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**(2007) 05 AHC CK 0367**

**Allahabad High Court**

**Case No:** None

Atherton Mills an Unit of  
National Textile  
Corporation (U.P.) Ltd.

**APPELLANT**

**Vs**

State of U.P.

**RESPONDENT**

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**Date of Decision:** May 25, 2007

**Acts Referred:**

- Uttar Pradesh Industrial Disputes Act, 1947 - Section 4K

**Citation:** (2007) 115 FLR 374

**Hon'ble Judges:** Sunil Ambwani, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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### **Judgement**

Sunil Ambwani, J.

Heard Shri Gopal Misra for the petitioner and Shri L.M. Singh for respondent-workman in writ petition No.18439 of 1999 and Shri L.M. Singh for petitioner and Shri D.P. Singh for respondent-employer in writ petition No.67316 of 2005.

2. The writ petition No. 18439 of 1999 filed by M/s Artherton Mills Company, a Unit of National Textile Corporation (UP) Ltd., Kanpur, the petitioner employer arises out of adjudication case No.94 of 1990 decided by, industrial Tribunal (3) U.P. Kanpur dated 30.10.1998 by which Shri Prahalad chandra Gupta-respondent No.3 workman was directed to be promoted by giving the post and pay-scale, and wages of Sales Officer w.e.f. 1.6.1979 when Shri Nisar Ahmad was promoted from the post of Supervisor to Sales Officer. The Tribunal further directed that the employer shall give difference of wages within one month and Rs. 250/- as cost of the case.

3. An industrial dispute was referred by the Government of U.P. on 23.1.90 u/s 4K of the U.P. Industrial Disputes Act, 1947 to the industrial Tribunal for adjudicating whether it was

just and proper not to give the post and pay scale to Shri Prahlad Chandra Gupta-workman, Sr. Clerk, Poly-General sales Department as Supervisor and, if the question is decided in favour of the employer the benefits and damages to which the workman is entitled. The second question referred to the Tribunal was whether the concerned workman was entitled to be given post of Sales Officer and other benefits with effect from the date on which his junior employees, were promoted as Sales Officer and if yes, the details thereof.

4. The respondent-workman stated in his written statement that he was directed to work as supervisor and sales officer from 1970 to June 1978 and when he demanded the post and pay scale of Sales Officer, the officers in the establishment transferred Shri Nisar Ahmad Ansari from Printing department mill side to the administrative office on 7.6.1978 and by placing him in supervising cadre, he was promoted as sales officer. Similarly Shri Narain Das, Junior clerk was promoted on 14.02.1977 from the post of Junior clerk to Sr. Supervisor as on 1.6.1979. Shri Sardendu Srivastava was directed appointed as Sales Officer. The respondent-workman further stated that there are no rules governing the promotions and that the establishment awarded promotions - arbitrarily without following any norms thereby discriminating senior employees. Shri Narain Das was promoted as Sales Officer on 1.11.1980. The juniors to the respondent-workman were also promoted in supervisory cadre and that the petitioner being senior to them was ignored.

5. The employer in his written statement took objections to the maintainability and competence of the reference raised by BMS (the unit), which did not have substantial membership. There was no vacancy in the sales department. In the year 1984, about 15 lacs meters of cloth was produced, which got reduced to 5 lacs mtrs. per month and thus there was no need of three sales officers and two sales supervisors. There was excess of two sales officers and two sales supervisors in the establishment. The respondent workman had no concern with the work of supervisor. He was in the category of senior clerk and as per the agreement dated 25.5.1989 the clerks were classified in the categories of one junior clerk, two senior clerks and three head clerks. There were many persons senior to the respondent workman.

6. In the additional written statement, the petitioner employer stated that no production and commercial activities are carried out by the mill since 14.5.1991. There is no industrial dispute either existing or apprehended as the industry was dead in the absence of working capital, and the financial position of plant and machineries. There was no chance of its revival. The State Government did not apply its mind before referring the question after lapse of about 5 years. The promotion of the employee is the prerogative of the management and the Tribunal has no authority to interfere in the matter. There was no post of Supervisor in the organisational structure sanctioned by the Board of Directors and as such the demand for the post, was illegal and unjustified. There is only one post of Sales Officer, which was held by Mr. M.M. Pathak and he is getting ideal salary as no sales activities are going on in the absence of production. The management was not in a position to bear the financial burden. The employer relied upon *Western Match Co. v.*

Western India Match Co. Workers" Union 1990 II LLJ SC. It was further contended that the respondent-workman was declared as senior clerk in terms of the settlement dated 28.5.1979. He did not become head clerk and could not be considered for promotion of Supervisor. The service conditions and wage structure of the clerks, supervisor/officer in quite different. The watch and ward staff are governed by standing order, while the others are governed by NTC Service rules with different age of superannuation. The demand of wage structure of the clerical staff is pending with the Supreme Court.

7. The Industrial Tribunal after examining the evidence including the statement of the respondent workman and Marketing Manager Shri G.S. Mishra as employer"s witness No. 1 found that the workman was working to he satisfaction of, the, employer. Shri Nisar Ahmad, junior to the petitioner was made supervisor and was thereafter promoted as Sales Officer. The other juniors also superseded the respondent workman and relying upon the incidence of R.K. Nayar, B.P. Singh and Shri Narain Das the Tribunal held that the petitioner was discriminated and directed that he be promoted as Sales Officer with effect from 1.6.1979 (the date when Shri Nisar Ahmad was promoted) with difference of salary and other benefits.

