

(A2)  
RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

-----  
Registration (T.A.) No. 1519 of 1986  
(Civil Suit No. 267 of 1973)

Gurubachan Singh & others                      ....                      Plaintiff-Applicants.

Versus

Union of India & another                      ....                      Defendant-Respondents.

Connected with

Registration (T.A.) No. 515 of 1986  
(Civil Revision No. 154 of 1985)

Gurubachan Singh & others                      ....                      Plff.-Revisionist-Applicants.

Versus

Union of India & another                      ....                      Defendant-Respondents.

Connected with

Registration (T.A.) No. 722 of 1986  
(Civil Suit No. 675 of 1981)

Sayed Waris Ali                                      ....                      Plaintiff-Applicant.

Versus

Union of India & another                      ....                      Defendant-Respondents.

Connected with

Misc. Case No. 39 of 1979  
(Under Order 39, Rule 2-A, C.P.C.)

Gurubachan Singh & another                      ....                      Applicants.

Versus

Sri Krishna Chandra & others                      ....                      Respondents.

-----  
Hon'ble D.K. Agrawal, J.M.  
Hon'ble K. Obayya, A.M.

(Delivered by Hon. D.K. Agrawal, J.M.)

Civil Suit No. 267 of 1973, instituted in the court of  
Munsif, Jhansi, on transfer to the Tribunal under the provisions  
of Section 29 of the Administrative Tribunals Act, 1985, was  
registered as T.A. No. 1519 of 1986. During the pendency of the

*D.K. Agrawal*



-: 2 :-

aforesaid case, Civil Revision No. 154 of 1985 was filed in the court of District Judge, Jhansi, arising out of an order dated 14.8.1985 passed in the suit, which on transfer was registered as T.A. No. 515 of 1986. One of the persons arrayed as defendant by the order of the appellate court, viz. Sayed Waris Ali, filed Civil Suit No. 675 of 1981 in the court of Munsif, Jhansi, which on transfer has been registered as T.A. No. 722 of 1986. There is yet another application under Order 39 Rule 2-A of the Code of Civil Procedure, which was pending in the court of Munsif, Jhansi, and the same has also been transferred. We propose to decide the above two suits, the civil revision, and the application for breach of injunction order by one common judgment. The reason is that the orders passed in the above suit has given rise to the said proceedings. In fact the said proceedings have been rendered infructuous, as mentioned below.

2. Briefly, the facts are that the plaintiffs, holding the post of Fireman 'B', claimed promotion to the post of Fireman 'A' without undergoing the selection process. They have raised their grievance that defendants no.3 to 42, who were junior to them, have been promoted to the post of Fireman 'A'. In fact the claim of the plaintiffs is based on Railway Board's circular dated 3.3.1964, which mentions that Fireman 'B' and Second Fireman are entitled to be empanelled as Fireman 'A' automatically on the basis of seniority.

3. Civil Suit No. 267 of 1973 was decreed on 16.9.1980. The Railway administration filed Appeal No. 273 of 1980, which was decided on 31.7.1984. The appellate court allowed the appeal and remanded the case with a direction that 40 persons already working as Fireman 'A', whose appointments were likely to be put in jeopardy by the result of the suit, be impleaded as defendants.

*Dr. Aggarwal*



-: 3 :-

Consequently defendants no.3 to 42 were impleaded.

4. The Railway administration filed written statement denying that the plaintiffs were entitled to be automatically promoted as Fireman 'A' without undergoing a test. They alleged that the defendants were promoted because they had successfully completed the test while the plaintiff had failed at the test. Therefore, the Railway administration pleaded that the plaintiffs are not eligible for promotion as Fireman 'A'.

5. The only point, which calls for determination in this case, is as to whether Fireman 'B' is entitled to be promoted to the post of Fireman 'A' without undergoing the selection process, which includes a test and viva voce. For this purpose we have to examine the circulars dated 3.3.1964, 22.6.1964, 8.10.1975, 24.10.1975 and 22.8.1979. Initially a circular was issued on 3.3.1964 which lays down in clear terms that Fireman 'B' having passed the Driver's course was entitled to be promoted to the post of Fireman 'A' on the basis of seniority. However, by another circular dated 22.6.64 it was clarified that Fireman 'B' and Second Fireman, who have passed the Driver's course of literate Shunter, are entitled to be automatically promoted to the post of Fireman 'A'. Thus, who have passed the course of semi-literate Shunter/Fireman were not entitled to automatic promotion, i.e. the circular dated 3.3.1964 will not apply to those who have passed the course of semi-literate Shunter/Fireman. The circular dated 8.10.1975 and 24.10.1975 further clarified the position which leaves no scope for doubt that only those were entitled to automatic empanelment as Fireman 'A' who had passed the course of literate Shunter/Fireman. The above two circulars and the circular dated 22.8.1979 made circular dated 3.3.1964 applicable prospectively with effect from 8.10.1975, i.e. on or after 8.10.1975 Firemen 'B' and Second Firemen, who had passed literate or semi-literate course, became entitled for automatic empanelment as Fireman 'A' on the basis of seniority. The impugned selection relates to the year 1972. We have been informed that the plaintiffs have been



