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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration (T.A.) No.1644 of 1986

Abhiman

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Plaintiff-Applicant

Versus

Union of India & others

Defendants-Respondents

Hon'ble Ajay Johri, A.M.
Hon'ble G.S. Sharma, J.M.

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

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Suit No.86 of 1984 has been received on transfer from the court of City Munsif, Varanasi under Section 29 of the Administrative Tribunals Act XIII of 1985. The plaintiff is employed in the Security Branch of the North-Eastern Railway. He was originally a Clerk working at Gorakhpur. On 14th August, 1978 he was transferred to Varanasi and was promoted as Sr. Clerk on ad hoc basis with effect from 25.11.1978. Subsequently a selection was held and he was regularised on 7.9.1982 with effect from the date of his ad hoc appointment, i.e. 25.11.1978. Defendant no.3, Roshan Lal, was also employed as a Clerk in the Security Branch at Izzatnagar. He was promoted as Sr. Clerk on 12.12.1981 and he was given seniority with effect from September, 1980. Roshan Lal was called for selection for the post of Office Superintendent, Grade II on 24.4.1982. According to the plaintiff since he was senior to defendant no.3, Roshan Lal, he protested against this discrimination and requested for being called for the said selection of Office Superintendent, Grade II. This selection was, however, not held

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but Roshan Lal was promoted as Head Clerk and posted to the office of the Principal, Training Centre, Gorakhpur. The plaintiff again represented but his representation brought no response. According to him a selection for the post of Office Superintendent was proposed to be held on 15.12.1983 and he has not been called again. An order has also been passed by the Chief Security Officer on 25.8.1984 cancelling the panel formed after the suitability test held on 28.3.1982 for the post of Sr. Clerk in which the plaintiff had qualified and which was finalized on 6.9.1982. The plaintiff has, therefore, prayed for a declaration that he is senior to Roshan Lal and that a mandatory injunction be issued to defendants 1 and 2 to call the plaintiff for consideration for the post of Office Superintendent, Grade II and to give him all the benefits including promotion to the post of Head Clerk in place of Roshan Lal.

2. The Government defendants' case is that the ad hoc promotion of the plaintiff was erroneously regularised retrospectively with effect from 26.11.1978 after the suitability test held on 28.3.1982. He was not entitled to get the benefits of seniority for the period he worked on ad hoc basis. Further on receipt of a representation regarding excess number of candidates having been called for the suitability test which was to fill up only 5 vacancies and examination of the matter, the panel was cancelled by the Chief Security Officer on 25.8.1984. They have further averred that the plaintiff is junior to Roshan Lal as he could not be assigned seniority from the date of his ad hoc promotion. Moreover, the panel has since been cancelled.

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3. We have heard the learned counsel for the parties. The submissions made by the learned counsel for the plaintiff before us were that the plaintiff is senior because he has been regularised from 26.11.1978 while Roshan Lal was promoted and regularised from September, 1980. It is the date of promotion in a division that determines the seniority as laid down in Para 321 of the Indian Railway Establishment Manual. It is the non-fortuitous service in the same or equivalent grade and on the basis of his regularisation from 26.11.1978 the plaintiff stands senior. The learned counsel for the Government-defendants has, however, challenged these submissions on the grounds that defendant no.3, Roshan Lal was promoted in 1981 in the Lucknow Division while the plaintiff was selected in 1982 and he was wrongly given seniority from 25.11.1978. He should have been given seniority with effect from 7.9.1982. The question of cancellation of the panel was also raised before us but it is a matter in Suit No.738 of 1984.

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4. Thus in this suit the limited question to be is as to how to determine seniority between two persons belonging to different seniority units and the effect of the period of ad hoc working in determination of this seniority. We are assuming that the panel was not cancelled and that the plaintiff was duly selected in the test and empanelled on 7.9.1982.

5. Defendant no.3, Roshan Lal, was regularised on 12.12.1981 as Senior Clerk. The plaintiff was similarly declared selected on 7.9.1982. The order dated 7.9.1982 also talks about the upgrading of two posts from 1.10.1980 against which two other persons in

the panel were put to work. Even defendant no.3 seems to have been given the benefit of the upgraded post against which he was regularised from September, 1980 as mentioned in the petition. At the Bar it was also so mentioned. The Government-defendants have taken a plea that since the selections were held in 1981 in one case and in 1982 in the other the person, who had been selected earlier will be senior.

