

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

**O.A.No. 260/00446 of 2015**

Cuttack this the 19<sup>th</sup> day of February, 2016 *R*

CORAM  
**HON'BLE SHRI R.C.MISRA, MEMBER(A)**

Birendra Nath Biswas  
Aged about 55 years  
S/o Late Binoda Bihari Biswas,  
At present working as Senior Section Engineer (Works)/Line/Sambalpur  
O/o Asstt. Divisional Engineer (Line),  
East Coast Railway,  
Sambalpur,  
At/PO Sambalpur,  
Dist.Sambalpur

...Applicant

By the Advocate(s)- Mr. D.R.Pattanaik

-VERSUS-

Union of India represented through:

1. The General Manager,  
East Coast Railway  
At/Po Chandrasekharpur,  
District Khurda.
2. Divisional Railway Manager,  
East Coast Railway, Sambalpur,  
At/Po/District Sambalpur.
3. Principal Chief Engineer,  
East Coast Railway,  
Rail Sadan,  
Chandrasekharpur,  
District Khurda.
4. Assistant Divisional Railway Manager,  
East Coast Railway,  
Sambalpur,  
At/PO/District Sambalpur.
5. Senior Divisional Personnel Officer,  
East Coast Railway,  
Sambalpur,  
At/Po/District - Sambalpur.
6. Senior Divisional Engineer (Co-ordination),  
East Coast Railway,

*Pattanaik*

Sambalpur,  
At/Po/District - Sambalpur.

7. Sri Rajeswar Panda,  
J.E.(Works)/TIG,  
East Coast Railway,  
Sambalpur,  
At/Po/District - Sambalpur.

...Respondents

By the Advocate(s)-Mr. M.B.K.Rao

**ORDER**

**R.C.MISRA, MEMBER(A):**

The applicant in this O.A. is a Railway employee at present working as Senior Section Engineer (Works)/Line at Sambalpur. He has approached the Tribunal with a prayer that order dated 7.7.2015 passed by respondent No. 4 (A-(A/6) and order of transfer dated 21.5.2015 (A/3) be quashed, and respondents be directed to allow the applicant to continue in the post of SSE (Works)/Line, Sambalpur, and not to transfer him out of this post for a period of two years.

2. The facts of the case stated in precision and brevity are that the applicant was working as SSE (Works), Land Cell, Sambalpur under the administrative control of the Senior Divisional Engineer (Co-ordination), Sambalpur. By an order dated 1.4.2014, he was transferred and posted as Senior Section Engineer (Works), Line at the same station, i.e., Sambalpur. The applicant joined this post on 15.4.2014. Before joining this post, the applicant had completed a period of three years in his earlier post in the Land Cell. However, the applicant was again transferred and posted back to the earlier post of SSE (Works), Land Cell by an order dated 21.5.2015 of the respondent No. 5. The applicant was aggrieved because he was transferred before completion of two years in the current post, and was in fact re-posted as SSE(Works),Land Cell, where he had completed a tenure of three years. The applicant alleges that this order of transfer runs contrary to the Railway Board instructions on the subject. It is further alleged

that the post of SSE(Works), Line was created without any supporting staff. Now a Junior Engineer has joined to assist in the management of technical matters. On the other hand, the applicant was transferred before completing his tenure in this sensitive post. Ventilating his grievance, applicant filed a representation dated 28.5.2015 before the Assistant Divisional Railway Manager, East Coast Railway, Sambalpur, making a prayer that the order of transfer may be cancelled. Since his representation was not considered by the authorities, applicant approached the Tribunal by filing O.A. No. 335/2015. The Tribunal disposed of the O.A. vide an order dated 19.6.2015 by issuing a direction to Assistant Divisional Railway Manager, Sambalpur to dispose of the pending representation, and status quo in respect of applicant was directed to be maintained till disposal of the representation.

3. In compliance of the directions of the Tribunal, the Assistant Divisional Railway Manager, Sambalpur (respondent No. 4 in the present O.A.), passed a speaking order dated 7.7.2015 disposing of the representation of the applicant. This is an order of rejection that has been challenged in the present O.A. The speaking order mentioned that applicant's performance in the post of SSE(Works)Line was not satisfactory, and considering his previous experience in the Land Cell, it was considered administratively expedient to transfer him back as SSE(Works)/Land Cell. The applicant submits that such a ground renders the order of transfer a punitive order, and therefore it is not sustainable under the law. The posts of SSE (Works) were lying vacant at Kantabanji, Titilagarh and Bolangir. One Sh. S.K. Pradhan, SSE was also representing for his posting as SSE(Works), Land Cell. The respondents, however, brushing aside all these factors, reposted the applicant to his earlier post where he had worked for a full



term. The applicant calls this decision of respondents as illegal, arbitrary and violative of Railway Board dated 27.5.2011.

