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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH
CUTTACK

O.A. 1008/2002

Date of order: 27.05.2004

Present : Hon'ble Mr. Justice B. Panigrahi, Vice-Chairman.
Hon'ble Mr. H.P. Das, Administrative Member.

Surath Kumar Subudhi.

-versus-

Union of India and Ors.

For the applicants : None.

For the respondents : Mr. R.C. Rath, counsel.

O R D E R

Per Justice B. Panigrahi, VC

The applicant was engaged as a Gangman under the respondent No.2. It appears that the respondent authorities formulated a policy for transfer in respect of certain employees from one place to another on the request of the concerned incumbent or on ^{account of} the administrative exigencies, as the case may be. On 13.8.99 the applicant made a representation for his placement as a Khalasi from Gangman (Jr. Trackman) on health ground even though the post carries lesser scale of pay. From the fact situation, it further emerges that some other employees viz. Jr. Gangman applied for transfer on their own volition from Gangman to Khalasi and their requests were allowed vide orders dated 13.7.99 and 25.8.99 respectively. Accordingly they were transferred to the post Khalasi ignoring the petitioner's case. Therefore, being aggrieved by such order passed by the respondent authorities, a case was filed by the applicant in this Tribunal being O.A. 8/2000 seeking therein a direction against the respondent authorities to place the applicant as a Khalasi and restore his

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seniority amongst other employees. On 27.11.2001 this Tribunal disposed of the O.A. by issuing following observation/direction:-

"As regards second prayer, as the representation of the applicant for transfer has to be considered and it at all he will be transferred which is 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 rules, in case he joins as Khalasi."

2. In the aforesaid case, a further direction was issued to the respondent No.2 to dispose of the applicant's representation within 45 days from the date of receipt of such representation.

3. After the aforesaid order was passed the respondent No.2 passed an order on 29.01.2002 which is assailed in this case. The applicant's request could not be acceded to on administrative ground as disclosed in the impugned order. This order does not throw any light as to what were the materials on the basis of which such order was issued regretting to accept the prayer for transfer from Gangman to the post of Khalasi on administrative ground. From the record we find that in the past several orders of transfers have been passed by posting Gangman to Khalasi. So if the applicant is transferred, it will not create any precedent. But we find the respondent authorities have taken a different attitude ^{while} ~~in~~ dealing with the applicant's case.

4. Mr. Rath, 1d. counsel appearing for the respondents has, however, invited our attention to the letter dated 1.2.2001 communicated by Chief Track Engineer on behalf of the General Manager. But this was in the form of general guidance to all DRMs. From the order passed by the respondent No.2 read with the letter of GM dt. 1.2.01, it is also abundantly clear that the applicant could be spared

from the post, if his successor joins on the post of Gangman. But it is not known as to whether any attempt has at all been made to trace out a successor to the post of Gangman in which the applicant is presently working. Therefore, it seems that the authorities somehow or other intend to avoid implementation of the direction of this Tribunal and decided not to transfer the applicant from the post of Gangman (Junior Trackman) to Khalasi taking the plea of administrative exigency. In our opinion, for a Group D staff like the applicant such a plea is not warranted, especially when such transfer was effected in the past.

5. In view of the aforesaid circumstances, we hereby direct the respondent No.2 to transfer the applicant from the post of Gangman to Khalasi, specially on the ground of health as stated in the application, within a period of four months from the date of communication of this order. No costs.

K. B. A.
Member (A)

B. B. B.
Vice-Chairman.