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**OA No.116 of 2009**

Felix Roshan Hemrom .....Applicant  
Versus  
Union of India & Others ..... Respondents

1. Order dated: *the 07th April, 2010*

**CORAM**

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

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Seeking quashing of the order under Annexure-A/5 dated 15.12.2008 transferring the applicant in his present capacity of Sr. Goods Guard from SMR/SBP to SMR/TIG, this OA has been filed by the Applicant. His contention is that he belongs to reserved community and as per the instructions of the Government, in the present case the Railway, he is not supposed to be disturbed from his present place of posting in the manner it has been done and that as per the guidelines of the transfer, the minimum tenure posting of an employee at a particular place is four years whereas he has been picked up and transferred before completion of his tenure posting of four years. His further stand is that the authority who passed such order of transfer is not the competent authority to order his transfer and as such, exercise of such power by a lower authority smacks of mala fide. The Respondents denied the contentions raised by the Applicant in support of the prayer made in this OA.

2. In support of the stand that the present order of transfer of applicant suffers from bias and mala fide, it was contended by Learned Counsel for the Applicant that in the order under Annexure-A/1 & A/5 while the transfer and posting of others were effected on their own request, the applicant is the only person who has been transferred in the garb of public interest although no such public interest exists to disturb the applicant. Further by placing reliance on Annexure-A/4 it was contended by him that though 46

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vacancies of Goods Guard and 11 Senior Goods Guard exist at Sambalpur and 36 vacancies of Goods Guard and 6 Senior Goods Guard exist at Titilagarh, the applicant has been disturbed from his place of posting prior to completion of his tenure while allowing the other similarly situated employees who are continuing for years together in the same station where the applicant is posted. To buttress the above stand it was contended by him that the applicant was put under suspension on 11.12.2008 and on the same day the proposal for transfer was given by the Assistant Operation Manager (g). On 12.12.2008 the suspension order was revoked vide Annexure-A/3. On 15.12.2008 memo of charges under rule 11 of the Railway Servants (Discipline and Appeal) Rules was issued to him and on the same day the applicant was transferred under Annexure-A/5. As such, according to the Applicant as the order of transfer is out of motive the same is liable to be set aside. By placing reliance on Annexure-A/2 it was further contended by Learned Counsel for the Applicant that Junior Scale Officer is only competent to transfer the Gr.D employee from one place to another. Applicant being a Group C employee and Assistant Personnel officer, Sambalpur being an officer of Junior scale he ought not to have transferred the applicant in Annexure-A/5. While doing so, no approval was also obtained from the competent authority as required under rules. As such the order of transfer is liable to be quashed. By placing reliance on Annexure-A/14 and in an earlier order of this Tribunal it was contended that the Applicant being a reserved community employee, he should not have faced the order of transfer in such a frequent and unscheduled manner. By stating so, Learned Counsel for the Applicant reiterated his prayer made in this OA. On the other hand Learned Counsel appearing for the Respondents rebutted the arguments advanced by Learned Counsel for the Applicant by reiterating the stand taken in the counter and by placing reliance of the decisions on various

Courts in the matter of interference in the order of transfer made in public interest and has prayed that this OA being devoid of any merit is liable to be rejected.

3. After giving due consideration to the rival submissions of the parties, perused the materials placed on record including decisions rendered by the Hon'ble Apex Court in the matter of interference in the order of transfer of an employee made in public interest. It is worth-mentioning that the Applicant is holding a transferable post is not in dispute. Also it is not in dispute that transfer is an incident of service and the authorities concerned are the best judge to decide who should be transferred where and at what point of time for the smooth running of the wheels of the administration and judicial interference in the matter of transfer of an employee is only in the event it is proved that exercise of power in transferring an employee is by way of mala fide or infraction of any of the statutory and mandatory Rules governing the transfer of such employee and in all other transfers judicial interference and intervention is strictly prohibited. It has been held by the Hon'ble Apex Court in the case of **Silpi Bose v State of Bihar** (reported in AIR 1991 SC 532) that 'where a competent authority issued an order transferring an employee with a view to accommodate another employee, then also the said transfer order cannot be interfered with by the Court'; in the case of **Union of India v S.L.Abbas** (reported in AIR 1993 SC 2444) that '**who should be transferred where**' is a matter for the appropriate authority to decide; in the case of **Union of India v H.K.Kirtania** (reported in 1989 (3) SCC 445) and **Gujarat Electricity Board v Atmaram Sungomall Pashani** (reported in AIR 1989 SC 1443) that transfer of an officer holding a transferable post cannot be objected to and that the Authority is the best judge to decide to distribute and utilize the services of an employee; in the case of **State of Orissa v Kishore Chandra**


**Samal** (reported in 1992 (2) SCALE 251) that where transfer is within the cadre with the identical responsibility, no objection can be raised against the transfer order; in the case of **State of Madhya Pradesh v S.S.Kourav** (reported in AIR 1995 SC 1056) that Courts and Tribunals, not being the Appellate Authority to decide on transfer of the officers (made on administrative grounds); it should allow the wheels of the administration to run smoothly and that Courts/Tribunals are not to interfere in working of the administration and in the of **Union of India v N.P.Thomas** (reported in AIR 1993 SC 1605) that if the transfer is not in violation of any statutory rule there should not be any vested right available to an employee to continue in his original post. Further in the case of **S.C.Saxena v UOI and Others-2006 (6) SCC 583**) it was held by the Hon'ble Apex Court that on transfer, **one should report first at new station and, thereafter only he/she can raise his grievance**, if any.

4. On examination of the case of the Applicant vis-à-vis the aforesaid decisions of the Hon'ble Apex Court I find no justifiable reason to interfere in the order of transfer because none of the arguments advanced by Learned Counsel for the Applicant has any legs to stand; firstly because it is seen that the allegation of mala fide urged by the applicant as one of the grounds in support of his prayer to quash the order of transfer is not based on any concrete material and is based on conjecture and surmises. In this connection it is noted that people are prone to making the allegation of *mala fide*/usually raised by an interested party (as in the instant case). Therefore, in very many cases, the Hon'ble Apex Court cautioned that the Courts/Tribunal should not draw any conclusion unless such allegations are substantiated beyond reasonable doubt. As stated above, since the allegation of mala fide exercise of power made by the applicant is based on conjecture and surmises



the same is not sustainable. Similar is the situation so far as the allegation of the applicant that the transfer has been made by the Asst. Personnel Officer who is incompetent to transfer the applicant. From the order of transfer under Annexure-A/5 it is proved that the Assistant Personnel Officer, Sambalur has only conveyed the order of the Sr.DMO, Sambalpur in issuing the order of transfer. So far as the contention of the Learned Counsel for the Applicant that he being from a reserved community should not have been transferred in such frequent and unscheduled manner falls to the ground because there is no blanket prohibition that reserved community employee cannot be transferred in any manner and in any situation not even in public interest. Rather in a number of cases it has been held by different Courts that public interest is the paramount consideration than personal interest. Applicant is holding a transferable post and as such deviation of any of the executive instructions providing tenure posting cannot give any right to the applicant not to carry out the order of transfer; more so when it is trite law that **one should report first at new station and, thereafter only he/she can raise his/her grievance**, if any against the order of transfer which has not been adhered to by the Applicant.

5. In the above premises, viewed the matter from any angle, I find no merit in this OA which is accordingly dismissed by leaving the parties to bear their own costs.

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