

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD

Original Application No.1052 of 2004.

Allahabad this the 30th day of September 2004.

Hon'ble Mr. Justice S.R. Singh, V.C.  
Hon'ble Mrs. Roli Srivastava, A.M.

1. Ashok Kumar Srivastava  
S/o Late Udai Narayan Srivastava,  
presently posted as Law Assistant in  
Chief Commercial Manager Office, N.E Railway,  
Gorakhpur.
2. Hari Ram S/o Late Tameshwar  
presently posted as Chief Law Assistant,  
in Chief Commercial Manager, Gorakhpur.
3. Krishna Gopal Singh  
S/o Late Vishwanath Singh  
presently posted as Chief Law Assistant,  
Chief Commercial Manager Office, Gorakhpur.
4. Brajesh Pandey S/o Late K.D. Pandey  
presently posted as Chief Law Assistant,  
in Chief Commercial Manager, N.E. Railway,  
Gorakhpur.
5. Raj Kumar Gupta S/o Sri Jagdish Prasad  
presently posted as Chief Law Assistant,  
in Chief Commercial Manager, N.E. Railway,  
Gorakhpur.
6. Shesh Kumar Srivastava S/o Late G.P. Srivastava  
presently posted as Chief Law Assistant, in  
Chief Commercial Manager, N.E. Railway, Gorakhpur.
7. Iqbal Parvez S/o Late Noorul Hassan  
presently posted as Chief Law Assistant  
in Chief Commercial Manager, N.E. Railway,  
Gorakhpur.
8. Amit Kumar Srivastava S/o Sri D.P. Srivastava  
presently posted as Chief Law Assistant, in  
Chief Commercial Manager, N.E. Railway,  
Gorakhpur.
9. Shahab Ashraf S/o Late Wahab Ashraf  
presently posted as Chief Law Assistant,  
in Chief Commercial Manager, N.E. Railway,  
Gorakhpur.
10. K.K. Lal Srivastava S/o Parashu Ram Lal.  
presently posted as Chief Law Assistant,  
in Chief Commercial Manager, N.E Railway,  
Gorakhpur.
11. Rajesh Kumar Srivastava S/o Late K.B. Lal  
presently posted as Chief Law Assistant,  
in Chief Commercial Manager, N.E. Railway,  
Gorakhpur.

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Rajesh Kumar Srivastava

12. Prem Prakash Dubey S/o Sri V.P. Dubey presently posted as Chief Law Assistant, in Chief Commercial Manager, N.E. Railway, Gorakhpur.
13. Dinesh Chand Tiwari S/o Sri J.P. Tewari Presently posted as Law Assistant in Chief Commercial Manager, N.E. Railway, Gorakhpur.
14. Vijai Bahadur Singh S/o Late Lal Singh presently posted as Law Assistant, in Chief Commercial Manager, N.E. Railway, Gorakhpur.
15. Ashok Tiwari S/o Late Sri K.C. Tewari presently posted as Chief Law Assistant, Law Office, N.E. Railway, Gorakhpur.
16. Radhey Shyam S/o Sri Shyam Ram presently posted as Chief Law Assistant, Law Office, N.E. Railway, Gorakhpur.
17. Basant Lal S/o Sri Shyam Bali presently posted as Chief Law Assistant, Law Office, N.E. Railway, Gorakhpur.
18. Pankaj Kumar Gupta S/o Sri P.C. Gupta, presently posted as Law Assistant, Chief Administrative Office (Construction), N.E. Railway, Gorakhpur.
19. Manoj Srivastava S/o Sri (Late) K.K. Srivastava, presently posted as Law Assistant, Law Office, N.E. Railway, Gorakhpur.
20. R.S. Chandel S/o Sri Mohan Singh, presently posted as Chief Law Assistant, Law Office, N.E. Railway, Gorakhpur.
21. Javed Akhtar S/o Late Mohd. Ali, presently posted as Chief Law Assistant, Law Office, N.E. Railway, Gorakhpur.
22. Ved Prakash Tripathi S/o Sri S.K. Tripathi presently posted as Chief Law Assistant, Law Office, N.E. Railway, Gorakhpur.
23. S.K. Sagar S/o Sri Ram Baran presently posted as Chief Law Assistant, Law Office, N.E. Railway, Gorakhpur.

.....Applicants.

(By Advocate : Sri V.K. Geel)

Versus.

1. Union of India through Secretary, Railway Board, New Delhi.
2. Union of India through General Manager, North Eastern Railway, Gorakhpur.
3. Senior Deputy General Manager, North Eastern Railway, Gorakhpur.
4. Chief Personnel Officer, North Eastern Railway, Gorakhpur.

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5. Chief Commercial Manager,  
North Eastern Railway, Gorakhpur.

.....Respondents.

