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CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCHM.A. No. 350/00745/2017 in  
O.A. No. 350/01643/2016Date of Order: 4<sup>th</sup> September  
2018Present: Hon'ble Mrs. Manjula Das, Judicial Member  
Hon'ble Dr. Nandita Chatterjee, Administrative MemberTapas Kumar Sarkar  
Son of Late D.L. Sarkar  
Aged about 55 years  
Residing at Radhanagar Road  
(Near Bōmbhola Kali Mandir), P.O. R.N. Road  
District – Burdwan, Pin – 713325.

...Misc. Applicant

-Versus-

1. Union of India  
Service through the General Manager  
Eastern Railway, 17, N.S. Road, Fairlie Place  
Kolkata – 700001.
2. The FA & CAO (W&T), Fairlee Place  
17, N.S. Road, Kolkata – 700001.
3. The Deputy Chief Accounts Officer  
(Traffic Accounts), 14, Strand Road  
Kolkata – 700001.

...Respondents

For the Applicants : Mr. A.K. Gayen &amp; Ms. J. Pal

For the Respondents : Mr. B.L. Gangopadhyay &amp; Mr. M.K. Das

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ORDER

Per Mrs. Manjula Das, Judicial Member:

Being aggrieved with the transfer order dated 07.10.2016, whereby the Misc. Applicant/Applicant has been sought to be transferred from ASN-D to Sr. DFM/MEDT, has approached this Tribunal by filing the instant application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- "11a) Direction be made upon the respondents more particularly the respondent no. 3 not to give effect and/or further effect of the transfer order dated 07.10.2016 forthwith and dispose of the original application on merit at an earliest till such time the impugned transfer order dated 07.10.2016 be stayed;
- b) Direction be made upon the respondents more particularly the respondent no. 3 to cancel, rescind and withdraw the order dated 04.08.2017 forthwith without any further delay."

2. Mr. A.K. Gayen, learned counsel appeared along with Ms. J. Pal learned counsel for the Misc. Applicant/Applicant and Mr. B.L. Gangopadhyay, learned counsel appeared along with Mr. M.K. Das, learned counsel for the respondents.

3. We have seen from the Registry Note that pleadings have been completed on 20.02.2017 and while the matter was listed on 24.02.2017, this Tribunal passed the following order:

"Ld. Counsel for the applicant by drew our attention to the order of Hon'ble High Court dated 24.1.17 passed in WPCT 289/16 in which the Hon'ble High Court has already directed this Tribunal to consider whether interim relief should be

granted to the petitioner on completion of pleadings on 21.2.2017.

However, the matter was not listed on 21.2.2017 and it has come under heading 'for orders' today i.e. 24.2.2017. In the meantime the pleadings are already completed and therefore in obedience to the order passed by the Hon'ble High Court at Calcutta list this matter for final hearing and disposal on the top of the list on 6.3.2017."

4. The matter was listed on 06.06.2017 where this Tribunal heard the matter. Thereafter, the case was listed on 11.07.2017, 09.08.2017. As there were no Division Bench available, the matter could not be proceeded with for final disposal.

5. The Misc. Applicant/Applicant has filed the instant Misc. Application with a prayer for a direction upon the respondent N. 3 not to give effect and/or further effect of the transfer order dated 07.10.2016 forthwith and dispose of the O.A. on merit and further to cancel, rescind and withdraw the order dated 04.08.2017. Thereafter, the matter was listed before this Tribunal on 09.10.2017 where the Single Bench passed an order as under:-

"Pleadings are complete. List this matter for hearing on 10.11.2017. However, as the Ld. Counsel for the applicant has filed an M.A., on the prayer made by Mr. B.L. Gangopadhyay, Ld. Counsel for the respondents 2 weeks time is allowed to the respondents to file reply to the M.A. No. 745 of 2017. List M.A. No. 745 of 2017 on 10.11.2017 for consideration of the interim prayer.


