

(2022) 02 CAT CK 0002
In the Central Administrative Tribunal
Case No : Original Application No. 443 Of 2021

Anirudh Prasad

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 01-02-2022

Acts Referred:

Citation : (2022) 02 CAT CK 0002

Hon'ble Judges : Jayesh V. Bhairavia, Member (J); Dr. A.K. Dubey, Member (A)

Bench : Division Bench

Advocate : S.S. Chaturvedi, R.R. Patel

Final Decision : Allowed

Judgement

Dr. A.K. Dubey, Member (A)

1. The applicant has approached this Tribunal praying for direction to the respondents to relieve him in pursuance of the letter from E.C. Railway

DDU dated 5.08.2021 (Annexure-A/1) informing the DRM(P) Ahmedabad Division that the competent authority there has accorded approval for

his own request transfer of the applicant and accordingly, he could be relieved for his new assignment in DDU Division. This communication also

intimates that this NOC is valid for six months after which it will be treated as cancelled.

2. Notice was issued and the respondents have filed their reply. Thereupon the applicant filed rejoinder. The respondents have submitted their sur rejoinder reiterating their contentions.

3. Applicant's say is that earlier, he had applied for own request inter divisional transfer in the year 2015. This request of 2015 was approved by the competent authority in April 2015 and the NOC was communicated by the East

Central Railway to the Western Railway vide letter dated April 2015

(Annexure-A/2). This communication clearly stipulated that the acceptance was valid for six months. Pursuant to this communication, the officials

concerned were asked to give the willingness for own request inter railway transfer. Accordingly, the applicant gave his willingness for going to

any division of East Central Railway vide his intimation dated 16.06.2015 (Annexure-A/4). The applicant claims that since nothing happened pursuant

to his tendering of willingness in 2015, he made a fresh request on 23.10.2020 (Annexure-A/7). He claims that between 2015 to 2020 no action took

place. But again, when he applied for own request inter divisional transfer on 23.10.2020 (Annexure-A/7), fresh NOC dated 05.08.2021

(Annexure-A/1) came. The applicant has also placed on record the communication dated 29.01.2020 from DRM(E) Ahmedabad to DRM(P) Danapur

E.C.R (Annexure-A/6) in which Danapur Division was asked if the applicant could be accommodated as acceptance of request for his transfer was

received in April 2015. Responding to this letter, fresh NOC dated 05.08.2021 was received. The applicant's say is that even this NOC is valid only

for six months from 05.08.2021 and therefore, it would lapse on 04.02.2022. Hence, the urgency to get relieved.

4. Respondents say is that the department has not discriminating against the applicant and had forwarded his application for own request inter

divisional transfer. However, the relief at any rate had to be subject to administrative exigency. The respondents have contended that out of 294

sanctioned posts in this cadre, 90 are vacant and therefore, there is a staff crunch due to which he could not be relieved.

5. The matter was taken up for final hearing today with the consent of counsel for both parties.

6. Learned counsel for the applicant submitted that this is the own request transfer which entails loss of seniority since the person will become the

junior most in his cadre in the new railway division. Delaying the relief would therefore have the implication of loss of seniority. Further, the provision

for own request transfer is there as per the policy of the respondents for which procedural requirements have been stipulated. When he applied first in

2015, he could not get relieved which necessitated undergoing the entire process afresh in the year 2020-2021. Now yet again the NOC has been

issued and yet again his relieving has not been ordered, the counsel submitted. The counsel drew the attention towards RBE No.85/2020 which says

that if after issue of NOC, the official is not relieved within a period of six months, NOC should mandatorily be revalidated and the employees should

be relieved on own transfer only after reconfirming the validity of NOC. The counsel contends that the second NOC dated 05.08.2021 is valid for six

months and if the applicant is not relieved within this time it will again require revalidation. She said that this itself was the second NOC.

7. Counsel for the respondents submitted that the matter has been dealt with in accordance with the laid down procedure and the relieving of the

applicant was held up mainly because of the staff crunch. She contended that the respondents have not discriminated against him and no one junior to

him had been transferred which means that his rights have not been infringed. She also argued that the applicant's reliance on the order of Ernakulam

Bench of this Tribunal was misplaced because the Ernakulam order was with respect to woman employee on the grounds of hardship faced by her

whereas in this particular case, there was no mention of any hardship. She submitted that the order of this Tribunal's Ernakulam Bench was not

applicable in this particular case. She also stated that the RBE No.85/2020 dated 01.10.2020 (Annexure-R/8) was very clear in saying that if the

employees concern were not transferred within the validity period, the NOC needed revalidation, and an employee could be transferred only after

reconfirmation of the validity of the NOC. This provision makes it clear that once the NOC is issued and if the employee is not transferred, fresh

NOC is required and it does not mean that the employee has to be mandatorily relieved once the NOC has been received, she argued.

