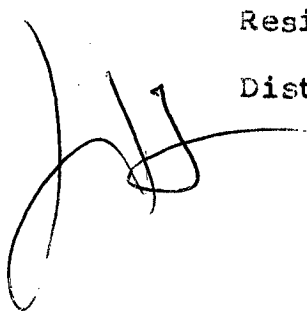


IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH: PATNA

Registration No.OA-130 of 1996

(Date of order 7th May, 2000)

1. Yogendra S/o Dukhan working as Sr.Unskilled Khalasi, resident of Village-Jahangirpur, Post - Sonpur, District - Saran.
 2. Bhairo Lal S/o Lal Muni, resident of village, Bachiyakali Toli, Post - Sidhwaliya, District Gopalganj.
 3. Nageshwar Rai, S/o Suba Rai, resident of village Chitrasenpur, Post -Sonpur, Distt.Saran.
 4. Bulkan S/o Namdhari, Resident of Village Gangajal Tola, Post Sonpur, Distt. Saran.
 5. Ram Prasad Das, S/o Ramswarop Das, Resident of village - Jahangirpur, Post Sonpur, Distt.Saran.
 6. Ramashanker S/o Sarbjit, Resident of Village-Govindchak, Post Sonpur, District Saran.
 7. Ganpat Ram, S/o Lakhichand Ram, Resident of village Sonpur Adam, Post Sonpur, Distt.Saran.
 8. Suresh, S/o Tiku, Resident of village Bakhatha, P.O.Sonpur, Distt. Saran.
 9. Sita Ram, S/o Moti Rai, Resident of Village - Parma Nandpur, Post Sonpur, Distt. Saran.
 10. Banka, S/o Gani Rai, Resident of village - Sonpur Adam, ~~Post~~ Sonpur, Distt - Saran.
 11. Shivnath Sarma S/o Baij Nath Sharma, Resident of village - Baijalpur, P.O.Sonpur, Distt. Saran.
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12. Sameshwar S/o Patamber, Resident of Village -
Jahangirpur, P.O.Sonpur, Distt. Saran.
 13. Shivjee S/o Chita, resident of village Dighi,
P.O.Hajipur, District - Hajipur.
 14. Ramji Ram, S/o Rameshraya Rai, Resident of
village - Nararmira, Post - Sonpur, Distt.Saran.
 15. Ramdeo Das S/o Munshi Das, Resident of Village -
Hilalpur, Post, Hajipur, Distt - Hajipur.
 16. Raj Bali Mishra S/o Sri Krishna, Resident of
village -Jogam, Post Jogum, Distt. Deoria.
 17. Puran Singh S/o Kaman Singh, Resident of Village -
Pakariya, Post - Mahendra Nagar, Distt.Dhanusha
- All applicants working under IOW/Hajipur at
present.

.....Applicants

By Advocate: Shri M.P.Dixit.

Versus

1. The Union of India through General Manager,
N.E.Railway, Gorakhpur.
2. Divisional Railway Manager,
3. Sr. D.E.N., N.E.Railway, Sonpur.
4. A.E.N. N.E.Railway, Sonpur.
5. Inspector of Works, N.E.Railway, Hajipur.

..... Respondents

Advocate: Shri P.K.Verma.

Coram: Hon'ble Mr. Justice S. Narayan, Vice-Chairman.

Hon'ble Mr. L.HMingliana, Member (Administrative).

O R D E R

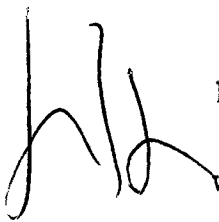
L.HMingliana, Member (A):

The 17 applicants were working as Sr. Unskilled
Khalasis under the Inspector of Works, North Eastern
Railway, at Hajipur when their O.A. was filed in September,
1996 and they were challenging the action taken by the

authorities for transferring them to Sonpur to work under the Permanent Way Inspector. Interim relief was not granted to them and their transfer order was issued on 20/26.2.1996 (Annexure-6). They were allowed to ~~amend~~ their O.A. to incorporate their transfer order as the impugned order and they have accordingly amended the O.A.

2. The applicants have already joined their posts under the Permanent Way Inspector at Sonpur and it is contended in the written statement filed on behalf of the respondents that their O.A. has become infructuous. It has to be clarified atonce that their O.A. has not become infructuous merely because they obeyed the transfer order and joined the posts to which they were transferred, provided they have a sufficiently good case against the order of their transfer.

