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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO.69 OF 2013
Cuttack this the 1st day of August, 2013

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

Mrutyunjay Nanda, aged about 48 years, working as Purchase Superintendent, in the Office of the Divisional Material Manager, East Coast Railway, Modipada, Sambalpur-768 002(Odisha)

...Applicant

By the Advocate(s)- Mr.P.K.Mishra-1
Mrs.P.Mishra

-VERSUS-

Union of India represented through

1. The General Manager, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar-751 017, Dist-Khurda (Odisha)
2. The Chief Personal Officer, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar-751 017, Dist-Khurda (Odisha)
3. The Controller of Stores, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar-751 017, Dist-Khurda (Odisha)
4. The Divisional Materials Manager, East Coast Railway, Modipada, Sambalpur-768 002

...Respondents

By the Advocate(s)-Mr.T.Rath



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

The applicant who is an employee of the Railways has approached this Tribunal and has sought a number of reliefs. He has prayed that Office Order dated 7.6.2012(Annexure-2) of this O.A. which is an order of transfer posting him at Sambalpur being illegal and violative of the Tribunal's interim order may be quashed. He has also prayed that he should be allowed to continue occupation of his quarters at Bhubaneswar with normal license fee and the proceedings for eviction should be dropped. He has also made a number of other prayers like payment of legitimate allowances like TA & DA as admissible in the intervening period at Sambalpur and he should be brought back to his original place of posting.

The facts which are relevant to this case are summed up below.

2. The applicant started his career in the Railways as Junior Clerk on 20.7.1989 being posted under the Controller of Stores, SE Railway, Garden Reach, Calcutta. Thereafter he was promoted as Sr.Clerk and worked in that office till 4.1.1994 when he was transferred to the Office of Chief Administrative Officer (Construction) S.E.Railway (presently East Coast Railway) under the Controller of Stores, S.E.Railway, Bhubaneswar. On 23.6.1995, he was promoted to the Post of Head Clerk and was retained at Bhubaneswar in the Office of Controller of Stores (Construction), East Coast Railways. Subsequently, he was posted as Head Clerk in



the Office of Controller of Stores, East Coast Railway, Bhubaneswar through option transfer from Controller of Stores(Construction), S.E.Railway with effect from 2.5.2003. Thereafter the applicant was promoted to the post of Purchase Assistant with effect from 26.10.2006 and thereafter to the post of Purchase Superintendent on 13.7.2011 under the Stores Department of Headquarters. He was transferred vide Office Order dated 7.6.2012 and posted under the District Materials Manager at Sambalpur. It is relevant to mention here that the applicant was an Office Bearer of the East Coast Railways Shramik Congress Union.. It was alleged by him that the transfer order was issued without following the procedure of transfer of the Office bearer of the Unions as laid down by the Railway Board. He had challenged the said order of transfer before this Tribunal in O.A.No.470/12. The General Secretary of the aforesaid Union was also the applicant No.1 in that O.A. A specific prayer was made in that O.A. for quashing the order of transfer dated 7.6.2012. On 27.6.2012 the said O.A. was taken up for admission wherein this Tribunal directed the learned counsel for the Respondents to obtain instructions as to whether the laid down procedure has been followed by the Respondent-Railways while transferring the applicant who was an office bearer of the Union. This Tribunal also directed for maintenance of status quo with regard to relieving of the applicant. It is alleged in the present O.A. that in spite of the status quo order and without considering the applicant's grievance in the representation dated 28.6.2012, Respondent No.3 relieved the applicant on 28.6.2012 and directed him to join at his new place of posting, i.e., Sambalpur under the charge of Respondent No.4. This according to applicant in the present

O.A. is a complete violation of the interim order dated 27.6.2012. Thereafter the applicant was compelled by the concerned authorities to join at Sambalpur because, he was allegedly given an impression that the authorities will take departmental action against him unless he joins the new place of posting immediately. After joining at Sambalpur, he moved this Tribunal and prayed not to press the O.A. No.470/12 on the basis of which, the said O.A. was disposed of as not pressed. In the meantime, because of his various family problems his family continues to stay in the quarters allotted to him in Rail Vihar, Bhubaneswar and the applicant made representations to the authorities for retention of the quarters till the end of his children's education. He also made another representation dated 1.8.2012 praying for his transfer back to Bhubaneswar in view of his various family difficulties. He also made a prayer to the authorities to post him to any other Department, but to bring ~~to~~ him back to Bhubaneswar. In the meantime, his request for retention of his official quarters at Bhubaneswar was also not favourably considered. His representation regarding transfer from Sambalpur Division to East Coast Headquarters' office, Bhubaneswar was also not favourably considered and this was communicated to him vide a letter dated 17.8.2012. To sum up this detailed matter, it appears that the applicant has been making representations not only for retention of his quarters at Bhubaneswar but also for his transfer back to Bhubaneswar and the concerned authorities have not considered his prayer favourably. This provides the background against which he has approached this Tribunal.

