

Reserved

Original Application No.200/00139/2017

Jabalpur, this Thursday, the 3rd day of May, 2018

**HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER**

Dipesh Panche, S/o Late Shri Chaman Lal Panche,
Aged about 26 years, Presently working as Helper,
Carriage & Wagon, Mechanical Department, Carriage
& Wagon, Passenger Yard, Jabalpur-482001. Presently
resident of 2665, Gayatri Bhawan, Baldi Kori ke Dafai,
Near Rajjan Diary, Ghampur, Jabalpur-482001 **-Applicant**

(By Advocate –Shri S.K.Nandy)

V e r s u s

1. Union of India, through its General Manager, West Central Railway, Opposite Indira Market Nagar, Jabalpur (M.P.)-482001
2. General Manager (Personnel), West Central Railway, Opposite Indira Market Nagar, Jabalpur (M.P.)-482001
3. Divisional Railway Manager (Personnel), Jabalpur Division, West Central Railway, In-front of District Court, Jabalpur-482001
4. Divisional Railway Manager(Personnel), Raipur Division, South Eastern Central Railway, Raipur Railway Station, Raipur
5. Sr. Divisional Mechanical Engineer (Co), Jabalpur Division, West Central Railway, In-front of District Court, Jabalpur-482001
6. Anil Kumar Bharti, Helper Carriage & Wagon Through respondent No.4Divisional Railway Manager, (Personnel), Raipur Division, South Eastern Central Railway, Raipur Railway Station, Raipur (C.G.) - **Respo**

(By Advocate –Shri A.S.Raizada)

(Date of reserving the order:-13.11.2017)

O R D E R**By Navin Tandon,AM**

The applicant is aggrieved by his mutual transfer order dated 23.09.2016 (Annexure A-1) from Jabalpur Division in West Central Railway (for brevity ‘WCR’) to Raipur Division in South East Central Railway (for brevity ‘SECR’).

2. The brief facts of the case are that the applicant was initially appointed as Helper in the respondent-organisation in the year 2013, after clearing RRC examination conducted by the WCR, and posted at New Katni Junction, Katni. On his request made in August 2013 he was transferred from Katni to Jabalpur on personal grounds. In March 2014 the applicant made a request for his mutual transfer from Jabalpur Division to Raipur Division. When no action was taken by the respondents on his application for mutual transfer even after lapse of two years he withdrew his request on 01.06.2016 (Annexure A-4) by stating that he has been settled at Jabalpur along with his old widow mother, who is taking treatment at Jabalpur.

2.1 In response to a notification dated 10.06.2016 issued by the respondents for departmental examination, he applied for it. His

name was short-listed for appearing on examination, which was to be held on 27.12.2016. In the meantime his request for mutual transfer was accepted and he was transferred to Raipur Division vide order dated 23.09.2016. He again made his request vide his letter dated 14.10.2016 (Annexure A-7) for cancellation of his mutual transfer. When no decision was taken he filed Original Application No.33 of 2017, which was disposed of by this Tribunal vide order dated 18.01.2017 (Annexure A-8) with a direction to the respondents to decide the applicant's representation dated 14.10.2016. In compliance with the said the applicant's representation was considered and decided by the competent authority vide order dated 13.02.2017 (Annexure A-9), whereby they have declined to accede the applicant's request for cancellation of mutual transfer. Hence this Original Application.

3. The applicant has prayed for the following reliefs in this Original Application:-

“8(i) Call for the entire material record pertaining to the instant controversy from the respondents for its kind perusal.

(ii) This Hon’ble Tribunal may kindly be quash and set aside the impugned order dated 23.09.2016 so far as it relates to applicant (Annexure A/1) and rejection order dated 13.02.2017(Annexure A/9).

(iii) This Hon’ble Court after granting above relief may kindly be issue a direction to the Respondent Authorities

especially to respondent No. 2, 3 & 5 not to transfer applicant from Jabalpur Division (WCR) to Raipur Division (SECR).

(iv) Grant any other relief/s which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case to the applicant.

(v) Award cost of the instant list to the applicant."

4. Through a Misc. Application No.200/00314/2017 filed on 11.05.2017 the applicant has submitted that in response to Notification dated 10.06.2016, a written examination was held on 27.12.2016 and the result of which has been declared vide order dated 17.04.2017 (Annexure MA/1). In the said examination he has been declared as passed and his name is placed at serial No.170.

