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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 1632/88

New Delhi this the 3rd day of May, 1994

CORAM :

THE HON'BLE MR. JUSTICE V. S. MALIMATH, CHAIRMAN
THE HON'BLE MR. P. T. THIRUVENGADAM, MEMBER (A)

S/Shri

1. Madan Lal S/O Amrit Lal
R/O 287/2, Railway Quarters,
Shakurbasti, Delhi-110034.
2. Krishan Kumar S/O Badri Dass,
R/O 81-C/2, Railway Quarters,
Motia Bagh, Delhi.
3. Mangleshwar Dutt S/O Roshan Lal,
R/O WA/2223, Raja Park,
Shakurbasti, Delhi-110034.
4. Amrik Singh S/O Charan Singh,
R/O WZ/1188-A, Rani Bagh,
Shakurbasti, Delhi - 110034....

Applicants

By Advocate Shri G. D. Gupta

Versus

1. Union of India through
the Secretary to the
Government of India,
Ministry of Railways,
New Delhi.
2. The Chief Printing &
Stationery Superintendent,
Northern Railway,
Printing Press, Shakurbasti,
Delhi.
3. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
4. Harish Kumar S/O L. N. Gandhi
5. Nand Prakash S/O Tuls i Dass
6. Girdhari Lal S/O Kishan Gir
7. Balbir Singh S/O Teja Singh
8. Gurbax Lal S/O Machhi Ram

V
Respondents Nos. 4 to 8
C/O The Chief Printing &
Stationery Suptd.,
Northern Railway Printing
Press, Shakurbasti,
Delhi.

... Respondents

By Advocate Shri B. K. Aggarwal

O R D E R (ORAL)

Shri Justice V. S. Malimath :-

The four petitioners in this case and respondents 4 to 8 were all holding the posts of Junior Compositors. In the cadre of Junior Compositors, the petitioners were admittedly senior to respondents 4 to 8. There were two channels of promotion available for the Junior Compositors — one by way of promotion to the cadre of Compositors and the other to the cadre of Junior Readers. The scale of pay of the Compositors and Junior Readers was the same, namely, Rs.260-400/-. Respondents 4 to 8 offered themselves for consideration for promotion to the cadre of Junior Readers. Their candidature was examined in accordance with the rules for promotion and they were promoted as Junior Readers between October, 1978 and August, 1981. So far as the petitioners are concerned, they did not opt at any time before the promotion of respondents 4 to 8 for consideration for promotion to the cadre of Junior Readers. The petitioners, however, were promoted between 1973 and 1978 as Compositors and in due course they were confirmed in the year 1979. Thus the factual position is that the petitioners who were seniors were able to secure higher scale of pay of Rs.260-400 in the post of Compositors much earlier than their juniors, respondents 4 to 8, who got into that scale

on their exercising the option and on their promotion as Junior Readers which took place between October, 1978 and August, 1981. Thus, the petitioners and respondents 4 to 8 were holding different posts - the petitioners holding the post of Compositors on their promotion between 1973 and 1978 and respondents 4 to 8 holding the post of Junior Readers on their promotion between October, 1978 and August, 1981. When this was the position, an order came to be passed by the Railway Board on 20.6.1983 reclassifying the post of Junior Compositor as skilled category with retrospective effect from 1.8.1978. This enabled the Junior Compositors to acquire higher status comparable to that of Compositors and the higher scale of pay of Rs.260-400 w.e.f. 1.8.1978. Most of the petitioners had come to the cadre of Compositors by the time reclassification took place, by the process of promotion and without the aid of reclassification order. The authorities appear to have thought of certain arrangements in the context of the retrospective reclassification of the posts of Junior Compositors into skilled category. One thing they did was to give everybody who got the deemed status of skilled Compositor w.e.f. 1.8.1978 the difference in emoluments. The said benefit was made available to respondents 4 to 8 who had by then ceased to be in the category of Jr. Compositors and had migrated as Junior Readers on their promotion between October, 1978 and August, 1981. Another arrangement they made was to issue a circular on 29.2.1984 produced as Annexure-F to the O.A.

