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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

CIRCUIT BENCH

LUCKNOW

T.A. 1129/87

(Writ Petition No. 1144/83 of High Court of Judicature at Allahabad, Lucknow Bench, Lucknow)

Abdul Majeed Siddiqui

..Petitioner

versus

Union of India & others

..Respondents.

Hon. Mr. Justice K. Nath, V.C.

Hon. Mr. M.M. Singh, Adm. Member.

(By Hon. Mr. Justice K. Nath, V.C.)

The writ petition described above is before us for quashing Annexure 3 dated 8.9.71 whereby the applicant, a Senior Typist, was posted as a Junior Typist, Annexure -4 dated 28.9.71 whereby he was transferred from Lucknow to Sitapur as a Clerk and Annexure 6 a telegram dated 7.10.82 whereby he was informed that the General Manager(Personnel) Gorakhpur had rejected his representation by order dated 15.9.82 against giving him bottom seniority as a Clerk.

2. The admitted facts are that on 5.5.56, the petitioner Abdul Majeed Siddiqui was appointed as a Junior Typist in the scale of Rs 110-180 at Gorakhpur. His family and parents, however, continued to live at Lucknow and therefore, he made representations from time to time for transfer to Lucknow. However, on 16.3.1965 he was promoted at Gorakhpur to the post of Senior Typist in the scale of Rs 130-300 where he continued to work till 1971 as a confirmed Senior Typist.

3. Ultimately by order dated 8.9.71 (Annexure III)

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of the G.M.(P) Gorakhpur, with the consent and request of the applicant, ^{the} latter was posted as Junior Typist in the scale of Rs 110-180 at Lucknow vice Shri S.C. Grover promoted as Stenographer at Izatnagar. The applicant, accordingly, joined at Lucknow in September, 1971. It appears that in the mean time the post of S.C. Grover was given to some other person and not to the applicant. Shortly after joining at Lucknow, he was ordered by Annexure 4 dated 28.9.71 to be posted as Clerk in the scale of Rs 110-180 in the office of Station Master at Sitapur. This order, however, mentions that the applicant's transfer to Sitapur was made on his own written consent as there was no vacancy for him at Lucknow. The applicant, however, joined at Sitapur as Clerk.

4. In 1972, the applicant was transferred back to Lucknow again as Clerk. His grievance is that his transfer to Sitapur in the post of Clerk is not with his consent and despite that situation he had been given bottom seniority among the Clerks at Lucknow and his representation against that seniority was rejected by G.M.(P) order dated 15.9.82 communicated vide order telegram dated 7.10.82 (Annexure 6). That is how he has prayed for quashing for Annexure 3, 4 and 6.

5. The respondents' case is that ever since his appointment at Gorakhpur as a Junior Typist, the applicant had been making frantic efforts for being transferred to Lucknow. The prayers for his transfer, made from time to time, used to be rejected, so much so that he even became a Senior Typist at Gorakhpur and ultimately the applicant offered to be posted as Junior Typist at Lucknow with bottom seniority. In consequence of that request he was transferred to Lucknow as Junior Typist under orders Annexure 3 dated 8.9.71. The respondents contend that the applicant cannot make any grievance of that transfer.

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6. The respondents next contend that since there was no vacancy of a Junior Typist at Lucknow despite his transfer to Lucknow by Annexure-3, the applicant again gave a written consent for being appointed as a Clerk at Sitapur. It was for that reasons that the applicant was transferred to Sitapur in that capacity and was given the bottom seniority. That bottom seniority continued when he was transferred back to Lucknow as a Clerk in 1972. It is lastly urged that the applicant has waited all these years from 1971-72 before filing this writ petition in the year 1982 and therefore, the writ petition is bad for delay and laches.

7. Counter-rejoinder have been exchanged. We have heard Shri Akhilesh Sahai for the applicant and the learned Standing Counsel Shri Rakesh Srivastava for the respondents and have been taken through by the documents on record.

8. The applicant's case against Annexure-3 cannot be accepted. In his efforts to be transferred to Lucknow, the applicant had repeatedly offered to accept appointment as a Junior Typist with bottom seniority at Lucknow. In his application dated 27.12.1976 (Annexure S-3) he stated that for transfer to Lucknow he could accept bottom seniority if necessary. In Application dated 21.7.1958 (Annexure S-6) he requested that he may be transferred to Lucknow either as a Typist or as a Clerk.

