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CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH, CUTTACK

O.A. 03 OF 2013

Cuttack this the 7th day of January, 2013

CORAM

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

Smt. Sumitra Panda,
Aged about 33 years,
D/o. Sukadev Panda
At present working as Senior T.C/CTC.
Presently reside at Srikunj Apartment
Khannagar,
PS-Madhupatna
Town/District-Cuttack

...Applicant

Advocate(s) M/s.D.R.Patnaik, M.R.Baug & S.Rath

VERSUS

Union of India represented through
1.The General Manager
East Coast Railway, Odisha, Bhubaneswar
At-Chandrasekhapur, Bhubaneswar
PS-Chandrasekharpur,
District-Khurda

2.General Manager
East Coast Railway, Odisha, Bhubaneswar
At-Chandrasekhapur, Bhubaneswar
PS-Chandrasekharpur,
District-Khurda

3.Senior Divisional personnel officer
Khurda Roa, East Coast Railway
At/PO-Khurda Road,
Istrict-Khurda

4.Chief Personnel Officer,
East Coast Railway, Bhubaneswar
At-Chandrasekharpur
Bhubaneswar,
PS-Chandrasekharpur, District-Khurda

5.Assistant personnel Officer-I,
East Coast Railway
Khurda Road
At/PO-Khurda Road
District-Khurda

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6.Sr.Divisional Commercial Manager
East Coast Railway
At/PO-Jatni
Dist-Khurda

... Respondents

Advocate(s)Mr.T.Rath, SC

ORDER(Oral)

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

Applicant, Smt.Sumitra Panda, presently working as Senior Ticket Collector under the Respondent-Railways has moved this Tribunal this Original Application seeking the following relief.

- i) Let the order of transfer of the applicant dated 26.08.2011 under Annexure-A/1 and her proposed sparing order dated 20.12.2012 under Annexure-A/8 be quashed.
- ii) let the order dated 24.12.2012 under Annexure-A/10 passed by the opposite Party No.2 be quashed.
- iii) Let any other order/orders, to which the applicant is entitled under law and equity be passed in favour of the applicant.

2. This matter came up on 7.1.2013 for admission. Heard Shri D.R.Patnaik, learned counsel for the applicant and Shri T.Rath, learned SC, on whom a copy of the O.A. has been served, appearing on behalf of the Respondent-Railways on the question of admission and perused the materials on record.

3. Earlier the applicant had moved this Tribunal in O.A.No.811/2012 praying therein for quashing the order of transfer and sparing her from Cuttack to Bhubaneswar. During pendency of the said O.A., the representation already filed by the applicant having been rejected on 31.10.2012, this Tribunal, vide order dated 22.11.2012 disposed of the said O.A. with direction to the applicant to file a detailed representation before the competent authority, in which eventuality, the authority should consider and dispose of the same through a reasoned and speaking order.

4. Pursuant to the above order of the Tribunal, Respondent No.2 vide order dated 24.12.2012 having rejected the fresh representation, the applicant has moved this Tribunal in the 2nd round of litigation with the prayer as aforementioned.

5. I have gone through the representation made by the applicant vide Annexure-A/9 pursuant to the order of this Tribunal in O.A.No.811/2012 vis-à-vis the speaking order dated 24.12.2012 issued by the General Manager (Res.No.1) vide Annexure-A/10. It

reveals from the representation made by the applicant that basically she had urged that she being an elected office bearer of the Union being elected on 6.1.2012 should not be subjected to transfer in view of Railway Board Circular dated 16.01.1980. In the above backdrop of the matter, this Tribunal is to adjudicate as to whether the applicant is protected under Railway Board Circular dated 16.01.1980.

6. Before considering the matter, it is pertinent to embody few facts leading to filing this O.A..

7. Admittedly, applicant, while working as Sr.TC/CTC had been transferred to Bhubaneswar on promotion as Hd.TC vide Office Order dated 26.08.2011. Subsequently, her request for retention at CTC on promotion till March, 2012 due to education of her child was allowed and accordingly, a modified order dated 20.12.2011 was issued with the stipulation that **after 31.03.2012 she would automatically stand spared to BBS**. While the matter stood thus, the applicant was elected as Asst. Secretary of the Cuttack Branch of ECoRSC held on 6.1.2012 and on this score, by laying emphasis on Railway board Circular dated 16.01.1980, applicant has called in question the legality and validity of the impugned orders of transfer.

7. I have gone through the Railway Board Circular vide Annexure-A/5 dated 7.2.1980 to the O.A., the relevant portion of which reads as under:

Transfer of Railway employees who are Office Bearers of recognized Unions.

The task force (Vigilance) has made the following recommendations:-

Item 27:

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.

Transfer of Recognized Trade Union Office bearers – Procedure to be followed.

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

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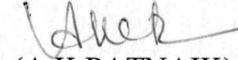
proposed transfer. If there is no agreement at the lower levels, the decision of the General Manager would be final.....

2. In the case of usual periodical transfer, however, where it is decided after consideration of the appeal by the General Manager not to cancel the transfer, the transfer may be allowed to pend till the next election.
5. In case of an employee being transferred on promotion the Union need only be informed about the proposed transfer and it is not necessary to pend the same unless the employee wishes to refuse promotion. A senior employee need not be transferred in preference to the one promoted in order to accommodate a Trade Union Office bearer on promotion at that station itself unless this course of action is otherwise feasible.

8. I have closely examined the applicability of the above rulings to the case of the applicant. First of all, applicant being an Assistant Secretary of the Cuttack Branch is not coming within the scope and ambit of the above Rules. Secondly, as regards the procedure to be followed for transfer of an office bearer as quoted above, it is to be noted that although, while working as Sr.TC/CTC applicant had been transferred to Bhubaneswar on promotion as Hd.TC vide Office Order dated 26.08.2011, but in consideration of her request she had been allowed to stay at CTC on promotion till March, 2012 and as such in the modified order dated 31.03.2012, it was indicated that after 31.03.2012 she would automatically stand spared to BBS. Viewed from this, the above provision of rules does not come to the aid of the applicant.

9. As regards the submissions made by the applicant that many incumbents of Hd.T.C.s have been continuing at Cuttack since long does not hold any water in view of the settled position of law that transfer and posting are completely within the prerogative of the administration.

10. For the reasons discussed above, I am of the view that the applicant has not been able to make out a *prima facie* case for admission. In the circumstances, the O.A. is dismissed at the threshold without being admitted. No costs.


(A.K.PATNAIK)
MEMBER(J)