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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH
NEDWXXDXXXXXXO.A. No.
~~XXXXXX~~

583

1988

DATE OF DECISION 30-4-1990.Narendra Jayantilal Acharya PetitionerMr.G.A.Pandit Advocate for the Petitioner(s)

Versus

Union of India & Ors. RespondentMr.R.M.Vin & Mr.M.M.Xavier Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H.Trivedi Vice Chairman

The Hon'ble Mr.N.R.Chandran 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?

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CJ

Narendra Jayantilal Acharya,
 Bhavnagar, - Railway Quarter
 No. 449/A1, Medical Colony,
 Bhavnagarpara.

... Applicant.

Versus

1. Union of India,
 Owing Western Railway,
 Churchgate,
 Bombay - 400020.
2. Mukhy Raj Bhasha Adhikari,
 Western Railway,
 Churchgate,
 Bombay.
3. Divisional Railway Manager,
 Western Railway,
 Divisional Office,
 Bhavnagarpara.
4. Devjibhai J. Modha,
 Hini Assistant, West. Railway,
 DRM's Office,
 Bhavnagarpara. ... Respondents.

Coram : Hon'ble Mr.P.H. Trivedi : Vice Chairman
 Hon'ble Mr. N.R.Chandran : Judicial Member

ORAL - ORDERDate : 30-4-1990

Per : Hon'ble Mr.P.H. Trivedi : Vice Chairman

Par
 Under Section 19 of the Central Administrative Tribunals Act, the petitioner has challenged the order of his transfer dated 23-5-1988 and the rejection of his representations regarding his seniority dated 12-8-1988.

While the respondent No. 4 is listed at Sl. No.12 and the petitioner at Sl. No. 13 in the aforesaid order of 23-5-1988 there is nothing in that order to show that the petitioner is junior to the respondent No.4 or that the order in which promotees have been listed follows any order of seniority. The petitioner has challenged his transfer from Bhavnagar to Churchgate on promotion on the basis that the senior person has to be retained at Bhavnagar and the junior person

has to suffer the transfer. The promotion post to which the order dated 23-5-1988 refers is admitted by all the parties to be a selection post. The nexus between seniority of the petitioner vis-a-vis respondent No. 4 and the impugned ~~order~~ transfer order arises only from the stand taken by the respondent Union of India in the reply that Respondent No. 4 being senior to the petitioner has been retained at Bhavnagar and the petitioner being junior to respondent No. 4 has been transferred to Churchgate. Without such a statement in the reply for the matters of transfer there is no rule or instruction that a junior is liable to it in preference to the senior, as transfer orders are not governed by seniority.

2. We must first dispose of the question of the bar of limitation. The learned advocates for the respondents Shri R.M. Vin and Mr.M.M.Xavier have argued that the cause of the petitioner in respect of seniority will be barred by limitation because the seniority in favour of respondent No.4 was settled as early as in August, 1976 and the petitioner himself has filed representation as late as February 1982 and has referred to them in his subsequent representations, in his representations on 24-5-1982, in December 1987, and in February 1988, on 30-5-1988, and on 15-7-1988. The respondents had rejected the petitioner's claim of seniority in specifically referred to his representation of 9-2-1988 and 30-5-1988 communicated the rejection on 7-7-1988 by orders annexed at A-6. In his reply respondent No.4, has referred to the seniority list having been informed on 30-4-1983 in which he has claimed that he was shown at Sl.No.54 and the applicant at Sl.No. 55. Both the respondents have stated that by not taking recourse to courts earlier the petitioner is barred by limitation in ~~raising~~ the question of his seniority at this stage. We however, understand that the rejection of the representation of the petitioner has been by order dated 9-7-1988 and we do not get a clear statement

regarding any notification of seniority list earlier after disposing of the petitioner's representations. In the circumstances we do not find that the cause can be derived from any single order in 1976 or later until the orders dated 7-7-1988, of rejecting the petitioner's representations. We therefore, do not find that there is any bar of limitation excluding the scope of disposal of the case on merits.

3. Having taken the ground that the governing consideration in retaining respondent No. 4 at Bhavnagar in preference to the petitioner the respondent Union of India cannot escape the consequences thereof. Without such grounds they might have been safe in taking the plea that the transfers are not governed by claims of seniority and it is proper that the junior who has a prospects of promotion should accept the transfer to enjoy this prospect. On that plea the merits of the case might have needed to be examined on the rights of the petitioner to retain his station on foregoing promotion if rules allow him to do so. In this case however, that is not the stand that the parties have taken. The only due bar was, is whether the nexus of seniority entitled the petitioner to claim protection against the transfer.

4. We are aware that any relief that the petitioner might get on this basis cannot deprive the respondent No.4 of the benefit of retaining of this post at Bhavnagar. We are of the opinion that as the issue of seniority has not been decided between the two there would be no justification in interfering with respondent's orders to retain respondent No. 4 at Bhavnagar.

Pw

5. In the facts and circumstances of this case it would be appropriate and adequate to direct that the impugned orders dated 23-5-1988, to the extent of the petitioner's transfer to Churchgate and of 12-8-1988, rejecting his representation are quashed and set aside. The petitioner is

entitled to be protected only against the transfer resulting from these orders. The respondents however are at liberty to pass fresh legal and valid orders of transfer. The claim of seniority of the petitioner vis-a-vis respondent No. 4, have to be decided by respondent Union of India by an order on examining the claims in the petition and any representation that the petitioner may make within one month from the date of this order to supplement it.

N.R.Chandran

(N.R.Chandran)
Judicial Member

P.H. Trivedi
(P.H. Trivedi)
Vice Chairman