

Central Administrative Tribunal, Circuit Bench,

Lucknow.

Registration (O.A. No. 46 of 1990)

R.L. Girj

... Petitioner

Vs.

Union of India & others

... Opp. Parties

Hon'ble Mr. Justice K. Nath, VC,

HOn'ble Mr. M.M. Singh, AM

J U D G M E N T

(Delivered by Hon'ble Mr. Justice K. Nath, VC)

This application under Section 19 of the Administrative Tribunals Act, 1985, is for a direction to the respondents to promote the applicant to the post of U.D.C. w.e.f. the date of promotion of P.R. Yadava and further promote him thereafter alongwith arrears of salary w.e.f. the date of suspension.

2. Counter affidavit has been filed on behalf of the respondents. The counsel for the applicant says that no rejoinder affidavit is filed. We have heard S/Sri P.N. Bajpai, counsel for the applicant and VK Chaudhary for the respondents.

3. Briefly, the facts are that the applicant was appointed as LDC on 13-5-1963 in the Central Ordnance Depot, Agra, Ministry of Defence. He was suspended on 18-10-1966 pending investigation of an offence of embezzlement punishable under Section 409 of the

Indian Penal Code. The departmental enquiry was instituted and as a consequence of which the applicant was dismissed w.e.f. 11-11-1970 by an order dated 10-11-1970, after holding the charges proved against him. The criminal trial of the applicant under

Section 409 IPC, however, ended in the applicant's acquittal by judgment dated 31-3-1984. On the basis of this acquittal, the dismissal order dated 10-11-1970 was revoked on 10-1-1985, but the departmental disciplinary enquiry was re-opened. During the pendency of the re-opened enquiry, the applicant was also ordered simultaneously to be deemed under suspension. The order of suspension ultimately was revoked on 2-2-1988 and by order dated 7-10-1988 (Annexure-1) the applicant was exonerated of the disciplinary enquiry.

4. It was in this background that the present application was filed whereby the applicant has claimed promotion as UDC w.e.f. the date of promotion of PR Yadava, LDC junior to the applicant. Further promotion to the posts of Technical Assistant, Office Superintendent, Grade-II and Office Superintendent, Grade-I has also been sought. The applicant claims arrears of his salary w.e.f. the date of suspension as contemplated in the order dated 7-10-1988, last paragraph of which runs as follows;

"the period of suspension of RL Birj will be treated as spent on duty and will be entitled to draw full pay and allowances as per his entitlement for the period of suspension".

5. Sri V.K. Chaudhary says that while the respondents have no objection to the promotion of the applicant to the post of UDC w.e.f. the date of promotion of PR Yadava (vide para 19 of the counter affidavit) in view of the fact that the post of UDC is a non-selection post governed by the principle of seniority-cum-suitability. The claim of further promotion as Technical Assistant, Office Superintendent, Grade-II is resisted because those are selection post governed by the criterion of merit. It is further said

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that further promotion of the applicant to the post of Office Superintendent, Grade-I is not on the criterion of merit, but nevertheless field of eligibility consists of persons appointed as Office Superintendent, Grade-II.

6. On a consideration of all the aspects of the case, we find that while the applicant is entitled to be promoted as UDC as aforesaid and the applicant is entitled to arrears of salary from the date of suspension i.e. 18-10-1966, the claim of further promotion as Office Superintendent, Grade-I and Office Superintendent, Grade-II must be examined by the respondents. If the applicant is selected as Technical Assistant and is again selected as Office Superintendent, Grade-II, he would have to be considered for promotion as Office Superintendent, Grade-I on the criterion seniority-cum-suitability. We dispose of this petition finally on the above lines and direct the respondents to comply with these directions within a period of six months from the date of receipt of this judgment.

M. M. Sirc.

(A.M.)

Ju

(V.C.)

Dated : Lucknow

September 12, 1990.

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