

Reserved
(On 28.05.2019)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 31st day of May 2019

Original Application No. 330/00276 of 2019

Hon'ble Ms. Ajanta Dayalan, Member – A
Hon'ble Mr. Rakesh Sagar Jain, Member – J

Janardan Ram, S/o Late Lalmuni, R/o Village & Post Bhikhampur, District Ghazipur. Presently posted as Senior Section Engineer (Bridge), North Eastern Railway, Varanasi.

... Applicant

By Adv: Shri Vinod Kumar

V E R S U S

1. Union of India, through General Manager, North Eastern Railway, Gorakhpur.
2. Chief Engineer (Bridge), North Eastern Railway, Gorakhpur.
3. Chief workshop Manager (Bridge), North Eastern Railway, Gorakhpur.

... Respondents

By Adv: Shri P.K. Rai

O R D E R

By Hon'ble Ms. Ajanta Dayalan, Member – A

The present OA has been filed by the applicant – Janardan Ram seeking quashing of transfer order dated 07.03.2019 (Annexure A-1) passed by respondent No. 3 transferring the applicant from the post of Senior Section Engineer (Bridge), North Eastern Railway, Varanasi to Gorakhpur. He has also sought for staying the effect and operation of this order.

2. The applicant was directly recruited to the post of Bridge Inspector Grade III and was appointed on 31.03.1983. He was lastly promoted as Senior Section Engineer (Bridge) and is presently working as Senior Section Engineer (Bridge) at Varanasi since 15.05.2015.

3. The case of the applicant is that vide impugned order dated 07.03.2019, he has been transferred from Varanasi to Gorakhpur, even though he has not completed the minimum period of posting of four years. He is due to retire in March 2020 and as such has only 10-11 months of his service tenure remaining. The applicant has quoted Railway Board's Circular dated 03.04.2012 (Annexure A-2), wherein it is provided that as per Railway Board's Circular dated 14.10.1970, "General Managers could however exercise their discretion to transfer non gazetted staff from Stations / Posts against whom there are complaints". Further the Circular provides that the man with longest stay is to be shifted first and those on the verge of their retirement i.e. with one or two years service left, may be exempted if complaints against them are not serious. The applicant has, therefore, concluded that the transfer order is in violation of this policy of Railway Board on periodical transfers. The applicant has also pleaded that he belongs to SC community and as per Railway Board's Circular, persons belonging to SC community who are on the verge of retirement, may be adjusted at their native place. But he has been shifted from Varanasi to Gorakhpur which is at a distance of about 300 Kms. No specific Circular or order has however been quoted by him to show that preference needs to be given to SC/ST employees over others in respect of transfer.

4. The applicant made representation dated 12.03.2019 (Annexure A-3) against the transfer order and this Tribunal vide order dated 27.03.2019 directed the respondents to dispose of this representation within 5 days. Till then, the operation of the impugned order was stayed. Later, the respondent department passed order dated 29.03.2019 rejecting his representation. He has also been relieved, vide order dated 28.03.2019 with direction to takeover charge at new place of posting.

5. The learned counsel for the applicant has moved MA No. 1090/19 seeking staying the effect and operation of this order dated 28.03.2019 alongwith order dated 29.03.2019. He has also moved another MA No. 1100/19 seeking amendment in the OA, challenging the fresh orders dated 28.03.2019 and 29.03.2019 passed by the respondent department. In the said MAs similar grounds have been taken as made in the OA. He has also stated that in the fresh order dated 29.03.2019, the respondents have not referred to Railway Board Circular and as such this order is illegal and not sustainable. He has also stated that he has never received his reliving order dated 28.03.2019 and has worked at his earlier place of posting upto 30.04.2019 and has been paid salary for April 2019 from that place.

6. Hence, the applicant has sought quashing of transfer order dated 07.03.2019 as well as for staying of the same.

7. The case was heard on 27.05.2019, when it was noted that the Circular of the Railway Board's Circular dated 03.04.2012 being relied upon by the applicant was not complete and only a partial and incomplete copy was provided. Accordingly, full copy of the Circular was sought. This was provided by the respondent department's counsel on 28.05.2019, when the case was again listed. The defence counsel pleaded that the transfer policy being relied upon by the applicant is only guidelines and not mandatory. Further, he stated that the order dated 29.03.2019 is speaking and it refers to instructions dated 14.10.1970, referred in the Railway Board's Circular dated 03.04.2012. He stated that the order is perfectly legal and there is no violation of Railway Board's policy. Hence, the case does not call for any interference by this Tribunal.

