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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.81/88.

P. Subramanian,
C/o. T.R. Talpade,
Advocate, High Court,
Narottam Niwas,
308, Jawaji Dadaji Road,
Nana Chowk,
BOMBAY - 400 007.

.. Applicant.

V/s-

1. Union of India, through
General Manager,
Central Railway,
Bombay V.T., Bombay.

2. General Manager,
Central Railway,
Bombay V.T., Bombay.

.. Respondents.

Coram : Hon'ble Shri Justice U.C. Srivastava, Vice Chairman
Hon'ble Shri M.Y. Priolkar, Member (A)

ORAL JUDGMENT

DATED: 26.6.1991.

¶ PER : Hon'ble Shri U.C. Srivastava, Vice Chairman ¶

The applicant during the pendency of this application retired on 28.2.1989. On the basis of written examination and interview the applicant was selected and promoted to Class II (Group) Gazetted in January, 1983 on the basis of the panel formed in the year 1982. He was working as Assistant Divisional Accounts Officer at the relevant point of time at Central Railway, Bombay V.T. The name of the applicant was included in the panel of promotional post in September, 1986 and his juniors were also

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promoted, but the applicant was not promoted which was because some investigation against him was going on. In January, 1987 action under Rule 11 of the Railway Servants (Discipline and Appeal) Rules, 1968 was proposed to be taken against him. In the memorandum a statement of imputations of misbehaviour/misconduct framed against the applicant was attached and in the said Memorandum the applicant was called upon to make a representation against the imputations. The imputation against him was that he committed certain irregularities in the purchase of Super Phones and Railway Administration was put to a loss of Rs.1400/- to the Government. The applicant was not satisfied with the imputation of misconduct and the increment which was due as on 1.2.1988 was withheld for a period of one year without having the effect of postponing future increments. The applicant was advised that he could appeal against the said order. The applicant had filed a representation against the same, but the appeal was not disposed of, whereafter he approached this Tribunal. The applicant was empanelled before any action. It was contended by the applicant that before any charge sheet was served upon him and his juniors have been promoted merely because some investigation against him was going on that will be no ground for withholding the promotion. It is not necessary to make a reference to any cases in the point as the legal decision in this behalf is clear that the promotion of person cannot be withheld on the basis of some inquiry which is made behind his back, and is not facing any criminal charge or departmental inquiry. Till

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then the applicant was not facing any departmental inquiry or any criminal trial as such he was entitled to be promoted and his non-promotion obviously is not in conformity with law. Obviously, so far as the penalty is concerned if it was to be imposed, that would have gone against his promotion the promotion could not have been made. So far as the seniority is concerned on behalf of the applicant it has been contended that it appears to be a minor penalty but it has put him to a great loss. A reference has been made to Rule 11 Sub-rule 4 of the Railway Servants (Discipline & Appeal) Rules, 1968 which reads as follows:

"(4) The record of the proceedings in cases specified in sub-rule (1) and (2) shall include-

- (i) a copy of the intimation to the Railway servant of the proposal to take action against him;
- (ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him;
- (iii) his representation, if any;
- (iv) the evidence produced during the inquiry, if any;
- (v) the advice of the Commission, if any;
- (vi) the findings on each imputation of misconduct or misbehaviour; and
- (vii) the orders on the case together with the reasons therefor."

2. The rule itself makes it clear that some sort of inquiry had to be conducted. But in the instant case no inquiry was held and the applicant was not called upon to tender evidence at any stage. Without entering into the question whether his negligence or carelessness amounted to misconduct, suffice it to say that punishment awarded to him was vitiated. Accordingly this application deserves to be allowed and the punishment order dtd. 25.2.1987 is quashed.

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and it is directed that the applicant will be deemed to have been promoted on the date his juniors were promoted with all consequential benefits. No order as to costs.

M.Y. PRIOLKAR
(M.Y. PRIOLKAR)
MEMBER(A).

U.C. SRIVASTAVA
(U.C. SRIVASTAVA)
VICE CHAIRMAN.