

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

ORIGINAL APPLICATION NO. 106/2008

Date of Order: 25-5-2008

HON'BLE Mr. V.K. KAPOOR, ADMINISTRATIVE MEMBER

Gajendra Singh Sindal S/o Shri Tej Singhji, aged about 42 years, R/o L-66A, Railway Colony, Dhabighat, Abu Road, at present employed on the post of Diesel Instructor, at Diesel Training Centre, Abu Road, Ajmer Division, North Western Railway.

....Applicant

Mr. J.K. Mishra : counsel for applicant.

VERSUS

1. Union of India, through General Manager, Western Railway- Church Gate, Mumbai.
2. General Manager, North Western Railway, Jaipur.
3. Sr. D.M.E. (Diesel), Diesel Shed Abu Road, N.W. Railway.
4. Laxman Ram Rana, Mail/Express Driver, Abu Road, Ajmer Division, North Western Railway.

....Respondents.

Mr. Kamal Dave : counsel for respondent No.1.

Mr. S.K. Malik : counsel for respondent No.4.

None present for respondents No.2 & 3.



ORDER

(Per Hon'ble Mr. V.K. Kapoor, Administrative Member)

Shri Gajendra Singh Sindal has filed the present OA against the order of respondents dated 27.4.2007 (Ann.A-1). The applicant has sought the reliefs that are as follows:-

- "(i) the official respondents may kindly be directed to implement the order dated 27.4.2007 (Ann.A-1) with all consequential benefits.
- (ii) any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances to this case in the interest of justice.
- (iii) the costs may also be awarded to the applicant."

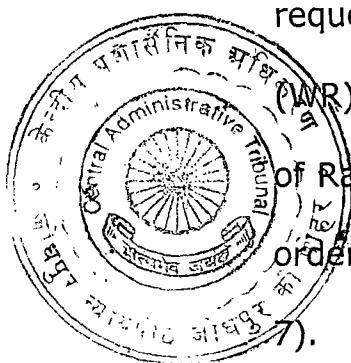
2. The facts of the case in brief are that the applicant was appointed on the post of diesel assistant posted at Bhavnagar division. He was further promoted to the post of Shunter, goods

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and passenger driver; selected for the post of diesel instructor (tenure post) in scale of Rs.6500-10500 vide order dt 11.5.1999. He was promoted in scale of Rs.6000-9800 on the post of mail/ express driver at Bhavnagar (WR) in 2001; but he continued to be on deputation on the post of diesel instructor at Abu Road (NWR). The applicant submitted an application for mutual exchange transfer with respdt 4; forwarded to DRM (P), Ajmer on 07.11.2006 (Ann.A-2, A-3). There was no objection to respdt 2 for applicant's transfer for which he wrote to respdt 1 vide letter dt 06.02.2007 (Ann.A-4, Ann.A-5). The respondent 4 was directed to be relieved first to report to Bhavnagar division (Ann.A-1). The respondent 4 requested to respondent 2 to relieve him to join at Bhavnagar (PWR) vide letter dt 17.01.2008 (Ann.A-6). There are instructions of Railway Board dt 21.4.2005 that once mutual exchange transfer orders are issued, the concerned parties should not retract (Ann.A-7). The similarly situated persons allowed mutual transfer, their orders were executed vide order dt 06.9.2007 (Ann.A-8). The applicant has prayed that the official respondents to implement the order dt 27.4.2007 with all consequential benefits (Ann.A-1).

3(a). The respdt 1 & respdts 2 & 3 in reply have stated that the mutual transfer order dt 27.4.2007 between applicant & respdt 4 is not been implemented. Later vide order dt 11.4.2008, the same was cancelled (Ann.R-1), thus the relief claimed does not survive. The mutual transfer order is passed for the same category; applicant belongs to general category & respdt 4 belongs to reserve category (SC). This order stands in pursuance of orders passed by High Court of Kerala; Railway Board issued instructions dt 14.8.2007 in this regard (Ann.A-2). Thus, the transfer orders dt

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27.4.2007 were rightly not executed in the light of orders of Railway Board dt 11.4.2008. It is averred by official respondents that applicant was working at Abu Road under Ajmer division on deputation. The main question relates to relieving respondent 4 from Bhavnagar (WR). The instructions of Rly Board dt 14.8.2007 are quite clear & specific that mutual transfers be carried out in the same category only. The DRM (Estt.), Ajmer vide letter dt 25.4.2008 intimated the official respdts that this mutual transfer cannot be considered in view of letter dt 14.8.2007. The request of two employees for inter-railway transfer cannot be claimed as a matter of right. One of the conditions of transfer is that the respdt 4 after being relieved, only then applicant would be relieved. After creation of new NW Rly zone at Jaipur, the applicant never applied for option. The respdt 4 has not reported at Bhavnagar division. The mutual transfer solely depends on administrative convenience, but same cannot be considered being an employee's right.



