



**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

Original Application No.350/01293/2017

Date of Order: This, the 15th Day of September, 2017.

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

THE HON'BLE DR.(MS.) NANDITA CHATTERJEE, ADMINISTRATIVE MEMBER

Shri Tarun Kumar Sadhukhan
Son of Late Jamini Sadhukhan
Aged about 51 years, working as TTI
South Eastern Railway, Mecheda
Residing at T.N.Mukherjee Road
Uttarpara, Dist: Hooghly
PIN: 712245.

... Applicant

- Versus -

1. Union of India
Through the General Manager
South Eastern Railway, 11,
Garden Reach Road, P.S: West Port
Kolkata-700 043.
2. The Chief Commercial Manager
South Eastern Railway
New Koilaghat Building
(8th Floor)
Kolkata-700 001.
3. The Additional Divisional Railway Manager
South Eastern Railway, Kharagpur Division
Kharagpur, PIN: 721 301.
4. The Senior Divisional Commercial Manager &
Disciplinary Authority, Kharagpur Division
South Eastern Railway, Kharagpur
PIN: 721301.
5. The Divisional Railway Manager (Personnel)

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Kharagpur Division, South Eastern Railway
Kharagpur, PIN: 721301.

6. The Assistant Personnel Officer-III
South Eastern Railway, Kharagpur
PIN: 721 301.
7. The Chief Ticket Inspector
South Eastern Railway
District-I, Howrah-711 101.
8. The Station Manager
South Eastern Railway
Mecheda, PIN: 721437.

... Respondents.

For the applicant: Mr.S.K.Dutta

For the respondents: S.C., South Eastern Railway

ORDER (ORAL)

MANJULA DAS, MEMBER (J):

Being aggrieved with the transfer order dated 09.05.2017 (Annexure-A13) and order dated 14.08.2017 (Annexure-A17) , the applicant has approached this Tribunal vide this OA seeking following relief(s):-

- "a. An order quashing and/or setting aside the impugned order of transfer dated 9.5.2017 as well as the impugned communication dated 14.8.2017.
- b. An order directing the respondents to allow the applicant to join at Mecheda from where he was ordered to be transferred to Ranchi Division by regularizing the period of his sickness by granting leave on medical grounds and/or any other leave as to this Hon'ble Tribunal may seem fit and proper.
- c. An order directing the respondents to produce/cause production of all relevant records..

d. Any other order or further order/orders as to this Hon'ble Tribunal may seek fit and proper."

2. Mr.S.K.Dutta, learned counsel for the applicant submitted that applicant during his entire service career since 1992, for the first time, was served with memorandum of charge dated 02.02.2017 followed by another minor penalty charge sheet dated 08.02.2017 and was transferred from Howrah to Mecheda in February, 2017. After serving the penalty the applicant was ordered to be transferred to Ranchi Division vide impugned order dated 09.05.2017. The applicant challenged the said transfer order vide OA.856/2017 before this Tribunal which was disposed of on 30.06.2017 granting liberty to applicant to file representation before the respondent no.3 within two weeks. The respondent no.3 was also directed to consider and dispose of the same by a speaking order within one month from the date of receipt of the representation. Accordingly, applicant made representation on 14.07.2017 which has been rejected by order dated 14.08.2017.

3. According to the learned counsel, applicant's transfer from Kharagpur Division, South Eastern Railway to Ranchi Division, South Eastern Railway is without consideration zone of jurisdiction as well as without considering the number of



transfers in four years' tenure. It was submitted by the learned counsel that the earlier transfer order from Howrah to Mecheda was the consequence of absence in service on 26.01.2017 due to medical ground. Applicant was proceeded with due to his absence from duty on 26.01.2017. Applicant made reply to the charge sheet. He was imposed minor penalty vide punishment order dated 22.02.2017. Against the said penalty, the applicant preferred appeal on 28.03.2017 which has been rejected by the appellate authority vide order dated 09.08.2017.

4. Learned counsel further submitted that the applicant was also served with memorandum of charge dated 08.02.2017 alleging failure to meet the target set by the competent authority for the last ten months from April 2016 to January 2017 in terms of individual earnings to which the applicant replied with all the facts and circumstances to the disciplinary authority Kharagpur Division. However, the disciplinary authority vide order dated 27.02.2017 imposed a minor penalty of stopping of next increment whenever due for a period of one year with NCE. Against such penalty applicant filed appeal on 16.04.2017 but the appellate authority has issued a show cause notice dated 09.08.2017 to enhance the penalty.



