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CENTRAL ADMINISTRATIVE TRIBUNAL, CIRCUIT BENCH LUCKNOW.

Registration O.A. No. 107 of 1988

Mohammed Yamin Applicant.

Versus

Director General, RDSO and others ... Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.
Hon'ble Mr. V.K. Seth, Member (A)

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

The applicant was appointed on 24.11.1970 as a Lab. Assistant in Civil Research Wing under the respondent no. 1. and on his application he was transferred from Civil Research Wing where he was originally appointed to Mechanical Research Wing. The applicant joined on his transferred post on 18.12.1978 with the condition that his seniority as Lab. Assistant will be fixed below all the working Lab. Assistants from the date he reports for duty there, and he will have no claim for seniority over the Lab. Assistants who were previously working in the Research Civil Wing and happened to be junior to him, and also he will not be eligible for promotion to the next higher grades in Research Mechanical Wing by virtue of his service as Lab Assistant rendered in the Research Civil Wing unless he is otherwise eligible for promotion in Research Mechanical Wing, and he will have no lien in the Research Civil Wing in the event his transfer to Research Mechanical Wing, as he is being transferred at his own request.

Having Joined the Mechanical Research Wingh, the applicant came to know that few persons who were ~~junior~~ junior to him in the Civil Research Wingh and who had also applied for their transfer to Mechanical Research Wing and transferred earlier, were given promotion as Junior Research Assistant (Mechanical) and regularised on that post by holding a selection on 24.10.1978 against the vacancies of departmental quota. The posts of junior Research Assistants are filled up by two sources that is 50% by promotion quota of departmental candidates and 50% from open market. The applicant applied for his correct seniority over his juniors and also claimed promotion as Junior Research Assistant in the same manner as had been done in the case of juniors. The applicant filed representation to this effect and as a result of his representation he was given seniority on proforma basis over and above S/Shri C. Hamilton and Dr. Jagdish Prasad but below Shri A.P. Vishkarma i.e. with effect from 20.8.1978 instead of 18.12.1978 vide order dated 31.10.1979.

2. The respondents have opposed the application of the applicant and have stated that the applicant was originally appointed as Lab. Field Attendant in the Civil Wing of Research Directorate w.e.f. 24.11.1970 in the scale of Rs. 110-180(AS). Thereafter, on his request, he was transferred ~~as above~~ and appointed as Lab. Assistant in the scale of

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Rs. 260-430 (RS) w.e.f. 18.12.1978 in the Research Mechanical Wing of the Research Directorate. He was promoted as Junior Research Assistant on adhoc basis w.e.f. 19.8.1981. Later on he was regularised w.e.f. 27.6.1984 on his being selected for the post of JRA(Mech.) in the scale of Rs. 425-700(RS) as a result of departmental selection held during June, 1984. Due to non-availability of departmental candidates, an outside selection was conducted during the year 1982 and as a result of which S/Shri A.K. Misra, Atul Sinha, R.K. Gupta, P.K. Gaba, SPS Labana, M.M. Misra who have been made respondents 2 to 7 were appointed as Junior Research Assistants(Mech.) between the year 1982 to 1983. Since no departmental candidates were eligible to be considered for the post of Junior Research Assistant (Mech.) because of having not completed 6 years regular service as Lab. Assistant (Mech.) no departmental selection could be held till June, 1984, and the applicant was permitted to appear in the selection by relaxation of the service as Lab. Assistant. As such, the seniority of the departmental candidates vis-a-vis outside candidates was fixed in terms of Rule 302 of Indian Railway Establishment Manual, as such, the respondent nos. 2 to 7 became senior to the applicant. In view of para 302 of the Indian Railway Establishment Manual, the applicant cannot be deemed to be senior to the respondents. In the Rejoinder affidavit, the applicant has stated that

the departmental selection for the post of Lab. Assistant held on 24.10.1978 and relaxation was given to all other candidates except the applicant, according to the applicant, who was ~~not~~ regularised as Lab. Assistant (Mech.) in ~~set~~ ~~fy~~ 20~~48~~ 1978 and in case the relaxation would have been given to the applicant, the applicant could have also got certain more benefits but it appears that the relaxation was not granted to the applicant.

3. Sri Tewari, learned counsel for the applicant contended that benefit has been given to the persons whose names were mentioned in the Rejoinder Affidavit and they were similarly placed but incidentally, they were not party to the application and no order for the detriment can be passed. The learned counsel for applicant further contended that there were certain more facts have been given in the representation and in case, his representation would have been decided then respondents themselves would consider that the equity and justice has not been done with the applicant.

4. Accordingly, the respondents are directed to dispose of the representation of the applicant within a period of three months

from the receipt of the communication of this order. The application is disposed of with the above directions. No order as to the costs.

W.S.
Member(A)

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Vice-Chairman

Dated: 20.4.1993
(n.u.)