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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.507 OF 2005

ALLAHABAD THIS THE 18<sup>th</sup> DAY OF October 2007

HON'BLE MR. K. S. MENON, MEMBER-A

Gyanesh Kumar Niraj,  
Son of Late Deo Sukh,  
Resident of C/o Mr. G.S. Nema retired A.D.J.,  
Engineer Coloney Kausalpur,  
New Agra.

. . . . .Applicant

By Advocate : Shri A. K. Srivastava

Versus

1. Union of India through  
General Manager,  
North Central Railway,  
Jhansi Division, Jhansi.
2. Divisional Railway Manager,  
North Central Railway,  
Jhansi Division, Jhansi.
3. Senior Divisional Personal Officer,  
North Central Railway, Jhansi Division,  
Jhansi.
4. Senior Divisional Personal Officer,  
North Central Railway, Agra Division,  
Agra.

. . . . .Respondents.

By Advocate : Shri Anil Kumar Dwivedi

O R D E R

This OA has been filed under section 19 of the Administrative Tribunals Act 185 seeking direction of this court to issue direction to the respondents to transfer the applicant from Jhansi Division to Agra Division of North Central Railway with the same grade, post and seniority.

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2. The applicant is working as Loco Inspector in Grade Rs.6500-10500 at Gwalior under Jhansi Division of North Central Railway. Consequent upon the creation of a new Agra Division of North Central Railway, respondents invited options from the staff to go on transfer to the newly created Agra Division vide their letter dated 04.07.2002. Applicant submitted his application on 31.10.2002 which <sup>was</sup> forwarded the same day to DRM Jhansi for further action (Annexure-2 of the OA). No action appears to have been taken on this application. He once again submitted his option along with proforma 'B' on 08.04.2004 which was forwarded from Gwalior to DRM Jhansi office on 10.04.2004. Once again the applicant received no reply. On the other hand respondents have transferred one Shri Ram Bahadur Loco Inspector from Jhansi to Agra vide letter dated 21.04.2004 and Shri B. K. Udainia Senior Loco Inspector to Agra vide letter dated 22.8.2003 on option basis. The applicant contends Shri Ram Bahadur submitted his option after the applicant submitted his while in the case of Shri Udainia no option was submitted at all. Hence he holds the action of the respondents to be discriminatory and illegal and his case deserves to be considered for a transfer to Agra Division.

3. The respondents nos. 1 to 4 on notice have filed a counter and a supplementary counter to the applicants rejoinder to the main counter affidavit. Their main contention is that the applicant submitted



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an application for transfer to Agra Station on 13.07.2001, as at that time the new Agra Division had not been formed, hence his request could not be considered at that time. They state that in accordance with Railway Board, letter dated 04.07.2002 options were invited for the new Zonal/Divisional Office posts from the staff. The last date for such options was 30.11.2002 as per Railway Board, letter dated 19.07.2002 (Annexure RR-5). They state that the applicant submitted his application on 08.04.2004 i.e. well after the last date. Besides respondents 1 to 3 maintain that all applications duly processed were forwarded to Agra Division and officials were to be relieved to join the new Division based on acceptance received from Agra Division. The two cases cited by the applicant i.e. Shri Ram Bahadur, and Shri B. K. Udainia were transferred based on the acceptance received from Agra Division. The applicant could not be transferred as no acceptance in his case was received from Agra Division. Respondent no. <sup>3</sup>4 maintains that application with options were to be considered by Jhansi Division and forwarded to Agra Division, who were to consider only those applications forwarded by Jhansi Division, which is what they have done. In view of this the respondent no. <sup>a</sup>4 is of the view that their action is in accordance with the rules and procedures and not arbitrary. The applicant has no case and the OA is, therefore, liable to be dismissed.

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4. Heard the counsels for the applicant Shri A. K. Srivastava and Shri Anil Dwivedi for the respondents and perused the pleadings on record.

5. The Railway Board has issued a series of letters modifying and clarifying their instructions dated 06.12.1996 regarding instructions for calling options from staff to work in the headquarters offices of the new Zonal Railways. The formation of the new zonal Railway w.e.f. 1.4.2003 was notified on 04.07.2002. Necessity of calling for fresh options was felt in view of :-

- (i) Change in jurisdiction of the new zonal Railways compared to that taken into account while calling for options initially.
- (ii) Creation of new divisions and reorganization of existing divisions and
- (iii) Date for exercising options being current only up to 30.09.1998.

