

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/00479/2015

Order Reserved on: 23.8.2016

Date of Order: 31.08.2016

CORAM

Hon'ble Ms. Meenakshi Hooja, Administrative Member

Manraj Meena s/o Shri Prasadi Lal Meena, age 43 years, Resident H.No. 34, Shri Ganesh Colony, Near Hanuman Bageechi, Jamdoli, Agra Road, Jaipur, presently working as Assistant Station Master, Railway Station Nokhra, Bikaner.

.....Applicant

(By Advocate Mr. Sandeep Saxena)

VERSUS

1.Union of India, through General Manager, North Western Railway, Railway Head Quarter, Jawahar Circle, Jaipur.

2.The Divisional Railway Manager, Northern Western Railway, Hasanpura, Jaipur.

3.The Divisional Railway Manager, Northern Western Railway, Bikaner.

.....Respondents

(By Advocate Mr. Anupam Agarwal
For respondents No.1 & 3)

ORDER

This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985 by the applicant being aggrieved with inaction on the part of respondent No.3 for not relieving the applicant to join the office of respondent No.2 and seeking the following reliefs:-

8.1 By an appropriate order or direction, the respondent No.3 may be directed to relieve the applicant pursuant to the order dated 12.02.2015 and 13.07.2015 to join at Jaipur and till then the respondent No.2 may be directed not to delete the name of the applicant from the priority list and may allow to join the applicant at Jaipur as and when he was relieved by the respondent No.3 with all consequential benefits.

8.2 Award exemplary cost in favour of the applicant.



8.3 Any prejudicial order to the interest of the applicant, if passed during the pendency of the application, same may kindly be taken on record and after examining the same be quashed and set aside.

8.4 Any other appropriate order or direction which may be considered just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.

2. Heard. When the case came up for consideration and hearing, the Ld. Counsel for the applicant submitted that the applicant was appointed as Assistant Station Master (ASM) on 03.01.2001 and on completion of training he was posted at Railway Station Bhusawal (Central Railway), Maharashtra where he joined on 21.08.2001 and thereafter the applicant was transferred to Baroda (Western Railway) on 16.6.2006 on mutual basis by losing his seniority. As the wife of the applicant, who is a State Government employee was posted as Teacher Gr.III in Elementary Education, Government of Rajasthan at Bikaner the applicant applied to the General Manager, Western Railway, Mumbai to transfer him at Bikaner in the year 2007. The application of the applicant was considered and after a long time vide order dated 04.01.2014 he was transferred from Baroda to Bikaner where he joined on 07.08.2014. However, during the pendency of his application his wife was transferred from Bikaner to Jaipur in the year 2010 where she is presently posted. Therefore, the applicant submitted an application to Respondent No.1 to transfer him at Jaipur in view of the policy of the respondents to transfer an employee on spouse ground, and vide letter dated 12.02.2015 (Ann.A/1) the approval and consent was granted for acceptance of transfer of the applicant from Bikaner Division to Jaipur Division by respondent No.2. The applicant submitted applications to Respondent No.3 to relieve him but he was not relieved and letter dated 13.07.2015 (Ann.A/2) was also issued by respondent No.2 that the applicant has not been relieved so far and if he is not relieved within a period of 15 days, his name will be removed from the priority list.

3. Counsel for the applicant further submitted that as may be seen from the Annexures attached to the rejoinder, more than 29 people have already been repatriated to Bikaner from other Zones/Divisions and there are many more cases which he has not been able to collect. Therefore, he argued that when so many officials have already been called back to Bikaner, then there is no justification not to relieve the applicant. He also referred to the reply filed by respondents especially Ann.R/2 dated 02.12.2015 by which the respondent No.2 has removed the name of the applicant from priority list only because he has not been relieved by respondent No.3. In this context the counsel for applicant contended that this order has been passed in December, 2015 during the pendency of the OA and well after notices were issued and served upon the respondents in August, 2015 and has no legal validity and therefore, prayed that the aforesaid order be cancelled and respondents be directed to relieve the applicant from Bikaner Division in pursuance of his transfer order and be allowed to join at Jaipur in Jaipur Division and the OA be allowed.

4. Per contra, the counsel for respondent submitted that in the first place the applicant has no legal right to Inter-Division Transfer and further referred to Ann.R/1 filed with the reply in which reasons have been given for not relieving the applicant. Ann.R/1 is the letter dated 04.08.2015 addressed to the applicant by DRM, Bikaner i.e. Respondent No.3 wherein it has been clearly stated that there are 144 vacancies of ASM category in Bikaner and, therefore, the applicant cannot be relieved. Further, the applicant has also been informed that as per Para 3 (d) of the Transfer Policy of the Railway Board (Railway Board's letter No. E(NG)T-2009/TR/29 dated 02.02.2010) that if he would like his spouse to be transferred to the nearest place of posting, then he may send the consent of the spouse, so that Railways may recommend to her Department for considering posting her to a place nearby to the

place of posting of the applicant. Counsel for respondents contended that the fact of 29 persons having been repatriated to Bikaner, as brought out by the counsel for the applicant, itself testifies to the shortage of man-power and as brought out in Ann.R/1 about 144 posts of ASM are still vacant, therefore, not relieving the applicant in view of administrative exigency is fully justified. He further submitted that the counsel for the applicant has referred to Ann.R/2 order dated 02.02.2015 and sought for its cancellation but he has not challenged the same. He also made it clear that vide this order the transfer order has not been cancelled but only the names including that of the applicant, have been removed from the priority list.

