

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 08.12.2009
Judgment delivered on: 21.12.2009

+ W.P. (C) No. 5341 of 2008

SHRI CHANDRANSH PANDEY Petitioner

Through: Ms. Jyoti Singh, Advocate.

versus

UNION OF INDIA & ORS.Respondents

Through: Kumar Rajesh Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR
HON'BLE MR. JUSTICE VIPIN SANGHI

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

J U D G M E N T

VIPIN SANGHI, J.

1. In this writ petition under Article 226 of the Constitution of India, the petitioner impugns the order dated 2.7.2008 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No.284/2008. By the impugned order, the aforesaid O.A filed by the petitioner has been dismissed. The said O.A had been

preferred to challenge the order dated 28.1.2008 whereby the petitioner's representation regarding his seniority in, and transfer to Delhi Division had been rejected.

2. At the relevant time, the petitioner was occupying the post of JE.II (Signal) since 4.7.1988. The petitioner was serving in Jhansi Division which fell within the Central Railway Zone. The operations of the Railways are divided into various zones. Within the zones there is a further sub-division and these sub-divisions are called 'Divisions'. Each 'Division', it appears, has various 'Sections'.

3. The Railway Ministry vide letter dated 16.9.1996 conveyed its decision to set up six new railway zones. The details with regard to the six new zones were contained in the Railway Board's D.O. letter dated 8.10.1996. One of the new divisions created within the Northern Railways (Railway Zone) was the Delhi Division.

4. To man the different posts in the newly created railway zones and their Divisions, the respondent Railways issued RBE No.123/96 dated 6.12.1996 for the purpose of calling options from staff to serve in the headquarters of the new railway zones, and to determine the seniority of the staff on transfer to the new zones. This notification, inter alia, stated:

"2. For the purpose of manning of posts in the New Zones at their headquarters offices, the Board desire that options may be called for from the staff as follows:-

(i) From non-gazetted staff working at the headquarters offices of the existing Zonal Railways from whose jurisdiction the new Zones have been carved out, for being transferred to the headquarters offices of the respective New Zonal Railways.

(ii) From the non-gazetted staff working in the affected Divisions of existing Zonal Railways as follows:-

(a) whether they would like to continue to work wherever they are working at present; or

(b) proceed to the headquarters offices of the respective New Zonal Railways."

Note: Non-gazetted staff of affected Divisions in categories/cadres controlled by headquarters will have the option to remain in the existing Zonal Railway or join the New Railway for which they must exercise option.

(iii) From non-gazetted staff working in other Divisions of existing zonal railways for working in the respective new zonal railways; and

(iv) From non-gazetted staff of all zonal railways/Production Units for working in the headquarters office of one of the new zonal railways against shortfall, if any.

2.1 Preference for transfer on option to the new zonal railways should be given in the order as indicated in para 2 above."

5. On 14.11.2002 the respondents issued a communication with regard to the formation of the new Agra Division. The new Agra Division fell within the North Central Railway and various sections, which earlier fell in other Divisions, such as Jhansi (JHS) Division, Kota Division, Allahabad Division etc. were transferred to the newly created Agra Division. The new Agra Division became functional w.e.f. 1.4.2003. The communication dated 14.11.2002 invited options from willing employees of Central Railway for transfer to new Agra Division. Their options were to be entertained favourably as per priorities detailed in the said communication. Paragraphs 2 to 3.3 in this regard are relevant and read as follows:

“2. Options are therefore invited from willing employees of Central Railway for transfer to new Agra division & their options will be entertained favourably as per priorities detailed below:-

2.1 From Non-gazetted staff working in territory as well as in territory which are to be included in Agra Division to opt for either Agra Division or their parent Division.

