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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Review Petition No. 25 of 1986

In

Registration O.A.No. 4 of 1986

Jai Singh v. Union of India & others
Connected with

Registration O.A.No.442 of 1986

S.K.Chhibber v. Union of India & others.
Connected with

Registration O.A.No.476 of 1986

A. Jahangir v. Union of India & others.
Connected with

Registration O.A.No.525 of 1986

G.N.Pandey & another .. v. .. Union of India & another.
Connected with

Registration O.A.No.546 of 1986

Ramesh Lal & others ... v. ... Union of India & others.

Hon'ble D.S. Misra, A.M.

Hon'ble G.S. Sharma, J.M.

(Delivered by Hon. D.S. Misra, A.M.)

These are five connected cases and will be governed by this order. Case No.25 of 1986 is a review petition against the order dated 11.6.1986 passed by this Bench in Registration No.4 of 1986. In the O.A.No.4 of 1986 the seniority list dated 17.12.1985 prepared by the Divisional Personnel Officer, Northern Railway, Allahabad, was declared void and inoperative. The applicant has contended that he belongs to the category of direct recruits on the post of TXR and his seniority is adversely affected by the impugned order. In accordance with our order dated 11.6.1986 the respondents passed fresh orders on 17.7.1986 revising the seniority. This order gave rise to four fresh applications under Section 19 of the Administrative Tribunals Act XIII of 1985 seeking cancellation of the order dated 17.7.1986 issued by the Divisional

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Personnel Officer, Northern Railway, Allahabad. These applications were registered as (1) O.A.No. 442 of 1986, S.K.Chheber v. Union of India, (2) O.A.No. 476 of 1986, A.Jehonger v. Union of India, (3) O.A.No. 525 of 1986, G.N. Pandey and another v. Union of India, and (4) O.A.No. 546 of 1986, Ramesh Lal and others v. Union of India. In these applications the order dated 17.7.1986, mentioned above, was sought to be cancelled. An interim stay against their reversion from the post of Head TXR to TXR was also obtained. As the points involved in the four applications, mentioned above, and the present review petition are the same, it was decided to hear ^{and dispose of} the review petition as well as the above mentioned four applications simultaneously.

2. Sri Jai Singh, who was the applicant in O.A.No. 4 of 1986, filed an application requesting to be impleaded as a respondent in the O.A.No.442 of 1986, S.K.Chheber v. Union of India, and the same was allowed. In the reply filed on behalf of Sri Jai Singh it was stated that the petitioner in the review petition and the petitioner in the original application No.442 of 1986 were promoted to the post of Head TXR on ad hoc basis and their promotion was subject to the decision of this Tribunal in O.A.No.4 of 1986; that in accordance with Rule 302 of the Railway Establishment Manual, the seniority of all persons promoted to the post of TXR was to be determined with reference to the date of their promotion and not from the date of their completion of training; that the question of training of the deponent is not at all concerned with the seniority

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which is to be determined from the date of appointment; that the competent authority had correctly fixed the seniority of the deponent and the petitioners in accordance with the existing rules, and the seniority lists dated 14.11.1980 and 31.10.1984 circulated by the Department were perfectly valid. A rejoinder was filed by the applicant, Sri S.K. Chhebbber.

3. Replies were filed on behalf of the Union of India in the Original Applications No. 442, 476, 525 and 546 of 1986 in which it was stated that rules regulating the seniority of non-gazetted staff in category of posts partially filled by direct recruits and partially by promotees are contained in para 302 of the Railway Establishment Manual which provides that the criteria for determining of seniority should be the date of promotion in the case of a promotee and the date of joining the working post in the case of direct recruits. In the case of promotees their promotion is subject to passing of the prescribed training course; that the two seniority lists mentioned in paragraph 6(viii) of the applications were published in terms of extant rules in this behalf; that on receipt of a representation from directly recruited TXRs. the matter was referred to the Head Quarters Office for decision and the revised seniority order dated 17.12.1985 was issued in accordance with the Head Quarters Office decision contained in the letter dated 28.10.1985. The four applicants filed rejoinder to the counter affidavit filed by Union of India in

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which the allegations made in the applications were reiterated.

4. In the rejoinder to the reply filed by Union of India, the applicants reiterated the allegations contained in their applications. The applicants apprehended that they would be reverted from the post of Head TXR, to which they were promoted in accordance with the seniority dated 17.12.1985 of TXR's, which was declared void and inoperative in the decision given by this Tribunal in O.A.No.4 of 1986.

