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O.A.No. 96 of 2009
K.C.Subudhi Applicant
Versus
Union of India & Others Respondents

Order dated: 22-03-2010

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

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Applicant is a Senior Section Engineer (C&W), E.Co.Rly presently posted at Puri under the Senior Divisional Mechanical Engineer, E.Co.Railway, Khurda Road and residing at 34, Chintamaniswar Area, Bhubaneswar-6. In this Original Application he challenges the order Annexure-A/7 dated 10th February, 2009 transferring and posting him to C&W Department, Paradeep. His grievance is that he having been released from Air Force, joined the S.E.Railway on 02.01.2001 and after undergoing necessary departmental training, he was posted as Section Engineer (C&W) at Sambalpur on 02.01.2002. According to the Applicant since then he has undergone four transfer the last posting was at Puri on 28.8.2008. But within a short span of time, without any rhyme or reason, in his present capacity, he has again been transferred and posted to C&W Department of ECoRly, Paradeep vide order under Annexure-A/7. His contention is that his old ailing parents and wife are under the treatment Military (ECHS) Medical centre situated at Bhubaneswar where he is getting the treatment at free of cost being an ex service man and in case he is disturbed from Puri his parents and wife would be deprived of such benefit; especially there being no such facility available at Paradeep and the distance of Paradeep is more than his present place of posting. Further case of the Applicant is that there are four more Senior Section Engineers working at (C&W) department of ECoRly at Puri out of them one Shri S.R.Behera is at Puri since about last 30 years, two others

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namely S/Shri A.K.Bid and Srinivas Sahoo are at Puri since 2000 and Shri R.C.Singh is working at Puri since 2006. But he has been discriminated and though he submitted representation stating all the above, no decision has yet been communicated to him on the same. Hence, he prayed to quash the order of transfer under Annexure-A/7, direct the Respondents to allow him to continue at Puri and meanwhile to direct the Respondents to consider and dispose of his representation made under Annexure-A/8.

2. The stand of the Respondents in their counter reply filed in this case on 16th September, 2009 is that Applicant cannot claim any right to continue at Puri especially when he is holding a transferable post. Applicant's transfer was necessitated keeping the need of his hand by the administration at Puri. He was transferred in Public interest which is the paramount consideration in public administration. Availing of medical facility and education of children are all personal matter which cannot be a ground to resist the order of transfer which has been made in public interest/administrative exigency. Therefore, by relying on several decisions of the Hon'ble Supreme Court as also Hon'ble High Court of Orissa it has been stated by the Respondents since transfer is an incident of service and the applicant's transfer has been made in public interest interference in the matter by this Hon'ble Tribunal is not warranted and accordingly the Respondents have prayed for dismissal of this OA.

3. While reiterating the stand taken in their respective pleadings of the parties, Learned Counsel appearing for the Respondents to buttress his argument has also relied on the decision of the Hon'ble Apex Court rendered in the case of **SC Saxena v Union of India and others** reported in 2006 SCC (L&S) 1890. Having heard them at length, perused the materials placed on record. At the out set I may state that interference in the order of transfer made



in public interest by the Courts/Tribunal is no more *res integra* and the law on this aspect needs no repetition. Since the present order of transfer of the Applicant has been made in public interest and admittedly the Applicant is holding a transferable post, the personal difficulties or inconvenience to be caused in case he is transferred from Puri pointed out in this OA cannot override the present order of transfer; especially Tribunal being not the Appellate Authority over the decision of the competent authority deciding who should be transferred where and at what point of time. Hence I refrain from interfering with the present order of transfer.

4. At the same time, this Tribunal cannot close its eyes to the specific allegation that there has been no uniformity in the exercise of the power of transfer by the Authority as other counter part employees like the Applicant have been continuing at Puri for years together where he has been disturbed within a short span of time. The Respondents have not controverted this allegation in their counter filed in this case. Fact remains that the representation submitted by the Applicant under Annexure-A/8 is still pending with the Respondents and no decision has been taken thereon. As such, the Respondents are hereby directed to consider the representation of the Applicant (keeping in mind the specific allegation of the Applicant that persons are continuing at Puri since long without facing any transfer and the personal difficulties raised by the Applicant) and pass a reasoned order within a period of thirty days under intimation to the Applicant. But the direction given above, will not entitle the Applicant not to join in his post at Paradeep by applying the ratio of the decision of the Hon'ble Apex Court rendered in the case of **S.C.Saxena v Union of India and others**, reported in 2006 SCC (L&S) 1890.

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5. With the discussions made above, this OA stands disposed of.
There shall be no order as to costs.


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

