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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Dated : Allahabad this the 17th day of November 1995.

QUORUM :- Hon'ble Mr. S. Das Gupta, Member-A
Hon'ble Mr. T. L. Verma, Member-J.

Original Application No. 852 of 1988

Dr. Dhum Singh, son of Mr. Alam Singh,
Assistant Reserach Officer,
Military Farms School & Research Centre,
Meerut Cantt. -250 001.Applicant.
(By Advocate Sri V.K.Srivastava)

Versus

Union of India through
the Secretary, Ministry of Defence,
New Delhi. Respondent.
(By Advocate Sri N.B.Singh)

ORDER

This application under Section 19 of the
Administrative Tribunals Act, 1985 has been filed
for issuing a direction to the respondents to
confirm the applicant with effect from 1.11.1974 and
for awaring cost at Rs. 10,000/-.

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2. The applicant was initially appointed as Assistant Research Officer in Military Farm School and Research Centre, Meerut on 24.1.1973. The post on which the applicant was appointed, was shown as permanent in the advertisement inviting application for appointment but, in the order, appointing the applicant, the same was shown as temporary. A few months after his appointment, the post was declared permanent and one Mr. Hari Lal was appointed on the said post. The said Sri Hari Lal retired on 1.11.1974. In terms of appointment, on a permanent post being available, the claim of the applicant for confirmation was to be considered in accordance with Rules. The applicant, it is stated, became eligible for being considered for promotion in 1975. According to rules, as were enforced at that time, confirmation was to be considered by the departmental Promotion Committee (D.P.C) every year. The applicant, should therefore, have been considered for confirmation in 1975 after completion of the period of probation, as a permanent vacancy was available after the retirement of Sri Hari Lal. The respondents, however, did not take up the matter of confirmation of the applicant. He therefore, filed O.S.No.424 of 1980 in the Court of Civil Judge, Meerut for a declaration regarding his confirmation. The suit was decreed. The appeal, filed against the judgment and order passed by the Civil Judge, Meerut was transferred to this bench of the Tribunal for disposal. The aforesaid appeal has since been disposed of with certain observations and the applicant sent a copy of the

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afpresadd order passed by this Tribunal to the respondents. It is stated that though he has been allowed to cross two Efficiency Bars ~~but~~, his case for confirmation has not been considered by the respondents despite the observations made by this Tribunal in the order passed in O.A. No. 170 of 1986 Hence this application for the relief mentioned above.

3. The respondents have contested the claim of the applicant by filing counter-affidavit. It has been stated in the counter-affidavit, that the applicant was appointed on probation for a period of two years against the temporary post which was likely to become permanent and that the petitioner's confirmation was examined by the Departmental Promotion Committee from time to time but as the applicant was involved in a disciplinary case, which resulted in termination of his services, with effect from 7.1.1984, his confirmation was with-held. He was, however, re-instated by order dated 14.1.1985. In the meantime the post of Assistant Research Officer was abolished hence his case for confirmation on the said post could not be finalised. A.C.R. dosiers of the applicant were sent to the Ministry of Agriculture alongwith his application for appointment on ^a ~~the~~ post having better career prospects. The A.C.R. dosiers of the applicant sent to the Ministry of Agriculture have not been received back. Case of the applicant shall be considered ~~soon~~ by the D.P.C. to be convened ^{soon after} ~~in~~ the A.C.R. dosiers are received.

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4. From the pleadings of the parties and other material on record, it is clear that availability of a permanent post, against which the applicant's claim for being confirmed could have been considered, has not ~~been considered, has not~~ been denied. The respondents have not denied the averments made in para Nos. 6(c) and (d) of the application to the effect that post was declared as permanent and that Sri Hari Lal was confirmed on the said post and that after his retirement with effect from 1.11.1974, no confirmation against the said post has been done. The applicant, completed his two years of probation on 21.4.1974. He had, therefore, become due for being confirmed on the said post, if he was found otherwise fit. The averments made in the counter-affidavit do not indicate that there was anything adverse against the applicant in 1975 and thereafter before serving charge -sheet, justifying non-consideration of the application for confirmation. There was thus, apparently no justifiable reason for the respondents not to take up the case of the applicant for confirmation.

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5. From the averments made in the rejoinder-affidavit, which have not been controverted by filing supplementary counter-affidavit, however, it appears that the applicant was put under suspension and the disciplinary proceeding, initiated against him was allowed to remain pending for over five years. The disciplinary proceeding was finalised after several years only on receipt of the direction of Hon'ble Supreme Court of India in Special Leave petition and thereafter in contempt application, filed by the applicant. The applicant was removed from service

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in the said departmental proceedings and the order of the removal from service was set-aside by the High Court.

6. The applicant was reinstated by order dated 14.1.1985. The respondents have not been able to consider confirmation of the applicant till date. The reasons given for the delay in considering confirmation of the applicant in our opinion are flimsy and as such can not be accepted. In facts and circumstances of the case discussed above we are inclined to accept the contention of the learned counsel for the applicant that delay is being caused, deliberately for harassing the applicant. We are satisfied that the applicant has been denied his legitimate claim for being considered for confirmation according to rules for no just and valid reason. We therefore, consider this to be an appropriate case in which the respondents should be saddled with cost for having driven the applicant to court for seeking redressal of his grievance, which otherwise should have been given to him in normal course.

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7. In view of the discussions made above, this application is allowed and the respondents are directed to constitute a Departmental Promotion Committee for considering the confirmation of the applicant.

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within a period of three months from the date of service of this order and take appropriate decision with regard to his confirmation. The respondents are directed to pay cost of Rs. 500/- to the applicant.

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Member-(J)

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Member-(A)

VKP/-