

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH**

OA 350/873/2018
(Read with M.A. 584/2018
MA 515/2018 & CPC 60/2018)

Date of Order: 12.10.2018

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

Sumit Dutta,
Son of Late Santi Ranjan Dutta,
Aged about 54 years,
Working as a Chief Ticket Inspector/CTI/II/NJP,
Under Senior DCM/ KIR at NJP, Katihar Division,
N.F. Railway, ~~Ministry of Railways~~,
Residing at Shanti Bhawan, Milanpally,
Sumaresh Bose Sarani,
Post Office & Police Station – Siliguri,
District – Jalpaiguri, Pin – 734005

... Applicant.

: Versus

1. Union of India,
Through the General Manager,
N.F. Railway,
Maligoan Guwahati,
Assam, Pin – 780011.
2. The Chief Commercial Manager,
N.F. Railway,
Maligoan, Guwahati,
Assam, Pin – 780011.
3. The Divisional Railway Manager,
North East Frontier Railway,
Katihar Division,
Bihar, Pin – 854105.
4. The Divisional Railway Manager (P),
North East Frontier Railway,
Katihar Division,
Bihar, Pin – 854105.

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5. The Senior Divisional Commercial Manager,
Katihar Division, N.F. Railway,
Bihar, Pin – 854105.
6. Assistant Personnel Officer/III,
North East Frontier Railway,
Katihar Division, N.F. Railway,
Bihar, Pin – 854105.

.....Respondents.

For the Applicant(s) : Mr. B.Chatterjee

For the Respondent(s) : Mr. B.P.Manna

O R D E R (Oral)

Per Dr. Nandita Chatterjee, Administrative Member:

Being aggrieved with the transfer order dated 02.01.2018 and subsequent speaking order dated 12.06.2018, the applicant has preferred this instant O.A. seeking the following relief:

"8.(a) An order do issue quashing/ setting aside the impugned Transfer Order No. EG/491/CTI-II/Promotion(T)/Pt. II dated 02.01.2018 issued by APO/III for Divisional Railway Manager(P), Katihar Division of N.F. Railway being Annexure "A-2";

(b) An order do issue quashing and/ or setting aside the impugned office order dated 12.06.2018 issued by the respondent No. 5 being Annexure "A-7";

(c) An order do issue quashing and/ or set aside release order if any is to 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 NJP, under Katihar Division of N.F. Railway as a Chief Ticket Inspector/CTI/II/NJP, with immediate effect alongwith all consequential benefits;

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(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 Your Lordships may deem fit and proper."

2. We have heard Ld. Counsel for both parties and have perused the pleadings and documents on record.

3. The case of the applicant, as submitted by his Ld. Counsel, is that the applicant is the Chief Ticket Inspector/CTI/II at New Jalpaiguri Railway Station.

That, on 02.01.2018, the applicant was placed under suspension by his Disciplinary Authority and, on the same date, was transferred to Jogbani Station in the State of Bihar, which is more than 500 Kms away from his present place of posting. Having no other alternative, the applicant preferred thereafter an O.A. No. 698/2018, which was disposed of on 24.05.2018 with directions on the Respondents to consider his pending representations in view of prevailing Railway Board's guidelines and to communicate the decision thereafter to the applicant; in the meanwhile status quo was to be maintained in respect of the applicant's present place of posting.

That, thereafter, the Respondents issued a communication dated 12.06.2018 in which the prayer of the applicant as contained in his

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representations was rejected. The said communication, however, did not traverse the issues which were agitated by the applicant while complaining about his arbitrary transfer and, hence, being aggrieved, applicant has approached the Tribunal in the instant O.A.

The applicant has cited, inter alia, the following grounds in support of his claim:

- (a) That, the Railway Board's Circular has been flouted.
- (b) That, the transfer orders were not issued in public interest.
- (c) That, the applicant had been discriminated against in being selected arbitrarily for transfer to a place 500 Kms away from his present place of posting.
- (d) and that, his representations had been disposed of in a cryptic and non-reasoned manner.

4. Per contra, the Respondents have argued that the applicant is the Chief Ticket Inspector, New Jalpaiguri, who had initially been appointed to the post of Jr. Trains Clerk and posted at New Jalpaiguri Railway Station. On being declared surplus, his post was absorbed with the post of Ticket Collector on 07.02.1996 and the applicant was posted at New Jalpaiguri. The applicant was, thereafter, promoted to the post of Sr. Ticket Collector at New Jalpaiguri. He was transferred to Katihar Station on administrative grounds in February, 2003 and, once again, on the

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basis of his prayer, was reposted at New Jalpaiguri in September, 2003. That, the applicant has been continuously working at New Jalpaiguri for about 15 years from 15.09.2003 to 02.01.2018.