Applications for filling in the posts of Junior Readers in grade Rs.260-400 (RS) for replacement of reading staff upgraded as Skilled Compositors in grade Rs.260-400 (RS) w.e.f. 1.8.1978 were invited from the staff possessing the following qualifications :-

1. Matriculation or its equivalent.
2. One year's service as skilled Compositor grade Rs.260-400 (RS) as on 1.8.1978.
3. A thorough knowledge of various proof reading marks used.
4. Conversant with the style of the house.

The notice further stated that suitability test would be held and after the test, successful candidates would be placed in the seniority list below all the Junior Readers working in the reading section prior to 1.8.1978. It is further notified that those who are considered suitable and posted would further seek promotion only in the reading section. It is clear from this notice that it is an invitation to such of those possessing the qualifications notified and if they are willing to be considered for promotion to the cadre of Junior Readers. The petitioners availed of the offer obviously as they were possessing the required qualifications and were successful in the test held for promotion. They were also duly promoted as Junior Readers. Respondents 4 to 8 felt threatened by the action of the administration in not only giving an opportunity to the petitioners and others similarly situated to come as Junior Readers but to give them a place above them in the seniority list of Junior

Readers. They, therefore, filed a writ petition in the High Court of Delhi being C.W. No. 729/84. Certain interim directions were issued during the pendency of that writ petition. The writ petition was ultimately transferred to the Tribunal where it was re-numbered as T-998/85. During the pendency of the said writ petition, the administration reviewed the earlier decision it had taken in the matter of affording promotion to the reclassified personnel and giving them promotion to the cadre of Junior Readers and appropriate seniority in that cadre. They filed an affidavit a copy of which is produced as Annexure-I wherein they have stated as follows :-

"1. That the case of the petitioners has been reviewed by the deponent and it has been observed that the Railway Board has not yet amended the Recruitment Rules for the post of Junior Readers. As such no disturbance is being contemplated by the office of the deponent in the existing seniority of those junior readers who have already been promoted to the post of junior readers from the then existing post of junior compositors.

2. That in view of the facts stated above the anxiety of the petitioners that their seniority would be disturbed is without any basis and the petition deserves to be dismissed."

Accepting this statement made in the affidavit filed by the department and the further assurance given by the counsel, the Tribunal disposed of the transferred application T-998/85 on 29.7.1987 as having become infructuous. The assurance given by Ms. Rachna Joshi on behalf of the department that none of the petitioners (respondents 4 to 8 in this application) would be

reverted was also recorded. It is necessary to point out that though the present petitioners were not originally impleaded as parties to T-998/85 it was submitted by Shgi Gupta, learned counsel for the petitioners, that they had got themselves impleaded subsequently. Thus, the aforesaid order came to be made in the presence of the petitioners by the Tribunal on 29.7.1987.

2. In the present application filed by the petitioners they have prayed for directions to the administration to treat respondents 4 to 8 as juniors to the petitioners in the cadre of Junior Readers. They have also prayed for quashing the statement made by the department before the Tribunal on 29.7.1987. Hence, the only question that requires examination in this case is as to whether the petitioners are right in their contention that on their being inducted as Junior Readers after the reclassification of the post of Junior Compositors, they are entitled to be treated as seniors to respondents 4 to 8 in the cadre of Junior Readers. It is not the case of the petitioners or of the respondents that there is any specific rule or order which regulates the relevant seniority in the cadre of Junior Readers. In the absence of any rule or order describing the mode of regulating seniority it is well settled principle of service law that the seniority should stand regulated taking into account the date of appointment or the date of continuous officiation in that cadre. In other words, the

person who is appointed first will be treated senior to the person appointed later in a particular cadre. That being the general principle of service law, if respondents 4 to 8 were appointed by the process of promotion as Junior Readers earlier than the petitioners, they would certainly be entitled to be treated as seniors to the petitioners. We have to examine as to whether there are any special reasons or factors justifying the acceptance of the contention of the petitioners that though they came to be appointed as Junior Readers between 1.4.1985 and 27.11.1985, they should be treated as seniors to respondents 4 to 8 in the cadre of Junior Readers even though they (respondents 4 to 8) came in the cadre of Junior Readers between October, 1978 and August, 1981, much earlier than the petitioners.

