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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.542 of 2006
Cuttack, this the 28th day of February, 2007.

Telesphore Ekka ... Applicant
Versus
Union of India & Others ... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? *ym*
2. Whether it be circulated to all the Benches of the CAT or not? *ym*

[Signature]
(N.D.RAGHAVAN)
VICE-CHAIRMAN

28/02/07

[Signature]
(B.B.MISHRA)
MEMBER(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.542 of 2006
Cuttack, this the 28/11 day of February, 2007.

C O R A M:

THE HON'BLE MR. N.D.RAGHAVAN, VICE-CHAIRMAN
AND
THE HON'BLE MR.B.B.MISHRA, MEMBER (A)

Telesphore Ekka aged about 43 years, son of Late Samuel Ekka working as Jr. Engineer Gr.I under Senior Divisional Engineer (Co.), South East Central Railway, Bilaspur at present staying at Quarter No. 54/2, Railway Colony, Brajarajnagar, Dist.Jharsuguda, PIN-768 216.

..... Applicant.

By legal practitioner: Mr.Achintya Das, Advocate.

-Versus-

1. Union of India represented through General Manager, S.E.Central Railway, Bilaspur, Chattisgarh, PIN 495 004.
2. The Chief Personnel Officer, S.E. Central Railway, Bilaspur, Chattisgarh, PIN 495 004.
3. Divisional Railway Manager, S.E. Central Railway, Bilaspur, Chattisgarh, PIN-495 004.
4. Sr. Divisional Personnel Officer, S.E. Central Railway, Bilaspur, Chattisgarh, PIN 495 004.
5. Sr. Section Engineer (P.Way), S.E. Central Railway, At/Po: Brajarajnagar, Dist. Jharsuguda, Orissa, PIN-768 216.
6. Sr. Divisional Engineer (Co-Ordination), S.E.C. Railway Bilaspur, Chattisgarh, PIN 495 004.

...Respondents.

By legal practitioner: Mr. S.K.Ojha, St.Counsel.

ORDER

MR.B.B.MISHRA, MEMBER(A):

According to Applicant, he is a Scheduled Tribe employee of the Railway working as Junior Engineer Gr.II (P.Way) and while he was at Brajarajnagar, in violation of transfer policy framed by the Railways especially meant for the employees of SC/ST, he was transferred to Sahdol, MP vide order dated 16.09.2005 (Annexure-A/9). Being aggrieved by the said order of transfer, he approached his authorities with request either to retain him at Brajarajnagar or to transfer him to his native place. Having failed to receive any sign of consideration of his representation, he challenged the said order of transfer in OA No. 906/2005. The aforesaid OA was disposed of giving liberty to the applicant to make a representation to his authority who shall consider and dispose of the same as per rules within a time stipulated therein. On receipt of the representation, the Respondents expressed their unwillingness to cancel the said order of transfer as it was made in public interest. Thereafter, the applicant again filed OA No. 77 of 2006 stating that the Respondents rejected the prayer of the applicant without taking into consideration the Railway Board's Circulars on this subject. The said OA was heard and disposed of at the admission stage with direction to the Respondents to reconsider the grievance of applicant keeping in mind the Railway Board's Circulars relied on by the Applicant. According to the Applicant, before taking any decision in compliance of the orders of this Tribunal passed in OA No. 77 of 2006, as the Respondents unilaterally relieved him from his present place of posting

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on 22.07.2006, he ha approached this Tribunal in the present Original Application filed under section 19 of the Administrative Tribunals Act, 1985 praying therein as under:

“8.1. To quash and set aside the impugned Sr. Divisional Personnel Officer, South East Central Railway, Bilaspur's Office Order No.ENG/72/05 dated 16.09.2005 (Annexure-A/9 and letter dated 22.07.06 issued by the Senior Section Engineer (P.Way),Brajrajnagar (Annexure-A/7).”

