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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

Dated : Allahabad this the 22nd day of May, 1996.

Coram : Hon'ble Mr. T. L. Verma, Judicial Member,
Hon'ble Mr. D.S. Bawej, Administrative Member.

Transfer Application No. 2025 of 1987
(Civil Appeal No. 50 of 1985)

BETWEEN

1. Union of India, through the Secretary, Ministry of Labour, Govt. of India, New Delhi-1.
2. The Regional Director, Regional Directorate of Apprenticeship Training, C.T.I.Campus, Udyog Nagar, Kanpur-208022.
3. The Principal, Central Training Institute, for Instructors, now known as Director, Advance Training Institute, C.T.I.Campus, Udyog Nagar, Kanpur.208022.

.....Appellants.

VERSUS

1. Shri Bansi Lal Sahijwani, adult son of Shri Kishan Chand Sahijwani, resident of Quarter No.C-8, C.T.I.Campus, Udyog Nagar, Kanpur-208022.Plaintiff-respondent
2. Shri S. S. Ahluwalia, adult, father's name not known, presently working as J.T.A., R.D.A.T., C.T.I. Campus, Udyog Nagar -208022, summons to be served through the Regional Director, R.D.A.T., C.T.I.Campus, Udyog Nagar, Kanpur-208022.
3. Shri A. K. Srivastava, adult, father's name not known presently working as A.T.O., C.T.I. C.T.I.Campus, Udyog Nagar, Kanpur-208022.
4. Shri N.R.Vishwakarma, adult, father's name not known, presently working as A.T.O., C.T.I. Udyog Nagar, Kanpur.-208022.
5. Shri Balbir Singh adult, father's name not known, presently working as S.T.A., R.D.A.T., C.T.I.Campus, Udyog Nagar, Kanpur-208022.
6. Shri V. P. Mishra, adult, father's name not known,

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presently working as S.T.A., RDAT., C.T.I.Campus,
Udyog Nagar, Kanpur-208022.

7. Shri H. N. Srivastava, adult, father's name not known, presently working as S.T.A.(purchase) C.T.I.Campus, Udyog Nagar, Kanpur-208022.
8. Shri K.N. Saran, adult, father's name not known, presently working as S.T.A.? R.D.A.T. C.T.I.Campus, Udyog Nagar, Kanpur-208022.
9. Shri B. D. Dubey, adult, father's name not known, presently working as A.T.O.(Welder) C.T.I. CTI Campus, Udyog Nagar, Kanpur-208022.
10. Shri Amir Kazim, adult, father's name not known, presently working as G.I., C.T.I. , CTI Campus, Udyog Nagar, Kanpur-208022.
11. Shri Agya Ram, adult, father's name not known, presently working as A.T.O., C.T.I., CTI Campus, Udyog Nagar, Kanpur-208022.
12. Shri P. N. Barthwal, adult, father's name not known, presently working as A.T.O. (Motor Mechanic) C.T.I. CTI Campus, Udyog Nagar, Kanpur-208022.
13. Shri S.R. Sharma, adult, father's name not known, presently working as J.T.A., R.D.A.T., CTI Campus, Udyog Nagar, Kanpur. Defendants-respondents.

CONNECTED WITH

TRANSFER APPLICATION NO. 2024 of 1987
(Civil Appeal No. 35 of 1985)

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1. Shri A. K. Srivastava, adult, father's name not known to the plaintiff, presently working as A.T.O., C.T.I., Campus, Udyog Nagar, Kanpur-208022.
2. Sri N. R. Vishwakarma, adult, father's name not known to the plaintiff, presently working as A.T.O., C.T.I. Campus, Udyog Nagar, Kanpur-208022.3/---

