

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Reg. No. OA 1889 of 1987

Date of decision: 6.8.1990

Mrs. Geeta Mittal

Applicant

vs.

Union of India & Others

Respondents

PRESENT

Mrs. Indira Sawhney, counsel for the applicant.

Shri P.H. Ramchandani, Sr. ~~Counsel~~ Counsel for the respondents.

CORAM

Hon'ble Shri B.C. Mathur, Vice-Chairman.

Hon'ble Shri S.R. Sagar, Member (J).

(Judgment of the Bench pronounced by Hon'ble Shri B.C. Mathur, Vice-Chairman.)

This is an application filed by Mrs. Geeta Mittal against being declared surplus to the post of clerk in the Departmental Canteen, Department of Electronics, vide impugned orders No. 1/Misc./Chmn./86-LNBDC dated 29.12.1986 (Annexure VI to the application).

2. Brief facts of the case, as stated in the application, are that the applicant was appointed as a clerk in the Lok Nayak Bhawan Departmental Canteen on 26.12.1983 having been sponsored by the Employment Exchange. The offer of appointment was issued on 13.3.1984 (Annexure VII to the application). She was promoted as cashier in the same canteen from 20.2.1984 in the scale of Rs. 260-400. The applicant has stated that three officials, namely, M/s. Joga Rao, A.N. Murthy and N.K. Kapoor who were deputed by the respondents to supervise the day to day functioning of the Canteen started indulging in acts of harassment against the applicant. As a result, she sent representations to the Chairman of the Canteens on 17.7.1986, 14.8.1986 and 17.11.1986 highlighting the unfortunate circumstances under which she had to work. The respondents with a view to punish her and to teach her a lesson

for refusing to oblige their unjustified demands planned to deprive her of employment as a cashier. In order to veil their designs, an office order, dated 26.12.1986 was issued merging the post of the Accountant and the Cashier and appointing one Shri Vikram Singh Negi to the merged post. The applicant was accordingly relieved of the duties of the post of cashier. The reasons given for the reversion of the applicant as clerk were that the existing posts of Accountant (Rs. 330-480) and Cashier (Rs. 260-400) have been merged to observe economy in expenditure, but there was no post of Accountant existing as such and the applicant while holding the post of Cashier was also looking after the accounts work. The respondents issued another office order dated 29.12.1986 asking the applicant to report to the Director of Canteen for further posting. The Director of Canteens ^{on} being contacted by the applicant informed her that she being surplus could not be allowed to join work although this was contrary to the principle of "first come last go" as clerks junior to the applicant were still continuing in employment.

3. The case of the applicant is that the merging of the posts of Accountant and Cashier was malafide and motivated and first reverting the applicant from a higher post to a lower one and then declaring her surplus is an act of hostile discrimination liable to be struck down ^{under} Articles 14, 16 and 21 of the Constitution. The applicant was reverted from a higher post to a lower one without giving her an opportunity to represent against the same and is in violation of the principles of natural justice.

4. The respondents in their reply have stated that the initial appointment of the applicant to the post of clerk in the Lok Nayak Bhavan Departmental Canteen and her promotion as Cashier in the same Canteen within two months of appointment were both illegal. The employees union challenged the original appointment of the applicant to the post of clerk and other matters in the Labour Court but the case was closed in March 1986 as both the parties did not attend the case. The applicant's appointment

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as clerk in the Canteen was not in accordance with prescribed rules/regulations as notified by the Directorate of Canteens. The applicant's brother who was working as Deputy Manager in the same Canteen was able to manipulate her appointment as clerk and then her promotion to the post of Cashier within two months of joining duties as clerk. In making appointment as cashier, the recruitment rules were not followed.

5. It has been brought out by the respondents that as per the rules of the Departmental Canteens, the post of Accountant is one of the posts available for 2-A type Canteens like the Lok Nayak Bhavan Departmental Canteen. The applicant was not entrusted with the work relating to the post of Accountant. As per sanctioned strength of the Type 2-A Lok Nayak Bhavan Departmental Canteen, there was no vacancy in the clerical cadre to accommodate the applicant at that time and as such she was nominated to the Directorate of canteens for her nomination to some other Departmental Canteen for her rehabilitation or otherwise. But the applicant was not enlisted by the Director of Canteens as her original appointment itself was made irregularly. The post of the Cashier in the Canteen was not abolished but merged with that of the Accountant by the competent authority after careful consideration both in the interest of efficiency as well as economy in expenditure. In their reply the respondents have also asserted that the reversion of the applicant was not as a matter of punishment, but for setting right a wrong and illegal appointment as per rules. Therefore, giving an opportunity to the applicant to represent or violation of principles of natural justice did not arise. No injustice was done in her case and all actions were strictly in accordance with the rules.

