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Court No. 1.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No. 1164 of 1986.
(Civil Appeal No.159/85 of the Court of District Judge, Gorakhpur.)

Union of India & others Defendant-Appellants.
Versus
Khunkun Prasad Plaintiff-Respondent.

Hon'ble Justice K. Nath, V.C.
Hon'ble K.J. Raman, A.M.

(By Hon. Justice K. Nath, V.C.)

This is an appeal for disposal before this Tribunal under Section 29 of the Administratiave Tribunals Act,1985. It is directed against the judgment dated 17.4.1985 whereby the plaintiff-respondent's Civil Suit No. 1203 of 1982 was decreed by the IV Additional Munsif, Gorakhpur.

2. The plaintiff-respondent, Khunkun Prasad, was initially appointed as a Postman in Bareilly. He appears to have been confirmed as such on 16.5.1954. On his own request for transfer from Bareilly to Padrauna he was transferred on 16.12.1963 and was given his seniority below all the officials of Padrauna Unit in accordance with Rule 38(2) of the Post and Telegraph Manual, Volume IV. There is no controversy upon that allotment of seniority.

3. The plaintiff-respondent again made a request for his transfer from Padrauna to Gorakhpur. By an order dated 11.1.1966 he was accordingly transferred from Padrauna to Gorakhpur; his seniority on the basis of that transfer is the subject matter in this litigation.

4. According to the plaintiff-respondent, Padrauna was within the larger Unit of Gorakhpur and, therefore, when he was transferred from Padrauna to Gorakhpur, his seniority was governed by Rule 38(3) of the aforesaid Manual. According to that rule, the

original seniority of the wider Unit, i.e. Gorakhpur, was to be protected. However, the defendant-appellants refused to give benefit of Rule 38(3) and took the stand that he could be considered for seniority only on the basis of confirmation in Padrauna Unit, which, according to them, came in 1972. The plaintiff-respondent's representation against that view of the Department was rejected by order dated 11.9.1980. The plaintiff-respondent, therefore, filed a regular Civil Suit, referred to above, for quashing the order dated 11.9.1980 and for a declaration that he was entitled to reckon his seniority on the basis of length of service in Padrauna Unit in accordance with Rule 38(3) of the Manual. He also prayed for consequential benefits and proper placement in the seniority list dated 8.12.1977.

The learned Munsif held that Padrauna was within the larger Units of Gorakhpur and, therefore, the plaintiff-respondent was entitled to retain his seniority on the original transfer from Bareilly to Padrauna on 16.12.1963 and could not be further reduced to a lower position in Padrauna Unit in consequence of transfer dated 11.1.1966. It was further held that the so-called confirmation of the plaintiff-respondent in 1972 in Padrauna Unit was meaningless because the plaintiff-respondent had already been confirmed in Bareilly Unit as early as 16.5.1954. The learned Munsif, therefore, decreed the suit, declared the order dated 11.9.1980 to be illegal and void, and further declared the plaintiff-respondent to be entitled to seniority in the Gorakhpur Unit under Rule 38(3) of the Manual on the basis of the initial seniority in consequence of the transfer order dated 6.12.1963 from Bareilly to Padrauna under Rule 38(2). He also directed that the plaintiff-respondent be placed at the proper position in the seniority list and be given consequential benefits thereof.

5. In this appeal, before us, the question of plaintiff's seniority was not re-agitated, and the submission made was that Padrauna was in Deoria Unit and, therefore, when the plaintiff was transferred on 11.1.1966 from Padrauna to Gorakhpur it

constituted a transfer from one Unit to another within the meaning of Rule 38(2) of the Manual and consequently his seniority was to be fixed below others working there.

6. In the course of the hearing of this case on 23.5.1990, we directed the appellants to produce an authentic copy of the notification by which Deoria Division was created. The learned counsel for the plaintiff-respondent ^{was} also required to produce the copy of the relevant notification. When the case was taken up today, the appellants' learned counsel, Sri K.C. Sinha, could not produce the notification. The learned counsel for the plaintiff-respondent filed an affidavit stating that on enquiries made by the plaintiff-respondent information had been given that Padrauna Sub-Post Office had been separated from Gorakhpur Division to Deoria Division after the notification of Deoria Division on 1.8.1972. It is further stated that before August, 1972 Deoria Division was in Gorakhpur Division and, therefore, Gorakhpur constituted the larger Unit in which the plaintiff-respondent's seniority was to be fixed. We have no reason to disbelieve the averments made in this affidavit. We may mention that in para 16 of the written statement it had been admitted that till 1963 Padrauna was within Gorakhpur Division. It was, therefore, to be shown by the appellants as a fact, specially in view of the findings of the trial court, that Padrauna Unit was within Gorakhpur Unit that before 11.1.1966 Padrauna Unit had been transferred to Deoria. That has not been done. The result is that the seniority of the plaintiff-respondent, on his transfer from Padrauna to Gorakhpur by the order dated 11.1.1966, was to be determined in accordance with Rule 38(3) of the Manual. That is what the learned Munsif has been found. The view of the learned Munsif, therefore, must be confirmed.

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7. The appeal is dismissed with costs, which we assess
as Rs.500/-.

K. R. Rao (A)
MEMBER (A).

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VICE-CHAIRMAN.

Dated: July 10, 1990.

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