



Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No.1098 of 1986 (O.Suit No.526/85)

Surendra Nath Applicant

Vs.

Union of India & 2 others ... Respondents.

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

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

This transferred application is an original suit and has been received on transfer from the Court of Munsif City Kanpur u/s.29 of the Administrative Tribunals Act XIII of 1985.

2. Shortly stated the case of the applicant Surendra Nath (hereinafter referred to the plaintiff) is that he was initially appointed as Viewer-C in the Small Arms Factory Kanpur and was later on promoted as Fitter -B (Auto). In 1970, he was transferred to the Ordnance Cable Factory Chandigarh and in 1973 he was again transferred to Kanpur and posted in the same capacity. On the charge of an attempt to commit theft of Govt.property, the plaintiff was placed under suspension on 10.1.75 and was also served with charge sheet dated 18.1.75 in that connection. During the suspension of the plaintiff, a trade test was held for promotion to the post of Fitter-A (Auto) but the plaintiff was not allowed to participate in the same. In the disciplinary proceedings, the plaintiff was awarded the punishment of withholding of his one increment on 23.2.1976 and his suspension was revoked from 9.1.1976 and by passing a separate order dated 19.3.1976 the pay and allowances of the plaintiff, over and above the ^{subsistence} ~~substantive~~ allowance for the period of suspension, were forfeited by the

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General Manager of the Ordnance Factory. The appeals preferred by the plaintiff against the orders of penalty and forfeiture were rejected by the Addl. Director General of Ordnance Factories.

3. After serving the defendants with the statutory notice u/s.80 Code of Civil Procedure the plaintiff filed suit no. 1144 of 1978 in the Court of Munsif City which was decreed on 25.8.1981 and the penalty imposed on the plaintiff as well as the order of forfeiture of pay of the plaintiff was set aside and it was held that the action of the defendants in refusing to allow the plaintiff to appear in the trade test was illegal and the defendants were directed to conduct the trade test for the plaintiff and on being successful, to promote him with retrospective effect from the date the persons junior to him were promoted. The defendants paid the dues of the plaintiff in accordance with the decree of the Civil Court but the matter of his promotion remained pending. In the meantime, the plaintiff was removed from service w.e.f. 19.2.1980, whereupon a writ petition was filed by the plaintiff in the High Court and the order of termination was changed into the order of compulsory retirement w.e.f. 19.2.1980. The writ petition is still stated to be pending.

4. The present suit was filed by the plaintiff on 8.4.1985 for a declaration that the defendants having failed to conduct the trade test for the plaintiff, the plaintiff is entitled to promotion as Fitter-A (Auto) from 1975 when the persons junior to him were promoted with the allegations that the plaintiff was entitled to this promotion under the decree of the Civil Court but the defendants did not hold the trade test despite their

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fixing the date and plaintiff's reporting for appearing in the trade test on the date intimated to him for the same.

5. The suit has been contested on behalf of the defendants and in the reply filed on their behalf by the Works Manager Ordnance Equipment Factory Kanpur, it was stated that on 6.1.1975 at 6.30 p.m. while going out from the main gate, the plaintiff was subjected to rigorous search and two numbers of Drawer Cotton made from the factory material were found in his unauthorised possession for which he was suspended and proceeded against departmentally. The punishment awarded to the plaintiff was set aside by the Civil Court and the defendants were directed to hold the trade test for the promotion of the plaintiff. The defendants accordingly fixed 26.5.1983 and then 20.7.83 for the trade test and directed the plaintiff to report for the same but the plaintiff did not turn up on 26.5.1983 and on 20.7.1983, he appeared before the Test Board but declined to appear in the trade test and left the Factory. The promotion of the plaintiff as Fitter-A (Auto) could not be made without his passing the trade test and even in accordance with the decree of the Civil Court, the plaintiff had to appear in the trade test. The plaintiff himself did not avail the opportunity to appear in the trade test when arranged by the defendants and he cannot get his promotion with retrospective effect and his suit is liable to be dismissed.

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6. In the replication filed by the plaintiff it was reiterated by him that he presented himself for trade test on 20.7.1983 but no trade test was held as the defendants were not clear in their mind whether the plaintiff could be trade tested after his retirement from service and the defendants having failed to arrange the trade test the plaintiff is entitled to his promotion from the date juniors to him were promoted.