9. The annexures S7 dated 1.9.58, S-8 dated 23.9.58 and S-9 dated 30.11.58 are letters of official correspondence within the department mentioning that there was no vacancy of Typist at Lucknow.

10. Ultimately Annexure S-23 dated 6.4.71 came to be the letter of GM(P) to the applicant stating that his transfer to Lucknow may be ordered as Typist in the scale

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of Rs 110-180 on acceptance of bottom seniority amongst Typists of the Lucknow Division, and that while there was no ~~present~~ instant vacancy of Junior Typist, his transfer as such could be considered on the availability of such vacancy. Annexure S-21 dated 14.4.1971 is the reply of the applicant to Annexure 23. The applicant clearly stated that he was ready to accept transfer to Lucknow as Typist or Clerk in the scale of Rs 110-180 alongwith bottom seniority as per extant rules, if at all his transfer at par was not possible. It is in consequence of this correspondence that the transfer order Annexure 3 (equal to Annexure S-25) was issued on 8.9.71. There is no manner of doubt whatsoever therefore, that the applicant's transfer to Lucknow in the post of Junior Typist with bottom seniority was done on the applicant's own request and consent. Annexure 3, therefore, must stand and cannot be quashed.

11. The real controversy concerns the applicant's transfer from Lucknow to Sitapur as Clerk by Annexure 4 dated 28.9.1971. According to the applicant, he never consented to be transferred as a Clerk much less with bottom seniority as such. According to the respondents he gave a written consent for transfer as a Clerk as incorporated in transfer order Annexure 4 dated 28.9.71.

12. This Tribunal had directed the respondents to produce the record. The learned Standing Counsel did produce the record but he could not show any document containing the written consent of the applicant for his transfer as a Clerk from Lucknow to Sitapur much less with bottom seniority. The learned Standing Counsel only relied upon the correspondence which passed between the applicant and the Deptt. in connection with his transfer prior to his posting at Lucknow.

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13. Annexure S-4 is the applicant's letter dated 21.5.58 addressed to the Deputy G.M.(P) Gorakhpur stating that on exercise of the policy of the option, he was agreeable to be transferred from ^{the} / post of Typist to a Clerical post. He was not keeping good health and the job of typist carried great labour and strain both physically and mentally. Annexure S-5 is the applicant's letter dated 5.7.58 in which he requested that he may be transferred to Lucknow with a change of cadre from Typist to Clerk on account of his indifferent health, climatic conditions, financial difficulties etc. Annexure S-6 dated 21.7.58 is the applicant's letter in which again he requested for transfer to Lucknow as Typist or as Clerk. The learned counsel for the respondents contends on the basis of this material that the applicant was always agreeable and indeed was willing for being transferred as a Clerk to change his category from Typist to the Clerk. But the applicant's request was not enough. Admittedly, the department did not acceded to his request till as late as April, 1971 and in the meantime the applicant was retained at Gorakhpur not only as a Typist but also promoted as Senior Typist. On the contrary the G.M(P) stated in his letter dated 6.4.1971 (Annexure S-23) that he would be transferred as Junior Typist to Lucknow as soon as the vacancy was available as he had accepted the bottom seniority but it was not/to possible accept his prayer for change of category because he had not replied to a letter dated 16.8.66 whereby he was asked to indicate whether or not he was willing to be transferred to the clerical cadre as a Junior Clerk in the scale of Rs 110-180. Again in his reply dated 14.4.71(Annexure A-23) the applicant stated that he was ready to accept his transfer as Typist or Clerk in the scale of Rs 110-180 with bottom seniority as per extant rules, if at all his transfer was not possible at par.

