
(2019) 01 CAT CK 0007

In the Central Administrative Tribunal

Case No : Original Application No. 330, 00358 Of 2018

Pramod Kumar

APPELLANT

Vs

Union of India And Ors

RESPONDENT

Date of Decision : 04-01-2019

Acts Referred:

Central Administrative Tribunal Act, 1985 — Section 19

Citation : (2019) 01 CAT CK 0007

Hon'ble Judges : Gokul Chandra Pati, J; Rakesh Sagar Jain, J

Bench : Division Bench

Advocate : A.K. Dave, A.K. Rai

Final Decision : Dismissed

Judgement

Rakesh Sagar Jain, J

1. Applicant Pramod Kumar in the O.A. filed under Section 19 of the Central Administrative Act seeks the following reliefs:

i. Quash the impugned Office Order No. 15/17 dated 10.03.2017 (Annexure A-1) passed by respondent no. 5 only with request to the applicant, as well as relieving order dated 03.03.2018 (Annexure No. A-2) passed by respondent No. 6.

ii. To quash the impugned order dated 24.4.2018 (Annexure A-1A) and the order dated 28.6.2018 (Annexure A-1B).

iii. To direct the respondents authorities to consider the request of the applicant regarding his posting at nearby railway station.

iv. To pass any other or further order as this Hon'ble may deem fit and proper under the circumstances of the case.

v. Award cost of application/petition".

2. Case of applicant Pramod Kumar working in the Railway Department pertains

to his transfer from Maduadih where he was working since 2016 as Chief Commercial Clerk to Sidhwaliya which is at a distance of 350 kilometer on administrative grounds by respondent No. 5 vide order dated 10.03.2017. He has mentioned that he belongs to Schedule Caste Community and is Divisional Secretary of Bhartiya Rail Dalit Mazdoor Association. He further avers that he submitted application dated 10.01.2017 to retain him for one year at Maduadih or in Office of Commercial Controller or at Varanasi City Railway Station.

3. Applicant makes a reference to circular No. 85-E (SCT) 1-43/1 dated 24.12.1985 (Annexure No. A-5) containing guidelines for posting of SC/ST employees. Applicant avers that looking to the scope of the circular (Annexure No. A-5), applicant filed a representation against his transfer on 16.03.2017 followed by another representation dated 17.11.2017. Applicant further avers that respondent No. 6 issued order dated 03.03.2018 relieving on basis of order dated 10.03.2017 wherein it is mentioned that transfer of applicant is on his own request which request he never made and contradicts the order dated 10.3.2017 transferring him on administrative ground. The transfer order and relieving order have not been given to him till date.

4. Respondents passed transfer order dated 9.3.2018 (Annexure No. A-9) which reflects that there was vacancy at relevant places where the applicant was interested to provide his service but the respondents did not consider his request.

5. Applicant further stand that the respondents got annoyed since he stood for the rights of a co-worker. His representation was rejected vide order dated 24.4.2018 (Annexure A -1A) on ground that "After considering representation, this being sensitive post, his transfer order stands."

6. As per applicant, respondent No. 3 passed order dated 28.06.2018 (Annexure A - 1B) on the applicant covering letter dated 17.5.2018 treating the same as representation wrongly observing therein that (1) it is not mandatory to post the employee to his native District or adjoining district and (2) Type II quarter is available at Sidwalia but admitting that that GP 4200 pay scale Rs.9300 - 34800/- is not available at Sidhwalia. Therefore the rejection of representation is in an arbitrary and illegal manner.

7. Applicant challenges the order dated 10.03.2017 of his transfer on the following grounds:-

1) respondent No. 6 issued order dated 03.03.2018 relieving on basis of order dated 10.03.2017 wherein it is mentioned that transfer of applicant is on his own request which request he never made and contradicts the order dated 10.3.2017 transferring him on administrative ground.

2) Order dated 10.3.2017 and relieving order dated 03.03.2018 are against Circular dated 24.12.1985 which provides that posting of SC/ST employee should be near their home town.

3) Representation dated 06.03.2018 is still pending before the respondents.

4) In pursuance of relieving order dated 03.03.2018, no spare memo, transfer order dated 10.03.2017 and relieving order dated 03.03.2018 have not been served upon the applicant.

5) Since applicant took up the case of on Lalji Prasad Gautam, respondents are annoyed and transferred only the applicant.

