

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.No.260/842/2014

Date of Reserve:27.08.2019

Date of Order:18.09.2019

CORAM:

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

Dr.Krushna Chandra Bal, aged about 59 years, S/o. Late Sudarsan Bal, at present working as C.P.O. (Training), East Coast Railway, Chandrasekharpur, Bhubaneswar, resident of At-HIG-33, Sailashree Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda, Odisha.

...Applicant

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

-VERSUS-

Union of India represented through:

1. The General Manager, East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
2. Chief Personnel Officer, East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
3. Secretary, Railway Board, Rail Bhawan, New Delhi-110 001.
4. Director (ESTT), Railway Board, Rail Bhawan, New Delhi-110 001.

...Respondents

By the Advocate(s)-Mr.S.K.Ojha

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the A.T.Act, 1985, the applicant has sought for the following reliefs:

- i) To quash the order of rejection dtd. 20.05.2013 and 15.10.2014 under Annexure-A/10 & A/14.
- ii) To direct the Respondents to regularize the period from March, 2012 to March, 2013 by treating period as waiting for duty.
- iii) To direct the Respondents to release the arrear salary for the month from March, 2012 to March, 2013.

2. Briefly stated, the facts of the matter are that the applicant while working as working as C.P.O. (IR), South Central Railway, Secunderabad

was transferred and posted as C.P.O.(Admn.)/East Coast Railway, Bhubaneswar vice Smt.Manju Ray, SAG/IRPS vide A/2 dated 15.03.2012 in view of the latter proceeding on leave with effect from 16.03.2012. Vide order dated 16.03.2012 (A/3) Smt. Manju Ray was recalled from leave and posted in the cadre of CPO(Admn.)/East Coast Railway vice Dr.K.C.Bal, SAG-IRPS (the applicant) proceeding on leave for 89 days that had been sanctioned on personal account by the General Manager, East Coast Railway. On completion of leave, the applicant submitted a representation dated 9.7.2012 (A/4) followed by a further representation dated 28.8.2012 to allow him to discharge his duty by adopting the musical chair system by allowing other two SAG cadre officers to proceed on leave. Since, there was no response, the applicant approached this Tribunal in O.A.No.924 of 2012 and this Tribunal disposed of the same vide order dated 19.12.2012 with direction to Respondent Nos. 1 & 2 to consider the representation and communicate the result thereof in a well reasoned order to the applicant. Complying with the aforesaid order, the Respondent-Railways passed order dated 25.01.2013 (A/6), the relevant part of which reads as follows:

“Based on the above grievances 1 to 4, the matter has been re-examined at length and it is observed that there are only two posts (1 SAG + 1 HAG) available in Personnel Department of E.Co.Railway, i.e., CPO(PHOD/CHOD) & CPO(Admn.). As both Mr.Akhtar, SAG/IRPS subsequently promoted to HAG/IRPS and Mrs.Manju Ray, SAG/IRPS have been continuing in the post of CPO(PHOD) and CPO(Admn.) respectively, there is no room to accommodate Dr.K.C.Bal/SAG/IRPS in East Coast Railway. The posting of PHOD/CHOD is decided by the Railway Board: hence the Railway cannot post anyone against this post.

Since all transfer and posting pertaining to SAG/IRPS officer is made out by Railway Board only, there is no deflection of Board's order as averred in the representation dated 28.08.2012. Dr.K.C.Bal, SAG/IRPS being transferred from South Central Railway has been posted as Chief Personnel Officer (Admn.), East Coast Railway vide this office order No.31/2012 dated 15.03.2012 and went on leave from

19.03.2012 to 14.06.2012. Thus the senior or junior does not make any sense for posting.

Officers who are coming from other Railways as excess to the cadre have to go on leave to ensure that continuity of working system are not spoiled by musical chair operation. While doing surplus management of officers in this Railway, it has been decided that any SAG officer posted in the cadre as excess will be allowed to join but have to go on leave till vacancy arises in the cadre. This has been made in principle keeping in view to protect the interest of Railway especially to avoid any interruption in the performance of Railway. Musical chair operation of excess officers shall not be permitted which will affect the Railway's performance. His mention of very little leave to his credit has no relevance to this system leave being personal to him. Moreover, as he is not having leave to his credit to accommodate him, other officers have to go on perpetual leave even if they have joined the cadre earlier, which cannot be accepted.

Thus, considering all aspects of leave grievances and administrative convenience, the applicant, Dr.K.C.Bal, SAGIRPS has to remain on leave till such time further transfer and posting order are issued by the Railway Board. It may be noted that the Railway has already requested to Board to accommodate Shri Bal in some other Railway where vacancy exists”.

3. While the matter stood thus, vide communication dated 1.2.2013 (A/7), the applicant was transferred and posted against the vacancy of one Nand Kishore, SAG/IRPS, transferred/posted as ADMR//Raipur/South Central Railway. The applicant, thereafter submitted representations dated 10.4.2013 (A/9) to the General Manager, East Coast Railway with a request as follows:

“The entire period of waiting except for the initial one week of joining in East Coast Railway from March, 2012 to March, 2013 ought to be treated as waiting for posting taking Board into confidence, if needed, since Board had issued my transfer orders to East Coast Railway and my waiting here for a posting so long was due to reasons, it may be appreciated, beyond my control. But pending this an administrative order ought to be passed for crediting of the leave and conversion of the LAP period availed into waiting for posting so that I am not put to

further loss and as fairness demands in consonance with the extant provisions”.