3. So far as the representation made by the administration when applications were invited for filling in the posts of Junior Readers for replacement of reading staff upgraded as skilled Compositors w.e.f. 1.8.1978 is concerned, the same is favourable to the petitioners. They were told that if they possessed the qualifications notified in the circular and are successful in the suitability test they would be placed in the seniority list below all the Junior Readers working in the reading section prior to 1.8.1978. Respondents 4 to 8 were working as Junior Readers not prior to 1.8.1978 but subsequent to that, as we have noted above. Hence, the representation made in the notice inviting applications would justify the stand taken by the petitioners that

16

consequent upon their being found suitable and appointed as Junior Readers they are entitled to be placed in the cadre of Junior Readers above all those who came in that cadre on or after 1.8.1978. But then the petitioners cannot invoke the principle of estoppel based on this representation for the reason that respondents 4 to 8 when apprehended that their seniority would be affected by the action that was proposed to be taken by the administration approached the High Court of Delhi for appropriate directions in which proceedings the present petitioners also got themselves impleaded as parties. During the pendency of that case which stood transferred to the Tribunal, the administration reviewed the earlier decision taken by them in which a representation was made favourable to the petitioners and to give an assurance to respondents 4 to 8 by means of an affidavit that their seniority would not be affected meaning thereby those to be inducted in pursuance of Annexure-F issued in 1984, like the petitioners, would not be placed above them in the seniority list of Junior Readers. On the strength of the solemn assurance given by the administration during the pendency of T-998/85 that respondents 4 to 8 should feel satisfied as there was no more threat to their seniority, the said application was disposed of as having become infructuous. This was done in the presence of the petitioners before us.

4. At Annexure-H is the notice notifying the result of the test held on 20.10.1984 in which the petitioners were declared successful. At the bottom of the said

notice Annexure-H it is stated that the posting of the petitioners and others as Junior Readers will be subject to the final decision of the High Court in the writ petition. Though the petitioners have not produced orders by which they came to be appointed as Junior Readers, we find from the records of T-998/85 which we called and scrutinised that the order in respect of the first petitioner, Shri Madan Lal dated 1.4.1985 was produced which reads, "W.E.F. 1.4.85 (FN) Sh. Madan Lal S/O Shri Amrit Lal Skilled Comp. T. No. 72 is transferred to Reading Section and posted as Jr. Reader at same rate of pay and scale against the post released by Shri Surinder Kumar Nagpal, Proof Reader Gr. 330-560 (RS). The post of Proof Reader Gr. 330-560 (RS) has been down graded to the grade of Rs. 260-400 (RS) due to Court's case of Junior Reader pending in the High Court. The claim above against any case is temporary and adhoc basis subject to court decision. Office order will follow."

5. Thus at every stage it is made clear and the petitioners were aware of the controversy that was going on in regard to their seniority in the light of the assurance that was contained in the notice inviting applications. The petitioners were also aware of the review of the decision earlier taken on the basis of which submission was made to the effect that the seniority of respondents 4 to 8 would not be affected. In this background, it is obvious that the petitioners cannot claim any rights on the basis of the representation which was made when the petitioners and others were invited to take the test if they were willing to be appointed as Junior Readers.

6. As already stated, neither of the contesting parties has contended that there is any specific rule or order regulating the seniority in the cadre of Jr. Readers. Hence, as we have observed earlier, the normal rule of seniority is to take into consideration the date of appointment of the petitioners in the cadre of Jr. Readers which should govern this case unless there are other circumstances justifying deviation from this principle. It was contended by the learned counsel for the petitioners that the petitioners are admittedly senior to respondents 4 to 8 in the cadre of Junior Compositors. It is their case that though under the relevant rules a Junior Compositor could aspire if he has necessary qualifications either to become a Compositor by promotion or Junior Reader, they could not aspire or compete for the post of Junior Reader before they were promoted as Compositors. As to whether a vacancy in the cadre of Junior Readers was available at the given point of time is a mere matter of chance. What the crux of the matter is that the rule uniformly applies to the everyone concerned. Before a vacancy in the cadre of Junior Readers arose, vacancies for Compositors in the same scale arose and the petitioners offered and got themselves selected and promoted to that cadre. Thus, it cannot be said that the petitioners were deprived of an opportunity of competing for the post of Junior Readers. Shri Gupta, learned counsel for the petitioners interrupted at this stage and submitted that it is not that there was no vacancy but there was no cadre of Junior Readers, which information, he says, he has now received from his clients.

