

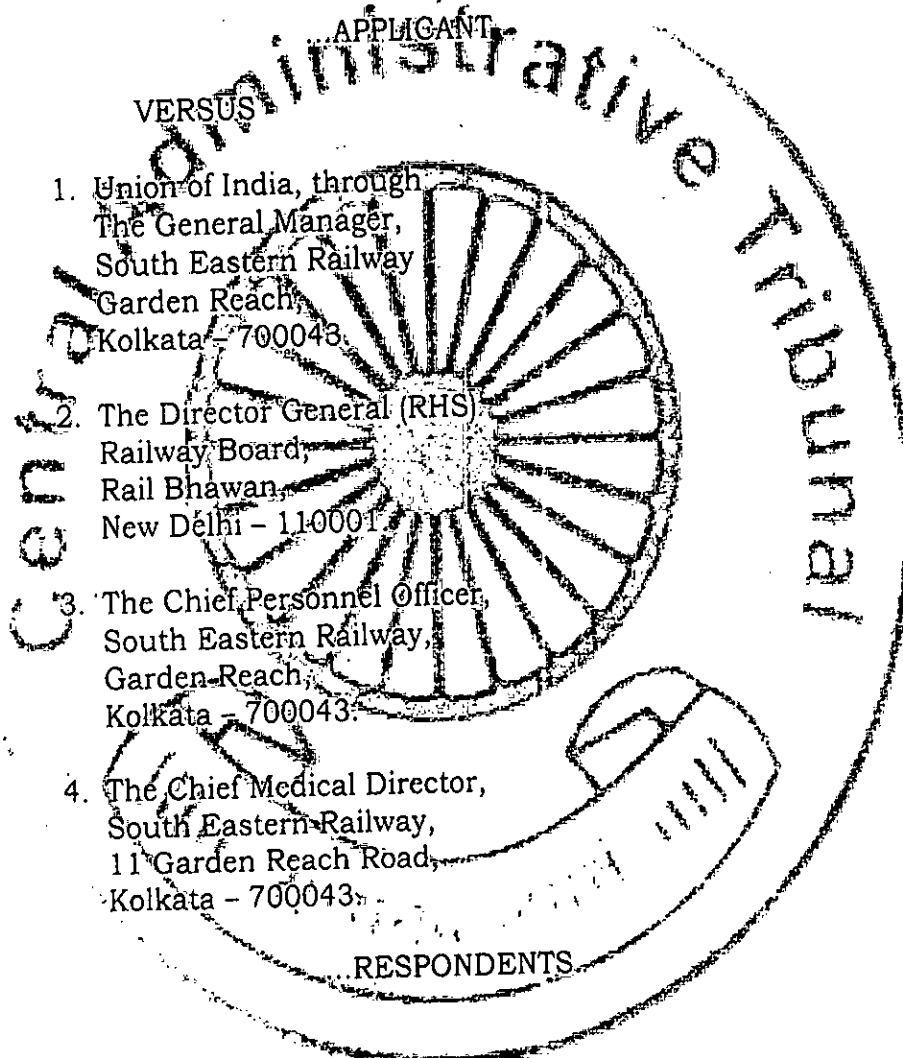
CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. MA 350/886/2017
OA 350/01445/2017

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

DR. BHRIGURAM ARI

S/o late Sripati Kumar Ari,
ACMS/SRC/S.E.Railway,
R/o Flat No. 3E, Block No. 4,
27 Christopher Road,
Kolkata - 700046.



For the applicant : Mr.A.Chakraborty, counsel
Mr.S.K.Dutta, counsel
Ms.P.Mondal, counsel

For the respondents: Mr.B.L.Gangopadhyay, counsel
Mr.S.Banerjee, counsel

Heard on : 7.5.2018

Order on : 11.5.18 .

O R D E R

Per Ms. Bidisha Banerjee, Judicial Member

Aggrieved with the transfer order dated 23.08.2017, transferring the applicant from Santragachi to KGP as A CNS, the applicant had preferred OA 1244/2012 to seek the following reliefs :

"An order do issue directing the respondents to consider the representation preferred by the applicant for his transfer at convenient health Unit under Eastern Railway at an earliest and to take a reasoned decision thereon without any further delay."

