

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

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ORDER SHEET

ORDERS OF THE TRIBUNAL

25.04.2012

OA No. 253/2012

Mr. S. Shrivastava, Counsel for applicant.  
Mr. V.S. Gurjar, Counsel for respondents.

On the request of the learned counsel for the applicant,  
list it on 30.04.2012.

IR to continue till the next date.

Anil Kumar

(Anil Kumar)  
Member (A)

K. S. Rathore

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

30/04/2012

OA No. 253/2012

Mr. S. Shrivastava, Counsel for applicants.  
Mr. V. S. Gurjar, Counsel for respondents.

Heard.

O.A. is disposed of by a separate  
order on the separate sheets for  
the reasons recorded therein.

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 30<sup>th</sup> day of April, 2012

ORIGINAL APPLICATION No. 253/2012

CORAM:

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

1. Manik Chandra Soni  
s/o 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. N.W.R., H.Q. 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., N.W.R. HQ at Jaipur.

... Applicants

(By Advocate: Shri S.Shrivastava)

Versus

1. Union of India  
through General Manager,  
North Western Railway,  
In front of Railway Hospital,  
Hasanpura Road, Jaipur
2. Chief Personal Officer,  
H.Q. North Western Railway,  
G.M. Office at Jaipur

3. Chairman,  
Railway Board,  
Rail Bhawan,  
New Delhi.

... Respondents

(By Advocate : Shri V.S.Gurjar)

ORDER (ORAL)

The applicants preferred this OA claiming the following reliefs:-

- i) That this Tribunal may graciously be pleased to quash and set aside the impugned order dated (Annexure A-1) 04.04.12 by which claim of the petitioners for getting lien in NWR has been rejected and petitioners are arbitrarily ordered to be repatriated back to their parental Division/Zone.
- ii) That respondents may be directed to provide lien and absorption to the petitioners in merged cadre of SM/ASM Yard Master and Traffic Inspector in NWR keeping in view the length of service rendered by the petitioners in NWR and in the light of the circular dated 09.10.03.
- iii) Any other relief, which this Hon'ble Tribunal may deem fit and proper, may be granted in favour of the petitioners.

2. This is third round of litigation. Earlier the applicants preferred OA No. 190/2008 and the same was disposed of vide order dated 27.2.2009 with direction to the applicants to make comprehensive representation to the Chairman, Railway Board within a period of



one month from the date of passing of the order and the Chairman, Railway Board was directed to disposed of the same within three months 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.

3. Subsequently, a Review Application No. 4/2009 in OA No.190/2008 was filed by the respondents for reviewing the order dated 27.2.2009 passed in OA No.190/2008 whereby direction was given to the Chairman, Railway Board to dispose of the representation of the applicants. Having heard the rival submissions of the respective parties, this Tribunal was of the view that since the Chairman, Railway Board was not impleaded as one of the respondents in the OA, it will be in the interest of justice, if, instead of Chairman, Railway Board, the General Manager, North Western Railway is directed to decide the representation of the applicants in term of the order dated 27.2.2009, passed in OA No.190/2008, objectively and without any pressure from any Union.

4. Pursuant to the direction of this Tribunal, the representation filed by the applicants has been decided and the same was rejected vide order dated 15.10.2009. The rejection order dated 15.10.2009 was again assailed by the applicants by way of filing OA Nos. 457/2009 and 473/2009 which were also disposed of vide order dated 13<sup>th</sup> October, 2011. While disposing these OAs, this Tribunal



examined the impugned order dated 15.10.2009 and upon perusal of the impugned order, it revealed that the directive of this Tribunal have not been considered in true spirit while disposing of the representation. The General Manager has neither considered the contents of the representation nor considered the representations 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 applicants 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. Therefore, having considered the facts, this Tribunal vide its order dated 13.10.2011 observed as under:-

"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.”

5. Pursuant to the above direction, the respondents have considered the case of the applicants for permanent absorption and passed a detailed speaking order dated 4.4.2012. Aggrieved and dissatisfied with the impugned order dated 4.4.2012, the applicants have filed the present OA on the ground that the respondents have ignored the direction of the Tribunal regarding considering the case of the applicants on availability of the post, rather by passing impugned order they have acted in gross violation of the intent and spirit of the judgment especially keeping in view the fact that vacancies of Traffic Inspectors are available. Further challenged on the ground that it is wrong to say on the part of the respondents that options were not invited for the posts which were not transferred to H.Q. office. It is also stated on behalf of the applicants that cadre of SM/ASM/Yard Master and Traffic Inspector have been merged and it is wrong to say on the part of the respondents that it was in respect of restructuring of cadre only at the given point of time. In fact, now all the posts mentioned are interchangeable and employees can be posted on either post subject to requirement of the administration, and therefore, the applicants could easily be absorbed on the vacant post of TI to provide them lien in NWR.




