



**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

No. O.A. 699 of 2016

Date of order: 18th September, 2016

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Indranil Chakraborty,
Son of Tarapada Chakraborty,
Residing at 23, Ramkrishna Sarada Road,
Post Office – Natagarh,
District – 24 Parganas (North),
Pin – 700 113.

.. Applicant

- V E R S U S -

1. Union of India,
Service through the General Manager,
South Eastern Railway,
Garden Reach, Kolkata,
Pin – 700 043.
2. Chief Personnel Officer,
South Eastern Railway,
Garden Reach, Kolkata,
Pin – 700 043.
3. R.K. Goel,
Chief Personnel Officer,
South Eastern Railway,
Garden Reach, Kolkata,
Pin – 700 043.
4. Divisional Railway Manager (P),
Kharagpur, South Eastern Railway,
Pin – 721 301.
5. Area Railway Manager / Santragachi &
Controlling Officer,
Mixed Higher Secondary School
(English Medium), Santragachi,
Pin – 711111.
6. Principal,
Mixed Higher Secondary School
(English Medium), Santragachi,
Pin – 711111.

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7. Debasish Bandyopadhyay,
Craft Teacher,
Girls Higher Secondary School,
Kharagpur,
Residing at Olaichanditala, 4th Lane,
Udaypur, Post – Nimta,
District – 24 Pgns.

..... Respondents

For the Applicant : Mr. S.K. Dutta, Counsel

For the Respondents : Ms. N.S. Alam, Counsel

O R D E R

Per Dr. Nandita Chatterjee, Administrative Member:

An Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:-

"(a) Commanding the respondents and each of them to revoke, cancel, withdraw and/or to forbear from giving any effect and/or further effect to the said purported order of transfer dated 27th August, 2015; purported order dated 14th September, 2015 and purported subsequent order of transfer dated 8th April, 2016 as contained in Annexure "A-6", "A-8" and "A-10" respectively.

(b) Commanding the respondents and each of them not to disturb the service of the applicant as Music Teacher at Mixed Higher Secondary School (English Medium), Santragachi under South Eastern Railway by any way and by any means whatsoever.

(c) Commanding the respondents and each of them to certify and transmit to this Hon'ble Tribunal the records relating to the issuance of the purported orders 27th August, 2015; purported order dated 14th September, 2015 and purported subsequent order of transfer dated 8th April, 2016 as contained in Annexure "A-6", "A-8" and "A-10" respectively for being quashed and/or set aside by this Hon'ble Tribunal.

(d) Pass such other or further order or orders, mandate or mandates, direction or mandates as may appear to be fit and proper."

2. Heard Ld. Counsel for both sides, perused pleadings and documents on record.

Ld. Counsel for the applicant has relied on *AIR 2010 SC 2794 East Coast Railway v. Mahadev Appa Rao* in his support. Although given liberty on

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16.8.2018, no written notes of arguments have been filed within the scheduled date.

3. The applicant's submissions, as advanced by his Ld. Counsel, is that he is a Craft-cum-Music Teacher under S.E. Railway and despite the fact that the applicant has all along worked as a Music Teacher, he was transferred to Girls Higher Secondary School (Bengali Medium), Kharagpur as a Craft Teacher. The applicant has alleged that there is no post of Music Teacher at his transferred post and also that his present transfer has been made only to accommodate respondent No. 7. Hence, being aggrieved, the applicant has approached the Tribunal with the instant Original Application.

The grounds that the applicant has advanced, inter alia, in support of his claim is that:

- (a) His transfer as Craft Teacher will jeopardise the career of students at Mixed Higher Secondary School, Santragachi.
- (b) The said transfer is contrary to the appointment of the applicant;
- (c) The transferee i.e. Respondent No. 7 has no experience of teaching Music as he is being transferred from Girls Higher Secondary School, Kharagpur which does not have any post of Music Teacher.
- (d) That, the applicant is being transferred to Girls Higher Secondary School, Kharagpur as a penal measure.
- (e) That, the action of the respondents, just to accommodate the respondent No. 7 in his own interest, is malafide and capricious;
- (f) That, his wife having been posted as a Ticket Collector in Howrah (South) Division, he should be posted at the same station in terms of Railway Board's circular dated 5th November, 1997.

