

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. 491 of 1996

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

KASHINATH CHOUDHURY

VS

UNION OF INDIA & ORS

For the petitioner : Mr. Balai Chatterjee, counsel

For the respondents : Mr. P.K.Arora, counsel

Heard on : 13.5.96 : Order on : ~~31.5.96~~ 4-6-96

O R D E R

M.S.Mukherjee, A.M.:

The petitioner, who was initially deputed for recruitment training as apprentice for the post of PWI from 30.10.84 to 30.10.85, on completion of training was posted as Permanent Way Inspector (PWI), Gr.III w.e.f. 30.10.85 at Sealdah under the control of DEN-I, Sealdah Division. Thereafter, he was transferred from Sealdah to Baruipur on 1.1.89. Since 1989 he has been working at Baruipur. The petitioner's wife is employed as an officer in a different organisation under the Ministry of Agriculture and her station of posting is at Calcutta. The petitioner's contention is that since he experienced problem to keep day to day contact with members of his family (which consists of his wife and 2 sons) at Calcutta from Baruipur, he made a representation on 28.2.95 seeking a posting either at Sealdah or Beliaghata either against a regular post or against a work-charged post. A copy of the representation is at Annexure-A2 to the petitioner. However, rather than posting him at Sealdah or Beliaghata, the petitioner has been transferred by an order dt. 29.3.96 to a far away station at Beldanga vice one Shri Kamallesh

Roy Talukdar transferred, ~~from Beldanga~~. Subsequently, the Assistant Engineer (Civil), Eastern Railway, Sealdah, through his letter dt. 2.4.96 (Annexure-A1 to the petition) ordered the petitioner to be spared on transfer with immediate effect with the direction to report to AEN, Ranaghat to work as PWI, III, Beldanga vice Shri Kamalesh Roy Talukdar, transferred. The petitioner's contention is that this transfer order is in conflict with the Railway Board's circular dated 1.10.71 (Annexure-A3 to the petition) under which there are instructions that "while transferring employees from one station to another, the fact that the employee's spouse is posted at a particular station may be kept in view." and that "request for transfer to a station where an employee's spouse is working may be considered sympathetically as far as possible having regard to the administrative convenience and the merits of each case."

2. The petitioner has, therefore, challenged his transfer order to Beldanga and has prayed for cancellation of the same and also for a direction on the respondents to the effect that he may be posted at Sealdah/Beliaghata/Barrackpore/Sonarapur against a regular post or a work-charged post as PWI, III.

3. The petition was originally moved by the learned counsel for the petitioner on 17.4.96 as an unlisted motion before the sister Bench of this Tribunal and on that date the learned sister Bench adjourned the case for admission hearing to 1.5.96 and passed an ex parte interim order (since no notice had been served on the respondents as yet) directing ^{at the respondents} not to give effect to the impugned transfer order till the matter appeared for admission hearing. The respondents were also directed to meanwhile dispose of the representation filed by the petitioner earlier (on 8.4.96) and communicate the decision to the petitioner accordingly.

4. The respondents have contested the case by filing a written reply to which the petitioner has filed a rejoinder.

5. We have heard the learned counsel for the parties and have gone through the reply. In view of urgency of the matter, we propose to dispose of the case at the admission stage itself.

6. The respondents' case is that the transfer has been made in administrative interest. According to the respondents, the interim order staying the operation of the order dated 2.4.96 had been passed by the Tribunal on 17.4.96, but the impugned order itself shows that the petitioner had been spared on transfer with immediate effect on 2.4.96 so that he could report to his new station at Beldanga vice Shri K.Roy Talukdar, transferred.

7. Mr. P.K.Arora, the learned counsel for the respondents has submitted during hearing that in pursuance of the order of transfer and release, petitioner's substitute had already joined the post from which the petitioner has been transferred. However, in obedience to the interim order issued by this Tribunal, the respondents have ^{it also} issued direction on 26.4.96 to the AEN(C), Sealdah Division not to give effect to the order dt. 29.3.96 and 2.4.96 till further advice.

8. Further, in compliance with the interim order of this Tribunal, the competent authority has duly considered the representation made by the petitioner but that the same could not be accepted. In fact the DRM by his order dated 26.4.96 has communicated the said decision vide Annexure-R1 to the reply. However, it was conveyed that the petitioner's appeal has been taken note of and that the matter will be considered sympathetically in future.

9. Mr. Balai Chatterjee, the ld. counsel for the petitioner has argued that this reply of the respondents dated 26.4.96 (Annexure-R1 to the reply) is not a speaking reply for rejection of the representation and that it does not indicate any proper application of mind.

10. We cannot, however, agree with this contention of Mr. Chatterjee. The interim order passed by this Tribunal on 17.4.96 only directed the respondents to meanwhile make endeavour to dispose of the representation filed by the petitioner and to convey the contents of the order to the petitioner by the respondents. The

reply of the respondents at Annexure-R1 shows that the representation of the petitioner has been carefully considered but it was decided that his transfer to Beldanga under AEN/Ranaghat was necessary in view of administrative reason. However, it was further indicated that his appeal will be considered sympathetically in future. To our mind, such disposal of the representation is sufficient and adequate.

11. Regarding the basic issue about transfer, Mr. Chatterjee has argued at length by relying on the Railway Board's circular dated 1.10.71 as already quoted. We have gone through this circular and we find that this circular indicates that posting of an employee at a station where his spouse is working may be considered sympathetically as far as possible having regard to the administrative and the merits of each case. So it is not mandatory that both the spouses have to be accommodated in the same station. The intention is that as far as possible subject to overall requirement of administrative reasons and merits of individual case, they may be accommodated at the same station as far as possible.