3. The case made out by them is that under the Permanent Way Inspector at Sonpur, the nature of the work they would have to do would be different for which they were not well trained or experienced, ^{that} ~~though~~ while they were in an intermediate grade under the Inspector of Works, Hajipur they would have to be in the initial grade under the Permanent Way Inspector at Sonpur, and that their ~~prospect~~ prospect of promotion there would also be affected. It is also their case that their transfer was effected on the basis of the strength of sanctioned ~~staff and~~ the staff who were actually in position at Hajipur and at Sonpur as per the Book of Sanction (B.O.S), but the figures given in the B.O.S. were not correct and there was no warrant for their transfer.




4. In the written statement filed on behalf of the respondents, it is stated that as per the B.O.S.-III of 1994-95, the sanctioned strength ^{at Hajipur} under the Inspector of Works was 49, ^{while the actual strength was 91,} and it was necessary to effect the transfer to rectify the imbalance, which was purely an administrative matter, without affecting the rights and entitlements of the applicants. The Book of Sanction with effect from 1.4.1995 (B.O.S - III) has been furnished with the written statement, but it is not easy to follow the staff strength given in the documents as the names and places are given in abbreviated forms. The statements in the O.A. that the service conditions of the applicants would change if they are transferred to Sonpur to work under the Permanent Way Inspector is denied in the written statement. As regards the statement in the O.A. that the promotion prospects of the applicants would be affected, if they were to work under the Permanent Way Inspector, it is stated in the written statement that the promotion prospects are almost the same.

5. That applicants filed their rejoinder to the written statement, in which they have stated that their transfer to another unit without obtaining their consent was illegal and not permissible. They have mentioned the case of one Shri Maleshwar Singh, who was screened in the year 1993 and posted as Gangman under the Permanent Way Inspector, Sonpur but who was allowed change of his cadre on his application.

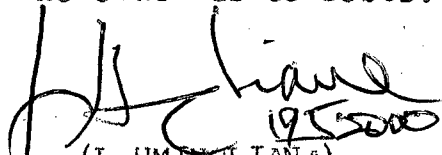
6. The applicants' learned counsel Shri M.P.Dixit stated that there were no corresponding posts under the permanent Way Inspector for the applicants and the prospects of promotion were also worse than under the Inspector of Works. He contended that if the transfer was for adjustment of surplus staff under the Inspector of Works at Hajipur, the Employees' Union should have been informed, but no such information was given to the union. He also contended that there were unskilled Khalasis in the pay scale of Rs.750-840 who were junior to the applicants in Hajipur and they should have been transferred instead of the applicants if the purpose was for adjustment of staff actually in position. He stated that the applicants would have no objection if they were transferred to other works side in the Division, but their objection is to their transfer to Permanent Way ~~side.~~

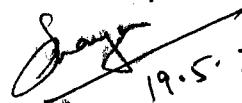
7. Shri P.K.verma, learned counsel for the respondents pointed out that the challenge to the Book of Sanctions in M.A 133 of 1998 was dismissed by the Tribunal on 13.7.1998 and accordingly the figures of the sanctioned strength of staff and the staff actually in position cannot be allowed to be raised now. He contended that the transfer was for adjustment of the surplus staff in Hajipur with the deficit in Sonpur and the Railways being a commercial undertaking, the adjustment was entirely an administrative necessity.



8. It is true that as per the Book of Sanctions, senior unskilled Khalasis under the Inspector of Works are an intermediary grade above unskilled khalasis, whereas under the Permanent Way Inspector, the pay scale is the lowest. But that cannot be a reason for quashing the transfers of the applicants because it is not their case that they will be getting less pay under the Permanent Way Inspectors. As regards the prospects of promotion, it is difficult to say for us whether they are better under the Inspector of Works than under the Permanent Way Inspector. Suffice it to say that the order of transfer of the applicants was not arbitrary or in contravention of the rules. Then the applicants are not entitled to relief.

9. In the result, the application is dismissed with no order as to costs.


(L. HMINGLIANA)
MEMBER (A)


19.5.2000
(S. NARAYAN)
VICE-CHAIRMAN

MAA