6) Transfer order dated 09.03.2018 clearly shows that there was vacancy at relevant places where the applicant was interested to provide his service, even then, respondents have not considered his request.

7) While issuing transfer order, respondents have not considered his family condition.

8) Respondent No. 3 passed order dated 28.6.2018 in violation of circular dated 24.12.1985.

8. Annexure No. A 1B reads as under: From the perusal of Your representation dated 17.5.2018 as well as your relevant documents by the competent authority, it is evident that you had a tenure of more than 4 years working in Maduadih station and for this reason that persons working on sensitive posts should be transferred periodically. Due to this policy, you have been transferred from Maduadih to Sindhwalia station as per administrative exigency. After the transfer order, you vide representation dated 14.3.2017 requested to be retained at Maduadih for one year and therefore you were not relieved for Sindhwalia station and permitted to work at Maduadih station for one year. On 03.03.2018, the Station Superintendent you have been relieved. As per Railway Board circular dated 24.12.1985, it is not mandatory for an official to be posted in his Native District or adjoining district. It is not possible to post all the SC/ST officials on their choice station since all the stations have to be manned in equal strength. You are entitled to Type 3 accommodation which is available in Sindhwalia. And if the entitled quarter is not available, official would be entitled to the next below quarter as per Rules. However, Type 2 quarter is available in Sindhwalia station which can be allotted to you. Grade pay 4200 in the pay scale of Rs.9300 - 34800/- not being available at Sindhwalia station, there would no effect on your pay scale because in Varanasi Division BOS-1, the grade pay 4200 in the pay scale of Rs.9300 - 34800/- is available and against the same you will get the pay. Regarding the medical attention for your wife or yourself, the medical leave can be granted, as per, rules and can be availed by you for medical treatment. Your statement that you have been transferred to harass you is incorrect. Your transfer has been affected on periodical basis and in accordance with rules. Your representation dated 17.5.2018 is disposed off.

9. In the short counter affidavit filed by the respondents it had been averred that the transfer of the applicant was made on administrative ground due to policy of periodical transfer due to working on sensitive post and after completing a tenure of more that four years in Manduadih. Applicant relies upon circular dated 24.12.1985 but the circular is not mandatory in nature and it is mentioned

therein that these instructions should be followed to the maximum extent to the possible, subject of course to the exigencies of service and therefore the direction of the circular does not have binding affect.

10. It has been further averred in the counter affidavit that the transfer order of the applicant has been passed on the following grounds :-

A. That this transfer order has been passed by respondents on the basis of directions/instructions issued by railway board for working on the sensitive post more than four years as periodical transfer.

B. That from conversion of Meter gauze to Broad gauze and after reopen of this section, it has been required an experienced employee and for this purpose, the post of senior commercial clerk is being upgraded as chief commercial clerk.

C. That it is not possible to give posting to all SC/ST employees at their desirous place and for working of the railway administration, required number of employees should have been posted at railway stations.

11. It is further averred in the counter affidavit that after passing the spare order, the applicant is absent continuously from duty and since the applicant is in the pay scale of Rs.9300-34800/- having a grade pay of Rs.4200/-, the sanctioned post of Sr. Commercial Clerk at Sidhwalia is being upgraded. Respondents have also filed a supplementary counter affidavit wherein it is averred that during arguments applicant raised the issue that type III railway quarter to which the applicant is entitled to is not available at Sidhwalia and relied upon letter dated 19.06.2018 of the Railway Board which stipulates that the transfer should be at a place with suitable quarter. In this regard the respondents have taken the plea that "for allotment of Railway Quarters a policy is being enforced from year 2000 and allotment of Railway Quarters have to be done in accordance with aforesaid policy. By perusal of the rule 2(2) of Chapter 6 of the aforesaid policy it is crystal clear that if the railway quarters are not available for employee for which class he is entitled in that circumstances Quarters of lower class can be allotted. A true copy of the Railway Quarter Allotment Rules 2000 is being annexed here with and marked as Annexure no. SR-2 to this affidavit."

12. Applicant filed rejoinder affidavit it has been averred that applicant's representation was rejected by respondent No. 2 vide order dated 24.04.2018 (Note : which has been impugned in the present O.A. by way of amendment). He has further averred that no Type III Quarter to which the applicant is entitled to is not available at Sidhwalia.