2.2 From Non-gazetted staff of affected Divisions who would like to opt for working in Agra division.

2.3 From Non-gazetted staff of all the Offices/Divisions/ Workshops, etc, for working in Agra division.

3. The terms & conditions of the transfer will be as under:-

3.1 The staff who had opted earlier are required to re-submit a fresh option in the format enclosed as Annexure "A".

3.2 Running staff area not included in the same of this calling option for transfer and will be dealt separately.

3.3 Preference for transfer on option to the new Agra Division on North Central Railway will be in the order as indicated above in para 2.1 to 2.3."

6. On 15.11.2002, another communication was issued by the respondent on the subject of, inter alia, transfer of portion of Jhansi Division to Delhi Division of Northern Railway. In so far as the transfer of a portion of the Jhansi Division to the Delhi Division is concerned, the section (area of jurisdiction) which was transferred to the Delhi Division was "Tughlakabad – Palwal (Incl)". This communication further stated that options may be exercised by the railway employees either for Agra Division, or Jhansi Division, or Delhi Division. It was stated that the transfer would be considered as per priority indicated in the letter dated 14.11.2002 above referred to.

7. The petitioner exercised his option in terms of communication dated 15.11.2002. He submitted his option form opting for Delhi Division, and within the Delhi Division gave his preference to work at Faridabad. We may note that at the relevant time the petitioner was on deputation with CRIS for a period of five

years beginning 25.04.2000. However, he held his lien at that time in Jhansi Division. The option form of the petitioner was forwarded by Manager (Admin & Personnel) to the DRM, Central Railway, Jhansi on 26.11.2002.

8. Vide a communication dated 06.12.2002, addressed to *"All the concerned Jhansi Division, Divisional Secretary, CRMS/NRMU SC/ST Association, Jhansi Division"* DRM (PRS) Jhansi invited the Railway Officers concerned to submit option forms in case they desire to opt for Delhi Division by 31.12.2002. As noticed above, the petitioner had already exercised his option in this respect.

9. A communication dated 24.07.2003 was sent from Delhi Division to Jhansi Division requiring the Jhansi Division to send the service record of, inter alia, the petitioner to Delhi Division. On 22.03.2004 the service record of the petitioner was sent by DRM (P) North Central Railway, Jhansi to North Division Railway. Another communication confirming the transmission of the service record of the petitioner to Delhi Division by Jhansi Division was sent on 30.04.2004. From the above narration it appears that the issue of transfer of the petitioner to Delhi Division was administratively complete and no further issue was raised thereafter for about a year. This was the lull before the storm, which was quietly approaching vis-à-vis the petitioner's service.

10. On completion of the petitioner's deputation period of five years, CRIS sent a communication dated 02.05.2005 to DRM (P), Northern Railway, New Delhi stating that the petitioner would report in the office of DRM (P) Northern Railway, New Delhi on 02.05.2005. The petitioner reported in the office of DRM(D) Northern Railway, New Delhi and joined service.

11. On 18.01.2006 the office of DRM, Northern Railway, New Delhi circulated the inter se seniority of JE-II/SIG Gr. Rs. 5000-8000. The said notice read as follows:

"As a result of merging DLI-PWL Section of JHS Divn. into DLI division as on 1.4.2003 two working posts of JE-II/Sig. Gr. Rs. 5000-8000 were transferred (on) (sic) as is where is basis. Consequently the following were to be assigned seniority in the cadre of JE-II/Sig. issued vide this office letter No. 347-E/482, P.6 dt. 9.12.2003.

1. Sh. A.K. Sharma, JE.II/FDB.
2. Sh. Chandransh Pandey, JE.II/FDB (On deputation with CRIS).

One of them Sh. A.K. Sharma was assigned seniority at item No. 1 in the said seniority whereas Sh. Chandransh Pandey could not (be) (sic) assigned due to over sighting (he) (sic) being on deputation with CRIS.

Sh. Chandransh Pande, JE.II/Sig. Gr. Rs. 5000-8000 who (was) (sic) on deputation with CRIS at the time of his lien transferred to DLI Divisino due to merging of DLI-PWL Section, was not assigned seniority in the list issued vide this office letter No. 847-E/482 P.6 dated 10.12.2003.

