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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.359/2003

New Delhi this the 30th day of May, 2003.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Vikram Ajit Chopra,
S/o Sh. Pran Nath Chopra,
R/o 20-A, Railway Colony,
Sardar Patel Marg,
New Delhi-110021. -Applicant

(By Advocate Sh. S.K. Verma with Sh. M.K. Chaudhury
and Sh. Prabhat Pachwani, Advocates)

-Versus-

1. Union of India through
Secretary,
Ministry of Railways,
Rail Bhawan,
New Delhi.

2. The Secretary,
Railway Board,
Rail Bhawan,
New Delhi.

3. Joint Secretary (GAZ),
Railway Board,
Rail Bhawan,
New Delhi.

-Respondents

(By Advocates Sh. H.K. Gangwani and Sh. V.S.R. Krishna)

O R D E R

By Mr. Shanker Raju, Member (J):

Applicant impugns respondents' orders dated 21.1.2003, 28.1.2003 as well as 3.2.2003, wherein he has been transferred to East Coast Railways and requests for cancelling the transfer order has been turned down. He has sought quashment of these orders. By an interim order dated 18.2.2003 status quo was maintained.

2. Applicant was appointed to the Indian Railway Traffic Service on 17.11.1976 and was posted to Northern Railway. One of the conditions specified in the appointment letter was that applicant would ordinarily be employed throughout the service on Railways on which he was

posted. Applicant was last posted as Chief General Manager (Passenger Marketing), Northern Railway in the grade of Rs.18,400-22,400/-. He was simultaneously empanelled as Joint Secretary to the Government of India. Applicant was also General Secretary of Northern Railway Officers Association. During the period 2002-2003 applicant dealt with the vigilance case of one Sh. Dhananjay Kumar, an Enquiry Clerk under his administrative control where vigilance department found him to have extended undue favours to Travelling Agency. The matter was marked to applicant. It was also noticed during the interregnum that in May, 2000 Sh. Dhananjay Kumar was allotted out of turn accommodation. This has been voiced by applicant and later on it was transpired that being nephew of the Minister for Railways and residing in the same house, undue favours have been made.

3. By an order dated 14.11.2002 applicant was posted as an Officer on Special Duty (OSD)/Divisional Railway Manager (DRM) at Guntur, South-Central Railway.

4. As applicant had some personal difficulty due to family circumstances he requested the respondents not to transfer him to Guntur and refused posting on the ex-cadre post of DRM for one year in the light of Railway Board's instructions dated 17.2.1965 envisaged in PS 2854 where in case of refusal of transfer on promotion one is debarred for promotion upto two years. On 27.11.2002 respondents communicated to applicant that as per the latest decision of Government in the even he does not join as OSD/DRM he would not be posted as DRM for the next two years from the date of refusal. Applicant accepted this and as other

officer was appointed in place it is reasonably expected that the respondents have taken action as per their PS 2854. The aforesaid posting was foregone to enable applicant in difficult family circumstances to stay at Delhi.

5. By a wireless message dated 21.1.2003 applicant learnt about his transfer to East Coast Railway. In response, applicant preferred a representation on 21.1.2003, highlighting his family circumstances, including widower father aged about 82 years and young school going daughter in the middle of the academic session. Further through application dated 21.4.2003 30 days leave was sought.

6. By an order dated 24.1.2003 applicant was relieved from the post and by another order dated 28.1.2003 it was informed that his representation has been rejected.

7. Applicant preferred an appeal to the Minister for Railways on 29.1.2003. In pursuance thereof an order was received on 3.2.2003, rejecting his representation.

8. Applicant vide memo dated 5.2.2003 was issued a minor penalty chargesheet under Rule 11 of the Railway Servants (Discipline & Appeal) Rules, 1968 for levelling false and baseless allegations against the Minister which has an effect of damaging the dignity of the high office. Applicant's leave application was rejected vide an order dated 5.2.2003, giving rise to the present OA.

