IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

JAIPUR BENCH, JAIPUR.

Date of decision: 28th April, 2004

OA No. 250/2003

Shambhu Sharma s/o Shri R.P.Sharma, aged about 39 years, r/o Plot 2-Chh-11, Shastri Nagar, Jaipur, working as Sr. T.I.A. North Western Zonal Railway, Jaipur Division, Jaipur.

.. Applicant

Versus

1. The Union of India through the Chairman, Railway Board, Department of Railway, Ministry of Railway, New Delhi.
2. The General Manager, Western Railway, Churchgate, Mumbai.
3. The General Manager, North-Western Zonal Railway, Mumbai.
4. The FA & CAO, Western Railway, Mumbai.
5. Shri M.S.Panwar, Sr. T.I.A., Abu Road c/o Sr. Accounts Officer, Traffic Accounts Office, North Western Railway, Ajmer.
6. Shri Akhilesh Sharma, Sr. T.I.A. c/o Dy. Chief Accounts Officer (TA), Western Railway, Ajmer.

.. Respondents

Mr.Virendra Lodha, counsel for the applicant
Mr. S.S.Hasan, counsel for respondent Nos. 1 to 4
Mr. H.S.Chaudhary, counsel for respondent Nos. 5 & 6

OA No.295/2003

Mohan Lal Sharma s/o Sri Ram Bahadur Sharma, r/o Railway Quarter No.413 Campus, Opp. Railway Hospital, Beawar Road, Ajmer, presently working as Sr. Inspector of Store Account in the Office of Dy. Chief Accounts Officer (Workshop and Store), Ajmer.

.. Applicant

Versus

1. Union of India through General Manager, Western Railway, Church Gate, Mumbai.
2. The General Manager, North-Western Railway, Jaipur
3. The Financial Adviser and Chief Accounts Officer (Admn.), Western Railway, Churchgate, Mumbai.
4. The Financial Adviser and Chief Accounts Officer (Admn.), North-Western Railway, Jaipur.
5. Shri R.C.Karnani, Sr. ISA, SAO (W&S) Office, Sabarmati (Gujrat).
6. Shri R.P.Lakharan, ISA, Dy. CAO (W&S) Office, Ajmer.
7. Shri Narendra Singh, ISA, SAO (W&S) Office, Sabarmati (Gujrat).

.. Respondents

Mr. Ashok Gaur, counsel for the applicant
Mr. S.S.Hasan, counsel for respondent Nos. 1 to 4
Mr. Nand Kishore, proxy counsel to
Mr. H.S.Chaudhary, counsel for respondent No.6&8

OA No.368/2003

Jawahar Singh Choudhary s/o Shri Chiranji Lal Choudhary r/o 215/29, Gulab Bari, Ajmer, presently posted as Sr. TIA, Ajmer-I, Ajmer Railway Station.

..Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. The General Manager, North-Western Railway, Jaipur.
3. The Financial Adviser and Chief Accounts Officer (Admn.), Western Railway, Churchgate, Mumbai.
4. Shri M.S.Panwar, Sr. T.I.A., Abu Road Station, Abu Road (Rajasthan).
5. Shri Akhilesh Sharma, Atta Oli Mohalla, Gandhi Chowk, Nasirabad Distt. Ajmer (Rajasthan).
6. Shri Pyare Lal Chauhan s/o SAO (TA),

Office, North Western Railway, Ajmer (Rajasthan).

7. Shri Vimal Sheel Rathore, Sr. TIA c/o SAO (TA) Office, North-Western Railway, Ajmer.

8. Shri R.C.Sharma, TIA, Nandurbar Station, Nandurbar (Maharastra).

..Respondents

Mr. Ashok Gaur, counsel for applicant

Mr. S.S.Hasan, counsel for respondents Nos. 1, 3 to 5.

Mr. Nand Kishore, proxy counsel for Mr. H.S.Chaudhary, counsel for respondent Nos. 6&8.

OA No.369/2003

Om Prakash Gaur s/o Shri Shanti Lal Gaur, aged about 40 years, r/o 65 UIT Main Scheme, Kotra, Ajmer. Presently posted as Sr. TIA, Ajmer-I, Ajmer Railway Station.

