
(2021) 09 CAT CK 0033

In the Central Administrative Tribunal

Case No : Original Application No. 180, 00399 Of 2021

Patil Hari Balavant

APPELLANT

Vs

General Manager, Southern Railway & Others

RESPONDENT

Date of Decision : 29-09-2021

Acts Referred:

Citation : (2021) 09 CAT CK 0033

Hon'ble Judges : P. Madhavan, Member J; K.V. Eapen, Member (A)

Bench : Division Bench

Advocate : Varkey, Martin, Asif K.H

Judgement

K V Eapen, Member A

1). The applicant working as a Helper at Mangalore in the Palghat Division of Southern Railway has filed this OA aggrieved by the refusal on the part of the respondents in relieving him to carry out the transfer approved by the competent authority and to facilitate him to join the Pune Division of Central Railway. The applicant had applied for inter railway transfer to Pune Division due to family conditions. Further, the transfer application (produced at Annexure A-1) was submitted by him on 23.05.2019. It was forwarded to Central Railway by a letter dated 11.03.2020. The 3rd respondent, who is, the Senior Divisional Personnel Officer, Pune Division, Central Railway, Mumbai approved and accepted the transfer of the applicant in the Pune Division. It should be noted that this approval (dated 10.08.2020) lists certain conditions for relieving him but does not mention that it was valid only for a specific period of time (produced at Annexure A-2). It requested the DRM(P), Palghat Division to relieve the applicant along with duly completed SR, leave a/c and LPC. On the applicant's representation and request to be relieved, he was informed by the 2nd respondent (Senior Divisional Personnel Officer, Palghat Division) that "the competent authority has not agreed to relieve you at present due to acute shortage of staff in the cadre" (produced at Annexure A-3).

2. The applicant says that there is no justification whatsoever, in the decision not to relieve him from Palghat Division. He has produced a Railway Board letter (RBE No.203 of 2019 dated 26.11.2019) on the subject of relieving railway employees whose transfers were approved by the competent authority (at Annexure A-4). This letter is important in that it underlines the reason to relieve transferred employees at an early date. It stops short however of allowing inter division/railway transferees being assigned seniority in the new unit from the date of approval of the transfer, as the employee is still working in the parent unit. The letter also indicates that wherever delay in relieving of employee after orders are issued exceeds 3 months, the case should be put up by Sr.DPO/WPO to DRM/CWM, as the case may be, giving specific reasons for the delay and likely date of relief. The applicant made frequent representations and requests and has been only assured from the 2nd respondent's office that the matter is under active consideration and he will be relieved soon. He submits that this matter has been settled by a series of decisions of this Hon'ble Tribunal and Hon'ble High Court of Kerala who have found that the existence of vacancies in the parent division is not an answer to deprive the benefit of transfer to the incumbents who are eligible to such transfer in accordance with the settled norms. The applicant also relies on an order in OA 1040 of 2017 passed by this Tribunal produced at Annexure A-5 which covers such cases. Similarly in such situations this Tribunal allowed the OA 576 of 2017 and OA 277 of 2017 and other connected cases, directing the Railway to relieve the applicant so as to carry out the respective inter railway transfers.

3. It is submitted that such applications cannot be kept pending for long for reason of adverse vacancy position. Such a position is against the Railway Board's instructions. Already, considerable time has been consumed pending the approval of the transfer. The applicant has had to forgo the seniority earned by him and will have to join at bottom seniority. He has, therefore, asked the respondents as one of the reliefs to reckon seniority with effect from date of approval of the competent authority to accommodate him in the Pune Division of Central Railway in August, 2020.

