

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

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No. O.A. 350/01582/2019

Date of order: 17.12.2019

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

Sri Arnab Mukherjee (ECRC),
C/o. Kanti Bhusan Chakraborty,
Surya Sen Road,
Purba Rabindrapally,
Wirelessgate,
Post Office – Nonachandanpukur,
Barrackpur,
Kolkata – 700 122.

.... Applicant

- V E R S U S -

1. Union of India,
Service through the General Manager,
Eastern Railway,
17, N.S. Road,
Kolkata – 700 001.
2. Chief Personnel Officer,
Eastern Railway,
17, N.S. Road,
Kolkata – 700 001.
3. Divisional Manager,
Sealdah,
Eastern Railway,
Kolkata – 700 014.
4. Senior Divisional Personnel Officer,
Sealdah,
Eastern Railway,
Kolkata – 700 014.
5. Senior Divisional Personnel Officer,
Mysuru South Western Railway,
Mysuru,
District – Karnataka,
Pin – 570 001.

... Respondents

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For the Applicant : Mr. T. Roy, Counsel
 For the Respondents : Mr. H. Ghosh, Counsel

O R D E R (Oral)

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached this Tribunal under Section 19 of the Administrative Tribunal Act, 1985 praying for the following relief:-

"(i) Directed to withdraw and/or cancel the purported order dated 07.11.2019 passed by the Senior Divisional Personnel Officer, Eastern Railway/Sealdah communicated to the applicant vide No. E.3/DIVN&INT.RLY.EFR/ECRC/2015 dated 11.11.2019 issued by Divisional Personnel Officer, Eastern Railway, Sealdah being annexure "A/14" to this application.

(ii) Direct the concerned respondent to allow the applicant to work under Sealdah Division on the basis of his joining on 10.7.2019 forthwith and to pay the salary from the date of joining on 10.7.2019 to Sealdah Division and to go on paying the current salary month by month without any further delay.

(iii) Any other order or orders, direction or directions as this Hon'ble Tribunal may deem fit and proper."

2. Heard rival contentions of both Ld. Counsel, examined documents on record as well as instructions brought forth by Ld. Counsel for the respondents in compliance to directions of this Tribunal.

3. The applicant was appointed as a Commercial Clerk in the Sealdah Division of Eastern Railway on 18.1.1995. On 18.10.2012, the applicant, ECRC/BTY, was transferred to South Western Railway, Hubli as per recommendations of the Vigilance and was spared from the Sealdah Division of Eastern Railway on 21.8.2013. The applicant, who, thereafter was functioning as ECRC/NTES of MYS Division of South Western Railway, obtained a letter of repatriation dated 13.5.2019 on his own request.

On 31.7.2018, the applicant had prayed for his repatriation to his original Zonal Railway (Annexure A-2 to the O.A.), on the ground that the major penalty proceedings against him have been concluded, and, that, as he has accepted the penalty so imposed on him, he may be allowed to



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be repatriated. The authorities in South Western Railway sought the approval of their competent authority towards such inter Railway request transfer of the applicant, and, thereafter, decided to repatriate the applicant to ECRC/SDAH Division of Eastern Railway, with the approval of General Manager, South Western Railway (Annexure A-4 to the O.A.). The applicant was relieved vide an order dated 5.7.2019 (Annexure A-6 to the O.A.).

The applicant reportedly joined his duties at Sealdah Division of Eastern Railway on 10.7.2019.

The respondents would argue in their speaking order, and, also in their written instructions, that, as no reference had been received by the Eastern Railways from any authority of South Western Railway to accommodate him in the Sealdah Division of the Eastern Railway, the applicant was thereafter directed to return back to DRM (P)/MYS Division, namely, to his former place of posting at Mysuru.

The respondents would, in support, cite Railway Board's Circular dated 23.10.2006 on the subject of Inter Divisional transfer of Commercial staff, which states as follows:-

"..... it has been decided that the request for transfer by the staff who were earlier shifted to another Division on administrative ground/vigilance ground, may be considered for transfer to their original Railway, but not to their original Division on case to case basis, subject to acceptance by **both the concerned General Managers i.e. relieving and accepting.**"

Respondents would further contend that the approval of General Manager, Eastern Railway was not obtained prior to the unilateral repatriation of the applicant by South Western Railway.

4. Ld. Counsel for the applicant would vociferously agitate that, upon being spared from Mysuru Division consequent to his request to be repatriated to his parent Railway, the applicant reported to the Sealdah Division, Eastern Railway on 10.7.2019, but, ever since such joining, neither the concerned authorities have assigned any duties nor have paid

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the applicant his salary. On the other hand, the respondent No. 3, who is the Divisional Railway Manager, Sealdah, Eastern Railway, had issued an order dated 13.8.2019 directing that the applicant be returned to the Mysuru Division, which the applicant has challenged in the instant Original Application.

5. From the rival contentions, it transpires that, although the competent authority in Eastern Railway was yet to accord approval to such inter-Railway transfer, the authorities in South Western Railway had repatriated him vide their orders dated 13.5.2019 to Sealdah Division along with post which had been earlier transferred to Mysuru Division on 18.10.2012.

The applicant had earlier approached the Tribunal in O.A. No. 1389 of 2013 which was disposed of on 15.10.2019 by the Vacation Bench of this Tribunal with directions on the competent authority to look into the grievance of the applicant and to release his salary within a period of one week from the date of receipt of a copy of this order if nothing stands in the way.

6. As reiterated by the respondents, the applicant is not entitled to be posted to the original Division in his parent Railway, particularly, as he was shifted to another Division on administrative/vigilance ground and that the applicant cannot be accommodated in the Sealdah Division and, accordingly, as because his joining in Sealdah Division was unauthorized, he has neither been assigned his duties nor released any salary thereafter.

7. Both Ld. Counsel, however, would agree that, to resolve the complications arising out of the unilateral repatriation and unauthorized joining of the applicant in the Eastern Railways without approval of the competent authority, the approval of the competent authority, namely,



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respondent No. 1 may be obtained in accordance with law to regularize the repatriation of the applicant in his parent Railway, namely, Eastern Railway in a Division other than the Sealdah Division.

If so posted, and, if nothing stands in the way, his salary would be disbursed to him from the date of joining the said post.

The interim period may be regularized as per law subject to availability of leave in his account and the competent respondent authority shall decide on his entitlements thereof.

8. With these directions, the O.A. is disposed of. There will be no orders on costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member



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