IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 6th day of October, 2010

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

Original Application No. 257/2009

Ms. Poonam Sharma
d/o Shri Rajendra Prasad Sharma,
Group-D employee,
Office of the Chief Administrative Officer
(Construction), Headquarter Office,
North-Western Railway (NWR), Jaipur
r/o Railway Q.No.314-E Railway Loco Colony
near General Manager Office, Jaipur

.. Applicant

(By Advocate: Shri P.V.Calla)

Versus

1. Union of India through
General Manager,
North Western Railway,
Headquarter Office,
Opposite Railway Hospital,
Jaipur.

2. The Divisional Rail Manager,
Jaipur Division,
Power House Road,
Jaipur.

3. The Chief Administrative Officer
(Construction),
Headquarter Office,
North Western Railway,
Opposite Railway Hospital,
Jaipur

... Respondents

(By Advocate: Shri Virendra Dave)

Original Application No. 308/2009

Ms. Poonam Sharma
d/o Shri Rajendra Prasad Sharma,
Group-D employee,
Office of the Chief Administrative Officer
(Construction), Headquarter Office,
North-Western Railway (NWR), Jaipur
r/o Railway Q.No.314-E Railway Loco Colony
near General Manager Office, Jaipur

.. Applicant

(By Advocate: Shri P.V.Calla)

Versus

1. Union of India through
   General Manager,
   North Western Railway,
   Headquarter Office,
   Opposite Railway Hospital,
   Jaipur.

2. The Divisional Rail Manager,
   Jaipur Division,
   Power House Road,
   Jaipur

3. The Chief Administrative Officer
   (Construction),
   Headquarter Office,
   North Western Railway,
   Opposite Railway Hospital,
   Jaipur

... Respondents

(By Advocate: Shri Virendra Dave)

O R D E R (ORAL)

By this order we propose to dispose of both these OAs as common question of facts and law is involved.

2. The applicant is Group-D employee. In OA No.257/2009, grievance of the applicant is regarding non-inclusion of her name in the eligibility list for selection to Group-C post of Clerk under 33 1/3

% quota pursuant to the notification dated 24.4.209 whereas in OA No. 308/2009 grievance of the applicant is regarding non-inclusion of her name in the eligibility list dated 15.7.2009 for the purpose of selection to the post of Clerk against matriculation quota. In OA No.257/2009, the selection to Group-C post of Clerk under 33 1/3 % quota has to be made from rankers where educational qualification is middle and in OA No.308/2009 the selection has to be made under matriculation quota of 16 2/3 % from amongst Group-D employees possessing matric qualification. The other condition of eligibility criteria for the aforesaid selection was that the person should have a lien under Headquarter office/any one branch of the Headquarter office. It may be stated that as per the notification dated 24.4.2009 (Ann.A/9) eligibility criteria for 13 posts of Group-C category out of which 10 were meant for unreserved category to which the applicant belongs, the eligibility criteria is that the person should have 3 years service as on 24.4.2009 and should have lien in the Headquarter office. It is not in dispute that offer of appointment to the applicant as Group-D was given vide order dated 31.5.2004 and she was posted in the Construction Department vide order dated 28.2.2005 where she joined on 31.3.2005. Admittedly, the applicant possesses three years requisite experience in Group-D category. It is also not in dispute that an application was moved by the applicant for her transfer form DRM Office to Headquarter Office vide letter dated 2.3.2009 (Ann.A/5). Pursuant to such application order dated 20.4.2009 (Ann.A/6) was passed by the office of DRM where the lien of the applicant was

transferred from DRM office to Headquarter office. As can be seen from the order dated 20.4.2006 one of the conditions stipulated was that the Personnel Department shall relieve the applicant pursuant to the order dated 20.4.2009. Vide letter dated 4.5.2009 (Ann.A/7) it was conveyed that at present there is shortage of Group-D employees, hence the applicant cannot be relieved for joining at Personnel Department of the Headquarter office. However, applicant's lien was transferred to the Headquarter office on paper w.e.f. 20.4.2009. Pursuant to the letter dated 4.5.2009 of Chief Administrative Officer (Construction), order dated 4.6.2009 (Ann.A/8) was passed by the Headquarter office thereby granting approval for maintaining lien of the applicant in the Headquarter office w.e.f. 20.4.2009.

3. As already stated above, the grievance of the applicant in these OAs is regarding non-inclusion of her name in the eligibility list dated 16.6.2008/15.7.2009 (Ann.A/1) pursuant to the separate notification dated 24.4.2009 (Ann.A/9) on the ground that the applicant has joined the Headquarter office on 4.6.2009 and thus was not possessing the Headquarter lien on the date of issuance of the notification dated 24.4.2009. Pursuant to the order passed by this Tribunal, the applicant was permitted to appear in the examination for the post of Clerk against both the categories provisionally and the result was ordered to be kept in sealed cover Pursuant to such order, the applicant appeared and qualified the examination under both categories. It may be stated that out of 13 vacancies under ranker quota, 10 vacancies were meant for

unreserved category to which the applicant belongs. So far as selection against matriculation quota is concerned, out of 7 vacancies which were notified, 6 were for unreserved category out of which only 3 persons have been empanelled. Thus, the fact remains that under both the categories requisite number of candidates as per the vacancy position have not been empanelled.

