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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.109 OF 2010

Cuttack this the 28th day of February 2011

L.Sarith Babu...Applicant

-VERSUS-

Union of India & Ors. ...Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?
2. Whether it be referred to PB of C.A.T., New Delhi for being circulated or not ?


(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER

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ORIGINAL APPLICATION NO.109 OF 2010

Cuttack this the 28th day of February, 2011

CORAM:

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

L.Sarith Babu, Son of Adinarayan, aged about 47 years, at present working as Jamaxar (Peon) under C.M.S., Waltair Division, East Coast Railway, At/PO/Dist:Vishakhpatnam, Andhra Pradesh

...Applicant

By the Advocates: M/s. N.R.Routray
S.Mishra

-VERSUS-

1. Union of India represented through the General Manager, East Coast Railway, Rail Vihar,Chandrasekharpur, Bhubaneswar, Dist-Khurda
2. Chief Medical Superintendent, East Coast Railway, Waltair Division, At/PO/PS-Vishakhpatnam, Andhra Pradesh
3. Senior Divisional Personnel Officer, East Coast Railway, Waltair Division, At/PO/PS;Vishakhpatnam, Andhra Pradesh
4. Divisional Railway Manager, East Coast Railway, Waltair Division, At/PO/PS-Vishakhpatnam, Andhra Pradesh
5. Senior Divisional Medical Officer, Health Unit, East Coast Railway, At/PO/Town/Dist-Koraput, Orissa

...Respondents

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

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ORDER

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER:

1. Applicant, L.Sarith Babu, at present working as Jamadar (Peon) under C.M.S., Waltair Division, East Coast Railways, has filed this Original Application challenging the legality and validity of order dated 9.03.2010 (Annexure-A/4) issued by Respondent No.4, viz., Divisional Railway Manager, East Coast Railway, Waltair Division, transferring and posting him to work under Sr.DMO/Health Unit/KRPU, along with the post in his existing capacity, scale and pay on administrative interest. Being aggrieved by this order, the applicant, vide Annexure-A/4 dated 12.3.2010 preferred a representation to Respondent No.3, viz., Sr.Divisional Personnel Officer

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praying therein to allow him to continue under CMS/Waltair. Having received no response on his representation and lest he may be relieved of his duties, the applicant has moved this Tribunal in the present Original Application seeking the following relief.

“To quash the order of transfer dated 09.03.2010 under Annexure-A/4 and pass any other order as this Hon’ble Tribunal deems fit and proper in the interest of justice”.

2. Respondent-Railways have filed a detailed counter opposing the prayer of the applicant. The genesis of transfer, as disclosed by the Respondents in their counter is that the Vigilance Department, while investigating a complaint case relating to forgery in medical examination of one R.N.Muduli, the applicant was found to have been involved to access to classified documents in the P.M.E.Section and as such, the Vigilance Department advised the Medical Department to shift the applicant from the Main Hospital, VSKP to outside the limits of Visakhapatnam. According to Respondents, to arrest the illegal and unconnected working of the applicant the administration had to transfer him to Koraput on administrative interest, based on the advice of the Vigilance Department, where the service of the applicant could be better utilized in view of the ARME Scale-I Stationed. The Respondents have further submitted that some other staff who were found to have been involved in the aforesaid forgery case have been penalized. Lastly, it has been submitted that transfer of the applicant being made in public interest, the Tribunal should not interfere with the matter. Accordingly, it has been prayed that the O.A. being devoid of merit is liable to be dismissed.

3. By filing an additional affidavit, the applicant has refuted the averment by the Respondents in their counter to the effect that he had been involved for having access to classified documents in the P.M.E. Section.

4. Heard Shri N.R.Routray, learned counsel for the applicant and Shri S.K.Ojha, learned Standing Counsel appearing on behalf of the Respondent-Railways and perused the materials on record.

5. This matter came up on 15.03.2010 for admission, when the Tribunal having found a prima facie case, while admitting the O.A., as an interim measure, stayed the operation of the impugned transfer order vide Annexure-A/4 dated 9.3.2010 and this interim order is in force as on date.

6. I have considered the submissions made by the learned counsel for the parties. Before coming to merit of the matter, it is worthwhile to note that transfer being an incident of service the scope of interference by the Court or Tribunal is very limited and the Court or Tribunal could intervene in the matter of transfer if there has been violation of statutory, mandatory rules or the transfer so made is tainted with bias or mala fide. It is also the settled position of law that who should be posted where and at what point of time is within the prerogative of the authorities competent in that behalf and therefore, no interference by the Court/Tribunal under such circumstance is called for. Within the above frame work, this Tribunal has to consider as to whether there is any scope to interfere with the order of transfer in the instant O.A.

7. In the fitness of things and for proper adjudication of the matter, it is pertinent to reproduce, at the outset, the letter dated 2.2.2010 (Annexure-R/1) addressed to Chief Medical Superintendent, East Coast Railway, Waltair by the Deputy Chief Vigilance Officer(T), which reads thus:

“Sub:Transfer of official from VSKP Main Hospital.

While investigating a complaint case, relating to forgery in medical examination of Sri R.N.Muduli, it was brought to the light that no DAR action had been initiated against Sri M.K.Sarith Babu, Jamadar Peon in your office for having access to classified documents in the PME Section, despite the fact of being an unauthorized person working there. The

inquiry report submitted on dt.30.04.08 (copy enclosed) had recommended action against him in this context.

