

Central Administrative Tribunal
Jaipur Bench, JAIPUR

OA.112/2010 with MA.44/2010

This the 25th day of February, 2010

Hon'ble Shri M.L. Chauhan, Member (Judicial)

Mr. Ashes Kiran Prasad, S/o Late Shri Dhanushdar Prasad, aged about 51 years, R/o B-504, Shatabdi Rail Vihar, B-9/4, Sector-62, Noida (U.P)-201301, and presently posted as Chief Traffic Officer/Planning and Survey, N-W Railway, Jaipur, and residing in Room No. 1, Railway Loco Officers' Rest House, Ganpati Nagar, Hasanpura Road, Jaipur-302006.

...Applicant

By Advocate: Applicant in person)

VERSUS-

1. The Union of India through the Chairman, Railway Board, Rail Bhawan, New Delhi-11001.
2. Member Traffic, Railway Board, Rail Bhawan, New Delhi-110001.

.....Respondents

O R D E R (Oral)

The applicant has filed this OA, thereby praying for the following reliefs:-

- (i) Posting of the applicant to Delhi for a minimum tenure of three years.
- (ii) If no vacancy exists in Delhi, then the applicant may be posted to Delhi on the first available vacancy.

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2. Briefly stated the facts of the case are that the applicant was transferred to North Western Railway, Jaipur in October, 2007 after spending four years in North-east Frontier Railways from October, 2003 to October, 2007. As per guidelines issued by the Ministry of Railway Department, Group 'A' officer, initially allotted to the North-east Frontier Railway can be considered for transfer out of N.F. Railway after they have put in 10 years of service, and other officers who have been transferred to North-east Frontier Railway on completion of their tenure of three years. The guidelines further stipulates that efforts shall be made to accommodate these officers on one of the Railway / Unit of their choice subject to administrative feasibility. As the applicant, who was posted in North-east Frontier Railways, has completed his normal tenure of posting at North-east Frontier Railway, he has to be transferred to the railway of his choice as far as possible as per policy decision/ administrative guidelines issued by the Railway Board vide letter dated 19.5.1992 Annexure A-4 which was partly modified as per Annexure A-9.

3. Grievance of the applicant in this case is that in terms of aforesaid administrative guidelines, he exercises option to be posted at Delhi but the Railway's authorities mislead the applicant by advising him to give two more choices / options for
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transfer to other Railway/other area in the order of preference so that the same can be considered by the Board. Thereafter, the applicant was adjusted & posted at Jaipur on the basis of preference given by him. According to the applicant, transfer /posting of the applicant at Jaipur is in violation of the Railway Policy/ circular dated 19.5.1992, which stipulates that choice of posting should be given after completion of tenure posting of three years and none implementation of guidelines has infringed the applicant's right. It is on the basis of these facts that applicant has filed this OA, thereby praying for the aforesaid reliefs. Alongwith OA the applicant has also filed MA-44/2010 for condonation of delay. The delay is sought to be condoned on the ground that applicant was misled by the Railways into believing that he can give three choices for posting not one. In the prayer clause, applicant has stated that he came to know recently as to how he has wrongly been denied choice of posting at Delhi, as such delay should be condoned.

4. I have heard applicant present in person. I am of the view that applicant is not entitled to any relief for the reasons stated hereinafter. As can be seen from the letter dated 19.5.1992, Railway authority issued guidelines normally to be followed in regard to tenure of officer posted in North-east Frontier

Railways. At this stage, I wish to reproduce relevant portion of the guidelines issued by the Railway Authorities which thus reads as under:-

(i) Group 'A' officers initially allotted to North-east Frontier Railway can be considered in deserving cases for transfer out of that Railway after they have put in 12 years of satisfactory service there; and

(ii) Officers in Group 'A' transferred to North-east Frontier (construction) from other Railways /Units, either on promotion or in the same grade, will be required to serve there for a minimum period of 3 years after which they can be considered for posting as far as possible, if they so desire, to the Railway of their choice. The Tenure of 3 years will stand extended by the period (s) the officer concerned remains on leave/training, etc. in excess of 4 weeks in each instances, whether in India or abroad.

Para (i) of the said guidelines, was further modified as can be seen from the letter dated 27.8.1999 annexed as MA/3,4 & Annexure A-9 with the, OA which thus reads under:-

In supersession of item (i) of Ministry of Railways (Railway Board)'s letter number E(O) III-91 /PL/24 dated 19.5.92 on the above subject, Ministry of Railways have decided that Group 'A' officers, initially allotted to Northeast Frontier Railway shall be considered for transfer out of N.F.Railway after they have put in 10 years of service there. The officers, on completion of their tenure on N. F. Railway, can submit 3 choices of Railways/Units of their preference for posting. Efforts shall be made/accommodate these officers on one of the Railway/Unit of their choice subject to administrative feasibility.

