

CENTRAL ADMINISTRATIVE TRIBUNAL  
JABALPUR BENCH

OA No.828/03

~~Subj:~~ this the 16<sup>th</sup> day of March 2005

~~CORAM~~

Hon'ble Mr.M.P.Singh, Vice Chairman  
Hon'ble Mr.Mādan Mohan, Judicial Member

1. Smt. Leeta Vikraman  
Sr. Steno  
W/o Shri M.N.Vikraman  
O/o Divisional Railway Manager  
West Central Railway  
Bhopal.
2. Smt. Susy Varghese  
Jr. Steno  
W/o Shri Varghese Abraham  
O/o Divisional Railway Manager  
West Central Railway  
Bhopal.
3. Smt. Manisha Shrivastava  
Jr. Steno  
W/o Shri R.K.Shrivastava  
O/o Divisional Railway Manager  
West Central Railway  
Bhopal.
4. Smt. Jolly Johnson  
Jr. Steno  
W/o Shri Johnson T.G.  
O/o Divisional Railway Manager  
West Central Railway  
Bhopal.

Applicants

(By advocate Shri S.Paul)

Versus

1. Union of India through  
Its General Manager  
West Central Railway  
Jabalpur.

2. The Divisional Railway Manager  
 West Central Railway  
 Bhopal Division  
 Bhopal.

3. Vijay Kumar, PA

4. Aryind K. Alwani, PA

5. Smt. Geeta Rajagopalan, PA

6. Smt. Ramadevi P, Steno Gr.I

7. Smt. Jaya Bhadouriya, Steno Gr.I

8. Shri Virendra Kumar Jain, Steno Gr.I

9. Shri M.V. Mohan Nair, Steno Gr.I

10. Smt. Aruna Ranade, Steno Gr.II

11. T.S. Mohanan, Steno Gr.II  
 (Nos. 3 to 11 C/o Divisional Railway Manager  
 West Central Railway, Bhopal Division,  
 Bhopal.)

Respondents.

(By advocate Shri S.P. Sinha)

### ORDER

By Madan Mohan, Judicial Member

By filing this OA, the applicants have sought the following main reliefs:

- (i) Set aside the seniority list Annexure A1 and also the impugned order dated 3.9.2003 (Annexure A2).
- (ii) Declare that the applicants are entitled to be shown senior qua the private respondents, command the respondents to revise the aforesaid seniority list and place the applicant over and above the private respondents.
- (iii) Direct the respondents to provide all consequential benefits including the promotion which have taken place in between with all benefits.

2. The brief facts of the case are that the applicants 1 to 4 were appointed as stenographers in Bhopal Division on 28.8.1988, 20.2.89, 22.2.89 and 24.2.89 respectively. Although private respondents 3 to 11 were appointed prior to the applicants, their lien was fixed in other division than the Bhopal Division of West Central Railway. Bhopal Division came into existence as a new division in the year 1987. The private respondents made requests on their own to be transferred to Bhopal Division. Upon receiving their requests, a policy decision was taken by the Chief Personnel officer that their transfers could only be in recruitment grade on bottom seniority basis (Annexure A4). Consequently, the private respondents 4 to 7 & 10 gave their option accepting the bottom seniority in the recruitment grade. All the private respondents came to Bhopal Division subsequent to the appointment of the applicants and, therefore, they be treated junior to the applicants because their transfer was under Clause 312 of IREM and it was on their own request basis. Private respondents 3 to 11 were holding the post of stenographer in the Grade of Rs.1200-2040 before switching over to Bhopal division. The official respondents did not publish the seniority list of stenographer in the grade of Rs.1200-2040 as on 23.2.1989 and in the absence of any seniority list they promoted private respondents 3 to 11 to other grades (Annexure A6). The applicants preferred representations which could not fetch any result. They again made representations but to no avail. The seniority list dated 6.11.1993 (Annexure A1) was issued whereby the private respondents were shown senior to the applicant. The matter was taken up in OA No.782/96. The OA was decided by the Tribunal vide order dated 1.10.2002 (Annexure A11). In compliance of the directions of the Tribunal, the applicants preferred identical representations to the department (Annexure A12). The representations were rejected vide impugned order dated 3.9.2003 (Annexure A2). The said order runs contrary to factual position and in total disregard to the findings of the Tribunal. Hence this OA is filed.

