

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.**

O.A.No.448/2017 with MA No.01/2018

Ahmedabad, this the 22nd day of February, 2018

CORAM :

HON'BLE Dr. K.B.SURESH, JUDICIAL MEMBER
HON'BLE Mr.K.N.SHRIVASTAVA, ADMINISTRATIVE MEMBER

Shri Rajendra, Age : 56 years
Son of Shri Chhita Parmar
Working as Chief Goods Supervisor
Residing at 204, Nisarg Appt.,
Gopal Nagar, Vijalpur,
Navsari – 396 450. Applicant

(Advocate : Shri M. S.Trivedi)

VERSUS

1. The General Manager
Western Railway
Churchgate, Mumbai 400 020.
2. The Divisional Railway Manager
O/o. DRM, Western Railway,
BCT Division, Mumbai Central
Mumbai 400 020.
3. The Divisional Railway Manager
O/o. DRM, Western Railway,
Divisional Office, Rajkot Division
Kothi Compound, Rajkot 360 001.
4. Chief Commercial Manager(PM)
O/o. CCM (PM) Western Railway
Churchgate, Mumbai 400 020.

5. Senior Divisional Commercial Manager
O/o. Sr. DCM, Western Railway
BCT Division, Mumbai Central
Mumbai 400 020. Respondents

(By Advocate : Shri M.J. Patel)

O R D E R (ORAL)

Per : Hon'bleDr. K.B. Suresh, Judicial Member

Heard. The matter is in a very short compass. The applicant challenges the transfer order issued by Annexure A-1 from Mumbai Division to Rajkot Division apparently on a complaint raised against him and apparently on the basis that continuation of the applicant at that point of time and that particular place is not desirable in view of integrity to be maintained in governance.

2. The applicant was relieved vide Annexure A-2 which we quote in full indicating the policy to be followed in transfer, generally :

*GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BORAD)*

No.E(O)III/2014/PL/03

Dated : 10.6.2014

General Managers
All India Railways/ Production Units
(As per Standard Lists)

Sub : Implementation of Supreme Court's judgment dated 31.10.2013 in WP (C) 82/2011 – Posting/ Transfer in Railways

1. *The Hon'ble Supreme Court in its judgment dated 31.10.2013 in Writ Petition (c) 82/2011 inter alia directed that :-*

"There should be a Committee to be constituted at appropriate levels to decide posting and transfer of all Group 'A', 'B' and 'C' officials even if within the same zone. The posting/transfer to be regulated by transparent polices with assured minimum tenure. Policy provision may, therefore, be framed.

2. *Board has, therefore, decided that there should be Placement Committee to recommend transfer/postings of all Railways servants as per Hon'ble Supreme Courts' decisions. The following shall be the Placement Committee :-*

I) For officers of the level of Group 'B' to Selection Grade in the Zonal Railways and Production Units/ Construction Organisations/ RDSO etc. and Workshops.

a) PHOD/CHOD/Cadre Controlling Officer of the concerned department.

b) Chief Personnel Officer/ HOD of Personnel Department and standby officer would be another SAG, IRPS officer.

c) One PHOD/CHOD of a Department outside the concerned department.

Competent Authority: *The Competent Authority to accept the recommendations of the above Placement Committee will be General Manager/Head of the Organisation.*

(ii) For officers of the level of Jr. Scale and Sr. Scale in the Zonal Railways and Production Units/ Construction Organisation/ RDSO etc.

a) HOD of the concerned cadre

b) HOD of the Personnel Department

c) HOD from another Department

Competent Authority: *The Competent Authority to accept the recommendations of the above Placement Committee will be the PHOD of the Cadre.*

iii) *For officials of the level of Group 'C' in Zonal Railway Headquarters :*

- a) JA/SG Officers of Personnel Branch
- b) The concerned JA/SG officer of the concerned department
- c) One JAG/SG officer of a Department outside the concerned department.

