

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

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Registration T.A. No. 1030 of 1986
(O.S. 80/81 of the Court of
Civil Judge, Dehradun)

Ram Singh Pundir ... Plaintiff

vs

Union of India and others . . . Defendants

Hon' Justice K. Nath, V.C.

Hon' I.K. Rasgotra, A.M.

(By Hon' Justice K. Nath, V.C.)

The regular civil suit described above is before us, under section 29 of the Administrative Tribunals' Act, 1985, for a declaration that the applicant is entitled to be promoted as Upper Division Clerk in the Forest Research Institute & Colleges, Dehradun, with effect from 8-6-1977.

2. The case has been called; appearance has not been made by the counsel of either of the parties. The case had been adjourned ^{several} times in past. We are not inclined to postpone it further. We, have therefore, gone through the record and ~~therefore~~, proceed to decide the case on merits.

3. A perusal of the plaint and written statement shows that the plaintiff was originally appointed as Lower Division Clerk in 1961 and was awarded adverse remarks in annual confidential report for the year, 1976. A departmental examination for

selection to the post of Upper Division Clerk was held in May, 1977. The plaintiff's case is that he had done well in the examination; he was not selected because of the adverse remarks for the year, 1976, which was communicated on 11-4-1977. The selection in which the applicant was not promoted was made in June, 1977.

4. It also appears that the applicant made representation against the adverse remarks which were ultimately expunged by the competent authority; and the same was communicated to the plaintiff by letter dated 9-8-1978. The plaintiff claims that at the time when Departmental Promotion Committee met to make selection for the post of Upper Division Clerk in consequence of the examination held in May, 1977, the adverse remarks were there on the record, but since they had been expunged, even then later^{on} his case should have been considered after ignoring those remarks.

5. In para 7 of the written statement the defendants have stated that it was wrong to allege that the plaintiff was not selected due to alleged adverse remarks; it was added that the case was duly considered for promotion by D.P.C. and he was not found suitable. The defendants ~~have~~ statement on this point^{is} contained in para 9 of their written statement, whose relevant portion runs as follows:
" That para 9 of the plaint is not admitted. There is no question of the plaintiff's promotion merely on account of the reason that the adverse remarks have been expunged on the date of the D.P.C. The adverse remarks were there in the record. However,

it was for the D.P.C. to consider the question of promotion and it cannot be said as to what transpired in the mind of the D.P.C. TO REJECT the case of the plaintiff for promotion. It would be wrong to say that the plaintiff was not only on account of the adverse remark in his annual confidential report. It is not admitted that the plaintiff fared well in the written examination, "..."

6. It is clear from this averment in the written statement that the adverse remarks for the year, 1976 were on the record of the plaintiff when the D.P.C. considered his case and that the defendants are not in a position to indicate what transpired in the mind of D.P.C. when they rejected the case of the plaintiff for promotion. There can be no doubt that the adverse remarks of 1976 became nonest as and when they were expunged and, therefore, they could not be considered by the D.P.C. while assessing plaintiff's case for the purpose of promotion. Even if the remarks were expunged after the D.P.C. met, ~~the~~ justice and fair^{ness} demands that there ought to have^{been} a review D.P.C.

7. The suit is partially decreed and it is directed that the defendants shall cause a review D.P.C. to be held to consider the case of the plaintiff's promotion to the post of Upper Division Clerk from due date after ignoring the adverse remarks for the year, 1976. The competent authority shall comply with these directions within 4 months^{of date of receipt of a copy of this judgment} and if the plaintiff is found suitable, to promote him from the

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due date when the official next junior to him was promoted as Upper Division Clerk and such consequential benefits be given to the plaintiff as may be admissible under rules. The suit is disposed of accordingly with no order as to costs.

Sulaythi
MEMBER (A)

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VICE CHAIRMAN

(sns)

December 6, 1990

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