OA 510/98

Original OA No. 507/98

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

[redacted]

ORIGINAL APPLICATION NOS.: 507/98, 508/98, 509/98, 510/98 AND 511/98.

Dated this Thursday, the 30 day of July, 1998.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA, VICE-CHAIRMAN.

Robinson Amprose,
D.S.K. - III,
Mahalaxmi Stores Depot,
Bombay Division.

Residing at -
Room No. 2, Chawl No. 2,
New Chawl, Saba Road,
Diwa (East),
Dist. Thane.

.. .. Applicant in O.A. No. 507/98.

Smt. Narendra Kaur Anand,
Senior Khalasi,
Mahalaxmi Stores Depot,
Bombay Division.

Residing at -
Western Rly. Quarter No.
173/16, S. V. Road,
Bandra (West),
Mumbai - 400 050.

.. .. Applicant in O.A. No. 508/98.

Smt. Jayshree J. Arde,
O.S.-II,
Mahalaxmi Stores Depot,
Bombay Division.

Residing at -
Western Rly. Qtr. No. 73/7,
Matunga Road,
Bombay - 400 019.

.. .. Applicant in O.A. No. 509/98.

Munnar Ram Gampat,
O.S.-II, Mahalaxmi Stores
Depot, Bombay Division.

Residing at -
Kurla Navjeevan Co.Op Hsg.
Society Ltd., Narayan Nagar,
Hill No. 2, Room No. 17,
Ghatkopar (W),
Mumbai - 400 086.

.. .. Applicant in O.A. No. 510/98.

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Ashok Kumar K. Nigam,
Section Engineer,
E.M.U. Workshop,
Mumbai - 400 013.

Residing at -
Western Railway,
Quarters No. 411/A-1,
Santacruz (West),
Mumbai - 400 054. ... Applicant in O.A. No. 511/98.

(By Advocate Shri Purandare alongwith Shri A. I. Bhatkar)

VERSUS

1. Union Of India
through General Manager,
Western Railway,
Churchgate,
Bombay - 400 020.

2. Shri Seva Singh,
Controller of Stores,
Western Railway,
Churchgate Station Bldg.,
Bombay - 400 020. ... As Respondent Nos. 1 and 2 in all the five O.A.s

3. Dy. Controller of Stores,
Western Railway,
Shakti Mills Lane,
Opp: Laxmi Woolen Mills
Compound, Mahalaxmi,
Bombay - 400 011. ... As respondent No. 3 from O.A. No. 507/98 to 510/98.

4. Shri Pokhram R. Verma,
District Controller Of Stores,
W. Railway, Shakti Mills Lane,
Opp: Laxmi Woolen Mills
Compound, Mahalaxmi,
Mumbai - 400 011. ... As Respondent No. 4 in O.As. from 507/98 to 510/98.
... As Respondent No. 5 in O.A. No. 511/98.

5. Shri S.S. Jain,
C.E.D.E. Western Railway,
5th Floor, Churchgate Stn.
Building, Mumbai -400 020. ... Respondent No. 3 in O.A. No. 511/98.

6. Shri Sunil Singh Soin,
Chief Workshop Manager,
E.M.U. Workshop, Western
Railway, Mahalaxmi,
Mumbai - 400 013. ... Respondent No. 4 in O.A. No. 511/98.

(By Advocate Shri V.S. Masurkar)

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ORDER

PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN

These are five cases filed by the respective applicants challenging their orders of transfer to different places. The respondents have filed replies in all these cases. Since the point involved is a short point, all the applications are being disposed of at the admission stage itself. I have heard the Learned Counsels appearing on both sides.

2. In O.A. No. 507/98, Robinson Amprose is the applicant. He is the Depot Store Keeper-III at Mahalaxmi Stores Depot of Western Railway, Bombay. He has been transfered by an order dated 10.06.1998 from Bombay to Gandhidham in Ajmer Division.

In O.A. No. 508/98, Smt. Narendra Kaur Anand is the applicant. She is the Senior Khallasi working in the same Depot. By an order dated 10.06.1998 she has been transferred to Dahod in Ratlam Division.

