

3

O.A.No. 177 of 2011  
Akur Swain .... Applicant  
Versus  
Union of India & Others. .... Respondents.

Order dated: 30-03-2011.

CORAM:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)  
A N D  
THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

.....  
Applicant is a Senior Section Engineer, East Coast Railway, presently posted at Cuttack. He was transferred and posted, on administrative interest, vide order under Annexure-A/1 dated 23.12.2010 from Cuttack to RHMA as the in-charge of the Depot i.e. SSE/OHE/RHMA.

2. He earlier approached this Tribunal in OA No.14 of 2011 challenging the order of transfer from Cuttack to Rahama under Annexure-A/1. This Tribunal disposed of the matter at the admission stage directing the Respondents to consider the representation of the applicant and till a decision is taken on the said representation, the transfer order of the Applicant shall not be given effect to. As it appears from the record, in compliance of the order of this Tribunal, the Respondents considered the representation but did not find it feasible to cancel the order of transfer. However, while rejecting the prayer for cancellation of his order of transfer in order under Annexure-A/9 dated 10.3.2011,

Y  
directed to keep the said order of transfer in abeyance till the end of the current academic session (2010-11). Further, advised the applicant in the said order to join at his new place of posting after expiry of the current academic session of his daughter.

3. Being aggrieved by the said order of rejection, the Applicant once again approached this Tribunal by filing the present round litigation by adding a new point that as per the Railway Board's instruction under Annexure-A/16 as he has a retarded son of 4 & 1/2 years he is precluded to face any transfer.

4. We have considered the submissions of Mr. Chand Learned Counsel for the Applicant and Mr.S.K.Ojha, Learned Standing counsel for the Railways, appearing on notice for the Respondents and perused the materials placed on record.

5. It is not in dispute either in the pleadings or during course of submission that the post of SSE in which post the applicant is continuing is having transfer liability, transfer is not a condition but is an incident of service, the distance from Cuttack to Rahama is about 60 KMs and that the transfer of the Applicant has been made on administrative grounds. We have gone through the order under Annexure-A/9 as also the Railway Board's instruction placed at Annexure-A/16 on which much credence has been given to by the Applicant in support of his prayer for cancellation of the

R

order of transfer and it is found that the Respondents have dealt with the grievance, as raised by the Applicant in his representation, and communicated the rejection in a well reasoned order. Similarly, no such absolute right can be vested with an employee by the Railway Board through the instruction under Annexure-A/**16** that if an employee has a retarded son/daughter, irrespective of the public interest/administrative grounds, he/she cannot be transferred from one place to the other. Besides, the above, the Applicant cannot be allowed to resist his order of transfer by filing Original Applications one after the other on different grounds even without taking such ground in the representation made to the authority. It is true that the order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employees but on that score the order of transfer is not liable to be struck down. Unless such order is passed with *mala fide* or the authority passing the order of transfer is not competent to do so and/or the order of transfer is in violation of statutory Rules. In a transferable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the Department. In the above perspective, we do not find any reason to fish into the administrative affairs of the Department for quashing the order of

transfer; especially when the same is in public interest. For the reasons stated above, this Original Application stands dismissed at this admission stage. Send copies of this order along with OA to the Respondent No.2 for record.

  
(A.K.PATNAIK)  
Member (Judl.)

  
(C.R.MOHAPATRA)  
Member (Admn.)