Ori. in OA 688/98

OA 734/98

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

(1) ORIGINAL APPLICATION NO.688/98,
(2) ORIGINAL APPLICATION NO.734/98 AND
(3) ORIGINAL APPLICATION NO.1070/98
(Originally this OA was OA 247/97 before the Jaipur Bench of the Tribunal).

Pronounced this the 9th day of February, 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member(A).

(1) Original Application No.688/98.

1. Sikander Kumar,
Accounts Assistant,
Under SAO (W&S),
Lower Parel.
2. Rajesh Chaturvedi,
Junior Accounts Assistant.
Under SAO (W&S),
Lower Parel.
3. Narain Singh,
Junior Accounts Assistant,
Under Senior DAO,
Bombay Central.
4. Manoj Kumar Sharma,
Accounts Clerk,
Under Senior DAO,
Bombay Central.
5. Ashok Kumawat,
Accounts Clerk,
Under SAO (W & S),
Lower Parel.
(C/o. G.S.Walia,
Industrial Traders Building,
Opp. Maharashtra Co-op.
Bank, Nagindas Master Road,
Fort, Mumbai-400023.
(By Advocate Shri G.S.Walia)

... Applicants
(in OA 688/98)

V/s.

1. Union of India, through
General Manager,
Western Railway,
Headquarters Office,
Churchgate,
Mumbai - 400 020.
2. Financial Advisor and
Chief Accounts Officer,
Western Railway,
Headquarters Office,
Churchgate,
Mumbai - 400020.

... Respondents
(in OA 688/98).

...2.

(2) Original Application No.734/98.

1. S.R.Rewadia,
   Sr. Section Officer,
   Accounts Department
   of Bombay Division of
   Western Railway,
   Bombay Central,
   Bombay -400 008.
2. H.K.Mishra,
   Section Officer,
   Accounts Department of Bombay
   Division of Western Railway,
   Bombay Central,
   Bombay-400 008.
3. Niren Gupta,
   Sr.Section Officer,
   Accounts Department of Parel Workshop
   of Western Railway,
   Lower Parel,
   Bombay 400 013.
4. Rajesh Kumar Gupta,
   working as Senior Section
   Officer, Accounts Department
   of Parel Workshop of Western
   Railway, Lower Parel,
   Mumbai - 400 013. ...Applicants
   (By Advocate Shri G.K.Masand) (in OA 734/98)

V/s.

1. Union of India through the
   General Manager,
   Western Railway,
   Churchgate,
   Bombay - 400 020.
2. Financial Advisor and Chief
   Accounts Officer,
   Western Railway,
   Churchgate,
   Bombay - 400 020.
3. Sr. Divisional Accounts Officer,
   Western Railway, Bombay Central,
   Bombay -400 008.
4. Sr. Accounts Officer, (W&S),
   Accounts Office,
   Parel Workshop,
   Bombay-400 013. ...Respondents
   (By Advocate Shri V.S.Masurkar) (OA 734/98)

(3) Original Application No.1070/98.

1. Ghanshyam Gupta.
2. Rakesh Kumar Khandelwal.
3. Prakash Chand Gupta.
4. Surendra Kumar.
5. Dinesh Kumar Sharma.

...3.

6. Man Mohan Kulwal.
7. Ashok Kumar Sharma.
8. Alok Kumar Meena.
9. Vipin Kumar Sharma.
10. Lokesh Kanjani.
11. Tej Narain Meena.
12. Gajendra Kumar Sharma.
13. Lal Chand Meena.
14. Mukesh Chaturvedi.
15. Dinesh Mendiretta.
16. Satyaveer Sharma.
17. Dinesh Kumar Sharma.
18. Ramesh Chand Sharma.
19. Shambhu Dayal Sharma.

(Applicants at Sl.Nos.1 to 14 are presently working as Accounts Assistant in the office of the Dy. Chief Accounts Officer(T.A.), Western Railway, Ajmer and Applicants at Sl.No.15 to 19 are presently working on the post of Accounts Assistant under the control of D.R.M. Western Railway, Ajmer). ...Applicants (in OA 1070/98)

(None appeared on behalf of the applicants)

V/s.

