

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...
Original Application No.290/00266/2016

Reserved on : 28.08.2018
Pronounced on : 31.08.2018

CORAM:

HON'BLE MR. A.K.BISHNOI, MEMBER (A)
HON'BLE MRS. HINA P.SHAH, MEMBER (J)

Parminster Singh s/o Shri Matbar Singh, aged about 47 years, resident of House No. 78 'A', Rameshwar Nagar, Basni First Phase, at present employed on the post of Technician-III TN 10752 in carriage work shop, North Western Railway, Jodhpur

...Applicant

(By Advocate: Shri J.K.Mishra)

Versus

1. Union of India through General Manager, North-Western Railway, Hqrs. Jaipur Zone, Chainpura, Jagatpura, Jaipur, Rajasthan
2. Senior Personnel Officer, North Western Railway, Workshop, Jodhpur Division, Jodhpur.
3. Chief Workshop Manager, Carriage Workshop, North Western Railway, Jodhpur.
4. Sr. Divisional Electrical Engineer, North Western Railway, Jodhpur.

...Respondents

(By Advocate: Shri Kamal Dave)

ORDER

Per Hon'ble Mrs. Hina P.Shah, M(J)

The applicant has filed the present OA u/s 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

- (i) That the impugned transfer order dated 19/25.4.2016 (Annexure A/1) and any consequential order if passed may be quashed and the applicant may be allowed all consequential benefits.
- (ii) That the relevant records/files noting where the decision to transfer the post of applicant from Railway Workshop Jodhpur to Sr. Divisional Electrical Engineer Jodhpur N/W Railway may be summoned from the respondents so as to unfold the true reasons and nature of his transfer.
- (iii) That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.

2. Brief facts of the case, as stated by the applicant, are as under:-

The applicant was initially appointed on the post of Khallasi on 27.6.1994 and thereafter promoted as Technician-III on 27.8.2006. A case was registered against applicant and other persons u/s 420, 468, 471 read with Section 120 of IPC on the allegation that they obtained housing loan from LICHL on the basis of fabricated salary certificate and expended the money somewhere else. They were arrested and released on bail. After investigation, the CBI filed challan against the applicant and others and after hearing on charges, the ACJM (CBI Cases), Jodhpur discharged the applicant and other accused on the ground of jurisdiction vide order dated 16.4.2007. The order was

challenged further and finally the Hon'ble High Court remanded the case to the ACJM (CBI Cases) for fresh hearing on charges and pass order, which is pending.

On the basis of arrest and as the applicant remained in custody for more than 48 hours, he was suspended. After issuance of suspension order dated 15.4.2002, respondents kept silent for about 6 years and when the applicant was discharged by the ACJM (CBI Cases) vide order dated 16.7.2007, the respondent No.4 issued charge sheet for imposition of major penalty vide letter dated 19.3.2008. Inquiry Officer was appointed and the Inquiry Officer has closed the enquiry in the month of December, 2008, but no final order has been passed by the Disciplinary Authority till date. The applicant filed OA No.365/2015 for treating the suspension period as invalid since after 90 days the suspension order was not revoked. He has further averred that his pay has not been revised as per 6th CPC and he has been paid the same salary for the month of April, 2016 which he was drawing prior to his suspension in the year 2002 and he has been penalised in multiple ways. The applicant has also referred to provisions of Para 1345 of Chapter 13 Railway Fundamental Rules – Pay and Increments. Further, he has filed several representations

for releasing the benefits to him as per law, but nothing has been done till date.

Now, the respondent No.2 has issued an order of transfer alongwith post vide order dated 19/25.4.2016 transferring him from Workshop to Division under respondent No.4 in compliance to GM, Northern Railway letter dated 27.6.2002 and Superintendent of CBI letter dated 13.9.2006. The applicant states that as per schedule of powers, the redistribution of post in the non-gazetted establishment, the power is delegated to the AGM vide 1st respondent letter dated 22.3.2004. Such approval has not been taken and a lower authority has passed the transfer order along with the post without taking approval of the competent authority. The applicant has referred to Para 226 of IREC Vol.I and submitted that there is no exigency of service in the instant transfer and the same has been passed by an incompetent authority, since the power is delegated to AGM and not to CWM. The Railway Workshop is separate and independent establishment. It has no relation with the division and Head of Department is different for both the establishments. According to the applicant, there is no administrative interest in issuing the impugned order. Rather the sequence of events show that

transfer of the applicant along with post is arbitrary and in colourable exercise of power, therefore, he has approached this Tribunal praying for quashing the transfer order dated 19/25.4.2016.

3. By filing reply dated 15.7.2016, the respondents have denied the claim of the applicant. The respondents have submitted that the suspension is ordered in adherence to the statutory rules in view of arrest of the applicant and his involvement in a criminal case. The applicant has assailed the suspension in OA No.356/2015, which is still pending for adjudication and as such the fact regarding suspension has no relevancy in the present case. The suspension has already been reviewed and revoked vide order dated 31.3.2016. The departmental inquiry is initiated in view of the misconduct under Railway Servants (Discipline and Appeal) Rules, 1968 after receiving the record and consideration of the same. The Disciplinary Authority has not accepted the inquiry report. The respondents have further submitted that his pay under 6th CPC will be revised in due course only after decision being taken by the Disciplinary Authority about treating the suspension period on completion of the departmental proceedings. According to the respondents, the applicant was suspended w.e.f.

