

Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No.137 of 1986 (C.A.No.56 of 1982)

Union of India ... Applicant

Vs.

Ram Rashpal Singh
& 4 others ... Respondents.

AND

Registration T.A.No.195-A of 1986 (C.A.No.47 of 1982)

Rameshwar Das
and another ... Applicants

Vs.

Ram Rashpal Singh
and 3 others ... Respondents.

Hon.D.S.Misra, AM
Hon.G.S.Sharma, JM

(By Hon.G.S.Sharma, JM)

These civil appeals arise out of the judgment and decree dated 15.12.1981 passed by the VII Addl. Munsif Saharanpur in suit no.208 of 1979 and have been received from the Court of Civil Judge Saharanpur u/s.29 of the Administrative Tribunals Act XIII of 1985.

2. The relevant facts of this case are that the respondent no.1 Ram Rashpal Singh in both the appeals (hereinafter referred to as the plaintiff) had filed suit no.208 of 1979 giving rise to these appeals for a declaration that he is senior to defendant nos. 2 and 3, namely, the appellants Rameshwar Das and Dharampal Singh in T.A.No.195 of 1986 and defendant nos.4 and 5, namely, Chiranjit Lal and Nathu Ram- respondents in both the appeals (hereinafter referred to as the defendants) and for a mandatory injunction to direct the Union of India- defendant no.1 in the suit to treat the

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plaintiff ~~is~~ senior to defendant nos. 2 to 5. It was alleged that the plaintiff had joined the Northern Railway as a ~~Cleaner~~^{Cleaner &} on 11.3.1965 and was promoted as Fireman Grade 'C' on 25.5.1973. Defendant nos. 2 and 3 - Rameshwar Das and Dharampal Singh were appointed in the Northern Railway in 1976 and promoted as Fireman grade 'C' in 1975 and were juniors to the plaintiff. Defendant nos. 4 and 5 - Chiranjit Lal and Nathu Ram were formerly in the employment of the Shahdra - Saharanpur Light Railway - a private Railway Company and on its closure in Aug. 1970, they were appointed as Cleaners in the Northern Railway in Pathankot on 29.7.71 and later on were transferred to Saharanpur by mutual exchange in 1976 when they were working as Fireman Grade 'C'. According to the plaintiff, the defendant nos. 2 to 5 are juniors to him but they were promoted as Fireman 'B' earlier than the plaintiff in Feb. 1978 and the plaintiff was appointed as Fireman 'B' on 4.7.1978. His grievance therefore, is that despite his satisfactory work and conduct, he was wrongly superseded in the matter of his promotion as Fireman 'B' and has been placed below the defendant nos. 2 to 5 in the seniority list to his great disadvantage in future and as his grievance was not redressed despite representations and statutory notice u/s.80 CPC, he had filed this suit in May, 1979.

3. The suit was contested by the defendant nos. 1 to 3, the appellants in the present

appeals. The Union of India in its written statement filed before the trial Court has stated that the plaintiff was appointed as substitute Loco Cleaner and not Cleaner on 11.3.1965 while the defendant no.2 Rameshwar Das was appointed as substitute Loco cleaner on 1.12.1963 and defendant no.2 Dharampal Singh was appointed as such on 1.11.1963, They were thus senior to the plaintiff and by mistake their services as substitute Loco Cleaner were not counted at the time of promotion as Fireman 'C' on account of which the plaintiff was wrongly promoted earlier than them. The defendant nos. 2 and 3 were given the regular appointment on 27.6.1966 and they are thus senior to the plaintiff and the plaintiff's allegations to the contrary are incorrect. The defendant nos. 2 and 3 were promoted as Fireman 'B' earlier than the plaintiff according to their seniority and there is no question of supersession of the plaintiff by these defendants. Regarding the defendant nos. 4 and 5, the defendant no.1 admitted in its written statement that they are junior to the plaintiff and they were given appointment in the Northern Railway on 28.7.1971 and by mistake they were promoted earlier and the mistake has now been corrected and the defendant nos. 4 and 5 have been placed below the plaintiff in the seniority list and the plaintiff can have no grievance against them now. The suit of the plaintiff was stated to be time barred and beyond the jurisdiction of the trial Court and it was further stated that the correct seniority has now been assigned to the plaintiff and he is not entitled to any relief.

4. The defendant nos. 2 and 3 had stated in their written statement that they having joined the Northern Railway earlier than the plaintiff as substitute Loco Cleaners, they are senior to the plaintiff and were rightly promoted earlier than him as Fireman 'B' and later on they were further promoted as Asstt. Driver (Diesel) according to their seniority and the claim of the plaintiff regarding his seniority is not correct and he has wrongly impleaded the defendant nos. 4 and 5 to confer jurisdiction to the Saharanpur Court and the suit was bad for misjoinder of parties and was also not within the jurisdiction of the trial Court. The defendant nos. 4 and 5 did not file any written statement in the case.