That, as the applicant was holding a sensitive post of CTI-II of New Jalpaiguri for more than 15 years, he was transferred from New Jalpaiguri to Jogbani Station keeping in view improvement in working of the applicant on administrative grounds and also on the recommendation of the Placement Committee in pursuance to Railway Board's Circular dated 10.06.2014, and that, as no Rules of the Railways been violated in the context of the transfer of the applicant, the O.A. deserved to be dismissed without any consideration thereupon.

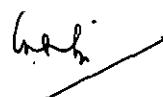
5. The point of determination in this matter is whether the applicant has been transferred according to the rules and policies governing the field of the Railway authorities.
6. At the outset, we refer to the order transferring the applicant dated 02.01.2018 (Annexure-A/2 to the O.A.), which is reproduced below:

"OFFICE ORDER"

Shri Sumit Dutta, CT/II/NJP is hereby transferred and posted at JBN with immediate effect in his same pay and level on administrative ground vice vacancy.

Shri Sumit Dutta is entitled to get all transfer benefits as per extant rules.

This issued with the approval of the placement committee.



Railway Qrs., if any, is under occupation should be vacated or he should apply for retention otherwise damage rent will be recovered besides D&AR action.

(A.Toppo)
APO/III
for DRM(P)/Katihar
Date. 02.01.18"

Thereafter, we examine the communication made to the applicant by the Respondent authorities on 12.06.2018 in compliance to the orders of the Tribunal dated 24.05.2018 in O.A.No. 698/2018. The said communication is as under:

"Shri Sumit Dutta
CTI/II/NJP
(By Hand in Office)"

Sub: Compliance of Order dated 24.05.2018 passed by the Hon'ble CAT/CAL in O.A. No. 350/00698 of 2018 in the matter of Shri Sumit Dutta Vs. UOI and ors.

In pursuance of direction for Hon'ble CAT, Calcutta dated 24.05.2018 passed in aforementioned matter the competent authority has gone through the representation dated 30.04.2018 only available in the official record and also the Railway Board's guidelines regarding transfer of employees circulated vide its communication number dated 10.06.2014 along with other relevant rules and observed as under:-

Prima facie as per the railway service terms and conditions transfer of an employee from one place to another place in administrative interest is unavoidable event to explore for smooth running of dynamic system and not at all punitive specially in the cases of holding sensitive post as specified by Railway Board. The employee has no right to post on particular place where he has passed almost period of service in one place.

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On completion of about 18 years at NJP station holding a sensitive post of Chief Ticket inspector, you have been transferred from NJP to JBN on administrative interest considering the recommendation of placement committee under purview of Railway board's guidelines dated 10.04.2014.

Moreover on receipt of said transfer order you have to carry order first and thereafter you have to make prayer by way of representation for consideration but wilfully you have violated the order of competent authority as well as the extant provisions of service conduct rule, 1966 and rushed to court without waiting of the outcome of the competent authority.

Besides these, you have not made representation before the competent authority in proper manner as well as only one representation dated 30.04.18 has been received addressing to CCM/MLG not to Sr. DCM/KIR.

Under the observations made herein above the undersigned is of the considered view that the transfer order issued on 02.01.2018 by the competent authority followed by the Railway Board's guidelines contained in circular dated 10.06.2014 transferring you from NJP to JBN is very much just and proper.

(V.N.Dwivedi)
Sr. DCM/KIR"

Upon perusal of the transfer order, the following transpires:

- (i) That, the applicant was transferred on administrative grounds.
- (ii) That the transfer was issued with the approval of the Placement Committee.

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Upon examining the communication dated 12.06.2018 (Annexure-A/7 to the O.A.), the following are inferred:

- (a) That, the communication is issued on the basis of the representation of the applicant as available in official record and Railway Board's guidelines governing the field for transfer of employees.
- (b) That, the employee has no right to be placed at a particular place, particularly, where he has remained posted for almost entire period of his service.
- (c) That, after completion of about 18 years in New Jalpaiguri Station and after holding the sensitive post of CTI-II, applicant has been transferred following the recommendation of the Transfer & Placement Committee.
- (d) That, the applicant has to carry out the transfer order first and, thereafter may represent for consideration.
- (e) and that, the transfer order dated 02.01.2018 was just and proper and issued in accordance with the Railway Board's guidelines.

