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CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH



No. OA 350/01781/2016

Date of order : 22.12.2016

Present : Hon'ble Justice Shri Vishnu Chandra Gupta, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

PRASHANT SINGHANIA

VS

UNION OF INDIA & ORS.

For the applicant : Mr.D.Samanta, counsel

For the respondents: Mr.M.K.Bandyopadhyay, counsel

O R D E R

Justice V.C.Gupta, J.M.

Heard the ld. Counsel for the parties at the admission stage.

2. This Original Application has been filed ^{on 20.12.2016} by the applicant Prashant Singhanian to set aside the e-mail message dated 17.12.16 and all further action pursuant thereto. He further prays that he may be allowed to continue in the post of Sr. DOM, S.E>Railway, Kharagpur Division. The e-mail message which is under challenge is annexed as Annexure A/5 and is extracted hereinbelow :

"FROM: COM/SER
CC NO 132/12

TO: DRM/KGP
DATE: 17.12.16

SRI VINEET GUPTA WILL LOOK AFTER THE DUTIES OF SR.DOM/ KGP WITH IMMEDIATE EFFECT TILL FURTHER ADVISE.
POSTING ORDER OF SRI PRASANT SINGHANI WILL FOLLOW SHORTLY.
THIS HAS THE APPROVAL OF GM/SER."

The grounds of challenge are that the applicant has not been allowed to complete the tenure of posting and has been transferred mid-session unauthorisedly without getting approval of his transfer from the Placement Committee. Hence his order of transfer through e-mail dated 17.12.16 is illegal. He also has personal grounds on which he assailed the action of the respondents.

3. Today a supplementary affidavit has been filed annexing certain documents affirming filing the order of transfer issued on 20.12.16 which is annexed as Annexure A/10 to supplementary affidavit and is extracted hereinbelow :

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SOUTH EASTERN RAILWAY

Headquarters Office,
P.Branch, GRC, Kol-43

Office Order No. 257/16

Dated : 20.12.16

The following orders are issued with the approval of the General Manager :

1. Shri Prashant Singhania, Sr. DOM/KGP is transferred and posted as Sr. DSO/CKP vice Shri Vineet Kumar Gupta vide item 2 below.
2. Shri Vineet Kumar Gupta, Sr. DSO/CKP is transferred and posted as Sr. DOM/KGP vice Shri Prashant Singhania vide item No.1 above.

(Shreerangam Haritash)
Senior Personnel Officer (Gaz)
for Chief Personnel Officer."

The aforesaid transfer order has been accepted by the applicant on 21.12.16. He was also relieved from the post on the same date i.e. on 21.12.16 as is evident from Annexure A/11 to the supplementary affidavit. On 21.12.16 Vineet Kumar Gupta, the incumbent to the post under transfer order has taken over the charge as is evident from the charge certificate which has been annexed as Annexure A/12 and is reproduced as below :

SOUTH EASTERN RAILWAY

CHARGE REPORT

In terms of CPO/GRC's office order No. 257/2016, dt. 20.12.16, I, the undersigned have taken over the charge of the post of Sr. DOM/KGP, S.E. Railway on 21.12.2016 (FN).

(Vineet Kumar Gupta)
Sr. DOM/KGP

Thereafter the applicant sent a letter to Divisional Railway Manager, S.E. Railway, Kharagpur wherein he prayed that process of taking over and handing over charge may be kept in abeyance till the disposal of OA 1781/16 i.e. the present Original Application. The applicant also on the same date proceeded on Casual Leave for 22.12.16.