7.1 The counsel for the respondents also submitted that it is not a case of denial of transfer. There is a provision for revalidation and if for any reason

the relief does not come through within the given time one can always get the NOC revalidated. Owing to the vacancies, if such transfers are

affected in large numbers, it would impact the functioning and efficiency.

8. We have carefully gone through the order of this Tribunal's Ernakulam Bench in OA No.106/2021 dated 09.04.2021 (Annexure-A/13). This order

is very clear as it refers to RBE No.170/2005. The RBE No.170/2005 dated 06.10.2005 (Annexure-A/12) mandates inter alia as follows:-

â??Since request by Railway servants for transfer on bottom seniority are made on grounds of special cases of hardships, it has been

decided that request for inter zonal transfers may not be withheld on account of existence of vacancies. If however, request for transfer are

withheld in the exigency of service or account of existence of vacancies, a time bound programme should be chalked out to fill up the

vacancies by direct recruitment or promotion, as the case may be.â??

9. The documents and materials brought before us make it clear appreciate that there is a provision of applying for inter railway transfer in the

category of own request IRT which, if granted, is on loss of seniority. In this context, the RBE No.170/2005 dated 06.10.2005 (Annexure-A/12) and

RBE No.85/2020 dated 01.10.2020 (Annexure-R/8) have been referred to. The applicant has also brought on record the letter of Western Railway

dated 12.01.2022 (Annexure-A/14) intimating the SSE/RAC/MG/KKF about one Raj Babbar for whom the relieving formality had been ordered. To

this the counsel for the respondents submitted that it was for an employee or another branch. The applicant has also drew our attention to the RBE

No.203/2019 dated 26.11.2019 (Annexure-A/10) which deals with the issue of relieving the employees in time after order of transfer in case of

request transfer. The relevant portion of this RBE is quoted below:-

â??....while it may not be desirable/feasible to assign seniority to transferred employee in the new unit from the date of approval of

transfer, when the employee is still actually working in the parent unit, every effort should be made to relieve her/him at an early date.

Where delay in relieving of the employee after orders are issued exceeds, is likely to exceed 3 months, the case should be put up by

Sr.DPO/WPO to DRM/CWM as the case may be giving specific reason for the delay and likely date of relieve.â??

10. After carefully going through the RBE provisions as well as the provision of own request inter divisional transfer, as provided for in the

respondents own policy it is clear that there is a provision for â??inter zonal railway transfer on own requestâ? for which there is a prescribed

procedure. That procedure has been completed in this case. The NOC was obtained in April, 2015 (Annexure-A/2) but the applicant was not relieved.

NOC was asked for yet again vide communication of the respondents dated

29.01.2020 (Annexure-A/6). The fresh NOC came vide letter dated 05.08.2021 (Annexure-A/1) requesting that the applicant may be released (Annexure A/1). At this stage, it is only matter of getting relieved. The argument of the respondent's counsel that there was deficit staff strength and lot of vacancies were there, does not hold good because at the time of ascertaining NOC afresh, situation was very much alike and still fresh NOC was asked for. There are instructions vide RBE No.170/2005 dated 06.10.2005 and RBE No. 203/2019 dated 26.11.2019 that relieving should not be delayed and if immediate relieving was not possible, fresh NOC was to be obtained and in the meanwhile, steps were to be taken to fill up the vacancy. In this case, the applicants could not succeed in getting relieved in the first round of request,. In view of RBE No.170/2005 dated 16.10.2005 as well as RBE No.203/2019 dated 26.11.2019, we think it is fit case to direct the respondents to honour their own rules and provisions and take further steps to relieve the applicant pursuant to NOC issued vide letter dated 05.08.2021 which is valid till 04.02.2022. The respondents, therefore, shall take steps to relieve the applicant within the period of validity of NOC.

11. With this direction, the OA is allowed. No order as to costs.