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O.A. 909 of 2005

Mustak Ahmed Khan Applicant
Vrs.
Union of India and others Respondents

Order dated 31st July 2007

Applicant Mustak Ahmed Khan, while working as Enquiry-cum-Reservation Clerk, Grade I, East Coast Railway, at Cuttack Railway Station, being aggrieved by the order dated 27.10.2005 (Annexure A/4) issued by the Senior Divisional Personnel Officer, East Coast Railway, Khurda Road Division (Respondent No.3) transferring the applicant from Cuttack Railway Station under Khurda Road Division of East Coast Railway to Waltair Division, on administrative interest, filed the Original Application on 18.11.2005, with a prayer to quash the same and for other consequential relief.

2. The Tribunal, by order dated 28.11.2005, while directing issuance of notices to the Respondents on the question of admission returnable within six weeks, passed the following interim order:

“Notwithstanding pendency of this O.A., the CPO/ECOR/Bhubaneswar should consider the representation under Annexure A/5 dtd.16.11.05 and pass necessary orders within 15 days hence.



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Pending disposal of this O.A., status-quo in respect of the applicant be maintained by the Respondents."

3. After expiry of notice returnable period of six weeks, the O.A. was not placed before the Bench for considering the question of admission and continuance or otherwise of the interim order. From the notes of the Registry it is seen that the O.A. was placed before the Deputy Registrar/Registrar on 22.2.2006, 25.4.2006, 29.6.2006, 23.8.2006, 27.9.2006, 31.10.2006, 29.11.2006 and 13.12.2006 and the learned counsel for the Respondents was granted time for different spells to file counter. In spite of all this, when the counter was not filed, the Registry placed the matter before the Bench on 20.12.2006 for appropriate direction to Respondents to file counter. Accordingly, the Bench granted two weeks' time to the Respondents to file counter, failing which the pleadings were directed to be deemed to have been completed and the O.A. was to be included in the list for hearing.

4. The Respondents filed their counter on 8.1.2007 stating that the prayer of the applicant became infructuous because the representation of the applicant was considered by Respondent No.2 on 24.3.2006 (Annexure R/1); that in



obedience to the interim order passed by the Tribunal on 28.11.2005 the Railway authorities allowed the applicant to continue in his place where he was continuing; that since the request of the applicant has already been acceded to by the Railway authorities in their order dated 24.3.2006, the O.A. is liable to be rejected; and that the O.A. is not maintainable because the applicant has failed to exhaust the alternative remedy before approaching the Tribunal.

5. The applicant, by filing a rejoinder on 2.2.2007, while disputing the stands taken by the Respondents in their counter, also raised the question of lack of jurisdiction and competency of the Respondent No.3 in ordering the applicant's transfer from Khurda Road Division to Waltair Division, besides the allegation of mala fide and colourable exercise of power by the Respondents.

6. The Respondents also on 12.4.2007 filed a reply to the rejoinder. They have stated that accepting the advice of the Vigilance Department, the Chief Commercial Manager, East Coast Railway, vide order dated 14.7.2005 (Annexure R/2), decided to make the transfer of the applicant from Khurda Road Division to Waltair Division, and while doing so, the Chief Commercial Manager took into consideration



the Railway Board's circular, vide Estt. Srl.No.147/2000. It has been submitted that the Chief Personnel Officer, East Coast Railway, Bhubaneswar (Respondent No.2) was competent to transfer an employee within the Zone. It has also been stated that Respondent No.2, by office order No.281/2005 dated 17.8.2005 (Annexure R/3), ordered the transfer of the applicant, and Respondent No.3, the Senior Divisional Personnel Officer only communicated the transfer order to the applicant vide Annexure A/4 which is impugned in the O.A. Besides, the Respondents have also submitted about the scope for the Tribunal to interfere with the order of transfer issued on administrative interest.

7. After the parties filed their respective pleadings, the O.A. was placed before the Bench from time to time when the learned counsel for respondents raised no objection to the prayers of adjournment made by the learned counsel for the applicant.

8. On 18.7.2007, when the matter was taken up for hearing, the learned counsel appearing for the applicant filed in Court a Memorandum dated 18.7.2007, after serving copy thereof on the learned Standing Counsel (Railways). The



said Memorandum reads as follows:

“MEMO FOR WITHDRAWAL OF THE ABOVE ORIGINAL APPLICATION.]