1. Chairman, Railway Board, Rail Bhavan, New Delhi.
2. General Manager, Western Railway, Churchgate, Mumbai.
3. Financial Advisor & Chief Accounts Officer, Western Railway, Churchgate, Mumbai.

... Respondents (in OA 1070/98)

(By Advocate Shri V.S.Masurkar)

: O R D E R :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

These are three cases filed under section 19 of the Administrative Tribunals Act, 1985. The respondents have filed reply in all the three cases.

...4.

We may mention here that O.A.1070/98 was initially filed before the Jaipur Bench of the Tribunal and was numbered as O.A.247/97. The Jaipur Bench of the Tribunal had granted some interim order. The other two cases were filed in this Tribunal, where we had granted some interim orders. Later, it transpired that common questions arise for consideration in all the three cases and the interim order passed by this Tribunal and the interim order passed by the Jaipur Bench of the Tribunal were conflicting with each other. In those circumstances, in the two cases which were on our file, we passed an order on 9.11.1998 for making a reference to the Hon'ble Chairman to transfer all the three cases to one Bench viz. that the case before the Jaipur Bench should be transferred to our Bench or the two cases on our file should be transferred to the Jaipur Bench of the Tribunal, so that all the three cases can be heard together and a common order is passed. Then the Hon'ble Chairman was pleased to transfer the O.A. 247/97 from Jaipur Bench to our Bench which was communicated to us by the Deputy Registrar of the Principal Bench by letter dt.19.11.1998. Then we received the case papers of OA 247/97 from the Registrar of the Jaipur Bench of the Tribunal. Then the case was registered and re-numbered in our Bench as O.A. 1070/98. We sent notices twice to the applicants and their counsels to come fully prepared to argue the matter before us. When the cases were called out for final hearing on 3.2.1999 neither the applicants nor their counsel was present, we have ourselves perused the pleadings and documents in OA 1070/98. We have heard the learned counsels appearing on behalf of the applicants in OAs 688 and 734 of 1998 and we have heard the learned counsels for the Railways in all the three cases. Since common question arise for consideration in all these three cases, we are disposing of all the three OAs by this common order.

2. The facts which are necessary for the disposal of these cases are as follows. All the applicants here ~~were~~ are working in the Western Railway. The Railway Board has taken a decision to form one new Zone called North-West Railway with Headquarters at Jaipur. A policy decision was taken to transfer employees from different places to the new Zonal Railway. The Railway Board issued a circular dt. 6.12.1996 mentioning the modalities of transferring the officials from the existing Zonal Railways to the new Zonal Railway. Options were called from employees about their willingness to go to the new Zonal Railway. The Railway Board Circular also gives preference to the officials working at Headquarters for being sent to the Headquarters of the New Zonal Railway at Jaipur.

All the applicants in these three cases belong to Accounts Department or Accounts Branch of the Western Railway. All of them are non-gazetted officials of the Accounts Branch of the Western Railway.

In pursuance of the Circular dt. 6.12.1996, the applicants in the first two cases viz. 688 and 734/98 gave options for being sent to the new Zonal Railway which has Headquarters at Jaipur. A seniority list was prepared including their names. Subsequently, by virtue of an order of this Tribunal dated 28.11.1997 in OA 941/97, the Railway Administration issued a fresh seniority list for sending the non-gazetted employees of the Accounts Department to the new Headquarters and this new list does not contain the names of the applicants in the first two cases.

The applicants in the first two cases, have, therefore, approached this Tribunal stating that they have every right to be considered for being considered to the New Zonal Headquarters and that they have given their option and a proper seniority list was prepared which has now been changed by the

Railway Administration. Their case is that as per the Railway Board Circular dt.6.12.1996 the non-gazetted employees of the Headquarters of the Western Railway are to be given first preference. Though these applicants are working at Parel Workshop and in Bombay Central, they belong to one common seniority unit of Accounts Department of the Headquarters of the Western Railway and therefore, they have a preference for being considered and sent to the new Zonal Headquarters.

