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**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK**

**O. A. No.484 OF 2013**  
Cuttack the 29<sup>th</sup> day of July, 2013

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

Jayakrushna Pani, aged about 54 years, Son of Gopinath Padhi, At-Bank Colony, Po.Sarvadoya Nagar, Puri presently working as Senior Sectional Engineer in the office of the DEE/CHG/Puri, East Coast Railway, At/Po/Dist.Puri.

...Applicant

(Advocates: M/s.K.P.Mishra,S.Mohapatra,T.P.Tripathy,L.P.Dwivedy )

**VERSUS**

**Union of India represented through –**

1. The General Manager, East Coast Railway, Chandrasekharpur, Rail Vihar, Bhubaneswar, Dist. Khurda.
2. Divisional Railway Manager, East Coast Railway, Khurda Road, PO.Jatni, Dist. Khurda.
3. Senior Divisional Personnel Officer, East Coast Railway, Khurda Road, Po.Jatni, Dist. Khurda.
4. Senior Divisional Electrical Engineer (G ), Khurda Road, Po.Jatni, Dist.Khurda.

.....Respondents

(Advocate: Mr.T.Rath)



**ORDER****A.K. PATNAIK, MEMBER (I):**

The Applicant (Jayakrushna Pani) who is working as Senior Sectional Engineer in the Office of the DEE/CHG, East Coast Railway, Puri and Vice-President of the East Coast Railway Shramik Union Puri Branch has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 seeking to quash his order of transfer dated 3.5.2013 under Annexure-A/3 in which he was transferred and posted in his present capacity as SSEE/ECORly/BBSR and the order dated 1.7.2013 under Annexure-A/9 in which his representation was rejected and communicated to him.

2. The main contention of Ms.S.Mohapatra, Learned Counsel appearing for the Applicant is that the applicant being the Vice-President of the registered Employees Trade Union is precluded from being transferred in terms of the Estt.Srl.No.37/80 dated 7.2.1980 but the DRM,ECORly,BBSR (Respondent No.2) rejected the representation of the applicant without considering the said mandatory provision of the Railway Board and as such the said order being a nullity in the eyes of law the order of transfer and rejection being not sustainable in the litmus test of judicial scrutiny are liable to be set aside. In support of the above contrition,

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Ms.Mohapatra, Learned Counsel for the Applicant placed reliance of the order of this Tribunal dated 7<sup>th</sup> May, 2012 in OA No. 251/2012 (A.Brahma-Vrs-Union of India & Others) which was also based on the earlier order of this Tribunal dated 3.5.2012 in OA Nos.281 & 234 of 2012. Relevant portion of the Estt.SI.No.37/1980 is extracted herein below:

"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.

X	X
X	X

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 proposed transfer. If there is no agreement at the lower levels, the decision of the General Manager would be final. Sufficient notice should be given to the Union of a proposed transfer so that the Union can make alternative arrangements for carrying on work or making a representation against the proposed transfer."

3. Earlier the applicant filed OA No. 332 of 2013 seeking to quash his order of transfer dated 3.5.2013 under Annexure-A/3 and vide order dated 29<sup>th</sup> May, 2013 this Tribunal disposed of the matter at the admission stage. Relevant portion of the order reads as under:

"4. I find that the applicant has made a representation at Annexure-A/5 on 16.5.2013 to the DRM, East Coast Railways, Khurda Road. He also had made a representation dated 13.5.2013 earlier which has

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been annexed to the OA. Shri T.Rath, Learned Standing Counsel has no specific instructions about the disposal of the above said representations. However, at the stage of admission without going into the merits of the matter I direct the DRM Est Coast Railway Khurda Road (Res.No.2) in the OA to dispose of the representations, if pending, at his level with a reasoned and speaking order and communicate the decision thereon to the applicant within a period of four weeks of the date of receipt of this order."

