

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
Alldb, P.D.

Original Application No. 293 / 1990
Transfer Application No.

Date of hearing 21.3.97

Dharma Prakash

Applicant(s)

Sri A. S. Dal

Counsel for the
applicant(s)

VERSUS

Suptdg Engr. All India Radio, Moradabad & others
Respondent(s)

Sri Ashok Malibey

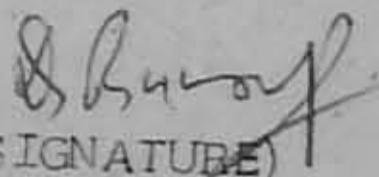
Counsel for the
respondent(s)

QUESTION:-

Hon'ble Dr. R.K. Sanin JM

Hon'ble Mr. D.S. Banerji AM

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


(SIGNATURE)

(Pandey)

RESERVED

Am to Date

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

(11)

Allahabad this the 21st day of March 1997.

Original application No. 293 of 1990.

Hon'ble Dr. R.K. Saxena, JM
Hon'ble Mr. D.S. Baweja, AM

Sri Dharma Prakash, Clerk Grade II,
in scale Rs. 260-400/950-1500, S/o
late Sri Gomti Nath Misra, posted
under the Superintending Engineer,
All India, Radio, Gorakhpur, Gorakhpur
District, R/o Mohalla Daudpur, Gorakhpur
City, District Gorakhpur.

..... Applicant.

C/A Sri A.S. Lal

Versus

1. Superintending Engineer, All India Radio, Gorakhpur.
2. Station Director, All India Radio, Lucknow.
3. Director General, All India Radio, Akashvani Bhawan, Parliament Street, New Delhi.
4. Union of India through the Secretary, M/o Information and Broadcasting, Shastri Bhawan, New Delhi.

..... Respondents.

C/R Sri Ashok Mohiley

ORDER

Hon'ble Mr. D.S. Baweja, AM

Through this application the applicant has
prayed for directing the respondents to consider the
promotion of the applicant as Clerk Grade I Rs. 1200-2040
from the date of promotion of the juniors and also to
arrange payment of the difference of pay and allowances
consequently.

Contd..2.....

:: 2 ::

2. The applicant was appointed as Clerk Grade II ^{Radio} in All India, Gorakhpur 3.8.74. He was promoted to Clerk grade I with effect from 1.12.82. However vide order dated 12.9.83, the applicant has been reverted to Clerk Grade II without taking any disciplinary action. The applicant was issued a chargesheet dated 15.11.83 with the charge of negligence which resulted in loss of Rs. 20,000/-. Inquiry was conducted. The charge sheet resulted in imposing of punishment of withholding of promotion to the next cadre for ~~•~~ five years vide order dated 25.7.84. The applicant alleges that he was entitled to continue as Clerk grade I even after 12.9.83 as he was promoted from 1.12.82 on the basis of his fitness for the post. During the period from 12.9.83 onwards juniors S/Sri A.K. Singh, M.P. Thakur, S. Kanji Lal and D.K. Paul have been promoted as Clerk grade I. The applicant further avers that as per the punishment order, the promotion was stopped for next five years in the next cadre. ^{and} as such, the promotion could not ^{be} withheld in the same cadre and therefore he was entitled to continue in Clerk grade I irrespective of the punishment imposed. It is also averred that the loss of Rs. 20,000/- had been written off by the President which implied that the applicant was not responsible for the loss and charge was thus not proved.

3. The respondents in the counter reply have at the outset opposed the application as being barred by limitation. As regards merits, the respondents submit that reversion of the applicant from Clerk grade I to grade II was not as a ~~measure~~ of punishment. His promotion was only on adhoc basis. The punishment of

Contd...3....

(13)

:: 3 ::

withholding promotion has been imposed in accordance with the provisions of CCS(COA) Rules 1965 and this penalty had no connection with his reversion. Applicant's plea that loss of Rs. 20,000/- was written off is not material as the applicant was charged ^{for} negligence. The respondents have also submitted that the alleged juniors have not been impleaded as a party and on account of this non-joinder of the necessary parties alone, the application deserves to be ~~quashed~~ ^{dismissed}. In consideration of these facts, the respondents contend that the application is not maintainable and also lacks merit and therefore deserves to be dismissed.

4. The applicant has not filed any rejoinder reply inspite of repeated opportunities being given.

5. We have heard S/Sri A.S. Lal and A. Mohiley learned counsel for the applicant and the respondents respectively. We have also perused the material on record.