Therefore, the applicants in the first two OAs have approached this Tribunal for a declaration that deleting the names of the applicants in the seniority list of optees to be sent to the New Zonal Headquarters is arbitrary and illegal and is liable to be set aside and for a declaration to the respondents to include their names in the seniority list of optees and for other consequential reliefs.

3. In OA 1070/98, the case of the applicants is entirely opposite to the stand of the applicants in the first two cases mentioned above.

The case of the applicants in OA 1070/98 (OA 247/97 of Jaipur Bench) is that the condition in the Circular dt. 6.12.1996 that only the non-gazetted staff of Western Railway Headquarters are to be given preference for being sent to the new zonal Headquarters at Jaipur is illegal, arbitrary and liable to be quashed. According to the applicants in this case, all the employees of the Western Railway are entitled to be considered by giving them option to go to the new Zonal Headquarters. It is their further case that in the alternative only the officials working in the Headquarters Office of Western Railway alone can be sent to the New Zonal Headquarters and the officials who are working in the Parel Workshop or Bombay Central Office are not entitled to be sent to the New Zonal Headquarters. Therefore, the applicants in this case have approached this Tribunal for quashing the condition in the Railway

Board Circular dt. 6.12.1996 that the non-gazetted staff working in the Headquarters Office are entitled to preference for transfer to the Headquarters of the newly created zone, for a direction to the respondents not to send employees working in Parel Workshop or Bombay Central to the New Zonal Railway Headquarters and for a direction that names of applicants and all other officials should be considered for being sent to the New Zonal Headquarters and for further consequential reliefs.

4. In O.A. 1070/98, the Railway Administration has filed a detailed written statement justifying the legality and validity of the policy decision of the Railway Board as mentioned in the Circular dt. 6.12.1996. They have stated that it is a policy decision taken in the best interest of the Railway Administration. It is pointed out that the employees working in the Headquarters are in a better position to man the office in the new Zonal Headquarters. That is why, preference is given to officials working in the Headquarters so that their service and experience can be used in the newly created zonal Headquarters. They have also pleaded that the employees of Accounts Department working in Parel Workshop and Bombay Central belong to a common seniority unit of Accounts Department in the Western Railway and therefore all of them are to be treated as working in the Headquarters Office and hence they have been rightly included in the list of optees for being sent to new Zonal Headquarters at Jaipur. It is therefore, prayed that the application be dismissed with costs.

5. In the first two cases viz. 688 and 734/98, the Railway Administration has friled a short written statement without bringing on record all the relevant details. It is admitted that earlier seniority list of optees was prepared, which include the names of all the applicants in both these OAs. However, this Tribunal by order dt. 28.11.1997 in OA 941/97 gave a direction

to the Railway Administration to effect transfers within the guidelines laid down in the Railway Board Circular dt. 6.12.1996. In view of the Judgment of this Tribunal in OA 941/97, the Railway Administration has prepared a new seniority list of optees confining it to the employees working in the Accounts Department and actually working in the Headquarters Office at Bombay. In other words, their stand appears to be that the employees of the Accounts Department working in Parel Workshop and Bombay Central office are not entitled to be treated as employees working in the Headquarters Office of the Western Railway.

6. After hearing the arguments of the learned counsel appearing on both sides in the first two cases and the argument of the learned counsel for the Railway Administration in the third case and after perusing the pleadings, the following points call for determination.

(1) Whether the condition in the Railway Board Circular dt.6.12.1996 giving preference to officials working in the Headquarters Office is bad in law and liable to be quashed.

(2) Whether the employees of the Accounts Department working in Parel Workshop and Bombay Central Office are to be treated as officials working in the Headquarters Office of the Western Railway and hence entitled to be included in the seniority list of optees for being transferred to the newly created Zonal Railway Headquarters at Jaipur.

(3) What Order.