7. We have a set of rules entitled Rules for Recruitment, Training & Promotion of Staff in the Railway Printing Presses, re-printed in 1973, which clearly contain specific provisions for filling up the posts of Junior Readers. They are contained in paragraph 205. It is, therefore, not right to say that there was no provision in the rules at all when the petitioners were promoted as Compositors for the post of Junior Readers. Sufficient provisions were very much in existence at that time and the mere fact that the vacancies were not there at the relevant point of time the advantage of which the petitioners could have taken, is a mere matter of chance. No right, therefore, can be built-up on the basis of such fortuitous circumstances.

8. So far as the method of recruitment to the post of Junior Readers is concerned, the same is prescribed in paragraph 205. It provides that 50 per cent posts of Junior Readers shall be filled in by direct recruitment of men possessing minimum qualifications detailed below :-

"(a) Essential Qualifications:-

- (i) Matric or its equivalent.
- (ii) Practical experience in proof-reading work for a minimum period of one year.
- (iii) Age below 30 years.

(b) Desirable Qualifications -

- (i) Professional Certificate in Proof Reading.
- (ii) Experience in Hand Composing."

50 per cent of the posts of Junior Readers are to be filled in by promotion of suitable men from the Junior

Compositors possessing the following qualifications :-

- "(a) Matric or its equivalent.
- (b) One year's service as Junior Compositor.
- (c) A thorough knowledge of the various proof reading marks used.
- (d) Conversant with the style of the House."

What becomes apparent from a reading of paragraph 205 is that the only modes of appointment to the post of Junior Readers are either by direct recruitment or by promotion. There is no other mode of recruitment prescribed by the rules. So far as the posts of Compositors are concerned, paragraph 209 provides that 25 per cent of the posts shall be filled in by direct recruitment of candidates who possess the minimum qualifications and experience as detailed below :-

"(a) Essential Qualifications :-

- (i) Passed VIII class.
- (ii) Practical experience for a minimum period of two years in a Printing Press of repute.
- (iii) Age below 25 years.
- (iv) Good experience in display work, making-up and imposing.

(b) Desirable Qualifications :-

- (i) Matric or its equivalent.
- (ii) Professional Certificate in the work."

So far as the promotion is concerned, it is provided in sub-paragraph (2) that 75 per cent of the posts of Compositors shall be filled in by departmental promotion from the Junior Compositors subject to passing of trade test.

9. The summary of Rules 205 and 209 makes it clear that there is a sharp difference so far as the essential qualifications for direct recruitment is concerned,

whereas for the post of Junior Reader a higher educational qualification of matic or its equivalent is prescribed, for direct recruitment to the post of Compositor, it is enough that the candidate has passed VIII class. We need not detail other qualifications which are not so important for the purpose. It is no doubt true that we are not concerned in this case with direct recruitment as such. So far as the post of Junior Reader is concerned, though the feeder category is of Junior Compositors, they are required to possess qualification of matic or its equivalent, apart from one year's service as Junior Compositor and thorough knowledge of various proof reading marks used. So far as the post of Compositor is concerned, the feeder category is the same, namely, that of Jr. Compositors and they would be eligible for promotion if they pass the prescribe trade test. Thus, it is clear that the qualifications as well as the method prescribed for promotion to the two categories of posts, namely, Junior Readers and Compositors are different. It is not, therefore, possible to ^{presume} having regard to the prescription of the rules that every Junior Compositor would necessarily have the qualifications for the post of Junior Reader. We have already noticed that so far as the post of Junior Reader is concerned, it is not enough that the person concerned is in the feeder cadre of Junior Compositors, but he has also to possess prescribed qualifications which we have summarised above. It is only such of the Junior Compositors who possess the qualification of matic or equivalent apart from

having one year's experience as Junior Compositor or who can be considered for promotion to the cadre of Junior Readers and not everyone among the Junior Compositors. In this background, it is not possible to say that any substantial change in the circumstances was brought about when reclassification was effected in the year 1984 to give rise to any rights in favour of the petitioners. The Rules of recruitment were not amended.

