

**CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH**

Original Application No. 040/00341/2018

Date of Order: This, the 06<sup>th</sup> day of December 2018

**THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER**

**THE HON'BLE MR. N. NEHSIAL, ADMINISTRATIVE MEMBER**

Sri A. Saibaba  
Son of Shri A. Chalapati Rao  
Presently resident of Railway Qtr.  
No. 527-B, Nambari Railway Colony  
Maligaon, Guwahati, Assam – 781011.

**...Applicant**

By Advocates: Mr. U.K. Nair, Sr. Advocate with Ms. N. Shyamal

-Versus-

1. The Union of India  
Represented by the Secretary  
Railway Board, Ministry of Railways  
Government of India, New Delhi – 110006.
2. The Railway Board  
Represented by its Secretary  
Ministry of Railways, Government of India  
New Delhi – 110006.
3. The Director (Estt.), Railway Board  
Ministry of Railways, Government of India  
New Delhi – 110006.
4. The General Manager  
N.R. Railway, Maligaon  
Guwahati – 781011.
5. The General Manager (Construction)  
N.R. Railway, Maligaon  
Guwahati – 781011.

6. Shri Sanjay Prasad Singh, SAG/IRSE  
Through the General Manager  
N.R. Railway, Maligaon  
Guwahati – 781011.

...Respondents

By Advocate: Mr. S. Chakraborty

### **ORDER**

#### **N. NEHSIAL, MEMBER (A):**

This is a remand case from the Hon'ble Gauhati High Court in WP (C) No. 7648/2018 in respect of the applicant who have been transferred from N.F. Railway.

2. Being aggrieved with the impugned order dated 17.09.2018 (in so far as it concerns the applicant and Respondent No. 6), the applicant herein has preferred the instant O.A. under Section 19 of the Administrative Tribunal Act, 1985 with the following reliefs:

- "8.(1) To set aside and quash the impugned order dated 17.09.2018 (Annexure-A/1) in so far as it concerns the applicant and the Respondent no. 6.
- 8.2 To direct the respondent to forbear from giving effect to the impugned order dated 17.09.2018 (Annexure-A/1) and allow the applicant to continue as Chief Engineer/Con-VII.
- 8.3 Cost of the application.
- 8.4 Any other relief/relief's to which the applicant is entitled to under the facts and circumstances of the case and as may be deemed fit and proper by this Hon'ble Tribunal upon consideration of the matter."

3. The O.A. of the applicant No. 040/00341/2018 was admitted by this Tribunal on 03.10.2018 and interim order was passed wherein transfer order dated 17.09.2018 was set aside in so far as the applicant was concerned for the period till completion of his PhD Course at IIT, Guwahati in April 2019. Aggrieved with this interim order of this Tribunal, the respondents had approached the Hon'ble Gauhati High Court and agitated before them that no opportunity was given to them in adjudication of the matter. Accordingly, the Hon'ble Gauhati High Court has remanded the case back to this Tribunal to restore the O.A. to file and grant appropriate opportunities to the parties and dispose of the same in accordance with law. The Hon'ble Gauhati High Court also directed that since the respondent is also seeking interim prayer before the CAT, if the CAT is unable to dispose of the application on its own merit in accordance with law, until orders on the interim prayer is passed by the CAT, the petitioners shall not precipitate the matter and shall maintain status quo. All contentions on merit are left open to be urged before the CAT.

4. In this connection, it may be recalled that the applicant initially joined to N. F. Railway on 07.06.2012. After working there for around 39 days, he had proceeded on sanctioned leave till 28.10.2012. Subsequently, the authorities had sanctioned him study

leave for pursuing his MBA in Information Technology from JNT Univeristy, Hyderabad w.e.f. 29.10.2012 to 28.10.2014. After completion of the course, the applicant continued to be on leave up to 15.10.2015. Later on he was posted as ADRM, Tinsukia and after short stint as ADRM at Tinsukia, finally he was posted to current assignment w.e.f. 10.05.2016 and till the date of issuance of the transfer order dated 17.09.2018, the duration of the current assignment comes to approximately 2 years 6 months.

5. During the hearing, the learned counsel for the respondents Mr. S. Chakraborty, draw the attention of the Bench para 20(1) of the Administrative Tribunals Act, 1985 wherein it stipulates that :-

“A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.”