7. Point No.1 :

The allegations in the application in O.A. 1070/98 are that the impugned condition favours the employees working in the Headquarters Office and causes discrimination against employees working in other offices of Western Railway. The fortuitous circumstance of some officials working in the Headquarters Office cannot be a ground to favour them and discriminate the other employees who are working in other offices of Western Railway. It is therefore, alleged that the impugned condition is void and violates Article 14 of the Consitution of India.

Though Article 14 of the Constitution prohibits discrimination, it is well settled that reasonable classification is permissible.

Admittedly, a new Zonal Railway is constituted with Headquarters at Jaipur. The new Zonal Railway is called North West Zone contains parts of Western Railway. As a result of the new Zonal Railway, the work in the Headquarters Office of the Western Railway is reduced by 1/4 th. It has been stated by the Respondents that 1/4th of the employees of the Headquarters Office of Western Railway are to be transferred to the new Headquarters at Jaipur. In order to carry out the transfer of employees to the Headquarters of the new Zone, the Railway Board has taken a policy decision which is indicated in the Circular dt. 6.12.1996. It is stated that while effecting transfers, the first preference should be given to the non-gazetted staff working in the Headquarters Office at Bombay.

8. The Railway Administration in the reply has given some reasons as to why the administration has given preference to the Headquarters staff and not to the staff working in other offices of the Western Railway.

The first reason is that it is the Headquarters Officials who are

affected by the creation of new Headquarters at Jaipur. In view of this creation of new Zonal Railway with Headquarters at Jaipur 1/4th of the Staff of the Western Railway Headquarters at Bombay will become surplus and they cannot be kept here and therefore that 1/4th staff will have to be transferred to the new Headquarters. By the creation of new Headquarters at Jaipur the officials working at Ajmer like the applicants or other officials working at different places are not affected in any manner. It is only the Headquarters staff who are affected by this policy decision of creating a new Zonal Railway with Headquarters at Jaipur and therefore 1/4th of the Staff from the Headquarters Office at Bombay have to be shifted or transferred to Jaipur. Now, let us say that there are 100 officials working in the Western Railway Headquarters. As a result of the creation of new Zonal Railway about 1/4th i.e. about 25 officials will become surplus and will have no work at the Headquarters Office of the Western Railway and hence they are to be shifted to the new Headquarters. Then out of 100 officials how to pick up 25 persons for being shifted to Jaipur. In such a situation, the question of considering the employees of Ajmer or other places will not arise at all. The affected people are only those working in the Headquarters Office and 25 officials who have become surplus have to be posted to Jaipur in the administrative exigencies. The administration without issuing the Circular dt. 6.12.1996 could have in public interest just picked up 25 persons froms the Headquarters Office and transferred them. Being a model employer, the Railway Board did not want to use its prerogative of transferring officials in public interest, but thought of sending persons who are willing to go to Jaipur, that is why the first option is given to the employees working in the Headquarters to give an indication whether they are willing to be transferred to Jaipur. If 25

persons give their consent then all of them can be transferred to Jaipur and matter ends there. It is quite possible that only 10 persons may give consent for being transferred to Jaipur. Even then the administration can just pick up 15 persons and transfer them to Jaipur, instead of doing such a thing the administration gives a second option to other officials to give their willingness for being transferred to Jaipur.

Since it is the workload of the Headquarters Office which is affected and since 1/4th of the officials working in the Headquarters have become surplus and those 1/4th officials are going to be affected, if they are transferred, the administration has given the first preference to the officials working in the Headquarters for being transferred to Jaipur. Therefore, in our view, this is not a case of discrimination at all. Since it is the Headquarters Office that is being affected and officials working therein are likely to be transferred, the first option is given to them to express willingness to go to Jaipur. By the creation of Headquarters at Jaipur the applicants who are working at Ajmer or other places are not affected in any way, but it certainly affects 1/4th of the employees working in the Headquarters. Therefore, this is not a case of applicants being in the same position like the officials working in the Headquarters Office. Hence, the question of discrimination does not arise at all.

