

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.598 of 2016
Cuttack this the 5th day of March, 2018

CORAM:

THE HON'BLE SHRI S.K.PATTNAIK, MEMBER(J)
THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

Boddepalli Ramu, aged about 43 years, S/o. of B.Tirupati Rao, at present working as a Senior Clerk, O/o.Divisional Personnel Officer/East Coast Railway/Waltair, Andhra Pradesh

...Applicant

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

-VERSUS-

Union of India represented through:

1. The General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda
2. Chief Personnel Officer, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda
3. Divisional Railway Manager, East Coast Railway, Waltair Division, At/PO-Dondapathy, Waltair, Andhra Pradesh
4. Senior Divisional Personnel Officer, East Coast Railway, Waltair Division, At/PO-Dondapathy, Waltair, Andhra Pradesh
5. Addl. General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda
6. B.Raju, Chief OS, C/o.Senior Divisional Personnel officer, East Coast Railway, Waltair Division, At/PO-Dondapathy, Waltair, Andhra Pradesh

...Respondents

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

ORDERDR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant was working as Senior Clerk in the O/o. Divisional Personnel officer, East Coast Railway, Waltair at the time of filing the O.A. He has challenged the order of transfer dated 16.3.2016 so far as his case is concerned and also the orders of rejection of his representations dated 21.6.2016, 23.8.2016 and 24.8.2016.

2. The applicant had joined as a Senior Clerk under the Senior Divisional Personnel Officer (Res.No.4) on 7.12.2014. On 16.3.2016, he was posted as Senior Clerk to Loco/RGDA to a non-administrative office. He submitted an appeal to the Divisional Railway Manager, East Coast Railway, Waltair Division on 23.3.2016 on the ground that he was suffering from a number of illnesses for which adequate medical facilities are not available at Rayagada. He had also submitted a representation that a case is pending before the Central Administrative Tribunal, Cuttack Bench on the issue of extracting work from him in the higher post for a long period of 15 years. Moreover, he had already worked in a field office for more than 7 years and therefore, he should be allowed to continue in the administrative office of the Senior Divisional Personnel Officer, East Coast Railway, Waltair Division. In the said representation he also submitted that he is in the status of Divisional General Secretary of the AIOBCREA and transferring him alone seems to be highly arbitrary and against the interest

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of the organization. On 21.6.2016, the Senior Divisional Personnel Officer (Res.No.4) had rejected his representation dated 23.3.2016. The applicant submitted an appeal to the General Manager, East Coast Railway (Res.No.1) on 5.4.2016 and again on 30.6.2016. He also filed O.A.No.455/2016 before this Tribunal which disposed of the O.A. with a direction to the General Manager, East Coast Railway to consider the representation of the applicant dated 30.6.2016 and pass orders in the light of extant rules and instructions. On 23.8.2016, the Additional General Manager, East Coast Railway (Res.No.5) disposed of the applicant's representation in compliance of the orders of this Tribunal. On 24.8.2016, an order was passed by the DRM(P), Waltair to the effect that the transfer order relating to the applicant will have its operation with immediate effect consequent to the disposal of the applicant's representation by the Additional General Manager's order dated 23.8.2016. Aggrieved by this, the applicant filed the present O.A. praying for the following reliefs:

- i) To quash the order of transfer dated 16.03.2016 (so far as this applicant is concerned), order of rejection dated 21.06.2016, 23.08.2016 and order dated 24.08.2016.
- ii) And to direct the respondents to allow the applicant to continue at Waltair.

3. The applicant has based his prayer on the ground that as per the RBE No.103/2014, the General Manager is the only

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competent authority who can decide any dispute relating to transfer of any Group-C employee. Hence the order passed by the Additional General Manager dated 23.8.2016 is illegal. Moreover, this Tribunal had directed the General Manager, ECoR to dispose of the pending representation of the applicant and therefore, the Additional General Manager has no authority to dispose of the representation. He has also challenged the order of transfer during the middle of the academic session which violates the transfer guidelines issued by the Railway Board. Having worked in a field office at Diesel Loco Shed, Waltair for seven years applicant should not have been posted again to the Loco Shed Rayagada by the impugned order dated 16.3.2016. He has also been transferred before completion of minimum tenure of two years as laid down by the Railway Board's order dated 10.6.2014. Since the applicant is the Divisional General Secretary of AIOBCREA, he is not ordinarily liable to be transferred as per RBE No.39/1999. The applicant has also submitted that he suffers from several illnesses for which his stay at Visakhapatnam is essential as at Rayagada sufficient medical facilities are not available at Rayagada.

