

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

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Original Application No. 147 of 1993

Allahabad this the 22nd day of September 1998

Hon'ble Mr. S. Dayal, Member (A)
Hon'ble Mr. S.K. Agrawal, Member (J)

Aditya Kumar Jaiswal, A/a 39 years, S/o Late Onkar Nath Jaiswal, working as Auditor in the office of A.G.(Audit) I U.P., Allahabad.

Applicant

By Advocate Sri J.P. Gupta

Versus

1. Union of India through the Comptroller and Auditor General of India, 10, Bahadur Shah Zafar Road, New Delhi.
2. The Accountant General (Audit) I, U.P. Allahabad.
3. Senior Deputy Accountant General (Administration), A.G.U.P. (Audit 1), Allahabad.
4. Sri Gopal Narain Singh, Senior Auditor, Office of Allahabad, A.G.(Audit) 1, A.G.U.P., Allahabad.

Respondents

By Advocate Sri N.B. Singh

O R D E R

By Hon'ble Mr. S.K. Agrawal, Member (J)

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In this O.A., the prayer of the applicant is to quash the order dated 03/1/92, deleting the name of the applicant for promotion one day after his joining

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as Senior Auditor and to promote the applicant as Senior Auditor w.e.f. 01.1.1992 with all consequential benefits.

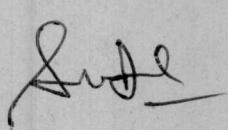
2. The facts of the case as stated by the applicant are that the applicant was appointed and joined as Auditor in the Office of A.G. (Accountant General) on 28.6.80 and since then he is continuously working. The applicant was promoted as Senior Auditor in the scale of Rs.1400-2600 vide order dated 01.1.92 passed by respondent no.3 and the applicant in compliance of the above order joined as Senior Auditor on 02.1.92 and also sent his joining letter to administration section on the same date. It is submitted that respondent no.3 vide his order dated 03.1.92 deleted the name of the applicant from the list of promoted Senior Auditors one day after the joining of the applicant as Senior Auditor. The applicant made representation on 10.1.92 against the order dated 03.1.92 to respondent no.2, which was rejected vide order dated 29.1.92 on the ground that a criminal case is pending against the applicant. Thereafter, the applicant made representation on 06.3.92 to respondent no.1 against the deletion of his name from the promotion list one day after his joining as Senior Auditor which is still pending. It is also submitted vide order dated 31.12.1992, the respondent no.3 was pleased to promote as many as 43 Auditors to the post of Senior Auditors (all are juniors to the applicant) and Sri Gopal Narain Singh-respondent no.4 at serial no.2 in the order dated 31.12.92 was also promoted on ad hoc basis although a criminal case is pending against him which is clear from the order itself. It is submitted that promotion of the applicant was

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illegally and arbitrarily withheld by the respondents without any basis. The F.I.R. which was lodged under Section 4 of Dowry Prohibition Act at the Police Station has no basis as no charge-sheet in the matter was filed and this was pertaining to the marriage of younger brother of the applicant, which could not be solemnized. It is, therefore, requested that this Tribunal be pleased to quash the order dated 03.1.92 deleting the name of the applicant one day after his joining as Senior Auditor and to promote the applicant as Senior Auditor w.e.f. 01.1.92 with all consequential benefits.

3. The counter-affidavit was filed. In the counter-affidavit, it was stated that vide order dated 01.1.92, 49 persons were promoted to the post of Senior Auditor with the stipulation that the order will take its effect from the date they take over as Senior Auditor. It is submitted that the applicant was suspended w.e.f. 10th March, 1991 due to involvement in a criminal case and the said pendency of criminal proceedings has come to the notice of the respondents while issuing the order dated 01.1.1992. Therefore, corrigendum was issued on 03.1.92 through which the applicant's name was deleted from the said promotion order. It is submitted that merely getting place in the promotion list, no right is conferred on the applicant for getting promotion in view of the fact that the said order shall take its effect only from the date he takes over the charge of Senior Auditor.


