A DWIJEN CHANDRA SARKAR AND ANR.

v.

UNION OF INDIA AND ANR.

DECEMBER 15, 1998

B [S. SAGHIR AHMED AND M. JAGANNADHA RAO, JJ.]

Service Law:

Promotion—Time-bound promotion—Past services, counting of—For
C *those who have "competed 16 years of service in that grade", provided in Scheme of P&T Department effective from 30.11.1983—Computation of eligibility period of 16 years—If service rendered by the employee in Rehabilitation Department prior to his transfer, to be counted—Purpose of time-bound promotion—Held, service rendered in earlier department would*
D *be counted for computing the eligibility period of 16 years for time-bound promotion—Requirement of 16 years' service in that grade does not mean that only regular P & T Department employees rendering 16 years' service would be eligible and those who were transferred in public interest would be denied that benefit under the Scheme.*

E *Seniority—Length of service—Time bound promotion—Scheme of P&T Department provided for eligibility period of 16 years service in the grade—Appellants transferred from Rehabilitation Department to the P&T Department—Transfer order provided that their past service would be counted for all purposes i.e. fixation of pay, pension and gratuity etc. except seniority—*
F *Appellants' prior service in the Rehabilitation Department to be counted for time-bound promotion—Held, words "except seniority" meant time-bound promotion of the appellants would not disturb the seniority of the existing P&T employees.*

Appellant were transferred from Rehabilitation Department of the
G **Government to the Department of P&T in public interest. The appointment order provided that their past services would be counted for all purposes i.e. for the fixation of pay, pension, gratuity etc. "except seniority". The Scheme for time-bound promotion of the P&T Department provided for the completion of 16 years service in that grade. And on this basis they were refused time-bound promotion although Appellants 1 and 2 had put in 16 and 12 years of**
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services respectively in the Rehabilitation Department. The Administrative Tribunal also rejected the case of the Appellants on the ground that the services rendered at the Rehabilitation Department could not be counted for time-bound promotion in the P&T Department. Hence this appeal.

Allowing the appeal, this Court

HELD: 1. Where there are a large number of employees in any department and where the employees are not likely to get their promotion in the near future because of their comparatively low position in the seniority list, the Government has found it necessary that in order to remove frustration, the employees are to be given a higher grade in terms of emoluments -while retaining in the same category. This is what is generally known as time-bound promotion. Such a time-bound promotion does not affect the normal seniority of those higher-up. That being the purpose of a time-bound promotion, it cannot be said that the Government wanted to deprive the appellants who were brought into the P&T Department in public interest - of the benefit of a higher grade. The frustration on account of stagnation is a common factor not only of those already in the P&T Department but also of those who are administratively transferred by the Government from the Rehabilitation Department to the P&T Department. The Government while imposing an eligibility condition of 16 years' service in the grade for being entitled to time -bound promotion, is not intending to benefit only one section of employees in the category and deny it to another section of employees in the same category. The common factor for all these employees is that they have remained in the same grade for 16 years without promotions. The said period is a term of eligibility for obtaining a financial benefits of a higher grade. [581-F-H; 582-A-B]

2. The words "except seniority" in the transfer order 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 orders. [582-D-E]

3. When the transfer is in public interest and not on request, the two employees transferred cannot be in a worse position than those who have been transferred on request and who accepted that their names could appear

at the bottom of the seniority list. Even in cases relating to request transfers, the past service will count for eligibility for certain purposes though it may not count for seniority. Hence the transfer order and circular of 1983 which required that the past service should not count for seniority, cannot have any bearing on eligibility for time-bound promotion. Seniority and time-bound promotions are different concepts. The past service of the appellants is to be counted for the limited purpose of eligibility, for computing the number of years of qualifying service, to enable them to claim the higher grade under the Scheme of time-bound promotions. [584-D-F]

Renu Mallick **v.** *Union of India,* **[1994] 1 SCC 373;** *Scientific Advisor to Raksha Manthri* **v.** *V.M. Joseph,* **[1998] 5 SCC 305 and** *A.P. State Electricity Board* **v.** *R. Parthasarthi,* **[1998] 9 SCC 425, relied on.**

4. The appellants will be entitled to the higher grade from the date they completed 16 years of service - computing the same by taking into account their past service in the Rehabilitation Department also along with the service in the P&T Department. They will be so entitled as long as they remain in the post of Assistant and till their normal promotion to a higher post according to the Rules. The difference between the emoluments in the grade as due to them and the amount which was actually paid to them, shall be computed and be paid within a month. [584-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3093 of 1988.