We hereafter proceed to examine the representations, which have been made by the applicant on 06.01.2018, 21.04.2018 and 30.04.2018

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respectively (Annexure-A/3 colly to the O.A.). In such representations, the following grounds have been advanced for his retention at New Jalpaiguri.

That, "(i)" the applicant is the sole male member of the family having two young college going daughters and an old aged aunt requiring medical care.

- (ii) That he had never been issued with charge sheet or any punishment in his service career.
- (iii) At the end of his service life, it would be difficult for him to join the transferred place of posting.

In this Original Application, the foremost ground which has been advanced in support of applicant's claim is that there has been a violation of the Railway Board's Circular in the case of the applicant. In none of the representations, however, the applicant has cited a single instance where the transfer policies of the Respondents have been violated. His prayers are entirely on personal grounds.

During hearing, however, the Ld. Counsel for the Respondents furnished a correspondence dated 11.10.2018 from the Sr. DCM/KIR,, V.N.Dwivedi, which reads as follows:

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"Shri B.P.Manna
Railway Advocate
CAT/Kolkata

Dated 11.10.18

Sub: Information regarding Sumit Dutta's joining
at Jobani Station in connection with O.A. No.
350/873/2018 & M.A.No. 350/515/2018.

Sir,

It is to inform you that as Shri Sumit Dutta, CTI/II/NJP under Sr. DCM/KIR was ordered to transfer from New Jalpaiguri station to Jobani station but till today neither he joined at his new place of posting at Jobani nor he reported at New Jalpaiguri. He is being marked as "Absent" in the Attendance Register at NJP station. Hence, whereabouts of Shri Sumit Dutta is not known to the Railway administration till date. Attendance Sheet of Shri Sumit Dutta for the month of September & October 2018 are annexed herewith.

This is for your kind information and Hon'ble CAT/Kol's kind appraisal.

"(V.N.Dwivedi)
Sr. DCM/KIR"

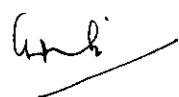
The said communication indicates that the applicant has neither joined at Jobani Station on transfer nor has he reported at New Jalpaiguri. This is an interesting communication as because the Sr. DCM/KIR admits therein that the applicant may report at New Jalpaiguri, which is in contradiction to the communication issued by him on 12.06.2018 wherein the applicant was directed to carry out the transfer order at the outset. Such correspondence on behalf of the Respondents

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also indicates that there is a scope for the applicant to report at New Jalpaiguri.

7. As held in the case of **Union of India Vs. S.L.Abbas (1993) II LLJ 626** and, more particularly, in the case of **N.K.Singh Vs. UOI (1995) I LLJ 854** that if the decision is vitiated by malafide or infraction of provision or principle governing the transfer as contained in the Respondents' transfer policy, this matter falls for intervention for judicial scrutiny. In none of the representations, however, as stated earlier, the applicant has challenged the violation of the transfer policy.

We, therefore, give liberty to the applicant to submit a comprehensive representation to the competent Respondent authority clearly stating which particular component of the transfer policy/guideline of the Respondent authorities have been violated in his context. This comprehensive representation is to be filed within two weeks of the date of receipt of copy of this order and, once the competent respondent authority receives such representation, the said competent respondent authority shall scrupulously examine as to whether there has been any violation of transfer guidelines in this regard and state the same in a reasoned and speaking order within four weeks of receipt of the said representation. Needless to say, the rules and guidelines governing the field should be referred to in concluding upon the representation of the

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applicant. Until such representation is disposed of, applicant may be permitted to report at New Jalpaiguri as indicated in the Respondents' communication dated 11.10.2018. Once a decision is arrived at, however, Respondent authorities will take necessary action in terms of extant rules and policy as applicable to the applicant.

If, however, the applicant fails to submit such representation within two weeks of the receipt of copy of this order, then the Respondent authorities will ensure his movement to his transferred place of posting. Regarding the interim period during which the applicant has not reported for duty, the Respondent authorities will take appropriate decision as per law and indicate the same in their speaking order.

With these directions, this O.A. is disposed of. There will be no orders as to costs.

M.A.s No. 915 of 2018, 584 of 2018 and CPC No. 60 of 2018 are disposed of accordingly.

(Dr. Nandita Chatterji,
Member (A)

(Bidisha Banerjee)
Member (J)

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