

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/20/01473/2014 & MA/20/87/2015

HYDERABAD, this the 2nd day of September, 2020



Hon'ble Mr. Ashish Kalia, Judl. Member

Hon'ble Mr. B.V. Sudhakar, Admn. Member

Uttam Chouhan S/o Sri Sitaram Chouhan,
Aged about 42 years,
Senior Parcel Clerk, Vijayawada,
Vijayawada Division, SC Railway,
Vijayawada – Andhra Pradesh

... Applicant

(By Advocate: Mr. M.C. Jacob, Id. Proxy counsel
Representing Mr. E.Sukumaran)

Vs.

1. Union of India rep by
The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.
2. Sr Divisional Personal Officer,
Vijayawada Division, SC Railway,
Vijayawada - Andhra Pradesh
3. Station Supdt,
Vijayawada Station,
Vijayawada Division, SC Railway,
Vijayawada – Andhra Pradesh.
4. The Chief Personnel Officer,
South Central Railway,
Rail Nilayam, Secunderabad.
5. Sri K.Santhosha Rao,
S/o not known,
Commercial Clerk, Kakinada,
Vijayawada Divn, SC Railway,
Kakinada – Andhra Pradesh.

... Respondents

(By Advocate: Mr. Bhim Singh, Id. Proxy counsel
representing Mr. M.Brahma Reddy, SC for Rlys &
Mr. KRKV Prasad, Advocate for R-5)

ORDER (ORAL)
Hon'ble Mr. B.V. Sudhakar, Admn. Member

Through Video Conferencing:

2. The OA is filed in regard to cancellation of Inter- Railway mutual transfer.

3. Brief facts of the case are that the applicant, while working as Leave Reserve Commercial Clerk (for short "**LRCC**") in South Central Railway, applied for mutual transfer in 2010 with an employee in the same grade working in North Eastern Frontier Railway (for short "**NEF Railway**") consenting for bottom seniority. The same was approved on 25.8.2014. Applicant was promoted as Sr. Booking Clerk in 2012 and therefore, he requested for cancellation of the mutual transfer on 29.09.2014. Without considering the request, the respondents were taking steps to relieve the applicant, pursuant to the impugned order dt. 28.11.2014. An appeal was made on 10.12.2014 based on Ernakulam Bench order in OA 276/2008 dt.7.11.2008. As there was no fruitful result, the OA has been filed.

4. The contentions of the applicant are that the request for mutual transfer was made when he was in the lower grade and the transfer was approved after he was promoted to a higher grade and hence, the transfer is legally untenable. There were reasons of family welfare to seek cancellation. Willingness of the applicant was not taken up as per FR 15. Order of the Hon'ble Ernakulam Bench in OA 276/2008, on a similar issue, is in his favour wherein FR 15 was cited, which deals with transfer. 5th respondent has joined on mutual transfer in the lower post of

Commercial Clerk and hence, there should not be any difficulty to continue the applicant in the higher grade of Sr. Commercial/ Parcel Clerk.

5. Respondents 1 to 4 state in the reply statement that the applicant from SC Railway and Sri K. Santhosh, 5th respondent, from NEF Railway applied for mutual transfer on 2.2.2010 with the consent of Mr. K.Santhosh working in GP of Rs.2800 to accept the lower grade of Rs.2000 on mutual transfer in which the applicant was working. The mutual transfer was approved on 25.8.2014. However, applicant represented on 29.09.2014 that he has been promoted to the higher grade pay of Rs.2800 with prospects of further promotion and hence, he was unwilling for the mutual transfer. Such back tracking is not permitted in terms of S.C. No. 66/2006 (Annexure R-7) and the representation was rejected. In the meanwhile, 5th respondent was relieved and he was posted to Kakinada under SC Railway. Applicant was directed to be relieved but he avoided taking the order by leaving the officer abruptly and filed the OA. The Tribunal ordered status quo on 19.12.2014. Processing of Inter-Railway mutual transfer is a time consuming process. Applicant did not represent for cancellation of the mutual request before the order was issued nor did he do so even after getting promotion on 3.1.2012. Applicant has also not informed the 5th respondent about his unwillingness till the transfer order was issued, which, in fact, was on request. Backtracking on the request is breach of agreement made with the 5th respondent and against SC. No. 66/2006/ Para 310 of IREM Vol-I. Neither of the parties to the mutual transfer were relieved when the representation was made by the applicant. However, allowing the request of the applicant will create hurdles to 5th respondent's request and it will lead to shortage of manpower in NEF Railway. The 5th respondent has sacrificed his higher grade and joined in a lower grade as per the mutual transfer

