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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 478 OF 1999  
Cuttack this the 24th day of March, 2000

Ajit Kumar Lohar

Applicant(s)

-Versus-

Union of India & Ors.

Respondent(s)

FOR INSTRUCTIONS

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

(SOMNATH SOM)  
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.478 OF 1999  
Cuttack this the 24th day of March, 2000

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

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Sri Ajit Kumar Lohar,  
Son of Sri Bauri Lohar,  
presently working as Khalasi Helper,  
Office of the Divisional Electrical  
Engineer(G), S.E.Railway, Sambalpur  
Division, District : Sambalpur

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Applicant

By the Advocates : M/s.A.Kanungo  
S.R.Mishra  
B.Ray  
M.K.Biswal

-Versus-

1. Union of India represented through  
its General Manager, S.E.Railway,  
Garden Reach, Calcutta
2. Divisional Railway Manager,  
S.E.Railway, Sambalpur Division,  
District : Sambalpur
3. Mr.Sunil Kumar  
Divisional Asst.Electrical Engineer(G)  
S.E.Railway, Sambalpur Division  
District : Sambalpur
4. Section Engineer(Elect)  
S.E.Railway, Sambalpur Division,  
District : Sambalpur
5. Divisional Personnel Officer  
Sambalpur, S.E.Railway,  
District : Sambalpur

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Respondents

By the Advocates : Mr.D.N.Mishra  
Standing Counsel  
(Railway Administration)

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ORDER  
(ORAL)

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 6.8.1999(Annexure-3) transferring him in the existing capacity and grade as Khalasi Helper from Sambalpur to Titlagarh on administrative grounds.

2. For the purpose of considering this application it is not necessary to go into too many facts of this case. It is only necessary to note that the applicant has stated that in order dated 19.6.1997 (Annexure-1), a major penalty proceedings was initiated against him. It is seen that Annexure-1 is the form of charges, but the exact charge or imputation is not there. The applicant has further stated that during pendency of the major penalty proceedings another charge sheet was issued to him on 1.9.1997(which has not been filed in this case)and in that proceedings punishment of stoppage of increment, for a period of three years without cumulative effect was imposed. In the proceedings initiated by issuing charge sheet at Annexure-1, penalty of reduction to lower post in the time scale was imposed vide Annexure-2 dated 4.8.1999. In this order the Dividional Asst.Electrical Engineer(G), which according to applicant is the disciplinary authority has imposed reduction to lower post in time scale of pay, i.e. Rs.2550-3200/- with effect from 1.9.1999 for 10 years with seniority. In this order it has also been mentioned in the preceeding para that the penalty as mentioned above is imposed on the applicant and <sup>that</sup> the applicant has been transferred to Titlagarh under J.F.-II(Elect). Thereafter in order dated

6.8.1999 vide Annexure-3 the impugned order of transfer has been passed. The applicant has stated that his transfer order has been engineered by the Divisional Asst. Electrical Engineer. He has also stated that against the Divisional Electrical Engineer several written complaints have been made, but no action has been taken. It is further stated that the applicant along with others have sent written complaints against the Divisional Asstt. Electrical Engineer to D.R.M., Sambalpur and that is why the applicant, who is the organising Secretary of the Union became eye sore of the Divisional Asst. Electrical Engineer and because of this, disciplinary proceedings was initiated and at last the applicant has been transferred. The applicant submitted a representation for cancellation of the transfer order on the ground that his wife was pregnant, but the same has not received attention. In view of this the applicant has approached the Tribunal with the prayers referred to earlier.

3. Respondents in their counter have stated that the applicant has been transferred on administrative grounds from Sambalpur to Titlagarh, and was relieved on 12.8.1999 with a direction to go and join at Titlagarh on 13.8.1999, but the relief <sup>order was</sup> / not accepted by the applicant and he refused to accept the same in presence of two witnesses, whose names have also been mentioned. His representation was disposed of on 10.9.1999. In this order he was also asked to join the new station, but he has not joined. As the applicant did not join the new place of posting, two letters dated 4.10.1999 and 4.11.1999 were sent to him. Respondents have stated that the applicant was proceeded against <sup>in</sup> / a major penalty

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proceedings on 19.6.1997 and punishment order was imposed on him. This has been challenged by the applicant in O.A. 461/92 which is still pending. Respondents have stated that the transfer of the applicant is not in consequence of the punishment order and the transfer order has been issued by Res.5, who is the authority competent to issue such transfer order. Respondents have further stated that the applicant is not the office bearer of the Organised Union and this has been stated by the applicant in his application only to mislead the Tribunal. The respondents have also denied allegation that the transfer order has been issued malafide or with malice. On the above grounds respondents have opposed the prayer of the applicant.

