

10
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Date of order: 31.08.2010

PRESENT:

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

In the Matter of

O.A. No.129/2010

E.Co.Rly Audit Association & Anr. ... Applicants

Versus

Union of India & Ors. ... Respondents

(For Full details, see the enclosed cause title)

For Applicant: Mr. A.K.Mishra, Sr. Counsel & Mr.P.K.Padhi, Counsel

For Respondents: Mr.U.B.Mohapatra, SSC

ORDER

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

The order under Annexure-A/4 dated 12.03.2010 transferring the Applicant No.2 (P.K.Parija, Auditor) from Con. & IT Audit at Hqrs, Bhubaneswar to Construction & Traffic Audit, Waltair is under challenge in this Original Application filed under section 19 of the Administrative Tribunals Act, 1985. Shri Gautam Halder stating to be the Secretary of the East Coast Railway Audit Association (Category-III) filed this OA along with Applicant No.2 (Pratap Kumar Parija) whose order of transfer has been challenged in this OA. However, on the prayer of the Learned Counsel for the Applicants the name of the applicant No.1 was deleted by the order of this Tribunal dated 25.3.2010 and this OA was confined in so far as Applicant No.2 is concerned. It is the case of the applicant, in support of the relief claimed in this OA, that in order to look after his family by forfeiting his seniority and promotional avenue in his former Department i.e. P&T Audit Office, Mumbai he came on transfer to the New Organization i.e. Principal Director of Audit, East Coast Railway, Bhubaneswar only on 2.4.2008. But before completion of his tenure of two years in his new place of posting, vide order under Annexure-A/4 he has been transferred to Waltair. This apart, it is the contention of the Applicant that he was elected on 12.11.2009 as the President of the recognized Railway Audit Association, ECoRly,

2

Bhubaneswar. Such recognition was granted by the Respondents as per the provision of Article 19 (c) of the Constitution of India. In terms of the bye law of the Association, the applicant being an office bearer of the recognized association is not liable to go out of the headquarters. According to the Applicant the present order of transfer being made in violation of the provision of the bye law, the same is liable to be quashed.

2. It is the stand of the Respondents in their counter filed in this case after serving copy thereof on other side that at the time of opening of the office of the Principal Director of Audit, East Coast Railway on 01.04.2006 almost 50% of the staff came on deputation from South Eastern Railway as the office was running short of staff. The applicant who was working at Mumbai came on transfer to the office of the Principal Director of Audit, East Coast Railway that covers the audit stations at Waltair Division, Sambalpur Division and Khurda Road Division. Therefore, the staffs can very well be transferred and posted to the units of audit stations of any of those stations by the Principal Director of Audit. As it is not possible to transfer the deputationists, the administration has the only choice to transfer the staff who are borne on its own cadre. After the joining of the applicant on transfer in April, 2008 he was considered with some others to be posted in audit stations under the divisions. However, the applicant was retained at Headquarters in Bhubaneswar while some others were transferred. Now the applicant is transferred being required for a new audit unit under Waltair Division opened at Visakhapatnam, in public interest for smooth functioning of the administration. In so far as the allegation of the applicant that the order of transfer is the out come of mala fide exercise of power he being the president of the association, he ought not to have been transferred, it is the contention of the Respondents that as his election as president was not held as per the constitution of the association, the authority did not recognize him as the president and which was intimated to the Secretary of the Association. It has been clarified by




the Respondents that the post of President of the Association fell vacant due to request transfer of Shri Anurup Sarkar, Ex-President to N.F. Railway. Though the applicant was stated to have been unanimously elected as the President of the Association on 12.11.2009 by the General Body, the election of the President was unconstitutional as it was not conducted in accordance with Art. 11 (b) of the constitution (Annexure-R/2) which stipulates that in case of vacancy of the post of President or Secretary, the Vice-President and the Assistant Secretary shall automatically take over as President and Secretary for the remaining period of its tenure. The election of the applicant an ordinary member as president by an arranged GB was unwarranted, amounts to taking law to his own hand and unconstitutional. In so far as the allegation of the applicant that he has been transferred within a short span of his posting at Bhubaneswar in keeping his juniors is concerned the same has been denied by the Respondents and it has been stated that as the applicant is holding a transferable post he cannot object some how or the other to obey the order of transfer which has been made in public interest/exigency of service and that one cannot resist to go on transfer on the ground of discrimination in the matter of transfer. Further contention of the Respondents is that in the transfer policy of the headquarters there is no such terms and condition that one cannot be transferred before completion of certain fixed period. On the above ground the Respondents vehemently opposed the prayer of the applicant to quash the order of transfer. Despite opportunity no rejoinder has been filed by the Applicant.

3. Learned Counsel appearing for both sides have reiterated the stand taken in their respective pleadings and having heard them at length perused the materials placed on record. In support of his stand, Learned Senior Counsel appearing for the Respondents by placing reliance on the Government of India lead emphasis that the applicant being an Office bearer of a recognized union ought not to have been shifted from the headquarters on transfer and as such the order of transfer being bad in law is liable to be set aside. I have gone through the Govt. of India instruction dealing

L

13

with the subject matter of transfer of the recognized office bearers relied on by the Applicant. But Learned Senior Counsel appearing for the Applicant, in spite of opportunity, was not able to substantiate by producing any rule or instruction prohibiting that in so far as the tenure of posting is concerned, one cannot be transferred before completion of such period in one post/station. The judicial review of the administrative decision in regard to transfer of an employee is no more res integra. It is well settled law that the Tribunal should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any Rule or on the ground of proved mala fide exercise of power. A Government servant holding a transferable post has no vested right to remain posted at one place or the other. No contemporaneous material has been placed by the applicant in support of his allegation of mala fide exercise of power by the Respondents in transferring him from Bhubaneswar to Waltair nor has he substantiated his stand of violation of any rule or instruction prohibiting such transfer before completion of particular period of continuance in one post. The instruction relied on by the Applicant dealing with the transfer of the Union Executive clearly envisages that transfer of the office bearers should not be made as far as possible. This means if the transfer is not unavoidable the authority competent can transfer the office bearer. It is the case of the Respondents that the transfer of the applicant was inescapable in public interest. It is the case of the Respondents that the election of the Applicant as President of the Association has no legal sanctity being made in violation of the provisions of the bye law. In view of the above, I see no force in the submission of the Learned Senior Counsel for the Applicant that there remains any ground to interfere in the present order of transfer of the Applicant. In the result, this OA fails being devoid of any merit and is accordingly dismissed by leaving the parties to bear their own costs.


(C.R. Mohapatra)
Member (Admn.)