

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00311/2020

Reserved on: 13/10/2020
Pronounced on: 09/11/2020

C O R A M

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



Dr. D.K. Sahay, Son of Late B.N. Sahay, Senior Consultant, Sub-Divisional Railway Hospital, East Central Railway, Gaya, Pin Code- 823001 (Bihar).

.... Applicant.

By Advocate: - Mr. M P Dixit

-Versus-

1. Union of India through the Secretary, Railway Board, Ministry of Railway, Rail Bhawan, New Delhi-110001.
2. The General Manager, East Central Railway, Hajipur, P.O.- Digghi Kalan, P.S.- Hajipur (Sadar), District- Vaishali.
3. The Senior Divisional Medical Officer (I/C)/SDH, East Central Railway, Gaya, Pin Code- 823001 (Bihar).

.... Respondents.

By Advocate(s): - Mr. B.K. Choudhary
Mr. Kumar Sachin

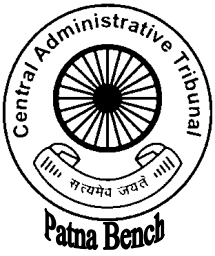
O R D E R

[Heard through Video Conferencing]

Per S.K. Sinha, A.M.:-The instant OA has been preferred against the decision of General Manager, East Central Railway, Hajipur (Respondent No.2), dated 27.08.2020 (Annexure A/8) rejecting the applicant's representation for cancelling the office order of East Central Railway (ECR) dated 06.08.2020(Annexure A/1) transferring him from Gaya under Deen Dayal Upadhyay Railway Division to

Dhanbad Division, both under East Central Railway. Prayers of the applicant under Para 8 reads as under:-

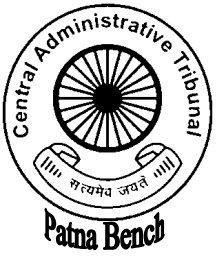
“ 8.1) That Your Lordships may graciously be pleased to quash and set aside the impugned order of transfer dated 06.08.2020 and the order dated 27.08.2020 rejecting the representation of the applicant for cancellation of his transfer, issued by Respondent No. 2 as contained in Annexure-A/8 and A/1 qua the Applicant altogether with so called spare order dated 07.08.2020 as contained in Annexure A/5 issued by the Respondent No. 3.



8.2) That the Respondents be further directed to allow the Applicant to continue at Gaya without any disturbance till attainment of his superannuation, i.e. 30.11.2021, by directing the concerned authority to accept the joining of the applicant forthwith.

8.3) That the Respondents be further directed to grant all consequential benefits in favour of applicant including salary beyond the period of 07.08.2020.”

2.1 According to pleadings in the OA, the applicant, presently posted as Senior Consultant, Sub-Divisional Railway Hospital, Gaya under East Central Railway is due to superannuate from service in the month of November, 2021 at the age of 65 years. Earlier, on 30.11.2018, when he attained the age of 62 and was due for retirement, the General Manager (GM), East Central Railway, on his request, approved his continuation in Railway Service for clinical duties only up to the age of 65 years in accordance with the Railway Board instruction, RBE 144/2018. While the applicant was working at Sub-Divisional Railway Hospital, Gaya since the aforesaid approval for his continuation in Railway service beyond 62 years, the East

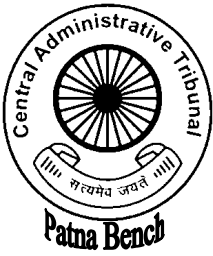


Central Railway, with approval of the GM, issued an office order on 06.08.2020 transferring him from Gaya (under Deen Dayal Upadhyay Division) to Dhanbad Division (Annexure A-1). Aggrieved by the transfer order, the applicant submitted a representation on 07.08.2020 requesting for cancellation of the transfer order on the grounds of his physical ailments and impending retirement in 15 months and the Railway Board instruction dated 07.08.2020 (issued in continuation of the Railway Board order dated 12.05.2020) to keep unimplemented transfer orders pending till 31.03.2021 due to Covid pandemic. The applicant has also put reliance on the Railway Board instruction dated 12.12.2018, issued as addendum to the Comprehensive Transfer Policy for Railway Officers, laying down inter alia that an officer due for retirement within two years should normally not be transferred (Annexure A/3).

