

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.

Dated : This the 31st day of May 2007

Original Application No. 1146 of 2006

Hon'ble Mr. P.K. Chatterji, Member (A)

Anil Kumar Sawarkar, S/o Sri Baleshwar Ram, Senior Pilot (Goods)/P.R.C. Northern Railway Loco Shed, Moradabad, Moradabad.

. . . Applicant

By Adv: Sri R.L. Yadav

V E R S U S

1. The Union of India through General Manager, Northern Railway, New Delhi.
2. The Senior Divisional Personnel Officer, Northern Railway, Moradabad.
3. The Divisional Personnel Officer, Northern Railway, Moradabad.
4. Suresh Singh Loco Pilot (Goods), S/o Chandar Singh, C/o Crew Controller, Chandausi, Northern Railway, Chandausi, Moradabad.
5. Naimuddin Khan, S/o Sri Thanvi Hussain, Loco Pilot (Goods), C/o Crew Controller Locoshed, Northern Raiwlay, Khurja Junction, Khurja.

. . . Respondents

By Adv: Sri A. Triathi & Sri S. Ram

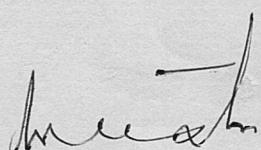
O R D E R

The applicant was Driver (Goods) working under Divisional Railway Manager, Moradabad. He applied for mutual transfer from Moradabad Division of Northern Railway to Varanasi division of North Eastern Rail at Varanasi with Suresh Singh Driver (Goods) working under Divisional Railway Manager Varanasi.

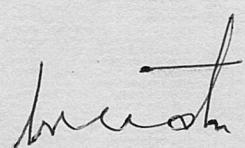
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applicant and Sri Suresh Singh (respondent NO. 4) applied jointly for mutual transfer. The Divisional Railway Manager Northern Railway Moradabad issued the transfer order on 03.04.2002 after the request of mutual transfer was accepted by the competent authority, with direction to Senior Section Engineer to spare the applicant to join at Varanasi. However, in the meantime the applicant had already sent a letter withdrawing his consent for transfer on 19.03.2002. The applicant alleges that even after his withdrawal was intimated the Divisional Railway Manager Moradabad still issued the order of transfer on 03.04.2002.

2. The applicant submitted one more application to Divisional Railway Manager Moradabad stating his family condition and education problem of his son as grounds for his withdrawal. He also requested for his transfer order of Varanasi to be cancelled. The applicant further says that on such application Divisional Railway Manager Moradabad directed Suresh Singh to be posted as Driver Goods at Chandausi retaining the applicant in his place for six months. The applicant at this stage states that although he requested for withdrawal of mutual transfer the applicant retained him for 6 months which was not what he wanted.

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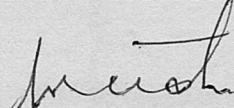
3. He made an appeal against this order to Divisional Railway Manager Moradabad stating that he had withdrawn his consent of mutual transfer 15 days before the transfer order dated 03.04.2002 was issued. He also stated in the application that he wanted cancellation of the order and not mere retention for 6 months. On 28./11.2002 the GM NR issued a letter No. 752E/133/157/IRMt (E II) C addressed to General Manager North Eastern Railway, Gorakhpur canceling the mutual transfer order dated 26.02.2002 and directing that Sri Naimuddin Khan Driver Goods be sent to Varanasi in place of the applicant for the purpose of mutual transfer. Sri Khan was willing to join and consequent upon the order Divisional Railway Manager Varanasi even went to the extent of getting a passport size photocopy of the employee. This was a formality, as stated by the applicant, before allowing Sri Khan to join. But on 27.08.2003 General Manager North Eastern Railway, Gorakhpur vide his letter (Annexure 13) stated that the mutual transfer of Sri Suresh Singh with Naimudding Khan was not agreed to and Sri Naimuddin Khan was sent back. After one year of this episode Divisional Railway Manager Moradabad again passed an order dated 05.07.2004 directing the applicant to proceed to Divisional Railway Manager Varanasi and join their. It is stated by the applicant that this letter was issued without the approval of General Manager, Northern Railway New Delhi.



4. It is also mentioned by the applicant that after mutual transfer the competent authority i.e. The General Manager has to transfer the lien of the employee from one unit to another. In this case as the transfer was cancelled by the competent authority i.e. the General Manager, Northern Railway New Delhi his lien was not transferred. Not only that he was allowed to take part in the screening for the post of power controller/crew controller, got selected and posted as Power Controller at Moradabad vide Divisional Railway Manager's Notice dated 15.11.2002. However, because of subsequent development the applicant's selection in the panel of power/crew controller have been kept in abeyance. The applicant stated that if his mutual transfer at this stage is executed he will loose the benefit of selection as he has to go through the screening afresh for his selection.

