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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

A L L A H A B A D

O. A. No. 272 of 1987

Dated : Allahabad this the ^{22nd} day of ^{September} ~~July~~, 1995.

C O R A M :- Hon'ble Mr. S. Das Gupta, A.M.
Hon'ble Mr. T.L. Verma, J.M.

1. Satya Ram,

2. Kali Charan

Both Assistant Accounts Officers, N.E.Railway,
employed in Financial Advisor & Chief Accounts
Officer, N.E.Railway, Gorakhpur.

..... applicants

(By Advocate Sri G. C. Bhattacharya)

Versus

1. Union of India, through the Chairman, Railway Board,
Rail Bhawan, New Delhi.

2. The General Manager, N.E.Railway, Gorakhpur.

...respondents.

(By Advocate Sri A.K. Gaur)

O R D E R

(By Hon. Mr. T. L. Verma, Member-J)

1. The applicants Satya Ram and Kali Charan were initially appointed as Clerks. On their passing departmental examinations they were promoted to the post of Junior Accountants (subsequently redesignated as Section Officer Accounts) with effect from 10.1.1972 & 21.10.1971 respectively. The applicants along with others were called for interview for empanelment for appointment to the post of Assistant Accounts Officer, Class-II on 5.11.1976. They were interviewed

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and empanelled, on being found suitable, for the post vide order dated 15.1.1977 (Annexure-2). Their names appear at serial Nos. 5 & 6 of the panel. They were, therefore, promoted and posted as Assistant Accounts Officer by order dated 12.7.1977 (Annexure-3) and the applicants have been working as such.

2. By order dated 15.1.1977 (Annexure-4) Vachaspati Mishra, Bansraj Singh, Vidyadhar and 6 others were also selected for the post of Assistant Accounts Officer, Group II and they were placed on the panel for promotion to the said post. J.N. Majumdar, B.A. Bahadur, Gopal Ram Gupta and 4 others were also selected for the post of Assistant Accounts Officer and were placed on the panel for appointment as Assistant Accounts Officer by order dated 12.9.1980 (Annexure-5).

3. The claim of the applicants is that since they were promoted to the post of Assistant Accounts Officer prior to Vachaspati Mishra, Vidyadhar Rai, J.N. Majumdar, B.A. Bahadur, Gopal Saran Gupta and others, they ranked senior to them by virtue of their longer length of service on the said post as compared to them. The seniority of the applicants over Sarv Sri Vachaspati Mishra and others, it is stated has been acknowledged by the respondents while preparing seniority list (Annexure-6). The applicants have been shown at serials 5 and 6 respectively and Vachaspati Mishra, and others have been mentioned at serial below the applicants. They were, therefore, entitled to promotion to the next higher rank i.e. Senior Accounts Officer, in preference to Sarv Sri Vachaspati Mishra, Vidya Dhar Rai, J.N. Majumdar and others mentioned above. One post

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of senior Accounts Officer, it is stated, fell vacant on 17.12.1982 and the other fell vacant on 29.4.1983. In the normal course, and by virtue of their seniority, the applicants should have been promoted to the said posts of Senior Accounts Officer. It is said, that to the utter surprise of the applicants, Vidya Dhar Rai and Vachaspati Mishra were promoted to the said post of Senior Accounts Officer with effect from 29.4.1983 and 17.12.1982 respectively by ignoring the legitimate claims of the applicants for no valid reasons. Again juniors to the applicants namely J.N. Majumdar, B.A. Bahadur, Gopal Saran Gupta, who were selected for the post of Assistant Accounts Officers on 24.9.1980, were promoted and posted as Senior Accounts Officer by superseding the applicants. The supersessions of the applicants, it is stated, is against fair-play and natural justice. The applicant No.1 submitted representation against the supersession on 8.8.1985 (Annexure-10) followed by reminders dated 17.1.1986 and 16.1.1987. The applicant No.2 filed representation against the supersession on 8.8.1985 followed by another representation dated 23.1.1987 (Annexure-11). The aforesaid representations it is stated have failed to evoke any response from the respondents hence this application, for issuing a direction to the respondents to promote the applicants on the next available vacancies of the post of Senior Accounts Officers in the North-Eastern Railway.

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4. The respondents have resisted the claim of the applicants inter-alia, on the ground that the application is barred by time inasmuch as the cause of action has arisen way back in 1977 when they were promoted to the post of Assistant Accounts Officer on Ad-hoc basis and on 29.12.1983 and 17.12.1982 when Vachaspati Mishra and Vidyadhar Rai were promoted to the post of Senior Accounts Officer in preference to the applicants. The case, it is stated, has been filed nearly four years after the cause of action had arisen. The further case of the respondents is that the applicants were promoted as Assistant Accounts Officer against the short-fall in the reserve quota for scheduled caste whereas their seniors were promoted subsequently against normal vacancies. Since the promotion of the applicants was against the norms and they were given adhoc promotion and their seniority was finally to be adjusted according to their seniority in the next below grade vis-a-vis their seniors, on their regular promotion, they are not entitled for the benefit of their service on adhoc basis, for determining their seniority vis-a-vis Vachaspati Mishra and others, who were promoted on regular basis though after the promotion of the applicants.

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5. The question that falls for our consideration is whether the promotion given to the applicants was adhoc ~~2~~ and if so whether they are entitled to get the period of their adhoc promotion counted for determining their seniority.