2.2 The applicant also approached this Tribunal with OA No. 050/00299/2020 against the aforesaid transfer order dated 6/8/2020 (Annexure A/1) which was disposed of at notice stage hearing on 14.08.2020 with direction to Respondent no. 4 in that OA to consider the representation of the applicant and to pass a reasoned and speaking order as early as possible and not to take further coercive steps qua impugned transfer order till a decision was taken on the representation of the applicant. As the Respondent no. 4 in that OA decided the representation on 27.08.2020 rejecting his request, the

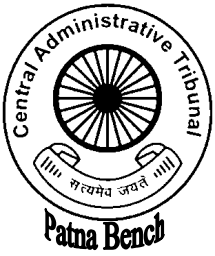
applicant has preferred the instant OA for setting aside the transfer order as also the speaking order of the GM rejecting his representation.

2.3 Applicant has mentioned some judicial pronouncements holding transfer orders within two years of superannuation as illegal and unsustainable. He refers to the cases reported in 1991(1) ATJ, Pg. 469 (Shankar Lal vs Union of India & others), 2005(3) ATJ Pg. 358 (Jagjit Singh Vs The State of Punjab & others), and 2006(2) ATJ 169, Placitum-B (Darshan Kumar Vs. The State of Punjab & others).



3.1 The Respondents contested the OA as not maintainable and filed reply. Respondents pleaded that the applicant had given option to continue on clinical post after attaining the age of 62 and the General Manager, East Central Railway approved his continuation in Railway service for clinical duties only in accordance with Railway Board instructions (RBE No. 144/2018). The office order approving his continuation (**Annexure R/1**) clearly states that his continuation as Consultant will be subject to availability of vacancy and administrative convenience as decided by the Competent Authority. The applicant while posted at Gaya was not prompt and sincere towards his duties and during a surprise inspection on 24.07.2020 at 9.15 Hrs. he was found absent from duty. The Principal Chief Medical Director, East Central Railway had submitted a proposal for

transferring the applicant out from DDU Division to Dhanbad and after recommendation of the Placement Committee and approval of GM, the applicant was transferred from Sub Divisional Hospital, Gaya to Dhanbad.



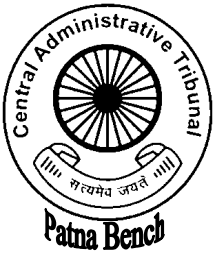
3.2 Respondents clarified that the applicant's reliance on the Railway Board's letter dated 12.12.2018 is not applicable to the instant case because it is an addendum to the Comprehensive Transfer Policy of Railway Board dated 31.08.2015. According to the Comprehensive Transfer Policy of the Railway Board dated 31.08.2015, total stay at a place for the Railway doctors has been fixed as 15 years and the total cumulative stay in broken spells at a particular station as 20 years. The applicant has remained posted at Gaya for most part of his service (for 29 years).

3.3 The Respondents further averred that the Hon'ble Supreme Court in several pronouncements has held that transfer of a Government servant is an incidence of service and the applicant has no legal right for being posted to a particular place. The public servant on being transferred should first join the place of transfer and make representation thereafter to the competent authority if he has any genuine difficulty. In this regard, judgements of the Hon'ble Supreme Court in Gujarat Electricity Board and Ors. Vs. Atmaram Sungomal Poshani and Union of India Vs. S.L. Abbas are relevant to

the instant OA. It has been held that administrative tribunal is not an appellate authority to sit in judgment over the orders of transfer.

4. During the hearing, the Tribunal issued an interim order directing the respondents to maintain status quo as regards the transfer of the applicant.

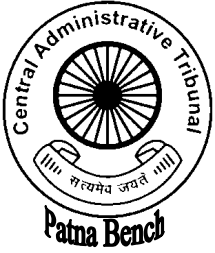
5. The matter after admission was heard for final adjudication.



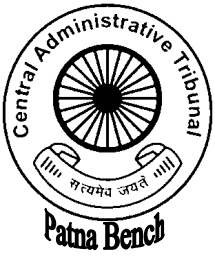
6.1 Learned counsel for the applicant during the hearing urged that the impugned transfer order was not issued by the competent authority. He referred to Para 1(ix) of the Comprehensive Transfer Policy for Railway Officers (Annexure R/8) issued on 31.08.2015 which mentions that the transfer of Doctors of IRMS within and outside the Zone should be decided by the Railway Board at appropriate level on case-to-case basis. He also mentioned that the Railways was not implementing the interim order of the Tribunal as the applicant was not allowed to join his post and as a result his salary was not being released.