4. The letter dated 1.7.2013 under Annexure-A/9 is the outcome of the consideration of the representation issued by the DRM, ECoRly in compliance of the order of this Tribunal in which it has been stated that proposal of transfer of the applicant from Puri to Bhubaneswar was consulted with the Divisional Co coordinator, Est Coast Railway, Shramik Union, Khurda Road vide letter dated 10.12.2012 as per Estt.Srl.No.37/1980 as the applicant belongs to Office bearer of Shramik Union. The Divisional Co coordinator/KUR vide letter dated 11.12.2012 intimated that the service of the applicant as office bearer was essential in view of the ensuing secret Ballot Election scheduled to be held shortly. Therefore, after completion of Secret Ballot Election the applicant has been transferred in administrative interest vide order dated 3.2.2013. Hence Mr.T.Rath, Learned Standing Counsel for the Respondents submitted that after completion of secret ballot election, in view of the letter dated 11.10.2012 (Annexure-A/11) applicant was transferred and posted to Bhubaneswar which warrants no interference. Ms.Mohapatra's

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contention is that when the applicant was reelected as the Vice-President of the Union he should have been transferred only in compliance of the Estt.SI.No.37/1980 which having not been followed while issuing the order of transfer, the transfer order is liable to be set aside.

5. We have considered the submissions made by Ms.S.Mohapatra, Learned Counsel for the Applicant and Mr.T.Rath, Learned Standing Counsel appearing for the Respondents. Pleadings as well as the order of rejection are silent with regard to when the applicant was reelected as the Vice-President of the Union i.e. whether it was before the order of transfer or after his election as Vice-President. If the transfer of the applicant after his election as Vice-President of the Union then the permission accorded by the Union in letter dated 11.10.2012 spent its force and, therefore, an transferring an office bearer must be only compliance of the Estt.SI.No.37/1980. Legality and validity of the order of an office bearer on the face of Estt. SI.No.37/1980 came up for consideration earlier before this Tribunal in OA Nos.281 and 234 of 2012 which were disposed of on 3.5.2012. Relevant portion of the order dated 03-05-2012 in OA Nos. 281 and 234 of 2012 is extracted herein below:

"4. We are conscious that transfer being an incidence of service the Tribunal should not ordinarily interfere with the order of transfer made in public interest/administrative

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exigency unless it is established that such transfer has been made in violation of the statutory rules or *mala fide* exercise of power. Therefore, we are in agreement with the Learned Standing Counsel appearing for the Respondents that in view of the decisions quoted above, where transfer is effected on administrative ground without violation of any codified provision the Tribunal should not interfere with the same. But none of the decisions on which reliance has been placed by the Respondents takes care of a situation involved in the instant OAs inasmuch as transfer of the office bearers has been effected without scrupulously following the codified provisions of Railway Board Circular No. 37/80 dated 07-02-1980. Therefore, the decisions relied on by Respondents' Counsel have no application to the instant OAs. It is not in dispute that in compliance of the Estt. Sl. No. 37/80 dated 07.02.1980 permission to transfer the office bearers/applicants were sought by the Respondents in letter dated 03.03.2010, 18.03.2010, 24.01.2011 and 25.01.2011 which was objected to by the Union. Thereafter, the Railway Administration maintained sphinx like silence for over one year. Obviously this would imply that the proposal for transfer was given a decent burial. All of a sudden ordering transfer based on earlier communication cannot revive the dead proposal. It is also not in dispute that meantime Applicants have again been elected as the Office bearers of the Union in January, 2012. We are therefore of the considered opinion that the Railway administration have failed in complying with the provisions of Estt. Sl.No. 37/80 by issuing the order of transfer of the office bearers of the Union. Hence the approval of the GM, ECoRly, BBS communicated by the CPO, ECoRly, BBS based on which transfer of the applicants have been effected is hereby quashed and accordingly, the impugned orders of transfer of the Applicants in both the OAs are quashed. It is, however, made clear that the Respondents are at liberty to take action in the interest of administration regarding transfer of this category of employees after complying

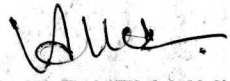
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with the provisions of Estt. Sl. No. 37/80 dated 07.02.1980."

6. In view of the above, we remit the matter back to the Respondent No.2 to give a relook to the entire matter afresh with reference to the discussions made above and communicate the decision in a well-reasoned order to the Applicant within a period of sixty days from the date of receipt of copy of this order. Till such time status quo as of date in respect of the relieve of the applicant shall be maintained

7. With the aforesaid observation and direction this OA stands disposed of. No costs. Copy of this order along with OA be sent to the Respondent No.2 for compliance.

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

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