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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH  
Registration O.A.NO. 1204 of 1987

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S.M.Srivastava

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Applicant

Vs.

Union of India & Others ....

Respondents

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Hon'ble Mr. Justice U.C. Srivastava, V.C.

Hon'ble Mr. A.B. Gorthi, Member (A)

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicant was appointed as Khalasi at Kanpur on 22.2.1961. After passing the requisite examination he was promoted as High Scale Fitter grade II in the year 1981, and in the seniority list he was placed at serial no.123. Out of 162 persons whose names were placed in the seniority list only 122 persons were promoted and from 123 to onwards were not given promotion, and from serial no.123 the order for transfer with promotion was passed, and the applicant was transferred to Ghaziabad. But the applicant did not joined at Ghaziabad, as his wife was hospitalised, and he made a representation to the authority not to transfer him from Kanpur in these circumstances. The representation of the applicant appears to <sup>have</sup> been remained pending upto the year 1987, although it was preferred in the year 1986. The applicant made a representation for getting the same facility and promotion for which he was entitled to, as the junior to the applicant who is at serial no. 124 was promoted in year 1986 at Mogal Sarai though he was earlier working in the grade II, and the respondents No.6 who was at serial no.125 was also promoted in grade I at Moghal Sarai. Similarly other respondents, with respondent No.7, respondent No.8, and respondent No.9 were also promoted. The applicant made a representation against the same but it was

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of no way <sup>help</sup> <sup>L</sup>

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2. The grievance of the applicant that he was not permitted to join the duty from 1.10.86 till 21.1.87, and the order of transfer was cancelled due to ailment of his wife. The applicant was given duty at Kanpur on 27.1.87, but was asked to work in grade-II. The applicant again made a representation and thereafter as he did not get any relief from the authority concerned, he made an appeal to D.R.M., Allahabad. Despite this no salary was paid to him upto the date 21.11.87 when he joined at Kanpur, and no reply to his representation was given. Ultimately after failing to get any relief from the departmental authority, the applicant approached this Tribunal pointing out that the transfer policy has not been followed and no consistante practice was adopted, and even juniors were promoted without any justification, and even one who was at serial no.143 <sup>also</sup> was/ordered to be transferred from Kanpur to Ghaziabad, though he did not joined at Ghaziabad his token was not sealed and also in the case of Maiku Lal who was at serial no.127 he too did not joined yet his token was not sealed, while in the case of applicant it was sealed.

3. The respondents have stated that the promotions were effected at Mogal Sarai on account of upgradation of posts and incumbents of the posts were automatically promoted. There were vacancies at Mughal Sarai and the staff <sup>L</sup> concerned were retained at Mughal Sarai on promotion, respondent No.7 was retained at Kanpur by the Divisional Railway Manager, Allahabad on administrative grounds while the respondents No. 8,9 & 10 were officials of the recognised Union and they were retained at Kanpur according to the policy laid down between the officials

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of the Union and D.R.M., Northern Railway, Allahabad. Regarding the other two cases which have been pointed by the applicant it has been stated by the respondents that the token of Noel George was not held because he had given clear refusal not to proceed on promotion to Ghaziabad. Similarly Maikoo Lal had submitted his refusal and the applicant neither carried out the orders of transfer nor did he submit clear refusal hence the token of the applicant was withheld.

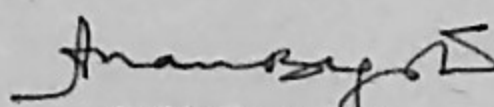
4. The applicant preferred a representation against the transfer order which was ultimately allowed and even though he did not refused the promotion yet his token was withheld only because there was a refusal by him. The applicant gave refusal only after 22.1.1987 and before that, the withholding of the token was without any justification and declares about the policy of the respondents. So far on which the transfer policy is concerned/both the parties relied the same points out that, "the trade union officials is to be transferred and promotion the Union/only be advised as the proposed transfer ~~is~~ not necessary to sent the same unless the employee wishes to refuse the promotion. A senior employee need not be transferred in order to accommodate the trade union office bearer on promotion at that station itself; Unless of course, of action otherwise feasible, transfer of an employee to another place has been rendered/surplus at particular station should also be treated in the same way." As the facts stated above indicate that the applicant was senior to the trade union officials yet preference was given to the trade union officials only because they were officials of trade union. As the preference was given to the trade union officials there was no reason and justification in not giving promotion to the applicant who was senior to them. The respondents themselves acted in breach of the transfer policy in giving undue preference to the trade union officials.

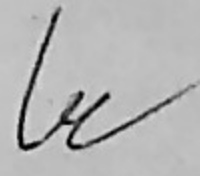
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in the matter of promotions, and the action was not justified in accordance with law.

5. Although now the respondents have given the promotion to the applicant in the year 1988, and no explanation has been given as to why this particular year has been chosen. But as the applicant was entitled to the promotion with effect from the date his juniors were promoted, the applicant's promotion notionally will be given from the back date when his juniors were promoted. So far as the period during which salary has not been given and he was in 'waiting' in the matter of transfer order which was ultimately cancelled, the salary of the said period shall be paid by the respondents within a period of 2 months from the date of communication of this order after deciding in what manner the said period is to be treated. This decisions will be taken in accordance with the relevant rules. The applicant's Passes shall also be released within this period in accordance with law. The application stands disposed of finally with the above observations. No order as to costs.

  
MEMBER (A)

  
VICE-CHAIRMAN.

28th November, 1991, Alld.

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