

Central Administrative Tribunal, Allahabad.

Registration T.A.No. 66 of 1987

Parmanand and another	...	Applicants
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VS.

Union of India and others ... Respondents.

Hon. P.S.Habeeb Mohd., AM
Hon. J.P.Sharma, JM

(By Hon. J. P. Sharma, JM)

Parmanand and Raj Kumar filed Suit No.25 of 1980 in the Court of City Munsif Saharanpur on 22.1.1980 for the declaratory decree to the effect that the Applicants (Plaintiffs) are senior to Malik Ram, Ravi Dutta, Vishnu Kumar, Shom Nath-Shunter Gr.B of localised Saharanpur, who are drawing more pay and allowances than the Applicants and those mentioned in para 1 of the plaint and for direction to the Respondents to refix the pay of the Applicants in accordance with rules of seniority and for arrears accruing to them by virtue of revised fixation of pay.

2. The suit was contested by the official private respondents and the learned Munsif Saharanpur prepared a number of issues on 15.5.1981 and again on 30.10.82. However, on the enforcement of the Administrative Tribunals Act XIII of 1985, the suit was transferred to the Tribunal u/s.29 of the said Act for disposal and was registered as TA No.66 of 1987.

3. The facts are that the Applicants alleging themselves to be representatives of Shunter Gr.B and Driver Gr.C Locoshed Saharanpur came to the Court challenging the fact that the persons mentioned in para 1 of the plaint are senior than private respondent nos. 4 to 8, namely, Malik Ram, Ram Dutt, Vishnu Kumar, Som Nath and Bhajan Singh and in spite of this fact, their juniors are getting more salary and emoluments than the Applicants. In para 3 of the plaint, the Applicants alleged that a similar anomaly existed in Delhi Locoshed which was also removed and the seniors were allowed to draw more pay than the juniors along with arrears.

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4. The Applicants were promoted from Fireman Gr.B to Diesel Asstt. in June 1975 in the scale of Rs. 290-350 and their salary was fixed at Rs.296 giving one increment instead of Rs.350. This was done arbitrarily and the Respondent nos. 4 to 8 were getting more salary and the Applicant's salary was not fixed at par with them. Though the Applicants got promoted from Diesel Asstt. to Shunter Gr.B in 1975 in the month of July and Novr. respectively in the scale of Rs.290-400 and their salary had been fixed at Rs.320 instead of Rs.350^{with}, two promotion increments of Rs.8 each, i.e. at the stage of Rs.366. The Applicants are working since then as Shunter Gr.B at loco Shed Saharanpur and instead of getting basic pay of Rs.382, they are drawing only Rs.344, which is unjust and unreasonable. They claim their basic pay to be fixed at Rs.390 in June. They made representation to the Respondents but in vain. Hence this Suit after giving notice u/s.80 CPC.

5. The official Respondents filed written statement denying the plaint allegations and also maintainability of the suit pointing out that the private Respondents had not been made parties (however, this defect has been removed by making them party by amendment). The point of limitation was also taken. According to the Respondents, the Applicants are not senior to the persons mentioned in para 2 of the plaint. Pay, which a person draws, is not the criterion for seniority and different factors are there under which senior persons draw lesser pay than the juniors, e.g., due to late promotion etc., etc. In para 36 of the written statement, it is said that some of the staff from different cadres have represented for refixation of their pay and as such, their cases along with the case of the Applicants are still under examination of the competent authority and hence, the suit is pre mature.

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6. We have heard learned counsel for the parties at length. As regards limitation, para 36 of the written statement filed by the official Respondents on 27.1.81 leaves no doubt that the matter was left for consideration of the authorities and was not decided till the filing of the Suit. In view of this, it cannot be said that the suit is barred by principle of limitation. After amendment, Union of India has filed another written statement on 24.4.86. In this written statement, the points taken in the earlier written statement were re iterated. However, it is said that Bajan Singh is not junior to the Applicants and the cadre of Bhajan Singh and that of the Applicants are totally different but they were amalgamated on 3.5.1971. Further, only some are declared suitable for the post of Diesel Asstt. and so, the Applicants cannot get all the benefits.

7. Parmanand, the Applicant no.1, also filed rejoinder before this Tribunal. The Respondents were directed to produce full record but the same has not been filed in spite of several opportunities. However, they have filed a seniority list, which does not make out any sense. In fact, the department should have filed the list of Shunter Gr.B, Diesel Asstt. and Guard Gr.C to find out the actual date of promotion and whether any of the official has been withheld and not promoted in time on his turn, but that too has not been done. So, that aspect of the matter cannot be looked into. In the rejoinder dated 7.12.88, we find that Parmanand was appointed on 22.3.56 and he was promoted on several occasions and at the time of filing Rejoinder, he was working as Driver Gr.A on adhoc basis and had a substantive lien on the post of Driver Gr.B. The Respondent nos. 4 to 8, as given out in the Rejoinder, are still working as Driver Gr.C. The Respondents have also not elucidated the correctness of the deposed facts in the rejoinder and since they have not been denied, due weightage has to be attached to them. The following chart will show that the Applicants

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that the Respondent nos. 4 to 8 are juniors to the Applicants and in that event under the financial rules, one who enters service subsequently, cannot get more pay than those who came earlier to him everything being equal regarding work and conduct. However, in the absence of the record no stateforward finding can be given touching the reliefs desired by the Applicants but at the same time a direction can be issued that if the Applicants are senior to the Respondent nos. 4 to 8 then at every stage they are entitled to the pay atleast equal to their juniors and that is also the maxim 'next below rule'. A half hearted effort was made by the learned counsel for the Respondents that the claim is barred by time. We are of opinion that Parmanand-Applicant is working as Guard Gr.8 and also officiated as Guard A earlier to the Respondent nos. 4 to 8. and, therefore, there is no question of going back on the point of limitation as the emoluments of Parmanand cannot be lesser than his juniors otherwise there shall be frustration and disappointment in the service itself and there should be no logic or reason in following and allowing this practice to be continued only on the technical ground of limitation.

8. Another point raised by the learned counsel for the Respondents was that Respondent nos. 4 to 8 happened to be posted in the workshop where they were absorbed and promoted as Diesel Asstt. earlier to Applicants, cannot oust the claim of the Applicants, because the procedure of seniority should have been followed at every stage where their chance of getting higher emoluments are there unless the incumbent, who is placed senior, denies that benefit.

9. In view of what has been discussed above, the Suit of the Applicants stands decreed and the Application is allowed with the direction to the Respondents that they shall pay to the Applicants their salary equal to that of the juniors in the same way as the juniors, i.e. Respondent nos. 4 to 8, have

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been paid at several stages of promotion and the Applicants shall be entitled to all consequential benefits regarding back wages etc., in this regard. The parties shall bear their own costs.

James

MEMBER (J) 257590.

Dated]
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MEMBER (A)

Approved by 50th Senate Member 5

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