

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 15th day of May 2002.

QUORUM : HON. MR. S. DAYAL, A.M.
HON. MR. RAFIQUDDIN, J.M.

O.A. No.1136 of 2001.

A.K. Majumdar s/o Late Shri D.L. Majumdar r/o 29 E-F, Central Road, Railway Colony, Tundla, District Firozabad.

..... Applicant.

Counsel for applicant : Sri A. Rajendra.

Versus

1. Union of India through General Manager (P), Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Allahabad Division, D.R.M. office, Allahabad.
3. The Senior Divisional Operating Manager, Northern Railway, Allahabad Division, D.R.M. office, Allahabad.
4. The Divisional Railway Manager, Northern Railway, Moradabad Division, D.R.M. office, Moradabad.

..... Respondents.

Counsel for respondents : Sri A.K. Gaur.

O R D E R (ORAL)

BY MR. S. DAYAL, A.M.

This application has been filed for setting aside the impugned order dated 16.8.2001 and a direction to the respondents to regularise the applicant on the post of Section Controller after completing three years and to provide all consequential benefits admissible to the post.

2. The applicant has claimed that he was appointed as A.S.M. through Railway Service Commission on 9.6.1980 in the pay scale of Rs.330-560/=. He states that Section Control Office under operating department are located at Allahabad and Tundla which are overseen and controlling the running of trains both goods and passenger. The applicant claims that



the respondents had called him for working on the post of Section Controller in 1989 before his appointment as ad-hoc Section Controller w.e.f. 28.8.89. The formalities of screening and interview had undergone in order to man the permanent vacancy existing in Tundla section of Control office. The applicant claims that he was sent to Chandausi Training Centre for training regarding work of Section Controller. The applicant has also claimed that he was given letter of appreciation for his work as Section Controller. He claims that the post of Section Controller in the grade of Rs.1400-2600 is a promotional post which is filled on the basis of seniority cum-suitability by holding a limited departmental competitive examination (written and Viva voce) from among eligible guards, station masters/Asstt. Station Masters and Yard Masters in the pay scale of Rs.1400-2600. He claims that Sri Jaipal Sharma, Sri H.K. Pandey and Sri Dilip Sarswat had been placed at ad-hoc Section Controller in Allahabad Division and given full benefits including grade of Rs.1400-2600 and were empanelled in 1995 despite failing in the examination. It has also been claimed by the applicant that Sri Ram Chandra and Sri Kishan Chandra, who were working as ad-hoc Section Controller have been regularised in similar situation without any examination for the post of Section Controller. He also claims that in Bikaner Division, the services of persons on the post of Section Controller had been regularised in similar manner. He also claims that six A.S.Ms., who have been named by him and who are working as ad-hoc Section Controller in similar situation were regularised. He claims that Sri K.P. Singh and Sri Abdul Hai Siddiqui, who were working in similar situation as ad-hoc Section Controller in Allahabad Division as the applicant who has drawing pay in the scale of Rs.1400-2600 were regularised as Section Controller without passing the written examination. He has also claimed that several typists, enquiry and reservation clerks, T.Cs., S.Ts. and

conductors, who were working on ad-hoc basis had been regularised. The applicant not having been regularised similarly filed O.A. No.87/98, which was decided on 2.7.01 directing the respondents to decide the applicant's representation by reasoned and speaking order. The said order has been assailed in this O.A. with further claim for regularisation of the applicant.

3. We have heard the arguments of Sri A. Rajendra for applicant and Sri A.K. Gaur for respondents.

4. The respondents have filed their counter reply in which they have taken the stand that the applicant had been afforded an opportunity against notification dated 24.8.90 with an option for consideration in the selection of Section Controller in the grade of Rs.1400-2600 but had failed. The respondents have also stated that the applicant had been punished for his irregular working a number of times before he started working as Section Controller and have been punished three times after he became Section Controller. It has also been mentioned that the applicant was promoted in his own panel and got the seniority as Asstt. Station Master in the grade of Rs.1600-2660 w.e.f. 1.3.93. He did not appear at the selection of Station Supdt./Dy./^{Station} Stpd. although he was called twice. It is claimed that the applicant was never promoted and posted as Section Controller at ad-hoc basis by the competent authority. It is also stated that A.S.M. in the grade of Rs.1600-2660 (Rs.5500-9000) in the revised scale) he went out of panel of promotion for the post of Section Controller. It is stated that the claim of the applicant had already been decided in O.A. 89/98 and, therefore, the same cannot be agitated again. It is stated that Sri Jaipal Sharma, Sri H.K. Pandey and Sri Dilip Sarawat had been posted as Section Controller on ad-hoc basis and on the basis of selec-