2. The O A was disposed of on 31.8.2017 with the following direction :

"I do not think it will be prejudicial to either side if the OA is allowed to disposed of by granting liberty to the applicant to make a comprehensive representation annexing all the relevant documents before the respondent-No. 2 & 3 within a period of 2 weeks from today and if within 2 weeks such a representation is preferred, respondents No. 2 & 3 are directed to consider the same keeping in mind all points raised in the representation as well as the rules and regulations governing the field and communicate the result thereof to the applicant within 6 weeks from the date of receipt of such representation."

Though I have not gone into the merits of the case, still then I direct that till such representation is made and disposed of status quo as on date so far as the continuance of the applicant is concerned, will be maintained by the respondents.

With the aforesaid observation and direction the OA is disposed of at the admission stage itself. No costs."

3. Pursuant to such direction, as aforesaid, a speaking order was issued by the CPO/SE Rly. on 16.10.17 whereby and whereunder the applicant's prayer for transfer to Santragachi as well his prayer for grant of VRS in the event he was not transferred, was turned down. The extracts whereof run thus :

"2. It is evident from your representation that the S.E. Railway Administration had helped you in getting your posting of choice at Santragachi Health Unit as per our own request in 2012.

3. It is not understood that inspite of getting your choice posting and residing in the same urban agglomeration as your working place, why you were not happy and again applied for inter railway transfer to Eastern Railway even when there was no issue of your transfer from Santragachi to Kharagpur. In your representation dated 15.7.2017 to DG (RHS)/Railway Board for transfer to Kamardanga Health Unit under Eastern Railway, you have requested dealing OS of CMS's office/KGP to keep it pending.

4. In your representation dated 12.9.2017, you have mentioned that other 3 doctors of SRC are staying near the health Unit in their own houses. You also could have stayed in accommodation provided by railways for officers near that Health Unit or else you could have arranged your private accommodation near this Health Unit like other doctors as per extant provisions. But you did not do so.

5. You have also mentioned that most of your time you have to spend in the health Unit. However, you are doing your schedule duties like other doctors at Santragachi. Moreover, it is expected that an officer will stay in his working place to complete/finish his assigned job.

6. A Senior Administrative Grade officer of the level of Jt. Secretary to the Govt. Of India, like any other railway officer is bound by rules and is obligated to discharge his duties anywhere.

Railways as per administrative need. In this case though you were posted in the same city, you have applied for inter railway transfer to a particular small health unit only because it is located just beside your own private residence. It appears that you want to avoid higher responsibility.

7. Due to administrative exigency, you were transferred to Kharagpur divisional hospital which is a 340 bedded hospital. This hospital has no regular Paediatrician and hence, you were considered for posting there to serve the vital needs of Child Health which is a priority not only under the national maternal & Child Health Services but also for railway health services.

8. You have mentioned that though there are 4 paediatricians at Central Hospital, Garden Reach none of them were considered for transfer to Kharagpur Railway Hospital. It may be mentioned here that Central Hospital, Garden Reach is a tertiary care referral hospital for whole of S.E. Railway Zone and patients are referred here for specialized care from all divisions of S.E. Railway including Kharagpur. The 4 Paediatricians posted here are not only managing Paediatric patients but also efficiently managing all other types of patients needing the care of Medicine Specialists. It may be noted that you have been given opportunity to work at Central Hospital, Garden Reach for some time but your commitment and expertise could not match with the requirement of Central Hospital.

9. You have mentioned in your application that your working place is far away from your residence which is not convincing as you were posted in the same city at that time.

10. At this juncture, it is not possible as there is no IRMS Paediatrician at Kharagpur divisional hospital. Moreover, it is mentioned here that you did your specialization in paediatrics while in service and with sanctioned study leave with salary paid by the railways during the period of study. Hence, it is naturally expected that the organization reap the benefits of these expert services where it is needed the most.

