

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

Original Application No.391/2013

Jodhpur this the 30th of May, 2014

Reserved on 22.05.2014

CORAM :

Hon'ble Mr. Justice Kailash Chandra Joshi, Member (J)

Hon'ble Ms. Meenakshi Hooja, Member (A)

Navab Ali S/o Shri Noor Khan, by castge Mohammedan, Aged about 38 years, R/o L-12G, Railway Quarters, Churu. at present posted at point man in the office of Station Superintendent Churu, Rajasthan.

.....Applicant

(Through Adv. Mr.H.S. Sidhu)

Versus

1. Union of India through the General Manager, North Western Railway, Head Office, Jaipur.
2. Divisional General Manager, Northern Western Railway Bikaner, Division Bikaner.
3. Divisional Personnel, Northern Western Railway, Bikaner.
4. The Station Superintendent, Northern Western Railway, Churu (Rajasthan).
5. Madan Singh Meena, Station Superintendent, Northern Western Railway, Churu (Raj).

.....Respondents

Mr. Salil Trivedi, counsel for respondents No.1 to 4.

None present for respondent No.5.

ORDER

Per Ms. Meenakshi Hooj, Member (A)

This OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 against the order bearing No.SS/CUR/Navab Ali Pointsman/ Establishment dated 04.09.2013


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(Annexure-A/1) passed by the Station Superintendent, North Western Railway Churu in pursuance to the order dated P-2/941E/ Points man B/ Establishment/ 2011 dated 29.08.2013 by which the applicant has been transferred from Churu to Shergarh (P.B.) which is about 350 KM away from Churu.


2. The facts of the case as averred by the applicant are that he is holding the post of Points Man A and at present posted under the respondent No.4 i.e. Station Superintendent, North Western Railway, Churu (Rajasthan). It has been averred that the respondent No.4 (also impleaded as respondent No.4 in personal capacity) intentionally and deliberately did not take the work of the Points Man and he is being assigned the work of the lower post i.e. Khalasi and Gateman. The applicant objected to the same and as a result the respondent No.4 became angry with the applicant and ultimately succeeded to place the applicant under suspension and thereafter succeeded to get him transferred from Churu with a malafide intention and with an oblique motive. It has been further averred that though the applicant is a Points Man, the work of Khalasi and Gateman was taken from him despite the fact that the persons Khalasi and Gateman are available with the respondent No.4. The post of the Khalasi is a lower post than the post of Points Man and the applicant was assigned the duties of Gateman for which he is not trained. The applicant objected to the same by making a representation to the respondent No.4 on 26.07.2013 (Annexure-A/2) but he did not take any action not to assign the duty other than Pointsman and became angry with



the applicant and made up his mind to harass the applicant by one or other reason. The applicant also made representation on 29.07.2013 (Annexure-A/3) before the respondent No.2, i.e. Divisional General Manager, Northern Western Railway Bikaner, Division Bikaner and as soon as the applicant raised his voice to the higher authority, the respondent No.4 harassed him further and assigned him duties of Gateman & Khalasi but no such duty was assigned to the junior Pointsman working under him. It has been further averred that instead of redressing the grievances of the applicant, the respondent No.4 started to harass the applicant and he started to make false complaint against the applicant to the higher authorities and mislead them so that the action may be taken against the applicant under the CCA Rules and may be was imposed on him. On the false complaint of respondent No.4 the applicant was placed under suspension vide order dated 14.08.2013 (Annexure-A/5). It has been further averred that a charge sheet was also issued to the applicant on false complaint by the respondent No.4 and further the respondent No.4 intentionally and deliberately assigned the duty of the Gateman to the applicant and further just with a view to get him penalized, he made the inspection at the place where the applicant was assigned the duty of Gateman and the respondent No.4 made a report during the inspection on 13.08.2013 that there is a sand between the Railway track and all the apparatus regarding the Gateman was not kept in the systematic way. It has been further averred that the applicant was served with charge sheet on 14.08.2013 (Annexure-A/6) and he filed the reply of the charge sheet on 23.08.2013 (Annexure-A/7) by pointing out that no such infirmities



