

7
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 578 OF 1999
Cuttack this the 10th day of May, 2000

Prasad Ku.Labala

...

Applicant(s)

-VERSUS-

Union of India & Ors.

...

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not? *Yes.*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *no*

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
10.5.2000

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 578 OF 1999
Cuttack this the 10th day of May, 2000

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

...

Prasad Kumar Labala
aged about 39 years
S/o. Dambaru Labala
resident of Raniguda,
PS: Raniguda, Dist: Rayagada
at present working as Electrician
Grade-III (Line-man-cum-Wireman)
S.E. Railway, Construction-I,
Chandrasekharpur, at present
residing Quarter No.C/8/F,
Chandrasekharpur
Bhubaneswar, Dist: Khurda

...

Applicant

By the Advocates

Mr. P. P. Panda

-Vs.-

1. Union of India represented through it's
Chief Administrative Officer, Construction-I
S.E. Railway, Chandrasekharpur, At/PO: Chandrasekharpur, Bhubaneswar, Dist: Khurda
2. Deputy Chief Electrical Engineer, Construction-I
S.E. Railway, Chandrasekharpur, At/PO: Chandrasekharpur
Bhubaneswar, Dist: Khurda
3. Assistant Electrical Engineer, Construction-I
S.E. Railway, Chandrasekharpur, At/PO: Chandrasekharpur
Bhubaneswar, Dist: Khurda
4. Section Electrical Engineer, Construction-I
S.E. Railway, Chandrasekharpur, Headquarter-Bhubaneswar,
At/PO: Chandrasekharpur, Dist: Khurda

S. Som

...

Respondents

By the Advocates

M/s. D. N. Mishra
S. K. Panda
S. Swain

...

2
O R D E R

9

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 16.11.1993 at Annexure-3 and for direction to departmental authorities to allow him to continue in the present post at Chandrasekharapur as Electrician Grade-III (Line-man-cum-Wire-man).

2. The case of the applicant is that he is working as Electrician Grade-III (Lineman-cum-Wireman), S.E. Railway, Construction-I at Chandrasekharapur, Bhubaneswar from 26.3.1994. He has stated that another employee, viz., Shri P.S.V. Prasad was transferred to Keonjhar immediately after the cyclone and the applicant along with Shri Prasad and another employee had gone to residence of Respondent No.3 to make a request not to relieve Shri Prasad from his posting at Bhubaneswar and to allow him to continue at Bhubaneswar at least /for a period of 15 days. Applicant has stated that the same was not acceded by Res.3 and in turn he filed a false FIR with the police against the applicant and others as a result of which the applicant was arrested and released on bail. It is submitted that in order dated 16.11.1999, Respondent 4 relieved the applicant to go to Sambalpur pursuant to Office Order dated 15.11.1999 which is said to have been passed by Respondent 2. Applicant has further stated that the order of transfer has not been communicated to him. He has also stated that no reliever has been posted in his place. It has been stated by the applicant that he is working in a Project and ~~wh~~ only when the project work is nearing completion then the staff working in that project are declared surplus and transferred elsewhere, but in case of the applicant this

S. Som

is not the position. It is further stated that his son is reading in Standard-IV at Chandrasekharpur and his wife is also ill and under medical treatment. In the context of the above facts the applicant has come up in this O.A. with the prayers referred to earlier.

3. Respondents in their counter have opposed the prayer of the applicant. They have stated that transfer by way of redeployment comes up ^{when} ~~due~~ to completion of a project staff becomes surplus. According to respondents in the present case the Project work at Bhubaneswar has not been completed. It is stated that the applicant is a good worker and has through knowledge of maintenance of various electrical equipments and assets and ~~in view of his good work and in view of urgent nature of work at~~ Sambalpur, where a Project is due to be completed by 31.12.1999 and the assets are to be handed over by the ~~Open~~ line Division the applicant has been posted and spared for working under the Construction Division from 16.11.1999. It is stated that the applicant has a thorough knowledge of work and he has done a good job in the previous projects. Therefore, the Administration has chosen the applicant in good faith that he would discharge his duties more promptly and efficiently ensuring that ~~has~~ construction assets have to be handed over to Open Line Division at Sambalpur within the stipulated period, i.e. 31.12.1999. With regard to averment of the applicant regarding criminal case against him respondents have stated that Shri P.S.V. Prasad was transferred and spared for working at Keonjhar keeping in view the urgency and importance of the Project electrical work at Keonjhar. It is stated that applicant and Shri Prasad will have a chance to come back to Bhubaneswar

and and when their services are required at Bhubaneswar.

As regards the criminal case, respondents have stated that the case is being investigated and it would take its own course and they have nothing to say with regard to this.

