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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 522 of 1986

Keshri Nandan Gupta Applicant.

Versus

Sr. Superintendent RMS 'G'
Division, Gorakhpur Respondent.

Hon'ble S. Zaheer Hasan, V.C.
Hon'ble Ajay Johri, A.M.

(Delivered by Hon. Ajay Johri, A.M.)

In this application filed under Section 19 of the Administrative Tribunals Act, XIII of 1985, Keshri Nandan Gupta, a retired Sorting Assistant, R.M.S., Gorakhpur has come up with a prayer for quashing a punishment order no. K 20/55/1/81 of 24.1.1986 withholding his promotions till retirement and for deeming him to be promoted to L.S.G. Cadre from the due date, i.e. 30.11.1983 under the time bound scheme for promotion after completion of 16 years of service together with fixation of his pay ^{3/} and in the higher grade ~~3/~~ payment of arrears.

2. The applicant's case is that he was taken up for some acts of omission and issued a charge-sheet on 6.11.1982. The enquiry officer did not find him guilty and the disciplinary authority dropped the proceedings against him. He was, however, again issued a charge-sheet for the same offence on 18.10.1985 against which he represented as he had already been exonerated but the disciplinary authority imposed the impugned punishment by the order dated 24.1.1986. He filed an appeal against

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the punishment but his appeal has not been disposed of yet. According to him de novo proceedings were against the rules. A review could have been done but he could not be taken up for the same offence again.

3. The respondents have averred that the punishment order of 24.1.1986 has since been set aside on 10.10.1986 and the applicant has been given his due promotion with effect from 17.7.1985. He could not be considered for promotion from an earlier date because he was undergoing punishments at the time his case was considered. He was punished as a result of charge-sheets issued to him on 28.3.1984, 22.8.1984 and 1.4.1985 in which punishments of stoppage of promotion for six months, stoppage of increments for three months and censure were awarded to him. The applicant never appealed against these punishments.

3/✓ 4. The short point that is to be considered in this application is whether on the punishment imposed on 24.1.1986 having been cancelled the applicant was entitled to his promotion from the due date. It has been admitted by the respondents that the punishment order of 24.1.1986 has been cancelled as a result of the appeal submitted by the applicant. CA-2 is the annexure implementing the recommendations of the DPC promoting the applicant with effect from 14.7.1985 in consequence of the punishment having been set aside. This letter also says that officials whose cases will be decided after the conclusion of Disciplinary Cases have been assessed under the sealed cover procedure and the proceedings have been kept in sealed cover.

Thus it is clear that the DPC has been following the sealed cover procedure. In Annexure '1' there are cases of promotion with effect from 1.12.1983 also.

5. In his replication the petitioner has said that he was found fit by the DPC held in February-March, 1984 for promotion. He further draws inference from the letter of 6.4.1984 (Annexure RA-1) that he was to be considered for promotion on the conclusion of the disciplinary proceedings. This letter confirms that a DPC was held in 1984. The applicant's name appears at Sl.No.2 amongst the list of those whose cases were to be considered on conclusion of the disciplinary proceedings. Annexure RA-2 is a letter dated 24.1.1986 which says in para (ii) that in the case of officials against whom cases were pending and such cases are decided in their favour they will get the benefit of time bound ~~and~~ promotion from 30.11.1983 or their original due dates except in the cases of those where punishment is imposed, who will get is on the date of expiry of the currency of the punishment. Annexure '3' of this letter includes applicant's name. These are ~~also~~ ³² the names of officials, who have not been found fit for promotion to next higher slab.

6. It is, therefore, evident that in terms of the letter of 24.1.1986 (Annexure RA-2) the applicant was not considered fit for promotion because the punishment of stoppage of promotion was current on this crucial date. His punishment was set aside on 10.10.1986. The right course of action then was to consider the applicant's case, keeping the relevant time in view when he was due for

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promotion, i.e. 30.11.1983, on the cancellation of punishment on 10.10.1986. The other punishments which have been taken into consideration did not exist at the time the DPC of 1983-84 considered his case. It was only the charge-sheet issued on 6.11.82 that could be material. Thus it is evident that erroneous decision has been taken in the applicant's case. It is also not clear how the date 14.7.1985 has been fixed for giving him promotion. It has not been explained and no light could be thrown on it during the course of arguments at the Bar. The letter of 6th April, 1984 (Annexure RA-1) has been issued after the DPC had met. Evidently at that time only one charge-sheet was under consideration. This was the charge-sheet dated 6.11.1982 which was dropped on 4.9.1985 and a fresh charge-sheet was issued on the same count on 18.10.1985 which was ultimately quashed on 10.10.1986. Thus the applicant had no case pending against him when the 1983-84 DPC met. The sealed cover procedure must have been adopted by the DPC in the case of those, who had Disciplinary Cases pending against them. There has been no indication of the same in the reply by the respondents. Thus it is not clear whether it was adopted or not. It is also not clear whether the applicant's name was sent to the DPC for consideration or not. It should have, in the normal course, been sent.

7. Since the charge-sheet of 6.11.1982 got ultimately quashed on 10.10.1986, the applicant had no case against him on 30.11.1983. The other charge-sheets were clearly for subsequent causes which would not affect the position of the applicant for his clearance on 30.11.1983. Subsequent events could not

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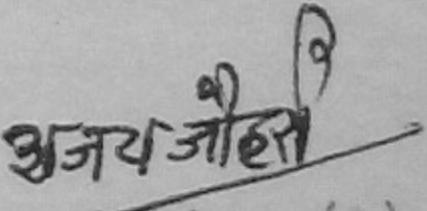
deprive the applicant of the right he had acquired earlier.

8. The applicant's request for quashing the punishment order of 24.1.1986 has become infructuous because the respondents have themselves set aside the impugned punishment. His second prayer for promotion in the time bound scheme is, however, liable to be favourably considered in view of what has been stated above.

9. In the result we order that if sealed cover procedure was followed by 1983-84 DPC the same may be opened otherwise the applicant's name be placed before a freshly constituted DPC to consider if he was fit for being promoted on 30.11.1983, there being no disciplinary case pending against him. If he is ^{so} ~~is~~ found otherwise fit, he will be deemed to have been promoted from the due date, i.e. 30.11.1983 and will be entitled to consequential benefits in accordance with rules. This exercise should be completed within two months from the date these orders are received.

10. The application is disposed of accordingly. Parties will bear their own costs.


Vice-Chairman.


अनंद जीवन
Member (A)

Dated: September 18th, 1987.

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