

Scientific Advisor To Raksha Mantri and Another

Vs

V. M. Joseph

Civil Appeal No. 3749 of 1992

(S. Saghir Ahmad, D. P. Wadhwa JJ)

14.01.1998

JUDGMENT

S. SAGHIR AHMAD, J. -

1. The respondent was appointed as a Lower Division Clerk on 15-11-1969 in the Ministry of Defence. Subsequently, in the same Department, he was appointed as a Storekeeper on 27-4-1971 in the Central Ordnance Depot, Pune. He got the status of quasi-permanent on 27-4-1974 and became permanent with effect from 1-5-1974. The respondent made a request for his transfer as a Storekeeper in the Naval Physical Oceanographic Laboratory (NPOL), Cochin, which was accepted on compassionate grounds and on 6-6-1977, he was transferred to that post, but was placed at the bottom of the seniority list of Storekeepers there.

2. On 22-8-1980, the respondent was promoted to the post of Senior Storekeeper.

3. On 15-7-1980, a new post of Senior Storekeeper, Grade I was created as an intermediate grade between the posts of Senior Storekeeper and Store Superintendent. One A. K. Anujan, who was the immediate senior of the respondent in the Grade of Senior Storekeeper was promoted to this intermediate post of Senior Storekeeper, Grade I on 31-8-1982. The respondent raised a claim that he should have been promoted as Senior Storekeeper on 31-1-1978 instead of 22-2-1980 and should have been further promoted to the post of Senior Storekeeper, Grade I, on 31-8-1982 along with his next senior A. K. Anujan. When this claim was not entertained, the respondent approached the Kerala High Court by a writ petition (OP No. 10013 of 1982-J) which was allowed on 30-7-1985 and a direction was issued to the present appellants to consider the claim of the respondent for antedating his promotion on ad hoc basis by applying the same rules and principles on which, his immediate senior, A. K. Anujan, was promoted to the post of Senior Storekeeper, Grade I.

4. In pursuance of the above judgment, the case of the respondent was considered by the Review Departmental Promotion Committee on 15-10-1985, which was of the opinion that, since the respondent had completed 3 years of regular service as Storekeeper commencing from 6-6-1977, only on 7-6-1980, he could not be promoted as Storekeeper earlier than 1980. With regard to his promotion to the post of Senior Storekeeper, Grade I, the Departmental Promotion Committee was of the view that since under the recruitment rules, the respondent had completed 3 years of regular service as Senior Storekeeper only on 23-8-1983, the respondent could not be considered for that post as that post had, in the meantime, been taken out of the purview of the Departmental Promotion Committee and the Recruitment and Promotion Rules with regard to that post had ceased to exist with effect from 7-11-1981.

5. On the basis of the decision of the Departmental Promotion Committee, the order dated 30-10-1985 was passed by the appellants, which was challenged by the respondent before the Central Administrative Tribunal, Madras Bench, which by its judgment dated 23-2-1988, has allowed the claim petition and issued the following directions :

"(a) The applicant's service as Storekeeper at Pune at least from 1-5-1974 when he was made a permanent Storekeeper should be reckoned as qualifying service for the purpose of eligibility for promotion as Senior Storekeeper at NPOL, Cochin.

(b) The Review DPC should consider the applicant for ad hoc or regular promotion as the case may be against ad hoc/regular vacancies between 31-1-1978 and 22-8-1980.

(c) On the basis of the recommendations of the Review DPC III, if any, the applicant should be promoted as SSK either on ad hoc or on regular basis by antedating his promotion from 22-8-1980.

(d) The respondents should identify the unfilled posts of SSK-I from 1982 to date and consider the applicant for promotion as SSK-I with effect from the date he can be deemed to have put in three years of regular service as SSK either from 22-8-1980 or an earlier date with effect from which the Review DPC recommends his name for regular promotion as per promotion as per (b) above."

6. From the facts set out above, it will be seen that promotion was denied to the respondent on the post of Senior Storekeeper on the ground that he had completed 3 years of regular service as Storekeeper on 7-6-1980 and, therefore, he could not be promoted earlier than 1980. In coming to this conclusion, the appellants excluded the period of service rendered by the respondent in the Central Ordnance Depot, Pune, as a Storekeeper for the period from 27-4-1971 to 6-6-1977. The appellants contended that, since the respondent had been transferred on compassionate grounds on his own request to the post of Storekeeper at Cochin and was placed at the bottom of the seniority list, the period of 3 years of regular service can be treated to commence only from the date on which he was transferred to Cochin. This is obviously fallacious inasmuch as the respondent had already acquired the status of a permanent employee at Pune where he had rendered more than 3 years of service as a Storekeeper. Even if an employee is transferred at his own request, from one place to another on the same post, the period of service 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. Eligibility for promotion cannot be confused with seniority as they are two different and distinct factors.

7. This Court in *Union of India v. C. N. Ponnappan* ((1996) 1 SCC 524 : 1996 SCC (L&S) 331 : AIR 1996 SC 764) has held that where an employee is transferred from one unit to another on compassionate grounds and is placed at the bottom of the seniority list, the service rendered by him at the earlier place from where he has been transferred, being regular service, has to be counted towards experience and eligibility for promotion.

8. In view of this decision, with which we respectfully agree, the direction of the Tribunal that the respondent may be promoted to the post of Senior Storekeeper from an earlier date and the further direction concerning the respondent's promotion to the post of Senior Storekeeper, Grade I, do not

suffer from any infirmity. That being so, the appeal has no merits and is accordingly dismissed without, however, any order as to costs.