

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 20th day of January, 2006

ORIGINAL APPLICATION No. 549/2005

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)

V.K.Sachvani
s/o Shri K.G.Sachwani,
r/o 14- D.M.B.S.Nagar,
Manoj Talkies, Kota Jn.
Presently under transfer from
Sawai Madhopur to Kota on
the post of Senior Section
Engineer (Works)
West Central Railway, Kota.

.. Applicant

(By Advocate: Mr. P.N.Jatti)

Versus

1. Union of India through
General Manager,
West Central Railway,
Jabalpur (MP)
2. Divisional Railway Manager,
West Central Railway,
Kota Jn.
3. Senior Divisional Engineer (D.E.N.)
(Coordination)
West Central Railway,
Kota Jn.
4. Deputy Chief Engineer (Survey)
and Construction,
West Central Railway,

Kota Jn.

5. Assistant Divisional Engineer,
West Central Railway,
Sawai Madhopur.

.. Respondents

(By Advocate: Mr. Anupam Agarwal)

ORDER

Per Hon'ble Mr. M.L. Chauhan.

This is a unique case where the applicant is praying for enforcing implementation of transfer order dated 9th September, 2005 (Ann.A1) whereby the applicant was transferred from Sawai Madhopur to Kota on the post of Senior Section Engineer.

2. Briefly stated, facts of the case are that the applicant, while working on the post of Senior Section Engineer, was transferred from Sawai Madhopur to Kota vide order dated 9th September, 2005. In his place one Shri Kripal Singh Meena was transferred by the same order. Pursuant to this transfer order Shri Kripal Singh Meena resumed his duty at his new place of posting at Sawai Madhopur on 8.10.2005. It is the case of the applicant that charge of the post was handed over in all respect to Shri Kripal Singh Meena on 25.10.2005. The applicant has also placed on record

copy of the certificate of charge showing handing over and taking over of charge as Ann.A2. Thereafter vide order dated 26.10.2005 (Ann.A3) addressed to the DRM (E) Kota and ADEN, Sawai Madhopur (respondent Nos. 2 and 5), the applicant requested to issue necessary letter to resume duty at Kota. This was followed by another letter dated 26.10.2005 addressed to respondent No.5 whereby it was specifically stated that complete record has been handed over and necessary relieving letter to resume duty at Kota may be issued. This was followed by another letter dated 28.10.2005 (Ann.A4) and letter dated 31.10.2005 (Ann.A5). Since the applicant was not relieved, he made representation to the Senior Divisional Engineer (respondent No.3) thereby alleging that he is not being relieved at the instance of respondent No.5 i.e. Assistant Divisional Engineer, West Central Railway, Sawai Madhopur and he is being threatened to make measurement and prepare bills for a work which was executed at the instance of respondent No.5, despite the fact that complete charge was handed over to Shri Kripal Singh Meena. Copy of this representation dated 31.10.2005 has been placed on record as Ann.A6. This is followed by another representation dated 8.11.2005 (Ann.A7). The applicant has also placed on record letter dated 10.11.2005 (Ann.A8) whereby he has requested respondent No.3 to issue relieving order so that he can join at the new placed on posting. Instead

of relieving the applicant, respondent No.5 issued letter dated 12.11.2005 (Ann.A10) stating that after handing over the charge on 25.10.2005 you were required to remain present for the purpose of relieving. You are absent from 28.10.2005. Since you are absent from duty, as such, you could not be relieved. It is further stated that the remaining record which is lying with you may also be handed over so that you can be relieved. Copy of the said letter has been placed on record at Ann.A10. Thereafter, respondent No.5 on his own passed an order whereby the applicant was relieved to Bharatpur where an enquiry was pending against him and it was mentioned that you will be relieved when the enquiry is completed at Bharatpur. Feeling aggrieved by the arbitrary action on the part of the respondents, the applicant has filed this OA thereby praying that respondents may be directed to implement the transfer order dated 9.9.2005.

3. Notice of this application was given to the respondents. The respondents have filed reply. At this stage it will be useful to quote para 4.5 in extenso, which is the case set out by the respondents in this OA:-

“4.5 That the contents of this para are not admitted in the manner stated. After being transferred on the basis of name noting, Sh. Kripal Singh Meena resumed his duties at his place in Sawaimadhopur on 8.10.2005. Applicant handed over the charge of store alongwith record to Sh. Meena

on 25.10.2005. Thereafter he went to Kota with due permission of two days. He however did not report for duties since 28.10.2005. He was sent a letter dated 12.11.2005 through registered post AD at his residential address with the request to deposit the record and receive his relieving. A copy of letter dated 12.11.05 is enclosed herewith and marked as Annexur-R/2. Applicant failed to turn-up in pursuance to the same. However, he reported on 18.11.05 at about 11 hours without record and asked for his relieving. On being demanded the remaining record he returned back by depositing his card pass with the section officer.

