

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

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Registration W.A. No. 964 of 1987  
( W.P. No. 7845 of 1982 )

Sri G.D. Gaur                      ...                      ...                      ...                      Applicant/  
Petitioner.

Versus

Union of India, through General  
Manager, Central Railway, Bombay V.T.  
and others                      ...                      ...                      ...                      Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.  
Hon'ble Mr. K. Obayya, Member (A)

( By Hon. Mr. Justice U.C. Srivastava, VC )

This is a transferred case under Section 29 of the Administrative Tribunals Act, 1985. The <sup>vertical</sup> applicant filed writ petition before the High Court of Judicature at Allahabad with a prayer for quashing the order dated 26.4.1982 reverting the applicant to the post of Tracer and for quashing the order of injunction dated 4.5.1979 so far as the applicant is concerned. He has further prayed that a writ of mandamus be issued commanding the respondent Nos. 1 & 2 that the injunction order dated 4.5.1979 is not applicable in the case of the applicant and the reversion order based on it may be withdrawn. Against which the challenge has been made by the applicant in the writ petition was the order passed by the Civil Court before which the applicant filed a suit before the Union of India. The civil court observed taking into consideration the allegation made by the applicant that he is the senior most person and he is the first to be promoted to the post of Senior Draftman but he has not been promoted and his promotion has always been avoided by one or other ground, and no

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objection to the same has been filed, as such, the allegations of the plaintiff remained unchallenged and unrebutted, and the plea of the respondent that he can be compensated for the damages not being a relief which can be granted to him in lieu of promotion, and as such, a case of prima-facie injunction was made out and the plaintiff being the senior, should be promoted first but in place of plaintiff, his juniors were promoted first instead of plaintiff. This application is allowed and the respondent is restrained from promoting junior persons without promoting the plaintiff before giving promotions to the junior persons to the plaintiff. As a result of this injunction order, the applicant was reverted by the order dated 26.4.1982 and that is why he filed a writ petition which by operation of law has been received to this Tribunal.

2. The applicant was posted as Tracer in the Mechanical Department, Central Railway Itarsi under the Divisional Mechanical Engineer ( Diesel ) under Loco Drawing cadre at Itarsi on 11.5.1978 and was transferred to Jhansi in the month of February, 1980. He appeared in the selection for the post of Senior Draftsman in the grade of Rs. 425-700 in Loco Drawing office which was a selection post in view of the notification issued by the Government of India, Ministry of Railways dated 4.9.1965. The two posts of Drawing Staff Loco Cadre (Diesel) were created for the first time in the Jhansi Division and the respondent no.3 was transferred to the Mechanical Department 1965, when these posts were not in existence.



3. The grievance of the applicant was that his appointment as Senior Draftsman in the Loco Diesel Shed Jhansi was made through proper selection and he could not be reverted without giving him any opportunity of hearing, and further the order dated 26.4.1982 is void ab-initio and is also bad for non compliance of principles of natural justice, and further no prohibitory injunction can be granted affecting the future chances of promotion through selection and the order dated 4.5.1979 is also void. The post of Senior Draftsman being a selection post and no court of law can grant injunction restraining the promotion and selection for all time to come. In view of the fact, the respondent no. 3 did not appear for selection to the post of Senior Draftsman in the grade of Rs. 425-700 and he is abusing the process of law by obtaining the order dated 4.5.1979 in collusion with the respondent no.1. and further the respondent no.3 was rightly grouped with (Carriage and Wagon Department) for his seniority and future channel of promotion and the suit filed by him is not maintainable. It appears that another suit was filed on Ashok Kumar Tewari and against the order of injunction, an appeal was filed and before the District Judge, an order was passed thereafter the clarification was sought from the court of District Judge and the District Judge Jhansi vide his order dated 26.11.1981 clarified that the applicant of that case will not be reverted till the decision of this case.

