

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00754/2019

Order dated: 29.08.2019

CORAM

HON'BLE MR. JAYESH V. BHAIRAVIA, MEMBER [J]
HON'BLE MR. DINESH SHARMA, MEMBER[A]

Subodh Kumar Singh, S/o Late Kapildeo Singh, resident of Monhalla – Anand Nagar Colony, Road No.1 Gobarsahi, District – Muzaffarpur.

..... Applicant.

By advocate: Sri J.K.Karn.

Verses

1. The Union of India through the General Manager, East Central Railway, Hajipur, PO – Dighi Kalan, PS – Hajipur, District – Vaishali at Hajipur – 844101.
2. The Pr. Chief Personnel Officer, East Central Railway, Hajipur, PO – Dighi Kalan, PS – Hajipur, District – Vaishali at Hajipur – 844101.
3. The Divisional Railway Manager, E.C. Raiwlay, Sonpur – 841101.
4. The Divisional Railway Manager [Pearsonnel], E.C. Railway, Sonpur- 841101.
5. The Divisional Railway Manag3er [Commercial], E.C. Railway, Sonpur.
6. The Sr. Personnel Officer –III, East Central Railway, Sonpur – 841101.

..... Respondents.

By advocate: Sri Sheojee Prasad.

ORDER [ORAL]

Per Jayesh V. Bhairavia, Member [J]:- In the instant OA, the applicant has sought for the following reliefs :-

“8[A] Office Order No.392/2019 issued under the

signature of Sr. Personnel Officer –III for DRM[P], East

Central Railway, Sonpur as contained in Annexure-A/1,

may be quashed and set aside whereby the applicant has been ordered his transfer from Muzaffarpur to Kursailla, above 200 KM away from his present place of working, where he is having life threat.

8[B] Order dated 30.07.2019 passed by Divisional Railway Manager, East Central Railway, Sonepur rejecting the request of applicant made in his representation, against his impugned Transfer from Muzaffarpur to Kursailla, erroneously in biased manner and by a non speaking order, communicated to applicant vide Letter No. C/545/Vividh Patrachaar/2018, dated 30.07.2019 issued under signature of for Divisional Railway Manager [Commercial] Sonpur, as contained in Annexure-A/2 may be quashed and set aside.

8[C] The respondent authorities may be directed to allow posting of applicant at Muzafarpur against numerous vacant posts or nearby Muzaffarpur, as he is required to be at Muzaffapur or nearby Muzaffarpur to get the Disciplinary Proceeding pending against him decided and also to participate actively in the inquiry conducted by the CVC.

8[D] Any other relief/reliefs as the applicant is entitled and your Lordships may deem fit and proper in the ends of justice."

2. The case of the applicant in brief is as under :-

[i] The applicant is an employee of East Central Railway. He submitted that he has been transferred from Muzaffarpur to Kursailla, vide order dated 13.05.2019 [Annexure-A/1] on administrative grounds, at a distance of above 200 km as he acted as a whistle blower for the department since he has been submitted confidential reports towards loss being caused to administration by one of the employee namely Sri Sanjit Kumar, Goods Clerk at Narayanpur Anant, Muzaffarpur.

[ii] The applicant filed a representation on 16.05.2019 against the aforesaid transfer order which has been rejected by the Divisional Railway Manager on 30.07.2019, which was conveyed to him on the same day, i.e. 30.07.2019 [Annexure-A/2], stating therein that the undersigned has come to the conclusion that the transfer of Shri Subodh Kumar Singh to Kursailla is just and proper.

[iii] The applicant further submitted that vide order dated 21.02.2018 [Annexure-A/3], whereby he was transferred to Narayanpur Anant as Goods In-charge on his own request. After his joining at Narayanpur, he noticed that an employee,

namely Shri Sanjeet Kumar was indulged in irregular activities, putting the administration to excessive revenue loss for his pecuniary gain. He reported the matter to higher authorities confidentially, vide Annexure-A/4 series, but instead of taking action against the said Sanjeet Kumar by making necessary departmental enquiry, he has been transferred to Kursailla.

[iv] After taking over the charge, vide order dated 26.10.2018, the applicant has been implicated in a major disciplinary action under Rule 9 of Railway Servants [Discipline and Appeal Rules, 1968. Thereafter, he was threatened to dire consequences by Shri Sanjeet Kumar by using parliamentary language, which was reported to the Sr. DCM, Sonpur, vide application dated 11.01.2019 [Annexure-A/6]. That apart, the applicant has been beaten up mercilessly by Shri Sanjeet Kumar along with his men on 14.04.2019, and the same was reported to the Sr. S.P. Muzaffarpur on 16.04.2019 [Annexure-A/7]. Thereafter, without any notice to the applicant, instead of taking action against Shri Sanjeet Kumar, he has been ordered to be transferred to Kursailla. The applicant submitted that he is having life threat at Kursailla as such on 20.05.2019 he filed a representation on 20.05.2018 [Annexure-A/8] before the Administration

explaining his grievance, but the respondents did not take any action on it.

