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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 283
~~XXXXXX~~

1986

DATE OF DECISION 30.6.87

Smt. Chander Kanta Gaur Petitioner

Shri B. S. Bindra Advocate for the Petitioner(s)

Versus

Union of India Respondent

Shri K. C. Mittal Advocate for the Respondent(s)

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. Ramakrishna Rao
(CH. RAMAKRISHNA RAO)

S. P. Mukerji
30.6.87
(S. P. MUKERJI)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
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O.A. 283/86

DATE OF DECISION : 30.6.1987

Smt Chander Kanta Gaur . . . Applicant

vs

Union of India . . . Respondents

Shri B.S.Bindra . . . Counsel for Applicant

Shri K.C.Mittal . . . Counsel for Respondents

CORAM

The Hon'ble Mr. S.P.Mukerji, Administrative Member

The Hon'ble Mr. Ch.Ramakrishna Rao, Judicial Member

(Judgment delivered by Hon'ble Mr. S.P.Mukerji,
Administrative Member)

ORDER

The applicant who is working as Junior Teacher in the Railway Higher Secondary School, Ratlam has filed this application on 28.4.86 praying that the impugned orders dated 26.2.86 and 28.2.86 reverting her from the post of Junior Teacher in the scale of Rs.440-750 to that of Assistant Teacher in the scale of Rs.330-560 may be quashed as illegal and unconstitutional and she should be continued as Junior Teacher at Ratlam.

2. The facts of the case can be recounted as follows. The applicant joined as Assistant Teacher at Ratlam through proper selection on 26.11.1977.

Another candidate Kumari Prem Kanwar was also selected and was graded at Sl. No. 17 in the merit list while the applicant was at 25th position. However, Ku. Kanwar was originally posted at Kota and later transferred to Ratlam on her own request as Assistant Teacher and under the existing rules, was placed as junior to the applicant as she got herself transferred to the Ratlam seniority unit at her own request. In the seniority list as on 14.9.1978 the applicant was shown at sl. no. 53 whereas Ku. Kanwar at sl. no. 55. Against this seniority list the applicant represented and the President of the Railway School vide the order dated 30.9.1982 (Annexure R-7 to the application) on his own and unilaterally placed Ku. Kanwar above the applicant between sl. nos. 52 and 53. In the meantime, respondents promoted Ku. Kanwar as Junior Teacher in the higher scale of Rs. 440-750 w.e.f. 3.9.1982; i.e., even before she was placed above the applicant. On 18.12.1982 the dispute about the seniority between the applicant and Ku. Kanwar had been referred to the Head Quarters by the Divisional Railway Manager (Annexure R-8 to the application) and the Head Quarters of Western Railway communicated the decision that the applicant will be senior to Ku. Kanwar; i.e., the seniority list of 14.9.1978 was maintained. The respondents surprisingly did not revert Ku. Kanwar to promote the applicant ~~but referred back to the~~ Head Quarters on 3.2.1983 and the Head Quarters

office of Western Railway in their letter dated 18.2.83 (Annexure R-12 to the Application) maintained their decision; i.e., the applicant would remain senior to Ku.Kanwar. On this the respondents promoted the applicant also without reverting Ku.Kanwar and surprisingly again while Ku.Kanwar continued to hold the post of Junior Teacher continuously from 3.9.1982, the applicant who was avowedly senior to Ku.Kanwar was intermittently reverted and re-promoted. According to respondents when the post of Junior Teacher ^{was} upgraded to that of Senior Teacher both the applicant as well as Ku.Kanwar had to be reverted but Ku.Kanwar managed to get a stay order from the District Judge on 3.3.83 and therefore she could not be reverted while the reversion of order of ^{ed} the applicant remain ^{ed} unchallenged till she filed this application before the Tribunal. It also appears that Ku Kanwar challenged her seniority in the Civil Court at Ratlam which was transferred to the Tribunal. From the additional reply given by the respondents on 24.12.1986, it appears that the Tribunal had observed that ~~Govt~~ Chander Kanta Gaur is senior to Ku.Kanwar.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. There is no doubt in our mind that the applicant in this case has been given rather a raw deal and while she was senior

to Ku. Kanwar in accordance with the declared seniority list, Ku Kanwar was given promotion as Junior Teacher before 3.9.1982 while the applicant got such promotion for the first time on 22.3.83. It appears that in order to justify this invidious promotion ^{given} to the junior, an irregular order placing Ku Kanwar above the applicant was passed which was held to be erroneous twice by the Western Railway Head Quarters. To add insult to injury to the applicant the applicant was reverted intermittently from the post of Junior Teacher while Ku. Kanwar continued without any interruption in the higher grade. Her continuance in preference to ^{the} applicant's was explained by the ex-parte stay order issued by the District Judge in 1983. We are not surprised ⁱⁿ the context and the manner in which Ku. Kanwar was promoted as Junior Teacher even when she was junior to the applicant, ^{as why} the ex-parte stay order still remains in force. It has been stated by the respondents in para 8 of their counter affidavit that "at present the post of Junior Teacher (Biology) is vacant at Railway Secondary School, Gangapur City and the applicant can be posted against that post. The promotion of Ku. Kanwar ignoring the claims of the applicant who was senior and was available at the same station, suffers from hostile discrimination against the applicant. In Shiv Dayal Sinha Vs. State of Bihar AIR 1981 SC 1543 it has been held that it is a clear violation of Articles 14 and 16 of the Constitution of India not to consider the case of

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of senior public servant for promotion when his juniors are considered. Since it is not the case of the respondents that on 3.9.1982 the applicant was also considered for promotion as Junior Teacher along with Ku Kanwar/she was not found suitable, we cannot sustain the applicant's non promotion during the period from 3.9.1982 when Ku. Kanwar was promoted. Since in accordance with the respondents the Tribunal had held the applicant as senior to Ku. Kanwar, we allow the application with the following directions.

The applicant will be given notional promotion with effect from 3.9.1982 and will be deemed to have continuously held the post of Junior Teacher with effect from that date concurrently with the period of officiation as Junior Teacher by Ku. Kanwar irrespective of the fact whether the period of such officiation of Ku. Kanwar coincided with vacations or continued under the stay order issued by any Court. It is up to the respondents to post the applicant as Junior Teacher against any existing vacancy but so long as Ku. Kanwar continues as Junior Teacher and draws pay as such, notional promotion as Junior Teacher and pay as Junior Teacher will have to be given to the applicant. The orders of notional promotion and payment of arrears of salary should be issued within three months of the date of communication of this order. The applicant will also get the benefit of seniority as Junior Teacher on the basis of notional promotion w.e.f. 3.9.82. The application is disposed of on the above lines and there will be no orders as to costs.)

Ch. Ramakrishna Rao
(CH. RAMAKRISHNA RAO)
J.M.

S. P. Mukerji
30.6.87
(S. P. MUKERJI)
A.M.