9. Learned counsel for applicant Sh. S.K. Verma assails the impugned orders on the ground that the same have been passed in violation of the statutory guidelines, actuated with malafides and transfer has been resorted to on extraneous consideration. It is further stated that the genuine personal difficulties have been given a go-bye and were not at all considered and as applicant has voiced against corruption rampant in Railways he has been made a scape goat and has been shunted out to facilitate the continuance of those illegal activities.

10. One of the grounds taken is that though applicant has been appointed to Northern Railway and as per conditions of service ordinarily be posted in Railways where he is appointed. There exists no administrative exigencies or public interest to resort to transfer of applicant in a newly created zone, which violates Articles 14 and 16 of the Constitution of India.

11. Applicant's counsel has also filed written submissions and contended that transfer is contrary to the convention and practice followed for 26 years and is punitive. According to applicant as per para 224 of the IREC-I employees refusing promotion expressly on transfer are debarred for future promotion for one year which is now modified to two years and in this conspectus stated that posting as DRM amounts to promotion and on refusal of applicant to avail promotion he cannot be transferred and posted at least for two years in accordance with rules.

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12. In so far as his contention that ex-cadre posting as DRM has an element of promotion by referring to clause (e) of Rule 214 of IREC-I it is contended that General Managers are empowered to promote on officiating basis Group 'A' officers as DRM. It is contended that in the Senior Administrative Grade (SAG) to which applicant belongs was working as Chief Traffic Manager, whereas DRM initiated the ACR of applicant and two designated Additional DRM are also reporting of DRM. It is in this background stated that DRM is a promotion in hierarchy which entitles one to have further avenues of promotion as General Manager.

13. Referring to Rule 221 of IREM-I it is contended that promotion is not just an elevation to higher grade but includes raise to the higher post or position. It is from lower grade to higher and from one class to another. The post of DRM constitutes a special class of post which is superior to SAG since selection to DRM is done amongst SAG officers. The post as DRM has a special connotation in the career of Group 'A' Railway officers. As such DRM is a promotion to another class. It is further stated that selection and posting as DRM, the procedure adopted is in pari materia with promotion as on a positive act of selection amongst the SAG officers a panel is drawn and approved whereas normal posting in SAG including posting to ex-cadre post does not require approval of the Minister.

14. According to applicant debarring a Railway officer to promotion for a period of two years cannot be done in a case of posting as per PS ibid but the same is to be invoked in case of promotion only.

15. The post of DRM, an ex-cadre post wherein posting is to be done from amongst SAG from all 8 organised Group 'A' services. As the Railway is geographically divided into units called Zonal Railways headed by General Manager and Divisions headed by DRMs which are the operational units. The contention of applicant is that while refusing posting to an ex-cadre post of DRM there is no loss of seniority as ex-cadre promotion can be refused without entailing loss of seniority.

16. By referring to DOPT OM dated 30.12.76 it is contended that when a Government employee does not want to accept a promotion which is offered to him he may make a written request that he may not be promoted and the request will be considered by the appointing authority taking relevant aspects into consideration. If the reasons adduced for refusal of promotion are acceptable to the appointing authority, the next person in the select list may be promoted, but where the reasons are not acceptable to the appointing authority then he should enforce the promotion of the officer.

17. By accepting the refusal of applicant for posting as DRM the necessary corollary which can be drawn is that the reasons assigned are deemed to be accepted. Accordingly applicant cannot be posted outside on his refusal of promotion.

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18. In so far as public interest and administrative exigencies due to creation of seven new Zones, including East Coast Railways and delay in joining of competent officers the transfer orders should have been issued after ascertaining the cadre position, the requirement of post as well as suitability of the officer. As the transfer has been issued in derogation of the rules it cannot be a transfer in public interest while selecting applicant for the post of DRM, Guntur the shifting stand of respondents in contrast establishes their legal malafides.

