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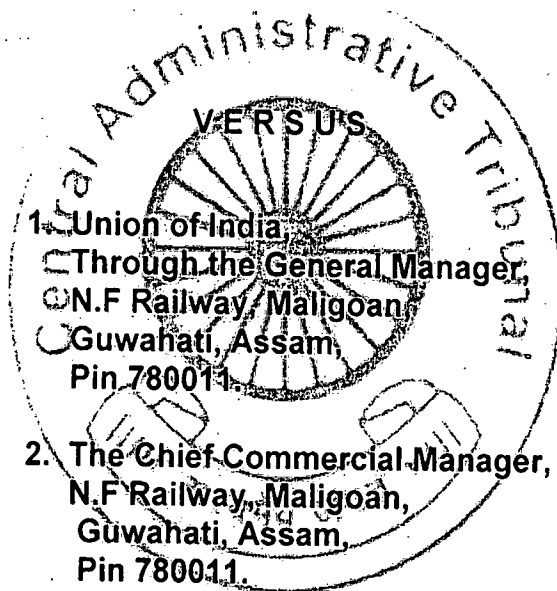
No. O.A. 827 of 2016  
M.A. 202 of 2018

Date of order: 5/9/2018

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

Debasish Karjee,  
Son of Late Jagadindra Nath Karjee,  
Aged about 50 years,  
Working as a Chief Commercial Inspector/TC/NJP,  
Under Senior DCM/KIR at NJP, Katihar Division,  
N.F Railway, residing at Surya Sen Apartment,  
Surya Sen Colony, within Ward No. 34 of  
Siliguri Municipal Corporation,  
Post Office & Police Station – Bhaktinagar,  
District – Jalpaiguri, Pin – 734007.

--Applicant



1. Union of India,  
Through the General Manager,  
N.F Railway, Maligoan,  
Guwahati, Assam,  
Pin 780011.
2. The Chief Commercial Manager,  
N.F Railway, Maligoan,  
Guwahati, Assam,  
Pin 780011.
3. The Divisional Railway Manager,  
North East Frontier Railway,  
Katihar Division, Bihar,  
Pin 854105.
4. The Divisional Railway Manager (P)  
North East Frontier Railway,  
Katihar Division,  
Bihar,  
Pin 854105.
5. The Senior Divisional Commercial Manager,  
Katihar Division, N.F Railway,  
Bihar, Pin 854105.
6. Assistant Personnel Officer/T,  
North East Frontier Railway,  
Maligoan, Guwahati, Assam,  
Pin 780011.

hsl

-Respondents.

For the Applicant : Mr. B. Chatterjee, Counsel

For the Respondents : Mr. L.K. Chatterjee, Counsel  
Ms. Gargi Roy, Counsel

ORDER

PER DR. NANDITA CHATTERJEE, ADMINISTRATIVE MEMBER:

Aggrieved with the transfer order dated 31.5.2016 issued by the respondent authorities, the applicant has sought the following relief in the instant Original Application under Section 19 of the Administrative Tribunal Act, 1985:-

- "(a) An order do issue quashing/setting aside the impugned Transfer Order No. 22/2016 dated 31.05.2016 issued by APO/T for General Manager, N.E. Railway being Annexure "A-2".
- (b) An order do issue quashing and/or set aside release order if any is/be issued by the respondent authority against your Applicant;
- (c) Any orders do issue directing the official respondent authority to allow your Applicant to continue in his duty at NJP, under Katihar Division of N.E. Railway as a Chief Commercial Inspector/TC/NJP, with immediate effect alongwith all consequential benefits;
- (d) An order directing the official respondents to produce the file/noting in connection with the transfer of the Applicant and all other relevant documents with an inspection to the Learned Counsel for the Applicant;
- (e) Any other or further order or orders or direction as to Your Lordships may deem fit and proper."

2. Heard both Ld. Counsel, examined pleadings and documents on record.

3. The case of the applicant, in brief, as advocated by this Ld. Counsel is that the applicant was appointed as a Commercial Clerk with the respondent authorities and that he was promoted as a Chief Commercial Inspector / TC/NJP on 8.8.2014.

That, on 11.6.2015, an office order was issued by the respondent authorities transferring the applicant from NJP under Katihar Division, to Lumding

*And*

Division of N.F. Railway and the controlling officer of Katihar Division in consonance with the said order dated 11.6.2015, transferred the applicant accordingly on 15.6.2015. That, the applicant having approached this Tribunal against the said order in O.A. No. 987 of 2015, the Tribunal quashed the transfer order dated 15.6.2015 and the applicant thereafter resumed the duties at NJP. That, the applicant, however, was forcefully taken to Katihar and has been compelled to work as CCMI/Ticket Checking/Katihar.

