

Reserved
(On 10.03.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 24th day of April 2018

Original Application No 330/00334 of 2017

Hon'ble Mr. Justice Dinesh Gupta, Chairman
Hon'ble Mr. Gokul Chandra Pati, Member – A

Vinesh Kumar, S/o Sri Ishwar Dass, R/o Quarter No. 948-A, R.B. – 1, T.R.s. Colony, Nagra, Jhansi – U.P. Presently working on the post of Technician – Grade III, Electric Loco Shed, North Central Railway, Jhansi.

. . . Applicant

By Adv: Shri S. Narain

V E R S U S

1. The Union of India, through, the General Manager, North Central Railway, Allahabad.
2. The Divisional Railway Manager, / Personnel, North Central Railway, Jhansi.
3. The Senior Divisional Electrical Engineer / R.S., Electric Loco Shed, North Central Railway, Jhansi.
4. Sri Deepak Kumar, S/o Sri Shiv Dayal, Presently posted as Helper Khalasi, At TRD, Electrical, Firozpur Division of Northern Railway.
5. The Divisional Railway Manager / Personnel, Firozpur Division, Northern Railway.

. . . Respondents

By Adv: Shri Ram Pal Singh & Shri A.D. Singh

O R D E R

By Hon'ble Mr. Gokul Chandra Pati, Member (A)

The applicant preferred the OA u/s 19 of the Administrative Tribunals Act, 1985 with the following reliefs:-

- a. Quash and set aside the impugned order dated 06.03.2017 (Annexure No. A-1 to Compilation No. I).*
- b. Call for the records and quash and set aside the Divisional Railway Manager / Personnel / NCR's order dated 20.02.2017 and Office Order No.100/2017, directing to transfer the applicant, vice Shri Deepak Kumar, on mutual exchange basis, after reverting him to the Helper Pay Band of Rs. 5200 – 20200 + Grade Pay, Rs. 1800/- vide Sri Deepak Kumar.*

b. Issue such order suitable orders or directions as might be found and proper in the facts and circumstances of the present case.

c. Award the costs of this Original Application in favour of the applicant, throughout.”

2. The brief facts of the case, as stated in the O.A are that the applicant entered into service on 08.12.1999 as a substitute Bungalow Peon and attached to Senior Divisional Electrical Engineer, Hajipur (Bihar). His services were regularized w.e.f. 25.01.2005 and he was posted as Khalasi at Danapur Division of East Central Railway in February, 2005. The applicant was transferred at his own request to Jhansi Division under North Central Railway, where he joined on 14.09.2006. Since 14.09.2006, the applicant has been working as Helper Khansi at Jhansi in the Grade pay of Rs. 1800/-. The applicant moved an application in March 2014 (Annexure No. A-2) for transfer to Firozpur Division on mutual exchange basis with one Shri Deepak Kumar who was working on the post of Helper Khansi at Firozpur Division in the same Grade Pay and pay band. The aforesaid application of the applicant was forwarded to the Divisional Railway Manager (P), Jhansi with the office noting, by the office of the Senior Divisional Electrical Engineer, North Central Railway, Jhansi vide letter dated 09.05.2014 (Annexure No. A-4). After the applicant moved his application for transfer, an office order dated 21.03.2014 (Annexure A-5) issued by the office of the DRM (P), Jhansi whereby the applicant with several others was given the benefit of first financial upgradation under the MACP Scheme and placed in the Grade Pay of Rs. 1900/- w.e.f. 01.09.2012.

3. Thereafter, vide order dated 16.11.2016 (Annexure A-13), the applicant was promoted to the grade of Technician Grade III in grade Pay of Rs. 1900/-, after which the applicant moved an application dated 13.02.2017 (Annexure A-14) requesting cancellation of his mutual transfer

request in view of his promotion. Thereafter, the applicant moved a similar application dated 23.02.2017 (Annexure No. A-15) before the respondents reiterating his request for cancellation of his mutual transfer. Failing to receive any response to his second representation the applicant submitted another application dated 02.03.2017 (Annexure No. A-16) before DRM (P), Jhansi seeking cancellation of his earlier request for transfer on mutual basis. Then the applicant was suddenly received the impugned order dated 06.03.2017 (Annexure No. A-1) reverting him to the Helper Grade in the Grade Pay of Rs. 1800/- and transferring him as per his request for mutual transfer..