2. Respondents in their reply have raised the preliminary objection of maintainability of this OA as being barred by the principles of *res judicata*. Secondly, they have stated that it is wrong to say that without taking into consideration the Railway Board's circular as per the orders of this Tribunal, he has been relieved. On receipt of the orders of this Tribunal, the case of the Applicant was reconsidered in the light of the Railway Board's Circulars on the subject but as it was found difficult to adjust him at his choice of places, his request was rejected and the same was intimated and served on him in the presence of witnesses. But the applicant refused to receive the same. It has been maintained that after completion of substantial period of three years in his present place of posting, he has been transferred to Sahdol on administrative grounds. It has been stated that the Circulars of the Railway Board does not give an indivisible right to an employee against public interest. The purpose of issuing such guidelines is only to restrict the misuse of power in the matter of transfer of SC/ST employees. It has further been pleaded by the Res. that the applicant has misled the authority by supplying false

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information regarding his family status. While verifying the office records as well as his representations, they came to know that his permanent address in his service book is at Ambachuan, Po: Lodhama, Dist. Raigarh (Chhatisgarh); whereas in his Pass declaration he has mentioned that his permanent address is at Sarlakami, Dhankuda, Sambalpur, Orissa which are contrary to each other. It has been stated that the applicant has also been allowed personal hearing in the matter of transfer. The Respondents, while denying any *mala fide* in the order of transfer of applicant, have stated that since the applicant is holding a post with transfer liability, and public interest is important than the personal difficulties, considering the need of the administration, the applicant was transferred from his present place of posting which therefore, needs no interference.

3. No rejoinder has been filed in this case. However, during the submission, Learned Counsel for the Applicant by laying emphasis on the pleadings taken in the OA, has submitted that as the applicant belongs to ST community, in view of the Circulars of the Railway Board (quoted in the OA), he was not liable to be disturbed from his present place of posting and if at all there would be any transfer, such transfer can only be made according to his choice of place of posting or only to his home town. Therefore, the transfer order being violative of the Railway Board's Circulars having statutory force, the same needs to be quashed. Taking support of the letter dated 14th July, 2006 of the Sr. Divisional Personnel Officer, SEC Railway, Bilaspur addressed to the applicant, the Learned Counsel for the Applicant has argued that since the order of transfer has been made by way

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of punishment/attaching stigma on the nomenclature of 'administrative exigencies/administrative interest, without any enquiry or giving opportunity, the same needs to be quashed. In support of this submission, he has also relied on the decision made in the case of **K.K.Jindal v. General Manager, Northern Railway and others** [ATR 1986 CAT 304] and the case of **Y.Kurikesu v. Sr. Superintendent of Telegraph Traffic, Triandrum Div. & Others** [1994 (1) ATJ 71]. In support of the plea that the order of transfer being contrary to the Railway Board's circulars he has also relied on the decision of the Jaipur Bench of the Tribunal made in the case of **B.S.Verma v. Union of India and others** [ATR 1993 (1) CAT 548].

4. On the other hand, Mr. S.K.Ojha, by relying on various decisions of the Hon'ble Apex Court on the subject has submitted that transfer being an incident of service and none, be it OC or SC/ST, can claim any vested right to continue at one place of posting. He has also submitted that the applicant having accepted/joined the post knowing fully well that this carries transfer liability, at this stage, he is estopped to resist the order of transfer. He has also argued that since the present transfer would not place him in any disadvantageous position either by way of loss of pay or position/post and the order of transfer having been made purely in public interest, the same needs no interference. He has also argued that the dispute having been raised and decided earlier, this OA is also not maintainable on the ground of the principles of constructive *res judicata*.

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5. Before dealing with the contentions of the parties, it is worthwhile to take note of the relevant portion of various Railway Board's Circulars relied by the Applicant and they are as under:

“(i) Rly.Bd's Letter No.E(SCT)74CM15/58
dt.14.1.75(Annexure-A/13):

2. It has been represented that the Scheduled Castes and Scheduled Tribes are being transferred from one place to other quite frequently. The Board have, therefore, decided that the employees belonging to SCs and STs should be transferred very rarely and for very strong reasons only.

