


**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.318/2011

Date of decision: 19.10.2012

Reserved on 09.10.2012

HON'BLE Mr. B.K.SINHA, ADMINISTRATIVE MEMBER.

Nachiketa S/o Shri Bhanwar Lal, aged about 58 years, R/o Gahlota Ka Bas, Magara Punjala, Jodhpur, at present employed on the post of EST/Helper Khallasi, NWR, Rai-ka-Bag Railway Station, Jodhpur Division, Jodhpur.

: Applicant

Mr. J.K.Mishra, counsel for applicant.

Versus

1. Union of India through General Manager, North Western Railway, H.Q. Office, Jaipur.
2. Senior Division Signal & Tele-com. Engineer, NWR, Jodhpur Division.
3. Shri K.C. Biarwa, Sr. Divisional Signal and Tele-com. Engineer, NWR, Jodhpur Division, Jodhpur.

.....Respondents

**Mr. Manoj Bhandari, Counsel for respondents No.1&2.
None present for respondent No.3.**

ORDER

Per Hon'ble Mr. BK Sinha, Administrative Member

The applicant, Nachiketa, is presently employed as EST/Helper Khallasi, NWR, Rai-ka-Bag Railway Station, Jodhpur Division, Jodhpur, since September, 2009. The case of the applicant is that he has challenged the action of the respondents in not granting the ACP benefits vide OA No.46/2011, which is pending adjudication before this Tribunal. He had also asked some information under RTI from the Railway Administration and for that he had preferred an appeal to CIC and the CIC fixed the hearing of



his appeal on 23.06.2011, the intimation of which was received on 06.06.2011. The 2nd respondent immediately directed the SSE (Signal) Jodhpur East, to shift the applicant from Rai-ka-bag to Jodhpur vide communication dated 07.06.2011 [A-1]. The applicant was immediately relieved and informed that if he did not join his duty on 08.06.2011 at 8.00 AM, he was to be treated as absent [A-2]. The applicant was granted leave from 08.06.2011 to 20.06.2011 to attend his ailing mother. He also applied for leave on 23.06.2011 to attend the court of the CIC but the same was not granted to him on account of which his appeal before CIC was turned down. The principal contention of the applicant is that the Railway servants cannot be transferred by means of a verbal order since the sanctity/propriety of such order cannot be adjudged. The applicant has not been transferred in administrative or public interest but rather on account of bias and malafide on the part of the 2nd respondent. Therefore, he has made a prayer to quash the impugned communication dated 07.06.2011 as being illegal, arbitrary and whimsical.

Stand of the respondents

2. The respondents on their part submitted a counter affidavit strongly denying the averments made in the OA. It has been submitted that the issue of granting the ACP is pending in litigation. The applicant has already filed a number of cases in one of which he has been declared a habitual litigant. As regards the issue of transfer, it has been submitted that the applicant has not been transferred but merely being shifted from one place to

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another. Shifting the work place to another is within the purview of the administration in the administrative exigencies of service and an employee can be shifted from one place to another within the sectional jurisdiction with the same bill unit and within the municipal limits. Written instruction to this effect has to be given because the employee is prone to disobeying oral instructions. It is an administrative decision taken on the basis of exigencies of service and the duty has been conferred within the section of the office and within the bill unit. Earlier, the employee had been sent from Jodhpur to Rai-ka-bag because there was a paucity of staff and now there was no job is required at Rai-ka-bag, he has been deployed at Jodhpur within the same sectional jurisdiction and same unit.

3. In his rejoinder application, the applicant has resisted the submissions in the counter reply stating that one Shri Satyanaran SE (Signal) was transferred from Jodhpur to Rai-ka-bag within the same municipality and sectional area by a written order dated 15.09.2010 issued by DPO as per SSE NWR Jodhpur's communication dated 25.09.2010 [A-4].

Facts-in-issue

4. After hearing the learned Counsels for both the parties and perused the pleadings and available records, the only fact-in-issue emerges for consideration is that whether shifting of an employee from Rai-ka-bag to Jodhpur is constitutes a transfer or merely a placement of duty within the same jurisdiction and the bill unit. As per the para 2 of the Government of India/Bharat Sarkar, Ministry

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of Railways/Rail Mantralaya (Railway Board), M/C No.24/91 dated

08.04.1991:- **"2. Transfer means the movement of a Railway servant from one headquarters station in which he is employed, to another such station, either (i) to take up the duties of a new post; or (ii) in consequence of a change of his headquarter."**

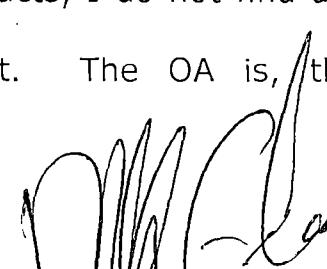
5. In order to determine this whether the present action of the respondents constitutes a transfer or a mere deployment one has to go into the ingredients of the transfer. A transfer necessarily involves three ingredients- (i) there should be change in place/office; (ii) there should be change in the controlling authority and; (iii) there should be change in the source of payment. A transfer can take place at the same place but in two different units of the same organization. Wherever any of these three essential ingredients are missing, there cannot be a transfer. The act of shifting unit entails a transfer. In Government services/Railway services, it is quite common to make deployments on short term/long term basis without there being any transfer autonomous. In the present case, it has to be examined that whether the essential ingredients are getting fulfilled. Admittedly, there is change in place from Raik-ka-bag Railway Station to Jodhpur Railway Station. Theses two Railway Stations are different, separated by a distance of three kilometers. However, the controlling authority continues to be same. The applicant happens to be a Group 'D' employee. The shifting has been made under the orders/directions of Senior DSTE Jodhpur. The example which has been cited by the applicant at Annexure-A-4 is in respect



of Section Engineer (Signal) whereas the applicant is a Group 'D' employee and hence the same could not be applicable. The Section Engineer is in-charge of the section and, therefore, a formal order is necessary to take charge and operate. The third requirement is that of a change in the source of payment, which again is not fulfilled in the instant case. Here, the applicant continues to receive his payment from the same source and there is no change in the payment authority. As such two essential requirements of a transfer are not getting fulfilled.

6. Railway is a commercial organization which provides a vital service to the public at large. As a commercial organization, it has to have good flexibility as well as response time. It has been experienced that in Railway, movements are made on the basis of deployment which are not necessarily written. If every deployment is to be reduced in writing with the justification then the smooth functioning of the Railway will not be possible. The organization would be robbed of its core advantage of flexibility. It would enormously add to the paper work as also to the volume of the litigation. It is in national and public interest that the Railway should continue to operate efficiently for which a high degree of flexibility and a quick response time is called for.

7. In consideration of the above facts, I do not find any merit in the contention of the applicant. The OA is, therefore, dismissed. No order as to costs.


 [B.K.Sinha]
 Administrative Member