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O.A. no. 350 of 1987

QUORUM: Hon'ble Mr.T.L.Verma JM
Hon'ble Mr.S. Dayal AM
-.-.-.-.-

R.S.S.Chauhan s/o Bengali Singh Chauhan,
Traffic Inspector, Norther Railway
Etawah. - - - - - Applicant

C/A Sri R.P.Srivastava

VERSUS

1. Union of India through General Manager,
Northern Railway, Baroda House,
New Delhi.
2. The Senior Divisional Personnel Officer,
Northern Railway, Allahabad .
3. The Divisional Railway Manager,
Northern Railway, Allahabad

— — — — — Respondents

C/R Sri Govind Saran

O R D E R

Mr.
By Hon'ble/T.L.Verma 'JM'

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thereafter to grade Rs.700-900 with effect from 1.1.1984, the date from which his juniors were promoted with all consequential benefits including retiral benefits based on the revised pay claimed, and for issuing a direction to the respondents to decide the appeal preferred by the applicant against his reversion.

2. The applicant was appointed as Assistant Station Master on 14.7.1950 and was promoted to the post of Station Master grade Rs.425-640/- in June 1978, to the post of Traffic Inspector grade Rs.455-700/- on 2.2.1980 and to grade Rs.550-750/- on 12.6.1982. He however, ^{it is alleged} was arbitrarily reverted to grade Rs.455-700 from grade Rs.550-750 on 22.6.1983 though he had cleared selection test for the post of Traffic Inspector held on 9.3.1980 and 3.6.1980. Further case of the applicant is that one Sri Sudarshan, who was junior to the applicant, was promoted to grade Rs.550-750/- with effect from 20.6.1983 by reverting the applicant to grade Rs.455-700/-. The applicant, submitted representation against his reversion and also served notice under section 80 C.P.C. on the respondents on 20.2.1984. He was informed that after restructuring of ^{cadres} Traffic Inspectors' post was being controlled by the Headquarters and all promotions in grade Rs.550-750/- were being made on a purely adhoc basis strictly on the basis of seniority and that Sudarshan Kumar and V.P.Karn were senior to him and that he, being juniormost among the person promoted on adhoc basis, was reverted to accommodate the seniors.

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3. According to the applicant Sudarshan Kumar was recruited locally as Traffic Apprentice and that he joined his working post on 13.7.1979 after

completion of his training. He was posted as Controller on his exercising his option for the post in Control office. On his request he was posted as Traffic Inspector on leave vacancy vide DPO/AV Office order No.941/E/39/ET/3/TI/XI dated 25.1.1980 with clear stipulation that the posting will not confer any right for posting as Traffic Inspector in future. It is stated that the name of Shri Sudarshan Kumar did not figure in the panel of T.Is. finalised on 14.8.1990. So option, if any, exercised by him subsequently for posting as T.I. will not make him senior to the applicant. He, therefore, submitted several representations to restore his position.

4. The respondents, it is alleged, have not passed any order on the representation, submitted by the applicant. He was promoted to the grade of Rs.550-750/- on 31.12.1986 and was appointed to officiate as Traffic Inspector in grade Rs.700-900/-. But he was neither given benefit of his service as Traffic Inspector in scale Rs.550-750/- from 12.6.1982 to 26.6.1983 nor order reverting him to grade Rs.455-700/- has been set aside despite representation submitted by him. The order reverting the applicant to grade Rs.455-700 is wholly arbitrary, illegal and against provision of law and rule. Hence this application.

5. The respondents have contested the claim of the applicant. In the C.A. filed on behalf of the respondents, it has been stated that the applicant was promoted to the post of Traffic Inspector grade Rs.455-700/- by order dated 31.1.1980 on adhoc basis subject to passing selection test. The further case of the respondents is that the applicant opted for the Traffic Inspector cadre, he was selected and placed in

the said cadre. The applicant was promoted in his own cadre as Traffic Inspector grade Rs.550-750 w.e.f.11.6.85 on regular basis as per his seniority in the said cadre and further as Traffic Inspector grade Rs.700-900 on adhoc basis with effect from 1.1.1987.

6. We have heard the learned counsels for the parties and perused the records .

7. The first question for determination in this application is inter se seniority of the applicant vis a vis Sudarshan Kumar. The applicant admittedly was promoted to Traffic Inspector grade Rs.455-700 on 2.2.1980 on adhoc basis. He was empaneled for that post on his clearing departmental examination on 14.8.1980. Sudarshan Kumar , however, joined as T.I. on regular basis on 2.2.80. The applicant, who was empanelled for promotion to the said post on a subsequent date, thus should be junior to Sudarshan Kumar.

8. From the perusal of the supplementary affidavit read with annexure CA-1, it is clearly established that Sri Sudarshan Kumar was selected as Traffic Apprentice and after completion of training, was posted as Section Controller in grade Rs.470-750 on 13.9.1977, whereas the applicant was appointed as Assistant Station Master on 14.7.1950 and was promoted to the post of S.M. grade 425-640 in June, 1978. Sri Sudarshan Kumar thus was appointed on a higher scale than the grade of Rs.425-640 to which the applicant was promoted in June 1978. He was thus senior to the applicant at that ^{point of} time ~~also~~.