5. The trial Court had framed the necessary issues in the case and it was held that the defendant nos. 2 to 5 were junior to the plaintiff. The suit was found to be within the jurisdiction of the trial Court and it was also not found bad due to the misjoinder or non-joinder of parties. The suit was accordingly decreed in part and declaration was granted to the effect that in the seniority list of the Delhi Division of the Northern Railway, the plaintiff is senior to the defendant nos. 2 to 5 and the parties were directed to bear their own costs. Aggrieved by the findings of the trial Court, the contesting defendants had filed two separate appeals, which have now come up before us under the changed law. They have been contested on behalf of the plaintiff-respondent.

6. The main point arising for determination in these appeals is the principle in accordance with which the seniority of the plaintiff and defendant nos. 2 to 5 is to be determined. The general principle is that the seniority has to be determined on the basis of the length of service. The case of the plaintiff is that he was appointed as Cleaner in the Loco Department on 11.3.65. The defendant nos. 2 to 5 did not dispute this fact but it is surprising that the defendant no.1 Union of India decided to make an allegation in para 1 (on merits) of its written statement that the plaintiff was appointed as substitute Loco Cleaner on 11.3.1965 and not as Loco Cleaner. Regarding the defendant nos. 2 and 3, it was stated that they were also appointed as substitute Loco Cleaners from 1.12.1963 and 1.11.1963 respectively and they were given the regular appointment as Cleaners w.e.f. 27.6.1966. Without giving any other date of the regular appointment of the plaintiff as Loco Cleaner, it was stated in para 3 of the written statement that the defendants were given the benefit of their service in the status of substitute Cleaners as per rules in force and they rank senior by virtue of their total length of service. The defendant no.1 should have furnished the necessary particulars regarding the plaintiff about his initial appointment as a substitute Loco Cleaner and then as a regular Cleaner and in accordance with the principle applied in the case of the defendant nos. 2 and 3 the period spent by the plaintiff as substitute Loco Cleaner should have also been given due consideration but these things are wanting in the written statement and we are constrained to observe that the written statement filed on behalf of the defendant no. 1 in this case was prepared without due care and caution.

So far as the defendant nos.4 and 5 are concerned, the defendant no.1 admitted in its written statement that they were given their appointed ^{-ment} in the Northern Railway for the first time on 28.7.1971 and by mistake, they were promoted earlier than the plaintiff treating them as seniors to him but the mistake committed was rectified and the defendant nos.4 and 5 have now been placed below the plaintiff and are junior to him. Thus, the real dispute is regarding the seniority of the plaintiff, vis-a-vis, the defendant nos. 2 and 3.

7. The parties had adduced both oral and documentary evidence in this case before the trial Court. The plaintiff Ram Rishpal in his statement as P.W.1 had stated that he was appointed as Loco Cleaner in the Railway on 11.3.1965 and he never worked as a substitute. He denied the suggestion made to him in his cross-examination that he was appointed as substitute Loco Cleaner. It is true that the plaintiff did not produce any documentary evidence to throw light about the nature of his appointment in the Railway on 11.3.1965.

8. Senior Clerk Amar Nath Bansal was examined on behalf of the railway administration in this case as D.W.1. He produced the photostat copies of the service books of the plaintiff and the private defendants. Though he did not state that the plaintiff was initially appointed as a substitute Cleaner, he produced the original letter of appointment of the plaintiff issued by the Asstt. Personnel Officer II, New Delhi whose copy is paper no.84-C on record. This document shows that the plaintiff was appointed

as substitute Loco Cleaner on the basis of his medical test on 6.3.1965 and was required to join his duty before 13.3.1965. The date of the order is not noted in the copy, Ex.A-5, on record. In case it is treated to be the letter of appointment of the plaintiff it does go to show that the plaintiff was appointed as a substitute Loco Cleaner but there is absolutely nothing on record to show as to when the plaintiff was given the regular appointment as a Loco Cleaner or till which date he was kept as substitute. On the other hand, the photocopy of the service book of the plaintiff, paper no.58-C goes to show that the plaintiff was given the appointment in his capacity as Loco Cleaner and not as substitute Loco Cleaner on 11.3.1965. The photostat copies of the service books of defendant nos. 2 and 3 have also been placed on record. They go to show that the defendant no.2 Rameshwar Das was appointed as Loco Cleaner on 27.6.1966. His date of appointment as a substitute ~~on~~ 18.10.1963 has not been mentioned in the service book. The service book was prepared on 18.12.1966, that is, nearly about 6 months after his regular appointment as a Loco Cleaner. The service book of the defendant no.3 Dharam Pal Singh shows that he was appointed as Loco Cleaner on 23.10.1963, which is incorrect as admittedly he was appointed as a substitute on this date and above the date 23.10.1963 another date 27.6.66, i.e. the date of his regular appointment has been noted in the service book. This service book was prepared on 22.10.1966 after the regular appointment of the defendant no.3 and not on his appointment as a substitute in 1963. The date of appointment 23.10.1963 noted in this service book is, therefore, incorrect and that is why the correct