As regards the averment that copy of the impugned order has not been served on the applicant respondents have stated that it is not always mandatory to give copy of the transfer order to the staff when he is working at the same place ~~of~~ where the posting order has been issued. It is also stated that the applicant, even after his relief on 16.11.1999 has not gone and joined at Sambalpur, but has remained on leave thereby making himself liable to disciplinary action. On the above grounds respondents have opposed the prayer of the applicant.

4. The applicant has filed an additional affidavit wherein to the averment of the respondents in their counter with regard to his chance to be brought back to Bhubaneswar as and when his services are required at Bhubaneswar, he has stated that at present there is no project work at Sambalpur and the project work has been closed and all the construction assets have already been handed over to the open line and therefore, order directing him to join at Sambalpur for the purpose of handing over the assets is no longer necessary. It is stated that the applicant was unable to join at Sambalpur due to his personal difficulties and ailment of his wife. It is also stated that the applicant had filed representation which is enclosed to his additional affidavit, praying for his posting at Bhubaneswar, but no consideration has been shown to him. On the above grounds the applicant has reiterated his prayer

in his additional affidavit.

5. Heard Shri P.P.Panda, learned counsel for the applicant and Shri D.N.Mishra, learned Standing Counsel and also perused the records. The first point to be noted in this case is that admittedly no copy of transfer order was served on the applicant. Respondents in their counter have stated that it is not mandatory ^{transferred} to serve a copy of the transfer order on the ~~the~~ officer/official if he is working ~~in~~ on the same station where authority issuing the transfer order is posted. Transfer order has been issued on 15.11.1999 by Res.2. Respondents have not cited any rules/instructions/authority in support of the above contention. Normal procedure is that when an official is transferred a copy of the transfer order is given to him. Apart from communicating the order of the appropriate authority to such officer about his transfer to another place or another station or any office, copy of the transfer order is also given to the transferred official for the purpose of his record. In the absence of any rule or instructions or authority cited by the respondents in support of their contention it is not possible to accede to the proposition that the ~~it is not mandatory to serve~~ copy of the transfer order on the transfrred official if he is working in the same station where the authority issuing the transfer order is posted. This contention is therefore, held to be without any merit and the same is rejected. It has been submitted by the learned Standing Counsel that order at Annexure-3 is merely an order of relief and the reason for not giving copy of transfer order to the applicant is that he has been posted temporarily on transfer at Sambalpur in order to handover the assets of the Construction Division there by 31.12.1999. Respondents have also stated in their

J. Am.

counter that applicant would be brought back to Bhubaneswar as and when his services are required. During hearing of this O.A. it has been submitted by the learned Standing Counsel that as soon as work at Sambalpur is over, the applicant will be brought back to Bhubaneswar. From Railway Establishment Sl. Nos. 213/84 and 92/88 filed by the Railways in another case it appears that the instructions of the Railways specifically provide that all transfers should be treated as permanent transfer unless the order of transfer specifically indicates that transfers are temporary. In this case order of transfer has not been annexed either by the applicant or by the respondents along with their counter. If indeed in the order of transfer it has been mentioned that it is a temporary transfer, then under Annexure-3, which is the order of relief it was incumbent on the part of the respondents to indicate that this transfer is temporary. This having not been done it cannot be said that the transfer order is a temporary one. In view of this it must be held that the applicant has been transferred to Sambalpur on regular basis. It is also admitted that a copy of transfer order has not been served on the applicant. It is further seen that transfer order has been issued on 15.11.1991 and in order at Annexure-3 issued on 16.11.1999 the applicant has been relieved. So to sum up, the position is that even according to respondents, transfer has been issued on 15.11.1999 transferring the applicant from Chandrasekharpur to Sambalpur. In the absence of any averment in the counter that this is a temporary transfer and in the absence of any mention in Annexure-3 issued on 16.11.1999 to the effect that the transfer is temporary and because of non-filing of transfer order it has been held that this is a permanent transfer and

J. J. J.

in such case copy of transfer order should have been given to the applicant. In view of this when the applicant has not been given a copy of transfer order, which is held to be not in accordance with rule, he cannot be relieved from his duties at Chandrasekharapur. In this view of the matter I hold that the order at Annexure-3 has been issued behind the back of the petitioner and on supply of a copy of transfer order to the applicant by the appropriate authority or by his immediate superior, the applicant could not have been relieved from his post. In view of this order under Annexure-3 is quashed, and the Original Application is accordingly allowed, but without any order as to costs.

Somnath SCM
(SOMNATH SCM)
VICE-CHAIRMAN. 2000

B.K.SAHOO//