

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH  
KOLKATA**

OA No.350/01546/2016

Date of hearing : 30.11.2016  
Dated of order : 09.12.2016

Present:

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

Raimani Roychowdhury, wife of Sri Sankar Roychowdhury  
residing a 17, Vivekananda Sarani, Garfa, Jadavpur, Kolkata-  
700078.

.....Applicant

**VERSUS**

1. UNION OF INDIA, service through the General Manager, South Eastern Railway, Garden Reach, Kolkata, Pin-700043.
2. I.G. Cum Chief Security Commissioner, Railway Protection Force, South Eastern Railway, Garden Reach, Kolkata, Pin-700043.
3. S.K.Sinha, I.G. Cum Chief Security Commissioner, Railway Protection Force, South Eastern Railway, Garden Reach, Kolkata, Pin-700043.
4. Senior Divisional Security Commissioner, Railway Protection Force, South Eastern Railway, Kharagpur, West Midnapore, Pin-721301.
5. Assistant Security Commissioner, Railway Protection Force Office at Shalimar, South Eastern Railway, Santragachi, Pin-711103.
6. Sri S.Ghosh, Chief Office Superintendent, Office of the Chief Security Commissioner, Railway Protection Force, South Eastern Railway, Garden Reach, Kolkata, Pin-700043.
7. Sri P.K.Bose, Chief Office Superintendent, Office of the Chief Security Commissioner, Railway Protection Force, South Eastern Railway, Garden Reach, Kolkata, Pin-700043.

8. Sri Partha Sengupta, Chief Office Superintendent, Office of the Assistant Security Commissioner, Railway Protection Force Office at Shalimar, South Eastern Railway, Santragachi, Pin-711103.

.....Respondents

Counsel for the Applicant :Mr.P.Majumdar , Advocate  
 Counsel for the Respondents :Ms.G.Roy, Advocate

### ORDER

#### MS.JAYA DAS GUPTA, AM:

The Applicant (RAIMANI ROYCHOWDHURY) has filed this second round Original Application U/s. 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"(a) Commanding the respondents and each of them to revoke cancel, withdraw and/or to forebear from giving any effect and/or further effect to the said purported order of placement dated 4<sup>th</sup> July, 2016 and purported subsequent reasoned order dated 9<sup>th</sup> September, 2016 as contained in Annexure-A/1 and A/5 respectively;

(b) Commanding the respondents and each of them not to disturb the service of the applicant as Chief Office Superintendent at Shalimar under South Eastern Railway by any way and by any means whatsoever;

(c) Commanding the respondents and each of them to certify and transmit to this Hon'ble Tribunal the records relating to the issuance of the purported orders of placement dated 4<sup>th</sup> July, 2016 and purported subsequent reasoned order dated 9<sup>th</sup> September, 2016 as contained in Annexure-A/1 and A/5 respectively for being quashed and/or set aside by this Hon'ble Tribunal;

(d) Pass such other or further order or orders, mandate or mandates, direction or mandates as may appear to be fit and proper."

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2. As it appears from the record, the applicant and five others were empanelled for promotion from the rank of Office Superintendent to Chief Office Superintendent vide Office Order No.77/2015 dated 21.09.2015. Consequently, on their promotion the applicant along with five others were posted as Chief Office Superintendent at various places and the applicant was posted to RPF/ZTI's Office/KGP from the Office of ASC/RPF, Office/SHM vide order dated 04.07.2016 (A/1).

As it further appears from the record, by making representation dated 07.07.2016, the applicant has prayed for her retention in the promotional post either at Garden Reach or at Shalimar instead of RPF/ZTI's Office/Kharagpur. Thereafter, she had approached this Tribunal in OA No. 350/01149/2016 which was disposed of on 19.08.2016.

The full text of the order dated 19.08.2016 passed in the aforesaid OA is reproduced herein below for ready reference:

"The instant application has been filed by the applicant challenging the transfer order dated 04.07.2016 (Annexure-A-1). She has preferred one representation before the authorities on 07.07.2016 (Annexure-A-4) against the impugned order. According to the applicant, as per the Railway Board circular dated 02.02.2010 in RBE No. 23/2010, the applicant's case should be considered as her husband is also posted at Kolkata. Moreover, her daughter is going to appear 12<sup>th</sup> Class Board Examination in the month of March, 2017. Therefore, she will be at difficulty, if she has to join Kharagpur in the mid academic session of her daughter.

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2. Learned Counsel for applicant has also submitted that respondent nos. 5,6 and 7 have been accommodated though they are posted here for long time. Therefore, there is clear discrimination in considering the case of the applicant vis-a-vis private respondents. Thus, she has prayed for an interim protection.

3. Learned counsel for respondents however, has placed one order dated 25.07.2016 passed in OA 350/01050/2016 in the case of Barun Chandra Aich vs Union of India & Ors, whose name appeared at Srl.No.2 in the transfer order dated 04.07.2016, where this Tribunal dismissed the OA. Therefore, respondent has objected to pass any interim protection.

