

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATAO.A.350/1824/2018
M.A. 72/2019

Order dated: 18.02.2019

Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Prasanta Kumar Nag,
Son of Late S.K. Nag,
Aged about 36 years,
Working as Senior Section
Engineer/Diesel /Engineering,
Siliguri Junction,
Under Senior Divisional Mechanical
Engineer/Siliguri Junction,
Katihar Division,
N.F. Railway,
Residing at Railway Quarter No. 306(A),
Diesel Colony, Pradhan Nagar,
Police Station - Pradhan Nagar, Siliguri,
District - Darjeeling, Pin - 734 003.

Applicant.

Versus

1. Union of India,
Through the General Manager,
N.F. Railway,
Maligoan, Guwahati,
Assam, Pin - 780 011.
2. The Chief Personnel Officer,
N.R. Railway,
Maligoan, Guwahati,
Assam, Pin - 780 011.
3. The Principal Chief Electrical Engineer,
N.F. Railway,
Maligoan, Guwahati,
Assam, Pin - 780 011.
4. The Principal Chief Mechanical Engineer,
N.F. Railway,
Maligoan, Guwahati,
Assam, Pin - 780 011.
5. The Deputy Chief Personnel Officer,

N.F. Railway,
Maligoan, Guwahati,
Assam, Pin – 780 011.

6. The Assistant Personnel Officer/Mechanical,
N.F. Railway,
Maligoan, Guwahati,
Assam, Pin – 780 011.

7. The Senior Divisional Mechanical Engineer,
Siliguri Diesel Loco Shed,
N.F. Railway,
Katihar Division,
Siliguri Junction,
Pin – 734 003.

..... Respondents.

For the applicant : Mr. B. Chatterjee, Counsel

For the respondents : Mr. B. L. Gangopadhyay, Counsel

O R D E R (Oral)

Ld. Counsels were heard and materials on record were perused.

2. The applicant in this O.A. has assailed a transfer order and has sought for the following reliefs:

"8.(a) An order do issue quashing/ setting aside the impugned Transfer Order No. Mech/Dsl./Staffmatter/2015/18(loose) dated 27.02.2018 issued by Deputy Chief Personnel Officer/Head Quarter for Chief Personnel Officer, N.F. Railway being Annexure "A-1".

(b) An order do issue quashing/ setting aside the impugned and purported office order dated 12.09.2018 issued by the Assistant Personnel Officer / Mechanical for Chief Personnel Officer, N.F. Railway being Annexure "A-6";

(c) An order do issue quashing and/ or set aside release order if any is/be issued by the respondent authority against your Applicant;

(d) Any orders do issue directing the official respondent authority to allow your Applicant to continue in his duty at Siliguri Junction Diesel Shed, of N.F. Railway as a Senior Section Engineer/ Diesel/ Electrical with immediate effect alongwith all consequential benefits;

B

- (e) An order directing the official respondents to produce the file/ noting in connection with the transfer of the Applicant and all other relevant documents with an inspection to the Learned Counsel for the Applicant;
- (f) Any other or further order or orders or direction as to what honours may deem fit and proper."

3. The applicant vide order dated 28.2.18 (Annexure-1) was transferred as under:

"Shri Prasanta Kumar Nag, SSE/Dsl./Elect. Working under Sr. DME/Dsl./SGUI has been transferred from SGUI Dsl. Shed to NGC Dsl. Sheds on administrative ground in his existing pay matrix level.

This issues with the approval of PCME.

Sd/-

(Amrita Sinha)

By Chief Personnel Officer/HQ.
For General Manager (P)/MLG"

4. Aggrieved he preferred O.A. 123/08 before the Guwahati Bench which was disposed of on 26.3.18 order dated 26.3.18, in O.A. 123/18 by the Guwahati Bench of this Tribunal, is as under:

"This O.A. is filed by the Applicant seeking a direction to the Respondents to set aside and quash the impugned office order No. Mech/Dsl./Staff matter/2015/18(loose) dated 27/28.02.2018 and to allow the Applicant to continue at his current place of posting of Siliguri Junction Diesel Shed.

2. At the request of the learned counsel for the Applicant, the matter was taken up to dispose of this O.A. of the admission stage itself as the learned railway standing counsel for the Respondents consented for the same as she has already taken instructions and submitted served documents including a letter wherein it is stated that impugned transfer order was preceded by Placement Committee recommendation. This letter was relevant because main contention of the Applicant was that the impugned transfer order was bad in law as it is not based on the recommendation of the Placement Committee.