19. As no external reasons have been brought on record no legitimate grounds exist for transfer.

20. By demonstrating sequence of events and the chain of facts it is contended that as applicant has voiced his concern against the close relative of the Railway Minister and his utterances of safety as General Secretary of the Northern Railway officers as retaliation transfer has been resorted to. The punitiveness in action of respondents is also apparent from the minor penalty imposed upon him as well as initiation of disciplinary proceedings for refusal to comply with the directions issued by respondents.

21. In so far as the objection taken by applicant as to his transfer though he has shown his intention to keep the same in abeyance for one year but subsequently he has challenged the legality of the order.

22. On the other hand, respondents' counsel Sh. H.K. Gangwani and Sh. V.S.R. Krishna contested the OA and vehemently opposed the contentions of applicant. According to them post of DRM is an ex-cadre post and SAG officers from all Group 'A' Railway services are considered and then they are listed for posting as DRM in the same grade. As this is a posting on an ex-cadre post cannot be equated with promotion which is within the cadre. According to them posting as DRM is not an officiating promotion as well. There is no change in the emoluments or the pay scale. The post of DRM is a tenure post where the officer has to work for two years as the number of Divisions on the Railways being limited proportionally the ex-cadre posts of DRM those who refuse posting as DRM are not considered but this does not cause an impediment for further posting during this interregnum of a suitable officer as per the administrative exigencies and in the interest of the organisation.

23. Shri Gangwani contends that under the Central Staffing Scheme Group 'A' Railway Officers are considered and placed on an offer list for posting in the various Ministry/Departments of Central Government. No such promotion is involved in such cases. One who refuses after being placed in the offer posting is barred for such posting. There is no rule or instruction which prohibits transfer of a Group 'A' railway officer to a Group 'A' post/Zonal Railway and as per Rule 226 of the IREC-I which is statutory framed under Article 309 of the Constitution of India. Group 'A' Railway Service has all India service liability and can be transferred. This is also reflected from the conditions of service alongwith the appointment

letter issued to applicant. As transfer is an incident of service posting as DRM which has a special connotation in the career of a Group 'A' Railway Officer despite an opportunity to rethink, refusal of applicant to go on this posting he was transferred in accordance with rules.

24. As applicant had remained for 26 long years in Delhi and as per the conditions of service to ordinarily post him at the place where he is appointed would not give him a vested right to continue in the Northern Railway throughout his service. As stipulated in the appointment letter that the Railway Ministry reserves the right to require applicant to serve in any other Railway or Project or even out of Delhi.

25. In so far as mala fides are concerned, it is objected to on the ground that the persons against whom mala fides are alleged have not been arrayed as necessary parties and mere vague assertion as to mala fides is not a valid compliance. A foundation is to be laid down and to be established as well. In this back drop it is stated that in so far as the case of Dhananjay Kumar is concerned, noticing irregularities Vigilance Department conducted a detailed investigation and prima facie no malafides were found against him. Moreover, in so far as relationship of Dhananjay Kumar with the Minister and his out of turn allotment are concerned, the same has no reasonable nexus or relevance with the matter in issue.

26. In so far as communicating beyond the usual channel a minor penalty has already been inflicted upon applicant and on his refusal to join the new place of posting a chargesheet for major penalty has already been issued to him.

27. Learned counsel for respondents by referring to the Government of India (Allocation of Business) Rules, 1961 contended that DOPT instructions relied upon by applicant are not applicable as regarding general policy matter for classification of posts and grant of gazetted status and recruitment of ministerial staff Department of Railways has been kept out of the ambit as such DOPT instructions would not apply.

28. It is further stated that leave of applicant was rightly turned down as on transfer and relief the competent authority to grant leave as per the Railway Board's letter dated 8.12.1991 is the authority under whose jurisdiction the officer has been transferred and reported after being relieved.