You are therefore, requested to immediately shift Sri M.L.Sarth Babu, Jamadar Peon from the Main hospital of VSKP and post him outside the limits of Visakhapatnam. The action taken against him may be intimated to this office for further disposal of the complaint case at this end.

This may be treated as most urgent.

Sd/-
(B.K.Panda)
Dy.Ch.Vigilance Officer(T)
For the GM/Vigilance.E/Co.Rly./BBS "

8. In this context, the observation of the Enquiry Officer, as noted and recommended against the applicant vide Annexure-R/2, reads as under:

OBSERVATION

4.Unauthorized peons are allowed to the PME Section for handling the sensitive documents (even writing the memos). In this particular case Mr.Sarath Babu, J/Peon, was allowed to write memos (example Memo No.403531). This has happened with the knowledge of OS (Medical), PME Doctor and CMS (as per the statement of Mr.Sarath Babu) thereby giving a chance for handling the documents and making alterations.

6.OS (Medical), CMS's office, Waltair does not maintain a proper movement register of the staff which could have been made him aware of Mr.Sarath Babu's movement to the PME Section.

RECOMMENDATION

2.The deputed Clerk, Mr.Sukru, allowing unauthorized peon i.e., Mr.Sarath Babu, to handle the documents without the permission of doctor incharge PME (as stated by Dr.T.J.Prakash). It is a violation of rules for which he should be taken up.

3.Mr.L.Sarath Babu, J/Peon working there in PME Section without any order either from CMS or OS(Medical) (as already stated by Sri Chitti, OS(Medical) vide his letter No.Nil Dt.28.03.08 is again a violation of working conduct for which he should be taken up.

7.Unauthorized persons are allowed to handle the registers and documents that to with the knowledge of pme Doctors (as per the statement of Mr.Sukru, Jr.Clerk and Mr.Sarath Babu, J/Peon) and on advice of should be taken into account and proper action may be taken".

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9. Perusal of the fact finding inquiry report as quoted above, makes it clear that the applicant is not competent to handle the unclassified documents in P.M.E. Section. At the same time, the observation and recommendation made in Paragraphs-4, 2 and 7 respectively cannot be brushed aside that being allowed and within the knowledge of the authorities the applicant had been so doing and at no point of time the authorities, until the vigilance inquiry could be conducted, had prevented him from doing such unauthorized working and as such, it is implied that the applicant had, so far been allowed to do such work in the PME Section. Paragraph-2 under "RECOMMENDATION" speaks of the deputed Clerk Mr.Sukru who, without the permission of his superior authority had allowed the applicant to work in PME Section.

10. From all the above, it is clear that the transfer of the applicant has been actuated at the instance and instigation of the Vigilance Department but not by the independent and impartial decision of the Railway Administration. Besides the above, the tenor of the transfer order attracts a stigma on the applicant as the Railway Administration on the dictate of the Vigilance Department is bent upon to dislodge him from the present place of posting on the alleged unsubstantiated involvement in certain affairs beyond his authority. If this state of affairs is accepted to be wholesome, the present transfer of the applicant would smack of a measure of punishment. Viewed from this angle, it is to be held that without holding an incumbent guilty of alleged charge on conclusion of a full-fledged inquiry after giving the delinquent adequate opportunity to have his/her say in the matter, no (punishment of transfer) punishment whatsoever could be imposed as the same is violative of the principles of natural justice. I am conscious that an incumbent could be transferred in

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public interest, as a measure of punishment, but that should only be done after following the due procedure of law.

11. Apart from the above, the so called fact finding inquiry per se was a preliminary inquiry which is aimed at only to hold whether there existed sufficient grounds to draw up charge against the alleged delinquents and to proceed against them in accordance with Discipline & Appeal Rules. It is not the case of either of the parties before me that the applicant had been served with any charge memo and/or any disciplinary action had ever been initiated against him on the conclusion of which, having been found guilty of such charge, as a measure of punishment transfer of the applicant from the present place of posting has been resorted to by the Railway Administration. This being the situation, the inescapable conclusion that only could be drawn is that the present transfer of the applicant from Waltair to Koraput is due to an imposition on the Railway Administration by the vigilance Department, which in other words would construe to mean "make a virtue of necessity" and therefore, by no stretch of imagination it can be said that the Railway Administration has taken an independent decision in the matter of transfer of the applicant and accordingly, I hold that the transfer order at Annexure-A/4 arises out of bias and malafide.

12. For the aforesaid discussions, the impugned order dated 9.3.2010 at Annexure-A/4 transferring and posting the applicant from CMS/WAT to work under Sr.DMO/Health Unit/KRPU along with the post in his existing capacity, scale and pay on administrative interest is hereby quashed and set aside.

13. Last but not the least, it is to be noted that this Tribunal, while admitting this O.A. and granting interim order on 15.03.2010 had entertained a doubt regarding its maintainability on the ground of jurisdiction. Since the Waltair Division under which the applicant is now working comes under the General Manager, East Coast Railways,

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Bhubaneswar and no such objection has been raised by the Respondents in their counter filed, it is held that the present O.A. is maintainable before this Tribunal from the jurisdiction point of view.

In the result, the O.A. is allowed. No costs.


(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER

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