

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

**OA No. 113 of 2020
MA No. 243 of 2020**

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Avanindra Ray, aged about 54 years, S/o Sri Krushna Chandra Jena, residing in Railway Quarter No.G/68, Traffic Colony, Khurda road, PO/PS – Jatni, Dist.- Khurda, presently working as Divisional Electrical Engineer (TRD), Group 'B', Khurda Road in East Coast Railway.

.....Applicant

VERSUS

1. The General Manager, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar, Dist.-Khurda.
2. The Principal Chief Personnel Officer, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar, Dist.- Khurda.
3. The Principal Chief Electrical Engineer, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar, Dist.-Khurda.
4. Shiv Dayal, posted as Divisional Electrical Engineer (TRD), Group 'A'. Khurda Road in East Coast Railway, Office of the Sr. Divisional Electrical Engineer (TRD), TRD building, DRM Office Complex, Khurda Road, Jatni-752050, Dist.-Khurda.

.....Respondents.

For the applicant : Mr.S.K. Mishra, Counsel

For the respondents: Mr.T. Rath, Counsel

Heard & reserved on: 05.10.2020

Order on : 21.10.2020

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant in the present OA has prayed for the following reliefs by way of filing this OA:-

“It is therefore prayed that this Hon'ble Tribunal be graciously be pleased to issue notice to the respondents, call for relevant records and after hearing the counsel for the respondents, the transfer Order No. 31/2020 dated 13.02.2020, Office Order No. 33/2020 dated 18.02.2020 and order dated 27.02.2020 be set aside and consequently, the respondents be commanded to retain the applicant at Khurda Road (KUR).”

2. The applicant's case in brief is that he was transferred on his own request to Khurda Road on 2.1.2019, while continuing on ad-hoc promotion to a senior scale in Electrical department of East Coast Railway. When he came to know that he is going to be transferred to Central Organization for Railway Electrification (in short CORE) with its headquarter at Allahabad responsible for execution of railway electrification works, he submitted a representation to

authorities on 18.12.2019 (Annexure-4 of the OA) requesting to be retained in Khurda Road due to his personal difficulties. He is aggrieved by the impugned order of transfer dated 13.2.2020 (Annexure-6 of OA), transferring him to CORE, Allahabad in spite of his prior representation. He filed OA No. 73/2020 which was disposed of by order dated 18.2.2020 (Annexure-7 of OA) directing the respondent no.1 to dispose of the applicant's representation in this matter and till a decision is taken the applicant be allowed to continue in present place if no reliever has been posted in the post held by the applicant. While the matter stood thus, the authorities promoted the respondent no.4 posting him in applicant's post on 18.2.2020.

3. Being aggrieved by promotion and posting of respondent no.4, the applicant approached the Tribunal by filing the OA No. 88/2020, which was disposed of vide order dated 20.2.2020 (Annexure-9 of the OA) directing the respondent no.1 to dispose of the applicant's representation within 7 days and till that time no disciplinary action be taken against the applicant for non-compliance of the transfer order dated 13.2.2020 to CORE, Allahabad. The respondent no.1 has passed the order dated 27.2.2020 (Annexure-10 of the OA) disposing of the applicant's representation without any modification of the transfer order. The applicant has challenged the aforesaid order dated 27.2.2020 in this OA in third round of litigation.

4. In the OA, the applicant has relied on the Railway Board letters dated 10.6.2014 (Annexure-11) specifying a minimum tenure of two years the officers and dated 12.12.2018 (Annexure-12) on transfer policy. It is also averred that the applicant having worked for more than four years in senior scale on ad-hoc basis cannot be reverted to lower grade. It is also submitted in the OA that he being a Group-B officer, cannot be transferred to another unit of the Railway and hence, CORE being another unit, the applicant cannot be transferred to CORE. Since there is no electrification project continuing in East Coast Railway, the applicant expects that he may be transferred by CORE to outside his parent railway. It is also averred that the respondent no.4 is a Group-A officer and he is junior to the applicant, who is within the sanctioned cadre and not surplus. Hence, it is argued that the respondent no.4 cannot be posted against the post held by the applicant prior to the impugned transfer order dated 13.2.2020 (Annexure-6 of OA).

