

A.F.R

Court No. - 2

Case :- WRIT - A No. - 8161 of 2022

Petitioner :- Union Of India Thru. Secy. Railway Board Ministry Of Railway Rail Bhawan, New Delhi And 2 Others

Respondent :- Central Administrative Tribunal, Lko. Thru. Member And Another

Counsel for Petitioner :- Sudhanshu Chauhan

Counsel for Respondent :- Praveen Kumar

Hon'ble Devendra Kumar Upadhyaya,J.

Hon'ble Saurabh Srivastava,J.

1. Heard Shri Shashi Prakash Singh, learned Additional Solicitor General of India assisted by Shri Sudhanshu Chauhan, learned counsel for the petitioners and Shri Praveen Kumar, learned counsel representing the respondent no.2. We have also perused the records available before us on this Writ Petition.

2. These proceedings under Article 226 of the Constitution of India lay a challenge to the judgment and order dated 04.11.2022 passed by the Lucknow Bench of Central Administrative Tribunal whereby Original Application bearing No.332/00084/2022 has been allowed and the transfer order dated 17.02.2022 which was under challenge therein has been quashed.

3. Learned Tribunal by the order under challenge before us has also directed that the respondent no.1-applicant shall be permitted to join at the same place of posting as immediately

before the transfer order even if he has been relieved or has joined at any other place.

4. By the said order since all the miscellaneous applications have also been disposed of, resultantly Execution Application No.332/00467/2022 filed by the respondent no.2-applicant seeking of execution of an interim order dated 22.02.2022 has also been disposed of.

5. Shri Shashi Prakash Singh, learned Additional Solicitor General of India vehemently arguing on behalf of the petitioners has submitted that the reasons given by the learned Tribunal, Lucknow while allowing the Original Application filed by the respondent no.2-applicant are not tenable. It has further been argued by Shri Singh that the circulars which have been relied upon by the Tribunal are not statutory and hence the same cannot be said to be binding. Shri Singh further urges that so far as the circular dated 12.12.2018 issued by the Railway Board is concerned, the same is also not binding for the reason that it has not been issued under any authority under some statute and the same, being only advisory in nature, could not be made the basis of the claim laid by the respondent no.2-applicant to challenge the transfer order. He has also stated that in case the respondent no.2-applicant was aggrieved by his transfer within a span of two years prior to his date of retirement/superannuation, he ought to

have approached the authorities concerned bringing to their notice that he is to retire within two years as such in view of the provisions contained in the circular dated 12.12.2018 he ought not be transferred. Submission further is that it is not in dispute that the respondent no.2-applicant owes pan-India transfer liability and hence in the exigencies of administration and public interest he could be transferred and further that there is no illegality in the order of transfer.

6. On the basis of all the aforesaid submissions, it has been urged by the learned Additional Solicitor General of India that the judgment and order dated 04.11.2022 passed by the Central Administrative Tribunal is thus not sustainable and hence the same is liable to be set aside.

7. *Per contra*, Shri Praveen Kumar, learned counsel representing the respondent no.2-applicant has submitted that the circular dated 18.12.2018 issued by the Railway Board may not confer any right upon him to remain posted at the same place and not be transferred before two years prior to date of his retirement, however, the railway authorities have to act in accordance with the provisions made in the said circular. It has been argued that admittedly the respondent no.2-applicant is to attain the age of superannuation on 31.12.2023 hence subjecting him to transfer within two years prior to his date of superannuation cannot be

said to be justified on any count not only because such transfer is violation of the provisions contained in the circular dated 12.12.2018 but also for the reason that the same has strong traces of arbitrariness on the part of the authorities.

8. Considered the submissions made by the learned counsel representing the respective parties.

9. Before delving into the rival submissions made by the learned counsel for the parties, we may note certain facts, which are necessary for proper adjudication of the issues involved in this petition. The petitioner was transferred from Gorakhpur to Modern Coach Factory (hereinafter referred to as 'MCF') at Raebareli on 03.08.2018 and was posted at MCF Raebareli on the post of Chief Material Manager. He was promoted vide order dated 25.09.2020 to the post of Principal Executive Director (Stores) and simultaneously was required to join at Research Designs and Standards Organization (herein after referred to as 'RDSO') at Lucknow. The occasion to require the respondent no.2-applicant to be posted at RDSO Lucknow had arisen on account of the fact that at the relevant point of time i.e. at the time he was promoted to the post of Principal Executive Director (Stores), the said post was being occupied by an incumbent who worked on the said post till 31.07.2021 when he retired. It is also to be noticed that on the retirement of the earlier incumbent from

the post of Principal Executive Director (Stores) at MCF Raebareli the respondent no.2-applicant was again posted at MCF Raebareli on the said post itself.

