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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

REGN. NO. O.A. 945 of 1987

Date of decision 27.3.1990.

Shri H. R. Ghera

... Applicant

-Versus-

Union of India & Ors

... Respondents

CORAM : HON'BLE SHRI P.C.JAIN, MEMBER (A)

HON'BLE SHRI J. P. SHARMA, MEMBER (J)

For the applicant

... Shri M. R. Bhardwaj
Advocate

For the respondents

... Shri N. S. Mehta,
Advocate

1. Whether Reporters of local papers may be
allowed to see the Judgment? X
2. To be referred to the Reporter or not? X
3. Whether their Lordships wish to see the
fair copy of the Judgment? X
4. To be circulated to all Benches of the
Tribunal? X

(P. C. Jain)
Member (A)

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Date of Decision:- 27th March, 1990.

Shri H.R. Ghera ... Applicant

Vs.

Union of India & Ors ... Respondents

CORAM:- Hon'ble Shri P.C. JAIN, MEMBER (A)
Hon'ble Shri J.P. Sharma, Member (J)

For the applicant ... Shri M.R. Bhardwaj, Advocate

For the respondents ... Shri N.S. Mehta, Advocate

Judgement of the Bench delivered by
Hon'ble Shri J.P. Sharma, Member (J)

The applicant preferred an application under Section 19 of the Administrative Tribunals Act, 1985, regarding his grievance of non-promotion to the post of Senior Assistant Director of Accounts, for which he had already been selected and approved by the Departmental Promotion Committee on 10.4.86.

2. The case of the applicant is that the appointment of the applicant, as Asstt. Director of Accounts, Department of Fertilizers, was regularised w.e.f. 1.8.81 (Annexure A-2). The post of Senior Assistant Director of Accounts (Group A) fell vacant w.e.f. 1.8.86, consequent on retirement of Shri A.K. Sengupta. As per Recruitment Rules, the vacancy has to be filled by promotion from the posts of Assistant Director of Accounts of a person who has rendered 5 years regular service in that grade. The applicant as per seniority list (Annexure A-3), the being/senior-most and also, as per roster, it being a reserved vacancy for Scheduled Caste, for which only the applicant being the

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senior most as well as belonging to Scheduled Caste, was eligible for promotion. A D.P.C. meeting was ^{also} held headed by a Member of U.P.S.C on 10.4.86. A separate Department of Fertilizers was created under the Ministry of Agriculture, bifurcating the earlier Ministry of Chemical and Fertilizers ^{but that is immaterial for the applicant's promotion}. In spite of the recommendation of the U.P.S.C. formal order of promotion was not issued to the applicant although he submitted the representation on 17.9.86. (Annexure A-5).

3. On 30.4.87 the applicant was served with a charge-sheet (Annexure A-6) regarding certain irregularities in the bill of L.T.C. submitted for the year 1982-83. Before the issue of the charge-sheet, the applicant was called upon to submit an explanation vide Memo No. 3-2/83-F.A/CASH dated 14.11.83 (Annexure A-7).

4. The applicant was allowed to cross the Efficiency Bar in August 1985, vide order N^o. 27-1367/83-EI dated 31.8.85 (Annexure A-9). Further the respondents having withheld the promotion wrote to U.P.S.C. to adopt the 'Sealed Cover Procedure' which was ^{by UPSC and} not accepted. In spite of that, the applicant was not promoted.

5. In the meantime on the basis of the charge-sheet served on 30.4.87 the applicant was held guilty and the penalty of compulsory retirement from service was imposed on 4.10.88, against which the applicant ~~has~~ filed O.A 2149/88 which was also pending for adjudication in the Tribunal. However, the O.A. has been allowed by the order ~~of even date~~ quashing the penalty imposed.

6. The contention of the applicant is that when meeting of the D.P.C. was held on 10.4.86 there were no departmental proceedings pending within the knowledge of the applicant, nor the applicant, during that period, was served with any notice for explanation on any such proposed enquiry. In fact the vigilance clearance was given on 19.10.83 as admitted by the respondents in their reply in

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para 5.21. The fact is also conceded by the respondents in sub-para 5.24 and 25 that U.P.S.C. was also approached to shelve the promotion till the departmental proceedings are concluded against the applicant, but U.P.S.C. has not agreed to it. As such, the case of the applicant is that maliciously his promotion has been withheld of reserved seat of Senior Assistant Director of Accounts.

7. The respondents in their reply admitted the fact that the applicant was not served with the charge-sheet until 30.4.87, and that vigilance clearance for promotion was already given in Oct. 1983, and the D.P.C. in April 1986 considered on merit the promotion of the applicant and recommended the same. However, in the meantime the applicant was charge-sheeted and the promotion could not be given at that time to the applicant as he was not found second time clear/from the vigilance angle. However, it is stated that the department is not bound with the recommendation of the U.P.S.C. and may disagree with it, in-as-much as U.P.S.C. has not consented to take a 'sealed cover procedure' regarding the applicant. Further it is said that the post has not yet been filled and the applicant has no right to lay the claim for promotion. Lastly, it is said that the applicant has been compulsorily retired on 10.4.88 as^{a/} result of enquiry on a charge-sheet served on 30.4.87 and so the question of promotion does not arise.

