

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

KOLKATA BENCH

An application under Section 19 of the Administrative
Tribunals Act, 1985.

O. A. NO. 350/1101 OF 2018

In the matter of:

Jaipal Kerketta, son of Bro Kerketta
of Jyotish Tower, Flat No. 1A,
Buddha Village, Asansol- 713301
working as SSE/ELS/TRS/ASN at
Asansol, Eastern Railways, Asansol

..... Applicant.

-VERSUS-

1. Union of India, service
through the General Manager,
Eastern Railway, 17, Netaji Subhas
Road, Kolkata- 700001.
2. The Railway Board, Ministry
of Railways, Government of India,
Rail Bhaban, New Delhi-
3. The General Manager, Eastern
Railway, having his office at 17,

Netaji Subhas Road, Kolkata-
700001.

4. Divisional Railway Manager,
Eastern Railway, having his office at
Asansol, P.O- Asansol, District -
Paschim Burdwan, PIN: 713301

5. Principal Chief Personal
Officer, Eastern Railway, having his
office at 17, Netaji Subhas Road,
Kolkata- 700001.

6. The Senior Divisional personal
Officer, Eastern Railway, Asansol
having his office at his office at P.O-
Asansol, District - Paschim
Burdwan, PIN : 713301

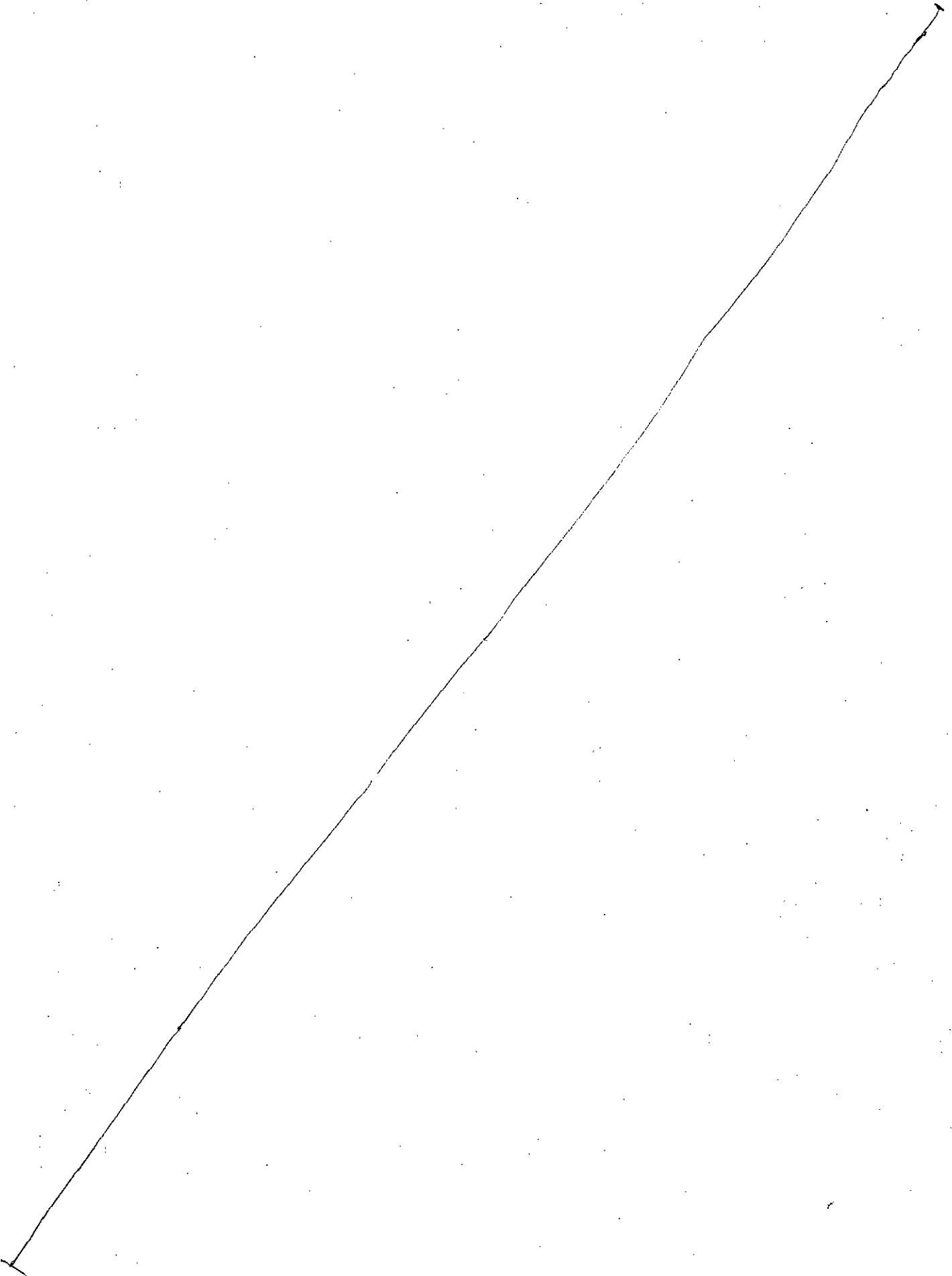
7. The Assistant personal
Officer (I), Eastern Railway, Asansol
having his office at his office at P.O-
Asansol, District - Paschim
Burdwan, PIN: 713301