That, on 18.2.2016, the concerned officials had requested the competent authority to post the applicant at NJP station in Katihar Division followed by request letters of his wife dated 4.4.2016 and 19.4.2016 respectively. The respondent authorities, however, transferred him from NJP of Katihar Division to Alipurduar Division vide transfer order dated 31.5.2016 and hence, being aggrieved by the orders of the respondent authorities, the applicant has approached the Tribunal with the Instant Original Application.

The applicant has advanced the following grounds, inter alia, in support of his claim:-

- (i) That, the Railway Board's circular dated 10.6.2014 on the subject of constitution of a Placement Committee has been violated;
- (ii) That, the said transfer order was not in public interest;
- (iii) That, as per para 9.5 of the Master Circular No. 24 of the respondent authorities, his rights, as he belonged to Scheduled Caste category, had to be safeguarded.

4. The respondents, per contra, in their counter affidavit as well as in their oral arguments have argued that the applicant, who was initially appointed to the post of Commercial Clerk controlled by Divisional Railway authorities of Alipurduar Division in 1994, had been promoted to the post of Ticket Collector at New Coochbehar and thereafter as Commercial Inspector (CMI) which is a post of Zonal Headquarters and accommodated at Katihar Division with posting at

*hnh*

New Jalpaiguri base from the year 2005 and even after being promoted as Chief Commercial Inspector consequent upon restructuring, the applicant was adjusted at the same station i.e. New Jalpaiguri upto 2015 although the post of CMI/CCMI is designated by the Railway Board as a sensitive post and incumbents are to be transferred after every 4 years.

That, thereafter, under the guidelines of Railway Board as well as the Vigilance Organization, he was transferred to Lumding Division vide order dated 11.6.2015 which, however, was quashed by the Central Administrative Tribunal as the formation of Placement Committee consequent to which such recommendations of transfer could be made was pending at the level of the respondents.

That, thereafter, having received representations from the Hon'ble MPs and recognized Unions, the applicant was thereafter posted in the West Bengal Government jurisdiction of Katihar Division. His wife, however, represented for posting her husband i.e. the applicant, at New Jalpaiguri. The applicant also obtained an interim relief from the Tribunal vide which it was directed that the applicant should not be released from New Jalpaiguri till further orders.

That, on account of administrative reasons, the applicant was transferred vide an order dated 31.5.2016 after following all the procedures in terms of Hon'ble Apex Court's judgment in WP (C) No. 82 of 2011.

That, the wife of the applicant is working as an Assistant Teacher in New Cooch Behar, which falls under the jurisdiction & administrative control of Alipurduar Division of N.F. Railway and that the transfer has been ordered with recommendations of the transfer placement committee and the recommendations of Zonal Vigilance Organisation orders dated 27.5.2016.

*Handwritten signature*

**ISSUE**

5. The sole point of determination in the Original Application is whether respondents had violated transfer policies in issuing the transfer order dated 31.5.2016 as impugned in the instant Original Application.

**FINDINGS**

6.(a) The first ground that has been advanced by the applicant, in his support, is that the Railway Board's circular dated 10.6.2014 on constitution of Placement Committee (A-9 to the O.A.), has been flouted.

The relevant extracts of the circular is quoted below:-

“  
GOVERNMENT OF INDIA  
MINISTRY OF RAILWAYS  
(RAILWAY BOARD)  
No. E(O)III/2014/Pl-03 Dated: 10.6.2014  
General Managers  
All Indian Railways/Production Units  
(As per Standard List)  
Sub: Implementation of Supreme Court's judgment dated  
31.10.2013, in WP (C) 82/2011 - Postings/Transfers in  
Railways.

1. The Hon'ble Supreme Court in its judgment dated 31.10.2013 in Writ Petition (C) 82/2011 interalia directed that:

“There should be a Committee to be constituted at appropriate levels to decide postings and transfers of all Group 'A', 'B' and 'C' officials even if within the same zone. The postings/transfer to be regulated by transparent policies with assured minimum tenure. Policy provision may, therefore, be framed.”

2. Board has, therefore, decided that there should be Placement Committee to recommend transfer/postings of all Railway servants as per Hon'ble Supreme Courts' decisions.

XXXXXXXXXXXXXXXXXX

-sd/-  
(N. Soman)  
Joint Secretary (Gaz.)

