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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 8TH DAY OF FEBRUARY, 2000

Original Application No. 182 of 1997

CORAM:

HON.MR.JUSTICE NEELAM SANJIVA REDDY, V.C.

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

Shri T.G.Mishra, aged about 57 years,
S/o late Shri P.D.Mishra, R/o 12 A, Tula Ram Bagh
Jawahar Lal Nehru Road, Allahabad.

.... Applicant

(By Adv: Shri Rakesh verma)

Versus

1. Union of India through
The Director General, Ordinance
Services, Army headquarter,
Post Office DHQ, New Delhi-110 011
2. Officer-in-charge, A.O.C Records
Post office Trimulgherry,
District Secunderabad-500 015
3. The Commandant, Central Ordnance
Depot, Cheoki, Naini, Allahabad.
4. Shri Baij Nath prasad, No.6953310
S/o Not known, working as Office
Superintendent Grade II in Central
Central Ordnance Depot, Naini, Allahabad.

.... Respondents

(By Adv: Shri S.C.Tripathi)

O R D E R

(By Hon.Mr.Justice Neelam Sanjiva Reddy)

This O.A has been filed seeking the relief of quashing
the cancellation of his promotion and posting on the post of
Office Supdt.Grade II.

2. A few facts as seen from the application, C.A., R.A and
documents filed on either side and necessary for disposal of
this case are these. The applicant, the 4th respondent and
several others were working as UDCs at C.O.D.Cheoki, Naini,

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Allahabad. In the month of November 1994 DPC considered cases of all eligible candidates working in all the units under the control of the second respondent and prepared a Select Panel of UDCs for promotion as Office Supdt. Gr.II during the year 1995 as and when vacancies arise in different units and the said Select list was issued on 12.1.1995 by the second respondent. The applicant is at Sl.No.68 and the 4th respondent is at Sl.no.63 in the Select list prepared by the DPC. The 4th respondent promoted as Office Supdt.Gr.II w.e.f 1.2.1995 as that vacancy arose at that time and was posted at Allahabad itself. Subsequently the seven more UDCs including the applicant from / select panel were promoted on 9.3.1995 w.e.f. 1.3.1995. Among the said promotees five of them are juniors to the applicant as seen from the Select Panel. Senior most among the candidates promoted on 9.3.1995 who is from Allahabad, is posted at the same place on promotion. The applicant and others working at COD Cheoki, Naini, Allahabad were posted out of Allahabad at different places and the applicant was posted to OAFBD Kirki. The candidates posted out were required to give their willingness or unwillingness for the posting and promotion. The applicant did not give his willingness immediately after posting order. He was required to do so in the month of July 1995 by third respondent. Applicant gave his willingness on 25.7.95 to third respondent to join his new post at Kirki. Thereafter the applicant made his representation dated 31.7.95 to second respondent through proper channel for his posting at Allahabad on the ground of personal difficulties in any present or future vacancies. His representation was not accepted by the second respondent by letter dated 12.10.95. Thereafter applicant made another representation on 11.11.1995 to the second respondent on the ground that he was junior to respondent no.4 and therefore

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is entitled to his posting at Allahabad. Thereafter he requested for payment of TA/DA on 15.11.1995 to proceed to his new post. His request was not favourably considered on 21.11.1995, and the promotion and posting order of the applicant was cancelled by the second respondent. The applicant learnt about it on 17.12.1995/made an appeal to the 1st respondent on 19.12.1995 against the said order of the second respondent. The appeal of the applicant was rejected and communicated on 6.4.1996 through the third respondent. The applicant aggrieved by the cancellation of his promotion and posting order preferred this OA against the respondents 1 to 3 adding Baij Nath Prasad as 4th respondent who has got posting at Allahabad itself.

3. Shri Rakesh Verma learned counsel for the applicant submits that the posting of the applicant outside Allahabad on promotion is in violation of Para 34 of R.O.I and it is liable to be set aside. Learned counsel for the official respondents submits AOC(R) that the posting of the applicant was strictly in accordance with ROIs and no infraction of the ROI was committed by the respondents in posting the applicant out of Allahabad. On the other hand, the posting of the applicant on promotion was strictly done according to Para 34 of ROI.

