

21.07.2008.

OA No. 246/2007 with MA 163/2007

Mr. Vinod Goyal, Proxy counsel for
Mr. Virendra Lodha, Counsel for applicant.

Ms. Sonal Singh, Proxy counsel for
Mr. Alok Garg, Counsel for respondents.

Heard learned counsel for the parties. MA 163/2007 for joining
together is allowed.

For the reasons dictated separately, the case is disposed of.

R. R. Bhandari

(R.R. BHANDARI)
MEMBER (A)

M.L. Chauhan

(M.L. CHAUHAN)
MEMBER (J)

AHQ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 21st July, 2008

ORIGINATION APPLICATION NO. 246/2007

CORAM:

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. R.R. BHANDARI, ADMINISTRATIVE MEMBER

1. Manoj Kumar Sharma aged about 37 years, son of Shri B.D. Sharma, resident of 1412-B, Gulab Bari Railway Colony, Ajmer.
2. Vijay Sharma aged about 36 years, son of Shri Bisan Lal Sharma resident of P. No. 11, Lavkush Nagar II, Tonk Phatak, Jaipur.
3. Surgyan Maharshi aged about 33 years, son of Shri Om Prakash Maharshi, resident of 205/34, Pal Beechla, Ajmer.
4. Syed Nadeem Ali, aged about 34 years, son of Shri Syed Masood Ali, resident of 1964-B, GLO Railway Quarter, Ajmer.

All the applicants are working as Accounts Assistant in the office of Dy. Chief Accounts Officer (Traffic Accounts), Western Railway, Ajmer.

....APPLICANTS

(By Advocate: Mr Vinod Goyal proxy counsel to Mr. Virendra Lodha)

VERSUS

1. Union of India through the Chairman, Railway Board, Rail Bhawan, New Delhi.
2. General Manager, Western Railway, Church gate, Mumbai.
3. General Manager, North Western Raiwlay, Hasanpura Road, Jaipur.
4. Financial Adviser & Chief Accounts Officer, Western Railway, Church gate, Mumbai.

5. Financial Advisor & Chief Accounts officer, North Western Railway, Headquarters, Hasanpura Road, Jaipur.

..... RESPONDENTS

(By Advocate: Ms. Sonal Singh proxy counsel to Mr. Alok Garg)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following relief:-

"(i) by an appropriate order or direction the action of the official respondents in not adhering to the request of the applicants in spite of their name noting for their transfer from Western Railway, Mumbai (at present posted at Ajmer) to North Western Railway, Jaipur in spite of their name appearing in the name noting priority list which was displayed at Notice Board of Hqrs. Church gate, Mumbai as early as in the year 2004 to that extent be declared null and void and be quashed and set aside.

(ii) by further appropriate order or direction the respondents be directed to immediately issue appropriate order of transfer of the applicants from FA & CAO, Western Railway, Church gate, Mumbai to FA & CAO, North Western Railway, Jaipur forthwith and be posted at Jaipur because transfer are at own request loosing seniority (at bottom seniority) as per their applying name noting for own request as early as in the year 2004.

(iii) By further appropriate order or direction the respondents be directed to issue appropriate orders of suitably posting the applicants under North Western Railway, Jaipur after their transfer from Western Railway, Church gate Mumbai (posted at Ajmer) and thereupon assigned them appropriate seniority over & above to new

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recruitment or any other new panel through RRB Ajmer in the seniority list of substantive Accounts Assistant/ Jr. Accounts Assistant with all consequential benefits thereto.

- (iv) By further appropriate order or direction the respondents be directed that in future transfer from Western Railway, Mumbai to N.W.R., Jaipur be made as per priority i.e. first to the persons whose name appears in the name noting register (own request transfer at bottom seniority) maintained at the time of issuance of earlier orders of transfers dated 29.9.2006 and 3.10.2006.
- (v) By further appropriate order or direction the official respondents be directed to absorb permanently the applicants on the post of Accounts Assistant/ Jr. Accounts Assistant in newly created North Western Railway, Jaipur in terms of Para 5.6 of Master Circular issued by Railway Board and thereupon assign appropriate seniority to the applicants in North Western Railway at Jaipur.
- (vi) Any other appropriate relief which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case may also be granted in favour of the applicants.
- (vii) Cost of the application may kindly be awarded to the applicants."

2. Briefly stated facts of the case are that due to the creation of the new Railway zone i.e. North Western Railway, most of the employees including the applicants sought their transfer to the North Western Railway zone in terms of the policy decision. Accordingly those who sought their transfer at own request at bottom seniority, their applications were forwarded to the North Western Railway subject to the

condition that release of staff shall take place only when vacancy position improves/permits. Respondents transferred certain persons. List of 52 persons who can be transferred to North Western Railway zone was sent by the Western Railway in which name of the applicants also figured. Since most of the employees were transferred and regarding other vacant posts, respondents proposes to fill up the same from direct recruitment as requisition of the same had already been sent to the Railway Recruitment Board, aggrieved on this account, the applicants have filed this OA thereby praying for the aforesaid reliefs.

3. Notice of this application was given to the respondents. The respondents have filed their reply. The facts as stated above are not disputed. It is, however, stated that out of the list of 52 employees, as sent by the Western Railway, only 17 employees have been transferred vide orders dated 29.09.2006 and 03.10.2006. It is further stated that requisition for candidates required for appointment to Group 'C' services in the Accounts department of North Western Railway had been sent to the Railway Recruitment Board (RRB) on 27.10.2005 and there was no application

pending for transfer from Western Railway to North Western Railway at that time and it was the sole discretion of the North Western Railway to call for fresh recruitments from Railway Recruitment Board to fill up the vacant posts in its jurisdiction. Respondents have also stated that the matter of the applicants is still under consideration, as can be seen from Para No. 4.5 of the reply.

4. During the pendency of this OA, the respondents have placed on record the order NO. AHQ/SO/No.61 dated 24.06.2008 whereby the competent authority has accorded sanction for own request Inter Railway Transfer of the applicants FA & CAO office, North Western Railway, Jaipur as J.A.A. on bottom seniority.

5. In view of this subsequent development, the substantial relief has been granted to the applicants. Learned counsel for the applicants submits that during the pendency of this OA, the North Western Railway zone has also given appointment to certain persons selected pursuant to direct requirement, as such the only dispute which now will survives is regarding the

seniority of the applicants vis-à-vis those persons who have been appointed by way of direct recruitment.

6. We have given due consideration to the submission made by the learned counsel for the applicants. The applicants have neither pleaded this part of the case in this OA nor have impleaded any selected candidates as party respondents. Learned counsel for the applicants submits that liberty may be reserved to the applicants to raise dispute regarding seniority by filing substantive OA.

7. In view of what has been stated above, we are of the view that it will be in the interest of justice if the liberty is granted to the applicants to raise the dispute regarding seniority by filing substantive OA. Ordered accordingly.

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

R. R. Bhandari
(R. R. BHANDARI)
MEMBER (A)

M. L. Chauhan
(M. L. CHAUHAN)
MEMBER (J)