9. The said Sudarshan Kumar was, thereafter, on his request ^{posted} as A.S.M. grade Rs.455-700 with effect from

1.2.1978. Again on his request he was posted as T.I. grade Rs.455-700 w.e.f. 2.2.1980. From the perusal of annexure CA-1, it would appear that in terms of Railway Board's letter no. 757-E/102 (EIB) dated 7.4.1976, 15% quota from Traffic Apprentices has been prescribed, for the post of Traffic Inspector, Section Controller, Asstt. Yard Master, A.S. grade Rs.455-700 and Rs.47-750 in each category. Shri Sudarshan Kumar was appointed against 15 % quota for Traffic Apprentices, first as Section Controller and thereafter he was shifted as A.S.M. and finally as Traffic Inspector. According to the extant rules, Traffic apprentice absorbed in a particular category has to seek further advancement in the same category, in terms of G.M.(P)'s letter no.758-E/5-XI (EIB) dated 6.11.1980. That being so, Sudarshan Kumar should have been absorbed in that category. Subsequent shifting to the post of A.S.M. and thereafter to the post of Traffic Inspector will affect his original seniority. In other words, his seniority in the category to which he was transferred on his request shall be reckoned from the date of entry in that category. The averments in the supplementary counter affidavit and other materials on record make it abundantly clear that the said Sudarshan Kumar has been given seniority in category of Traffic Apprentice w.e.f. 2.2.1980, the date on which he joined the said post. We find nothing wrong in the decision of respondents to give seniority to Sudarshan Kumar in Traffic Inspector's category from 2.2.1980.

10. It is also admitted that Sudarshan Kumar was promoted as T.I. Grade Rs.550-750 by order dated 13.4.1981 and the applicant was promoted on the said grade on Rs.550-750 by letter dated 3.6.1981. The applicant joined

the post on the same date and Sudarshan Kumar on 6.9.1991 after his representation was disposed of. The contention of the learned counsel for the applicant is that the seniority in grade Rs.550-750 should have been determined from the date of joining and as such the applicant, who had joined as T.I. Grade Rs.550-750 on 3.6.1981, two months before Sudarshan Kumar joined, should rank senior to him. Therefore, he should have not been reverted to the grade Rs.455-700.

11. We are unable to accept the contention of the learned counsel for the applicant. In this connection, it may be mentioned that promotion of the applicant to T.I. Grade Rs.550-750 was on adhoc basis and so was the promotion of Sudarshan Kumar to the post in grade Rs.550-750. At that time the post of Traffic Inspector grade Rs.550-750 was headquarter controlled post. On posting of regular incumbent from the headquarter, Sri Sudarshan Kumar was reverted to his substantive post of grade Rs.455-700. From the perusal of annexure CA-1, it appears that the order reverting Sudarshan Kumar to grade Rs.455-700 was an administrative error. This error, it is stated, occurred because the applicant had joined the post of T.I. grade Rs.550-750 immediately after order of promotion was passed on 3.6.1981 while Sri Sudarshan Kumar had not joined on the said post as he had submitted a representation for being permitted to remain at Aligarh. In the aforesaid circumstances, Sudarshan Kumar was reverted to grade Rs.455-700 instead of the applicant R.S. Singh Chauhan, who was actually junior to Sudarshan Kumar. The above administrative error was rectified by promoting Sudarshan Kumar to grade Rs.550-750 by reverting the applicant by the impugned order dated 20.6.1983.

12. The learned counsel for the applicant submits that an employee, who refuses promotion will take his seniority from the date of his re-promotion and all the persons promoted earlier will rank senior to him. Since Sudarshan Kumar did not join the place to which he was posted on promotion, he will be deemed to have refused the promotion and as such his seniority shall be reckoned from the date on which he joined in the said scale. In support of his contention, he has relied upon the circular no.940-ElO-III (EIV) dated 17.2.1965. We have perused the circular and also order dated 5.9.1981, whereby posting of Sudarshan Kumar, T.I. Aligarh to Allahabad on promotion in grade Rs.550-750 at Allahabad transferred to Aligarh and Sudarshan Kumar has been appointed to officiate on that post as Traffic Inspector grade Rs.550-750. After careful examination of the pleadings of the parties and the documents referred to above, we are unable to hold that Sudarshan Kumar had refused promotion to grade Rs.550-750. That being so, the delay of five months in joining the post, in our opinion will not affect the position of Sudarshan Kumar in the panel. The delay as apparent from the pleadings of the parties had taken place because the competent authority took time in deciding the representation of Sudarshan Kumar to permit him to remain at Aligarh. Sri Sudarshan Kumar, therefore, should not suffer on account of delay on the part of the respondents in deciding his representation.

13. On a careful consideration of the facts and circumstances discussed above, we are satisfied that Sri Sudarshan Kumar was senior to the applicant all along. The applicant, therefore, was rightly reverted to grade ;.455 Rs.455-700 by the order dated 20.6.1983. We are also satisfied

that Shri Sudarshan Kumar remained senior in grade
Rs.550-750 also vis a vis the applicant.

14. In view of the above, we find no
merit in this application and dismiss the same.

15. There shall be no order as to cost.

A.M.
A.M.

J.M.
J.M.

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