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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration (T.A.) NO. 1553 of 1986

Lakshman Singh .... Plaintiff-Applicant.

Versus

Union of India .... Defendant-Respondent.

Hon'ble Ajay Johri, A.M.  
Hon'ble G.S. Sharma, J.M.

(Delivered by Hon. Ajay Johri, A.M.)

This application (Suit No. 305 of 1981) has been received on transfer from the court of City Munsif, Meerut under Section 29 of the Administrative Tribunals Act XIII of 1985. The plaintiff, a Scheduled Caste, joined the Military Farms as Lower Division Store Keeper (LDSK) on 21.3.1957. Certain promotions were made in February, 1971 to the post of Upper Division Store Keeper (UDSK), but the plaintiff was not considered for the promotion. On his representation he was advised that the promotions were made on seniority-cum-fitness basis and there is no reservation as claimed by him. When some more juniors were promoted the plaintiff again represented. He was ultimately promoted in July, 1979. The plaintiff has claimed that being a Scheduled Caste (SC) and there being reservation in promotion he should have been promoted on the occurrence of the first vacancy as there was nothing adverse against his working communicated to him upto 1971. The adverse remarks in the 1973 and 1974 reports, according to him, are motivated as he was on leave without pay during this period. The plaintiff has, therefore, prayed that he should be considered to have been promoted either from 1.4.1960 and if not so at least from 1971 or 1973 when his juniors were promoted and he should be paid the difference of <sup>30</sup> pay.

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2. In their written statement the defendants have said that the plaintiff's name was considered for promotion but he was not recommended by the Departmental Promotion Committee (DPC). The plaintiff was ~~31~~ promoted to the post of UDSK in the month of December, 1978 but he assumed charge of the post only in September, 1979. According to the defendants the work and conduct of the plaintiff has not been very satisfactory. He had received nearly 8 punishments excluding the adverse remarks in his Confidential Reports (CR). They have given the details of the punishments during the years 1959, 1962, 1965, 1967, 1970, 1971 and 1972. They have further said that the plaintiff has been graded as poor in his report for the year 1966 with a remark that he required constant chasing to get work done and that he is not recommended for promotion. There is also a remark that he lacks initiative and has got no sense of responsibility to carry out his duties. Similarly for the year 1967 there is a remark that he lacks initiative, ~~work~~ and <sup>w tact</sup> judgment, not recommended for promotion, graded as poor. ~~was given~~ <sup>31</sup> ~~given~~ <sup>31</sup> ~~in this~~ <sup>31</sup> The ACRs for the year 1969, 1970, 1971 and 1972 have also not been any better. According to the defendants all the above remarks were duly communicated to the plaintiff and they were awarded by different officers under whom he worked during these years and the post of UDSK was not covered by the reservation orders upto the year 1973. ~~according to the~~ <sup>31</sup> ~~defendants~~ The promotion from LDSK to UDSK is not by selection. It is on the basis of seniority-cum-fitness and there being no quota for SC reservation prior to 1973 in respect of non-selection posts and the plaintiff's <sup>31</sup> ~~having been~~ case ~~was~~ considered by DPG in their meetings held in 1969, 1970 and 1972 along with other eligible candidates and

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3/ ~~During~~ <sup>3/</sup> ~~he was~~ was not found fit for promotion. Thereafter during 1973 and 1974 there was no vacancy but in 1975 he was still not found fit for promotion and there was no vacancy in 1976 ~~again~~ <sup>3/</sup> ~~as well~~. In 1977 there was only one vacancy and a senior person to him was promoted. It was only in August, 1978 that he was declared fit for promotion. <sup>3/</sup> As a result he was posted to the Military Firm, Kirki where a vacancy existed. He reported at Kirki in September, 1979. Even when reservation came in 1973 in promotional post the promotion was subject to the candidate's fulfilling all the required conditions. Therefore, the defendants have not acted in any way in an irregular manner. They have denied that the entries made in ACRs were motivated or were awarded with mala fide intention. The proper procedure laid down for writing ACRs had been followed by the authorities and, therefore, there was nothing illegal or discriminatory in the plaintiff not having been considered for promotion. They have also challenged the jurisdiction of the court at Meerut. According to them, the suit should have been filed either at Jammu or at Pune and not at Meerut as earlier the plaintiff was posted at Jammu and after promotion he was posted at Pune.

3. In his replication the plaintiff has said that the punishments mentioned in para 28 of the written statement had been awarded to him not due to his inefficiency but due to mala fide attitude of the authorities. He has further said that ~~he~~ he was denied his rightful promotion without valid reasons and was granted promotions only when he approached higher authorities and M.Ps. He has further said that if reservation came in 1973 he

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should have considered for promotion against the reserved post thereafter, but he was promoted only in 1979. He has further said that the adverse entries etc. were communicated to him when he was at Meerut, therefore, the cause of action arose at Meerut when he filed the suit.

4. We have heard the learned counsel for the parties. on behalf of the plaintiff the contentions made by the learned counsel for the plaintiff were that there was reservation in promotion to the post of UDSK and, therefore, the plaintiff should have been considered against the reserved quota. The learned counsel for the defendants, however, submitted that since there was no reservation prior to 1973 and the promotions were based on seniority-cum-fitness and the plaintiff was not considered fit by DPC he having <sup>an indifferent</sup> ~~obnoxious~~ service record the plaintiff was not promoted due to his unfitness. We have seen the case file also.