5. The matter was considered for admission on 5.3.2020 and 26.5.2020 directing the respondents not to take any disciplinary action against the applicant for non-compliance of the transfer order and to file Counter. The applicant filed MA no. 243/2020 with prayer to be permitted to work against any equivalent post and for payment of salary from March, 2020 since he was

relieved after joining of respondent no.4. The MA was considered alongwith the OA for final disposal by this order.

6. In the Counter, the respondents have stated that CORE, Allahabad is not a Railway zone and it does not have its own cadre officers. It is created for electrification work and the officers required for electrification work within a Railway zone are taken from that zone on temporary basis. The deputation of officers and staff to CORE and their repatriation from CORE is done with mutual consent between the General Managers of the zone and CORE as per the Railway Board circular dated 22.12.1987 (Annexure-R/5). It is stated that the respondent no.4 was selected by the DPC for promotion to Group-A post and he was posted with approval of competent authority. It is also stated that the officers including the applicant have been posted to CORE in pursuance of the policy of 100% electrification by 2023. Senior scale posts are Group-A posts against which the applicant was posted on ad-hoc basis and after posting of respondent no.4 on regular promotion, he would have been reverted normally and he cannot claim regular status and it is in accordance with the Railway Board letter dated 11.8.2016 (Annexure-R/12). It is also averred that the applicant will be posted for execution of electrification works under East Coast Railway (in short ECoR) and he will not be posted outside the ECoR under CORE and also, he will continue to be in senior scale post.

7. The respondents have filed Objection to the MA, stating that the applicant has not given his willingness to be reverted against any post under Khurda Road division in his representation and that he had remained on leave by submitting a Private Medical Certificate which is not permissible. It is stated that the applicant was relieved since his reliever joined on 6.3.2020 and instead of joining in his new place of posting, he continued to submit leave applications to the divisional authorities who cannot sanction the leave.

8. The applicant has filed Rejoinder stating that there is no project unit of CORE at Bhubaneswar. CORE functions under Railway Board and not under ECoR. It is stated that respondent no.1 cannot transfer the applicant to CORE though he can transfer him to any electrical project work under ECoR. It is also stated that mutual consent between GM ECoR and GM CORE has not been taken and that his transfer to CORE, Allahabad is beyond the power of the respondent no.1. Railway Board circular dated 9.3.2019 (Annexure-A/25 to Rejoinder) has been cited by the applicant to fortify his argument that his transfer to CORE has adversely affected him and it is not permissible under the said circular.

9. The respondents' counsel filed a Memo dated 28.9.2020 enclosing a copy of the order dated 15.9.2020 of the CORE, by which, the applicant has been posted in Khurda Road to look after electrification works in the jurisdiction of ECoR. At the time of hearing on 29.9.2020, the respondents' counsel submitted that since the applicant has been posted at Khurda Road by CORE, his grievances have been addressed. But the applicant's counsel did not agree and submitted that the applicant's grievance is against his transfer to CORE by respondent no.1 and the present posting order dated 15.9.2020 posting the applicant at Khurda Road has been issued by CORE instead of ECoR authorities and hence, it is not sustainable.

10. Learned counsels for both the sides were heard in the matter. Learned counsel for the applicant besides reiterating the applicant's stand in the pleadings, emphasized that the CORE, Allahabad have no authority to issue posting orders of the applicant since his posting in CORE is challenged by him. To justify his submissions, he argued that it is not permissible to change the cadre of an employee without his consent. Further, it was submitted that the CORE authorities can transfer the applicant to any other place after the electrification works under Khurda Road division are completed.

