

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH:JODHPUR.**

**Original Application Nos. 246/2004 &
Misc. Application No.130/2005
Original Application Nos. 247/2004
Misc. Application No.131/2005**

Date of decision:23.02.2007

Hon'ble Dr. K B.S. Rajan, Judicial Member.

Hon'ble Mr. Tarsem Lal, Administrative Member.

K.D.Swami, S/o Shri Mai Dass Swami aged about 41 years, resident of 4-E, 237- JNV. Colony, Bikaner. The applicant is presently holding the post of Senior Section Engineer Works(Const.) North Western Railway, Bikaner.

: Applicant in O.A. No. 246/04 & M.A.
No.130/05

Lilu Ram, S/o Shri Trilok Ram, aged about 45 years, resident of C/o Shri Mahendra Puniya Sainik Colony, B 82, Sadhalpur, District Churu. The applicant is holding the post of Senior Section Engineer (C) Bikaner.

: Applicant in O.A. No. 247/04 & M.A.

Mr. Kuldeep Mathur : Counsel for the applicants in both the O.As

VERSUS

1. The Union of India, through the General Manager, North Western Railways, Jaipur.
2. The Chiefr Administrative Officer (Construction) North Western Railway, Jaipur.
3. The Deputy Chief Engineer (Construction-II) North Western Railway, Opp. Dholamaru hotel, Bikaner.
4. The General Manager, Western Railway, Church gate, Mumbai.

: Respondents in both the O.A.s

Mr. Manoj Bhandari : Counsel for the respondents 1 to 3

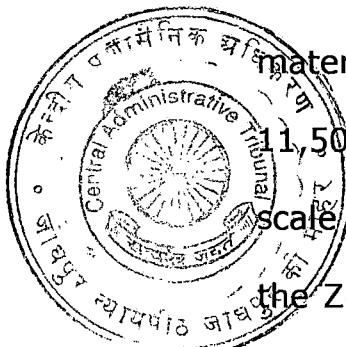
None present for respondents. No. 4

Per Dr. K.B.S.Rajan, Judicial Member

The two applications revolving round the same subject matter, the same are considered by this common order. For the purpose of reference, OA 246/04 has been considered.

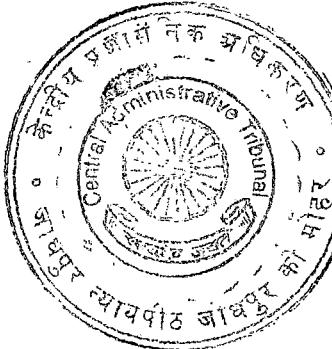
2. At the very outset, as applicant in OA No. 246/04 had, by filing M.A. No. 130/05 and applicant in OA No. 247/04 had, by filing M.A. No. 131/05 prayed for certain interim relief, whereas, the case has been finally heard, the said M.A. No. 130 of 2005 as well as 131/05 has been rendered infructuous and is accordingly closed as having become infructuous.

3. Briefly stated, the applicants originally belonged to the Western Railway. While applicant in OA No. 247/04 was, at the material point of time, functioning as S.S.E. in the scale of 7,450-11,500/-, applicant in OA No. 246/04 was functioning as S.E. in the scale of Rs 6,500 - 10,500/-. Provision exists for their changing the Zones subject to certain conditions. Thus, when, a new Zonal Railway called North Western Railways was formed, on the basis of a Railway Board Notification dated 9-07-2002 circulated under Western Railway notification dated 25-07-2002, vide Annexure A-2, the applicants in these two O.As applied for switching over from the Western Railway to the North Western Railway. Applicants' option was duly forwarded to the G.M. Western Railway, vide Annexure A-3 order dated 09-08-2002 (Annexure A-4 in the case of Applicant in OA 247/04) read with Annexure A-4 order No. E-740/1 (S & C) dated 28-08-2002. Their options had been accepted and they were sent to the Construction Wing in the North Western Railway, vide order dated 30-08-2002 (Annexure A-6 in OA No. 246/07) and 25-06-2003 (Annexure A 7 in OA No. 247/04). Various other