Consequent upon being repatriation (repatriated) (sic) from CRIS on 2.5.2005, Sh. Chandransh Pandey is assigned interpolated at item No. 1 i.e. above to Sh. A.K. Sharma provisionally in the seniority list issued vide letter No. 847-E/482/P.6 dated 10.12.2003 in terms of Rly. Bd. Policy laid down in the letter No. (NG) 1/06/PR/36/Vol.II dt. 19.7.92. The service particulars of the employee are as under:-

S.No	Name	D.O.	D.O.N. J.E.II	Seniority Item No.	Assigned at
1.	S.Chandransh Pandey	5.7.60	26.7.90	1.	i.e. above to Sh. A.K.Sharma

12. Objections were invited to the fixation of the petitioner's seniority above Sh. A.K. Sharma.

13. Without any prior notice to the petitioner, as a bolt from the blue, the respondent visited the petitioner with a notice/order dated 24.02.2006 issued from the office of DRM, Northern Railway, New Delhi thereby cancelling the provisional seniority assigned to the petitioner above Sh. A.K. Sharma on the ground that a post of JE-II/SIG Gr. 5000-8000 has not been provided by Jhansi Division w.e.f. 01.04.2003 where against the petitioner could be adjusted. From this order, it also appears that the name of the petitioner was included in the Memorandum of Understanding (MOU) relating to the carving out of Delhi Division, inter alia, from Jhansi Division. The provisional seniority assigned to the petitioner was treated as

cancelled *“unless a post of JE-II/SIG Gr. Rs. 5000-8000 is not provided by JSH Divn. from 01.04.2003 to adjust Sh. Chandransh Pandey”*. It, therefore, appears that the withdrawal of the provisional seniority was not on account of Sh. A.K. Sharma being found senior to the petitioner, or on account of transfer of the petitioner from Jhansi Division to Delhi Division being unauthorized. It was on account of an administrative lapse i.e. the failure of Jhansi Division to transfer one post of JE-II/SIG Gr. Rs. 5000-8000 to Delhi Division upon creation of Delhi Division w.e.f. 01.04.2003.

14. The petitioner, it appears, represented against the aforesaid order dated 24.02.2006 and consequently the respondent passed another order dated 12.02.2007 restoring the seniority assigned to the petitioner at Serial No. 1 i.e. above Sh. A.K. Sharma. From this order, it appears, that the crisis which had arisen on account of one post of JE-II/SIG in the Grade Rs. 5000-8000 not being transferred from Jhansi Division to Delhi Division stood resolved, on account of the sudden death of JE-II/SIG/FDB Sh. K.B. Vijay and, consequently, the petitioner could be fitted against the slot vacated by late Sh. K.B. Vijay. Since this notice/order dated 12.02.2007 narrates the background of the case and also shows the application of mind by the Divisional Personnel Officer in DRM'S office, New Delhi, and the ADRM(T), we consider it appropriate to reproduce the same in its entirety:

“NOTICE

When the re-organization of the Division was done, the staff was to be transferred on the basis of as is where is, Sh. Chandransh Pandey, JE-II/Signal of JHS Division was on deputation at CRIS and his name included in the MOU. Hence, on relieving by CRIS, he reported on DLI Division on 02-05-05.

On merging TKD-PWL section in DLI Division from 01-04-03, two posts of JE-II/Signal were transferred along with incumbents (i) Sh. A.K. Sharma (ii) Sh. K.B. Vijay. Thus, it was a situation where 03 persons have been transferred from JHS Division to DLI Division and only two posts were transferred.

