

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

No. O.A. 1352 of 2016

Date of order: 3.8.2018

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

I, Biman Chandra Roy,
Son of Late A.R. Roy,
Aged about 53 years,
Working as Deputy Chief Mechanical Engineer,
Metro Railway,
Under the control of General Manager,
Metro Railway,
At present residing at Flat No. 4, Block 10B,
11, Garden Reach Road,
Kolkata – 700 043, West Bengal.

VERSUS -

1. Union of India,
Through the General Manager,
Metro Railway,
Metro Bhawan,
33/1, Jawaharlal Nehru Road,
Kolkata – 700 071.

2. Chief Personnel Officer,
Metro Railway,
Metro Bhawan,
33/1, Jawaharlal Nehru Road,
Kolkata – 700 071.

3. Chief Electrical Engineer,
Metro Railway,
Metro Bhawan,
33/1, Jawaharlal Nehru Road,
Kolkata – 700 071.

4. Director Establishment,
Railway Board,
Rail Bhawan,
New Delhi – 110 001.

5. Member Mechanical redesignated as
Member Rolling Stock,
Railway Board,
Rail Bhawan,
New Delhi - 110 001.

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..Respondents

6. Asutosh Prasad,
Divisional Mechanical Engineer (D),
Howrah,
Howrah Diesel Shed.

For the Applicant : Mr. C. Sinha, Counsel

For the Respondents : Mr. B.L. Gangopadhyay, Counsel

O R D E R (Oral)

Per Dr. Nandita Chatterjee, Administrative Member:

Being aggrieved with transfer order dated 1.7.2016, the applicant has approached this Tribunal in the instant original application filed under Section 19 of the Administrative Tribunal Act, 1985, seeking the following relief:-

- "a) To set aside and quash impugned letter dated 1.7.2016 issued by Director (Estt.), Railway Board as regard applicant is concerned.
- b) To set aside and quash impugned letter being No. O.A. 1035 of 2016 dated 29.8.2016 issued by Dy. Chief Personnel Officer for Chief Personnel Officer, Metro Railway.
- c) To direct the respondents to allow the applicant to continue as Deputy CME, Metro Railway.
- d) Any other order or orders as the Hon'ble Tribunal deems fit and proper."

This O.A. is a sequel to O.A. No. 1035 of 2016 which was disposed of vide orders dated 14.7.2016.

2. Heard both Id. Counsel, examined pleadings and documents on record.
3. The case of the applicant, as canvassed by his Id. Counsel, is that, the applicant had joined the Railways on 4.5.1990 as a Trainee Section Engineer and was thereafter promoted to the post of Deputy Chief Mechanical Engineer and at the time of filing of the O.A., was working as such in Metro Railway, Kolkata.

That, the applicant had been transferred nineteen times in his service career.

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That, vide Board's letter dated 1.7.2016, the applicant was transferred from Metro Railway, Kolkata to CLW and that such transfer was against the Respondents' transfer policy which specifies each tenure for a minimum period of two years.

That, the instant transfer dated 1.7.2016 is also violative of the Railway Board's circular dated 19.6.2014 which calls for constitution of a placement committee and in the case of the applicant, no such placement committee has been formed.

That, although the applicant has submitted representations, the same had neither been considered nor disposed of and thereafter the applicant had filed O.A. No. 1035 of 2016 which was disposed of vide order dated 14.7.2016 pursuant to which the respondents passed an order dated 29.8.2016 which has been challenged in the instant O.A.

The grounds advanced by the applicant are that:

- (i) the transfer order dated 1.7.2016 as far as it relates to the applicant, is violative of Railway Board's policy, dated 31.8.2015 that specifies a minimum tenure of two years and the applicant has completed only six months as Deputy CME, Metro Railway.
- (ii) That, the transfer is violative of the Railway Board's policy as issued vide Circular No. 57 of 2014 dated 19.6.2014, which provides for constituting a Placement Committee, but the transfer matter of the applicant has not been routed through such Placement Committee, and that, the said reference to Placement Committee is not confined to transfers within Zonal Railways.
- (iii) That, the contentions of the respondents that the applicant had earned no confidence of the controlling officer or that the applicant had committed and assured the General Manager of Metro Railway are denied.

4. The respondents, on the other hand, through their counter affidavit, and also during their oral arguments, stated that, ab initio, this Original Application

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has become infructuous as the applicant has since joined his transferred place of posting and his reliever has also replaced him.