5. It was submitted by the learned counsel that the absence on 26.01.2017 was beyond control of the applicant and the respondents have framed charges one after another and imposed punishments as well as transferred him from one place to another within four months without following the rules as well as the circulars issued from time to time. The applicant has not been given opportunity of being heard, as such transfer is bad in law. Further, in the span of 24 years of service there is no bad report in his career, even he has been sent to vigilance authority where there is no report against the applicant. According to the learned counsel, the respondents have started pick and choose policy to transfer from one place to another without following the rules framed by the competent authority. Moreover, the Divisional Railway Manager (P), South Eastern Railway, Kharagpur (respondent no.5) has no power to transfer the applicant by denying the Board/Committee made by the railway for transfer. According to the learned counsel, applicant's transfer within a span of four months without assigning any reason is not permissible in the eyes of law.

6. According to the learned counsel, impugned order dated 14.08.2017 (Annexure -A17) rejecting the representation of the applicant dated 14.07.2017 filed in terms of order dated



30.06.2017 passed in OA.856/2017 is without application of mind to the materials on record as the applicant by mistake mentioned the date of submission of medical certificate as 30.01.2017 instead of 28.01.2017 as the applicant submitted his medical certificate on 28.01.2017. According to the learned counsel, the action of the respondents in transferring the applicant had shown a vindictive attitude towards the applicant inasmuch as in one hand the respondents have accepted that applicant was sick but on the other hand they held the applicant guilty of gross negligence. Learned counsel further submitted that in the event there was any gross negligence, the applicant could not have been proceeded with minor penalty proceedings, which shows the action of the respondents totally tainted with malice. Thus, the order of transfer is against the mandate of rule of law.

7. Learned counsel further submitted that impugned order of transfer dated 09.05.2017 was made without following the provisions of the Railway Board's Circular dated 10.6.2014 and there was no deliberation of any Committee which is mandatory for the purpose of transfer. Moreover, transfer has been made frequently in violation of the Establishment Serial Circular No.13/2015 (Annexure-A19) as there was no charge of malpractice/corruption against the applicant. Learned



counsel further submitted that transfer order and the impugned communication dated 14.08.2017 were passed in a punitive measure.

8. On the other hand, learned railway standing counsel vehemently objected to giving relied to the applicant and submitted that impugned transfer order as well as order dated 14.08.2017 were passed as per law. The applicant was absent unauthorizedly on 26.01.2017 and he did not meet the target set by competent authority for ten months for which proceedings were also initiated and punishments were imposed. It was further submitted that transfer order is not frequent or in lieu of punishment and the same may not be interfered.

9. We have heard the learned counsel for the parties and the documents annexed with the OA. We have gone through both the charge sheets. The allegation in the first charge sheet dated 02.02.2017 is as under:-

" It is observed, on 26.01.2017, he has been found to be absent from duty on 26.01.2017, causing a great embarrassment to the Railway administration apart from tarnishing the image of the Railway. This is a gross negligence of the commitment to the duty.

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Accordingly, the disciplinary authority charged the applicant that he failed to maintain the absolute integrity towards the railway service with unbecoming of a railway servant, contravening the Railway Service Conduct Rules, 1966, rendering himself liable for disciplinary action against him in terms of Railway Servants (D&A) Rules, 1968 as amended from time to time. Applicant made statement of defence on 06.02.2017. Thereafter, the disciplinary authority vide penalty order dated 22.02.2017 held the applicant guilty and imposed a penalty of reduction of two stage lower in the time scale of pay for the period of 3 (three) years with NCE which will however not have the effect of postponing the future increment of his pay. The appeal filed by the applicant on 28.03.2017 has been rejected by the appellate authority vide order dated 09.08.2017.

10. The Chief Ticket Inspector Station Incharge, Howrah, S.E.Railway on 12.02.2017 issued transfer and posting order of the applicant by posting him to Mecheda and spared him on 12.02.2017 itself by directing him to carry out the transfer order. Applicant thereafter joined at Mecheda. We have noted that the respondents have issued the transfer order before culmination of the 1st disciplinary proceeding.



11. In the second charge sheet the applicant was charged as under:-

" It is observed that in last ten months period ending from April 2016 to January 2017, in terms of individual earnings, he has consistently failed to meet the target set by the competent authority. This sounds somewhat unrealistic and unconventional. This unsatisfactory performance is unacceptable and unexpected from a senior staff in the capacity of a Head TTE/TTI.

Thus, by the above act, Sri T.K.Sadhukhan, TTI/HWH(S), has failed to maintain the absolute integrity towards the Railway service which is unbecoming of a Railway servant, contravening the Railway Service Conduct Rules-1966, rendering himself liable for disciplinary action against him in terms of Railway Servants. (D & A) Rules-1968 as amended from time to time. He is to explain."

