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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 431 OF 1999

Cuttack, this the 2nd day of February 2001

P.L.Prabhakar 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
2.2.2001

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 431 OF 1999
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CORAM:

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

.....
P.L.Prabhakar Rao, aged about 57 years, son of P.Narasingha
Rao, Gajapatinagar, P.O-Jatni, District-Khurda, at present
serving as P.G.T.Economics, Gr.I in S.E.Railway,
M.H.S.S.Khurda Road, P.O-Jatni, District-Khurda
.....
Applicant

Advocates for applicant - M/s A.K.Rath
M.K.Sahoo
S.N.Mallick

Vrs.

1. Union of India, represented through the General Manager, S.E.Railway, Garden Reach, Calcutta-43, West Bengal.
2. Chief Personnel Officer (IR), S.E.Railway, Garden Reach, Calcutta-43, West Bengal.
3. Divisional Railway Manager, S.E.Railway, Khurda Road, Jatni, District-Khurda.
4. Senior Divisional Personnel Officer, S.E.Railway, Khurda Road, Jatni, District-Khurda
.....
Respondents

Advocate for respondents-Mr.C.R.Mishra

ORDER

SOMNATH SOM, VICE-CHAIRMAN

S.J.M.
In this application the petitioner has
prayed for a direction to the respondents to pay his
salary for the period from 29.10.1996 to 3.6.1997 within a
time to be fixed by the Tribunal and for quashing the
order dated 25.3.1999 (Annexure-4) rejecting his prayer
for drawal of salary for the aforesaid period. The
respondents have filed counter opposing the prayers of the
applicant, and the applicant has filed a rejoinder.

2. The facts of this case are not at controversy. The admitted position is that the applicant is a Post Graduate Teacher in Economics (hereinafter referred to as "PGT, Economics"). A post of PGT, Economics fell vacant in Mixed Higher Secondary School (MHSS), Khurda under the S.E.Railways on superannuation of Smt.Sunita Banerjee on 31.10.1992. One Smt.N.Jayashree, T.G.t. working in the same school was given ad hoc promotion in order dated 17.11.1992 in that vacancy for a period of six months or till such time an empanelled candidate is posted, whichever is earlier. The present applicant P.L.Prabhakar Rao was working as P.G.T., Economics in MHSS, Bilaspur and he was transferred to Khurda Road against the vacant post. Smt.N.Jayashree approached the Tribunal in OA No. 623 of 1992 and the Tribunal, as an interim measure, ordered on 15.12.1992 that reversion of Smt.N.Jayashree from the post of P.G.T to T.G.T. is stayed and she should not be disturbed from the present post. On applicant's joining M.H.S.S.,Khurda Road, Smt.N.Jayashree was adjusted against the post of P.G.T., Mathematics. As Smt.N.Jayashree was adjusted against the post of P.G.T., Mathematics, a regular P.G.T., Mathematics could not be posted at Khurda Road and the students suffered a lot. The Divisional authorities of Khurda Road Division brought this matter to the notice of headquarters and accordingly, thereafter in order dated 30.8.1996 the applicant was transferred from Khurda Road to Bandamunda so that Smt.N.Jayashree could be accommodated in the post of P.G.T., Economics, in view of the stay order of the Tribunal in OA No.623 of 1992. The applicant approached

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the Tribunal challenging his transfer order in OA No. 686 of 1996 which was disposed of at the stage of admission in the order dated 24.9.1996. The Tribunal directed the applicant to file a representation before the Senior Personnel Officer, S.E.Railway, Garden Reach, Calcutta, within one week from the date of receipt of the order dated 24.9.1996 and the authorities were directed to dispose of the representation within a period of four weeks. It was also ordered that till the representation is disposed of, the applicant's transfer to Bandamunda was stayed. The applicant's representation filed in pursuance of the Tribunal's order in OA No. 686 of 1996 was considered and a speaking order was passed confirming the previous order of transfer dated 30.8.1996. He was accordingly relieved of his duties on 28.10.1996 and was ordered to join at MHSS, Bandamunda. Thereafter the applicant filed OA No. 787 of 1996 which was disposed of in order dated 10.3.1997. The Tribunal quashed the order of transfer of the applicant to Bandamunda and directed that the question of transfer of the petitioner to Bandamunda should be considered *denovo*. The Tribunal directed that the departmental authorities should take a view as to who between N.Jayashree and the applicant should be transferred from Khurda Road as there is only one post of P.G.T., Economics in MHSS, Khurda Road. Both these persons urged personal difficulties, and the departmental authorities were directed to consider the personal difficulties of both the persons, give them personal hearing, and pass a reasoned order about transfer of one of them from Khurda Road. In pursuance of the above order, the departmental authorities considered the entire matter and in order dated 15.5.1997 it was decided that the applicant should be transferred back to Khurda Road and

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Smt.N.Jayashree was ordered to be transferred to Bandamunda. Accordingly, the applicant joined in MHSS, Khurda Road, on 4.6.1997. After joining he had filed representation for getting his salary from 29.10.1996 to 3.6.1997. His representation was considered and rejected by the Chief Personnel Officer in his order dated 25.3.1999 at Annexure-4 on the ground that as the applicant did not work during the period, the question of treating the period as "waiting for duty" does not arise.

3. Against the above background of admitted facts, the prayers of the applicant are to be considered. Before doing that it is to be noted that the order of transfer of the applicant from Khurda Road to Bandamunda was stayed by the Tribunal on 24.9.1996 till the disposal of his representation. The respondents have pointed out that the applicant's representation dated 30.9.1996 was considered and rejected, and he was relieved from Khurda Road on 28.10.1996. Thus, for the period during which his transfer order dated 30.8.1996 was stayed in order dated 24.9.1996 he has been treated to be on duty at Khurda Road and has been paid his salary. His prayer is, therefore, for payment of salary for the period from 29.10.1996, the day after he was relieved on 28.10.1996 till 3.6.1997, the date immediately preceding the date of his rejoining at Khurda Road on 4.6.1997.

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4. We have heard Shri A.K.Rath, the learned counsel for the applicant and Shri C.R.Mishra, the learned Additional Standing Counsel for the respondents.

5. The respondents have stated in their counter that after being relieved on 28.10.1996 the

applicant did not join at Bandamunda nor has he applied for leave and as during the aforesaid period he has not worked, he is not entitled to salary. In order dated 10.3.1997 in OA No. 787 of 1996 the transfer of the applicant from Khurda Road to Bandamunda has been quashed and therefore, it must be taken that the transfer order is not in existence. In view of this, the applicant will be entitled to be treated as if he was on duty during the aforesaid period and will be entitled to his salary. In a similar matter in OA No. 526 of 1998, decided on 13.7.1999 (P.C.Samal v. Union of India) the Tribunal have taken the same view. As the transfer order of the applicant has been quashed, it cannot be held that the applicant's absence from duty during the aforesaid period is due to any fault on his part. The order at Annexure-4 denying the applicant his salary for the aforesaid period is therefore held to be legally not sustainable and is quashed. We accordingly direct the respondents to treat the applicant as on duty in MHSS, Khurda Road, during the period from 29.10.1996 to 3.6.1997 and pay his salary for the said period within 90(ninety) days from the date of receipt of copy of this order.

6. In the result, therefore, the Original Application is allowed. No costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
2.2.2001
VICE-CHAIRMAN