.. Applicants

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.

2. The General Manager, North-Western Railway, Jaipur.

3. The Financial Adviser and Chief Accounts Officer (Admn.), Western Railway, Churchgate, Mumbai.

4. Shri M.S.Panwar, Sr. TIA, Abu Road Station, Abu Road (Rajasthan).

5. Shri Akhilesh Sharma, Atta Oli Mohalla, Gandhi Chowk, Nasirabad District Ajmer (Rajasthan).

6. Shri Prare Lal Chauhan c/o SAO (TA), Office, North Western Railway, Ajmer (Rajasthan).

7. Shri Vimal Sheel Rathore, Sr. TIA, C/o SAO (TA) Office, North-Western Railway, Ajmer- 305001 (Raj).

8. Shri R.C.Sharma, TIA, Nandurbar Station, Nandurbar (Maharastra).

.. Respondents

Mr. Ashok Gaur, counsel for the applicant

Mr. S.S.Hasan, counsel for respondent Nos. 1,3 to

5.

Mr. Nand Kishore, proxy counsel to Mr. H.S.Chaudhary, counsel for respondent Nos. 6&8.

OA No.180/2003

1. M.K.Talwar s/o Shri Ved Prakash Talwar r/o Plot No.298, Adarsh Nagar, Raja Park, Jaipur, presently working as Sr. ISA (C), FA&CAO (S&C), NWR Headquarter, Jaipur.
2. A.K.Singh s/o Brij Mohan Singh r/o Plot No. 146, Near Madhav Circle, Adarsh Nagar, Ajmer, presently working as Sr. ISA (W&S), Dy. CAO (W&S), NWR, Ajmer.
3. B.S.Meena s/o Ram Phool Meena, r/o c/o Shri Pradeep Kumar Upadhaya, Patel Nagar, Topdara, Ajmer, presently working as Sr. ISA (W&S), Dy. CAO (W&S), NWR, Ajmer.

.. Applicants

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. The General Manager, North-Western Railway, Jaipur.
3. The Financial Adviser and Chief Accounts Officer (Admn.), Western Railway, Churchgate, Mumbai.

..Respondents

Mr. Ashok Gaur, counsel for the applicants
Mr. S.S.Hasan, counsel for respondents

OA No.261/2003

Rajesh Khandelwal s/o Shri Prahlad Das Khandelwal r/o 1/87, SFS Agarwal Farm, Mansarovar, Jaipur, presently working as Sr. Inspector of Store Account in the office of FA&CAO (S&C), H.Q. NWR, Jaipur.

.. Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. The General Manager, North Western Railway, Jaipur.

3. The Financial Adviser and Chief Accounts Officer (Admn.), Western Railway, Churchgate, Mumbai.

4. The Financial Adviser and Chief Accounts Officer (Admn.), North Western Railway, Jaipur.

.. Respondents

Mr. Ashok Gaur, counsel for applicant
Mr. S.S.Hasan, counsel for respondents

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

HON'BLE MR. A.K.BHANDARI, MEMBER (ADMINISTRATIVE)

O R D E R

Per Hon'ble Mr.M.L.Chauhan

By this common order, we propose to decide the aforesaid OAs as a common question of facts and law is involved in these cases.

2. Facts of the case are that the applicants are working on the posts of Senior Inspector of Store Accounts/Senior TIA (hereinafter referred to as Sr. ISA/Sr. TIA) with railway authorities. They have challenged the order of transfer of some officials made by the railway administration to the newly created zone viz. North-Western Railway, Jaipur. Their grievance is that the transfer has been made in violation of the policy of the Railway Board dated 6.12.1996 (Ann.A7). This policy was again reiterated in the Railway Board letter dated 18.2.1997. According to the applicants, the respondents while issuing transfer order have not adhered to the priority as laid down in para 2 of the said letter. Further grievance of the

applicants is that in any case they should not have been transferred from the place where they were working at the time of passing of the impugned order.

