

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

No. O.A. 350/01275/2018

Date of order: *3rd July 2019*

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

Sumit Sengupta,
Son of Late Sanat Sengupta,
Aged about 49 years,
Working as Chief Commercial Clerk,
Sealdah, Eastern Railway,
Residing at 11/1, Fern Road,
Ballygunge,
Kolkata - 700 019.

.. Applicant

V E R S U S -

1. Union of India
Represented by the General Manager,
Eastern Railway,
17, Netaji Subhas Road,
Kolkata - 700 001;
2. Principal Chief Commercial Manager,
Koilaghat Street,
Kolkata - 700 001.
3. Principal Chief Personnel Officer,
Eastern Railway,
17, Netaji Subhas Road,
Kolkata - 700 001.
4. Divisional Railway Manager,
Eastern Railway,
Sealdah Division,
Kolkata - 700 014.
5. The Senior Divisional Commercial Manager,
Eastern Railway,
Sealdah Division,
Kolkata - 700 014.
6. The Senior Divisional Personnel Officer,
Eastern Railway,
Sealdah Division,

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Kolkata – 700 014.

.. Respondents

For the Applicant : Mr. A. Chakraborty, Counsel

For the Respondents : Mr. S.K. Das, Counsel

O R D E R (Oral)

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:

- "(i) An order directing the respondents to act and proceed in accordance with law and further commanding them to rescind, revoke and/or withdraw the purported speaking order dated 25.7.2018 issued by the concerned authority (being made Annexure "A-9" Original Application) and further directing the respondent authority to retain the applicant in the former place at Sealdah in Non-Cash Handling Section viz. Return Section & Stock etc.
- (ii) An order directing the respondents to rescind, revoke and withdraw the purported order of transfer No. 18.05.2018 dated 24.5.2018 (being Annexure A-19).
- (iii) An order directing the respondents to release the unpaid salary for the months of December, 2017 to April, 2018 to the applicant, withheld by the authority illegally.
- (iv) An order directing the respondent to produce the relevant records relating to the Posting in the non-cash handling section at Sealdah Section, Eastern Railway before this Hon'ble Tribunal.
- (v) And to pass such other or further order or orders as Your Lordships may deem fit and proper."

2. Heard both ld. Counsel, examined documents on record. The matter is taken up at the admission stage.

3. The submissions of the applicant, as canvassed through his Ld. Counsel, is that, the applicant was posted at Sealdah and his earlier transfer order from Sealdah to Dakshin Barasat stood cancelled in compliance to an order of the Tribunal in O.A. No. 497 of 2016. That,

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thereafter, the applicant made several representations to the competent respondent authority to engage him in Non-Cash handling Section, and, as his request was not adhered to, he preferred another O.A. bearing No. 1676 of 2016 which was disposed of by this Tribunal vide order dated 8.5.2018 directing the respondents to issue a reasoned order. That, the concerned respondent authority thereafter passed a speaking order rejecting his prayer and, hence, challenging the same, the applicant has approached the Tribunal in third stage litigation with the instant O.A.

4. The Ld. Counsel for the respondents, in response to the directions of the Tribunal dated 15.1.2019 and 13.5.2019 respectively, and, under instructions, has submitted their justification for not posting the applicant at Non-Cash Handling point, largely, reiterating the contents of their speaking order.

5. At the outset, we examine the speaking order which was issued by the respondents in compliance with order of the Tribunal in O.A. No. 1676 of 2016. The same is reproduced as below:-

Reasoned and Speaking order

Ref.: Hon'ble CAT's Order dated 08.5.2018 in O.A. No. 350/1676/2016 filed by Shri Sumit Sen Gupta, Chief Commercial Clerk/SDAH.

The Honble CAT/Calcutta vide Order dated 08.5.2018 in O.A. No. 350/1676/2016, disposed of the case with following observations:

"Since his relief lies in the domain of the respondents, we dispose of the O.A. without going into the merits of the case with a direction upon the applicant to prefer a comprehensive representation indicating the manner in which he is aggrieved and seeking redressal of his grievances before the Sr. DCM/ER/SDAH with in a period of 10 days from receipt of this order.

In the even such representation is filed, the Sr. DCM shall look into the grievance of the applicant and consider his representation in accordance with rule pertaining in the field and a reasoned and speaking order there upon within a period of two months thereafter.

