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CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH

Original Application No. 360 of 1981

Pravati Lal . . . . . Applicant

Versus

Union of India & Others . . . . . Respondents

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

Hon'ble Mr. K. Chayya, Member (A)

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

The applicant was appointed as a Film Checker on 22.11.1967 and thereafter he was promoted to the post of Film Shipper on adhoc basis on 30.12.1970. But subsequently, when a regular Shipper became available he was reverted to his substantive post of Film Checker on 31.8.1971, but again he was promoted to the post of Film Shipper on 15.11.1971 and was confirmed on that post on 8.9.1978. In pursuance of the letter dated 12.7.1978, the applicant appeared in the interview and he was ~~became~~ successful in the said interview and the promotion order was passed promoting him to the post of Film Shipper in a regular vacancy by order dated 8.7.1978 w.e.f. 27.11.1977. The applicant has approached this tribunal with the prayer that the directions may be issued to the respondents to treat him at Lucknow as Junior Booker from 15.5.1990 and seniority and other benefits attached to that post may also be given to him. He claims that in view of the earlier judgement passed by this tribunal on 28.2.1990, the applicant was entitled to more so when the post of Junior Booker fell vacant in the year in the year 1986, but the opportunity of the same was not given to him, even though, the D.P.C. had selected him for

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~~for~~ promotion as Junior Booker, in the year 1984 he was given promotion out side Lucknow contrary to his option and in any view of the matter he should have <sup>been</sup> posted on 15.5.1990 when the respondents shifted to one Radhey Shyam from Vijaywada to Lucknow. Vide order Dated 28.9.1990, this tribunal directed the respondents to post the applicant on Junior Booker as it was <sup>in</sup> mind of the tribunal that there was vacancy since 1986 which occurred on account of promotion of One K.K. Chawala, Salesman.

2. From the counter-affidavit filed by the respondents it appears that the applicant has been appointed to the post of Junior Booker w.e.f. 28.8.1991 and adjusted against the higher post of Senior Booker which is still lying vacant. Thus, the applicant has practically got the desired relief, but the only question now remains <sup>whether</sup> ~~is~~ that the applicant is entitled to the said promotion <sup>post</sup> w.e.f. the date claimed by him. Nobody can claim a post w.e.f. a particular date if it is a selection post and it appears that the applicant was holding the post of Junior Booker on ad hoc basis against the vacancy caused by promotion of one Senior Booker to the post of Salesman on ad hoc basis. The post of Salesman was required to fill on promotion basis from amongst the senior Bookers who have put in atleast 5 years of service. The post of Senior Booker was required to be filled by promotion basis from amongst the Junior Bookers who have put in atleast three years of regular service and that of Junior Bookers from amongst the Film Shipper should be atleast 5 years of service. As the eligible officials in the feeder cadre did not satisfy the requirement of post of Salesman, could not be filled in as such. The department took step to get the

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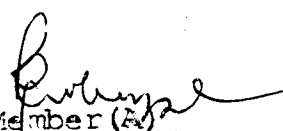
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relaxation in respect of the officials on the post of Senior Booker with regard to their qualifying service. The persons working on the post of Salesman, Senior Booker, Junior Booker would have been allowed to continue on ad-hoc basis till a regular incumbent became available for the post of Salesman. The applicant was reverted because of the persons working in the chain vacancy of Salesman and Senior Booker were reverted to their regular posts of Senior Booker and Junior Booker respectively, in view of the instructions contained by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) O.M. No. 28036/8/87-Estt(D) dated 30.3.1988, which laid down that all the ad-hoc appointments should be reviewed and in any case no ad-hoc appointment should be continued beyond the period of one year.

3. As the applicant was holding the post of Junior Booker on ad-hoc basis against the chain vacancy, the applicant was reverted to the said post. From this fact, it is evident that the earlier appointment of the applicant was on ad-hoc basis and the reversion which is under challenge. Subsequently, the applicant has been promoted. As there was no vacancy and it was open for the department to transfer any person from another place to this place, the applicant could not have claimed the post. Wherever in a transferable service, an employee has no option and an employee has no right to say that he can stay only a particular station and he can not be transferred elsewhere, because it is the right of the employer which is also condition of terms of service.

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The applicant having been promoted and there being no vacancy earlier and he can not claim promotion w.e.f. retrospective effect or with effect from the date when one person was called from Vijaywada. As it is open for the department to call another person from some other place. Accordingly, as the desirous relief has been granted to the applicant, though not to the extent claimed by him, there appears to be no good ground for interfering in the matter, as we do not find any illegality in the promotion or reversion or earlier promotion or subsequent promotion of the applicant. However, in view of the facts, that the applicant has been promoted and adjusted against the particular vacancy, his case for promotion and confirmation will now be considered by the Department expeditiously. With the observations, the application stands disposed of finally. No order as to the cost.

  
Member (A)

  
Vice-Chairman

Lucknow Dated: 5.1.1993.

(RKA)