

(RESERVED ON 06.08.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

This is the 09th day of **OCTOBER, 2018**.

ORIGINAL APPLICATION NO. 330/560/2018

HON'BLE MR JUSTICE BHARAT BHUSHAN, MEMBER (J).
HON'BLE MR MOHD. JAMSHED, MEMBER (A).

1. Laeque Ahmad, aged about 56 years, son of, Late Raees Ahmad, resident of 112, O.P. Near Loco Hospital, North Central Railway, Kanpur-U.P. presently posted as Office Superintendent, Sub Divisional Hospital, North Central Railway, Kanpur-U.P.
.....Applicant.

VERSUS

1. The Union of India, through, the General Manager, North Central Railway, Allahabad.
2. The Chief Medical Director, North Central Railway, Allahabad.
3. The Divisional Railway Manager, North Central Railway, Allahabad.
4. The Chief Medical Superintendent, Sub Divisional Hospital, North Central Railway, Kanpur.
5. The Divisional Railway Manager (Personnel), North Central Railway, Allahabad.

.....Respondents

Advocate for the Applicant : Shri Shyamal Narain

Advocate for the Respondents : Shri Pramod Kumar Pandey

O R D E R

(Delivered by Hon'ble Mr. Mohd. Jamshed, Member-A)

The Original Application (OA) has been filed by the applicant under Section-19 of the Administrative Tribunals Act, 1985 seeking to quash and set aside the impugned transfer and relieving orders dated 18.05.2018 and 19.05.2018 (Annexure Nos A-1 and A-2 to the OA), transferring & relieving the applicant from Kanpur to Allahabad.

2. The applicant is working on the post of Office Superintendent at the Sub Divisional Hospital, North Central Railway, Kanpur since 2010. The applicant was earlier served with a transfer order dated 26.05.2014 transferring him from Kanpur to Tundla on administrative grounds. The applicant challenged the aforesaid transfer order dated 26.05.2014 before this Tribunal by filing OA No. 768 of 2014 – Laeque Ahmad Vs The Union

of India and others and this Tribunal by means of Order dated 03.06.2014 (Annexure No. A-3 to the OA) stayed the same observing that:-

"Though the transfer order dated 26.05.2014 projects that the transfer order is on administrative grounds but as the applicant was transferred being medically de categorized on his suffering from epilepsy, staying alone may be fatal. Keeping this view in mind the applicant herein is directed to prefer a representation before the respondents giving in detail all the facts and situations along with his medical condition within one week from today and the respondents are directed to take a decision keeping in view the reasons cited above.

Issue notice returnable within four weeks.

List on 24.07.2014.

The effect and operation of the impugned transfer order dated 26.05.2014 shall remain stayed till the next date of hearing."

3. The aforesaid OA No. 768 of 2014 is still pending before this Tribunal and the interim order dated 03.06.2014 passed therein has been extended from time to time. The last extension was done on 01.05.2018. Subsequently, the Railway Administration vide transfer order dated 18.05.2018 (Annexure No. A-1 to the OA), which is impugned in the present OA, transferred the applicant from Kanpur to Allahabad. The Chief Medical Superintendent, Kanpur, who is also the controlling authority of the applicant vide letter dated 19.05.2018 (Annexure No. A-2 to the OA) relieved the applicant for reporting to Chief Medical Superintendent, Central Hospital, Allahabad. This order was challenged before this Tribunal vide OA No. 560 of 2018 and following order was passed on 25.05.2018:-

"Considering the above noted facts, I am of the view that till respondents conduct an enquiry on the complaint made by the Member of Parliament, they cannot pass transfer order. Secondly, without permission of court, the respondents cannot pass order of his transfer because the earlier transfer order transferring the applicant from Kanpur has already been stayed by this Tribunal in O.A. No. 768/2014 on 3.06.2014. Therefore, the operation of the present impugned order is stayed till the next date of hearing.

In the mean time, as prayed, two weeks time is allowed to the respondents to file written statement. If the facts noted above are otherwise, the respondents can move application for vacation/modification of stay order even prior to the date."

