

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 350/01501/2014

Date of order : 11.2.16

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member

BISWANATH GHOSH

VS

UNION OF INDIA & ORS.

For the applicant : Mr.A.Chakraborty, counsel

For the respondents : Mr.A.K.Banerjee, counsel

O R D E R

This matter is taken up in the Single Bench in terms of Appendix VIII of Rule 154 of CAT Rules of Practice, as no complicated question of law is involved, and with the consent of both sides.

2. This is a sequel to an earlier OA filed assailing a transfer order dated 14.8.14 whereby and whereunder the applicant a Hd. TE and holder of a sensitive post was transferred from Kharagpur to Bagnan. The order was assailed as it was an "own request" transfer and was issued in violation of Master Circular No. 24 which prescribed the tenure of Railway servant holding "sensitive posts" as four years. The OA was disposed of with a direction upon the appropriate authority to issue a reasoned and speaking order stating as to why the applicant had to be shifted prematurely before completion of his tenure and that too only within one year from the date he was posted to Kharagpur on his own request. Till issuance of order status quo was directed to be maintained in regard to the applicant.

On 5.11.14 a speaking order was issued stating that the said circular did not preclude the Railway Administration from transferring a staff holding sensitive post before completion of four years in exigency of service and in public interest. It further said that since the applicant was an experienced Ticket Checking staff and had worked as BZN station for a long time and dealt

with or without ticket passengers, during duty hours, quite effectively without any complaint, as also due to the fact that he was found courteous towards passengers etc., his presence was needed badly as he could mitigate a situation arising out of an incident that occurred on 28.6.14 in which two lady Ticket Checking staffs were man-handled by public at Bagnan Railway Station. He was transferred to and posted again at Bagnan Station on administrative interest.

Therefore the present application has been filed seeking quashing of the transfer order as well as the speaking order dated 5.11.14 on the grounds inter alia :

- (i) His transfer to Kharagpur, his present place of posting, was on his own request as his mother was suffering from heart problem and was totally dependent on him. There was no reason to transfer him out of Kharagpur prematurely.
- (ii) It was a premature transfer since the tenure prescribed is four years.
- (iii) He ought to be considered as a good earner in Kharagpur squad having received Sr. DCM and GM's award for good performance at Kharagpur and should be retained at Kharagpur.
- (iv) The transfer was out of vengeance on the part of administration.

3. Ld. Counsel for the applicant would vociferously argue that the reason cited in the speaking order could not be a justified and bona fide reason for transfer on administrative interest because any Ticket Checking staff who is posted at Bagnan or any other station would have his bounden duty in discharging of his official work to control without ticket passengers or manage a situation as spelt out in the speaking order. Further it should not be a ground to post him eternally at Bagnan Station even in violation of Master Circular 24 which prescribed a maximum tenure of four years.

Further Id. Counsel would argue that there are RPF staff on duty to control all sorts of untoward incidents that occur in stations. Therefore the reason spelt out is hopeless, necessitating interference of this Tribunal.

4. Per contra Id. Counsel for the respondents would argue that the transfer being not a punitive one the applicant should first carry out the transfer and then seek transfer back. Further it would be argued that the four years' limit was the outer limit, so it did not prevent the authorities from transferring a staff on administrative interest before completion of four years.

5. I have heard Id. Counsel for the parties and perused the materials on record.

6. I have noted the following facts :

(i) The applicant joined at Bagnan on 4.12.07 and was posted there till 9.7.13 whereafter he was transferred to Kharagpur on his own request.

(ii) The applicant on 4.12.07 had infact requested the Sr. Divisional Commercial Manager for his transfer to Kharagpur whereafter his transfer was effected to Kharagpur by an order dated 4.1.08.

(iii) By an order dated 16.10.09 the applicant was sought to be transferred to Bagnan as Head TE whereafter on 9.7.13 he was posted back to Kharagpur on "own request" depriving him of transfer benefits. He was sought to be shifted from Bagnan on 14.8.14 i.e. after allowing him stay at his requested place only for one year against a prescribed tenure of four years.

(iv) In terms of the Railway Boar's circular Master Circular No. 24, para 4.3(i) **Railway servants holding sensitive posts and who come into contact with public or/and contractors/suppliers etc., should be transferred out of their existing post/seat or station as the case may be, after every four years.**

In the said instructions Ticket Collectors have been identified as holders of sensitive posts.

The prescribed tenure of a Ticket Collector is therefore four years at a station.

7. In view of the said provisions and the facts aground I find much force in the argument of the Id. Counsel for the applicant that the reason given in the speaking order is neither satisfactory nor justified. When the Board's policy (Master Circular 24) proscribes retention of sensitive post holders beyond four years at a particular place and there is nothing to show that the instructions are not mandatory, it would specifically imply a tenure of four years at a particular place for the sensitive post holders. The authorities should not be permitted to deviate from their laid down policy to transfer a sensitive post holder before completion of his tenure, in absence of justified and bona fide administrative reasons, which they failed to demonstrate.

8. In such view of the matter the transfer order is quashed and the OA is disposed of with a direction upon the respondents to post the applicant back to Kharagpur as expeditiously as possible.

9. The OA is accordingly disposed of. No order is passed as to costs.

(BIDISHA BANERJEE)
MEMBER (J)

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