Competent Authority : The Competent Authority to accept the recommendations of the above Placement Committee will be the PHOD/DHOD of the Cadre.

iv) *For officials of the level of Group 'C' in Railway Divisional Office:*

- a) JA/SG officer of Personnel Branch
- b) Cadre Controlling Officer of the Department (JAG/SG/Sr.Scale)
- c) JA Grade Officer outside the Department (JAG/SG/Sr.Scale)

Competent Authority : The Competent Authority to accept the recommendation of the above Placement Committee will be DRM/ADRM.

v) *For officials of the level of Group 'C' in Production Units and RDSO/Workshop :*

Production Units/Workshops

- a) Sr. Scale/ JA/ SG Officers of Personnel Department
- b) One JA/SG officer of a Department outside the concerned department
- c) One JA/SG officer of the concerned Department

Competent Authority: The Competent Authority to accept the recommendations of the above Placement Committee will be CME/CWE/CWM.

For RDSO the Placement Committee shall be :-

- a) JA/ SG officer of Personnel Department
- b) JA/SG officer of a Department outside the concerned department
- c) JA/SG officer of Personnel Department

Competent Authority: The Competent Authority to accept the recommendation of the above Placement Committee will be Sr.ED/ in-charge of the Cadre.

Note : (i) The concerned PHOD/CHOD of the Cadre will nominate the officer from his cadre in various Placement Committee. The Placement Committee depending upon the availability of Members of the Committee.

(ii) They will nominate suitable stands by members.

3. **Functions:** The following will be functions of the Placement Committee :

(i) To consider and make recommendations for transfer and posting of officers/staff and to make recommendation as per explicitly stated applicable norms under various extant instructions on transfer/postings.

(ii) For posting for various posts in Board, the suitability for a particular post will be governed by guidelines issued by the concerned Functional Board Member.

(iii) The Placement Committee would meet at least once in three months and also when required at the time of transfer on promotions.

(b) Tenure in Zonal Railway, Production Units/ Workshops

(i) The minimum tenure in any post upto SAG will be 2 years & maximum 4 years, subject to guidelines issued in connection with posting in sensitive posts.

(c) Tenure in RDSO

A minimum of 2 years and a maximum of five years tenure will be permitted for the officers of the rank of Joint Director, Director and Executive Director.

Note : The Respective Competent Authority may overrule the recommendations of the Placement Committee by recording the reasons in writing.

Please acknowledge.

-sd-
(N.Soman)
Joint Secretary (Gaz.)
Railway Board

*Rly. 43339.
DOT & FAX (23382765)*

3. The applicant also relies on a decision of our Bench in OA No.327/2017 dated 31.8.2017 in which we held that since the Railway Board has enacted a scheme, they need to stick to it.

4. But then this is not applicable universally. This transfer as mentioned in Annexure A-2 and upheld by us in Annexure A-3 in regard to transfer normally, but then when there is a complaint against a particular employee and he had to be removed from that seat unless the concerned authority has immediate authority to remove him from seat, great prejudice will be caused to public interest.

5. At this point of time, the learned counsel for the applicant would submits that Annexure A-3 was also passed on the same line because it was an issue in which complaint had been made, but at the same time, it is to be left to the concerned authority to decide the gravity in any situation. Adjudicatory body should be very reluctant to enter into his seat and decide for themselves whether it is proper for a person to be in that particular seat or not, but then at the same time, we are also well aware that should there be any malafide transfer interference is called for. For this, there are other opportunities available to the concerned

person, who had been so inflicted with transfer, which is not applicable here. It will naturally be accepted of Adjudicatory body to look into that matter at that point of time, but for present, since infraction has been alleged against the applicant and concerned authority has found that he must be transferred out from that particular position, no fault can be attached to that authority at least for the time being. Even though we close this issue now, we need not think that the matter had attained full closure after concerned investigation is over and that it should be conducted within reasonable time, the applicant will have a right to bring up the matter before Adjudicatory Authority to try and get the transfer order quashed, if it is done illegally and with *mala fide* intention. The whole idea behind the rule of proportionality and reasonableness is that all the Government authorities are expected to act rationally, but then *prima facie* all the governmental actions are to be termed as correct and needed to the hour of need. Therefore, for the time being, we uphold the transfer and dismiss the OA. Learned counsel for the applicant submits at that point of time, the Committee juncture was not invited. But as responsibility to act immediately was there and therefore, there is no infraction. The decision is upheld for the time being.

6. MA No. 01/2018 also stands disposed of. No costs.

(Dated, this the 22nd February, 2018)

(K.N.SHRIVASTAVA)
ADMIIISTRATIVE MEMBER

(Dr. K.B.SURESH)
JUDICIAL MEMBER

NK.

(K.N.Shrivastava)
Member (A)

(K.B.Suresh)
Member(J)

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