

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A. Nos.172 & 173 of 2013
Cuttack, this the 8th day of May, 2013

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

OA No.172 of 2013

Dr.Mrs.Sabita Satapathy,
Aged about 46 years,
W/o Dr.Pranabesh Panda,
K-21/B, Traffic Colony,
Jatni, Khurda,
Sr. Divisional Medical Officer (SG),
Divisional Railway Hospital,
East Coast Railway,
Khurda Road,
Jatni, Dist.Khurda.Applicant

(By Advocate(s): Mr.A.A.Das, P.K.Chand)

-Versus-

Union of India represented through

1. General Manager,
East Coast Railway,
Chandrasekharpur,
Bhubaneswar,
Khurda.
2. The Chief Personnel Officer,
East Coast Railway,
Chandrasekharpur,
Bhubaneswar,
Khurda.

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3. Divisional Railway Manager,
East Coast Railway,
Khurda Road Division,
Jatni, Khurda.
4. Chief Medical Superintendent,
Divisional Railway Hospital,
East Coast Railway,
Khurda Road Division,
Jatni, Khurda.
5. Divisional Railway Manager (P),
East Coast Railway,
Khurda Road Division,
Jatni, Khurda.
6. The Chief Medical Director,
East Coast Railway,
Chandrasekhpur,
Bhubaneswar,
Khurda.
7. Dr. Pranabandhu Sahoo, SAG,
ACMS (Physician),
Divisional Hospital,
E.Co.Railway,
Sambalpur,
Odisha. Respondents

(By Advocate: Mr. T.Rath)

OA No. 173 of 2013

Dr. Pranabesh Panda,
Aged about 53 years,
S/o.Late Yajneswar Panda,
K-21/B, Traffic Colony,
Jatni, Khurda,

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Sr. Divisional Medical Officer (SG),
Divisional Railway Hospital,
East Coast Railway,
Khurda Road,
Jatni,
Dist.Khurda.

.....Applicant

(Advocate(s) -M/s.A.A.Das, P.K.Chand)

-Versus-

Union of India represented through –

2. General Manager,
East Coast Railway,
Chandrasekharpur,
Bhubaneswar,
Khurda.
2. The Chief Personnel Officer,
East Coast Railway,
Chandrasekharpur,
Bhubaneswar,
Khurda.
3. Divisional Railway Manager,
East Coast Railway,
Khurda Road Division,
Jatni, Khurda.
4. Chief Medical Superintendent,
Divisional Railway Hospital,
East Coast Railway,
Khurda Road Division,
Jatni, Khurda.
5. Divisional Railway Manager (P),
East Coast Railway, Khurda Road Division,
Jatni, Khurda.

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6. The Chief Medical Director,
East Coast Railway,
Chandrasekharpur,
Bhubaneswar,
Khurda.
7. Dr.S.B.V.Prasad, RMS,
Senior Divisional Medical Officer,
East Coast Railway,
Jagdalpur,
Dist.Bastar,
Chhatisgarh. Respondents

(By Advocate: Mr. T.Rath)

O R D E R (oral)

MR. A.K. PATNAIK, MEMBER (J):

Although we have heard the OAs, one after the other, since the issues involved, in both the matters, are interlinked, this common order is passed which will govern in both the two OAs.

2. In OA No.172 of 2013 filed by Dr.Mrs.Sabita Satapathy, W/o. Dr.Pranabesh Panda (who is applicant in OA No. 173 of 2013) seeking to quash/set aside the order of transfers dated 7.2.2013 & 8.2.2013 (Annexure-A/1 series) in so far as Applicant is concerned and the order dated 19.3.2013 (Annexure-A/3) and to direct the Respondents to allow the applicant to work in her place of posting/post which has been transferred to Central Hospital, Bhubaneswar.

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3. Similarly, OA No. 173 of 2013 has been filed by Dr. Pranabesh Panda the husband of Applicant in OA No.172 of 2013 seeking to quash the orders dated 7.2.2013 & 8.2.2013 (Annexure-A/1 series) and the order dated 19.3.2013 (Annexure-A/3).

4. In the aforesaid order of transfer the Applicant in OA No. 172 of 2013 was transferred and posted from Khurda to Koraput and Applicant ⁱⁿ OA No. 173 of 2013 was transferred and posted to Jagdalpur. Both of them have earlier approached this Tribunal in OA Nos.75 & 76 of 2013. Both the OAs were disposed of at the admission stage on 21.2.2013 with direction to the Respondents to consider their representations and communicate the decision in a reasoned order. The Respondents considered representations but rejected their prayer to cancel the orders of transfer or to accede to the request for posting at Bhubaneswar. Being aggrieved by the said order of rejection the present OAs have been filed by them seeking the aforesaid reliefs.

