



CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

MA No. 350/00337/2016

OA No. 350/00633/2016

Date of order: 26/09/2016

PRESENT:

THE HON'BLE MR. JUSTICE VISHNU CHANDRA GUPTA, JUDL MEMBER

THE HON'BLE MS. JAYA DAS GUPTA, ADMINISTRATIVE MEMBER

.....

Shri Amar Prasad Patra son of late Sudhir Chandra Patra
aged about 48 years, holding the post of Ticket Examiner,
Kharagpur under Chief Ticket Inspector (IC), Kharagpur
residing at Village North Bhabanipur, PO. Kharagpur,
District-Paschim Medinipore, Pin-721 301.

.....Applicant.

-Versus-

For the Applicant

- Mr.S.K.Dutta, Counsel

1. Union of India through the General Manager, South Eastern Railway, Garden Reach, Kolkata-700 043.
2. The Chief Commercial Manager, South Eastern Railway, 14, Strand Road, Kolkata-700 001.
3. The Divisional Railway Manager, South Eastern Railway, Kharagpur Division, Kharagpur, District-Paschim Medinipore, Pin- 721 301.
4. The Senior Personnel Officer (C), South Eastern Railway, 14, Strand Road, Kolkata-700 001.
5. The Senior Divisional Commercial Manager, South Eastern Railway, Kharagpur Division, Kharagpur, Paschim Medinipore, Pin-721 301.

6. The Chief Ticket Inspector (I/C), Kharagpur Squad/South Eastern Railway, Kharagpur, Paschim Medinipre, Pin-721 301.

.....Respondents

For the Respondents -Mr.M.K.Bandyopadhyay, Counsel

ORDER

JUSTICE V.C.GUPTA, JM:

Heard the learned counsel for both sides and perused the records.

2. The applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"a) An order holding that the impugned order of transfer dated 23.3.2016 and non consideration of representation of the applicant dated 28.3.2016 are totally arbitrary and unlawful;

b) An order quashing and/or setting aside the impugned order of transfer dated 23.3.2016

c) An order directing the respondents to produce/cause production of all relevant records ;

d) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."

The M.A. filed by Respondents for disposal of the OA No. 633 of 2016 expeditiously.

3. The point for consideration in this Original Application falls in a narrow compass i.e as to whether by transferring an

employee any condition can be imposed affecting the performance of duties attached to the post which resulted in financial loss.

4. The case of the applicant, in brief, is that he was initially appointed as Ticket Collector on 20.10.1992 in Kharagpur Division of South Eastern Railway. While continuing as such, he was dismissed from service in exercise of power under Rule 14 (ii) of the Railway Servants (D&A) Rules, 1968. The order of dismissal was ultimately quashed by this Tribunal which order has also been upheld by the Hon'ble High Court of Calcutta. Consequently, he was reinstated to service. Thereafter, he was transferred to CKP which was challenged before this Bench in OA No. 7 of 2005, however, ultimately, the order of transfer was quashed by the Hon'ble High Court, Calcutta. The applicant was again transferred to Ghatsila in CKP Division which was challenged by the applicant before this Bench in OA No. 353 of 2009 and ultimately this Bench vide order dated 21.11.2011 quashed the order of transfer of the Applicant. The said order of this Tribunal dated 21.11.2011 has been challenged by the Respondent Department before the Hon'ble High Court of Calcutta in WPCT No. 125 of 2012 and the matter is pending adjudication before the Hon'ble High Court, Calcutta. It is the case of the applicant that instead of allowing him to discharge the duty of Ticket Examiner, he was entrusted with the duty of Announcer at Kharagpur Railway Station with an intention to create mental pressure upon him thereby