3. Shri Balbir Singh, adult, father's name not known to the plaintiff, presently working as S.T.A., R.D.A.T. C.T.I Campus, Udyog Nagar, Kanpur-208022.
4. Sri V. P. Mishra, adult, father's name not known to the plaintiff, presently working as S.T.A., R.D.A.T. C.T.I.Campus, Udyog Nagar, Kanpur-208022.
5. Sri H.N.Srivastava, adult, father's name not known to the plaintiff, presently working as S.T.A.(Purchase) C.T.I.Campus, Udyog Nagar, Kanpur-208022.
6. Sri K. N. Saran, adult, father's name not known to the plaintiff, presently working as S.T.A.,R.D.A.T., CTI Campus, Udyog Nagar, Kanpur-208022.
7. Sri B. D. Dubey, adult, father's name knot known to the plaintiff, presently working as A.T.O.(Welder), C.T.I. CTI campus, Udyog Nagar, Kanpur-208022.
8. Sri Amir Kazim, adult, father's name not known to the plaintiff, presently working as G.I.,? CTI, CTI Campus, Udyog Nagar, Kanpur-208022.
9. Sri Agya Ram, adult, father's name not known to the plaintiff, presently working as A.T.O., C.T.I.? CTI Campus, Udyog Nagar, Kanpur-208022.
10. Sri P. N. Barthwal, adult, father's name not known to the plaintiff, presently working as A.T.O.(Motor Mechanic), C.T.I., CTI Campus, Udyog Nagar, Kanpur-208022.
11. Sri S. R. Sharma, adult, father's name not known to to the plaintiff, presently working as J.T.A. R.D.A.T. CTI Campus, Udyog Nagar, Kanpur-208022

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.....APPELLANTS.

V E R S U S

1. Sri Bansi Lal Sahijwani, adult, son of Sri Kishan Chand Sahijwani, resident of Quarter No. C-8, CTI Campus, Udyog Nagar, Kanpur-208022.
2. Union of India, through the Secretary, Ministry of Labour, Government of India, New Delhi.
3. The Regional Director, Regional Birectorate of Apprenticeship Training, C.T.I.Campus, Udyog Nagar, Kanpur-208022.
4. The Principal, Central Training Institute, for Instructors, C.T.I.Campus, Udyog Nagar, Kanpur-208022.

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5. Sri S. S. Ahluwalia, adult,
father's name not known to
to the plaintiff, presently
working as J.T.A., R.D.A.T.,
C.T.I.Campus, Udyog Nagar,
Kanpur-208022.

summons to be served through the
Regional Director, R.D.A.T., C.T.I.
Campus, Udyog Nagar,
Kanpur-208022.

..... Respondents.

O R D E R

(By Hon'ble Mr. T. L. Verma, Member-J)

Both T.A. Nos. 2024 of 1987 and 2025 of 1987
arising out of the judgment and decree passed in O.S.
No. 163 of 1982 by the Vth Additional Munsif, Kanpur
have been heard together and are being disposed
of by this common order.

2. Bansi Lal Sahijwani plaintiff of O.S.No.163
of 1982 was initially appointed as Visual Aid Instructor
in 1963 in the pay scale of Rs.180-280/- . The said scale
of pay was revised to Rs. 250-550 with selection grade of
Rs. 550-750 with effect from 25.7.1970. Thereafter on
the recommendation of the 3rd Pay Revision Commission
the pay-scale of post held by the plaintiff was revised
to Rs. 450-750 with selection grade of Rs.740-880, with
effect from 1.1.1973.

3. The designation of the post held by the plaintiff was changed to Vocational Instructor (Visual Aid)

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vide letter No. DGET-48(1)/74-T.U. dated 2.11.1977

