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22.9.92.

.... Applicant

-Versus-

... Respondents

: M/s R.P.Mohapatra,
B.N.Rath,
B.B.Rath,
S.N. Mohapatra
Advocates.

: Mr. Ganeswar Rath, Addl. St. Counsel

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CORAM:

THE HONOURABLE MR. K.P.ACHARYA, VICE CHAIRMAN

AND

THE HONOURABLE MISS.USHA SAVARA, MEMBER (ADMN.)

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1. Whether reporters of local news papers may be allowed to see the judgment? Yes.
2. To be referred to the reporters or not? *Yes*
3. Whether Their Lordships wish to see the fair copy of the judgment? Yes.

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J U D G M E N T

K.P.ACHARYA, V.C.

In this application under section 19 of the Administrative Tribunals Act, 1985, the Petitioner raised a grievance on account of nonconsideration of his case for promotion to the Post of Junior Grade of Indian Information Service - Group 'A'.

2. Shortly stated the case of the Petitioner is that the Petitioner joined the Central Information Service on 5th May, 1971 in Grade IV and in course of time he was promoted to Grade III on selection basis on the recommendation of the Departmental Promotion Committee from amongst employees serving in Grade IV. According to the Petitioner, in the seniority list of Grade III employees, the petitioner was placed against Sl. No. 39. Twenty Two Officers namely Opposite Party Nos. C to X were given promotion to the post of Junior Grade Officers of the Indian Information Service -Group 'A' with effect from 25th February, 1987 and these officers were promoted ~~to~~ from Grade III. Further case of the petitioner is that his case was not considered for promotion and hence he was superseded for which ~~this~~ representation filed by the petitioner didn't any fruitful result and hence this application has been filed with the aforesaid prayer.

3. No counter had been filed in this case. for the reasons best known to the Opposite Party Nos. A and B. But all the same law is well settled that even ^{in an} ~~ex parte~~ ^{plaintiff} proceeding ~~onus~~ lies in the ~~pleadings~~ ^{pleadings} to prove ~~the~~ ^{with} satisfactory evidence that he is entitled to a decree to be passed in his favour. Similarly, in the present case, even though no counter has been filed yet, heavy onus lies on the petitioner to prove ^{with} ~~the~~ satisfactory evidence that

his case was not considered.

4. We have heard Mr. B.B.Ratho learned counsel appearing for the petitioner and Mr. Ganeswar Rath, learned Standing Counsel. We have perused the pleadings of the parties and the relevant documents.

5. It was submitted by Mr. B.B.Ratho learned counsel appearing for the Petitioner that since no counter has been filed, denying the allegations of the petitioner regarding nonconsideration of his case for promotion, the case of the petitioner should be accepted and the application should be allowed. Of course, when no statement has been filed by the adversary of the Petitioner challenging or counter acting the averments finding place in the petition, the facts stated by the petitioner in his pleadings can be accepted. But where unimpeachable documentary evidence filed in the case, counter acts the case of the petitioner, in such circumstances, the allegations of the petitioner cannot be accepted as true and correct. Annexure 4 dated 21st May, 1987, has been filed by the petitioner. It is a letter sent by the Under Secretary to the Government of India in the Ministry of Information and Broadcasting addressed to the present petitioner, it runs thus:

"I am refer to your representation dated 17-3-1987 on the subject noted above and to state that promotion from Grade III to Grade II is made on the basis of selection and not on seniority, subject to being unfit. Your name figures at S.No.35 of the seniority list. We regret to inform you that the DPC convened by the UPSC did not find you suitable for promotion to Grade II".

VW

6. From the contents of the above quoted letter, it is clearly indicative that the case of the petitioner was considered but not found to be suitable. A Government employee has no right to claim promotion but he has right to urge that his case should be considered. This document has been filed by the Petitioner himself. Therefore, there is no escape from the conclusion that the case of the petitioner was considered and he was not found to be suitable. Hence the case put forward by the Petitioner in his pleadings that his case was not considered is not correct. Suitability has to be adjudged by the Executive Authority. Judiciary has no role to play in the matter. Judiciary can only lay ^{its finger} ~~its finger~~ when a case of malafide or bias is ^{put} ~~stood~~ up against the adjudicating authority. No such case has been pleaded by the Petitioner. The case of the Petitioner having been considered and having been found not to be suitable for promotion, the case is devoid of merit and liable to be dismissed. Hence the application stands dismissed, leaving the parties to bear their own costs.

B. Sarangi
MEMBER (ADMINISTRATIVE)

B. Sarangi
22.9.92
VICE CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack/K. Mohanty
22.9.92.

