

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 592 OF 2000
Cuttack this the 10th day of September 2001

Jagannath Mohapatra Applicant.

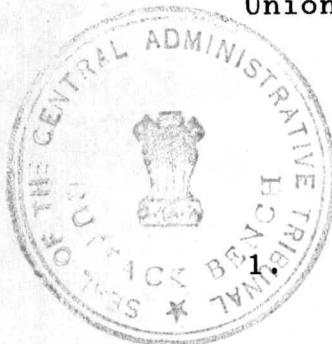
Versus

Union of India & Ors Respondents.

(For Instructions)

1. Whether it be referred to the Reporters or not?

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



Somnath Som
SOMNATH SOM
VICE-CHAIRMAN
10.9.01

10.9.01
(G. NARASIMHAM)
MEMBER (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.592 OF 2000
Cuttack this the 10th day of September 2001

CORAM:

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

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1. Jaganath Mohapatra, aged about
41 years, S/o. Gopinath Mohapatra,
Divisional Accounts Officer ,
(D.A.O.) Grade-I - At present
residing at Rasali Sahi(Aloi Lana)
PO.Dist. Town - Puri. Applicant
By the Advocates Mr.S.Mallick

Versus

1. Union of India represented
through the comptroller and
Auditor General of India, 10
Bahadur Saha Zafar Marg,
New Delhi - 10001.

2. Principal Accountant General
(A & E) Orissa, Bhubaneswar
Dist. Khurda.

3. Dy.Accountant General (Works Acccount)
Office of the Principal Accountant
General (A&E)Orissa, Puri Branch,
At/Po/Dist.Puri. Respondents
By the Advocates Mr.B.Dash

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ORDER

G.NARASIMHAM, MEMBER (JUDICIAL): Applicant,
Jaganath Mohapatra, a Divisional Accounts Officer, grade-I serving under the Respondents was transferred and posted to National Highway Division, Berhampur on 31.7.97. By order dated 16.6.99 of Respondent No.3 i.e. the Deputy Accountant General (Works Accounts), Puri he was transferred from Berhampur to Nawrangpur. Pursuant to that order of transfer he was relieved from Berhampur on 6.8.99. Without joining at Nawrangpur he preferred O.A. 510 of 1999 before this Bench challenging the transfer order. By order dated 24.9.99 this Bench directed ~~to~~ the Department to allow the applicant to continue on leave in case he applies for the same. Ultimately the Original Application was disposed of on 18.2.2000. The impugned order of transfer was quashed and the Department was directed to give a posting to the applicant against the post of D.A.O., grade-I carrying the pay scale of Rs.6500-10,500/-. Thereafter, the applicant who was on medical leave submitted a joining report on 25.2.2000 before the respondent 2 with a fitness certificate and requested for posting order in terms of the direction of this Tribunal and sanction of leave from 7.8.99 to 25.2.2000. But neither the joining report was accepted nor the leave was sanctioned. On the otherhand, the Department preferred O.J.C.No.4013 of 2000 before the High Court of Orissa challenging the order of this Tribunal. The High Court through stayed the order 14

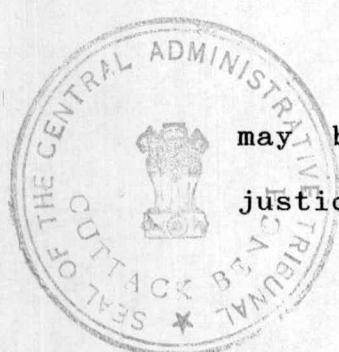
of this Tribunal, ultimately dismissed the O.J.C by order dated 21.3.2001. But before disposal of the O.J.C by the High Court, the applicant filed this Original Application in November 2000 with the following prayers:

(i) direct/order that, leave salary for the period from 7.8.99 to 24.2.2000 and duty pay from 25.2.2000 till date shall be paid to the applicant within a stipulated period with admissible interest thereon;

(ii) quash the impugned orders as at Annexures 3 & 5; and

(iii) pass such other order(s) & direction(s) as may be deemed fit & proper in the bonafide interest of justice.