4. Para 34 of ROI reads:

Posting on Promotion

"Names of individuals appearing in the select DPC Panel will be promoted to the extent of vacancies available in the Corps from time to time according to their seniority in a station/group of stations. At the time of promotion, junior amongst the promotees will be absorbed in Situ against the vacancies and the remaining will be posted out whereever vacancies exist."

From a reading of the above para it is quite apparent that

vacancies arising during the year 1995 have to be filled from time to time according to their seniority. From the facts of this case it is quite apparent that 4th respondent was promoted and posted in a vacancy that arose one month earlier than the promotion of the applicant. As 4th respondent was only one candidate from the same unit to be promoted and posted and he was rightly posted at Allahabad itself on promotion in accordance with Para 34 of ROI. Hence we do not see any contravention of the ROIs in the posting of 4th respondent at Allahabad.

5. The applicant and others were promoted on 9.3.1995 w.e.f. 1.3.1995. It is clear from the record that on that day 7 UDCs including the applicant were promoted and posted as Office Supdt. Gr.II. There are four juniors to the applicant among the said promotees at Allahabad itself in the same unit. Naturally, there is absolutely no scope for the applicant to get a posting at Allahabad in view of the said factual position as to seniority and juniority among the candidates promoted. No doubt, we see from the order dated 9.3.95 seniormost UDC working in Allahabad was absorbed in Situ at COD Cheoki, Allahabad itself in contravention of para 34 of ROI. As the junior entitled to the posting at Allahabad is not a party in this case and not questioning the posting order, we are of the view that the present applicant cannot have any grievance against his posting at Kirki on promotion.

6. Learned counsel for the applicant submits that the applicant was willing to go and join at Kirki in case his request for posting at Allahabad was rejected and in fact he wanted payment of TA/DA to move to the new station in case of such rejection. As his representation was not rejected by the Competent Authorities promptly he could join his new post and consequently the order of cancelling his promotion and posting is bad and liable to be set aside.

The counsel for the official respondents submits that it was the duty of the applicant to go to the new place of posting and join duties as Office Supdt.Gr.II on receipt of promotion orders and that the applicant went on making representations on one ground or the other to avoid his posting at a different place and that the authorities are within their limits in cancelling the promotion and posting of the applicant.

8. It is seen from the record that the applicant suffers from bodily infirmity and this fact cannot be disputed. No doubt, it was the duty of the applicant to go to his new station and join his duties in the new post soon after getting promotion orders. It is clear from his first representation that he was not aware of the ROIs as to posting on promotion. His representation reveals that he wanted second respondent to consider his case for posting at Allahabad on the ground of physical infirmity, family difficulties etc. We are of the view that the request appears to be bonafide but the request probably could not be complied with because of Para 34 of the ROI by the second respondents. His second representation is based on para 34 of the ROI on the ground that his senior was posted at Allahabad. He being a clerk probably could not understand the true import of the ROI and went on agitating for his posting at Allahabad. It is also clear that the authorities concerned did not consider his representations promptly and reject them without any delay. In that case probably the applicant would have gone and joined his new place of posting at Kirki. Considering all the above aspects, we are of the view that passing of the order cancelling promotion and posting of the applicant was due to subjective appreciation of facts and rules by the applicant and lapses on the part of the concerned authorities in the delayed disposal of representations of the applicant.

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8. In view of the above circumstances, the learned counsel on both sides fairly submit that the applicant may be promoted from the date of this order and may be posted in any place without backwages as he is retiring on 31.7.2000. We appreciate the fair submission of the learned counsel on both sides in the background of the facts of the case to render substantial justice. Accordingly, the original petition is allowed setting aside the orders cancelling the promotion and posting orders of the applicant as Office Supdt.Gr.II at Kirki and he shall be promoted to the said post from the date of this order without backwages. In the circumstances of the case parties shall bear their own costs. The original records be returned to the counsel for the official respondents.

S. O. S.
MEMBER(A)

W. S. S.
VICE CHAIRMAN

Dated: 08.02.2000

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