6.2 The learned counsel mentions that the impugned order does not mention any ground for transfer, whether it has been made in public interest or for the sake of administrative exigency. While the applicant has been transferred from Gaya to Dhanbad no Senior Consultant has been posted at the Sub Divisional hospital at Gaya. The hospital has a sanctioned strength of 5 IRMS doctors and as on 29.06.2020 two Senior Consultants were posted there out of the five

sanctioned posts. One of the two Senior Consultants has already moved out on transfer and after the departure of the applicant on transfer no Senior Consultant would be available at the Sub Divisional hospital which would impact the health services there. Hence, his transfer cannot be said to serve public interest.



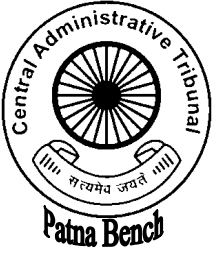
6.3 The applicant was due for retirement in less than 15 months on November 30, 2021 at the age of 65 years and the Railway Board order dated 12.12.2018 (Annexure A/3) clearly mentions that officers due for retirement within two years should normally not be disturbed from the present posting. The General Manager, East Central Railway, in his speaking order (Annexure A/8) while disposing of the applicant's representation overlooked this fact altogether. Ld. Counsel further mentions that the Railway Board vide its order dated 07.08.2020 have directed all Railway Units that unimplemented periodic transfer order of the staff on sensitive posts should be kept pending till March 31, 2021 in view of the ongoing pandemic. The applicant suffers from various ailments including diabetes (insulin dependent), hypertension and coronary artery disease. The people above 60 and suffering from diabetes and hypertension carry a higher risk of being infected with coronavirus. The applicant has settled at Gaya with family and disturbing him towards the end of his career will cause a lot of hardship.



7.1 The learned counsel for respondents while stating that the OA was devoid of merit and deserved dismissal submitted that the Zonal General Manager was competent to transfer Senior Consultants of IRMS within the Zone. Ld Counsel drew attention to Para-5 of the Railway Board instructions contained in RBE No. 144/2018 dated 20.09.2018 (Annexure R/11) according to which posting orders in respect of IRMS and Dental doctors involving inter-Railway transfers and for those working in Board's office are to be issued by the Railway Board and transfer orders of Chief Medical Superintendents (CMSs) in Zonal Railways who cross 62 years of age and opt to serve in a clinical post would be issued by the Zonal Railway administration themselves. Ld counsel clarifies that as per this instruction the inter-Railway transfer of IRMS doctors is presently being done by the Railway Board, whereas the transfer of doctors within a zone is decided by the concerned GMs. The transfer of applicant from Gaya to Dhanbad being under the same Railway zone is within the competence of the GM, East Central Railway.

7.2 The learned counsel for respondents refers to Para 1 (ix) of the Comprehensive Transfer Policy for Railway Officers (Annexure R/8) which says that for IRMS doctors the total stay at a stretch at a particular station should not be more than 15 years and the total cumulative stay at a place in broken spells should not be more than 20 years. The applicant has served at Gaya for more than 33 years

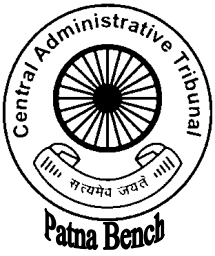
out of his total service of 34 years so far. After he was appointed to the IRMS on 05.02.1986, he continued at Gaya as Senior DMO till 01.12.2006 for more than 20 years and further from 04.09.2007 to 06.08.2020 when the impugned transfer order was issued. The Railway Board instruction dated 07.08.2020 to keep the unimplemented transfer orders in respect of staff on sensitive posts pending till 31.03.2021 in view of the pandemic Covid is not relevant for the applicant. The applicant is not working on a sensitive post and he is also not a staff rather he is a senior rank Gazetted officer.



7.3 The learned counsel further mentions that Hon'ble Supreme Court in several judgments has held that transfer of the Govt. servant from one place to another is an incidence of service and a Govt. Servant has no legal right to demand posting to a particular place. Transfer order from one place to another is necessary in public interest and efficiency in the public administration and whenever a public servant is transferred he must comply with the order. The applicant has opted to continue on clinical post upto 65 years in terms of RBE No. 144/2018 dated 20.09.2018. The transfer of applicant was ordered in administrative exigency and in public interest to post another suitable and prompt doctor in his place. Ld Counsel in order to buttress his point, refers to the judgement of Hon'ble Patna High Court in CWJC No. 3501 of 2017 (Union of India Vs. Harendra Pd. Gupta) quashing the decision of the Tribunal

(CAT, Patna Bench) to set aside the transfer order and send the matter back for reconsideration as a case of overreach.

