

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Writ Petition No.18092 of 2015

K.S.Prakaash

.... Petitioner

vs.

1) Union of India, rep. by
The Divisional Railway Manager,
Office of the DRM,
Southern Railway,
Madurai.

2) The Divisional Personnel Officer,
Divisional Office,
Southern Railway,
Madurai.

3) The Registrar,
The Central Administrative Tribunal,
Chennai Bench, High Court Complex,
Chennai.

.... Respondents

Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records of the order passed in O.A.No.310/00535/2014 dated 8th April, 2015 by the 3rd respondent Tribunal and quash the same and direct the 1st and 2nd respondents to transfer the petitioner to Trichy in compliance to the Railway Board Circular.

For Petitioner : Mr.S.Mohan

For Respondents : Mrs.V.Bhavani Subbaroyan

ORDER

(Order of the Court was made by Mr.Justice S.MANIKUMAR)

The petitioner was appointed as a Commercial Clerk on 10.12.1996, in Trichy Division of Southern Railway. Thereafter, when he was working as a Senior Commercial Clerk, at Trichy Fort Railway Station, based on a vigilance check, conducted on 21.06.2001, disciplinary action was initiated against him and a penalty of reduction of pay from Rs.4900/- to Rs.4000/- in the scale of pay of Rs.4000/- to Rs.6000/- for a period of 12 months, with cumulative effect was imposed. On appeal, the punishment was modified into reduction to the next lower grade of Rs.3200/- to Rs.4900/- fixing the pay as Rs.4,050/- for a period of three years and on revision, the period of three years was reduced to two years.

2.The petitioner has further submitted that while so, he was transferred from Trichy Division to Madurai Division, vide order No.Comml.Admin/91-02 dated 29.11.2002 of the 2nd respondent/Divisional Personnel Officer, Divisional Office, Southern Railway, Madurai, on administrative grounds. Condition No.(iii) of the abovesaid order was that transfer is not permanent to sever his lien and that his lien would be maintained in Trichy Division for further avenue of promotion.

3.It is further submitted that pursuant to the order of transfer dated 29.11.2002, the petitioner joined the Madurai Division. He made representation to the respondents 1 and 2, requesting re-transfer to his parent unit namely, Trichy Division. Vide letter No.U/P 576/III/Idt/vol.III dated 04.10.2003, the 2nd respondent rejected his request on the grounds of pendency of disciplinary proceedings against him. In the said letter, the 2nd respondent has stated that as per Railway Board Letter No.E(NG)I/80/IR/28 dated 19.02.1986, an employee could not be brought back to parent unit, if he is not fully exonerated.

4.According to the petitioner, the above circular in Letter No.E(NG)I/80/IR/28 dated 19.02.1986 is applicable only to ticket checking staff and not to the commercial clerks. Therefore, the 2nd respondent is not correct in rejecting his request for re-transfer.

5.The petitioner has further submitted that his son and daughter died in a road accident on 11.07.2004 and he has to look after his aged mother, who is suffering from renal disease disc pro-lapse, due to which, she is unable to move by herself and someone has to look after her day-to-day needs and she requires regular physiotherapy. Hence, he made a representation dated 15.12.2008 to the 2nd respondent seeking re-

transfer to parent division. The 2nd respondent by order in No.U/P/676/III/CC/IDMT/Vol.III dated 11.02.2009 rejected the request of the petitioner for re-transfer. Challenging the said order, the petitioner filed O.A.No.257 of 2009, before the Central Administrative Tribunal, Madras Bench, and the same was dismissed by order dated 15.04.2009. Against which, the petitioner has filed W.P.No.18614 of 2009. By order dated 22.11.2012, the said writ petition was disposed of, with a direction to consider the request of the petitioner for re-transfer and pass appropriate orders. Pursuant thereto, the 2nd respondent by order dated 24.09.2013 rejected the request of the petitioner. Aggrieved by the same, the petitioner filed O.A.No.310/00535/2014 before the Central Administrative Tribunal, Madras Bench. Relying on the Railway Board Circular dated 23.10.2006, wherein, instructions have been issued that staff could be considered for re-transfer to the original Railway, but not to the original division, on case to case basis, on completion of a minimum period of six years service, by order dated 08.04.2015 the Central Administrative Tribunal dismissed O.A.No.310/00535/2014. Challenging the said order, present writ petition has been filed.

6.Assailing the impugned order made in O.A.No.310/00535/2014 dated 8th April, 2015 by the Central Administrative Tribunal, Madras Bench, learned counsel for the petitioner has submitted that the Tribunal has completely overlooked the order passed by this Court in W.P.No.18614 of 2009 dated 22.11.2012, wherein, it has been clearly held that the petitioner is entitled to re-transfer to his parent division at Trichirappalli and rejected the contention of the railways that in view of the penalty imposed on the petitioner, he was not entitled to re-transfer.

