



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 350/00078/2021

Date of order: 23.2.2021

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

Manoranjan Maity,
Son of Late Sudhanshu Maity,
Aged about 37 years,
Working as Khalasi Helper
Residing at Vill. - Banashigouri,
P.O. - Akandabari,
Dist. - Purba Medinipur,
Pin - 721650.

..... Applicant.

-Versus-

1. Union of India,
Service though the General Manager,
S.E. Rly,
Garden Reach,
Kolkata - 43.
2. Divisional Railway Manager,
S.E. Rly, Kharagpur,
PO+PS - Kharagpur,
Dist. - Paschim Midnapur,
W.B. 721301.
3. Sr. Divisional Engineer (Head Quarter),
S.E. Rly, Kharagpur,
PO+PS - Kharagpur,
Dist. - Paschim Midnapur,
W.B. 721301.

..... Respondents

For the Applicant : Mr. A. Chakraborty, Counsel
Ms. P. Mondal, Counsel

For the Respondents : Mr. R.K. Sharma, Counsel

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ORDER (Oral)**Dr. Nandita Chatterjee, Administrative Member:**

Aggrieved with his transfer orders from Tamluk to Kharagpur, the applicant has approached this Tribunal in the second stage litigation, praying for the following relief:-

"i) Office Order dated 13.08.20 (Posting Order No. W/MISC/3/A/Transfer/Assistant Works and Chowkidar) issued by Divisional Engineer (Head Quarter) cannot be sustained in the eye of law and as such same may be quashed.

ii) Speaking Order dated 31.12.20 issued by Divisional Engineer (HQ) cannot be sustained in the eye of law and therefore the same may be quashed."

2. Heard both Ld. Counsel, examined documents on record. This matter is taken up for disposal at the admission stage.

3. The submissions of Ld. Counsel for the applicant is that, the applicant was initially appointed as a Khalasi Helper and posted at Kharagpur under SSE (W), S.E. Railway, Kharagpur. The applicant had represented for posting at Tamluk on personal grounds which was considered and he was posted at Tamluk.

The applicant, however, was once again posted to Kharagpur vide orders dated 13.8.2020 (Annexure A-3 to the O.A.). As his representation against such transfer was not considered by the respondent authorities, the applicant had approached this Tribunal in O.A. No. 946/2020 and an order was issued by the respondent authorities on 31.12.2020 (Annexure A-6 to the O.A.) in compliance to the directions of this Tribunal. Being aggrieved with rejection of his representation, the applicant has approached this Tribunal for quashing of such speaking order in the aforementioned relief.

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4. Upon perusal of records, we would infer as follows:-

(i) The applicant had represented to the authorities on personal grounds for transfer from Kharagpur to Tamluk. Upon consideration of the same, he was posted at Tamluk vide orders at Annexure A-2 dated 23.10.2017 with a direction that:

“the transfer on bottom seniority of recruitment grade as per extant rules.”

(ii) That, thereafter, vide orders dated 13.8.2020 (Annexure A-3 to the O.A.), the applicant was once again transferred to Kharagpur and in response to directions of this Tribunal, the respondent authorities have clarified that once his seniority has been decided on his posting at Tamluk on his own request, such seniority will not be changed further and, that, he will retain his present seniority while being posted to Kharagpur.

(iii) In the speaking order, the respondents have further reasoned as follows,

“You have been ordered for transfer from JE(W)TMZ to SSE(W) Horticulture/KGP in the same grade and post of Helper Gr.-II on administrative interest along with 02 (two) other staff vide DRM/Engg/KGP's order No. W/Misc/3/2A/Transfer/Asst. Works & Chowkidar dated 13.8.2020 as your service in the said post under SSE (W) Horticulture/KGP is highly essential at the present juncture to safeguard the railway interest.

Hence, the transferred order dated 13.8.2020 stand good and you are advised to comply the administrative order.”

implying thereby that the applicant's transfer to Kharagpur was in public interest.

5. We find that this order of the respondent authorities at Annexure A-3 to the O.A. is severely prejudicial to the applicant. The applicant, prima facie, was placed at bottom-most seniority upon his transfer to Tamluk in personal interest. Admittedly, the applicant had agreed to

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such bottom seniority upon his belief that he would be retained in Tamluk on personal grounds, and, hence, was willing to sacrifice his seniority in the interest of retention.

If, however, he is transferred once again to KGP on bottom seniority, such action would act as the proverbial nail on the coffin, rendering his acceptance of bottom seniority as infructuous.

In ***K.P. Sudhakaran v. State of Kerala, (2006) 5 SCC 386*** the Hon'ble Apex Court, while deliberating on the subject of transfer affecting seniority and promotion, had held, that the general rule is that if a Government servant holding a particular post is transferred to a similar post in the same cadre, the transfer will not wipe out his length of service in the post till the date of transfer and the period of service in the post before his transfer has to be taken into consideration in computing the seniority in the transferred post. But where a Government servant is so transferred on his own request, the transferred employee will have to forego his seniority till the date of transfer, and will be placed below the junior-most employee in the category in the new cadre or department.

In the event the applicant's original seniority was restored while transferring him to Kharagpur, the validity of the transfer was justifiable on grounds of administrative interests as ruled below by the Hon'ble Apex Court in ***K.B. Shukla v. Union of India, 1979 (2) SLR 58 (SC)***.

" The responsibility for good administration is that of the Government. The maintenance of an efficient, honest and experienced administrative service is a must of the due discharge of that responsibility. Therefore, the Government alone is a best suited to judge as to the existence of exigencies of such a service requiring appointments by transfer. The term "exigency" being understood in its widest and pragmatic sense...."

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In this matter, however, the respondents have admitted that his original seniority will not be restored. Hence, once having agreed to transfer him to Tamluk at bottom seniority on account of pressing personal interests, the respondents cannot turn around and deal the applicant with a double whammy. In ***B. Varadha Rao v. State of Karnataka, 1986 (3) SLR 60 (SC)*** the Hon'ble Court had settled the proposition that transfer, being an ordinary incident of service, should not result in alteration of any condition of service to his disadvantage.

6. We would hence intervene and would quash such transfer orders at Annexure A-3 to the O.A. with immediate effect. With the quashing of the orders so impugned, it is directed that the applicant be permitted to rejoin his duties at Tamluk and the interim period be regularized in accordance with law.

The respondent authorities will arrange for a Substitute Helper Gr. II to serve the authorities at SSE (W) Horticulture/KGP in public interest.

The entire exercise be completed within 12 weeks from the date of issue of this order.

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

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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