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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 2549/97

New Delhi this the 25th day of May, 2000.

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN  
HON'BLE MRS. SHANTA SHAstry, MEMBER (ADMNV)

Anil Kumar Sharma,  
S/o Shri Shridutt Sharma,  
Section Controller,  
Northern Railway,  
D.R.M. Office,  
Moradabad.

...Applicant

(By Advocate Ms. Meenu Mainee, proxy for Sh. B.S. Mainee,  
Advocate)

-Versus-

Union of India through:

1. The General Manager,  
Northern Railway,  
Baroda House,  
New Delhi.
2. The Divisional Railway Manager,  
Northern Railway,  
Moradabad.

...Respondents

(By Advocate Shri R.L. Dhawan)

O R D E R (ORAL)

By Reddy, J.-

The applicant was appointed as an Assistant Station Master in the Moradabad Division of the Northern Railway in 1986. His scale of pay was Rs.1200-2040. He submits that thereafter, he was appointed as Section Controller w.e.f. 30.11.87 on ad hoc basis in the pay scale of Rs.1400-2600 and since then he has been working as full-fledged Section Controller but was paid the salary in the scale of Rs.1200-2040.

2. The applicant in response to the applications invited for appointment to the posts of Section Controller on regular basis applied for the same and he was declared successful in the written examination. He was also called

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for viva voce test. Results were declared on 31.7.90 but he was not empanelled.

3. The grievance of the applicant was two fold. Firstly that as the applicant has been working since 1987 in the post of Section Controller on ad hoc basis, he was entitled for payment of salary in the grade of Rs.1400-2600.

4. The second contention was that as he has been working on ad hoc basis, he should have been selected on regular basis.

5. The applicant, therefore, filed OA-1760/91, seeking the above two reliefs. But the OA was disposed of by an order dated 31.1.97, directing the applicant to make a comprehensive representation and that the same should be disposed of within two months of its receipt. Accordingly, applicant filed the representation on 5.6.97 but it was rejected by the impugned order 5.6.97. The present OA is filed, seeking the above two reliefs, once over.

6. We have given careful consideration to the pleadings as well as the arguments advanced by the learned counsel.

7. The main contention of the learned counsel for the applicant that he was posted on ad hoc basis to work in the post of Section Controller, is not borne out by record. The Annexure A-2 makes the position clear. In the A-2 the subject was stated as 'transfer'. He was also shown as working as Section Controller since 30.11.87 as per <sup>h</sup>



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Senior DOS orders and "his pay upto 2.6.88 has been charged here, onwards to be charged at yours". Again in the proceedings dated 27.1.90 it was again stated that the applicant was spared by the office order dated 16.1.90 it was also stated that his pay as on 2.2.90 is "charged and further to be charged at yours". It was further stated that he was working as Section Controller since ~~31.7.90~~<sup>30.11.87</sup> as per Senior DOS Moradabad orders. Thus he was only transferred and spared to Traffic Inspector, Moradabad on 6.8.88 in the capacity of Assistant Station Master in the same grade of Rs.1200-2040 and that he was simply utilised against the post of Section Controller. He was never promoted to officiate as Section Controller at any time. The post of Section Controller was a selection post and unless the incumbents are selected they cannot claim regularisation in that post. It is also stated in the counter that the applicant could not have been promoted on ad hoc basis as Section Controller as Assistant Station Master in the higher grade of Rs.1400-2300 and Guard in the grade of Rs.1350-2200 and Assistant Yard Master/Guard, are eligible for promotion. If the incumbents in the above two posts are not eligible then only the Assistant Station Master/Guard in the scale of Rs.1200-2040 are eligible to appear in the selection, after passing P-16 course. It is further stated that the applicant had appeared in the selection to the post of Section Controller but he was not selected. Hence, the applicant is not entitled for regularisation in the post of Section Controller.

8. In the impugned order A-1 the representation of the applicant has been considered and rejected holding that as the applicant was never posted on ad hoc basis as

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Section Controller he was not entitled for the higher grade of Rs.1400-2600. It was further stated that the applicant has been considered for selection but he could not be appointed, though he could pass the written test.

9. The Learned counsel for the applicant relies upon the proceedings dated 30.3.93 where the working of the applicant and two others was shown as working as ~~Assistant section~~<sup>h</sup> Controller on ad hoc basis. This proceeding cannot be construed as regular orders of ad hoc appointment in favour of the applicant.

10. Learned counsel relies upon the Circular dated 9.3.1976 and the judgment of the Supreme Court in C.A.No. Nil of 95 arising out of SLP No.9866/93 in P.C.Srivastava Vs. Union of India & Anr. We have perused the Circular and the Judgment. The Supreme Court, taking into consideration the high percentage of marks in written test and viva-voce, directed that the applicant therein, who was working on ad hoc basis, should have been selected. In this case, the applicant was not appointed on ad hoc basis and he was not alleged to have obtained excellent <sup>h</sup> works. This above case is, therefore, not applicable. The selection cannot be interfered with.

11. It is, however, apparent that the applicant has been working, since 1987 as Section Controller in the office of Chief Section Controller, Moradabad sometime by way of transfer and sometime by way of ad hoc arrangement. Though the respondents take the stand in the counter that he was only posted whenever there was necessity or casualty, the above proceedings as brought out supra in the

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preceding paragraphs, make it clear that the applicant was working as Section Controller. We do not find, therefore, any justification in declining to grant the pay to the applicant for the period <sup>or days, during which</sup> he has been working as Section Controller in the same scale of Section Controller as he has been discharging the duties of the higher post.

12. In view of the above, we direct the respondents to pay the salary and allowances of Section Controller to the applicant for the period during which he has been discharging the duties of Section Controller, on such verification by the respondents.

13. The relief as to placing the applicant in <sup>of 1990 &</sup> the panel of Section Controller is rejected. The OA is partly allowed. There shall be no order as to costs.

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(Smt. Shanta Shastry)  
Member (Admnv)

*Arindhyagulandla*  
(V. Rajagopala Reddy)  
Vice-Chairman(J)

*Santosh*