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5. Upto 1973 when there was no reservation in posts to be filled by promotion on the basis of seniority-cum-fitness the plaintiff could have no claim for preferential treatment on the basis that he <sup>is</sup> belonging to SC community. According to para 28 of the written statement where the extracts of the punishments given to the plaintiff have been given by the defendants it is clear that the plaintiff's work was not entirely satisfactory and, therefore, if the DPC did not consider him fit for promotion to the post of UDSK the plaintiff cannot challenge his non-promotion. Promotion is a matter of administrative discretion and the competent authority would be well within its right to take

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a decision whether an incumbent is suitable for the post or not, because ~~if~~ a Government servant has not been considered for promotion he cannot complain that any of his rights have been infringed or that he has been denied equality of opportunity as enjoined in Article 16 of the Constitution.

6. The defendants have said in their written statement that the plaintiff's case ~~was~~ considered by DPC in the years in which it met but he was not considered suitable for promotion. The plaintiff has not made any allegation that DPC was unfair or was not competent to give their recommendation of his promotion.

7. As far as the Confidential Reports are concerned, an effort has been made by the plaintiff to say that the adverse remarks on the CRs were motivated. If a CR is tainted with malice the entire report made ~~has~~ to be rejected. Similarly if an adverse entry has not been communicated and finalised, i.e. on which a representation made by the employee has not been finally disposed of such an adverse entry can also not be ~~be~~ taken into consideration. We do not find that the plaintiff has been able to establish that there was any malice on the part of the Reporting Officers, who gave adverse entries to him, as enumerated in para 28 of the reply filed by the defendants. Moreover, according to the averments made by the defendants these reports were written by different officers and it is difficult to believe that all the officers, who came to occupy the position of the Reporting Officer during the periods before 1972 or even thereafter, <sup>for which</sup> the adverse entries have been given and communicated to the plaintiff would <sup>all</sup> have ~~any~~ bias or

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prejudice against the plaintiff. He has not been able to make out a case to support his allegation that these entries were motivated and, therefore, this plea cannot be accepted. ORs show an assessment of an officer's performance and a judicial review is not warranted unless the entries are unreasonable or erroneous on the face of record or mala fide or ~~or~~ vindictive. The plaintiff's representation were considered by the defendants. No plea has been taken by the plaintiff that any of the adverse remarks were given consideration when his representation was still under disposal. DPC proceedings are not before us but in the absence of any pleas taken by the plaintiff it will be incorrect to assume that any such reports were taken into consideration by DPC before they came to the conclusion that the plaintiff was not fit for promotion. Therefore, for the periods prior to 1973 when reservation in promotional posts came into being the plaintiff has no case.

8. As far as the promotion against reserved post is concerned, the rules in this regard are very clear. A reserved post cannot be filled by a general candidate unless it is de-reserved and if the roster point indicates that the next promotion has to be made against a reserved vacancy a general candidate cannot be promoted against the same without resorting the exercise of de-reservation. The defendants have not said anything in this regard. They have simply said that the plaintiff could not be promoted because promotion could only be made if he was fit and since he was not fit another person was promoted against the post. Without de-reservation no other general candidate could have been promoted against the reserved post. There are also certain concessions

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available to reserved community candidates in promotions which are made either by selection or suitability-cum-seniority. It is not clear from the replies given by the respondents that the orders and instructions in regard to filling up of the post reserved for SCs & STs were correctly followed by them after the reservation came into operation, i.e. after 1973. The applicant was promoted finally in 1978 and he took over as UDSK at Kirki in 1979. According to the defendants he was not found suitable in 1975 when he was considered against the vacancy that arose and he was again not considered <sup>in</sup> ~~in~~ 1977 because there was only one vacancy and single vacancy could not be reserved. In the absence of any positive averments made by the defendants that due <sup>to</sup> ~~to~~ concessions were given while considering him against 1975 vacancy it can be presumed that this aspect was lost sight of. The plaintiff, therefore, will have a case for review of the proceedings of DPC held in 1975. As far as promotion in 1977 is concerned, a single vacancy which falls <sup>in</sup> ~~on~~ a reserved point and is filled by a reserved category candidate, according to his own merit or seniority, cannot be treated as unreserved. If it is a single vacancy and is filled by a candidate on the basis of his own merit by seniority by a general candidate, <sup>it has a</sup> ~~it~~ that means, if a general candidate was senior he <sup>had a</sup> ~~had~~ claim on a single vacancy. The defendants' averment that since it was a single vacancy it was given to a junior in 1977 will, therefore, not get supported by the relevant instructions.

9. The plaintiff has made a prayer that he may be considered to be promoted as UDSK from 1.4.1960 or if in the opinion of the court the plaintiff may not be found eligible

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with effect from 1.4.1960 then from 12.2.1971 or 23.2.1973 when his juniors were promoted to the post of UDSK. This relief is not maintainable because at the particular time there was no reservation and, therefore, the plaintiff could not seek any advantage of his belonging to SC community. He was not found suitable by DPC and his working was also unsatisfactory as elaborated by the adverse reports communicated to him. However, his case for consideration against the reserved vacancy in 1975 and thereafter in 1977 needs to be reviewed and we accordingly direct that the defendants should review the DPC proceedings and consider his eligibility again giving him the benefits <sup>or of</sup> ~~and~~ concessions that are due to the reserved community candidates, who are considered for promotion <sup>3rd</sup> ~~and if he is found suitable & eligible consider him for promotion from due date.~~ against reserved vacancy. With these directions we dispose of this application (Suit No. 305 of 1981). Parties will bear their own costs.

*Swami*  
MEMBER (J)

*BJP/ST/EP*  
MEMBER (A).

Dated: September 26<sup>th</sup>, 1983.

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