

**THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET**


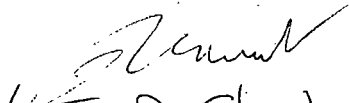


APPLICATION NO.: _____

Applicant(s)

Respondent (s)

Advocate for Applicant (s)

Advocate for Respondent (s)

NOTES OF THE REGISTRY	ORDERS OF THE TRIBUNAL
	<p><u>07.02.2008</u> <u>OA 241/2003 a/w MA 36/2006</u></p> <p>Present : Mr.R.K.Sharma, proxy counsel for Mr. R.N.Mathur, codounsel for the applicant. None for the respondents.</p> <p>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.</p> <div style="text-align: right;"> (GURMIT SINGH) DEPUTY REGISTRAR</div> <p>akv</p> <p><u>13-2-2008</u></p> <p>Mr. R.N. Mathur, Counsel for the applicant Mr S.S. Hassen, Counsel for the respondents</p> <p>Heard learned Counsel for the parties.</p> <p><u>Order Reserved.</u></p> <div style="display: flex; justify-content: space-between; align-items: flex-end;"><div style="text-align: center;"> (J. P. Shukla) M (A) <u>15.2.2008</u> order pronounced today in the open court by the aforesaid Bench.  15.2.2008 C O</div><div style="text-align: center;"> (M.L. Chauhan) M(J)</div></div>

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 15th day of February, 2008

ORIGINAL APPLICATION No.241/2003

CORAM:

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

1. Salimmuddin Khan, Sr. Section Officer (A/cs),
Divisional Accounts Office, North Western
Railway, Ajmer.
2. A.K.Agiwal, Sr. Section officer (A/cs),
Divisional Accounts Office, North Western
Railway, Ajmer.
3. Gopal Prasad Tiwari, Sr. Section Officer
(A/cs), Workshop and Stores Accounts Office,
North Western Railway, Ajmer.
4. M.S.Gehlot, Sr. Section Officer (A/cs),
Workshop and Stores Accounts Office, North
Western Railway, Ajmer.
5. A.E.Massey, Sr. Section Officer (A/cs),
Workshop and Stores Accounts Office, North
Western Railway, Ajmer.
6. V.B.Garg, Sr. Section Officer (A/cs),
Divisional Accounts Office, North Western
Railway, Ajmer.
7. N.C.Oza, Sr. Section Officer (A/cs), Divisional
Accounts Office, North Western Railway, Ajmer.
8. R.K.Baldua, Sr. Section Officer (A/cs),
Divisional Accounts Office, North Western
Railway, Ajmer.
9. N.D.Sharma, Sr. Section Officer (A/cs),
Divisional Accounts Office, North Western
Railway, Ajmer.
10. O.P.Pareek, Sr. Section Officer (A/cs),
Workshop and Stores, North Western Railway,
Ajmer.

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11. Purshottam Das, Sr. Section Officer (A/cs), Workshop and Stores Accounts Office, North Western Railway, Ajmer.
12. Rajeev Verma, Sr. Section Officer (A/cs), Workshop and Stores, North Western Railway, Ajmer.
13. Rakesh Sharma, Sr. Section Officer (A/cs), Workshop and Stores, North Western Railway, Ajmer.
14. Kuldeep Dave, Sr. Section Officer (A/cs), Workshop and Stores, North Western Railway, Ajmer.
15. Basant Kumar Jha, Sr. Section Officer (A/cs), Workshop and Stores, North Western Railway, Ajmer.
16. R.K.Arora, Sr. Section Officer (A/cs), Workshop and Stores, North Western Railway, Ajmer.
17. Purshottam Natu, Sr. Section Officer (A/cs), Workshop and Stores, North Western Railway, Ajmer.
18. R.K.Gaur, Sr. Section Officer (A/cs), Workshop and Stores, North Western Railway, Ajmer.
19. R.K.Verma, Sr. Section Officer (A/cs), Workshop and Stores, North Western Railway, Ajmer.
20. Tej Raj Daroga, Sr. Section Officer (A/cs), Workshop and Stores, North Western Railway, Ajmer.
21. Smt. Anita Kalra, Sr. Section Officer (A/cs), Workshop and Stores, North Western Railway, Ajmer.
22. S.K.Jain, Sr. Section Officer (A/cs), Workshop and Stores, North Western Railway, Ajmer.
23. Nand Kishore Sharma, Sr. Section Officer (A/cs), Workshop and Stores, North Western Railway, Ajmer.
24. Kalu Ram Udai, Sr. Section Officer (A/cs), Divisional Accounts Office, North Western Railway, Ajmer.

