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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration No. 1274 of 1986(T)

(O.S. No.666 of 1982)

Panna Lal & Others Plaintiffs

Versus

Union of India & Others Defendants

Connected with
Registration No.1281 of 1986(T)
(O.S. No.667 of 1982)

Kheloo & Others Versus Union of India & Another

Hon.S.Zaheer Hasan, V.C.

Hon. Ajay Johri, A.M.

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

Suit No. 666 of 1982 Panna Lal & Others

Versus Union of India and D.M.E., Carriage and Wagon

Eastern Railway Moghalsarai has been received on
transfer from the Court of Munsif Haveli, Varanasi.

There is another suit No. 667 of 1982 Kheloo and
Others Versus Union of India & Others also received
from the Court of Munsif Haveli, Varanasi. Both
these cases pertain to common matters and involve
common points of law and therefore they are being
dealt with by this judgement which will also govern
the Suit No. 667 of 1982.

2. The plaintiffs in both the cases were initially
appointed as substitutes and have been working
as such after having attained temporary status. Their
appointments were made on various dates during 1957
onwards. According to the plaintiffs they were

transferred from the Loco Shed Mughalsarai to the Carriage and Wagon Department on administrative ground under rules enjoying the protection of original seniority counted from the date of their initial appointment. They have claimed that their seniority should have been counted on the basis of the date of appointment and their services were not transferable except on administrative account and since they have been so transferred their seniority in the new place of posting that is Carriage and Wagon Department should be maintained on the basis of their seniority in the Loco Shed. According to them the defendants in a most arbitrary, illegal and uncalled for manner have been ignoring their seniority and have vide their letter of 21.4.1979 ordered that the plaintiffs seniority should be counted from the date of posting in Carriage and Wagon Department treating the transfer on their own requests. They have, therefore, prayed that a decree of declaration be issued that they are entitled to seniority counted from the date of initial appointment and not from the date of joining Carriage and Wagon Department and they should be afforded all consequential benefits including promotion etc. thereupon.

3. The defendants' case is that the suit is bad for misjoinder of other defendants, that they were transferred to the Carriage & Wagon Department in the same capacity and no assurance was given or could be given regarding protection of seniority

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as claimed. There has been no discrimination or violation of any rule. The case of the plaintiffs for deciding their seniority in the Loco Shed Department was under active consideration of the railway administration and pending decision of the competent authority on the subject it was not possible to accept the contention of the plaintiffs regarding their claim for seniority, promotion etc. According to the defendants the case is pre-mature. Since it was receiving attention of the administration, ~~and~~ the plaintiffs should have waited for the final decision before taking recourse to the court of law and since departmental remedy had not been exhausted the suit was pre-mature.

4. We have heard the learned counsel for both parties. Shri V.K.Srivastava, learned counsel for the plaintiffs dwelt only on the points that the plaintiffs had attained temporary status and after having worked for nearly 10 years in the Loco Shed they were transferred to the Carriage and Wagon Department in 1967 on administrative ground and in terms of para 312 of the Indian Railway Establishment Manual they should be given their seniority on the basis of their length of service and not from the date they were posted to the Carriage and Wagon Department. While Shri G.D. Mukherjee, learned counsel for the defendants referred to the letter of 1.8.1979 which has been sent by the Officer on Special Duty Mughalsarai to the Secretary E.R.M.C. Mughalsarai

contending that the plaintiffs had no case that they were transferred from the Loco Shed to the Carriage & Wagon Department because they were not getting continuous engagement and certain applications were also received requesting for transfer to Carriage and Wagon Department and the purpose of the transfer was that they were surplus to the requirements of the Loco Shed. Under the circumstances, the plaintiffs were not eligible for consideration of their service in Loco Shed for fixing their seniority in the Carriage and Wagon Department. It was more for providing them regular engagement that they were transferred to the Carriage & Wagon Department.

5. We have also perused the case files. Exhibit-5 is an appeal for correction of date of appointment in the service record made by the plaintiffs in the suit. In the fourth para of this appeal they have stated as follows :-

" That, we were unfortunate enough that we were transferred from the Loco Foreman to Carriage Foreman/MGS on administrative ground and on enquiry it was brought in our notice that we were transferred as surplus from Loco."

It is therefore obvious that the plaintiffs were in full knowledge that they were transferred on being surplus from the Loco Shed as has also been indicated in the Officer on Special Duty's letter mentioned above.

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6. This letter of Officer on Special Duty, Mughalsarai to the Secretary E.R.M.C. Mughalsarai is dated 1.8.1979. But in their written statement in paras 25 and 28 the defendants have replied that the case of the plaintiffs for deciding their seniority in the Loco Department was under active consideration. The learned counsel for the defendants has, however, not been able to advise if this consideration of the railway administration has come to a conclusion or not. The plaintiffs had worked for about 10 years in the Loco Department. They were transferred to a separate seniority unit i.e. Carriage and Wagon Department because there was not enough work at that time in the Loco Department. This transfer had taken place on 1.6.1967. Having 10 years of service in the Loco Department they had definitely occupied a certain position amongst the ^{3/} ~~of Loco Shed~~ casual labours and substitutes who were to be regularised in due course. By posting to the Carriage and Wagon Department, unintentionally, their seniority in the matter of absorption got affected as it came to be counted in the Carriage and Wagon Department from the date of their posting to that Department. It is not a question that their case was similar to those who are transferred on request. The seniority of the casual labours/substitutes when they are screened and absorbed in regular posts counts from the date of absorption. Only for the purpose of screening their seniority has to be reckoned with reference to the date on which they attained temporary status and have been working continuously thereafter.

