

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

Original Application No.36/2014

Jodhpur this the 20<sup>th</sup> day of November, 2014

CORAM

**Hon'ble Mr. Justice Kailash Chandra Joshi, Member (Judicial)**  
**Hon'ble Ms. Meenakshi Hooja, Member (Administrative)**

Kunal Vyas S/o late Shri Minesh B. Vyas, by caste Brahmin, aged about 31 years c/o Sohan Singh Purohit, 21, Bhagat Singh Marg, Mandore Road, Jodhpur, Rajasthan.

.....Applicant

By Advocate: Mr. Nitin Trivedi.

**Versus**

1. Union of India through the General Manager, North Western Railway, Jaipur
2. The Divisional Railway Manager, DRM Office, Jodhpur
3. Senior Divisional Personnel Officer, North Western Railway, Jodhpur
4. Rajesh Kumar Bhall s/o Shri Gokul Dass Bhall, presently working as ECRC in the office of respondent No.3 i.e. Senior Divisional Personnel Officer, North Western Railway, Jodhpur and earlier was working as EXRC at Indore in Western Railway.

.....Respondents

By Advocate : Mr. V.K. Vyas.

ORDER (Oral)

Per Justice K.C. Joshi, Member (J)

In the present OA filed u/s 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:-

- I. That the order dated 23.05.2013 (Annexure A/1) and order dated 15.01.2014 (Annexure- A/2) may kindly be quashed and set aside and; accordingly the respondents may kindly be directed to permit the applicant to work at present posting place i.e. at Jodhpur Division (NWR) with all consequential benefits.*
- II. The respondents may further kindly be directed to accept the application dated 14.01.2013 seeking withdrawal of his request of mutual transfer.*
- III. Any other order passed during the pendency in the interregnum period of pendency of OA, which adversely affects the rights of the applicant to remain at present posting place kindly be quashed and set aside.*
- IV. The applicant may kindly be permitted him to challenge the validity of the circulars/RBE guidelines No.53/2006 and 200/2003, if the occasions so arise.*
- V. That RBE No.53/06 dt. 21.04.2006 and RBE No. 200/09 dt. 12.11.2009 to the extent prohibiting employees to backtract or withdraw their request/application of mutual transfer under any circumstances, may kindly be declared as ultra vires as it is violating the provisions of Articles 14 and 21 of the constitution of India.*
- VI. Any other favourable order 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.*
- VII. Original Application filed by the applicant may kindly be allowed with costs."*

2. After receiving the reply of OA, the counsel for the applicant filed an MA No.211/2014 for amendment of the OA, which was allowed by this Tribunal vide order dated 12<sup>th</sup> May, 2014 and accordingly the present OA was amended.

3. Brief facts of the case are that the applicant was initially appointed as ECRC on compassionate grounds. While working as ECRC due to some personal problems he submitted a joint application (marked on 17.09.2012) (Annexure-A/4) for inter railway transfer on mutual basis whereby joint request was made by the applicant and one Shri Rajesh Kumar Bhalla working as ECRC at Western Railway, Indore. The copy of the mutual transfer application was forwarded to the Headquarter office NW Railway by respondent No.3 vide letter dated 15.10.2012 (Annexure-R/1) which

was further forwarded to the HQ office, Western Railway,, Churchgate, vide their letter No.939/EC/IECRMut.Tfr/Kunal-Rajesh dated 07.12.2012. Thereafter, the applicant submitted another application seeking withdrawal of his earlier application of mutual transfer vide his letter dated 14.01.2013 (Annexure-A/5). It has been averred by the applicant that he sought withdrawal of his earlier application seeking mutual transfer within the period of 90 days, but vide letter dated 23.5.2013 (Annexure-A/1), the respondent No.3 informed the applicant that his application dated 14.1.2013 seeking withdrawal of request of mutual transfer cannot be accepted according to Rules and further explanation was sought from the applicant as to why disciplinary action may not be initiated against him. In response to this, the applicant submitted his representation vide letter dated 27.5.2013 (Annexure-A/6) wherein it was mentioned that he was under acute depression at the time of filing the application seeking mutual transfer and had therefore withdrawn his application on 14.01.2013 and wants to continue in Jodhpur Division of Western Railway. The applicant has averred in his OA that he is residing at Jodhpur for the last six years and his daughter is studying in school and his wife pregnant and seeking treatment at Jodhpur. Therefore, in these circumstances, it will be very difficult for the applicant to move from present posting place to another. It has been further stated that the respondents never executed the request of the applicant and private respondent No.4 seeking mutual transfer upto January 2013 and the respondent No.4 was relieved and joined his duties only in November, 2013. The applicant thereafter sent