(ii) No. 89-E(SCT)I/29-5, dt. 8.11.89(Annexure-A/14):

In this connection, attention is also invited to the instructions contained in Board's letter quoted above, these instructions should be scrupulously followed and any violation thereof be seriously viewed.”

(iii) GI Dept. of Per&Trg., OM No.36026/3/85-Estt.(SCT)dt.24.6.85-(Annexure-A/15):

“2.It has been pointed out that SC/ST officers are sometimes transferred to far-off places and also placed at insignificant positions. It has also been stated that these officers are not accepted at their places of posting by the concerned superior officers in some cases.”

(iv) No.2003-E(SCT)I/22/27/Inf.Meeting
dt.12.01.2004(Annexure-A/16):

It has been brought to the notice of Board by the CEC (Central Executive Committee) of AISC/STREA (All India Scheduled Caste/Scheduled Tribe Railway Employees Association) that Board's transfer policy of SC/ST Railway Employees are not being implemented and they are being transferred by framing illegal local transfer policies at Zonal/Division/Branches on the Railways. “Board desire that instructions issued vide Board's letters No. 78-E(SCT)I/15/25 dt.6.7.78, No.89-E(SCT)I/29/5 dated 8.11.89 and

No.97E(SCT)I/22/12 dt.5.3.99 may strictly be followed”.

6. Relevant portion of the decisions made in the cases of K.K.Jindal (Supra) and relied on by the Learned Counsel for the Applicant reads as under:

“It cannot be gainsaid that transfer is in exigency of service and may be ordered for administrative reasons and the employer is the best judge in this regard. At the same time an order of transfer can uproot a family, cause irreparable harm to an employee and drive him into desperation. It is on account of this that transfers when effected by way of punishment, though on the face of it may bear the stigma of innocence, are quashed by courts.

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When the respondents in their counter themselves state that the applicant was transferred because he was indulging in undesirable activities, that amounts to arriving at a positive conclusion as regards conduct.

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23. From the above discussion it is clear that the impugned transfer is thus for reasons other than merely administrative. That is only the ostensible reason.

24. The impugned order is, therefore, quashed....”

Relevant portion of the order made in the case of Y.Kurikesu(supra) relied on by the Applicant read as under:

“6.....The expression ‘public interest’ is not a magic word which can do service for anything in any situation. Nor, is it a carpet under which anything could be swept. Expression ‘public interest’ has a definite purport, and in a particular case such interest must be disclosed or discernible. It has not been done here. The expression ‘public interest’ like the expression ‘exigencies of public service’ often made an apology, for something that cannot be justified.”

Similarly in the case of B.S.Verma (supra) it has been held as

under:

"6. Keeping in mind the pious object of fulfilling the desires of the father of the Nation, the Railway Board in its wisdom has issued the Circular No. E (SCT) 74 CM15/58 dated 14th January, 1975, which is reproduced as under:-

"Subject Hardships caused to Scheduled Castes/Scheduled Tribes who are transferred.

2. It has been represented that the Scheduled Caste and Scheduled Tribes employees are being transferred from one place to other quite frequently. The Board have, therefore, decided that the employees belonging to Scheduled Castes and Scheduled Tribes should be transferred very rarely and for very strong reasons only.

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9. As far as the question of posting and transfers of the members of the SC/ST is concerned, this stands on a different footing and unless there are string and exceptional reasons of public interest and administrative exigency, the transfers of SC/ST officials away from their native places should not be made. In the instant case, Mr. Manish Bhandari, appearing on behalf of the Railways, has not brought to the notice of the Bench which were the compelling circumstances and compelling administrative exigencies to transfer the applicant from Jaipur to Bombay.

14. In the case of the persons of the ST and SC there is prohibitory as well as mandatory direction. Officers have been directed that the employees belonging to the SC & ST should be transferred very rarely and for very strong reasons only..."

