

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

LIBRARY

No. O.A. 350/00623/2020

Date of order: 9.3.2021

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
 Hon'ble Dr. Nandita Chatterjee, Administrative Member

Mukesh Agarwal,
 Son of Omprakash Agarwal,
 By occupation service,
 Working as Track Maintainer IV-SSE PW/DMA,
 Aged about 38 years, Permanent resident of
 Village and Post Office - Dharampur,
 Near Railway Crossing, via Burnpur,
 P.S. - Hirapur,
 District - Paschim Burdwan,
 West Bengal - 713325,
 Presently residing at Railway Quarter No.
 Ds-50/D,
 Railway Colony, Burnpur,
 Post Office - Burnpur,
 P.S. - Hirapur,
 District - Paschim Burdwan,
 West Bengal - 713325.

..... Petitioner / Applicant.

-Versus-

1. Union of India,
 Service though the General Manager,
 South Eastern Railway,
 Garden Reach,
 Kolkata - 700043.
2. The Divisional Railway Manager,
 South Eastern Railway,
 Adra Division,
 P.O. - Adra,
 District - Purulia,
 West Bengal - 723121.
3. The Sr. Divisional Personnel Officer,
 South Eastern Railway,
 Adra Division,
 P.O. - Adra,
 District - Purulia,
 West Bengal - 723121.

4/26

4. The Sr. Divisional Engineer (Central)/ Adra,
South Eastern Railway,
Adra Division,
P.O. – Adra,
District – Purulia,
West Bengal – 723121.
5. The Assistant Divisional Engineer (East)/ Adra,
South Eastern Railway,
Adra Division,
P.O. – Adra,
District – Purulia,
West Bengal – 723121.
6. The Sr. Section Engineer (PW),
Damodar/South Eastern Railway
under Adra Division,
P.O. – Adra,
District – Purulia,
West Bengal – 723121.

.....Respondents.

For the Applicant : In person

For the Respondents : Mr. K. Sarkar

O R D E R

Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 in second stage litigation praying for the following relief:-

A) Office Order being No. 08/2020 dated 08.06.2020 issued by the respondent No. 4 and Office Order No. E/MK/2016 dated 10.06.2020 issued by the respondent No. 6 (annexed in ANNEXURE A/1) are not tenable in the eye of law and as such the same may be quashed.

B) Speaking Order being No. E/1/Court Case/M. Agarwal issued by the respondent No. 4 is not tenable in the eye of law and as such the same may be quashed.

C) An order do issue directing the respondents to pay the applicant his salary month by month and arrears with effect from the month of May, 2020 and to certify and transmit the entire records and papers pertaining to the applicant's case so that after the causes shown thereof conscientious justice may be done unto the applicant by way of grant of reliefs as prayed for in (a) and (b), above.

W.H.

D) Costs.

E) Such further order or orders, Direction or Direction as Your Lordships may deem fit and proper."

2. Heard the applicant in person and Ld. Counsel for the respondents.

Examined pleadings, documents on record as well as those furnished during hearings.

3. The applicant appears in person and would submit that he had joined the Railway service on 8.8.2016 as Track Maintainer - IV (Gangman) and was posted at Gang No. 7/Muradi (Headquarter) under SE/P. Way/DMA, Adra Division. The applicant was, thereafter, transferred to Chandil under SSE/P.Way/CNI which is about 130 kilometres away from his place of residence.

As an enquiry has been initiated against him, the applicant would allege that his transfer to Chandil should be interpreted as a penal measure.

The applicant would also aver that his family members, namely, wife and daughter suffer from several medical complications and Burnpur is their preferred place of treatment.

The applicant's representation against such transfer, however, was not considered and, being aggrieved with such inaction, the applicant had approached this Tribunal in first stage litigation in O.A. No. 350/00436/2020. In compliance to directions of this Tribunal therein, the respondents issued a speaking order dated 27.7.2020 rejecting his claim and, being aggrieved, the applicant has approached this Tribunal praying for the aforementioned relief in the instant O.A.

haf

The applicant has reportedly joined his duties at Chandil in October, 2020.