order. In the application made, applicant has given an undertaking that he would not seek retransfer to Vijayawada Division nor would he withdraw his mutual consent. Hon'ble Ernakulam Bench has not considered the aspect that the mutual transfer has come into existence based on agreement between both the parties. If any withdrawal of the request has to be made, it should be made by both the parties, who have entered into the agreement.

6. 5th respondent in his reply statement has stated that once consent has been given, then applicant should not withdraw from the same and that he has accepted the mutual transfer to a lower grade. The applicant has not represented for quite some time even after he was promoted and that the applicant was in constant touch with the 5th respondent over phone till the order was issued. FR 15 does not apply to mutual transfer since it was based on request. Moreover, Railway Board orders do not permit withdrawal of mutual transfer request once the orders are issued.

7. Applicant filed rejoinder stating that he has not given consent for transfer to a lower grade. Consent for working to a lower post was not taken from the applicant as was taken from the 5th respondent. Railway Board order dated 30.4.2014 states that the senior of the two, who sought mutual transfer, has to be relieved first, but the 5th respondent, who was junior, was relieved. Circular relied by the 5th respondent are in respect of transfer in the same grade. Para 310 of IREM is irrelevant. Applicant being in touch with the 5th over phone has been denied. Applicant came to know about the mutual transfer only after it was issued.

8. Heard both the counsel and perused the pleadings on record.

9. I. Applicant applied for mutual transfer while he was working as LRCC grade on 2.2.2010, which was approved on 25.8.2014, after more than 4 years of making the request. In the meanwhile, the applicant was promoted as Senior Booking Clerk on 3.1.2012. Applicant represented on 29.9.2014 and appealed on 10.12.2014. Representation was rejected. 5th respondent was relieved on 17.11.2014 and he was posted to Kakinada on 5.12.2014. As seen from the records, the applicant was granted mutual transfer when he was in the grade of LRCC in SC Railway with another official of NEF Railway, who was working in a higher grade than the applicant. In other words, applicant expressed willingness for mutual transfer in the same grade in which he was working. However, as on the date of approval of the mutual transfer, applicant was working in a higher grade of Sr. Booking Clerk. Consequently, he would be borne in the seniority list of a higher post of different cadre. Hence, the mutual transfer, which was to be effected in LRCC grade, cannot be effected when the applicant started working in the higher grade of Sr. Booking Clerk. Such a transfer would tantamount to demotion, which will arise only in cases of disciplinary action or when the applicant voluntary consents to lower grade in mutual transfer. In respect of the applicant, both contingencies have not arisen. Hence, implementation of the mutual transfer would be impractical.

II. Further respondents have admitted that, if one of the two is working in a higher grade, then the consent of the person, who is working in the higher grade, has to be taken if he is seeking mutual transfer with a person working in a lower grade. This aspect was followed in respect of the 5th respondent while approving the mutual transfer. In respect of the applicant, when he was promoted to a higher post, to effect the mutual transfer, respondents ought to have taken his

consent to work in a lower post as stated by them. Respondents ignored to follow their own yardstick in attempting to implement the mutual transfer.

