

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. No.185 of 1997

CP(C) NO.49 of 1996 10/17

Present: Hon'ble Dr. B.C. Sarma, Administrative Member

Hon'ble Mr. D. Purakayastha, Judicial Member

Mahesh Prasad Verma, CTXR  
Residing at Quarter No.48/F,  
South Colony, Sahebgunge,  
Dist. Sahebgunge (Bihar)

VS

1. Union of India, service through  
The Secretary,  
Ministry of Railway,  
Railway Bhavan, New Delhi

2. The General Manager,  
Office of the General Manager,  
Eastern Railway,  
Fairlie Place,  
Netaji Subhas Road  
Calcutta-700 001

3. The Divisional Railway Manager(Personnel),  
Malda Division,  
Eastern Railway,  
Malda (West Bengal)

4. The Divisional Personnel Officer,  
Eastern Railway,  
Malda Division, (West Bengal)

5. The Divisional Mechanical Engineer,  
Eastern Railway,  
Malda (West Bengal)

6. The Chief Mechanical Engineer,  
Eastern Railway, Fairlie Place,  
Calcutta-700 001

7. The Senior Section Engineer (C.N.W.)  
Eastern Railway, Sahebgunge, Bihar

... Respondents

For the Applicant : Mr. S.N. Roy, counsel  
Mr. A.K. Ghosh, counsel

For the Respondents: Mr. C. Samaddar, counsel

Heard on 12.2.1998

Date of order: 12.2.1998

O R D E R

B. C. Sarma, AM

The dispute raised in this application is about the order of transfer dated 26.9.96 passed by the respondents on the applicant for his movement from Sahebgunge to Jamalpur. The applicant is the Chief Train Examiner, Gr.II. After the transfer order was passed, the applicant had earlier filed an application before this Tribunal bearing OA 26/97 which was disposed of by an order dated

10.1.1997. That application was disposed of by this Tribunal in the following terms:

"We, therefore, dispose of this application at this admission stage itself with a direction upon the respondents to treat the application together with the annexures as a representation for the reliefs claimed and to dispose it of within 4 weeks from the date of communication of this order by passing a speaking order and in case it is rejected, the order of rejection shall be communicated to the petitioner soon after rejection. The petitioner shall not also be required to join the transferred post before disposal of the representation. After disposal of the representation, appropriate order shall also be passed as to how the intervening period should be treated."

2. Pursuant to the said order of the Tribunal, a speaking order was passed by the respondents on 22.1.97 which is still annexed with the application as Annexure/D to the application. It is the specific contention of the applicant that the said speaking order is not at all a speaking order, whereas it is a cryptic one and thereby, it is not in consonance with the direction given by this Tribunal and, hence, it is not sustainable in the Court of law. The applicant, therefore, contends that the transfer be quashed and set aside and he be allowed to continue in Sahebgunge.

3. The case has been opposed by the respondents by filing a reply. It has been contended by the respondents therein that on receipt of the order of the Tribunal, the matter was placed before the D.R.M., Malda, who, after seeing all the relevant records and papers concerning the transfer order, passed the order "I do not find sufficient acceptable grounds for cancelling his transfer order." The said order was communicated to the applicant under a letter dated 22.1.97. They have, therefore, prayed for the dismissal of the application on the ground that it is devoid of merit.

4. We have heard the submission of the learned counsel of both the parties and perused the records. We have also perused the Annexure/D to the application containing the order of the Divisional Railway Manager, Malda, which is purported to be a speaking order. We, however, find that the said order is not at all a speaking order and, rather, it is a cryptic one and hence the said order has to be quashed and set aside. Since the matter cannot be allowed to linger for a long period, we would like to adjudicate it about the legality of the transfer order passed.

