CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/00366/2016

ORDER RESERVED ON 31.08.2016

DATE OF ORDER: 27/09/2016

CORAM

HON'BLE MS. MEENAKSHI HOOJA, ADMINISTRATIVE MEMBER

1. S.K. Jain S/o late Shri Harish Chand Jain, aged about 56 years, R/o 1269, Park View Apartment, Flat No. 401, Rani Sati Nagar, Gautam Marg, Nirman Nagar, Jaipur and presently working as TNCR under CTI (SL), Jaipur, North Western Railway, Jaipur Division, Jaipur.
2. Radhey Shyam Bairwa S/o Shri Badri Prasad Bairwa, aged about 52 years, R/o 53, Moti Nagar, Near Gurjar Ki Thadi, Jaipur and presently working as TNCR under CTI (SL), Jaipur, North Western Railway, Jaipur Division, Jaipur.
3. Jitendra Kumar Rathore S/o late Shri Sohan Lal Rathore, aged about 33 years, R/o H/3, Near Katariya Colony, Ram Nagar Extension, Sodala, Jaipur and presently working as TNCR under CTI (SL), Jaipur, North Western Railway, Jaipur Division, Jaipur.

....Applicants

Mr. C.B. Sharma, counsel for applicants.

VERSUS

1. Union of India through the General Manager, North Western Railway, Near Jawahar Circle, Jagatpura Road, Jaipur.
2. Divisional Railway Manager, North Western Railway, Power House Road, Jaipur.
3. Senior Divisional Personnel Officer, Jaipur Division O/o Divisional Railway Manager, North Western Railway, Power House Road, Jaipur.

....Respondents

Mr. P.K. Sharma, counsel for respondents.

ORDER

This Original Application has been filed by the applicants under Section 19 of the Administrative Tribunals Act, 1985, aggrieved with Annexure A/1 letter dated 23.05.2016 by which the

representations of the applicants pertaining to their transfer has been rejected, thereby seeking the following reliefs: -

> "(i) That the impugned letter of rejection of representations dated 23.05.2016 (Annexure A/1) with the transfer order dated 30.03.2016 (Annexure A/11) so far as it relates to the applicants may kindly be quashed and set aside with the direction to respondents to allow the applicants to work at their present place of posting at Jaipur as before passing the order / letter with all consequential benefits.
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> (ii) That respondents be further directed to take note that applicants are working on the post of TNCR and not completed post tenure and not to give effect transfer order dated 30/03/2016 (Annexure A/11) by deleting names of the applicants with all consequential benefits.
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> (iii) Any other order/directions of relief may be granted in favour of the applicants, which may be deemed just and proper under the facts and circumstances of this case.
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> (iv) That the costs of this application may be awarded"

2. The O.A. was initially heard on 26.08.2016 and thereafter at the request of counsel for applicants made on 29.08.2016 to file written submissions, it was listed under "For Being Spoken To" on 31.08.2016 and vide order dated 31.08.2016 written submissions were permitted to be filed. The counsel for the applicants filed the written submissions on 31.08.2016 and the counsel for the respondents filed his written submissions on 07.09.2016. The same have also been considered, along with the arguments and contentions raised by the respective counsels during the hearing.

3. When the matter came up for consideration and hearing, learned counsel for the applicants submitted that the applicants had earlier filed an OA registered as OA No. 291/00249/2016 challenging their transfer order dated 30.03.2016, which was

disposed of at the admission stage vide order dated 13.04.2016 (Annexure A/3) with the following directions: -

> "Considered the aforesaid contentions and perused the record. As this a transfer matter, it is deemed appropriate that the applicants may be permitted to file a fresh representation before the respondents and the same may be decided by respondents by a reasoned and speaking order. Accordingly the OA is disposed of at the admission stage itself, without going into the merits of the case, with the directions to applicants that they may file a detailed representation to respondent No.2 within 7 days of receipt of copy of this order and further the respondent No.2 (or the competent authority, as the case may be) is directed to decide the representations, if any, so filed by the applicants, within a period of one month from the date of receipt of such representation(s). Till the decision on the representations, the effect and operation of Ann.A/1 qua the applicants is stayed. In case no such representations are filed, respondents are at liberty to proceeds further as per law. "

