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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.197 OF 2008

Cuttack this the 27th Day of July, 2009

Sri Jaya Chandra Mishra

.....
Applicant

-VERSUS-

Union of India & ors

.....

Respondents

INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not?
- 2) Whether it be sent to the P.B.,CAT, or not?


(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER


(K.THANKAPPAN)
JUDICIAL EMMBER

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

ORIGINAL APPLICATION NO.197 OF 2008

Cuttack this the 27th Day of July, 2009

CORAM:

THE HON'BLE SHRI JUSTICE K. THANKAPPAN, JUDICIAL MEMBER
AND
THE HON'BLE SHRI C.R. MOHAPATRA, ADMINISTRATIVE MEMBER

Sri Jaya Chandra Mishra, aged about 48 years, Son of Sri Bhagabat Mishra, working as Office Supdt., Gr.I in the Office of Sr.DOM, East Coast Railway, Sambalpur, PO-Modipara, Dist-Sambalpur, PIN - 768002

... Applicant

By the Advocates: A.K. Bose, P.K. Das, D.K. Mallick

-VERSUS-

1. Union of India represented by the General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda
2. Divisional Railway Manager, East Coast Railway, Sambalpur, PO-Modipara, Dist-Sambalpur-768002
3. Divisional Personnel Officer, East Coast Railway, Sambalpur, PO-Modipara, Dist-Sambalpur-768002
4. Additional Divisional Railway Manager, E.Co.Railway, Sambalpur, PO-Modipara, Dist-Sambalpur-768002
5. Sri Manoj Kumar Mishra, Senior Divisional Operation Manager, East Coast Railway, Sambalpur, PO-Modipara, Dist-Sambalpur, PIN-768002

** Corrected vide order dt. 17-02-2010 * 6.*
*Sri Madan Mohan Patnaik, Assistant Operation Manager (CCNL)
Sri Madan Mohan Patnaik, Assistant Operation Manager (CCNL)
East Coast Railway, Sambalpur, P.O. Modipara, Dist. Sambalpur - 768002
By the Advocates: Shri R.S. Behera*

ORDER

JUSTICE K. THANKAPPAN, JUDICIAL MEMBER:

1. Applicant, at present working as Office Superintendent, Grade-I in the Office of Sr.Divisional Operating Manager, East Coast Railway, Sambalpur, being aggrieved by the transfer order dated 28.3.2009 (Annexure-A/1), has filed this Original Application for quashing the said order of transfer.
2. The facts in brief are that the applicant was originally appointed as Assistant Station Master under the Railways in 1984 and subsequently

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promoted to the grade of Station Master & Deputy Station Superintendent and worked as such up to December, 1999 when he having met with an accident leading to amputation of one of his legs was medically decategorised. The applicant was thereafter posted to a sedentary post as Office Superintendent, Grade I, in the office of Senior Divisional Operating Manager at Sambalpur. While working as such, on the proposal initiated by Respondent No.5, as per Office Order dated 28.3.2009 (Annexure-A/1) the applicant has been transferred to Titilagarh.

3. The applicant has assailed the order of transfer as being illegal, mala fide and without jurisdiction. He has submitted that there is no post of Office Superintendent I at Titilagarh against which he has been posted. The authority issuing the order of transfer of the applicant along with the post is not competent. The artificial limb used by the applicant was more than two years old and in broken condition. He having approached the Authorized Railway Medical Officer has been recommended for replacement of the same and accordingly, Chief Medical Superintendent, East Coast Railway, Sambalpur has referred the applicant to the Medical Superintendent, NIRTAR, Olatpur, Cuttack, for further investigation and replacement of B.K. Prosthesis. It is the further case of the applicant that since inception of Sambalpur Division in the year 1990 not a single clerical staff has been transferred out of Divisional Office even though some of them have submitted their option seeking transfer as all the posts were created for Divisional Office. The applicant has submitted that his transfer by Respondent No.5 is without obtaining necessary sanction from the competent authority. Besides the above, the applicant has placed reliance on the guidelines as per S.E.Railway Establishment Serial No.138/94

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(Annexure-A/4) in the matter of transfer of ministerial staff from Administrative Office to non-Administrative Office in Railways and according to him, the present transfer is illegal inasmuch as no option has been exercised by him for his transfer to non-Administrative Office at Titilagarh. Apart from this, the applicant has submitted that the Office Memorandum dated 10.5.1990 (Annexure-A/5) issued by the Department of Personnel and Training regarding posting of physically handicapped candidates having been adopted and followed by the Railways, the transfer of the applicant as such is illegal, arbitrary and without application of mind. As per the above Office Memorandum, it is stated that the request from physically handicapped employees for transfer to or near their native places may be given preference and their option should be considered with spirit. With these submissions, the applicant has prayed for quashing the impugned order of transfer at Annexure-A/1.

4. When this Original Application came up for admission, this Tribunal, while directing notice to the Respondents, as an interim measure, as per order dated 15.6.2008 stayed the operation of the order of transfer at Annexure-A/1 for a period of 45 days and subsequently, the stay was made absolute.

5. The Respondent-Railways, in pursuance of notice of this Tribunal have filed their counter-reply opposing the prayer of the applicant. They have taken the stand that transfer is a condition of service which is to be effected by the employer or the competent authority in the interest of administration, and in the instant case, the order of transfer has emanated owing to greater exigency of public service inasmuch as the skill, efficiency and service of the applicant could be best utilized in the assigned post at transferred place which

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requires effective management of the establishment work, such as, maintenance of staff attendance register, muster roll, maintenance of roster for running staff (Guards) leave/sick records, etc. The Respondents have submitted that the order of transfer has been issued by the competent authority only after creation of a post of Office Superintendent, Gr.I at Titilagarh They have refuted the transfer of the applicant is out of mala fide. Above all, the Respondents have submitted that keeping in view the administrative need and exigency of service, the order of transfer should not be interfered with.

