

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

Applicant(s) Abdul Sattar APPLICATION NO.: 43/2003

Advocate for Applicant (s) Mr. Nand Lalhore

Respondent (s) U.O.I.

Advocate for Respondent (s) Mr. N.C. Roy, Mr. Indrajit Singh

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

17/1/08.

Mr. Nand Lalhore, counsel for applicant.
Mr. N.C. Roy, counsel for respondents.
Mr. Indrajit Singh, counsel for Pt. respondents.

Heard. Learned counsel for parties.
Judgment reserved.

(J.P. Shukla)
member (A)

(M. L. Chauhan)
member (J)

12/2/08

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

12/2/08
C.O.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 12th day of February, 2008

ORIGINAL APPLICATION No.43/2003

CORAM:

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

1. Abdul Sattar
s/o Juman Khan,
E.L.F., N.W.R.,
Diesel Shed, Phulera,
r/o H.No.83, Dadu Nagar Phulera.
2. Indar Pal
s/o Pannal Lal,
E.L.C., N.W.R.,
Diesel Shed Phulera
r/o Dhani Gordhanpura, Phulera.
3. Swaroop Chand
s/o Mangal Chand,
E.L.F., N.W.R.,
Diesel Shed, Phulera,
r/o Dhani Karigaraon, Ram Nagar, Phulera.
4. Devi Lal
s/o Hanuman Prasad,
E.L.F., N.W.R.,
Diesel Shed Phulera,
r/o Chani Gordhanpura, Phulera
5. Moti Lal
s/o Chhotu Ram,
E.L.F., N.W.R.,
Diesel Shed Phulera,
r/o Railway Qtr. No.:-28,
Phulera.
6. Kishan Singh
s/o Moti Lal
E.L.F., N.W.R.,
Diesel Shed Phulera,
r/o Mishra Colony,
Behind Locoshed, Phulera
7. Jagdish Prasad

s/o Chhaju Ram,
E.L.F., N.W.R.,
Diesel Shed, Phulera
r/o Chani Karigaon, Phulera

8. Chandan Singh
s/o Trikha Ram
E.L.F., N.W.R.,
Diesel Shed, Phulera,
r/o Dhani Karigaon,
Phulera.
9. Dilip Kumar
s/o Vimila Prasad
Diesel Shed, Phulera,
r/o Raj Bazar, Opposite Post Office,
Phulera.
10. Rajendra Kumar
s/o Jai Singh Yadav
E.L.F., N.W.R.,
Diesel Shed, Phulera,
r/o In front of R.S.E.B. Office,
Jobner road, Phulera.
11. Radhey Shyam Mali
s/o Hari Ram
E.L.F., N.W.R.,
Diesel Shed, Phulera
r/o Railway Qtr. No.516 B,
Phulera.

.. Applicants

(By Advocate: Shri Nand Kishore)

Versus

1. Union of India
through General Manager,
North Western Railway,
Jaipur
2. Divisional Railway Manager,
North Western Railway,
Power House Road,
Jaipur
3. Gajveer Singh
E.L.F., N.W.R.,
Diesel Shed,
Phulera.
4. Shri Trilochan Singh,

F.L.F., N.W.R.,
Diesel Shed, Phulera

5. Balveer Singh
E.L.F., N.W.R.,
Diesel Shed, Phulera.
6. Kuldeep Singh Chaudhary,
E.L.F., N.W.R.,
Diesel Shed, Phulera
7. Jagdish Prasad
E.L.F., N.W.R.,
Diesel Shed,
Phulera.
8. Matadeen Meena
E.L.F., N.W.R.,
Diesel Shed,
Phulera.
9. Om Prakash Sharma
E.L.F.,
N.W.R., Diesel Shed, Phulera.