In O.A. No. 509/98, Smt. Jayshree J. Arde, is the applicant. She is an Office Superintendent, Grade-II, working in the same depot. She is transferred by an order dated 17.06.1998 to Bhavnagar-Para in Bhavnagar Division.

In O.A. No. 510/98, Shri Munnar Ram Ganpat is the applicant and he is working as an Office Superintendent on the second floor in the same Depot. By an order dated 17.06.1998, he has been transferred to Ajmer in Ajmer Division.

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In O.A. No. 511/98, Ashok Kumar K. Nigam is the applicant. He is the Section Engineer in the same Depot. By an order dated 18.06.1998, he has been transferred to MEMU Shed of Baroda Division.

3. Being aggreived by the above orders of transfers, the applicants have approached this Tribunal by filing these applications. Their grievance is almost the same in all the cases. Their pleadings are almost worded same in all cases.

The substance of the applicants' grievance is that, they are all active members of the Workers' Union. They had objected to certain transfers of other officials before Respondent No. 4 and there was some exchange of talk. Then again an incident took place on 04.06.1998 when also there was some exchange of words between some of the applicants and Respondent No. 4. It is alleged that to victimize the applicants for their trade union activities, by way of punitive action, the administration has transferred the applicants to distant place, far away from Bombay city.

4. It is alleged that impugned orders of transfer are malafide and not in public interest. There is some trade union dispute between some of the applicants and D.U. Trivedi, who is in the rival group. There is some dispute pending in the Industrial Court regarding trade union rivalry dispute. The transfers are done from one seniority unit to another seniority unit on false administrative grounds. The

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administration has succumbed to the pressure of the Union Secretary, Shri Trivedi. There was no justifiable ground for inter-divisional transfer of the applicants. The transfers are in violation of the necessary rules and circulars. Some allegations of prejudice and malafides are alleged against Shri P.R. Verma, Respondent No. 4. That even the joining time is not given to the applicants under the impugned transfer orders. The purported allegations that the applicants manhandled respondent No. 4 is false. The administration has even intimated the Medical Officer not to give medical facilities to the applicants who are under orders of transfer. Some of the applicants have pleaded their personal difficulties and hardships in view of the impugned orders transferring them to distant and different places. On the above allegations, the applicants have approached this Tribunal for quashing the impugned orders of transfer.

5. Respondent Nos. 1 to 3 have filed a common reply asserting that the transfers have been made in administrative exigencies and in public interest. The applicants are entitled to all the benefits like seniority, promotion, pay, joining time, travelling allowance, etc. as per rules. That the transfers are ordered by the General Manager in the larger interest of the administration. The allegation of malafides are denied. It is stated that there is a report from Respondent No. 4 regarding some incident of 04.06.1998 in which the applicants are involved. In order to maintain the discipline and morale of the staff and

peaceful atmosphere in the Stores Depot, the General Manager, in the larger interest of the administration, transferred the applicants immediately under the impugned orders. Taking of disciplinary action is a lengthy procedure and it will not result in immediate restoration of discipline and peaceful functioning of the Stores Depot. The orders of transfer are not punitive but done in the interest of administration. Therefore, the respondents have prayed that the applications be dismissed.

6. Respondent No. 4, P. R. Verma, against whom personal allegations are made and malafides are alleged, has filed a separate reply in all these cases. He has also denied allegations made against him. He has spoken of some earlier incidents of some of the applicants who approached him for cancellation of the earlier orders of transfer of other officials of the Store Depot. Then he has referred to an incident of 04.06.1998 when a mob of 25 to 30 persons including two of the applicants, manhandled him and obstructed him in the discharge of his official duties. That all the allegations made against him are false. He also prays that all the applications be dismissed with cost.

7. The Learned Counsel for the applicant has questioned the correctness and legality of the impugned orders of transfer. He maintained that the orders of transfer are contrary to Railway Board circulars and instructions. He argued that the orders of transfer are punitive. He also attributed malice and malafides against Respondent No. 4 in getting the orders of transfer issued

Then he also pressed into service some of the personal difficulties and hardships of the applicants due to transfer to distant places. On the other hand, the Learned Counsel appearing for the respondents justified the stand of the Railway Administration in effecting transfers in public interest and in the interest of the administration and to maintain discipline and peaceful atmosphere in the Stores Depot. He refuted the allegation of malafides against the respondents. He also denied that the transfers are contrary to rules.

