

Reserved

Central Administrative Tribunal
Allahabad.

Registration T.A.No.199 of 1986 (Civil Appeal No.417 of 1984)

Union of India and another ... Applicant—ts

Vs.

Shankar Lal

... Respondent

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

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

This transferred application is a civil appeal and has been received by transfer from the Court of II Addl. District Judge, Kanpur under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The respondent (hereinafter referred to as the plaintiff) had filed suit no. 1657 of 1979 in the Court of Munsif City Kanpur against the applicants (hereinafter referred to as the defendants) for a direction to the defendants to promote him as M.T.D Grade I w.e.f. 1973 and to restore his seniority from the said date with all consequential benefits with the allegations that in Novr.1972, he had passed the trade test for his promotion to MTD Grade I but on account of his involvement in a criminal case he was suspended w.e.f. 22.3.1973 and by the time the criminal case ended in acquittal and he was reinstated, four persons namely, Rama, Waheed Khan, Jagbhan Singh and Balraj Singh were promoted to Grade I in 1975. On the reinstatement of the plaintiff as MTD at Air ~~Fort~~ Station Chakeri, Kanpur in May, 1977, he made several representations and ultimately, also gave a notice under Section 80 Civil Procedure Code to the defendants for his promotion from due date but the defendants did not pay any heed. According

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to him, he was entitled to promotion on the basis of his seniority in 1973 and his suspension made by the defendants was illegal and he could not be deprived of his promotion and seniority on account of the criminal case.

3. The suit was contested by the defendants. In the written statement filed on their behalf by the Air Commodore Air Officer Commanding, Kanpur, it was admitted that the plaintiff had passed the trade test for promotion to the MTD in Novr. 1972 and stated that on account of his involvement in a case under Section 436/342 IPC, he was suspended from duty on 22.3.1973 and on his acquittal in the said case, the suspension was revoked on 25.5.1977. The suspension of the plaintiff was in accordance with rules and was not illegal. No promotion superseding the plaintiff was made. It was further stated that the trade test of MTD Grade II are being held every year but as no vacancy occurred since 1971, the persons having passed the trade test will be promoted according to their seniority when the vacancy occurs. In the end it was stated that the suit of the plaintiff is misconceived and is liable to be dismissed. No additional pleas were taken by the defendants in their written statement and merely the allegations made in the plaint were either admitted or denied or were clarified. Replication was also filed by the plaintiff reiterating his plaint case.

4. The learned trial Court had framed the following five issues in the case :-

1. Whether the suspension order passed by the defendant was illegal and invalid, if so its effect?
2. Whether the plaintiff is entitled to seniority and other emoluments, if so, effect?
3. Whether the deductions made in salary was legal and according to law, if so its effect?

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4. Whether the notice under Section 80 CPC is illegal and invalid, if so its effect?

5. To what relief, if any, the plaintiff is entitled?

Issue no.1 was decided against the plaintiff and under issue no.3, it was held that as the necessary arrears of pay for the period of suspension had been paid to the plaintiff, it was not necessary to decide this issue. In the discussion under issue no.2, it was observed that the plaintiff was transferred to Kanpur w.e.f.22.1.1968 on his own request and as such, his seniority has to be counted from that date and in this way, he was junior to Rama, Waheed Khan, Jagbhan Singh and Balraj Singh and they were rightly promoted earlier than the plaintiff. After considering the provisions of letter dated 8.3.1979 of Air Force Headquarters Delhi, copy Exb.A-4, the re-fixation of the seniority of the plaintiff was found to be correct and the issue no.2 was decided against the plaintiff. Issue no.4 was not pressed by the defendants and under issue no.5, it was held that the plaintiff was not entitled to any relief and the suit was accordingly dismissed on 28.3.1981. The plaintiff went on appeal challenging the correctness of the findings recorded against him and the learned IV Addl. District Judge Kanpur who had heard his earlier appeal no.305 of 1981 held that the only proper issue framed by the Munsif in the suit was issue no.2. After considering the findings on this issue, the learned Judge further observed that in his opinion, the approach of the Munsif was erroneous as this case was not pleaded by any party. He further observed that it was never pleaded that the plaintiff was transferred to this department on his request

