

17

OA No.380 of 2008

Esak Mohammad Applicant

Versus

UOI & Ors. Respondents

1. Order dated 10th November, 2009.

C O R A M

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

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The Applicant while working as Senior Gate Keeper in Arand Railway Station in the State of Chhatisgarh requested for his transfer and posting to Orissa and on acceptance of his prayer, he was transferred and relieved from Arand Railway Station on 29.04.2008 to join at Kantabanji Railway Station in the State of Orissa where he also reported to duty on the same day. Vide order under Annexure-A/3 dated 17.09.2008 he was transferred from Kantabanji Railway Station to Bagharbar (in short 'BGBR') and as a consequence, he was asked to vacate the Railway quarters which was in his occupation at Kantabanji Railway Station. By making representation under Annexure-A/4 dated 22.09.2008 he prayed before his authority for cancellation of his transfer on the ground of the education of his children etc. Apprehending his relieve before any decision is taken on his representation under Annexure-A/4 he approached this Tribunal by filing the present Original Application u/s.19 of the Administrative Tribunals Act, 1985 praying to quash the order of transfer under Annexure-3 dated 17.9.2008 and to direct the Respondents to allow him to continue at Kantabanji Railway

1

Station. The grounds set-forth in this OA in support of the above prayer is that as the applicant has come on transfer on his own request to meet the personal difficulties faced by him on the reason of getting his child admitted in the Oriya medium School, the present order of transfer passed by the Assistant Personnel Officer, E. Co. Railway is illegal and arbitrary and that he being the only Senior Gatekeeper in the Kantabanji Railway Station, he ought not to have been disturbed at short intervals. Further stand of the Applicant is that the other shifts, the Stationmaster is utilizing surplus cadre like as TP, TPM (B) and TPMA at Kantabanji Gate. Since the applicant is the only one permanent Senior Gatekeeper posted at Kantabanji and in other shifts the juniors are working there, the transfer of applicant is not permissible. But the authorities have passed the order of transfer even prior to completion of three months of the admission of his child at Kantabanji without taking into consideration the above aspects of the matter. His next contention is that he has already lost his father and mother and there being no other member in his family in case he is disturbed his ailing wife and children would be left without any attendance.

2. Respondents filed their counter *inter alia* opposing the stand of the Applicant. Their stand in the counter is that due to change of technology at Kantabanji Railway Station, the Central Panel interlocking system was introduced in place of end Cabin

controlling system resulting surplus of the end cabins staff. It has been stated that there were 19 staff in different posts viz; LM, TPM-A, TPM-B & Sr.GK who were working at Kantabanji Railway Station before introduction of Central panel and after introduction of new system, the total required number of staff is 14. Accordingly, five staff were rendered surplus. In terms of the Rules junior most employees in the order of seniority, in the circumstances, are to be disturbed. As the applicant was one of the junior most employees from among the employees working at Kantabanji Railway Station, on being rendered surplus vide order under Annexure-3, he was transferred to Bagharbar. They have denied the allegation of the applicant that he was the senior most Gatekeeper at Kantabanji Railway Station. According to the Respondents request transfer employees are bound to be placed at the bottom of the employees working in the transferred place and as such there was no wrong in showing the applicant junior amongst the employees working in Kantabanji thereby transferring him as surplus employee. That apart it is the stand of the Respondents that the applicant is holding a transferable post and as he has no vested right to remain posted in the place where he was working i.e. at Kantabanji. They have also denied receipt of any such representation relied on in this OA and to state that since the applicant has approached this Tribunal without exhausting the departmental remedies this OA besides on merit is liable to be

dismissed being violative of the mandatory provision enshrined in Section 20 of the A.T. Act, 1985.

3. By filing rejoinder, in substance, the Applicant has stated that the stand taken in the counter by the Respondents is false, fabricated and after thought; because it is not that the applicant was rendered surplus, he was made to become surplus intentionally and deliberately only to oust him from his place of posting.

4. Heard rival submissions of the parties. While the Respondents' counsel, besides reiterating the stand taken in the counter in support of their stand relied on the decision of the Hon'ble Apex Court in the case of **S.C.Saxena v Union of India and others**, (006) 9 SCC 583 and the Hon'ble High Court of Orissa in WP (C) No. 2034 of 2009 disposed of on 11.02.2009 in the case of **Premlal Panda and Another v Union of India and others**, Learned Counsel for the Applicant has stated that as per Annexure-R/2 the junior most employee in the same/combined cadre shall have to be transferred first in the event of curtailment of staff on administrative grounds but not junior most employee from other cadre i.e. Gate keeper and as per guidelines under AnnexureA/5, Gate Keeper is not included in the common cadre of Points men/Lever men/Cabin men to be transferred. Hence the present order of transfer of applicant being bad in law is liable to be quashed. His further contention

is that the plea of introduction of central panel interlocking system at KBJ made the applicant and others surplus is not acceptable being far from truth because with closure of end cabins, the creation of level ~~cross~~ crossing Gate independently was necessitated and the minimum required is manning of the gate round the clock by gate keeper in shift duty and basing upon such requirement the applicant was transferred on promotion about five months back only. Therefore, rendering the applicant to be surplus is whimsical, motivated and arbitrary order of the respondents especially when the respondents pin pointed GK/Sr.GK per 08 hrs shift vide para 6.1.1 and page Nos.9 and 10 of the SWR/KBJ in Annexure-A/6. His next contention is that Bagbahara station to which the applicant is transferred is a station having end cabins and there is no level crossing Gate independently to be operated by Gate keepers of Traffic department and it is not clarified in the transfer order in which post the applicant will have to work there since he is not authorized person to work in the end cabin system of working. It is emphatically submitted by him that since the applicant is the only gate keeper in the cadre at KBJ losing or gaining seniority on own request transfer does not arise. It was further contended by Learned Counsel for the Applicant that the duty hour of a gate keeper is eight hours. Only one person has been retained at Kantabanji in place of two and as such, non-retention of the applicant who is the only Sr.

Gate Keeper is nothing but mala fide exercise of power with a view to subject the applicant to humiliation and harassment. However, much stress was given by the Learned Counsel for the applicant that the present transfer of applicant has been made only within five months that too during mid academic session, the order of transfer is liable to be quashed. From the above, it reveals that the present order of transfer, according to the Respondents, was due to reduction of the staff at Kantabanji. It is, therefore, necessary to examine whether the transfer of the applicant was due to reduction of sanctioned strength at Kantabanji or for some other purposes. Except the pleadings in the counter, no document has been filed by the Respondents along with the counter showing the reduction of the sanctioned strength of the post at Kantabanji. That the Applicant was the only Senior Gate Keeper has not been disputed by the Respondents. No record has been produced showing curtailment of the post of Sr. Gatekeeper by keeping the Gatekeeper at Kantabanji. Keeping one gate keeper even after introduction of central panel interlocking system shows that there is a necessity of the hands of gatekeeper. Similarly the eight hours duty per day is the codified rules of the Government in Railway. As such, dispensing with the hands of applicant by way of transfer cannot be said to be justified I have gone through the decisions relied on by the Learned Counsel for the Respondents. On close scrutiny of the decisions relied on by the

23 -7-

Respondents' counsel vis-à-vis the case in hand, it can safely be held that the facts and circumstances of those cases are totally distinct and different and ~~as~~ such are not applicable to the present case. For the reasons discussed above, the inevitable conclusion is that the transfer order of applicant is wholly unjustified and the same is accordingly quashed.

5. In the result this OA stands allowed by leaving the parties to bear their own costs.


(C.R. MOHAPATRA)
MEMBER (ADMN.)