

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.

Original Application No.254 of 2004.

ALLAHABAD THIS THE 7¹⁵ DAY OF OCTOBER. 2005.

Hon'ble Mr.K. B.S. Rajan, Member-J.

1. Govind Singh, s/o late Narendra Singh.
2. I.H. Siddiqui, S/o Sri Amir Hassan.
3. Arun Kumar, S/o Mohan Srivastava
4. Anand Kumar Tripathi, S/o
5. S.K. Kushwaha, S/o Sri S.K. Verma

.....Applicant.

(By Advocate : Sri S. Ram)

Versus.

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Chief Personnel Officer, N.R., Baroda House, New Delhi.
3. Financial Adviser and Chief Accounts Officer, now designated as Financial Manager and Chief Accounts Officer, N.R., Baroda House, New Delhi.
4. Chief Personnel Officer, N.C.R., Allahabad.
5. Financial Manager and Chief Accounts Officer, N.C.R., Allahabad.

.....Respondents.

(By Advocate : Mr. A. K. Gaur)

ORDER


The explosive expansion of the railways to cater to and cope up with the ever increasing travelling of the public results in creation of various zonal railways by the Indian Railways, the massive organization of Asia. Powers to create such new zonal railways is vested with the Central Government vide Sec. 3(4) of the Indian Railways

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Act, 1989 (Act 24 of 1989). Such a creation of new zones would inevitably lead to allocation and re-allocation of or carving out from the territorial jurisdiction of the existing zones and in turn, such a transfer of territorial jurisdiction to the newly created zones would have its own impact in the service conditions of the Railway employees coming under the administrative control of the new zonal railways. One such item feeling this impact, which frequently comes in for judicial scrutiny, is transfer and seniority of such employees. The case in hand belongs to this character.

2. First the law on the subject on which the facts of the case would be telescoped so as to find out the admissibility of the claim of the applicants. For, the only area for judicial exploration is to decoct the rule from the ruling or the law and fit it to the admitted facts. Consolidation of various provisions involved in the matter would, it is hoped, assist in dealing with cases of identical nature, which are in fact in undoubted abundance.

3. The existing rule/procedure on the subject matter could be taken to originate from the Railway Board's circular No. E(NG) I-96/TR/86 dated 06-12-1996 and the same is reproduced below:-



"1.....

2. For the purpose of manning of posts in the new Zones at their Headquarters offices, the Board Desired that options may be called from the staff as follows :-

(i) For non-gazetted staff working at the Headquarters offices of the existing Zonal Railways from whose jurisdiction the new Zones have been carved out, for being transferred to the Headquarters offices of the respective new Zonal Railways.

(ii) For the non-gazetted staff working the affected Divisions of the existing Zonal Railways as follows:-

(a) Whether they would like to continue to work wherever they are working at present, or

(b) Proceed to the Headquarters offices of the respective New Zonal Railways.

Note: Non Gazetted staff of the affected Division in the categories cadres controlled by the Headquarters will have the option to remain the existing Zonal Railways or join the New Railways for which they must exercise option.

(iii) From non-gazetted staff working in other divisions of existing Zonal Railways for working in the respective New Zonal Railways; and

(iv) From None-Gazetted staff of all zonal Railways/Production units for working in the Headquarters office of one of the New Zonal Railways against shortfall, if any.

3.

4.1 The options received may be forwarded to the OSD's of the New Zonal Railways for further necessary action. List of optees should be forwarded category-wise, grade-wise and strictly in the order of seniority. This entails commitment to spare the staff for transfer of the New



Zonal Railways as and when required by the concerned New Zonal Railways.

5. The Seniority of staff coming on transfer from one Railway to another should be determined in each grade on the basis of non fortuitous length of service in the grade, as on the date of New Zonal Railways becoming operational which will be declared in the due course ensuring that the inter-se- seniority of the staff absorbed in the same unit is not disturbed.

- 5.1 It should also be ensured that the options are accepted from staff for posting only in a grade in which he/she is already working on regular basis after completion the due process of selection/suitability test."

4. The above notifications had been clarified/modified by certain subsequent Railway Board Circulars and the same, in the chronological sequence, are as under:-

"DATED 21.3.1997

ADDENDUM

Sub: Calling of options from staff to serve in the headquarters of the new Railway Zones-determination of seniority of staff on transfer to the New Zones.

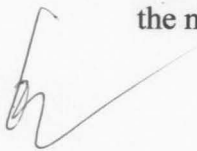
Reference this Ministry's letter of even number dated 6.12.1996 on the above subject.

2. The Board have decided that at the end of the existing para 2.2 of their letter referred to above, the following may be added:-

Further action may be taken accordingly,
Please acknowledge receipt.

Dated; 5.5.1997

Sub: Calling of options from staff to serve in the Headquarters of the New Railway Zones- determination of seniority of staff on transfer to the new Zones.



Reference this Ministry's letter of even number dated 6.12.1996 on the above subject as modified by their letter dated 21.3.97.

2. The Board has decided that the period for exercising option for being transferred to the Headquarters offices of the New Zonal Railways may be extended by another six months i.e. upto 5.9.97.

Please acknowledge receipt.

Dated 23.7.97

Sub: Calling of options from staff to serve in the Headquarters of the New Railway Zones- determination of seniority of staff on transfer to the new Zones.

Reference this Ministry's letter of even number dated 6.12.1996 as modified by their letters dated 21.3.97 and 5.5.97.

2. In terms of para 2.2 of this Ministry's letter of even number dated 6.12.96 as amended by their letter dated 21.3.97 such of the staff working in the workshops and stores Depots as are borne in the Headquarters seniority and Divisional seniority are eligible to exercise option for being transferred to the headquarters offices of the respective new Zonal Railways. The question whether all staff in Workshops and Stores Depots irrespective of the seniority units in which they are borne should be allowed option for being transferred to the new Zonal Railways has been considered by the Board. It has been decided, in partial modification of the instructions contained in this Ministry's letter of even number dated 6.12.96 as modified by their letter dated 21.3.97 that the staff of extra-Divisional units including the staff working in the workshops and stores Depots located in the territorial jurisdiction of affected Divisional irrespective of the seniority units they are borne in, may be allowed the option for being transferred to the respective new Zonal Railways alongwith staff covered in para 2 (iii) of this Ministry's letter of even number dated 6.12.96.