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therefore, he is junior to other persons alleged to have been promoted earlier than him. The Munsif was blamed for deciding a fact which was not in dispute in the case. He further observed that the case of the defendants was that no person was promoted since 1971 as there was no vacancy and the promotion shall be considered as and when the vacancy will arise. After considering the pleadings of the parties, the learned Addl. District Judge further held that it was not denied on behalf of the defendants that the four persons named above were juniors to the plaintiff. He accordingly formulated a question and observed that the question was whether the four named persons were promoted as MTD Grade I and if so, from which date and whether the plaintiff was entitled to be promoted from that very date. With these observations the suit was remanded for deciding it afresh after framing proper issues. The defendants did not challenge the correctness of the said order by filing an appeal before the High Court of Judicature at Allahabad. After remand, the learned Munsif recast the issues and in place of 5 issues framed earlier, the following two issues were framed :-

" 1. Whether Sri Rama, Waheed Khan, Jagbhan Singh and Balraj Singh have been promoted as MTD Grade I, and if so, from which date and whether the plaintiff is entitled to the promotion from that very date ?

2. To what relief, if any, is the plaintiff entitled ; "

5. Under issue no.1, it was held that the defendants did not dispute the fact that the four persons, namely, Rama, Waheed Khan, Jagbhan Singh and Balraj Singh were juniors to the plaintiff and they were promoted in 1975 and the plaintiff is entitled to get his promotion from the date of their promotion. With this finding, the suit was decreed on 6.9.1984. The present appeal arises from this decision.

6. The learned Addl. Standing Counsel appearing on behalf of the defendant-appellants invited our attention to the findings dated 28.3.1981 on issue no.2 recorded by the Munsif and contended that while remanding the case for retrial, the IV Addl. District Judge did not set aside this finding and this Tribunal should accept the said finding now and in any case, on the reasonings adopted by the learned Munsif while giving his finding on issue no.2, ^{we} should allow the appeal and non-suit the plaintiff. The learned counsel for the plaintiff-respondent had contested the appeal and supported the view taken by the learned IV Addl. District Judge ~~expressed~~ in his remand order and contended that the findings recorded by the learned Munsif in his first judgement are no longer valid and it is not open to the defendants to base their arguments on them.

7. We have very carefully considered the contentions raised before us on behalf of the parties and find that unfortunately, on account of the lengthy plant, which runs into 16 typed pages, the learned Munsifs who decided this case twice as well as the learned IV Addl. District Judge, who had remanded the suit for retrial did not go through its contents minutely and carefully. The learned IV Addl. District Judge was right in his observation that the only proper issue arising for determination in this case was the issue no.2. The question of his suspension and the arrears of his pay and allowances for the period of suspension was incidently raised by the plaintiff and as his period of suspension was already treated as duty and he was granted full pay and allowances for that period according to his own allegations there was no controversy about ~~ant~~ and issue nos. 1 and 3 were wrongly framed by the learned Munsif in the beginning. The learned Addl. District Judge however committed a blunder in para 9 of his judgment holding that it was not denied that Rama, Waheed Khan,

Jagbhan Singh and Balraj Singh were junior to the plaintiff. This fact has been alleged in para 14 and again in sub-paras (5) and (6) of para 15 of the plaint and the said paragraphs have not been disputed in the written statement. No doubt the defendants did not dispute the allegations made in paragraphs 14 and 15 of the plaint and in those paragraphs, there was a mention that these 4 persons were junior to the plaintiff and were promoted in 1975. Paragraphs 14 and 15 were, however, so worded that ~~the~~ ^{very} admission by the defendants in their written statement cannot be treated as their admission of the facts stated in the said paragraphs. It has been stated in para 14 of the plaint that the plaintiff had made a representation to the Air Officer Commanding-defendant no.2 on 18.9.1978 stating that the aforesaid 4 persons were junior to him and were promoted in 1975 when he was under suspension and his claim could not be considered for promotion at that time. Again in paragraph 15, it was stated in the plaint that against the order of the defendant no.2, the plaintiff preferred a departmental appeal under rule 23 of the Central Civil Services (Classification, Control and Appeal) Rules to the Air Officer Commanding Incharge Headquarters stating that the aforesaid four persons were junior to him and they were promoted as MTD Grade I while the plaintiff was under suspension. As the plaintiff did ~~not~~ make representation and the appeal, as alleged in these paragraphs the defendants admitted in their written statement that the allegations made in paragraphs 14 and 15 of the plaint are substantially correct and are not disputed. Considering the contents of paragraphs 14 and 15 as pointed out by us, the learned Addl. District Judge committed an error in holding that it was not disputed that the aforesaid four persons were junior to the plaintiff. After remand, the learned Munsif did not enter into any controversy at all and in his brief finding on issue no.1, it was held that it was not in dispute that Rama, Waheed Khan, Jagbhan Singh and Balraj Singh were junior to the plaintiff and were promoted

in 1975 and as the plaintiff had also passed the trade test he too was entitled to promotion from the date these four junior persons were promoted. The mistake committed in the remand order thus led to this miscarriage of justice and the learned Munsif was influenced by the views expressed in the remand order by the appellate court and did not apply his own mind to the point in controversy.