communications reflected that the transfer from Western Railway to North Western Railway was complete. In so far as Western Railway is concerned, while retaining the lien of the applicants, vide order dated (21-12-2005 filed during the course of arguments), the names of the applicants were omitted to be reflected in the seniority list, respectively of S.W (in respect of Applicant in OA 246/04) and S.S.W. (in respect of applicant in OA No. 247/04). However, when the North Western Railway had issued the impugned seniority lists of S.Es and S.S.Es in their Railway, the names of the applicants did not figure in. As such, representations were filed by the applicants, reflecting the entire episode of their having opted for transfer to N.W.R., the due approval by the competent authority, etc., and request was made for inclusion of their names in the respective seniority lists at the relevant place. However, this not having been done, the applicants have moved these O.As, praying as under:-

- " i) That the seniority lists dated 24.06.2004 (Annex.A/1) and 15.09.2004 (Annex. A/12) may kindly be declared illegal and same may kindly be quashed and set aside.
- ii) The respondents may kindly be directed to issue fresh seniority list of the Engineering Department of NWR., Jaipur by including the name of the applicant.
- (iii) In the alternative, it is humbly and respectfully prayed that in case name of the applicant has not been included in the seniority lists 24.06.2004 and 15.09.2004 on the ground that his lien has not been fixed in the NWR after his transfer to NWR from Western Railway, then by an appropriate order or direction, the respondents may be directed to first fix lien of the applicant in NWR in pursuance letter dated 09.07.2002 issued by the Railway Board and then show name of the applicant at an appropriate place in the seniority lists dated 24.06.2004 and 15.09.2004.
- (iv) Any other relief, which this Hon'ble Tribunal deems fit and proper in favour of the applicant, may be granted to the applicant.
- (v) Costs of this application may kindly be ordered to be awarded in



favour of the applicant."

4. Respondents have resisted the O.A. contending that the applicants were sent on deputation to the NWR and as such, their names have not been reflected in the seniority lists. Their contention is based on the fact that the liens of the applicants were retained in the Western Railway.

5. Counsel for the applicants argued that when all the documents clearly show that the entire action in the move of the applicants had the initial order of the Railway Board dated 09-07-2002 as its base and as such, the said reference is contained in various communications and action taken accordingly, it cannot be contended that the move of the applicant is one of deputation.

6. The counsel for the respondent had contended as to what had been stated in the Counter.

7. Arguments were heard and documents perused. Admittedly, the applicants have exercised their option in the wake of the notification dated 09-07-2002 of the Railway Board. All the subsequent actions are based on and orienting towards the said order only. Seniority list of Western Railway does not contain the name of the applicants, clearly reflecting the fact that they have been struck off the strength of Western Railway. Retention of lien is for a limited purpose, viz, should there be a situation, whereby the applicants were to be sent back to the Western Railway, the applicants should not lose their seniority position in their respective posts in the Western Railways. Nothing less; nothing else. As such, the contention of the respondents that the applicants have been on deputation to North Western Railway is totally





unacceptable. The respondents have committed a patent error in not reflecting the names of the applicants in the seniority list of their respective posts in the North Western Railway.

8. In view of the above, **O.A No. 246/04 and 247 of 04 are allowed.** It is declared that the applicants in these O.As have been transferred in the wake of the Railway Board notification dated 09-07-2002 and their transfer to North Western Railway is one of transfer from Western Railway to North Western Railway and the logical corollary of such transfer is inclusion of the names of the applicants in the seniority list maintained by the North Western Railway and attendant benefits thereof, to which the applicants are entitled. The applicants shall be entitled to the benefits, such as participating in the examinations, if any, as available to others in the seniority list and consideration for promotion in turn on the basis of the seniority list. Respondents are, therefore, directed to take immediate action to reflect the names of the applicants of these O.As in the respective seniority lists of the posts in which the applicants were inducted in the North Western Railway. Time calendared to complete this drill is three months from the date of communication of this order.

9. No cost.

Tarsem Lal
(Tarsem Lal)
Administrative Member.

Dr. K.B.S. Rajan
(Dr. K.B.S. Rajan)
Judicial Member.

TSV

Rec. copy of order
Query date
11/3/07
for Mr. MANOJ BHANDARI

RIC
11/3/07
for K. Mehta
AM.