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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

**ORIGINAL APPLICATION NO.485 OF 2012
CUTTACK, THIS THE 16th DAY OF JANUARY, 2015**

K.S. NayakApplicant

Vrs.

Union of India & OrsRespondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

(A. K. Patnaik)
Member (J)

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

**ORIGINAL APPLICATION NO.485 OF 2012
CUTTACK, THIS THE 16th DAY OF JANUARY, 2015**

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

.....
Sri K.S. Nayak,
aged about 49 years,
Son of Late B.K. Nayak,
Working as Staff & Welfare Inspector
Gr.II under Chief Workshop Manager,
Coach Repair Workshop,
Mancheswar residing at
Quarter No.F19/1 Type III,
At/P.O-Mancheswar Railway Colony,
Pin-751017.

...Applicant

(Advocates: M/s-G. Rath, D.K. Mohanty)

VERSUS

Union of India Represented through

1. General Manager,
E.Co.Railway,ECOR Sadan,
Chandrasekharpur,
Bhubaneswar, Pin-751017.
2. The Chief Personnel Officer,
E.Co.Railway,ECOR Sadan,
Chandrasekharpur,
Bhubaneswar, Pin-751017.
3. The Chief Workshop Manager,
Carriage Repair Workshop,
Mancheswar,
Bhubaneswar, Pin-751017.
4. Md. Akhtar,
Chief Personnel Officer,
E.Co.Railway,ECOR Sadan,
Chandrasekharpur,
Bhubaneswar, Pin-751017.
5. Shri M. Muralidhar,
Chief Staff & Welfare Inspector,
C/o-Chief Personnel Officer,
E.Co.Railway,ECOR Sadan,
Chandrasekharpur,
Bhubaneswar, Pin-751017.

... Respondents

(Advocate: Mr. S.K. Ojha)

S. K. Ojha

ORDER

A.K. PATNAIK, JUDICIAL MEMBER

The case of the Applicant in nut shell is that he belongs to an employee of the Mancheswar Workshop of the ECoRly, Bhubaneswar. The personnel working in the Mancheswar Workshop have their separate identity/cadre. The personnel working there are not transferable to the headquarters unit or vice versa. Their seniority, promotion etc. are governed within the cadre of Mancheswar Workshop. The applicant is working as Staff and Welfare Inspector Grade II under the Chief Workshop Manager, Coach Repair Workshop, Mancheswar. Since 14.11.1990. For the above reason, even personnel joining later on, in the headquarters cadre of the ECoRly as staff and Welfare Inspector Gr.II have been promoted to next higher post as no promotional avenue available in the Mancheswar Workshop. Now the Respondents vide order dated 18.6.2012 transferred him along with the post from Mancheswar Workshop to Headquarters of ECoRly without finalizing his service conditions by posting Respondent No.5 as Chief Staff and Welfare Inspector in the Office of the Chief Workshop Manager, Mancheswar, Bhubaneswar. Being aggrieved by the order dated 18.06.2012 the applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 praying therein to quash the said order and to hold that as per the letter dated 20.11.2009 he is not liable to be transferred from Mancheswar Workshop.



Therefore, it is relevant to quote the full text of the said two orders which are stated herein below:

Order dated 18.06.2012-

“With the approval of the Competent Authority, the following orders are issued to have immediate effect.

1. Sri M. Muralidhar, Chief Staff & Welfare Inspector in scale Rs.9300-34800/- + GP Rs.4600/- working in CPO’s Office/BBS is hereby transferred in his existing scale and capacity along with the post and posted under WPO/CRW/MCS.
2. Sri K.S. Nayak, Staff & Welfare Inspector in scale Rs.9300-34800/- + GP Rs.4600/- working under WPO/CRW/MCS is hereby transferred in his existing scale and capacity along with the post and posted under CPO’s office/BBS.

NB: (i)The above transfer is arranged on administrative interest.

(ii)The staff concerned may be released accordingly.

(iii)The date of effect may be intimated to this office for record.”