As Sh. Chandransh Pandey's name is included in the MOU, he was assigned seniority at item No. 1 provisionally as per length of service in grade Rs. 5000-8000 in the seniority list of JE-II/Signal issued on 10-12-03, vide this office notice of even No. dated 18-1-06. Sh. A.K. Sharma JE-II/Sig/FDB represented against the assignment of seniority of Sh. Chandransh Pandey pleading that Sh. Pandey was not working on the merger section. At the point of time, the provisional seniority treated as cancelled vide this office notice of even No. dated 24-2-2006.

Sh. Chandransh Pandey represented against the cancellation of seniority. The competent authority viewed the changed situation which arised due to sudden death of one JE-II/Sig/FDB Sh. K.B. Vijay and it is decided that the seniority already assigned to Sh. Chandransh Pandey which was treated as cancelled be restored as his name was appearing in the MOU which was accepted by DLI Division and he was

allowed to join DLI Division at that time and working since 2005.

Accordingly the seniority assigned at item No.1 i.e. above to Sh. A.K. Sharma vide this office notice of even No. dated 18-01-06 is restored.

This has the approval of ADRM(T)."

15. The matter, however, did not rest here. The respondents once again sought to swing the other way. The Sr. Divl. Pers. Officer in the office of DRM, New Delhi issued a show cause notice dated 23.07.2007 to the petitioner requiring him to show cause as to why the seniority assigned to him should not be cancelled, and he should not be required to report to DRM, Jhansi for further duty. In this show cause notice it was stated that Sh. A.K. Sharma had represented against the assignment of seniority to the petitioner above him. It was also stated that a joint representation signed by the staff working under JE-II was received through the union against the petitioner.

16. The petitioner, it appears, submitted his reply. However, the respondent passed an order dated 28.01.2008 rejecting the reply of the petitioner and cancelling the restoration of his seniority vide office notice dated 12.02.2007. It was also stated that petitioner's reporting to Delhi Division on 02.05.2005, on being relieved from CRIS, was erroneous and that he should have reported to DRM, Jhansi for further orders at their end.

17. The petitioner was aggrieved by the said action of the respondent and, therefore, filed the aforesaid original application being O.A. No. 284/2008 before the Central Administrative Tribunal, Principal Bench, New Delhi which, as aforesaid, has been dismissed by the Tribunal.

18. The respondents filed their counter affidavit before the Tribunal wherein the stand taken by the respondents, inter alia, was as follows:

“It is pertinent to mention here that Jhansi Division was the effected Division from whose Division the new Zone, namely North Central Railway have been carved out. So the options were invited from remaining staff wherever they were working or to proceed to new Zonal Railway of North Central Railway as per Railway Board’s letter dated 6.12.1996.....”

19. However in another part of the counter affidavit the respondent had stated that no options were invited from any staff to opt for Delhi Division.

20. The learned Tribunal while rejecting the petitioner’s original application was of the view that no option was to be exercised for Delhi Division by those falling within Jhansi Division, except those falling within the affected part of Jhansi Division. Consequently, the exercise of option by the petitioner was of no avail. It was held that the transfer of the petitioner to Delhi

Division was not covered under the policy of the Railway Board. The transfer of the petitioner's service record to Delhi Division was also not considered to be of any relevance by the Tribunal. The Tribunal set out columns 14 and 15 from the option form and interpreted the same to mean that option could be exercised only by staff working in that Section of Jhansi Division, which was to become part of Delhi Division. Columns 14 and 15 from the option form extracted by the Tribunal read as follows:

14. Whether desired to opt for a) JHS Present Division b) DELHI (To be filled by staff working in those section at the JHS Division which are to be part of DELHI Divn.)
15. Whether willing to work any where in DELHI Divn, if so preference, if any. (To be filled by staff other than mentioned in item 14 above).

21. The Tribunal concluded that the petitioner was not working in the section TKD-PWL (Tuglakabad-Palwal) of Jhansi Division at the relevant time and, consequently, he could not exercise the option to get transferred to Delhi Division. The Tribunal was also impressed by the stand taken by DRM/P Jhansi Division, North-Central Railway wherein they had stated that it was a mistake to have transferred the petitioner to Delhi Division.