Applicant was handed over duty pass no. 459640 dated 18.11.2005 to report at ADEN-BTE for his DAR enquiry on the same day itself i.e. on 18.11.2005. He received the same but returned it on 19.11.05 without presenting himself for duty. Meanwhile on 18.11.05 itself Sh. Meena who had resumed his duties in his place wrote a letter to the respondent No.5, a copy of which is enclosed herewith and marked as Annexure-R/3, wherein it was pointed out that applicant has not handed over few record which might be lying with him and had not signed certain documents. Therefore, he should not be relieved till their completion. Accordingly, a letter was written to the applicant through registered post AD at his residential address. But the applicant failed to respond against the same. A copy of letter dated 19.11.05 so written to the applicant is also enclosed herewith and marked as Annexure-R/4. Applicant is continuously absent without information. He failed to contact either personally or otherwise. He failed to submit the official record and complete the formalities so as to be relieved.

Therefore he has no reason to prefer this original application. The original application deserves to be rejected, however, parawise reply to the grounds is submitted as under..”

4. The applicant has filed rejoinder. In the rejoinder, the applicant has reiterated that despite the fact that the applicant has handed over the complete charge to Shri Kripal Singh Meena, he is not being relieved at the instance of respondent No.5.

5. When the matter was listed on 14.12.2005, this Tribunal in order to sort out the matter particularly the stand taken by the respondents, vide letter dated 12.11.2005 that the applicant shall be relieved after handing over remaining record, passed the following order:-

"The learned counsel for the respondents submits that the applicant has to sign certain documents which he is avoiding. Whereas, learned counsel for the applicant submits that his client has handed over the complete charge and nothing is required to be done on his part. Let the matter be listed for hearing on 4.01.2005. In the meanwhile, applicant will report to Assistant Divisional Engineer, Sawaimadhopur, alongwith copy of this order on 19.12.2005 and it is expected that the Assistant Divisional Engineer, Sawaimadhopur will render all assistance and ensure that the applicant is relieved to Kota pursuant to his transfer order. It is expected that the applicant shall also render all possible assistance in the matter. CC be made available to the parties."

Despite the aforesaid order passed by this Tribunal, the matter is not taken in right perspective by respondent No.5. When the matter was listed on the next date of hearing, the same was adjourned on the request of the learned counsel for the respondents to 12.1.2006. On 12.1.2006, the matter was heard and in order to decide the matter in controversy, the respondents were directed to bring the original record whereby the case of the applicant after passing the transfer order, was processed and the matter was listed on 18.1.2006. Copy of the order was also made available to the learned counsel for the respondents. The matter was heard finally on 18.1.2006. Instead of bringing the original record as directed vide order dated 12.1.2006 and that copy of the order was also made available to the learned counsel for the respondents, the respondents have not brought the original record. Further, the respondents have also not brought the relevant record whereby the case of

the applicant after passing of the transfer order was processed. The respondents have produced photocopy of attendance register thereby showing that the applicant remained absent from duty after handing over charge and also letter dated 12.11.2005 and 18.11.2005 which are already on record and also photocopy of representation dated 22.12.2005 made by the applicant whereby pursuant to direction issued by this Tribunal dated 14.12.2005, the applicant approached the office of respondent No.5 on 19.12.2005, but the respondent No.5 was out of station on that date, as such effort was also made by the applicant on the next date i.e. on 20.12.2005, Further on 21.12.2005 and lastly on 22.12.2005. In his representation dated 22.12.2005, the applicant has given detailed reply regarding the so called incomplete charge and requested for relieving so that he can join at new the place of posting, but despite this, the applicant has not been relieved so far.

6. I have heard the learned counsel for the parties and gone through the material placed on record. The learned counsel for the respondents has raised oral submissions that the present OA is not maintainable as the applicant has not challenged any order and as such no mandamus can be issued to relieve the applicant pursuant to the transfer order. The learned counsel for the respondents also argued that the applicant

stood already relieved for DAR enquiry to report to ADEN-BTE by order dated 18.11.2005 alongwith duty pass. Therefore, the applicant is not entitled to any relief now. On merits, the respondents could not satisfy this Tribunal as to how despite the valid transfer order passed by the competent authority, the lower authority i.e. respondent No.5 could have withheld relieving order and also that once the applicant has been transferred by the superior authority to Kota under what authority of law the Assistant Divisional Engineer could have relieved the applicant to report to ADEN-BTE for his DAR enquiry vide order dated 18.11.2005 and to pass order that he will be relieved only when the enquiry is completed.