7.He further submitted that the Tribunal has failed to take note that the transfer order does not show that the petitioner was transferred based on a vigilance case, but only on administrative grounds and if transfer is made by way of punishment, it should be specifically mentioned in the order. Thus, he submitted that the transfer is effected not as a measure of punishment nor in contemplation of disciplinary action .

8.He further submitted that the Tribunal has not considered the transfer order dated 29.11.2002, in proper perspective, wherein, the 2nd respondent has stated that the transfer has been made only on administrative grounds and that transfer is not a permanent one to sever his lien and that the petitioner's lien will be maintained in Trichy Division, for further avenue of promotion.

9.The Senior Divisional Personnel Officer, Southern Railway, Madurai, has filed a counter affidavit. Based on the averments made therein, learned counsel for the respondents have contended that the petitioner was appointed as a Commercial Clerk in Tiruchirappalli Division of Southern Railway on 10.12.1986, which is the parent division of the petitioner for assigning seniority and promotional opportunities. He was transferred from Tiruchirappalli Division to Madurai Division on 29.11.2002, based on a vigilance complaint that he accepted extra money and upon considering his poor integrity and honesty in discharging the responsibility, the respondents have effected the abovesaid transfer.

10.Learned counsel for the respondents further contended that though in terms of the railway board's circular dated 23.10.2006, the petitioner is eligible for transfer on completion of 6 years in Madurai Division, the request of the petitioner for re-transfer to Trichy Division, was not considered in the light of the circular dated 23.10.2006, as per which, employees imposed with penalty and transferred to another Division based on administrative/vigilance ground cannot seek re-transfer to their parent Division. It is further submitted that the petitioner's earlier transfer to Trichy Division was done, based on a complaint reported by the Vigilance Organisation of the Southern Railway. In the departmental action proceeded against him, he was imposed with a penalty of reduction to the next lower grade. Hence, his request for re-transfer to his parent division has been rightly rejected.

11.As regards the contention that directions issued by this Court in W.P.No.18614 of 2009 dated 22.11.2012 have not been complied with, it is submitted that pursuant to the order passed in the abovesaid writ petition, giving direction to consider the representation of the petitioner for re-transfer, the 2nd respondent by order dated 29.04.2013, rejected the representation of the petitioner seeking re-transfer.

12.Inviting the attention of this Court to paragraph 3 of the Railway Board Circular dated 23.10.2006, which states that request for transfer by the staff who were earlier shifted to another Division on administrative ground/vigilance ground, may be considered for transfer to their Railway, but not to their original Division, on case to case basis, subject to acceptance by both the concerned General Managers i.e., relieving and accepting, learned counsel for the respondents further contended that since the petitioner was involved in a vigilance case, wherein after departmental enquiry, he was imposed with a penalty of reduction to next lower grade and that had become final, even if the petitioner has completed 6 years of service or more, he cannot be considered for re-transfer in view of paragraph 3 of the circular dated 23.10.2006. For the abovesaid

reasons, she prayed for dismissal of the writ petition.

Heard the learned counsel for the parties and perused the materials available on record.

13. Material on record discloses that the petitioner was appointed as a Commercial Clerk on 10.12.1996, in Trichy Division of Southern Railway. Thereafter, he was working as a Senior Commercial Clerk at Trichy Fort Railway Station. Subsequently, based on a vigilance check, conducted on 21.06.2001 disciplinary action was initiated against him and a penalty of reduction of pay from Rs.4900/- to Rs.4000/- in the scale of pay of Rs.4000/- to Rs.6000/- for a period of 12 months, with cumulative effect was imposed. He was transferred from Trichy Division to Madurai Division, vide order No.Comml.Admin/91-02 dated 29.11.2002 of the 2nd respondent/Divisional Personnel Officer, Divisional Office, Southern Railway, Madurai, on administrative grounds. Pursuant to the said order, the petitioner joined Madurai Division. He made representation to the respondents 1 and 2, requesting re-transfer to his parent unit namely, Trichy Division. Vide letter No.U/P 576/III/Idt/vol.III dated 04.10.2003, the 2nd respondent rejected his request on the ground of pendency of disciplinary proceedings against him. Against which, he filed O.A.No.257 of 2009 before the Central Administrative Tribunal, and the same was dismissed. Challenging the said dismissal, the petitioner has filed W.P.No.18614 of 2009 and this Court by order dated 22.11.2012, disposed of the said writ petition with the following observations:-

'Issuance of the aforesaid circular dated 23.10.2006 is not disputed by the Standing Counsel. The aforesaid Circular deals with inter divisional transfer of commercial staff. Paras 3 & 4 of the aforesaid Circular provide for transfer of the concerned staff on request only after completion of a minimum of six years service in the existing Division. It is not in dispute that the petitioner was transferred from Trichy Division to Madurai Division on 29.11.2002 and he is serving in the said Division for more than nine years. The aforesaid Circular was not brought to the notice of the Tribunal instead an Old Circular dated 25.01.1969 was relied on and therefore, the Tribunal could not be found fault with. However, in view of the latest circular dated 23.10.2006, the petitioner becomes entitled for re-transfer. The contention of the learned Standing Counsel that the petitioner, who was imposed with penalty of reduction to the next lower grade, is not entitled for re-transfer in view of the said Circular, cannot be accepted. A reading of the entire Circular

does not prohibit the Department in considering the request of the staff, who were imposed with penalty, however, such request could be considered only after a period of six years.''