Against the said charge sheet the applicant submitted his statement of defence on 25.02.2017. The disciplinary authority thereafter on 27.02.2017 imposed punishment of stopping of next increment whenever due for a period of one year with NCE upon the applicant. Applicant submitted appeal on 16.04.2017 in reply to which he has been served with a show cause notice dated 09.08.2017 proposing to enhance the penalty. In the meantime, the authority vide order dated 09.05.2017 transferred the applicant from Kharagpur Division to Ranchi Division along with post on administrative ground. The OA no.856/2017 was disposed of on 30.06.2017 with a liberty to



the applicant to file representation against his transfer before the respondent no.3. The detailed representation dated 14.07.2017 filed by the applicant before the respondent no.3 was rejected vide impugned order dated 14.08.2017.

12. The entire episode from transfer to punishment and then again transfer happened in four months. On 26.01.2017, the applicant was absent for which he submitted medical certificate. The authorities spared him from office on 31.01.2017 and immediately after one day, i.e., 02.02.2017 issued charge sheet for unauthorised absence. We have noted that the absence was due to his medical ground and that shall not be treated as unauthorized. Applicant made statement of defence on 06.02.2017 which was not accepted by the disciplinary authority and imposed punishment on 22.02.2017. The authority again charge-sheeted the applicant alleging failure to meet the target. Again his statement of defence on 25.02.2017 was not accepted and he was imposed penalty vide order dated 27.02.2017. During pendency of his appeal, applicant has been transferred from Mecheda, Kharagpur Division to Ranchi Division along with the post on administrative ground.

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13. The bonafide of the respondents including the disciplinary authority in conducting the proceedings alleging unauthorized absence and then for failure to meet the target and then transferring the applicant first from Howrah to Mecheda and then Mecheda, Kharagpur Division to Ranchi Division along with the post on administrative ground is not expressly visible rather smacks ^{of} malafide. It appears that the transfer order dated 09.05.2017 and rejection order dated 14.08.2017 is the consequence of the two charge sheets dated 02.02.2017 and 08.02.2017, thus it gives smell of (i) frequent transfer; and (ii) in lieu of punishment. We have noted that during the four months the applicant has been transferred twice, which in our view, is bad in law. There is no cloud to understand that the transfer order was issued in lieu of punishment. In our view, transfer in lieu of punishment is not permissible under the law. In the case of **Somesh Tiwari vs. Union of India & Ors. (2009) 2 SCC 592**, the Hon'ble Supreme Court held that when an order of transfer is passed in lieu of punishment the same is liable to be set aside being wholly illegal.

14. Learned counsel for the applicant strenuously argued that the transfer of the applicant has been made in



violation of Establishment Serial circular No.13/2005 dated 17.01.2005. The said circular provides as under:-

" In terms of existing instructions ticket checking staff detected to be indulging in malpractices, are required to be invariably sent on inter-divisional/inter-railway transfer as a matter of policy."

Not Applicable

We further note that in none of the two memorandums dated 02.02.2017 and 08.02.2017, the applicant was charged for any malpractice, fraud or corruption which warrants inter divisional transfer as per above circular. Thus, in the absence of any allegation of malpractices against the applicant we have no hesitation to hold that the transfer of the applicant from Kharagpur Division to Ranchi Division along with the post is not permissible under the law. In the case of **Sarvesh Kumar Awasthi Vs. U.P. Jal Nigam and others (2003) 11 SCC 740** the Apex Court has held that transfer of officers is required to be effected on the basis of set norms or guidelines. In the case of **Subir Bose vs The State of West Bengal & Others** decided on 27 August, 2009, the Hon'ble Calcutta High Court has observed as under:-

"It is true that transfer is an incident of service. It is also true that nobody could say that he will not join in the transferred post. It is also a settled proposition of law that in a transferred matter the Court will be very slow to interfere as it is the matter which is to be considered by the administration and administration



is the expert body to take decision. But there is an exception where transfer order is interfered with by a Court of law exercising the power of judicial review, namely, (i) in the case of malafide on the person; (ii) in the case when the transfer order is not passed by a competent authority."

15. In view of the above facts and circumstances of the case, the ratios^w laid down by the Hon'ble Supreme Court and the Hon'ble High Court, as quoted above, are attracted in this case. Thus, we hold that the transfer order dated 09.05.2017 (Annexure-A13) is bad in law and liable to be set aside. Accordingly, the same is set aside and quashed. Consequently, the rejection order dated 14.08.2017 (Annexure-A17) is also quashed and set aside.

16. OA is allowed accordingly at the admission stage itself.

(DR.NANDITA CHATTERJEE)
ADMINISTRATIVE MEMBER

(MANJULA DAS)
JUDICAIL MEMBER