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RAM UJAREY
v.
UNION OF INDIA

NOVEMBER 13, 1998

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[S. SAGHIR AHMAD AND S.P. KURDUKAR, JJ.]

Service Law :

C *Reversion—Railways—Coal Khalasi in Loco Department—Transferred to Carriage Wagon Department—Passed Trade tests—Promoted to the posts of Semi Skilled Fitter and Skilled Fitter—By an order reverted to the post of Khalasi—Challenged by filing a suit before Trial Court—Suit decreed—On appeal by Railways, Tribunal directed to file claim petition before the appropriate Bench of the Tribunal—Claims petition filed which was dismissed by Tribunal holding that appellant not entitled to count the service rendered in Loco Department for seniority in Wagon Department—On appeal, Held, appellant was rightly promoted to the post of semi skilled and skilled fitter after he passed trade tests—Benefit of previous service rendered cannot be withdrawn without giving opportunity of hearing to appellant—Reversion Order wholly illegal and cannot be sustained—Appellant to be put back on duty on the post of Fitter with consequential benefits—Central Administrative Tribunals Act, 1985—Section 19.*

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Central Administrative Tribunals Act, 1985—Sections 19, 21 :

F *Limitation—Reversion Order dt. 18.4.1980—Challenged by filing a suit in 1980—Within Limitation period—Tribunal directing to file the claim petition before proper court—Refiling of petition—Delay of one and half months—Tribunal held barred by limitation—On appeal, Held, Tribunal erred in dismissing the claim on the ground of limitation.*

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The appellant was appointed as Khalasi under the Loco Foreman, Ambala Cantt. and was posted as Coal/Fuel Khalasi. He was transferred to Carriage Wagon Department and was posted as Khalasi at Khanalampura Goods Yard. He was again transferred to Ambala Cantt. where he passed the trade test for the posts of Semi-Skilled Fitter and Skilled Fitter and was promoted. By an Order dated 18.4.1990, the appellant was reverted to the post Khalasi. Appellant challenged the reversion order by filing a regular suit before the

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trial court which was decreed. An Appeal filed by the Department was allowed by the Tribunal directing the appellant to file the plaint before the appropriate Bench of the Tribunal. Appellant then filed a claim petition before the Tribunal. The said petition was dismissed by the Tribunal holding that appellant was not entitled to count the service rendered by him in the Loco Department as Coal Khalasi towards his seniority in the Carriage and Wagon Department as he has failed to prove that he was sent on transfer to Carriage Wagon Department and not as fresh appointee. The Tribunal also dismissed the petition on the ground of limitation. Hence the present appeal.

Allowing the appeal, this Court

HELD : 1.1. The Revision Order passed by the respondents was wholly illegal and cannot be sustained. The appellant shall be put back to duty on the post of Fitter with all consequential benefits. [692-A; 694-B]

1.2. On perusal of the Original Record it is found that the appellant was initially appointed as Khalasi in 1964 and was confirmed with effect from 11.4.1965. Thus it was not a case of mistake on the part of Administration, but they had rightly given the benefit of previous service to the appellant who was as a consequence thereof, rightly called for trade tests for the posts of Semi-Skilled Fitter and Skilled Fitter and having passed those tests was rightly promoted on those posts. [691-D-E]

1.3. The appellant having earned two promotions after passing the trade tests, could not have been legally reverted two steps below and brought back to the post of Khalasi without being informed that the period of service rendered by him could not be counted towards his seniority and, therefore, the promotion orders would be cancelled. The appellant had been allowed benefit of service rendered by him as Coal Khalasi in the Loco Department as that period was counted towards his seniority and it was on that basis that he was called for the trade tests which he had passed and was, thereafter, promoted to the posts of Semi-Skilled Fitter and Skilled Fitter. If the benefit of service rendered by him from 1964 to 1972 was intended to be withdrawn and promotion orders were to be cancelled as having been passed on account of mistake, the respondents ought to have first given an opportunity of hearing to the appellant. [692-C-D; B]

1.4. The respondent, curiously overlooked the Service Record of the appellant which contained material documents to indicate that the appellant had already acquired the permanent status. These documents could not have