This was an isolated post with a single grade structure and seniority of the applicant was maintained separately without clubbing it with any other cadre/post. In 1966, a Model Training Institute was established and the same was attached to the Central Training Institute, Kanpur. The respondents made appointment on the post of Junior and Senior Instructor (Fitter, Turner, Machinist etc) to cater to the requirement of the Model Training Institute. The grievance of the applicant is that though he was eligible and had also offered himself for appointment /promotion to the post of Sr. Instructor (Fitter), the respondents illegally ignored his claim on the ground that the post of Vocational Instructor (Visual Aid) was not a feeder cadre for promotion to the post of Sr. Instructor. It is stated that the post of Vocational Instructor (Visual Aid) had the same scale of pay as that of the Junior Instructor and should, therefore, have been included in the seniority list of Junior Instructors. As he was appointed in the year 1963, he was senior most in the scale of Rs.180-280 and as such should have been placed at the top of the seniority list of the Junior Instructors. As this was not done, he was not considered for promotion to the post of Senior Instructor in 1966 and persons who were appointed as Junior Instructor much after the plaintiff, were appointed /promoted to the post of Senior Instructor of Model Training Institute.

4. The Government of India, by its letter No. DGET /98(1)/74 TA dated 2.11.1977 communicated the decision of the Government that the posts of Junior Instructors and Senior Instructors were abolished and the existing post of the Instructors were redesignated

as Vocational Instructor. Subsequently, by letter No. DGET C-20/1/75-TA(1) dated 8.8.1979, final decision, to the effect that all those posts in the scale of Rs.180-280 would be the Feeder posts and the Officers holding pay-scales of Rs.280-380, Rs.210-425, and Rs.250-380 as on 26.5.1970 should rank enblock senior to the officer holding the post of Junior Officer drawing Officer, Fitter, Junior Machinist etc. who hold these post on the same date in the senior pay of Rs.180-280 subject to the maintenance of their interse seniority in their respective grade and further subject to the officers holding the substantive post as on 27.7.1970 on their respective post on that grades, was communicated.

5. The omission on the part of the respondents to include the name of the applicant in the combined seniority list of Junior Instructor, it is said, resulted in denial of promotion to the applicant to higher grade while promotion was granted to Junior Instructors appointed in the pay-scale of Rs.180-280 much after the plaintiff was appointed. In addition to that, some direct appointments were also made on the post of Senior Instructor and equivalent higher post in the trade of Fitter to the detriment of the applicant. The applicant come to know that his post was also a feeder post for promotion to the post of senior Instructor only from aforesaid letter dated 8.8.79. Combined seniority list was prepared on the basis of instructions contained in letter dated 8.8.1979. The said list was published and circulated vide letter dated 1.10.1981. The department by publication of the said seniority list clubbed all those who were appointed as Instructor in the pay-scale of Rs.180-280 or in the

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grade Rs. 210-380/- Rs. 210-425/- and Rs. 250-380/- and placed the applicant at Sr. No.14 of the seniority list. According to the plaintiff he was entitled to be treated as senior most for the post of Vocational Instructor and his name placed at Sr.No.1 of the seniority list of the Vocational Instructor notified on 1.10.1981. He accordingly submitted a representation and also served notice under Section 80 of the C.P. C. to give to the plaintiff retrospective seniority and also promotion to the higher scale. The respondents failed to pass any order on the representation of the plaintiff, he filed OS No. 163 of 1982 in the Court of Munsif, Kanpur for a declaration that the post held by the plaintiff in the in the scale of Rs. 180-280/- was a feeder post for promotion to higher post and for further declaration that the plaintiff be placed at Sr.No.1 of the seniority list of Vocational Instructor in place of Sr.No.14, with all consequential benefits including grant of Selection Grade in the same cadre treating the plaintiff to be senior with entitlement to further promotion and for issuing a direction to the respondents to pass necessary orders for assigning correct seniority to the plaintiff at Sr.No.1 in place Sr. No.14 and to treat him to be senior most in the cadre of Vocational Instructors.

6. Official respondents, appeared and contested the suit. In the written statement filed on behalf of the official respondents, it was stated that the plaintiff did not possess the necessary qualification for being promoted as Senior Instructor. It has further been stated that post of Visual Aid Instructor in the scale of Rs. 180-280/- held by the plaintiff was not a feeder post therefore, he was not entitled for promotion

to the post of Senior Instructor. The post of Visual Aid Instructor/Vocational Instructor (Visual-Aid) although having same pay-scale as that of junior Instructor was not clubbed with the Junior Instructor till the Recruitment Rules, 1974 were amended in 1979. It was only after the recruitment rules 1974 were amended in that 1979, the post of Vocational Instructor was included as feeder post for promotion to the higher post.

