

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Registration No.504 of 1986 (T)

(original Suit No. 78 of 1982 of the Court of
Civil Judge I, Gorakhpur)

1. R.Jackson
2. Krishan Murari Vishwakarma PLAINTIFFS
vs.

Union of India DEFENDANT

Hon. S.Zaheer Hasan, Vice Chairman

Hon. A.Johri - Member

(Delivered by Hon. S.Zaheer Hasan, V.C.)

on 17.3.1982 the plaintiffs filed suit
No. 78 of 1982 in the court of Civil Judge,
Gorakhpur for declaration that the impugned order
dated 26.2.1982 reverting the plaintiffs from
the post of Fireman Grade 'B' to the post of
Fireman Grade 'C' was illegal and against the
principles of natural justice. It was further
prayed that the defendant be restrained from
implementing the aforesaid order.

The plaintiffs were appointed as Engine
Cleaners in the years 1967 and 1966 respectively
in the grade of Rs 196-232. In 1974 and 1970
they were promoted to the next grade (Fireman
Grade 'C' - Scale Rs 210-270). On 19.11.1979 they
were appointed as Fireman Grade 'B' in the scale
of Rs 260-350. According to the plaintiffs, an
employee who was promoted and had officiated
against a permanent ~~vacancy~~ post for a period of
two years should be deemed to have been confirmed,
and, therefore, the plaintiffs were confirmed
employees holding the post of Fireman Grade 'B'

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and they could not be reverted to the post of Fireman Grade 'C' without adopting the usual procedure. It was further stated that according to the General Manager's letter dated 23.6.1984 an employee who has officiated for more than eighteen months cannot be reverted from a higher grade to a lower grade without observing the procedure laid down under the law. However, if for any administrative reason the reversion order had to be passed, the same could be done only by the General Manager and not by any other authority. It is also the plaintiffs' case that under the Railway rules an employee who passes the examination earlier than other employees who pass the same subsequently should rank senior to them. On this principle also the plaintiffs are senior to the staff who are proposed for promotion to the post of Fireman Grade 'B' after reverting the plaintiffs from the post of Fireman Grade 'B' to the post of Fireman Grade 'C'. Those who are being promoted after reverting the plaintiffs failed in their test and they cannot be considered as senior to the plaintiffs.

The defence is that the plaintiffs were sent for training course and they were promoted as Fireman Grade 'B' on 19.11.1979. Those promotions were in short term vacancies out of turn in connection with sugarcane season, which did not confer any right of permanent retention on that post. The plaintiffs' seniors were promoted. The plaintiffs were not reverted as a measure of punishment but they had to make way

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for their seniors. They were reverted to their substantive posts. The Fireman Grade 'C' who were senior but could not be sent for promotional training course due to certain administrative reasons cannot be made to lose their seniority against those who were junior to them and were sent for training course earlier for managing short term vacancies. They retained their original seniority as Fireman 'C' in preference to the plaintiffs who were junior even though they were sent for promotional course later and passed the same at a later date due to administrative reasons.

From the order dated 19.11.1979 it appears that the arrangements were made in the sugarcane season of 1979-80 and these promotions were made, including those of the plaintiffs, as a temporary measure. On 2.4.1980 persons senior to the plaintiffs were reverted because they were not qualified at that time could not pass the test. The plaintiffs passed the test, so they continued. The persons senior to the plaintiffs passed the test on 26.2.1982. So on that date the plaintiffs were reverted to their substantive posts and the persons senior to the plaintiffs were promoted.

So the first contention raised before us was that the plaintiffs were senior because they passed the test and the persons senior to the plaintiffs had failed.

It is the date of appointment to the post and not the date on which the qualifying examination is passed that is material for determination of seniority. The earlier success in the

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qualifying examination of a person who was subsequently appointed does not displace the seniority or rank of the earlier appointees simply because they passed the examination subsequently. Persons otherwise senior cannot be deprived of their seniority only because they passed the suitability test ~~in second chance~~ ^{subsequently}. So the senior will remain senior, even if he passes the test later. It was conceded before us that those persons who were promoted after reverting the plaintiffs, were senior to the plaintiffs, ~~but they had failed in the first chance. When they failed they were reverted~~ ^{As they were not qualified at that time} on 2.4.1980 and the plaintiffs continued because they had passed the test. When the persons senior to the plaintiffs passed the test on 26.2.1982, the plaintiffs were reverted and those seniors were promoted. In this way neither justice nor law has suffered. The plaintiffs were not holding any permanent post, and their reversion was not by way of punishment.

It was next argued that the plaintiffs continued on that post for more than eighteen months, so they should be deemed to have been confirmed and they could not be reverted without applying the regular procedure or without the permission of the General Manager. Circular Letters dated 23.6.1964, 31.6.1966 and 15.1.1966 were relied upon by the learned counsel for the plaintiffs.

The relevant
All these circulars were discussed
in a case reported in A.I.R. 1971 Patna, p. 18
(Pashupati Narain Sinha v. Union of India)

and in another case reported in 1985 Local Bodies & Education Cases, p. 185 (Umesh Narain Singh v. The Union of India). It was observed at page 20 in Pashupati Narain Sinha's case that the safeguard of eighteen months' rule applies only to those employees who have acquired a prescriptive right to the officiating post by virtue of their empanelment or having been declared suitable by the competent authority. It does not apply to those officiating on promotion as a stop-gap measure and also to those cases where an employee duly selected has to be reverted after a lapse of eighteen months because of change in the panel position consequent to the rectification of some mistake in seniority etc. So to our mind the rule of eighteen months cannot be applied to the facts of this case. As already stated, persons senior to the plaintiffs were reverted because they failed in the test and the plaintiffs continued because they passed the test. But subsequently the persons senior to the plaintiffs passed the test, so naturally the plaintiffs had to give way to their seniors, and as such there was no question of any punishment, or of giving any notice, or any punitive action.

No other point was pressed before us.

The plaintiffs' suit is dismissed. The parties shall bear their own costs.

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Gaur
Vice-Chairman

21-11-96

B. Jayaraman
Member