4. The Respondents in their counter-reply filed on 8.12.2016 have submitted that the General Manager, East Coast Railway, Bhubaneswar has issued an elaborate speaking order dated 23.8.2016 in obedience to this Tribunal's order dated 12.7.2016. The applicant had joined as Khalasi on 28.11.2000

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and was promoted as Junior Clerk on 20.2.2001. He continued to be a Junior Clerk till 1.10.2012 when he was promoted as Senior Clerk and was retained at his place of posting at Waltair in the Office of Sr.D.P.O. On 16.3.2016, he was transferred to Loco Shed, Rayagada. He has been transferred in the interest of administration. The applicant's representation was examined by Respondent No.3 and was rejected on the ground that due to his illness, he was transferred to a lighter post at Rayagada. The applicant had completed nearly nine years in the same administrative office dealing with the bill units, and therefore, it was considered necessary to transfer him. His transfer has been ordered after the approval of the Placement Committee whose recommendations were accepted at the Divisional Level and there was no need to forward the matter to the Headquarters for a decision of the General Manager. The applicant's representation dated 23.1.2016 was rightly rejected by the order dated 21.6.2016 since there is no concept of tenure in the field offices and as long as field office is within the zone of seniority a staff can be posted any number of times in the field office. Since the applicant had already spent more than nine years at Visakhapatnam his transfer to Rayagada where he will have lighter work is not illegal or arbitrary.

5. The applicant filed a rejoinder on 2.1.2017 in which he has reiterated that he has not completed the minimum period of two years in his present place of posting and therefore, his

transfer within two years is violative of the Railway Boards' order on the subject. The applicant submits that there is not a single complaint against him at any point of time and therefore, there was no need to transfer him to Rayagada.

6. The applicant had filed M.A.No.563/2016 on 14.9.2016 with a prayer for direction to Respondents to allow him to resume his duties at Waltair. The applicant had also filed M.A.No.205/2017 on 19.4.2017 with a prayer for direction to Respondents to allow him to discharge his duties at Waltair against the vacancy which has occurred due to non-joining of B.Raju, Chief O.S., Rayagada.

7. We heard the learned counsels for both the sides on 19.1.2018. In the course of argument, the learned counsel for the applicant relied on the judgment of the Hon'ble Apex Court in **Mohinder Singh Gill & another vs. Chief Election Commissioner, New Delhi & Ors. (AIR 1978 SC 851)** wherein it has been held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. It is the contention of the learned counsel for the applicant that the Respondents had not given any reason for effecting transfer of the applicant and have tried to justify it

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later in the orders passed on his representation. The applicant claims that hence the ratio in M.S.Gill case will be applicable. The issue to be decided in the present O.A. is whether the orders transferring the applicant from Waltair to Rayagada dated 16.3.2016 and the subsequent orders passed on his representations can stand the scrutiny of law.

8. From the facts of the case, it is obvious that the applicant was posted as Junior Clerk in the Office of Sr.DPO, Waltair from 17.7.2007. On 8.5.2008 he was transferred as Jr.Clerk/BS-III and posted to work under OS/Cadre. He was again posted to Cadre Section on 24.11.2008. On 12.2.2009, he was posted in the Bill Section as Junior Clerk. On 1.10.2012, he was posted as Sr.Clerk in the Bill Section-IX and continued in the Office of Sr.DPO till 16.3.2016. In effect, he continued in the Office of Sr.DPO from 17.7.2007 to 16.3.2016 which is close to nine years. On 16.3.2016, he was transferred to Loco Shed, Rayagada.