14.It is relevant to extract the Railway Board Circular No.E(NG)I-2004/TR/22, dated 23.10.2006.

'In terms of the existing procedure contained in the then Board (CRB)'s D.O. letter No. V(SS) 81/Genl. dated 25.3.81, Ticket Checking staff suspected to be indulging in malpractices should, as a matter of policy be invariably transferred on inter-divisional/inter zonal basis as a measure of campaign against rampant social evil and such of them as are fully exonerated or imposed only a penalty of censure on the conclusion of disciplinary action, may be transferred back on review by GM on request made by the staff concerned.

2.This issue came up for discussion in the DC/JCM Meeting with Board vide agenda item No.30/2006 when the Staff Side desired review of the extant policy relating to inter-divisional/inter railway transfer of ticket checking staff suspected to be indulging in malpractices so as to consider transferring them back to their parent railway. The issue has arisen owing to bifurcation of Railways w.e.f 1.4.2003 when the staff transferred to different Division on the same Railway on administrative ground landed up in different Railway after the bifurcation.

3.The matter has since been considered by the Board. It has been decided that the request for transfer by the staff who were earlier shifted to another Division on administrative ground, may be considered for transfer to their original Railway, but not to their original Division on case to case basis, subject to acceptance by both the concerned General Managers i.e., relieving and accepting.

4.The request will be considered only after completion of a minimum of six years service by the concerned staff in the existing Division.''

15.Though the petitioner had contended that condition No.3 of the transfer order dated 29.11.2002 passed by the 2nd respondent that transfer is not a permanent one to sever his lien and the petitioner's lien will be maintained by Trichy Division for further avenue of promotion, taking note of the Railway Board Circular dated 23.10.2006 that staff could be considered for re-transfer to the original Railway but not to

the original Division on case to case basis on completion of a minimum of six years service, the Tribunal by observing that transfer is made on administrative grounds and interference with the same would affect the administration, has dismissed O.A.No.310/00535/2014 by order dated 08.04.2015.

16.Though the respondents have contended that the petitioner was transferred from Tiruchirappalli Division to Madurai Division pursuant to a vigilance complaint that he was accepting extra money, the transfer order dated 29.11.2002 does not state that transfer has been effected as a measure of punishment. On the other hand, it has been made on administrative grounds.

17.Request of the petitioner to re-transfer is on the grounds that the petitioner's son and daughter died in a road accident on 11.07.2004 and he has to look after his aged mother, who is suffering from renal disease disc pro-lapse, due to which, she is unable to move by herself and someone has to look after her day-to-day needs and that she requires regular physiotherapy. The said reasons have not been properly adverted to by the respondents. Lien has not been terminated. It is also to be noted that in the order dated 22.11.2012, this Court has observed thus.

''However, in view of the latest circular dated 23.10.2006, the petitioner becomes entitled for re-transfer. The contention of the learned Standing Counsel that the petitioner, who was imposed with penalty of reduction to the next lower grade, is not entitled for re-transfer in view of the said Circular, cannot be accepted. A reading of the entire Circular does not prohibit the Department in considering the request of the staff, who were imposed with penalty, however, such request could be considered only after a period of six years.''

18.It is also to be noted that while transferring the petitioner, the respondents have made it clear that the lien of the petitioner would be retained in Trichy Division. Lien in the parent division cannot be terminated. While that be the case, the case of the petitioner cannot be negated, on the basis of the subsequent order issued in 2006. Besides, even on sympathetic grounds, the petitioner's case ought to have been considered.

19.Considering the fact that he lost his children in the accident and has to look after his ailing mother, we direct the respondents to consider the request of the petitioner and transfer her to the parent division, within a period of three weeks, from the date of receipt of a copy of this order.

The writ petition is disposed of accordingly. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

NBI

To

1)The Divisional Railway Manager,
Union of India
Office of the DRM,
Southern Railway,
Madurai.

2)The Divisional Personnel Officer,
Divisional Office,
Southern Railway,
Madurai.

3)The Registrar,
The Central Administrative Tribunal,
Chennai Bench, High Court Complex,
Chennai.

+1 cc to Mr.S.Mohan Advocate sr.25311

W.P.No.18092 of 2015

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