

26

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A./~~PA~~. No. 2235/90 /19

Decided on: 23.2.96

Shri S.C.Sharma. APPLICANT(S)
(By Shri G.D.Bhandari. Advocate)

VERSUS

UDI & others. RESPONDENTS

(By Shri P.S.Mahendru. Advocate)

CO RAM

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

THE HON'BLE ~~SHRI/SMT~~ / DR. A.VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not? **Yes.**
2. Whether to be circulated to other Benches of the Tribunal ?

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

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No. 2235 of 1990

New Delhi, dated the 23rd February, 1996

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

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri S.C. Sharma,
S/o Shri R.L. Sharma,
Vice-Principal,
Zonal Training School,
Chandausi, Distt. Moradabad,
U.P. APPLICANT
(By Advocate: Shri G.D. Bhandari)

VERSUS

1. Union of India through
the General manager,
Northern Railway,
Baroda House, New Delhi.
2. The Divl. Rly. 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)

J U D G M E N T

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

In this application Shri S.C.Sharma has impugned the order dated 6.3.90 (Ann.A-1) and dt. 2.1.90 (Ann. A-3) and the rejection of his appeal dt. 23.5.90 (Ann.A-7), ordering recovery of excess salary amounting to Rs.29480/- in monthly instalments of Rs.1000/-.

2. The applicant's case is that he was appointed as a Gaurd Grade 'C' in the Indian Railways on 22.4.63 after being selected in the Indian Railways and was posted in Bikaner Division in Northern Railway till 1978. In

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October, 1978 he was selected as Sectional Controller (Grade Rs.470-750) and was transferred from Bikaner Division and was posted in the Central Control Office, H.Q. Baroda House, New Delhi vide Respondents letter dated 21.7.79 (Ann. A-8). He further states that the post of Sec. Controller is a feeder post to the next higher post of Dy. Chief Controller (Gr. Rs.700-900) which is a non-selection post, to which promotions are made on seniority-cum-suitability basis. He further avers that while working as Sectional Controller in H.Q. he was promoted as Dy. Chief Controller (Gr. 700-900) w.e.f. 22.5.80 vide orders dated 28.5.80 (Annexure A-9). He contends that the cadre of Section Controllers and Dy. Chief Controllers is a divisional controlled post and seniority unit was created in H.Q. office vide orders dated 5.1.77 (Annexure A-2), and it is his contention that in the light of paragraph 2 of that order, he was transferred from Divisional Seniority unit to H.Q. Seniority Unit and thus ceased to hold his lien in the Divl. Office. He further states that by respondents letter dated 21.12.81, while working as Dy. Chief Controller (Gr. 700-900) through admittedly on ad hoc basis, he was transferred to work as Transportation Instructor, Zonal Training School, Chandausi which is an ex-cadre post where he joined on

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26.12.81. He further states that at about the time he joined as Instructor, the respondents issued order dated 2.12.81 (Annexure A-12) that as he had been promoted as Dy. Chief Controller only on ad hoc basis his transfer in the same grade of Rs.700-900 as Instructor would be subject to the condition that he would be allowed to draw that grade of pay i.e. Rs.700-900 only upto the period he continued to be deemed to have continued to officiate as Dy. Chief Controller on ad hoc basis in the H.Q. office. It is further stated that consequent to pay scale restructuring many promotions were ordered and in Bikaner Div. certain Station Controllers were promoted as Dy. Chief Controllers w.e.f. 1.11.84 in which applicant's name was also included (Ann.A-13), but apparently the applicant did not join there, but had given his option on 26.11.81 and 21.12.81 (Ann.A-10 & A-11) for retention of his lien in the Central Control Office, and had represented for determination of his seniority in Central Control Office itself (Ann. A-14) but had received no response. His promotion in Grade 700-900 was regularised vide letter No. E.T/85/SCWI/23/Roster dated 12.2.84 while working as Transportation Instructor at Zonal Training

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School, Chandausi (Rs.700-900) he was selected as a Group 'B' Officer (Rs.2200-3500) and was promoted as Vice-Principal on 11.3.88 (Annexure A-15), upon which he opted for pay fixation under Rule 2017 (A)(1) - R II from the date of his next increment (Ann. A-16). The applicant states that Resp. No.3 wrote to Resp. No.2 on 13.10.88 for fixation of the applicant's pay accordingly, such that the applicant's pay was fixed at Rs.2900/- w.e.f. 1.5.88 i.e. the date of his next increment but despite several reminders and the applicant's own representations there was no response. The applicant further states that while this matter was pending, Resp. No.2 i.e. Principal, ZTS, Chandusi ordered recoveries of Rs.29,450/- from the applicant's salary in monthly instalments of Rs.1000/- against which also he filed representations, but receiving no response, he has filed this O.A.

3. The respondents in their reply have contested the O.A. Apart from taking the ground, that the applicant had not exhausted the departmental remedy of making representations, and that the applicant is working in U.P. which lies outside the jurisdiction of the Principal Bench, it is contended that the Central Control Office could not be constituted as a separate unit in terms of order dated 5.1.77 due to admini-

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trative reasons until 1984 vide letter dated 6.3.90 (Annexure A-1) and till then the H.Q. Office posts remained ex-cadre posts. It is thus averred that the applicant was promoted as Dy. Chief Controller w.e.f. 28.5.80 only on ad hoc basis. The said post was a non-selection post and promotions were made on the basis of seniority-cum-suitability. It is stated that the applicant's lien was in Bikaner Div. and there were several persons senior to him in the junior grade (Rs.470-750). The case of Shri L.S. John has been cited who was senior to the applicant and who had filed OA. No.387/87 in the CAT, Principal Bench which was disposed of by judgment dated 18.11.88 in which it was categorically held that the post of Dy. Chief Controller was an ex-cadre post, and hence respondents contend that it is evident that the applicant was not promoted as Dy. Chief Controller in a regular manner, but was holding the post merely as a stop-gap arrangement on purely ad hoc basis, till he left H.Q. Office in Dec. 81 i.e. prior to the formation of the separate unit in 1984. As he was promoted on ad hoc basis from one unit i.e. H.Q. Office to another in ZTS, Chandausi, where also he was working in grade Rs.700-900 (on ad hoc basis) in ^athe stop-gap arrangement, they state that he cannot get the

