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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

Registration no.480/86

Tribhuwan Singh plaintiff/applicant

Union of India and another vs. Defdts/respondents

Hon'ble D.S.Misra,A.M.
Hon'ble G.S.Sharma,J.M.

(Delivered by Hon'ble D.S.Misra)

This is a transferred suit(no.300/84)which was pending in the court of City Munsif,Varanasi and has come on transfer under Section 29 of the A.T.Act XIII of 1985.

2.The plaintiff's case is that he has been working as senior clerk in the office of Divisional ^{Engineer}/Phones,Varanasi and that he was entitled to selection grade pay in the scale of Rs.425-640 w.e.f. 1.6.74 on seniority cum fitness basis; that the General Manager,Phones,Lucknow vide his order dated 15.11.1975 had approved his case for grant of selection grade w.e.f.1.6.74 on the conditions that no vigilance or disciplinary case was pending against the plaintiff,copy annexure A; that Divisional Engineer,Telephones,Varanasi did not issue the required order granting selection grade to the plaintiff and dragged the matters for 5 years though several juniors were promoted; that the order dated 18.3.80 of the Accounts Officer granting selection grade and fixing pay of the plaintiff w.e.f. 14.1.1980 is without jurisdiction or authority and is illegal and void; that the chargesheet dated 11.2.1976 could not be effective retrospectively and that an order of censure or minor punishment is no bar to the promotion of a government servant; that the plaintiff

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served a notice dated 24/27.8.81 and another notice dated 14.10.1983 under Section 80 C.P.C. to the defendants and the office of the District Manager, Phones, Varanasi and the suit was filed after the expiry of the time mentioned in the notice seeking declaration that plaintiff be granted selection grade w.e.f. 1.6.74.

3. In the written statement, filed on behalf of the defendants, the claim of the plaintiff was denied and the suit was contested and it is also stated that the plaintiff was initially promoted on purely temporary and ad hoc basis w.e.f. 1.6.74 by General Manager, Telephones, Lucknow vide his letter dated 15.11.1975, but at that time, there was disciplinary case under process against the plaintiff and as such he could not be promoted w.e.f. 1.6.74; that the disciplinary case against the plaintiff was finalised vide order dated 26.11.79 wherein a punishment of censure with a cash recovery of Rs.500/- was awarded to the plaintiff; that the recovery of Rs.500/- was deposited in cash on 14.1.80 and the plaintiff was promoted on the same day; that the promotion order of the plaintiff was revised vide GMT Lucknow memo dated 7.5.79 wherein plaintiff was promoted against 2/3rd quota of vacancies of 1977-78; that the promotion order of the plaintiff was revised due to revision of the circle gradation list of clerk cadre in the light of the decision dated 12.4.78 from Supreme Court; that the plaintiff was declared junior to certain other officials of the previous gradation list and he became due for promotion in selection grade cadre only against the vacancy of 1977-78 and he could not be promoted from 1.6.74; that a robbery took place in the office before 1.6.74 due to the negligence of the plaintiff and as such a disciplinary

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case was under investigation; that there is no question of giving retrospective effect to the chargesheet served on 11.2.76 and that the Accounts Officer acted according to the departmental rules which provide that during the pendency of the contemplated inquiry, promotion could not be given, that the plaintiff is not entitled to the relief claimed by him.

4. In his replication the plaintiff asserted that there was no disciplinary or vigilance case pending against him when the matter of his promotion w.e.f. 1.6.74 was considered. The plaintiff also filed copy of a letter dated 13.12.77 of the Director General Posts & Telegraph on the subject of vigilance inquiries for promotion, confirmation and deputation abroad and photo copy of inquiry proceeding dated 14.2.79 containing the statement of Sri V.P. Garg D.E., Phones, in which he stated that on 29.7.74 he had made a recommendation for promoting the plaintiff to higher post.

