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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 636 OF 1998.

Cuttack, this the 19th day of April, 1999.

SHRI U.K.MISHRA.

....

APPLICANT.

- VERSUS -

UNION OF INDIA & 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*

*(Signature)*  
(G. NARASIMHAM)  
MEMBER (JUDICIAL)

*(Signature)*  
(SOMNATH SOM)  
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 636 OF 1998.

Cuttack, this the 19th day of April, 1999.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

A N D

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDL.)

....

Shri U.K. Mishra,  
Aged about 54 years,  
S/o. late Harish Chandra Mishra,  
Resident of Railway Quarters No. L-28/1,  
Diesel Colony, Bondamunda, Dist. Sundargarh,  
Orissa, Pin - 770 002. ... .. Applicant.

By legal practitioner: Mr. M. Maleshwaram, Advocate.

-versus-

1. Union of India represented by GM,  
S.E. Railways, Garden Reach,  
Calcutta, West Bengal.
2. Sr. Divisional Mechanical Engineer,  
Diesel Loco shed, Bondamunda,  
PS. Bondamunda, Munsif/Tahasil-Panposh,  
Dist. Sundargarh, Orissa.
3. Divisional Mechanical Engineer,  
Bondamunda, Munsif/Tahasil-Panposh,  
Dist. Sundargarh, Orissa. ... .. Respondents.

By legal Practitioner: Mr. D. N. Mishra, Standing  
Counsel (Railways).

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application u/s.19 of the Administrative Tribunals Act, 1985, the applicant has prayed for quashing the order dated 26th of August, 1998 at Annexure-A-III in which he has been informed by the Senior Sr.DME (Diesel), Bandamunda that he has been released from the Office of the Diesel Locoshead, Bandamunda and has been transferred to Senior DME(D)/Wat. Applicant has stated that he is working as Mechanic Grade-I under Respondent No.2, Senior DME, Diesel Shed, Bandamunda and he is a sincere worker and does his duty with utmost sincerity and purpose. It is further stated that as per the usual practice, the Senior DME, Bandamunda, Respondent No.2 listens the grievances of the staff everyday at about 4 PM. On 18-12-1997, the staff of Respondent No.3 wanted to send some of their staffs to apprise the Respondent No.3 with their grievances. Accordingly, applicant alongwith some other staffs went to the Sr.DME to putforth their grievances before him. But when the applicant alongwith other staffs entered to the Chamber of the SR.DME with his permission, Respondent No.2 asked them to wait and just after some time, in an aggressive voice, Respondent No.2 directed the staff, who <sup>had</sup> entered the Chamber to get out immediately. According to the applicant, though the applicant alongwith other staffs, were trying to make the Respondent No.2 understand that their grievance with regard to the issue

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of the tools and some other miscellaneous work, Respondent No.2 did not care to listen the grievances of the applicants/staffs who entered his Chamber and repeatedly asked them to get out. Even though the staff including the applicant felt humiliated, they came out and sat on the floor of the shed and waited for the Sr. D.M.E. to come out and give them further orders but the Respondent No.2 did not give any order to make them to start the work and therefore, the staffs stopped the work for the day and the subsequent day only because the Respondent No.2 directed them not to work until his direction. In the meantime, Respondent No.2 called the G.R.P. and went to the extent of directing the G.R.P. to make Lathi Charge upon the silent sitting staff, even though the agitating staffs were sitting silently and peacefully. According to the petitioner, the GRP denied to make the Lathicharge on the staffs, who were sitting on dharana calmly and peacefully without creating any trouble. According to the applicant, the stalement/continued for about 48 hours when Respondent No.3 and other Senior Officers of Chakradharpur head office came and settled the matter. Respondent No.2 marked the agitating staffs absent in the Attendance Register for the two days even though they were physically present in the shed. Respondent No.1 at the instance of Respondent No.2 deducted the salary of the other staffs though the staff who received the payment from 18-12-1997 to 20-12-1997 had also joined hands with the workers group to focus their grievances to the Respondent No.2. Thereafter, on 17-7-1998 at about