.. Respondents

(By Advocate: Shri N.C.Goyal for resp.No.1, 2 and 4
and Shri Inderjeet Singh for resp. No.3)

O R D E R

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

Applicants who are 11 in number have filed this OA. The main grievance of the applicants is regarding assigning of seniority to respondent Nos. 3 to 9 and also against inclusion of respondent Nos. 3 to 5 in the eligibility list prepared for selection to the post of Diesel Electrical Fitter Gr.II, Diesel Shed, Mechanical Department, Jaipur Division vide notification dated 16.12.2002 showing their names in list 'A' whereas names of applicant Nos. 1 to 3 have been placed in list 'B'. It may be stated that persons

in list 'B' will be called for the purpose of selection only if any of the person in List 'A' show his unwillingness to appear in the selection test. The applicants have prayed that eligibility list dated 16.12.2002 (Ann.A1) may be amended making the applicants senior and applicants may be included in list 'A' according to their seniority position. Though initially the applicants have not made any prayer for quashing the seniority list dated 25.1.2002 (Ann.A11) although the applicants have annexed aforesaid order on record but subsequently they filed amended application which amendment was allowed and the applicants were permitted to amend the OA thereby permitting to seek relief regarding quashing of the aforesaid seniority.

2. Now brief facts of the case may be noticed. The applicants are working as Electrical Fitter in the Diesel Shed, Phulera in the scale of Rs. 3050-4590. The official respondents decided to operate Diesel Shed at Jaipur Division w.e.f. 1.9.98. For that purpose, it was decided to separate the cadre of Abu Road and Phulera Diesel Sheds and the affected staff of the Diesel Shed, Abu Road and Phulera was given right to exercise their option to work at Diesel Shed, Phulera, which was to form part of Jaipur Division or to work at Abu Road, which was to form part of Ajmer Division, besides Chittor which was to form part of

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Ratlam Division. Here we are concerned with the employees who have exercised their option to work under Ajmer Division and Jaipur Division. Pursuant to such decision taken by the railway authorities whereby the Diesel Shed was to operate w.e.f. 1.9.98., options were sought from the employees. The last date of option was 31.8.98. Such policy decision of Railway authorities had the approval of Head Office, Churchgate, Mumbai. The decision dated 14.8.98 taken by the Head Office has been placed on record as Ann.A2. Pursuant to the said policy decision, options were called for and respondent Nos. 3 to 5 opted for Abu Road which was part of Ajmer Division. The applicants have placed on record letter dated 10.8.98 (Ann.A3) issued by the Divisional Office, Ajmer containing names of persons who have exercised their option in which names of respondent Nos. 3 to 5 also included and whereby they have opted for Abu Road. It may be stated that previously the respondent No.3 was working at Chittor. He opted for Abu Road whereas respondent Nos. 4 and 5 were working at Phulera. They also exercised option for Abu Road. Perusal of this list reveals that in case name of any person has been wrongly deleted such person could file objections upto 30.8.98, after which, no such requested will be entertained. Another document which has been placed by the applicants on record is order dated 15.3.99 (Ann.A5) issued by Ajmer Division whereby it was

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specifically stated that in case name of any persons has not been included in the list, they should make representation within 15 days failing which no such request shall be entertained. In this list also, names of respondent Nos. 3 to 5 find mention at Sl.No. 16,19 and 20 respectively.

The grievance of the applicants in nutshell is that once the respondent Nos. 3 to 5 have exercised their option for Abu Road, it was not permissible for the railway authorities to entertain their request after cut off date i.e. 31.8.98 to withdraw their request for option. In any case, at the most they can be treated as fresh entrants who have been transferred to Jaipur Division subsequently on their own request and in that eventuality, they are entitled to bottom seniority in terms of provisions contained in para 312 of the Indian Railway Establishment Manual (IREM). As per the material placed on record, respondent No.4 Trilochan Singh, has made request to Divisional Railway Manager, Jaipur/Ajmer vide his letter dated 14.5.99 (Ann.R1 with the reply filed by R4) for revoking his option on the ground that on account of death of his mother, he does not want to go to Abu Road and wants to remain in Jaipur Division. Such request of respondent No.4 was accepted, as can be seen from order dated 12th Oct.99 (Ann.R2). Perusal of this order reveals that request of respondent No.4 was accepted by the competent authority alongwith request

