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Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No.1449 of 1986
(Civil Appeal No.75 of 1982)

Union of India and another ... Applicants

Vs.

Triloki Nath and others ... Respondents.

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

(By Hon.Ajay Johri, AM)

This appeal received u/s.29 of the Administrative Tribunals Act XIII of 1985 arises out of the judgment and decree dated 30.4.1982 passed by Addl.Munsif V, Bareilly in suit no.335 of 1980 decreeing the plaintiffs' suit. The grounds of appeal are that the plaintiff nos. 1 and 2 had already been reverted and were not entitled to the relief ; the plaintiffs were wrongly judged as senior to defendant nos. 3 to 6 and having acquired permanent status of Train Examiner (for short TXR), and wrong inferences were drawn from the evidence on record.

2. The facts of the case are that the plaintiffs -respondents (hereinafter referred to as the plaintiffs) were promoted adhoc against posts meant for apprentice TXRs who were under training at Lucknow. They continued to officiate for a period of nearly 5 years having been promoted in June 1975. Sometime in 1980 when the apprentice TXRs reported to the Division after completion of their training, the plaintiffs were being sought to be reverted to accommodate them. The case of the plaintiffs was that defendant nos. 3 to 6 who were promoted subsequent to them could not be retained as TXRs in preference to them as they became junior by virtue of the plaintiffs' early promotion. Defendant nos. 3 to 6 were promoted between 1977 and 1978, though they were senior to them in the

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substantive grades. The plaintiffs had been promoted after a local examination in which only matriculates were called. Defendant nos. 3 to 6 were promoted against the promotee quota. The plaintiffs challenged this reversion.

3. In suit no. 335 of 1980 the learned trial Court had, on issue nos.1 and 2 whether the proposed reversion was legal and whether the plaintiffs were senior to defendant nos. 3 to 6 on the post of TXR basing the conclusion on paper no.28 C, decided that in terms of this circular the plaintiffs were entitled to be confirmed on the post of TXR on which they have officiated for 5 years. The plea of the defendants that this was an adhoc arrangement was rejected by the trial Court. The 18 months officiating rule was also relied on by the learned Court below. The trial Court also rejected the plea take by the defendants that defendant nos. 3 to 6 were senior in the substantive grade. Instead it held that the seniority should be reckoned in the post of TXR and that the reversion should be made on the principle of 'last come first go' unless one is found unsuitable for the post.

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4. We have heard the learned counsel for both parties. The submissions made on behalf of the applicants (appellants) were that the plaintiffs were locally promoted against the vacancies reserved for apprentice TXRs and on arrival of those apprentice TXRs after completion of their training, they had to go back to their substantive grade and seek promotion against promotee quota while the contention of the learned counsel for the plaintiffs was that the plaintiffs had been properly selected and they could,

therefore, not be reverted after having worked satisfactorily for 5 years or so. We have gone through the suit file too.

5. The directions issued by the Railway Board in 1971 (Annex A of documents filed by the plaintiffs) in regard to confirmation of staff pertain to such staff who have been promoted on a regular basis after due selection or suitablity test. Similarly the protection under the 18 months officiating rule is also available only to regularly promoted staff. The 5 years rule enunciated by the Board in their letter of 2.12.1970 (Annex 'C' of documents filed by plaintiffs) is similarly in respect of staff promoted after due selection against promotee quota but utilised against direct recruitment quota in excess of the promotee quota.

6. There is thus no ambiguity about the fact that the staff promoted should have been regularly promoted and they should have been qualified against the promotee quota. Posts in certain grades are filled both by direct recruitment and promotion. TXR's post is one such category. So if persons are selected against promotee quota and being in excess are allowed to officiate against direct recruitment vacancies and they officiate for more than 5 years, they are to be confirmed even against direct recruitment quota. Similarly, promotees regularly selected have the benefit of protection against 18 months officiating rule and stand to be confirmed after two years of officiation. The continuous officiation being counted for seniority also applies only to those selected according to rules. The Hon'ble Supreme Court in P.D.Agarwal Vs. State of U. P (1987 (4) S.L.R.-134) have clearly laid down the law that adhoc service does not count for seniority.

7. The plaintiffs were called for a test for filling up vacancies of TXRs and the notification said that the test will give them no claim for any such promotion. This was not a regular selection. Some serving matriculates were called for filling up direct recruitment posts temporarily. Such selections cannot be made by the Department and rules are very clear that recruitment to group 'C' posts has to be made through the agency of Railway Recruitment Boards. This was not a regular selection to fill promotee quota posts because the plaintiffs were Skilled Fitters and defendant nos. 3 to 6 were in Highly Skilled grades and only plaintiffs were given the opportunity to appear in the test. So the obvious conclusion has to be that this test was some sort of exercise for making stop gap arrangement to fill up the vacancies reserved for apprentice TXRs who were in the pipeline but were not available. This test can by no stretch of imagination result in regular selection of those who were called to appear who were the matriculates from amongst the serving Fitters. That is so, no benefit can accrue to the plaintiffs as decreed by the learned trial Court. The trial Court had obviously erred in appreciating these facts. On these counts therefore, the decree is liable to be set aside.

8. The seniority in the cadre can only count if one is regularly promoted. Since this promotion was dehors the rules, the plaintiffs can get no advantage of the same. Reversion from such officiating appointments also does not attract Art.311(2) of the Constitution. The principle of 'last come first go' has also no application in this case. Here a comparision

is sought to be made between those promotees who have been regularly promoted against the promotee quota and those who were selectively allowed to officiate on adhoc basis after their suitability was locally judged, for which arrangement no rules exist and the test was done as an abundant precaution to weed out those who were useless or unfit even for temporary adhoc promotion. Such an exercise cannot result in any special treatment being given to those who got promoted.

9. The plaintiffs have now been working since 1975. We are not sure about the fate of plaintiff nos. 1 and 2 who are reported to have been reverted in 1980. But whatever the position, they have managed to continue to work as TXRs for the last 13 years or so. This is a sufficiently long period to give them the experience and expertize on the job. We feel that it may not be wholly proper to revert them now. But the seniority position wrongly occupied by them will need to be set right and defendant nos. 3 to 6 cannot be considered junior to them. They will also have to be considered for being exempted from appearing in a selection at their due turn under the appellants' powers by virtue of their having worked for such a long period in order that they may be regularised either against promotee quota or direct recruitment quota depending upon their eligibility & performance.

10. In the above view, we allow the appeal and set aside the judgment and decree in suit no.335 of 1980. The suit stands dismissed. We further direct that the plaintiffs need not be reverted now and they

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be continued by local adjustment if their work is satisfactory. Their seniority will be determined in accordance with the rules on the subject and the adhoc officiating arrangement will not give them any unintended benefit. The officiation will be considered fortuitous. We make no order as to costs.

MEMBER(J)

MEMBER(A)

Dated: Nov. 4th 1988
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