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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration No. 495 of 1986 (T)

Kashi Nath Mallick Plaintiff

Versus

Union of India & Others Defendants

Hon.S.Zaheer Hasan, V.C.

Hon. Ajay Johri, A.M.

(By Hon.Ajay Johri, A.M.)

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Suit No. 415 of 1984 has been received on transfer from the Court of Hawali Munsif Varanasi under Section 29 of the Administrative Tribunals Act XIII of 1985. The plaintiff was a skilled fitter under Electrical Foreman Moghalsarai. In 1968 he was selected for the post of Highly skilled fitter grade II under Executive Engineer Plant Depot Moghalsarai, and became Highly skilled Fitter Grade.I in April, 1969. On 1.1.73 he was drawing a pay of Rs. 392/- in the Scale Rs.380-560. In May, 1978 he was posted back under D.E.E. Moghalsarai as Mistry grade.I in the same scale i.e. Rs.380-560 and his pay was fixed at Rs. 452/-. On 30.11.82, after about four years, his pay was refixed at Rs. 404/- w.e.f. 1978 i.e. retrospectively. Having failed in his representations for restoring his pay to Rs.452/- he filed this suit praying for issue of a permanent injunction restraining the administration from putting down his seniority below defendant No.4 and reducing his pay from Rs.452/- to Rs.404/- and any other relief.

2. Union of India through G.M. Eastern Railway and Others are defendants Nos 1 to 3 alongwith one A.K.Banerjee who is defendant No.4. The Railway's case is that when the plaintiff got posted to the Plant Depot Moghalsarai he was posted there on deputation. The Plant Depot was a separate unit. He does not become senior to his erstwhile seniors in the parent department. When he came back in 1978 his pay was erroneously fixed at Rs.452/- by taking into consideration the pay he was drawing in the Plant Depot. Had he been in the parent Department he would have got Rs.404/- only. The mistake was corrected. Defendant No.4 was senior to the plaintiff and he did not lose seniority to the plaintiff when he got promotion while on deputation. Thus the plaintiff has neither a case of lowering of his seniority nor protection of his pay.

3. We have heard the learned counsel for both parties. On the point of seniority in the parent department i.e. under Electrical Foreman Moghalsarai Defendant No.4 was senior to the plaintiff. Both had joined in 1960 and according to the Defendants the seniority position was never disputed and this question cannot be raised now after nearly 25 years of service. The plaintiff's case is that by virtue of his selection for the post of Highly Skilled Grade.II in 1968 in the Plant Depot Moghalsarai he becomes senior because the defendant No.4 also applied and was not selected.

4. Our attention has been drawn to the Eastern Railway HQrs. letter of 27.4.1978(13-Ga) placing

the Tie Tamping Organization attached to Plant Depot Moghalsarai which was declared ex cadre on 16.9.70 as cadre organisation. It is thus clear that the post to which the plaintiff got posted in 1968 was an ex cadre post and in an ex cadre organization he got promoted to the post of Mistry too and thus his pay came to the stage of Rs.452/- before he returned to his parent department in May, 1978. The contention of the Defendants that he was on deputation to the Plant Depot is fully supported by this letter, and the claim of the plaintiff that post held by him in the Plant Depot was neither ex cadre nor on deputation does not hold ground. It is very clearly stated in this letter that the organization which was declared ex cadre in 1970 is now declared as cadre organization.

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5. The change of status of the Tie Tamping Organization from ex cadre to cadre in April, 1978 did not automatically give any benefit ^{to the plaintiff}. In the same cadre promotions are made on seniority-cum-suitability basis. In an ex cadre organization this rule does not apply. Once the organization is declared as cadre organization on its amalgamation if any juniors, who had been earlier sent to that organization, had occupied senior positions they cannot claim an unintended benefit of continuing on those posts after it gets amalgamated. The claim of seniors in accordance with the parent seniority position has to be considered and distortions corrected.

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6. In Nohiria Ram Versus Union of India (AIR 1958 S.C. 113, 114, 115) it was held that continued holding of an ex cadre post does not confer a right to hold a cadre post to a person. The Tie Tamping Organization was declared ex cadre in 1970 and continued so till April, 1978. It is not known what was its status before 1970 but evidently it was in nascent stage and therefore the question of the cadre of this organisation was decided only when it was declared ex cadre in 1970. Cadre is the strength of a service or a part of the service sanctioned as a separate unit. Normally persons belonging to the cadre have a right to hold the post^{in the cadre}. The plaintiff belonged to the cadre of the Divisional Electrical Engineer to which he was returned after having served in the Plant Depot Moghalsarai on deputation in an ex cadre post. He, therefore, has to take his seniority and position in the cadre in accordance with what it existed. He is not entitled to protection for any fortuitous promotion that he might have ^{got} had in the ex cadre organisation.


7. Para 311 Chapter III of Indian Railway Establishment Manual is also not applicable to the plaintiff. He had returned to his parent organisation. It was not a case of transfer from one cadre to another on administrative grounds. The organisation from where he returned got amalgamated to the parent department to which he belonged. He could not usurp the right of his seniors for consideration to the post^{got} before himself.

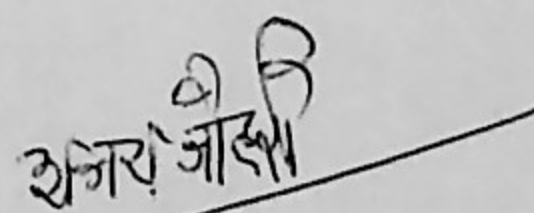
8. It was also not a case of supersession of defendant No.4 by the plaintiff. This is possible in ones own cadre when a junior can supersede his senior if the senior is declared unsuitable. No such test or selection was held in the cadre. For ex cadre posts the choice remains with the department who accepts persons on deputation. It cannot result in the senior being ignored in his own department without being declared unsuitable. The claim of seniority by the plaintiff on this ground does not sustain.

3b 9. We therefore do not find any substance in the plaintiff's claim that he is senior to defendant No.4 and that his pay which he was getting by way of a fortuitous promotion in the ex cadre post may not be brought to the proper level to which he would have been entitled had he remained in the parent cadre. Had he not got these fortuitous promotions and if his chance for promotion came in parent department ^{while he was on deputation} he would get protection under the next below rule but this was not his case. He had got an earlier promotion while his seniors are still waiting in his parent Department. It is true that the plaintiff was in receipt of higher emoluments while on deputation. As soon as he came back to his parent department the drawing of less emoluments cannot be agitated as it does neither attract Article 311 nor could he have drawn those emoluments had he been in his parent department. Normally only senior employees should be posted on deputation against ex cadre post and where it is not possible as in the case of the plaintiff

the pay fixed on reversion to the parent cadre shall be restricted under Rule 2029 of the Indian Railway Establishment Code Vol.II to the pay admissible to his immediate senior to the higher post in the parent department in the usual course. The pay fixation done vide Office Order No. 189 of 1978 (10-Ga) was evidently not correct and the mistake was rectified on 30.11.1982 (11-Ga).

34 10. In conclusion the plaintiff has no case for being put senior to defendant No.4 and for protection of his pay which he was drawing in the ex cadre organization while on deputation. The suit is dismissed with no order as to costs.


V.C.


A.M.

Dated the 18th Dec., 1986.

RKM