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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No. 100 of 1987

Union of India & another Applicants.

Versus

Vijaya Shankar Kumariya & others Respondents.

Hon'ble S. Zaheer Hasan, V.C.
Hon'ble Ajay Johri, A.M.

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

38 ✓

Civil Appeal No. 135 of 1984, Union of India and another v. Vijaya Shankar Kumariya & two others, against the judgment and decree dated 22.12.1983 passed by the XVI Additional Munsif, Agra in Suit No.13 of 1981 has been received on transfer from the court of District Judge, Agra under Section 29 of the Administrative Tribunals Act XIII of 1985. The grounds of appeal are that the learned Munsif was wrong in holding that the plaintiff-respondent became entitled to seniority with effect from 27.7.1961 and that the learned Munsif was wrong in holding that the transfer of the plaintiff-respondent from one department to another was not a transfer on request and as such the plaintiff-respondent was not entitled to any seniority with effect from 27.7.1961, ^{38 ✓ & that} ~~because~~ the case of the plaintiff-respondent does not fall within Article 310 or 311 of the Constitution of India, which was held so by the Trial Court.

2. The facts of the case are that the plaintiff-respondent filed a suit claiming that he was senior to defendants nos. 3 and 4 and, therefore, he was

A2/2

-: 2 :-

entitled to the promotion and other benefits on account of this seniority. The plaintiff-respondent was originally appointed as a Khalasi on 2.7.1955 in the Loco-shed at Tundla. He became a skilled Welder on 27.7.1961. In 1973 the Divisional Superintendent, Allahabad sent a circular indicating that there ³¹ were certain vacancies of artisan staff in TRD Department and inviting applications from permanent employees, who will like to join the new department. The plaintiff-respondent had applied for the same. The plaintiff was thereafter by an order, indicating transfer on promotion dated 21.11.1973, was transferred to TRD, Tundla and since then he has been working as a Welder in that department. According to him respondents nos. 3 and 4 got appointed on the post of Welder on 15.5.1965 and 11.12.1970 respectively and since he was appointed on 27.7.1961 he should be considered senior to them, but he has been shown in the seniority list issued on 1.8.1978 under EM-2/TRD/Seniority list/Artisan, below defendants 3 and 4. According to him he was already a Welder having been promoted earlier and he was only transferred to the loco-shed on administrative grounds. He ³² had, however, appeared in a trade test held for absorption of the applicants in the Traction Depot on 22.9.1973 and had passed the same. Taking shelter under Para 311 of Chapter III of the Indian Railway Establishment Manual which determines seniority of persons transferred on administrative grounds he ³² ~~mentioned~~ ^{contends} that he should be considered senior to respondents 3 and 4. According to defendants 1 and 2 the private defendants were working as Welders in TRD department from 15.5.1965 and 11.12.1970 respectively while the plaintiff was

13/3

-: 3 :-

transferred to TRD department on 21.12.1973 after he qualified in the trade test and, therefore, he is not entitled to any consideration of his seniority in the earlier post. He was transferred on being selected, not on administrative grounds, but as a result of his application. The learned Munsif had framed five issues. On issue no.4, whether the plaintiff was entitled to seniority from 27.7.1961 or not, the learned Trial Court had held that since the plaintiff had become Welder on 27.7.1961 he is entitled to count his seniority in the trade of Welder from this date. He had also relied on the submissions made by the learned counsel for the plaintiff that the transfer to TRD department Tundla was made on administrative ground and, therefore, the seniority should have been determined in terms of para 311 of the Indian Railway Establishment Manual. He repelled the contentions of the learned counsel for the defendants that since the plaintiff was transferred on 21.12.1973 he could count his seniority only from that date in terms of para 302 of the Indian Railway Establishment Manual. He had also considered the reliance placed by the learned counsel for the plaintiff that when a person is transferred to a post in the same grade it is not called an appointment but it is considered as a transfer and, therefore, the seniority should be counted ^{from} ~~on~~ the date when he was actually promoted to the grade. He, therefore, concluded that the seniority of the plaintiff should be counted from 27.7.1961 because he became skilled Welder on this date and he was transferred in the same grade and, therefore, it was not a new appointment.

38/

The same is also clear from the order issued by the Assistant Personnel Officer, Northern Railway, on 21.11.1973 saying that the following transfers and promotion orders are issued with immediate effect proving that the plaintiff was transferred and not appointed. Another point which the learned trial court considered was that for filling up vacancies in TRD Department only the permanent employees of the Division were asked to apply for the post. It was not open to general candidates. Therefore, the transfer cannot be termed as a new appointment. He rejected the contentions raised by the learned counsel for the defendants that since he had applied for transfer, he came on his own request, and, therefore, the seniority should be on the basis of transfer on request under Rule 312 of the Indian Railway Establishment Manual and, therefore, he has been correctly shown as junior to private defendants 3 and 4. The learned trial court had also held that the plaintiff did not apply on his own but he applied in response to a notice issued by the Divisional Personnel Officer asking for volunteers, who would like to go to TRD department. It can also not be treated as a transfer on request because no written undertaking was given by the plaintiff while he was transferred to TRD Department. According to the learned Munsif the transfers which are not transfers on request can only be termed as transfers on administrative grounds and since TRD department was a new department and wanted experienced and skilled Artisans the transfers were made in the interest of the administration. Therefore, the learned trial court concluded that the

plaintiff-respondent was entitled to seniority on the basis of his original promotion as a Welder, i.e. from 27.7.1961. It is this decision that is under challenge in this appeal.

