

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI.

(16)

OA No.2342/91

Date of decision:- December 11, 1992

Sh.V.K.Upadhyaya .. Applicant  
versus

Union of India through  
General Manager,  
Northern Railway,  
New Delhi & anr. ... Respondents

CORAM: THE HON'BLE SH.P.C.JAIN, MEMBER(A)  
THE HON'BLE SH.J.P.SHARMA, MEMBER(J)

For the Applicant .. Sh.G.D.Bhandari, Counsel.

For the Respondents .. Sh.P.S.Mahendru, Counsel.

JUDGEMENT

(Delivered by Hon'ble Sh.P.C.Jain, Member(A))

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has assailed the communication dated 2.7.91 from Divisional Railway Manager's office, Northern Railway, Moradabad (Annexure A-1) in which his prayer in regard to promotion for the post of Deputy Chief Controller in the grade of Rs.2000-3200/- and for promotion on regular basis with retrospective effect from 14.11.80, have been rejected. He has prayed for quashing of the aforesaid impugned order as also for a direction to the respondents to consider him for promotion as Deputy Chief Controller in the aforesaid grade on the basis of his continuous long officiation from 14.11.80, from the date his junior was promoted

u.

17

as Deputy Chief Controller with all consequential benefits of pay fixation, arrears etc. and other ancillary monetary benefits.

2. The respondents in their reply have contested the OA to which rejoinder has also been filed by the applicant. In the OA, the applicant did not request for any interim direction but by means of MP No.4205/91 filed on 16.12.91, he prayed for restraining the respondents from implementing his reversion orders from the post of Deputy Chief Controller as he had not been reverted by that time as he was on medical leave. By an order passed on 21.5.92 an interim direction was issued to the respondents to maintain status quo in respect of the applicant, as of that date, with respect to the post of Deputy Chief Controller (Coaching), if not already reverted till the next date. A perusal of the ordersheet shows that this interim order does not appear to have been continued thereafter.

3. As the pleadings in this case were complete, it was decided with the consent of the parties to finally dispose of this OA at the admission stage itself. Accordingly, we have perused the material on record and also heard the learned counsel for the parties.

(1)

(B)

4. Briefly stated, the facts relevant to the issue for adjudication in this case, are that while working as Assistant Station Master in the Moradabad Division of Northern Railway, the applicant was appointed to officiate on ad hoc basis on the post of Section Controller in the then scale of Rs.470-750 with effect from 14.11.80 and orders in this connection were said to have been issued on 29.9.81. A copy of this order has not been brought on record by either party but the facts are not in dispute. The applicant was one of the six Assistant Station Masters who are said to have been appointed to officiate on ad hoc basis as Section Controllers in the Moradabad Division. By an order dated 18.5.89 (Annexure A-3), Northern Railway Headquarters, New Delhi communicated to the Divisional Railway Manager, Moradabad that after discussion in the PNM meeting with the General Manager on 17.5.89, "it has been decided that the six ASMs officiating as Section Controller on ad hoc basis may be booked for P-16 course to be held next at Zonal Training School, Chandussi and on their possessing the said course they may be regularised by placing them below all selected and empanelled Section Controllers Grade Rs.470-750(RS)/Rs.1400-2600(RPS) of your division and no viva-voce test is to be taken."

Ques.

Accordingly, the applicant was deputed to the training course from 16.6.89 to 18.9.89 and <sup>in</sup> the result dated 2.4.90(Annexure A-4) he is shown to have passed. On 11.4.90, orders for his regularisation as Section Controller were passed (Annexure A-2). It was also stated in these orders that the seniority shall be fixed below all the regular Section Controllers. Thereafter, the applicant sent a number of representations claiming to be regularised with effect from the initial date of his ad hoc appointment in 1980. It is stated that he did not receive any reply to his representations except the one dated 2.7.91 which has been impugned in this case. The applicant also stated in his Misc.Petition,adverted to above that he was ordered to work as Deputy Chief Controller(Coaching) in the scale of Rs.2000-3200/- in July 1990 and that formal orders of his posting as Deputy Coaching were issued on 24.7.90(Annexure A-16),but the orders were issued on 10.12.91(Annexure A-16a) under which he has been relieved from the post of Deputy Chief Controller and ordered to work on an ex cadre post of Instructor,Safety School which is a post which is generally manned by an officer of the rank of Section Controller and in a lower scale of pay than the post of Deputy Chief Controller. Hence, this OA.

C.

5. It is not in dispute that the post of Section Controller is a selection post and the procedure for selection comprises of a written test as well as viva-voce test. The applicant has neither claimed in his OA nor has shown otherwise that he ever passed through the prescribed selection for regular appointment to the post of Section Controller. Further, it is also not in dispute that his appointment to the post of Section Controller in 1980 was on ad hoc basis and it continued to be so till he was regularised on this post by orders issued on 11.4.90. Thus, his initial appointment in 1980 to the post of Section Controller cannot be said to be in accordance with the rules nor his subsequent regularisation in 1990 can be said to be after his having been selected through prescribed procedure for selection. The orders issued on 18.5.89(Annexure A-3) clearly show that the orders for his regularisation along with 5 other similarly placed ASMs were in the nature of an exception outside the scope of the rules, and as such the applicant cannot rely on one part of the package ignoring the other. These orders clearly state that he was first to be sent to P-16 training course and on passing the said course, he was to be regularised by placing him below all selected and empanelled Section

Ce.

