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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 45 OF 1998
Cuttack this the 17th day of August/2000

S.G. Krishnan ... Applicant(s)

-VERSUS-

Union of India & Others ... Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? 44
2. Whether it be circulated to all the Benches of the CA^T Central Administrative Tribunal or not ?

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
17.8.2000

17.8.2000
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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ORIGINAL APPLICATION NO. 45 OF 1998
Cuttack this the 17th day of August/2000

CORAM:

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

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S. Gopala Krishna
S/o. Madhusudhan Rao Patnaik,
aged 32 years, working as I.O.W.(Con)
Project Manager's Office, S.E.Rly.,
Visakhapatnam - Residing at :
Door No.
VIZIANAGARAM

...

Applicant

By the Advocates

M/s.Y.Subramaniyam
P.K. Chand

-VERSUS-

1. Chief Project Manager (Con)
S.E.Rly., Visakhapatnam
2. Chief Personnal Officer,
S.E.Rly., Calcutta-43
3. Divisional Railway Manager
S.E.Rly., Khurda Road
4. Divisional Railway Manager,
S.E.Rly., Visakhapatnam
5. M. Prasada Rao
I.O.W. Gr.II (Con) under
CAO/C/BBS

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Respondents

By the Advocates

Mr.R.C.Rath
Addl. Standing Counsel
(Railways)
(For Res. 1 to 4)

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O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL): Applicant, S.Gopal Krishnan joined the Railway service as Apprentices I.O.W./Gr.III on 1.1.1988 as a direct recruit. By then this cadre was centralised under the Chief Personnel Officer, S.E.Railways, Calcutta. This was decentralised with effect from 1.1.1989. Though applicant was serving under Visakhapatnam Division, his lien was fixed in Khurda Division. On his representation dated 9.12.1989 (Annexure-4) for change of lien from Khurda Road Division to Visakhapatnam Division the Chief Personnel Officer, Khurda Road in his letter dated 30.3.1990 (Annexure-5) intimated that as per policy decision lien of the applicant could be changed to Visakhapatnam Division, provided the applicant is ready to accept bottom seniority amongst the I.O.W.s Gr.III in that Division. Pursuant to this intimation the applicant under Annexure-6 dated 4.6.1990 gave declaration that he was prepared to accept the bottom seniority in that cadre in Visakhapatnam Division and requested for change of his lien to Visakhapatnam Division. By order dated 7.1.1993 (Annexure-11) lien of the applicant was changed from Khurda Road Division to Visakhapatnam Division with immediate effect. In the seniority list dated 8.8.1995 (Annexure-13) published by the Visakhapatnam Railway Division his position was shown at Sl.No.17. He represented to the Divisional Personnel Officer, Visakhapatnam Railway Division sometime in September, 1995 (Annexure-12) challenging this fixation by stating that his lien was refixed from but not transferred ~~to~~ Waltair Division to Khurda Road Division and as such his seniority should be protected and he should be placed at Sl. No.2. In letter dated 18.4.1996 (Annexure-16) Chief Personnel Officer, Calcutta turned down this request of the applicant by stating that as per rules he would get his seniority

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in Visakhapatnam from the date of change of his lien, i.e.

7.1.1993 since his lien has been refixed from Khurda Road Division to Visakhapatnam Division at his own request. These facts are not in controversy.

2. In this application while praying for quashing the CPO's order dated 18.4.1996 vide Annexure-16, the asp. Well as for issue of direction to respondents for refixation of lien from the date of decentralisation order, the case of the applicant is that soonafter the decentralisation he had applied for change of lien from Khurda Road Division to Visakhapatnam Division and this was considered belatedly and finally refixation of lien was ordered on 7.1.1993. Since it is a refixation and not a transfer he cannot lose seniority. Refixation of his seniority at the bottom in the cadre in Visakhapatnam Division with effect from 7.1.1993 should not have been ordered because the delay occurred not on account of his fault, but at the administrative level and in the meanwhile some more officials in that cadre inducted in Visakhapatnam Division ~~and~~ enjoyed seniority above him. The applicant also filed Misc. Application 59/98 praying for condonation of delay in filing Original Application on 20.1.1998. The Department in their counter, while questioning the jurisdiction of this Bench to entertain and hear this Original Application also take the stand that the application is barred by limitation. On merits it is their case that since the change of lien from Khurda Road to Visakhapatnam Division was at the request of the applicant and the applicant who also agreed to accept the bottom seniority at Visakhapatnam Division the question of refixation of seniority will not arise. As per Railway Establishment Sl. 32/86 dated 17.2.1986 containing Railway Board's letter dated 21.1.1986 even in case of transfer of a railway

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servant from one Railway to another or from one Cadre/Division to another Cadre/Division under the same Railways at his request the transferred railway servant should be placed below the existing confirmed as well as officiating and temporary railway servants in the relevant Grade in the promotion group in the new Establishment irrespective of his date of confirmation or length of officiating/temporary service.