The applicant would furnish the following grounds in support of his claim:-

- (i) Being a Gr. 'D' staff, he is not liable to be transferred.
- (ii) That his transfer to Chandil would severely affect the seniority of the applicant.
- (iii) That, his transfer to Chandil was a penal measure to manifest the vindictive intentions of the authorities.
- (iv) The medical complications of his family members were aggravated during the epidemic period and, hence, it was difficult for him to join his transferred place of posting.
- (v) That, Burnpur is the preferred place of treatment of his family members.
- (vi) That, in order to fill up vacant posts of Trackmen at Chandil, the authorities ought to have issued notification seeking willingness of employees to be posted therein.
- (vii) The Damodar Unit at which the applicant was posted is a vital section for movement of trains and freights calling for his omnipresence therein.

4. The respondents, per contra, have sought to rebut the claim of the applicant with the following contentions:-

- (i) That, although entrusted with safety related responsibilities, the applicant had refused to perform his duties throughout the lockdown period.

hsl

- (ii) He had deliberately lodged false complaints against his immediate supervisor as well as the Gatekeeper before Hirapur P.S. on 14.5.2020 which were subsequently proved to be unsubstantiated.
- (iii) The complaint made by the applicant's family members against the wife of his immediate supervisor was proved to be baseless.
- (iv) That, there were a series of complaints and joint appeals made by the applicant's gang mates and other Track Maintainers against the misdemeanor of the applicant.
- (v) That, CMP/Burnpur had also complained that the applicant threatened him for non-extension of his sick leave.
- (vi) The applicant was also put on alert by his supervisor for allegedly tampering with the attendance sheet.
- (vii) That, the applicant has been transferred against an existing vacancy in Chandil which is a vital unit in PRR-TATA main line Section and, subsequently, a sparing memo has also been issued to him.

The respondents would also inform that the applicant had been penalized for his unauthorized absence by reducing his pay by one stage with non-cumulative effect vide disciplinary authority's order dated 22.6.2020 (Annexure R-2 to the reply) and that the applicant had been earlier penalized on 21.11.2019 (Annexure R-8 to the reply) on the grounds of overwriting on his attendance sheet. Despite such reprobations, the applicant failed to demonstrate professionalism in discharge of his duties.

hsl

5. The applicant's rejoinder only reiterates of the claims made in his Original Application without any specific rebuttal of the arguments of the respondent authorities.

6. The speaking order dated 27.7.2020 at Annexure A-5 to the O.A., which is under challenge, is extracted as under:-

S.E. Railway

No. E/1/Court Case/M. Agarwal

**Office of the
Sr. Divl. Engineer(Co)/Adra
Date: 27.7.2020**

To
Sri Mukesh Agarwal,
Track Maintainer-IV
Under SSE/P.Way/CNI
Erstwhile Qr. No. DS/50/D. Railway Colony Burnpur,
P.O. Burnpur, Dist. Paschim Bardhaman,
Pin - 713325.

Reasoned and Speaking order

xxxxxxxxxx

In obedience to the kind direction of the Hon'ble CAT/Kolkata, I the undersigned being the Respondent No. 4 have gone through the Judgement/order dated 24.6.2020 passed in O.A. No. 436 of 2020 along with representation of the applicant dated 16.6.2020 as annexed with the O.A. at Annexure A/6 meticulously with full application of mind.

After meticulous examination it is noticed that you have been transferred to perform the duty of Track maintainer-IV under SSE/P.Way/CNI. The post of Track Maintainer is a Safety Category post and related to maintenance of Railway track which demands utmost care for maintaining safety for safe movement of Mail/Express/Passenger Trains and Goods Trains.

The Chandil Unit of Purulia-Tata Section is a vital Section for movement of Trains and Freight. Moreover, there are vacancy of Track Maintainers at Chandil and Railway is facing lot of problem for maintenance of the Track in regard to movement of Trains.

You are being an educated and responsible person, your service is essentially required at Chandil for better maintenance of Railway Track.

In your representation you have raised various allegations against your supervisor and staff baselessly. As per Railway Service Conduct Rules, 1966 you cannot deny to perform your duty allotted by your immediate Supervisor.

On exigency of your service you have been transferred from Damodar unit to Chandil unit against existing vacancy on Administrative Interest vide this office order dated 08.06.2020. But without carrying out your transfer order, you have filed the instant case before the Hon'ble Tribunal.

hsl

In the Supreme Court order in the case of S.S. Karaav Vs. State of MP reported in 1995 SCC (L&S) 666 has held that the inconvenience caused to the employee out of transfer cannot be a ground for judicial review of the transfer order. There is no dispute in the fact that the transfer is not only an incident of service but also a condition of service.

