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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Original Application No. 894 of 1994

Smt. Prabha Misra

..... Applicant

Versus

Union of India and Ors

..... Respondents

CORAM:

HON'BLE MR. JUSTICE B.C. SAKSENA, V.C.

Notice was directed to be issued to the respondents and by an interim order, the implementation of the order dated 24.5.94 (Annexure 1) was already been stayed. After receipt of notice the respondents have put in appearance <sup>through</sup> Shri Satish Chaturvedi, Advocate.

2. I have heard the learned counsel for the parties.

3. The brief facts are that the applicant after the death of her husband was given compassionate appointment on the post of Clerk (Gr. I/Junior Accounts Asstt) in the Accounts department in the pay scale of Rs.1200-2040. The letter of appointment is dated 27.9.88. According to the Service Rules, the newly recruited Clerks Gr. I will be eligible for confirmation only after passing the Departmental Examination called as Appendix-II-A. The applicant failed to qualify the prescribed Departmental Examination. Apprehending termination of her services, she filed this O.A. in this Tribunal which was numbered as 158/92. The said

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O.A. was decided by order dated 10.3.94. In the operative part of the order it was interalia provided that;

"in case the applicant is not found suitable for appointment in the Accounts Department for her having failed to pass Appendix II-A examination, we direct the respondents to consider her eligibility and suitability for appointment in some other department. If there is no suitable post for her appointment, supernumerary post should be created to accommodate her".

After the decision of the said O.A. vide order dated 24.3.94 the applicant has been reverted as Accounts Clerk with Grade Rs.960-1300 w.e.f. 14.5.94. The reason indicated in the said order for reversion is that the applicant has not qualified in the Appendix II-A examination.

4. The learned counsel for the applicant made the following three submissions;

- (i) that the impugned order itself states that the applicant is being reverted. He therefore submits that this order would be violative of principles of natural justice inasmuch as the applicant has not been afforded any opportunity;
- (ii) The applicant was given compassionate appointment on the post of Jr. Accounts Asstt and now she is posted as Accounts Clerk which post she never held, not was appointed to;
- (iii) The impugned order is against the direction given by the Tribunal in its earlier O.A. filed by the applicant.

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5. There is no doubt that by the impugned order the applicant is being reverted, the applicability of principles of natural justice does not arise. Apprehending termination of her services, the applicant had filed O.A. No. 158/92. The validity of the circular prescribing for qualifying the Departmental Examination was challenged. The same was upheld in the order passed in the said O.A. In the operative part, it has provided which has been quoted hereinabove, that the respondents shall consider the suitability of the applicant for appointment to a post in the Accounts Department or even in some other department. The learned counsel for the applicant lays stress on the direction contained in the operative part of the order in the said O.A. which provided that if no other post is available then a supernumerary post should be created. ~~Evidence containing~~ <sup>Contention</sup> is that the direction indicates that the Tribunal had directed that the applicant should be appointed on an equivalent grade post and if no post is available then a supernumerary post should be created. The contention <sup>attract</sup> ~~cannot~~ stand scrutiny. <sup>though</sup> ~~for~~ The sum and substance of the direction by this Tribunal in the order passed in the earlier O.A. is that the respondents may consider the suitability of the applicant for appointment to a post in the Accounts Department or in some other department. This implies that the post to which she could be appointed can be either of a lower grade depending on her suitability. The provision for creating a supernumerary post was with a view to ensure that the applicant though

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found suitable, for a post may not be left without a post and appointment. The direction in the operative part is not ~~Capable of acceptable to~~ an interpretation, <sup>which</sup> ~~be~~ when the learned counsel for the applicant seeks to place <sup>it</sup> ~~it~~ did not rule out even appointment of the applicant to a lower post than the post which she held earlier. Evidently she would not have been allowed to continue on the same post since admittedly she did not qualify the prescribed departmental examination.

6. In view of the fact that the impugned order has been passed in the light of the directions given in the order passed in the O.A. No. 158/92., the principles of natural justice would not be attracted. The respondents ~~are~~ <sup>have</sup> complied with the directions given in the said O.A. and after having considered her suitability have given her appointment.

7. The other plea advanced by the learned counsel for the applicant that the applicant had never worked nor was appointed to the post of Accounts Clerk is misconceived. The learned counsel cited a decision reported in 'A.I.R 1987 S.C page 1627. The facts of the said case are not in ~~parimateri~~ with the facts of the present case. The order for appointment as Accounts Clerk has been made ~~after~~ considering the suitability of the applicant for a post other than the post ~~which~~ she was holding earlier.

8. The only question that remains to be considered is ~~that~~ the last submission of the learned counsel for the applicant. In view of the discussion hereinabove, it would be evident that the impugned order in my opinion, ~~has~~ <sup>and</sup> been passed in accord with the letter <sup>and</sup> ~~in~~ spirit of the direction

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given by this Tribunal in the earlier O.A. The applicant's suitability has been considered for a post in the Accounts Department and she has been given appointment. Even other options which were left open to the respondents in view of this this have not arisen.

9. In view of the discussion hereinabove, the O.A. lacks merits and is dismissed summarily. The interim order passed earlier is vacated.

B.C. Saksena

Vice Chairman

Dated: 24.6.1994 :

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