

(2023) 09 CAT CK 0001
In the Central Administrative Tribunal
Case No : Original Application No. 289 Of 2023

S.P. Shakya

APPELLANT

Vs

Union Of India, Through General Manager, North Central
Railway, Headquarter, Subedarganj, Prayagraj. Others

RESPONDENT

Date of Decision : 05-09-2023

Acts Referred:

Citation : (2023) 09 CAT CK 0001

Hon'ble Judges : Mohan Pyare, Member (A)

Bench : Single Bench

Advocate : Ashish Srivastava, Vijay Kumar Singh

Final Decision : Dismissed

Judgement

Mohan Pyare, Member (A)

1. Shri Ashish Srivastava, counsel for applicant.

Shri Vijay Kumar Singh, counsel for respondents.

2. By way of this original application the applicant has sought the following reliefs:-

“(i) This Tribunal may be pleased to quash and set aside the impugned transfer order dated 15.03.2023 passed by the respondent No.2 only in respect of applicant (Annexure No.A-1 of this OA)

(ii) This Court may graciously be pleased to direct the respondents to allow the applicant to be remain posted in Jhansi division till his superannuation on the same post of or any other equivalent post as per the administrative convenience.

(iii) Any other relief, which this Tribunal may deem fit and proper in the circumstances of the case may be given in favour of the applicants.

(iv) Award the costs of the original application in favour of the applicant.”

3. The brief facts of the case are that applicant was working as Assistant Divisional Material Manager, Jhansi from 14.03.2019 and was transferred to Assistant Material Manager, Rail Sprint Karkhana, Sithauli, Gwalior on 15.03.2023. The Divisional Personnel Officer, North Central Railway, Jhansi issued office order dated 20.03.2023 for implementation of transfer order dated 15.03.2023 with immediate effect. The Railway Board issued a comprehensive policy for Railway Officer, transfer No.E(O)III/2014/PL/05 dated 31.08.2015. Further addendum to the above transfer policy was issued on 12.12.2018. On 27.03.2023 applicant submitted a representation requesting for modification in the transfer order. Further on 29.03.2023 he submitted another representation requesting sympathetic consideration on his transfer order and either to stay the transfer order or adjust him in any other unit in Jhansi only as he is going to retire on 31.07.2024 and he is suffering from diabetes and there is nobody else in his family to look after him and his wife. His representation dated 27th and 29th March, 2023 was not considered. Shri Abhishek Srivastava has been allowed to join in place of applicant. The above order is in violation of Railway Board's letter dated 12.12.2018. In several similar cases Tribunal has granted relief and taking analogy of the same the impugned order should be quashed.

4. The respondents in their counter reply have submitted that transfer policy dated 12.12.2018. Para (iii) of the same reads as under:-

"Officers due for retirement within the span of two years should normally not be disturbed from the present posting."

5. The applicant has completed four years in sensitive post and his transfer was issued in the light of policy guidelines issued by CVC. On the strength of interim order issued by this Tribunal applicant has submitted a representation dated 20.04.2023. The Central Vigilance Commission letter No.8(1)(h)/98(1) dated 18th November 1998 it has been stated that "There is a scope for patronage and corruption especially in matters relating to tenders", as such rotational transfer of officers handling such sensitive matters involves larger public interest.

6. The Railway transfers are issued on the recommendation of a High Level 3 Members Committee and approved on the level of General Manager in public interest keeping in mind the sufficient delivery of service and Career Progression of the officers involved. As applicant have completed four years in the sensitive post so he was transferred to Gwalior which has due medical facility and barely at a distance of 100 Kms. The officer has relinquished the charge of the post on 06.04.2023 and interim stay order has been issued by this Tribunal on 15.04.2023. The new officer has taken charge on the post of ADMM/JHS vide charge assumption report dated 10.04.2023.

7. The applicant has relied on a judgment dated 13.01.2022 in OA No.1078 of 2021 in which issue of transfer of the applicant who had less than two years of service left before his retirement was considered and Tribunal has issued directions that such consideration may be done within the next three weeks from

the date of issue of relevant order based on relevant policy/rules.

8. As this transfer order has been issued in accordance with Railway Policy and guidelines, the applicant has already been relieved so this OA has become infructuous. Accordingly, the OA should be dismissed as having become infructuous.

