

NOTES OF THE REGISTRY

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Order dated 27.11.2001

Heard Shri S.S.Das, learned counsel for the petitioner and Shri D.N.Mishra, learned Standing Counsel for the respondents and perused the records. In this O.A. the petitioner has prayed for direction to respondents to consider his representation afresh and post him as Khalasi at Khurda Road Division on transfer from his present place of posting as Junior Trackman at Barang against the existing vacant post. His second prayer is for direction to respondents to make such transfer with retrospective effect protecting the seniority of the applicant. Respondents have filed their counter opposing the prayer of the applicant. Applicant has filed Addl.affidavit enclosing certain order issued by the respondents after serving copy on the other side. It is submitted by Shri Das that this Addl.Affidavit may be taken as his rejoinder.

For the purpose of considering this petition it is not necessary to go into too many facts of this case. The admitted position is that the applicant, as stated by him and not denied by the respondents, in their counter, on being duly selected ~~he~~ was appointed ~~q~~ as Gangman in October, 1996 and posted to work under Respondent No.3, viz., Senior Asst.Engineer, S.E.Railway, Bhubaneswar. Initially he joined as Junior Gangman which post was redesignated as Junior Trackman and he is currently working under P.W.I., Barang. Applicant has stated that because of his personal difficulties he has submitted representation for being transferred to Khurda Road Division

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in the post of Khalasi. It is stated that the scale of Junior Trackman is Rs.2610-3540/- whereas the scale of Khalasi is Rs.2550-3200/-. Thus the post of Khalasi is a lower scale than the post of Junior Trackman, which the applicant currently holds. The grievance of the applicant is that, even though in ~~an~~ many other cases on representations ^{Transfer} from one cadre to another cadre has been allowed, ^{^ J/m} in his case in spite of representation no order has been passed. Respondents have stated that transfer and change of cadre cannot be claimed as a matter of right. On that ground they have opposed the prayer of the applicant. It is no doubt true that change of cadre ^{or} ~~on~~ transfer from one post to another post cannot be asked as a matter of right. But in the instant case the fact of the matter is that ~~inspite~~ of representation made by the applicant the same has not yet been disposed of. It has also to be noted that the applicant has submitted that in several other cases ^{similar} transfers have been ordered ^{^ J/m} and this has not been denied by the respondents in their counter. In this view of the matter I dispose of this O.A. with direction to respondents, particularly, Res.2, viz. Senior Divisional Engineer, Coordination, S.E.Railway, Khurda Road to consider the representation of the applicant at Annexure-1 if the same is still pending with him and dispose of the same through a speaking order within a period of 60 (sixty) days from the date of receipt of copy of this order. Applicant is also directed to file a fresh representation within a period of 15 (fif

^{^ J/m}

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Free copies of final
order dt. 27/11/2001
issued to counsel for
both sides.

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days on the possibility that the earlier representation may not be available with Res.2 and in that even Res.2 shall dispose of the said representation within a period of 45(forty-five) days from the date of receipt of such representation.

As regards second prayer, as the representation of the applicant for transfer has to be considered and if at all he will be transferred which is yet to be issued, his transfer cannot be given effect to retrospectively. This prayer is, therefore, rejected. It is also made clear that in case representation of the applicant is allowed and he is transferred to Khurda Road Division in the post of Khalasi, he will not claim seniority in the rank of Khalasi and his pay and seniority will be regulated strictly in accordance with rules in case he joins as Khalasi.

O.A. is disposed of as above. No costs.

Sumanth Singh
VICE-CHAIRMAN
27/11/2001