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Krishan Kumar Thukral Vs. Union of India (Uoi) and anr.

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Court : Delhi

Decided On : Jan-31-2002

Reported in : 99(2002)DLT528; 2003(3)SLJ273(Delhi)

Judge : S.B. Sinha, C.J. and; A.K. Sikri, J.

Appeal No. : Civil Writ No. 197 of 2002

Appellant : Krishan Kumar Thukral

Respondent : Union of India (Uoi) and anr.

Advocate for Def. : Sanghi, Adv.

Advocate for Pet/Ap. : Ranganath Swamy, Adv

Judgement :

S.B. Sinha, C.J.

1. This writ petition is directed against a judgment dated 27th March 2001 passed by the Central Administrative Tribunal, Principal Bench (in short the 'Tribunal') in O.A. No. 2693/99, whereby and whereunder the original application filed by the petitioner herein was dismissed.

2. The facts of the matter are as under: The petitioner was appointed in Border Roads Organisation as Lower Division Clerk in the year 1968. He made representation for his transfer to any other Organisation located in Delhi on

deputation basis. In the year 1985, he was selected for deputation and was directed to join Ministry of Industry. In 1989 he made a representation for permanent absorption in the Border Roads Organisation. His request was acceded to by an order dated 16th October 1989 subject to the condition that he would be placed as junior most employee in the seniority list amongst Lower Division Clerks. The petitioner reached maximum pay scale in the Lower Division Clerk on 1st January 1995. He on expiry of one year made a representation to the higher authorities that he might be given the benefit of in-situ promotion, in terms of the extant rules. The said representation was rejected on the ground that untill all his seniors were promoted his case for promotion could not be considered.

3. Feeling aggrieved, he filed the afore-mentioned Original Application, which was dismissed by the learned Tribunal stating therein as follows:

'In accordance with Finance Ministry's OM dated 20.4.93 and corrigendum dated 27.9.93 one of the conditions to be satisfied before in-situ promotion can be granted to applicant is that all his seniors should have been promoted vide para 9 of Annexure-R3. As all applicant's seniors have not been promoted , we are unable to direct respondents to grant applicant in-situ promotion.

During hearing applicant's counsel Shri Ranganath Swamy wanted us to read the words 'provided all his seniors have been promoted' to mean provided all his seniors who are eligible for in-situ promotion have been promoted', but we cannot read words into a Govt. order which do not exist there.'

4. The only question which has been raised in this writ petition is that although the petitioner was placed at the bottom of the seniority list,his past experience is not altogether wiped off.

5. The question which has been raised in the writ petition is squarely covered by judgment of this Bench in CWP 6281/99 Union of India v. Shri Deo Narain and Ors. decided on 30th January 2002, wherein it has clearly been held that on permanent transfer from one department to another although the concerned employee is placed at the bottom of the seniority list but his past experience is not wiped off altogether. His case for promotion may be taken into consideration in the

event his seniors are not eligible for promotion to the higher post even if relaxation of the eligibility criteria, in terms of the extant rules, is granted. In this view of the matter, we are of the opinion that the learned Tribunal went wrong in passing the impugned judgment.

6. This writ petition is thereforee allowed. Impugned

JUDGMENT / ORDER

is set aside and the respondents herein are directed to consider the representation of the writ petitioner on its own merit, in terms of the observations made hereinbefore. This writ petition is thus disposed of without any order as to costs.

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