4. However, today during the course of hearing learned counsel for the applicant has submitted that it would suffice her purpose if her representation dated 07.07.2016 along with OA be considered by the respondents within a stipulated period of time.

5. Learned counsel for the respondents has no objection to the said proposition.

6. Accordingly, the respondents are directed to consider the representation of the applicant dated 07.07.2016 treating this OA as part of it, in the light of their circulars as well as submission made by the applicant in the OA and to pass a reasoned and speaking order within the period of 15 days.

8. OA is accordingly disposed of with no order as to costs."

In compliance of the aforesaid order of this Tribunal, the Respondents considered the representation of the Applicant and the result of such consideration was communicated to the applicant through a detailed speaking order communicated through letter No. CC/RRC-2016/2986 dated 12.09.2016. The relevant portion of the

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order communicated through letter No. CC/RRC-2016/2986 dated 12.09.2016 is given herein below for ready reference:

"No. CC/RRC-2016/2986 dated 12.09.2016

**ORDER**

4. The cases of the remaining 03 candidates including the applicant Smt. R.Roychowdhury, OS of ASC's office/Shalimar, which involved change of HQrs/place of posting, were put up before Placement Committee, consisting of following 03 members as per the procedure in accordance with the instructions contained in Railway Board's letter No. E(O)III/2014/PL/03 dated 10.06.2014 adhering to the judgment dated 31.10.2013 of the Hon'ble Supreme Court of India in WP ( C ) No. 82/2011- Postings/Transfer in Railways:-

- i) DIG-cum-Addl.CSC/RPF/ S.E.Railway/ GRC;
- ii) Dy. Chief Accounts Officer (T)/ S.E. Railway / GRC;
- iii) Chairman, Railway Recruitment Cell/S.E.Railway/GRC.

5. The aforesaid placement committee submitted its recommendations dated 04.07.2016 indicating the postings on promotion to the rank of Ch. OS of those 03 candidates, including the applicant Smt. Roy Chowdhury on transfer from their present place of posting, after due consideration of their service particulars as well as immediate need of Supervisory Officials at different places for proper functioning of the Administration.

The IG cum CSC/RPF/S.E.Railway being the competent authority, agreed with the recommendations of the Placement Committee and approved the same. Accordingly, necessary order of posting on promotion to the rank of Ch. OS of all the 06 candidates including the applicant/Smt. Roy Chowdhury was issued vide IG

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cum CSC/RPF/S.E.Railway's Office Order  
No.41/2016 dated 04.07.2016.

6. The applicant Smt. Roychowdhury who is working in ASC's Office/Shalimar since 03.11.2006 on being transferred from SCS's office/Garden Reach on promotion to the rank of OS has been posted against an existing vacancy at RPF/ZTI's office/Kharagpur on promotion to the rank of Ch. OS, vide IG cum CSC/RPF/S.E.Railway's said Office Order dated 04.07.2016.

7. The applicant Smt. Roy Chowdhury remained posted at CSC's Office/Garden Reach/Kolkata since her appointment in the Railways as a junior clerk w.e.f. 16.10.1987 and thereafter on her promotion to the rank of office Superintendent in the year 2006 she was transferred from Garden Reach/Kolkata to ASC's office/Shalimar, Howrah where she has been working from 03.11.2006 to till date.

Hence, as per records, she has been working within Kolkata urban agglomeration for a long period of more than 28 years, since her appointment. She has never worked in any of the Divisional Offices/places outside, Kolkata area.

9. The applicant Smt. Roychowdhury who is the junior most in the promotional panel dated 21.09.2015 and who has never worked in any of the Divisional Offices/places outside the Kolkata area, since her appointment, has prayed to allow her again to continue either at Garden Reach or at Shalimar i.e. within Kolkata urban agglomeration area, as her husband is serving in Central Excise and Service Tax Department in Kolkata in terms of Railway Board's Circular dated 02.02.2010 (RBE No. 23/2010) regarding posting of husband and wife in the same station. She has also submitted that her daughter is studying in Class-XII at a School in Kolkata and going to appear in Board examination in the month of March, 2017.

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10. The relevant paragraph i.e. paragraph 3 ( c ) of the Railway Board's Circular dated 02.02.2010 on the issue of posting of husband and wife at the same station, reads as follows:-

3(C ) where one of the spouses is a Railway servant and the other belongs to All India Service or another Central Service.

The Railway servant should be posted at Station/place in the Railway Division/POU in whose territorial jurisdiction the place/state of posting of his/her spouse falls or as close to it as possible if there is no Railway organisation /post at the place/state of posting of the spouse.