Further the Hon'ble Apex Court in the case of S.C. Saxena vs. Union of India & ors [2006 (9) SCC 583] has held as under:-

"In the first instance, a Government servant cannot disobey the transfer order by not reporting at the place of his posting and then ventilate his grievance. It is his duty first to report for working, where he is posted and make representation as to what may be his personal problems and this tendency of not reporting at the place of posting and indulging in litigation, needs to be curbed."

Thus I am of the considered opinion that your representation dated 16.6.2020 has been disposed of in light of Hon'ble CAT Judgment/Order dated 24.6.2020 with advice you to join your duty at Chandil immediately and thereafter you may submit your representation for personal problems before the competent authority.

Please acknowledge receipt."

From the said speaking order, the following is inferred:-

- (i) That, the applicant was posted as a Track Maintainer and transferred accordingly. The post of a Track Maintainer is a safety category post calling for responsible maintenance to ensure maximum safety in movement of Mail/Express/Passenger/Goods trains.
- (ii) That, the Chandil Unit of Purlia -TATA Section is a vital Section for movement of trains and freight. Vacancies in the post of Track Maintainers therein is likely to compromise with the safety in the movement of trains.
- (iii) That, the Hon'ble Apex Court in **S.S. Kaurav v. State of M.P. 1995 SCC (L&S) 666** had held that inconvenience caused to an employee out of transfer cannot be a ground for judicial review and that it is undisputed that transfer is not only an incidence of service but also a condition of service.

hsl

(iv) In the speaking order, the respondents have also cited the decision in **S.C. Saxena v. Union of India & ors [2009 (9)**

SCC 583] wherein it was held that the government servant has to first report for duty and thereafter represent on his issues that could prejudice him on account of such transfer.

7. We have carefully considered the rival contentions as well as the submissions made by the parties during hearing, and; we would like to observe as follows:-

(i) The applicant has claimed that being a Gr. 'D' staff he is on a non-transferable post.

No appointment order containing such condition of his non-transferability has been furnished by him to support such claim before this Tribunal.

In this context, we would like to refer to **B. Varadha Rao v. State of Karnataka, 1986 (3) SLR 60 (SC)** wherein it is held that unless specifically mentioned in the transfer order, all posts are transferable.

(ii) The applicant has been transferred to the same post at a different location. As the transfer order (Annexure A-1 to the O.A.) does not reflect any contention that the terms and conditions of his service would be to his disadvantage, his allegation that his seniority will be adversely affected, is not established.

The applicant has averred that the authorities should call for willingness of employees to be transferred to existing vacant posts.

To the contrary, in **S.P. Gupta v. Union of India, 1981 (Supp)**

bph

SCC 87, Hon'ble Apex Court had held that generally, the exercise of transfer is not dependent on the consent of the employee.

(iii) In their speaking order, the respondents have reiterated the fact that the applicant was posted at Chandil on public interest as there was a crying need of Trackman to ensure the safety of movement of Passenger as well as Goods trains. The respondents have clarified that the transfer of the applicant is in public interest and that such transfer was not issued as penal measure against the applicant.

In **N.K. Singh v. Union of India, (1995) I LLJ 854**, it was ruled that unless the decision to transfer is vitiated by mala fides or infraction of any professed norm or principle governing the transfer, judicial scrutiny is eschewed. It was further held that, when career prospects remain unaffected and, also, there is no detriment to the government servant, interference by courts should be rare.

The Hon'ble Apex Court reiterated this view in **Abani Kanta Ray v. State of Orissa, 1995 Supp (4) SCC 169** when they held that transfer, which is an incident of service, is not to be interfered with by Courts unless shown to be clearly arbitrary, vitiated by malafides or infraction of any professed norm or principle governing the transfer.

In the instant matter, the authorities have clearly stated that the applicant has been moved to Chandil to ensure safety and maintenance of train movements which is entirely in "public interest". Once a transfer is made in public interest, it may not be

hsc

said to be violative of transfer policy. The applicant's allegation on "penal" nature of transfer is belied by independent penalties imposed on grounds of unauthorized absence and overwriting on attendance sheets.

Hence, we would conclude that no professed norm or principle governing transfer has been violated in case of the applicant.

