

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH:
J A I P U R

O.A.No.478/95

Date of order: 17.10.1996

Biri Singh : Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. Divisional Railway Manager (Estt.) Western Railway, Kota Division, Kota.
3. Traction Foreman, Bayana, Western Railway, Kota Division, Bayana.
4. Senior Divisional Electrical Engineer (TRE), Electrical Loco shed, Tuglakabad, New Delhi.
5. Sr. Divisional Electrical Engineer (Estt.)(TRD), Kota Division, Kota W/Fly.
6. Shri Fransis s/o Shri Varnavas Khallasi, at present employed under Chief Traction Foreman (TFD) Bayana through Chief Traction Foreman (TFD) Bayana, Distt. Bharatpur.

: Respondents

Mr. Shiv Kumar, counsel for the applicant
Mr. M. Rafiq, counsel for the respondents

CORAM:

HON'BLE SHRI RATAU PRAKASH: MEMBER (JUDICIAL)

O R D E R

PER HON'BLE SHRI RATAU PRAKASH: MEMBER (JUDICIAL)

Through this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has sought a direction against the respondents to spare respondent No.6 from Bayana to Tuglakabad and to take the applicant on duty at the place of respondent No.6 at Bayana with a further prayer to pay the salary and

8

...3

allowed to join duty neither at Tuglakabad, nor at Bayana has approached this Tribunal by filing this O.A. claiming aforesaid reliefs.

4. After admission of the O.A., the respondents No.1 to 5 put in their appearance on 1.1.1996 and on the submissions made by the learned counsel for the parties, an interim direction was issued to respondent No.4 to allow the applicant Shri Biri Singh to join his duties at Tuglakabad where he was earlier posted before his transfer. It has been submitted today by the learned counsel for the applicant that in pursuance of this direction, the applicant has since joined at Tuglakabad and is continuing there.

5. The respondents No.1 to 5 have opposed this application by filing a written reply to which the applicant has not filed any rejoinder. Respondent No.6 was duly served but he has not filed any reply to the O.A. and the proceedings would be deemed to have proceeded ex-parte against him. The stand of official respondents is that although initially respondent No.6 has made a request for mutual exchange transfer with the applicant but subsequently, on 17.7.1995(Annex-R-1) he made a request to the respondents that he now does not want to go to Tuglakabad and that his request made earlier for mutual exchange transfer may be treated as cancelled. It is further the case of the official respondents that in pursuance of this request of

dc

learned counsel for the respondents has been that since respondent No.6 has already moved on 17.7.1995 for cancellation of his request for mutual transfer made earlier, he was rightly not relieved to join his duties at Tuglakabad and subsequently the order of mutual transfer dated 14.7.95 having been cancelled vide order dated 31.8.1995(Annex.R-2), this O.A. deserves rejection.

8. The contention of the learned counsel for the respondents is that since respondent No.6 has submitted an application on 17.7.95 for cancellation of his request made for transfer on mutual exchange basis with the applicant, the respondents were within their right not to allow the applicant to join his duties at Bayana. I am afraid that this contention of the learned counsel for the respondents is not tenable. The reason is that neither on 17.7.1995, nor before the applicant was spared on 29.7.1995 to join his duties at Bayana and further also when he reported to join his duties on 31.7.95 at Bayana, no order of cancellation of the mutual transfer dated 14.7.1995 was in existence. The order of mutual exchange transfer dated 14.7.95 has been cancelled on 31.8.1995 (Annex.R-2). It was, therefore, the bounden duty of the respondent No.3 to allow the applicant to join his duties at Bayana on 31.7.1995. In my opinion, the respondents have been at fault in issuing the order dated 31.8.1995(Annex.R-2) and in not allowing the applicant to join his duties in pursuance of their own order dated 14.7.95 which has not been cancelled earlier than 31.8.1995 and no legal effect can be given to order dated 31.8.1995. Since the applicant has reported to join his duties at Bayana on

(13)

...6

31.7.1995, it would be deemed that for all purposes he has joined his duties on transfer on mutual exchange basis at Bayana on that date and his seniority would be governed by Regulation No.310 of the I.R.E.M. Vol.I. It may not be out of place to mention that in cases of transfer on mutual exchange basis if any one of the employee retracts his consent given earlier, this action would not be treated to bring the order issued by a competent authority as also the request made/consent given by him earlier for transfer to a nullity. In such situations, it would have been appropriate if the official who wants to withdraw his consent given earlier to transfer on mutual exchange basis; to again obtain the affected employee's consent not to give effect to his earlier request made in this regard and simultaneously request the concerned authority to cancel the order of transfer which has come into existence. This having been not done by respondent No.6 Shri Fransis 'B', he cannot reap any advantage of his own fault solely on the basis of his unilateral intimation given to his controlling officer.

9. For all the aforesaid reasons, this O.A. is allowed. Respondents are directed to take the applicant Shri Biri Singh on duty at Bayana and to spare respondent No.6 Shri Fransis 'B' to join his duties at Tuglakabad with immediate effect. For the purpose of assigning seniority to the applicant as per Regulation No.310 of I.R.E.M. Vol.I, the applicant would be deemed to have joined his duties at Bayana on 31.7.1995. However, since the applicant has been allowed to join

On

(9)

...2

wages for the intervening period till he is taken on duty.

2. The facts in brief leading to this application and as stated by the applicant are that the applicant was initially appointed as Khallasi at Kota on 11.11.1982 and thereafter he was transferred to Tuglakabad in the year 1993. While he was working as Tuglakabad on the post of Senior Khallasi in the pay scale of Rs.850-1150, he applied for mutual transfer with respondent No.6 and an application for mutual transfer Annexure A-1 was submitted to the respondents.

