

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00484/2016

Jabalpur, this Thursday, the 11th day of October, 2018

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

Subedar Singh, Son of Shri Buddura,
aged about 52 years, Resident of F-130, D-Nirupam,
Enclave, 2-C, Sector Saket Nagar,
Bhopal (MP), Pin 462024
Working as Sr. Publicity Inspector

Applicant

(By Advocate –**Shri Ajay Pratap Singh**)

V e r s u s

1. Union of India, through its General Manager, West Central Railway, Indira Market, Jabalpur (MP), Pin code 482001

2. The Chief Personnel Officer, West Central Railway,
G.M.'s Office, Jabalpur, M.P., Pin-482001

3. The Deputy Personnel Officer (Adm),
West Central Railway, Jabalpur, M.P., Pin code 482001

4. Mr. I.A. Siddiquee, Public Relations Officer,
Bhopal Division, D.R.M. Office, West Central Railway,
Bhopal, M.P. Pin code-462024

5. Mr. B.N.Gupta, Senior Publicity Inspector,
Bhopal Division, D.R.M. Office, West Central Railway,
Bhopal, M.P., Pin code 462024

-Respondents

(By Advocate –**Shri S. Ganguly for respondents Nos. 1 to 3**
& **Shri Amardeep Gupta for respondent No.4**)

(Date of reserving the order:-03.08.2018)

ORDER

By Ramesh Singh Thakur, JM:-

The applicant has challenged the legality, validity and propriety of impugned periodic transfer order dated 22/25.04.2016 (Annexure A-1).

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

“8. Relief Sought:

8.1 Quash order dated 22/25.04.2016 Annexure A/1 and call record of impugned periodic transfer order and applicant be allowed to continue at Bhopal; or

8.2 To grant any other relief as may deem fit and proper may be awarded with costs of the present application.

3. The applicant is working as Senior Publicity Inspector Bhopal and has been transferred to Kota Division under Periodical transfer policy vide impugned order dated 22/25.04.2016 (Annexure A-1). The applicant has submitted that he has been transferred on the proposal of respondent No.4 and the applicant had earlier vide impugned order had made a representation dated 13.04.2016, a copy of which is annexed as Annexure A-2.

3.1 The Vigilance Branch of West Central Railway sought information regarding sensitive posts vide letter dated 18.09.2015. A copy of letter dated 18.09.2015 is filed as Annexure A-3.

3.2 The respondent No. 4 has hatched conspiracy to get applicant transferred despite the fact that as per periodic transfer policy, the applicant can not be transferred. The post of Senior Publicity Inspector does not come under sensitive post.

3.3 The case of the applicant is that earlier the applicant has filed Original Application No. 653/2008 which was allowed by the Hon'ble Tribunal vide order dated 09.07.2009 (Annexure A-6). The respondent No.4 had challenged the order of the Hon'ble Tribunal before the Hon'ble High Court in Writ Petition No. 7029/2009(S). The main case of the applicant is that the respondent No. 4 is the instrumentalities for issuing the transfer order of the applicant vide impugned order.

4. The replying respondents has filed the reply and it has been submitted that as per law settled by the Hon'ble High Court in the case of **R.S.Choudhary vs. State of M.P. and others**, ILR (2007) MP 1329 has analyzed the scope of judicial review in transfer matter and the Hon'ble Apex Court has also observed that transfer is an administrative function in the jurisdiction under Article 226 of the Constitution of India, interference in such matter is very limited. It has been further submitted by the replying respondents that as per law settled by the Hon'ble Apex Court in the matters of **Shilpi Bose and others vs. State of Bihar and others**, AIR 1991

SC 532 and subsequently in many other decision, there is no vested right of an employee to be posted in one place. It has been specifically submitted that in absence of any apparent malafides or on the ground of competence of the authority who has issued the order of transfer the same can not be interfered with. In the present case, none of the ingredients are present.

4.1 It has been submitted that the Senior DCM/BPL has proposed to CPRO for rotational transfer of the applicant vide letter dated 01.04.2016 (Annexure R-1). Thereafter, CPRO has recommended vice versa rotational transfer of the applicant, Sr. Publicity Inspector/BPL and Shri B.N.Gupta, Sr. Publicity Inspector/KTT vide letter dated 13.04.2016 (Annexure R-2). So as per recommendation, competent authority has issued the transfer order.

