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C.A.No. 524 OF 1999

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.524 OF 1999@@
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K.R. Deharia

... Appellant

Versus

Union of India & Ors.

... Respondents

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The legality of the impugned order of reversion of the appellant from the post of OS Grade II by order dated 30th August, 1996 is the subject matter of challenge in this appeal. The brief facts necessary to adjudicate the dispute between the parties are that the appellant and respondent no.3 were appointed as LDC in the Ordnance Factory at Jabalpur on 11.1.1980 and on 3.1.1980 respectively. The said respondent no.3 on his own request on compassionate ground was transferred to the factory at Itarsi on 10.7.1984 and, therefore, in accordance with the relevant rules governing the seniority was required to be treated as the lowest in the cadre of LDC at Itarsi. The appellant was brought on promotion as UDC w.e.f. 6.4.1986 and respondent no. 3 was promoted to the UDC at Itarsi in the year 1992. On the basis of their seniority in the cadre of UDC at Itarsi, the appellant was further promoted to OS Grade II on 12.1.1994
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w.e.f. 31.12.1993. In the meanwhile, on 27.4.1985 another LDC at Itarsi having been promoted to the UDC, the respondent no.3 assailed the said order of promotion before the Tribunal, alleging inter alia that he has been excluded from consideration erroneously. The Tribunal disposed of that matter by order dated 17.8.1994 and came to the conclusion that the appropriate authority committed error in not considering the past services of the respondent no. 3 in the cadre of LDC while he was at Jabalpur. But since by that date, the respondent no.3 had already been promoted to the post of UDC w.e.f. 1992, the Tribunal directed that respondent no.3 would be entitled to his notional seniority in the cadre of UDC but he would not be given any backwages for the past period. This order of the Tribunal which was passed in OA 514/1989, was assailed by the Union of India as well as by respondent no.3 himself in Civil Appeals arising out of SLP(C) Nos. 6401-6402/95. Both these appeals stood disposed of by order dated 28th August, 1995 on the basis of a concession of the learned counsel appearing for the respondent no.3 to the effect that he does not claim seniority but his past services wherever experience is a criteria would have to be taken into account for the purposes of determining the
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extent of experience. This Court, therefore, held that the order of the Tribunal will have to be so read. Subsequent to the aforesaid order of this Court dated 28th August, 1995, the Department concerned issued a notice to the present appellant on 16th August, 1996, obviously being of the view that the order of this Court, permits for counting the seniority of respondent no.3 w.e.f. 27.4.1985 on the date on which he was illegally excluded from promotion and therefore the appellant should be reverted. After the aforesaid notice, the final order emanated on 30th August, 1996, which clearly indicates that the appellant stands reverted due to re-amendment of the seniority in question. The appellant, therefore, assailed the aforesaid order by approaching the Tribunal and having unsuccessful before the Tribunal, approached the High Court in a writ petition. Both the Tribunal and the High Court construed the order of this Court dated 28th August, 1995 passed in the aforesaid two civil appeals and held that the appropriate authority has rightly redetermined the seniority and on account of such redetermination, the order of reversion is merely consequential and, therefore, refused to interfere with the order of the High Court.

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Mr. P.N. Mishra, the learned senior counsel appearing for the appellant, contends that in view of the clear and categorical terms of the order of this Court dated 28th August, 1995, the question of re-amendment of the seniority in the cadre of UDC does not arise particularly when the counsel appearing for respondent no.3 fairly conceded that he does not claim any seniority in the cadre. According to Mr. Mishra, the order of this Court dated 28th August, 1995 has been misconstrued and misread by the Departmental Authorities as well as by the Tribunal and, therefore, the impugned order of reversion is vitiated.

Mr. Anoop Choudhary, the learned senior counsel appearing for the Department and the learned counsel appearing for the affected respondent no.3, on the other hand, contend that the impact of the earlier order would be that respondent no.3 would be entitled to get his promotion in the cadre of UDC on the date he was illegally excluded from consideration and, therefore, necessarily he would be held senior to the present appellant in the cadre of UDC. According to the learned counsel, the concession that he would not claim any seniority relates to the seniority in the cadre of LDC and

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does not affect in any way so far as the seniority in the UDC is concerned and, in accordance with the principles, since the only person available at Itarsi in respect of one of the posts meant for reserved category was respondent no.3 and he had the necessary experience, he was entitled to get that promotion retrospectively and necessarily therefore he would be treated senior to the present appellant in the cadre of UDC. According to the learned counsel, the order of reversion, therefore, is justified.

Having regard to the respective contentions of the

parties, the sole question that boils down for our consideration is: what is the true import of the order of this Court dated 28th August, 1995 ?

It is undisputed that on the date this order was passed the present appellant had already been promoted to the cadre of UDC since 6th of April, 1986. To us the order is explicit and unambiguous and it is susceptible of only construction that the respondent no. 3 who had also been promoted to the cadre of UDC since 1992, will not claim any seniority in that cadre and necessarily therefore he would be ...6/-

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junior to all the UDCs on that date who were serving at Itarsi. That being the true import of the aforesaid order, the conclusion is irresistible that the Union Government as well as the Tribunal, committed error in misconstruing the aforesaid order of this Court and redetermining the seniority of the appellant and respondent no.3 in the cadre of UDC and passing consequential order of reversion of the appellant from the post of OS Grade II who in the meantime had already been promoted to the said Grade.

We, therefore, set aside the impugned order of the Department dated 30th August, 1996 and direct that the appellant shall be held to be senior to respondent no.3 in the cadre of UDC and necessarily all consequential benefits would flow therefrom. This appeal is accordingly allowed.

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(G.B. PATTANAİK)@@
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(S.N. PHUKAN)@@
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New Delhi;
February 07, 2002

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(S.N. VARIAVA)@@
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ITEM No.106 COURT No.3 SECTION IV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No. 524 of 1999@@
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K.R. Deharia

...APPELLANT (s)

VERSUS

Union of India & Ors.

...RESPONDENT (s)

(With appln(s) for taking addl. document on record and with office report)

Date :07/02/2002 The appeal(s)/matter(s) was/were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.B. PATTANAIAK
HON'BLE MR. JUSTICE S.N. PHUKAN
HON'BLE MR. JUSTICE S.N. VARIAVA

For Appellant (s) Mr. P.N. Mishra, Sr. Adv.
Mr. Shiv Sagar Tiwari, Adv.

For Respondent (s) Mr. T.G. Narayanan Nair, Adv.

Mr. Anoop G. Choudhary, Sr. Adv.
Mr. V.C. Mahajan, Sr. Adv.
Mr. Rajiv Nanda, Mr. RN Poddar,
Mr. C. Radha Krishna, Adv.
Mrs. Anil Katiyar, Adv.

UPON hearing counsel, the Court passed the following
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Mr. Mishra, the learned senior counsel, commenced his arguments at 2.30 p.m. and concluded at 2.40 p.m. whereafter Mr. Choudhary, the learned senior counsel, argued the case till 2.55 p.m.

Appeal is allowed in terms of the signed order.

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(J.S. Rawat)
Court Master

(Janki Bhatia)
Court Master

(Signed order is placed on the file)