

Reserved
(On 10.10.2019)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the **23rd** day of **October** 2019

Original Application No. 330/00807 of 2019

Hon'ble Ms. Ajanta Dayalan, Member – A
Hon'ble Mr. Rakesh Sagar Jain, Member – J

Dr. Ramesh Chand, S/o Ram Milan, ACMS (Health), Kanpur Anwarganj, NCR Health Unit, Ro M – 17, Anwarganj, Railway Colony, Kanpur – 208003.

. . .Applicant

By Adv: Shri Anil Kumar and Shri Ashish Kumar

V E R S U S

1. Union of India through Secretary, Railway Board, New Delhi.
2. Director General Health, Rail Bhawan, New Delhi.
3. General Manager, North Central Railway, Subedarganj, Allahabad.
4. Sr. Personnel Officer (Gazetted) for Chief Personal Officer (C.P.O.) / Headquarter, North Central Railway, G.M. Office, Allahabad.
5. Principal Chief Medical Director, North Central Railway, Allahabad.

. . . Respondents

By Adv: Shri Pramod Kumar Pandey

ORDER

By Hon'ble Ms. Ajanta Dayalan, Member – A

The present OA has been filed by the applicant – Dr. Ramesh Chand seeking quashing of order dated 15.04.2019 (Annexure A-1) transferring him from Kanpur to Jhansi. As the applicant has since joined at his new place of posting, the stage of interim relief is over.

2. Learned counsel for the applicant stated that the applicant was initially appointed in 1996 and was posted at Alipurduar in North Frontier Railway, which is a hard station. He served there for about 10 years upto November 2006. Meanwhile, on 10.09.2004, he applied for inter zonal transfer to North Eastern Railway on the grounds of posting of husband

and wife at same station on his request. But this request was not forwarded by North Frontier Railway, Guwahati due to shortage of doctors there. The applicant thereafter, preferred an OA No. 96 of 2005, wherein Guwahati Bench of this Tribunal directed him to file an application before respondent No. 4 i.e. General Manager, North Frontier Railway, who was directed to decide the same within 3 months. Subsequently, on filing of review, Guwahati Bench of this Tribunal vide order dated 19.05.2005 further directed that even if General Manager, North Frontier Railway feels that he has no jurisdiction, he has to forward the same to the competent authority for taking the decision. Accordingly, the applicant filed an application dated 03.05.2005 addressed to General Manager, North Frontier Railway for inter zonal transfer. In pursuance of these directions, the General Manager, North Frontier Railway passed order dated 09.06.2005 and forwarded the case of applicant to Secretary, Railway Board. The applicant was thereafter transferred on 13.11.2006 (Annexure A-4) to North Eastern Railway, Gorakhpur. He was also promoted as Senior DMO (SG) in 2008. In 2012, he was transferred to Kanpur. He was promoted as ACMS in 2016 and was transferred back to Gorakhpur in 2018 vide order dated 17.01.2018 (Annexure A 4/1) and further on his request, was transferred to North Central Railways in the same capacity as ACMS with the approval of President of India (Annexure A /2). Vide notification of March 2016, the Health unit Anwarganj in North Eastern Railway was merged in North Central Railway and he was posted as ACMS Anwarganj, Kanpur, North Central Railway vide order dated 08.06.2018 (Annexure A-5).

3. Learned counsel for the applicant pleaded that the applicant's wife is working in U.P. Dental Surgeon cadre of State of UP and was posted at Kushinagar and was transferred to Gazipur. She was transferred from Gazipur to Kanpur in January 2013 on her own request and is presently

posted at Kanpur. The applicant was also deputed in Kumbh Mela in 2018 – 2019 at Allahabad and performed his duties without any complaint. However, vide order dated 15.04.2019 (Annexure A-1), the applicant was transferred to Jhansi vice Dr. Surendra Nath. This is despite the fact that no person has been posted against the applicant vide the said order.

