

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Original Application No.289/2010
With MA No. 155/2010

Reserved on 02.05.2014

Jodhpur this the 9th day of May, 2014.

CORAM

**Hon'ble Mr.Justice Kailash Chandra Joshi, Judicial Member
Hon'ble Ms. Meenakshi Hooja, Administrative Member**

1. Manohar Lal s/o Mohan Lal, aged about 52 years, at present employed on the post of Carpenter in the Office of Dy CSTE (C) Dholamaroo, Bikaner, NWR.
2. Bansi Lal s/o Shri Bhagwan Ram, aged about 53 years, at present employed on the post of Black Smith in the Office of Dy CSTE (C), Dholamaroo, Bikaner, NWR
3. Chain Singh s/o Shri Bag Singh, aged about 51 years, at present employed on the post of Fitter in the Office of Dy CSTE (C) Dholamaroo, Bikaner, NWR
4. Gurmit Singh s/o Nishan Singh, aged about 56 years, at present employed on the post of Painter in the Office of Dy CSTE (C) Dholamaroo, Bikaner, NWR
5. Poona Ram s/o Shri Ladu Singh, aged about 54 years, at present employed on the post of Black Smith in the Office of Dy CSTE (C) Cholamaroo, NWR.

Address for correspondence:-

C/o Shri Manohar Lal r/o Indira Colony, in front of Railway Station, Maha Mandir, Jodhpur.

.....Applicants

(Through Advocate Mr. J.K.Mishra)

Versus

1. Union of India through General Manager, North Western Railway, Hqrs Jaipur Zone, Hasanpura, Jaipur

2. General Manager, Northern Railway, Baroda House, New Delhi.
3. Chief Administrative Officer, Construction, North West Railway, Jaipur
4. Chief Signal and Telecommunication Engineer, North West Railway, Hqrs Office, Jaipur Zone, Jaipur

.....Respondents

(Through Advocate: Mr. Kamal Dave)

ORDER (ORAL)

Per Justice Kailash Chandra Joshi, Member (J)

By way of filing the present OA u/s 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:-

- i) That the applicant may be permitted to pursue this joint application under rule 4(5) of CAT Procedure Rules, 1987.
- ii) That respondents may be directed to accept option of the applicants and fix their lien in Jodhpur Division of North Western Railway, Jaipur Zone, Jaipur accordingly. The respondents may be directed to allow with all consequential benefits thereof.
- iii) That any other direction, or orders may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- iv) That the costs of this application may be awarded.

2. So far as prayer no. i) is concerned, since the cause of action has arisen from the same order, therefore, the applicants are permitted to pursue their grievance through this joint OA.

3. The applicants have also filed a Misc. Application No. 155/2010 for condonation of delay in filing the OA. We have considered the grounds taken in the Misc. Application and in the interest of justice, the same is allowed.

4. Brief facts of the case, as stated by the applicants, are that all the applicants except applicant No.2 were initially engaged as Casual Labour/Artisan in Construction Organisation in the office of Signal and Telecommunication, Tilak Bridge. They were promoted after they successfully cleared the trade test. Applicant No.2 was initially engaged as Black Smith. In the OA, the applicants have given service particulars as under:-

<u>Sl.No.</u>	<u>Name</u>	<u>Date of App</u>	<u>Present Post</u>
1.	Manohar Lal	2.8.1979	Carpenter
2.	Bansi Lal	7.4.78	Black Smith
3.	Chain Singh	6.12.78	Fitter
4.	Gurmit Singh	29.4.78	Painter
5.	Poona Ram	4.5.78	Black Smith

The applicants have stated that they were subjected to trade test for Group-C post and all of them passed their respective trade tests. They were also formally granted temporary status in the year 1983 despite acquiring the temporary status from the earlier date, on rendering 180 days continuous service. The applicants have further stated that they were subjected to screening test for absorption in Group-D post in regular establishment on 13.12.1993 and their lien on absorption was fixed in Delhi Division of Northern Railway, New Delhi

somewhere in the year 1997. The applicants were given paper promotion to the post of Signal and Telecom Helper Khallasi in the year 1999 and they were assigned seniority accordingly in Delhi Division vide letter dated 18.12.2006 and 29.10.2009 wherein their names figure at Sl.No.516, 536A, 524, 409 respectively. After operation of 7 new zones, since the applicants were working in the Jodhpur Division, therefore, the applicants have given their option for Jodhpur and the same was forwarded to the Headquarter Office by their controlling authority vide letter dated 26.8.2002 (Ann.A/3). The applicants were also asked to submit their fresh option for transfer/fixing their lien at Jodhpur Division on bottom seniority in the year 2004 but since they had already given the options, therefore, this was not required, however, the applicants gave another option. The respondents No.3 forwarded a list of employees of the Construction Organisation opted in time for fixing their lien in North Western Railway vide letter dated 19.1.2009 (Ann.A/6) and names of the applicants are placed at Sl.No. 93,90,89,92 and 91 respectively. The applicants have further stated that some of the persons filed OA no.63/2007 and 426/2006 before this Tribunal at Jaipur Bench and during the pendency of the same, they have been allowed paper lien in their opted division vide letter dated 15.7.2009 (Ann.A/7). The applicants have also filed representations raising their grievance but they are being given differential treatment and similarly situated persons who have entered into litigation have been granted the lien as per their option, but the applicants are not given the same, therefore, they have approached this Tribunal by filing the present OA.

