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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 57 OF 1999
Cuttack this the 21st day of May, 1999

Hrushikesh Patnaik

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

Somnath Som
(SOMNATHSOM)
VICE-CHAIRMAN
21.5.99

G. Narasimham
(G.NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.57 OF 1999
Cuttack this the 2nd day of May, 1999

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

...

Shri Hrushikesh Patnaik,
aged about 54 years,
S/o.Bauri Bandhu Patnaik
Office Superintendent Gr.I,
Sr.Section Engineer(C & W)
Office, S.E.Railway,
Town/Dist: Puri

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Applicant

By the Advocates : M/s.Saraswata Patnik
P.K.Das, L.Misra,
D.Patnaik and
A.K.Nayak

-Versus-

1. Union of India replestned through its
Divisional Railway Manager,
S.E.Railway, Khurda Road,
PO: Jatni, Dist: Khurda
2. Mr.R.N.Maharana
Divisional Mechanical Engineer,
S.E.Railway,
Khurda Road, PO:Jatni,
Dist: Khurda
3. Sr.Divisional Mechanical Engineer
S.E.Railway,
Khurda Road, PO: Jatni
Dist: Khurda
4. Sr.Section Engineer(C & W)
S.E.Railway,
Town/Dist: Puri-752002

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Respondents

By the Advocates : Mr.D.N.Mishra,
Standing Counsel

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ORDER

MR.G.NARASIMHAM, MEMBER(J): In this application for quashing order of transfer passed on 1.1.1999 under Annexure-2 and for other consequential reliefs, the case of the applicant is that he has been serving at Puri since 1.3.1993 under Khurda Road Division of S.E.Railway as Office Superintendent Gr.I in the scale of Rs.6500 - Rs.10,500/-. Two posts of Chief Office Superintendent in the scale of Rs.7450 - Rs.11,500/- were created in the cadre of Mechanical Branch (Ministerial) for which the applicant along with five others were called to appear for the selection test to be held on 7.1.1999 at Khurda Road in Sr.D.M.E.'s Office (Annexure-1). For this test, the applicant made full fledged preparation in order to secure 80% marks. However, by order dated 1.1.1999 (Annexure-2) of the Sr.Divisional Personnel Officer, he was ordered to be transferred in the existing Grade and capacity to Khurda Road under C.F., Khurda Road. It has been indicated in that order that this posting order will have immediate effect. It is the further averment of the applicant that in that order he was directed to vacate the Railway quarters immediately and this order he had received just ⁶⁻⁷ ~~two~~ days prior to the proposed selection test. On account of this unexpected transfer in the middle of the academic session and that too while he was preparing himself for the selection, the applicant became very much depressed and could not perform his normal duties and remained under treatment of Railway Doctor at Puri with effect from 2.1.1999. The Doctor gave him unfit certificate vide Annexure-3. Still he hoped he would be able to appear the selection test on 7.1.1999, but he was shocked to learn about order under

Annexure-4 of the Divisional Mechanical Engineer, S.E.Railway, Khurda Road that the applicant has to be supered immediately and the railway quarters has to to be vacated immediately. He represented under Annexure-5 dated 4.1.1999 for reconsideration of the transfer order, but without any success. The railway Doctor at Puri, according to applicant, discharged him on 16.1.1999 under the pressure of Divisional Mechanical Engineer. Hence he was forced to undergo further treatment under a non-railway Doctor from 16.1.1999 onwards.

This application was filed on 15.2.1999 for quashing the order of transfer on the ground that it is not only arbitrary, but also prejudicial to the applicant, because a deliberate attempt has been made to harrass him and deprive him of the promotion. This in brief, is the averment in this application.

Since during hearing the learned counsel for the applicant did not press the relief No.2, i.e., regarding convening of supplementary selection test, facts averred in the application in this regard ~~have~~ not been dealt.

Interim relief for stay of the transfer order and for direction to respondents not to relieve the applicant had been disallowed by this Tribunal in order dated 16.2.1999. He preferred Misc.Application No.227/99 for issue of direction to respondents to allow him to charge, handover/ take the release-cum-identification memo and drawal of salary from January, 1999 onwards by seeking permission to join at Puri. This was disallowed through our elaborate order date 13.4.1999.

Thereafter the applicant filed Misc.Application

No.270/99 to recall our order dated 13.4.1999 and for fresh direction to applicant to join at Puri for handing over the charge, for giving three months notice for voluntary retirement and for entitlement to take terminal leave. He also preferred Misc.Application No.279/99 for drawal of his salary.

