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S.P. INDU

v.

THE GENERAL MANAGER, METRO RAILWAY AND ANR.

OCTOBER 12, 2007

B

[S.B. SINHA AND HARJIT SINGH BEDI, JJ.]

C

Service Law—Promotion—Post of Assistant Law Officer—Appellant and respondent posted in Metro Railway from open line on different dates, with different designations—Respondent promoted as Asstt-Law Officer being senior most amongst regular Chief Law Assistants on their parent Railway—Challenge to, by appellant—Held: Not correct since appellant having not passed departmental examination never held the post of Chief Law Assistant on substantive

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basis in the open line—He was merely on deputation—Respondent having passed departmental examination was in the cadre of Chief Law Assistant in the open line—Calcutta Metro Railway (Operation and Maintenance) Temporary Provisions Act, 1985—Indian Railway Establishment Manual—Paragraph 203.5.

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Appellant joined South Eastern Railways as a Clerk in 1964 and was posted to Metro Railway Project on 17.10.1970. Third respondent joined as a Junior Stenographer in the South Eastern Railways on 4.2.1978 and was posted to Metro Railways on 12.5.1978. He was promoted as Law Assistant on 28.3.1979 in the scale of pay of Rs.550-750/- on an ad hoc basis which was regularized w.e.f. 28.3.1979. He was again promoted as Law Assistant on 10.12.1985. On 28.3.1990, respondent was promoted as Chief Law Assistant. Respondent passed the departmental examination and became Law Assistant on a regular

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basis in 1991. He was promoted to the post of Assistant Law Officer on 30.1.1994. Appellant did not pass the departmental examination. Appellant, while retaining his lien in the Southern Eastern Railway Administration, was appointed as Chief Law Assistant in the Metro Railways in the scale of pay of Rs.700-900/- on an ad hoc basis w.e.f.

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23.7.1986. Appellant challenged the promotion of the respondent as Assistant Law Officer. The promotion order of the respondent was upheld. Appellant then filed Original Application which was allowed. However, the Division Bench of High Court set aside the order holding that the appellant had never held the post of Chief Law Assistant on a substantive basis in the open line where he had the lien. Hence the present appeal.

Appellant contended that the High Court failed to take into consideration that the appellant having been placed in the pay scale of Rs.2000-3200/- by the Metro Railway was eligible to be considered for promotion to the post of Assistant Law Officer since only seniority-cum-suitability test was to be applied; that the High Court erred in holding that the appellant had been holding a post of Head Clerk, since the appellant had been holding the post of Chief Law Assistant for four years whereas the private respondent had not even completed three years of regular service; and that the appellant was holding the feeder grade to the promotion of Assistant Law Officer since 10.12.1985, respondent held the post of Chief Law Assistant only from 28.3.1990.

Dismissing the appeal, the Court

HELD: 1.1. At all material times, the appellant had retained the lien of the South Eastern Railway Administration. From the records, it appears that he was permanently absorbed in the Metro Railway Project as governed by the Calcutta Metro Railway (Operation and Maintenance) Temporary Provisions Act, 1985. However, no Rules had been framed at the relevant time and the Office Order issued on 19.9.1970 was applicable. [Para 12] [555-C, F]

1.2. Third respondent, in terms of the said Rules carried with him the seniority in the open line when he joined the Metro Railway. He having passed the departmental examination was in the cadre of Chief Law Assistant in the open line. However, appellant having not passed the said examination held his lien in the post of Head Clerk in the open line. [Para 14] [556-B]

A **1.3. It cannot be said that the said Rule will have no application to the employees of the Metro Railway being not an establishment of the Indian Railways. Employees from different streams were eligible to appear at the competitive examination. Their inter se seniority was, therefore, required to be determined in terms of the said Rule. Although**
B **Metro Railway was an independent organization, it used to recruit people on deputation from different Railway Administrations. The General Manager of the Metro Railways also had rejected the representation of the appellant, *inter alia*, on the basis thereof.**

[Para 16] [556-E, F]