He also highlighted that against the impugned transfer order dated 17.09.2018, the applicant has submitted his representations on 20.09.2018, page 22, Annexure – A/6 and dated 27.09.2018, page 23, Annexure – A/7 for retention in the N.F. Railway particularly in the context of academic course pursued by him which was duly approved by the competent authority. He further highlighted that since the representations of the applicant were under consideration by the competent authority, it is not

appropriate on the part of the Tribunal to intervene in the matter and pass the interim relief.

6. The learned counsel for the respondents also emphasized that No Objection Certificate for Ph. D programme to the applicant vide letter No. E/283/Con/Gaz/Higher Study dated 14.12.2017, Annexure – R/4 to the O.A. was only for registering himself as external candidate and not to adversely affect administrative work and the period of study would not come in the way for transfer by administration.

7. The learned counsel for the respondents also brought out that keeping in view of the fact that the applicant had joined initially on 07.06.2012 in N.F. Railway Headquarter, it is not factually correct to say that he has not completed the normal tenure of 3 years. By counting from this date, the applicant has, in fact, already completed more than 6 years in the N.F. Railway. In addition to this, the learned counsel for the applicant has also brought to the notice of this Tribunal the ruling of the Hon'ble Supreme Court in the case of **State of U.P. and Ors. Vs. Bobardhan Lal, Civil Appeal No. 408 of 2004** and **D.B. Singh Vs. D.K. Shukla and Ors., Civil Appeal No. 409 of 2004**, reported in **(2004) 11 SCC 402** where the Hon'ble Apex Court has held that – the Courts should not interfere with the transfer of the

Govt. employees except under certain exceptions as highlighted therein.

8. We have given due consideration to the points brought out by the learned counsel for the respondent authorities. It is true that the Tribunal should not 'ordinarily' interfere in any application unless conditions as prescribed in Section 20 of the Administrative Tribunals Act, 1985 are met. However, in this case, it was noticed that the applicant was deeply concerned with his pursuing and completion of his academic course of PhD in IIT, Guwahati. As such, he had made two representations on 20.09.2018 and 27.09.2018 respectively. There was no any indication from the authorities that his representations would be favourably considered. Moreover, transfer was not 'stand alone' but a chain of officers to be relieved by the incoming incumbent. Keeping in view of this situation, the Tribunal felt that it was not ordinarily situation and as such, considered fit it to pass the said interim order.

9. As regards to the completion of his tenure or otherwise, the Govt. of India's policy guidelines on this is very clear. The policy says that those who are posted to NER has to serve minimum of 3 years as circulated by the Ministry of Railways vide their letter No. E(O)III-2000/PL/02 dated 03.02.2000, page 26, Annexure – A/10 to the O.A. After which if somebody would like to get posted out from NER,

three choice stations have to be given by him and has to be favourably considered by the competent authorities. This policy guideline amply implies that if anybody would like to remain posted in NER for more than 3 years, the policy guidelines does not restrict posting in the region for more than three years unless there is any specific administrative reason to curtail the period. Moreover, this period of three years or more is subject to the condition that if somebody is on leave/training for more than four weeks, the period has to be excluded from computing of three years tenure in NER. As regards to the maintainability of the legality of transfer order, it is conceded that it is entirely within the prerogatives of the administrative authorities which of course has to be subjected to the principles of fairness, natural justice and in accordance with law.

10. Notwithstanding the above position and views and after considering all aspects in totality of the circumstance and the genuine interest of the applicant to complete his duly approved academic course of PhD course at IIT, Guwahati, we feel that it is fair and appropriate that he should be allowed to complete his academic course which will be over by April 2019. Accordingly, the impugned transfer order dated 17.09.2018 so far the applicant is concerned shall be kept in abeyance till April 2019. We further direct that during this period and considering the fact that the project handled by him has linked with his academic course, he shall also

not be disturbed from the current assignment as Chief Engineer/CON-VII, N.F. Railway (Construction Organization).

11. With the above observations and direction, O.A. stands disposed of with no order as to costs.

**(N. NEIHSIAL)**  
**MEMBER (A)**

**(MANJULA DAS)**  
**MEMBER (J)**

**PB**