

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the 28th day of March 2000.

Original Application no. 1197 of 1996.

Hon'ble Mr. S.K.I. Naqvi, Judicial Member
Hon'ble Mr. M.P. Singh, Administrative Member.

Jai Nand, S/o Sri Motilal,
R/o, C/o Chief Inspector of Works,
Northern Railway, Prayag,
Allahabad.

... Applicant.

C/A Shri A.K. Dave

Versus

1. Union of India through General Manager
Northern Railway,
Baroda House,
New Delhi.
2. Divisional Railway Manager,
Northern Railway,
Lucknow.
3. Divisional Superintending Engineer II,
Northern Railway,
Lucknow.
4. Divisional Engineer, Northern
Railway, Varanasi.

... Respondents

C/R Sri A.V. Srivastava

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ORDER

Hon'ble Mr. M.P. Singh, Member-A.

The applicant is aggrieved against non payment of salary for the period of suspension from 25.06.1991 to 31.12.1992 and further depriving him from the benefits consequential to revocation of the suspension.

2. The brief facts of the case are that the applicant was appointed as Sub-oversee Mistry (SOM) in the Civil Engineering Department of the Railways w.e.f. 02.11.1982. The applicant was promoted on ad-hoc basis to the post of I.O.W. Grade III w.e.f. 16.11.1987 for a period of 2 months and, thereafter, the ad-hoc appointment was extended from time to time. He was put under suspension from 25.06.1991 on the allegation made by a contractor to S.P. C.B.I., Lucknow for demanding illegal gratification. He was re-instated on duty w.e.f. 31.12.1992. According to him no memorandum of charge has been issued to him and as such the period of suspension has not been justified as charges were false.

3. During the intervening period, the selection was made for preparing the panel to fill up 27 vacancies of I.O.W. Grade III, out of which 4 vacancies were reserved for SC candidates. Only 2 SC candidates were called as, against the 4 vacancies reserved for SC candidates. According to him he passed the test but his name was not notified because he was under suspension. The S C candidate

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junior to him was empanelled and was promoted. He has stated that the matter ~~has been~~ ^{was} referred to S.P. CBI Lucknow regarding suspension & declaration of the result of the selection held in 1991. The persons junior to the applicant have been promoted to the post of IOW Grade III on regular basis on 31.1.92. He has, therefore, filed the present OA claiming the following reliefs:-

- i. To direct the respondents to treat the period of suspension of the applicant from 25.06.1991 to 31.12.1992 as period spent on duty as IOW grade III.
- ii. direct the respondents to pay the difference of pay for the period 25.06.1991 to 31.12.1992 including increments.
- iii. direct the respondents to declare the result of the applicant for the post of IOW Grade III in the selection held in 1991.
- iv. direct the respondents to absorb the applicant to the post of IOW grade III against the vacancies reserved for Scheduled caste from the date his juniors have been given the said benefit.
- v. grant any other appropriate relief besides cost and expences of the OA.

4. The respondents in their Counter affidavit have mentioned that ~~that~~ the applicant was involved in a criminal case by the CBI in 1991. Pending investigation, he was put under suspension. After clearence of CBI, the order of suspension was revoked. The applicant was

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allowed to appear in the selection held for the post of IOW Grade III in the year 1991 but he failed to qualify. Thereafter, another regular selection for the post of IOW Grade III was held in the year 1996. The applicant was called to appear, but this time also he failed to qualify the same. As regards the intervening period of suspension, the same shall be decided after final outcome of pending criminal case. According to them the applicant was working as IOW Grade III purely on ad-hoc basis and he was designated as such in both suspension & revocation orders,

5. Heard, Shri A.K. Dave, learned counsel for the applicant and Shri A.V. Srivastava, learned counsel for the respondents & perused the records.

6. As per order dated 14.10.1999, the respondents have produced the proceedings of promotion of the applicant to the post of IOW grade III. As per record, the Office of C.B.I., Lucknow vide its letter dated 04.12.1992 informed the Divisional Supdt. Engineer, Northern Railway, that chargesheet against the applicant had been filed in the Court of law after completion of investigation. It was further stated by the Office of C.B.I. that the suspension of the applicant be dealt as per existing instructions. Divisional Supdt. Engineer has also communicated the sanction for the prosecution of the applicant vide letter dated 30.10.1992.

7. During the course of the arguments learned counsel for the respondents stated that since a criminal case was pending against the applicant, sealed cover procedure was followed with regard to his selection for the next higher post of IOW Grade III. The Hon'ble Supreme Court in its judgment, U.O.I. & Others Versus K.V. Jankiraman & others, (1993) 23 ATC 322, has observed as follows:-

"In view of the aforesaid peculiar facts of the present case, the DPC which met in July 1986 was justified in resorting to the sealed cover procedure, notwithstanding the fact that the charge-sheet in the departmental proceedings was issued in August/December, 1987. The Tribunal was, therefore, not justified in mechanically applying the decision of the Full Bench to the facts of the present case and also in directing all benefits to be given to the employees including payment of arrears of salary. We are of the view that even if the result in the sealed cover entitle the employees to promotion from the date their immediate juniors were promoted and they are, therefore, so promoted and given notional benefits of seniority etc., the employees in no case should be given any arrears of salary. The denial of the benefit of salary will, of course, be in addition to the penalty, if any, imposed on the employees at the end of the disciplinary proceedings. We, therefore, allow these appeals as above with no order as to costs."

8. In this case the criminal proceedings against the applicant are still pending in the Court of Law. The sanction of the procedure has already been given

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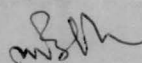
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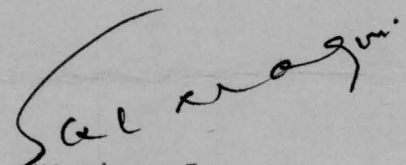
by the department and the charge-sheet has already been filed by the CBI against the applicant in the Court of Law as mentioned in para 6 above. Action taken by the respondents to put the result of 1991 selection of the applicant for promotion to the higher grade of IOW grade III in sealed cover is in accordance with the law laid down by the Hon'ble Supreme Court in the above mentioned case.

9. We may, however, mention that the respondents have not correctly ^{stated} ~~mentioned~~ the facts in the counter affidavit. The result of the test of IOW grade III is kept in the sealed cover as stated by the counsel for respondents. However, in the affidavit it has been mentioned that the applicant has failed to qualify in the test which appears to be a false statement. The department may take action as deemed fit against the officer who has stated wrong facts in the counter affidavit.

10. In the light of the above discussion & also facts and circumstances of the case, the O.A. is dismissed.

11. No order as to costs.


Member-A


Member-J

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