Please acknowledge receipt.
Hindi version will follow.



Dated; 19.8.97

Sub: Calling of options from staff to serve in the Headquarters of the New Railway Zones- determination of seniority of staff on transfer to the new Zones.

Reference this Ministry's letter of even number dated 6.12.96 as modified by their letters dated 21.3.97, 5.5.97 and 23.7.97 on the above subject.

2. In the review meeting of the Board with OSDs of the new zonal railways held on 27.6.97, it was inter-alia decided that to begin with large scale exercise of option by employees from other than the headquarter offices of the affected zonal Railways should not be encouraged and that the some should be accepted only in rare/exceptional cases. Attention in this connection is invited to para 2.1 of this Ministry's letter of even number dated 6.12.96, in terms of which first preference for transfer on option to the respective headquarters offices of the new zonal Railways should be given to staff working in the headquarters offices of the existing zonal Railways from whose territorial jurisdictions the new zones have been carved out. In the light of the discussion held in the Board's review meeting with OSDs, it is reiterated that the order of preference indicated may be strictly followed.

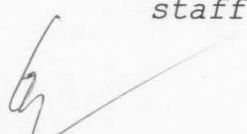
Please acknowledge receipt.
Hindi version will follow.

Dated; 20.8.97

Sub: Calling of options from staff to serve in the Headquarters of the New Railway Zones- determination of seniority of staff on transfer to the new Zones.

Reference this Ministry's letter of even number dated 6.12.96 as modified by their letter dated 21.3.97, 5.5.97 and 23.7.97 on the above subject.

2. In the discussion the Board had with OSDs of the new Zonal Railways on 5.5.97, it was inter-alia decided that the lien of the staff proceeding on transfer to the new zonal Railways should not be transferred for the prospect. In this connection attention is invited to para 6 of this Ministry's letter of even number dated 6.12.96 in terms of which the staff transferred to the new zonal railways



will continue to progress in their parent Railway till the new zonal Railways become operational. The Board desire that these instructions should be strictly adhered to.

Please acknowledge receipt.
Hindi version will follow.

Dated; 13.11.97

Sub: Calling of options from staff to serve in the Headquarters of the New Railway Zones- determination of seniority of staff on transfer to the new Zones.

In terms of this Ministry's letter of even number dated 6.12.96 read with their letter dated 5.5.97 and as modified by their letters dated 21.3.97 and 23.7.97 the staff could exercise their option for being transferred to the Headquarters offices of the new zonal Railways upto 5.9.97.

2. The Board has now decided that the period for exercising option for being transferred to the Headquarters offices of the new zonal Railways may be further extended upto 31.3.1998.

Dated; 31.3.97

Sub: Calling of options from staff to serve in the Headquarters of the New Railway Zones- determination of seniority of staff on transfer to the new Zones.

Please refer to your letter No.ADM/2/G.350/1 dated 21.1.1998 seeking modification of Board's letter of even number dated 6.12.96 in the context of CAT/Mumbai Bench judgment in OA No.941/1997 titled Shri Ravi Bhargava & others Vs. Union of India & others decided on 28th Nov. 1997 directing to follow the Board's orders contained in their letters of same number dated 6.12.96 and 19.8.97.

2. The matter has been considered by the Board and it has been decided that no further modification of the instructions contained in Board's letter of even number dated 6.12.96 read with their letter dated 19.8.97 is called and the same are reiterated for being adhered to.

Please acknowledge receipt.



Dated; 26.05.98

Sub: Calling of options from staff to serve in the Headquarters of the New Railway Zones- determination of seniority of staff on transfer to the new Zones.

In terms of this Ministry's letter of even number dated 6.12.96 read with their letter dated 5.5.97 and 13.11.97 and as modified vide their letters dated 21.3.97 and 23.7.97 the staff could exercise their option for being transferred to the Headquarters offices of the New Zonal Railways upto 31.3.98.

Transfer of Group C and Group D posts in the event of such creation of new zonal railways is administered by the following Railway Board Letters:-

Dated; 2.1.97

Sub: Formation of new Zonal Railway creation and transfer of posts- instructions regarding.

Attention is invited to Board's letter of even number dated 7.10.96 under which sanction was issued for creation of non gazetted work charged posts as detailed therein for the new zones.

2. As the new zones are being formed by re-organization of the territorial jurisdiction of the existing zones, generally requirement of staff and officers for the new zonal headquarters offices will arise or the purpose of creation of the posts in the new zonal headquarters offices, the following instructions are issued.

- i) No addition will be made in the sanctioned and operated strength of staff in the existing zonal Headquarters with immediate effect.
- ii) The sanctioned strength of posts of the existing Zonal headquarters will be reduced by the percentage indicated against each and the same will be transferred to the new zonal headquarters offices as further indicated against each, in the following manner:-



Existing Railways	Reduction in the strength of HQ staff	Extent of posts identified in Col. 3 for transfer to be transferred to new zonal Railways.
Central	29%	2/3 to WCR/Jabalpur 1/3 to NCR/ALD.
Eastern	29%	Full reduction to ECR/Hajipur.
Northern	50%	½ to NWR/Jaipur, ½ to NCR/ALD
N. Eastern	40%	Full to ECR/Hajipur
N. Frontier	-	----
Southern	29%	Full to SWR/Bangalore.
S. Central	50%	Full to SWR/Bangalore
S. Eastern	50%	¾ to ECOR/ Bhubanneswar ¼ to WCR/ Jabalpur.
Western	25%	Full to NWR/Jaipur.

(iii) OSD of the new zones will create posts to the extent required for the new zonal Hqrs. Offices utilizing the posts transferred by the existing zones as matching surrender.

(iv) The posts created for the new zonal Hqrs. Offices will be filled up by the staff who opt for transfer to the new zones. Necessary instructions for manning the posts by calling of options from the staff having been issued separately under Railway Board's letter No. E(NG)1/96/TR/36 dated 6.12.1996.

