

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

OA NO. 1327 OF 97 WITH MA 172 OF 97

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

Ashley Christopher Periara,
'Melville', Pollen Para,
P.O. Baksara, P.S. Jagacha,
Dist. Howrah

VS

1. Union of India through the
General Manager, Metro Railway,
33/1, Chowringhee Road,
Calcutta-700 071
2. The Chief Engineer,
Metro Railway,
33/1 Chowringhee Road,
Calcutta-71
3. Sr. Personnel Officer,
Metro Railway,
33/1, Chowringhee Road,
Calcutta-71

For the petitioner : Mr. B.C.Sinha, Counsel
Mr. J.R.Ghosh, Counsel
Mr. T.K.Biswas, Counsel.

For the respondents : Ms. Uma Sanyal, Counsel

Heard on : 25.6.97 : Order on : 12.8.97

O R D E R

M.S.Mukherjee, A.M.

This is a petition under section 19 of the Administrative Tribunals Act, 1985, in which the petitioner, who is a railway employee on deputation to the Metro Railway, is aggrieved that he has been reverted to his parent railway i.e. South Eastern Railway, under the impugned order dt. 13.3.97 issued by the Metro Railway authorities, copy of which is at Annexure-B to the petition.

2. The petitioner had initially joined the South Eastern Railway as a Jr. Clerk through Railway Service Commission in 1975. In 1980 when option was invited by the Metro Railway to fill up clerical vacancies in that railway, the petitioner

opted for the same and he was accordingly taken on deputation to Metro Railway from S.E.Rly. and he joined the Metro Railway in August 1980 as a Jr. Clerk. Subsequently, the petitioner while on deputation in metro Railway was first promoted as Sr. Clerk and then as Head Clerk in 1987.

3. The petitioner submits that in the Metro Railway he was working in the personnel section and he lately was dealing with discipline and appeal cases and he was holding charge also of secret and confidential files and documents other than DA files kept under his lock and key. The petitioner contends that by an order dt. 30.12.96 he was transferred to the Bill Section in the same Metro Railway and that he asked for some time to list out confidential files and documents kept in his almirah so that the charge could be handed over smoothly. He adds that on 14.3.97 his wife fell ill and he had to apply for leave. But while he was on leave, the Metro Railway authorities by their impugned office order dt. 13.3.97 (Annexure-B to the petition) has ordered his repatriation and has also released him w.e.f. 14.3.97 to join his parent railway i.e. S.E.Rly. The petitioner suggests that the said letter, which was issued during his leave, would be served upon him on his resumption of duty. The petitioner then submitted an appeal before the Metro Railway authorities requesting for cancellation of the repatriation order as he was neither the seniormost nor the juniormost in the cadre and that the repatriation order was unjust. His contention is that any such repatriation should be on the basis of seniority either from the top or from the bottom of the list, but should not be by pick and choose method. His further contention is that by the impugned order, he has been ordered to be repatriated immediately to his parent railway and in that event he would be prevented from preparing catalogue of secret and confidential files in his custody and from handing over

A
11

the same to the designated official and for any possible loss or damage of unlisted files and documents, the petitioner may be blamed and subjected to harassment subsequently. His further grievance is that after having served the Metro Rly. for long 17 years and having secured a number of promotions, he is being repatriated without any certainty of retaining his present position of Head Clerk. He has, therefore, prayed for the quashing of the impugned order of repatriation dt. 13.3.97.

4. The respondents have contested the case by filing a written reply. Their contention is that the petitioner has been duly repatriated to his parent railway by the competent authority and since he is not substantively working in the Metro Railway, where his service is taken on deputation only, he cannot claim, as a matter of right, to continue indefinitely. The respondents have also contended that there is no such rule that repatriation is to be made only on the basis of seniority, rather the Metro Rly. authorities, as the borrowing organisation, has the right to retain the petitioner or for that matter any other employee on deputation only on the basis of his utility and since it has been adjudged that the petitioner's service is no longer of any utility to the borrowing organisation, the respondents were justified in ordering his repatriation to his parent railway. The respondents have, therefore, urged for rejection of the case.

5. The petitioner has submitted a written rejoinder to the reply. Further on 25.6.97, the petitioner submitted an unlisted Misc. Petition with copy previously given to the 1d. counsel for the respondents. Through the said Misc. petition, the petitioner has given a list of 12 Head Clerks in the Metro Railway who were all junior to him in the said railway in the sense that they had all joined Metro Rly. and promoted as Head Clerk subsequent to him and yet they have been retained by the

5/

Metro Railway authorities and not repatriated to their parent railways.

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

7. Regarding the impugned order of repatriation, it is mutually admitted that the petitioner is not the juniormost person to be repatriated and there is no rebuttal that he is neither the seniormost nor juniormost person in the cadre to be repatriated. Mr. B.C.Sinha, the 1d. counsel for the petitioner has submitted that repatriation should follow a proper principle and that it should be on the basis of seniority and not by pick and choose method which is arbitrary.

8. The respondents, however, contest this contention. According to them, the borrowing organisation has the unfettered right to repatriate an employee to his parent deptt. if found without ability. It is further contended that the petitioner has his lien in his parent railway and the competent authority after due consideration, has ordered his repatriation to his parent cadre where he holds lien in terms of provision of Rule 227(FR-15) of IREC, Vol. I, 1987 Edn.

9. In our view, this would seem to be the general provisions when an employee has been taken on deputation or borrowed from some other sister organisation or sister units and divisions and the employee is holding substantive post or lien in his parent cadre or parent organisation. In the instant case, it is admitted by the petitioner himself that in the Metro Railway i.e. borrowing organisation, he is not holding any substantive post and that all the promotions that he has secured are on officiating basis. The respondents have also added that these are local arrangements because of

S/

exigency of service and it does not give them any right to continue in the promoted post if the borrowing authorities decide to repatriate them to their parent cadre in the parent railway. The petitioner does not deny this specific contention that he is still holding permanent lien in the S.E.Railway.