4. The official respondents, on the contrary, have argued that the applicant was initially appointed in the post of Craft-cum-Music teacher in the Chakradharpur Division in South Eastern Railway, liable to be transferred at any

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station within the jurisdiction of S.E. Railway and that he had agreed to the terms and conditions in the offer letter prior to accepting the offer of appointment.

That, the applicant was transferred on his own request from Chakradharpur Division to Kharagpur Division in the year 1997 and thereafter again, at his own request was transferred to Mixed Higher Secondary School, Santragachi in the year 2000 and, since then, has spent more than 15 years in the said station.

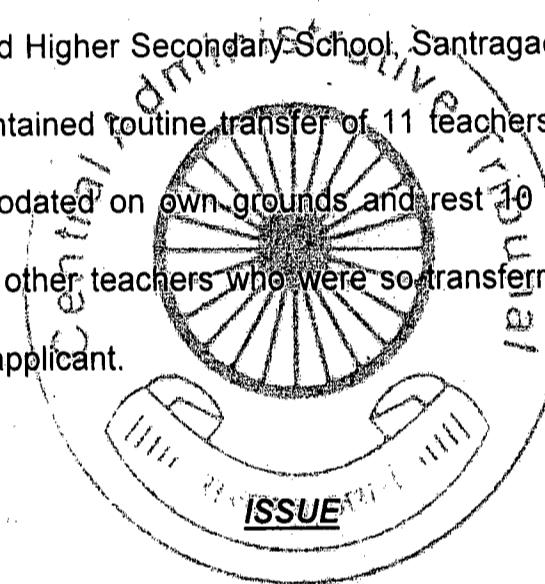
According to the respondents, there are no students who have opted to pursue music as an optional subject in the said school while, on the contrary, a large number of students from Class I to Class XII were keen in pursuing Arts and Craft as an optional subject. (annexed as R-1 to the reply of the official respondents).

That, pursuant to the transfer order dated 24.8.2015, all the teachers so transferred, barring the applicant, had moved and joined their respective posts to which transferred. The applicant could not be released initially on account of his deployment on election duties and after being relieved from such election duties, the applicant reported sick as being under treatment of a private doctor. The applicant failed to furnish any sick certificate in the prescribed form issued by a Railway doctor as per the provisions of the Railway Medical Manual and that the applicant has not joined his duties till the date of filing of the Original Application.

The Respondents have further argued that, the applicant having challenged the corrigendum dated 27.8.2015 and not the transfer order dated 24.8.2015, technically, the O.A. is liable to be dismissed. Further, the applicant, not having received any stay to his transfer order from the Tribunal, had approached the Hon'ble High Court in WPCT No. 181 of 2016 wherein the Hon'ble High Court, having dismissed the matter, had directed that it was for the Tribunal to decide on the Original Application. Hence, according to the respondents, the applicant does not have any reasonable grounds to claim the relief as prayed for and this Original Application deserves to be dismissed.

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5. In addition, Respondent No. 7 has also furnished his reply to argue that the applicant was appointed as a Craft-cum-Music teacher as per his appointment in South Eastern Railway and was teaching music in the Mixed Higher Secondary School at Santragachi since November, 2000 i.e. for a period of more than 15 years at the same station. A school improvement programme was drawn up by the respondent authorities and circulated vide Office Memorandum dated 28.8.2001 entitled as 25 Points Programme in which point No. 16 confined the tenure of teachers in a particular school to 5 years (Annexed as Annexure R-1 to the reply of respondent No. 7). Consequent to the circulation of the 25 Points Programme for School improvement, 2001, respondent No. 7 had represented severally to the respondent authorities and was, accordingly, transferred at his own interest at Mixed Higher Secondary School, Santragachi. The transfer order dated 27.8.2015 contained routine transfer of 11 teachers of whom respondent No. 7 was accommodated on own grounds and rest 10 were moved in public interest and that all other teachers who were so transferred have subsequently moved, barring the applicant.



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6. The point of determination in this Original Application is whether the transfer order as challenged by the applicant is liable to be set aside and/or quashed.

FINDINGS

7.(a) At the outset, we examine the offer of appointment to the applicant, which is germane to the lis. The said offer of appointment dated 12.4.1994 is reproduced below:-

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SOUTH EASTERN RAILWAY

REGISTERED WITH A/D
Office of the Chief Personnel Officer, GRC,
Calcutta - 700 043

No. SPO (W)/CON/T. PANELS.