three letters to the respondents in which he sought withdrawal of his earlier application. The letters dated 22.11.2013 and 06.12.2013, Annexure-A/9 and A/10 were sent to respondent No.3 and letter dated 25.11.2013 to respondent No.1. He also submitted representation dated 17.01.2014 (Annexure-A/12) to respondent No.1 requesting not to spare him from duties as he did not want to join at Indore, but the respondent No.3 vide letter dated 15.1.2014 (Annexure-A/2) ordered to relieve the applicant with immediate effect in view of letter dated 29.11.2013 issued by Headquarters Office Jaipur rejecting his request for cancellation. The applicant has referred to RBEs No.53/2006 and 200/2009 wherein it is specified that there are instances when employees seeking mutual transfers, backtrack after issuance of orders accepting their request or after 1 of 2 employees join at transferred place, therefore, matter is reviewed and it is decided that no request for backtracking from mutual exchange arrangement will be entertained under any circumstances and further direction has been issued to ensure strict compliance of these directions. Therefore, aggrieved and dissatisfied with the order dated 23.5.2013 (Ann.A/1), 15.01.2014 (Ann.A/2) relating to rejecting of his request for cancellation and relieving him and RBE 53/06 (Ann.A/2A) and RBE 200/09 (Ann. A/2B) so far they relate to prohibiting/restricting employees to withdraw their application seeking mutual transfer under any circumstance, the present OA has been filed by the applicant praying for the reliefs as extracted above.

3. By filing reply to the amended OA, the respondents have denied the right of the applicant and submitted that as per the guidelines issued by Railway Board and as per the circular RBE 53/2006 dated 21.4.2006, application for withdrawal of mutual transfer application which was earlier submitted jointly by the applicant as well as Rajesh Kumar cannot be allowed to be withdrawn. The respondents have further submitted that as per the Railway Board Guidelines and Circulars it has been informed to the applicant vide letter dated 23.5.2013 (Annexure-A/1) that cancellation of mutual transfer application cannot be considered due to rules of the Railways, hence the question of submitting representation after 23.5.2013 does not serve any purpose. So far the application dated 14.01.2013 (Annexure-A/5) submitted by the applicant seeking withdrawal of his request for mutual transfer is concerned, the same is not at all be considered as per the Railway Board Circular and prevailing guidelines. It has been further submitted that in compliance to the western Railway HQ office, Church Gate, letter dated 30.8.2013 (Annexure-R/6) and 27.9.2013 (Annexure-R/7), Ratlam Division has spared Shri Rajesh Kumar, ECRC, Indore firstly to Jodhpur Division vide letter dated 8.11.2013 (Annexure-R/8). On reporting by Shri Rajesh Kumar, ECRC to Jodhpur Division, his posting order and inter Railway Mutual Transfer order of the applicant was issued vide letter dated 18.11.2013 (Annexure-R/9). The application for cancellation of mutual transfer dated 27.5.2013, 30.11.2013 and 6.12.2013 submitted by the applicant were forwarded to NWR Headquarter vide letter dated 26.12.2013 (Annexure-R/10) for sympathetic consideration.

However, vide letter dated 29.11.2013 (Annexure-R/11) NWR Hqr has informed that in terms of the Railway Board instruction RBEs 53/2006 and 200/2009 mutual transfer cannot be cancelled, hence Shri Kunal Vyas, ECRCI Jodhpur should be immediately spared for Ratlam Division. According to the respondents, as per Railway Board Policy circulated in connection with mutual transfer, cancellation/withdrawal of mutual transfer application cannot be considered in any circumstances. Further, Shri Rajesh Kumar, ECRC has joined Jodhpur Division on mutual transfer vice the applicant and there is no vacancy in the cadre of ECRC. Therefore the action of the respondents is perfectly legal.

4. Heard both the parties. Counsel for the applicant contended that the applicant along with respondent No.4 Rajesh Kumar Bhall filed a joint application for their mutual transfer (marked on 17.09.2012), Annexure-A/4, which was forwarded to the competent authority i.e. Hqr Office NW Railway on 15.10.2012. The same application was forwarded by the competent authority to the Headquarter office Western Railway, Churchgate on 07<sup>th</sup> December, 2012. However, before any orders were issued by the competent authority, applicant moved his application dated 14<sup>th</sup> January, 2013 (Annexure-A/5) withdrawing his consent for mutual by assigning some reasons. However, on 23<sup>rd</sup> of May 2013, he was conveyed that his request for withdrawal cannot be considered. On 27<sup>th</sup> of May, 2013, he again filed an application (Annexure-A/6) stating reasons for withdrawal of his application. He further filed several representations

