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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ~~1984-85~~ ALLAHABAD BENCH

Registration O.A.No.120 of 1987

Nirmal Kumar Verma & Others....

Applicant

Vs.

Union of India & Others

Respondents

Hon'ble Mr. Justice U.C.Srivastava, V.C.

Hon'ble Mr. A.B. Gorthi, Member (A)

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

The appointment of all the applicants who were recruited as Trade Apprentice to work in the Diesel Locomotive Workshop, Varansi was made during the month of March & April, 1977. The applicants have approached the Tribunal for setting aside the seniority list dated, January 1984 of Skilled Artisan Grade-III and to direct the respondent no. 2 to 3 to re-determine the seniority of the applicants qua the respondent no. 4 to 18 and other similarly placed promotee incumbents considering the applicants date of appointment in the Grade as mentioned in Column-6 of the order dated 30.6.78 by giving benefit of entire continuous service from the date of appointment of substitute skilled Artisan Grade-III. On 15th July 1978 all the applicants were issued similar letter informing their appointment on temporary basis on their respective posts, on which they were working in the same grade. In the said order it was mentioned that the applicants were required to undergo ~~for~~ medical test but no medical test etc was taken in as much as the applicants were working on their respective posts for the last one year and all the formalities were already complied with. The applicants entered the department as Trade Apprentices and at that stage they were required to undergo training, and thereafter they were recruited as such. On 30.6.78 a letter was issued by General Manager (P), Diesel Locomotive

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Works, Varanasi, in which it was mentioned that the applicants alongwith many other persons were appointed as Temporary Skilled Artisan in the grade of Rs.260-400/-. The applicants have stated that the aforesaid order was neither pasted on the notice board nor was circulated amongst the applicants and therefore they were never informed of such order. Thereafter the impugned seniority list dated January, 1984 of the Skilled Artisan Grade-III was circulated wherein the names of the applicants were shown much below to the respondent No.4 to 18. The applicants filed their representations against the same within the prescribed time raising objections against the exclusion of their service order to the appointment vide order dated 30.6.78 and the placement of the respondent no.4 to 18 alongwith other persons above the applicants, although they were promoted after the appointment of the applicants in Grade-III and were also in excess of the quota prescribed under the rules. No reply to the said representation was given by the respondents and thereafter the applicants submitted a reminder on 20.7.85. Vide order dated 30.12.85 the applicants were informed that the respondent no.2 has rejected their representation against reconsideration of seniority. The said letter was received by the applicant on 2.1.86. The applicants again requested the respondent no.2 to furnish detailed reasons for rejecting the representation, but no reply was given. The applicants submitted a reminder on October, 1986, but failing to get any reply they approached this Tribunal in month of February, 1987. Para-135 of sub section(3) of Section B of Chapter-I of IREM provides that the total number of Skilled Artisan Grade-III were recruited 50% as direct recruitment and remaining 50% by promotion. When all the applicants were recruited as

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Grade Apprentices were undergoing for training to appointment to the post of Skilled Artision can be made by direct recruitment but the respondents No.2 and 3 continued to fill the vacancy by promotion only. The respondents 4 to 18 who were working as Group-IV were promoted only on adhoc basis with the condition that they cannot get any any benefit of the said services for the purpose of seniority.

2. It has been pointed out by the respondents that the applicants after the completion of All India Trade Apprentices were engaged as Trainees for which there is no commitment for absorbing any of the Apprentices Trainees and after completing successful training they were offered the post of Skilled Artision and were posted as such for a period of 3 months which were extended from time to time till they were appointed as temporary skilled Artisans. Vide order dated 25.1.1977 which modified the earlier orders that the recruitment against the direct recruitment quota of 50% of the vacancies in the skilled grade may be made from course completed Act Apprentices and I.T.I. qualified personnel but only after first trade testing and promoting all the eligible staff in the lower grades. It has been stated by the respondents that the respondents nos.4,5,6,7,8,9 to 18 were initially appointed as Skilled Artisans in the grade of Rs.260-400/- on ad-hoc basis vide order dated 27.7.77, 30.7.77 5.8.77, 23.11.77, 14.5.1979 and later on their appointments were regularised as Skilled Artision (Electrician Trade), and the position in the seniority list was mentioned vide circular dated 16.1.1984 which was in pursuance of the Railway Board's letter dated 25.1.1987. The respondents 4 to 8 after passing the trade test were promoted as Skilled Artision (Electrical) in the grade of Rs.260-400/- in the year 1977 whereas the applicants were absorbed/appointed as Skilled Artisions (Electric) in the grade of Rs.260-400/- on regular basis on 1.7.1978 and that is why they have

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been given seniority over the applicants. So far as the respondents nos. 9 to 18 are concerned the respondents nos. 9 to 11 passed the trade test in the year 1977 but they were promoted as skilled artisans (Electrical) in the grade of Rs. 260-400/- in the year 1979. The respondents Nos. 12 to 18 have passed the trade test in the year 1979 and were promoted in the year 1979. The respondents nos. 4 to 8 passed the trade test and promoted in the year 1977 as skilled Artisans and they have been assigned seniority accordingly. The respondents nos. 9 to 18 ~~were~~ passed the trade test in the year 1977, but they could only be promoted in the year 1979 alongwith their juniors respondents nos 12 to 18 who passed the trade test in the year 1979, although it the trade test would have been materialised earlier they could have been promoted in the year 1977 against the promotional quota. To avoid the undue benefit to the direct recruits, the promotees have been assigned seniority above the direct recruits. As the applicants were absorbed in the year 1978 they have been assigned seniority with effect from 30/6/1978.

