

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.649 of 2017

Cuttack this the 19th day of February, 2018

CORAM:

THE HON'BLE SHRI S.K.PATTNAIK, MEMBER(J)
THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

Mihir Kumar Swain, aged about 43 years, S/o. late Udhaba Charan Swain, Office of Deputy Chief Engineer/Con.II, East Coast Railway, Bhubaneswar, Resident of Qr.No.D-68/F, Rail Vihar, Chandrasekharpur, Bhubaneswar-23, Dist-Khurda, Permanent resident of At-Brundabanpur, PO-Mandar, PS-Nihal Prasad, Dist-Dhenkanal-759 016

...Applicant

By the Advocate(s)-M/s.N.R.Routray
T.K.Choudhury
S.K.Mohanty
Smt.J.Pradhan

-VERSUS-

Union of India represented through:

1. The General Manager, E.Co.Rly., E.co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda-751 017
2. Chief Administrative Officer, Construction, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, District-Khordha-751 023
3. Chief Engineer (Con.HQ), East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, District-Khordha-751 023
4. Chief Engineer (Con.I), East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, District-Khordha-751 023
5. Dy.Chief Engineer (Con.II), East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, District-Khordha-751 023

6. Dy. Chief Engineer/Con/Bridge/Rayagada/East Coast Railway, Rayagada, Dist-Rayagada
7. Dy. Chief Personnel Officer/Con., East Coast Railway, Rail Vihar, Chandrasekharapur, Bhubaneswar, District-Khordha-751 023

...Respondents

By the Advocate(s)-N.K.Singh

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant is a Junior Engineer (Works) in the Office of Deputy Chief Engineer/Con.II, East Coast Railway, Bhubaneswar under the administrative control of the Chief Engineer (Con./HQ), Bhubaneswar. He had approached this Tribunal earlier against his order of transfer dated 10.11.2017 under the Deputy Chief Engineer(Construction)/Bridge/Rayagada. This Tribunal in its order dated 24.11.2017 had disposed of that O.A. at the stage of admission itself directing Respondent No.2 to retain the applicant at Bhubaneswar till the treatment of his son for his disability continues. Transfer order dated 10.11.2017 and the relieving order dated 16.11.2017 were quashed and set aside in so far as applicant is concerned. It was directed that the revised orders for the retention of the applicant at Bhubaneswar be issued within a period of one week from the date of receipt of the Tribunal's order. Against this order of the Tribunal, the official Respondents had approached the Hon'ble High Court in

W.P. (C) No.25314 of 2017. The Hon'ble High Court of Orissa has remanded the matter back to this Tribunal by judgment dated 20.12.2017 with the following observations:

“Considering the above submission of the learned counsel for the parties and on perusal of the impugned order it reveals that the Tribunal without giving opportunity of hearing to the respondents to contest the original application on merit disposed of the same and quashed the order of transfer at the stage of admission. The Tribunal also directed to retain the applicant at Bhubaneswar till the treatment of his son for his disability conditions continues without giving any chance of rebuttal of the petitioners though taken note of the representation filed by the applicant on 13.11.2017 and the fact that he was already relieved from his post on 16.11.2017 violating the principle of natural justice. Accordingly, we set aside the impugned order dated 24.11.2017 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A.No.649 of 2017 and remit the matter back to the Tribunal for fresh disposal. Let the petitioners file their counter affidavit in O.A.No.649 of 2017 within a period of seven days from today. The order of transfer shall be kept in abeyance till disposal of the original application. It is needless to say that the original application be disposed of within a period of 15 days from today.

The writ petition is disposed of accordingly”.

2. After the matter was remanded back to this Tribunal, Respondent Nos. 1 to 7 filed their counter-reply to the O.A. on 29.12.2017. It is their contention that the applicant has been transferred to Rayagada from Bhubaneswar after a stay for more than two decades at Bhubaneswar. The transfer order has been issued purely in a transparent manner since his service

relates to safety aspects and he has been posted in Construction Organization against a work charged post. According to his service conditions, he is required to move where there is need for track installation, modification, renewal etc. undertaken by the Construction Organization. The Construction Organization does not recruit personnel for its wing and the open line zonal administration of the Railways provides the required staff against the work charged post as per requirements. The applicant's lien is maintained in Sambalpur Division of the East Coast Railways. Since there is a demand for development of track activities at Rayagada and Koraput, transfer of four SSEs/SEs including the applicant has been considered excess at Bhubaneswar. Therefore, applicant's transfer to Rayagada is for smooth progress of the track expansion activities. The applicant had submitted a representation on 30.11.2017 to his controlling officer for retention. A reply has already been given to him on 28.11.2017 (R/2) rejecting his representation and clarifying that his transfer was on routine basis and that his continuation on the ground of his disabled child from beginning to end in one place is not possible since he was holding a safety category post in the Construction Organization. He was also informed that in future if any further scope is available, his case will be considered on priority basis. It was pointed out that except for a brief period of one year when he was shifted to Khurda Road, he has been working at