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3 A.M. when the applicant was on night duty, Respondent No. 2 through his staff asked the applicant to receive a letter without opening the cover of the letter and when the applicant doubted that some conspiracy was made against him, he requested the staff to give the letter after opening the same, after his duty hour is over. But on 18th of July, 1998, morning, the letter was not given to the applicant and the applicant came to his house after completion of his duty. Thereafter, the applicant fell sick and reported to the authorities and also to the Railway Medical Officer. As the applicant was remained sick from 18-7-98, he was not asked to receive the letter at Annexure-A-III in which he has been transferred to the Sr.DME, /WAT Loc shed. Applicant continued on leave and reported his sickness on 5-8-98 and 24-8-98. He also preferred an appeal to his higher authorities for ~~concella-~~ ~~ation~~ of his transfer order but without any result. The applicant apprehends that the transfer order was nothing but a coercive measure applied by the Respondents because of the incidents which took place on 18-12-1997 when the shed was practically closed for 48 hours and the action taken by the Respondents in transferring the applicant to Vishakhapatnam is punitive in nature and can not be sustained in the eye of law. In view of this, he has come up in this Original Application with the prayers referred to earlier.

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2. Respondents, in their counter, have denied the applicant's assertion that he was a sincere worker. They have

pointed out in para-2 of the counter that on three occasions, he has been punished with minor punishment and on one occasion with major punishment. In a disciplinary proceeding, he has also been placed under suspension from 14-6-1991 which was revoked on 04-07-1991. Respondents have stated that on 18-12-1997, at about 3.45 PM, the applicant along with some other staffs of Diesel Loco Shed, Bondamunda came to the Chamber of Sr. DME. Respondents denied that the Respondent No. 2 <sup>in a</sup> violent and in aggressive voice directed the staff to get out immediately from his Chamber. Respondents have stated that the applicant along with other staffs, entered to the Chamber of Respondent No. 2 without prior appointment and without any written request and while the Sr. DME explaining them, they have left the Chamber in a huff without listening the explanation of the Respondent No. 2. Respondents have further denied the allegation of the applicant that Respondent No. 2 has asked them to stop the work until further orders. Rather the applicant gathered a large number of staff of Diesel Loco Shed outside the Sr. DME's Office and instigated them to sit in strike in front of the token booth and stop work from 4 PM on 18-12-1997. It is further stated that the applicant led the demonstration outside the Chamber of Respondent No. 2 and instigated the Staff to shout slogans and abuse officers and supervisors. Because of the agitation of the Staff, Officers were wrongfully confined inside the office. They were not allowed to leave the office till 19-12-1997. GRP was called and it was only after the arrival of GRP, officers who have been detained through out the night could move out. It is further stated that the cease work and sit in demonstration which was started from

4 PM of 18-12-1997 continued till 12 noon of 20-12-1997. Ultimately Additional Divisional Railway Manager, Chakradharpur Division came along with some officers to the Diesel shed, Bondamunda and tried to talk with the agitating staff with a view to persuade them to resume work. But the applicant never allowed the staff to resume duty. He provoked them to continue in strike. It is further stated that on the morning of 19-12-1997 some of the staffs were prepared to resume work but the applicant opposed the same. As the maintenance work of locomotives were already affected by the ~~cease~~ work, with the appeal made to the staff on 20-12-1997 (noon) they resumed their duties. As the staff went on strike without giving proper notice, the period of their absence were treated as 'no work no pay'. Respondents have further stated that the applicant had worked for about six months, after the strike was called off, under the Respondent No. 2 and after six months he has been issued with an order of transfer from Bondamunda to Diesel Loco Shed Visakhapatnam by the order of the Chief Personnel Officer, Calcutta dated 10.7.98 on administrative interest. The said transfer order was received at Bondamunda on 15.7.98 and it was served on him on 18.7.98 vide order dated 17.7.98 but the applicant refused to accept the same. The endorsement of his refusal is at Annexure-R/1. It is further stated that after refusal of the applicant to accept the order of transfer, the applicant reported sick and remain on leave. Therefore, he is deemed to have been released from the Diesel Loco Shed, Bondamunda. Subsequently, the applicant was also discharged from the sicklist by the

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Railway Medical Officer on 20.7.98 on the ground of non-attendance at the Hospital. After that, the applicant submitted a sick certificate from a private Medical practitioner at Bondamunda and has remained on leave through out. On the above ground, Respondents have stated that the applicant's transfer has been made due to administrative necessity and in view of this, they have opposed the prayer of the applicant.

