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Central Administrative Tribunal, Allahabad.
Registration T.A.No.1240 of 1986 (Civil Appeal No.168 of 1980)

Radha Krishna Arora Plaintiff -Appellant
Vs.
Union of India Defendant-Respondent.
Hon.D.S.Misra, AM
Hon.G.S.Sharma,JM
(By Hon. G.S.Sharma,JM)

This Civil Appeal has been received by transfer from the Court of I Additional District Judge, Moradabad under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The plaintiff had joined the Northern Railway as a Goods Clerk in 1950. He was appointed as Demurrage Inspector (For short DI) w.e.f. 30.9.1955 and he worked on that post till 24.11.1958. The plaintiff was thereafter reverted to the post of Goods Clerk. His said order of reversion was set aside by the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 656 of 1959 on 29.6.1965. The case of the plaintiff is that on account of his aforesaid reversion, he suffered a financial loss of about Rs.10,000 and also missed his 3 promotions- (i) as Commercial Inspector, (ii) as Goods Supervisor and (iii) as Public Complaints Inspector for which he was fully qualified. The plaintiff made petitions under Section 15 of the Payment of Wages Act for difference in pay before the Prescribed Authority but when he again apprehended his reversion from the post of Commercial Inspector, to which he was promoted on the restoration of the seniority after the decision of the High Court in the aforesaid writ petition, he filed the present suit on 2.3.1968 for declaration that he is entitled to promotion as Goods Supervisor, Commercial Inspector and Public Complaints Inspector and for permanent injunction to restrain the defendants from reverting him from the post of Commercial Inspector.

3. During the pendency of the suit, the plaintiff retired as Commercial Inspector in 1971 and as such, his suit so far as the relief for injunction is concerned, became infructuous. The suit has been contested on behalf of the defendant and in the

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written statement filed on its behalf, it has been stated that the post of DI was a non-selection post and when a panel of suitable candidates according to seniority cum suitability was formed in 1955, the plaintiff was appointed as DI w.e.f. 30.9.1955 on the basis of the date of confirmation as Supervisor. On a reference made by some staff, it was detected that the plaintiff was promoted on the basis of wrong seniority. He was reverted and posted as Goods Clerk. On his writ petition no.656 of 1959 being allowed by the High Court, he was reinstated as DI by order dated 22.11.1965 and all his resulting dues were paid to him. The questions of promotion, posting and seniority are not justiciable in the Court of law and the Court has no jurisdiction to try the suit. The High Court has not made any observation to entitle the plaintiff to hold the post of Commercial Movement Inspector against the rules and regulation of the Railway administration and his claim for permanent injunction is premature.

4. This suit was formerly decreed by the trial Court on 15.12.1972. On appeal the case was remanded for retrial after necessary clarifications of the pleadings. The learned trial Court decided the suit again on 4.3.1980 with the findings that the plaintiff has not been able to establish his case to get promotion and seniority and as he has not claimed any consequential relief, he is not entitled to the declaration sought by him. All the dues payable to the plaintiff on his reinstatement on the decision in the writ petition by the Allahabad High Court in his favour were found paid and the suit was accordingly dismissed with costs. Aggrieved by the findings recorded against him, the plaintiff preferred this appeal, which has come before us under the changed law.

5. At the time of arguments in this appeal, the learned counsel for the appellant made emphasis on the fact that on the decision in the C.M.Writ Petition No.656 of 1959 setting aside the order of reversion of the plaintiff by the High Court Allahabad,

the plaintiff became entitled to get his seniority and promotion and the trial Court wrongly ignored this fact and the plaintiff is entitled to the benefits of promotion, to which he would have been entitled had he not been reverted. Unfortunately, the copy of the judgement of the High Court in Writ Petition No.656 of 1959 has not been placed on record so far. Despite an observation in the judgement of the trial court that a copy of the judgment of the writ petition has not been filed on record, the plaintiff did not produce the same on the record of this appeal after seeking necessary leave of the Court. At the time of arguments we also felt ^{the} relevancy of the said judgement and directed the plaintiff to file the same before us but the same has not been done so far. We have, therefore, to decide the appeal on the basis of the material available on record. Regarding the decision in the writ petition no.656 of 1959, we presume that in the said writ petition, the reversion order of the plaintiff was set aside as illegal and without jurisdiction and that is why he was reinstated by the defendant on the post from which he was reverted and the said reversion had not to be considered as an adverse circumstance against the plaintiff in the matter of seniority and promotion.

