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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No.260/00404 of 2014
Cuttack, this the 01st day of October, 2014

B.K. Das

.....Applicant


-Versus-

Union of India & Others

..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? ☒
2. Whether it be referred to PB for circulation? ☒


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

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CUTTACK BENCH: CUTTACK

Original Application No.260/00404 of 2014
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THE HON'BLE MR.R.C.MISRA, MEMBER (ADMN.)

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Bijay Kumar Das,
Aged about 40 years,
S/o. Rabindra Kumar Das,
At present working as JEE/CRW/MCS/E.Co.Rly.,
Permanent resident of Plot No.1294/4,
Nayapalli, Bhubaneswar-12,
Dist-Khurda, Odisha

...Applicants

(Advocates: M/s. N.R. Routray, J. Pradhan, T.K. Choudhury, S.K. Mohanty)

VERSUS

Union of India represented through

1. The General Manager,
East Coast Railway, E.Co. R. Sadan,
Chandrasekharapur, Bhubaneswar, Dist. Khurda.
2. Divisional Railway Manager,
East Coast Railway, Khurda Road Division,
At/Po.-Jatni, Dist. Khurda.
3. Divisional Railway Manager (P),
East Coast Railway, Khurda Road Division,
At/Po.-Jatni, Dist. Khurda.
4. Senior Divisional Electrical Engineer,
East Coast Railway, Khurda Road Division,
At/Po.-Jatni, Dist. Khurda.
5. Workshop Personnel Officer,
East Coast Railway, Carriage Repair Workshop,
Mancheswar, Bhubaneswar, Dist. Khurda.
6. Deputy Chief Electrical Engineer,
East Coast Railway, Carriage Repair Workshop,
Mancheswar, Bhubaneswar, Dist. Khurda.

... Respondents

(Advocate: Mr. T. Rath)



ORDER

R.C. MISRA, MEMBER (A)

The applicant in the present case is working as JEE at Mancheswar in the East Coast Railway and has approached this Tribunal with prayer that the order of transfer dated 09.04.2014 (so far as the applicant is concerned) and the orders of rejection dated 24.04.2014 and 20.05.2014 may be quashed and resultantly the Respondents may be directed to allow him to continue at Mancheswar.

2. The facts in brief are that, the applicant while continuing as JEE at Mancheswar has been transferred to Khurda Road for working under the SSE/P/Khurda Road vide order dated 09.04.2014. He submitted two representations. In his representation dated 10.04.2014 to the Deputy Chief Electrical Engineer at Mancheswar he pointed out several family difficulties and made a prayer that his transfer order should be cancelled. The said representation was forwarded to the Divisional Railway Manager, East Coast Railway, Khurda Road on 16.04.14. In the meantime, the Sr. Divisional Electrical Engineer Khurda Road has rejected the representation of the applicant vide letter dated 24.04.2014 mentioning that his representation does not have any merit since he has been continuing at Mancheswar for more than 13 years. This letter was also addressed to one Smt. Urmila Rout, Sr. SEE who happens to be the wife of the applicant. A ground taken for rejection of the request was that both wife and husband were transferred and posted at the same station. The applicant approached this Tribunal by filing O.A. No.291/14 in which he challenged the order of transfer as well as the order of rejection of his representation. The Tribunal vide its order dated 01.05.2014 disposed of the O.A. at the stage of admission with a direction to Respondent No.2 i.e., the Divisional Railway Manager, Khurda

Road to consider and dispose of the representation within a period of 30 days from the date of receipt of the order. In compliance of the direction of this Tribunal, the Respondent No.2 passed a reasoned and speaking order dated 20.05.2014. This order which is placed at Annexure-A/9 of this O.A. is the subject matter of challenge in the O.A. The applicant, is informed by this order that the promotions and subsequent transfers or transfers otherwise are the absolute discretion of the administration in terms of the Para 226 and 227 of Indian Railway Establishment Code Volume-1. It was also informed that the applicant was transferred on promotion as SSE (Electrical)(AC) to Puri vide order dated 12.08.2013. The applicant's prayer for retention at Mancheswar on promotion was not agreed to by the authorities. Such a conditional acceptance of promotion was not sustainable. Moreover, the applicant had stayed at Mancheswar for more than 13 years by holding some sensitive posts. Therefore, at this point of time he is liable to be transferred to another place. With regard to the family difficulties, the order mentions that the medical and educational facilities are available at new places of posting. Therefore, such difficulties cannot be accepted as a ground for cancelling the order of transfer.

