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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

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Registration (T.A.) No. 1186 of 1986

Vidya Lal Srivastava ..... Plaintiff-Applicant.

Versus

Union of India ..... Defendant-Respondent.

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Hon'ble S. Zaheer Hasan, V.C.

Hon'ble Ajay Johri, A.M.

(Delivered by Hon. Ajay Johri, A.M.)

Suit No. 1293 of 1984 has been received on transfer from the court of Munsif I, Gorakhpur under Section 29 of the Administrative Tribunals Act XIII of 1985. The plaintiff is working as an Unit Catering Manager on the North-Eastern Railway. His case is that for filling up five existing plus one anticipated vacancy and 25 per cent for unforeseen requirements of Assistant Catering Inspectors a selection was held on 4.5.1976. 21 candidates were available, plaintiff and 9 others qualified in the selection. One Aman Ullah Khan was also called for selection and he was placed at Sl. No. 5 of the list in the panel declared on 13.4.77, though as a consequence of a vigilance case, while he was working as an Assistant Manager Catering at Samastipur, he was debarred from being promoted as Catering Manager. On 29.12.1979 the panel was quashed by the Chief Commercial Superintendent but it was later revived on 3.4.1984 and though the panel has not yet been published a provisional panel of 6 was declared and operated. One vacancy reserved for Scheduled Tribes was

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<sup>2/</sup> to be <sup>de-</sup> reserved and thus a total of 7 vacancies were to be filled. According to the plaintiff the number should have been eight, on the basis that 6 plus 25 per cent of 6 gives 7.5 which should have totalled to 8 and not 7, by treating 0.5 as one. Aggrieved by non-inclusion of his name in the panel and no response to his representations the plaintiff filed this suit with the prayer that the formation of panel should be for 8 posts instead of 7 and his name be included in the panel of the selected candidates for the post of Asstt. Catering Inspector.

2. The defendant's case is that the suit is bad for non-joinder of the parties, it is barred by Section 80 of the Code of Civil Procedure and the suit is not justiciable as the issue raised is purely administrative. According to the defendant a selection <sup>3/</sup> for forming a panel of 5 general candidates, one Scheduled Caste and one Scheduled Tribe candidate of Catering Inspector was held in 1976 for 5 existing vacancies, one anticipated vacancy and 25 per cent <sup>3/</sup> ~~equal to~~ one as unforeseen vacancy giving a total of seven vacancies. The Railway Board's letter No. PC-61/PS-5/MS-1 of 15.12.1964 being not applicable for rounding off in calculation of vacancies the total vacancies were kept at 7. One Aman Ullah Khan was debarred from being further utilized as Assistant Manager Catering and was posted as Clerk in 1965 but when he represented the Chief Commercial Superintendent passed orders in 1975 for his posting back to his original post and since he had been restored he was called for the said selection

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and was placed in the provisional panel. This panel was cancelled by the Chief Commercial Superintendent in 1979 but the General Manager restored it in 1984 after considering the case. 4 posts were filled in April, 1977, 2 in August, 1984 and remaining one after dereservation in October, 1984.

3. The submissions made at the bar were that induction of Aman Ullah Khan was incorrect and the panel should have been made for 8 persons because 0.5 should have been rounded off to 1. These were repelled by the learned counsel for the defendant on the ground that no such instructions exist for calculation of vacancies, and Aman Ullah Khan was rightly restored by the competent Authority. Nothing else was pressed before us.

4. There is no dispute about the fact that Aman Ullah Khan was posted as a Clerk from the post of Assistant Manager Catering. Railway Board's letter of 1971 on the subject of appointment of class III staff of Catering Branch conveys approval to the regularization of appointment of 42 class III staff. Against Aman Ullah Khan's name a remark is given "Permanently reverted as a Clerk". Reversion as a Clerk effected the seniority of <sup>by on</sup> Aman Ullah Khan. Also <sup>permanently</sup> permanent reversion as a Clerk the question of repromotion should not have arisen. However, the competent authority considered his representation and brought him back as Assistant Manager. Thus the reduction was changed from permanent to the time he was repromoted. The seniority in this case <sup>is</sup> has to be redetermined by the date of repromotion. He <sup>could have</sup> ~~can not~~ got his original seniority unless the punishment was cancelled, which has <sup>perhaps</sup> not been the case.

However, it was submitted by the learned counsel for the plaintiff that ~~the~~ plaintiff will not agitate the matter in respect of his seniority vis-a-vis Aman Ullah Khan. Aman Ullah Khan has also not been impleaded as a party in the suit. This matter, therefore, needs to be given a quietus.

5. Para 210(d) of Chapter II Section 'B' of the Indian Railway Establishment Manual lays down that for selection of non-gazetted posts candidates to the extent of four times of the number of existing vacancies and anticipated vacancies plus 25 per cent thereof for unforeseen vacancies has to be considered. Later in 1976 September the Railway Board vide their letter No. E(NG)1-76 PMI-168 of 3.9.1976 decided that panels should not cater for unforeseen vacancies and they decided that for calculation of vacancies for unforeseen contingencies 20 per cent of the anticipated vacancies only (not existing vacancies) should be added to the total of existing and anticipated vacancies. This selection was held on 4.5.1976, i.e. before the issue of the Railway Board's letter of September, 1976 which changed the basis of calculation of vacancies. Previously it was 25 per cent of the total of existing and anticipated vacancies as also explained by the defendants in their averments. Thus on the basis of the previous method there being 6 (existing + anticipated) vacancies the total including 25 per cent comes to 7.5 vacancies. The defendants have submitted that this 0.5 has to be ignored because there are no instructions to round <sup>31</sup> it ~~down~~ of to 1.

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6. Railway Board's letter No. PC-61/PSS/MS-1 of 15.12.1964 on re-distribution of posts on the basis of prescribed percentages lays down that fraction of half or more than half be rounded off to the next full number in working out the posts in higher grades under up-grading orders issued from time to time. Similarly for computation of Tax on Income and Salaries the total Tax is rounded off to the nearest rupee by ignoring a part of the amount less than fifty paisa or increasing to one rupee if the fraction is fifty paisa or more. It is, therefore, not correct to presume that there are no principles available to compute 0.5 of the vacancies. 0.5 should have been taken as one and the total number of vacancies would then be 8 and not 7 as averred by the defendants and the panel should have been formed for eight persons.

7. Thus on the basis of the number of vacancies which should have been calculated as 8 and not 7 the plaintiff has a case.

8. Under the circumstances the defendants are directed to place the plaintiff in the panel of Assistant Catering Inspectors declared during 1984 enhancing the number of persons finally placed on the panel from 7 to 8. The application (Suit No. 1293 of 1984) is allowed. Parties will bear their own costs.

*Praveen*  
Vice-Chairman.

*मंजरी गोदाली*  
Member (A).

Dated: October 27, 1987.

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