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Central Administrative Tribunal  
Principal Bench, New Delhi

Date: 23-12-1988

1. Regn. No. RA-99/87

Smt. Prem Kunwar Rathor .... Applicant

Vs.

Smt. Chandra Kanta Gaur  
& Others .... Respondents

For the Applicant .... Shri S.K. Gupta, Advocate.

For the Respondents .... Shri D.P. Kshtriya, Advocate.  
IN

2. Regn. No. OA-283/86

Smt. Chandra Kanta Gaur .... Applicant

Vs.

Union of India & Another .... Respondents

For the Applicant .... Shri B.S. Bindra, Advocate

For the Respondents .... Shri M.K. Gupta, Advocate.

2. Regn. No. TA-610/86

Smt. Prem Kunwar Rathor .... Plaintiff

Vs.

Union of India .... Respondents

For the Plaintiff .... Shri S.K. Gupta, Advocate

For the Respondents .... Shri B.S. Bindra, Advocate &  
Shri D.P. Kshtriya, Advocate.

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman (Judl.)  
Hon'ble Shri D.K. Chakravorty, Administrative 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*

(Judgement of the Bench delivered by Hon'ble  
Shri P.K. Kartha, Vice-Chairman)

The inter se seniority between Smt. Chandra Kanta  
Gaur (applicant in OA-283/86 and respondent in RA-99/87)  
and Smt. Prem Kunwar Rathor (applicant in TA-610/86 and  
RA-99/86) is the subject matter of these applications.

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Hence, these applications are being disposed of by a common judgement.

2. Smt. Chandra Kanta Gaur filed OA-283/86 in this Tribunal in which the Union of India, represented by the General Manager, Western Railways, Bombay, and the Divisional Railway Manager, Western Railways, Ratlam, were impleaded as the respondents. She did not implead Smt. Prem Kunwar Rathor in the said application. After hearing the learned counsel for both the parties and going through the record of that O.A., this Tribunal gave its judgement dated 30.6.1987 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. 3.9.1982. The application is disposed of on the above lines and there will be no orders as to costs."

3. Smt. Prem Kunwar Rathor had not been impleaded as a respondent in OA-283/86. She filed review application - RA-99/87 - praying for the following reliefs:-

- (a) To set aside our judgement dated 30.6.87 insofar as it prejudices and adversely affects her rights, claims and seniority against Smt. Chandra Kanta Gaur (original applicant in OA-283/86), without any notice and without giving any opportunity of showing cause and of being heard to her.

(b) To adjudge her as senior to Smt. Chandra Kanta Gaur.

4. Smt. Prem Kunwar Rathor had filed suit No.104-A/83 in the Court of Civil Judge, Ratlam, which stood transferred to the Jabalpur Bench of this Tribunal (TA-610/86). The suit was for permanent injunction to restrain the defendants from reverting her from the post of Junior Teacher to the post of Assistant Teacher in a Railway school. On 20.5.1988, the Chairman passed an order directing that TA-610/86 be transferred to the Principal Bench as the subject matter of that application was the same as that of RA-99/87, in order to avoid conflict of decision.

5. We have gone through the records of these cases very carefully and have heard the learned counsel for both the parties at length. Shri Gupta, learned counsel for the review applicant, contended that Smt. Chandra Kanta Gaur filed OA-283/86 in this Tribunal by deliberately concealing the material facts. In OA-283/886 Smt. Gaur had declared that the matter regarding which the application had been made was not pending in any court of law or any other authority, or any other Bench of the Tribunal. According to Shri Gupta, Smt. Gaur knew fully well that she was a party to suit No.104-A/83 which was transferred to the Jabalpur Bench of this Tribunal as TA-610/86.

6. The aforesaid contention of Shri Gupta is clearly untenable. We have gone through the pleadings in suit No.104-A/83. It is seen that Smt. Gaur was impleaded as respondent No.3 by the order of the Court dated 4.12.1987. A noting to this effect appears on the title page of the plaint filed by the plaintiff. OA-283/86 was filed in this Tribunal on 28.4.1986, which was prior to that date.

On

7. The admitted factual position is that Smt. Prem Kunwar Rathor was appointed as a temporary Assistant Teacher in Kota Division on 17.8.1977. She applied for a transfer vide her letter dated 25.10.1977 which reads as follows:-

"To

The Chief Personnel Officer,  
Western Railway,  
Churchgate - BOMBAY.

THROUGH: PROPER CHANNEL.

Sub:- Rly. Schools - Transfer from one Division to another i.e. Kota Division to RTM Division.

R/Sir,

With due respect I beg to lay down the following few lines to your kind consideration and sympathetic action.

I beg to state that at present I am working as Asstt. Teacher scale Rs.330/560 (R) in the Rly. Primary School (Wagon Repairs Shop) Western Railway, Kota under the Administrative control of Works Manager & Divisional Personnel Officer, Western Railway, Kota.

I am unmarried girl. My father and other family relative are at RTM. My father is working as Loco Inspector(II) RTM. In the present trend of social life, it is very difficult to live alone for an unmarried girl at outside where she has not any relative and any other guardian to look after. However, I am passing my days at KTT in very odd condition.

