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Date:- 28.3.2017

O.A.No.350/1643/2016

Coram : Hon'ble Mr. A.K. Patnaik, Judicial Member

Hon'ble Ms. Jaya Das Gupta, Administrative Member

For the applicant : Mr. A.K. Gayen, counsel
Ms. J. Pal, counsel

For the respondents : Mr. B.L. Gangopadhyay, counsel
Mr. M.K. De, counsel

ORDER

Per Mr. A.K. Patnaik, Judicial Member

This O.A. has been filed under Section 19 of the Administrative Tribunals Act challenging an order of transfer issued by the Deputy Chief Accounts Officer(TA), Eastern Railway, Kolkata dated 07.10.2016 from ASN-D to Malda under Senior DFM/MLDT without any cogent reason and/or ground forcefully and vindictively and withholding of one increment without cumulative effect vide Memo No.SAO/TA-1/DAR/TKS/16 dated 02.11.2016.

2. In the O.A. the applicant has sought the following reliefs:-

8(a) An order and/or direction be issued by quashing and/or setting aside the purported transfer order dated 07.10.2016 issued by the Deputy, CAO/TA, Kolkata with the approval of the competent authority without showing any reason thereof save and except a stereotype order;

(b) An order and/or direction be made upon the concerned respondents more particularly the respondent nos. 2 and 3 to withdraw and/or recall and/or resign the transfer order dated 07.10.2016 or not to give effect to the effect to the same till the finalization of the instant application;

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- (c) An order and/or direction be made upon the respondents to produce the relevant records before this Hon'ble Tribunal pertaining to the transfer order dated 07.10.2016 and also the report of the placement committee so that the conscientable justiced may be made;
- (d) Direction be made upon the respondents to consider and dispose of the representation dated 31.10.2016 filed by the application in accordance with the Sl. No. 120/97 and 57/2014;
- (e) Any further order or orders and/or direction or directions be made as your Hon'ble Tribunal may deem fit and proper."

The applicant has also prayed for an interim relief which reads as under:-

"Ad-interim order to issue upon the respondents more particularly respondent nos. 2 and 3 not to give effect and/or further effect of the impugned transfer order dated 07.10.2016 issued by the respondent no. 3 with the approval of respondent no. 2 taking into consideration the Railway Board's circulars as mentioned in annexure 'A-1' and 'A-2' herein and also till finalization of the representation dated 31.10.2016 filed by the applicant."

3. This O.A. was filed on 11.11.2016 and taken up for admission on 16.11.2016. However, while allowing the respondents to file reply statement and the applicant to file rejoinder to the reply statement vide order dated 16.11.2016, this Tribunal did not grant any interim order. The order dated 16.11.2016 runs as under:-

"Heard Id. counsel for the applicant. This is a petition challenging the order of transfer of the applicant from Asansol to Malda town. It has been contended that the order has been passed without approval of the competent authority. The applicant proceeded on leave after communication of this order. The order has been challenged on the ground that this should be cancelled as the daughter of the applicant has expired and his wife is a psychiatric patient. It has further been



contended that the Placement Committee has not recommended the transfer. Issue notice to the respondents. Put up before the Joint Registrar who will place the matter on board after completion of pleadings. We do not find any reason to grant interim order because the grounds taken for cancellation are not mandatory. So far as the question of approval by the Placement Committee is concerned, the matter may be scanned after receipt of reply from the respondents."

4. Subsequently though the matter was listed for several times, no interim order was granted. Therefore, the applicant approached the Hon'ble High Court at Calcutta by filing a Writ Petition i.e. W.P.C.T.No.289 of 2016 which was disposed of on 24.01.2017 with the following directions:-

"The petition has been preferred against the order dated 16th November, 2016 by which the Tribunal has refused to grant interim order. While doing so, the Tribunal has noted that there were no pleadings from the respondents and, therefore, it was not able to consider the claim of the petitioner.

The petitioner is aggrieved by an order transferring him from Asansol to Malda Town. He has various grounds on which he contends that the order of transfer would be prejudicial to him and detrimental to his family life.

Mr. Das, the learned counsel appearing for the Railways, submits that he may be permitted to file the reply to the Original Application. Accordingly, reply be filed within two weeks from today and rejoinder, if any, be filed within one week thereafter before the learned Tribunal. We have been informed that the matter has now been listed on 21st February, 2017 before the learned Tribunal.

