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CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH, ALLAHABAD

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August 29, 1989

Registration T.A. No. 565/87(T)

B.N. Malhotra & ors Petitioners

Vs.

Union of India ors Respondents

Hon' Mr. K.J. Raman, A.M.

Hon' Mr. D.K. Agrawal, J.M.

(By Hon' Mr. D.K. Agrawal, J.M.)

The above application was registered on receipt of record/petition No. 4208/80 from the High Court of Judicature at Allahabad under the provision of Section 29 of the Administrative Tribunals' Act, 1985.

2. The above writ petition was filed in the High Court by the petitioner for quashing the order of appointment dated 23-2-1980 (Annexure No. 18) and the seniority list circulated in the month of November, 1972 and October, 1978 (Annexure Nos. 5 and 13 respectively), and for issue of a writ of mandamus, order or direction in the nature of mandamus directing the respondents xxxx i.e. Railway administration to correct the seniority of the petitioners in accordance with the rules.

3. The facts are that the petitioners were selected through Railway Service Commission, along with respondents third set for the post of Apprentice Assistant Signal Inspector in the year 1964 and were sent for training from January to April, 1965.

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The petitioners, although were required to undergo training of 18 months, but made to join the post of Assistant Signal Inspector after training of 12 months only, either under the exigencies of service or quality of their performance as alleged by them. The recruitment to the post of Assistant Signal Inspector is made from two sources, 40% by direct recruitment and 60% by promotion, from amongst different class three posts. The respondents 2nd set (Respondent Nos. 5 to 44) are promotees Assistant Signal Inspector. The petitioners' grievance is that they along with respondent 3rd set (direct recruit) were shown at sl. No. 184 to 190 in the seniority list published in August, 1968 vide Annexure No. 4 to the writ petition, that the said seniority list was revised to their detriment without affording opportunity to them in November, 1972 and February 1979; that their representations did not bear any result, so much so, that the respondents have issued an appointment order dated 22.2.1980 vide Annexure No. 18, based on the revised seniority list published in the year 1972 and 1979 as mentioned above. Therefore, aggrieved with the revised seniority list of 1972 and 1979, the petitioners filed the above writ petition in the High Court of Judicature at Allahabad.

4. The respondents 1st set in their counter affidavit pleaded that the respondents II set were selected for promotion as Assistant Signal Inspector before the recruitment of the petitioners as Apprentice Assistant Signal Inspector and the administration on the representations of its employees has taken a decision to assign the promotees seniority w.e.f.

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the requisite length of service as ED Mailmen or casual labour.

9. Regarding the contention of the petitioners that their appointments were duly implemented and there remains nothing to keep in abeyance and as such, the impugned order keeping their appointment in abeyance is illegal, we are of the view that there is not much force in this contention. Principal Bench of the Tribunal in S.D.Suchdeva Vs. Director General, Employees State Insurance Corporation (1988) 8 A.T.C.-93) has recently held that if a promotion is made under mistake or due to non-compliance of rules, the subsequent reversion cannot be construed as reduction in rank and hence Art. 311 of the Constitution is not attracted. In our opinion, the same principle will apply to an appointment made in contravention of some rule and on knowing the complaints committed in conducting the examination in which the petitioners had participated, the respondents committed no mistake in keeping its result and appointments in abeyance till pendency of the enquiry. It has not been brought to our notice by any party that the contemplated inquiry has been completed in the meantime and as such, we see no reason to interfere in this case and the petition is, thus, bound to fail.

10. The petition is accordingly dismissed. We will, however, direct the respondents to complete the inquiry if it has not already been completed in the meantime in respect of the complaints received in conducting the examination for the recruitment of Mailmen on 25.5.80 by the Superintendent Railway Mail Service Xth Division Jhansi within a period of 4 months from the date of the receipt of this order. We, however, ^{as to costs.} make no order

[Signature]

MEMBER (J)

[Signature]

MEMBER (A)

Dated: 15-11-1988
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15-6-1966 or from the date of their promotion whichever is later.

5. We have heard the learned counsel for the parties and perused the seniority list of 1968, 1972 and 1979 and other documents filed by the parties. It is not disputed that Railway Establishment Manual Chapter I Sec. B, provides as to how the seniority inter-se seniority of direct recruits and the - promotees is to be determined. The relevant rule nos. 302 and 303 have been quoted in the writ petition. The relevant extract thereof is as follows :

302 : "..... In categories of posts partially filled by direct recruitment and partially by promotion, criterion for determination of seniority should be the date of promotion in the case of a promotee and date of joining the working post in the case of a direct recruit, subject to maintenance of inter-se seniority of promotees and direct recruits among themselves....."

The seniority of candidates recruited through the Railway Service Commission or by any other recruiting authority should be determined as under :

303:(a) Candidates who are sent for initial training to training schools will rank in seniority in the relevant grade in the order of merit obtained at the examination held at the end of the training period before being posted again working posts.

(emphasis supplied by us).

(b) Candidates who do not have to undergo any training the seniority should be determined on the basis of the merit order assigned by the Railway Service Commission or other recruiting authority. "

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The above rules do not leave scope for any doubt about interpretation. The seniority of the direct recruits inter-se or qua promotees, has to be determined strictly in accordance with the above provisions of rule which presents no difficulty to us to hold that the railway administration has grossly erred in determining the seniority of the promotees as ^{against} direct recruits from a date arbitrarily. The seniority to the promotees has to be given from the date of their appointment to the post. The direct recruits will also get seniority from the date they join the post. As regards the inter-se seniority of direct recruits, it has to be determined on the basis of the examination held at the end of the training or in case, there were no training, in accordance with the order of merit assigned by the Railway Service Commission or other recruiting authority. In our opinion, the railway administration has to be directed to determine the seniority a fresh in accordance with the above rule.

6. As regards the promotion of respondent no. 6 i.e. Shri J.C. Malik, we direct the respondents to consider the same in the light of our observations made above in the body of the judgment ^{after} taking into account the inter-se seniority of the direct recruits and the seniority of the petitioners qua promotees.

7. The petition is accordingly allowed. The respondents are directed to issue a fresh

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seniority list of the petitioners and
consider their promotion in accordance with
their seniority and the rules on the subject.
There will be no order as to costs.

Dr. C. S. Rao
MEMBER (J) 29.8.89

h. S. Rao
MEMBER (A)

(sns)

August 29th 1989

Allahabad.