Consequently, the Tribunal dismissed the petitioner's original application.

22. Learned counsel for the petitioner submits that the interpretation given by the learned Tribunal to the scheme for creation of new zonal railways and for staffing of the new zonal railways is erroneous and the scheme has been completely misunderstood by the Tribunal. She submits that under the policy, the petitioner was entitled to, and had validly exercised the option to migrate to Delhi Division.

23. She further submits that the issue with regard to the petitioner's placement in Delhi Division of Northern Railway had already been thrashed out after due application of mind upon the issuance of the communication dated 12.02.2007, and the respondents had no authority to once again disturb the same merely on account of pressure being exerted by the employees union. She submits that Jhansi Division was an "affected Division", inasmuch as, a part of the said division, namely, Tuglakabad-Palwal section was transferred to the Delhi Division of Northern Railway upon restructuring and, consequently, in terms of the respondents policy decision contained in RBE No. 123/96 dated 06.12.1996 read with respondent's communication dated 14.11.2002 and

15.11.2002, the petitioner was entitled to exercise the option to seek transfer to Delhi Division.

24. On the other hand learned counsel for the respondents has sought to support the reasoning of the Tribunal by submitting that the petitioner was not deployed in the affected section of Jhansi Division and, consequently, he was not entitled to give his option to seek transfer to Delhi Division.

25. In view of the aforesaid submissions of the parties, it is necessary for us to examine the purport of the respondent's policy decision with regard to the manning of the newly created divisions in the six new zonal railways, and the fixation of seniority on transfer of the railway employees to the newly created zones.

26. We have extracted the relevant portion of Clause 2 of RBE No. 123/96 above which deals with the aspect of manning of posts in the new zones of the railways. On a reading of the said clauses it is seen that railway employees working not only in the affected divisions of the existing zonal railways but even those working in other divisions of existing zonal railways, who were interested in working in the new zonal railways, were entitled to give their options. All that the said notification provided was that such options were to be considered according to the priority set out in Clauses (i) to (iv) of Clause 2. Admittedly, the petitioner was

working in an “affected Division” of an existing zonal railway, inasmuch as, he was working in Jhansi Division which was affected by the process of creation of, inter alia, Delhi Division. The fact that Jhansi Division was an affected Division is clear from the fact that at least one section of Jhansi Division, namely, Tughlakabad-Palwal section was transferred from Jhansi Division to Delhi Division, as is evident from the communication dated 15.11.2002 above referred to. This notification did not restrict the right to submit options for transfer to the newly created divisions, to only those employees who were working in the affected part / section of the affected division. Such a restriction is clearly not borne out from a plain reading of RBE no. 123/96. On the contrary, “*non-gazetted staffs working in other divisions of existing zonal railways*” could also opt to work in the respective new zonal railways (see Clause 2 (iii) of RBE No. 123/96). A perusal of paras 2 to 3.2 of the communication dated 14.11.2002 extracted above also shows that railway staff working within the territory of Agra division, “*as well as in the territory which are to be included in Agra Division*” could opt for either Agra Division or their parent division. All such employees were placed in the first priority. (see Clause 2.1 of the communication dated 14.11.2002). The second priority was in respect of “*non-gazetted staff of affected divisions who would like to opt for work in Agra Division*” (see Clause 2.2). Therefore,

the staff working in the territory falling within the Agra Division, and those which were included in the Agra Division by virtue of the communication dated 14.11.2002 were all entitled to opt either for Agra Division or their parent division.

27. The communication dated 15.11.2002 makes it clear that the same principle had to be applied in relation to the staffing for the Delhi Division. Consequently, it follows that the non-gazetted staff working in Jhansi Division (irrespective of the section in which the staff may be working within the Jhansi Division) were entitled to give their option to seek transfer to Delhi Division.