A been legally ignored but the respondent, for reasons best known to them, did otherwise. Thus the conduct of the respondent is wholly arbitrary and bad in law. [692-E-F]

B 2. The Tribunal erred in dismissing the claim of the appellant on the ground of limitation. The appellant was reverted by an Order dated 18.4.1980. It was in 1980 that he filed a suit challenging his reversion and the said suit was decreed by Trial Court. Thus the litigation process was started by the appellant in 1980 when he filed the Suit, though in a wrong Court, within limitation. The Tribunal while allowing the appeal filed against the decree passed by the Trial Court, directed that the plaint be returned to the appellant for presentation before the appropriate Bench of the Tribunal. Some delay had occurred in the re-filing of the plaint before the Tribunal and the Tribunal itself had observed that there was a delay of one and half months only. At this late stage it will be too much for a poor employee of the status of appellant to be driven out of the Court on the ground of limitation. In the circumstances the delay in filing the O.A. before the Tribunal is condoned.

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D [692-F-G-H; 693-D-E-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5714 of 1998.

E From the Judgment and Order dated 28.11.95 of the Central Administrative Tribunal, Chandigarh in O.A. No 977 of 1988.

Anis Suhrawardy for the Appellant.

N.N. Goswami, Ms. Sushma Suri and A.K. Sharma for the Respondent.

F The Judgment of the Court was delivered by

S. SAGHIR AHMAD, J. Leave granted.

G The appellant was appointed as Khalasi under the Loco Foreman, Ambala Cantt and was posted as Coal/Fuel Khalasi at Nangal Dam where he worked upto 15th of September, 1972. On 16th of Sept. 1972, he was spared and transferred to Carriage and Wagon Department of Northern Railway and was posted as Khalasi at Khanalampura Goods Yard, Saharanpur, where he joined on 20.9.1972. He was again transferred to Ambala Cantt on 11.6.1978 where he passed the trade test for the post of Semi-skilled Fitter and was promoted to that post. He was further promoted, after passing the requisite trade test,

H as Skilled Fitter on 9.5.1979.

By an order dated 18.4.1980, the appellatant was reverted to the post of Khalasi in Carriage and Wagon Department. It was this order which was challenged by the appellatant in Regular Suit No. 294 of 1980 which was decreed by the VIIIth Additional Munsif, Saharanpur, on 13.11.1981. This judgment was challenged in appeal, filed by the Railway Administration, in the court of the District Judge, Saharanpur which was later transferred to the court of IVth Additional Civil Judge, Saharanpur, while the appeal was pending in that court, Central Administrative Tribunals Act, 1985 came into force and the appeal stood transferred to the Central Administrative Tribunal, Allahabad. The Tribunal allowed the appeal and set aside the judgment and decree passed by the trial court as it was of the opinion that the suit had not been filed in the proper court and consequently directed the plaint to be returned for presentation to the proper Bench of the Tribunal for a fresh decision.

The appellatant then filed the claim petition under Section 19 of the Central Administrative Tribunals Act, 1985 before the Tribunal at Chandigarh which, by its judgment dated 28.11.1995, dismissed the petition. It is this judgment which is assailed in appeal before us.

The respondent had contested the suit as also the Claim Petition mainly on the ground that the appellatant was initially appointed as Substitute Khalasi, who later acquired the temporary status. In 1972, when the contract system was introduced in the Loco Shed, he was declared surplus and was absorbed in Carriage and Wagon Department as a Khalasi. The period of service rendered by the appellatant from 1964, when he was first appointed as Khalasi, to 1972 when he was shifted to Carriage and Wagon Department as Khalasi, was wrongly counted towards his seniority and, consequently, he was not entitled to be promoted either as Semi-skilled Fitter or Skilled Fitter although he had passed the requisite trade tests for both the posts. When this mistake was noticed, the reversion order dated 18.4.1980 was issued and he was again posted as Carriage and Wagon Khalasi. The claim was also contested on the ground of limitation.

