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OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 21st day of November, 2000

Original Application No.1287 of 2000

CORAM :-

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

Hon'ble Mr. VK Majotra, A.M.

Hari Dutt Sharma

Son of Shri Mangal Sen Sharam,

Resident of Qr.No.R-E 24,

Railway West Colony, N.Rly,

Rampur.

(Sri ABL Srivastava, Advocate)

..... Applicant

Versus

1. Union of India through

The General Manager,

Northern Railway,

Baroda House,

New Delhi.

2. The Divisional Railway Manager,

Northern Railways, Moradabad Division,

Moradabad.

3. The Senior Divisional Engineer (G)

Moradabad Division,

Moradabad,

4. Shri Bhanu Prakash, Divisional Engineer II,
(Sri Moradabad Division, Moradabad.

(Sri Prashant Mathur, Advocate)

..... Respondents

O R D E R (O_r_a_l)

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

The facts giving rise to this application are that the applicant Sri Hari Dutt Sharma, was promoted to the post of Senior Section Engineer from the post of Junior Engineer vide order dated 15-1-1999. A copy

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of the order has been filed as Annexure-A-3 and his name is shown at Serial No.7. In pursuance of this order of promotion the applicant joined on 16-1-1999 as is clear from the document annexed as Annexure-A-4 to the OA. The case of the applicant is that from the date of joining, he continued to discharge the function of Section Engineer. However, by the impugned order dated 27-9-1999, a direction has been issued to revert the applicant. His grievance is that the order has been passed without giving any opportunity of hearing. Learned counsel for the applicant has also submitted that the amount paid to the applicant in pursuance of the order dated 15-1-1999 is also being recovered. Learned counsel for the applicant has quoted the judgement of the Division Bench of the Hon'ble High Court of Judicature at Allahabad in the case of Dr. Avneesh Kumar and others Vs. Director Indian Veterinary Research Institute Bareilly and others, 1999(2) ATJ 306. The relevant paragraphs of the judgement reads as follow :-

"26. When all the requirements of valid promotions were fulfilled, there remains nothing to keep the promotions of the petitioners in abeyance and the petitioners could have not been reverted. The fact that the order of reversion was later on withdrawn, itself shows that the respondents have realised their mistake in reverting the petitioners to the posts from which they were promoted. It is not a case where the promotion was honest, meaning thereby that it was without jurisdiction or contrary to the rules. No doubt the order does not indicate as to why the promotions were kept in abeyance, resulting into reversion of the petitioners to the lower posts.

27. It has been pointed out that complaints were received by the respondents regarding certain irregularities or illegalities in the said promotions. When the order of promotion became effective, we are of the view that the principle of audi alteram partem demanded that the petitioners be served with show cause notice indicating that they were wrongly appointed. It is not a case where the petitioners themselves have committed any irregularities. It is also not a case of the respondents that the

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petitioners have concealed or suppressed certain facts or committed any fraud in getting themselves to be promoted on higher grade, hence, for that reason, we are of the view that the order of reversion suffers from violation of principles of natural justice, which is embedded in Article 14 of the Constitution of India."

2.. The facts of the present case are clearly covered by the aforesaid judgement. The applicant was promoted by the order dated 15-1-1999. He joined on 16-1-1999. Thus, the order of promotion was given effect. Therefore, while passing the order cancelling promotion on 27-9-1999, it was obligatory on part of the respondents to provide adequate opportunity of hearing to the applicant, which in fact, in the present case, has not been done. The Framing of charge sheet or service of charge sheet alone could not render the promotion honest. The respondents could promote the applicant even during the pendency of the disciplinary proceedings. Thus, the applicant cannot be blamed for this lapse on part of the respondents. In the circumstances, the opportunity of hearing was necessary.

3. The second contention of the learned counsel for the applicant is that the charge sheet was served on the applicant on 29-12-1998 to which a reply was given by him on 06-1-1999. However, another charge sheet dated 04-1-1999 has been served on him with respect to the same charge. It has been ~~submitted~~ ^{submitted} that the second charge sheet is illegal and it may be quashed. Learned counsel for the applicant has placed before us both the charge sheets. We have tried to compare the two charge sheets to find out any difference. However, we could not notice. In any view of the matter the legality of the proceeding is not affected merely because the second charge sheet in respect of the same matter has been served by oversight or by mistake.

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The applicant can be subjected to disciplinary proceedings with regard to a charge ~~where~~^{whether} it is mentioned in one paper or two papers. In the circumstances we ~~leave~~^{leave} it open to the applicant to invite attention of the departmental authorities and obtain a clear direction as to which of the two charge sheets shall be the basis for disciplinary proceedings. As such, a representation shall be filed within two weeks from today which shall be replied by the disciplinary authority within two weeks from the date of service of this order.

4. For the reasons stated above, this application is allowed partly. The order dated 27-9-1999 (Annexure-A-4 to the OA) is set aside. The applicant shall be entitled to continue on the promotional post and also ^{for} refund of any amount which has been recovered from him. However, it shall be open to the respondents to pass a fresh order in accordance with law as per observations made above.

5. The office is directed to hand over a copy of the above order to the counsel for the applicant within a week.

6. There shall be no order as to costs.

Uk Majhi

Member (A)

Vice Chairman

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