Order dated 20.11.2009-

“With reference to SDGM’s letter under reference, the status of employees of Mancheswar Workshop for extended long tenure has been reviewed. Following comments are offered for kind perusal of SDGM:-

1. The seniority of Mechanical Supervisors and staff of Mancheswar Workshop is specific to Workshop and therefore, their posting continues with Workshop till the time they retire. However, within the workshop, changes are made from section to section or shop to shop.



2. Electrical staff of Mancheswar have seniority specific to Mancheswar Workshop. They also continue till their retirement inside shop. However, Electrical Supervisors of Mancheswar Workshop have common seniority with KUR Division. Transfer of electrical supervisors out of workshop is controlled by CEE/Sr.DEE(G)/KUR
3. For Stores staff and Supervisors posted in Mancheswar Workshop, cadre control is with FA & CAO and their transfer/posting are normally done by FA& CAO/Admn./HQ. However, reshuffling of their sections is normally done from time to time.”

2. Respondents filed their counter opposing the prayer of the Applicant on the grounds that from the date of his promotion to S&WI Gr.III till the order dated 18.06.2012, the applicant was continuing at Mancheswar Workshop for a period of near about 22 years. The Applicant is working under the jurisdiction of the East Coast Railway. As per Section 3 and 4 of the Railway Act, the General Manager is competent to take decision in the matter of promotion, transfer and other related service conditions of Gr. C & D employees and, thus, there was no illegality in the order dated 18.06.2012. In so far as the order dated 20.11.2009, it has been stated that through this letter a suggestion was made to the General Manager for appraisal which has neither been approved nor notified for general information and, thus, the same cannot form a part of an order which can be enforced by an employee. The

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present order of transfer has been issued in public interest. The transfer and posting of staff of the employees is purely an administrative matter and the same can be interfered with if service prospect of the employees concerned are likely to be affected adversely or the transfer is purely an outcome of mala fide exercise of power. Since the interest of the applicant is not going to affect adversely nor it is the case of the applicant that the same is done in mala fide exercise of power there is hardly any scope for this Tribunal to interfere in the matter. Accordingly, the Respondents have prayed for dismissal of this OA.

3. Heard Mr.D.K.Mohanty, Learned Counsel appearing for the Applicant and Mr. S. K. Ojha, Learned panel counsel of the Railway- Respondents and perused the records.

4. Mr. Mohanty's contention is that Mancheswar Workshop of the ECoRly is governed by Factory Act and came into existence in the year 1983. The South Eastern Railway issued Memorandum No. P/L/13/M/MCS/cadre dated 09.11.1987 regarding formation of separate and independent workshop cadre for Mancheswar workshop w.e.f. 01.01.1988 under direct control of Chief Mechanical Engineer/Chief Works Engineer of East Coast Railway with separate working condition. He has controverted the stand of the Railway-Respondent that the applicant cannot claim any right on the strength of the letter dated 20.11.2009 as in the said letter only a suggest was sent to the GM for



approval and by drawing my attention to the said letter it has been stated that the said letter is a compliance report of the letter dated 06.11.2009 issued by the Senior Deputy General Manager regarding the action taken in posting policy wherein it has been stated that the staffs of the Mancheswar Workshop their posting continues with workshop till their retirement which establishes that the staffs of Mancheswar Workshop do not come under the jurisdiction of the Chief Personnel Officer, ECoRly rather they come under the controller of the CWE/CME of the said workshop. It has been stated that as per the provisions made in 124 of the Indian Railway Establishment Code, only the GM has full power to make rules with regard Group C and D to Railway servants are concerned. As such, CPO, ECoRly having no competency or authority to take any decision with regard to the employees of the Mancheswar Workshop the order dated 18.06.2012 is a nullity being inconsistence with the provision of 124 of the Railway Establishment Code and the order dated 20.11.2009. Further it has been stated that as the applicant, at that relevant point of time, was continuing as an office bearer of the recognized association and transfer of office bearer being de hors the provision of Estt. Sl.No. 37/80 and decision of this Tribunal in OA No. 251 of 2012 disposed of on 07.05.2012 (A.Brahma Vrs Union of India and others), the order dated 18.06.2012 is liable to be set aside. To fortify the stand that circulars/instructions issued by the Railway Board