4.2 It has been submitted by the replying respondents that applicant has periodically and routinely transferred to Kota Division on administrative interest and efficiency. For employee not working in a sensitive post can not be a ban on administrative right to transfer staff on grounds of administrative efficiency and interest. The fact regarding transfer at the behest of respondent No.4 has been specifically denied as the proposal from Senior DCM/BPL vide letter dated 01.04.2016 has been initiated. It has

been submitted by the replying respondents that though the post of Senior Publicity Inspector is not included in sensitive post as per Railway Board letter dated 11.08.2008 (Annexure A-4), but as per Railway Board letter dated 03.04.2012 Railway employees holding sensitive posts, including those who frequently come into contact with public and/or contractors/suppliers are required to be transferred every four years as it is also reiterated in Railway Board's letter dated 15.12.2015. As per Annexure R-1 Senior DCM/BPL has proposed to CPRO for rotational transfer of the applicant and being Controlling Officer in the cadre, has recommended vice-versa rotational transfer of the applicant and Shri B.N. Gupta Senior Publicity Inspector/KTT. Resultantly as per recommendation of CPRO transfer order dated 22/25.04.2016, the applicant has completed more than four years at Bhopal.

4.3 So as per Railway Board letter dated 03.04.2012(Annexure R-3) as per duty list of Public Relation Section, the applicant is performing the works related to passing bills, tender notices, impress works, works related public contacts etc. A copy of duty list of the applicant is annexed as Annexure R-4. So the applicant was transferred from Jabalpur to Bhopal under periodical transfer as per Railway Board's instructions those who frequently come

into contact are transferred every four years and this post is purely related with public relation.

4.4 It has been specifically submitted by the replying respondents that though the applicant had challenged the selection of Public Relation Officer whereby the respondent No.4 was promoted. The respondent No.4 has filed Writ Petition before the Hon'ble High Court of Madhya Pradesh of Jabalpur which is still pending. The instant case is not related with that case so the transfer of applicant from BPL to KTT is not malafide action at all. So the impugned order passed by the replying respondent is based on administrative efficiency.

5. The applicant has filed the rejoinder. The applicant has reiterated its earlier stand taken in the Original Application to the effect that the transfer has been done on the behest of the respondent No.4 and periodic transfer policy in the sensitive post is not applicable. It has been further submitted that the transfer order is not in administrative exigency and more over the applicant was not working on the sensitive post and periodic transfer policy is not applicable to the applicant. It has specifically been pointed out vide RBE No. 24/2006 dated 23.02.2006 (Annexure RJ-2) that from the List of sensitive posts at Serial No. (iii) (I), Public Relations Department has been deleted. Thus, it is clear that the work of staff

dealing with revenue earning and commercial publicity has been shifted to commercial department, whereas applicant's post does not come in sensitive post and Public Relation Department of applicant, does not fall in sensitive categories of department of railways. A copy of letter dated 11.08.2008 with RBV No. 10/2008 is annexed as Annexure RJ/3. So as per Annexure R-4 dated 25.02.2016 the post of the applicant does not fall in sensitive category of post by Railway Board.

5.1 The specific submission has been made by the applicant in his rejoinder that as the applicant has challenged the selection of respondent No. 4 and promotion order and same was quashed by Hon'ble CAT in O.A. No. 653/2008 vide order dated 09.06.2009 against which the respondent No. 4 has filed the Writ Petition No. 7029/2009(S). The applicant has also filed the Contempt Petition against the respondents. Therefore the respondent No. 4 has hatched conspiracy against the applicant of transfer. The case of the applicant is that on own request the applicant has been posted at Bhopal and has also relied upon the RBE No. 336/85 dated 24.12.1985 regarding posting of SC and ST employees as per Annexure RJ-6. So the applicant was harassed continuously by respondent No. 4 and the representation dated 01.03.2016 had been made by the applicant vide Annexure RJ/7.

6. We have heard the learned counsel for the parties and have gone through all the documents attached with the Original Application.

7. In the instant case, the main allegation alleged by the applicant is that the transfer order Annexure A-1 has been passed in conspiracy hatched by respondent No.4 on the ground that the applicant has challenged the action of the Department before Central Administrative Tribunal and now the respondent No. 4 has filed the Writ Petition before the Hon'ble High Court of Madhya Pradesh at Jabalpur.

