

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 635 OF 1999
Cuttack, this the 7th day of July 2000

Nabin Behari Mohanty

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

CENTRAL ADMINISTRATIVE TRIBUNAL,
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CORAM:

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

.....
Nabin Behari Mohanty, a ged about 56 years, son of late Guru Charan Mohanty, resident of village Pindiri, PS/Dist.Kendrapara, at present serving as Chief Permanent Way Inspector (Special), S.E.Railway, Khurda Road, Dist.Khurda

..... Applicant

Advocates for applicant - M/s P.V.Ramdas
P.V.B.Rao

Vrs.

1. Union of India, represented by the General Manager, S.E.Railway, Garden Reach, Calcutta-43.
2. Divisional Railway Manager, S.E.Railway, Khurda Road, Dist.Khurda.
3. Sr.Divisional Personnel Officer, S.E.Railway, Khurda Road, Dist.Khurda.
4. Divisional Personnel Officer, S.E.Railway, Khurda Road, Dist.Khurda.
5. Sr.Divisional Engineer (Co), S.E.Railway, Khurda Road, Dist.Khurda.

..... Respondents

Advocates for respondents - M/s D.N.Misra
S.K.Panda
S.Swain

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application the petitioner has prayed for quashing the order dated 18.11.1999 at Annexure-5 levying damage rent of Rs.1,04,042/- for the period from 19.6.1998 to 31.10.1999.

2. The applicant's case is that he was working as Permanent Way Inspector, Kalupadaghat and was in possession of a quarters. Assistant Engineer (South),

S.E.Railway, Khurda Road, issued a letter dated 9.3.1998 directing that the applicant should report to Chief Project Manager (Construction), Chandrasekharpur immediately as per instruction of Sr.Divisional Engineer, Khurda Road, over phone. When the applicant showed this letter to Chief Project Manager (Construction) he was directed to work under Senior Project Manager-III, Sambalpur. The applicant hasstated that no formal order of transfer was issued and the direction to him to work at Sambalpur is at best a temporary transfer. The applicant reported to Construction Organisation on 11.3.1998 and on the following day, i.e., on 12.3.1998 orders were issued for his journey from Bhubaneswar to Sambalpur. He has further stated that Senior Divisional Personnel Officer in his order dated 31.3.1998 directed the applicant to report to Senior Divisional Engineer (Construction), S.E.Railway, Khurda Road for his further posting. But no posting order was issued and the applicant attended the office of Senior Divisional Engineer (Construction) regularly. Ultimately on 25.10.1999 at Annexure-1 the Senior Divisional Engineer (Construction) ordered that the applicant is posted as Chief Permanent Way Inspector in his office with effect from 19.6.1998 in his existing pay, grade and capacity. The applicant hasstated that this order dated 25.10.1999 has been given effect to from 19.6.1998 and issuing of such retrospective order is illegal. On 8.11.1999 the applicant made a representation to the Divisional Railway Manager, S.E.Railway, Khurda Road, seeking permission to retain the Railway quarters on normal rent up to May 2000 as his son is reading in Kalupadaghat High School. He also gave a certificate about his son studying in Kalupadaghat High School. The representation and the certificate are at Annexures 2 and 3. On 9.11.1999

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the Senior Divisional Engineer (Co-ordination) directed the applicant to accompany the Accident Relief Train till alternative incumbent is posted. This order is at Annexure-4. While the situation is such, in the order at Annexure-5 damage rent amounting to Rs.1,04,042/- has been charged for his alleged unauthorised retention of Railway quarters at Kalupadaghat from 19.6.1998 to 31.10.1999. The applicant has stated that he has not been permanently transferred from Kalupadaghat. But at the same time damage rent has been ordered to be recovered and after deduction of damage rent he only gets Rs.2851.00 as his net salary which is causing him great hardship. He has filed a representation at Annexure-7 questioning deduction of damage rent from his salary on the grounds mentioned in his representation, but no order has been passed on his representation. The applicant has stated that he had earlier challenged the order of transfer in OA No.137 of 1998 which was dismissed in order dated 22.4.1999. In that OA in an order dated 13.3.1999 he was allowed to retain the quarters at Kalupadaghat till the disposal of the OA and therefore his retention of quarters from ~~13.3.1999~~ ^{13.3.1999} ~~13.3.1999~~ till 22.4.1999 cannot be treated as unauthorised. He has also stated that under the departmental instructions after a temporary transfer he is entitled to retain the quarters and on the above grounds he has come up with the prayers referred to earlier.

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3. The respondents in their counter have stated that while the applicant was working as CPWI, Kalupadaghat, he was issued with a transfer order dated 31.3.1998 and in compliance with the transfer order he joined his new post on 19.6.1998 after availing joining time from 8.6.1998 to 18.6.1998. But after joining at Khurda Road, he

did not vacate the Railway quarters nor did he make any request for his continuance in the quarters. As no request was received from him, following the rules damage rent for the above amount was charged for the period from 19.6.1998 to 31.10.1999 and opportunity was also given to him to show cause why the said amount should not be recovered. But the applicant did not avail of the opportunity of showing cause. The respondents have referred to the earlier OA No.1 37 of 1998 and have stated that even after disposal of the OA there was no request for retention of the Railway quarters at Kalupadaghat and therefore they have stated that damage rent has been rightly levied and have opposed the prayers of the applicant.

4. We have heard Shri P.V.Ramdas, the learned counsel for the petitioner and Shri D.N.Mishra, the learned Standing Counsel (Railways) for the respondents and have perused the records.

