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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.768/95

New Delhi this the 7th day of October, 1999.

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN (J)
HON'BLE SMT. SHANTA SHASTRY, MEMBER (A)

Sh. Syed Shahid Karim,
S/o Syed Mohd. Karim,
Catering Inspector,
Parliament Street House,
Catering Complex,
New Delhi.

...Applicant

(By Advocate Shri B.S. Mainee)

-Versus-

Union of India Through:

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Chief Commercial Manager,
Northern Railway,
Baroda House,
H.Q. Office,
New Delhi.

(By Advocate Shri R.L. Dhawan)

3. Shri Unny Chandra Mohan,
Chief Catering Inspector,
Parliament House Catering Complex,
Northern Railway,
New Delhi.

...Respondents

(By Advocate Shri Ashok Mahajan)

ORDER

BY REDDY, J.-

The applicant who was a Catering Inspector in the grade of Rs.1600-2660 in the Northern Railway, was working in the Parliament House Catering Complex during 1990. The staff working in the catering complex in the Parliament House was constituted as a separate unit during 1990. The staff working therein were asked to exercise their options to remain in the Parliament House Catering Complex. Such of those employees exercised their options were included in the Unit and a separate seniority list was also maintained. The

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seniority list in respect of Group 'C' staff working in the Parliament House catering staff was issued on 4.12.90. In the said seniority list the applicant was shown as Catering Inspector in the grade of Rs.1400-2300. The respondent No.3 was one of the employees working in the Catering Complex in the Northern Railway who has not exercised such option. Hence his name was not found in the said seniority list.

2. In 1993 the Railway Board, taking into consideration the heavy stagnation amongst the staff of various cadres in the Northern Railway had issued an order restructuring the posts on 27.1.93 by which a large number of posts in the higher grades have been increased. In accordance with the aforesaid decision one more post of Chief Catering Inspector in the grade of Rs.2000-3200 was created. Thereby the existing two posts of Chief Catering Inspector were increased from two to three.

3. It is the case of the applicant that respondent No.3 taking advantage of his working in the Prime Minister's Office catering unit manipulated to get himself absorbed subsequently in 1994 in the Parliament House Catering Complex Unit in the grade of Rs.1600-3660 with a view to get the benefit of the newly created post of Chief Catering Inspector. Accordingly, the impugned order was passed absorbing R-3 in the Parliament House Catering Complex w.e.f. 7.1.89 - the date on which he was transferred from Northern Railway to P.M. House catering Unit, a part of Parliament House Catering Complex. Soon after his absorption R-3 was promoted to the post of Chief Catering Inspector in the grade of Rs.2000-3200 w.e.f. 1.3.93 by order dated 14.3.95 (Annexure A-5). The



representations of the applicant and his colleagues protesting the absorption and the promotion of the R-3 have been rejected. The present OA is, therefore, filed questioning the above orders of absorption and promotion of R-3.

4. In the counter-filed by respondents 1 and 2, it was averred that R-3 was transferred to P.M. Office canteen in South Block under the Parliament House Catering Complex by transferring the post of Chief Catering Inspector grade Rs.1600-2660 from Base Kitchen New Delhi on 7.11.89. When the Parliament House Catering Complex was declared as a separate cadre for the purpose of seniority and channel of promotion, ⁱⁿ on account of administrative error R-3 was not asked to exercise his option whether he would remain ⁱⁿ in Parliament House Catering Complex or otherwise. Hence, he could not exercise his option. His name was, therefore, shown in the seniority of Northern Railway catering unit. Subsequently, as R-3 filed a representation and exercised option, seeking to be absorbed in the Parliament House Catering Complex, the error was rectified and R-3 was absorbed w.e.f. 7.11.89 and thereafter he was rightly promoted to the post of Chief Catering Inspector.

5. R-3 also filed the counter-affidavit on the same lines as the counter-affidavit filed by R-1 R-2.

6. Most of the facts are not in dispute. There is no dispute as to the separation of the Parliament House Catering Complex for the purpose of promotion in 1990 and also that a separate seniority list has been published in respect of Group 'C' staff working in the Parliament House

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Catering Complex on 4.3.90 on the basis of the options exercised who wanted to remain therein. It is also not in dispute that R-3 has been transferred from the Railways to work in the PM Office canteen under Parliament House Catering Complex on 7.11.89 and that he did not opt to join Parliament House Catering Complex Unit hence his name was not shown in the seniority list of the Catering Inspectors working in the Parliament House Catering Complex. It is also not in dispute that in view of the upgradation of the posts one more post of Chief Catering Inspector in the grade of Rs.2000-3200 has been created increasing the sanctioned strength from two to three on 28.4.94.

7. The only question that is in dispute and that has to be decided is whether R-3 deliberately restrained not to exercise his option but to remain in the Northern Railway Catering Unit and whether he has decided to join the unit only in 1994. The thrust of the plea of the learned counsel appearing for respondents 1 and 2 as well as R-3 is that R-3 was not asked by the administration to exercise his option. He came to know about the creation of the separate unit in 1993 when he made a representation seeking for absorption and accordingly he was absorbed. The learned counsel for the Railways also tries to convince us that there was an administrative error in not asking R-3 to exercise the option.