3. The respondents have filed reply thereby opposing the applications. According to them, they have not violated the policy of the Railway Board. The respondents have further stated that the cadre of ISA/TIA are controlled by the Headquarters. Two different grades have been provided for the Inspectorrial staff in the Stores Accounts wing and Traffic Accounts wing. 80% of the posts in both the categories are operated in the higher grade of Rs. 7450-11500, as Sr. ISA/Sr.TIA and 20% of the posts are operated in the lower grade of Rs. 6500-10500 as ISA/TIA. All these four categories are distinct, having separate seniority and are controlled by the Headquarters. Transfer, posting and promotions in these categories are controlled and regulated from the Headquarters. By the very nature of duties attached to these posts almost all the posts in these categories are operated in the field units of stations. Only there are few posts in the Headquarters which are meant for the purpose of co-ordinationing the work. It is further stated that those working in these categories does not possess any right of lien on any particular division. The respondents have further stated that in terms of Railway Board letter dated 27.9.89, railway employees holding

sensitive posts and too frequently coming into contact with public/contractors/suppliers are required to be transferred every four years. The Railway Board vide their subsequent letter dated 2.6.1995 have classified these categories amongst sensitive posts and consequently the staff working in the categories of TIAs and ISAs are being transferred from one station to another on completion of tenure of four years at the particular station. The respondents have further stated that consequent upon reorganisation and formation of the new zone, North-Western Railway has been carved out of the jurisdiction of Western Railway and Northern Railway, with the jurisdiction of Ajmer and Jaipur Divisions of Western Railway. The new zones consists of 4 divisions out of which Ajmer and Jaipur Divisions were previously part of the Western Railway whereas Jodhpur and Bikaner were part of the Northern Railway. It is further stated that number of posts of Sr. TIA and TIA transferred to the jurisdiction of the North-Western Railway from Western Railway were 16 and 4 respectively. Similarly, in the case of Sr. ISA/ISA the number of posts transferred to North-Western Railway were 6 and 2 respectively. It is further stated that in order to fill these posts options were accordingly invited from all the staff of the Western Railway including those working in the category of ISA and TIA before preparing the list of optees category-wise and grade-wise. The instructions contained in the Railway Board

letter dated 6.12.96 read with Railway Board letter dated 21.3.97 on the assignment of priorities were deliberated upon by the department. It was noted that there was a distinct method to be followed in case of optees borne on the divisional seniorities and those borne on centralised or unified seniority controlled by the Headquarters.

It is further averrred that in respect of staff working on the divisions, different options were required to be exercised by the employees, based on the nature of the cadre on which they were borne as per para 2(ii) of the letter dated 6.12.96 whereas in the case of employees whose seniority is controlled by the Headquarters, the option available for such staff were distinctly different and they have to exercise option whether (a) to continue to work in the existing zonal railway i.e. Western Railway or (b) to proceed and join the New Zonal Railway i.e. North Western Railway, for such cases provision of para 2(ii) are not applicable. The respondents have further caterogically stated that the persons who have been transferred to North Western Railway are senior to the applicants except such persons who have been transferred against reserved posts. The respondents in their reply have also stated that since the applicants are either Sr. ISA/Sr. TIA cannot contend that certain persons junior to them and belonging to the lower category of ISA/TIA have been transferred to the newly

created zone. Sr. ISA/TIA are different than the grade of ISA/TIA for which separate seniority is being maintained. The respondents have also stated that the reservation is also applicable to the aforesaid categories in view of the railway Board letter No.AHQ/SO/No.312 dated 31.3.2003.

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

4.1 It is not disputed that seniority of Sr. ISA/Sr. TIA is controlled by the Headquarters. Similarly, transfer, posting and promotion in these categories are also controlled and regulated by the Headquarters. The main grievance of the applicants is that the respondents have not followed the policy dated 6.12.96 read with another railway board letter dated 18.2.97 whereby the said policy has been reiterated while giving effect to the impugned transfer orders. In order to decide this question, it will be useful to quote the policy letter dated 6.12.96 (Ann.A7) relevant portion of which is reproduced hereinbelow:-

> "Subject: Calling of Option from Staff to serve in the Headquarters of the New Railway Zones- Determination of seniority of staff on transfer to the New Zones.
>
> .....
>
> .....
>
> 2. For the purpose of manning of posts in new Zones at their Headquarters Offices, the Board desired that options may be called from the staff as

follows:-

i) 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 zonel railways.

ii) For the non-Gazetted staff working 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 will have the option to remain in the existing zonal railways or to join the new railway for which they must exercise option.