4. There are precisely three grounds basing upon which, applicant prays for quashing the impugned order.

(i) That he has been transferred from the post of SSE (Works), Line before he completed even two years in this post.

(ii) He was reposted to the post of SSE (Works)/Land Cell, where he had worked for a full tenure.

(iii) The transfer order is punitive, because as mentioned in the impugned order, the transfer was made since the applicant's performance in the post of SSE(Works)/Line was unsatisfactory.

5. The respondents have filed a counter-affidavit in the O.A., making the following submissions.

6. The applicant was posted as Senior Sectional Engineer (Works) Line, Sambalpur on transfer from the post of SSE (Works), Land Cell, Sambalpur by an order dated 01.04.2014. Later, by the impugned order dated 21.05.2015, the applicant was transferred as SSE(Works) Land Cell, Sambalpur purely in the interest of administration without in any manner altering any of his service conditions such as rank, pay or emoluments and without even disturbing his place of posting in order to avoid any grievance with regard to issues such as inconvenience of shifting or mid-academic session of wards.

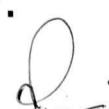
7. It is also submitted that it is not the respondent No. 5 who is the transferring authority in so far as applicant is concerned. On the other hand it is the respondent No. 4, i.e., Assistant Divisional Railway Manager, Sambalpur, who is the competent authority under whose orders, the order of transfer dated 21.5.2015 has been issued. The recommendation for transfer was made by a Placement Committee consisting of three members. There has been no whimsical

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 or punitive approach in making the transfers. In obedience to the direction issued by the Tribunal in OA No. 335/2015, the competent authority has disposed of the representation of applicant by an order dated 07.07.2015 placed at Annex.A/6. This order is well reasoned and does not suffer from any vices like unfairness, impropriety or unreasonableness.

8. The compulsions faced by the administrative authorities have also been clearly brought out in the impugned order. Contrary to the claim made by the applicant, the post of SSE(Works) Land Cell is not a sensitive post, and the applicant has been <sup>posted</sup> there so that his experience in this post can be properly utilized. It was also taken into account that applicant faced difficulty in manning the post of SSE(Works)Line and his unsatisfactory performance was noted by his superiors.

9. On the basis of above submissions, the respondents have asserted that the impugned orders dated 25.05.2015 and 07.07.2015 did not suffer from any legal or factual infirmities. Apart from this, respondents in the counter-affidavit mentioned the settled position of law regarding transfers as laid down by the Hon'ble Apex Court in the decision reported in **AIR 1991 SC 532 - Mrs. Shilpi Bose and Anr. Vs. State of Bihar and Ors.** The relevant part is quoted below :

**"In our opinion, the Courts should not interfere with transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violative of any mandatory statutory rule or on the ground of mala fide. A Government servant holding transferable post has no vested right to remain posted at one place or the other and he is liable to be transferred from one place to other".**



10. It is further mentioned by respondents that in the case of ***State of UP and Ors. Vs. Gobardhan Lal*** reported in **AIR 2004 SC 2165**, the Hon'ble Apex Court has further observed as follows:-

***.... Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned an opportunity to approach their higher authorities for redress, but can not have the consequence of depriving or denying the competent authority to transfer a particular officer / servant to any place in public interest and if found necessitated by exigencies of service..... "***

11. The decision of the Supreme Court of India in the case of ***Union of India Vs. S.L. Abbas, AIR 1993 SC 2444*** is on the same lines. A Division Bench of the Hon'ble High Court of Orissa in the decision reported in 2014 (11) OLR 755 (Manas Mahapatra Vs. State of Orissa & Ors.) has laid down that the Court can interfere with the order of transfer where it has been passed mala fide or where it has been made in violation of the statutory provisions.

12. According to respondents, in the post of SSE (Works) Line, the performance of the applicant was not satisfactory and attracted adverse reports. Just because the applicant had served in the Land Cell earlier for three years, it cannot be argued that he cannot be <sup>Q</sup> reported. In fact, the respondents intended to utilize his earlier experience to strengthen the Land Cell.

13. One crucial point that respondents have brought out is that the post of SSE (Works) Land Cell is not a sensitive post. The Railway Board's Notification dated 27.05.2011 is with regard to laying down a cooling off period between two postings in a sensitive post. This provision does not apply to posting in the Land Cell.



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 14. The respondents also deny that the order of transfer is a punitive one, as alleged by applicant. There is no doubt that according to reports, the performance of the applicant was unsatisfactory. But that was not the basis of issuing transfer order dated 21.05.2015. Hence the contention that the rejection order dated 07.07.2015 is a punitive one is wholly misconceived and unfounded.

