



CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

OA. 350/00568/2016

Date of Order: 8.11.2016

Present :Hon'ble Justice Shri Vishnu Chandra Gupta, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

Anup Kumar Singh, son of Ram Bharat Singh, aged about 31 years, working as Junior Commercial Clerk under Senior Divisional Commercial Manager, South Eastern Railway, Kharagpur, residing at Purba Para, Andul, District- Howrah, Pin Code- 711 302.

.....Applicant.

-versus-

1. The Union of India, through the General Manager, South Eastern Railway, Garden Reach, Kolkata- 700043.
2. Chief Commercial Manager, South Eastern Railway, 14 Strand Road, 8th Floor, Kolkata- 700 001.
3. The Additional Divisional Railway Manager, South Eastern Railway, Kharagpur, Post Office & P.S. Kharagpur, District- Paschim Midnapur, Pin Code- 721301.
4. The Assistant Personnel Officers, South Eastern Railways, III Kharagpur, Post Office & P.S.- Kharagpur, District- Paschim Midnipur, Pin Code- 721301.

.....Respondents.

For the Applicant : Mr. A. Chakraborty, Counsel

For the Respondents : Mr. MK Bandyopadhyay, Counsel

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O R D E R

Per Ms. Jaya Das Gupta, AM:

The applicant Shri Anup Kumar Singh had approached before C.A.T. under Section 19 of AT Act, 1985 seeking the following relief:

"Office order dated 01.04.2016 issued by Assistant Personnel officer III cannot be tenable in the eye of law and therefore the same may be quashed."

2. It is the case of the applicant that he is at present working as Junior Commercial Clerk under Senior Divisional Commercial Manager, South Eastern Railway, Kharagpur being posted at Debra. Allegedly he is being compelled to perform the duty of Engineering Cum Reservation Clerk also in addition. The applicant received a major penalty charge sheet dated 04.09.2014 wherein it is alleged that he accepted nine requisitions slips in bulk dated from 15th February, 2014 to 21st February, 2014 and generated ARP Journey Cum Reservation Tickets through modification of waitlisted passengers generated previously. Because of the above act of omission an inquiry as per Rules was held and the penalty of reduction by two stages of his salary for a period of 2 years with non-cumulative effect was imposed upon him. An appeal was preferred by the applicant which is still pending.

Further allegation of the applicant is that after issuing of this penalty order a punitive transfer order was issued to him on 01.04.2016. It is against such punitive transfer order the applicant had approached this Tribunal and had asked for relief of quashing the

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transfer order from one division to another division namely Kharagpur to Adra.

3. Per contra, it is contended by the respondent authorities that the applicant Shri Anup Kumar Singh was appointed in the Railways as the Junior Commercial Clerk on 28.02.2005. He has working at Reservation Counter (PRS) at Kolaghat due to shortage of manpower at the PRS centre. During service period of the applicant from 2005 to 2016, he was charge sheeted several times due to adopting mal-practices as detected by the Railways Vigilance team.

It is also the submission of the Railway Authorities that this transfer of the applicant from Kharagpur to Adra is not as a penalty but as per the prevailing orders of the Railway Board. Hence, the Respondent Authorities have submitted that all actions have been taken as per the rules and the OA deserves to be dismissed.

4. Heard counsels for both sides, consulted records. Annexure A-1 of the OA which is the penalty order imposed by the Divisional Commercial Manager and the Disciplinary Authority dated 04.01.2016 is extracted below:

"To
Anup Kumar Singh
Jr. CC/DEBRA

Sub: Punishment Notice.

Ref: SF-5 vide Memorandum no. Dated 04.9.14.

During your working as Jr. CC/Debra on 15th, 17th to 21st February, 2014 in PRS counter No. 1 Debra in 08:00 to 14:00 hrs shift, you accepted four requisitions slips on 18th and 21st February in bulk and generated ARP journey-cum-reservation tickets through modification of wait-listed JCRTs generated previously, in the first minute of opening hours of PRS by pre-feeding the journey particulars in PRS system. On investigation by Rly.

Board Directorate, it is revealed that you used the user ID 'QGTAKS' thereby generating 4 or more tickets in first minutes (i.e. 8:00 hrs to 08:01) of opening hours of PRS booking. You generated these tickets with the average speed of 12 or 13 seconds per JCRT. This is possible in the event of misusing the system or accepting the requisitions in bulk.

On analyzing the discussions of the case it is revealed that the fact has been corroborated by the depositions given by the P.W. 1 and the depositions gives ample proof that requisitions were received in bulk. Your argument towards prosecution's failure to cite any sort of authenticated genuine document against generating ARP journey-cum-reservation tickets through modification wait listed JCRTs generated previously, is not tenable. Your argument is unconvincing and also acceptable because you refused to give a demonstration to prove yourself that you can issue a ticket in zero to 12 seconds which is evident from your answer to Q. No. 6, of your clarificatory statement (Exhibit P/1). Your charge, so, is fully substantiated.

