

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : this the 3rd day of February, 2012

Original Application No. 1031 of 2006

Hon'ble Mr. Sanjeev Kaushik, Member Judicial
Hon'ble Mr. Shashi Prakash, Member Administrative

Vishan Chand Sharma, S/o late Raj Narayan Sharma, R/o 95/16B, Vivekanand Colony, Civil Lines, Jhansi.

... Applicant
By Adv: Sri A.K. Goel & Sri R.K. Nigam

V E R S U S

1. Union of India through General Manager, Central Railway, Mumbai.
2. Divisional Railway Manager (P), Mumbai CST.
3. General Manager, N.C.R. Allahabad.
4. Station Manager, Jhansi, NCR.

... Respondents
By Adv: Sri P.N. Rai

O R D E R

Hon'ble Mr. Shashi Prakash, Member - A

Through this OA the applicant seeks following main reliefs:

- "i. To issue a order or direction quashing the order dt 26/29.07.2002 (Annexure no. 7) passed by DRM (P) Mumbai CST. And order dt. 11.08.2006 (annexure no. 9) passed by respondent no. 6.
- ii. To issue the orders or direction to the respondents to issue an other transfer order to the petitioner following the Railway Boards order dt. 05.11.1997 letter no - E(NG)I-97/TR/28.
- iii. To issue orders or directions to pay al the monetary benefits which have already been suffered by the petitioner.
- iv. To issue order and direction to the D.R.M. (P) Jhansi to issues first class railway pass to the petitioner.
- v."

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2. The facts of the case as stated by the applicant are that he was appointed on 24.07.1986 as Commercial Clerk in Central Railway in Bombay Division. His wife Smt. Deepika Sharma was appointed on 03.05.1996 as Primary Teacher in Central Railway Senior Secondary School, Itarsi. Due to different places of posting the applicant and his wife found difficult to manage their three young children. Accordingly, the wife of the applicant filed an application for her transfer from Itarsi to Mumbai which was followed by several reminders. On 05.05.2000 the wife of the applicant was transferred from Itarsi to Jhansi instead of Mumbai as requested by her. As the applicant's wife had been transferred to Jhansi, the applicant also applied for his transfer from Mumbai to Jhansi and on 12.12.2002 the applicant was transferred from Mumbai division to Jhansi division. As stated by the applicant his pay grade prior to his transfer to Jhansi was ₹ 5000 – 8000. However, on his transfer from Mumbai division to Jhansi division, the pay grade of the applicant was reduced to ₹ 3200 – 4900. Aggrieved by this reduction the applicant met the authorities for redressal of his grievances but was only given assurances and no action was taken. Thereafter, he submitted representations dated 18.06.2003 and 27.02.2004 in the office of Divisional Railway Manager, Jhansi. Subsequent representations dated 18.06.2003 and 25.07.2005 were submitted to Divisional Personnel Officer, N.C.R., Jhansi and Chief Personnel Officer, N.C.R., Allahabad but with no response. The applicant has stated that it was in view of the extreme adverse family circumstances that he was compelled to submit a request for his transfer in 'B' form.

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3. By letter dated 07.02.2001 DRM (P), Mumbai informed CPO (C) CST, Mumbai that out of turn interdivisional transfer of the applicant has not been accepted, implying thereby that his 'B' form had been rejected. Thereafter, by order dated 26/29.07.2002, DRM (P), Mumbai CST issued transfer order of the applicant clearly stating that the applicant who was in GB Grade of ₹ 5000 – 8000 in Mumbai Division, Central Railway is reverted as Junior BC in Grade of ₹ 3200 – 4900 and transferred out of turn as a special case at his own request at bottom seniority (Annexure 7). It is alleged by the applicant that his representation in 'B' form which was based on spouse factor was converted by the authorities as a normal interdivisional transfer which was in contravention of the Railway Board's circular dated 05.11.1997 relating to Posting of Husband and Wife at the same place in respect of Grade 'C' and 'D' Railway employees.

