
(2001) 02 MP CK 0016

In the Madhya Pradesh High Court

Case No : Writ Petition No. 447 of 2001

Union of India (UOI) and Others

APPELLANT

Vs

Hasmat Ali and Another

RESPONDENT

Date of Decision : 05-02-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2001) 5 MPHT 75 : (2001) 3 MPLJ 65

Hon'ble Judges : Bhawani Singh, C.J.; Arun Mishra, J

Bench : Division Bench

Advocate : R.K. Gupta, for the Appellant;

Final Decision : Dismissed

Judgement

Arun Mishra, J.

Union of India, General Manager Central Railways and Anr. have filed the present writ petition assailing the order passed by the Central Administrative Tribunal in O.A. No. 195 of 1999 on 6-10-2000, whereby the Tribunal has allowed the application filed by the respondent No. 1 and has declared that the respondent No. 1 shall be deemed to have been promoted to Grade III on regular basis at Coach Repair Workshop with effect from 27-2-91. His seniority be determined afresh. If it is found that the respondent No. 1 is senior to other direct recruits, he shall be continued in the post to which he was promoted as Grade I and he shall also be entitled to pay and allowances with effect from the date of his reversion till the stay order was passed by the Tribunal. Directions for re-determination of his seniority in Grade II and Grade III have also been issued on the similar basis.

The facts unfold that the respondent No. 1 was initially appointed as Khalasi Grade IV in the pay scale of Rs. 750-940 vide order 26-8-83 and was posted at Parel Workshop, Mumbai. He was given the pay scale of Rs. 800-1150 in the year 1986. In the year 1989, vide order dated 15-7-89, the applicant was transferred

from Parel Workshop, Mumbai to Coach Repair Workshop, Bhopal.

From the post of Khalasi/Helper, the next promotion is to the higher grade - Grade III i.e. Skilled Artisan, for which the department has prescribed passing of an examination, which was cleared by respondent No. 1 and he was promoted to Grade III i.e. Skilled Artisan in the pay scale of Rs. 950-1500/-vide order dated 27-2-91. Thereafter, it appears that on 20-9-93 an order was passed treating him regularly promoted with effect from 16-6-93. Proforma seniority and pay scale was granted with effect from 16-6-93. Thereafter, the respondent No. 1 again appeared in the departmental examination required to be passed for promotion to the post of Coach Repairer Grade II. On passing it successfully, he was promoted to the post of Coach Repairer Grade II in the pay scale of Rs. 1200-1800 vide order dated 11-10-93. Thereafter, with effect from 19-7-96, the respondent No. 1 was promoted to the post of Coach Repairer Grade I in the pay scale of Rs. 1320-2040 after passing the prescribed departmental examination. Thereafter, all of a sudden, the respondent No. 1 was reverted vide order dated 23-2-99 from the post of Coach Repairer Grade I to the post of Coach Repairer Grade II. The reversion order was passed on the ground that there were shortage of posts to accommodate direct recruit candidates.

The petitioners in their reply to the application before the Central Administrative Tribunal contended that the respondent No. 1 was transferred to Bhopal in the Grade of Helper/Khalasi in the year 1989. The persons junior to the applicant in Parel Workshop, Mumbai were given regular promotion. As such, the petitioner was given seniority with effect from 16-6-93 and at that time, the Cadre was open and after closure of the Cadre, all those working on ad hoc basis were treated as regular. In 1996 the respondent No. 1 was promoted as Grade I whereas there were 40 other candidates who were directly recruited by the Railway Recruitment Board as Technician Grade III in July, 1991 and regularized in January, 1992 as per their terms of appointment. Later on, it was found that the persons who were directly recruited, were placed below the respondent No. 1 and as such, vide the impugned order dated 23-2-99, the respondent No. 1 was rightly reverted. The reason for reversion assigned in the order of reversion is to give place to the senior direct recruits because vacancies in Grade I were not available to accommodate the respondent No. 1.

The Tribunal has taken the view that the applicant shall be deemed to have been promoted to Grade III on regular basis in Coach Repair Workshop, Bhopal with effect from 27-2-91.

Learned counsel for the petitioners urged that the reversion order of the respondent No. 1 was justified. He has further submitted that the vacancies were required to be filled by direct recruits and on proper determination of seniority, the reversion of respondent No. 1 is justified. It is his further submission that the promotion made on 27-2-91 of respondent No. 1 to Grade III i.e. Skilled Artisan was ad hoc. Thus, the period spent could not be counted for seniority. Thus, the order passed by the Tribunal is bad in law.

The documents on record - Annexure-P-1 dated 19-6-87 contains the provision that New Coach Repair Workshop at Bhopal was to be set up and the options were asked from the staff for their transfer. The staff who will be transferred to Coach Repair Workshop, Bhopal will maintain their seniority and also maintain lien in the parent department till such time he is permanently absorbed in Bhopal Workshop. The Cadre was open upto July, 1992 as is apparent from Document - Annexure-P-2 which is a letter of Chief Personnel Officer (Admn.) of workshop of Bhopal. The promotion order of the-respondent No. 1 dated 27-2-91 (Annexure-P-4) mentions that the respondent No. 1 had passed a departmental examination and was promoted as Skilled Artisan of Workshop on temporary basis, and as such, such an employee has to remain in the parent cadre and will remain junior to the seniors in the Workshop of Bhopal, and will be entitled to promotion only after his seniors are promoted in the parent Cadre. The Rules regulating the seniority of non-Gazetted Railway Servants are contained in Annexure-P-5-A. Para 302 provides 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 senior to the direct recruits, maintaining inter-se-seniority of each group.

NOTE-- In case of training period of a direct recruit is curtailed in the exigencies of service, the date of joining the working post in case of such a direct recruit shall be the date he would have normally come to a working post after completion of the prescribed period of training."