7. We have carefully gone through the records in the light of the submissions made before us on behalf of the parties. The plaint of the suit runs into 25 typed pages as the plaintiff has traced the history of his case from the date of his appointment. He again repeated a part of the history of the case in his replication. The whole history of the case of the plaintiff is not material and for the purpose of this case it is not in dispute that under the decree dated 25.8.1981 of the Civil Court (Munsif Hawali) passed in suit no.1144 of 1978, the penalty of withholding one increment of the plaintiff imposed on him in the disciplinary proceedings ^{for his} ² ~~in accordance with the~~ alleged attempt to commit theft of Govt. property was set aside and the Civil Court had also held that the defendants should hold a trade test for the promotion of the plaintiff and on his having passed the same he should be promoted with retrospective effect. Both the parties are also in agreement on the point that the defendants had fixed two dates-26.5.83 and 20.7.83- for the trade test but the trade test was not held on any date. According to the contention of the plaintiff, the trade test was not held due to the indecisiveness of the defendants despite his presenting himself for the same while the contention of the defendants is that the plaintiff did not turn up on the first date fixed for his trade test and on the second date, he did turn up but did

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not appear in the trade test and the defendants are not guilty of the non-compliance of the Civil Court decree. In view of these facts the only point arising for determination in this case is whether the defendants are responsible for not holding the trade test for the promotion of the plaintiff and the plaintiff is entitled to promotion from the date juniors to him were promoted?

8. The plaintiff did not produce the necessary documents with his plaint and the only relevant document produced by him is the original letter dated 25.10.83 of the General Manager Ordnance Factory-defendant no.3 stating that the plaintiff did not appear in the trade test vide intimation dated 13.7.1983 and as such, the matter of his promotion could not be proceeded with. The plaintiff, however, filed the copies of a number of documents with his replication which may be helpful in determining the responsibility of the parties regarding the trade test. As pointed out above, the Civil Court decree was passed on 25.8.1981. The plaintiff made representations to the defendant no.3 on 18.10.1981, 19.12.1981, 15.1.1982, 18.2.1982, 27.5.1982 and 30.8.1982 vide copies annexures R.A.2 to R.A.7. In all these representations, he requested only for the payment of his dues becoming payable to him under the decree but did not speak ^{about} ~~on~~ his promotion. For the first time he is shown to have raised the question of promotion in his representation dated 23.2.1983 (copy on the record) and thereafter on 10.5.1983 (copy annexure R.A.9). In reply, the General Manager vide his letter dated 18.5.1983, copy annexure R.A.10 intimated to him to report to the Factory on 26.5.1983 at 8.30 a.m. in connection with the trade test for the post of Fitter-A (Auto). The receipt of this letter is not disputed by the plaintiff but he did not turn up for trade test on 26.5.1983 and

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on 30.5.1983 he wrote back to the General Manager raising some querries vide copy of his letter, annexure R.A.11. He wanted to ascertain from the General Manager whether a worker forcibly retired in the year 1980 should be allowed to appear in the trade test, as intimated by him. He further inquired whether an ex-employee, if he appears in the trade test, can be declared successful by a Committee of impartial and unbiased Chairman and Members. He further questioned the propriety of such trade test by requiring the General Manager to quote the rules signifying the position to enable him to appear for the test on getting a further intimation. In this way, the plaintiff not only questioned the propriety of holding the trade test after his retirement but also doubted the impartiality of the Committee deputed for trade test.

9. On receiving the aforesaid letter dated 30.5.1983 of the plaintiff the General Manager replied to the plaintiff on 13.7.1983, vide copy annexure R.A.12, clearly stating that unless the plaintiff appeared in the trade test, the orders of the Court could not be implemented and he was being given one more opportunity to report at the Factory for this purpose on 20.7.1983 at 9 a.m. The plaintiff did report at the factory on 20.7.1983 but according to the defendants he did not appear in the trade test. After 20.7.1983, the plaintiff is shown to have sought a personal interview with the General Manager on 20.8.1983 regarding his promotion and on 1.10.1983, he had sent a letter to him, copy annexure RA-14, with a request that the decision taken in his matter be communicated to him. There is nothing in this letter



to state that the plaintiff had appeared in the trade test on 20.7.1983. He also did not state anything about the result of such trade test and again made a representation to the General Manager, copy annexure R.A.15 (without date) perhaps on 29.10.1983 as mentioned in his replication again making a number of querries and expressing doubts about the intention of the defendants in the matter of his promotion. The relevant extract of this letter, which appears to be tale-telling are quoted below :-

"1. After having all customs, conditions for my trade test on 20.7.83, still no decision have been conveyed to me why it so, reason best known to you, please intimate.

