

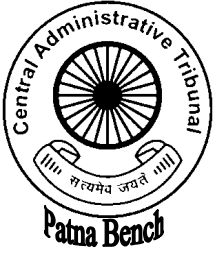
**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.
OA/050/00264/2020 [VC]
With
OA/050/00265/2020[VC]**

Date of CAV: 04.11.2020
Date of order : 04.12.2020

C O R A M

**HON'BEL MR. M.C. VERMA, JUDICIAL MEMBER
HON'BLE MR. SUNIL KUMAR SINHA, ADMINISTRATIVE MEMBER**

OA/050/00264/2020 [VC]



Jitendra Kumar, son of Shri Raj Kumar Rai, Safaiwala [House Keeping Assistant] under Health & Malaria Inspector, North Frontier Railway, Katihar – 854105 [Bihar].

.....

Applicant.

By advocate : Shri M.P.Dixit

Vs.

1. The Union of India through the General Manager, North Frontier Railway, Maligaon [Guahati], Pin Code – 781001.
2. The General Manager [Personnel], North Frontier Railway, Maligaon [Guahati], Pin Code – 781001.
3. The Principal Chief Medical Director, North Frontier Railway, Maligaon [Guahati], Pin Code – 781001.
4. The Divisional Railway Manager, North Frontier Railway [Bihar], Pin Code 854105.
5. The Senior Divisional Personnel Officer, North Frontier Railway [Bihar], Pin Code 854105.
6. The Chief Medical Superintendent, North Frontier Railway [Bihar], Pin Code 854105.
7. The Senior Divisional Medical Officer, North Frontier Railway [Bihar], Pin Code 854105.
8. The Senior Divisional Financial Manager, North Frontier Railway [Bihar], Pin Code 854105.
9. The Assistant Chief Medical Superintendent, North Frontier Railway [Bihar], Pin Code 854105.

.....

Respondents.

By Advocate : Shri S.K. Ravi

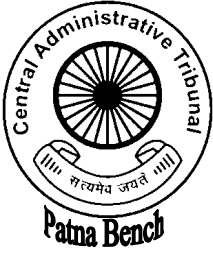
OA/050/00265/2020 [VC]

Ram Kumar Routh, son of late Rabhu Lal Menta, Lab Attendant, under Assistant Chief Medical Superintendent, North Frontier Railway, Katihar – 854105 [Bihar].

..... Applicant.

By Advocate : Shri M.P.Dixit

Vs.



1. The Union of India through the General Manager, North Frontier Railway, Maligaon [Guahati], Pin Code – 781001.
2. The General Manager [Personnel], North Frontier Railway, Maligaon [Guahati], Pin Code – 781001.
3. The Principal Chief Medical Director, North Frontier Railway, Maligaon [Guahati], Pin Code – 781001.
4. The Divisional Railway Manager, North Frontier Railway [Bihar], Pin Code 854105.
5. The Senior Divisional Personnel Officer, North Frontier Railway [Bihar], Pin Code 854105.
6. The Chief Medical Superintendent, North Frontier Railway [Bihar], Pin Code 854105.
7. The Senior Divisional Medical Officer, North Frontier Railway [Bihar], Pin Code 854105.
8. The Senior Divisional Financial Manager, North Frontier Railway [Bihar], Pin Code 854105.
9. The Assistant Chief Medical Superintendent, North Frontier Railway [Bihar], Pin Code 854105.

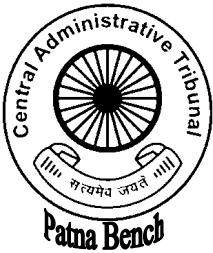
..... Respondents.

By advocate: Shri S.K. Ravi.

ORDER

Per S.K. Sinha, A.M. : Both the above OAs are being disposed of by a common order since both have been preferred raising same grievance; and the background of both OAs and the reliefs prayed for in them are similar.