11. Learned counsel for the applicant has also filed a written note of submission broadly reiterating same pleas taken in applicant's pleadings. It is stated that although a Group-A officer can be transferred anywhere in India, but a Group-B officer cannot be transferred out of his parent Railway, for which the order dated 13.2.2020 posting the applicant to CORE is invalid. It is pointed out that in similar case by some other Railways, different procedure was adopted. Learned counsel has cited the Railway Board's circular dated 10.6.2014 (Annexure-A/11) to fortify his arguments. It is also stated that the applicant has never been informed to give his option for reversion from Sr. Scale post if ad-hoc posts are not available in ECoR. At the same time it is also submitted that as per the Railway Board letter dated 11.8.2016 (Annexure-R/12 of the Counter), authorities should ensure adequate number of vacancies of Sr. Scale posts to accommodate the officers who have completed 3-4 years of service in Sr. Scale on ad-hoc basis and the applicant who was promoted on ad-hoc basis since February, 2016 is entitled for the benefit of the letter dated 11.8.2016 of the Railway Board.

12. On the other hand, learned counsel for the respondents submitted that as per the Railway Board circular dated 22.12.1987 at Annexure-R/5 of the Counter under which an officer of Junior and senior scale can be transferred by CORE only to the Railway from which they were brought on deputation and for posting to another Railway, prior permission of Railway Board is necessary.

He further submitted that the CORE does not have any cadre of its own and managed the electrification work by drafting officers and staff from respective Railways where the electrification works being undertaken and after completion of work, they are sent back to parent Railway. Learned counsel for the respondents further submitted that as per his Memo dated 28.9.2020 filed in OA No. 113/2020 enclosing a copy of the order dated 15.9.2020 passed by CORE authorities by which, the applicant has been posted in the same headquarter i.e. in Khurda Road to look after the electrification works in ECoR jurisdiction and hence, the difficulties of the applicant for transfer from Khurda Road have been addressed by the authorities.

13. We have considered the matter with reference to the pleadings on record and the submissions by learned counsels. The applicant's contention is that the impugned transfer as per the order dated 13.2.2020 (Annexure-6 of OA) is not sustainable since the applicant's service cannot be transferred to CORE, Allahabad which is a separate administrative unit which can post the applicant to any place outside the ECoR where electrification work is continuing and if applicant's services were required for electrification work within the area of ECoR, then he could have been posted by respondent no.1 directly to such projects within ECoR instead of transferring him to CORE.

14. In reply, the respondents have stated that CORE does not have any permanent cadre under it and it has work-charged posts (vide order dated 11.6.2018 at Annexure-R/4 of the Counter), which are filled up by drafting the officers and staff from different Railway Zones. A junior and senior scale officer can be transferred back to their parent Railways and if it is required to transfer them to other Railway, prior approval of Railway Board is to be taken vide Railway Board circular dated 22.12.1987 (Annexure-R/5 of Counter).

15. Railway Board circular dated 22.12.1987 (R/5) relied on by respondents to justify the impugned transfer order dated 13.2.2020, states as under:-

“Vide letters referred to above, transfers of Junior Scale/Group ‘B’ and Senior Scale Officers of Railway Electrification Projects under the control of a Railway had been delegated to the Railway concerned.

General Manager/Railway Electrification who is in charge of the gazetted cadre of RE projects may transfer such officers from a project to another under control of another Railway. It is clarified that a Junior Scale/Group ‘B’ or a Senior Scale Officer drawn to RE projects when transferred back to Railways, GM/RE, is authorized to order such transfer only to the Railway from where the officer had been drafted. If such officers are to be transferred to other than their parent Railways, Board's prior permission is to be obtained.

The drafting into the RE and repatriation to the parent Railway of officers according to this delegation of powers shall be by mutual consent between the

Railway concerned and the General Manager/RE and if there is a difference of opinion, the matter shall be referred to Board for issue of orders.”

