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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No.23 of 1986

Prabhoo .... Plaintiff-Appellant-Applicant.

Versus

Union of India & others .... Defendant-Respondents.

Hon'ble Ajay Johri, A.M.  
Hon'ble G.S. Sharma, J.M.

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

This is an appeal against the judgment and decree dated 30.10.1984 passed in Suit No.408 of 1984, Prabhu v. Union of India, passed by the Munsif West, Allahabad dismissing the plaintiff's suit. It has been received under Section 29 of the Administrative Tribunals Act XIII of 1985 from the court of District Judge, Allahabad. The grounds of appeal are that though the plaintiff had asserted in his pleadings that notice under Section 80 of the Code of Civil Procedure was already served upon the defendant no.1, the trial court dismissed the suit ex parte for non-serving of the notice. The suit was not contested by the defendants inspite of personal service. The plaintiff-appellant has filed the copy of the notice with the appeal, and the defendants have been allowed to file their written statement now.

2. In the judgment the learned trial court had said that the plaintiff had not attached a copy of the notice said to have been sent by him on 3.2.1984 neither has he attached the receipts etc. He should have presented before the court that notice or the acknowledgements for the same. Since he has not done so the suit is bad for non-service of the notice.

3. The plaintiff-appellant has attached a copy of the notice under Section 80 of the Code of Civil Procedure sent by him on 3.2.1984 to the General Manager, Northern Railway, Delhi with copies to DRM, Northern Railway, Allahabad, TFR,

Northern Railway, Allahabad, and Chief Personnel Officer, New Delhi. He has also attached copies of postal receipt dated 3.2.1984 of a letter addressed to the General Manager, Northern Railway, *SV The Certificate* ~~Copies of service~~ of posting to DRM etc. and postal acknowledgement receipt from the General Manager dated 16.2.1984. We thus find that the plaintiff-appellant had actually sent a notice under Section 80, C.P.C. and, therefore, the ground on which his suit was dismissed by the trial court did not actually exists. On this short point the appeal is liable to be allowed.

4. We have heard the learned counsel for the parties on merits of the suit. The learned counsel for the plaintiff contended that the plaintiff had no adverse entry, that he had qualified in the examination for promotion to Grade 'A' and his juniors were promoted on 19.9.1983. His name appeared at Sl.No.117 of the list while two of his juniors at Sl.Nos. 118 & 122 were promoted and he was ignored which was bad in law and he should be considered to have been promoted at least on the date his juniors have been promoted. The learned counsel for the defendants however, submitted that the plaintiff has been promoted in June, 1984 and that he was not senior enough and that is why he was not promoted.

5. In his plaint in Suit No.408 of 1984 the plaintiff has said that he was working as Electrical Driver Grade 'B'. He passed P-18 course from Chandausi and also fulfilled other requirements for his promotion. He was the senior-most employee and was entitled to get promotion in Grade 'A', but he was given a step-motherly treatment and his due claims were ignored whereas his juniors at Allahabad and Kanpur were promoted on 19.9.1983 and 21.1.1984 respectively. He was never called for selection on the basis of seniority. Thus he has been put to great financial loss in matter of pay and other allowances. He ~~has~~ is, therefore, entitled to get his promotion from the date of the promotions

of his juniors and also entitled to get all the differences of pay and allowances and other dues from that date. He is also entitled to realise damages amounting to Rs.1,000/- approximately. He, therefore, has prayed that it may be declared that he is entitled to get his promotion to Grade 'A' with effect from 19.9.1983 with all difference of pay and allowances, etc.

6. In their reply the respondents have said that the past working of the plaintiff was not satisfactory. He was not selected for the promotion to Driver Grade 'A' as he refused to appear in the selection and written test held on 19.2.1984. He did not appear in the tests on 25.3.1984 as well and he has been given one more chance on 19.9.1984. According to the defendants the plaintiff is not the senior-most. His name appears at Sl.No.419 whereas the others whom he has named are much senior to him. They have also challenged the suit on the ground that the plaintiff has claimed a number of reliefs and all the reliefs cannot be allowed under one heading and that the relief should have been claimed in the Labour Court and since he is not working on the post for which he is claiming wages, he is not entitled to higher pay. During 1983-84 he could not be promoted because of his unfitness. He has, however, been promoted on 8.6.1984.

7. In the seniority list of Drivers Grade 'B' as on 1.10.1984 the plaintiff's name appears at Sl.No.117. He has been shown as having been promoted on ad hoc basis as Driver Grade 'A'. His grievance is that though his juniors who are at Sl.Nos. 118, 122, 129, 133 and 144 have been promoted on 19.9.83, he has not been so promoted. The respondents in their reply in para 4 have said that the name of the plaintiff appears at Sl.No. 419, but they have not filed the seniority list to which the reply refers. It is, therefore, difficult to appreciate their plea that the plaintiff is not the senior-most. According to the seniority list of Grade 'B' Drivers if the plaintiff was at Sl.No.117 <sup>& and</sup> he

has passed the requisite qualifying examination for promotion to Driver Grade 'A' and if promotion to Driver Grade 'A' was to be made strictly on seniority-cum-suitability the plaintiff has a case for having been ~~incorrectly~~ ignored vis-a-vis his juniors, who, according to him, were promoted on 19.9.1983.

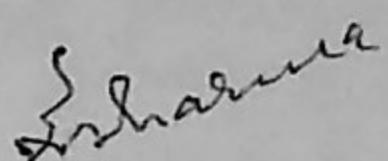
8. At the Bar a mention was made by the learned counsel for the defendants that the plaintiff did not have a satisfactory record and that he was taken up for some offence but at the same time the learned counsel had mentioned that this pertained to the year 1982 and, therefore, he did not feel it proper to submit the Confidential Records of the plaintiff for ~~our~~ examination. In view of this submission it appears to be clear that at the relevant time the plaintiff was not undergoing any punishment and that his service record at the material time was also not unsatisfactory. If that was the position the plaintiff should have been promoted along with his juniors.

9. On the above considerations we order that the respondents will re-examine the case of the plaintiff and if he was not undergoing any punishment and was otherwise fit having passed P-18 examination he would ~~be~~ considered for promotion to the post of Driver Grade 'A' from the due date and he will be entitled to proforma fixation of his salary vis-a-vis his juniors from the date he was promoted as Driver Grade 'A', i.e. 8.6.1984. From this date also he will be entitled to revised rate of allowances, etc. which are due to Drivers, ~~he~~ <sup>as</sup> had already started officiating as Driver Grade 'A'. The request of the plaintiff for any arrears of salary, etc. from 19.9.1983 is, however, not accepted and rejected.

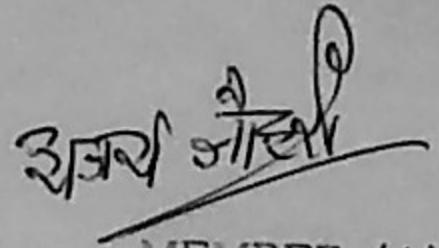
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10. In view of above, the application (Appeal No.632 of 1984) is allowed and the Suit No.408 of 1984 is decreed in part as indicated above. Parties will bear their own costs throughout



MEMBER (J).



MEMBER (A).

Dated: March 11, 1988.

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