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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 149 of 1986
T.A. No.

DATE OF DECISION 7.1.'87

SHRI NATVERLAL L. Petitioner

SHRI G.A. PANDIT Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. (W.PLY.) Respondent

SHRI R.P. BHATT Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. TRIVEDI, Vice Chairman

The Hon'ble Mr. P.M. JOSHI, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal.

Per: Hon'ble Shri P.H. Trivedi, Vice Chairman

JUDGMENT

The applicant, Shri Natverlal L. was made permanent as Class IV employee on 4.12.'58 and was promoted to Class III on 3.2.'78, when his seniority was given serial number 30 in the relevant orders dated 3.2.'78. Aggrieved by this on the ground that his officiating in the grade of Rs. 210-270 continuously since 1.7.'59, had not been taken into account, he sought revision of this order and on 3.7.'84, his correct seniority was placed between serial number 5 and 7 by orders dated 3.7.'84. Thereafter, this question was agitated in the High Court by some others affected by this order, and in compliance with the High Court's order to consider the applicant's representation, the railway authorities fixed his seniority at serial no. 23A by a speaking order which is annexed at 'D' in the application. The reasoning of the speaking order is that the seniority will be reckoned according to the length of service, both officiating and permanent service as on the last date of receipt of the applications given in the notification for the promotion of Class IV to Class III post of Brakeman in the scale of Rs. 225-308, which is to be taken for seniority purpose i.e. 25.4.'75. Further, the speaking order states that as the applicant had officiated after 25.4.'75, being the date for receipt of applications, the period of his service thereafter, would not be counted for seniority purpose. The question before us is fixation of his correct seniority. The applicant's case is that his officiating in Class III post since 1.7.'59, has been ignored by the orders dated

4.6.'85, by which his seniority is now interpolated as 23A.

2. In their reply, the respondents have taken the stand that the rules require that the vacancy in the scale of Rs. 225-308 in 1975 was for Asst. Guard, which is a selection post and all Class IV staff in Transportation and Commerical Department, who have completed three years of continuous service were eligible to apply for selection. The notification dated 26.3.75 invited applications from eligible staff, and the applicant who was working as Platform Porter in the scale of Rs. 196-232 also applied along with others and after undergoing the tests was placed at serial no. 30 by orders dated 3.2.'78, because the rules require that the basis of seniority is only the substantive post held by the candidate on the date of notification and not of officiating position and therefore the orders were perfectly correct. The respondents have contended that while the applicant was officiating in the scale of Rs. 210-270 on adhoc basis at the time of selection, this was not so on the date of notification and therefore his officiating in this case was not taken into account. The speaking order dated 27.1.'86 found that the order dated 4.6.'85, which had placed the applicant between serial no. 5 and 7 was erroneous because it had taken into account the officiating service of the applicant. However, the speaking order dated 27.1.'86 placed the applicant at 23A and it is contended by the respondent that it has taken into account the admissible officiating service before the date of notification but not the period thereafter which was erroneously taken into account by the orders dated 4.6.'85.

3. According to the Indian Railway Establish-

ment Manual, the post in the scale of Rs. 225-308 is a selection post. It is admitted by both the parties that the post of Asst. Guard is one of them. We have not been furnished with the notification dated 26.3.'75, inviting applications from the eligible staff but the validity of this notification has not been contested by the parties. The principal issue which needs to be decided is whether the petitioner's officiating service should be taken into consideration and if so, from which date. It is admitted that the petitioner was appointed as a Platform Porter in the scale of Rs.196-232. The petitioner claims that on the date of the application, he has been officiating in the post of Pointsman in the scale of Rs. 210-270, on adhoc basis. The date on which he was given this appointment as Pointsman and the nature of it is not clear. Neither side has furnished the relevant appointment order. He was given the position serial no. 23A by the order dated 4.6.'85, but this was subsequently revised by the competent authority by speaking order of 27.1.'86. The ground of the revision as stated in the written statement of the application is that the competent authority determined the seniority on the basis of the substantive position held by the candidate on the date of notification and not on the basis of officiating position. This is further averred by the respondent in para 4 of his written statement. This seems to be an erroneous interpretation. In this case, the relevant rule to be applied as stated by the respondent in the written statement is Rule 321 of the Indian Railway Establishment Manual, which reads as under:

"When a post (selection as well as non-selection) is filled by considering staff of different seniority units, the total length of continuous service in the same or equivalent grade held by the employees shall be the determining factor for assigning inter-



seniority irrespective of the date of confirmation of an employee with lesser length of continuous service as compared to another unconfirmed employee with longer length of continuous service. This is subject to the proviso that only non-fortuitous service should be taken into account for this purpose.

4. This makes it clear that this Rule does not bar officiating service, as long as this service is continuous, provided that it is non-fortuitous. In fact, the speaking order of 27.1.'86, on which the respondent relies states that the competent authority has reckoned seniority according to length of service both officiating and permanent. The interpretation of the Rule as stated in the written statement, is therefore not in accordance with that of the competent authority in its speaking order on which the respondent relies.

5. In the absence of the relevant notification calling for applications or the order of appointment of the petitioner as Pointsman, it is not possible to ascertain whether the promotion of the petitioner as Pointsman was fortuitous or not. Nor is it possible to ascertain whether the period claimed by the petitioner for his officiating service was prior to 25.4.'75, the date of the notification calling for the applications or thereafter. From the language of the speaking order it appears that the period of officiating service prior to that date has been taken into account by the competent authority, but not thereafter.

6. In the absence of relevant documents which have not been produced by either party, we are obliged to determine whether the basis on which seniority has been decided is according to the correct interpretation of the Rules. Due to the discrepancy between the respondent's written statement and the speaking order, we are unable to know with certainty that the officiating period was

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taken into account. Even if the appointment of the petitioner was adhoc, it does not automatically render it to be of a fortuitous nature. Whether it was fortuitous or not, can only be found from the language of the relevant order of appointment or in other attendant circumstance. From the nature of the averments made and the fact that it has not been specifically established by the respondent that the officiating of the petitioner was fortuitous, we are inclined to regard that the petitioner's officiating was of such a nature as to render him eligible for consideration under Rule 321. We hold that the petitioner was entitled to have the period of continuous service even though of an officiating nature to be reckoned for this purpose.

7. On the above basis, we decided that the speaking order fixing the position of the petitioner at serial no. 30 as per Annexure 'D' is upheld, with the condition that in case the respondent has not given the credit for any officiating service of a continuous nature of the petitioner prior to the date of the notification calling for the applications for the post of Asst. Guard, the seniority decided by the speaking order will need to be suitably revised. We hold that the contention of the respondent that only substantive service should be reckoned for fixation of seniority and not officiating service, is not according to the Rules and is based upon an erroneous interpretation of the Rules. As long as officiating service is continuous and ^{non} fortuitous, it should be reckoned for the fixation of seniority. With these observations, we direct the respondents to so determine the seniority. No order as to costs.

P. H. Trivedi
(P.H. TRIVEDI)
Vice Chairman
P. M. Joshi
(P.M. JOSHI)
Judicial Member