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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
ADDITIONAL BENCH AT ALLAHABAD

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Allahabad : Dated this 6th day of December, 1996

Original Application No.726 of 1993

District : Allahabad

CORAM:-

Hon'ble Mr. S.Das Gupta, A.M.

Hon'ble Mr. T.L. Verma, J.M.

1. Shyam Sunder Dubey S/o Late Daya Shanker Dubey
R/o 63/7-A, Madhwapur,
PO-Bairhna, Allahabad.
2. Lal Sahib Dube Son of Late Daya Shanker Dubey,
R/o 63/7-A, Madhwapur, PO-Bairhn, Allahabad.

(By Sri OP Khare, & Sri AN Sinha, Advocates)

. Applicants

Versus

1. Union of India through the C&A G of India,
10, Bahadur Shah Zafar Marg, New Delhi.
2. The principal Accountant General Office of
the A.G. (A&E) I, U.P., Allahabad.

(By Sri NB Singh, Advocate)

. Respondents

ORDER

By Hon'ble Mr. S. Das Gupta, A.M.

This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking direction to the principal Account General U.P. (Respondent No.2) to grant the applicant notional promotion as Senior Accountant in the pay scale of Rs.1400-2600 retrospectively from the date immediately after he passed departmental examination by creating a supernumerary post. He has also sought a direction to the respondent no.2 to fix his pay in the higher post of Senior Accountant retrospectively granting all consequential benefits

including the post retirement benefits with interest on the arrears of pay and pension @ 18% per annum. The admitted facts in this case are that the applicant was promoted as Accountant from the post of LDC by the order dated 3-1-1989. After completing three years' service as Accountant, he became eligible to appear in the qualifying examination for further promotion to the post of Senior Accountant. He appeared in the aforesaid ^{and} was declared passed as per results qualifying examination in February, 1992/ notified by an office order dated 28-5-1992. The applicant was due to retire on 31-7-1992. He made representation to the respondent no.2 on 5-6-1992, to constitute a departmental promotion committee for consideration of his promotion and promoting him before he retired from service. However, the DPC meeting was not held prior to the date of retirement and he could not be promoted. The plea of the applicant is that when the administration allowed him to appear in the qualifying examination for Senior Accountant, they were aware of the date of his retirement and, therefore, on his passing the examination, if a vacancy was available, he had a legal right to be promoted and by rejecting his claim for promotion, the principles of promisory estoppel has been contravened. He further emphasised that he had completed three years as Accountant and passed departmental examination much before his date of retirement and had, therefore, fulfilled necessary requirements for being promoted as Senior Accountant.

2. The respondents have contested the case by filing a counter affidavit. Their case is that according to the circular dated 1-8-1987 issued by the Controller and Auditor General of India (Respondent No.1), the eligibility for promotion as Senior Accountant is determined as on 1st of October of the preceding year.

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The applicant had not completed three years service as Accountant on the crucial date i.e. 1-10-1991 for the panel year 1992. He was, therefore, not considered for promotion to the post of Senior Accountant during the panel year, 1992. He would have been eligible for consideration for promotion as Senior Accountant for the panel year 1993 on the basis of the crucial date 1-10-1992 but he had already retired on 31-7-1992 and therefore could not be considered for promotion.

3. In the rejoinder affidavit filed by the applicant, he has averred that he had completed three years service as Accountant on 3-1-1992 and, therefore, was eligible for promotion as Senior Accountant immediately after declaration of the result on 28-5-1992 when a vacancy did exist on that date. The DPC should have been constituted immediately after the declaration of the result and immediately the applicant could have been promoted. It is his contention that fixing a crucial date as 1st October of the preceding year for determining the eligibility is wholly arbitrary. He has drawn reference to Para 12 of the Recruitment Rules, pertaining to the post of Senior Accountant which states that promotion to that post shall be effected on seniority basis subject to rejection of unfits from among accountants with three years regular service in the grade having passed departmental examination.. The applicant's contention is that the requirements as laid down in the Recruitment Rules have been fulfilled by him. Therefore, he could not have been ignored on the ground that he had not completed three years service on the crucial date 1st October, 1991.

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4. ~~The~~ During the pendency of the application, the original applicant expired and he was substituted by his legal heirs as the applicants.

5. We have heard learned counsel for the parties and perused the record carefully.

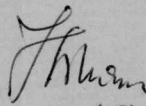
6. It is clear from the averments that the applicant had passed qualifying examination on 28-5-1992 when the results were declared and he retired from service on 31-7-1992. Thus, the interval between passing qualifying examination and the date of retirement was very short. The applicant certainly had a right to be considered for promotion but not right to be promoted. Had the DPC meeting taken place during the short interval he might have claimed that he also be considered for promotion irrespective of the crucial date for consideration of eligibility. As it was, it is the case of no one that a DPC meeting had taken place during this short interval and the applicant's case was ignored. We, therefore, do not see any necessity to examine the question as to whether the crucial date fixed by the respondent by an executive order is valid order or not. Suffice ^{it} to say that no DPC meeting ^{was} stated to have been held between the date he was declared passed in the qualifying examination and the date of his retirement and obviously the DPC meetings are held as per the departmental schedules and not on ad hoc basis, in the interest of a particular employee. The applicant, therefore, could not have claimed that the DPC meeting be held merely to promote him irrespective of the normal schedule of such meetings.

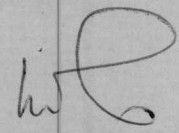
7. The principle of promisory estoppel also cannot be successfully invoked in this case. Passing a qualifying examination, is a requirement for becoming

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eligible for consideration for promotion. However, being allowed to appear in such examination, does not imply that any promise is ^{held} ~~made~~ out to the candidate that he shall be promoted. The promotion is dependent on several factors, one of which is that the aspirant to the higher post shall qualify in an examination. We do not consider it a fit case in which the elements of promisory estoppel are present. After all, the promisory estoppel must rest on a promise held out by one party to the other and the breach of such promise whereas in the present case we neither see any promise being held ^{out} by the respondents to the applicant nor any breach thereof. It was ^{unfortunate} ~~in the form~~ that the interval between the applicant's passing the qualifying examination and the date of his retirement was too short. We can commiserate with the applicant for his misfortune, ^{but} we cannot grant the relief prayed for in the absence of any enforceable right.

8. In view of the foregoing, this application is dismissed. The parties shall, however, bear their own costs.


Member (J)


Member (A)

Dube/