29. In view of creation of seven new Railway Zones of which East Coast Railway is one. The same became operational from 1.4.2003 and this necessitated required number of officers and staff to be transferred and posted immediately. Delay would have been against the public interest. Taking an over all view of the cadre having regard to the ability of applicant he has been transferred in the interest of organisation and in public exigencies.

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30. In so far as personal problems are concerned, it is stated that having regard to the paramount interest of administration and public interest, applicant has never been assured that he would not be disturbed from the place of posting even on refusal of posting as DRM. It is in this conspectus stated that officers who are posted to new Railway Zones are allowed to retain their accommodation at the earlier place of posting for a period of one year. This has take care of their personal problems.

31. In so far as educational and medical facilities are concerned, these problems are common to the officers of the rank and age of officers and this cannot be a valid ground to assail the transfer orders.

32. Learned counsel for respondents by referring to the following decisions of the Apex Court contended that posting is a domain of administration and it is within the jurisdiction of competent authority in public interest and administrative exigencies and the same cannot be interfered with in a judicial review by this court acting as on appeal, stalling the smooth flow of the wheels of administration being run:

1. Shanti Kumari Versus Regional Dy. Director, Health Services Patna Division, Patna (AIR 1981 SC 1577)
2. E.P. Royappa Versus State of Tamil Nadu and Another (1974 Vol.4-SSC Page No.3)

3. B. Varadha Rao Versus State of Karnataka and Others (AIR 86-SC-1955)
4. Gujarat Electricity Board and Another Versus Atmaram Sungomal Posham (AIR 1989-SC-1433)
5. Union of India and Others Versus H.N. Kirtania (AIR 1989-SC-1774)
6. Shilpi Bose (Mrs.) and Others Versus State of Bihar and Others (1991 Supp(2) SCC 659 - dt. of judgement 19.11.1990)
7. M. Sankaranarayanan, IAS Versus State of Karnataka and Other (AIR 1993-SC-763 date of judgement 11.11.1992)
8. Rajendra Roy Versus Union of India (AIR 1993-SC-1236 date of judgement 14.11.1992)
9. State of Punjab and others Versus Joginder Singh Dhutt, (AIR 1995-SC-2486)
10. N.K. Singh Versus Union of India (AIR 1995-SC-423 date of judgment 25.8.1994)
11. Chief General Manager (Telecom) NE Telecom Circle Versus Rajendra Ch. Bhattacharjee (AIR 1995-SC-813 date of judgment 18.1.1995)
12. State of Madhya Pradesh and Another Versus S.S. Kourav and Others (AIR 1995-SC-10566)

13. Union of India and Others Versus S.Labbas (1993 25 ATC 844)

14. State Bank of India Versus Anjan Sanyal (AIR 2001 SC 1748)

33. As the transfer is not issued by an incompetent authority and is neither actuated with mala fides nor in violation of the statutory rules, the same does not deserve interference.

34. In the rejoinder applicant strongly reiterated his pleas taken in the OA and further stated that as per Rule 221 of the IREM-I promotion includes from lower grade of higher grade and as the instructions to defer transfer and promotion on refusal for a period of two years are applicable only when the incumbent is promoted and it is never followed in case of a posting. In this backdrop it is stated that DRM posting is a positive act of selection of an outstanding officer amongst SAG officers and the list is approved by the Minister of Railways. On the contrary normal posting in SAG including posting to an ex-cadre post do not require approval of the Minister. This establishes that the aforesaid procedure which is adopted for promotion is a promotion and officers cannot refuse to carry out the transfer orders except when it involves promotion.

