

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH, ALLAHABAD

(THIS THE 19th DAY OF May 2011)

Hon'ble Dr.K.B.S.Rajan, Member (J)
Hon'ble Mrs.Manjulika Gautam, Member (A)

Original Application No. 347 of 2003
(U/s 19, Administrative Tribunal Act, 1985)

1. Subhash Chand Verma, S/o Shri Gulab Singh
2. Surendra Kumar Kulshrestha, S/o Shri J.P.kulshrestha
3. Pramod Bihari Sinha, S/o Late K.B.Sinha
4. Krishna Nand Chaudhary, S/o Late R.R.Chaudhary
5. Direndra Pratap Singh, S/o Shri B.P.Singh

Presently posted under Chief Controller,
Northern Railway, Tundla.
.....Applicants

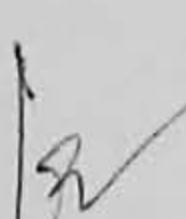
Present for Applicants: Shri Ajai Rajendra, Advocate

Versus

1. Union of India through General Manager (P)
Northern Railway, Baroda House,
New Delhi.
2. The Divisional railway Manager,
Northern Railway, D.R.M. Office,
Allahabad.
3. The Divisional Personal Officer,
Northern Railway, DRM Office,
Allahabad.
4. The Senior Divisional Operating Manager,
Northern Railway DRM Office,
Allahabad.

.....Respondents

Present for Respondents: Shri P.N.Rai, Advocate



(Delivered by Hon'ble Dr.K.B.S.Rajan, Member (J)

1. The applicants were beneficiaries of the order dated 27-07-2001 of this Tribunal in OA No. 26/2001 whereby officiating allowance as of Section Controller had been made available to the applicant. Annexure 5 to the O.A. refers. This order makes a mention that the grant of officiating allowance would not confer any right to claim seniority on the basis of the same. The applicants had served for a substantial period of 7 years plus and have been granted officiating allowance accordingly. The claim of the applicant is that their full service should be counted for seniority purpose.
2. OA No. 1576 of 2002 decided on 08-01-2003, which was filed by the very same applicants gives out a thumbnail sketch of the case and the same is as hereunder:-

2. It is submitted by the applicants that they were initially recruited as Assistant Station Master through Recruitment Board, Allahabad on 5.1.80, 3.2.83, 15.7.82, 10.3.78 and 8.12.82 respectively. The next promotion of the applicants is Section Controller in the grade of Rs.1400-2600 (RPS) now Rs.5500-9000, which is to be filled up from amongst the Assistant Station Master, Yard Masters and Guards through a Limited Departmental Competitive Examination. The grievance of the applicants is that there were number of vacancies and looking to the urgent need to work as Section Controller, the respondents after completing the necessary procedure and interview posted the applicants on the post of ad hoc Section Controller w.e.f. 21.4.88, 3.12.87, 30.12.87, 16.8.87 and 25.2.90 respectively. They had discharged their duties on the post of ad hoc Section Controller continuously till their regular selection on 18.7.1997. They have further submitted that they were paid officiating allowance as per the directions of the Tribunal's order dated 27.7.2001. The grievance of the applicants is that even though they have represented to the authorities by filling Annexure A-2 and Annexure A-3 annexed with the O.A. On 22.2.2002 and 10.5.2002, but till date, the respondents have not passed any final order thereon. Thus, they have claimed in the alternative that a direction be given to the respondents to decide their representation within a stipulated period of time.

3. The Tribunal disposed of the aforesaid OA with a direction to the respondents to decide the representation pending with the respondents. The representation having been rejected, vide Annexure A 1 order dated 21-02-2003, the applicants have again moved this OA claiming the following:-

- (i) To issue a suitable order quashing the impugned order dated 28.2.2003 passed by the respondent no.2 (Annexure No.1).
- (ii) To issue a direction to the respondent no.2 to count the period of officiating service of the applicants rendered as Ad-hoc Section Controller in fixing their seniority as Section Controllers.