9. Now we can go to the other strong ground given by the administration as to why the Headquarters Officials are preferred for being sent to Jaipur and not the employees working in other offices like the applicants. We can take judicial notice that the work in the Headquarters Office is also different from the nature of work in the subordinate office. The Headquarters Office will have to do over all administration of the entire Western Railway,

but officials working in other offices are concerned with only the local problems. That is why in the reply filed in this case the respondents have pleaded in para 1 as follows:

> "It is relevant to mention that the prime consideration for giving preference to the staff working at the existing Headquarters Office is for the purpose of maintaining efficiency, as the staff working at the existing Headquarters Office have better experience and as such they are in a position to maintain proper efficiency at the Headquarters of the New Railway Zone."

Again in para 21 of the reply it is stated as follows:

> "..... Further, the officials who are already working in the Headquarters Office at Mumbai are well acquainted with and have adequate experience of the working and level of efficiency required at the Headquarters Office, which controls the various divisions under it and issues instructions and guidelines in the implementation of the policies of administration, establishment and other matters laid down by the Railway Board. It is, therefore, submitted that the classification of the priorities made on the basis of the place of working is quite reasonable and proper and has nexus to the object of establishing the new North West Zone at Jaipur with a view to maintain efficiency in the Headquarters Office of the said new Zone."

In our view, the above reasons given by the Railway Administration appears to be fully justified as the sufficient legal ground for giving first option to the officials working in the Headquarters Office for being transferred to the new Headquarters.

In view of the two reasons given by the Administration which we have pointed out above, one is that Headquarters Officials are affected since 25% of them have become surplus and they have to be given first option and the other reason is that the Headquarters Officials will be efficient and conversant with the entire administration of the Railway Zone and they will be of great use in the new Zonal Headquarters and therefore, the Headquarters officials are given first option. In our view, both these reasons are sufficient to reject the challenge of the applicants to the impugned condition in the Railway Board Circular dt. 6.12.1996 on the ground that it exhibits

discrimination against the applicants and similar employees. This is not a case of discrimination at all. It is a policy decision taken by the Railway Board in the administrative exigency and in public interest. It is not meant to favour some person or discriminate somebody else, but the decision is in the larger interest of the organisation to maintain efficiency in the new Headquarters.

10. Some grievance is made by the applicants in the application that there are policy guidelines issued by the Railway Board for request transfer, mutual transfers and registering names in the "Name Noting Register" and these policy guidelines cannot be implemented in view of the impugned condition in the Circular dt. 6.12.1996. In our view, this contention has no merit.

The request transfers, mutual transfers etc. are a continuous process. As and when vacancies occur, request transfers will be considered as per waiting list and other priorities. That right is still there. The impugned condition in the Circular dt. 6.12.1996 does not take away those rights, but it is a one time transfer to the new Headquarters, at Jaipur. This is only a one time measure in view of the creation of the new Zonal Headquarters, but the request transfers, mutual transfers, registration in the Name Noting Register are continuous process and they are not affected by this one time measure. The respondents have clearly stated in the reply that the request transfers etc. will be considered as and when regular vacancies arise in the new Zonal Railway or other places due to retirement, resignation etc. But what is achieved as a one time measure by the Circular dt. 6.12.1996 is to meet a new situation which has arisen because of a policy decision taken by the Government of India to create a new Zonal Railway called North West Zonal Railway. Therefore, the other policy guidelines regarding request transfers

etc. still stand and the applicants can get the benefit of their applications for request transfers etc. as per the existing Rules. The respondents will consider them as and when vacancies arise in the new Zonal Railway.

After applying our mind to the pleadings and the facts and circumstances of the case and the law bearing on the point we have no hesitation to hold that the impugned condition in the Circular dt. 6.12.1996 does not offend Article 14 of the Constitution and it is not a case of discrimination at all. Point No.1 is answered in the negative.

11. Point No.2 :

The relevant para in the Circular dt. 6.12.1996 which is necessary for our present purpose is 2(i) which reads as follows:

> "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."

