

CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH,
JA BALPUR

Original Application No. 434 of 2005

Jabalpur this the 7th day of April,2006.

Hon'ble Mr. Justice M.A.Khan,Vice Chairman
Hon'ble Dr.G.C.Srivastava,Vice Chairman

Malhari Meena, aged about 43 years,
S/o Shri Panchya Ram Meena, Senior Goods Driver,
West Central Railway, Guna, Resident of RB-II-114/B,
Railway Colony, Guna (M.P.) **- Applicant**

(By Advocate – Shri L.S.Rajput)

V E R S U S

Union of India, Through

1. General Manager, West Central Railway
"Indira Market", Near Railway Station,
Jabalpur (M.P.)482001.
2. Divisional Railway Manager, West Central Railway
Habibganj, Bhopal (M.P.).
3. Divisional Railway Manager, West Central Railway,
DRM's Office – KOTA (Rajasthan). **-Respondents**

(By Advocate – Shri M.N.Banerji)

O R D E R

By Dr.G.C.Srivastava, Vice Chairman.-

This OA has been filed against an order issued by respondent no.2 on 25.04.2005 transferring the applicant Malhari Meena, presently working as Senior Goods Driver, Guna in Bhopal Division to Kota Division as Goods Driver on mutual basis vice Kamlesh Kumar R., who is working as a Goods Driver. The applicant has prayed for quashing of the impugned order being malafide, arbitrary, illegal and against rules.

[Signature]

2. The admitted facts are that the applicant and Kamlesh Kumar R. (who has sought to be an intervener in this OA) submitted applications on 21-09-2000 (annexures R-1/4 to 7) for mutual transfer on the ground of "domestic convenience". At that time, they were posted as Goods Driver at Guna and Kota respectively. The case of the applicant is that on 20-07-2004 he was promoted as Senior Goods Driver retrospectively with effect from 01-11-2003 (annexure-A-2) and thereafter on 28-07-2004, he withdrew his application for transfer (annexure A-4) on account of his promotion and on the ground that he had settled his family at Guna, as his request for mutual transfer had not been agreed to for four years. He submitted another similar representation on 13-09-2004 (annexure A-6). In spite of these representations, an order (annexure A-7) was issued on 12-01-2005 transferring him to Kota vice Kamlesh Kumar R in the grade of Goods Driver. Subsequent to his representation dated 15-02-2005 (annexure A-8b) against the transfer, the order was cancelled on 05/06-04-2005. Again, for reasons not known to the applicant, a fresh order was issued by respondent no.2 ordering transfer of the applicant on mutual basis in the scale of Goods Driver. The applicant has challenged the impugned order mainly on the ground that mutual transfer is permissible between two employees of equal status and he cannot be compelled to go on transfer in a lower grade, which amounts to reversion without following the procedure laid down in Discipline & Appeal Rules. The applicant has accordingly prayed that the impugned order should be quashed and he should be allowed to continue at his present post of Senior Goods Driver in Bhopal Division.

3. The respondents have stated in their counter reply that on formation of the West Central Railway on 01-04-2003, Bhopal and Kota Divisions, which were earlier in Central and Western Railway respectively, became part of the new West Central

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Railway and a policy decision was taken at the headquarter on 02-07-02004 to relieve the Loco Running Staff of Kota Division on mutual transfer to Bhopal Division. Accordingly, an order was issued by the Kota Division on 07-07-2004 relieving Kamlesh Kumar R for Bhopal Division (annexure R-2), where he joined in compliance to the order issued by the Bhopal Division on 13-07-2004 (annexure R-3). Since the applicant's reliever had already joined in Bhopal Division on mutual transfer, the order transferring the applicant was issued on 12-01-2005 (annexure A-7). However, at the intervention of the West Central Mazdoor Union, transfer orders of both Kamlesh Kumar R. and the applicant were cancelled on 15-03-2005 and 05/06-04-2005 respectively (annexures A-9 and A-10). But subsequently, on the instructions of the headquarters (annexure R-4), the impugned order was issued for mutual transfer of the applicant and Kamlesh Kumar R.

4. The main contention advanced on behalf of the applicant is that he cannot be compelled to go on transfer to a lower post and that he had already withdrawn his request for mutual transfer before the issue of the transfer order. The learned counsel further argued that the respondents, after remaining inactive for four years, could not have issued transfer order on mutual basis without obtaining the consent of the two parties.

