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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

REGISTRATION (TA)no. 533 of 1986

P.C.Pradhan and others ... plaintiff/
applicant.

Versus

Union of India and another ... Defendants/
respondents.

Hon'ble Ajay Johri,A.M.

Hon'ble G.S.Sharma,JM .

(By Hon'ble Ajay Johri)

This suit has been received on transfer
from the court of Civil Judge,Farrukhabad under
Section 29 of the A.T.Act XIII of 1985. The
plaintiff(P.C.Pradhan,Mauji Lal and Ram Singh)
are working in the control office of the North
Eastern Railway at Fatehgarh as Sr.Section
Controllers. By this plaint, they are challenging
a seniority list issued by D.R.M.(P) Izzatnagar(IZN)
in 19.8.1983 on certain instructions from the
General Manager(P) Gorakhpur.

2. The facts of the case as narrated by the
plaintiffs are that in 1981 a seniority list was
issued by D.R.M.(P) IZN as on 1.1.1981,where the
plaintiffs were assigned positions at sl.nos. 16
17, and 18 respectively on the basis of their
dates of appointment which were 31.1.1977,14.2.77
and 14.2.1977. In 1983,they were advised that their

dates of promotion were changed to 24.1.1979. They were not given reasons nor any opportunity nor any notice before this change was made. By this order they were put in the 1979 panel though they were selected and empanelled in 1976. They represented against these orders but no reply was given to them.

3/ case is that

3. The defendants at the relevant time the persons eligible for the post of section controller Rs. 4470-550 had to be below 40 years of age and had to be qualified in transportation. In the panel formed in 1976, plaintiff no. 1 was overage, and plaintiffs nos. 2 and 3 both were ~~overaged~~ ^{not only} ^{but also} qualified where as they declared themselves as qualified. When this fact was brought to the notice of the administration by the N.E. Railway Mazdoor Union, their names were deleted from the panel. On sympathetic considerations, their reversion orders were not given effect to and subsequently they were put in the ~~year~~ 1979 panel and their seniority was changed. According to the defendants the administration is fully empowered to make a change in seniority when a mistake is detected.

4. We have heard the learned counsel for both the sides. The contentions raised by the learned counsel for the plaintiffs was that the order of change of seniority is bad because no notice was given to the plaintiffs and no opportunity to explain the position was given before affecting the change. The learned counsel also contended that the plaintiffs were below the age of 48 years. The mention of the

^{3/} ~~man~~ on age being 40 years is wrong. According to him even the circular inviting the applications mentioned, that the age should be below 48 years. The learned counsel for the defendants submitted that the plaintiffs were not qualified and were also overage at the relevant time. In the end, the claim was limited to the issue that the change in seniority having been done without notice and without giving opportunity should be declared illegal. Nothing else was pressed before us.

5. In AIR 1966 Punjab 46, H. Amarchand/State of Punjab, the Punjab and Haryana High Court had held that seniority once fixed can not be altered to the detriment of the employee after a long lapse of time and promotions given on that basis can not be taken away arbitrarily without complying with the provisions of Art. 311. A reversion on account of change of seniority retrospectively amounts to reduction of rank. In the plaintiffs' case, they were assigned seniority in 1976 and the same was changed in 1983. They were, however, not reverted as the orders of reversion were suspended.

6. In AIR 1966 SC 1197 S S. Srivastava/G. M. NERLY the Hon'ble Supreme Court has held that if a civil servant comes to possess a right to a post then the reduction from the rank will operate as a penalty but if he possesses no right, the deletion of the name from the panel could not be construed as a reduction falling within provisions of Article 311. The orders dated 21.1.1977 (annexure III) say in

clear terms that the staff who were working on ad hoc basis and who have been selected for the post of TNL in terms of notification of 18.11.1976 are posted as TNL. Their Seniority will count from the date of regular promotion. So the plaintiffs had to come to possess a right to the post and they could not be reverted or their position in seniority list changed without following the provisions of Art. 311.