3. Heard the learned counsel for both parties. It is argued on behalf of the applicants that though the private respondents 3 to 11 were appointed prior to the applicants, as they made requests on their own to be transferred to Bhopal Division, they were placed at the bottom seniority according to rules. No seniority list was published as on 23.2.1989 and in the absence of any seniority list, they promoted private respondents 3 to 11. Though the applicants made several representations, all went in vain. Ultimately, they were compelled to file an OA No.782/96 which was finally disposed of by the Tribunal vide order dated 1.10.2002 and it was held in its page 7 that the private respondents had filed their options after the last date and submitted them to the respondents vide Annexure A4 dated 8<sup>th</sup> June 1987. According to this letter, the options could have been filed up to 15<sup>th</sup> July 1987 while the Tribunal had specifically mentioned in its order that the private respondents Smt.Geeta Rajagopalan and Smt.Rama Devi P had filed their options in the year 1988 and that the respondents were directed to re-examine the entire facts n the light of the observations made by the Tribunal. In compliance with the order of the Tribunal, the applicants filed representations but the respondents have rejected them vide impugned order dated 3.9.2003 (Annexure A2), which is in total disregard to the findings of the aforesaid order. The learned counsel further argued that the respondents did not exhaust any legal remedy against the findings and observations of the Tribunal passed in OA 782/96. Hence the impugned order passed by the respondents is apparently a non-compliance with the observations made by the Tribunal while the Tribunal had directed the respondents to consider the representations of the applicants in the light of the observations made in the judgment. Hence the impugned order is liable to be quashed and set aside and the OA deserves to be allowed.

4. It is argued on behalf of private respondents 3 to 7 and 9 to 11 (except private respondent No.8) that the OA deserves to be dismissed on ground of misjoinder of parties and the applicants have not challenged the earlier seniority lists published in 19890 and 1991. Hence they cannot

challenge the subsequent seniority lists. The respondents have passed the impugned order dated 3.9.2003 (A-2) after considering all the contentions of the applicants and the private respondents and is perfectly in compliance of the order of the Tribunal passed in OA 782/96. The respondents have not shown/committed any disregard to the findings and observations of the Tribunal.

5. It is argued on behalf of the official respondents that in the previous OA No.782/96, the applicants had purposely suppressed many vital and material facts. They had only challenged the seniority list of 1993 ignoring the previous two lists published in 1989 and 1991. The impugned order is passed properly and in due compliance with the order of the Tribunal passed in OA 782/96. The contentions of the applicants regarding assignment of lien and seniority to private respondents 3 to 11 in Bhopal Division is misconceived and far from the truth. Private respondents 3 to 11 were correctly assigned lien and seniority above the applicants according to their position. Private respondents 3 to 11 were assigned lien on the permanent cadre and were absorbed in Bhopal Division in the interest of administration. Hence their seniority and consequential promotions are just and proper. Bhopal Division came into existence in 1987. The private respondents did not make requests on their own to be transferred to Bhopal Division. It was misleading and false that a policy decision was taken on receiving the requests of private respondents to transfer them as per A-4 as alleged by the applicants. After assignment of lien in Bhopal Division on the basis of options in response to notification dated 8.6.87 and letter requesting to fix lien at Bhopal Division, the private respondents continued to work at other places, but their seniority and promotions were regulated by Bhopal Division. These private respondents were promoted on regular basis at Bhopal Division w.e.f. 1.8.89 to next higher grade of stenographers in grade Rs.1400-2300 (RPS) and this fact is evident from the seniority lists published in 1991 and 1993. Private respondent No.11 was promoted as senior stenographer w.e.f. 19.11.90. The learned counsel further argued that the Tribunal had

directed the official respondents to decide the representation in the light of the observations of the Tribunal and the impugned order is passed fully in compliance with the orders of the Tribunal. Our attention was drawn towards the impugned order dated 3.9.2003 (A-2) in which in para 6 (a)(v) it is mentioned that:

