

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK**

**ORIGINAL APPLICATION 260/00010/2015  
Cuttack, this the 14<sup>th</sup> day of August, 2015**

.....

Subas Chandra Das

.....Applicant

**VERSUS**

Union of India and Others

.....Respondents

**FOR INSTRUCTIONS**

(1) Whether it be referred to the Reporters or not ? *yes*

(2) Whether it be referred to PB for circulation ? *yes*

  
*R.C. Misra*

**(R.C.Misra)**  
Member (A)

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CUTTACK BENCH: CUTTACK**

**ORIGINAL APPLICATION 260/00010/2015**

Cuttack, this the 14<sup>th</sup> day of August, 2015

**CORAM**

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

.....

Subas Chandra Das aged about 34 years S/o Late Bhagirathi Das, Office Superintendent under SSEE (P)/Bhadrak, resident of Quarter No. ELC-125/1, Railway Colony Charampa, Near RPF Barak, At/PO Charampa, District Bhadrak, Odisha.

.....**Applicant**

**(Advocate : Mr. N.R.Routray)**

**VERSUS**

1. Union of India, represented through General Manager, East Coast Railway, E.Co.R Sadan, Chandrasekharpur, Bhubaneswar, District Khurda.
2. Divisional Railway Manager, East Coast Railway, Khurda Road Division, At/PO Jatni, District Khurda.
3. Senior Divisional Personnel Officer, East Coast Railway, Khurda Road Division, At/PO Jatni, District Khurda.
4. Senior Divisional Electrical Engineer (G), East Coast Railway, Khurda Road Division, At/PO Jatni, District Khurda.
5. Mr. P.K. Mohapatra, Senior Section Engineer (E), East Coast Railway, Bhadrak, At/PO/Town/ District - Bhadrak.
6. Mr. Girija Sankar Das, Chief O.S., under Senior Section Engineer Electrical (P), East Coast Railway, At/PO/Town/District – Bhadrak.

.....**Respondents**

**(Advocate : Mr. M.B.K.Rao )**

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**O R D E R**

**BY THE COURT :**

The applicant in this O.A. working as Office Superintendent under Senior Section Engineer Electrical (P) at Bhadrak, has approached this Tribunal making a prayer that the order of transfer dated 17.11.2014 (Annex. A/4) and the order of rejection dated 06.01.2015 (Annex.A/16), issued by the respondent authorities, may be quashed and a direction be issued to the respondents No. 2 to 4 to allow the applicant to continue at Bhadrak till completion of his tenure.

*[Signature]*

2. The short facts of the case are that the applicant was earlier working as Office Superintendent under the Senior Section Engineer Electrical at Berhampur. On his own request, he was transferred vide office order dated 12.10.2012 to Bhadrak in the same capacity in place of one Sh. G.S.Das (respondent No. 6) who was transferred on promotion to the post of Chief Office Superintendent to Angul. Subsequently, the respondent No. 3 vide an Office Order dated 17.11.2014 transferred the applicant to Angul on administrative grounds and the said Sh. G.S. Das (respondent No. 6), was reposted to Bhadrak. This gave rise to a grievance to the applicant on the ground that he had a tenure of four years in a sensitive post which was not yet completed. Further, since Sh. G.S.Das was a Chief Office Superintendent therefore, transfer between them should not have been made. The applicant is further aggrieved with the transfer as it was made at the behest of one Sh. P.K. Mohapatra, who was SSEE at Bhadrak. The applicant also had a ground of having some family difficulties at Bhadrak because of which he was brought to Bhadrak earlier on the basis of his own request. He filed a representation to the authorities making a prayer to cancel the order of transfer. He then approached this Tribunal by filing **O.A. No. 862/2014** under Section 19 of the Administrative Tribunals Act, 1985 and the Tribunal vide an order dated 02.12.2014 disposed of the O.A. by issuing a direction to respondents No. 2 and 3 to consider the representation within a period of 30 days and communicate the decision to the applicant in a well reasoned order. The Tribunal also directed that the status quo in respect of relieving of the applicant will be maintained till the disposal of the representation. The allegation of the applicant is that the respondents did not obey the interim order of the Tribunal in order to accommodate respondent No.



