

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.W. No. 1536 of 1996

Present : Hon'ble Mr. Justice A.K. Chatterjee, Vice-Chairman
Hon'ble Mr. M.S. Mukherjee, Administrative Member

Amal Chandra Ganguly, s/o Late S.N. Ganguly,
aged about 56 yrs. working for gain as I.O.W./II
under ZEN(North), Metro Railway, Calcutta at
present residing at Vill. Hatpukur, P.O. G.I.P.
Colony, Dist. Howrah-4, Ramrajatala.

.... Applicant

-Vs-

1. Union of India, service through the General Manager, Metro Railway, Calcutta ;
2. The General Manager, Metro Railway, Cal-71 ;
3. The Chief Engineer, Metro Railway, Cal-71 ;
4. The Dy.C.P.O., Metro Railway.

.... Respondents

For applicant : Mr. S.K. Ghosh, counsel

For respondent
Nos. 1, 2 & 4 : Mr. C.R. Bag, counsel

For respondent
No. 3 : Ms. K. Banerjee, counsel

Heard on : 16.7.1997

- Order on : 18 - 8 - 1997

O R D E R

A.K. Chatterjee, VC

The petitioner contends that while working as Works Mistry, he was transferred to Metro Railway in the same capacity in 1977 and after two promotions, he is now working as I.O.W.-Gr.II. He is due to retire on 28.2.96 for which a notice was duly issued by the Metro Railway, which also indicated that final settlement dues will be made by the said railway. However, an order dt. 26.6.96 was issued transferring him to Eastern Railway, which he has challenged in this application, inter alia, on the ground that this

order of transfer from one railway to another after issue of retirement notice despite availability of post is bad in law and is in the nature of reversion and a punitive action. The order having been issued within two years of superannuation was also said to be bad as opposed to the guidelines issued by the Railway Board in this regard. It is also said to be malicious as other colleagues have been retained but only the petitioner has been singled out. He has also stated that due to certain domestic commitment, he is unable to move from the Metro Railway. On receipt of the impugned order dt. 26.6.96, he had previously filed O.A. 1403 of 1996 for quashing the same and it was disposed of on 26.11.96 with a direction upon the authorities to consider the representation made by the petitioner, which was then pending and the transfer order was stayed till the representation was considered. The representation was, however, rejected, which was communicated to the petitioner by Memo dt. 12.12.96. While filing the instant application, the petitioner has challenged the rejection memo as well as the transfer order dated 26.6.96 mainly on the ground already mentioned.

2. The Chief Engineer, Metro Railway, who is respondent No.3 and who had rejected the representation of the petitioner has filed a reply, while the other respondents have filed a separate reply. Both the replies, however, seek to resist the claim of the petitioner on substantially same grounds. They contend that the lien of the petitioner was maintained in Eastern Railway and as the construction activity is ^{merely} over in Metro Railway, the requirement of manpower has been reduced. It was said that promotions were given to the petitioner in Metro Railway ^{to the limit of 100} purely on temporary and work charge basis of ~~1.0.M.~~, but the substantive position held by him is that of Works Mistry in Eastern Railway in

in which he was confirmed by the said railway on 7.4.89. He was called for selection in the lien holding railway for higher post in 1990 and ^{while} ~~as~~ some juniors to the petitioner appeared in the selection and earned proforma promotion in Eastern Railway as I.O.W. Gr.III, the petitioner did not avail of this opportunity. It is denied that the petitioner was singled out and contended that in issuing the order of repatriation, seniority position have been strictly followed, though all of them could not be released because of an order passed in O.A.1257/96 filed by some other IGWs, who had also been repatriated. The guideline referred to above was said to have no application to transfer by way of repatriation.

3. The petitioner has filed a separate rejoinder to both the replies controverting the grounds taken therein.

4. We have heard the Ld. Counsel for the parties and also perused the records.

5. We find no substance in the contention of the petitioner that it was a case of transfer ^{from} ~~for~~ one railway to another, which could only be made by the Railway Board. The records leave no manner of doubt that the lien of the petitioner was maintained in Eastern Railway, which confirmed him in the post of Works Mistry on 7.4.89 and also gave an opportunity to appear in the selection test for higher post even later. The respondents have also brought to our notice in this connection a note given by the Railway Board in December, 1971 to all Railways with regard to subordinate staff requirement of MTP Organisation and the petitioner volunteered to work as Works Mistry in the then Metropolitan Project, presently known as Metro Railway, Calcutta when he was engaged as Works Mistry in the Eastern Railway. In the note of the Railway Board issued in December, 1971, it was stated that the staff from different railways, who came to M.T.P. would retain their lien in the parent

railway. Further the lien of the railway servant can only be terminated on acquiring a lien on a permanent post outside the cadre on which he is borne and the Metro Railway being predominantly a construction organisation does not have any permanent post and cannot, therefore, provide lien to a railway servant. In such circumstances, there cannot be any manner of doubt that the petitioner held lien ^{on a post} in the Eastern Railway and thus, the impugned order dt. 26.6.96 was in reality an order of repatriation to the parent railway.