Your defense statement against the Charge-sheet is not convincing and not acceptable too.

You had been given ample opportunity at the inquiry sitting to prove your innocence but you have failed to do so. Natural justice has not been violated. Besides above, no partiality also has been revealed either from the inquiry officer or from the Under-signed.

However, in view of the above context as well as on the basis of the documentary and oral evidences as adduced in this case, I, as, DA do find you guilty and do impose the following punishment which should be acknowledge upon.

Your present pay are reduced by 02(two) stages below i.e. reduced from your present pay of Jr. CC of Rs. 8820/- in Pay Band (Rs. 5200-200/-) GP- Rs. 2000/- to the pay of Rs. 8310/- in Pay Band (Rs. 5200/- to Rs. 20,200/- GP Rs. 2000/- for the period of (two) years with NCE. This punishment will takes effects on and from 24.10.16 (i.e., after completion of previous on-going punishment on 23.10.16). such reduction will not have the effect of postponing your future increment and pensionary benefits.

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You may also prefer appeal to the Appellate Authority/Sr. DCM within 45 (forty-five) days from the acknowledgement of this punishment notice.

You should acknowledge the above."

5. The impugned transfer order dated 01.04.2016 is extracted below:

" S.E. Railway

Office of the DRM (P)
Kharagpur
Dated :01.04.016

Memorandum No. SER/P-KGP/EC/235/1/25/Jr.
CC/AKS/16.

With the approval of Ch. Commercial Manager/KOL as communicated vide APO (Comml)/KOL's No. SER/P-HQ/EC/223/1/MMR&BK, Dt. 22.3.2016 and with the approval of ADRM/KGP the following Inter Divisional Transfer order is issued with immediate effect.

Sri Anup Kumar Singh (UR), Emp No. 14100706, Jr. CC/Debra PRS in PB Rs. 5200-20200/-+GP Rs. 2000/- is hereby transferred to CKP Division in his existing Pay Band and Grade Pay on Administrative ground.

Note: This issues in conformity with the Railway Board's recommendation for Inter Divisional Transfer as communicated by CVO(T)/GRC vide No. G. 130/PC/2014/08/0018/VI/N/ADA/KGP/DAR/11890/1052
Dt. 05.08.2014 and No. G.130/TRN/2014/08/0018/VI/N/KGP/DAR-11890/1183,
Dt. 13.10.2015.

(Vishnu Kant)
Asst. Personnel Officer-III
For Divl. Railway Manager (P)
S.E. Railway, Kharagpur."

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6. It appears from the Reply in para 3(a) that the applicant has been punished on several occasions due to mis-conduct on his part. In the first of such case in the year 2007 he was charge sheeted for major penalty and penalty was imposed after a regular inquiry was held. In the second case which arose in the year 2008 he was served with a minor punishment of stoppage of increment for a period of 3 months. In the third case which also arose in the year 2008 he was charge sheeted under major penalty clause and a major penalty for reduction to lower stage of pay scale was imposed after a full departmental inquiry was held. In the forth case during the year 2011 he was again charge sheeted under a major punishment clause by way of reduction of one stage below of existing pay vide punishment order dated 11.03.2013. In the fifth case which arose in the year 2014 he was also charge sheeted under the major penalty clause which resulted in reduction of two stages below the existing pay (Supra at para 4).

7. The above submission by the Railway Authorities clearly exhibit that on several occasions the applicant had been charge sheeted under major penalty clauses and major penalty has been imposed only after a full inquiry as stipulated by Railway (Service and Discipline Appeal) Act, 1968. Therefore, the allegation of the applicant that he has been transferred as a punitive action does not hold ^{good wif} as in all cases a full inquiry under Discipline and Appeal Rules have been held. Also the applicant has not given any evidence in his pleading showing malice on the part of respondent authorities.

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8. On the other hand it is the contention of the Respondent Authorities that he has been transferred as per the rules according to Estt. Srl. No. 260/98 and Estt. Srl. No. 103/2007 which envisaged that cases of staffs who have repeatedly figured in substantiated vigilances cases and where penalties have been imposed, should be reviewed at appropriate level and such staff transferred on inter divisional basis.

Such Estt. Srl. Nos are set out below:

"Estt. Srl. No. 260/98

No. P/R/14/167/A/Pt. I

A copy of Railway Board's letter No. E(NG) I-98/TR/11 dt. 30.10.98 (RBE No. 250/98) is published for information, guidance and necessary action.

Copy of Railway Board's letter No. E(NG) I-98/TR/11 dt. 30.10.98 (RBE No. 250/98) from Joint Director Estt(N) Railway Board to the General Managers, All Indian Railway and others.

Inter-divisional transfer of staff repeatedly figuring in vigilance cases.