All the applicants are r/o Khanpura Road, Plot No.242, Chisti Nagar, Ajmer

... Applicants

(By Advocate: Shri R.N.Mathur)

Versus

1. Union of India through the Chairman, Railway Board, Government of India, Ministry of Railways, New Delhi.
2. The General Manager, Western Railway, Churchgate, Mumbai.
3. The Financial Advisor and Chief Accounts Officer, Western Railway, Mumbai.
4. The Financial Advisor and Chief Accounts Officer, North Western Railway, Jaipur.

... 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 the following reliefs:-

"Your humble applicants pray that in the facts and circumstances state above, this Hon'ble Tribunal may be pleased to accept and allow this OA and the impugned orders - Annexure-1 and Annexure-2 may be quashed and set aside and the respondents be restrained from transferring the applicants from the North-Western Railway to any other railway.

2. Briefly stated, facts of the case are that on bifurcation of railway zones as per order dated

14.6.2002, a new zonal railway namely, North Western Railway was constituted w.e.f. 1.10.2002. Consequently, the jurisdiction of three railway zones viz. North Western Railway, Jaipur; Northern Railway, Delhi and Western Railway, Mumbai was changed. It is case of the applicants that options were called from the applicants whether they want to continue in the same zone or not. The applicants gave option for North Western Railway, Jaipur. As per averments made in the OA, the respondents without any valid reason transferred them to Western Railway ignoring their option and also simultaneously retaining certain juniors in the North Western Railway. Thus, they have challenged the order dated 31.3.2003 (Ann.A1) whereby on bifurcation of railway zones, the applicants have been transferred to zones other than the zone in which they were working. According to the applicants, they will be seriously prejudiced if they are transferred out to a distant place which is now part of Western Railway. This Western Railway include far distance places like Bahvnagar, Mumbai, Kota, Ratlam, Vavodara and Rajkot Divisions. It is further pleaded that the applicants are presently working in the North Western Railway which include existing Jaipur and Ajmer Divisions and also certain other divisions i.e. Bikaner and Jodhpur Division of the North Western Railway. Aggrieved by the order dated 31.3.2003, the applicants filed OA No. 151/2003 before this Tribunal.

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Since representations of the applicants were pending before the appropriate authority and the applicants were not relieved at the relevant time, directions were given by this tribunal to the applicants to file fresh representation to respondent No.4 with copy to respondent No.5 for information and in that eventuality respondents No.4 was directed to dispose of their representation by a speaking order within four weeks from the date of receipt of representations. The representations of the applicants were however, rejected vide order dated 15.5.2003 (Ann.A2). It is this order as well as the original order of transfer (Ann.A1), which is under challenge in this OA, as can be seen from prayer clause as reproduced in the earlier part of the order.

3. Notice of this application was given to the respondents. The respondents have filed reply. The stand taken by the respondents is that all the applicants, barring one applicant, have opted to serve on the North Western Railway at Ajmer. The applicants did not opt to move to the Headquarters of the new zonal railway situated at Jaipur. Therefore, the applicants have not challenged the transfer of Sr. SOs ordered from the office of Dy. CAO (TA), Ajmer and who have been posted vice the applicants. Thus, according to the respondents, it does not lie with the applicants to question continuance of their alleged

juniors working at Jaipur, when they themselves in writing gave option to serve at Ajmer. According to the respondents, Ajmer housed 4 wings of Accounts Department of the Western Railway right upto the year 1999 viz. Dy. CAO (TA)-Ajmer, Sr. Divisional Accounts Officer, Ajmer, Dy. CAO (W&S)-Ajmer and Dy. FA&CAO (S&C)-Ajmer. As there was a huge concentration of the staff of Accounts Department at Ajmer, naturally large number of persons from various offices at Ajmer used to qualify in the App-3 IREM Exam. These qualified staff had to move initially on promotion as SO (A/cs) to the offices in Mumbai as the cadre of SO (A/cs) was centrally controlled by headquarter, having one common seniority for the entire Western Railway. According to the respondents, vide order dated 31.3.2003 only senior in the category of SO have been posted to North Western Railway as per their options thereby resulting in the posting of juniors in the office of Dy. CAO (TA)-Ajmer. It is further stated that the Sr. SOs working in all the three Accounts Offices situated at Ajmer had submitted their option for continuing at Ajmer under North Western Railway with handful of them opted to move to headquarter OT, North Western Railway at Jaipur, while those who have opted for Jaipur have been/are being considered and transferred to Jaipur as per their seniority. The Sr. SOs working in the office of Dy. CAO (TA)-Ajmer were sufficiently senior than the applicants in the order of seniority as envisaged