of other persons and the persons mentioned in the said order were transferred to Diesel Shed, Phulera with immediate effect stating that seniority of these employees will be determined by the Jaipur Division. However, order regarding transfer of respondent No.3 was made on 9.8.2000 by the office of Divisional Rail Manager, Ajmer (Ann.R 3/2). Perusal of this order reveals that request of respondent No.3 was considered by the competent authority who ordered that he be transferred to Jaipur Division. It is further stated that before relieving the applicant, it may be ensured that no disciplinary proceeding is pending against him and the railway servant has vacated the railway accommodation. Though respondent No.3 in the reply filed by him has submitted that initially he has submitted option on 17.8.98 for Diesel Shed, Abu Road but he again exercised his option vide letter dated 25.8.98 (Ann.R3/1) when date of option was extended upto 31.8.98. At the outset, it may be stated that this assertion of the applicant cannot be accepted on the basis of the material placed on record. In case respondent No.3 has recalled his earlier option dated 17.8.98 vide letter dated 25.8.98 before the cut off date i.e. 31.8.98, he should have objected about inclusion of his name for Abu Road in the list dated 10.8.98 (Ann.A3) and subsequently when his name was also included in the order dated 15.3.99 (Ann.A5). That apart, specific query regarding this fact was

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called from the official respondents. As per the stand taken by the respondents, as can be seen from para 2 of MA No.147/07, the respondents have not given any reply to the query so raised by the Bench although the same find mention in para (i) of the said MA. The precise query put by the Bench was that in case respondent No.3 has recalled his option on 25.8.98 how the matter was processed with regard to respondent No.3 after such a delay. The only reply given by the respondents is that seniority to respondent Nos. 3 to 5 was given pursuant to Head Office, Churchgate No. Sen 839/42/1 Diesel dated 30.10.2001 and according to this respondent Nos. 3 to 5 were given original seniority.

3. The official respondent Nos. 1 and 2 have filed reply. Their stand in the reply is that respondent Nos. 3 to 5 were given seniority pursuant to the aforesaid letter dated 30.10.2001 issued by the Head Office, Churchgate, Mumbai. It is further stated that pursuant to the letter dated 30.10.2001, letter dated 25.1.2002 has been issued by respondent No.2, as such, name of respondent Nos. 3 to 5 were incorporated over applicant No.1. The official respondents on the basis of this revised seniority list justified inclusion of respondent Nos. 3 to 5 in the eligibility list Ann.A1 for further promotion to the post of Diesel Electrical Fitter Gr.II pay scale Rs. 4000-6000.

Respondent No.3 in the separate reply filed on his behalf has stated that he was transferred from Ajmer Division to Jaipur Division after considering his revised option vide order dated 9.3.2000 and this application has been filed in the year 2003, as such the same is time barred. It is further stated that he has also been promoted on the basis of the impugned seniority list Ann.A1.

Similarly, respondent No.4 has filed separate reply, which is in tune with the reply filed by the official respondent Nos. 1 and 2. It is further stated in the reply that he was Diesel Electric Fitter Gr.III in the year 1994 at Abu Road, whereas these applicants were Khallasis in the year 1994 and remained Khallasis upto 1999 and they became Diesel Electric Fitter Gr.III in the year 1999. Thus, the applicants are much junior to respondent No.4 besides on account of inclusion of his name in List 'A' vide Ann.A1 dated 16.12.2002, he has also been promoted to Diesel Electric Fitter Gr.II on 4.2.2003.

Respondent No.5 has neither filed reply nor appearance has been made on his behalf.