2. May, I dare to ask the reason for ignoring my promotion and remaining dues or it may be presumed as next harassment as well as direct refusal to Hon.Court's order held in this case No.1144/78.

3. It is very very unfortunate indeed on the part of Admin Wing who still could not satisfy his lust after snatching my services on 19.2.80 and continuing his tactics to harass me through one pretext to the other.

4. Once again, I will request, please let me know, that a compulsory (Forcibly) retired person can be recalled for departmental trade test, when he is no more on the factory strength, clear answer is not.

5. Will you please state that if a such employee passed the trade test will be promoted "answer certainly not" because you are having revengeful view against him and there will be no justice for him in this regard. In other words, you want to dawdled under impression of having trade test and stamp me as failure in the test.

In view of the above, once again I will request don't be bias towards an employee who served for 18 years having Blotless service under your control, having no promotion since 1965, when his service record is clear and having no adverse report about his work etc.

Once again requested please reconsider the circumstances and fact of the case and after that order for my promotion may please be issued in my favour as early as possible."

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10. In our opinion, this letter is very significant to expose ^{the} working of the mind of the plaintiff. Even in this letter he did not clearly mention that he had appeared in the trade test on 20.7.1983. On the other hand, if he had appeared in the trade test on that date, he could not again raise the querries contained in paragraphs 4 and 5 of the letter as quoted above in verbatim. We are further of the view that being absolutely on the mercy of the defendants, the plaintiff could not think of making irresponsible allegations and using undignified language for his superiors in this letter. We are, therefore, of the view that even on 20.7.1983 the plaintiff did not appear in the trade test and came back only after his reporting at the factory and his contention to the contrary cannot be accepted. According to the allegations of the plaintiff, the defendants were not happy with him. He was also not in service in 1983 and in case the defendants did not like to give him promotion with retrospective effect in compliance of the decree of the civil Court, instead of not holding the trade test they should have preferred to hold the trade test at the earliest and if they wanted to do any injustice with him, they could easily fail him and as such, it does not appear probable that despite fixing a date the defendants would have not taken the trade test of the plaintiff on 20.7.1983. On the other hand, the plaintiff having lost faith in the defendants ^{and} he did not offer himself for the test as he did not like to take the risk of being failed therein and that is why he made peculiar querries to the defendants as appears from his correspondence quoted above.

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11. Our conclusion finds support from the subsequent correspondence between the parties. On 25.10.1983, the General Manager wrote to the plaintiff vide copy R.A.16 that he did not appear in the trade test and he regretted that the matter of his promotion could not be proceeded with in the absence of the same. Even after this reply, the plaintiff vide his letter dated 9.12.1983, copy annexure R.A.3, wrote to the General Manager that it should be realised whether a person who is not on the factory strength could be subjected to trade test and he requested that his case be considered for reinstatement in service and then for giving him a chance for trade test. In paras 1 to 3 of this letter, it has been stated that on 20.7.1983 he was asked to report to Mr. Jain Manager Engineering. On his report to Sri Jain, latter put certain questions to him about his case and on hearing him, he was permitted to go. The plaintiff further stressed that this should not be taken to be his refusal for not appearing in the trade test. On 13.10.1983, the plaintiff made his stand clear to the General Manager by stating that he had no objection to undergo the prescribed trade test on the subject and requested to fix a date for the same, copy annexure R.A.19. He sent reminders in this connection on 9.1.1984 and 10.2.84 vide copies annexures RA 20 and 21, but no reply is stated to have been received by the plaintiff. We are of the view that on 20.7.1983 the plaintiff himself did not appear in the trade test and there was no question of his not being trade tested when he reported for the same to Manager Engineering Sri Jain. The plaintiff, thus, having been given an opportunity for appearing in the trade test twice,

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the opportunity was not availed ^{to} by the plaintiff and the defendants cannot be blamed for the same. The promotion of the plaintiff as Fitter A(Auto) was subject to his having passed the trade test and on account of his failure ^{to appear} in the trade test the relief claimed by him cannot be granted to him. There is thus no merit in this case and it merits dismissal.

12. The suit of the plaintiff is accordingly dismissed but without any order as to costs.

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MEMBER(J)

Dated: Nov. 15, 1988
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MEMBER(A)