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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 117 OF 2000

Cuttack, this the 27th day of April, 2000

Rabindra Martha 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

(SOMNATH SOM)
VICE-CHAIRMAN
21.4.2000

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

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Rabindra Martha, aged about 40 years, son of Indramani Martha, At/PO-Dingar, Via-Begunia, Dist.Khurda, at present Qr.No.C/13/3, New Type-II, Mancheswar Railway Colony, Bhubaneswar-751 015.... Applicant

Advocates for applicant -M/s G.A.R.Dora
G.R.Dora
J.K.Lenka
S.P.Mishra

Vrs.

1. Union of India, represented through General Manager, S.E.Railway, Garden Reach, Calcutta-43.
2. Divisional Railway Manager, S.E.Railway, Khurda Road, PO-Jatni, Dist.Khurda.
3. Chief Workshop Manager, Carriage Repair Workshop, S.E.Railway, Mancheswar, Bhubaneswar, Dist.Khurda.

..... Respondents

Advocate for respondents - Mr.D.N.Misra
S.C.(Railway)

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

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In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order dated 9.2.2000 transferring him from Carriage Repair Workshop, Mancheswar to Workshop at Kharagpur in administrative interest. The second prayer is for a direction to the respondents to allow him to continue at Mancheswar.

2. The applicant joined as Skilled Artisan Grade-III in 1985 in Carriage Repair Workshop at Mancheswar and was promoted to Grade-II in 1992 and has been working there as Grade-II since then. According to the applicant, Carriage Repair Workshop, Mancheswar is a separate and independent unit/cadre and seniority list

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different categories of staff is maintained separately for different independent units. Promotions from Grade-II to Grade-I is based on seniority-cum-merit and transfer from one seniority unit to another seniority unit is not permissible, according to the applicant. In order dated 29.12.1998 (Annexure-1) the applicant along with three others was transferred from Carriage Repair Workshop at Mancheswar to Raipur and Kharagpur. The applicant who was working as Carpenter Grade-II was transferred to C.W.M, Kharagpur in existing capacity and grade on administrative interest. In order dated 19.5.1999 (Annexure-2) transfer order of all the four persons including the applicant was cancelled and the applicant was reposted at CRW, Mancheswar, on administrative interest. Again in the impugned order dated 9.2.2000 at Annexure-3 he has been transferred to Kharagpur in administrative interest in the same capacity and grade. In this order it has been mentioned that the earlier order dated 29.12.1998 was kept in abeyance and now the applicant is again transferred to Kharagpur Workshop. The applicant has pointed out that this is an obvious mistake because the earlier order of transfer was not kept in abeyance but was cancelled in the order at Annexure-2. The Union took up the case of the applicant and suggested that the transfer order of the applicant be cancelled but without any result. The two communications of the Union are at Annexures 4 and 5. The applicant has stated that the impugned transfer order has been issued without application of mind. Out of the four persons including the applicant who were earlier transferred out of Mancheswar CRW and whose

transfer was cancelled, only the applicant has been again picked up for transfer to Kharagpur. This is mala fide. He has also stated that transfer outside the cadre from one seniority unit to another seniority unit is not permissible and this will affect chances of promotion adversely. He has also mentioned that his wife is ill and is undergoing treatment and his children are reading in different schools at Bhubaneswar and his transfer in mid-academic session will affect their studies. He has also stated that some other Carpenters Grade-II have given option in writing to go on transfer to Kharagpur. He has mentioned the name of one of them in the OA. But instead of transferring one of them, the applicant has been transferred. In the context of the above facts, the applicant has come up with the prayer referred to earlier.

