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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.413/03
Cuttack, this the 28th day of , 2004

Ras Bihari Birtia Applicant

Vrs.

Union of India & Others Respondent

FOR INSTRUCTIONS

(1) Whether it be referred to the Respondents or not? *Ans*
(2) Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *Ans*


(B.N. SOM)
VICE-CHAIRMAN

CENTRAL ADMINISTRATATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.413/03

Cuttack, this the 28th day of May 2004

CORAM:

HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN

Sri Ras Bihari Birtia, aged about 40 years, S/o. Late Dalaganjan Birtia, at present working as Deputy Station Superintendent, Sambalpur City, Sambalpur Division, East Coast Railway, P.O./Dist-Sambalpur.

..... Applicant.

By the Advocate(s) Mr. S.B. Jena
-Vrs-

1. Divisional Personnel Officer, Sambalpur Division, East Coast Railway, At/Po-Sambalpur, Dist-Sambalpur.
2. Senior Divisional Operating Manager, Sambalpur Division, East Coast Railway, At/Po/Dist-Sambalpur.
3. Divisional Railway Manager, Sambalpur Division, East Coast Railway, At/Po-Sambalpur, Dist-Sambalpur.
4. Union of India, represented through General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist-Khurda.

..... Respondent(s)
By the advocate(s) Mr. T. Rath

ORDER

SHRI B.N. SOM, VICE-CHAIRMAN: Shri Ras Bihari Birtia has filed this O.A., being aggrieved by the order of transfer dated 15.07.03 passed by Respondent No.1, transferring him from Sambalpur City Station to Jujumura Station, situated at a distance of 45 Km. His grievance is that it

was only on 26.08.01 that he was transferred from Khalipalli to Sambalpur and again from Sambalpur Junction to Sambalpur City Station in November, 2002. Whereas in the first instance of transfer from Sambalpur Junction to Sambalpur City Station did not affect his family, the second round of transfer from Sambalpur City Station to Jujumura is causing serious dislocation in his family life as his children are school going and they have been admitted in the present school only in 2001 when he was posted to Sambalpur Junction. He has alleged that his transfer order is violative of the declared policy of the East Coast Railway regarding posting and transfer of employees. He ^{has} further stated that although there are number of posts of Deputy Station Superintendent and all these posts are manned by people junior to him, he has been transferred to Jujumura at the behest of Respondent No.2 being influenced by the Traffic Inspector whom he did not oblige earlier. By referring to Estt. Sl. No.273/89 he has argued that as he is occupying a sensitive post he should not have been transferred before he had completed four years tenure. His frequent transfer has caused psychological and mental strain on him. The applicant submitted a representation to Respondent No.3 who had assured him to take-care of his problems but actually no action has been taken by him to mitigate his

hardship. The applicant has therefore submitted that the impugned order of transfer is illegal, perverse and was issued in arbitrary use of powers.

2. The Respondents have opposed the O.A. by filing a detailed counter. They have submitted that the applicant came on transfer from Nagpur Division and was posted at Khaliapalli Station as Deputy Station Superintendent in May, 2000. But his tenure as Deputy Station Superintendent (in charge) at Khaliapalli Station was not blamishless. The Respondent had received series of complaints from various corners and also from the staffside regarding his rude behavior towards the staff and the public as also his unsatisfactory manner of managing the affairs of the office. He was therefore transferred to Sambalpur City Station as Station Manager (I) in the grade of Deputy Station Superintendent and was given limited job of train passing duty with effect from August 2001. His work and conduct again came into bad light and therefore he was shifted from Sambalpur junction. They have given instances of bad behavior of the applicant and that on two occasions he orchestrated the closure of this Station. He was twice counseled by the Senior Divisional Operational Manager. During this period he was charge sheeted and punished with stoppage of increment for two years without cumulative effect vide order dated 13.11.02 issued by the Senior Divisional Operational Manager,

Sambalpur(Annexure R/2). As his behavior did not improve he was transferred to a newly opened station, called, Sambalpur City Station located within the Municipality of Sambalpur in February, 2002 but here also he repeated the instances of his careless working including desertion from duty. The Respondents have mentioned in the counter that " some of the Zonal Officers who have inspected this station also mentioned in their reports regarding the unsafe working manner of the applicant and his non availability at the station during duty hours." A surprise check carried out on 23.06.03 brought to the notice of the Chief Operational Manager HQ, Bhubaneswar that the applicant was absent from his duty place without authority. When the Divisional Operational Manager was carrying out a check regarding the state of alert-ness on the part of the employees on operational duty, he was found absent from his duty place without locking the Panel Board from which points and signals for the trains are operated and that he had left the private number of books, identification covers and other safety registers scattered on the tables. Considering all these, the competent authority thought it necessary to transfer the applicant to a nearby road side station like Jujumura with the hope that the applicant will improve his work and conduct and would prove himself worthy of a railway servant.