7. So far as the submissions of the learned counsel for the respondents that since the applicant has not challenged any order, as such, the OA is not maintainable and no direction can be issued to the authorities to relieve the applicant pursuant to the valid order of transfer which is still in force, suffice it to say that the contention raised by the learned counsel for the respondents deserves outright rejection. It may be stated that this Tribunal has been created by making provision in the Administrative Tribunals Act, 1985 for adjudication or trial of disputes and complaints with respect to recruitment and conditions of service of persons appointed to

public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or Society owned or controlled by the Govt. in pursuance to Article 323A of the Constitution and for matters connected therewith or incidental thereto. Section 2(q) of the Act defined service matters in relation to a person to mean all matters relating to the conditions of service including remuneration, pension and other retiral benefits, leave, disciplinary matters, seniority, promotion, reversion etc. and any other matter whatsoever. As per Section 19, a person aggrieved by any order pertaining to any matter within the jurisdiction of this Tribunal has been authorized to make an application for redressal of his grievance. Explanation has been appended below Section 19(1). For the purpose of aforesaid sub-section, 'order' has been defined to mean an order made by the Govt. or local or other authority within the territory of India. If one has regard to the aforesaid provisions and scheme of the Act, it is clear that this Tribunal has been vested with the power to deal with all claims regarding recruitment and matter concerning to recruitment and all service matters in respect of recruitment and conditions of service of a person appointed for the affairs of the Union or any State or any local

authority within the territory of India or any incidental matter thereto and any person who is aggrieved by an order pertaining to service matter within the jurisdiction of this Tribunal can file an application for redressal of his grievance. As can be seen from scheme of the Act, the 'order' would also mean 'omission' and 'inaction' on the part of the authority concerned for which public servant can move the Tribunal. If contention of the respondents is accepted, a person will be remediless and 'omission' and 'inaction' on the part of the authorities would not be subject matter of this Tribunal. Thus, the public servant will be left without remedy to challenge any action or inaction on the part of the respondents. This contention of the respondents cannot be accepted as it will defeat the very purpose for which this Tribunal has been created, more particularly, in view of the provisions contained in Section 2(q) where service matter has been defined not only to mean conditions of service but also any other matter whatsoever. According to me, inaction by itself is independent action and this Tribunal can affectively deal with the same and the 'order' as defined under Section 19 of the Act would mean omission and inaction on the part of the authority concerned for which public servant can move this Tribunal, otherwise for such action a person aggrieved will be remediless as he cannot directly approach the

Hon'ble High Court in service matters in view of the law laid down by the Apex Court in the case of L.Chandra Kumar vs. UOI of India and ors., AIR 1997 SC 1125 whereby it has been stated that a person should approach the Tribunal at the first instance and it is only thereafter that the power of judicial review is available to the Hon'ble High Court for redressal of his grievance.

8. Now, let me advert to the merits of the case. It is not disputed that the applicant was transferred vide order dated 9th September, 2005 and in his place Shri Kripal Singh Meena was transferred to Sawai Madhopur. It is also not in dispute that the said Shri Kripal Singh Meena resumed his duty on 8.10.2005 and complete charge of the store alongwith record was handed over to Shri Meena on 25.10.2005. The applicant has placed on record certificate of charge showing handing over and taking over of the charge on record as Ann.A2. It is also not disputed that immediately thereafter on the next date i.e. on 26.10.2005, the applicant took the matter with the DRM (E) Kota and Assistant Divisional Engineer, Sawai Madhopur (respondent No.5) for relieving him from duty. The applicant has also placed on record further letters dated 26.10.2005 (Ann.A3), 28.10.2005 (Ann.A4) and 31.10.2005 (Ann.A5) thereby requesting for relieving of the applicant. When nothing was heard, the

applicant made two representations dated 31.10.2005 and 8.11.2005 (Ann.A6 and A7) to the Senior Divisional Engineer (Coordination), Kota (respondent No.3) thereby leveling allegation against respondent No.5 whereby inter-alia it was stated that the said Assistant Divisional Engineer is also directed him to complete the record in respect of tender work which was directly executed at the instance of the Assistant Divisional Engineer, Sawai Madhopur. It was only thereafter that a letter came to be issued by respondent No.5 thereby stating that the applicant remained absent w.e.f. 28.10.2005, as such he could not be relieved and he should also hand over remaining record without specifying as to what was the remaining record to be handed over. Thereafter the applicant made repeated representations regarding his relieving on his transfer and also made representation to respondent No.3 for the purpose of relieving to join at the new place of posting. To ascertain the exact position, this Tribunal also summoned the original record whereby the case of the applicant after passing of transfer order was processed. Despite specific directions to make original record available to this Tribunal vide order dated 12.1.2006 especially when copy of the order was also made available to the learned counsel for the respondents, the said record has been withheld. The respondents instead of producing the original record, as directed, have only

