

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD

D.A. No.
T.A. No. 1099/87

199

DATE OF DECISION

R. P. Yadav

Petitioner

H. P. Tripathi

Advocate for the Petitioner(s)

Versus

Union of India and others Respondent

K. C. Sinha

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M. D. K. Agrawal, J. M.

The Hon'ble Mr. K. Obayya, A. M. A. B. Moizli A. M.

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether to be circulated to all other Benches ?

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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

Registration No. O.A. No. 1099/1987

R.P. Yadav Applicant

Versus

Union of India and others Respondents

Hon'ble Mr. D. K. Agrawal, J.M.
Hon'ble Mr. A. B. Gorthi, A.M.

(By Hon'ble Mr. D. K. Agrawal, J.M.)

The prayer in this application under section 19 of the Administrative Tribunals Act 1985 is for quashing the impugned order dated 6.12.1985 as contained in Annexure A-5 and the subsequent orders passed by the Competent Authority rejecting the representations of the applicant on 4.7.1986 and 4.6.1987 (Annexures No. A-7 and A-9).

2. Briefly, the facts are that the applicant was initially appointed as a Postman, promoted in due course as Postal Clerk w.e.f. 5.12.1986. An examination was held in the year 1978 by the department for promotion to Lower Selection Grade Scale, the result of which was declared on 28.1.1984 as contained in Annexure-2. The applicant was declared successful and posted in Jaunpur Division. The said order was issued by Director Postal Services (Headquarter) Lucknow on behalf of Post Master General U.P. Circle. It was

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specifically mentioned in the said order that officials included in the said list will be deemed to have been promoted to Lower Selection Grade w.e.f. 30.11.1983. Thereafter all of a sudden another order dated 6.12.1985 as contained in Annexure A-5 was issued by the Superintendent Post Offices, Jaunpur stating therein that the applicant i.e. Ram Pher Yadav (Postal Assistant) is promoted in Lower Selection Grade w.e.f. 22.12.1985. The applicant represented twice against the order dated 6.12.1985 but the same were rejected vide orders dated 4.7.1986 and 4.6.1987. Therefore, the present claim petition was filed.

3. Counter Affidavit has been filed by one Sri D.D.Dube son of Sri Paras Nath Dube posted as Superintendent Post Office, Jaunpur. No counter affidavit has been filed on behalf of opp. party nos. 1 or 2. The affidavit filed Sri D.D.Dube does not state that the same has been filed on behalf of the opp. parties 1 and 2 as well. The plea taken in the counter affidavit is that the applicant was given time bound promotion on completion of 16 years of service on the basis of a policy decision taken by the department. Memo 22.11.1985 (it does not contain the page number or annexure number) has been referred to by the Learned Additional Standing Counsel at the time of arguments as a document which contains a decision for grant of time bound

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promotion on completion of 16 years of service. It was contended by the Learned Counsel that the applicant was given time bound promotion on the basis of the said document. However, no plea has been raised as to why the order passed by the Post Master General as contained Annexure No.-2 dated 28.1.1984 has been superseded. The order passed by Post Master General superseding the order dated 28.1.1984 has also not been brought on record for reasons best known to the department or their counsel. We may also point out here that it has been specifically pleaded in para 6.37 of the claim petition that the applicant has been singled out to be promoted to Lower Selection Grade under time bound promotion scale without any reason. In reply to para 6.37 as contained in para 29 of the counter affidavit it has been stated that contents of para 6.34 to 6.48 have already been replied to in preceding paragraphs. However, we have not been able to lay our hand on a pleading about the cancellation of the result of examination dt. 28.1.1984 as contained in Annexure A-2. We may also mentioned at this stage that the impugned order dated 6.12.1985 contained in Annexure A-5 has been passed by Superintendent Post Offices, Jaunpur. It does not make a reference to any order passed by Post Master General superseding his earlier orders dt. 28.1.1984. If so we fail to understand how Superintendent Post Office passed an order superseding the orders of Post Master General dt. 28.1.1984. It is interesting

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to note that the impugned order dt. 6.12.1985 as contained in Annexure No.-A.5 makes a reference to a G.O. Dt. 22.11.1985 alleged to be a policy decision document. It means that the Superintendent Post Office took a decision of his own in pursuance of the G.O. dated 22.11.1985 to promote the applicant in the time bound promotion scheme notwithstanding the promotion already granted to the applicant vide order dt. 28.1.1984 passed by or on behalf of Post Master General, U.P. Circle. In this manner we are constrained to observe that either the department has withheld the documents or their action is per se arbitrary. We are also constrained to observe that the counter affidavit does not set out the reasons as to why order dt. 28.1.1984 was set aside, by whom and at what point of time. Unless the said order was set aside, the impugned order dt. 6.12.1985 could not have been passed. It is surprising that the counter affidavit also does not contain pleadings about these facts. To say the least it only indicates that the department has contested the case in a casual manner.

4. After having given our anxious consideration to the documents on record, the pleadings contained in the claim petition and the counter affidavit, we have no option but to hold that the impugned order dt. 6.12.1985 contained in Annexure A-5 of the applicant

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is arbitrary and hit by the Rule of natural justice. The same is, therefore, liable to be quashed.

5. In the result, we hereby allow this claim petition, quash the impugned order dated 6.12.1985 contained in Annexure A-5 and direct that the applicant will be treated to have been promoted to the Lower Selection Grade w.e.f. 30.11.1983 as ~~contained in the order dt. 28.1.1983~~ as contained in the order dt. 28.1.1984 (Annexure A-2)

The parties shall, however, bear their own costs.

Shanayg
Member(A)

D.K. Chaudhary
Member(J) 15.4.91

Dated: 15 April, 1991

Allahabad.

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