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Date of order : 25.04.2000.

1. O.A.NO.342/99.
2. OA NO.343/99.
3. OA NO.344/99.
4. OA NO.345/99.

Ganga Ram S/o Shri Kaluji aged 46 years, Fitter Gr.II, Carriage and Wagon, W.Rly.Abu Road, Dist.Sirohi, R/o Rly.Colony, Abu Road.

...Applicant of OA NO.342/99

Nawal Singh S/o Shri Veer Singh aged 44 years, Fitter Gr.II, Carriage and Wagon (W.Rly.Abu Road, Dist.Sirohi,) R/o Railway Colony, Abu Road.

...Applicant of OA NO.343/99

Hari Kishan S/o Shri Har Lal aged 49 years, Fitter Gr.II, Carriage and Wagon, W.Rly.Abu Road, Distt.Sirohi, R/o Railway Colony, Abu Road.

...Applicant of OA NO.344/99

Babu Lal S/o Shri Birdichand aged 45 years, Fitter Gr.II, Carriage and Wagon, W.Rly.Abu Road, Rly.Colony, Abu Road.

...Applicant of OA NO.345/99

VERSUS

1. Union of India through the General Manager, W.Rly, Church Gate, Mumbai.
2. Divisional Railway Manager, W.Rly. Ajmer.
3. Senior Section Engineer (C&W), Abu Road, District Sirohi.

...Respondents in all the OAs.

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CORAM :

HON'BLE MR.A.K.MISRA, JUDICIAL MEMBER

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Mr.Vijay Mehta, Counsel for the applicants.

Mr.S.S.Vyas, Counsel for the respondents.

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ORDER

BY THE COURT :

In all these O.As the impugned transfer order dated 15.10.99/

2.11.99 (Annex.A/1), has been challenged. Facts of the case and the relief sought by the applicants are similar to each other, therefore, these O.As are disposed of by one common order.

2. In O.A.No. 342/99, the applicant was promoted from the post of Fitter Grade III to Fitter Grade II at the same station whereas applicants of other three O.As were promoted ^{first and then transferred} to Abu Road on their own request as Fitter Grade II against the vacancies of Fitter Grade I. The difference as narrated above, will not affect the case pleaded by the applicants but the difference has been mentioned just to distinguish one case from other three cases.

3. In all the OAs the applicants have prayed that the impugned transfer order dated 2.11.99 (Annex.A/1) transferring the applicants ^{to Gandhidham} be quashed and the respondents be directed to continue the applicants at Abu Road.

4. By the impugned order, the applicants were transferred from Abu Road to Gandhidham. As per the reply the applicants were relieved of their charge by the authorities at Abu Road and are said to have been taken over at Gandhidham.

5. The applicants have challenged the impugned transfer order on the ground that the transfer is a mid-term transfer and would affect the studies of the school going children. The syllabus and the language are different at these places i.e. at Abu Road and Gandhidham. The applicants have been disturbed in order to accommodate few of the employees of the category of Fitter Grade I who have been transferred from Madar to Abu Road, the applicants have been transferred to Gandhidham on the link vacancies of Fitter Grade I and not on the vacant posts of Fitter Grade II, at least three vacancies of the cadre of Fitter Grade II are available at Abu Road and yet the applicants have been transferred to Gandhidham, thus, the transfer of the applicants is mala fide.

6. Notice of the OAs was given to the respondents who have filed their separate reply in each of the cases. It is stated by the respondents that there is no vacancy of the cadre of Fitter Grade II at Abu Road, hence, the applicants were transferred to Gandhidham. It is alleged by

the respondents that vide order dated 30.6.99 (Annex.R/1), 87 posts of various categories were transferred to Madar Depot from various stations and consequently few transfers were made transferring the persons from Abu Road to Madar. Since there was no post of the cadre of Fitter Grade II ^{at Abu Road} and the applicants were working against the posts of Fitter Grade I, therefore, they were transferred to Gandhidham. They were not transferred on account of adjustment of persons of the cadre of Fitter Grade I. It is further stated by the respondents that on account of transfer of certain posts of the rank of Fitter Grade I from Abu Road to Madar, the working strength of Fitter Grade I was reduced to 7 and, therefore, six persons of the rank of Fitter Grade I, who were earlier transferred to Madar, were retained at Abu Road. It is also alleged by the respondents that no person junior than the applicants has been retained at Abu Road. Those who have been retained at Abu Road against the vacancies of Fitter Grade I are senior to the applicants. Since there is no post available of the rank of Fitter Grade II, therefore, retirement of three persons and thus availability of three vacancies for adjustment of three applicants is not factually correct. There is no mala fide in transferring the applicants and, therefore, the OAs deserves to be dismissed.