C **1.4. It is one thing to say that the appellant was in the scale of pay of Rs.2000-3200/- but it is another thing to say that he was holding the substantive post of Chief Law Assistant. He might be working in the said post in the Metro Railways but the same would not mean that**
D **despite the fact that he had not passed the departmental examination, would still be eligible for being considered for promotion to higher post in the open line although he was not qualified therefor.**

[Para 17] [556-G; 557-A]

E **1.5. Appellant was not appointed on substantive basis in terms of the provisions of the said Act. He was merely on deputation and, therefore, for the purpose of considering his eligibility to be appointed on an existing post, he was required to hold the post of Chief Law Assistant in a substantive capacity for a period of three years. The cases of the appellant and the third respondent were not comparable and in**
F **that view of the matter although the appellant joined the services of the South Eastern Railway Administration as also the Metro Railways earlier, he could not be treated to be senior to the third respondent. Therefore, the premise adopted by Tribunal in allowing the original application filed by the appellant was not correct.**

G [Para 18] [557-A, B, C]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4884-85 of 2007.

H From the Judgment and final Order dated 14.08.2003 of the High Court of Calcutta in W.P.C.T. Nos. 223 & 224 of 2002.

Rana Mukherjee, D. Bharat Kumar, Indrani and Abhijit Sengupta
for the Appellant. A

R. Radhakrishnan, Varuna Bhandari Gugnani, Alka Sharma, D.S.
Mahra and Shreekant N. Terdal for the Respondents.

The Judgment of the Court was delivered by B

S.B. SINHA, J. 1. Leave granted.

2. Seniority in the post of Assistant Law Officer in the Metro
Railways is in question in these appeals which arise out of a judgment
and order dated 14.8.2003 passed by a Division Bench of the Calcutta
High Court reversing a judgment and order dated 14.12.2001 of the
Central Administrative Tribunal, Calcutta. C

3. Appellant joined South Eastern Railways as a Clerk in the year
1964. He was transferred in public interest to Metropolitan Transport
Project (Railway) in Calcutta on 17.10.1970. P.K. Gangopadhyay, the
third respondent herein, was appointed as a Junior Stenographer in the
South Eastern Railways on 4.2.1978. He was also transferred to the
Metro Railways Calcutta on 12.5.1978. Third respondent was promoted
as Law Assistant on 28.3.1979 in the scale of pay of Rs.550-750/- on
an ad hoc basis. The said ad hoc promotion was regularized w.e.f.
28.3.1979. He was again promoted as Law Assistant on 10.12.1985.
Appellant, while keeping his lien in the Southern Railway Administration
was appointed as Chief Law Assistant in the Metro Railways in the scale
of pay of Rs.700-900/- on an ad hoc basis w.e.f. 23.7.1986. Respondent
was promoted as Chief Law Assistant on 28.3.1990. D E F

4. It is not in dispute that the principles which were applicable for
promotion to the post of Assistant Law Officer were as under :

“The following principles should be followed in determination of
seniority and promotion of staff in the Metropolitan Transport
Project, Calcutta : G

1. *SENIORITY* : The Metropolitan Transport Project is a purely
temporary work charged organization and, as such all posts H

- A in this organization are purely temporary, ex-cadre and work-charged ones. These posts are normally filled by drafting staff from different seniority groups of different Railways. The seniority of such staff will be reckoned on the basis of joining this Project. For the purpose of this rule all employees will be
- B treated as having joined on the same date. As a consequence of this principle, the relative seniority of employees joining in a particular grade will be fixed based on the length of service rendered in that grade other than fortuitous service. Periods of officiating service rendered in the higher grade as a regular
- C measure other than periods of promotions against ex-cadre or work-charged posts will be taken into consideration while fixing his seniority on re-promotion in the same higher grade in this project.
- D 1.1. The seniority of staff now working in this Project will be prepared on the above principles and placed on record. On arrival of any new staff, their names will be interpolated on the basis of their length of non-fortuitous service in the respective grade.
- E 2. *PROMOTION* : All posts under Metropolitan Transport Project have been classified as either selection or non-selection. Promotion to selection posts will be made as per extant orders in connection with the filling of selection posts. Promotions to non-selection posts will be made on the basis
- F of seniority-cum-suitability, suitability being judged by the authority competent to fill the post by oral and/or written test or a departmental examination as considered necessary and the record of service. The only exception would be in cases where for administrative convenience the competent authority
- G considers it necessary to promote a railway servant other than an empanelled staff or senior most staff to officiate in a short term vacancy.
- H 2.1. A staff who has already been promoted against a vacancy other than fortuitous promotion will not be disturbed even if

