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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/00758 of 2015

Cuttack this the *4th* day of *April*, 2016

Ajay Kumar Roul...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *No*
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not ? *No*

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

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CENTRAL ADMINISTRATIVE TRIBUNAL
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CORAM:
HON'BLE SHRI R.C.MISRA, MEMBER(A)

Ajay Kumar Roul
Aged about 50 years
S/o. late Ananta Kumar Roul
At present working as Chief Office Superintendent
Office of the Asst. Divisional Electrical Engineer
(Traction & Distribution)
South Eastern Railways
At/PO/Dist-Balasore

...Applicant

By the Advocate(s)-M/s.N.R.Routray
Smt.J.Pradhan
T.K.Choudhury
S.K.Mohanty

-VERSUS-

Union of India represented through:

1. Divisional Railway Manager(Personnel)
S.E.Railway,
Kharagpur
Dist-Midnapur
West Bengal
2. Asst.Divisional Railway Manager
S.E.Railway
Kharagpur
3. Sr.Divisional Electrical Engineer(TRD)
S.E.Railway,
Kharagpur
4. Sr. Divisional Personnel Officer
S.E.Railway,
Kharagpur



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5. Asst. Divisional Electrical Engineer(TRD)
S.E.Railway,
Balasore

...Respondents

By the Advocate(s)-Mr.T.Rath

ORDER

R.C.MISRA, MEMBER(A)

Applicant in this O.A. is an employee of the Railways working as Chief Office Superintendent in the office of the Assistant Divisional Electrical Engineer, Balasore under South Eastern Railway. He has approached this Tribunal with a prayer that the order of transfer dated 6.7.2015 passed by the respondents transferring and posting him at SSR/RRD, Kharagpur may be quashed, and in effect, he may be allowed to continue in his present position at Balasore.

2. The facts of this O.A. are that the applicant had joined the Railways as a Senior Clerk in the year 1988. Subsequently, he was promoted as Office Superintendent in the year 1994, and then as Chief Office Superintendent in the year 2004. The applicant was working as Chief O.S. under DRM, Kharagpur, and by the communication dated 21.6.2009, he was transferred and posted at Balasore. He has been discharging his duties at Balasore since then. By the same order, one post of Chief Operating Superintendent was shifted to Balasore, in order to post the applicant at Balasore. Even when the applicant was posted at Balasore, he, as per the direction of respondents was

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attending to some items of work at Kharagpur office on Thursday and Friday. However, as per orders dated 6.7.2015 of respondent no.1, applicant was transferred to Kharagpur in his existing PB and GP as one M.L.Hembram, Senior Clerk in the Kharagpur was on the verge of retirement. This order of transfer is the cause of present grievance of the applicant.

3. The main ground on which applicant has challenged the order of transfer is that he was posted at Balasore on the ground that his wife was also working there. This was in accordance with Railway Board Establishment Sl.No.23/2010 dealing with posting of both husband and wife in the same station. The said guidelines lay down that when both spouses are in the same Central Service or are working in the same Department they should be in the same station, if posts are available. Clause(d) of the guidelines provides that where one of the spouses is a railway servant and the other belongs to a State service, the railway servant should be posted at a station in the same Railway Division in whose territorial jurisdiction the place of posting of his/her spouse falls. On the basis of such guidelines, he had been earlier transferred to Balasore from Kharagpur along with the post since his wife is a teacher under the State Government. Now, suddenly, in spite of the fact that the post of Chief Office Superintendent is available at Balasore, his daughter being eight years of age is studying in Central School, Balasore, and his widow mother and mother-in-law are

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old and ailing, the applicant has been transferred to Kharagpur by the order dated 6.7.2015. The applicant made a representation praying for cancellation of transfer order to the DRM, Kharagpur. He has been informed by a letter dated 7.10.2015 that his prayer could not be granted since there was no requirement of two ministerial staff at Balasore unit of Elect/TRD, and no post of Chief O.S was available at Balasore. The other reasons assigned are that the applicant was posted at Balasore for more than six years, and that one post of Chief O.S was essential at Kharagpur. The applicant raises a grievance that his present post is not sensitive in nature, and the employees holding even sensitive posts are continuing for eight years, whereas the applicant's continuance at Balasore for six years has been questioned.