3. Respondents in their counter have stated that the transfer order dated 9.2.2000 was served on the applicant. But after going through the transfer order he refused to accept the same and thereafter he remained absent from his duties. Accordingly, he was released from Mancheswar Workshop on 10.2.2000 and his release order was sent to his address by registered post which came back. Ultimately, the orders were pasted in his quarters in presence of witnesses. The respondents have admitted that Mancheswar Workshop and Kharagpur Workshop are two different units maintaining separate seniority list of staff working there. But they have stated that both the units are under the control of Chief Workshop Engineer, Garden Reach, Calcutta and staff are transferable between the two Workshops

on administrative interest. In case of such transfer protection of seniority is given to the staff so transferred. It is further stated that Head of Department is vested with powers to transfer staff from one independent unit to another independent unit. They have stated that the original order of transfer dated 29.12.1998 was cancelled as the applicant's services were further required at Mancheswar and when the same was over he was transferred to Kharagpur on administrative interest. As regards willingness of other staff to go to Kharagpur, the respondents have stated that it is not obligatory on the part of the administration to act on the option of the staff with regard to transfer. On the above grounds, the respondents have opposed the prayer of the applicant.

4. The applicant in his rejoinder has reiterated his prayer in the OA. He has stated that the transfer is not from one Department to another or from one Division to another Division. It is from one independent cadre to another independent cadre and therefore is not permissible under the rules and instructions. He has also mentioned names of several other staff who are Grade-II Carpenters like the applicant working at Mancheswar and who are willing to go to Kharagpur. On the above grounds, the applicant has reiterated his prayer in his rejoinder.

5. I have heard Shri G.A.R.Dora, the learned counsel for the petitioner and Shri D.N.Mishra, the learned Standing Counsel(Railways) for the respondents and have also perused the record. The

transfer order has been challenged on different grounds and these grounds are discussed below.

6. The first ground of challenge is that the transfer order is an instance of non-application of mind because even though the earlier transfer order dated 29.12.1998 was cancelled, in the impugned order it has been mentioned that the earlier transfer order was kept in abeyance. The respondents in their counter have admitted that the first order of transfer of the applicant was actually cancelled because the applicant's services were then required at Mancheswar and later on that work being over, he has been transferred on administrative interest to Kharagpur in the impugned order. Even though in the impugned order it has been wrongly mentioned that the earlier transfer order was kept in abeyance, that would not mean that the transfer order has been issued through non-application of mind. This may be an administrative error, as has been admitted by the respondents in their counter. This error by itself would not invalidate the transfer and therefore, this ground is held to be without any merit and is rejected.

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7. The second ground of challenge is that the transfer order has been issued mala fide because even though initially four persons including the applicant were transferred out of Mancheswar, later on by order at Annexure-2 the transfer order of all the four persons including the applicant was cancelled and they were allowed to continue at Mancheswar. Later on the applicant has been picked up and transferred to Kharagpur even though the other three persons who were transferred out of Mancheswar along with the applicant and whose transfer order was cancelled, have been

allowed to continue at Mancheswar. Secondly it has been urged that even though a large number of Carpenters Grade-II like the applicant are willing to go to Kharagpur, the departmental authorities without considering their cases, have piced up the applicant for transfer. On the above ground it is submitted that the transfer order has been issued mala fide. Law is well settled that when mala fide is alleged, the person against whom the allegation of mala fide is made has to be impleaded by name as an opposite party so that the person concerned has a chance to have his say with regard to the allegation of mala fide made against him. As this has not been done by the applicant, the allegation of mala fide is prima facie not entertainable. Moreover, the very fact that out of the four persons including the applicant who were transfrred earlier out of Mancheswar and whose transfer orders were cancelled, were even allkowed to continue at Mancheswar and the applicant has been transferred cannot be a ground for establishing mala fide. The fact of willingness of other persons to go to haragpur has not been taken into account is also not a relevant point for establishing mala fide. The allegation of mala fide is accordingly rejected. *It's of Jm.*

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8. The next ground urged by the learned counsel for the petitioner is that transfer from one seniority unit to another seniority unit is not permissible and therefore the transfer order is liable to be struck down. The respondents in their counter have admitted that the Workshop at Mancheswar and Workshop at

