

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

Original Application No.305/2020

Dated this the 4th day of February 2021

CORAM:

Hon'ble Sh. Jayesh V. Bhairavia, Member (J)

Hon'ble Dr. A.K. Dubey, Member (A)

Mahesh Chandra Agrawal,
Male, aged about 40 years,
Son of Shri Radhe Shyam Agrawal,
Occupation: Station Master, Patan,
Residing at:
12, Kumarpal Society,
Near Sidhpur Circle,
Chanasma Highway,
Patan.

...Applicant

(By Advocate Mr.Rahul Sharma)

Vs.

1. The General Manager,
Western Railway, Churchgate,
Mumbai – 400 020.
2. The General Manager,
North-Western Railways,
Sector 11,
Malviya Nagar,
Jaipur – 302 017.
3. The Divisional Railway Manager,
Jaipur Division,
Power House Road,
Jaipur – 302 006.
4. The Divisional Railway Manager,
Ahmedabad Division,
Opposite GCS Hospital, Naroda Road,
Ahmedabad. Respondents

(By Advocates Mr.M.J.Patel
& Ms.Nisha Parikh)

O R D E R (Oral)
Per: A.K.Dubey Member (A)

1. The applicant has preferred this OA seeking the following reliefs:-

“8A This Hon’ble Tribunal be pleased to quash and set aside the impugned letter, dated 31.08.2020, of Respondent No.3, giving No objection Certificate (NOC) for the acceptance, on transfer on their own request, of 31 Station Masters into Jaipur Railway Division, which letter has been annexed at ANNEXURE ‘AI’ to this application;

B This Hon’ble Tribunal be pleased to direct Respondent No.2 and Respondent No.3 to consider the application of the applicant for request-transfer, considering his date of application as 10.12.2020 and issue a No Objection Certificate in his respect, if he is otherwise eligible for transfer, within one month of the disposal of this application;

C. This Hon’ble Tribunal may be pleased to grant any other and further reliefs, as the nature and circumstances of the present case may require and in the interest of justice.”

2. The applicant herein had joined the service under the respondents as Assistant Station Master (ASM) on 13.12.2005 and after training he was posted at Piprala Railway Division. He applied for his inter-railway transfer to Jaipur division (North Western Railways) as his “own request” (Annex.A/2). Respondent No.4, i.e., DRM Ahmedabad forwarded a list of Station Masters/ ASMs, who had requested for inter-railway transfer, to the Respondent No.1, General Manager, Western Railway, Churchgate, Mumbai. This list included the name of the applicant at Sl.No.5 (Annex.A/3).

2.1 The applicant preferred another representation dated 22.05.2018 pursuant to which, the 1st respondent sent a reminder to the 2nd respondent i.e. General Manager, North Western Railways, Jaipur to ascertain the status of the applicant’s request for inter-railway transfer. This reminder was sent together with a copy of the application form (Annex.A/4). In this regard, the 4th respondent, DRM, Ahmedabad sent a reminder dated 28.01.2019 to various General Managers of respective railways (Annex.A/5) where, in the list of requests for inter-railway transfer, applicant’s name was at Sl. No.3. The applicant made representation yet again on 30.01.2019 and the 1st respondent yet again forwarded the representation to the 2nd respondent on 26.06.2019 (Annex.A/7).

2.2 The learned counsel for the applicant submits that despite several representations, applicant’s name was not included in the list, even though

many other officials who had applied later than him, had received NOC from the respondent No.3. The learned counsel argued that the Railway Board had a comprehensive transfer policy; Para 229 of the General Conditions of Service provided for transfer on request (Annex.A/8). Further, para 5 of the Master Circular No.24 contains provisions for transfer on the basis of requests (Annex.A/9). The main argument is that despite having applied in 2011, the applicant's request for inter-railway transfer has not been considered yet, even though the officials who applied later than him have received NOCs for such "own request inter-railway transfers". It is because of this that the applicant seeks to get the impugned order dated 31.08.2020 quashed.