13. It has been further pleaded in the O.A. that :

"in reply to paragraph no. (6) of the short counter reply, it is submitted that the while transferring the applicant from Maduadih to Sidhwalia the respondent totally ignored the RBE no. 336/1985 dated 24.12.1985 which is specially on the subject of posting of SC/ST near their home town on initial appointment/

promotion/transfer. The applicant belong to SC category as such the above referred circular dated 24.12.1985 issued by Government of India (Bharat Sarkar) Ministry of Railways/Rail Mantralaya (Railway) is fully applicable in the applicant case. It is further relevant to point out here that Government of India Ministry of Railway (Railway Board) vide New Delhi letter dated 19.06.2018 again reiterating the Railway Board letter No. 85-E(SCT) I-43/I dated 24.12.1985 with regrd posting of SC/ST candidate/employees near their home town on initial appointment/promotion/transfer. In the above referred letter dated 19.06.2018 Railway Board specifically mentioned as under:-"It has been brought to the notice of Railway Board that above instruction are not being followed in some Railways. It is therefore once again reiterated that while making initial appointment as well as on transfer/posting of SC/ST candidate/employees, guidelines issued vide Railway Board's letter No. 85E/SCT/I-43/1 dated 24.12.1985 may be kept in view by concerned Railways PUS."

In the last para of the letter mentioned that the above may be brought to the notice of all concerned for information and strict compliance. A photo copy of the Railway Board letter dated 19.06.2018 is being filed as Annexure No. SRA-3 to this short rejoinder.

It is further submitted that the Senior Divisional Commercial Manager North Eastern Railway Varanasi who have filed the short counter reply interpreting the Railway Board circular dated 24.12.1985 according of his convenience ignoring the spirit of the letter dated 24.12.1985 and the further clarification issued by the Railway Board on 19.06.2018, after coming t know that the above Railway Board instructions are not being followed in some Railways. In view of the above submission, It is clear that the Railway Board letter dated 24.12.1985 is mandatory and binding to all the authorities who are working under the umbrella of Ministry of Railway (Railway Board) New Delhi."

14. It is also the case of applicant in rejoinder affidavit that he went to Sidhwalia Station for joining and on request, he was informed by Station Superintendent Sidhwalia that there is no type III quarter available and so the applicant returned back to Varanasi. It is also clear that no post of Chief Commercial Clerk having a Grade Pay of Rs. 4200/- is available at Sidhwalia and, therefore, his transfer to Sidhwalia is unwarranted. This apart Railway employee who does not get the Railway accommodation is entitled to H.R.A under the Central Government Rules. So this argument of the applicant is also be rejected on this ground.

15. We have heard and considered the arguments of learned counsels for the parties and gone through the material on record as well as written arguments filed by applicant and as also the case law filed by either party.

16. Before proceeding further, reference may be made to Circular of 1985 which reads as under:-

"Dated of the letter/Codal/Manual provision GOVERNMENT OF INDIA (BHARAT SARKAR) MINISTRY OF RAILWAYS/RAIL MANTRALAYA (RAILWAY BOARD) RBE

No. 336/1985/ No. 85-E (SCT) 1-43 dated 24.12.1985 Subject: Posting of SC/ST near their Home Town on initial appointment/promotions/transfers.

Reference:- Board's letters No. E (SCT) 70 CM 15/15/3 dated 19.11.1970 (ii) E (SCT)/74 CM 15/50 dated 14.01.1975 (iii) 28-E (SCT) 15/25 dated 06.07.1978.

In Board's letters dated 19.11.1970 and 14.1.75 referred to above, it was desired that the transfer of SC/ST employees should be confined to their native districts or adjoining districts or places where the Administration can provide quarters and that these instructions should be followed to the maximum extent possible, subject of course to the exigencies of service. It was also desired that employees belonging to SC/ST should be transferred very rarely and for very strong reasons only. Again, in Board's letter dated 06.07.1978 referred to above, it was clarified that even at the time of initial appointment, the SC/ST candidates should as far as practicable, be posted nearer to their home towns or at the places where the administration can provide them quarter subject to their eligibility. It was further clarified that these instructions would equally apply to cases of transfer on promotion provided the post is available.

A few cases of transfer of SC/ST employees have come to the notice of the Board wherein the above mentioned instructions have not been followed. They, therefore, desire that instructions on the subject should be reiterated to all concerned that due consideration should be given to the above mentioned instructions while ordering transfer/posting of SC/ST employees".

