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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

Original Application No. 380 of 2007  
Cuttack, this the ~~07<sup>th</sup>~~ day of May, 2008

Kartik Kumar Senapati .... Applicant.  
Versus  
Union of India & Ors. .... Respondents

For instructions

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

  
(C.R. MOHAPATRA)  
MEMBER (ADMN.)

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C O R A M:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (ADMN.)

Kartik Kumar Senapati .... Applicant.

Versus

Union of India & Ors. .... Respondents

(For Full details, see the enclosed cause title)

By legal practitioner: M/s.Prafulla Kumar Mohapatra, S.K.Nath,  
Counsel.

By legal practitioner: Mr. M.K.Das, Counsel.

O R D E R

MR.C.R.MOHAPATRA, MEMBER(A):

Applicant is a Cabin Lever Man under the Station  
Manager, Bolangir Railway Station, East Coast Railway, Bolangir.  
He having faced the order of transfer under Annexure-A/1 dated  
14.06.2007 to Ambadola Station along with many others carried the  
matter in appeal. As the said appeal of Applicant did not yield any  
fruitful result, he has approached this Tribunal in the present Original  
Application filed under section 19 of the Administrative Tribunals  
Act, 1985 seeking to quash the order of transfer on the ground that he


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being not the junior most employee of the Division, besides being an SC employee is not liable to face such transfer.

2. Respondents have filed counter in which it has been stated the transfer of the Applicant along with others was made in public interest as they were rendered surplus at Bolangir due to introduction of Central Panel Interlocking System. The applicant, accordingly was transferred to Ambadola Railway Station under Kalahandi District on the administrative interest in his same capacity and post. While denying the other allegations made by the Applicant in his Original Application it has been admitted by the Respondents in paragraph 13 of their counter that the Applicant is the senior most employee in terms of station seniority and among the CLMs (Cabin Lever Man). But the applicant was transferred due to being surplus at Bolangir as he had completed more than 22 years of service at Bolangir and had the longest stay in the Division.


3. Heard rival submissions of the parties and perused the materials placed on record.



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4. From the submissions and materials placed on record, it is manifest that the present order of transfer of Applicant was not a routine transfer. Rather it was, as a result of reduction of the staff strength due to modernization of system of working in the Railway and introduction of Central Panel Interlocking System at Bolangir the end cabin controlling movement of trains were closed resulting the staff CLM working in cabins becoming surplus. Therefore, now the question is to be decided as to whether under the above circumstances the junior or the senior employee in the cadre of a division should face the transfer. Learned Counsel appearing for the Applicant by placing reliance on the Railway Board's instruction No. E(NG) 11/7 TR/21 of 10.06.1977 has stated that in such circumstances, it is not the applicant but the junior most CLM of the Division ought to have faced such transfer. Besides the above, by placing reliance on various instructions of the Railway Board, marked as Annexure-A/4, the Applicant has stated that he being an SC employee belonging to Bolangir District, ought not to have been disturbed even in routine transfer not to speak of transfer on surplus. On the other hand, it is



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the stand of the Respondents that there is no such guidelines that in case of transfer of surplus staff in a station 'bottom up' principles will be followed. By relying on various decisions of the Hon'ble Apex Court, the Respondents have taken the stand that since the transfer of applicant was necessitated in public interest and not for any *mala fide* or colourable exercise of power, interference on the same is not warranted. However, it is the specific case of Respondents that due to the absence of Applicant he has not been relieved from his place of posting and by placing reliance on the decision of the Apex Court in the case of **S.C. Saxena v Union of India**, 2006 (9) SCC 585, the Respondents have vehemently opposed to interference in the order of transfer and prayed for dismissal of this OA.

5. I have gone through the decisions relied on by the Respondents in the counter filed. It is manifest from the Instructions of the Railway Board enclosed as Annexure-A/4 that transfer of SC and ST employees should be confined to their native districts or adjoining districts or places where the administration can provide quarters. It is not the case of Applicant that there is no quarters



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available in his new place of posting. As the present transfer of applicant is to the adjoining district that too within the radius of 125 KMs on this ground the transfer order cannot be faulted with. However, it is provided in the Railway Board instructions dated 10.06.1977 that **'wherever any curtailment in cadre takes place, as a general rule the junior most employee shall be transferred first.'** This has also sanction of law and is a wholesome principle that in the event of reduction of sanctioned strength of a particular cadre, the junior most employee has to go first. I have also gone through the decisions relied on by the Respondents. No doubt the power of interference in the matter of transfer by the Courts/Tribunal is limited. But in none of the decisions relied on by the Respondents, transfer in such a situation was under challenge. Hence, it is found that those decisions have no application to the present case. Rather although there is no specific allegation of *mala fide* or colourable exercise of powers but these circumstances clearly indicate that the persons manning the department are using a policy of pick and choose. Exercise of power in the above manner has been deprecated by the




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Hon'ble Apex Court in the case of Scheduled Castes and Scheduled Tribes Officers Welfare Council v State of Uttar Pradesh and another, AIR 1997 SC 1451. Further more it is seen that in the representation dated 20.07.2002 (Annexure-A/2 against the order of transfer dated 14.06.2007 (Annexure-1), the Applicant, raised several points by quoting the instructions of the Railway Board for annulling his order of transfer. But the ADRM, Sambalpur without answering/meeting those points, in a bald order rejected the representation of applicant in letter dated 19.09.2007 (Annexure-A/3) by stating as under:

“Your application dt. 20.07.2007 regarding cancellation of transfer from Bolangir to AMB issued vide this office O.O. No.OIptg/62/2007 Dt.14.06.2007 has not agreed by the competent authority.”

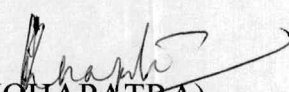
6. Non-consideration of all the points raised by Applicant in his representation amounts to denial of justice and makes an order nullity. In this connection I would like to refer to the decision of the Hon'ble Supreme Court rendered in the case of **Bhartesh C. Jain and Others v Shoaib Ullah and another**, (2008) 1 SCC (L&S) 616. In the said case the Hon'ble High Court of



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Allahabad dismissed the Writ Petition without meeting/answering issues raised. But on appeal the Hon'ble Apex Court remitted the matter to the High Court on the ground of not meeting/answering the issues raised.

7. Hence, viewed the matter in any angle, the order of transfer dated 14.06.2007 under Annexure-A/1 and the letter rejecting the grievance of Applicant dated 19.09.2007 (Annexure-A/3), so far as Applicant is concerned, are not legally sustainable. Accordingly, both the orders impugned, so far as the Applicant is concerned, are hereby quashed. In the result, this OA stands allowed. No costs.

  
(C.R. MOHAPATRA)  
MEMBER (ADMN.)

KNM/PS