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RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No. 1846 of 1987

Smt. Lakshmi Srivastava ..... Petitioner.

Versus

Union of India & others ..... Respondents.

Hon'ble K.J. Raman, A.M.  
Hon'ble D.K. Agrawal, J.M.

(Delivered by Hon. K.J. Raman, A.M.)

This Writ Petition No. 7887 of 1985, filed in the High Court of Judicature at Allahabad by Smt. Lakshmi Srivastava, a Lecturer in the Intermediate College in North-Eastern Railway, Gorakhpur, against (1) the Union of India through the Chairman, Railway Board, (2) General Manager, N-E. Railway, Gorakhpur, (3) Superintendent, N-E. Railway, Gorakhpur, & (4) Smt. Kameshwari Devi, the then Acting Head-Mistress and Lecturer in Hindi in the college at Gorakhpur, has been received on transfer by this Tribunal under Section 29 of the Administrative Tribunals Act, 1985. In the writ petition there were a number of prayers mainly seeking direction to treat the petitioner as the Principal of the college in the place of respondent no.4, referred to above, and to revert the latter. There was also one prayer that the petitioner should be given selection grade (Rs.775-1000) from April, 1981. Since the filing of the writ petition in the High Court, <sup>the</sup> respondent no.4 had been reverted. Taking into account the changed situation, the learned counsel for the petitioner <sup>has</sup> submitted before this Tribunal on 17.11.1988 that the only claim which the petitioner is making now is for fixation of <sup>his</sup> seniority and claiming arrears from 1.4.1981. It was further stated that the arrears had been paid from 13.12.1984. The claim is now for payment of arrears for the period between 1.4.1981 and 12.12.1984.

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2. In this case as the original petition and the accompaniments could not be traced after the transfer of the case, copies of the petition, reply, etc. were obtained from the parties. The case was heard on 2.8.1989 when Sri O.P. Gupta, learned counsel for the applicant and Sri V.K. Goel, learned counsel for the respondents 1 to 3 argued their respective cases. We have very carefully examined the records of the case and arguments of the learned counsel for the parties.

3. As indicated above, the issue involved in this case is within a narrow compass. The Hon'ble High Court of Judicature at Allahabad in its judgment dated 13.12.1984 in Writ Petition No. 12516 of 1981, filed by the present petitioner against the same respondents, had ordered that the present petitioner shall be deemed to be senior to respondent 4 in this case (Smt. Kameshwari Devi) and opposite parties Railways shall proceed to act in accordance with the rules, as stated by their counsel in that case. The judgment has earlier stated that the said counsel had stated that once the seniority is determined by the Court, Railways shall follow the same and will give all the benefits which are available to the petitioner in accordance with the rules including the post of Head-Mistress. The grievance of the petitioner in the present writ petition is that the respondent-Railways have not carried out the orders of the High Court, as stated above, in full insofar as giving the selection grade of the post to the petitioner from the due date. The petitioner states that the respondents have given the petitioner the selection grade (Rs.775-1000) only with effect from 13.12.1984, by their order dated 26.4.1985 (Annexure '3' to the writ petition). The petitioner has submitted copies of seniority list which show that the petitioner was the senior-most Lecturer in the college having been regularly promoted as Lecturer with effect from 23.8.79. The petitioner has further produced a copy of an order dated 31.5.82 creating a number of posts retrospectively from 1.4.1981 and ~~once~~

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one of the post so created is the selection grade post of Lecturer, to which the petitioner takes her claim, being the senior-most Lecturer, with effect from 1.4.1981. The petitioner states that the selection grade has been given to her by the impugned order dated 26.4.1985, referred to earlier, only with effect from 13.12.1984 which is the date of judgment, although the petitioner was entitled to selection grade when it came in April, 1981, because the petitioner was the senior-most Lecturer from 23.8.1979 (para 6 of the writ petition). Similarly in para 10 of the writ petition the petitioner refers to her representation dated 7.5.1985 regarding the same issue of selection grade and making the same claim. During the hearing the learned counsel for the petitioner strongly contended that there was no reason at all why the petitioner was not given the selection grade with effect from 1.4.1981 and there was no rhyme or reason why the date of the judgment, viz. 13.12.1984 should have been taken as the date from which she should be given selection grade. He stated that it has been made amply clear in the writ petition as well as in the rejoinder affidavit by the petitioner that the vacancy was available with effect from 1.4.1981 and the petitioner being the senior-most was entitled to being given the selection grade from the date the post was created, i.e. 1.4.1981.