Learned counsel for the appellatant has contended that the finding recorded by the Tribunal that the appellatant having been declared surplus at Ambala Cantt in 1972, was not entitled to count the previous service from 1964 to 1972 towards his seniority, was erroneous and was liable to be set aside as the appellatant had been confirmed on the post of Coal Khalasi and having acquired permanent status, there was no question of his being declared surplus. It was on account of his permanent status that he was shifted to

- A Carriage and Wagon Department as Khalasi without his service having been terminated by any specific order. It is also contended that the assertion of the respondents that the promotion orders were made by mistake, was wholly wrong as the appellant besides having passed the trade tests for the promotional posts of Semi-Skilled Fitter and Skilled Fitter was entitled to count the entire period of service from 1964 to 1972 as Coal Khalasi towards his seniority,
- B specially on account of the fact that he was already confirmed on that post with effect from 11.4.1965.

- Learned counsel for the respondents, on the contrary, contended that the handling of coal in the Loco Department was given to contractors and,
- C therefore, all the posts of Coal Khalasi were surrendered, as a result of which the appellant including many others were declared surplus and they were, on compassionate ground, absorbed as Khalasis in the Carriage and Wagon Department and, therefore, the appellant was entitled to count his seniority in the Carriage and Wagon Department only with effect from 1972 when he was appointed in that Department. He was not, it is contended, entitled to
- D count his previous service, rendered as Coal Khalasi in the Loco Department from 1964 to 1972, towards his seniority. His promotions, consequently, were made at a time when he was, on the basis of seniority in the Carriage and Wagon Department, not entitled to be promoted either as Semi-skilled Fitter or as Skilled Fitter, notwithstanding that he had passed the trade tests for the
- E two posts. It is further contended that the appellant should not have, as a matter of fact, been called for the trade tests.

- The main issue, therefore, between the parties was whether the period of service rendered by the appellant, from 1964 to 1972 as Coal Khalasi in the Loco Department, was liable to be counted towards his seniority in the
- F Carriage and Wagon Department where he was appointed in 1972 or it was to be ignored altogether. It is obvious that if the appellant had already acquired the permanent status in the Loco Department, he would be entitled to the benefit of previous service rendered by him in that Department, for the purpose of his seniority in the Carriage and Wagon Department where he was
- G appointed in 1972.

- The finding recorded by the Tribunal, on this issue, is cryptic. It has been recorded only by reason of the fact that the Tribunal was of the opinion that the appellant had failed to prove that he was sent on transfer to Carriage and Wagon Department as Khalasi and not as a fresh appointee. The Tribunal
- H has observed that the mere fact that a railway pass was issued to the

appellant for proceeding to Khanalampura Goods Yard, Saharanpur and that joining time was also allowed to him could not mean that he was sent there on transfer. These factors could not legally constitute the basis for recording a finding that the appellant was not entitled to count the service, rendered by him in the Loco Department from 1964 to 1972 as Coal Khalasi, towards his seniority in the Carriage and Wagon Department. As a matter of fact, the duty of the Tribunal was to have investigated whether the appellant who was initially appointed as Substitute Khalasi and who had, admittedly, acquired the temporary status had, at any time, been confirmed as Coal Khalasi or his status as a temporary Khalasi continued till he was allegedly declared surplus in 1972. This could be found out only by a perusal of the Service Records which was not done by the Tribunal nor were the relevant records produced by the respondents before the Tribunal to enable it to come to the correct conclusion on this vital question. It was for this reason that we, by our Order dated 3rd of February, 1998, directed the respondents to produce the original Service Record before us. It is in pursuance of this Order that the respondents have produced the original Service Book of the appellant and other relevant records before us. The second page of the Service Book contains the following entry :-

“Confirmed as Coal Khalasi w.e.f. 11-4-65.

Sd/-
A.P.O. III”

There is also the following entries made by A.P.O.III :-

“The following period of service have been verified from the available service records and will qualify for pension.

From 5.6.64 to 31.3.65

1.4.65 to 31.3.66

1.4.66 to 31.3.67

1.4.67 to 31.3.68

1.4.68 to 31.3.69

1.4.69 to 31.3.70

Sd/-

A.P.O. III

A 1.4.70 to 31.3.71

Sd/-

A.P.O. III"

B The third page of the Service Book Contains the entries regarding the appellant's having passed the trade tests for the posts of Semi-skilled Fitter and Skilled Fitter and his consequent promotions on those posts.