15. The Railway authorities in their counter have finally asserted that being employer they have the prerogative to decide when, where and at what point of time, the applicant is to be transferred inasmuch as it is the settled position of law that transfer is an incidence of service. The applicant's interest in the present matter has not been adversely affected. He continues in the same station. His rank, pay and emoluments remain protected. The transfer is made in administrative interest and does not have a punitive character. The applicant in fact does not have any genuine grievance. He cannot challenge an order that is passed in the legitimate pursuit of administrative interest. The respondents have emphatically submitted that this O.A. has no merit and must be dismissed.

16. The learned counsel for applicant in his rejoinder takes a plea that he was transferred all of a sudden to the Land Cell which does not have requirement of posting of a technical person like SSE(Works). Since the impugned order dated 21.05.2015 is not passed by the Assistant Divisional Railway Manager, Sambalpur, this order is passed without jurisdiction. Moreover, the transfer was made on the basis of reports that performance of the applicant is unsatisfactory. Therefore, it is a punitive transfer, and not permissible under the law in view of the decision of Hon'ble Supreme Court reported in **AIR 2009 SC 1399, Somesh Tiwari Vs. UOI and Ors.** The remedy of unsatisfactory performance is not an order of transfer. The applicant being a technical person could have been transferred to a technical post. On the contrary, he was transferred to a post, in which his technical

knowledge would be of no use. The learned counsel further submits that the case laws cited by respondents are not relevant to the present case. In this case, the point of dispute is whether the transfer was punitive in nature, and whether transfer has been made by an authority, not having jurisdiction. In fact, the relevant case law in **Somesh Tiwari Vs. UOI & Ors.** In which the Hon'ble Apex Court has held that order of transfer on the basis of allegations is not permissible under the law.

17. Another issue that applicant has raised is that since Assistant Divisional Railway Manager is said to be the competent authority, he could not have disposed of the representation with an order of rejection, because in that process he has only justified his own action. Therefore, the plea of the applicant in the rejoinder is that order of transfer was issued only to victimize the applicant with mala fide intention, and so the impugned orders must be set aside and applicant may be allowed to continue in the post of SSE(Works) Line at Sabalpur.

18. The learned counsels of both side have submitted their written notes of submission, after conclusion of the hearing.

19. Having heard carefully, the contentions of learned counsels for both sides, I have perused the records. After careful analysis, the following issues emerge for adjudication :

- 1) Whether the transfer order is in violation of administrative guidelines
- 2) Whether reposting of applicant in the Land Cell violates any guidelines, and whether he should have been posted in a non-technical post
- 3) Whether a transfer allegedly made because of unsatisfactory performance is a punitive transfer, not permissible under the law ?
- 4) Whether authorities had a vindictive and mala fide approach in making the transfer ?
- 5) Whether the order of transfer was made by the competent authority, and whether the competent authority disposed of the representation in proper compliance of the orders of the Tribunal in the earlier round of litigation ?

20. In so far as the 1<sup>st</sup> issue is concerned, the first thing to be noted is that in several cases decided by the Hon'ble Apex Court, it has been repeatedly emphasized that transfer is an incidence in the Government service. It has to be done based upon consideration of public interest and administrative efficiency, and unless there is evidence of mala fide or lack of jurisdiction on the part of authority making transfer, the Courts and Tribunals must not interfere with such orders. In the case of ***Shilpi Bose Vs. State of Bihar, AIR 1991 SC 532***, the Hon'ble Apex Court has most tellingly observed that, "if Courts continue to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest." On the basis of such settled principle of law, it can safely be concluded that the impugned order of transfer does not need to be interfered with. The applicant has submitted that he has worked less than two years as SSE (Works) Line and this being a sensitive post, he should not have been transferred before completion of his tenure. On the other hand, respondents have said that the post in the Land Cell is not a sensitive post, and the applicant can be transferred there without observance of cooling off period. I have noted a mismatch between the positions taken by both counsels. However, I do not think there is any illegality in making a transfer from a sensitive post before completion of a tenure on administrative grounds and there is also no bar in reposting the applicant in the Land Cell within a short period, since Land Cell is not a sensitive post. It has not been established that the transfer contravenes any of the administrative guidelines of respondent-authorities. Moreover, applicant has been transferred in the same station, causing him no personal hardship.



21. The second issue arises out of the grievance of applicant that he being a technical person, should not have been posted to a non-technical post in the Land Cell. But before his transfer to SSE (Works) Line, he himself worked in the Land Cell for a period of three years, apparently without a demur. Applicant may be right that Land Cell does not involve any technical work. But respondents are best authorities to decide who will be placed where, and Tribunal cannot interfere in the deploying of manpower by the respondents who are free to do so after assessing the needs of administration and the available manpower at their command. No specific direction can be passed in this regard. If the respondents intended to utilize the experience of the applicant to enhance the efficiency of Land Cell, they are free to do so, so long as they are doing it in the public interest. The plea made by applicant on this count does not hold water.

