

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4895 of 2020

1. The Union of India through the General Manager, East Central Railway, Hajipur, P.O.-Hajipur, Dist-Vaishali (Bihar).
2. The General Manager (Personnel), East Central Railway, Hajipur, P.O.-Hajipur, Dist-Vaishali (Bihar).
3. The Chief Electrical Engineer, East Central Railway, Hajipur, P.O.-Hajipur, Dist-Vaishali (Bihar).
4. The Senior Divisional Personnel Officer, East Central Railway, Dhanbad (Jharkhand).
5. The Senior Divisional Electrical Engineer, East Central Railway, Dhanbad (Jharkhand).
6. The Senior Divisional Personnel Officer, East Central Railway, Danapur, P.O. Khagaul, District Patna (Bihar).

... .. Petitioner/s

Versus

Narendra Kumar Son of Sri Hari Nandan Prasad, Assistant Loco Pilot-II, Under Senior Divisional Electrical Engineer, East Central Railway, Dhanbad Division, District-Dhanbad (Jharkhand).

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Dr. Anand Kumar, Advocate Mr. Bipin Kr. Deo, Advocate Kanak Verma, Advocate
For the Respondent/s	:	Mr. Munna Pd Dixit (M.P. Dixit), Advocate Mr. Sanjay Kumar Chaubey, Advocate Ms. Swastika, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 04-07-2022

Heard learned counsels for the parties.

2. In the instant petition, petitioners have assailed the order dated 29.05.2019 passed in O.A./50/362/2016 by the Central Administrative Tribunal, Patna Bench, Patna (for short 'Tribunal').



3. Respondent while working as Assistant Loco Pilot under South East Central Railway, Bilaspur Division submitted application for request transfer to Danapur Division on account of the fact that he had old aged parents and to accommodate him near his native place that is Danapur. The petitioners have taken note of the respondent's request to transfer and proceeded to transfer the respondent to Dhanbad Division instead of Danapur Division of East Central Railways *vide* order No. 663 of 2015 dated 14.08.2015. Initially he was posted in East Central Railways Headquarters, Hazipur, thereafter, he was transferred to Dhanbad Division which was subject matter before the Tribunal and it was allowed on 29.05.2019. Thus, petitioners - Department have presented this petition.

4. Learned counsel for the petitioners vehemently contended that such a transfer to Dhanbad Division is in the interest of Railway Administration. The respondent has no right to seek any particular post and place. In respect of the aforesaid contention, petitioners relied on a decision of the Apex Court in the Case of ***SK Nausad Rahaman & Ors. vs. Union of India and Ors.*** reported in **Civil Appeal No. 1243 of 2022**. She has also apprised that policy relating to transfer has been taken note of before respondent was transferred to Dhanbad Division by the office of the East Central



Railway Headquarters, Hazipur. Therefore the Tribunal order is to be set aside while affirming transfer order

5. Undisputed facts are that petitioners – Railway Department has a Proforma B issued by South East Central Railway to be filled up by the employee who intends to seek request transfer. It is a cyclostyle form except for three items which is required to be filled by an employee who intends to seek transfer. Respondent submitted application of requesting transfer. His request is to transfer to Danapur Division. The petitioners while considering the respondent application for request transfer proceeded to send him to East Central Railway Headquarters, Hazipur. The competent authority in the East Central Railway Headquarter, Hazipur transferred the respondent to Dhanbad Division instead of transferring to Danapur Division in terms of his request transfer *vide* Proforma – B.

6. Learned counsel for the respondent submitted that if the Railway authority had not considered his request transfer to Danapur Division and posting to Dhanbad Division, it does not amount to request transfer. Proforma B is relating to furnishing of request transfer is in respect of only two issues namely mutual exchange or own request transfer and it is not relating to transfer of an employee on administrative ground. It is further submitted that respondent would loose certain service benefits like seniority and other benefits



which has been taken note of by the respondent before making such application for transfer. If the petitioners are not accepting respondent's request for transfer to Danapur Division at least they should have rejected his request for transfer with reference to Proforma B which was submitted by the respondent.

7. The Tribunal after taking note of factual aspects of the matter found that respondent has made out a *prima facie* case with reference to Proforma B, application for request transfer and allowed the original application.

8. Heard learned counsel for the respective parties.

9. Undisputed facts are that Railway Department have policy decision in respect of transfer of its employee. One of the policy is related to mutual exchange or own request transfer by its employee. To that effect Proforma B has been issued so as to enable an employee who intends to seek mutual exchange or own request transfer. Proforma B issued by South East Central Railway and filled up by respondent reads as under :

“ SOUTH EAST CENTRAL RAILWAY
PROFORMA "B" (Must be attached to PROFORMA "A")

To be filled by the employee

(I) I (Full Name) NARENDRA KUMAR do hereby apply for transfer on the basis of MUTUAL EXCHANGE/OWN REQUEST and DECLARE to abide by the following conditions:

(a) I shall abide by and accept the seniority as admissible under the rules of Mutual Transfer.