3. We have heard Mr. M. Maleswaram learned counsel for the applicant and Shri D. N. Mishra, learned Standing Counsel appearing for the respondents and have also perused the records.

4. The first point submitted by the learned counsel for the applicant is that in accordance with the Railway Board's letter dated 27-9-89, certain persons who are working against sensitive posts identified by the Ministry of Railways, are required/liable for periodical transfers and the applicant is a fitter and his name was not in the list of officers of the Mechanical Department, who are holding the sensitive posts and as such, he was not liable to be transferred. We have gone through this Circular. This circular only envisages the posts/persons, and who frequently come into the contact with public and/or contractors/suppliers are required to be transferred every four years. It does not specifically envisage that persons working other than the sensitive posts should not be transferred. It is also not the case of the applicant or Respondent that the applicant has been working in a sensitive post. It is the case of the Respondents that the applicant has been transferred on

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administrative grounds. As such, this circular is not at all relevant to the facts of this case.

Learned counsel for the applicant further relied on Railway Board's Circular dated 27.7.1966 printed at Pages 141 and 142 of the Indian Railway Establishment Rules and Labour Laws of K.P.Sharma (IVth edition) in which it has been provided that Ordinarily a railway servant shall be employed throughout his service on the railway or railway establishment to which he is posted on first appointment and shall have no claim as of right for transfer to other railway or another establishment and only in the exigencies of service, it shall be open to the President to transfer the Railway servant to any other department or railway or railway establishment including a project in or out of India. This circular also deals with regard to the request of a Railway servant in Gr.C and D for transfer from one to any other Railway on grounds of special cases of hardships. Learned counsel for the petitioner has relied on the circular that competent authority may transfer a Railway servant from one post to another provided that except on account of inefficiency or misbehaviour or on his written request, a railway servant shall not be transferred substantively to or, except in the case of lower dual charge, appointed to officiate in a post carrying pay than the pay of the permanent post on which he holds a lien, or would hold a lien had his lien not been suspended. In the present case, the applicant has been transferred from diesel Lok Shed, Baramunda to Visakhapatnam in the same scale of pay and his emoluments will not undergo any change. In

consideration of the above, it is held that this Circular has no relevance to the facts of the present case. The Respondents have given a detailed sequence of events leading to the strike in the Diesel Loco Shed, Bondamunda and the wrongful detention of the Officers. The applicant in his petition has also narrated the same fact from a different angle. Going through the version of the learned counsel for the applicant and the averments made in his petition as also with the version of the learned Standing Counsel appearing for the Respondents and the counter filed by the Respondents, it does appear that on those relevant days there was stoppage of work in the Diesel Loco Shed Bondamunda affecting the work of the Loco Shed. The applicant's statement that the stoppage of work ~~was~~ at the instance of the Sr. D.M.E., Respondent No. 2, who had asked them not to work is not believable in view of his own assertion that subsequently the Sr. DME, Respondent No. 2 came and intervened and requested them to resume work. In view of the fact as stated by the applicant and the Respondents in their counter, we are satisfied that the Respondents have made out a case of transfer of the applicant on administrative necessity. The position of law is well settled that the scope of interference of the Courts or Tribunal in transfer is limited and this can only be made if the transfer is mala fide or in violation of any statutory Rules. Besides the Circular referred to above, learned counsel for the applicant has not shown us any rules or instructions of the Railways which have been violated in this regard. The applicant has worked for

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more than 30 years at his present place of posting. He is in a transferrable job and has been transferred within the same railways. In the process, he does not suffer any loss of emoluments.

5. In view of this, we hold that the applicant has not been able to make out a case for any of the reliefs sought for by him in this Original Application. The Original Application is held to be without any merit and is rejected but in the circumstances, there shall be no order as to costs.

(G. NARASIMHAM)  
MEMBER (JUDICIAL)

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN  
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