

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No. 952 of 1987

Union of India Defendant-Appellant-Applicant.

Versus

Shyam Mohan Plaintiff-Respondent.

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

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

This appeal received under Section 29 of the Administrative Tribunals Act XIII of 1985 is against the judgment and decree passed by the Additional Munsif, Mathura in Suit No.366 of 1978, Shyam Mohan v. Union of India. The Union of India, appellant, has preferred the appeal on the grounds that the judgment and decree are against the weight of evidence, fixing of seniority is outside the jurisdiction of the court and the solitary evidence of the plaintiff-respondent has been relied upon.

2. The plaintiff-respondent (respondent) was a C&W Khallasi at Mathura. A trade test for promotion to the post of Wheel Attendant was held in 1965. The respondent had qualified but he was not promoted and a junior viz. Jagat Singh was given promotion. In the seniority list published in 1977 the respondent was placed at Sl.No.618 while Jagat Singh was placed at Sl.No.620. On the basis of date of appointment also the respondent was senior because he was appointed on 29.11.1962 while Jagat Singh was appointed on 1.12.1962. The junior could have been promoted if the senior had refused but it was not so. He had not refused promotion. Two more persons who were

trade tested along with the respondent were promoted in February, 1966 but the respondent has not been promoted yet. He has been representing directly and through the Union but nothing has been concluded yet. The defendant-appellant's (appellant) case is that the respondent was trade tested for the post of Wheel Attendant Gr. Rs.210 - 290 and not for the grade of Rs.225-400. Jagat Singh was given promotion on old policy as he had passed the trade test before the respondent. The other persons named by the respondent were only officiating. He has denied that there has been any discrimination.

3. ^{3/} The learned trial court framed proper issues. On the ^{issue} ~~basis~~ whether the respondent passed trade test after Jagat Singh, the trial court held that the tests were held on different dates. These were sent on 24.2.66 to the Chairman, Trade Test Panel for approval and the result was announced on 19.5.1966 by the Divisional Railway Manager (D.R.M.), Jhansi. The holding of trade test on different dates cannot give seniority to a person who is tested earlier if the approval is given on same date and the panel is same. So the trial court held that Jagat Singh had not passed earlier. On the issue whether rules have been violated in promoting Jagat Singh earlier the trial court held that in the seniority list of 1977 the respondent is shown senior. On the occurrence of vacancies they should have been filled by qualified persons according to seniority. Since the respondent was senior and qualified he should have been promoted earlier. But the appellant said that according to policy existing prior to 22.10.1970 Jagat Singh having passed trade test earlier became senior. The policy prior to 22.10.1970 was, however, not indicated and since according to the decision

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that both passed the trade test together and the respondent was senior to Jagat Singh thus there appeared no justification in appellant's ignoring the respondent for promotion. Though in the promotion order issued on 5.9.1966 both the respondent and Jagat Singh have been promoted together yet the appellant has averred that Jagat Singh was promoted earlier. The trial court further held that it appeared that the promotion orders were never conveyed to Mathura Junction. Neither was any report sent ^{from 3/} for Mathura that the respondent has refused to carry out the orders. On his representations the respondent was advised that his promotion could not be made because he was 35th in the list of those yet to be promoted. Even the statement of the appellants that ^{9/ no} one has been promoted from those appointed after 31.3.1962 is not supported by facts because Jagat Singh was appointed on 1.12.1962 and he was promoted. The trial court thus concluded that the respondent was entitled for promotion prior to Jagat Singh but due to carelessness on the part of appellants he was allowed to suffer. His promotion was made on paper and not given effect to. Thus promotion rules were infringed and the respondent was due for relief. The learned trial court further held that though seniority is not a matter to be adjudicated by a court of law yet if some rules which are laid down for determining seniority are violated a judicial notice can be taken of ^{2 and} the same ^{of} the matter becomes justiciable. It is not a case where a promotion is being given by the court but it is a matter of seeing the justification in denying a promotion. The judiciary cannot promote or demote official but can demolish a bad order. Therefore, the learned trial court came to a conclusion that even a

promotional order could be obtained by a plaintiff.

