

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/00620/2014
Cuttack this the 25th of September, 2014

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Surendra Kumar Lenka...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? ✓
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not? ✓

(R.C.MISRA)
MEMBER(A)

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

Surendra Kumar Lenka
Aged about 53 years
S/o. late Banamali Lenka
At-Beraboi, PO-Dandipur
District-Puri
At present working as Sr.Section Engineer
In the O/o. TRD/RRD/KUR
East Coast Railway
Khurda Road Division
Jatni
Khurda

...Applicant

By the Advocate(s)- M/s.P.K.Chand
N.Samal

-VERSUS-

Union of India represented through

1. General Manager
East Coast Railway
Chandrasekharpur
Bhubaneswar
Khurda
2. Divisional Railway Manager
East Coast Railway
Khurda Road Division, Jatni
District-Khurda
3. Sr.Divisional Personnel Officer
East Coast Railway
Khurda Road Division, Jatni
District-Khurda
4. Sr.Divisional Electrical Engineer(TRD)
East Coast Railway
Khurda Road Division, Jatni
District-Khurda

5. Sri S.K.Patra
Sr.Section Engineer/PSI/KUR
East Coast Railway
Jatni
District-Khurda

...Respondents

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

M/s. S. C. Acharya
C. R. Das & A. P. Banerjee

ORDER

R.C.MISRA, MEMBER(A)

Applicant in the present Original Application is a Senior Section Engineer under the Respondent-Railways. He has approached this Tribunal being aggrieved with the order dated 28.07.2014(A/12) whereby he has been transferred to Keonjhar in the existing capacity. In the circumstances, he has sought for the following relief.

"...allow this application by quashing transfer order dated 28.07.2014 as at Annexure-A/12 to the O.A. to the extent it relates to the applicant".

2. Facts of the matter are that the applicant being a Senior Section Engineer in the East Coast Railways, Khurda Road was in charge of Running Repair Depot(RRD)Khurda Road since 11.12.2009. According to his submission, he was handling very important charge of the East Coast Railways. The store handles about 2400 varieties of items and several activities of the Railways. The applicant was transferred from RRD, Khurda Road to Power Supply Institute (PSI), Khurda Road in the same station. Although he was transferred by an order dated 3.3.2014, his reliever one S.Sahoo joined duties on 24.5.2014. Handing over of charge of several items in the RRD was taking a very long time. Applicant, however had represented to the authorities that he may be allowed to continue in the charge of RRD, but the Respondents directed him to complete the charge handing over. In the meantime, however, another transfer order dated 28.7.2014 was issued by

R.C. Misra

which in supersession of the earlier order of transfer to PSI, Khurda Road, applicant was transferred as SSE, PSI, Keonjhar in administrative interest. This order of transfer to Keonjhar dated 28.7.2014 has been attached to this O.A. as A/12 and constitutes the subject matter of challenge in this O.A.

3. The main ground urged by the applicant for challenging this transfer order is that he has been subjected to deliberate harassment by the Respondents by the issue of this order of transfer. He has brought in a specific charge of mala fide action by Respondent No.4 in this O.A., who is Senior Divisional Electrical Engineer, East Coast Railway, Khurda Road. Applicant alleges that one Shri R.K.Dora, ^{ha} who was working under him was transferred without placement of substitute. The bill in respect of his office phone was also not paid because of which the telephone got disconnected and excess internet charges were realized from him. In addition to the same, a number of minor penalty charges were issued to him, which according to him, was indicative of an attitude of harassment by the Respondent-authorities. To establish that there was mala fide action by Respondent No.4 in this case, applicant has submitted that an Inquiry Committee was constituted to look into the ^{issue of} materials worth about Rs.11 lacks and the applicant was expected to produce the relevant papers of the RRD stores before the Committee. The process of inquiry was not being completed despite repeated requests of the applicant. When the process of inquiry is still going on, order of transfer has been issued in order to prejudice the case of the applicant. One further point which has been raised by the applicant is that when in pursuance of the order dated 3.3.2014 he and his reliever in the RRD Depot were in the midst of the process of taking over and handing over of the materials, suddenly transfer order dated 28.7.2014 was issued transferring the applicant to Keonjhar. This

according to applicant, speaks volumes about the attitude of the Respondent-authorities towards him that they are resolved to harass him in various ways.

