

[RESERVED ON 03.05.2012]

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 19th DAY OF July 2012)

Present

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MR. SHASHI PRAKASH, MEMBER (A)

ORIGINAL APPLICATION NO. 1204 OF 2006

(U/S 19, Administrative Tribunal Act, 1985)

1. Brijesh Singh Chauhan, S/o Sri D.S. Chauhan, R/o 35/13 E/2A, Pushpanjali Nagar, Allahabad (Sec. Controller).
2. Manoj Kumar Srivastava, S/o Sri R.N. Srivastava, 54-C, Beli Road, New Katra, (Sec. Controller).
3. Smt. Nahid Fatima, D/o Syd. Mohd. Askari, 56/32, Meour Road, Rajapur, Allahabad.
4. Sandeep Srivastava, S/o G.P. Srivastava, H. No. 161/4, Taji Khana, Rakabganj, Lucknow.
5. Chandramani Chanchal, S/o D.P. Singh, Rly. Block No. 28, C.D, IInd Avenue, Nawab Yusuf Road, Allahabad.
6. Rajendra Kumar Pandey, S/o Sri Virendra Narayan Pandey, R/o 262/2, Rajrooppur, Allahabad.

.....Applicants

V E R S U S

1. Union of India, through General Manager, Northern Central Railway, Allahabad.
2. Chief Personnel Officer, North Central Railway, Allahabad.
3. Chief Operations Manager, North Central Railway, Allahabad.

.....Respondents

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Advocates for the applicants:- **Shri Ashish Srivastava.**
Advocate for the Respondents:- **Shri Anil Kumar.**

ORDER

DELIVERED BY:-

HON'BLE MR. SANJEEV KAUSHIK, (MEMBER-J)

By means of present O.A. applicant seeks following reliefs:-

"a).quash the impugned order dated 08.09.2006 as well as order dated 03.10.2006 passed by the respondent No. 2 (Annexure No. A-1 & 2).

b). direct the respondent Nos. 2 & 3 to allow the applicants work on their post till regular appointment is done.

c).respondents may be directed to fix the salary of the applicants in the pay scale of Rs. 5500-9000 from the date, the applicants have taken over the chare in view of the notification dated 24.04.2006 and posting of applicants on special duty."

2. The facts of the case, in brief, are that the applicants, who are working under the North Central Railway, Allahabad in different pay scales i.e Rs. 5000-8000/- or 4500-7000/- or 5500-9000, were posted to work as Section Controller on ad-hoc under respondent No. 3. The applicant No. 1 was relieved from his place of duty on 27.04.2003. The other applicants were also relieved likewise the applicant No. 1. The respondent No. 3 issued a Notification on 24.06.2004 for filling up the vacancy of Deputy Chief Controller and Section Controller in the pay scale of Rs. 6500-10,500 and

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5500-9000 respectively on temporary basis (Annexure A-4). The vacancies notified in the said notification were against the post which the applicants were holding. The applicant having eligibility and experience of the said post applied and they were called for interview scheduled to be held on 03.08.2004. The result of interview was declared on 20.10.2004 (Annexure A-6) and all the applicant were declared successful. On 28.03.2005 the temporary posting of the applicants were approved by the respondent No. 2. On 17.06.2005 the respondent No. 3 issued a letter whereby informing the respondent No. 2 about joining of the applicants on their respective posts in pay scale of Rs. 5500-9000. As the applicants were not paid the pay scale of Rs. 5500-9000 attached to the post of Section Controller, they filed joint representation on 12.05.2006, which has been rejected by the respondent No. 2 on 08.09.2006 and have issued another Notification dated 03.10.2006 for filling up the posts on ad-hoc basis, which the applicants are holding hence the O.A

3. Pursuant to notice respondents filed detailed Counter Affidavit resisting the claim of the applicants. It is stated in the CA that the appointment of the applicants as Section Controller, which is ex-cadre post in the same pay scale on which they were working, was purely adhoc and temporary

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till the regular selection was made. It is further stated that the claim of the applicants in their representation dated 12.05.2006 was for the salary as Section Controller in higher grade, which was not permissible as per rules, therefore, same was rejected on 08.09.2006 on the ground that their posting was made against 'higher grade vacancies' and not in 'higher grade' and merely posting in higher grade vacancies does not entitle them eligible for extending the benefit of higher grade pay. It is also stated that since the earlier posting of the applicants was not in accordance with rules, therefore, Notification dated 03.10.2006 was issued to afford an opportunity to all the eligible candidates.

