

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.339 OF 2010
Cuttack this the ~~11~~ day of November, 2010

CORAM:

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

Sri Ajit Kumar Mishra, aged about 49 years, S/o. late Sashanka Sekhar Mishra, At/Po-Karilopatna, Dist-Kendrapara - at present working as Station Superintendent, East Coast Railway, Cuttack

...Applicant

By the Advocates: Mr.P.K.Chand, D.Satpath & J.Mohanty

-VERSUS-

1. Union of India represented through General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar
2. Divisional Railway Manager, East Coast Railway, Khurda Road, Jatni, Khurda
3. Sr.Divisional Operating Manager, East Coast Railway, Khurda Road, Jatni, Khurda
4. Sr.Divisional Personnel Officer, East Coast Railway, Khurda Road, Jatni, Khurda

...Respondents

By the Advocates: Mr.M.K.Das, SC

ORDER

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

1. Applicant, Ajit Kumar Mishra, at present working as Station Superintendent, East Coast Railways, Cuttack has moved this Tribunal being aggrieved by the order of transfer issued by the Railway Administration vide Office Memo No.OPTG/C/87/10 dated 25.6.2010 transferring him to TLSB near Talcher(TLHR) (Annexure-A/1).

L

2. It is the case of the applicant that while working as Deputy Station Superintendent, Badabandha he was promoted to the post of Station Superintendent being posted to Cuttack on his own request, which according to him, is illegal and arbitrary by the reason that he had never made any request or representation for his posting at Cuttack on promotion. Be that as it may, the applicant joined at Cuttack on 29.4.2010. While working as such, within a span of two months, vide order dated 25.6.2010 he has been transferred to TLSB near Talcher (TLHR). According to applicant, this transfer order arises out of mala fide, besides the same to have been resorted as a measure of punishment. His grievance is that he should have been allowed to complete his tenure of four years at Cuttack. In the circumstances, he has sought for the following relief.

“...to quash the Office Memo No.OPTG/C/87/10 DATED 25.6.2010(Annexure-A/1) in transferring the applicant from Cuttack Station to TLSB Station, Talcher to the extent it applies to the applicant and further be pleased to pass any other order as deem fit and proper in the fact and circumstances of the case”.

3. This matter came up for admission on 5.7.2010 before this Tribunal. The Tribunal while admitting the O.A. and directing notice to Respondents, as an interim measure, stayed the operation of the transfer order vide Annexure-A/1 which has since been continuing.

4. In response to notice issued by this Tribunal, the Respondent-Railways have filed a detailed counter opposing the prayer of the applicant. The main thrust of the counter filed by the Respondents is that on receipt of a complaint over telephone from a disabled passenger at Cuttack on 22.5.2010 that the applicant did not allow him to use the wheel chair without a collie who demanded Rs.100/- for use of wheel chair, the applicant was called upon by the Divisional Railway Manager, Khurda Road to

explain his conduct. According to Respondents, the explanation offered by the applicant in that behalf being not satisfactory, Railway Administration decided to transfer him to some other place where there is no passenger interface so that no further passenger complaint would generate on his account and as a consequence, the applicant was transferred to TLSB near Talcher(TLHR) in administrative interest. Thus being the genesis of transfer of the applicant the Respondents have prayed that the O.A. being devoid of merit the Tribunal should not interfere in the matter and therefore, the same should be dismissed.

5. The applicant has filed a rejoinder to the counter.

6. Heard Shri P.K.Chand, learned counsel for the applicant and Shri M.K.Das, learned Addl.Standing Counsel appearing on behalf of the Respondent-Railways and perused the materials on record.

7. Having regard to the adduced facts and circumstances of the case by the both sides, the sole point to be determined is as to whether the present transfer arises as a measure of punishment even though the same is stated to have been issued in public interest.

8. It is not in dispute with regard to receipt of a complaint over telephone by the Railway Administration from a disabled person. According to Respondents, the applicant's explanation offered in this regard not found to be satisfactory, they resorted to transfer of the applicant. From the above recital of facts it is crystal clear that the applicant has been transferred as a measure of punishment. In this connection it is to be noted that the delinquent could be imposed with a punishment only on conclusion of an inquiry after affording reasonable opportunity to defend himself. From the record it reveals that although the Respondents have made out a case against the applicant, but they have failed put up any material before the Tribunal to show

that prior to the impugned order of transfer as a measure of punishment it could be issued only after an enquiry had been conducted in conclusion of which ^{he} having been held guilty it impelled the Respondent-Railways to resort to transfer in public interest. Even the Respondents have not been able to produce a scrap of paper recording the purported explanation offered by the applicant, which according to them was not satisfactory. From the above narration the inescapable conclusion that could only be drawn is that the applicant's transfer arises as a measure of punishment; which punishment has been imposed in the absence of any inquiry after giving him reasonable opportunity to defend himself.

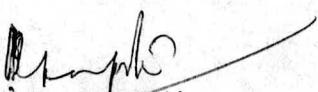
9. As regards the plea that the transfer arises out of mala fide, this Tribunal is not at one with the learned counsel as the applicant has not produced any corroborative materials to show that the Respondent-Railways have acted so. In so far as the claim of the applicant to allow him to complete the four years tenure at the present place of posting, it is to be noted that such claim is based on the transfer policy guidelines which has been issued to regulate transfer and not mandatory in nature and the Railway Administration is within its domain to effect transfer of an incumbent in exigency of service even before completion of four years tenure.

10. I have gone through the decisions cited by the Respondent-Railways in support of their claim. But in the peculiar facts and circumstances of this case, as discussed above, those decisions are of no help. Transfer as a measure of punishment amounts to a stigma which is not legally acceptable.

11. Having regard to what has been discussed above, it is to be held that the transfer of the applicant though ordered in public interest yet the same arises as a measure of punishment in the absence of any inquiry or rather proved misbehaviour and accordingly the same is not sustainable in the eye of law.

12. For the foregoing reasons transfer order issued vide Office Memo No. OPTG/C/87/10 DATED 25.6.2010(Annexure-A/1) in so far as the applicant is concerned is quashed.

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



(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER

BKS