It is made clear that if the applicant is found entitled, to be posted in non cash handling point and in case any discrimination is meted out with regard to

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his grievances, it shall be suitably redressed by the said respondent authorities by issuing appropriate order with in such period."

In pursuance to the said order the applicant Shri Sumit Sengupta preferred a representation dated 28.5.2018 before the undersigned on 29.5.2018. The details of the representation are reproduced below:

"I moved for making an application seeking justice for non-considering my case for posting in non-cash handling section ignoring the priority list and also transfer and posting a group no. of commercial clerk in the non-cash handling section ignoring my candidature, before the Hon'ble CAT and by order dated 08.05.2018. Hon'ble CAT was pleased to dispose of the OA inter alia by directive me to make a comprehensive representation indicating my grievances and injustice meted out to me. Hon'ble Tribunal has also held "**in case any discrimination is meted out in regard to his grievances, it shall be suitably redressed by the respondent authorities by issuing appropriate order, within such period**". Accordingly, I am making the representation pointed out the gross discriminations. Now, the apparent discriminations are as follows:-

1. i. Sourav Kr. Dutta/Sr. Commercial Clerk
- ii. Ajay Prasad/Sr. Commercial Clerk
- iii. Vinod Yadav/Commercial Clerk
- iv. Tarun Kr. Basu/Commercial Clerk
- v. Amit Samal/Commercial Clerk
- vi. Gautam Pahari/Commercial Clerk
- vii. Anup Bhakta/Chief Commercial Clerk
- viii. Shankar Chakraborty/Chief Commercial Clerk
- ix. Rajendra Prasad/ Chief Commercial Clerk
- x. Sucharita Mukherjee/ Chief Commercial Clerk

All are junior to me in respect of candidature of priority list and in status of length of service, and seniority position but they got posting in non-cash-handling section as per their choice by ignoring all transfer and posting policy.

2. It is proved that Sri Dibakar Mondal, Dy. Station Manager (Commercial)/Sealdah intimated to all staff by a letter dated 27.6.2013 the representations of transfer made by the employees of their choicest sections or so may be entertained serially on priority basis. But discrimination has appeared that in the priority list of transfer the said serial number of the undersigned was 556 whereas the candidate having Serial No. 576 named as Sourav Kr. Dutta was transferred to his choicest places ignoring or depriving the undersigned and obviously disobeying the above circular. The Xerox copy of the concerned priority list of transfer is being enclosed herewith for compliance and marked as A-1.

3. Beside this, from the replied dated 21.02.2017 and 07.03.2017 of the RTI Application dated 28.11.2016, it will be evident that **Ajay Prasad/Sr. Commercial Clerk** and **Vinod Yadav/Commercial Clerk** were posted at Sealdah Stock and **Tarun Kr. Basu/Commercial Clerk** and **Amit Samal/Commercial Clerk** were posted at Sr. DCM Returns Section ignoring my candidature which will once again prove that the authorities have given false and absurd statement every time and everywhere which is being exposed at every step and contrary to the administrative transfer and posting policy supported by the establishment Rule. Copies of the aforesaid RTI replies dated 21.02.2017 and 07.03.2017 are annexed and collectively marked as A-2.

4. Notwithstanding, Gautami Pahari/CC SDAH and Anup Bhakta/CCC SDAH by an office order No. 11/2016 dated 25.10.2016 were deployed at Sealdah Booking and subsequently both of them were posted at the Return section i.e. Non-Cash handling Section by a verbal order by the authority which clearly indicate that the concerned authorities have adopted this vague policy and making repeatedly one after another false statement only to refuse my accommodation in Non-Cash handing Section.

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5. In this regard, I made several applications for considering my posting as choicest place as per circular dated 27.06.2013 issued by the Sr. DCM/SDAH for considering the case of the applicant for the said purpose on priority basis. Unfortunately, my candidature for posting at Non-Cash handling section was never considered, although I applied at first but the candidatures of others considered by the authority ignoring my case and by disobeying the Railway Board's Circular dated 19.06.2014 and also the Hon'ble Apex Court's decision in W.P. (C) 82 of 2011 and also in violation of the order and judgment dated 25.04.2016 passed by the Hon'ble Tribunal to this effect. From the above, it is clear that the intention of the respondent authority is to harass and humiliate me at every stage.