another staff who becomes senior to him as per policy in para 1.1 joins Metropolitan Transport Project in the lower grade after the promotion of the junior. The senior staff will have to wait for his chance of promotion according to his seniority position fixed in accordance with para 1.1 above. On promotion to the higher grade, his seniority position will be restored and the name interpolated in the seniority list of the higher grade provided he qualifies for such promotion either through selection or suitability test in the first chance. This seniority list will then be followed for subsequent promotions to still higher grades. The same principle will also be adopted when a staff joins MTP on transfer in the intermediate grade.

3. *SELECTION/SUITABILITY TEST* : Even if an employee has already qualified himself in a Selection/Suitability test on the Open Line, no weightage in seniority will be given to him in the MTP, but he will not be required to re-appear for further test for promotion when his turn for promotion comes according to his seniority position in the MTP. However, the inter se seniority of staff coming from the same seniority unit will not be disturbed.

- 3.1. The above principles for fixing seniority will be followed till the completion of the two surveys entrusted to this Project. This principle will be reviewed in due course if the construction work is sanctioned and undertaken by this Project.”

5. Indisputably, appellant herein appeared in the departmental examination but did not succeed. He again appeared in the said examination in 1992. Although he passed the written test, but failed to qualify the viva voce. Third respondent, on the other hand, became a Law Assistant on a regular basis in 1991 upon passing the suitability test conducted therefor. He was promoted to the post of Assistant Law Officer on 30.1.1994.

6. Appellant, being not been promoted, filed an Original Application before the Central Administrative Tribunal, Calcutta (CAT). By an order dated 30.8.1994, the General Manager (Metro Railway) was directed

A by CAT to pass a speaking order. Appellant was personally heard by the said authority. A speaking order was passed which is to the following effect :

B “In compliance with the Hon’ble Central Administrative Tribunal, Calcutta Bench’s order dated 30th August, 1994 in O.A. No.937 of 1994 – *S.P. Indu – v– Union of India & Ors.*; Shri S.P. Indu and P.K. Gangopadhyay have been given personal hearing by me on 17th November, 1994 at 11:40 hrs. After hearing the oral submission of the said employees and going through the entire records and considering the facts and circumstances of the case, I am satisfied that the contention of the applicant is not acceptable.

C Shri Indu is Head Clerk in the pay scale of Rs.1400-2300/- and Shri P.K. Gangopadhyay is Chief Law Assistant in the scale of Rs.2000-3200/- in the parent Railway i.e. in South Eastern Railway. Both of them are having non-fortuitous service in the respective grades in the parent Railway.

D In terms of Para 203.5 of Indian Railway Establishment Manual, Vol.I (Revised Edition 1989) promotion as Asstt. Law Officer in Group ‘B’ can be considered on seniority on the basis of total length of non-fortuitous service rendered in grade Rs.2000-3200/- (RS) and above. Shri Indu who holds the position of Head Clerk in his parent Railway is, therefore, not eligible for being considered.

E In terms of Estt.Srl.No.212/85 dt.19.09,85 issued by the Ministry of Railways, double ad hoc promotion should not normally be given. Shri Indu is clearly enjoying the benefit of double ad-hoc promotion whereas Shri Gangopadhyay ceased to get benefit of even a single ad hoc promotion w.e.f. 18.11.92. His promotion w.e.f. 01.07.94 as Asstt. Law Officer gives him a single ad hoc promotion in conformity with the directives of the Ministry of Railways and being the senior-most amongst the employees similarly placed (that is regular Chief Law Assistants on their parent Railway) he was correctly promoted as the Asstt. Law Officer.