6. A promotion made on ad hoc basis does not give any benefit of seniority in the case of those, who are not properly selected. The claim for seniority only arises after a person has been duly selected. He only then becomes member of that Service (promoted post). The Hon'ble Supreme Court in the case of Ashok Gulati v. B.S. Jain (S.C.C. p.612, A.T.C. p.623 para 22) have observed -

"According to accepted cannons of service jurisprudence seniority of a person appointed must be reckoned from the date he becomes member of service..... it is well settled that an ad hoc or fortuitous appointment on a temporary or stop gap basis cannot be taken into account for the purpose of seniority even if the appointee was qualified to hold the post on a regular basis. As such temporary tenure hardly counts for seniority in any system of service jurisprudence."

Similarly in the case of P.D. Agarwal v. State of U.P. (1987 (4) A.T.C. 272) the Hon'ble Supreme Court in para 28 observed :-

"Similar observation was also made by this court in the case of State of Gujrat v. G.C. Desai (1974 (2) S.C.R. 255). Therefore, we make it clear that the period of service

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rendered by the ad hoc appointees before their service duly regularised in accordance with the regularization rules, cannot be taken into account in reckoning their seniority in service. Their seniority in service will be counted only from the date when such ad hoc appointees after regularisation in accordance with concerned rules have become members of service?

7. It is thus clear that the order of 7.9.1982 regularizing the plaintiff from 25.11.1978 was erroneous and had to be set right. He could only be regularized from the date of announcement of panel.

8. Railway Board's letter No.E(NG)1-80 SR 6/107 of 3.11.1981 lays down that in the case of upgraded posts seniority of staff promoted in upgraded posts will be from the date of upgradation. Where selection, etc. are delayed the identified staff shall reckon the date of upgradation as date of entry into the grade for purpose of seniority. Even if the benefit of this letter is made available to the plaintiff he could only be regularized with effect from 1.10.1980 as defendant no.3, Roshan Lal, and not from 25.11.1978. Since in this case the date of promotion will become same para 315 of the Indian Railway Establishment Manual comes into play. This lays down that when the dates of appointment to the grade are the same, the dates of entry into the grade next below it shall determine seniority. If these dates also coincide, then the date of entry into each of lower grades in order down to the lowest grade in the channel of promotion shall determine seniority. If these dates are also identical then the relative date of birth shall determine seniority.

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9. Relative seniority of employees in an intermediate grade belonging to different seniority units appearing for a selection/non-selection post in higher grade is determined by the total length of continuous service in the same or equivalent grade as laid down in para 321 of the Indian Railway Establishment Manual. Only non-fortuitous service is taken into account.

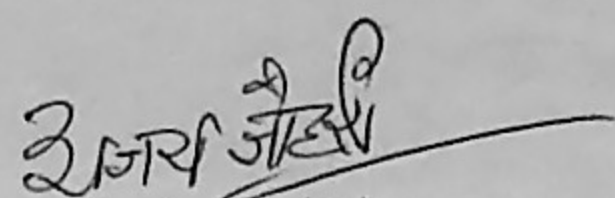
10. The most important ingredient that is essentially to be seen is the date of appointment to the grade and in the case of the plaintiff it could either be 1.10.1980 if he is given the benefit of the upgraded post or 7.9.1982 if the date of empanelment is to be considered. Similarly in case of defendant no.3 it would either be 12.12.1981 the date of his regularization or again 1.10.1980 the date the post was upgraded. On the basis of date of empanelment, i.e. the length of service in identical grades ^{3/ from date of selection} defendant no.3 is senior to the plaintiff. On the basis of the date of upgradation the length of service in the lower grade has to be seen as the date of upgradation is the same in case of both of them. The plaintiff was first employed on 3.4.1976 as a clerk at Gorakhpur while Roshan Lal, the defendant no.3, was initially appointed in 1961 as advised during the submissions at the Bar. Thus even on this account defendant no.3 would be senior to the plaintiff.

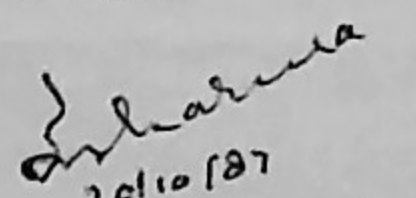
11. On the above considerations we see no merit in the prayer made by the plaintiff that he be declared senior to Roshan Lal, and in view of the same he would

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be due promotion only on his turn. The suit is, therefore, dismissed. Parties will bear their own costs.


Member (A).


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Member (J).

Dated: October 20th, 1987.

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