7. Having heard the rival submissions of the parties and gone through the materials placed on record, it is seen that the Applicant has himself admitted in paragraph 4.1 of the Original Application that from the date of entry to Railway service, he had undergone the following transfers/postings: ✓

25.5.87 to 06.03.89 :Reported as JE-II(P.Way) at Nagpur under CPM (RE) and continued at Nagpur;

06.03.89 to 01.04.93 :Posted as JE Gr.II/I(P.Way) at Talcher (Orissa);

01.04.93 to 02.02.94 ;Posted as JE Gr.I (P>Way) at Angul.

02.02.94 to 05.08.99 :Posted as JE Gr.I (P.Way) at Mancheswar;

05.08.99 to 24.01.02 :Posted as JE Gr.I (P.Way) at Sambalpur;

07.02.02 to 03.04.03 :Posted as JE Gr.II (P>Way) in open line at Raigarh under Asst. Divisional Engineer;

03.04.03 to till date posted as JE Gr.II(P.Way) at Brajrajnagar.

8. Interference in the matter of transfer by the Courts/Tribunal is no more *res integra*. It has been made clear by the Hon'ble Apex Court in the case of **Shilpi Bose vrs. State of Bihar**, (reported in *AIR 1991 SC 532*) that where a competent authority issues transfer order with a view to accommodating a public servant the same cannot be interfered with by the court. In the case of **Union of India vrs. H.N. Kirtania** (reported in *1989 (3) SCC 445*), and in the case of **Gujurat Electricity Board vrs. Atmaram Sungomall Pashani** (reported in *AIR 1989 SC 1433*) that transfer of an officer holding a transferable post cannot be objected to and that Government is the best judge to decide to distribute and utilize the services of an employee. In the case of **State of Orissa vrs. Kishore Chandra Samal** (reported in *1992 (2) Scale-251*), it has been held that transfer (within the cadre with identical responsibilities) no objection can be made. In the case of **Union of India vrs. S.L. Abbas** (reported in *AIR 1993 SC*

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2444) it has been held that "who should be transferred where" is a matter for the appropriate authority to decide. In the case of **State of Madhya Pradesh vrs. S.S.Kourav** (reported in *AIR 1995 SC 1056*) it has been held that courts or Tribunals are not the Appellate Authority to decide the question of transfer of officers made on administrative grounds. The function of the administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict/interfere with the working of the administration. In the case of **Union of India vrs. N.P.Thomas** (reported in *AIR 1993 SC 1605*) it has been held that, if the transfer is not in violation of any statutory rule, no vested right accrued to an employee to claim to continue in one place for eternity.

9. But in the present case, the exception is that the applicant belongs to a ST employee of the Railways, and therefore, it is to be examined as to whether he is having any inviolable right of not to be transferred from one place to other. In this connection, it is noted that nowhere in the pleadings, we find any supporting materials that the applicant had ever raised any objection particularly when he was transferred from Nagpur to Talcher and thereafter to various places. But surprisingly, this time, when he was transferred to Sahdol vide order dated 16.09.2005 he raised objection stating that as he belongs to ST community, he ought not to have been transferred to such far away place which shows that the applicant raises the point when the transfer order does not suit his purpose.

10. On a thorough scrutiny of the Railway Board's Circulars, we find that nowhere the Railway Board puts any embargo/*ex facie* restriction that in

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no circumstances employees belonging to SC/ST communities can be transferred. It merely envisages that quite frequent transfer of SC/ST employee should be avoided. It is also not the case of the Applicant that he has been transferred quite frequently. All his case is that he being a ST employee is not liable to be transferred. It is the specific case of the Respondents that the Applicant has been transferred in public interest. The Hon'ble Supreme Court, time and again, have deprecated the interference in the order of transfer if it is made in public interest. In view of this, we are not convinced with the assertion of the applicant that as he belongs to ST employee he is immune to the vice of transfer even in public interest.