4. Counsel for the applicants further submitted that vide order dated 23.05.2016 (Annexure A/1), the respondents have rejected the representations of the applicants preferred on 18.04.2016 by respondent nos. 2 & 3 (Annexure A/2) and similar representation preferred by the applicant no. 1. In the first place, counsel for the applicants submitted that the order of rejection of representations has not been made by the competent authority and it has been rejected by the same authority who had issued the transfer order just to justify his action. Further counsel for applicants submitted that in the context of the issues raised in the OA, that amongst others, there are two posts in the Railways namely of Train Conductor (TNRC) and Train Ticket Inspector (TTI). He further submitted that while it is the duty of the TTI to check and issue tickets during the running train, it is the duty of the Train Conductor (TNCR) to manage the passengers and the coach. Counsel for applicants then referred to instructions of the Railway Board dated 26.06.2000 (Annexure A/4) relating to Periodical transfers

of such employees and specially cited para 4 (i) (a) & (b), which provide as under:

> "4(i)(a). The first category includes staff of the Commercial Department (such as Commercial Supervisors, Enquiry-cum-Reservation Clerks / Booking Clerks, Goods Clerks, Parcel Clerks, Ticket Checking staff etc.) and the staff of the Operating Department (SSs/SMs/ASMs etc).
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> (b) In order to avoid large scale dislocation in the case of this category of staff, periodical transfers may, as far as possible, be effected without involving a change of residence of the staff concerned, so long as the fundamental objectives of such transfers can be achieved by transferring such staff to a different location in the same station or to a different station in the same urban agglomeration."

Counsel for applicants then referred to Annexure A/6 instructions dated 24.10.2011, wherein a Schedule has been prescribed for carrying out such periodical transfers.

5. As per the above instructions as at Annexure A/4 and Annexure A/6, counsel for applicants submitted that such Periodical transfers, as far as possible, are to be effected without involving a change of residence of the staff concerned to avoid large scale dislocation and further that process of proposal for periodical transfers is supposed to be prepared in the month of November, issue of transfers orders to be done in the month of December / January and execution of orders / sparing of staff in the month of March/April. Counsel for applicants contended that these instructions have nowhere been followed in the case of the applicants. As far as the Schedule is concerned, as may be seen from Annexure A/10 proposal for transfer was issued only on 08.01.2016 i.e. in January instead of November and final orders issued on 30.03.2016 (Annexure A/11) i.e. in March instead of

December / January. Thus, the respondents have not followed their own 'schedules' as per Annexure A/6 dated 24.10.2011. Moreover, there is a change of location and residence in the case of the applicants as they have been transferred from Jaipur to Ajmer and the principle laid down in instructions as at Annexure A/4 dated 26.06.2000 to avoid change of residence have not been adhered to.

6. He further submitted that in the order dated 30.03.2016 (Annexure A/11) exemption has been given to several persons on the ground of being trade union officials, having less than 02 years service left prior to retirement. Moreover as may be seen from "Note"-3, exemptions have also been given to a large number of persons who got themselves transferred on option / mutual transfers from the post of TTI to TNCR and TNCR to TTI in the year 2012 and 2013. On this point, counsel for the applicants has submitted in the written submissions that in fact the respondents never sought any option and further there is no rule to grant exemption from periodical transfer on mutual exchange basis. However in the case of the applicants this exemption has been denied and they have been discriminated against. Counsel for applicants submitted that the applicants nowhere completed the post tenure on the post of Train Conductor (TNCR) and referred to the order dated 28.03.2014 (Annexure A/7) by which the entire cadre of TNCR was brought under the control of CTI (SL) from DCTI-JP, which are two separate units and have yet to complete the 04 years period as Train Conductors. The applicants have been given the Periodical transfer and transferred to another location / station i.e. Ajmer,

which is against the policy of not changing residence and this issue of working as Train Conductor has also not even been referred to in the order dated 23.05.2016 (Annexure A/1) by which the representations have been rejected. It has also been brought out in the written submissions by the counsel for applicants that the posts of TNCR and TTI are separate posts and there is a separate tenure for them.

7. Further the request of the applicants regarding education of their children and mid-term transfer has not been considered though this is clearly not in accordance with the policy of the Department, as may be seen from circular dated 04.03.2010 (Annexure A/5) which provides for taking into account the education – term of the children of the employees sought to be transferred under the Periodical transfers policy.

8. Counsel for applicants contended that though all the aforesaid points were raised by the applicants in their representation dated 18.04.2016 (Annexure A/2) but without considering them properly, the respondents have rejected their representations vide order dated 23.05.2016 (Annexure A/1). On these grounds, counsel for applicants submitted that the transfer order dated 30.03.2016 (Annexure A/11) qua the applicants and the letter/order dated 23.05.2016 (Annexure A/1) by which their representations have been rejected, be quashed and set aside and prayed for the OA to be allowed.

9. Per contra, counsel for respondents submitted that in fact the applicants have joined at the place of transfer and thereby the O.A. has become infructuous. To this, counsel for applicants

submitted that though the applicants have joined at the place of transfer, but they have joined on protest and on this ground alone, the O.A. cannot become infructuous and the issue is required to be decided on merits for which he has already made his arguments.

