

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH  
KOLKATA

Transfer

OA No.350/00829/2014

Date of hearing : 30.11.2016

Dated of order : 9.12.2016

Present:

THE HON'BLE MR. JUSTICE V.C.GUPTA, JUDICIAL MEMBER  
THE HON'BLE MS. JAYA DAS GUPTA, ADMINISTRATIVE MEMBER

.....

RAJESH KUMAR SHARMA, son of Late Shibji Mistry, aged about 38 years, working as a Senior Commercial Clerk under SM ( G), New Jalpaiguri, Katihar Division, N.F.Railway, residing at Railway Quarter No. 340/A, Mahananda Colony, Siliguri, PO & PS Pradhan Nagar, District-Darjeeling, Pin-734003.

.....Applicant

## VERSUS

1. UNION OF INDIA, through the General Manager, N.F.Railway, Maligoan, Guwashati, Assam, Pin-780011.
2. The Chief Commercial Manager, N.F.Railway, Maligoan, Guwahati, Assam, Pin-780011.
3. The Divisional Railway Manager (P), North East Frontier Railway, Katihar Division, Bihar, Pin-854105.
4. The Senior Divisional Commercial Manager, Katihar Division, N.F.Railway, Bihar, Pin-854105.
5. Assistant Personnel Officer (T), N.F.Railway, Maligaon, Guwahati, Assam, Pin-780011.

.....Respondents

6. Shri Bandhan Oraon, CS/IC/NJP, posted t New Jalpaiguri Railway Station, Department of Coaching, Kaihar Division, New Jalpaiguri, Pin-734004.

..... Proforma Respondents

Counsel for the Applicant :Mr.S.K.Datta  
Mr.JU.Dutt  
Advocate

Counsel for the Respondents :Mr.B.L.Gangopadhyay, Advocate

JW3

## ORDER

MS. JAYA DAS GUPTA, AM:

The Applicant (RAJESH KUMAR SHARMA) has filed this Original Application U/s. 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

(a) An order do issue quashing/setting aside the impugned Transfer Order dated 22.04.2014 being Annexure-A/4 issued by APO/T for GM (P), Maligoan, N.F.Railway;

(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 New Jalpaiguri as a Senior Commercial Clerk NJP/Parcel with immediate effect along with all consequential benefits;

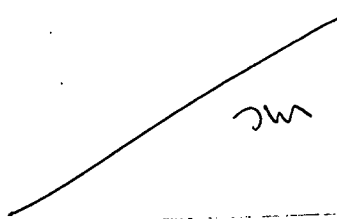
(d) An order directing the official respondents to produce the file/noting in connection with the transfer of the applicant and all other relevant documents with an inspection to the learned counsel for the applicant;

(e) Any other or further order or orders or direction as to Your Lordships may deem fit and proper."

2. It is the case of the Applicant, in a nut shell, that he was posted as Senior Commercial Clerk at New Jalpaiguri Station, N.F.Railway under Senior DCM. He was on LAP leave on 05.02.2014. On the very same day he was going to attend a marriage ceremony along with his other colleague outside NJP Railway premises when a trivial issue arose between the applicant, his colleague Shri Abhinash

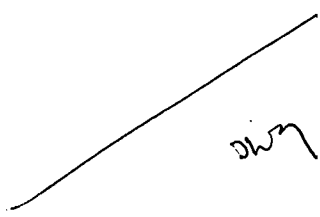
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Kumar and with the CS/IC/NJP who was the Supervising official on duty which resulted to a commotion. Following such incident, the CS/IC/NJP lodged a complaint before the NJP outpost of Bhaktinagar Police Station which was treated as an FIR against the applicant and one of his colleagues and is pending adjudication before the Learned CJM, Jalpaiguri in GR Case No. 603 of 2014. Smt. Vijeta Kumari, the wife of his colleague Shri Abinash Kumar, also lodged a complaint before the NJP, Outpost of Bhaktinagar Police Station for the injury inflicted upon her husband by the CS/IC/NJP. The police treated the said complaint as an FIR against the CS/IC/NJP which is also pending adjudication before the Learned CJM, Jalpaiguri in GR Case No. 606 of 2014. It is the case of the Applicant that in the said GR Case, the applicant and the CS/IC/NJP obtained regular bail from the competent Court of law. Accordingly, both of them are facing trial in accordance with the Criminal jurisprudence. It has been stated that he was surprised when he was placed under suspension vide order dated 28.02.2014 by the competent authority without assigning any reason. The said order of suspension was revoked vide order dated 12.03.2014. It is further alleged that he was shocked to have received a major penalty Memorandum dated 21.03.2014 in respect of the alleged incident which took place on 05.02.2014. Allegedly, following such incident, he was transferred, vide order dated 10.04.2014 from his existing place posting at NJP/Coaching to NJP/Goods which was given effect to from 12.04.2014. Thereafter,