6 in the concerned post. The applicant, therefore, has filed a **Contempt Petition No. 66/2014** in which the Tribunal has issued notice to the alleged contemnor. The said issue is, however, not the subject matter of this O.A. since the contempt proceedings are separately under consideration of the Tribunal.

3. The respondent No. 3 complied with the orders of this Tribunal and disposed of the representation of the applicant by issuing an order dated 06.01.2015. The representation of the applicant was however rejected and, therefore, the said order is under challenge before this Tribunal in this O.A. The grievance expressed by the applicant against this order is that respondent No. 3 has not passed a reasoned order although, the Tribunal had directed him to do so. He has only defended the order of transfer which was issued with mala fide intention. The grounds on which the applicant has challenged the impugned order is that the order of transfer is not justified because the applicant was holding a sensitive post and had a tenure of four years, whereas the order of transfer was passed after 1 year and 10 months from his taking over the charge of the post. He was posted to Bhadrak on his own request on account of some family obligations and because of his premature transfer, he is not able to discharge his duties to the family. The applicant has also alleged mala fide against the respondent No. 5 and his specific allegation is that the order of transfer was effected at the behest of respondent No. 5 in order to accommodate respondent No. 6 in the post at Bhadrak. On the above mentioned grounds, he has prayed for the relief as already stated above.



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4. The contentions of the respondent – authorities as submitted in their counter affidavit may be summarised as below.

The applicant was brought to the post of Office Superintendent on his own request. This post is a very responsible post and the incumbent has a duty to maintain office establishment as well as electrical store materials of the Bhadrak Electrical Unit. The applicant did not discharge his functions efficiently but, on the other hand, disturbed the entire working atmosphere of the office. In view of his negligence, a proceeding was initiated against him under the Railway Servants (Discipline & Appeal), Rules 1968 and on conclusion of the proceedings, a punishment of stoppage of annual increment for 24 months was imposed on him. The applicant did not make any representation against the order of punishment dated 16.05.2013 (Annex.R/1). The applicant also misbehaved with the staff working with him and never carried-out the instructions of respondent No. 5. He used to abuse the staff in ~~a~~ bad language and even lodged a police complaint against the respondent No. 5. Subsequently, the applicant gave an undertaking on 14.09.2014 in presence of three witnesses promising that he will not indulge in such wrong and unwarranted activities in future. Even thereafter also, the entire staff of the Electrical Unit of the Bhadrak, being fed-up with his un-becoming conduct, submitted a joint <sup>representation</sup> report on 12.11.2014 (Annex.R/4) demanding immediate shifting of the applicant. In the meantime, respondent No. 6 had requested for his transfer from Angul to Bhadrak on the ground that his spouse was suffering from Cancer. This request was placed before the placement committee along with a proposal for the applicant's transfer in the interest of administration. The recommendation of the placement committee was put up before the competent authority i.e. the

respondent No. 2 who approved transfer of respondent No. 6 from Angul to Bhadrak and the applicant's transfer from Bhadrak to Angul was made in administrative interest of the organisation without altering in any manner the service conditions of the applicant vide an order dated 17.11.2014 (Annex.A/14). The applicant was released from Bhadrak on 20.11.2014 and was directed to report at Angul. He refused to receive the relieving order and on the other hand, produced a sick certificate of a private medical practitioner. The applicant reported back to duty on 04.12.2014 with fit certificate issued by the said private medical practitioner. He was directed to appear before the Railway Doctor who issued a 'Fit' certificate on 05.12.2014 and when he reported for duty, he received the release order dated 20.11.2014. The orders of the Tribunal along with interim direction for status quo was received by the respondents on 6.12.2014. It is, therefore, the contention of the respondents that the applicant had already been relieved by the time the interim order of this Tribunal was received by them. The applicant was no doubt relieved but, he did not join his new place of posting at Angul.