10. It is also to be noted that pursuant to the order dated 25.09.2020 whereby respondent no.2 was promoted to the post of Principal Executive Director (Stores) and was asked to join at RDSO Raebareli, he submitted his joining at RDSO Raebareli on 25.01.2021 and accordingly charge report was also sent to the authorities concerned on 28.01.2021. He remained posted at RDSO Lucknow till he was asked to join at MCF Raebareli on the retirement of the earlier incumbent at Raebareli from the post of Principal Executive Director (Stores) on 31.07.2022. The said transfer order requiring the respondent no.2-applicant to join at MCF Raebareli from RDSO was passed on 18.08.2021 pursuant to which he submitted his joining at MCF Raebareli, however, while working at MCF Raebareli, the transfer order dated 17.02.2022 was passed whereby the respondent no.2-applicant was transferred to East Central Railway, Hajipur, Bihar. It is this transfer order dated 17.02.2022 which was challenged by the respondent no.2-applicant by instituting Original Application No.332/00084/2022 in which initially an interim order was passed on 22.02.2022 whereby the learned Tribunal had stayed the operation of the transfer order and had further directed that

the respondent no.2-applicant shall not be relieved from the place of his posting at MCF Raebareli and shall continue to work there till pendency of the Original Application. It was further directed by the learned Tribunal that even if the respondent no.2-applicant had been relieved he should be restored to earlier place of posting. This interim order dated 22.02.2022 in respect of which Execution Application No.332/00467/2022 was filed, which, too, has been disposed of by means of the order under challenge in this writ petition.

11. Apart from relying on other grounds, learned Tribunal has relied upon the circular issued by the Railway Board dated 12.12.2018. So far as the submissions made by the learned counsel for the respondent no.2-applicant which was advanced by him before the learned Tribunal in relation to his multiple transfers is concerned, we do not find any merit in the same for the reason that the petitioner-authorities were justified in posting him at RDSO on his promotion to the post of Principal Executive Director (Stores) as on the date he was promoted to the said post, no equivalent post at MCF Raebareli was vacant, rather it was being occupied by the earlier incumbent and accordingly he was rightly posted at RDSO, Lucknow. Since the earlier incumbent retired on 31.07.2021 from his post at MCF Raebareli, the

respondent no.2-applicant was again rightly posted at MCF Raebareli vide order dated 18.08.2021.

12. As observed above, amongst other reasons, one reason which we need to consider in this case as given by the learned Tribunal for quashing the transfer order is the provisions contained in the circular dated 12.12.2018. The said circular is an Addendum to the Comprehensive Transfer Policy Guidelines issued by the Railway Board on 31.08.2015. The circular dated 12.12.2018 states that the same was issued in partial modification of the Comprehensive Transfer Policy Guidelines issued by the Railway Board 31.08.2015. The Addendum, thus, issued vide circular dated 12.12.2018 *inter alia* provides as under:

"(iii) Officers due for retirement within the span of two years should normally not be disturbed from the present posting."

13. The aforequoted provision contained in the circular dated 12.12.2018 clearly provides that officers due for retirement within a span of two years should normally not be disturbed from their present posting.

14. Though the circular dated 12.12.2018 is only a part of comprehensive transfer policy guidelines and the same having not been issued by the Railway Board under any statutory authority vested in it by any enactment, is not statutory, however,

the policy decisions taken by any authority, including the Railway Board, is normally to be followed. We are also of the opinion that any action of the authorities of the Government or any other State instrumentalities is to be judged and tested on the basis of such guidelines issued by the authority/government/State instrumentality concerned. After all any policy by the policy makers is formulated and issued not to be violated but for being followed and honoured and respected. Having said as above, we do not mean to say that the circular dated 12.12.2018 is binding in all circumstances on the authorities of the Railways. we are clear in our minds that such circular or any other such transfer policy guidelines do not confer any right on the government servant to remain posted at his present posting even if he is due to retire within a span of two years. However, the policy decision contained in the circular dated 12.12.2018 has to be normally followed by the authorities and in case of any deviation from such normal, there has to exist justifiable reasons before the authority concerned as to why it intends to deviate from normal as spelt out in the policy decision concerned.

