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Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No.577 of 1986
(Original Suit No. 568 of 1985)

Roop Narain Plaintiff

Vs.

Union of India Defendant

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

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

This original suit has been received by transfer from the Court of Munsif VI, Gorakhpur under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The plaintiff was appointed as a Stenographer by the defendant on 11.9.1952 in the grade of Rs.80-220. He was promoted in the grade of Rs.200-300 on 1.4.1956 and was confirmed as such on 28.7.1959. The plaintiff again got promotion in the scale of Rs.210-425 and was posted as Confidential Assistant (in short CA) to the Divisional Superintendent, N.E.Railway, Lucknow on 9.3.1971. The plaintiff was thereafter attached with Chief Workshop Engineer as his CA in the grade of Rs.550-750. Vide Railway Board's letter No.PCIII/78/PS-3/5 dated 28.7.1978, ^{it was} directed that the Stenographers working in the scale of Rs.550-750 with Level I and Level II officers be given promotion on the basis of seniority-cum-fitness

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in the scale of Rs.550-900 w.e.f. 4.7.1978.

No adverse entry was communicated to the plaintiff and despite his working as a Stenographer or CA efficiently, he was not given the benefit of this letter though he was attached with Level I officer from 23.9.1977 to 17.12.1978.

In pursuance of the aforesaid letter of the Railway Board, 23 GAs were promoted in the grade of Rs.550-900. The plaintiff being the senior-most employee, was not promoted. The representation made by him on 1.9.1978 to the General Manager was rejected on 7.10.1978. The plaintiff made another representation on 16.10.1978 to the Chief Personnel Officer and he also sought personal interview with him on 16.2.1979 but to no effect. The plaintiff was thereafter promoted on the post of CA in the scale of ^{Rs.550-900} _^ 16.11.79 but he was not given his due seniority and arrears of pay from 4.7.1978. He accordingly filed the suit for declaration that he is entitled for promotion in the scale of Rs.550-900 w.e.f. 4.7.1978 with all consequential benefits.

3. The suit has been contested on behalf of the defendant and it was pleaded ^{therein} that the upgraded posts of Stenographers were to be filled by promotion from amongst the

Stenographers on the basis of seniority-cum-fitness. The plaintiff was not given the up-graded grade from 4.7.1978 on account of the adverse remark in his confidential report. The plaintiff had preferred representations against the adverse remarks but the same were turned down by the competent authority. The Divisional Railway Manager (in short DRM) had written against the plaintiff vide annexure II to the written statement and the plaintiff was not entitled to ^{get} the promotion earlier. The plaintiff filed a replication denying the fact that any adverse remark was communicated to him and he had made the representation against the same. He again reiterated that no adverse remarks were communicated to him nor did he make any representation against the same and his promotion was wrongly withheld by the defendant. According to him, atleast six representation/appeals were made by him for his promotion to the higher authorities vide copies annexures 2 to 5 to the replication but the defendant paid no heed to them and there was an undue discrimination against him on the part of the defendant and its officers.

4. After hearing the learned counsel for both the sides and perusal of the record we feel that most of the facts in this case are not in dispute. Undisputedly, the plaint-

iff was working as CA in the scale of Rs.550-750 and attached with Chief Workshop Engineer, an officer in the scale of Rs.2500-2750 from 23.9.1977 to 17.12.1978 at Gorakhpur. The Railway Board vide its circular letter dated 28.7.1978, annexure 1 to the replication, upgraded the post of such Stenographers in the pay scale of Rs.550-750 to the grade of Rs.550-900, who were attached to the Additional Heads of Departments and Heads of Departments of the Zonal Railways, Production Units and other railway organizations drawing the pay in the scale of Rs.2250-2500 by way of promotion on the basis of seniority-cum-fitness. These orders were to take effect from a back date, namely, 4.7.1978. The plaintiff claims himself to be the senior most Stenographer in the pay scale of Rs.550-750 on the date this circular letter was issued and he was also attached to an officer of the pay scale mentioned in this letter. The plaintiff was thus, *prima-facie* eligible for the upgraded post of Stenographer by promotion.