4. The learned counsel for the appellant contended that it was a case where the advice of promotion was not sent to Mathura and, therefore, his promotion went by default. While the learned counsel for the respondent submitted that since both of them were trade tested together and the respondent was senior and Jagat Singh got promoted at Agra while respondent was left out because the advice of promotion did not reach Mathura it is a hardship for the respondent having been ignored for promotion from 1966 till to-day. Even the judgment given by the trial court on 2.11.1981 has not been implemented by ^{3/} ^{it} ^{been} ^{3/} appellant and ^{he} has said that he is still 35th in the position according to seniority for promotion. Nothing else was pressed before us. At page 30-Ga is a copy of letter which circulated Railway Board's letter No.E(NG) 55 SR 6-7, dated 13.8.1959 laying down the policy of promotion. Railway Board's instruction was that all vacancies that arose on or before 12.8.1959 were to be filled in accordance with the provisions 'Procedure of promoting staff on the basis of date of passing the trade test or the date of being declared suitable for the higher post' while all vacancies occurring thereafter are to be filled in accordance with the seniority from amongst qualified suitable staff available on date of occurrence of vacancy. There is no doubt that the respondent was engaged on 29.11.1962 while Jagat Singh, whose case he has cited was engaged on 1.12.1962. On 5.9.1966 there were two vacancies of Wheel Tappers, one at Agra Cant and one at BIN. The respondent was ordered to be promoted along with Jagat Singh. His promotion orders indicated that he is being promoted as a Wheel Tapper at

BPL which is perhaps Bhopal and Jagat Singh was promoted at BIN. When the matter was taken up in October, 1975 paper no.36-Ga shows that DRM(P), Jhansi advised the Chairman, CRMS, Mathura in response to his letter of 5.10.1975 in regard to the respondent that the promotions were being made on the basis of seniority and his case has been re-examined. His date of appointment was 29.11.62 and for his promotion he was still 35th in the order of seniority. There is no doubt that the trade test of the respondent was done on 16.1.1965 while the trade test of Jagat Singh was done on 11.1.1965 as the papers 37 and 38-Ga show. But these trade tests were approved by the Chairman of the Trade Test Panel on 24.2.1966 and the promotions have been made only after the trade test had been approved by the Chairman of the trade test panel. We, therefore, do not find that the Trial Court has in any way gone against the weight of evidence that was produced before it in affiving at the conclusion. It was also not a case of fixation of his seniority. What was examined by the trial court was whether the plaintiff was senior to Jagat Singh or not and it concluded on the evidence available that the respondent was senior to Jagat Singh and it was after through examination of the fact available that the learned trial court came to the conclusion that the respondent had a case and has been incorrectly denied promotion which was ordered in 1966 and, therefore, he was entitled to the reliefs.

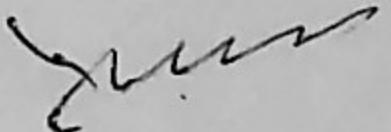
5. The promotion orders show that the respondent was promoted as a Wheel Tapper at BPL and not at Mathura Jn. It is not the appellant's case that the respondent had refused his promotion because it involved his transfer to BPL from Mathura where he was working. If it was so

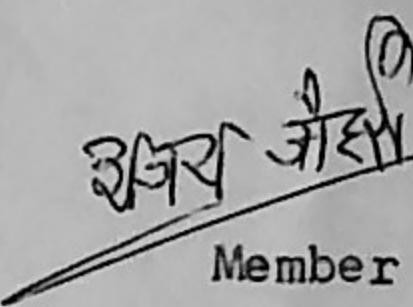
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perhaps they would have been correct in pleading that the judgment of the Trial Court was not based on correct evidence but this has not been brought out by them in their reply or in the arguments at the Bar before us. We, therefore, feel that the judgment and decree of the trial court does not need any modification.

6. On the above considerations the appeal is dismissed. The judgment and decree of the trial court in Suit No.366 of 1978 is up-held. Parties will bear their own costs, throughout.


Vice-Chairman.


Member (A).

Dated: December 14, 1987.

PG.