7.1 It is pertinent to mention that in the cause title another respondent No.5 has also been added. However, in the pleadings there is no averments regarding malafide against the respondent No.5. As per reply filed by the replying respondents it has been specifically submitted that the proposal for rotational transfer of the applicant was proposed by the Senior DCM/BPL to CPRO vide Annexure R-1. Thereafter, CPRO has recommended vice-versa rotational transfer of the applicant as per Annexure R-2. Resultantly, the transfer order Annexure A-1 has been passed by the competent authority after approval.

7.2 It is clear from the pleadings itself that CPRO is the Higher Officer than respondent No.4. Moreover, the proposal for rotational

transfer has been proposed by the DCM/BPL. It has come in the reply that the applicant has been transferred to Kota Division on administrative exigency. It has been specifically submitted by the replying respondents that an employee not working in a sensitive post can not be a ban on administrative right to transfer staff on the ground of administrative efficiency and interest.

7.3 Second thrust of the argument put forth by the counsel for the applicant is that the post occupied by the applicant is not a sensitive post. It is pertinent to mention that as per RB/Estt. No. 48/2012 dated 03.04.2012 (Annexure R-3) the persons who frequently come in contact with public and/or contractors/suppliers are required to be transferred every four years.

7.4 It has been mentioned at Annexure R-4, that as per duty list of Public Relation Section, the applicant has to perform the works related to passing bills, tender notices, imprest works, press release etc. As per reply filed by the replying respondents the Railway employee holding sensitive post, including those who frequently come into contact with public and/or contractors/suppliers are required to be transferred every four years which is clear as per Railway Board's letter dated 15.12.2015.

7.5 Admittedly, the applicant has completed more than four years at Bhopal as the applicant is working in Bhopal since 2004.

Further allegation of the applicant is that, as the contempt has been filed against the respondent department so there is malafide on the part of the department. But in the pleadings there is no specific facts regarding such malafide. Rather, the replying respondents has specifically denied this fact and has submitted that the case regarding the selection of respondent No.4 is pending before the Hon'ble High Court of Madhya Pradesh and it has no nexus with the present case.

7.6 Merely by alleging malafide that the case is pending before the Hon'ble High Court of Madhya Pradesh filed by the respondent No. 4 is not sufficient, especially in view of the fact that no allegation has been made against respondent No.4, that how the conspiracy is being hatched.

8. The law has been settled by the Hon'ble Apex Court in the matters of **Union of India Vs. S.L. Abbas**, (1993) 4 SCC 357 the Hon'ble Supreme Court has specifically held that who should be transferred where, is a matter for the appropriate authority to decide. In the matters of **State of M.P. Vs. S.S.Kourav**, (1995) 3 SCC 270 the Hon'ble Supreme Court has held that the wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places.

It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by malafides or by extraneous consideration without any factual background or foundation.

9. In the matters of **National Hydroelectric Power Corpn. Ltd. Vs. Shri Bhagwan, (2001) 8 SCC 574**, the Hon'ble Supreme Court has held that unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders as a matter of routine, as though they are the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned". Thus, it is a settled law that transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved at times. The only realistic approach is to leave it to the wisdom of the hierarchical superiors to make the decision. Unless the decision is

vitiating by malafides of infraction of any professed norms of principle governing the transfer which alone can be scrutinized judicially, there are no judicially manageable standards for scrutinizing all transfers and the courts lack the necessary expertise for personal management of all government departments. This must be left in public interest to the departmental heads subject to the limited judicial scrutiny indicated {See: **N.K.Singh Vs. Union of India**, (1994) 6 SCC 98}.

10. In the matters of **State of U.P. Vs. Gobardhan Lal**, (2004) 11 SCC 402, the Hon'ble Supreme Court has held that "[E]ven administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra,

shown to be vitiated by mala fides or is made in violation of any statutory provision”. Thus, in view of these settled legal position, the contention of the applicant that she has been transferred during mid-academic session, which is not permissible as per clause (xxv) of the Transfer Guidelines, cannot be sustained.

11. In view of the above we do not find any illegality in the order passed by the respondent authority.

12. Resultantly, the Original Application is dismissed. No order as to costs.

(Ramesh Singh Thakur)
Judicial Member
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(Navin Tandon)
Administrative Member