

08.02.2008
OA176/2003

Present : None for the applicant.

Mr.S.S.Hassan, counsel for the respondents.

This case has been listed before the Deputy Registrar due to non-availability of the Division Bench. Be listed before the Hon'ble Bench on 13.02.2008.

akv

(GURMIT SINGH)
DEPUTY REGISTRAR

13.2.08
Mr P.V. Calla, Counsel for applicant
Mr. S.S. Hassan, Counsel for respondents
Heard learned Counsel for the
parties.

Order Reserved.

(J. P. Shukla)
M (A)

(M. L. Chauhan)
M (J)

15.2.2008

order pronounced today
in the open court by
the aforesaid Bench.

15/2/2008
C.O.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 15th day of February, 2008

ORIGINAL APPLICATION No.176/2003

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. J.P.SHUKLA, MEMBER (ADMINISTRATIVE)

1. Gajendra Singh Rathore s/o Shri Prem Singh Rathore
2. Sant Ram Sad s/o Shri Mangal Lal Sad
3. S.N.Chourasia s/o Shri Charanji Ram
4. Anil Mittal s/o Shri R.N.Mittal
5. Ashok (U) Sharma s/o Shri V.D.Sharma
6. Sonar Lal s/o Shri K.L.Kumavat
7. Tulsi Ram Meena s/o Shri K.L.Meena
8. Jai Ram Meena s/o Shri H.L.Meena
9. Babu Lal Meena s/o Shri Laxman Meena
10. Ratal Lal Bairwa s/o Shri K.L.Bairwa
11. Ramesh Chand Meena s/o Shri P.L.Meena
12. Kamal Singh Meena s/o Shri B.L.Meena
13. Narayan Meena s/o Shri Mahadev Prasad
14. Mahesh Chand Meena s/o Shri P.R.Meena
15. Prakash Meena s/o Shri Shiv Lal Meena
16. Surendra Kumar Gupta s/o Shri Mohan Lal Gupta
17. Bhagwan Sahai s/o Shri Shrvan Ram Ragar
18. Rajendra Gotan s/o Shri LG Gotan
19. Ashok Kumar Baniwal s/o Shri L.G.Gotan
20. Mohar Singh Meena s/o Shri Suraj Narayan
21. Shankar Lal Meena s/o Shri Sanwal Ram Meena
22. Sirmor Meena s/o Shri Phool Singh Meena
23. Ram Phool Meena s/o Shri Ram Lal Meena
24. Prakash Meena s/o Shri Gulab Chand Meena
25. Vijay Ram Meena s/o Shri Dev Karan Meena
26. Paras Ram Meena s/o Shri Shri Ram
27. Laxmi Nayaran Meena s/o Shri Nand Ram Meena
28. Amar Singh s/o Shri Omkar Prasad
29. Ramesh Chand Maholia s/o Shri S.L.Maholia
30. Mahipal Raiya s/o Shri Chotu Ram Raiya
31. Mahendra Kumar Verma s/o Shri Bhagwan Sahai
32. Ramesh Chand Meena s/o Shri Rewad Mal Meena
33. Bhagwan Singh Meena s/o Shri K.R.Meena
34. Kajod Mal Bairwa s/o Shri Jagannath Bairwa
35. Bansi Prasad Sharma s/o Shri M.L.Sharma
36. Sharwan Kumar Meena s/o Shri P.R.Meena

69

37. Man Singh Meena s/o Shri Nathu Ram Meena
38. Kanshi Ram Meena s/o Shri Bhonri Lal Meena
39. Alok Dutt Gaur s/o Shri Vishnu Dutt Sharma
40. Dara Singh Meena s/o Shri Har Sahai Meena
41. Govind Ram s/o Shri Goverdhan Lal
42. Hemant Kumar Bari s/o Sshri R.L.Bari
43. Jagdish Prasad Verma s/o Shri Nanu Ram Verma
44. Mangal Chand Meena s/o Shri Nathur Ram
45. Mahesh Meena s/o Ladu Ram Meena
46. Yogesh Gupta s/o Shri P.P.Gupta
47. Hari Kishan Meena s/o Shri Sohan Lal Meena
48. Ramesh Chand Saini s/o Shri Rati Ram
49. Sayed Nadeem Ali s/o Shri S.M.Ali
50. Vishnu Dariwal s/o Shri Ram Dayal
51. Sunil Soni s/o Shri K.C.Soni
52. Akhtar Hissan s/o Shri Mohad Sabir
53. Hari Om Sharma s/o Shri M.P.Sharma
54. Vijay Meharwal s/o Shri H.S.Meharwal
55. Surya Prakash Pareek s/o Shri S.D.Pareek
56. Raj Kumar Toshniwal s/o Shri R.N.Toshniwal
57. Kalua Ram s/o Shri Devi Singh
58. Satyendra Kumar Lodia s/o Shri R.L.Lodia
59. Naresh Kumar Meena s/o Shri Badri Prasad Meena
60. Alok Shukla s/o Shri S.C.Shukla

All are presently working as Accounts Assistant under the control of F.A. & C.A.O. and presently posted in the office of Dy. Chief Accounts Officer at Ajmer.

