
(2022) 11 CAT CK 0039

In the Central Administrative Tribunal

Case No : Original Application No. 1602 Of 2015

Ajay Sahu

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 16-11-2022

Acts Referred:

Citation : (2022) 11 CAT CK 0039

Hon'ble Judges : Om Prakash VII, Member (J)

Bench : Single Bench

Advocate : Antriksh Verma, N.C. Nishad, Dharm Raj Pal, R.N. Joshi

Final Decision : Allowed

Judgement

Om Prakash VII, Member (J)

1. The present original application has been filed by the applicant seeking following relief:

i. The Hon'ble Tribunal may graciously be pleased to quash the letters / orders dated 07.07.2015 and 11.08.2015 issued / passed by respondent no. 4 (Annexure No. 1 and 2 to the Compilation No. I to this application) with all its consequential effects.

ii. The Hon'ble Tribunal may graciously be pleased to direct the respondent no. 4 to get the applicant joined on his transferred place or which he has been relieved vide letter dated 10.08.2015 on mutual transfer.

iii. The Hon'ble Tribunal may graciously be pleased to direct the respondents authorities to consider and take appropriate decision upon the applicant's representation dated 06.10.2015 as well as letter dated 19.10.2015 issued by respondent no. 2 (Annexure No. 11 & 12 to the Compilation No. II to this application) forthwith in accordance with law by a speaking and reasoned order within reasonable time.

iv. The Hon'ble Tribunal may graciously be pleased to grant any other suitable relief in favour of the applicant, which the Hon'ble Tribunal may deem fit and proper under the facts and circumstances existing in the present case.

v. Award the cost of this application to the applicant."

2. The brief facts of the case as has been narrated in the instant original application are that the applicant who was initially appointed by the respondents on 24.05.2012 as Helper (Khalasi) in the Engineering department of the East Central Railway at Mughalsarai Station entered into an agreement of mutual transfer with another employee named Girja Chaudhary, arrayed as respondent no. 6 in the instant original application, who was also appointed as Helper (Khalasi) by the respondents on 13.09.2013 in Mechanical department / Workshop of North Central Railway at Jhansi Station. This was done in accordance with the Railway Board Circulars bearing RBE No. 53/2006 dated 21.04.2006 and R.B.E. No. 156/2007 dated 04.12.2007 which enunciates Railway's policy of Inter-Railway and Intra-Railway transfers on mutual exchange. Consequent to agreeing upon mutual transfer with Respondent No. 6, the applicant was relieved from Mughalsarai vide order dated 10.08.2015, the place where he was already working to join at his new place of posting at Jhansi Station. However, contrary to what was agreed upon by Ms. Girja Chaudhary earlier, the respondent no. 6 refused to exchange transfer locations with the applicant on mutual basis vide her request letter dated 07.07.2015 and accordingly she was retained at Jhansi Station itself vide order dated 16.07.2015. The applicant has preferred this original application challenging the orders dated 07.07.2015 and 11.08.2015.

3. Learned counsel for the applicant submits that there is a clear policy of the Railways' by way of Circulars bearing RBE No. 53/2006 dated 21.04.2006 and R.B.E. No. 156/2007 dated 04.12.2007 which enunciates Railway's policy of Inter-Railway and Intra-Railway transfers on mutual exchange. And, on the basis of these two circulars, the applicant who was working at Mughalsarai Station and Ms. Girja Chaudhary i.e., respondent No. 6, who was working at Jhansi Station, entered upon an agreement of Inter Railway Mutual Transfer and accordingly they preferred an application as per the prescribed proforma for Inter Railway Mutual Transfer through proper channel and their request was approved by the General Manager (P), East Central Railway, Hajipur vide order dated 09.06.2015 which is the competent authority in the matter concerned.

4. Learned counsel for the applicant goes on to submit that in view of the approval of the competent authority dated 09.06.2015, the applicant was relieved from Mughalsarai Station vide order dated 10.08.2015 to enable him to join at Jhansi Station. However, after the order dated 09.06.2015 was already passed, Ms. Girja Chaudhary, i.e., respondent no. 6 moved an application to the competent authority concerned with a request that she is no longer willing to exchange the place of transfer with the applicant and accordingly her earlier request for Inter Railway Mutual Transfer may be done away with. Her request

was acceded upon by the General Manager (P), Northern Railway, Allahabad vide order dated 07.07.2015 and accordingly she was retained in Jhansi Station.

5. In the meantime, the applicant, on the strength of transfer order dated 10.08.2015, appeared before the Competent Authority at Jhansi Station but instead of permitting the applicant to join he was refused joining by the Chief Workshop Manager (P), North Central Railway, Jhansi vide order dated 11.08.2015. However, in the meantime, a letter dated 03.09.2015 was also issued by the General Manager (P), Northern Railway, Allahabad approving the Inter Railway Mutual Transfer of both the parties.

6. Learned counsel for the applicant further submits that when the applicant was refused joining at Jhansi Station, he went back to his earlier office at Mughalsarai and thereafter, the Competent Authority there issued a letter dated 21.09.2015 to the General Manager (P), Northern Railway, Allahabad which is the Competent Authority of Jhansi Station wherein a strong reference of the Railway Board's Circular dated 21.04.2006 and 12.11.2009 was given mentioning that requests for backtracking from the orders issued for transfer on mutual exchange basis, should not be entertained under any circumstances and strict adherence to the orders issued is required to be ensured. In compliance of the letter dated 21.09.2015, a letter dated 19.10.2015 was also issued by the respondent no. 2 submitting the same provisions established under the above mentioned Railway Circulars which were enunciated in the letter dated 21.09.2015.

