OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 25th day of April 2003.

QUORUM : HON. MR. JUSTICE R.R.K. TRIVEDI, V.C.

O.A. No. 1330 of 1998

Bachi Lal S/O Late Shri Ram Sewak R/O Village Basohni, Post Manjhanpur, District Kaushambi, Allahabad.

..... 7 .... Applicant.

Counsel for applicant : Sri S. Agrawal & Sri S.S. Sharma.

Versus

1. Union of India through General Manager (Officer on Special Duty), North Central Railway, Allahabad.
2. Shri N.N.S. Rana, Chief Personnel Officer, N.C.R., Allahabad.
3. Senior Personnel Officer, N.C.R., Allahabad.

.... Respondents.

Counsel for respondents : Sri A.V. Srivastava.

A N D

O.A. No. 1337 of 1998

Rajpati Ram S/O Late Dev Narain, aged about 56 years R/O 12, Himmatganj, Allahabad..... ..... Applicant.

Counsel for applicant : Sri S. Agrawal & Sri S.S. Sharma.

Versus

1. Union of India owning and representing 'North Central Railwa notice to be served to The Officer on Special Duty, Headquarters Office, Allahabad.
2. The General Manager, Northern Railway, Headquarters Office, Baroda House, New Delhi.
3. Shri N.N.S. Rana, The Chief Personnel Officer, North Central Railway, Headquarters Office, Allahabad.
4. The Senior Personnel Officer, North Central Railway, Headquarters Office, Allahabad.

.... Respondents.

Counsel for respondents : Sri A.V. Srivastava.

A N D

O.A. No. 1381 of 1998

Ram Pal S/O Shri Ram Khelawan, aged about 38 years R/O Railway Qr.No.172-C, Railway Colony No.1, Subedarganj, Allahabad.

.... Applicant.

Counsel for applicant : Sri S. Agrawal & Sri S.S. Sharma.

Versus

1. Union of India owning and representing 'North Central Railway', notice to be served to the Officer on Special Duty, Headquarters Office, N.C.R., Allahabad.
2. General Manager, Northern Railway, Headquarters Office, Baroda House, New Delhi.
3. Shri N.N.S. Rana, Chief Personnel Officer, North Central Railway, Headquarte-rs Office, Allahabad.
4. Senior Personnel Officer, North Central Railway, Headquarte: Office, Allahabad.... ..... Respondents.

Counsel for respondents : Sri A.V. Srivastava.

A N D

O.A. No. 75 of 1999

Ram Dev Yadav S/O Shri Ram Bodh Yadav, aged about 45 years R/O 407-E, Railway Colony, Smith Road, Allahabad.

.... Applicant.

Counsel for applicant : Sri S. Agrawal & Sri S.S. Sharma.

Versus

1. The Union of India owning and representing 'North Central Railway', notice to be served to the Officer on Special Duty, North Central Railway, Headquarters Office, Allahabad.
2. The Secretary, Railway Board, Ministry of Railways, Rail Bhawan, New Delhi.
3. The General Manager, Northern Railway, Headquarters Office, Baroda House, New Delhi.
4. Shri N.N.S. Rana, Chief Personnel Officer, North Central Railway, Headquarters Office, Allahabad.
5. The Senior Personnel Officer, North Central Railway, Head-quarters Office, Allahabad.

.... Respondents.

Counsel for respondents : Sri A.V. Srivastava.

O R D E R (ORAL)

BY HON. MR. JUSTICE R.R.K. TRIVEDI, V.C.

Questions of facts and law in the aforesaid O.As are similar and they can be decided by a common order against which counsel for parties have no objections. O.A. No.1330/98 will be the leading case.

2. The facts, in short, giving rise to these O.As are that the Railway Board proposed to create six new Zones in the year 1996 known as under:—

	NEW ZONES	HEADQUARTER OFFICES
1.	North Central Railway	Allahabad.
2.	South Western Railway	Banglore.
3.	East Central Railway	Hajipur.
4.	East Coast Railway	Bhubaneswar.
5.	West Central Railway	Jabalpur.
6.	North Western Railway	Jaipur,

3. By circular order dated 6.12.1996 Railway Board provided to invite options from the staff to serve in the Head quarter Offices of new Railway Zones.