4. As per averment made by the applicant, on his joining at Jhansi he was being issued first class pass, the last being on 05.12.2005. Subsequent request for issue of pass made by the applicant was not acceded to by the respondents. The applicant made a representation dated 22.06.2006 to Station Manager, N.C.R. Jhansi and Divisional Railway Manager (P), N.C.R. Jhansi. The representation of the applicant was rejected by the Station Manager by order dated 11.08.2006. Aggrieved by non issuance of first class pass by the Station Manager, Jhansi, based on his reduced pay grade resulting from his transfer order the applicant has preferred this OA.

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5. Sri S.K. Pandey brief holder of Sri R.K. Nigam, learned counsel for the applicant argued that while considering the transfer application of the applicant, the respondents instead of treating his application as per direction of the Railway Board, treated his application as transfer on request and while passing order for his interdivisional transfer dated 26/29.07.2002, reduced his pay Grade for GV Grade ₹ 5000 – 8000 (RSRP) to BC Grade ₹ 3200 – 4900. The action on the part of the respondents to reduce the Grade of the applicant was arbitrary and illegal. According to the learned counsel for the applicant despite two representations submitted by the applicant against reduction of his pay grade as contained in his transfer order no action was taken by the respondents to take necessary corrective steps. Learned counsel for the applicant further argued that after his joining at Jhansi on 12.12.2002 the respondents was being issued first class pass having regard to his entitlement based upon his grade prior to his transfer to the Jhansi division. First class pass continued to be issued in favour of the applicant till 05.12.2005. Lateron, when the applicant applied for first class pass his request was rejected and the representation submitted by him in this regard was also rejected by the respondents. Learned counsel drew the attention of the Tribunal to Rule 5 of Railway Board's letter dated 01.02.1999, which provides that, "the Railway employees who are already entitled to first class passes, shall continue to draw first class passes, irrespective of their eligibility in terms of these orders". Taking into account this provision learned counsel submitted that as the applicant was being issued first class passes prior to the date of the issue of the Railway Board's letter dated 01.02.1999, it is wrongful on the part of the respondents to deny the issue of first class passes to the applicant. Having regard to the above facts and the rule position, learned counsel urged that the transfer order dated 27/29.07.2002 be set

aside and the pay of the applicant should be fixed in the same grade which he was drawing at CST Division at Mumbai before his transfer. Learned counsel also prayed for issue of direction to the respondents for issuing first class passes to the applicant as per his entitlement.

6. Sri P.N. Rai, learned counsel for the respondents stated that the interdivisional transfer of the applicant was made based upon specific request of the applicant. The transfer order was subject to fulfilling the terms and conditions as provided in the transfer order. Learned counsel further informed that there is no provision to transfer any employee at his own request at intermediate grade and that an employee can only be considered for transfer on request in the initial recruitment grade. The fact that the applicant in pursuance of the transfer order dated 27/29.07.2002 joined at Jhansi division and he never represented to the authorities regarding his grievances goes to show that the transfer order alongwith its terms and conditions was accepted by the applicant. The applicant has not mentioned the rule under which his case has to be considered. Concluding his arguments learned counsel stated that the transfer of the applicant was at his own request and his case was dealt as per existing norms and he was rightly given the recruitment grade at Jhansi. As initial recruitment grade of the applicant on his joining at Jhansi was reduced to the initial grade of ₹ 3200 – 4900, the applicant by virtue of this fact became ineligible for grant of first class passes. Hence the denial of first class passes is as per the circular of Railway Board dated 01.02.1999.

7. Heard learned counsel for the parties and perused the pleadings on record. The relevant point for consideration in this case mainly relates to the guidelines/circular issued by the Railway Board

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with regard to the transfer on request. In the counter reply filed by the respondents a photo copy of para 312 of IREM has been annexed which reads as under:-

"312. TRANSFER ON REQUEST.- The seniority of railway servants transferred at their own request from one railway to another should be allotted below that of the existing confirmed, temporary and officiating railway servants in the relevant grade in the promotion group in the new establishment irrespective of the date of confirmation or length of officiating or temporary service of the transferred railway servants.

