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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO.608 of 2012
Cuttack this the 23rd day of July, 2013

CORAM:

HON'BLE SHRI A.K.PATNAIK, MEMBER(J)
HON'BLE SHRI R.C.MISRA, MEMBER(A)

Ashish Kumar Dhal, aged about 51 years, S/o. Suryamani Dhal, Village-Bankipal, PO-Sayedpur, PS-Binjharpur, District-Jajpur – at present working as Senior Technician (Signal & Maintenance) Office of the Senior Section Engineer, East Coast Railway, Jajpur Road, District-Jajpur

...Applicant

By the Advocate(s)-M/s.D.K.Sahoo-I,
P.K.Sahoo,
B.K.Behera

-VERSUS-

Union of India represented through

1. The General Manager, East Coast Railway, Odisha, Bhubaneswar, At-Chandrasekharapur, Bhubaneswar, PS-Chandrasekharapur, Dist-Khurda
2. General Manager, East Coast Railway, Odisha, Bhubaneswar, District-Khurda, At-Chandrasekharapur, Bhubaneswar, PO-Chandrasekharapur, Dist-Khurda
3. Divisional Railway Manager (P), East Coast Railway, At/PO/Dist-Khurda
4. Asst.Personnel Officer III, East Coast Railway, Office of the Senior Divisional Railway Manager (P), Khurda, District-Khurda
5. Senior Section Engineer (S&T), East Coast Railway, Jajpur Keonjhar Road, At/PO-Jajpur Road, District-Jajpur

...Respondents

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



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ORDER**HON'BLE SHRI R.C.MISRA, MEMBER(A):**

The applicant in this Original Application has come to the Tribunal with a prayer that the order of transfer dated 1.3.20~~12~~¹² issued by the Respondents, i.e., the authorities of East Coast Railway may be quashed.

2. The facts of the matter in short are that the applicant was working at Jajpur – Keonjhar Road. He was an office bearer of the East Coast Railway Shramik Union which is a registered recognized trade union in its Jajpur – Keonjhar Road Branch. According to Railway Board Circular dated 16.1.1980, a proposal of transfer of an office bearer of a Union has to be sent first to the concerned Union which can bring its objection, if any, to the notice of Divisional Officer, or if necessary, to the notice of General Manager of Railways. If there is disagreement at the lower levels about the proposed transfer, the decision of the General Manager would be final. It is alleged by the applicant that without the laid down procedure being followed, the applicant was transferred to Berhampur by an office order dated 1.3.2012 issued by the Divisional Railway Manger (Pers.), Khurda Road.

3. The applicant in this O.A. had filed M.A.No.1000/2012 which was disposed of by this Tribunal by an order dated 12.11.2012, in which the General Manager, East Coast Railways was directed to dispose of the representation of the applicant, if the same is filed within a period of seven days, and communicate his decision to the applicant. The General Manager in compliance of this order has disposed of the representation of the applicant by his speaking order dated



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3.1.2013, and rejected the representation. The grounds of rejection are given as follows.

The Sr.DSTE, Khurda Road in a letter dated 16.3.2010 proposed to transfer the applicant who is an office bearer of East Coast Railway Shramik Union as he had completed more than 19 years of service at Jajpur – Keonjhar Road Station. He, therefore, requested the Divisional Coordinator, East Coast Railway Shramik Union, Khurda Road to offer his views, by his letter dated 18.3.2010, by following the procedure in terms of Estt.Srl.No.37/1980. The Divisional Coordinator did not offer any views and remained silent. Subsequently, it was decided to transfer 30 nos. of staff who are in the same station for more than 10 years, and the applicant was also included in the list of transfer, which was approved by the General Manager.

4. In the speaking order, the General Manager did not find any merit in the representation on the above ground, apart from the ground that this transfer has been done in the normal course, since the applicant has completed 19 years of service in the same station, and Berhampur the city to which he has been transferred has got all amenities of living.

5. The applicant has in his O.A. mentioned in detail the provisions of the Railway Board Circular dated 16.1.1980 regarding transfer of office bearers. It is his contention that he was elected an office bearer of the Union in 2010 for a period of two years, and thereafter, he was again elected as an office bearer on 30.5.2012 in the election held for the Union as Asst. Secretary of the JKR Branch

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and in such capacity he will continue for two years w.e.f. 30.5.2012. In view of this, the authorities have transferred him with an ulterior motive to disturb the functioning of the Union, without following the procedure laid down in the Railway Board Circular dated 16.1.1980. The applicant's counsel in his written notes of argument has further argued that the respondents sent the proposal of transfer to the Union on 18.3.2012⁰² and 5.5.2010, which the applicant was not aware of. The order of transfer was issued only on 1.3.2012. This according to the learned counsel for the applicant, establishes the mala fide intention of the Respondents to harass the applicant.