Dated: 12.4.94

To:

Shri Indranil Chakraborty
23, Ramkrishna Sarada Rd.
P.O. - Natagarh, Dist. 24 Pgs (N)
Pin - 743175.

The following appointment letter is sent herewith to you for your further necessary action.

DY. CHIEF PERSONNEL OFFICER

Office of the Chief Personnel Officer,
Garden Reach, Calcutta -43.

No. SPO(W)/CON/T. PANELS

Dated: 12.4.94

To Shri Indranil Chakraborty
23, Ramkrishna Sarada Rd.
P.O. - Natagarh, Dist. 24 Pgs (N)
Pin - 743175.

Reg. No. Temporary appointment
Nature of appointment Craft cum Music Teacher
Grade 1400-2600/-
Rate of pay, per mensem

I am prepared to offer you temporary employment in Grade and rate of pay specified above plus usual allowance subject to your passing the prescribed medical examination by an authorised Medical Officer of this Railway and production of your original certificates and satisfactory proof in support of your age, such as birth or Matrimonial certificate.

2. It must be clearly understood that this temporary appointment is terminable on 14 days' notice on either side except that no such notice is required if the termination of service is due to the expiry of the sanction to the post you held or on return to duty of absence in whose place you may be engaged in which cases your services will automatically terminate from date of expiry of the sanction or from the date the former resumes his duty, as the case may be also no such notice will be required if the termination of service is due to your mental or Physical incapacity or to your removal or dismissal as a disciplinary measure after compliance with the provisions of clause (2) of article 311 of the constitution of India.

You will have to sign the prescribed joining report from at the time of appointment.

3. You will not be eligible for any pensionary and benefit under the State Railway Provident or Gratuity Rules or to any absentee allowances beyond these admissible to temporary employee under the rules in force from time to time during such temporary service.

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4. You will be held responsible for the charge and care of Government money, goods stores and all other property that may be entrusted to you.

5. You will be required to take an oath of allegiance or take an affirmation in the indicated below:-

"I do swear/solemnly affirm that I will be faithful and bear true allegiance to Indian Union and the Constitution of India as by law established and that I will carry out the duties of my office loyally, honestly and partially. So help "God".

NOTE:- Conscientious objectors to oath taking may make a solemn affirmation the prescribed form indicated above.

6. You will confirm to all rules and regulation applicable to your appointment.

7. Your appointment is subject to production of original certificates.

8. You must be prepared to go on transfer to any station on the South Eastern Railway System.

9. You will be required to undergo a course of basic training for months and to pass a qualifying examination at the end of the course.

10. You will be required to undergo a departmental training for months and to pass a qualifying examination at the end of the course.

11. Failure to qualify in either of the examination referred to in Col. 9 & 18 will render you liable for discharge from service.

12. You will bring one character certificate from the Head of the Institution where you have studied last duly attested by the 1st Class Executive Magistrate, District Magistrate or Sub-Divisional Magistrate (as per specimen enclosed).

13. No travelling allowance will be granted for joining the post. A 2nd Class Pass No.....x..... for your journey is enclosed.

14. If you intend taking up the appointment on these conditions please signify your acceptance and return this form a duplicate copy of which is enclosed for retention by you. In the event of your acceptance please call at the office of the S.P.O. (W), S.E. Railway, New Administrative Building, (Annex. Bldg.), Garden Reach, Calcutta - 700 043 by 26.4.94 positively. FAILING WHICH THIS OFFER WILL LAPSE AND WILL NOT BE RENEWED.

15. Every individual appointed to the above post shall, if so required by liable for military service in the Railway Engrs. Units so the RA for appeared of 7 years in the Territorial Army Service and 8 years in the Territorial Army Reserve for such periods as may be laid down in this behalf from time to time.

16. You will have to deposit Rs. 12/- (Rupees twelve only) as are recruitment medical examination fee under Head of allocation Abstract Z to the Chief Cashier/Divl. Cashier, South Eastern Railway before sending you for medical examination. You will also have to bring two copy of your passport size photographs for the said purpose.

17. The attestation & Character certificate forms should be returned duly filled in & signed.

18. You will have to bring all your original mark sheets and certificates for verification.

DY. CHIEF PERSONNEL OFFICER

I accept the offer on the terms detailed above.

Dated: 18.4.94

SIGNATURE OF THE CANDIDATE

[Signature]

Admittedly, the applicant had agreed to the terms and conditions in his offer letter consequent to which his final appointment was issued to him on 2.5.94. Para 8 of the said offer letter stated as follows:-

"8. You must be prepared to go on transfer to any station on the South Eastern Railway System."

