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Reserved

Central Administrative Tribunal, Allahabad.
Registration T.A.No.228 of 1987(Writ Petition No.
10048 of 1978)

Suresh Dixit Petitioner

Vs.

Union of India &
3 others Respondents.

Hon.Ajay Johri,AM
Hon.G.S.Sharma,JM

(By Hon.G.S.Sharma,JM)

This writ petition filed before the High Court of Judicature at Allahabad under Art.226 of the Constitution has been received u/s.29 of the Administrative Tribunals Act and challenges the validity of the orders dated 4.11.78 and 11.11.78 reverting the petitioner from the post of Fireman 'B' grade Rs.260-350 to the post of Fireman-II grade Rs.210-270.

2. The case of the petitioner is that he having joined the service of the North Eastern Railway as a casual labour in 1964 was promoted and appointed as Cleaner on 25.2.65. It is stated that he was promoted as Fireman II on 11.11.68 and was confirmed on this post on 1.4.74. After his confirmation as Fireman II in the provisional seniority list of Firemen published on 1.4.75, the petitioner was placed at sl.no.403 and the respondent no.4 Janardan Tewari was placed at sl.no.476. On 23.6.78, the petitioner was given further promotion as Fireman 'B' in grade Rs.260-350 and the respondent no.4 being junior to the petitioner was not given this promotion at that time. Despite the continuous work-

ing of the petitioner as Fireman 'B' from 7.7.78 efficiently, the respondent no.2- Divisional Superintendent vide his order dated 4.11.1978 reverted the petitioner in the grade of Rs.210-270 and promoted the respondent no.4 as Fireman 'B' in his place. In pursuance of that order, the respondent no.3 Loco Foreman vide his order dated 11.11.1978 directed the petitioner to report for duty on 12.11.1978 at Varanasi Loco Shed on the reverted post. The allegation of the petitioner is that he being senior to the respondent no.4 and having worked on the promotion post for several months could not be reverted without giving him an opportunity of showing cause and as the petitioner has been made to suffer even the financial loss on account of the reversion as well as loss of status, the impugned orders amount to punishment and are violative of the provisions of Articles 14,16 and 311(2) of the Constitution.

3. In the counter affidavit filed on behalf of the respondents by the Asstt. Personnel Officer, N.E.Railway Gorakhpur, it has been stated that the petitioner was promoted as Fireman II on 11.11.68 in Samastipur District and in the panel the position of the petitioner was 34 while that of respondent no.4 was 3. The petitioner was, therefore, junior to the respondent no.4 and by mistake the petitioner was promoted ignoring the claim of the respondent no.4 and on account of earlier promotion of the petitioner in the seniority list relied upon by him he was placed at sl.no.403 and the respondent no. 4 was placed at sl no.476. In this way, the promotion of the petitioner as Fireman 'B' was due to bonafide mistake and it did not confer any legal right on him and there has been no infringement

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of any provision of the Constitution or law on his reversion under the impugned orders and he is not entitled to any relief.

4. In the rejoinder filed by the petitioner, it was stated that the panel Annexure CA-1 filed by the respondents is a fabricated document and it never existed and it has been created with a view to give undue advantage to the respondent no.4 and the petitioner has always been senior to the respondent no.4 and the allegations made in the counter affidavit are incorrect.

5. The main point arising for determination in this case is the question of seniority of the petitioner vis-a-vis the respondent no.4. In the seniority list dated 26.9.1975 of Firemen II, copy annexure 1 to the petition, the petitioner has been shown at sl.no.476. This position has not been disputed on behalf of the respondents. The contention of the respondents, however, is that in this seniority list, the seniority of the petitioner and respondent no.4 has not been correctly shown on account of the fact that the petitioner was promoted as Fireman II at an early date and in the panel on the basis of which the promotions were made, the respondent no.4 being at sl.no.3 was senior to the petitioner who was shown at sl.no.34. The copy of the panel has been filed as annexure CA-1 to the counter affidavit. The petitioner has disputed the genuineness of this panel and his contention is that this has been created with a view to give advantage to the respondent no.4 in an illegal manner. We have very carefully considered the contentions raised on behalf of the parties in this connection and

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are of the view that the panel annexure CA-1 cannot be ignored as a fabricated document merely on the saying of the petitioner. It is common knowledge that ^{before making of} the promotion a panel or select list is prepared in every department and in case the panel filed by the respondents is not genuine, the petitioner could file the copy of the so-called genuine panel prepared before ^{his} promotion. He, however, did not do so nor had the courage to summon any original genuine panel from the office of the respondents in support of his contention. We are, therefore, not prepared to take his objection to the genuineness of annexure CA 1 seriously and we see no reason to ignore this document. In view of the panel position of the petitioner vis-a-vis the respondent no.4 as shown in annexure CA 1, the respondent no.4 was senior to the petitioner and merely because for any reason the petitioner was promoted as Fireman II earlier than the respondent no.4, he cannot become senior to him and the contention of the petitioner to the contrary is liable to be turned down.

6. The only other point which arises for consideration is whether the petitioner was entitled to an opportunity of showing cause before ordering his reversion. It is evident from the pleadings of the parties and the material on record that the petitioner was not reverted by way of punishment but as a consequence of revision of his seniority and as such, he was not entitled to any opportunity of hearing. In proper cases, even the whole panel can be cancelled and the reversions on account of cancellation of the panel cannot be challenged under the law. In A.Durairajan Vs. G.M.Southern Railway and others (1987 (1) S.L.J-465), a Bench of the Tribunal had held that reversion due to the cancellation of select panel is no penalty and calls for no hearing before

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effecting the reversion. The petitioner is, therefore, not entitled to get any relief and his petition merits dismissal.

7. The petition is accordingly dismissed without any order as to costs.

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MEMBER(J)

Dated: 21.9.1988
kkb

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MEMBER(A)