

21

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O.A.No.36 OF 2013

Cuttack this the 23rd day of September, 2013

CORAM

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

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

Dusmanta Pujari

Aged about 38 years

Son of Sibanarayan Pujari

At/PO-Satkana, PS-Kuchinda, Dist-Sambalpur

At present working as Goods Clerk/Commercial Clerk under
Station Superintendent,

Baragarh East Coast Railway

Sambalpur Division

At/PO/Dist-Bargarh

...Applicant

By the Advocate(s)-M/s.P.K.Mohapatra

S.C.Sahoo

-VERSUS-

Union of India represented through

1. The General Manager
East Coast Railway
Chandrasekharpur
Bhubaneswar
Dist-Khurda
2. Divisional Railway Manager (P)
Sambalpur Division
East Coast Railway
Sambalpur
At/PO/District-Sambalpur
3. Senior Divisional Commercial Manager
East Coast Railway
Sambalpur Division
At/PO/Dist-Sambalpur
4. Divisional Railway Manager
Sambalpur Division
East Coast Railway
Sambalpur
At/PO/Dist-Sambalpur

5. Station Superintendent
East Coast Railway,
Bargarh
At/PO/District-Bargarh
6. Sri S.Barik
At present working as Book Clerk in Booking Office
East Coast Railway
At/PO/Dist-Bargarh

...Respondents

By the Advocate(s)-M/s.R.N.Pal
M.R.Swain

ORDER

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

1. Applicant in this Original Application has approached this Tribunal with a prayer that the speaking order dated 22.1.2013 issued by Respondent No.3 vide Annexure-A/6 rejecting his representation for cancellation of the order transferring him from BCW Siding, Baragarh to Booking Office/BGBR be quashed. He has made a simultaneous prayer that the order of transfer dated 21.12.2012 vide Annexure-A/2 transferring him from BCW siding/BRGA to Booking Office/BGBR be also quashed.

2. The facts which have been presented in this Original Application are that the applicant was working as Junior Commercial Clerk/Goods Clerk at Bargarh Cement Work Siding, Bargarh. He was posted to this station after successful completion of his training period vide office order dated 18.10.2012, where he joined on 16.11.2012. He was satisfactorily discharging his duties after joining this position. However, just after one month from his joining at this station, Respondent No.2, i.e., Divisional Railway Manager(P), East Coast Railway, Sambalpur Division, on the basis of a note from Respondent No.3, i.e., Senior Divisional Commercial Manager, Sambalpur, transferred him from Bargarh to

22

Bagbahera in the State Chhatisgarh and posted private Respondent No.6, Shri S.Barik in his place even though, Respondent No.6 had served for a number of years at Bargarh. The grievance of the applicant is that the order of transfer is premature since he had completed only one month after joining his duties at Bargarh. Secondly, this transfer order was issued only to accommodate Respondent No.6 in spite of his working in the Booking Office at Bargarh Railway Station since long without facing any transfer to any station outside the State. This order was therefore, violative of Master Circular No.24 of the Ministry of Railways which involves the norms and principles of transfer. This master circular lays down the principle that the Railway servants holding sensitive post and having public dealings should be transferred after every four years. The applicant was a Clerk in the Commercial Department, which is identified as a sensitive post, but he was transferred after completing only one month of working in the station in complete violation of the Master Circular. In fact as per the said Circular, Res.No.6 having already worked for a long time at Bargarh should have been transferred first. This order of transfer, as submitted by the applicant, has put him in serious difficulty, because he has to look after his ailing mother, who is residing with his family at Bargarh, besides, the education of his children will be seriously affected. Another grievance stated by the applicant is that he will face the problem of language as a consequence of his transfer to a Hindi speaking area. Presenting in detail his grievance, he had submitted a representation to Res.No.3 on 4.1.2013 praying for his continuance in the present place of posting by cancelling the order of transfer. Thereafter, he approached this Tribunal in O.A.No.11 of 2013 which was heard by this Tribunal on 10.1.2013. This Tribunal after hearing the matter disposed of the said O.A. on the same day with a

direction to Respondent No.3 to consider the grievance of the applicant as contained in the representation made by him and dispose it of through a reasoned and speaking order within a period of two weeks from the date of receipt of the order under intimation to the applicant. After the orders of this Tribunal were communicated to the Railway Authorities, the Senior Divisional Commercial Manager(Res.No.3) passed a speaking order on 22.1.2013, in which, he rejected the representation on the basis of flimsy grounds as mentioned therein. Therefore, the applicant has approached this Tribunal in this O.A. seeking relief as referred to above.