8. Pramod Bhagat, son of
Ganesh Bhagat, working at JE at

ELS/ BHILAI, Raipur, S.E.C

Railways PIN : 492001

---- Respondents.



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A.350/1101/2018

Date of order : 25.02.2020

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

SHRI JAIPAL KERKETTA
VS.
UNION OF INDIA & OTHERS
(Eastern Railway)

For the applicant : Md. T. Khan, counsel

For the respondents : Mr. B.P. Manna, counsel

ORDER

Bidisha Banerjee, Judicial Member

This application has been preferred to seek the following reliefs:-

- "a) An order directing the respondents, their agents, subordinates and successors to rescind, cancel and/or withdraw the purported decision communicated by the respondents under memo dated 03.01.2017, 11.04.2018 and 13.07.2018 respectively to this application;
- b) An order directing the respondents, their agents, subordinates and successors to allow that applicant to retain his post of SSE/ELS/TRS/ASN at Asansol forthwith without any hindrance from any quarters;
- c) An order directing the respondents, each one of them their men, agents, staffs, subordinate and associates to certify and transmit to this Hon'ble Tribunal relevant documents pertaining to the present case so that conscionable justice may be administered by directing them to forthwith;
- d) Costs of and/or incidental to this application be borne by the respondents;
- e) Such further and/or other order or orders be passed and/or direction or directions be given, as to this Hon'ble Tribunal may deem fit and proper."

2. The admitted facts that could be culled out from the pleadings of the parties are as under:-



The applicant at present is working as SSE at Eect/TRS department at Asansol. In the year 2012, the applicant, the then Junior Engineer/TRS/Asansol in PB-2(Rs.9300+34800/-+GP Rs.4200/-), Level-6 in 7th CPC, prayed for inter railway mutual transfer with one Sri Pramod Bhagat, Junior Engineer/BIA/Raipur Division of South East Central Railway. The mutual transfer was approved after almost 4 years on 13.12.2016 and was communicated by PCPO/ER vide L/No.E.1140/IRMT/Elect/Pt.XVI/RTI(Loose) dated 13.12.2016(Annexure R/1 to the reply). Meanwhile the applicant was promoted to the post of SSE on cadre restructuring with effect from 01.11.2013 and was asked to give his willingness to join in place of Sri Pramod Bhagat, Junior Engineer/BIA/Raipur Division vide communication dated 16.01.2017. In response to the same the applicant expressed his unwillingness to join the lower posts of Junior Engineer. Sri Pramod Bhagat however joined the lower post of J.E. in terms of the order dated 11.04.2018 as contained in Annexure R/8 to the reply. On 24.05.2018 it was intimated to the applicant that mutual transfer is a contract between two employees and therefore he cannot be allowed to backtrack. Aggrieved as such, the applicant preferred O.A.No.350/596/2018 with was disposed of by this Tribunal on 15.05.2018 with liberty to the applicant to prefer a comprehensive representation ventilating his grievances within 15 days and the competent respondent authority was directed to consider and dispose of the same keeping in mind the earlier application of the applicant for treating his application for