As is clear, the plaintiffs were surplus to the requirement of the Loco Shed at the time of their posting in Carriage and Wagon Department. Being surplus they ^{should} ~~must~~ have been junior most substitutes in the Loco Shed to be transferred to the Carriage and Wagon Department because the junior most must be rendered surplus first, but ~~they were the senior most.~~

7. According to para 2319 of the Indian Railway Establishment Manual, a register is required to be maintained where names of all substitutes wherever employed are recorded according to the unit of recruitment strictly in order of their taking up substitute employment at the time of their initial engagement. This initial engagement refers to the engagement in the particular unit. Therefore, the defendants were not wrong in assigning them seniority in the Carriage and Wagon Department from the date of their initial engagement in that Department after having been declared surplus in the Loco Shed.

38 According to the Railway Rules a Service Book is required to be opened for each casual employee and this card contains the details of his engagement, dates of discharge, nature of job etc. under the Supervisor under whom he is supposed to be working. When they attained temporary status the casual labours/ substitutes are entitled of the rights and privileges as admissible to temporary railway servants under Chapter 23 of the Establishment Manual. These are scales of pay, compensatory & local allowances, Dearness Allowances, Medical facilities, leave, Provident Fund facility, Passes, notice for termination

of service and hospital leave. They are not brought on permanent establishment till they are selected through Railway Selection Board for class IV staff. They get the benefit of half of their service after attainment of temporary status if followed by regular absorption for pensionary benefits.

8. The plaintiffs have not produced any documents to show that they have been regularly absorbed. Therefore, the question of seniority in service does not arise at all. What they can rightfully claim, is seniority while being considered for screening. But they ~~had~~ ^X had a claim for regular absorption in the Loco Shed on the basis of their seniority in that unit and in the case of the Carriage and Wagon Department on the basis of their seniority in the new unit. They cannot carry their seniority for purposes of absorption from Loco Shed to the Carriage and Wagon Department.

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9. From the letter dated 1.6.1967, (Exhibit 2) transferring the plaintiffs from the Loco Shed to the Carriage and Wagon Department, it is indicated that the plaintiffs were senior most substitutes ^{of and not the junior most} of the Mughalsarai Loco Shed. The question of their seniority was also under examination as averred by the defendants in their written statement. From 1967 onwards a number of persons must have been regularised in the Loco Shed as well as Carriage and Wagon Department. The plaintiffs have in their appeal (Exhibit 5) indicated that several of their juniors have been promoted as semi skilled whereas they were

still working in the unskilled category. In Exhibit-9 they have again represented to the Divisional Superintendent, Eastern Railway, Mughalsarai pointing out that many other employees who were transferred to Carriage and Wagon Department from other Departments including from Farakka have been assigned their original seniority as a result of which the plaintiffs lost position to them though their length of service were more than all these transferees. It becomes, therefore, doubtful whether the defendants have been following a constant policy in regard to absorption of the staff in the Carriage and Wagon Department. Their own averments that the question of the seniority of the plaintiffs in the Loco Shed was under examination, is a further proof that the matter raised by the plaintiffs had some force and therefore the administration had engaged ^{3/4} ~~himself~~ in the exercise of deciding the actual position of seniority of these substitutes in the Loco Shed.

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10. No light has been thrown by the learned counsel for defendants on the outcome of this examination of the seniority. It is also not clear whether the plaintiffs have since been regularised or they are still working as substitutes in the Carriage and Wagon Department. If they have not been absorbed in the Carriage and Wagon Department they ^{would} ~~will~~ have ^{prior claim} a ~~right~~ for absorption in the Loco Shed on account of the service rendered by them there ^{3/4} and if any of their juniors have since been absorbed in the

Loco Shed. This is for the defendants to see, examine and decide at this stage in terms of their averment that this question was under examination, which as a matter of fact runs contrary to their letter of 1.8.79 (Paper 5 of plaintiffs submitted during arguments). Since senior most persons were transferred, their transfer to the Carriage and Wagon Department was irregular. It was made in 1967. The defendants should have transferred the junior most to the Carriage and Wagon Department. This becomes history now due to passage of time. So many things must have happened over the period of nearly 15 years. Seniority cannot be altered after a long lapse of time and promotions already made cannot be taken away. It is too old a matter to be agitated now. On the other hand if the defendants had transferred substitutes and casual labours from other Departments e.g. Farakka etc. to the Carriage and Wagon Department and given them seniority on the basis of their seniority in those Departments in matter of regularization, principles of equity will demand that the plaintiffs should also not be denied such a treatment.

11. In the result the request of the plaintiffs that the seniority of the plaintiffs in Carriage and Wagon Department should be counted from the date of their initial appointment in the Loco Shed

and not from the date they joined the Carriage and Wagon Department, is liable to be rejected as it has no basis and is against the normal concepts of determining the seniority of substitutes. If the defendants have erroneously given seniority to other substitutes who were brought to Carriage and Wagon Department from Farakka etc. they will take action to correct the same to ensure that the plaintiffs are not treated differently and equality of opportunities as enjoined in the Constitution is guaranteed to them. This exercise should be completed by the defendants within a period of six months.

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12. Upon the above considerations that have found favour with us, the suit is dismissed. There are no orders as to costs.

[Signature]

V.C.

[Signature]

A.M.

Dated the 20th Jan., 1987

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