4. Applicant in his rejoinder has pointed out that he has challenged the order of transfer in this Original Application on two grounds. Firstly the impugned order of transfer is a product of malafide intention and ~~consequently~~ the same is punitive in nature. In support of these two contentions the applicant has made various averments. He has also stated that the transfer is an example of un-fair labour practice and therefore, hit by § 25 T of Industrial Dispute Act, 1947. These averments of the applicant challenging the order of transfer was also submitted by the learned counsel for the petitioner during hearing of this petition and this will be considered while considering submissions made by the learned counsel for both sides and therefore, it is not necessary to repeat the same. On these grounds the applicant has reiterated his prayer as made in the Original Application.

5. I have heard Shri A.Kanungo, learned counsel for the applicant and Shri D.N.Mishra, learned Standing Counsel



appearing for the respondents and also perused the records.

6. Learned counsel for the petitioner has submitted a date chart and written note of arguments which have also been taken note of. The first point raised by the learned counsel for the petitioner is that transfer order has been issued maliciously. It is seen from Annexure-3 that the transfer order has been issued by the Divisional Personnel Officer. His allegations are only against Divisional Assistant Electrical Engineer, who has been arraigned as Res.3 in this Application by name. It is submitted by the learned counsel for the petitioner that Res.3 has arranged for his transfer from Sambalpur to Titlagarh prevailing upon the Divisional Personnel Officer to issue the order of transfer. There is no material on record that the Divisional Assistant Electrical Engineer has prevailed upon the Divisional Personnel Officer ~~in order~~ to issue the transfer order. It is submitted by the learned counsel for the petitioner that this ~~can be~~ is apparent from the fact that in the punishment order at Annexure-2, the Divisional Electrical Engineer has written on 4.8.1999 that the applicant has been transferred from Sambalpur to Titlagarh under JF-II(Elect), when the transfer order has actually been issued two days thereafter, i.e. on 6.8.1999. It is also submitted by the learned counsel for the petitioner that in order at Annexure-2 the Divisional Asst. Elect. Engineer has mentioned that the applicant has been transferred from Sambalpur to Titlagarh even though he is not the authority competent to transfer the applicant. From this, it is argued by the learned counsel

for the petitioner that it is clear that the transfer order at Annexure-3 has been issued at the instance of the Divisional Asstt. Engineer (Electrical). It is submitted by the learned Standing Counsel Shri D.N. Mishra that the order of transfer has been issued by the competent authority in public interest. The punishment order is <sup>in</sup> no way connected with the order of transfer. The very fact that in the punishment order it has been mentioned that the applicant has been transferred to Titlagarh would not by itself prove mala fide nor would invalidate the order of transfer on the grounds of malafide.

7. I have carefully considered the submissions made by the learned counsel for both sides. In this case transfer order has been issued by the competent authority, i.e., Divisional Personnel Officer. There is no allegation of mala fide against him. The allegation of malafide is against the Divisional Asst. Electrical Engineer. There is no material on record to show that the Divisional Asstt. Electrical Engineer has engineered the transfer order by prevailing upon the Divisional Personnel Officer. Just because the Divisional Assistant Electrical Engineer has mentioned at Annexure-2 that the applicant has been transferred to Titlagarh, it does not mean that he has prevailed upon Res. 5 ~~in order~~ to issue transfer order. It is also submitted by the learned counsel for the petitioner that Res. 3, the Divisional Asst. Electrical Engineer is not the authority to seek for his transfer and as the transfer order has been made at his instance, the same should be held illegal. I am not inclined to accede to this proposition because a person under whom a

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railway servant is working can always seek transfer of his subordinate official on administrative grounds. It cannot be expected that even a proposal for transfer of a particular officer can be made only by the transferring authority. This is also absurd, because the transferring authority is the person who is to issue the transfer order and therefore, if a proposal is made for transfer of a particular official that has to be made only by the person making such proposal, who is the authority competent to transfer that particular official. This contention of the learned counsel for the petitioner is, therefore, held to be without any merit and the same is rejected. In view of the above, it is held that the applicant has not been able to prove that the transfer order has been issued out of mala fide.