From the Judgment and Order dated 16.2.88 of the Central Administrative Tribunal, Calcutta in O.A. No. 355 of 1987.

Mr. Sheela Goel for A.K. Goel for the Appellants.

P.N. Mishra, H.V.P. Sharma, A.K. Sharma and Mrs. Sushma Suri for the Respondents.

The Judgment of the Court was delivered by

M. JAGANNADHA, RAO. Two appellants who are working in the Posts and Telegraph Department filed this appeal against the judgment of the Central Administrative Tribunal, Calcutta Bench in O.A. No. 355 of 1987 dated 16.02.1988. By that Judgment the Tribunal dismissed the application filed by the appellants. The point in issue is whether for the purpose of computing 16 years service for getting a "time-bound promotion" as per the relevant circular of the Government dated 17.12.1983, the appellants are entitled to count the service rendered by them in the Rehabilitation Department of the

Government of India prior to their transfer to the Department of Posts and Telegraph. The Tribunal has held that the said service with former department cannot be counted and, therefore, the appellants are not entitled to the time bound promotion unless they complete 16 years in the transferee department, namely, P & T Department.

The following are the facts:

The appellants 1 and 2 were appointed as Lower Division Clerks in the Department of Rehabilitation, Government of India on 18.11.1970 and 5.2.1965 respectively. Subsequently, on 7.12.1976 the first appellant was transferred to the P & T Department in public interest as Postal Assistant and the second appellant was also so transferred on 13.12.1976 to the same Department in public interest.

The particular scheme which deals with time bound promotion is dated 17.12.1983 and reads as follows:

> "The scheme will come into effect from 30.11.1983. All officials belonging to basic grades in Group 'C' and Group 'D' to which there is direct recruitment either from outside and/or by means of limited competitive examination from lower cadres, and who have *completed 16 years of service in that grade* will be placed in the next higher grade. Officials belonging to operative cadres listed in the Annexure 'A-1" to the agreement will be covered under the scheme."

From the aforesaid circular, it is clear that the Scheme has come into force w.e.f 30.11.1983 and all officials belonging to the basic grades in Group 'C' and 'D' to which there is direct recruitment whether from out side and/ or by means of limited competitive examination from lower cadres, will get time-bound promotion if they have completed 16 years service in the grade. It is also clear from the same circular that Postal Assistants in pay scale of Rs. 260-480 will, w.e.f. 30.11.1983 be placed in the scale of Rs. 625-640 if they have completed 16 years service in the grade of Rs. 260-480. The question, however, is whether the appellants can be considered to be having 16 years of service in the grade? The respondent Union of India, however, relies upon the conditions mentioned in the orders of transfer of the appellants to the P & T Department made in 1976. The said order reads as follows to the extent relevant for the present purpose; that the employees will be:

> "treated as transferred in the public interest and their past service is

A counted for all purposes (i.e. fixation of pay, pension and gratuity etc.)

The respondents have also relied upon a copy of letter No.20/34/76-SPB dated 31.3.1977 from the D.G. P & T, Calcutta in relation to the subject of appointment of surplus staff of Mana Camp. The material portion of the said letter reads as follows:

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> "Surplus personnel on their redeployment in your circular are treated as transferred in the public interest and their past service is counted for all purposes (i.e. fixation of pay, pension and gratuity) *except seniority.*"

C The Tribunal by rejecting the case of the appellants held that the 16 years of service of the first appellant and 12 years of service of the second appellant in the Department of Rehabilitation could not be computed for the purpose of reckoning 16 years service as prescribed under the time bound promotion scheme. According to the Tribunal, the service should be rendered D in the particular grade while working in the Postal Department. For coming to the conclusion, the Tribunal relied upon the words "16 years of service in that grade" mentioned in the circular dated 17.12.1983. It held as follows :

