

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5913 of 2018

1. The Union Of India through the General Manager, East Central Railway, Hajipur, District-Vaishali (Bihar)- 844 101
2. The General Manager (Personnel), East Central Railway, Hajipur, District - Vaishali Bihar - 844101
3. The Chief Operation Manager, East Central Railway, Hajipur, District - Vaishali Bihar - 844101.
4. The Divisional Railway Manager, East Central Railway, Sonpur, P.O. Sonpur, District - Saran (Bihar)-841221.
5. The Senior Divisional Personnel Officer, East Central Railway, Sonpur, P.O. - Sonpur, District – Saran (Bihar)-841221.
6. The Chief Operating Manager, East Central Railway, Sonpur, P.O. - Sonpur, District - Saran (Bihar)-841221.

... .. Petitioner/s

Versus

Md. Shamim Akhtar Ansari Son of Late Abdul Bari Station Manager, East Central Railway, Baragopal, District - Saran Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Anshuman Singh
For the Respondent/s	:	Mr. M.P. Dixit
		Mrs. Swastika
		Mr. Sanjay Kumar Chaubey

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 09-01-2020

Heard learned counsel for the petitioners and
learned counsel for the respondent.

2. This application has been filed by the petitioners
for setting aside the order dated 19.09.2017 passed in Original



Application bearing No. 050/00242/2017 whereby the Central Administrative Tribunal, Patna Bench, Patna (for short 'The Tribunal') has directed that the respondent herein cannot be compelled and relieved in pursuance of the order dated 06.01.2009 and set aside the orders dated 29.03.2017 and 30.03.2017 issued under the signature of D.R.M. (Personnel) Sonapur.

3. The facts of the case in brief are that:

(a) The respondent Md. Shamim Akhtar Ansari was initially appointed on 17.05.1993 as A.S.M. in Sonapur Division of the East Central Railway. He got promotion from the post of A.S.M. to the post of Station Master with effect from 01.06.1995.

(b) One Arvind Kumar was initially appointed on 26.09.1997 as a Group-C employee in North Eastern Railway at Varanasi.

(c) The respondent and the aforesaid Arvind Kumar filed a joint application for mutual transfer in the year 2007 in terms of Rule 310 of IREM, Vol.-1, 1989.



(d) With the consent of the respective Zonal authorities as well as the Divisional heads in the year 2008, the request for mutual transfer was accepted.

(e) The aforesaid Arvind Kumar of Station Master grade was spared from North Eastern Railway, Varanasi Division to join at Sonapur Division under the East Central Railway. Pursuant to the said order of transfer, he also joined at East Central Railway, Sonapur Division.

(f) On 06.01.2009, the G.M. (Personnel) Headquarter, East Central Railway, Hajipur passed order that the respondent should be spared for joining at Varanasi Division of North Eastern Railway pursuant to acceptance of his mutual transfer. However, the respondent was not spared by the authorities and he continued to work on his post at Sonapur Division.

(g) Vide order dated 22/24.10.2014 passed by D.R.M. (Personnel), Sonapur, the



respondent was promoted to the post of Station Superintendent and was posted at Baragopal, Railway Station. He joined on the said post and is still continuing there.

(h) Vide order dated 29.03.2017 passed by D.R.M. (Personnel), Sonapur, the respondent was reverted to the post of A.S.M. and was spared to join at Varanasi Division under the mutual transfer order made in the year 2009.

(i) Vide order dated 30.3.2017, the respondent was spared to join at Varanasi Division of North Eastern Railway pursuant to the aforesaid order dated 29.03.2017 with pay protection having been granted to him.

(j) Being aggrieved by the aforesaid orders dated 29.03.2017 and 30.03.2017, the respondent filed Original Application before the Tribunal bearing No. 050/00242/2017.

(k) The Tribunal vide impugned order dated 19.09.2017 allowed the original application and set aside the aforesaid orders



dated 29.03.2017 and 30.03.2017 and also directed that the respondent cannot be compelled and relieved in pursuance of the order dated 06.01.2009.

(l) Being aggrieved by the aforesaid order dated 19.09.2017 passed by the Tribunal, the petitioners have filed the instant writ petition.