(By Advocate : Sri K.P. Singh)

O R D E R

By Hon'ble Mr. Justice S.R. Singh, V.C.

Heard Sri V.K. Goel learned counsel for the applicants, Sri K.P. Singh learned counsel for the respondents and perused the records.

2. The applicants, who are Chief Law Assistants/Law Assistants in North Eastern Railway at Gorakhpur, are aggrieved by the communication contained in letter dated 24.08.2004, issued by Assistant Personnel Officer (T) on behalf of General Manager (P), North Eastern Railway as well as letter dated 08.07.04 circulated by A.P.O. (T) on behalf of General Manager (P) thereby circulating transfer policy framed by the Senior Deputy General Manager, North Eastern Railway, copies whereof have been annexed as Annexure A-1 and A-2.

3. The Transfer policy, as initially contained in Circular dated 08.07.04, stands modified by subsequent circular/letter dated 24.08.04 on consideration of representations received as against the initial transfer policy circulated vide letter dated 08.07.04. Four of the applicants have been transferred from Headquarter, Gorakhpur to Divisional Offices either at Izzatnagar or Lucknow. The transfer order which was passed on 08.09.2004 is not impugned, though in the interim order it was made clear that any transfer pursuant to the transfer policy would abide by the result of the O.A.

4. Impugned transfer policy as framed by Senior Deputy General Manager, North Eastern Railway, Gorakhpur is assailed on the ground, firstly, that the Senior Deputy General Manager was not competent to frame

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transfer policy in that the power to frame the transfer policy is vested with the Railway Board; secondly, the transfer policy is contrary to and inconsistent with paragraph 226 of the Railway Establishment Code which contains transfer policy framed by the Railway Board; and thirdly, that the impugned transfer policy is arbitrary. For the respondents, it has been contended by Sri K.P. Singh that the transfer policy framed by the Railway Board, as contained in the Railway Establishment Code, does not inhibit the Senior Deputy General Manager to frame guidelines with a view to regulating exercise of power vested with him for transfer of Railway employees from Headquarter to Divisional Office and Vice-Versa. It has also been submitted by learned counsel for the respondents that the impugned transfer policy is neither arbitrary nor discriminatory.

5. We have given our anxious considerations to the submissions made across the bar.

6. Para 226 of Railway Establishment Code Vol-1 being relevant to the question involved in the case is quoted below :-

"226. Transfer- Ordinarily, a Railway servant shall be employed throughout his service on the Railway or Railway Establishment to which he is posted with 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 Minister's decision-Requests from Railway servants in Group 'C' & 'D' for transfer from one to 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".

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It would be evident from para 226 of the Railway Establishment Code extracted above that 'ordinarily', a railway servant shall be employed throughout his service on the Railway or Railway Establishment to which he is posted on first appointment and shall have no claim as of right for transfer to another establishment. In the exigencies of service, however, President is vested with power to transfer railway servant to any other department or railway or Railway Establishment including a project in or out of India. It is further provided that 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. It is, thus, evident that while a Railway Servant cannot claim as of right for transfer to another Railway or another Establishment, there is no restriction on the power vested with General Manager to transfer a Railway employees within the same Railway. The power may be re-delegated to transfer the Railway servant to any department or any Railway Establishment including a project in or out of India. That apart, right to remain posted on the Railway or Railway Establishment to which a Railway employee is first posted, is not an absolute right, for word 'ordinarily' with which paragraph 226 begins makes it abundantly clear that there is no such absolute right vested in a Railway Servant to remain on the Railway or Railway Establishment to which he was posted on the first appointment. In any case nothing in paragraph 226 inhibits the General Manager and for that purpose the Senior Deputy General Manager to transfer Railway servant from one place to another on the same Railway and to formulate a policy regulating exercise of discretion in this regard. We are not impressed with the submission made by learned ~~counsel~~ for the applicant that the impugned transfer policy suffers for

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from the lack of jurisdiction.

7. The next question that arises for consideration is whether the impugned transfer policy is arbitrary. With a view to appreciating the contention, we consider it apt and proper to quote the relevant part of the Circular dated 08.07.2004 :-

विषय: पूर्वोत्तर रेलवे गोरखपुर में कार्यरत मुख्य विधि सहायक/विधि सहायक दै0मा0 7450-11500 एवं वै0मा0 6500-10500 का स्थानान्तरण एवं पदस्थापना हेतु नीति का निर्धारण।

पूर्वोत्तर रेलवे गोरखपुर में कार्यरत मुख्य विधि सहायक/विधि सहायक वेतनमान 7450-11500 एवं 6500-10500 का स्थानान्तरण एवं पदस्थापना हेतु वरिष्ठ उप महाप्रबन्धक महोदय के निम्न नीति निर्धारित की है:-