3. Heard Mr. C.S. Bazarika, learned counsel for the Applicant and Ms. U. Das, learned railway standing counsel for the Respondents. Perused the O.A. and all the documents.

3. Though the learned counsel for the Applicant strenuously and vehemently submitted that the impugned transfer order dated 27/28.02.2018 be given effect to after six months for enabling him to shift his sick mother. The learned railway standing counsel for the Respondents also equally strenuously and vehemently submitted that no time should be given at all as it affects public interest.

4. After considering the various submissions made by the learned counsel for the Applicant as well as learned railway standing counsel for the Respondents more particularly with respect to the health condition of the mother of the Applicant, the Respondents are directed to give effect to the transfer order dated 27/28.02.2018 after two months, that is, from 25.05.2018.

O.A. stands disposed of accordingly at the admission stage. No order as to costs."

5. The respondents pursuant to such direction as supra, issued an order as under:

"Reg. : Cancellation of the transfer order of Shri Prasanta Kr. Nag, SSE/D/E from SGUJ dsl. Shed to NGC dsl. Shed.

Earlier Smt. Riya Choudhary w/o Shri Prasanta Kr. Nag has submitted a representation dated 01.01.2018 (vide S.N. 16) regarding transfer of Sri Prashant Kumar Nag, SSE/Dsl/SGUJ to NGC/Dsl shed on the ground of marital discord (extra marital affairs) PCME has accorded his kind approval for transfer of Shri Nag (vide PP-06) and office order was issued on 27.02.2018 with the recommendation of placement committee and approval of PCME, which may be seen at SN-17.

Shri Prasanta Kumar Nag, SSE/D/E/SGUJ has filed court case of O.A. No 123/2018 against his transfer order Hon'ble CAT/GHY has disposed instant OA at the admission stage with direction to Railway for giving effect to the transfer order dated 27/28.02.2018 after two months, that is, from 26.05.2018 vide SN-02 to SN-07, accordingly, a letter was sent to Sr. DME/Dsl/SGUJ to comply Hon'ble CAT/GHY's order vide SN-08.

Sri Prasanta Kr. Nag, SSE/Dsl./Elect. Has reported sick under RMC w.e.f. 23.05.2018, Sr. DME/Dsl./SSGI has stated vide letter dated 07.06.2018 stated that SSE/IC/Dsl./Elect./SGUJ will be spared Sri Nag after joining from sick.

Now, Sr. DME/Dsl./SGUJ has forwarded the application submitted by Shri Prasanta Kr. Nag, SSE/D/E for cancellation of the transfer order from SGUJ Dsl. Shed to NGC Dsl. Shed (SN-13).

Submitted for further decision please.

Sd/-
OS/EM
Ch.OS/EM

May kindly peruse notings at above and submitted for decision please to cancel transfer order of Sri Prasanta Kr. Nag, SSE/D/E/SGUJ.

Sd/-
31/7/18"

(Extracted verbatim with the appended notes.)

6. The applicant, thereafter, renewed his prayer for cancellation of his transfer from D/Shed/SGUJ to D/Shed/NGC. His prayer was forwarded to PCEE,/MCG on 1.9.18 by Chemist & Metallurgist N.F. Railway, Siliguri Junction.

He had prayed before the PCEE as under (extracted with supplied emphasis for clarity)

"To
The PCEE,
N. F. Railway,
Maligaon, Guwahati, Assam"

(THROUGH PROPER CHANNEL)

Ref: My earlier prayer letter dated 21.05.2018.

Sub: Humble prayer for cancellation of Transfer order issued by the competent authority on administrative ground.

Respected Sir,

I would like to draw your kind attention to the following facts for your sympathetic consideration please.

Sir, the Railway authority issued transfer order on administrative ground against me on 28.02.2018.

Sir, I have earlier appealed for cancellation of my Transfer/Posting to NGC/DSL Shed on Date: 21/05/2018. But till date there is no response/action from your end which makes me to go through real mental stress and thus making my life more miserable.

Sir, I have come to know that the Transfer order dated 28/02/18 has been issued against the written complaint lodged by my wife Smt. Riya Choudhury before you. In the said letter my wife told you that if I am transferred to Guwahati NGC/DSL Shed than it would give better future to our married life.

Sir, I humbly submit that this is not the true submission of my wife as because, she has already lodged a written complaint before the all women police station, Pan Bazar being case no 205/2018 under section 498A I.P.C.

Sir, it is pertinent to mention here that I have already obtained a bail from the Ld. Court against this complaint lodged by my wife.