Railway Board subsequently clarified the issues vide para 4 of their letter dated 19.07.2002 as under:-

"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 zonal Railways and of the existing zonal railways from whose terminal jurisdiction the new zones have been carved out, may be called for from the staff for working in the headquarter office 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.dt.6.12.1996 as modified subject to the following further conditions.

- (i) The options may be exercised latest by 30.11.2002.
- (ii) The staff short-listed for transfer/posting to the headquarter office of the new zonal Railways should be in position as per schedule advised by the new zonal Railways but in any case latest by 31.03.2003 for which the COPs of the existing zonal Railways should ensure that the staff

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- concerned are relieved as soon as requested by the new zonal Railways.
- (iii) Any transfer to the headquarter office 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. dt. 06.12.1996 will continue to apply."

From the above it is seen that the deadline for exercising options was 30.11.2002 and the entire exercise of transfer/posting and acceptance by the receiving divisions was to be completed by 31.03.2003. Transfers after this date was to be treated as on own request on bottom seniority in recruitment grades subject to usual conditions governing such transfers. The option exercised by the applicant on 13.07.2001 was much before formation of the new zonal Divisions w.e.f. 01.04.2003 and issue of instructions regulating such options and was therefore not considered by the respondents, although there is nothing on record before the court to show how this application was disposed of by the respondents. The applicant submitted another application dated 31.10.2002 (copy not annexed with the counter or Supplementary counter) however, copy or the covering letter forwarding the said application from Gwalior to DRM, Jhansi is at Annexure-2 of the OA. There is no record of how this application was also disposed of by the respondents. In view of the inactions<sup>of</sup> of the respondents, the applicant once again submitted another application

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along with from B on 08.04.2004 which was sent by Jhansi Division to Agra Division on 10.04.2004. There appears to be some confusion about whether Jhansi or Agra Division is responsible for deciding the case. Instructions contained in para 4 (ii) of Railway Boards letter dated 19.07.2002 stipulates that the Division where the applications/options are submitted would process such cases and short list the same for transfer/posting to the headquarters of the new zonal Railways and should be in position as per schedule advised by the new zonal Railway and the whole exercise is to be completed latest by 31.03.2003. This would mean that Jhansi Division would short list the application and options received up to 30.11.2002 and communicate this list to Agra Division, who in turn would convey their acceptance as per the schedule worked out, Jhansi Division would then relieve the officials concerned as soon as request is received from Agra Division and complete the whole exercise by 31.03.2003.

6. A simple reading of the above instructions and procedures would indicate that whoever opts after 30.11.2002 and/or whose transfers are effected after 01.04.2003 is not to be covered under the option scheme but under 'own request' basis. The respondents appears<sup>2w</sup> to have dealt with the applicants application dated 08.04.2004 in the above manner. They have not indicated how and when the applicants option dated .10.2002 which was well before the cut off date i.e.

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30.11.2002 has been disposed of. Besides they have not been consistent in their application of the instructions contained in Railway Boards letter dated 19.07.2002. If in the two cases cited by the applicant that of Shri Ram Bahadur and Shri Udainia, the respondents have transferred them after the stipulated date of 01.04.2003 on option basis, <sup>2</sup> they have clearly discriminated between these two officials and the applicant. As model employers, the respondents had a moral duty to advise the applicant in case of any lapse on his part. The respondents have also not been able to come out convincingly as to why the cases of Shri Ram Bahadur and Shri B.K. Udainia have been handled the way they have been to their advantage in violation of Railway Boards instructions dated 19.07.2002 while cut off dates have been used to the disadvantage of the applicant. Respondent no.4 i.e. Agra Division has also not come out clearly in their counter as to why the applicants case forwarded by Jhansi Division on 31.10.2002 as mentioned in para 11 of the counter of respondents 1,2 & 3, was not considered and accepted. Instead of coming clean on the issue respondents 2,3 & 4 have been shifting the blame on one another at the cost of the applicant.

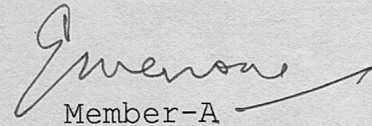
7. It is evident that the applicants case has not been handled the way expected of a model employer, therefore, I think the principles of natural Justice would be met if the respondents transfer the applicant



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as per his option dated 31.10.2002 in the same capacity and grade on option basis to Agra Division.

8. In view of the above, the OA is allowed and the respondents are directed to transfer the applicant to Agra Division in the same capacity and grade on option basis as per his application dated 31.10.2002 and Railway Board's letter dated 19.07.2002 within a period of three months from the date of receipt of a certified copy of this order. No costs.

  
Member-A

/m.m./