> "From the reading of this circular particularly the DG P & T No. 31-26/83-PGI dated 17.12.83 and clarificatory orders, it is clear that the E scheme is applicable only to the regular P & T employees and some of the basic operative cadres enumerated in the original order. It is a scheme which is not for universal application to all the Central Government Employees but is applicable only to a limited group of employees within the P & T Department"

F The Tribunal also relied upon a letter No. 31-26/62 PEI dated 1.3.84 DG P & T which clarified that the order detailing the scheme would be applicable only to the regular appointees and not to those employees who were serving on an ad-hoc basis. Reference was also made to another letter 6-19/84 SPB-II dated 19.7.84 DGP&T to the effect that ex-servicemen who had surrendered G their entire benefits of defence service would not be entitled to avail their past service in the defence forces for the purpose of computation of the 16 years. These were referred to by way of analogy.

According to the appellants, the view taken by the Tribunal is wrong. Several rulings of this Court are relied upon by the learned counsel for the H appellants. On the other hand, the learned senior counsel for the respondent,

Shri P.N. Mishra points out that from the language of the circular as set out above, it is clear that the service of 16 years must be in the relevant P & T Department and, therefore, any service rendered by the appellants in the Rehabilitation Department of the Government cannot help them. The scheme is scheme of the P & T Department and it specifically required the service in a grade in the Department. The learned senior counsel submits that the view taken by the Central Administrative Tribunal, Calcutta Bench is the correct one.

The point for consideration is; whether the appellants are entitled to the time bound promotion by combining their service in the Rehabilitation Department of Government rendered by the appellants before being administratively transferred to the P & T Department?

It is to be noted that the transfer of the appellants from the Rehabilitation Department to the P & T Department was not on their request but was expressly stated to be in the public interest. But while doing so, it was clarified that their past service in the Rehabilitation Department would not count for 'seniority'. The purpose of this restriction was that their transfer should not disturb the chances of promotion of those who were already working in the P & T Department. There is no doubt, that for the purpose of their regular promotions to higher posts in the P & T Department their seniority is to count only from the date of their transfer to the P & T Department. The transfer order imposed this restriction. We are not concerned with the validity of this restriction. All that it means is that these two transfers will not alter the existing seniority of those in the P & T Department.

However, the position in regard to 'time-bound' promotions is different. Where there are a large number of employees in any department and where the employees are not likely to get their promotion in the near future because of their comparatively low-position in the seniority list, Government has found it necessary that, in order to remove frustration, the employees are to be given a higher grade in terms of *emoluments* - while retaining them in the same category. This is what is generally known as the time-bound promotion. Such a time-bound promotion does not affect the normal seniority of those higher up.

If that be the true purpose of a time-bound promotion which is meant to relieve frustration on account of stagnation, it cannot be said that the government wanted to deprive the appellants who were brought into the P & T Department in public interest - of the benefit of a higher grade. The frustration on account of stagnation is a common factor not only of those

A already in the P & T Department but also of those who are administratively transferred by Government from the Rehabilitation Department to the P & T Department. The Government, while imposing an eligibility condition of 16 years service in the grade for being entitled to time-bound promotion, is not intending to benefit only one section of employees in the category and deny it to another section of employees in the same category. The common factor B for all these employees is that they have remained in the same grade for 16 years without promotions. The said period is a term of eligibility for obtaining a financial benefit of a higher grade.

If the appellants are entitled to the time-bound promotion by counting C service prior to joining the P & T Department, the next question is whether treating them as eligible for time-bound promotion will conflict with the condition imposed in their transfer order, namely, that these will not count their service for seniority purposes in the P & T Department.

The words " except seniority" in the 1983 circular, in our view, mean that D such a benefit of a higher grade given to the transferees will in no way effect 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-E 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.