Kharagpur are two different seniority units. But they have stated that transfer from one seniority unit to another seniority unit, from one Division to another Division and from one Department to another Department is permissible and in such a transfer, seniority of the person so transferred is protected. In view of the above averment of the respondents, the point for consideration is whether such transfer from one seniority unit to another seniority unit in the same grade and capacity is permissible or not. In support of his contention the learned counsel for the petitioner has relied on the following decisions:

- (i) Prem Parveen v. Union of India, 1973(2) SLR 659;
- (ii) Upendra Chandra Sarangi v. State of Orissa, 1974 (2) SLR 345; and
- (iii) Jawaharlal Nehru University v. Dr..S.Jawatkar and others, AIR 1989 SC 1577.

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For the purpose of considering the present matter it is not necessary to go into the facts of the above cases. In Prem Parveen's case (supra) the applicant was an UDC in the Directorate of Extension, Ministry of Food & Agriculture, New Delhi and was transferred on his promotion to the post of Superintendent, Grade-II to a Regional Station. Admittedly, Directorate of Extension and Regional Station to which the applicant in that case was transferred were two separate cadres and the question arose whether it is permissible on the part of the Government to transfer a person from one post in a cadre to which he belongs to another post in another cadre. In that case, their Lordships of the Hon'ble High

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Court of Delhi after considering FRs 14 and 15 came to the conclusion that such transfer is not permissible. In that case no principle or instruction was also shown justifying such a transfer and their Lordships in paragraph 7 of their judgment noted that once the Government is shown to have the authority to transfer a Government servant the Courts would be most reluctant and disinclined to interfere with the exercise of administrative discretion by the Government on the obviously plausible plea that the administration is the best Judge and in the know of all relevant circumstances to determine as to the desirability or the propriety of any particular posting and at what place, of a Government servant. In the case of Upendra Chandra Sarangi (supra) the point for consideration was the relevant provision of Orissa Service Code and their Lordships of the Hon'ble High Court of Orissa held that the petitioner, who was a Statistician in the Directorate of Health Services cannot be included in the cadre of Statistician in Medical Colleges. In the case of Dr.S.Jawatkar (supra), Jawaharlal Nehru University set up a Centre for Post-graduate Studies at Imphal and Dr.S.Jawatkar was appointed and confirmed as an Assistant Professor at the Centre. Subsequently the Centre was transferred to Manipur University and Jawaharlal Nehru University decided for transfer of the Centre to Manipur University and also decided that the Divisions of the Centre would become Divisions of Manipur University. The Hon'ble Supreme Court in that case held that the Centre represented an activity of the Jawaharlal Nehru University and therefore the teaching and administrative staff must be understood as employees

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Jawaharlal Nehru University and without the consent of the respondent before them it was held that he could not be transferred to the control of Manipur University. From the above three cases it is clear that unless the Rules specifically provide, a person cannot be transferred from one cadre to another cadre. In the instant case the respondents have stated that instructions permit such transfer. They have admitted that Mancheswar Workshop and Kharagpur Workshop are two different units with different seniority lists, but both the Workshops come under common control of Chief Workshop Engineer, Garden Reach, Calcutta and the staff are transferable within the said Workshops on administrative interest. It is further stated that in such case protection of seniority is given. Head of Departments have been vested with powers to transfer staff from one independent unit to another as per Establishment Serial which has been enclosed at Annexure-R/1. On a perusal of Establishment Serial No.109/81 issued on 11.5.1981 we note that this is an order providing for delegation of powers and against serial no. 30 in the enclosure to this order, it is clearly mentioned that Head of Department has full power to transfer a staff from one Division to another Division. Serial no.31 gives full power to Head of Department to transfer staff from one Department to another Department. The applicant in his rejoinder has stated that his transfer from Mancheswar to Kharagpur is not from one Division to another Division or from one Department to another Department. This is only a transfer from one seniority unit to another seniority unit. The respondents have stated in their counter that both the Workshops at Mancheswar and

