

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G. SHYAM PRASAD

Writ Petition No.45461 of 2016

ORDER: *(per V. Ramasubramanian, J.)*

Aggrieved by the order of the Central Administrative Tribunal, Hyderabad Bench, allowing the application of the 2nd respondent herein, not to reduce her Grade Pay and not to reduce her in status, the Railway Administration has come up with the above writ petition.

2. Heard Ms. Chintalapati Lakshmi Kumari, learned standing counsel for the petitioners and Sri K.R.K.V. Prasad, learned counsel for the 2nd respondent-employee.

3. The 2nd respondent herein was working as Chief Commercial Clerk in Sambalpur Division, in Pay Band-2, in the scale of pay of 9300-34800 with a Grade Pay Rs.4200/-. She made a request for transfer to Waltair Division on the ground that her husband was transferred from Sambalpur to Waltair Division. While accepting the said request, the Railway Administration passed an order dated 01-03-2013 to the following effect:

“With the approval of the competent authority the following Inter Divisional Own request (one way) transfer orders are issued.

Smt. Y. Kumari, Ch.CC/SBP in PB-2 (Rs.9300-34800/-) with GP Rs.4200/- working under Sr.DCM of SBP Division/East Coast/ Railway is hereby transferred to WAT Division on Inter Divisional Own request (one way) transfer on reversion as Jr.CC in PB-1 (Rs.5200 - 20200/-) with GP Rs.2000/- on bottom seniority in recruitment grade against an element of DRQ in WAT Division. She may be directed to this office for final release to DRM (P)/WAT/East Coast Railway for further Posting.....”

4. Aggrieved by her reduction in status as well as pay, the 2nd respondent filed an application in O.A.No.020/01448/2014 on the file of Central Administrative Tribunal. The Tribunal allowed the application, forcing the Railway Administration to come up with the above writ petition.

5. To a limited extent, the Tribunal was wrong in thinking that a transfer made at the request of a person on the ground that the spouse is employed elsewhere, could be treated as an administrative transfer. The correct position in law is that such transfers are also only request transfers and not administrative transfers.

6. But the only consequence of a transfer on own request is that a person may forfeit his seniority. But what the petitioners have done is to reduce the Pay Band as well as to reduce the post to which the 2nd respondent was transferred. Therefore, the Tribunal was correct in setting aside the same.

7. The learned standing counsel for the petitioners placed reliance upon the Memo dated 08-02-2000 issued by the Railway Board. In paragraph 3 of the said memo, the Railway Board stated that for transfer of employees on request on bottom seniority in recruitment grades, the employees should possess the qualification prescribed for recruitment to the relevant post. The expression "relevant grade" is also defined in Para 312 of the Indian Railway Establishment Manual. It reads as follows:

"The expression "relevant grade" applies to grade where there is an element of direct recruitment. Transfer on request from Railway employees working in such grades may be accepted provided they fulfil the educational qualification laid down for direct recruitment to the post.

No such transfers should be allowed in the intermediate grades in which all the posts are filled entirely by promotion of staff from the lower grade(s) and there is no element of direct recruitment”.

8. But unfortunately, the above paragraph does not state that a person can be reduced in rank or status or that there could be a reduction in the scale of pay. If a person cannot be accommodated on transfer in the same post in which he is working at a particular station, the administration should refuse to accept the request for transfer. After accepting the request for transfer, the administration cannot reduce a person in rank or status. A reduction in rank or scale of pay or status is permissible only as a major penalty and not otherwise. A request to be posted in the same station to which the spouse is posted is not a punishable offence. Therefore, the Tribunal was correct in setting aside the impugned order reducing the 2nd respondent in rank, status and pay. We find no reasons to interfere with the impugned order.

Accordingly, the writ petition is dismissed. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

G. SHYAM PRASAD, J

Date: 26-12-2016

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