

3

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.426 OF 2010

Cuttack this the 13th day of August, 2010

...

Dr.Kshirod Chandra Sahoo...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to Principal Bench of the Tribunal or not ?


(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER


(G.SHANTHAPPA)
JUDICIAL MEMBER

②
4
1

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No.426 of 2010
Cuttack this the 13th day of August, 2010

CORAM:

THE HON'BLE SHRI G.SHANTHAPPA, JUDICIAL MEMBER
AND
THE HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

...

Dr.Kshirod Chandra Sahoo, aged about 50 years, S/o. Late Prahallad Sahoo, at present working as Sr.Divisional Medical Officer (Surgeon), Waltair Divisional Railway Hospital, At-Dondaparathi, PO/Dist-Visakhapatnam, Andhra Pradesh, residing at Bunglow No. S & C, Type-V/7, Near Railway Stadium, Visakhapatnam, Andhra Pradesh, permanent resident of Village-Jemadeippur, PO-Chandapur, PO-Ranapur, Dist-Nayagarh, Orissa

...Applicant

By the Advocates: Ms.G.Rath,N.R.Routray, S.N.Mishra, T.K.Choudhury

-VERSUS-

1. Union of India represented through the General Mnager, East Coast Railway, Rail Vihar, Chdnrasekharapur, Bhubaneswar, Dist-Khurda
2. Chief Medical Director, East Coast Railway, Rail Vihar, Chandrasekharapur, Bhubaneswar, Dist-Khurda
3. Chief Personnel Officer, East Coast Railway, Rail Vihar, Chandrasekharapur, Bhubaneswar, Dist-Khurda
4. Dr.M.V.Ramana Reddy, Chief Medical Superintendent, Waltair Division, East Coast Railway, At-Dondaparathi, PO/Dist-Visakhapatnam, Andhra Pradesh
5. Chief Medical Superintendent, Divisional Railway Hospital, East Coast Railway, Khurda Road Division, At/PO-Jatni, Dist-Khurda

...Respondents

By the Advocates:Mr.S.K.Ojha, S.C.

ORDER

HON'BLE SHRI G.SHANTHAPPA, JUDICIAL MEMBER:

1. The above Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985, challenging the legality and propriety of the order of transfer dated 4.5.2010(Annexure-A/1) and the order dated 9.8.2010(Annexure-A/12).
2. We have heard the learned counsel for the applicant and Shri S.K.Ojha, learned Standing Counsel for the Respondents.



5

3. It is the case of the applicant that while working as Senior Divisional Medical Officer(Surgery) at Waltair Divisional Railway Hospital, he was transferred and posted as Senior Divisional Medical Officer(Surgery) at Khurda Divisional Hospital vice Dr. R.K.Mohapatra, Senior Divisional Medical Officer (Paediatric). The said order was issued on 4.5.2010. The applicant had submitted his representation dated 10.5.2010 requesting the Chief Medical Director, East Coast Railway (Respondent No.2) for his retention at Visakhapatnam and allow him to take care of his pressing family needs and also carryout the surgery peacefully and with dedication. In his representation he had also mentioned his family difficulties, his 2nd son is studying in Class-X, his another is preparing for entrance examination for getting admission in Engineering stream, his wife is not well very often, he had already suffered six transfers within his service of 26 years and there is no blemish in his service. To support the said statements he has produced the documents. The said order of transfer dated 4.5.2010 was challenged in Original Application No.269/2010. After filing of counter, this Tribunal was pleased to dispose of the O.A. with the following observation and direction.