5. We have heard learned counsel for the parties and perused the documents on record. Learned counsel for the plaintiff contended that the denial of promotion to the plaintiff was arbitrary and illegal. It was also contended that the plaintiff was not involved in the robbery which took place on 5.5.74, and that the Divisional Engineer (Phones) had himself recommended the case for promotion of the plaintiff vide his letter dated 29.7.74; that no disciplinary case was pending when the matter of his promotion to the selection grade was considered by the Divisional Engineer, Phones, Varanasi. Learned counsel for the defendants

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contended that the order dated 15.11.75 of G.M.T.Lucknow did include the name of the plaintiff for promotion to the L.S.G.Cadre w.e.f. 1.6.74 but this order was subject not only to the suitability of the plaintiff but also whether any disciplinary or vigilance case was pending against him. The plaintiff has admitted that a chargesheet was served on him by an order dated 11.2.76. The robbery took place on 5.5.74 and the order of G.M.T.Lucknow approving the plaintiff for promotion to selection grade is dated 15.11.75. The plaintiff's contention is that the fact that the D.E.Phones, Varanasi had recommended his case for promotion on 29.7.74 proves that no disciplinary or vigilance case was pending against him.

4. We have examined the contention of the defendants that the grant of promotion was withheld due to the disciplinary action for loss of Government money pending against the plaintiff. Withholding of promotion pending inquiry has been held to be illegal in several decisions of the High Court and the Supreme Court. In the case of **K.CH Venkata Reddy and others V. Union of India, and others**, the Hyderabad Bench of the Central Administrative Tribunal (ATR 1987(i) CAT, page 547, the matter has been examined in great detail with reference to various decisions and it has been held that:

1. Consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay can not be held merely on the ground of pendency of a disciplinary or criminal proceedings against an official;
2. Withholding of promotion of an official after finding him fit on the ground that disciplinary or criminal proceedings are pending against him cannot be treated to be penalty under rule 11(2) of the Central Civil Services (Classification, Control and Appeal) Rules 1965;

3. the instructions issued by Central Government embodying the sealed cover procedure do not conflict

valid except for the portion indicated above which have been struck down by us.

4.the sealed cover procedure can be resorted only after a charge memo is served on the concerned official or the charge sheet filed before the criminal court and not before;

5.the adoption of the sealed cover procedure as modified by us sufficiently safeguards the interests of the employees against whom disciplinary or criminal proceedings had been initiated as also the public interest in the matter of promotion and the same is valid;

6.the sealed cover procedure to be valid should also provide for payment of salary for the period during which the promotion was withheld, along with all consequential benefits in case the official is completely exonerated in the disciplinary or criminal proceedings;

7.in cases where a penalty is imposed on the official after the conclusion of the enquiry, his claim ~~for~~ for promotion should be considered by a review DPC as on the original date in the light of the results of the sealed cover as also the penalty imposed and his claim for promotion cannot be postponed for consideration to a subsequent date;

8.a similar sealed cover procedure shall be adopted and followed by the government in case of withholding selection grade or the higher scale of pay or the crossing of the efficiency bar pending disciplinary or criminal proceedings, to safeguard and protect the interests of the official concerned in the event of ultimate exoneration in those proceedings.

We are of the opinion that the facts of the present case disclose that a chargesheet was served on the plaintiff only on 11.2.76, whereas the plaintiff's case for his fitness for grant of selection grade was to be considered prior to 1.6.74. The defendants have nowhere alleged that he was considered and not found fit for promotion to selection grade as on 1.6.74. The fact that the Divisional Engineer

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Phones, Varanasi had on 21.7.74 recommended the case of the plaintiff for promotion to a higher grade indicates that the plaintiff was fit for promotion to a higher post. We are of the opinion that the issue of a chargesheet on the plaintiff by an order dated 11.2.76 can not stand against the plaintiff, so far as the suitability and fitness for promotion to the higher grade is concerned. We are not going into the allegations contained in para 40 of the written statement of the defendant that the seniority of the plaintiff was changed in the light of the decision from Supreme Court dated 12.4.78 and that the plaintiff became due for his promotion in Selection Grade cadre only against the vacancy of 1977-78. Our finding is to the effect that the plaintiff could not be denied selection grade w.e.f. 1.6.74 on the ground that the disciplinary proceeding was started against him in the year 1976. The defendants are free to take note of ^{events} ~~evidence~~ subsequent to 1.6.74 in accordance with the relevant rules on the subject.

For the reasons mentioned above, we hold that the plaintiff is entitled to the grant of selection grade w.e.f. 1.6.74 and we make no order as to costs.

A.M.
A.M. 26.11.87

J.M.
J.M. 26/11/87

JS/26.11.87