vide order dated 22.4.2014 he was transferred from NJP (within Katihar Division) to Tinsukia Division. It has been stated that Senior Commercial Clerk belongs to the category of Group 'C' staff and are Division controlled posts and not Head Quarters controlled posts. Therefore, the impugned interdivisional transfer is not permissible in law. The order of transfer has emanated from malicious attitude of the respondents. It is his further grievance that being an Office Bearer of N.F.R.OBC Employees Association for the session 2013-2015, in terms of the settled principles of law the office bearer of a Registered Trade Union/Association ought not to have been transferred. Further case of the applicant is that stating so, he had preferred a representation but no action alleged to have been taken on the said representation. Hence, according to the applicant, being aggrieved by such actions, he has filed this OA seeking the aforesaid reliefs.

3. Per contra, it is the contention of the Respondents that disciplinary proceedings were started against the applicant as a fall out of the torture and manhandling to the senior supervisor Shri Oraon, CS-I/NJP while he was on duty on 05.02.2014 which was reported by him to AM/NJP. Accordingly, Shri Oraon lodged an FIR at Police Station on 05.02.2014. . For such incident, Shri Oraon was admitted in Railway Hospital on 05.02.2014 and was discharged on 07.02.2014. It has been reported at the Bar that the Disciplinary

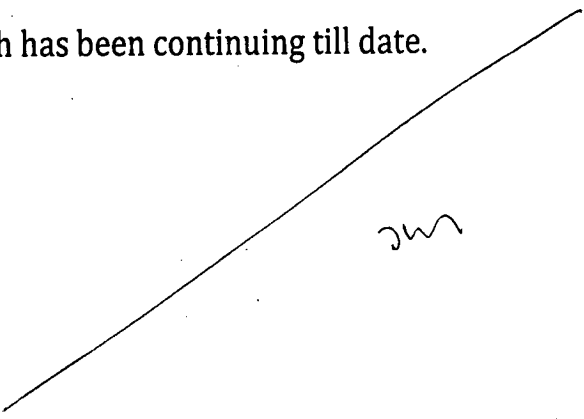


Proceedings instituted against the applicant for such incident has been concluded. Further contention of the Respondents is that the authority has all power for inter divisional transfer from Katihar Division to Tinsukia Division and, therefore, there was no illegality in issuing such impugned order of inter divisional transfer. Besides, it has been stated that the transfer of the applicant was necessitated in administrative exigency and, therefore, this OA lacks merit and is liable to be dismissed. In order to strengthen their stand that the Tribunal should not interfere with a transfer order which is made in public interest and administrative exigency, they have also placed reliance on the decisions of the Hon'ble Apex Court in the following cases:

- (i) **Silpi Bose V State of Bihar**, AIR 1991 SC 532;
- (ii) **Prabir Banerjee V Union of India and Others**,  
(2008) 1 SCC (L&S) 917;
- (iii) **Government of AP V Venkataratnam**, (2008)  
2 SCC (L&S) 900.

4. Heard both. Consulted the records.

5. We find that vide order dated 31.07.2014, the Single Member directed to maintain status quo on the posting of the applicant which has been continuing till date.



6. Before proceeding to deal with the contentions of the applicant, it is worthwhile to mention the order impugned in this OA which is extracted hereunder for ready reference:

Annexure-A/4

N.F.Railway  
OFFICE ORDER

- 1) Xxxxx
- 2) Shri Sri Rajesh Kumar Sharma, Sr. CC under Sr. DCM/KIR is hereby transferred in his existing pay and scale **along with the post** and posted under DCM/TSK on **administrative interest** with immediate effect.

This issues with the approval of CCM/MLG in GM/O's file No. C/SS/VIG/SPE/DAR/84.

Sd/-

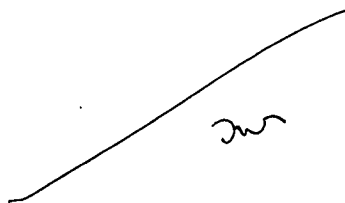
APO/T

For General Manager (P)/MLG  
Maligaon, dated 22.04.2014

(emphasis supplied)

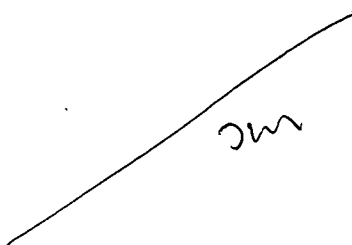
7. The main contentions of the applicant against the impugned order is that it has emerged due to malice; the authority does not have any right to make inter divisional transfer of the employees belong Group C category and he being an office bearer of a registered Union 2013-2015 he ought to have been transferred. Also no action has been taken against Shri Oraon but he has been transferred.

