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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

REGISTRATION NO. 228 of 1987(OA)

Inder Jit Oberai ... Applicant.

Versus

Union of India, through Tele
Communication Board and others ... Respondents.

Hon'ble S.Zaheer Hasan, V.C.
Hon'ble Ajay Johri, A.M.

(By Hon'ble Ajay Johri)

This is a petition filed under Section 19 of the A.T. Act XIII of 1985. In this application, Inderjit Oberai has challenged an order dated 6.3.87 issued by the Divisional Engineer Telegraphs Sultanpur retiring him from service w.e.f. 31.3.87 as a telephone operator instead of a High Selection Grade Monitor and without completion of his service book.

2. The facts of the case as alleged by the applicant are that he was after promotion as LSG Monitor on 17.9.1967 illegally reverted as telephone operator on 13.5.68. This became a subject matter of litigation and his reversion orders were quashed by the Allahabad High Court on 9.10.1974. Instead of treating him as working LSG Monitor upto the date of reinstatement on 12.5.75 consequent to the quashing of the reversion order he was given ad hoc proforma promotion for certain periods only. This subject had become a matter of litigation in transferred application no. 610 of 1986. He has claimed that if the orders of the Allahabad High Court had been implemented correctly and he would have been approved for promotion as LSG Monitor by the Competent Authority, he would have become HSG Monitor on 1.1.1980. He has also alleged that two of his juniors M.S. Adhikari & and Gopal Krishna have been given wrong seniority by counting some of their

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service when they were below 18 years of age. According to him he has been harassed since 1968 in matter of promotion. His service book has not been transferred to Allahabad and difference of salary from Jan. 86 to March, 1986 has not been credited to his PF Account. He has alleged that by calling him for a departmental enquiry on 14/15.9.1987 when he had been retired on 31.3.87, the retirement order gets automatically cancelled. The enquiry could not be conducted under Rule 14 of CCS(CCA) Rules, but it should have been converted into an enquiry under Rule 9 of CCS Pension Rules. He has further alleged that the question of his retirement does not remain for adjudication because the competent authority has already extended to date of retirement in special circumstances. The applicant has, therefore, prayed for following reliefs:-

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- a) That declaration that he was ~~unsuitable~~ for promotion as LSG(Monitor) w.e.f. 14.5.68 to 12.5.75 is void.
- b) That the applicant be deemed to be a LSG Monitor w.e.f. 17.9.67 to 31.12.79 and as HSG Monitor W.e.f. 1.1.1980 to 31.3.87.
- c) That the service of M.S.Adhikari, Gopal Kishore & others in HSG are unconstitutional.
- d) That he is entitled to incharge allowance at Pilibhit. Where his junior was put to work as LSG(monitor).
- e) That he is entitled to arrears of salary with compound interest @ 2% p.m. in terms of the Allahabad High Court judgments.
- f) That he is entitled to receive payments of his claim and leave Travel Concession before his retirement.
- g) That the retirement orders be with-held till the completion of constitutional service record.

3. The applicant has filed two cases in this tribunal. OA no. 216 of 1987 and this application. The reliefs claimed in OA 216 of 1987 are in respect of his various outstanding claims. He is praying for ~~relief in certain matters again in this application, as~~ ~~doing so.~~ These matters have been dealt with in that registration and are not being taken up here. ~~by~~

4. Similarly, he filed a suit no.51 of 1977 which has been received on transfer in this tribunal and is registered as Transfer Application 610 of 86. The reliefs regarding his promotion as LSG Monitor and against punishments imposed on him and adverse entries in his C.R's have been sought in this case. These have been dealt with in that case and cannot be subject of this application. These can not be claimed again. His request at item C of para 2 is also not tenable as he has not impleaded the parties whose promotions he wants to be quashed.

5. In the result the only relief that remains to be ~~adjusted~~ ^{dealt} in this case is the relief regarding his retirement. This is also the main relief. The applicant's case is that he cannot be retired as a Telephone Operator ~~and~~ till his service book is completed and his retirement date should be deemed to have been extended as he has been called to attend a disciplinary enquiry under Rule 4 of CCS (CCA) Rule in September, 87. We shall deal only with ~~the~~ aspects in this application.

6. As far as the service book and its completion is concerned, the respondents have said that this was filed amongst the documents in suit no.51 of 1977 and as soon as it is received back it would be completed and the arrears etc due to the applicant will be paid. Suit no.51 of 1977 is now registered as TA no. 610 of 1986. We have given orders in that case. We order that the service book be now returned to the respondents for further action in terms of our decisions on the three applications of the applicant which are before us ~~and~~ in which we have given orders separately. But ~~now~~ completion of service book cannot

result in non retirement or continuation in service beyond the age of superannuation. We reject this plea taken by the applicant. His retirement on 31.3.1987 on attaining the age of superannuation cannot be assailed on this ground.

7. Promotions are matters of administrative direction. It is the competent authority who decides whether a person is suitable for promotion or not. Because a government servant has not been promoted, he cannot complain in a court of law that any of his right has been infringed or that he has been denied equality of opportunity under article 16. Courts can only demolish a bad order. The applicant was considered by a duly constituted Departmental Promotion Committee and he was not recommended for promotion. Promotions to LSG Monitor's grade are made, according to the recruitment rules filed by the applicant, on the basis of seniority cum fitness. If he is not promoted he cannot say that he cannot be retired too. Retirement on attaining the age of superannuation takes place automatically. We find no force in the applicant's prayer that since he is being retired as Telephone Operator and not as LSG/HSG Monitor, he cannot be retired. The prayer is rejected.

8. The respondents have not commented on the prayer made by the applicant in regard to his being summoned in a Departmental Enquiry under Rule 14 of CCS(CCA) Rules. Rules 136 to 138 of the P and T Manual Vol. III lay down that disciplinary proceedings initiated while an officer was in service should be deemed to be proceedings under Rule 9 of CCS Pension Rules. A copy of the letter dated 12.8.87 issued by SDO Phones in-connection with an enquiry under Rule 14 of CCS(CCA) Rules shows that this has not been issued in accordance with Rule 9 of Pension Rules. Moreover the applicant has been addressed as Telephone Operator. This evidently is an error and needs to be looked into by the respondents. But there is no rule which says that the proceedings come to an

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automatic end on the retirement of an employee. Also Rule 9 empowers the President to withhold or withdraw a pension or part thereof as also order recovery in cases of pecuniary loss caused to the government. This Rule does not say that proceedings after retirement have to be confined to only cases of pecuniary losses. Under Rule 9(2) (a) of the Pension Rules, disciplinary proceedings instituted against an official during the course of his service automatically become Presidential proceedings ^{under Rule 9(2) of pension rules} after retirement. The findings etc. are then to be submitted to the President. So we find nothing wrong in the respondents continuing with the alleged disciplinary proceedings.

On the above considerations, we dismiss this application with costs on parties.

अग्रणी
A.M.

Vice Chairman

JS/ 30.5.1988