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Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No. 1307 of 1986 (O.Suit No.587 of 1985)

Janardan Singh and another Applicants.

Vs.

Union of India Respondent.

Hon. Ajay Johri, AM
Hon. G.S.Sharma, JM

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

This transferred application is a regular suit and has been received under Section 29 of the Administrative Tribunals Act XIII of 1985 from the Court of Munsif I Gorakhpur.

2. Janardan Singh and Janak Singh - two applicants (hereinafter referred to as the plaintiffs) were appointed as Asstt. Teachers in the North Eastern Railway Gorakhpur in the pay scale of Rs.170-380 on 21.7.1966 and 31.8.1967 respectively. This grade was revised to the scale of Rs.440-750 w.e.f.1.1.1973. The next promotion of the Asstt. Teachers working in the scale of Rs. 440-750 is made to the scale of Rs.740-880 on the basis of seniority and record of service. Certain vacancies arose in the scale of Rs.740-880 of the Asstt. Teachers in Dec. 1983 and both the plaintiffs were eligible for being placed in the said scale but the defendant wrongly withheld their promotion and promoted their juniors vide order dated 22.6.1984. No adverse entry was ever communicated to the plaintiffs to deprive them of their promotion to the higher scale of pay. The representations made by the plaintiffs on 9.7.1984 did not bear any fruit and the Principal of the North Eastern

Railway Intermediate College, Gorakhpur informed the plaintiffs vide letter dated 19.10.1984 that their claim for promotion has been rejected by the competent authority. The plaintiffs have challenged the legality of the said intimation dated 10.10.1984 on the ground that the same is illegal and they have further prayed that they be promoted in the higher scale w.e.f. 22.6.1984 when the persons junior to them were promoted.

3. The suit has been contested on behalf of the defendant and in the written statement filed on its behalf by the Dy. Chief Personnel Officer, N.E. Railway it has been stated that 20% of the posts of Asstt. Teachers in the scale of Rs.440-750 are allotted in the scale of Rs.740-880 and are to be filled on the basis of seniority subject to fitness. The plaintiffs were within the field of eligibility for promotion to the said post but on the screening of their records, they did not satisfy the condition of fitness allowing them promotion. The names of the plaintiffs were duly considered but they were not found fit and as such, they were not given the higher grade. There is no rule that all sorts of adverse entries in the character rolls should be communicated to the staff concerned as it is only in the nature of guideline for the staff to concentrate more and improve upon the areas where he has been reported adversely. The plaintiffs must have known from their unsatisfactory performance in the class rooms for 3 years ending in 1982-83 which would reflect on their record of service. The representations of the plaintiffs were duly considered by the competent authority but they were not found fit for promotion and informed by the Principal. The action of the railway administration was quite legal and valid and the plaintiffs are not entitled to any relief.

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4. On the date fixed for hearing before us, the plaintiffs did not appear and the case was heard on their absence. Sri G.P. Agarwal learned counsel for the defendant produced before us the confidential reports of the plaintiffs and submitted that the performance of the plaintiffs was not satisfactory and as such, they were superseded in the matter of promotion and their grievance before the Tribunal is not justified.

5. We have examined the confidential reports of the plaintiffs. The plaintiffs were superseded w.e.f. 22.6.1984. The confidential reports of the period prior to this date are, therefore, relevant. The defendant has alleged in paras 26 and 27 of its written statement that all sorts of adverse entries in the confidential reports are not to be communicated to the ~~applicants~~ ^{State} and the plaintiffs must have known from their unsatisfactory performance in the class rooms for the 3 years ending 1982-83 which would reflect on their record of service. Thus according to the defendant, the performance of the plaintiffs during the period of 3 years preceding the date of their supersession was not satisfactory. We will, therefore, like to examine the reports for the years 1980-81, 1981-82 and 1982-83 of the plaintiffs. In the year 1980-81, the plaintiff Janardan Singh was not awarded any adverse entry and he was rated as a good teacher. The examination results of the subjects taught by him also appeared good in that year. In the year 1981-82, the reviewing authority had recorded his confidential report on 30.9.1982 without recording any adverse entry. The reviewing authority in his report dated 7.6.1984, however, found him not yet fit for promotion without recording any reason or even without disagreeing with the report of the reporting officer on any point. The

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result of the examination of the four subjects taught by this plaintiff in that year was 71% to 90%. In the year 1982-83, the initiative of the plaintiff Janardan Singh was reported to be poor and there was not adverse entry. The reviewing authority in his report dated 22.2.1984, however, found him not yet fit for promotion.

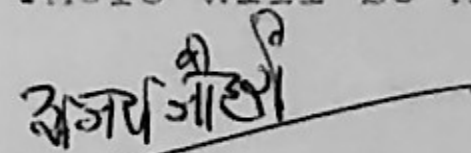
6. The confidential reports of the other plaintiff Janak Singh show that in 1981-82 his initiative and organising ability were found to be poor and the reviewing authority had reported him to be not yet fit for promotion. In the year 1982-83, his knowledge of drafting and ability to maintain discipline were reported to be poor by the reporting officer and the reviewing officer had again found him not yet fit for promotion. For the year 1980-81, the reporting officer had found that he is a slow teacher and had to work hard. His initiative and knowledge of drafting were reported to be poor. There are no remarks of any higher authority during that year about his working.

7. It is apparent from the confidential reports as well as from the stand taken by the defendant in the written statement that the adverse entries awarded to the plaintiffs were not communicated to them as it was not found necessary to communicate the same. We find ourselves unable to agree with this stand of the defendant. In Brij Mohan Singh Chopra Vs. State of Punjab (1987 (3) ATC-496), the Hon'ble Supreme Court had observed that it is well settled that in accordance with the rules of natural justice, an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to

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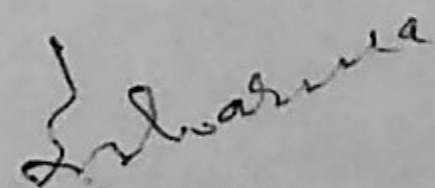
explain the circumstances leading to the report. The Hon'ble Court further observed that such an opportunity is not an empty formality, its object, partially being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned whether the adverse report is justified. The defendant has, therefore, not done justice in the matter of supersession of the plaintiffs and their claim for promotion was wrongly ignored by the railway administration on the basis of some adverse entries without communicating the same to the plaintiffs and without giving them an opportunity to explain the lapses on their part. We are, therefore, unable to justify the action of the defendant in this connection and we direct the defendant to review their case.

8. It is accordingly ordered that ignoring all uncommunicated adverse entries awarded to the plaintiffs, their case for promotion to the grade of Rs.740-880 be considered by the competent authority within a period of 3 months from the date of the receipt of this order and in case ^{they are} found fit, they should be given promotion with all consequential benefits from the date the persons junior to them were promoted. There will be no order as to costs.



MEMBER(A)

Dated: 30th May. 1988
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MEMBER(J)