6. The learned counsel appearing for the applicants also submitted that after issuance of circulated dated 9.10.2003, the applicants made representation to provide lien but the same was kept pending. The applicants have been continuously working on the posts of S.S. (S.W.R.), and seeking their absorption in the light of the circular dated 9.10.2003 and order dated 16.6.2006 passed by the respondents in respect of similar situated employees.

7. Per contra, the learned counsel appearing for the official respondents submitted that the applicants joined in the Headquarter Office of North Western Railway on 6.1.2003 on the basis of specific terms and condition and in view of totally separate consideration, that too on their request to work against work-charged posts vide letter dated 30.9.2002. The letter contains unambiguous and specific terms and conditions to the effect that their seniority and lien shall be maintained in their parent divisions and they will not have any right for their permanent retention on North Western Railway. It is further stated that their transfer has no relation with the transfers of staff from other divisions to North-Western Railway under Railway Board's policy letter dated 6.12.1996. The difference is apparent because no opportunity of options were available to them as there was no post of Station Masters in newly created Zonal Office of North Western Railway and because options were only invited against posts which were transferred to headquarters office of North Western Railway from



Western and Northern Railway Headquarters Offices. No post of Station Master/Station Superintendent was transferred to Headquarters of North Western Railway. Thus, in view of this fact, the applicants were not eligible for submitting options for their transfer to newly established Headquarters of North Western Railway. The so called options were submitted to North Western Railway without being forwarded even by Divisional Railway Manager, Bhavnagar/Ratlam and the applicants have concealed the fact that they have joined in North Western Railway on submission of written acceptance to the effect that their seniority and lien will be maintained in their parent divisions viz. Bhavnagar and Ratlam divisions respectively of the Western Railway.

8. The learned counsel appearing on behalf of the applicants strongly agitated and submitted that other officials are absorbed but only the applicants were not absorbed under the pressure of the Union and referred letter written by the Union to the respondents stating that without considering objections raised by the Union, the applicants may not be absorbed in the North Western Railway. It is also contended on behalf of the applicants that in their parent department, their names have been struck off from the seniority list, thus, their lien does lie with the parent department and they are entitled to be absorbed in the newly created zone of North Western Railway.





9. The submissions made on behalf of the applicants are strongly controverted by the respondents and it is contended that the applicants belong to seniority group of Bhavnagar and Ratlam divisions. Therefore, merger of SMs/ASMs/YMs/TIs will be effective for them on their parent divisions, where their seniority is being maintained till now and not in North Western Railway where they are working as deputationists on work-charged posts. Applicant, Shri Rajesh Yadav, was given proforma promotion to the post of Station Superintendent w.e.f. 26.2.1998 by the Ratlam Division and subsequently he has also been extended the benefit of Modified Assured Career Progression (MACP) scheme w.e.f. 1.9.2008 in grade pay of Rs. 4800. Similar applicant, Shri M.C. Soni was given paper promotion to the post of Station Superintendent w.e.f. 1.3.2003 by Bhavnagar Division and extended him the benefit of MACP w.e.f. 1.9.2008 in the grade pay of Rs. 4800.

10. The respondents have also drawn our attention towards the documents placed alongwith reply and seniority list issued recently by the Western Railway in the year 2011 to show that their lien still remains with the Western Railway. It is also contended that the internal policy decision taken by the competent authority does not confer any legally enforceable right in favour of the applicants, much less when the applicants are working on deputation and referred the judgment of the Hon'ble Supreme Court in the case of Mahesh Kumar K.Parmar and others vs. S.I.G. of Police and others




reported in (2002) 9 SCC 485 wherein the supreme Court observed as under:-

"The petitioners were permitted to continue in the Intelligence Bureau even after the enforcement of the Rules till 1999, and then were repatriated to their parent organization. The petitioners' grievance is that since they could be brought into the Intelligence Bureau by way of transfer in accordance with the Rules, that have been framed in exercise of power under clause (b) of Section 5 of the Bombay Police Act, and since they have already rendered services in the Bureau from 1991 till the date of their repatriation, they must be held to have acquired a right to be permanently absorbed in the Bureau or at least a legitimate expectation to be absorbed. The aforesaid grievance of the petitioners not having been acceded to by the competent authority, they approached the High Court. The High Court having dismissed the writ petition, they have approached this Court. Dr. Dhavan, the learned Senior Counsel appearing for the petitioners vehemently contended that since the petitioners satisfied all the tests and requirements under the Rules to be permanently absorbed, there was no rhyme and reason to repatriate them to their parent organization, particularly when they have rendered services in the Bureau from 1991 till the date of their repatriation. According to Dr. Dhavan these petitioners, who instead of being sent back to their parent organization on expiry of their period of deputation of three years having been continued in the Bureau, even after enforcement of the Rules, and after having passed certain tests in the Bureau, they had the legitimate expectation to be absorbed in the Bureau, and therefore, the Court would be in a position to issue a mandamus to