shown an attitude of negligence with an ill motive and mala fide intent to enforce the applicant in an unusual duty. He has submitted a representation dated 07.10.2013 praying for giving him posting as Ticket Examiner. Thereafter, he was posted under CTI (I/C)/KGP squad in his existing pay and GP, however, with a fixed target. It has been stated that he has achieved the target given by his authority. In the meanwhile, on 07.12.2013 there was an incident regarding alleged ill treatment and assaulting against the TTE of Train No. 12833, Shri Debasis Chandra and incidentally the applicant and one Shri Dilkulsh Kumar and B.N.Ghosh TTE were also performing their duties in the another AC compartment. At that stage they were informed that one of their colleagues is being manhandled in the next compartment. They immediately rushed to the spot and the applicant and others tried to save the life of Shri Chandra. On being complained this matter was enquired into in detail by the competent higher authority and found that the allegation regarding assaulting and molestation is not correct. It has been stated that while discharging the duty as TTE, false complaints are usually made. On 26.08.2014 he was served with a Memo issued by CTI (IC)/KGP-Squad, S.E.Railway, Kharagpur . This Memo was to the effect that though he was sick but he used to visit the office to meet the CTI (I/C)/KGP to know details about matter and to collect the formal order of transfer. It has been stated that the authorities with an



revengeful attitude with ill motive and mala fide intention with a view to victimize the applicant, for one reason or the other ultimately, transferred him outside the KGP vide order dated 23.03.2016 with a condition that the applicant shall not handle cash. He submitted representation on 28.3.2016 against the order of transfer and thereafter filed the present OA on the ground that this being a punitive order of transfer the same is liable to be quashed.

5. Respondents have filed their reply wherein they have relied upon the Estt. Sl.No. 260/98 which is re produced herein below:

"Estt. Sl.No. 260/98:

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 organised 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 transfer on inter divisional basis."

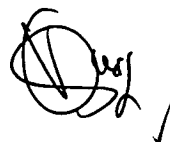
6. The aforesaid Esttt. Sl. makes the matter abundantly clear that cases of staff who have repeatedly figured in substantiated vigilance cases and where penalties have been imposed, should be reviewed at appropriate level and such staff transfer on inter divisional basis. The Respondents have also relied upon a letter written by Shri Rajiv Kumar Sharma, Dy Chief



Comml. Manager (PS) dated 31.7.2014 which shows that a complaint against the applicant was received in his office regarding cheating and fraudulent activities on the part of the applicant. A detailed investigation was conducted by Anti fraud Inspector and it was found correct and a criminal case was lodged against the applicant on 04.06.2014 vide diary No. 06062 under section 154 CrPC at KGP/GRP Office. It has also been written in the letter that in the past enormous complaints were received against the applicant. Therefore, a request was made to transfer the applicant from his existing post and post him to a non cash handling area as enquiry announcing etc and debarred him from cash handling duties until further orders. It has been stated that in pursuance thereof, the order of transfer was issued.

7. Admittedly, the TTEs collect amount as fine from the passengers travel without any valid ticket for which they receive incentive. This fact has not been denied. If transfer depriving the benefits attached to the post, it amounts to punishment and, therefore, it can only be done after following the Rules and complying with the principles of natural justice and not otherwise.

At this stage, the learned counsel for the applicant has fairly submitted that he does not want that the transfer order should be quashed. He simply wants that the conditions put in the order of transfer should be quashed/lifted.



We would like to observe that the authorities manning the department are within their domain to transfer an employee from one place to other and one post to another in public interest or administrative exigencies and the Tribunal lacks jurisdiction to interfere on the same. But certainly if the transfer is by way of punishment or deprives the benefits attached to the post, without following due process of rule or complying with principles of natural justice, then the same can be interfered with being punitive one.

In view of the above and after hearing the rival submissions of the respective parties, we have no hesitation in holding that the conditions/words stipulated in the order of transfer dated 23.03.2016 that "without cash handling and without EFT Book", being not sustainable in law, is hereby quashed.

It has been informed that the applicant has not reported to duty till date. Therefore, we direct the authorities/respondents that if the applicant fails to resume his duties they may proceed against him according to Rules and in case the applicant reports in his duty, the Respondents are at liberty to pass appropriate order in accordance with law.

8. In the result, both OA and MA are accordingly disposed of. No costs.

(Jaya Das Gupta)^l
Member (Admn.)

Knm

(Justice V.C. Gupta)
Member (Judl.)