6. The Respondents in their counter affidavit have pleaded that an employee must first obey his order of transfer and join his new station. Only thereafter, he should agitate his grievances. That is the settled position of law as pronounced by the Hon'ble Supreme Court in a large number of judgments. In this case, in compliance of this Tribunal's order in MA No.1000/2012, the General Manager, East Coast Railways has considered the applicant's representation and disposed it of in a speaking order dated 3.1.2013. His decision to reject the applicant's representation has been communicated to the applicant. Notwithstanding this, the applicant has not joined his new place of posting. It is further pleaded that the Railway Board's instructions regarding transfer of office bearers were duly followed. Since the Union did not offer its views, it amounted to consent with the proposals of transfer. Besides the above, the applicant had

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completed 19 years of service at Jajpur Keonjhar Road Station, and was liable for transfer.

7. Having heard the learned counsel for both the sides, perused the records. The applicant's sole contention is that he is an office bearer of the Union, and Railway Board Circular dated 16.1.1980 has to be followed in the case of his transfer, which was not done by the Respondents. The said circular is reproduced 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".

"The Ministry of Railways have carefully considered the matter and they desire that the instructions issued on the subject from time to time as brought out in the notes attached may be strictly followed in dealing with the case of transfer of recognized Trade Union Office Bearers".

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

8. The procedure was no doubt followed in this case, the objection of the applicant being that the proposal of transfer was sent to the Union on 18.3.2010 and 5.5.2010 to elicit its views, whereas the applicant was transferred



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on 1.3.2012. Now, on this ground it cannot be said that the due procedure was not followed. The Railway Board Circular in fact says that "**sufficient**" notice should be given to the Union, of a proposed transfer. The important thing ^{to} have to be noted is that the Union has kept silent. The Respondents have taken it as no objection from the Union to the proposed transfer. Obviously, if the Union had some views contrary to the proposal, it would have communicated the same to the authorities. The other objection of the applicant is that he was not aware of the communication sent to the Union and no response from them, earlier to the date when order of transfer was made. That is not something which can be held against the Respondents. They are supposed to correspond with the Union, and the concerned employee not being aware of this communication does not prove that the procedure was not followed. This does not also support the allegation that there was mala fide intention of the authorities against the applicant.

9. A reading of the Railway Board Circular indicates that protection from transfers being given to the officials of the Trade Unions should be restricted to only one or two main functionaries, viz., President/ Vice President and/or General Secretary/Organizing Secretary. The applicant has mentioned that he is elected as Asst. Secretary of the Jajpur Keonjhar Road Branch of the Union. He does not strictly come within the categories mentioned above, viz., President/Vice President, General secretary, Organizing Secretary. However, from the facts presented before us, it appears that the authorities have followed the procedure relating to transfer of office bearers in the case of the applicant.

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10. The General Manager in his speaking order dated 3.1.2013 has mentioned the process of consultation with the Union with regard to the transfer of the applicant. He also mentions that the applicant has completed 19 years of service at Jajpur Keonjhar Road Station and that the order of transfer was in keeping with the general decision of transferring staff who had served in one station for more than ten years. There appears to be no specific ground on which the speaking order can be faulted.

11. Transfers are a normal occurrence in the career of a Govt. servant, and they cannot be faulted particularly when the same are made after a Govt. servant has served for a long time in a particular station, because such transfers are required for maintaining normal health of the administration. In case of proposals involving office bearers of the Unions, the Railway Board has prescribed a procedure of prior consultation with the Unions. That procedure has been followed in the present case. Apart from that, the applicant has completed 19 years of service at a particular place and should not have any grievance about this transfer.

12. The Hon'ble Apex Court in the case of ²**S.C.Saxena vs. Union of India reported in 2006, Vol.-9 SCC 583** has held that non-reporting at the new place of posting after transfer amounts to misconduct and thereby an employee makes himself liable for being proceeded under D & A Rules.

In the case of **State of Madhya Pradesh vs. S.S.Kurav reported in AIR 1995**

SC 1056 the Hon'ble Apex Court has held as follows.

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"The Courts or Tribunals are not appellate forums to decide on transfer of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the Courts or Tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous consideration without any factual background foundation".

13. On deliberating upon the facts, and the arguments advanced by learned counsels for both parties in this case, we find that the procedure of consultation with Union with regard to proposal of transfer of the applicant being an office bearer was duly followed in the case. The speaking order passed by the General Manager (Res.No.2) passed in compliance of directions issued by the Tribunal in M.A.No.1000/2012 contains the administrative necessity of such transfer, and the grounds mentioned being genuine and valid do not warrant any interference by the Tribunal.

14. For the reasons stated above, the O.A. is dismissed being devoid of merit. No costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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