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The orders already issued, therefore, stand.”

7. Aggrieved by and dissatisfied with the said order dated 30.8.1994, another original application was filed by the appellant before the CAT. By an order dated 14.12.2001, CAT, *inter alia*, considering the fact that the appellant had joined the Metro Railway much prior to the third respondent and proceeding on the premise that he had already been placed in the pay scale of Rs.2000-3200/- (RS), held :

“It is not disputed that the Metro Railway was constituted under the Central Act of Metro Railway (Construction and Work) Acts, 1978 (as amended by Act 42 of 1987) and that both the applicant and the respondent were recruited in the open line in different time and job but were posted under Metro Railways respectively with effect from 17.10.70 and 12.5.78. Whereas the applicant was recruited in the year 16.12.64, as U.D. Clerk, it is now stated that Respondent Shri P.K. Ganguly was recruited on 4.2.78 as Law Asstt. in a different grade of Group-C job. From the records we are able to come to the conclusion that both these incumbents came to be posted in the Metro Railways from open line on different dates and with different designations. When the respondent statedly recruited on 4.2.78 came to Calcutta and joined the Metro Railway project from 12.5.78, the applicant had come and joined in Metro Railways on 17.10.70 with clearly 8 years before the respondent.

In this connection, the applicant has submitted a separate seniority list for officers posted in Metro Railways which was separate, self contained and is dated 17.11.88. There the applicant has been shown to have become Law Asstt. with effect from 30.3.79 and thereafter he was promoted as Chief Law Officer on ad hoc basis with effect from 1.7.86. In this seniority list the position of the respondent is shown as Law Asstt. with effect from 10.12.85 and his promotion as Chief Law Assistant is not at all shown. In fact as stated by the applicant, the respondent was promoted as Chief Law Assistant with effect from 28.2.90 but this position has been disputed by the respondent who has submitted another open line

A seniority list dated 28.2.93 (Annexure R1). In this seniority list the position of respondent is shown against No.30 and his date of promotion as Chief Asst. Law Asst. on regular basis is shown with effect from 18.11.92 and marked to be posted in Metro Railways. In this seniority list his date of appointment has been indicated to be 4.2.78 under Column 3 but the post in which he was appointed has not been indicated specifically. It was, however, clarified that he was appointed as Asstt. Law Officer. If this seniority list in the open line is considered as the only seniority list for Law Officer and Chief Law Assistant, it becomes evident that the respondent came to Calcutta probably on deputation to Metro Railways in a lower post where he was promoted as Law Officer with effect from 10.12.85. In other words, he worked as Law Asstt. in open line only for 3 months i.e. from February to May 1978. Hence he was not holding the post of Law Assistant in the scale of Rs:1400-2660/- continuously since February 1978 being his date of recruitment.”

8. On the said findings, the Original Application filed by the appellant herein was allowed setting aside the speaking order passed by the General Manager (Metro Railway) on 29.11.1994.

9. Two writ petitions were filed thereagainst before the Calcutta High Court; one by the Union of India and the other by the third respondent. A Division Bench of the Calcutta High Court reversed the said judgment of CAT saying that the appellant had never held the post of Chief Law Assistant on a substantive basis in the open line where he had the lien.

10. Appellant is, thus, before us.

11. Mr. Rana Mukherjee, learned counsel appearing on behalf of the appellant, in support of this appeal, contended that the High Court committed a manifest error in passing the impugned judgment insofar as it failed to take into consideration that the appellant having been placed in the pay scale of Rs.2000-3200/- by the Metro Railway was eligible to be considered for promotion to the post of Assistant Law Officer, particularly, in view of the fact that therefor only seniority-cum-suitability

test was to be applied. It was further submitted that the High Court, in opining that the appellant had been holding a post of Head Clerk, committed a serious error as the fact that he had been holding the post of Chief Law Assistant for four years whereas the private respondent had not even completed three years of regular service, was totally ignored. It was furthermore submitted that whereas the appellant was holding the feeder grade to the promotion of Assistant Law Officer since 10.12.1985, the respondent held the post of Chief Law Assistant only from 28.3.1990.

