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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

21.09.2011

OA No. 457/2009 with MA No. 473/2009

Mr. S. Srivastava, counsel for applicant.
Mr. V.S. Gurjar, counsel for respondents.

At the request of learned counsel for the applicant, put up the matter for hearing on 13.10.2011. I.R. to continue till the next date.

Anil Kumar

(ANIL KUMAR)
MEMBER (A)

K. S. Rathore

(JUSTICE K.S. RATHORE)
MEMBER (J)

Kurniawati

3/10/2011

13/10/2011

OA No. 457/2009 with MA No. 473/2009

Mr. S. Srivastava, counsel for applicant.

Mr. V.S. Gurjar, counsel for respondents.

Heard.

The O.A. and M.A. are disposed of by a separate order on the separate sheet for the reasons recorded thereon.

Anil Kumar

[Anil Kumar]
Member(A)

K. S. Rathore

[Justice K.S. Rathore]
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 13th day of October, 2011

CORAM:

**HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)**

OA No. 457/2009

1. Manik Chandra Soni s/o late Shri Ram Dayal Soni, r/o C-8-B, Mother Teresa Nagar, Gatore Road, Jaipur, presently posted as S.S. (S.W.R.) under C.O.M., NWR, HQ at Jaipur.
2. Rajesh Yadav s/o Shri B.S.Yadav r/o H.No. 5, Officers Extension, Sirsi Road, Khatipura, Jaipur, presently posted as S.S. (S.W.R.) under C.O.M., NWR, HQ at Jaipur

..Applicants

(By Advocate : Shri S.Srivastava)

Versus

1. Union of India
through the General Manager,
North Eastern Railway,
In front of Railway Hospital,
Hasanpura Road,
Jaipur
2. Chief Personnel Officer (T),
HQ North Western Railway,
GM Office at Jaipur
3. Chairman,
Railway Board,
Rail Bhawan,
New Delhi.

... Respondents

(By Advocate : Shri V.S.Gurjar)

OA No. 473/2009

1. Manik Chandra Soni s/o late Shri Ram Dayal Soni, r/o C-8-B, Mother Teresa Nagar, Gatore Road, Jaipur, presently posted as S.S. (S.W.R.) under C.O.M., NWR, HQ at Jaipur
2. Rajesh Yadav s/o Shri B.S.Yadav r/o H.No. 5, Officers Extension, Sirsi Road, Khatipura, Jaipur, presently posted as S.S. (S.W.R.) under C.O.M., NWR, HQ at Jaipur

..Applicants

(By Advocate : Shri S.Srivastava)

Versus

1. Union of India
through the General Manager,
North Eastern Railway,
In front of Railway Hospital,
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2. Chief Personnel Officer (T),
HQ North Western Railway,
GM Office at Jaipur
3. Chairman,
Railway Board,
Rail Bhawan,
New Delhi.

... Respondents

(By Advocate : Shri V.S.Gurjar for respondents and Shri Sunil Saamdarria for intervener)

ORDER (ORAL)

Both the OAs involving similar question of law and facts
are being decided by this common order.



2. Brief facts of the case are that the applicants originally belongs to Bhawnagar and Ratlam Division of the erstwhile Western Railway Zone and prior to their transfer in Headquarter, North Western Railway (HQ, NWR) applicant No.1 was working in the parental division as S.S. (SWR) in the pay scale of Rs. 6500-10500 and applicant No.2 was working as Station Master in the pay scale of Rs. 5500-9000.