(v) 50% of vacancies against direct rectt. Quota in the existing zones should not now onwards be filled up and be earmarked for transfer to the new zones within the extent specified in Col. 3 under sub para (ii). The actual transfer of these posts may be affected in consultation with the OSD's of the new zones concerned.

Hindi version will follow.
Please acknowledge receipt.

Dated; 29.8.97

Sub: Formation of new Zonal Railway creation and transfer of posts-instructions regarding.



Ref: Board's letter of even number dated 02.01.97.

Please add the following as para 3, below para 2 (v) of Board's letter under reference.

"This issues with the concurrence of the Finance Directorate of the Ministry of Railways".

Dated; 31.10.97

Sub:-Transfer of Group 'C' and 'D' staff from Railways to the new zones.

Attention is invited to Board's letter of even number dated 02.01.97 laying down the guidelines for transfer of posts from the headquarters offices of the existing zonal Railways to the headquarters offices of the new zones. It was inter-alia laid down that while no additions may be made in the sanctioned strength of the headquarters offices of the existing zonal Railways, the existing sanctioned strength may be reduced by a percentage indicated therein with the balance strength of posts being gradually transferred to the headquarters offices of the new zones. It was also laid down that immediately 50% of the vacancies against direct recruitment quota in the headquarter offices of the existing zonal railways should be frozen and earmarked for transfer to the headquarters offices of the new zones within the specified percentages.

2. The matter was discussed further in the Board's review meeting with the OSDs of the new zones in Railway Board on 27.6.97 vide paras 4.1, 5.0, 5.1 and 5.3 of the minutes of the meeting. In the light of these discussions, the following further guidelines are laid down in this regard.

- a) The existing zonal Railways should reduce the sanctioned strength of the headquarters offices by the percentages indicated in Board's letter of even number dated 2.1.97 at the earliest, and transfer the balance strength of posts to the new zones.
- b) When an officer's post is transferred, the full complement of the associate Gr. 'C' & 'D' posts like stenos, Pas, Peons, etc. attached with the post of officers should



also be transferred from the parent Railway to the new zone. All the posts so transferred to the new zone should be immediately surrendered in the old zones in direct recruitment grade in the relevant categories transferred to the new zones.

- c) The posts in all grades/categories should be transferred by the parent Railway proportionately, keeping in view the requirements of the new zones. The freezing and transfer of Direct Recruitment quota vacancies should not be restricted to the vacancies in the initial direct recruitment grade only and it should be ensured that direct recruitment vacancies in all the grades in proper proportion are transferred to the new zones.

Kindly acknowledge receipt.

Hindi version will follow.

5. Invoking the powers under Sec 3(4) of the Indian Railways Act, the Central Government has constituted five new Zonal Railways w.e.f. 01-04-2003 vide Notification dated 04-07-2002, which is reproduced below:

"GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

No. 97/E&R/700/1/Notification

New Delhi, dated July 04, 2002

NOTIFICATION

In exercise of powers conferred by Sub-section (4) of Section 3 of the Railways Act, 1989 (No. 24 of 1989), the Central Government hereby constitute five new Zonal Railways with effect from 01.04.2003, namely

- i. EAST COAST RAILWAYS out of the existing South Eastern Railway with its headquarter at Bhubaneswar.
- ii. SOUTH WESTERN RAILWAYS out of the existing Southern and South Central Railways with its headquarter at Hubli.
- iii. WEST CENTRAL RAILWAY out of the existing Central and Western Railways with its headquarter at Jabalpur.; and



iv. SOUTH EAST CENTRAL RAILWAY out of existing South Eastern Railway with its headquarters at Bilaspur.

2. The aforesaid Zonal Railways shall, with effect from 01.4.2003, exercise jurisdiction in respect of the areas as indicated in the Table 1 below:-

TABLE-1

s. No.	Railway/headquarter	Area of jurisdiction
1.	East Coast Railway, Bhunasewar	. Khurda Road, Waltair and Sambalpur Divisions of South Eastern Railway
2.	South Western Railway Hubli	. Bangalore and Mysore Divisions of Souther Railway.
3.	West Central Railway Jabalpur	. Jabalpur and Bhopal Divisions of Central Railways . Kota Division of Western Railways as Re-organized vide notification No. 98/E&R/700/1/Notification dated 04.7.2002
4.	North Central Railway Allahabad	. Allahabad Division of Northern Railway as re-organized vide notification No. 98/E&R/700/1/Notification dated 04.4.2002. . Jhansi Division of Central Railway as re-organized vide notification No. 98/E&R/700/1/Notification dated 04.7.2002 . Agra Division as constituted vide notification No. 98/E&R/700/1/Notification dated 04.7.2002
5.	South East Central Railway Bilaspur	. Nagpur Division of South Eastern Railway and . Bilaspur Division of South Eastern Railway as re-organized vide notification No. 98/E&R/700/1/Notification dated 04.7.2002 . Raipur Division as constituted vide notification No. 98/E&R/700/1/Notification dated 04.7.2002

Table II shall exercise jurisdiction in

TABLE II

s. No.	Railway/headquarter	Area of jurisdiction
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1.	Central Railway Mumbai	. Bhusawal and Nagpur Divisions . Mumbai (CST) and Solapur Divisions are re-organised vide notification No. 98/E&R/700/1/Notification dated 04.7.2002 . Pune Division as constituted vide notification No. 98/E&R/700/1/Notification dated 04.7.2002
2.	Eastern Railway Kolkata	. Malda, Howrah, Sealdah and Asansol Divisions.
3.	Northern Railway Delhi	. Ambala, Firozpur, Lucknow and Moradabad Divisions.
4.	North Eastern Railway, Gorakhpur	. Lucknow and Varanasi Divisions. . Izatnagar Division as re-organized vide notification No. 98/E&R/700/1/Notification dated 04.7.2002
5.	Northeast Frontier Railway, Guwahati	. Katihar, Lumding and Tinsukia Divisions and . Alipurduar Division as re-organized vide notification No. 98/E&R/700/1/Notification dated 04.7.2002 (ineligible) Division as constituted vide notification No. 98/E&R/700/1/Notification dated 04.7.2002
6.	Southern Railway, Chennai	. Chennai, Madurai, Palghat, Triuchehirappalli and Trivanduram Divisions
7.	South Central Railway	Hyderabad, Secunderabad, Guntakal and Vijayawada Divisions as re-organized vide notification No. 98/E&R/700/1/Notification dated 04.7.2002 . Guntur and Nanded Division as constituted vide notification No. 98/E&R/700/1/Notification dated 04.7.2002
8.	South Eastern Railway Kolkata	. Khanapur Division . Adra and Chakradharpur Divisions as constituted vide notification No. 98/E&R/700/1/Notification dated 04.7.2002 . Ranchi Division as constituted vide notification No. 98/E&R/700/1/Notification dated