8. The applicant in support of his contention submitted the seniority list (Annexure A-3) in which he is the senior-most and Scheduled Caste candidate. Memo dated 30.4.87 (Annexure A-6) is about proposing to hold the enquiry (against the applicant) along with article of charge framed (against the applicant). Memo dated 31.8.85 (Annexure A-9) is of crossing of Efficiency Bar of the applicant in the present scale of pay.

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9. We heard the learned counsel for both the parties at length. The short question involved is whether the promotion due to the applicant, for which he is eligible on account of seniority as well as being ^a Scheduled Caste candidate, can be refused solely on the ground that after the meeting of D.P.C. ^{which} recommended him on ^{for promotion,} disciplinary action was contemplated/initiated/ 10.4.86 [/] 10.4.86 [/] The fact is that no 'sealed cover procedure' was adopted and for all purposes applicant was cleared for promotion. The respondents have to follow D.M. No. 22011/6/75-Estt (D) dated 30.12.76 issued by the Cabinet Secretariat (DP&AR), a copy of which has been filed by the applicant. ~~xxx~~ In case of dis-agreement between the department and the U.P.S.C. the matter has to be referred again to U.P.S.C. and if dis-agreement still remains then to the Appointments Committee of Cabinet but this procedure has not been followed.

10. The respondents have admitted that applicant was made clear from vigilance angle in Oct. 1983 and the matter now for which his promotion is being withheld relates to year 1982-83 and at the relevant time when D.P.C. was held neither there was an enquiry against him nor any charge-sheet issued or served. The respondents have clearly admitted in their reply that enquiry had not commenced when the applicant was recommended for promotion to the post of Senior Assistant Director of Accounts. The applicant has taken support from the ^{case} law reported in (1) ATR-1987-(1)-CAT-547 (2) ATR-1986-(1)-CAT-433 Dr. Sushil Misra Vs. Union of India (3) 1989-SLJ-(3)-CAT-Cuttack-608 A.K. Gupta Vs. Union of India and (4) AIR-1979-SC-1628 Shri R.O. Sheety Vs. International Airport Authority.

11. From the above law it is clear that the applicant's case is covered by the various decisions of the Tribunal that if

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disciplinary proceedings are not pending when D.P.C. is held then the applicant cannot be made to suffer. Any incidence of misconduct, after D.P.C. in its meeting has recommended the applicant for promotion cannot be ^aground to withhold promotion. It shall be an act of arbitrariness and discrimination and violative of Articles 14 and 16 of the Constitution of India if the promotion for which the applicant has been eligible, and particularly ^{when he is} a Scheduled Caste candidate, is withheld.

11. The arguments of the respondent's counsel that the post has not been filled up as yet is not relevant and acceptable. When the post is vacant, and is to be filled up from the zone of consideration in which the applicant is uppermost in a reserved seat, then he cannot be denied that right which is an incidence of service. The promotion can be withheld only when there is some thing against the applicant on the relevant date. The case of Gurdial Singh Fiji Vs. State of Punjab reported in AIR 1979-SC-1622 at page 1624 is not at all applicable to the facts of the present case.

12. The learned counsel for the respondents also placed reliance on 1971-SLR-264-SC Government of India Vs. T.N. Ghosh. The facts of this case also do not apply to the present case. Firstly seat was reserved seat and secondly the applicant had already been cleared for promotion and was also recommended by U.P.S.C. Thirdly if by subsequent enquiry any punishment was imposed, then that was still under consideration before this Tribunal in OA 2149/88, and now the punishment imposed has been quashed. ~~xxxxxx xxxxxxxxxx~~

13. The respondents in their reply have not indicated the date when the investigation against the applicant into the alleged irregularities started. Investigation into the alleged irregularities and initiation of formal proceedings against the

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applicant, after the selection by D.P.C. and recommendation by U.P.S.C for promotion to the post of Senior Asstt. Director of Accounts, cannot be, in any view of the matter taken as an excuse to withhold the formal orders of promotion. The learned counsel for the respondent argued that the clearance from vigilance angle at the time of actual issue of order of promotion was not available, it is observed that ~~negative~~ so the promotion had not been given. However, the D.P.C. and met in March 1986, the U.P.S.C recommended the promotion of the applicant in April, 1986. It is not clear how the Department on that date ^{could} withheld the promotion. It was not a case of criminal charge or any event occurring after the meeting of D.P.C. ^{which} was convened for filling up a reserved available promotional post vacancy. The act of the respondents ⁱⁿ withholding ^{the} applicant's promotion is, therefore, arbitrary and discriminatory and cannot be sustained.

14, The grievance of the applicant is, therefore, genuine and the respondents have materially erred in not giving him promotion on the recommendations of the D.P.C. and U.P.S.C from 10.4.86.

15. The application is, therefore, allowed and the applicant shall be deemed to have been promoted to the post of Senior Assistant Director of Accounts from the date of recommendation of U.P.S.C. i.e. from 10.4.86 and he shall be entitled to all consequential benefits including pay and allowance and all other future benefits arising out of that promotion to the post of Senior Asstt. Director of Accounts. There will be no orders as to costs.

J. P. Sharma
(J.P. SHARMA)
MEMBER J)

P.C. Jain
(P.C. JAIN)
MEMBER (A)

Pronounced in open court.

P.C. Jain 27/3/90
(P.C. Jain)
Member(A)
27.3.90.