

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH.

O.A.NO. 449 of 2001

Cuttack, this the 6th day of February, 2003

Makan Hembram

.....Applicant

Vrs.

Union of India and others

..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *no*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *yes*

M.R. Mohanty
06/02/2003
(M.R. MOHANTY)

MEMBER (JUDICIAL)

B.N. Som
(B.N. SOM)

VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

O.A.NO. 449 of 2001

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CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

AND

HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDICIAL)

.....

Makan Hembram, son of Sri Kali Charan Hembram, village Bhudrakula, Khuntia, Mayurbhanja.....Applicant

Advocates for the applicant - M/s B.K.Sahoo, K.C.Sahoo,
R.K.Sahoo and S.Mishra

Vrs.

1. Union of India, represented by the General Manager, South Eastern Railway, Garden Reach, Calcutta 43.
2. Divisional Railway Manager, S.E.Railway, Khurda Road, P.O. Jatni, Khurda.
3. Coaching Depot Officer, S.E.Railway, Station Road, Puri.
.....Respondents

Advocate for the Respondents -Mr.D.N.Mishra
S.C.(Railways)

.....
O R D E R

SHRI B.N.SOM, VICE-CHAIRMAN

In this Original Application, the applicant Shri Makan Hembram, who was working as a Grade III Skilled Artisan (Fitter) in Coaching Depot, Puri, has asked for the following reliefs:

- a) To quash the order of transfer dated 13.3.2001(Annexure 5); and
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- b) To direct the Respondents to declare the result of the trade test in which the applicant appeared for promotion to Grade II Fitter.

2. Shorn of details, the facts of the case are that the applicant was asked by Respondent No.2, vide his circular No.P/R/136, dated 24.3.1999, to exercise option for joining in newly created Sambalpur Division with the assurance that his lien would be maintained in the parent unit. He submitted his option to be transferred to Sambalpur Division. However, by submitting a representation on 2.1.2001 (Annexure 3), the applicant withdrew his option for transfer to Sambalpur Division due to family circumstances. Further, he stated that on 28.2.2001, he appeared in the trade test for promotion to Grade II and on 8.3.2001 he was called for viva voce test, after being successful in the written test. On 13.3.2001 he received ^{from his controlling authority} the order of his transfer to Sambalpur Division in Grade III post without considering his application dated 2.1.2001 ^{sending} withdrawn ^{of} his option to be transferred to Sambalpur Division. Not only his application regarding withdrawal of option was not considered, but also ^{that} the authority did not publish ~~his~~ ^{his} result of trade test for ^{his} promotion to Grade II, although some persons junior to him, who had appeared in the trade test along with him, were promoted to Grade II, after being declared successful in the said trade test.

3. The Respondents, in their counter, have refuted the allegations made by the applicant. It has been pointed out in the counter that the Chief Personnel

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Officer, Garden Reach, had issued necessary posting order in favour of the applicant, along with other optees, on 16.6.2000 (Annexure R/2). However, the formal release of the applicant was delayed on administrative grounds. The Respondents have admitted that the applicant had submitted an application for cancellation of his transfer order on 2.1.2001, but the competent authority did not agree to the same due to exigencies of administration. It has also been admitted by the Respondents that the applicant was called for the trade test for promotion to Fitter Grade II, but the result of the applicant was withheld since he was released on transfer to Sambalpur on 13.3.2001 (Annexure 5).

4. We have heard Shri B.K.Sahoo, the learned counsel for the applicant and Shri D.N.Mishra, the learned Standing Counsel (Railways) appearing for the Respondents and perused the relevant records and the decision cited by the learned counsel for the applicant in the case of Jai Ram v. Union of India, AIR 1954 SC 554, which is not strictly relevant to the point at issue.

5. During oral arguments, the learned counsel for the applicant forcefully argued that the Respondents have done injustice to the applicant on two counts. Firstly, no action was taken on the option exercised by the applicant till 13.3.2001, by which time the applicant was asked to appear in the trade test, both in the written test as well as in the viva voce test, for promotion to the higher grade. When the transfer order was issued on 13.3.2001, the applicant was on leave on medical grounds. The applicant also submitted a

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representation to Respondent No.2 on 26.3.2001, but he was not favoured with any decision. In the meantime, the Respondents declared the result of the trade test on 4.6.2001, but withheld the applicant's result on the plea, as admitted by the Respondents in their counter, that he has been transferred to Sambalpur Division. In this way, the applicant is put to double jeopardy, firstly, that his career prospect has been blocked for no fault of his, and, secondly, that he has been forced to go on transfer although he has already withdrawn his option before he was served with the posting order.

6. The learned Standing Counsel (Railways), appearing for the Respondents, argued that the transfer of the applicant has been done on administrative grounds. His seniority will be protected in his parent unit and as already intimated in the circular of the Chief Personnel Officer, circulated to all concerned on 16.6.1993, "at the time of finalisation of the cadre for the newly formed Sambalpur Division, the staff working in the new Division will be asked to exercise their final option for their retention in Sambalpur Division or return to their parent Division/Unit where they hold lien". He, therefore, argued that the applicant should have joined as per his option, without having any apprehension regarding his seniority as his seniority is not only protected but he could come back to Puri if he would later decide not to be absorbed in Sambalpur Division.

7. We have given our careful thoughts to the facts of the case and the arguments ^{placed} ~~made~~ before us by both the parties and we find that the grievance of the

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applicant that he has suffered double jeopardy is worth serious consideration. Firstly, it was incumbent upon the Respondents to have disposed of his representation dated 26.3.2001 with a speaking order. That having not been done, the applicant has been denied the benefit of natural justice. Secondly, the Respondents, after having put the applicant to the trade test for promotion to Grade II, did not do justice to the applicant in withholding his result. As promotion to the next higher grade is done only by virtue of an employee passing trade test, the Respondents could not have denied the applicant the opportunity of appearing in the trade test in furtherance of his career prospect. It was, therefore, a correct decision on their part to have called him for the trade test in February/March 2001, but it was an act of injustice to withhold his results on the ground that he was being transferred on administrative grounds. It was incumbent upon the administration to seriously consider how to deal with the promotion and posting matter of the applicant to ensure that the interest of the applicant was protected while the administrative purpose was also served. In this respect, we find that it was open to the administration to declare that as the applicant had opted for transfer to Sambalpur Division and it was not feasible either to accept his plea for withdrawal of option for transfer to Sambalpur Division on administrative grounds or to deny him an opportunity to appear in the trade test for promotion to the higher grade, the applicant would be transferred to Sambalpur Division in the higher grade in the event of his being found successful in the trade test. It was submitted

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during oral arguments by the learned Standing Counsel (Railways) that there was no post of Grade II Fitter available in Sambalpur Division and hence the administration could not have declared the result of his test. We, however, do not see this as an insurmountable problem, because in the Railways, a system exists that on administrative grounds a person may be transferred along with the post from one station to another / from one unit to another. In this case, the same principle should have been applied to serve the ends of justice to protect the interest of both of the applicant and of the administration. Accordingly, we direct the Respondents as follows:

- i) The result of the trade test for promotion to Fitter Grade II should be published in respect of the applicant immediately; and
- ii) In case the applicant is found successful in the trade test, he should be transferred along with the post to Sambalpur Division. On the other hand, if he is found unsuccessful in the trade test, Respondent No.2 should consider his representation for withdrawal of option for transfer to Sambalpur Division for reasons adduced in his representation.

8. With the above directions, the Original Application is disposed of. No costs.

(M.R. MOHANTY)
MEMBER (JUDICIAL)
06.02.2003

(B.N. SOM)
VICE-CHAIRMAN