

13. M.S.Tambe
(Ad-hoc Group "C" employee
14. Kondayya V.
(Ad-hoc Group "C" employee
15. Chintamani Bapu
16. S.S.Raut
17. C.D.Ahirey
18. R.U.Khan

- Applicants

All the applicants are working in
group "D" posts in Western Railway
Under Headquarters Office, Churchgate
Mumbai

C/o Mr.G.S.Walia,
Advocate High Court
16, Maharashtra Bhawan
Bora Masjid Street
Behind Handloom House,
Fort, Mumbai-400 001

(By Advocate: Shri G.S.Walia)

Versus

1. Union of India, through
The General Manager
Western Railway, Headquarters Office
Churchgate,
Mumbai-400 020

2. Chief Personnel Officer
Western Railway, Headquarters Office
Churchgate,
Mumbai-400 020

- Respondents

(By Advocates - Shri V.S.Masurkar and Shri
R.R.Shetty, proxy for Shri R.K.Shetty)

O R D E R

By Hon'ble Mr.Kuldeep Singh, Member(J)

By this common order, we will be deciding
two OAs involving common question of facts and law.

2. In both the OAs, the applicants are aggrieved of the fact that they have not been granted lien on the post on which they are presently working as permanent employees and from where they should be promoted to the higher posts on the basis of combined seniority of Open Line and Survey and Construction

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department of the Western Railway. They further allege that though they have been working for a number of years, are still treated as employees of Survey and Construction department i.e. temporary employees do not have any lien in the common seniority of Engineering department which includes Open Line and Construction Department. Therefore, they are not being considered for higher promotion and hence these OAs.

3. At this stage, it will not be out of place to mention that earlier a common OA was filed by the applicants of both the OAs which was registered as O.A. 39/95. Respondents had objected to the filing of that OA on the ground that some of the applicants were group "D" employees, some were regularised as group "D" employees, some were promoted as Junior Clerks and some were still casual labourers. Respondents had submitted that joint application was not maintainable since the applicants belonged to more than one class and there being no common cause of action. The Tribunal vide its order dated 15.12.99 upheld the objection of respondents and offered an opportunity to the applicants to amend the OA by deleting the names of such persons who had no common cause of action. Applicants were directed to do the same within a fortnight. Thus in deference to the order dated 15.12.99, the applicants have filed the present OAs.

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4. Facts as alleged by the applicants, are that they had initially joined as Class - IV employees in Survey and Construction department of Western Railway. It is stated that engineering department of the Western Railway has two wings viz. Open Line Engineering Department and Survey and Construction Department. It is submitted that in the year 1971, a decision was taken by the Railway Board that 40% of the posts in Survey and Construction Department were to be treated as permanent posts and the seniority in respect of those posts was to be merged in the Open Line Department which was subsequently raised to 60%. It is alleged that Class-IV employees are entitled to be promoted as Junior Clerks in the scale of Rs.950-1500 on the basis of selection and though they have completed more than 20 years of total service, only few of them i.e. applicants in OA-253/2000 have been promoted and others are yet to be promoted. The applicants have stated that their counterparts in the Open Line Department have been granted lien and promoted as Clerks etc. Besides that, permanent employees can also apply for other ex-cadre posts like Welfare Inspector etc. but since the applicants have not been confirmed, so they are not entitled to apply for any other higher post.

5. It is submitted that when a decision had been taken that 60% posts of the Survey and Construction Department were to be treated as permanent, they were to be distributed among various divisions of Western Railway in order to allot lien to those employees of group "D" staff against the posts

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so distributed. In respect of those casual labourers who had been regularised from 1.12.78, the question was still open whether they were to be given seniority in group "D" with retrospective effect or their seniority would be only prospective. Applicants submit that seniority should be given from the respective date of regularisation for the reason that their regularisation w.e.f. 1.12.78 onwards is beyond question and it had been done as per Railway Board's order and consequently, they have been a part of the floating cadre and, therefore, were not given any lien on any division. Now that the required posts have been allotted to different divisions as per memo issued by the department, therefore, these posts are legitimately due to be occupied by construction staff. The staff can, therefore, be allotted lien on respective divisions against these posts but as far seniority, their full regular service should be counted as it would be unjust to ignore length of their regular service. Thus the applicants claim that they are entitled to ~~be~~ ^ regularised from 1.12.78 in the Headquarters Unit of Engineering Department and consequential benefits as such and they are also entitled to have a lien in the Open Line Department of the Headquarters Unit and further entitled for promotion on the basis of common seniority. Despite the fact that the applicants have been working for quite long time, they have not been granted lien and for that reason, during 1978-1985 they were not called for any selection/examination which was to be conducted by the competent authority for promoting them to group "C" posts. It is only after

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negotiations held on 24.1.86 that it was decided to hold selection for the post of Record Sorter/Tally Clerks and after holding of the selection, the promotion order was issued on 29.4.86. On 28.2.87, the Railway Administration issued ad-hoc promotion order for the posts of Junior Clerk.