3. Learned counsel for the applicant contended that since the date of appointment as skilled Artisans although in a substitute capacity the applicants were working continuously in grade-III of the regular pay scale hence the said period cannot be ~~ex-~~ excluded for the purpose of determining the seniority. The initial letter issued to them inviting them for interview did not mention any such word the quota of direct recruit was lying unfilled and yet without adverting to the quota the respondents 2 and 3 made continuous promotions to the extent of 100% illegally depriving the applicants of their rights and substitute appointments and ~~therefore~~ there have been no alteration in the service rendered by the applicant as a temporary employee therefore

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the entire period of one year prior to 1.7.1978 cannot be excluded for computation of seniority. It has been further contended by the applicant that the promotions of respondent 4 to 18 were purely temporary and stop gap arrangement and yet not only gave them benefit of said the same was not to be counted for seniority/ services but also

In the case of respondents nos. 9 to 18 they have been given seniority with retrospective effect i.e. 30.6.78 although they were actually promoted on 14.5.1979, and prior to that they were working in grade-IV. Hence the applicant's services prior to 1.7.78 could not have been excluded, and the benefit of continuous service were to be given to them. Learned counsel for the applicant placed reliance to the case of State of Bihar Vs. Akhori Schindra Nath, 1991 SCC(L) 5 page 1070. In which it was held that no person can be promoted with retrospective effect from the date when he was not born in the cadre. In the said case the promotee respondents 6 to 23 were not born in the cadre of Assistant Engineer, Bihar Engineering Services Class-II at the time when respondents 1 to 5 were recruited to the post of Assistant Engineer as such they were not to be given seniority in the service as Assistant Engineer over of Assistant Engineers respondents nos. 1 to 5. The inter-seniority/in the Bihar Engineering Services were to be considered from the date of joining and length of the service rendered against as Assistant Engineer and the length of the service should be computed from the date of initial date of entering into the service. The promotees cannot be made senior to the respondents 1 to 5 as they were the ^{done} recruit recruits. the order passed by the High Court in the said case was thus, affirmed. In support of his contention that of course the applicants are entitled to the period during which they worked as substitute and the entire period prior to the their regularisation in 1978 towards continuous service which

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to be taken into account for computing the seniority. Learned counsel for the applicant made reference to the case of State of Maharashtra Vs. Direct Recuits Engineering Officer, AIR 1990 SC page 1607. But in the said case it was held that once an incumbent is appointed to the said post according to rule his seniority has to be counted from the date of his appointment and not according to his date of confirmation, and that the initial appointment was only ad-hoc and not according to rules and made as stop gap arrangement for officiation such posts cannot be taken into account for considering the seniority. It was further observed that experience of such appointment cannot be taken to the experience of regular appointment. But the case of Direct Recruitment has no applicability in the instant case as the applicants were allowed as substitute and it was thereafter they were regularised. In the case of V. Vardarao Vs. State of Karnataka AIR 1987 SC page 287, in the said case the applicant was appointed on temporary basis he was out of cadre post and his services were subsequently regularised. It was held that his seniority is to be given from the date of regularisation and not from the date of temporary appointment. In the case of Jasbir Singh Vs. Union of India 1987 SCC (L&S) page 417 with reference to the Railway Boards circular it was held that the general view of recording seniority is from the date of appointment. The case was decided with reference to Rule 302 of Railway Establishment Manual. It was held that those who were appointed Grade-C earlier would be entitled to be senior to the ^{subsequent appointment} ~~applicant~~ in that grade. In the case of Ashok Gupti Vs. V.S. Jain 1986 SC page 424 it was held that the period of adhoc and fortuitous appointment cannot be reckoned ^{for seniority}.

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In the case of A.D.Bhatnagar Vs. Union of India, 1990 SC page 601

wherein the rules provided that the inter-se-seniority was to be determined on the basis of merit, It was held that the adhoc service cannot be taken into account for computing seniority.

4. Thus the position which emerges out is that the applicants who were appointed as substitute and so far as they were substitute their appointment was not in accordance with rules but their appointments were regularised in accordance with rules and as such it was not open for them to count the earlier period towards seniority. A substitute has got no right to the post or for regularisation as ~~Amber~~ the position of the substitute is equal ^{to} that of an adhoc employee. But so far as some of the respondents are concerned who were promoted after the regularisation of the applicants they cannot be made senior to the applicants, and so far as the some ^{of 42} respondents are concerned ~~they were promoted in the year 1979~~ ^{they} entered into the cadre only in the year 1979. If the Railway Administration have promoted them with retrospective effect to confer certain benefits on them of course it was for the Railway Administration to confer that benefit on them, but by confirmation of that benefit the seniority of those who otherwise were senior to them could not be affected. These persons can count their seniority only from the date when ^{they were born} in the cadre and not before that and consequently for the purposes of seniority those who were promoted subsequently cannot rank above the applicants. Thus those who were promoted ^{with} retrospective effect ^{but} subsequent to the regularisation of the applicants cannot claim seniority over the applicants. Accordingly the applicants are not entitled to claim seniority with those respondents who were appointed

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or promoted earlier but they are entitled to claim seniority over those who were promoted subsequent to their regularisation and their promotion with retrospective effect the seniority of the applicants. Accordingly the respondents are directed to correct the seniority list and place the applicants above those who were promoted subsequent to the regularisation of the applicants, and let it be done within a period of 3 months from the date of communication of this order. No order as to costs.

Manoj K S
Member (A)

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Vice-Chairman.

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