28. This position is also clear from a reading of the letter dated 06.12.2002 issued by the Divisional Railway Manager (Pers.), Jhansi. This communication was addressed to *"All the concerned Jhansi Division, Divisional Secretary, CRMS/NRMU, SC/ST Association, Jhansi Division for information"*. Had it not been the intention and understanding of the respondents to invite options from all the non-gazetted staff working in the Jhansi Division, which, admittedly was an affected division, but to restrict the invitation of options only to those working in the affected area/section of Jhansi Division, there was no purpose in sending the communication dated 06.12.2002 inviting options to all the staff of Jhansi Division. The only limitation was that the options of the

opting staff were to be considered in accordance with the priority set out in paras 2.1 to 2.3 of the office letter dated 14.11.2002. Therefore, it is clear that the contention of the respondent and the finding of the Tribunal that the petitioner was not even entitled to submit an option to get transferred to Delhi Division is not borne out from a plain reading of the respondent's policy contained in RBE No. 123/96 and in their letters dated 14.11.2002 and 15.11.2002, as aforesaid.

29. Pertinently, it is not the respondent's case that though the petitioner was entitled to opt for Delhi Division, his case could not have been considered favorably on account of his falling in a lower priority, without compared to other optees. As a matter of fact the option exercised by the petitioner was acted upon by the respondents who transferred him from Jhansi Division to Delhi Division. This is evident from the communication dated 26.11.2002, 24.07.2003 and 22.03.2004 above referred to.

30. In our view the Tribunal has introduced the concept of an "affected part" of a division without any basis and plainly on an incorrect reading of the policy of the respondents. The interpretation given on the basis of columns 14 and 15 of the option form is also misplaced. Under the policy decision contained in RBE 123/96, read with the communications dated 14.11.2002

and 15.11.2002 it was provided that the staff working in the section of Jhansi Division which became part of Delhi Division would, by default, get transferred to Delhi Division and the staff which was working in part of Jhansi Division which continued to remain under Jhansi Division even after re-organization/creation of the new zones would, by default, remain in Jhansi Division. If such staff (which were working in those sections which, consequently, became part of Delhi Division) desired to continue to remain in Jhansi Division, they had to exercise an option, else they would stand transferred to Delhi Division. Similarly, staff working in Jhansi Division but not in the sections transferred to Delhi Division, were required to exercise their option if they desired to get transferred to Delhi Division. It is for this reason that Column 14 had to be filled *“by staff working in those section at the Jhansi Division which are to be part of the Delhi Division”*.

31. The Tribunal in our view, clearly erred in interpreting the scheme on the basis of Column 14 of the option form to mean that only those employees who were working in the particular section of Jhansi Division, which was to become part of Delhi Division, could give an option to opt for the newly created Delhi Division. This is clearly against the plain language of the policy, as discussed above. Even if one were to assume that the option form introduced some ambiguity, the language of the option form could not have

diluted or nullified the express language of the policy. The interpretation given by the Tribunal to the Scheme/Policy, even otherwise does not appeal to reason. Change of posting within a division from section to section is a dynamic phenomena. Merely because a particular employee may or may not be posted in a particular section at the relevant time i.e. when the option is to be exercised, it should not either grant him a windfall or lead to a disadvantage when compared to others working in other sections within the same division. Therefore, all employees in the “affected division” and not just the “affected section” were vested with the right to exercise option to seek transfer. The interpretation given by the Tribunal to the respondents’ policy would render it discriminatory and unreasonable. That is another reason to reject such an interpretation.

32. We also cannot agree with the Tribunal that the fact that the service record of the petitioner stood transferred to Delhi Division was not indicative of the fact that the petitioner already stood transferred to Delhi Division. The transfer of the service record of the petitioner to Delhi Division from Jhansi Division was a conscious decision. The same was taken in accordance with the scheme and policy evolved by the respondents and in keeping with the option exercised by the petitioner. It clearly demonstrated the fact that the petitioner stood transferred to Delhi Division.