6. For the purpose of granting lien, the applicants submitted that the Railway Board vide letter dated 25.10.93 had taken a decision consequent to the filing of a writ petition in Bombay High Court by some of the employees working in Construction Department that the office of C.E.(Survey and Construction) will form part of the Headquarters office. The applicants have been working under C.E. (Survey and Construction) at Churchgate i.e. the Headquarters Office and as such, their lien has to be maintained in the post controlled by the Headquarters Office and they cannot be granted lien in the division or in any other seniority unit apart from the Headquarters Office. So the action of respondents in granting lien to the applicants in the divisions in which they have never worked, is wrong and illegal and it is alleged that this has been done purposely after filing of the OA with a view to favour some of the employees who are junior to the applicants and are working in the Headquarters office. It is submitted that the applicants are entitled to the lien against 40% posts in the Survey and Construction Department under the Chief Engineer (Survey and Construction) in the Headquarters office itself. Inspite of the Railway Board's orders, the respondents have

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maintained two seniority lists and have promoted the junior employees working in the Open Line Department in the Headquarters office against the reserved posts i.e. 40% posts in the Survey and Construction Department of the Headquarters office. Thus the applicants pray that they are entitled to get their lien fixed against permanent posts and their seniority is to be merged with the Open Line Engineering Department of the Western Railway Headquarters from the date they had been regularised and consequently they are entitled for further promotions.

7. Respondents are contesting the OA. They have submitted that the applicants were initially appointed in the Construction Department of the Railways and they are now seeking regularisation of their service and grant of lien in the permanent establishment of Railways since the Construction Department is not a permanent establishment. It is submitted that the applicants are aggrieved by an order dated 6.1.95 vide which their lien has been fixed in the Bombay Division since they had already been granted regularisation. Respondents have pleaded that the demand of the applicants for grant of lien on the permanent establishment of the Railways has already been met and they will be granted further promotions as per their lien in the Bombay Division of the Western Railway. But as far the demand of applicants to merge their seniority as per their position in the Construction Department is concerned, the same cannot be met. It is also stated that the applicants had initially joined the office of

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respondents in the Survey and Construction Department and that no seniority can be maintained in the said department as the same is transitory and not a permanent one. The applicants therefore have been granted lien and permanent regularisation and seniority in the Bombay Division. Respondents further submit that as per the rules, the lien of Construction Department employees is to be fixed on a division falling under the jurisdiction of Construction Department. There is no question of merging their seniority in the Headquarters office. Accordingly the applicants have been provided lien in the Bombay Division. It is submitted that the applicants cannot choose the department or office in which the permanent lien has to be granted to them which is a policy matter whereby the lien has been duly granted to the applicants. In any case, the respondents further submit that there is no question for granting the applicants any seniority on the basis of work done by them or post held by them in the Survey and Construction Unit. Stand taken by the respondents is common in both the OAs.

8. Rejoinder to the counter has also been filed and in the rejoinder the applicants have again alleged that they are claiming relief for granting lien to them where they are working and they submit that for the purpose of seniority and promotion, Headquarters office, Western Railway is treated as a separate unit apart from the eight divisions of the Western Railway. Every division of the Western Railway and Headquarters office has a separate entity for the purpose of

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seniority and promotion and granting of lien. Since the applicants have been working all the time in the Headquarters Office in Survey and Construction Department, therefore, for seniority, promotion and grant of lien, it is only the Headquarters Office where the applicants can claim such benefit. Applicants have never worked in any other division including the Bombay Division. Thus it is submitted that the applicants are entitled to permanent lien in the Headquarters Unit.

9. We have heard learned counsel for the parties and gone through the records.

10. Learned counsel for the applicants submitted that all the applicants throughout have been working in the Headquarters i.e. Survey and Construction Department and Headquarter is maintaining separate seniority unit, parallel with various other divisions under the Western Railway. As per policy decision of respondents, the applicants who had been working under the Headquarters Division are entitled to be allocated Headquarters Division instead of Bombay Division which is under challenge. Learned counsel referred to Exhibit A-2 which is a letter written by Headquarters Office, Churchgate to the General Secretaries of the two Unions i.e. WRMS-BCT, Bombay and WREU, Grant Road, Bombay. According to this, a proposal was mooted by the Headquarters office to allocate the number of group "D" posts to respective Divisions where these 153 persons were working and to grant them lien on those divisions which shows that the Railways had

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proposed a solution for allocation of division to all those employees on the basis of "as is where is" meaning thereby that whosoever is working on a particular division, he should be allocated the lien on that very Division.