NOTE:- 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 shortfall, is any.

2.1 Preference for transfer on option to the new zonal railways should be given in the order as indicated in para 2, above.

2.2 Staff in workshops, stores depots and RPF are included in the scheme of calling of options for transfers. There is however no bar for clerical staff

posted in workshops and stores depots, borne in the divisional seniority exercising their option alongwith other staff of respective divisions for the new zonal railways.

3.....

4. The staff should be asked to exercise their option within a period of three months.

4.1 The options received may be forwarded to the OSD's of the new zonel railways for further necessary action. List of optees should be forwarded categoriwis, gradewise and strictly in the order of seniority. This entails commitment to spare the staff for transfer to the new zonal railways as and when required by the concerned new zonal railways.

5. The seniority of staff coming on transfer from one railway to another should be determined in each grade on the basis of non-fortuitous length of service in the grade, as on the date of new zonal railways becoming operational which will be declared in the due course ensuring that the inter-se seniority of the staff absorbed in the same unit is not disturbed.

5.1 It should also be ensured that the options are accepted from staff for poting only in a grade in which he/she is already is working on regular basis after completion of the due process of selection/suitability test.

6.....

7....."

4.2 Thus from reading of the portion as quoted above, it is quite evident that in order to man the posts created in the new zone at their Headquarters office, preference for transfer on

the new zonal railway should be in the order as indicated in para 2. First priority is that of staff working at Headquarters office of the existing zonal railway on whose jurisdiction new zone have been carved out and second priority is that of non-gazetted staff working in the affected divisions of the existing zonal railway.

The main question which requires our consideration is whether the applicants who are admittedly working in different divisions, though their seniority is controlled by the Headquarters, can be said to be the staff working at the Headquarters office of the existing zonal railway from whose jurisdiction the new zone has been carved out or they can be termed as employees falling under category ii) of para 2 i.e. non-gazatted staff working in the affected divisions of the existing zonal railways.

According to the applicants, such non-gazetted staff working at different divisions though controlled by the seniority issued by the Headquarters cannot be said to be the staff working at the Headquarters office of the existing zonal railway from whose jurisdiction the new zones have been carved out. They are the employees working in the affected divisions of the existing zonal railway, as such the respondents have committed error in treating such employees as staff working at Headquarters office of the existing zonal railway for the purpose of exercising option of transfer to the new zonal railway.

We are not inclined to accept the

submissions made by the learned counsel for the applicants. At this stage it will be useful to reproduce the relevant portion of the decision rendered by the Mumbai Bench of this Tribunal in the case of Sikander Kumar and ors vs. Union of India and ors. OA No.688/98 and other connected matters. One of the points for consideration before the Mumbai Bench in that case was whether the employees of Accounts Department working in Parol Workshop and Bombay Central 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 at Jaipur. In that case in OA No.1070/98 the stand taken by the railway authorities was that the officials of the Accounts Department working at the Headquarter, Churchgate are to be treated as officials of the Headquarters office and the Accounts officials working at Parol Workshop or Bombay Central cannot be included within the staff working in the Headquarters office. Thus, according to the respondents, the officials working in Bombay Central or Parol Workshop cannot be included within the meaning of the staff working in the Headquarters office while deciding the matter in controversy, the Tribunal in para 12 had made the following observations:-

> "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 options alongwith 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 ....

