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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH

O.A.NO. 670 OF 2002

Cuttack, this the <sup>5th</sup> day of February, 2003

R.N.Burman

Vrs.

Union of India and others

.....

.....

Applicants

Respondents

FOR INSTRUCTIONS

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

  
(B.N.SOM)  
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH

O.A.NO. 670 OF 2002

Cuttack, this the 5<sup>th</sup> day of February, 2003

CORAM:

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

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**Sri R.N.Burman**, aged about 58 years, son of late B.C.Burman, working for gain as Chief Parcel Supervisor (CPS, in short) under Station Manager (Gazetted), Bhubaneswar, S.E.Railway, at present staying at 33, Budheswari Colony, Bhubaneswar

.....Applicant.

Advocate for applicant - Mr.Achintya Das

Vrs.

1. Union of India, service through General Manager, S.E.Railway, Garden Reach, Kolkata 43.
2. Divisional Railway Manager, S.E.Railway, Khurda Road, P.O. Jatni, District Khurda PIN 752 050
3. Sr.Divisional Commercial Manager, S.E.Railway, Khurda Road, P.O. Jatni, Dist. Khurda, PIN 752 050
4. Chief Personnel Officer, S.E.Railway, 14 Strand Road, Kolkata 1, PIN 700 001.
5. Member Staff, Railway Board, Rail Bhavan, New Delhi.
6. Station Manager (Gaz), S.E.Railway, Bhubaneswar, District Khurda

..... Respondents

Advocate for Respondents - Mr.Ashok Mohanty

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**ORDER****SHRI B.N.SOM, VICE-CHAIRMAN**

The applicant, Shri R.N.Burman, Chief Parcel Supervisor at Bhubaneswar, having faced transfer from Bhubaneswar to Khurda Road, has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985.

2. The applicant alleges that he has been transferred from Bhubaneswar to Khurda Road by way of punishment. His transfer is also in violation of the instructions issued by the Railway Board regarding transfer of officials who are on the verge of retirement and in respect of the officials belonging to SC and ST communities. The applicant belongs to SC community and is due for retirement on superannuation on 30.6.2004. According to the Railway Board's circular, the SC employees should be transferred to their native districts or adjoining districts or places where administration can provide quarters. In another circular of the Railway Board issued in 1979, which still holds the ground, it was stated that periodical transfer of the staff in the category of Commercial Supervisors to different places may not always be possible. But it should at least be ensured that the Commercial Supervisor are shifted to a different section or area in the same station provided he has put in five years in the specific post. He

has, therefore, alleged that the office order transferring him to Khurda is an act of arbitrariness and colourable exercise of power, that the applicant after just completing three years as Chief Parcel Supervisor, was transferred to the post of Chief Booking Supervisor at Bhubaneswar on 4.6.2002 and just within next two months, he was transferred to Khurda Road vide Annexure R/6. He had represented against this transfer order to the Respondents on the above grounds but to no effect. Aggrieved by the said decision of the Respondents, he has approached this Tribunal for justice.

3. The Respondents have submitted counter refuting the allegations made by the applicants and have sought to defend their decision to transfer the applicant on administrative grounds.

4. I have heard Shri Achintya Das, the learned counsel for the applicant and Shri Ashok Mohanty, the learned Senior Panel Counsel (Railways ) for the Respondents and have perused the records.

5. The points at issue, in this Application, are basically three:

- (i) Whether the transfer order dated 26.7.2002 issued by the Respondents was colourable exercise of power;

- (ii) Whether the applicant being an SC official was entitled to certain protection against transfer, granted by the Railway Board from time to time; and
- (iii) Whether the applicant was denied the benefit granted by the Railway Board's order dated 21.8.1961, to employees due to retire within a period of two years from the purview of orders regarding periodical transfer.

6. Regarding the first issue, the Respondents in their counter have given reasons for transferring the applicant from Bhubaneswar to Khurda, stating that he being old in age and in ill health, lacking in capability to manage and monitor the work of Parcel Department efficiently, the Management decided to transfer him. They have also referred to the warning given to him on 8.8.2001 for some mistakes in calculation of wharfage charges, detection of cases of inefficiency and irregularities in the parcel office at Bhubaneswar Railway Station by anti-fraud squad, that the applicant while working as Chief Booking Supervisor-1, Bhubaneswar, was issued with a major penalty chargesheet on 14.3.1998 for certain lapses and a minor penalty was imposed by way of stoppage of his increment for a period of six months with non-cumulative effect. They have also referred to other

instances of bad work done by the applicant. From the said averments made by the Respondents, it is clear that the applicant was not transferred as a part of routine periodical transfer, but on grounds of non-performance or inefficiency. The point to decide is, whether such a transfer on arriving at a positive conclusion as regards conduct of an employee can be termed as a transfer in administrative interest or is a colourable exercise of power. In this connection, my attention has been drawn to the decision of this Tribunal in the case of Shri K.K.Jindal v. General Manager, Northern Railway and others, ATR 1986 CAT 304. The Tribunal in that case, while considering whether transfer of an employee on arriving at a positive conclusion as regards his conduct, could be called punitive in nature, held as follows:

“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. Transfer ordered upon reaching such a conclusion cannot be one made merely because of bad reputation but one based on a finding as to the conduct of the petitioner which conclusion is not based on any inquiry conforming to Art. 311(2) and the provisions governing disciplinary proceedings. Such a conclusion cannot be reached behind the back of the petitioner. Though transfer per se does not constitute a punishment, in certain circumstances it may be punitive. It would be so if ordered on reaching a conclusion that the person concerned is indulging in undesirable activities.”

In the instant case also, the Respondents used the transfer mode to book

the applicant for his inefficiency in handling of his duties at Bhubaneswar. They were also contradicting themselves in stating that he was transferred because his health was in bad condition and he was inefficient. In view of the above, I hold that the transfer of the applicant from Bhubaneswar to Khurda construes a punishment and therefore, punitive in nature. Hence it should be set aside.

7. Regarding the second point, we must answer it in the affirmative because the Railway Board has consciously given protection to SC and ST employees. The applicant needed the other protection as he had reached the age of 58 years and as the Respondents themselves have stated, he was not keeping good health.

8. Regarding the last issue, it is to be stated that he was entitled to the concession granted by the Railway Board by their letter dated 21.8.1961 (Annexure A/17) exempting an employee due to retire within a period of two years from the purview of periodical transfers.

9. Last but not the least, I find from a perusal of the transfer order at Annexure R/6 that the applicant was transferred "temporarily only along with the post". A temporary transfer is made for a short period and normally not for a period of more than 180 days. That time will expire soon. In the circumstances, the applicant should, in the normal



course, be transferred back to Bhubaneswar along with the post by the Respondents.

10. In view of the above facts and circumstances of the case, this O.A. succeeds. As I have stated earlier, this transfer order dated 26.7.2002 was colourable exercise of power. I am not quashing the said order for the reason that this transfer was done for a temporary period which should be not more than six months and therefore, I hope and trust that the Respondents will re-transfer the applicant along with the post to Bhubaneswar before 15.2.2003. No costs.

  
(B.N.SOM)  
VICE-CHAIRMAN

CAT/CTC/AN-PS