17. It has been argued by the Learned Counsel for the applicant that the transfer of his client has been effected in complete violation of the circular of 1985 (supra), there is no accommodation befitting his status at Sidhwalia and no post carrying his pay scale in the grade pay of Rs.4200/-. It is also his case that since he took the stand on behalf of one co-worker, he is being victimised by the authorities by being transferred and placed reliance on The Railway Board v/s P.R.Sumramaniyam, 1978 SCC (L&S) 35.

18. Learned counsel for the respondents argues that applicant being SC/ST category does not enjoy any special privilege in the matter of transfer, more so, since in the present case, the transfer is not actuated by mala fide but has been effected in exigencies of service. Applicant stay in a sensitive post for more than 4 years has now been transferred. Learned counsel for respondents relied upon observation of the Hon'ble Apex Court in :

A. Union of India and Ors vs. S.L. Abbas, (1993) 4 SCC 357 that:

"Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must

consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the government employee a legally enforceable right."

B. Laxmi Narain Mehar Vs. U.O.I., 1997 SCC (L&S) 643 that :

"It is true that as far as possible, the convenience of the officer belonging to Scheduled Castes and Scheduled Tribes may be considered and he may be posted near the home town, but the authority has power to transfer him when the administrative need arises. It is further contended that the petitioner had made allegations against the officers and the transfer is a vindictive measure of punishment. It is seen that he was transferred on account of administrative exigencies.

Under these circumstances, we do not think that there is any justification to interfere with the impugned order. The petitioner, if so advised and is desirous, may made a representation before the appropriate authority and the appropriate authority may consider it on merits."

C. Civil No. 4975 of 2009 titled Rajendra Singh v/s State of U.P decided on 31.07.2009 that "A Government Servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No Government can function if the Government Servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires"

D. Mrs. Shilpi Bose & Others vs. State of Bihar & Ors, AIR 1991 SC 532 that:

"In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders."

E. National Hydroelectric Power Corporation LTD. vs. Shri Bhagwan, 2001 (8)

SCC 574, the orders of transfer came to be challenged on the ground that they were contrary to the settlement entered into between the corporation and its employees Union and the model standing orders framed under Industrial Employment (Standing Orders), 1946, Hon'ble Supreme Court while dismissing the claim of petitioners has held as under: On a careful consideration of the submissions of the learned counsel on either side and the relevant rules to which our attention has been invited to, we are of the view that the High Court was not justified in interfering with the impugned orders of transfer. It is by now well-settled and often reiterated by this Court that no Government servant or employee of public Undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of malafide 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.

This, apart, Learned counsel for respondents placed reliance on case titled Dr. Krishna Chandra Dubey v/s Union of India decided on 05.09.2005, Writ -A No.18177 of 2017 titled Dhirendra Nath v/s The State of U.P. decided on 28.4.2017 by Hon'ble Allahabad High Court and Uma Shanker Rai v/s State of U.P., 2009 (2) ESC 786 (All) (DB) (LB) in support of his contention. All the citations are based on principles regarding transfer. In fact, the observations of the Hon'ble High Court in Uma Shanker Rai (supra) are pertinent: "If that be so, we hope and trust that it would be looked into by the competent authority as to whether administrative exigency requires posting of respondent No. 4 at Mirzapur for a period of such a long time since continuance of an officer at a place for a very long time is also against established norms and against interest of administrative exigency."

19. Applicant's contention is that his transfer is in contravention of the Statutory circulars which lays down that the transfer of SC/ST employees (1) should be confined to their native districts or adjoining districts or places where the Administration can provide quarters; (2) should be transferred very rarely and for very strong reasons only. However, the rider in these circular is instructions should be followed to the maximum extent possible, subject of course to the exigencies of service.

20. Undisputedly, applicant has been in the post at Maduadih for more than 4 years and it is a sensitive post, as per, the respondents. This apart, the applicant himself has averred in the O.A. that he submitted application dated 10.01.2017 to retain him for one year at Maduadih or in Office of Commercial Controller or at

Varanasi City Railway Station. The respondents acceded to his request, is discernible from the fact that they relieved the applicant in March 2018. So, it does not lie in the mouth of applicant to say that respondent No. 6 issued order dated 03.03.2018 relieving on basis of order dated 10.03.2017 wherein it is mentioned that transfer of applicant is on his own request which request he never made and contradicts the order dated 10.3.2017 transferring him on administrative ground. The respondents seem to have been lenient in their administration and no wonder, indiscipline crops up. Another point raised by applicant is that since he stood up for a co-worker, he has been victimised by the respondents by way of transfer. Other than a bald statement, there is nothing on record to support this argument of the applicant.

