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CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH.

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Registration T.A. No. 1558 of 1987
(W.P. No. 455 of 1984)

R.B. Singh Applicant.

Versus

Union of India and others Respondents.

Connected With

Registration T.A. No. 1617 of 1987
(W.P. No. 5072 of 1983)

R.C. Joshi Applicant.

Versus

Union of India and others Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.

Hon'ble Mr. A.B. Gorthi, Member (A)

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

In these two applications, as both the applicants are claiming seniority over each other in the same department, so these applications are being disposed of together. The case of T.A. No. 1558 of 1987 (R.B. Singh Vs. Union of India and others) is being taken as a leading case.

2. The applicant in the leading case i.e. R.B. Singh was appointed as ~~Lower~~ Lower Division Clerk in Headquarters Easter Command, Lucknow w.e.f. 23.7.1960 in the scale of Rs. 260-400. and in the year 1963 ~~also~~ when the Easter Command Headquarters was shifted to Calcutta, the applicant also moved there. The applicant was selected by the Departmental Promotion Committee for the post of

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Stenographer Grade-II w.e.f. 1.7.1972 and was promoted as such from the same date viz 1.7.1972 by the authorities at Headquarters Easter Command, Calcutta and was put on 2 years Probation. The applicant completed his 2 years 'Probation Period' as Stenographer Grade-II on 1.7.1974 and was confirmed as Stenographer Grade-II w.e.f. 1.4.1976, vide letter dated 12.9.1980. The applicant's seniority to new unit was to be ~~Government~~ ^{ad} under the Government of India letter dated 29.6.1973 (reproduced in C.P.R.O. 73/73), the relevant portion of which reads as Under;

"2. Subject to the provisions of para 3 below, persons appointed in a substantive or officiating capacity to a grade prior to the issue of these general principles, shall retain the relative seniority already assigned to them or such seniority as may hereafter be assigned to them under the existing orders applicable to their cases and shall en-bloc be senior to all others in that grade. Explanation-

For the purpose of these principles (a) persons who are confirmed retrospectively w.e.f. the date earlier than the issue of these general principles, and (b) persons appointed on probation to permanent post substantively vacant in a grade prior to the issue of these general principles, shall be considered to be permanent officers of the grade.

Now vide CPRO No. 73/73 laid down the general principle for determining the seniority of various categories of persons employed in Central Services, ~~@@@~~ para- 3 of the same reads as under;

"There have also been some doubts about the applicability of the revised principles of

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seniority in respect of individuals adjusted under surplus and deficiencies scheme and transferred on compassionate grounds. Revised principles of seniority are applicable w.e.f. 1.7.1973. In view of this, the seniority of locally controlled staff, rendered surplus to 1.7.1973 will be determined in accordance with AI 241/50. Seniority of individuals adjusted or transferred on compassionate grounds on or after 1.7.1973 will be determined in accordance with the revised principles of seniority. In other words, those adjusted/ transferred on or after 1.7.1973 will not get the benefit of their previous service on their reporting to the new units.

Now a clarification was given by the Army Headquarters vide its letter dated 26.8.1976 in the following terms;

" It is clarified that the civilian employees adjusted/transferred on compassionate/medical grounds will not be treated as fresh entrants for the purpose of pension, leave and quasi-permanency in the grade. They will, however, not be given the benefit of their previous service for promotion and confirmation in the new units/establishments.

Vide Sangathan Nideshalaya's letter dated 21.7.1977 the person who was posted on compassionate ground on mutual basis will retain their seniority in the new units in accordance with the instructions contained in C.P.R.O. Now these instructions make it clear that a person comes to another unit as a result of mutual transfer or on compassionate ground his transfer to another unit, he will lose his seniority in the

previous unit~~s~~ and will be taken as a entrant in ^{new} the unit, the result of which will be that ~~you~~ will ^{be} the junior to all the permanent officers in the unit where he has been transferred and those who are on probation will also be ranked as permanent officers for ^{this} purpose as as been made clear in the Government of India's letter ^{of} 29.6.1973 relied by the applicant himself.

3. The applicant ⁱⁿ the other connected petition i.e. Mr. R.C. Joshi was initially appointed as Stenographer Grade-III w.e.f. 1.11.1960 and was also confirmed as such. Subsequently, on creation of post of P.A. Grade-II, he was promoted to the post of P.A. Grade-II by the D.P.C. on the basis of seniority-cum-fitness w.e.f. 26.9.1975, in the scale of Rs. 425-700 and placed on probation for two years, which has been successfully completed by him on 26.9.1977. Now Sri R.B. Singh, who was employed as Stenographer Grade-II in the Headquarters Eastern Command, Calcutta submitted his willingness declaration to Army Headquarters for his mutual transfer to Headquarters Central Command, Lucknow on compassionate grounds. A perusal of paras 7 & 8 of the aforesaid posting order dt. 13.8.76 issued by Army Headquarters indicates that the said Sri R.B. Singh was transferred to ^{Central Command &} Headquarters Lucknow subject to the condition that he was posted against temporary (regular) vacancy/appointment and that his seniority in the Headquarters Central Com and Lucknow ~~was~~ would be reckoned from the date of reporting for duty in the Headquarters Central Com and Lucknow as per the

instructions contained in the Ministry of Defence Government of India letter dated 29.6.1973. Now the Government of India issued a revised seniority list ~~rules~~ which was subsequently clarified on 21.7.1977 as has been referred to above and in accordance with the seniority rules, the said R.B. Singh was placed junior to Sri R.C. Joshi in P.A. Grade-II and the seniority list which was prepared of which notice was given to the persons concerned to which no objection was raised by R.B. Singh, the said R.C. Joshi was shown senior to R.B. Singh.