7. Learned counsel for the applicant argues that despite issuance of letters dated 21.09.2015 and 19.10.2015 expressing the same established provisions of the Railway's Inter Railway Mutual Transfer Policy, no action has been taken upon them by the authorities concerned thus resulting in dilapidating applicant's mental health as he has been running from pillar to post since 2015 seeking redressal of his grievance. On account of the same, the applicant also preferred a representation dated 06.10.2015 but no action has been taken upon that representation also till date.

8. Concluding his arguments, learned counsel for the applicant submits that when the respondents, by way of their letters dated 21.09.2015 and 19.10.2015 have themselves admitted the fact that once agreed upon, the request for Inter Railway Mutual Transfer cannot be backtracked. And in this particular case, gross violation of Railway Board's Circulars dated 21.04.2006 and 04.12.2007 has taken place as the Circulars clearly establish that once acceded to, the request for backtracking mutual transfer cannot be made by either of the parties involved. And thus, the learned counsel for the applicant requests that the orders dated 07.07.2015 and 11.08.2015 as have been impugned in the present original application may be set aside and thereby, directing the respondent no. 4 to permit the applicant to join at Jhansi Station and also the competent authority amongst the respondents may be directed to take appropriate decision on the pending representation dated 06.10.2015 of the applicant by way of a reasoned and speaking order.

9. Learned counsel for the respondents vehemently opposes the relief sought by the applicant in the present original application and submits that after entering upon the policy of mutual transfer with the applicant, Smt. Girja Chaudhary, i.e, respondent no. 6, on account of some personal problems in leaving her present place of posting, preferred an application to the competent authority citing her inability to leave the city. However, learned counsel further submits that contrary to what has been claimed by the applicant, the request dated 27.05.2015 of Smt. Girja Chaudhary was never acceded to by the respondents and the order for retaining her was already passed on 07.07.2015 i.e., much before the order dated 10.08.2015 was passed for transferring the applicant to Jhansi. And therefore, the respondents were well within their right to retain Smt. Girja Chaudhary at Jhansi as it was a failure on the part of the applicant to join at his new place of posting at Jhansi on time after being relieved from Mughalsarai which lead the respondents to pass an order retaining Smt. Girja Chaudhary.

10. Learned counsel for the respondents, by way of the counter affidavit, further submits that the office at Jhansi Station did not receive any communication with regard to the letter dated 03.09.2015 issued by the General Manager (P), Northern Railway, Allahabad approving the Inter Railway Mutual Transfer of the applicant and respondent no. 6 and hence the order dated 07.07.2015 retaining Smt. Girja Choudhari at Jhansi was passed in accordance with the established rules and hence is completely legal and tenable in the eyes of law.

11. By way of the supplementary affidavit, learned counsel for the applicant submits that during the pendency of the instant original application, the applicant preferred Civil Misc. Writ Petition No. 6455 of 2021 titled Ajay Sahu vs. Central Administrative Tribunal before the Hon'ble High Court of Allahabad with a request to direct the Central Administrative Tribunal to expedite the proceedings of the instant O.A. and the Hon'ble High Court disposed of the said writ petition on 23.06.2021 directing the Central Administrative Tribunal to expedite the proceedings and decide the pending O.A. within three months. However, the correct copy of the said judgment could only be procured on 15.07.2021.

12. I have heard the rival contentions advanced by the learned counsel appearing for the parties and perused the documents on record. None appeared for respondent No. 6.

13. It is an established fact that the applicant and Smt. Girja Chaudhary entered upon an agreement of mutual transfer with each other solely on the strength of Railway Board's Circular dated 21.04.2006 and 04.12.2007 and accordingly their request got the sanction of the competent authority on 09.06.2015. It is pertinent to lay down that the above cited Circulars clearly establish that requests for backtracking from the orders issued for transfer on mutual exchange basis should not be entertained under any circumstances and strict adherence to the orders issued is required to be ensured. Moreover, the competent authorities amongst the respondents vide their letters dated 21.09.2015 and 19.10.2015 have themselves admitted to the aforementioned fact as laid down in the

Circulars governing the matter of Inter Railway Mutual Transfer. In spite of this, the applicant's request has not been acceded to.

14. The argument advanced by the learned counsel for the respondents that the application dated 27.05.2015 requesting for retention was never acceded to and she was retained only on the ground that the applicant failed to join at his new place of posting at Jhansi Station till the order was passed even after being relieved earlier does not hold water as any new order in regard to revocation of already approved transfers should have been communicated to the applicant under all the circumstances whatsoever which the respondents seemed to have failed to do probably on account of their absolute dereliction which ultimately left the applicant stranded at nowhere as he was already relieved from the department where he was serving and denied joining at transferred place.

15. In view of the above, this original application is liable to be allowed and is accordingly allowed with following directions:

i. The Competent Authority amongst the respondents is directed to adjust the applicant at Jhansi Station on the designation he is liable to be given.

ii. Further, the respondents are also directed to grant salary along with all associated benefits @ 6% interest to the applicant for the entire period he was not working at either of the office while running from pillar to post in search of the redressal of his grievance.

iii. Order dated 07.07.2015 vide which the respondent no. 6 was retained at Jhansi Station appears to be in complete violation of the Railway Board's Circulars as have been referred to earlier and is accordingly set aside.

iv. Further, order dated 11.08.2015, by way of which the applicant was denied joining at Jhansi Station is also set aside.

v. The compliance of all the above said directions be done within a period of eight weeks from the date of this Order.

16. Accordingly, O.A. No. 1602 of 2015 is allowed.

17. All the associated MAs also stand disposed of accordingly.

18. No costs.