4. Respondents have contested the OA. Their main thrust in justifying their decision is as under:-

(a) That while working as Assistant Station Masters the applicants were called by Operating Officer to work in control office at Tundla from various dates as indicated against each:-

Name	Date of working in Control Office	Date of regular promotionas SCNLinCNL Office
S.C.Verma	21.4.88	19.8.97
P.B.Sinha	30.12.87	19.8.97
Krishna Nand	16.8.87	19.8.87
S.K.Kulshrestha	03.12.87	19.8.87
D.P.Singh	25.2.90	19.8.87

(b) That, after empanelment, they claimed for payment of officiating allowances in Grade Rs.1400-2600/5500-9000 from the date they were put to work at Control Office, which

was not accepted. They filed a case being OA No.26 of 2001 and in pursuance of order dated 27....7.2001 of this Hon'ble Tribunal, they were paid officiating allowance from different dates to the date they started actually working as Section Controller after empanelment.

(C) That, thereafter they claimed seniority as Section Controller from the date of sanctioned of officiating allowance and filed case, OA No.1576 of 2002 wherein this Hon'ble Court vide order dated 8.1.2003 directed to dispose of the representation of the applicants dated 22.2.2002 and 10.5.2002 by a reasoned and speaking orders.

(d) That, the respondents accordingly considered both the representations and the applicants were intimated by a reasoned and speaking order in the letter No.ET.3/SCNL/Central Administrative Tribunal/98 dated 28.2.2003.

5. Counsel for the applicant was not available at the time of hearing, while counsel for the respondents argued the case on behalf of the respondents and contended that grant of officiating allowance was on the basis of court order and rule relating to seniority is as given in para 306 of IREM. No deviation could well be made therefrom. The applicants are not, therefore, entitled to the seniority which they claim.

[Signature]

6. Though time for furnishing written arguments was given, no response was made. Hence, the case is decided invoking the provisions of Rule 15 of the CAT (Procedure) Rules, 1987.

Documents perused and arguments of the counsel for the respondents heard. Para 309 of the IREM relates to seniority on promotion and the same refers to para 306 and the said paras state as under:-

306. Candidates selected for appointment at an earlier selection shall be senior to those selected later irrespective of the dates of posting except in the case by paragraph 305 above.

307 xxx

308 xxx

309. SENIORITY ON PROMOTION. - Paragraph 306 above applies equally to seniority in promotion vacancies in one and the same category due allowance being made for delay, if any, in joining the new posts in the exigencies of service.

The contention of the respondents as stated in their letter (impugned) is that as per para 306 those selected in the previous batch would stand senior to the ones who had been selected in the subsequent batch. The question is not about seniority with reference to any selection of the previous group. The question is when officiating allowance has been granted to the applicants and when these had been functioning in that capacity on ad hoc basis for as

many as 7 years followed by regular promotion, whether or not the period of ad hoc service should be counted for seniority purpose.

7. Para 4.6 of the application refers to occurrence of permanent vacancies in the year 1986 in the pay scale of Rs 1,400 – 2,600 for the post of Section Controller in the Control Department in Tundla. Para 4.7 talks of regular selection could not take place and some arrangements were made. Para 4.9 relates to the applicants discharging the functions as Section Controllers continuously and para 4.10 relates to holding of selection test in which the applicants had qualified and made regular Section controllers.

8. Two questions arise – When the applicants were paid the salary of Section Controllers, the respondents would not have paid the salary just on the basis of order of the Tribunal. If there were no vacancies of Section controllers, they would not have appointed them to hold the posts. These are safety posts and unless their efficiency is tested in advance, they could not have been so appointed. Again, when vacancies existed, the respondents ought to have conducted necessary selection at the appropriate time and if they could not but the individuals did perform the duties of higher responsibilities, in the event of their qualifying in the first attempt as and when the selection takes place, they must be deemed to have been qualified in the year in which the vacancies had arisen and selection ought to have been conducted. Thus, in this case, since the applicants have been holding the post of Section Controllers since 1987 and since they had qualified in the selection on the very first attempt in 2001, they should be deemed to have been promoted on regular basis from 1987 itself. This

would not in any way affect the seniority of others as all that would happen is that their date of promotion would be advanced in which event, they would be eligible for further promotion after completion of the specified number of years of service as Section controllers.

