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Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

REGISTRATION NO.31 (T) of 1986.

Hirday Ram

.... plaintiff-
appellant.

Versus

Union of India and others

.... Defendants-
respondents.

Hon'ble D.S.Misra-Member(A)

Hon'ble G.S.Sharma-Member(J)

(By Hon'ble D.S.Misra-Member)

1. This is an appeal which has come on transfer from the court of III Addl. Civil Judge, Ghaziabad under Section 29 of the Administrative Tribunals Act.

2. This appeal has been preferred against the judgment and decree passed in Original Suit no.617 of 1980 by I Addl. Munsif Ghaziabad dismissing the suit of the plaintiff-appellant. In the plaint, it was stated that the plaintiff-appellant was appointed as a temporary teacher in the Primary School of Ordnance Factory Morad Nagar, u.e. from 28.10.1967 and he was declared quasi-permanent u.e. from 28.10.1970. In the list of persons fit for promotion prepared by the D.P.C. on 15.2.1980, the name of the plaintiff-appellant was not mentioned and the said list was challenged in the original suit which was dismissed by the learned I Addl. Munsif, Ghaziabad. In appeal the appellant has contended that the case of the applicant was covered under Rule-11(2)(i) of the Central Civil Services (Classification, Control and Appeal) Rules 1965 and it amounted to with-holding of promotion, which being a recognized minor penalty, could not be inflicted on him without complying with the

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procedure prescribed in Rule 16 of the above mentioned Rules.

It has been also contended that the order of non-promotion was a clear case of discrimination and violation of Article 16 of the Constitution of India. Another point raised in the appeal is that the adverse comments which formed the basis of his non-selection, were never communicated to him and therefore, these could not be taken into consideration without the applicant having been given an opportunity to make representation against such comments.

3. In reply the respondents have admitted that the applicant was working as a quasi permanent teacher when selection for the higher post of teacher in the higher scale of pay was made by the Departmental Promotion Committee in the year 1979. It was contended that this was a non-selection post and the promotion was to be made on the basis of seniority with elimination of unfitness. The list prepared by the D.P.C. received by the Director General, Ordnance Factory, on 30.10.1979, did not include the name of the applicant as he was not found fit and suitable by the D.P.C.. They denied the allegation of the plaintiff that the list was prepared against the rules. The representation dt. 11.3.1980 submitted by the applicant was duly examined by the competent authority and the applicant was informed vide letter dated 26.9.1980 that since the D.P.C. did not recommend his name as being fit for promotion to the higher grade, his representation could not be accepted. The teachers who were found fit for promotion were promoted.

4. We have heard the arguments of learned counsel for the parties and have carefully perused the relevant documents on record. A perusal of the judgment of the learned Addl. Munsif would show that on the basis of the pleadings of the parties six issues were framed. For the purpose of this appeal, the following two issues

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appear to be relevant:

- A) Is the promotion list dt. 3.7.1980 prepared by the defendants not valid as stated in the plaint?
- B) Is the plaintiff entitled for promotion as stated in the plaint?

5. Both the issues were considered together and decided in negative. It is admitted on both sides that the post on which selection is sought was a non-selection post and the Departmental Promotion Committee was required to consider suitability of candidates for promotion on the basis of seniority cum fitness. The committee considered the annual confidential report for three years, preceding the year in which selection was made. In the annual confidential report of the appellant for the three years, i.e., ^{and 1978-79} ~~1976-77, 1977-78~~, the appellant was not recommended for promotion.

Following the same procedure, three of his juniors, who were recommended for promotion and were found suitable, were promoted. The contention of the plaintiff- appellant that his annual confidential report should have been compared with the annual confidential reports of other candidates, was rejected by the learned Munsif as it was not in accordance with the procedure prescribed for promotion and functioning of the departmental Promotion Committee contained in Rule 1 (9) of Civil Service Regulation (appendix 2(9)).

6. Learned Munsif has also discussed the grievance of the appellant regarding non-communication of adverse entries in this confidential report. It is well known that the annual confidential report is a confidential document and the observation of the competent authority regarding fitness of the individual for promotion to the higher post is not taken as adverse remark. In

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any case the Departmental Promotion Committee is supposed to consider all the remarks of the reporting officer ~~and the~~ ^{by} reviewing officer while considering the fitness for promotion. A confidential report need not be adverse while considering suitability and fitness for promotion. Even remarks like average performance has the effect of drawing inference of a person being unsuitable for promotion.

7. The third point taken by the appellant that the non-selection of the appellant for promotion amounted to with-holding of promotion and imposition of a minor penalty under Rule 11 (ii) of the C.C.A. Rules has also been discussed in the judgment of the learned Munsif. The plaintiff appellant has admitted that only persons who are approved, for promotion by a D.P.C. are entitled to promotion. The learned Munsif has rightly held that non-promotion does not amount to with-holding of promotion. Since the plaintiff appellant was not found fit for promotion by the D.P.C., he did not have a claim for promotion to the higher post.

8. For the reasons mentioned above, we are of the opinion that the findings of the learned Munsif are based on a proper appreciation of evidence on record and the relevant rules prescribed by the competent authority for promotion from lower post to a higher post and there is no force in this appeal. We, therefore, dismiss the appeal without any order as to costs.

K. Sharma
11/9/86
Member (A)

S. Narayana
11/9/86
Member (J)