

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

CP No. 49 of 2020**OA No. 145 of 2020**

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

CP No. 49 of 2020

Mangal Charan Marandi, aged about 51 years, S/o Late Thunka Marandi, At-Tikarapada, BO-Banakathi, PS-Khunta, District-Mayurbhanj-757019 at present working as Chief Parcel Supervisor (Group-C),East Coast Railway, Khurda Road Division Jatni, District-Khurda-752050.

.....Applicant

VERSUS

1. Ranjan Mohanty, Divisional Railway Manager (P), East Coast Railway, Khurda Road Division, Jatni, District-Khurda-752050.
2. Amitesh Ananda, Sr. Divisional Commercial Manager, East Coast Railway, Khurda Road Division, Jatni, District-Khurda-752050.

.....Respondents.

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VERSUS

1. Union of India, represented through General Manager, East Coast Railway, Rail Vihar, Chandrasekharapur, Bhubaneswar, District-Khurda-751017.
2. Divisional Railway Manager, East Coast Railway, Khurda Road Division, Jatni, District-Khurda-752050.
3. The Divisional Railway Manager (P), East Coast Railway, Khurda Road Division, Jatni, District-Khurda-752050.
4. The Sr. Divisional Commercial Manager, East Coast Railway, Khurda Road Division, Jatni, District-Khurda-752050.

.....Respondents.

For the applicant : Mr.P.K.Chand, counsel

For the respondents: Mr.M.B.K.Rao, counsel

Heard & reserved on : 14.10.2020

Order on : 02.11.2020

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant of this Original Application (in short OA) was working as Chief Parcel Supervisor, Khurda Road Division office under East Coast Railway for about one year when he was served with an order dated 5.2.2020 (Annexure-A/1 of the OA) by which he was transferred as CGS in Talcher. The applicant has submitted a representation dated 8.2.2020 (Annexure-A/5) addressed to the respondent no.3 requesting for his retention in Khurda Road on the ground that his wife is working as a Khalasi in Khurda Road and since he belongs to S.T. community frequent transfers are demoralizing for him. He is further aggrieved by the fact that transfer two other employees were cancelled or modified vide order at Annexure-A/6 without considering his case. Hence, this OA is filed by him, praying for the following reliefs :

“It is humbly prayed that the Hon’ble Tribunal may be pleased to allow this original application by quashing the order dt. 05.02.2020 as at Annexure A/1 to the extent in transferring the applicant from Khurda to Talcher.

And further be pleased to pass any other order/orders as deem fit and proper in the facts and circumstances of the case.

And for such act of kindness, the applicant shall as in duty bound, ever pray.”

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2. In this OA, the applicant alleges that the impugned transfer order is mala fide since the employees who have completed 4 years are not transferred while transferring the applicant from Khurda Road after completion of one year only and the applicant is being subjected to frequent transfers. It is further averred in the OA that the impugned transfer order is not as per the guidelines at Annexure-A/3 and A/4 series.

3. Counter filed by the respondents opposed the OA by stating that the applicant was spared/relieved on 16.3.2020 in pursuance of the transfer order. But the applicant refused to receive his relieving order dated 16.3.2020, for which he was deemed to be relieved from that date. The respondents have cited a number of judgments to oppose the prayer made in the OA. It is stated the ground of the posting of his wife at same station cannot be accepted since he has not mentioned whether his children are less than 10 years and transfer of his wife to Talcher can be considered if such a request is made. It is further contended that Talcher where the applicant has been transferred is nearer to his native place (Khunta) than Khurda Road. It is also stated in the Counter that the applicant being an efficient and experienced staff was posted at Talcher which is an important loading point for the railway. His transfer is ‘on account of administrative exigency.’ It is further averred that the applicant’s representation dated 8.2.2020 has been disposed of vide order dated 20.2.2020 (Annexure-R/3 of Counter).