8. In the light of the arguments addressed before me, the point for consideration is, whether the applicants have made out a case for interfering with the impugned orders of transfer or not ?

9. Though both the counsels placed reliance on some decisions of the Benches of Central Administrative Tribunal, I feel that there is no necessity to refer to them since the law on the point is crystalized in view of the decisions of the Apex Court. Once the law has been declared by the Apex Court, then we need not refer to any decision of the High Court or Tribunal. Hence, I am confining myself to the law declared by the Supreme Court of India.

In A.I.R. 1993 SC 2444 (Union Of India & Others V/s. S. L. Abbas) the Supreme Court has ruled that transfer guidelines issued by the Government do not confer upon the employee any legally enforceable right and the order of transfer made without following

the guidelines cannot be interfered with by the Court or Tribunal unless the order is vitiated by malafides or is in violation of any statutory provision. It is observed that it is for the Competent Authority to decide whether the transfer is necessary or not. It was further observed that the Administrative Tribunal cannot act as an Appellate Authority over the orders of transfer passed by the Administrative Authority.

In 1995 SCC L & S 666 (State of Madhya Pradesh & Another V/s. S.S. Kaurav & Others) the Supreme Court has ruled that Courts and Tribunals are not Appellate Forums to decide on transfer on administrative grounds. It is for the administration to take appropriate decision regarding transfer and that decision cannot be inter-fered with unless it suffers from malafides or in violation of any law. In that case, it was found that transfers were banned during President's Rule without prior approval of the Government. Though the Governor had not passed any order on the file. the Advisor of the Governor had given approval. It was held that an order of transfer cannot be interefered with on that ground. The applicant was challenging his re-transfer to Bhopal on the ground that there was no justification for the same. The Supreme Court observed that the wheels of administration should be allowed to run smoothly and the Courts or Tribunals are not expected to interdict the working of administrative system by transferring the officers to

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proper places. The expediency of posting an officer to a particular place is for the administration to decide and not for the Court or Tribunal. Then personal hardship was pressed into service by pointing out that the respondent's wife committed suicide and the officer is having three children and he will be put to extreme hardship if he is transferred. The Supreme Court observed, thatthis question of relative hardship is not a matter for the Court to decide but it is for the administration to consider and pass appropriate orders.

In A.I.R. 1993 SC 1236 | Rajendra Roy V/s. Union Of India | the Supreme Court held that the order of transfer often causes lot of difficulties and dislocation to concerned employee but that is no ground for the order to be struck down by the Court or Tribunal, unless the order is malafide or in violation of service rules. That was a case where an officer had been transferred from New Delhi to Calcutta. There also the applicant had alleged number of reasons to show that the order of transfer was malafide. The Supreme Court rejected that contention. As far as personal difficulties are concerned, it is a matter for the department to consider and not for the Court or Tribunal.

In 1997 SCC L & S 643, | Laxmi Narain Mehar V/s. Union Of India & Others | it was held that the order of transfer was in the exigencies of service. As far as the transfer of SC/ST candidates are concerned, it is observed that it is only a guideline but inspite of that, the authority has powers to transfer the official

due to administrative reasons. However, it is open to the applicant to make representation to the department on personal grounds.

10. From the above decisions of the Apex Court, I find that now the law is very much crystalized, namely that the Tribunal or Court cannot sit as an appellate authority over administrative orders of transfer of Government officials. The orders of transfer cannot be interfered with by a Court or Tribunal unless the order is contrary to any statutory provisions or suffers from malafides. Personal hardship or difficulties are not matters to be considered by the Court or Tribunal but it is a matter for the department to consider. Now in the light of the law declared by the Supreme Court, let us examine the facts of the present cases.