On these grounds, the representation of the applicant was rejected.

3. The applicant has challenged the impugned order on the ground that when the authorities decided to transfer him from Mancheswar, then they are also duty bound for effective ^{promotion.} of the order of transfer. There are persons who are holding the post of SEE and continuing for more than 15 years and, therefore, refusing the representation on the ground of long continuance of the applicant in the same station amounts to discrimination

Although the applicant has been there at Mancheswar for last 13 years, but he has been subjected to a number of inter departmental transfers and has not been continuing in any particular post.

4. The Respondents have also filed their counter affidavit in this case. It has been submitted in the counter affidavit that the applicant was posted as Sr. Section Engineer on promotion at Puri on 12.08.2003. The applicant made a representation to the Divisional Railway Manager, Khurda Road on 19.08.2013 to continue with his posting at Mancheswar, because ^Rof his wife was also working there. In the meantime, vide order dated 09.04.2014 both the applicant and his wife have been transferred and posted to the same station i.e., Khurda Road. The applicant continued to make representations and finally filed O.A. No.391/2014 in the Tribunal and as per the directions of this Tribunal, the Respondents through a reasoned and speaking order dated 20.05.2014 rejected his prayer. Thereafter, the applicant as well as his wife were released from their posting at Mancheswar but only the wife has reported at Khurda on 23.07.2014 whereas the applicant has not reported in his new place of posting. The sum and substance of the submissions of the Respondents is that the applicant was promoted as Sr. Section Engineer and was posted at Puri but he did not join in his new place of posting on promotion. Therefore, the promotion was not given effect to. Thereafter, he along with his wife was transferred to Khurda Road and the applicant has been transferred as JE since he has refused his promotion. With these submissions the Respondents have prayed that the O.A. being devoid of merit may be dismissed.



5. The applicant has filed rejoinder in this matter in which he has quoted para 224 of the Rules governing refusal of promotion of staff which lays down as follows:-

"224. Refusal of Promotion

1. Selection Posts

(i) The employee refusing promotion expressly or otherwise (i.e. that he does not give in writing his refusal but also does not join the post for which he has been selected,) is debarred for future promotion for one year but he is allowed to be retained at the same station in the same post. Promotion after one year will be subject to continued validity of the panel in which he is, borne otherwise he will have to appear again in the selection."

6. Therefore, his plea is that if he had refused his promotion he ought to have been allowed to continue at least for one year in the same station and in the same post.

7. I have heard the learned counsel for both the sides and perused the records. In course of the hearing, the learned counsel for the applicant has submitted that the applicant ^{was} prepared to go on transfer to Khurda Road, ^{if} he is given promotion. But, if his promotion is treated to have been refused, then he should be allowed to continue at the same station at Mancheswar.

8. On the otherhand, Shri T. Rath, Ld. Standing Counsel for the Railways has argued that the applicant has not made any such prayer at any point of time to the concerned authorities. It appears that the prayer made by the applicant's counsel is ^a reasonable one. However, I find nothing on record to substantiate ^{that} applicant had ever made any such submission to the administrative authorities. In the absence of such a prayer made to the authorities competent the Tribunal cannot ^{take} issue any direction in this

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regard. However, on the prayer made by Shri Routray, applicant is permitted to make a fresh representation to the Respondent No.2, making the specific prayer that he may be transfer^{red} to Khurda Road along with the promotional post or in the alternative, he may be allowed to continue in the same post in keeping with the Rule 224 of the Rules governing the promotions of Group 'C' staff Indian Railway Establishment Code Volume-1 and if any such prayer ^{is} ~~may~~ be made within a period of 15 days from the date of receipt of the order, then the Respondent No.2 is directed to consider the prayer of the applicant and pass a reasoned and speaking order under intimation^{to} the applicant within a period of 30 days from the date of receipt of such representation.

9. With these observations and directions this O.A. is disposed of. No costs.


(R.C. MISRA)
ADMN. MEMBER