

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31-01-2006

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE R. SUDHAKAR

WRIT PETITION NO.5413 OF 2004

1. The Regional Provident Fund Commissioner,
Office of the Regional Provident Fund Commissioner,
No.20, Royapettah High Road,
Chennai 14.
2. The Assistant Provident Fund Commissioner,
Employees' Provident Fund Organisation,
Sub Regional Office,
10, A/3, St. Thomas Road,
High Grounds, Tirunelveli 627 011.
3. Employees Provident Fund Organisation,
Head Office, Bhavishya Nidhi Bhavan,
No.14, Bhikaji Cama Place,
New Delhi 110 066. ... Petitioners

Vs.

1. The Central Administrative Tribunal,
rep. By its Registrar,
Madras Bench, High Court Buildings,
Chennai 600 104.
2. K. Sivaraman,
S/o. Kandasamy ... Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of certiorari to call for the proceedings of the first respondent Tribunal in O.A.No.308/2003 dated 14.11.2003 and quash the same.

For Petitioners : Mr.M. Veluswami, SCGSC
For Respondent-2 : Mr.P.V.S. Giridhar for
M/s.P.V.S. Giridhar &
Associates

O R D E R

(The order of the Court was made by P.K. MISRA, J)

The Regional Provident Fund Commissioner has filed this writ petition against the order of the Central Administrative Tribunal, whereunder the Tribunal, while allowing O.A.No.308 of 2003 filed by the present Respondent No.2, observed that Respondent No.2 is entitled to be considered for the purpose of promotion under Time-Bound Promotion Scheme, dated 17.3.1992.

2. The brief facts are as follows :-

The present Respondent No.2 was appointed as Lower Division Clerk in the Army Head Quarters, New Delhi, in the year 1982. Subsequently, he was promoted as Upper Division Clerk in the said organisation on 18.1.1989. However, thereafter, on his own request he was appointed on transfer as Lower Division Clerk under the present petitioners' organisation by order dated 8.4.1991 and at that stage he was treated as a fresh recruit in the Department. Subsequently, he was promoted to the post of Upper Division Clerk on 8.9.1995. Thereafter, the present respondent No.2 filed an application for being considered for the benefit of One Time Bound Promotion Scheme, dated 17.3.1992, which had been given effect from 1.1.1992. The provision contained in the scheme is to the following effect :-

"... All Upper Division Clerks who have completed 17 years of Clerical Service in each region as on 31.12.1991 will be placed in the next higher grade i.e. Rs.1400-2300 on non-functional basis. The number of Upper Division Clerks to be placed on higher grade in each region is furnished in Column-3 of Annexure 'A' on the basis of the information supplied by each region."

2. The Respondent No.2 made representation to the appropriate authority for giving benefit of such scheme on completion of 17 years of clerical service by taking into account his earlier service rendered in Army. However, such representation was turned down by order dated 8.4.2002. Thereafter, the present Respondent No.2 filed O.A.No.308 of 2003 before the first respondent Tribunal. The Tribunal by referring to several decisions of the Supreme Court has observed that the past services rendered by Respondent No.2 in clerical capacity should also be considered for the purpose of conferring the benefit under the Scheme dated 17.3.1992 and accordingly the Tribunal had given a direction to the present petitioners to consider the question of grant of such benefit to the present Respondent No.2. Such direction is being challenged in the present writ petition.

3. The main contention raised by the petitioners is to the effect that as per the initial order of appointment of the present Respondent No.2, such appointment was considered as fresh appointment for all purposes and it was specifically indicated that such person will not be entitled to service benefits such as seniority, leave, pension, etc., which had been earned in his previous service. It is further indicated that such employee shall be considered as a fresh recruit and the seniority in the cadre of Lower Division Clerk may be reckoned from the date of his appointment under the petitioners organisation. Learned counsel for the petitioners has vehemently submitted that Respondent No.2 having not completed 17 years of clerical service under the Regional Provident Fund Commissioner, he is not entitled to the benefits contemplated under the Scheme.

4. Learned counsel appearing for Respondent No.2, on the other hand, has supported the reasonings given by the tribunal and supplemented his contentions by placing reliance upon the decision of the Supreme Court reported in (2003)8 SCC 714 (UNION OF INDIA AND ANOTHER v. V.N. BHAT).