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 62 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 options for being transferred to the New Headquarters. Though normally staff working in the Workshops and Stores Depot 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 Parol 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." (emphasis ours)

4.3 Thus, from the findings as recorded by the Mumbai Bench, it is clear that while taking action on the options submitted by employees, the first preference are required to be given to the non-gazetted staff of the existing zonal railways for being transferred to the Headquarters Office of the new Zonal railway at Jaipur. It has also been made very clear that employees who are controlled by the Headquarters office and who has common seniority, they can give option. We do not agree that the submissions made by the learned counsel for the applicants that the finding given by the Mumbai Bench should be confined to the employees working at Parol Workshop and Bombay Central office and not to other employees working in different divisions. Once it has been held that the persons borne on common seniority placed in the Headquarters office are entitled to be treated as employees of the Headquarters office irrespective of their working in different places

and such interpretation was given on the basis of the Railway Board Circular dated 21.3.1997, it cannot be said that the benefit of the judgment/Railway Board circular dated 21.3.1997 and circular dated 6.12.1996 should be confined only to employees working at Parel Workshop or Bombay Central and not to other employees working in different divisions though they are borne on the common seniority list with other non-gazetted officials working in the Headquarters office at Churchgate.

4.4 Yet for another reason, we are not inclined to interfere with the matter. As can be seen from the note appended below para 2(ii), relevant portion of which has been quoted above, it has been specifically provided that non-gazetted staff of the affected division in the categories/cadres controlled by the Headquarters will have the option to remain in existing zonal railway or join the new railway for which they must exercise option. From reading of this note, it can safely be concluded that non-gazetted staff who are controlled by the Headquarters office will have to exercise option either to remain in the existing zonal railway (i.e. Western Railway) or to proceed to join the new zonal railway i.e. (North-Western Railway). Such employees have not been given option either to continue wherever they are working at present or to proceed to the Headquarter office of the respective new zonal railway which option is available to the staff working on the divisions.

The learned counsel for the respondents argued that option to be exercised by the persons working in the Headquarters controlled posts are different than persons working on the divisions. In the case of staff working on divisions, option have to be exercised in terms of para 2(ii) (a) and (b) whereas in case of persons whose seniority is controlled by the Headquarter have to exercise different option as per note below para 2. In view of this submission, it can not be said that the applicants are covered under priority No. 2 and not under priority No.1 viz. staff working at Headquarters office.

4.5 The learned counsel for the applicants argued that no reservation could have been made by the respondents in respect of posts which has been transferred to the newly created zone as reservation is applicable in the case of promotion/appointment and not in te case of transfer. According to us, this contention of the learned counsel for the applicants deserves out right rejection. It is not a case of transfer. In real sence it is a case where certain posts were transferred to North-Western Railway from the Western Railway. In order to fill those posts by transfer, the respondents were justified in giving proper representation to the reserved category as per post based roster. Thus, it cannot be said to be a case of mere transfer but in fact it is a case of appointment of persons in newly created zone by transfer who after their appointment in new zone will cease to be

employees of the existing zone.

4.6 Lastly, the learned counsel for the applicants argued that in the cadre of Sr.TIA S/Shri Akhilesh Sharma and M.S.Panwar have submitted option to North Western Railway after the last date as stipulated and as such they could not have been accommodated in North Western Railway. The respondents have submitted explanation and it has been stated that Shri M.S.Panwar has initially submitted option on 8.7.2002. As the said option was not in the prescribed format, Shri Panwar filled up and submitted his option on 8.10.2002. As regards Shri Akhilesh Sharma, it is stated that his option dated 2.10.2002 was accepted for the reason that he was on duty to Mumbai during the month of August, 2002 which was certified by the Deputy CAO (TA), Ajmer and hence he was prevented from exercising option in time. It is further stated that the case of S/Shri Akhilesh Sharma and M.S.Panwar was deliberated upon by the administration before issuing their transfer orders. It was under these circumstances that the option of these officials were accepted though the last date of submission of the same was 31.8.2002. We are of the view that such action of the respondents cannot be said to be wholly unjustified. As such while exercising the power of judicial review, it is not permissible for us to interfere in the matter in view of the reasons given by the respondents.

5. For the reasons as stated above, we are of the view that there is no force in these OAs. The same are accordingly dismissed with no order as to costs. Interim releif granted by this Tribunal shall also stands vacated.

(A.K.BHANDARI)
Member (A)

(M.L.CHAUHAN)
Member (J)