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Kharagpur come under the control of Chief Workshop Engineer, Garden Reach. This has not been denied by the applicant in his rejoinder. As the Chief Workshop Engineer is the Head of Department obviously therefore these two Workshops come within the same Department under the control of Chief Workshop Engineer. These two Workshops are also not in Divisions of Indian Railways. Carriage Repair Workshop is not under Khurda Road Division. Both the Workshops at Mancheswar and Kharagpur come under Chief Workshop Engineer, Garden Reach, Calcutta. As Head of Department has the power to transfer staff from one Division to another Division and from one Department to another Department, it cannot be held that staff cannot be transferred from one seniority unit to another seniority unit protecting their seniority. The applicant has not shown to me any rule which specifically prohibits such transfer whereas the respondents have shown the instructions which even permit transfer from one Division to another Division and from one Department to another Department by the Head of Department. It automatically follows therefore that within the same Department transfer from one unit to another unit is permissible. In Prem Parveen's case (supra) the Hon'ble Delhi High Court noted that once the Government establish their right to transfer an employee the Courts should be normally reluctant to interfere with the exercise of administrative discretion by the departmental authorities. In view of this, we hold that the plea of the applicant that he cannot be transferred from Mancheswar Workshop to Kharagpur Workshop is without any merit and the same is rejected. It is also

to be noted that the respondents have stated that in case of such transfer seniority of staff is protected. They have of course not indicated that in the past such transfer has actually taken place. But in any case when there is a system of protection of seniority of such transferred staff, it must be presumed that in the past such transfer has actually taken place.

9. In this case after conclusion of hearing the learned counsel for the petitioner has filed copy of two orders dated 5.1.1999 and 13.2.1999 along with a memo. It has been mentioned in the memo that copies of these two orders have been served on the learned Standing Counsel (Railways) for the respondents. But as the learned Standing Counsel for the respondents has not had a chance to react to these two orders, it would not be proper to take these into account except knowing their contents. From the letter dated 5.1.1999 it appears that this letter has been issued with reference to the original transfer order dated 29.12.1998 in which along with the applicant one S.N.Biswal was transferred to Kharagpur. From the letter dated 5.1.1999 the name and designation of the sender do not appear. It is only seen that in this letter it has been noted that if Shri Biswal and the present applicant are absorbed in Kharagpur, they will be eligible to get the benefit of seniority and there would be severe resentment amongst the existing staff. In view of this, a clarification has been sought whether the applicant and Shri Biswal will be absorbed in Kharagpur Workshop in pursuance of the transfer order dated 29.12.1998. But as this transfer order dated 29.12.1998 has been

ultimately cancelled, it is not necessary to pursue this point further. The other letter dated 13.2.1999 is a letter from Workshop Personnel Officer, Kharagpur in which history sheet and other service records along with LPC of S.N.Biswal and the present applicant have been returned to the Chief Workshop Manager, Mancheswar, on the ground that on their posting to Kharagpur Workshop, clarification has been sought. As the applicant himself has stated that after the impugned transfer order, he is on leave and the respondents have stated that he is on unauthorised absence, obviously the applicant has not reported at Kharagpur and the question of his joining at Kharagpur has not arisen. But from these two letters dated 5.1.1999 and 13.2.1999 it does appear that there is reluctance on the part of Kharagpur Workshop to accept the services of the applicant. In view of this, it is eminently reasonable to ^{except} ~~except~~ the Chief Workshop Manager, Mancheswar Carriage Repair Workshop and more particularly the General Manager, S.E.Railway, Garden Reach, Calcutta (respondent no.1) on whose delegated authority the Chief Workshop Engineer, Garden Reach, Calcutta, has ordered the transfer of the applicant, to sort out the question of joining of the applicant at Kharagpur Workshop. This should be done within a period of 10 (ten) days from the date of receipt of copy of this order.

10. In the light of my above discussions, we hold that the application is without any merit and the same is rejected with the aforesaid observation and direction. No costs.

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(SOMNATH SOM)
VICE-CHAIRMAN
21.4.2000