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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 192 OF 2003
Cuttack this the 26th day of Sept. /2003

Pradip Kumar Dash ... Applicant(s)

VERSUS

Union of India & Others ... Respondent(s)

FOR INSTRUCTIONS

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

26/09/03
(M.R. MOHANTY)
MEMBER (JUDICIAL)

Subrata
B.N. SORI
VICE-CHAIRMAN

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CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
&
THE HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDICIAL)

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Pradip Kumar Dash, 40 years,
Son of Late Umanath Dash, Plot No. 2,
Station Square, Unit III, Bhubaneswar -
at present serving as Accounts Assistant
in the Office of the Dy.F.A. & C.A.O. Carriage
Workshop, Mancheswar, Bhubaneswar

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Applicant

By the Advocates

M/s. A.K. Mishra, J.
Sengupta, D.K. Panda,
P.R.J. Dash, G. Sinha

VERSUS

1. Union of India represented through its General Manager, East Coast Rly, Bhubaneswar
2. General Manager, SE Rly, Garden Reach, Calcutta
3. F.A. & C.A.O., East Coast Rly, Bhubaneswar
4. Dy. F.A. & C.A.O., Work Shop, Kharagpur, South Eastern Railway, W.B.
5. Sr. Accounts Officer, Carriage Repair Workshop, Mancheswar - now designated as Sr.A.F.A. Workshop East Coast Rly, Mancheswar, Bhubaneswar

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Respondents

By the Advocates

Mr. B. Pal
Mr. R.C. Rath

ORDER

MR. B.N. SOM, VICE-CHAIRMAN: This Original Application, under Section 19 of the Administrative Tribunals Act, 1985, has been filed by Shri Pradeep Kr. Das (applicant) challenging the order of transfer dated 27.03.2003 (Annexure-2) issued by the Office of Deputy F.A. & C.A.O. (W.T/S) Mancheswar, transferring him from Mancheswar Workshop to Kharagpur Workshop. He has assailed the

said transfer order on the ground that it was issued in an arbitrary manner.

2. The case of the applicant is that he has been working in the Accounts Section of S.E.Railway with effect from 22.5.1987 at Mancheswar. The applicant has further submitted that while working as Accounts Assistant, he has been awarded certificate of merit for his meritorious service by the Chief Workshop Manager, Mancheswar on 11.4.2000. This posting order has come without any notice because of nor did he ever ask for a change. In fact/trifurcation of erstwhile S.E.Railway, he had applied for his retention in the East Coast Railways, which was to be given effect from 01.04.2003 and just a few days before this administrative switchover, he has faced this transfer. Once he joins the new Unit, i.e., Kharagpur Workshop which is under S.E.Railway, he will lose his option to be inducted in the newly created East Coast Railway, Bhubaneswar. Thus while effecting his transfer, the Respondents-Railways had acted against the instructions contained in Railway' Boards letter dated 19.7.2002 and the letter of the C.P.O., Garden Reach, Calcutta dated 8.8.2002..... wherein options were invited from the employees serving in S.E.Railway to comeover to newly created East Coast Railway, Bhubaneswar or South East Central Railway, Bilashpur. He has, therefore, felt aggrieved that he is being posted out in a punitive manner and if he is posted to the new Unit, he would also lose his seniority in the Accounts cadre. Over and above this, the applicant has submitted that this sudden transfer would cause umpteen problems for his family including disruption

in the educational programme of his children. For the above reasons, he has approached this Tribunal with a prayer to quash the impugned order of transfer dated 22.3.2003 (Annexure-1) and the relieving order dated 27.3.2003 (Annexure-2). He has further prayed that the ^{not} Tribunal should direct that the applicant is/entitled to be disturbed at present from the place of posting. Pending final disposal of this Original Application, he had also prayed for staying the operation of Annexures-1 and 2.

3. We had heard the prayer for interim relief sought by the applicant at the stage of admission of this Original Application and we ordered that during pendency of this O.A. no coercive action should be taken against the applicant in the matter of allotment of zone.

