

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
Original Application No.33/2021.**

Dated this on the 6th day of August, 2021.

CORAM:

Hon'ble Sh. Jayesh V. Bhairavia, Member (J)

Hon'ble Dr. A.K. Dubey, Member (A)

1. Shri Harishkumar,
Son of Shri Ranchhodji Patel,
Age: 59 years, serving as Chief Booking
Supervisor in the office of the respondents
Residing at Nani Suplad, Vai – Vapi.
Ta. Vapi, Dist. Valsad – 396 191.

...Applicant

(By Advocate Mr. M. S. Trivedi)

Vs

1. The General Manager,
Western Railway,
Churchgate, Mumbai – 400 020.
2. The Divisional Railway Manager (E)
O/o. DRM, Western Railway, BCT,
Mumbai Central, Mumbai – 400 001.
3. The Sr. Divisional Commercial Manager,
O/o. DCM, Western Railway, BCT
Mumbai Central, Mumbai – 400 001.
4. The Station Master / Superintendent,
O/o. S.M., Western Railway,
Karmbeli, Surat – 370 001.

...Respondents

(By Advocate MR. M. J.Patel)

ORDER(ORAL)

PER: Hon'ble Dr.A.K.Dubey Member (A)

1. Aggrieved by his transfer from Karmbeli (KEB) to Dhani (DRD), the applicant has filed this OA seeking following reliefs:

- (A) That, the Hon'ble Tribunal be pleased to allow this petition.
- (B) That, the Hon'ble Tribunal further be pleased to hold/declare that the impugned ex-facie illegal, arbitrary, unjust and unconstitutional action/ decision/ order No. E/C/839/8/3/Vol.

Dated 11/1/2021 (Annexure A/1) issued by the respondents regarding of the applicant from KEB (Karambeli) to DRD (Dhani), is nonest in the eyes of law.

(C) That, the Hon'ble Tribunal further be pleased to quash and set aside the impugned ex-facie illegal, arbitrary, unjust and unconstitutional action/ decision/ order No. E/C/839/8/3/Vol. Dated 11.1.2021 (Annexure A/1) issued by the respondents regarding of the applicant from KEB (Karambeli) to DRD (Dhani).

(D) Such other and further relief/s as may be deemed just and proper in view of the facts and circumstances of the case may be granted.

2. While the applicant was working as Chief Booking Supervisor (CBS) with respondents at KEB, a vigilance check was carried out on 16/10/2019, which revealed that recovery of wharfage amount of Rs. 52,836/- had been pending for a month. Consequently, the applicant was issued with SF II notice dated 28/02/2020 to which he replied on 09/03/2020 (Annexure A/2) asking for details. He avers that he wasn't supplied with the details requested for, but the respondents issued NIP dated 11/11/2020 imposing penalty of withholding increments for two years without future effect (Annexure A/3).
- 2.1 After issue of SF II dated 28/02/2020, respondents transferred the applicant to BL (Booking station) vide order dated 02/03/2020 (Annexure A/4). However, this was cancelled vide order dated 06/03/2020 (Annexure A/5). Then again, he has been transferred vide order dated 11/01/2021 (Annexure A/1). The applicant was promoted as CBS and posted at KEB in March 2018. As per extant policy, he should have been allowed a normal tenure of 3 years in breach of which, he was transferred. This transfer is on vigilance angle. Hence, it is a punitive transfer, the applicant argues. Further, such vigilance based transfers should be with the approval of HOD whereas in this case, it had been with the approval of Sr. DCM.
- 2.2 The applicant has also expressed personal reasons against transfer such as son studying in class 9 in Surat, family condition, health issues, etc.
3. Respondents have filed their reply. Reply refers to the vigilance check on 16/01/2019 wherein it was discussed that the applicant had allowed 23 loaded trucks of a private firm without approval of higher authority and the wharfage amount is Rs. 52,836/- had been pending since a month. Thus he was issued with SF II on 28/02/2020, and all relevant documents were served to the applicant on acknowledgement, to enable him to submit his

defense. Respondents assert that employees can be shifted on vigilance advice and here the disciplinary authority had passed the order accordingly. It is also submitted that the Sr. DCM is competent to transfer the applicant and accordingly, the transfer order was issued on 11/01/2020.

4. The matter came up for final hearing today. Learned Counsel for the applicant reiterated the grounds taken in the OA and prayed for quashing the transfer order dated 11/01/2020. He argued that the transfer was with a malafide intention and was in violation of the tenure.
5. Per contra, learned counsel for the respondents submitted that the transfer was within the same division. Further, in case of the applicant, charges against him were proved and he was awarded punishment of reduction in rank by one stage with future effect and affecting seniority vide NIP dated 23/03/2021 (Annexure A/2 of MA). The counsel also stated that in any case he has been there for about three years and this transfer wasn't in breach of the transfer policy.
6. Heard the counsel for both the parties. We are of the considered opinion that the applicant has not been able to make out a case for himself as neither the competence of the transferring authority nor the breach of transfer policy is established at all. We do not find it a fit case for our intervention. The OA is therefore dismissed. MA has been disposed off.

(A K Dubey)
Member(A)

(Jayesh V Bhairavia)
Member(J)

Kk/skv