Hence, clearly the applicant was liable to be transferred within the jurisdiction of the S.E. Railway system. Hence, his plea that he could not be transferred from an ICSE/ISC school to a school under Madhyamik Board does not hold good as his appointment was not in a specific Board of Education but within the S.E. Railway system and does not support the ground that the transfer was contrary to his appointment.

(b) The offer of appointment clearly stated that the nature of appointment was Craft-cum-Music Teacher and his final appointment letter also designates him as a Music-cum-Craft Teacher. Admittedly, the applicant had not objected to such designation during the time of accepting the offer of appointment or his final appointment.

Ld. Counsel for the applicant would vociferously point to Annexure R-1 of his rejoinder dated 17.2.1991 wherein the notification for the post of Craft-cum-Music Teacher has been enclosed along with requisite qualifications and would say that given that as the requisite qualifications related only to specialisation in Classical Music, the question of his training/teaching craft to students does not arise. The applicant claims that he was primarily qualified as a Music Teacher by virtue of his training and academic experience. It is interesting to note, however, that in Para 4.6 of the Original Application, in his pleadings, the applicant has admitted that he was teaching crafts and miscellaneous subjects in the Boys Higher Secondary School, Kharagpur prior to his transfer to Santragachi.

According to the respondents, the applicant had obtained promotion in Level-8 of 7th Central Pay Commission on the basis of ACRs wherein he himself had noted that he has conducted classes of Craft, Arts and Socially Useful

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Productive work for Class-IX and X. Hence, as the applicant has self-proclaimed his skills in imparting training in Craft in order to establish his claims for his assessment, he cannot turn back and claim that the skill of imparting training in Crafts to young students is beyond his knowledge and control. The headmaster of Mixed Higher Secondary School (English Medium), Santragachi, while trying to justify the creation of Music Teacher in his school vide his letter dated 24.7.1999 (Annexure A-3 to the O.A.) had also stated that the applicant had taught craft in lower classes. Therefore, the claim made by the applicant that he cannot be transferred to a school where Music is not a taught subject is contrary to his earlier assignment as a Craft Teacher.

(c) In the same letter, it has been stated that SUPW, Craft, Music, Physical Education, Computer Science are ~~six optional~~ compulsory subjects implying therefore, that the students can opt for any one of these optional subjects and it is not mandatory for all students to opt for Music. This has also been further corroborated by official respondents in Annexure R-1 to their reply wherein it is shown that while no students have been pursuing Music as a subject for ICSE/ISC, 2017; nearly 300 students, on the other hand, have preferred Art and Craft as their optional subject. It is therefore undisputed that there is reasonable demand for Craft vis-à-vis Music for which, reportedly, there are no optees. Hence, the applicant's apprehension that his transfer will jeopardize the career of students of MHSS, Santragachi is not corroborated by students' inclination to opt out of Music.

It is also noted that with reference to an earlier appeal submitted by the applicant that the respondent authorities had once recommended (Annexure A-4 to O.A.) that it would be appropriate if he is posted to a Girls School preferably at the same station, namely, Kharagpur. On the other hand, when the applicant had actually been transferred to Kharagpur, being aggrieved, he has filed this Original Application.

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(d) It is seen that the applicant had twice been transferred at his own request, first, in 1997 from Chakradharpur Division to Kharagpur Division and next, in 2000 to Santragachi. Hence, the applicant is perfectly aware that the respondent authorities had accommodated him on his own request, and no whiff of "malafide" was alleged by him in such transfers. It is only when, however, respondent No. 7 was accommodated at his own request, that the applicant has red flagged malafide clarifying nowhere with conviction as to the distinction between the Respondent's bona fide actions in transferring him at his own request vis-a-vis malafide accommodation of the respondent no. 7 on similar grounds. Hence, the issue that remains unanswered by the applicant is how the Respondents' motives guiding his transfers (at own request) are apparently as pure as the driven snow whereas similar considerations shown to another teacher are allegedly ^{law} bête noire.

