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Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No.549 of 1986 (Original Suit No.1113/1985)

Harihar Prasad ... Plaintiff

Vs.

Union of India and 3 others ... Defendants.

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

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

This original suit for declaration and injunction has been received by transfer from the Court of Munsif Gorakhpur under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The plaintiff, who belongs to Scheduled Caste (for short SC) had joined the service of the North Eastern Railway on 9.6.1959 as a Junior Clerk. He was promoted as Senior Clerk in 1980 and as Head Clerk in January 1983. In May 1983, the plaintiff was posted in the office of Deputy Chief Engineer (Bridge) Gorakhpur defendant no.3. One Sri D.P.Gupta who was then holding the post of Dy.Chief (Bridge) was very much annoyed with the policy of the Railway Board regarding promotion of SC and Scheduled Tribes candidates as according to him on account of their quick promotion the efficiency of the administration had gone down. On 28.5.1983, the plaintiff was placed under suspension by the defendant no.3 without issuing any charge sheet. On 10.6.1983, a charge sheet for major punishment was issued to the plaintiff with the allegation that the plaintiff was

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negligent and lacked devotion to duty for his failure to progress the settlement cases of employees retiring from January 1977 to January 1983. The suspension of the plaintiff was revoked on 1.7.1983. After considering the explanation submitted by the plaintiff in reply to the charge sheet, he was awarded a minor punishment on 13.7.1983 withholding his increment for 2 years without cumulative effect. The appeal preferred by the plaintiff was dismissed and the revision filed by him also did not bear any fruits. It is alleged that the then defendant no.3 Sri D.P.Gupta in order to feed fat his grudge manoeuvered to give an adverse entry to the plaintiff for the year 1983-84 finding him unfit for promotion for another 10 years. After giving a notice under Section 80 of the Code of Civil Procedure, he accordingly filed the suit for a declaration that the punishment awarded to him and the adverse entry given to him are inoperative and void because the charge sheet was submitted by an officer who was not competent to do so under the rules and his explanation was not properly considered and the adverse entry was given with a malafide intention to debar the plaintiff from further promotion against the principles of natural justice. On the receipt of the record of the case in this Tribunal, the plaintiff sought an amendment in the plaint stating that during the pendency of the suit, he had appeared in the written test for the post of Office Superintendent Grade II

on 5.10.1985. He was declared 'pass' in the written test and was called for viva-voce test on 21.1.1986 but his name was illegally not included in the list of selected candidates published on 23.1.1986. He, therefore, further sought an injunction against the defendants to include his name in the list of selected candidates and for ^{mandatory &} injunction to promote him from 19.7.1986 from which date Hiranand, junior to him was promoted as Office Superintendent.

3. The suit has been contested on behalf of the defendants and in the written statement filed on their behalf, it has been stated that the plaintiff was suspended and charge sheet was issued to him by the defendant no.3 on account of his gross-hegligence and lack of devotion and not on account of any personal consideration. On considering the explanation submitted by the plaintiff to the charge sheet, the competent authority decided to impose a minor punishment of stopping his increments for 2 years without cumulative effect. The appeal preferred by the plaintiff against the said punishment was duly considered by the appellate authority and the punishment awarded to him was confirmed. The confidential report for the year 1984 was given after due consideration. It should not be read as a bar to future promotion for a period of 10 years. The plaintiff was given full opportunity to defend himself in the disciplinary proceedings and the officer who had taken ^{action} against him was fully

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competent under the rules to take such action. The allegations of personal bias and prejudice made against Sri D.P.Gupta are not correct. The plaintiff cannot seek the amendment after the transfer of the case to this Tribunal and he has not been promoted on account of his having failed in the selection test and on account of his adverse entry ~~and on account of his adverse entry~~ and , he is not entitled to any relief.

4. The first grievance of the plaintiff is against the order of punishment dated 2.8.1983 stopping his increment for 2 years without cumulative effect. The contention of the plaintiff is that in contemplation of the disciplinary proceedings, he was suspended by the defendant no.3 on 28.5.1983 but the suspension was revoked on 1.7.1983 and he was served with a charge sheet for major penalty on 10.6.1983 and on submitting the statement of his defence, he was awarded the said penalty treating the case of minor penalty without giving him any opportunity of defending himself. He also alleged that the defendant no.3 was prejudiced against SC/ST officials as in his opinion, on account of special rule of promotion for these people, the efficiency of the administration had gone down. This last allegation of the plaintiff, though personal, does not indicate that the disciplinary authority was prejudiced against the plaintiff in particular on account of his any act or conduct. The allegation is of general nature of which no serious note can be taken. The fact that considering the gravity of the charge, the plaintiff was first suspended and was then served with a charge sheet for major penalty but on going through

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the statement of defence of the plaintiff, the case was treated to be a case fit for minor penalty only shows that the disciplinary authority was working with open mind despite his alleged prejudice against the SC/ST employees of the department. The fact that the suspension of the plaintiff was revoked without much delay also leads to the same conclusion.