6. Nor are we disposed to accept the contention of the petitioner that the order of repatriation was made as a measure of penalty because in the Eastern Railway, he cannot be adjusted in a post carrying the same scale of pay as I.O.W. - Gr.II, which is Rs.1600-2660/-! It has been rightly contended by the respondents that the petitioner was promoted to this post on a purely temporary and adhoc basis without any prescriptive right to hold and enjoy the same on repatriation to the parent railway. Moreover, it is on the record that as far back as in 1990, he was called by his parent railway for selection to the post of I.O.W. - Gr.III, but he did not appear in the test and thus he did not avail the opportunity offered to him to secure proforma promotion. In such circumstances, even if the petitioner has to suffer some monetary loss because of repatriation, the impugned order cannot be struck down as he has no vested right to continue as I.O.W. - Gr.II in Metro Railway.

7. We are also unable to find any malice of the authorities in passing the order of repatriation. The specific facts constituting malice have not been disclosed but probably the suggestion is that all other employees have been retained and only the petitioner has been singled out for repatriation. It is the case of the respondents that in issuing the order of repatriation, the seniority position has been strictly followed. This was no doubt denied in the

rejoinder filed by the petitioner, but he has not disclosed the name of any junior, who has been retained in the Metro Railway. It is, however, possible that all his juniors could not be released because as pointed out by the respondents, ^{servants} ~~as~~ IOWs had made an application being O.A.1257/96 against their order of repatriation which is still pending and only an interim order was made on 11.10.96. In this state of record, it cannot be held that the order of repatriating the petitioner to Eastern Railway was the outcome of malicious exercise of power by the authorities.

8. The petitioner has urged that under the order of the Railway Board laying down guidelines of transfer of railway employees, no railway servant should be transferred within two years preceding his date of retirement. It is hardly necessary to add that the guidelines do not lay down any inflexible rule and necessarily the exigencies of service is a paramount consideration in the matter of transfer. Here as already pointed out, that the construction activity of Metro Railway is almost over and as such manpower requirement has automatically come down and consequently sanction of all IOWs posts is not available to maintain bulk manpower. This obviously necessitated the repatriation of the petitioner about 20 months before his due date of retirement. Moreover, the guidelines lay down the consideration for transfer of a railway servant and not with regard to repatriation and therefore the guideline, even if it was an inflexible rule could not come to the aid of the petitioner.

9. The petitioner has laid great emphasis on the retirement notice issued by Metro Railway on 28.2.96 in which it was stated that all settlement dues would be paid by the said Railway. It was, therefore, contended that it necessarily implied that the petitioner would be retired from Metro Railway and therefore, his



transfer to Eastern Railway only about four months thereafter can hardly be sustained. It may be noted that the notice was issued not in respect of only the petitioner but in respect of the entire non-gazetted staff during the period 31.3.96 to 31.3.98. The respondents have contended that the retirement notice is a precautionary measure, which is issued well in advance to keep in account, a readily available list of staff retiring within a particular period and further the endorsement in the notice that final settlement dues will be paid by the railway does not mean that the listed staff will have to be retained in Metro Railway. We find substance in this contention and unable to hold that this retirement notice confers any right upon the petitioner to claim retention by Metro Railway till his actual date of retirement.

10. The petitioner has also ventilated certain domestic problems for which he is unable to move away from Metro Railway and his apprehension/that transfer at this stage may entail delay in settlement of retiral dues. The repatriation of the petitioner to Eastern Railway in Howrah Division may not necessarily involve any change of residence and therefore, atleast at the present moment, there is no foundation for the apprehension of any dislocation of family affairs. We are also unable to ~~locate~~ ^{find} any basis for his apprehension that there may be delay in settlement of his retiral dues because of the order of repatriation. It has been stated by the respondents that the machinery for payment of settlement dues to railway servant all over Indian Railways is excellent and it was committed and guaranteed that the petitioner would get his retirement dues in Eastern Railway without any hitch. In such circumstances, we cannot share the apprehension of the petitioner about the apprehended delay in settlement of retiral dues?

11. Considering the application in all its bearing, we find that there is no merit in it and it is accordingly rejected. No order is made as to costs.

Mukherjee
18/8/97
(M.S. Mukherjee)
Member (A)

A.K. Chatterjee
18.8.97
(A.K. Chatterjee)
Vice-Chairman