4. The Respondents-Railways have opposed the relief prayed for by the applicant. They have stated that the applicant's transfer to Kharagpur Workshop was done on administrative ground. They have further submitted that this transfer order having been passed before the creation of new zone, i.e., East Coast Railway, the objection raised by the applicant in this regard was not valid. Respondents have further stated that the applicant being a Central Government employee, the authorities reserve ample power to transfer him at any place under the Zonal Railways, viz., S.E.Railway in the face of the matter as stood before 01.04.2003. They have reiterated that on 22.02.2003, Res. No.4 was the authority to transfer the applicant to any Workshop under its administrative

central and that no grievance can be made about it. They have also submitted that since the applicant was transferred on administrative ground, it is of no consequence that the S.E.Railway was trifurcated with effect from 1.4.2003 as the order, transferring the applicant was issued before the trifurcation. Respondents-Railways have also denied that the applicant had ever exercised his option in terms of the Railway Board's letter, referred to by him in his application. They have also stated that Respondent No. 4, being his cadre controlling authority, the transfer was valid and legal in all respects.

4. The applicant, by filing a rejoinder has refuted the averments as made by the Respondents-Railways in their counter. Referring to Railway Establishment Rules and Labour Laws - 2002 (Page-189) the applicant has tried to establish that he could not have been transferred on administrative ground as such a method of transfer has not been formulated by the Railway Board in the relevant rules, and further that the Respondents having not mentioned the specific administrative ground on which he has been transferred, their action is liable to be called in question and set aside. He further pointed out that if someone had to be shifted out of Mancheswar Workshop due to curtailment of Establishment, the junior-most official should have been subjected to transfer first and that he being one of the senior officials in the Accounts Department in that Workshop, he could not have been transferred. With regard to allegation of the Respondents that he had never submitted any option for transfer to

East Coast Railway headquarters, the applicant pointed out that out of 19 Accounts Assistants working at Mancheswar only two individuals had given written option for transfer to East Coast Railway headquarters, but no one out of 17 non-optees had been subjected to transfer except him and according to him, that was an act of victimisation. The applicant has further submitted that the Accounts Assts. are not liable to be transferred, because this cadre is divisionalized, i.e., Accts. Assts of one Division cannot be transferred to another by the administration as seniority is maintained divisionwise. ~~and~~ Their cadre transfer is possible ^{only} at the request of an employee, who has to suffer loss of seniority in consequence thereof. He has also submitted that if the transfer order is not cancelled, the applicant will have to serve life-long in a foreign Railway zone, i.e., S.E.Railway. He has also alleged that the transfer has been made with a malicious intent and on account of personal antipathy of Respondent No.1 towards him.

5. We have heard Shri A.K.Mishra, the learned counsel for the applicant and Shri B. Pal, learned assisted by Shri R.C.Rath, S.C. Senior Counsel appearing on behalf of the Respondents-Railways and also perused the materials placed before us.

6. The Respondents-Railways filed a detail reply to rejoinder repudiating the allegations of mala fide and victimization brought against them by the applicant. They have underlined that the applicant has been transferred in administrative interest and not due to options and/or creation of new Railway Zone nor is it a case of inter-railway transfer. They have submitted that the applicant's

transfer being within the Accounts cadre of Workshop, in the same zone, i.e., S.E.Railway, there is no question of lesser seniority of the applicant.

7. We have considered the rival submissions. The sole point to be decided in this matter is whether the impugned order under Annexure-1 transferring/posting the applicant to Kharagpur Workshop is valid or not. The applicant has claimed that he being an employee borne in the Clerical/Accounts cadre is not liable to be transferred from one station to another, except either on promotion or on own request. He has also advanced two more reasons while assailing the order of transfer - firstly, that transfer on the eve of implementation of the trifurcation of erstwhile S.E.Railway would cause permanent/effectuation set back to his interest as he intends to remain in the East Coast Railway headquarters and secondly, that he has only been singled out on transfer out of Mancheswar out of 17 Accounts Assts., which action of the Respondents, according to him, is mala fide and ~~subjected~~ smacks of victimization. The Respondents-Railways while denying these allegations have stated that transfer of the applicant was done in administrative interest.

