



CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 350/1806/2017

Present: Hon'ble Ms. Manjula Das, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

NASIM ATHER

S/o Late Ashique Hossain,
Aged about 54 years,
By occupation Railway employee,
R/o 13/H/46 Braunfeld Row,
Kolkata - 700047.

...APPLICANT

VERSUS

1. Union of India, through
General Manager,
South Eastern Railway,
Having its office at
Garden Reach,
Kolkata - 700043.
2. The Chief Commercial Manager (CCM),
South Eastern Railway,
Having its office at
14 Strand Road,
Kolkata - 700001
3. The Chief Personnel Officer (CPO),
South Eastern Railway,
Having his office at
Garden Reach,
Kolkata - 700043.
4. The Divisional Railway Manager (DRM)
Kharagpur,
South Eastern Railway,
Having his office at Kharagpur,
West Midnapore,
Pin - 721301.
5. The Additional Divisional Railway Manager (ADRM)
Kharagpur,
South Eastern Railway,
Having his office at Kharagpur,
West Midnapore,
Pin - 721301.
6. Sr. Divisional Commercial Manager (Sr.DCM)
South Eastern Railway,
Having his office at Kharagpur,
West Midnapore,
Pin - 721301.

7. Sr. Divisional Personnel Officer (Sr.DPO)
South Eastern Railway,
Having his office at Kharagpur,
West Midnapore,
Pin - 721301..

8. Area Manager. (ARMO,
Shalimar,
South Eastern Railway,
Having his office at
Shalimar, Shibpur,
Howrah - 711102,
Presently Ch OS(G) incharge.

...RESPONDENTS.

For the applicant : Mr.B.Bhusari, counsel

For the respondents: Mr.G.Roy, counsel
Mr.S.Banerjee, counsel

Heard on : 2.2.2018

Order on :

Per Ms. Manjula Das, Judicial Member

Being aggrieved with the speaking order dated 13.12.2017 by which the respondent authorities have rejected the prayer of the applicant for retaining at Shalimar, the applicant has approached this Tribunal by making the present OA under Section 19 of the Administrative Tribunals Act, seeking the following reliefs :

- a) Do issue mandate upon the respondents, their men and agent and each of them to forthwith rescind, recall and/or withdraw the impugned speaking order dated 7.12.2017/13.12.2017 passed by the respondent No.6 in purported compliance of order dated 29.11.2017 passed by this Hon'ble Tribunal in OA NO.1458/2017;
- b) Do issue mandate upon the respondents, their men and agent and each of them to forthwith rescind, recall and/or withdraw the purported transfer order dated 4th October, 2017 issued by the office of DRM(P) being Annexure A/6.
- c) Do issue mandate upon the respondents, their men and agent and each of them to forthwith rescind, recall and/or withdraw the purported transfer order dated 10th October, 2017 issued by the office of respondent No.7 being Annexure A/6.
- d) Issue direction upon the respondents to allow the applicant to perform the assigned work at present place of posting or to transfer within the vicinity of the present place of posting upon considering the medical condition.
- e) Issue direction upon the respondents, their men and agent and each of them to forthwith certify and transmit all the papers and documents in connection with the instant application before this Hon'ble Tribunal for kind perusal and on such perusal do conscionable justice to the applicant;

- f) To pass further and other order/orders as this Hon'ble Tribunal may deem fit and proper;
- g) Costs including full advocate's fee be borne by the respondents.

2. Mr.B.Bhusan, Id. Counsel appeared for the applicant and Mr.G.Roy, Id. Counsel assisted by Mr.S.Banerjee, Id. Counsel appeared for the respondents..

3. Mr.Bhusan, Id. Counsel for the applicant submitted that the applicant was appointed as Sr. Clerk in the Chittaranjan Locomotive Works (CLW) at Chittaranjan. While holding he said post he obtained a mutual transfer from Chittaranjan to Kharagpur vide order dated 14.8.1991 and dispensed his work till 13.9.1992. However, on 13.9.1992 due to family exigencies the applicant was constrained to obtain mutual transfer from Kharagpur to Shalimar. Thereafter vide order dated 12.9.2015 the applicant got transferred from Kharagpur to Shalimar to mitigate his family responsibilities by sacrificing his career growth and advancement in order to comply with the conditions imposed in the policy of mutual transfer. Thereafter the applicant took over the charge of Chief OS on 27.6.2017 against the existing vacancy.