5. In his argument, the learned counsel of the respondents justified the transfer of the applicant in a lower grade on the ground that mutual transfer can be ordered between two employees of equal status ^{only} and it had to be ordered as subsequent to the request of mutual transfer, the reliever of the applicant had already joined in Bhopal Division. The intervener in his written submissions also supported the stand of the respondents.

6. We have heard the arguments of the counsels and have gone through the material on record. It is correct that the respondents did

not take any material action on the application for mutual transfer for four long years except that the DRM, Bhopal sent a note to the DRM, Kota on 09-04-2001 giving certain information about the two applicants seeking mutual transfer (annexure R-1). The first significant step towards acceding to the request of mutual transfer was taken on 07-07-2004, when Kota Division issued an order relieving Kamlesh Kumar R (annexure R-2). But by that order the applicant of the present OA was not transferred. The first order by which the applicant was transferred was issued on 12-01-2005 (annexure A-7). This was much after the applicant had withdrawn his request for mutual transfer vide his letter dated 28-07-2004 (annexure A-4). The respondents had, therefore, rightly cancelled this transfer order vide order dated 05/06-04-2005 (annexure A-10) subsequent to applicant's representation dated 15-02-2005 (annexure A-8b). Without mentioning any reasons, the respondents again issued a fresh transfer order, which is the impugned order. The only reason advanced by the respondents before this Tribunal is that this was done at the instructions of the headquarters (vide annexure R-4).

7. It has been admitted by the counsel of the respondents in his argument that by the impugned order, the applicant has been transferred to a lower post. But he has justified this action on the ground that mutual transfer can be agreed to only between employees of equal status. That being the case, the only reasonable decision that the respondents could have taken was to reject the request. This also would have been an option only if it was presumed that the request was still live after the lapse of four years of inaction and despite the applicant having withdrawn it. We have no doubt in our mind that the impugned order does amount to imposing the penalty of reduction in rank without following the procedure laid down in Discipline and Appeal Rules. Further, the argument advanced on behalf of the respondents that the order

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dated 07-07-2004 (annexure R-2) by which Kamlesh Kumar R was relieved by the Kota Division acted as a estoppel for the applicant to withdraw his request for mutual transfer does not stand in the eyes of law as the aforesaid order was neither addressed to the applicant nor was copied to him. It was not issued by an authority competent to transfer the applicant. We agree with the contention of the applicant that the respondents could not have suddenly acted upon the request of the applicant after remaining inactive for four years unless they obtained fresh consent from the two employees, especially when one of them had already got promoted and had become ineligible to seek mutual transfer with the other employee, who was not of the same status.

8. We are aware that the apex court has laid down that who should be transferred where is a matter for the appropriate authority to decide [Union of India Vs.S.L.Abbas, 1993 (2)SLR 585 (SC)] and transfer in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of statutory rules or on ground of mala fides [Union of India Vs.H.N.Kirtania, JT 1989(3)SC 131]. In the present case, the transfer order has been issued apparently on mutual request and not necessarily or primarily in public interest. The rules and guidelines laid down for such transfers have not been followed in as much as two employees, who are not of the same status, have been transferred on mutual basis. The impugned order also violates statutory rules, as it amounts to imposing a major penalty on the applicant without following the procedure laid down in Discipline & Appeal Rules. Even bona fides of the respondents do not appear to be above board, as is evident from the manner in which the order was first issued and then reissued after cancellation.

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9. In view of the above, we are of the view that the impugned order has been passed by the respondents arbitrarily. It is illegal. It is liable to be quashed. We order accordingly. The application is allowed and the impugned order is quashed. No order as to costs.


 (Dr. G.C. Srivastava)
 Vice Chairman(A)


 (M.A. Khan)
 Vice Chairman(J)

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पूर्णकान सं औ/न्या..... जबलपुर, दि.....

प्रतिलिपि आवृत्ति छिन्नः—

- (1) सचिव, उच्च व्यायामाला दार एवलेल्हाराज, जबलपुर
- (2) अधेकर श्री/श्रीमती/यु..... के काउंसल
- (3) प्रत्यर्थी श्री/श्रीमती/यु..... के काउंसल
- (4) ग्रंथपाल, के प्रांा, जबलपुर दार्ति

सूचना एवं आवश्यक कार्यवाही देने

उप नियमित

Issued
10/4/06

L.S. Rayal 12/12/2006
 M.J. Deve 12/12/2006
 MK Sanghi 12/12/2006