33. To us it appears that the reversion of the petitioner to Jhansi Division could well have been done on account of pressure exerted by the staff union. The same is suggested by the show cause notice issued to the petitioner. One also gets the impression that the staff union was only advancing the interest of Sh. A.K. Sharma, as he was the only one affected by the fact that the petitioner was assigned seniority at Serial No. 1 which resulted in Sh. A.K. Sharma being dislodged from that slot and being pushed down to seniority position no. 2. Pertinently, the issue with regard to the petitioner's so called incorrect transfer to Delhi Division was not raised between 26.03.2004, when the petitioner's service record was transferred from Jhansi, and 24.03.2006, when the provisional seniority assigned to the petitioner was cancelled without any prior notice. Pertinently, even this cancellation of the petitioner's seniority was not on account of the so called unauthorized transfer of the petitioner to Delhi Division from Jhansi Division. This cancellation was only on account of an administrative lapse for which the petitioner was not responsible, inasmuch as, one post of JE II/SIG Gr. Rs. 5000-8000 had not been provided by Jhansi Division from 01.04.2003 onwards, where against the petitioner could be adjusted. It was only when the show cause notice dated 23.07.2007 was issued, that for the first time it was claimed that the transfer of the petitioner to Delhi

Division was unauthorized and not in accordance with the policy or the scheme.

34. In our view, the objections raised by the respondents at the behest of the union were an afterthought and without any basis. One gets the impression that the entire exercise has been resorted to, merely to somehow remove the petitioner from being positioned above Sh. A.K. Sharma in seniority.

35. The Tribunal has also failed to notice the categorical stand taken by the respondents in their counter affidavit as extracted by us hereinabove wherein they state that Jhansi Division was the affected Division from which the new zone has been carved out and that options were invited from the "*remaining staff wherever they were working*" to proceed to the new zonal railway.

36. We, therefore, hold that the petitioner was validly transferred to Delhi Division, and upon being repatriated on his deputation with CSIR coming to an end, he rightly reported to Delhi Division. Since the denial of seniority to the petitioner in Delhi Division is only on account of his illegal repatriation to Jhansi Division, we restore his seniority in Delhi Division.

37. As a result we set aside the impugned order passed by the Tribunal and quash the order dated 28.01.2008 passed by the

respondents whereby the petitioner's representation was rejected. We restore the respondents' notice/order dated 12.02.2007 whereby the petitioner was assigned seniority above Sh. A.K. Sharma in Delhi Division.

38. We must express our disapproval at the manner in which the respondents have conducted themselves. The petitioner, it appears, has been put to sheer harassment by the Railways only on account of pressure being exerted by the staff union to get rid of the petitioner and to pack him off to Jhansi Division. It appears that the fact that petitioner was on deputation at the time of his transfer to Delhi Division made him appear as an alien when he joined Delhi Division upon his repatriation from deputation. By then his other contemporary Sh. A.K. Sharma appears to have entrenched himself in Delhi Division and that may have led to protests, inter alia, by the staff union against the petitioner when he suddenly emerged upon his deputation with CSIR coming to an end. In our view, the railway administration should have taken a principled stand and should not have allowed itself to get drawn in this dispute and to become an instrument in the hands of the staff union to advance their unjust demand. If, either Sh. A.K. Sharma or the staff union were aggrieved by the absorption of the petitioner in Delhi Division, they should have taken up the cause by approaching either the Tribunal, or by resort to any other

appropriate judicial/quasi judicial proceeding. The respondent could not have recalled its order/conscious decision dated 12.02.2007. The railway association cannot appear to be taking sides and to swing from one end to another because pressure may have been exerted by the staff union. Consequently, we allow this petition with costs quantified at Rs.20,000/-.

**(VIPIN SANGHI)
JUDGE**

**(ANIL KUMAR)
JUDGE**

DECEMBER 21, 2009
as/dp