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		04.7.2002
9.	Western Railway Mumbai	<i>. Bhavnagar and Mumbai Central Divisions.</i> <i>. Ratlam, Rajkot and Vadodara Division as re-organized vide notification No. 98/E&R/700/1/Notification dated 04.7.2002</i> <i>. Ahmedabad Division as constituted vide notification No. 98/E&R/700/1/Notification dated 04.7.2002</i>

Revised jurisdiction in respect of North Western Railway and East Central Railway w.e.f. 01.04.2003 shall be as indicated in the Table **III**.

TABLE III

s. No.	Railway/headquarter	Area of jurisdiction
1.	North Western Railway, Jaipur	<i>. Jodhpur Division of Northern Railway</i> <i>. Bikaner Division of Northern Railway as constituted vide notification No. 98/E&R/700/1/Notification dated 04.7.2002</i> <i>. Jaipur and Ajmer Divisions of Western Railway as re-organized vide notification No. 98/E&R/700/1/Notification dated 04.7.2002</i>
2.	East Central Railway, Hajipur	<i>Sonpur and Samartipur Divisions of North Eastern Railway and</i> <i>. Danapur, Mughalsarai and Dhanbad Divisions of Eastern Railway.</i>

Sd/-
(R.R. Jaruhar)
Secretary Railway Board

To

The Manager,
Government of India Press
Maya Puri,
NEW DELHI.

6. Once the decision to create new Zonal Railways has been taken giving the deadline for operation



w.e.f. 01-04-2003, in quick succession action had been taken by the Railway Board for whereby it called for options from the desiring individuals, arrangement of the same in accordance with the prescribed categories and seniority amongst such optees, and in this regard, the following notifications are relevant:-

7. Para 2 to 5 of Order dated 19-07-2002 reads as under:-

2. In para 5 of this Ministry's letter dated 6.12.1996 it has been stipulated that seniority of staff coming on transfer from the existing zonal Railways to the headquarter offices of the new zonal Railways should be determined in each grade on the basis of non-fortuitous length of service in the grade as on the date of new zonal Railway becoming operational. The requisite notification constituting five new zonal Railways namely East Coast Railway, Bhubaneswar, North Central Railway, Allahabad, South East Central Railway Bilaspur; South Western Railway, Hubli; and West Central Railway, Jabalpur, w.e.f. 1.4.2003 with following jurisdiction, has since been issued vide this Ministry's Notification No.97/E&R/700/1/Notification, dated 4.7.2002 :-

Sl. No.	Railway/HQ	Area of Jurisdiction
1.	East Coast Railway, Bhubaneswar	Khurda Road, Waltari and Sambalpur Divisions of South Eastern Railway
2.	North Central Railway, Alld	Alld. Division of N.R as organized vide notification no. 98/E&R 700/1/Notification dated 4.7.2002. Agra Division as constituted vide notification dated 4.7.2002
3.	South East Central Railway, Bilaspur	Nagpur Division of South Eastern Railway. Bilaspur Division of South Eastern Railway as re-

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		organized vide notification dated 4.7.2002. Raipur Division as constituted vide notification dated 4.7.2002.
4.	South Western Railway, Hubli	Banglore and Mysore Divisions of Southern Railway Hubli Division of South Central Railway as re-organized vide notification dated 4.7.2002.
5.	West Central Railway, Jabalpur	Jabalpur & Bhopal Divisions of Central Railway. Kota Division of Western Railway as re-organized vide notification dated 4.7.2002.

3. The question of allowing fresh options to staff for working in the headquarter offices of the above five new zonal Railways has been considered by the Ministry of Railways in view of the following :-

(i) change in the jurisdiction of the new zonal Railways, if any, from the one as contemplated/taken into account while calling options initially in terms of this Ministry's letter dated 6.12.1996;

(ii) creation of new Divisions and re-organization of existing Divisions vide notification No.98/E&R/700/1/Notification dated 4.7.2002; and

(iii) date for exercising options being current only up to 30.9.98 vide this Ministry's letter of even No. dated 26.5.1998.

4. The Ministry of Railways have decided that in view of the above fresh options, as considered necessary and as may be decided mutually between the respective CPOs of the new zonal Railways and of the existing zonal Railways from whose territorial jurisdiction the new Zones have been carved out, may be called for from the staff for working in the Headquarter offices of the above five new zonal Railways strictly as per the priority laid down in para 2 of this Ministry's letter of even No. dated 6.12.1996 as modified subject to the following further conditions :-

(i) The options may be exercised latest by 30.11.2002.

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- (ii) The staff short-listed for transfer/posting to the headquarter offices of the new zonal Railways should be in position as per schedule advised by the new Zonal Railways but in any case latest by 31.3.2003 for which the CPOs of the existing zonal Railways should ensure that the staff concerned are relieved as soon as requested by the new Zonal Railways.
- (iii) Any transfer to the headquarter offices of these five new zonal Railways on or after 1.4.2003 will be treated as transfer on request on bottom seniority in recruitment grades subject to usual conditions governing such transfers being fulfilled.
- (iv) Other conditions as stipulated in this Ministry's letter of even No. dated 6.12.1996 will continue to apply.

