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RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

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Registration No.771 (T) of 1986

Mahesh Chand Dubey ..... Plaintiff-Applicant.

Versus

Union of India and another ... Defendants-Respondents.

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Hon'ble D.S. Misra, A.M.

Hon'ble G.S. Sharma, J.M.

(Delivered by Hon. D.S. Misra, A.M.)

This is an original suit No.632 of 1983, which was pending in the court of Munsif 'I', Jhansi, and has come on transfer under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The plaintiff's case is that he was appointed as Boiler Maker in the Steam Loco Shed, Central Railway, Jhansi, in the year 1959; that he has been working as Diesel Mechanic Grade I in the scale of Rs.380-560 since the year 1976 and stands at 7th position in the seniority list of Diesel Mechanics published by the Personnel Branch of the Divisional Officer, Jhansi and displayed on the notice board at Diesel Loco Shed on 14.7.1980; that the incumbents of Diesel Mechanic cadre have avenue of promotion in the supervisory cadre only in the Engine wing of diesel organisation and they are eligible for promotion to the post of Junior Chargeman (Mechanical), Engine Examiner, Junior Instructor, etc.; that five posts of Mechanical Supervisor in the grade of Rs.425-700 were notified to have fallen vacant vide circuler letter dated 27.9.1980 of Divisional Railway Manager (P), Jhansi, and the plaintiff having come in <sup>the</sup> zone of consideration

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by virtue of his being the senior-most ~~and~~ got promotion as such on the post of Junior Chargeman (Mechanical) in the grade of Rs.425-700; that the plaintiff has been working on the aforesaid post most efficiently, honestly and diligently without any complaint in regard to supervisory work; that in the written examination and viva-voce test held later on the plaintiff was deliberately failed in the viva-voce test with ulterior motive of local officers; that the plaintiff had obtained second position in the written test but was failed in the viva-voce test in violation of the instructions of the Railway Board contained in the circular dated 9.12.1975 of the Railway Board. The plaintiff has prayed that a decree of declaration be passed in favour of the plaintiff against the defendants that the act of failing the plaintiff in the selection to the post of Junior Chargeman (Mechanical) is illegal, arbitrary, malafide, ultravires and to declare the plaintiff 'passed' and to prevent the defendants from reverting him from the post of Junior Chargeman (Mechanical) to a lower post.

3. In the reply filed on behalf of the defendants it is stated that the promotion to the post of Supervisor cadre is not made on the basis of seniority-cum-suitability but on the basis of selection; that the plaintiff was promoted purely on ad hoc basis in the exigency of service; that in December, 1980 it was decided to form a panel to fill up the post of Chargeman 'B' Mechanical against the ten vacancies of 25 per cent quota of departmental rankers and the eligible candidates were called to appear in the written test in the selection of above posts; that the plaintiff did pass the written test but he failed in the viva-voce test and he could not find a place in the panel prepared for this purpose; that

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no local officers of the defendants had any vested interests in any person and the allegation that the plaintiff was deliberately failed is not correct; that the instructions of the Railway Board referred to by the plaintiff are applicable to the case of Scheduled Caste and Scheduled Tribe candidates only and not to the case of the plaintiff, who is a general candidate; that there is no violation of any statute of Railway administration and any article of the Constitution of India; that the plaintiff cannot claim promotion on the basis of seniority as the post was to be filled by a positive act of selection and as the plaintiff had failed in the selection test he is not entitled to be empanneled and promoted as Chargeman 'B' as claimed by him; that the plaintiff cannot claim his promotion to the post on the basis of his continuous working for more than 18 months as the Railway Board have clarified in their letter dated 15.1.1966 that the benefit of 18 months officiation on the higher posts is applicable to employees promoted after passing the selection test and being selected by the Selection Board in case of posts ~~in~~ to be filled up by selection.

4. We have heard the arguments of the learned counsel for the parties and have also perused the documents on record. The first contention of the plaintiff ~~in~~ that by virtue of his having been officiating on the higher post for more than 18 months, he should be deemed to have been appointed on a regular and permanent basis and that he could not be reverted to a lower post, has been considered by us. The defendants have referred to the Railway Board's instructions contained in their letter dated 15.1.1966 in which it was clearly stated that the instructions, referred to

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above, were applicable in the case of such employees, who are promoted to a higher post after they have been selected and found fit by a proper selection board. Admittedly the plaintiff was promoted on a purely ad hoc basis and, therefore, he could be reverted to the lower post by the Competent Authority. The next point agitated by the plaintiff is that he had passed in the written test and as he was already working in the higher post satisfactorily he could not be failed in the viva-voce test. The defendants had filed copies of the confidential reports of the plaintiff for the years 1980-81, 1981-82 and 1982-83. On a perusal of these reports it is found that in the year 1980-81 the plaintiff had earned good entries in respect of large number of items of work but the Reporting Officer had not found him fit for promotion. The general assessment of the Reporting Officer is, "he has not yet been able to establish himself as an effective Supervisor and needs constant guidance from his superiors". The adverse portion of the remarks were communicated to the plaintiff from time to time. In the report dated 17.11.1982 the plaintiff was declared not fit for promotion and his performance was judged from 'good' to 'average'. It appears that the plaintiff had made representation against the adverse reports for the last three years on 23.5.1983 in which there is mention of a representation made by him on 3.12.1982. These reports clearly indicate that the assessment of the work and conduct of the plaintiff was not satisfactory, as claimed by the plaintiff in his plaint. It was contended by the learned counsel for the defendants that in the viva-voce test due consideration was given to the confidential reports on the work and performance of the

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employees during the previous three to five years.

It was thus contended by the defendants' counsel that the failure of the plaintiff in the *viva-voce* test was neither due to the ulterior motive of any member of the Selection Board nor of any other officer under whom the plaintiff was working.

Ulterior motive has also not been established as a fact.

5. After giving due consideration to the facts and circumstances of the case we are of the opinion that the formation of the panel by the Selection Committee does not suffer from any illegality and does not disclose any arbitrariness or malice on the part of the members of the Selection Board. We are, therefore, unable to accept the claims made by the plaintiff and dismiss the suit. The parties shall bear their own costs.

~~23.6.87~~

A.M.

*J.M.*  
23/6/87

Dated: June 23.6., 1987.

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