3. Respondents have filed their reply.
 - 3.1 Respondent Nos.1 & 4 namely, General Manager, Western Railway and DRM, Ahmedabad have filed their reply through their Standing Counsel Mr. Manish Patel. Respondent Nos. 2 and 3 namely the General Manager, North Western Railways and the Divisional Railway Manager, Jaipur have filed their reply through their counsel Ms. Nisha Parikh. In their reply, respondent Nos.1 & 4 have contended that they had forwarded the application of the applicant to GM (E) CCG vide letter dated 05.01.2011. Similarly, the applicant's representation dated 22.05.2011 was forwarded to GM(P), Jaipur vide letter dated 11.06.2018. Their reply also states that Western Railway, HC-CCG had forwarded the letter alongwith Xerox copy of the employees' application, to GM(P) on 30.06.2019. In this letter, it had also been mentioned that further correspondence was to be made directly with the concerned Division/Railway as per Railway Board's letter No.2018/Trans/1/Policy dated 09.04.2018.
 - 3.2 The reply of the respondent Nos.2 & 3 stated that the request of the applicant dated 24.01.2011 was never received by them. However, when reference from Western Railway vide letter No.E/d/1140/68/4/ASM/R/B-1 dated 11.06.2018 with the Xerox copy of the applicant for transfer application was received by the respondent Nos. 2 and 3 on 20.06.2018, it was processed and applicant's name was entered in the priority list of said transfer at Sl.No.100. This had also been communicated to the respondent No.4 vide office letter No.939/ET/ASM/1 Part-7 dated 05.09.2018 by respondent No.3. A copy of this letter is at Annex.R/1. Respondent Nos.2 & 3 contend that the original request was never received in 2011. This non-receipt of the applicant's

request dated 24.01.2011 was communicated to the DRM(E) vide letter dated 17.03.2019 (Annex.R/2). The respondents have contended that they have always been adhering to the extant rules and policy directives/instructions.

4. Heard the arguments of counsel for the respondents and parties.
 - 4.1 It has emerged from the records and arguments that the applicant had applied for inter-railway transfer as early as in 2011 which was forwarded by the 4th respondent to the first respondent. Upon not receiving any response, the applicant gave another representation on 22.05.2018 on the basis of which, the first respondent sent a letter dated 11.06.2018 to the 3rd respondent (Annex.A/4). Further, vide letter dated 28.01.2019 (Annex.A/5), the fourth respondent wrote to various regional railways.
 - 4.2 Respondent Nos. 2 & 3 maintained that they never received the communication of 2011; they got to know of it only in 2018 and thereafter they processed it, to include in the priority list which is at Srl. No.100. The 3rd respondent also responded to the letter of the 1st respondent vide letter dated 07.03.2019 (Annex.R/2). Further, vide letter dated 28.01.2020, the 3rd respondent has sent the applicant's details to the 2nd respondent (Annex.R/3).
 - 4.3 The applicant's counsel has also brought to our notice that the implication of delayed transfer is the loss of seniority. Therefore, there is an implication of such delay even if it is attributable only to the office procedures. It is not convincing that after 7 years, the matter did not materialise even as the people who applied later than him got the NOC/transfer.
5. After going through the documents and records placed before us and hearing the arguments of the counsel for the respective parties, we are of the opinion that the applicant has been able to make out the case for himself that he had applied for inter-railway transfer, through proper channel and his administrative office had forwarded his request to the Zonal Railway HQs to act upon it. It is not in dispute that the matter was of including the applicant's name in the priority list for inter-region transfer which, upon receiving his representation in 2018 was acted upon. However, the applicant's contention is that such delay had advertantly affected his case.
6. Taking into consideration the factual matrix of this case, the documents produced before us and the arguments of the counsel for both parties, we are

of the opinion that the applicant has been able to make a valid case for himself. We see his request, though sent through proper channel and as per rules, remaining unattended for almost seven long years. In our considered view, the OA succeeds. Accordingly, the impugned order (Annex.A/1) is quashed and set aside. We direct respondent Nos. 2 & 3 to assign proper place in the list of applications for inter-railway transfer on 'own request basis', taking into consideration, the original date of application by the applicant i.e.10.12.2010 (which was forwarded by DRM(E),Ahmedabad to GM(E), CCG vide letter dated 05.01.2011 Annex.A/3), as the reference date. We further direct that consequent upon assigning appropriate place in the list of requests for inter-railway transfer, the respondents Nos.2 & 3 shall issue the modified order incorporating the name of the applicant at the appropriate position and thereafter the revised NOC shall operate in *seriatim*. However, we do not intend to reopen any old or settled case. Aforesaid direction should be complied within a period of eight weeks from the date of receipt of a copy of this order. OA is disposed of as above.

A.K.Dubey
(Administrative Member)

Jayesh V. Bhairavia
(Judicial Member)

SKV