4. Applicant Bachi Lal in O.A. No.1330/98 was serving as Khalasi in Rail Coach Factory, Kapurthala (Punjab). He exercised option by application (Annexure-3) and prayed that he may be transferred to North Central Railway and the acceptance of his option was communicated to the General Manager, Rail Coach Factory, Kapurthala vide letter dated 10.12.1996. On communication of this acceptance, applicant was relieved on 5.3.1997 for joining at Allahabad. The applicant accordingly joined at Allahabad on 20.3.1997 (Annexure-8). The applicant was working at Allahabad when impugned order dated 3.11.1998 was passed against him and he was repatriated to his parent unit i.e. Kapurthala in same grade and capacity. This order was passed by the Officer on Special Duty (P). Aggrieved by this order dated 3.11.1998, applicant has filed this O.A.

5. Applicant Raj Pati Ram of O.A.No.1337/98 was serving as Office Superintendent Grade-I at Moradabad. He exercised option on 18.2.1997 (Annexure-6). The option of the applicant was acce-pted by the General Manager on 9.7.1997 (Annexure-8). Applicant was relieved on 7/8.5.1997 and joined on 11.8.1997 at Allahabad. The applicant was posted at Allahabad. However by impugned order dated 25.11.1998 applicant was repatriated back to parent division i.e. Moradabad, Division aggrieved by which he filed this O.A.

6. Applicant Ram Pal in O.A. No.1381/98 was serving at Allahabad as Khalasi under the Assistant Engineer, Chunar. He filed his option which was accepted by order dated 14.2.97 and he was posted under Officer on Special Duty, N.C.R.. The applicant joined on 14.2.1997 itself. However, he was re-patriated by impugned order dated 4.12.1998 (Annexure A-1), aggrieved by which he as approached the Tribunal.

7. Applicant Ram Dev Yadav in O.A. No.75/99 was also serving at Allahabad as Khalasi. He exercised option in Nov. 1996 which was accepted on 24.2.1997 and he was ~~asked~~ required to be spared for joining at N.C.R., Allahabad. Applicant joined on 22.9.1997. However, by impugned order dated 20.1.1999, the applicant was repatriated back to his parent unit at Allahabad aggrieved by which he has filed this O.A.

8. Contesting the claim of the applicants, respondents have filed counter affidavits and supplimentary counter affidavits. Applicants have also filed supplimentary rejoinde affidavits and many other documents.

9. I have heard Sri S. Agarwal and Sri S.S. Sharma, learned counsel for applicants and Sri A.V. Srivastava, learned counsel for respondents at length.

10. The question for determination appears to be as to whether the applicants, who ~~have~~ exercised their options in pursuance of Railway Board circular dated 6.12.1996 could be

repatriated back as done by respondents by impugned orders. Sri S. Agarwal, learned counsel for applicants submitted that as the applicants were asked to work in bunglow of the Chief Personnel Officer and they refused to do so, the impugned orders were passed against them. It is submitted that the orders are malafide and arbitrary. It is also submitted that as the applicants were allowed to exercise option, which was accepted and they became members of the cadre of N.C.R., they could not be legally sent back under the orders of the Zonal Officers as the transfer from one Zone to another Zone could only be with the consent of competent authority or the Railway Board. It is also submitted that the orders do not indicate any reason and the respondents may not be permitted to submit reasons now by filing documents to justify the orders. Sri A.V. Srivastava, learned counsel for respondents, on the other hand, submitted that the impugned orders passed by respondents repatriating the applicants to their parent unit are fully justified in the facts and circumstances of the case. He has submitted that applicants had themselves filed an application (Annexure-10) and requested that if there is no work in the office they may be sent back and they shall have no objection. Application Annexure-10 has been signed by applicants Bachi Lal, Ram Pal, Ram Dev Yadav, K.K. Srivastava and Sudhir Kumar. Raj Pati Ram has not signed this application. Learned counsel has further submitted that in para 6 of the circular dated 6.12.1996 it was clearly provided that the cadre in the Head-quarter office of new Zonal railways will remain open till the date new Railway Zones become operational and till then the staff transferred thereto will continue to progress in their original cadre. Learned counsel has submitted that the afore-said provision clearly suggests that lien of the applicants was not transferred to N.C.R. and they could be repatriated back. He has also placed reliance on Railway Board order dated 20.8.1997 which has also the similar effect. Learned

