

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 040/00307/2018

Date of Order: This, the 12th day of September 2018

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

Shri Mukul Kumar Das
Son of Late Amulya Prasad Das
Superintendent, Office of the
Principal Chief Electrical Engineer
N.F. Railway, Maligaon, Guwahati
781011, Assam.

...Applicant

By Advocates: Mr. A. Ahmed, Ms. R.R. Rajkumari & Ms. A. Theyo

-Versus-

1. The Northeast Frontier Railway
Represented by the General Manager
Maligaon, Guwahati, Pin – 781011.
2. The Principal Chief Electrical Engineer
N.F. Railway, Maligaon, Guwahati
Pin – 781011, Assam.
3. The Senior Division Electrical Engineer
N.F. Railway, Lumding Division
P.O. – Lumding, District – Hojai
Pin – 782447.

...Respondents

ORDER (ORAL)**MANJULA DAS, JUDICIAL MEMBER:**

Being aggrieved with the impugned transfer order dated 27.04.2018 as well as impugned Sparing letter dated 03.05.2018, the applicant has preferred the instant petition under Section 19 of the Administrative Tribunal Act, 1985 seeking the following main reliefs:-

- “8.1 To set aside and quash the impugned Transfer office Order No. E/283/80 (Elect)/IDT-1 (Loose) dated 27.04.2018 issued by the Office of the Principal, Chief Electrical Engineer, N.F. Railway, Maligaon, Guwahati.
- 8.2 To set aside and quash the Sparing letter bearing No. EL/E/59/5 dated 03.05.2018 issued by the Office of the Principal, Chief Electrical Engineer, N.F. Railway, Maligaon, Guwahati.
- 8.3 To direct the Respondents to allow the Applicant to continue in any office at Guwahati under N.F. Railway till his retirement from service on superannuation on 31.03.2010.

2. Mr. Adil Ahmed, learned counsel appearing on behalf of the applicant submits that from the year 2008, the applicant was working in Store Section in the office of the Principal Chief Electrical Engineer, N.F. Railway, Maligaon. In the year 2011, he was entrusted as Incharge of Store Section.

However due to mental pressure as well as difficulties in working as Store Incharge, he was by letter dated 03.02.2012 has requested the authority to relieve him from the post of Store Incharge and entrust the said works to a superior officer by allotting him another Section in the office. The competent authority of Electrical Department of the Headquarter of N.F. Railway by Circular dated 05.12.2017 has reshuffled the duty chart of all Group 'C' Staff of Electrical Department (HQ), N.F. Railway whereby the applicant's duty was changed from Store Section to Coaching Section to do some specific duties. According to Mr. Ahmed, in the month of January 2018, the Vigilance Department has instituted an inquiry against the applicant by alleging that he has not submitted the file and ledger to the authority. In reference to the letter No. EL/E/7411/Loose dated 05.03.2018 issued by the respondent No. 2, the applicant submitted his written statement to Vigilance Cell, N.F. Railway, Maligaon, Guwahati.

3. Mr. Ahmed further submitted that the applicant has successfully undergone the Management Development Programme for Senior Sub-ordinate from 19.03.2018 to 23.03.2018 at N.F. Railway Headquarter Complex, Maligaon. Unfortunately, he met within an accident on 25.03.2018 while

coming from office to home as a result he got fracture in leg and undergone treatment under Private Doctor w.e.f. 26.03.2018 at Azara who had advised him to complete bed rest with restriction of movement for 45 days w.e.f. 26.03.2018. He was also informed his office on 26.03.2018 about his private sick leave. But the office of the General Manager (P), N.F. Railway, Maligaon, Guwahati by office order dated 27.04.2018 has sought to transfer the applicant from the office of the Chief Electrical Engineer, N.F. Railway, Maligaon to the office of the Senior Divisional Electrical Engineer, Lumding against the existing vacancy at Vigilance Ground with immediate effect. Thereafter, the respondent No. 2 vide letter dated 03.05.2018 has spared the applicant from the office of the respondent No. 2 and advised him to report immediately to Senior Divisional Electrical Engineer, Lumding. According to Mr. Ahmed, said transfer of the applicant has been made on the advice of the Vigilance Department. The said transfer of the applicant is based on recommendation of Vigilance Department would definitely be as a measure of punishment. The transfer order cannot be passed as a measure of punishment. If such allegation is there, the respondents ought to have taken departmental action not by way of transfer.