5. On the basis of these administrative instructions, the applicant contended that there was no requirement of giving three stations of choices so far as officers in Group 'A' Service covered under letter item No.1 (ii) are concerned and requirement of three more choices as stipulated in letter dated 27.8.1999 relates to an officer who are covered under item No.(i) of instruction/circular letter dated 19.5.1992 and not in respect of category person covered under para (ii). According to the applicant his case was covered under (ii) of the letter dated 19.5.1992, as such the option sought by the respondents regarding two more stations vide letter dated 15.11.2008 (Annexure A-8) is of no consequence and the applicant has preferential right to be posted at Delhi in pursuance to the option exercise at the first instance and option given by the applicant pursuant to the letter dated 15.11.2008 (A-8) regarding two more choices/options for transfer, pursuant to which he has been transferred to Jaipur has to be ignored.

6. I have given due consideration to the submission made by the applicant. As already stated above, the applicant has not made out any case for grant of relief. At the out set, it may be stated that guidelines issued by the Railway Department pursuant to the letter dated 19.5.1992 and letter dated

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27.8.1999 as reproduces above, do not confer any legally enforceable right unless transfer is vitiated by malafides or is made in violation of any statutory provision. This is not the case of such nature. Even otherwise also as can be seen para (ii) of the circular, as reproduced above, it has been stipulated that as far as possible the persons who has served in Northeastern Frontier Railway can be adjusted to other Railway of their choices. Thus, there is no mandatory condition that a person who has completed his tenure in Northeastern Frontier Railway has to be necessarily adjusted & posted at a place of his choice nor such a situation is contemplated in public interest. As can be seen from the prayer clause what the applicant is seeking from this Tribunal is that he should be posted in Delhi, as he has completed his tenure in Northeastern Frontier Railway. According to me such a direction can not be given, as law on this point is well settled. At this stage I wish to quote para 7 of the judgment of the Apex Court in the case of *State of U.P. & Ors. v. Gobardhan Lal (2004) 11 SCC* (Supra) at page 402, which thus reads as under :-

7. It is too late in the date for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also

implicitly as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act of Rules) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not found affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legal enforceable rights, unless as notices supra, shown to be vitiated by a mala fides or is made in violation of any statutory provisions.

7. Thus, as can be seen from the judgment of the Apex Court in ***State of U.P. & Ors. v. Gobardhan Lal* (2004) 11 SCC** (Supra), the Apex Court has categorically held that even if transfer order is made in transgression of the administrative guidelines, the Court should not interfere in the matter. As already stated above, even guidelines issued by the Railway stipulates that as far as possible a person should be adjusted at a

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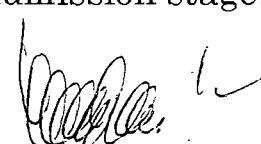
place of his choice, the aforesaid administrative guidelines neither mandates that a person has to be posted at a place of his choice nor such a guidelines can be issued in the exigencies of service; as transfer of an employee is not only an incident inherent in the terms of appointment but also implicitly as an essential condition of service.

8. Further according to me it appears that the sole purpose of the applicant to file this OA at this stage is that he should be posted at Delhi as he is going to complete his normal tenure of three years at Rajasthan whereby he was posted on account of his preference. When the applicant was asked why this OA has been filed at this belated stage when he was transferred in October, 2007, that too beyond the period of limitation prescribed under Section 21 of the Central Administrative Tribunal Act., 1985, the only explanation given by the applicant is that he became aware about these guidelines recently. Such an explanation on the part of the applicant can not be accepted and to me it appears to be an afterthought with a sole purpose of obtaining favourable order from this Tribunal in the garb of the policy decision as reproduced above. Be that as it may, according to me the applicant has not made out any case for interference, in view of law laid down by the Apex Court in the

case of *State of U.P. & Ors. v. Gobardhan Lal (2004) 11 SCC (Supra)*.

9. Yet for another reason that the applicant is not entitled to any relief. What the applicant is seeking from this Tribunal is to issue mandamus to the respondents to transfer the applicant to Delhi. According to me, the applicant has no legal right to be posted at a particular place nor there is any corresponding duties with the respondents to post a person at a place of his choice. The law on this point is well settled. At this stage, it will be useful to quote the decision taken in the case of *State of U.P. v. U.P. Rajay Khanij Vikas Nigam Sangharash Samiti (Thakeer, J.) (2009) 1 SCC at page 237* whereby the Apex Court has held that *mandamus, can not be issued unless existence of a right in favour of employee and corresponding duty of State instrumentality was shown to exist*. Even on this ground the claim of the applicant is liable to be dismissed.

10. Thus, in view of what has been stated above, the OA is bereft of merits, which is accordingly dismissed alongwith MA for condonation of delay at the admission stage.


(M.L.Chauhan)
Member (Judicial)