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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No. 1087 of 1987

Mani Lal ..... Applicant

Versus

Union of India & Others .... Respondents.

Hon. D.S. Misra, A.M.

Hon. C.S. Sharma, J.M.

(By Hon. D.S. Misra, A.M.)

This is an application under Section 19 of the Administrative Tribunals Act XIII of 1985 seeking a direction to the respondents to promote the applicant, refix the seniority of promoted grade and to allow all the consequential benefits including arrears of wages and increments.

2. The applicant has been working as Permanent Way Inspector at Janghai Station, Northern Railway since 1973. The applicant claims that on the basis of his seniority in the cadre of PWIs he was due for promotion to the grade of Rs. 700 - 900 since 1.1.1984 but the respondents ignored the promotion of the applicant and promoted other persons junior to the applicant. The applicant has alleged that he was falsely implicated with 15 other persons in a Criminal Case under Section 120-B, 420 and 468, Indian Penal Code which is pending in the Court of Law at Lucknow since 1980. The applicant

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sent several representations to the General Manager, Northern Railway Baroda House, New Delhi but there has been no response to his various representations.

3. In the reply filed on behalf of the respondents it is stated that the applicant was involved in a criminal case involving moral turpitude and the case is still pending and he is not entitled to be promoted merely on the basis of seniority; that his case for promotion can be considered only after the finalization of the criminal case and his acquittal; that no representation of the applicant regarding his promotion to the higher grade has been received by the respondents.

4. We have heard the learned counsel for the parties and have carefully perused the documents on record. The only point for consideration in this case is whether consideration for promotion can be withheld during the pendency of the criminal case. This question was considered in all its aspects by a Full Bench of the Central Administrative Tribunal in A.Ch.Venkat Reddy and Others Versus Union of India & Others ATR 1987(1) CAT 547. The Full Bench after discussing the case law on the point concluded that

- (i) consideration for promotion, selection grade, crossing the Efficiency Bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official.
- (ii) withholding of promotion of an official after finding him fit on the ground that disciplinary or criminal proceedings are

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pending against him cannot be treated to be a penalty under Rule 11(2) of the C.C.S. (CC&A) Rules, 1965.

(iii) the instructions issued by the Central Govt. embodying the sealed cover procedure do not conflict with C.C.S.(CC&A) Rules, 1965 and as such it is quite valid except for the portions indicated above which have been struck down by us.

The provisions of the Railway Servants (Discipline & Appeal) Rules, 1968 are similar to the provisions of the C.C.S.(CC&A) Rules, 1965 and the observations of the Full Bench in the above mentioned case would be fully applicable in the instant case in which the applicant is a railway employee. Applying the ratio of the above mentioned case we come to the conclusion that the applicant is not entitled for promotion until the finalization of the criminal case pending against him. However, we reject the contention of the respondents that his case will be considered only after his acquittal in the pending criminal case.

5. In the result we reject the petition of the applicant and direct the respondents to follow the sealed cover procedure prescribed in the O.M. dated 14.7.77 of the Ministry of Home Affairs, Department of Personnel & Administrative Reforms which provides that in case the official <sup>is</sup> completely

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exonerated in the disciplinary or criminal proceedings the official would be entitled for payment of salary for the period during which the promotion was withheld alongwith all consequential benefits. The claim of the applicant for promotion should be considered by a Review Departmental Promotion Committee as on the original date when the applicant became due for promotion. The application is disposed of accordingly without any order as to cost.

*Sharma*

Member (J)

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Member (A)

Dated the 27<sup>-1</sup>, Jan., 1989.

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