10. Counsel for the respondents also refuted the contention of the counsel for applicants that the representations have been rejected by an incompetent authority, because the Senior Divisional Commercial Manager is the competent authority to decide the transfers/postings of the Ticket Checking Staff and the orders have been issued accordingly.

11. Counsel for respondents thereafter proceeded to submit that as per Annexure A/4 instructions dated 26.06.2000, it is clear that this transfer policy of Periodical transfers applies to the Railway employees holding sensitive posts, including those who frequently come into contact with public and they are required to be transferred every four years. Thus both the posts i.e. Travelling Ticket Inspector (TTI) and Train Conductor are covered by this policy. Counsel for the respondents further submitted that the applicants were holding the post of TTI for more than 05 years (Shri S.K. Jain from 2009 and Shri Radhey Shyam Bairwa on the post of TTI from the year 2010 under CTI (SL). These employees were posted on the post of TNCR under the DCTI in the year 2011, but they were working under the CTI (SL), Jaipur, therefore they have completed more than 04 years of service at the same place and as per the Railway Board's Policy such Periodical Transfers are required to be made. It has also been mentioned in the reply that the applicants were posted

on the post of TNCR under the DCTI in the year 2011 but they were working under the CTI (SL), Jaipur. The supervision of the post of TNCR was shifted to CTI (SL) from DCTI Jaipur vide order dated 28.03.2014. Therefore only supervision cadre has changed of the applicants by the transfer, the place of working and duties remains the same.

12. He further submitted that when Annexure A/10 order dated 08.01.2016 was issued, giving the list of officials including the applicants, proposed for periodical transfers in which the applicants have been shown working as TTI/CTTI under CTI (SL) Jaipur for more than 04 years, objections were invited on the same, to be submitted by 20th January, 2016. However, the applicants did not submit any objection within the stipulated time and instead of filing any objections, the applicants filed OA in April, 2016 i.e. after the transfer orders were issued on 30th March, 2016 (Annexure A/11). Thereafter as per the directions of the Tribunal dated 13.04.2016 in OA No. 291/00249/2016, the respondents have passed the reasoned and speaking order dated 23.05.2016 (Annexure A/1).

13. Counsel for respondents also submitted that there was no unit/post available near their residence and transfer of the applicants has been made from Jaipur to Ajmer, which is the nearest place and the circular also provides that residence may not be changed as far as possible, but in this case, this was not feasible. Therefore, he contended that the transfer is as per Railway Board's Policy Annexure A/4 dated 26.06.2000.

14. Counsel for respondents further submitted that the Schedule has been followed by the respondents and the Readiness list (Annexure A/10) was issued in January 2016 itself and the transfer orders were issued in March as at Annexure A/11 and there is no major deviation or any violation.

15. As far as the contention of counsel for applicants regarding exemption being given to certain persons as per Note-3 of the transfer order dated 30.03.2016 (Annexure A/11) is concerned, counsel for respondents contended that the applicants are not eligible for such exemption and it has been stated in the reply that Note-3 in order dated 30.03.2016 (Annexure A/11) is as per Board Policy and the exemption of such employees for periodical transfer only on the basis of option and mutual transfer for the year 2012-13 is as permissible to all employees as per the Board Policy. It has been submitted that the applicants have completed more than 05 years of service at the same place under CTI (SL) Jaipur and therefore there is no discrimination with the applicants.

16. Counsel for the respondents also submitted that this is not a case of mid-term transfer because Readiness list was issued as early as 08th January, 2016 and orders issued on 30th March, 2016 and that cannot be said to be a mid-term of the academic session.

17. Counsel for respondents emphasized that all these aspects were also taken into due consideration when considering the representation filed by the applicants (in pursuance of directions of the Tribunal in its order dated 13.04.2016 in OA No.

291/00249/2016, earlier filed by the applicants) and a detailed and speaking order has been passed as at Annexure A/1 dated 23.05.2016. Counsel for respondents submitted that the applicants have not raised issues of the transfer order being mala fide or in violation of any statutory provisions. He referred to a catena of judgments of the Hon'ble Apex Court wherein it has been upheld that transfer is an incidence and condition of service and Courts & Tribunals should not ordinarily interfere in the same unless there is proven mala fide, or violation of statutory provisions and/or the incompetent authority has issued the order, and none of this is so in the present case. As the transfer order dated 30.03.2016 (Annexure A/11) is in accordance with the rules, policy and instructions on the subject and the order of rejection of representations as at Annexure A/1 dated 23.05.2016 is detailed, reasoned and a speaking order, therefore, there is no ground to set them aside and hence counsel for respondents prayed for the dismissal of the O.A.