Sir, my wife again lodged another complaint case before the Ld. Court at Kamrup Guwahati against me under section 12 of Domestic Violence Act being Misc. Case No. 22 of 2018.

Sir, my wife lodged another complaint case before the Principal Judge Family Court Kamrup at Guwahati under section 125 CR. P. C. being Case no. 84 of 2018 for claiming maintenance for her amounting to Rs. 25,000/- per month.

Sir, my wife is an employee of Assam Police, now posted at Guwahati and she is very influential lady and she is a well connected with the hooligans.

Sir, every time she is threatening me that whenever I will join my service in Guwahati that she will see to it as she is police personnel so law is in her hand and I would not be able to do anything to her.

Sir, in every time when I appear before the Ld. Forum/Ld. Courts some antisocial elements who are engaged by my wife use to follow me, where I am going and what I am doing for that reasons I am always under an apprehension of my life and hence I straight way go to railway station from the Ld. Court with the help of my advocates.

Sir, it is humble submits that during stay with my wife in my railway quarter I saw she developed her illicit relation with my colleague. When I resist the said relationship my wife then and there created a scene and left my quarter wilfully stating that she will give a lesion to me as because all the laws are in favour of the women.

Sir, it is again humble submits that on several occasion I had tried to convince her that of her earlier marriage could not be continued due to her same behaviour and again she is doing the same thing with me but it was all in vain.

Sir, without finding any alternative I have lodged a matrimonial suit for divorce before the Ld. Court at Siliguri being Mat Suit no. 22 of 2018.

Sir, for the above acts and conducts of my wife it is very much clear that she is not willing to continue her matrimonial relationship and she is only interested in harassing me in different ways. Her main motive is to get monetary benefit from me and to restrain me from looking after my ailing old mother.

Sir, I humbly submits before you that I got this job on compassionate ground against the death of my father, who was a railway employee and I am the only son of my parents. My mother is an old, ailing and widow lady and every time is required for taking care of my mother due to her illness.

Sir, in spite of that if you do not cancel my transfer order my life will be miserable and I will be always in an apprehension that I may be killed.

Sir, view of the above facts and circumstances I pray before you to allow me to continue to be posted at Siliguri Diesel Loco Shed and request you to cancel the office order for transfer dated 28.02.2018.

Yours faithfully,

Sd/-
(SRI. PRASANTA KUMAR NAG)
SSE/DSL/ELECT, N. F. Railway."

7. Ld. Counsel for the applicant would invite attention to a communication dated 12.7.18 of the Sr. DME/Diesel/SGUJ which reads:

"Siliguri Diesel Shed has maintaining 189 HHP locomotives against the sanctioned BOS of 100 locomotives.

Recently, two electrical supervisor has been transferred to NGC Diesel Shed on own request transfer. At present there are 04 (four) vacancies Electrical Supervisor scale. Shed has facing shortage of Electrical Supervisor. And Electrical Supervisor Shri P.K. Nag has submitted an application for stay in Siliguri Diesel Shed on medical ground of his mother treatment at Siliguri.

If the appeal of Shri P.K. Nag, SSE/Elect/D/SGUJ for stay at Siliguri Diesel Shed is considered and granted by HQ, then it will be beneficial for Siliguri Diesel Shed as well as applicant.

Put up to your end for kind consideration and remarks from Pr. GEE/NFR please."

Ld. Counsel, placing the above, would strenuously urge that the applicant can be accommodated at Siliguri since there is a shortage at the shed.

Ld. Counsel would further submit that the applicant's transfer to Guwahati Diesel Shed may prove harmful to him. It is bound to cause mental unrest and threat to life while he needs to look after his aged widow mother.

8. Ld. Counsel for the respondents Mr. Gangopadhyay would vociferously object since in terms of Guwahati Bench order the applicant was supposed to ^{be} retained for a few more months and not beyond that.

9. Since the subsequent representation has been preferred and the same is not disposed of, whereas we note the communication dt. 12.7.18, extracted supra, we dispose of the O.A. with a direction upon the respondents to sympathetically and with an open mind consider the representation dated 1.9.18, verify the

genuineness of the statements made therein about his family disturbances, and modify the transfer and posting order suitably for any place other than Guwahati, or retain him if found entitled.

Appropriate order be issued within 4 weeks from the date of receipt of a copy of this order.

10. Till such time the applicant shall not be compelled to join the place of transfer.

11. This O.A. accordingly would stand dispose of. No order as to costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

drh