C Mr. N.N. Goswami, learned senior counsel, appearing for the Union of India, drew our attention to the order of appointment dated 30.5.1964 by which the appellant was appointed as Substitute Khalasi. This document loses its significance as the personal file of the appellant contains another document dated 30.3.1965 by which the appointment of the appellant as Substitute Coal Khalasi was regularised as Temporary Coal Khalasi. Then there is the endorsement made in the Service Book that he is confirmed as Coal Khalasi with effect from 11.4.1965. Reading these documents together, D it is apparent that though the appellant was initially appointed as Substitute Khalasi in 1964, he acquired temporary status by virtue of the order dated 30.3.1965 and permanent status with effect from 11.4.1965 as per the entry contained in his Service Book.

E Mr. Goswami then drew our attention to the "Notice" issued by the Divisional Office, Northern Railway, New Delhi, in September, 1972 which indicates that a number of Coal Khalasis, including the appellant, who were rendered "surplus from shed under LF UMB due to change over to contract system with effect from 16.9.1972" were absorbed on other alternative posts. The appellant was absorbed as Coal Khalasi in the Carriage and Wagon F Department and was posted at Khanalampura Goods Yard, Saharanpur. A "Note" appended to this order reads as under :-

G "Note: The absorption of the above noted staff are purely as a temporary measure. They will not have any right of absorption in the category other than for which they are empanelled. They will be considered for posting back on occurrence of vacancies on loco side as Kh. Changes may be advised promptly.

Sd/-

Asstt. Personnel Officer/III
N. Rly New Delhi"

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It is on the basis of this "Note" that Mr. Goswami contended that it was not a case of transfer of the appellant from the Loco Department to Carriage and Wagon Department, but was a case of absorption, as a temporary measure, of the appellant, who was declared surplus as Coal Khalasi in the Loco Department. He contended that this was enough to indicate that the appellant was not holding a permanent status and was consequently treated to have been appointed afresh in 1972 as Khalasi in the Carriage and Wagon Department and his seniority was rightly reckoned from that date with the result that the promotion orders in 1978, on the post of Semi-Skilled Fitter and in 1979, on the post of Skilled Fitter, could not have been legally issued as the appellant, on the basis of his seniority, was not even entitled to be called for trade tests much less to be promoted on the posts in question. The promotions were given to the appellant on these posts only because the Administration, by mistake, had given the benefit of service rendered in the Loco Department from 1964 to 1972 towards his seniority in the Carriage and Wagon Department.

Having perused the original record and having found that the appellant, who was initially appointed as Khalasi in 1964, was given temporary status in 1965 and was confirmed from 11.4.1965, we are of the positive opinion that it was not a case of mistake on the part of Administration, as contended by Mr. Goswami, but they had rightly given the benefit of previous service to the appellant who was, as a consequence thereof, rightly called for trade tests for the posts of Semi-Skilled Fitter and Skilled Fitter and having passed those tests was rightly promoted on those posts. There is, however, a limited reservation. Whether the service rendered by the appellant from the date on which he was appointed as Substitute Khalasi up to the date on which he acquired 'permanent' status would be counted for seniority or not is a question which is to be decided by the authorities in the light of the relevant provisions of the Service Rules contained in the Railway Establishment Code or the Manual or circular letters of the Railway Board. We may, however, make it clear that we are not deciding any dispute of seniority as between the appellant and those who were already working in the Carriage & Wagon Department when the appellant came there.

What will be his seniority position in the Carriage and Wagon Department and where will he be placed in the seniority list is to be considered and decided by the authorities of the Department and not by us as this dispute is not before us.

A On account of what has been said above, the reversion order dated 18.4.1980, passed by the respondents, was wholly illegal and cannot be sustained.