OA. 264/2020 - The applicant has preferred the OA against the order of Divisional Railway Manager (Personnel), Katihar office (Respondent No.5) dated 03.06.2020 transferring him from Katihar Division to Agartala under Lumding Division(**Annexure A/3**). The applicant, at Para-8 of the OA, has prayed for quashing the impugned transfer order (**Annexure A/3**) and the order of Addnl. Chief Medical Superintendent, North Frontier Railway (NFR), Katihar (Respondent No.9) dated 03.06.2020 (same as the date of transfer) relieving him from Katihar to report to Lumding Division for further duty.



OA 265/2020 -The applicant has impugned the order dated 03.06.2020 of the office of DRM (P), KIR transferring him from Katihar Division to Rangiya Division(**Annexure A/2**). The prayers of the applicant include quashing the impugned order and the order of Addnl. Chief Medical Superintendent, NFR, Katihar (Respondent No.9) relieving him from Katihar to join the Rangiya Division for further duty same day, i.e. on 03.06.2020.

2. Both the applicants, as per the pleadings in OAs, are working under North Frontier Railway (NFR), Katihar – the applicant of OA 264/2020 as Housekeeping Assistant under the Health and Malaria Inspector and the applicant of OA 265/2020 as Lab Attendant under Assistant Chief Medical Superintendent. Both were placed under suspension on 09.07.2019 and served charged memorandum under Rule 9 of Railway Servants (D&A) Rules, 1968 alleging that they had

demanded and accepted bribe money from the candidates shortlisted for recruitment in Railway in lieu of clearing their medical report at Divisional Railway Hospital, Katihar. The applicant of OA 264/2020 was alleged to have demanded and accepted Rs. 9000/- whereas the applicant of OA 265/2020 allegedly demanded and accepted Rs. 500/-. The Inquiry Officer, after the departmental enquiry, submitted his inquiry report holding that the charges levelled against the applicants were not substantiated. The Disciplinary Authority, however, not agreeing with the enquiry report, sent disagreement note along with a copy of the enquiry report to the applicant of OA 264/2020 for reply within 15 days. The disagreement note was received by the applicant on 02.06.2020. Applicant of OA 265/2020 was not given any copy of the enquiry report or any disagreement note. On 3rd June, 2020, the authorities revoked the suspension of both the applicants; issued the impugned transfer order; and relieved them on the same date (3rd June, 2020) for joining the place of transfer.



2.1 The applicants have pleaded that their transfer order is against the Railway rules and guidelines and in violation of the government orders restricting movement during the ongoing pandemic Covid. The applicants have questioned the competence of Divisional Railway Manager (DRM) to issue the inter-division transfer order and also referred to Rule-226 of IREC which empowers President to transfer a railway servant to any other department or railway or railway establishment including a project in or out of India. They have also

referred to the Railway Board order incorporated in the Railway Servants (D&A) Rules , 1968 (Annexure A/6) which lays down that during pendency of departmental proceeding, non-gazetted staff may not be normally transferred from one Division to the other. Also, since in view of the ongoing Covid pandemic, the government has issued guidelines restricting public movement and the train service to the places of transfer has been suspended ,the transfer and sparing orders were against the government instructions.



2.2 The applicants have placed reliance on the judgement of Calcutta High Court in **Debendra Nath Bag vs UoI** reported in 1989(11) ATC 326, (Annexure A/7), CAT Patna Bench reported in 2004(3) ATJ 116 (Annexure A/9) and the orders of CAT Patna Bench dated 1.08.2017 and 09.12.2019 (annexure A/8) in order to support their claim.

3. Respondents opposed the OAs on grounds of maintainability and filed reply in which they have stated that Railway Vigilance had used decoy for routine check into the conduct of doctors and other staff at Railway Hospital, Katihar. During the exercise, conduct of six medical staff and Dr. Rajesh Kumar, Divisional Medical Officer, Katihar was found suspicious. The applicant of OA 265/2020 (Ram Kumar Rout), Lab Attendant under CMO, Katihar was found demanding and accepting bribe money on 06.07.2019 from the shortlisted candidates for clearing their medical reports. Based on the findings of the decoy exercise, DGM cum Chief Vigilance Officer submitted a confidential note dated 10.07.2019 to Principal Chief Medical Director, NFR (Respondent no. 3).