4. In the reply filed as well as during the arguments on behalf of the respondents, it has been admitted that the petitioner was regularly promoted with effect from 23.8.1978; and that the petitioner was the senior-most at the relevant time has also been admitted and not denied. But the respondents have not given any reason at all why the petitioner was not given the selection grade with effect from 1.4.1981 but was given the grade only with effect from 13.12.1984. It has been stated that the date 13.12.1984 was adopted because it was the date of the judgment. The learned counsel for the respondents also sought to state that there was no specific claim that the post of selection grade was available with effect from 1.4.1981 and that the petitioner claimed entitlement



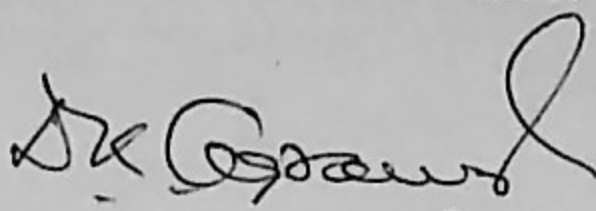
to be promoted with effect from that date. This contention is, however, <sup>pa</sup>~~palpably~~ wrong in view of paras 6 and 10 of the writ petition and also the rejoinder affidavit. The petitioner has unmistakably stated that she was entitled to selection grade when it came in April, 1981 and that she had, in a representation dated 7.5.1985, requested the respondents to allow the petitioner the benefit of promotion in the selection grade from April, 1981. This claim is also made clear elsewhere in the writ petition and in the prayer.

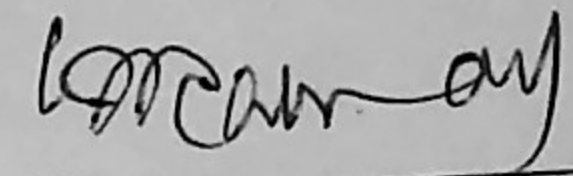
5. It is admitted on all sides that the petitioner was the senior-most Lecturer at the relevant time, i.e. about March, 1981. It is also admitted that the post of selection grade was created with effect from 1.4.1981 by the order dated 31.5.1982, referred to above. The respondents have not stated that there was no vacant post available as on 1.4.1981 for being given to the petitioner. The petitioner has specifically claimed that she was entitled to that post and it was for the respondents to deny, if this was not so. It is not also the case of the respondents that the petitioner was in any way found unfit for being given the selection grade in accordance with any rule applicable. The creation of the post by an order dated 31.5.1982, retrospectively with effect from 1.4.1981 clearly shows the intention of the respondents to fill up the said post and other posts <sup>as</sup>~~was~~ sanctioned, with retrospective effect. If ~~these~~ were not so, it would have been pointless to issue such an order. Further the petitioner herself was promoted retrospectively with effect from 13.12.1984 by the order dated 26.4.1985. Thus there seems to be no difficulty in considering and issuing an order extending the benefit of selection grade retrospectively. As stated earlier, there is nothing in the pleadings or arguments of the respondents to the effect that the petitioner was unfit for being given the said grade with effect from 1.4.1981.

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6. In the above circumstances, respondents 1 to 3 are hereby directed to give the petitioner the selection grade in question (Rs.775-1000) from 1.4.1981 and also pay her the consequential arrears. These directions shall be carried out within three months from the date of receipt of this order. The petition is allowed accordingly. There will be no order as to costs.

  
MEMBER (J). 4.8.89.

  
MEMBER (A).

Dated: August 4<sup>th</sup>, 1989.

PG.