

**Central Administrative Tribunal
Chandigarh Bench**

OA No.060/00502/2014

Order reserved on 21.08.2014
Pronounced on: 26.08.2014

Coram:

Hon'ble Mr. Sanjeev Kaushik, Member (J)

Raj Kumar, son of late Sh. Sukhdev, Head Enquiry and Reservation Clerk, Railway Station, Northern Railway, Ludhiana.

-Applicant

(By Advocate Shri N.P. Mittal)

-Versus-

1. Union of India through its General Manager (P), Northern Railway, Headquarters Office, Baroda House, New Delhi.

(By Advocate Shri Lakhinder Bir Singh)

2. Divisional Railway Manager, Northern Railway, Ferozepur Division, Ferozepur Cantt.
3. Senior Divisional Commercial Manager, Northern Railway, Ferozepur Division, Ferozepur Cantt.
4. Senior Divisional Personnel Officer, Northern Railway, Ferozepur Division, Ferozepur Cantt.
5. Chief Enquiry & Reservation Supervisor, Railway Station (Northern Railway), Ludhiana.

-Respondents

(By Advocate Shri Yogesh Putney)

O R D E R

Per Mr. Sanjeev Kaushik, Member (J):

The present Original Application (OA) is directed against an order dated 30.07.2013 (Anneuxre A-1) passed

by respondents 2 & 3 whereby the applicant has been transferred from Ludhiana to Udhampur and order dated 22.05.2014 (Annexure A-2) whereby the applicant was spared to join his new place of posting.

2. The facts, which led to filing of the present OA, are to be stated first. The applicant, who belongs to scheduled caste category joined the Northern Railway as Booking Clerk on 29.05.1993 and was posted at railway station Jalandhar City. He was transferred and posted as Enquiry and Reservation Clerk (E&RC) in the year 2006 and posted at Fazilka. Thereafter transferred at railway station Nakoder. On being promoted as Head E&RC he was posted at Ludhiana vide order dated 27.09.2012. By the impugned order dated 30.07.2013 the applicant has been transferred to Udhampur on administrative grounds and posted at Udhampur. It is this order along with the spare order dated 22.05.2014 which are under challenge in this OA.

3. Pursuant to the notice the respondents resisted the claim of the applicant by filing their written statement, wherein they have taken a preliminary objection that the applicant has not approached this Tribunal with clean



hands. It is submitted that the applicant was transferred to Udhampur railway station on the same post on purely administrative grounds and not as a routine periodical transfer by the impugned order. It is submitted that the applicant has not challenged the policy regarding transfer issued by the Railway Board and as per the circular issued by the Railway Board the respondents are permitted to effect inter-division/inter railway transfers. It is also submitted that the applicant was spared to join his duty at Udhampur vide order dated 22.05.2014 but the applicant chose not to join there. The respondents have placed reliance upon a judgment in the case of **Dalip Singh v. State of U.P.**, (2010) 2 SCC 114 to the effect that if the applicant does not approach the Court of Law with clean hands and his claim is based on untrue facts then he is not entitled to any relief.

4. I have heard learned counsel for the parties and given my thoughtful consideration to the entire matter and perused the pleadings and judgments with the able assistance of the learned counsel for the respective parties.

5. Shri N.P. Mittal, learned counsel appearing for the applicant attacked the impugned orders on four grounds, firstly that there is no administrative reason in transferring the applicant to Ludhiana within a short span of 20 months, secondly that the applicant being the General Secretary of All India SC/ST Railway employees association at Ludhiana cannot be transferred, thirdly the applicant is facing a departmental enquiry and as per the policy of the Railway he cannot be transferred out till the said enquiry is completed and fourthly the transfer is a midterm transfer and, therefore, cannot be acted upon. To elaborate his arguments the learned counsel submitted that the applicant was posted at Ludhiana on 27.09.2012 and has been transferred by the impugned order dated 22.05.2014 within a span of 20 months on administrative reasons without giving any reason why he has been transferred out. The learned counsel argued that there is no administrative reason, rather for extraneous reasons the applicant has been transferred out. The applicant was transferred in the month of September, 2012 but he was spared on 22.05.2014. Therefore, from this fact it can be seen that

