

Reserved On 16.10.2020

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD**

(This the 26TH Day of **October, 2020)**

**Hon'ble Mr. Justice Vijay Lakshmi, Member (Judicial)
Hon'ble Mr. Devendra Chaudhry, Member (Administrative)**

**Misc. Application No.945 of 2020 (Stay Vacation Application)
In
Original Application No.330/425 of 2020**

Parshuram Tripathi **Applicant**

By Advocate: **Shri Ravindra Narain Singh**

Versus

Union of India & Others. **Respondents**

By Advocate: **Shri P.K. Rai**

O R D E R

Delivered by Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)

Order on MA No.330/945/2020

Instant MA is a stay vacation application filed by the respondents with prayer to vacate the interim order dated 11.09.2020 passed in OA No.425 of 2020.

2. We have heard Shri Ravindra Narain Singh, learned counsel for the applicant and Shri P.K. Rai, learned counsel for the respondents and perused the pleadings available on record.

3. The applicant by means of the instant OA, has challenged his transfer order dated 19.06.2020, whereby he has been

transferred from the post of Station Superintendent, Deoria to the post of Station Superintendent, Nunkhar Railway Station.

4. The impugned transfer order dated 19.06.2020 has been challenged by the applicant mainly on the ground that the transfer order has been passed in violation of the circular dated 12.05.2020 issued by Railway Board.

5. The applicant has contended that due to effect of Covid-19, the transfers of employees posted on sensitive post, have been stopped vide circulars dated 12.05.2020 and 07.08.2020, till 31st March, 2021. The post of Station Superintendent, on which the applicant is presently working, being a sensitive post as per master circular No.24, the applicant should not have been transferred. On the aforesaid ground, the applicant filed the instant OA with prayer to quash the impugned transfer order and as interim measure, it was prayed that its operation be stayed till the disposal of OA.

6. On 11.09.2020, while hearing on admission on instant OA No.425 of 2020, the Tribunal had passed the following order:-

"The present O.A has been listed during the period of Unlock - 4.

The undersigned as well as Hon'ble Mr. Navin Tandon, Member (Administrative) have joined this Division Bench on line through Video Conferencing facility.

Shri R.N. Singh, learned counsel for the applicant and Shri P.K. Rai, representing all the respondents, on advance notice, both are present in court.

Order on the point of Admission.

Heard the learned counsel for both the parties and perused the record.

The applicant is aggrieved by his transfer order dated 19.06.2020.

Learned counsel for the applicant submits that the applicant is currently posted on the post of Station Superintendent at Deoria Railway Station and the said post comes under the category of sensitive post. In support of this contention, learned counsel for the applicant has drawn our attention to Master Circular No. 24, copy whereof has been as Annexure A-1 in Compilation Part No. II, to show that the post of Station Superintendent comes under the category of sensitive post. It is further submitted that there is a Circular dated 7.8.2020 whereby all the periodical transfer of the Railway employees posted on sensitive posts have been stopped till 31st March 2021 due to pandemic of Covid -19.

On the aforesaid ground he has prayed for interim stay of the impugned transfer order.

Learned counsel for the respondents prays for and is allowed a time of 10 days to seek instructions and to file a short counter reply against the prayer for interim stay of impugned transfer order made by the applicant.

Let the short counter reply be filed within 10 days and short rejoinder reply, if any, may be filed within 3 days thereafter.

List on 30.09.2020 for consideration of interim relief.

Meanwhile, the respondents shall not take any coercive measure against the applicant.

Hon'ble Mr. Navin Tandon, Member (Administrative) has consented to this order during video conferencing.”

7. In the present Stay Vacation Application, learned counsel for the respondents has taken the plea that the impugned transfer order dated 19.06.2020 has been passed by the competent authority on the administrative ground, which is apparent from a bare perusal of the impugned order, copy whereof has been annexed as Annexure No.A-II to Compilation-I of the OA.

8. Learned counsel for the respondents has vehemently contended that the circular dated 12.05.2020, issued by Railway Board is not applicable in the present matter because the aforesaid circular is applicable in respect of only periodical transfer of the staff working on sensitive posts, whereas the transfer of the applicant has been made on administrative ground.