4. In response to this, a counsel statement has been filed by learned counsel for the respondents stating that the competent authority has not agreed to relieve the applicant due to acute shortage of staff in cadre. This was informed to the applicant vide the letter dated 23.09.2020 (produced at Annexure A-3). When the approval of the competent authority of Pune Division (vide his letter dated 10.08.2020) was received, the matter was put up to Senior Divisional Electrical Engineer/General Service on 27.08.2021 for the applicant's relief, subject to NOC from Pune Division as per RBE 85/2020, along with the vacancy position. However, the same was not approved and the applicant was informed. It is submitted that since the validity of the approval communicated by the concerned Railway i.e, Pune Division "was before 6 months", NOC is to be again obtained from the concerned Railway/Division as per RBE 85/2020 (produced at Annexure R-1). Accordingly, another letter has been sent to the concerned Railway on

31.08.2021 (produced at Annexure R-2).

5. We have gone through the submissions made by the counsels along with the documents provided. In the Annexure R-1 letter (RBE 85/2020), it has been mentioned that despite several executive orders issued by the Board from time to time to minimize the hardship of the officials, repeated complaints are being received from staff and the Federations that the transfer requests are not being processed properly. The letter states that it has been observed that after issue of the NOC by the accepting Railway, the staff concerned are not relieved on time, at times taking more than one year, and by the time the staff are relieved on the basis of the NOC, the vacancies get filled up, and the Railway which had issued the NOC refuses to accept the transferred staff, putting such staff to considerable hardship as he is left with nowhere to go, having been relieved by the parent Railway. To obviate such issues, it has been decided by the Board that NOC issued by the receiving Railway should be valid for a period of six months, and if transfer of the employees concerned are not effected within this period, the NOC in such cases should be mandatorily revalidated. The employees should be relieved on transfer only after re-confirming the validity of the NOC.

6. In this regard, it is observed that this new circular (produced at Annexure R-1) dated October, 2020 has been issued by the Railways after the no objection at Annexure A-2 dated 10.08.2020 from the Pune Division was received. Hence, the applicant's inter railway transfer was approved by the Pune Division even before this circular was issued. It is also seen that the NOC in such cases should be mandatorily revalidated if the transfers of the concerned employees are not effected within the period of 6 months. However, even after such instructions, the letter written to Pune Division was only as late as 31.08.2021, a full year after the first NOC was received. (Annexure R-2)

7. Further, the Senior Divisional Personnel Officer, Southern Railway, Palghat has written to the Pune Division only to confirm whether the applicant can be accommodated on bottom most seniority since more than 6 months has elapsed after conveying the NOC in favour of him. We note the circular at Annexure R-1 doesn't appear to be about any issues relating to seniority but has simply stated that the NOC issued by the receiving Railway would be valid for a period of 6 months, and if, transfers of the employees concerned are not effected within this period, the NOC in such cases should be mandatorily revalidated. The employees should be relieved on transfer only after re-confirming the validity of the NOC. Thus even if the letter at Annexure R-2 was sent, we are not clear about its purpose as it appears to be relating to the seniority of the employee in the Pune Division and not having anything to do with the circular at Annexure R-1 even though it is referred to in the letter. The directions at Annexure R-1 only state that the relieving Railway should reconfirm the validity of the NOC. To us it doesn't appear anywhere from the documents provided by the respondents or the averments made that the validity of the NOC is being sought as required. Thus, due to extremely excessive delay in the matter and due to an unclear

purpose of the letter at Annexure R-2, we direct that the concerned employee should be relieved without fail within 15 days of receipt of a copy of this order to join in the Pune Division. This action should be carried out by the Senior Divisional Personnel officer, Palghat Division, Palghat accordingly.

8. We are not however inclined to give any direction on the relief sought at serial no.3, which is to direct the respondents to assign the seniority of the applicants in the transferred division with effect from the date of approval of the competent authority in August, 2020 to accommodate the applicant in Pune Division of Central Railway. Such a direction will be against the circular RBE 203/2019 dated 26.11.2019 produced at Annexure A-4. It would also create a binding precedent which will have its fallout in other cases. The respondents may therefore fix his seniority in Pune Division as per the guidelines in force. Our orders are only confined to directing the relieving Railway Authority to relieve the applicant within the period mentioned in paragraph 7. No order as to costs.