4. The official respondents have filed their counter affidavit in which it is submitted that the application of the applicant for mutual transfer was received through Depot-in-Charge on 30.05.2014 and the same was sent to the Headquarters vide letter dated 13.11.2014. On the basis of the same respondent No. 4 (Shri Deepak Kumar) sent to Headquarters for sanctioning of mutual transfer. Headquarters, North Central Railway sanctioned mutual transfer vide letter dated 16.01.2017 (Annexure CA-II). The case of the applicant is covered under Railway Board Circular No. RE/156/2007 dated 04.12.2007 and RE-200/2009 dated 12.11.2009 on mutual transfer (Annexure No. CA-III). It was further submitted that when the applicant submitted his application for mutual transfer, he immediately declared in Form – ABC that “I will not refuse to move on above transfer, if the, same is considered” (Annexure No. CA-4). The applicant had not submitted any cancellation letter on mutual on transfer till it was sanctioned from Headquarters office, Allahabad. After sanction of inter-zone transfer, there is no provision to withdraw the said transfer. The applicant vide letter dated 20.02.2017 was reverted to the Helper Grade in the Grade Pay of Rs. 1800/- implementing the inter-zone mutual transfer.

The representation of the applicant dated 13.02.2017 has already been decided vide order dated 16.05.2017 (Annexure No. CA-5).

5. The private respondent No.4 has also filed his counter reply in which he has stated that the Railway Board issued a circular dated 21.04.2006 (Annexure No. 2), in which it has been clearly provided that the mutual transfer are with the consent of both the parties. It was submitted that at the time of forwarding application for mutual transfer, no request for backtracking from the mutual exchange arrangement can be entertained under any circumstances as such the case of the applicant has no merit. He has further submitted that respondent No. 2 has rightly cancelled the grade pay of the applicant which was granted under the MACP Scheme on completion of 10 years service vide officer order dated 20.02.2017 and the same was not challenged in the OA. It is further submitted that the applicant even after reversion will continue to get MACP benefit of grade Pay of Rs. 1900/-. It is further submitted that applicant while seeking mutual transfer and even in which clearly given the declaration / undertaking on oath that he will accept bottom seniority, secondly the applicant will go and join on transferred place and thirdly the applicant will not refuse to move on transferred place if the same is considered. Hence, it is stated that the impugned order dated 06.03.2017 has been correctly passed. The respondents have rightly accepted the mutual transfer as per undertaking and declaration submitted by the applicant and has correctly and legally passed the impugned order dated 06.03.2017 in accordance with Railway Board's Circular dated 21.04.2006. The respondents have considered the representation of the applicant dated 14.02.2017 and passed a reasoned and speaking order dated 16.05.2017 rejecting the representation of the applicant and the same has not been challenged in this OA.

6. No rejoinder has been filed by the applicant on the counter filed by the respondents.

7. The matter was heard. Learned counsel for the applicant argued that the applicant had submitted representation on for mutual transfer as far back as in March, 2014 which was forwarded to the competent authority vide letter dated 09.05.2014 (Annexure A-4). But the respondents did not take any action till the applicant vide letter dated 13.02.2017 requested for cancellation of the mutual transfer request, after he was promoted vide order dated 16.11.2016 (Annexure A-13) to the next Higher Grade Technician Grade -III (Annexure A-13) with Grade Pay of Rs. 1900/-. That the mutual transfer request was made when the applicant was in Helper Khalasi Grade with Grade Pay of Rs. 1800/-. But after promotion, the applicant made a request to cancel the mutual transfer request. This request was forwarded to the higher authority vide letter dated 14.02.2017 (Annexure A-14). The applicant followed up with another letter dated 02.03.2017 (Annexure A-16). Instead of taking any action in the said representation, the respondents issued the impugned order dated 06.03.2017 (Annexure A-1), by which the applicant has been reverted to the grade of Helper, in pursuance to the request of mutual transfer and he was ordered to be relieved on mutual transfer. Learned counsel further submitted that the reversion of the applicant is illegal, particularly because the applicant had requested for cancellation of mutual transfer itself and no show cause notice has been issued before such reversion. It was further stated that the action on mutual transfer cannot be taken after a long period of delay particularly when the applicant has been promoted to the next higher grade. It was also argued that after promotion, his request of mutual transfer has become infructuous, since the person with whom he had agreed for mutual transfer was on a lower grade.

8. Learned counsel for the official respondents submitted that as per the Railway Board Circular dated 04.12.2007 and 12.11.2009 once mutual transfer request is made, it cannot be backtracked (Annexure CA-3 to the Counter). The learned counsel also referred to para 12 of the counter in this regard and explained that the delay is on account of the fact that the mutual transfer involved transfer to a different zone. The respondents further explained that since the mutual transfer request cannot be withdrawn or cancelled, the applicant was reverted to the Helper grade to implement the mutual transfer request, since the other person other whom the transfer is made is to be of Helper grade. It was further submitted by learned counsel that the applicant did not take any action to cancel his request for mutual transfer till it was approved by the respondents vide order dated 16.01.2017 (Annexure CA-2).

