

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.863/87

DATE OF DECISION: 10.1.1992.

SHRI RADHEY SHAM GUPTA ...APPLICANT

VERSUS

UNION OF INDIA & ORS. ...RESPONDENTS

CORAM:

HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

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

FOR THE APPLICANT SHRI G.D. BHANDARI, COUNSEL

FOR THE RESPONDENTS SHRI P.S. MAHENDRU, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. I.K. RASGOTRA, MEMBER (A))

The case of the applicant as put across by Shri G.D. Bhandari, learned counsel is that he was appointed as Assistant Station Master (ASM) on the Northern Railway on 4.10.1955. He was promoted as Section Controller grade Rs.450-700 on 24.12.1969 on adhoc basis. Vide Notice issued by the respondents on 25.9.1976, the service of the applicant was regularised. The said Notice reads as under:-

"Consequent on the empanelment of the following staff their adhoc promotion as Section Controllers grade Rs.470-750 (RS) already made stands regularised..."

The applicant appears at srl. No.11 of the said Notice. On 21.4.1979, however, another order was issued, the subject heading of which reads as under:-

"Selection of the posts of Section Controller grade Rs.450-750 (RS) as a result of written test and interview held for the post of Section Controllers grade Rs.470-750 on 21.12.75, 4.1.76, 21.3.76, 27.3.76, 24.3.76, 1.5.76,

31.3.77, 6.6.77 and 11.7.77. The following staff have been selected and placed on the panel in the order of seniority...."

The applicant in this list appears at srl.No.9.

The applicant contends that since adhoc appointment stands regularised vide Notice dated 25.9.1976, he should have been reckoned as Section Controller for purpose of further promotion etc. w.e.f. 24.12.1969 and his seniority regulated accordingly. He would have thus figured in the list of eligible candidates called for supplementary selection for promotion to Group 'B' in the Notice issued vide order dated 28.2.1987.

By way of relief he has prayed that he should be deemed as regularised w.e.f. 24.12.1969 - the date on which he was promoted as Section Controller (Rs.450-700) on adhoc basis and his subsequent selection for higher posts and eligibility for selection to Group 'B' posts be regulated accordingly.

In their counter-affidavit the respondents have contended that the applicant was promoted as Section Controller purely on temporary basis in local arrangement pending selection of the relieving transportation assistant through which category the post of Section Controller used to be filled. The channel of promotion, however, was changed with the abolition of the category of relieving transportation assistant subsequently and, therefore, category of ASM became eligible for regular selection for the post of Section Controller. The applicant was, therefore, regularised as such w.e.f. 28.8.1976. They further submit that the post of Section Controller is a selection post and is filled from the staff of the eligible categories by a positive act of selection. They further maintain that the applicant has been assigned seniority

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correctly.

The learned counsel for the respondents Shri P.S. Mahendru, further, submitted that the applicant had been selected and promoted as Chief Controller in the grade of Rs.840-1040 w.e.f. 6.4.1987 and that the seniority assigned to him on the basis of his regularisation as Section Controller vide order dated 21.4.1979 was not objected to by him at any stage. If he was aggrieved against the seniority assigned to him as Section Controller, he should have agitated the matter at proper and suitable time. He, therefore, contended that the matter was time barred. On our pointing out to the learned counsel for the respondents that in the Notice dated 25.9.1976 the applicant figures at srl. No.11 while in the order dated 21.4.79 he figures at srl. No.9, the learned counsel submitted that he would like to go through the papers and argue the case in the afternoon. In the afternoon we waited for him for over one hour but he was not available. Shri D.S. Mahendru, proxy counsel for Shri P.S. Mahendru, learned counsel for the respondents submitted that the latter is arguing another case in Court No.V and that he would like to be heard further in the matter.

The Learned counsel for the applicant supplemented his arguments on 7.1.1992. However, Shri P.S. Mahendru, learned counsel for the respondents had prayed for hearing him on 8.1.1992, as he could not be present due to his pre-occupation elsewhere.

