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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 115 OF 2002
cuttack, this the 9th day of July, 2003.

Jasi Ketan Kale. Applicant.

- Versus -

Union of India & Ors. 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.*

For
09.07.2003
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.115 OF 2002
Cuttack, this the 9th day of July, 2003.

C O R A M;

THE HONOURABLE MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL)

....

Jasi Ketan Kalo,
Aged about 39 years,
S/o. Late G. Kalo,
At present working as Deputy Station Superintendent,
South Eastern Railway, At/Po/Ps/Dist. Jharsuguda.

.... Applicant.

By legal practitioner: M/s. M. Kanungo,
M. Verma,
P. K. Rath,
S. Nanda,
S. Kanungo,
Y. S. P. Babu,
Advocates.

;Versus:

1. Union of India represented through
Chief Personnel Officer, South Eastern Railway,
Garden Reach, Kolkata-43 (W.B.).
2. Divisional Operating Manager,
S. E. Railway,
At/Po/Ps: Chakradharpur.
3. Senior Divisional Personnel Officer,
S. E. Railway, At/Po/Ps: Chakradharpur.
4. Station Manager, S. E. Railway,
At/Po/Ps: Dist. Jharsuguda.

.... RESPONDENTS.

By legal practitioner: Mr. D. N. Mishra,
Standing Counsel for Railways.

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O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL) :

The Applicant (Jasi Ketan Kalo, a Railway employee) has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 praying (a) for quashing of the order of transfer (on reversion from the rank/post of Deputy Station Superintendent to the rank/post of Asst. Station Master) under Annexure-2 dated 21.06.2001 and the order of rejection of his appeal under Annexure-4 dated 01-02-2002; with a further prayer (b) for a direction to the Respondents to allow him to continue in the promoted post i.e. Deputy Station Superintendent.

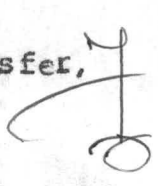
2. The case of the Applicant is that while working as Station Manager at Phutra (of Chakradharpur Railway Division) he submitted a representation for a mutual transfer to Samsalpur Railway Division as against one Shri Basant Kando, the Station Manager of Brundamal (of Samsalpur Division) on 04-10-1999 and that for a long time no communication was made to him on his prayer for transfer, on mutual basis and that, while the matter stood thus, the Applicant was found suitable for the post of Deputy Station Superintendent; for which he was granted promotion as Deputy Station Superintendent (from the rank/post of Asst. Station Manager) and was posted as such (in the promotional post) at Jharsuguda vide order under Annexure-1 dated 26.02.2001. It is the case of the Applicant

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that, while working as Deputy Station Superintendent, he received an order under Annexure-2 dated 21.6.2001 wherein he was asked to face reversion (to the rank/post of ASM) and transfer to report as ASM at Sambalpur Railway Division in order to accommodate Shri B. Kinde (who has come on transfer from Sambalpur Railway Division) as ASM. It is the further case of the Applicant that on 23.7.2001 he preferred an appeal against the order of reversion; which was rejected under Annexure-4 dated 01-02-2002 and in the said premises the Applicant has filed the present Original Application with the aforesaid prayer.

3. Respondents have filed their counter interalia stating therein that as the Applicant did not submit any application/unwillingness to move out on transfer to Sambalpur Division, even after his promotion, and since in the meantime, Shri B. Kinde (ASM of Sambalpur) reported at Chakradharpur Division (on 15.5.2001) the Respondent No.3 had to issue the impugned transfer order (by reverting the Applicant to his former post) vide order dated 21.6.2001, as per extant rule of mutual transfer. It has been disclosed by the Respondents, in their counter, that on receipt of the application for mutual transfer the same was forwarded (from the end of the Respondent No.3) to the Respondent No.1, on 14.12.1999, and approval for such mutual transfer was received (at the end of the Respondent No.3) on 25.4.2000 and, as such, there were nothing wrong in issuing the order of transfer,



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on reversion, under Annexure-2 dated 21-06-2001.

