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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 832/1989.

DATE OF DECISION: 31-10-1991.

Bhagwan Sahai

....

APPLICANT.

v/s.

Union of India & Ors.

....

RESPONDENTS.

CORAM: Hon'ble Mr. B.S. Sekhon, Vice Chairman (J).
Hon'ble Mr. P.C. Jain, Member (A).

Shri B.S. Mainee, counsel for the applicant.
Smt. Raj Kumari Chopra, counsel for the respondents.

P.C. JAIN, MEMBER:

JUDGMENT

The applicant, who was posted as a Skilled Carpenter in the scale of Rs.950-1500 under G.E. (North), Meerut Cantt. (respondent No.4) was promoted to the post of Carpenter HS-II in the scale of Rs.1200-1800 with effect from 1.2.1988 pursuant to the retirement of one Shri Masum Ali, Carpenter HS-II on 31.1.1988 (Annexure A-2). However, vide impugned order dated 26.4.1988 passed by G.E. (N), Meerut Cantt., the above promotion order of the applicant was withheld till further orders. The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985, assailing the above impugned order dated 26.4.1988. He has prayed that the impugned order at Annexure A-2 be quashed being void ab initio and that the respondents be directed to restore promotion as per Annexure A-2 from the date specified therein with all consequential benefits and arrears with interest at 14% p.m. calculated at half yearly interval. As an interim order, a Bench of this Tribunal had ordered on 1.8.1989 that appointment to the post of Carpenter HS Grade II made by the respondents in the meanwhile would be subject to the decision of this application and the concerned appointees may be informed accordingly.

2. Respondents have contested this application by filing a return and the applicant has filed a rejoinder thereto. We have carefully perused the material on record and also heard the learned counsel for the parties.

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3. The applicant's case, in brief, is that he joined directly as Carpenter on 19.9.1968 after obtaining the qualification from ITL. He was called upon to pass the prescribed Trade Test for a higher post of Cabinet Maker and he passed the same on 17.9.85 and, as such, became eligible for promotion to the higher post and he should have been promoted to the post of Cabinet Maker, but was not promoted. The posts of Carpenter and Cabinet Maker were merged in 1985 and, as such, he was again called upon in 1987 to subject himself to the Trade Test for Carpenter H.S. II in the scale of Rs.1200-1800, which also he passed on 5.3.87 and thus became eligible for the higher post of Carpenter H.S. II. A.D.P.C. meeting was conducted by respondent No.3 in 1988 for promotion to the post of Carpenter H.S. II to fill up the existing vacancies and he was selected. Thereafter, he was promoted vide orders dated 18.4.1988 (Annexure A-2). He has also contended that he actually took charge of the promotion post. He assails the withholding of his promotion on the grounds that the same could not be withheld without any show cause notice or by a non-speaking order, as the same is violative of the principles of natural justice. It is also pleaded that withholding of promotion is arbitrary and motivated with a view to accommodating an ineligible and unqualified person who is a Trade Union official.

4. The case of the respondents, in brief, is that as a result of introduction of 3 grade structure, 20% vacancies as on 15.10.84 were required to be filled only on the basis of seniority without the requirement of passing the Trade Test. Over and above 20%, 15% posts were required to be filled by promotion as HS II as on 15.10.84 subject to passing of the trade test after availing two chances in the trade test by skilled workers. It is, therefore, contended that as a senior candidate was not given second chance, there was no other alternative but to withhold the promotion of a junior candidate and by doing so, no injustice or unfairness has been done to the applicant.

