

Munshi Lal Verma

Vs

Union of India

Civil Appeal No. 5903 of 1983

(P. N. Bhagwati, Ranganath Misra JJ)

02.08.1983

JUDGMENT

RANGANATH MISRA, J. -

1. Special leave is granted.
2. Appellant, an Assistant in the employment of the Western Railway, filed a suit asking appointment in one of the 24 upgraded posts of non-gazetted cadre Clerks sanctioned in March 1957 with effect from April 1, 1956. The requisites to be satisfied for enjoying the advantage were that the employee should be a graduate on the date of the order, viz., November 12, 1957, and should be entitled to be considered on the basis of seniority. The plaintiff was placed in the twenty-first position according to seniority. The plaintiff was placed in the twenty-first position according to seniority and was already a graduate by the relevant date. He was, however, not given one of those upgraded posts as four out of the 24 upgraded posts were reserved for Scheduled Castes and Scheduled Tribe employees. Ultimately when employees of the reserved category were not available the posts were dereserved. Yet plaintiff was not given one of those posts. He, therefore, filed the suit.
3. The Railway Administration took the stand that plaintiff had not passed the requisite test by the relevant date and before dereservation of the four posts the office was reorganised and the divisionalisation was adopted. The plaintiff, therefore, had no right to the post.
4. The trial court as also the Additional District Judge in appeal and the High Court in second appeal have negated relief to the plaintiff. The short question which has been canvassed in appeal before this Court is that divisionalisation had no relationship with the plaintiff's claim to one of the upgraded posts. The relevant order of the Railway Administration clearly indicates that the posts were upgraded with effect from April 1, 1956, and if the requisite qualification was possessed by the date of the order issued on November 12, 1957, plaintiff's claim was bound to succeed. Five aspects were raised for consideration in the courts below and on the first four findings were given in favour of the plaintiff. But he lost on a finding that the posts did not exist. This finding seems to be contrary to the record inasmuch as in a letter dated September 19, 1963, it was clearly indicated that the four vacancies remained unfilled. If this aspect had been borne in mind, the plaintiff was bound to succeed. Mr. Francis for the Railway Administration had no answer to this contention.
5. The plaintiff must succeed on the findings already recorded in the courts below. The appeal is allowed and the plaintiff's claim for one of the 24 upgraded posts with effect from April 1, 1956, is decreed. His claim for extra salary and other advantages flowing from the seniority with effect from

the date plaintiff became qualified would be given effect to. He shall be entitled to costs throughout.

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