The learned Tribunal will consider whether interim relief should be granted to the petitioner on the completion of pleadings on 21st February, 2017.

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The learned Tribunal will also consider whether the action of the respondents in stopping the petitioner's salary is legal.

The petition is disposed of."

5. Although direction was given by the Hon'ble High Court to this Tribunal to consider the prayer of interim relief on completion of pleadings on 21.02.2017, somehow or the other the matter could not be heard on 21.02.2017 by the Tribunal and it was listed under the heading 'for orders' on 24.02.2017 on which date the matter was fixed for final hearing and disposal on the top of the list on 06.03.2017. Thus the matter could be heard by this Tribunal on the question of interim relief on 06.03.2017.

6. We have heard the ld. counsel for both sides on the prayer for interim relief.

7. As an interim measure the applicant has prayed for not to give effect to the impugned order of his transfer dated 07.10.2016 from Asansol to Malda till finalisation of his representation dated 31.10.2016 keeping in view the Railway Board Circulars as mentioned in Annexure 'A-1' and 'A-2' of the O.A. He prays for his posting at any district of Asansol or Durgapur and challenged the transfer order on the following grounds:-

(a) His wife is working under the State of West Bengal and as per the Railway Board's letter No.E(NG)1-97/IR/28 dated 05/11/1997, husband and wife should be posted at the same station;

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(b) His younger daughter met with a tragic fatal accident and expired on 20.04.2013 as a result of which his wife became a psychiatric patient;

8. The respondents have stated the brief outline of their case as follows:-

"That the applicant is working as a Sr. TIA which is a sensitive post in which an employee can be retained in a particular station for 4 years but the applicant is working for more than 12 years at Asansol. Hence, his transfer is long due and as such, as per recommendation of the Placement Committee he has been transferred at Malda under Sr. DFM/E.Rly./Malda with the approval of FA & CAO/ E. Rly. The applicant has not yet reported to Malda and is going on submitting one after another Private Medical Certificate mentioning different ailments but simultaneously submitting application to consider his transfer in and around of Asansol mentioning his family problems. Hence, the administration is not in a position consider his case for submitting different pleas as follows:

- 1) Submitting Private Medical Certificate stating one after another ailments;
- 2) Requesting his transfer in and around Asansol and
- 3) For his family problems.

Furthermore, the rule cannot be ignored since he is holding a sensitive post where transfer is mandatory on completion of 4 years service at a particular station while the applicant has already completed more than 12 years service at Asansol. Hence, the applicant has moved this instant OA before the Hon'ble Tribunal to kill sometime more and to make an attempt to get his transfer withheld for a further long period which cannot be accepted by the administration if rule is to be followed. Hence, the instant OA is to be dismissed."

9. The applicant has annexed the Railway Board's letter No.E(NG)-I-97/TR/28 dated 05.11.1997(Annexure A-1 to the O.A.), para 5(iv) of which runs as follows:-

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"The Railway servant should be posted at the Station/place in the Railway/Division/...(not legible) in whose territorial jurisdiction the place/state of posting of his/her spouse falls. If it is not possible, if a request from the railway servant to the Controlling Authority of the spouse for his/her posting at the place of posting of the railway servant is received the same may be forwarded to the concerned authority for sympathetic consideration.

Para 5.1 of the said Railway Board's letter reads as under:-

"The guidelines given above are only illustrative and not exhaustive. The Ministry of Railways desire that in all other cases the controlling authority of the railway servants should consider requests from non-gazetted railway servants for transfer to the place of posting of their spouse with utmost sympathy."

The applicant himself has annexed the report of the Placement Committee dated 06.10.2016 as P/18 to the Rejoinder from which it is clear that his plea that his case was not placed before the Placement Committee is not true.

10. In the instant case, the applicant has not availed of the opportunity given to the railway employee under the guidelines given in the aforementioned para 5(iv). Moreover, the applicant has completed 12 years of service at Asansol.

11. Considering the aforesaid Therefore, we are not inclined to grant any interim order at this stage. However, if the applicant is rendering service and he has leave in his credit, he may be granted leave, if he prays for and if any salary is withheld the same may be released as per rules.

12. Fix for final hearing on 6.6.2017.

(Jaya Das Gupta) 28.3.2017

Administrative Member

(A.K. Patnaik)
Judicial Member