4. Learned counsel for the applicant further pleaded that due to this order of April 2019, the applicant was upset and met with an accident, was hospitalized and was advised 4 weeks bed rest. He therefore, “moved an application for temporary staying at Kanpur” (para 4.10 of the OA) through representation dated 16.04.2019 (Annexure A-9)

5. Learned counsel for the applicant stated that vide order dated 07.05.2019 (Annexure A-11), the transfer of the applicant was stayed till 31.07.2019. However, the fact regarding applicant’s wife already having been posted at Kanpur was not considered. Learned counsel for the applicant further pleaded that Principal Chief Medical Director (PCMD) is ‘exercising his colorable power to harass’ the applicant (para 4.12 of the OA), directed him for training of Hospital Management Programme from 01.07.2019 to 04.07.2019’ at Vadodra. The applicant represented against the same and also met the General Manager and the training order was modified and another doctor was nominated in the place of the applicant. However, another transfer order dated 25.06.2019 was issued with the approval of PCMD and General Manager, North Central Railway, Allahabad, vide which Dr. Surendra Nath was retained for 3 months at Jhansi. But this order does not give any specific administrative reason. On the other hand, the applicant was directed to join at Jhansi after 31.07.2019 without considering the fact of his wife still being posted at Kanpur. Learned counsel for the applicant further alleged that the orders are in “colorable exercise of power” on behest of PCMD (para 4.13 of the

OA). He argued that as per DOP&T letter dated 30.09.2009 (Annexure A-16), husband and wife are to be posted at the same station even when they are working under different Governments / departments i.e. in Central Government and in State Government. This circular has been adopted by the Railways vide letter dated 31.08.2015 (Annexure A-17) stating that 'every effort will be made to post the husband and wife at the same station'. The counsel further argued that the applicant was posted at Kanpur only in June 2018 and has not completed even 10, 15 to 20 years of service at Kanpur, whereas doctors with longer stay at Kanpur – namely Dr. Tulika Mishra and Dr. Rekha Rani - have been continuing there for around 20 years. It is, therefore, alleged that the transfer is contrary to transfer policy dated 31.08.2015. The learned counsel for the applicant has also pleaded that the post of ACMS at Kanpur is still vacant and the applicant may be permitted to stay there. He has also stated that the applicant has made a representation dated 06.07.2019 (Annexure A-19) requesting that he be retained at Kanpur. But no action has been taken by the respondents so far on his representation. Applicant's wife has also made a representation dated 06.07.2019 (Annexure A-20) requesting for staying the transfer of her husband, but no action has been taken by the respondents. He, therefore, pleaded that the justice needs to be done and transfer order of the applicant needs to be set aside to enable his family to "survive without hindrance in our domestic / family life" (para 4.20 of the OA).

6. Learned counsel for the respondents has vehemently opposed the pleas of the learned counsel for the applicant. He stated that the transfer order is not malicious and has been made in the best interest of the organization. He further stated that in the field of medicine, the specialty in which a person is working is very relevant and has to be kept in mind while taking into consideration the overall vacancies and the requests of

individual doctors. Further, he stated that the transfer policy is only a guideline and is not mandatory. Besides, Railways has already framed a comprehensive transfer policy for Railway officers vide OM dated 31.08.2015 (Annexure CR-5). This policy is in supersession of all existing instructions. It states in Para 1 (vii) that "Normally, minimum tenure on a particular post at a time will be 2 years and maximum tenure will be 5 years. For sensitive posts, maximum tenure will be 4 years. Minimum tenure will not be applicable for Junior Scale/Senior Scale officers of Group A. However, in administrative exigencies, relaxation may be granted by cadre controlling officer". Besides, in Sub Para (ix), it states that 'The transfer of doctors within and outside the zone should be decided by the Railways / Board at appropriate level on case to case basis'. Thus, the transfer of doctors is not always to be decided by the Board. Only inter-zonal transfers are to be decided by the Railway Board. Thus, the order has been issued by the authority competent to do so. Further, the policy states that 'total stay at a stretch / cumulative stay (in broken spells in a particular station) be limited to 15 and 20 years respectively'. Even here, there is a clear note stating that 'The idea behind these guidelines is that specialist services are not disturbed while keeping the administrative interest in mind'. The counsel for the respondents, therefore, concluded that the transfer order is fully in compliance with this policy.

7. Further, learned counsel for the respondents stated that the applicant has been posted at Kanpur right from 26.04.2012 onwards and not from 2016 or 2018. In 2016, only the specific post was transferred from North Eastern Railway to North Central Railway. But there was no change in the post of the applicant and as such, he cannot take advantage of this fact to mislead this Tribunal into believing that he has been at Kanpur since 2016 only. In view of this fact, it is clear that the applicant

has been in Kanpur since 2012 and has thus served at Kanpur for more than 7 years now. Even before this, he was posted in Uttar Pradesh at Gorakhpur right from November 2006 and hence, he was at Gorakhpur for about 6 years.

