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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Original Application No. 239 of 1988

R.L. Pandey Petitioner
Versus
Union of India and Ors Respondents

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HON'BLE MR. JUSTICE R.K. VARMA, V.C.

HON'BLE MR. V.K. SETH, MEMBER(A)

(By Hon. Mr. Justice R.K. Varma, V.C.)

By this petition filed Under section 19 of the Administrative Tribunals Act 1985, the petitioner has sought a direction to the respondents to correct the seniority of the petitioner in grade Rs.425-640 as Catering Inspector from the date of promotion of his junior Shri Kewal Krishna vide notice dated 22.10.86 (Annexure VI to the petition) with all consequential benefits.

2. The facts giving rise to this petition briefly stated are as follows:

R.K. Varma
On departmentalisation of the Catering Unit of Indian Railways, the petitioner was absorbed in the Department of Catering and Vending Establishment of Northern Railway. Later on, the petitioner was put to work in the category of Bill Issuer w.e.f. 30.12.57. He was promoted as Asstt. Catering Manager w.e.f. 13.1.61

and he continued to work as such till 15.10.69. Thereafter the petitioner was given a chance to work and manage the department of Catering Unit at Mirzapur as Manager w.e.f 10.10.69 upto 6.6.70 vide certificate dated 15.1.77 (Annexure I to the petition) issued in this behalf by the Asstt. Commercial Supdt. Northern Railway Allahabad.

3. In the year 1968 a revised seniority list (Annexure- II to the petition) of Catering staff of the following categories of staff was circulated.

- (1) Unit Catering Manager AS Rs. 150-240
- (2) Asstt. Manager AS Rs. 110-200
- (3) Store-Cum-A/cs Clerks AS Rs. 110-180

In the revised seniority list the name of the petitioner found place at sl. no.8, whereas the name of Sri Kewal Krishna was placed at sl. No.45 which obviously indicated that seniority of the petitioner was far above that of respondent no.4.

4. In the year 1976, the Railway Administration held a selection for the post of Store-Cum-A/Cs Clerk in the grade of Rs.260-400. The petitioner was not informed or called for the said selection, whereas the juniors who were working in the lower posts were called and selected. The petitioner has filed a certificate (Annexure No.III to the petition) issued by the Unit Catering Manager (Vending) Northern Railway, Kanpur which states that the said circular calling for the applications for the posts of Stores-Cum-A/Cs Clerk in the Grade 260-400 in the year 1976 was not received

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in Vending Unit CHB and hence Sri R.L. Pandey (the petitioner) could not be informed of the same and hence he could not apply. The petitioner made representation to the Higher Authority against the promotion of his juniors in the circumstances.

5. In the year 1980 a selection was again held for the post of Stores-Cum-A/Cs Clerk Grade Rs.260-400. In the examination for the said selection, the petitioner appeared with respondent no.4 and both were declared successful and were given the same grade.

6. In the year 1986 a selection on the basis of Viva-voce test was held for the post of Catering Inspector in the grade of Rs.425-640 and in the list of candidates called for the viva-voce test the name of respondent no.4 was placed at sl. no.2 and the petitioner's name was shown at sl. No. 19 vide (Annexure 5 to the petition) dated 30.4.86.

7. When the result of the selection was declared and the names of Catering staff promoted to the post of Catering Inspector Gr. II (Rs.425-640(RS) was circulated by the Head Quarter's Office, New Delhi and circulated for information to the staff by the Division Office, the petitioner came to know for the first time that he had been superseded by a very junior person, respondent no.4. The petitioner then made a representation dated 9.2.87 to the General Manager (Catering), Baroda House, New Delhi followed by a reminder dated 25.3.87 but he received no response and thus the petitioner being aggrieved by the discriminatory treatment filed this petition.

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8. The respondents have sought to justify the departure from the original seniority of the petitioner over respondent no.4 and have alleged that the respondent no.4 was senior

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to the petitioner at the time of selection to the higher grade post of Catering Inspector Gr. II (Rs.425-640).

