

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA**

OA No./050/00211/2020

**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]



Binod Kumar Son of Sri Madan Singh, Resident of Village-Parasbigha, Post-Mandil, P.S.- Parasbigha, Distt-Jehanabad, Deputy Chief Inspector of Ticket, East Central Railway, Patna Jn. (Bihar) .- Pin- 804408.

.....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 (Bihar).
2. The General Manager (Personnel) East Central Railway, Hajipur, P.O.- Digghi Kalan, P.S.-Hajipur, Distt.- Vaishali, Pin Code-844101 (Bihar).
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 (Bihar).
5. The Senior Divisional Commercial Manager, East Central Railway, Danapur, P.O- Danapur, P.S.- Khagaul, Distt- Patna, Pin Code-801105 (Bihar).
6. The Senior Divisional Personnel Officer, East Central Railway, Danapur, P.O- Danapur, P.S.- Khagaul, Distt- Patna, Pin Code-801105 (Bihar).
7. The Assistant Personnel Officer, East Central Railway, Danapur, P.O- Danapur, P.S.- Khagaul, Distt- Patna, Pin Code-801105 Bihar)

.....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. 1400/2019 dated 24.10.2019 (Annexure A/5), 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 Deputy Chief Inspector of Ticket in East Central Railway.

2. Assailing the above said Transfer Order applicant did plead in his OA that applicant was working as Deputy Chief Inspector of Ticket, Rajendra Nagar, Patna. He was transferred to Kiul, vide order dated 13.06.2017, on administrative ground on the basis of recommendation of vigilance department. Applicant joined his said transferred place Kiul on 15.06.2017. The applicant was again transferred; vide order no. 415/2017 dated 06.07.2017 to Mughal Sarai Division , he approached this Tribunal through O.A. 383/2017 and this tribunal pleased to grant ad interim stay of said transfer order no. 415/2017 dated 06.07.2017. That during pendency of the O.A., applicant submitted a representation before the competent authority

for his transfer to Patna and the applicant was transferred/posted to Patna , vide transfer order dated 27.08.2018. After this transfer order dated 27.08.2018, OA No. 383/2017 of the applicant was dismissed as infructuous. That now referring said Order no. 415/2017 and to execute Order no. 415/2017 he was again transferred from Danapur Division to Mugalsarai Division vide order dated 24.10.2019, 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 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 stating personal difficulty gave representation to respondents for his transfer to Patna and 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 since 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 "ANIAMITA" but bracketed English word used is "misconduct") during vigilance enquiry, in administrative interest Vinod Kumar Dy. CIT (the applicant) is transferred from PNBC 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. 383/2017 and during pendency of the OA, respondent after considering his representation

transferred him from Kiul to Patna, instead of Mugalsarai, how in said backdrop transfer order No. 415/2017, which was subject matter of O.A. 383/2017 legally can be given effect now particularly when after this transfer from Kiul to Patna the OA , 383/2017 was disposed of by this Tribunal as infructuous. He explained that applicant had been transferred from Patna to Mugalsarai 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 for Mugalsarai was pending implementation another transfer order of the applicant for posting to Patna has been passed by the respondents then how said previous transfer order No. 415/2017, from Rajender Nagar 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.



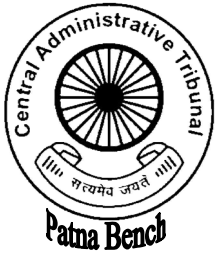
9. While concluding, learned counsel for respondents added that yesterday he sought adjournment of this OA to take instructions from the respondents, he has taken instruction from the respondents and respondents want to reconsider the entire matter afresh and if needed to pass a fresh order taking note 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 it's entirety, impugned Transfer Order dated 24.10.2019 (Annexure A/5) 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 an 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/