22. The third issue is whether the transfer order will be considered punitive. In the impugned order dated 07.07.2015, the respondents have noted that the performance of applicant as observed over a period of 13 months was not satisfactory, and his superiors were not happy with his performance. Applicant's contention is that when transfer is made on the basis of allegation, the same has to be interpreted to be punitive, in view of the decision of Hon'ble Apex Court in the **Somesh Tiwari's** case. In the present case, however, there are no allegations based upon which the transfer order was passed. But if the applicant did not undertake field visits, or did not promptly attend to his work, the respondents are bound to reflect this behavior in the performance reports. This Tribunal is not ~~rushing~~ <sup>rushing</sup> ~~rushing~~ to any judgment on this issue. This is not the subject matter of this O.A. But if the concerned authorities take into account the performance of incumbents and consequently, make transfer order in public interest, such order cannot be termed punitive. Neither any allegations are pending for investigation,

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nor any inquiry has been initiated. It is merely that concerned authorities have considered applicant's performance in a particular post as unsatisfactory. They have decided to utilize the services of applicant elsewhere. Such order of transfer is not at all punitive. In the normal course of transfers in any Department of the Government, ~~while~~ transfers are to be made in conformity with guidelines as applicable, but also taking into account performance and suitability of incumbents.

23. We cannot deprive the administrative authorities ~~at~~ <sup>of</sup> the privilege of this appraisal, unless the decisions are tainted with mala fide. In order to establish that an order of transfer is punitive, and therefore not sustainable under law, several ingredients have to be proved. In the present case, the applicant has not been able to bring in any evidence regarding the alleged punitive nature of the transfer. Unsatisfactory performance could be a basis of transfer in the administrative interest, and it is not necessarily punitive. In the present case, I hold that this order of transfer is not punitive in nature, and allegations made in this regard by the applicant are unfounded.

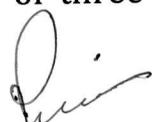
24. Similarly, the fourth issue is also answered in the negative. I do not find any evidence for drawing a conclusion that the respondents had a mala fide or vindictive approach in making this transfer.

20. The fifth issue for adjudication is whether the competent authority has issued the order of transfer. From the record, it is noted that order dated 21.05.2015 (Annex.A/3) has been issued by Senior Divisional Personnel Officer, no doubt. But in the Note below it is clarified that this order is made with the approval of the competent authority, i.e., Assistant Divisional Railway Manager, Sambalpur on recommendation of Placement Committee. The learned counsel for applicant has raised an objection that the impugned order dated 07.07.2015 has

also been passed by the Assistant Divisional Railway Manager, Sambalpur by way of disposing of the representation of applicant. By that process, the Assistant Divisional Railway Manager has justified his own action. In this regard, I have perused the order of the Tribunal dated 19.06.2015 in O.A. No. 335 of 2015. In this O.A. it was ordered that "since a representation was pending with the Respondent No. 3 it is required that he should first consider and dispose of the same through a reasoned and speaking order to be communicated to the applicant within a period of one month from the date of receipt of this order." Respondent No. 3 in that O.A. was Assistant Divisional Railway Manager, Sambalpur, who is arrayed as respondent No. 4 in the present O.A. The Assistant Divisional Railway Manager to whom applicant has submitted his representation has disposed of the representation in compliance of the orders of the Tribunal. These facts go to prove that the issue raised by the learned counsel for applicant regarding the competence of the concerned authorities is not sustainable and therefore cannot be entertained by this Tribunal.

25. Thus the issues framed on the subject are discussed and addressed above, and on none of these issues the applicant gets a foot-hold to successfully challenge the legality and merit of the impugned orders. In addition to that, I also take note of the fact that the applicant has been transferred in the same station, i.e., Sambalpur. There is no ground of personal inconvenience that can be raised since the usual dislocation in the personal front that is associated with transfer to another station, is just not there in the present case.

26. At the conclusion of hearing of this case, the learned counsel made a prayer that even if the order of transfer is not cancelled, the applicant may be permitted to function in the present post where he is now continuing as a result of interim orders of the Tribunal, for at least a period of three months more, because of



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certain personal difficulties. In his written notes of submission, the learned counsel for applicant has made a mention that "inasmuch as the wife of the applicant is seriously ill and bed ridden, he prays to be accommodated for five months only. And further he prays that he may be posted to a technical post as per his work schedule as SSE/(Works)." Having found no merit in the application in the Tribunal, I find it inappropriate to issue a positive direction in the matter to the respondents. But learned counsel for applicant has made an earnest and sincere prayer in this regard, and in my opinion, no prejudice will be caused to the respondents, if they consider this limited prayer with sympathy, and take a suitable decision.

27. With the above observations and directions, this O.A. is dismissed, being devoid of merit, with no order as to costs.

  
**(R.C.MISRA)**  
**MEMBER(A)**