F There are atleast three precedents of this Court to support the principle enunciated above. The first one is *Renu Mallick* v. *Union of India,* [1994] 1 SCC 373. In that case the appellant, a Lower Division Clerk, was transferred from the Central Services and Customs Department, *on her own request,* to the Central Excise Collectrate. She gave an undertaking in terms of Central G Departmental instructions which said:

> "the transferee will *not* be entitled to count the service rendered by her in the former Collectorate for the *purpose of seniority* in the new charge."

Now for purpose of promotion as Inspector, she had to put in a service H of 5 years as UDC or a total service of 13 years both as UDC and LDC, subject

to minimum of 2 years as UDC. When the appellant's turn for promotion as Inspector came up she was denied promotion on the ground she was ineligible because she did not have the required number of years of service in the transferee department. This view was not accepted. It was held that seniority and eligibility are different concepts. It was directed that the appellant be given promotion as Inspector only when she would fall within the zone of consideration as per her seniority reckoned in the transferee department. When her turn based on the service seniority in the transferee department arrived, if any, question as to her eligibility for promotion should arise i.e. whether she had 5 years as UDC or a total of 13 years as UDC and LDC, for computing the said period of qualifying service, the past service in the Central Services and Customs Department should also be counted. Kuldip Singh, J. observed:

> "We are of the view that the Tribunal fell into patent error in dismissing the application of the appellant. A bare reading of para 2(ii) of the executive instructions dated May 20, 1980 shows that the transferee is not entitled to count service rendered by him/her in the former Collectorate for the purpose of *seniority* in the new charge..... But when she is so considered, her past service in the previous Collectorate cannot be ignored for the purposes of determining her *eligibility* as per Rule aforesaid. Her *seniority* in the previous Collectorate is taken away for the purpose of counting her *seniority* in the new charge *but that has no reliance* for judging her eligibility....."
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> "The rule no where says that the period of 5 years and 13 years is not applicable for an officer who has been transferred from one Collectorate to another on his own request."

In *Scientific Advisor for Raksha Manthri* v. *V.M. Joseph,* [1998] 5 SCC 305, to which one of us (Saghir Ahmed, J.) was a party, it was held that service rendered in another department helps for determining *eligibility for promotion* though it may *not* count for *seniority*. In that case, the employee was transferred from the Ministry of Defence to the Central Ordinance Depot. Then he made a request for transfer to the Naval Physical Oceanographic Laboratory, Cochin. He was transferred to be placed at the bottom of seniority list. It was held that he could still count his past service for purpose of eligibility for promotion. It was observed:

> "Even if an employee is transferred at his own request, from one place

A to another on the same post, the period of services rendered by him at the earlier place where he held a permanent post and had acquired permanent status, cannot be excluded from consideration for determining his *eligibility* for promotion, though he may have been placed at the bottom of the *seniority* list at the transferred place."

B Again in *A.P. State Electricity Board* v. *R. Parthasarathi,* [1998] 9 SCC 425, a government servant was transferred and absorbed in the Electricity Board and it was held that the past service in government would count towards the requisite experience of 10 years for eligibility for promotion.

C 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 seniority list. Even in case relating to request transfers, this Court has held, D as seen above, that the past service will count for eligibility for certain purposes though it may not count for seniority.

Hence the transfer order and concerned circular of 1983 which required that the past service should not count for seniority, cannot have any bearing on eligibility for time bound promotion. Seniority and time bound promotions E are different concepts, as stated above.

For the above reasons, we hold that the past service of the appellants is to be counted for the limited purpose of eligibility - for computing the number of years of qualifying service, to enable them to claim the higher grade under the scheme of time-bound promotions.

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In our view, the Tribunal was in error and its order is set aside. The appellants will be entitled to the higher grade from the date they completed 16 years of service computing the same by taking into account their past service in the Rehabilitation Department also along with the service in the P & T Department. They will be so entitled as long as they remained in the post G of Assistant and till their normal promotion to a higher post according to Rules. The difference between the emoluments in the grade as due to them and amount which was actually paid to them, shall be computed and be paid within a month from the date of this order. There will be no order as to cost.

R.K.S. Appeal allowed.