21. Another ground taken by applicant is that there is no quarter befitting his status and also no post having the pay scale of GP 4200 pay scale Rs.9300 - 34800/- available at Sidhwalia. In this regard, respondents' stand is that - It is not possible to post all the SC/ST officials on their choice station since all the stations have to be manned in equal strength. Applicant is entitled to Type 3 accommodation which is available in Sindhwalia. And if the entitled quarter is not available, official would be entitled to the next below quarter as per Rules. However, Type 2 quarter is available in Sindhwalia station which can be allotted to you. Grade pay 4200 in the pay scale of Rs.9300 - 34800/- not being available at Sindhwalia station, there would no effect on your pay scale because in Varanasi Division BOS-1, the grade pay 4200 in the pay scale of Rs.9300 - 34800/- is available and against the same you will get the pay. This squarely meets the arguments raised by applicant regarding his transfer.

22. The law is well settled the Tribunal should not normally interfere with the transfer order unless the transfer order shown to be vitiated by malafides or passed in violation of any statutory provisions or issued by an authority not competent to pass such an order.

23. Learned counsel for the respondents argues that a member of SC/ST category does not enjoy any special privilege in the matter of transfer and the circular dated 16.7.1978 issued by Railway Board in respect of non transfer of SC/ST employees has been declared un-enforceable by the Full Bench of C.A.T. Hyderabad in the case of Ch. Roosevelt vs General Manager, South Central Railway, Secunderabad & Ors reported in 1997 (1) ATJ 12. The Full Bench of CAT Hyderabad has categorically held that a member of SC/ST enjoys no special privilege in the matter of transfer and the circular/letter mentioned hereinbefore is not enforceable in law.

24. In the case of Union of India and Ors vs. S.L. Abbas reported in 1994 SCC (L&S) 230 Honble Supreme Court has also held that the guidelines, however, does not confer upon Government employee a legally enforceable right. In the case of Laxmi Narain Mehar Vs. U.O.I. and others S.L.P. (C) Nos. 3433-34 of 1997 decided on 24.12.1997 reported in 1997 SCC (L&S) 643 Honble Supreme court has held that it is true that as far as possible, the convenience of the officer

belonging to SC and ST may be considered and he may be posted near the home town, but the authority has power to transfer him when the administrative need arises. In view of principles laid down in S.L. Abbass case (supra) and Laxmi Narain Mehars case (supra) and Full Bench judgment delivered by C.A.T. Hyderabad Bench in the case of Ch. Roosevelt (supra) it is clear that being a member of SC, the applicant does not enjoy any special privilege in respect of transfer and he may be transferred on administrative grounds. In view of above the applicant cannot take shelter of any circular for restraining his employer to transfer him from Maduadih to Sidwaliya even on administrative ground.

25. Learned counsel for the applicant referred to the case of The Railway Board and others Vs. P.R. Subramaniam and others reported in 1978 Supreme Court Cases (L&S) 35. The law laid down in the said case is as under:-

"The Prefatory Note to the Indian Railway Establishment Manual which contains the above rule says:

It must be noted that the provisions of this Manual do not supersede the rules contained in any of the Indian Railway Codes and in case of conflict the latter should prevail. This Manual may not be referred to as the final authority and a reference should always be made to the original orders on the subject.

It would thus be seen that those who were confirmed in Grade I against permanent posts in accordance with the decision contained in Ex. R-9 must rank senior to those who were absorbed against permanent posts later although they were confirmed in supernumerary posts created in Grade I w.e.f. April 1, 1956. There was nothing wrong in it. It is undisputed that respondent 3 to 9 had been confirmed due to one reason or the other against permanent posts earlier than respondents 1 and 2. In our judgment, the decision contained in Ex. R-9 which had the force of a rule made under Rule 157 did override Rule 20 (b) contained in the Manual. Respondent 1 and 2, therefore, were not entitled to get any relief for the quashing of the impugned order Ext. P-4 dated March 6, 1972".

26. The applicant failed to prove any mala fides either in law or on facts or against any statutory rule. Hence, the impugned order dated 10.03.2017 is to be treated as a transfer on administrative grounds and exigencies of service.

27. In the circumstances and for the aforesaid reasons, we do not find any merit in the OA and accordingly the same is dismissed. Interim order, if any, is vacated. No costs.