

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Allahabad this the 15th day of May, 2001

C O R A M :- Hon'ble Mr. Justice R.R.K. Trivedi, V.C.
Hon'ble Maj. Gen. K.K. Srivastava, A.M.

Orginal Application No. 43 of 1994

V.S. Pandey, Head Clerk, Local Office,
Employees State Insurance Corporation,
51, Tilak Marg, Allahabad.

.....Applicant.

Counsel for the applicant :- Sri Arvind Kumar

V E R S U S

1. Union of India, through the Director General,
E.S.I. Corporation, E.S.I.C Bhawan, Kotla Road,
New Delhi.

2. Regional Director, E.S.I. Corporation, Panchdeep
Bhawan, Sarvodaya Nagar, Kanpur.

.....Respondents.

Counsel for the respondents :- Sri B.N. Asthans
Sri P.K. Asthana

O R D E R (Oral)

(By Hon'ble Mr. Justice R.R.K. Trivedi, V.C.)

By this O.A applicant has prayed for a direction to the respondents to promote the applicant as Manager grade II in the grade of Rs. 1640-2900 w.e.f April, 1993. It is also prayed that respondents may be directed to promote the applicant from the date persons junior to him were promoted as Manager grade II.

applicant was serving as Head Clerk in local office of the E.S.I. Corporation at Allahabad. While he was a U.D.C in the said office, he was awarded punishment, on 15.09.83 by disciplinary authority, of withholding of next three increments without cumulative effect. The order was maintained in appeal and revision, aggrieved by which, applicant filed O.A No. 507/1988 in this this Tribunal. The O.A was allowed by Division Bench of this Tribunal on 25.11.92 by the following order :-

" Now we come to the matter of confirmation of the applicant. A communication dated 07.10.1983 issued by the Additional Director indicates that the Departmental Promotion Committee found the applicant 'not fit' for substantive appointment. Annexure-1 to the Rejoinder Affidavit filed by the applicant is a communication dated 07.08.1989 of the Regional Director to the applicant informing him that the Departmental Promotion Committee passed its recommendation regarding the applicant on the sole ground that he had been punished in the departmental proceedings. In view of the fact that we have quashed the order of the punishing authority, the recommendation of the Departmental Promotion Committee stands automatically vitiated. It is, therefore, quashed so far as it pertains to the applicant. It shall consider again the case of the applicant for consideration on the footing that on the relevant date, no punishment was subsisting against the applicant. The Regional Director shall, therefore, confirm the applicant in accordance with the recommendation of the Departmental Promotion Committee. It goes without saying that the applicant shall be given confirmation from the due date. Once this done, the seniority of the applicant will automatically follow. "

3. In pursuance of the aforesaid order, the seniority list was corrected and communicated vide letter dated June, 1993 (Annexure-A- 4). His name was mentioned in seniority list just below Sri Lal Ji Yadava at Sl. No. 43.



After the seniority list was corrected, applicant became entitled for being considered for promotion to the next higher grade i.e. Manager grade II. By letter dt. 16.07.93 (Annexure A- 5) applicant was asked to communicate by 20.07.93 as to whether the applicant is willing to accept promotion to the post of Manager grade II on adhoc basis and also willing to move out side Allahabad. According to the applicant, this letter was received by him on 26.07.93. The respondents on 21.07.93 issued an order promotting several persons as Manager grade II who were junior to the applicant. When applicant was not promotted, he filed this O.A on 07.01.94. The applicant retired as Head Clerk in the same month.

4. Sri Arvind Kumar, learned counsel for the applicant has submitted that the applicant has been deprived of the chance of promotion by manoeuvring. Learned counsel for the applicant has placed before us the letter dt. 16.07.93 by which applicant was asked to ^{communicate} ~~undertake~~ his willingness to go on promotion and to join another place. Applicant was required to communicate his willingness by 20.07.93 though the letter was received on 26.07.93. It is submitted that due to short time allowed by the letter dt. 16.07.93, applicant ^{was} ~~shall~~ not be able to communicate his willingness and immediately on expiry of the date 20.07.93, order of promotion was issued on 21.07.93. Learned counsel for respondents has filed three letters of the applicant to justify that he was not willing to go out side Allahabad on promotion. It is submitted that the letters are of the dt. 08.06.92, 04.09.92 and 15.03.93. Learned counsel has also placed before us a note dt. 05.06.93 given by Regional Director that the applicant has expressed his unwillingness to go out side on promotion. It is submitted that if such a note was already ⁱⁿexistance, there was no question for issuing the letter dt. 16.07.93. Learned counsel has submitted that all these ^{were} done only to

deprive of the chance of promotion ~~to~~ the applicant. In this connection, it has also been submitted that though order of Tribunal was passed on 25.11.92, the seniority list was corrected after 8 months in June, 1993. Sri A.K. Asthana, learned counsel for the respondents on the other hand has submitted that in response to letter dt.

16.07.93, applicant never communicated his willingness to go out side Allahabad on promotion. He has placed before us a letter of the applicant dt. 27.07.93 (Annexure A- 7) in which applicant has admitted receipt of the letter dt. 16.07.93 on 26.07.93 but he has only tried to express that required consent could not be communicated within the time allowed. He has not said any thing about his actual willingness to go on promotion and join at any place allocated by the respondents. It has been further submitted that by letter dt. 30.08.93 (Annexure A- 8) though the applicant has lodged the protest but he has not said that he is prepared to go at any place on promotion.

5. We have carefully considered the submissions made by counsel for the parties.

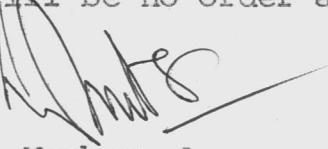
6. It is true that respondents delayed the matter in correcting the seniority list for about 8 months. During this period Sri Ram Sahai Dube was promoted in April, 1993 though he was junior to the applicant and in seniority list his name was shown at Sl. No. 46. On 21.07.93, respondents promoted 8 persons to the post of Manager grade II. Some of them were junior to the applicant. In August, 1993 Vishnu Dayal Dixit was promoted though he was also junior to the applicant. All these facts could have gone in ~~the~~ favour of the applicant but his own action ~~by~~ ^{showing} expressing in letter dt. 27.07.93 (Annexure A- 7) goes a long way to show that he was not willing to leave Allahabad and was prepared to forego chance of promotion.



The contents of the letter show that it was not written by a person having keen desire to join promotional post. He, in a very casual manner, informed that letter was received on 26.07.93 and reply was required on 20.07.93. This clearly indicates casual approach. From the conduct of the applicant, it is clear that probably he was not willing to go out side on the promotion by way of adhoc ^{promotion} ~~work~~ for short time. The regional Director in his note has also mentioned that he declined to go out side Allahabad due to his personal affairs.

7. In the above facts and circumstances, though conduct of the respondents is not very much appreciable, we are not inclined to grant relief to the applicant as claimed in this O.A. The O.A is accordingly dismissed.

8. There will be no order as to costs.



Member- A.



Vice-Chairman.

/Anand/