3. The notice issued on 13.6.1973 by the Divisional Superintendent, Northern Railway, Allahabad regarding the vacancies of Artisans in TRD department was circulated to all senior subordinates, i.e. TRD Electrical, TRD Main & Operating, Carriage & Wagon Loco, Signal & Telecom. departments, etc. The notification said that "applications are invited for the following posts from willing semi-skilled and un-skilled staff of TRD Electrical General, TRS Carriage & Wagon Mechanical, SNT and Engineering Departments in proforma enclosed by 30.6.1973. These applications were invited only from regular employees. It was mentioned in the notice that they will have to pass a trade test in order ^{& of} seniority before their promotion. The plaintiff had applied against the requirement of this notification.

4. The respondents have in para 9 of their written statement said that the working in loco shed is separate from the working of TRD department and that different seniorities are maintained in different departments.

5. There is a letter at 40-Ga of the case file which is from the Divisional Superintendent, Allahabad to Vijai Shanker Kumaria on the subject of fixation of seniority. It is said in this letter that since he came on transfer from Loco department to TRD department on 21.12.1973 at his own request he has been assigned

-: 6 :-

seniority from 21.12.1973, the date he reported to TRD department. This would go to indicate that the defendants have taken the application given by the plaintiff in response to the notice for filling up vacancies of Welders in TRD department as a request. We do not agree to this contention. The plaintiff applied for the post of Welder in TRD department in response to the notice. He was already working as a Welder and this application cannot be considered as a request for transfer but it was an application against the requirement, therefore, his seniority cannot be determined on the basis of transfer on request.

6. At the Bar the learned counsel for the plaintiff made ³the ~~following~~ submissions that the transfer being on administrative account original seniority should be given to the plaintiff; that he had passed the trade test in 1961 and, therefore, his seniority should be from the date he passed the trade test and Rule 311 of the seniority rules, as mentioned in the Indian Railway Establishment Manual, should be applicable to the plaintiff. These contentions were challenged by the learned counsel for the appellants on ²the point that applications had² been invited and the seniority can only be on the basis of the date of absorption. It was not a transfer on administrative account and, therefore, original seniority could not be given. What was required was to fill up the vacancies by volunteers, who have applied to come to the new department. Nothing else was pressed before us. It is clear that in this case the vacancies were filled from applicants who were ²as ²working a semi-skilled or unskilled in TRD Electrical General, TRS Carriage & Wagon,

-: 7 :-

Mechanical, Signal and Engineering Departments. The plaintiff was already working as a skilled Welder having qualified in the trade test and having been promoted as such from 21.7.1961 in the Loco shed at Tundla.

6. 7. The plaintiff is claiming his seniority on the basis of Para 311 of the Indian Railway Establishment Manual which deals with the subject of transfer in the interest of administration. It was not a question of his transfer in the interest of administration. Applications were invited and he applied against those requirements, therefore, it cannot be said that his transfer was in the interest of administration and neither can it be said that his transfer was covered under Para 312 of the Indian Railway Establishment Manual, which deals with transfers on request. His applying for ^{the} job in TRD Department cannot be said that this was a request from him and, therefore, he should be covered by Para ³12.

8. In respect of determination of related seniority of employees in an intermediate grade belonging to different seniority units who appear for a selection or non-selection post in higher grade, Para 321 of the Manual says that when a post, selection as well as non-selection, is to be filled by considering staff of different seniority units, the total length of continuous service in the same or equivalent grade held by the employees shall be the determining factor for assigning inter se seniority irrespective of the date of confirmation of such an employee who may be

15/8

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having lesser length of continuous service as compared to another ~~an~~ unconfirmed employee with longer length of continuous service. This is, however, subject to the proviso that only non-fortuitous service should be taken into account for those purpose². Though this para deals with selection and non-selection posts in higher grades, In the case of the plaintiff it was a parallel movement but the principles laid down in para 321 will be equally applicable for filling up the post in TRD department consequent to the notification inviting applications. It should, therefore, be the total length of continuous service in the same or equivalent grade which is held by the employees who are coming in the same grade from different seniority units like Carriage & Wagon Department, Signal Department, Engineering Department, etc.

3/

9. The plaintiff's ^{claim} ~~point~~ was that he should be declared senior to defendants 3 and 4 by virtue of the fact that he was already working as a Welder from 1961. It is not disputed that he was promoted in the year 1961 in the Loco shed, Tundla. Therefore, based on the principles laid down in para 321 when the employees of the same grade coming from different departments are being considered for determination of inter se seniority it should be the date of promotion or the length of service in the equivalent grades. On this basis the plaintiff happens to be senior to defendants 3 and 4.

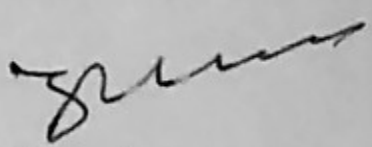
10. In the appeal one of the grounds has² been that the learned Munsif was wrong in holding that the transfer of the plaintiff-respondent was not a transfer

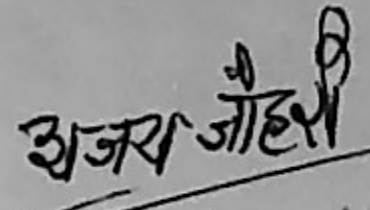
(12/9)

-: 9 :-

on request and that the seniority of the employees of every department ^{is} ~~are~~ determined separately. We have already indicated that para 321 will determine the seniority and on that basis the judgment and decree passed by the learned trial court, giving the benefit of seniority to the plaintiff from 27.7.1961, the date when he started officiating as a Welder, vis-a-vis defendants 3 and 4, ^{it cannot be to be 3.} ~~was~~ held, wrong.

11. On the above considerations we dismiss the appeal. We up hold the judgment in Suit No.13 of 1981. Parties will bear their own costs throughout.


Vice-Chairman.


Member (A).

Dated: October 16th, 1987.

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