5. The petitioner has enclosed at Annexure-8 the relevant instructions regarding retention of quarters and paragraph 2 of these instructions deals with temporary transfer and it is provided that during the entire period of temporary transfer an employee may be permitted to retain the quarters at former place of posting on payment of normal rent. It is also provided that the temporary transfer should not, however, be ordered for a period of more than four months unless there are pressing circumstances. It is further provided that where temporary transfer is converted into permanent transfer, the Railway employee may be allowed to retain the Railway accommodation at the old duty station for further period as admissible on permanent transfer on payment of rent as prescribed. This period will be over and above the

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period already allowed to the employee on temporary transfer.

6. The applicant has stated that his transfer from Kalupadaghat to Khurda Road is a temporary transfer. The learned Standing Counsel for the Railways has, on the other hand, submitted that this is a permanent transfer. Thus, the first point for consideration is whether the transfer of the applicant from Kalupadaghat to Khurda Road is a permanent transfer or a temporary transfer. The parties have not enclosed the original order of transfer along with their pleadings. But it was submitted by both the learned counsels that this has been filed in the earlier OANo.137 of 1998 and we have perused the records of that OA. At Annexure-2 to that OA is an order of Assistant Engineer(South), S.E.Railway, Khurda Road, addressed to Chief Project Manager (Construction), Chandrasekharpur, Bhubaneswar. In the letter it is merely stated that Shri N.B.Mohanty, CPWI, is hereby directed to report to Chief Project Manager (Construction), Chandrasekharpur, immediately as per instruction of Senior Divisional Engineer(Co-ordination), Khurda Road, for further direction by the Chief Project Manager (Construction). On this letter apparently the Chief Project Manager (Construction) has ordered that the applicant will work under S.P.M-III, Sambalpur. Accordingly, at Annexure-3 of that OA it is ordered by the Chief Project Manager (Headquarters), S.E.Railway, Bhubaneswar, that the applicant, who has reported for working on Sambalpur-Talcher Line in accordance with the order dated 9.3.1998, would work under S.P.M-III, Sambalpur. From these two orders it is clear that no formal order transferring the applicant from Kalupadaghat to Bhubaneswar or to Sambalpur was issued. He was merely asked to report at Bhubaneswar in the office of Chief Project Manager (Construction), Sambalpur.

Manager (Construction), Chandrasekharpur and on his so reporting he wa directed to work under S.P.M-III, Sambalpur. These two orders cannot be treated as an order of permanent transfer of the applicant and therefore it must be held that by these two orders he was only temporarily transferred from Kalupadaghat to Bhubaneswar. The applicant has stated that Senior Divisional Personnel Officer, Khurda Road in an order dated 31.3.1998 directed the applicant to report to Senior Divisional Engineer (Construction),Khurda Road. He has not enclosed a copy of this order. But from the order dated 9.11.1999 at Annexure-4 of this O.A. it is seen that Senior Divisional Engineer(Co-ordination) has ordered that the applicant, who is presently working in the office of Senior Divisional Engineer, Khurda Road will accompany the Accident Relief Train till alternative incumbent is posted. From this order also it is clear that the applicant has been described as presently working in the office of Senior Divisional Engineer, Khurda Road. The respondents have stated that in order dated 31.3.1998 the applicant was issued with an order to report before Senior Divisional Engineer (Co-ordination), Khurda Road. A copy of this transfer order has also not been enclosed and therefore it cannot be seen if this is a permanent transfer or a temporary transfer. Ultimately in order dated 25.10.1999 an order has been issued that the applicant is posted as CPWI in Senior Divisional Engineer(Co-ordination) office with effect from 19.6.1998. From the above recital of facts it is clear that when the applicant was issued with orders dated 9.3.1998 and 11.3.1998
at Annexure 2 of 3
of OA No.137 of 1998 it was a temporary transfer. The order

dated 25.10.1999 is also an order directing him to work in the office of Senior Divisional Engineer (Co-ordination) on being spared from Kalupadaghat. It is important to note that the language used in this order is that the applicant is spared from Kalupadaghat. Normally in case of a permanent transfer of a Railway servant he is relieved of his earlier post and he joins the new post. In view of this, the order at Annexure-1 also must be taken to be a temporary transfer and as this order has been issued on 25.10.1999 it cannot be said that the applicant has been permanently transferred from Kalupadaghat to Khurda Road with effect from 19.6.1998 when he joined in the office of Senior Divisional Engineer (Co-ordination) in pursuance of the order dated 31.3.1998 which has not been produced before us. As this period is to be treated as temporary transfer, the applicant will be entitled to retain his quarters at Kalupadaghat from 19.6.1998 till 25.10.1999 or till 31.10.1999 as has been mentioned in the order at Annexure-5. As the Railway servant is entitled to keep his quarters during the period of his temporary transfer levy of damage rent for the period from 19.6.1998 to 31.10.1999 is obviously without any legal justification.

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7. This order at Annexure-5 is liable to be quashed also on another ground. Even if it is taken for argument sake that the applicant was permanently transferred from Kalupadaghat to Khurda Road on 19.6.1998 in accordance with the order dated 9.3.1998 or the order dated 31.3.1998, he is entitled to retain his quarters after his relief from the old duty post. Damage rent cannot be charged immediately after his joining the new post when before joining the applicant was on sick leave and thereafter he availed joining time.

8. In consideration of all the above, we hold that the order at Annexure-5 is legally not sustainable and the same is quashed. The Original Application is accordingly allowed. No costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
7.7.2000
VICE-CHAIRMAN

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