

4

O.A.No. 284 of 2007

K.Vijayan	Applicant
Vrs.		
Union of India and others	Respondents

Order dated 31.8.2007

This Original Application was filed on 30.8.2007 and placed before the Bench on 31.8.2007 for considering the question of admission. Though there are two learned advocates M/s N.R.Routray and D.K.Mohanty who have filed Vakalatnama in this case, yet on 31.8.2007 they did not appear before the Bench due to Advocates' strike on Court work before this Bench purportedly on the basis of CAT Bar Association resolutions. In this connection, I would like to refer to the decision of the Hon'ble Supreme Court in the case of Ramon Services Pvt.Ltd. v. Subhash Kapoor and others, **JT 2000 (Suppl.2) SC 546**, wherein Their Lordships, in paragraphs 24, 27 and 28 of the judgment, have held that no Advocate can take it for granted that he would appear in the court according to his whims and fancies or convenience. It would be against professional ethics for a lawyer to abstain from the court when the cause of his client is called for hearing or further proceedings. In appropriate cases the court itself can pass effective orders for dispensation of justice with the object of inspiring confidence of the common man in the effectiveness of judicial system. Inaction will surely contribute to the erosion of ethics and values in the legal profession and the defaulting Courts may also be contributory to the contempt of the Hon'ble Apex Court. Keeping in view the case law laid down by the Hon'ble Supreme Court, the materials available on record were perused and the applicant was heard in person.

2. Applicant K.Vijayan, who claims to have been working as Painter Grade II under Deputy Chief Engineer, Construction, D-II, East Coast



Railway, Station Bazar, Cuttack, has filed this Original Application praying for quashing the order of transfer under Annexures A/1 and A/4 dated 11.5.2007 and 3.8.2007. He has also prayed for staying operation of the order of transfer dated 11.5.2007.

3. This is the second round of litigation, the applicant's earlier OA No. 193 of 2007 having been disposed of by the Tribunal on 28.6.2007 with direction to the Respondents to dispose of the applicant's representation. The applicant's representation has been rejected by the Respondents, vide order dated 3.8.2007 (Annexure A/4) for the following reasons:

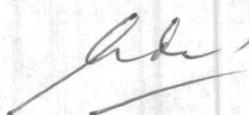
"The Construction Organization is a work-charged organization and staff are being transferred from one place to other depending upon the requirement of Construction activities. As such in the administrative interest the staff was transferred along with others. The reasons narrated by the applicant are not convincing as such he may carry out the orders."

4. The applicant submitted that he is aged 58 years and has only two years of service to retire and that the impugned order of his transfer from Cuttack to Khurda Road is violative of the transfer policy of the Railways vide Annexures A/5 and therefore, liable to be quashed. He also submitted that while rejecting his representation against the transfer order, the concerned authority has not taken into account his request to change the place of his posting from Khurda Road to Bhubaneswar.

5. Annexure A/5 is the letter dated 10.6.1981 issued by the Chief Personnel Office, S.E.Railway, Garden Reach, circulating the Railway Board's letter dated 23.5.1981, the relevant portion of which is quoted below:

"A case has come to the notice of the Board wherein a Gazetted Officer on the Western Railway was subjected to more than 20 transfers during the span of 7 years of service prior to his superannuation.

2. The Board have observed that the repeated transfer of the officer was not correct and such frequent transfer of the Railway servants should not be ordered. They desire that



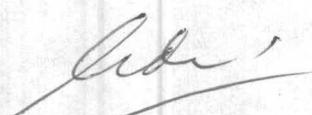
when the transfer of the railway servant is on temporary basis, the same should be mentioned in his transfer orders. Attention in this connection is also invited to the instructions contained in Board's confidential letter No. E(NG)II-70-IR-28 dated 14.10.1970 which provides that General Managers can exercise their discretion to transfer non-gazetted staff from Stations/posts against whom there are complaints the man with longest stay being shifted first and those on the verge of their retirement with 1 or 2 years service left may be exempted if complaints against them are not serious. Ministry of Railways desired that those instructions may be followed scrupulously."

5.1 The enclosure to Annexure A/5 is the letter dated 23.10.1970 issued by the Chief Personnel Officer, S.E.Railway, Garden Reach, Calcutta, circulating the Railway Board's letter dated 14.10.1970, the relevant portion of which is quoted below:

"Reference Railway Board's letter No.E(NG)II-67TR2/45 dated 12.12.67, 16.11.68 and 25.9.69 in which orders were communicated that periodical transfers of Class III staff should be held in abeyance during the year 1968, 1969 and 1970 respectively. The Board have decided that the periodical transfers should continue to be held in abeyance during the year 1971 also.

2. The General Managers could, however, exercise their discretion to transfer staff from Stations/posts against whom there are complaints – the man with longest stay being shifted first, those on the verge of retirement (with 1 or 2 years service left) may be exempted if complaint against them are not serious."

