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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration No. 66 of 1986 (T)

Union of India ...Defendant Appellant

Versus

Baijnath & Another..... Plaintiff Respondents

Hon. S. Zaheer Hasan, V.C.

Hon. Ajay Johri, A.M.

(By Hon. Ajay Johri, A.M.)

Appeal No. 359 of 1983 Union of India  
Versus Baij Nath & Gaya Prasad has been received on  
transfer from the Court of District Judge, Varanasi. The  
appeal is against the permanent injunction decreed by  
the learned Munsif 9th Varanasi that the seniority of  
the plaintiff respondents may not be disturbed or changed  
at any level. The grounds of appeal are that the suit  
was not maintainable because transfer orders are not  
challengeable in a court of law, and since the plaintiffs  
were transferred on same pay and grade to another  
Division hence they had no cause of action as their  
seniority was not affected.

2. The learned Munsif had considered and  
agreed with the plea that transfer orders are not  
justiciable but on the point of seniority she had  
observed that since the seniority list is prepared on  
Divisional basis and since the same position will not

be maintained it will have adverse effect on the future of the plaintiff respondents and hence she issued direction to the defendant appellant not to disturb the seniority of the plaintiff respondents.

3. The plaintiff respondents Baij Nath and Gaya Prasad were engaged as substitutes in July, 1971 and February, 1975 and they were appointed as a regular employee on 5.5.78 and 25.10.78 respectively. Gaya Prasad's appointment was on adhoc basis. According to the defendant appellant there is no rule that prohibits transfer of class IV employees from one Division to another. They are given their original seniority and do not lose it when transferred on administrative account. According to Rule 311 of the Indian Railway Establishment Manual Chapter III (24-Ga) the seniority in such transfers is regulated by the date of promotion/date of appointment to the grade as the case may be. The plaintiff respondents' plea is that the contemplated transfer as detailed in the orders (22-Ga) to Dhanbad and Asansol will result in irreparable loss to them due to disturbance of their seniority.

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4. The only point that has been taken before us is that the transfer will result in lowering of the seniority of the plaintiff respondents. There has been no plea of any mala fide and they are not being transferred to a lower post with discriminatory preference and therefore the transfer order is not open

challenge to attacks. They are being given their original seniority and do not lose it when transfer <sup>by</sup> <sub>is</sub> on administrative account. Govt. has the responsibility of good administration and it is the best judge to decide how to distribute its man power. A variety of factors weigh at arriving on these decisions. These are exigencies of service. So long as the transfer is made <sup>by transfer order</sup> on exigencies of service it cannot be challenged. They are also not justiciable in the normal course. It is an implied condition of service and the appointing authority is the best judge. We will not like to adjudicate as long as the power has not been exercised mala fide. The fear of the plaintiffs that they will lose in their seniority has also not a good ground. The learned Munsif gave the directions that the defendant appellant will not disturb the seniority of the plaintiff respondents. This seniority is not being disturbed. Seniority is determined by length of service and when transfer <sup>by</sup> <sub>is</sub> on administrative ground there is no loss, as the relevant rules show.

5. In the result we find that the plaintiff respondents will retain their seniority as they are being transferred on administrative account and the orders of the learned Munsif do not <sup>bar</sup> ~~bar~~ such a transfer. <sup>by</sup> Defendant Appellants will be at liberty to implement the transfer order if they so desire. <sup>by</sup> The appeal is disposed of accordingly. There are no orders as to costs.

Dated the 5<sup>th</sup> Jan 1987 Dec., 1986

RKM

*Yours*  
V.C.

*SPTR/STP*  
A.M.