were committed by him as pointed out in the charge sheet and as the respondent No.4 is not happy with him therefore he has made a false complaint against the applicant just with a view to harass him and get him penalized for one or other reason. Thereafter the applicant again made a representation to the higher authority on 21.08.2013 (Annexure-A/8) that respondent No.4 is harassing him and soon thereafter suspension order of the applicant was revoked vide order dated 26.08.2013 (Annexure-A/9). As the respondent No.4 was not happy with the applicant, he succeeded to get the applicant transferred from Churu to Shergarh, which is 350 KM away from Churu and nearby the Railway Station Bhatinda in Punjab. It has been further averred that the applicant has not been transferred on the ground of the administrative exigency or in the public interest but has been transferred with the malafide intention of the respondent No.4 as he raised the voice against him regarding taking the duty of posts other than on which the applicant was appointed. It has also been averred that the children of the applicant are studying at Churu in the 10th class and during the mid session of the education calendar he has been transferred with a malafide intention though he could have been posted nearby Churu. It has been further averred that against the transfer order, the applicant also made a representation to the higher authorities on 06.09.2013 (Annexure-A/11) raising his grievances against the transfer order but no action has been taken on his representation so far. As the transfer has been made intentionally and deliberately with a motive to harass the applicant and though he is a low paid employee he has been transferred more than 350 KM away from Churu in the mid session of the education which has



adversely affected the education of his children as well as the family life of the applicant and further since no action has been taken on his representation, therefore, he has filed this OA for seeking following reliefs:-

- “(i) *That the impugned transfer order Annexure-A/1 dated 04.09.2013 whereby the applicant has been transferred from Churu to Shergarh may kindly be quashed and set aside.*
- (ii) *Any other order/ relief/ direction which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.*
- (iii) *That the cost of this application may be awarded to the applicant.”*


3. By way of reply, the respondent department has averred that the applicant is junior most amongst in the cadre of Pointsman-A posted under the Station Superintendent, Churu. It has been further submitted that the applicant is deployed in roster of Pointsman-A, but at the same time on account of leave/sickness or extra work related to train operations, the shortage is accrued and as a consequence thereof, the applicant's services is utilized as Gateman/ Khalasi and for this the supervisor Station Superintendent, Churu is fully empowered to utilize the staff working under him for better management of the station with the available manpower. In the reply it has been denied that the applicant services were utilized frequently as Gateman/ Khalasi and a chart dated 21.09.2013 (Annexure-R/1) has been appended to show that the services of the applicant were utilized as Gateman/ Khalasi from January, 2013 to till 04.09.2013 for three days only as Gateman and as against the Khalasi for only nine days. Thus only for 12 days in a total period 8 months he was asked to do the job of Khalasi / Gateman and that too also on account of certain exigency of staff not being available. It has been further averred



that the applicant as well as other Pointsmen working under the Station Superintendent are trained for doing the job of Gateman also and after their training they are issued a competency certificate and such a certificate was also issued in favour of the applicant on 15.09.2011 (Annexure-R./2). The respondent department has also produced the copy of the Station Working Rules for Bikaner Division as at Annexure-R/3, to show that the Pointman can be assigned the duties of the Gateman when the Gateman is off from the duty or no Gateman is available. Regarding seniority, it has been averred that the applicant was junior most amongst the Pointsmen-A till March, 2013 and after April, 2013 the applicant was senior to one Pointsmen-A therefore in these circumstances the representation submitted by the applicant is wholly false and the same was submitted with the intention of not discharging the duties assigned to him and with complete biasness against the respondent No.4 and such frivolous representation was made for which the applicant is habitual even in the past. The respondent department has annexed Annexure-R/4, which is a copy of earlier legal notice dated 21.10.2009 (Annexure-R/4) sent by the applicant through his Counsel Dhana Ram Saini, and the same was responded by the respondent vide reply dated 24.02.2010 (Annexure-R/5) by averring that the applicant's own conduct towards the discharge of his duties is very careless and negligent and on the contrary for no issue the applicant is in the habit of issuing the notices through his counsel. It has been further averred that the applicant was assigned the duties at level crossing gate No.167-A on 13.08.2013, which he did not perform and during the inspection conducted by Station Superintendent Churu, the