produced photocopy of Ann.R1 and R3 which is appended with the reply and also photocopy of the attendance register where the applicant has been marked as absent and also representation of the applicant dated 22.12.2005 whereby the applicant pursuant to the order passed by this Tribunal on 14.12.2005 made repeated visits to the office of respondent No.5 for the purpose of relieving the applicant and thereby extending all cooperation and also giving para-wise comments to the so called incomplete record submitted by the applicant, which according to the applicant, has been completely handed over. Such an action on the part of the public authority not to make the original record available is highly deplorable and it is expected that respondent No.2 i.e. DRM, Kota will look into the matter at administrative level as to why despite directions given by this Tribunal, the relevant record has not been made available to this Tribunal and in what manner after passing the order of transfer, representations of the applicant Ann.A3 to Ann.A7 and Ann.A9 were processed. Thus, in the absence of relevant record not made available adverse inference has to be drawn, more particularly, when in the reply the respondents have not given any explanation why the applicant was not relieved despite his repeated requests and what action has been taken by the respondent No.3 on the representations of the applicant where he has levelled certain allegations

against respondent No.5 for not relieving him, the only conclusion which can be drawn is that action of respondent No.5 in not relieving the applicant is arbitrary, without any justifiable cause. Once the substitute of the applicant has joined on the post of Sr. Section Engineer on 8.10.2005 and charge was also handed over on 25.10.2005, two persons could not have been allowed to man one post. Even if the applicant has not presented himself personally for relieving, it was permissible for the respondents to relieve the applicant in absentia so that work of the post of Senior Section Engineer, Kota which is atleast lying vacant when Shri Kripal Singh Meena has joined at Sawai Madhopur on 8.10.2005, would not have suffered.

9. Now let me advert to the plea taken by the respondents for not relieving the applicant pursuant to valid transfer order. For the first time, the respondent No.5 intimated the applicant vide letter dated 12.11.2005. As can be seen from letter dated 12.11.2005, the reason given for not relieving the applicant is that he remained absent from duty and also that he has not handed over the complete charge, which, according to me, is an after thought plea and cannot be accepted. This letter has been originated by respondent No.5 for the first time when the applicant had made serious allegations against respondent No.5 to the higher authority vide his representation dated 31.10.2005 and 8.11.2005. Even if the plea of the

respondents is accepted that the applicant has not handed over the charge and, as such, he could not be relieved, in that eventuality, the course adopted by the respondents was not proper. It was within their permissible rights to proceed against the applicant departmentally for not handing over the complete charge and the respondents were not remediless. The course adopted by respondent No.5 was not legally permissible. In order to see that respondent No.5 will act fairly and in consonance with the lawful order passed by the competent authority whereby the applicant on transfer was to resume his duty at Kota, an effort was made by this Tribunal to reconcile the matter at their own level, as can be seen from the order dated 14.11.2005 which has been reproduced in the earlier part of the judgment. As can be seen from the record produced by the respondents themselves (representation of the applicant dated 22.12.2005) the applicant extended full cooperation in the matter and also attended the office not only on 19th December but on 20th and 21st December, 2005 and thereafter he made representation on 22nd December, 2005, but despite that respondent No.5 has taken the observation of this Tribunal lightly and ~~magnanimity~~ ^{by magnanimity} shown by this Tribunal thereby authorizing the respondents to rectify their inaction has been misconstrued and totally ignored. Such action on the part of official authorities, more particularly, on the part of respondent No.5 is highly

deplorable. Respondent No.5 has tried to justify his unjustified action on one pretext or the other and the plea taken by the respondents that applicant has not been relieved as he did not hand over complete charge, cannot be accepted on the face of the certificate of charge Ann.A2. Similarly, the respondents cannot also place any reliance on letter dated 18.11.2005 which has been made by Shri Kripal Singh Meena after a lapse of about 3 weeks that the record mentioned vide letter dated 18.11.2005 (Ann.R3) has not been handed to him. Further, once the applicant was transferred to Kota and that order is still subsisting and has not been superseded or cancelled, it is not understood under what authority of law respondent No.5 has ignored the order passed by the higher authority and instead passed fresh order dated 18.11.2005 whereby it has been stated that the applicant is relieved to Bharatpur where he will attend DAR enquiry pending against him and he will be relieved to Kota only when enquiry is concluded. If the facts as stated above, coupled with the fact that the applicant made serious allegations against respondent No.5 that he want to complete the record pertaining to tender for which tender was floated by respondent No.5 only and the same was also executed at his instance and under his direction (Ann.A6 and A7) and, as such, he was not relieved for extraneous reasons is construed in right perspective, the plea taken by the applicant that he