5. Thus aggrieved the applicant has approached this Tribunal for the following reliefs:

- "i. The Hon'ble Tribunal may be gracious enough to quash the arbitrary transfer order which after cancellation of the same on 3 occasions previously by the G.M./NR has been made for the 3<sup>rd</sup> time abruptly after an interval of about 4 years by the DRM Officer order (Notice) dated 29.09.06.
- ii. The office order of DRM/Moradabad No. 752/EP/Pilot II/Pass/Selection/04 dated 18.04.06 (Placed as Annexure A-21) in which the applicants name has not been placed on the panel for extraneous, unlawful reasons, may also be quashed and the respondents No. 2 and 3 be directed to redraw a new correct panel list

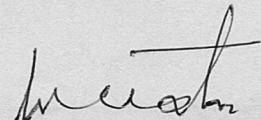


including the name of the applicant at proper place of Seniority.

- iii. Respondents No. 2 and 3 may be directed to promote the applicant as Loco Pilot (Passenger) in grade 5500-9000 on the right time of his turn which has not been done vide office order dated 21.04.06 and juniors have been promoted neglecting the applicant violating thereby Article 14 of the Constitution of India. The arrears of payment consequent upon promotion may also be paid to the applicant.
- iv. The Hon'ble Tribunal may award any other relief which they may deem fit in this case."

6. The grounds mentioned may be summarized as follows:

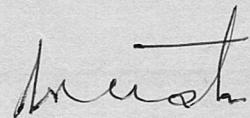
- a. His mutual transfer was cancelled by the order of appropriate authority dated 28.11.2002. Therefore, the Divisional Railway Manager Moradabad had no authority to issue an order afresh.
- b. The request for withdrawn for mutual transfer was made by the applicant 15 days before the order of transfer was issued. The applicant had right to withdraw the previous request for transfer. The reasons were genuine. Therefore, the action of the Divisional Railway Manager Moradabad to issue the order of transfer was uncalled for.
- c. Since the mutual transfer order the applicant had already served for 4 years at Moradabad div, passed the screening test and was subsequently promoted in higher scale also. He also qualified in the written test of Loco Pilot in Grade of Rs. 5500-9000. If he has to fact mutual transfer at this stage he will lose the benefit of these all. This will also upset a settled position existing for five years after the first order.



d. Besides the action of the respondents in withholding his promotion as Loco Pilot was violative of Article 14 of the Constitution. His lien having been not terminated, the respondents have no right to do so.

7. At the time of arguments the learned counsel for the respondents has also said that he is not praying for any relief at the cost of respondent No. 4 with whom the mutual transfer was initially processed. The private respondent Sri Surendra Singh has been working as Moradabad after his order on mutual transfer was issued in March/April 2002. If the mutual transfer order is not effected, it has been apprehended by the respondent No. 4 that he will be ranking junior to all other employees in the Grade. Because on cancellation of mutual transfer order his transfer would be treated as on his own request. The terms of on request transfer is that the employee has to rank junior to all other person in his grade in the new unit.

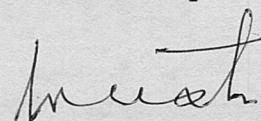
8. Counter affidavit has been filed by the official respondents as well as the private respondent No. 4. It has been stated by the official respondents that the order dated 28.11.2002 was issued from the office of General Manager, Northern Railway New Delhi without taking the approval of the GM. It is also stated that mutual transfer orders are approved with the consent of the GMs of both zones, therefore, it could not be cancelled unilaterally by the General Manager Northern

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Railway New Delhi without the consent of the General Manager North Eastern Railway, Gorakhpur.

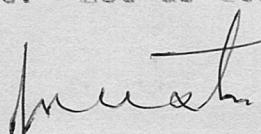
9. The respondents have not denied that in place of the applicant the name of one Sri Naimuddin Khan came up for consideration as a transfer on a mutual request with Sri Suresh Singh. However, this could not materialize as this was not agreed to by the General Manager North Eastern Railway, Gorakhpur. It has further been stated by the respondents that the irregular order issued by the General Manager Northern Railway was corrected by the same authority vide letter dated 15.09.2006 and in pursuance of the letter fresh notice was issued to spare the applicant for transfer to Varanasi.

10. Respondent No. 4 has contended in his counter affidavit that there is no provision to ask him to accept bottom seniority as it was stated in the letter dated 11.08.2004 of General Manager (P) Northern Railway, New Delhi. He has also stated that back tracking of the applicant for mutual transfer was not covered by any rules and, therefore, his prayer should not have been granted. The applicant was already transferred to Varanasi vide notice dated 03.04.2002. It was only at his request that he was retained for 6 months and the private respondent No. 4 was temporarily directed to work at Chandusi. But for this reason the applicant has not developed any right



to hold his lien and seniority in Moradabad division. The official respondents in their CA has also stated that although the respondents considered for a while replacing the name of the applicant by Sri Naimuddin Khan, this could not materialize due to its being not agreed to by General Manager North Eastern Railway, Gorakhpur. However, such consideration does not confer any right upon the applicant to ask for cancellation of mutual transfer order. The respondents have also stated in para 20 of their reply that according to the circular of the Railway Board dated 21.04.2006 no request for withdrawl for mutual transfer be entertained under any circumstances. After receiving this circular direction from General Manager, Northern Railway, New Delhi dated 15.09.2006 reiterating the transfer of the applicant to Varanasi was issued, and there was no illegality in the same order. With these submissions the respondents requested for dismissal of the OA.