.. Applicants

(By Advocate: Shri P.V.Callan)

Versus

1. Union of India through General Manager,
Western Railway,
Churchgate, Mumbai
2. The Financial Advisor
and Chief Accounts Officer,
Western Railway,
Churchgate, Mumbai.

... Respondents

(By Advocate: Shri S.S.Hasan)

O R D E R

Per Hon'ble Mr. M.L.Chauhan.

The applicants have filed this OA thereby praying for quashing the order dated 14.3.2002/14.3.2003 (Ann.A1) whereby representations of the applicants were rejected, the Railway Board letter dated 6.12.1996 whereby preference/principle has been laid down for the purpose of manning the posts in the new zone at their headquarter office pursuant to creation of new railway zone and Railway Board letters dated 9.7.2002 and 25.7.2002 (Ann.A3 and A4) which stipulates exercising options for the purpose of transfer of employees to the headquarter office of new zonal railway with further prayer that the respondents may be directed to issue order transferring the applicants at headquarter of the North Western Railway at Jaipur.

2. Briefly stated, facts of the case are that the applicants, 60 in number, are working on the post of Accounts Assistant in the office of Deputy Chief Accounts Officer (Dy.CAO), Ajmer. As per the averment made by the applicants in the OA the Dy. CAO office is situated at Ajmer and the entire work of Traffic Accounts is controlled at Ajmer in respect of the

Western Railway Zone. As a matter of fact the staff working at Ajmer is neither under the control of Divisional Office nor their seniority is maintained in the Division i.e. in the office of Divisional Railway Manager. It is further averred that the post of Accounts Assistant is inter-changeable post, i.e. an Accounts Assistant working at Mumbai i.e. under the control of F.A. & C.A.O. is liable to be transferred at Ajmer or at any place where the competent authority deems proper. It is further averred that the Indian Railway was bifurcated into 9 zones in which Western Railway zone is one of the biggest zone. Under the Western Railway zone there are 8 divisions and in the entire zone the work of Traffic Accounts is regulated at Ajmer. The Headquarters office i.e. the office where the General Manager sits is situated at Churchgate, Mumbai. It is further stated that an employee working at Mumbai can be transferred to Ajmer and the employees working at Ajmer are posted at Mumbai Headquarter as soon as they are promoted to the post of Section Officer. Promotion to the post of Section Officer is being made from the post of Accounts Assistant. It is further stated that the Government of India under the Ministry of Railway decided to create new zonal railway and to this effect a policy decision was taken to fill up the vacancies at headquarters of new zonal railway and necessary instructions for transfer of posts from existing

62

headquarter office i.e. Mumbai was issued. While issuing instructions vide letter dated 6.12.1996 options were called from the staff in the priority as follows:-

- (i) For non-gazetted staff working at the headquarters office of the existing zonal railways from whose jurisdiction the new zones have been carved out, for being transferred to headquarter offices of the respective new zonal railways.
- (ii) For the non-gazetted staff working in the affected divisions of the existing zonal railways and so on.

In sum and substance, case of the applicants is that while working as Accounts Assistant in Traffic Accounts, Ajmer they are members of the Headquarter, Mumbai under the control of FA&CAO as the seniority of the staff working at Ajmer is certainly not maintained by any of the Division of the Western Railway zone, but it is undisputed that when Accounts Assistant is promoted to the next higher post his service condition is controlled by the FA&CAO and he is the only cadre controlling authority. According to the applicants, this fact clearly goes to show that the FA&CAO is only the cadre controlling authority so far as the staff working at Traffic Accounts whereas Dy. CAO is certainly an officer under whom they are working but ultimately the staff working in Traffic Accounts is liable to give reply to the FA&CAO. Thus, the members working in Traffic Accounts are the members of the Headquarters office as the office of FA&CAO is

situated at Mumbai. It is further stated that the staff working at Parel Workshop or Mumbai Central have been treated as employees working in the headquarter office at Churchgate, Mumbai pursuant to the decision rendered by the Mumbai Bench in OA No. 688/98. As such, the Accounts Assistants working at Ajmer have to be treated as employees borne in the headquarter seniority. According to the applicants, action of the respondents in not treating them as employees borne on the headquarter seniority and treating them as employees borne on the seniority of Traffic Accounts, Ajmer is arbitrary and action of the respondents in transferring persons from Western Railway to Headquarter of North Western Railway vide order dated 17.9.2002 (Ann.A14) is illegal.

3. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, the respondents have specifically stated that the applicants in the present case are borne on the seniority list of Traffic Accounts, Ajmer and could not be considered against posts for giving first priority, as they are not considered to be borne on the headquarter seniority. According to the respondents, as per Railway Board letter dated 6.12.96 the posts as stipulated in MOU between existing and new zonal railways, were to be transferred to headquarter of new railway zone and since posts were

to be transferred from headquarters, first priority was given to the staff of headquarter office, otherwise staff of headquarters office would have become surplus due to surrender of posts. It is further stated that 18% posts in all the categories were transferred from Headquarters, Churchgate, staff of headquarter seniority unit were transferred to the headquarter of North Western Railway and against the posts transferred from Traffic Accounts Office at Ajmer, staff from Traffic Accounts seniority were transferred to Traffic Accounts Headquarter of North Western Railway. Regarding the validity of the circular dated 6.12.1996 (Ann.A2) the respondents have stated that the validity of the said circular has been upheld by the CAT, Mumbai Bench in OA No.1070/98 whereby it was held that the impugned condition in the circular dated 6.12.96 does not offend article 14 of the Constitution and it is not a case of discrimination at all. Regarding the fact that the employees are working in Parel Workshop and Mumbai Central are borne on the combined seniority with other account officials working in the headquarter office at Churchgate, the respondents have stated that these employees have been included in the headquarter seniority pursuant to the clarification issued by the Railway Board vide Ann.R2 whereas in the case of applicants who are working in Traffic Accounts Office, Ajmer, no such decision has been taken. They are not

employee borne on the combined seniority with other account officials working in the headquarter office, as such, they cannot get preference over and above employees borne on combined seniority of account officials working in the headquarter office.

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

5. The main question, which requires our consideration is whether the applicants who are working as Accounts Assistant, in Traffic Accounts Office, Ajmer are to be treated as employees borne on the common seniority with other account officials working in the headquarter office at Churchgate for the purpose of giving first preference in terms of Railway Board letter dated 6.12.1996 for their transfer to headquarter office of the newly created zone i.e. North Western Railway, Jaipur or they are to be treated as employees working in the affected division of the existing zonal railway, disentitling them for transfer after exhausting preference from the staff working at headquarter office.

At this stage, it will be useful to quota para 2 of the policy decision taken by the Railway Board vide letter dated 6.12.1996 (Ann.A2) which is relevant for

the purpose of deciding the matter in issue, which thus reads:-

"2. For the purpose of manning of posts in the new zones at their Headquarter Office, the Board desired that the options may be called from the staff as follows:-

- (i) For non-gazetted staff working at the Headquarter office 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
- (ii) For non-gazetted staff working in the affected Divisions of the existing zonal Railways as follows:-
 - (a) Whether they would like to continue to work wherever they are working at present; or
 - (b) Proceed to the Headquarters office of the respective New Zonal Railways.

Notes: Non-gazetted staff of the affected Divisions in the categories/cadres controlled by the headquarters will have the option to remain in the existing Zonal Railways or join the New Railway for which they must exercise option.

- (iii) From non gazetted staff working in other Divisions of existing Zonal Railways for working in the respective New Zonal Railways; and
- (iv) From non gazetted staff of all Zonal Railways/production units, for working in the Headquarters office of one of the New Zonal Railways against shortfalls, if any."

Thus, from the portion as quoted above, it is clear that preference for transfer on option to new Zonal Railway has to be given in the order of preference as indicated in Para 2 above i.e. at the first instance the employees working at headquarter office of the existing zonal railway from whose jurisdiction the new Zones have been carved out, for

being transferred to the Headquarter Offices of the respective new Zonal Railways. According to respondents, case of the applicants does not fall under para 2(i). However, their case fall under Para 2(ii) i.e. non-gazette staff working in the affected divisions in the category/cadre controlled by the headquarter. On the contrary, the stand taken by the applicants is that their case falls under para 2(i).

6. We have given due consideration to the submissions made by the parties and gone through the material placed on record. We are of the view that the applicants have not made out a case for our interference. From the material placed on record and more particularly from Para 3 of the notice for demand of justice dated 3.10.2002 (Ann.A13), it is clear that the applicants themselves have made the following averments:-

"...An employee working at Mumbai can be transferred at Ajmer and the employees working at Ajmer are posted at Mumbai Headquarters as soon as they promoted to the post of Section Officer. Promotion to the post of Section Officer is being made from the post of Accounts Assistant..."

