

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/681/2019

Date of Reserve: 09.01.2020

Date of Order: 11.02.2020

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

A.K. Dwivedy, aged about 42 years, S/o. Gananath Dwivedy, Group-C, at present working as Chief Commercial Clerk, under SMR (Commercial), East Coast Railway, Bhubaneswar – permanent resident of Fakirmohan Nagar, PO/Dist-Balasore-756 021, Odisha.

...Applicant

By the Advocate(s)-M/s.N.R.Routray
A.K.Dhal
Smt.J.Pradhan
T.K.Choudhury

-VERSUS-

Union of India represented through:

1. The General Manager, East Coast Railway, Rail Sadan, Chandrasekharapur, Bhubaneswar, Dist-Khurda-752 017.
2. Divisional Railway Manager, East Coast Railway, Khurda Road Division, At/PO-Jatni, Dist-Khurda-752050.
3. Senior Divisional Personnel Officer, East Coast Railway, Khurda Road Division, At/PO-Jatni, Dist-Khurda-752 050.
4. Mr.P.K.Samal, Senior Divisional Commercial Manager, East Cost Railway, Khurda Road Division, At/PO-Jatni, Dist-Khurda-752 050.
5. Station Manager (Commercial), East Coast railway, Bhubaneswar Railway Station, PO-GPO, Bhubaneswar-1, Dist-Khurda.

...Respondents

By the Advocate(s)-Mr.T.Rath

ORDERPER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant while working as Chief Commercial Clerk under SMR (Commercial), East Coast Railway, Bhubaneswar, was transferred and posted as CCS under SMR/Talcher vide order dated 16.10.2019 (A/7) on administrative interest. Being dissatisfied, he submitted a representation dated 17.10.2019 (A/10) to the Divisional Railway Manager, East Coast Railway with a request to reconsider his transfer and allow him to continue at the present place of posting. Simultaneously, he approached this Tribunal in the instant O.A. seeking for the following reliefs:

- i) To quash the order of transfer dated 16.10.2019 (so far as this applicant is concerned) under Annexure-A/7.
- ii) And to direct the Respondents to allow the applicant to continue in his present place of posting.
- iii) And to quash the order of rejection dated 24.10.2019 under Annexure-A/12.
- iv) And to quash the sparing letter dated 16.10.2019 and rejection order dated 30.10.2019 under Annexure-A/15, & A/16, respectively.

2. Brief background of the matter is that on being medically invalid for running cadre, the applicant was posted as Chief Commercial Clerk at Dhanmandal in the year 2013. He was thereafter, transferred to Bhubaneswar in February, 2015. According to applicant, while working as such, vide control order dated 11.02.2018, he was transferred from Booking Office to Parcel Office. Subsequently, vide control office order dated 3.11.2018, he was transferred from Parcel Office to Lingaraj Passenger Halt. Further, as per verbal order of Senior DCM/KUR dated 19.07.2017, he was transferred from Lingaraj Passenger Halt to Parcel Office and finally, vide control order No.24 dated 02.09.2019, he was against posted at Booking Office. While the matter stood

thus, having come to know that such frequent movement orders are being issued by the Senior DCM on being bribed by one R.C.Behera, Chief Booking Supervisor, the applicant lodged written complaints to the Chief Vigilance Officer, General Manager, Chief Commercial Manager and Senior DCM and the Divisional Railway Manager with a request to enquire into the matter. This matter was enquired into by the Chief Vigilance Inspector, who is a Clerk working under the Senior DCM/KUR against whom the written complaint had been lodged.

3. Grievance of the applicant is that his transfer is an outcome of bias and mala fide inasmuch as, the same is backed by the complaint lodged by him against the Senior DCM. In addition to this, it has been submitted by the applicant that though persons are continuing in Booking and Parcel Office for more than four years, but they have neither been transferred nor posted to any other place during their tenure, whereas, he has been disturbed by way of transfer/posting frequently, besides the present transfer. Applicant has contended that he had tried to bring to the notice of the higher authorities in the Railway regarding the corruption going on by a particular authority. Instead of taking action against the said authorities, he has been subjected to transfer which is at the behest of the Senior DCM/KUR, because of the allegations made against him.

4. This matter came up for admission on 18.10.2019, when this Tribunal directed as follows:

“In view of the above, the respondents are directed to inform the present status of the representation dated 17.10.2019 filed by the applicant and status of the inquiry with reference to Annexure-A/6 of the OA. Respondents will be at liberty to dispose of the said representation by passing a speaking order and communicate the copy to the applicant before the next date and will also file short reply in the matter. Regarding prayer for interim relief, taking into

consideration the facts and circumstances, till the next date, the applicant will not be relieved in pursuance to the impugned transfer order dated 16.10.2019 (Annexure-A/7), if he is not being relieved as on today”.

5. In the meantime, the Railway Administration, complying with the aforesaid direction, passed a speaking order dated 30.10.2019 (A/16) rejecting the representation of the applicant, which the applicant has brought out on record by way of amendment to the O.A.

