

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16471 of 2018

Sanjay Kumar Son of Sri Govind Sahu, Junior Engineer Construction/Works,
Under Deputy Chief Engineer Construction, East Central Railway, Danapur,
Post- Khagaul, District- Patna- 801105 Bihar.

... .. Petitioner/s

Versus

1. The Union of India
2. The General Manager (Personnel), East Central Railway, Hajipur, P.O. Digghi Kalan, P.S.Hajipur(Sadar), District -Vaishali, Pin Code-844101
3. The Principal Chief Engineer, East Central Railway Hajipur, P.O.- Digghi Kalan, P.S. Hajipur Sadar
4. The Chief Administrative Officer Construction/South East Central Railway, Mahendrughat, Patna- 800
5. The Deputy Chief Engineer Construction, East Central Railway, Danapur, P.O.- Khagaul, P.S. Danapur
6. The Deputy Chief Engineer Construction, East Central Railway, Singrauli.
7. The Senior Personnel Officer, Construction, East Central Railway, Mahendrughat, Patna- 800004 (Bihar)

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Munna Pd Dixit M.P. Dixit
For the Respondent/s : Mr.Anil Kumar Sinha

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 10-01-2020

Heard learned counsel for the petitioner and learned
counsel for the Union of India.

The petitioner has filed the present writ petition
challenging the order dated 20.7.2018 passed by the Central
Administrative Tribunal, Patna Bench, Patna (for short 'the
Tribunal') in O.A.No.050/000495 of 2018 whereby the prayer
of the petitioner for stay of transfer order dated 09.01.2018



issued by the Senior Personnel Officer (Construction), East Central Railway, Patna has been dismissed.

The contention of the petitioner is that he has 5 years old son who is physically handicapped suffering from autistic disorder. The Department of Personnel and Training (DOPT) Government of India vide OM dated 06.06.2014 have made special provisions in respect of transfer of the Government servants whose children are suffering from physical disability. The DOPT vide another OM dated 17.11.2014, have notified autistic disorder also as physical disability to which OM dated 06.06.2014 would apply. The OMs of the DOPT have been served to all the General Managers of the railways with a direction to implement the instructions containing therein. Hence the impugned transfer order of the petitioner was in gross violation of the instructions issued by the DOPT. Thus, the Tribunal ought to have set aside the transfer but erroneously it has dismissed the original application filed by the petitioner.

Per contra, learned counsel appearing for the East Central Railway submitted that there is no illegality in the order passed by the Tribunal. The OMs issued by the DOPT do not totally exempt the Government servants whose children are physically handicapped or suffering from autistic disorder. He contended



that the petitioner was posted at Danapur in the year 2008 and has been transferred after 10 years in 2018. The project for which he was posted at Danapur has been completed and no work in connection with which he was posted at Danapur is left in the said project. Since he was not required at Danapur, he was transferred in administrative exigencies. His transfer does not suffer from any infirmity. He has drawn our attention towards the averments made in the written statement filed in the original application before the Tribunal.

We have heard learned counsel for the parties and carefully perused the record.

On perusal of the DOPT OM dated 6.6.2014 we find that the Government employee who has disabled child and serve as main care-giver of such child, has been exempted from routine exercise of transfer/rotational transfer subject to administrative constraints.

It would further appear from the DOPT OM dated 17.11.2014 that autistic disorder has also been notified as physical disability to which OM dated 06.06.2014 would apply.

From the written statement of the respondents, we find that after considering the representation of the petitioner and the relevant provisions of the Railway Board, the respondents took



a decision on 14.2.2018 and they did not agree with the request of the petitioner for stay of his transfer order. We further find that the petitioner who is a Junior Engineer and was posted in a Railway Over Bridge Project at Danapur has been transferred to Singrauli as the work at Danapur has been completed and a very important project is going on at Singrauli where doubling between Garrah Road to Chopan and Kariala Road Junction to Singrauli are going on.

As seen above, the DOPT OM dated 6.6.2014 gives liberty to the Government to transfer an employee in case of administrative exigency. It exempts only routine and rotational transfer.

Since the transfer of the petitioner has been made in administrative exigency, we are of the opinion that the Tribunal has rightly rejected the original application filed by the petitioner and declined to interfere with the order of transfer.

Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

(Partha Sarthy, J)

Bibhash/-

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CAV DATE	
Uploading Date	17.01.2020
Transmission Date	

