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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

* * *

Date of Decision:

5.3.93

OA 616/88

R.K. RAWAT

... APPLICANT.

VS.

UNION OF INDIA & ORS.

... RESPONDENTS.

CORAM:

HON'BLE SHRI J.P. SHARMA, MEMBER (J).

HON'BLE SHRI S.R. ADIGE, MEMBER (A).

FOR THE APPLICANT

... SHRI G.D. BHANDARI.

FOR THE RESPONDENTS

... SHRI K.K. PATEL.

JUDGEMENT

(DELIVERED BY HON'BLE SHRI S.R. ADIGE, MEMBER (A).)

In this application dated 7.4.88 under Section 19 of the Administrative Tribunals Act, 1985, Shri R.K. Rawat, Senior Transportation Instructor, Zonal Training School, Chandausi, U.P., has prayed for (i) quashing the impugned order dated 18.3.88 (Annexure A-1) regarding selection for promotion to Group-B service in Operating Branch of T(T) & C Dep. to his exclusion; (ii) for assigning him seniority w.e.f. 15.11.77 in the grade of Rs.700-900 after regularising his continuous adhoc promotion; and (iii) for issuing a fresh list of candidates for the aforesaid selection only after assigning him his proper seniority.

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The applicant joined Northern Railway as an Assistant Station Master on 1.12.62 and was promoted as Section Controller grade Rs.470-750(RS) vide select list dated 1.1.76 (Annexure A-2). The cadre of Section Controllers and Deputy Chief Controllers was maintained divisionwise in the 8 divisions of the Northern Railway, and a control office functioned in the Headquarters Office, posts in which were filled by transferring staff from different divisions, till 1977. However, in that year, by G.M. Northern Railway letter dated 5.1.77 (Annexure A-3) a separate seniority unit was created in the Headquarters Office and in paragraph 4 of that letter it was stated that such staff of the divisions, who gave their option for promotion in the Headquarters Office, would cease to be eligible to revert to their parent divisions after they were selected and promoted in the Headquarters Office. By notice dated 28.2.77 (Annexure A-4), the applicant, who was officiating as Section Controller grade Rs.470-750(RS), Moradabad Division, was transferred to Headquarters Office in the same capacity on the condition that (i) he was selected for the post of Section Controller in his own division, (ii) he was willing to accept seniority from the date of joining Headquarters Office, and (iii) once he joined that office he forfeited his right to return to his parent division. This notice was subsequently partially modified by notice dated 19.3.77 (Annexure A-5), wherein it was stated that the applicant on transfer to Headquarters Office would continue

to hold his original seniority and would not be assigned seniority from the date of joining in the Headquarters Office. The applicant joined the HQs Office as Section Controller on 19.3.77 (Annexure A-6) and later, by order dated 15.11.77 (Annexure A-8) was promoted to officiate on adhoc basis as Deputy Chief Controller grade Rs.700-900(RS) without conferring any prescriptive right for similar promotion in future. By notice dt. 28.12.81 (Annexure A-9), he was transferred to the post of Transportation Instructor, Zonal Training School, Chandausi, U.P. in the same grade which is also a HQs controlled post. In that notice it was stated that he would continue to enjoy that grade till such time as he would have cosntinuously officiated as Dy. Chief Controller in grade Rs.700-900(RS) in HQ Office. The DRM's Office Moradabad, however, showed him in the promotion list of Dy. Chief Controller against a post made available through restructuring w.e.f. 1.1.84, but although the applicant represented against that, claiming continuous officiation against the post of Dy. Chief Controller in HQ Office w.e.f. 15.11.77, his claim was not allowed. He avers that he was thereby also not considered for promotion to Group-B post in T(T) & C Deptt., section for which were shdeduled in March, 1988. The applicant states that the DRM, Moradabads Office, has conceded that they had erroneously showed him as promoted to the post of Dy. Chief Controller w.e.f. 1.1.84 as a resut of restructuring vide their letter

dated 17.6.87 (Annexure A-7), and his repeated representations for fixing seniority as Dy. Chief Controller w.e.f. 15.11.77 have proved fruitless because neither the Moradabad Division nor the HQs Office accepts him as their own.

In reply, the main points urged by the respondents is that although the HQs Office was named as a separate unit as per notification dt. 5.1.77, it was physically established as such only in November, 1984 when the first panel of Section Controllers grade Rs.470-750(RS) was formed by holding selections internally. It is claimed that the modification introduced by the notice dated 19.3.77 implied that although the applicant was transferred from Moradabad Division to HQ Office, he continued to retain his original seniority in Moradabad Division on the post of Section Controller on which he held lien. He was, therefore, considered by Moradabad division for promotion to the post of Dy.C.C. w.e.f. 1.1.84 which became available as a result of restructuring and he cannot claim the benefit of counting seniority as Dy.C.C. in the HQs. Office w.e.f. 15.11.77 as it was purely an adhoc promotion, without giving him any prescriptive right for promotion in the future.

We have heard Shri G.D. Bhandari, learned counsel for the applicant as well as Shri K.K. Patel, learned counsel for the respondents.

In the light of the various annexures, referred to above, and relied upon by Shri Bhandari, the contents which have not been refuted by Shri Patel we are compelled to conclude that the applicant was transferred from the Moradabad Division to the HQs Office as officiating Section Controller on 28.2.77, and he joined on 19.3.77 (Annexure A-6). No doubt it was stated vide notice dt. 19.3.77 that he would continue to retain his original seniority, but having joined the HQ Office, his option to revert back to Moradabad Division was deliberately closed, and w.e.f. 19.3.77 he must be treated as belonging to the HQ Office where he was given ad hoc promotion as dy.c.c. w.e.f. 15.11.1977. In spite of adequate opportunity being given to Shri Patel, he was unable to produce a single document to substantiate the respondents' claim that although the separate HQs unit was notified on 5.1.77, it was physically established only in November, 1984. The Dy. Railway Manager, Moradabad office has itself recognised its error in showing the applicant's name in the promotion list as Dy.C.C. w.e.f. 1.1.1984 (Annexure A7) and have conceded that he was promoted as Dy.C.C. in Head Quarters office w.e.f. 15.11.1977 and no satisfactory answer has been given by the respondents to this point beyond stating that the Dy.Railway

Manager, office is subordinate to the Head Quarters office and the contents of a letter from the subordinate office cannot necessarily be accepted by the Head quarters office.

As averred by the applicant, he was promoted as Dy. Chief Controller grade Rs.700-900(RS) in the HQ Office w.e.f. 15.11.77, initially on officiating basis but later on continue to work against a substantive post and there has been no break in his service against that post. Although no document has been produced before us to show whether there has been any break or not, after the applicant was initially appointed on officiating basis as Dy. Chief Controller in the HQ Office, and under the circumstances the benefit of continuous officiation w.e.f. 15.11.77 will accrue to him cannot be denied to him, provided (i) he has not been reverted from the post of Dy.C.C. at any time till the date he was regularised against that post and (ii) none of those senior to him consequent to his being granted ad hoc promotion as Dy. Chief Controller w.e.f. 15.11.77 are adversely affected.

Under the circumstances, the respondents are directed to examine if the above two provisos are fully met and if so they will have no option but to count the applicant's seniority as Dy. Chief Controller w.e.f. 15.11.77, and if in consequence thereof he becomes eligible to be considered for promotion to Group-B in the ensuing selection, he should be so considered.

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This application is disposed of accordingly with the
above directions. No costs.

Adige
(S.R. ADIGE)
MEMBER (A)

Sharma
B-3-21
(J.P. SHARMA)
MEMBER (J)