16. The applicant in Rejoinder has not specifically denied the contention that the transfer of the applicant was issued as per the Board’s circular dated 22.12.1987 (Annexure-R/5), but stated that the applicant should have been transferred by the respondent no.1 to RE/Bhubaneswar instead of transferring him to CORE, Allahabad and in support of his contention, he has enclosed orders of posting of some other officers who have been posted by the concerned Railways directly to the RE projects under their control. It is also averred by the applicant that being a Group-B officer, he cannot be transferred to any other zone other than ECoR. It is noticed that no rule or the circular of Railway Board has been enclosed by the applicant to prove that as a Group-B officer, he cannot be transferred to any other Railways other than ECoR. The circular dated 22.12.1987 of Railway Board stipulates that a Group-B officer can be repatriated from Electrification project to a Railway other than his parent Railway with prior permission of the Board. Moreover, in this case the applicant has been transferred in the impugned order dated 13.2.2020 (Annexure-6 of the OA), which states in respect of the applicant as under:-

“Shri Avanindra Ray, Gr.B/Elect. presently working in Sr. Scale on ad-hoc basis as DEE/TRD/KUR (Postcode-04CO6P001) is transferred to CORE to look after Railway Electrification works being undertaken in the jurisdiction of East Coast Railway.”

It is clear from the above order that the applicant has been posted under CORE for the purpose of looking after the Railway Electrification projects under jurisdiction of ECoR. Hence, the impugned order does not envisage posting the applicant in any other RE project other than the projects under jurisdiction of the ECoR. Hence, the applicant’s contention that he has been posted out of ECoR or he may be posted in any other Railway apart from his parent Railway is without any basis and it is not as per the impugned transfer order.

17. The applicant has also stated that the consent of GM of CORE has not been taken as would be revealed from the letters between ECoR and CORE at Annexure- R/6, R/7 and R/8 of the Counter. It is noted that the letter at Annexure-R/8 of CAO of CORE dated 14.1.2020 communicated the consent of CORE for posting of the applicant for Railway Electrification works being undertaken in the jurisdiction of the ECoR. There is nothing on record to prove that the approval of the competent authority in the CORE has not been taken before issue of the letter at Annexure-R/8 by the CAO. Hence, the objection raised by the applicant on consent of GM of CORE to his posting under CORE cannot be accepted.

18. The respondents have contended in the Counter that the applicant was working in a Sr. Scale post on ad-hoc basis and after posting of a Group-A officer (respondent no.4) in his place on regular promotion, the applicant would have to be reverted and to avoid the possibility of reversion, the applicant has been deployed to CORE in a post in which he will continue to enjoy the benefits of Sr. Scale, while his parent cadre in ECoR will remain unchanged. Further, the respondents' counsel vide his Memo dated 28.9.2020 has enclosed the order dated 15.9.2020 by which the applicant has been posted at Khurda Road by CORE to look after the RE works in the jurisdiction of ECoR. The applicant, however, challenges validity of such posting order by CORE where as he will not have any objection if the same posting order would have been issued by the authorities of ECoR. As discussed earlier, the applicant has not furnished any rule to substantiate his contention that the impugned transfer order dated 13.2.2020 is illegal.

19. The settled position of law regarding transfer of a government servant is that this Tribunal cannot interfere in a transfer order unless it is established that such order violated the statutory rule or it is shown to be malafide. Hon'ble Apex Court in the case of **Union of India and Ors. vs. S.L. Abbas reported in AIR 1993 SC 2444** has observed that transfer is an incident of service and has held as under:-

“Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it.”

20. Hon'ble Apex Court in the case of **S.C. Saxena vs. U.O.I and Ors reported in 2006 (9) SCC page 583** has held as under: -

“6.In the first place, a Government Servant cannot disobey a transfer order by not reporting at the place of posting and then go to court to ventilate his grievances. It is his duty first to report for work, where he is transferred and make representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed.”

21. In the case of **Rajendra Singh & others vs. State of U.P. & others JT 2009 (10) SC 187**, Hon'ble Apex Court observed that a Government servant holding a transferable post has no vested right to remain posted at one place or other, he is liable to be transferred from one place to other. In the said case, the Court also observed that the transfer orders issued by the competent authority do not violate any of the legal rights of the concerned employee. If a transfer order is passed in violation of a executive instruction or order, the Court ordinarily should not interfere with the

order and the affected party should approach the higher authority in the department.