9. We have gone through his representations and also the orders of rejection passed by the various authorities which are well-reasoned orders. No Government servant has a vested right to continue in any particular post or any particular place indefinitely. The fact that the applicant is an Office Bearer of the AIOBCREA does not give any right to continue in any particular place of posting. We have perused the RBE NoS.138/1994, 103/2014 and No.39/1999 quoted by him and annexed to the

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O.A., but none of the orders comes to his rescue in continuing at any particular place of posting indefinitely. The ground of his illness has also been considered in the reasoned order which has been passed in compliance with the direction of this Tribunal. Rayagada being a District Headquarters has all the necessary medical facilities available there. The Additional General Manager, who was looking after the duties of the General Manager has passed the order on 23.8.2016 and has comprehensively dealt with the representation of the applicant. The relevant parts of the order passed by him on 23.8.2016 reads as follows:

“2. While considering for rotation of staff working on sensitive post, you were transferred to RGDA to work under CC/RGDA vide O.O No.WPV/PB/182/Transfer/02/2016 dated 16.03.2016 with the recommendations of Placement Committee, even if, you have not completed two years minimum tenure. The said proposal of transfer has been initiated considering your regular working in a vital seat of Bill Section connected with the staff of Operating Department involved in train operations. You have availed 150 days leave in a short spell of one and half year (11/2 year), most of the time producing Private Medical Certificates. As there were lot many periods of absence from your duties. You are unable to cope with the work load/work requirement of the present bill unit(s). As a result, there has been huge back log of OT/TA pertaining to your bill unit(s). thus leading to resentment and agitation among the staff as well as your own peers and supervisors. Your absence from duties causes serious concern for the administration in terms of regular staff complaints.

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3. There is no concept of tenure in the field office, as long as field office is within the zone of seniority, a staff can be posted any number of times in field office.
4. In terms of RBE No.39/99, an office bearer may be transferred, once the competent authority satisfies the requirement of such transfer duty apprising the Liaison Officer of the circumstances. In your case the liaison officer was apprised regarding your transfer to RGDA vide letter dt. 17.06.2016. hence, there is no violation of Railway rules with regard to your transfer".

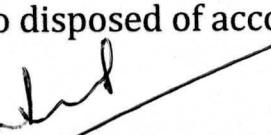
10. The case laws cited by the applicant in M.S.Gill (supra) is not applicable in the present case since the order of transfer dated 16.3.2016 clearly shows that the applicant has been transferred in the interest of administration. His plea that he is an office bearer of the AIOBCREA does not confer any right to him to continue at Visakhapatnam indefinitely. After spending close to nine years in the Office of the Sr.DPO, he cannot question his transfer to Loco/Rayagada.

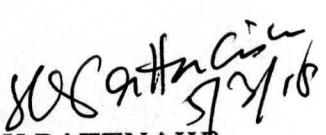
11. In a catena of judgments the Hon'ble Supreme Court has held that who should be transferred where, is a matter for the appropriate authority to decide. "If a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration". [Union of India vs. S.L.Abas (1993) 4 SCC 357]. In Rajendra Singh vs. State of U.P. (2009) 15 SCC 178, it has been held by the Hon'ble Supreme Court that "a Government servant has no vested right to remain posted at a

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 place of his choice nor can he insist that he must be posted at one place or the other". We have also taken note of the decisions of the Hon'ble Supreme Court in Kendriya Vidyalaya Sangathan vs. Damodar Prasad Pandey (2004) 12 SCC 299, Abani Kanta Ray vs. State of Orissa 1995 Suppl. (4) SCC 169, Shilpi Bose & Ors. vs. State of Bihar & Ors. in AIR 1991 SC 532 and N.K. Singh vs. Union of India & Ors. (1994) 6 SCC 1998 laying down the limited scope of interference by the Courts/Tribunals in the matter of transfer.

12. Having perused the order of transfer and the detail orders in which the representations of the applicant have been rejected, we find that the respondents have acted in a perfectly legal and non-arbitrary manner while ordering transfer of the applicant from Visakhapatnam to Rayagada. The case laws at Para-11 above make it very clear that this Tribunal has very limited power to interfere in orders of transfer unless they are illegal, biased or arbitrary. We find that no ground for us to interfere in the impugned orders of transfer and the orders dismissed the applicant's representation. The O.A. is therefore, rejected as devoid of merit. All the pending Misc. Applications are also disposed of accordingly. No costs.


 (DR. M. R. U. YUNJAY SARANGI)
 MEMBER(A)


 (S. K. PATTNAIK)
 MEMBER(J)

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