4. The learned counsel for the applicant has argued that the transfer and relieving orders dated 18.05.2018 and 19.05.2018 respectively have been issued without giving any reasons and it is beyond the competence of

the respondents to pass a fresh transfer order so long as the previous transfer order dated 26.05.2014, transferring the applicant from Kanpur to Tundla was still in existence although suspended due to the stay granted by this Tribunal. No reasons have been given for the transfer order, however, it is mentioned in the relieving order dated 19.05.2018 that the applicant is being relieved with immediate effect on administrative grounds.

5. The learned counsel for the applicant has prayed that the impugned transfer and relieving orders dated 18.05.2018 and 19.05.2018 be quashed. It has been stated in the OA that till date, the impugned transfer order has also not been given effect to, in as much as the applicant has not been relieved, nor has he relinquished the charge of his office in pursuance of the impugned transfer and nor has anyone else been posted against the applicant.

6. Learned counsel for the applicant has argued that the respondents have passed the impugned transfer order dated 18.05.2014, without first cancelling, withdrawing or revoking the earlier order of transfer dated 26.05.2014, which, though presently inoperative owing to the stay order dated 03.06.2014 granted by the Tribunal, has not gone out of existence and, as such, no new transfer order in respect of the applicant could have validly been passed. It was not open for the respondents to pass any fresh transfer order in respect of the applicant without first cancelling the previous one or, at the very least, seeking the leave of this Tribunal to pass a fresh order after recalling the earlier one; since no such leave was even sought by the respondents, much less granted by the Tribunal, the present impugned transfer order dated 18.05.2018 stands badly vitiated in law and is wholly unsustainable.

7. Learned counsel for the applicant in support of his argument has also cited the following judgements:-

- (i) Ratnagiri Gas & Power (P) Ltd v RDS Projects Ltd., (2013) 1 SCC 524
- (ii) Shree Chamundi Mopeds Ltd vs Church or South India Trust Assn decided by Hon'ble Apex Court.
- (iii) Dr. H. Phunindre Singh and Ors. vs K.K. Sethi and Anr decided by Hon'ble Apex Court.
- (iv) Pradeep Goel v Regional Mnager, Region, II, State Bank of India, Zonal Office, Meerut & Others decided by Hon'ble High Court of Allahabad.
- (v) Shobh Ram Vs State of H.P. and another – CWP No. 304 of 2004 decided on 20.05.2004 by Hon'ble Himachal Pradesh High Court
- (v) Somesh Tiwari Vs Union of India and Others (2009) 2 Supreme Court Cases 592
- (iv) In the matter of Anil Panjwani Vs (Proceedings under Section 14 of Contempt of Courts Act, 1971) decided by Hon'ble Supreme Court on 05.05.2003.
- (vi) Sabhapati Pathak Vs State of U.P. and Ors decided by Hon'ble Allahabad High Court
- (vii) Gandhimathi Vs The District Collector decided by the Hon'ble Madras High Court

8. In the counter reply filed by the learned counsel for the respondents, it is stated that vide order dated 18.05.2018, the applicant has been transferred from Kanpur to Allahabad under the administrative control of Chief Medical Superintendent, Central Hospital, Allahabad and subsequently the applicant was relieved on 19.05.2018 by competent authority in pursuance of transfer order dated 18.05.2018. It is also mentioned that while passing the interim order, the Tribunal had granted time to file written statement and also observed that if the facts stated in the order are otherwise, the respondents can move an application for vacation/modification of the stay order even prior to the date fixed i.e., 18.07.2018.

9. It is also mentioned by the learned counsel for the respondents that due to interim order dated 03.06.2014 granted in favour of the applicant, he was allowed to continue on the said post and in the year 2018 after

about 04 years he has been transferred on administrative grounds by the competent authority.