4. On these grounds applicant has sought the transfer order (A/12) to be quashed.

5. Respondent-Railways have filed their counter reply, in which they have submitted that the applicant as Sr. Section Engineer In-charge of the RRD Khurda Road was holding a sensitive post since the 11.12.2009. He had therefore, completed four years in a sensitive post and was due for a transfer. It is admitted that the applicant was first transferred as SSE to Power Supply Institute (PSI) Khurda Road by an order dated 3.3.2014. His reliever joined on 24.5.2014 and thereafter, the applicant was asked to handover the charge of the RRD. In spite of various instructions, the applicant never completed his responsibility of handing over the charge of the materials and was in fact adopting ~~a~~^Q dilatory tactics to delay this process. In the meantime, the Placement Committee decided to transfer the applicant to Keonjhar and accordingly, the transfer order dated 28.7.2014 was issued. The Respondents have mentioned that this order has been passed on administrative ground and therefore, the allegation made by the applicant that it was motivated by any mala fide is completely misplaced. It is further urged that Respondent No.4 had joined recently and it is totally baseless that he is causing any harassment to the applicant. The minor charge sheets have been issued to the applicant in respect of various irregularities committed by him and therefore, it cannot be mentioned as a bias for harassing the applicant. The Respondents, therefore, have completely denied the charge of any mala fide leading to issuance of transfer order. In fact the transfer to Keonjhar is done on administrative ground to fill up a vacant post ~~of~~^Q at Keonjhargarh. It is admitted by the

Respondents that there is a fact finding inquiry going on into the issue of store materials for which a Committee has been constituted. The work of this Committee, according to Respondents, has nothing to do with the order of the transfer. Apart from this, the Respondents have urged that the applicant has been conducting himself in a most irresponsible manner by not handing over the charge of the RRD stores and thus, disobeyed the orders of the competent authorities. With regard to the personal difficulties pointed out by the applicant, the Respondents have forcefully pointed out that personal reasons are not to be considered for quashing a bona fide transfer order. Transfer is only an incident in the Government service and the applicant must join his new place of posting. Accordingly, Respondents have submitted that the Tribunal should not interfere with the order of transfer.

6. Applicant has filed a rejoinder in reply to the counter of the Respondent-Railways. The rejoinder is very detailed. However, the allegation of mala fide has been repeated. It is further alleged that a post in Keonjhar has been deliberately made vacant so that the applicant could be transferred against that post. Applicant has mentioned that he is an ex-army employee and is very disciplined in his work and the authorities are only planning to harm him because of his honest and upright attitude. The grounds taken by the applicant in the O.A. have been more or less further emphasized in the rejoinder filed by the applicant.

7. Having heard the learned counsels for both the sides, I have also perused the records. Before considering the matter on merit, it is necessary to go through the sequence of evidence in respect of this O.A.

8. The O.A. was heard on the question of admission on 13.8.2014. It was found by the Tribunal that a representation of the applicant dated 5.8.2014

addressed to the Sr. Divisional Electrical Engineer, East Coast Railways, Khurda Road praying for cancellation of the order of transfer to Keonjhar was pending. The learned Standing Counsel further raised an issue that instead of handing over the detailed charge of RRD in pursuance of the order of transfer dated 3.3.2014, applicant has approached the Tribunal with a prayer for quashing the transfer order dated 28.7.2014. After hearing the learned counsel for both the sides, the Tribunal directed both the counsels to obtain instructions in this regard and specifically, the learned counsel for the applicant was directed to obtain instructions as to whether the applicant had handed over the charge of the office or not in response to the order dated 3.3.2014 and if not handed over he should hand over the charge and report. Thereafter, applicant's counsel filed a Misc. Application No.659/2014 in which he prayed for revision of the order dated 13.8.2014 of the Tribunal on the ground that the Tribunal was not within its powers to issue direction with regard to the handing over the charge in respect of the earlier order of transfer dated 3.3.2014. This M.A. was rejected by an order dated 26.8.2014 as devoid of merit and the earlier instruction of the Tribunal were reiterated. The applicant, thereafter challenged the orders of the Tribunal dated 13.8.2014 and 26.8.2014 by filing W.P. (C) No.16444/14 before the Hon'ble High Court of Orissa. The Hon'ble High Court gave an interim direction that if a proper application is filed, the proceedings in respect of this O.A. shall be adjourned till 8.9.2014. Thereafter, W.P.(C) No.16444/14 was disposed by the Hon'ble High Court vide order dated 6.9.2014, in which the Hon'ble High Court passed the following orders.

"In view of the above submissions, without going into the merits of the case, this Court requests the learned Tribunal to dispose of O.A.No.260/00620/2014 as early as possible, preferably, within a period of two weeks from to-day. Status

quo as on to-day shall be maintained till disposal of the O.A. The Writ Petition is accordingly disposed of".

9. After receipt of the order of the Hon'ble High Court, hearing in the matter was concluded and orders reserved on 16.9.2014.