5. The staff exercising option for working in the headquarter offices of the new Zonal Railways should also signify their consent for receiving their salary and other payments by cheque. This may be ensured. In this connection instructions contained in Board's letter No.2002/ACII/21/13, dated 19.7.2002 refer.

8. Order dated 07-08-2002 reads as under:-

Copy of the NCR's letter No.979-E/NCR/New Zone/Option dated 07.08.2002

Sub :- Calling of options from staff for posting in the Headquarter Offices of North Central Zonal Railways w.e.f. 01.04.2003 including North Central Railway, Allahabad and Board's letter No.E(NG)-I 96/TR/36 dated 19.07.2002, options are called from the staff who are willing to work in the Headquarters Offices of North Central Railway, Allahabad, strictly as per priority laid down in Board's letter No.E(NG)-I 96/TR/36 dated 06.12.1996 as under :-

- (i) From non-gazetted staff working at the Headquarters Office of the existing Zonal Railways from whose jurisdiction, the new zones, have



been carved out, for being transferred to the Headquarters Offices of the respective New Zonal Railways.

(ii) From the non-gazetted staff working in the affected Divisions of existing Zonal Railways as follows :-

- (a) Whether they would like to continue to work wherever they are working at present or
- (b) Proceed to the Headquarters Office of the respective New Zonal Railways.

Note : Non-gazetted staff of effected Divisions in Categories/Cadres controlled by headquarters will have the options to remain in the existing Zonal Railway or join the new railway for which they must exercise option.

(iii) From non-gazetted staff working in other Divisions of existing Zonal Railways for working in the respective New Zonal Railways, and

(iv) From non-gazetted staff of all Zonal Railways/production Units for working in the Headquarters Office of one of the New Zonal Railways against shortfall, if any.

Staff of extra-divisional units including the staff working in the Workshops and Store Depots located in the territorial jurisdiction of affected Divisions irrespective of the seniority units they are borne in, may be allowed the option for being transferred to the respective New Zonal Railways along with the staff covered in para (iii) above as per Board's letter No.E(NG)-I 96/TR/36 dated 23.07.1997.

The staff who give their willingness to be transferred to North Central Headquarter Office, Allahabad should be prepared to be relieved on transfer as soon as requested by North Central Railway, Allahabad.

Any transfer to the Headquarter Office of North Central Railway on of



after 01.04.2003 will be treated as transfer on request on bottom seniority in recruitment grades subject to usual conditions governing such transfers being fulfilled. Other conditions as stipulated in the Board's letter No.E(NG)I-96/TR/36 dated 06.12.1996 will continue to apply.

Options from the staff may please be obtained and sent to the office latest by 30.11.2002 on the format as lper Annexure-I. It may be made clear to the fresh optees that their option for transfer to North Central Railway, Headquarter Office, Allahabad, will be considered only after the options given by the staff earlier which have already been registered in the relevant priority order, are exhausted. Only after this, fresh optees will be considered keeping in view their priority position.

The options of the staff obtained on the format as per Annexure-I may be sent to this office latest by 30.11.2002. The options must be forwarded through the personnel branch of the respective Headquarter and not directly by a covering letter indicating names of staff department-wise, category and grade-wise (in regular scale of pay) showing their designation etc. in Proforma Annexure-II enclosed, strictly in order of seniority as laid down in para 4.1 of Board's letter No.E(NG)I-96/TR/36 dated 06.12.1996. The names should also be placed in order of priority mentioned above. The Staff will be considered for transfer to this Headquarter only in grades in which they are regularly promoted/working and not working on ad-hoc basis.

The employees who opt to work in the Headquarters Office of North Central Railway, Allahabad should give an undertaking to draw their salary and other payment through cheque/Bank.

It may be informed that North Central Railway is being formed with following Divisions as per Board's letter No.98/E&R/700/1/Notification dated 04.07.2002.

Name	of	Sections	(Area	Route	Division
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the Division	of Jurisdiction)	Kms.	from/in/Railways
Agra	Agra Palwal (excl.)	133	Jhansi /CR
	Bayana (excl) Agra	87	Kota/WE
	Agra Tundla (excl.)	21	Allahabad/NR
	Agra Bandikui (excl.)	149	Jaipur/WR
	Mathura Alwar	120	Jaipur/WR
	Mathura-Achnera	27	Izzatnagar/NER
	Mathura Vrindavan	12	Izzatnagar/NER
	Total	549	
Jhansi	Existing jurisdiction except the following sections Agra-Palwal Palwal-Tughlakabad Residual	133 40 1370	To Agra/NCR To Delhi/NR
Allahabad	Existing jurisdiction except Agra-Tundla (excl) Section Residual	1073 21 1052	To Agra/NCR

It is requested to please take action as above alongwith the Board's instructions as contained in their letter No.E(NG)I-96/TR/36 dated 06.12.1996, 21.03.97, 23.07.97 and No.E(NG)I-96/TR/36 Vol.II dated 15,.07.2002, (copies of which are enclosed herewith for ready reference)

All options must be sent to this office though concerned offices as above by 30.11.2002 positively through a special messenger if necessary Options received by this Office after 30.11.2002 will not be considered.

9. With a view to trimming and sizing the strength of Group C and Group D posts in the Headquarter offices of the Existing Zonal Railways and its



transfer to the Headquarter office of the New Zonal Railways, the Railway Board had made certain modification in the % and extent indicated in para 2(ii) of their earlier circular of 02-01-1997 and consequently, the Railway Board had revised the proportion of such reduction and the extent of such reduction to be apportioned to the transferred posts together with attendant conditions, vide letter dated 08-08-2002 and the relevant extract is as under:-

Existing Railways	Reduction in Group C & D post of HQ Office	Extent of reduction in posts identified to be transferred to new zonal Railways vis ECOR/SWR/WCR/NCR/SECR
1	2	3
Central	42.5.	14% to NCR/ALD & 28.5. to WCR/JBP
Western	12.5	Full to WCR/JBP
Northern	12.5	Full to NCR/ALD
Southern	28.5	Full to SWR/UBL
S.C.	20%	Full to SWR/UBL
S.E.	6.2.5	37.5% to ECOR/BBS & 25% to SECR/BSP

3. Central Northern, Southern South Central, South Eastern & Western Railways should work out the money value of the post to be transferred to these new zones as per the percentages mentioned in para (2) above. This amount should be credited in the vacancy bank of the East Coast, South Western, West Central, North Central and South East Central Railways. However, since all the posts to be transferred may not be vacant, for the present, the transfer should be done against existing vacancies and subsequently as and when the posts keep getting vacated.