there is no administrative reason involved for transferring the applicant from Ludhiana to Udhampur. It is only to harass the applicant that he has been transferred. The learned counsel submitted that in paragraph-4.3 of the OA the applicant has given details of employees who are having longer stay than the applicant. On the basis of the above contentions the learned counsel submitted that the impugned orders can only be termed as colourable exercise of power by the respondents. He further submitted that the impugned transfer order is a midterm transfer and the studies of the children of the applicant will suffer and thus the impugned order be set aside. The learned counsel submitted that his two daughters are studying in B. Tech and B. Ed. Whereas his son is studying in class-X and his wife is suffering from nasty diseases and thus she cannot look after the children and the applicant being the bread earner and sole responsible for his family, therefore also the impugned order is to be quashed. In this regard, he placed reliance upon an order passed by the Hon'ble Supreme Court in the case of **Director of School Education, Madras v. O. Karuppa Thevan**, 1994 (Sup2) SCC 666. He

thus urged that even the transfer order is liable to be set aside being contrary to Railway Board's order dated 04.03.2010 under the heading of 'Periodical Transfer of Railway Employees holding sensitive posts on Railways'. Since the applicant is holding a sensitive post (E&RC) therefore he cannot be transferred till he completes his tenure at a particular station. The learned counsel submitted that since the applicant has been transferred in violation of policy, therefore the impugned transfer order be set aside. In this regard he placed reliance on the judgment of the jurisdictional High Court in **Dr. Dev Parkash Chugh v. State of Punjab and others**, 2005 (4) SCT 726 on the point that there is no public interest involved in the order of transfer. He also placed reliance upon the judgment of the Hon'ble Supreme Court in the case of **Ramadhar Pandey v. State of U.P. & Ors.**, 1993 (4) SLR 349, **N.S. Bhullar v. The Punjab State Electricity Board (P&H)**, 1991 (1) SCT 392. Lastly the learned counsel submitted that against the impugned transfer order the applicant has submitted a representation, which has not been received by the respondents till date.

On merit, it is submitted under paragraph-5 that the applicant was transferred on 27.09.2012 and considering that his children are studying, therefore, he was allowed to continue at Ludhiana but knowing fully that he is under transfer the applicant got admitted his children at Phagwara in the new academic session, 2014. Therefore, the contention of the applicant that the transfer is a midterm transfer is misplaced. With regard to the administrative exigency or administrative reason the respondents under the heading of 'brief history of the case' have spelt out that there was a racket going on at Ludhiana for issuing tickets to private traveling agents and after conducting a thorough enquiry it came to light that the applicant is one of the persons who was indulged in these types of activities. The averments to this effect read as under:

"Shri Raj Kumar, HERC/LDH, while working as such has committed the serious misconduct. A preventive check was conducted by RPF/LDH at Janta Travels Service Sherpur, Manku Market, and Ludhiana. 189 RPS tickets and 30 cancelled tickets were recovered from the said Agency. In this regard, FIR No.450/13 was lodged against Shri Hari Shankar Thakur and four others under Railway Act 143 at RPF Post Ludhiana.

Out of these 189 reserved tickets and 78 tickets were booked by Shri Raj Kumar, HERC/LDH dated 20.05.2013 while working at Counter No.926. He issued 20 tickets between 16.07 to 19.36 hrs, among these 9 tickets from S.No.42506314 to 4250623 were issued in continuity.

On 21.05.2013, he issued 35 tickets while working at counter no.924 between 14.46 to 17.24 hrs. Among these tickets from S.NO.4299711 to 42997114 (4 tickets), 42997120 to 42997123 (4 tickets), 42997140 to 42997153 (13 tickets) and 42997165 to 171 (5 tickets) were issued in continuity.

As all these PRS tickets were recovered from Janta Travel Service, Sherpur, Manku Market, Ludhiana which shows he issued tickets to touts knowingly."

The respondents have also placed reliance upon the judgments of the Hon'ble Supreme Court in **S.B.I. v. Anjan**, (2001) 5 SCC 508, **National Hydro Electric Power Corporation Ltd. v. Shri Bhagwan**, (2001) 8 SCC 574, **Union of India v. Janardan Debnath**, (2004) 4 SCC 245, **State of U.P. v. Siya Ram**, (2004) 7 SCC 405 and **Shilpi Bose v. State of Bihar and others**, AIR 1991 SC 532.

