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CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH, ALLAHABAD

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Registration T.A. No. 109 of 1986

Hashim Raza Hamidi ...

Applicant/
Plaintiff

vs

Union of India and ors ...

Respondents/
Defendants

Hon' Mr K. Obayya, A.M.

Hon' Mr J.P. Sharma, J.M.

(By Hon' Mr J.P. Sharma, J.M.)

The appellant Hashim Raza Hamidi Guard Grade 'C' in Northern Railway, Muradabad Division filed a civil suit No. 209/78 in the Court of Munsif City, Bareilly, for a declaratory relief that the applicant-plaintiff is entitled to get his seniority fixed in Guard gr.'C' from the date of appointment as Assistant Station Master with effect from 1-11-50 on being transferred to Guard grade 'C'. The Union of India contested the suit. The issues were framed and issue nos. 4 and 6 which were to the effect whether the suit is within the limitation, and whether the suit is bad for non joinder of necessary parties were decided against the applicant plaintiff by the Munsif City of Bareilly in the judgement dated 18.11.1981 and at the same time the issue no. 1 which is the main issue was decided in favour of the plaintiff that the plaintiff-appellant is entitled to count his seniority in Guard grade 'C' w.e.f. his joining as Assistant Station Master from 1.11.50, but ultimately, the suit was dismissed on the finding of issue nos. 4 and 6.

2. Aggrieved by this order the plaintiff-appellant filed the civil appeal No. 149/1981 in the Court of District Judge, Bareilly on 17.12.81 which was registered

there, but was ultimately transferred after coming into force of the Administrative Tribunals' Act, 1985, under section 29 of the aforesaid Act, to this Tribunal for disposal.

3. In this Tribunal the plaintiff's counsel on 9.1.87 moved an application for impleadment of certain private respondents, in view of the finding on issue no. 6. This amendment was allowed on 25.11.87, but the plaintiff/applicant's counsel did not carry out amendment nor filed the process for the respondents desired to be impleaded and after giving several dates, finally on 15.4.88 the case was listed for final hearing.

4. The arguments were heard and concluded on 17.4.90, but, had to be adjourned for 18.4.90 when Shri R.K. Jain appeared for the applicant and Shri Lalji Sinha appeared for the respondents. We heard the learned counsel of both the parties at length and perused the record.

5. The brief of facts of the case are that the applicant was earlier appointed as Assistant Station Master on 1.11.50. Under the policy of the Railway Administration 16 2/3% of the vacancy of Guard gr. 'C' were to be filled up from willing Assistant Station Master(ASM) after proper scrutiny and test and the plaintiff qualified in that selection and was posted on ad-hoc basis on 25.11.64, but, again he was sent back on 9.5.65 against the substantive post of A.S.M. He again subsequently allowed to join as Guard Gr. 'C' on 4.1.66. The contention of the applicant is that no seniority list of Guard Grade 'C' was ever published nor it came to the knowledge of the plaintiff and he only learnt about the same when he made a representation for his promotion to the Guard Grade 'B', and

from the reply dated 6.9.75 communicated through the Station Master, Bareilly to the plaintiff, he learnt that his name exist in the seniority list at sl.no. 312 and then he found the seniority list, wherein his seniority has been shown w.e.f. 16.12.66. However, the plaintiff was confirmed as A.S.M. w.e.f. 10.3.54. The suit was filed after serving a notice under section 80 C.P.C. for reconing his seniority from the date of appointment as A.S.M. from 1.11.50.

6. The respondents contested the suit denying the allegations of the plaintiff regarding the fact that the seniority list was not communicated to the plaintiff well in time. It is admitted by the Defendants that the plaintiff was initially appointed as A.S.M. on 1.11.50. It is further contended by the Defendants that a policy was laid-down in 1958 for recruitment of Guard Grade 'C' from different Departmental categories and different percentage were fixed in the number of vacancies for recruitment. As and when the vacancies arose, persons from all eligible categories were asked to apply and those who willingly opted to shift the Trade had to undergo the necessary suitability test. This practice was later on by the Board's order was not appreciated from January, 67. However, those A.S.Ms, who were already working in the cadre of Guard Grade 'C' continued to work. The seniority list of Guards was issued after every 3 years. There is a difference in the maximum grade of A.S.Ms. and Guard grade 'C'. But, at the same time Guard Gr.'C' also earns while on board by getting mileage etc. and so the net emoluments of Guard Gr.'C' are much higher than A.S.M. It is said that the applicant did not raise/any objection when the seniority list of Guard Gr.'C' was published and even on merits also the plaintiff cannot claim the counting of seniority from the time when he joined as A.S.M. on