6. We have heard Shri A.K.Bose, learned counsel for the applicant and Shri R.S.Behera, learned counsel appearing on behalf of the Respondent-Railways and perused the materials on record.

7. At the outset we would like to note that ordinarily Courts or Tribunals should not interfere with the order of transfer unless it is an outcome of violation of statutory mandatory rules and/or mala fide. Be that as it may, in the instant case, the applicant has relied on Estt.Srl.No.138/94 – guidelines for transfer of Clerical Staff from Administrative Offices to non-Administrative Offices and vice-versa, the relevant portion of which reads as under:

- i) The clerks posted in non-Administrative offices may be given an option after a minimum stay of five years in such offices, for transfer to administrative offices and in their place clerks working in administrative offices in the same seniority unit, may be posted. But in making such posting, Clerks with longest service in administrative offices, say upto 15 years' service may be picked up preferably from amongst those who have opted for transfer from administrative offices to non-administrative, if such optees in sufficient number are available. However, in the case of optees the maximum service limit need not apply.
- ii) Opportunity of such posting to administrative offices and vice-versa, may also be given to clerks at the time of their promotion to higher grade, so that a clerk on promotion in administrative office may be posted in non-administrative office and in his place, clerk in that grade working in non-administrative office



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for the longest period who opted for transfer from non-administrative office to administrative office, is posted.

iii) Opportunity of transfer of clerks from non-administrative office may also be taken at the time of recruitment of clerks against vacancies in that seniority unit. By way of this, a newly recruited clerk on joining, may be posted straightway to a non-administrative office against a clerk who has worked there for over 5 years and who has given his option for transfer to administrative office under this exchanging scheme.

Note: The administration may, in public interest defer the transfer of staff for any specified period. On the expiry of such specified period the transfer is to be considered again in the normal course. It is to be ensured, however, that transfer from non-administrative to administrative offices should cover about 20% of such staff in a year including those who have opted for transfer from non-administrative offices.

8. Apart from the above, Office Memorandum dated 10.5.1990 issued by the Department of Personnel & Training and accepted and followed by the Railways in the matter of posting of physically handicapped candidates reads as under:

“The undersigned is directed to say that a suggestion has been made that physically handicapped candidates appointed under the Govt. should preferably be posted in their native places or at least in their native district. The matter has been examined carefully. It may not be possible or desirable to lay down that physically handicapped employees belonging to Group-A or Group-B who have all India transfer liability should be posted near their native places. However, in the case of holders of Group C or Group D posts who have been recruited on regional basis and who are physically handicapped, such persons may be given posting, as far as possible, subject to administrative constraints, near their native places within the region”.

2. Requests from physically handicapped employees for transfer to or near their native places may also be given preference”.

9. We have considered the guidelines as set out in Estt.Srl.No.138/94 regarding transfer of Clerks from Administrative Offices to non-Administrative Offices and vice-versa (supra). But we are not convinced that any of the provisions enshrined therein is applicable to the case of the applicant as the transfer of optees is involved therein within the same seniority



unit having regard to their stay in Administrative Offices or non-Administrative Offices, as the case may be. This apart, the transfer guidelines is in respect of Clerks only and not belonging to any other class, grade or category, like one of the applicant. In the instant case, the applicant being Office Superintendent-I, the reliance placed by him on Estt. Srl.No.138/94 is unfounded as it is not a matter of transfer by exercising option.

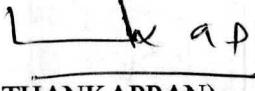
10. The next point to be considered is whether Office Memorandum dated 10.5.1990 issued by the Department of Personnel & Training (as quoted above) is applicable to the case in hand or not. Reading of the said Office Memorandum at the very threshold unequivocally and unambiguously makes it clear that it is impossible and undesirable to lay down a policy guidelines for posting of physically handicapped belonging to Group A & B who have all India transfer liability to their near or native places. However, posting of physically handicapped persons belonging to Group C and D, who have been recruited on regional basis, to their native places could be considered, as far as possible, subject to administrative constraints, within the same region. Neither of the parties herein has thrown any light as to whether the applicant belongs to either Group-A and B or Group-C and D. Be that as it may, the second provision in the said Office Memorandum envisages that requests from physically handicapped persons for transfer to near or their native places may also be given preference. This provision, in our considered view, safeguards the claim of the applicant directly and unhesitatingly. In other words, in the instant case, the applicant has not sought for his transfer to near or his native place – rather, he wants to continue in the same place of posting without being

subjected to transfer. It is also not the case of the Respondents that Sambalpur Division could be managed without Superintendent, Grade-I.

11. Having regard to what has been discussed above, we direct the Respondent-Railways to reconsider retention of the applicant at Sambalpur Division keeping in view the O.M. dated 10.5.1990 issued by the DoP&T and accordingly, pass appropriate orders within a period of thirty days from the date of receipt of this order. Until a final order as directed above is issued by the Respondents, the applicant shall not be disturbed.

12. With the above observation and direction, this O.A. is disposed of. No costs.


(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER


(K.THANKAPPAN)
JUDICIAL MEMBER