



CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Registration No. 759 of 1986(T)

(Misc. No. 18 of 1982 in O.S.
No. 539 of 1980)

N.F.Singh ...

...

APPLICANT
(Plaintiff)

versus

Union of India and another ...

RESPONDENTS
(Defendants)

Hon. Justice S.Zaheer Hasan, V.C.

Hon. A. Johri, Member (A)

(Delivered by Hon. S.Zaheer Hasan, Vice Chairman)

This is an application for review of judgment under Order 47, rule 1, Civil Procedure Code, which has been transferred to this Tribunal under section 29 of the Administrative Tribunals Act, 1985, from the court of III Addl. Munsif, Jhansi.

The plaintiff filed the suit for

- (a) declaring the period of suspension from 14.4.1976 to 10.10.1976 as regularised with all the consequential benefits thereof including increment etc;
- (b) declaring charge sheet dated 13.10.1977 as false, mala fide and void;
- (c) mandatory injunction directing the defendants to release his promotion as Chief Clerk Gr. 550-750 with retrospective effect from 1.1.1979, the date of upgradation;
- (d) mandatory injunction directing the defendants to release his promotion as Office Superintendent Grade 700-900 with retrospective effect from 1.10.1980, the date of upgradation and also for payment of all financial and retiring

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benefits.

The plaintiff's contention was that he was head clerk and he ought to have been promoted as Chief Clerk, because he was the seniormost head clerk. The post of Office Superintendent was upgraded during the pendency of the suit, so the plaint was amended, with a prayer that he should be promoted as Office Superintendent from 1.10.1980, the date of upgradation.

The learned Munsif decreed the suit, but on issue no. 5 he gave a finding against the plaintiff. This application has been filed for reviewing the finding on issue no. 5 under which the learned Munsif has held that the post of Office Superintendent (grade 700-900) was a selection post, and since the plaintiff has not appeared in the test, so he was not entitled to that promotion. The contention of the plaintiff is that it was a non-selection post, to which promotion is made on the basis of seniority-cum-suitability, and as such there was no question of appearing in any test or departmental examination. His contention is that persons junior to the plaintiff who were promoted as Chief Clerks were further promoted as Office Superintendents without any test or examination, but the plaintiff was not promoted. It has further been alleged that after the judgment was pronounced, the plaintiff came to know that N.R.Nandy, Chief Clerk, has been given the benefit of promotion

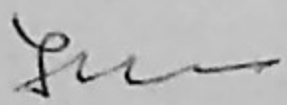
as Office Superintendent with retrospective effect even after his retirement without any test or examination, vide order dated 7.10.1981, though he had retired on 1.10.1981. The plaintiff had retired on 1.10.1981, so he also should have been promoted to that post without any test etc.

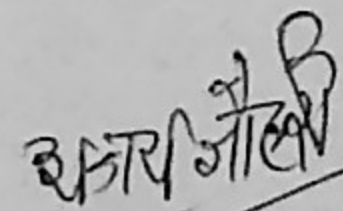
There is no mistake or error apparent on the face of the record. On the basis of the evidence and the file it cannot be held with reasonable certainty that this post was a non-selection post. As such it is not possible to review the finding of the learned Munsif on issue no. 5.

The application for review is liable to be rejected.

It would be upto the Department to promote him as Office Superintendent in case it was a non-selection post and in case in similar circumstances the order of promotion of N.R.Nandy was passed.

The application is dismissed. There will be no order as to costs.


Vice Chairman


Member (A)

D/- February 12th, 1987.

AAK