Here there was some incident on 04.06.1998 in which the applicants were involved in quarelling and alleged manhandling the respondent no. 4. I am not for a moment concerned with the question - whether the allegation is true or not ? Respondent No. 4 is not the transferring authority. The allegations of malafides are only against Respondent No. 4. Here the transfer is made from one Division to another division by the highest authority of Western Railway, namely - the General Manager. Admittedly, there are no allegations of malafides against the General Manager. The General Manager, in the very nature of things, is the highest

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executive and the administrative head of the Western Railway. He has to maintain discipline in the railway administration. If he passes an order of transfer in the interest of administration and exigencies of service, it cannot be interfered with very lightly. Even if there is some dispute between the applicants and Respondent No. 4, respondent no. 4 cannot influence the decision of the administrative head of the railways. He is a junior officer in the Western Railway.

As far as the administrative exigencies are concerned, the reply filed by the respondents gives the reasons for the same.

In the reply filed on behalf of respondents, para 7 reads as follows :-

> "The respondents submit that the Respondent No. 4 had sent an urgent report to the office of the Respondent No. 2 narrating the truthful incident and Criminal Act committed by the present applicant under the leadership of one Shri A.K. Nigam , SS (EMU) W/S-MX alongwith many others on 04.06.1998. Since this matter is very urgent and had wide and adverse ramifications on the Discipline and morale of staff as well as with peaceful atmosphere of the Stores Depot at Mahalaxmi, the matter was taken up to the GM (Estt) and the said higher authority after considering the pros and cons of the incident took a decision in the larger interest of the administration to transfer the said employees immediately so that the peace and working of the Stores Depot at Mahalaxmi is not affected because of any delay in issuing of Stores by

depot staff for maintenance will finally affect the running of Railways i.e. Suburban trains as well as non-suburban trains and as well as the economy. In these circumstances, this Honourable Tribunal will appreciate that the steps taken by the Respondents is strictly in the interest of Administration which if seen properly are also in the public interest because ultimately, the affected persons will be the Rail Commuters. In these circumstances, the original application should also be dismissed with costs.

Again, para 9 reads as follows :-

"With reference to paragraph 1 of the application the respondents respectfully submit that the action as stated earlier is strictly in the interest of the Administration with a view to maintain peace and discipline in the Store Depot at Mahalaxmi and the said action is neither with any malice or to punish the applicant but is issued in the name of Public interest. As stated earlier, the transfer is issued by GM (E) and not either by Respondent No. 3 or by Respondent No. 4. Respondent No. 4 in his powers has merely relieved the applicant in obedience of the orders of the GM(E), Churchgate, Western Railway."

(Shri P.R. Verma is shown as Respondent No. 4 in the first four cases and is shown as Respondent No. 5 in the last case, namely - O.A. No. 511/98).

The above reasons given in para 7 and 9 of the reply are sufficient to make out the case for transfer in the interest of administration. The argument that the order

amounts to punitive transfer cannot be accepted. I have to see from the point of view of maintaining discipline in the organisation and smooth running of the Mahalaxmi Stores Depot. It is true that the applicants could have been suspended and disciplinary enquiry could have been started. It may take months together to complete the enquiry. But immediate need of the hour is to maintain discipline and peaceful atmosphere and what is more, the proper working of the depot to ensure supplies to different wings of the Railways and to see that the running of the railways is not affected. In such a situation, suspending an officer or holding departmental enquiry is not the question but the executive head has to decide as to how to run the stores properly and effeciently without detriment to public interest. I know how the railway work can be obstructed by sudden strike by handful of officials, which may in the long run affect the public at large. Bombay is a place where 90% of the public depend upon suburban railways for transport and if there is a break in the railways, even for a few hours or a day, it will create havoc in the city. The General Manager cannot take chance in a matter like this. He has to act swiftly and take appropriate decision in the larger interest of the administration and to maintain proper discipline in the organisation. If in these circumstances, the General Manager decides to transfer the applicants, it cannot be said that it is without justification and suffers from malafides, etc. Hence, I am not prepared to accept the argument of the Learned Counsel for the applicants that the impugned order is punitive or it suffers from malafides.

