

**CENTRAL ADMINISTRATIVE TRIBUNAL**

**AHMEDABAD BENCH**

**OA No.283/2014**

**Dated this the 1<sup>st</sup> day of July, 2021**

**CORAM:**

**Hon'ble Sh. Jayesh V. Bhairavia, Member (J)**

**Hon'ble Sh. A.K. Dubey, Member (A)**

Shri M.K.Parmar,  
Supdt. of RMS,  
'RJ' Division, Rajkot – 360 001,  
Residing at 9, Aksharvatika,  
6, Vaishalinagar,  
Rajkot – 360 007.

... Applicant

(By Advocate: A.D.Vankar)

1. Union of India & Others,  
Notice to be served through,  
Secretary to the Govt. of India,  
Ministry of Communication & I.T.,  
Department of Posts,  
Dak Bhavan, Sansad Marg,  
New Delhi – 110 001.
2. Chief Post Master General,  
Gujarat Circle, Khanpur  
Ahmedabad – 380 001.
3. Post Master General,  
Rajkot Region,

Rajkot – 360 001.

4. Director of Accounts (Postal)  
Gujarat Circle,  
1<sup>st</sup> Floor, Behrampura P.O. Building,  
Behrampura, Ahmedabad – 380 022.

5. Supdt. of RMS,  
'RJ' Division,  
Rajkot – 360 001.

.... Respondents

(By Advocate :Ms.R.R.Patel)

**ORDER (ORAL)**

**Per Dr.A.K.Dubey, Member (A)**

1. Applicant has filed this OA seeking following reliefs:

- "i) May be pleased to admit and allow this Original Application.*
- ii) May be pleased to declare impugned orders at Annexure A-1, A-2 & A-3 as illegal, irrational unjust, unfair, unreasonable and violative of Principles of Natural Justice and Art 14, 16, 21 and 311(2) of the Constitution of India and quash and set aside the same.*
- iii) May be pleased to direct the respondents to regularise the officiating period of the applicant and waive the recovery as ordered vide impugned orders at Annexure A-1, A-2 and A-3*

*And*

- iv) Grant such other and further relief as may be deemed fit and appropriate in the facts and circumstances of the case.*

2. According to the applicant, he was promoted vide order dated 20.04.1998(Annex.A/4) as ASRM on temporary and ad hoc basis, which was subject to the outcome of the judgment of any writ petition filed/pending before Supreme Court / High Court / Central Administrative Tribunal. Subsequently, vide Memo dated 26/03/2001 (Annex.A/5), the ad hoc promotion of the applicant was regularised in ASRM Cadre, stipulating that his promotion on regular basis was with effect from 08.02.2001 (Annex.A/1).

2.2 Vide Communication dated 8.8.2013 (Annex.A/1), the Accounts Officer intimated the PMG, Rajkot to furnish reply of the audit observation emanating from the internal audit inspection report for the period from 24.06.2013 to 28.06.2013. Among the observations in this report, one observation was with regard to the service book of the applicant which said that his continuation as ARSM on ad hoc basis beyond one year from 07.09.1998 till 07.02.2001 was irregular for which either post facto approval for continuation of officiating arrangement beyond one year should be

taken and regularised through competent authority or an amount of Rs.8,3029/- being excess salary etc. paid to the applicant for the period for March 1999 till May 2013 should be recovered.

- 2.3 Upon the impugned order regarding recovery, the applicant made a representation requesting to regularise the adhoc promotion/ Officiating arrangement. This representation was rejected by the respondents.
3. Respondents have filed their reply contending that their action was in accordance with DoP&T OM dated 30.03.1988 (Annex.R/1) and OM dated 23.07.2001 (Annex.R/2) according to which adhoc promotion should not be made routinely. Respondents have also contended that the recourse to recovery was a consequence of internal audit inspection, as it was clearly mentioned in the order dated 20.04.1998 that his promotion was on purely temporary basis and as per DoP&T OM, this was valid only till 26.04.1999 (one year from the date of joining i.e., 27.04.1998). According to respondents, this order clearly mentioned that it would not bestow

upon the applicant any claim of regular promotion or continuation or seniority.