From this part of pleading, it is clear that Accounts Assistants working at Ajmer can be posted at Mumbai Headquarter only on their promotion as Section Officer and not otherwise meaning thereby that seniority at the level of Section Officer and above is maintained at headquarter level. Since the applicants

are Accounts Assistant, which is feeder category for promotion to the post of Section Officer, they cannot be treated to be employees borne on the headquarter seniority and thus, the stand taken by the respondents that the applicants cannot be treated as employees borne on headquarter seniority, but they are employees who are under control of Dy. CAO, and their seniority is distinct has to be accepted. The respondents have also produced for our perusal seniority list of the category of Junior Account Assistants scale Rs. 4000-6000 (R) of T.A.O., Ajmer as on 31.7.99 in which names of applicants find mention, which fact also proves that seniority of applicants is maintained by the Dy. CAO (TA) A-II who is their controlling officer. Further, the respondents in the reply in para 4(II) and (III) of the reply has categorically stated that Traffic Accounts works of Western Railway is being undertaken at Traffic Accounts office, Ajmer and Foreign Traffic Accounts Office, Kishanganj, Delhi. Both the offices are Headquarter offices for Traffic Accounts and the controlling officers are Dy. CAO (TA) AII and AAO (FTA) DKZ for all purposes. It is further stated that though FA&CAO is the PHOD of the Accounts Department and all the wings of the Accounts are headed by FA&CAO, the seniority, cadre etc. are maintained by the respective controlling officers. It is further stated that seniority of clerical cadre has been decentralized as per P.O.O. No. AHQ/SO 387 dated

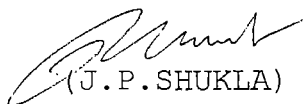
12.03.82 and the seniority of staff of Traffic Accounts office, Ajmer i.e. Coaching and Goods Branches which is controlled by Dy. CAO (TA) AII and the same is distinct from the seniority of staff of FA&CAO's office situated at Churchgate. Thus, in view of this specific stand taken by the respondents in the reply and the fact that the applicant themselves have admitted that further promotional channel from the post of Accounts Assistant is Section Officer, whose seniority are controlled by the headquarter office, we are of the view that the applicants cannot be treated as employees borne on the headquarter seniority, as such, they are not entitled to preference over and above employees working at headquarter office. Thus, according to us, the respondents have not committed any illegality whereby persons mentioned in the order dated 17.10.2002 (Ann.A14) have been transferred to North Western Railway headquarter being the staff working in the headquarter office of the existing zonal railway from whose jurisdiction the new zones have been carved out having preference over the applicants who were employees of the affected division in the category or cadre controlled by the headquarter and not borne on the headquarter seniority.

6. Further, we are of the view that the applicants cannot challenge the policy decision of the Railway Board dated 6.12.1996 which stipulates

condition/preference for transfer on option to new zonal railway as the validity of the same has been upheld by the Mumbai Bench in OA No. 1070/98. Further, the applicants cannot have any grievance regarding treating the employees working in Parel Workshop and Mumbai Central as they were borne on the combined seniority with other account officials working in the headquarter office at Churchgate, inasmuch as, in their case the Railway Board has taken decision to include them in the headquarter seniority vide Ann.R2 pursuant to the decision rendered by the Mumbai Bench in OA No.688/98, Sikandra Kumar and ors. vs. Union of India and ors. whereby the Bench has considered the Para 2.2 of the circular dated 6.12.1996 and also the circular dated 21.3.97 and has held that though normally the staff working in workshop and stores cannot give option for transfer and exception is made in respect of officials working there provided they are borne on the headquarter seniority. It was further held that there is no dispute and there cannot be any disputed that the officials of accounts branch who are working at Parel Workshop or Mumbai Central are on the combined seniority with other accounts officials working in the headquarter office at Churchgate. Thus, it was in that context that the accounts officials of Parel Workshop and Mumbai Central are treated as borne on the combined seniority with the account officials working in the headquarter office, Churchgate. The

applicants are neither working in the Workshop or store depot^{chke} having combined seniority with the accounts officials working in the headquarter office of Churchgate, as such, they cannot draw any assistance from the judgment rendered by the Mumbai Bench in the case of Sikander Kumar (supra).

8. Thus, viewing the matter from any angle, the applicants have not made out any case for our interference. Accordingly, the OA is dismissed with no order as to costs.


(J.P. SHUKLA)

Admv. Member


(M.L. CHAUHAN)

Judl. Member

R/