3(b). Learned counsel respdt 4 in reply has stated that GM (E) WR, BVP has conveyed sanction for transfer to GM (P) NWR, Jaipur. The DRM, WR Bhavnagar has not yet issued applicant's transfer to NWR, Ajmer division, DRM (E) Bhavnagar has issued applicant's promotion order on 07.10.2008 (Ann.R4-1). The orders for mutual transfers are not issued earlier by DRM (E), Ajmer or DRM (E) Bhavangar till 30 Sept, 2008 (Ann.R4-2). In view of serious family problems; respdt 4 had moved for his transfer to Bhavnagar. Vide Railway Board's circular dt 14.8.2007, mutual transfers should be allowed between same category of employees, The DRM, Ajmer vide letter dt 25.4.2008 has shown his unwillingness to consider mutual transfer, the respdt 4 is to retire on 31.12.2011. As he is

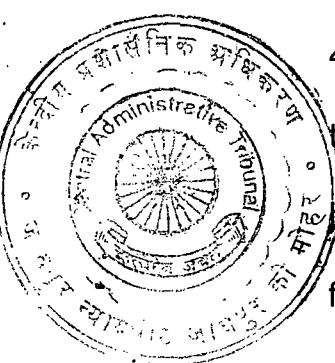
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left with 02 years of service, as per Rly Board's policy, he cannot be transferred out of his work place. The contentions of respdt 4 are supported by an additional affidavit of 06 May, 2010.

3(c). Learned counsel for applicant in rejoinder has stated that respdt 4 submitted an application for mutual transfer (Ann.A-6); he is to be relieved first. The respdt 4 was pressing hard to relieve him, the competent authority issued an order dt 29.8.2008 (Ann.A-9) for compliance of order dt 06.02.2007 (Ann.A-5). The family grounds raised by respdt 4 are not correct. The instructions of Rly Board dt 14.8.2007 are not relevant as sanction for transfer is given much earlier; thus not applicable retrospectively.

4(a). Learned counsel for the applicant in arguments has stated that the applicant belongs to Bhavnagar division (WR) and respdt 4 belongs to Ajmer division (NWR). The applicant & respdt 4 moved for mutual transfer, permission was given by GM, NWR, Jaipur vide order dt 06.02.2007 (Ann.A-5); the order by GM, WR, Mumbai dt 27.4.2007 (Ann.A-1) was issued; respdt 4 was to be relieved first. The transfer order was passed after considering facts & circumstances. The authorities did not relieve respdt 4; who requested on 17.01.2008 for an early action/compliance (Ann.A-6). This is not a normal transfer, in mutual transfer, there is no loss to junior; the loss is to incur to applicant in terms of seniority. Rule 230/226 IREM (Vol.I) speak of mutual & inter railway transfers. In similar cases, transfer on mutual request was implemented on 06 Sept, 2007; later NWR vide letter dt 11 April, 2008 wrote to cancel the transfer order (Ann.R-1). Later, on 28 Aug, 2008 the cancellation of transfer was withdrawn by competent authority; an overall view



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was taken, the mutual transfer was maintained. As the transfer is upheld by the competent authority, this should be maintained. The respdt 4 can't be allowed to behave differently and take many a stance at times. The applicant has filed an affidavit in support of his contentions on 08 Oct, 2010 (Ann.A-10). In execution of transfer, the Rly Board's circular cannot be made applicable from retrospective date; the employees should not be discriminated. The applicant is not interested in promotion, once consent for mutual transfer is given, it cannot be withdrawn.

4(b). Learned counsel for respondent 01 in arguments has stated that the applicant was posted in the present cadre, Bhavnagar, then posted to Abu Road in Ajmer division (NWR). Under mutual transfer conditions, respdt 4 was relieved first. No post is available for carrying out this transfer, order of promotion for applicant in WR stands. As no post was available in WR; NWR was not ready for mutual transfer, because other incumbent was not available. The mutual transfer being an administrative matter, this cannot be taken as a matter of right. If a person loses seniority, this transfer should not be implemented. Applicant holds post of promotion and seniority in the cadre, whereas respondent 4 cannot get promotion.