4. Notices of these applications were given to the respondents. The respondents have filed reply. The main stand taken by the respondents for not including name of the applicant is that since the applicant joined the Headquarter office on 4.6.2009, as such, she will be treated to have been transferred to the Headquarter office w.e.f. 4.6.2009 and accordingly a corrigendum dated 16.6.2009 (Ann.A/2) was issued pursuant to order dated 4.6.2009 whereby approval for treating the applicant as transferred to the Headquarter office w.e.f. 4.6.2009 was given. The respondents have placed reliance upon the Railway Board letter No. E (NG) II-71 TR/1 dated 31.3.1971 (Ann.R/3) and Para-228 of the Indian Railway Establishment Manual (IREM) (Ann.R/4).

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

6. The sole question which requires our consideration is whether the applicant was having lien in the Headquarter office on 24.4.2009 when notification was issued by the respondents for selection to Group-C post of Clerk under ~~ranker~~ middle pass quota and also under matriculation quota. According to the applicant, her lien was

already transferred to the Headquarter office when the office order dated 20.4.2009 (Ann.A/6) was passed followed by another order dated 4.5.2009 (Ann.A/7) whereby the respondent No.3 has requested the General Manager to grant paper lien to the applicant w.e.f. 20.4.2009. It is also mentioned in the said letter that on account of administrative difficulty the applicant cannot be relieved pursuant to the order dated 20.4.2009.

7. It is also not in dispute that such request of respondent No.3 was accepted by the competent authority vide order dated 4.6.2009 (Ann.A/8) thereby granting approval to retain the lien of the applicant at Headquarter office w.e.f. 20.4.2009. Thus, on the face of the approval so granted by the competent authority dated 4.6.2009 and the fact that the applicant was not relieved due to the difficulty shown by respondent No.3 in relieving the applicant on administrative grounds, whether it was permissible for the respondents to supersede the order dated ~~20.4.2009~~ 4-6-2009 thereby substituting the date of approval of the lien of the applicant to that of 4.6.2009 by depriving the right of the applicant to appear in the selection pursuant to subsequent notification dated 24.4.2009. According to us, once approval has been conveyed by the competent authority vide order dated 4.6.2009 thereby transferring lien of the applicant w.e.f. 20.4.2009 taking into account the fact that the applicant be retained in Construction Department for some more time, it was not permissible for the respondents to issue corrigendum dated 16.6.2009 (Ann.A/2) thereby changing the date of lien to that of 4.6.2009. It is not the case of such nature

where late joining of the applicant in the Headquarter office was on account of inaction on the part of the applicant. The applicant was not permitted to join on administrative grounds and in the exigency of service. As such, according to us, the action of the respondents in treating the lien of the applicant w.e.f. 4.6.2009 cannot be accepted and accordingly the impugned order dated 16.6.2009 (Ann.A/2) is required to be quashed.

8. The matter can also be looked into from another angle. Admittedly, the applicant has qualified the examinations both under middle pass quota as well as under matriculation quota and the respondents have prepared the panel of less persons than the vacancies so notified. It has been brought to our notice that under middle pass quota against 13 vacancies only panel of 12 candidates has been prepared whereas under matriculation quota against 7 vacancies, panel of 3 persons has been prepared. Thus, according to us, the applicant who has qualified the examination both under middle quota as well as matriculation quota can be included in the panel at the suitable place as per the instructions in vogue and this will not cause any prejudice to any of the selected candidate. This is one of the reasons which prevailed with us to grant relief to the applicant. The reference made the respondents to Para 228 of the IREM is not applicable in the instant case which deals with permanent transfer of employees from one railway to another railway whereas in the instant case the applicant has been transferred from one seniority unit i.e. DRM office to another seniority unit i.e. Headquarter office and admittedly, pursuant to such

transfer the applicant will be placed at the bottom seniority of the Headquarter office, which will not cause any prejudice to the employees already working in the seniority unit of Headquarter office.

9. Thus, in view of the peculiar facts and circumstances of this case, the present OAs are allowed and the orders dated 16.6.2009 (Ann.A/2 in both the OAs) are quashed. It is held that the applicant is eligible to be considered for selection to the post of Clerk both under middle quota as well as matriculation quota. Since the applicant has qualified the examination, the respondents are directed to place name of the applicant in the panel and give consequential benefits by giving her appointment as Junior Clerk in one of the categories preferably against 33 1/3 %, as contended by the learned counsel for the applicant. It is, however, clarified that in case by inclusion of the applicant against 33 1/3% quota any person belonging to general category is demoted as per the panel prepared by the respondents, in that eventuality, case of the applicant may be considered against matriculation quota where the panel of only 3 persons has been prepared as against 7 vacancies.

10. With these observations, both the OAs are disposed of with no order as to costs.

11. In view of disposal of OAs, no order is required to be passed in MA No. 226/2010 which is accordingly disposed of.

Anil Kumar

(ANIL KUMAR)
Admv. Member

(M.L.CHAUHAN)
Judl. Member