

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 134 of 2020

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

Sri B.V. Ramana, aged about 54 years, S/o Sri B. Demudu, presently working as Divisional Electrical Engineer (Chg.), Group-B, Waltair, East Coast Railway, Visakhapatnam-530009, (Under Transfer) residing in Railway Quarter No. 752, Jail Area, Dondaparti, Visakhapatnam-530009.

.....Applicant

VERSUS

1. Union of India represented through its General Manager, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar, Khurda-757017.
2. The Principal Chief Personnel Officer, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar, Khurda-757017.
3. The Principal Chief Electrical Engineer, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar, Khurda-757017.
4. Boddepalli Avinash, JS/IRSEE, presently working as ADEE/TRS/WAT, Waltair Electric Locoshed, Po: NAD, Visakhapatnam-530009

.....Respondents.

For the applicant : Mr.D.K. Mohanty, 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:-

“(i) To quash the order of transfer dt. 13.02.2020 under Annexure-A/6, order dt. 18.02.2020 under Annexure-A/11 & order dt. 04.03.2020 under Annexure-A/14.

(ii) To direct the Respondents to retain the applicant at Visakhapatnam in his post as he had transferred on his own request only joined on 03.12.2018 or allow him at Visakhapatnam in any other equivalent post in view of guidelines formulated by the Railway Board.

(iii) To pass any other order/orders as deemed fit & proper;”

2. The applicant’s case in brief is that he was transferred on his own request on spouse ground to Visakhapatnam on 3.12.2018, while continuing on ad-hoc promotion to a senior scale in Electrical department of the 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 representations to the authorities in January 2020 (Annexure-A/5 series of OA) requesting to be retained in Visakhapatnam due to his personal difficulties. He is aggrieved by the impugned order of transfer dated 13.2.2020 (Annexure-A/6 of OA), transferring him to CORE, Allahabad in spite of his prior representation and without mentioning any reasons mentioned in his representation. He filed OA No. 72/2020 which was disposed of by order dated 18.2.2020 (Annexure-A/10 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 will not be relieved provided no reliever has been posted in his place. 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. 89/2020, which was disposed of vide order dated 20.2.2020 (Annexure-A/13 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 (A/6) to CORE, Allahabad. The respondent no.1 has passed the order dated 04.03.2020 (Annexure-A/14 of OA) disposing of the applicant's representation without any modification of the transfer order. The applicant has challenged the aforesaid order dated 04.03.2020 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-A/9 series) specifying a minimum tenure of two years the officers and dated 2.2.2018 (Annexure-A/8) prescribing that posting of husband and wife should be in one place. 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 Railway zone, the applicant cannot be transferred to CORE. It is also averred that applicant's transfer has not been recommended by the Placement Committee and since the applicant had been transferred to Visakhapatnam on his own request, he cannot be transferred to another place and should be adjusted in Visakhapatnam. The applicant has also relied on the judgments in Commissioner of Police Bombay vs. Gobardhan das Bhanji, AIR (39) 1952 SC 16, B. Varada Rao vs. State of Karnataka, AIR 1986 SC 185, R. Keshav Adkae (dead) vs. G.J. Charvara, AIR 1975 SC 915, Sarvesh Kumar

Awasthi vs. UP Jal Nigam & Others, (2003) 11 SCC 740 and Kendriya Vidyalaya Sangathan vs. Damodar Prasad Pandey & others, (2007) 2 SCC (L&S) 596.

5. The matter was considered for admission on 16.3.2020 and 27.6.2020 directing the respondents not to take any disciplinary action against the applicant for non-compliance of the transfer order and to file Counter. It was mentioned by the applicant's counsel on 16.3.2020 that the applicant was on leave on medical ground.

6. In the Counter, the respondents have stated that CORE, Allahabad is not a separate 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 and it cannot be said that respondent no.4 was junior to the applicant. It is stated in Counter that 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/10 of Counter). It is also averred that the applicant will be posted for execution of electrification works under East Coast Railway (in short ECoR) as clearly mentioned in the order dated 13.2.2020 and he will not be posted outside the ECoR under CORE and also, he will continue to be in senior scale post.

7. The applicant has filed Rejoinder reiterating the grounds in the OA and also denying the contention about surrender of the post held by the applicant prior to his transfer. Applicant has enclosed Railway Board letter dated 9.3.2019 (Annexure-R/2 of Rejoinder) to state that the post held by applicant prior to transfer was not surrendered. Hence, it was contended that the respondents have shown malafide intentions. Further, mere surrendering of a post cannot be a ground to transfer the applicant to another organization. Railway Board letter dated 3.12.1977 has been enclosed with Rejoinder to submit that the applicant cannot be transferred to CORE. Regarding the contention in the Counter that the applicant has been posted to CORE to protect his ad-hoc promotion to senior scale, it is stated that there were 3 officers junior to the applicant. It is further stated that the respondent shave tried to favour the

respondent no.4 who has been adjusted in the post held by the applicant who has been posted to CORE and hence, the impugned transfer shows malafide.