8. Shri Gopal Misra, learned Counsel for the petitioner submits that there is no production in the company since 1991 as there is no working capital and that the mill is closed. Almost all the workmen have taken voluntary retirement. The respondent-workman was superannuated in 1999 and has been accepting all the retiral dues. The promotions to the post of Supervisor Sales Officer were required to be made in accordance with the rules applicable to NTC employees. The post of Supervisor and Sales Officer belong to junior management grade. The promotion of clerk under certified Standing Order 32 was granted with due regard to seniority ability. efficiency and general suitability. The petitioner is only high school and was not qualified and eligible to be appointed either as Sales Supervisor or sales Officer and he never worked on these posts.

9. Shri L.M. Singh appearing for the respondent-workman, has made in submissions in support of the award and has relied upon the permission given to Shri Nisar Ahmad and other persons junior to petitioner, who were brought to the administrative sections to supersede the petitioner. He submits that the superannuation of the respondent-workman in 1999 and acceptance of retiral benefits will not take away his rights, which he has acquired through the award.

10. An application was filed in July 1999 stating therein that net worth of the mill was fully eroded. The BIFR registered Case No.504 of 1993 and by order dated 30.4.1998 the mill was declared as sick industrial company under the Sick Industrial Companies (Special Provisions) Act, 1985. Almost 700 employees have taken benefit of voluntary retirement scheme and that the company with losses of Rs. 21 crores as on 31.3.1998 without any production since 14.5.1991, is unable to pay its dues and to comply with the interim order dated 5.5.1999.

11. In Brooke Bond India Private Ltd. and their workmen (1962) 5 FLR 368 the Supreme Court held that the promotion of industrial employees is normally the function of the management and that the Tribunal must leave the matter of promotion to the employers.

12. In Hindustan Lever Ltd. v. The Workmen (1973) 2 FLR 398 the Supreme Court reiterated the principles that ordinarily the promotion is management function. In the absence of finding of malafide, victims for trade union activity or unfair labour practice the Labour Court's direction to place the workman in higher grade is not appropriate and is liable to be set aside.

13. In Har Narain Ashok Kumar v. The State of U.P (1973) 27 FLR 401 and in A.J. Fernandis v. The Divisional Manager, South Central Railway and Ors. JT 2000 2 (Supp.) SC 460 this Court and the Supreme Court held that promotion must be based on the policies made by the department.

14. In the present case the respondent workman was appointed and was working in clerical cadre. He had only passed high school examination. The evidence led by him did not prove that he was allowed to work as Supervisor or Sales Officer. The industry was gradually loosing its production and that there was reduction in the number of Supervisors and Sales Officer. THE production ultimately came to an end on 14.5.1991 resulting into severe losses and that in 1998 the company was declared as sick industrial company in these circumstances, the Tribunal grossly erred in allowing the petitioner's benefit of promotion only on the ground that one Shn Nisar Ahmad was junior was made Supervisor. The employer denied that Shri Nisar Ahmad was appointed as Sales Officer or that Shri Nisar Ahmad was actually promoted as Sales Officer. There were only three posts of Sale officers, two posts of Sales Supervisor and thus it could not be said that about five of the workmen junior to the petitioner were promoted a Sales supervisor and then Sales Officers.

15. The prevalent promotion rules of the National Textile Corporation provided in Rule 20.2 the criteria for promotion from Group B to Group F posts in Grade I, was seniority subject to suitability and from Group II to Group IV merit, efficiency and past performance and seniority being taken into consideration, only if other factors arc equal. On availability of vacancy the management could either fill the post by direct recruitment or by promotion through a Departmental Promotion Committee in the month of January and July each year. The method of assessment and panel for selection was provided in Ride 24 and 25 and that on the recommendation of Departmental Promotion Committee, the appointing authority could promote under Rule 26.

16. The promotion of an employee is purely a departmental function, and is guided by the departmental rules. Even if the Industrial Tribunal declares that the workman is entitled to promotion, it cannot pass an order directing promotion to him and to fix a date for his promotion based on the criteria of the promotion given to junior officer. In every case the person seeking promotion must be eligible and should fulfill the criteria for promotion. The

thumb rule that promotion given to junior discriminates the senior is not applicable to the matters of selections. The award of the Tribunal as such cannot be justified and is liable to be set aside.

17. The writ petition No. 18439 of 1999 is allowed. The award of the Industrial Tribunal dated 30.11.1998 passed by the Industrial Tribunal-III U.P. Kanpur in Adjudication Case No.94 of 1990 is set aside.

18. in write petition No. 67316 of 2005, Shri Prahlad Chandra Gupta-the workman has prayed for setting aside the order passed by the presiding officer, Labour Court (I), U.P. Kanpur in Misc. Case No. 166 of 1999 by which he rejected the workman's application for calculating and payment of entire difference between the post of Sales Officer and Sr. Clerk from 1.6.1979 to 31.3.1999 (the date of his superannuation) quantified by him to be recovered u/s 33-C (2) of the at Rs. 5,62,247.05. The Labour Court rejected the application on the ground that the award of the Industrial tribunal was stayed by the High court in write petition No.18439 of 1999 and that the stay modification application is still pending.

19. Now since the writ petition No. 1843 of 1999 has been allowed by this judgment setting aside the award of the industrial Tribunal, there is no question of payment of any difference of salary.

20. The writ petition No. 67316 Prahlad Chandra Gupta v. The presiding Officer and Anr. is consequently dismissed.