

OA No.291/00208/2016

**IN THE CENTRAL ADMINISTRATIVE
TRIBUNAL
JAIPUR BENCH, JAIPUR**

OA No.291/00208/2016

Order Reserved on : 13.05.2016
Date of Order: 02.06.2016

CORAM

Hon'ble Ms. Meenakshi Hooja, Administrative Member

Laxmi Narayan Son of Shri Prabhat Ram, aged about 47 years, resident of Railway Bungalow No. 421, Hazari Bag, Beawar Road, Ajmer, at present employed on the post of OS in the office of Sr. Divisional Commissioner (FPF), Ajmer, NWR.

.....Applicant
(By Advocate Mr. C.B. Sharma)

VERSUS

1. Union of India, through General Manager, I office, North-Western Railway, Malviya Nagar, near Jawahar Circle, Jaipur 17
2. Chief Security Commissioner (RPF), HQ Office, North - Western Railway, Malviya Nagar, Jawahar Circle, Jaipir 17
3. Divisional Security Commissioner, RPF, Ajmer, North Western Railway.

.....Respondents
(By Advocate Mr. Anupam Agrwal)

ORDER

This Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985

against the orders dated 15.03.2016 (Annexure- A/1) 15.03.2016 (Annexure- A/2) passed by Respondent No. 2, and order dated 16.03.2016 (Annexure A/3) and order dated 16.03.2016 (Annexure A/4) passed by Respondent No. 3, seeking the following reliefs:

- (i) That the impugned orders dated 15.03.2016 (Annexure A/1), Transfer order dated 15.03.2016 (Annexure A/2) passed by the 2nd Respondent, and relieving order dated 16.03.2016 (Annexure A/3 and A/4) issued by the 3rd Respondent may be quashed and the applicant may be allowed all consequential benefits.
- (ii) That the relevant records/files noting where the decision to transfer the post of OS and the applicant from Ajmer to Bikaner has been taken, may be summoned from the respondents so as to unfold the true reasons and nature of his transfer.
- (iii) That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (iv) That the costs of this application may be awarded.

2. When the case came up for consideration and hearing on 13.05.2016, learned counsel for the applicant, inter alia, submitted that order dated 15.03.2016 (Annexure A/1) was passed by the O/o the Chief Security Commissioner (RPF) Head Quarter, North-

Western Railway, Jaipur, by which one post of OS has been transferred from Divisional Security Commissioner (RPF) North-Western Railway, Ajmer to Divisional Security Commissioner(RPF) North-Western Railway, Bikaner and on the very same day, vide order dated 15.03.2016 (Annexure A/2) the applicant was transferred from DSC(RPF) Ajmer to DSC(RPF), Bikaner and thereafter on the very next day, the applicant was relieved by Respondent No. 3 vide order dated 16.03.2016 (Annexure R/3). In this context, counsel for applicant contended that the applicant was initially appointed to the post of Constable Agni Loco on 20.03.1989 in Railway Protection Force (RPF) and later he was de -categorized and absorbed in Ministerial Cadre and is presently working on the post of Office Superintendent (OS). Counsel for applicant submitted that he is challenging the aforesaid orders on the ground that there is no public interest involved in the said transfer of the post and immediately thereafter of the transfer of the applicant on the said post. The counsel for applicant contended that rather the same have been ordered in a mala fide manner and further that the Respondent No. 2 i.e. the Chief Security Commissioner (RPF) Head Quarter, North-Western Railway, Jaipur is not the competent authority for transferring the post.

3. As far as public interest is concerned, counsel for applicant submitted that no public interest is involved because as may be seen from Annexure- A/7 there are 05 posts of OS in Ajmer out of which only 4 posts were filled up and despite there being existing vacancies, and shortage of staff in Ajmer itself one post of OS has been transferred to DSC (RPF), Bikaner and the applicant has also been transferred along with the post. He further referred to Annexure A/8 which is a letter dated 23.06.2015 from Respondent No. 3 to Respondent No. 2 which again shows the shortage of staff at Ajmer and despite this being so the applicant has been transferred along with one post of OS to DSC(RPF), Bikaner. Counsel for applicant also referred to Para 5(D) of the OA where it is highlighted that no exercise was done regarding the requirement of the posts at different places and the necessity of transfer of the post, as is generally required to be done in such matters. Counsel for applicant further contended that the transfer has been made on mala fide basis because both the transfer of the post and the transfer of the applicant has been made on same day and he has been relieved also on the very next day and while transferring the post, no reason and justifications have been given.