4. In the counter-reply, the respondents have submitted that the applicant after coming to learn about his order of transfer did not report for duty, and gave a leave application on medical ground which was not sanctioned. Although the Tribunal passed an interim order on 4.11.2015 to maintain status quo, because of the applicant being on leave without sanction, he could not be taken on duty. Further, it is submitted that the applicant was transferred to Balaosre vide an order dated 21.6.2009 on his personal request, ^{sinc} his wife was serving as a teacher at Balasore. But by the present order of transfer under challenge, the applicant has been posted as Chief

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O.S. at Kharagpur, purely on administrative grounds. There is no post of Chief O.S. available at Balasore. The applicant being the most experienced in the Department, must not challenge his posting at Kharagpur, since there is no further administrative need of his continuing in the Balasore office. Even though the applicant was transferred to Balasore on the ground of his spouse working there as a teacher, he cannot claim to continue to work at Balasore, when there is no post of Chief O.S. at that station. The applicant is holding a transferable post, and has been promoted to the rank of chief O.S. Therefore, he can not continue to project his personal problems, and claim that these should over-ride the administrative interests of the Department.

The next point advanced by the respondents is that the applicant is holding a sensitive post, and he has completed more than six years of service under the establishment of ADEE/TRD/Balasore. He is, therefore, due for a transfer under the extant instructions. There is no illegality with the order of transfer.

5. With regard to the personal problems ventilated by the applicant, the respondents have submitted that Kharagpur is quite near Balasore and both places are well connected by train. The applicant can commute by train any time he has to attend to personal work at Balasore. Kharagpur as a town has all the required medical and educational facilities. Therefore, the



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representation of applicant was rightly rejected. It is also assertively stated by the respondents in the counter that applicant has no right to continue working in one place.

6. The applicant in his rejoinder has not raised any substantial points. On perusal of rejoinder, at best three main points come out. First, the respondents should have ~~not~~ allowed the applicant to join in the Balasore office in compliance of the interim direction of the Tribunal. Secondly, he has acute domestic problems for which his continuance at Balasore is required. Thirdly, there are several Railway employees who are continuing in sensitive posts for several years without being transferred by Railway authorities.

7. Having heard the learned counsels of both the sides, I have perused the records. I have also perused the written notes of submission. It is an admitted fact of the matter ~~case~~ that applicant has completed six years of stay in his present place of posting at Balasore as Chief O.S. Therefore, he is very much due for transfer. Applicant was transferred to Balasore by the authorities considering the fact that his wife was serving as a teacher at Balasore. Thereafter, he has been permitted to continue for six years. But at this point of time, he cannot claim his further continuance on the same ground, and the respondent-authorities cannot be expected to ignore administrative compulsions. The respondents will post the employee on the consideration of place of posting of the spouse



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only to the extent possible. Administrative compulsions will override the personal considerations at some point of time. Even about personal and domestic problems, the position is quite clear that such factors should be considered by the authorities, no doubt, but no employee has a vested right to claim special consideration on the basis of personal problems, and cannot make it a ground to avoid the call of duty. Transfer is an incidence to Government service. Therefore, unless some specific rule is violated, and there is an apparent attempt to harass the employee, Courts and Tribunals are not expected to interfere in the orders of transfer. If in every routine transfer, or in a transfer made on administrative reason, the Tribunal would step in to intervene, there will no doubt a collapse of the administrative process. Therefore, the Hon'ble Apex Court by several judgments has limited the scope of interference only to situations where there has been a breach of some statutory instructions, and where mala fide is proved on the part of the transferring authority.

8. The orders of the Hon'ble Apex Court in Mrs. Shilpi Bose & Ors. Vs. State of Bihar (AIR 1991 SC 532) are quoted below in this regard.

"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... If the Courts continue to interfere with day to day transfer issued by the Government and its

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subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest".

9. The applicant has mentioned that some other employees are continuing in sensitive posts for several years without being disturbed. Applicant prays to be treated similarly, thereby claiming some kind of negative equality. The circumstances in which some other employees are continuing for long in sensitive posts are not the subject matter of adjudication in this case. Even if such an instance of violation is proved to be true, it will not create a good ground for the applicant to rest his case upon.

10. In the conspectus of the facts of the present case, I do not find any material that would justify the intervention of this Tribunal. The transfer order, in my opinion, is not fraught with any legal deficiency or mala fide. The prayer of the applicant is not supported by any substantive ground. Accordingly, the O.A. being devoid of merit is therefore, dismissed, without any order as to costs.


(R.C.MISRA)
MEMBER(A)

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