same was reported to the competent authority and the inspection report has been annexed by the respondent department as Annexure-R/6. It has been further averred that earlier also, the applicant when deployed as Gateman / Khalasi detention to the trains was given intentionally. One such communication was made for giving caution to the staff by SSE to Station Superintendent, Churu on 22.05.2013 as at Annexure-A/7. Further, in view of the shortcomings brought out in the inspection report dated 13.08.2013 the applicant was rightly suspended w.e.f. 13.08.2013 vide order dated 14.08.2013 Annexure-A/5 and the charge sheet was rightly issued to him under disciplinary and appeal rules and same was issued on account of his careless and negligent working while on duty. It has also been further averred that the respondent No.4 has joined as Station Superintendent at Churu only on 03.07.2013, thus there is no question harassment by the respondent No.4 as alleged by the applicant. The respondent department have by way of reply strongly refuted the allegations regarding malafide and oblique motive and intentional harassment of the applicant by the respondent No.4 and brought out the reason to utilize services of the applicant as Gateman/ Khalasi and further pointed out the shortcomings of the applicant in the discharging of his duties and being a habitual complainant while not doing his duties in a proper way. It has been also been averred that the applicant has been transferred from Churu to Shergarh on Administrative grounds against a vacant post of Pointsman and further averred that the transfer is an incidence of service and no employee has got a right to be retained at a particular place and the competent authority is well within its power to



transfer an employee on administrative grounds. It has been submitted that the law in regard to transfer of an employee in service jurisprudence has been well settled by the Hon'ble Supreme Court as well as by the Hon'ble High Court in various judgments. The Hon'ble Rajasthan High Court considered the entire case law of transfer in the case of *Bhagwan Das Mittal vs. State of Rajasthan*, reported in 2007 Vol.-II, WLC page 775 and in view of the law declared by the Hon'ble High Court in the aforesaid case, the ground taken by the applicant that the transferred place is at a distance of 350 kms from Churu, his children are studying in class 10th in Churu are of no relevance. It has also been averred that the applicant is allotted a railway accommodation at Churu and if a request is made by him to retain the railway accommodation during the school session of his children, then such request may be considered as per rules. With reference to the interim order of the Tribunal dated 13.09.2013, it has been clarified that the applicant had already relieved/spared from Churu to join his services at Shergarh on 04.09.2013 and consequent upon the LPC being sent to Shergarh on 07.09.2013 his name was entered at Shergarh and further the applicant himself had submitted a representation dated 11.09.2013 (Annexure-R/8) to the Station Superintendent of the transferred place i.e. Shergarh that he would join his duties after being medically fit as he is under private treatment, but till date he has not joined his duties. In view of all the above reasons, the respondent department has prayed for dismissal of the OA.

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4. The applicant in his rejoinder averred that in seniority list of Pointsman-A dated 10.08.2010 (Annexure-A/13) issued by the Divisional Personnel Officer, NWR Bikaner, his name has been shown at serial No.569 whereas the persons junior to him who is working at Churu i.e. Jai Prakash S/o Prahalad has been shown at serial No.645 and is working at Churu from 13.02.2013, so it is not correct to say that the applicant is the juniormost Pointsman at Churu. It has been reiterated that when there are Gateman and Khalasi available at the Churu Station, the applicant who is Pointsman could not have been assigned duty of Khalasi/ Gateman. It has also been averred that the Training Certificate of Gateman as annexed at Annexure-R/2 by the respondent department has not been issued to him. It has been further averred that the post of pointsman is lying vacant at Churu and despite the interim order of this Tribunal dated 13.09.2013, the applicant has not been allowed to join his duties at Churu.

5. In the counter to the rejoinder, the respondent department averred that the seniority list which have been placed in the rejoinder is circulated by Divisional Personnel Officer, Bikaner on Divisional seniority basis, not on station seniority basis and the duties from the applicant at the station are being taken on station seniority basis. It has been further averred that Jai Prakash, Pointsman joined at Churu station on 01.03.2013 and prior to that date the applicant was junior most at Churu station in category of Pointsman- A. It has been further averred that the seniority of Pointsman and Gatemen have been merged with the unanimous decision taken by the recognized Trade Union and Administration in a view to

ensure optimum utilization of man power. Further the Station Superintendent according to Rule Book (General Rules for Indian Railway with the Subsidiary Rules of NWR) Rule No.16.01, has been empowered to issue certificate to Pointsman for competency to work at a particular level Crossing gate. It has been again averred that the applicant is not sincere and devoted worker and Annexure-R/11 has been annexed regarding the penalties awarded to the applicant on several earlier occasions. It has been reiterated that the applicant was assigned duties as Gateman/ Khalasi only for a very few days (12 in all) in a period of eight months and that too in accordance with rules and in exigency of work and there was no intention on the part of the respondents to harass him; on the other hand the applicant is a habitual complainant and has been awarded penalties several times before and is not committed toward his duties, and as the transfer has been made in public interest in exigencies of service without any malafide, the dismissal of the OA has been prayed for.