I make it clear that if the applicant has been allowed to work in the meantime and if he is otherwise eligible, then the respondents may take necessary steps for releasing the salary of the applicant."



6. The O.A. along with the instant M.A. was thereafter listed several occasions, that is, on 31.01.2018, 23.02.2018 and 09.03.2018. On 09.03.2018, matter was heard on 09.03.2018 on interim prayer.

7. Mr. A.K. Gayen, learned counsel for the applicant submitted that the impugned transfer order dated 07.10.2016 cannot be sustained in the eye of law as the same has been issued violative of Sl. Circular No. 120 of 1997 dated 11.11.1997 issued by the Ministry of Railways as well as violation of the order of the Hon'ble Supreme Court dated 31.10.2013 and also the specific Rule of Railway being Sl. No. 57 of 2014 dated 19.06.2014. According to the learned counsel, the said transfer order dated 07.10.2016 was also challenged by the applicant vide O.A. No. 350/01643/2016. According to the learned counsel, the Placement Committee's order is not according to Rule of the Railway Administration and there is irregularity and illegality. Hence the impugned transfer order dated 07.10.2016 shall not be sustained.

8. Learned counsel further submitted that as per Railway Board's Circular No. 120/97 dated 11.11.1997, it has been decided that while husband and wife both are Govt. servants either of Central or State, posting of husband/wife be posted at the same station. Further instructions were made to prepare a separate register at each Divisional and Zonal Headquarters of the Railways for registering requests for transfers from Railway servants for posting at the place of posting of their spouses, which may be received from time to time. According to the learned counsel, the concerned Railway authorities forcefully, vindictively with a malafide intention once again transferred the applicant on



06.09.2016 to the Sahebgaunj and directed to report to Superintendent/S.I. Section/Traffic Accounts/E.Rly./Headquarters. Immediately, the applicant made representation before the authority on 07.09.2016 stating that due to unavoidable circumstances as his wife was a 'Phychiatric' patient and was under the treatment, thus requested that he may be transferred to any district of Asansol or any district of Durgapur so that he may look after his wife day to-day. Said appeal was duly received by the respondent authority and the authority thereafter, cancelled the earlier transfer order dated 06.09.2016 and on the very same date i.e. 07.10.2016, by issuing another transfer order, sought to transfer the applicant from Asansol to Malda under Sr. DFM/Malda.

9. Learned counsel contended that no such reason has been shown for transferring the applicant to Malda as well as for not transferring to his choice place as per request made on 07.09.2016 by his representation which according to learned counsel is whimsical, unconstitutional and forceful.

10. On the other hand, Mr. B.L. Gangopadhyay, learned counsel appearing for the respondents, by filing reply to the Misc. Application submitted that the applicant is working as Sr. TIA which is a sensitive post in which an employee can be retained in a particular station for four years. But the applicant is working for more than 12 years at Asansol. Hence, transfer is long due and as such, as per recommendation of the Placement Committee he has been transferred at Malda under Sr. DFM/E. Rly./Malda with the approval of FA & CAO/E.Rly. The applicant has not yet reported to Malda and is going on



submitting one after another Private Medical Certificate mentioning different ailments but simultaneously submitting application to consider his transfer in and around of Asansol mentioning his family problems. Hence, the administration is not in a position to consider his case for submitting different pleas. Hence, it cannot be said that the transfer order is made without cogent reason.

11. Further submitted that the Railway Board issued directives under RBE No. 39/2010 where only the academic session of the children are to be considered while issuing the periodical transfer order of the staff holding the sensitive post. Hence, the question of posting husband and wife at the same station does not arise at all.

12. Having heard the learned counsel on both sides, perusal of the pleadings and material placed on record, it is noted that the matter was listed on several occasions and no interim order was granted. Thereafter the applicant approached the Hon'ble High Court at Calcutta by filing a Writ Petition i.e. W.P.C.T. No. 289 of 2016 which was disposed of on 24.01.2017 with some directions. Relevant Paras of 4 & 5 are being reproduced below:-

"4. The petition has been preferred against the order dated 16<sup>th</sup> November, 2016 by which the Tribunal has refused to grant interim order. While doing so, the Tribunal has noted that there were no pleadings from the respondents and, therefore, it was not able to consider the claim of the petitioner.