4. Counsel for applicant further submitted that the Respondent No. 2 i.e. Chief Security Commissioner (RPF), HQ Office, North - Western Railway, Jaipur is not the competent authority to transfer the posts because as may be seen from the Schedule of powers of North Western Railway Part 'A' (Establishment Matters) (Annexure A/11) filed with the Rejoinder that only General Manager or Additional General Manager (AGM) to whom powers have been delegated have the authority to redistribute posts in the Group 'C' and 'D' category of non-gazetted employees. Counsel for applicant further submitted that the applicant has outstanding record as may be seen from the APAR of 2014-15 and appreciation certificate (Annexure A/9 & A/10 filed with rejoinder) but due to some engineered complaints and a manipulation/conspiracy against the applicant for which inquiry was also conducted but no penalty or punishment has been given, he has been transferred to Bikaner simultaneously with the post.

5. Counsel for applicant also referred to Para 276.2 of the Rules quoted at Annexure R/1 by the Respondents in the Reply to rejoinder and contended that Indian Railway Establishment Code is required to be followed by the Respondents and as already submitted that the powers to

transfer of posts in Non gazetted Establishment have been delegated to Additional General Manager and Respondent No. 2 is not the competent authority to transfer the posts. Thus on the grounds of mala fide as well as Respondent No. 2 not being a competent authority to transfer the posts and there being no public or administrative interest involved in the transfer of the applicant, counsel for applicant submitted that orders dated 15.03.2016 (Annexure- A/1) 15.03.2016 (Annexure- A/2), 16.03.2016 (Annexure A/3) and order dated 16.03.2016 (Annexure A/4) be quashed and set aside and prayed for the OA to be allowed.

6. In support of his contentions, counsel for applicant also relied upon the following decisions/judgments:

- (i) A.K. Gandhi Vs Union of India & Ors. (OA No. 1912/2003) date of order 14.11.2003 – Central Administrative Tribunal, Principal Bench, New Delhi reported in 2004(1) ATJ Page 134 (Annexure A/12)
- (ii) Somesh Tiwari Vs Union of India and Others, Civil Appeal No. 7308 of 2008, Date of judgement December 16, 2008 – Hon'ble Supreme Court of India reported in (2009) ISCC (L&S) Page 411 (Annexure A/13)
- (iii) Dharm Pal Singh Vs Union of India & Ors. (TA No. 961 of 1986) date of order 08.09.1989 – Central Administrative Tribunal, Calcutta. Reported in 1990 (3) SLR Page 213 (Annexure A/14)
- (vi) Pratibha Hada Vs Union of India & Ors. (OA No. 217/2005 with MA No. 191/2005) date of order 31st August, 2005 Central Administrative Tribunal, Jaipur Bench Jaipur

7. Per Contra, learned counsel for the Respondents submitted that the applicant is working in the Organization of Railway Protection Force (RPF) of the Railways and the applicant is governed by the RPF Act 1957 and RPF Rules 1987 which are applicable to the employees who are working in the said Organization. In this regard counsel for applicant contended that as per Rule 276.1 of the RPF Rules (Annexure R/1) different ranks of the Ministerial cadre have been delineated and further as per Rules 276.2 only the method of recruitment and other conditions of service relating to the said posts shall be in accordance with the rules and procedure laid down in the Indian Railway Establishment Code. In this context he submitted that transfer of a post does not in any way relate to the 'condition of the service' and therefore Railway Establishment Code is not applicable with regard to transfer of posts. He further contended that on the other hand Rule 276.3 clearly provides that the ministerial cadre presently posted with the Security Department shall be subject to the control of Chief Security Commissioner who shall be their Head of the Department. Thus Respondent No. 2 being a Cadre Controlling Authority and the Head of Department is fully competent to transfer the post and Annexure A/1 cannot

be said to issued by an incompetent authority and the Schedules of powers as given at Annexure A/11 only applies to the Zonal Railways and not to the RPF.

8. Counsel for Respondents, further submitted that the question of mala fide does not arise as alleged with regard to the chain of events regarding transfer of the post and thereafter, the transfer of the applicant and relieving the applicant on the next day. He further contendend that the applicant has not impleaded any person against whom mala fide in transfer is alleged and no reasons and details have been given and simple allegation of mala fide has been made without any substantiation.