The learned counsel for the respondents appeared on 8.1.1992 and referring to the counter-affidavit filed by the respondents submitted that the applicant was selected as Section Controller and regularised as such w.e.f. 28.8.1976. The post of

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Section Controller is a selection post and is filled by a positive act of selection. To our query that if the applicant was regularised vide Notice dated 25.9.1976 how has he been treated as having been regularised again vide order dated 24.1.1979 and further how has the seniority of the applicant undergone a change from serial No.11 as per notice of 25.9.1976 to serial No.9 as given in the order dated 24.1.1979, the learned counsel submitted that selections were held on various dates as indicated in order dated 24.1.1979 and the consolidated list of selected persons was issued vide the said order. We, however, observe that instead of making annual selection as enjoined by the relevant rules governing selection. The selection in this case seems to have spread over the years 1975, 1976 and 1977. This, however, is not a material point for disposal in this O.A. Nonetheless, the admitted position is that the applicant was regularised w.e.f. 28.8.1976 whereas he claims that he should be deemed to be regularised from 1969 when he was initially appointed as Section Controller on adhoc basis and further be assigned benefit of seniority from that date.

The adhoc service can be counted for the purpose of seniority etc. if the initial appointment is made according to rule. (**The Direct Recruit Class II Officers Association v. State of Maharashtra & Ors. JT 1990 (2) SC 264**) and (**C.V.K. Naidu & Ors. v. UOI & Ors. Full Bench Judgements CAT (1989-1991) Vol.II 169**)

Since the appointment on adhoc basis was not according to rule, the benefit of adhoc service cannot be conferred on the applicant for the purpose of seniority. He is, however, entitled to be treated as

regular Section Controller w.e.f. 28.8.1976.

The next issue raised by the learned counsel for the applicant is that had the applicant been assigned seniority taking his date of regularisation as 28.8.1976 he would have been eligible for selection for Group 'B' post in the Transporation (Traffic) and Commercial Department against 75% of the vacancies. The learned counsel also drew our attention to the decision of the Tribunal in **OA 2420/89** decided on **24.10.1989** and submitted that the applicant should be granted the benefit of being fixed in Group 'B' applying the ratio of the judgement in the said O.A.

We have considered the submissions of learned counsel for both the parties and perused the records. As far as the seniority is concerned, for the reasons given above we order and direct that the respondents shall review the case of the applicant and place him suitably in the seniority list of Deputy Chief Controllers and Chief Controllers in accordance with the seniority assigned to him on the basis that he was a regular Section Controller w.e.f. 28.8.1976. We further direct that the applicant shall be fixed notionally in the grade of Deputy Chief Controller and Chief Controller from the date he would have been promoted, had his seniority been assigned to him, deeming his promotion as Section Controller as regular w.e.f. 28.8.1976.

Regarding appointment to Group 'B', we are of the view that the applicant had to be selected for the said post. He had to appear in the written test and viva voce, as is apparent from the notification dated 28.2.1987, issued for supplementary selection by the respondents. Unless the applicant qualifies in the written test and the viva voce and placed on the select list, he cannot be given the benefit of Group

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'B' post. We cannot assume that had the applicant appeared in the supplementary selection for Group 'B' post, he would have been selected and placed on the select list. We, therefore, cannot consider granting him any relief in this respect on the basis of conjectures and assumptions. The judgement in OA 2420/89 decided on 24.10.1989 is of no help to the applicant, as in that case the issue related to adhoc promotion to a Group 'A' post. The said judgement is, therefore, distinguishable from the facts of this case.

In conclusion, the applicant shall be assigned seniority as Section Controller w.e.f. 28.8.1976 with notional fixation of pay in the grade of Deputy Chief Controller and Chief Controller. He shall also be entitled to pension and other retirement benefits at the revised rate, reckoning his emoluments for the last 10 months as per the pay notionally fixed in the relevant grade, the applicant having finally retired w.e.f. 31.12.1988 voluntarily. He shall also be paid arrears on account of pension with interest at 12% w.e.f. 1.4.1989 to the end of the month preceding the date of actual payment. We further direct that the above orders shall be implemented within 12 weeks from the date of communication of this order.

There will be no order as to costs.

J. P. Sharma

(J.P. SHARMA)

MEMBER(J)

I. K. Rasgotra

MEMBER(A)

January 10, 1992.

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