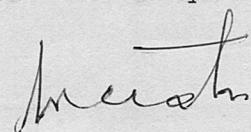
11. I have gone through the pleadings and heard the arguments. No complex legal question is involved. It is a question whether the applicant can assert a right to withdraw the request for mutual transfer. The respondents stated that as per the directions of the Railway Board 15.09.2006 no such request can be entertained. It is noticed that this direction of the Railway Board came 4 years after issue of the mutual transfer order of the applicant. Let us for arguments

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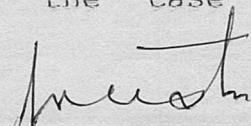
sake take it that such instruction existed before and the circular of 15.09.2006 is a mere reiteration. But we cannot ignore the fact that the respondents acting on a request by the applicant deferred his transfer, and not only that, for a while they also considered replacing the applicant by Sri Naimuddin Khan. Therefore, modification of the mutual transfer order was not considered to be beyond of realm of possibility.

12. The office of General Manager, Northern Railway even went to the extent of canceling the order of mutual transfer on 28.11.2002. This however, the respondents dismiss now as being invalid for the reasons that the approval of GM NR was not taken. I am of the view that it is futile and unnecessary to probe this matter to see whether such approval was taken or otherwise. The fact remains that the order of mutual transfer was once cancelled. Therefore, this contradicts the stand now taken by the respondents that the order of the Railway Board dated 15.09.2006 is sacrosanct and inviolable.

13. It transpires from the factual position that despite the initial acceptance of the mutual transfer the applicant has remained in Moradabad Division, respondent No. 4 as well. The respondent No. 4 has not been treated as the junior most in the grade which is usual in case of transfer on request. It is

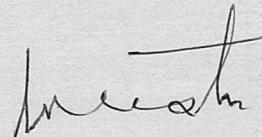
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apprehended by him that in case the applicant is not sent out in Moradabad Division he will have to swallow such condition. I however, do not see any reason as to why such a condition should be imposed in case the mutual transfer of the applicant to Varanasi is not implemented. The terms and conditions attached to mutual transfer is mere administrative orders. They are not statutory rules. In this instant case we have to remember that both the applicant and respondent No. 4 have been working in Moradabad division 5 years from the time of the first mutual transfer order, and without disturbing the original seniority of respondent No. 4, and it has not created any intractable administrative complication. It has not been explained by the respondents as to what problem and complication will arise if both the applicant and respondent No. 4 are allowed to work at Moradabad after accepting the present realities. I have particularly thought over the apprehension of the applicant that if at this stage he is to accept the mutual transfer to Varanasi he will lose all the benefits of his subsequent promotion/up gradation and has to start afresh. I am of the view that it would be very harsh upon the applicant to compel him to do so. One has to remember that the respondents were initially favorably disposed to consider the request of the applicant. The move went up to the extent of finding a suitable and willing substitute for replacing the applicant in the case of mutual

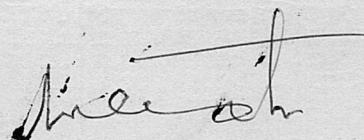


transfer. It could not be implemented because of disagreement by the General Manager, NER. The whole episode creates the impression that on mere technicalities the respondents are trying to impose consequences of unwarrantedly harsh proposition upon the applicant. The impression created that the interests of the applicant on the one hand and the respondent No. 4 on the other are mutually exclusive and ~~in~~reconcilable is also not convincing on a close scrutiny. There interests are not mutually exclusively and totally ~~w~~reconcilable. Moreover, if the applicant has to face the transfer now, it will upset the situation that existed for five years since the order of mutual transfer. As far as respondent No. 4 is concerned, it is not likely to create any administrative impasse for the respondents if his transfer is taken to be a mutual transfer although the original order was ~~eff~~ected only in half. In other words he should not be made to bear the harsh consequence of the terms of transfer at own request as far as seniority is concerned.

14. For the above reasons I find the OA is not devoid of merit and is allowed. The transfer order dated 29.09.2006 (Annexure A-1) is hereby quashed. The office~~r~~ order of Divisional Railway Manager Moradabad dated 18.04.2006 is also hereby quashed and it is directed that the respondents will consider the applicant for his due promotion in the higher grades



in NR for which he has passed the screening successfully. They would also on the basis of screening and subsequent tests consider the applicant for promotion as Loco Pilot and take decision as admissible under the rules and subject to applicant's fulfilling all requisite qualification. With regard to respondent No. 4 it is directed that he should be allowed to retain his seniority and not be relegated to the junior most position in the grade as a condition of transfer on own request. With these directions the OA is disposed of. No cost.



Member (A)

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