5. The submission in the counter affidavit is that in obedience to the directions of this Tribunal dated 2.12.2014 in **OA No. 862/2014**, the respondent No. 3 had disposed of the representation dated 25.11.2014 by rejecting the prayer of the applicant. By defending their orders, the respondents have submitted that the applicant had no vested right to continue in a particular post. He is working in a transferable job and transfer is an incident in the career of a Government servant. The respondents are at liberty to decide who should be transferred and posted where as it is purely an administrative decision. The transfer has been made on administrative interest and, therefore, it is wholly



justified. In the counter affidavit, the respondents have mentioned two important judgments of the Hon'ble Apex Court on the subject of transfer. These judgments are reported in AIR 1991 SC 532 ***Mrs. Shilpi Bose and Ors. Vs. State of Bihar*** and in AIR 2004 SC 2165 – ***State of U.P. and Ors. Vs. Goverdhan Lal.*** In the counter affidavit, the respondents have also submitted that the applicant did not discharge his duties properly and there were several instances of his negligence. With regard to the allegation of mala fide levelled by the applicant against respondent No.5, the respondents have termed this allegation as allegation without any foundation. It is further submitted that the transfer of the applicant was done in administrative interest by the competent authority acting upon the recommendation of the placement committee consisting of three members and there has been no violation of Master Circular No. 24 as alleged. It is submitted that the applicant cannot make a claim that the post of Office Superintendent being a tenure post of four years, he cannot be transferred in terms of Master Circular No. 24 dated 22.09.2011. Holding of sensitive posts requires sensible handling of the duties and also acting in a manner which will inspire confidence of seniors and subordinates alike. The applicant having failed to discharge his duties satisfactorily was transferred. He therefore cannot make a claim that the transfer was in violation of Master Circular No. 24. Attribution of motives to the members of the placement committee by the applicant according to respondents is most unfortunate. The post of Chief Office Superintendent and Office Superintendent are supervisory category posts and it is permissible to make transfer between the incumbents holding such posts. The transfer having been made by the competent authority for ensuring effective administration at Bhadrak Electrical Unit, cannot be



challenged by the applicant. It is further submitted that the submission of the applicant that the impugned order was issued because he belongs to Scheduled Caste community is a very unfortunate and baseless allegation. The respondents have completely denied that there was any mala fide consideration involved in the order of transfer. On the other hand, their claim is that the order of transfer has been passed by the competent authority only in the administrative interest of the Railway Organisation.

6. The applicant has also filed a rejoinder to this counter. In the rejoinder, he has submitted that he could not discharge his duties at Bhadrak properly because of the interference of the higher authorities and the respondent No. 5 convinced the higher authorities to bring back the respondent No. 6 to Bhadrak so that they can together carry - out some mischievous acts. The applicant further claims that due to repeated mischievous acts by respondent No. 5, he filed an FIR which was subsequently withdrawn based upon a compromise which was effected at the intervention of other staff members. Another point that is mentioned in the rejoinder is that wife of respondent No. 6 had expired in the month of September 2014, whereas transfer committee was set-up in the month of November 2014 i.e., after the death of respondent No. 6's wife. Therefore, the order transferring respondent No. 6 to Bhadrak could not have been made on the ground that his wife was suffering from cancer. The applicant therefore, submits that respondent No. 6 has been brought back to Bhadrak on the basis of wrong information submitted to the placement committee. The entire substance of the rejoinder filed by the applicant is that his transfer to Angul and the transfer of respondent No. 6 to Bhadrak are decisions which are tainted with mala fide intention.



7. The learned counsel for the applicant as well as the respondents have submitted their detailed written notes of submissions reiterating their stand as taken in their respective pleadings.