4. Other conditions mentioned in this office letter of even number dated 2.1.97 will continue to apply.

10. The Northern Railway had issued a general circular to all the authorities concerned by letter dated 04-09-2002 to invite applications from the willing individuals by 30th November, 2002 and forward the same latest by 02-12-2002, and the extract of the relevant letter reads as under:-


Sub: Calling of option from staff (Group C & D) to serve in the Headquarters of the New railway Zones-determination of seniority of staff on transfer to the new zones.

May please find enclosed herewith Railway Board Letter No. E (NG)/1/96/TR36 Vol II, dated 19th July, 2002 (RBE No. 117/2002) circulated vide GM/P letter no. 939-E/228/New Zone/Policy/EIID, dated 2.8.2002 (PS no. 2462/02) for calling of willingness from willing staff to serve the Headquarter of NCR, Allahabad. These options may be exercised latest by 30.11.2002. It has also been decided that any transfer to the zones after 1.4.2003 will be treated as transfer at own request on acceptance of bottom seniority.

Willingness received upto 30.11.2002 in the prescribed proforma in duplicate enclosed at Annexure-1 duly verified and certified by the controlling officers may be forwarded to this office latest by 2.12.2002. It may be ensured that consolidated category wise/grade wise statement may be prepared strictly according to the seniority and forwarded to this office alongwith the applications. The fresh willingness from the staff who had earlier submitted their willingness to serve NCR, Allahabad in the year 1997 & 1998 may also be forwarded."

11. In so far as North Central Railway is concerned, between the said Zonal Railway and the Northern Railway, a Memorandum of Understanding was struck, vide MOU dated 12th December, 2002 and the same is reproduced below.



1. The gazette notification no. 97/E&R/1/Notification dated 4.7.02 has been issued by Railway Board for setting up of North Central Railway zone with its, Headquarters at Allahabad comprising the existing Allahabad Division of Northern Railway and Jhansi and new Agra Division comprising of part of Central, Western Northern and North Eastern Railways and operation of North Central Railways from 1st April, 2003, A copy of the above notification is enclosed as Annexure-1
 2. This memorandum formalize the understanding reached between the Northern Railway and North Central Railway regarding transfer of the proportionate gazetted and non-gazetted posts and staff from Northern Railway to North Central Railway shown in Annexure II, III and IV.
 3. On the basis of Railway Board letter dated 6.12.1996, options were called for from staff of northern Railway to serve in the Headquarters of North Central Railway. In terms of the board's letter dated 19.7.2002 fresh options as considered necessary, have been called for from the staff for working in Headquarters office of the new Zonal Railway. However, the priority for transfer as laid down in para 2 of Board's letter dated 6.12.1996 as modified from time to time and notified vide their letter referred to above shall be followed.
 4. In terms of Board's letter dated 8.8.2002, it has been decided that Northern Railway shall transfer over all 12.5% of its gazetted and non-gazetted posts in Headquarters office for operation in Headquarters office of newly created North Central Railway. Accordingly, the number of gazetted and non-gazetted posts planned for transfer are indicated in Annexure II, III and IV.
 5. Accordingly, options were invited from the staff of Northern Railway for transfer to North Central Railway to be exercised by 30.11.2002.
 6. Options were similarly sought from the Group 'B' officers of the Northern Railway for transfer to North Central Railway and the gazetted posts to the extent of 12.5% would also be transferred from each department of Northern Railway to North central Railway. However, format orders to transfer all officers will be issued by the Railway Board.
 7. It was argued to transfer to North Central Railway money value of 2006 non-gazetted posts in a fortnight's time.
 8. It was agreed that headquarters provision in each estimate of works being done by Allahabad Division may be identified and man months of posts justified may be transferred to North Central Railway.
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9. It was also mutually agreed that after transfer of Gazetted and non-gazetted posts to North Central Railway as identified and mentioned in Annexure II, III and IV., further review would be done subsequently.

10. This MOU is signed at New Delhi on 12th December 2002 by Chief Personnel Officers of Northern Railway and North Central Railway General Manager, Northern Railway who is holding the additional charge of the post of officer on Special Duty/North Central Railway.

11. Supplementary MOU in regard to transfer of files/documents relating to land records, Court cases etc, would be entered into at the level of PHODs/ Co-coordinating HODs

12. In terms of the above and on the basis of seniority of the optees, necessary transfer orders were effected and a specimen of such a transfer order is contained in order dated 31st March, 2003 which is reproduced below:-

"In terms of Railway Board's letter dated 19.7.2002 circulated under Northern Railway PS No. 12462/2002, the competent authority has decided that the following SO/SSO(A/cs)/WA who have exercised their option for transfer to Headquarters of North Central Railway/Allahabad are hereby transferred. These posts have already been identified for transfer to NCR/ALD in terms of this office surrender memo dated 31.3.2003.

1. Sri Ram Chander Upadhaya SO (A/cs)/AO/G/HQ working in grade Rs. 6500-10500/- (RPS).
2. Sri Md. Belal Siddiqui SO (A/cs)/AFA/FX/HQ working in grade of Rs. 6500-10500/- (RPS)
3. Sri C.P. Shukla SSO (A/cs)/Sr. DAO/ALD working in grade Rs. 7450-11500 (RPS).
4. Sri Om Prakash Srivastava SSO (A/cs)/Sr. DAO/ALD working in grade Rs. 7450-11500 (RPS)
5. Sri Arshad Naseem, SSO (A/cs) Sr. DAO/ALD working in grade Rs. 7450-11500 (RPS).

The lien of following five SO/SSO (A/cs) presently working on deputation at RE/Allahabad is transferred to HQ of NCR.