6. Respondents in their counter-reply have opposed the prayer of the applicant. According to respondents, the applicant's posting in a sensitive post dealing with public and financial transaction having been more than four years, i.e., from 12.02.2015 to 01.09.2019, in terms of the Railway Board's guidelines, it was considered expedient on the part of the Railway Administration to issue order transferring the applicant from Bhubaneswar to Talcher in the same capacity based on the recommendations of the Placement Committee. The Respondents have pointed out that utilization of services of the applicant at Parcel Office, Booking Office and Lingaraj Temple Road Halt etc. cannot be treated as transfer since thereby he had not been shifted out of Bhubaneswar and his headquarters and bill unit remained unchanged. As regards complaint lodged by the applicant, the respondents have pointed out that this has nothing to do with his transfer, which has been issued purely in the interest of service by following Railway Board's guidelines. However, they have pointed out that the applicant's complaint having been duly investigated, it was found that there was no case of bribery by anybody to shift him.

7. We have heard the learned counsels for both the sides and perused the records. For the sake of clarity, the relevant part of the order dated

30.10.2019 passed by the Divisional Railway Manager, EC Railway, Khurda, in pursuance of the order of this Tribunal dated 18.10.2019 reads as follows:

- "3. In terms of Railway Board's Circular circulated under BRBE No. 182/2018 in which it has stated that:

"In the Commercial Department, Commercial Clerks, Ticket Collectors and Enquiry-Cum-Reservation Clerks are required to be transferred periodically every **four years** in terms of Railway Board's letter under reference. Following merger of these three categories into one vide Railway Board's letter No. E(NG)1-2016/PM1/12(Pt.) dated 22.02.2018 and also in view of the frequent complaints of violation of extant rules, it has to be ensured that Commercial Clerks dealing with parcel activities who have completed four year stay should be immediately shifted out. A confirmation to this effect should be sent to this office latest by 15.12.2018. Any violation of Board's instructions in this regard will be viewed seriously".
4. The applicant was posted under Station Manager (Commercial)/Bhubaneswar as Chief Commercial Clerk and posted as such in Parcel Office w.e.f. 12.02.2015 and worked as such upto 02.09.2019. Thereafter, the applicant has been shifter to Booking Office in the same capacity on 02.09.2019 (AN) without changing the Bhubaneswar station HQrs. The post of Chief Commercial Clerk either in Parcel or Booking officers is sensitive in nature dealing with the public and financial transaction. As such, in terms of the Railway Board's guidelines it is expedient on the part of the respondents to issue transfer order of the applicant from Bhubaneswar to Talcher in the same capacity vide Respondents No. 3's office order dated 16.10.2019 duly following the norms fixed by the Railway Board vide letter No. dated 10.06.2014 (Annexure A/8 to OA).
5. The applicant as stated in para-2 of his representation is not true. The applicant while working at Bhubaneswar due to exigencies of service the applicant has been deputed for few days to work at Lingraj Passenger Halt station without issue of any transfer order. At that material time his Bhubaneswar HQrs and bill unit has not been changed. Thereafter, he has been returned back to Bhubaneswar.

6. The allegations as laid by the applicant in para-3 & 4 of his representation are not true and after conducting inquiry the same has been replied by the office of the Principal Chief Commercial Manager, Bhubaneswar vide letter dated 28.10.2019 to the applicant.
7. The allegations as laid by the applicant in para-5 & 6 of his representation are not true. No transfer orders have been issued by the respondents during his tenure at Bhubaneswar from 12.02.2015 to 02.09.2019, hence in terms of the Railway Board's guidelines, the transfer has been issued on 16.1.2019 under Annexure A/7 to OA as he has already completed his tenure of more than four years at Bhubaneswar.

Under the aforesaid circumstances, I find the applicant's representation dtd. 17.10.2019 deserves no consideration. Thus, I decline to interfere in the order of transfer which is made in the larger public interest and accordingly, the representation dtd. 17.10.2019 is disposed of".

8. From the impugned order of transfer, it reveals that a number of employees have been transferred in pursuance of the recommendations made by the Placement Committee. This apart, it is not in dispute that the applicant since his posting as CCM from February, 2015, has been working in a sensitive post and as per the Railway Board's guidelines, quoted supra, the post held by the applicant being of sensitive in nature, entails a periodical transfer in every four years.

9. Law is well settled that the Tribunal should not interfere with the orders of transfer unless the same arises out of bias or mala fide or has been made in violation of the statutory mandatory rules. In the instant case, there is no such element involved. In view of this, we are not inclined to interfere in the orders of transfer.

10. Before coming to closure of the matter, we would like to note that this Tribunal has taken note of the fact that the applicant after being relieved on

transfer has not joined the transferred place, probably because of interim order of status quo granted by this Tribunal. However, after the joining the transferred place, if the applicant submits leave application, he shall be granted leave of the kind as due and admissible.

11. For the reasons aforesaid, the O.A. being devoid of merit is dismissed, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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