JAI RAM SHARMA

v.

JAMMU DEVELOPMENT AUTHORITY

APRIL 19, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Service Law :

Promotion—Public Relations Officer—Employee on deputation promoted to the post—Regular employee belonging to the service not promoted—Held, regular employee from the Service had a legitimate right to be considered—Directed that he should be considered to have been regularly promoted from the date the deputationist was promoted—His entitlement to be considered within three months.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7750 of 1996.

From the Judgment and Order dated 10.2.95 of the Jammu & Kashmir High Court in L.P.A. (SWP) No. 77 of 1990.

R.C. Pathak for the Appellants.

Ashok Mathur for the Respondents.

The following Order of the Court was delivered :

Leave granted.

We have heard learned counsel on both sides.

This appeal by special leave arises from the judgment and order dated February 10, 1995 of the High Court of Jammu & Kashmir in LPA No. 77 of 1990. The admitted position is that while the respondent No. 5, P.N. Jalla, was on deputation as senior Steno, the appellant was appointed on regular basis as Office Superintendent. For the post of Public Relations Officer, he is required to be considered for promotion on regular basis. Instead of promoting him on regular basis, the deputationist was considered and promoted. The appellant challenged the said action by way of writ petition which was not properly considered by the Division Bench.

When the Matter had come up for admission, this Court on August 21, 1995 had passed the following order :

> "Counsel for the petitioner says that the petitioner does not require payment of back-wages but his due seniority is to be considered according to rules. The 3rd respondent was only a senior stenographer from Govt. service and was on deputation. While the petitioner is a regular employee and is entitled to be considered, when the vacancy of Public Relations Officer had arisen, he was not considered. Since the Single Judge has given the direction Correctly, the Division Bench was not right in upsetting that order from the date on which he was due to be considered. In view of the fact that he is not claiming any arrears and the 5th respondent has retired from service, notice is issued to the State as to why the petitioner's seniority should not be taken from the date when the vacancy as P.R.O. had arisen and he was due for consideration but was not considered along with the 5th respondent."

Counter-affidavit has been filed by the respondent contending that appellant's seniority was considered with effect from the date when the vacancy had arisen after the retirement of the 5th respondent. The above action is obviously illegal and an arm twist to nepotism. When the appellant was a regular candidate as Office Superintendent, he was entitled to be considered in preference to the deputationist, who is not a member of the service as on that date. He was wrongly denied of his legitimate right to be considered for appointment on the date when the 5th respondent was appointed. It is, therefore, directed that the appellant must be considered to have been regularly appointed with effect from the date on which the 5th respondent was promoted as P.R.O. and in terms of the order passed by this Court. His entitlement would be considered according to the rules within a period of three months from the date of the receipt of the order.

The appeal is accordingly allowed. No costs.

G.N. Appeal allowed.