Keeping their misconduct in view, the applicants were placed under suspension on 9th July, 2019 and departmental inquiry was initiated against them. Further, acting on the Vigilance report, Railway officials revoked the suspension orders on 3/06/2020, transferred them out of Katihar Division and relieved them for joining their place of transfer. The Additional Chief Medical Superintendent, Katihar Division (Respondent no 9) initiated the proposal for inter-division transfer of applicants and Divisional Railway Manager (DRM), Katihar approved the transfer by virtue of the schedule of power in respect of inter - division transfer issued by Ministry of Railway in 2018 (Annexures R/5 & R/6) . The transfer was ordered on administrative grounds in the interest of smooth functioning of Railway administration. As power of the GM of inter-division transfer had already been vested to the DRM by Ministry of Railway in 2018, the ratio laid down in the case of **Debendra Nath Bag vs UOI & Others** by the Calcutta High was not applicable in the instant case now.



3.1 Respondents have further pleaded that as per the Railway Servants (D&A) Rules, 1968, a Disciplinary Authority is within his competence not to accept the finding of an inquiry report and seek comments of the delinquent officer by providing a copy of the report with his disagreement note. In the Railway, it is also well settled that if a charged official is transferred from one Zone to another Zone or from one Division to another Division during pendency of a departmental proceedings, the controlling authority at the place of transfer will

become the disciplinary authority and shall, proceed further in accordance with the provisions of the RS(D&A) Rules.

3.2 Respondents further submitted that the ratio decided by the Hon'ble Apex Court in the case of S. C. Saxena Vs. UOI & Ors. reported in (2006)9 SCC 583 decided on 21.06.2006 requires a government official to first report for work where he is transferred and then make a representation about his personal problem. Respondents also referred to similar decision of CAT Patna Bench in OA no. 596/2018 (Ravindra Nath Thakur Vs. UOI & ors) .



4. After admission, we heard the counsels for rival parties.

5. Shri M.P. Dixit, learned counsel representing the applicants in both OAs, averred that the transfer order was contrary to railway rules and guidelines and suffered from the incompetency of the authority issuing the order. Ld counsel mentioned that the applicants were transferred from one Division to another Division through a common order by the DRM who is not competent to order inter- Division transfer. He also stated that IREC Rule 226 does not empower the President to transfer a Railway servant from one Division to other Division. Reiterating the facts mentioned in the pleadings (Para 2), Id counsel submitted that though the transfer order (Annexure A/3) was professedly made on administrative grounds, it was actually meant to be a punishment because the allegations against the applicants in the departmental proceeding were not substantiated and the applicant was transferred before he could submit his representation in response to the

disagreement note. Also, suspension of the applicants which had been continuing since July 2019 was revoked suddenly on June 3.06.2020, without finalization of the departmental enquiry, only to facilitate the transfer and sparing of the applicants. Learned counsel further urged that Railway Board instructions - RBE Nos. 250/98 and 251/98 - permit inter divisional transfer for those staff who have repeatedly figured in substantiated vigilance cases and where penalties have been imposed or the ticket checking staff found indulging in malpractice. In the instant OAs, the applicants do not fall in any of these categories. The Id. counsel urged that as per a Railway Board order incorporated in the RS(D&A) Rules, a non-gazetted staff may not be transferred from one Division to other during the pendency of departmental proceeding. Besides being against the Railway rules and guidelines, the impugned transfer order and sparing order violated the current government instructions on transfer and movements in view of Covid pandemic.



6. Learned counsel for Respondents submitted that the power of General Manager in respect of Inter-Division transfer of Railway staff/employees has been given to the DRM of concerned Division by the Schedule of Powers issued by Ministry of Railway on 24.07.2018 (Annexures R/5 & R/6). Hence, the impugned transfer order which was issued with the approval of DRM does not suffer from incompetency of the issuing authority. The learned counsel submitted that the applicants' transfer was made on the basis of vigilance report and in public interest for smooth running of Railway Administration. All benefits relating

