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Versus

Union of India
and others Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.
Hon'ble Mr. K. Obayya, Member (A)

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicant who was promoted as Clerk on 15.12.1956 and later on promoted as Head Clerk on 1.1.1980 and Assistant Superintendent w.e.f. 1.1.1984 in the grade of Rs. 550-750 as a result of re-structuring of the posts in the cadre. The applicant was further promoted as Superintendent in Grade Rs. 2000-3200 (Rs) under Sr. DEE/TMS/ Kanpur against clear vacancy with the approval of the competent authority by the order ~~vide 11.11.1988~~ dated 7.3.1988. It appears that 20 months ~~after~~ after passing the promotion order, one G.C. Dixit was promoted in place of the applicant and applicant was reverted to the lower post. The applicant has challenged this reversion order before this Tribunal and in the interim order passed by this Tribunal, he is continuing before the said post. The application was resisted on behalf of the respondents and it has been stated that although the applicant was promoted against a clear vacancy in place of one who retired ~~12.11.1988~~ but as a result of a direction given by the Tribunal, this order has to be passed. The said P.C. Dixit was Assistant Station Master in the Central Railway and was transferred to Northern Railway in the year 1965. He was declared medically unfit in the year 1975 and was absorbed as Senior Clerk w.e.f. 25.10.1975. He was assigned seniority as a Senior Clerk w.e.f. 14.9.1962 and was later on promoted as Head Clerk on 21.7.1978. Subsequently, as the Railway

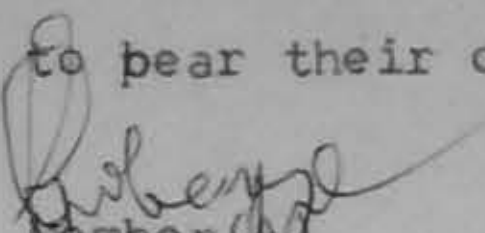
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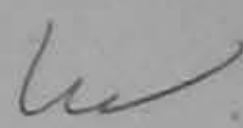
sought to revise the seniority of said Dixit w.e.f. 1.1.1973. He was to be reverted back to the post of Senior Clerk. He filed a writ petition in the High Court of Judicature at Allahabad and his reversion order was stayed and by operation of law, the said petition was transferred to the Tribunal and the Tribunal vide its judgment dated 26.2.1989 allowed the application with a direction to the Railway Administration that Sri G.C. Dixit be given ~~the~~ the benefit of the service w.e.f. 30.10.1965 and his seniority be fixed below of all senior clerks who were in ^{from} position/30.10.1965 and not on the basis of equivalence granted w.e.f. 1.1.1973 and to regulate his future promotion accordingly. As a result of the order of the Tribunal, the said Dixit was promoted. As such, by the judgment of the Tribunal, the said Dixit who was the junior most was promoted and the applicant was reverted. It is true that the applicant was not a party to the writ petition or the said application before the Tribunal, as such, the judgment of the Tribunal may not ^{be} binding on him but the dispute raised by the said Dixit is regarding his seniority, and in this very dispute his seniority was fixed and that is why it led to the reversion of the applicant who was promoted against a clear vacancy on officiation under the normal rules. Under the normal rules, the applicant is entitled to count the entire period of continuous officiation towards the seniority. But in view of the intervening circumstances, obviously the said Dixit has become senior to him and has already been appointed. In the meantime, certain posts must have occurred but there appears to be no reason as to why the applicant has not been regularised against any vacancy. It is only after considering the case of the applicant for regularisation and to promote him against the said post, his

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reversion order will become effective but he will
get the benefit as and when vacancy occurs. The
application is disposed of with the above observations.
Parties to bear their own costs.


Member (A)


Vice-Chairman

Dated: 17.12.1991

(n.u.)