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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration No. 618 of 1986 (T)

Union of India & Others Appellants

Versus

C.L. Baghela Respondent

Hon. S. Zaheer Hasan, V.C.

Hon. Ajay Johri, A.M.

(By Hon. Ajay Johri, A.M.)

3/11 an appeal no. 23/85 against the decree in
This is ^{3/11} a suit No. 987 of 1982 received on
transfer from the Court of ^{3/11} ~~the~~ *1st Addl. Dist. Judge* Jhansi under Section
29 of the Central Administrative Tribunals Act XIII of 1985.
According to the plaintiff ^{3/11} *respondent* Shri C.L. Baghela, he was promoted
as Office Supdt. grade Rs. 700-900 vide office order
No.P.367/2/CCO/EO dated 5.5.1982 and posted in the Loco
Foreman's office Jhansi. Prior to this he was working
as Chief Clerk in the grade Rs. 550-750 on a substantive
basis. His pay was also fixed after promotion at the initial
of the pay scale of Rs. 700-900 vide DRM's letter
No.P/PF/CLB/LS/3A dated 1.6.82. The plaintiff ^{3/11} *respondent* was aggrieved
of the fact that though he was promoted u.e.f. ^{3/11} *5.5.82* he
was being paid only Rs. 610/- per month which he was drawing
prior to his promotion. According to him, while his
designation promotion and fixation of pay has been allowed,
actual payment is not being made and withholding of his
salary was an act of high handedness, arbitrariness and
with ulterior motives to harm him. He has therefore prayed
that the decree of mandatory injunction may be granted in
his favour against the defendants directing them to release
his wages in the scale of Rs. 700-900 on the basis of his
^{3/11} *fixation*
~~decision~~ made on 1.6.82.

2. The Defendant^{3/11/82 appellants'} case is that the plaintiff^{3/11/82 respondent} was promoted as Office Supdt. on 5.5.82 and his pay was also fixed at Rs. 700/- in the grade of Rs.700-900 but since the plaintiff gave his refusal to work in the Store Section as Loco Store Keeper and his refusal was received by the Divisional Railway Manager (DRM) on 5.5.82, as such he was not entitled to get his pay as fixed on 1.6.82. According to the defendant^{3/11/82 appellants' to} plaintiff^{3/11/82 respondent} was being paid according to the rules and no deduction from his wages has been made. According to the defendant^{3/11/82 appellants'} ^{3/11/82 respondent} 2 posts in the grade Rs.700-900 known as Office Supdt. were allotted to the Loco Shed Jhansi and consequently the post of Loco Store Keeper was upgraded from Rs. 550-750 to Rs.700-900. As the holder of this post was going to retire and a suitable incumbent had to be provided after his retirement the plaintiff^{3/11/82 respondent} was promoted on adhoc basis in advance so that he can get acquainted with the working of Store Section and the replacement of the person who was to retire may be done smoothly. Since the plaintiff^{3/11/82 respondent} refused to work in the Store Section he was not entitled to get the pay that he claimed.

3. We have heard the learned counsel for both the parties. According to the learned counsel for the plaintiff^{3/11/82 respondent} the two posts of Office Supdt. in the grade of Rs.700-900 were allotted to the Loco Shed as a result of restructuring of the cadres. There is no dispute about this fact and the defendant^{3/11/82 appellants'} have also admitted that orders of promotion of the plaintiff^{3/11/82 respondent} were issued and his pay was also fixed in the higher grade. There is also an entry in the service record of the plaintiff^{3/11/82 respondent}, which was produced before us, indicating the orders of promotion of the plaintiff^{3/11/82 respondent} but this matter is not under dispute. The plaintiff^{3/11/82 respondent}

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^{31/ considered} was not promoted because he refused to work as Loco Store Keeper which was the post to which he was ^{31/ on promotion} posted. The ^{31/ Defendant} plaintiff had been denying that he gave a written refusal and the same was also not forthcoming from the ^{31/ appellants} defendants in spite of the repeated instructions to them. They have however now produced a copy of the refusal signed by the ^{31/ Defendant} plaintiff as Chief Clerk (Oil) on 5.5.82 addressed to the Loco Foreman Jhansi in response to his letter No.6/21 of 4.5.82. In this letter the ^{31/ Defendant} plaintiff has said as follows :-

" With due respect and humble submission I beg to state that I have already given in writing that I will not be able to work in Loco Main Store as I have never worked in any Stores Depot during my 28 years services.