5.2.2002. He was transferred by the competent authority along with post vide order dated 27.6.2002, but since he remained suspended till 31.3.2016, the transfer order could not be implemented. On his revocation w.e.f. 31.3.2016 process for his transfer was initiated and finalized and formal order was issued vide Ann.A/1. As the CWM is Head of Jodhpur Workshop at present, his administrative approval for issuance of transfer order has been taken as per practice in vogue. NR HQ's letter dated 27.6.2002 had been issued after the approval of the competent authority. The applicant has not challenged competency of the competent authority of Northern Railway. The competent authority in this case is Northern Railway HQ, which has wrongly been mentioned as CWM as the competent authority. The applicant failed to place on record the correct provisions and has referred to Para 226 of IREC Vol.I. In fact, as per Para 227, the order of transfer with post has no infirmity. The respondents have further submitted that the applicant is transferred on the ground of administrative exigency in adherence to the statutory rules and the powers vested for such transfer which is having the approval of the competent authority, therefore, the grounds raised by the applicant referring to change of seniority is

immaterial as it does not have any effect by the said transfer. The applicant is transferred in the administrative interest and retained at Jodhpur, therefore, no grievance can be raised in this respect.

4. The applicant has filed rejoinder to the reply and reiterated the averments made in the OA.

5. Heard Mr. J.K.Mishra, counsel for the applicant and Shri Kamal Dave, counsel for the respondents. Though, the parties in the pleadings have mentioned the facts about the criminal case and the departmental proceedings, which are pending adjudication, but we are restricting the present controversy only with regard to the transfer of the applicant.

6. The learned counsel for the applicant contended that the applicant has been transferred alongwith post by an incompetent authority without obtaining approval, which is violative of Para-226 of the IREC. The transfer order has been passed on the basis of the letter passed by the then General Manager, Northern Railway in the year 2002 and Superintendent CBI letter dated 13.9.2006, when the criminal case was under investigation. Therefore, the impugned order is required to be quashed and set aside.

7. The learned counsel for the respondents, contended that the transfer with post was issued to the applicant with the approval of the General Manager, Northern Railway vide order dated 27.6.2002 and at that time of the decision, the applicant was under suspension. Therefore, the ground of incompetency of authority raised by the applicant has no meaning in view of Para 227 of the IREC Vol.I, whereby the competent authority can transfer a railway servant on account of inefficiency or misbehaviour. The learned counsel further contended that transfer with post has no infirmity as the same has been passed as per the powers vested with the administration. The learned counsel for the respondents relied upon the judgments in the cases of **Union of India and Others vs. S.L.Abbas**, (1993) 4 SCC 357 and **Shilpi Bose vs. State of Bihar**, AIR 1991 SC 532 and contended that the Courts/Tribunals should not interfere with transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory/statutory Rule or on the ground of malafides. A Government servant holding a transferable post has no vested right to remain posted at one place or the other as he is liable to be

transferred to any place. Transfer orders issued by the competent authority do not violate any of his legal rights.

8. After hearing the parties and perusing the material available on record, it is clear that the present matter can be restricted to two issues- whether the order under challenge dated 19/25.4.2016 has been passed by the competent authority and whether the same has been passed as per rules. So far as the first issue is concerned, it is clear that CWM is Head of Jodhpur Workshop and administrative approval for issuance of present transfer order has been obtained in furtherance to General Manager, Northern Railway letter dated 27.6.2002, therefore, the transfer order in question has been passed by the competent authority. Pertaining to second issue, it is clear from Para 227 of the IREC Vol.I that transfer order has been passed as per the powers vested with the administration. Therefore, the present transfer has been made in administrative exigency in adherence to the rules under the powers vested and after approval of the competent authority. The further issue raised by the applicant pertaining to seniority has no relevance as he has not brought out the same in challenge raising the ground as to how the same will affect him, therefore, the same cannot

be considered as it has no relevance with the present transfer order. Also reference made by the applicant to Para 226 of IREC Vol.I is misleading and instead Para 227 of IREM Vol.I is relevant in the present case. Further, though the issue of malafide has been raised by the applicant but the applicant failed to establish malafide of any authority towards him and, therefore, the same cannot be considered. Even otherwise, the applicant has been transferred from one office to another office, which is situated in Jodhpur itself. So far as prayer regarding summoning record is concerned, we do not find any necessity for the same.

9. It is settled law that transfer is an incidence of service and if the same is passed in public interest/administrative exigency, Courts/Tribunals should not interfere with the same. In the instant case the transfer order with post has been passed by the competent authority in administrative exigency and there is no malafide or colourable exercise of powers, therefore, the impugned transfer order dated 19/25.4.2016 does not warrant any interference and thereby the interim relief granted by this Tribunal vide order dated 11.05.2016 stands vacated.

10. Accordingly, in view of above discussions, the OA is dismissed with no order as to costs.

(HINA P.SHAH)
Member (J)

(A.K.BISHNOI)
MEMBER (A)

R/