

(2019) 02 CAT CK 0117
In the Central Administrative Tribunal
Case No : Original Application No. 2085 Of 2017

Shakil Akhtar

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 13-02-2019

Acts Referred:

Citation : (2019) 02 CAT CK 0117

Hon'ble Judges : V. Ajay Kumar, J; Aradhana Johri, J

Bench : Division Bench

Advocate : Gaya Prasad, Prabodh Kumar, Kripa Shankar Prasad

Final Decision : Dismissed

Judgement

Aradhana Johri, J

1. The applicant, Shri Shakil Akhtar was appointed as Apprentice Assistant Loco Pilot on 07.12.2009 and after training posted in Delhi Division under Northern Railway.

O.A No. 2085/2017

He became regular Assistant Loco Pilot on 23.08.2010. He gave an Inter Railway transfer request on 13.12.2011 to Mughal Sarai on East Central Railway (Hazipur Zone). When the transfer did not materialise, he filed O.A No. 609/2017 in which the following orders were passed on 02.03.2017 :-

"4. In the circumstances, the O.A is disposed of at the admission stage, without going into the other merits of the case, by directing the respondents to consider the representation dated 11.08.2016 of the applicant and to pass appropriate speaking and reasoned orders thereon, in accordance with law, within 90 days from the date of receipt of a copy of this order. No order as to costs.

Let a copy of the O.A be enclosed to this order."

2. In compliance with the above orders, a speaking order was passed by Senior

Divisional Personnel Officer, New Delhi on 17.05.2017, which clarified the position regarding certain transfers from Delhi to Moradabad and Lucknow Divisions due to shortage of staff and quoted administrative exigencies as the reason for these transfers. This order further indicated that the Inter Railway transfer requested by the applicant would be considered when his turn came as per priority register.

3. Aggrieved by this order, the present O.A has been filed.

4. The grounds taken by the applicant are that someone junior to him has been transferred from Delhi to Lucknow and certain other transfers have also taken place. This is in violation of the Railway Board Guidelines and Policy which provided for transfer request being made on the basis of their registration in the priority register. He has further alleged that there was a shortage of Assistant Loco Pilots in East Central Railway for which notification for recruitments was issued. He has claimed that his representation has been illegally turned down without application of mind by passing a non-speaking, non-reasoned and irrelevant order. He has prayed for the following reliefs :-

"i. to allow the O.A and quash and set aside the impugned order dated 17.05.2017 (Ann.A-1) passed by the Senior Divisional Personnel Officer, Northern Railway, New Delhi (Respondent No.3) and consequently direct the Respondents to consider the case of the Applicant for Inter Railway Transfer and also direct to relieve him on request on accepting bottom seniority from Delhi Division, N. Rly. To Mughal Sarai Division of Hazipur Zone as per request of Applicant.

ii. to pass any other order/orders which deem fit and proper in the interest of justice."

5. The respondents have denied the allegations and have clarified that there was a shortage in Moradabad and Lucknow Divisions and since operation and safety of trains was at stake, transfer to these divisions were done. They have stated that the applicant's name is registered against priority No. 66 in the Register and no violation of the guidelines have been done.

6. Heard Mr. Gaya Prasad, learned counsel for applicant and Mr. Prabodh Kumar Singh for Mr. Kripa Shankar Prasad, learned counsel for respondents.

7. The guidelines for Railway Board Policy as given in the O.A are as follows :-

"The request transfers are considered presently after registering them on priority register on first come first serve basis. But to extend equal opportunity to all the field staff to whom this information would take some trying to reach. It has been decided as a one time measure to put on hold the present practice, for two months, from the date of issuance of these instructions. The application received would be registered only and priority would be registered only and priority would be allotted on the basis of length of service of the transferring staff during these two months. Thereafter, the mode of the registering requests of transfer on the basis of first come first serve would resume as per the present practice.

However, the practice of releasing / sparing of transfer requesting staff, who fulfil the existing conditions on the basis of the exigencies of service and availability of relief vice them, would continue, as is being done now"

8. Though the respondents have stated that priority of the applicant is at Sl. No. 66 in the Priority Register, at the time of final hearing, the applicant has filed a photocopy of DRM, New Delhi, Northern Railway order dated 15.12.2016 which shows Shri Shakil Akhtar at Sl. No. 33. This still does not alter the situation of the speaking order dated 17.05.2017, which indicates that his request will be considered as and when his turn as per Priority Register comes.

9. Other than posting one person from Delhi Division to Lucknow Division, the applicant has not been able to point out any other case of such transfer on request.

10. The applicant has cited judgment of Ernakulam Bench in O.A No. 1109/2012, 1110/2012 & 1158/2012 in Anima Kujur & Ors. Vs. Union of India & Ors. decided on 25.02.2013. However, in the case in question, the transfer order had already been passed and the applicant had to be relieved, which is not the case in the present O.A. Further, the case of Sandeep Kumar Vs. Chief Commissioner of Central Excise in O.A No. 333/2016 decided on 12th July, 2016, has been relied upon. In that particular case, the directions were for framing a set of guidelines clearly delineating eligibility norms, giving due weightage to various components such as seniority. These directions were issued so that the system may not be opaque. Further directions were given to consider the case of the applicant along with others according to the prescribed transfer norms to be adopted.

Therefore, both these cases do not help the applicant in the current O.A.

11. Further, the present guidelines themselves provide for exigencies of service and availability of relief, which must be adhered to.

12. The order dated 17.05.2017 in compliance of order of this Tribunal is a speaking order, which clearly gives reasons why the request of the applicant cannot be acceded to immediately. It also clarifies that there was shortage of staff in Moradabad and Lucknow Divisions, which was why Assistant Loco Pilots were transferred to Lucknow and Moradabad on the basis of administrative exigencies. Further, this order does not reject the representation of the applicant but states that his request for Inter Railway Transfer will be considered as and when his turn comes as per priority register.

With the above observations, this O.A is dismissed with no orders as to costs.