8. Having considered the rival contentions and perused the record carefully, we find it difficult to accept the case of the respondents. It should be kept in view that R-3 has all along been working in the PM Office Catering Unit which is a part of Parliament House Catering Complex.

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since 1989. It is seen from the Annexure I filed along with the rejoinder that some of the staff working under R-3 in PM's office canteen have already exercised their option one way or the other. If that is so it is difficult to accept that R-3 being the head of the Unit in the PM's office canteen cannot be said to have ^{been}unaware of the options asked for. It is also relevant to notice that in the same Annexure it is seen that the staff who wanted to remain in the Northern Railway have also exercised their option. Thus all the staff working in the Parliament House Catering Complex have exercised his option one way or the other. It cannot however be ruled out that there might have been an administrative error and R-3 might not have asked for his option. In that he should have requested for such an option form immediately. The Parliament House Catering Complex has been formed as a separate unit for the purpose of promotion etc. in 1990 and the separate seniority list has also been published on 4.12.90 and R-3's name was not shown in the said seniority list. Thus R-3 at least after the above seniority lists had been published, immediately thereafter, he should have filed a representation seeking for absorption. He has not done so till 1993. He remained on the existing rolls in the main catering unit of the Railways. His explanation is not supported by any material and if the same is allowed, it would be open to many such persons coming with fresh options stating the same reason. It is the case of the learned counsel for the applicant that when new posts have been created in January, 1993 the applicant finding that there are better chances of promotion in Parliament House Catering Complex unit managed and got himself absorbed with retrospective effect from 1989. There is sufficient force in this contention.

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9. The representation alleged to have been filed by R-3 was also not filed by him. A perusal of the file produced by the learned counsel for the Railways does not reveal that each of the staff member was asked individually to exercise his option to be retained in the Parliament House Catering Complex. No individual letters are filed as Annexures to the counter filed by the Railways or by R-3. It appears that all the staff were asked by a general notice to exercise their option. In the proceedings of the Estate Commissioner, Office Catering, Parliament House Catering Complex dated 15.4.93 addressed to the CCM it was stated that R-3 has 'now opted' for retention in the Parliament House Catering Complex. The representation alleged to have been given along with the option form dated 15.4.93 was not filed nor available in the file. In the representation dated 28.1.94 made by R-3 it was only stated that he has earlier given a representation on 15.4.93. In this representation it was stated by R-3 that he was aware of the formation of the separate unit w.e.f. 10.8.90 but he states that he was given to understand on 28.1.94 that all the employees working in the Complex are continued to work in that unit. Since he was not given the option form and only then he came to know of it he sent his option form on 15.4.93. Thus, it is clear that though he was aware of the unit during 1990 he came to know about the necessity of exercising the option only on 15.4.93. But in the counter-affidavit filed by him it was stated that formation of the separate unit for Parliament House Catering Complex other staff were asked to exercise their option but he was not given such an option and hence in 1993 he represented and exercised his option on 13.4.93 for permanent

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absorption. Thus, there is material contradiction in both the explanations given by R-3. If he was not asked to exercise his option he should have immediately made a representation in 1990 itself. No reasonable explanation is coming forward for keeping quiet for three years till 1993. The reason for his option in 1993 is not far to seek. In 1993, as stated supra, the new posts have been created and the post of Chief Catering Inspector was available for promotion and coming to know of it, R-3 must have tried to get himself absorbed by giving the option to stand a chance for obtaining promotion. As a result of absorption of R-3 he was placed above all the Catering Inspectors who have already been permanently absorbed in 1990. Thus, R-3 became senior to all of them and thus he was immediately promoted and the applicant being the senior Catering Inspector was denied of his promotion.

10. The learned counsel for the applicant contends that if the applicant's seniority was sought to be disturbed, the applicant should have been given notice and if at all R-3 was entitled to be absorbed he should have been absorbed only from the date of his option and not from the retrospective date. The learned counsel for the respondents, however, contends that R-3 was entitled to be absorbed along with others retrospectively as his absorption was delayed only on account of an administrative error. The law is well settled that the seniority of permanent employees should not be disturbed which has been settled after long time. It is also well settled that seniority is a valuable right which an employee acquires on account of his length of service and any action affecting such right can be taken only after giving notice to all the affected



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persons. In the present case all the staff who have exercised option have been shown in the seniority list of Parliament House Catering Complex, in 1990. After about five years he is now shown junior to R-3. This action is wholly illegal.

11. In view of the foregoing discussion we are of the view that the impugned order of absorption of the applicant is bad in law and is liable to be set aside. Secondly, the promotion in respect of R-3 for the post of Chief Catering Inspector based upon the date of illegal absorption is also vitiated and is liable to be quashed.

12. The O.A. is allowed. The impugned orders are quashed ^{and in} the circumstances with costs of Rs.1500/- (Rupees one thousand five hundred only) against the respondents 1&2.

Shanta
(Smt. Shanta Shastry)
Member (A)

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V. Rajagopala Reddy
(V. Rajagopala Reddy)
Vice-Chairman (J)