

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 10th DAY OF AUGUST 2010)

PRESENT:

HON'BLE MR. S.N. SHUKLA, MEMBER-A

ORIGINAL APPLICATION NO.1363 OF 2005

(U/s, 19 Administrative Tribunal Act.1985)

1. Raj Nath Yadav, aged about 46 years, Son of Late Brahmachari, permanent Resident of Village Aandhi, Post Bharari, District-Allahabad.

Presently residing at Railway Qr. No.492-G, Railway Colony, Balaipur, Allahabad and posted as Diesel Goods Pilot at North Central Railway, Allahabad (under orders of transfer to Tundla on promotion to the post of Diesel Passenger Pilot).

2. Dev Raj, aged about 47 years, Son of Shri Ram Prakash, permanent Resident of Village Birahimbad, Post Kasia, Mooratganj, Police Station, Charwa, District Kaushambi.

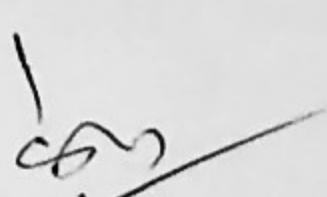
Presently resident of Railway Qr. No.693-A, Loco Colony, 10th Marg, Near Geep Factory, Allahabad and posted as Diesel Goods Pilot at North Central Railway, Allahabad. (under orders of transfer to Tundla on promotion to the post of Diesel Passenger Pilot).

..... Applicants

By Advocate: Shri Shyamal Narain

Versus

1. The Union of India, through the General Manager, North Central Railway, Allahabad.



2. The Divisional Railway Manager, North Central Railway, Allahabad.
3. The Senior Divisional Mechanical Engineer, North Central Railway, Allahabad.
4. The Senior Divisional Personnel Officer, North Central Railway, Allahabad.

..... Respondents

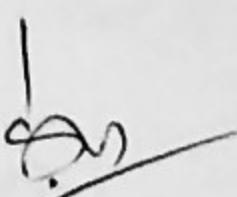
By Advocate: Shri Gautam Chaudhary

O R D E R

The perusal of record shows that the case has been adjourned on the ground of illness slip or at the request of learned counsel for the applicant on the following dates:-

25.8.2006, 15.9.2006, 15.12.2006, 02.02.2007,
 14.03.2007, 27.07.2007, 06.09.2007, 10.10.2007,
 3.12.2007, 03.03.2008, 28.11.2008, 27.1.2009,
 30.04.2009, 06.10.2009, 18.12.2009, 08.01.2010,
 30.03.2010, 17.05.2010, 09.07.2010 and
 10.08.2010.

Earlier when this case was called out on 03.08.2010 Shri Jaswant Singh brief holder of Shri Shyamal Narain had sought a short adjournment on the ground that Shri Shyamal Narain was busy elsewhere which was allowed as a last opportunity. The reasons for continuance adjournment on the part of the applicant may be linked to the fact that perhaps applicant has been enjoying the benefit of temporary stay of the transfer obtained at the time of early stages of proceedings.



Learned counsel for the respondents is also not able to throw any light on the latest fate of the impugned order.

Be as it may, the leave on the ground of illness of learned counsel for the applicant does not inspire a reasonable confidence. In any event the matter is more than five years old and some of the grievances of the applicant such as the transfer in the middle of academic session of school and college going children etc. would have been mitigated with the afflux of five longer years. At this stage there appears to be no compelling reasons to keep this OA pending any longer and hence this order is being passed today on the basis of material available on record and after noting the presence of the learned counsel for the respondents.

2. The OA is against the impugned order dated 23.09.2005 (Annexure A-1 of compilation-I). The applicant is seeking relief on the following grounds:-

"(i) Because the impugned order dated 23.9.2005, to the extent it directs the applicants to be transferred out to Tundla, upon promotion to the post of Diesel Passenger Pilots, is grossly arbitrary, discriminatory and illegal.

(ii) Because while ordering the applicants' transfer, the respondents have sharply departed from the well established norm and practice of retaining such candidates at Allahabad who were higher in merit in the select panel, and transferring those who were lower down.

(iii) Because the respondents have seriously erred in law in adopting pick and choose policy in the matter of determining the postings/transfers of selectees for the posts of Diesel Passenger Pilots.

(iv) Because while the applicants, who were placed at Sl. Nos. 11 and 12 in the order of merit, have been directed

1
67

to be transferred to Tundla, on promotion, the candidates placed at Serial Nos. 14, 15 and 25 have been directed to be retained/posted at Allahabad.

(v) Because the impugned action of the respondents amounts to subjecting the applicants to hostile discrimination and it, therefore, liable to be interfered with by this Tribunal.

(vi) Because, in any case, there are sufficient vacancies on the posts of Diesel Passenger Pilots at Allahabad and the applicant's transfer out to Tundla, is wholly unnecessary and unwarranted and only a ploy to adjust certain chosen selectees at Allahabad whose names have not been included in the present list of promotees but whose panel is likely to be declared shortly.

(vii) Because the applicants have been ordered to be transferred in the middle of the academic session, thereby gravely jeopardizing the studies of their school and college-going children, which was wholly avoidable in view of the existing vacancies of Diesel Passenger Pilots at Allahabad.

(viii) Because repeated representations and requests made by the applicants before the concerned respondents have failed to yield any response.

(ix) Because the applicants have neither been served with the orders of transfer nor any spare memo/passes, and their transfer order has not been given effect to till date.

