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CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH, CUTTACK

O. A. No. 483 of 2013

Cuttack, this the 3rd day of January, 2014

CORAM

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

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

....Applicant

(Advocates: M/s.B.Baug, M.R.Baug, S.Rath)

VERSUS

Union of India Represented through –

1. The General Manager, East Coast Railway, Odisha, Bhubaneswar, At-Chandrasekharpur, Bhubaneswar, PS-Chandrasekharpur, Dist. Khurda.
2. The General Manager, East Coast Railway, Odisha, Bhubaneswar, At-Chandrasekharpur, Bhubaneswar, PS-Chandrasekharpur, Dist. Cuttack.
3. Chief Personnel Officer, East Coast Railway, Bhubaneswar, Rail Sadan, 2nd Floor, South Block, Chandrasekharpur, Bhubaneswar-75107, Dist. Khurda.
4. Assistant Personnel Officer (HQ-I), East Coast Railway, 2nd Floor, South Block, Chandrasekharpur, Bhubaneswar-75107, Dist. Khurda.
5. Dy. Chief Personnel Officer (IR & W), East Coast Railway, 2nd Floor, South Block, Chandrasekharpur, Bhubaneswar-75107, Dist. Khurda.
6. Senior Divisional Personnel Officer, Khurda, East Coast Railway, Khurda Road, At-Khurda, Dist. Khurda.

.....Respondents

(Advocate: Mr.T.Rath)



ORDERA.K.PATNAIK, MEMBER (I):

The Applicant, in this OA, assails his order of transfer dated 22.05.2013 and the order dated 11.07.2013 rejecting his representation requesting his retention at his present place of posting. Relevant portion of the order of transfer dated 22.05.2013 is extracted herein below:

- “2. **Shri S.Ghosh**, SSE/Br/SBP working in SBP division is transferred in his existing grade and capacity and posted as SSE/Br/CTC vide item No.3 below.
- 3. **Shri G.K.Pattanaik**, SSE/Br/CTC working in KUR Division is transferred in his existing grade and capacity and posted as SSE/Br/TIG vice item No.4 below.
- 4. **Shri R.S.Raju**, SSE/Br/TIG working in SBP division is transferred in his existing grade and capacity and posted as SSE/Br/ARK vice item No.5 below.

In other words, Shri Ghosh was posted in place of the applicant and the applicant was posted to SBP Division and the person who was working in SBP Division was posted to WAT Division.

The main grievance of the applicant ^{is that} ~~he~~ being an office bearer of a Union he would not have been transferred from his present place of posting. Earlier, he had assailed the present order of transfer in OA No. 336 of 2013. Since no decision, on the letter dated 15.5.2013 of the General Secretary, East Coast Railway Shramik Congress was taken by the Chief Personnel Officer (in short ‘CPO’), East Coast Railway; the said OA No.



336 of 2013 was disposed of on 26th June, 2013 with direction to the CPO, ECoRly, BBSR, to take a view on the said letter and communicate the decision to the General Secretary of the said Union. In compliance of the order dated 26th June, 2013 of this Tribunal in OA No. 336 of 2013, the CPO, ECoRly, BBSR, in his letter dated 11.7.2013, intimated the General Secretary of the Union, ECoRly, BBSR as under:

“In obedience to the Hon’ble CAT/CTC order dated 26.06.2013 passed in OA No. 336 of 2013 the undersigned the respondent No.3 of the OA has gone through the detail case file as well as the representation submitted by General Secretary, ECoRSC vide letter dated 15.05.2013 objecting the transfer proposal of Shri G.K.Patnaik, SSE (Br)/CTC who is an office bearer of the Recognized Trade Union.

In this connection, it is stated that proposal of transfer of certain SSE/(Bridge) was submitted by Chief Bridge Engineer, East Coast Railway, Bhubaneswar on dated 13.05.2013 wherein Shri G.K.Patnaik, SSE (Br)/CTC was proposed for transfer as SSE/Br/TIG on administrative interest. Before issuing the transfer order it was noticed that he is an office bearer of Recognized Trade Union i.e. (ECORSC).

Keeping in view of the above and as per the instructions contained in Estt. Srl.No.37/80, the matter was brought to the notice of General Secretary, East Coast Railway, Shramik Congress for no objection vide letter dated 10.05.2013, but GS/ECoRSC did not agree to the proposed transfer of Shri G.K.Patnaik, SSE(Bridge)/CTC.

However, since Shri G.K.Patnaik has been working as SSE (Br)/CTC at Cuttack station with effect from 15.12.2008 against a sensitive post, the case was further examined and as per the instruction contained in Estt. Srl.No.37/80, the case was sent to competent authority i.e. General Manager, East Coast Railway, Bhubanesar for a decision who has approved to transfer Shri G.K.Patnaik to Titilagarh in SBP Division on administrative interest under periodical rotation transfer policy.

Alleged

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Thus, there is no mala fide intention in transferring Shri G.K.Patnaik, as the same has been made as per the policy/guidelines issued by the Railway Board.”

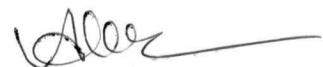
Thereafter, the Applicant as well as the General Secretary of the said Union filed appeal to the General Manager, ECoRly,BBSR on 17.7.2013 and 15.07.2013 respectively, praying for reconsideration of the order of transfer of the applicant to SBP Division and alleging no action, the instant OA has been filed by the Applicant seeking to quash the order of transfer dated 22.05.2013 and the order of rejection of the request of the General Secretary of the Union dated 11.07.2013.

