

AB

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

LUCKNOW

O.A. NO. 311/92

Balraj Krishan Bholा Applicant.

Versus

Union of India Respondents.
and others.

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Hon'ble Mr. Justice U.C. Srivastava, V.G.

Hon'ble Mr. K. Obayya, A.M.

(By Hon'ble Mr. Justice U.C. Srivastava, V.C.)

The Applicant is an I.P.S. Officer of the year 1974 and was allotted the U.P. Cadre. The Gradation List of the Indian Police Service, Uttar Pradesh Cadre has been published by the Government of Uttar Pradesh in which the name of the applicant finds place at serial no. 145 of the Gradation List. From the perusal of the Gradation List, it would be seen that the applicant is a direct recruit of 1974 batch and his date of appointment has been shown as 11.11.1974 and confirmation date has been shown as 11.11.1976. It is further clarified that the applicant was also given his senior scale grade with effect from the date i.e., 7.2.1979.

2. The applicant remained posted in the capacity of Superintendent of Police/Senior Superintendent of Police in different districts and lastly he was posted as Senior Superintendent of Police, Nainital.

3. The Departmental Promotion Committee was constituted sometime in the month of May/June 1991 when the cases of the applicant's batch, i.e. 1974 batch were considered for promotion to the next

higher post of Deputy Inspector General of Police but some how the applicant was left over purposely and several juniors to the applicant were given promotion to the post of Deputy Inspector General of Police on the basis of Departmental Promotion Committee held in the year 1991.

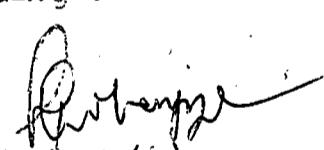
3. He was superceded by the opposite party even though the applicant's service record remained unblemished and he was never communicated any adverse entry nor was subjected to any disciplinary proceedings till the date of selection / supercession. The applicant preferred application / representation to the Home Secretary, State of U.P. Lucknow vide his representation dated 5.7.1991. The above representation did not evoke any response from the opposite party and thereupon the applicant again moved another application that if there is anything against the applicant, the same may be communicated to him. Ultimately the opposite parties vide communication letter dated 4th November 1991 communicated to the applicant adverse entry alleged to have been made in his Character roll in the year 1982-83 and the adverse entry was communicated after receiving the representation, the applicant preferred to file his representation dated 29.1.1992 against the adverse remark.

4. The applicant's pleas that no such entry has been communicated and it appears that the same was taken into account by the Departmental Promotion Committee ^{which} superceded him. For the first time a charge-sheet was served on the applicant in the month of October, 1991. The applicant was communicated in the month of October 1991 that a departmental

enquiry U/R 8 (1) of A.I.S. (Discipline & Appeal) Rules, was proposed against the applicant together with a charge-sheet. The reply was given to this charge-sheet by the applicant vide D.D. No. DP-1/ 1992 dated 10.3.1992. The enquiry has not been concluded. That the respondents have admitted that the Departmental Enquiry was in contemplation, the applicant's result was kept in sealed cover by the D.P.C. Feeling aggrieved against the same, the applicant has approached the Tribunal contending that when the D.P.C. met there were no adverse entry against him or if any, the same was uncommunicated and as such uncommunicated entry could not have been taken into account superceding him and further there being no charge-sheet against him, merely because there was some departmental enquiry in contemplation the result could not have been kept in sealed cover and should have been declared. In case, there was a subsequent charge-sheet a subsequent event could not have been taken into account for superceding the applicant. The factual position is quite clear there is no denial of this fact that still no charge-sheet was served upon him when the departmental promotion committee met and there appears also to be no denial of the fact that the adverse entry was communicated to him after 9 years or the same uncommunicated entry was taken into account superceding the applicant. The legal position is now quite clear as it has been held in the case of Union of India Versus K.G. Janki Raman 1991 (4) SCC page 10

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that it is only after the date of issuing of charge-sheet the departmental proceedings are said to have been initiated and the juniors of the applicant have been given promotion and promotion is to be given to seniors also and the result is not to be kept in sealed cover unless the departmental proceedings have already been initiated. The same position arises hereto and accordingly this application deserves to be allowed and the respondents are directed to open the sealed cover and declare the result and in case the applicant has not been selected and the adverse entry have been taken into account, the respondents are directed to convene the review D.P.C within 2 months from the date of communication of this order and consider the case for promotion ignoring uncommunicated adverse entry. The application stands disposed of finally in these terms. We have not made any observation regarding the pending departmental proceedings. No order as to the cost.



Member (A)



Vice-Chairman

Lucknow dated 17.12.1992

(a.m.)