10. The learned counsel for both the sides have also filed their written note of submissions. The learned counsel for the applicant in his written note of submission has repeated his points that the order of transfer arises out of mala fide intention of Respondent aNo.4. The issue of a number of minor penalty charges sheets against the applicant confirms the fact that the Respondent No.4 had a mala fide intention to harass the applicant. It is the submission of learned counsel that the applicant was ready to join in his new place of posting in compliance of the earlier orders of transfer dated 3.3.2014, but all of a sudden, to put the applicant into greater harassment, the transfer order was modified and he was transferred to PSI, Keonjhar, by the impugned transfer order dated 28.7.2014. It is further alleged that Respondent No.4 is one of the members of the Placement Committee and at his instance, such a modification was made. In support of the argument, the learned counsel has cited the decision reported in **AIR 2009 SC 1399** in which the Hon'ble Supreme Court has held that "***there cannot be any doubt whatsoever that transfer which is ordinarily an incidence of service should not be interfered with save in cases where inter alia mala fide on the part of the authority is proved***". Relying on another decision of the Hon'ble Supreme Court in **AIR 2009 SC 1784**, which lays down that "***an order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered with lightly by the Court of Law in exercise of its discretionary jurisdiction unless the court finds that either the order***



is mala fide or that the service rules prohibit such transfer or that the authorities, who issued the order had not the competence to pass the order", learned counsel for the applicant has urged that in the present case mala fide intention of Res.No.4 in order to harass the applicant is writ large and therefore, the Tribunal should interfere with the order of transfer.

11. Learned Standing Counsel for the Respondents, on the other hand, has also filed his written note of submission, in which, he has submitted that the applicant in respect of the rejection of his representation and the joining of his reliever did not handover a single article to his reliever and therefore, continued to disobey the orders. This resulted in dislocation of the normal work of the Railway system. The Placement Committee thereafter decided to modify the transfer order dated 3.3.2014 and accordingly, transfer order dated 28.7.2014 was issued posting the applicant to Keonjhar. Applicant has behaved in a manner which is unbecoming of a Railway servant and committed various irregularities because of which, minor penalty charges have been issued and therefore, this ground cannot be taken to drive home the point that there was mala fide intention against the applicant. One further point which has been adduced by the learned Standing Counsel is that the work of the fact finding inquiry committee which is being conducted by the Departmental Inquiry Committee is completely unrelated to the present order of transfer to Keonjhar. Therefore, the charge of mala fide has been vehemently opposed by the learned Standing Counsel. Respondents have relied on the decision in ***First Land Acquisition Collector & Ors. vs.Nirodhi Prakash Gangoli & Anr. (AIR 2002 SC 1314)*** in which it has been held by the Hon'ble Supreme Court that "***the burden of establishing mala fide is very heavy on the person who alleges it and mere allegation is not enough***'. Also

relying on the judgment of the Hon'ble Supreme Court in *Silpi Bose vs. State of Bihar (AIR 1991 SC 532), Rajendra Ray vs. Union of India & Ors. (AIR 1993 SC 1236)* and *Union of India vs. S.L.Abas (AIR 1993 SC 2445)*, the learned Standing Counsel submitted that the Tribunal should not interfere with this matter. For the sake of clarity, relevant portions of the judgments cited supra are quoted hereunder.

Silpi Bose

"We fail to appreciate the reasoning recorded by the High Court. If the competent authority issued transfer orders with a view to accommodate a public servant to avoid hardship, the same cannot and should not be interfered by the Court merely because the transfer orders were passed on the request of the employees concerned. The respondents have continued to be posted at their respective places for the last several years, they have no vested right to remain posted at one place. Since they hold transferable posts they are liable to be transferred from one place to the other. The transfer orders had been issued by the competent authority which did not violate any mandatory Rule, therefore, the High Court had no jurisdiction to interfere with the transfer orders.

In our opinion, the Courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the Courts continue to interfere with day-to-day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer orders".

Rajendra Ray

"...It is true that the order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employees but on that score the order of transfer

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is not liable to be struck down. Unless such order is passed mala fide or in violation of the rules of service and guidelines for transfer without any proper justification, the Court and the Tribunal should not interfere with the order of transfer. In a transferable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the Department. We are in agreement with the central Administrative Tribunal that the appellant has not been able to lay any firm foundation to substantiate the cause of malice or mala fide against the respondents passing the impugned order of transfer. It does not appear to us that the appellant has been moved out just to get rid of him and the impugned order of transfer was passed mala fide by seizing an opportunity to transfer Shri Patra to Orissa from Calcutta. It may not be always possible to establish malice in fact in a straight cut manner. In an appropriate case, it is possible to draw reasonable inference of mala fide action from the pleadings and antecedent facts and circumstances. But for such inference, there must be firm foundation of facts pleaded and established. Such inference cannot be drawn on the basis of insinuation and vague suggestions".