However I will request your honour to kindly allow me to have personal interview with Sr. DME(P) in this connection and oblige. "

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This refusal was put up by the CCG to the Loco Foreman who ordered that it may be sent to the Senior DME Jhansi in person and made over. It cannot therefore be said that the ^{31/ Defendant} plaintiff did not refuse his posting as Loco Store Keeper. The ^{31/ Defendant} plaintiff has further supported his plea that he had actually been working as Office Supdt. by producing extracts of the Attendance Register of the Loco Shed ^{31/} where ~~as~~ his designation has been shown as Office Supdt. He has also produced copies of certain orders in connection with punishment whereas his designation has been shown as Office Supdt. He has also submitted copies of the Railway passes issued to him in May, 1985 and March, 1986 showing his designation as Office Supdt. He has also claimed protection of his promotion orders on the plea that no cancellation orders have been issued by the ^{31/ appellants} defendants and therefore once his promotion orders were

issued he should have been deemed to have been effectively promoted and continued in the scale of Rs.700-900.

4. No documents have been produced before us to show that the plaintiff^{31/11/82} actually took over charge of the post of Office Supdt. The defendant^{31/11/82} have been claiming that he had given a written refusal and they have now produced ^{31/11/82} a letter, which speaks of a copy of the same, dated 5.5.82. Normally an employee who refuses promotion is debarred for promotion for one year. If he refuses ^{31/11/82} a second time his name can be struck off from a panel if he has been put on one. The effect of refusal of promotion is also on ^{31/11/82} seniority. He loses seniority in respect of those who may be promoted earlier than him. In adhoc promotions as was the case of the plaintiff^{31/11/82} because he was not duly selected, the senior most eligible persons as per their turn are promoted.

5. The plaintiff^{31/11/82} contention that he was shown as Office Supdt. in the Attendance Register is not supported ^{31/11/82} by the ^{31/11/82} Muster Roll on which payments have been made to the staff and where his name has been indicated and his designation has been shown as Chief Clerk. These pay sheets cover the period from June, 1982 to January, 1985. The entry made in the Attendance Register or the showing of the designation as Office Supdt. on the passes or the memorandum issued to the plaintiff can best be called as clerical errors. We can ^{31/11/82} place much reliance on them. The basic document on which payment has been made to him has shown his designation as Chief Clerk. Further in his own admission he has written letters on 3.6.82(40B), 7.8.82(41-B), 25.9.82(42-B), 22.7.82 (43-B), 7.7.82 (44-B), 8.11.82(48-B),

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17.2.83 (51-B), & 24.2.83(52-B), ^{where} He has repeatedly shown his designation as Chief Clerk.

6. We have also got a copy of the letter dated 25.9.86 from the Loco Foreman Jhansi to the D.R.M. (P) Jhansi detailing that there were three posts of Office Supdt. in the grade of Rs.700-900 in the Loco Shed at Jhansi. In the first para the Loco Foreman has said that Shri C.L.Baghela has refused to work as Office Supdt. Stores and therefore his promotion to the grade of Rs.700-900 ^{if could} ~~can~~ not be implemented.

7. A promotion order is not effective unless a person physically takes over charge of the post to which he is promoted. The plaintiff ^{respondent} has not produced any such charge report. Mere issue of a promotion order of fixation of his salary in the new scale does not entitle the person so promoted to the salary of the post he is to physically take over. ^{On his own admission} Shri C.L.Baghela did not find himself competent enough to take over charge of the Loco Stores Keeper which was the upgraded post on which he was promoted.

38/ ^{It is thus clear that the}
8. Plaintiff ^{respondent} refused promotion and he did not physically take over the charge of the post. We therefore find no force in his plea that since there was no reversion order he should be deemed to have been promoted and should be paid the salary on the promotional post and arrears of pay.
^{In view of the above, the contention of the defendant appellants seems to be correct & the appeal is liable to be allowed.}
9. In the result ^{the appeal is allowed, the decree of the main & side suits} ~~the~~ ~~petition~~ is dismissed with costs on parties.

V.C.

A.M.

RKM
Dated the 7th Nov., 1986.