8. Having heard the learned counsel for both sides, I have also perused all the materials available on record.

9. With regard to the charge of the applicant regarding violation of interim order in **OA No. 862/2014**, I do not want to make any comment since it is the subject matter of **C.P. No. 66/2014** filed by the applicant. The issue for consideration in this O.A. is, whether in a sensitive post where the tenure is for 4 years, a transfer can be made after a period of 1 ½ years and if so, whether there is a violation of Master Circular No. 24 in effecting transfer in so far as applicant is concerned. The Master Circular No. 24 which is at Annex. A/6 is on the subject of transfer of non-gazetted Railway servants, issued on 22.09.2011.

At Clause 4.3 of this Circular, it is mentioned that Railway servants holding sensitive posts and who come into contact with public or/and contractors/suppliers etc., should be transferred out of their existing post/seat or station as the case may be, after every four years. Under this clause, the posts in the different departments which have been identified as sensitive posts for the purpose of periodical transfer, have been listed-out in detail. The purpose of this clause in the master circular 24 is well understood. Sensitive post means - a post in which there are dealings with the public as well as with contractors/suppliers of the Railways. The respondents have a reasonable apprehension that if the incumbents of this post continued for a very long time, they are likely to develop their unwarranted vested interest in the organisation which may adversely affect the public interest. Seen in this context, framing of a



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mandatory provision in the master circular that such incumbents must be transferred from these posts after every four years, is essential. But, at the same time, it is required to examine whether transfer of the applicant after 1 1/2 years of working in this post would constitute any violation of the provisions. Apparently, the master circular nowhere mentions that there cannot be a transfer from a sensitive post before expiry of 4 years and that cannot be the import of this Circular. If an incumbent of a sensitive post does not perform his duties satisfactorily or there are complaints about his performance or the administrative interest of the organisation is affected adversely, then nothing would prevent the respondents from transferring such incumbents. In the counter affidavit, respondents have specifically mentioned acts of administrative impropriety and negligence on the part of the applicant which adversely affected the working atmosphere of the organisation. There were FIRs lodged by the applicant against respondent No.5 and later on, there was some compromise between them. The members of the staff also sent a written complaint against the applicant demanding his transfer. I would not, however rush to conclude that applicant was guilty of mis-demeanour in all such instances mentioned by the respondents. There are several other administrative points and issues involved in the instant O.A. in which this Tribunal has no scope to interfere. The Railways have a hierarchy of administrative authorities and those authorities are appropriately positioned to dispose of such matters on the basis of their knowledge of the ground realities. These nitty-gritties are best left to the administrative authorities. The Tribunal is to see whether natural justice is being denied, whether there are coercive measures taken against the applicant in



circumstances that do not warrant adoption of such measures and whether statutory provisions are being violated.

10. Coming to the facts of the present case, a *prima facie* picture is emerging that because of the misconduct of the applicant, the working atmosphere was vitiated and complaints were also made by the members of the staff. These allegations definitely warrant inquiry and appropriate punitive measures. However, the administrative authorities are duty bound to maintain the right working atmosphere in the organisation. If in the course of performing duties the respondents thought it fit to transfer the applicant, the Tribunal would not like to interfere unless there are concrete grounds for such intervention. As already mentioned, a claim cannot be made that irrespective of performance one has to be allowed to complete one's tenure in a sensitive post. Master Circular No. 24 does not provide any protection to the applicant in this regard. The applicant has no inherent right to continue in a post and for his satisfactory performance he should be responsible to the authorities and also to the member of the public.

11. I have also deliberated upon the allegation of *mala fide* against respondent No. 5 and also the complaint with regard to respondent No. 6 who was brought back to the post held by the applicant at the behest of respondent No. 5 in order to facilitate some mischievous action. The claims and counter claims in this O.A. have only brought-out one thing, i.e., the applicant and respondent No. 5 were having altercations which was ruining the atmosphere in the office. The applicant is supposed to demonstrate responsible conduct and even if he has counter allegations to make, such matters will have to be disposed of by the administrative authorities. The charge of *mala fide* cannot be