Bhubaneswar for the past 20 years from 1997 till 2017. In the reply, the respondents have also submitted that the applicant instead of joining in the new place of posting had availed leave. The Respondents have also questioned the severity of the medical condition of the applicant's child and have submitted that the applicant has tried to take advantage of his child's ordinary ailment to carve out the sympathy of the Tribunal in the matter of his transfer.

3. The applicant has filed a rejoinder on 3.1.2018 in which he has claimed that there are other officials in the Construction Wing who are working at Bhubaneswar for more than 20 years without being transferred even once and at no point of time, the applicant has been declared surplus or excess to warrant a transfer from Bhubaneswar to Rayagada. He has also enclosed copies of Memoranda given by a few MLAs and one MP highlighting the need for early completion of Khurda - Bolangir Railway Line and posting of four JEs at Bhubaneswar. The applicant has also submitted that this is the first time that he has objected to an order of transfer since it is on the ground of his son's treatment. He has denied that he has made false representation about his son's health condition.

4. On 15.11.2018 we heard the learned counsels for both the sides and perused the documents submitted by them. It is clear that the applicant has spent close to 20 years at Bhubaneswar with a brief spell of transfer to Khurda Road and

being in Construction Wing he is liable for transfer to any place where there is requirement in the Construction Wing. We are also aware of the limitation of the Tribunal to interfere in the transfer of the applicant. However, the OM issued by the DOP&T dated 6.6.2014 clearly provides for special consideration for Government employees with differently-abled dependents. Para-3 of the said OM reads as follows:

“3.Considering that the Government employee who has disabled child serve as the main care giver of such child, any displacement of such Government employee will have a bearing on the systemic rehabilitation of the disabled child since the new environment/set up could prove to be a hindrance for the rehabilitation process of the child. Therefore, a Government servant who is also a care giver of disabled child may be exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraints. The word ‘disabled’ includes (i) blindness or low vision (ii) hearing impairment (iii) locomotor disability or Cerebral Palsy (iv) leprosy cured (v) mental retardation (vi) mental illness and (vii) multiple disabilities”.

5. The Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training had subsequently extended the scope of Office memorandum dated 6.6.2014 by including ‘Autism’ in the term ‘disabled’ as defined in para-3 of the above mentioned Office Memorandum dated 6.6.2014. In the said O.M. it was mentioned that considering the fact that the autism spectrum disorder child requires constant caregiver support and it would be imperative for the Government

employees to take care of their autism spectrum disorder child on continuous basis, it has been decided to include 'Autism' in the term 'disabled' as defined in Para-3 of the above mentioned O.M. dated 06.06.2014. Following this, RBE Nos. 85/14 and 137/14 have been issued by the Railway Board adopting the above two OMs of the DOP&T.

6. The Respondents have questioned the authenticity of the medical condition of the applicant's child. The certificates enclosed by the applicant are from non-Railway Hospital. Since Railways have their own medical facilities, they are at liberty to cause necessary tests on the child of the applicant and should it be established that the child needs presence of the parents, the respondents are obliged to follow the instructions issued by the DOP&T adopted by the Railway Board in RBE Nos.85/14 and 137/14.

7. In view of the above, the case of the applicant is remanded back to the Respondents with a direction to take necessary action for the medical examination of the applicant's child at their own hospital or any other hospital designated by them to determine the extent of disability and the eligibility of the applicant to be considered under RBE Nos.85/14 and 137/14.. They should pass necessary orders regarding the transfer/retention of the applicant within a period of two months from the date of receipt of this order. Till that period

the transfer order dated 10.11.2017 and the relieving order dated 16.11.2017 will not be given effect to.

8. With the above observation and direction, the O.A. is disposed of. No costs.

(DR.MRUTYUNJAYSARANGI)
MEMBER(A)

(S.K.PATTNAIK)
MEMBER(J)

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