11. It is true that the applicants are transferred to different divisions. The applicants are serving in a Central Government organisation which is a transferable post. It is well settled that transfer is an incident of service. The General Manager has powers to transfer an official from one Division to another Division. It may be that in the larger interest of the organisation and to maintain proper discipline in the organisation, the General Manager thought fit to transfer the applicants to distant places so that they would not affect the morale of the officials at Bombay. As already stated, this Tribunal cannot sit in appeal over the decision of the General Manager and then decide whether the applicants should be transfered to Surat, or he should be transferred to Pune, or he should be transferred to Baroda or to any other place. I am not sitting in appeal over the orders of the Administration. The scope of judicial review is very limited. We have to see whether the order suffers from malafides or it is contrary to any statutory rules.

12. Another contention urged regarding malafide is that, an intimation of transfer is sent to the Doctor for not giving medical facilities. The object of sending that letter is to see that the applicants do not go there and report sick and take a sick certificate and apply for medical leave. Then it was argued that joining time is not allowed in the orders of transfer. Here again, since the order is passed urgently and in view of the exigencies of the situation and to maintain discipline,

morale and peaceful atmosphere in the Depot, the administration might have thought that the applicants should not be allowed to stay here, as their presence might spoil the atmosphere. At any rate, this cannot be a ground to attribute malafides. It is capable of two interpretations.

As pointed out in one of the decision of the Supreme Court mentioned above, in a matter like this, the Tribunal cannot do a roving enquiry to find out malafides. We have to take a broad view of the whole fact and then come to the conclusion whether the allegation of malafide has been made out or not. After considering the various arguments addressed by the Learned Counsel for the applicant, I am not persuaded to accept his contention that the order suffers from malafides.

13. It is not brought to my notice that the order of transfer is contrary to any statutory rule but it was pressed into service that the order of transfer is contrary to master circulars issued by the Railway Board pertaining to transfer of railway servants. The Learned Counsel for the applicant invited my attention to the circular dated 08.04.1991 on this point. In the very preamble of the circular itself, it is clearly mentioned that "these instructions are issued for the information and guidance of all concerned." I, therefore, hold that these are only general guidelines

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and cannot be called statutory rules. My attention was drawn to para 4.8 which pertains to transfer of railway servants from one unit to another unit. The Learned Counsel for the applicant submitted that the applicants are transferred from one seniority unit to another and it affects their seniority. The Learned Counsel for the respondents made it clear that the applicants seniority is not disturbed and it will not be affected when the transfer is made in public interest. Therefore, in my view, the transfer will not affect the seniority of the applicants. Even otherwise, there is no blanket prohibition that official from one seniority unit should not be transferred to another seniority unit. It clearly mentions that such transfers can be done if it is urgent, which means, when it is absolutely necessary. Then my attention was drawn to para 6 which pertains to transfer of railway servants who are office bearers of recognized trade unions and here also it is stated that it should not be done without informing the Union. For one thing, this also is a guideline. For another, in this case, the grievance of the applicants themselves is that the transfer is done at the instance of the General Secretary of the Union. Therefore, it is not the case where the applicants are alleging that the transfer is made without consulting the union. Then para 9.3 refers to guidelines regarding transferring railway official's spouse who is working in the same place. This is again a guideline to be considered on

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sympathetic ground and not a statutory rule. Then para 9.2 refers to transfer of SC/ST officials. This also is in the form of guideline. I have already referred to a decision of the Supreme Court above, where it is mentioned that even if there is such a guideline, even then the SC/ST employees can be transferred on administrative grounds. Ultimately, it boils down to the same question, namely - whether the transfer is in public interest or not? I have already pointed out the circumstances to show that the impugned transfers are made in public interest. The administration has not violated any statutory rule in effecting the transfers. The allegations of malafide are not made out. Hence, I am not inclined to interfere with the orders of transfer.

14. As far as the personal difficulties are concerned, these are matters which the administration has to consider. It is open to the applicants to make representation to the Railway Administration regarding their difficulties and personal problems and it is for the Competent Authorities to consider.

But however, I notice that Smt. N. K. Anand, the applicant in O.A. No. 508/98, has been transferred to Ratlam Division. She is a Class-IV employee working as a Sr. Khallasi in the Railways. She is a widow. Her youngest son is mentally retarted. She was appointed on compassionate grounds after her

husband's death (vide exhibit A-13 dated 15.06.1998, her representation to the General Manager).

