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RESERVED
Court No.1

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A.No.852 of 1986
(C.A. No.203 of 1981)

Agha Mehndi Plaintiff/Appellant

Versus

Union of India & Others Defendants/Respondents

Hon. Ajay Johri, A.M.
Hon. G.S.Sharma, J.M.

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

This appeal arises out of the judgement and decree dated 22.4.81 passed by Munsif North Lucknow in Suit No. 10 of 1973 dismissing the suit.

The grounds of appeal are that the Trial Court

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- i) did not care to look into the pleadings of the appellant,
- ii) ignored the fact that on a transfer under Rule 38 of the P&T Manual the seniority is fixed below the existing permanent staff as done in Subedar Dubey's case consequent to an order in Suit No. 507 of 1968,
- iii) took into consideration amended Rule 38 when the amendment did not exist in 1949,
- iv) did not proceed with the Suit ex parte after ordering so.

2. In suit No.10 of 1973 the plaintiff's case was that he was confirmed as a Clerk on 29.3.41.

On 25.6.49 the services of the plaintiff were transferred to Return Letter Office (RLO) under Rule 38 at the request of the plaintiff without arranging mutual exchange. In the seniority list he was placed below all permanent staff and above all temporary staff of the R.L.O. Later on he was placed even below the temporary staff. This was also against the court decrees given in the case of two other persons who were aggrieved by a similar action in their case where the administration's orders of putting them below temporary staff were set aside by the Court. He had represented against lowering of his seniority but his representations were turned down. He therefore filed the Suit praying for a declaration to be issued that his seniority be fixed below the juniormost permanent staff w.e.f. 25.6.49 and above all temporary staff with consequential benefits.

3. The learned Trial Court on the issue whether the seniority of the plaintiff had been correctly fixed concluded that since in para 38 of the P&T Manual Vol. IV if an employee is transferred on request without mutual exchange his seniority is fixed below all permanent and quasi permanent or such temporary staff *3x the plaintiff's seniority was correctly fixed. 3x* who are recruited against permanent posts of the Unit. The plaintiff's grievance against fixing of his seniority below the temporary employees was opposed by the defendants on the ground that those temporary employees were recruited against permanent vacancies and they were confirmed with retrospective effect

though after 25.6.49. The Trial Court had examined a number of documents filed by the defendants and ^{3V} ~~revision of seniority made by the~~ concluded that the defendants ~~conclusion~~ was supported by them. The Trial Court had further said that even if it is assumed that those persons were not permanent the plaintiff gets no relief because Rule 38 protects such temporary employees who are recruited against permanent vacancies and the plaintiff had not said anything. against this fact, and moreover confirmation did not give any special status. So the Trial Court decided the issue against the plaintiff.

4. Rule 38 of the P&T Manual Vol.IV before its amendment on 21.11.59 laid down that a person transferred from one branch of service to another on his request will rank junior to all the permanent officials in that branch on the date of his transfer. This rule was amended on 21.11.59. By this amendment the position to be occupied in the seniority list by a person transferred on his own request will be below all permanent, Quasi Permanent and temporary employees. The plaintiff was transferred on 25.6.49. So he had to be placed below all permanent employees only on the date of transfer. According to paper 83Ka of the Suit file the defendants' case was that he has been fixed only below the permanent employees ^{3V} ~~as~~ the temporary employees against whom he is representing were also confirmed retrospectively from a date earlier to the date of his transfer.

5. Is retrospective confirmation illegal ? Whenever a person is appointed freshly in a job he has necessarily

to be on probation and after successful completion of the same his confirmation is considered. Confirmation does not occur automatically after efflux of time. The date of confirmation is fixed on an objective consideration of all circumstances and on the basis of a reasonable criteria. Confirmation is an incidence of service. It is done against a permanent post. So when a person is appointed against a permanent post, after completion of his probation and after he is found fit for confirmation he has to be confirmed on that post usually from the date of appointment or the date from which a permanent post becomes available after release by the previous incumbent who may have got promoted and then confirmed against a higher post.

