

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 5th day of September, 2008

CORAM:

HON'BLE MR. M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. B.L.KHATRI, ADMINISTRATIVE MEMBER

ORIGINAL APPLICATION No.297/2007

O.P.Chetiwal
s/o Shri D.R.Chetiwal,
r/o Ward No.7,
Post Surajgarh, Distt. Jhunjhunu,
Presently working as A.En.,
North Western Railway,
Sikar.

..Applicant

(By Advocate: Shri Amit Mathur)

Versus

1. Union of India
through Secretary,
Railway Board,
Delhi.
2. General Manager,
North-Western Railway,
Hasanpura,
Jaipur
3. General Manager,
Northern Railway,
Baroda House,
New Delhi.

.. Respondents

(By Advocate: Shri Anupam Agarwal and Shri S.P.Sharma)

ORIGINAL APPLICATION No.16/2008

Jagmohan Lamba
 s/o Shri C.L.Lamba,
 r/o Officers Rest House No.26,
 Railway Station, Jaipur,
 Presently posted as
 Assistant Divisional Engineer H.Q.
 in N.W.R., Jaipur

(By Advocate: Shri Shailendra Srivastava)

... Applicant

Versus

1. Union of India
 Through General Manager,
 North Western Railway,
 In front of Railway Hospital,
 Hasanpura, Jaipur
2. Secretary,
 Railway Board,
 Rail Bhawan,
 New Delhi.
3. Divisional Personal Officer,
 Jaipur Division,
 N.W.R., Jaipur
4. General Manager,
 Northern Railway,
 Head Quarter Office,
 Baroda House,
 New Delhi.

(By Advocate: Shri Anupam Agarwal)

O R D E R

Per Hon'ble Mr. M.L.Chauhan, M(J)

By this common order, we propose to dispose of these OAs as common question of facts and law is involved.

2. In OA No.297/07, the applicant has prayed that seniority list dated 2.1.2007 may be quashed and set-

aside or modified by including name of the applicant in the aforesaid seniority list and respondents may be directed to transfer lien of the applicant from Northern Railway to North-Western Railway w.e.f. the date when he was promoted on the post of Assistant Engineer with consequential benefits. In OA No.16/2008, the applicant has prayed that the impugned orders dated 13.8.07 (Ann.A1), 9.10.07 (Ann.A2) and 23.2.06 (Ann.A3) by which the respondents are intending to repatriate the applicant back in Northern Railway or otherwise forcing to accept bottom seniority in the seniority list of Group-B officers of Engineering Department of North Western Railway be quashed and the respondents may be directed to include name of the applicant in the seniority list of Group-B officers of Engineering Department of North Western Railway dated 2.1.2007 at appropriate place.

3. Briefly stated, facts of the case are that the applicants were working as Group-C employees in Jodhpur Division of the erstwhile Northern Railway zone. It will be relevant to mention here that on account of formation of new zones, North-Western zone became operational w.e.f. 1.11.2002 and Northern Central zone became operational w.e.f. 1.4.2003. The Railway Board issued detailed guidelines for conducting combined selection for Group-B post in Northern Railway taking into account the reported

vacancies of North-Western Railway and North Central Railway, since the cadres of newly formed Northern Western Railway and Northern Central Railway were not closed by that time. The Group-C employees working in Bikaner, Jodhpur and Allahabad Divisions of the erstwhile Northern Railway were also allowed to appear in the said selection. Accordingly, notification dated 29.8.2003 (Ann.A2) for combined selection to the post of Assistant Engineer against 30% LDCE quota vacancies for the year 2003-05 was issued. As can be seen from the impugned notification, 17 vacancies were for the assessment period 1.12.2002 to 31.3.2003 and 22 vacancies were for the assessment period 1.4.2003 to 31.3.2005. Further, from perusal of this notification, it is also clear that the employees appearing for the combined selection test to be held by Northern Railway will have to exercise option for their transfer to North Western Railway/North Central Railway on permanent absorption basis in case their names find mention on the combined panel and their cases for permanent absorption will be dealt with in pursuance of the Railway Board letter dated 22.8.2002.

It is admitted case between the parties that both the applicants appeared in the written test pursuant to the aforesaid notification and their names were placed on the provisional panel of Assistant Engineer (A.En.) in order of merit against vacancy for the assessment period from 1.12.2002 to 31.3.2003, as can

be seen from order dated 7.10.2004 (Ann.A3 in OA No.297/07). Accordingly, the applicants were posted as ADEN vide office order dated 2.11.2004 (Ann.A4 in OA No.297/07). The grievance of the applicants in these cases is that since they were promoted against the vacancy arising in North Western Railway, as such, there was no occasion for them to submit option for transfer of their lien to the said zone, and the contention of the respondents that their lien has not been transferred from Northern Railway cannot be accepted. Thus, according to the applicants, their names ought to have been included in the seniority list dated 2.1.2007 at appropriate place and in the alternative the respondents may be directed to transfer lien of the applicants from Northern Railway to North-Western Railway.