An order agreed upon in 2003, loses its weight after a lapse of time. The Rly Board vide order dt 14.8.2007 issued directions that transfer be carried out in the same category/cadre only; applicant is of general category, but respdt 4 comes from reserve category. Unless the conditions are fulfilled, applicant does not claim transfer as implemented, the policy norms are to be carried out in toto. It is noteworthy that respdt 4 was never relieved; he failed to joint at Bhavnagar. The applicant was promoted 10 years back, he can't

Answer

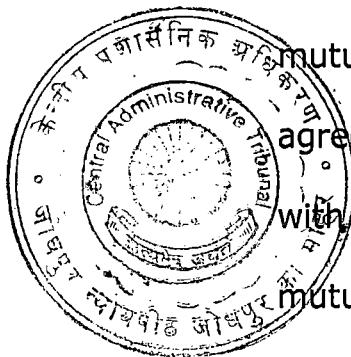
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treat transfer as a matter of right. The order of NWR, Ajmer dt 08 Oct, 2008, throws the burden on applicant to prove his case; a new seniority can't be assigned to a person in a garb of transfer.

4(c). Learned counsel for respdt 4 in arguments has stated that he being of reserve category, the mutual exchange/transfer can't be implemented as per Rly. Board's circular dt 14 Aug, 2007. In the light of judgment of High Court, Kerala, the Rly Board also drafted the conditions for mutual transfer, this circular is based on order of CAT, Ernakulam; then upheld by High Court Kerala. The applicant is duty bound to respond to directions of Rly Board dt 14.8.2007. The respdt 4 made a request to the official respdts to cancel this mutual transfer & its execution, but the parties should initially agree, besides employers' consent. Further, the respdt 4 is left with near 1½ years of service, thus he does not want that the mutual transfer to be carried out. In support of his contentions, counsel for respdt 4 has cited the cases of 2008 AIR (SC) 336, 2004 AIR (SC) 1391. As less than 02 years are left in the super-annuation of respondent 4, under these conditions he should not be transferred, therefore, mutual transfer should not be allowed.

5. The applicant submitted an application for mutual transfer with respdt 4 as per Ann.A-2. The applicant was mail/express train driver (Rs.6000-9800-rp) WR. Bhavnagar, on deputation/employed on the post of diesel instructor at Diesel Training Centre, Abu Road, Ajmer Division (NWR). The respdt 4 was driver in mail/express trains, Abu Road, Ajmer Division (NWR). Both moved application for mutual transfer; a subject of inter-railway transfer as per rule 226/230 IREM (Vol.I); the GM, NWR Jaipur initiated action on

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receipt of letter from GM (P) WR Mumbai dt 11.10.2006 (Ann.A-3).

The DRM (Estt) NWR vide letter dt 20.01.2007 (Ann.A-4). The DRM (Estt), NWR gave NOC for this mutual transfer. Then after, GM, NWR Jaipur wrote to GM, WR Mumbai on 06.02.2007 quoting terms, conditions & agreements between both the employees. It is noteworthy that both these employees loco diesel drivers of mail/ express trains were in pay scale of Rs.6000-9800; but respdt 4 was to be relieved first (Ann.A-5). Thenafters, on 17.01.2008, respdt 4 made a request for expediting this case of mutual transfer. Actually, the delay took place because of non-relieving of respdt 4 by NWR authorities. The applicant has quoted instructions of Rly Board dt 21.4.2006 as regards back tracking by one party in the mutual transfer case (Ann.A-7). The applicant has placed a case of similarly situated employees' transfer being implemented vide letter/order of DRM, Jaipur dt 06.9.2007. It is noteworthy that this mutual transfer was cancelled vide order dt 11.4.2008 (Ann.R-1). The grounds were relating to pay protection of respdt 4 & loss of seniority at new posting place. It is alleged that applicant holds promotion post & seniority in the cadre, whereas respdt 4 stands on sticky wicket in terms of seniority & pay protection etc.