6. From the averments made by the applicant we find that the applicant has mixed up the issue of promotion of his juniors and the penalty imposed vide order dated 25.7.84. The applicant admits that he was reverted from the post of Clerk Grade I vide order dated 12.9.83. If it was so, then the applicant should have represented against the same or agitated the matter for legal remedy. However there is no averment to this effect. At the same time the applicant has raised the issue of the punishment order dated 25.7.84 asserting that the same had no bar for his promotion. This is based on the plea of the applicant that as per the punishment order, the promotion was to ^{be} withheld in the "next cadre" which implied

Contd...4....

:: 4 ::

that promotion was not withheld in the same cadre and therefore he could be promoted in the clerical cadre. On going through the order dated 25.7.84, we are not impressed by the interpretation of the applicant. Here it will be appropriate to extract the relevant portion from the order as under:-

"I have consulted the Rule 11, Rule 15 CCS(CCA) 1965, I consider that in this case the penalty imposed under the rule 11 para (ii) will be sufficient for negligence committed by Sri Dharam Prakash. Hence under Rule 11 para (ii), I impose the following penalty:-

*to withhold Sh. Dharam Prakash C.G.II(Ex-cashier) promotion to the next cadre for five years with immediate effect."

From the above extract of the order, it is obvious that the penalty imposed is as per Rule 11 para (ii). Though it is agreed that the use of ~~this~~ ^{word} cadre is not appropriate but the ~~use~~ ^{meaning} of 'cadre' in the order by the disciplinary authority has to be interpreted in the context of Rule 11(ii). The 'cadre' in the order meant the next grade or not different cadre. The interpretation of the applicant is totally untenable. The punishment imposed was therefore for withholding of the promotion to the next grade for five years. The applicant had been already reverted to Grade II and thus it meant promotion to grade I. In view of this position, the applicant could not be promoted in the face of the punishment imposed. In any way, the applicant has also not prayed for the quashing of the punishment order. Therefore the pleadings made with regard to this punishment order and the learned counsel of the applicant was at pains to dwell upon the same during hearing, have no nexus with the relief prayed for.

Contd...5...

:: 5 ::

8. The main relief prayed for is the promotion with reference to his juniors. The juniors have been named. But no details of the seniority list and promotion orders have been furnished in the original application. On perusal of the paper book, we notice that the applicant had filed an amendment application to clarify the position with regard to the seniority of the applicant vis-a-vis that of the alleged juniors and the details of the promotion orders of the juniors. Copy of this application had been also served on the counsel of the respondents. However from the record, it appears that the applicant did not press for this application ~~as~~ ^{has been} no order passed to incorporate the amendment in the original application. Since the details in the amendment application are material to the adjudication on the reliefs prayed for, we are taking note of the same. The applicant has stated that Sh. Shambu Nath at S.No. 42 of the seniority list and Sh. D.K. Lal at S.No. 64 have been promoted as Clerk Grade I with effect from 27.2.88 and 5.8.88 vide orders dated 17.3.88 and 5.9.88 respectively. Date of promotion of Sri M.P. Thakur and A.K. Singh could not be obtained by the applicant but he submits they have been also promoted in 1988. The applicant has stated that in the seniority list issued on 31.3.78 he was at S.No. 41 and thus senior to the above named employees. The applicant has neither brought the seniority list 31.3.78 nor the promotion orders of so called juniors on record. The respondents in ~~their~~ reply to para 15 of the application have not denied the promotion of the alleged juniors named by the applicant.

9. Taking the information furnished by the applicant

(1) Contd...6....

:: 6 ::

is factual, then the so called juniors were promoted during the period when the applicant was undergoing punishment of withholding promotion for five years. The applicant seems to have sought the relief of promotion from the date his juniors have been promoted on the interpretation of the punishment order as discussed earlier. On this aspect we have already indicated our findings that this plea is not tenable. Apart from merits of this relief, we agree with the respondents that application is not maintainable due to non joinder of the alleged juniors as a party. The alleged juniors are considered as necessary party as any order in favour of the applicant will have serious affect on their interest. In the matter of seniority and promotion the non impleadment of the alleged juniors who are necessary party is fatal and such an application is not maintainable on this account alone.

10. Now we come to the issue of the application being barred by limitation raised by the respondents. As brought out earlier in para 8, the alleged juniors were promoted in 1988. The application has been filed on 5.4.90. Keeping this fact in view the application is not barred by limitation. The respondents have based their objection taking that the cause of action arose before 25.7.84, when the applicant was reverted. The applicant has claimed promotion from the date his juniors have been promoted. He has not challenged his reversion from 12.9.83 and the respondents' submission is not tenable. In the consideration of these facts, we are unable to agree with the respondents that the application is time barred.

(D) Contd...7....

(12)

:: 7 ::

11. In the result of above, the application
lacks merit and the same is dismissed accordingly. No
order as to costs.

Member - Chairman

Bartholomew

Member - J

Arvind.