including Annexures-A/9 (22.11.2013), A/10 (06.12.2013), A/11 (25.11.2013) different dates and lastly (Annexure-A/12) on 17<sup>th</sup> January, 2014. His representations were never forwarded by the Division Office to the higher authorities but at the Divisional level itself, it was informed to him that his withdrawal application cannot be considered. However, on 11<sup>th</sup> November, 2013, the respondent No.4 reported at Jodhpur and his posting orders were issued on 18.11.2013. Counsel for the applicant contended that after filing his withdrawal application in January, 2013 itself after a lapse of about 11 months, the respondent No.4 was allowed to join at Jodhpur and his first withdrawal application dated 14.01.2014 was not forwarded by the Divisional authority to any higher authorities for consideration. Further, counsel for applicant has challenged the legality of the Circulars/RBE Guidelines No.53/2006 and 200/2009 to the extent of words 'under any circumstance' being violative of the Articles 14 and 21 of the Constitution of India.

5. Counsel for the respondents vehemently opposed the OA and argued that the respondent department was right in rejecting the application of the applicant for withdrawal of his mutual transfer because as per the Railway Board's Circulars/RBE Guidelines No.53/2006 and 200/2009 such withdrawal application cannot be considered under any circumstances and he further submits that the legality of the Circulars/RBE Guidelines No.53/2006 and 200/2009 which has been challenged is devoid of any force because the words 'under any circumstances' cannot be said to be violative

to the Articles 14 & 21 of the Constitution of India especially so because where there is a practice or conspiracy between the two persons to file a joint application for mutual transfer and to later withdraw it, after joining of any one of the two persons or after passing of the orders, and this creates administrative inconvenience and severe problems to the Department. Counsel for the respondents further contended that in view of this administrative exigency and problem the department has passed these orders and therefore prayed to dismiss the OA.

6. In our considered view the Circulars/RBE Guidelines No.53/2006 and 200/2009 cannot be said to be violative to the Articles 14 & 21 of the Constitution of India and therefore the prayer in regard to Circulars/RBE Guidelines No.53/2006 and 200/2009 that these circulars to the extent of words 'under any circumstance' are violative of the Constitution is disallowed.

7. Now, if we come to the factual matrix of the case, it is admitted position that the application of the applicant (marked on 17.09.2012) was forwarded to the competent authority in Hqr Office of North Western Railway on 15.10.2012 and the competent authority then forwarded it to the Western Railway HQs on 07<sup>th</sup> December, 2012 (refer Para 8 of the reply) Therefore, the applicant filed an application on 14.01.2013 (Annexure-A/4) for withdrawal of consent for mutual transfer within just after a month after it was sent to HQ of Western Railway. But this application of withdrawal by the applicant was not forwarded by the

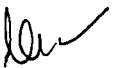


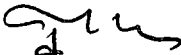
Department to the higher authorities to whom they had forwarded the original mutual transfer application and as such the higher authorities had no occasion to consider the same. The applicant was informed by the Divisional level authority on 23<sup>rd</sup> May, 2013 (Annexure-A/1) that his application cannot be considered as per rules. Though the counsel for the respondents relied upon the Circulars/RBE Guidelines No.53/2006 and 200/2009 for this decision, but in our considered view the application of withdrawal filed by the applicant ought to have been forwarded to the higher authorities i.e. the authority who can pass the ultimate order of transfer so that at the time of passing or at the time of considering the mutual applications, they could have taken cognizance of this fact that one of the applicant has withdrawn his consent for transfer. Although, the Railway Board has issued the orders bearing Circulars/RBE Guidelines No.53/2006 and 200/2009 but when the applicant has withdrawn his application soon after forwarding of it, i.e. within a little more than month from the date of forwarding of the application to the Western Railway i.e. on 07.12.2012 Headquarters, in our considered view the order passed by the respondents at Annexure-A/1 and A/2 requires reconsideration keeping in view the fact that the applicant has withdrawn his consent within a little over a month from the date of the forwarding of the application to the Western Railway Headquarters.

8. Accordingly, Annexures-A/1 & A/2 are set aside and the respondents are directed to reconsider the case of the applicant in the light of the facts

discussed by us, within two months from the date of receipt of a copy of this order. So far as the present status of the applicant is concerned, counsel for the respondents contends that he has not been relieved therefore the interim order passed by this Tribunal vide order dated 23.01.2014 shall remain in force till the final disposal of the case after reconsideration. So far as salary of the applicant is concerned, as per the averments made by the counsel for the applicant that the applicant has been working at Jodhpur therefore it is directed that he may file a separate representation within a fortnight from the date of receipt of a copy of this order to the respondent department, and the respondent department shall consider it and decide the same within two months from the date of receipt of such representation.

9. The OA is thus disposed of as stated above with no order as to costs.

  
[Meenakshi Hooja]  
Administrative Member

  
[Justice K.C. Joshi]  
Judicial Member

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Koyas  
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