5. The respondents have submitted that as per Railway Board's letter dated 21.4.06 requests for backtracking from the orders issued for transfer on mutual exchange basis, should not be entertained under any circumstances and strict adherence of the orders issued, is required to be ensured. Further vide RBE No.200/2009 (Annexure R-4) the Railway Board have stated that instances have come to notice that requests for backtracking have been considered by Railways, which has been viewed seriously by the Railway Board. The Railway Board have further requested to

ensure strict compliance of the extant instructions. Thus, keeping in view these instructions of the Railway Board, the applicant's request for cancellation of mutual transfer has not been acceded to by the respondent-authorities. The applicant while submitting his application for mutual transfer has specifically stated that he shall abide by and accept the seniority as admissible under the rules of mutual transfer and he will not withdraw his application under any circumstances in case of mutual transfer. Thus, his withdrawal of application of mutual transfer can not be permitted. The respondents have submitted that there is no bar on the applicant of mutual transfer to participate in departmental examination being held during the processing of mutual transfer. Therefore, the applicant was allowed to participate in the departmental examination held on 27.12.2016.

6. The applicant has also filed Misc. Application No.662/2017 for a direction to stay the order of transfer as well as direction to the respondent-authorities to permit him to continue his training of Technician-III (Fitter) at New Katni Junction. In the said Misc. Application, the applicant has submitted that during the pendency of this Original Application, the applicant has been selected in a Class-III post after clearing departmental examination and vide order dated 04.09.2017 (Annexure IA/2) the applicant had been

sent for training for a period of six months w.e.f 05.09.2017. However, during the training period the applicant has been relieved to join at Jabalpur vide order dated 26.09.2017 (Annexure IA/3). Thereafter, the applicant approached the concerned authority and he was informed that he is going to be relieved for joining at Raipur in pursuance of transfer order dated 23.09.2016 (Annexure A-1). The applicant submits that in the Memorandum dated 30.5.2016 (Annexure IA-4) in clause 2 it has been mentioned that the said order was issued subject to the staff is free from any disciplinary proceedings/vigilance case pending against him at the time of relieving. However, a charge sheet dated 22.06.2017 (Annexure IA-1) under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 is pending against the applicant. Therefore, in these circumstances the respondent-authorities can not relieve the applicant in terms of memo dated 30.05.2016 (Annexure IA-4).

7. In reply to the aforementioned MA, the respondents have submitted that the charge-sheet has been issued to the applicant alleging that he was unauthorisedly absent from his duty. The applicant cannot be permitted to take the benefit of his own fault. The position as it was existing on the day when the transfer order dated 30.05.2016 was served is to be considered while the charge

sheet was issued on 22.6.2017. The respondents have further submitted that with regard to the fact that the applicant has been promoted to superior post is of no consequence when the applicant made an application for inter-railway mutual transfer on own request, he was aware that once such mutual transfer is accepted, in no eventuality it can be withdrawn/cancelled.

8. Heard the learned counsel of both sides and carefully perused the pleadings of the respective parties.

9. The Railway Board's letter dated 21.4.06 (Annexure R-1), which stipulates that requests for backtracking from the orders issued for transfer on mutual exchange basis should not be entertained, would have applied in the present case had there been no change in the position of the two mutual applicants. Whereas the respondent No.6 is still functioning as Helper Carriage and Wagon, the applicant has already been moved to a higher post in Group-C as Technician-III (Fitter). Thus, with his move to a higher post, he has entered into a different seniority zone and thus, he is not in a comparable post with reference to mutual transfer. The law on mutual transfer is very clear that transfer is essentially to a similar post in the same cadre. Thus, transfer from the post carrying higher pay to that carrying a lower pay is not legally sustainable except on account of inefficiency or misbehaviour or

on the written request of government servant. Thus, when the applicant stood promoted to the higher post, he can not against his willingness be shifted to a lower post on mutual transfer on the basis of his application made by him at the time when he was holding a lower post.

10. As regards the undertaking given by the applicant, at the time of applying for mutual transfer, that he would not withdraw his application, certainly holds good so long as the applicant remains in that post and not when he stands promoted to a higher post.

11. Before we part, we would like to make an observation that mutual transfer is based on an application which is moved by two persons serving under two different Administrations. Such an application is made in the hope that transfer orders will be issued in a reasonable period. Thus, the employees give an undertaking that they would not withdraw their application for mutual transfer. Time lapse of more than 2 years, as in instant case, can not be said to be reasonable period. There is a need for Railway Board to review their own instructions and allow the applicants to withdraw such application after a lapse of a reasonable period like 6, 9 or at most 12 months. Registry is directed to send a copy of this order to

the Secretary/ Railway Board for taking necessary action in the matter.

12. In view of the above, the present Original Application is liable to be and is allowed. The impugned order dated 23.09.2016 (Annexure A-1), so far as it relates to the applicant, is set aside. The respondents are directed to continue the applicant to serve under the respondents at Jabalpur. The respondents may also consider transfer of the private respondent at Jabalpur Division subject to his accepting the bottom seniority as on the date he had come and reported. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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