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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. OA 516/1986

Date of decision: 28.08.1992.

Shri Om Prakash Mudgal

...Applicant

Vs.

Union of India through the
General Manager, Northern
Railway

...Respondents

For the Applicant

...Shri J.C. Singhal,
Counsel

For the Respondents

...Shri K.N.R. Pillay,
Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. B.N. DHOJNDIYAL, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed
to see the Judgment? Yes

2. To be referred to the Reporters or not? Yes

JUDGMENT

(of the Bench delivered by Hon'ble Shri P.K.
Kartha, Vice Chairman(J))

We have gone through the records of the case and
have heard the learned counsel for both parties. The
issue raised in this application is whether the different
provisions applicable to transfers on request and transfers
on mutual exchange stand the test of reasonableness
envisioned in Article 14 of the constitution.

2. The learned counsel for the applicant vehemently
argued that transfer on request and transfer on mutual
exchange belong to the same species and are effected not
in public interest but in personal interest of the

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individuals concerned. That being so, there is no justification or rationale in fixing the seniority in respect of the two categories of persons differently. According to him, this amounts to mini-classification which is unconstitutional. The learned counsel for the respondents submitted that the classification is reasonable and valid.

3. The applicant while working as Grade 'C' in the Western Railway requested for transfer to the Northern Railway for personal reasons, viz. to look after his old parents. His request was acceded to and he was transferred to Northern Railway on 30.09.1974. His seniority as Guard Grade 'C' in Western Railway was S.No.63A. On his transfer to Northern Railway, he was assigned seniority at S.No.144. He was absorbed against 'C' an existing vacancy of Guard Grade on bottom seniority basis. With regard to his request for transfer, the Northern Railway Headquarters office had informed the General Manager, Western Railway by letter dated 22.6.74 as follows:-

"This administration has no objection to the transfer of above named employee on bottom seniority in terms of Railway Board's letter No.E55SR/6/6/3 dated 19.5.1955 in grade Rs.130-240(AS). He may please be relieved and directed to report to the Divisional Supt., Northern

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Railway, Bikaner for further orders provided there is no DAR/Vig/SPE & Fraud case pending against him and he has not participated in the illegal strike of May, 1974.

His service record, leave record etc. etc. may please be sent direct to Divisional Superintendent, Northern Railway, Bikaner under advice to this office.

Sd/-
for General Manager(P).

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Copy to the Divisional Superintendent, Northern Railway, Bikaner for information and necessary action. The above named employee may please be absorbed against an existing vacancy of Guard Grade Rs.130-250(AS) on bottom seniority basis".

4. We are not impressed by the submission made by the applicant that he was unaware of the position of seniority applicable to such transfers. His domestic problems and difficulties were paramount and outweighed all other considerations. His grievance arose when Shri Sher Singh Yadav who was junior to him in Western Railway got transferred to Northern Railway on mutual exchange. Shri Yadav's seniority as Guard Grade 'C' on Western Railway was at S.No.172. On his transfer to Northern Railway, he was assigned seniority at S.No.105. Thus, his erstwhile junior in the Western Railway became his senior on account of his transfer to Northern Railway. Thereby, the applicant's chances for promotion to higher grades have been adversely affected.

5. The respondents have raised two preliminary objections, namely, that Shri Yadav's whose seniority has been challenged, has not been impleaded as a respondent and that the seniority position of the

applicant stood finally determined on 30.09.1974 and the application is, therefore, hopelessly barred by limitation. We do not consider it necessary to go into these objections raised by them as we have come to the conclusion that there is no merit in the claim made by the applicant in the instant case.

6. The question regarding the constitutionality of the relevant provisions requires reconsideration. The Railways have laid down a policy regarding transfers on request and transfers on mutual exchange. For our present purpose, it is sufficient to refer to Rules 226, 229 and 230 of the Indian Railway Establishment Manual, Vol.I, 1985 Edition, which read as under:-

"226. Transfers.— Ordinarily, a railway servant shall be employed throughout his service on the railway establishment to which he is posted on first appointment and shall have no claim as of right for transfer to another railway or another establishment. In the exigencies of service, however, it shall be open to the President to transfer the railway servant to any other department or railway or railway establishment including a project in or out of India. In regard to Group 'C' and Group 'D' railway servants, the power of the President under this rule in respect of transfer, within India, may be exercised by the General Manager or by a lower authority to whom the power may be re-delegated.

Railway Ministry's decision - Requests from railway servants in Groups 'C' and 'D' for transfer from one railway to another on grounds of special cases of hardships may be considered favourably by the railway administration. Such staff transferred at their request from one railway to another shall be placed below all existing confirmed and officiating staff in the relevant grade in the promotion group in the new establishment, irrespective of date of confirmation or length of officiating service of the transferred employees. (Railway Ministry's letter No.E. 55SR/6/6/3 dt. 19th May, 1955)

229. Transfer on request - Transfers ordered in the interest of employees shall be within the same seniority group, or

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different group or a mutual exchange. If such transfers are within the same seniority group under the same railway the seniority is not affected but if the transfers are inter divisional or outside the seniority group, the Railway Ministry's decision below Rule 226 for inter railway transfers shall apply.

230. Transfer on mutual exchange - In case of mutual exchange, the senior of the two employees will be given the place of seniority vacated by the other person. The junior will be allowed to retain his former seniority and shall be fitted into the seniority below the persons having the same seniority".

7. It is well settled that in order to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question. There must be a nexus between the basis of classification and the object of the Act under consideration.

8. In the instant case, the respondents have stated that the object sought to be achieved in the case of transfer on request is to protect the seniority of staff in each seniority unit. It is provided in Rule 312 of the Indian Railway Establishment Manual that no such transfer will be allowed in the intermediate grades in which all posts are filled entirely by promotion of staff from lower grades. This protects the promotion chances of staff already in the Unit. In the bottom grade, there is an

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element of direct recruitment and it is against this element that an employee is transferred. This does not adversely affect seniority of the existing staff since the newcomer will be at the bottom of the seniority list. The rule about seniority of mutual exchange also fulfils the object of protecting the seniority of existing staff of the unit. Since one person is leaving the cadre, there will be no adverse effect if his place in the seniority list is taken by the new comer who comes in exchange.

9. In our opinion, the classification between the existing staff of a seniority list and outsiders is a rational and reasonable classification. Rules providing that outsiders will be put on bottom seniority list in the case of transfer on request and rules providing for seniority at the place vacated by the person who goes in exchange apply to different categories of persons and operate in different fields. The classification is, therefore, reasonable.

10. The service fortunes of those who proceed on transfer by request and of those who proceed on transfer by mutual exchange are not comparable.

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11. In the light of the foregoing discussion, we hold that the applicant is not entitled to the main relief sought by him. With regard to his alternative prayer to retransfer him to Western Railway and to give him his former seniority in the Western Railway, we hold that even if he is so retransferred, he would be only entitled to bottom seniority in the Western Railway as he has already become an outsider there from 1974. His prayer to give him the original seniority in the Western Railway is also not legally tenable. The application is disposed of with the above findings and observations.

There will be no order as to costs.

B.N. DHOONIYAL
 (B.N. DHOONIYAL) 29/7/92
 MEMBER (A)
 28.08.1992

P.K. KARTHA
 (P.K. KARTHA) 28/8/92
 VICE CHAIRMAN (J)
 28.08.1992

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