6. Now comes the question whether the plaintiff is entitled to the 3 promotions claimed by him in this suit ? The established law is that no Government servant can claim promotion as of right. He can complain against his non-promotion only if there is a discrimination against him when the persons junior to him are promoted. In our opinion, the plaintiff has not made out any such case. In paragraph 8 of the plaint he has claimed his promotion as Commercial Inspector, Goods Supervisor and Public Complaints Inspectors merely on the ground that he had topped the list of successful candidates for the post of Commercial Inspector and was called for the selection to the post of Goods Supervisor and was qualified and entitled to be called for the selection for the Public Complaints Inspector. It has nowhere been alleged that any person junior to him was promoted prior to him or his claim was wrongly ignored on the ground of reversion. The plaintiff has, therefore, not made out

the plaintiff became entitled to get his seniority and promotion and the trial Court wrongly ignored this fact and the plaintiff is entitled to the benefits of promotion, to which he would have been entitled had he not been reverted. Unfortunately, the copy of the judgement of the High Court in Writ Petition No.656 of 1959 has not been placed on record so far. Despite an observation in the judgement of the trial court that a copy of the judgment of the writ petition has not been filed on record, the plaintiff did not produce the same on the record of this appeal after seeking necessary leave of the Court. At the time of arguments we also felt ^{the} relevancy of the said judgement and directed the plaintiff to file the same before us but the same has not been done so far. We have, therefore, to decide the appeal on the basis of the material available on record. Regarding the decision in the writ petition no.656 of 1959, we presume that in the said writ petition, the reversion order of the plaintiff was set aside as illegal and without jurisdiction and that is why he was reinstated by the defendant on the post from which he was reverted and the said reversion had not to be considered as an adverse circumstance against the plaintiff in the matter of seniority and promotion.

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any case in his pleadings to call for an interference by a Court or Tribunal.

7. In his statement as P.W 1 the plaintiff Radha Krishna Arora has stated that during the period of his reversion, R.R.Handa, and Pritam Singh, who were junior to him, were allowed to officiate on the senior post. The plaintiff himself has filed Ex.12, the copy of letter dated 15.7.1969 of the Divisional Personnel Officer, Moradabad suspending the lien of Sri Pritam Singh and R.R.Handa in the post of Commercial Inspector and confirming the plaintiff on one of the said posts. The injustice done to the plaintiff was ~~was~~ undone on his reinstatement and his seniority was duly restored. We find nothing else on record to show that there was any discrimination against the plaintiff in the matter of promotion at any stage. The learned trial Court carefully considered the evidence produced on the record and has observed that the plaintiff never got aggrieved by any order regarding his seniority or promotion till 1968 and according to its view, the suit was filed by the plaintiff only when he apprehended his reversion. The plaintiff did not make any departmental representation to claim any seniority or promotion and he came to the Court to claim a vague and misconcieved declaration.

8. We fully agree with the findings arrived at by the Trial Court and find no ground to interfere in this appeal so far as the question of seniority and promotion is concerned. Regarding the other relief, as already stated above, the plaintiff has already retired from service and the question of any injunction against his reversion does not arise.

9. In the result, appeal fails and is accordingly dismissed. The parties are however, directed to bear their own costs.

MEMBER (A)

Bhme
23.6.87

Dated 23.6.1987

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MEMBER (J)

Indrajeet
23/6/87