

विधि (प्रक्रिया) नियमावली के नियम 21 के अन्तर्गत नियन्त्रण बटि
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

OA file
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Date of order : 25.5.2000

1. O.A.NO.234/99
2. O.A.NO.323/99

Ram Dayal Verma S/o Sri Lal Verma aged 65 years retired Deputy Chief Controller, Grade Rs. 2000-3200 (RPS) Northern Railway, Bikaner, R/o House No. 592, Gali No. 1, Rampura Basti, Lalgarh, Bikaner.

...Applicant in O.A.NO.234/99

Prabhu Dayal Meena S/o Shri B.L.Meena, aged 46 years, presently posted as Area Officer, Northern Railway, Rewari R/o Q.No. T-5/B, Railway Colony, Rewari (Haryana).

...Applicant in O.A.No.323/99

versus

1. General Manager, Northern Railway, H.Q. Office, Baroda House, New Delhi.
- 2.± Divisional Railway Manager, Northern Railway, Bikaner Division, Bikaner.
3. Senior Divisional Personnel Officer, Northern Railway, Bikaner Division, Bikaner.

....Respondents in both the OAs.

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CORAM :

HON'BLE MR.A.K.MISRA, JUDICIAL MEMBER

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Mr.Y.K.Sharma, counsel for the applicants.

Mr.Manoj Bhandari, counsel for the respondents.

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BY THE COURT :

In both these O.As, the controversy involved and the relief claimed by the applicants is common, therefore, both the O.As are disposed of by this common order.

2. Shri Ram Dayal Verma, applicant in the first O.A., has alleged that while he was working as Deputy Chief Controller in the grade of Rs. 2000-3200 was put to officiate on the post of Chief Controller grade Rs. 2375-3500 w.e.f. 26.9.88 and continued to officiate on the higher post up to 31.1.93. The applicant retired on superannuation on 31.1.93.

3. Shri Prabhu Dayal Meena, applicant in the second O.A. has alleged that while he was working as Deputy Chief Controller in the grade of Rs. 2000-3200, he was put to officiate on the post of Chief Controller grade Rs. 2375-3500 w.e.f. 12.5.88 and continued to shoulder the duties and responsibilities of the higher post up to 30.9.92.

4. In both these O.As, the applicants submitted their claim for officiating allowance to the concerned authorities which was forwarded by the Divisional Railway Manager, Bikaner, vide its letter dated 11.10.94 (Annex.A/2), to the General Manager (Personnel), Northern Railway, New Delhi but the officiating allowance has not yet been paid to the applicants. It is alleged by the applicants that one Shri N.N.Chaturvedi, who was also one of such candidates, had officiated on the higher post and whose name was also recommended for grant of officiating allowance in letter Annex.A/2, filed an O.A. which was registered at No. 397/96 and claimed payment of officiating allowance with consequential benefits. The said O.A. was allowed by the Tribunal vide its order dated 10.2.98. The respondents preferred a writ petition against the order of the Tribunal which was registered as D.B.C.W.P.No.3272/98 and was dismissed on 25.1.99. The case of the applicants is similarly placed as that of Shri Chaturvedi. After the case of Shri N.N.Chaturvedi was finally decided, the applicants moved a representation to the Divisional Railway Manager (Personnel), on 4.2.99 (Annex.A/1) but the applicants were not

granted the officiating allowance. Hence, the O.As.

6. The stand of the respondents in both these OAs is common. It is alleged by the respondents that the claim of the applicants is highly belated and is hit by limitation. The claim of the applicants is time barred and deserves to be rejected. It is stated by the respondents that the post of Chief Controller in the grade Rs. 2375-3500 (RP), is a selection post and is a headquarter controlled post. The orders regarding officiation on the higher post were not issued by the headquarters directing the applicants to officiate on the higher post and, therefore, they are not entitled to officiating allowance as claimed by them. The claim of the applicants in this regard is still pending decision at the headquarters, therefore, the O.As are premature. It is further alleged by the respondents that the applicants were not the senior-most in the Division so as to be given the responsibility for officiating on the higher post. The applicants cannot claim advantage on the basis of the decision in Shri N.N.Chaturvedi's case. In respect of officiating arrangement, no sanction was granted by the headquarter and, therefore, the applicants cannot claim officiating allowance, as mentioned by them in the respective OAs. The O.As. are devoid of merit and deserve to be dismissed.