10. In fact, this principle has been enunciated by the courts on a number of occasions. For example, the Allahabad Bench of this Tribunal in the case Jagroshan Lal -vs- UOI & Ors (OA No. 198 of 1988) held on 5.4.89, after discussing a number of previous rulings on the subject that since the petitioner (in that case) was holding an ad hoc post in the borrowing organisation, he has no right to hold it indefinitely and that there was no element of penalty in the impugned order of repatriation which was not violative of any rules or instructions nor does it involve any stigma.

11. We would concur with this view and hold that the borrowing organisation is not bound to follow the rule of seniority in the matter of repatriation. However, although the above may be the general proposition of the rules or principles, we have simultaneously to consider the special position prevailing in the Metro Railway organisation. The respondents have clearly stated through their reply that "Metro Railway is an ex-cadre organisation and the non-gazetted posts have been filled up by transfer of staff from zonal railways and production units. A staff so transferred holds his lien on his parent railway against his substantive post. The promotions and posting in Metro Railway are purely ad hoc and on local arrangements..." It is, therefore, clear that almost all the staff or at least bulk of the staff of the Metro Rly. are on deputation from other railways and that the Metro Railway is utilising their services in the best interest of the organisation, because of

S
1

very nature of the establishment where a larger number of people are required at the construction phase of the Metro Railway which cannot continue indefinitely thereby necessitating creation of permanent establishment and filling up the posts permanently.

12. So, in the Metro Railway, these are not cases of isolated posts filled up by deputation from other organisation on stray basis. When all posts or bulk of the same are filled up like this, in our opinion, the Metro Railway authorities should follow certain predictable norm for retaining the staff in the Metro Railway once they have accepted them on deputation. The employees, who come on deputation get certain advantages - prospect of early promotions in the metro railway under local arrangement, non-transferability from the city life of Calcutta etc. and it is, therefore, not unusual that many, whose conditions are hard in their parent railways, are keen to come to the Metro Railway on deputation and they are also interested to continue in the same for obvious reasons. Under the circumstances, so far as metro railway is concerned, after the services of the employees have been utilised, the Metro Railway authorities should not repatriate any employees to the parent cadre arbitrarily without any norm, which may appear as pick and choose method breeding undue favouritism or discrimination. This will not be conducive to the morale of the Metro Railway employees - a public organisation and to the smooth and efficient functioning of the same. While repatriating the deputationists, the Metro Railway authorities should, normally therefore, follow certain set principles preferably based on relative seniority. We do not, however, go into the specifics of such desirable principles any further, since it is not necessary to decide the instant case for reasons further analysed below.



13. In the instant case, the respondents have averred that the petitioner had initially been transferred within the Metro Railway itself from only one wing of Metro Railway to another unit in the same railway involving no change of station, by its order dt. 30.12.96, a copy of which has been added as Annexure-R1 to the reply. The petitioner does not deny this. But the petitioner has never complied with this order. The petitioner's case is that he needed time to prepare a list of all confidential and other records for smooth hand over of the same on transfer so that no future complication may arise and he is not unnecessarily subjected to harassment from any possible loss or damage to such records, as the records were, according to him, in his custody under his lock and key. But how long should the petitioner reasonably demand to need simply to prepare such list of documents in order to comply with the transfer order dt. 30.12.96 ? Although the said transfer order dt. 30.12.96 indicated that making over and taking over of charge was to take place immediately, yet the respondents subsequently issued an order for the petitioner after a long fortnight on 13.1.97 (Annexure-R2 to the reply) asking him to comply with the order and hand over charge early. Yet nothing happened. Thereafter the respondents through the letter dt. 4.3.97 (Annexure-R3) directed the petitioner to hand over charge to a designated official and report to duty to his transferred Section by 7.3.97 at the latest. So the petitioner had more than 9 weeks to hand over his charge and implement the transfer order. Yet the petitioner did anything. In the face of his non-compliance, respondents felt that the work of Pay Bill Section continued to suffer by way of accumulation of huge arrears pertaining to Tollygunj Car. Shed leading to industrial unrest. Thus, according to the respondents, the utility of the petitioner so far as the Metro Rly. is concerned, ended and there was no

51

alternative than to repatriate him to his parent railway after considering the case in its entirety.

14. In our considered view, the position of the respondents is very reasonable and appropriate. The respondents have urged that on consideration of relative utility and not on consideration of seniority, the petitioner has been repatriated. They have relied on a judgement of the Delhi High Court in the case of Naunihal Singh -vs- UOI as reported in 1971(1) SLR 566 where the petitioner originally a stenographer in Armed Forces Headquarters was working as Private Secretary to the Speaker of Lok Sabha. He lost confidence of the speaker and therefore found to be unsuitable for the job and he was sent back to his parent deptt. It was held by the Hon'ble Delhi High Court that there was no stigma attached to the order of repatriation and therefore the impugned order of repatriation was not to be interfered with. Similar contention has been held in the case before the Allahabad Bench of the Tribunal i.e. Jagroshan Lal -vs- UOI already mentioned above.

15. Under the circumstances, in overall consideration of the facts, we find nothing wrong in the action of the respondents in passing the impugned order of repatriation. Accordingly, the petition is rejected. There will be no order as to costs.

M.S. Mukherjee
12/8/1997
(M.S. MUKHERJEE)

MEMBER(A)

A.K. Chatterjee
12/8/97
(A.K. CHATTERJEE)

VICE CHAIRMAN