3. At the time of creation of new zone i.e. North Western Railway, options were sought from the employees of the Indian Railways who were inclined to work at the Headquarter office of North Western Railway. The applicants were amongst those who were inclined, as such, they applied for transfer on permanent basis to North Western Railway Headquarter vide applications through proper channel dated 16.8.2002 and 27.8.2002 respectively. Consequently, approval was accorded in respect of both the applicants by the then competent authority deputed on special duty (P) vide its order dated 30.9.2002 (Ann.A/2). While the applicants were working in the North Western Railway, the Railway Board issued circular dated 9.10.2003 by which cadres of S.M./A.S.M., Yard Master and Traffic Inspectors were merged in one unified cadre and the posts of Traffic Inspectors were available in Headquarter right from the inception of the zone. Therefore, in view of the

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circular dated 9.10.2003, the applicants represented before the respondents for permanent absorption in the North Western Railway. The representations so filed by the applicants were not decided by the respondents, therefore, applicants preferred OA No. 190/2008 before this Tribunal which was disposed of by this Tribunal vide order dated 27.2.2009 with direction to the applicants to make comprehensive representation to the Chairman, Railway Board within one months from the date of the judgment and the Chairman, Railway Board was directed to dispose of representation of the applicants within a period of three month from the date of receipt of representation taking into consideration the grievance of the applicants and the fact that they were working in North Western Railway since 2003.

4. Pursuant to the direction issued by this Tribunal, the applicants furnished their representation to the Chairman, Railway Board, but the same was not disposed of. In the meantime, the respondents filed a Review Application No.4/2009 with the prayer to modify the judgment to the extent that General Manager may be directed to dispose of the representation of the applicants. The Review Application No.4/2009 was disposed of with the direction that General Manager would decide the representation of the applicants in terms of the judgment dated 27.2.2009 passed in OA

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No.190/2008 objectively and without any pressure from any union. (Ann.A/7).

5. Since the respondents have rejected the representation of the applicants dated 7.8.2009 without following the direction issued by this Tribunal, as such, aggrieved and dissatisfied with the impugned order dated 15.10.2009, the applicants filed these OAs.

6. The main challenge to the impugned order dated 15.10.2009 is on the ground that representation is not considered on its merits objectively as directed by this Tribunal. It is also alleged that while rejecting representation of the applicant the respondents have not even considered the points raised in the representation and left the matter to be decided by the Chief Operational Manager under whom the applicants have been working. It is further alleged that the respondents are under pressure of the employees union, Mazdoor Sangh. Further, the case of the applicants was not considered at par with the similarly situated persons who have been absorbed in the North Western Railway and referred order dated 16.6.2006 (Ann.A/5) and this act of the respondents is a hostile discrimination.

7. Per contra, the Mazdoor Sangh filed a Misc. Application N0.20/2010 seeking impleadment as party respondent. Having considered the Misc. Application, the same was allowed and



the intervener Mazdoor Sangh has also filed reply. The learned counsel for the intervener Shri Sunil Samadaria referred letter dated 30.9.2002 (Ann.A/2) and more particularly the condition which has been incorporated in this letter wherein it is stipulated that the transfer from the BVP and RTM divisions of WR to NWR zone will not give them any right for their permanent absorption and seniority in the NWR. Their lien shall continue to be maintained at their respective divisions. The learned counsel appearing for the intervener also referred to clause 2.1 of RBE No.177/2003 (Ann.A/4) wherein it is mentioned that these order will not be applicable to ex-cadre and work-charged posts which will continue to be based on worth of charge and as per Ann.A/2, the applicants were transferred by the competent authority in the new zone against two newly created work-charged posts and approved their transfer to NWR in same capacity and scale.

8. Mr. Samadaria also referred to Ann.I/1 dated 23.12.2002 wherein it is stipulated that declaration may be obtained from employees for transfer on NWR against the work charge post newly created upto 31.3.2003 and it is also mentioned in this letter that transfer from BVP division to WR to NWR zone will not give any right for their permanent retention and seniority in NWR, and their lien shall continue to be maintained at BVP division.

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9. So far as submission made on behalf of the applicants that they have been working continuously in the newly created zone NWR and their names does not find in the seniority published by their parent department, therefore, in view of the recommendations made by the General Manager on 25.8.2009 the learned counsel for the intervener submitted that the General Manager after having gone through the representation of the applicants observed that it is true that they have not been extended any right for permanent retention and seniority/lien on NWR, therefore, they cannot be granted lien or permanent absorption on NWR. They shall, however, continue to work on NWR as their services are essentially required in NWR and decision about repatriation to their parent units may be taken by COM depending upon the need for their services on NWR or the need to replace their services by other suitable hands of NWR.