date was noted above it. We are, therefore, of the view that the service book is prepared only on regular appointment and not on appointment as a substitute or casual worker. We are, further, of the view that the plaintiff was appointed as a regular Loco Cleaner on 11.3.1965 and not as a substitute and by some mistake or otherwise in the aforesaid appointment letter the word substitute was noted. We find support in coming to this conclusion from the fact that like the defendant nos. 2 and 3, no^f date of the appointment of the plaintiff as a regular cleaner has been disclosed by the defendants anywhere. It is not the case of any party that the plaintiff is still a substitute. ²He could not get his promotions in that capacity without his regular appointment. We are, therefore of the view that the plaintiff was appointed as a regular Loco Cleaner w.e.f. 11.3.1965 and defendant nos. 2 and 3 were appointed as regular Loco Cleaners subsequently w.e.f. 27.6.66.

9. Placing his reliance on para 2318 of the Indian Railway Establishment Manual, the learned trial Court has held that ~~through~~ the substitutes are entitled to all the rights and privileges admissible to temporary railway servants on the completion of 6 months continuous service except seniority on their eventual absorption against the regular post after selection. No rule to the contrary has been produced on behalf of the defendant-appellants before us. We, therefore, see no reason to disagree with the finding arrived at by the learned trial Court in this connection and the seniority of the plaintiff and defendant nos. 2 to 5 has to be determined on the basis of the length of their regular service as Loco Cleaner excluding the period their working as substitutes.

10. In the seniority list dated 2.1.1980, Ex.A-2 filed by the defendants, the date of appointment of the plaintiff has been noted to be 11.3.1965 and that of the defendant nos. 2 and 3 as 27.6.1966. The same dates have been noted in the subsequent seniority list dated 13.8.1980, Ex.A-3. In the seniority list of Loco Cleaners dated 28.12.1976, Ex.A-1, the period during which they had worked ~~as such~~ as substitute or otherwise before their regular appointment has been mentioned and the period of defendant nos. 2 and 3 as claimed by them in their written statement has also been noted. No such period has, however, been noted in the case of the plaintiff, which further fortifies our conclusion that the plaintiff had not worked as a substitute at all and he had worked as a regular cleaner from 11.3.1965 and he was accordingly rightly held to be senior to the defendant nos. 2 to 5, who were given the regular appointment as Loco Cleaners subsequent to his date of appointment. This is in accordance with the settled principle of determining the seniority upheld by the Hon. Supreme Court in P.D. Agarwal Vs. State of U.P. (1987 (4) A.T.C.-272), Ashok Gulati Vs. B.S. Jain (1) 1987 A.T.L.T. 353) and Basant Kumar Jaiswal Vs. State of M.P. (1987 S.C.C.(L&S)-458).

11. The defendant nos. 2 and 3 filed an extract of the seniority list of Feb.1974 in these appeals and on its strength contended that there are four other persons mentioned in this list who were treated senior to the plaintiff after taking into consideration the period of their working as substitutes and as the plaintiff did not implead them as parties to these cases, no relief can be granted to him as the seniority of the plaintiff cannot be determined in the absence of the affected

persons. The question of misjoinder and non-joinder of the parties was raised even before the trial Court and we fully agree with the view taken by the learned Munsif that the plaintiff has not claimed his seniority over any other person except the defendant nos. 2 to 5 and as such, the relief claimed by him can be granted in the present suit in the absence of any other person who could be a proper party to it. We too are not going to lay down any general principle of seniority so as to affect any other person except the plaintiff and the defendant nos. 2 to 5 and as such, the contention raised on behalf of the contesting defendants before us is devoid of any force. The trial Court has granted the declaration to the plaintiff that he is senior to the defendant nos. 2 to 5. The other relief claimed by him was not granted and the plaintiff does not seem to have filed any cross objection or appeal for the relief denied to him by the trial Court. The question of non-joinder of any party is, therefore, not relevant.

12. In the result, we find no force in these appeals and they merit dismissal.

13. Both the appeals are hereby dismissed and the judgment and decree passed by the trial Court in suit no. 208 of 1979 are hereby upheld and the parties are directed to bear their own costs of these appeals.

MEMBER(J)

Sharma
MEMBER(A)

Dated: Nov. 17, 1988
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