(b) I am fully aware that backtracking from the request for transfer will not be allowed under any circumstances.



(c) I shall accept bottom seniority under the rules, as transfer is sought for at my own request.

(II) I shall accept posting at any station/Office/Division of the Railway to which I shall be transferred.

(III) I agree to go on reversion in the initial recruitment grade/my mutual partner's grade of 5200-20200, GP 19001 - ALP- II

(IV) I am aware that I am neither entitled to transfer passes or TA/DA or joining time.

(V) I shall not claim for allotment of Railway Quarters on out of turn basis.

(VI) I shall deposit security money as required and when required for the post, of which I am seeking transfer.

(VII) I shall remain under initial/refresher course and first aid training etc. as required under the rules.

(VIII) I shall comply with the rules, regulations and instructions connected with the duties of the post of which I am seeking transfer.

(IX) I am fully aware that in case I am promoted/empanelled to a higher post, my request for mutual transfer will be treated as deemed to have been cancelled.

(X) I am fully aware that the cancellation of my request for mutual transfer will not be allowed even when the other candidate is a long absentee or is under D&AR proceedings, provided that his/her services are not terminated or he/she is not reverted to a lower grade post.

(XI) I am fully aware that the cancellation of my request for transfer will not be allowed on the ground of family problems/delay in processing/ well settled in the new parent zone.

(XII) I am seeking transfer on account of to look after my old mother and father, also my native place nearest to Danapur.

(brief the ground for transfer)

* Score out condition whichever is not applicable

sd/-

Signature: sd/-

मुख्य नियंत्रक

Name: NARENDRA KUMAR

Chief Crew Controller

दक्षिण पूर्व मध्य रेलवे, बिलासपुर

Signature of immediate Supervisor with seal & Name"

10. Perusal of the aforesaid request of the respondent, it is

evident that in item No. XII, reasons have been assigned as to why



respondent is seeking request transfer to Danapur Division. If the petitioners were not satisfied with the respondent's request transfer in terms of the aforesaid Proforma B, they could have rejected while assigning the reason. On the other hand, they have acted upon the respondent's Proforma B for own request to nearer to Danapur Division application. On the other hand, respondent's services have been shunted out to East Central Railway Headquarters, Hazipur. In turn, East Central Railway Headquarters, Hazipur send the respondent to Dhanbad Division instead of Danapur Division. Therefore, the respondent's grievance has not been redressed in terms of Proforma B. That apart, if the respondent accepts the posting at Dhanbad Division, he is likely to loose certain service benefits including seniority in the particular cadre. In other words, if he is posted to Danapur Division or Dhanbad Division, he would be placed at the bottom of the particular cadre, as his transfer was on his request and it is not in public interest.

11. Learned counsel for the petitioners – Railway contended that employee has no right to seek particular post and place. Further Apex Court in the case of ***S.K. Nausad Rahaman and Ors. vs. Union of India and Ors.*** reported in **Civil Appeal No. 1243 of 2022** has dealt with as to why Tribunal and Courts have interfered with transfer of an employee. In the present case transfer of contesting respondent is in the interest of railway administration,



therefore, the Tribunal has committed error in interfering with the contesting respondent's transfer to Dhanbad division. Nodoubt it is true that an employee has no indefeasible right to seek particular post and place. Time and again Courts have held that transfer of an employee is not a service condition and it is left to the employer where to post its employee and to extract work. At the same time the present matter is distinguishable with reference to the principle that an employee has no indefeasible right to seek transfer in a particular post and place, for the reasons that petitioners – railway have evolved a scheme of transfer at the request of the respective employee. To that effect a policy has been drawn so also the prescribed form is also notified. In other words, railway employee who intends to seek request for mutual transfer or request transfer, he is required to fill the Proforma-B/prescribed form to seek transfer from one division to other division or from one place to another place while assigning reasons for such mutual/request transfer. The petitioners – railway after taking note of contesting respondent's Proforma B had option of either accepting or rejecting.

12. Perusal of the records, it is evident that petitioners – railway have not rejected the contesting respondent request transfer/Proforma-B. However, with reference to the contesting respondent request, respondent has been transferred to Dhanbad division and it is contrary to contesting respondent's request to



transfer him to Danapur division. In the light of these facts and circumstances, the cited decision i.e. ***S.K. Nausad Rahaman and Ors. vs. Union of India and Ors.*** reported in **Civil Appeal No. 1243 of 2022** is not attracted to the case in hand.

13. In the light of above facts and circumstances, petitioners – railway have not made out a *prima facie* case to interfere with the Tribunal's order dated dated 29.05.2019 passed in O.A./50/362/2016.

14. Accordingly, petition stands dismissed. No order as to costs.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	18.07.2022
Transmission Date	