10. As per Ann.A/10 regarding justification for regularization of two work charge posts of SS/SM (SWR) and absorption of existing staff in operating department of Headquarter office, Jaipur/NWR, the CPTM has observed that 'both the employees have been assigned specific job which will be required to be carried out on sustained basis since the inception of new zone. As mentioned above, their services in future will be very helpful to maintain the work motto and see its more requirement as

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they have put bricks and stones in the foundation of operating department working in HQ as per their assign duty in the office. Hence, it is desirable to let them continue in the zone as per the Financial Manual para 411 and Additional Member Staff D.O. letter no. E(EN)1-69 CN5/24 dated 30.9.69 as they have worked for more than three years'.

11. The learned counsel appearing for the applicants referred remarks for UPRMS PNM placed at Ann.A/12, relevant portion which reads as under:-

"Remarks for UPRMS PNM item No.49/2008- After having gone through all the relevant documents, it has revealed that:

Shri M.C.Soni and Shri Rajesh Yadav, SS (SWR) had come to newly created zone NWR from BVP and RTM divisions of W.R. on the basis of option just like other staff, which was duly approved and accepted by the competent authority. Both had been posted on newly created work charge posts of SS (SWR) in the operating department as there were no posts of SS/SM at that time in the office. Though these work charge posts were initially created from 23.9.2002 to 31.3.2003 for financial year 2002-03 so both could not be absorbed in NWR and their lien was maintained at their respective divisions. Ever since the currency of these work charge posts has been extended till date and both are working on these posts continuously since their posting dated 06.01.2003. Both had applied so many times to provide lien and to absorb them in NWR but no any action has been taken in this



regard by this railway due to one and another reason. Both are still working in the 'Rules' section of operating department due to more requirement.

Reasons for justification for absorption of Shri M.C.Soni and Shri Rajesh Yadav, SS (SWR) in NWR-

Cadre of SM/ASM, TI and Yard Master has been merged into one unified cadre of SM/ASM vide Railway Board's letter No. PC-III/2003/CRC/6 dated 9.10.2003 (CP-23 to 31) and cadre of NWR was closed on 30.10.2003. Though the cadre closing date of NWR is later than the date of issue of said letter so they should have been absorbed in NWR immediately after issue of this letter. Previous COM has asked the CPO to convert these work charge posts of SS (SWR) in to TI (SWR) vide No... dated (CP...) and sufficient cadre posts of TI are still vacant in H.Q.

Similarly situated other staff, who were working in construction department, have also been absorbed in NWR after closing of cadre in NWR so both deserve their absorption in NWR.

Both are devoted to duty men and their performance is satisfactory for which the remarks of previous COM ((CP-32 to 34) may also be considered.

Dy.COM (Safety)

COM".

12. After referring this document, the learned counsel appearing for the applicants submits that their work has been appreciated by the respondents and their case has been recommended for permanent absorption, as such, they could



have been considered in letter and spirit but the same has not been considered and respondents have passed a non-speaking order, which is contrary to the directions issued by this Tribunal in the earlier OA No.190/2008 and the order passed in RA No.4/2009.

13. The learned counsel for the intervener in reply to the submissions advanced on behalf of the applicants drawn our attention towards the document Ann.I/9 filed alongwith MA No.114/2011 wherein seniority list has been drawn and name of the applicant No.1 find place at Sl. 15 and submits that this seniority list has been published on 11.5.2007 and it is wrong on the part of the applicants that their names have been struck off by the parent department from the seniority list, which is contrary to the facts and record