8. On the question of malice, it is the case of the applicant that based on the FIR lodged by the CS/IC/NJP, disciplinary proceedings were initiated against him but no action was taken



against the CS/IC/NHP based on the FIR lodged by the wife of his colleague i.e. Shri Abhinash Kumar on the incident occurred on 5.2.2014. Both the GR cases instituted are still pending for adjudication. As such, the impugned order transferring him to other Division is nothing but is the outcome of the malice. It has also been alleged that due to his transfer he will be deprived of pursuing the criminal case pending against him.

9. We find nothing wrong in taking disciplinary action against the applicant for the alleged grave misconduct of manhandling a supervisory official. However the disciplinary proceedings initiated against the applicant, as reported at the bar. Further it is noted that the transfer order has been passed by the General Manager, in administrative interest. The plea of the applicant that because of his transfer he will unable to attend his Criminal case cannot be accepted as he is always free to take leave, wherever, he is, to attend in Criminal Case, whenever, it is necessitated. In such circumstances, the plea of malice attributed by the applicant is not acceptable. Hence, we find no force on the stand of the applicant that the transfer is tainted with malice being not supported with any evidence. The issue of "malus animus" was considered in **Tara Chand Khatri vs Municipal Corporation Of Delhi**, AIR 1977 SC 567, 1977, wherein the Hon'ble Supreme Court has held that the Court would be justified in refusing to carry on investigation into the



allegation of malice, if necessary particulars of the charge making out a prima facie case are not given in the petition and burden of establishing malice has heavily on the person who alleges it and **there must be sufficient material to establish *malus animus***. In this case except frivolous allegation no material has been placed to establish such allegation with supporting documents.

10. So far as his allegation that interdivisional transfer cannot be resorted to in his case, the Respondents have stated in paragraph 24 of their reply that the applicant has been transferred to Lumding **along with his post**. As such question of his transfer from one seniority group to another seniority group does not arise at all. The seniority of the applicant will be maintained at NJP only and all his seniority connected matter will be governed by parent division. Further it has been stated that though Sr. CC is the divisional control post, but the overall controlling officer is CCM and as per item No. 18.1 of the SOP, PHOD, the CCM the authority concerned has full power for transfer of non gazetted staff from one station to another. Copy of such SOP has been produced by the Respondents at Annexure-R/1 and we have perused the same which reads as under:

Sl.No.	Nature of power	Authority	AGM	PHOD/CH ODs	HODs	DRMs	ADRM s	JAG&B O	Sr. Scale	Jr. Scale	Remarks
xxxx	xx		xx	xx	xxx	xx	xx	xx	xx	xx	Xx
18.2	Temporary transfer in respect of non gazetted staff from one station to		Full powers	Full Powers	Full Powers	Full Powers	Nil	Nil	Nil	Nil	Upto period of one year with out finance conc



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Though the Applicant has filed his rejoinder the stand taken in paragraph 24 of the reply, stated above, has not been rebutted by producing any authority contrary to the ruling place at Annexure-R/2 by the Respondents. Thus, there being no loss to the applicant in such transfer, and the transfer having been made in administrative exigency, we are not inclined to interfere with the same on the aforesaid stand of the applicant.


11. So far as the plea taken by the applicant that he being an Office bearer of a registered Union ought not to have been transferred is concerned, we find that the applicant himself admitted in his OA that he was an office bearer for the year 2013-2015. We are not prepared to accept this stand of the applicant for the simple reason that only because an employee is an office bearer of a registered union cannot be transferred even in public interest or administrative exigency in service or for other offence, detrimental to the administrative interest. Rather, we are fortified by the law laid down by the Hon'ble Apex Court that who should be transferred where and at what point of time, in administrative exigencies, is a matter falls within the exclusive domain of the employer to decide and the court and Tribunal cannot intervene and interdict on the said order of transfer which has been made in public interest or administrative exigency.

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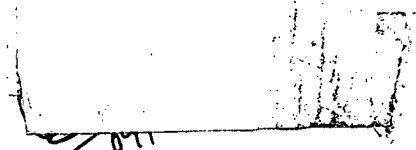
12. In view of the discussions made above we hold that this OA sans merit and is accordingly dismissed. Consequently, the order of status quo on the transfer of the applicant passed by the single Member on 31.07.2014 which has been continuing till date stands vacated.

The applicant is directed to join his new place of posting forthwith failing which the Respondents are free to take action against him as per Rules.

There shall be no order as to costs.



(Jaya Das Gupta)  
Member (Admn.)



(Justice V.C. Gupta)  
Member (Judl.)