8. The respondents' counsel had filed a Memo dated 28.9.2020 in OA No. 113/2020 with a similar controversy, which was being heard on 5.10.2020 alongwith this OA, enclosing a copy of the order dated 15.9.2020 of the CORE, by which, the applicant has been posted in Waltair to look after electrification works in the jurisdiction of the ECoR. At the time of hearing, the respondents' counsel submitted that since the applicant has been posted at Waltair by CORE, his grievances have been addressed. But the applicant's counsel 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 Waltair has been issued by CORE instead of ECoR authorities and hence, it is not sustainable.

9. 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 and the said transfer order is malafide. To justify his submissions, 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 and the applicant, being a Group-B officer cannot be posted out of ECoR.

10. 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 since the applicant had been posted to Waltair about one year back on his own request as his wife is working in the same station, he could not have been transferred again to CORE, Allahabad, which is a separate organization under the Railway Board. It is stated that as per the Railway Board letter dated 22.12.1987 (Annexure-R/5 of the Counter) the GM of ECoR is authorized to post the applicant to the RE projects under jurisdiction of ECoR, but he cannot transfer him to CORE. Hence, the impugned order dated 13.2.2020 is not as per the Railway Board letter dated 22.12.1987. Learned counsel for the applicant has also mentioned about order dated 15.9.2020 issued by CORE posting him when the applicant had not joined at CORE. It is stated that when the matter is sub judice, posting the applicant by CORE is misleading.

11. 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 Waltair to look after the electrification works in ECoR jurisdiction and hence, the difficulties of the applicant for transfer from Waltair have been addressed by the authorities.

12. 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-A/6 of OA) is not sustainable since the applicant's service cannot be transferred to CORE, Allahabad which is a separate organization 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 as per the Railway Board letter dated 22.12.1987 instead of transferring him to CORE.

13. 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).

14. 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.”

15. 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 as per the said circular dated 22.12.1987. It is also averred by the applicant that being a Group-B officer, he cannot be transferred to any other zone other than ECoR as per the Railway Board letter dated 3.12.1977 (annexed to Rejoinder). The letter dated 3.12.1977 states that for the officers of Class II being localized, inter-Railway transfers are not normally made and then it stipulates the procedure for own request transfer to another Railway. The said letter of Railway Board does not forbid inter-Railway transfer of Group-B officers though it is not normally made. It is noticed that no other 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-A/6 of OA), which states in respect of the applicant as under:-

“Shri B.V. Ramana, Gr.B/Elect. presently working in Sr. Scale on ad-hoc basis as DEE/Chg./WAT (Postcode-04CO6P006) 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 RE projects under jurisdiction of ECoR. Hence, the impugned order does not envisage posting the applicant in any other Railway Electrification project other than the projects in the jurisdiction of the ECoR. Hence, the applicant's contention that by posting the applicant in CORE, he has been posted under another organization which is out of the jurisdiction of ECoR, is without any basis.

16. 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.

17. The respondents have contended in the Counter that the applicant was working in a Sr. Scale post on ad-hoc basis and after reorganization of cadre, the said post was surrendered, a claim which is disputed by the applicant. Assuming that the said post was not surrendered, still after posting of a Group-A officer (respondent no.4) against his post on regular promotion, there was possibility of reversion from ad-hoc post in Sr. Scale. If the official respondents mentioned it in the order or Counter, it cannot be considered to be malafide. 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 as submitted by the respondents' counsel. Further, the applicant's counsel in his written submissions has referred to the order dated 15.9.2020 of CORE by which the applicant has been posted at Waltair to look after the RE works in the jurisdiction of ECoR. The applicant, however, challenges validity of such posting order by CORE as it was issued before his joining in CORE and as the OA is sub judice. It is noted that the applicant 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. Further, the grounds urged to show that the impugned transfer order is malafide, are not adequate to treat the order as malafide exercise of power by the respondent-authorities.

18. 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. In the case of **B. Varadha Rao** (supra) which is referred to in the OA, the question considered by Hon'ble Apex Court was whether an appeal will lie against a transfer order treating it as a service condition. Answering it in negative, it was observed by their Lordships as under:-

"It is an accepted principle that in public service transfer is an incident of service. It is also an implied condition of service and appointing authority has a wide discretion in the matter. The Government is the best judge to decide how to distribute and utilise the services of its employees. However, this power must be exercised honestly, bona fide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations or for achieving an alien purpose or an oblique motive it would amount to mala fide and colourable exercise of power. Frequent transfers, without sufficient reasons to justify such ; transfers, cannot, but be held as mala fide. A transfer

is mala fide when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose, than is to accommodate another person for undisclosed reasons. It is the basic principle of rule of law and good administration, that even administrative actions should be just and fair.