31✓ Confirmation is normally done by a Departmental Promotion Committee which is convened at regular periodical intervals to consider the case of eligible temporary employees for confirmation immediately the permanent post becomes available and on completion of the probationary period in case of fresh recruits. So it is clear that an employee can be confirmed if a permanent post is available, his appointment is regular ~~or he was appointed~~ i.e., after qualifying through a selection/suitability test etc. and he becomes due for confirmation.

Retrospective confirmation as we have remarked earlier is given when a substantive vacancy exists on that particular date or on an earlier date. Therefore if a person is recruited against ~~pre~~ permanent vacancy

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after probation he can be considered for confirmation from a back date. In view of this we find nothing wrong in the issue of an order confirming a person retrospectively.

6. The next issue that arises for adjudication is ~~whether~~ at the relevant time when the plaintiff was transferred to the R.L.O., the unamended Rule 38 of P&T Manual Vol. IV, laid down that a transferee on request will rank junior to all permanent officials in that Unit on the date of his transfer and therefore a temporary employee who was recruited against a permanent post but was not confirmed on the crucial date will get the benefit of his retrospective confirmation vis-a-vis the employee who is transferred on request. In our opinion, once a provision exists for confirming an employee with a retrospective date the benefits flowing from such confirmation should automatically flow to him i.e. he would have to be considered as having become a permanent employee from the retrospective date though this decision ~~was~~ ^{is} taken at a later date and therefore his seniority will have to be adjusted vis-a-vis those who came on transfer on request and were fixed below the permanent employees on the roster on the particular date. The names of such employees who are given retrospective confirmation will have to be interpolated in the seniority list giving them the proper

position. It is evidently in this background that Rule 38 of the P&T Manual was amended on 21.11.59. This amendment clarified the position that a transferee on request will rank junior to all permanent, Quasi permanent and temporary employees who were recruited against permanent vacancies and who got confirmed on ~~31/~~ ^{with effect from a date 31/} permanent vacancies prior to the date of arrival of the transferee.

7. The plaintiff has relied on a judgement of the Additional Munsif, Varanasi in Suit No. 507 of 1966 Subedar Dubey Versus Union of India where the plaintiff in that suit was also transferred on request and his seniority was disturbed in 1966 by an order of the P.M.G. on the ground that since he had not given his option in terms of Rule 38 of the P&T Manual Vol. IV earlier and gave it only on 9.2.50 therefore he was placed below all those permanent employees who were confirmed before 9.2.50. The transfer in that case was taken to become effective only after the plaintiff in that suit gave his option i.e. w.e.f. 5.4.50. In that Suit the learned Trial Court had held that since the defendants had already decided to give him seniority below all permanent employees and the gradation list was duly published ~~the~~ the plaintiff's case was governed by the old Rules, The new Rules which laid down the seniority to be fixed under all permanent, Quasi permanent and temporary employees will not be applicable to him,

therefore the order changing the seniority of the plaintiff had no basis and was not in conformity with the Rule 38 of the P&T Manual and the late submission of the declaration could not deprive the plaintiff of his rightful place in the gradation list. To our mind the appreciation in regard to the process of confirmation and the retrospectivity of the same which makes an employee permanent after he has completed his probationary period which is naturally a temporary service and gives the added benefits to such employees who are confirmed retrospectively was not appreciated by the Trial Court in this relied on case. Therefore the ratio of the judgement in this case will not help the plaintiff who is before us in this appeal.

8. We, therefore, do not find any force in the plea raised by the plaintiff appellant and reject the contentions raised by him that he cannot be given a position lower than those temporary employees of the new Unit who were recruited against permanent posts but were confirmed retrospectively at a date later than the date on which he came on transfer to the new Unit.

9. On the above considerations we dismiss the appeal and uphold the decree and judgement in Suit No.10 of 1983. Parties will bear their own costs.

J.M.
J.M.

अन्तर्जीवी
A.I.I.

Dated the 18th Aug., 1983.

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