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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 16TH DAY OF OCTOBER, 2000

Original Application No. 1019 of 1997

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MR.S.DAYAL, MEMBER(A)

Chhedi Lal, son of Sukh Deo,
R/o 151/P Railway Colony, Behind
Railway Hospital, Etawah.

... Applicant

(By Adv: Shri B.N.Singh)

Versus

1. Union of India through the Divisional Rail manager, Northern railway, Allahabad Division, Alld.
2. Divisional personnel Officer Northern Railway, Alld. DN., Allahabad.
3. Senior Divisional Electrical Engineer(TRD) Northern railway, Allahabad DN, Alld.

... Respondents

(BY Adv: Shri Amit Sthalekar)

O R D E R(Oral)

(By Hon.Mr.Justice R.R.K.Trivedi,V.C.)

This application u/s 19 of the A.T.Act, 1985 has been filed for a direction to the respondents to promote the applicant Chhedi Lal as Head Clerk from the date when juniors of the applicant were promoted with all consequential benefits. It has also been prayed that notice dated 4.9.1997 for selection of candidate for the post of OS Grade II may also be quashed.

The facts giving rise to this application are that applicant was serving as Senior Clerk under Divisional Electrical Engineer Tundla. The applicant was asked to take over charge on 17.5.1993 of Electrical Store.

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The applicant refused to take charge of the Store on the ground that the same was not part of his duty. This refusal gave rise to disciplinary proceedings against the applicant. He was put under suspension and by order dated 17.1.1994 he was reverted. This order of reversion was challenged in OA No.803/94 which was allowed and order of reversion was set aside. The respondents by order dated 18.6.1997 implemented the order of the Tribunal, set aside the order of punishment dated 17.1.1994 and the applicant was restored the status of Senior clerk. The grievance of the applicant is that as many as seven persons junior to him were promoted as Head Clerks on 20.9.1993 and as the order of reversion has been set aside, he is entitled for the same benefit. There was nothing against his conduct in service.

The respondents, on the other hand, filed counter affidavit and submitted that two charge-sheets for major penalty are pending against the applicant served on him in the year 1995 and 1997 respectively for unauthorised absence from duty for the period 31.3.1994 to 28.11.1995 and 29.11.1995 to 17.8.1997. The learned counsel for the applicant has submitted that aforesaid ground of pendency of disciplinary proceedings against the applicant could not be made basis for refusing promotion to him which has been granted to his juniors. The learned counsel for the applicant has placed reliance in a case of 'Sulekhchand and Salekh Chand Vs. Commissioner of Police and Others, 1994(28) ATC-711(SC). We have considered the aforesaid judgement. however, on facts the case is clearly distinguishable. In the case of 'Sulekh Chand there was no intervening factor like in the present case that fresh proceedings for another misconduct are pending. The applicant was virtually absent from duty from 31.3.1994 to 17.8.1997. Such a long absence from duty (without expressing opinion about the correctness of the allegation) could be a valid ground for refusing promotion. In the circumstances, we are of the view that applicant is not entitled for the relief claimed. Even if the applicant was reverted by an order which was subsequently set aside by this Tribunal, it was not expected from the applicant that he will not work on the reverted post. Be as it may, as this question is subject matter of the

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disciplinary proceeding we, without expressing any opinion, dispose of this application with a direction that the disciplinary proceedings pending against the applicant shall be concluded within a period of six months from the date a copy of this order is filed before respondent no.2 and if he is exonerated from the charge, he shall be considered for promotion from the date his juniors were promoted. There will be no order as to costs.

MEMBER (A)

VICE CHAIRMAN

Dated: 16.10.2000

Uv/