A decision has been taken to accord prosecution sanction for prosecuting the applicant but, by mistake this fact could not be brought before the Departmental promotion Committee. As a result of which, the name of the

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applicant was included in the promotion order dated 01.1.1992 and the said error came to the notice on the very next day before the order dated 01.1.1992 was given effect, as such corrigendum was issued on 03.1.1992. It is said that a separate joining report is to be obtained from each candidate before they are actually considered and promoted. No such joining report was ever accepted from the applicant. It is further submitted that Government order dated 12.1.98 read with the order dated 31.7.91 issued by the Department of personnel & Training clearly stipulated that persons against whom the criminal proceeding has been initiated and are pending should not be promoted unless the said proceedings are concluded. Therefore, on the basis of the averments made in the counter-affidavit, the respondents have prayed to dismiss this O.A. with cost.

4. The rejoinder was also filed by the applicant. In the rejoinder-affidavit, facts stated in the O.A. are reiterated.

5. Heard, the learned lawyer for the applicant and learned lawyer for the respondents and have perused the whole record.

6. Learned lawyer for the applicant has submitted that once an employee is promoted and he joined in pursuance to the said promotion order, his name cannot be deleted from the promotion list.

7. On the other hand, learned lawyer for the respondents while objecting the above submissions

argued that mere getting place in the promotion list, no right is conferred on the applicant and he referred Rule 31-A of F.R. as issued by Government of India.

8. It is an admitted fact that vide order dated 01.1.1992, the applicant was promoted as Senior Auditor alongwith others. On 02.1.92, the applicant sent the joining report to the administration section as per directions vide order of respondents dated 01.1.92. Thereafter, the name of the applicant was deleted vide order dated 03.1.92. It is also evident from the record that a criminal case was registered under Section 4 of Dowry Prohibition Act in connection with the marriage of the younger brother of the applicant which could not be solemnised on 09.3.91.

9. In Shanker Nath Mukhopadhyaya Vs. U.O.I. and Others (O.A. No. 1333/96, decided on 04.4.97 by Calcutta Bench of C.A.T.), the applicant was promoted vide order dated 06.11.96 but his promotion was cancelled on 08.11.96 as no vigilance clearance was given due to investigation for disproportionate assets. It was held that promotion cannot be denied unless charge-sheet is served which was given on 20.11.96. Since there was no charge-sheet on 06.11.96, it was not a case of any error and the order, cancelling the promotion dated 08.11.96 was quashed.

10. In 'Vijai Bahadur Singh Vs. Union of India and Others 1998(37) A.T.C. 526(O.A.85/97, decided on 05.12.97) the applicant was working as Assistant Commissioner of Income Tax and was promoted vide order dated 10.4.97. The order was issued and the applicant acted upon.

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Held, charge having been taken by the applicant, cancellation of promotion would cause prejudice to the applicant.

11. In Laxmi Chand Vs. U.O.I. & Ors. (1998) 37 A.T.C. 599', the applicant was promoted as Assistant Store Keeper, subsequently reverted on the ground that he had been promoted by mistake. Order involves civil consequence and such order cannot be passed without complying Audi Alteram Partem - party should be given an opportunity to meet his case before an adverse decision is taken.

12. In 'Dhirendra Kumar Dass Vs. Union of India and Others S.L.J. 1997(3) 204', the applicant was promoted in the year 1991. After nine months vide order dated 27.1.92, he was reverted without inquiry. Held, reversion was in violation of Article 311(2) of the Constitution of India.

13. In the instant case, it is established that after promotion, the applicant submitted his joining report, therefore, deleting his name was altogether in violation of principle of natural justice and the way in which the name of the applicant was deleted after he acted upon in pursuance of the order of promotion, cannot be permitted. Therefore, the impugned order dated 03.1.92 is liable to be quashed.

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14. We, therefore, allow this A.O.A. and quashed the impugned order dated 03.1.1992. Looking to the facts and circumstances of the case, parties shall bear their own costs.

S. J. Joseph
Member (J)

Shanmugam
Member (A)

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