9. The respondents in their Counter affidavit at para 7 have stated that when suitability test for the post of Stores-Cum-~~Asst~~/Cs Clerk Gr. Rs.260-400 was conducted, a combined seniority list of sale Incharge, Bill Issuers and Class IV staff of Catering Department was prepared and at that time, the respondent no.4 was working in the Grade of Rs.103-135(AS) on regular basis and the petitioner was working in the grade of Rs. 80-110(AS) and as such the respondent no.4 was senior to the petitioner as he was working in higher grade than the petitioner. The respondents have not filed the alleged combined seniority list in support of this averment.

10. The petitioner on the other hand has filed the revised seniority list of Catering staff as per (Annexure II) dated 6.4.1968, according to which the petitioner is shown at sl. no.8 whereas the respondent no.4 is shown at sl. no. 45 of the seniority list and whereas the petitioner is shown to have been confirmed in the substantive post on 13.1.61, the respondent no.4 is shown to have been confirmed on 3.12.64. Further the petitioner is shown to be officiating as AQM in the grade of Rs.110-200 whereas the respondent no.4 is shown to be officiating as Clerk in the pay scale of Rs.110-180. Thus the unsubstantiated averment made in para 7 of the Counter affidavit can be of no avail to the respondent in disputing the seniority of the petitioner over respondent no.4, as has been well established by (Annexure II to the petition.)

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11. The learned counsel for the respondents has sought to justify the placing of the respondent no.4 in the list of candidates for selection to the post of Catering Inspector Gr.II (Annexure V) dated 30.4.86 as well as in the list of selection for appointment to officiate as Catering Inspector Gr.II purely on ad hoc basis, pending selection against the existing vacancy sanctioned as a result of restructuring (Annexure VI) dated 22.10.86, on the basis of seniority, treating the respondent no.4 as senior to the petitioner.

12. But we find that there is no valid basis for the respondents to treat the respondent no.4 as senior to the petitioner. The petitioner has been very much senior to the respondent no.4 from the very beginning in the substantive post and the petitioner and the respondent no.4 in the year 1980 were selected for the post of Stores-Cum-A/Cs Clerk in the same examination. No explanation was given by the respondents as to how the original interse seniority between the petitioner and the respondent no.4 got changed at any time. The only ground alleged by the respondents for treating the respondent no.4 senior to the petitioner is that the respondent no.4 was working in the grade of Rs.103-135, whereas the petitioner was working in the grade of Rs.80-110. But this alleged ground is not substantiated by any document. On the contrary, the position is that the petitioner was receiving more salary than the respondent no.4 as per revised seniority list of the various categories of staff (Annexure II) dated 6.4.68 filed by the petitioner which list has not been disputed by the respondents. In the said list the date of confirmation of the petitioner is shown as 13.1.61, whereas the date of confirmation of Sri Kewal Krishna is shown as 3.12.64. Thus the petitioner in our opinion, is entitled to be placed above the respondent

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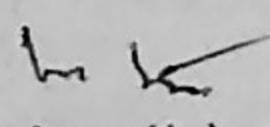
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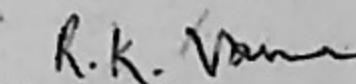
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no.4, both in the list of candidates (Annexure V) dated 30.4.86 as well as in the list of officiating appointments as Catering Inspector on adhoc basis (Annexure VI) dated 22.10.86.

13. In view of the discussion aforesaid, this petition succeeds and is allowed. The respondents are directed to treat the petitioner senior to the respondent No.4 and to appoint him to officiate as Catering Inspector Gr. II Rs. 425-640 on adhoc basis in precedence to respondent no.4. It is directed that ~~the name~~ ^{Mr. on such order being passed Mr.} of the petitioner shall be deemed to have been ~~appointed~~ ^{substituted for unappointed Mr.} in the place of respondent no.4 in the list of appointments (Annexure VI) and shall be given all consequential benefits. The respondents shall make consequential change in respect of respondent no.4. As regards the petitioner's claim of seniority over his juniors who were selected for the post of Stores-Cum-A/Cs Clerk in the grade of Rs.260-400 in the year 1976 when the Administration did not inform the petitioner to apply for the post of Stores-Cum-A/Cs Clerk, the respondents are directed to consider and decide the petitioner's representation claiming seniority over those juniors.

14. There shall, however, be no order as to costs.


Member (A)


R.K. Vora
Vice Chairman

August 30th, 1993

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