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RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No. 1310 of 1986.

(Original Suit No. 1814 of 1984)

Rudal Prasad Tripathi Plaintiff-Applicant.

Versus

Union of India & others Defendant-Respondents.

Hon'ble G.S. Sharma, J.M.
Hon'ble K.J. Raman, A.M.

(Delivered by Hon. K.J. Raman, A.M.)

This is a suit filed by the plaintiff, Rudal Prasad Tripathi, in the year 1984 in the court of Munsif (I), Gorakhpur, seeking to declare the order of promotion of Jiut Prasad, defendant no.3, as null and void. This suit has come to this Tribunal for decision on transfer from the said court under Section 29 of the Administrative Tribunals Act, 1985.

2. The facts of the case, in brief, are that the plaintiff was working at the time of filing the suit as Polisher in the Paint Shop of North-Eastern Railway Workshop, Gorakhpur. According to the seniority list, the seniority position of the relevant persons including the plaintiff in this case is as follows :-

- (i) Raghu Nath Prasad,
- (ii) Jiut Prasad,
- (iii) Ram Surat, &
- (iv) Rudal Prasad Tripathi.

A vacancy arose in the grade of Mistry Grade I and the trade test was conducted after notice. The persons mentioned at Sl.Nos. (i) and (iii) above refused to appear in the suitability test and as such Jiut Prasad, defendant no.3, was tested. According to the plaintiff, he was found unsuitable by the Divisional Mechanical Engineer (BTC) (in short DME(BTC)), Gorakhpur. The allegation of the plaintiff is

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that inspite of his failure, due to mala fide action of one C.P. Agrawal, Additional Chief Mechanical Engineer (C&W) (in short ACME (C&W)), Gorakhpur, Jiut Prasad was asked to submit an appeal and he was ultimately declared as successful in the test, depriving the plaintiff of a chance to be tested and promoted. According to the plaintiff, the Deputy Chief Mechanical Engineer (C&W) (in short DCME(C&W)), Gorakhpur had acted in utter disregard of the rules in promoting defendant no.3 and issuing the impugned order dated 15.5.1983 promoting Jiut Prasad. According to the plaintiff, DCME (C&W) being the approving authority, had no jurisdiction to take suitability test of defendant no.3 and declaring him successful. Thus the contention of the plaintiff is that the promotion of defendant no.3 on the basis of the test conducted was vitiated because the test was not conducted in the proper manner or by the proper authorities, according to rules.

3. In the written statement, the defendants have denied the allegations of irregularity and wrongful promotion of defendant no.3. It is averred that no-doubt the suitability test of defendant no.3 was conducted by DME(BTC), but before the result of the test was approved by the competent authority, viz. DCME(C&W), ~~an~~ a complaint was received from Jiut Prasad, defendant no.3. The approving authority on the basis of the complaint did not approve the result of the test conducted by DME(BTC). Instead, DCME(C&W) keeping in view the complaint, himself assessed the suitability of defendant no.3 and put up the proceedings to the next higher authority, i.e. ACME/C&W(W), who approved the same. The allegation of mala fide on the part of C.P.Agrawal is denied.

4. The defendants have submitted copies of various relevant documents dealing with ^{the} conduct of the test and the developments thereafter. These documents show that after the initial testing of defendant no.3 and the finding thereof was submitted to the higher authority, he took cognizance of the representation made by

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defendant no.3 regarding the test. DCME(C&W) himself called Jiut Prasad on 12.5.1983 and assessed his general awareness regarding expectations from a Mistry. It is recorded that according to his assessment, keeping in view the general calibre of Mistris available in the shops, he has reasonable awareness of his responsibilities as a Mistry and methodology to discharge his duties, and that DME(BTC)'s assessment had been on the stricter side. It is seen that this was submitted to ACME/W for approval, who approved the same after observing that Jiut Prasad being a S.C. candidate, the assessment in any case is required to be more liberal than for a general candidate. He also recorded that Jiut Prasad is considered suitable for promotion. Thereafter, a representation from the plaintiff was considered at various levels. ACME(W) found the representation of the plaintiff to be uncalled for, as a man senior to him has been tested for suitability and found suitable and that the plaintiff had no ground whatsoever for complaint.

5. After a very careful consideration of the allegations of the plaintiff and the records of the case including the official records referred to above, as well as after hearing the learned counsel for the parties, it is seen that there has been no contravention of any rule or regulation in the selection of defendant no.3, who is, after all, senior to the plaintiff and further belongs to S.C. community eligible for sympathetic consideration. The highest authority possible, who is competent to test and assess the candidates, has carried out the test fairly and in a sympathetic manner in a deserving case and no fault can be found thereof. The plaintiff has nothing to be aggrieved about by the promotion of his senior in this case.

6. In view of above, the suit is accordingly dismissed with no order as to costs.

W.M. Chawla

MEMBER (A).

L. D. Bhatia

MEMBER (J).

Dated: 13-7-1989

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