3. Respondent-Railways by filing their counter affidavit have opposed the prayer of the applicant. They have submitted that the applicant after successful completion of his training was posted at BCW Siding/Bargrh as Junior Commercial Clerk on 18.10.2012. BCW Siding was having three numbers of staff including the applicant and the staff in position was in excess of the actual requirement in that station. There was an administrative necessity to transfer one staff to the Booking Office at Bagbahera as the existing staff of Bagbahera was involved in a criminal case and arrested as a result of which the Unreserved Ticketing System (UTS) counter was lying unmanned. In order to meet this exigency and to avoid inconvenience to the travelling public, a combined transfer order was issued and the applicant was transferred to the Booking Office at Bagbahara Station in administrative interest by an order dated 21.12.2012. In order to fill up the place vacated by the applicant, Respondent No.6, who was working at Bargarh Road Station, being a senior and more useful staff was transferred to BCW Siding, Bargarh to look after the siding work. Therefore, the allegation of the applicant that he was transferred to Bagbahara only to accommodate Respondent No.6 has



27
 been completely denied by the Respondent-Railways. It is admitted in the counter that as per the Master circular No.24 staff working in sensitive position should normally be transferred after every four years. However, this does not mean that there is a bar on transfer of a staff before completion of four years depending upon the administrative exigencies. It is also presented in the counter that the distance between ^{a R} Bargarh Road Station and BCW Siding Bagarh being about 13 kms., which is one unit to the other, transfer of Respondent No.6 cannot be considered as retention in the same station. In respect of personal difficulties of the applicant, the reply given by the Respondent-Railways is that Bagbahara is an important station having all educational and health facilities and therefore, the applicant would not have any difficulty as apprehended by him. Regarding the contention of the applicant ^{that R} he has been transferred to a Hindi speaking State, the position taken in the counter affidavit is that Hindi is our National language and the applicant being a Central Government employee cannot make a claim that he should be posted only to the home State.

4. In the counter affidavit, the Respondent-Railways have relied on some important decisions of the Hon'ble Apex Court in the matter of transfer of Government servants, which are as under.

- i) S.C.Saxena vs.Union of India -206(9) SCC 583
- ii) Shilpi Bose vs. State of Bihar (1991) Suppl.(2) SCC 659
- iii) Ntional Hydro Electric Poer Corporation Ltd. Vs. Shri Bhagwan 2001(8) SCC 574

5. The crux of the decisions of the Hon'ble Supreme Court in the matter of transfer is that Courts should not normally interfere with a transfer order issued in public interest and for administration reasons, unless it is established that such transfer order is made in violation of any mandatory statutory rules or on the

ground of mala fide. A Government servant who is holding a transferable post does not have a vested right to remain at one place and is liable to be transferred from one place to another.

6. Private Respondent No. 6 though noticed has neither appeared nor filed any counter.

7. In the rejoinder to the counter filed by the applicant it has been submitted that his transfer was made just after 30 days of his joining/working at BCW Siding/Bargarh whereas persons continuing since long at that place have not been disturbed. Respondent No.6 has rendered a long service period at Bargarh and yet, he was again accommodated at BCW Siding/Bargarh. However, during pendency of this O.A., Respondent No.6 has again been transferred to Parcel Office, Sambalpur. Therefore, the applicant's case for continuance at BCW Siding/Bargarh could have been considered. Respondent No.6 has also joined Parcel Office, Sambalpur since 18.6.2013 and therefore, there was no difficulty on the part of the Respondent-Railways to cancel the applicant's transfer and allow him to continue at BCW Siding/Bargarh. Therefore, it is contended in the rejoinder that the order of transfer is a colourable exercise of power and the rejection of his representation in the speaking order is unfair and unjust.

8. This Tribunal during the course of hearing of the matter, vide order dated 29.1.2013 directed the Respondent-Railways to furnish specific instruction as to how many persons are working at Bargarh and their respective date of joining at Bargarh. Although the Respondents have furnished some names of the incumbents working at Bargarh, but they have not indicated the date(s) of their joining at Bargarh.

