

**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 155/2006

Date of Order: 06/3/2006

**HON'BLE MR. N.D. RAGHAVAN, VICE CHAIRMAN.
HON'BLE MR. SHANKAR PRASAD, ADMINISTRATIVE MEMBER.**

Yaswant Singh S/o Shri Heera Lal, aged 44 years, resident of Udaipur, presently working on the post of Loco Pilot (Shunting) under the Loco Foreman, North Western Railway, Udaipur (Rajasthan).

...Applicant.

Mr. A.K. Khatri, counsel for applicant.

VERSUS

1. Union of India, through the General Manager, North Western Railway, Jaipur.
2. The Divisional Railway Manager, North Western Railway, Ajmer Division, Ajmer.

...Respondents.

Mr. Salil Trivedi, counsel for respondents.

ORDER

[Per Mr. Shankar Prasad, Administrative Member]

By this Original Application, the applicant seeks a direction to the respondents to quash that part of the order dated 18.07.2006 by which he has been transferred from Udaipur to Abu Road. The promotion order dated 16.04.2002 shows that the applicant was posted and also promoted at Udaipur City. The note after the names of the employees is as under:

"Employees posted at Abu Road and Udaipur City have been promoted against link vacancies in higher grade. They will be adjusted at the places where vacancies will become available."



(2)

The respondents by the impugned order have reverted 21 Loco Pilot (Shunting) to the post of Senior Loco Pilot (Diesel Assistant) as being in excess of cadre. While reverting, 11 persons belonging to SC/ST have not been reverted as they have been adjusted against the roster point. The name of the applicant is not included in the said list. The applicant has ^{only} ~~also~~ been transferred to Abu Road on the ground of having become surplus in Udaipur City.

2. The case of the applicant in brief is that person can be declared surplus to the cadre only and not to a particular place. He cannot be transferred against non-vacant post at Abu Road. If such a post is not available then special supernumerary post is required to be created. Various other provisions relating to surplus employees have been referred to. The applicant seeks quashing of the impugned order. While issuing notice, the implementation of the impugned order was stayed and the said interim relief has been extended from time to time.

3. The respondents have filed the detailed reply. They have stated that the applicant has been transferred in administrative exigencies. The sanctioned strength of Loco Pilot (Shunting) at Udaipur is 2 posts and 24 Loco Pilot (Shunting) were working there. Out of 22 excess Loco Pilot (Shunting) working at Udaipur, 12 were reverted to their



(3)

substantive posts and 10 Loco Pilot (Shunting) including the applicant have been transferred out. The applicant has not been declared surplus on account of abolition of posts. There is no question of following the policy of surplus staff in the instant case. They have requested that the present Original Application be dismissed.

4. The Tribunal, while issuing the notice, took note of the fact that the transfer order is silent about the vacancy at Abu Road and had granted the interim relief till the next date and the same has been extended from time to time.

5. The respondents in para 8 of the reply have stated as under:

"8. It is further submitted that the vacancy of Loco Pilot (shunting) were arisen at Abu Road after reversion from Loco Pilot (shunting) to Loco Pilot (Diesel Assistant) and their transfer from Abu Road to Ajmer on the name noting basis, therefore as many as 7 vacancies arose due to the this reversion and transfer. Thus, 7 Loco Pilot (shunting) including the applicant have correctly been transferred from Udaipur to Abu Road against clear vacancies of Loco Pilot (shunting) at Abu Road."

6. We have also come across in O.A. No. 25/2007 (Narain Lal & Ors. vs. Union of India & Ors.) – a statement showing the position of running staff of Ajmer Division as on September, 2008 at various places including Ajmer, Abu Road, Udaipur, etc. If we consider the position of Loco Pilot (Shunting) and higher posts of Loco Pilot (Goods), Loco Pilot



(Passenger) and Loco Pilot (Mail Express), we find that in Abu Road, there is a shortage of 20 running staff while at Udaipur, there is a surplus of 3 staff.

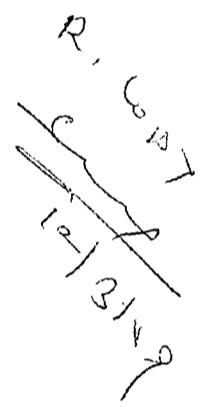
7. A bare perusal of the impugned order dated 18.07.2006 (Annex. A/1) also shows that the applicant has not been reverted from the post of Loco Pilot (Shunting). ^{in to be} He has been found ⁱⁿ excess of the sanctioned strength. ⁱⁿ Besides this the reply gives the reasons about vacancy also. The same has not been controverted by filing a rejoinder.

8. It is well settled that a transfer order can be challenged only on three grounds, namely, that (a) it is issued by incompetent authority, (b) the relevant rules have not been taken into account and (c) the transfer suffers from mala fide. It is well settled that whom to post where is an executive function. ^{Such is not the case here.} ⁱⁿ

9. Under these circumstances, we found no illegality in the aforesaid impugned order. The Original Application is fit to be dismissed and is dismissed with no order as to costs.

Shankar Prasad
[SHANKAR PRASAD]
ADMINISTRATIVE MEMBER

N.D. Raghavan
[N.D. RAGHAVAN]
VICE CHAIRMAN



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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH, JODHPUR

ORDER SHEET

Misc. APPLICATION NO.128.... OF 2008 in OA 155/2006

Applicant(s) 401 & CBS

Respondent(s) Yashwant Singh

Advocate for Mr. Salil Trivedi

Advocate for Mr. A.K. Khatri

Applicant(s)

Respondent(s)

Notes of the Registry	Orders of the Tribunal
<p>This is a misc. Application filed by the applicants u/s R. 47 of CAT Rules of Practice, 1993 for early hearing of O.A. No 155/2006. It is DB case. All pertains to the jurisdiction of Jodhpur Bench.</p> <p>Copy of the M.A. has already given to opposite Counsel Mr. A.K. Khatri Adv. on scowlity, it has no defects.</p> <p style="text-align: right;">(P) 14/11/08</p>	<p><u>MA No. 128/2008 in OA No. 155/2006,</u> <u>MA No. 129/2008 in OA No. 305/2006 and</u> <u>MA No. 130/2008 in OA No. 151/2006</u></p> <p><u>Date of Order: 19.11.2008</u></p> <p>Mr. Salil Trivedi, counsel for applicants in these M.As. (respondents in O.As.) Mr. A.K. Khatri, counsel for respondents in these M.As. (applicants in O.As.).</p> <p>These Misc. Application Nos. 128/2008, 129/2008 and 130/2008 are filed by the respondents in the Original Application Nos. 155/2006, 305/2006 and 151/2006 for early hearing.</p>
<p>14.11.2008</p> <p>Mr. Salil Trivedi Counsel for Applicants</p> <p>Register put up in Court R. Commision on 19-11-2008 alongwith OA.</p> <p style="text-align: right;">(P) 14/11/08</p> <p style="text-align: right;">REGISTRAR CAT, JODHPUR Name MR. T. J. TAYYAB 14/11/08</p>	<p>For the reasons given in the Misc. Applications, they are allowed.</p> <p>Accordingly, all the aforesaid Original Applications may be listed for hearing on 11.12.2008.</p> <p style="text-align: right;">(P) [Tarsem Lal] Member (A)</p> <p style="text-align: right;">(P) [George Paracken] Member (J)</p>

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Section officer (Record)