8. It is an accepted principle that in public service appointing authority is having a wide discretion in the matter of posting and transfer of the officials under his control. It is now a well accepted principle of administration and time and again dictated by the Apex Court, e.g., in the case of S.L.Abas reported in AIR 1993 SC 2444, that the Government is the best judge

to decide how to distribute and utilize the services of its employees. Normally, therefore, the Court will not intervene in such matters. However, it is also widely accepted that this power of the appointing authority must be exercised honestly, bona fide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous consideration or for achieving oblique purpose/motive, it would amount to mala fide and colourable exercise of power. A transfer can be held as mala fide only when it is found that the transfer has not been made for the professed purpose, but for the purpose to accommodate another person for undisclosed reasons. This was the decision taken by the Chandigarh Bench of this Tribunal in B.C.Chatturvedi vs. Union of India & Ors. (in C.A.319/96 decided on 2.7.1997).

9. In the instant case, the applicant more than saying that this order is arbitrary, mala fide or an act of victimization has not placed before us any material to shew that the transfer order was issued to serve any personal purpose or ⁱⁿ violation of statutory rules. It is an accepted position of law that the Government have got inherent power to transfer an official from one place to another in supersession of the notified transfer policy on administrative ground and transfer made on administrative grounds cannot be assailed as arbitrary exercise of power. It is also well settled that the allegation of mala fide, if urged, the person against whom mala fide is alleged, has to be arraigned by name as party/respondent, which

in the instant case, the applicant has not chosen to do so. This view, we had held earlier while disposing of Original Application No.332/95 in the case of A. Samyasi Rao vs. Union of India & Ors. (disposed of on 4.12.1997). In view of the above, we do not see any substance in the allegation brought forth by the applicant that his transfer was made either out of malicious intent or in violation of statutory rules. We also find that the applicant is aggrieved because his transfer to Kharagpur Workshop would entail loss of seniority. Respondents in their reply to rejoinder have clarified that applicant's seniority would remain intact as the Clerical/Accounts cadre of the Workshop has not yet been trifurcated. However, there is another practical angle involved in this case. Although the Respondents-Railways have averred that the combined clerical cadre of all the Workshops located at East Coast Railway, South East Central Railway and South East Railway offices have not yet been trifurcated till date, it has not been averred that these would never be trifurcated. In otherwords, it would appear that no final policy decision has yet been taken by the Respondents-Railways as to how to deal with the combined clerical cadre of the Workshop Acts. on fragmentation of the erstwhile Railway Zones. Under the circumstances, the clerical cadres of the Workshops are going through a period of transition and any transfer/posting occurring after 1.4.2003 would undoubtedly cause apprehension and expressed opposition. To that extent the fear as/like by the applicant cannot be brushed aside. On the other hand, the Respondents

have repeatedly submitted that the applicant's posting out is on administrative ground. During hearing the learned Standing Counsel for the Respondents adduced before us the confidential records of the cadre controlling authority stating the administrative reason for which he decided to post the applicant out. We have already held that the Government/administrative authorities have inherent power to exercise and that they are having the power too to transfer an official from one place to another by overreaching the declared transfer policy. When such reasons are available on record, as in this case, we have no hesitation in upholding the decision of Respondent No.4 to issue the order of transfer vide Annexure-1. As the Respondents have ~~stated~~ ^{clearly} submitted in the reply to rejoinder that "the clerical cadre of Workshops Accounts Office has not yet been trifurcated for administrative reasons", the impugned order is allowed to hold good with the clear understanding that if in future a policy decision is taken to ~~divide~~ ^{divide} the combined clerical cadre/Accounts cadre of Mancheswar and Kharagpur Workshops, the Respondents-Railways will transfer the applicant back to Mancheswar Workshop, without loss of seniority. It is also made clear that during the period the applicant will remain at Kharagpur ^{he will not be} as a part of combined clerical cadre/without suffering any loss of seniority and he will be considered for promotion, if any, to the next higher grade, according to his personal seniority position and on merit.

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10. In the aforesated terms, we dispose of this
Original Application leaving the parties to bear their
own costs.

*See
rel 09/03*
(M.R. MOHANTY)
MEMBER (JUDICIAL)

*See
B.N. SENGUPTA*
VICE-CHAIRMAN

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