4. Notice of these applications were given to the respondents. Respondents have filed reply. The facts as stated above have not been disputed. It is stated that on formation of North Western Railway and North Central Railway their cadres were not finalized and Northern Railway was authorize by the Railway Board for arranging combined selection taking into account the vacancies of North Western Railway and North Central Railway. The transfer of selected persons to these railways for permanent absorption was stipulated after exercising option by the selected persons duly

accepted by the railways on which they sought such absorption on bottom seniority. It is stated that no such recommendation was received from North Western Railway in favour of the applicants and unless and until the office of North Western Railway agrees to the acceptance of the applicants in North Western Railway, it is not possible to issue orders of transfer of the applicants in North Western Railway on permanent absorption basis and their lien has to be kept in the parent department which is Northern Railway.

5. We have heard the learned counsel for the parties and gone through the material placed on record.

6. The sole question which requires our consideration is whether the applicants can be treated as employees of North Western Railway and thereby acquiring lien in North Western Railway. For that purpose, it will be useful to quote relevant parts of the order dated 29.8.2003 (Ann.A2) i.e. notification whereby selection for promotion from Group-C to Group-B post of A.En. against 30% LDCE quota vacancies for the year 2003-05 in Civil Engineering department was to be carried out in accordance with the instructions as contained in Railway Board letter dated 13.5.2003. For that purpose, Group-C employees working in the Civil Engineering Department of the Northern Railway

including the erstwhile Bikaner, Jodhpur and Allahabad divisions now falling in the jurisdiction of North Western Railway and North Central Railway respectively holding the post in Group-C and fulfilling the condition mentioned in Para 1 were held eligible. The applicants being eligible appeared in the said selection test and they were also included in the provisional panel against vacancies arising for assessment period 1.12.2002 to 31.3.2003. Names of candidates were included in the selection panel subject to the condition mentioned in the said notification dated 7.10.2007. At this stage, it will be useful to quote para 4 and 5 of the order dated 7.10.2004 whereby names of the applicants and other persons were included in the provisional panel subject to the conditions stipulated in para 4 and 5, which thus reads:-

"4. The above provisional panel has been framed by the Northern Railway keeping in view of the instructions as contained in Railway Board's letter No. E(GP)2002/1/18dt: 13.5.2002 taking into account the reported vacancies of NWR and NCR. Accordingly Northern Rly it-self will issue the promotion orders of the empanelled persons only.

5. In compliance of instructions as contained in Railway Board's letter dt:13.5.2003 (PS No:12629), the following provisions must be got noted by all concerned:

5(i) the employees found place on the above combined provisional panel for the post of AEN against 30% quota vacancies, are liable to be posted on either Railway i.e. Northern Railway or NWR/NCR depending upon the availability of vacancies, but they will have their seniority in Group 'B' on the parent Railway.

5(ii) the provisions in sub-para (i) above are only in regard to posting of officers against

Group 'B' vacancies in the parent Railway or the New Zones. Permanent absorption of a Group 'B' officer in the New Zone will however be decided on their options for the same on the basis of criteria laid down in Railway Board's letter No: E(G)) 2002/1/18 dt. 22.08.2002." (emphasis supplied).

Thus, as can be seen from Para 4 of the instructions, as quoted above, promotion orders of empanelled persons were to be issued by the Northern Railway. Accordingly, promotion orders were issued vide letter dated 2.11.2004 and name of applicants find mention at Sl.No.28 and 29.

At this ^{stage} it will also be useful to quote relevant portion of Annex. A4 which relates to promotion, transfer and posting of the employees:-

"28. Shri Om Prakash/SSE/W/JU, the next person available on the above panel is promoted to Group 'B' services in the Civil Engineering Department/NR and posted as ADEN in NWR.

29. Shri Jag Mohan Lamba/SEE/W/JU the next person available on the above panel is promoted to Group 'B' services in the Civil Engineering Department/NR and posted as ADEN in NWR."

Thus, from the portion as quoted above, it is evident that both the applicants were promoted to Group-B service in Civil Engineering Department of the Northern Railway and they were posted as ADEN in Northern Western Railway and thus the contention of the applicants that they were promoted against the vacancy of North Western Railway is wholly misconceived. The facts remain that they were promoted against the vacancy of Northern Railway, however, they

were given posting against vacancies arising in North Western Railway. Thus, contention of the applicants that they have been promoted against the vacancies of North Western Railway and, as such, there was no requirement for exercising option for transfer of their lien to North Western Railway is wholly misconceived and cannot be accepted.

