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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

OA No. 251 of 2012
A.BrahmaApplicant
-Versus-
Union of India & Ors. Respondents

Copy of the
Order of 7.5.12
may be issued
to Counsel
on both sides.

ORDER DATED - 7th May, 2012 (Oral)

CORAM
THE HON'BLE MR.C.R.MOHAPATRA, MEMBER, (ADMN.)
And
THE HON'BLE MR.A.K.PATNAIK, MEMBER (JUDL.)

Heard Mr.A.Das, Learned Counsel for the Applicant and Mr. S.K.Ojha, Learned Standing Counsel appearing for the Respondents/Railways. Applicant, besides being an employee of the Railways is an office bearer of a Union registered under the Trade Union Act, 1926. He has filed this OA seeking to quash his order of transfer under Annexure-A/4 dated 01-03-2012 mainly on the ground that the order of transfer is in violation of the Estt. Sl.No. 37/80 dated 07.02.1980 issued by the Railway Board. Respondents have filed their counter opposing the prayer of the Applicant.

Similar matter came up for consideration before this Tribunal in OA Nos.281 and 234 of 2012 and the same was disposed of by this Tribunal on 03-05-2012. Relevant portion of the order dated 03-05-2012 in OA Nos. 281 and 234 of 2012 is extracted herein below:

“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:



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“ 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 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.”

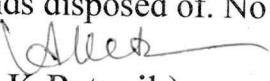
4. We are conscious that transfer being an incidence of service the Tribunal should not ordinarily interfere with the order of transfer made in public interest/administrative exigency unless it is established that such transfer has been made in violation of the statutory rules or *mala fide* exercise 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. 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

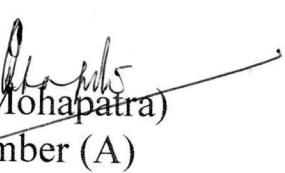
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meantime Applicants have again been elected as the Office bearers of the Union in January, 2012. We are therefore of the considered opinion that the Railway administration have failed in complying with the provisions of Estt. Sl.No. 37/80 by issuing 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.”

2. In view of the above and by applying the ratio of the order passed in the aforesaid OAs, the order of transfer of the Applicant under Annexure-A/4 dated 01-03-2012 is hereby quashed. It is, however, made clear that the Respondents are at liberty to take action in the interest of administration regarding the transfer of the applicant after complying with the provisions of Estt. Sl. No. 37/80 dated 07.02.1980.

3. With the aforesaid observation and direction this OA stands disposed of. No costs.


(A.K.Patnaik)
Member(J)


(C.R.Mohapatra)
Member (A)