9. The non regularization of the applicants' services from the initial date of promotion as Section Controller is not on account of any deficiency in educational qualifications or experience but that the selection did not take place. And at the earliest opportunity, when the selection was held, they were through. If so, the applicants who did shoulder the additional responsibilities should not be deprived of their seniority. This is the law as laid down by the Apex court in the Constitution Bench in the case of *Direct Recruit Class II Engineering Officers' Assn. v. State of Maharashtra*, (1990) 2 SCC 715, whereby vide Para 47 B, it has been stated that when ad hoc is followed by regular appointment, the officiating period shall count for seniority. The said judgment states as under:-

47. To sum up, we hold that:

.....
 (B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

10. The case of the applicant is not that they had served as a stop gap arrangement for a limited period. The period they had officiated is a stupendous seven years. The Constitution Bench in the case of Rudra Kumar Sain vs Union of India (2000) 8 SCC 25 had dealt with in extenso about the fortuitous circumstances and stop gap

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arrangements and has held that when the period of ad hoc arrangements is for a substantial period, the same shall qualify to be counted for seniority purpose. The said judgment has been cited in a subsequent judgment of the Apex Court in the case of *Ganesh Rao Patnaik v. State of Jharkhand*, (2005) 8 SCC 454, wherein it has been held as under:-

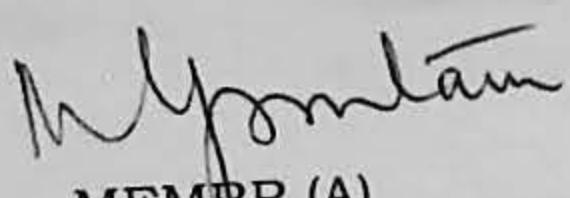
"What is a fortuitous appointment has been explained in a Constitution Bench decision of this Court in Rudra Kumar Sain v. Union of India . After observing that the Rules in question did not define the terms "ad hoc", "stopgap" and "fortuitous", which are in frequent use in service jurisprudence, the Court referred to several dictionaries. The meaning given to the expression "fortuitous" in Stroud's Judicial Dictionary is "accident or fortuitous casualty". This should obviously connote that if an appointment is made accidentally, because of a particular emergent situation, such appointment obviously would not continue for a reasonably long period. In Black's Law Dictionary the expression "fortuitous" means "occurring by chance", "a fortuitous event may be highly unfortunate". It thus indicates that it occurs only by chance or accident, which could not have been reasonably foreseen. In Oxford Dictionary the meaning given to the word "fortuitous" is, happening by accident or chance rather than design. In our opinion it will not be proper to hold that the promotion of the contesting respondents was fortuitous as contended by the learned counsel for the appellants. It cannot be said that the contesting respondents were promoted by accident or by chance. Their promotion order was passed as there were vacancies to the posts of Additional District and Sessions Judges, though in the quota of direct recruits, but as no recruitment from the said channel had been made for a long time and sufficient number of candidates were not available, the 470 vacancies were filled in by giving promotion to members of the Bihar Civil Service (Judicial Branch).

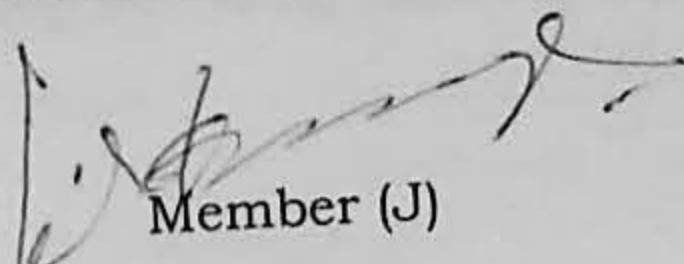
11. In view of the above, **the OA succeeds**. Order dated 28-02-2003 is hereby quashed and set aside. It is declared that the applicants are entitled to count their services of officiation from 1987 and thereafter as a part of their regular service and their seniority would be advanced accordingly. This benefit could however be subject to the condition that the same should not disturb the seniority of others who are already senior to the applicants. All that the benefits that could accrue out of such advancement of seniority is that the period of

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services required in the post of Section Controller for promotion shall reckon from the date of their initial officiation as Section Controllers. Respondents are directed to pass suitable orders in this regard and make suitable amendments in the seniority list of the applicants. For further promotion, taking into account their seniority from the earlier period, if the applicants were eligible to be considered, the respondents shall convene review DPC and consider the case of the applicants for the higher posts and further action be taken accordingly.

The above order shall be complied with, within a period of six months from the date of communication of this order. No cost.


MEMBR (A)


Member (J)

UV/-