The observation that transfer is also an implied condition of service is just an observation in passing. It certainly cannot be relied upon in support of the contention that an order of transfer ipso facto varies to the disadvantage of a Government service, any of his conditions of service making the impugned order appealable under Rule 19(1)(a) of the Rules.

6. One cannot but deprecate that frequent, unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to a Government servant and drive him to desperation. It disrupts the education of his children and leads to numerous other complications and problems and results in hardship and demoralisation. It therefore follows that the policy of transfer should be reasonable and fair and should apply to everybody equally.....”.

Applying the above cited judgment to the present OA, it cannot be said that the impugned transfer of the applicant to CORE is malafide and colourable exercise of power since from the respondents' pleadings, it is clear that such transfer is to meet the shortfall of officers for Railway Electrification works in the jurisdiction of ECoR and it is permissible as per the circular of the Railway Board. Further, after considering the difficulties of the applicant, the CORE authorities have posted him in the same headquarters i.e. in Waltair. Hence, this judgment cited in OA is not helpful for the applicant.

19. In the case of **Gobardandas Bhanji** (supra) relied in the OA, the issue was refusal of a licence by the appellant for construction of a cinema hall and the facts are clearly distinguishable. No judgment cited by the applicant laid down the principle that a transfer order of a Government servant is required to disclose the reasons for such transfer, which is treated as an incidence of service unless it is proved that the applicant's service is non-transferable or his transfer to another place violates a statutory rule.

20. In the case of **Kendriya Vidyalaya Sangathan vs. Damodar Prasad Pandey & others** cited in the OA, the dispute related to the claim of the respondent no. 1 in that case, who is a teacher of Kendriya Vidyalaya Sangathan, to be posted at the same place as his wife (respondent no. 5 in that case) who is also a teacher. Such a claim was not accepted by the Tribunal. In the writ petition before Hon'ble High Court of M.P. a direction was given to post the respondent no.1 in a place in M.P. The appeal was filed by Kendriya Vidyalaya Sangathan before Hon'ble Apex Court in which direction of Hon'ble High Court was vacated with following observations:-

“4. Transfer which is an incidence of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or vitiated by malafide or infraction of any prescribed norms of principles governing the transfer (see Ambani Kanta Ray vs. State of Orissa, (Suppl) 4 SCC 169). Unless the order of transfer is vitiated by malafide or is made in violation of operative guidelines,

the Court cannot interfere with it. (see **Union of India vs. S.L. Abbas** 1993 AIR(SC) 2444. Who should be transferred and posted where is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by malafide or is made in violation of operative any guidelines or rules the courts should not ordinarily interfere with it. In **Union of India & Ors. Janardan Debanath & Anr.** 2004 (4) SCC 245 it was observed as follows:

"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 another 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 is shown to be an outcome of mala fide 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, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in **National Hydroelectric Power Corpn. Ltd. vs. Shri Bhagwan** (2001) 8 SCC 574".

In the above case, a direction of Hon'ble High Court to the authorities to consider respondent no.1 for a posting within the State of M.P. was vacated by Hon'ble Apex Court. The above judgment cited in the OA is therefore unhelpful for the applicant. Rather, it justifies the case of the Railway authorities in the present OA.

21. We have considered other grounds mentioned by the applicant in his pleadings and in the factual circumstances of the case as discussed earlier. These grounds do not justify any interference in the impugned order dated 13.2.2020 (Annexure-A/6 of OA) in the light of the law relating to transfer as laid down by Hon'ble Apex Court in a number of cases including the cases cited in the OA as discussed above. 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 it is to be decided by appropriate authorities. Tribunal cannot interfere in disputes relating to transfer unless it is in violation of rules of it is malafide.

22. 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 on the issue of transfer 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."

23. 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 public undertaking has legal right for being posted at any particular place. Transfer from one place to other is

generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary 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.”

24. Learned counsel for the respondents has submitted the written note of submissions citing a number of judgments of Hon’ble Apex Court 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 of the applicant 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.

25. 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-A/6 of OA) and hence, we are unable to allow the reliefs sought for by the applicant in this OA. However, taking into consideration the fact that in order dated 16.3.2020 of the Tribunal 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, we direct the respondents not to take any disciplinary action against the applicant for non-compliance of the transfer 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.

26. The OA is disposed of in terms of the paragraph 25 above. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (A)

(GOKUL CHANDRA PATI)
MEMBER (J)

I.Nath