4. Heard the counsel for the applicant and the respondents. In course of argument, the applicant's counsel reiterated the grounds against the impugned order. To drive home his contention, he placed reliance on the order of the Jabalpur Bench of this Tribunal in Radhelal Goud v. Union of India in OA No.793/2007 in which the order of Hon'ble Apex Court Dwarika Prasad Tiwari v. MP State Road Transport Corporation & Another [(2002) SCC (L&S) 9] was relied upon. It was held:-

*"I find these rulings of Apex Court are squarely applicable to the instant case. Undoubtedly, the Applicant worked in a post carrying higher pay scale consequent to order issued by the competent authority. Even though the applicant worked on higher post in an officiating capacity, he is entitled to higher pay scale for the period he worked on this post. He would also be entitled to retiral benefits on the basis of the salary drawn by him in the higher scale."*

The learned counsel for the applicant also relied on the Bombay Bench of this Tribunal's order dated 23.06.2008 in OA No.601/2004 in which recovery of excess payment due to pay

fixation was quashed. This order attained finality as Hon'ble High Court found that no interference was called for in this matter. Similar order of this Tribunal dated 06.03.2012 in OA No.7/2011 was also relied upon, by the applicant's counsel.

5. From the documents and records presented before us, it is clear that the action of recovery was initiated because of the audit observation at Annexure A/1. However, its letter dated 08.08.2013 clearly stated: "Before making recovery/payment the concerned records may be got verified." But recovery was only an alternative as the audit observation reads under the sub heading: "Para 01, Service Book of Shri M.K.Parmar, ASP(T&E)." The same is quoted below:- *"Post facto approval for continuation of officiating arrangement beyond one year may be got regularised through competent authority otherwise Rs.83,029/- ( from March 99 to May-13) as in Annexure 'A' may be recovered under intimation to PAO, Ahmedabad"*.

- 5.1 It is evident that the audit observation suggested to obtain post facto approval for officiating arrangement beyond one year or else, recovery should be made. Regarding regularization, DoP&T OM dated 03.04.2013 refers, as per which continuation of adhoc arrangement beyond one year should be with prior approval of DoP&T. In this case, the applicant was promoted as purely temporary/adhoc basis vide order dated 20.04.1998 (Annex.A/4), clarifying that it would not entitle him to claim regular promotion /continuation/seniority. It also stated that Government reserved the right to cancel the adhoc promotion and revert the official to the parent cadre. Later, vide order dated 26.03.2001, the applicant was promoted on regular basis (Annex.A/5), w.e.f. 08.02.2001.
- 5.2 Records before us do not suggest that the applicant was reverted or his ad hoc promotion was cancelled. On the basis of order dated 20.04.1998, he continued to officiate till his regularization vide order dated 26.03.2011. So the period under audit observation is from 20.04.1998 till 7.2.2011 which was the period

when he was on adhoc and temporary promotion. So the period under audit observation is from. Even the audit observation says that his continuance beyond one year should be regularised or else recovery be made. If, in view of DoP&T OM cited above, prior approval of the competent authority was required, the respondents could have obtained it as per the procedure. We also see that on the same post, the incumbent was subsequently granted regular promotion and continuation.

6. The applicant did not continue on his own; he continued on express authorisation by the respondents. If the respondents did not conform to the procedural requirement of his officiation beyond one year, the applicant cannot be held substantially or even vicariously liable for such procedural omission. Of course, in terms of order dated 20.04.1998, he can't claim seniority or regular promotion from the date. But as per the instructions of DoP&T that have been referred to, regularization beyond one year has a prescribed procedure which was open to the respondents to follow.



In this case, they did not. Even audit observation had suggested to regularise his ad hoc service beyond one year or else, recovery.

Further, regarding recovery, the judgments relied upon do offer a guiding principal to the limited extent of giving the due for the work done or the principle of *quantum meruit*, particularly in view of Hon'ble Supreme Court's observation that has been relied upon.

7. Under the factual matrix obtaining above, we find that the applicant has been able to make out a case for himself. We allow the application and quash Annexures A2 & A3 vide which his representation was rejected and we restrain the respondents from recovery of excess payment apropos of the audit observation under reference here. We further direct the respondents to comply with the audit observation in the internal audit report about ex-post facto approval for continuation of officiating arrangement beyond one year i.e., beyond 06.04.1998 till 07.02.2001.

**A.K.Dubey**  
**(Administrative Member)**

**Jayesh V. Bhairavia**  
**(Judicial Member)**