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even by the applicants as such, these seniors were transferred to the offices of Sr. DAO, Ajmer and Dy. CAO (W&S) Ajmer vide the impugned order in place of the applicants who were relatively juniors in the order of seniority.

4. The applicants have filed rejoinder thereby reiterating the submissions made in the OA. Alongwith the rejoinder, the applicants have annexed copy of the Railway Board letter dated 20.12.96 (Ann.A13) and also another letter dated 16th August, 2002 (Ann.A18). The letter dated 16th August, 2002 has been issued in continuation of letter dated 30.7.2002 whereby it was advised that item No. 1 A of the proforma of the option form calling for the name of opted station stands deleted. Thus, according to the applicants, the facts that the applicant have opted a station i.e. Ajmer of the North Western Railway against column No. 1 A will not materially make any difference as highlighted by the respondents (that they have exercised option for Ajmer only, as such they cannot be transferred to North Western Railway headquarter) in view of deletion of item No. 1-A vide the aforesaid letter. The applicants have also drawn our attention to other items of the option given in the prescribed proforma which shows that the applicants have opted to keep their lien with North Western Railway. The applicants have also annexed the order dated

19.12.2003 (Ann.A22) whereby Accounts Assistant's were promoted to the post of SO. Out of these 16 persons, 14 persons were promoted against the existing vacancies. Thus, according to the learned counsel for the applicants, the applicants could have been adjusted against these 14 vacancies of SO and it was not permissible for the North Western Railway to promote Account Assistants against existing vacancies of SO.

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

6. It is admitted facts that on account of creation of new zonal railway namely, North Western Railway, Jaipur, the employees were to be transferred to man the Headquarter office of the North Western Railway in terms of Railway Board circular dated 6.12.1996. At this stage, it will be useful to quota relevant portion of para 2 which thus reads:-

"2. For the purpose of manning of posts in the New Zones at their headquarters offices, the Board desire that options may be called for from the staff as follows:-

- (i) From 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.
- (ii) From the non-gazetted staff working in the affected Divisions of existing Zonal Railways as follows:-

all

- (a) whether they would like to continue to work wherever they are working at present; or
- (b) proceed to the headquarters offices of the respective New Zonal Railways.

Further, para 2.1 of the said circular stipulates that preference for transfer on option to the new zonal railways should be given in the order as indicated above. It is not in dispute that first preference for manning the posts in the North Western Railway headquarter has to be given to the staff working at headquarter office of the existing zonal railway from whose jurisdiction the new zones have been carved out. Regarding this aspect, there is no dispute between the parties. It is admitted case between the parties that the case of the applicants is covered under 'Note' given under Para 2(ii), which thus reads:-

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

The question which requires our consideration is whether the impugned order Ann.A1 has been passed by the respondents in conformity with the requirement as stipulated in the Note above. According to the learned counsel for the applicants, the respondents have not adhered to the zonal seniority as employees who have been transferred vide impugned order Ann.A1 including the applicants are the staff of affected division

whose cadre was controlled by the headquarter and it was not permissible for the respondents to adhere to the unit seniority.