35. I have carefully considered the rival contentions of the parties and perused the material on record. The following observations have been made by the Apex Court in National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan and Shiv Prakash, (2001) 8 Supreme Court Cases 574:

"5. On a careful consideration of the submissions of the learned counsel on either side and the relevant Rules to which our attention has been invited to, we are of the view that the High Court was not justified in interfering with the impugned orders of transfer. It is by now well settled and often reiterated by this Court that no government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders as a matter of routine, as though they are the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned. On the facts and circumstances of the cases before us, we are also unable to agree with the learned counsel for the respondents that Rule 4.1.1 of the Seniority Rules interdicts any transfer of the employees from one office or project or unit to any one of the other as long as the seniority of such an employee is protected based on the length of service with reference to the date of promotion or appointment to the grade concerned irrespective of the date of promotion or appointment to the grade concerned irrespective of the date of transfer. We also consider it to be a mere submission in vain, the one urged on the basis of alleged adverse consequences detrimental to their seniority resulting from such transfer. In the facts of the present case, at any rate, no such result is bound to occur since the Project undertaken to which the respondents have been transferred is itself a new one and, therefore, we see no rhyme or reason in the alleged grievance."

36. In the light of the decision of the Apex Court in State Bank of India v. Anjan Sanyal, 2001 (3) SLJ SC 270 the only scope for interference in a judicial review with a transfer order is when it is passed without jurisdiction, vitiated by malafides and is in violation of statutory rules and established guidelines.

37. In the light of the above ratio, the relevant issue for consideration in the present OA is whether the order passed by respondents on 14.11.2002 where applicant has been posted as OSD/DRM amounts to an officiating promotion against an ex-cadre post or not?

38. In so far as aforesaid issue is concerned, what has been contended by applicant is that as there has been an element of selection in the post as outstanding officers amongst SAG officers are selected to be posted as DRM in view of Rule 214 IREC-I General Manager has power to post a Group 'A' officer as DRM and the fact that while working as CRM, DRM initiated the ACR of applicant and reference to Rule 211 of IREM-I to contend that promotion includes promotion from a lower grade to higher grade and as DRM constitutes a special class of post which has a pivotal and special connotation in the career of a Group 'A' Officer and as the Minister of Railway has approved the panel which is not normally done for other SAG officers posting including ex-cadre post all the elements of promotion are existing and moreover respondents' own action that in case of refusal of promotion as DRM as per Board's letter dated 15.12.1971 on refusal of promotion one is debarred for promotion for two years and to be kept at the same post. In case of a ordinary posting the same would

have no application. The aforesaid act of the respondents clearly establishes that what has been conferred upon applicant through letter dated 14.11.2002 was not a posting but a promotion cannot be countenanced. As per Rule 201 of IREM-I his appointment to Group 'A' in Railway service is to be made by the President on the recommendations of the UPSC. As per Rule 209 a Junior Scale Officer is promoted as Senior Scale and further promoted from Senior Scale to higher grade post dependent upon the sanctioned establishment and made by selection.

39. Rule 214 provides power of the General Manager in making officiating promotion, which includes placing an officer in the Junior Scale Officer to officiate in senior scale and senior scale officer to junior administrative post. When the posting has been done for the first time of a Group 'A' officer it is incumbent to seek approval of the Minister of Railways. However, Rule 214 (e) of the Rules ibid when it is a first time posting empowers the General Manager to depute a Group 'A' Officer to officiate as DRM or ADRM or Additional Head of Department. Merely because approval has been sought from the Ministry would not make the posting of applicant as DRM as an officiating promotion. Admittedly post of DRM is an ex-cadre post where SAG officers from all 8 Group 'A' services are considered and short listed within the grade. It is a tenure link post where the incumbent has to work for two years. Based on the same analogy like Central Staff Scheme where Group 'A' officers are considered and placed on the offer list for posting in several departments/ministries. This does not involve any component/element of promotion. In case of refusal of such