8. We have heard both counsels and have also gone through the pleadings in the case.

9. We find that the facts of the case are undisputed. The applicant has been at Varanasi since 15.05.2015 and is due to retire in March 2020. Vide order dated 07.03.2019, he was transferred from Varanasi to Gorakhpur, which order is under challenge in the present OA. The representation made by the applicant has been rejected by the respondent department vide order dated 29.03.2019. He has also been relieved from his present place of posting and has been directed to report to new place of posting, vide order 28.03.2019. These fresh orders are also now under challenge through amendment application.

10. Firstly, we observe that the applicant had already served for almost 4 years (only 2 months less) at Varanasi at the time of issue of his transfer order. We also note from the complete Railway Board's Circular dated 03.04.2012 that the only tenure mentioned in this Circular is of 4 years. The Circular provides that railway employees holding sensitive posts and coming in contact with public / contractors / suppliers are required to be transferred every four years. Hence, as regards tenure, the applicant had served the tenure at his present place of posting and was thus due for transfer.

11. Further we note that the order dated 07.03.2019 is only a transfer order and does not give any grounds for transfer, but this is also not expected in an order transferring employees from one place to another. However, we note that the order dated 29.03.2019 passed by the respondent department rejecting the representation of the applicant is speaking and gives reasons for his transfer. As per this order, complaints were received against the applicant from other employees as well as

Union. He was also found not paying attention to work allotted to him, such as construction of bridges. Considering the safety of bridges and the letter dated 14.10.1970, the applicant was transferred from Varanasi to Gorakhpur. The order also states that earlier in 2017 the applicant was transferred from Varanasi to Gorakhpur. But this order was stayed. But still there was no improvement in his work. Hence, the present transfer order was passed. In view of all above, his representation was rejected. Thus the impugned order dated 29.05.2019 is reasoned and speaking.

12. This Circular further refers to earlier Circular dated 14.10.1970 whereby General Managers could exercise their discretion to transfer non-gazetted staff from Stations/Posts against whom there are complaints. In such cases, the man with longest stay was to be shifted first and those who are at the verge of retirement "may be exempted if complaints against them are not serious". We note that the use of word is 'may' and not 'shall'. This fact was also highlighted by the respondents' counsel during arguments.

13. From the above discussion, we find that the applicant had completed his normal tenure at present place of posting. Further, as there were complaints against him relating to his work as well as from other employees and Union, the applicant was transferred. We do not find any violation of the transfer guidelines. In fact, the transfer guidelines themselves provide discretion to the Railway Authorities to transfer the employees in case of complaints. Besides, the applicant was given a chance earlier in 2017 when his transfer from Varanasi to Gorakhpur was stayed, but there has been no improvement in his performance.

14. As regards the applicant's argument that he is being transferred in his last years of service, we find justification in this argument. However,

Railway Board's Circular relied upon by the applicant does not prohibit such transfer specially as discretion in this regard is given to Railway Authorities based on the nature of complaints as well as the fact that the applicant had already completed his normal tenure at the present place of posting. We also note that the Railway Circular of 2012, being relied upon by the applicant himself, does not give any exception in cases where employees have completed 4 years of service at one place of posting. Hence, we are of the clear view that it cannot be said that the transfer order is in violation of Railway Board's Circular of 2012.

15. We thus find that the order dated 29.03.2019 is quite reasoned and speaking and gives reasons for rejection of the representation of the applicant. Hence, the applicant's argument that the order is non-speaking and needs to be quashed is not sustained. Besides, this order also specifically refers to both Railway Board's Circulars of 1970 and hence, applicant's argument that this Circular has not considered the same while issuing order dated 29.03.2019 rejecting his representation, is also not sustained.

16. The argument put forth by the learned counsel for the applicant that the competent authority for issue of order is General Manager also not sustained. This is clear if we reads the Circular in toto. This Circular refers to many other old Circulars and Circulars of 1970 is almost at the end. Here, it reads that "General Manager could however, exercise their discretion to transfer non-gazetted staff from Stations/Posts against whom there are complaints". But approval of General Manager was required only if employees were transferred only on compliant basis. But in the instant case, the applicant had completed his normal tenure of four years and hence, no exception was required to be made in this case.

17. The learned counsel for the applicant has quoted number of judgments in his support. These includes the judgment of Hon'ble Supreme Court in the case of ***Shipli Bose vs State of Bihar*** reported in ***1990 LawSuit (SC) 692*** and also the case of Allahabad Bench of this Tribunal in ***Original Application No. 147 of 2012 – Qazi Syed Tabassum Ali vs Union of India and others*** decided on 18.04.2013. However, we find that in the specific facts and circumstances of the instant case as discussed above, these judgments are not applicable here. We also note that it is settled law that transfer is an executive function and the Court should intervene only when there is injustice or clear violation of law or discrimination. We do not find any ground for such interference in this case.

18. In view of the above, the OA lacks merit and the same is dismissed.

19. There is no order as to costs.

(**Rakesh Sagar Jain**)
Member – J

(**Ajanta Dayalan**)
Member – A

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