

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.



CIRCUIT BENCH, LUCKNOW.

O.A. No. 309/89(L)

Banshu Das

Applicant.

versus

Union of India & ors.

Respondents.

Hon. Mr. Justice K. Nath, V.C.

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

(Hon. Mr. Justice K. Nath, V.C.)

This application under section 19 of the Administrative Tribunals Act, 1985 has been filed for issue of directions for confirmation of the applicant with effect from 1.8.1975 and for creating supernumerary post for the purpose and to grant him consequential benefits flowing from the confirmation from the due date.

2. Counter-Rejoinder have been exchanged and we have heard the learned counsel for both the parties. The material facts are no longer disputed. The applicant was appointed as U.D.C. on 7.2.73 and was admittedly due for confirmation on 1.8.75. However, he was not confirmed by the department in consequence of the D.P.C. on 17.7.76 on the ground that the C.R. was not available. He was not confirmed subsequently on the ground that there were adverse entries in his character roll for the period from August 76 to March 77. In

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82/7

course of time, however, he was ~~not~~<sup>h</sup> found fit and was confirmed with effect from 1.7.82. The applicant's case is that there were no adverse entries whatsoever in the applicant's service record prior to the due date i.e. 1.8.75 and that the D.P.C. fell into an error in denying confirmation with effect from the due date only on the basis of subsequent adverse entries. There is substance in this contention, as is apparent from the Accountant General (A.E-1), Allahabad respondent No. 2 letter dated 9.1.1985 referred to in para 4.13 of the application and produced before us today. It is clearly mentioned that on review it was detected that the applicant had not earned any adverse entry till the year 1975-76 and therefore overlooking for confirmation with effect from 1.8.1975 on the basis of adverse entries for subsequent years was not justified. In this very letter a request was made for creation of a supernumerary post of Auditor for the benefit of the applicant for the period from 1.8.1975 to 30.6.1982, when the applicant was ordered to be confirmed with effect from 1.7.1982. One of the prayers made in the application is that a DPC may be required to be held to consider the applicant's confirmation with effect from 1.8.75. We, in the facts and circumstances of the case do not think it necessary to call for DPC. We are of the opinion that the applicant must be confirmed with effect from 1.8.1975.

3. The learned counsel for the applicant has also requested for consequential benefits. The learned

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counsel for the respondents says that the claim is barred by limitation and that the grant of any consequential benefit will upset the seniority ~~of~~ of a number of persons. We do not think that the bar of limitation should stand in the way of the facts and circumstances of this case in as much as it is the admitted case of the parties that the applicant had been denied confirmation from the due date only on the basis of subsequent adverse entries which was not permissible in the eyes of law. Indeed, in the letter dated 9.1.85 of the department itself, it was stated that the applicant's withholding of confirmation as on due date was not justified. In this view of the matter, the claim of the applicant may not be rejected on account of delay or principle of limitation.

4. We do not think that any substantial change in the seniority may be involved by the consideration of ~~the~~ solitary case of the applicant. However, it is premature for us to say what kind of consequential benefits the applicant may be entitled to because, the record will have to be examined by the competent authority for the period after 1.8.1975 in order to see what service benefits he was entitled to. We are not in a position to record any firm opinion upon how the applicant is to be dealt with in the matter of consequential benefits on account of confirmation with effect from 1.8.1975.

5. For the reasons indicated above the petition is partly allowed and we direct that the applicant

9/12

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shall be deemed to have been confirmed as Auditor with effect from 1.8.1975. We also direct the respondents to examine the case of the applicant for service consequential benefits with effect from 1.8.1975 and to award him such benefits as he may be found to be entitled in accordance with the applicable rules within a period of six months from the date of receipt of copy of this judgment.

Adm. Member.

Vice Chairman.

Lucknow Dt. December 14, 90