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posting one is debarred and at that moment as the posting is not promotion further posting can be made in the interest of administration, public interest as well as smooth functioning of the department. A promotion necessarily has the element of posting from one scale to another from one grade to another with raise in the emoluments as well as the incumbent is to shoulder higher responsibilities. Posting to an ex-cadre post by no stretch of imagination can be an officiating promotion. As the posting as DRM is within the grade as per FR 22 (1)(a) where a substantive holder of a post is promoted either temporarily, substantively or in officiating capacity as per the eligibility condition of relevant recruitment rules it is necessarily to another post carrying duties and responsibilities of greater importance. As per FR 22 (a) when appointment to a new post does not involve assumption of duties and responsibilities of greater importance he shall draw as initial pay the stage of time scale which is equal to pay in respect of the old post. Accordingly the components of promotion are lacking in the posting and merely because applicant has been posted as DRM/OSD and respondents' letter dated 27.11.2002 debarring him for posting as DRM for next two years would not be construed as refusal to promotion within the meaning of Rule 224 ibid and Board's letter dated 15.12.1971. Merely because there is an element of only status promotion in posting and nobody can refuse posting as DRM the aforesaid circular would have no application.

40. In so far as OM dated 30.12.1976 issued by DOPT in view of Allocation of Business Rules 1961, the same would not have any application on officers working in Railways.

41. Having regard to the aforesaid, I am of the considered view that through letter dated 14.11.2002 applicant was merely posted as DRM and was not promoted on officiating basis as such.

42. If one has regard to the above, despite refusal of posting and debarment of two years to be posted as DRM and on an opportunity to re-think, applicant's adamant attitude to refuse the posting shall not prevent or cause an impediment on the part of respondents in the exigencies of service to transfer applicant in accordance with rules. As the aforesaid deputation as DRM is not a promotion, no relief can be claimed having regard to the Board's guidelines.

43. Another contention put-forth as to the malafides is concerned, it is a cardinal principle of law that when a personal mala fide or mala fide on facts is raised one has to lay down a real foundation and to establish the same. Without arraying the persons against whom mala fides are alleged the same cannot be legally established and entertained.

44. In the light of the above, the contention that as applicant has voiced his concern over the safety measures taken and highlighted the misdeed of one Dhananjay Kumar which had prompted the respondents in retaliation on

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the behest of the concerned to take an arbitrary action of transfer, cannot be countenanced as on thorough investigation by Vigilance the allegations levelled against Dhananjay Kumar have not been *prima facie* found incorrect. Moreover, the instances of out of turn allotment of accommodation will not have any relevance to the facts in issue and the aforesaid fact does not show any nexus with the impugned action.

45. Having failed to lay down any firm foundation as to the malice mere insinuation and suggestion would not suffice to establish the *mala fides*. As applicant has failed to discharge this onus his contention holds no water.

46. In so far as personal problems are concerned, as on creation of new Railway Zones competent officers were required to be posted and as applicant had already been in posting in Northern Railway for the last 26 years in the light of the one of the conditions of service having all India service liability and to be posted anywhere in any Division or Railway one cannot have his own choicest posting. A particular place of posting cannot be claimed as a matter of right. However, the posting of applicant has been necessitated in public interest and in the interest of organisation which is paramount.

47. In so far as personal problems are concerned, applicant had firstly refused posting as DRM and through his application had sought time to join the posting which showed his intention to join. However, if one does not take cognizance of the same as the medical treatment

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and academic avenues are also available at the new place of posting and moreover personal difficulties are redressed to the extent that on transfer for one year applicant can retain his accommodation at the transferred place, these personal problems which are common should give way to the paramount interest of administration.

48. In so far as refusal of leave to applicant is concerned, in view of Board's letter issued in 1981 it is the competent authority at the transferred place who has to grant leave to applicant and refusal of leave is perfectly in accordance with law.

49. In the result, for the foregoing reasons, as the transfer is within jurisdiction, not actuated by mala fides and is also not contrary to the established statutory principles the same cannot be interfered by this Court, which would amount to stalling the wheels of administration being run smoothly. Finding no legal infirmity in the orders passed by respondents OA is bereft of merit and is accordingly dismissed. No costs.

50. Interim order passed his hereby vacated. No costs.

S. Raju
(Shanker Raju)
Member (J)

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