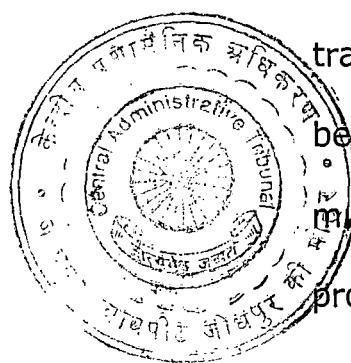
6. The official respondents have quoted the order dt 11.4.2008 (Ann.R-1) by which the mutual transfer was not agreed upon, thus cancelled. This is highlighted that applicant belongs to general category whereas respdt 4 comes from reserve category (SC); thus their mutual transfer dt 06.02.2007 would be treated as cancelled. In OA 851/1999 before CAT, Ernakulam bench, in order dt 31.12.2001, this was held that mutual transfer should be allowed between staff belonging to the same category (i.e. general with

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general, SC with SC & ST with ST). In OA 612/2005, the CAT, Ernakulam bench directed that Rly Board should decide policy arising out of High Court of Kerala's order dt 07.6.2006. It is noteworthy that High Court of Kerala upheld this order of CAT, Ernakulam bench. The Rly Board as per rules 102A, 310, 312 of IREM (Vol.I) adopted directions of Kerala High Court in principle that mutual transfers would be carried out in the same categories of employees only; thus vide order dt 11.4.2008, rejected the request mutual transfer of both these employees/loco drivers.

Thus, it is not a matter/question of backing out from transfers mutually agreed upon as quoted in Rly Board's circular dt 21.4.2006 (Ann.A-7). In fact, the applicant's case for mutual transfer was not minutely examined vis-à-vis that respdt 4 belonged to reserve category (SC). Thus implementation of such mutual transfer was likely to create related problems as regards to promotion etc. The Rly Board was forced to consider the further promotional aspects as well, in para 3.1 of the instructions dt 14.8.2007 (Ann.R-2) that such transfer should be allowed only against vacant direct recruitment quota, not against promotion quota posts. Thus, the aspect of future promotion/seniority to the respdt 4 would be covered in these instructions. The respdt 4 had expressed these apprehensions in regard to maintaining his relative seniority if the mutual transfer was implemented. The instructions relating to transfer are subject to change/amendment from time to time, these being a continuous process, cannot be relegated to back seat in the guise of retrospective effect. Taken otherwise also, the directions of CAT, Ernakulam bench and Kerala High Court case in 2005, prior to the present mutual transfer case.

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These important aspects cannot be shelved, the instructions of Rly Board dt 14.8.2007 are to be looked into in wider perspective.

7. The applicant has drawn attention to letter/office order of GM (P) office, NWR, Jodhpur dt 29.8.2008 (Ann.A-9) by which inter railway mutual transfer issued vide letter dt 06.02.2007 would hold good; thus the cancellation orders issued vide this office letter dt 11.4.2008 would be treated as withdrawn. In pursuance of this order, the DRM (Estt) NWR, Ajmer vide order dt 08 Oct, 2008 gave certain directions for effecting this mutual transfer case (Ann.A-10, Ann.R-1). But subsequently, the respondent 4 made a request to cancel this inter railways transfer order because of his pressing family problems vide letter dt 30.9.2008 addressed to DRM (Estt) NWR, Ajmer (Ann.R4/2, 4/3). The respdt 4 has submitted proof as regards death of his father on 25.11.2006 etc and given affidavit in support of these contentions. The application for cancellation of his transfer was moved by respdt 4 on 30.9.2008 due to changed family circumstances. In view of Rly Board's circular dt 14.8.2007, the present case of mutual transfer cannot be implanted or allowed as he belongs to reserve category whereas applicant comes from general category. The respdt 4 is to retire on 31.12.2011, thus less than 02 years are left in service. The request of two employees for inter-railway transfer cannot be claimed as a matter of right. The administrative exigencies and limitations are to be adhered to while allowing such request of employees. The transfer of these two employees has not materialized till to date; the respondent 4 has also shown his unwillingness for change from present place. The respondent 4 is left with less than 02 years period for retirement. Thus, keeping in view the unwillingness on the part of respdt 4, the

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present mutual transfer need not be implemented in all fairness. The conditions of mutual transfer are not fulfilled in overall purview of the matter. The balance of convenience is in favour of respdt 4. Therefore, the official respondents have rightly decided not to shift respondent 4 from the present posting place, thus the applicant's transfer cannot be given effect in the prevailing circumstances.

8 In the light of deliberations made above, no case is made out in applicant's favour. Accordingly, the order dated 27.4.2007 (Ann.A-1) needs no intervention. Resultantly, the present OA is hereby dismissed. No order as to costs.

V.K. Kapoor
(V.K. KAPOOR)
ADMINISTRATIVE MEMBER