(e) The applicant admittedly had also been posted earlier at Boys' Higher Secondary School, Kharagpur against an existing vacancy for Craft-cum-Music Teacher. Although not specifically averred by him that he was engaged in teaching music in the said school, there is a reference of the respondent authorities stating that he was teaching both Craft and Music subjects in the school at Kharagpur. The applicant had not averred that he had objected to his assignment as a Craft Teacher while he was posted at Boys Higher Secondary School, Kharagpur. His insistence on being posted solely on the basis of his musical expertise was however, at the point of his transfer out of MHSS, Santragachi.

Ld. Counsel for the applicant states at the bar that the applicant is ready to move anywhere as a Music Teacher and his only objection is to teaching craft, an averment that is taken on record.

(f) The official respondents as well as Respondent No. 7 have both referred to the School Improvement Programme (25th Point Programme) wherein point 16 limits tenure of teachers in a particular school to 5 years. The applicant,

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admittedly having spent 15 years in Santragachi MHSS, is scheduled rightfully for transfer as per such programme.

(g) Ld. Counsel for the applicant has cited AIR 2010 SC 2794 (**East Coast Railway & anr. v. Mahadev Appa Rao & ors.**) in his support. The Hon'ble Court had observed therein as follows:-

"13. It is evident from the above that while no candidate acquires an indefeasible right to a post merely because he has appeared in the examination or even found a place in the select list, yet the State does not enjoy an unqualified prerogative to refuse an appointment in an arbitrary fashion or to disregard the merit of the candidates as reflected by the merit list prepared at the end of the selection process. The validity of the State's decision not to make an appointment is thus a matter which is not beyond judicial review before a competent Writ Court. If any such decision is indeed found to be arbitrary, appropriate directions can be issued in the matter."

In this instant matter, the Respondents have not disregarded his merit/competence in classical music. The respondents had to pragmatically decide to move him to a school where he could be put to use given his earlier background and admissions in training students in craft and because no student opted for Music.

In para 19 the Hon'ble Court has stated as under:

"19. Dealing with the principle governing exercise of official power Prof. De Smith, Woolf & Jowell in their celebrated book on "Judicial Review of Administrative Action" emphasized how the decision-maker invested with the wide discretion is expected to exercise that discretion in accordance with the general principles governing exercise of power in a constitutional democracy unless of course the statute under which such power is exercisable indicates otherwise. One of the most fundamental principles of rule of law recognized in all democratic systems is that the power vested in any competent authority shall not be exercised arbitrarily and that the power is exercised that it does not lead to any unfair discrimination. The following passage from the above is in this regard apposite:

"We have seen in a number of situations how the scope of an official power cannot be interpreted in isolation from general principles governing the exercise of power in a constitutional democracy. The courts presume that these principles apply to the exercise of all powers and that even where the decision-maker is invested with wide discretion, that discretion is to be exercised in accordance with those principles unless Parliament clearly indicates otherwise. One such principle, the rule of law, contains within it a number of requirements such as the right of the individual to access to the law and that power should not be arbitrarily exercised. The rule of law above all rests upon the principle of legal certainty, which will be considered here, along with principle which is partly but not wholly contained within the rule of law, namely, the principle of equality, or equal treatment without unfair discrimination."

As the applicant has availed of grounds in his own interest to secure preferred transfers on two occasions, he cannot allege discrimination against Respondent No. 7 who has been moved on similar ground.

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8. It has been held in *Union of India v. S.L. Abbas, (1993) II LLJ 626* and more particularly in *N.K. Singh v. Union of India, (1995) I LLH 854* that if the decision to transfer is vitiated by mala fides or infraction of any professed norm or principle governing the transfer as contained in the respondents' transfer policy, this matter calls for intervention in judicial review.

Following the above ratio, the only grounds on which the said transfer order could have been vitiated is if the policy guidelines have been challenged. We do not find any overt challenge to the policy guidelines apart from a fleeting reference to be accommodated in the same station as his spouse. This ground, however, was not pressed during the oral arguments during hearing. Clearly, malafide has not been established as because the applicant himself had taken advantage of being accommodated at his own request, he cannot turn around and allege malafide when another teacher is being accommodated on similar grounds.

Accordingly, we do not think that the transfer order, so impugned, calls for intervention by the Tribunal.

9. We would, hence, direct the applicant to join his transferred place of posting and thereafter prefer a representation to the respondents to post him to any school within the S.E. Railway system where Music is a preferred subject by the students and the respondents thereafter would try to accommodate him in such school if at all there are optees for Music and as far as possible and in proximity to a station with respect to the posting of his spouse.

With these directions, the O.A. is disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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