8. In his rebuttal, learned counsel for the applicant reiterated most of his earlier arguments. Additionally, he mentioned that even if we accept that the applicant served at Gaya for about 33-34 years it is not clear what was the reason to shift him now when he is due for retirement in 15 months. Further, the applicant should not have been disturbed during the Covid period in view of his age and physical ailments as the transfer is likely to impact his wellbeing as also functioning at the new place.

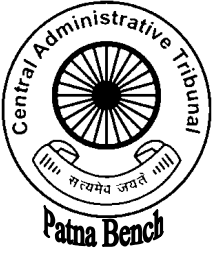


9. The issue which requires to be adjudicated in this OA is whether the impugned transfer order is in conformity with the extant rules and instructions of Railway Board. The transfer order and subsequent rejection of the applicant's representation by the General Manager, East Central Railway have been contested by the applicant broadly on following three grounds :-

- (a) Competence of General Manager in approving the transfer of applicant, a Senior Consultant of IRMS.
- (b) No mention of any ground such as public interest, administrative exigency etc. in the impugned transfer order.
- (c) The transfer order not being in accordance with the Railway's policy and recent instructions on transfer because of the applicant's impending superannuation in 15 months, his age and affliction with multiple physical ailments.

10. Regarding the competence of General Manager in approving the transfer order, it is important to note that OA No. 050/00299/2020 against the impugned transfer order dated

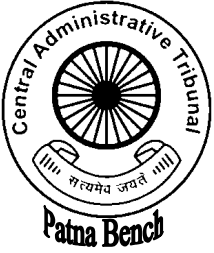
06.08.2020 was disposed of by the Tribunal directing Respondent no. 4 in that OA (General Manager, ECR) to consider the representation of the applicant and pass a reasoned and speaking order thereon as early as possible. Mr. M.P. Dixit, the learned Counsel of applicant in the instant OA had also pleaded for the applicant in the earlier OA No. 050/00299/2020. The learned counsel in his submissions had then mentioned that Respondent no. 4 was the competent authority to decide the representation of the applicant.



11. During hearing of the instant OA the learned counsel for the applicant submits that Railway Board is the competent authority to transfer IRMS doctors within and outside a zone.

12. Learned counsel has referred to para (ix) (a) of the Comprehensive Transfer Policy for Railway officers dated 31.08.2015 (Annexure R/8, relevant portion of which reads: *"The transfer of doctors within and outside the zone should be decided by the Railways/Board at appropriate level on case-to-case basis, keeping in view the administrative interest. Total stay at a stretch/cumulative stay (in broken spells in a particular station) be limited to 15 & 20 years respectively. However, while issuing such transfer orders the following guidelines should be observed."* He also quoted Railway Board instructions issued vide RBE No. 144/2018 dated 20.09.2018. Para 5 of the said RBE reads: *"5. Posting orders involving inter-Railway transfers and for those working in Boards office will be issued by the Railway Board. Orders of CMSs and CMDs in Zonal Railways*

who cross 62 years of age and opt to serve in a Clinical post and who are posted on the same Railway itself would be issued by the Zonal Railway administration themselves.”



13. While the Comprehensive Transfer Policy dated 31.08.2015, referred to by the counsel for applicants, is meant for all railway officers including IRMS doctors, RBE No. 144/2018 dated 20.09.2018, relied upon by the counsel for respondents, deals exclusively with the Doctors of IRMS who opt to serve the government upto the age of 65 years after they reach the age of 62. The provision for Doctors of IRMS continuing beyond 62 years for clinical duties was formalized and notified through the RBE 144/2018 dated 20/9/2018. This provision did not exist in 2015 when the Comprehensive Transfer Policy for railway staff was issued on 31.08.2015. Hence, the case of applicant would be governed by RBE No. 144/2018. As RBE 144/2018 lays down that GM is the competent authority to issue transfers within the zone for doctors who cross the age 62 and opt to serve in a clinical post, the impugned transfer order (Annexure A/1) does not suffer from inadequacy of competence of the authority approving it.

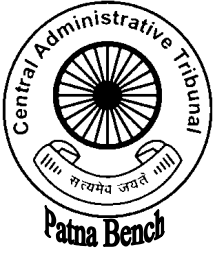
14. As regards the absence of any mention of the ground in the transfer order, the same has been clarified by the General Manager in his order rejecting the representation of the applicant wherein he has clearly mentioned that the applicant was transferred on administrative grounds. The respondents, in their reply, have also mentioned about the circumstances which led to the issuance of the

transfer order (para 8 of the Reply filed by respondents). The applicant or his Id. counsel has not contested these pleadings of respondents in any manner.