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are statutory in nature, Mr.Mohanty has placed reliance on the decision of the Hon'ble Apex Court in the case of **Railway Boards and Others Vrs P.R.Subramanyan** reported in AIR 1978 SC 284; the Tribunal can interfere in the administrative order if the same is without jurisdiction or contrary to law (**Union of India and another Vrs Kunisetty Satyanarayana**, reported in (2007) 2 SCC (L&S) 304); where power is given to do a thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden (**Capt. Subha Singh Vrs Lt. Governor, Delhi**, reported in (2004) 6 SCC 440) and that the Tribunal can interfere in the order of transfer if the same is made in violation of the statutory provision and by an authority not competent to do so as in the instant case. Accordingly, Mr.Mohanty has prayed for the relief claimed in the OA.

On the other hand by reiterating the stand taken in the counter has submitted that the applicant, in compliance of the order dated 18.06.2012 has reported to duty in the office of the CPO, BBSR. By drawing my attention to the order dated 18.06.2012, Mr.Ojha submitted that in the said order it has specifically been stated that the same has been issued with the approval of the competent authority. The applicant cannot interpret the word competent authority means the CPO, BBS if according to him the GM is the competent authority to do so. He has submitted that when the order has been issued in administrative



interest that too the transfer within Bhubaneswar from one office to another and that the interest of the applicant is not adversely affected in any manner by the said order of transfer, the points raised by him have hardly any substance in support of the relief claimed in this OA. Further it has been stated that it is not a routine transfer. The transfer of the applicant is along with the post thereby necessitating posting of Chief Staff and Welfare Inspector in the office of the WPO/CREW/MCS and thus, it can be termed that such exercise of power was as a matter of policy and, when action taken as a matter of policy there is hardly any scope for the Tribunal to interfere in the same. Accordingly, Mr.Ojha has prayed for dismissal of this OA.

5. I have considered the respective arguments with reference to the pleadings and decisions relied on.

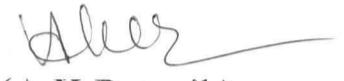
6. The General Manager, ECoRly who has been made as Respondent No.1 in this OA, has the competency and jurisdiction for such transfer as has been done in order dated 18.06.2012 is not in dispute. I find that the counter has been filed by Mr.Ojha for Respondent Nos. 1 to 4. In counter at paragraph 7 it has specifically stated that the order dated 18.6.2012 has got the approval of the General Manager, ECoRly,BBSR. Hence, this contention of the applicant is held to be without any merit. In so far as the stand of the applicant is that he being an office bearer of an union ought not to have been transferred is

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concerned I find this argument is of no consequence in the present case as the applicant has been posted from Mancheswar, Bhubaneswar to the office of the CPO, Bhubaneswar within the same city that too along with the post. According to the applicant there was only one sanctioned post in which he was continuing. It is not the case of the applicant that while retaining his juniors in the Mancheswar Workshop he has been transferred. When the post was transferred the person who is continuing in the said post is bound to face the consequence. Therefore, the stand of the applicant that as he was office bearer of the Union would not have been transferred for the discussion made above does not stand to judicial scrutiny. I also find that on transfer of the applicant along with the post Respondent No.5 has been posted to Mancheswar Workshop along with the post as Chief Staff and Welfare Inspector. The said transfer and posting along with the posts cannot be termed as a matter of routine rather as a matter of policy which is within the domain of the authority manning the Department to decide and in my considered opinion that the Tribunal has competency to interfere in a matter which has been done as a matter of policy. I have also gone through the decisions relied on by Mr.Mohanty but taking into consideration the facts of the present case I do not see any relevance of those decisions, facts being different and distinct, to the present case.

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7. For the discussions made above, I find no merit in this OA which is accordingly dismissed by leaving the parties to bear their own costs.


(A.K. Patnaik)
Member (Judl.)