5. Having heard the learned counsels appearing for the parties and having gone through the relevant materials on record, we are of the considered opinion that the order of the Tribunal does not call for any interference. The Tribunal has referred to the main intention of introduction of such a Scheme, which was introduced with a view to avoid any stagnation and avoid any frustration. As a matter of fact, while considering a similar matter, the Supreme Court in (2003) 8 SCC 714 (cited supra) has observed as follows :-

"4. The submission of the learned counsel for the appellants in short is that having regard to the admitted fact that the respondent herein has not completed 16/26 years in the postal service, the One Time-Bound Promotion Scheme or BCR Scheme is not applicable in his case. The fact that the respondent herein had completed 18 years of service in the Ministry of Defence is not disputed. The question which, therefore, arises for consideration is as to whether the period of service rendered by the respondent in the Ministry of Defence should be wiped off for all purposes. The well-settled principle of law that even in the case where the transfer has been allowed on request, the employee concerned merely loses his seniority, but the same by itself would not lead to a conclusion that he should be deprived of the other benefits including his experience and eligibility for promotion. In terms of the Schemes aforementioned, promotion is to be granted for avoiding stagnation only within the said parties. The said Schemes have been framed because they are beneficial ones and are thus required to be implemented. The Scheme merely perused that any person having rendered 16/26 years of service without obtaining any promotion could be entitled to the benefit therefor. It is, therefore, not a case where

promotion to the higher post is to be made only on the basis of seniority. Even in a case where the promotion is to be made on selection basis, the employee concerned, even if he be placed at the bottom of the seniority list in terms of the order of transfer based in his favour, he cannot be deprived of being considered for promotion to the next higher post if he is eligible therefor. This aspect of the matter is clearly covered by the three decisions of this Court, namely, A.P. Seb v. R. Parthasarathi {(1998) 9 SCC 425}}, Scientific Advisor to Raksha Mantri v. V.M. Joseph {(1998) 5 SCC 305} and Renu Mullick v. Union of India {(1994) 1 SCC 373}.

5. The aforementioned decisions have been followed by this Court in Dwijen Chandra Sarkar v. Union of India {(1999) 2 SCC 119} in the following paras: (SCC opp.124-125, paras 14 & 17)

"14. The words 'except seniority' in the 1983 circular, in our view, mean that such a benefit of a higher grade given to the transferees will in no way affect the seniority of employees in the P&T Department when the turn of the P&T employees comes up for promotion to a higher category or post. The said words 'except seniority' are intended to see that the said persons who have come from another Department on transfer do not upset the seniority in the transferee Department. Granting them higher grade under the Scheme for time-bound promotion does not, therefore, offend the condition imposed in the transfer order. We are, therefore, of the view that the appellants are entitled to the higher grade from the date on which they have completed 16 years and the said period is to be computed on the basis of their total service both in the Rehabilitation Department and the P&T Department.

...

17. On the facts of the present case and especially in view of the aforesaid decisions, we are of the view that when the transfer is in public interest and not on request, the two employees transferred cannot be in a worse position than those in the above rulings who have been transferred on request and who in those cases accepted that their names could appear at the bottom of the seniority list. Even in cases relating to request transfers, this Court has held, as seen above, that the past service will count for eligibility for certain purposes though it may not count for seniority."

6. In our opinion, the ratio of the aforesaid decision, which has referred to several earlier decisions of the Supreme Court, is squarely applicable to the present case.

7. Having regard to all these aspects, we do not find any illegality in the order passed by the Tribunal. Moreover, the order of the Tribunal appears to be in the aid of substantial justice. Even assuming that there is some flaw in the order passed by the Tribunal, since substantial justice had been rendered, we do not think this is a fit case where the order of the Tribunal should be interfered with in exercise of jurisdiction under Article 226 of the Constitution. The present petitioners are directed to implement the order of the Tribunal. Learned counsel appearing for the petitioners has requested some time for complying with the order. We direct that the order should be complied with within a period of three months from the date of receipt of copy of this order. The writ petition is accordingly dismissed. No costs.

dpk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Registrar,
The Central Administrative Tribunal,
Madras Bench, High Court Buildings,
Chennai 600 104.

1 cc To Mr.P.V.S.Giridhar Associates, Advocate, SR.3944.
1 cc To Mr.M.Veluswami, Advocate, SR.4069.

सत्यमेव जयते

ORDER IN WP.NO.5413/2004

NG (CO)
RVL 27.02.2006

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