4. As per contents contained in the supplementary affidavit, it appears that the applicant compressed his grounds of attack to the order of transfer in para 9, which is extracted hereinbelow :

"That the Placement Committee meeting was held on the same day as the date of issuance of transfer order of the applicant from Sr. DOM/KGP to Sr. DSO/CKP i.e. on 20.12.16. However the transfer via email and sms were sent by COM/SER with the approval of GM/SER, 4

(Signature)

days before he Placement Committee Meeting i.e. on 17.12.16, thereby reflecting that the transfer was premeditated and a unilaterally decided one and executives of the Placement Committee took the decision merely to effect the above without an independent impartial and objective application of mind (as to the premature tenure of the applicant as Sr. DOM, mid-term transfer, effect it will have on the family and daughter's education depriving the applicant of a fair chance to stably perform for the assessment year to meet targets, in violation of relevant establishment orders and policy of having a minimum service tenure of 2 years on a particular post, the fact that the applicant was ne of the five Branch Officers out of around hundred in SER who was selected for Prime Minister's idea generation Rail Vikas Shivr and his idea was patented also by SER, his ACR was outstanding in the immediately preceding period, his integrity has been 'Beyond Doubt' throughout his service, no charge sheet or disciplinary letter was issued to him by COM/SER during his entire service period at Kharagpur or even before). The decision of transfer was not only taken much before he Placement Committee proceedings, without even involving the members of the Placement Committee as per Hon'ble Supreme Court judgment, but was also effected in an illegal manner via an email/sms sending the private respondent in place of the applicant; Placement Committee then rubber stamped this whole invalid and unilateral exercise after 4 days. This makes a complete mockery of the spirit of the Hon'ble Supreme Court judgment which recommended transfers to be decided through a Placement Committee."

5. The Id. Counsel for the applicant further submits that the applicant has outstanding record and this transfer has been affected to accommodate Shri Vineet Kumar Gupta by the superior authorities.
6. On the contrary Id. Counsel for the respondents placed before us the records pertaining to the aforesaid lis which was also permitted to be inspected by the Id. Counsel for the applicant as per his request which led to the approval of Placement Committee on the transfer of the applicant. The record reveals that on 15.12.16 the proposal of transfer of the applicant Prashant Singhania was sent for consideration before the Placement Committee which is extracted hereinbelow :

"For consideration of the Placement Committee for transfer and posting of Shri Prashant Singhania, Sr. DOM/KGP:

Shri Prashant Singhania took over charge of Sr. DOM/KGP in April 2016. His performance has not been upto the desired level, primarily on account of his lack of knowledge regarding Railway operations and his inability to provide leadership to the operating team in the Division.

There has been a steady deterioration in both operations in terms of mobility and traffic planning of KGP Divisions in the recent past. This has reflected in the steady increase in the wagon holding of the Division from 5957 in April'16 to 7522 in November'16. Instead of taking effective measures to improve mobility of the freight trains in the Division to reduce wagon holding, he continuously engaged with the HQ for reducing the input into KGP. The interchange of trains at BHC and ASB also came down in the past several days signifying a deterioration in mobility. This

(Signature)

has resulted in near collapse of freight train operation over KGP and is drawing criticism from railway Board.

While sending the proposal for non-interlocked working in JLZ section, inspite of repeated counselling by the HQ Officers, he as Sr. DOM, did not mention the repercussion on freight trains running due to NI. He failed to inform the HQ the full implications of the Route Control Chart of KGP RRI submitted to him by the S&T department. This has resulted in avoidable delays in finalising the RCC of KGP Division. These failures on his part are attributable to his lack of domain knowledge and his inability to manage day-to-day working of the Operating department of KGP Division.

It is therefore proposed to transfer Shri Prashant Singhania to CKP as Sr. DSO and post Shri Vineet Kr. Gupta, presently working as Sr. DSO/CKP as SR.DOM/KGP with immediate effect."

The same was forwarded on the same date. The action was approved by Placement Committee on 20.12.16 and the General Manager approved the same on the same date. Consequently a formal transfer order was issued on 20.12.16. It was further submitted that the order of transfer has not been challenged and this petition has thus become infructuous and is not legally maintainable.