The question of effecting inter-divisional transfer of staff repeatedly figuring in vigilance cases and where penalties have been imposed, was discussed in the Conference on Malpractices and Corruption in mass contact areas organized by the Ministry of Railways on 10.7.98.

2. It has been decided that the cases of staff who have repeatedly figured in substantiated vigilance cases and where penalties have been imposed, should be reviewed at appropriate level and such staff transferred."

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Estt. Srl. No. 103/2007

RBE No. NIL

No. P/R/14/167/A/Pt. I (Policy)

Dated 05.06.2007

Ref: Railway Board's letter No. E(NG) I/87/TR/34/NFIR/DC-JCM dt. 26.09.89 (Estt Srl. No. 273/89)

Railway Board's letter No. E(NG) I/2007/TR/12 dated 07.05.2007 (RBE No. NIL) is as under:

In the meeting of the Consultative Committee of MPs for the Ministry of Railways held on 19.03.2007 it was pointed out that staff staying at one place for long period should be transferred to prevent them from developing vested interests and that duty of TTEs from one train to another should be changed after three years.

2. In terms of extant instructions Railway employees holding sensitive posts and who frequently come into contact with public and/or contractors/suppliers are required to be transferred every four years. A comprehensive list of sensitive posts for this purpose was circulated under this Ministry's letter No. E(NG) I/87/TR/34/NFIR/DC-JCM dt. 27.09.89 as amplified from time to time. This list includes the post of TTEs. Besides, ticket checking staff as also other staff in mass contact areas detected to be indulging in malpractices are required to be sent on inter divisional transfer as a matter of policy. Further, the staff who have repeatedly figured in substantiated vigilance cases and where penalties have been imposed, are required to be reviewed at appropriate level and such staff are also required to be transferred on inter-divisional basis.

3. The matter has been considered in the light of the observations in the meeting of the Consultative Committee on MPs as mentioned above. The Ministry of Railways wish to reiterate the existing instructions on the subject and also desire that the same should be adhered to scrupulously and there should be no complaint regarding non-compliance of these instructions. Any complaint received in this regard will be viewed seriously and responsibility fixed on the officers concerned. The CPOs and the HODs concerned are especially required to ensure that these instructions are complied with, without exception."



Thus we note that the transfer of the applicant to Adra, has been made according to the order of the Railway Board and not whimsically.

9. The order of Railway Board are akin to provision of Article 309 of Constitution. The Hon'ble Supreme Court in the case of **P. R. Subramanium (1978) 1 SCC 158** has directed that "order issued by Railway Board for general application to non-gazetted Railway servants are treated as rule having provision to Article 309 of the Constitution."

Para 3- In Indian Railway Establishment Code, Vol. 1 are rules framed by President of India under Article 309 of Constitution contained in the said code is the well known Rule 157 which authorized the Railway Board as permissible under Article 309 to have "full power to make rules for general application to non-gazetted Railway servants under their control."

"These rules have been treated as rules having the force of rules framed under Article 309 pursuant to delegated power to Railway Board....."

Thus it is clear that vide Estt. Srl. No. 260/98 and Estt. Srl. No. 103/2007 dealing with RBE No. 250/98 and RBE No. Nil dated 05.06.2007, the Railway Authorities are authorized to issue such Inter Divisional transfer order of the applicant.

10. It is also been alleged by the applicant that he has inter divisionally transferred and his case was not placed in the appropriate Placement Committee. Per contra, from the reply given it is apparent from page 7 of the reply that the approval of the inter divisional transfer was obtained from Chief Commercial Manager who is the

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head of the Commercial Department, S.E. Railway and also in the Placement Committee of Kharagpur Division in the Commercial Department. The Inter Divisional transfer order dated 01.04.2016 from Kharagpur to Chakradharpur Division (Adra) was issued after getting the approval from the Placement Committee.

11. We also find from rejoinder submitted by the applicant at page

4 in para 6 that he had admitted irregularities were committed by him.

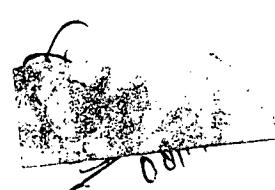
^{Mr. J.W.}
this contention is that the Railway did not face any pecuniary loss due
to irregularities caused by him.

12. From the copy of the OA it is not apparent whether he has given any representation to the Railway Authorities against the impugned order of transfer dated 01.04.2016 but he has straightway approached before the CAT. In this regard his application is liable to be dismissed under Section 20 of the AT Act as he has not availed of all the remedies available to him.

13. Based on the above several facts we find there is no merit in the case that the applicant cannot be transferred Inter Divisionally from Kharagpur to Adra. The OA deserves to be dismissed and hereby is dismissed. No costs. Any subsisting interim order is also vacated.



(Jaya Das Gupta)
Member (A)



(Vishnu Chandra Gupta)
Member (J)