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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A No. 204 of 2011
Cuttack, this the 11th of April, 2011

CORAM:

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

Pratap Chandra Roy, aged about 59 years, son of Late Gobardhan Ray, at present working as Station Superintendent, Sason Railway Station, At/Po.Sason, Dist. Sambalpur, resident of Sason Railway Colony, At/Po.Sason, Dist. Sambalpur.

.....Applicant

By legal practitioner: M/s.N.R.Routray, S.Mishra,
T.K.Choudhury, Counsel.

-Versus-

1. Union of India represented through the General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist.Khurda.
2. Divisional Railway Manager, East Coast Railway, Sambalpur Division, At/Po-Kshetarajpur, Town/Dist. Sambalpur.
3. Senior Divisional Personnel Officer, East Coast Railway, Sambalpur Division, At/Po.Kshetarajpur, Town/Dist.Sambalpur.
4. Senior Divisional Operating Manager, East Coast Railway, Sambalpur Division, At/Po.Kshetarajpur, Town/Dist. Sambalpur.

....Respondents

By legal practitioner: Mr.S.K.Ojha, SC

O R D E R

MR. C.R.MOHAPATRA, MEMBER (ADMN.):

In this Original Application filed U/s.19 of the A.T.

Act, 1985, the Applicant who is at present working as Station



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Superintendent, Sason Railway Station, At/Po. Sason, Dist. Sambalpur, challenges the order No. Optg./04/2011 dated 03.02.2011 [Annexure-A/2] in which he has been transferred and posted to Atabira. His contention is that as his date of retirement is 30th April, 2012, the present transfer would cause him immediate difficulties as he is left with only one year service and that there having been no complaint against him, he should not have been transferred from his present place of posting. In this connection he has placed into service copy of the letter No.P/R/Con/IR dated 10.6.2981 and copy of the letter No. P/R/Con/TR dated 23.10.1970 [Annexure-A/3] which *inter alia* speaks that the General Manager can exercise his discretion to transfer the staff from one station to other against whom there are complaints but an employee on the verge of retirement (with 1 or 2 years service left) may be exempted if complaints are not serious in nature. Hence, Applicant seeks cancellation of his transfer from Sason to Atabira in Annexure-A/2.

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2. Copy of this OA has been served on Mr. S.K.Ojha, Learned Standing Counsel appearing for the Railways who appears on notice for the Respondents. Heard Learned Counsel for both sides and perused the materials placed on record. Mr. Ojha, Learned Standing Counsel appearing for the Respondents submits that transfer is an incident of service and who should be transferred where is a matter to be decided by the authority. Therefore, since the representation of the applicant is pending this OA being premature is liable to be dismissed. On the other hand, Learned Counsel appearing for the Applicant submitted that there is every chance of his relieve before any decision is taken and communicated on his representation. Hence he has approached this Tribunal seeking to quash the order of transfer and pending final decision on this OA, the order under Annexure-A/2 in so far as it relates to applicant should be stayed.

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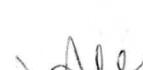
3. We have considered the rival submission of the parties and perused the materials placed on record. No doubt that transfer is an incident of service and who should be transferred where is a matter to be decided by the authority. It is also trite law that the Tribunal can interfere in the order of transfer only if it is made in contravention of the rules or the order of transfer is actuated with *mala fide* exercise of power. It is not in dispute that instruction issued by the Railway Board is statutory in nature. It appears that the Railway Board instruction has been ~~circular~~ circulated vide Annexure-A/3. Therefore, it was the bounden duty of the Respondents to give respect to the order of the Railway Board while contemplating the transfer of an employee who is left with 1 or 2 years to retire.

4. But as the representation under Annexure-A/4 is pending with the Respondent No.4 (Senior DOM), ECoRly, Sambalpur, we desist from expressing any opinion on the merit of the matter and as agreed to by

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Learned Counsel for both sides, this OA is disposed of at this admission stage with direction to the Respondent No.4 to consider and dispose of the representation of the Applicant as at Annexure-A/4 keeping in mind the instruction of the Railway Board communicated in letter under Annexure-A/3 within a period of thirty days from the date of receipt of copy of this order. Till a decision is taken and communicated to the applicant in a well reasoned order, the order of transfer of the Applicant in Annexure-A/2 shall be kept in abeyance.

5. Send copy of this order along with OA to the Respondent Nos.2, 3 and 4 by post, at the cost of the Applicant, for compliance. Free copy of this order be given to Learned Counsel for both sides. Mr. Routray, Learned Counsel for the Applicant undertakes to deposit the postal requisite by 12.4.2011.


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


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