“I observe that the aforesaid option forms and letters regarding fixing up of lien at Bhopal Division preferred by the private respondents could not be produced before the Hon’ble Tribunal, hence the Hon’ble Tribunal made adverse observations in paras 5 & 5.1 of the judgment.”

Hence the action of the respondents is perfectly legal and justified and the OA deserves to be dismissed.

6. After hearing the learned counsel for both parties carefully perusing the records, we find that according to the notification dated 8.6.87 (Annexure A4), the last date for submission of the option was 15.7.1987. This letter is issued from the HQ office, Personnel Branch, Victoria Terminus, Mumbai and not from Bhopal Division. In the impugned order dated 3.9.2003 (A-2) it is mentioned that Mrs. Jayashree Sharma, private respondent No.7 submitted her option for Bhopal on 26.6.86 i.e. before the date of the notification dated 8.6.87. Under what circumstances it was submitted by Mrs. Jayashree Sharma before one year of the aforesaid notification is not known. We have perused the order dated 1.10.2002 passed in OA 782/96. In this order, it is held that:

“It is further seen that the copies of option in respect of respondents No.3 to 11 are stated to be filed as Annexure R4 by the official respondents. In this Annexure R-4, option letters of the following persons are filed:

1.Miss Yaya Shree V.Sarma	dated 8.8.1988
2.Smt.Geeta Rajgopalan	dated 9/10.8.1988
3.Smt Rama Devi P	dated 9.8.1988.

The official respondents have not filed the option letters of the remaining private respondents. From perusal of the option letters of the above three persons, it is clear that the

option exercised was much after the expiry of last date of 15.7.87 as envisaged in the circular letter dated 8.6.87 (Annexure R3). Apparently, these persons have filed the options after the expiry date. Therefore, they should have been given bottom seniority in the recruitment grade as per their options. Respondents No.8 & 9 are direct recruits who were posted in RE Division. The lien of these two direct recruits stenographers has been fixed vide CPO Bombay V.T. letter dated 20.2.1989. It is to be ascertained as to whether the appointment of these two direct recruits envisaged their posting in Bombay Division or in Bhopal Division. This can be found out with reference to their appointment letter which has not been placed before us. Even if these persons were directly recruited, they cannot be placed senior to the applicants, who were already working in the Bhopal Division. On the date of his joining R.E. Division on 4.8.1986, the applicant No.1 was already in Bhopal Division on 14.5.1986, when Shri M.V. Mohan Nair joined on 4.8.1986. Therefore, the applicant No.1 cannot be placed junior to Shri Virendra Kumar Jain.”

7. We have perused the impugned order dated 3.9.2003 (Annexure A2). From this letter, it is seen that private respondent No.8 – Virendra Kumar Jain had submitted his option on 6.2.87 and private respondent No. 9 – M.V.Mohan Nair had submitted his option on 10.6.87 and private respondent No.10 – Smt.Aruna Ranade had submitted option on 13.7.87. Apparently, the option submitted by private respondent No.8 was before the notification date 8.6.87. In the notification issued from the HQ Office, Personnel Branch, Victoria Terminus, Mumbai, the last date given for receiving the option was 15.7.1987. According to the judgment in the aforesaid OA 782/96, private respondent No.7 – Smt.Jaya Bhadouriya submitted her option on 8<sup>th</sup> August 1998 in compliance with the aforesaid notification; private respondent No.6 – Smt.Ramadevi P. submitted her option on 9<sup>th</sup> August 1998 and private respondent No.5 - Smt.Geeta Rajgopalan submitted her option on 9<sup>th</sup> August 1998 while in the impugned order, the dates of submission of the options of the aforesaid three respondents are mentioned as 26<sup>th</sup> June 1996, 14<sup>th</sup> July 1997 and 13<sup>th</sup> July 1997 respectively. Apparently all these dates differ from the those given in the judgment and in the impugned order. Further, Smt.Jaya Bhadouriya is said to have filed her option on 26.6.86 while the options

