

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the 27<sup>th</sup> day of November 1997.

Original Application no. 473 of 1996.

Hon'ble Mr. S. Dayal, Administrative Member.

Mohd. Tahir, S/o Late Shri Abdul Latif, r/o 33/L(D) Railway,  
Loco Colony, Idgah, Agra.

.... Applicant.

C/A Shri P. Mishra

Versus

1. Union of India through its Secretary, Ministry of Railways, Rail Bhawan, New Delhi.
2. Senior Divisional-Mechanical Engineer (Estt.) Western Railway, Jaipur (Raipur).
3. Divisional Railway Manager (Estt.) Western Railway, Jaipur (Rajasthan).

.... Respondents.

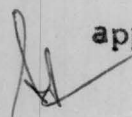
C/R Shri S.K. Jaisawal.

ORDER

Hon'ble Mr. S. Dayal, Member-A.

This is an application under section 19 of the Administrative Tribunals Act, 1985.

2. The applicant seeks following reliefs in this application:-



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i. Setting aside of impugned order of transfer dated 07.11.94.

ii. Award the cost of the application.

3. The applicant has mentioned in the application ~~that~~ that he was working as Diesel Assistant in Loco Shed Idgah, Railway Station, Agra, with effect from 24.08.95. The respondents transferred the applicant by order dated 07.11.95 from Idgah to Mathura to accommodate Shri Rahman Khan and Shri Radhey Shyam who had requested for their transfer to, Idgah. The applicant made representation dated 13.02.96 to the respondents against this order of transfer on the ground that he was senior most Diesel Assistant at Idgah where he was posted only on 24.08.95 and that he was going to retire after two years and four months. He mentioned other personal difficulties also, like having large family, education of his daughters and sons. He has mentioned that there were 9 posts of Diesel Assistant at Idgah while only 5 has been filled. It has also been mentioned that the transfer order has been made only to accommodate the employees named by him who are junior to him. He has also extracted provision of Railway Board memorandum no. E (NG) 1-69 SR-6/15 of 24.06.1969, which bans making transfer on request in cadres in which 100% post are to be filled up by promotions. The applicant has also stated that ordinarily a railway servant is to serve the railway establishment given to him on his first appointment except on his own request in case of special hardship. He has also challenged the transfer as not in public or administrative interest and suffering from malafide.

4. Arguments of Shri P. Mishra learned counsel for the applicant and Shri S.K. Jaisawal learned counsel for the

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respondents have been heard and the pleadings on record have been taken into consideration.

5. The respondents in their counter affidavit have stated that the applications of Shri Rahman Khan and Shri Radhey Shyam for transfer to Idgah were pending and the same have been over looked when the order of posting of the applicant to Idgah Station on 24.08.95 was made. The respondents have denied that the seniority of the applicant should be counted for his continuation at Idgah. The seniority is taken into account only when transfers are pursuant to declaration of officials as surplus. The respondents also denied that the transfer of the applicant was barred by the O.M. of the Railway Board dated 24.06.69 cited by him. The O.M. is applicable to the case in which transfer is made from one seniority unit to another. The applicant is sought to be transferred within the same seniority unit which is Jaipur Division. Learned counsel for the respondents have also pleaded that law of transfer is clear and the applicant does not have any cause for claiming relief in this case.


6. The grounds of seniority, large family, availability of vacancies and non transfereability from cadre to be filled up by promotion only on which the applicant has sought relief do not entitle him to any relief. The facts that the applicant is to retire on 31.07.98 and that his children are studying in local school are relevant. Any transfer near the date of retirement would lead to avoidable dislocation in the absence of a strong reason which would justify such a transfer. The facts of the case do not justify such a conclusion.

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7. As regards the ground of mid academic term transfer, <sup>the apex court</sup> has ruled that in cases in which there is no overriding reason to effect a transfer in the mid academic session, it may be considered only at the end of academic session. The ratio of this case applies to the present case. Hence the impugned transfer order dated 07.11.95 is set aside.

8. There shall be no order as to costs.

  
Member-A

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