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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 5725/2014& CM Nos.14147/2014, 8844/2015

UNION OF INDIA AND ORS

..... Petitioners

Through: Mr. Jagjit Singh & Ms. Rashmi
Malhotra, Advocates

versus

RANGA SWAMI

..... Respondent

Through: Mr. M.K. Bhardwaj, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **19.01.2016**

The Union of India [The General Manager, Northern Railway and The Divisional Railway Manager (P)] have filed this writ petition, impugning the order dated 20.3.2014 passed by the Principal Bench of the Central Administrative Tribunal, New Delhi ('Tribunal' for short).

The respondent to the present petition is one Ranga Swami, s/o Muthu Swami, and it is an admitted position that he was at Sl. No.598 in the seniority list of Helper Cleaner Carriage ('HCC') published in the year 1998. His namesake, Ranga Swamy, s/o Kappan Swamy @ Kuppam Swamy was shown at Sl.No.206 in the same seniority list.

The similarity in the two names, or rather as the names were identical, the respondent by mistake as Ranga Swamy, s/o Kappan Swamy with seniority at Serial No.206, was permitted to appear in the trade test and promoted to Technical Grade-III and Grade-II w.e.f. 10.6.2003 and 22.10.2006 respectively, with all consequential benefits.

The error of mix up of identities of namesakes came to the notice of the petitioner in September, 2009, when the respondent working as

Technical Grade-II, DLI, moved an application for correction of the date of birth and the date of appointment. The petitioners had examined their official records and observed that Ranga Swamy, s/o Muthu Swami, had been by mistake promoted to the post of Technical Grade-III and Technical Grade-II, believing and on the basis that he was Ranga Swamy, s/o Kappan Swamy, i.e., the person who was at Sl. No.206 in the Seniority List.

A Show Cause Notice was issued to the respondent and vide order dated 22.6.2010, the promotions granted to the respondent to the post of Technical Grade-III and Technical Grade-II were withdrawn.

This letter, dated 22.6.2010, prompted the respondent to approach the Tribunal in OA No.2249/2010. By the impugned order, the OA has been allowed recording as under:

“10. From the facts which have now emerged clearly, it is seen that the Applicant's position was 598 in the seniority list of HCCs but he was promoted against SI NO.206 against which the name shown was Ranga Swami S/o Kappan Swami. Therefore, the promotion given to the Applicant as Technical Grade-Ill with effect from 13.06.2003 was premature and it was due to the mistake committed by the Respondents. But the fact that remains is that irrespective of the position of the Applicant in the seniority list, there is no dispute that he was not eligible for promotion as Technical Grade-Ill in the year 2003. Only draw back was that his turn did not come in that year. Moreover, the Applicant's promotions were based not only on seniority. He was promoted" after having qualified the requisite trade test. He was also under the bonafide belief that he was entitled for such promotion. The respondents also had no doubt about his entitlement for the promotions. Accordingly, he worked as Technical Grade-Ill from 10.06.2003 to 19.10.2006 and then as Technical Grade-II from 20.10.2006 onwards. He worked on that post till his promotions were withdrawn by the Respondents vide the Impugned letter dated 22.06.2010. Therefore, the promotions of the Applicant as Technical Grade-Ill w.e.f. 10.06.2003 and

Technical Grade-II w.e.f. 20.10.2006 can at best be described as premature but in no way the respondents could have accused him that he "obtained them illegitimately" under the guise of Shri Ranga Swami S/o Shri Kappan Swami or S/o Karuppan. Consequently in the first instance, the Applicant cannot be denied the pay scales attached to the posts of Technical Grade-III and Technical Grade-II during the period he actually worked. Secondly, equity demands that after 7 years, his promotions as Grade-III and Grade-II cannot be allowed to be withdrawn on the same analogy that the settled seniority cannot be unsettled after a number of years. Consequently, the Applicant shall be deemed to have acquired seniority in the said posts from the respective dates of his promotions. Therefore, the impugned order dated 22.06.2010 shall remain quashed and set aside, as already ordered by this Tribunal vide its earlier order dated 15.01.2013. Consequently, the Applicant shall continue to be treated as promoted to the posts of Technical Grade-III and Grade-II w.e.f. 10.06.2003 and 20.10.2006 respectively with all consequential benefits. The Respondents shall also fix the pay of the Applicant in the aforesaid grades accordingly and to pay him the arrears immediately but in any case within a period of two months from the date of receipt of a copy of this order."