4. In response to the above, the decision of the General Manager was communicated to the applicant vide A/10 dated 20.05.2013, which reads as follows:

“The officer should have applied for leave to get his salary and continuity of service which he has not done. He may be advised to do so for post-facto sanction. After availing some leave midway, he cannot claim “waiting for duty”.

5. On a subsequent representation made, the applicant was intimated vide letter dated 15.10.2014 (A/14) that he should apply for leave for the period in question. Aggrieved with this, the applicant has approached this Tribunal seeking for the following reliefs as mentioned above.

6. The grounds on which the applicant has mainly based his claim are that in obedience to the orders of the competent authority, he joined the transferred post and it was his none of his duties to look after whether there existed a vacancy to accommodate him or not and if it was so, then he should not have been transferred and posted to East Coast Railways. This apart, the applicant has pointed out that because of lack of vacancy to accommodate him in the transferred post, it was improper and unreasonable on the part of the respondents to compel him to go on leave. The applicant has also pointed out that for no fault of his, he should not be made to suffer.

7. Contesting the claim of the applicants, respondents have filed a detailed counter. Respondents have pointed out that in compliance of the orders of this Tribunal, the General Manager disposed of the representation of the applicant dated 28.08.2012 rejecting his request to accommodate him in East Coast Railway being surplus in cadre, inter alia, stating that the

officers who are coming from other Railways as excess to the cadre have to go on leave to ensure that continuity of working system is not spoiled by musical chair operation. According to respondents, in the matter of surplus management of officers in East Coast Railway, it has been decided that any SAG officer posted in the cadre as excess will be allowed to join. However, he/she has to go on leave till vacancy arises in the cadre. This has been made in principle keeping in view to protect the interest of railways, especially to avoid any interruption of the performance of Railway. As the applicant was posted in the cadre as excess, on his reporting to resume duty after completion of 89 days leave, he was advised to proceed on further leave and at the same time, the matter was referred to Railway Board to accommodate the applicant in some other railways where vacancy exists. The applicant was advised vide letter dated 06.08.2012 to submit leave application for sanction of leave from 18.06.2012 in order to regularize the period for drawal of salary, but he failed to do so. With these submissions, the respondents have stated that the O.A. being devoid of merit is liable to be dismissed.

8. Respondents have also filed additional counter in which they have more or less reiterated the same facts as in the O.A.

9. Heard the learned counsels for the parties and perused the records including the rejoinder filed by the applicant. It reveals from the record that after joining of the applicant at the transferred place, he was allowed to 89 days leave vide A/3 dated 16.03.2012 on personal account by the General Manager, East Coast Railways. Thereafter, the applicant was asked to take leave on the ground that he was the surplus officer. However, it is the case of the applicant that if there was no vacancy in the East Coast Railways, he ought not to have been transferred and posted there. It is also

his contention that he cannot be forced to take leave since there was no vacancy to accommodate him.

10. We have considered the rival submissions. We are unable to understand that if there was no vacancy, what prompted the respondents to transfer the applicant from South Central Railway with a view to posting him in the East Coast Railways. It shows total non-application of mind of the respondents. In our considered, opinion, it is not a healthy practice in the affairs of personnel management under the Respondents. Even if there was no vacancy to accommodate the applicant, a duty was cast on the respondents to immediately look into the matter and post him against a suitable vacancy. Instead of doing so, the applicant was granted 89 days under what is called personal account by the General Manager. Even within this time, the matter was not set at rest by the respondents and the applicant was further asked to proceed on leave. This is a peculiar situation that appears to have been introduced by the respondents in this case which is not supported by any rules or instruction of Railway Board. Learned counsel for the Respondents has relied upon the decision of the Hon'ble Supreme Court, as quoted in Para-3 of the counter (Transport & Dock Workers' Union & Ors. Vs. Mumbai Port Trust & Anr.) wherein it has been observed that "the court should not ordinary interfere in administrative matters unless the decision is clearly violative of some statute or is shockingly arbitrary. Adjudication must be done within the system of historically validated restraints and conscious minimization of the judges' preferences. The court must not embarrass the administrative authorities and must realize that administrative authorities have expertise in the field of administration while the court does not..." There cannot be any dispute regarding the settled position of law. However, in the present facts and

circumstances of this case, it is seen that instead of being sensible and realistic to the posting of the applicant against a suitable vacancy consequent upon his transfer, he was asked to go on leave till a vacancy arises to accommodate him and since, the applicant did not apply for leave, his salary was withheld. Disposition of this sort of state of affairs by the respondents does not appeal to our judicial conscience. It is a clear case that even though the applicant was willing to work, he was prevented by the authorities from doing so and on the other hand, he was directed to go on leave to save the situation concerning surplus management. This Tribunal unequivocally and unhesitatingly, deprecates this approach and attitude of the respondents which are against the administrative propriety.

11. For the reasons aforesaid, we have no hesitation to hold that the action of the respondents in preventing the applicant from discharging his duties in the garb of surplus and at the same to overcome this deficiency, asking him to go on leave, is improper and unreasonable and hence, does not stand the judicial scrutiny. In view of this, we quash the impugned order dated 25.01.2013 (A/6) including the communications dated 20.05.2013 (A/10 and 15.10.2014 (A/14) and direct the Respondents to issue appropriate orders regularising the period in question and releasing arrears salary in his favour within a period of sixty days from the date of receipt of this order, without insisting on the applicant for submission of any leave application against that period.

12. In the result, the O.A. is allowed as above, with no order as to costs.

(SWARUP KUMAR MISHRA)  
MEMBER(J)

(GOKUL CHANDRA PATI)  
MEMBER(A)

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