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Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No.173 of 1986(C.Appeal No.9 of 1985)

Hans Raj Mehta ... Applicant

Vs.

Union of India and another ... Respondents.

Hon.D.S.Misra,AM
Hon.G.S.Sharma, JM

(By Hon.G.S.Sharma, JM)

This transferred application is a civil appeal against the judgment and decree dated 31.3.1983 passed by V Munsif Bareilly in suit no. 75 of 1980 and has been received from the Court of Addl.Civil Judge, Bareilly under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The applicant Hans Raj Mehta (hereinafter referred to as the plaintiff) had joined Indian Veterinary Research Institute (for short IVRI) Izatnagar, Bareilly in 1948 as a Research Assistant. On the establishment of Indian Council of Agricultural Research (for short ICAR)-respondent no.2, the services of the plaintiff were placed at its disposal but the plaintiff continued to be in the service of Government of India and did not opt for his absorption in the ICAR. The case of the plaintiff is that he was the senior most Research Assistant and was due for promotion as Asstt. Research Officer (for short ARO) (gazetted class II) but his name was not considered in the meeting of the Departmental Promotion Committee (for short DPC) held on 30.8.1974 on account of his being a Diploma Holder only. Later on the Diploma Holders were made eligible for promotion as ARO and in the meeting of the DPC held

on 5.5.1975, K.D.Bhaya and C.Majumdar, diploma holders, who were junior to the plaintiff were promoted as ARO whereupon he filed suit no.231 of 1975 in the Court of Munsif Hawali Bareilly for his promotion which was dismissed on the ground that the plaintiff was considered for promotion by the DPC and its recommendations were kept in sealed covers due to the pendency of the vigilance inquiry proceedings against him. The vigilance inquiry against the plaintiff was finally disposed of and he was not found guilty of any misconduct or lapse as reported by the Deputy Secretary to the Government of India vide his letter dated 27.1.1977. The plaintiff thereafter retired from service on 31.1.1977 on reaching the age of superannuation but by that time neither he was promoted nor the findings of the DPC were communicated to him. He accordingly filed the suit giving rise to this appeal for a declaration that he be declared promoted as ARO w.e.f.5.5.1975.

3. During the pendency of the suit he got his plaint amended to raise the pleas that his annual character roll for the year 1973 was recorded by a wrong person due to malafide reasons and the adverse entry made in that year was communicated to him in June 1975 in order to deprive the plaintiff from consideration of his name for promotion in the meeting of the DPC held soon thereafter. The plaintiff was not considered by the DPC met on 30.8.1974 and 31.8.1974 due to adverse character roll entry and the fabricated vigilance case and the reviewing officer K.C.Sinha was instrumental in getting the adverse entry to the plaintiff on account of personal bias due to the obtaining of money decree by the son of the plaintiff against him. It was also alleged

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that the punishment imposed on the plaintiff on 7.2.1977 was without any evidence. He also got the relief clause amended and by amendment sought a declaration that the plaintiff retired after having been promoted in the grade of Rs.650-1200 w.e.f. 5.5.1975 with all benefits on being cleared from vigilance case and the imposition of punishment by order dated 7.2.1977 is illegal, void and in-operative.

4. The suit was contested on behalf of the defendants and in the written statement filed on their behalf it was stated that the case of the plaintiff was placed before the DPC held in 1974 but he was not considered as he was not eligible for promotion being a diploma holder. In the meeting of the DPC held on 19.7.1975, the plaintiff was not found fit for promotion and this fact was duly communicated to plaintiff's lawyer vide letter dated 24.4.1980 in response to his notice under Section 80 CPC. The plaintiff was duly considered by the DPC at the proper time but he was not found fit for promotion and as such, he has no case and he is not entitled to any relief. The defendants did not file any additional written statement in reply to the pleas taken by the plaintiff by way of amendment as stated above.

5. In the replication filed by the plaintiff it was stated by him that his character roll was deliberately spoiled a day before the meeting of the DPC and his case was not considered by the DPC met on 19.7.1975 due to the adverse entry in his character roll as well as due to vigilance case pending against him in which he was exonerated.

