

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/411/2018

Date of Reserve: 21.01.2019

Date of Order: 06.02.2019

CORAM:

HON'BLE SHRI GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE SHRI SWARUP KUMAR MISHRA, MEMBER(J)

Manoj Kumar Agarwal, aged about 55 years, S/o. Late Som Prakash, at present working as Chief Engineer, Construction-III, E.Co. Railway, Bhubaneswar, Dist-Khurda.

...Applicant

By the Advocate(s)-M/s.D.R.Pattnayak
N.Biswal
L.Pattnayak

-VERSUS-

Union of India represented through:

1. The Chairman, Railway Board, Rail Bhawan, New Delhi-110 001.
2. General Manager, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar-17, Dist-Khurda.
3. Secretary, Railway Board, rail Bhawan, New Delhi-110 001.
4. Principal Chief Personnel Officer, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar-17, Dist-Khurda.

...Respondents

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

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant is presently working as Chief Engineer, Construction-III, E.Co. Railway, Bhubaneswar. He has approached this Tribunal being aggrieved by the order dated 25.05.2018 (A/1) by virtue of which he has been transferred as ADRM/BVP vice Shri Rakesh Rajpurohit as well as the communication dated 31.07.2018 (A/6) made to him rejecting his representation for retention at Bhubaneswar. In the circumstances, he has sought for the following reliefs:

- i) To quash the impugned order issued vide Order dated 25.05.2018 issued by the office of the Respondent No.3 vide Annexure-A/1 in so far as it relates to the applicant.
 - ii) To quash the order issued vide Order dated 01.08.2018 passed by the Respondent No.4 vide Annexure-A/6.
 - iii) To direct the respondents to allow the applicant to continue at Bhubaneswar under E.Co. Railway till completion of the educational session of his daughter i.e., Class-XII examination.
 - iv) To pass such order/directions as deemed fit and proper.
2. The main thrust of the O.A. is that applicant's transfer during mid-academic session will have a prejudicial effect on the academic career of his daughter who is reading in Class-XII. Secondly, he being an IRES cadre officer his posting on transfer without obtaining his willingness against the post of ADRM, BVP, Western Railway, which an ex cadre post amounts punishment.

3. On the other hand, the respondents have filed a detailed counter opposing the prayer of the applicant. According to Respondents, applicant's retention at his present place of working was considered by the Railway Board and the competent authority after taking into account all the facts including the fact that applicant's daughter is studying in Class-XII decided that the applicant should carry out his transfer/posting as ADRM/Bhavnagar as it is purely in administrative exigency. It is not the case that the applicant has been singled out for posting as ADRM and as a matter of fact, along with him many other officers have also been transferred and posted as ADRMs. The respondents have pointed out that as a matter of policy under the Railways appointment against the post of ADRM or DRM is made from different Group-A Railway Services and while doing so, no option is required to be exercised. According to respondents, Para-(xiii) of the Comprehensive Transfer Policy for Railway issued by the Railway Board vide A/4 dated 31.08.2014 stipulates

that transfers other than those caused due to promotion, deputation/return from deputation, retirements will be generally issued from January to March. However, in administrative exigencies, transfer orders may be issued as and when required. Since the post of ADRM is a very high and important post, it could not be kept vacant from the point of view of the General Administration of the Division. As regards the mid-academic session of her daughter, the respondents have submitted that the applicant has deliberately suppressed the details of the Institution and pattern of education and in case her daughter is studying in the Central School at Bhubaneswar, then he can get her daughter transferred to Bhavnagar.

4. It is to be noted that this matter came up for admission on 7.8.2018 and this Tribunal while directing notice to the respondents, as an interim measure, directed not to relieve the applicant till the next date of hearing. This interim order is in force as on date.

5. We have heard the learned counsels for both the sides and perused the records. We have also gone through the rejoinder, additional rejoinder filed by the applicant and reply to rejoinder filed by the Respondents. During the course of hearing, learned counsel for the applicant brought to the notice of the Tribunal a circular dated 12.12.2018 issued by the Railway Board on the subject "*addendum to the Comprehensive Transfer Policy guidelines issued vide Board's letter of even number dated 31.08.2015*", the gist of which is reproduced herein below:

"In partial modification to the Comprehensive Transfer Policy guidelines issued vide Board's letter of even number dated 31.08.2015, particularly with reference to Para 1(i) ^ the para 1(viii) regarding the total stay of Railway officers at a stretch at a particular station, it has been decided with the approval of the Competent authority that :-

- i) Stay only at Head Quarters of the Zonal Railway should normally be counted for the purpose of continuous stay.
- ii) One full tenure posting in Railway Board should be exempted for the purpose of counting continuous stay at a station.
- iii) Officers due for retirement within the span of two years should normally not be disturbed from the present posting.
- iv) Critical/Terminal illness of dependents requiring stay at a station for the sake of continuing of treatment can be considered on case to case basis.
- v) Officers with children who are at a crucial stage of education, i.e., Board level exam (XIth & XIIth only) should be exempted till such time the child is in the crucial classes".

6. Since the relief sought for by the applicant is limited that he should join the transferred post only after the academic session of her daughter studying in Class-XIIth is over and to that extent, he is governed by the aforesaid circular issued by the Railway Board, it would be, in the fitness of things, if the applicant is allowed to continue in the present place of posting till the academic session of her daughter is over. Accordingly, in the peculiar facts and circumstances, the Respondents are directed to issue necessary order in modification of order issued dated 25.05.2018 (Annexure-A/1) in so far as it relates to the applicant read with order dated 01.08.2018(Annexure-A/6).

7. The O.A. is allowed to the extent indicated above, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(A)

BKS

(GOKUL CHANDRA PATI)
MEMBER(J)