11. As Kharagpur divisional Hospital is a big hospital with large beneficiary base as compared to Santragachi health Unit, the services of a specialized doctor i.e. paediatrician is more needed there in comparison to Santragachi health Unit to provide vital child health services at the Divisional Hospital.

12. Your request of such conditional VRS cannot be considered. Moreover, as stated earlier, your posting at Garden Reach is not feasible as the requirement of Central Hospital, Garden Reach will not be fulfilled by your posting at Garden Reach as you are not well in touch with the nature of working of a tertiary care Zonal hospital like Central Hospital, Garden Reach."

4. The order is assailed in the present OA, wherein, on 26.10.17 this Tribunal issued an interim order to the effect that

"Status quo as on date in so far as continuance of the applicant in the present place of posting be maintained till the next date of listing."

5. Pursuant to such status quo order of this Tribunal, as the applicant was on leave, ^{even} after issuance of release order, ^B the respondents permitted the applicant to be on leave, vide order dated 9.11.17.

6. The order dated 9.11.17 is assailed through MA 886/2017 with averment that the MA has been filed to seek execution of the order dated 26.10.17.

7. Meanwhile on 2.11.17 the applicant has been charge-sheeted, which along with subsequent documents has prompted the applicant to come up with a supplementary affidavit.

8. It is evident from the order dt. 9.11.17(MA-1) that LAP was sanctioned in favour of the applicant from 12.10.17 to 21.10.17 against his application to CMS, dated 19.10.17. No further leave was sanctioned thereafter, on his representations dated 19.10.17 to 26.10.17 seeking seven days' LAP from 22.10.17 to 28.10.17 and 29.10.17 to 3.11.17 respectively. However, a letter dated 4.1.17 revealed that the applicant was on leave from 22.10.17 till 3.11.17 without sanction of leave. On 26.10.17 the status quo order was issued by this Tribunal, and pursuant thereto the applicant was allowed to be on leave till further orders from this Tribunal. It is further evident that the status quo order was not extended from time to time.

In view of the facts borne by materials on record the applicant was under the aegis of status quo orders from 31.08.17 till disposal of the representation with the issuance of speaking order on 16.10.17 i.e. till 16.10.2017 and again on 26.10.17 till next date of listing before a Division Bench, i.e. on 17.1.18. The applicant was however shown as released on 29.10.17, which fact was disputed by the applicant on 23.03.18.

9. Ld. Counsels were heard and the materials on record were perused.

10. As on date the applicant seems to be aggrieved as his prayer for transfer to Santragachi has been turned down by the CPO vide impugned speaking order dated 26.10.2017 and his prayer for VRS, which ought to have been personally dealt with by the Respondent No.2, has also been turned down by the CPO usurping the powers of respondent No.2 and therefore in wrongful exercise of jurisdiction. He has crossed 58 years of age and is entitled to seek VRS. However, he desires to stay either at Santragachi or at Kamardanga or to be allowed to opt for VRS in the event he cannot be accommodated at such places. Be that as it may, the applicant being allowed to be on leave, the respondents are unable to utilise his expertise at Kharagpur.

11. To ameliorate the grievance of the applicant and to amicably settle the dispute as also to give a quietus to the matter the following directions are being issued in the OA -

- i) The respondents shall regularise the entire period during which the status quo order was operative, as detailed in para 8 supra.
- ii) The applicant shall seek regularisation of the balance period he was on leave without sanction, within 4 weeks from this day.

In the event such application is made, the respondent No. 3 shall consider the application in accordance with law by regularising the leave appropriately within four weeks from the date of receipt of a copy of this order.

- iii) His application seeking VRS, as already preferred to respondent No.2, shall be forwarded to the respondent No.2 for appropriate consideration in accordance with law, with a reasoned and speaking order to be issued within 4 weeks which shall accordingly govern his further entitlements.
- iv) Till such time the applicant, if on leave shall be allowed to be on leave and this period till date of such further order shall be regularised by grant of appropriate leave, as due.

12. The OA accordingly stands disposed of. No order as to costs.

(DR. NANDITA CHATTERJEE)
ADMINISTRATIVE MEMBER

(BIDISHA BANERJEE)
JUDICIAL MEMBER

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