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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 155 of 1986
~~R.A.x.Nox~~

DATE OF DECISION 7.9.1987

Sh. Piare Lal Tiwari Petitioner

Miss Nitya Ramakrishnan Advocate for the Petitioner(s)

Versus

Union of India Respondent

Mrs. Raj Kumari Chopra Advocate for the Respondent(s)
1 to 3

Shri Sant Lal Advocate for the Respondent
4 to 7

CORAM :

The Hon'ble Mr. S. P. MUKERJI, ADMINISTRATIVE MEMBER

The Hon'ble Mr. CH. RAMAKRISHNA RAO, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*,
2. To be referred to the Reporter or not ? *Yes*,
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*

Ch R Rao
(CH. RAMAKRISHNA RAO)

S.P. Mukerji
(S. P. MUKERJI)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

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OA.NO.155/86

DATE OF DECISION : 7.9.87

Sh

Sh. Piare Lal Tiwari . . Applicant
Vs.
Union of India . . Respondents
For Applicant . . Miss Nitya Ramakrishnan,
Advocate
For Respondents 1 to 3 . . Mrs Raj Kumari Chopra,
Advocate
For Respondents 4 to 7 . . Sh. Sant Lal, Advocate.

CORAM

The Hon'ble Mr. S. P. Mukerji, Administrative Member
The Hon'ble Mr. Ch. Ramakrishna Rao, Judicial Member

(Judgment of the Bench delivered by Hon'ble
Sh.S.P. Mukerji, Administrative Member)

JUDGMENT

The applicant who is a Sorting Assistant
in the Railway Mail Service under the Director General
Post & Telegraphs moved the Tribunal with his application
dated 3.3.1986 under Section 19 of the Administrative
Tribunals Act, 1985 praying that the impugned order
dated 15.3.1985 promoting respondents 4 to 7 to the
(L.S.G.)
Lower Selection Grade of the Railway Mail Service
with effect from 1.10.1968 should be quashed. He has
also prayed that respondents 1 to 3 be directed to
consider the applicant for such promotion with
effect from 1.10.1968.

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2. The brief facts of the case are that the applicant was appointed as a Sorting Assistant in 1959. ^{The} ~~His~~ next promotion to the Lower Selection Grade (LSG) was to be made 33 1/3% by selection and 66 2/3% on the basis of seniority. Because of his alleged participation in the general strike between 18th and 19th of September, 1968 he was not considered for promotion of Sorters to LSG when on 30.9.1968, 19 loyal workers who had not participated in the strike were promoted. These 19 promotees included some of Applicant's juniors also. Though these promotions were made on a purely temporary basis, in July 1969 the Director General passed orders that they will not be reverted from L.S.G but adjusted against future vacancies and no new promotion would be made till all of them are adjusted. The applicant did not represent against such promotion of his juniors. Since these 19 promotees did not include those who had been on deputation outside, one of the Sorters on Deputation Shri Kulwant Singh filed a Writ Petition 1248/71 praying that he should also be promoted to the LSG and won the case. On the basis of the directions given by the High Court of Delhi in that case, by the impugned order 14 more Sorters including the respondents 4 to 7 were promoted on 13.3.1984 with effect from 30.11.1983 and ^{later} ~~later~~ promoted to the L.S.G. by the impugned order with effect from 1.10.1968. It is against this order that the applicant has come up before us. The applicant has challenged his supersession by respondents 4 to 7 by stating that he was not considered for promotion when 19 officials were promoted in 1968 and again when respondents 4 to 7 who were junior to him

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were considered and promoted. Thus he says promotions of his juniors without considering his case in violation of Recruitment Rules under which ^{one} 2/3 of the vacancies had to be filled up on the basis of seniority subject to the rejection of the unfit. The respondents have argued that since the applicant had participated in the strike he was considered to be unsuitable for promotion of the LSG in 1968. They have further stated that since the applicant had not represented against his supersession when some of his juniors amongst 19 promotees were promoted in 1968, he cannot represent against the promotions of respondents 4 to 7 who are senior to the applicant's juniors promoted in 1968. According to the respondents the cause of action in the application arose ^{not} on 15.3.85 when his juniors who were on deputation in 1968 were promoted, but the cause of action arose on 13.9.1968 when his juniors working with him in the cadre were promoted. Thus the application is relatable to the promotions made in 1968 and as the applicant did not represent against his supersession in 1968, the present application is hopelessly time barred.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. There ^{is} ~~can be~~ no dispute about the fact that when 19 Sorters including some who were junior to the applicant were promoted in 1968 to LSG, the applicant was not considered as he had participated in the strike of 18th/19th of September, 1968. The respondents have in their counter affidavit and during the arguments conceded this fact. After consulting

the documents ^{the} respondents ^{also} admitted that the 19 ^{Lower} promotees of 1968 were elevated to the Selection Grade for their loyalty during the strike ^{but} and ^{that} they were not considered by the DPC as the promotions were on an ad-hoc basis. However, ^{from} the order issued by the Assistant Director General (Memorandum No.31/6/69-PE.I) dated 3rd July, 1969 it was clarified "that 19 officials in question who have been appointed to L.S.G. Grade, against additional posts ordered to be created under Directorate letter of even number dated 16.6.1969 will not be reverted on adjustment of the post against future vacancy. As and when, any vacancy occurs in already existing L.S.G. posts, one of the additional posts of L.S.G. will be brought under reduction and the individual official shown against vacancy in already existing posts of L.S.G. It, therefore, follows that the officials otherwise eligible for promotion will be considered only when these 19 officials have been adjusted". It will thus ^{be} clear that the 19 loyal workers were given more or less regular ^{and durable} promotions to LSG. This fact was accepted by the High Court of Delhi in C.W.1249 of 1971. ^Q In their judgment dated 29.1.1980 after discussing the details in various orders passed by the respondents ^{the} High Court of Delhi came to the conclusion that "Impliedly, the appointments of these 19 persons were regular appointments". However, the fact

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remains that the applicant did not represent against his supersession by the loyal workers since 1968. It was only when in 1985 on the basis of the judgment of the High Court in the aforesaid Writ Petition ^{move} juniors to the applicant who were on deputation to the Army Postal Service were promoted that the applicant ^{has} made a fresh grievance and moved this Tribunal.