10. As already stated, if the petitioners possessed the prescribed qualification, they could have offered themselves as candidates and got themselves selected and promoted to the cadre of Junior Readers. If they have not been able to join that cadre on dates earlier than respondents 4 to 8, we fail to see how they can steal a march over respondents 4 to 8 because they got selected after the reclassification was made and they were given an opportunity. In our opinion, reclassification did not automatically require the authorities to give an opportunity to the petitioners to offer themselves for being transferred and appointed as Junior Readers. The mere fact that the petitioners were in the same scale of pay as Compositors as the one drawn by the Junior Readers does not mean that they could straightway get transferred and appointed as Junior Readers. That the posts are not regarded as inter-changable, is obvious. Had the posts been inter-changable one would have possibly said that the service rendered by the petitioners as Compositors could ensure for their benefit for counting their seniority in the cadre of Junior Readers. The

petitioners had to qualify themselves for being considered for appointment as Junior Readers. They had further to qualify the prescribed trade test. The prescription of the test and the opportunity that was afforded to the petitioners to go on transfer to the post of Junior Readers is an opportunity de hors the rules. We have already pointed out that the rules do not provide for a third mode of recruitment to the post of Junior Readers by transfer of Compositors to the cadre of Junior Readers. The administration, however, resorted to this method in the wake of the reclassification of the posts of Junior Compositors and bringing them on par so far as the scales of pay are concerned with the Junior Readers. We have, therefore, no hesitation in taking the view that appointment of the petitioners by the process of transfer to the cadre of Junior Readers must in the context be understood as fresh appointment. We are not concerned in this case with the validity of the appointments of the petitioners to the cadre of Junior Readers as that question has not arisen for examination. But the petitioners cannot by virtue of their appointment on transfer claim the benefit of the service rendered by them as Compositors as the service rendered by them as Compositors cannot be regarded as on par or equivalent to the service rendered as Junior Readers. The nature of duties and responsibilities of the two posts are different as is clear from the type of experience that is required for the posts of Junior Readers and the Compositors and further channels of promotion in different sections.

we have, therefore, no hesitation in holding that the petitioners on their being appointed on transfer as Junior Readers cannot count the past service rendered by them as Compositors for claiming seniority in the cadre of Junior Readers.

11. Another contention of Shri Gupta which deserves notice is that the petitioners were promoted as Junior Readers. The order by which they were appointed says that they were appointed on transfer basis. The qualifications prescribed by the notice inviting their willingness for consideration prescribe one year's experience as skilled Compositors in the grade of Rs.260-400 as on 1.8.1978 as one of the qualifications. Under Rule 205 pertaining to Junior Readers what is required is one year's service as Junior Compositors. If it were a case of promotion the service qualification would have been one year's experience as Junior Compositor and not one year's service as Compositor as on 1.8.1978. This circumstance itself is sufficient to show that the process by which the petitioners came to be appointed as Junior Readers is not the process of promotion prescribed by the rules but a process de hors the rules which is analogous to that of transfer subject to fulfilment of certain conditions. Hence, the consequences that would follow when there is a ^{promotion} ~~transfer~~ are not attracted to the facts of this case. Even if we were to accept the petitioners' contention that they came to be appointed by the process of promotion it does not in any way advance their case regarding seniority. Respondents 4 to 8 were promoted much earlier whereas the petitioners

came to be promoted much later. Hence, the petitioners have to rank juniors to them. This is not a case where the petitioners ~~were seniors~~ and were prevented from becoming Junior Readers earlier by denying them any opportunity which under the rules they were entitled to. We have, therefore, no hesitation in holding that there is no substance in this contention either.

12. For the reasons stated above, it is not possible to accede to the contention of the petitioners that they should be accorded seniority over respondents 4 to 8 in the cadre of Junior Readers. Consequently, it has to be held that the stand taken by the administration in T. No. 998/85 is sound and does not call for interference.

13. In view of the foregoing, this application fails and is dismissed. No costs.

P. T. Thiru

(P. T. Thiruvengadam)
Member (A)

Malimath

(V. S. Malimath)
Chairman

/as/