

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No.403/2018

Date of decision:24.11.2020

**Hon'ble Mr. Dinesh Sharma, Member (A)
Hon'ble Mrs. Hina P. Shah, Member (J)**

Om Prakash Meena son of Shri Kalu Lal Meena, aged about 34 years, resident of 63, Adarsh Nagar, Ajmer and presently working as Senior Section Engineer (Milright Shop No.31) under Chief Works Manager (Carriage Workshop), North Western Railway, Ajmer Division, Ajmer.

...Applicant.

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India, through General Manager, North Western Zone, North Western Railway (Head Quarter), Near Jawahar Circle, Jagatpura, Jaipur-302017.
2. General Manager, West Central Zone, West Central Railway, Indira Market, Jabalpur-482001.
3. Chief Works Manager (Carriage Workshop), North Western Railway, Ajmer Division, Ajmer-305001.
4. Chief Works Manager (Carriage Workshop), West Central Railway, Kota Division, Kota-324002.

...Respondents.

(By Advocates: Sh.Anupam Agarwal for respondents No.1 & 3
Sh.Y.K.Sharma for respondents No.2 & 4)

ORDER (Oral)

Per: Dinesh Sharma, Member (A):

In this case, the applicant has prayed for mutual transfer as per his request and for quashing the letter dated 28.06.2018 (Annexure-A/1), by which this request has been denied. He has also requested for directing the respondents to allow mutual transfer while ignoring his punishment, the period of which is going to be over on 24.02.2019. He has stated that such denial is arbitrary, unjustified and against the rules and provisions made in the interest of employees which entitle him to such mutual transfer. A right under such provisions cannot be curtailed in the garb of punishment.

2. The respondents, in their reply, have denied the claims of the applicant. They have quoted Column No 8 of Proforma-C enclosed with format of forwarding letter provided in the Transfer Policy letter No WCR/PHQ/Ruling/Transfer/390/132 dated 28.8.2006, which seeks, *inter alia*, details of any DAR case pending against a person seeking transfer. They have enclosed other relevant proforma directions relating to mutual transfer, where a report about pending disciplinary action is required to be

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disclosed (Annexures R/2, R/3). It is stated that the competent authority has to exercise its discretion in sanctioning mutual transfer and the employee has no role in it. It is admitted that the applicant has been punished for a serious dereliction and an OA (OA No. 291/00606/2015 is pending before this Tribunal in that respect.

3. We have gone through the pleadings and heard the arguments of the learned counsels through video conferencing. It goes without saying that transfers cannot be claimed as a matter of right and the competent authorities have all the right to accept/reject such requests on objective considerations and considerations of administrative expedience. The impugned order does not mention why the competent authority has not granted permission for inter-railway transfer. However, it can be made out, from the reply filed by the respondents, that the disciplinary action taken against him, and the fact of the pendency of an OA against that action before this Tribunal now, might have been a consideration in denying the request of the applicant. We hope it is not so. However, if that is the reason, we are constrained to observe that it would be stretching the definition of "any DAR case pending" a little too far, if the pendency of an action challenging the punishment (imposed in the past and fully undergone),

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before a Court or Tribunal is to be taken as a case pending against an employee. We also find that the period of punishment (for the dereliction mentioned in the OA and the reply) is now over.

4. We, therefore, dispose of this Original Application with direction to the respondents to again consider the request of the applicant for mutual transfer, if it is still valid and pursued by both the parties (making the mutual request), under their relevant rules and policies. This should be done without letting the pendency of the OA No.291/00606/2015, (or any subsequent action by the applicant to pursue that matter before an appropriate court/forum) come in the way of that decision. No costs.

(Hina P. Shah)
Member (J)

(Dinesh Sharma)
Member (A)

/kdr/