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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration No.698 of 1986 (T)

Azizur Rahman Khan      .....      Applicant

Versus

Union of India, through G.M.      Respondent  
Central Railway, Bombay, VT.

Hon.S.Zaheer Hasan, V.C.  
Hon.Ajay Johri, A.M.

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

Suit No.280 of 1984 has been received on transfer from the Court of Munsif I Jhansi under Section 29 of the <sup>34</sup>~~Central~~ Administrative Tribunals Act 13 of 1985. The petitioner Shri Azizur Rahman Khan is working in the Accounts Department of the <sup>34</sup>~~Central~~ Railway at Jhansi since 1967. He passed the Appendix-2A examination in 1973. This examination qualified him for promotion as clerk grade-I. According to him certain persons junior to him have been promoted at Jhansi itself while he was ordered to be transferred on promotion to Bombay. He had made representation to the F.A. & C.A.O. Bombay and to the local Senior Divisional Accounts Officer at Jhansi regarding his posting at Jhansi itself against the vacancies existing there but his representations and requests have not been considered and he is continuing to work as clerk grade-II inspite of his having qualified in the Appendix-2A examination. The respondent's case is that the promotions which were made at Jhansi against 25% quota were in accordance with the certain policy decisions taken on 3.9.1985 by the F.A. & C.A.O., Central Railway Bombay and



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the policy for promotion for qualified Appendix-2A staff was separate. According to respondent the petitioner has been refusing promotion since 1975. The transfer on promotion as CGI is obligatory and therefore the petitioner has no case.

2. We have heard the learned counsel for both parties. The petitioner has been appealing for his promotion at Jhansi since long time. He was being advised that there was a waiting list where staff who had moved out of Jhansi on initial promotion has registered for transfer back to Jhansi and in the face of this list it was not possible to promote the petitioner at Jhansi in preference to those who were on the waiting list. The petitioner has however been pleading before the administration that he is an old patient of T.B. His present state of health cannot stand the strain of daily Up and Down in local trains at BB. to which station <sup>he</sup> has been transferred on promotion. The petitioner has been making these representations periodically and in 1981 he had given some more reasons for consideration of his posting at Jhansi like his old mother, his large family, his old dependent mother and his weak eye sight on account of cataract in the left eye. He had also cited examples of recent postings of some of the grade-II clerks at Jhansi itself promoting them provisionally as a special case. In this way for nearly last ten years the petitioner has been waiting for his promotion at Jhansi itself.

3. The petitioner is a clerk grade-II in the scale



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of Rs.260 - 400. His next promotion is in the scale of Rs. 330 - 560 as clerk grade-I which he has not been able to get on account of the policy of the administration to consider for posting at certain stations. <sup>3</sup>those whose requests are registered in preference to those who are waiting for promotion at the same station. Clerk Grade-I i.e. in the grade of Rs.330 - 560 is also a direct recruitment post, recruitment for which is made through the Railway Service Commission. A large percentage of these posts are filled by direct recruits and according to the reorganized staffing pattern of the accounts Department on the Railways it would appear that the maximum of 20% of vacancies in clerks grade-I are to be filled by promoting clerks grade-II. Considering the fact that these clerks are in a very low grade, a transfer even on promotion does become sometimes a burden and forces such staff to refuse promotion and <sup>3</sup>stay ~~set~~ at the same station in the lower grade in preference to taking the promotion and moving to a new place with new surroundings, with new educational pattern and so many other related problems to face. There is no doubt that the Govt. is the best Judge to decide how to distribute and utilize the services of its employees. However, it would seem that this power has to be exercised reasonably. It is under these circumstances perhaps that the administration had decided to post some of the compassionate appointees and those suffering physically at Jhansi itself but in the case of the petitioner the pleas taken by him had not been accepted as sufficient ground for consideration of his



case sympathetically. It is not a question that any alien purpose is being achieved by adopting this policy of considering those who have registered for transfer to Jhansi first and thereafter promote the local clerks grade-II if the vacancies are left unfilled. In regard to policy <sup>and</sup> <sup>on</sup> promotion we can only suggest that in case where transfers are involved on promotion they should be made if sufficient number of vacancies in the cadre of promotion are not available at the stations at which such officers are serving especially in cases of this nature where the staff belong to the category of clerks in the initial grades. If there are no vacancies there could be no other course but to transfer such persons on promotion. In any case a local promotee should get preference of posting in preference to a direct recruit who joins the Railway after being selected from the open market. So long as transfer is made in exigencies of service, is not to a lower post with discriminatory preference of a junior, it would be valid and not open to <sup>an</sup> ~~attempt~~ <sup>attack</sup>. We do not find that there is any malafide exercise of power and therefore the petitioner's case is not a subject <sup>for</sup> ~~of~~ review of the orders of transfer. The petitioner has mentioned that there are still number of vacancies available at Jhansi. We are not aware whether the said vacancies have since been filled up. In the circumstances of the case while no directions are being given on the <sup>petitioner's</sup> application for promotion at Jhansi and retention of the petitioner on promotion there his application is once again referred to the respondents for sympathetic and compassionate consideration

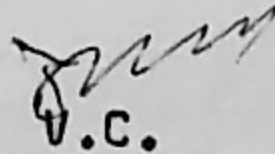


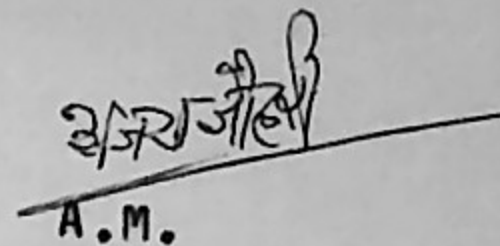
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in view of the difficulties brought out by him. Since there has been no other pleading on the question of malafide etc. the petition is liable to be dismissed.

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4. In the light of the above, <sup>3/ (Suk no. 280 of 1984)</sup> the petition fails and is dismissed with no order as to costs.

  
V.C.

  
A.M.

Dated the 11<sup>th</sup> Dec., 1986.

RKM