

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 15th day of September, 2004.

Original Application No. 1417 of 2003.

Hon'ble Mr. Justice S.R. Singh, Vice-Chairman.
Hon'ble Mrs. Roli Srivastava, Member- A.

A.K. Majumdar S/o Late Sri D.L. Majumdar
R/o 29 E-F Central Road Railway Colony,
Tundla, Distt. Firezabad.

.....Applicant

Counsel for the applicant :- Sri Ajay Rajendra

V E R S U S

1. Union of India through Secretary, Railway Board, New Delhi.
2. General Manager (P), Northern Rly. Baroda House, New Delhi.
3. General Manager (P), North Central Railway, Allahabad.
4. The D.R.M, North Central Railway, Allahabad Division,
D.R.M Office, Allahabad.
5. The Senior Divisional Personnel Officer,
North Central Railway, Allahabad Division,
D.R.M Office, Allahabad.
6. The Sr. Divisional Operating Manager, North Central Rly.,
Allahabad Division, D.R.M Office, Allahabad.
7. The Divisional Railway Manager, Northern Railway,
Moradabad Division, D.R.M. Office, Moradabad.
8. The Divisional Railway Manager, Northern Railway,
Jodhpur Division, D.R.M. Office, Jodhpur.
9. The Divisional Railway Manager, Northern Railway,
Bikaner Division, D.R.M. Office, Bikaner.

.....Respondents

Counsel for the respondents :- Sri A.K. Gaur
Sri S.K. Rai

O R D E R

By Hon'ble Mr. Justice S.R. Singh, VC.

The applicant, who was initially appointed as Assistant Station Master (ASM) in the year 1980, was, it is alleged, given adhoc promotion to the post of Section Controller on

28.08.1989 and is working in that capacity till date. It appears that the applicant staked his claim for regularisation to the post of Section Controller which was rejected by order dated 16.08.2001. The said order was challenged in O.A No. 1136/01 wherein the applicant ^{has} prayed for setting aside of the order dated 16.08.2001 and for issuance of a direction to the respondents therein to regularise the applicant on the post of Section Controller after completion of three years and to provide him all consequential benefits admissible to the post.

2. The case of the applicant was that similarly ^{circumstanced} officials working in Jodhpur Division, Bikaner Division and Moradabad Division were regularised and, therefore, the applicant should also be given similar treatment and relief. The O.A No. 1136/01 aforesaid was disposed of with direction to the respondents to examine the cases cited by the applicant in his original application and decide ^{his case based on parity?} the case of the applicant. The applicant, it appears, failed in the examination conducted for appointment to the post of Section Controller in the year 1991. However, the Tribunal having regard to the fact that similarly ^{circumstanced} officials were considered for regularisation, directed the respondents to consider the applicant also for regularisation having regard to his past services. The D.R.M (P), Allahabad by his order dated 04.04.2003 impugned in this O.A rejected the claim of the applicant for regularisation. The said order is sought to be set aside in this O.A.

3. The case of the respondents on the other hand is that ^{the} applicant ^{was} never posted as Section Controller on adhoc basis and, therefore, is not entitled to be regularised on the post of Section Controller and the order impugned herein does not suffer from any infirmity. Their case further is that other officials with whom the applicant is claiming

parity had worked as Section Controller on adhoc basis and they were regularised on the post having cleared the examination.

4. We have given our anxious consideration to the submission made by the learned counsel at the Bar. The D.R.M (P), Allahabad in his order dated 04.04.2003 has recorded the following findings :-

" Further it is also seen from the papers that the applicant has worked as ASM Grade Rs. 425-640/1400-2300 at DER, ALJN and DKDE. During this period you appeared in the selection for the post of Section Controller in the year 1991 and could not pass the written test. You were given promotion as ASM Gr. Rs. 1600-2660 w.e.f 01.03.1993 as a result of cadre restructuring on as is where is basis. At that time you did not give refusal for the promotion as ASM and the same was effected from 01.03.1993. Your services, however, continued to be utilized in the control office at TDL-CNL. All this while you were designated as and was being paid the salary of ASM Gr. Rs. 1600-2660/5500-9000 in the bill unit of TDL-CNL in the substantive capacity. Even today you are designated as ASM Gr. Rs. 5500-9000 and being paid salary as ASM. Keeping in view, your substantive position as ASM Gr. Rs. 5500-9000, you were also called for the selection to the post of Station Superintendent/ Dy. SS Grade Rs. 6500-10500 in the year 1998 but you did not appear in the selection. Since you were already availed opportunity of promotion as ASM Grade Rs. 1600-2660/5500-9000, you cannot seek further advancement in the cadre of Section Controllers as per laid down channel of promotion because ASMs of grade Rs. 5000-8000 are only eligible to opt for promotion as Section Controllers Gr. 5500-9000 whereas you are already working as ASM grade Rs. 5500-9000 and, therefore, not eligible for being considered as Section Controller in the same grade as that of your substantive post. As per avenue of channel of promotion no lateral induction is permissible in the category of Section Controller Gr. Rs. 5500-9000 from the post of ASMs Gr. Rs. 5500-9000.

It is seen that the applicant has only been utilized in control office. Supreme Court in writ petition

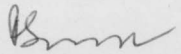
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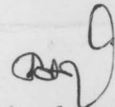
No. 548 of 2002 titled Inder Pal Yadav and Ors. Vs. U.O.I
U.O.I have held that "local promotion in the projects cannot
be taken as having vested in them a right either to
continue in the project or to resist reversion back to
the cadre, or to enjoy a higher promotion merely on the
basis of locally provisional promotion granted to them
in the project in which they had been employed at a
particular point of time. "

No rule or scheme providing for regularisation of officials
who have worked as Section Controller in the manner the
applicant is said to have worked. ^{It has been brought to our notice.} It cannot be gain said that
regularisation to a post, recruitment ^{to which is} governed by
statutory rules, cannot be ordered except in accordance with
law. However, since the applicant's claim for parity has been
rejected by the DRM (P), Allahabad on the ground that persons
with whom the applicant is claiming parity were regularised
by the Railway Board, it would meet ^{the} ends of justice, if the
O.A is disposed of with direction to the Railway Board to
consider the applicant's claim for regularisation based on
parity in accordance with law.

5. Accordingly the O.A is disposed of with direction that
in case the applicant files a representation to Railway Board,
the same shall be considered and decided in accordance with
law after taking into reckoning the points raised by the
applicant in his representation. The decision in this regard
shall be rendered within a period of six months from the
date of communication of this order.

6. There will be no order as to costs.


Member- A.


Vice-Chairman.

/Anand/