The Applicant had approached this Hon'ble Tribunal with above original application U/S 19 of the Administrative Tribunals Act, 1985 challenging the illegal order of his transferred from Khurda Division to Waltair Division under the East Coast Railway vide No. Comm1/74/205, dtd.27.10.2005 issued by the Senior Divisional Personnel Officer, Khurda Division, Respondent No.3 under annexure-A/4.

The pleadings from both the sides was also completed and is matured for final hearing. During pendency of the above original application, the above impugned order of transferred has become become in fructuous by virtue of his further transferred from Cuttack to Talcher Railway Station under the kind control of Station Manager (PRS) on administrative interest with exhausting pay, scale and capacity with immediate affect vide a Memo No.51/2007, dtd.04.07.2007 issued by the Senior Divisional Personnel Officer/KUR, Office of the D.R.M. (Personnel), Khurda Road and the copy of the said is enclosed herewith for the perusal of this Hon'ble Tribunal.

In the above changing circumstances, the above named Applicant does not like to proceed further in the above matter and the leave may be granted in his favour to withdraw the above original application.”

Copy of the Memorandum No. 5/2007 dated 4.7.2007 has been enclosed with the said Memorandum dated 18.7.2007 filed by the learned counsel for the applicant.

9. Shri R.B.Mohapatra, the learned counsel appearing for the applicant, reiterating the statements



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contained in the said Memorandum dated 18.7.2007, submitted that the applicant might be permitted to withdraw the Original Application. Shri S.K.Ojha, the learned Standing Counsel (Railways), appearing for the Respondent-Railways, fairly submitted that as the applicant did not like to proceed further in the matter, his prayer contained in the Memorandum dated 18.7.2007 might be acceded to.

10. Upon perusing the pleadings in this case and after considering the submissions made by the learned counsels appearing for the parties, I find myself unable to simply agree with the learned counsels. The applicant's challenge in this O.A. is to the order dated 27.10.2005 (Annexure A/4) transferring him from Cuttack under Khurda Road Division to the Waltair Division, whereas by Memorandum No.5/2007 dated 4.7.2007 (enclosed with the Memorandum dated 18.7.2007 filed by the applicant's counsel) the applicant has been transferred from Cuttack to Talcher, both the places falling within the Khurda Road Division. Therefore, the statement contained in the Memorandum dated 18.7.2007 that in view of the applicant's transfer from Cuttack to Talcher vide Memo No.5/2007 dated 4.7.2007 (enclosed with the Memo dated 18.7.2007),



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the impugned order dated 27.10.2005 (Annexure A/4) has become infructuous, is untenable. On the basis of this statement, the Original Application cannot be held to have become infructuous. No doubt, the applicant, at any stage of the proceedings, may withdraw the Original Application, but in such an event of withdrawal of the O.A., he shall be liable to pay costs and shall also be precluded from instituting any fresh O.A. in respect of such subject matter.

11. I would like to observe here that when the interim order dated 28.11.2005 passed by the Tribunal is still in force directing the Respondents to maintain status quo in respect of the applicant's continuance at Cuttack, the Senior Divisional Personnel Officer (Respondent No.3) should not, without leave of the Tribunal, have issued the Memo No. 5/2007 dated 4.7.2007 (enclosed with the Memo dated 18.7.2007 filed by the applicant) transferring the applicant from Cuttack to Talcher, both the places falling within the Khurda Road Division. Though this action of Respondent No.3 is clearly violative of the interim order passed by the Tribunal, yet I do not hereby make any order for initiation of suo motu contempt proceeding against him, but give a caution to the said Respondent No.3 that in the event of




recurrence of similar action on his part being noticed by the Tribunal in any other proceedings, he shall be liable for being proceeded against for contempt of the Tribunal.

12. On the facts and in the circumstances of the case, I dismiss the Original Application as withdrawn and debar the applicant from instituting any fresh O.A. in respect of the same subject matter.

Copy of this order be given to the learned counsels for both the parties.


(N.D. RAGHAVAN)
VICE-CHAIRMAN


S.O. (J)

PPS

No. 11.2.07
Copy of Order
may be given to
both the counsels.

10/2/07