According to the applicants in the first two cases, staff working at the Headquarters Offices includes all the Accounts Staff who are working in the Headquarters office at Churchgate and also those officials who are deputed to work in the Bombay Central Accounts Office and Parel Workshop Accounts Office. Their contention is that the Accounts Office has one seniority unit of the Headquarters, but they may be sent to work in different places in administrative exigencies. It is their case, that these officials of the Accounts Office of the Headquarters, wherever they work, are under the control of the Financial Advisor and Chief Accounts Officer of the Western Railway Headquarters Office. According to these applicants, the Accounts Office is one unit comprising the Accounts Office at Churchgate Office, Accounts Office in Bombay Central and Accounts Office at Parel Workshop. The entire one unit

has been treated as Accounts Office of the Headquarters with a common seniority.

But, according to the applicants in the third case viz. O.A.1070/98, it is only the officials of the Accounts Office working at the office of the Headquarters at Churchgate to be treated as officials of the Headquarters Office and the Accounts Officials working at Parel or Bombay Central office cannot be included within the meaning of the staff working in the Headquarters Office. Even the Railway Administration has taken this position viz. that the officials working in Bombay Central or Parel Workshop cannot be included within the meaning of Staff working in the Headquarters Office.

This is the short controversy ~~between~~ before us.

12. There is intrinsic material on record to show that the stand of the applicants in the two cases is correct. We get some indication in the very Circular dt. 6.12.1996. Para 2.1 of the Circular mentions that "Preference for transfer on option to the New Zonal Railways should be given in the order as indicated in para 2 above." Then comes para 2.2 wherein it is mentioned that staff in workshops, stores depots and RPF are not included in the scheme of calling of options for transfers. Therefore, this sentence makes it clear that staff working in the workshops, stores depots etc. cannot give options for transfers at all. Then to this general statement there is an exception in the same para 2.2 stating that there is no bar for a clerical staff posted in workshops and stores depots "borne in the Divisional Seniority" exercising their option along with other staff of respective divisions for the New Zonal Railways. Therefore, the Railway Administration is always taking the seniority unit as one common unit and that is why this exception is carved out in para 2.2.

Then we find that the Railway Administration itself has issued an amendment to para 2.2 of the Circular dt. 6.12.1996 by issuing a Circular dt.21.3.1997, which is at page 52 of the paper book in OA 688/98. Here it is clearly mentioned that staff working in the Workshop and Stores Depot and borne on the "Headquarters Seniority" may also exercise option for being transferred to the New Headquarters. Though, normally staff working in Workshops and Stores Depots cannot give option for transfer, an exception is made in respect of officials working there provided they are borne in the Headquarters seniority.

There is no dispute and there cannot be any dispute that the officials of the Accounts Branch who are working at Parel Workshop or Bombay Central are borne on the common seniority with other Accounts Officials working in the Headquarters Office at Churchgate. The Railway Board Circular dt.21.3.1997 clearly gives an impression that though the officials may be working in different places, but if they are borne on common seniority in the Headquarters office, then they are entitled to be treated as employees of the Headquarters Office and can give option.

13. The learned counsel for the Railway Administration pressed into service another Circular of the General Manager of the Western Railway dt.9.9.1997 which contains a copy of the Railway Board Circular dt.19.9.97 which is at page 45 of the paper book in OA 734/98. In this Circular the Railway Board re-affirms its previous Circular including the letter dt.21.3.97 to which we have just made reference above. In this Circular, the Railway Board reiterates that the option exercised by officials other than the Headquarters Office should not be encouraged except in exceptional cases. That means Railway Board is reiterating that the first option should be given to the officials working in the Headquarters Office. There is no dispute

on this point, but the dispute is as to who belong to the Headquarters? Is it only the officials working in the Churchgate Office or does it include the officials of the Headquarters Accounts Office deputed to work in Parel Workshop or Bombay Central Accounts Office. Therefore, in our view, on this disputed point, the Railway Board Circular dt. 19.8.1997 will not throw any light.

