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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Original Application No: 1763 of 1993

S.C.Srivastava Applicants.

Versus

Union of India & Ors. Respondents.

Hon'ble Mr. S.Das Gupta, Member-A

Hon'ble Mr. T.L.Verma, Member-J

(By Hon'ble Mr. T.L.Verma, J.M.)

The applicant, Suresh Chandra Srivastava, Chargeman -A Process Section North Eastern Press Gorakhpur has filed this application under Section 19 of the Administrative Tribunals Act for quashing order dated 28/30.9.1993 Number E/255/12/Press/IX fixing combined seniority of Chargeman-A Northern Railway Press grade 1600-2600 (Annexure-1) and direction to the respondents to count the length of service of the applicant in the cadre of Chargeman-A from the date of continuous officiation w.e.f. 1.1.1984 and other consequential reliefs as mentioned in para 8.3 to 8.6 of the application.

2. As mentioned in para 8.3 to 8.6 of the

2. The applicant was appointed as a Cameraman in the scale of Rs. 425-700 in the Printing Press of North Eastern Railway Gorakhpur on 8.6.1981. The Railway Board by its letter No. P.C. III/83/UPG/7 dated 4.9.1984 accorded sanction to the tradewise distribution of the post of the Technical Supervisors (Printing Press) (Annexure A-2, compilation 2), as detailed below:-

Section	<u>No. of Posts allotted in different grade</u>			
	<u>Chargeman'B'</u>	<u>Ch. Man'A'</u>	<u>Foreman</u>	<u>Foreman</u>
	<u>Came raman</u>	<u>550-750</u>	<u>700-900</u>	<u>840-1040</u>
	<u>Hd. Reader</u>			
	<u>425-700</u>			
	<u>425-600</u>			
	33%	30%	27%	10%

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After the tradewise distribution of posts the General Manager's office vide order No. E/210/12/II/Port I (IX) passed provisional order of promotion whereby the applicant was promoted to grade 550-750 from grade 425-700 and was placed in Production and Control Organisation (Annexure-3). ~~The promotion was to take effect from 1.1.1984.~~ He was accordingly, allowed proforma fixation of pay from 1.1.1984. In the promotion list, the applicant was at Sl. No. 9 while Bhupendra Veer Singh was at Sl. No. 10. The above promotions were made consequent upon restructuring of cadre of technical supervisors of Printing Press in the scale of 840-1040, 700-900, 550-700 as sanctioned vide Memorandum No. E/59/2/UPG/84 IX dated 26.3.1985 in terms of Railway Board's letter No. PC III/83/UPG/7/ dated 4.8.1984.

3. The Railway Board by order communicated ~~xxx~~ under letter No. E(ANG)/1/85/PM-13/3 New Delhi dated 24.10.1985, ~~the post of Cameraman~~ directed that the post of Cameraman be redesignated as Chargeman 'B' in the same scale.

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-- The seniority as given in the provisional promotion list was subsequently questioned by B.V.Singh by filing a representation. The appropriate authority, on a consideration of the representation filed by Shri B.V.Singh, ordered that Shri B.V.Singh should ~~rank~~ Senior to Shri Srivastava in the category of Chargeman 'A' (550-750) and that the period of promotion of Shri Srivastava to the post of Chargeman 'A' shall be treated as adhoc up to the date of issue of AVC ~~for~~ for promotion of Cameraman (425-700) to the post of Chargeman 'A' (550-750). The applicant questioned the correctness of the ^{above} decision by filing OA No. 231/86. The OA was dismissed by judgement and order dated 16.1.1987 (Annexure RA-4). Thereafter

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interim seniority list of technical and supervisory of various sections of printing press was circulated by General Manager (Personnel) Gorakhpur under letter No. Sau/255/12/Press IX dated 25.5.1987 (Annexure-6) in which the applicant was shown as Chargeman-A (PCO) in the scale of pay of Rs. 550-750 w.e.f. 1.1.1984 with a note; 'This post is excadre and that Shri S.C.Srivastava will not get the benefit of seniority.' One Sunil Kumar Singh, a direct recruit who joined the service after training, filed O.A. No. 1034/1988 for a decision whether the seniority should be determined according to the provisions contained in para 303(A) of the I.R.E.M. or according to the provisions of para 303(B). The Tribunal, by its order dated October 14, 1992 allowed the application and issued a direction to the respondents to prepare a fresh seniority list according to the provisions of para 303(A) of the I.R.E.M. Pursuant to the directions issued in the said case, the Railway Board/Authorities published fresh seniority_{list} (Annexure 8-A) compilation 2). The above seniority list has been challenged by Raj Kumar Singh in O.A. No. 124/1993 and the same is pending for consideration. The applicant also filed representation (Annexure-9) for giving him the benefit of length of service for the purpose of determining seniority. The respondents, it has been stated, have without deciding his representation dated 20.7.1993 with a reasoned order, have passed the impugned order in which the applicant has been shown at the bottom of the seniority list of the Chargeman 'A'. As The impugned list, it is stated, has been prepared without taking into account continuous officiation of the applicant as Chargeman 'A', hence this application for the reliefs ~~xxx~~ as mentioned above.

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4. The claim of the applicant has been contested by the respondents. It has been averred in the Counter Reply that this application is barred by the principle of resjudicata and that the post of Cameraman was redesignated as Chargeman 'B' w.e.f. 24.10.1985 whereas the respondents No. 6, 7 & 8 were appointed as Chargeman 'B' prior to that date *and* such are senior to the applicant.