were invited vide order dated 8.6.87 (Annexure A4), the last date being 15<sup>th</sup> July 1987. The respondents have not explained as to why Smt. Jaya Bhadouriya had submitted her option one year before the date of the notification. We have perused the order sheet of the OA dated 25.10.04 which reads as follows:

“25.10.2004”

Applicant by Shri V.Tripathi

Official respondents by Shri S.P.Sinha

Shri L.S.Rajput for private respondents.

In this case, the learned counsel for the applicants has stated that options given by the private respondents have not been filed by the learned counsel for the respondents. The learned counsel for the respondents has stated that those who were working in the newly created division of Bhopal were not required to exercise their options. The learned counsel for the respondents is directed to file an affidavit in this regard and the learned counsel for the respondents states that he will file the affidavit by 1.11.2004 positively with a copy to the opposite party. The learned counsel for the applicant states that he will file rejoinder within 2 days positively.”

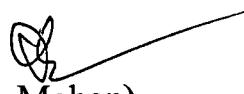
8. The learned counsel for the respondents Shri S.P.Sinha has not filed any affidavit so far. Para 3.1. of the impugned order reads as follows:

“3.1 On formation of Bhopal Division in the year 1987, options were called from staff of all categories of all departments vide letter dated 8.7.87, to be submitted on or before 15.7.1987. The private respondent No.3 to 10 submitted their option/application for maintaining lien at Bhopal division before the cut-off date of 15.7.87.”

But the respondents have not given the dates of the options of private respondents 3 & 11 and the date of option of private respondent No.9 is given as 10.6.87. We have perused the letter of private respondent No.9 – M.V.Mohan Nair (Annexure R2). It does not seem to have been given in compliance with the aforesaid notification dated 8.6.87 and the respondents have not filed the options of other private respondents. As mentioned earlier, the dates of options given by the three private

respondents apparently differ from those given in the judgment of the CAT and in the impugned order (Annexure A-2).

9. Considering all facts and circumstances of the case, we are of the considered opinion that the respondents have to re-examine<sup>✓</sup> the entire facts in the light of the observations made in the order of the Tribunal in the earlier OA No.782/96. Hence the impugned order dated 3.9.2003 (Annexure A2) is quashed and set aside and the respondents are directed to re-examine the entire facts in the light of the observations made in the order of the Tribunal in earlier OA and also made in the present OA, within a period of four months from the date of receipt of a copy of this order. No costs.

  
(Madan Mohan)  
Judicial Member

  
(M.P. Singh)  
Vice Chairman

aa.

पृष्ठांकन सं. ओ/न्या..... जबलपुर, दि.....  
प्रतिलिपि दाको लिखत:-  
(1) समिति, उच्च व्यापारालय कार एसोसिएशन, जबलपुर  
(2) आवेदक श्री/श्रीमती/कु..... के काउंसल  
(3) प्रत्ययी श्री/श्रीमती/कु..... के काउंसल  
(4) कंशपाल, योग्या, जबलपुर लोकलीठ  
सूचना एवं आवश्यक कार्टवाही हेतु

S. Paul Dated 20/2/08  
S. P. Singh Dated 20/2/08  
L. S. D. Dated 20/2/08

Issued  
On 22/3/08

22/3/08  
राजस्थान सरकारी रजिस्ट्रर