4. The question is whether by not representing against his juniors in the cadre who were promoted in 1968 by superseding him, the applicant can be held to be estopped from representing against the promotion of his other juniors who were on deputation in 1968 but were later promoted to L.S.G. with retrospective effect by the impugned order of 15.3.1985. We feel that the stand taken by the respondents that the applicant is ^{permanently} debarred from challenging the order of 15.3.1985 because he had ~~not~~ challenged the order of 30.9.1968 is not fair and just. Even though the promotion to the LSG is ^{to} ~~it~~ be made purely on the basis of seniority, it cannot be said that if the applicant did not represent against some of his juniors who were promoted in 1968 he cannot challenge the subsequent promotion with retrospective effect of other juniors who were senior to those who had superseded him in 1968. In the matter of promotion the case of every junior who superseded the applicant is a specific and distinct case and the grievance arising by the supersession by every junior is severable from the grievance arising out of supersession by other juniors. In cases of

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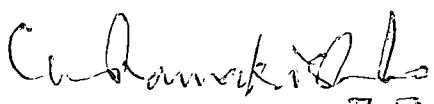
selection the issue is clear. One junior may supersede the senior because the former adjudged to be ~~to be~~ outstanding but that does not entitle ^{all} those who are senior to the outstanding junior to also supersede the senior unless and until each one of them is also adjudged to be 'outstanding' while the senior is graded as 'good' or 'very good'. Thus, the case of each superseding officer creates a fresh cause of action ^{for} by the superseded senior. On the same analogy even when the promotion is to be made on the basis of seniority subject to rejection of unfit the case of every superseding junior creates a fresh cause of action for the superseded officer unless and until each superseding officer proves himself to be fit for promotion. In other words, in the matter of promotion either by selection or on ^{seniority} suitability the superseded officer being in competition with each one of them can raise fresh cause of action, and promotion of a ^{over the superseded officer} junior cannot give a licence and a right of ^{similar supersession} promotion to all those who are senior to such a promoted junior ^{but junior to the superseded officer}. In the circumstances we feel that the applicant can raise a legitimate grievance by the impugned order of 15.3.85 by which respondents 4 to 7 who were junior to him but ^{were} on deputation in 1968 were promoted with retrospective effect from 1.10.1968. We, therefore, find the application to be within time under Section 21 of the Administrative Tribunals Act, 1985.


5. The other main question before us is whether the applicant can be deprived ^{of} ~~from~~ his right of being considered for promotion to the Lower Selection Grade when others including his juniors were so considered and promoted. Respondents admitted before us that the loyal Sorters ^{who} were promoted on 13.9.1968 and regularised from July 1969 were not considered by the DPC as per the Recruitment Rules ^{but} were promoted solely on the ground that they had not participated in the strike of September, 1968 and that the applicant was not considered for such promotion along with others ^{solely} because that he had participated in the strike. This, to our mind is not legal. Every government servant has a right to be considered for promotion in accordance with the Recruitment Rules, much more so, when his juniors are so considered. It is another ^{matter} ~~thing~~ that the Selection Committee or the DPC having considered such a person rejects him ^{as} unfit for promotion. So long as he is not considered for promotion he continues to be deprived of his fundamental right. Even when the juniors were considered on 15.3.1985 for promotion with effect from 1.10.1968, the ^{case} of the applicant was not considered as ^{he had} ~~having been~~ taken part in the strike of 1968. He has been ^{considered} ~~deemed to have been~~ ^{permanently} disqualified ^{for} ~~himself from~~ such considerations. Such disqualification without giving any opportunity to the applicant to defend himself whether he participated in the strike or not and whether there were any other reasons for not attending his office on the day of strike, is to

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our mind, ab-initio void. It is true that the Railway Mail Service is an essential public service and participation in the strike to dislocate this service is reprehensible and punishable. But, before anybody is punished in any manner the rules of natural justice requires that he should be given an opportunity to defend himself. Such an opportunity was not given to the applicant in 1968^{or thereafter}. His exclusion from being considered for promotion cannot be sustained.

6. In the facts and circumstances discussed above we allow the application to the extent of directing that the case of the applicant should be considered for promotion to LSG by the respondents as on 1.10.1968 in the same manner as the cases of respondents 4 to 7 were considered on the basis of seniority subject to the rejection of unfit. While considering the applicant's case the entries in C.R. upto 30.9.1968 ^{only} may need be considered. In case he is found suitable for such promotion he should be promoted notionally with effect from 1.10.1968 against a supernumerary post with all consequential benefits ^{as given to respondents 4 to 7} in accordance with relevant rules and instructions. The application is disposed of on the above lines. There will be no order as to costs.


(CH. RAMAKRISHNA RAO) 7.9.87.
JUDICIAL MEMBER


(S. P. MUKERJI)
ADMINISTRATIVE MEMBER