१क० ऐसे मुख्य विधि सहायक/विधि सहायक वै0मा0 7450-11500 एवं 6500-10500 जो मण्डल में विस्थापित है तथा मंडल में रहना चाहते हैं, उन्हें तब तक वहाँ से निरपित नहीं किया जायेगा जब तक प्रशासनिक स्तरपर उन्हें स्थानान्तरित करने की आवश्यकता महसूस न हो।

२ख० यह विधि सम्मत मान्य है कि कैडर के कनिष्ठतम कर्मचारी का स्थानान्तरण किया जाता है अतः मुख्य विधि सहायक/विधि सहायक वै0मा0 7450-11500 तथा 6500-10500 के कैडर से ऐसे कनिष्ठतम कर्मचारी को मुख्यालय से दो वर्ष के लिए मण्डल में रोटेसन बैशिष्ठ पर पदस्थापित किया जायेगा, जिसमें मण्डल में 2 साल का कार्यभार नहीं सम्भाला है, इसके लिए अवधि का गणना 01-07-02 से किया जायेगा।

३ग० कनिष्ठतम कर्मचारी, जो एक मण्डल में पदस्थापित होगा अपना 2 साल का कार्यकाल पूरा करने के पश्चात ही मुख्यालय में लौटेगा। कैडर में पदोन्नति तथा चयन के फलस्वरूप जुड़े नये कर्मचारी को मण्डल में पदस्थापित किया जायेगा जो जबकि मुख्यालय से भेजे गये मुख्य विधि सहायक/विधि सहायक वै0मा0 7450-11500 तथा 6500-10500 को .....में 02 वर्ष का कार्यकाल पूरा हो जायेगा। तत्पश्चात अगला कनिष्ठ कर्मचारी मण्डल में पदस्थापित किया जायेगा।

४घ० विशेष परिस्थिति में वै0उप महाप्रबन्धक महोदय के व्यक्तिगत अनुमोदन पर ही किसी भी मुख्य विधि सहायक/विधि सहायक के स्थानान्तरण सम्बन्धी अनुरोध पर विचार किया जायेगा।

उपरोक्त आधार पर आगे मुख्य विधि सहायक/विधि सहायकों को स्थानान्तरण/पदोन्नति पर पदस्थापना की जायेगी।

The impugned circular has been modified to the following extent :

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The impugned circular has been restricted to the following extent :

- "(i) The employees who have already done a tenure of at least one year in any one of the division and are currently posted at GKP will be excluded from the 1st round of rotational transfer.
- (ii) They will however have to carry out transfer out of G.K.P. when under rotational transfer all employees have carried out transfer out of GKP and their turn comes again as per guide lines decided".

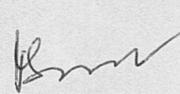
8. It has been contended by Sri V.K. Goel learned counsel for the applicant that provision contained in Clause IV of circular dated 08.07.2004 which provides for transfer of junior most employees for a period of two years on periodical/rotation basis is illegal and arbitrary in as much as senior most employees should have been preferred instead of junior ones. It cannot be gainsaid that the formulation of policy laying down norms and guidelines for exercise of discretion is the prerogative of the executive or administration. In our opinion the Tribunal cannot sit in appeal over the policy which has been framed by the Competent Authority. We do not find any inherent inconsistency between the impugned policy and the one framed by the Board & Railway <sup>Vide</sup> para 226 of the Indian Railway Establishment Code. It was for the Competent Authority as to who should first go on periodically/rotational basis. The scheme cannot be faulted merely because it is not on the basis of length of service at the Headquarter and is rather based on seniority. That by itself is no ground to hold that the policy as illegal and arbitrary in as much as that would be equally applied to all employees and thus there would be no discrimination. We are of the view that the imugned policy neither suffers from lack of jurisdiction nor does it run counter to the policy laid down by the Railway Establishment Code nor does it suffer from arbitrariness so as attract the provision of Article 14 of the Constitution.

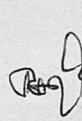
9. It is then submitted by Sri V.K. Goel learned counsel for the applicant that the matter of rotational transfer visualized by the impugned policy is already covered <sup>by</sup> L the policy laid down by the Railway Board Circular dated 24.07.1979 and 07.02.1980 and therefore, there was no need or occasion for framing another policy. In our opinion, the impugned transfer policy being supplementary in nature can always be framed by Senior Deputy General Manager with a view to regulate the exercise of discretionary power vested with him.

10. However, it may be observed that if any individual employee has suffered any hardship due to mid academic transfer, it would <sup>be</sup> open to him to make a representation before Senior Deputy General Manager, North Eastern Railway for redressal of grievance. If any such representation is filed, the said Authority shall look into the grievance of such applicant and take appropriate decision on the representation in accordance with law.

11. In view of the above, the O.A. is dismissed subject to the above observation. Interim order is vacated.

No costs.

  
Member-A

  
Vice-Chairman.

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