The petitioner is aggrieved by an order transferring him from Asansol to Malda Town. He has various grounds on which he contends that the order of transfer would be prejudicial to him and detrimental to his family life.



Mr. Das, the learned counsel appearing for the Railways, submits that he may be permitted to file the reply to the Original Application. Accordingly, reply be filed within two weeks from today and rejoinder, if any, be filed within one week thereafter before the learned Tribunal. We have been informed that the matter has now been listed on 21<sup>st</sup> February, 2017 before the learned Tribunal.

The learned Tribunal will consider whether interim relief should be granted to the petitioner on the completion of pleadings on 21<sup>st</sup> February, 2017.

5. Although direction was given by the Hon'ble High Court to this Tribunal to consider the prayer of interim relief on completion of pleadings on 21.02.2017, somehow or the other the matter could not be heard on 21.02.2017 by the Tribunal and it was listed under the heading 'for orders' on 24.02.2017 on which date the matter was fixed for final hearing and disposal on the top of the list on 06.03.2017. Thus the matter could be heard by this Tribunal on the question of interim relief on 06.03.2017."

13. Thereafter, this matter was heard by this Tribunal on 28.03.2017 and after hearing on interim prayer, this Tribunal passed order as follows:-

10. In the instant case, the applicant has not availed of the opportunity given to the railway employee under the guidelines given in the aforementioned para 5(iv). Moreover, the applicant has completed 12 years of service at Asansol.

11. Considering the aforesaid Therefore, we are not inclined to grant any interim order at this stage. However, if the applicant is rendering service and he has leave in his credit, he may be granted leave, if he prays for and if any salary is withheld the same may be released as per rules. "

14. The applicant by filing the present Misc. Application arising out of O.A. No. 350/01643/2016 has approached this Tribunal for interim order by stating that while the applicant was under sick and during sickness, the post of Sr. TIA/ASN-D, Asansol which was held by him, had been filled up by the authority by



adjusting another incumbent vide order dated 04.08.2017 which is in mystery and not fair play of the respondent authority.

15. The learned counsel for the applicant further submitted that as per the Railway Rule, if an employee is in sick condition and on leave, said post shall not be filled up by transferring another employee. Learned counsel vociferously argued that it is well settled principles of law that being the Railway Authority is the public functionary, all actions must be guided by reasons and not by whims or personal predilections.

16. It is noted that after passing of the order by the Hon'ble High Court at Calcutta on 24.01.2017 in W.P.C.T. No. 289 of 2016, this Tribunal dealt with the matter on 28.03.2017 and rejected the prayer for interim relief as here under:-

"Considering the aforesaid Therefore, we are not inclined to grant any interim order at this stage. However, if the applicant is rendering service and he has leave in his credit, he may be granted leave, if he prays for and if any salary is withheld the same may be released as per rules."

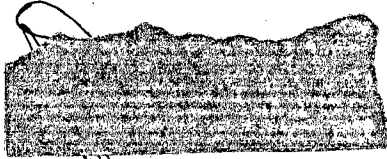
17. In the O.A. No. 350/01643/2016 also, similar relief has been sought by the applicant by narrating same grounds. Transfer is an incidence of service and the department is the best suited authority who should be posted where. As the interim order has already been rejected by this Tribunal in a detailed order on 28.03.2017, hence we do not find any logic to entertain the present Misc. Application for passing any interim order. The issue of illegality or irregularity or any malafide in issuing the transfer order have to be dealt in detailed argument.





Hence we are not inclined to pass any interim order at this stage. Accordingly, M.A. stands dismissed. The O.A. be posted accordingly as per date given earlier.

(DR. NANDITA CHATTERJEE)  
MEMBER (A)



(MANJULA DAS)  
MEMBER (J)

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