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**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

08.05.2012

OA No. 183/2011 with MA 383/2011

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

Mr. R.G. Khinchi, Counsel for respondent nos. 1 & 2.

Mr. Anupam Agarwal, Counsel for respondent no. 3.

Heard. The OA is disposed of by a separate order.

Anil Kumar
(Anil Kumar)
Member (A)

afq

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

Jaipur, the 8th day of May, 2012

ORIGINAL APPLICATION No. 183/2011
With
MISC. APPLICATION NO. 383/2011

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISITRATIVE MEMBER

Girish Kumar Padonia son of Shri Chandra Prakash Padonia, aged about 31 years, resident of Chopra Farm, Adarsh Colony, Gali No. 4 1/2, Dadwara Kota Junction, Kota and presently working as Assistant Loco Pilot under Chief Traction Crew Controller (CTCC), West Central Railway, Kota Division, Kota.

... Applicant

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

Versus

1. Union of India through General Manager, West Central Zone, West Central Railway, Jabalpur.
2. Divisional Railway Manager, West Central Railway, Kota Division, Kota.
3. Divisional Railway Manager, Western Railway, Ahmedabad Division, Ahmedabad.
4. Shri Bharat Singh, Assistant Loco Pilot, C/o Chief Traction Crew Controller (CTCC), West Central Railway, Kota Division, Kota.

... Respondents

◆ (By Advocates: Mr. R.G. Khinchi – Respondent nos. 1 & 2
Mr. Anupam Agarwal – Respondent no. 3)

ORDER (ORAL)

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

"(i) That the respondents be directed to accept the request dated 17.12.2010 (Annexure A/4) of the applicant for withdrawal/ cancellation of mutual transfer by quashing order dated 15.04.2011 (Annexure A/1) with the any instructions of the respondents which deprived the

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applicant from withdrawal/ cancellation of request with all consequential benefits.

- (ii) That the respondents be further directed to allow the applicant to continue in Kota Division and also to give effect promotion order dated 16.12.2010 (Annexure A/3) in respect of applicant by allowing him to go through training to the cadre of Loco Pilot (Goods) pay band Rs.9300-34800/- with grade pay Rs.4200/- with all consequential benefits.
- (iii) Any other order, direction or relief may be passed in favour of the applicant, which may be deemed fit, just and proper under the facts and circumstances of the case.
- (iv) That the costs of this application may be awarded."

2. Learned counsel for the applicant argued that the applicant while working as Assistant Loco Pilot at Bhopal, he made a request in November, 2007 for mutual transfer with one Shri Bharat Singh, Assistant Loco Pilot, Western Railway, Kankariya (Ahmedabad) (Annexure A/2). In the meantime, the applicant was promoted to the post of Loco Pilot (Goods) in the pay band of Rs.9300-34800/- plus Grade Pay of Rs.4200/- vide order dated 16.12.2010 (Annexure A/3). The name of the applicant is at sr. no. 125 of the said order. The applicant immediately thereafter on 17.12.2010 made a request that he is no longer interested in mutual transfer. Therefore, his request for mutual transfer may be treated as cancelled but the respondents ignoring the request of the applicant for cancellation of mutual transfer, allowed the mutual transfer to private respondent no. 4 on 15.04.2011 (Annexure A/1). Learned counsel for the applicant further argued that since the applicant has been promoted, therefore, if he is transferred to Ahmedabad then he would suffer irreparable loss because he has already been promoted in the higher grade by the

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official respondent nos. 1 & 2. Therefore, the applicant's transfer order dated 15.04.2011 (Annexure A/1) may be cancelled. In support of his averment, learned counsel for the applicant referred to the order of the CAT Jabalpur Bench in the case of **Malhari Meena vs. General Manager, West Central Railway & Others** [OA No. 434/2005 decided on 07.04.2006].

3. On the contrary, learned counsel for official respondent nos. 1 & 2 argued that the request for mutual transfer was received in the office of the respondents on 26.02.2008 and not in November, 2007 as stated by the applicant. Thereafter, as per the procedure, the action was initiated on the part of the respondents for effecting mutual transfer. He drew my attention to Annexure R/1 of reply by which his request dated 17.12.2008 was forwarded to the General Manager, Western Railway for further action. He further argued that after receipt of 'No Objection' from the concerned General Manager, the Personnel Department of West Central Railway granted the permission of mutual transfer of both the candidates vide order dated 19.01.2011 (Annexure R/2). Therefore, the contention of the applicant is not correct that the matter has been delayed and kept pending. Learned counsel for the respondent nos. 1 & 2 further argued that it is not correct to say that the applicant has been promoted on 16.12.2010 because it is only a suitability list of the candidates for promotion and no promotion has been given till date. Therefore, the contention of the applicant is misleading. He further submitted that the Director Establishment Railway Board issued a letter dated 21.04.2006 in which it has been

