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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No. 1059 of 1986

Ambika Prasad Shukla Plaintiff-Applicant.

Versus

Union of India & others Defendant-Respondents.

Hon'ble S. Zaheer Hasan, V.C.
Hon'ble Ajay Johri, A.M.

(Delivered by Hon. Ajay Johri, A.M.)

In this suit, received on transfer from the court of Munsif City, Kanpur under Section 29 of the Administrative Tribunals Act XIII of 1985, the plaintiff, Ambika Prasad Shukla, who was employed as a Vehicle Mechanic in the Central Ordnance Depot, Kanpur (COD, Kanpur) was rendered surplus and was transferred to EME Corps in the same grade and rate of pay vide order dated 13.1.1960 and he was accordingly posted to EME Detachment, which was attached to the Ordnance Depot, Kanpur, on alternative appointment. The plaintiff has claimed that in terms of the conditions of service applicable to the civilian employees rendered surplus and absorbed in alternative appointment his previous service may be counted for purposes of seniority amongst the cadre. Due to ~~selection~~³ stagnation in various cadres the Government announced a number of relief measures by creation of higher grade posts at different levels. The plaintiff's claim is that he became entitled for promotion to the higher grade or at least ~~to~~³ ~~for~~³ placement in the selection grade in his cadre but while his juniors were promoted he was not given any promotion.

Aggrieved by the situation he made a number of representations directly and through the COD Mazdoor Union, Kanpur. He has claimed for a relief that he should be considered entitled for promotion to the post ⁱⁿ ~~at~~ selection grade in his cadre/Chargeman Grade II with retrospective effect from 1.8.1976 or from the date his immediate junior was promoted to the said post whichever is earlier and the consequential reliefs thereof. The grounds on which he has claimed this relief that the ^{at} EME Detachment/~~and~~ COD, Kanpur was under the administrative control of Ordnance authorities for all purposes.

In an identically similar case ~~at~~ one Sri Alfred was given a relief by being promoted by counting his seniority in the Ordnance Depot for further promotion. He had, therefore, also hoped that he will also be promoted on his own turn amongst the employees of the Ordnance Depot (OD) but he was advised that as far as he was concerned his eligibility will be determined in accordance with the Ministry of Defence letter of 10.1.1977 and that he was not eligible for such promotion to selection grade. The plaintiff has alleged that had he known that EME Depot will not come under the purview of the Ordnance he would have got absorbed in the Ordnance Depot itself instead of EME Detachment. Thus shifting of the responsibility in respect of his promotion between OD and EME Detachment had ruined his service prospects. The plaintiff has further claimed that in view of his initial appointment, i.e. with effect from 23.12.1944 he is entitled to promotion to selection grade or higher grade on Supervisor Technical with effect from 1.8.1976.

2. The respondents' case is that the plaintiff

was not appointed as a Vehicle Mechanic but as a Motor Transport Fitter and he accepted the alternative appointment and, therefore, he was struck off from the strength of COD Kanpur on 10.2.1960. According to the defendants the plaintiff was not entitled to count his previous service for all purposes. EME Records letter of 15.9.1977 says that the tradesmen are eligible for promotion in their turn after passing the prescribed supervisory test in their respective trades and the plaintiff did not pass this test. Though the plaintiff was under the administrative control of COD Kanpur his promotion to higher grade was to be made only in accordance with the letter of 15.9.1977 issued by EME Records. Once he had accepted the alternative appointment he was rightly governed by the rules of EME Records for promotion and the question of his re-absorption in OD at a later stage did not arise. The plaintiff has since retired with effect from 30.6.1984 and he was not due or entitled for any promotion to higher grade or selection grade with effect from 1.8.1976. Since the plaintiff had himself accepted the alternative appointment in EME Detachment he cannot claim that his appointment was with COD Kanpur. The plaintiff's case for grant of selection grade was also examined and he was not found entitled and consequently he could not get promotion.

3. We have heard the learned counsel for the parties. A contention was made that the plaintiff was not surplus and though surplus staff cannot count for previous service since he was not surplus his previous service should be counted for purposes of further promotion. Nothing else was pleaded before us.

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4. There is no doubt about the fact that the plaintiff was declared surplus and he accepted the alternative appointment in EME Detachment at COD Kanpur. This EME Detachment, though it was under the administrative control of the COD Kanpur, for purposes of seniority, etc. was a separate department and was governed by the rules of EME Records. Once the plaintiff had been absorbed in EME Detachment his claim for seniority or promotion in the Ordnance Depot ceased to exist. According to his service book at the time of his accepting the alternative appointment the plaintiff was still temporary Motor Mechanic. He was confirmed in 1967 in EME Detachment. The creation of Selection Grade posts, according to the respondents, dependant on the number of lower grade posts and since in EME Detachment the requisite number of posts ~~was~~ ^{or were} not available, selection grade post could not be created. Thus not only there was no selection grade post available in ~~the department~~ but also the plaintiff was not senior enough to be considered for promotion to the selection grade posts. His request for consideration against the Ordnance Depot posts ~~could~~ ^{not} be accepted because once he had opted to get absorbed on being declared surplus in EME Detachment his connection with OD stood severed and he could get no benefit of any promotions by virtue of his earlier posting in OD.

5. Under the circumstances we do not find any merit in his request for promotion in his erstwhile seniority group in the OD or in EME Detachment where no selection grade post could be created for want of

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requisite number of posts which should have been five or more than 5 consistently for three years in a particular trade in a particular Unit in terms of EME's letter of 11.12.1980 placed in the file. The application (Suit No.937 of 1984) is accordingly dismissed with costs on parties.

राजेश नाथ

MEMBER (A).

Dated: March 25th, 1988.

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VICE-CHAIRMAN.

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