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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA. No. 2021/90

Dated this the 30th Day of October, 1995.

Hon'ble Shri S.R. Adige, Member(A)
Hon'ble Dr. A. Vedavalli, Member(J)

Shri R.K. Rawat,
S/o Shri Raj Kumar Rawat,
Chief Controller,
Northern Railway,
D.R.M. Office,
Moradabad (U.P.)

R/o 119, Avas Vikas,
Civil Lines,
Moradabad (U.P.) ...Applicant.

By Advocate: Shri G.D. Bhandari, counsel for the
applicant.

versus

1. Union of India through
The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Moradabad (U.P.)
3. The Principal,
Zonal Training School,
Northern Railway,
Chandausi,
Distt. Moradabad (U.P.) ...Respondents

By Advocate: Shri P.S. Mahendru, counsel for the
respondents.

Shri Karan Singh, Office Superintendent, departmental
representative on behalf of the respondents.

O R D E R (Oral)

(By Hon'ble Shri S.R. Adige)

In this application Shri R.K. Rawat, Chief
Controller, Northern Railway, DRM Office, U.P. has
impugned the order dated 6.3.90 (Annexure A-1)
refixing his pay, treating the post in the Control
Office as a separate cadre and with a separate
seniority unit from 1984 instead of 5.1.77 as also the
letter dated 7.7.90 (Annexure A-3) directing recovery

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of Rs.47,775.90 from the applicant for the period he worked as Instructor on the Zonal Training School, Chandausi.

3. Shortly stated, the applicant joined the Northern Railway as an Assistant Station Master on 1.12.62 and was promoted as Section controller vide select list dated 1.1.76. The cadre of Section Controller and Deputy Chief Controller was maintained division-wise in the eight Divisions of the Northern Railway and a Control office functioned in the H.Q. office, posts in which were filled up by transferring staff from different division till 1977. However, in that year, by G.M. Northern Railway's letter dated 5.1.77, a separate seniority unit was created in the H.Q. Office and it was stated in that letter that such staff of the divisions who gave their option for promotion in the H.Q. Office would cease to be eligible, to be reverted to their parent office after they were selected and promoted in the H.Q. Office. By notice dated 28.2.77, the applicant who was officiating as Section Controller Moradabad division was transferred to the H.Q. Office in the same capacity on the condition that he was (i) selected for the post of Section Controller in his own Division, (ii) he was willing to accept seniority from the date of joining the H.Q. Office and (iii) once he joined that office, he forfeited his right to join the parent department. This notice was subsequently partially modified by notice dated 9.3.77 wherein, it was stated that the applicant on transfer to the H.Q. Office would continue to hold his original seniority and

would not be assigned seniority from the date of joining H.Q. Office. The applicant joined H.Q. Office as Section Controller on 19.3.77 and was promoted to officiate on adhoc basis as Deputy Chief Controller by order dated 15.11.77. Later, by notice dated 28.12.81, he was transferred to the post of Instructor Zonal Training School, Chandausi in the same grade, which is also an H.Q. controlled post.

4. It appears that in reply to the Principal Zonal Training School, Chandausi letter dated 28.2.90, the H.Q. office in their impugned letter dated 6.3.90 informed him that it was not correct that the H.Q. unit of Central Control was a separate cadre at the time of the applicant's posting as adhoc Instructor on 2.12.91 in the grade admissible for Deputy Chief Controller (Rs.700-900) on 2.12.81, as the office was finally approved as a separate entity only in 1984. The applicant was holding his lien in his Division and was working as Deputy Chief Controller (Rs.700-900) against an ex-cadre post in the H.Q. office, prior to their posting as adhoc Instructor on 2.12.81 and their pay had to be fixed accordingly. Accordingly, the Principal Zonal Training School Chandausi in his letter dated 7.5.90 informed the Divisional Accounts Office Moradabad that the applicant was not entitled to get the benefit of the ex-cadre office while working as Instructor at Zonal Training School Chandausi as a result, of which, he was over paid and accordingly, by the impugned letter dated 7.7.90, a sum of Rs.42,575/- is sought to be recovered from him.

5. In this connection, the applicant had separately filed OA.616/88 in the Tribunal seeking a protection for:-

(i) quashing the order dated 18.3.88 regarding selection for promotion to group 'D' services in the Operating Branch of T(T) & C Department to his exclusion.

(ii) Assigning him seniority w.e.f. 15.11.77 in the grade of Rs.700-900 after reckoning his continuous adhoc promotion.

(iii) for issuing a fresh list of candidates for the aforesaid selection only after assigning him his proper seniority.

6. After completion of pleadings and hearing both sides, that OA was disposed of by judgement dated 5.3.93 wherein it was held that the benefit of continuous affiliation w.e.f. 15.11.77 could not be denied to the applicant provided (i) he had not been reverted from the post of Deputy Chief Controller at any time, till the date he was regularised in that post and (ii) none senior to him consequent to his being granted adhoc promotion as Deputy Chief Controller w.e.f. 15.11.77 would be adversely affected. The Tribunal held that if the above two provisos were fully met, the respondents would have no option but to treat the applicants seniority as Deputy Chief Controller w.e.f. 15.11.77.

7. It appears that some time after the judgement had been delivered, the applicant also filed CCP 409/93 alleging non-implementation of the Tribunal's judgement dated 5.3.93 and in view of the direction given vide dated 26.4.95 in that CCP read with judgement in OA.616/88, the applicant has been shown as having been given regular promotion in the scale of Rs.700-900 revised to Rs.2000-3200 w.e.f. 15.11.77 and interpolated at S1.2(A) of the seniority list of Transportation Staff working in Grade Rs.2000-3200 and above as on 1.1.94.

8. The respondents in their reply to this OA.2021/90 have taken the stand that as the applicant was promoted as Deputy Chief Controller (Rs.2000-3200) w.e.f. 15.11.77 purely on adhoc basis by local arrangement, and he was regularised as Deputy Chief Controller only w.e.f. 1.1.84, the pay that he drew as Deputy Chief Controller (Rs.2000-3200) during his posting as Instructor Zonal Training School Chandausi, can be protected only from 1.1.84 onwards and he cannot get pay protection from 26.12.81 to 31.12.83 and hence the impugned recoveries are in order, but in view of the fact that the respondents have in compliance of the Tribunal's judgement dated 5.3.93 in OA.616/88, regularised the applicant in the scale of Rs.700-900 revised to Rs.2000-3200 w.e.f. 15.11.77, the applicant would also be entitled to pay protection in the scale of Rs.2000-3200 from 26.12.81 to 31.12.83 and hence the pay drawn by him right from 26.12.81 upto 31.10.88 on which date he proceeded on promotion to Moradabad Division as Chief Controller

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(Rs.2375-3500) would have to be in the scale of Rs.700-900 revised to Rs.2000-3200 and no recoveries would be due from him.

9. In the result, this OA succeeds and is allowed. The interim order dated 4.10.90 restraining the respondents from effecting recoveries as per the impugned order dated 7.7.90 is made absolute and recoveries, if any, already made should be refunded to the applicant within 2 months from the date of receipt of a copy of this judgement. No costs.

A. Vedavalli

Dr. A. Vedavalli
Member(J)

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S.R. Adige
(S.R. Adige)
Member(A)