provided by the learned counsels of both sides, it is seen that Rule 19 deals with general principles of transfer of ministerial staff other than Office Superintendent. Sub-rule (a) of Rule 19 lays down that they are transferred from one office to another every five years within the same Circle and such transfer can be ordered by the Superintending Engineer concerned. It is also stated that transfer from one station

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to another, where unavoidable, shall be made by the Superintending Engineer(Co-ordination) or by the Superintending Engineer of the Circle concerned in consultation with the Superintending Engineer(Co-ordination) so that the latter can properly coordinate transfers from popular to unpopular stations and vice-versa. Sub-rule (b) of Rule 19 lays down that transfers from one Circle to another in the same station or in another station, if required, or where need arises to fill up a post outside a popular station, when such a post has fallen vacant due to some reasons shall be made on the basis of longest continuous stay of individuals in all grades, the longest stayee being transferred first. Sub-rule (c) of Rule 19 lays down that Lower Division Clerks, Stenographers and Draughtsmen Grade-III are not normally transferred from one station to another. Such transfer can be made on the request of an individual by the Superintending Engineer(Co-ordination) of the Region concerned. Sub-rule (d) lays down that for the purpose of operation of five years transfer rule, a Sub-Division located at a station other than its Divisional headquarters shall be treated as a separate office.

10. The first ground of challenge is that in the instant case the order of transfer has been issued by Superintending Engineer, Bhubaneswar Central Circle and not by Superintending Engineer (Co-ordination) who has not even been consulted. In support of his contention, the learned lawyer for the petitioner has referred to the case of Chief General manager, Telecommunication, Patna v. Jagdish Narain Kumar, (1996) 32 ATC 195 (SC), wherein it has been held that order of transfer passed by an incompetent authority is unsustainable. In the instant case, the petitioner has been

transferred from one office to another office and from one station to another station within the same Circle and under sub-rule (a) of Rule 19 of CPWD Manual, Vol.I, such transfer can be done either by Superintending Engineer (Co-ordination) or by Superintending Engineer of Circle Concerned in consultation with the Superintending Engineer (Co-ordination). The Rule does not specifically provide that such consultation is necessary even before the transfer order is issued. In the instant case, the transfer order has admittedly been issued by Superintending Engineer, Bhubaneswar Central Circle and as has been stated by the respondents in their pleadings, such transfer has been agreed to though implicitly by the Superintending Engineer (Co-ordination). In view of this, it cannot be said that the order of transfer has been issued by an authority who is not competent to the applicant, and this contention of the learned counsel must, therefore, be rejected.

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11. The second ground of attack is that in Sambalpur office there is no sanctioned post of U.D.C., and posting of Z.Kujur, U.D.C., in place of the applicant is *prima facie* illegal. The respondents have pointed out that there is sanctioned strength of U.D.Cs., L.D.Cs. and other ministerial staff for the Circle as a whole and the departmental authorities are competent to allocate the staff in between different offices. An order of such allocation of staff has been enclosed by them at Annexure-B to the counter. In view of this, it cannot be held that posting of Z.Kujur, U.D.C., at Sambalpur in place of the petitioner is illegal.

12. The third ground of the petitioner is that the transfer is not in public interest. As has been laid down by the Hon'ble Supreme Court in several cases, it is for the departmental authorities to decide who is going to be transferred, when and to which place. The Tribunal

cannot interfere in such matters except in case of mala fide or violation of statutory rule. The respondents have stated that the petitioner has worked at Sambalpur for his entire service career from 1985 except for a spell of eight months at Bhubaneswar. Thus, he had completed with this break of eight months more than twelve years at Sambalpur. His job is transferable and he cannot make any grievance for his transfer from Sambalpur after he has worked for twelve years there except for the break of eight months. The respondents have stated that if he is allowed to continue at Sambalpur indefinitely, then there would be resentment amongst the other staff. The applicant has stated that there are other persons who have continued in their stations for fifteen and twenty years. It is not necessary for us to go into the cases of those persons because admittedly the petitioner has stayed at Sambalpur for more than twelve years with the break. His transfer from Sambalpur is, therefore, in accordance with the departmental rules and must be taken to be in public interest. This ground of attack must, therefore, be rejected.

13. The other side of the picture is that the petitioner had earlier come on transfer to Bhubaneswar and according to him, he faced various problems there and on his own representation, he was transferred back to Sambalpur. He has stated in his pleadings that he is prepared to go anywhere in India, preference being Ranchi, Gauhati and Siliguri. The respondents in their pleadings have stated that they have no objection to recommend his transfer to Ranchi, Gauhati and Siliguri. In view of the above, while holding that the petition is without any merit, we direct that the applicant, who is on medical leave, should obey the transfer order and join his post at Bhubaneswar after he recovers from his illness. After joining at Bhubaneswar, he

may file a representation for his transfer to Ranchi, Gauhati and Siliguri within a period of 7 (seven) days from the date of joining at Bhubaneswar. His representation should be forwarded by Superintending Engineer, Bhubaneswar Central Circle, within 15 (fifteen) days from the date of receipt of the same, to the Superintending Engineer (Co-ordination) and final order on his transfer to Ranchi, Gauhati or Siliguri may be passed within a period of 2 (two) months from the date of forwarding of the representation by the Superintending Engineer, Bhubaneswar Central Circle and the result thereof should be intimated to the petitioner within 15(fifteen) days thereafter.

14. In the result, therefore, the Original Application is disposed of in terms of the observation and direction contained in paragraphs 10,11,12 and 13 of this order. There shall be no order as to costs.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

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(SOMNATH SOM) 18.8.98
VICE-CHAIRMAN