

Joyachan M. Sebastian

Vs

Director General and Others

Civil Appeal No. 11481 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

23.08.1996

ORDER

1. Leave granted.
2. We have heard the learned counsel on both sides.
3. The only question for consideration is whether the appellant is entitled to seniority from 21-9-1983 when after passing the All India Clerk Grade II Examination he was posted as Clerk Grade II at Television Station, Kohima or from 26-3-1987 when he was transferred to and posted at the Television Station, Trivandrum ?
4. The admitted position is that after his initial appointment on 21-9-1983, the post which he was holding came to be abolished on account of administrative exigencies, on 8-6-1983. Thereupon, he was transferred and posted at his option to Tamil Nadu Doordarshan Kendra at Salem on 6-8-1984. He was further transferred to Trivandrum at his request on 26-3-1987. It is seen that when the seniority list was prepared as per the order of appointment, his seniority was not shown from the date of his initial appointment at Kohima. Therefore, he filed OA in the Central Administrative Tribunal, Ernakulam Bench. The Tribunal by the impugned order dated 6-7-1994 made in OA No. 932 of 1994 dismissed the same. Thus this appeal by special leave.
5. It is also not in dispute that he was mentioned in his application for transfer to Doordarshan Kendra, Trivandrum that he would not claim his seniority held in Salem w.e.f. 19-8-1984.
6. Shri E.M.S. Anam, the learned counsel for the appellant, contended that since the transfer had come to be made due to administrative exigencies, viz., abolition of the post and creation of the post and availability of the vacancy in Tamil Nadu, the transfer was not on account of the request made by the appellant and that, therefore, the seniority had to be reckoned from the date of his initial appointment, i.e., 21-9-1983. We find no force in the contention.
7. It is now settled legal position that on abolition of the post, the holder of the post has no right to continue on the post. Instead of retrenching him as surplus, the Government have accommodated him in the available vacancy and, therefore, it must be deemed to be a fresh appointment for the purposes of seniority. After joining in Salem in Tamil Nadu, he made a request for transfer to Trivandrum and it is at his request that he was transferred. Consequently, on his undertaking in the application that he would not claim his seniority at Salem Station, the transfer was effected at his request. It is settled legal position that he would take his seniority as juniormost among the confirmed employees in the transferee region.

8. Considered from this perspective, we are of the view that the Tribunal has not committed any error of law warranting interference.

9. The appeal is accordingly dismissed. No costs.