6. Heard both the parties. Counsel for the applicant contended that the applicant has been transferred to a far away place during mid session on malafide grounds because the respondent No.4 i.e. Station Superintendent, Churu (also impleaded in personal capacity as respondent No.5) intentionally and deliberately harassed him and assigned him the duties of Khalasi and Gateman, though the applicant holds a post of Pointsman, and Khalasi is a lower post and further he has not been trained to be a Gateman. The respondent No.4 did not even take account of his seniority in assigning such duties, which were against the rules. When the

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applicant protested against such assignment of duties, the respondent No.4 got angry and even falsely implicated the applicant, because in the first place the respondent gave him the duty of Gateman against the rules, then made the inspection and pointed out false shortcomings and got him suspended and charge sheeted just to harass him though he was performing his duties in a proper manner. Only on complaint to higher authorities his suspension was revoked therefore the respondent No.4 got him transferred with an intentional and deliberate motive to harass him. Thus, the transfer has been made on malafide basis and has been made during the mid session which has adversely affected the education of his children as also disturbed his family life. The applicant made a representation dated 05.09.2013 (Annexure-A/11) against his transfer to the higher authority but the higher authority has not given even a reply of his representation. Therefore, the applicant prays for quashing of the order dated 04.09.2013 (Annexure-A/1) by which he has been spared/relieved for Shergarh from Churu.

7. Per contra, counsel for the respondents while reiterating the facts as averred in the reply as well as counter to the rejoinder, contended that there is no force in the contention of the counsel for the applicant that the applicant was being harassed by the respondent No.4 and though being Pointsman, he was given duties of a lower post of Khalasi and of the Gateman, for which he has not trained. Referring to Annexure-R/1, he contended that in 8 months only 12 days' duty were given to the applicant as Khalasi/Gateman. A plain reading of the Annexure-R/1 makes it clear

that duties were assigned in exigencies of work when other staff was away on training / CR and this was in accordance with the powers of Station Superintendent shown as per Annexure-R/3. The applicant was junior most Pointsman A from January to March 2013 and after April 2013 he was senior to only one Pointsman A at Churu Station. In fact, the respondent No.4 joined as Station Superintendent only on 13.07.2014 and duties of Gateman and Khalasi were assigned as per requirement for a very limited time. The applicant has been issued training competency certificate for Gateman by the competent authority in September, 2011 itself as per Annexure-R/2. He further contended that there was no malafide whatsoever in the transfer order and the same was carried out in administrative exigency and further no harassment of the applicant by the respondent No.4 or other authorities has been established and the suspension order Annexure-A/5, charge sheet Annexure-A/6 were based on the inspection report of 13.08.2013. It was further submitted that there have been several earlier disciplinary cases and penalties against the applicant, which have been detailed as per Annexure-R/11 which shows a poor performance record. On the basis of transfer was made on 29.08.2013, the applicant was relieved/spared for Shergarh vide Annexure-A/1 dated 04.09.2013 and his LPC was also sent to the transferred place i.e. Shergarh. The applicant did not join duties and rather he himself wrote a letter on 11.09.2013 (Annexure-R/8) to his transferred place i.e. Shergarh office that he is sick and under private medical treatment and would report for duty after being fit but has not joined duties so far. In this context the counsel for the respondents also referred



to the fact that on the date of grant of interim relief i.e. on 13.09.2013, the applicant already stood relieved/spared on 04.09.2013 itself and his LPC was sent to Shergarh and his name was discontinued at Churu and entered at Shergarh, but he has not joined there, despite writing a letter dated 11.09.2013 (Annexure-R/9) that he will join, after being fit. Thus, counsel for the respondents strongly contended that there is no malafide on the part of respondents regarding the transfer order which has been made in administrative exigency and transfer being an incidence and condition of service as per settled law the Tribunal may not like to interfere with the same. In support of his arguments, the counsel for the respondents also referred the judgment of the Hon'ble Rajasthan High Court, Jaipur Bench in the case of *Bhagwan Das Mittal & 207 Anr. Vs. State of Rajasthan & Ors.*, reported in 2007 (2) WLS 775 wherein it has been held following AIR 1991 SC 532 and several other judgments of the Hon'ble Apex Court that the transfer being prerogative of employer, following incidents to exercise of power of transfer are irrelevant (i) posts available or vacant at original place; (ii) far off distance of place of transfer; (iii) Mid-session transfer; or (iv) transfer within two years of superannuation, and prayed for the dismissal of the OA.