2. Heard Mr.B.Baug, Learned Counsel appearing for the Applicant and Mr.T.Rath, Learned Standing Counsel (Railway) appearing for the Respondents and perused the records.

3. The main contention of Mr.Baug is that the applicant being an office bearer of East Coast Railway Shramik Congress which is a duly registered/recognized Trade Union of the Railway; should not have been transferred, in terms of various Railway Board's instructions reiterated in consolidated circular dated 03.02.2012 (RB/Estt.No.17/2012). By placing reliance on the said consolidated Railway Board's instruction issued on 03.02.2012, it was contended by Mr.Baug that vide order dated 10.05.2013, the Deputy Chief Personnel Officer, on behalf of the Chief Personnel Officer, ECoRly, requested the General Secretary of ECoRly,Shramik Congress Union to give his views on the proposed transfer of the applicant.



The General Secretary of the said Union, vide letter dated 15.5.2012, informed the CPO, ECoRly,BBSR 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, the Union opposed the transfer of the applicant. But despite the said opposition and prohibition of transfer of office bearers, without the consent of the Union, the Respondents issued the order of transfer of the applicant. By drawing our attention to the letter dated 10.5.2013 and the order of rejection dated 11.07.2013 it was contended by Mr.Baug that the order of transfer smacks mala fide exercise of power being in violation of specific instruction of the Railway Board to the effect that an office bearer of an Union cannot be transferred without the consent of the Union and as per the Railway Board Circular dated 07.02.1980 the CPO, ECoRly,BBSR vide letter dated 10.05.2013 sought the consent of the transfer of the applicant vide letter dated 15.5.2013 which was resisted by the General Secretary of the Union. But when the proposal of transfer was mooted by the Chief Bridge Engineer, ECoRly on 13.05.2013, how the Dy.CPO sought the consent prior to such proposal vide letter dated 10.05.2013. Further contention of Mr.Baug is that as per the Railway Board Circular dated 07.02.1980, after the proposal for transfer is objected to by the Union, there should have been an agreement in the lower level and if the same did not yield any fruitful result, order of



transfer would have been issued after the approval of the General Manager. But the said procedure was not followed while issuing the order of transfer. Accordingly, the conclusion of Mr.Baug is that as the present transfer is in violation of the Railway Board's instruction, the same needs to be quashed.

On the other hand, Mr.Rath submitted that Shri S.Ghosh, SSE/Br/SBP working in SBP Division is transferred in his existing grade and capacity and posted as SSE/Br/CTC i.e. in the place of the Applicant and the applicant was transferred to SBP Division vide Shri R.S. Raju. Though Mr.Ghosh and Mr.Raju, SSEs are necessary and proper parties in this OA none of them have been made as parties and, therefore, this OA is liable to be dismissed on the ground of non-joinder/mis-joinder of parties.

As regards, merit of the matter, it was contend by Mr. Rath, that the order of transfer is a chain transfer which has been ordered keeping in mind the necessity of the posting of the applicant in SBP Division, in public interest/administrative exigency. He has denied the contention of Mr.Baug that the order is in violation of the Railway Board's instruction prohibiting the transfer of an office bearer since the said order of transfer was issued with the approval of the General Manager, ECoRly,BBSR. As regards the stand taken by Mr.Baug that when proposal of transfer was mooted by the Chief Bridge Engineer, ECoRly on 13.05.2013, how the Dy.CPO sought the consent prior to such proposal vide letter dated 10.05.2013, Mr.Rath submitted that be that as it may since the order of transfer was issued with



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the approval of the GM, ECoRly that too in public interest/administrative exigency keeping in mind the need of the service of the applicant at SBP Division, the stand taken by Mr.Baug to the above extent is no more valid. This apart, by placing reliance on various decisions of the Hon'ble Apex Court, Mr.Rath submitted that since the order transferring the applicant and others was issued in public interest/administrative exigency, the same needs to be maintained and, this OA is liable to be dismissed.

4. We have considered the rival contentions of the parties and perused Railway Board's instructions with regard to transfer and posting of an office bearer. That the General Manager has the power to transfer, even in case of objection by an Union, is not in dispute nor is it in dispute that present order of transfer has been issued with the approval of the GM, That the ECoRly, BBSR. The applicant is holding sensitive post having transfer liability is also not in dispute. Periodical transfer of the employees holding sensitive posts is a well-recognised principle adhered to by the Railway since long. Law is well settled in a plethora of judicial pronouncements that who should be transferred where is a matter for the appropriate authority to decide. In a transferable post an order of transfer is a normal consequence. It is also trite law that Courts/Tribunals are not the Appellate Authority to decide on transfer of officers made on administrative grounds/public interest. The Courts/Tribunal would have come to the rescue where the order of transfer is made in violation of statutory/mandatory rules or mala fide



exercise of power which is not proved in the instant case, by providing any satisfactory explanation/material in support thereof. Be that as it may, we are not inclined to interfere in this matter for another reason which is that Shri S.Ghosh, SSE/Br/SBP working in SBP Division is transferred in his existing grade and capacity and posted as SSE/Br/CTC i.e. in the place of the Applicant and the applicant was transferred to SBP Division vide Shri R.S. Raju. If the transfer order of the applicant is quashed, necessarily the persons named above though would be affected, have not been made as parties in this OA.

5. For the reasons discussed above, we find no merit to entertain this OA. Hence this OA stands dismissed at this admission stage itself. There shall be no order as to costs.


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


(A.K.PATNAIK)
Member (Judicial)