9. As far as question of shortage of staff at Ajmer office and requirement of post at Bikaner office is concerned, he further contendend that in any case the applicant cannot claim any right to decide such matters and it is purely the responsibility of the Administration where the posts should be and who should be transferred. Therefore it cannot be said that Annexure A/1, A/2 are in anyway illegal as Annexure A/1 has been issued by an incompetent authority. As far as judgement of the CAT Bench Calcutta dated 08.09.1989 at Annexure A/14 in the case of Dharm Pal Singh Vs Union of India &

Ors in TA No. 961/1986 is concerned, that relates to transfer on a lower post and is not applicable in the present case as the applicant has been transferred in the same capacity and not on a lower post. Counsel for Respondents also contended that the transfer is not punitive as no disciplinary proceedings have been initiated and judgement as at Annexure A/12 is not applicable and administrative action on the basis of complaints and unsatisfactory working is fully justified in public interest. Counsel for Respondents also submitted that the applicant has been at Ajmer from the inception of his joining service from 1989 and this is his first transfer outside Ajmer and he has been relieved also.

10. Rebutting the arguments, counsel for applicant reiterated that Chief Security Commissioner (RPF) is not the competent authority to transfer the post and the post has been transferred even without the concurrence of the Finance Department.

11. Considered the aforesaid contentions and perused the records. As far as the question of competent authority, with regard to the transfer of the post from DSC (RPF) Ajmer to DSC(RPF), Bikaner is concerned, it is noted that the applicant is working in the RPF Organization which is governed by the Railway Protection

Force (RPF) Act 1957 and RPF Rules, 1987 and the relevant provisions have been referred to in Annexure R/1. It is apparent from a perusal of Rule 276.3 at Annexure R/1 that Respondent No. 2 is the Cadre Controlling Authority of the Ministerial Cadre and Head of Department (HOD) in the RPF and the Schedule of Powers referred to by the applicant at Annexure A/11 relate to Zonal Railways and is not applicable to the RPF. Regarding the question of transfer of posts, it is noted that the Indian Railway Establishment Code as per Rule 276.2 of RPF Rules is applicable to method of recruitment and other conditions of service, and there is force in the contention of counsel for Respondents that transfer of posts cannot be said to be a condition of service and it is clearly under the purview of Cadre Controlling Authority and HOD i.e. Respondent No. 2 to consider and decide such matters. Therefore, it cannot be said that Respondent No. 2 is not the competent authority to transfer the post.

12. As far as question of mala fide is concerned, the fact that the post has been transferred by way or order on 15.03.2016 and on the same day the applicant has been transferred and relieved on the next day, does not by itself point to any mala fide rather it is normal in

administrative procedure that transfer and reliving orders are issued in quick succession. Further no details or substantiation of mala fide have been given nor any officer specifically impleaded in this regard. No case of proven mala fide has been established by the applicant.

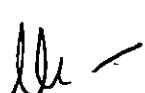
13. As far as the complaints against the applicant and some inquiry is concerned, transfer made in administrative interest on the basis of complaints and working of the applicant cannot be held as punitive unless there is loss of pay, status etc, which is not so in the case of the applicant. The judgement at Annexure A/14 in the case of Dharm Pal Singh Vs Union of India & Ors, in TA No. 961 of 1986 decided on 08.09.1989 by Central Administrative Tribunal, Bench Calcutta does not come to rescue to the applicant in this case because he has not been transferred to a lower post. Moreover, judgement as at Annexure A/12 (in the case of A.K. Gandhi Vs Union of India & Ors in OA No. 1912/2003 decided on 14.11.2003 by Central Administrative Tribunal, Principal Bench, New Delhi) also relates to transfer during disciplinary proceedings and as per available records, no disciplinary proceedings have been initiated against the applicant on the basis of which it can

be said that he has been transferred during the pendency of disciplinary proceedings.

14. It is also noted that the applicant has been posted at Ajmer since his joining in 1989 as Constable and thereafter being absorbed in the Ministerial Cadre and this is his first transfer out of Ajmer.

15. In view of the aforesaid analysis there are no grounds to set aside orders dated 15.03.2016 (Annexure- A/1) and 15.03.2016 (Annexure- A/2), passed by Respondent No. 2 and order dated 16.03.2016 (Annexure A/3) and order dated 16.03.2016 (Annexure A/4) passed by Respondent No.3.

Accordingly the OA is dismissed with no order as to costs.


(MS. MEENAKSHI HOOJA)
Administrative Member

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