9. In this regard, our attention has been drawn to the circular dated 26.06.2000 (Annexure SCR-1) issued by Railway Board clarifying the position of periodical transfer of Railway employees. Clause-1 of the aforesaid circular provides that Railway employees holding sensitive posts, including those who frequently come into contact with public and/or contractors/suppliers, are required to be transferred every four years. The object of periodical transfer is that the Railway employees who are working on sensitive posts and frequently come into contact with the public or contractors/suppliers should be transferred every 4 years. The aforesaid provision does not provides that prior to completing 4 years of service, the employees working on sensitive posts cannot be transferred even on the administrative grounds. The Clause -4 of the Master Circular No.24 also provides that transfers otherwise than on periodical basis, are necessitated by

administrative requirement or occasioned by consideration of request received from the railway servant.

10. In the instant case a transfer order has been issued on the basis of administrative requirements. Therefore the same can't be said to be periodical transfer as provided in the circular dated 26.06.2000.

11. Learned counsel for the respondents has further, contended that as the aforesaid provision nowhere provides that the employees holding sensitive posts cannot be transferred prior to completing four years of service even on administrative grounds, transfer order can be issued by the administration at any time on the ground of administrative requirement.

12. In this regard, reliance has been placed by the learned counsel for the respondents on the following landmark judgments rendered by Hon'ble Apex Court:-

- i. State of U.P. vs. Siya Ram- 2004 AIR (SC) 4121.
- ii. Tushar D. Bhatt vs. State of Gujrat & another – 2009 (2) SCC 678
- iii. Rajendra Singh & Another vs. State of U.P. – 2009 (15) SCC 178
- iv. S.C. Saxena vs. Union of India & Ors. – 2006(9) SCC 583.

13. The learned counsel for the applicant has opposed the Stay Vacation Application in his short reply and has laid much

emphasis on the circulars dated 12.05.2020 and 07.08.2020. He has vehemently contended that both the aforesaid circulars are quite unambiguous leaving no scope for any interpretation by the respondents in the absence of any clarificatory circular. According to him, the transfer is always made for administrative reasons. The Railway Board while issuing both the aforesaid circulars, was well aware of it but the Railway Board has not carved out any exception in the aforesaid circular by stating that "however there can be transfer on administrative grounds".

14. It is further contended that by using all rules of interpretation, the above circular can be construed only in one way that due to Covid-19 pandemic, all transfers, be administrative or periodical or otherwise, have been postponed till 31st March, 2021.

15. It is lastly contended by learned counsel for the applicant that the ratio of judgments of Hon'ble Apex Court cited by learned counsel for the respondents in Stay Vacation Application, are not applicable to the facts and circumstances of the present case.

16. We have considered the rival contentions advanced by learned counsel for both the parties and have carefully gone

through the pleadings available on record.

17. A perusal of the order dated 11.09.2020 passed by us while hearing on admission, of the instant OA, quoted above, clearly shows that we had not stayed the impugned transfer order and had called for a short counter reply from the respondents. However, the respondents were directed not to take any coercive action against the applicant in pursuance of the impugned transfer order in the meantime.

18. The respondents along with their short counter reply have also moved the instant MA for stay vacation.

19. The main issue involved in the instant OA is whether the impugned transfer order is in the teeth of Railway Board circulars dated 12.05.2020 and 07.08.2020. For ready reference, the circular dated 12.05.2020 is quoted below:-

*“Government of India
Ministry of Railways
(Railway Board)*

*The General Manager (P)
All Indian Railways/Production Units.*

Sub:- Cancellation of Periodical Transfers of the staff.

Taking into account the extraordinary situation created by the pandemic COVID-19, it has been decided by the Competent Authority that the unimplemented periodical transfer orders of the staff working on sensitive posts be reviewed and pended till 31st July, 2020.

(Sunil)
Executive Director Estt. (N)
Railway Board

Further, the circular dated 07.08.2020 is also quoted below:-

“Government of India
Ministry of Railways
(Railway Board)

No. E(NG)I-2020/TR/2

New Delhi dated 7th August, 2020

The General Manager (P)
All Indian Railways &
Production Units.

Sub:- Cancellation of Periodical Transfers of staff.