2. In the counter, the Department intimates that by order No.58 dated 5.12.2000 applicant's leave from 7.8.99 to 24.2.2000 had been sanctioned on medical grounds and instruction for drawal of the leave salary were communicated to the Executive Engineer, Berhampur National Highway division. The applicant has not denied this fact in his rejoinder filed on 6.8.2001. Yet the Department had taken the plea that since by order dated 24.5.2000, the High Court of Orissa stayed operation of the order of this Tribunal no posting order could be issued. and Prior to the filing of O.J.C. the

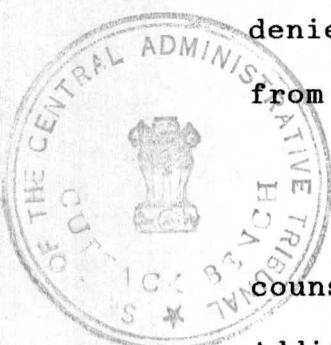


Department preferred Review Application 6 of 2000 before this Tribunal which was ultimately rejected on 6.4.2000. However, after the dismissal of the writ application on 31.3.2001 which order was received by them on 27.3.2001, the applicant was posted at OECF Division No.1, Badajhar, in the scale of 6500-10,500/- by order dated 3.4.2001 (Annexure-R/1). Since the applicant was not on duty from 25.2.2000 onwards, he would not be eligible to draw the duty pay.

3. In the rejoinder the applicant stated that he had since joined at the new place of posting issued in order dated 3.4.2001 of the Department (annexure-R/2). Since the original transfer order to Nawrangpur was quashed and since he joined duty on 25.2.2000 with medical fitness certificate, he cannot be denied his duty pay, as for no fault he was prevented from attending duty.

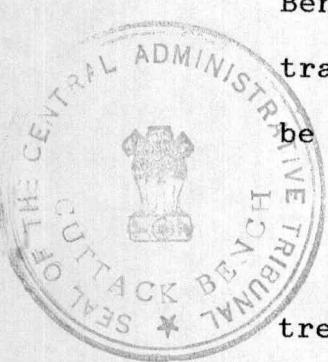
4. We have heard Shri S.Mallick the learned counsel for the applicant and Shri B.Dash the learned Additional Standing Counsel for the Respondents.

5. Facts are not very much in dispute. The fact remains earlier order of transfer to Nawrangpur was quashed. Though the Department challenged the order of this Tribunal, the High Court did not interfere with that order. In otherwards, that earlier order of transfer is



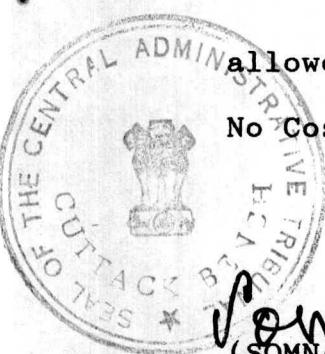
~~not~~ non-est under law. It is not as though the applicant was not willing to perform his duty after this Tribunal quashed the order of transfer to Nawrangpur. Hence the well known doctrine of "no work no pay" cannot be applicable in his case as has been held by the Apex Court in Janaki Raman's case reported in AIR 1991, S.C.2010. The Apex Court held that normal Rule of "no work no pay" is not applicable to such cases where employee although is willing to work is kept away from work by the authorities for not fault of his. Basing on this Principle, in O.A.431 of 99 disposed of by this Bench on 2.2.2001, it was held that once the order of transfer is quashed the period of absence shall have to be treated as duty.

6. In the result, we direct the respondents to treat the period from 25.2.2000 till 3.4.2001, that is the date of issue of new order of posting under Annexure R/2 as duty period of the applicant and pay him the salary of that per period within 120 days from the date of receipt a copy of this order. However, keeping in mind that stay was in operation for some time, prayer for payment of interest is disallowed. Since the period from 4.4.2001 till he joined the new place of posting depends on the date of his joining, we refrain from passing any order for that period. Impugned orders under Annexure -3 dated 30.5.2000 is not entertaining the joining report and Annexure-5 dated 28.9.2000 calling explanation for initiating disciplinary action, are hereby quashed.



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7. The Original Application is accordingly
allowed in terms of the ~~operation~~ ^{directions} and ~~make~~ ^{make} directions above.
No Costs.



Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
10.9.2001

10.9.01.
(G, NARASIMHAM)
MEMBER (J)