4. In the panel which was prepared by the Departmental Promotion Committee and the list of which was approved also on 24.11.1979 and the name of R.B. Singh was shown at No. 4 while the name of Joshi was not shown at all. When two additional vacancies became available from 10.12.1979 and 14.11.1980. Against the second vacancy, the said R.B. Singh claimed that he was to be promoted but an order was passed reverting him back to the lower grade. The said R.B. Singh was though promoted as Stenographer Grade-I but latter on the order of confirmation was cancelled. Feeling aggrieved from the order of confirmation, he filed the writ petition which has now been transferred to the Tribunal being a leading case.

5. Now as the R.C. Joshi's seniority was not decided and his grievance was that he was not given an opportunity to ^{object} the seniority list in which he was shown junior and the Departmental Promotion Committee wrongly included his name in the panel excluding his

name from the seniority list. The said R.C. Joshi continued to make representations after representations though, in the meantime, certain promotional benefits were given to the said R.B. Singh. Ultimately, he too filed a writ petition stating that the recommendations of the Departmental Promotion Committee and confirmation contained in letter dated 22.7.1982. maybe quashed and the respondents may be directed not to give effect to the confirmation order dated 21.5.1982 and seniority list dated 22.7.1982 and promotion order dated 9.9.1983.

6. The respondents have filed the counter affidavit in the leading case, though, they have not filed counter affidavit in the second one as the instructions were given to them not to contest this case in view of the subsequent order which has been passed by the respondents. The subsequent order, which has been placed on record by said R.C. Joshi by means of an affidavit. From the said order, it appears that on 9.9.1983, the earlier order was cancelled and a seniority list was published and vide order dated 25.3.1985, a promotion list was directed to be published in which the said R.C. Joshi was granted promotion w.e.f. 1.4.1981 and the said R.B. Singh w.e.f. 1.2.1984. Even though, the superior authorities gave such a direction but the inferior authorities did not abide by it and published D.O. Part-II on 7.10.1985 granting promotion ^{to} both R.B. Singh and R.C. Joshi w.e.f. 1.2.1984 on the ground that the relating seniority will be fixed as per orders of the court. The respondents

procedure, in fact was followed in respect of the two additional vacancies which has been stated that these vacancies were not meant for R.B. Singh. As his case with regard to the relative seniority was under dispute and in the proceedings of the Departmental Promotion Committee which was held on 24.11.1979, there were three persons senior to him and according to their claim in question, his seniority was under consideration and it was mandatory for Headquarters Eastern Command to call him back to Eastern Command because at that time he was holding his lien ~~on~~ permanent post in the Headquarters. In the D.O. Part-II dated 9.9.1983, it is stated that this D.O. Dated 9.9.1983 was published on the authority of Departmental Promotion Committee proceeding held on 24.9.1979 and this was also objection^{ed} by the Army Head Quarters and was cancelled vide D.O. Part-II dated 7.1.1984. The promotion given to the said R.B. Singh for the time being to the post of Major General (Artillery) was done purely on Administrative grounds and though he was described as Stenographer Grade-I, but it was on account of a mistake which was rectified as referred to above. Regarding Sri R.C. Joshi, it has been stated that he had been working with Major General (Artillery) w.e.f. 1.4.1980 to 8.12.1983, thereafter he was asked to move out elsewhere.

7. The post of Stenographer-I is a non-selection post and for promotion it is based on the seniority-cum-fitness basis as guide lines laid down in CPRO 18/82, and taking into consideration this criteria and the error which has ^{crept into it} been kept, the confirmation of the applicant was rightly changed as per direction of the Army Headquarters and ^{as} the substantive vacancy was available for

stenographer Grade-II w.e.f. 1.12.1976 as such, he could be confirmed w.e.f. 1.12.1976 and occasion arose to rectify the mistake..

8. The facts as indicated above, make the entire factual and legal position quite clear. Undoubtedly, the promotion was given to R.B. Singh and some time it was purely on administrative grounds. By his earlier seniority, the said R.B. Singh was given confirmation and the seniority list was published but while publishing the seniority list, the transfer of mutual ground was not given effect to because in view of that principal, the said R.B. Singh was to go below to R.C. Joshi. Undoubtedly, the said R.C. Joshi had not still completed the probationary period. In view of the rules relied on by both the parties, it was clear that the appointment of said R.C. Joshi was deemed to be a permanent appointment as he was subsequently confirmed and in view of the transfer policy, the said R.B. Singh was ranked below the said R.C. Joshi, and the cancellation order was rightly passed and subsequently, the seniority was corrected. It appears that the seniority list has not yet been finally corrected on the date of promotions on which both the parties have raised their voice.

9. Now with the above observations, that so far as the seniority is concerned, the said R.C. Joshi will be ranked senior to the applicant R.B. Singh who has no claim of seniority over ~~above~~ ^{R.C. Joshi}. The respondents are directed to prepare the seniority ^{list} and adjudge the date of confirmation accordingly. Let it be done within

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3 months from the date of communication of this order in accordance with the C.P.O's referred to above and the observations made in the judgment. Both the applications are disposed of with the above observations. Parties to bear their own Costs.

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Member (A)

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Vice-Chairman

Dated: 27.1.1992

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