

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

LIBRARY

No. O.A. 1326 of 2018

Reserved on: 3.3.2020

Date of order: 16-03-2020

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Smt. Soumita Mallick,
Daughter of Sailendra Nath Mallick,
Aged about 31 years,
Residing at North Bhabanipur,
(Back of Subhash Sanga),
Post Office - Kharagpur,
District - Paschim Midnapur,
Pin - 721 301,
West Bengal.

..... Applicant.



Versus

1. The Union of India,
through General Manager,
South Eastern Railway,
Garden Reach,
Kolkata - 700 043.
2. Chief Personnel Officer,
South Eastern Railway,
Garden Reach Road,
Kolkata - 700 043.
3. The Deputy Chief Mechanical Engineer,
(C/W), South Eastern Railway,
Kharagpur,
Dist. - Paschim Midnapur - 721 301.
4. The Assistant Personnel Officer (G),
South Eastern Railway,
Kharagpur - 721 301.

..... Respondents.

For the Applicant : Mr. A. Chakraborty, Counsel

For the Respondents : Mr. B. Manat, Counsel

[Signature]

ORDER**Per Dr. Nandita Chatterjee, Administrative Member:**

The instant applicant, an aspirant for mutual transfer, has challenged the rejection order of the respondent authorities dated 8.8.2018 (Annexure A-2 to the O.A.) in this Original Application.

2. Heard both Ld. Counsel, examined pleadings and documents on record.

3. The matter, in a narrow compass, is that the applicant, a compassionate appointee posted as Technician Gr. III, had applied for mutual transfer in association with one Niranjan Kumar, Technician Gr. III and their applications were duly forwarded to the competent respondent authority for consideration but the prayer of the applicant for mutual transfer was rejected. The applicant has approached the Tribunal challenging the said rejection order on the following grounds:-

(i) That, RBE Circular No. 107 of 2007 prescribes mutual transfer involving exchange between similar communities.

(ii) That, mutual transfer within candidates directly recruited against vacancies is only applicable in the case of general candidates and the applicant herein as well as Shri Niranjan Kumar are both SC candidates.

(iii) and, that, in accordance with RBE Circular No. 107 of 2007, the principle of bottom seniority will not apply in case of mutual transfers.

4. The respondents, per contra, would controvert the claim of the applicants by referring to the provisions of RBE No. 107 of 2007, particularly, paras 1(i), 2.1 and 3.1 in support as well as Clause 2(ii)(b) of RBE No. 134 of 2007, to drive home the point that mutual transfer is

only permissible against candidates recruited in specific quota such as DR quota. While the applicant herein had been appointed on compassionate ground in DR quota, the other aspirant transferee, being a candidate promoted from the category of Helper, does not possess the requisite technical qualifications for appointment in DR quota and, accordingly, as per the rule, a non-qualified candidate, who does not merit recruitment in DR quota cannot be mutually transferred against the applicant, a compassionate appointee who has been inducted in the DR quota.

5. As adjudication of the instant issue involves examination of the rules furnished by the parties in support, we would primarily refer to RBE No. 107 of 2007 dated 14.8.2007 which deals with transferees on mutual exchange basis. The provisions of the said RBE reads as follows:-

“ RBE No. 107/2007

Subject: Transfer from one Railway/Division/Unit to another Railway / Division/Unit on request on bottom seniority and on mutual exchange basis.

[No. E(NG)I-2004/TR/16, dated 14.8.2007]

In terms of extant procedure vide paras 102A, 310 and 312 of Indian Railway Establishment Manual, Vol.I, 1989, read with administrative instructions issued from time to time, request transfers are allowed from one seniority unit to another in the following manner:-

- i) On bottom seniority in grades having direct recruitment against vacant direct recruitment quota posts subject to the condition that the employee requesting transfer fulfils the qualification prescribed for direct recruitment to the post; and
- ii) On mutual exchange basis in any grade on own seniority or seniority of the employee with whom the exchange takes place, whichever of the two is lower.

2. The staff side have raised a demand in the forum of DC-JCM that the extant provisions regarding regulating transfers on request may be modified suitably as such transfers are being allowed without having regard to the operation of post-based rosters resulting in shortfall of the particular categories in the unit from which transfers take place and excess of that categories in the unit to which the employees are transferred thereby blocking in the latter unit, promotional/employment opportunities.

2.1. Separately, the High Court of Kerala at Ernakulam vide their order dated 07.06.2005 in O.P No. 2150/02 while partially upholding the order of CAT, Ernakulam Bench dated 31.12.2001 in OA No. 851/1999, have held that mutual transfers should be allowed between staff belonging to the same category (i.e. General with General, SC with SC and ST with ST). Subsequently in OA No. 612/2005 the CAT, Ernakulam Bench have directed that the Railway

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Board should decide the policy arising out of High Court of Kerala's order dated 07.06.2005 as expeditiously as possible.

3. In the light of the above, the matter has been considered carefully by the Ministry of Railways. It has been decided that in order to maintain the balance in the post-based rosters with reference to reservations prescribed for SC and ST staff and to avoid hardship to staff in the feeder grade in the matter of their promotion, transfers on mutual exchange basis should be allowed between employees belonging to the same category (i.e. General with General, SC with SC and ST with ST).

3.1. However, transfers on bottom seniority in recruitment grades need not be restricted with reference to points in the post-based rosters. The procedure being followed generally in this regard to adjust shortfall/excess in future may continue. But such transfers should be allowed only repeat only against vacant direct recruitment quota posts and not against promotion quota posts.