is not being relieved at the instant of respondent No.5 for extraneous reasons, cannot out rightly be rejected. Further, I fail to understand why the applicant could not be relieved to join~~s~~ at Kota where post is lying vacant and whereas on 18.11.2005 the respondent No.5 passed an order relieving the applicant to Bharatpur, meaning thereby that the condition of handing over the so called complete charge has been waived of by respondent No.5 while relieving the applicant to Bharatpur.

10. Accordingly, the OA is allowed. The respondents are directed to relieve the applicant to Kota forthwith on presentation of a copy of this order. Keeping in view the observations made hereinabove, respondent No.2 is directed to look into the matter regarding allegations made by the applicant in his representation Ann.A~~6~~ and A~~7~~ and also why the relieving order was withheld despite repeated requests made in that behalf coupled with the fact whether respondent No.5 has acted within his jurisdiction while passing fresh order dated 18.11.2005 relieving the applicant to Bharatpur for DAR enquiry and not to relieve him to Kota till the conclusion of enquiry as this Tribunal prima-facie is of the view that on account of inaction of respondent No.5, the applicant could not join at the new place of posting which in a given case will mean that the work of the post of

Senior Section Engineer at Kota remained unattended thus detriment to the public interest and ultimately may result in payment of salary without executing any work from the applicant.

11. Before parting with the matter, I would like to observe the way in which reply affidavit has been filed by the Senior Divisional Personnel Officer, Kota in the instant case. While filing reply, it was within the knowledge of the said officer that respondent No.5 has passed the order dated 18.11.2005 whereby the applicant has been relieved to Bharatpur to attend the departmental enquiry and he will be relieved to Kota only after conclusion of the enquiry. This order passed by respondent No.5 is certainly in violation of the transfer order dated 9th September, 2005 passed by the higher authority. The Senior Divisional Personnel Officer has tried to defend the action of respondent No.5 as if he was competent to pass the order completely ignoring the lawful order passed by the higher authority. Further, from the material placed on record Ann.A2 to A8, it is clear that the applicant has handed over the charge to Shri Kripal Singh Meena on 25.10.2005 and thereafter repeatedly requested the authorities to relieve him so as to join at Kota. When nothing was heard, this fact was also brought to the notice of respondent No.3 vide letter dated 31.10.2005 and 8.11.2005 (Ann.A6 and A7).

The applicant has also requested respondent No.3 to relieve him vide letter dated 10.11.2005. It is only thereafter the respondent No.5 has taken a plea that the applicant could not be relieved as he was not personally present and has not handed over the charge. In case, the applicant has not handed over the charge why he has been relieved to Bharatpur vide letter dated 18.11.2005. Further, the applicant could have been relieved in absentia, if he was not personally present and especially when he has repeatedly written to the authorities to relieve him, not once but more than three or four occasions. Thus, from the facts as stated above, it was available to the Senior Personnel Officer before signing and filing reply to advise respondent No.5 to relieve the applicant or to bring the facts regarding unlawful action on the part of respondent No.5 not to relieve the applicant, to the higher authorities. Surprisingly, the Senior Personnel Officer has rather supported the illegal action of respondent No.5 contrary to the valid order passed by the higher authority where the applicant was required to join at Kota on his transfer. It was certainly not permissible for him to take contradictory stand in the reply which has been filed on behalf of all the respondents. As such, Shri R.A.Sharma, Sr. Divisional Personnel Officer, DRM Office, Kota is cautioned to be more careful in future while filing ^{in reply} before the court of law. To say least, it was not legally permissible

for him to defend the action of respondent No.5 who is not only *prima-facie* guilty of ignoring the order of the higher authority but also has ignored the observations made by this Tribunal vide order dated 14.12.2005.

In case the matter would have been examined by the Senior Divisional Personnel Officer, Kota in right perspective after issuance of notices by this Tribunal, which the respondents were duty bound to do so, the observations made by this Tribunal would have been avoided. Let a copy of this order be sent to respondent No.1 i.e. the General Manager, West Central Railway, Jabalpur for his information.



(M.L.CHAUHAN)

Judl. Member

R/