7. On the pleadings of the parties, the Trial Court framed the following issues for determination :-

(a) Whether the plaintiff was not qualified /eligible for being promoted/appointed in the grade/cadre of Senior Instructor in 1966 as alleged by the defendant ?

(b) Whether the post held by the plaintiff in the pay-scale of Rs. 180-280/- was not a feeder post to higher post in higher grade and pay-scales as alleged by the defendants ?

(c) Whether the plaintiff was entitled to be placed at Sr. No. 1 of the Seniority List of Vocational Instructor with entitlement to all benefits arising on him from as alleged by the plaintiff ?

(d) Whether the defendants No. 4 to 15 had been appointed through direct recruitment or promotion to the post of Senior Instructor ?

(e) Whether the suit is barred by limitation ?

(f) to what relief, if any, the plaintiff is entitled ?

8. The learned Munsif on consideration of the evidence adduced in the case allowed the suit in part and declared that the post of Visual Aid Instructor held by the applicant/plaintiff in the scale of Rs.180-280/- was a feeder post for promotion to the post of Senior Instructor and that he is entitled to be deemed to have been promoted to the post of Senior Instructor w.e.f. 18.10.1966 and that he is entitled to all consequential benefits as would flow from his deemed promotion with effect from 18.10.1966, and that he is entitled to be

placed above respondent No. 4 to 15 in the seniority list. The Union of India and the respondents No. 4 to 15 filed two separate appeals which were numbered as C.A. No. 50 of 1985 and C. A. No. 35 of 1985 in the Court of District Judge, Kanpur challenging the validity of the judgment and decree passed by the Munsif, Kanpur. These appeals have been transferred to this Tribunal under Section 29 of the Administrative Tribunals Act, 1985 for disposal.

9. We have heard the learned counsel for the parties and perused the record. The first question we propose to examine is whether the post of Visual Aid Instructor held by the plaintiff at the relevant time was a feeder post for promotion to the post of Senior Instructor (Fitter). The relevant rules regulating appointment to and promotion from the post of Visual Aid Instructor, prior to 1974 have not been shown by either party. The pleadings of the parties, however, make it absolutely clear that seniority of the plaintiff was being maintained separately. The copies of the seniority list Exhibit 58 Ka/2 to 58 Ka/11 are seniority lists of various categories of employees working in the Directorate of Apprenticeship Training C.T.I. Kanpur as on 31.3.1975,. Exhibit 58 Ka/5 is the seniority list of Audio Video Instructors. Plaintiff is the solitary employee in this seniority list. Exhibit 58Ka is the seniority list of Senior Instructors, Exhibit 58 Ka/3 is the seniority list of Junior Instructor. The Junior Craft Instructor have separate seniority list Exhibit 58 Ka/4. The pleadings of the parties and the documents referred to above leave no room for doubt that the post of plaintiff comprised an isolated cadre. There is no material on record to show that post of Visual Aid Instructor though comprised a separate cadre was feeder post for promotion to the post of Senior Instructor.

10. In 1974, new recruitment rules known as Directorate of Training (Class III posts) Recruitment Rules, 1975 were framed. By these rules, the post of Drawing Instructor/Fitter General/Machinist General were made feeder post for promotion as Senior Instructor. The post of Visual Aid Instructor was again left out the category of Feeder post for promotion to Senior Instructor. This position continued till 1979. The 1974 rules were amended vide notification dated 11.1.79 (Exhibit 102 Ka/1). By this amendment ⁱⁿ existing entry under column No.1 the post of "Vocational Instructors" was inserted. Earlier/the decision of the Govt. to redesignate the post of Instructors as Vocational Instructor in their respective grade was communicated by Govt. of India, Ministry of Labour by letter dated 02.11.1977.