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27

9. Having heard the learned counsel for both the sides, we have also perused the materials adduced on record. We will start with the premise that transfer is an incidence in the service career of a Government servant and no Government servant has a vested right to continue in a particular place. This has been settled by a number of judicial pronouncements of the Hon'ble Apex Court as already mentioned by the learned counsel for the Respondents in the Counter affidavit. Therefore, in the normal course, we are not supposed to interfere with the order of transfer of a Government servant. The Respondent-Organization is in charge of a vital infrastructure of our country and is supposed to look after the interest of the travelling public, which is its onerous responsibility. Therefore, we are in agreement with the learned counsel for the Respondents that administrative interests are of paramount consideration while making an order of transfer and that the authorities are well within their rights to post and deploy their staff in public interest. However, every organization is supposed to lay down some guidelines and principles of making transfers so that such decisions are not tainted with whims and caprice^s of the individual authority. The Master Circular No.24 which is a compendium on the transfer of non-gazetted railway servants issued on 8.4.1991 contains the guidelines of transfer in order to minimize the instances of personal prejudice in such matters. It is laid down therein that the Railway Servants holding sensitive posts and who come into contact with public and/or contractors, suppliers etc. should be transferred out of their existing post/seat or situation as the case may be, after every four years. In the Commercial Department, Goods/Parcel/Luggage Clerk^s have been declared as the sensitive posts. The intention of laying down such a guideline is presumably that if such a staff is allowed to continue beyond a period of four years, he/she could

develop a ~~habit of~~^e vested interest. In order to eliminate the possibility of such malfunction or malpractice, a maximum period of four years for staying in one station has been laid down. Strictly speaking, this does not lay down that transfers cannot or should not be made before completion of four years in a particular station. To that extent, the case made out by the learned counsel that since the applicant was holding a sensitive post should not be transferred before completion of four years does not have any justification. However, in this case, the applicant was transferred after 30 days of his joining in the present assignment. This transfer order has been made on account of some administrative requirement that arose at Bag^Rahara to which place he was transferred. In his place was posted one Shri S.Barik (Res.No.6), who was working at Bargarh Road Railway Station and is said to have been working in Bargarh since a number of years. Objectively speaking, the period of working for 30 days in a post is not quite enough on the part of a Government servant to discharge any meaningful work. So, in our considered view, the applicant has not been given adequate time to do some substantial work and to have a personal settlement in his place of posting. At the same time, since Res.No.6 was already working for a number of years at Bargarh by posting him in the place of the applicant in the same station, the Respondent-Railways have not demonstrated any fairness even though they have mentioned that the distance between Bargarh Road Station and BCW Siding, Bargarh is 13 Kms. It is not known whether in respect of Res.No.6, the authorities in the Railways have applied the guidelines in Master Circular No.24 which prescribes a maximum stay of four years for the staff working in the sensitive post.^e There were staff working at BCW Siding, Bargarh, who had joined much before the joining of the applicant. In case an

245
administrative requirement arose at Bagbahara, staff who had been working at Bargarh for a number of years could have been considered for a transfer.

10. Another point which needs to be considered in this regard is that the Respondent-Railways submitted that BCW Siding at Bargarh had already additional staff and the applicant was posted there as a temporary arrangement. If that be the position, it is not understood why they posted Res.No.6 at the BCW Siding, Bargarh in place of the applicant when admittedly they had excess staff there. This exposes an incongruity in the submissions made by the Respondent-Railways in presenting their case. The applicant's counsel in the rejoinder has placed before us the fact that during pendency of this O.A., Res.No.6 has however, been transferred to Parcel Office at Sambalpur and continuing there since 18.6.2013. If this be so, it automatically emerges that there is a vacancy at Bargarh in which the present applicant can continue.

11. It is the responsibility of the administrative authorities to maintain fairness in dealing with the employees in the organization in important matters like transfer. No impression should be given that any favouritism has been shown or any personal prejudice has actuated the decision making process. In the present case the Respondent-Railways have failed to substantiate that the basic intents or principles laid down have been duly followed in the matter of transfer.

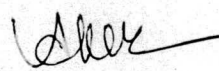
12. For the reasons discussed above, we hold that the impugned orders have not been issued on the objective consideration. Therefore, the prayer of the applicant for quashing the impugned orders deserves consideration. In the circumstances, the impugned transfer order dated 21.12.2012(Annexure-A/2) in so far as applicant is concerned and the speaking order dated 22.1.2013(Annexure-A/6) are quashed and set aside.

28
Ordered accordingly.

In the result, the O.A. is allowed as above. No costs.


(R.C.MISRA)
MEMBER(A)

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(A.K.PATNAIK)
MEMBER(J)