4. I have heard Mr. Y. S. P. Babu, Learned Counsel appearing for the Applicant and Mr. D. N. Mishra, Learned Standing Counsel appearing for the Respondents-Railways and perused the materials placed on record. It has been pointed out by the learned counsel for the Applicant that no communication was ever made to the Applicant on his request for mutual transfer, before granting him promotion and posting him as Deputy Station Superintendent in Jharsuguda Division. It has been disclosed by him that the order/letter dated 25.4.2000 of the Chief Personnel Officer of South Eastern Railway, Garden Reach, Kolkata was never supplied to /served on him before granting him promotion.

5. As no communication was made to the Applicant (accepting/allowing him to go on mutual transfer in the rank/cadre of A.S.M.) before granting him promotion as Deputy Station Superintendent on 26.02.2001; the request for his mutual transfer as A.S.M. had automatically become infructuous. As such, the Respondents were, virtually, estopped to act upon old/request of the Applicant to go on mutual transfer as A.S.M. after a long lapse of time, and that too, after granting him promotion to higher post. In case it is allowed to be given effect to ^{then} that would amount to allowing the applicant to face reversion; which cannot be allowed to be done without following the rigorous of the Rules.

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6. Mr. Mishra, Learned Standing Counsel appearing for the Respondents, while rebutting the assertions of the learned Counsel appearing for the Applicant, had drawn my attention to the following statement made in para-2, at page-2 of the counter, where it has been stated that "after applicant's absorption in the promotion post, the Applicant did not submit any application/unwillingness to move on transfer to Sambalpur division", and, by, stating so, the learned Standing Counsel submitted that had the Applicant recalled his willingness, then the things would have been different. As it appears, the proposal for mutual transfer was approved by the zonal Headquarters in April-May of 2000 (which has, of course, not communicated to the Applicant) and he was granted promotion in Feb.-April, 2001 and, on coming to know (in May-June, 2001) that he is going to be transferred in the lower rank of ASM, he submitted representation in July, 2001; which was an action taken after getting his promotion. Thus, nothing is attributable to the Applicant for what has happened to his prejudice; especially when no materials have been placed on record to show that the acceptance of the proposal for his mutual transfer (said to have been issued in April-May, 2000) was ever made known to him.

7. It is crystal clear from the facts of the case that till the Applicant's promotion to the post of Deputy Station Superintendent, there was no communication made to

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the Applicant on his request for mutual transfer as ASM and it was only after his promotion (without seeking his willingness, for transfer on reversion) the Respondents passed orders under Annexure-2 dated 21.06.2001 transferring (on reversion) and posting him at Sambalpur Division as A.S.M. No material has been placed on record (by the Respondents) to show that the letter dated 25.4.2000 of the CPO of South Eastern Railway at Garden Reach Kolkata had ever been communicated to the Applicant informing him that his request has been acceded to for such mutual transfer (in the status of A.S.M.) to Sambalpur Railway Division. It is also evident that the appeal preferred by the Applicant had been rejected without assigning any reason or the rule position. In case this order of transfer (on reversion) is allowed to be given effect to, then, virtually, that would amount to reversion of the Applicant without following due procedure of law/rule. Since the Applicant was allowed to get promotional post of Deputy Station Superintendent, before being allowed to go on mutual transfer as A.S.M., his prayer for mutual transfer became infructuous and the Respondents were estopped to send him on mutual transfer as A.S.M. without taking his consent.

3. In the above said premises, I have no hesitation to hold that the order of transfer (on reversion) under Annexure-2 dated 21.06.2001 is not justified and, therefore, the same is hereby quashed. The order of rejection of the appeal of the Applicant under Annexure-4 dated 1.2.2002 is

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also hereby quashed, the same being bereft of any reason.

9. In the result, therefore, this Original Application is allowed with a direction to the Respondents to treat the Applicant to be continuing as Deputy Station Supt. in Jharsuguda railway division (without being disturbed in any manner) and he shall get all service benefits in that post. No costs.

(Signature)
09/07/2003
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

KNM/CM.