6. Per contra, Shri Yogesh Putney, learned counsel appearing on behalf of the respondents vehemently opposed the contentions raised by the applicant and submitted that the impugned transfer of the applicant is not a routine

transfer. It was effected only when it was found that he also indulged in corrupt practices. Therefore, on administrative grounds the applicant has been transferred to Udhampur for smooth functioning of the Railway. With regard to the contention of the applicant that he cannot be transferred under the periodical transfer policy, the learned counsel submitted that it is not a routine transfer and perusal of the impugned order also suggests that the applicant is transferred on administrative grounds, therefore, the applicant cannot get any benefit on the basis of policy of the Railway on periodical transfer. He submitted that applicant knowing fully that he is under transfer and was not spared due to midterm transfer. He again admitted his children at Phagwara. Therefore, he cannot take advantage of his own wrong.

7. The issue in this case lies in a narrow compass, i.e., whether the impugned order of transfer dated 27.09.2012 whereby the applicant has been transferred from Ludhiana to Udhampur is legally sustainable or not?

8. Rival parties have referred to various judgments which have been perused and for the purpose of brevity in

16

this order; I may refer to some of those judgments, as I feel relevant for adjudicating the controversies raised in this OA.

9. In the setting of the facts narrated within, I may examine the legal aspects now. Transfer is an exigency and incidence of service and is an administrative decision. The executive has unfettered rights to transfer its employees from one place to another place. However, interference by the Tribunal with transfer orders should only be in very rare cases. In a catena of decisions of the Hon'ble Apex Court viz. in **B. Varadha Rao versus State of Karnataka** (AIR 1986 SC 1955); **Shilpi Bose Versus State of Bihar and Others** (AIR 1991 SC 532); **Union of India and Others versus S. L. Abbas** (AIR 1993 SC 2444); **State of M.P. and Another Versus S.S.Kourav and others** [1995-3-SCC-270]; **Arvind Duttatraya Dhande Versus State of Maharashtra** [1997-6-SCC-169]; **Mysore Paper Mills Ltd., Bangalore Verus Mysore Paper Mills Officers Association, Bhadravati and Another** [1999-6-SLR-77]; **National Hydroelectric Power Corporation Ltd. Versus Shri Bhagwan and Another** [2001-8-SCC-574]; **Kendriya Vidyalaya Sangathan versus Damodar Prasad Pandey and Others** [2004-12-SCC-299];

Airport Authority of India Versus Rajeev Ratan Pandey

[JT 2009 (10) SC 472]; **Somesh Tiwari versus Union of**

India and Others [2009-2-SCC-592]; and **Rajendra Singh**

Versus State of UP and Others [2010-1-SLR-632], it has

been held that in the transfer matter of a Government

employee, scope of judicial review is limited. A Tribunal or

court of law should not interfere with an order of transfer

lightly be it at the interim stage or final hearing as the

Courts cannot substitute their own decision and as the

Courts and Tribunals are not appellate authority in such

matters of transfer. Further, we are guided by the judgment

of Honourable Supreme Court in **Masood Ahmad Versus**

State of U.P. [2007-8-SCC-150] decided on 18.09.2007,

which reads as follows :-

"4. The petitioner-appellant, who was an Executive Officer, Nagar Palika Parishad Muzaffarnagar, had in his writ petition challenged his transfer by the State Government by order dated 21.6.2005 as Executive Officer, Nagar Palika Parishad Mawana, District Meerut. Since the petitioner was on a transferable post, in our opinion, the High Court has rightly dismissed the writ petition since transfer is an exigency of service and is an administrative decision. Interference by the Courts with transfer orders should only be in very rare cases. As repeatedly held in several decisions, transfer is an exigency of service vide B. Varadha Rao vs. State of

Karnataka AIR 1986 SC 1955, Shilpi Bose vs. State of Bihar AIR 1991 SC 532, Union of India Vs. N.P. Thomas AIR 1993 SC 1605, Union of India vs. S.L. Abbas AIR 1993 SC 2444 etc..