6. Over and above, it is revealed that **Shankar Chakraborty/CCC SDAH** has been posted in Non-Cash handling Section (Returns Section) by manipulating his actual posting place vide order 36/07/2017 dated 26.07.2017 bearing Serial No. 06. Beside this, **Rajendra Prasad/CCC DDJ** has also been posted in Sr. DCM Returns Section by violating all establishment rules, being transferred twice in a year from DDJ to BNXR vide order no. 18/March/2017 dated 29.05.2017 bearing Serial No. 26 and subsequently from BNXR to Sr DCM Returns Section vide office order no. 20/03/2018 bearing serial no. 26 and also **Sucharita Mukherjee/CCC** from DAKE to Sr. DCM office as CTI/HQ vide office order no: 20/03/2018 dated 19.03.2018 bearing serial no. 11, marked as "own request" which is a glaring instance of illegal manipulation an unlawful policies of the authorities. Both two copies are collectively annexed and marked as **A-3**.

In this regard it is to be noted that the undersigned is not only senior to them in status but also in prescribed priority list for Non-Cash handling section. Furthermore, it is also to be noted that one representation dated 10.10.2017 has been submitted to you for my posting at Sealdah as RPC as an alternative choice in priority list, but unfortunately the said appeal has been also ignored as an uniform matter which exposed the deprivation policy from your end. The copy of appeal is annexed as marked **A-4**. So it is proved in broad-day-light that the authorities imposed vindictive and malicious attitude upon me, even after being complied with all mandatory rules and norms.

7. Moreover, it is glaring instance of irregularity and discrimination of your concerned department that during the pendency of execution of judgment and order dated 08.05.2018 passed by the Hon'ble CAT, Kolkata, suddenly my transfer order has been issued from Sealdah to Belgharia vide no. 18/05.2018 bearing serial no. 02 dated 24.05.2018. The illegal initiation of making my transfer prior to my compliance of Hon'ble Tribunal's order is not only violation of Constitutional Rule but exposed your malicious attitude which clearly turn to the contempt of court.

Under the above circumstances the undersigned most humbly prays to the posting in the Non-Cash handling section i.e. Returns Section or Stock Section under Dy. Station Manager (Commercial)/SDAH or Returns Section under Sr. DCM/SDAH or as RPC at Sealdah Parcel by which the **discrimination** to be removed following the judgment and order of Hon'ble CAT, Kolkata and by posting me in my existing place of work at Non-Cash handling Section".

In compliance with the order of the Hon'ble CAT/Calcutta, the undersigned being Sr. DCM/SDAH has gone through and examined the representation of the applicant along with related records. My observations on consideration of representation of the applicant are as under.

- i. Priority list as referred to by the applicant is maintained for effecting transfer from one station to another station, not for transfer within sub-sections of a unit at a station or non cash handling point. There is no earmarking of post/posts as non cash handling and posting thereto, as raised by the applicant. All the staff under commercial clerk cadre to which the applicant belongs to, are posted at different stations and they

