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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration No. 848 of 1986 (T)

(O.S. No.432 of 1981)

N.L.Narang Plaintiff

Versus

Union of India & Others Defendants

Hon. Ajay Johri, A.M.

Hon. G.S. Sharma, J.M.

(By Hon. Ajay Johri, A.M.)

Suit No., 432 of 1981 N.L. Narang Versus Union of India & Others has been received on transfer from the Court of Munsif Hawali, Lucknow under Section 29 of the Administrative Tribunals Act XIII of 1985. The plaintiff was working as a Goods Clerk in the grade of Rs. 330 - 560 on the Northern Railway at Lucknow. According to him he was due promotion to the scale of Rs. 425 - 640 on the basis of seniority-cum-suitability. There were vacancies existing in 1976. He was however given a punishment withholding his increment for one year on 31.1.77 whereby his annual increment due to him on 1.1.78 was stopped for one year. The plaintiff's case is that inspite of their being vacancies and his punishment being current from 1.1.78 he was not given the promotion to the next grade which according to rules he should have been given and his juniors were promoted

during the time the punishment was current. Even after the punishment was over that is ~~on~~ 1.1.79 he was not promoted to the next higher grade and he was given promotion on 2.4.80. Thus he was deprived of his due and legitimate right for promotion and was put to heavy financial loss. He has also claimed that he officiated in the higher grade that is Rs.425 - 640 from 15.2.79 to 31.7.79 but this period was also not counted for fixing his pay when he was promoted on 2.4.1980. He has prayed that he should be deemed to have been promoted with effect from 1.1.79 and a decree of Rs. 510/- as arrears of pay be passed.

2. The defendants' case is that the plaintiff was promoted on 2.4.1980 ^{or after} ~~when~~ he became free from punishment and he could not be promoted on 1.1.79 as a ^{or} Discipline ^{or} Appeal case was pending against him and he was also placed under suspension for a short period towards the end of March, 1979. He has however been allowed ^{or} ~~to~~ proforma fixation from 1.1.79 and that no officiating claim for the period 15.2.79 to 31.7.79 was ever received in their office. He should not have been allowed to officiate during the period as he was under punishment of WIT two years. In his application the plaintiff has denied that he has any punishment of WIT two years. The only punishment that he was undergoing was withholding of increment temporarily given to him on 31.1.77. The punishment mentioned by the defendants as given on 6.10.76 was cancelled on 1.9.81 as a result of a court case ^{or} ~~in~~ by the decree passed by the Additional Munsif in Suit No.217 of 1980 and according to the plaintiff even if

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the punishment had not been cancelled this punishment: would not have been current on 1.1.79 the date from which he is asking for promotion.

3. The learned counsel for both parties have given their arguments. We have gone through the petition and the arguments forwarded in the written briefs. In the extracts of Railway Board's letters No.E(D&A) 71 RG6-23 of 1.6.1971 and 1.1.72 giving procedure for promotion of railway servants under suspension to non-selection post, it has been said that if a person becomes due for promotion after the finalization of disciplinary proceedings and the penalty imposed is one of the following he should be promoted only after the expiry of the penalty. These penalties are shown as follows :-

- i) withholding of promotion.
- ii) withholding of increment.
- iii) reduction to a lower stage in time scale.
- iv) reduction to a lower time scale.

There is however a proviso that where the penalty imposed is withholding of increment and it becomes operative from a future date the person concerned should be promoted in his turn and the penalty imposed in the promotion grade for a period which would not result in greater monetary loss.

4. The above is contrary to a situation when promotion could not be withheld on the sole ground

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that an enquiry was pending. This delay in conducting of the enquiry conferred undue advantage on the person promoted pending enquiry inasmuch as it makes promotion absolute and unavoidable. In such cases those who were less blameworthy than the one subjected to inquiry can easily say that they had been discriminated against. Comparatively speaking, a person charged with misconduct necessitating an inquiry should not be promoted earlier than those who were either not meritorious or had a record which did not call for a serious inquiry.

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5. But the plaintiff's case is not one of promotion plus penalty. When the increment is withheld temporarily it gives a particular financial disadvantage for a limited period and this financial disadvantage is not taken away if the punishment of withholding increment temporarily is imposed in the promoted post for an equivalent period to give the same financial effect as would have occurred in the lower grade. It has not been brought to our notice as to when the juniors got promoted and whether this was in the interval from the date of imposition of the penalty on the plaintiff to the date of its actual commencement that is 1.1.78. The plaintiff has however in his petition said that there were vacancies available on 1.1.76. In case there were vacancies available and the cause of his non promotion was only the imposition of the penalty of WIT one year and he was otherwise suitable, he deserved to be promoted to the grade

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Rs. 425 - 640 during the interregnum the penalty was imposed and became effective. According to the averments made by the defendants he has been given proforma fixation from 1.1.79 the date when his juniors were promoted. 1.1.79 is also the date when his punishment of WIT one year had expired.

6. It is thus clear that the plaintiff has been given proforma fixation in pay as soon as his punishment expired. According to the written statement submitted by the defendants he was not paid any arrears on this account as the same has not been considered admissible to him. This could be only on the reasoning that he had not shouldered higher responsibilities because he was actually promoted on 2.4.1980.

7. There is no doubt that promotion is a matter of administrative discretion and the authority is well within its rights to decide whether an incumbent is suitable for the post or not. This right can be exercised at the time when the question of filling up of post arises. If a person is not suitable he cannot treat his non promotion as punishment. It will be a punishment only if by an order he is debarred from promotion for a certain period. Because the Govt. servant has not been considered for promotion he cannot complain in a court of law that any right of his is infringed and that he has been denied equality of opportunity under Article 16 of the Constitution. In the absence of anything to



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the contrary we can safely presume that the plaintiff was suitable for promotion and the only impediment was the order of punishment which was issued on 31.1.77. According to what has been observed above this could not withhold the plaintiff being considered for promotion if a vacancy existed in the higher grade at that time. As a matter of fact the plaintiff has already been given proforma fixation from 1.1.79 as admitted by the defendants in para 17 of their written statement (Ka-26/2). The plaintiff has prayed for the relief that he should be deemed to be promoted to the scale of Rs.425 - 640 as senior Goods clerk w.e.f. 1.1.79. With the admission made by the defendants his pay has been fixed as if he was promoted on 1.1.79. The small question that remains is regarding arrears of Pay & Allowances from 1.1.79 to 2.4.1980. We have not been given any convincing reason why the plaintiff could not be promoted by reverting the junior most officiating person to accommodate him on 1.1.79. In the absence of any pleadings on behalf of the defendants on this point, we conclude that the promotion was delayed due to administrative lapse and therefore if he has been given proforma fixation on the basis of a seniority position from the date his junior was promoted he cannot be denied the difference of pay for this period. As a matter of fact if the vacancy had existed prior to 1.1.79 the plaintiff had a very sound claim for his promotion prior to 1.1.78. He has however not prayed for a relief on this account.

8. Upon the above considerations the petition (Suit No. 432 of 1981) is allowed. The plaintiff who

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has already been promoted proforma from 1.1.79
will also be paid arrears of salary for the period
1.1.79 to 2.4.1980. Parties will bear their own
costs.

[Signature]

A.M.

[Signature]

J.M.

Dated the 6th Jan., 1987.

RKM