4. Thus, from the facts as stated above, the applicants are aggrieved regarding their seniority whereby name of respondent No. 3 to 5 has been shown over and above them vide letter Ann.A11 issued on 25.1.2002 whereas according to the applicants, no

doubt, they were senior to them prior to 1.9.98 when Diesel Shed was created at Jaipur but once they have opted for Ajmer Division and their lien was kept in that Division, they could not have been placed over and above the applicants and at the most they can be treated as fresh entrants in the cadre, who have been transferred on their own request and thus are entitled to bottom seniority in terms of para 312 of IREM.

Another grievance of the applicants is regarding assigning seniority to respondent Nos. 6 to 9 over and above the applicants. According to the applicants, these respondents were posted on regular basis in the scale Rs. 3050-4590 vide letter dated 28.4.2000 (Ann.A10) when they qualified the test in terms of para 302 of the IREM. They have to be assigned seniority from the date of joining and not from the year 1989. When the attention of the learned counsel for the applicants was drawn to the judgment rendered by the Jodhpur Bench of the Tribunal in OA No. 368/96 and OA No.111/97 Heera Lal vs. UOI decided by a common judgment dated 27.9.2002 where the Bench has held that the applicants would be deemed to have been promoted to the post of Electric Fitter w.e.f. 14.6.96, date of the panel, and this promotion will relate back to the year 1989 for the purpose of seniority and the respondent Nos. 6 to 9 being similarly situated were entitled to such relief, the learned counsel for the applicants fairly submitted that this issue is

directly involved in OA No.177/07 and in view of that he may not press for relief granted to respondent Nos. 6 to 9 over and above the applicants in this OA and the question may be left open. In view of what has been stated above, we are not inclined to decide this issue and the question on this point is kept open.

Thus, the only question which requires our consideration, as already stated above, is whether respondent Nos. 3 to 5 could have been assigned seniority over and above the applicants when pursuant to their option, they have opted for Abu Road which falls in Ajmer Division and such option was not withdrawn up to the cut off date i.e. 31.8.98 and whether it was permissible for the respondents to restore seniority of respondent Nos. 3 to 5 over and above the applicants, as if they were never transferred to Ajmer Division, contrary to their policy decision dated 14.8.98 (Ann.A2). According to us, the action of the respondents is wholly arbitrary, unwarranted and contrary to the rules and instructions issued by the Railway Board in that behalf.

It is admitted case between the parties that last date for exercising option was 31.8.98. It is also admitted case between the parties that respondent Nos. 3 to 5 exercised their option for Abu Road, which falls in Ajmer Division. It is also not disputed and rather cannot be disputed that pursuant to option exercised by respondent Nos. 3 to 5 their names were

incorporated in the list of employees having exercised option vide order dated 10.8.98 (Ann.A3) and another office order dated 15.3.99 whereby name of respondent Nos. 3 to 5 find mention having exercised their option for Abu Road which falls in Ajmer Division. We have already stated that though respondent No.3 tried to mislead this Court that he has recalled his option to remain at Jaipur Division on 25.8.98 before the cut off date i.e. 31.8.98, we have already rejected this part of the contention in view of the findings given in the earlier part of the judgment. The fact remains that respondent Nos. 3 to 5 have requested revocation of earlier option much after the cut off date. We have also made reference to order dated 12th October, 1999 (Ann.R2 with the reply of respondent No.4) in the earlier part of the judgment whereby request of respondent No.4 for revocation of his earlier option on the ground that his mother has expired and for that reason he does not want to go to Abu Road which falls in Ajmer Division and which request of respondent No.4 was accepted by the competent authority alongwith other persons with immediate effect and it was made clear that his seniority will be determined by the Jaipur Division. This order was issued by the DRM, Ajmer in conformity with policy decision as contained in Head Office, Churchgate, Mumbai letter dated 14.8.98 (Ann.A2). We fail to understand under what provision of law it was