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established by making certain allegations. The Government servants working in an administrative system are governed by a hierarchy and also rules and regulations regulating that hierarchy. If the applicant has complaints and allegations regarding any such administrative matters involving day to day affairs of the office, he can only ventilate his grievance to the supervisory administrative authorities. The Tribunal has no scope to get into such cantankerous issues. The only thing to be decided is whether transfer order was issued on mala fide grounds. In so far as this issue is concerned, I do not find any concrete ground that a mala fide intention has influenced the competent authority to issue the order of transfer. If the authorities have issued some order of transfer for maintaining administrative discipline by any stretch of imagination that cannot be termed as mala fide. Besides, the applicant cannot challenge the posting of another officer i.e. respondent No. 6 in his place on the ground that, that officer has done one tenure earlier. This is within the domain of the administrative authority. The submission made by the applicant that the respondents No. 5 and 6 will conspire to indulge in mischievous deeds is completely out of place. It goes without saying that every administrative authority will have to perform his duties within the confines of rules and regulations and under the scrutiny of the higher administrative authority. It is therefore expected that the concerned authorities will maintain their vigilance in such matters. It is not appropriate for the applicant to make such a mention without any concrete material to support his submission.

12. As has been already mentioned, transfer is an incident in the life of a Government servant and no Government servant can claim an inherent right to

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continue to work against a particular post. The learned counsel for both sides have relied upon some judgments on the subject of transfer which are worthy to be mentioned in this order.

13. The learned counsel for the respondents has submitted a decision reported in 2014 (II) OLR 755 – **Manas Mohapatra Vs. State of Orissa and Ors.**, in which a Division Bench of the Hon'ble High Court of Judicature for Odisha at Cuttack, while dealing with a case of a State Government employee after taking note of the fact that the contentions made regarding transfer being made on the basis of allegations and that the petitioner therein had been transferred without completing the tenure of three years, held as under :-

*"It is settled principles of law that the Courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer order is made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted to one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the 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 (Mrs. Shilpi Bose and others Vs. State of Bihar and others, AIR 1991 SC 532). Further in Union of India Vs. S.L. Abbas, AIR 1993 SC 2444, it has been observed that the Government guidelines/instructions on transfer are mere guidelines which do not confer upon the Government employee a legally enforceable right. 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. It is also settled that employee holding post cannot claim any vested right to work at a particular place as the transfer order does not affect any of his legal rights and the Court cannot interfere with a transfer / posting which is made in public interest or on administrative exigency. Further in the case of Union of India and others v. Janarhan Debanath and another, reported in AIR 2004 SC 1632, it has been made clear that for the purpose of affecting a transfer, the question of holding an enquiry to find out whether there was misbehaviour or conduct unbecoming of an employee is unnecessary and what is needed is the *prima facie* satisfaction of the authorities concerned on the contemporary reports about the occurrence complained of and if the requirement of holding an elaborate enquiry is to be insisted upon, then the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum would be frustrated."*

The Hon'ble Apex Court in the case of **Mrs. Shilpi Bose Vs. State of Bihar and ors.** (supra) had observed as follows :

*"14. In our opinion, the courts 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 mandatory statutory rule or on the ground of mala fide. A Government servant holding transferrable post has no vested right to remain posted at one place or the*



other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or order, the Courts ordinarily should not interfere with the order; instead affected party should approach the higher authorities in the Department. If the 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. The High Court overlooked these aspects in interfering with the transfer order."

The Hon'ble Apex Court in a decision reported in AIR 2004 SC 2165 – **State of U.P. and Ors. Vs. Gobardhan Lal** (supra) has held as follows :-

"8. .... 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 cannot have the consequence of depriving or denying the competent authority to transfer a particular officer / servant to any place in public interest and as is found necessitated by exigencies of service. .... .

9. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements for the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer. .... .".

14. I have gone through the above mentioned citations carefully. After having closely examined the facts of this O.A., the contentions made by the learned counsel for both sides and also applying the ratio of the decisions of the Hon'ble Apex Court as also of Hon'ble high Court of Odisha as quoted above, I do not find any merit in this O.A. and accordingly, the same is dismissed with no order as to costs.



(R.C.Misra)  
Member (A)