

State of U.P.

Vs

Onkar Nath Tandon and others

Civil Appeal No. 3331 of 1992

(A. M. Ahmadi, S. Mohan JJ)

17.08.1992

JUDGMENT

1. Special leave granted.

2. Heard counsel on both sides. We do not think that the impugned order of the High Court can be sustained. The respondent No. 3 (the original petitioner in the writ petition before the High Court) joined service as Lower Division Assistant in 1949 and after a competitive examination conducted by the State Public Service Commission (for short 'PSC') he was confirmed as Lower Division Assistant in 1953. In the course of service he was transferred to the Vidhan Sabha Sachivalaya as Lower Division Assistant. Respondent No. 1 Onkar Nath and respondent No. 2 Krishna Das Rastogi were also selected after a competitive examination conducted in 1953 as Lower Division Assistants in the Vidhan Sabha Sachivalaya. The appointments of respondents Nos. 1 and 2 were, however, made after that of respondent No. 3 since the latter was already in service. Respondent No. 3 was, therefore, senior to respondents Nos. 1 and 2.

3. In 1977 selection for confirmation to the post of Section Officer was held by the PSC against seven permanent posts. Out of those considered by the PSC six persons were found fit and they were appointed as Section Officers. Respondent No. 3 was found unfit and, was rejected. One post which was reserved for Scheduled Caste candidates was not filled as no suitable candidate from that class was available.

4. The respondent No. 3 made representation to the Government that his juniors were promoted as Section Officers. On the basis of these representations the Government wrote to the PSC to convert the vacant post reserved for Scheduled Caste candidates into a general category post. After initial hesitation, the PSC agreed and the said post was converted into a general category post. The respondent No. 3 was appointed as Section Officer on the said post by Notification dated 8-1-1983 with effect from 2-1-1982. Respondent No. 3 then represented that he was senior to respondents Nos. 1 and 2 Onkar Nath and Krishna Das Rastogi. This representation was rejected by the order of 17-5-1984. Thereupon, respondent No. 3 filed a writ petition in the High Court challenging that order. The High Court allowed the writ petition on two grounds, namely, (i) that respondent No. 3 was left out and was not selected while his two juniors were duly selected by the PSC; and (ii) that even otherwise after the appointment of respondent No. 3 as Section Officer the injustice done to him was remedied and, therefore, under the settled law he was entitled to be considered senior to his juniors who were promoted earlier in point of time. We are afraid that the High Court went wrong on both the factual as well as the legal aspects. In the first place it is necessary to note that

respondent No. 3 was considered along with others but was found unfit for the post of Section Officer. He was, therefore, left out and his juniors who were found fit were appointed on that post. Out of the seven posts which were vacant one belonged to the reserved category but since no suitable Scheduled Caste candidate was available that post was kept vacant. Taking advantage of that fact the respondent No. 3 made representations on the basis of which the PSC was persuaded to convert the reserved category post to a general category post. It was only thereafter that the respondent No. 3 was appointed on that post. In the circumstances, it cannot be said that respondent No. 3 could be treated at par with candidates who had been selected by the PSC. In fact respondent No. 3 was not found to be fit and it was on that account that he was left out. He thereafter entered the cadre of Section Officer by getting the Scheduled Caste seat dereserved and without going through a competitive selection process. He cannot, therefore, be permitted to disturb the seniority of selected candidates. He can only rank below them. Therefore the decision of the authorities to treat him as junior to the other two candidates cannot be assailed. It appears from the High Court judgment that he gave the impression that his claim was overlooked when the PSC selected six candidates for the six general category seats. That is why the High Court observes in the judgment that he was 'left out from consideration and not selected by the PSC'. This is not a case of candidate having been inadvertently omitted from consideration. He was considered and not found fit for being selected for the post of Section Officer. The High Court, therefore, proceeded on a wrong assumption that he was inadvertently left out from consideration by the PSC when it selected candidates for filling the six general category seats. The High Court then proceeds to observe :

"It has been a settled rule of law and practice in Government Departments that whenever on a post a person is promoted from which he was earlier superseded, he would regain his seniority from the date he was superseded."

We are afraid that this broad statement of law is not accurate because if a junior supersedes a senior on merit basis his senior cannot claim seniority in the higher cadre on his being promoted at a subsequent date unless it is shown that he was left out from consideration on the earlier occasion when he ought to have been considered. The High Court perhaps made this broad statement on the factual premise that he was left out of consideration and, therefore, not selected by the PSC. This factual premise is not correct.

5. In view of the above we are of the view that the benefit obtained by respondent No. 3 under the impugned order of the High Court is undeserved and based on a factual inaccuracy that he was left out of consideration when his juniors were considered for promotion as Section Officer. As pointed out earlier he was considered and found unfit by the PSC and it is on that account that his name was not entered in the select list and he did not secure promotion to the next higher post. His subsequent promotion was also arranged by persuading the PSC to de-reserve the vacancy meant for Scheduled Caste candidates and treated as one belonging to the general category. Thus his entry in the cadre of Section Officers was not on merit but on this exercise and therefore he cannot claim seniority over his juniors who were selected and appointed on merits to the next higher post. We are, therefore, of the opinion that the High Court was in error in allowing the writ petition of respondent No. 3 and in granting consequential benefits. We, therefore, set aside the impugned order and direct that the said writ petition will be treated as dismissed with no order as to costs throughout. Appeal allowed.

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