6. We have heard the learned counsels for the parties and perused the record. From the pleadings of the parties and other material on record, it is app^arent that the applicants were given promotion to wipe out the backlog of the quota of Scheduled Caste and Scheduled Tribes candidates. The consistent case of the respondents is that the applicants, who did not come within the ~~zone~~ ~~zone~~ zone of consideration, were given adhoc promotions pending further orders of the Railway Board. The averments made by the respondents in the counter-affidavit are borne out from Annexure-A-2, the panel prepared for promotion to the post of Assistant Accounts Officer and Annexure-A-3, whereby the applicants were promoted. Annexure-A-2 clearly mentions that promotion of the applicants was provisional. In order, Annexure-A-3, dated 12.7.1977, it has been clearly mentioned that the promotion of the applicants in gazetted rank was purely temporary and on adhoc basis pending further orders of the Railway Board. The adhoc promotion was not questioned by the applicants till the promotion of Sri Vachaspati Mishra and others to the post of Senior Accounts Officer on 29.12.1973 and 17.12.1982. The fact that the applicants remained satisfy with adhoc promotion coupled with Annexure-CA-2 and CA-3 referred to above, leaves no room for doubt that the promotion of the applicants as Assistant Accounts Officer was on adhoc basis.

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7. The Railway Board issued instructions by letter No.E(SCT/73CM15/13 dated 17.8.74 regarding reservation for Scheduled Caste and Scheduled Tribes in promotion made by selection from Class III to Class II and from class II to the lowest rung of Class I. In para 3 of the said letter it has been provided that the selection against the vacancies reserved for Scheduled Castes and Scheduled Tribes will be made only from among those Scheduled Caste and Scheduled Tribes Officers who are within the normal zone of consideration. This instruction, it was found had been mis+understood leading to certain anomalies ~~positions~~. Railway Board therefore, issued further instruction vide letter No. 75E(SCT) 15/15 dated 1.4.1977 ~~by~~ clarifying that selection against the reserved vacancies for promotion from Class III to Class II or from Class II to Class I should be made from among those officers belonging to the Scheduled Castes/Scheduled Tribes who are within the normal zone of consideration fixed with reference to the total number of vacancies (inclusive of reserved vacancies) and there would be no separate zone of consideration for the reserved vacancies.

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8. The above directions thus, make it clear that the only such of the scheduled Castes and Scheduled Tribes candidates were eligible for consideration for promotion to the post of Assistant Accounts Officer who come within the normal zone of consideration fixed with reference to the total number of vacancies. The applicants have failed to give clear statistics as to the number of vacancies available with number of vacancies reserved for Scheduled

Castes and Scheduled Tribes candidates so as to enable us to ascertain whether the applicants come within the normal ~~zone~~ of consideration. That not having been done, we are left with no alternative but, to accept the contention of the learned counsel for the respondents. that the applicants did not fall within the zone of consideration.

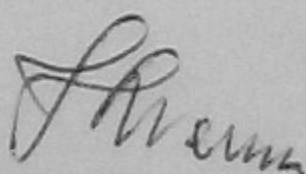
9. In view of the conclusion arrived at above, it follows that the applicants could not have been promoted even on adhoc basis in view of the instructions issued by the Railway Board in 1974, and clarified by issuing another letter in 1977. It appears that when this fact came to the knowledge of the authorities, the matter was referred to the Railway Board. The Railway Board, issued direction to the effect that employees, who were promoted on the basis of their enpanelment though were not within the zone of consideration, could be allowed as a special case to continue on adhoc basis, and be assigned seniority in Class II service with reference to their actual position on the future class II panel on which they could have been included, had they been considered for class II selection only when in turn based on normal zone of consideration.

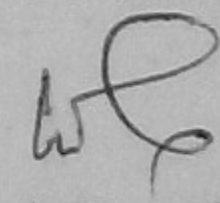
10. The above instructions explain how the applicants continued to be on the promoted post, although they were not within the ~~zone~~ of consideration. The settled position of law regarding nature of adhoc promotion is that where initial appointment is only adhoc and not according to the Rules, the period of adhoc officiation can not be take into account for considering the seniority. One Prahlad ^{Kureel} ~~Puri~~, who was similarly promoted to the post of Assistant Accounts Officer on adhoc basis filed Original Application No.179 of 1991, challenging promotion of some junior candidates who were promoted as Senior Accounts Officer on the ground that he has been promoted to the post of Assistant Accounts Officer

18 months before them. A bench of this Tribunal dismissed the claim of Sri ^{Kureel} ~~Rurk~~ by order dated 29.1.1993, on the ground that the period of his officiation on the post of Assistant Accounts Officer being adhoc in nature, the same could not be taken into account for determining his seniority. The facts of this case are pari-materia with the facts of the case of O.A.No. 179 of 1991.

11. In addition to the above, if the applicants, were aggrieved by their promotion on adhoc basis, they should have challenge the same before an appropriate forum within the period of limitation. The promotions were made way back in 1977, but, not even a whisper appears to have been raised against their adhoc promotion by the applicants until Sri Vachaspati Mishra and others were promoted to the post of Senior Accounts Officer in 1982, and 1983. Equity does not come to hold of those, who sleep over their right. The applicant therefore, can not ~~be~~ not be permitted to challenge the nature of their promotion and argue that they had been regularly promoted after such an inordinate delay.

12. In view of the discussions made above, we find that there is no merit in this application and the same is dismissed leaving the parties to bear their own costs.


J.M.


A.M.)

VKP/-