“After giving due consideration to the rival contentions of the parties, perused the materials placed on record. Power and jurisdiction to interfere in the order of transfer made in public interest is no more res integra and in various decisions the Hon’ble Apex Court has made it clear that such interference in the order of transfer by the Court/Tribunal can only be where the order of transfer is made other than public interest/administrative exigency in other words on the ground of mala fide/in colourable exercise of power or if it is in gross violation of statutory and mandatory Rules governing the transfer and posting of the employees. It is not the case of the Applicant that his present order of transfer suffers from any one of the conditions stipulated by the Hon’ble Apex Court. The only ground canvassed by the Applicant against the present order of transfer is the education of his children and in this regard, learned counsel for the Applicant undertakes that the applicant will come and join in his transfer post after the final examination of his son is over. On the other hand learned




6

Standing Counsel for the Respondents submits that in absence of any surgeon immediate joining of the Applicant at KUR Hospital is necessary. In the above background, though mid-academic session transfer has been deprecated by the Hon'ble Apex Court in the case of Director of School Education, Madras and Another v. O.Karuppa Thevan and another, 1995(1) AT(SC) 21, this Tribunal being not the appellate authority over the decision of the competent authority manning the department, I entirely leave the matter to the Respondent No.1's consideration to decide whether in the circumstances especially on the basis of the undertaking furnished by the Applicant that he shall report at his new place of posting at the end of the current academic session the order of transfer of the applicant under Annexure-1 can be kept in abeyance and pass a reasoned order within a period of fifteen days hence. Till a decision is taken as stated above, the order of transfer of the Applicant under Annexure-A/1 shall not be given effect to".

4. As directed by this Tribunal, the Respondents, i.e., the General Manager, E.Co.Railways, Bhubaneswar has passed a speaking order on 9.8.2010 rejecting the request of the applicant and advised him to report at the new place of posting at KUR Divisional Hospital in view of administrative exigency. The applicant is challenging the said order dated 9.8.2010 and has sought for the interim order of stay of the impugned orders.

5. The applicant is challenging the said orders on the grounds that the Respondents have violated the transfer guidelines, his request has not been considered, there is no reasoned order as directed by this Tribunal, the 3rd Respondent has been trying to create trouble for the applicant since long time, as a matter of fact the applicant was threatened to be proceeded against in a disciplinary proceedings on the basis of fake E.Mail and when the applicant on 7.5.2008 sought for permission to lodge a complaint for a cyber crime, he was refused permission to proceed with the prosecution for fake E-mail by the 4th Respondent. The impugned order of transfer has been passed at the instance of Respondent Nos.3 and 4. Hence, the order of transfer is illegal.



6. The learned counsel for the Respondents has stated under instructions vide communication made to him on 10.8.2010 that the applicant has been relieved on the after-noon of 10.8.2010 and advised to report positively at the new place of posting at KUR Divisional Hospital in view of administrative exigency. The learned counsel for the Respondents further submitted that the said relieve order has been displayed on the notice board, a copy thereof was affixed at the residence of the applicant and a copy was also sent to him. The learned Standing Counsel further submitted that the services of the applicant, being a senior Surgical doctor is badly need at Divisional Railway Hospital, KUR and this is why he has been posted to that place in administrative interest. Finally, the learned counsel for the Respondents submitted that there being no illegality in the order of transfer and that the applicant having been relieved on 10.8.2010, the O.A. is liable to be dismissed.

7. We have carefully considered the submissions made by the learned counsel from either side.

8. The grievances set out by the applicant in his earlier representation dated 10.5.2010 relate to his family problems. Though the applicant has alleged mala fide against Respondent Nos. 3 and 4, yet he has not made Respondent No.3 as party-respondent by name. However, the applicant may agitate his grievance against Respondent Nos. 3 and 4 in a separate proceedings. But the fact remains that the earlier O.A. filed by the applicant was disposed of by this Tribunal on 29.7.2010 which is extracted above.

9. As directed by this Tribunal, the Respondents have decided the representation and issued an order dated 9.8.2010. We have carefully examined the said order. The grievance of the applicant is that the said order is not in accordance with the direction



8

of this Tribunal and that the Respondents have not assigned the reasons while rejecting his request. The reasons assigned in order dated 9.8.2010 are –

“The transfer orders from WAT to KUR has been issued in administrative interest as presently surgical services at KUR are suffering from want of senior surgeon.