Controllers. These orders have been complied with by DRM, Moradabad. It is not now open to the applicant to claim seniority contrary to these orders and particularly when his initial appointment on ad hoc basis and his subsequent regularisation as aforesaid were not in accordance with the rules. The mere fact of his continuous officiation in these circumstances does not give any vested right of claiming seniority for the period of ad hoc officiation on subsequent regularisation. In a similar case which came up for consideration before a Division Bench of the Central Administrative Tribunal in OA 486/87 between Suresh Kumar Sharma Vs. Union of India & ors., decided on 8.9.92 it was held as below:-

" So far as the claim of the petitioner for granting him seniority from the date of his original appointment in the year 1984 is concerned, the question stands concluded by the decision of the Supreme Court. A Constitution Bench of the Supreme Court has ruled in JT 1990 (2) SC 264 between Direct Recruit Class II Engineering Officers' Association Us. State of Maharashtra and Others that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such a post cannot be taken into account for considering the seniority. This decision was followed subsequently in another decision of the Division Bench of the Supreme Court in JT 1992(2) SC 491 Union of India Vs. Sh. S. K. Sharma, Professor of Civil Engineering Punjab Engineering

(22)

College, Chandigarh. The law is, therefore, well settled that if the initial appointment is only ad hoc and not made according to rules and made as a stop-gap arrangement, that service cannot be taken into account for considering the seniority. As the petitioner was appointed on purely ad hoc basis and this was a stop-gap arrangement pending filling up the post on regular basis in accordance with the rules after holding a proper test for that purpose, we have no hesitation in holding that the petitioner cannot claim seniority from the date of his ad hoc appointment in the year 1984. He can, however, claim his seniority from the date on which he was regularly selected in the year 1988. Hence, it is not possible to grant the second relief either."

6. Another ground taken by the applicant is that he had been granted the regular pay scale of Rs.1400-2600 from the date of his ad hoc promotion in November, 1980 to the post of Section Controller and that he was granted increments in that scale year after year. This contention does not help him in getting seniority for the period of ad hoc officiation as an employee has to be paid in the pay scale for the post on which he works. Similarly, the contention that no adverse remarks had been awarded to him nor was any punishment inflicted on him, <sup>does not</sup> help the applicant. These two aspects may be relevant for his selection in accordance with the prescribed procedure but in themselves do not help the applicant in getting

Q.

(23)

seniority for the period of ad hoc promotion.

7. Another ground taken is that the impugned orders are contradictory to respondents' own orders dated 18.5.89 inasmuch as the stipulation of passing the course applies only for the purpose of regularisation of the ad hoc promotion and once ad hoc promotion is so regularised it has to relate back to the initial date of ad hoc promotion. We have already dealt with this contention in the preceding paragraphs. The decision for regularisation of the applicant is inter alia subject to the condition that he will be placed below all selected and empanelled Section Controllers. There is no contradiction, as alleged.

8. Another contention is that the action of the respondents is in grave violation of the principles of natural justice as no notice had been served on the applicant and he was not given an opportunity to show cause as to why his seniority should be reckoned only from the date of his regularisation i.e. 11.4.90 as against 14.11.80. This contention is not tenable as the orders regarding regularisation of the applicant are self-contained. In pursuance of these orders, he was deputed to the P-16 course. He did not raise any protest at that time. It is only after

(22)



24

the impugned orders of his regularisation were issued in pursuance of the orders relating to his regularisation that the applicant started making representations.

9. Another contention is that the impugned orders are most arbitrary, mala fide and full of hostile discrimination, as the principle of reckoning of seniority on the basis of continuous long officiation has been applied not only in other cadres but in the same cadre in other Divisions of the Northern Railway. If there is any arbitrariness in the orders passed by the competent authority for regularisation of the services of the applicant on the post of Section Controller even without his having gone through the prescribed process of positive selection, it has given benefit to the applicant and cannot be said to be against him. Neither any particulars of mala fide nor relevant particulars in support of the plea of discrimination have been furnished. The legal position in this respect has already been discussed in the preceding paragraphs.

10. As regards his promotion to the post of Deputy Chief Controller in the grade of Rs.2000-3200, the respondents in their reply, have stated that his case was examined and after due

Ques.

(25)

consideration it was held that he was not due for promotion to the aforesaid post on the basis of his regularisation on the post of Section Controller with effect from 11.4.90. It is also submitted by the respondents that no person had been promoted as Deputy Chief Controller since the receipt of the General Manager's letter dated 19.5.89 and that persons promoted as Deputy Chief Controller vide order dated 31.1.91 were senior to the applicant as they were selected/empanelled as Section Controller before the regularisation of the applicant. It is also stated that no junior Section Controller who had not completed two years' service as such, has been promoted to the post of Deputy Chief Controller. His posting to the post of Instructor, Safety School is based on the fact that the applicant was still a Section Controller and, therefore, this posting is neither reversion nor arbitrary and illegal, as alleged, as the applicant has himself admitted that Section Controllers have been working on the post of Instructor, Safety School. It is thus clear that as regards the applicant's promotion to the post of Deputy Chief Controller, he has to take his turn in accordance with the seniority in the feeder cadre of Section Controller.

(12)

11. In the light of the foregoing discussion, we are of the considered view that the applicant is not entitled to the reliefs prayed for by him and the OA is devoid of merit. The same is accordingly dismissed, leaving the parties to bear their own costs.

*J.P. Sharma*  
(J.P. SHARMA)  
MEMBER(J)

*Cec: 11/12/92*  
(P.C. JAIN)  
MEMBER(A)

SNS