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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

1. O.A.No.1232 of 1988.

Lal Bahadur Chauhan & another.....Applicants.

Versus

Union of India & others Respondents.

2. O.A.No. 1376 of 1988.

Rakesh Kumar Srivastava & 11 others . Applicants.

Versus

Union of India & others Respondents.

Hon'ble Mr.Justice S.K.Dhaon ,V.C.

Hon'ble Mr.K.Obayya,A.M.

(By Hon'ble Mr.Justice S.K.Dhaon,V.C.)

The controversy raised in this application and in O.A.No.1376 of 1988 is similar. The two applications have been heard together. Thereafter, they are being disposed of by a common judgment.

2. The material averments are/ the applicants were initially appointed as Assistant Goods Clerks. They were promoted as Senior Goods Clerks. Promotion to the post of Supervisor in the graduate quota had to take place. Quota fixed was 10%. It appears that a panel was set-up to select the qualified candidates. On 16.6.83, the applicants were empanelled. They were required to undergo training. The controversy between the parties is about the duration of the training with which we are not concerned. It appears that the applicants were under ~~and~~ training in July, 1984, a restructuring of panel took place w.e.f. 1.1.84. After completing the training, the applicants were appointed either as Goods Clerks Or Coaching Supervisors. The panel-list was published on 16.6.83 and thereafter on 10.2.87, a seniority list was published.

3. The grievance of the applicants is that in the aforementioned seniority list dated 10.2.87, they were shown junior to those who were appointed as Goods Supervisors on account of restructuring of panel in accordance with order dated 1.1.84. It appears to be the case of the applicants which has not been controverted in the reply filed on behalf of the respondents that those who were shown senior to the applicants, were appointed later than the applicants as Goods Clerk. Therefore, it appears to be an admitted position that the applicants had a longer length of service than those who were shown senior to them in the seniority list.

4. The simple argument, advanced by the applicant, is that in the absence of restructuring of panel, due to controversy the normal rule of length of service should not be departed for the purpose of seniority. The argument is met by the learned counsel for the respondents on two grounds; the first is that since the applicants have been empanelled, it is a clear understanding that they had to undergo training and it will be deemed that they were appointed as Supervisors/Coaching Clerks only when they joined the post after completing their training as Supervisors/Goods Clerks. In the reply, it is stated that the period of training is fixed as two years wherein in the rejoinder-affidavit, it is stated that the duration of the training was 60days. The notification inviting applications under 10% graduate quota, does not indicate any period of training nor it has been shown that it was intended that the date of joining on the post of Supervisor will be reckoned from the date when a candidate

joined the post after completing the training. It appears that after empanelment, the applicants became entitled to be Supervisors/Coaching Clerks subject to successful completion of training. The process cannot be broken into two different compartments. Even though a Government servant had been empanelled and was sent for training, yet the period during which he had to undergo for training will be scrutinized for the purpose of seniority. Once a candidate completes his training successfully and joins within the time allowed for joining, his service-career ^{to} will be deemed/have commenced from the date of joining.

5. Learned counsel also placed reliance on Para 302 of the Indian Railway Establishment Manual. A particular reliance has been placed on these words:-

"In categories of posts partially filled by direct-recruits and partially by promotion, the criterian for determination of seniority should be the date of regular promotion after due process and in case of a promotee and the date of joining, the working post after due process in the case of direct recruitment"

6. The crucial question to be determined is as to whether the applicants were appointed as direct recruits. The relevant rule has been seen by us and there were three modes for recruitment; first is open recruitment, the second is by promotion and third by transfer. By no stretch of imagination, it can be said that the applicants were promoted as Supervisors/Coaching Clerks. We are satisfied that the applicants fall within the category of promotees. The said rule has no application.

7. Learned counsel for the respondents next urged that this application is not maintainable as admittedly the persons alleged to be junior are not impleaded as respondents and, therefore, the respondents cannot get any relief. It is true that one of the prayers made is that the applicants will be made senior to some of the persons. However, we are not inclined to give such relief. It is not necessary to implead those promotees in the matter of determination of seniority which is likely to be affected. The reason is that the Court of law does not fix seniority. That is a function which is performed by the department. Therefore, if we direct the respondents to re-fix the seniority of the applicants than this course will satisfy the principle of natural justice.

8. The last point urged is that this application is barred by time and, therefore, it should be thrown out. It is not in dispute that the applicants made a series of representations beginning from 16.10.87 to 28.9.88. The argument is that in view of the matter, the applicants should have approached the tribunal after expiry of six months before making first representation. The representation was filed on 16.10.87 and this application was filed on 26.10.88. Even if there is slight delay which, in our opinion, is not a delay. It is not a fit case where delay cannot be condoned. The application succeeds and is allowed. The respondents are directed to re-fix the seniority of the applicant published on 10.2.87 in the light of above observations and fix the seniority in O.A.No.1232 of 1988 in accordance with the

directions given above.

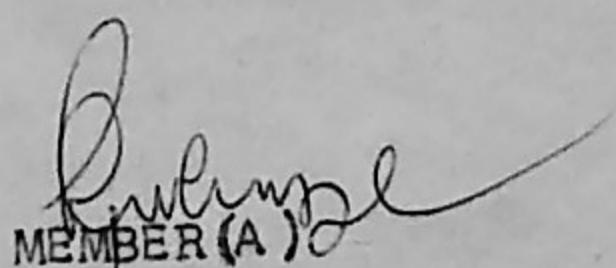
9. In O.A.No.1376 of 1988, though the panel was same, the seniority-list was published on 23.11.87. Likewise, we direct that the respondents shall re-fix the seniority of the applicants as published on 23.11.87. With these observations, we dispose of the applications.

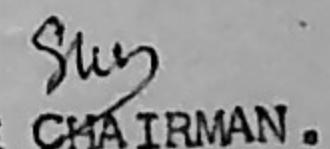
10. Shri A.K.Gaur-learned counsel for the respondents states that the respondents will re-fix the seniority of the applicants within a period of six months from the date of receipt of certified copy of the order. Let it be done within aforesaid period.

11. We are informed that selection to some promotional posts is likely to take place in the near future. We direct that no appointment will be made to the promotional posts till the seniority of the applicants is re-fixed. However, it will be open for the respondents to make stop-gap-arrangement.

12. There shall be no order as to costs.

13. Let a copy of this judgment be placed on the file of O.A.No.1376 of 1988 'Rakesh Kumar Srivastava & others Vs.Union of India & others'.


MEMBER (A)


VICE CHAIRMAN.

DATED: NOVEMBER 25, 1992.

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