

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

WRIT PETITION NO. 8037 of 2022

Hariom Meena, District Chandrapur, M.S.

vs.

The Union of India through its Divisional Railway Manager, Nagpur and others.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri N.P. Lambat, Advocate for petitioner.
Shri PVNavlani, Advocate for respondent no.1.
Shri Alok Upasani, Advocate for respondent-5/Caveater.

CORAM :- A.S.CHANDURKAR AND ANIL L. PANSARE, JJ.,

DATE :- DECEMBER 14, 2022

Heard.

The challenge raised in this writ petition is to the order passed by the Central Administrative Tribunal (for short, the Tribunal) dated 18.11.2022 dismissing the Original Application preferred by the petitioner. Prayer clauses (ii) and (iii) in the said Original Application read as under :

(ii) To Direct the respondent nos. 1 to 4 to recall/withdraw/rescind the Joint Application (Annexure A-1) (colly) filed by the Applicant (Hariom Meena) and the Respondent no.5 (Roshan Rajkumar Meshram) for Inter Railway Mutual Transfer on the ground that the consent for mutual transfer of the applicant was obtained by the respondent no.5 way of fraud/ misrepresentation/ cheating and thus illegal, arbitrary and impermissible under the law;

(iii) In the alternative and without prejudice to the aforesaid prayers this Hon'ble Tribunal may be pleased to direct the respondent nos. 1 and 2 to decide the representation sent by the application daed 21.01.2022 (Annexure A-2) as in accordance with law.

It is however the case of the petitioner that at the instance of the respondent no.5 an imposter had telephonically called upon the petitioner in September, 2021 and had proposed to seek mutual transfer. According to the petitioner, with a view to seek benefit of inter railway mutual transfer a joint application was moved by the petitioner and the respondent no.5 on 25.10.2021 indicating their consent for mutual transfer. On realising that there was some mischief played at the instance of the respondent no.5, the petitioner on 18.01.2022 initially sought cancellation of the request for mutual transfer on the ground of ill health of his son since long. Thereafter on 20.01.2022 due to fraud played at the instance of the respondent no.5 cancellation of the request for mutual transfer was sought. In the backdrop of aforesaid, Original Application No. 120 of 2022 came to be filed seeking the reliefs stated above.

The learned Member of the Tribunal considering the aspect of fraud as raised has observed that said aspect could not be taken into consideration by the Tribunal. It then referred to application dated 18.01.2022 made by the petitioner for cancellation of mutual transfer on account of ill health of his son and recorded a finding that all subsequent steps taken by the petitioner were by way of an afterthought. Reference was also made to paragraph 4(iv) of the Railway Boards Transfer Policy dated 11.01.2019 in that regard.

It is the case of the petitioner himself that initially written complaints were made on 11.03.2022 and thereafter on 04.04.2022 the petitioner has filed a private complaint being Criminal Case No. 85 of 2022 alleging commission of offence under Section 420 of the Indian Penal Code by the respondent no.5 in that regard.

In the aforesaid factual backdrop, we find that the Tribunal was justified in refusing to grant relief as prayed for in the Original Application. The entire premise on which relief was sought by the petitioner was that on account of fraud/mischief/misrepresentation/cheating the application for inter railway mutual transfer had been submitted and therefore that application be permitted to be withdrawn. Unless a finding is recorded that such process was vitiated for aforesaid reasons, the petitioner would not be entitled for any relief. Recording such finding either by the Tribunal under Section 19 of the Administrative Tribunals Act, 1986 or this Court under Article 226 of the Constitution of India would not be permissible.

We do not find any reason to interfere with the order passed by the Tribunal. It is clarified that at the conclusion of the criminal proceedings, if any order is passed in favour of the petitioner, he is free to take legal redress in accordance with law.

The writ petition is disposed of. No costs.

(ANIL L. PANSARE, J.)

(A.S.CHANDURKAR, J.)

Andurkar.