

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-1414/2003

MA-1225/2003

MA-1226/2003

New Delhi this the 6th day of April, 2004.

Hon'ble Shri Shanker Raju, Member(J)

1. Shri Jayo,
S/o Sh. Pardesi,
Gangman.
2. Shri Abhay Kumar,
S/o Sh. Idi,
3. Shri Gumrah,
S/o Sh. Mandhar

All working as Gangmen under Permanent Way Inspector
Northern Railway, Shakurbasti, Delhi.

(through Sh. B.S. Mainee, Advocate)

Versus

Union of India through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. Divl. Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.
3. The Sr. Section Engineer
(P-Way) Constn.,
Northern Railway,
Delhi Sarai-Rohilla,
Delhi.

..... Respondents

(through Mrs. Anju Bhushan, Advocate)

ORDER (ORAL)

Through this O.A. applicants seek salary and
allowances for the period from 7.9.2000 to 10.3.2001.

2. Heard the learned counsel for the parties.

3. Applicants who had been working as regular
Class-IV employees in construction organisation vide
order dated 29.8.2000 were spared and directed to report

in D.R.M. office, New Delhi. Though lien of the applicants was with AEN Karnal yet they had been posted and attacheed with DEN Jind as well as AEN /Rohtak. Later on their posting was with their consent done at Delhi as well as Ghaziabad.

4. Learned counsel of the applicant states by referring to the decision of Delhi High Court in B.D. Sharma Vs. U.O.I. (2004(1)ATJ) 477 that transfer and posting outside the cadre is not tenable. As no consent was taken from the applicants to post outside their cadre their non-joinings ^{not} can be attributed to them and in ~~that~~^{the} event they are entitled of pay and allowances for the period they were not posted.

5. Mrs. Anju Bhushan, learned counsel of the respondents opposed the contention and stated that the applicants have not joined their posting station and has remained unathorisedly absent, they are not entitled for the salary for the period.

6. On careful consideration of the rival contentions and in the light of the decision of the High Court, I am of the considered view that a person without his consent cannot be posted though the applicants ^{had} their lien at AEN Karnal. They had been poosted at different places.

7. O.A. stands disposed of with a direction to the respondents to re-examine the issue regarding

payment of salary and allowances to the applicants for the period from 7.9.2000 to 10.3.2001 in the light of the observations made above as well as the decision of the High Court. In the event, the claim of the applicants is allowed, they shall be paid the pay and allowances. The aforesaid exercise shall be undertaken and completed within a period of 2 months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member(J)

/vv/