*[Signature]*

Railway Board  
Rly. 43339  
DOT & FAX (23382765)"

The proceeding of the Placement Committee meeting which had recommended the transfer of the applicant as furnished by the respondents (Annexure 'R-1' to the reply) is reproduced below:-

"Proceedings of the Placement Committee Meeting regarding posting of CMI in PB-2 with GP Rs. 4600/- on administrative ground

Railway Board vides their letter No. E(O)/III/2014/PL/03 dated 10.6.2014 circulated vide GM (P)/MLG circular No. MISC 1860 dated 10.7.2014 has decided that there should be a Placement Committee to recommend transfer/posting of all Railway servants as per Hon'ble

Supreme Court judgment dated 31.10.2013 in WP (C) 82/2011. Accordingly, a placement committee has been constituted vide GM (P) letter under reference.

Further, as per Board's letter dated 29.8.2014 the above instruction is also applicable for transfers ordered by vigilance etc.

In this case, the committee has examined the issue of transfer of Sri Debasish Karjee, CCMI in scale PB-2 with GP Rs. 4600/- on administrative Ground as per recommendation of Vigilance organization out of NJP and the recommendation of the committee is as under:-

(a) The Existing Vacancy in the category of CMI in scale G.P. Rs. 4600/- in N.F. Railway is as under:-

SN	Office	GP	Sanction	On Roll	Vacancy
1	CCM/FM/MLG	4600	33	31	2
2	CCM/PM/MLF	4600	8	8	0
3	Sr. DCM/KIR	4600	10	9	1
4	Sr. DCM/APDJ	4600	08	8	0
5	Sr. DCM/RNY	4600	06	6	0
6	Sr. DCM/LMG	4600	11	9	2
7	DCM/IC/TSK	4600	5	5	0
TOTAL			81	76	5

(b) Considering the above, the following posting / transfer is proposed:

SN	Name in full	Design	Transferred & Posted under
1	Sri Debasish Karjee	CCMI/TC/NJP	Transfer and posted at APDJ Division along with post.

-sd/-  
Dy. CCM/PM

-sd/-  
Dy. DE/G

-sd/-  
Dy. CPO/HQ

Remarks: approved."

*Gan*

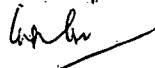
It is apparent from the above proceedings that the Placement Committee did recommend the transfer of the applicant to Alipurduar Division along with the post.

Hence, as the Placement Committee had recommended the transfer it is not established that the Railway Board's circular at Annexure A-9 to the O.A. has been violated in the context of the applicant.

This Tribunal, while hearing this matter on an earlier occasion, had directed the respondents on 30.7.2018 to ascertain whether the applicant could be posted within the same Division upon his rotational transfer. The respondents have furnished before us a time table No. 90 wherefrom it is seen that Alipurduar is included within West Bengal jurisdiction. The respondents have also averred that the applicant's wife is an Assistant Teacher under the District Primary School Council at New Coochbehar, which falls within the jurisdiction and administrative control of Alipurduar Division and, hence, the applicant's posting in Alipurduar Division does not adversely affect his domestic interests.

(ii) The respondents, in response to the averment/reference that employees belonging to SC/ST community may be transferred and posted as far as possible nearer to the home town or at a place where the administration could provide them quarters subject to the eligibility (reference: Master Circular 24 para 9.5), has clarified that the applicant has actually been placed nearer to his home station and working place of his wife at New Coochbehar.

(iii) Regarding the claim of the applicant that such orders were not issued in public interest, the respondents have produced before us an order dated 17.11.2009 wherefrom it is seen that, earlier, the applicant had been punished with the penalty of reduction to a lower stage and time scale of pay for a period of one year with cumulative effect on grounds for violation of Service Conduct Rules 3.1(ii) & (iii) of 1966. Further, given that the applicant is holding a sensitive post, his transfer had been recommended in public interest.



Accordingly, we are unable to comprehend as to how the applicant has been prejudiced by the transfer order dated 31.5.2016, which actually placed him in a Division wherein his wife was working as a Primary School Teacher and which is within the State of West Bengal.

7. Accordingly, in our considered view, the transfer policy guidelines have not been violated while issuing the transfer order dated 31.5.2016.

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 is vitiated by mala fides or infraction of any professed norm or principle governing the transfer as contained in the respondents' transfer policy, transfers call for intervention in judicial review. In this case, we do not find that any malafide has been proved by the applicant against the respondent authorities. The applicant has not challenged the transfer order on the ground that it was issued by an incompetent authority and as the said orders have not been issued in violation of any procedure or statutory rules or provisions, in our considered opinion judicial review is not invoked and accordingly, we do not find it necessary to intervene in the context of transfer order dated 31.5.2016 with respect to the applicant. The Original Application is hence dismissed on merit.

8. M.A. bearing No. 202 /2018 praying for vacation of interim order issued on 23.6.2016, also stands disposed of accordingly.

  
(Nandita Chatterjee)  
Administrative Member

  
(Bidisha Banerjee)  
Judicial Member

SP