

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No. 021/1205/2018

Date of CAV: 28.1.2019

Date of Pronouncement: 04.02.2019

Between:

S. Geetha, D/o. S. Ramesh Chandra,
Aged 50 years, Occ: Office Superintendent (Group 'C'),
O/o. The Chief Cashier, South Central Railway,
Lekha Bhavan, Secunderabad.

... Applicant

And

1. Union of India, Rep. by the General Manager,
Rail Nilayam, 3rd Floor, South Central Railway,
Secunderabad.
2. The Financial Advisor & Chief Accounts Officer (Traffic),
South Central Railway, Lekha Bhavan, Secunderabad.
3. The Chief Accounts Officer (Traffic),
South Central Railway, Lekha Bhavan, Secunderabad.
4. The Chief Cashier, The Financial Advisor &
Chief Accounts Officer (Traffic),
Cash & Pay, South Central Railway,
Lekha Bhavan, Secunderabad.

... Respondents

Counsel for the Applicant ... Mr. K.R.K.V. Prasad

Counsel for the Respondents ... Mr. D. Madhava Reddy, SC for Rlys

CORAM:

Hon'ble Mr. Justice R. Kantha Rao, Member (Judl)

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORDER
{Per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. OA is filed challenging the office order 30/2018 dt 16.11.2018 transferring the applicant.

3. Applicant is working as Office Superintendent since 19.6.2018 in the Pay Office of Hyderabad Division /Construction, which is under the control of the 4th respondent. Applicant was transferred on 16.11.2018 by the 3rd respondent from Pay Office to Cash Office functioning under Headquarters and under the control of the 4th respondent. Against the transfer a representation was made on 3.12.2018 to the 2nd respondent. Thereafter, the applicant went on sick leave as she was down with viral fever from 4.12.2018 onwards. However, the muster roll was tampered with by striking off the earlier entry of showing her as on sick leave on 4.12.2018 & 5.12.2018 and indicating that she was relieved on 4.12.2018. The applicant claims that she has been subjected to frequent transfers and hence had to necessarily approach the Tribunal to stall the latest transfer which is *malafide*. Therefore the OA.

4. The submissions of the applicant against the transfer are that within a period of 10 months the applicant was subjected to 4 transfers. Other similarly situated employees were not disturbed. Muster roll was tampered with, to show that she was relieved when she was actually on sick leave. Applicant has been transferred from one post to another which involves change of duties and hence, Railway Board order vide RBE No.48/2012 is applicable. Railway Board further prescribes vide Serial Circular No.87/2014 that transfers be effected on the recommendation of a committee but the same was not followed. Transfer order was not issued by the competent authority. At least as per local agreement between the Trade Unions and the then 4th respondent, she has to be retained for a period of one year. Being subjected to frequent transfers would besmear her image as if, something is wrong with her.

5. Respondents contend that the applicant was transferred on rotation basis from Sr. DC/Pay Office / HYB&CN to Cash Office/SC which is located at a

distance of less than ½ a KM. Applicant informally sought time of 15 days to get relieved but since she did not do so, applicant was ordered to be relieved by 4th respondent vide letter dt 4.12.2018. The applicant reported sick from 4.12.2018 but till 13.12.2018 the sick certificate was not submitted. On the directions of the 4th respondent, Sr DC, who is the immediate superior, could not relieve the applicant on 4.12.2018 as she did not report to duty and hence the entry in the muster roll was crossed. The representation of the applicant was made to FA & CAO/Gen and not to the 2nd respondent. However, the said representation was received on 10.12.2018 only after filing of the OA. Applicant was in office on 3.12.2018 and hence, was aware of the order of the 4th respondent dt 3.12.2018 to relieve her. To avoid the transfer, the applicant has been on sick leave. Respondents explain the sequence of transfers by stating that the first transfer order dt. 3.11.2017 was cancelled as the applicant refused it orally. Second one was issued on 16.11.17 modifying the previous order dt. 3.11.2017, which was complied but after a lapse of 4 months. The third one was issued on 10.4.2018 consequent to the merger of 5 pay offices into 3 offices which are located in the same building. Due to the merger, the Pay Office/HQRS & LGD was attached to her and hence should not be treated as a transfer. On 19.6.2018, 2 more employees were also transferred on administrative grounds. The present transfer order dt.16.11.2018 was issued moving her from Pay Office to Cash office /SC by the competent authority as per the policy of rotation on completion of 1 year which was evolved, with the consent of the local Trade Unions, to shift OS from Cash Office/SC to Cash Vouchers/ Traffic Accounts Office and vice versa. Further Railway Board orders are to be followed only when the applicant is moved from the jurisdiction of one controlling officer to another. The present movement is only under the same controlling officer and that too, as per the

rotation policy. No change of duties is involved in the transfer as alleged by the applicant. As per recruitment norm applicant has to serve wherever she is posted and that she has no vested right to be posted to a particular place as per Honourable Supreme Court judgments. Applicant reported to duty on 14.12.2018 and the applicant continues in the same post as per the interim order of this Tribunal dated 21.12.2018. Refusal of the applicant to obey the transfer order is breeding indiscipline among the employees.