9. The learned counsel for respondent No. 4 submitted that as per the Railway Board's Circular, the applicant cannot withdraw the mutual transfer request and the representation of the applicant in pursuance to the order dated 28.03.2017 has been disposed of and a speaking order dated 16.05.2017 has been passed by the respondents (Annexure CA-4 to the counter filed by respondent No. 4). Her further submitted that respondent No. 4 has been rightly transferred and he is suffering by the conduct of the applicant, who is not permitted to withdraw the request for mutual transfer.

10. We have considered the submissions as well as the pleadings of the parties. The official respondents in their counter refer to the Railway Board's Circular dated 04.12.2007 (Annexure CA-3 to the counter filed by the official respondents), stated the following:-

"It has been brought to the notice of this Ministry that the requests for mutual transfer of employee has not been processed /

implemented by authorities concern in the Railway / Divisions / Units and even after such transfers are accepted, the same was not implemented for the reason that one Railway / Division / Unit wait for the other Railway / Division / Unit to relieve the employee first.....

.....

Therefore Ministry of Railways desire that:-

- i) the request for mutual transfers should be proceeded / accepted as soon as they are received subject to fulfillment of prescribed conditions; and*
- ii) once the transfers are accepted, the employees concerned should be relieved immediately without waiting for the other units to relieved the employee first.*

....."

From the above, it is clear that the authorities are required to take expeditious steps to implement the mutual transfer request. In this case such request was submitted by the applicant during March, 2014 which was forwarded to the authorities on 09.05.2014 (Annexure A-4). But no action was taken by the authorities to implement the mutual transfer request submitted by the applicant or to approve the same till the order dated 16.01.2017 was issued after the applicant was promoted to higher Grade Pay vide order dated 16.11.2016. After not taking any action for more than 03 years, the respondents during March, 2017 decided to revert the applicant and implement the mutual transfer request which was approved by respondents on 16.01.2017. The delay is explained by the official respondents on the ground that the mutual transfer in this case involved inter-zone transfer, which takes time. But the reasons for delay and stages where such delay occurred have not been explained by the respondents in their pleadings. In the light of the above provisions in the Circular dated 04.12.2007 of the Railway Board to which the official respondents have themselves referred to, the delay in this case should have been justified, otherwise such delay in implementation of mutual transfer request would clearly violate the Railway Board's Circular dated 04.12.2007.

11. In this case the applicant was promoted before implementation of mutual transfer request vide the promotion order dated 16.11.2016 (Annexure A-13) which is also mentioned in the order dated 16.05.2017. The order dated 16.05.2017 did not discuss the consequences of the applicant's promotion to higher grade on his requested for mutual transfer.

12. Before allowing the benefit of promotion to the applicant on 16.11.2016, the pending issue of mutual transfer request since March, 2014 should have been approved and implemented. But approval of mutual transfer of the applicant was accorded vide order dated 16.01.2017 (Annexure CA-2), which incorrectly refers to applicant's Grade Pay as Rs. 1800/- treating him as Helper. It is not clear from the said order dated 16.01.2017, if the promotion of the applicant vide order dated 16.11.2016 was brought to the notice of the competent authority before passing the order dated 16.01.2017. It is clearly a mistake on the part of the respondents to have passed aforesaid order relating to mutual transfer and then try to implement the said order after reverting the applicant to lower grade. Prior to 16.01.2017, the applicant was allowed to avail the promotion to the next higher Grade Pay of Rs. 1900/- vide order dated 16.11.2016. Since the respondents allowed such promotion to the applicant to the grade Pay of Rs. 1900/-, the earlier request for mutual transfer with an employee of Grade Pay of Rs. 1800/- could not have been approved or implemented since the grades of both the employees have now become different. It could have been approved prior to 16.11.2016, even when applicant was enjoying the grade pay of Rs. 1900/- under MACP which is the benefit of upgradation allowed on personal basis. But after his promotion, it is not possible without reversion of the applicant which is not provided under any rules. No rule or instruction of the Railway Board has been furnished by the respondents in this case, permitting reversion of the applicant from the higher grade pay of Rs.

1900/- (Technician Grade III) to the Grade Pay of Rs. 1800/- (Helper Khalasi) to implement his pending mutual transfer request.

13. In view of the above, taking into account the fact that there is no rule or instruction of the Railway Board permitting reversion of the applicant to implement his request for mutual transfer and unexplained delay in processing and implementing the applicant's request for mutual transfer, we are of the view that the passing of the impugned order dated 06.03.2017 reverting the applicant to the Grade Pay of Rs. 1800/- without taking his consent, to implement his mutual transfer request is not in accordance with any rules or instructions of Railway Board and hence, it is illegal and liable to be set aside and quashed.

14. Accordingly, the OA is allowed and the said impugned order dated 06.03.2017 (Annexure A-1) is quashed and set aside. There is no order as to costs.

(Gokul Chandra Pati)
Member (A) **(Justice Dinesh Gupta)**
Chairman
/pc/