Note: - (i) This applies also to cases of transfer on request from one cadre/division to another cadre/division on the same railway.

(ii) The expression "relevant grade" applies to grade where there is an element of direct recruitment. Transfers on request from Railway employees working in such grades may be accepted provided they fulfil the educational qualifications laid down for direct recruitment to the post. No such transfers should be allowed in the intermediates grades in which all the posts are filled entirely by promotion of staff from the lower grade(s) and there is no element of direct recruitment."

8. The terms and condition on the basis of which interdivisional request transfer of the applicant was made by order dated 27/29.07.2002 is reproduced below:-

"With the approval of Competent Authority, the Inter Divisional transfer at own request basis is hereby issued to have immediate effect.

Shri V.C. Sharma, HBC, GV Grade Rs. 5000 - 8000 (RSRP) BB Division Central Railway is reverted as Jr. BC in Grade Rs. 3200 - 4900 (RSRP) is transferred to DRM (P) JHS out of turn as a special case at his own request in initial recruiting Grade Rs. 3200 - 4900 & bottom seniority below the confirmed, officiating as Temporary Jr. BC of JHS Division.

Shri V.C. Sharma, HBC GV is not entitled for pass/PTO/TA/Transfer grant & Joining time etc, on transfer account, since his transfer is at his own request.

There should be no DAR/VIG/SPE Cases & admitted debits pending against him."

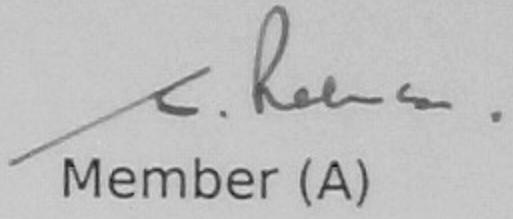
9. A perusal of para 312 of IREM which deals with the issue of transfer on request specifically mentions that the seniority of railway servants transferred at their own request from one railway to another should be allotted below that of the existing confirmed, temporary and officiating railway servants in the relevant grade. This provision makes it quite clear that though

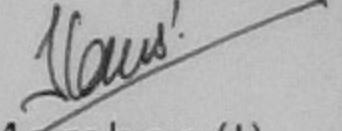
the Railway Servant transferred at his own request from one division to another is to be placed at bottom seniority but should be given the relevant grade. In this case relevant grade would mean the grade in which concerned employee was working prior to his transfer. There does not appear to be any provision in the aforesaid rule regarding placement of an employee transferred at his request for reduction his pay to the initial recruitment grade. Respondents have also not been able to show any rule under which it is provided that in case of request transfer the concerned employee has to be downgraded to the initial recruitment grade. It may be pertinent to mention that imposition of condition of reduction in the pay in case of request transfer of an employee is patently contrary to law as such an order can be passed in form of a penalty after following the procedure as laid down in Rule 6 and Rule 9 of Railway Servant (Discipline and Appeal) Rules, 1968. Issuing of a transfer order on request basis with the condition of the reduction of pay grade would amount to punishment of the concerned employee without compliance of the statutory procedure. Hence, any such an order is bad in law and is liable to be set aside.

10. Having regard to foregoing position the OA is partly allowed. The transfer order dated 27/29.07.2002 to the extent of reduction of pay grade of the applicant from ₹ 5000 – 8000 to ₹ 3200 – 4900 is set aside with the direction to the respondents that the pay grade which applicant was having prior to his transfer should be restored from the date of passing of this order with notional benefit from the date of his

joining at Jhansi. As the restoration of the pay scale of ₹ 5000 - 8000 to the applicant would entitle him to issue of first class passes as per the Railway circular dated 01.02.1999, the respondents shall take action accordingly in this regard. The above direction should be complied with within a period of four months from the date of receipt of a certified copy of this order. No cost.

/pc/


Member (A)


Member (J)