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Registration O.A.No. 206 of 1986

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Applicant.

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Respondents.

Hon. Ajay Johri, AM
Hon. G.S.Sharma, JM

(By Hon. G.S.Sharma, JM)

2. The relevant facts of the case are that on the creation of P & T Civil Circle VI at Lucknow, options were invited from the non-gazetted staff of Calcutta and Delhi Circles for coming to Lucknow. One H.K.Asthana working as Head Clerk (in short HC) in New Delhi office had given his conditional option to come to Lucknow as Office Superintendent (in short OS) but the said condition was later on withdrawn and he was transferred to Lucknow as HC.

In 1973, the applicant, ^{as alleged by him,} was the only eligible HC for promotion as OS but the said Asthana was wrongly promoted as OS by Sri H.C.Goel Superintending Engineer on the basis of the report of the Departmental Promotion Committee (DPC) of which he himself was the Chairman. As Asthana did not fulfil the required condition of becoming the OS, when this fact came to the notice of Sri Goel, he convened the Review DPC and its earlier report was cancelled and the

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nature of the promotion of Asthana was changed as an ad-hoc promotion. Asthana filed a writ petition in the High Court but the same was dismissed and despite the observations of the High Court that Asthana could not be promoted to the post of OS, he was not reverted and in this way, the applicant was denied his due seniority and the right of promotion. The applicant was later on promoted as OS on 4.2.1984 but he was not given his seniority w.e.f.3.8.1973. The applicant represented for the same on 2.4.1985 but it was rejected.

3. The claim of the applicant has been contested on behalf of the respondents and it has been stated by them in their reply that the applicant and Asthana both had given their options for Lucknow. The applicant subsequently gave his option for the post of OS in the newly created Civil Circle Bhopal on 5.4.1973 and he was transferred to Bhopal on 1.8.1973. His absorption in Bhopal was not approved by the higher authorities and as such, he was sent back to Lucknow on 25.8.1973. As the applicant was under orders of transfer, his name for the post of OS could not be considered in the meeting of the DPC held on 3.8.1973 and Asthana being the only eligible HC was first promoted as OS and later on when it came to the notice that he was otherwise not eligible for such post, the nature of his promotion was changed and it was made ad-hoc. Aggrieved by this change, Asthana had unsuccessfully filed a

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writ petition in the High Court but no advantage of the same could be had by the applicant as on 3.8.1973, he was rightly not considered by the DPC for promotion and later on the applicant was involved in a disciplinary enquiry case and was awarded the punishment and could not be promoted earlier.

4. In the rejoinder filed by the applicant it was stated by him that due to the mistake of the respondents the case of the applicant was not put up before the DPC on 3.8.1973 and material facts regarding service of H.K.Asthana ^{were} was concealed by the office and on a misrepresentation, he was found fit for promotion by the DPC but despite ^{the} mistake coming to ^{the} its notice and the review DPC, Sri H.C.Goel wrongly did not revert Asthana to the post of HC and as such, the applicant was deprived of the same.

5. At the time of arguments, much stress was laid on behalf of the applicant on the observations of the Lucknow Bench of the Allahabad High Court in the writ petition filed by H.K.Asthana, copy annexure 13, to the effect that Asthana could not be promoted to the post of OS and his regular promotion order was passed in contravention of the rules of seniority. In our opinion, this observation does not add any weight to the case of the applicant. Before Asthana approached the High Court in the writ petition, the departmental authority had already realised that he was wrongly promoted and as such, his promotion was cancelled but ^{at} that time there was no other eligible candidate

for officiating as OS, he was allowed to continue as such on ad-hoc basis and was not reverted.

6. The applicant has deliberately concealed some material facts and he did not state the necessary facts regarding the particulars of his service and the service particulars of Asthana prior to 3.8.1973. According to annexure CA-2 filed by the respondents, in the seniority list Asthana has been shown senior to the applicant on 1.9.1981. Asthana had joined the service in 1962 while the applicant had joined in 1953. According to the applicant, the promotion to the post of OS could be made by promotion from amongst the permanent or quasi-permanent HCs of minimum standing of 5 years and on 3.8.1973 he was eligible for promotion but Asthana was not eligible for the promotion. As the DPC was held on 3.8.1973 and prior to that the applicant was already ordered to be transferred to Bhopal as OS on 1.8.1973 and remained there upto 25.8.1973, he could not be considered in the DPC held on 3.8.1973 and the contention of the applicant to the contrary has no force. The grievance of the applicant, however, is that he could be considered in the review DPC held on 2.5.1974 in which the earlier selection of Asthana made in the meeting of 3.8.1973 was cancelled or a separate meeting of the DPC could be held to consider his case but as it was not done

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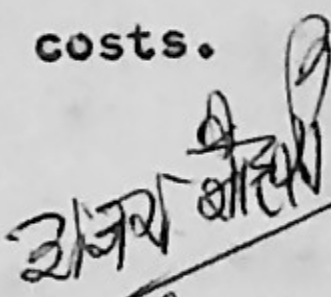
he is entitled to the seniority from the date Asthana was promoted as OS. Both the parties have filed the seniority list. In the seniority list of 1.6.1974 filed by the applicant as annexure 2 to his rejoinder, Asthana has been shown to be senior to the applicant in all respects. The same is the position in the seniority list annexure CA-2 filed by the respondents. This seniority list, however, shows that Asthana was made permanent HC w.e.f. 1.3.1979 and the applicant was made quasi-permanent HC w.e.f. 16.3.1970. As on the own showing of the applicant, the standing of 5 years as quasi-permanent HC was required for becoming OS on 3.8.1973, he too was not eligible for such promotion on that date and as such, there is no force in his contention.

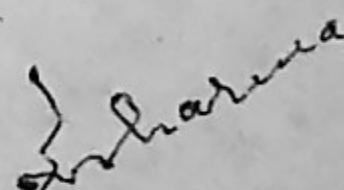
7. We have carefully gone through the judgment of the Lucknow Bench of the Allahabad High Court in the writ petition filed by Asthana, copy annexure B to the petition, but find nothing therein to support the claim of the applicant on any ground. The mere reversion of Asthana from the post of ^{ad-hoc} OS could not make him eligible for such promotion under the rules. When the applicant completed his 5 years of his standing as HC in 1975 he was involved in a disciplinary proceeding and was awarded punishment in that case. His pay was reduced to the minimum of his time scale upto 4.1.1984 and on the restoration of the same, he got his promotion as OS w.e.f. 4.2.1984 and as such, he has failed to

establish any claim for his promotion from any earlier date. We further find that he was not superseded by Sri Asthana in any manner and it was upto the discretion of the respondents to revert him to the post of OS or to allow him to work as OS on ad-hoc basis.

8. Having thus carefully considered the case of the applicant, we find no force in any of the contentions raised by him and he is not entitled to get his seniority or promotion from any earlier date. From his conduct it further appears that from 3.8.73 when Sri Asthana was promoted to the post of OS, the applicant kept mum and did not challenge his alleged supersession on any date nor claimed his seniority or promotion from an earlier date before making a representation on 2.4.1985, copy annexure 'D', because he knew the reality and his claim made before us is now an afterthought.

9. The petition is accordingly dismissed. The parties are, however, directed to bear their own costs.


22.4.1987
MEMBER (A)


22.4.1987
MEMBER (J)

Dated 22.4.1987
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