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benefit of the ad hoc promotion for pay fixation in ZTS and his pay has to be fixed with reference to his substantive pay as his lien was in Bikaner Div. The Respondents denied that R-3 ever wrote letter dated 13.10.88 to R-2 and they termed it a false and fabricated document. Other contentions raised by the applicant are also denied and it is urged that the O.A. is fit to be dismissed.

4. The applicant in his rejoinder has broadly reiterated the contents of the O.A. and has denied the averments made in the reply. It has also been strongly contended that the letter dated 13.10.88 is not a fabricated document.

5. We have heard Shri G.D. Bhandari for the applicant and Shri P.S. Mahendru for the Respondents. We have also perused the materials on record and given the matter our careful consideration.

6. For the applicant's claim to succeed he has to establish that the post of Dy. C.C. he was holding in H.Q. unit of Central Control in the scale of Rs.700-900 w.e.f. 28.5.90 was a separate cadre post which he was holding on regular basis at the time of his posting as Instructor in ZTS, Chandausi on ad hoc basis on 2.12.81. This is necessary because under rules a person

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promoted from one ad hoc unit to another unit cannot get the benefit of higher pay in the other unit.

7. In this connection we note from the judgment in L.S. John's case (Supra) that the Tribunal had clearly held that the post of Dy. C.C. in H.Q. unit of Central Control being held by the applicant was an ex-cadre post. No materials have been produced before us to lead us to conclude that the said judgment has not become a final one. As regards the basis ^{of} which that post was held (ad hoc or regular) the applicant has himself conceded in paragraph 4(xxvi) of his O.A. that he was holding the post of Dy. C.C. in H.Q. unit on ad hoc basis.

8. Shri Bhandari has heavily relied upon the Tribunal's judgment dated 5.3.93 in O.A. 616/88 R.K. Rawat Vs. UOI. In that judgment the Tribunal had held that the benefit of continuous officiation on the post of Dy. C.C. in H.Q. Office w.e.f. 15.11.77 could not be denied to Shri Rawat provided (i) he had not been reverted from that post of Dy. C.C. at any point of time till he was regularised against that post and (ii) none of those senior to him consequent to his being granted ad hoc promotion as Dy. C.C. w.e.f. 15.11.77 were adversely affected.

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9. The judgment in Rawat's case (Supra) has admittedly been implemented by the Respondents, but the difficulty in extending the benefits of that judgment to the present applicant are two fold. Firstly, the law regarding the benefit of continuous officiation where ad hoc service is followed by regularisation has itself been crystalised as a result of the judgment dated 13/14.9.93 in O.A.727/87 I.K. Sukhija & Anr. Vs. UOI & Ors. and othe ronnected cases which has discussed a catena of Supreme Court pronouncement, on the subject. There is nothing^{which} has been shown to us to suggest that the said judgment in Sukhija's case (Supra) has been stayed, set aside or modified, and manifestly the conditions necessary for the grant of benefit of continuous officiation as outlined in that judgment, are not fulfilled by the applicant in the present case, because neither was the appointment as Dy. C.C. made ~~separately~~^{strictly} in accordance with the rules, nor was the period of officiation of the duration of 15-20 years. Secondly, the relief granted to Shri Rawat was itself predicated on the important proviso that none senior to him, consequent to his being granted the benefit of continuous officiation as Dy. C.C., would be adversely affected. In the present matter

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before us in L.S. John's case (Supra) it has been clearly held that Shri John was senior to the applicant and no materials have been furnished by the present applicant to satisfy us that by granting him the relief prayed for, Shri John would not be adversely affected, or that the judgment in John's case has not become final and conclusive.

10. Railway Board's letter dated 16.5.73 (Ann. A-25) relied upon by the applicant also does not advance his case, because that letter was issued in the context of a Railway servant's drawing pay in an ex-cadre post, ^{who} ~~and~~ was reverted to his parent cadre, and was appointed in that cadre to a post higher than the ex-cadre post he was holding, immediately before his reversion. Those circumstances are nowhere found in the present case.

11. In the result we find ourselves unable to grant the relief prayed for by the applicant. It also appears from the applicant's letter dated 25.6.90 that he had filed a representation against recoveries and he had been given a personal hearing by the Respondents on 5.6.90, therefore, it cannot also be said that the recovery ~~has~~ ^{is} been ordered without giving the applicant an opportunity of being heard. However, before parting with this case we note that the applicant has been called upon to refund

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nearly Rs.30,000/-. The applicant who filed this O.A. on 22.10.90 and gave his age as about 53 years at that point of time he would have retired by now, or at rate would on the very verge of retirement. Under the circumstances, ~~it~~[^] having regard to the applicant's age and all other ~~surrounding~~[^] factors, if upon a self-contained representation filed by the applicant to the Respondents praying for waiver of further recoveries from him, ~~and~~[^] the Respondents upon sympathetic consideration of the same are inclined to waive any or all the recoveries, nothing contained in this judgment will operate as a bar to them ~~in~~[^] doing so.

12. This O.A. is disposed of in terms of paragraph 11 above. No costs.

A. Veda Valli

(DR. A. VEDAVALLI)
Member (J)

S. R. Adige

(S.R. ADIGE)
Member (A)

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