[No. E (NG) 178 SR 6 42 dt. 7-4-1982 ACS 132]"

It is pertinent to mention here that the respondent No. 1 was transferred on 15-7-89 and his lien in the parent office was to be maintained only for a period of two years. Respondent No. 1 was promoted as a Skilled Artisan Grade III, then Grade II and then Grade I and all of a sudden in 1999 he was reverted to Grade II. The respondent No. 1 was promoted on successfully clearing the trade test examination and his promotion order dated 27-2-91 (Annexure-P-4) possessed only a rider of keeping the respondent No. 1 below any senior person in his parent department. If there was any junior person to the respondent No. 1 either in the parent department or elsewhere, obviously such person has to be kept below him, in the matter of seniority; and the promotion order of respondent No. 1 was only subject to the rights of a senior in the parent

department. When the lien of the petitioner had come to an end, in the parent department and he was holding the promoted post with effect from 27-2-91, he could not be made junior to other direct recruits who had joined Grade III subsequent in point of time to him, in the year 1991 and later on, they were regularized in the year 1992. Such direct recruits cannot become senior to the respondent No. 1 in view of Para 302 of the Rules Regulating Seniority (Annexure-P-5-A) reproduced above. The seniority was to be maintained from the date of the appointment to the Grade. Direct recruits were not born to the cadre on the date of the promotion of the respondent No. 1 to Grade III i.e. the Skilled Artisan. It is not in dispute that the appointment was against a regular post and it is also not in dispute that the process of regular promotion was followed when the order of promotion of the respondent No. 1 was passed. The aforesaid rule further provides for maintenance of seniority of the promoted employees over the direct recruits. It further provides that when the dates of entry into a grade of promoted railway servants and direct recruits are the same, they should be put in alternate position, the promotees being senior to the direct recruits, maintaining inter-se-seniority of each group. Merely by circumstance that in parent cadre, some other Khalasi were promoted on subsequent date, in Parel Workshop, Mumbai, when the respondent No. 1's lien had come to an end in parent cadre at Parel Workshop, Mumbai, he could not be ordered to be treated as having been appointed in new workshop at Bhopal when the cadre was still open to be treated as appointed with effect from 1993 and not 1991. The promotion of respondent No. 1 thus could not be interfered with and was subject to senior's right in parent cadre when respondent No. 1's lien in parent cadre had come to an end, the promotion of respondent No. 1 was not subject to any rider. But, the respondent No. 1 had continued at Workshop at Bhopal and thus, obviously, he has to be treated above the persons who had come to be appointed subsequent in point of time to him at Bhopal Workshop as direct recruits, when the cadre was open. No rule of quota for direct recruits was prescribed. No rule has been brought to our notice to show that direct recruits have to be placed above the promotees who were promoted earlier to them in point of time. Thus, we are unable to accept the contentions raised by the learned counsel for the petitioners.

As no rule has been placed before us, laying down rule of seniority, the normal rule would be to determine seniority on the basis of length of service as laid down by the Apex Court in *H. V. Pardasani v. Union of India* 1985 (2) SLR 43 and *V.K. Jaiswal v. Union of India*, (1989) 1 SLR 50 and *M.R. Joshi v. Satish Kumar Pandey* 1992 (5) SLR 611. In the instant case, as Bhopal Workshop was new, the Cadre was kept open. No quota was prescribed nor shown to exist in Cadre for promotees and direct recruits. The respondent No. 1 was duly promoted as per rules, hence is entitled to seniority over the direct recruits subsequently appointed at Bhopal Workshop.

A direct recruit can not challenge promotion of a person validly promoted and whose promotion is not shown to be invalid or illegal according to statutory or

non statutory rule. Direct recruits can not be permitted to score a march over the promotees because that itself being arbitrary would be violation of Articles 14 and 16 as enunciated by Apex Court in the case of A Janardhan v. Union of India (1983) 2 SLR 113 (SC). In P.S. Mahal and Others Vs. Union of India (UOI) and Others, it has been laid down that seniority normally should be fixed on continuous length of officiation. As discussed above, the promotion of Respondent No. 1 in 1991 was duly made in new Workshop at Bhopal and was subject to seniors right at Parel Workshop, Mumbai, not to any other appointment of direct recruits at same Workshop at Bhopal.

Yet another aspect of the matter desist us from interfering in the matter. The respondent No. 1 was promoted to the post of Skilled Artisan Grade III on 27-2-91, on passing departmental examination and having been found fit, he was promoted to the post of Coach Repairer Grade II on 11-10-93 and was further duly promoted to the post of Coach Repairer Grade I on 19-7-96, after about 3 years 8 months on 23-2-99, he was reverted to the post of Coach Repairer Grade II without hearing in utter disregard to rule of audi alteram partem. Thus, order is violative of rule of fair play in action. It is not the case of petitioner that promotion of respondent No. 1 was Illegal to the post of Coach Repairer Grade I, which post he held for 3 years 8 months before reversion. This order can not be allowed to stand.

The submission raised by the petitioners' counsel that order of 1993 by which respondent No. 1 was treated to be promoted with effect from 1993 not 1991 has not been challenged. The order of promotion of respondent No. 1 passed in 1991 was implemented and was after following the rules at new Workshop at Bhopal but rider of just right of seniority was put in 1991 order of a senior person in parent department at Parel Workshop, Mumbai. In parent department if any person was senior would not defeat right of respondent No. 1 against a third person, who are admittedly juniors and came to Cadre much later than respondent No. 1. Hence for purpose of continued seniority vis-a-vis direct recruits order of promotion of 1991 has significance and can not be ignored, as that was pursuant to passing of departmental examination which was as per rules.

There is no merit in the petition and the same is accordingly dismissed.