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10

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

Original Application No.157 of 1988

Date of decision : August 22, 1988.

Sri Anil Kumar Das, son of late Gaganbehari Das,
Booking Clerk, Coaching, Sakhigopal Railway Station,
At /P.O- Sakhigopal, Dist- Puri.

... Applicant.

Versus

1. Union of India, represented through its General Manager, South Eastern Railway, Garden Reach, Calcutta-43, West Bengal.
2. Divisional Railway Manager, South Eastern Railway, Khurda Road, At/P.O-Khurda Road, Dist-Puri.
3. Divisional Personnel Officer, South Eastern Railway, Khurda Road, At/P.O-Khurda Road, Dist- Puri.
4. Divisional Commercial Superintendent, South Eastern Railway, Khurda Road. , Dist- Puri.

.... Respondents.

Mr. D.S.Misra, Advocate For Applicant.

Mr. B.Pal, Sr. Standing Counsel
(Railways) For Respondents.

C O R A M :

THE HON'BLE MR. B.R. PATEL, VICE CHAIRMAN
A N D

THE HON'BLE MR. K.P.ACHARYA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be permitted to see the judgment ? Yes.
2. To be referred to the Reporters or not ? No
3. Whether Their Lordships wishto see the fair copy of the judgment ? Yes.

JUDGMENT

K. P. ACHARYA, MEMBER (J), In this application under section 19 of the Administrative Tribunals Act, 1985, the order ^{of} transferring the petitioner from Sakhigopal to Berhampur, vide Annexure-4 is under challenge.

2. Shortly stated, the case of the petitioner is that he is working as a clerk in the South Eastern Railway and has been posted at Sakhigopal in the Railway Office. The petitioner was initially appointed as a Junior Commercial Booking Clerk and was posted at Talcher. In course of time he was transferred to Sakhigopal where he worked for some time and thereafter he has been transferred to Berhampur. Prayer of the petitioner is to strike down the order of transfer and direct the authorities to retain him at Sakhigopal.

3. In their counter, the respondents maintained that the impugned order of transfer has been passed in usual course and there being no malafide in the matter, the application should be dismissed.

4. We have heard Mr. D.S. Misra, learned counsel for the applicant and Mr. B. Pal, learned Senior Standing Counsel for the Railway Administration at some length. It was contended by Mr. Misra that option was asked from the petitioner as to whether he would opt to remain in the Booking side or on the coaching side and in response thereto, though the petitioner opted in the year 1983 to remain on the Booking side, ^{yes} ~~but~~ on 3.2.1988 vide Annexure-2, the petitioner had withdrawn this option and chose to remain on the coaching ~~yes~~ side. In such circumstances, transfer of the petitioner

to Berhampur to work on the booking side is illegal, unjust and improper. Before we deal with this contention advanced by the learned counsel for the petitioner it would be worth-while to state that law is well settled that an order of transfer could be struck down only when it is malafide in nature or has been passed as a ~~major~~^{measure} of punishment. The petitioner has not put forward a case of the aforesaid nature, namely, either malafide or as a ~~measure~~ of punishment. So far as the aforesaid contentions are concerned, it may be stated that on 3.2.1988 vide Annexure-2 the petitioner submitted to the Divisional Commercial Superintendent that though he had opted on 20.10.1983 for ~~an~~ appointment as a Junior clerk in the Goods Section and such option not having been acted upon till date, such option should be deemed to have been withdrawn. It was contended by the learned Sr. Standing Counsel for the Railway Administration that once the option has been given it cannot be withdrawn. We think there is considerable force in this contention of the learned Sr. Standing Counsel. That apart the petitioner not having come forward with any case of malafide, we are bound to presume that the transfer order has been passed in usual course and for administrative ~~exigency~~. The last contention of Mr. Misra was that under the rules transfer on own request can be made with the mutual consent of the person transferred from one station and the person who seeks to come to the same station. Mr. Misra invited our attention to Annexure-5 wherein against serial number 5 it is mentioned that Sri G. Mohapatra is transferred and posted at his own request vice Sri A.K. Das transferred. In

13

regard to this fact an attempt was made to make a mountain out of mole. On a deeper scrutiny of the matter it would be found that Annexure-4 containing the transfer of the present petitioner was passed on 1.3.1988 and the post in question at Sakhigopal being liable to fall vacant, on 12.5.1988 vide Annexure-5, the competent authority transferred Sri G.Mohapatra on his own request, vice Sri A.K. Das transferred. We cannot subscribe to theview that there has been any infringement of the rules.

5. Lastly it was submitted that the mother of the petitioner is suffering from Cancer and his transfer to Berhampur would seriously affect the condition of his mother. This is at a belated stage made for the first time before this Bench on the date of hearing and it does not find place in the averments made in the application. we also cannot agree with the learned counsel for the petitioner that order of transfer amounts to malafide nature because it was passed to accommodate Sri G.Mohapatra because of the reasons stated above.

6. Thus, we find no merit in the application which stands dismissed leaving the parties to bear their own costs. The stay order passed by this Bench on 20th May 1988 stands automatically vacated .

L. J. Patel
22-8-88
Member (Judicial)

B.R. PATEL, VICE CHAIRMAN, 9 agree.

B. R. Patel
22-8-88
Vice Chairman.

Central Administrative Tribunal,
Cuttack Bench.
August 22, 1988/Roy, Sr. P.A.