transfer were extended to the applicants. He submitted that the applicants had filed the OAs before the Tribunal without making a representation before the Railway authorities. Also, they did not approach the Tribunal with clean hand as they did not mention about the sparing order dated 03.06.2020 which they received on 05.06.2020 in the OAs. The applicants wanted to suppress the fact that they had already been relieved. Ld counsel also mentioned that the applicants had still not joined the place of transfer. While referring to the recent judgement dated 04.09.2020 of Himachal Pradesh High Court in CWP No.3311 of 2020 (**Ghanshyam Dass Vs. The State of H.P. and Anr.**) the learned counsel argued that a government servant holding a transferrable post has no vested right to remain posted at one place and the courts should not ordinarily interfere with the orders of transfer and there is little scope for judicial review by courts/Tribunals against the transfer order unless the same is found to be in contravention of the statutory rules. The learned counsel for the respondents, therefore, prayed for dismissal of the OA.



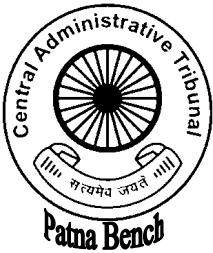
7. In rebuttal, Shri M P Dixit, Ld. counsel for applicants contested the averments of counsel for respondents that the applicants have not mentioned about the sparing order dated 03.06.2020 and suppressed an important fact from the Tribunal. Ld counsel referred to Para 8 of the OA wherein the reliefs requested for include quashing the impugned orders dated 3.06.2020 issued by Respondents No. 5 and 9. He mentioned that sparing order dated 03.06.2020 was issued by Respondent No. 9. Also,

the applicants have included the sparing order as part of the annexures (A/3 series). The Id. counsel urged that the applicants had challenged both the transfer and sparing orders. Id. Counsel further mentioned that as per Rule 226 of IREM (India Railway Establishment Manual) of inter divisional transfer of a railway employee can be ordered only in administrative exigencies. He stated that the impugned order was ultra vires as it was issued at the behest of Vigilance department.



8. The counsel for applicant has put reliance on **Vinod Kumar Singh Vs the State of Bihar & others** (CWJC No.12656 of 2006) in which the Hon'ble Apex Court in its order dated 14.11.2007 quashed the impugned transfer order on the ground that it had been issued by the statutory authority without application of mind by him, but at the dictates of another, which amounts to complete abdication of jurisdiction by the statutory authority. This ratio is not applicable in the instant case as the facts are different. Id counsel also referred to CAT decisions reported in (1995) 31 ATC 237 (Rajendra Choubey Vs. UOI & Others) ; and OA No. 569 of 2016 of CAT, Patna Bench in support of his arguments, however, the ratio decidendi of these cases is not applicable to the instant case. Applicants in the instant case were transferred on administrative grounds based on a vigilance report. The vigilance authorities, after a decoy exercise, had sent their report to the Divisional authorities who took decision on their own in the exigencies of service.

9. The law on transfer as per various pronouncements of the Hon'ble Supreme Court is now well settled. It is now an established fact that transfer is an incident of service and an employee has no right to demand posting to a particular place. It is for the employer to decide how and where to employ an employee. In the case of **State of U.P. Vs. Govardhan Lal** reported in AIR (2004) SC 2165, Hon'ble Supreme Court observed that unless the order of transfer is shown to be an outcome of a mala fide exercise of power or in violation of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with.



10. Thus, moot issue in the instant case is whether the impugned transfer order is in conformity with various existing relevant rules and guidelines. The applicants have challenged the order on following grounds:-

- (a) Not being in conformity with
 - i. Rule 226 of IREC,
 - ii. Railway order incorporated in the RS(DA) Rules, 1968, and
 - iii. RBE 250/1998 and 251/1998.
- (b) DRM not being competent to issue inter-divisional transfer orders.
- (c) Government's recent instructions in view of the ongoing Covid Pandemic.

Para 226 of IREM reads as under:

“226. Transfers - Ordinarily, a railway servant shall be employed throughout his service on the railway or railway establishment to which he is posted on first appointment and shall have no claim as of right for transfer to another railway or another establishment. In the exigencies of service, however, it shall be open to the President to transfer the railway servant to any other department or railway or railway establishment including a project in or out of India. In regard to Group C railway servants, the power of the President under this rule in respect of transfer, within India may be exercised by the General Manager or by a lower authority to whom the power may be re-delegated.”



