

09.08.2024
D.L.6
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 19137 of 2024

Barun Chandra Aich & Ors.
Vs.
The Union of India & Ors.

Mr. Sarajit Sen,
Mr. Sasanka Kumar Mandal
.....for the petitioners.

Ms. Priti Jain
.....for Union of India.

The petitioners are seven in numbers and claim to be ministerial staff at the office establishment of Assistant Securities Commissioner/Railways Protection Force (RPF), Shalimar under South Eastern Railway. The petitioners, however, hold different posts but have joined in the same writ petition to assail a common order of transfer dated 3rd July, 2024. The petitioners have challenged the transfer order principally on four grounds which are as follows:-

1. The Shalimar Division, according to the petitioners, was set up pursuant to a decision of the Railway Board. Any transfer order in respect of an employee or staff posted at the said office, according to the petitioners, has to be done by the Railway Board.
2. The petitioners cannot be transferred from one unit to the other. At the highest, they

can be transferred within the unit. Moreover, one of the petitioners that is petitioner no.1 has less than 2 years of service left, and as such, could not have been transferred.

3. In terms of the order passed by the Hon'ble Supreme Court on 31st October, 2013 in WP (C) 82 of 2011 there is a direction as set out hereunder:

“There should be a Committee to be constituted at appropriate levels to decide postings and transfers of all Group ‘A’, ‘B’ and ‘C’ officials even if within the same zone. The postings/transfer to be regulated by transparent policies with assured minimum tenure. Policy provision may, therefore, be framed”.

No Committee constituted at the appropriate level has decided the transfer of the petitioners in terms of the observations made by the Hon'ble Supreme Court.

4. The transfer has taken place in respect of the ministerial staff enblock, and as such, the office at Shalimar is likely to collapse on the administrative side.

The transfer order is annexed at page 25 of the writ petition. It has been issued by the Principal Chief Security Commissioner, Railway Protection Force (RPF), South Eastern Railway. In the transfer order it is clearly stated that the transfer of the petitioners is in the interest of administration. It also records that the same is with the approval of the Principal Chief Security Commissioner, RPF, South

Eastern Railway and has been recommended by the Placement Committee.

Going by the transfer order it is clear that the Placement Committee has approved the said transfer as required in terms of the circular dated 10th June, 2014, which is annexed at pages 27 to 30 of the writ petition. Thus, it cannot be said that the committee to be constituted in terms of the direction of the Hon'ble Supreme Court has not been complied with while issuing or effecting the transfer order. Moreover, the objection raised by the petitioners that in case of Group 'C' officials the competent authority to accept the recommendations of the Placement Committee is DRM/ADRM is also not sustainable as the Principal Chief Security Commissioner, RPF, South Eastern Railway in the instant case, being the head of the organization or unit to which the petitioners belong has accepted the recommendations. The DRM/ADRM is not the competent authority.

The petitioners may have been posted as ministerial staff but their origin is in the RPF which is not in dispute from the statements contained in the writ petition. The petitioners had been posted as ministerial staff on being medically decategorized. So, their birth in the cadre is that of RPF of which the Principal Chief Security Commissioner, RPF, South

Eastern Railway is admittedly the Head and, therefor, is entitled to accept the recommendations of the Placement Committee.

So far as the likelihood of administrative collapse, is concerned, it is not for the employees and staff to consider the same. They, particularly being in Group 'C', are required to carry out the instructions with very limited administrative power.

Orders of transfer generally form part of the policy matter and is left in the domain of the administration who decides on the transfer of an employee. The decision is taken with the aim of smooth administration. In the instant case, the transfer orders are in the interest of administration and has been duly recorded.

The Courts are loathe in interfering with transfer order. Only in exceptional cases where the transfer is palpably illegal or is aimed to victimize an employee, the same is interfered with by the Court.

In the instant case, I do not notice any palpable illegality in the transfer order dated 3rd July, 2024, being the subject matter of challenge in this writ petition. No case to victimize any of the petitioners is also apparent. On the contrary, it is evident that the petitioners have been since long serving at the same office which is ordinarily construed to be against the

principle of smooth administration. Moreover, it does not appear from the records that the petitioners are transferred outside the unit.

This matter has been brought into the daily list from the combined monthly list on being mentioned citing urgency as the transfer order, if effected, would render the writ petition infructuous. No such urgency is also borne out from the records.

In view of the aforesaid, the writ petition is unmeritorious and is accordingly dismissed with costs assessed at Rs.10,000/-. Out of Rs.10,000/-, Rs.5,000/- to be paid to the High Court Legal Services Committee and the residual amount of Rs.5,000/- to the State Legal Services Authority for being kept earmarked for the victims of POCSO.

The payment of costs shall be a pre-condition for the petitioners initiating any proceedings before this Court relating to their transfer or service issues in connection therewith.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Arindam Mukherjee, J.)