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- deal with liquid cash or cash instruments or papers relating to cash/instrument transactions.
- ii. Divisional Return section under Sr. DCM / SDAH located at DRM office/Sealdah looks after scrutiny, computing, preparation and collection of different periodical and monthly statements of financial transactions carried out at all stations along with vouchers, financial instruments etc. for onward submission to Accounts Department for scrutiny on target dates. To meet the target dates, they also assist the stations, if need be, in preparation of such statements of financial transactions.
- iii. Return Section and also the ticket stock section under Dy. Station Superintendent (Commercial)/Sealdah are sub-units of Sealdah station Booking Office together with operation ticket booking counters. They are not separate independent units where posting of staff is made. Majority of commercial clerks of different grades posted in Sealdah Booking Office mainly work at ticket counters to avoid long queue. Only a limited few staff are deployed in-Return and Ticket Stock sub-section of Sealdah station by the station in-charge i.e. Dy. Station Superintendent (Commercial)/Sealdah. No separate posting is made in Sealdah station Stock or Return Section.
- iv. With computerisation of commercial activities and accounting in Railway together with increase in volume of traffic, the area of manual transaction and accounting is getting limited resulting in major deployment at ticket issuance counters for the intending passengers. Only a limited few staff is required to be entrusted with responsibility for stocking of tickets, money value books, scrutiny of financial transactions, timely accounting and onward submission of financial transactions to nominated authorities.
- v. The limited number of staff engaged in the job of stocking of tickets, money value books, scrutiny of financial transactions, accounting are required to be regular, proficient, fully dedicated, target oriented and man of integrity. Any lapse in their part will put the Railway in financial mess.
- vi. Assignment for stocking of tickets, money value books, accounting as discussed above are very very sensitive, vital and crucial for administrative interest and accordingly only a selected few who are competent are posted/deployed for the purpose whether he/she makes an appeal or not. Moreover, seniority of staff is not a point of consideration for such posting/assignments. Further, preferring an appeal for such assignments by any staff does not entitle him/her for such assignments.
- vii. The staff named by the applicant in his representation have been found suitable for the post/assignment considering their competence and other required qualities.
- viii. Contention of the applicant regarding memo dated 27.06.2013 issued by Dy. Station Superintendent (Comml.)/Sealdah, Shri Dibakar Mondal who is over-all in-charge of Sealdah station ticket booking office to sub-section supervisors under his control is misconceived, misrepresentation and distortion of instruction contained therein. The contents of the letter in verbatim is, "As per directives of the competent authority under above reference, please communicate all the staff under your shift who has been prayed for transfer earlier to the competent authority but till their case has not been finalized or pending, may please be contact with Dy SS/Comml./SDAH positively". From the above, it is clear that instruction was not for posting in choicest section.
- ix. The applicant had served at Return Section under Sr.DCM/SDAH and Return Section under Dy. SS (Com)/SDAH in past and his performance was unsatisfactory during his tenure at both the places. Moreover, he is irregular in duty.
- x. As regards the contention of the applicant regarding his transfer to Belgharia station, it is to point out that all staff belonging to cadre of commercial clerk staying long at a unit at public interface for 11 years and above have been uniformly transferred and as the applicant was staying at Sealdah Booking for more than 11 years, he has also been transferred to Belgharia station to work in Booking Office.

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xi. In posting of applicant in past and his present transfer, no discrimination has been made. His posting has been made keeping in view the administrative requirement vis-a-vis his performance.

In view of the above, the appeal made vide representation dated 28.05.2018 by the applicant for posting is not considered tenable in administrative and larger public interest.

This appeal is thus disposed off in compliance with the order of the Hon'ble CAT/Calcutta in subject O.A. No. 350/1676/2016.

This is without prejudice.

Sd/-
(C.R. Jha)
Sr. Divisional Commercial Manager
Eastern Railway, Sealdah"

The main rationale which had been advanced by the respondents in their speaking order are as follows:-

- (i) There is no priority list for posting in different sub-sections of a unit. There are no earmarked, non-cash handling posts in the cadre of commercial cadre.
- (ii) That, all the staff under Commercial Clerk cadre are posted at different stations/units and they are to deal with liquid cash, cash instruments or papers relating to cash/instrument transaction. The applicant herein is a part of the Commercial Clerk Cadre.
- (iii) In the Divisional Return Section, the staff so engaged have to be responsible with the job of stocking of tickets, money value books and scrutiny of financial transactions which are required to be handled by regular, proficient, fully dedicated, target oriented staff of integrity as any negligence on their part would create substantial difficulties and jeopardize the system.
- (iv) With computerization of commercial activities and accounting together with increase in the volume of traffic, only manual

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transactions and accounts require physical transactions in the Returns Section. Hence, only a few responsible staff are deployed in the Returns Section.

The remaining staff including the Commercial clerks mainly work at ticket counters to address the long queue of passengers.

Hence, only those staff who have been found suitable in accordance with their competence and sense of responsibility have been posted in the Return Section.

- (v) That, the applicant, who had earlier served at the Return Section was repeatedly irregular in his duties and his performance was also found to be unsatisfactory during such postings.
- (vi) That, the memo dated 27.6.2013 of the respondent authorities was not circulated to obtain choice of postings.
- (vii) That, all staff who have stayed for more than 11 years and above at units with public interface have been uniformly transferred and, as the applicant was posted at Sealdah Booking Unit for more than 11 years, he had been transferred to Belghoria Station. That, no discrimination has been meted out to the applicant vis-à-vis other similarly circumstanced employees of the Commercial Clerk Cadre.

On 8.5.2018, this Tribunal had disposed of the earlier O.A. No. 1676 of 2016 filed by the applicant as follows:-

"2. It is noticed that the applicant had preferred representation before the Senior Divisional Commercial Manager way back 2016 November seeking posting in non-cash handling point. Ld. Counsel for applicant submits that accordingly seniority list of transfer and posting order has been published and who are juniors to the applicant have been posted in the non-cash handling point. He brought forth certain names by way of rejoinder, which are not reflected in his representation.

