

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 12th day of May 1997.

Original Application no. 455 of 1995.

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

1. Sri S.P. Singh, TCI-III, Under CTI(N), Agra Cantt. Jhansi Division, Central Railway.
2. Prem Singh, TCI-III, Under CTI (N), Jhansi Division, Central Railway, Agra Cantt.

... Applicant.

C/A Sri W.H. Khan, Sri P.R. Ganguli.

Versus

1. Union of India through the General Manager, Central Railway, Victoria Terminus, Bombay.
2. The Divisional Railway Manager, Jhansi Division, Central Railway, DRM Office, Jhansi.
3. The Divisional Personnel Officer, Jhansi Division, Railway (Central Railway), DRM Office, Jhansi.

... Respondents.

C/R Sri A.K. Gaur.

ORDER

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

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

The applicants have come to the Tribunal for relief of setting aside of order of transfer dated 24.02.95 and continuation of the applicants on the post

of CTI at Agra. The applicants have also sought the award of the cost of the application.

The order of transfer dated 24.2.95 ordered transfer of Shri R.K. Lavania, TCI-I in the grade of Rs. 2000-3200 and Shri A.U. Khan TCI-I to Agra in the same grade on their own request and transferred Shri Prem Singh TCI-III in the grade of Rs. 1400-2300 and Shri S.P. Singh TCI-III in the same grade to Morena and Dholpur respectively. The applicants have challenged these transfers as discriminatory because they were neither the senior most nor the juniormost TCIs-III and because the transfers had been effected to accommodate Shri R.K. Lavania and Shri A.U. Khan. The transfers have also been challenged because of its adverse impact on their families. It is also contended that the applicants were disturbed after three and a half years leaving others who were there for more than that period undisturbed. It is contended that the applicant no 2 belongs to the Scheduled Castes and could not have been disturbed.

The respondents have stated in their counter reply that the transfer of applicants was made due to pinpointing of upgradation under restructuring with effect from 1.3.93. The respondents have denied that they harboured any bias against applicant no. 1. The respondents have stated that TCI-III were in excess in the division and had to be adjusted in the division. They have stated that four posts of TCI-III were excess in the division and juniors had to be transferred or adjusted against vacancies in the division or sent to other

division under orders of the C.P.O. It is mentioned that applicant no. 2, a scheduled ~~caste~~ official was posted near Agra. The respondents have denied receiving any representation before filing the OA.

The arguements of Shri W.H. Khan were heard. Shri A.K. Gaur, who could not remain present at the time of hearing subsequently submitted written arguements which cover no ground beyond what was already covered in the pleadings.

The issues which come up for resolution in this case are whether the scheme of upgradation included transfer and whether those upgraded under scheme of restructuring were placed beyond the liability of being transferred.

The first issue has to be resolved in terms contained paragraphs 7 and 13 of Railway Board Circular no.RBE No. 19/93 SL no. 2/93 dated 27.1.93 on restructuring. Paragraph 7 of the Circular provides for continuation of the posts in excess of the revised percentages brought about by restructuring till they are placed out by vacation of the posts by existing incumbents. Paragraph 13 provides the modes by which an existing incumbent may ~~vacate~~ the post. The modes mentioned are retirement, promotion, transfer etc. Thus the scheme of restructuring does not rule out transfer. Paragraph 13 also permits subsequent pinpointing of posts as per administrative requirements. Thus, the respondents had the authority to locate TCI-III in smaller railway establishments and TCI-I in larger

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railway establishments under terms of Circular dated 27.1.93.

The ground of discrimination is not available to the applicant insomuch as their juniors and seniors were not transferred because the applicant had only the right to hold the post of TCI-III and not to hold such a post located at Agra because transfer is an incident of service and negates any right of an official to hold a post at a particular place.

The applicants have made insinuations of malafides as applicant no. 1 in the OA Shri S.P. Singh has alleged discrimination against him after 1991 as he was not sent for training for the post of T.C.I (Stores). They have also made suggestions that they were transferred to accommodate two other officials who were already working as T.C.I. -I. Such an allegation does not negate the claim of the respondents that the transfers were made for pinpointing of posts.

The other grounds taken up by the both the applicants of difficulties to their families and non completion of tenure do not invite any intervention in judicial review as per the law laid down by the apex court in Union of India and others vs. S.L. Abbas, AIR 1993 SC 2444. Shri Prem Singh applicant no. 2, has alleged that he cannot be transferred because he is a scheduled caste. It is not his case that Morena is not near Agra or that in Morena he would not have the facility of railway quarter.

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The applicants have been unable to establish that their transfers were motivated by malice or that there was any statutory bar operating against their transfers.

The application is, therefore, dismissed as having no merits.

There shall be no order as to costs.

Sd/-
A.M.

/pc/

Complaint
/pc/