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6. The learned trial Court had directed the defendant-respondents to produce the character rolls of the relevant years of the plaintiff for perusal but the same were not produced and from this it was inferred that the adverse entries to the plaintiff were given by the defendants against the principles of natural justice but the learned Munsif refused to grant any relief to the plaintiff on the ground that the plaintiff had admitted in his statement before the Court as P.W.1 that in its recommendations, the DPC had reported the plaintiff "not yet fit for promotion" and as such, he was duly considered by the DPC and this being the position the Court did not have any further role to play in promotion matter. The suit was accordingly dismissed.

7. In appeal before us, it was contended on behalf of the plaintiff that the adverse entry was given to him in 1973 due to malice and its communication was deliberately delayed to deprive the plaintiff from consideration of his case in the DPC and grave injustice was done with him by the departmental authorities and despite his exoneration in the vigilance case, he was wrongly deprived of his promotion though he was the senior most person in the department. The appeal has been contested on behalf of the respondents.

8. On the direction of this Bench, the learned Addl. Standing Counsel for the respondents produced the character rolls and the reports of the DPC before us. On a perusal of the same, it appears that in the meeting of the DPC held on 29.8.1974 and 30.8.1984, the plaintiff was not found eligible for promotion as he did not possess the requisite qualification. The plaintiff himself has admitted this fact in para 9 of his plaint. Diploma holders were subsequently made eligible for promotion vide letter dated 11.3.1975, Ex.A-2 on record. The name

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of the plaintiff was accordingly considered in the subsequent meeting of the DPC held on 19.7.1975 but he was not found fit for promotion due to adverse remarks in his confidential report for the year 1973. This report of the DPC was kept under sealed cover and was opened only after the vigilance case against him was over.

9. It appears from the character roll entries of the plaintiff that for the year 1973, his annual report was finalised more than 8 months after on 28.8.1974 and more than 9 months thereafter, the adverse remarks were communicated to him on 3.6.1975. Soon thereafter, the DPC had met on 19.7.1975. It is not clear from the record whether after receiving the copy of the adverse remarks on 3.6.1975, the plaintiff had made any representation before 19.7.1975 or not. The plaintiff Hans Raj Mehta in his statement as P.W.1 had stated that he had received the copy of the adverse entry in Aug.1974 (it should be 1975) and he had sent his reply within a month. From this it can be inferred that he had made a representation against this entry within a month or so. In his cross-examination, it was stated by him that he had made a representation against the adverse entry to the Director of the concerned Ministry. He showed his ignorance about the result of his representation. There is no denial on behalf of the respondents of the fact that the plaintiff had made a representation against the adverse entry of 1973 communicated on 3.6.1975. After a careful consideration of the whole matter, we are of the view that the adverse entry of 1973 was recorded after a great delay and there was again an undue delay in its communication. The plaintiff who was seriously fighting for his promotion could not keep quiet on receiving the adverse report and there is no reason to disbelieve

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his oral testimony about his making the representation against the same within one month. The adverse entry awarded to the plaintiff was, thus, considered by the DPC before the disposal of the representation made by the plaintiff which was not permissible under the law. It further appears from the recommendations of the DPC made available to us by the respondents that the sole ground of his finding unfit for promotion by the DPC met on 19.7.1975 was the adverse confidential report for the year 1973. In case, the said report would have been excluded from consideration by the DPC due to the pendency of the representation made by the plaintiff, the plaintiff would have been found fit for promotion. The plaintiff has already retired from service and it does not appear to be expedient that we should order to hold a review DPC on this ground. There being no other adverse material against the plaintiff, we find him fit for promotion w.e.f. the date ^{any} ~~first~~ persons found fit by the DPC in its meeting held on 19.7.1975 ^{was promoted} ~~for promotion~~. There is no other point for consideration in this appeal.

10. We accordingly allow the appeal and set aside the judgment and decree of the trial Court and direct the defendant-respondents to promote the plaintiff w.e.f. the date any person, found fit by the DPC in its meeting held on 19.7.1975, was promoted as Asstt. Research Officer with all consequential benefits. We, however, leave the parties to bear their own costs.

Sharma
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MEMBER(A)

Sharma
MEMBER(J)

Dated April 29, 1988
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