7. We have given due consideration to the submissions made by the learned counsel for the applicants. We have also perused the impugned order Ann.A1 vis-à-vis seniority list of Senior SOs/SOs as on 1.1.2001, which has been made available by the learned counsel for the respondents for our perusal. The persons who have been transferred as Sr. SO/SO to the new zone as per the impugned order dated 31st March, 2003 (Ann.A1) are admittedly senior to the applicants who have been transferred to the Western Railway. From the perusal of the impugned order dated 31st March, 2003, it is also clear that persons upto the Sl.No. 31 have been posted in North Western Railway whereas persons from Sl.No.35 to 60 which include name of the applicants have been transferred to the Western Railway. Name of persons which have been retained in North Western Railway vide impugned order find mention in the seniority list from Sl.No. 30, (Shri S.S.Saini at Sl.No. 1) to Sl.No.144 (Shri R.K.Chotwani, Sl.No.29) except reserved category candidates, whereas name of applicants who have been transferred vide impugned order find mention between Sl.No. 161 (Shri V.B.Garg Sl.No.35) and Sl.No.341 (Shri A.E.Massey Sl.No.59). Thus, the contention

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raised by the learned counsel for the applicants that the respondents had adhered^{to} the unit seniority while making transfer vide impugned order Ann.A1 instead of resorting to zonal seniority as the cadre is being controlled by the headquarter is wholly misplaced and misconceived. Thus, according to us, the applicants have not made out any case for our interference.

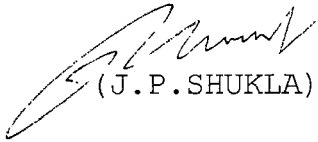
Further contention raised by the applicants is that it was not permissible for the Western Railway to pass the impugned order as the applicants were working in the newly created zone of North Western Railway, is wholly misconceived. The impugned order Ann.A1 was passed on 31st March, 2003 whereas admittedly, the cadre was finally closed on 30.4.6.2003. It is only after closing of the cadre, new railway zone i.e. North Western Railway was competent to pass any order in respect of employees working in the newly created zone. Prior to closure of the new zone, it was not permissible for the new zonal railway either to make promotion or resort to the direct recruitment and till such time the cadre is closed, lien of the staff has to be maintained at the parent zone. This fact is clear from the Railway Board letter dated 6.12.96 (Ann.A13) on which reliance has been placed by the applicants themselves. Thus, this contention of the applicants can not also be accepted and deserves out right rejection.

Similarly, the contention raised by the applicants in the OA that the policy of reservation was followed in the transfer illegally, cannot be accepted. It is not a simple case of transfer. It is a case where certain new zonal railways were created from amongst the existing railway zones. As per policy decision taken by the Railway Board reservation has to be made applicable as per post based roster issued by the Railway Board vide order dated 21.8.97. This was due to the fact that 18% posts of different categories had to be transferred to the newly created zone. Thus, in order to maintain the percentage of reservation in the respective cadre it was decided by the Railway Board to make applicable the reservation as per post based roster. Thus, we see no infirmity in the action of the respondents whereby reservation has been provided while transferring the staff to the newly created railway zone.

As already noticed above, the learned counsel for the applicants has also made a grievance regarding promotion of 16 Accounts Assistants to that of SO vide order dated 19.12.2003 (Ann.A22) annexed with the rejoinder, which order shows that as against 16 persons, 14 persons were promoted as SO against the existing vacancies. The learned counsel for the applicants argued that it was permissible for the

respondents to consider the case of the applicants for transfer to North Western Railway against the aforesaid existing 14 vacancies. Since the applicants have taken this point in the rejoinder, as such, no opportunity was given to the respondents to controvert this fact. Be that as it may, since the cadre was closed finally on 30.6.2003, it was permissible for the North Western Railway to make promotion after that date. The fact whether these 14 posts have fallen vacant/created after 30.6.2003 (when the cadre was closed) or some of the posts of SO were existing prior to 30.6.2003 against which the applicants, who have exercised option for North Western Railway, could have been considered, no positive finding can be given on this aspect. Since the order Ann.A22 has been passed by the Dy. CAO (G), North Western Railway who is not party before us, as such, no direction can be given to the North Western Railway to consider this aspect again. Accordingly, it will be open for the applicants to make proper representations qua the aforesaid aspect to the appropriate authority and in case such representation is made within a period of one month from the passing of this order, the appropriate authority may consider this aspect only by passing a speaking order within a period of two months from the date of receipt of such representation, if any.

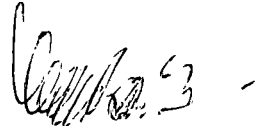
8. With these observations, the OA stand disposed of with no order as to costs.



(J.P. SHUKLA)

Admv. Member

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(M.L. CHAUHAN)

Judl. Member