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14. The effect of this correspondence is that while the applicant had expressed his willingness over a number of years to be posted at Lucknow either as a Junior Typist or even as a Junior Clerk by change of category, the department was not finding it possible to permit his change of category at that stage and was inclined to transfer him only as a Typist. This situation took final shape in Annexure 3 dated 8.9.71. By that order the applicant was transferred in place of Shri S.C. Grover as a Junior Typist at Lucknow with the stipulation that he would be given bottom seniority as Typist. That appointment was accepted by the applicant and he proceeded to Lucknow. But the authorities at Lucknow, for reasons undisclosed, did not allow the applicant to join vice Shri S.C. Grover. The stand taken is that the applicant could not be appointed as a Typist at Lucknow because no post of Typist was vacant. This is an unsustainable pretext. It will be recollected that the applicant was not being transferred to Lucknow because there was no vacancy and the GM (P) in his letter dated 6.4.1971 (Annexure S-23) had stated that he would be transferred to Lucknow as soon as a vacancy could be available. The order dated 8.9.71 (Annexure -3) was issued by G.M. (P) which clearly mentions that the applicant was transferred vice S.C. Grover, the Typist who was promoted as Stenographer in the scale of Rs 130-300. We cannot accept the version of the department therefore, that the applicant could not be given an appointment at Lucknow because there was no vacancy. It is not stated that S.C. Grover's transfer as a Typist was cancelled or S.C. Grover did not join as Stenographer. The presumption is that ~~the~~ ^{join} Shri Grover must have proceeded to/on promotion post and his own post must have fallen vacant.

15. We can appreciate that if despite the order of the General Manager the authorities at Lucknow, could not find

their way to give an appointment to the applicant as a Typist, ~~by which~~^{he} had hardly any option but to proceed to the post of Clerk at Sitapur in compliance with the orders dated 28.9.71 (Annexure-4). This document mentions that the applicant was transferred accordingly on his written consent. No such consent document has been produced before us. It is the emphatic and repeated assertion of the applicant that he did not consent to proceed to Sitapur as a Clerk much less to be given bottom seniority as a Clerk. We see no reason to disbelieve his version in this regard. After all, he had sacrificed his post of Senior Typist at Gorakhpur in order to be with his parents and family at Lucknow, and therefore, to accept appointment as a Junior Typist with bottom seniority at Lucknow. It is difficult to see that he would have consented to proceed once again out of Lucknow in less than a month's time on the post of Clerk with bottom seniority. We could understand if he was given a posting at Lucknow as a Clerk at that time; perhaps he might have accepted bottom seniority even as a Clerk. But having not been given the post of Typist or Clerk at Lucknow, when he was transferred from Gorakhpur, it is very unlikely that he would have agreed of his free will to be posted as Clerk at Sitapur with bottom seniority. If the transfer to Sitapur as a Clerk was not with his consent, he could not be given bottom seniority by change of cadre vide A.K. Chatterji vs. South Eastern Railways (1985 Supreme Court 482).

16. There would have been some substance in the contention of the respondents on the point of delay and laches if it could be shown that the applicant was aware that he would be given bottom seniority on transfer to Sitapur and had not represented against such transfer within a reasonable time. The learned counsel for the applicant points out that in the

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transrer order Annexure -4 although there is a mention that the transfer ~~was~~ was with the written consent of the applicant, there is no mention that he would get bottom seniority. The mention is that he would get seniority as per extant rules. It is not shown that in every case of change of cadre by consent the rules envisage a bottom seniority. What is more important is that we do not agree that the transfer of the applicant from Lucknow to Sitapur as a Clerk was with his consent. Of course, the applicant ultimately, acquiesced in his transfer back to Lucknow as a Clerk and the case of the applicant now is that even so his seniority should have been preserved.

17. It is not shown that any seniority list was prepared at sometime after his transfer back to Lucknow in 1972 placing him at the bottom on the basis of which he could have raised a protest. The only document brought to our notice is the telegram dated 7.2.82 (Annexure-6) informing the applicant that according to GM(P's) decision dated 15.9.82 the applicant's seniority at bottom had been correctly determined. The cause of action in the matter of seniority, in these circumstances, seems to have arisen only in Oct. 1982. The filing of the writ petition is dated 28.2.83, therefore cannot be said to be bad for laches or delay.

18. On careful consideration of all the matters, we are of the opinion that the applicant cannot be given bottom seniority on the ground ~~of~~ his posting as Clerk and that he is entitled to be given a proper seniority on the basis that his transfer from the Typist to the clerical cadre was not occasioned by his consent with further readiness to be given bottom seniority.

18. The writ petition partly succeeds and we quash the orders determining his seniority on the basis of bottom

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seniority as Clerk as Communicated to him by telegram dated 7.10.82 (Annexure 6). We direct the respondents to re-consider the case of the applicant's seniority in the cadre of Clerk on the basis that the applicant had not consented to be transferred as Clerk with bottom seniority. The respondents shall comply with these directions within a period of four months from the date of receipt of a copy of this judgment.

M. M. Singh

Adm. Member.



Vice Chairman.

Lucknow Dated: Nov 15, 1990.