10. It has also been held that the scope of judicial review of transfer in a Court of law has been settled by the Supreme Court in **Rajendra Rao vs. Union of India** (1993) 1 SCC 148; (AIR 1939 SC 1236), National Hydroelectric Power Corporation Ltd. vs. Shri Bhagwan (2001) 8 SCC 574; (AIR 2001 SC 3309), State Bank of India vs. Anjan Sanyal (2001) 5 SCC 508; (AIR 2001 SC 1748). Following the aforesaid principles laid down by the Supreme Court, the Allahabad High Court in **Vijay Pal Singh vs. State of U.P.** (1997) 3 ESC 1668; (1998) All LJ 70) and Onkarnath Tiwari vs. The Chief Engineer, Minor Irrigation Department, U.P. Lucknow (1997) 3 ESC 1866; (1998 All LJ 245), has held that the principle of law laid down in the aforesaid decisions is that an order of transfer is a part of the service conditions of an employee which should not be interfered with ordinarily by a Court of law in exercise of its discretionary jurisdiction under Article 226 unless the Court finds that either the order is mala fide or that the service rules prohibit such transfer, or that the authorities

who issued the orders, were not competent to pass the orders.

11. The courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides. In the case of *Shilpi Bose* (supra), the Hon'ble Apex Court has held as under:-

"4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to- day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders.

12. In N.K. Singh Versus Union of India & Ors.

[(1994) 6 SCC 1998], the Hon'ble Apex Court reiterated that the scope of judicial review in matters of transfer of a Government Servant to an equivalent post without adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides or violation of any specific provision.

13. In Airport Authority of India Versus. Rajeev

Ratan Pandey [2009 (8) SCC 377] Honourable Supreme Court relying on its earlier judgment observed the following on the allegation of malafide as a ground of transfer, which reads as follows :-

“In the case of State of U.P. v. Gobardhan Lal (2004) 11 SCC 402, while dealing with a matter of transfer, this Court observed that allegations of mala-fides must inspire confidence of the Court and ought not to be entertained on the mere asking of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference would ordinarily be made with an order of transfer. That the burden of providing malafides is on a person leveling such allegations and the burden is heavy, admits of no legal ambiguity. Mere assertion or bald statement is not enough to discharge the heavy burden that the law imposes upon the person leveling allegations of mala-fides; it must be supported by requisite materials. In a

matter of transfer of a government employee, scope of judicial review is limited and High Court would not interfere with an order of transfer lightly, be it at interim stage or final hearing. This is so because the courts do not substitute their own decision in the matter of transfer.”

14. The Hon'ble Supreme Court discussed its earlier orders on different facets of transfer of Government employees in Rajendra Singh's case (supra) and the relevant paragraph reads thus:-

“6. A Government Servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No Government can function if the Government Servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires [see State of U.P. v. Gobardhan Lal; (2004) 11 SCC 402]”.

15. In the light of the above dictum, I now proceed to examine the facts of the present case. The applicant has been transferred by the impugned order to Udhampur on administrative grounds. The respondents in their written statement have spelt out the reasons. It is only for the

smooth functioning of the Administration the applicant has been transferred from Ludhiana to Udhampur. With regard to the midterm transfer as indicated above the applicant was allowed to continue for that very session at Ludhiana station itself and only thereafter the spare order was issued. The applicant fails to point out any illegality or irregularity in his transfer. The other grounds cannot be taken into account because it is not a periodical transfer where the respondents are bound to consider their instructions issued on this subject. Accordingly, I find no reason to interfere with the well reasoned order.

Hardship is a matter that ought to be left to the employer/competent authority to consider the grievance of the concerned employee if pending before it in accordance with law. Considering that the children of the applicant are studying at Phagwara wherefrom he has now been transferred to Udhampur and for this reason he has already submitted a representation for his posting at nearby station, I expect from the authorities to decide the same expeditiously in accordance with law.

16. For the reasons stated above, the OA stands disposed of in the aforesaid terms, with no order as to costs.

(Sanjeev Kaushik)
Member (J)

Place: Chandigarh.

Dated: August 26, 2014.

‘San.’