Since Dr.K.C.Sahoo’s (SAG/IRMS) services are very much essential at KUR, therefore, it would not be possible to keep his transfer order in abeyance for such a long period even though he gives an undertaking that he shall report at Khurda at the end of current academic session.

Keeping in view his son’s education, he can be allowed retention of quarters as per extant rules till scholastic session, if he requests for such retention of quarter. Since relief is available to his son by way of uninterrupted stay in the existing Rly.Accommodation to pursue his education, I have decided not to keep the transfer order in abeyance for such a long period. He is advised to report at new place of posting at KUR Divisional Hospital in view of administrative exigency”.

10. The learned counsel for the applicant submits that the applicant has availed leave on 10.8.2010, in his absence he has been relieved illegally. Respondents admit that the applicant has been relieved in his absence since his service is required in administrative exigency, a copy of the order was communicated to the applicant and a copy thereof was also displayed on the notice board.

11. The Hon’ble Supreme Court in the case of National Hydroelectric Power Corporation Ltd. Vs.Shri Bhagwan and Shiv Prakash (2002 Supreme Court Cases (L&S) 21 has held that normally the Courts and Tribunals should not interfere with the orders of transfer which is made in the interest of public, unless mala fide is alleged against concerned officers. In this connection, it is relevant to extract hereunder Para-5 of the said judgment of the Hon’ble Supreme Court.

“On a careful consideration of the submissions of the learned counsel on either side and the relevant Rules to which our attention has been invited, we are of the view that the High Court was not justified in interfering with the impugned orders of transfer. It is by now well settled and often reiterated by this Court that no government servant or employee of a public

9

undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest as efficiency in public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise of powers or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders as a matter of routine, as though they are the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned. On the facts and circumstances of the case before us, we are also unable to agree with the learned counsel for the respondents that Rule 4.1.1 of the Seniority Rules interdicting any transfer of the employees from one office or project or unit to any one of the other as long as the seniority of such an employee is protected based on the length of service with reference to the date of promotion or appointment to the grade concerned irrespective of the date of transfer. We also consider it to be a mere submission in vain, the one urged on the basis of alleged adverse consequences detrimental to their seniority resulting from such transfer. In the facts of the pressed cases, at any rate, no such result is bound to occur since the Project undertaken which the respondents have been transferred is itself a new one and, therefore, we see no rhyme or reason in the alleged grievance".

12. On perusal of the records, we find that the order of transfer is on administrative exigencies. The applicant has all India transfer liability. An order of transfer should normally be eschewed and should not be countenanced. The Tribunal cannot substitute its own decision in the matter of transfer for that of a competent authority of a State and even allegation of mala fide when made must be such as to inspire confidence in the Court or as based on correct materials or on consideration borne out of conjectures or surmises except for strong and convincing reasons and no interference could ordinarily be made with an order of transfer.

13. In another case in Union of India and Ors. vs. Janardhan Debanath and another 2004 SCC(L&S) 631, the Hon'ble Supreme Court has held that normally the Tribunal should not interfere unless the order of transfer is shown to be an outcome of malafide



10

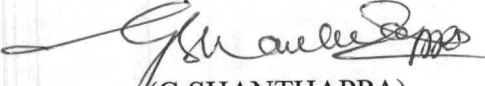
7

exercise or stated to be in violation of statutory provisions prohibiting any such transfer. In this case we do not find any malafide against any particular officer or violative of the guidelines of transfer.

14. If the applicant approached the competent authority for his posting to a particular place, it is for the competent authority to exercise their powers in administrative side on a representation, if any made by him.

15. For the foregoing discussions, we are of the view that the applicant has not established his legal right to challenge the said order of transfer. Since the applicant has already been relieved, the present O.A. fails and is accordingly, dismissed. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(G. SHANTHAPPA)
JUDICIAL MEMBER