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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 336 OF 2013
CUTTACK, THIS THE 26TH DAY OF JUNE, 2013

CORAM

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

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

Gouri Kumar Patnaik,
aged about 43 years,
Son of Late Pravakara Patnaik,
At present working as S.S.E. Bridge
Cuttack, East Coast Railway,
R/O-Plot No.107/7,
Aerodrum Area, Bhubaneswar,
P.S.- Airfield, Bhubaneswar.

...Applicant

By the Advocate(s) - M/s- B. Baug

VERSUS

Union of India represented through

1. The General Manager,
East Coast Railway,
Odisha, Bhubaneswar,
At-Chandrasekharpur,
Bhubaneswar,
P.S- Chandrasekharpur,
District-Khurda.
2. The General Manager,
East Coast Railway,
Odisha, Bhubaneswar,
At-Chandrasekharpur,
Bhubaneswar,
P.S- Chandrasekharpur,
District-Khurda.
3. Chief Personnel Officer,
East Coast Railway,
Bhubaneswar,
Rail Sadan, 2nd Floor,
South Block, Chandrasekharpur,
Bhubaneswar-75107, Dist-Khurda.

W. A. Lee

4. Assistant Personnel Officer-(HQ-I),
East Coast Railway,
Rail Sadan, 2nd Floor,
South Block, Chandrasekharpur,
Bhubaneswar-75107, Dist-Khurda.
5. Dy. Chief Personal Officer (IR & W),
East Coast Railway,
Rail Sadan, 2nd Floor,
South Block, Chandrasekharpur,
Bhubaneswar-75107, Dist-Khurda.
6. Sr. Divisional Personal Officer,
Khurda, East Coast Railway,
Khurda Road,
At-Khurda, Dist-Khurda.

... Respondents

By the Advocate(s) - Mr. S.K. Ojha

ORDER (ORAL)

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

Heard Shri B.Baug, learned counsel for the applicant and Shri S.K.Ojha, learned Panel Counsel for the Respondent-Railways.

2. Shri Baug submitted that vide order dated 10.5.2013, the Deputy Chief Personnel Officer, on behalf of the Chief Personnel Officer, East Coast Railways,(Res.No.3), has requested the General Secretary of the East Coast Railway Shramik Congress to which Union the applicant happens to be the office bearer, to give his views on the proposed transfer of the applicant. Vide letter dated 15.5.2012, the General Secretary of the East Coast ShramiK Congress informed the Chief Personnel Officer that in the meantime, secret ballot election was nearly over and the body of central and branches had not yet started functioning, and at that juncture proposal for transfer of office bearers by the Administration would be causing shock for organization and therefore, they

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opposed the proposed transfer of the applicant. However, vide office order dated 22.5.2013 the transfer order was issued transferring the applicant in the existing grade and capacity posting him as SSE/BR.Ctc vice Item No.3 below(Annexure-A/3).

3. On the other hand, learned panel counsel for Railways, Shri Ojha submitted that the Union has been derecognized and therefore, the applicant is not an office bearer of the said Union. To that effect he has already filed objection in which it has been submitted that earlier as per the guidelines issued by the Railway Board all four Employees Unions will be de-recognized in each four years (now onwards 6 years) and secret ballot election will be held as per the specification to find out the Unions eligible for further recognition. It has been further submitted that the final list was published on 3.5.2013 declaring two Unions such as East Coast Railway Shramik Congress and East Coast Railway Shramik Union as recognized unions and as such these Unions have received further recognition and are only eligible to nominate their office bearers on the basis of election or unanimous selection from among the valid members of the Union.

4. In response to this, the applicant has filed a rejoinder. Shri Baug brought to our notice a circular dated 20.2.2012 issued by the Ministry of Railways (Railway Board) addressed to all General Managers, with copy to General Secretary, NFIR and AIRF, which reads as under:

“As the process of conducting next Secret Ballot Elections for recognition of Union Unions or the Zonal Railways has already

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commenced, transfer of staff who are office bearers/activists of the Unions may be pended till the process of Secret Ballot Election is compete".

5. Shri Baug further brought to our notice a letter dated 6.5.2013(Annexure-A7 to the rejoinder) and submitted that after the recognition granted to the East Coast Railway Shramik Congress of which the applicant is a member and an office bearer, the General Secretary of the said East Coast Railway Shramik Congress has intimated the Chief Personnel Officer enclosing the existing list of Central Office Bearers & Branch wise Office Bearers of WAT, KUR and SBP Division including ZHQ/BBS & MCS(W/S) that the Central Office Bearers (COBs) and Branch Office Bears those are continuing existingly will presently continue as per our ECoRSC Bye-Law. From the above, it is crystal clear that the applicant was an office bearer and will continue as an office bearer of the East Coast Railway Shramik Congress.

6. Shri Ojha, learned Panel Counsel for the Railways brought to our notice the guidelines for transfer of Recognized Trade Union Officer bears – procedure to be followed, which reads as under:

"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 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"

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7. Relying on this, Shri Ojha submitted that once a proposal for transfer of an officer bearer of the Union has been informed to the said registered union and the registered union has opposed the said proposed transfer and subsequently the order of transfer itself shows that there is failure of conciliation, the applicant should have approached the General Manager whose decision will be final.

8. Per contra, Shri Baug though admitted that the proposal for transfer of the applicant was conveyed to the Registered Union and the General Secretary of the Registered Union Opposed the transfer of the applicant, yet the transfer order has been issued on 22.5.2013 without any decision of the General Manager and without any rejection at the Zonal/Divisional leve..

9. Apparently, there is nothing on record to show that there is no agreement at the lower levels regarding transfer of the applicant in the face of guidelines for transfer of Recognized Trade Union Officer bears – procedure to be followed, as quoted above.

10. In view of this, we dispose of this O.A. at the stage of admission itself with direction to Chief Personnel Officer, East Coast Railway(Res.No.3) to first consider the letter issued by the Union objecting the transfer of the applicant, which was sent by the General Manager, East Coast Railway Shramik Congress on 15.5.2013 and communicate the decision thereof to the General Secretary of the said Union for further action at their end.

11. Till such consideration is made and decision is communicated, the transfer of the applicant shall be kept in abeyance.



12. Send copies of this order along with copies of the paper book to Res.Nos. 2, 3 and 6 for compliance at the cost of the applicant, for which Shri Baug undertakes to deposit the postal requisites by 28.6.2013.

13. Free copies of this order be made over to the learned counsel for both the sides.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)