

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1388 of 1992

Allahabad this the 29th day of August, 2000

Hon'ble Mr.S.K.I. Naqvi, Member (J)
Hon'ble Mr.M.P. Singh, Member (A)

N.N. Gupta, Son of Late Shri Sita Ram, aged about 53 years, resident of III/104, Customs Excise Colony, Varanasi.

Applicant

By Advocate Shri Lalji Sinha

Versus

1. Union of India through Secretary, Central Board of Excise and Customs Excise, North Block, New Delhi.
2. Collector, Central Excise, Allahabad, 38, M.G. Marg, Allahabad.

Respondents

By Advocate Shri S.C. Tripathi

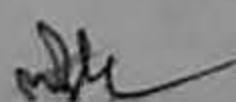
O R D E R (Oral)

By Hon'ble Mr.M.P. Singh, Member (A)

The applicant has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985, for his non-promotion to the post of Superintendent Grade 'B'.

2. Brief facts of the case are that the applicant was appointed as Sub Inspector on 19.10.1962 and was promoted to the post of Inspector on 04.8.1972. A promotion order

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was issued by respondent no.2 on 10.6.1992 promoting S/Shri Baya Shanker Tiwari, M.D. Pandey and Ram Saram Yadav, all juniors to the applicant to the post of Superintendent Grade 'B'.

3. A charge-sheet was served on the applicant on 06.7.1992, wherein it was alleged that the applicant alongwith Sri S.N.-Tripathi, Sri M.C. Shukla and Sri J.L. Shukla violated the provision of Rule 3(1)(i), (ii) and (iii) of the C.C.S. Conduct Rules, 1964. The charge-sheet was absolutely without any basis for recovery which was made in the night and the recovery memo could not be made as such at late hours. There was no allegation that any loss was caused to the department. The case of the applicant is that the charge-sheet was served ~~on~~ him in July, 1992 whereas the order ~~promotion~~ was issued on 10.6.1992. Thus, the order dated 10.6.1992 is in violation of Article 14 and 16 of the Constitution of India. The applicant could not be deprived of his right for promotion to the post of Superintendent Grade 'B', merely because some departmental case was ~~under~~ under investigation.- in view of the case reported in 1991 S.C. 2010 Union of India Vs. K.V. Janki Raman. Aggrieved by this, he has filed this O.A., seeking direction to the respondents to promote him to the post of Superintendent Grade 'B' from the date ~~his~~ his juniors

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had been promoted and pay him all arrears of pay, with all consequential benefits.

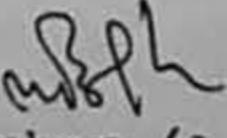
4. The respondents have contested the case and have stated that the applicant was not promoted to the post of Superintendent because some inquiry was going on--against the applicant. According to the respondents, they followed the sealed cover procedure, in view of the inquiry pending against the applicant. The respondents have stated that the representation of the applicant is under active consideration and a decision in this regard will be communicated to him in due course of time. In view of the foregoing, the O.A. is devoid of merit and is liable to be dismissed.

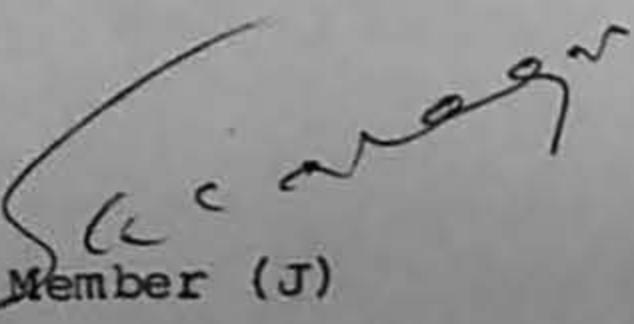
5. Heard the learned counsel for the parties and perused the record.

6. It is not in dispute that the charge-sheet was served on the applicant on 06.7.1992, whereas the meeting of D.P.C. to consider the applicant and his juniors, was held before this date. It is a settled law by the Hon'ble Apex Court that sealed ~~re~~cover procedure will be followed only incase charge-sheet has been served on the employee on or before the date of meeting of D.P.C. In view of the fact that no charge-sheet was served on the applicant ~~on or~~ before he was considered for promotion to the

post of Superintendent Grade 'B', sealed cover procedure should not have been followed in his case, and the recommendation of the D.P.C. should have been implemented and the case of the applicant should have been considered alongwith his juniors for promotion to the post of Superintendent Grade 'B'. With this position in view, the directions are required to be given to the respondents to implement the recommendation of D.P.C., through to which the juniors of the applicant namely S/Shri Daya Shankar Tewari, M.D. Pandey and Ram Saran Yadav, were promoted on 10.6.1992.

7. In view of the above discussions, the O.A. is allowed and the respondents are directed to implement the recommendation of D.P.C. through which juniors to the applicant namely S/Shri Daya Shankar Tewari, M.D. Pandey and Ram Saran Yadav were promoted to the post of Superintendent Grade 'B' on 10.6.1992, within a period of 3 months from the date of communication of this order. Inbase the applicant is found suitable and promoted to the post of Superintendent Grade 'B', all consequential benefits should be paid to him in 3 months thereafter. No order as to costs.


Member (A)


Member (J)

/M.M./