8. Finally, learned counsel for the respondents stated that one must see the request made by the applicant immediately after issue of the impugned transfer order dated 15.04.2019. This request is dated 16.04.2019 (Annexure CR-9). Here, the same grounds are given by the applicant as now and the applicant requested for allowing him to stay at Kanpur till 31.07.2019. This request is addressed to General Manager, North Central Railway. This is despite the fact that the applicant is now pleading that the General Manager is not competent to issue his transfer order. This request of the applicant was considered and allowed by the General Manager (Annexure A-11). Even the applicant has himself admitted this in the OA. Having benefited by the grace that was given to him by the department as per his own request, the applicant cannot now turn around to seek quashing of the order. Learned counsel for the respondents, therefore, concluded that the case of the applicant needs to be rejected.

9. We have heard the learned counsels for both the parties and have also gone through the pleadings on record.

10. We observe that the submissions made by the learned counsel for the respondents regarding transfer policy are borne out on facts. On 31.08.2014, Ministry of Railways has brought out 'Comprehensive Transfer Policy for Railway Officers'. This is annexed at Annexure CR-5. As per this, minimum and maximum tenure has been fixed as 2 years and 5 years. But, these are only in normal cases. This policy clearly states

that in administrative exigencies, relaxation may be granted by cadre controlling officer. The applicant, having served at Kanpur for 7 years right from 2012, has served at Kanpur for more than the maximum term. The argument that the some other doctors have been allowed to stay for longer period does not hold much ground as the policy clearly gives powers to cadre controlling officers to relax the conditions due to administrative exigencies. Besides, specialists services are not to be disturbed while keeping administrative interest in mind.

11. We also observe that as per this policy, power to transfer of doctors within and outside the zone is to be decided by the Railways / Board at appropriate level on case to case basis. We, therefore, are of the clear opinion that intra-zonal transfers are to be done by the zonal Railways authorities and only for inter-zonal transfers, approval of the Railway Board is required. During arguments, the applicant's side was not able to show any other order or instruction except the policy to prove their point that the order was not issued by the competent authority which is the Railway Board according to them. This, we have already seen, is not a correct interpretation of the policy in view of the wordings used in the policy. Hence, we are of the view that there is no reason for us to believe that the transfer order was not issued by the competent authority.

12. Further, we observe that as per the policy, total stay at a stretch / cumulative stay (in broken spells at a particular station) are limited to 15 and 20 years respectively. However, it does not mean that all this period needs to be exhausted at one go. Even otherwise, maximum tenure is limited to five years only and this period is already exhausted in case of the applicant's posting at Kanpur. The period of 15 and 20 years is the length of stay at a particular station during the whole service of the employee.

13. We also are in agreement with the respondents plea that specialty of individual doctor is to be kept in mind while making transfers. This is perfectly logical and reasonable. For instance, a pediatric doctor may be retained for longer period than even maximum tenure in case there is no replacement available, keeping in view the over-all interest of the employees. In any case, over-all institutional interest will override the individual officers' preferences for posts or their requests.

14. Moreover, we also observe that the applicant has been at Kanpur right from 2012 when he was first posted there in North Eastern Railway. The argument of the applicant's counsel that the applicant is in Kanpur only since 2016 (or 2018) is not correct as in 2016, only the post was brought under the control of North Central Railway from North Eastern Railway. But there was no change in his place of posting or even in his duties. Hence, the applicant cannot take undue benefit of this change of control of the very post he was holding from one zone to another zone, to his advantage.

15. Most importantly, we find that the applicant himself has written on 16.04.2019 – i.e. one day after the transfer order dated 15.04.2019 being challenged in the OA – and has requested for allowing him to stay in Kanpur till 31.07.2019. This request was very specific and was gracefully accepted in toto by the respondent department. Thereafter, the applicant has changed his stand and now seeks quashing of the very same order. This change of stand by the applicant is not at all appreciated by us.

16. We also do not find any ground to believe that the impugned transfer order is malicious or discriminatory. In fact, we note that as per the submissions made by the applicant in the OA itself (which are

summed up here by us), most of the requests of the applicant have been agreed to by the respondents – including his transfer from North Frontier Railway to North Eastern Railways, change of his training duty at Vadodra, his transfer to Kanpur and continuing him at Kanpur till July 2017 as per his own request. The fact that the earlier post of the applicant is still vacant, does not entitle the applicant to get posted back to his old post. We also do not believe that the transfer order has been passed without approval of the competent authority, in view of the observations made earlier in this order.

17. We also believe that the various judgments relied upon by the applicant are not relevant here in view of the specific facts of the case as discussed above.

18. In view of all above, we do not find any merit in the OA. Accordingly, the OA is dismissed being devoid of any merit.

19. There is no order as to costs.

(Rakesh Sagar Jain)
Member – J

(Ajanta Dayalan)
Member – A

/pc/