(iv) We find from records that there had been a number of allegations against the applicant from most of his colleagues alleging that the applicant and his family has been disturbing the environment in the colony. Reportedly, the applicant and his family had acrimonious relationships with his supervisor leading to FIRs and counter complaints.

It was hence incumbent upon the respondent authorities to restore a healthy working environment, reportedly being vitiated by the presence of the applicant and his family. Such attempts of the authorities in trying to maintain a healthy eco system for its employees cannot be held as vindictive or reflective of malafide intentions.

(v) The applicant has demonstrated an insistence, almost bordering on obstinacy, to stay back at Burnpur and to continue to occupy his official accommodation therein.

It is settled law that no employee has a vested right to stay continuously at one place of posting as per ***N.K. Singh (supra)***.

In ***Abani Kanta Ray (supra)*** it is ruled that it is needless to emphasise that a government employee or any servant of a public

h.s.

undertaking has no legal right to insist for being posted at any particular place. It cannot be disputed that concerned employee holds a transferable post and unless specifically provided in his service conditions, he has no choice in the matter of posting.

(vi) In case, the applicant was influenced by extraneous reasons to continue his stay at Burnpur, the same has not been disclosed in his pleadings. The applicant would reiterate the medical complications of the members of his family, namely, his wife and daughter. The latest certificate furnished by a medical practitioner on 14.10.2020 which reads as follows:-

"This patient is known case of CKD Stage III, hypothyroidism, Beta Thalassemia Carrier and Microcytic Anemia.

She is under my treatment and supervision since last 3 months. She is physically weak and prone to secondary infections and hence she needs to be taken care of by her husband Mr. Mukesh Agarwal on urgent basis."

The respondent authorities vide their communication dated 5.2.2021, conveyed as follows:-

"But Shri Agarwal refused to attend Divisional Railway Hospital/Adra with his wife & daughter and communicated the matter through his WhatsApp to the undersigned on 4.2.2021 (copy enclosed) stating that it is contrary to Hon'ble Tribunal's order.

In compliance to Hon'ble Tribunal's Order dtd. 14.1.2021 a list of Hospitals within Adra Division is enclosed those are Railway empanelled Hospitals. Sri. No. 2 Brahamanand Narayan Hrudalaya (Multi Speciality) Hospital at Tata (Jamshedpur) is within 30 Kms from Chandil where Sri Agarwal has been posted and he can avail it for the treatment of his wife & daughter as Brahamanand Narayan Hrudalaya (Multi Speciality) Hospital is empanelled for all specialties."

The respondents have also disclosed a list of empanelled hospitals in which treatment for nephrological issues and for thalassemia patients are available. The applicant, however, has repeatedly refused to attend such hospitals although one such hospital namely, Brahamanand

Leh

Narayan Hrudalaya (Multi Speciality) Hospital at Tata (Jamshedpur) is only 30 kms from Chandil wherein the applicant was posted.

It would not be logical for the applicant to insist that medical facilities available to treat nephrological patients as well as thalassemia patients are available only at Burnpur as decidedly other Railway hospitals as well as empanelled hospitals provide such treatment to numerous patients suffering from similar complications.

8. The authorities, in response to directions of this Tribunal dated 8.2.2021, have agreed, as a concessionary measure, to post the applicant at Bankura under AEN. The same has been disclosed vide letter dated 19.2.2021 furnished during hearing. The applicant was offered an opportunity to take instructions on the medical facilities available under AEN Bankura but he expressed his reluctance to avail of any medical facilities anywhere else but in Burnpur. Such resistance of the applicant to move anywhere beyond Burnpur violates legal dicta. Hence, his challenge to the transfer on grounds of violation of transfer policy, malafide intentions and the penal nature of his transfer, fails.

8. Accordingly, we would dispose of this O.A. with the following directions:-

- (i) The respondent authorities will issue revised orders of his transfer by posting him under Bankura, AEN within a fortnight of receipt of a copy of this order.
- (ii) The applicant, on receipt thereof, will join the same, after availing of permissible joining time. Upon joining, he will vacate his official accommodation at Burnpur.

446

(iii) The applicant's salary, if withheld, should be released in accordance with rules, and, as per his entitlement, within a period of 2 weeks thereafter.

9. With these directions, the O.A. is disposed of. No costs.

Dr. Nandita Chatterjee
Administrative Member

Bidisha Banerjee
Judicial Member

SP