The first sentence of para 10 records the accepted and admitted position that the respondent was at Sl. No.598 in the Seniority List of the HCC employees. The second sentence rightly records that the promotion granted to the respondent as Technical Grade-III w.e.f. 13.6.2003 was premature and due to a mistake committed by the petitioner. The third sentence also rightly states that there was no dispute that the respondent was not eligible for promotion as Technical Grade-III in the year 2003. In spite of said findings and factual position, the Tribunal felt that the respondent was entitled relief and his promotion to Grade-II should not be withdrawn for two reasons; seniority, once granted, should not be unsettled after a long period, and the promotion to Grade-II could best be described as premature,

as the respondent had passed the trade test.

We are unable to accept the said reasoning. A mistake cannot confer any right, and once the mistake is discovered, it has to be corrected and rectified. There were a number of employees between Ranga Swamy, s/o Kappan Swamy at Sl. No.206 and the respondent, Ranga Swamy, s/o Muthu Swamy at Sl. No.598 of the HCC Seniority List. The respondent was made senior to his juniors because of an error on the assumption that the respondent was Ranga Swamy, s/o Kappan Swamy. In fact, the learned counsel for the petitioners before us has submitted that the mistake could not have occurred without active connivance and knowledge of the respondent. Without commenting on the said aspect, as no enquiry and proceeding on this count have been initiated, we have no hesitation in holding that the respondent was certainly not entitled to promotions to the post of Technical Grade-III and Technical Grade-II w.e.f. 10.6.2003 and 20.10.2006 respectively, for he was not the person eligible or could have been promoted as per Rules, overlooking rights of others who were his seniors. We do record and hold that this slip up should not get a stamp of approval. The error should be rectified and not perpetuated and made permanent. The promotion was granted to Ranga Swamy, s/o Kappan Swamy and not to Ranga Swamy, s/o Muthu Swami. Namesake is not entitled to assume and take advantage of the other namesake's seniority

The learned counsel for the respondent has submitted that the respondent would have been promoted in due course and may not have appeared with others, when eligible, in the trade test for Technical Grade-III and Technical Grade-II. This submission of the respondent is taken care of, as in the Show Cause Notice dated 10.3.2010, it is recorded as under:

“Your immediate juniors and contemporaries such as S/Sh. Jai Prakash, Moti, Dori Lai and Ram Ganesh as per the seniority list of HCCs circulated vide letter No. 847E/260/HC/Hkh/P-5 dt 14.09.98 were selected as Tech-III vide letter - No.758E/107/Pt-XX/P-5 dt 07.02.08 & your name was also proposed similarly situated employees. Since ' you had already qualified the trade test you are due promotion as Tech-III/C&W grade Rs.5200-20200+GP1900 w.e.f. 15.12.08 along with other as per letter No.758E/107/Pt-XXI/P-5 dt 15.12.08.”

This position will not be disturbed. It will also be open to the respondent to make a representation in case he is entitled to any further promotion(s) under the Rules. The said representation will be disposed off within four months from the date the same is made.

The learned counsel for the petitioner, on instructions from Mr. A.K. Mishra, the Chief Legal Officer, Northern Railway and on examination of the original records has stated that the respondent on being reverted to the post of Technical Grade-III w.e.f. 1.9.2010, his salary was computed as payable to an employee with his service in the Grade-III post. The learned counsel for the parties are unable to state whether any recoveries have been made from the respondent. In case the respondent has any grievance on this count, he will be at liberty to agitate the same in accordance with law.

The writ petition is accordingly allowed in the aforesaid terms. CM Nos.14147/2014, 8844/2015 are also disposed off.

SANJIV KHANNA, J

NAJMI WAZIRI, J

JANUARY 19, 2016/tp