The other applicants are officials of some status like Store Keeper, Office Superintendent or Section Engineer. As far as the applicant in O.A. No. 508/98 is concerned, she is a Class-IV official called as 'Khallasi', which is like a Peon. She being a widow and having a mentally retarted child, it would be doing great injustice if she is transferred to a different division and particularly, to a distant place. Though I am holding that the order of transfer of even this applicant is justified in the administrative interest, I am only pointing out that her transfer to such a distant place may not be necessary. To maintain discipline in the railway administration and in public interest, even the transfer of this applicant is justified. But however, in the facts and circumstances of this case, her transfer to any place in Bombay Division would be just and proper.

15. After considering all the facts and circumstances of the case, I am satisfied that the impugned orders of transfer are fully justified in public interest. The allegation of malafides are not established. Admittedly, the impugned orders of transfer are not contrary to any statutory rules. In these circumstances, I am not inclined to interfere with the decision of the General Manager to transfer these applicants from

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Mahalaxmi Depot. So far as Smt. N.K. Anand is concerned, while justifying the order of transfer, the General Manager must be asked to re-consider the place of posting of this official.

16. We may take judicial notice that Bombay Division in the Western Railway is a very big Division. It not only comprises Bombay city, but it extends upto and inclusive of Surat. There are number of railway stations between Bombay city and Surat. We may take judicial notice that the distance between Bombay city and Surat is about 260 Kms. Now the applicant has been transferred to Ratlam Division. If in the interest of administration, the applicant cannot be kept in Mahalaxmi Depot and thereby she has to be transferred, the General Manager may consider whether she can be accomodated in any of the offices or stations of Western Railway at Bombay city or even, if that is not found feasible, the General Manager may consider whether she can be given posting to any place in Bombay Division which extends upto Surat. Therefore, I feel that the General Manager should be asked to reconsider his decision and give a posting to the applicant anywhere in Bombay Division instead of Ratlam Division.

17. So far as the other applicants are concerned, I have held that their transfers are justified and does not call for interference by this Tribunal. They have pleaded certain personal difficulties and hardship

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which were highlighted by the Learned Counsel for the applicant. That is a matter which cannot be decided by the Tribunal but it is for the administration to consider. I hereby give liberty to these four applicants that after obeying the order of transfer and joining the new post, they are at liberty to send fresh representation regarding personal difficulties and hardship, etc. through proper channel to the General Manager and if such a representation is received, the General Manager may consider them and take whatever decision he deems fit in the facts and circumstances of each case. ~~That~~ Through the orders of transfer were issued in the second week of June, 1998, These applicants have not joined in the new place. It may be because they approached this Tribunal challenging the order of transfer. This Tribunal did not grant any order of stay. However, this Tribunal by way of interim order directed the administration not to take disciplinary action for not obeying the order of transfer. I am disposing of these O.As. within about a month after filing of the same. It may be that since the applicants filed these O.As., they might have not obeyed the orders of transfer and joined the place of posting as per the orders of transfer. Having regard to the facts and circumstances of the case, I feel that if the applicants go and join their duties as per the order of transfer within one week from today, then the concerned authority should not take any disciplinary action against these

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applicants on the ground of disobeying the orders of transfer. But however, if the applicants do not join the post within one week from today, then the matter is left to the appropriate authority to take whatever action he deems fit according to law.

18. In the result, it is ordered as follows :-

(i) O.A. Nos. 507/98, 509/98, 510/98 and 511/98 are hereby dismissed, subject to the observations in para 17 above.

(ii) O.A. No. 508/98 is partly allowed. While maintaining the decision of the General Manager to transfer this applicant, Smt. Narendra Kaur Anand, from Mahalaxmi Depot, the place of posting namely - that portion of the order under which this applicant is posted to Dahod, Ratlam Division, is set aside. The General Manager is hereby required to reconsider and pass a fresh order of posting by giving a posting to this applicant anywhere in Bombay Division, either in the Bombay city or outside in the Bombay Division, as per the observations made in para 16 above. Since the applicant has already been relieved from the present post, the General Manager may pass the fresh order within one week from the date of receipt of this order.

(iii) In the circumstances of the case, there will be no order as to costs

(R.G.VAIDHYANATHA)
VICE-CHAIRMAN.

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