

Reserved**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD****ORIGINAL APPLICATION No. 1382/2006**(THIS THE 19/12 DAY OF Dec, 2012)**HON'BLE MR. D.C.LAKHA, MEMBER-A**

B.C. Agrawal aged about 50 years, son of Late O.P. Agrawal, Mail Driver
103, Loco Shed, Jhansi.

..... Applicant

By Advocate: Shri A.K. Srivastava

Versus

1. Union of India through General Manager, North Central Railway Allahabad.
2. Divisional Railway Manager, North Central Railway, Jhansi Division, Jhansi.
3. Senior Divisional Personnel Officer, North Central Railway, Jhansi Division, Jhansi.
4. Sr. Divisional Personnel Officer, North Central Railway, Agra Division Agra.

..... Respondents

By Advocate: Shri A.K. Sinha.

ORDER**(DELIVERED BY:- HON'BLE MR. D.C. LAKHA, MEMBER-A**

This application has been instituted for the following relief(s):-

"8.1 Issue a writ, order in nature of certiorari quashing the order dated 11.09.2006 passed by Respondent No. 3, which is as Annexure No. 1 to this original application.

8.1 'A' That Hon'ble Tribunal may graciously be pleased to direct the respondents for transferring the applicant from Jhansi Division to Agra Division on the same grade and post."

2. The facts of the case in brief, as stated in the O.A. are that the applicant is Mail Driver and is working in Jhansi Division. On creation of new Railway Division, options/registrations were invited from the employees for transfer from one Division to another division and the applicant applied and was registered for transfer from Jhansi to Agra Division. Citing letter dated 4.11.2002 (Annexure 03) it is averred that the Running staff are not included in the same of this calling option for transfer and will be dealt separately. 4 persons who were registered later than the applicant were transferred on 18.6.2003, but the applicant was not transferred though his registration was dated 10.8.2001. It is further averred that the applicant was transferred to Jhansi, while many of the Drivers, who were at Gwalior, Mathura and Agra were taken in Agra Division, a newly created Division. The applicant represented for transfer on 13.1.2006 with subsequent reminders. The applicant pleads for his transfer to Agra on the ground of his ailing old mother, as also for violation of letter dated 30.11.2004 (A-6) providing therein that "The above change shall result into additional recruitment of 5 sets of Mail Crews in Agra Division rendering 5 sets of such crew surplus in Jhansi requiring transfer of these posts from Jhansi to Agra Division." Their action is malafide, arbitrary and bad in law as they have not complied with the views expressed by this Tribunal in O.A. No. 442 of 2006 decided on 2.5.2006. Hence the O.A.

3. On notice, the respondents have filed the counter affidavit denying the averments made in the OA. It is further stated that the name of the applicant was registered for transfer to Agra and Gwalior stations which fell then under Jhansi division at priority nos. 5 and 1 respectively. Then the Agra division was carved out and both these stations fell under JHs division. The name of applicant was registered for transfer to Agra/Gwalior on 10.8.2001 while the letter contained in Annexure -3 was issued subsequently i.e on. 14.11.2002,

hence it is not applicable in the case of the applicant. It is further stated that registration of Sri Liyaqat Ali is dated 2.12.2000 i.e. prior to applicant and Sri Liyaqat Ali was transferred to Agra Station on 18.6.2003 i.e. before the closure of the cadre ie. 30.9.2003 after carving the Agra Division. The other employees transferred to Mathura Jn. were passenger drivers. Regarding the letter dated 30.11.2004, it is stated that only the posts of LP (M) were transferred and not the incumbents. The representation dated 13.1.2006 was not within the zone of consideration because "(a) there was no provision of obtaining option from running staff as per policy decided by HQ/CSTM's letter dated 14.11.2002 and (b) AS per Rly. Board's policy, the inter division/inter railway transfer is not permissible in intermediate grade. It is permissible only in recruitment grade on bottom seniority as per extant rule and (c) as the cadre was closed on 30.9.2003, such transfers were to be made on inter-divisional basis instead of on the basis of registration on own request." (CR -1). In compliance of the direction of the Tribunal passed in O.A. No. 42 of 2006 order dated 11.9.2006 has been passed.

4. The applicant has not chosen to file Rejoinder.

5. The learned counsel for the respondents has filed written arguments reiterating the contentions made in the Counter, per order dated 29.11.2012, allowing the time conceding to the prayer for the learned counsels by the Tribunal. The learned counsel for the applicant has not filed written arguments even after expiry of time provided for the purpose.

6. I have heard the learned counsels for the parties and perused the pleadings on record. The learned counsel for the applicant while arguing his case has laid much stress on the circulars contained in Annexure A-3 and Annexure A-6 to the O.A., in violation of which the applicant has not been transferred to Agra/Gwalior Division. He has further argued that the persons

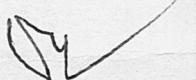


who were registered later than the applicant for transfer, have been transferred, but the applicant has not been transferred, which is an arbitrary and malafide action. The learned counsel for the respondents, has on the other hand argued that the circular contained in Annexure A-3 was issued after the registration of the applicant for transfer and the registration of Liyaqat Ali was earlier to the applicant and the other persons were passenger drivers and their case is not comparable to the applicant. It is further argued that the inter division/inter railway transfer is not permissible in intermediate grade and the cadre was closed on 30.9.2003, such transfers were to be made on inter-divisional basis instead of on the basis of registration on own request."

7. I have given thoughtful consideration to the rival contentions of the parties, and the pleadings including the written arguments. It is seen from the record that besides Liyaqat Ali whose registration is said to be earlier to the applicant, two other persons namely Shri Munesh Singh and Shri H.C. Arora (A-4) whose registration for transfer was later than the applicant, have also been transferred. Regarding them, the respondents have taken the plea that they were transferred to Mathura Jn. in the capacity of Passenger Drivers. But the fact remains that both these employees are similarly placed like that of the applicant, inasmuch as they belong to running staff (Drivers). The respondents have not been able to place any authority distinguishing the two categories of running staff i.e. LP (M), to which the applicant belongs and the Passenger Driver, to which category Shri Munesh Singh and Shri H.C. Arora belong. In my considered opinion, all the three persons including the applicant belong to running staff. By transferring the two persons mentioned above and not transferring the applicant, the respondents have not acted fairly and in equitable manner. As the applicant was registered for transfer prior to the above two persons (running staff), he ought to have been transferred to



Agra/Gwalior Division first. Consequently, the claim of the applicant has merit. The O.A. is allowed. Impugned order dated 11.09.2006 (Annexure-1) is quashed. The respondents are directed to transfer the applicant to Agra Division on the same grade and post. No costs.


Member(A)

S.a.