11. By letter dated 1.7.1974, the Govt. decision of revision of scales of pay of the employees of Directorate General (Employment and Training) was announced. According to this decision uniform pay scale of Rs. 250-500/- with selection grade of Rs. 550-700/- was sanctioned for Senior Instructors/Store Keeper, Technical, Senior Instructor (Electrical & Chemicals) Maintenance Electrician, Junior Technical Assistant, Junior Instructor/Drawing Instructor/Fitter General/Machinist General/ and the allied trade /Visual Aid Instructor.

12. Senior Instructors/Store Keepers (Technical) Senior Instructor (Electricals)/Chemicals) Maintenance Electrician Junior Technical Assistants were in the scale of pay of Rs. 210-425/- and Junior Instructors, Drawing Instructors were drawing pay in the scale of pay of Rs. 180-280/-. The applicant, who was Visual Aid Instructor in May, 1970 was in the scale of pay of Rs. 180-280/-. The said uniform scale of pay was again ~~xxxxxxxx~~ revised to Rs. 440-750/-

with effect from 1.1.1973 vide office memorandum dated 31.3.1976 (Annexure-54/Ka-1).

13. From the above it would appear that the post of Visual Aid Instructor was redesignated as 'Vocational Instructor' (Visual Aid) by decision communicated under letter dated 2.11.1977 and made a feeder cadre for promotion to the higher post by amendment incorporated in Item No. I of the schedule appended to 1974 recruitment rules in 1979. The case of the Union of India before the Trial Court was that the post of Vocational Instructor (Visual Aid) was included as feeder post for promotion to higher grades with a view to providing promotional avenues to the incumbent on the said post as there was no such L that cadre. In view of the discussions of the facts and circumstances made above, we are satisfied that the post of Visual Aid Instructor/Vocational Instructor (Visual Aid) was not a feeder post for promotion to Senior Instructor in 1966.

14. In view of the foregoing conclusion the second question that falls for our consideration is whether the applicant possessed basic minimum qualification for promotion/appointment on the post of Senior Instructor in 1966. As we have already seen above, neither party has filed rule/instructions to show the minimum qualification as was required in 1966 for appointment to the post of Senior Instructor. The plaintiff also does not appear to have agitated the matter before 1982 when O.S. No. 163 of 1982 was filed. The plaintiff remained silent over the matter for about 16 years after the appointments on the post of Senior Instructor of Model Training School were made. It is not possible to hold a roving inquiry as to the entitlement of the applicant for being considered for promotion to the post of Senior Instructor after about

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30 years. The plaintiff, if he was aggrieved, should have agitated the matter before the proper forum within a reasonable time. He, not having done so, in our opinion, is not entitled now to re-open the issue after 16 years.

16. The other question that needs to be considered is whether the decision of the Govt. to provide uniform scale of pay to Senior Instructors, Maintenance Electrician Junior Technical Assistants and the Junior Instructors and other employees in different rates in the scale of pay of Rs. 180-280/- w.e.f. 27th May, 1970 shall make a difference so far as the seniority of the plaintiff vis-a-vis defendant Nos. 4 to 15 of O.S.No.163 of 1982, the appellants before us is concerned,. The Govt. of India by its letter dated 8.8.1979 issued directions regarding inter-se seniority after the equalisation of scales of pay of the Senior Instructors and Officers holding the post in the scale of pay Rs. 180-280/- revised to Rs. 250-550/- with effect from 1.1.1973. The decision of the Govt. of India in this regard is as follows :-

"The post of Senior Instructor, Store Keepers Maintenance Electrician and Junior Technical Assistant were in higher scale and the post in the scale of Rs. 180-280/- were feeder posts, the officer holding the post in higher scale of Rs. 210-380/-, Rs. 210-425/- and Rs. 250-380/- as on 26.5.70 should rank enblock senior to the officers holding the post of Junior Instructor, Drawing Instructor, Fitter General, Machinist General etc. who held these posts on the same days in the scale of Rs. 180-280/- subject to the maintenance of their interse seniority in their respective grade and further subject to the officers holding substantive post as on 27.5.70 in their respective post on those grades."