14. The learned counsel appearing for the official respondents submitted that the applicants are not legally entitled to be absorbed permanently in the NWR against two newly created work charge posts and transfer of the applicants from WR to NWR will not confer any right for permanent absorption and seniority in the NWR as the applicants were found suitable and taken to work to NWR against two newly created work charge posts with the stipulation that their lien and seniority shall continue to be maintained at their respective divisions. The learned counsel



appearing for the official respondents further referred to clause 2.1 of RBE No.177/2003 providing that these orders will not be applicable to ex-cadre and work-charged posts which will continue to be based on worth of charge as submitted by the intervener whereas the applicants have referred to clause-10 of this letter which thus reads:-

"10. The concept of Multi-skilling is to be introduced by merging the different categories as mentioned hereunder. While the revised percentage distribution of posts as indicated in the annexures to this letter should be implemented in the unified cadres based on the integrated seniority list, the duties, responsibilities and functions being performed by the employees of the respective cadres will be combined in a phased manner. Each member of the cadre will have to be equipped with necessary skills and functions through proper training and development. The categories indicated herein will be merged by integrating the seniority of the employees working in respective grades with reference to length of non-fortuitous service in the relevant grade keeping the inter-se seniority in the respective group intact".

15. Having heard the rival submissions of the respective parties and upon careful perusal of the material available on record and the averments made in the OA as well as the reply filed by the intervener and the official



respondents and the rejoinder to the reply as well as the Misc. Application filed by the parties, it is evident that this Tribunal at the time of admission on 23.10.2009 have considered the grievance of the applicants against the impugned order dated 15.10.2009 (Ann.A/1) and while issuing notices also granted interim relief and directed the respondents not to issue any order of repatriation of the applicant to their parent units till the next date.

16. We have also gone through the order passed by this Tribunal in OA No.190/2008 on 27th February, 2009. This OA was preferred by the applicants claiming following reliefs:-

"(I) That this Hon'ble Tribunal may graciously be pleased to direct the respondents to grant absorption and lien to the petitioner in the HQ of North Western Railway with all consequential benefits, which are accrued or likely to be accrued in future keeping in view of their options submitted well in time for permanent absorption in NWR and also on the basis of the decision for absorption of other similarly situated persons taken by the administration itself vide orders dated 16.6.2006 and 28.12.2007 in the light of the various judgments rendered by this Hon'ble Tribunal.

(ii) That respondents may further be directed to produce complete dossier pertains to the absorption of the petitioners in HQ, NWR especially alongwith the remarks given by the APO and COM who is departmental authority of the petitioners.



(iii) Any other order or direction in favour of the petitioners which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

(iv) Award the cost of the petition in favour of the petitioner."

17. In response to the notices issued by this Tribunal, the respondents taken stand that there was no regular cadre of category of Station Master, to which the applicants belonged at Headquarter at the time of their transfer, as such, they were allowed on temporary basis on work charged basis in North Western Railway.

18. Having heard the rival submissions of the respective parties the Tribunal observed as under:-

"We have given due consideration to the submission made by the learned counsel for the parties. We are of the view that the matter can be disposed of at this stage with a direction to the applicants to make a comprehensive representation to the Chairman, Railway Board within a period of one month from today and the Chairman, Railway Board is directed to dispose of the same within three months from the date of receipt of such representation taking into consideration the grievance of the applicants and the fact that they were working in North Western Railway since 2003."



19. The order dated 27.2.2009 was sought to be reviewed by preferring Review Application No. 4/2009 and the same was decided on 5.8.2009. The respondents prayed to amend the order dated 27.2.2009 passed in the OA whereby the direction was given to the Chairman, Railway Board to dispose of representation of the applicants within a period of three months from the date of receipt of representation. Since the Chairman, Railway Board, was not impleaded as party respondent in the OA, thus having considered the matter and in the interest of justice, the direction which was issued to the Chairman, Railway Board to decide representation was directed to be complied with by the General Manager, North Western Railway in terms of order dated 27.2.2009 passed in OA No. 190/2008.

