

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

order dt. 03.05.12

Copy of the order
may be issued
to both counsels.

*Despatched 8.5.12
Bageshwar S. J.
8.5.12*

OA No.281 of 2012

And

OA No. 234 of 2012

ORDER DATED – 3rd May, 2012 (Oral)

CORAM

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER, (ADMN.)

And

THE HON'BLE MR.A.K.PATNAIK, MEMBER (JUDL.)

Besides being the employees of the Railways the applicants are the office bearers of a Union registered under the Trade Union Act, 1926 known as "East Coast Railway Shramik Congress Union". They have filed these OAs praying to quash the approval of the GM, ECoRly, BBS conveyed by the CPO, ECoRly, BBS for the transfer of the applicants from their present place of posting. The main contention of the Applicants is that they being the Office bearer of a registered recognized Trade Union should not have been disturbed from their place of posting without complying with the provisions made by the Railway Board in Estt. Sl.No. 37/80 dated 07.02.1980.

2. Respondents in their counter have stated that all the applicants have been continuing in their present place of posting for more than ten years even though some of them are holding the sensitive posts for which periodical transfer is inevitable. Therefore, on receipt of proposal from the concerned department and after taking the approval of the GM, ECoRly, BBS, in accordance with the

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Railway Board's instruction in Estt. Sl.No. 37/80 dated 07.02.1980; the Applicants were transferred from their present place of posting in accordance with Estt. Sl.No. 273/89. Hence by placing reliance on the decisions of the Hon'ble Apex Court in the cases of **S.C.Saxena Vrs Union of India** (2006) 9 SCC 583; **Registrar General, Madras High Court Vrs R.Perachi & Ors**, AIR 2012 SC 232; **Chandra Nandi Vrs N.F.Railway**, AIR 1971 SC 359, **Indian Drugs and Pharmaceuticals Ltd Vrs Indian Drugs & Pharmaceuticals Employees Union**, (2007) 1 SCC 408 and **Transport & Dock Workers Union & Ors Vrs Mumbai Port Trust & Anr**, (2011) 1 SCC (L&S) 566 it has been stated by the Respondents that since the transfer of the Applicants was necessitated and made in administrative interest, the Tribunal should not interfere in the order of transfer and accordingly Respondents have prayed that the OAs being devoid of any merit are liable to be dismissed.

3. It is the specific case of the Applicants that their transfer being de hors the provisions made in Estt. Sl. No. 37/80 dated 07.02.1980, the orders of transfer are liable to be quashed. Relevant portion of the aforesaid Estt. Sl.No.37/1980 is extracted herein below:

“ Protection from transfers being given to the officials of the TRADE UNIONS should be restricted to only one or two main functionaries of the Trade Union viz. President/Vice-President and/or General Secretary/Organizing Secretary.

X X
X X

Any proposal for transfer of an office bearer of a recognized Trade Union including the Branches thereof should be communicated by the Railway to the Union concerned and the

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Union allowed to bring to the notice of the Divisional Officer and, if necessary, later to the General Manager any objection that they may have against the proposed transfer. If there is no agreement at the lower levels, the decision of the General Manager would be final. Sufficient notice should be given to the Union of a proposed transfer so that the Union can make alternative arrangements for carrying on work or making a representation against the proposed transfer."

4. We are conscious that transfer being an incidence of service the Tribunal should not ordinarily interfere with the order of transfer made in public interest/administrative exigency unless it is established that such transfer has been made in violation of the statutory rules or *mala fide* exercise of power. Therefore, we are in agreement with the Learned Standing Counsel appearing for the Respondents that in view of the decisions quoted above, where transfer is effected on administrative ground without violation of any codified provision the Tribunal should not interfere with the same. But none of the decisions on which reliance has been placed by the Respondents takes care of a situation involved in the instant OAs inasmuch as transfer of the office bearers has been effected without scrupulously following the codified provisions of Railway Board Circular No. 37/80 dated 07-02-1980. Therefore, the decisions relied on by Respondents' Counsel have no application to the instant OAs. It is not in dispute that in compliance of the Estt. Sl. No. 37/80 dated 07.02.1980 permission to transfer the office bearers/applicants were sought by the Respondents in letter dated 03.03.2010, 18.03.2010, 24.01.2011 and 25.01.2011 which was objected to by the Union.

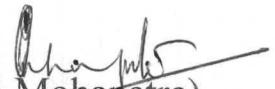
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Thereafter, the Railway Administration maintained sphinx like silence for over one year. Obviously this would imply that the proposal for transfer was given a decent burial. All of a sudden ordering transfer based on earlier communication cannot revive the dead proposal. It is also not in dispute that meantime Applicants have again been elected as the Office bearers of the Union in January, 2012. We are therefore of the considered opinion that the Railway administration have failed in complying with the provisions of Estt. Sl.No. 37/80 by issuing the order of transfer of the office bearers of the Union. Hence the approval of the GM, ECoRly,BBS communicated by the CPO, ECoRly,BBS based on which transfer of the applicants have been effected is hereby quashed and accordingly, the impugned orders of transfer of the Applicants in both the OAs are quashed. It is, however, made clear that the Respondents are at liberty to take action in the interest of administration regarding transfer of this category of employees after complying with the provisions of Estt. Sl. No. 37/80 dated 07.02.1980.

5. With the aforesaid observation and direction these OAs stand disposed of. There shall be no order as to costs.


(A.K.Patnaik)
Member(J)


(C.R.Mohapatra)
Member (A)