7. The applicants have filed rejoinder to the reply of the respondents and the respondents have filed reply to the rejoinder along with seniority list of the cadre of Fitter Grade II.

8. I have heard the learned counsel for the parties and have gone through the case file. It was argued by the learned counsel for the applicants that the applicants other than Shri Ganga Ram, were brought to Abu Road on their own request in the year 1999 as per order Annex.A/2. If there existed no post of Fitter Grade II at Abu Road then why they were brought to Abu Road. It is further argued that at Gandhidham also, there exists no posts of Fitter Grade II yet the applicants have been transferred. Thus, there is possibility that the applicants may again be disturbed in near future as and when persons of the rank of Fitter Grade I are available for posting. Thus, the present transfer is mala fide one or is a result of colourable exercise of power. On the other hand, the

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learned counsel for the respondents has argued that from time to time, the working strength of various cadres at various places, is reviewed and consequently posts are transferred from one place to another place. When 87 posts of various ranks were transferred to Madar as a result of administrative review, it was felt that the applicants could not be continued any more at Abu Road against the vacancies of Fitter Grade I, as there were 13 persons of the rank of Fitter Grade I ^{who} were available against the available vacancies numbering 15 of the rank of Fitter Grade I. Therefore, senior most two Fitter Grade II, were retained against the remaining two vacancies of Fitter Grade I and rest of the Fitter Grade II were transferred. He has further argued that transfers made in exigencies of administration cannot be interfered with.

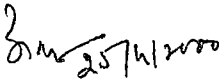
9. I have considered the rival arguments. In my opinion, no case of colourable exercise of power or mala fide transfer has been made out by the applicants. The applicants have been transferred because of the administrative exigencies. If no posts of the rank of Fitter Grade II are available at Abu Road then the applicants cannot be ordered to be retained against the posts of Fitter Grade I resulting into disturbance to candidates of Fitter Grade I. No doubt, earlier applicants were adjusted and allowed to work against the vacancies of Fitter Grade I but this does not entitle them to continue at Abu Road. Against the available higher grade vacancies, persons of lower cadre of the same line, can be adjusted against such vacancies and, therefore, if the applicants have been transferred to Gandhidham against the vacancies of Fitter Grade I, this transfer cannot be termed as mala fide transfer. Adjustment of the applicants earlier at Abu Road at their own request also cannot help them to continue at Abu Road.

10. The ground of mid-term transfer is now not available to the applicants as the education session has come to an end. The applicants have a transfer liability in whole of the Western Railways, therefore, the applicants cannot claim to be retained at Abu Road on the ground of ^{language} ~~any~~ problem while they are being transferred to Gandhidham. To surmount such difficulties, central schools have been established at various

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places with a uniform educational pattern and syllabus. Language can be opted accordingly. In my opinion, the applicants have not been able to establish that their transfer is mala fide one. Hon'ble the Supreme Court has time and again propounded the principle that transfers can only be interfered with if the same has been established to be a result of colourable exercise of power or due to some malafides. In the instant case, no such grounds are established so as to enable the Tribunal to interfere in the impugned transfers. The OAs, are in my opinion, have no force and the same deserve to be dismissed.

11. The OAs are, therefore, dismissed at the admission stage. The parties are left to bear their own costs.


(A.K.MISRA)
Judicial Member

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jrm

order Copy Receive in respect of following case
on 21.12

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OA 344/95

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Recd
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(S.S. Vyas)
Advo.

Recd Copies of orders in

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Part II and III destroyed
in my presence on 1-9-1906
under the supervision of
section officer (J) as per
order dated 29-1-1906

Section officer (Record)