permissible for the Head Office, Churchgate, Mumbai to pass cryptic and non-speaking order dated 30.10.2001 that those persons who have exercised option for Abu Road and Chittor and thereafter exercised their option for withdrawal of the same, shall retain their original seniority. We have not been shown any such provision. Further, on the face of the Head Office letter Ann.A2 it was not permissible for the authority who had issued letter dated 30.10.2001 to again come to the conclusion that even after cut off date i.e. 31.8.98 and in fact new division also came into operation w.e.f. 31.9.98, the employees who have become part of another division can again be repatriated to their original division thereby adversely affecting rights of some of persons who have born on the cadre of particular division as on 1.9.98. Rather such a decision taken by the Headquarter Office, Churchgate, Mumbai is against all norms and not supported by any instruction issued by the Railway Board. Para 312 of the IREM specifically stipulates that a person can be repatriated from one division to another division only on his request and in that contingency he will be placed at bottom seniority. Further, it is not a case of transfer in administrative exigency/administrative ground which in a given case may protect seniority of those persons who have been transferred from one division to another division in terms of instructions issued by the

Railway Board and in view of provisions contained in Rule 226 of Indian Railway Establishment Code. As already stated above, the revised option of respondent No.4 is already on record with reply as Ann.R1. Perusal of this revised option reveals that he has requested for transfer on compassionate grounds. Be that as it may, since the respondents have failed to show any provision under which a person whose lien has been transferred from one division to another can again be repatriated with original seniority, we are of the firm view that it was not permissible for the Head Quarter, Churchgate, Mumbai to issue letter dated 30.10.2001 contrary to Rules 226 and 229 of the Indian Railway Establishment Code and also in terms of Para 312 of the IREM on the basis of which the respondent No.2 has issued impugned seniority list dated 25.1.2001 (Ann.A11) whereby respondent Nos. 3 to 5 have been shown over and above applicant No.1. Accordingly, the applicants have made out a case for quashing the order Ann.A11, which is hereby quashed and set-aside so far as it relates to show respondent Nos. 3 to 5 over and above the applicants in Electrical Fitter Gr.III. These respondents cannot be treated senior to the applicants once their lien was transferred to Ajmer Division and exercising of revised option to maintain their lien at Jaipur Division can at the most be treated their own request for transfer to Jaipur division and thus seniority has

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to be regulated in terms of Rules 226 and 229 of the Indian Railway Establishment Code read with Para 312 of IREM. Since the eligibility list for promotion to the post of Diesel Electric Fitter Gr.II in the scale Rs. 4000-6000 is prepared vide order dated 16.12.2002 (Ann.A1) on the basis of impugned seniority list Ann.A11, which we have quashed, as such, any action taken by the respondents on the basis of such eligibility list is illegal.

It may be stated here and as can be seen from eligibility list Ann.A1 that three posts of Diesel Electric Fitter Gr.II were meant for general category candidates. Names of respondent Nos. 3 to 5 were included in list 'A' of the said list whereas names of applicant Nos. 1 to 3 belonging to general category was placed in list 'B'. In case the railway authorities would have proceeded the selection on the basis of original list, admittedly, applicant Nos. 1, 2 and 3 only could have appeared in the selection test and would have further promoted on the said post. Thus, according to us, the eligibility list notified vide notification dated 16.12.2002 has not been correctly prepared. That is why, we have quashed and set aside the aforesaid eligibility list dated 16.12.2002 (Ann.A1) and any action taken pursuant to such selection shall be deemed to be illegal. At this stage, it will be useful to notice decision of the Apex Court. In the case of Indu Shekar Singh vs. State

of U.P., 2006 (8) SCC 129, the Hon'ble Supreme Court held that once option is exercised and they obtained entry on that basis, they cannot be allowed to turn round and contend that the conditions are illegal. Their Lordships held as follows:-

"26. They, therefore, exercised their right of option. Once they obtained entry on the basis of election, they cannot be allowed to turn round and contend that the conditions are illegal."

