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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH.

O.A. No. 297 of 1992.

Smt. Remu Mullick.....Applicant.

Versus

The Union of India & anotherRespondents.

Hon'ble Mr. Justice U.C.Srivastava, V.C.

Hon'ble Mr. A.B.Gorthi, A.M.

(By Hon'ble Mr. Justice U.C.Srivastava, V.C.)

The applicant was appointed as Key Punch Operator/Lower Division Clerk in the Directorate of Statistics & Intelligence, New Delhi on 17th December, 1974. She was promoted to the post of Upper Division Clerk on 10.5.81. On her own request, the applicant sought her transfer to Allahabad and the same was allowed vide letter dated 30.7.87. On joining at Allahabad Collectorate, She gave an undertaking that her seniority will be fixed below the last temporary Upper Division Clerk in Central Excise, Allahabad and will be treated as a fresh entrant in the cadre of Upper Division Clerk. She joined on 4.8.87 and was placed below Smt.Kailash Suri, Upper Division Clerk. The promotions to the post of Inspector, Customs & Central Excise are made on the basis of direct recruitment to the extent of 75% and by promotion to the extent of 25%. The promotion quota is filled-up by selection from amongst the Tax Assistants/ Upper Division Clerks, Stenographers and Women Searchers. The applicant also applied for this post and she, along with others, was required to appear before the Departmental Promotion Committee on 8.11.91 in which she was found fit. After medical-examination, she along with others appeared for interview before the Departmental

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Promotion Committee and thereafter a **viva-voce** test was held at Allahabad. The applicant was selected along with 79 other candidates as Inspector, Customs & Central Excise. All these 80 posts were filled-up by promotion. On 11.11.91, she was asked to join Anti-Evasion Branch but in her appointment-letter, it was mentioned that she was promoted on adhoc basis. 78 candidates were promoted without any such rider. The applicant was promoted on 11.11.91 and on 20.2.92, an order was passed by the Assistant Collector (P &V) Central Ecise, Allahabad reverting the applicant to the post of **Tax Assistant**. It is this order which the applicant has challenged on the ground that no opportunity was given to the applicant before the impugned order was passed and the impugned order is a non-speaking order.

2. The respondents have opposed the claim of the applicant and have stated that the applicant was promoted to the grade of **Tax Assistant** on the basis of her seniority in Allahabad Collectorate. It has been further stated that the applicant does not fulfil any of the conditions i.e. she has neither completed five years service as Upper Division Clerk in the Allahabad Collectorate nor has completed 13 years of total service as Upper Division Clerk and Lower Division Clerk together subject to the condition a minimum of two years service in the grade of Upper Division Clerk in the Collectorate. The applicant joint her service in the Collectorate Allahabad as a fresh entrant on 4.8.87 after foregoing the seniority of Directorate of Statistics and Intelligence, New Delhi, and she was not entitled to count the period during which she worked in the Directorate of Statistics and Intelligence.

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Being the dealing assistant, she suppressed the facts in the consideration list that she was transferred from Directorate of Statistics & Intelligence, New Delhi after foregoing the past services and that is why she was called for interview and appointment letter was issued to her. The transfer condition in this connection is governed by the administrative instructions. The said instructions provide that a transferee will not be entitled to count the service rendered by him for the purpose of seniority in the new charge. In other words, she will be treated as a fresh entrant in the Collectorate where she was transferred and shall be placed at the bottom of the list of temporary employees in the cadre of Upper Division Clerk.

3. Learned counsel for the applicant contended that it is because of this order that the applicant undertook to comply with a condition that her seniority will be fixed below the last temporary Upper Division Clerk in the Allahabad Collectorate and she will be treated as a fresh entrant but this issue is only for the purpose of seniority. So far as qualifying period of five years is concerned, for other promotional posts and for other purposes, her undertaking cannot be stretched to that extent. As the applicant got herself transferred at Allahabad, she was obviously bound by not only instructions and rules in this behalf but her own undertaking. The undertaking does not include two clauses; firstly regarding seniority and the other was that she will be treated as a fresh entrant in the cadre of Upper Division Clerk. Once she undertook that

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she is to be treated as a fresh entrant, apparently it was not open for her to count the earlier period towards completion of five years or 13 years service. The learned counsel for the applicant made reference to the case of 'R.A.Nadarajah Vs. Union of India' O.A. No. 401 of 1989 decided by the Central Administrative Tribunal, Madras Bench on 14.2.90. In that case, the applicant was an employee of Madras Customs Collectorate as UDC. He was transferred on inter-Collectorate transfer basis from Madras Customs Collectorate in Central Excise Collectorate Madras and upon his request, he was again transferred to the office of the Assistant Collector of Central Excise. In March 1984, willingness was called for from the eligible UDCs/Stenographer who have put in four years of regular service as on 30.6.84 for adhoc promotion to the grade of Inspector of Central Excise. The applicant also gave his willingness and pointed out that the services rendered by him in the Customs Collectorate, Madras as UDC may also be taken into account for the purpose of computing the qualifying service. He was intimated by the Collector that his willingness was not forwarded to the Collector of Central Excise, Madras for the reason that he was not completed four years of service as UDC in the department. It is against this order that he submitted an appeal which was rejected. Thereafter, he approached the tribunal. The Tribunal held that the applicant will be treated as a fresh entrant in that Collectorate but that does not mean that he would be deprived of his right of promotion.

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The learned counsel for the respondent is fair enough to admit that rules do not prescribe four years of service in a particular unit and, therefore, the applicant satisfied the condition prescribed in the rules. There was nothing to indicate that the applicant was intimated that his promotion would be delayed. In the instant case, the position is somewhat different. In the instant case, willingness was taken and the applicant gave her willingness. The applicant was an employee of Customs Department itself and she from one place to other place was transferred. Here in the present case, the applicant was an employee of another department and not customs department and the applicant was transferred to the customs department. When he was transferred to the Customs Department, she gave an undertaking and the applicant was bound by that undertaking. As the applicant was treated as a fresh entrant, obviously she was not entitled to count ~~as~~ the period of her service in view of the undertaking given by her. It is true and we agree with the observations given by the Madras/Tribunal that she would not be de-prived of her right of promotion but ~~as~~ as the applicant has not completed the period of five years or 13 years of service as provided under rules, obviously she was not eligible. Accordingly, we do not find any merit in the application and it is dismissed.

No order as to costs.

Member A
MEMBER A

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VICE CHAIRMAN.

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DATED: MAY 18 1992
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