5. Both the OAs were listed on 4th April, 2013 and when we find that the main ground of challenge of the order of transfer that the posting of both of them at two different places de hors the Railway Board instruction dated 2.2.2010 (Posting of husband and wife at the same station) Mr.T.Rath, Learned Standing Counsel for the Railway was directed to apprise whether two vacancies in the grade in which

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the applicants are working are available in particular station of the ECoRailiway. Besides the above, it was directed that till next date no coercive action shall be taken against both the Applicants. Mr.Rath, Learned Standing Counsel produced copy of the Office Order dated 11.4.2013 in which it was ordered as under:

"Office Order No.41/2013 dated 11.04.2013
In partial modification of CPO/ECoR/BBS Office Order No.13/2013 dated 07.02.2013, the vacant SASG post of CMS/WAT is temporarily transferred to Koraput and Dr.Pranabesh Panda, SG/IRMS, ex.Sr.DMO/KUR is posted as Sr.DMO-II/KRPU HU instead of JDB HU by operating the SAG IRMS post in SG -JAG till further orders."

6. Both the OAs were again listed on 30.04.2013 and copy of the order dated 11.4.2013 was produced by Mr.T.Rath, Learned Standing Counsel for the Respondents. Mr.P.K.Chand, Learned Counsel appearing for the applicants mentioned that he does not have any such information in the matter and, therefore, prayed for one weeks' time for obtaining instruction. Accordingly, both the OAs were adjourned and hence listed today.

7. In view of the Office Order No.41/2013 dated 11.4.2013 in which the posting of Applicant in OA No. 173/13 to Jagdalpur has been modified to Koraput the OA No.173/2013 has been rendered infructuous and is accordingly disposed of.

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8. In so far as the grievance of the applicant that posting both husband and wife at two different places de hors the Railway Board's instruction dated 2.2.2010 is no more available to be canvassed in view of the order dated 11.4.2013 in which the husband of the applicant was posted to the place where the applicant in OA No. 172 of 2013 has been posted. We also find that the representation of the applicant was rejected in a well-reasoned order. Hence there is hardly of any scope for this Tribunal to interfere in the matter.

9. More so, admittedly, both the applicants are holding transferable posts and transfer being an incidence of service no employee can claim any vested right to continue at one place/station or claim to be posted at his/her choice. It is ^{for} ~~the~~ administration to decide who should be posted where and at what point of time in administrative exigencies/public interest. In this connection we would like to rely on some of the decisions of the Hon'ble Apex Court with regard to interference by the order of transfer made in public interest/administrative exigencies.

10. In the case of **State of Madhya Pradesh vrs. S.Kourav** reported in AIR 1995 SC 1056 it was held by the Hon'ble Apex Court that courts or Tribunals is not the Appellate Authority to decide on transfer of the officers made in administrative grounds. The wheels

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of the administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict/interfere the working of the administration system.

In the case of **Mrs. Shilpi Bose and others Vrs State of Bihar and others**, AIR 1991 SC 532 it has been observed by the Hon'ble Apex Court as under:

"We fail to appreciate the reasoning recorded by the High Court. If the competent authority issued transfer orders with a view to accommodate a public servant to avoid hardship, the same cannot and should not be interfered by the court merely because the transfer order were passed on the request of the employee concerned..."

"In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the courts continue to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the

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administration which would not be conducive to public interest”

In the case of **Union of India Vrs N.P.Thomas**, AIR 1993

SC 1605 it has been held by the Apex Court as under:

“In the present case, it cannot be said that the transfer order of the respondent transferring him out of Kerala Circle is violative of any statutory rule or that the transfer order suffers on the ground of mala fide. The submissions of the respondent that some of his juniors are retained by Kerala Circle and that his transfer is against the policy of the Government posting the husband and wife in the same station as far as possible cannot be countenanced since the respondent holding a transferable post and no vested right to remain in the Kerala Circle itself and cannot claim, as a matter of right, the posting in that Circle even on promotion.

.....For all the aforementioned reasons, we hold that the Tribunal was not justified in quashing the order of transfer of the Respondent and accordingly, we set aside the order of the Tribunal”.

In the case of **Union of India Vrs S.L.Abas**, AIR 1993

SC 2444 it has been held by the Hon'ble Apex Court as under:

“Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keeping mind the guidelines issued by the Government on the

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subject. Similarly 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. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right".

In the case of **Rajendra Roy-Vrs-Union of India and others**, AIR 1993 SC 1236, it has been held by the Hon'ble Apex Court as under:

"....It is true that the order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employees but on that score the order of transfer is not liable to be struck down. Unless such order is passed mala fide or in violation of the rules of service and guidelines for transfer without any proper justification, the court and the Tribunal should not interfere with the order of transfer. In a transferable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the Department".

In the case of **Union of India and others Vrs. V.Janardan Debanath and another**, (2004)4 SCC 245 it has been held by the Hon'ble Apex Court as under:-

"No Government servant or employee of a public undertaking has any legal right to be



posted for ever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authority substituting their own decision for that of the employer/management, as against such order passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corpn. Ltd. Vs. Shri Bhagwan (2001) 8 SCC 574."

11. In view of the facts and law discussed above we do not see any merit in the matter. Accordingly, OA No. 172/2013 also stands dismissed. There shall be no order as to costs.

R.C.Misra
(R.C.MISRA)
Member (Admn.)

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