1.11.50, because, the feeder post of Guard Grade 'C' as per the policy of the Railway Administration were different categories having almost the same Grade and scale of pay from where fixed percentage of eligible successful candidates were appointed and so there is no question of giving any seniority of the earlier service. The defendants pointed out that the plaintiff has no case. The learned Munsif framed the following 6 issues:

- (1) Whether the plaintiff is entitled to count his seniority from the initial date of appointment on the post of A.S.M.?
- (2) Whether the suit is under value and Court fee paid is insufficient?
- (3) Whether the suit is bad for want of notice under section 80 C.P.C.?
- (4) Whether the suit is barred by time?
- (5) To what relief, the plaintiff is entitled?
- (6) Whether the suit is bad for non joinder of necessary parties as alleged by the Defendants in para 18 of their written statement?

7. As stated above, issue nos. 4 and 6 were decided against the plaintiff and the suit was dismissed, and so, now the appeal.

8. The relevant letter dated 10.1.77 No.E/X/76- Guards shows that the seniority list of Guard Grade 'C' had already been published earlier and the name of the applicant is at Sl.No. 199 and the list from sl.no. 263 to 337 was published on that date. The letter No.E/10/69 dated 30.9.69 shows the seniority list of the Guard at Sl.No. 318, the name of the applicant is mentioned. This list was notified for circulation to different sections. The Service Book

of the applicant also is to show that he has been working as Guard from 18.12.66.

9. Before the learned Munsif, the plaintiff Hashim Raza Hamidi examined himself.

10. The learned Lower Court on issue no. 4 gave the finding that the applicant has not come within time and the present suit has been filed much after and any decision in favour of the plaintiff will totally upset the seniority list effecting those persons who have occupied the promotion post for a number of years and have gone up most in next promotion also. There is some substance in this, because the applicant cannot say that he did not know about the seniority list when he himself files the seniority list of A.S.M. showing thereby that the applicant has been quite vigilant in knowing his position in the list while he was posted as A.S.M. The plaintiff has been working since 1966, as Guard Grade 'C' and it cannot be accepted that the list which was published in 1969 was not in his knowledge. Merely, showing the fact on oath will not prove it, unless the fact appears to be believable. Though there is no rebuttal of the oral testimony of the plaintiff, but his statement is more of a negative nature. He stated that he does not know whether any examination for Guard Grade 'C' was held from June to September, 1974. He also could not show whether along with him other similarly situated employees took the test for Guard grade 'C'. He also denied the knowledge that along with him 23 other A.S.Ms. were also appointed as Guard. He also said that he does not know who is senior and who is junior in the cadre of Guard Grade 'C'. Thus the statement of such a witness does not inspire confidence who knows only that much which helps him and deny the rest without any reason. Even on receiving the letter

from the Railway Board of his rejection of representation in June, 1975, the applicant stated on oath that even then he did not look for the seniority list and this is totally unbelievable. Thus, the finding of the learned Munsif that present suit was barred by Article 58, cannot be said to be in any way infirm. Though there are certain cases, where matters relating to seniority have been agitated much after when actually the aggrieved person was in zone of consideration for promotion, but, in those cases there is some basis ^{to} strike down the seniority list on the basis of a discrimination, as well as, on a new cause of action of promotion. In this case, it is not alleged in the plaint that the applicant was due for promotion on his own calculation regarding his position in a hypothetical seniority list. Here the applicant does not know his own position and only says that he should be given seniority ~~is~~ from the date of his entering into the service as A.S.M. though he was working as Guard Grade 'C' since 1966. Normally, the seniority is of a one particular category of employees and where there is a combined seniority list, there the position ^{is} either inter changeable or they form the feeder post for the next promotion. Here this is not the case. Thus from any angle the plaintiff has not come within the time before the Court.

