

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 040/00133/2019

Date of Order: This, the 25th day of April 2019

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

Dr. Bhaskar Basak
 Son of Late Ramani Kanta Basak
 Arabindanagar, Town – Alipurduar
 Post Office – Arabindanagar
 Police Station – Arabindanagar
 District – Alipurduar
 West Bengal, Pin – 736122.

...Applicant

By Advocates: Mr. T.R. Deori & Mr. B. Kalita

-VERSUS-

1. Union of India
 Represented by the Secretary
 To the Government of India
 Ministry of Railways, Rail Bhavan
 Raisina Road, Rajpath Area
 Central Secretariat, New Delhi – 110001.
2. The General Manager
 N.F. Railways, Maligaon
 Guwahati, District – Kamrup (M)
 Assam, Pin – 781011.

... Respondents

By Advocate: Ms. U. Das, Railway SC

ORDER (ORAL)**MANJULA DAS, MEMBER (J):**

By this O.A., applicant makes a prayer for setting aside the impugned transfer order dated 13.02.2019 issued by the respondent No. 2 i.e. General Manager, N.F. Railway by which the applicant Dr. Bhaskar Basak (SAG/IRMS) ACMS/APDJ has been sought to be transferred from Divisional Railway Hospital, Alipurduar Junction to Badarpur Railway Hospital, Badarpur.

2. Heard Mr. T.R. Deori along with Mr. B. Kalita, learned counsel for the applicant and Ms. U. Das, learned Railway standing counsel for the respondents.
3. At the outset, learned railway standing counsel prays for some time for filing written statement. On the other hand, learned counsel for the applicant prays for staying of the operation of the impugned transfer order dated 13.02.2019.
4. The main contention raised by the applicant is that the applicant by now 61 years and about to retire from service. Only one year left of service. Learned counsel for the applicant has drawn my attention to the Railway Board's Order No. E(O) III-2014/PL/05 dated 12.12.2018 where against Sl. No. (iii), it is stipulates as here under:-

"(iii) Officers due for retirement within the span of two years should normally not be disturbed from the present posting."

According to the learned counsel for the applicant, the impugned transfer order dated 13.02.2019 is violative in terms of aforesaid guideline of the respondent department. Hence, the impugned transfer order dated 13.02.2019 be quashed and set aside. Otherwise interim order be passed by staying the operation of the aforesaid impugned transfer order dated 13.02.2019.

5. Objecting the contentions made by the learned counsel for the applicant, Ms. U. Das, learned railway standing counsel representing the respondents submits the following points:-

- (i) That from initial joining, the applicant is in the same station at Alipurduar and all along he has not been transferred. Now he is in verge of retirement and before retirement, he has to be transferred;
- (ii) That although retirement age is 62 years, but the applicant may continue in his service up to 65 years if he desires in view of the letter No. E (P&A)I-2016/RT-16 dated 17.10.2018 issued by the Dy. Director, Estt. E(P&A)-II, Railway Board.
- (iii) That the Demand Notice was issued to the General Manager by an Advocate on 17.01.2019 to know under which provisions of law an employee i.e. applicant is working at ACMS/Alipurduar Junction (APDJ) of NFRL for last 32 years without any transfer.
- (iv) That transfer of an employee is an incidence of service. As such, transfer order dated 13.02.2019 shall not be interfered.

(v) There is no malafide as alleged by the applicant.

6. Learned counsel for the respondents has drawn my attention to para (ix)(a) of Comprehensive Transfer Policy for Railway Officers under No. E(O)III/2014/PL/05 dated 31.08.2015 which reads as here under:-

"(a) The transfer of doctors within and outside the zone should be decided by the Railways/Board at appropriate level on case-to-case basis, keeping in view the administrative interest. Total stay at a stretch/cumulative stay (in broken spells in a particular station) be limited to 15 & 20 years respectively."

According to the learned counsel for the respondents, the Railway Board Circular dated 12.12.2018 is not applicable in the case of the present applicant where learned counsel for the applicant Mr. T.R. Deori reiterates his submission and argued that the said Railway Board Circular is in recent having force to apply in case of the applicant.