These two Misc.Applications along with this Original Application have been heard together and orders ~~were~~ reserved.

Despite several adjournments respondents have not filed any counter. This does not necessarily mean that the railway department conceded the case of the applicant. In fact Shri D.N.Mishra, learned Standing Counsel for the Railways vehemently opposed the prayer of the applicant on the basis of the averment made in the application. We have also heard Mrs.Saraswata Pattnaik, learned counsel for the applicant.

2. The order of transfer is challenged as arbitrary mainly on the following grounds:

- a) The applicant has been allowed to appear in the selection test on 7.1.1999 in view of his seniority.
- b) The Department being fully aware of preparation of the applicant for the test, issued the impugned order of transfer on 1.1.1999 only to harrass him.
- c) Immediately after the order of transfer, the Sr.Divisional Mechanical Engineer under Annexure-4 directed for his immediate relief from Puri; and
- d) Simultaneously in these orders there has been direction to applicant to immediately vacate the railway quarters under his occupation at Puri.

Having considered the contentions of learned counsel for both sides and taking note of the aforesaid circumstances, we are not inclined to accept the case of

the applicant that the order of transfer was arbitrary to his prejudice. Admittedly the applicant has been serving at Puri since 1.3.1993. No rule or instruction has been brought to our notice that an employee of the cadre of the applicant, under normal circumstances should not be disturbed on transfer within six years. His place of transfer is Khurda Road, where the selection test was proposed to be held on 7.1.1999. If indeed the applicant made elaborate preparations for the examination with an optimistic outlook, there was absolutely no difficulty for him to obey the transfer order and join at Khurda Road and then appear the selection test. It is not as though he has been transferred to a distant place out of reach to Khurda Road, the place of selection test. We do not see any irregularity and/or illegality in the order of transfer and in the order of Sr. Divisional Mechanical Engineer, directing for immediate relief of the applicant from Puri, because the Divisional Railway Manager, in the order of transfer made it clear that the transfer would take effect immediately.

3. Another point highlighted in the pleadings is that the applicant was directed to immediately vacate the railway quarter under his occupation at Puri. This averment in the pleading, if not ^{de}misleading averment to the Bench, at least a misstatement of fact. In the order of transfer as well as order of the Divisional Mechanical Engineer, the relevant sentences with reference to quarter are as follows :

"He should vacate the railway quarter, if any, under his occupation at Puri".

In other words it would imply that ^{neither} the transferring authority nor the Sr. Divisional Mechanical

was ~~not~~ sure whether the applicant was in occupation of any railway quarters. Hence a routine direction to that effect was passed. As it was a routine order, there was no direction for immediate vacation as pleaded and highlighted in the pleadings by the applicant. In fact taking note of such incorrect pleading in the interim order, we have directed that the applicant should not be disturbed from the railway quarter at Puri under his occupation till seven days of filing of counter. As already stated, counter has not been filed by the respondents which in a way indicated that the respondents-department displayed a sympathetic attitude towards the applicant in allowing him to occupy the quarter for some more time.

We, therefore, do not see any arbitrariness on the part of the railway administration in issuing the impugned order of transfer.

4. Law is well settled by a catena of decisions of the Apex Court that transfer is an incidence of service and the competent authority passing the order of transfer is the best judge to know which employee is to be posted when and where and Tribunals/Courts cannot assume the rule of higher administrative authorities in giving suitable directions to the Departments to modify or cancel the orders of transfer unless it is mala fide or in violation of any statutory rules or law. It is true that a colour of malice has been indicated in the pleading to the effect that the railway Doctor at Puri under the pressure of Sr. Divisional Mechanical Engineer(Res. 3) discharged the applicant on 15.1.1999,

although the applicant was still sick. We do not see a bare allegation of this nature will establish a case of malice since malice has to be strictly proved and not on the basis of bald allegations.

5. In the result, we do not see any merit in this application.

Prayer in the Misc.Application 270/99 for recalling our order dated 13.4.1999 and to direct the applicant to join at Puri needs no further consideration since we held that the order of transfer cannot be interfered with. As regards proposal for opting voluntary retirement and seeking regularisation of leave etc. dealt in both the M.A.s, i.e. M.A. Nos.270/99 and 279/99, we are of the view that we cannot assume the role of higher administrative authority ^{to} deal with such matters. It is for the department to deal with these matters. We, therefore, do not see any merit in these two Misc.Applications.

6. In the result Original Application along with M.A.s 270/99 and 279/99 are dismissed, but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
21.5.99

B.K.SAHOO

21.5.99
(G.NARASIMHAM)
MEMBER(JUDICIAL)