

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

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Registration I.A. No. 1407 of 1987
(.W.P. No. 11554 of 1984)

Jagdish Swarup Sinha Applicant.

Versus

The Union of India
and others Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.
Hon'ble Mr. K. Obayya, Member(A)

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

This is a transferred case under Section 29 of the Administrative Tribunals Act, 1985. By means of this application, the applicant has prayed that a mandamus be issued commanding the respondent no. 2 to fix the seniority of the applicant in accordance with Rule 156 read with Rule 180(14) of the Posts and Telegraphs Manual, Volume-III. Para 180(14) reads as follows;

"180(14) - Communication of Adverse remarks:- Para 12 of Rule 174 lays down that adverse remarks whether they relate to remediable or irremediable defects should be immediately communicated to the officer concerned. Instruction on this subject have been issued from time to time. In spite of these repeated instructions, however, it is noticed that some authorities continue to omit to communicate all the adverse remarks on the ground that communicating of a certain adverse remark would not help the officer to improve himself or that the remarks are in answer to the question printed in left hand side, and communicate only some of the adverse remarks leaving the rest of them on record uncommunicated. This is not only irregular but is also unfair and opposed to principles of justice and equity. Communication of an adverse remarks may act as a warning to the official to

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improve his performance, where as omission is likely to result in wrong assessment of the conduct and performance of an officer by the Departmental Promotion Committee which will be not only against the interests of the officer but also against the interests of the administration.

The Director General has taken a very serious view of such omissions. The competent authorities may be instructed to communicate invariably all the adverse remarks, whether relating to remediable or irremediable defects immediately after they are recorded, to the officer concerned. Any omission in this regard will be viewed seriously by the Secretary, Communication."

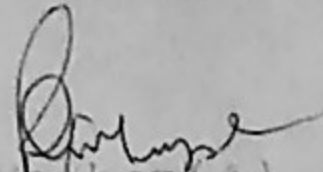
2. According to the applicant, he has been discriminated while the junior candidates have been considered for the promotion in the Lower Selection Grade, and rule-156 of the Posts and Telegraphs Manual Volume-III has not been fully complied with and the seniority has not been correctly fixed.

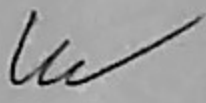
3. The respondents have refuted the claim of the applicant and have stated that the applicant was found guilty of criminal mis-conduct. In the year 1970, he was caught red handed by the police for acceptance of bribe from a Radio Dealer and consequently he was arrested for an offence under Section 161 Cr.P.C. and 5(2) of Prevention of Corruption Act, Later on, he was prosecuted and was placed under suspension but in the said criminal ^{case}, the benefit of doubt was given to him. So far as the Lower Selection Grade is concerned, the same is made on the recommendation of the Departmental Promotion Committee after taking into consideration the over all assessment of the officials for the entire period of service. The

applicant's case also came up before the D.P.C. which was held between the year 1974 to 1979. His case was successively considered, but since a criminal case was pending against him, the finding was kept in a sealed cover. As the case was not finally decided and the confidential report was not available, his case could not be considered by the D.P.C. for the vacancies of the year 1976 but in the subsequent D.P.C. held in the year 1990 to fill up vacancies for the year 1977-78, his over all records of service was not found to be satisfactory, and he was, therefore, adjudged to be unfit for promotion to the Lower Selection Grade. According to the respondents, para-184 will not apply in this case because it was a case of over-all assessment. It appears that in over all assessment, the applicant was not promoted and the D.P.C. was within its right to promote or not to promote the applicant, but in the earlier year, due to pendency of the criminal case, his result was kept in a sealed cover. In case, the applicant was found fit for promotion, there appears to be no reason why he should not be promoted in that year. @.

4. Accordingly, the respondents are directed to open the sealed cover and in case the applicant was found fit for promotion in that year, then a notional promotion may be given to him but, in case, he has not been found fit for the promotion in that year he cannot be promoted.

5. The application is disposed of with the above directions. No order as to the costs.


Member (A)


VICE-CHAIRMAN.

Dated: 2.12.1992
(n.u.)