counsel has further submitted that as strength of the N.C.R. was reduced and work was not there, applicants were repatriated and there was no question of malafide and arbitratiness. It is also submitted that transfer orders become necessary on account of budgetory constraints and the applicants are not entitled for any relief. It is also submitted that applicant Raj Pati Ram of O.A. No.1337/98 has already ~~been~~ retired from service and the O.A. filed by him has rendered ~~becoming~~ infructuous. Learned counsel has further submitted that the applicants Bachi Lal, Ram Pal and Ram Dev Yadav have joined their parent department and for this reason they are also not entitled for any relief.

11. Learned counsel for applicants in rejoinder submitted that the submission on behalf of the respondents that the strength was reduced hence the applicants were repatriated is not correct. In the same period in quick ~~consecution~~ succession they communicated to other divisions for sending persons to join and work at N.C.R. He placed certain documents in this connection.

12. I have carefully considered the submissions made by counsel for the parties. In my opinion, the question for determination in these O.As is as to whether on the option exercised by the applicants in pursuance of the circular dated 6.12.1996 applicants became member of the cadre of N.C.R., which was a different Zone and they could be transferred to another Zone or Division. Learned counsel for applicant has placed before me Paragraph 226 of Railway Establishment Code and submitted that in exigency of service, it is only for the President to transfer the railway servant from one department to another department of the railway establishment. This power may be delegated by the President to General Manager or to some other authority. It is submitted that there is no such delegation of powers. Counsel for the respondents, on the other hand, placed reliance on para 6 of the circular

dated 6.12.1996. Para 6 reads as under :-

> "6. The cadres in the headquarters offices of the new zonal railways will remain open till the date of the new zonal railways becoming operational and till then the staff transferred thereto will continue to progress in their original cadres. Accordingly, in the new zonal railways, normally no promotion should be resorted to and in case any promotion is given to the transferred staff, the same will be treated as ad-hoc. The new zonal railways will also not resort to any direct recruitment till the date of the new zones becoming operational and will meet their requirement as it arises only from the optees."

13. From perusal of the aforesaid provision it is clear that the intention behind creating such an arrangement was to protect the interest of the optees. It cannot be denied that though the new zonal railways were created in 1996, some of them could be operational as late as on 1.4.2003. N.C.R. could become operational from the aforesaid date. The Board made the provision in para 6 to protect the interest of the optees during the above period. It is not disputed that the optees, who joined new zonal headquarters, could not get promotion during this period until zones became operational. N.C.R. itself may be taken as example. It took seven years in becoming operational. Without a provision, like contained in para 6, optees could be deprived of chances of promotion, whereas persons junior to them, could get promotions. To avoid such an anamolous situation interest of optees was guarded by keeping the promotion chances open to them also. Cadre was kept open for this limited purpose. However, from perusal of the entire circular dated 6.12.1996, it is clear that so far cadres in new zonal railways were concerned they gained finality and no further action was required to absorb these optees. Their joining in the zonal cadre was final for rest of the purposes.

14. In these facts and circumstances, in my opinion, the applicants, who had joined and exercised option, could not be repatriated as done by the impugned orders. Their status in N.C.R. was not of deputationist. Respondents illegally construed the order dated 6.12.1996 by saying that the applicants were serving on deputation and they could be repatriated. The perusal of the circular dated 6.12.1996 does not contemplate joining on deputation basis anywhere. In the circumstances, the impugned orders cannot be justified in the eyes of law and they were passed without authority.

15. For the reasons stated above, the impugned order passed in O.A. No.1330/98 i.e. 3.11.1998 and the impugned order dated 4.12.1998 passed in O.A. No.1381/98 and impugned order dated 20.1.1999 passed in O.A. No.75/99 are quashed. The applicants will be entitled to be reinstated on the respective posts at N.C.R., Allahabad with all consequential benefits.

16. As applicant Rajpati Ram during this period has voluntarily retired from service, no order is required in his case except that if on account of the impugned order dated 25.11.1998 he has suffered any loss or disadvantage, he shall be compensated for the same for which applicant shall make representation before the competent authority which shall be considered and decided expeditiously.

There shall be no order as to costs.

V. C.

Asthana/