8. Considered the rival contentions of the both the parties and perused the record. It is noted that the applicant was transferred from Churu to Shergarh (PB) vide order 29.08.2013 and on the basis of the same he was relieved/spared vide order dated 04.09.2013 with effect from 04.09.2013 itself and it was further stated that his LPC would be sent by post

(Annexure-A/1). The applicant himself vide letter dated 11.09.2013(Annexure-R/8) informed Shergarh office that he has been transferred a spared for Shergarh but due to his suddenly falling sick he is under private medical treatment and would report for duty after being fit and this letter was also received in Shergarh Office as Per Annexure-R/8. Thus, it stands from the record that the applicant has been transferred and relieved / spared for Shergarh on 04.09.2013 (Annexure-A/1) but he did not join his duties at Shergarh office despite writing himself that he would do so.

9. As far as the question of allotting the duties to the applicant as Gateman/ Khalasi is concerned, it is clear from the chart Annexure-R/1 submitted by the respondents that in the period of 8 months, the applicant was assigned duties of Khalasi/Gateman for a total of just 12 days, for which Station Superintendents have been empowered to allot the duties as per requirements of the Station (Annexure-R/3). The applicant has also been issued a competency certificate for Gateman as at Annexure-R/2. Thus, there appears to be no force in the contention of the counsel for the applicant that the applicant has been assigned duties which are below his rank i.e. Khalasi or of Gateman (for which he has not been trained) or that he has been frequently being given such duties with an intention to harass him. It is further noted that the applicant was junior most in the cadre of Pointsman posted under the Station Superintendent Churu upto March 2013 and later after appointment of one Jai Prakash the latter became junior most. It is clear from the record that the seniority of Pointsman is


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maintained on both Division wise basis and Station wise basis and therefore the applicant on Station wise basis cannot claim seniority over others. It was the contention of the counsel for the applicant that when the applicant protested against wrong assignment of duties of Khalasi & Gateman to him, the respondent No.4 i.e. Station Superintendent started harassing him and deliberately trying to disturb his work and even got him suspended, charge sheeted and later on got him transferred and therefore there was biasness and malafide on the part of the respondent No.4 and even the inspection of 13.08.2013 was set up to falsely implicate the applicant. However, this is not borne out from the record because after suspension of the applicant vide Annexure-A/5 dated 14.08.2013 the charge sheet was duly issued on the basis of the inspection report and the applicant has already replied to the same and further on his representation dated 21.08.2013 (Annexure-A/8) the suspension was revoked on 26.08.2013 (Annexure-A/9) which is indicative of the fact that his representations have been duly considered by the respondents. The facts at Annexure-R/1 and other documents on record do not reveal any biasness or oblique motives on the part of the respondents in either assignment of duties as Gateman/ Khalasi or in the order of suspension/ issue of charge sheet or in the transfer/ relieving order at Annexure-A/1 which is under challenge. In fact the applicant after being spared for Churu, wrote to the Shergarh office that as he has suddenly fallen sick, he will join after being fit (Annexure-R/8) but never did so, which shows that he neither complied with the order of the respondent nor carried out his own submission. Thus the applicant has failed to establish any malafide

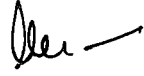


against the respondents, especially respondent No.4 who anyway joined his duties as Station Superintendent Churu only on 13th July, 2013. Further, Annexure-R/11 shows that there have been several cases in which disciplinary proceedings have been taken against the applicant and penalty orders issued. It is a settled principle of law that transfer is an incidence of service and there are catena of judgments of Hon'ble Apex Court in this regard and the counsel for the respondents has referred the case of Bhagwan Das Mittal (supra) which clearly holds that even in cases like mid session transfer or to a distant place the transfer cannot be set aside. Therefore there appears no justification or ground for us to set aside the order dated 04.09.2013 (Annexure-A/1).

10. However, looking to the entire facts and circumstances of the case and the fact that the family of the applicant is residing at Churu and his children are studying there and the applicant has been transferred to Shergarh, which is 350 km away from Churu and his representation dated 05.09.2013 (Annexure-A/11) has not yet been decided, we are proposing to dispose of this OA with certain directions.

- (i) The applicant may join at his place of posting at Shergarh and make a further detailed representation regarding his transfer within 15 days of his joining to the competent authority.
 - (ii) The competent authority is directed to consider and decide the representation within two months from the date of receipt of such representation.
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11. Accordingly, the OA is disposed of with no order as to costs.



(MEENAKSHI HOOJA)
Administrative Member



(JUSTICE K.C. JOSHI)
Judicial Member

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H.S. Riky on behalf of
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