
(1996) 10 SC CK 0195

In the Supreme Court Of India

Case No : Civil Appeal No. 2462 Of 1993

Union of India (UOI) and Others

APPELLANT

Vs

Prem Narain Mishra

RESPONDENT

Date of Decision : 31-10-1996

Acts Referred:

Citation : (2000) 10 SCC 535

Hon'ble Judges : S. C. Agrawal, J;G. T. Nanavati, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.C. Agrawal and; G.T. Nanavati, JJ.-Prem Narain Mishra, the respondent herein, was appointed as Commercial Clerk in the Eastern Railway on 15-1-1962. He was confirmed on the said post in the year 1963. On 1-1-1978, he was asked to work as Enquiry-cum-Reservation Clerk in the scale of Rs 150-560 on ad hoc basis as stopgap arrangement. M.L. Bhowmik and S.C. Ghosh who were appointed as Ticket Collectors (a post in grade lower than that of Commercial Clerk) on 15-1-1962 and certain other employees who were appointed as Commercial Clerks subsequent to Respondent 2 were also asked to work as Enquiry-cum-Reservation Clerks on ad hoc basis on 1-1-1978. All were regularised as Enquiry-cum-Reservation Clerks with effect from 1-1-1978. A gradation list was circulated on 6-4-1981 in which M.L. Bhowmik and S.C. Ghosh and the other Commercial Clerks aforementioned were shown senior to the respondent as well as one Awadesh Rai who had been appointed as Commercial Clerk on 27-12-1955 and had been asked to work as Enquiry-cum-Reservation Clerk on 1-1-1978. Feeling aggrieved by the said seniority list, the respondent and Awadesh Rai filed a writ petition (CWJC No. 2419 of 1981) in the Patna High Court which was subsequently transferred to the Central Administrative Tribunal (hereinafter referred to as "the Tribunal") and numbered as TA No. 10 of 1983. By judgment dated 16-12-1988, the said petition was allowed by the Tribunal and it was directed that the respondent and Awadesh Rai be assigned seniority over M.L.

Bhowmik, S.C. Ghosh and other Commercial Clerks.

2. Prior to the revision of pay scales with effect from 1-1-1986, there were the following grades for Enquiry-cum-Reservation Clerks:

Rs 330-560 (Initial)

Rs 425-640 (Non-selection)

Rs 455-700 (Selection)

Rs 550-750 (Non-selection)

Rs 700-900 (Selection)

3. While the above-referred petition was pending before the High Court and the Tribunal, steps were taken for promotion to the selection scale of Rs 455-700. The said selection involved a written test followed by an oral test. The written test was held on 17-6-1984 and 30-6-1984. The respondent could not appear in the written test on those dates on account of his having fallen sick and the selection was kept upon (sic open) for him. The respondent appeared in the written test held on 4-12-1985 but he failed to obtain the minimum qualifying marks. A selection panel containing the names of S.C. Ghosh and other persons who were junior to the respondent was prepared.

4. By order dated 24-9-1986, pay scales were revised with effect from 1-1-1986 and as a result of such revision the grades of Rs 425-640 and Rs 455-700 were merged into one unified scale of Rs 1400-2300 which was classified as "non-selection". The next higher scale of Rs 550-750 which was earlier classified as "non-selection" was revised to Rs 1600-2660 and was classified as "selection". S.C. Ghosh was promoted to the scale of Rs 550-750 (revised scale Rs 1600-2660) on 10-1-1989.

5. By order dated 27-3-1989 the directions given in the judgment of the Tribunal dated 16-12-1988 were sought to be implemented and the respondent was placed senior to S.C. Ghosh in the grades Rs 330-560 and Rs 425-640. In the said order it was also stated that beyond the scale of Rs 425-640 the respondent will not get any benefit of seniority as he could not qualify in the written examination held on 4-12-1985 for promotion to the selection grade of Rs 455-700 and S.C. Ghosh was shown as having been placed in the grade of Rs 455-700. Feeling aggrieved by the said order dated 27-3-1989 the respondent filed a petition (OA No. 449 of 1990) before the Tribunal wherein he sought a direction that his seniority may be fixed above S.C. Ghosh and he be placed in the grade of Rs 700-900 (revised scale Rs 2000-3200) on the basis that S.C. Ghosh is in that grade. The said petition was decided by the Tribunal by the impugned judgment dated 27-1-1992. The Tribunal has held that since the respondent had been found to be senior to S.C. Ghosh and others, the railway administration was duty-bound to consider him for each promotion on higher grades whenever those persons who were found junior to the respondent were

considered for any higher grade or higher promotion and that he is entitled to the grade of Rs 700-900 (revised scale Rs 2000-3200) which has been granted to S.C. Ghosh. As regards the order dated 27-3-1989 the Tribunal has said that it only contains certain observations regarding seniority and grant of grade to the respondent and that the said observations with respect to the seniority and grant of grade to him will have no adverse effect on the claim of the respondent.

6. We have heard Shri Qadri, the learned counsel for the appellants, in support of the appeal and Shri Uday Sinha, the learned Senior Counsel for the respondent. It is no doubt true that prior to revision of the pay scales with effect from 1-1-1986 selection had been made for the purpose of promotion to the higher grade of Rs 455-700 and in that selection while S.C. Ghosh had been selected, the respondent was not selected since he failed to obtain the minimum qualifying marks in the written test. But it does not appear from the record that any order was passed promoting S.C. Ghosh to the scale of Rs 455-700 on the basis of the said selection with effect from a date prior to 1-1-1986. We must, therefore, proceed on the basis that on the date when the pay scales were revised with effect from 1-1-1986, the respondent as well as S.C. Ghosh who were in the same grade of Rs 425-640 and by virtue of judgment of the Tribunal dated 16-12-1988 the respondent was senior to S.C. Ghosh in the said grade. Any promotion to a higher grade after the revision of the pay scales with effect from 1-1-1986 has to be made on the basis of the said seniority.

7. As regards the direction given by the Tribunal that the respondent should be given the scale of Rs 700-900 (revised scale Rs 2000-3200) the learned counsel for the appellant has pointed out that S.C. Ghosh had not been given the said scale of Rs 700-900 as claimed by the respondent and that he was promoted to the grade of Rs 550-750 (revised scale Rs 1600-2660) on 10-1-1989. The aforementioned direction given by the Tribunal in this regard cannot, therefore, be upheld and has to be set aside. All that the respondent can claim is that he be considered for higher grade/grades on the same basis on which persons junior to him have been considered. The appeal is, therefore, dismissed subject to the modification as indicated above in directions given by the Tribunal in the impugned judgment. No order as to costs.