11. As there is no other vacant post of Ch. OS within Kolkata urban agglomeration area, the applicant Smt. Roychowdhury (junior most of the promotional panel) has been posted on promotion to the rank of Ch. OS against an existing vacancy in RPF/ZTI's office/Kharagpur which is nearest to Kolkata (the place where her husband is working) than the other vacant places at Adra, Ranchi & Chakradharpur in accordance with per Para 3 (c) of the Railway Board's letter dated 02.02.2010.

In this context, it is pertinent to mention here again that although there were vacancies of the post of Ch.OS in the office of Sr. DSC/RPF/Adra (Purulia, West Bengal), the applicant Smt. Roychowdhury has been posted on promotion to the rank of Ch.OS at Kharagpur which is comparatively much nearer to Kolkata than the aforesaid 03 places, in conformity with the provisions contained in Railway Board's letter dated 02.02.2010.

12. As regards the submission of the applicant about forthcoming Class-XII final examination of her daughter in the month of March, 2017, the applicant Smt. Roychowdhury may be advised that as per provision contained in Sub Rule I (i) of Paras 224 of Indian Railway Establishment Manual, Vol-I (Revised Editon-2009), she is at liberty to pray for foregoing the

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promotion for one year, if she so desires to overcome the present situation.

In view of the above mentioned facts and circumstances, the undersigned is not in a position to consider the request of the applicant Smt. Roychowdhury who is the junior most candidate for accommodating her by posting within the same Kolkata urban agglomeration where she has been working for more than 28 years since her appointment, on promotion to the rank of Ch.OS as there is no other vacant post of Ch. OS, either at Garden Reach or at Shalimar or anywhere else which is nearer to Kolkata than RPF Zonal Training Institute/Kharagpur.

Hence, the request of the applicant cannot be accepted.]

Accordingly the matter is disposed of, regretting her appeal.

Sd/-  
 (S.K.Sinha)  
 IG Cum chief Security Commissioner, RPF  
 S.E.Railway, Garden Reach, Kolkata-43.

Being aggrieved, the applicant has filed the instant OA seeking the aforesaid reliefs.

3. This matter has been listed today for considering on the question of admission and grant of ad interim order prayed for by the applicant.

4. No reply has been filed.

5. Heard learned counsel for both sides. Consulted the records.

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6. After going to the speaking order, cited supra, we find no scope for this Tribunal to interfere in the order of transfer/posting her as Ch.OS. The Respondents considered all the points raised by the applicant in her representation and posted her on promotion to the nearest available station in Kolkata. She has also been given liberty to pray for foregoing the promotion for one year, if she so desires to overcome the present situation as there is no vacancy where the applicant wants to be posted on her promotion. The applicant had already spent 28 years in and around Kolkata.

The interference by the Courts/Tribunal in the order of transfer is well settled in a catena of decisions of the Hon'ble Apex Court. In the case of **Union of India v S.L.Abas**, AIR 1993 SC 2444 it has been held that an order of transfer is an incidence of Government service. Who should be transferred where is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of statutory provisions, the Court cannot interfere with it. Similarly, if a person makes any representation with respect to his transfer, the appropriate authority is to consider the same having regard to the exigencies of administration. The guidelines of posting of husband and wife at one place does not confer upon the government employee a legally enforceable right as executive

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instructions issued by the Government are in the nature of guidelines. They do not have statutory force.

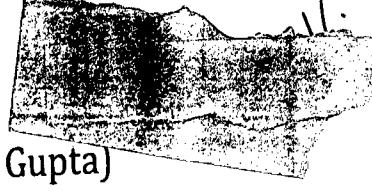
Our mind is reminiscent and redolent with a decision of the Hon'ble Apex Court rendered in the case of **State Of Madhya Pradesh & Ors vs Sri S.S. Kourav & Ors**, 1995 AIR 1056, 1995 SCC (3) 270 in which it has been held that the transfer order may cause hardship, as an employee would be forced to have a second establishment at a far distant place, education of his children may be adversely affected, and the employee may not be able to manage his affairs or to look after his family. But it is not permissible for the Court to go into the relative hardship of the employee. It is for the administration to consider the facts of a given case and mitigate the real hardship in the interest of good and efficient administration.

Last but not the least, we may state as held by the Hon'ble Apex Court in the case of **Union of India v Janardhan Debnath**, AIR 2004 SC 1632 that an employee has no right to claim to remain in a particular post or place. 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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7. The learned counsel appearing for the Respondents also brought to our notice a copy of the order dated 25.07.2016 in OA N. 350/01050/2016 which was filed by one of the similarly placed employee Barun Chandra Aich, who was transferred and posted outside the Kolkata urban agglomeration area in the same order along with the applicant. This Tribunal, after considering all aspects of the matter and law ultimately dismissed the OA.

8. Considering the facts and law enunciated by the Hon'ble Apex Court, quoted above, we do not find any justifiable reason to interfere in the matter. There shall be no order as to costs.



(Jaya Das Gupta)  
Member (Admn.)



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