22. Similarly, in the case of **State of U.P vs. Siya Ram and others – AIR 2004 SC 4121**, Hon'ble Apex Court has held as under: -

“No Government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer as shown to be an outcome of malafide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals normally cannot interfere with such orders as a matter of routine.”

23. Learned counsel for the respondents has submitted the written note of submissions citing a number of judgments in which same legal principles regarding transfer were laid down as discussed above. Applying the law laid down in the above cases to the present OA and taking note of the fact that there is nothing in the pleadings on record to prove that the impugned transfer order dated 13.2.2020 (Annexure-6 of OA) is issued in violation of the statutory rules or it is malafide, we are of the considered view that the applicant is not entitled for any relief sought for in the OA.

24. The applicant has enclosed some of the orders issued by other Railways in which the officers have been posted to the Railway Electrification projects under their control instead of posting them under CORE. In this case, though the respondents have not posted the applicant to the projects under CORE directly, but he has been posted under CORE to look after the Railway Electrification projects in the jurisdiction of East Coast Railway, which is in accordance with the Railway Board circular dated 22.12.1987 (Annexure-R/5) as discussed earlier. The applicant has also sought for protection from reversion citing the Railway Board letter dated 11.8.2016 (Annexure-R/12), implying that he should have been adjusted in a post within ECoR instead of transfer to CORE. But there is nothing in the aforesaid circular to exclude the posts in CORE for adjusting the officers on ad-hoc promotion to senior scale. Hence, such grounds furnished by the applicant will not vitiate the transfer order dated 13.2.2020 (Annexure-6 of the OA).

25. Regarding MA No. 243/2020, the applicant has prayed for sanction of special leave for the period of lock down and for disbursement of his salary from March, 2020 onwards. Vide the interim order dated 5.3.2020, the respondents were directed not to take any disciplinary action against the applicant in respect to the transfer order in question. It is stated in the Objection to the MA filed by the respondents that after joining of the

respondent no.4 on 6.3.2020 in the post held by him prior to his transfer to CORE, the applicant is continuing on leave instead of joining in his new place of posting as per the order dated 13.2.2020 in spite of the letters issued to the applicant to join in the new place of posting where the leave application can be submitted for consideration. It is noticed that the respondents have issued the posting order to the applicant under CORE on 15.9.2020 posting him in Khurda Road as informed by Memo dated 28.9.2020 filed by the respondents' counsel. The reason for delaying the posting order to the applicant in CORE from 13.2.2020 till 15.9.2020 has not been explained by the respondents. Though the applicant was expected to comply with the order dated 13.2.2020 by reporting before CORE authorities, but in absence of a detailed posting order by CORE authorities and during pendency of this OA challenging the order dated 13.2.2020, the applicant cannot be blamed for not joining in compliance of the impugned order dated 13.2.2020.

26. In the circumstances, the MA No. 243/2020 is disposed of with direction to the respondents to consider the leave application if submitted by the applicant to the competent authority after joining in the place of posting as per his posting order issued by CORE authorities posting him at Khurda Road and dispose of the said leave application in accordance with law by passing an order, copy of which is to be communicated to the applicant within six weeks from the date of submission of the said leave application by the applicant.

27. In view of the discussions in the preceding paragraphs, we do not find any infirmity in the respondents' decision to transfer the applicant to CORE vide order dated 13.2.2020 (Annexure-6 of OA) and hence, we are unable to allow the reliefs sought for by the applicant in this OA. However, taking into account the fact that in order dated 5.3.2020 in this OA, the respondents were directed not to take any disciplinary action against the applicant for non-compliance of the transfer order dated 13.2.2020 and considering the discussions in paragraphs 25 and 26 of this order regarding the MA No. 243/2020, we direct the respondents not to take any disciplinary action against the applicant for non-compliance of the said order dated 13.2.2020 if the applicant joins in his place of posting as per the said order and subsequent orders regarding his posting issued by the authorities within 15 days from the date of receipt of a copy of this order.

28. The OA and the MA No. 243/2020 are disposed of in terms of the paragraphs 25 and 27 above. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)
I.Nath

(GOKUL CHANDRA PATI)
MEMBER (A)