4. Applicants have filed Rejoinder. In the Rejoinder it is stated that the applicants were posted as Section Controller on temporary basis till the regular selection is made. The said appointment of the applicants were approved by the respondent No. 2 on 28.03.2005. In para 7 of the Rejoinder, it is stated that in terms of Notification, the applicants are entitled to continue on the post of Section Controller till regular selection is made. It is also stated that in terms of the Notification, the applicants are also entitled for one grade higher pay scale from the date they joined as Section Controller.

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5. Suppl. Counter Reply and Suppl. Rejoinder Reply have also been filed by the respective parties.
6. We have heard Shri Ashish Srivastava, learned counsel for applicants and Shri Anil Kumjar, learned counsel for respondents.
7. Shri Ashish Srivastava, learned counsel for applicants vehemently argued that the action of respondents in issuing Notification dated 03.10.2006 (Annexure A-2) is illegal and contrary to the settled principle of law that an adhoc cannot be replaced by another adhoc. He placed reliance on the judgment of Apex Court in the case of Khagesh Kumar Vs. Inspector General of Registration and Ors – AIR 1996 (SC) 417. He further argued that the applicants were posted as Section Controller after passing the requisite test hence denial of pay scale of Rs. 5500-9000 to the applicants is also illegal and arbitrary.
8. On the other hand Shri Anil Kumar supported the impugned orders.
9. We have considered the rival submissions and have gone through the record.
10. The short controversy arises for our consideration that whether an adhoc can be replaced by another adhoc.

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Secondly, whether an employee, who performed the higher duty can be deprived to get the pay scale of higher post.

11. Incidentally after creation new Zone i.e. North Central Railway, the services of the applicants, who were working as Section Controller, were transferred to new zone i.e. North Central Railway by order dated 27.04.2003 and accordingly they joined. A notification dated 24.06.2004 was issued by the respondent No. 4 for filling up vacancy of Dy. Chief Controller and Section Controller on temporary basis (Annexure A-4). Since the applicants were already working on the same very post on special duty, they applied pursuant to the Notification. They were called for interview by respondent No. 3. After judging their suitability the result was declared on 20.10.2004 and the applicants were declared successful. Respondent No. 2 also approved the temporary posting of the applicants by order dated 02.03.2005, a copy of which was also endorsed to respondent No. 3 with request to relieve the applicants to join the new place of posting. The respondent No. 3 vide letter dated 17.06.2005 also informed the office of respondent No. 2 that all the individuals, who were selected against these posts, have assumed their duty. On 08.09.2006 the respondent No. 2 rejected the representation of the applicants for grant of pay scale of Rs. 5500-9000 admissible to the post against which they were

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selected and posted on temporary basis on the basis that the post was not notified by the respondent No. 2. Surprisingly a letter was issued on 03.10.2006 re-notifying the post of Deputy Chief Controller and Section Controller to be filled up on adhoc basis, against which the O.A was filed on the ground that once the applicants have been selected after due procedure and appointed on temporary basis against the post , which is now sought to be filled up on adhoc basis, therefore, the action of the respondents is illegal, arbitrary and against the judgment of Apex Court, which says that adhoc cannot be replaced by another adhoc. The impugned order rejecting their representation indicates that the sole ground taken by the respondents that the post against which the applicants were appointed on temporary basis, were not notified by the respondent No. 2 whereas, from the pleadings it is clear that their appointment were approved by the respondent No. 2 and he was intimated time to time, therefore, objection raised by the respondents is totally against the record hence cannot be sustained and the impugned order is liable to be set aside being illegal.

12. Once the applicants have been appointed on temporary basis then they cannot be substituted by another set of adhoc or temporary employee except the regularly selected candidates. Our view has been supported by the judgment of

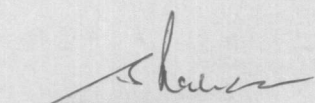
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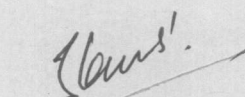
Apex Court in the case of **Dr. A.K. Jain Vs. Union of India - 1988 SCC (L&S) 222**. Therefore, the impugned order notifying the vacancy to fill up the post on adhoc basis is set aside.

13. With regard to grant of pay scale for the post to which the applicants are working, it is settled principle of law that if a person is performing higher duty then he is entitled for the pay scale of post. Admittedly the applicants are working on the post which carries pay scale of Rs. 5500-9000, therefore, they are entitled to have the pay in pay scale of Rs. 5500-9000 from the date when they were appointed on the said post.

14. Accordingly the impugned order regarding rejection of the representation of the applicants for pay scale of Rs. 5500-9000 is set aside. The respondents are directed to grant the pay scale of Rs. 5500-9000 to the applicants from the date when they assumed the duty in the said pay scale.

15. The O.A is allowed in the above terms. No costs.


Member-A


Member-J

Anand/-