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3. Therefore, since his relief lies in the domain of the respondents, we dispose of the O.A. without going into the merits of this case with a direction upon the applicant to prefer a comprehensive representation indicating the manner in which he is aggrieved and seeking redressal of his grievances before the Senior Divisional Commercial Manager, within a period of 10 days from the date of receipt of this order.

4. In the event such representation is filed, the Senior Divisional Commercial Manager shall look into the grievance of the applicant and consider his representation in accordance with rules operating in the field and pass a reasoned and speaking order thereupon, within a period of 2 months thereafter.

5. It is made clear that if the applicant is found entitled, to be posted in non-cash handling point and in case any discrimination is meted out in regard to his grievances, it shall be suitably redressed by the said respondent authorities by issuing appropriate order, within such period."

By the abovenoted order, the Tribunal had directed as follows:-

- (a) That, according to the applicant his juniors have been posted in the non-cash handling points.
- (b) That, the applicant was to prefer a comprehensive representation seeking redressal of his grievance before the competent respondent authority and that the competent respondent authority was to pass a reasoned order within a specific time frame.
- (c) And, in case the applicant is found entitled to be posted in non-cash handling point and in case any discrimination was meted out to him, it should be redressed suitably by issuing the appropriate orders.

In their speaking order issued in compliance, the respondent authorities had made it very clear that only such staff have been deployed in the Return Section, who are responsible and have been found to be dedicated and sincere in their duties, as because the job in the Return Section, although carried out with limited staff, calls for responsible handling of the transactions, and, that, the

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applicant in his earlier stints had proved to be irregular in his duties and unsatisfactory in his performance, while posted in the Returns Section.

The respondents have also stated that no discrimination was meted out to him as because all staff of the cadre, who had been posted for more than 11 years at public interface points, have been transferred out and, accordingly, the applicant's grievance of discrimination is not justified.

From the above it is noted that the respondent authorities had adhered to the specific directions of the Tribunal while issuing their speaking order.

6. Ld. Counsel for the applicant submits that the applicant is wary of being posted in the Cash Section as because he was penalized for about six years when he was earlier posted in the Cash Section and, hence, the applicant is apprehensive that he might again be pulled up for misdemeanor in case he is posted in Cash Section. This is evidenced by his representation dated 19.7.2013 (Annexure A-1 contd. to the O.A.)

The applicant has not brought before us any transfer policy of the authorities which establish that movement between sub-sections of a unit is guided by a priority list based on seniority. There are no averments either as to how the applicant alone was singularly discriminated against (vide orders dated 18.5.2018) when 52 officials of commercial clerk cadre were transferred on administrative grounds on account of their long stay in earlier place of posting. Hence, the transfer policy remains unassailed by the applicant.

Hon'ble Apex Court has ruled in **N.K. Singh v. Union of India, (1995) I LLJ 854** that unless the decision to transfer is vitiated by mala

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fides or infraction of any professed norm or principle governing the transfer, the same cannot be scrutinized judicially. Challenge in Courts of a transfer, when the career prospects remain unaffected and also there is no detriment to the government servant must be eschewed and interference by courts should be rare. Such interference by courts should be made only when a judicially manageable and permissible ground is made out.

Further in *Abani Kanta Ray v. State of Orissa, 1995 Supp (4)*

SCC 169 it has further been held that a transfer which is an incident of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or vitiated by mala fides or infraction of any professed norm or principle governing the transfer.

Hence, as ruled by the Hon'ble Apex Court in various judicial pronouncements, a transfer can be challenged either for violation of statutory provisions or for malafide.

The transfer order of the applicant has not been challenged on grounds of infraction of professed norm or statutes. Although the applicant has ascribed malafide on the part of the respondent authority he has not named or impleaded the particular officer to whom malafide has been alleged or conclusively established malafide against the concerned authority. The applicant has referred to the fact that priority list has been deliberately ignored in the case of his transfer which has been suitably controverted by the respondents by stating that priority lists are not maintained for sub-sections postings within a unit and also that there were no directions to prefer choice of place of posting in respondents' memo dated 27.6.2013.

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7. Accordingly, the applicant's claim, not being substantiated by facts as well as law, deserves to be dismissed.

The O.A. therefore fails to succeed.

Parties will bear their own costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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