In SL Abas: "Who should be transferred and posted where is a matter for the administrative authority to decide. Unless the orders of transfer is vitiated by mala fides or is made in violation of any operative guidelines or rules the courts should not ordinarily interfere with it".

12. Again relying on the decision of the Hon'ble Supreme Court in S.C.Saxena vs. ^{nion} Union of India (2006) 9 SCC 583, which lays down that "**it is the duty of an employee to comply with the transfer order**", learned Standing Counsel submitted that the O.A. as laid being devoid of merit is liable to be dismissed.

13. Having come across the pleadings of the parties, the short point to be decided is whether the transfer order dated 28.7.2014(A/12) to the extent it concerns the applicant needs to be interfered with.

14. The scope of interference of the Courts/Tribunal in the orders of transfer is limited only to the cases where it is found that such orders have been made in violation of any mandatory or statutory rules or guided by mala

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fide consideration. Barring these two exceptions in other matters, the Tribunal is not expected to interfere in the orders of transfer.

15. To consider the facts of the present case in the light of the judgments of the Hon'ble Apex Court,(supra) the first point which is worthmentioning is that transfer of the applicant has been made from a sensitive post after completion of four years and therefore, the order cannot be faulted. It is admitted that the applicant had been first transferred by an order dated 3.3.2014 to PSI in Khurda Road. His reliever joined on 24.5.2014 and therefore, the applicant was supposed to handover the charge. Allegedly, the process of handing over the charge of the RRD was not being done smoothly enough and in the meantime, order of transfer dated 28.07.2014 was issued transferring the applicant to Keonjhar on the decision of the Placement Committee. This order has been issued in administrative interest and therefore, it will not be desirable for the Tribunal to interfere with this order even though admittedly, this order was issued in supersession of the earlier order dated 3.3.2014. In this connection, it is to be noted that earlier order dated 3.3.2014 being within the same headquarters, was in the nature of change of duties more than an order of transfer ^{since he} ~~which~~ it did not involve any dislocation from the headquarters. Thereafter, the authorities have decided on administrative ground to transfer the applicant to Keonjhar. In this backdrop of the issue, there is absolutely no ground for the Tribunal to interfere in the process of action taken by the Respondents in administrative interest as they are the best judge in the matter of postings and transfers. The applicant is consistently making a charge of mala fide on the part of Respondent No.4 and has made allegations that he was being harassed by Respondent No.4 in various ways. However, the grounds which have been

taken as mala fide, i.e., the issue of minor penalty charges, non-payment of telephone and internet bills do not at all constitute mala fide – let alone establish. Charge on minor penalty cannot be based on conjecture and surmises. On the other hand, applicant is not bereft of any liberty to defend the matter to prove his innocence in the event of any such charge sheet ^{being P} is issued. This apart it is not the case of the applicant that Respondent No.4 having gone out of the way has harassed the applicant. So long as the actions of the authorities are within the four corners of rules, it is not possible to establish the allegation on mala fide. Even though Respondent No.4 is said to be a member in the Placement Committee, straightway a charge cannot be made that it is because of his mala fide intention, ^{that P} an order of transfer has been issued. Judged from this angle, allegation of mala fide in so far as transfer of the applicant is concerned is out of place.

16. It is evident that the orders of transfer have been issued on administrative grounds and therefore, the grounds taken by the applicant in this regard are baseless and unfounded.

17. Applicant has further submitted that in order to ^{thwart P} ~~thwart~~ the process of fact finding inquiry, he has been subjected to transfer. In this regard, Respondents have argued that the Departmental Inquiry Committee has been set up to look into the irregular transaction of material to Jakhapura fly over work. According to them, this inquiry with regard to irregular transaction of material ^P is worth Rs.11 lacks is in no way connected with the present transfer of the applicant. In fact, the Respondents have also argued that the applicant on his own admission has already been called by an order dated 23.12.2013 to produce the relevant records before the Committee. The arguments advanced by the learned Standing Counsel in this regard are more credible and

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therefore, the applicant's plea that his transfer is somehow connected with the work of the fact finding inquiry committee does not have any leg to stand upon.

18. According to law laid down by the Hon'ble Supreme Court in respect of transfers, (supra) the Courts/Tribunals should not interfere with the orders ~~of~~ ^{of} which are made in public interest and on administrative reasons, unless such transfers are made in violation of any mandatory, statutory rule or on the ground of mala fide.

19. In the present case, neither any mandatory statutory rule appears to have been violated nor mala fide as urged has been established. Therefore, I am of the opinion that the applicant has failed to bring out any sound reasoning based on which the order of transfer could be interfered with by the Tribunal.

In the result, the O.A. being devoid of merit is dismissed. No costs.


(R.C.MISRA)
MEMBER(A)

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