By filing counter affidavit in this case, the Respondents have submitted that the present O.A. is not maintainable since the order of transfer was ^{made} ~~beyond~~ long time back and the applicant in obedience to that order has joined his new place of ^{posting} ~~posting~~ at Sambalpur. Moreover, he has already over-stayed in his official quarters at Bhubaneswar and no relief is admissible to him for further retention of his quarters, when he has already joined at Sambalpur. The Respondents have submitted that the applicant has accepted the relieve order dated 28.6.2012 and has also handed over partial charge and thereafter, he has joined at Sambalpur on 5.7.2012. He occupied the Railway quarters unauthorizedly even after the expiry of ^{of} ~~on~~ seven months from the date of transfer and thereafter, a notice ~~on~~ imposition of penal rent was given to him. Since there was no reply from him a terminal notice has also been given in respect of vacation of quarters. The Respondents in short have challenged the validly of every prayer that the applicant has made in this O.A.

The applicant has also filed his rejoinder to the counter affidavit. His main contention is that in spite of interim order dated 27.6.2012 for maintenance of status quo the applicant with a mala fide motive of the Respondents was relieved and was forced to join in his new pace of posting. Therefore, the action of the Respondents in this regard is vindictive. Similarly, the refusal of the Respondents to allow him to continue to stay in the Railway quarters at Bhubaneswar is also a mala fide action since they have refused to consider the various family difficulties that he has been facing after his transfer to Sambalpur. The learned counsel for the applicant in the rejoinder has termed his transfer as illegal and vindictive and



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violative of the interim orders of this Tribunal. He has reiterated his prayer for bringing him back to Bhubaneswar and also allowing him to retain the Railway quarters till he joins at his original Unit at Bhubaneswar.

Heard the learned counsel for both the sides. In course of hearing the learned counsels for both the sides reiterated their stand points as mentioned in their respective pleadings.

The first point for consideration is that the O.A.No.470/12 was admittedly disposed of "not being pressed" by the applicant. Although there was an interim order for maintaining status quo on 27.6.2012 by this Tribunal, the applicant has joined his new place of posting at Sambalpur on 5.7.2012 in obedience ^{to} ~~of~~ the orders of transfer dated 7.6.2012. It is therefore, clear that the applicant has obeyed the orders of the Railway authorities and as such has not pressed his prayer before the Tribunal in the earlier O.A.No.470/2012. It has been urged by the applicant that the said transfer order was in violation of the procedure laid down for the transfer of office bearers of the Union of the railways. However, since he has not pressed O.A.No.470/2012, at this point of time those issues cannot be reopened particularly when the applicant has obeyed the orders of transfer and joined his new place of posting more than a year back. Therefore, in the present O.A. the only valid prayer which is worthy of consideration is that he should be brought back from Sambalpur to Bhubaneswar.

The law is well settled as decided by the Hon'ble Apex Court in various cases that transfers are ^{incidence} ~~incidence~~ of Government servants and therefore, unless

the transfers are proved to be mala fide or violative of statutory rules or regulations, the administrative authorities would be competent to make transfer orders on administrative grounds from time to time. In the present case the applicant has even after filing of O.A.No.470/2012 ~~has~~ shown the discipline of obeying the transfer order by joining at Sambalpur. His further prayer for a transfer back to Bhubaneswar is a fresh cause of action for consideration by the administrative authorities. The Tribunal cannot issue any direction to the ^{respondents} ~~to bring~~ the applicant back to Bhubaneswar as it is within the domain of administration to decide who should be posted where and at what point of time.

Since the various representations of the applicant are pending with the Respondents for a transfer back to Bhubaneswr, the concerned authorities should look into those representations and consider the genuineness of his grievance having regarding to administrative need.

In so far as prayer of the applicant for retention of the Railways quarters at Bhubaneswar is concerned, this is governed by a separate of rules and regulations, which the Respondents are expected to follow and take a final decision in the matter. In this area also the Tribunal cannot directly interfere and give a direction to the Respondents to allow the applicant to continue to stay in the Railway quarters at Bhubaneswar on payment of usual license fees even when he has been posted out for more than a period of one year. Direct interference by the Tribunal in such matters will create various difficulties for the administrative authorities and will set a bad precedent. However, it is hoped and trusted that

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the concerned authorities will decide this matter according to extant rules and also consider the various representations made by the applicant on the ground of his personal difficulties, though a decision cannot be forced on the concerned authorities in this regard.

On the grounds as mentioned above, the various prayers made by the applicant in this O.A. are found to be misconceived. However, it is open for the authorities to consider his pending representations for a transfer back to Bhubaneswar at an appropriate point of time, if the prayer made by the applicant is found to be genuine and such a transfer would be within the parameters of Rules and regulations.

Having regard to what has been discussed above, the O.A. being misconceived is dismissed along with the observations that have been made above. No costs.


(R.C.MISRA)
MEMBER(A)