Reference Board's letter even no. dated 12.05.2020, vide which the Railways were advised that the unimplemented periodical transfer orders of the staff working on sensitive posts be reviewed and pended till 31st July, 2020 due to the extra ordinary situation created by the pandemic COVID-19.

2. In view of the ongoing pandemic situation, on request from both the Federations i.e. AIRF & NFIR, the matter has been further reviewed by the Board, and it has been decided by the Competent Authority that the periodical transfer orders of the staff working on sensitive posts be pended till 31st March, 2021.

DA: Nil,

(D. Joseph)
Joint Director Estt. (N)
Railway Board”

20. The subject of both these circular letters is printed in bold letters as its heading, which clearly indicates that these circulars have been issued in respect of periodical transfers and not in respect of transfer on own request, transfer of administrative grounds or transfer on the ground of any other exigencies.

21. It is true that the applicant is working on a sensitive post but the impugned transfer order shows that he has been transferred on administrative grounds. Moreso, nowhere it has been stated by the applicant that he has completed 4 years at Deoria and it was his periodical transfer. Therefore, it cannot be said to be his periodical transfer, which are stopped vide Railways circulars due to pandemic.

22. The law regarding transfer on administrative grounds, is well settled by Hon'ble Apex Court in a catena of judgements and time and again it has been reiterated that if the transfer is not punitive and if the transfer order has been passed on administrative ground, the court should not interfere.

23. The substance of all the cases of Hon'ble Supreme court, cited by learned counsel for the respondents, can be summarised as under:-

- (i) Transfer is an incident of service and if a transfer is made due to exigency of service, the court would not interfere particularly when the transfer was not a mala fide exercise of power.

- (ii) A government servant has no vested right to remain posted at a place of his choice nor can he insist that

he must be posted at one place or the other because no government can function in such manner.

(iii) Government servant is liable to be transferred in the administrative exigencies from one place to other.

(iv) Transfer of an employee is not only an incident, inherent in the terms of appointment but also implicit as an essential condition of service and the courts are always reluctant to interfere with the transfer of an employee unless such transfer is vitiated by violation of some statutory provision or suffers from mala fide.

24. In N.K. Singh vs. Union of India & Ors (1994) 6 SCC 98,
the Hon'ble Apex Court has held as under:-

“6..... the scope of judicial review in matters of transfer of a government servant to an equivalent post without any adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides and violation of any specific provisions”

25. Learned counsel for the applicant, apart from challenging the transfer order on the ground of its being violative of Railway Board's circulars, has also taken the ground of some family problems, for example marriage of his son and daughter has been fixed in December, 2020 and January, 2021 and also medical treatment of his wife.

26. In **S.C. Saxena vs. Union of India (supra)** the same issue was involved before Hon'ble Apex Court and it was held that a government servant cannot disobey the transfer order by not reporting at the new place of posting. It is his duty to first report for work where he is transferred and then make a representation after his joining at the transferred place, as to what may be his personal problems. Such tendency of not reporting at new place of posting and indulging in litigation need to be curbed.

27. The relief column of the OA shows that main relief claimed by the applicant is to set aside the impugned transfer order dated 19.06.2020 and the interim relief is to stay the effect and operation of the impugned transfer order dated 19.06.2020.

28. The record reveals that the relieving order of the applicant has also been passed by the respondents on 23.06.2020.

29. In view of the above discussions in the light of the judgments rendered by Hon'ble Apex court, the **MA No.945 of 2020** (Stay Vacation Application) moved by the respondents **is allowed** and the interim order/ protection, passed by this Tribunal on 11.09.2020, whereby the respondents were

directed not to take any coercive measure against the applicant is vacated .

30. The applicant is directed to proceed to his transferred place and to join there within a period of 10 days.

31. However, he is at liberty to move a representation after joining at his new place of posting, ventilating his grievances with regard to his personal problems.

32. The learned counsel for the respondents is directed to file a detailed counter reply if he wishes to do so, within three weeks. Rejoinder, if any, be filed by the applicant within two weeks thereafter.

33. List the matter on 02.12.2020 for final hearing.

(Devendra Chaudhry)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

Sushil