7. Having heard the learned counsel for the rival parties, perusal of the pleadings and material placed on record, I find that it is a matter of transfer and in my view instead of considering interim prayer, it would be deemed fit and proper to pass a final order by disposing of the petition inasmuch as the applicant having only one year of his service for retirement. The objection raised by the learned counsel for the respondents that the applicant is continuing at

Alipurduar for long 32 years has been admitted by the learned counsel for the applicant. But at the same time, it shall not be ignored that continuity at Alipurduar for long 32 years is not his own whims but rendering the medical service for the department.

So far the question as to the provisions of law for continuity of the applicant at Alipurduar, it is observed that the Advocate's Demand Notice on 17.01.2019 is made by an outsider and so far present case in my hand in question, he has no locus-standi to look into the matter of continuity or posting of the applicant. Hence, the submission made by the respondents' counsel on the plea of Demand Notice is not acceptable.

8. Another contention i.e. although retirement age is 62 years and the applicant may continue up to 65 years, in my view; it is up to the employee. More so, for extension or continuity at the verge of retirement, the authority will see the performance of the employee and if so satisfied, then of course there is possibility that too with the consent of the employee. Thus it would be now appropriate to concentrate by restricting age of 62 years of retirement. Although transfer is an incident of service and no malafide alleged but Railway Board's transfer guideline dated 12.12.2018 shall not be washed away which is guiding principle of the Railway authority more particularly one employee when he will

be transferred where stipulation is very much apparent against SI. No. (iii) that – ‘Officers due for retirement within the span of two years should normally not be disturbed from the present posting’.

9. In **Narayan Choudhury Vs. State of Tripura & Ors. WP(C) No. 239/1999** rendered in **(2000) 1 GLR 519** where the Hon’ble Gauhati High Court of Agartala Bench has held that – “The petitioner is retiring towards the end of 2000 and he has to serve hardly one and half years, no practical purpose will be served by asking the writ petitioner to proceed to his place of posting at Gomit just for a period of 5/6 months”.

10. More so, there is an objective based on consideration of welfare behind such provision in the transfer policy as it would enable a person about to retire after a long and devoted service to make arrangements for settling down thereafter with his family, acquire a house if not already done and to make necessary arrangement for his superannuated life. In **Union of India Vs. Dr. Umesh Kumar Mishra WA No. (SH) 17/12**, Hon’ble Gauhati High Court has held that – “Fairness requires that if a policy has been laid down, the same may be deviated from only if there is any reason to do so. If no reason is forthcoming, the exercise of power of transfer in violation of a laid down policy may be held to be arbitrary.”

11. Normally, if one employee is transferred at the verge of retirement, no fruitful services can be expected from him/her for fulfilling the expectation of Government. Accordingly, time to time, the policy decision has been formulated by the Govt. of India as well as Ministry of Railways for benevolence of employees. Hence Addendum dated 12.12.2018 to the Comprehensive Transfer Policy guidelines issued vide Board's letter dated 31.08.2015 stands.

12. Learned counsel for the respondents by referring para (ix)(a) of Circular No E(O)III/2014/PL/05 dated 31.08.2015 submits that the transfer of doctors within and outside the zone should be decided by the Railways/Board at appropriate level on case-to-case basis keeping in view the 'administrative interest'. From the reading of the impugned transfer order dated 13.02.2019, nothing has been found apropos 'administrative interest'. Rather appeared as 'against existing vacancy'. Hence submission made by the learned counsel for the respondents fails.

13. After taking into entire conspectus of the case and the decisions rendered by the Hon'ble High Court in the case of **Narayan Choudhury (supra)** and **Umesh Kr. Mishra (supra)** as well as policy guideline as discussed in the foregoing paragraphs, I am of the view that it is a fit case for disposal of the O.A. by not keep pending long and to direct the respondents to retain the applicant

at his present place of posting at Divisional Railway Hospital, Alipurduar till he attains the age of 62 years. Ordered accordingly.

14. With the above observations and directions, O.A. stands disposed of accordingly at the admission stage. There shall be no order as to costs.

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

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