

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA**

OA No./050/00207/2020

**Due to COVID-19 Pandemic, case has been heard &
decided through Video Conferencing**

Date of order 29.09.2020

CORAM

Hon'ble Shri M.C. Verma, Member [J]

Hon'ble Shri Sunil Kumar Sinha, Member [A]



Nitin Vyas, son of Sri Girish Chandra, posted as Reservation Supervisor-II, Patna Saheb, East Central Railway, Danapur, Resident of 11A, Deoki Complex, Nai Sarak Chawk, P.S.-Chawk, Patna City, Distt-Patan, Pin Code-800008.

.....Applicant

By Advocate : Shri S.N. Madhuvan

Versus

1. The Union of India through the General manager, East Central Railway, Hajipur, District- Vaishali, Pin Code-844101.
2. The General Manager (P) East Central Railway, Hajipur, P.O.- Digghi Kalan, P.S.-Hajipur, Distt.- Vaishali, Pin Code-844101.
3. The Chief Commercial Manager, East Central Railway, Hajipur, P.O.- Digghi Kalan, P.S.- Hajipur, Distt-Vaishali, Pin Code-844101.
4. The Divisional Railway Manager, East Central Railway, Danapur, P.O- Danapur, P.S.- Khagaul, Distt- Patna, Pin Code-801105.
5. The Senior Divisional Commercial Manager, East Central Railway, Danapur, P.O- Danapur, P.S.- Khagaul, Distt- Patna, Pin Code-801105.
6. The Senior Divisional Personnel Officer, East Central Railway, Danapur, P.O- Danapur, P.S.- Khagaul, Distt- Patna, Pin Code-801105.
7. The Assistant Personnel Officer, East Central Railway, Danapur, P.O- Danapur, P.S.- Khagaul, Distt- Patna, Pin Code-801105.Respondents

By Advocate: Shri B.K. Choudhary for respondents

Shri Kumar Sachin, Counsel for Railway.

O R D E R (ORAL)

M.C. Verma, M [J]



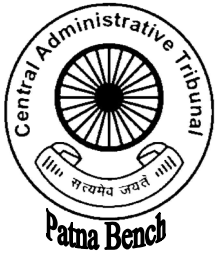
1. Being aggrieved by his Transfer Order No. 184/2020 dated 20.02.2020 (Annexure A/13), whereby applicant has been transferred from Patna Saheb to Mughal Sarai Division instant OA has been preferred by the applicant, who is holding the post of Reservation Supervisor-II in East Central Railway.

2. Assailing the above said Transfer Order applicant did plead in his OA that on 01/09/2016 he was posted as Reservation Supervisor-II at Patna Sahib Gurudawara Reservation Office and on 12/9/16 alleging misconduct was transferred there from to Patna Sahib Rly Station and subsequently, vide order dated 23.05.20217 was transferred from Patna Saheb Railway Station to Jhajha. That thereafter, vide order no. 415/2017, dated 06.07.2017 he was transferred from Jhajha to Mughal Sarai Division. That being aggrieved by his frequent transfer & impugning Transfer Order no. 415/2017, he approached this Tribunal in O.A. No. 385/2017 and this tribunal pleased to grant ad interim stay of said transfer



order. That during pendency of O.A. No. 385/2017 *he* represented the competent authority for his transfer to Patna, on account of spouse and child ground. That taking note of his representation, preferred during pendency of the OA, this Tribunal pleased to dispose his OA with direction to respondents to consider representation and expedite his case within forty five days from the date of receipt of copy of order. That pursuant to order of the Tribunal , passed in O.A. No. 385/2017 representation of applicant was considered by the respondent and vide order dated 18.09.2019, the applicant was transferred from Jhajha to Patna Sahib. That this transfer order dated 18.09.2019 obviously was in supersession of previous inter divisional transfer Order no. 415/2017 but now referring said Order no. 415/2017 and to execute Order no. 415/2017, impugned transfer Order dated 20.02.2020 transferring him from Patna Saheb to Mughal Sarai Division has been issued and hence is this O.A.

3. Respondents contested the matter and did file WS stating that on the ground of misconduct, found during vigilance enquiry inters division transfer of some persons, including applicant were done in year 2017. That applicant vides office order No. 415/2017 dated 06.07.2017, on the ground of misconduct was transferred from Patna



(Danapur Division) to Mughal Sarai Division. The said order was issued after approval of competent authority i.e Chief Commercial Manager/Hajipur. That all the employee so transferred preferred OA, but separately. That during pendency of his OA, applicant on 01/02/2019, stating personal difficulty, gave representation to respondents for his transfer to Patna and requested the Tribunal to direct the respondents to consider and decide his representation and in said background this Tribunal, vide its order dated 30/07/19 disposed of the OA of the applicant giving direction to the respondent to consider and decide his representation. That on the basis his representation, the matter relating to his transfer was examined. It has also been pleaded that Office Order No. 415/2017 was not quashed by the Tribunal hence said order was intact and qua other transferee had been implemented so it was decided to implement said order qua applicant also and hence the impugned order of instant OA, to give effect to Order No. 415/2017 was issued.