the State Government for their permanent absorption in the Bureau. Mr. Dholakia, the learned Senior Counsel appearing for the State, on the other hand, submitted that the Rules never contemplated a permanent absorption of the existing employees on deputation, and therefore, since the nature of their tenure in the Bureau was that of a deputation, the employer has always a right to repatriate the deputationist to the parent organization, and consequently,, the question of issuing mandamus for their permanent absorption does not arise. Having considered the rival submissions and also the relevant provisions of the Rules, we do not see any enforceable right with the petitioners for being permanently absorbed though we see sufficient force in the contention of Dr. Dhavan that the appropriate Government would be well advised to consider the retention of these petitioners permanently in the Bureau having regard to the case that they have already rendered services from 19991 till 1999, and that the Rules themselves contemplate to man the post on transfer. While, therefore, we are unable to issue any mandamus to the State Government requiring them to permanently absorb these petitioners in the Bureau, we would observe that the State Government may consider the case of these petitioners for absorption on transfer in accordance with the Rules, if they are found otherwise suitable. In that case the administration would be better served on account of experience the petitioners have already got in the Bureau by serving for eight years."

11. We have also gone through the impugned order dated 4.4.2012 passed pursuant to the direction of this Tribunal. In the impugned order, each and every aspect has been examined by the



respondents and after thoroughly considering the matter, the respondents were of the view that :-

(i) The case of Shri Manish Sharma who came on transfer to NWR as TI had different merits and not similar to S/Shri M.C.Soni and Rajesh Yadav. Shri Manish Sharma and other similar employees were already working in the Construction organization at Jaipur prior to formation of NWR HQ's office at that time. The Construction organization was under the jurisdiction of Western Railway. S/Shri M.C.Soni and Rajesh Yadav had applied to work against workcharged posts keeping their lien on Bhavnagar and Ratlam Divisions of Western Railway. As such, the case of Shri Manish Sharma and others cannot be treated at par with that of S/Shri M.C. Soni and Rajesh Yadav. As regard other employees who were provided lien on NWR also had different merits and as such cannot be generalized to compare with the case of Shri M.C. Soni and Rajesh Yadav who joined NWR with condition that their seniority and lien would be maintained in Bhavnagar and Rajkot (sic) divisions of western Railway and they would not have any right for permanent retention in NWR.

(ii) They were permitted by the Western Railway to work on North Western Railway against work-charge post for a short period. On expiry of the period, COM, Western Railway wrote to the North Western Railway for their repatriation and again reminded vide their letter dated 03.08.2007, wherein it was clearly mentioned that the competent authority the COM/WR has not permitted



extension to work on NWR. However, these employees approached to Hon'ble CAT, Jaipur by filing an OA deliberated ignoring their own commitment that their seniority and lien would be maintained on their parent divisions and will have no right of permanent retention but managed the stay and since then they are continuing due to Hon'ble CAT's intervention."

12. Having considered the rival submissions of the respective parties and the impugned order, which is under challenge as well as the earlier orders passed by this Tribunal in OA No.190/2008, RA 4//2009 and subsequent OA Nos. 457/2009 and 473/2009 and the judgment rendered by the Hon'ble Supreme Court in the case of Mahesh Kumar (supra), we are of the view that case of the applicants is altogether different as compared to other persons who have been absorbed permanently in the newly created zone of North Western Railway, as also observed in the impugned order. Therefore, the applicants are not entitled to be absorbed in NWR being the case of different merit in comparison to other employees, who were provided lien in NWR. Further, as per the ratio decided by the Hon'ble Supreme Court in the case of Mahesh Kumar (supra) also, since seniority and lien of the applicants were retained in Bhavnagar and Ratlam Divisions of Western Railway, as such, the applicants are not entitled to remain on NWR indefinitely and the employer has right to repatriate the applicants to their parent organization.



13. Accordingly, we find no illegality in the impugned order, which requires no interference by this Tribunal. Consequently, the OA being bereft of merit fails and is hereby dismissed with no order as to costs.



(ANIL KUMAR)  
Admv. Member



(JUSTICE K.S.RATHORE)  
Judl. Member

R/