5. The facts relating to passing of the trade test by the applicant, his empanelment for the post of Carpenter HS II and issue of orders of his promotion are not in dispute. It also cannot be disputed that the impugned order at Annexure A-1 does not state any reasons for withhold^{ing} the promotion. Further, the applicant's representations dated 2.5.1988 (Annexure A-3), dated 20.6.1988 (Annexure A-4) and dated 20.9.1988 (Annexure A-6) were not replied to. The only point which remains for consideration, thus, is whether the applicant, who had been duly promoted, could be denied the promotion simply on the ground that two other persons who are stated to be senior to the applicant in the feeder cadre had failed in the first chance to qualify in the trade test and had not been given the second chance before the D.P.C. met and the applicant was empanelled and later on promoted. The counter reply of the respondents, as already stated above, states that 15% of the vacancies in the cadre of Carpenter HS II were to be filled up on the basis of qualifying in the trade test. This being the condition precedent for eligibility for promotion to the above 15% posts, seniority was irrelevant. Seniority comes into the picture only among those who are otherwise eligible. The applicant having passed the trade test for the post and the so-called seniors viz., Shri Salek Chand (MES-461514) and Shri Attar Singh (MES-452133) having failed after they appeared in the trade test, the promotion of the applicant could not be withheld on that ground. The respondents, in their return, have referred to E-in-C's Branch letter No.90270/89/TGS/ELC(3) dated 26.6.86, according to which, it is claimed that no candidate could be superseded unless he had been given at least two chances to pass the requisite trade test. Though a copy of this letter is stated to be enclosed as Appendix 'B', no such enclosure had been filed. This enclosure as well as Appendix-D, Appendix-C, Appendix-F, Appendix-G, Appendix-H, Appendix-I and Appendix-J, which are referred to in the return of the respondents have not been filed. This was pointed out
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specifically by the applicant in his rejoinder filed on 6.12.1989. Even then, none of these enclosures was filed by the respondents. We are, therefore, unable to examine the policy said to have been laid down by the Engineer-in-Chief in the letter dated 26.6.1986. Even otherwise, if it were really so, the D.P.C. should not have been held and the applicant empanelled or if it had been held and a mistake was discovered later on, the same should have been cancelled. No such action is shown to have been taken by the respondents. Moreover, if the socalled seniors had appeared in the trade test but failed, they could not claim any preemptive right against a candidate who had passed the test against the vacancies which were to be filled in on the basis of passing the qualifying test irrespective of seniority. The respondents have not placed any material on record to show that the vacancy against which the applicant was promoted did not belong to the category of 15% vacancies, which were to be filled in on the basis of passing the prescribed trade test.

6. It may also be mentioned that while the promotion orders were issued on the basis of authority of Headquarters CWE Meerut letter dated 12.4.1988 as mentioned in the promotion order dated 18th April, 1988 (Annexure A-2), the promotion of the applicant was withheld by the order passed by GE (N), Meerut Cantt. GE (N) being lower in rank than CWE was not *prima-facie* competent to withhold an order which had been issued under the authority of his superior. The impugned order at Annexure A-1 does not quote any authority from CWE while ordering withholding of promotion. Though the respondents, in their return, have referred to certain correspondence for obtaining approval of the competent authority subsequently and copies of such correspondence are stated to be enclosed with the return, as already stated above, no such enclosures were filed either with the return or subsequently.

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7. It is well settled that an administrative order having adverse civil consequences for a public servant has to meet the test of the principles of natural justice (STATE OF ORISSA Vs. DR. MISS BINAPANI DEI & OTHERS - AIR 1967 S.C. 1269; UNION OF INDIA & ORS. Vs. E.G. NAMBUDIRI - AIR 1991 S.C. 1216). In this case, neither the impugned order by which the promotion of the applicant was ordered to be withheld gives any reason whatsoever in support of the order, nor any show cause notice was issued to the applicant before the promotion was ordered to be withheld. Further, if the promotion had already taken effect, as contended by the applicant with reference to the documents placed by him on record and which contention has not been rebutted by the respondents in their return, the impugned order would, in fact, amount to reversion without due process of law, as no proceedings were initiated under the CCS (CC&A) Rules, 1965.

8. In the light of the foregoing discussion, the impugned order dated 26.4.1988 at Annexure A-1 is quashed and hereby set aside. The applicant will be deemed to have been promoted even if he had actually not taken charge ~~for~~ the post of Carpenter HS. II in the grade of Rs.1200 - 1800 with effect from 1.2.1988, i.e., the date from which he was promoted vide orders dated 18.4.1988 (A-2) and he shall be entitled to arrears of pay and allowances admissible thereon with effect from 1-2-1988 and his seniority in the post of Carpenter HS. II shall also count from that date. The prayer of the applicant for interest at the rate of 14% per month compounded half-yearly is disallowed. The respondents are hereby directed to comply with these instructions within a period of three months from the date of receipt of a copy of this order. O.A. is accordingly disposed of in terms of these directions, leaving the parties to bear their own costs.

Clerk 31/10/91
(P.C. JAIN)
Member(A)

B. S. SEKHON
(B.S. SEKHON)
Vice Chairman (J)

31.10.1991.

31-10-91