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mutual transfer as cancelled in view of his promotion to the post of SSE and to issue appropriate reasoned order as per rules within a period of three months from the date of receipt of the representation.

3. Pursuant thereto, a comprehensive representation was preferred on 17.05.2018 which was disposed of by a speaking order dated 13.07.2018 issued by Senior Divisional Personnel Officer, Eastern Railway, Asansol communicated vide letter dated 16.07.2018. Relevant portion of the speaking order dated 13.08.2018 is reproduced below for ready reference:-

"The timeline framed by Railway Board(Sl. No.131/2017) for disposal of Inter Railway mutual transfer cases has been made effective from 22.09.17 i.e. after his case was approved by competent authority of both Zonal Railways. It may be highlighted here that in Para-3 of RBE No.131/2017, it has been clearly mentioned that "no request for backtracking from the mutual exchange arrangement will be entertained under any circumstances."

Shri Kerketta has accepted all the terms and conditions of mutual transfer prescribed under relevant rules. He has self declared at Point No.13 of Form "D"(Application for Inter-Railway and Inter-Divisional Transfer) that he shall not withdraw from the mutual consent given to and also as per Declaration Form Point No.(viii) he shall not seek re-transfer to Asansol Division.

Moreover, mutual transfer is nothing but a contract between two serving employees binding both the parties involved in the transfer and violation of agreement/contract is not acceptable as per extant rules. The case of Shri Kerketta is not tenable as per existing Railway rules as it is certainly a breach of contract and violation of agreement/contract. He should be released from this Division/Railway to South East Central Railway forthwith on reversion to the post of JE/Elect/TRS in Level-6 of 7th CPC on his Inter-Railway mutual transfer as his counterpart has already joined this Division/Railway as Junior Engineer/Elect/TRS in Level-6 on reversion from the post of SSE/Elect/TRS in Level-7.

This disposes of Hon'ble CAT/CAL's order dated 15.05.18 passed in O.A.No.350/596 of 2018."

4. The issue that has cropped up for determination in the present O.A. is whether the applicant could backtrack from his earlier request for transfer on mutual exchange with another railway employee.



5. At hearing, Id. counsel for the applicant would place decision of Hon'ble High Court at Patna dated 1st August, 2017 in **CWJC No.17826 of 2016(Union of India & Others vs. Shri Sudarshan Kumar)** and also the decision of Allahabad Bench of this Tribunal in **O.A.No.330/334/2017(Vinesh Kumar vs. Union of India & Others)** rendered on 24.04.2018, citing instances where such backtracking has been permitted on the ground that the respondents have accepted the request after a considerable delay. The order passed by the Hon'ble High Court at Patna dated 1st August, 2017 in **CWJC No.17826 of 2016(Union of India & Others vs. Shri Sudarshan Kumar)** records the following (extracted with emphasis for clarity):-