It is submitted by the Id. Counsel that vide impugned transfer order dated 4.10.2017 respondent No.7 with the recommendation of the Placement Committee transferred the applicant to the office of Sr.DCM, Kharagpur. Accordingly the office of respondent No.8 issued impugned office order dated 10.10.2017 posting the applicant from Shalimar to Kharagpur. It is submitted by the Id. counsel that the applicant made detailed representation dated 12.10.2017 to the office of Sr. DCM Kharagpur, respondent No.6 with a request to retain him at Shalimar. As his representation has not been responded to, the applicant approached this Tribunal in OA 1458/2017 for setting aside the posting and transfer order dated 4.10.2017 as well as 10.10.2017.

Mr.Bhusan further submitted that this Tribunal vide order dated 29.11.2017 disposed of the said OA by directing the respondent authorities to dispose of the representation dated 12.10.2017 as per rules within a stipulated period. It was further ordered that until disposal of the representation and until a decision is arrived at by the respondent authorities, the applicant will not be disturbed from his present place of posting. Once the decision is arrived



at the respondents will be at liberty to proceed in the matter. Thereafter the impugned speaking order was passed by rejecting his prayer to retain him at Shalimar.

According to the Id. Counsel the instant transfer order and the consequential orders are an arbitrary exercise of power. It was further submitted that the applicant obtained mutual transfer to perform his work at his convenient place of posting and that too at the cost of his career growth. However, in the instant case the applicant got posted at Shalimar at the cost of his career progress, therefore it is not a fact that the applicant is enjoying privilege on being posted at Shalimar. It is further submitted that the respondents acted hastily without giving any opportunity to the applicant which is warranted by the Master Circular No. 24 issued by the Railway Board. As such the transfer order cannot be sustained and the speaking order be set aside.

4. On the other hand Mr. G. Roy, Id. Counsel appearing on behalf of the respondents submitted that as per policy decision, Shalimar Goods Terminal as well as Goods related activities were shifted at SGTY (Sankrail Goods Terminal Yard) vide office order dated 25.5.2017 and presently ARM (Area Railway Manager), Shalimar is not functioning at Shalimar office and the post of ARM/Shalimar has been shifted. It was further submitted that the assigned job of Shalimar Area Railway Manager's office are being dealt with in the Sr. DCM, Kharagpur's office. But due to superannuation of 3 numbers of Chief OS in 2016-17 at Sr. DCM, Kharagpur office and accumulation of assignment of ARM/Shalimar office at Sr. DCM Kharagpur office, it necessitated for shifting of staff from ARM/Shalimar's office to Sr. DCM/Kharagpur. It was further submitted that presently the ministerial cadre (Ch OS-3, OS-1, Sr. Clerk-1) of SHM office have become idle due to shifting of assignment from Shalimar office to Kharagpur office. Therefore essentiality of 5 ministerial cadre of Shalimar office is no more required and to maintain the smooth performance of all work, the instant transfer order dated 4.10.2017 of the applicant has been issued

from Shalimar to Kharagpur within the administrative jurisdiction of the Division in exigency of administration.

Ld. Counsel further submitted that when most of the assignment of SHM office has been shifted from Shalimar office to Sr. DCM office at Kharagpur, the staff of Shalimar office is now extra and required adjustment throughout the division. Moreover by bringing file from Shalimar to Kharagpur and return back to Shalimar after getting the work done from the office of Sr. DCM, Kharagpur causes extra expenditure like TA, DA etc and consuming time also. On the other hand in Sr DCM office at Kharagpur for shifting or work from Shalimar to Kharagpur day to day work is being hampered for want of such manpower. It is further submitted that the name of the applicant has been struck off from the attendance register of Shalimar Unit on and from 18.12.2017 and the muster roll has been sent to Sr. DCM's office at Kharagpur for further action. As soon as the applicant had come to know that his sparing memo had been issued then and there he reported to private medical for self sickness w.e.f. 18.12.2017 and sent the intimation for sickness by speed post to Shalimar office which was redirected to Sr. DCM's office at Kharagpur as his name had been struck off from the attendance register of SHM Unit.

According to the Ld. Counsel as the posting from Shalimar to Kharagpur is in administrative reason and exigency and the reasons set forth in the speaking order dated 13.12.2017, there is no scope to consider the case of the applicant for retaining him at Shalimar.