7. In 1987(2) ATC 862 P.Joel Karunakaran/
Chairman Rly. Board, the Madras Bench of this Tribunal held that modification of a seniority list to the prejudice of an employee without affording him an opportunity is violative of principles of natural justice.

8. It is not under dispute that the plaintiffs were eligible to appear in the selection for the post of TNL as the maximum age limit was 48 years. It is also clear from the office order dated 21.1.1977 issued by the Divisional Superintendent (P) Izatnagar that the staff who were working as TNC on ad hoc basis in local and tentative arrangements and who ^{3/} have been selected for the post of TNLS in terms of notification dated 18.11.1976 are posted as TNLS in the grade of Rs.470-750. Out of the staff so promoted, the applicants' name appears in para 6 of this order saying that they are required to be qualified in transportation and the next class for transportation was commencing on 21.2.1977. It was

also stated in this order that their further retention as TNL will depend on their successful completion of the transportation training. It is thus clear that when this promotion order was issued the only condition imposed was that their retention as TNLS was dependant on their successful completion of the training and they were promoted. No-where it was said that the promotion can not be made because they are not qualified in the transportation training. Learned counsel for the applicants has contended that possessing of the qualification in transportation was not a pre-requisite to the selection or promotion as a TNL. ^{as that it is so} It is evident from this promotion order, issued on 21.1.1977. In their averments, the defendants have said that they issued orders for reversion on a complaint having been received from one of the unions. Evidently, they had not examined the whole case and they acted in a hurry to issue the reversion order in respect of the plaintiffs. They also did not give any opportunity to them ^{or when} ^{if} they wanted to delete their names from the panel of 1976 and put it in the panel of 1979. This action of the defendants is not justified.

9. Learned counsel for the plaintiffs has relied on a number of decisions to support his case. In 1987(2)SLJ 578 (S.K.N.IYER V. UNION OF INDIA) one of the cases on which he has relied, the matter was regarding removal of the petitioner's name from a selection panel. It was held by the Ahmedabad Bench of this tribunal, which decided this case, that the name could not be deleted from the panel

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without hearing the petitioner and the respondents were restrained from reverting him on this ground.

The second case on which he has relied is 1975, S.L.J. (xxv), (P.S.KOHLI VS. STATE OF PUNJAB AND OTHERS. In this case, the petitioner was appointed as a computor in 1968 and was later promoted as a statistical assistant with a condition that he would be reverted from the said post in the event of the abolition of the post, or of the availability of a person recommended by the Board. The Government issued directions to revert the petitioner and promote another person. In this case, it was held that it was incumbent on the respondents to have afforded an opportunity of being heard before accepting the representation of the other persons and reverting ^{3/1 the petitioner} ~~him~~ to the original post.

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In regard to another matter of reversion, 1980, SLJ, 227 P.S.Rao Vs. The Post Master General ^{which} Andhra Pradesh has been relied on, in which a notice to show cause for reversion was issued upon a report of an official without making the said material available to the petitioner and giving opportunity either to rebut or to present his own case. The Andhra Pradesh High Court in this case had held that the notice was violative of the natural justice and it was struck down.

In another case decided by the Calcutta High Court, 1986, Vol. I, SLJ 429 D.K.Dev Vs. Superintendent of Police, a reversion was ordered after three years of promotion due to some mistake detected

in calculation of qualifying service for promotion without giving an opportunity of showing cause.

The order of reversion was set aside on this ground.

10. We have no hesitation in agreeing with the observations made in the various cases by the various authorities in the above cited cases, ^{some of} which have been relied on by the learned counsel for the plaintiffs, and therefore, the petition(suit) is liable to succeed.

11. In the result, the suit is decreed in part and the impugned order dated 19.8.1983 passed by the D.R.M. (P) Izatnagar is set aside. The defendants are directed to give opportunity to the plaintiffs to explain their case and then decide whether the seniority as given earlier needs a change. We make no order as to costs.

J.M.

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A.M.

JS/31.5.88