9. Heard both the counsel for the parties and perused the documents on record.

10. The OA was first heard on 15.04.2023. After listening to rival submissions the OA was admitted and interim stay on transfer was granted. On 2. 06.2023 stay vacation application No.1790 of 2023 was heard and the relevant portion of the order is reproduced below:-

"The official respondents in the OA and the applicant in this MA contend that the initial stay order granted on 15.04.2023 was based on certain misrepresentations of rules as well as facts as the applicant in the OA has already been relieved. Hence, stay order is infructuous and the applicant has not clearly brought to the notice of the Court that he has already been relieved. He should have obtained status quo ante order, if at all also as he had obtained the said order based on the fact that the addendum to the transfer policy guidelines, issued by Board's letter of even number dated 12.012.2018, wherein at para 3 it was mentioned that, "officer due for retirement within the span of two years should normally not be disturbed from the present posting". Whereas the said clarification was only limited to certain parts of the said transfer police dated 31.08.2015 i.e. para 1 (i) and 1 (viii) and not about the whole original transfer policy as such. Hence, if we see the comprehensive transfer policy, in that there is another para xi, which mentions following:-

"xi. In terms of pare 124 of IREC, Vol. I, GMs have full power to make rules with regard to non-gazetted Railway Servants. No change is recommended. Maximum tenure on sensitive posts will however be 4 years. In case of nongazetted Railway employees, no inter railway transfer request will be considered till completion of 5 years of joining Railway."

As, the applicant in the OA was holding a sensitive post in the store department, so his transfer could have been effected even though he was due to retire within two years. Even though he is going to retire shortly his continuance there is not in the interest of good governance. Hence, as per rule only he was transferred. The counsel for the applicant in the OA and the respondents in this MA argues that in the said OA he had clearly mentioned that he was already relieved; which is there in para 4.5 on page 7 of the OA and he emphatically says that the interpretation of this addendum dated 12.12.2018 by the official respondents of the OA is incorrect as he is going to retire in less than two years, and this para 3 on officers due for retirement within a span of two years should normally not be disturbed from the present posting is applicable to him.

From the simple perusal of the record it is evident that this two years stipulation

is not in derogation of general rules, and for sensitive posts the special provisions at para 1 (xi) of the comprehensive transfer policy was applicable.

Considering this there is a prima facie case to vacate the stay and I pass following orders:-

"Stay is vacated. Applicant is directed to join at new place of posting and he may give his representation regarding his grievances to the authorities, which the official respondents in the OA may consider in a time bound manner and sympathetically consider his case for posting that he is going to retire shortly. Other contentions raised will be heard at the time of final hearing."

11. Accordingly, the MA No.1790 of 2023 was allowed and stay granted was vacated. The applicant was transferred on 15.03.2023 and relieved on 06.04.2023. On 15.04.2023 an interim order was issued by this Tribunal staying the transfer order. While listening to stay vacation application the stay granted on transfer of applicant was infructuous as he was already relieved. Perusal of the relevant transfer policy clearly indicates that minimum tenure on a particular post at a time will be of two years and maximum tenure for sensitive post will be four years. An addendum relied upon by the applicant is applicable to para 1(i) and para 1(viii) whereas the transfer order to the applicant was issued in compliance of para 1(vii) & (xi) which prescribes maximum tenure on sensitive post as four years. In his representation dated 29.03.2023 the applicant has himself mentioned that either his transfer should be stayed or he should be accommodated in any other unit in Jhansi only.

12. As applicant has completed four years in a sensitive post, his transfer has been done to a post at about 100 Kms. from the present post, he was relieved from the present post on 06.04.2023, the substitute has joined on 10.04.2023 and he has already joined the new post on 6.7.2023. The present OA has become infructuous and liable to be dismissed as infructuous.

13. Accordingly, the original application is dismissed as having become infructuous. Meanwhile, in an order dated 02.06.2023 it was ordered that the representation regarding the grievance of the applicant should be considered in a time bound manner and considered sympathetically keeping in mind that he is going to retire shortly. The respondents are directed to consider the representation of the applicant dated 29.03.2023 within a period of three months from the date of receipt of certified copy of this order by passing a reasoned and speaking order. No Costs.

All associated MAs are disposed of.