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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

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Date of order : 24.3.2000

O.A.NO. 424/1995

Ganga Singh Jyotiana S/o Shri Sukh Lal Jyotiana, aged about 48 years, R/o Railway Quarter No. 489/B, Railway Colony, Dhobighat, Abu Road, at present employed on the post of Sr. Teacher (English), in Railway Senior Secondary School, Abu Road, Western Railway.

.....Applicant.

versus

1. Union of India through the General Manager, Western Railway, Churchgate, Bombay.
2. The Chief Personnel Officer, Western Railway, Churchgate, Bombay.
3. Shri Dharam Singh Sagar, Sr. Teacher (Hindi), Railway Senior Secondary School, Abu Road, Western Railway.

.....Respondents.

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Mr. J.K. Kaushik, Counsel for the applicant.
Mr. R.K. Soni, Counsel for the respondents No. 1 and 2.
None is present for the respondent No. 3.

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CORAM :

HON'BLE MR. JUSTICE B.S. RAIKOTE, VICE CHAIRMAN

HON'BLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER

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ORDER

PER HON'BLE MR. JUSTICE B.S. RAIKOTE, VICE CHAIRMAN :

This Application is filed challenging the empanelment of third respondent vide Annex.A/1 dated 21.8.91 to the post of Post Graduate Teacher (PGT) Hindi and consequently quash the seniority list dated 17.9.93 regarding the Post Graduate Teachers. The counsel for both sides admits that this post of Post Graduate Teacher is also called Senior Teacher.

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2. The learned counsel for the applicant submitted that the promotion and recruitment of the applicant-respondent No.3 respectively would be on the basis of the date on which they joined the post but not on the basis of the empanelment for the purpose of appointment. He elaborated his arguments stating that respondent No. 3 Shri Dharam Singh was in fact appointed on 20.11.92 to the post of PGT whereas the applicant was already promoted to this post on 20.5.92, therefore, in the cadre of PGT, the applicant would be senior to the respondent No.3. Consequently, it follows that the seniority list showing the respondent No.3 at Sl.No. 28 and applicant at Sl.No.32, is illegal and contrary to Rule 302 of the Indian Railway Establishment Manual, Vol.I. He contended that as per the said Rule 302, it has been specifically provided that seniority amongst the persons inter se between the promotees and the direct recruits would be on the basis of the date of promotion so far as the promotees are concerned and on this basis the date joining the duties so far as the direct recruits are concerned. If that is so, the respondent No. 3 as a direct recruit has joined to the post in question later than the promotion of the applicant, the and hence applicant would be senior to the respondent No.3. Therefore, the seniority list so far as it affects the applicant, is required to be declared as illegal. On the other hand, the learned counsel for the contesting respondents submits that the respondent No. 3 would be senior to the applicant in terms of Rule 306 of the said Rules. He has stated that according to the Rule 306 the candidates selected on the basis of earlier selection list, shall be senior to those selected later irrespective of the dates of posting. He stated that the empanelment, out of which he has been appointed is dated 21.8.91 whereas the applicant was promoted to the cadre in question only

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on 20.5.92, therefore, the applicant would be junior to the respondent No. 3. He further argued that there is no irregularity or any illegality in the impugned seniority list and consequently the application is liable to be dismissed.

3. We have given our very anxious consideration to the case. From the facts narrated and on the basis of the arguments and pleadings raised in the case, we are of the opinion that few of the facts are admitted. The applicant was promoted on 20.5.92 whereas the respondent No. 3 was recruited on 20.11.92. We have to clarify at this stage itself that the applicant and respondent No.3 had come to the present cadre of PGT from two different sources. The applicant comes from the promotional source whereas the respondent No. 3 is a person appointed through direct recruitment source. In order to clarify inter se seniority between such a promotee and direct recruit, we have to rely upon Rule 302. For better appreciation we think it appropriate to extract Rule 302. The relevant portion of the Rule is as under:-

"302.Seniority in initial recruitment grades-Unless specifically stated otherwise, the seniority among the incumbents of a post in a grade is governed by the date of appointment to the grade. The grant of pay higher than the initial pay should not, as a rule, confer on a railway servant seniority above those who are already appointed against regular posts. In categories of posts partially filled by direct recruitment and partially by promotion, the criterion for determination of seniority should be the date of regular promotion after due process in the case of promotee and the date of joining the working post after due process in the case of direct recruit, subject to maintenance of inter-se-seniority of promotees and direct recruits among themselves. When the dates of entry into a grade of promoted railway servants and direct recruits are the same they should be put in alternate positions, the promotees being senior to the direct recruits, maintaining inter-se-seniority of each group."

4. From the above rule, it is clear that the inter se seniority amongst a promotee and a direct recruit, the criteria

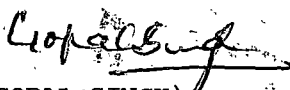
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is laid down that so far as the promotee is concerned, the date of promotion should be taken into consideration and regarding the direct recruit, the date of joining on the post. If that be so, in the case of the applicant the date of promotion would be relevant and in the case of respondent No. 3 the date of joining the duties to the present cadre is relevant. As we have already noticed above, the date of promotion of the applicant even as reflected in the seniority list, it is clear that the applicant was promoted on 20.5.92 whereas the respondent No. 3 joined the said post on 20.11.92. If that is so, in the cadre of PGT (Senior Teachers), the respondent No. 3 would be junior to the applicant. In this view of the matter, we are of the opinion that showing the applicant at No. 32 and the name of the respondent No. 3 at Sl.No.28 of the seniority list, is illegal and contrary to Rule 302 of the Rules. The learned counsel for the contesting respondents submits that his seniority has to be determined only on the basis of the empanelment and he gets seniority right from the date of the empanelment notwithstanding the fact that when he joined the duties. He heavily relies upon Rule 306 on this point. But this argument is not acceptable to us for more than one reason. Rules 305 and 306 together applied to a situation when some persons are selected as direct recruits on the basis of some panel. From the reading of Rules 305 and 306 together, it appears to us that whenever the persons are to be appointed on the basis of the selection list irrespective of their joining duty their seniority amongst them would be determined on the basis of the selection list, and in case a person joins later than joining time, the authority may place him below his juniors in the selection list. From this, it follows Rules 305 and 306 regulate the promotions inter-se amongst the

persons directly selected and these rules do not apply to a situation where the inter-se seniority between the direct recruits and promotees are to be considered and for that purpose it is only Rule 302 that applies. As we have already stated above in terms of Rule 302, the applicant would be senior to the contesting respondent. Accordingly, this last contention of the respondent is rejected. In these circumstances, we have no option but to declare the seniority list Annex.A/2 dated 17.9.1993 as illegal so far as it pertains to the applicant and the respondent No.3. Accordingly we order as under :-

The Seniority List dated 17.9.1993 (Annex.A/2), is declared as illegal so far as it pertains to applicant at Sl.No. 32 and respondent No. 3 at Sl.No. 28 is concerned. It is further directed that the applicant shall be placed over and above Shri Dharam Singh, respondent No.3, in the seniority list.

5. No orders as to cost.


(GOPAL SINGH)
Adm.Member


(B.S. RAIKOTE)
Vice Chairman

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