B There is yet another infirmity in the impugned order of reversion. The appellant had been allowed benefit of service rendered by him as Coal Khalasi in the Loco Department from 1964 to 1972 as that period was counted towards his seniority and it was on that basis that he was called for the trade tests which the appellant had passed and was, thereafter, promoted to the posts of Semi-Skilled Fitter and Skilled Fitter. If the benefit of service rendered by him from 1964 to 1972 was intended to be withdrawn and promotion orders were to be cancelled as having been passed on account of mistake, the respondent ought to have first given an opportunity of hearing to the appellant. The appellant having earned two promotions after having passed the trade tests, could not have been legally reverted two steps below and brought back to the post of Khalasi without being informed that the period of service rendered by him from 1964 to 1972 could not be counted towards his seniority and, therefore, the promotion orders would be cancelled. In a situation of this nature, it was not open to the respondents to have made up their mind unilaterally on facts which could have been shown by the appellant to be not correct, but this chance never came as the appellant, at no stage, was informed of the action which the respondents intended to take against him.

E The respondents, curiously, overlooked the Service Record of the appellant which contained material documents to indicate that the appellant had already acquired the permanent status. These documents could not have been legally ignored but the respondents, for reasons best known to them, did otherwise. We cannot but categorise their conduct as wholly arbitrary and bad in law.

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The Tribunal had also dismissed the claim of the appellant on the ground of limitation. This finding, in our opinion, is also not correct.

G The appellant was reverted by order dated 18.4.1980. It was in 1980 that he filed the suit for several reliefs, including the relief for declaration that the order dated 18.4.1980, by which he was reverted, was wrong and illegal and that he was entitled to continue on the post of Fitter, to which he was promoted on 9.5.1979. The suit was decreed by the trial court by its judgment dated 13.11.1981 against which the Railway Administration had filed an appeal. During the pendency of the appeal, Central Administrative Tribunals were established under the Administrative Tribunals Act, 1985 and, therefore, the

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appeal was transferred to the Allahabad Bench of the Tribunal which, by its judgment and order dated 18.4.1988, allowed the appeal and set aside the decree passed by the trial court with a direction that the plaint shall be returned to the appellant for being filed before the appropriate Bench of the Tribunal. Thereafter, the appellant filed the Original Application on 12.12.1988 with an application for condonation of delay, in which it was indicated that he had received back the plaint on 20.8.1988, though in the affidavit in support thereof this date is indicated as 20.10.1988. There was, thus, a delay of about one and half month in the filing of the O.A., which has not been condoned by the Tribunal.

The period of limitation within which Claim Petitions can be filed before the Tribunal is indicated in Section 21 of the Act. The contingencies contemplated by Section 21 are not applicable to the present case. The suit, admittedly, was filed within time. It is another matter that it was filed in a court which had no jurisdiction and, therefore, the Tribunal, while allowing the appeal filed against the decree passed by the trial court, directed the plaint to be returned to the appellant for presentation before the appropriate Bench of the Tribunal. Some delay had occurred in the re-filing of the plaint before the Tribunal and as pointed out by the Tribunal itself, the delay was only of one and half month, although, at one place, the Tribunal observed that there was a delay of about eight months. The period of eight months has been calculated by the Tribunal from the date on which an order was passed at Allahabad for the return of the plaint. The limitation would not run from the date of the order, but would run from the date on which the plaint was returned and made available to the appellant, if the appellant was not at fault. Two dates have been mentioned on which the plaint was returned; in the application for condonation of delay, the date mentioned is 20.8.1988, but in the affidavit filed in support of that application, the date of receipt of the plaint is mentioned as 20.10.1988. Since the O.A. was filed before the Tribunal on 12.12.1988, there was delay of either three and a half months or one and a half month, but not a delay of eight months as observed by the Tribunal. The Tribunal had itself observed in an earlier part of its judgment that there was a delay of one and half month only.

Be that as it may, the fact remains that the litigative process was started by the appellant in 1980 when he filed the suit, though in a wrong Court, within limitation. Now, at this late stage, it will be too much for a poor employee of the status of appellant to be driven out of the court on the ground of limitation, namely, that his O.A. was beyond time by one and half

A month or three and half months. Whatever be the delay in filing the O.A. before the Tribunal, the same is hereby condoned and the order of the Tribunal to that effect shall be treated to have been set aside.

B For the reasons stated above, the appeal is allowed and the judgment and order dated 28.11.1995 passed by the Tribunal is set aside with the direction that the appellant shall be put back to duty on the post of Fitter with all consequential benefits. There will be no order as to costs.

S.V.K.I.

Appeal allowed.