7. After hearing the counsel for the parties and going through the records and the file placed before us by the respondents, we are of the opinion that this petition has no merit and cannot be admitted for hearing for the reasons recorded below :

- i) It is true that ^{an}e-mail message has been sent on 17.12.16 by directing Vineet Kumar Gupta to look after the duties of Sr. DOM, Kharagpur with immediate effect till further advice. It is also true that the authorities in the aforesaid message said that a posting order of Prashant Singhania will follow shortly and this action of sending a direction through e-mail message was with the approval of GM/SER. But it is also a fact that transfer order has been passed on 20.12.16.
- ii) Infact the proposal of transfer of the applicant was initiated on 15.12.16 and was sent for approval of the Place ^{ment} Committee on the same date and when the affirmation was made the transfer order was issued. Therefore it cannot be said that the transfer order issued was without approval of the Placement Committee.

iii) It is also true that Vinit Kumar Gupta was not allowed to take over charge in terms of the e-mail message and had actually taken over charge after the transfer order. Therefore so far as the procedure adopted for transferring the applicant cannot be said to be wrong.

8. We do not find any force in the argument of the Id. Counsel for the applicant that virtually it is a pre-determined action of the superior authorities to accommodate Vineet Kumar Gupta. But the report submitted on transfer reveals otherwise. The Placement Committee after considering the grounds has approved the action of the authorities of transferring the applicant and placing Vineet Kumar Gupta to the post.

So far as the terms of policy of transfer is concerned it is well settled that in special circumstances the authorities can transfer any individual officer on administrative ground of course subject to approval of the Placement Committee which in this case has been done and the action in such circumstances cannot be said to be violative of the principle of transfer policy.

9. It is well settled that it is the wisdom of the employer to take work from any employee who can fulfil the objectives for which he was posted and in case of failure to achieve the objective the employer shall not allow to continue the incumbent of the post which is causing adverse effect to the administration and in that situation the authorities are not powerless and they are not bound to bind themselves to the transfer policy in general. It is true that in case of transfer some difficulty should have bound to occur to a person but that would not be a ground for cancelling the transfer which is otherwise in accordance with law.

10. The Id. Counsel for the applicant relied upon a judgment of the Hon'ble High Court of Calcutta passed in **Ranjit Kumar Halder -vs- State of West Bengal & Ors. given in CPAN No. 1424 of 2003 /WPST No. 612 of 2003** decided on 12.9.03. On the strength of the judgment it has been emphasised that when a matter has been challenged in the Court the respondents should not be hurried up the things in an effort to circumvent the pending Court proceedings or should rush to over-reach the Court by anticipating its order

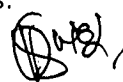
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with a view to steal a march over the opponent. It was further emphasised that in an appropriate case the Courts are competent to issue injunction in the mandatory form to nullify the steps hurriedly taken by the respondents after notices received and on the score it has been contended that the subsequent order of transfer should have been stayed by issuing a mandatory injunction against the respondents.

11. In view of the facts and circumstances of this case we are of the view that the same cannot be given effect to in the present set of circumstances. The e-mail message was originated after taking a proposal for transfer of the applicant and process was virtually initiated on 15.12.16, matter was sent for approval with specific remarks that the transfer of Prashant Singhania shall shortly follow and in this case as soon as the proposal of 15.12.16 was approved by the Placement Committee and then by the competent authority the transfer order was issued on 20.12.16. Therefore we do not find any reason that in the present scenario the benefit of judgment of **Ranjit Kumar Halder** may be extended to the applicant.

12. Hon'ble Supreme Court time and again warned the Courts and Tribunals that in the matter of transfer the Courts should go slow and should not likely interfere with the order of transfer if they are not malafide as has been observed in **Tushar D. Bhatt -vs- State of Gujarat & Os. [2009 (11) SCC 678]**. The Apex Court in the aforesaid judgment further held that in the interest of discipline of any institution or organisation, approach in the attitude of the employee by evading the transfer by unauthorisedly absenting from duty cannot be countenanced.

13. Consequently the OA is dismissed at the admission stage. However, liberty is granted to the applicant that, after joining the post where he has been transferred, may make a representation to the authorities in the light of personal difficulties and in such a situation if the representation is made by the applicant after joining the post where he has been transferred the authorities shall expeditiously consider his grievances and take decision under intimation to the applicant. There shall be no order as to costs.



14. The record placed before us by the Id. Counsel for the respondents be returned back to him.



(JAYA DAS GUPTA)
MEMBER (A)



(JUSTICE VISHNU CHANDRA GUPTA)
MEMBER (J)

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