20. Careful perusal of the order passed in OA No.190/2009 as well as in RA No.4/2009 reveals that in the earlier OA the Tribunal was of the view to direct the applicants to make a comprehensive representation to the Chairman, Railway Board within a period of one months and on receipt of such representation, the same was required to be decided by the Chairman, Railway Board taking into consideration the grievance of the applicants and also the fact that the applicant were working in the North Western Railway since 2003. The order was, of course, modified in the Review



Application and instead of Chairman, Railway Board the representation was to be decided by the General Manager, North Western Railway as per order dated 27.2.2009 objectively and without any pressure from any employees Union. Thus, in our considered view, there are two aspects. One with regard to direction issued to the applicants to make comprehensive representation to the respondents and after making such representation direction were issued to consider grievance of the applicants taking into account the fact the applicants were working in the North Western Railway since 2003 that too objectively and without any pressure from any Union, as indicated in the order passed in the Review Application.

21. Now we have to examine the impugned order dated 15.10.2009. It is seen that only a reference has been made by the Assistant Personnel Officer/Traffic for General Manager regarding the joint representation dated 7.8.2009 addressed to the General Manager (P), North Western Railway, by bare perusal of the same reveals that this order cannot be said to be a speaking order, which is reproduced as under:-

"I have gone through the representation of S/Shri M.C.Soni and Rajesh Yadav. It is true that they have not been extended any right for permanent retention and seniority/lien on NWR (CP-5&9). Therefore, they cannot be granted lien or permanent absorption on NWR. They



shall, however, continue to work on NWR as long as their services are essentially required in NWR HQs. Therefore, the decision about their repatriation to their parent units may be taken by COM depending upon the need for their services on NWR or the need to replace their services by other suitable hands of NWR."

22. After perusal of the decision taken on the representation of the applicants, it reveals that while deciding the representation the General Manager has neither considered the contents of the representation nor considered the representation objectively on merit as per direction of this Tribunal vide order dated 27.2.2009 passed in OA No.190/2009 as well as the order passed in RA No.4/2009 dated 5.8.2009 and only mentioned that the applicant have not been extended any right for permanent retention and seniority/lien on NWR, therefore, they cannot be granted lien or permanent absorption in NWR. The second part of the order is that the applicants shall, however, continue to work on NWR as long as their services are essentially required in NWR HQ and decision about their repatriation to their parent units may be taken by the COM depending upon the need for their services on NWR or the need to replace their services by other suitable hands of NWR.

23. Admittedly, the applicants are still continuing in the NWR HQ. and no repatriation order has been passed and

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subsequently vide impugned order dated 15.10.2009, they were allowed to continue on the post observing that the decision may be taken by the COM depending on their need for their service on NWR or the need to replace their services by other suitable hands of NWR.

24. We have made query to the learned counsel appearing for the official respondents regarding their contention and he stated at Bar that the applicants are allowed to continue on the post and as and when regular posts are made available, their cases will be considered for absorption and permanent lien in NWR HQ. The learned counsel appearing for the applicants submitted that the applicants are ready to render service in the NWR HQ if they are absorbed permanently in the NWR HQ in the manner similarly situated persons are absorbed and agreed that in the seniority of their cadre their names may be placed at the bottom and they are not claiming seniority over and above the employees who are already absorbed and working in the NWR HQ.

25. Be that as it may, as discussed hereinabove, we are of the view that the representation of the applicants has not been decided by the respondents, as directed by the Tribunal vide order dated 27.2.2009 and 5.8.2009, objectively on merit but since the respondents are allowing the applicants to continue on the post and still the order of repatriation has not



been passed, in such circumstances, we are of the view that the respondents shall consider the case of the applicants afresh for permanent absorption in the cadre on availability of posts and till consideration of their case in accordance with the provisions of law for permanent absorption, the applicants shall not be repatriated to their parent division, as per the statement made by the counsel appearing for the official respondents that their case will be considered sympathetically for permanent absorption as they are still required in the NWR as per the note sheet and orders placed on record.

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

27. In view of the order passed in the OAs, no order is required to be passed in MA No.224/2010 and MA No.114/2011, which shall stand disposed of accordingly.

Anil Kumar
(ANIL KUMAR)
Admv. Member

K. S. Rathore
(JUSTICE K.S.RATHORE)
Judl. Member

R/