

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 262 of 2019

**Present : Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Balaram Nayak, aged about 50 years, S/o govinda Nayak, at present working as Chief OS, under ADEN (Br.)/east Coast Railway/KUR, resident of Goda Dharmasagar, PO/PS-Jatni, Dist-Khurda-752050, Odisha.

.....Applicant

VERSUS

1. Union of India, represented through the General Manager, East Coast Railway, E.Co.R.Sadan, Chandrasekharapur, Bhubaneswar, Dist-Khurda-751017.
2. Senior Divisional Personnel Officer, East Coast Railway, Khurda Road Division At/PO-Jatni, Dist-Khurda-752050.
3. Senior DEN/Co-ordn., East Coast Railway, Khurda Road Division At/PO-Jatni, Dist-Khurda-752050.
4. Assistant Divisional Engineer (Bridge), East Coast Railway, Khurda Road Division At/PO-Jatni, Dist-Khurda-752050.
5. Pratap Chandra Behera, OS under SSE (P.Way)/ East Coast Railway, Khurda Road Division At/PO-Jatni, Dist-Khurda-752050.

.....Respondents

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.S.K.Ojha, counsel

Heard & reserved on : 31.7.2019

Order on : 12.9.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed this OA seeking the following reliefs :

- “(a) To quash the order of transfer dtd. 1.3.2019 under Ann. A/6 (so far this applicant is concerned);
- (b) And to quash the order of relieve in absentia dtd. 16.3.2019 under Ann. A/15;
- (c) And to quash the order of rejection dtd. 11.4.2019 under Ann. A/19;
- (d) And to direct the respondents to allow the applicant to continue in his place of posting under Respondent No.4;
- (e) And/or to direct the departmental respondents to post the applicant in any office either at Khurda Road or at Bhubaneswar except store;

And pass any other order as this Hon'ble Tribunal deems fit and proper in the interest of justice;

And for which act of your kindness the applicant as in duty bound shall every pray.”

2. The applicant, working as Chief OS under the respondents, is aggrieved by his transfer from Khurda Road to Talcher vide the impugned order dated 1.3.2019 (Annexure-A/6) on the ground that being a medically de-categorized employee, had requested for his continuance in Bhubaneswar to take care of his ailing wife. Hence, he had submitted a representation on 14.2.2019 to be allowed to continue at Khurda Road in any post except in Store.

3. It is stated that on receipt of his transfer order, the applicant is continuing on medical leave from 2.3.2019 and he submitted another representation on 6.3.2019 to the respondent no.3 to reconsider his posting at Khurda Road or Bhubaneswar due to the reasons as mentioned in the representation. When no action was taken on the representation, the applicant filed the OA No. 177/19 which was disposed of with a direction to the respondents to dispose of the representation and till such disposal, the status quo of the posting of the applicant was required to be maintained. It was submitted that as on 28.3.2019, no reliever had joined in place of the applicant. But the respondents did not allow the applicant to join his duty in the previous post in violation of the order of the Tribunal to maintain status quo of the posting of the applicant. It is stated that the applicant was relieved in absentia vide order dated 16.3.2019 (Annexure-A/15), when he was on sick leave.

4. It is also submitted by the applicant that he has been given the election duty on being informed by the respondent no. 2. Hence, he submitted a representation dated 28.3.2019 (Annexure-A/18) requesting the respondents to allow him to work at Khurda Road. Vide order dated 11.4.2019 (Annexure-A/19), his representation for cancellation of his transfer was rejected.

5. Counter filed by the respondents stated that the applicant was relieved vide order dated 16.3.2019, but the applicant did not accept the order. Under these circumstances, the respondent no.5 who was posted in place of the applicant, was relieved and on 29.3.2019, he joined in earlier post held by the applicant. It is stated that before allowing the reliever to join, the Tribunal could not be informed due to inadvertent mistake. It is stated that on the pretext of sickness, the applicant is trying to avoid the transfer order issued by the administration. It is also stated that the pleas taken by the applicant in the OA cannot be taken as a ground to interfere with the transfer order. It is also stated that there is no rule to the effect that the medically de-categorized staff cannot be transferred. It is stated that the applicant was holding a sensitive post, against which, it is necessary to transfer the incumbent from time to time. It is stated that regarding his election duty, the applicant could not attend to the duty as he remained on leave instead of joining.

6. The applicant filed Rejoinder without raising any new issue. Heard learned counsel for the applicant as well as the respondents and perused the materials on record. Learned counsel for the respondents submitted that the respondents would look into the case of the applicant in due course of time and adjust him in his preferred place of posting subject to availability of vacancy.

7. It is the settled law that transfer is an incidence of the service and the order of transfer cannot be interfered with by this Tribunal. In the case of S.C. Saxena vs. Union of India and others, reported in (2006) 9 SCC 583, Hon'ble Apex Court has held as under:-

".....In the first place a government servant cannot disobey a transfer order by not reporting at the place of posting and to go to a court to ventilate his grievance. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems...."

In the case of Shilpi Bose (Mrs.) and others vs. State of Bihar, reported in AIR 1991 SC 532, it was held by Hon'ble Apex Court as under:-

"4. 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 malafide. 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....."

8. Applying the judgments as discussed above to the present OA, if the applicant has some personal problem, it is open for him to approach the authorities or avail the leave as per the rules. The grounds urged by the applicant like sickness of his wife, his election duty or own sickness do not constitute adequate grounds for this Tribunal to interfere with the impugned transfer order in the circumstances of this case. Further, no rule or guideline has been furnished by the applicant in support of his claim to be adjusted in a particular station.

9. With regard to the facts and circumstances as discussed above, we are not able to allow any of the reliefs prayed for by the applicant and dispose of this OA with liberty to the respondents to reconsider the case of the applicant in the light of the observation made in the last para of the order dated 11.4.2019 (Annexure-A/19) and taking into consideration his personal difficulties, to suitably adjust him against a suitable post subject to availability of vacancy and exigencies of administration. There will no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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