Respondent No.6 also gave his consent for mutual transfer with the applicant vide his application dated 20.3.1995 (Annexure A-3). Consequently vide order dated 14.7.1995 (Annexure A-4), the Divisional Authorities of the respondents transferred the applicant from Tuglakabad to Bayana and respondent No.6 from Bayana to Tuglakabad.

3. It is the case of the applicant that vide order dated 29.7.1995 (Annexure A-5) respondent No.4 relieved the applicant from Tuglakabad to join at Bayana on mutual transfer with respondent No.6. When applicant gave his joining report on 31.7.1995 (Annexure A-6), respondent No.3 did not allow him to join duty and hence he was kept away from his job. It has, therefore, been averred by the applicant that by this action of the respondents he has been put to financial loss every month and has not been paid monthly salary w.e.f. 29.7.1995. He having been not

80

(V)

...4

respondent No.6, the order of mutual exchange transfer was cancelled by order dated 31.8.1995(Annex.R-2) whereby the applicant was ordered to be repatriated at TES-TKD. It has, therefore, been averred on behalf of the respondents that since the applicant has deliberately not resumed his duties at Tuglakabad, he is being treated as absent from duties. It has also been stated that since respondent No.6 has already made a request for withdrawing his request for mutual transfer made earlier, action of respondents in not relieving respondent No.6 from Bayana is not illegal, arbitrary or in colourable exercise of powers. Hence, it is urged on behalf of the respondents that the application deserves rejection.

6. I have heard the learned counsel for the parties and have examined the record thoroughly.

7. There is no dispute between the parties that the order of mutual transfer dated 14.7.1995 (Annexure A-4) has been issued in pursuance of the request made by the applicant and respondent No.6 for mutual transfer. It is also made out that consequent upon this order dated 14.7.1995 (Annex.A-4) the applicant Shri Biri Singh was spared to join duties at Bayana on 29.7.1995 (Annex. A-5). He thereafter submitted his joining report dated 31.7.1995 (Annex.A-6) before respondent No.3. On the basis of these documents, it has been argued by the learned counsel for the applicant that the applicant should be allowed to join his duties at Bayana and respondent No.6 be directed to be spared by respondent No.3 to join his duties at Tuglakabad. On the contrary, the argument of the

8

learned counsel for the respondents has been that since respondent No.6 has already moved on 17.7.1995 for cancellation of his request for mutual transfer made earlier, he was rightly not relieved to join his duties at Tuglakabad and subsequently the order of mutual transfer dated 14.7.95 having been cancelled vide order dated 31.8.1995(Annex.R-2), this O.A. deserves rejection.

8. The contention of the learned counsel for the respondents is that since respondent No.6 has submitted an application on 17.7.95 for cancellation of his request made for transfer on mutual exchange basis with the applicant, the respondents were within their right not to allow the applicant to join his duties at Bayana. I am afraid that this contention of the learned counsel for the respondents is not tenable. The reason is that neither on 17.7.1995, nor before the applicant was spared on 29.7.1995 to join his duties at Bayana and further also when he reported to join his duties on 31.7.95 at Bayana, no order of cancellation of the mutual transfer dated 14.7.1995 was in existence. The order of mutual exchange transfer dated 14.7.95 has been cancelled on 31.8.1995 (Annex.R-2). It was, therefore, the bounden duty of the respondent No.3 to allow the applicant to join his duties at Bayana on 31.7.1995. In my opinion, the respondents have been at fault in issuing the order dated 31.8.1995(Annex.R-2) and in not allowing the applicant to join his duties in pursuance of their own order dated 14.7.95 which has not been cancelled earlier than 31.8.1995 and no legal effect can be given to order dated 31.8.1995. Since the applicant has reported to join his duties at Bayana on

(13)

...6

31.7.1995, it would be deemed that for all purposes he has joined his duties on transfer on mutual exchange basis at Bayana on that date and his seniority would be governed by Regulation No.310 of the I.R.E.M. Vol.I. It may not be out of place to mention that in cases of transfer on mutual exchange basis if any one of the employee retracts his consent given earlier, this action would not be treated to bring the order issued by a competent authority as also the request made/consent given by him earlier for transfer to a nullity. on mutual exchange basis In such situations, it would have been appropriate if the official who wants to withdraw his consent given earlier to transfer on mutual exchange basis; to again obtain the affected employee's consent not to give effect to his earlier request made in this regard and simultaneously request the concerned authority to cancel the order of transfer which has come into existence. This having been not done by respondent No.6 Shri Fransis 'B', he cannot reap any advantage of his own fault solely on the basis of his unilateral intimation given to his controlling officer.

9. For all the aforesaid reasons, this O.A. is allowed. Respondents are directed to take the applicant Shri Biri Singh on duty at Bayana and to spare respondent No.6 Shri Fransis 'B' to join his duties at Tuglakabad with immediate effect. For the purpose of assigning seniority to the applicant as per Regulation No.310 of I.R.E.M. Vol.I, the applicant would be deemed to have joined his duties at Bayana on 31.7.1995. However, since the applicant has been allowed to join

DR

(R.P.)

at Tuglakabad by virtue of order dated 1.1.1996 passed by the Tribunal, the respondents would issue appropriate orders for adjustment of payment of his salary as per rules. To comply with the directions aforesaid, the respondents and the applicant are given two weeks time.

10. The O.A. is disposed of accordingly with no order as to costs.


(RATAN PRAKASH)
MEMBER (JUDICIAL)