The respondents have further questioned the maintainability of the instant O.A. on the grounds of res-judicata as the earlier O.A. No. 1035 of 2016 was filed on the same cause of action.

5. The only point of determination in the instant O.A. is whether the transfer order, so impugned, is violative of transfer policy of the respondents invoking judicial review thereon.

6.(a) As the transfer policy is germane to the lis, at the outset, we refer to the comprehensive transfer policy for Railway Officers (Annexure A-4 to the O.A.) wherefrom the following is extracted:-

"GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)
No. E(O)III/20, 14/PLI05 New Delhi dated 31.8.2015
General Managers,
All India Railways/Production Units
(As per Standard List)
Sub: COMPREHENSIVE TRANSFER POLICY FOR RAILWAY OFFICERS

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(vii) Normally, minimum tenure on a particular post at a time will be 2 years and maximum tenure will be 5 years. For sensitive posts, maximum tenure will be 4 years. Minimum tenure will not be applicable for Junior Scale/Senior Scale officers of Group A. However, in administrative exigencies, relaxation may be granted by cadre controlling authority.

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Again, Srl. No. 57 of 2014 dated 19.6.2014 of Eastern Railway states as follows:-

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"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 inter alia 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

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- 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/posting of all Railway servants as per Hon'ble Supreme Courts' decisions. The following shall be the Placement Committee:

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From the two policy statements as enunciated above, following decisions are inferred: (i) the minimum tenure in a particular post shall be for two years and the maximum tenure is for five years; and

(ii) while the minimum tenure will not be applicable to Junior/Senior scale, in administrative exigencies, relaxation may be granted by the cadre controlling authority;

(iii) Placement Committees should be constituted to recommend transfers/postings of Railway servants as per decisions of the Hon'ble Apex Court. Orders of the Hon'ble Apex Court states that "there should be a Committee to be constituted at appropriate levels to decide postings and transfer of all Group 'A', 'B' and 'C' officials even if within the same zone."

Hence, the phrase "even if within the same zone" clearly implies that Placement Committee is applicable to transfers in general including zonal transfers. Therefore, as Circular No. 57 of 2014 relates to postings / transfers in Railways in general (even if the circular at Annexure A-5 to the O.A. had been issued by the Eastern Railway), such Placement Committees should logically be set up in all Zones of Railways and even for the purpose of inter-Railway transfers.

(b) We next examine the contents of the speaking order "Annexure A-9 to the O.A." dated 29.8.2016, which is reproduced below:-

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I have gone through the representation of Shri B.C. Roy, and also the direction of the Hon'ble CAT to consider his application for retention for one year at least or dispose of the same in the light of circulars mentioned.

2. Essentially two circulars have been cited:-
 (a) E(O)III/2014/PL/05 dated 31.8.2015 and

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(b) E(O)III/2014/PL/03 dated 10.6.2014

It is seen that the circular at (b) above refers to transfers within the zone and does not cover inter-railway transfers. Even there, there is a rider that competent authority, i.e. GM/Head of the Unit, may override the recommendations of the Placement Committee by recording reasons in writing. Therefore, the circular at (b) above is not applicable since it is an inter-zonal transfer.

3. Reg. applicability of circular at (a) above, only clauses (vii) and (xiii) are relevant from the applicant's point of view, and I would like to include (xviii) as well. Clause (vii) specifies a minimum tenure of 2 years on a particular post. It, however, also provides for relaxation by the cadre-controlling officer --- Member Mechanical (now Member Rolling Stock) in this case -- due to administrative exigencies. The order had been approved by the competent authority in this case. In any case, the present orders are also being passed by the competent authority.

4. Clause (xiii) specifies that the transfer orders should generally be issued from January to March. The reason, though not mentioned explicitly, has been due to children's education. Even in this clause, it provides for transfer orders to be issued as and when required, in administrative exigencies.

5. While clause (xviii) talks of a system being developed for officers to indicate their requests for transfer, a portal Indian Railway cadre management system (IRCMS) has been developed in 2014 to enable officers to record their choices (though not requests) of posting and also provides for an opportunity to indicate any constraints on account of family or self or dependents. This system has been working for IRSME, a cadre to which the applicant belongs.

6. The officer had filled up in May, 2014 that his daughter was studying in Class 12th. The transfer orders in question had been issued in July 2016 when she would have completed her 12th studies. No other extenuating circumstances have been mentioned in the portal, even till 18.8.2016. Therefore, transfer orders other than in January- March are not expected to cause any hardship to him.