1. Sri Dhruva Raj Pandey, SSO (A/cs)
2. Sri Tauheed Alam Ansari SSO (A/cs)
3. Sri Kanhaiya Lal, SO(A/cs)
4. Sri Rajesh Kumar Srivastava, SO (A/cs)
5. Sri Syed Aktar Mohdi, SO (A/cs)



The aforementioned staff will report to FA&CAO /NCR/Allahabad.

2. There are nine SO/SSO(A/cs) presently working at TA/ALD against the sanctioned strength of 12 posts. Out of these 7 posts of SO/SSO(A/cs) are transferred from AO/TA/ALD office to Dy CAO/TA/NDLS Office for the work of Lucknow area. Hence, 7 staff minus the no. of vacancies (i.e. 3) are already working within the jurisdiction of NCR. Posting orders of excess SO/SSO (A/cs) over the sanctioned strength office may be decided by FA&CAO/NCR from the list of four SO (A/Cs) presently working at AO/TA/ALD who have opted for HQ of NCR which is enclosed herewith.

- 1. Sri S.N. Tripathi, SO (A/cs)*
- 2. Sri Avdhesh Kr. Singh. SO (A/cs)*
- 3. Sri Suresh Kumar Aggarwal, SO (A/cs)*
- 4. Sri Ram Adhar, SO (A/cs)*

3. The above staff may be relieved immediately and directed to report to FA&CAO/NCR/ALD for further posting.

4. The D&AR/Vigilance clearance of the above transferred staff will be intimated lateron."

13. The above sequence is summarized as under:-

- (a) The Central Govt. has been vested with the powers to create new Zones by rescheduling the existing Zonal Railways.
- (b) Once the decision is taken for such creation of new zonal railways, the extent of territorial jurisdiction is earmarked.
- (c) Options are invited from the employees either to remain in the zone in which the existing zone or the new zone. A specific cut off date is prescribed for the same.
- (d) The optees are categorized into four categories with inter-se seniority within the same category being maintained.
- (e) On the basis of the priority of category, the vacancies are filled up.
- (f) Any vacancy left unfilled would be filled up in accordance with the provisions of rule 312 of IREM which reads as under:-

"312 TRANSFER ON REQUEST - The seniority of railway servants transferred at their own request from one railway to another should be allotted below that of the existing confirmed, temporary and officiating railway servants in the relevant grade in the promotion group in the new establishment



irrespective of the date of confirmation or length of officiating or temporary service of the transferred railway servants.

Note :- (i) This applies also to cases of transfer on request from one cadre/division to another cadre/division on the same railway.
[Rly. Bd. No.E(NG) I-85 SR 6/14 of 21.1.1986].

(ii) The expression "relevant grade" applies to grade where there is an element of direct recruitment. Transfers on request from Railway employees working in such grades may be accepted in such grades. No such transfers should be allowed in the intermediates grades in which all the posts are filled entirely by promotion of staff from the lower grade(s) and there is no element of direct recruitment.

14. Now the facts of the case in the two OAs. In fact, there is no quarrel in so far as the drill as itemized is concerned. However, the grievance of the applicants in the two O.As is concerned, the same is as to the way the transfers were effected.

15. The applicants are functioning in the accounts wing under the senior Divisional Financial Manager, Northern Railway, at different places and applicant No. 1 in OA 254 of 04 is on deputation under Financial Manager and Chief Accounts Officer, Railway Electrification Allahabad. They had all applied for transfer to the North Central Railway, in the wake of the circular letter dated 19th July, 2002 within time and while they were awaiting their

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transfer orders, on finding that the entire drill of transfer was over but these had not been favoured with the transfer order, representations were made by them on various dates and these representation too not having resulted in their desired transfer vide rejection letter dated 20-10-2003 in OA 254/04, they have moved the present O.A. The main grounds of attack as could be seen from para 5 of the O.A. are as under:-

- “5(i) Because the applicants and other staff of affected Division of Moradabad, exercised their options for their transfer to the Headquarters office of New zone Allahabad as per direction of Railway boards letter dated 19.7.2002, but the respondents did not transfer so far.
- (ii) Because the respondents are determined not to transfer the applicants in a arbitrary and illegal manner abrogating the directing the Railway Board contained in letter dated 19.7.2002 and various other letters.
- (iii) Because the respondents are discriminating the applicants in a arbitrary manner by violating the provisions of Article 14 and 16 of the Constitution of India.
- (iv) Because the respondents are determined to prevent the applicants and his children from his posting to Headquarters office Allahabad which is near to his village and city.”

16. The applicants had therefore prayed for quashing of the above order of rejection of their representation and for a direction to the respondents to pass necessary orders for their



transfer from Northern Railway to North Central Railway, retaining intact their seniority.

17. Respondents have contested the O.A. Their contention is that the number of optees being more than the number of vacancies/posts in the NCR in the respective wings, it became necessary to filter the applications on the basis of seniority and strictly following the drill formulated by the Railway Board, the transfer orders were effected and since the names of the applicants figured in Category III and there were seniors to them in the said category, they could not be posted to the North Central Railway.

18. Rejoinder to the counter was filed, substantially reiterating the contentions as contained in the OA.

19. Earlier, when the case was listed for hearing, the learned counsel for the respondent was directed to furnish the details in respect of the number of applications (category-wise), the number of posts, and the number of persons transferred etc., in a tabular column and reply thereof, with due back-up details have been furnished by way of supplementary reply. The details are as under:-

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"For better appreciation of the case it is respectfully submitted that 40 posts of Accounts Assistants (38 from General Accounts & 2 from TA Office) & 13 posts of Section Officer of Headquarters Office were worked out to be surrendered to NCR on the basis of Memorandum of Understanding entered between two Railways. Accordingly two lists have been prepared priority wise and seniority wise - one for staff of General Accounts & another for staff of Traffic Accounts for Accounts Assistant only. In order not to disturb the geographical dislocation of the staff, Northern Railway adjusted 29 staff (Account Assistants) of TA/Allahabad office who became excess over sanctioned strength in TA/ALLAHABAD due to transfer of Account Assistant posts to TA/New Delhi (Northern Railway) on account of transfer of work of Lucknow Division (since Lucknow Division remained with Northern Railway after formation of North Central Railway) and the rest 11 staff (40-29) were transferred strictly on the basis of the priorities laid down by Railway Board vide their letter No.E (NG)/I-96/TR/36 dated 6.12.96. In the case of Section Officers, 4 Section Officers who became excess over sanctioned strength in TA/Allahabad's office were adjusted in NCR/ALD also. It may kindly be pointed out that all the applicants are under priority No.3 of Railway Boards' said letter dated 6.12.96 and even under priority No.2, the certain staff could not be accommodated while considering them for transfer to North Central Railway, Allahabad.

