

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 29th day of August, 2002.

Original Application No. 1507 of 2001.

C O R A M :- Hon'ble Mr. Justice R.R.K. Trivedi, V.C.
Hon'ble Maj. Gen. K.K. Srivastava, A.M.

P.K. Sharma a/a 44 years S/o Vishnu Kumar Sharma
R/o H-355-F, Railway Harthala Colony, Moradabad.

.....Applicant

Counsel for the applicant :- Sri T.S. Pandey

V E R S U S

1. Union of India through the General Manager,
Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway,
Moradabad Division, Moradabad.
3. Senior Divisional Operating Manager, Moradabad
Division, Northern Railway, Moradabad.
4. Senior Divisional Personnel Officer, Northern Railway,
Moradabad Division, Moradabad.

.....Respondents.

Counsel for the respondents :- Sri Prashant Mathur

O R D E R (oral)

(By Hon'ble Mr. Justice R.R.K. Trivedi, V.C.)

By this O.A under section 19 of Administrative Tribunals Act, 1985, the applicant has challenged the order dated 08.11.2001 (annexure- 1) by which his claim for promotion on regular basis as Section Controller has been rejected.

2. This case has chequered history which started in 1992 when the applicant filed O.A No. 1060/1992 before Principal Bench for the relief that he may not be reverted



from the post of Section Controller to the post of Assistant Station Master (A.S.M.). The claim of the applicant is that though he was holding the post of A.S.M, he was asked to work as Section Controller right from October, 1985 and till date he is working in this capacity. This O.A No. 1060/1992 was dismissed as withdrawn on 27.07.1998. The applicant was given liberty to file a fresh OA. The applicant then filed O.A No. 169/2000 which was disposed of on 27.10.2000 with direction to respondents to decide his representation. The matter again came before this Tribunal and O.A No. 521/2000 was filed which was also disposed of with direction to the respondents to decide the representation by order dated 31.10.2000. Lastly, the O.A No. 128/2001 was filed which was decided on 09.05.2001 with direction to decide the representation of the applicant in pursuance of which order dated 08.11.2001 has been passed. For not accepting the claim of the applicant for promotion, it has been stated that he was never promoted on adhoc basis to work as Section Controller. Though he was serving as A.S.M, his services were utilised as Section Controller and he is not entitled for the benefit, which, in normal course, is applicable to the adhoc employee. It is also not disputed that the applicant is serving as Section Controller from 02.10.1985 till date, though, it has been tried to be explained that he was continued on the post under the interim order passed by this Tribunal.

3. Contesting the claim of the applicant, the respondents have filed the CA in which it has been stated that the applicant was afforded several opportunities and he appeared in the selection test but he failed and he could not be empanelled for being promoted as Section Controller.

4. The learned counsel for the applicant however, placed

before us the circular dated 19.03.1976 (annexure- 6) which reads as under :-

"2.2 Panels should be formed for selection posts in time to avoid ad-hoc promotions. Care should be taken to see while forming panels that employees who have been working in the posts on ad-hoc basis quite satisfactory are not declared unsuitable in the interview. In particular any employee reaching the field of consideration should be saved from harassment."

5. The Principal Bench had occasion to consider this circular in case of Jaipal Sharma and others Vs. U.O.I and others O.A No. 198/1996. This was also a case filed by the A.S.Ms of Allahabad Division of Northern Railway, who were aggrieved by their non-selection to the post of Section Controller. The Principal Bench of this Tribunal after examining the controversy at length concluded as under :-

"Considering that the applicants herein had rendered satisfactory adhoc service for a period of more than 7 years, we find they are also entitled to the benefit of the aforesaid circular dated 19.03.1976. Admittedly, they have passed the written examination and it is only on the basis of the interview that they were inducted in the panel and not found suitable on the basis of the merit position in terms of the aforesaid circular they should not have been declared as failed in the interview. Following the ratio of the Supreme Court in P.C. Srivastava case (Supra) we find that the applicants are entitled to be declared successful in the examination and for inclusion of their names in the impugned order dated 04.10.1995."

6. In the present case also it is their own case of the respondents that applicant in selection held in 1999 secured 22.50 marks out of 35 in written test. However, in interview he secured only 20 marks out of 35. The



applicant was not found eligible for empanelment as he could not secured 60% marks in personal ability i.e. interview. In our opinion, as the applicant had already served for long period as Section Controller right from 1985 to 1999, he was entitled for the benefit of circular dated 19.03.1976 as held by the Principal Bench in case of Jaipal Sharma. The applicant could not be legally failed on account of low scoring in interview. Thus, we are of the view that the applicant is entitled for interpolating his name in the panel prepared in 1999 selection. We have also been informed that the applicant has already passed P-16 examination, the result of which has been declared on 16.02.2002, thus there is no ~~hurdle~~ ^{hurdle} in promoting the applicant as Section Controller on regular basis on basis of the selection held in 1999.

7. The OA is accordingly allowed. The name of the applicant shall be included in the list of Section Controller ^{✓ proposed} on basis of the selection held in 1999 and he shall be treated as Section Controller alongwith other and shall also be entitled for consequential benefits.

8. There will be no order as to costs.



Member- A.



Vice-Chairman.

/Anand/