10. Learned counsel has also argued at length that transfer is an exigency of service, and therefore, the applicant is liable to be transferred. It is also mentioned in this case, that the applicant has been working at the same post for the last 08 years since 2010. It is also stated that since the applicant has already been relieved of his duties vide order dated 19.05.2018, it is incorrect to say that he is continuing on the said post. Learned counsel for the respondents prayed that the interim order dated 25.05.2018 passed by this Tribunal may be vacated and the OA filed by the applicant may be dismissed. It is further mentioned that in pursuance of interim order passed by this Tribunal, the transfer order dated 26.05.2014 of the applicant was stayed on 13.06.2014. Learned counsel for the respondents has also mentioned that it is incorrect to say that the transfer orders have been issued on the basis of complaint dated 10.05.2017 made by the Hon'ble Member of Parliament on which only a notice has been issued seeking clarification from the applicant on 03.08.2017 and that this transfer is purely on administrative ground in accordance with law after due approval from the transfer committee.

11. Learned counsel for the respondents in support of his argument has cited the following judgements:-

- (i) S.C. Saxena Vs Union of India and others (2006) 9 Supreme Court Cases 583
- (ii) State of M.P. and Another Vs S.S. Kourav and others (1995) 3 Supreme Court Cases 270

12. Heard the arguments of the learned counsels for both the parties and perused the pleadings.

13. The fundamental point in this case is not about the transfer of the applicant and the grounds meriting transfer or the right of the employer to

transfer an employee but regarding the role of this Tribunal for deciding such cases and the relief available to both the parties in terms of prescribed laws & rules. It is a fact that the applicant belongs to Government service and is liable to be transferred from one place to another, transfer being an exigency of service. The employee could have reasons to feel aggrieved if such transfer orders are passed frequently or with even malafide intentions on administrative grounds. In this particular case, the applicant has been holding the same post at the same place for the last 08 years. He did not carry out his transfer in 2014 and obtained stay from this Tribunal and continued to work on the same post during the interim period. The applicant was again transferred in 2018 vide the impugned order and now the applicant is seeking relief against the same from this Tribunal.

14. The arguments from both sides reflect divergent positions. Learned counsel for the applicant has not only justified the longer stay of the applicant at the same place but has also justified the applicant's action of not carrying out his transfer in 2014 on which stay has been obtained from this Tribunal. He has, however, concluded that in view of the stay granted by this Tribunal, Railway Administration has no authority to pass any further orders without taking leave of this Tribunal, which has not been done in this case.

15. Learned counsel for the respondents has argued about the authority of the employer to transfer and post employees in the exigency of service and on administrative grounds or requirement of the administration as the case may be and therefore, the transfer of employee and the relieving orders are, to that extent prerogative of the administration.

16. Taking into account the arguments and facts of the case, it is clear that the applicant has continued to be on his present place of posting since 2010 and continued to work there in terms of the stay granted by this Tribunal in 2014. In normal course, the applicant should have carried out his transfer in 2014 which was on administrative grounds and also in 2018. However, despite the issuance of relieving order he has not joined at the new place of posting.

17. It is also intriguing to note that the respondents have issued the impugned transfer and relieving orders dated 18.05.2018 and 19.05.2018 respectively despite stay granted by this Tribunal on 03.06.2014 whereas in terms of Rule 19 (4) of the Administrative Tribunals Act, 1985 no such authority is available to the respondents unless leave of this Tribunal has been obtained. This reflects a casual attitude of the respondents.

18. Accordingly, the OA is allowed and the impugned transfer and relieving orders dated 18.05.2018 and 19.05.2018 are set aside and quashed. The respondents are directed to allow the applicant to join back at Kanpur in the same capacity from where he has been transferred and relieved within two weeks of the receipt of this order. The applicant will be entitled to all monetary benefits including back wages for the period he was not paid as per the extant rules. However, consequent to the joining of the applicant as Office Superintendent under CMS, Kanpur, the respondents are at liberty to take suitable action as deemed necessary as per rules. No order as to costs.

(MOHD JAMSHED)
MEMBER-A

(JUSTICE BHARAT BHUSHAN)
MEMBER-J