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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Decision delivered on: 03.09.2021

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W.P.(C) 9512/2021 & CM Nos.29498-99/2021

ANITA KAUSHIK

..... Petitioner

Through : Mr. Setu Niket and Ms. Esha
Mazumdar, Advocates

versus

UNION OF INDIA & ANR.

..... Respondents

Through : Mr. Jivesh Kumar Tripathi and Mr.
Anirudh Shukla, Advs. for UOI.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

RAJIV SHAKDHER, J. (ORAL):

[Physical Hearing]

CM No.29499/2021

1. Allowed, subject to just exceptions.

**W.P.(C) 9512/2021 & CM No.29498/2021 [Application filed on behalf of
the petitioner for taking additional documents on record]**

2. This writ petition is directed against the order dated 30.03.2021,
passed by the Central Administrative Tribunal (in short 'the tribunal') in
O.A. No.651/2021.

2.1. It appears, the petitioner had approached the tribunal with regard to
the rejection of her representations, concerning the change of designation of
her post.

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2.2. The respondents rejected the petitioner's representations, dated 19.08.2019 and 21.06.2019, *vide* communication dated 06.12.2019, which was what was assailed by her, before the tribunal.

2.3. The tribunal, having considered the matter, dismissed the aforementioned OA. The rationale given by the tribunal, is contained in paragraphs 3 and 4 of the impugned order, dated 30.03.2021. For the sake of convenience, the said paragraphs, are extracted hereafter:

“3. It is not disputed by the learned counsel for the applicant that the applicant was initially appointed to the post of Accounts Clerk-cum-Typist (ACT) and her services have been regularized as such with the initial date of her joining and the benefits of ACPS and MACPS have been also accorded to her by the respondents. Her only grievance is that at the time of her appointment, there was no available vacancy to the post of Accounts Clerk-cum-Typist (ACT).

4. We have heard the learned counsel for the applicant and we are of the considered view that if the applicant has been appointed in the year 2007/2008 and she has accepted the offer of appointment and terms and conditions thereof, at the initial stage, she cannot raise the issue that her appointment was without availability of vacancies for the said post and, therefore she should be re-designated and higher pay should be given to her and that too after more than a decade. In the present OA, the applicant has neither challenged her appointment to the post of Accounts Clerk-cum-Typist (ACT) nor has raised any point as to why this Tribunal should interfere in the matter of change of designation as being raised by the applicant. Though the impugned order has been passed on 06.12.2019, however, the claim of the applicant is of the year 2007/2008 and, therefore, we find that the claim is stale one.”

3. Mr. Setu Niket, who appears on behalf of the petitioner, says that, what ails the petitioner is not simply the re-designation of her post, but, that her junior, one Mr. Rajesh Karanth has been accorded the benefits of higher post, without the petitioner being considered for the same. In this behalf, Mr. Niket has made the following submissions:

(i) That the petitioner was appointed on *ad-hoc* basis w.e.f. 08.04.1993, vide letter of appointment dated 01.06.1993, and that she had subsequently been made permanent to the post designated, as Accounts Clerk-cum-Typist (ACT).

(ii) That Mr. Rajesh Karanth, i.e., the petitioner's junior was appointed as ACT, on 01.01.1995.

(iii) Mr. Rajesh Karanth was, provisionally, appointed as Junior Accountant, on 31.12.1995.

(iv) Mr. Rajesh Karanth was appointed as District Youth Officer and paid the salary applicable to the said post.

3.1. In support of the aforementioned plea, our attention has been drawn by Mr. Niket to the documents appended on pages 201, 208, 210 and 220 of the case file. Concededly, these documents were not made available to the tribunal.

3.2. Mr. Niket also concedes that, the petitioner in her representations, dated 19.08.2019 and 21.06.2019, which were rejected by the respondents, *via* communication dated 06.12.2019, did not raise the grievance articulated before us today.

4. Having regard to the aforesaid, we are not inclined to interfere with the order of the tribunal. However, liberty is given to the petitioner to make a fresh representation with regard to the grievances articulated before us, i.e., the petitioner's junior has been considered for placement to the higher post and is being paid a higher salary, while the same benefit has not been extended to her.

4.1. If such a representation [as indicated above] is made, the respondents will deal with the same, and pass a speaking order, in that behalf. A copy of the order so passed will be furnished to the petitioner.

4.2. The respondents will dispose of the aforementioned representation, within a period of four weeks, from the date, they are served with the representation. The petitioner will endeavour to make a fresh representation to the respondents, at the earliest, though, not later than three weeks from today.

5. The writ petition is disposed of in the aforesaid terms. Consequently, the pending application shall also stand closed.

RAJIV SHAKDHER, J

TALWANT SINGH, J

SEPTEMBER 3, 2021/aj

Click here to check corrigendum, if any

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