8. The second ground urged by the learned counsel for the petitioner that the transfer order is punitive in nature. It is submitted by the petitioner that in order at Annexure-2, while imposing penalty on the applicant at the conclusion of the disciplinary proceedings initiated against him on 19.6.1997, the disciplinary authority has mentioned that he has been transferred to Titlagarh. In view of this it has been urged that the transfer order is punitive in nature. In support of this contention learned counsel for the applicant has relief on the following cases.

- 1) Mohd. Thekkethil v. Director of Panchayats (Ker) reported in 1982(2) SLR 390
- 2) Miss. Shantipriya Kar vs. Director of Public Instruction (Schools) and Ors. reported in 55(1983) CLT 132
- 3) Sridhar Dash vs. State of Orissa and ors. reported in 1985 ILR 462
- 4) Achyutananda Behera vs. State of Orissa & Ors. reported in 59(1985) CLT 319



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9. In Mohd.Thekkethil case (Supra) the applicant was working as Executive Officer of a Panchayat. On a complaint made by the President of the Panchayat which was found to be vague by the Hon'ble High Court of Kerala, the applicant was transferred even though enquiry had been ordered on the complaint. In that case respondents had clearly stated that the only reason for transfer was the complaint by the President and as in that case complaint was vague <sup>to be</sup> which was found in the process of enquiry it was held by the Hon'ble High Court that the transfer order had been issued on ~~such~~ vague complaint which was yet to be substantiated and the same could not be sustained.

10. In the circumstances of this case the respondents have come out that there were several proceedings against the applicant in which ~~major~~ <sup>major</sup> punishment has been imposed on the applicant and thereafter the applicant has been transferred on administrative grounds. In view of this the case of Mohd.Thekkethi (Supra) does not apply to the <sup>case</sup> instant and is clearly distinguishable.

11. In the case of Sridhar Dash as cited by the learned counsel for the applicant, Hon'ble High Court of Orissa held that transfer of a Govt. servant as a disciplinary measure amounts to punishment without giving him reasonable opportunity and therefore, such order is not sustainable.

12. In the case of Achyutnanda Behera, the Hon'ble High Court of Orissa held that when on the complaint of an M.L.A., who is the local politician, the petitioner has been transferred without making an enquiry into the allegations, the transfer order seemed to have been issued on extraneous consideration.

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13. So far as Miss. Shantipriya Kar case is concerned, in consideration of the circumstances of that case the Hon'ble High Court of Orissa held that the transfer order was harsh and had been issued in colourable exercise of powers and therefore, the same was accordingly struck down.

14. Applying the law laid down by the Hon'ble High Court of Orissa to the facts and circumstances of the case before me I note that in this case in the departmental proceedings a major penalty has been imposed on the applicant and the applicant has challenged the same in a separate Original Application as referred to earlier, which is pending. This not a case where on the basis of unsubstantiated allegation the applicant has been transferred. Transfer order has also been issued by the authority competent to issue such order. The fact that the Divisional Asst. Electrical Engineer in his order at Annexure-2 has mentioned that the applicant has been transferred to Titlagarh would not make the transfer order issued by Res.5 punitive in nature. Because of mentioning of transfer even in the order of punishment, the transfer order has not been issued as a measure of punishment nor does the transfer order speak of punishment by itself. The punishment has been separately mentioned in a later para. But because of this it has been averred by the applicant that he has been transferred to Titlagarh, maliciously. In view of this it cannot be said that the transfer order is punitive in nature; more so, as held earlier, when the applicant failed to prove that the transfer has been engineered by the Divisional Asst. Electrical Engineer and had been

*J. Som*

issued mala fide. It may be that because of departmental proceedings against him in which the applicant having found guilty has been imposed punishment and his immediate authority has moved the competent authority seeking his transfer from Sambalpur to Titlagarh. This apart, applicant holds a transferable post and the transfer is an incidence of service. In view of this it cannot be held that the order of transfer is punitive in nature. This contention of the learned counsel for the petitioner is held to be without any merit and the same is rejected.

15. In the result, I do not see any merit in this application which is accordingly rejected, but without any order as to costs.

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN  
*24.7.2010*

B.K.SAHOO