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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.122 OF 2001  
Cuttack this the 23rd day of July, 2001

K.C.Khadanga

...

Applicant(s)

-VERSUS-

Union of India & Others ...

Respondent(s)

(FOR INSTRUCTIONS)

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

*S. NARASIMHAM*  
S. NARASIMHAM,  
VICE-CHAIRMAN  
23.7.01

23.7.01  
(G. NARASIMHAM)  
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.122 OF 2001  
Cuttack this the 23rd day of July, 2001

CORAM:

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

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K.C.Khadanga, aged about 52 years,  
S/o.Late Banchanidhi Khadanga  
presently working as : Hd.GC/KUR  
At - Khurda Road, Dist-Khurda

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By the Advocates

Applicant

M/s.B.S.Tripathy  
A.C.Swain  
J.Sahoo  
P.S.Das  
J.Nayak

-VERSUS-

1. Divisional Railway Manager, South Eastern Railway  
Khurda Road Division, Dist-Khurda
2. Senior Divisional Personal Officer, South Eastern  
Railway, Khurda Road Division, Dist-Khurda
3. Senior Divisional Commercial Manager, South Eastern  
Railway, Khurda Division, Dist-Khurda
4. Rudra Narayan Pani, Hd.GC/NALCO Siding,  
Budhapanka(BDPK), Dist-Angul
5. Union of India represented through General Manager  
South Eastern Railway, Garden Reach, Calcutta

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By the Advocates

Respondents

M/s.M.Mishra  
D.K.Patnaik  
B.B.Mohanty  
(Res. 4)

Mr.R.C.Rath,  
A.S.C.(Res.1)

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O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL) : Applicant, who is serving as Head Goods Clerk under S.E.Railway, Khurda Road, prays for quashing the order dated 5.4.2001 vide Annexure-1, transferring him as Head Goods Clerk to NALCO Siding, Budhapanka and transferring Shri R.N.Pani (Res.4) as Head Goods Clerk from NALCO Siding, Budhapanka to Khurda Road, in his place.

Respondent no.4 and the departmental respondents filed

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separate counters opposing the prayer of the applicant.

2. This Bench stayed the order of transfer vide order dated 9.4.2001 and this stay order is still continuing.

3. We have heard Shri A.C.Swain, the learned counsel for the applicant, Shri M.Mishra, learned counsel for Res.4 and Shri R.C.Rath, learned Addl.Standing Counsel appearing on behalf of the departmental respondents.

4. The order of transfer has been challenged on several grounds, which have been replied by the respondents in their counters. Without entering into the discussion of those grounds, we are of the view that this Original Application can be disposed of by considering one of the grounds, i.e., the ground of malafide urged by the applicant inasmuch as to accommodate Shri R.C.Pani (Res.4) at Khurda Road this order of transfer was passed even though Res.4 has not so far moved out of Khurda Road and obeyed the earlier order transferring him to Budhapanka.

In order to appreciate this point the following facts which are not in controversy can be taken into account. Respondent No.4, who was S.R.D.I.(Goods cadre)/KUR was repatriated to the parent cadre and on his repatriation, by order dated 16.7.1999(Annexure-2) he was posted as Head Goods Clerk at NALCO Siding, Budhapanka against the existing vacancy. Pursuant to that order by order dated 19.7.1999 (Annexure-3) he was released from the office of the Senior Divisional Commercial Manager, Khurda Road to work as Head Goods Clerk, NALCO Siding in that afternoon itself. Res.No.4 then approached this Tribunal in Original Application No.370 of 2000, challenging the order of repatriation. The order of

repatriation was by then cancelled. However, during pendency of that O.A., Original Application Nos.386/99 and 554/99 were filed by some of the aggrieved employees challenging the order of cancellation of repatriation. Those three Original Applications were disposed of by this Bench through a common order dated 8.8.2000 by rejecting the Original Application filed by Res.4, and partly allowing the other two O.A.s. Pursuant to the final order of this Bench, by order dated 7.8.2000 (Annexure-4) the order of repatriation of Respondent No.4 and the consequent order of transfer dated 16.7.1999 (Annexure-2), posting him as Head Goods Clerk, Budhapanka were treated to be in order and the conditions mentioned under that Annexure-2 remained through unchanged. Again/another order dated 7.8.2000 (Annexure-5) Respondent No.4 was released from the Office of the Senior Divisional Commercial Manager, Khurda Road to work as Head Goods Clerk, NALCO Siding, Budhapank. As Respondent No.4 did not obey this order, he was placed under suspension by order dated 3.11.2000 (Annexure-6/1) and by order dated 8.11.2000, he was served with the charges. Thereafter by order dated 29.11.2000 (Annexure-6) he was released to Adra Division from the Office of the Sr.Divisional Commercial Manager, S.E.Railway, Khurda Road (apparently on reinstatement). This transfer order to Adra Division was subsequently cancelled by order dated 20.3.2001 (Annexure-8) by the D.R.M. Khurda Road, in which it was made clear that Shri Pani was retained as Head Goods Clerk at NALCO Sidining, Budhapank. Thereafter the impugned order of transfer has been passed. Yet the fact remains and admitted in the pleadings that Respondent No.4 had not in fact gone to Budhapanka and joined as Head Goods Clerk at NALCO

Siding.

Para-10 of the counter of the departmental respondents is clear that the impugned order of transfer was issued in administrative interest keeping in view the exigency of service. Further the applicant having continued at Khurda Road for more than 13 years should not have ~~any~~ <sup>any</sup> more grievance for going out of Khurda Road. To this the applicant in his rejoinder averred that Respondent No.4 also served at Khurda Road for more than 19 years except for a short spell of nine months at Cuttack when the post of S.R.D.A. was temporarily shifted to Cuttack. This has not been controverted during hearing. Hence duration of stay ~~of~~ either of the applicant or Res.4 at Khurda Road should not be the criterion to judge whether the applicant's transfer from Khurda Road vis-a-vis Res.4 is justified.

But the fact remains the applicant was ordered to be transferred to Budhapanka so that Res.4 can come on transfer to Khurda Road in his place from Budhapanka. Question of Res.4 coming to Khurda Road on transfer from Budhapanka would arise only when he would have joined at Budhapanka in obedience to the earlier orders of transfer. Admittedly he had disobeyed these earlier orders of transfer for which he is facing a disciplinary proceedings. We, therefore, do not see any meaning in transferring Res.4 to Khurda Road in place of the applicant under an assumption that Res.4 had joined and served at Budhapanka and transferring the applicant to Budhapanka in place of Respondent No.4. Question of transferring the applicant to Budhapanka would arise only when earlier order of transfer transferring Res.4 to Budhapanka had been cancelled and since the Res.4 has not yet joined at Budhapanka question of transferring him from Budhapanka again

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would not arise. Consequently the transfer of the applicant  
to Budhapanka in place of Res.4 because of ~~his~~ transfer to Khurda  
Road in place of the applicant would not also arise.

5. For the reasons discussed above, order dated  
5.4.2001 (Annexure-1) transferring the applicant from Khurda  
Road to NALCO Siding, Budhapanka as Head Goods Clerk is quashed.  
In the result, Original Application is allowed, but without  
any order as to costs.

S. N. S.  
(SOMNATH SOM)  
VICE-CHAIRMAN  
83.7.01

23.7.01  
(G. NARASIMHAM)  
MEMBER (JUDICIAL)

B.K.SAHOO//