III. Moreover, there has been a delay of more than 4 years in issuing the mutual transfer. Had it been effected promptly, the issue would not have arisen. Indeed before promoting the applicant, respondents could have at least verified about the pendency of the mutual transfer and sought applicant's reconfirmation as to whether he would be still interested to seek mutual transfer to a lower grade consequent to his promotion as Sr. Commercial Clerk. Respondents have not taken this step and hence, it is their mistake. The mistake of the respondents should not recoil on to the applicant in terms of losing promotion as Sr. Booking Clerk. While observing so, we take support of the Hon'ble Supreme Court judgment in *Nirmal Chandra Bhattacharjee v. Union of India, 1991 Supp (2) SCC 363*, wherein it was held

"The mistake or delay on the part of the department should not be permitted to recoil on the appellants."

IV. Further, whenever any administrative order is issued, which has adverse civil consequence, then Principles of Natural Justice dictate that effected employee should be put on notice. The adverse civil consequence is forcing the applicant to join in a lower grade on mutual transfer. Respondents for not having issued the notice have violated the Principles of Justice.

V. Moreover, as per FR 15, which is extracted hereunder, transfer cannot be affected to a post with lower pay.

"(a) The President may transfer a Government servant from one post to another provided that except-

(1) on account of inefficiency or misbehaviour, or (2) on his written request, a Government servant shall not be transferred to, or except in a case covered by Rule 49, appointed to officiate in a post carrying less pay than the pay of the post on which he holds a lien."

The written request of the applicant was to the same post carrying the same pay. Hence, enforcing the mutual transfer order would be a clear transgression of F.R 14, which the respondents, as model employer, are not expected to do nor does law permit the same.

VI. Instructions of the Railway Board cited by the respondents would apply only if the terms contained in the mutual transfer are fulfilled. Applicant gave his consent for mutual transfer when he was working in a lower grade but not when he was promoted to a higher post. Respondents did not take consent from the applicant as per Rules to effect the mutual transfer for working in a lower post by the applicant. In addition, as per the Railway Board order dated 30.4.2014 the senior of the two seeking mutual transfer has to be relieved first which too was not complied by relieving the 5th respondent who was junior to the applicant. Para 310 of IREM would be not relevant on the basis of law as expounded above. True, the applicant cannot seek re-transfer or withdraw his application, provided the mutual transfer was effected before the applicant was promoted to a higher grade. The terms of contract are valid when the applicant has undergone a change due to the event of promotion of the applicant and hence, the process thereupon to be performed as per rules and law had to be followed, which the respondents did not undertake. Hence, this contention of the respondents is invalid.

VII. The 5th respondent has been relieved and posted in the SC Railway as per the mutual transfer order in a lower grade by the respondents by taking due

consent. Hence, it cannot be found fault with, at this juncture of time. Only when it came to the applicant's case, we found the lacunae as pointed out supra.

VIII. In addition, Hon'ble Ernakulam Bench has dealt with a similar issue in OA No.276/2008 and gave relief, vide order dt. 07.11.2008, as is sought in the instant OA by covering all the aspects of mutual transfer. It is binding on this Bench as per judgment of Hon'ble Supreme Court in *Sub-Inspector Rooplal & Anr. vs Lt. Governor through Chief Secretary, Delhi & Ors, (2000) 1 SCC 644*.

IX. Regarding manpower shortage in NEF Railway, if the applicant were not to be relieved, it is pertinent to point out that the respondents need to have exercised proper caution to follow their own rules and more so, when neither of the parties were relieved as on the date of preferring the representation by the applicant.

X. Therefore viewed from any angle, be it from the view point of rules or law, the OA succeeds. Hence the impugned order dated 25.08.2014 and 28.11.2014 are set aside only to the extent of ordering mutual transfer of the applicant from SC Railway to NEF Railway. 5th respondent has joined SC Railway in pursuance of the order with his consent and therefore, requires no modification.

XI. With above direction, the OA is allowed. Consequently, MA No. 87/2015 stands disposed. No order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

al/evr

(ASHISH KALIA)
MEMBER(JUDL.)