5. It is not in dispute that prior to tradewise distribution of the post of technical supervisors vide Annexure-2, there was no avenues of promotion from the post of Cameraman. The N.E. Railway (Administration) had written to the Railway Board that the post of Cameraman may be included for promotion to the category of Chargeman 'A' and in anticipation of sanction of the Railway Board, the applicant was promoted as Chargeman (A) in the Production and Control Organisation by Annexure A-3 and he was given proforma fixation of pay w.e.f. 1.1.84. But ^{that} it was only in 1985/ Head Reader and Cameraman were clubbed with ^{Chargeman grade 'B'} ~~the~~ for the purpose of promotion to higher ranks ~~and~~ ^{Foreman} in the channel of promotion to Chargeman grade 'A'/(700-900) and Foreman (840-1040) ~~xxxxxxxxxxxx~~

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6. The question that came up for consideration in O.A. No. 231/1986 was whether the applicant could have been promoted to a post ~~of~~ on regular basis which was not in the channel of promotion of the post of Cameraman prior to the date on which the post of Cameraman was redesignated as Chargeman grade 'B' by order dated 24.10.1985. The Tribunal has held that the applicant became eligible for promotion as Chargeman Grade 'A' only from the date, he was redesignated as Chargeman Grade 'B'

in the scale of Rs. 425-750, and accordingly, dismissed the application.

7. The learned counsel for the applicant, argued that neither the question in issue decided in O.A. No. 231/1986 is in issue in this O.A. nor the litigation was between the same parties and as such the principle of resjudicata will not apply. We are unable to accept this contention of the learned counsel because the question raised before us is substantially the same as come up for consideration in O.A. No. 231/86. Applicant and Union of India are parties in both the applications. So far as respondents No. 6, 7 & 8 are concerned they are contesting this case under the same title. It may be seen that the applicant was designated as Chargeman 'B' w.e.f. 24/4/1985. The impugned seniority list, it is thus apparent, has been prepared on the basis of First Come First Served in terms of principle enunciated in the decision of this Tribunal in O.A. No. 231/1986 filed by the applicant.

8. As has been held by Halsbary; "The doctrine of resjudicate is not a technical doctrine of all Courts that there must be an end of litigation." In O.A. No. 231/86 the principle for determining interse seniority of the applicant and other officer of the cadre has been laid down. This, in our opinion is final and binding. The applicant, therefore, cannot be allowed to reagitate the matter and say that he is senior to respondents No. 6, 7 & 8 by virtue of his having worked on an excadre post. We therefore find that the application is barred by principle of resjudicata.

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9. In addition to the above, the Supreme Court has in the State of Punjab Vs. Jadish Singh & Ors. reported in AIR 1964 Supreme Court 521 has held;

"Where a Government Servant has no right to a post or to a particular status, though an authority under Government acting beyond its competence had purported to give that person a status which it deemed to have been validly appointed to the post or given the particular status -----
Article 311(2) does not, therefore, come into the picture at all."

As has already been stated above, there was no channel of promotion for the post of Cameraman. It was only in 1964 the post of Cameraman and Head Reader were clubbed with Chargeman 'B' for promotion to Chargeman 'A' and so on. Had the intention of the order, as was argued by the learned counsel for the applicant, been to merge the post of Cameraman & Head Reader with that of Chargeman 'B' then in that case, the necessity of issuing letter dated 24.10.1985 (Annexure-4) communicating the order of the Railway Board to re-designate the post of Cameraman as Chargeman grade 'B' would not have arisen. The necessary implication of the two orders referred to above is that prior to 24.10.1985 the applicant was not holding a post in the line of channel of promotion to Chargeman 'A' and so on. That being so the appointment of the applicant as Chargeman grade 'A' w.e.f. 1.1.1984 did not give status to the applicant and as such he cannot be said to have acquired a right to claim seniority on that basis.

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The principle for determining seniority has been laid down in Ashok Gulati Versus B.S.Jain by

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by the Supreme Court in AIR 1987 Supreme Court page 424;

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"According to the accepted canons of service jurisprudence, seniority of a person appointed must be reckoned from the date he becomes a member of the service. The date from which seniority is to be reckoned may be laid down by rules or instructions (a) on the basis of the date of appointment (b) on the basis of confirmation (c) on the basis of regularisation of service (d) on the basis of length of service, or (e) on any other reasonable basis. It is well settled that an ad hoc or fortuitous appointment on a temporary or stop-gap basis cannot be taken into account for the purpose of seniority even if the appointee was qualified to hold the post on a regular basis, as such temporary tenure hardly counts for seniority in any system of service jurisprudence.

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In view of the & principle of Supreme Court

quoted above, also the applicant, who was designated as Chargeman Grade B w.e.f. 24.10.1985, will be deemed to have been appointed on the said post w.e.f. the said date. That being the position he cannot ~~xx~~ claim seniority over respondents No. 6, 7 & 8 who were appointed as Chargeman ~~x~~ grade B w.e.f. 1.4.1985.

10. On a careful consideration of the facts and circumstances of the case discussed above, we are of the view, that this application merits dismissal and the same be and is hereby dismissed. There will be no order as to costs.



Member-J



Member-A

Allahabad Dated: 30.6.94

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