6. The learned counsel for the applicant strongly refuted the allegation that the applicant was appointed as a clerk irregularly. The management of the Canteen had asked the Employment Exchange to forward names and the applicant alongwith others appeared before the Selection Board comprising of the Chairman and two Members namely Shri I.K. Tvasi and Shri R.C. Javeswal

and the General Manager of the Canteen, Shri A.R. Sen. On the basis of the educational qualifications and performance before the Interview Board, the applicant was put at serial No. 1 in the order of merit (Annexure III to the rejoinder). Similarly, the respondents vide letter dated 24th January 1984 requested the Director of Canteens to forward names of suitable candidates for filling up the vacancy of Store Keeper/cashier in the Lok Nayak Bhavan Departmental Canteen. Nominations were also sought from 15 Ministries/Departments of Government of India and the Employment Exchange. A Selection Committee comprising Shri S. Ghose, Chairman, and Shri P.J. Vernekar, Shri R.G. Jayaswal and Shri M.K. Sharma, Members, interviewed the candidates on 20.2.1984 for the posts of Storekeeper and Cashier. As such, it is wrong to say that the applicant who is a B. Com was selected illegally. The contention that her brother who was Deputy General Manager of the Canteen had manipulated her appointment is not based on facts as her brother was not a Member of the Selection Board at all and persons senior to him were in the Selection Committee. The learned counsel for the applicant said that the applicant was issued a circular reverting her to the post of clerk where she was declared surplus and after three months, the services of Shri Negi, who was appointed as Accountant, were also terminated and as such the posts of Cashier and the Accountant are still vacant.

7. The learned counsel for the respondents Shri P.H. Ramchandani stated that the applicant had no case at all as the managing committee of the Canteen had the full authority to merge the posts of Cashier and Accountant for the sake of economy and efficiency and it was a policy decision that ex-servicemen should be appointed to such posts. He said that the courts should not interfere in policy matters and as the services of the applicant were no longer required, she had to be declared surplus.

8. We have gone through the pleadings and given careful consideration to the arguments by the learned counsel. It is noticed that according to the Department of Personnel & A.R. notification dated 11th December, 1979, all posts in the canteens run Departmentally will be the posts in connection with the affairs of the Union and accordingly the incumbents of such posts would qualify as holders of civil posts under the Central Government. The notification provides that necessary rules governing their conditions of service will be framed under proviso to Article 309 of the Constitution. According to para 26.35 of the 4th Pay Commission's Report, the employees of the departmentally run canteens have not been treated as regular employees, but this matter is sub judice before the Supreme Court. We have also gone through the Central Government Departmental Canteen Rules vide Swamy's Compilation on Central Government Departmental Canteens (Corrected upto 1st August, 1986). These Rules provide that all vacancies will be filled in accordance with the provisions specified in columns 3 to 8 of Schedule 'B'. It also provides that members of the Service employed in a canteen, which is decided to be closed for administrative reasons shall be deemed to have been retrenched from service with effect from the date of closure of such canteen, but in case it is decided to reduce the number of posts in any canteen due to any administrative reason, the retrenchment of members of the Service will be done keeping in view the principle "last come first go" in the category of posts in which reduction is effected. The qualifications for the post of Cashier is matriculation with one year's diploma in book keeping whereas for Accountant, it should be B. Com with three years experience. The conditions of service of canteen employees are governed under the administrative instructions of Departmental Canteens in Government offices and industrial establishments. We also examined the file dealing with the merger of the posts of Cashier and Accountant and the reversion of the applicant to the post of a clerk. We find that there is no resolution of the Managing Commi-

