

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00095/18
With
MA/050/00044/19

Date of Order: 22.01.2019

C O R A M

HON'BLE MR. JAYESH V. BHAIKARIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

1. Rajeev Kumar Singh, son of Shri Vijay Kumar Singh.
2. Rajeev Kumar, son of Sri Paras Mandal

Both posted under Chief Crew Controller at Barauni, EC Railway, Barauni in Sonpur Division of EC Railway, Hajipur.

..... Applicants.

- By Advocate: - Mr. S.K. Dutta

-Versus-

1. The Union of India through the General Manager, EC Railway, Hajipur-840001.
2. The Divisional Railway Manager, Sonpur Division, EC Railway, Sonpur, PIN Code- 841101.
3. The Divisional Railway Manager (Personnel), Sonpur Division, EC Railway, Sonpur, PIN Code- 841102.
4. The Divisional Mechanical Engineer, Sonpur Division, EC Railway, Sonpur-842001.
5. The Chief Crew Controller, Diesel Lobby, Barauni, EC Railway, Barauni.

..... Respondents.

- By Advocate(s): - Mr. Ram Kinker Choubey

O R D E R
[ORAL]

Per Dinesh Sharma, A.M.:- The case of the applicants is that applicant no. 1 had submitted an application in the prescribed form to the competent authority for his mutual transfer with one Dheeraj Kumar Singh of Malda Division on 23.09.2010 and applicant no. 2 had sent his request for such mutual transfer with one Prabhas Kumar in Malda Division on

05.05.2011. Since there was inordinate delay in finalising the case of mutual transfer, applicant no. 1 submitted a representation for cancellation of his request on 30.04.2013 while applicant no. 2, for the same reason, submitted his request for cancellation through proper channel on 25.09.2017. In the meantime, Applicant No. 1 has been found suitable for promotion to the post of Senior Assistant Local Pilot by office order dated 13.01.2013, w.e.f. 09.07.2012, and has been further promoted to the post of Loco Pilot by office order dated 03.03.2016 w.e.f. 01.07.2016. Applicant no. 2 also was granted promotion, along with applicant no. 1 to the post of Assistant Loco Pilot on 13.01.2013, w.e.f. 09.07.2012, further promotion to the post of Loco Pilot Shunter Grade-II by office order dated 23.08.2016 w.e.f. 23.08.2016 and after fulfilling the required conditions to the post of Loco Pilot (Goods) w.e.f. 08.04.2017. The applicants are aggrieved by the order dated 27.12.2017 of the DRM, Personnel, Sonpur by which the Chief Crew Controller, Barauni who is the controlling officer of applicants is directed to spare the applicants to give effect to mutual transfer for joining at Malda Division. The applicants have requested for quashing this order since it has been issued after they had withdrawn their request for mutual transfer and has been done more than 6 years after their request for mutual transfer.

2. Since during the pendency of this application, they were relieved by an order dated 23.05.2018 the applicants were allowed to amend their OA by adding another request for quashing this relieving order. The applicants have referred to the circulars of Railway Board where instructions are given

to Railway authorities to dispose of request for mutual transfer expeditiously and pass orders within a period of two months. The applicants have also quoted this Tribunal's decision dated 30.09.2013 in OA 438/2013 where, under similar situation, a mutual transfer order was not found to be legally tenable.

3. The respondents have denied the claim made by the applicants. They have quoted Railway Board Circulars RBE 53/2006 dated 21.04.2006 and RBE No. 200/09 dated 12.11.2009, according to which persons who make requests for mutual transfer are forbidden from withdrawing it. They have alleged that after following the official process, mutual exchange office order was issued vide GM(P) HJP Office Order No. 49/13 dated 23.01.2013 itself. In view of the Railway Board's instructions quoted above, the representation made thereafter for cancellation of order cannot be entertained. They have also argued that the order dated 27.12.2017 (the impugned order) was not immediately implemented because the applicant reported sick. After duty fitness certificate from railway Doctor, both have been relieved and ordered to join duty. Regarding the judgment of this Tribunal in OA 438/2003 the respondents maintained that it is not applicable in case of the instant applicants since they have already joined in Sonpur Division. Regarding the circular indicating time bound disposal of request of mutual transfer, the respondents have pointed out that the circular issued under RBE No. 131/2017, which gives such timelines, cannot be made applicable to mutual transfers accepted in the year 2013 and 2015.

4. The applicants in their rejoinder have reiterated their case and questioned the illegality of a transfer after lapse of more than 6 years despite the fact that both the applicants have submitted the applications to their competent authorities for cancellation of their mutual transfer request way back in the year 2013. Such transfers, after granting them two promotions, are definitely to their prejudice and show malafide. Not following the circular of 2017, and quoting a rule of 2006 which prevents withdrawal of requests, is *prima facie* illogical.

5. We have gone through the pleadings and heard the counsels for both the parties. Most of the facts involved in this matter are not questioned by either party. It is accepted that mutual transfer has taken place years after the request for such mutual transfer was made. It is also not in question that during this period the applicants did get two promotions. It is not denied by the respondents that the applicants' request (for cancellation of withdrawal of their earlier request for mutual transfers) was made much before their relief under the mutual transfer was ordered. The respondents have also not denied the applicants' allegation that no decision on their request for cancellation was conveyed to them. The only reason the respondents are justifying their action is their circulars RBE 53/2006 and RBE 200/2009. The respondents have also not denied issuance of new directions for time bound disposal of mutual transfer requests though they claim that this was not done in supersession of their above mentioned earlier circulars.

6. It stands to reason that after inordinate delay in accepting a person's request, and accepting it after that request has been withdrawn, is illogical. The circulars of 2006 and 2009 are obviously with an intention of preventing unnecessary and frequent flip flops by the employees. In this situation, the employer is also expected to be equally reasonable and expeditious in responding to such requests. It could not have been the intention of the above quoted circulars to eternally bind the employees to their requests. In the light of the fact that the Railway Board Circular dated 29.02.2017 (Annexure A/7) provides only two months (for issue of transfer order from the date of forwarding of the application), a delay of six years is certainly very unreasonable. Keeping mum on applicants' request for cancellation, which was done almost two years after the original request, also shows that the respondents have acted unreasonably. The action of the respondents to order relief of the applicants on 27.12.2017, by the impugned order, under the pretext of a mutual transfer request that was made in the year 2011 is, therefore, hereby quashed with respect to the applicants.

7. This brings us to the issue, mentioned during arguments, about the effect of this decision on the other two persons (who were counter parties to the original mutual request). It would have been better if they were also made parties to these proceedings. However, as argued by the learned counsel for the applicants and also mentioned in their rejoinder, this issue was also before the OA 438/2013 where similar matter was resolved by not letting this order affect them prejudicially. Following that

decision, we also order that this order will not be interpreted adversely against any non-parties and will not be used for re-transferring them to their parent Railway. Since these other persons had not withdrawn their request, there is no need to issue any orders under this OA regarding their seniority.

8. In the light of the above, the OA succeeds. The order relieving them from Barauni vide order dated 23.05.2018 issued by respondent no. 3 is hereby quashed. No order as to costs. MA /050/00044/2019, which is filed by the applicants for allowing them to resume duty at Barauni, is, accordingly, disposed of. No order as to costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member