15. Applicant has put reliance upon the Railway Board instruction dated 12.12.2018 (Annexure A/3 - issued as addendum to the Comprehensive Transfer Policy Guidelines dated 31.08.2015) which at para (iii) mentions that “officers due for retirement within the span of two years should ***normally*** not be disturbed from the present posting”. However, the instruction dated 12.12.2018 (Annexure A/3) leaves scope to transfer an official within two years of retirement under special circumstances. The averment of applicant that he is due for retirement in 15 months’ time and as such he should not be transferred is not exactly in accordance with the spirit of the RBE instructions which mentions that the officers due for retirement within the span of two years should **normally** not be disturbed from the present posting. The respondents in their reply (Para 8) have elaborated the circumstances which prompted the Principal Chief Medical Director, ECR to send proposal for transfer of the applicant. The GM, ECR in his order has mentioned that the applicant’s transfer was on administrative grounds. The applicant’s transfer was issued under special circumstances hence, the order is not in violation of the Railway Board instruction dated 12.12.2018. The applicant has also referred to the Railway Board instruction dated 07.08.2020 issued in view of the ongoing pandemic situation “*that the periodical transfer*

orders of the staff working on sensitive posts be pended till 31st March , 2021". The applicant's plea is that he is afflicted by various physical ailments including diabetes insulin dependent, hypertension and coronary artery disease and the transfer order is in contravention of these instructions.



16. Regarding said instruction dated 07.08.2020 (Annexure A/2), the order of GM mentions that the applicant is not a staff; rather he is a senior rank Gazetted officer and not working on a sensitive post and hence, the Railway Board order dated 7.8.2020 to keep the unimplemented transfer orders of staff on sensitive posts pending till 31.03.2020 does not apply on the applicant. The order of GM further mentions that Insulin dependent Diabetes, Hypertension and Coronary Artery Disease (Angiography done on 2016) can be better treated and managed at Divisional Railway Hospital at Dhanbad and that Kolkata is nearer to Dhanbad where renowned multi-speciality hospitals are available.

17. It has been established by the counsel for respondent during hearing that the applicant has spent his entire service in IRMS at Gaya itself except for 9 months in 2006-07. After he was appointed to the IRMS on 05.02.1986, he continued at Gaya as Senior DMO till 01.12.2006 for more than 20 years and further from 04.09.2007 to 06.08.2020 when the impugned transfer order was issued. He has served at Gaya for almost 33 years which is much beyond the

approved maximum limit of cumulative stay at any place laid down by the Railway Board instructions.

18. It has been well established by various judicial pronouncements that the transfer is an incidence of service and a Government servant has no right to be posted to a particular office or to a particular place. It is within the exclusive domain of the employer to determine as to at what place and for how long the services of a particular employee are required. The Government servant has to report at the place of transfer first and then make a representation for redressal of his grievance, if he so wishes. 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 violative 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. The Hon'ble Supreme Court in the case of **S.C. Saxena Vs. Union of India & Others** reported in (2006) 9 SCC 583 has held as under:-



“a Government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed...”

19. The submissions at Bar and pleadings on record indisputably indicate that the applicant has been transferred from Gaya to Dhanbad by the competent authority on administrative ground after



following the due procedure. Applicant has no legal right to seek to be posted to a particular place, it is the domain of executive and as long as there are no substantive allegations of mala fide attached to the transfer order there is no reason to go into that. Settled law on transfer is that a transfer order can be challenged only on the grounds of mala fide, violation of any statutory provision or competency of the authority passing the order. None of these grounds apply in the instant case. The applicant has served at Gaya, i.e. his present place of posting for almost entire length of service. The order approving continuation of applicant on clinical posts beyond 62 years of age clearly mentions that his continuation as Consultant/Health is subject to availability of vacancy and administrative convenience as decided by the competent authority (Annexure R/1).

20. Based on the above observations, we are not inclined to interfere with the impugned transfer order dated 06.08.2020 (Annexure A/1) or the order of the GM, ECR dated 27.08.2020 (Annexure A-8) whereby representation of the applicant preferred against the transfer order has been rejected. The OA is devoid of merit and accordingly is dismissed. Pending MA, if there is any also stands disposed of. No order as to costs.

[Sunil Kumar Sinha]
Administrative Member

[M.C. Verma]
Judicial Member

Srk.