The applicant brought to the notice of the Tribunal about the order/judgment passed by the Central Administrative Tribunal, Principal Bench, New Delhi in the case of Azam Siddiqui vs. Union of India & Ors. [OA No. 1003/2007] reported in All India Service Law Journal 2009 [2] CAT, page 224, wherein it is held by the Tribunal that – “Although it is true that justifiability of the charges at the stage of initiation of a disciplinary proceeding, by a Court also in a pending inquiry is not to be interfered, yet if there is an element of malice and motive involved and the authority concerned is so biased that the enquiry would be a mere farcical show and the consequences are well known than the same has to be interfered. It is equally trite in law that a real danger of bias is to be gathered from the surrounding circumstances. However, if it is a fanciful apprehension shall not be interfered.”

[v] Earlier the applicant filed an Original Application [OA/050/00597/2019] challenging his erroneous and malafide transfer order. On 07.06.2019 [Annexure-A/9], the OA was heard and disposed of directing the Divisional Railway Manager, E.C. Railway, Sonpur to consider the pending representation of the applicant, if not decided, within thirty

days from the date or receipt of a copy of the order. The applicant submitted that the copy of the order was sent to the Divisional Railway Manager, East Central Railway, Sonpur along with copy of the OA. On 24.06.2019, the wife of the applicant submitted an application before the Hon'ble Railway Minister.

[vi] The applicant further submitted that the aforesaid complaint has been responded by the CVC. In the meantime, the representation of the applicant which was directed to be decided by the Tribunal, has been rejected by a non-speaking order in a biased manner by the D.R.M., E.C. Railway, Sonpur as contained in Annexure-A/2. The applicant submitted that the foundation of the rejection has been made that the applicant was involved in MAAR-PEET and unlawful behaviour hence his transfer was justified.

[vii] The applicant has placed reliance on the following decisions/ orders :-

[a] Civil Writ Jurisdiction Case No.1342 of 2014 decided on 05.03.2014 in the case of Union of India & Ors. vs. Vijay Kumar Gupta and Ors. wherein it is held that –

“15. Coupled with the above, we may also point out that it is not in dispute that respondent No.1 was transferred to Samastipur, on his representation, inasmuch as he was to retire within a year. This was in tune with the Railways' circular to accommodate a retiring person, as far as possible, at the place of his choice. The learned Tribunal was correct in observing that the impugned transfer order of Vijay Kumar Gupta [Respondent No.1 in writ application] dated

01.08.2013, which modified his earlier transfer order, dated 23.07.2013, was made with a view to accommodate Satish Chandra Srivastav, though he had remained at Samastipur, for more than four years in one capacity or other.

16. In the result, we do not find any merit in this writ petition and this writ petition is accordingly dismissed. Consequently, the interlocutory application, too, fails and shall stand dismissed."

[b] OA No. 383/2006, Mahesh Joshi vs. Union of India & Ors. – orders passed by CAT, Bangalore Bench wherein relying upon various judgements, it is held that –

"42. Viewed from any angle, it does not inspire confidence in us to hold that the order transferring the applicant from DDK, Bangalore to DDK, Chennai was made on administrative grounds or in public interest. On the other hand, on the admitted facts, it is seen that the 6th respondent, M.P. had requested for shifting the applicant immediately from Bangalore; the said request was made to the Hon'ble Minister for Information and Broadcasting personally and that the Ministry was pressing hard for the comments of the applicant time and again by way of reminders. It is also evident that no satisfactory reply could be given to the 6th respondent from the Ministry on the request made by him for about three months and it is only to pacify him the applicant has been transferred as requested by the 6th respondent. From these circumstances, it is clear that the transfer of the applicant was malafide within the meaning of the expression as clarified by the Supreme Court in the Gurdial Singh's case supra. Thus, it is clear that the transfer of the applicant was not on administrative grounds nor on public interest

3. Heard Shri J.K.Karn, Id. Counsel for the applicant and Shri Sheojee Prasad, Id. Counsel for the respondents and gone through the materials available on record.

4. We have noticed that the applicant has been transferred from Muzaffapur to Kursailla purely on administrative reasons. Pursuant to the directions given by this Tribunal in OA/050/597/2019, a detail speaking order has been issued by the Divisional Railway Manager dated 30.07.2019 [Annexure-A/2], wherein it is observed that the allegation made by the applicant is quite a separate issue which needs enquiry, and the same has no connection with this transfer order. Further the Divisional Railway Manager has come to the conclusion that the transfer order is just and proper. Therefore, we do not find any cogent reason to interfere with the transfer order dated 13.05.2019 [Annexure-A/1] as well as order dated 30.07.2019 [Annexure-A/2]. The judgment/orders relied upon by the applicant is not at all applicable in the facts and circumstances of the present case, since the applicant has been transferred to Kursailla on administrative grounds.

5. In view of the aforesaid discussions, this OA fails and the same is dismissed accordingly. No costs.

Sd/-

Sd/-

[Dinesh Sharma]M[A] [Jayesh V. Bhairavia]M[J]

Mps.