5.2 I have carefully considered the submissions of the applicant with reference to the guidelines issued by the Railway Board in the above referred letters quoted above. The Railway Board, by their letter dated 14.10.1970, while reiterating their decision to keep in abeyance the periodical transfer of Class III staff during the year 1971, conferred discretion on the General Managers of the Zonal Railways to transfer staff from Stations/posts against whom there were complaints during the year 1971. It was also laid down in the said circular that the man with



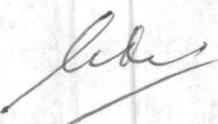
the longest stay at the station should be shifted first and that those on the verge of retirement (with 1 or 2 years service left) might be exempted if complaints against them were not serious. In the other letter dated 23.5.1981, the Railway Board, while dealing with the case of a Gazetted Officer on the Western Railway who was subjected to more than 20 transfers during the span of 7 years of service prior to his superannuation, observed that the repeated transfer of the officer was not correct and such frequent transfer of the Railway servants should not be ordered. The Railway Board thus desired that when the transfer of the railway servant was on temporary basis, the same should be mentioned in his transfer orders and that the instructions contained in Board's confidential letter No. E(NG)II-70-IR-28 dated 14.10.1970 which provided that the General Managers could exercise their discretion to transfer non-gazetted staff from Stations/posts against whom there were complaints and that the man with longest stay should be shifted first and those on the verge of their retirement with 1 or 2 years service left might be exempted if complaints against them were not serious.

5.3 The applicant has not disputed his transfer liability. It is not the case of the applicant that he has been subjected to frequent transfers. Admittedly he has been working in the Construction Organization, a work-charged establishment of the East Coast Railways. The impugned order of transfer was issued on 11.5.2007 (Annexure A/1). The applicant has not produced any transfer policy/guidelines issued by the Railway Board or any competent authority laying down that periodical transfer was kept in abeyance during 2007. It is also not the case of the applicant that any person with longer stay than him at Cuttack is continuing and he has been singled out. In the Railway Board's letters (Annexure A/5) it has nowhere been provided that persons left with one or two years service to retire on superannuation shall not be transferred. The instructions contained in the letters at Annexure A/5 were issued by the Railway



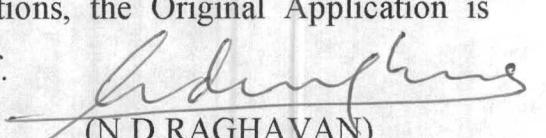
Board in a different context and therefore, have no application to the facts of the present case. Be that as it may, the Respondent-Railways, in compliance with the Tribunal's order dated 28.6.2007 passed in O.A.No.193 of 2007, have duly considered the representation of the applicant and rejected the same after assigning reasons. The Respondent-Railways have stated in the order dated 3.8.2007 (AnnexureA/4) that the Construction Organization is a work-charged organization and staff are being transferred from one place to other depending upon the requirement of Construction activities and that in the administrative interest the applicant was transferred along with others. I have considered the reasons assigned by the Respondents in rejecting the applicant's representation. If there is no need of the applicant's services at Cuttack, the Respondents cannot be expected to make him sit idle and get salary because he is left with two years of service to retire on superannuation. The Respondents have disclosed the transfer of the applicant as in the administrative interest. In view of this, I do not find any irregularity or illegality in the impugned order of transfer. There is no allegation made by the applicant that order of his transfer has been issued mala fide. It is also not the case of the applicant that in issuing the transfer order, the Respondent-authorities have violated any rules or executive instructions having statutory force other than the instructions contained in the Railway Board's letters (Annexure A/5) which, as I have already held, are not applicable to the present case. Hence there is no substance in the first submission of the applicant.

6. The next submission of the applicant is that in his representation dated 26.5.2007 (AnnexureA/2) he requested the Senior Personnel Officer, Construction/Coordination, East Coast Railway (Respondent No.2) to consider his transfer and posting under Dy.Chief Engineer (Construction) D-2, Chandrasekharpur, Bhubaneswar, instead of Dy.Chief Engineer (Construction), Khurda Road, and that Respondent



No.2, while rejecting his representation by order dated 3.8.2007 (Annexure A/4), has not at all considered the aforesaid request. The applicant, therefore, contended that the order (Annexure A/4) is bad and liable to be set aside. I have carefully considered the submission of the applicant. From the order dated 3.8.2007 (Annexure A/4) it does not appear that the said authority has considered the request of the applicant for his transfer and posting to Chandrasekharpur, Bhubaneswar, instead of Khurda Road. As the applicant is left with only two years of service to retire on superannuation, the said authority should have considered the applicant's request if at all there was any vacancy in the post of Painter at Chandrasekharpur, Bhubaneswar. But the applicant has not stated either in his representation or in the present O.A. that there still exists a vacancy in the post of Painter at Chandrasekharpur, Bhubaneswar. Be that as it may, the non-consideration of the applicant's request by Respondent No.2 can hardly be said to be a ground to impugn the order of transfer. However, in the facts and circumstances of the case, particularly in view of the fact that the applicant is left with only two years of service to retire on superannuation, I wish to observe that in the event the applicant, after joining at Khurda Road, makes a representation to the Senior Personnel Officer, Construction/Coordination, East Coast Railway, Bhubaneswar (Respondent No.2) for his transfer and posting under the Dy. Chief Engineer (Construction) D-2, Chandrasekharpur, Bhubaneswar, the said Senior Personnel Officer will be well advised to sympathetically consider the applicant's request within a period of 45 (forty-five) days of the receipt of such representation, provided there exists a vacancy in his post of Painter, ~~in view of the fact that the applicant is left with only two years of service to retire on superannuation.~~

7. With the above observations, the Original Application is rejected at the stage of admission itself.


(N.D.RAGHAVAN)
VICE-CHAIRMAN