a)	Total number of posts of Accounts/Section Officer allotted to NCR/Allahabad	Accounts Asstt 40 Section Officer 13 Total 53
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B	Number of applications (priority wise) received by the FA & CAO Northern Railway, Baroda House, New Delhi	A.As 153 (Category wise position in terms of Railway Board's letter dated 6.12.96 (Annexure IV of the Counter Reply) is annexed as Annexure CA-2 SOs 40 -do- -do-
c	The seniority position of applicants in O.A nos. 254/04 excluding applicant Nos. 2,3 and 5 position of applicants in O.A. no. 1465/03	In O.A. No. O.A. no. 254/04 Priority No. Applicant No.1 Sri Govind Singh - 31 4.Sh Anand Kr.Tripathi 48 <u>In OA 1465/2003</u> Applicants a) Accounts Asstt. no 1.Sh. Javed Ahmad 40 2.Manoj Kr. 50 3.H.U. Khan 47 4.Smt.Sunita Srivastava 51 5.Ram Bihari 38. 6.Rajneesh Arya 52 b) Section Officer 7. T.A. Siddiqui 37 8. vinod Ji Kesari 33 (Copy of Annexure CA-3)
d)	Whether there are still vacancies at NCR Allahabad where these applicants could be accommodated	As per information received from NCR, Alld vide their letter dated 12.4.2005 2 posts of Section Officer & 5 posts of Accounts Asstts are vacant as on 28.2.2005. 9 Section Officers & 10 Accounts Asstts. Are to be repatriated. Further cadre of NCR stands closed on 30.10.2003. Applicants can be considered in items of para 312 of IREM i.e. on bottom seniority in initial grade. A copy of North Central Railway's letter dated 12.4.2005 is annexed as CA-4

20. Arguments were heard and the documents perused. The learned counsel for the applicant mainly relied upon the notification dated 6th December, 1996, 19th

July, 2002 and stated that the respondents have acted in a discriminatory manner inasmuch as the applicants have not been transferred. He had also contended that many have been posted to East Central Railway Hazipur, and these belonged to Category IV, while the applicants who belonged to Category III have not been transferred to North Central Railway. Again, in respect of one of the Section Officers, who stood junior to one of the applicants Shri T.A. Siddiqui, initially he was not transferred, whereas by a separate order he was also transferred vide order dated 31-03-2003, which reads as under:-

NORTHERN RAILWAY
(Accounts Department)

Headquarters Office
Baroda House
New Delhi

SOO No. NG 046
March 31, 2003

The competent authorith has approved the following transfer/posting of SO/SSO(A/cs)/WA.

1.....

2.....

3.....

4. *Shri Ajay Kumar, SO A/cs)/Sr.DAO/MB on his turn on priority is transferred and posted under AO/TA/ALD against the existing vacancy.*

5.....

6.....

7.....

Authority: Competent Authority's approval at PP 31 of file No. 97/Adm/C/5/1/SO(A/cs)NC Rly."




21. The respondents on the other hand invited my attention to the statement furnished by the respondents, with the able assistance of Shri B.K. Sinha, departmental representative (who deserves appreciation for the job performed by him in furnishing the requisite details in full and in the form required and who could explain and elucidate with minute details in the court also and clarify certain points). The details attached to the supplementary reply clearly reflect the category-wise seniority of those who have exercised their option and thus, there is absolutely no legal flaw in the transfer orders effected by the Respondents. All the transfers have been effected strictly in accordance with the priority category and within the same priority, inter-se seniority on the basis of the applications had been maintained.

22. The counsel for the applicant then contended that the seniority particulars contained in the annexure to the supplementary reply do not reflect the date of application of such optees and therefore, the same should not be entertained. This argument is to be summarily rejected for, the seniority is not based on the date of such applications but the seniority in the respective grade. In this regard, it is worth, at the cost of repetition, the directions emanated from the

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Headquarters, Baroda House New Delhi vide communication dated 4th September, 2002, which clearly administered a full fledged caution, *"It may be ensured that consolidated category wise/grade wise statement may be prepared strictly according to the seniority and forwarded to this office along with the applications."*

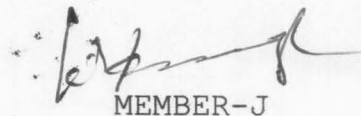
23. As regards the junior one Shri Ajay Kumar's transfer, the departmental representative explained that that transfer is not in response to the options called for but is "on his turn on priority" as contained in the very transfer order. I could find substance in the submission made on behalf of respondents. Though two transfer orders emanated on the same day, i.e. 31-03-2003, the preambular statement of the respective letters clinches the issue. One relating to transfer under the zonal Railway fully refers to the various notifications/letters of the Board etc., while the other is a normal transfer order simpliciter with a special mention, as stated above, "on his turn on priority". Hence, even the hostile discrimination alleged in respect of one of the applicants does not have a proper base. In case the applicant had also applied under the priority quota but had been discriminated, the same could be agitated through a separate OA as this OA relates only in respect of



transfer under the Zonal Railway Creation and the rules thereunder.

24. Thus, the applicants have miserably failed to make out their case. Consequently, the O.As are dismissed. However, the respondents themselves have given latitude to the applicants that in case they desire, they could apply under the provisions of Rule 312 of IREM in which event, and the applicants would be placed at the bottom seniority. If any such applications are made by the applicants, the same should be considered by the respondents and the applicants accommodated.

25. Under the circumstances no order as to costs.


MEMBER-J

GIRISH/-