-: 4 :-

also been promoted as Fireman 'A', thereafter Driver 'C' and ultimately as Driver 'B', etc. Some of them have even become Driver 'A'. It thus appears that the aforementioned circulars have been given effect to by the Railway administration. Thus the claim of the plaintiffs for automatic empanelment in the year 1972, in preference to defendants no.3 to 42, is not sustainable on the ground of seniority alone. We may also make a mention that this matter has already been adjudicated upon in Writ Petition No.7532 of 1979 filed in the High Court of Judicature at Allahabad and transferred to the Tribunal, registered as T.A. No.11 of 1986 (Sunil Kumar Singh & 8 others v. Union of India & others). The impugned selection of the year 1972 was held to be a valid selection in clear terms by a Bench of this Tribunal by judgment and order in T.A. No.11 of 1986 dated 11.3.1987. It was held therein that there was no ambiguity in the selection of Fireman Grade 'A' held in the year 1972. However, the Bench directed that without disturbing the existing position the seniority list of Driver Grade 'C' should be recasted in respect of the parties to that proceeding and other other similarly placed persons. Probably it is for this reason that the plaintiffs have secured two or three promotions by now. In this manner we have no doubt in our mind that the case of the plaintiffs has no merits. It cannot be declared that the empanelment of the defendants in the year 1972 to the post of Fireman 'A' was bad in law or that the plaintiffs were entitled to automatic empanelment as Fireman 'A', despite having failed at the test in the year 1972. They were entitled to automatic empanelment only after 8.10.1975. There is no material on record to indicate that the plaintiffs were not empanelled in accordance with the existing instructions after 8.10.1975. If it were so, the plaintiffs should have challenged by separate proceeding. In any case, we do not find any merit in the case of the plaintiffs.

*Dr. Agn*

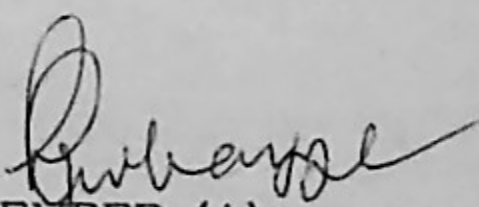


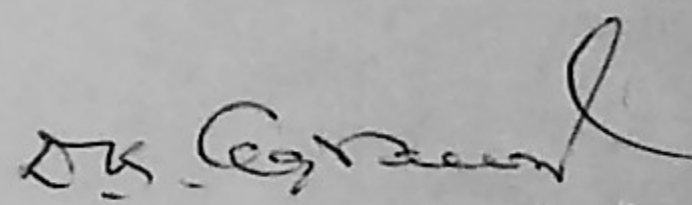
A3/5

-: 5 :-

6. As regards Civil Revision No. 154 of 1985 (T.A. No. 515 of 1986), Civil Suit No. 675 of 1981 (T.A. No. 722 of 1986), and the Application under Order 39 Rule 2-A, C.P.C., filed by the plaintiffs, all these proceedings have become infructuous. We may only observe that no contempt whatsoever has been committed by the Railway administration in terms of our aforesaid findings. Sayed Waris Ali, who filed Civil Suit No. 675 of 1981 (T.A. No. 722 of 1986) has also not been reverted as apprehended. Civil Revision No. 154 of 1985 (T.A. No. 515 of 1986) has also become infructuous because the interlocutory order passed by the Munsif is merged in the judgment.

7. In the result, Civil Suit No. 267 of 1973 (T.A. No. 1519 of 1986) is dismissed without any order as to costs. Civil Revision No. 154 of 1985 (T.A. No. 515 of 1986) and Civil Suit No. 675 of 1981 (T.A. No. 722 of 1986) also stand dismissed as infructuous.

  
MEMBER (A)

  
MEMBER (J). 23.11.90

Dated: November 23<sup>rd</sup>, 1990.

PG.