7. The applicant had earned no-confidence of his controlling officer or in himself in a short-span of one year in his new place of work. As the only Mechanical Officer in the unit, he should have put his best foot forward as things in his domain wholly dependent on him. I had spoken to the new General Manager, who had called him and counselled him in August, 2016 but his subsequent action belied the assurance given to the new GM, as he intimidated to me.

8. I see no reason to change the order issued.

(Prabir Singha Roy)
Dy. Chief Personnel Officer
For Chief Personnel Officer"

Upon an examination of the said speaking order, the following contradictions come to light:-

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(i) In paragraph 2 of the same, the authority drafting the speaking order has mentioned that the circular at (b) above, namely, referring to the directions on constitution of Placement Committee dated 10.6.2014 refers to inter-Zonal transfers and does not cover inter-Railway transfers. The same authority however, goes on to say that the circular at (b) above is not applicable since the transfer impugned is an inter-Zonal transfer. This is an illustrative oxymoron with the authority simultaneously stating that the circular is applicable to inter-Zonal transfer and denying its applicability to an inter-zonal transfer itself. Being riddled with contradictions, paragraph 2 of the said speaking order does not convey any conclusive decisions.

(ii) Again the contentions of paragraphs 3 and 5 highlighting the need of transfer on the basis of administrative exigencies contradicts the contention in paragraph 7. Paras 3 and 4 concludes that the officer's transfer was made necessary on grounds of administrative exigency. Logically, those officials are moved to address administrative exigencies whose performance is found laudable and whose efficiency is established. As such, most competent officials are expected to rise to the occasion when confronted with administrative exigencies.

In para 7, the author of the speaking order has stated that the applicant has not earned any confidence of the controlling officer. He should have put his best foot forward as the sole Mechanical Officer of the Unit in Metro Railway wherein he had been posted and that despite assurances given by the applicant to the General Manager who had counselled him, the applicant had belied all expectations on performance.

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Thus an officer who is not found suitable to earn confidence of his superiors in Metro Railway is hardly the most suitable incumbent to handle exigencies in CLW.

(c) It is also not understood as to why the applicant was removed before the expiry of the mandated tenure. There can be two exceptions:-

(i) That, he was highly proficient with creditable performance and hence his services were urgently required in CLW. As stated in para 7, the Respondents were of the view that, the officer was clearly lacking in professional efficiency.

(ii) That, the officer was incompetent and the transfer was ordered to remove him from Metro Railway as his performance was below optimum.

In this case, the transfer becomes a penal measure, which is not supported by the transfer policy of the respondents.

Hence, neither of the two hypotheses is established in the case of the applicant.

(d) There is a reference as made in para 5 of the speaking order that the official did not record his choice posting. The case of the applicant, however, is that he has been removed in violation of the transfer policy and it is not that he was requesting for any choice posting. In this context, the conditions of paras 5 and 6 do not hold good.

7. In our considered view, the respondent authorities have not adhered to their own transfer policy guidelines in issuing the transfer orders dated 1.7.2016 whereby the applicant was moved from Metro Railway to CLW.

The Hon'ble Apex Court 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, this matter calls for intervention in judicial review, as there is an established

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departure from the policies of the Respondents while issuing transfer order dated 1.7.2016 with respect to the applicant, the ratio applies.

Admittedly, the applicant has joined his transferred place of posting. As he had, however, filed the O.A. prior to joining his transferred place of posting, his right to challenge the policy remains to be considered on merits of the case and hence, in our considered opinion, the matter deserves to be examined afresh by the respondent authorities.

Accordingly, we direct the respondent authorities, who have approved the transfer order dated 1.7.2016 with reference to the applicant, to examine the applicability of the transfer policy, particularly in the context of policy dated 31.8.2015 in the context of minimum tenure and policy dated 15.6.2014 / 10.6.2014 on Placement Committee, and to issue a re-transfer /posting order in the context of the applicant strictly as per policy. As the applicant has already served in the transferred post for certain tenure, the same should not debar the applicant from being re-transferred back to the Metro Railways so as to enable him to complete his requisite tenure of two years with the Metro Railways.

Once, he has served the designated tenure as mandated by the transfer policy, the respondents are at liberty to transfer the applicant as per their policy guidelines.

The objection of the Respondents that this original application is barred by Res Judicata does not hold good because the earlier original application No. 1035 of 2016 was not disposed of on merit.

8. The O.A. succeeds to the extent of the above directions and is disposed of accordingly. There will be no orders on costs.

(Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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