4. Mr. Anshuman Singh, learned counsel appearing for the petitioners submitted that the impugned order has been passed by the Tribunal without appreciating the facts and law in correct perspective. He contended that the respondents transfer could not be effected because the dealing Assistant was in his collusion. The concerned dealing Assistant had suppressed his file for which he was proceeded against and his ten months increment were withheld with non-cumulative effect. He contended that the Tribunal failed to appreciate that while reverting the respondent to the post of Station Master, his pay was protected even at the transferred place. He has further contended that the Tribunal also failed to appreciate that there is no time limit on effecting an order of mutual transfer. On the basis of the aforesaid submissions, he has contended that the



order impugned passed by the Tribunal deserves to be set aside.

5. Per contra, Mr. M.P. Dixit, learned counsel appearing for the respondent submitted that there is no illegality in the order passed by the Tribunal. According to him, the Tribunal has correctly appreciated the facts and law involved in the case and has rightly set aside the impugned orders dated 29.03.2017 and 30.03.2017 whereby the respondent was reverted to the post of Station Master and was spared to join at a different Division under a different Zone. He contended that as far as the respondent is concerned, no inquiry has ever been held against him and the allegation that he was conniving or was in collusion with any dealing Assistant, has got no basis. He has no concern in any manner with any proceeding against another dealing Assistant. He submitted that it is beyond imagination that a dealing Assistant could have managed continuance of the respondent for about eight years in spite of his mutual transfer. He urged that as a matter of fact, the petitioners did not spare the respondent and retained him in spite of his request for quite a long time deliberately and ultimately granted him promotion to higher post. According to him, in the background of the facts involved in the case, the Tribunal has rightly allowed the application filed by the respondent.



6. Having heard the parties and carefully perused the record, we deem it proper to extract the operative part of the impugned order passed by the Tribunal hereinunder:-

“7. Even if we accept the respondent’s contention that the applicant’s file was suppressed in collusion by the dealing assistant, that cannot explain the promotion given to him because the dealing clerk cannot ensure a promotion in collusion. Therefore, besides the collusion by the dealing clerk, there must have been serious negligence, acquiescence or collusion by senior officials. In the light of this, the respondents argument does not have much force.

8. In any view of the matter, any transfer order becomes stale after a lapse of eight years. The applicant in the meanwhile has been promoted to a higher post. The respondents have lived with the situation after joining of Shri Arvind Kumar for eight years without any difficulty. Therefore, he must have been appropriately adjusted. Once the matter has become settled, it would be quite unusual and unreasonable to unsettle it by forcing the applicant to comply with an eight year old transfer order.

9. In conclusion, the OA is allowed. The impugned orders dated 29.03.2017 and 30.03.2017



are quashed and set aside. It is also directed that the applicant cannot be compelled and relieved in pursuance of the order dated 06.01.2009.”

7. We are of the opinion that the reasons assigned by the Tribunal for interfering with the orders dated 29.03.2017 and 30.03.2017 issued under the signature of D.R.M. (Personnel), Sonapur are sound and cogent.

8. We are also of the opinion that a dealing Assistant could not have managed to ensure promotion of the respondent in the Division. The petitioners have taken a conscious decision. They did not spare the respondent for about five years after the mutual transfer order and granted him promotion also. They allowed him to continue on the promotional post for over two years. The Tribunal has rightly observed that there must have been serious negligence and acquiescence by the senior officials. The Tribunal has also rightly observed that the transfer order has become stale after lapse of eight years. In the meanwhile, the respondent has been also promoted to a higher post. At this belated stage asking the respondent to join pursuant to the order dated 06.01.2009 on a reverted post, would be highly unreasonable and arbitrary.

09. In that view of the matter, we see no reason to



interfere with the order passed by the Tribunal whereby it has set aside the orders dated 29.03.2017 and 30.03.2017 passed by the DRM (Personnel) Sonepur in the original application.

10. Accordingly, the writ petition is dismissed.

(Ashwani Kumar Singh, J)

(Partha Sarthy, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	16-01-2020
Transmission Date	N.A.

