

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
Registration T.A.No. 1015 of 1987

S.P.S.Verma

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Applicant

Vs.

Union of India & Others

Respondents

Hon'ble Mr. Justice U.C.Srivastava, V.C.

Hon'ble Mr. A. B. Gorthi, Member (A)

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

The applicant, ^{was} appointed as Lower Division Clerk in the year 1960 in the Harness & Saddlery Factory, Kanpur, which is run by the Ministry of Defence, Govt. of India, filed a writ petition before the High Court against the reversion order by which he was reduced to the post of Lower Division Clerk in the time scale of Rs.260-400/- from the post of Office Superintendent Grade-II vice an order dated 28th July, 1981. The applicant after certain transfers was promoted on the basis of seniority. In the meantime the applicant was transferred from Ordnance Depot Shakurbasti to Bengal Engineer Group & Centre, Roorkee, Distt Saharanpur ^{vide} an order dated 1.8.1974. This transfer was effected on the own request of the applicant. Taking the applicant senior he was promoted as Upper Division Clerk ^{vide} order dated 31.18.1974 and continued to remain as such and on 28.11.79 he was promoted on the post of Office Superintendent Grade II with effect from 29.11.1979. It was discovered later on some 7 years thereafter on the representation of some one who claims seniority, it was discovered that the applicant who had lost his seniority because he sought transfer on compassionate grounds was even then promoted, taking into consideration the original seniority and not the lost seniority and that is why he was promoted to the grade of Upper Division Clerk and thereafter he was promoted as Office Superintendent Grade II.

2. The respondents have challenged the claim of the applicant stating that it is by mistake the applicant

was transferred and this mistake was rectified when it came to the notice of the department concerned and that to/on the representation of one Shri Gaur who made such a representation regarding his seniority. From the affidavit filed by the respondents it appears that this promotion from the post of L.D.C. was made on the recommendation of D.P.C. which recommended 7 persons including that of the applicant and the applicant was the senior most of the IDC and that is why he was placed at serial no.1 of the promotion list. Subsequently it appears that through the agency of the DPC he was promoted to the higher post of Office Superintendent Grade-II and for few years no objection was made by any one and it appears that those who/placed below in the list of UDCs ^{were} ~~accused~~ in it and did not challenge the placement of the applicant over their heads or ~~in~~ his consideration and promotion to the post of Office Superintendent Grade-II and the Department also did not ^{act} ~~accuse~~ in it or rather sleeping over the matter and/the matter was screened it was found that the mistake was committed. In order to rectify that the department~~s~~ have committed mistake after mistake in as much as that without taking into consideration to the promotional post of the applicant who in the meantime had been promoted to the post of Office Superintendent Grade.II It was considered as if he was still UDC and the matter was referred to DPC and the DPC although promoted others ~~but~~ did not include the name of the applicant in the list of UDC and that is why the applicant was reverted to the post of IDC. Those who were affected at least in the promotion of the applicant, if the applicant would not have been transferred on compassionate ground that is on his own request. The applicant obviously/senior to all these persons in the normal course ~~and~~ he would have earned ~~all~~ these promotions He got his promotion only because he earlier was transferred ~~to~~ his own request~~s~~ and under the rules

it is stated that one who goes on transfer to another place on his own request was to be placed at the bottom. This was either not noticed or ignored. Reliance has been placed on behalf of the applicant on the case of R.S. Makeshi and others Vs. I.M. Menon & Others, 1982 SC cases as annexed page 77. Wherein it has been held that it is to be noticed that all the other persons and applicant were not drawn from the one department but they were drawn from various other departments and they were not in one cadre and that is why the reliance has been placed on the said case, in which case it has been held that the petition should be dismissed on the ground of delay and it seeks to disrupt the vested rights regarding rank, promotion and seniority which accrued to the respondents into period of eight years. In the present case, it was the mistake on the part of the department in not considering the case of the applicant correctly. In the meantime the applicant got yet another promotion and that too in the DPC taking into consideration his seniority after so many years. It was the case in which the mistake has been committed on the part of the department, interference should not have been made, yet the department committed another mistake. As a matter of fact, the representation made by another person should have been rejected. So far as the applicant is concerned as the said person also was sleeping over for a few years and his seniority could not have been determined. Accordingly this application deserves to be allowed and the order dated 28.7.81 is quashed. It will be open for the respondents to proceed in accordance with law. With the above observation the application stands disposed of. No order as to costs.

6th December, 1991, Alld.
(sph)

MEMBER (A)

VICE-CHAIRMAN.