4. Mr. Ahmed further submits that the applicant is having less than 2 (two) years of service left out and want to settle his peaceful retirement life at his home town Guwahati. As such, he is entitled to get the benefit as extended by the Hon'ble Gauhati High Court of Agartala in the case of **Narayan Choudhury Vs. State of Tripura & Ors.** reported in **2000 (1) GLR 519** as well as **Union of India Vs. Dr. Umesh Kumar Mishra WA No. (SH) 17/12.**

5. I have heard the learned counsel for the applicant. Perused the pleadings and the documents relied upon. No doubt, the department is the best suited to judge as to the existence of exigencies of such transfer who should be transferred where. Same time, it should not be given bye that the power of judicial review could very well be exercised by a court of law if such transfer indicated hardship factor in compliance with such a transfer order. Moreover, it is the policy of the Govt. of India that in case of an officer due to superannuation, posting to station of choice shall be given due weightage. There is an objective based on consideration of welfare behind such provision in the transfer policy as it would enable a person about to retire after a long and devoted

service to make arrangements for settling down thereafter with her family, acquire a house if not already done and to make necessary arrangement for her superannuated life. In **Union of India Vs. Dr. Umesh Kumar Mishra WA No. (SH) 17/12**, Hon'ble Gauhati High Court has held that – “Fairness requires that if a policy has been laid down, the same may be deviated from only if there is any reason to do so. If no reason is forthcoming, the exercise of power of transfer in violation of a laid down policy may be held to be arbitrary.”

6. In the present case, we have noted that, applicant will retire in March 2020. Only about 1 ½ years left of his service.

In **Narayan Choudhury Vs. State of Tripura & Ors. WP(C) No. 239/1999** rendered in **(2000) 1 GLR 519** where the Hon'ble Gauhati High Court of Agartala Bench has held that – “The petitioner is retiring towards the end of 2000 and he has to serve hardly one and half years, no practical purpose will be served by asking the writ petitioner to proceed to his place of posting at Gomit just for a period of 5/6 months”.

The present case is squarely covered with the above case of **Narayan Choudhury Vs. State of Tripura** (supra).

7. By taking into consideration the entire conspectus of the case as well as the ratio laid down by the Hon'ble Gauhati High Court mentioned above as well as without issuing notice, I feel it deem fit and proper to issue a direction upon the respondents to consider the case of the applicant in view of the foregoing discussion. But it is seen that the application has not exhausted the alternative remedies as provided under Section 20 of the Administrative Tribunals Act, 1985 before approaching this Tribunal. Hence, I prefer to direct the applicant to make a comprehensive representation before the respondent authority by ventilating his grievances within a period of fifteen days from the date of receipt copy of this order. On receipt of such representation, the respondent authority shall consider and dispose of the same within a period of two months thereafter keeping in mind that the applicant is in the verge of retirement and nearly 1 ½ years left of his service.

8. It is clear that the respondent department has already spared the applicant vide letter No. EL/E/59/5 dated 03.05.2018 consequent upon his transfer and posting order No. E/283/80(Elect)/DT-I(Loose) dated 27.04.2018. By taking note of age as has been discussed in the foregoing paragraphs, I

further direct the respondent authority to accommodate the applicant either at Maligaon, Guwahati or in any place nearer to his home town.

9. Consequently, impugned transfer and posting office order No. E/283/80(Elect)/IDT-I(Loose) dated 27.04.2018 is set aside.

10. With the above observations and directions, the O.A. stands disposed of accordingly at the admission stage itself. No order as to costs.

**(MANJULA DAS)
MEMBER (J)**

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