

Om Prakash Sharma and Others

Vs

Union of India and Others

Civil Appeal No. 3434 of 1984.

(Ranganath Misra, D. A. Desai JJ)

11.04.1985

JUDGMENT

DESAI, J. -

1. There were three independent divisions called the departments under the Control of Divisional Electrical Engineer, Jhansi. They were :

1. Divisional Electrical Engineers, Jhansi
2. Office of the Assistant Electrical Engineers (Workshop), Jhansi
3. Office of the Assistant Electrical Engineer, Jabalpur

These three departments had three separate offices. But the clerical staff such as clerk, senior clerk, head clerk and chief clerk of all the three departments were borne on a common seniority list till August 31, 1956. Effective from September 1, 1956, these three departments under the control of the Divisional Electrical Engineer, Jhansi were separated from each other on the introduction of the divisionalization in the railways. These three departments became three independent units, and in the matter of staff each devised its separate seniority list.

2. Department styled as workshop mentioned at serial no. 2 above was merged with the department office of the Chief Electrical Engineer, Bombay. This merger continued till July 31, 1979. Effective from August 1, 1979, all the three original departments trifurcated on August 31, 1956 were re-amalgamated in the matter of staff and a common seniority list was introduced in respect of all the four cadres which were prior to September 1956 on a common seniority list. Pursuant to the amalgamation common seniority list (Annexure 6) was drawn up. It purports to be the combined seniority list of the Railway Administration, Electrical Department, Central Railway, Jhansi. Validity of the seniority list is impugned in this appeal. In this seniority list appellant 1 is at serial No. 3, appellant 2 is at serial No. 4, and appellant 3 is at serial No. 10. The department has assigned seniority to respondents 3-6, in the same seniority list at serial Nos. 2, 5, 6 and 9 respectively in the cadre of head clerks. The appellants contend that when the three departments had a common seniority list, the appellants were senior to respondents 3 to 6, but after trifurcation and re-amalgamation respondents 3 to 6 who belonged to erstwhile workshop staff and who were amalgamated with the staff of the Chief Electrical Engineer, Bombay, obtained accelerated promotion because of easy availability of vacancies. Consequently, when re-amalgamation was introduced from August 1, 1979 when respondents 3-6 reverted to the common seniority list with appellants and other similarly situated persons, they scored a march over the appellants because of a

fortuitous event. The contention in terms is that where staff employed in different units under the administrative control of one higher officer are borne on a common seniority list, when because of trifurcation re-amalgamation all are brought back on the common seniority list, their position ante must be reflected in the seniority list. Original seniority it is said must prevail otherwise any other view would be denial of equality of opportunity in the matter of public employment guaranteed under Article 16 of the Constitution. Accordingly the appellants challenged the seniority list in Writ Petition 1415 of 1983 in the High Court of Judicature at Allahabad. A Division Bench of the High Court by a short cryptic order rejected the writ petition observing that the Court did not find any merit in the writ petition. Hence this appeal by special leave.

3. The appellants have an iron-clad case. The facts, not disputed, to summarise briefly are that under the Divisional Electrical Engineer there were three separate departments under his administrative control. Members of the staff of the three departments were borne on a common seniority list. In other words they were deemed to belong to one office in the matter of seniority and promotion. This is not only not disputed but the averment to that effect in para 6 of the petition has been admitted in the counter-affidavit filed on behalf of the Railway Administration. It is again admitted that the three appellants since their entry into service were senior to respondents 3 to 6. For the administrative convenience the Railway Administration trifurcated the cadres. In other words, three units were separated from each other which resulted in each unit having its own seniority list and the common seniority list became irrelevant from the date of the trifurcation. The unit No. 2 called the workshop was amalgamated with the office of the Chief Electrical Engineer, Bombay. That is not controverted. Respondents 3 to 6 belonged to the administrative staff in the department styled as the workshop. The result of the trifurcation and amalgamation of the workshop with the Bombay office was that the workshop staff including respondents 3 to 6 were taken over on the seniority list maintained by the Bombay office. It is admitted that on account of availability of vacancies in the Bombay office respondents 3 to 6 got some accelerated promotions in the cadre of head clerks. Surprisingly after a span of 23 years, Railway Administration reconsidered its earlier decision and detached the workshop staff from the office of the Chief Electrical Engineer, Bombay and brought it back to Jhansi and three former departments under Divisional Electrical Engineer were amalgamated. In other words situation ante as on August 31, 1956 was restored, and members of the staff were brought on common seniority list cadre wise. This factual averment is unambiguously admitted. Consequent upon amalgamation in 1979 a fresh common seniority list was drawn up in which cadre wise respondent 3 was shown senior to appellants 1 and 2 and respondents 2, 5, 6 and 9 were shown senior to appellant 3. Obviously when the amalgamation took place, respondents 3 to 6 could not score a march over erstwhile seniors on any valid principle of seniority. This would unquestionably be denial of equality under Article 16 of the Constitution. It may be that they might have enjoyed some accelerated promotion when workshop staff was amalgamated with the Bombay office. But when they were repatriated and re-amalgamated with original two offices and brought back on the common seniority list, they must find their original place qua the appellants. This is not a case where appellants were passed over at the time of selection or denied promotion on the ground of unsuitability. In such a situation status quo ante has to be restored. Obviously respondents 3 to 6 will be below the appellants and any other view to the contrary would be violative of Article 16 as it would constitute denial of equality in the matter of promotion. Therefore, the seniority list drawn up on a principle contrary to what is discussed herein would be bad in law and deserves to be quashed.

4. Accordingly, we quash and set aside the seniority list produced at Annexure 6 and direct that the appellants shall be shown senior to respondents 3 to 6 in the cadre of head clerks and future promotions shall be dealt with according to their places in the seniority list. It is not for a moment suggested that promotion to the post of chief clerk has to be given by mere seniority. But if and to

the extent seniority is considered relevant it shall be given due weight. We consider it unnecessary to call upon the Railway Administration to re-draw the seniority list. Let an order in the nature of mandamus be issued directing the Railway Administration to assign seniority to the appellants over respondents 3 to 6. Seniority list shall stand re-drawn as herein indicated.

5. Mr. G. D. Gupta, learned counsel made some grievance about the communication produced at Exhibit P-5. That communication consists of a letter inviting certain persons to appear at a test to consider their suitability for further promotion. If for the post of chief clerk invitation to appear at a test is dependent upon the place in the seniority list, invitations shall be readjusted and reissued consistent with the direction given herein and test shall be held thereafter.

6. If any promotions are given since this appeal was admitted these shall be readjusted in accordance with the directions herein given. The appeal is allowed to that extent with costs quantified at Rs. 2000.

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