4. Rejoinder filed by the applicant stating that the Railway Board circulars at Annexure-A/3 and A/4 series governing transfers are mandatory in nature and are to be followed by the authorities. But in this case, these mandatory provisions have been violated. It is averred that the applicant and his wife have been posted at different places for long years for which they have not been blessed with any child. Regarding administrative exigency in posting the applicant, it is stated in the Rejoinder that there are many other staff who are working as Chief Parcel Supervisor at Khurda like Sri B.S. Rao, Sri A. Baral, Sri N.S. Reddy and Sri G.D. Swain who are there at Khurda Road for more than 5 years and they could have been transferred. Some of these staff have completed their tenure in Khurda Road long back, but they have not been transferred. It is further stated that there is one post of Chief Goods Supervisor and one post of Chief Booking Supervisor vacant at Khurda Road and applicant can be accommodated in any one post. It is further stated that the applicant has never refused to accept the sparing order dated 16.3.2020. He proceeded on sick leave w.e.f. 17.3.2020 and joined on 26.5.2020 (Annexure-A/7) with a copy of the interim order of the Tribunal and between 16.3.2020 and 26.5.2020 the applicant was not informed anything about the order dated 16.3.2020. By way of filing an Additional Affidavit, the applicant has enclosed copy of the Railway Board circular RBE No. 23/2010 dated 2.2.2010 for posting of husband and wife at the same place and some other circulars.

5. Heard learned counsel for the applicant, who submitted that the impugned transfer order of the applicant violated the Railway Board circulars which are considered to be mandatory rules. In this connection, he cited the judgment in the case of **M.P. Patil vs. D.R. Khanna** and another reported in AIR 1965 Bombay 267 in support of his contention that the General Manager is empowered to make rules in respect of Group C and D employees under the rule 157 of the Indian Railway Establishment Code. It was submitted that the impugned order in respect of the applicant is not sustainable as it violated the rules of the Railway Board. He further submitted that the impugned order was also mala fide for the reasons mentioned in the pleadings of the applicant who has been transferred after completion of one year two months only in Khurda Road where many others are continuing even though they have completed their term long back and the circulars of Railway Board have been violated by the respondents while issuing the impugned order. Learned counsel for the applicant also filed written notes of argument.

6. Learned counsel for the respondents was heard. Besides reiterating the grounds in the Counter, he submitted that there is no post at Khurda Road as the post in which the applicant was posted has been filled up after joining of

his reliever. It is stated that the transfer order was a chain transfer issued in administrative exigency. He also referred to the judgment in the case of **Bank of India vs. Jagjit Singh Mehta**, reported in AIR 1991 SC 519 in which the plea of posting of husband and wife in one place was not accepted. He also submitted that the allegations of harassment of the applicant have no basis.

7. We have considered the pleadings and the submissions by both the parties. The contention of the applicant that he has been transferred before completion of his tenure at Khurda Road and after completion of about one year two months there has not been disputed in the Counter. The applicant's counsel contends that the impugned order violated the Railway Board circulars at Annexure A/3 series and A/4 series of the OA, which are mandatory rules.

8. We have perused the circulars at Annexure-A/3 series regarding posting of both spouses at the same station. As per the Railway Board circular dated 5.11.1997, where both the spouses are railway employees belonging to same seniority unit, they may be posted to same station in such a way that one of them does not work as subordinate to other. If both are railway employees belonging to different seniority units, then efforts be made to post them at same station if posts at appropriate level exist. These circulars have been modified vide circular dated 2.2.2010 (Annexure-A/10 of the Additional Affidavit of the applicant), but the guidelines where both the spouses are railway employees in different seniority units are same as the circular dated 5.11.1997. No provision in these circulars have been shown by the applicant to show that both the spouses are mandatorily required to be posted at the same station. In this case, the respondents have contended that if a request is made for posting of the applicant's wife at Talcher, it will be considered.

9. Perusal of the circulars at Annexure-A/4 series, it is seen that vide Estt. Srl No. 22/86 dated 31.1.1986, it was stipulated as under:-

“ In Board's letters dated 19.11.70 and 14.1.75 referred to above, it was desired that the transfer of SC/ST employees should be confined to their native districts or adjoining districts or places where the administration can provide quarters and that these instructions should be followed to the maximum extent possible, subject of course to the exigencies of service. It was also desired that employees belonging to SC/ST should be transferred very rarely and for very strong reasons only.....”