5. We find that amongst the grounds cited by the applicant it is stated that the Divisional Railway Manager, Malda had acted contrary to the direction given by this Tribunal. On this aspect we have given our decision that the order of the D.R.M., Malda is not sustainable in law. Apart from that, there is no convincing ground that has been adduced by the applicant in this petition. We ~~have been~~ given to understand that the applicant had been continuing in ~~Sahebgunge~~ for more than 15 years at a stretch. The learned counsel for the applicant made a feeble attempt for connecting the order of minor penalty passed by the respondents to the impugned transfer order. We find that on the allegation that a mail train was delayed because of certain late action of the applicant, one set of Railway privilege pass was stopped on the next date due. Mr. Roy, learned counsel for the applicant relied on the reply filed by the respondents particularly on the sentence "in this connection it is stated that the transfer of the applicant has been done in the overall interest of the administration as he has not been discharging his duties to to the satisfaction of the administration for which he has been punished in individual cases." We are not impressed by the said submissiown of Mr. Roy. The respondents have categorically stated that the transfer of the applicant was done in the over all interest of the administration. The fact that he was punished in the individual case has been discussed by us already and it is a closed chapter. Simply because a Railway employee or a Government employee is punished in a particular case is not sufficient that he should be transferred subsequently. He may be transferred in public interest which is the fact in this case. The Hon'ble Apex Court in the case of State of M.P. and others vs. Shri S.S. Kourak and others, reported in 1995(2) JT SC 498 observed that the Courts or Tribunals are not appellate forums to decide on transfer of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the Courts or Tribunals are not expected to interdict the working of administrative system by transferring officers to proper places. It is for the administration to take appropriate decisions and such decisions should stand unless they are vitiated either by malafides or by extraneous consideration without any factual background

foundation. Accordingly the application is liable to be dismissed.

6. For the reasons given above we do not find any merit in the application. It is, therefore, dismissed.

7. Mr. Roy submits that pursuant to the order passed by this Tribunal the applicant is still at Sahebgunge, but he has not been given pay and allowances for the last one year or so for which a direction be issued. We have considered the submission of Mr. Roy, but we find that in the order passed by this Tribunal on 10.1.97 it was observed that the applicant shall not be required to join the transferred post before the disposal of the representation and after disposal of the representation appropriate order shall be passed as to how the intervening period should be treated. The representation was disposed of by the respondents on 22.1.1997 and the said order was also, as per the contention made by the respondents, sent to the applicant by registered post on the same date. While the exact date of receipt of the intimation is not known, we presume that the applicant had received it at least within a period of one month i.e., 22.2.1997. If that be so, as per the Tribunal's order earlier the applicant can continue at Sahebgunge only upto that date. Mr. Samaddar, on the other hand, submits that the applicant was released already on 19.12.96, but no effect can be given in view of the Tribunal's order passed earlier, which we have referred. Accordingly the applicant stands released only on 22.2.1997. The respondents shall pay and allowances to the applicant as per rules upto that period at Sahebgunge. The intervening period from 23.2.97 to the date on which he joins at Jamalpur shall have to be treated by the respondents as per rules.

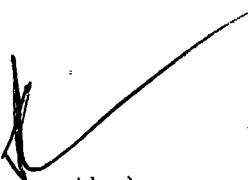
8. Mr. Roy, however, submits that by the order of the Tribunal dated 10.2.97 the applicant was not to be released. We have perused that order and the direction given by this Tribunal is as below:

"Hearing the ld. counsel for both the parties and on perusal of the application and annexures thereto, we direct as an interim measure that the petitioner shall not be relieved from his present post, unless already relieved, till the next date."

There are records to show that the applicant was already released on 19.12.96. Therefore, this interim order was not effected in

any event. In any event the Tribunal had already passed the order and the applicant shall not be required to move at this stage. This matter was discussed already and, therefore, the contention of Mr. Roy is rejected.

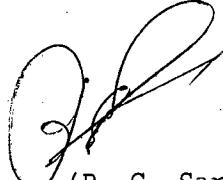
9. We find that the applicant had filed a C.P.C. bearing 49/96 on the ground that the interim order has been violated. Since this aspect of the matter has already been discussed, the C.P.C. has been taken on day's list and as it has become infructuous it is dismissed.



(D. Purkayastha)

MEMBER (J)

12.2.1998



(B. C. Sarma)

MEMBER (A)

12.2.1998