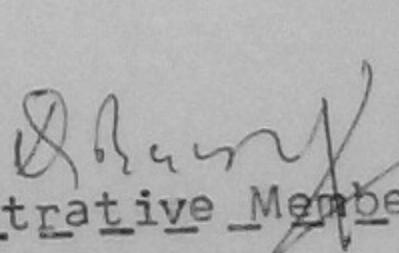
17. Crucial dates for our consideration in this case is the date of entry of the applicant in service. The

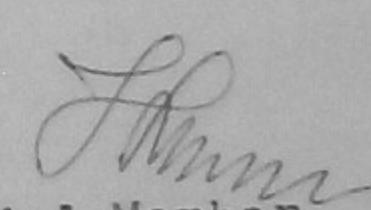
applicant was appointed as Visual Aid Instructor on 29.7.1963 in scale of Rs. 180-280/- . This scale was revised to Rs. 250-550/- by order dated 1.7.1974 with effect from 27.5.1970 by the same order, the scales of pay of Senior Instructor (Stores) Store Keepers (Mechanical) Electrical Maintenance Electrician and Junior Technical Assistant were also revised to Rs.250-450/- By this order scale of pay of Senior Instructors and Junior Instructors including Instructor (Visual Aid) merged and a common scale of pay of Rs.250-450/- was sanctioned. The Senior Instructors Maintenance Electrician and the Junior Technical Assistants were in a higher scale of pay of Rs. 210-380/- Senior Instructor was in the scale of pay of Rs. 250-380/- and Junior Technical Assistant was in the scale of pay of Rs.210-425/- . The incumbents of the aforesaid posts, therefore, were senior to Junior Instructors and other officials initially appointed in the scale of Rs. 180-280/- on that date. Thus, the Senior Instructors, Maintenance Electricians and Junior Technical Assistants were enblock senior to Junior Instructors and the Audio Visual Instructors.

18. The claim of the plaintiff of seniority over defendant Nos. 4 to 15 has to be examined in the light of the above factual position. Applicant Nos. 1, 2 and 3 were appointed as Senior Instructors in the scale of pay of Rs. 210-380/- by office order dated 20.6.1969. They were senior to the applicant by virtue of their being in a senior scale from before the date the scale of pay of the Senior Instructors and Junior Instructors including the post of plaintiff were merged in the same scale of pay. Similarly defendant Nos. 7 to 15 were holding post of Senior Instructors with effect from

19.10.1966, 6.2.1964, 19.10.1966, 01.11.1966, 1.11.1966, 1.11.1966, 14.11.1966, 19.11.1966, 1.12.1966 and 17.9.68 and they were also thus working on a Senior Scale on the date the scale of the applicant merged in the higher scale of Rs.250-550/- by order dated 1.7.1974 . The defendant Nos. 7 to 17(Appellants No.1 to 15) had thus acquired seniority over the plaintiff by virtue of their being in a senior scale of pay. This vested right therefore, could not be taken away by a subsequent order merging the two scales made with retrospective effect, as has been held by the Hon'ble Supreme Court in P.D. Agarwal vs. State of U. P. reported in A.I.R.1987(SC) 1976. The above view has been followed by the Hon'ble Supreme Court in Union of India & others vs. Tusar Ranjan Mohanta reported in J.T.1994(4) S.C. Page 390. This being the position of law, the plaintiff cannot claim seniority over the applicant Nos. 1 to 15 of T.A. by virtue of the scale of pay having merged in the scale of pay of Senior Instructors.

19. In the facts and circumstances discussed above we find and hold that the judgement and decree passed by the learned Munsif Kanpur cannot be sustained. T. A. Nos. 2024 and 2025 of 1987 are accordingly allowed and judgement and decree passed in O.S.No.163 of 1983 is hereby set-aside. The parties to bear their own costs.


Administrative Member


Judicial Member