5. In rebuttal the counsel for the applicant submitted that the applicant may not have a right to transfer but once the order are issued the right accrues to him and he approached the Tribunal only after orders dated 02.12.2015 and 13.07.2015 (Ann.A/1 and Ann.A/2) were issued. He also contended, with regard to the point made by the counsel for applicant that the transfer order has not been cancelled but only the applicant's name has been removed from the priority list, that the applicant cannot join unless he is relieved and therefore, his prayer is for being his relieved by respondent No.3 so that he can join the office of the respondent No.2. He further reiterated that order dated 02.12.2015 Ann.R/2 issued during the pendency of OA by respondent No.2 is not sustainable and prayed for the said order to be cancelled and direction be given to respondent No.3 to relieve the applicant and to be allowed to join at Jaipur.

6. Considered the above contentions and perused the record. It appears that though applicant initially joined the service in 2001 in Central Railway but thereafter sought transfer to Western Railway and was transferred to Baroda on 16.6.2006. He also applied in the year 2007 for transfer from Baroda to Bikaner in view of his wife being a


Teacher and working in the State Government, at Bikaner. His request for transfer from Baroda to Bikaner in NWR was accepted on 04.01.2014 but in the meanwhile his wife was transferred from Bikaner to Jaipur in February, 2010. From a perusal of record it is also noted that nowhere at this stage (i.e. after his wife's transfer to Bikaner in 2010) did the applicant make any change in request for transfer from Baroda to Jaipur (instead of Bikaner) and on being transferred to Bikaner(NWR) in January, 2014 he joined at Bikaner.

7. After joining at Bikaner he again requested for his Inter Division transfer and letter as at Ann.A/1 was issued on 02.02.2015 addressed by respondent No.2 to respondent No.3 accepting the Inter Division Transfer and requesting to relieve the applicant within one month otherwise it will be presumed that the applicant is not interested in transfer and the name of the applicant would be removed from the priority register. Again a similar letter dated 13.7.2015 Ann.A/2 was written by respondent No.2 to respondent No.3 to relieve the applicant.

However, it has been brought out by the respondents in Ann.R/1 dated 04.08.2015 that in view of the 144 vacancies of ASM, respondent No.3 was not in a position to relieve the applicant due to Administrative exigencies. Thereafter the respondent No.2 issued order dated 02.12.2015 removing the names of various employees including that of the applicant from the priority list. It is apparent from Ann.R/1 filed by the respondent No.3 with the reply, that there are 144 post of ASM vacant in Bikaner Division and if a number of officials, even more than 29 as brought out by the counsel for applicant have been brought back to Bikaner from other places, even then more than 100 vacancies would remain; therefore there appears to be force in the contention of counsel for respondents that the applicant was not relieved in view of administrative exigencies. It is further noted that vide letter dated 02.12.2015 of respondent No.2 the transfer of the applicant has not

been cancelled but only his name has been removed from the priority list. It is also noted that the respondent No.3 has informed the applicant vide Ann.R/1 dated 04.08.2015 that as it is not possible to relieve the applicant from Bikaner, therefore, he may submit the application for transfer of his wife to Bikaner or nearby place, which they will send to the concerned authorities of her Department in the State Government for sympathetic consideration. This appears to be in accordance para 3(d) of the Railway Board's Policy dated 02.02.2010 which has also been referred to by the applicant as at Ann.A/5. Thus on overall analysis of the basis of facts and circumstances of the case, it is seen that the respondent No.3 has not been able to relieve the applicant because of prevailing large number of vacancies of Assistant Station Master (ASM) which is a justifiable administrative exigency. Further, vide latest order of respondent No.2 dated 02.12.2014 (Ann.R/2) only the priority has been removed but transfer has not been cancelled. As the applicant has sought the transfer on spouse ground, therefore, he is also entitled and at liberty and avail the opportunity to move an application as suggested by respondents at Ann.R/1 as per Para 3(d) of Railway Board's Policy (Ann.A/5). Therefore, the prayer of the applicant to direct the respondent No.3 to relieve him from Bikaner for Jaipur or to cancel order dated 02.12.2015 issued by respondent No.2 does not appear to have sound justification or merit and therefore, there is no ground to grant the relief sought for in the OA.

In view of the above position, the OA is accordingly dismissed with no order as to costs.


(Ms.Meenakshi Hooja)
Administrative Member

Adm/