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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
(Circuit Bench at Lucknow)
Registration T.A.No.842 of 1986

Radhey Krishna Plaintiff

Versus

Union of India & Others Defendants

Connected with

Registration T.A.No.628 of 1987

Radhey Krishna Petitioner

Versus

Union of India & Others Respondents

Connected with

Registration C.A.No.423 of 1986

R.A. Tripathi Applicant

Versus

Union of India & Others Respondents.

Hon.Ajay Johri, A.M.

Hon. G.S.Sharma, J.M.

(By Hon.Ajay Johri, A.M.)

This suit has been received on transfer from the Court of Munsif South Lucknow. The plaintiff in this suit was absorbed against the post of Lower Division Clerk in Central Govt. Health Scheme and given the grade of Rs.330 - 560 as personal to him. This was the scale he was drawing on some technical post earlier from where he came to the clerical cadre

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in June, 1976. He was later transferred on request to Lucknow in January, 1979 where he is working now. There being one vacancy of Upper Division Clerk he applied for the same in July, 1982. The eligibility condition for filling up the post of Upper Division Clerk was a service of 5 years as L.D.C. The plaintiff was not considered eligible for the post because the defendants did not count his previous service as L.D.C. at Kanpur, hence he has filed this application praying for a direction to be issued to the defendants to promote him as U.D.C.

2. There is another registration No.628 of 1987(T) Radhey Krishna Versus Union of India, a Writ Petition No.6704 of 1983 received on transfer from the Lucknow Bench of the Allahabad High Court. The petitioner in this Writ Petition was similarly absorbed at Kanpur Rs.330 - 560 in the grade/in the C.G.H.S. and came on transfer to Lucknow in January, 1979, on his own request. He was considered and recommended for the post of U.D.C. by the Departmental Promotion Committee and a promotion order was issued in August, 1983 but in October, 1983 he received a letter making his appointment Adhoc on the ground that he had not completed 5 years service as L.D.C. He has challenged this order praying for quashing the order of October, 1983.

3. The above two applications have been received under Section 29 of the Administrative Tribunals Act XIII of 1985.

4. There is yet another application O.A.No.423 of 1986 R.A. Tripathi Versus Union of India & Others ^{filed or} under Section 19 of the Administrative Tribunals Act XIII of 1985 where the applicant was appointed as L.D.C. in December, 1978 and was promoted as U.D.C. in January, 1983 whose promotion was made Adhoc because he was not considered as having completed 5 years as L.D.C. which was an essential condition for regular promotion as U.D.C. He completed 5 years service in December, 1983. He has claimed that he is the senior most L.D.C. at Lucknow. He was selected against the promotee quota on seniority-cum-fitness basis but as one post of U.D.C. was reserved for Scheduled Caste candidate a reversion had to be made but since a junior person, the petitioner in writ petition No.6704 of 1983 obtained a stay order in his favour, the applicant has been threatened to be reverted and has not been regularized. He has prayed for regularization w.e.f. 18.12.83.

5. Out of these three applications the first two are on the same point of law i.e. how should the period of 5 years of service be counted for considering promotion to the grade of U.D.C. The third petition has been connected because the order in the first two will effect the applicant in the third application. Hence all the three applications are being dealt with together. The orders in this ^{or claim petition} ~~case~~ will equally apply

to the Writ Petition 6704 of 1983 and the application 423 of 1986 will be disposed of as a consequence of these orders.

6. The facts of the case in the suit are not in dispute. The plaintiff had come on transfer to Lucknow as L.D.C. on his own request. He was thus allotted bottom seniority in L.D.C. cadre at Lucknow. When the question came for filling up of three posts of U.D.C., one was to be filled by competitive Examination and the other two by promotion on seniority-cum-fitness basis, the plaintiff's case was not considered by the Departmental Promotion Committee. He was however later promoted w.e.f. 24.8.83. His claim is that he should have been promoted w.e.f. 17.8.82 or if it is not possible w.e.f. 29.8.82 when vacancy arose. He has also challenged the modification of the order of 24.8.83 on 11.10.83, on the ground that it is in contravention to the Recruitment Rules.

7. We have heard the learned counsel for both parties. The main contention of the learned counsel for the applicant was that by coming on transfer on request the seniority can be changed but a person cannot be made to lose his previous service which he had rendered in the previous station. This was opposed by the learned counsel for the defendant on

the ground that a person can only be considered for promotion according to seniority and the period of service has to be counted from the date the employee reports on transfer to the new Unit. We have perused the case file too.

8. The rules for promotion to the post of U.D.C. are not ambiguous. For promotion on seniority-cum-fitness basis the length of service as L.D.C. is required to be 5 years and for promotion on the basis of competitive examination it has to be 3 years as L.D.C. The primary criteria is of course seniority. When the plaintiff came on transfer to Lucknow on his own request what he lost was seniority. He could not be made to lose his span of service already rendered as an L.D.C. at the previous station. His eligibility *via seniority and length of service* has to be determined after weighing both the factors giving seniority the greater weightage. So if he comes within the eligibility list the next point to be seen is his service in the grade of L.D.C. His candidature cannot be rejected merely on the ground that he has not rendered the required service of 5 or 3 years at the new Unit to which he has come on transfer. So if his seniors have been promoted and his turn for promotion has come he cannot be held back or given Adhoc promotion ^{or} ~~only~~ on the ground that he has not done 5 years as L.D.C. The plaintiff cannot

however, claim that since he has done 5 years service he should be promoted and seniors in the new Unit where he has come on transfer be ignored. He, as already indicated above, takes his place below all confirmed and temporary staff in the relevant grade in the promotion group of the new Unit notwithstanding his date of confirmation or length of service.

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9. Thus seniority position in such cases is different and quite separate and independent of the service rendered by the employee. It cannot be said that he starts service anew in the new Unit. So if an open competitive examination is arranged where only condition is years of service in the lower grade, the transferee ^{or who came} on request, would, if he has done the requisite service, be entitled to appear in the examination. Thus for the one post that has been filled on the basis of Departmental Examination, the denial to the applicant of the permission to appear was incorrect. He should have been permitted to appear.

10. In conclusion we dispose of this application with the following directions :-

- i) Seniority in the new Unit will determine the position in regard to promotion which of course will be subject to fitness.

the order making the promotion Adhoc. This petition gets disposed of in terms of our directions given above. We make no orders as to costs in this petition.

(c) In regard to O.A. No.423 of 1986 which is the application filed before this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 the applicant's case will be considered for regularization in view of the final orders having been given in Writ Petition No.6704 of 1983. His case for regularization now will be considered from the due date. In this application also we make no orders as to costs.

J. M.
J.M.

A. M.
A.M.

Dated the 30th Aug., 1988.

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