

KULDIP CHAND
v.
UNION OF INDIA AND ORS.

AUGUST 24, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Service Law :

Seniority—Promotion—Fortuitous service cannot be reckoned for seniority—Seniority list—Illegal preparation of—Representation against—Rejection—Delay in filing writ petition—Held mere rejection of representation does not disentitle to claim seniority against his non-consideration for promotion.

Respondent-4 was appointed on November 29, 1976 as octroi Moharrar in the pay scale of Rs. 110-250 and was posted as a Clerk on March 1, 1984. In 1982 the posts of Octroi Moharrars and Clerks were fused and redesignated as Clerks. Respondent-4 claimed promotion to the post of accountant vis-a-vis the appellant who was appointed as Sanitary Supervisor on August 29, 1973 in the pay scale of Rs. 100-160, promoted as Clerk on February 5, 1979 and fortuitously posted as a Storekeeper in the pay scale of Rs. 510-800. His claim was accepted by the High Court. Hence this appeal.

Dismissing the appeal, this Court

HELD : 1. Admittedly Respondent-4 has been working as a Clerk since inception, viz. November 29, 1976. On the other hand the appellant was appointed as a Clerk on February 5, 1979 and had not been promoted to the post of Storekeeper in his own right but came to be posted by way of fortuitous circumstances and continued to work on that post. Therefore it would not be a ground to claim seniority over Respondent-4. The High Court, therefore, was right in its conclusion that the fortuitous circumstance of the appellant working as a store-keeper cannot permit him to have a march over the 4th respondent. [47-B-C]

2. The mere fact that Respondent-4 did not challenge the seniority list, which was illegally prepared, till he was aggrieved by non-considera-

A tion of the claim to the post of accountant, his legitimate right to be considered cannot be denied. Consequently the delay is of no consequence for considering his claim. [47-F-G]

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7926 of 1995.

From the Judgment and Order dated 22.11.91 of the Himachal Pradesh High Court in C.W.P. 267 of 1991.

V.M. Issar and M.M. Kashyap for the Appellant.

C B.S. Charya, S.C. Paul and J.D. Jain for the Respondent No. 4.

N.N. Goswami, Ms. Subhashini, Ms. Sushma Suri and Ms. Anil Katiyar for the Respondent Nos. 1-3.

D The following Order of the Court was delivered :

Leave granted.

E On 1st January, 1991 when the post of Accountant became vacant, Ashok Kumar, 4th respondent had staked his claim for consideration of his case for promotion contending that he was appointed on November 29, 1976 as octroi moharrar in the pay scale of Rs. 110- 250 and that he was posted as clerk on March 1, 1984. By the proceedings of the competent authority, the post of octroi moharrar and clerks were redesignated as clerks in year 1982. Consequently he was working as a clerk from November 29, 1976. The post of clerk is a feeder post for consideration to the vacancy of accountant. He being senior to the appellant, is better situated to be considered for the post of accountant. His claim was negated. Consequently, when he approached the High Court of Himachal Pradesh in W.P. No. 267/91 by order dated November 22, 1991, the High Court accepted the claim and allowed the writ petition directing the Union of India to consider his case for promotion as an accountant vis-a-vis the claim of Kuldip Chand, which found favour with the authorities. The case of the appellant is that he was appointed as sanitary supervisor on August 29, 1973 in the pay scale of Rs. 100-160. He was promoted as a clerk on February 5, 1979 and was posted as a store keeper in the pay scale of Rs. 510-800. Ever since he has been drawing the same scale and is thus senior to the 4th respondent.

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The question, therefore, for our consideration is : who is the senior in the post of the clerk? Admittedly, post of clerk is a feeder post for promotion as an accountant. It is not in dispute that the posts of octroi moharrar and the clerk were fused and redesignated as clerks. In that view, it must be deemed that Ashok Kumar has been working as a clerk since inception, viz., November 29, 1976. The appellant admittedly was appointed as a clerk on February 5, 1979. The post of store keeper though was a specialised post the appellant had not been promoted to that post in his own right. When that post was vacant, the appellant came to be posted by way of fortuitous circumstances and continued to work in that post, which was otherwise than in his own right. It would not be a ground to claim seniority over Ashok Kumar who admittedly was a clerk from November 29, 1976. The High Court, therefore, was right in its conclusion that the fortuitous circumstance of the appellant working as a store keeper in the pay scale of Rs. 510-800 cannot permit the appellant to have a march over the 4th respondent.

It is next contended by Mr. M.M. Kashyap, learned counsel for the appellant, that Ashok Kumar disputed the correctness of the seniority list made on December 23, 1982 in his representations dated January 10, 1983 and August 1, 1983 which were duly considered and rejected. He allowed it to become final as he did not challenge the same till post of accountant became vacant. When it was rejected, he filed the writ petition in the High Court. there is a considerable delay in claiming his seniority over the appellant. It is true that the seniority list was prepared as early as on December 23, 1982 but no vacancy had arisen thereafter and, therefore, the mere rejection of the claim for seniority does not disentitle him to claim his seniority over the appellant for consideration by the respondent-Union.

When the aforesaid facts are taken into consideration, it would be obvious that the preparation of seniority list *per se* was illegal. Therefore, the mere fact that he did not challenge the seniority list, which was illegally prepared, till he was aggrieved for non-consideration of the claim to the post of accountant, his legitimate right to be considered cannot be denied. Under these circumstances, the delay is of no consequence for considering the claims of Ashok Kumar for the post of accountant.

The appeal is dismissed. No costs.

T.N.A.

Appeal dismissed.