4. Impugned Transfer, which is in Hindi is showing that in view of having found misconduct (Word used in the order in Hindi is "ANIAMITATA" but bracketed English word used is "misconduct") during vigilance enquiry, in administrative interest Nitin Vyas RS-II (the applicant) is

transferred from PNC and is allotted Mughal Sarai Division. Transfer order will take immediate effect and lien of the transferee is kept in parent Division. The note underneath the order reveals that it is by Authority of Order no. 415/2017. Said note in vernacular reads :- "PRADHIKAR: MAHAPARBANDHAK (KA)/HAZIPUR KE KA AA 415/2017 AVANM PATRANK ECR HRD/283/IRT-IDT/COMML/2017 DINANK 06-07-2017 "



5. This OA came on Board for final hearing, on 28.09.2020 and remained part heard. Counsel for applicant at threshold urged on that day that when previously transfer order No. 415/2017 was assailed by the applicant in O.A. 385/2017 and said OA was disposed of by this Tribunal with direction to respondent to consider representation of applicant and that when respondents, after considering his representation transferred him from Jhajha to Patna, instead of Mughalsarai, how in said backdrop transfer order No. 415/2017, which was subject matter of O.A. 385/2017 legally can be given effect now. He explained that applicant had been transferred from Patna to Mughalsarai to give effect to transfer order No. 415/2017 and to fortify his submission referred the impugned order.

6. When a question was posed to respondent's counsel that once during the span, when transfer Order from Jhajha to Mugalsarai was pending implementation another transfer order of the applicant from Jhaja to Patna has been passed by the respondents then how said previous transfer order No. 415/2017, from Jhajha to Mugalsarai can be said to be alive and whether that transfer order cannot be said to be non-est, and if so how the present transfer order, taking shelter of previous transfer order no. 415/2017 can be said to be legally tenable? However counsel for respondents requested for adjournment to take instruction from the respondent and matter thus was adjourned for today.



7. Today learned counsel for applicant resuming his submission referred the WS of the respondent and argued that respondent in their WS has admitted that pursuant to direction of the Tribunal representation of applicant was considered and on the basis his representation, the matter relating to his transfer was examined. He concluded that when the matter relating to transfer of the applicant, meant to say transfer Order No. 415/2017 was examined and thereafter he was transferred to Patna, insted of Mugalsarai, how it can be said that transfer Order No. 415/2017 was intact and that in fact this transfer Order

No. 415/2017 became non est on the very day when another order of transfer, from Jhajha to Patna was passed. He urged to quash the impugned order as it has been issued to implement, qua the applicant said non alive Order No. 415/2017.



8. Learned counsel for respondents initially tried to justify the impugned order and submitted that transfer order no. 415/2017 based on vigilance report and is an inter division transfer order whereas transfer order from Jhajha to Patna (Annexure A/10) was an intra division transfer order and the authority for inter division transfer order is GM and for intra division transfer it is DRM and hence after transfer order No. 415/2017 another inter division transfer order passed cannot be construed to mean that transfer order no. 415/2017 has become non alive.

9. While concluding, learned counsel for respondents added that yesterday he sought adjournment of this OA to take instructions from the respondents, he has taken instruction from the respondents and respondents want to reconsider the entire matter afresh and if needed to pass a fresh order taking note of the entire surrounding facts. He also informed that respondent would have no objection if is directed to recall the impugned order or even the

impugned order is quashed provided liberty be given to them to reconsider the entire matter afresh and in case of need to pass a fresh order. Counsel for applicant, at this stage submits that impugned order may be quashed and applicant would have no objection of providing liberty to respondent to reconsider the entire matter afresh and of passing fresh order in need, however said fresh order should be in accordance with law and be not passed having nor prejudice against the applicant.



10. Considered the submissions and taking note of factual aspects and submissions made at Bar in its entirety, impugned Transfer Order dated 06.07.2017 (Annexure A/13) is quashed & is set aside. The OA to this extent stands allowed. However, this order of allowing of the OA would not be an impediment for the respondent to reconsider the entire matter afresh and in case of need to pass a appropriate fresh order as per justifiable norms. Pending MA, if is any also stand disposed of accordingly.

(Sunil Kumar Sinha) M (A)

(M.C. Verma) M [J]

/mks/