5. We have heard the Ld. Counsel for both parties and perused the pleadings and materials placed before us.

6. The grievance of the applicant is that though the applicant came on mutual transfer from Chittaranjan to Kharagpur and then from Kharagpur to Shalimar with due request to meet out the family problem that too sacrificing his career growth, the respondent authorities vide impugned transfer order dated 4.10.2017 as well as posting order dated 10.10.2017 transferred him from Shalimar to Kharagpur in the Unit of Sr. DCM office against existing vacancy. Immediately the applicant made a representation before the

respondent No.6 on 12.10.2017 highlighting his grievance with a request to retain him at Shalimar. As the representation was not responded to by the respondent authorities the applicant approached this Tribunal vide OA 1458/17 whereby this Tribunal vide order dated 29.11.2017 disposed of the OA by passing an order as hereunder :

"In view of the above, the respondent authorities are directed to consider and dispose of the representation of the applicant dated 12.10.2017 (Annexure A/5) as per rules ad pass a reasoned and speaking order within a period of one month from the date of receipt of this order. The decision so arrived at will be communicated to the applicant forthwith. Till disposal of the representation the applicant shall not be disturbed from his present place of posting."

In due compliance to the above order of the Tribunal, the respondent authorities passed the speaking order dated 13.12.2017 which is impugned in the present OA. In the said speaking order the respondent authorities assigned the reasons for transfer and posting of the applicant from ARM office, Shalimar to Sr.DCM's office at Kharagpur. The reasons assigned by them in the speaking order as well as in the reply are as hereunder:

- (i) The ministerial 5 cadre i.e. Chief OS -3, OS-1, Sr. Clerk-1 of Shalimar office remaining idle for shifting of assignment from Shalimar office to Sr. DCM office, Kharagpur.
- (ii) The essentiality of the 5 ministerial cadre is no more required and to maintain the smooth performance of all work the transfer of the applicant was made vide order dated 4.10.2017 from Shalimar to Kharagpur in the exigency of administration.
- (iii) When most of the assignment of Shalimar office has been shifted from Shalimar office to Sr.DCM office at Kharagpur, the staff of Shalimar office has become extra and required suitable adjustment within the Division.
- (iv) Bringing the files from Shalimar to Kharagpur and return back to Shalimar after getting the work done from Sr. DCM office Kharagpur will cause extra expenditure. Moreover the work from Shalimar to Kharagpur is hampering for want of such manpower.

We further noted that while the transfer order was issued by the respondent authorities on 4.10.2017 it contained the remark "against existing vacancy on administrative interest". It is further noted that the decision of shifting Shalimar Goods Terminal as well as Goods related activities to the SGTY (Sankrail Goods Terminal Yard) in pursuance of the office order dated 25.5.2017 is the administrative prerogative of the respondents for their smooth functioning by taking into interest of their department either in terms of administrative ground or administrative exigency.

We further noted that in their own interest the respondent authorities shifted the assigned job of Shalimar Area Railway Manager office to Sr. DCM office at Kharagpur.

7. Transfer is an incident of service. Until and unless there is a malafide and the transfer guidelines or statutory rules for transfer has been violated normally the Court should not interfere. In the present case we find that no such violation of any statutory rule for transfer or transfer policy/guideline has been violated more importantly there is no smack of malafide exists while making the impugned posting order. It is easily discernible that the circumstances warranted to post the applicant to Kharagpur from Shalimar in exigency of service and on administrative ground.

8. In the case of **S.L. Abbās -vs- Union of India & Ors. [1993 (4) SCC 357]** Hon'ble Apex Court held that

"who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafide or is made in violation of any statutory provision the Court cannot interfere with it."

In **K.B. Shukla -vs- Union of India & Ors. [1979 (4) SCC 673]** Hon'ble Apex Court held that

"the Government alone is best suited to judge as to the existence of exigencies of such a service, requiring appointments by transfer."

In **Subir Bose -vs- State of West Bengal**, Hon'ble Calcutta High Court held that

"though a transfer might be an incident of service whether the Court should be very slow to interfere, the power of judicial review could

very well be exercised by a Court of Law in first transfer is either malafide or was not passed by a competent authority."

As we have noted in the foregoing paragraphs the instant transfer and posting has been made in the exigency of service or administrative ground; hence the above decisions have squarely covered the instant case.

9. In view of the ratio laid down by the Hon'ble Apex Court in the above cases, we are of the view that the instant transfer is made in the interest of administration and exigency of service as much as there is shortage of staff including Chief OS and the posts in the unit at Shalimar has fallen extra. As such we are not inclined to interfere with the impugned transfer order as well as speaking order.

10. Accordingly the OA stands dismissed. No order as to costs.

(DR. NANDITA CHATTERJEE)
ADMINISTRATIVE MEMBER

(MANJULA DAS)
JUDICIAL MEMBER

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