14. The learned counsel for the Railway Administration also contended that Railway Administration had to issue the fresh seniority list of optees in view of the decision of this Tribunal in the order dt. 28.11.1997 in OA 941/97. In our view, this argument has also no merit. We have perused the order of this Tribunal dt. 28.11.1997 to which one of us was a party(R.G.Vaidyanatha, Vice-Chairman). In that case, this Tribunal gave only a direction to the Railway Administration to carry out transfers strictly in accordance with the Circular dt. 6.12.1996. Even, the applicants in the first two cases are not asking anything more than implementation of the Circular dt. 6.12.1996. In O.A.941/97 as could be seen from the order there was no dispute on the question and meaning of " staff working in Headquarters Office". This Tribunal in the order dt. 28.11.1997 has not expressed any opinion and has given no finding as to what is meant by "staff working in Headquarters Office". The Tribunal only gave a direction that the Circular dt. 6.12.1996 should be strictly implemented and even now in the present OA we want the Railway Administration stick to the Circular dt. 6.12.1996. The question whether the Accounts Officials deputed to work in Parel Workshop or Bombay Central Office would come within the meaning of "Officials working in the Headquarters Office" was not decided by this Tribunal in the said order dt.28.11.1997.

15. It may be recalled that the applicants who filed the case before the Jaipur Bench of the Tribunal in OA 247/97, which has since been re-numbered as OA 1070/98 and which we are disposing of to-day had taken similar specific stand that the Accounts Officials working in Parel Workshop or Bombay Central Office should not be included as the staff of the Headquarters. Now, let us see as to what is the reply of the Railway Administration on this point in OA 1070/98. The Railway Administration has taken inconsistent stand in these OAs. In O.A. 1070/98 the stand of the Railway Administration is that the entire Accounts Office is one unit and it includes officials working in the Churchgate Office, Parel Workshop and Bombay Central Office. But, in the first two cases which we are disposing of to day, the Railway Administration has taken an inconsistent stand stating that these officials working at Parel Workshop or Bombay Central Office do not come within the meaning of "staff working in the Headquarters Office". In our view, the Railway Administration should have stuck to one stand. They cannot take conflicting stands in the two OAs. Either the accounts staff worksing in Parel Workshop and Bombay Central Offices are part of the Headquarters Office or not at all. The Railway Administration cannot take inconsistent stands in the two sets of applications, one filed at Jaipur and two filed at Bombay on this point.

Now, coming back to the stand of the Railway Administration in O.A.1070/98, we find that in the written reply in para 13 they have pleaded as follows:

> "It is stated that the Headquarters seniority unit consists of - (i) Accounts Offices (Open line and Construction) CCG; (ii) Sr.DAO-BCT's Office; and (iii) SAO (W&S) PL, MX's Offices - vide item No.1 in the Annexure -B to the order No.POO No.AHD/SO/387 dated 12.3.1982, a copy whereof is annexed herewith and marked as Annexure R/2. It is therefore stated that since the 41 persons mentioned in this sub-para, who are working in Parel and Mumbai Central,belong to the Headquarters Seniority Unit, they have also been asked to exercise their options in accordance with the Railway Board's letter dt. 6.12.1996."

Therefore, the above stand of the Railway Administration clearly show that they have unequivocally admitted that the entire accounts office though working in different places is one unit of the Headquarters and even the 41 officials of the Accounts Section who are working in Parel and Mumbai central belong to the Headquarters seniority list. In the face of this clear unequivocal and unqualified admission by the Railway Administration they cannot again now come and plead in the subsequent OAs that Accounts officials working at Parel Workshop and Bombay Central Accounts Office do not come within the meaning of "staff working in headquarters office". Again in para 16 of the reply, the Railway Administration has again re-asserted that these 41 employees working in the Workshop and Bombay Central Accounts Office belong to the seniority unit of the Headquarters and are eligible and entitled to exercise their option and therefore, the Railway Administration rightly included the names of these 41 officials and it is perfectly proper, reasonable and justified". There is no dispute that these 41 officials which is mentioned by the Railway Administration in the reply includes the name of all the applicants in the first two cases.