Further, as can be seen from para 5(i) and 5(ii) of the order dated 7.10.2004, relevant portion of which has been reproduced hereinabove, it has been specifically made clear in para 5(i) that the employees whose names find mention in the provisional panel are liable to be posted on either railway i.e. Northern Railway or North Western Railway/North Central Railway depending upon availability of vacancy but they will have their seniority in Group-B on the parent railway. Thus, admittedly, the applicants while holding Group-C post were working in Jodhpur division, which was under the Northern Railway. Thus, their seniority in Group-B post on account of their empanelment has to be maintained in the parent railway i.e. Northern Railway and contention of the applicants that subsequently Jodhpur Division has formed part of North Western Railway, as such, their parent department is North Western Railway, cannot be accepted.

That apart, para 5(ii) of the aforesaid instructions also made it clear that posting of the

empanelled candidates in the parent railway or new zone will not pursuant to their empanelment is of no consequence so far as their permanent absorption in Group-B post in new zone is concerned, which will be decided on their option for the same on the basis of the criteria laid down in Railway Board letter dated 22.8.2002. Thus, this para makes it clear that cases of empanelled candidates for permanent absorption in new zone will be decided on the basis of the option and as per criteria laid down vide letter dated 22.7.2002. Admittedly, the applicants have not given option for their absorption in new zone, as according to the learned counsel for the applicants, the instructions dated 22.8.2002 apply to only those Group-B employees who were occupying the Group-B posts at the relevant time whereas the applicants were empanelled against Group-B vacancies only on 7.10.2004, as such, these instruction cannot be made applicable in their cases. We are of the view that such a contention of behalf of the applicants requires out right rejection. As can be seen from para 5(ii), as reproduced above, the Railway Board has issued letter dated 22.8.2002 which has been made applicable as per the criteria laid down therein. For the purpose of absorption in new zone, this does not mean that the instructions dated 22.8.2002 has to be followed literally. As per the circular dated 22.8.2002 option has to be exercised within 30 days. Thus as per para

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5(ii) 30 days will have to be computed from the date of declaration of result and not strictly from the date of instruction issued on 22.8.2002.

7. It may also be relevant to notice here that both the applicants have made a joint representation to the General Manager (P), North Western Railway, Jaipur (Ann.A5 in OA No.297/07) whereby they have inter-alia stated that they are working as A.En. under North Western Railway and again opt to fix lien in North Western Railway they are given seniority before posting of 70% panel published vide order dated 24.2.2005 but not later than this. In bio-data, both the applicants have shown their parent lien in NR/NDLS and against column 'Lien Desired', it has been mentioned as NWR/JP. Thus, the contention raised by the learned counsel for the applicants that their parent railway is North Western Railway, as such, there was no necessity to exercise option for their absorption in the North Western Railway cannot be accepted, in view of their own document (Ann.A5) where in the biodata under the heading 'Parent Lien' they have categorically mention as Northern Railway.

8. The learned counsel for the respondents has brought to our notice order dated 6.6.2008 whereby both these applicants have been placed on the select list for allotment of higher scale of Rs. 8000-13500

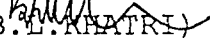
w.e.f. 4.1.2008 (Om Prakash) and 5.1.2008. Thus, according to the learned counsel for the respondents, once they have been granted promotion in the Northern Railway being employees of Northern Railway, their lien cannot be transferred in the North Western Railway. However, this fact is not disputed by the learned counsel for the applicant. Be that as it may, since we have held that parent railway of the applicants was Northern Railway, as such, their lien could have been transferred/they could have been absorbed in North Western Railway i.e. new zone only if there was a valid order for their absorption in the new zone in terms of condition stipulated in para 4 and 5 of the order dated 7.10.2004 and not solely on the basis of their posting in North Western Railway.

The learned counsel for the respondents argued that the applicants have to submit their application in the prescribed proforma and while applying for the aforesaid post they have also given undertaking in terms of para 5(i) and 5(ii) thereby abiding by instructions as mentioned in para 5(i) and 5(ii) above, as such, they are precluded from raising the contention that they have been permanently absorbed in new zone especially when they have agreed that they will have their seniority in the parent railway.

9. Thus, viewing the matter from any angle, we are of the view that the applicants are not entitled to

any relied. Accordingly, both the OAs are dismissed with no order as to costs.

10. In view of dismissal of OA, no order is required to be passed in MAs, which shall stand disposed of accordingly.


(B. L. KHATRI)

Admv. Member

(M. L. CHAUHAN)

Judl. Member

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