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3. I have perused the records placed before me. The applicant has filed a rejoinder to the counter also. The Ld. Counsel for the petitioner stoutly submitted that the transfer of the applicant was done in colourable exercise of power. In support of his stand he drew my attention to the letter of appreciation sent to the applicant by Senior Divisional Manager, Shri S.K. Mishra, South Eastern Railway, Sambalpur for his performance for the year 2002-2003. He therefore stated that a person who was commended for his performance only in the month of April 2003 could not have been found so irresponsible and unworthy soon thereafter. He also placed a copy of the transfer policy issued by Divisional Railway Manager, Nagpur Division where it was mentioned that "the practice of transferring a person because he is a bad worker should stop further. The correct course is to take disciplinary action. No such transfers should be ordered without prior allowance to DS."

4. The Ld. Counsel appearing for the applicant drawing my attention to Rule 227(a) of Railway Establishment Manual VI-I stated that under this Rule the applicant could not have been transferred on account of misbehaviour or inefficiency. Ld. Counsel for the Railways, on the other hand, relying on the decision of the Apex Court in Civil Appeal No.1010-1011 of 2004 arising out of SLP (C) 20002-20003 of 2003 dated 13.02.04 in the

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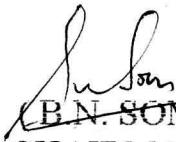
case of Union of India Vs. Janardhan Debnath reported in 2004 AIR SCW 955, stated that the transfer was valid in all respects. In the Civil appeal the question involved was whether the appellant had power of transferring a Govt. servant from one post to another on account of inefficiency or mis-behaviour. In that case the transfer of the Govt. employee was challenged on the ground that according to the provision of Fundamental Rules 15, the Respondent Government servant could not have been transferred on account of mis-behaviour. Their lordship observed that a bare reading of FR 15 makes it clear that except the cases ~~where~~ the transfer is (a) on account of inefficiency or misbehaviour or (b) on a written request, the Government servant cannot be transferred to officiate in a post carrying less pay than the pay of the post on which he holds a lien.

5. Admittedly, the case of the applicant, being a Railway servant is covered by R 227(a) of Indian Railways Establishment Manual Volume-I, the Respondents have taken the stand that the transfer was done in public interest and on account of exigencies of administration. They have also in the counter gone at length to explain the exigencies of administration, that he has been found wanting in public dealings and he has exhibited a tendency to remain absent from duty without permission. The plea of the Ld. Counsel for the applicant is ^{that} if he is inefficient or unruly the remedies do not lie in

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transferring the individual but to resort to disciplinary proceedings as per R 227(a). The Ld. Counsel for the Respondents relying on the judgement of the Apex Court in Civil Appeal Nos. 1010-1011 of 2004 (2004 AIR SCW 955) has submitted that transfer method can be resorted even on account of inefficient or mis-behaviour so long as it does not lead to appointment of an official to a post carrying less pay than the pay of the post to which he holds the lien. The Apex Court further added ^{that} the transfer unless inflicts ~~an~~ adverse effect on the person concerned with any penal consequences, are not required to be preceded by holding an inquiry into the matter. He has therefore submitted that the transfer of the applicant having been made to a post which is equal in status to the post of Deputy Station Superintendent which he is holding at the present place of posting the applicant cannot assail the transfer order on the plea that it has been done in colorable exercise of power. I agree with the submissions made by the Ld. Counsel for the Respondents.

6. Having regard to the above facts and circumstances of the case I see no merit in this O.A. which is dismissed with the observation as made above. With this interim order also stands vacated. No costs.


B.N. SOM 28/5/04
VICE-CHAIRMAN

CAT/CTC
Kalpeswar