12. When questioned, Mr. Mukherjee could not deny or dispute that, at all material times, the appellant had retained the lien of the South Eastern Railway Administration. From the records, it appears that he was permanently absorbed in the Metro Railway Project as governed by an Act known as the Calcutta Metro Railway (Operation and Maintenance) Temporary Provisions Act, 1985 ; Section 18 whereof reads as under :

“Save as otherwise expressly provided in this Act, the provisions of the Indian Railways Act, 1890, and the rules, orders or notifications made or issued thereunder shall, so far as may be and subject to such modifications as may be necessary, apply to the operation and maintenance of the metro railway, as if such metro railway were a railway as defined under that Act, and the references to “railway administration” and “inspector” in that Act shall be construed as references to the “metro railway administration” and “Commissioner” respectively.”

13. It is, however, not in dispute that no Rules had been framed at the relevant time and the Office Order issued on 19.9.1970 was applicable.

We may notice some of the relevant provisions of the said Office Order dated 19.9.1970 :

“The Metropolitan Transport Project is a purely temporary work-charged organization and, as such, all posts in this organization are purely temporary, ex-cadre and work-charged ones. These posts are normally filled by drafting staff from different seniority groups of different Railways.

A 1.1. The seniority of staff now working in this Project will be prepared on the above principles and placed on record. On arrival of any new staff, their names will be interpolated on the basis of their length of non-fortuitous service in the respective grade.”

B 14. Third respondent, in terms of the said Rules carried with him the seniority in the open line when he joined the Metro Railway. He having passed the departmental examination was in the cadre of Chief Law Assistant in the open line. Appellant, however, having not passed the said examination held his lien in the post of Head Clerk in the open line.

C 15. Paragraph 203.5 of the Indian Railway Establishment Manual reads as under :

D “Since employees from the different streams will be eligible to appear for the selection, their integrated seniority for purposes of the selection should be determined on the basis of total length of non-fortuitous service rendered in grade Rs.2000-3200(R.S.) & above. In other words the date of appointment to the grade Rs.2000-3200(R.S.) on a non-fortuitous basis will be the criterion.”

E 16. Submissions of Mr. Mukherjee that the said Rule will have no application to the employees of the Metro Railway being not an establishment of the Indian Railways cannot be accepted. Employees from different streams were eligible to appear at the competitive examination. Their inter se seniority was, therefore, required to be determined in terms of the said Rule. Although Metro Railway was an independent organization, it used to recruit people on deputation from different Railway Administrations.

F The General Manager of the Metro Railways also had rejected the representation of the appellant, *inter alia*, on the basis thereof.

G 17. It is one thing to say that the appellant was in the scale of pay of Rs.2000-3200/- but it is another thing to say that he was holding the substantive post of Chief Law Assistant. He might be working in the said post in the Metro Railways but the same would not mean that despite the fact that he had not passed the departmental examination, would still

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be eligible for being considered for promotion to higher post in the open A
line although he was not qualified therefor.

18. The premise adopted by the Tribunal in allowing the original
application filed by the appellant herein, therefore, was not correct. B
Appellant was not appointed on substantive basis in terms of the
provisions of the said Act. He was merely on deputation and, therefore,
for the purpose of considering his eligibility to be appointed on an existing
post, he was required to hold the post of Chief Law Assistant in a
substantive capacity for a period of three years. Cases of the appellant
and the third respondent, therefore, were not comparable and in that view C
of the matter although the appellant joined the services of the South Eastern
Railway Administration as also the Metro Railways earlier, he could not
be treated to be senior to the third respondent.

For the reasons aforementioned, there is no merit in these appeals. D
They are dismissed accordingly. In the facts and circumstances of the case,
however, there shall be no order as to costs.

N.J.

Appeal dismissed.