5. The defendant had, however, denied the promotion to the plaintiff on the ground that his service record was not good, adverse entries were made in his character roll and the representations made by him against them were rejected and *as such*, his claim for upgradation from 4.7.1978

was rightly ignored. It appears to us that though the suit has been contested by the defendant, it has been done half-heartedly. Half-heartedly because the relevant documents in support of the contentions raised in its written statement by the defendant have not been produced on record. The defendant took an undue long time in filing the written statement. The suit was filed in March 1985 at Gorakhpur but the written statement was filed before this ^{Wards} Bench in September, 1986. In paragraph 8, it was pleaded that the plaintiff was not considered fit for promotion, hence he was transferred to CSO's office vide order dated 11.12.1978.

In paragraph 14, it was stated that on account of the adverse remark in his confidential report the plaintiff was not given the upgraded pay scale in July 1978. In paragraph 15 it was stated that the plaintiff preferred representations against the ~~said~~ remark, but the same were turned down by the competent authority up to be General Manager and as such, his suit is not maintainable. The plaintiff denied these allegations of the defendant in his replication and it was stated in paragraph 16 thereof that the defendant should have thought twice before making averment that intimation was given to the plaintiff. It is false to say that the plaintiff was either communicated adverse entry in his confidential report or the Board's letter dated 30.12.1980 containing any such adverse report. After this specific

denial of the plaintiff, it was the duty of the defendant to file the necessary documents on record to show that any adverse remarks were given to the plaintiff in any of the years to be considered for his upgrading and he had the opportunity to make representation against the same. As according to the defendant, the plaintiff had made the representation and the same was rejected, the defendant should have filed the copies of the representations and order of rejection in support of its contention. In the absence of any such documents, we are not going to place any reliance on such allegations of the defendant made in its written statement.

6- The defendant has filed a copy of letter dated 18.1.1980 of the DRM Samastipur to the General Manager, N.E.Railway stating about the adverse remarks and bad conduct of the plaintiff and complaining that such a man should not have been posted as his CA but despite his protest, he was not changed. The years in which the adverse remarks were earned and misconduct was committed by the plaintiff have not been mentioned in this letter. In any case, this letter was sent much after the relevant Railway Board's letter dated 28.7.1978, annexure 1, and the same could not be considered as adverse while considering the question of upgradation in 1978 when other persons junior to the plaintiff were placed in the upgraded scale. The plaintiff has filed a number of representations to show that his stand throughout was that he had no bad record of service and no adverse remark was communicated to him and the upgraded pay scale was wrongly denied to him. Vide

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letter dated 7.10.1978, it was informed to the plaintiff that his case was considered but he was not found fit for promotion to a more responsible post as mentioned in the annexure 5 dated 26.4.1983.

It is further not clear that how the plaintiff was not found fit for promotion or for a more responsible post. In the absence of any material in support of this contention, it is liable to be ignored.

7. Both the parties have filed copies of circular letter dated 30.12.1980 laying down the guidelines for promotion against the non-selection post. In our opinion, the guidelines issued in the end of 1980 could not be taken into consideration in 1978 when the plaintiff was to be considered for being placed in the upgraded pay scale. This letter is, therefore, not relevant for the purpose of this case.

8. After giving our careful consideration to all the points in issue, we are of the view that the plaintiff was wrongly denied the upgraded pay scale in 1978 when persons junior to him were given this pay scale and the reasons given by the defendant in support of their action are neither correct nor justified in the eye of law. The plaintiff is, therefore, entitled to the upgradation from the same date.

9. The defendant is directed to give the upgraded pay scale of Rs. 550-900 to the plaintiff from the date the persons junior to him were given

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this upgraded pay scale. The plaintiff will also be entitled to all consequential benefits of this upgradation. The parties shall bear their own costs.

~~Member~~
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MEMBER (A)

Member
29.4.1987
MEMBER (J)

Dated 29.4.1987
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