

(2024) 07 CAT CK 0016

In the Central Administrative Tribunal

Case No : Original Application No. 200, 00706 Of 2021

Love Kumar

APPELLANT

Vs

Union Of India, Through: Its General Manager. Western
Railway, Churchgate, Mumbai-400020 & Ors.

RESPONDENT

Date of Decision : 01-07-2024

Acts Referred:

Citation : (2024) 07 CAT CK 0016

Hon'ble Judges : Akhil Kumar Srivastava, Member, J; Kumar Rajesh Chandra,
Member (A)

Bench : Division Bench

Advocate : Gautam Prasad, Arun Kumar Soni

Final Decision : Dismissed

Judgement

Akhil Kumar Srivastava, Member J

1. Through this Original Application applicant is seeking for the following reliefs:-

8(i) Summon the entire relevant records from the respondents pertaining to the instant controversy for its kind perusal.

8(ii) This Hon'ble Tribunal may be pleased to quash/set aside the impugned transfer order dated 22.07.2021 (Annexure-A/1).

8(ii) After quashing/setting-aside the impugned transfer order dated 22.07.2021 (Annexure-A/1), this Hon'ble Tribunal may also be pleased to direct the respondents to not transfer the applicant from O/o Sr. Section Engineer (Bridge) Ujjain to O/o Sr. Section Engineer (Bridge) Ratlam and allow the applicant to work at the present place of posting i.e. at O/o Sr. Section Engineer (Bridge) Ujjain.

8(iv) Any other order or orders that this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case may kindly be passed.

8(v) Award the cost of the instant lis to the applicant.

2. The brief facts of the case are that the applicant was initially appointed as Khalasi on 26.04.2007 and presently holding the post of Senior Technician Grade I. Vide order dated 22.07.2021 applicant was transferred from O/o Senior Section Engineer (Bridge) Ujjain to O/o Senior Section Engineer (Bridge) Ratlam on administrative ground. The impugned transfer order was issued without placing the applicant's case before the placement committee as per the Railway Board's letter/instruction dated 10.06.2014. It is submitted by the applicant that as per Master Circular No.24 para 4.2 stated that "as a general rule the junior most employees should be transferred first." This principal has not been followed as there are many junior employees in the cadre of applicant who have been retained at Ujjain. Applicant was informed by Whatsapp that, in pursuance to the impugned transfer under dated 22.07.2021 (Annexure -A/1) he has been relieved from his duties at Ujjain w.e.f. 23.07.2021 (A/N). Applicant submitted a representation to Sr. Section Engineer (Bridge) Ujjain on 23.07.2021, for cancellation of his transfer by agitating his grievance that, he has a child who is studying in Class 10th and moving from Ujjain would disturb his studies and future carrier prospects. It is he who is looking after his only child at Ujjain inasmuch as his wife is a Veterinary doctor under state Govt. of Bihar who is posted at Patna. In view of the same he requested that the transfer order be withdrawn and he be permitted to work at Ujjain on the present post itself. But as on date the respondents have not decided the said representation of the applicant. It is submitted by the applicant that at present in Ujjain in the O/o Sr. Section Engineer (Bridge) Ujjain there are 03 post of Tech. Grade-1, where 01 Tech. Grade-1 employee has been posted out on promotion as JE, 01 post of Tech. Grade-1 is lying vacant and now applicant too has been transferred out of Ujjain. Therefore, there is no employee in Tech. Grade-I post at Ujjain i.e. all 03 post are now lying vacant at Ujjain. Applicant had also orally talked with both the Sr. Section Engineers at Ujjain and Ratlam for cancelling his transfer order, but to no avail. As such, the applicant was constrained to submit a legal notice dated 09.08.2021 (Annexure-A/6) of his lawyer to the respondents for cancellation his transfer order but the same has not yet been decided. Hence this Original Application.

3. Respondents in their reply have submitted that the applicant has not come with the clean hands as he has not disclosed his conduct and punishment imposed and also the several complaints made by his colleagues regarding abusing and assaulting which is the basis of transfer of the applicant. A criminal case has also been registered against the applicant in VYAPAM matter and SIT/ STF is regularly calling him for investigation. That past incident of the applicant is also not good as he is habitual absentee and several punishments had been imposed over him for absent and negligent of work. He has been issued Charge sheet dated 16.10.2010 due to absent was imposed punishment of one set of pass had been withheld, charge sheet dated 19.11.2011 due to absent whereby one set of pass and one PTO had been withheld, charge sheet dated 26. 03.2012

due to absent, two set of PTO had been withheld, charge sheet dated 06.11.2013 due to negligence in service, two set of pass had been withheld and charge sheet dated 20.02.2016 due to absent, one year increment was withheld. It is further submitted that Ratlam Division Engineer Department has already approved his transfer vide Annexure R/3. The policy referred by the applicant is not applicable in the case of the applicant as it is applicable only for employees who are working on the sensitive post and in every four years in rotation they are transferred periodically. It is submitted that telephonically applicant had been informed about his transfer thereafter applicant again remained absent from 23/07/2021 to 19/10/2021 he did not report to his supervisor nor submitted any representation. Applicant has also not made any representation on spouse ground. Further, under S.S.E. Bridge Ujjain cadre of six employees are there even after the transfer of the applicant, 5 employees remain there and 2 trainees are also available. Applicant was absent up-to 19/10/2021 and the legal notice which he sent through his lawyer without waiting decision on that he has rushed to this Hon'ble Tribunal hence no decision could be taken in his case.

4. Applicant has submitted rejoinder wherein he has reiterated the averments made in the O.A. and in addition he has submitted that the respondents have given post facto approval of applicant's transfer which is not permissible as per rules/instructions/circulars.

5. We have heard the learned counsel for the parties and perused the pleadings and documents annexed therewith.

6. It is seen that the impugned transfer order has been passed on administrative ground. Further, the respondents have categorically stated in their reply that he was issued many charge sheets due to absence from duty from time to time. The applicant has also not denied this fact. The applicant has contended that his transfer order was not placed before the Placement Committee but in the present case post facto approval of placement committee was taken and on perusal of Annexure A/2 it does not bar post facto approval and the same was taken in note sheet which is evident from Annexure R/3. So it cannot be said that transfer order was never placed before placement committee. Hence, it cannot be said that the impugned transfer order is harsh or punitive in nature, which warrants interference of this Tribunal.

7. In the matters of Union of India Vs. S.L. Abbas, (1993) 4 SCC 357 the Hon'ble Supreme Court has specifically held that who should be transferred where, is a matter for the appropriate authority to decide. In the matters of State of M.P. Vs. S.S.Kourav, (1995) 3 SCC 270 the Hon'ble Supreme Court has held that the wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by malafides or by extraneous consideration without any factual background or foundation.

8. In the matters of National Hydroelectric Power Corpn. Ltd. Vs. Shri Bhagwan, (2001) 8 SCC 574, the Hon'ble Supreme Court has held that "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".

9. Since there is no allegation of mala fide against any officer of the respondents nor any allegation with regard to competency of the officer, who has passed the impugned order of transfer, we do not find any ground to interfere with the impugned order of transfer, so far as it relates to the applicant.

10. Accordingly, the Original Application is dismissed, however, without any order as to costs.