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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A. No.575 of 1987
(W.P.No.10340 of 1980 of the High Court of)
Judiciary at Allahabad.

Harbans Singh Applicant

Versus

Union of India & Others Respondents.

Hon. Mr. P. S. Habib, A.M.

Hon. Mr. J. P. Sharma, J.M.

• (By Hon. Mr. J. P. Sharma, J.M.)

The applicant was working as a Fitter grade I in the North Eastern Railway at the relevant time but by the order dated 27.10.80 (Annexure-5), the applicant was ordered to be upgraded from 30.1.80 instead of 1.8.78 and it was further ordered that the emoluments drawn from 1.8.78 to 30.1.80 be recovered from the applicant which he has drawn in excess of wrong order of upgradation to Fitter grade I from 1.8.78. In the Writ Petition, the applicant challenged the above order on the ground that he has passed the grade I examination and the respondent No.3 Manmohan Lal cannot be reckoned senior to him. Further, it is said that the seniority list in which respondent No.3 was shown junior, had become final and cannot be changed without notice to the applicant. Further, it is contended that no notice was given to the applicant before issuing the order. The applicant claimed the relief for issue of certiorari to quash the order No.168 dt. 27.10.80 and

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further a direction that such order may not be given effect to. The applicant also filed the Annexure showing the seniority list and the relevant position in Annexure-1 where the applicant is at Sl.No.129 and respondent No.3 is at Sl.No.133. This seniority list is of 1972 and another seniority list (Annexure-2) is of 1975 in which the applicant is at Sl.No.177 and respondent No.3 is at Sl.No.121. The applicant also filed an order passed on the representation of respondent No.3 on 24.7.75 (Annexure-3) in which a communication was made to respondent No.3 that the applicant is senior to respondent No.3. The applicant also filed the promotion order No.13 (Annexure-4) dated 2.1.79 in which the promotion was given to grade I to the applicant with effect from 1.8.78 and also the promotion was given to respondent No.3 with effect from the same date.

2. From the side of the respondents, A.P.C., North Eastern Railway, Izatnagar, Bareilly filed the Counter Affidavit in which it has been stated that in fact the date of joining and date of promotion of respondent No.3 is earlier to the applicant but by certain mistake the applicant has been shown above the respondent No.3 in the various seniority lists. However, when the mistake was detected the correction was made and the consequential order of withdrawing promotion to the Fitter Grade I with effect from 1.8.78 of the applicant was withdrawn and he was given the same promotion from 30.1.80. There is nothing wrong in the order of the

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recovering excess emoluments drawn by a wrong order of promotion in favour of the applicant passed in 1979. In support of their contention the respondents also pointed out that the applicant in the examination conducted in 1979 for testing for promotion to grade I, the applicant ~~failed~~ failed while the respondent No.3 passed. Further, it has been pointed out from Annexure-2, filed by the applicant himself, that the date of appointment of Harbans Singh is much later than that of respondent No.3. So also the date of appointment to the grade is earlier of respondent No.3 being 30.11.66 and that of the applicant is 1.12.66. The date of confirmation is the same of both. The respondents have also contended in the Counter Affidavit that respondent No.3 had already qualified in the trade test of basic Fitter and was promoted earlier on 15.10.63. There were various branches of semi skilled Fitter in the grade Rs. 210 - 290 like Greezer and Fitter etc and the seniority inter se for further promotion is determined from amongst all these branches collectively relating back to the date of their promotion to the grade. The applicant was promoted in the grade on 22.11.63 later than the respondent. Thus by any angle the applicant is junior to respondent No.3.

3. The applicant has also filed the rejoinder.

4. We have heard the learned counsel at length. The basic question is that the grade once awarded cannot be taken back without show cause notice being given to the affected employee. In this case, the order for

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withdrawing the grade and giving effect with effect from 30.1.80 has been passed but this could not have been done without issuing a show cause notice to the applicant as held in A.I.R. 1974 SC 1989 Divisional Supdt. Eastern Railway Vs. L.N. Kesari and Others.

This view has been also taken in 1986 (3) SLJ 324 and 1988 (1) SLJ 186.

5. The contention of the applicant's counsel has also some force inasmuch as some persons who are admittedly junior to Harbans Singh in the revised list of seniority are still said to be working on the Fitter grade I post. If it is a fact then the notice to the applicant was all the ^{more} ~~most~~ necessary so that the authority may scrutinise the promotions on the basis ^{vi} of the representations to be made on show cause notice by the applicant.

6. In view of the fact, the impugned order dated 27.10.80 (Annexure-5) is quashed and the respondents 1 and 2 are directed to issue a show cause notice to the applicant regarding correction of the seniority list and placing in the seniority list below respondent No.3 so that the applicant may give a reply within a reasonable time and after that the respondents 1 and 2 will pass necessary order disposing of the representation. If the applicant is held junior then in that event he has to suffer the consequence and the date of promotion will be subsequent to that of respondent No.3 in the Fitter grade I. If the applicant is not found to be junior

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or if there is still existing vacancy on the date i.e. 1.8.78 and the juniors of the applicant have been promoted then the applicant shall be given promotion to the post of Fitter grade I from this very date and no recovery has to be effected from the applicant in that case. With the above directions, the application is disposed of with costs on parties.

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Member (J)

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Member (A)

Dated the 8th May, 1990

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