11. As regards finding on issue no. 6 by the learned Munsif it has also been decided against the plaintiff in as much as the persons to be effected ultimately has not been made parties as respondents in this case. Though the learned counsel for the plaintiff sought time after getting a reply from official respondents about the names of such employees

in Guard Grade 'C' who shall be effected in the case, and yet, they were not made parties and nor notices were served on them. In spite of the fact that amendment was allowed, but not carried out and also, in spite of 10 to 15 dates of adjournment in the case in ^{the no amendment was incorporated} one year. The point is that those effected persons are effective parties in as much as, by revision of seniority list, those persons would be effected because they at that time were drawn from different categories of service under the Railways, i.e. A.S.M., K.T.C. etc.etc. Moreover, there was a quota system in such a situation all those who wanted quota to be safe guarded have to be impleaded as party. It is not the case of the applicant that an A.S.M. junior to him has become senior in Guard Grade 'C'. Thus, the suit is bad for non joinder of necessary parties, particularly, when there was a direction to implead them and steps were taken, but not ultimately given effect to on the record, by the plaintiff. The finding of issue no. 6 is also confirmed.

12. The finding on issue nos. 2 and 3 are not material as they do not ^{relate} rely to the merit of the case, but, nothing has been shown that the finding arrived ^{at} as by the learned Munsif are in any way incorrect. As such, ^{the findings on} these issues are also confirmed.

13. As regards finding on issue no. 1, the learned lower court also held that the applicant is entitled to seniority from the date of joining as A.S.M. But, on going through the reasoning given by the learned Munsif, there is only mention of some paper 24-Kha in which it has been held that Guard Grade 'C' is a promotional post. But, in fact the learned lower

Court has totally ignored paper no. 70 Ka/15 dated 9.12.63. This letter is reproduced below:

" It is proposed to form a panel of Guards Grade 'C' from the following categories according to the prescribed percentage as shown against each:-

- (A) TNCs in grade Rs.110-180 & Yard Staff in scale Rs.110 - 180 20%
- (B) Commercial clerks in grade Rs.110-220 & Ticket Collectors in gr.110-180 20%
- (C) A.S.Ms in grade Rs.130-225 162/3%
- (D) Brakesman in grade Rs.100-130 10%

2. Applications are invited from the above staff who are under 39 years of age on 30.11.63 and have put in 5 years service on the proforma appended below. The staff who are medically unfit in class A2 need not apply.

3. The selected candidates will be required to pass medical test in class A-2 and practical training after passing the promotional course from Railway Training School Chandausi in the duties of Guard before promotion as such.

4. Those desireous to be considered for the post of Guard Grade 'C' should submit their applications in their own hand writing on the prescribed proforma duly forwarded by their subordinate incharge so as to reach this office by 25.12.63 positively in a cover addressed to Sri R.C. Jagarwal, APO II/Moradabad superscribed "application for the post of Guard grade 'C'.

Applications received otherwise will not be considered. " ..

14. This document shows that it was a recruitment of the railway employees to Guard Grade 'C'. The more important fact is that the learned Lower Court has ignored the seniority list of A.S.M. filed by the plaintiff , paper no. 75-Ka where at sl.no. 147, the name of the plaintiff has been shown and in the remarks column it is shown that he is officiating Guard.

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In this seniority list there are number of A.S.Ms. who are officiating as Guard. The fact is that the applicant willingly opted for the service of Guard Grade 'C' and when he joined that particular branch he has to be adjusted in the seniority list of Guard Grade 'C'. If the contention of the plaintiff is accepted and since the plaintiff has given the choice after putting 15 years of service then his whole of service is to be taken into account and all those who have been directly recruited as Guard Grade 'C' and have lesser total length of service than the applicant, than those later persons may be senior in the branch of Guard, but will otherwise become junior. If the applicant is given seniority, of service as A.S.M. though the applicant has worked for a lesser number of years and may even be confirmed as Guard Grade 'C' will become senior to those who have more length of service as Guard Grade 'C'. There is a substance in the contention of the respondents that the applicant cannot be given seniority of A.S.M. in the Guard Grade 'C' Cadre. Also, no rule has been shown, nor any precedence cited that whole of the service of another branch can be counted in the new branch to the disadvantage of other persons. There is only an exception for the military service, where to a service period is given for counting seniority of ex-serviceman. The finding, therefore, on issue no.1 is set aside and it is held that the applicant is not entitled for seniority from the date of joining as A.S.M. on 1.11.50.

50. On merits, therefore, the appeal has no force, so this transferred application is dismissed with costs on parties.

(sns)

May 10th, 1990
Allahabad.

J. S. Minhas
MEMBER (J)

R. K. Bhagat
MEMBER (A) 5/5/90