In somewhat similar circumstances, respondent Nos. 3 to 5 want to revoke their option once their lien stand transferred to another division much after the cut off date, which is not permissible at all.

Respondent Nos. 1,2,3 and 4 have tried to raise technical objections in order to defeat the claim of the applicants. For that purpose, the respondents have referred to the case of Apex Court in B.S.Bajwa vs. State of Punjab and ors., (1998) 2 SCC 523, and argued that since pursuant to the impugned select list the applicant have been granted promotion and they have also been promoted further, as such, this OA cannot be entertained which will unsettle the settled position. We fail to understand how the judgment of the Apex Court in B.S.Bajwa (supra) is applicable in the facts and circumstances of this case. That was a case where the Apex Court had held that question of seniority has been raised after more than decade after joining the service when promotion has also taken place. It was

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under these circumstances, the Apex Court observed that the High Court should have declined to interfere under Article 226. This is not a case of such nature. In this case, the decision of assign seniority on the basis of original option was taken on 30.10.2001. Pursuant to such decision respondent No.2 issued a seniority list Ann.A11 on 25.1.2002. It is on record that out of 11 applicants, 9 applicants have filed joint representation against this seniority list. The respondents have not taken any decision on the representation filed by the applicants. Rather, instead of deciding representation and conveying decision to the applicants, respondent No.2 in order to favour respondent No. 3 to 5 issued a notification dated 16.12.2002 whereby eligibility list was issued on the basis of impugned seniority dated 25.1.2002 against which objections were pending. The applicants have approached this Tribunal by filing the OA on 28.1.2003 i.e. within 1 ½ months. Under these circumstances, can it be said to be a case where seniority dispute has been raised after more than a decade thereby unsettling the settled position? Thus, the contention raised by the learned counsel for the respondents is wholly untenable and is hereby rejected. The second authority cited by the learned counsel for the respondents is Ashwani Kumar Singh vs. U.P.Public Service Commission and ors., (2003) 11 SCC 584 which says that person promoted later to higher

post vis-à-vis person appointed to such post earlier in the absence of any statutory provision, the person appointed to higher post earlier would be senior. The learned counsel for the respondents cannot draw any assistance from this authority. No doubt, respondent Nos. 3 to 5 were senior to the applicants in the cadre of Diesel Electric Fitter Gr.III. Had they not exercised any option for transfer of their lien to Ajmer Division, definitely they would have been senior to all the applicants but once they with open eyes have exercised option for their transfer to Ajmer Division, obviously with a view that they will have better promotional chances in that Division cannot claim seniority/lien in their parent division, solely because at one time they were the employees of that division. The legal position is that once a person by his own conduct has sought transfer to another division and his lien is maintained in the transferred division, he cannot subsequently be permitted to say that he may now be considered as an employee of parent division. If such a situation is allowed to prevail, it will cause administrative chaos, which has been caused in this case on account of arbitrary decision taken at the Headquarter level. The respondent Nos. 3 to 5 cannot be permitted to avail right of consideration for promotion both in Ajmer Division as well as in Jaipur Division when they subsequently found that some posts have been created in Jaipur

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Division/ are going to fall vacant and their chances of promotion to higher post is not available in Ajmer Division. We see considerable force in the submissions of the learned counsel for the applicants that respondent Nos. 3 to 5 have manipulated their transfer to Jaipur Division with original seniority in connivance with Headquarter authorities for revocation of their options.

5. Thus, looking the matter from any angle, we are of the view that action of the respondents is arbitrary and contrary to the rules and instructions issued by the Railway Board itself. Accordingly, the present OA is partly allowed with the aforesaid directions. No costs.



(J.P. SHUKLA)

Admv. Member



(M.L. CHAUHAN)

Judl. Member

R/