3. Rejoinder of the applicant is more or less is reiteration of the averments made in the Original Application.
4. In the Original Application the applicant impleaded one M.Prasad Rao, I.O.W. Gr.II as Res.5 and as his correct postal address was not filed by the applicant despite repeated adjournments this application was ordered to be dismissed as against Res.5 by order dated 27.5.1999.
5. We have heard Shri P.K.Chand, learned counsel for the applicant and Shri R.C.Rath, learned Addl.Standing Counsel. Also perused the records.
6. This Original Application was filed on 21.1.1998 when the applicant was serving and residing at Visakhapatnam(Andhra Pradesh). The cause of action for filing this application arose on account of the seniority list published on 8.8.1995 by the D.R.M., Waltair Division of S.E.Railway and ultimate rejection of representation of the applicant for consideration of his seniority position by the C.P.O., S.E.Railway, Calcutta(West Bengal). Thus it is clear that neither the applicant is a resident of this State(Oriissa) nor the authorities fixing his seniority and dealing with the representation for refixation of his seniority reside in Orissa. We ~~are~~ ^{are}, therefore, agree with the contention of Shri Rath the learned Addl.Standing Counsel appearing for the Railways that

under Rule-6 of the C.A.T. (Procedure) Rules, 1987, this Bench lacks jurisdiction to entertain and hear this Original Application. Rule 6 of C.A.T. (Procedure) Rules, 1987 reads as under :

6. **PLACE OF FILING APPLICATION** - (1) An application shall ordinarily be filed by an applicant with the Registrar of the Bench within whose jurisdiction -

- (i) the applicant is posted for the time being, or
- (ii) the cause of action, wholly or in part, has arisen :

Provided that with the leave of the Chairman the application may be filed with the Registrar of the Principal Bench and subject to the orders under Section 25, such application shall be heard and disposed of by the Bench which has jurisdiction over the matter

(2) Notwithstanding anything contained in sub-rule(1) persons who have ceased to be in service by reason of retirement, dismissal or termination of service may at his option file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of application".

In G.S.R. 631(E) dated 15.10.1990 issued in exercise of power conferred under Section 18(1) of the Administrative Tribunals Act, 1985, the Central Government declared the territorial jurisdiction of each Bench of the Central Administrative Tribunal.

As per ^{1/2/1} notification territorial jurisdiction of the Cuttack Bench is confined only to the territories coming within the State of Orissa. In other words, this Cuttack Bench has no territorial jurisdiction over Visakhapatnam and/or Calcutta, where cause of action for filing this application wholly or in part arose. The applicant is also not the resident of Orissa. Hence under Rule-6 the applicant either to have filed an application of this nature before the Calcutta Bench or Hyderabad Bench or before the Principal Bench and certainly not before this Bench. It is true that expression "Ordinarily" finds mentioned in this Rule. This expression, in our view, refers to the place where an applicant is posted or the cause of action wholly or in part has arisen.

If Original Application is not filed in any of these Benches, then

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with the leave of the Chairman an application can be filed with the Registrar of the Principal Bench in which case subject to orders of the Hon'ble Chairman under Section 25 of the A.T. Act in regard to transfer of cases from one Bench to another, such application shall be heard and disposed of by the Bench, who has jurisdiction over the matter. In other words, this Cuttack Bench, without the orders of the Hon'ble Chairman under Section 25 of the Act cannot entertain and hear this application. Even if the expression "Ordinarily" is interpreted to mean that under special circumstances an application under Section 19 can be filed before any Bench of the C.A.T., then the application should contain what those special circumstances are. In the absence of any such pleadings, that particular Bench cannot entertain or hear the application. In the present application no reason has been assigned as to why the applicant chose to file this O.A. before this Bench. We have, therefore, no hesitation to hold that this Bench lacks jurisdiction to hear and dispose of this O.A. Since we lack jurisdiction we are not inclined to go into the merits of this Application.

7. In the result, Original Application is dismissed as barred on the point of jurisdiction. There shall, however, be no order as to costs.

Somnath Somym
(SOMNATH SOMY)
VICE-CHIEF JUSTICE

17-8-2002
(G. NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//