

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

**ORIGINAL APPLICATION NO. 291/00390/2016**

ORDER RESERVED ON 31.08.2016

DATE OF ORDER: 27/09/2016

**CORAM**

**HON'BLE MS. MEENAKSHI HOOJA, ADMINISTRATIVE MEMBER**

Naresh Kumar Mukhija S/o Shri Asha Nand, aged about 45 years, R/o 5, Daya Nagar, Daudpur, Alwar and presently working as TTI, under Chief Ticket Inspector, North Western Railway, Alwar.

....Applicant

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

**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. Indresh Sharma, counsel for respondents.

**ORDER**

This Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, aggrieved with Annexure A/1 letter dated 23.05.2016 by which the representation of the applicant pertaining to his transfer has been rejected, thereby seeking the following reliefs: -

✓

"(i) That the impugned letter of rejection of representation dated 23.05.2016 (Annexure A/1) with the transfer order dated 30.03.2016 (Annexure A/8) so far as it relates to the applicant may kindly be quashed and set aside with the direction to respondents to allow the applicant to work at their present place of posting

at Alwar as before passing the order / letter with all consequential benefits.

- (ii) That respondents be further directed to take note that applicant is working on the post of TTI and not completed post tenure being union representative and not to give effect transfer order dated 30/03/2016 (Annexure A/8) by deleting name of the applicant with all consequential benefits.
- (iii) Any other order/directions of relief may be granted in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case.
- (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 applicant 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 applicant filed the written submissions on 31.08.2016 and the counsel for the respondents filed his written submissions on 09.09.2016. 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 applicant submitted that the applicant had earlier filed an OA registered as OA No. 291/00248/2016 challenging his 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 applicant 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 applicant that he 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 representation, if any, so filed by the applicant, within a period of one month from the date of receipt of such representation. Till the decision on the representation, the effect and operation of Ann.A/1 qua the applicant is stayed. In case no such representation is filed, respondents are at liberty to proceed further as per law. "

4. Counsel for the applicant further submitted that vide order dated 23.05.2016 (Annexure A/1), the respondents have rejected the representation of the applicant dated 18.04.2016 (Annexure A/2). In the first place, counsel for the applicant submitted that the order of rejection of representation 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 applicant 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 applicant 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), (at page 29 of OA), 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).

(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 applicant then referred to Annexure A/6 instructions dated 24.10.2011, (at page 33 of the OA), 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 applicant 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 applicant contended that these instructions have nowhere been followed in the case of the applicant. As far as the Schedule is concerned, as may be seen from Annexure A/7 dated 08.04.2016 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/8) 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 applicant as he has been transferred from Alwar 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/8) 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 applicant has submitted in the written submission 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 applicant this exemption has been denied and he has been discriminated against. Counsel for applicant submitted that though the applicant was working as Train Conductor from the year 2014 but without even completion of 04 years on the said post he has 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 has also not even been referred to in the order dated 23.05.2016 (Annexure A/1) by which his representation has been rejected. It has also been brought out in the written submission by the counsel for applicant that the posts of TNCR and TTI are separate posts and there is a separate tenure for them.

7. Further the request of the applicant regarding education of his 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 applicant contended that though all the aforesaid points were raised by the applicant in his representation dated 18.04.2016 (Annexure A/2) but without considering them properly, the respondents have rejected his representation vide their order dated 23.05.2016 (Annexure A/1). On these grounds, counsel for applicant submitted that the transfer order dated 30.03.2016 (Annexure A/8) qua the applicant and the letter/order dated 23.05.2016 (Annexure A/1) by which his representation has 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 applicant has joined at the place of transfer and thereby the O.A. has become infructuous. To this, counsel for applicant submitted that though the applicant has joined at the place of transfer, but he has 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 applicant that the representation has 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 (TNCR) are covered by this policy. Counsel for respondents further submitted that the applicant was placed as TTI under CTI Alwar on 10.01.2010 and actually became due for transfer after 04 years but he was also given one year extension being office bearer of the Union and thereafter his transfer has been made only on 30<sup>th</sup> March, 2016 (Annexure A/8) which shows that he has actually been posted at one place for more than six years. It has also been mentioned in the written submission of the counsel for respondents that the applicant has not shown any document that he has worked from one post to another except under C.T.I. Alwar and is eligible for such exemption and the argument of counsel for applicant that the applicant joined as Train Conductor only in the year 2014 has no force.