ttee to merge the posts of Accountant and Cashier and have a post of Accountant-cum-Cashier in the pay scale of Rs. 330-560, but there is an office note dated 17.10.1986 suggesting to have a post of Accountant-cum-Cashier and entrust all duties of both Cashier and Accountant in the Canteen to one person. The note further states that "if the proposal is not acceptable, we may continue to have the post of Cashier separately and fill up the post of Accountant as early as possible. Since we have already identified the post of DGM in the Canteen for Ex-servicemen, we may earmark the post of Accountant in the Canteen for Ex-serviceman and we may get a suitable candidate from the D.G. Resettlement M/o Defence." The entire note has been approved although it is not clear that the first part alone has been approved. Perhaps the intention was to approve the merger of the posts of Accountant and Cashier, but this file primarily deals with Shri P.K. Kakkar, Deputy General Manager, who is the brother of the applicant and who had been reverted from the post of Dy. G.M. to the post of Cashier (Credits) with effect from 8.7.86. We do not want to go into the case of the applicant's brother, but two points are very clear. First of all, the Labour Court had not declared that the applicant's appointment was illegal. In any case, when the selection was done by a high-powered Selection Committee after interviewing candidates sponsored by the Employment Exchange, the appointment cannot be held illegal. Secondly, it is not brought out how her brother manipulated her two appointments. If any illegality has been committed, it is by the higher officers, namely, the Chairman and others who made the appointment, but the applicant cannot be held responsible for the same. The respondents would certainly be within their rights to merge the posts of Accountant and Cashier in the interests of efficiency, but if it affects an employee, she should at least be given a notice. In the present case, the applicant was not given even one day's notice. The least that could have been done was to give her a month's salary on giving the notice. To say that the reversion

did not require any opportunity to be given to the applicant to represent or that it does not violate the principles of natural justice, in our view, is highly improper. We have to see the circumstances and the totality of the case. The applicant did make a representation against three senior officers who were supervising her work and in this representation she has alleged harassment by them, but there is no indication that the respondents ever looked into the matter. She was reverted to the post of a clerk although *prima facie* she had not been promoted to the post of Cashier from the post of Clerk and once again while she was declared surplus, she was not considered by the Director of Canteens as her original appointment itself was considered illegal. All this could have been done by following proper procedure, but nothing has been explained as to how her appointment as a Clerk or Cashier was illegal except that her brother had manipulated the appointment.

9. There is no detailed examination that the Chairman or the Managing Committee of the Canteen really felt the need to fill up the post of Accountant in the interest of efficiency. It has not been alleged that the work of the applicant as Cashier was found unsatisfactory and unless it could be stated that the work of the applicant was not proper and that it was necessary to have an Accountant, the question of merging the post of Accountant and Cashier would not be justified in the interest of economy, specially as the post of the Accountant had not been filled up and by merging and filling up the post of Accountant, the expenditure in fact increased instead of there being any economy by such an action. These are, however, matters to be determined by the Chairman or the Managing Committee of the Canteen according to rules. We also note that copies of the character roll furnished by the applicant indicate that her work was very good. We are not concerned how she got copies of the character roll, but the respondents have not stated that the contents are wrong nor have they produced the original ACRs. It appears that as far as the applicant is concerned, she has not received a fair deal and we have no hesitation in quashing the impugned orders declaring her

surplus and thereby removing her from service. Since she was actually reverted to the post of a Clerk, we direct that the respondents should pay her the salary of a Clerk from the day of her reversion by orders dated 29.12.86 (Annexure VI to the application). We also direct that the Chairman of the Canteen should examine whether her appointment as a Cashier was justified or not, but we leave it to the Managing Committee to decide the case. We would have left the question of appointment of the applicant as a Clerk also to the Managing Committee, but since she has been removed without giving any opportunity to explain her case and without any notice, we feel that such removal would be invalid and she should, therefore, be employed as a Clerk, as she had been duly selected by the Selection Board at the time of selection. If there is no vacancy of a Clerk and if the post of Cashier is lying vacant, she could be adjusted against that post, but taken back in the scale of a Clerk. She may also be given arrears of pay admissible to her from the date of her being declared surplus within a period of three months from the receipt of these orders. There will be no orders as to cost.

(S.R. Sagar) 6.8.90
Member (J)

B.C. Mathur
6.8.90
Vice-Chairman