Clearly, above provisions regarding transfer/posting of SC/ST railway employees are subject to exigencies of service. The respondents in their Counter have averred that the applicant's services are required in Talcher because of his experience and expertise. Hence, there is no violation of these circulars in posting of the applicant as per the impugned order. Such contention has been denied in Rejoinder by stating that there are more

experienced staff available for posting at Talcher. But the assessment of the concerned authorities cannot be ignored by such contentions in Rejoinder which are not substantiated by relevant documents/proof in support of such contentions.

10. Further, the applicant has alleged that he was frequently transferred by the respondents. But in the OA, no details of his past postings and transfers have been furnished. In absence of such details, it cannot be said that since the applicant has been transferred from Khurda Road after completion of one year and two months only, he was frequently transferred or being harassed for with frequent transfer. The applicant has not furnished anything about his past postings and in absence of those details, the contention of harassment due to frequent transfers of the applicant is not substantiated. Hence, based on the materials on record, it cannot be said that the transfer of the applicant by the impugned order is malafide.

11. Learned counsel had submitted that the applicant's transfer before completing his term as per the Railway Board circulars dated 31.1.2014 and 17.1.2013 (Annexure-A/9 series to the Additional Affidavit of the applicant). Perusal of the above circulars reveals that the officers completing four years in sensitive posts should be transferred. But there is no provision to debar transfer of railway employees before completion of four years in exigencies of service. Hence, the ground of transfer before completion of term has no force.

12. 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 **S.C. Saxena vs. U.O.I and Ors reported in 2006 (9) SCC page 583**, Hon'ble apex Court 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.”

13. 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.”

14. Regarding the issue of posting of both the spouses in one station, it is held by Hon'ble Apex Court in the case of **Jagjit Singh Mehta** (supra) as under:-

“No doubt the guidelines require the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible. The only thing required is that the departmental authorities should consider this aspect along with the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees. The High Court was in error in overlooking all the relevant aspects as well as the absence of any legal fight in the respondent to claim the relief which the High Court has granted as a matter of course. The High Court's order must, therefore, be set aside.”

15. As discussed earlier, the applicant has not been able to prove that the impugned order violated any statutory rules or it is issued to harass him or it is malafide. Keeping in view the settled law in this regard, we are unable to allow the reliefs as prayed for in the OA. However, the applicant will have liberty to submit a representation to the respondent no.3 for his and/or wife's posting in accordance with the Railway Board circulars within one month from the date of receipt of a copy of this order and if such a representation is received by the respondent no.3 the same will be considered and disposed of in accordance with the provisions of the applicable rules and guidelines of Railway Board, communicating the decision to the applicant within three months from the date of receipt of such representation from the applicant. Further, taking into consideration the facts and circumstances of the case, the respondents are directed not to take any coercive action against the applicant for non-compliance of the transfer order in question if the applicant joins at his place of posting within 15 days from the date of receipt of a copy of this order.

C.P. No. 49/2020

16. The CP was filed by the applicant alleging violation of the interim order dated 11.5.2020 of the Tribunal passed in OA No. 145/2020. By the said interim order, the respondents were directed not to relieve the applicant if he has not been relieved as on date. But the respondents have stated in Counter that the applicant has been relieved on 16.3.2020 and the sparing order dated 16.3.2020 was not received by the applicant. The applicant has denied such contention and stated that though he proceeded on sick leave on 17.3.2020, he was not informed about order dated 16.3.2020. Further, vide letter dated 4.8.2020, copy of which has been filed by respondents' counsel in Memo dated 4.8.2020, applicant's reliever has joined on 16.3.2020. The applicant has admitted in para 12 of Rejoinder that he went on sick leave from 17.3.2020. Hence, when the interim order on 11.5.2020 was passed, the applicant was on sick leave and his reliever had already joined on 16.3.2020. Hence, there is

nothing on record to show that the applicant was not relieved on 11.5.2020. Hence, no contempt as alleged is committed.

17. In the circumstances, the C.P. No. 49/2020 is dropped. The OA is also disposed of in terms of directions in paragraph 15 of this order. No cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

(CSK)