15. We are also conscious that transfer is an exigency of service and it is the prerogative and the right of the employer, in this case is the railways, to transfer its employees or officers to any place on various grounds including the ground of public interest and

administrative exigencies. The scope of judicial scrutiny by this Court under Article 226 of the Constitution of India in a matter relating to transfer of an employee is very very limited. Unless the court finds the transfer order having been effected on account of the malice or mala fide or if it is found to be infested with arbitrariness, Court would normally not interfere in the transfer order.

16. It is well settled principle of law that any State action has to be free of arbitrariness and it should conform to the principles of fairness. The concept of fairness or non-arbitrariness in the administrative action is well recognized. Reference, at this juncture, may be made by us to one of the most celebrated judgments of Hon'ble Supreme Court in the case of **E.P. Royappa vs. State of Tamil Nadu and another**, reported in **(1974) 4 SCC 3**, where Hon'ble Supreme Court has clearly laid down that along with unjustness and unfairness, arbitrariness is also a facet of Article 14 of the Constitution of India. The said judgment contains one of the most famous legal doctrines evolved in the context of interpretation of Article 14 of the Constitution of India which is "*in fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch.*" Where an act is arbitrary, it is implicit in it that it is

unequal both according to political logic and constitutional law and is therefore violative of Art. 14.

17. If we consider the scope of judicial scrutiny in a matter of transfer of an employee in a situation where transfer policy guidelines provide that the officers who are due to retire within a span of two years normally not be displaced from their present posting, in the light of the law laid down by Hon'ble Supreme Court in the case of **E.P. Royappa** (supra), what we find is that in case of any deviation from the normal, the authority concerned needs to justify such administrative action. The scope of judicial scrutiny in such matters has to be confined only to see if there exists any justifiable reason for the authority concerned from deviating from the normal.

18. So far as this case is concerned, it is not denied by the petitioners that the respondent no.2-applicant has to retire on 31.12.2023. He was transferred by means of an order dated 17.02.2022. Admittedly, at the time he was transferred from Raebareli to Hajipur, period of less than two years was left prior to his retirement on his attaining the age of superannuation on 31.12.2023. The provisions contained in the circular dated 12.12.2018 clearly lay down the policy decision that officers who are due to retire within a span of two years should not normally be transferred. No reason in this case comes forth for the

deviation from the said normal as contained in the circular dated 12.12.2018. We may also observe at this juncture that for formulating and issuing the guidelines relating to non-displacement of the officers from their present place of posting if they are to retire within a span of two years, has a purpose. After rendering long services to an organization i.e. to his employer, if the employer/officer is to retire within a span of one or two years, he is in a state of mind where he intends to settle for rest of his life and accordingly he needs some time and energy to plan a peaceful and smooth life after retirement.

19. It is with such a laudable purpose that such a provision is contained in the circular dated 12.12.2018. Disturbing a person at the fag end of his entire service career would thus not be in public interest unless there is something more impelling in public interest which may warrant transfer even in such a situation.

20. For the reason above, we are not inclined to interfere in this writ petition which is hereby **dismissed** and the order passed by the Central Administrative Tribunal, Lucknow, dated 04.11.2022 in Original Application No.332/00084/2022 is hereby affirmed.

21. At this juncture, learned counsel for the respondent no.2-applicant has very fairly submitted that he will have no objection in case the railway authorities pass order transferring him either to RDSO or to Headquarters of Northern Eastern Railways at

Gorakhpur or to the Headquarter of North Central Railways at Allahabad.

22. We, thus, provide that keeping in view the overall facts and circumstances of the case, specially the fact that now it is only a year is left when the respondent no.2-applicant shall retire on his attaining the age of superannuation on 31.12.2023, if the petitioners are not inclined to post the respondent no.2-applicant posted at MCF Raebareli, they shall be free to post him at either on the aforesaid three places, namely, RDSO Lucknow or Headquarters of North Eastern Railways at Gorakhpur or Headquarters of North Central Railways at Allahabad.

23. There will be no order as to cost.

Order Date :- 5.12.2022

akhilesh/

[Saurabh Srivastava, J.] [D. K. Upadhyaya, J.]