

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

(121)

Original Application No. 1007 of 1988

Ravindra Nath Mandal ..... Applicant

Versus

Union of India & others ..... Respondents

Vinay Kumar Srivastava ..... For the applicant

K.C. Sinha ..... For the respondents

Hon'ble Mr. A.K. Sinha, Judicial Member  
Hon'ble Mr. V.K. Seth, Admin. Member

(BY HON'BLE MR. V.K. SETH, ADMN. MEMBER)

In this application the applicant has prayed for quashing of the order dated 17.5.84 (Annexure-I) of the respondents and issue of direction to the respondents to make the promotion of the applicant under 1/3 quota of L.S.G. cadre for which the examination was held on 15.2.81 by declaring his result.

2. The respondents have opposed this application.

The applicant was initially appointed as Clerk on 7.11.62 in the Department of Telecommunications. On 12.11.79 a charge-sheet was served upon the applicant for committing irregularities during the period of 1976-to-1978 Vide impugned order dated 17.5.84 by respondent No. 3 as Divisional Engineer (Phone) Varanasi, he was awarded penalty of 'Censure'. The applicant preferred an appeal against the said punishment order addressed to Director General on 4.6.1985 and on further advice given by the Divisional Engineer (Phone), he preferred a representation to the Divisional Engineer (Phone) on 28.6.85 (Annexure 2-A). Since he did not get any redressal of his grievance he has come-up before this Tribunal.

3. We have carefully gone through the record of the case and considered the arguments of the learned counsel for the parties.

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4. The respondents in their Counter affidavit have, interalia, contended that the petition is time-barred as the punishment order against the applicant was issued on 17.5.84 and the appeal was preferred on 28.6.85 and as such cause of action arose before enactment of Administrative Tribunals Act. We do not find any merit in this argument as clause 2 ~~X~~ of section 21 of Administrative Tribunals Act read as under :-

" Notwithstanding anything contained in sub-section (1) where :-

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), or sub-section (1) or within a period of six months from the said date, whichever period expires later".

5. It is quite apparent from a reading of the above provisions that the appeal has been made within 3 years immediately preceding the date on which the Act came into force and therefore the petition is quite in time.

6. In their Counter affidavit the respondents have also stated that in original statement dated 29.6.79 before C.B.I., Lucknow, the applicant had admitted the inspection of the relevant records. The relevant records could not be made available to the applicant during inquiry. We are convinced that the absence of relevant records during the proceeding obviously resulted in vitiating the same. In the interest of principles of natural justice, if the applicant so desired the evidence in support of charges in the shape of any documents, sought should have been made available for his perusal and non-availability of the same, therefore, has made the proceeding as legally untenable. In regard to the second relief claimed by the applicant, the respondents in their Counter affidavit have stated that the applicant has appeared in examination held on 16.2.81 for 1/3 quota of L.S.C. cadre but the result of the applicant has been declared ~~successfully~~ ~~and~~ ~~with permission of the relevant~~ on 16.11.88 through which the applicant has been declared

successful (CA-I). A perusal of the relevant Annexure shows that the examination was held on 15.2.81 relating to 1/3 quota of vacancies for the year of 1979-80 and this letter of the Department of Telecommunication dated 28.10.88 addressed to the Chief General Manager, U.P. Circle, Lucknow states that the following name i.e. name of the applicant may be included in the list of successful candidates, forwarded under their office letter dated 12.8.81. It is noticed from the Counter affidavit that charge-sheet under Rule 16 of CCS (CCA) Rules 1965 was issued by Divisional Engineer (Phone) on 12.11.79 which finally resulted in the award of penalty of 'Censure' on 17.5.84. As has already been discussed earlier, we do not find the said punishment as tenable and accordingly quash the same. The applicant's case for promotion on the basis of 1/3 quota of L.S.C. cadre, therefore, has to be considered after ignoring the said punishment.

7. In view of the foregoing discussion we pass the orders as follows:-

(i) The impugned order dated 17.5.84 (Annexure-I) awarding the penalty of 'Censure' to the applicant is quashed.

(ii) The case of the applicant for his promotion under 1/3 quota of L.S.C. cadre on the basis of the examination held on 15.2.81 be considered afresh after ignoring the above said punishment which has been quashed by this order.

8. In view of the facts and circumstances of the case, there will be no order as to costs.

*By Smt*  
Admn. Member

*Ashok Kumar, Justice*  
Judicial Member

Allahabad, Dated:

LUCKNOW DATED :- 26/2/93