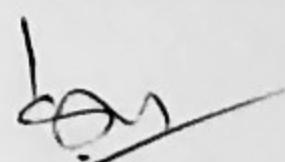
(x) Because the impugned action of the respondents is tainted with legal malice.

(xi) Because the impugned action of the respondents is against equity, fair-play and natural justice."

3. The respondents replied the counter affidavit is at para 8 and 9 of the counter affidavit which reads as under:-

"8. That with regard to the contents of paragraph no. 4.13 and 4.14 of the O.A. it is submitted that at this stage it is also pointed out that 08 Diesel Goods Pilots at Serial No. 1, 2, 3, 4, 5, 6, 8 and 10 senior in the merit to both applicant Serial No. 11 and 12, have also been transferred from COI/Allahabad to Kanpur. As regards for retaining Shri D.N. Khanna, Shri A.K. Tripathi and Shri R.N. Sharma of Serial No. 14, 15 and 25 who are Junior in the merit to both applicant at Allahabad on criteria for the same is given below:-

Serial No. 14 (Shri D.N. Khanna) was retained at Allahabad on promotion in compliance of Railway Board instructions issued vide para No.-3 of Board letter No. E(NG)/ 1-97/TR/28 dated 05.11.1997, since he is a Railway Employee and his wife is a Central Government Employee (a teacher in Central School at Allahabad). That is why Shri D.N. Khanna has been retained at Allahabad on promotion.



Both Shri A.K. Tripathi and Shri R.N. Sharma Serial No. 15 and 25 respectively were retained at Allahabad on promotion because they were working as Drafted Power Controller in Power Control Organization Allahabad in compliance to Railway Board P.S. 11528 (Railway Board circular dated 03.2.1998) at the time of promotion and posting order. Since no Drafted Power Controller senior to these fellows (S.No. 15&25) as available at Allahabad among the Diesel Goods Pilot, whose promotion orders were issued, beside division was not in a position to spare both these fellows as per their required strength to tackle the work load of Power Controller Organization Allahabad, which plays a vital role in the Diesel Train operation in the Division. Therefore just to make strength in the Powers Control Organization Allahabad these fellows were retained at Allahabad to work in the said organization, in the interest of smooth Diesel Train Operation. In fact no favour was given to both Serial No. 15 and 25 from Administration and they have purely been retained in power control. A photocopies of letter dated 05.11.1997, Certificate and P.S. No. 11528 are being filed herewith and marked as Annexure CR-II, CR-III and CR-IV respectively.

It is further submitted that the petitioners have no locus-standi to challenge the order in as much as that admittedly the applicants are placed at Serial No. 11 and 12 in the merit list and as per seniority list, there are ten candidates who are senior to the applicant in the seniority list and all of them have been posted out of Allahabad and posted at Kanpur.

9. That the contents of paragraph no. 4.15 and 4.16 of the OA are denied. Suitable reply in this regard has already given in the preceding paragraph of the reply. However the promotion of Diesel Goods Pilot to Passenger Pilot were issued after taking into consideration the "Bare Minimum Requirement" of combined Mail/Express and Passenger Pilot at Allahabad, Kanpur and Tundla. At the same time the percentage of vacancy position at said placed was also considered for posting of promotion Diesel Goods Pilots. The combined sanction, on Roll and vacancy position at Allahabad and Tundla was as follows at the time of promotion and posting:-

Allahabad			Tundla		
Sanction	On Roll	Vacancy	Sanction	On Roll	Vacancy
33	22	-11	30	15	-15

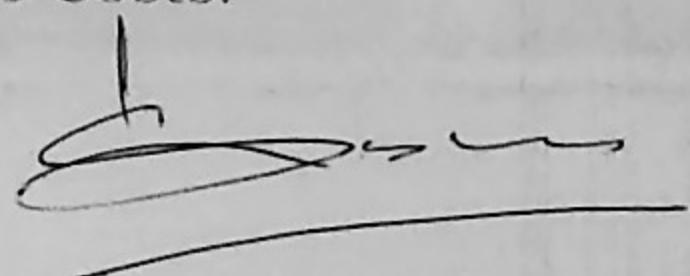
With the above position it is quite clear that percentage of vacancy at Tundla was much more than Allahabad which is worked out to the tune of 33% and 50% respectively. Beside the introduction of New Diesel Hauled Trains also took place at Tundla and not at Allahabad. Therefore from administrative point of view it was more necessary to make the Tundla area more strengthened by posting and promoting Diesel Pilots as compared to Allahabad. It is pertinent to mention here that after taking into account the 'Bare Minimum Requirement' of Mail/Express and Passenger Trains at

52

Allahabad no necessity was felt to fill up all the above combined vacancies of Mail Express and Passenger Pilots, had it been done the Division could not be in the position to manage the operation of Diesel Mail Express and Passenger Trains at Tundla where three pair of New Diesel Hauled Mail/Express/Passenger Trains were inducted in addition to earlier Diesel Train Operation of the same. Therefore it is quite clear that there have been no wrongful action in the posting of both of the applicants (S.No. 11 and 12) at Tundla."

4. Having considered the material available on record and the reply filed by the respondents the Tribunal is firmly of the view that no irregularity or malafide can be found in the impugned order dated 23.9.2005 (Annexure No.A-1) and the transfers have been made for operation reasons.

5. OA, therefore, stands dismissed. No Costs.



Member-A

/ns/