6. Heard Sri K.R.K.V. Prasad, learned counsel for the applicant and Sri D. Madhava Reddy, learned Standing Counsel for the respondents. The submissions were in wavelength with the written submissions made. We have gone through the relevant documents and the material papers submitted.

7(I) Transferring an employee is the prerogative of the respondents. While recruiting employees it is stipulated that they are liable to be transferred to any place on administrative requirements. Transfer is definitely incidental to service. The stand of the respondents in this regard is unquestionable. However, a transfer issued should be fair and based on rules without any malafide intentions. It is against the above yardsticks the present case has to be adjudged. In this context the submission of both the parties are analysed as under to arrive at a fair decision.

(II) It is an undeniable fact that the Railway Board is the Policy evolving body and its orders are binding to all the subordinate formations. Any order contravening the Railway Board order would have to be construed as invalid. The Railway Board order dated 3.4.2012 (RBE No. 48/2012) at 2 (ii) stipulates that in regard to Accounts Office, change of seat which will involve change in nature of job will meet the requirement of periodic transfer. The applicant was transferred from Pay Office to Cash Office which involves change

of duties. Hence, it has to be treated as a transfer as per Railway Board orders. Therefore, the contention of the respondents that she has been moved within the jurisdiction of the same controlling officer and hence, not a transfer does not hold ground. The Railway Board having evolved the Transfer policy the respondents cannot evolve any other policy contravening the same. Therefore the rotational policy evolved by the respondents with the consent of the local trade unions is invalid. It can be said to be valid, if the respondents approached the Railway Board and got it ratified. No such exercise was undertaken. The Railway Board's policy vide Serial Circular No.87/2014, dt. 13.08.2014 lays down the formation of a Placement Committee, in pursuance of the Supreme Court judgment dt 31.10.2013 in WP (C) No. 82/2011, to recommend transfers. The committee members in regard to transfer for Group C employees are - 1) the JA/SG officer of the Personnel Branch 2) concerned JA/SG officer of the concerned department 3) JAG/SG officer of the department outside the concerned department. Recommendations of the committee are to be approved by the Principal HOD/ Chief HOD. Transfer order was issued by the Chief Cashier who is not competent. Thus, in the present case, neither the committee was formed nor was the order approved by the PHOD who is the competent authority. The tenure fixed is (4) years as per the Railway Board order 48/2012 dt 3.4.2012. The same need to be adhered to and applied uniformly. Further, making changes in the muster roll, a statutory document, by the respondents when the applicant is on sick leave was not called for. It was submitted by the learned counsel for the applicant that after an employee reports sick, he/she is marked as sick in the muster roll and on resuming duty the medical certificate is submitted to be forwarded to the competent authority for grant of sick leave. The

applicant has followed the said procedure and hence objection of the respondents does not seem to be reasonable.

(III) Applicant has submitted that as per policy of the respondents, there are 17 staff members working as Chief Office Supdts/Office Supdts working in the same building who are to be rotated, but not rotated. There are other long standing members who are to be transferred. There has been no response from the respondents in this regard. The other contentions made by both the parties in regard to rotational policy are not being commented upon since in our view it is invalid as it contravenes the Railway Board order cited. Moreover, other employees not being transferred despite being longstanding does bring an element of discrimination. Besides, it gives room for being *mala fide* as seen in the present case. The applicant was under pressure with too many shifts and that too against rules. Indeed, frequent transfers do adversely effect the morale of the employees. Transfers generally involve change of duties. Change of duties consequent to frequent transfers orders do impact work efficiency and hence detrimental to the respondents organisation. Besides, rules laid down are to be followed. Respondents need to lead the way in this regard. In this context the observations of the Supreme Court about adherence of rules, cited below, are not only relevant, but also act as essential guidelines for the respondents to follow:

“The Hon’ble Supreme Court observation in T.Kannan and ors vs S.K. Nayyar (1991) 1 SCC 544 held that “Action in respect of matters covered by rules should be regulated by rules”. Again in Seighal’s case (1992) (1) supp 1 SCC 304 the Hon’ble Supreme Court has stated that “Wanton or deliberate deviation in implementation of rules should be curbed and snubbed.” In another judgment reported in (2007) 7 SCJ 353 the Hon’ble Apex court held “the court cannot de hors rules”

The applicant did contest the stand taken by the respondents in regard to the different orders issued in the past by submitting a rejoinder. It is not a

disputed fact that multiple transfer orders were issued in a short span of 10 months. Respondents tried to explain the reasons but the main drawback we noticed is that the transfer order issued vide Office Order No.30/2018 dt 16.11.2018 is against the Railway Board order vide RBE No.48/2012 dt.03.04.2012 and Serial Circular No.87/2014. Hence, the same stands quashed. The interim order issued vide order dated 21.12.2018 is made absolute. Before parting, we would like to state that Respondents should follow the Railway Board guidelines in regard to transfers and effect them in transparent, uniform and fair manner so that there is little scope for employee grievances to emerge.

(IV) The OA is allowed as above. There shall be no order as to costs.

**(B.V. SUDHAKAR)
MEMBER (ADMN.)**

**(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)**

Dated, the 4th day of February, 2019

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