tion initiated in the year 1990 and finalised in the year 1995, Sri M.K. Pandey was found suitable and placed in the panel of Section Controller in the scale of Rs.1400-2600 on 4.10.1995.

It is stated that Sri Jaipal Sharma and Sri Dilip Sarswat were empanelled on account of directions given by the Principal Bench of C.A.T. in O.A. No.198/96. As regards the promotion of Sri Ram Chandra and Sri Kishan Chandra in Jodhpur Division, the respondents have taken the stand that since the applicant was not a party in that selection and since ~~that~~ he has not been posted as Section Controller on ad-hoc basis by the competent authority, he could not claim the benefit of promotion as Section Controller. Similar plea has been taken with regard to the stencils cited by the Bikaner Division and Moradabad Division. As regards the instance of Sri K.P. Singh and Sri Abdul Hai Siddiqui, the respondents have mentioned that the applicant had failed in the selection notified in 1990 and finalised in 1995 while these two officials had passed.

5. We have carefully considered the submissions made by the rival counsels and the pleadings of the case. We find that there is no denial of the claim of applicant that he worked as Section Controller and still working as Section Controller ^{as learned counsel for the applicant &} states at bar that he is still working as a Section Controller. This shows that the applicant has been working for as long as 13 years as Section Controller without being appointed on ad-hoc basis on the said post. We do not consider that the mere fact that the applicant had not been formally appointed on ad-hoc basis as Section Controller can deny to him the benefit of being treated similarly as other Section Controllers in various Divisions cited by the applicant who had been regularised merely on account of the fact that they were shown as posted as ad-hoc basis whereas the applicant has not been shown as ad-hoc appointee by passing a formal order. The post of Section Controller is a safety category

post and a person can be allowed to function as a Section Controller after carefull consideration of his capacity to do the same as the job affects the safety of passengers. The fact that the applicant has been allowed to continue as long as nearly 13 years may denote non-availability of suitable persons for this post but also shows that the applicant's services had been found acceptable. The mere fact that the applicant had failed the examination once can again not deny to him the right to be considered similarly as the officials in Jodhpur Division, Bikaner Division and Moradabad Division. If the officials in these three Divisions have been regularised merely on account of the years of working, they had put in without being made to pass the written and viva-voce tests which are prescribed for introduction to the post of Section Controller, the applicant by virtue of his long stint is also entitled to being treated at par with the said officials. The respondents in their order passed on representation of the applicant on Aug. 16, 01 have taken the stand with regard to the cases cited by the applicant of similar officials by stating that the applicant was not a party to the cases relating to Jodhpur, Bikaner and Moradabad divisions. The fact that they have not denied shows that the respondents have the ^{power} ~~bar~~ to regularise, and if similarly situated official have been regularised, the applicant is also entitled to consideration on the same basis. Since the order on the representation shows that no such consideration has been give the respondents are directed to examine the cases cited by the applicant in paragraph 4.20, 4.21 and 4.22 for regularisation of the applicant. In case, the names of persons of Bikaner Division are not available with the respondents, they shall call for these information from the applicant and decid the case of the applicant in a similar manner. Since the

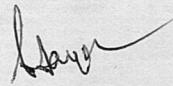
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case relates to a number of Divisions, Respondent No.1 i.e. General Manager, Northern Railway Baroda House shall call for information at his level and decide the case of the applicant as per directions in this O.A. Respondents shall carry out the direction within a period of four months from the date of receipt of a copy of this order.

There shall be no order as to costs.



J.M.



A.M.

Asthana/
20.5.02