16. The Railway Administration in the reply has placed strong reliance on the interim order passed by the Jaipur Bench of the Tribunal dt. 28.10.1997. It is interesting to notice that even at the time of arguments the learned counsel for the Railway Administration contended before the Jaipur Bench on 28.10.1997 that the Accounts staff in the Zonal Headquarters of Western Railway includes such Accounts staff working in Bombay Division and Parel Workshop and forming one seniority unit and therefore have a right to exercise option and get transfer to the newly set up Zonal Headquarters at Jaipur. But, however, by way of interim order the Jaipur Bench of the Tribunal gave certain directions.

Therefore, we find that the Railway Administration both in the reply and also at the time of arguments before the Jaipur Bench has conceded that the Accounts Officials working at Parel Workshop and Bombay Central Accounts Office belong to one unit of Accounts Office of Headquarters of Western Railway.

17. The Railway Administration itself has issued a seniority list of optees as per letter dt. 24.6.1997 which admittedly included the names of 41 officials working in the Accounts Office at Parel Workshop and Bombay Central Accounts Office which included the names of the applicants in the first two cases. That shows, that the stand of the Railway Administration was that the staff working in Headquarters Office includes Accounts officials deputed to work in Parel Workshop and Bombay Central Office. That is also a stand taken by the Railway Administration before the Jaipur Bench which we have referred to above.

Subsequently, the Railway Administration issued a second seniority list of optees as per letter dt. 27.7.1998 by dropping the names of the applicants of the first two cases and some others who were working in Parel Workshop and Bombay Central Accounts Office. The reason given in this letter for this change of stand is the order of this Tribunal dt. 20.11.1997 in OA 941/97. We have already pointed out that this Tribunal gave no finding on this question in the order dt. 26.11.1997. It gave one and only direction viz. that the Railway Administration should strictly adhere to the letter dt.6.12.1996 and even now we are issuing the same direction. This disputed question was not considered and decided in OA 941/97.

After going through the pleadings and documents on record, we have reached a conclusion that the staff working in the Headquarters Office

mentioned in the Circular dt. 6.12.1996 includes the Accounts Officials who have been deputed to work in the Parel Workshop and Bombay Central Accounts Office. Point No.2 is answered accordingly.

The learned counsel for the Railway Administration contended that in policy matters Courts or Tribunals should not interfere. There is no dispute about this proposition of law. We are not interfering, in fact we have already upheld the policy decision of the Railway Board enunciated in the Circular dt. 6.12.1996 by upholding it while answering Point No.1. Now what we are doing here is only interpreting the words used in the Circular. We have gained support for the interpretation by the admission of the Railway Administration in the reply filed in OA 1070/97 before the Jaipur Bench and we have relied on the arguments of the learned counsel for the Railway Administration before the Jaipur Bench of the Tribunal and we have further relied on their own seniority list of optees dt. 24.6.1997 and this shows that the Railway Administration was throughout holding ~~doubt~~ out that officials working in Headquarters includes the Accounts Staff of Parel Workshop and Bombay Central Accounts Office. They have, no doubt changed their stand subsequently not because of policy decision, but because of the order of this Tribunal dt. 28.11.1997 in OA 941/97 and we have already pointed out that no such direction and no such finding was recorded in OA 941/97. For these reasons the answer on Point No.2 is in the affirmative.

18. In the result, it is ordered as follows :

(1) OAs 688/98 and 734/98 are hereby allowed. It is hereby declared that the words "staff working in the Headquarters Office" in the Railway Board Circular dt. 6.12.1996 includes the officials of the Accounts Branch sent or deputed to work in Accounts Office at

Parel Workshop and Accounts Office in Bombay Central and the Railway Administration should prepare proper seniority list of optees from the officials of the Accounts Branch of Headquarters including the Parel Workshop and Bombay Central Accounts Office.

(2) OA 1070/97 (OA 247/97 of Jaipur Bench) is dismissed.

(3) The interim orders passed in all the three OAs are hereby vacated.

(4) In the circumstances of the case, there will be no orders as to costs.

(D.S.BAWEJA)
MEMBER (A)

(R.G.VAIDYANATHA)
VICE - CHAIRMAN

B.