12. Such instructions are in the nature of guidelines. The Hon'ble Supreme Court in the case of UOI & Ors -vs- S.L.Abbas, 1993(25) ATC 844 has held that guidelines regarding transfer are not mandatory. They do not confer any legally enforceable right. Further it has been held that unless the impugned transfer order has been made mala fides or in violation of statutory rules, the Tribunal or court should not interfere with the same and that the Tribunal should not act as an appellate authority to decide about the merits of the case and substitute its own judgement for that of the executive.

13. In the instant case, there is not even a whisper that the said transfer order has been passed with mala fide motive or against any statutory rules. The learned counsel has mainly relied on the guidelines issued by the Railway Board. But as already

indicated the said guidelines only stress on the desirability of keeping both the spouses together only if its administratively possible.

From the reply dt. 26-4-96 to the representation, The respondents have clarified that the transfer to ~~Baruipur~~ is necessary due to administrative reasons.

14. The Hon'ble Supreme Court in the case of Bank of India -vs- Jagjit Singh Mehta as reported in AIR 1992 SC 519 has held that where it is not administratively possible to keep spouses together, they can be posted away. In deciding that case the Hon'ble apex court has made the following observations :

"There can be no doubt that ordinarily and as far as practicable the husband and wife who are both employed should be posted at the same station even if there employers are different. The desirability of such a course is obvious. However, this does not mean that their place of posting should invariably be one of their choice, even though their preference may be taken into account while making the decision in accordance with the administrative needs. In the case of All India Services, the hardship resulting from the two being posted at different stations may be unavoidable at times particularly when they belong to different services and one of them cannot be transferred to the place of the other's posting. While choosing the career and a particular service, the couple have to bear in mind this factor and prepared to face such a hardship if the administrative needs and transfer policy do not permit the posting of both at one place without sacrifice of the requirements of the administration and needs of other employees. In such a case the couple have to make their choice at the threshold between career prospects and family life.No doubt the guidelines require the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible. The only thing required is that the departmental authorities should consider the aspect along with exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees."

15. In the instant case, the petitioner since his date of recruitment has been in or around Sealdah or at Baruipur (which is very near Sealdah) for about 11 years and only this time he has been transferred to a slightly far away station at Beldanga on administrative reasons and could not be accommodated in or around Calcutta. However, the authorities have also promised to consider his case sympathetically in future. Against such facts and the Railway Board's guidelines notwithstanding, we are unable to find any fault with the impugned transfer order.

16. On the other hand, Hon'ble Supreme Court has further held in the case of State of M.P. -vs- S.S.Kowrav as reported in 1995(5) SCC 270 that even in the case of extreme hardship the court or Tribunal should not interfere with the transfer order except when there is mala fides. In the cited case the transferred official's wife had committed suicide leaving three children and the transferee had been experiencing extreme hardship as he was transferred to a new station inside a remote tribal area. Rejecting the contention of the petitioner the Hon'ble Supreme Court held in that case that court cannot go into the question of relative hardship, it would be for the administration to consider the facts of a given case and to mitigate real hardship in the interest of good and efficient administration. The courts or tribunals are not appellate forum to decide on transfer on administrative grounds. It is for the administration to take appropriate decision in the matter.

17. In view of the foregoing, we find no merit in this case and it is liable to be rejected and it is ordered to be rejected accordingly. The interim order passed on 17.4.96 is hereby vacated.

18. However, through his rejoinder to the reply, the petitioner has submitted that the Metro Railway authorities are prepared to accept him on deputation provided certain conditions are satisfied and that this has been communicated by the Metro Railway to the CPO, Eastern Railway on 13.9.95, a copy of which has been annexed to the rejoinder. By the said communication dt. 13.9.95, the Metro Railway authorities have indicated to the CPO, E.Rly that they were willing to take the petitioner (by name) as PWI, III, Baruipur, on deputation and the CPO was requested to release the petitioner immediately. The latest position about this request of Metro Railway is not known. Firstly, the petitioner filed the said rejoinder only 2 days before final hearing of the case, when these 2 days were holidays. So it could not be possible for Mr. P.K.Arora, the ld. counsel for the respondents to receive instructions from the office of the respondents by contacting them

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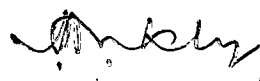
in office. The petitioner also did not enclose the Metro Railway's letter as part of his original petition, in which case the respondents could indicate their position about the matter through reply. Any way, it appears that the said letter was addressed by the Metro Railway to CPO, Eastern Railway (who has not been impleaded as a party respondent by the petitioner in this case) quite sometime back. It may quite be possible that this letter of Metro Railway, due to some communication gap, did not reach the office of DRM, Sealdah, which had issued the impugned transfer order in March 1996. Since the respondents have indicated that they would consider the case of the petitioner for a posting in Calcutta in future, as stated in their reply at Annexure-RI, it will, therefore, be just and proper that they should appropriately take a final view about the offer of the Metro Railway.

19. We, therefore, dispose of the petition with the following orders, viz. :

i) The petition is dismissed. The interim order issued earlier in this case is vacated forthwith.

ii) The petitioner ~~after joining the new station of transfer~~ may make a representation to respondent No. 5 i.e. the DPO, Sealdah, through proper channel, for deputation to Metro Railway with reference to the offer of the Metro Railway in this regard while enclosing a copy of this order and also the copy of the Metro Railway's communication and the latter shall expeditiously explore the possibility of sparing the petitioner for joining Metro Railway on deputation in case the offer is still available and the respondents do not have other reasons to the contrary.

iii) There will be no order as to costs.


(M.S. MUKHERJEE)

MEMBER(A)

~~31.5.96~~ 4/6/96


(A.K. CHATTERJEE)

VICE CHAIRMAN

~~31.5.96~~ 4.6.96