

CASE NO.:
Appeal (civil) 2962-63 1989

PETITIONER:
A. J. FERNANDIS

Vs.

RESPONDENT:
THE DIVISIONAL MANAGER, SOUTH CENTRAL RAILWAY & ORS.

DATE OF JUDGMENT: 07/12/2000

BENCH:
S.R.Babu, S.N.Variava

JUDGMENT:

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J U D G M E N T

S. N. VARIAVA, J.

These Appeals are against a Judgment dated 11th December, 1987 in a Petition filed by the 3rd Respondent before the Central Administrative Tribunal and an Order dated 22nd August, 1988 by which, pursuant to Judgment dated 11th December, 1987, the 1st Respondent has determined that Appellant is junior to 3rd Respondent and reverted him to post of Porter in the Commercial Department.

The 3rd Respondent has not appeared even though served.

Briefly stated the facts are as follows: On 22nd July, 1972 the Appellant was appointed as a Porter on casual basis in the Transportation (Traffic) Department of the South Central Railway, Hubli Division. On 1st March, 1973 the Appellant was conferred a temporary status.

The 3rd Respondent was appointed as a Porter in the Commercial Department on 30th August, 1974.

Rule 180 of the Railway Establishment Manual reads as under: "180: Transportation (Traffic) & Commercial Department:- All railway servants in the lowest group should be eligible for consideration for promotion to higher grades in both the Transportation and Commercial Branches. Applications should be invited from amongst candidates eligible for promotion from both the branches. All railway servants who apply will be considered. An adhoc seniority list will be prepared on the basis of length of continuous service in the grade and suitable men selected and placed on a panel for training. Systematic and adequate training and examinations or tests must precede actual promotions."

As provided in this Rule Appellant and the 3rd Respondent were allowed to attend promotional courses to qualify as Ticket Collectors. In 1979 both Appellant and

3rd Respondent were allowed to compete for selection to the post of Ticket Collectors. However, neither got selected. On 20th August, 1980 the Appellant got posted in the Commercial Department. They then again competed in 1981. On 17th June, 1981 both the Appellant and the 3rd Respondent were shown to have been selected. However, as there were no vacancies they were not appointed.

Thereafter both the Appellant and the 3rd Respondent were appointed as Ticket Collectors on adhoc basis on the condition that this would not confer any right for regular appointment and that they would make room for regular appointees as and when selected and appointed.

On 27th September, 1981 a provisional seniority list was prepared. In the seniority list the name of the Appellant was missing. The Appellant made a representation against the fact that his name had not been included in the seniority list.

Selections for the post Ticket Collector were again made in 1982 and 1983. In 1983 the Appellant was selected along with 17 other persons. Pursuant to this selection on 28th May, 1983 the Appellant was promoted as Ticket Collector in a vacant post. It must be mentioned that in this selection the 3rd Respondent had also competed, but was not selected. Thereafter another selection was held in April 1986. In that selection again the 3rd Respondent appeared but was again not selected.

On 25th September, 1986 the Appellant was promoted to the grade of Senior Ticket Collector. On 29th September, 1986 the 3rd Respondent who, during all this period, had been working as an adhoc Ticket Collector was reverted to make room for candidates who had been successfully empanelled. On 5th January, 1987 the 3rd Respondent challenged his reversion and the promotion order of the Appellant by filing a Petition before the Central Administrative Tribunal.

On 11th December, 1987 the Central Administrative Tribunal held that the promotion of the Appellant was not proper as the Appellant was not eligible. The Central Administrative Tribunal held that the Appellant was working in the Transportation (Traffic) Department and the selections were to be from persons working in the Commercial Department. The Central Administrative Tribunal held that as the Appellant had been appointed in Commercial Department on 22th August, 1980 he could not be considered to be senior to the 3rd Respondent who had been appointed on 30th August, 1974. The Central Administrative Tribunal directed the Government to prepare a fresh seniority list confining themselves to the Commercial Department and thereafter, if the 3rd Respondent was found senior to the Appellant, to promote him with effect from the date of promotion of the Appellant. It is this Judgment which is assailed before us. Pursuant to this Judgment the 1st Respondent has passed an Order dated 22nd August, 1988 by which seniority of Appellant is fixed below 3rd Respondent and it is proposed that Appellant be reverted to the post of Porter in the Commercial Department.

Even though the 3rd Respondent had not appeared, Mr. Nagaraja and Mr. Qadri have fairly placed before us all the material and have assisted the Court.

Undoubtedly, the selection was to be from persons working in the Commercial Department. However, with effect from 22nd August, 1980 the Appellant was also working in the Commercial Department. Therefore, in 1983 he was eligible to be selected. All persons who were eligible were allowed to compete for selection. Being so eligible both the Appellant and the 3rd Respondent had competed. The Appellant got selected and was put on the select panel on 29th April, 1983. The 3rd Respondent had also competed but he was not selected or empanelled. Only persons who were empanelled could be appointed as Ticket Collectors. In such a case, the question of inter se seniority between the two persons did not arise. As 3rd Respondent was not empanelled he could not be promoted. Even presuming the Appellant was junior, the Appellant could still get promoted as he was selected.

Rule 180, set out above, shows that all railway servants were eligible for consideration of promotion. The 3rd Respondent, having failed to get selected, could hardly complain about the promotion of the Appellant. On this basis itself the Order of the Central Administrative Tribunal cannot be sustained.

Even otherwise, it is to be noted that the Appellant got promoted to the post of Ticket Collector on 28th May, 1983. He was thereafter promoted as a Senior Ticket Collector on 25th September, 1986. The Appellant was then promoted as a Train Ticket Examiner on 25th May, 1987. The 3rd Respondent chose to challenge the promotion of the Appellant as a Ticket Collector only on 11th December, 1987, i.e. after a period of 4 years. On the ground of delay and latches also the application of the 3rd Respondent should have been dismissed.

In this view of the matter the impugned Order dated 11th December, 1987 is set aside. The Application of the 3rd Respondent before the Central Administrative Tribunal stands dismissed. The Order dated 22nd August, 1988, passed pursuant of the Order dated 11th December, 1987, which we have set aside in this appeal cannot survive and is quashed. These Appeals stand allowed accordingly. There will be no Order as to costs.