W 4. According to the respondents, the applicant was wrongly appointed as Senior Draftsman and the moment he came to know of that, he moved an application for contempt against the Railway Administration as there was a prohibitory injunction operating for not effecting the selection on that



basis and on that application, notice was issued. Thereafter, the Railway Administration corrected ~~his~~ <sup>the</sup> wrong action by sending the applicant back to the post of Tracer. The respondent no. 3 filed an appeal against the decision of the Chief Workshop Engineer dated 8.7.1976 before the Chief Mechanical Engineer and the matter is pending there and no final decision has been communicated to the applicant so far, and that is why he moved an application before the court of Munsif Jhansi where the suit was pending and an interim prohibitory injunction was granted. This appeal was filed by him for his non-promotion as according to him it was he who should have been promoted. So far as the written test in relation to the selection for the post of Draftsman is concerned, it was held that he has no information for the same in time and written declaration was obtained prior to the test which was given under protest as the matter was pending decision in the court, and he was not informed in time. He has filed the suit much before the selection and in that suit prohibitory injunction was granted and in case of the prohibitory injunction, no selection could have taken place in the year 1979. The respondent no. 3 was transferred from electrical department to Mechanical department and according to him, his seniority was to be fixed ~~@@@~~ vis-a-vis carriage and wagon drawing office cadre, and one Mr. Sharma who came on transfer in the Division in the interest of administration, his transfer was regularised. According to him, he was prepared to appear in the selection but he could not be treated from the cadre of carriage and ~~@@@~~ Wagon workshop in the office and in these circumstances, he

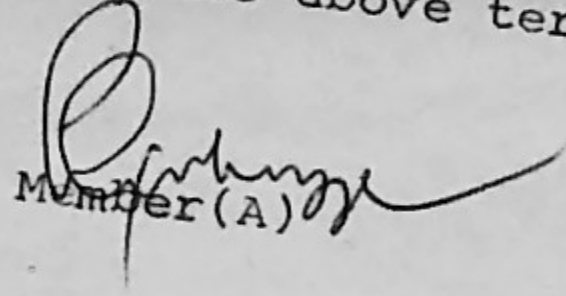


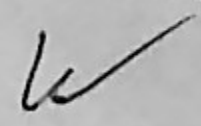
communicated his willingness under protest, and he was deprived of appearing in the test because of the lack of information. According to applicant, he ~~was~~ was not junior to him but he was illegally promoted on 9.2.1982 and that is why he filed a suit. The dispute before us between the applicant and the respondent no. 3 is for seniority. The respondent no. 3 filed a civil suit in which an ~~order~~ injunction was granted that he should be promoted first before any junior could be promoted. The court of Munsif did not restrain the Railway Administration from holding any selection and the injunction was only for the purpose that the respondent no. 3 should be promoted first before any junior could be promoted. As the respondents were within their rights to hold the selection and the respondent no. 3. himself did not appear in the said selection and for which, he was himself responsible. When the question of promotion came into existence, the applicant was promoted earlier obviously, he was not covered by the injunction order dated 4.5.1979 as the injunction order is not to operate against the person who is not party to the proceedings, and as a result of test, the applicant was promoted on 9.2.1982 that is after the injunction order. It appears that the ~~Railway~~ Administration was under the impression that the applicant was senior, promoted him, and the question of seniority still remained undecided. Even if the respondent no. 3 was senior to the applicant but he did not offer himself for examination, may be because the suit was pending, he will be responsible for the same and on that very ground the applicant could not have been reverted, that too without taking a decision on the question of

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seniority. According the reversion order dated 26.4.1982 is quashed and the respondents/Railway Administration are directed to decide the question as to whether the applicant is senior or the respondent no. 3 is senior within a period of 3 months from the date of communication of this order and in case it comes to the conclusion that the respondent no.3 infact was senior, and he was wrongly deprived in appearing in the examination, a supplementary test for him can be taken and in case he succeeds in the said test, the consequential benefits by virtue of seniority may be given to him. The application is disposed of finally in the above terms. No order as to costs.

  
Member (A)

  
Vice-Chairman

Dated: 19.8.1992

(n.u.)