6. I have heard the learned counsel for the parties and have gone through the case files.

7. Both the learned counsel for the parties elaborated their arguments on the lines of their pleadings.

8. First of all, the point relating to limitation has to be disposed of. The learned counsel for the respondents has submitted that the claim of the applicants is hit by limitation and is

hopelessly time barred as the claim relates to officiating allowance for the period between September 1988 to January 1993 and May 1988 to September 1992 respectively. But, in my opinion the claim of the applicants is not barred by limitation. The claim of the applicants relating to officiating allowance was forwarded with recommendation to the higher authorities vide Annex.A/2 dated 11.10.94. The claim of the applicants was not disposed of by the headquarter upto February 1997 as is clear from the letter dated 5.2.97 (Annex.A/3) written by the Senior Divisional Personnel Officer, to both the applicants. Once the respondents admit that the claim of the applicants is pending consideration they cannot come round and say that the claim is barred by limitation. If the claim of the applicants was pending upto January 1997 and the same was not decided inspite of the Tribunal's order dated 10.2.98 passed in favour of a similarly situated candidate, Shri N.N.Chaturvedi, then the applicants' have a right to agitate their grievance after waiting for a reasonable time. The writ petition filed against the order of the Tribunal was dismissed by the Hon'ble High Court on 25.1.99. Therefore, it could be legitimately expected by the applicants that a favourable decision would be taken by the authorities in respect of all the similarly situated candidates but the ⁱⁿaction of the respondents falsified the hopes of the applicants and thus they were driven to knock the doors of the Tribunal although the ^{could}Respondents have done well to grant the desired relief to the applicants administratively. In view of this, I am of the opinion that the claim of the applicants cannot be thrown out on the point of limitation, as argued by the learned counsel for the respondents. The argument of the learned counsel for the respondents in this regard is hereby rejected.

9. The respondents have not stated in their reply that the applicants had not officiated on the higher post as claimed by

them. All what they have said is, that the post of Chief Controller is a headquarter controlled post, therefore, the applicants cannot officiate on the higher post under local arrangement. But in my opinion, this defence of the respondents is not tenable. The respondents have not specifically denied that the applicants had worked on the post of Chief Controller on officiating basis. They have also not said that the applicants had not officiated for the ^{said} period, therefore, respondents' assertion that the applicants had not officiated on the higher post under the orders of the competent authority, virtually amounts to admission of the fact that the applicants had worked on officiating basis on the higher post. As per rules, officiating arrangements should not continue for more than six months and the officiating arrangement should be reviewed from time to time. But, it appears that in the instant cases, nobody was posted on the post of Chief Controller and consequently, the applicants continued on the higher post on officiating basis for which the applicants cannot be faulted. It was for the competent authority to monitor the position of officiation and make proper arrangements from time to time. If under the orders of some superior authority, the applicants had worked on the higher post on officiating basis, they cannot be denied officiating allowance on the ground that the ^{latter} officiation was not so ordered by the competent authority. If this is allowed to be done, it would mean that the applicants would be denied their legal dues for having worked on the higher post under the orders of superior authority, though not competent to order officiation. Therefore, in my opinion, the officiating allowance, as claimed by the applicants, cannot be denied or refused.

10. The claim of the applicants relating to officiating allowance was recommended to the higher authorities vide Annex.A/2. This recommendation also supports the claim of the applicants. As there

are no written orders regarding officiation, the claim of the applicants shall have to be regulated for the period as mentioned in Annex.A/2 and the applicants cannot be permitted to say that the date of termination of officiating arrangement has wrongly been mentioned in the order Annex.A/2. In other words, the claim of the applicants regarding the officiating allowance, shall have to be restricted only upto 30.7.1992, as recommended in Annex.A/2 and not upto the dates as claimed by the applicants in their respective OAs i.e. 31.1.93 and 30.9.92.

11. In my opinion, the claim of the present two applicants is in all respects, is similar to that of Shri N.N.Chaturvedi, who was granted the relief by the Tribunal vide its order dated 10.8.98. Due to dismissal of the writ petition filed by the respondents, the order of the Tribunal has become final and no other view can be taken in the matter relating to the applicants claim.

12. In view of the above, I come to the conclusion that the applicants are entitled to get the Officiating Allowance as claimed by them but the same shall be restricted upto 30th of July,1992, as recommended by the concerned authorities.

13. I have also considered the prayer for grant of interest on the ~~amount~~ of the arrears of officiating allowance. In my opinion, the applicants cannot be awarded interest on the officiating allowance, as the same was also not allowed to Shri N.N.Chaturvedi, while deciding his O.A. The O.As, therefore, deserve to be accepted in part.

13. Both the O.As are,therefore, partly accepted. The respondents are directed to calculate and pay to the applicants Shri Ram Dayal Verma and to Shri Prabhu Dayal Meena, Officiating Allowance of the

post of Chief Controller, in the pay scale of Rs. 2375-3500 from 26.9.88 to 30.7.92 and 12.5.88 to 30.7.92, respectively within a period of three months from the date of communication of this order. The claim of the applicants relating to grant of interest on arrears of officiating allowance, is hereby rejected. If necessary, retiral benefits of Shri Ram Dayal Verma, be recalculated accordingly and arrears of such benefit be paid to him, within a further period of three months but in the circumstances without interest.

14. Parties are left to bear their own costs.



SD/-
(A.K.MISRA)
JUDL. MEMBER

प्रमाणित सही प्रतिलिपि

06/06/2000

अनुभाग अधिकारी (न्यायिक)

फैसलीय प्रशासनिक अधिकरण

जोधपुर