4. The above instructions do not in any way alter the existing procedure as laid down by this Ministry regarding operation/maintenance of post-based rosters."

Further, the provisions of RBE No. 134 of 2007 dated 22.10.2007 which also is on the subject of transfers on mutual exchange basis reads as follows:-

"RBE.No.134/2007

Sub: Transfer from one Railway /Division/ Unit to another Railway / Division / Unit on request on bottom seniority and on mutual exchange basis.

[No. E(NG)I-2004/TR/16, dated 22.10.2007]

In terms of instructions contained in this Ministry's letter of even number dated 14-08-2007, mutual transfers have been restricted between employees belonging to the same community as the change disturbs roster points in post based roster. However, no restriction has been imposed on transfer on bottom seniority in recruitment grades. In the context of these instructions, the following doubts have been raised:

- [i] Whether the restriction does not apply to employees belonging to OBCs as the same has not been mentioned in the instructions *ibid*; and
- [ii] Whether the restrictions on mutual transfer will apply when such transfers take place in recruitment grades.

2. The matter has been considered carefully and the same is clarified item-wise as under:

[i] There being no reservation in posts filled by promotion for OBCs, the term 'General' should include OBCs also. In other words, staff belonging to General /OBC categories may contract mutual transfers with staff belonging to General / OBC.

[ii] In view of the fact that the instructions do not impose any restriction on transfer on request on bottom seniority in recruitment grades mutual transfers in the recruitment grades will also be allowed without restriction provided:

[a] the posts in the grade are entirely filled by direct recruitment from open market; e.g. the category of Staff Nurse in grade Rs.5000-8000; and

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[b] in cases where posts in the grade are partly filled by promotion and partly by direct recruitment, both the employees seeking mutual transfer should have been recruited directly from the open market; the intention being that both of them should be borne in the post-based rosters maintained for direct recruitment. In other words, if one or both the employees are borne in the post-based rosters maintained for promotion, the restriction on mutual transfer as per instructions dated 14-08-2007 will apply."

Upon close examination of the provisions of the above mentioned RBE, the following transpires:-

- (i) Request transfer on mutual exchange basis are to be allowed in any grade on own seniority or seniority of the employee with whom the exchange takes place, whichever of the two is lower.
- (ii) As per the decision in the Hon'ble High Court of Kerala at Ernakulam in O.P. No. 2150/02, it was held that mutual transfers should be allowed between staff belonging to the same category, and, accordingly, the Railway Board has decided that transfer on mutual exchange should be allowed between employees belonging to the same category namely, General to General, SC with SC and ST with ST respectively.
- (iii) All such transferees on mutual exchange basis should be allowed only against vacant direct recruitment quota posts and not against promotional quota posts.
- (iv) In cases where the posts are partly filled by promotion and partly by direct recruitment, both the employees seeking mutual transfer should have to be recruited directly from the open market, namely, the restrictions on mutual transfer as per instructions dated 14.8.2007 will apply.

Hence, it transpires from a detailed reading of the said RBEs that such mutual exchange is permissible only in the case of candidates who have been recruited from the open market and should be borne on post based rosters maintained for direct recruitment.

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6. The respondents have categorically stated that Shri Niranjan Kumar was recruited as a Helper borne in promotional quota who does not possess the requisite technical qualifications for induction/absorption against DR quota and, in following SER Estt. Srl No. 135/1997 and 181/97 no direct recruits could be placed in a promote roster or vice-versa. Similarly, SER Estt. Srl. No. 215/2005 mandates that the promotes cannot be placed in the DR quota reservation roaster, particularly, in the context of the fact that he has not qualified in "Course completed Act Apprentices/Passed ITI in Relevant trade" as mandated by Para 150 of IREM.

The applicants' primary argument is that as the applicant and Shri Niranjan Kumar both belong to SC category, mutual exchange between categories should apply in her case and that the reference to Clause 3.1 of RBE Circular No. 107/2007 which relates to bottom seniority should not apply in the case of their prayers for mutual transfer.

7. We, however, are of the considered view that RBE 107/2007 as well as RBE. 134/2007 have to be read in totality along with SERs Estt. Srl. No. 135/1997, Estt. Srl. No. 181/97 as well as Para 150 of IREM. A comprehensive reading of such provisions leads us to conclude that mutual exchange is permissible between two candidates recruited from open market against post based rosters maintained for direct recruitment, and, that, such mutual exchange would be confined between General to General, SC to SC and ST to ST categories.

Admittedly, in the absence of averments to the contrary, Shri Niranjan Kumar does not possess the requisite qualifications to qualify in the DR quota. Ld. Counsel for the applicant would refer to Annexure A-1 to the O.A. wherein the designation of Shri Niranjan Kumar has been noted as Technician III / Fitter. The form, however, has been filled up by

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the applicants to such mutual exchange and the fact that Shri Niranjan Kumar could have held such post purely as a promotee have not been controverted by the applicant at any stage.

8. Accordingly, we find that given the provisions of RBEs, supporting Estt. Serials as well as the IREM , Shri Niranjan Kumar is not qualified to claim mutual exchange with the applicant. Hence the claim fails.

In case, however, the applicant is able to ascertain willingness for mutual transfer from a DR candidate, who is also an SC, she will be well within her rights to make such prayers, upon receipt of which the respondent authorities will decide as per law and, particularly, in terms of the provisions of RBE No. 107/2007 (supra).

6. With these directions, the O.A. is disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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