5. Paper no.3 filed by the plaintiff before this Tribunal is the memorandum of charge sheet containing the imputation of misconduct served on him. The two charges against the plaintiff were (i) that he failed to progress the settlement cases of employees retired from 1977 to Jan.1983 and (ii) he did not prepare the proforma for top sheet to watch the progress of settlement cases. We have gone through the statement of defence of the plaintiff, paper no.4 on record giving the explanation to the charges levelled against him. The order dated 2.8.1983 , copy paper no.5, shows that the disciplinary authority had considered and discussed the explanation given by the plaintiff in his reply but did not find the same correct. The appeal preferred by the plaintiff was admittedly dismissed by the appellate authority vide copy paper no.8. The Railway Servants (Discipline and appeal) Rules, 1968 permit that a disciplinary case started on the charge sheet for major penalty can be converted into a case for minor penalty and under rule 11, the delinquent has no right of personal hearing and the case can be finally disposed of after considering the statement of his defence. In his reply the plaintiff did not state for giving him any other opportunity of producing his defence. There is also nothing else on the record to establish this fact. The disciplinary authority was thus fully competent to deal with the matter as it had done under the rules and the grievance of the plaintiff against the procedure adopted in his case is not genuine.

6. The impugned order of punishment has also been challenged by the plaintiff on the ground that he is an employee of the Personnel Department and could be proceeded against only by an officer of that

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Department and the Dy.Chief Engineer (Bridge), defendant no.3 was not competent to initiate the disciplinary proceedings and award the punishment to him. In support of this contention, the plaintiff has filed an extract of order dated 7.7.1971 of the Chief Personnel Officer Gorakhpur, paper no.14 on record, which states that the Confidential Section will be under SPO (I). The disciplinary proceedings of Personnel Branch staff of Extra Divisional Offices will be initiated and dealt with by the Departmental Officers. The disciplinary cases of Personnel Branch staff working in Dy.CME/Izatnagar office and Dy.CME (Workshop) Gorakhpur will be dealt with by APO concerned of Workshop, who shall act as disciplinary authority for such staff. The defendants also relied upon this order and after careful consideration of the same, we are of the view that this letter negatives the contention of the plaintiff and does not support him. The plaintiff was not working in the Personnel Section nor was working in the office of Dy.CME/Izn or Dy.CME (workshop) and as such, the departmental officers were competent to initiate the disciplinary proceedings against him. It is not shown that the Dy.CME (Bridge) was, for any other reason, not competent to take this action against the plaintiff. We are, therefore, of the view that the defendant no.3 was fully competent to take action against the plaintiff for his alleged misconduct or negligence and his contention to the contrary is not correct. However, considering the fact that the plaintiff had taken over charge as Establishment Clerk only a few months before and some old settlement cases were pending since long, the ends of justice may be served if the penalty awarded to him is reduced to the stoppage of his increments for one year only.

7. Regarding the adverse entry "he is not fit for promotion for another 10 years atleast" awarded to the plaintiff by the defendant.

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no.3, we are of the opinion that it merely shows the immaturity of the officer giving this entry and we are unable to support the same. The annual remarks are given to the Government Servants annually till they are in service and their suitability for promotion is to be judged every year. It is, therefore, wholly uncalled for on the part of the defendant no.3 to opine that the plaintiff was not fit for promotion for another 10 years and we will like to substitute this remark by the remark "he is not yet fit for promotion."

8. The plaintiff has also sought the relief for his promotion as Office Superintendent w.e.f. 19.7.1986 when his junior Hira Nand was promoted as such. It is alleged that he had appeared in the selection test held on 5.10.1985 and had also appeared for viva-voce on 21.1.1986 but his name was illegally not included in the selected candidates. The defendants have filed the result sheet of the selection test before us. It mentions the marks secured by the plaintiff in various papers and viva-voce test. Only two promotional posts were reserved for SC candidates. Three such candidates were selected on the basis of this test but the plaintiff had secured less marks than the said three candidates and as such he was declared unsuccessful. There is nothing on record before us to show that the marks awarded to the plaintiff in the selection test were not fairly awarded or he was prejudiced in any manner in the selection test so held. We, therefore, do not find any force in his contention that his name was illegally not included in the selected candidates.

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9. There is no other point for consideration and in the result, the suit succeeds in part.

10. The suit is accordingly decreed in part and the adverse entry awarded to the plaintiff for the year 1983-84 is set aside and ordered to be substituted by the entry "he is not yet fit for promotion." The penalty awarded to the plaintiff is reduced to the stoppage of increment for one year only without any cumulative effect and the defendants are directed to pay the arrears of ^{increment} one year to the plaintiff within 3 months. The parties are directed to bear their own costs.

MEMABER (A)

Bhmn
21/9/87

MEMBER (J)

Subbarao
21/9/87

Dated Sept. 21, 1987
k.k.b.