5. We heard the learned counsel for the parties on the question of maintainability ^{of the} R.P. The learned counsel for the objector, Sri Jai Singh, contended that the applicant in the review petition was not a party in the original application No. 4 of 1986 and had no locus standi to file the present review petition. The learned counsel for the petitioner, however, contended that the petitioner was adversely affected by the decision of this Tribunal in O.A. No.4 of 1986 and he was competent to file this review petition. The learned counsel for the petitioner had promised to produce case law in support of his contention but he failed to do so. However, on our own effort we were able to find a case law (A.I.R. 1963 S.C. 1909) Shivdeo Singh & others v. State of Punjab & others in which their Lordships held as follows :-

"On a writ petition by A for cancellation of the order of allotment passed by the Director of Rehabilitation in favour of B,

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the High Court cancelled the order in favour of B though he was not a party to the writ proceedings. Subsequently B filed a petition under Article 226 for impleading him as a party to A's writ petition and re-hearing the whole matter. The High Court allowed the writ petition.

Held that the second writ petition by B was maintainable and the High Court had not acted without jurisdiction in reviewing its previous order at the instance of B who was not a party to the previous writ proceedings.

There is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. In entertaining B's petition the High Court thereby did what the principles of natural justice required it to do."

In Sampat Kumar v. Union of India (A.T.R. 1987 (1) S.C. 34) the Hon'ble Supreme Court in its judgment dated 9.12.1986 has observed that in respect of service matters the Central Administrative Tribunal is a substitute for the High Court. We are, therefore, of opinion that the above-mentioned case law is fully applicable to the present case and there is no illegality in entertaining and hearing the review petition filed by Sri Arun P. Sinha against the order passed in the Original Application No. 4 of 1986. We are also of opinion that the points for consideration in the review petition as well as in the four original

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applications mentioned in paragraph 1 earlier are the same and can be disposed of by a common judgment. During arguments on the merit of the case, the learned counsel for the petitioners cited the decision of Central Administrative Tribunal, Madras in S. Rajagopalan & others v. General Manager, Southern Railway, Madras and others (A.T.R. 1987 (1) CAT 12). We have gone through this case and we find that the applicants in the above mentioned case had claimed seniority over persons who were ad hoc promotees without being selected by a regular Selection Board and whose services were regularised retrospectively in violation of Rules 302, 306 and 314 of the Indian Railway Establishment Manual. The facts of O.A.No. 4 of 1986 are not identical to the above mentioned case as the applicant in O.A.No. 4 of 1986 was initially promoted as TXR on ad hoc basis from 15.2.1978 but he was officially declared to be a TXR on regular basis from 2.9.1978 and given seniority on that basis.

6. The petitioners in the four cases, mentioned above, were selected for appointment to the post of TXR by direct recruitment and were sent for training with effect from 2.8.1978 and on completion of their training were appointed as TXR on 3.6.1980. The petitioners have admitted that the applicant in O.A.No. 4 of 1986 was selected for promotion to the post of TXR on 26.12.1978 against 40% (per cent) reserved for promotion from amongst the Artisans but it is contended that this appointment could not be treated as being regular because the applicant had not undergone departmental training of one year

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as required under the rules. Their contention is ~~be~~ that ~~a~~ promoted TXR^s cannot be considered as regularized TXR unless they have completed the prescribed training of one year. In this connection it is relevant to ~~the~~ examine the provisions of Rule 302 of the ^{Indian} Railway Establishment Manual relied upon by the applicants as well as the opposite party, Union of India. Rule 302 reads as follows :-

"Seniority in initial recruitment grades: 302. Unless specifically stated otherwise the seniority among the incumbents of a post in a grade is governed by the date of appointment to the grade. The grant of pay higher than the initial pay should not, as a rule, confer on a railway servant seniority above those who are already appointed against regular posts. In categories of posts partially filled by direct recruitment and partially by promotion, criterion for determination of seniority should be the date of promotion in the case of a promotee and date of joining the working post in the case of a direct recruit, subject to a maintenance of inter-se seniority of promotees and direct recruits among themselves. When the dates of entry into a grade of promotion, railway servants and direct recruits are the same, they should be put in alternate positions, the promotees being senior to the first direct recruits maintaining inter-se seniority of each group".

From the above it can be safely inferred that the date of appointment to the post excluding period of ad hoc appointment is the deciding factor in determining the seniority of promotees. It is not

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disputed that Sri Jai Singh was selected by the competent authority of the Railway Administration and appointed TXR on regular basis with effect from 2.9.1978. His seniority decided by the respondents otherwise was rightly held to be erroneous and his claim petition No. 4 of 1986 was, therefore, allowed. The subsequent revision of the seniority of TXR made by the respondents under the impugned order dated 17.7.1986 is thus perfectly in accordance with law and there is no force in the review petition and other original applications.

7. In view of above the review petition and other original applications are accordingly dismissed without any order as to costs.

Bhuma
4.5.1987
A.M.

Sharma
4/5/87
J.M.

Dated: May 4, 1987.

PG.