5. The respondents by filing reply to the OA have denied the right of the applicants and submitted that the applicants are not entitled for fixing their lien in North Western Railway. It has been further submitted that while referring to the rules, the applicants have no where referred the statutory provisions extending the right for such acceptance of the option whereas the order dated 28.4.2004 (Ann.R/1) disentitled the applicants for fixing their lien in North Western Railway. According to the respondents, utilization against temporary local arrangement does not create any right particularly when the applicants are holding a lien in Delhi Division and also got further promotion in their parent department and no claim for equal treatment can be founded in ignorance to the statutory rules and even if some persons are allowed some benefits, on this basis, the applicant are not entitled to claim the same unless they clearly establish their right on the basis of the rule position. Respondents have further submitted that as per Ann.R/1 RBE 92/2004 the Railway Board has already decided that the proposal for providing lien to the staff working in the Construction Unit in view of creation of new zones cannot be accepted as the same will adversely affect seniority and promotion of existing staff in the relevant division/unit. Therefore, the applicants have no case.

6. The applicants have also filed rejoinder to the reply filed by the respondents thereby reiterating the averments made in the OA.

7. Heard both the parties. Counsel for the applicant contended that the applicants submitted their options to the respondent department after coming into operation of the new zones in the year 2000. These options were sent in response to the options called from the staff for Divisions/units wherever they were physically working in the cadres in the Headquarter office of these zones. The applicants were working in the office of DSTE (C) at Jodhpur which fell in Jodhpur Division of North Western Railway, Jaipur Zone. All the applicants gave their option for North Western Railway and the same was forwarded to the Headquarter office by the controlling authority. When the matter was kept pending, the applicants also submitted representation for expediting the matter and the same was forwarded to the higher authorities. Counsel for the respondent further contended that respondent No.3 also forwarded a list of employees in the Construction Organisation who had opted in time for fixing their lien in North Western Railway vide letter dated 19.1.2009 (Annex. A/6) and names of the applicants were placed at Sl.No. 89 to 93. According to the counsel for the applicants some of the similarly situated persons filed OA no.67/2007 and 426/2006 before the CAT-Jaipur Bench and during the pendency, they have been allowed paper lien in their opted division of North Western Railway, Jaipur Zone. Thereafter the applicants filed another representation and reminder was also sent but the respondent department failed to take note of it and the department has not accepted the options of the applicants for fixing their lien in Jodhpur Division of the North Western Railway. The counsel for the applicants further contended that the options submitted by the similarly

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situated persons were considered positively and their lien has been fixed in their opted division, therefore, the applicants are also entitled to have their option decided in their favour.

8. Per contra, counsel for the respondents contended that the respondent department called options from all the divisions on account of operation of new zones from the year 2000 but when the fact came to the knowledge of the department that in case employees of the Construction Organisation are transferred to other divisions, the matter of seniority will become complicated and it will be very difficult to fix their seniority vis-à-vis the employees already working in that division, therefore, Establishment Order No.92/2004 was issued by the Director, Estt. (N), Railway Board (Ann.R/1) and thereafter only the persons opting for the Headquarter office have been allowed their options for transfer and so far as divisions are concerned, such options were allowed subject to bottom seniority, because in case of bottom seniority, their seniority will be fixed in the bottom whereas in the Headquarter office, the seniority are to be fixed from the date of coming into operation of the new zone, therefore, Ann.R/1 circular was issued by the competent authority.

9. Counsel for the respondents further contended that the contention raised by the counsel for the applicants regarding Ann.A/6 and A/7 cannot be said to be correct statement of fact because Ann.A/6 was only a proposal and not a policy decision as it only refers to the proposal in which names of the applicants find place at Sl.No.

89 to 93 and at the same time, the persons whose options were allowed vide Ann.A/7 were allowed only for North Western Railway Headquarter and not for any division.

10. Although the counsel for the applicants contended that several persons have been allowed to opt for the division, but at the same time, counsel for the respondents contended that in the absence of any documentary evidence, oral argument cannot be accepted and he contended that no one was allowed to opt for any division except on bottom seniority.

11. We have perused the documents available on record and also pondered over the arguments advanced by both the parties. So far as record is concerned, the applicant relied upon Ann.A/6 and A/7 and vehemently contended that out of the list forwarded vide Ann.A/6, persons finding place at Sl.No. 1, 11, 85, 86, 87 and 88 were allowed their option vide Ann.A/7 but we see that vide Ann.A/7 their options were allowed only for Headquarter office and not for any division. Further, Ann.A/6 is only a proposal letter and not any policy decision that the railway is going to accept the options of the employees of the Construction Organisation to other divisions. From the record, it is clear that the railway administration has consistently remained very strict in its policy decision issued vide letter Ann.R/1 and no violation has been shown by the applicants about the policy decision taken vide Ann.R/1. So far as bottom seniority rule is concerned, it is still

operational as is evident from Ann.R/5 enclosed with the additional submissions.

12. Thus, in view of the discussions made hereinabove, the applicants' application lacks merit and is accordingly dismissed with no order as to costs.

Meenakshi

(MEENAKSHI HOOJA)
Administrative Member

Justice

(JUSTICE K.C.JOSHI)
Judicial Member

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Ray
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16/5/14