12. He further submitted that when Annexure A/7 order dated 08.01.2016 was issued, giving the list of officials including the applicant, proposed for periodical transfers in which the applicant has been shown working as TTI under CTI Alwar for more than 04 years, objections were invited on the same, to be submitted by 20<sup>th</sup> January, 2016. However, the applicant did not submit

any objection within the stipulated time and instead of filing any objections, the applicant filed OA in April, 2016 i.e. after the transfer orders were issued on 30<sup>th</sup> March, 2016 (Annexure A/8). Thereafter as per the directions of the Tribunal dated 13.04.2016 in OA No. 291/00248/2016, the respondents have passed the reasoned and speaking order dated 23.05.2016 (Annexure A/1).

13. Counsel for respondents also submitted that there is only one unit in Alwar and therefore transfer of the applicant has been made from Alwar 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/7) was issued in January 2016 itself and the transfer orders were issued in March as at Annexure A/8 and there is no major deviation or any violation.

15. As far as the contention of counsel for applicant regarding exemption being given to certain persons as per Note-3 of the transfer order dated 30.03.2016 (Annexure A/8) is concerned, counsel for respondents contended that the applicant is not eligible for such exemption and it has been submitted in the written submission that the case of applicant does not relate to mutual transfer. It has been stated that Note-3 in order dated 30.03.2016 (Annexure A/8) 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 applicant has completed more than 06 years of service, including 01 year exemption at the same place being Union office bearer, under CTI Alwar, and therefore there is no discrimination with the applicant.

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 08<sup>th</sup> January, 2016 and orders issued on 30<sup>th</sup> 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 applicant (in pursuance of directions of the Tribunal in its order dated 13.04.2016 in OA No. 291/00248/2016, earlier filed by the applicant) and a detailed and speaking order has been passed as at Annexure A/1 dated 23.05.2016. Counsel for respondents submitted that the applicant has 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/8) is in accordance with the rules, policy and instructions on the subject and the order of



rejection of representation 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/7 dated 08.01.2016, the respondents issued a Readiness list of persons, including the applicant, who were to be transferred under Periodical transfers and objections were invited upto 20.01.2016 but as brought out by the respondents, the applicant did not make any objections that he was 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/8), the applicant filed earlier OA No. 291/00248/2016 in which the respondents were directed to decide the representation of the applicant. The representation of the applicant has been considered and decided by the respondents vide speaking order dated 23.05.2016 (Annexure A/1).

19. Counsel for the applicant has raised the contention that the rejection of the representation 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 applicant that the order has not been passed by a competent authority does not hold ground.



20. Counsel for applicant, 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/7) and the final transfer orders were issued on 30.03.2016 (Annexure A/8) 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 applicant, is concerned, there appears to be no major deviation from the Schedule given in Annexure A/6 because the Readiness list has been issued in early January and 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 was posted as TTI under CTI Alwar on 10.01.2010 and therefore 04 years' time has already passed and he comes into the periodical transfer category. Counsel for applicant has argued that the applicant was working as Train Conductor in 2014 and hence has not completed 04 years as Train Conductor but this does not carry much force because as brought out by the respondents, he has been working under CTI Alwar from 10.01.2010 and has completed more than 06 years and has already got the benefit of one year exemption as Union office bearer. Moreover, counsel for the applicant has not shown any document to establish that posts of TTI & 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 applicant 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 applicant 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 applicant because even by his own admission, he has been working as Train Conductor only from the year 2014. Moreover, the applicant has not made out any case that he is covered under the option or mutual transfer category and has been discriminated against on that basis. In any case, the applicant made no objection when the Readiness list was issued and he was treated as covered under the Periodical transfer category having completed more than 04 years as TTI under CTI Alwar.

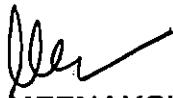
The other exemption regarding left over service prior to retirement does not apply in the case of the applicant and he has already got the benefit of one year extension earlier on the ground of being a Union office bearer.

24. It has also been brought out by the respondents that there is only one CTI unit in Alwar and therefore transfer of the applicant has been made from Alwar 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 only one Unit at Alwar 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 applicant as per order dated 30.03.2016 (Annexure A/8) 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/8) qua the applicant and order dated 23.05.2016 (Annexure A/1) rejecting his representation 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