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stated that in no conditions mutual transfer will be considered for backtracking and compliance of mutual transfer has to be made strictly because the transfer are made on the consent of both the parties (Annexure R/4). That Shri Bharat Singh has joined at Kota Division on 07.04.2011 and thereafter the office of respondents issued letter dated 15.04.2011 to comply with the order issued by the competent authority to transfer the applicant to Ahmedabad Division. Now the applicant cannot be allowed to take 'U' turn from the mutual transfer, which he sought by his own choice. Therefore, the action taken by the respondents is perfectly legal and valid and in accordance with the law and, therefore, the OA being devoid of merit be dismissed with cost.

4. Learned counsel for respondent no. 3 also supported the arguments advanced by learned counsel for respondent nos. 1 & 2. He further argued that Shri Bharat Singh has already been relieved from Ahmedabad and joined at Kota Division and now he cannot be taken back to Ahmedabad. He also argued that this OA be dismissed.

5. Heard learned counsel for the parties and perused the documents on record. It is not disputed between the parties that the applicant made a request for mutual transfer with one Shri Bharat Singh. According to the applicant the request for mutual transfer was made in November, 2007 but according to the learned counsel for the respondents, the application of mutual transfer was received in the office of respondents on 26.02.2008. Even if we take the ^{date of} application of mutual transfer as 26.02.2008, mutual transfer orders were issued in

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January, 2011 that means the respondents did not issued the order of mutual transfer for long three years. It is also not disputed that in the meantime, the applicant was put on the suitability list for the post of Loco Pilot (Goods) in the pay band of Rs.9300-34800 with grade pay of Rs.4200/- vide order dated 16.12.2010 (Annexure A/3). This means that the applicant was put on the select list prior to the transfer order which were issued in January, 2011. Immediately thereafter the applicant made a request for cancellation of his request for mutual transfer on 17.12.2010. The applicant has already been sent for training for the post of Loco Pilot (Goods) because of the interim order passed by this Tribunal on 26.05.2011. It has been admitted by the learned counsel for official respondent nos. 1 & 2 that after completion of training, the applicant would be posted as Loco Pilot (Goods). This Tribunal is aware of the fact that Hon'ble Apex Court has laid down that courts should not normally interfere with the transfer order made in public interest unless there are strong and pressing reasons. Transfer is an incident of service but in this case, the transfer was not made on administrative ground or in public interest but it was made on a request for mutual transfer. It is not disputed that the request for mutual transfer was made on 26.02.2008 but no orders were issued for long three years. In the meantime, the applicant was put on the select list for the post of Loco Pilot (Goods) and if he is transferred now to Ahmedabad, he will be going to lower post of Assistant Loco Pilot and ~~even~~ ^{will} suffer irreparable loss. It was in the knowledge of respondent nos. 1 & 2 that the applicant was put in the select list for promotion to the post of Loco Pilot (Goods) which is higher post than

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Assistant Loco Pilot. Therefore, the official respondents should have inquired from the applicant whether he would still ^{be} interested in going to Ahmedabad on mutual transfer but instead of inquiring from the applicant, even his request for cancellation of mutual transfer dated 17.12.2010 was not considered by the respondent nos. 1 & 2, ^{and} the applicant has been transferred. I have gone through the order of the Jabalpur Bench in OA No. 434/2005 decided on 07.04.2006. I am of the view that the ratio decided by the Jabalpur Bench in the case of **Malhari Meena vs. General Manager, West Central Railway & Others** [OA No. 434/2005 decided on 07.04.2006] is squarely applicable in this case.

6. In view of the facts & circumstances of the case discussed above, I am of the view that impugned order dated 15.04.2011 (Annexure A/1) has been arbitrarily passed and, therefore, it is quashed and set aside. The respondents are directed to allow the applicant to continue at Kota Division and also to give effect to the promotion order dated 16.12.2010 (Annexure A/3) in respect of the applicant and he should be posted as Loco Pilot (Goods) after completion of his training on his turn.

7. Private respondent no. 4, Shri Bharat Singh, who has already joined at Kota, may be allowed to work on the post of Assistant Loco Pilot against the vacancy created by promotion of applicant, if deemed just & proper by official respondent nos. 1 & 2.

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8. With these observations, the OA is disposed of with no order as to costs.

9. In view of the order passed in the OA, no order is required to be passed in MA No. 383/2011 filed by the applicant for further interim direction allowing promotional post of Loco Pilot (Goods) to the applicant, which stands disposed of accordingly.

Anil Kumar
(Anil Kumar)
Member (A)

AHQ