1.1. Learned counsel for the applicants further referred to exhibit A-4 which is a letter dated 25.10.83 whereby a decision was taken that office of CE(S&C) ADI will form part of BRC Divn. and the office of CE (S&C) CCG will form part of the Headquarters Office. After referring to this, learned counsel for the applicants submitted that all the applicants had been working under the CE (S&C) CCG, so according to the decision of respondents they are entitled to be allocated the Headquarters office as seniority unit and that they could not be allocated any other division as they have never worked in any other division. Therefore, the applicants are entitled to their lien and seniority against the posts of Headquarters Office only. Learned counsel for the applicants also stated that decision taken by respondents to allot the applicants another division is not only against their own policy but is also bad in law because the applicants will be victimised as it is in the case of the applicants since decision with regard to allocation of lien had not been made and now they will become junior to the other employees if they are allocated another division instead of Headquarters Office.

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12. In reply to this, learned counsel for the respondents submitted that as per the rules, the lien of Construction Department employees is to be fixed on a division falling in the jurisdiction of Construction Department and there is no question of merging their seniority in the Headquarters Office. It is further submitted that as per Annexure R-1, the applicants have been correctly given the Bombay Division, so they cannot challenge the same and cannot ask that they should be given seniority at the Headquarters Office.

13. From the perusal of prayer clause of the OA, we find that the applicants have prayed for direction in the mandatory form for granting ~~lien~~ permanency/ confirmation against the permanent posts and also merger of their seniority with the Open Line Engineering Department of the Western Railway Headquarters Unit. As far the prayer for grant of lien/ permanency and confirmation is concerned, that has already been met by Exhibit R-1 and this is so stated in the counter affidavit as well. Therefore the only short question is whether the applicants have been allocated the proper Division or they are entitled for merger of their seniority with the Open Line Engineering Department of the Western Railway Headquarters.

14. Though the respondents in their counter affidavit have submitted that the applicants have been granted lien on a division falling under the jurisdiction of Construction Department as per rules but no rules have been shown or cited under which the

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applicants have been granted lien on a division other than Headquarters Division. There is no denial to the fact that Headquarter Establishment Unit is also maintaining a separate seniority list for Open Line Engineering Department and the documents like Exhibit A-2 and A-4 show that while writing letters to the respective unions, the Headquarters Office had made a proposal to allocate the number of group "D" posts with respect to divisions where those 153 persons were working for granting them lien on those divisions. The proposal at Exhibit A-2 shows that the concerned unit of CE (S&C) CCG was proposed to be merged with the Open Line Engineering Department. This letter itself shows that the Headquarter is maintaining a separate Engineering Unit namely CE (S&C) CCG. Further the Headquarter's letter at Exhibit A-4 also shows that the Railway had adopted a policy that the office of CE (S&C) CCG will form part of the Headquarters Office which also goes to show that the office of CE (S&C) CCG has got a separate seniority unit at Headquarters office.

15. Thus the allocation of division where the applicants have never worked (vide Exhibit R-1) seems to be contrary to the policy of the Western Railway itself. Even in the counter affidavit, Western Railway has not been able to justify as to why these applicants should be allocated any other seniority unit instead of Headquarters Unit. We are, therefore, of the considered opinion that the applicants are entitled for allocation of division where they had been working i.e. CE (S&C) CCG which is a part of

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Headquarters seniority unit. So in respect of applicants, order Exhibit A-1 cannot stand and the same is liable to be quashed.

16. Respondents have also taken the plea that these OAs are barred by time as the applicants are challenging the order dated 6.1.95 while this OA has been filed on 14.2.2000. However, the applicants have placed on record a copy of order showing that they had earlier filed a joint OA and the Tribunal vide its order dated 15.12.99 had rejected that OA for mis-joinder of parties and an opportunity had been given to them to amend the OA by deleting the names of such persons who had no common cause of action. Thereafter, the applicants have filed the present two OAs, the plea of limitation is, therefore, rejected.

17. In the result, we are of the opinion that the order Exhibit R-1 vide which the applicants have been allocated the lien at Bombay Division instead of Headquarters Division cannot stand and deserves to be quashed in respect of allocation of Bombay Division to applicants in both the OAs. Both the OAs deserve to be allowed. Accordingly, we allow both OAs with the following directions:

- "1) that respondents shall allocate lien to the applicants in the Headquarters Unit; and
- 2) after allocating Headquarters Unit, respondents shall determine the

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seniority of applicants in accordance with rules, instructions and judicial pronouncements on the subject."

18. The above directions shall be implemented within a period of three months from the date of receipt of a copy of this order. No costs.

Let a copy of this order be placed in both the OA files (OA-253/2000 and 458/2000).

Shanta S

(Mrs. Shanta Shastry)
Member (A)

Kuldeep

(Kuldeep Singh)
Member (J)

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