It is learnt through the reliable sources that on RTM Division, some posts of Asstt. Teachers in scale Rs.330/560(R) have been sanctioned by your kind honour. Therefore, it is requested that I may kindly be adjusted against one of the same posts at RTM by transferring me from Kota to Ratlam where my parents are living.

I hope your kind honour will definitely look into my grievances as well as a position of unmarried girl who is living away from her parents and will consider my request by transferring me from Kota to Ratlam at your earliest.

For this act of your kindness, I shall pray ever & ever for your long life and prosperity.

Hoping to receive a favourable consideration.

Thanking you in anticipation please.

Yours faithfully,

Dated:25.10.1977

Sd/-Kum. Prem Kanwar  
Asstt. Teacher Rly. Prim. School,  
(Wagon Repair Shop)  
Western Rly.,  
K O T A."

8. The Headquarters Office of the Western Railways allowed her request vide their letter dated 19.11.1977 which reads as follows:-

"Kum. Prem Kanwar, Asstt. Teacher, Railway Primary School, KTT is hereby transferred to Ratlam Division.

2. The transfer of Kum. Prem Kanwar is at her own request. She will, therefore, be assigned seniority according to extant rules. She will not be entitled to any transfer allowance, transfer pass, joining time etc." (Emphasis supplied).

9. Smt. Kunwar joined Ratlam Division on 29.11.1977. Smt. Gaur was also allotted to Kota Division. Smt. Gaur was, however, appointed as a temporary Teacher at Ratlam Division and had joined there on 26.11.1977. Thus, Smt. Gaur joined at Ratlam Division earlier than Smt. Rathor.

10. Shri Kshtriya, the learned counsel for the Railways, stated that the inter se seniority as Assistant Teacher of Smt. Gaur and Smt. Rathor had been considered by respondents 1 and 2. The seniority of Smt. Rathor was fixed in accordance with para.312 of the Indian Railway Establishment Manual, according to which, in the case of transfer on request, the seniority of Railway servants transferred at their own request from one Railway to another, should be allotted below that of the existing confirmed and officiating Railway servants in the relevant grade in the promotion group in the new establishment, irrespective of the date of confirmation or length of officiating service of the transferred Railway servants. This applies also to cases of transfer on request from one cadre/division to another cadre/division on the same Railway.

11. Originally, respondent No.2 passed an order to the effect that Smt. Rathor was senior to Smt. Gaur. This was objected to by the Western Railways Mazdoor Sangh, Ratlam Division and in view thereof, respondent No.2 made a

*OK*

reference to the competent authority in respondent No.1's Office. The competent authority advised respondent No.2 to the effect that Smt. Gaur was senior to Smt. Rathor. The letter of respondent No.1 dated 27.1.83 addressed to Respondent No.2, reads as follows:-

"The case simply stated is that Ku. Prem Kanwar joined at Ratlam on request transfer basis and Smt. Chandra Kanta Gaur joined at Ratlam on the basis of her allotment for Ratlam Division and she joined earlier than Ku. Prem Kanwar. In this circumstance the criterion of merit order in the RSC is not relevant. I do share your view in regard to observance of merit order in respect of candidate coming from the same RSC select test. Had perhaps the position been ascertained before change of allotment, the changes could have been done to satisfy the merit order position also. But the facts of circumstances are otherwise.

Therefore Smt. Chandra Kanta Gaur will be senior to Ku. Prem Kanwar."

12. However, Smt. Rathor was not reverted from her post as she had obtained interim orders of stay from the Civil Court.

13. Shri B.S. Bindra, learned counsel for the applicant in OA-283/86 vehemently argued that our judgement dated 30.6.1987 cannot be challenged on the ground that there is any error apparent on the face of the record. We are inclined to agree with this contention. The question of inter se seniority between Smt. Rathor and Smt. Gaur has been finally decided by respondent No.1 who is the competent authority. This Tribunal, by its judgement dated 30.6.87, has upheld the validity of the decision of respondent No.1. The scope of review is well-settled. It <sup>is possible or</sup> ~~appears~~ that a view which appeals to a judge in coming to his conclusion, is erroneous. That by itself can afford no ground for review (vide M/s the Associated Tubewells Ltd. Vs. Gujarmal,

Or

A.I.R. 1957 S.C. 742 at 743). A review proceeding cannot be equated with original hearing of the case and the finality of the judgement cannot be reconsidered except where a glaring omission or patent mistake, or like grave error has crept in by judicial fallibility (vide Northern India Caterers (India) Ltd., Vs. Lt. Governor of Delhi, 1980 (2) S.C.C. 167 at 171-172; A.T. Sharma Vs. A.P. Sharma, A.I.R. 1979(4) S.C.C. 389; and Avtar Singh Vs. Union of India, A.I.R. 1980, S.C. 2041).

14. On careful consideration of the grounds raised in the review application, we are satisfied that there is no error apparent on the face of the record warranting a review as prayed for. The grievance of Smt. Gaur, who was the plaintiff in OA-104-A/83 (TA-610/86), being the same as in the present RA-99/87, we also find that there is no merit in the suit. In the circumstances, RA-99/87 and TA-610/86 are dismissed. There will be no order as to costs. A copy of this judgement may be placed in RA-99/87 and OA-283/86.

*D. K. Chakravorty*  
(D.K. Chakravorty)  
Administrative Member

*P. K. Kartha*  
(P.K. Kartha)  
Vice-Chairman(Judl.)