8. The blame, however, cannot be squarely laid on the Courts alone. The defendants are equally ^{responsible &} ~~blamed~~ for not raising a specific plea in their written statement that on account of the transfer of the plaintiff from Allahabad to Kanpur on his request, his previous service has to be ignored for the purposes of seniority and on reckoning his service from the date of his transfer i.e. 22.1.1968, he became junior to Ram, Wah-eed Khan, Jagbhan Singh and Balraj Singh and he cannot claim his promotion from that date. Though the fact that the plaintiff was posted to Kanpur on his mutual transfer is evident from his service book on record and it is evident from the entries therein that it was his mutual transfer and he was not given even the joining time and any travelling allowance, the same could not be considered by any Court for want of a specific plea. The settled law is that no amount of evidence on a point which is not pleaded can be looked into by the Court. As the service book of the plaintiff was filed by the defendants, they could insist for framing an issue regarding lowering down of the seniority of the plaintiff on account of mutual transfer even in the absence of a plea on the basis of his service book. The provisions of O.XIV R.3 CPC are amply clear that the Court may frame issues from the allegations made in the pleadings

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and the contents of document produced by the parties. The Munsif was, however, not expected to go through the entries of the service book at the time of framing the issues and this could be done only if his attention could be drawn on behalf of the defendants. As the defendants neither took a specific plea regarding lowering down of the original seniority of the plaintiff in the department nor pressed an issue on this point, the same could not be considered as rightly observed by the learned Addl. District Judge, in his remand order.

9. In view of the confusion created in this case as discussed above, the main question arising for determination in this case before us is as to what is the proper course open to us to do justice in the case. In case we ignore the contention of the defendants that the seniority of the plaintiff was adversely affected by his mutual transfer from Allahabad to Kanpur in 1968, it may create further confusion as at the most only the parties to this case may be bound by their pleadings and the decision given in this case but other employees of the department of the plaintiff, who could claim seniority over him on the ground of mutual transfer, cannot be bound by the decision in this case to which they are not parties. In Ranga Reddy Vs. State of Andhra Pradesh (1987 Supreme Court Cases (L&S)-271), the Hon'ble Supreme Court had observed that the Tribunal ought not to have determined the question of seniority without the affected persons being before the Tribunal since determination of this question would directly affect their interest. The case was, therefore, remanded to the High Court for impleading necessary parties to decide their inter-se seniority. As under the changed law, we now cannot remand the case to any Court, we can certainly remand the case to the proper authority of the defendants. Regarding powers of the Tribunal to make such order, we feel that this Tribunal in hearing the present

appeal exercises much more powers than the District or the Addl. District Judge under the provisions of the Code of Civil Procedure and otherwise. Under Section 14 of the Act XIII of 1985, the Central Administrative Tribunal exercises all the jurisdiction, powers, and authority exercisable immediately before the Act came into force by all Courts except the Supreme Court. Section 29 under which this appeal has been transferred to the Tribunal does not limit the powers of the Tribunal for its disposal. Clause (b) of sub-section (4) of Section 29 of the Act provides that where any suit, appeal or other proceedings stand transferred from any Court, the Tribunal shall proceed to deal with the same, so far as may be, in the same manner as in the case of the application under Section 19. Sub-section (1) of Section 22 of Act XIII of 1985 provides that the Tribunal shall not be bound by the procedure laid down by the CPC but shall be guided by the principles of natural justice. Therefore, there appears to be no difficulty in passing such order under the powers conferred on this Tribunal by Act XIII of 1985.

10. The appeal is accordingly allowed and the judgment and decree passed by the trial Court are hereby set aside and we direct the Air Officer Commanding, Air Force Station Kanpur to redetermine the seniority of the plaintiff after issuing notice to all the persons likely to be affected by his order and after giving the plaintiff an opportunity of personal hearing in accordance with rules of his service and shall pay the arrears if any, found due to the plaintiff on such redetermination of his seniority and promotion within a period of 4 months from today. We make no order as to costs.

Sharma
6.11.87

MEMBER (A)

Sharma
6/11/87
MEMBER (J)

Dated: Novr. 6, 1987
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