"An application for mutual transfer was filed before the competent authority on 05.04.2013. The final order, accepting the request for mutual transfer, was passed on 04.02.2016, after almost three years. In the meantime, the person making request for mutual transfer got a promotion, and, therefore, in the changed circumstances, wrote a letter withdrawing his consent, but, then, the authorities quoted a Railway Boards Circular that once a consent always a consent has been used for rejecting such prayer against the transfer. The authorities had to understand the Circular of the Railway Board in the context in which it has been issued, as the facts have undergone a change during the long pendency of the request for mutual transfer, then, the changed circumstances would be required to be considered and revisited. There should not be a rigidity of such kind on that level in the decision making especially at the level of superior authorities. It was not the fault of the private Patna High Court CWJC No. 17826 of 2016 dt. 01-08-2017 respondent that it took three years for the authorities to approve the mutual transfer case and it was also not the fault of the private respondent that the Railway has granted him promotion which changed his status, and, therefore, he made a request for withdrawal and reconsideration.

In these backgrounds, the observation of the Tribunal that prima facie the decision seems to be tainted with mala fide, coupled with unreasonableness may sound too harsh, but, then, there is no other way of describing the manner in which the Railways have gone about taking a decision and trying to force it upon the private respondent.

No interference is required to be made with the impugned order dated 8th April, 2016 passed in O.A. No. 285/2016 by the Tribunal.

The writ application is dismissed being devoid of merit;"

While the Hon'ble High Court at Patna in Civil Review No.444 of 2017(CWJC No.17826/2016) further recorded as under:-

"The dispute lies in a very sort compass where before the Tribunal two employees of Technician Grade-III had made a request for mutual transfer.

The circular of Railway Board is to the effect that at Patna High Court C. REV. No. 444 of 2017(4) dt. 03-04-2019 the time of forwarding the application for mutual transfer, no request for back tracking from the mutual exchange arrangement will be entertained under any circumstances. This is provided for in the Railway Board Circular dated 21st April, 2006.

Learned counsel for the applicants has invited the attention of the Court to the order dated 23-11-2015 of the Central Administrative Tribunal, Kolkata Bench in relation to the consideration of such circular, in the aforesaid circumstances, that the same would also apply here hence, the Division Bench without consideration thereof has erroneously proceed to assume that there were circumstances which were available for allowing the mutual transfer to be withdrawn.

We have considered the submissions raised and we find that the order of the Tribunal dated 8th April, 2016 which was under challenge before this Court categorically records that the employee had been promoted to Grade-II. It is long thereafter, that the impugned order was passed on 04.02.2016 giving effect to a transfer in respect of the mutual transfer to a Technician Grade-III employees.

In our considered opinion, the very foundation of the mutual transfer vanished with the promotion of the employee Patna High Court C. REV. No. 444 of 2017(4) dt. 03-04-2019 and therefore, the applicability of the Railway Board Circular as urged on behalf of the applicants does not appear to be in accordance with law. We are, therefore, clearly not inclined to entertain this review application on any such ground as raised in the review application."

6. The Allahabad Bench of this Tribunal in O.A.No.330/334/2017(Vinesh Kumar vs. Union of India & Others) considered the Board's order dated 04.12.2007 that requests for mutual transfers should be proceeded/accepted as soon as they are received subject to fulfilment of prescribed conditions and having noted that there was no rule or instruction of Railway Board permitting reversion of the applicant to implement his request for mutual transfer



and unexplained delay in processing and implementing the applicant's request for mutual transfer, quashed the impugned order passed by the authorities.

7. In the present case, we discern that the applicant, while a Junior Engineer (JE in short), had preferred an application for mutual transfer in 2012 with a Junior Engineer. The respondents sat tight over the matter until January, 2017. Meanwhile the applicant got promoted to a higher post of Senior Section Engineer (SSE) and is already serving as such. At this juncture, compelling him to join a lower post of J.E. may amount to his reversion entailing civil consequences which is not permissible unless ordered in accordance with law.

8. Accordingly, we quash the impugned orders and direct the authorities to consider the case of the applicant in the light of the decisions cited above and issue appropriate orders within a period of 2 months from the date of receipt of this order.

9. Meanwhile the applicant shall continue as SSE.

10. The present O.A. accordingly stands disposed of. No order as to costs.



(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member