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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

~~XX~~ No.
T.A. No. 236/87

198

DATE OF DECISION 10 August 1990

Shri Babulal Sabaji Atre .. Petitioner

Shri Mohan Sudame .. Advocate for the Petitioner(s)

Versus

Union of India & Ors. .. Respondent

Shri S.V. Gole .. Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. G. Sreedharan Nair, Vice Chairman

The Hon'ble Mr. I.K. Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY
CAMP SITTING AT NAGPUR

Transfer Application No.236/87

Shri Babulal Sabaji Atre ... Applicant

vs

Union of India & Ors. ... Respondents

CORAM : Hon'ble Vice Chairman, Shri G. Sreedharan Nair
Hon'ble Member (A), Shri I.K. Rasgotra

Appearances:

Shri Mohan Sudame, Advocate,
for the applicant and Shri
S.V. Gole, Advocate, for
the Respondents.

JUDGEMENT

Dated : 10 August 1990

(Per. Shri I.K.Rasgotra, Member (A))

Writ Petition No.910/82 filed by the petitioner Shri Babulal Sabaji Atre was received on transfer from Bombay High Court under Section 29 of Administrative Tribunals Act, 1985 and has been numbered as Tr. 236/87. The petitioner belongs to the Scheduled Tribes and was working as a Lower Division Clerk in the Office of the Respondents. He is agrieved by his supersession for promotion to the post of Upper Division Clerk by respondents 5, 6 & 7. He is further agrieved by Memorandum dated 11/12 February, 1982 (page 27 of the paper book) proposing to take action against him under Rule 16 of CCS (CCA) Rules 1965 as he had violated Rule 3(1)(iii) of CCS (Conduct) Rules, 1964, on the ground that he had taken scooter advance of Rs.2870/- for buying a specific second-hand Lambretta No.MHX-2210, Model 1970, from a particular party but ^{with} buying a different second-hand Lambretta No.MTA-375, Model 1969, from a different party without obtaining prior sanction. For the alleged

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misconduct a penalty of withholding promotion for a period of two years was imposed on him with effect from 18.3.1982 (Annexure P-9, page 30 as above). The petitioner has prayed for a direction to the Respondents that (i) he be promoted retrospectively with effect from 1.9.1980 as Upper Division Clerk, (ii) the Office Memo dated 18.3.82 imposing penalty of withholding promotion for two years be quashed and (iii) the memos dated 1.8.80 and 12.8.80 communicating him the adverse remarks in his Confidential Reports be expunged.

2. Advocate Mr. Mohan Sudame appearing for the applicant submitted that no misconduct was involved in the purchase of a scooter after taking scooter advance from the Respondents as the amount of advance was not misutilised. The scooter advance was taken for buying a second-hand scooter from a particular party. As this transaction did not materialise the applicant bought a second-hand scooter of about the same age from a different party. There was no misutilisation of the funds taken from the Respondents for a specific purpose. The learned counsel cited the case of Abdul Gaffar vs. Union of India and others reported in ATR 1988 (2) CAT 318 in support of his case.

3. We have considered the material on record and the rival contentions of the counsels of both the parties. As far as the promotion of the applicant from Lower Division Clerk to Upper Division Clerk is concerned, it is observed that the promotion is based on the selected list recommended by the Departmental Promotion Committee. The Departmental Promotion Committee had not found the applicant fit for

being placed on the select list. This fact has been advised to the applicant himself also on the relevant occasions. Regarding the second relief, we are of the view that there was no misconduct involved in this case as the applicant had drawn a scooter advance of Rs.2870/- for purchase of a second-hand Lambretta Scooter, Model 1970, ~~from~~ a particular person. Instead, he bought a second-hand Lambretta from a different party of 1969 model. The amount drawn by the applicant was utilised for the specific purpose for which it was obtained. There was neither any diversion of funds nor any misutilisation. The only slip on his part, if that be taken as a fault, was that he did not advise the change in the person of the seller of the scooter. Besides, the amount of advance had also been recovered from him. There was neither ^{any} mala fide intention nor any action on the part of the applicant. We, therefore, hold that the transaction of purchase of the scooter by the applicant from a different seller than the one advised earlier to the Respondents cannot be deemed as an action unbecoming of a Government servant. Accordingly, the order dated 18.3.1982 imposing the penalty of withholding of promotion is hereby set aside. We also direct applicant shall be entitled to consequential benefits by way of holding a review Departmental Promotion Committee if any DPC were held during the period from March 1982 to March 1984, for promotion of Lower Division Clerks to Upper Division Clerks. There is no order as to costs.

(I.K. Rasgotra)
Member (A)

10/8/1990

(G. Sreedharan Nair)
Vice Chairman

10/8/1990