11. As regards the plea of the Applicant that the order of transfer has been made by way of punishment/attaching stigma in view of the letter of the Sr. Divisional Personnel Officer, SEC Railway, Bilaspur dated 14th July, 2006 other than public interest, we may state that even if it is so, there is no wrong in the order of transfer; because every employee has to maintain absolute integrity and devotion to duty. It may be noted that when the authorities found that any employee lacks sincerity which has adverse impact on the safety of the public, he can be shifted at any point of time and the same cannot be said to be illegal in any manner. However, except the letter, neither any material was produced by the applicant nor has it been found place in the pleadings of the either parties that the transfer was effected due to any such incident. Therefore, this plea of the Applicant has no slightest assistance so far as declaring the transfer order as null and void.

While reaching such a conclusion, we also take support of the decisions of

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Hon'ble Apex Court rendered in the case of **UNION OF INDIA AND OTHERS v. JANARDHAN DEBANATH AND ANOTHER** [2004 SCC (L&S) 631]. In the said decision, Their Lordships of the Hon'ble Apex Court in paragraph 12 of the decision held as under:

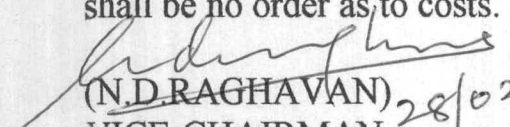
- "12. That brings us to the other question as to whether the use of the expression "undesirable" warranted an enquiry before the transfer. Strong reliance was placed by Learned counsel for the respondents on a decision of this Court in Jagdish Mitter v. Union of India [AIR 1964 SC 449) to contend that whenever there is a use of the word undesirable" it casts a stigma and it cannot be done without holding a regular enquiry. The submission is clearly without substance. The said case relates to use of the expression "undesirable" in an order affecting the continuance in service by way of discharge. The decision has therefore no application to the facts of the present case. The manner, nature and extent of exercise to be undertaken by court/tribunals in a case to adjudge whether it casts a stigma or constitutes one by way of punishment would also very much depend upon the consequences flowing from the order and as to whether it adversely affected any service conditions-status, service prospects financially-and the same yardstick, norms or standards cannot be applied to all categories of cases. Transfers unless they involve any such adverse impact or visit the persons concerned with any penal consequences are not required to be subjected to same type of scrutiny, approach and assessment as in the case of dismissal, discharge, reversion or termination and utmost latitude should be left with the department concerned to enforce discipline, decency and decorum in public service which are indisputably essential to maintain quality of public service and meet untoward administrative exigencies to ensure smooth functioning of the administration."

(emphasis added)

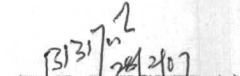
12. In view of the law laid down by the Hon'ble Apex Court and in view of the discussions made above, the decisions relied upon by the Learned Counsel for the Applicant have no assistance to the present case.

13. Besides, the consistent view of the Hon'ble Supreme Court and followed by this Tribunal is that unless an order of transfer is shown to be an outcome of *mala fide* exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts/Tribunal being not the Appellate Authority over the decisions of the employer/management, interference in orders of transfer made in public interest is not warranted. Those are State of Madhya Pradesh v. Shri Arijun Sing – AIR 1993 SC 1239 ; Abani Kanta Ray v. State of Orissa - 1995 (Suppl.) 4 SCC 169; Union of India and Others v. V. Janardan Debanath and Another - (2004)4 SCC 245; National Hydroelectric Power Corpn. Ltd. Vs. Shri Bhagwan (2001) 8 SCC 574; State of UP and Others v. Gobardhan Lal and D.B.SINGH v. D.K.Shukla and Others - 2005 SCC (L&S)55; and State of U.P. & Ors. v Siva Ram & Anr.-2005(1) AISLJ 54.

14. In view of the discussions made above, there being no irregularity/illegality/infirmity warranting interference in the order of transfer of the Applicant, this Original Application stands dismissed. There shall be no order as to costs.


(N.D. RAGHAVAN)
VICE-CHAIRMAN

28/02/07


(B.B. MISHRA)
MEMBER(A)