11. Thrust of the above para is that a railway servant shall normally remain employed throughout his service on the railway or railway establishment to which he is posted on first appointment. However, the President can transfer a 'Group C' railway servant to any other department or railway or railway establishment including a project in or out of India in exigencies of service. The applicants have averred that the power of President to transfer the railway servants to any other department or railway or railway establishment does not cover inter-division transfer. The assertion of applicants is negated by the Schedule of Powers issued by the Ministry of Railways (Annexure R/5 & R/6) through which DRM has been delegated full powers for inter-division transfer in respect of Division controlled posts. The schedule of powers mentions that the delegation of power to DRM has been made under the authority of Rule 226 of IREC. The applicants have not challenged the vires of the Schedule of Powers issued by the Ministry on 24.07.2018.

The respondents have averred that the transfer was made on administrative grounds for smooth running of Railway administration. As administrative ground implies exigencies of service, the impugned order cannot be said to be in violation of Rule 226 of IREC.

12. The order of Railway administration incorporated in the RS (DA) Rules, 1968, reads as under:-



"1. Cases have come to the notice of Ministry of Railways where staff, whose conduct was under investigation were transferred from one Railway to another which made it difficult to finalise departmental proceedings. The Ministry of Railways have, therefore, decided that non-gazetted staff against whom a disciplinary case is pending or is about to start, should not normally be transferred from one Railway/Division to another Railway/Division till after the finalisation of the departmental or criminal proceedings, irrespective of whether the charges merit imposition of a major or minor penalty."

The above order is meant for periodic transfers under normal conditions; it does not preclude the transfer of a staff under special circumstances, especially in exigencies of service. In the instant case, applicants who are facing departmental proceeding have been transferred on administrative grounds in view of vigilance reports. Hence, the impugned order is not against the aforesaid Railway order incorporated in the RS(D&A) Rules, 1968.

13. Railway Board instructions RBE 250/1998 and RBE 251/1998, placed at Annexure A/5, mandate inter-division transfer for staff who repeatedly figure in substantiated vigilance cases and where penalties have been imposed or ticket checking staff detected to be indulging in malpractices. These instructions are meant for a limited category of

Railway staff and do not convey in any way that the officials outside this category are exempt from inter-division transfers. The applicants' claim that their transfer is in violation of the aforesaid instructions because they do not fall in the limited category mentioned therein is not correct.

14. The question relating competency of DRM for inter-division transfer is also settled with the Schedule of Powers issued by the Ministry of Railway vide their order dated 24.07.2018. DRM has been delegated the GM's power for inter-divisional transfer in respect of Division controlled posts. This delegation has been ordered under the authority of IREC Rule 226. Hence, there is no lacuna in the impugned orders as regards competency of the issuing authority.



15. The restrictions on transfer of government officials during Covid period was lifted by the Central Government in June, 2020 and different government Departments have been issuing transfer orders in accordance with their requirements subject to local conditions.

16. It is clear from the preceding discussion that the impugned order is not in violation of existing Railway rules and guidelines and the order does not suffer from incompetency of the issuing authority. The order has been made on administrative ground for smooth running of railway administration. The restrictions by Government of India on movements and transfers in view of covid pandemic from March this year were lifted from June. In terms of the ratio laid down by the Hon'ble Apex Court in the case of **S. C. Saxena Vs Union of India & Others** reported in **(2006)9 SCC 583**, a transferred government servant is first required to

join at the place of transfer and if he feels aggrieved with the order, make a representation thereafter. In the instant case the applicants filed the OAs against the transfer order before this Tribunal without joining the place of transfer.

17. In the result, we are not inclined to interfere with the transfer order as the OAs are devoid of merit and accordingly both the OAs, namely OA No. 264/2020 and OA No. 265/2020 are dismissed. The respondents may, however, consider sympathetically the period between the date of relieving and the date of joining the place of transfer, if the applicants join promptly after this order. No order as to cost.

18. Original order passed be placed on the file of OA No. 264/2020 and its copy be placed on the record of OA No. 265/2020.

[Sunil Kumar Sinha]
Administrative Member

[M.C. Verma]
Judicial Member

Srk.