18. Considered the aforesaid contentions and perused the record. It is noted that vide Annexure A/10 dated 08.01.2016, the respondents issued a Readiness list of persons, including the applicants, who were to be transferred under Periodical transfers and objections were invited upto 20.01.2016 but as brought out by the respondents, the applicants did not make any objections that they were not eligible or due for Periodical transfer at that stage within the stipulated time. However, after the issue of transfer order dated 30.03.2016 (Annexure A/11), the applicants filed earlier OA No. 291/00249/2016 in which the respondents were directed to decide the representations of the applicants. The representations of the applicants have been considered and

decided by the respondents vide speaking order dated 23.05.2016 (Annexure A/1).

19. Counsel for the applicants has raised the contention that the rejection of the representations vide order dated 23.05.2016 (Annexure A/1) has been made by an incompetent authority, but it has been brought out by the respondents that the Senior Divisional Commercial Manager is the competent authority for transfer / posting of Ticket Checking Staff. There is no ground to dispute the reply of the respondents and therefore the contention of the counsel for the applicants that the order has not been passed by a competent authority does not hold ground.

20. Counsel for applicants, amongst other issues, has raised the issue that the transfer has been issued in the mid-term of the children's education in violation of instructions as at Annexure A/5 dated 04.03.2010. In this regard, it is noted that initial proposed Readiness list of persons for periodical transfers was issued on 08.01.2016 (Annexure A/10) and the final transfer orders were issued on 30.03.2016 (Annexure A/11) and these cannot be said to be mid-term.

21. Further as far as the point regarding following of the schedule as at Annexure A/6 dated 24.10.2011 raised by the counsel for applicants, is concerned, there appears to be no major deviation from the Schedule given in Annexure A/6 because the Readiness list was issued in early January and the transfer orders have been issued in March and their execution is to take place in April and the schedule provides for execution of orders / sparing of staff in the month of March / April.

22. It has also been brought out in the reply that the applicant Shri S.K. Jain was working on the post of TTI from the year 2009 and Shri Radhey Shyam Bairwa was working on the post of TTI from the year 2010 under CTI (SL). These employees were posted on the post of TNCR under the DCTI in the year 2011, but they were working under the CTI (SL) Jaipur. The supervision of the post of TNCR was shifted to CTI (SL) from DCTI Jaipur vide order dated 28.03.2014. Thus it is clear that the applicants have worked at the same place and have completed more than 04 years and are therefore eligible under the Periodical transfer. Moreover counsel for the applicants has not shown any document to establish that posts of TTI and TNCR have separate tenure for the purpose of Periodical transfer, if they are at the same place, be under same or different authority.

23. With regard to the point raised by the counsel for applicants that a number of officials have been given exemptions as per Note 3 of the transfer order dated 30.03.2016 because of their options and mutual transfer from TTI to TNCR and TNCR to TTI in the year 2012 and 2013 and the applicants denied the same, it is seen that only those persons, who have given option in the year 2012 and 2013 only and on mutual transfers, were considered for exemption, and this is not the case of the applicants. Moreover, the applicants have not made out any case that they are covered under the option or mutual transfer category and have been discriminated against on that basis. In any case, the applicants made no objection when the Readiness list was issued in January 2016 and they were treated as covered under the Periodical transfer category having completed more than 04 years as CTTI/TTI under CTI (SL) Jaipur.

24. It has also been brought out by the respondents that there is no unit / post available near their residence and therefore transfer of the applicants has been made from Jaipur to Ajmer, which is a nearest place and thus there appears no violation of directions as per Annexure A/4 dated 26.06.2000 as change of location / residence became necessary in view of there being no unit / post available near their residence and the circular provides that as far as possible location / residence may not be changed, but does not put a complete bar on the same.

25. Thus, in view of the above analysis, the action on the part of the respondents of transferring the applicants as per order dated 30.03.2016 (Annexure A/11) and the reasons given in the speaking order dated 23.05.2016 (Annexure A/1) appear to be as per rules, policy and instructions on the subject. The Hon'ble Apex Court has held in a catena of judgments that Courts and Tribunals should not ordinarily intervene in transfer matters unless there is proven mala fide or violation of statutory provisions or the order has been issued by an incompetent authority, which is clearly not so in this case. Thus, no ground is made out for setting aside the transfer order dated 30.03.2016 (Annexure A/11) qua the applicants and order dated 23.05.2016 (Annexure A/1) rejecting their representations or granting any other relief as prayed for in the O.A. Accordingly, the Original Application is dismissed with no order as to costs.

(MS. MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER

Kumawat