

SUPREME COURT OF INDIA

M. Ramakotaiah

Vs.

Union of India (Uoi)

(A Lakshmanan and T Chatterjee JJ.)

12.03.2007

JUDGMENT

TARUN CHATTERJEE, J.

1. Leave Granted

2. This batch of appeal has been filed against the judgment passed by the Division Bench of the High Court of Andhra Pradesh whereby the common order of the Central Administrative Tribunal, Hyderabad (in short "the Tribunal") was clarified to the extent that such of the observations made by the Tribunal which went contrary to the decision of this Court in V. Kameshwari v. Union of India (1993) 2 Supp SCC 407, had to be ignored and the authorities shall only take, into consideration the principles laid down by this Court and prepare the seniority list as directed.

3. Briefly stated the facts leading to the filing of these appeals are:

On 19th January 1971, some of the casual labourers were selected as Khalasis by the Selection Committee constituted by the Railways. Their names were placed in the panel for absorption as Khalasis as and when vacancies would arise. Those who were working as casual labourers in 1970-71 were given temporary status after completion of 180 days of continuous service. The appellants and similarly situated persons were promoted as Khalasis and from Khalasis to Khalasis Helper and Grade III Fitter, Grade II Fitter and Grade I Fitter and Master Craftsman (MCM). A seniority list was prepared on 6th March 1979. One K. Prabhakar Rao and others who were working as Class IV Khalasi, filed a Writ Application No. 5917 of 1980 in the High Court challenging the aforesaid seniority list. By a final order dated 8th December 1983, a learned Single Judge of the High Court disposed of the Writ Application by directing the petitioners to submit their representations within one month from the date of that order and also directed the respondents to prepare final seniority list and publish the same within four months of receipt of the representations from them. The judgment read:

The petitioners shall be permitted to submit their representations against the seniority list published on 6-3-1979, within a period of one month from today. If any such representations are received, they shall be considered in the light of the relevant material by the appropriate authorities, and a

final seniority list published. The final seniority list shall be published within four months of the receipt of representations from the petitioners'. In case the seniority list is revised, the promotions already made, shall also be revised and re-adjusted in accordance with the said seniority list.

(Underlining is ours)

4. On 29th October 1984, in a different matter concerning the Seniority list of the Grade-D Khalasi of Secunderabad Division, a Division Bench of the High Court allowed a Writ Application No. 4058 of 1982 and held as under:

The petitioners are entitled to count their seniority from the date of their completion of six months of continuous service i.e. from the date they acquired temporary status in the category. A seniority list shall accordingly be prepared, published and communicated. It is clarified that the amended paragraphs 2511(a) of the Indian Railways Establishment Manual has no application to the petitioners.

(Underlining is ours).

5. When the Tribunal was constituted under the Act, some of the casual labourers, on 23rd September 1987 challenged the seniority list before the Tribunal, which dismissed the said petition on the ground of delay. On an application for review of the aforesaid order dated 23rd September 1987, the Tribunal allowed the same on 2nd November 1987 and held that the petitioners to that review application were entitled to count their seniority from the date of granting them temporary status. On 21st February 1989, the Tribunal allowed a Transfer Application No. 135 of 1986 filed by Prabhakar Rao and others in which it was held that the applicants therein were entitled to seniority from the date of temporary appointment and not from the date of regularization. On 27th October 1989, the Tribunal in Transfer Application No. 779 of 1986 filed by one K. Ch. Venkayya and others directed the respondents therein to prepare the seniority list according to the dates when the applicants therein attained temporary status.

6. Again on 1st November 1993 the Tribunal in Original Application No. 829 of 1991 held as under:

the seniority lists which were revised in regard to the appellants in various writ petitions/ transfer applications/ original applications have to be revised with regard to the employees who are similarly situated to the applicants in those seniority units so as to reckon their services for the purpose of seniority from the date on which temporary status was confirmed.

(Underlining is ours)

7. In 1995, another provisional seniority list was prepared by the respondents. However, on 24th November 1999, the Tribunal in O.A. No. 1547 of 1999 allowing the said application held that the fixation of seniority was to be from the date of grant of temporary status. On the basis of this order, the final seniority list was prepared on 25th July 2000 which was challenged by the respondents other than the State in O.A, No. 1933 of 2000 before the Tribunal. On 12th March 2001, in the said original application, the Tribunal directed the Government to prepare the seniority list on the basis of the date of entry into grade.

8. A seniority list was thereafter prepared on 31st August 2001 on the basis of the order of the Tribunal in O.A. No. 1933 of 2000 which was challenged by the appellants and their batch by way of O.A. No. 1679 of 2001 before the Tribunal and sought for quashing the same by declaring the seniority list as illegal and void and also for setting aside the consequential Memos dated 27.9.2001 reverting/downgrade revision of the promotion of the petitioners in O.A. No. 1679/2001 based on the said revised seniority and consequential declaration of the seniority list published earlier on 28th July 2000 to be held valid with all consequential monetary benefits.

9. On 21st January 2003, the Tribunal allowed the Original Application No. 1679 of 2001 and directed the respondents to prepare a fresh seniority list on the basis of the judgment of this Court in the case of V. Kameshwari v. Union of India 1993 (2) Suppl. SCC 407. The Tribunal held:

The impugned seniority list published on 31-8-2001 and consequential memos and orders issued on 27-9-2001 and 28-9-2001 proposing to revert/downgrade their seniority are hereby quashed. The official respondents are directed to prepare a fresh seniority list on the basis of the judgment of the Hon'ble Supreme Court in Kameshwari's case reported in 1993 (1) SLR 550 which is reiterated in O.A. No. 1933/2000 and also in accordance with the future clarificatory directions given by this Tribunal in O.A. No. 1547/99. M.A. No. 291/02 also stands disposed of in terms of the order passed in the main OAs.

(Underlining is ours)

Aggrieved by the aforesaid order of the Tribunal, the Union of India filed Writ Petitions in the High Court challenging the order of the Tribunal.

10. On 27th November 2003, the Division Bench of the High Court held that in preparing the seniority list the clarification given by the Tribunal should not be taken into account. Aggrieved by the said orders, the present appellants have filed the Special Leave Petitions in this Court for which leave has been granted.

11. We have heard the learned Counsel for the parties and examined the facts and the orders of the High Court and the Tribunal in detail. In the instant appeal, our attention has been drawn to answer the following issues:

1. Whether the High Court was justified in ignoring the directions made in its earlier order dated 29th October 1984 and the decision of this Court in V. Kameshwari v. Union of India (supra)?

2. Whether the seniority list prepared by the Department in the year 2000 taking into consideration the proviso to the amended Rule 2511(a) was open to contest even though the 2001 list was held to be correct?

12. Before dealing with the issues posed before us, we would like to examine the un-amended and amended Para 251 1(a) of the Indian Railway Establishment Manual (hereinafter referred to as the 'Manual'). The un-amended Para 251 1(a) was to the following effect:

Casual labour treated as temporary are entitled to all the rights and privileges admissible to temporary railway servants as laid down in Chapter-XXIII of the Indian Railways Establishment Manual. The rights and privileges admissible to such labour also include the benefits of the

Discipline and Appeal Rules. Their service, prior to the date of completion of six months continuous service will not, however, count for any purposes like reckoning of retirement benefits, seniority etc. Such casual labourers will also be allowed to carry forward the leave at their credit to the new post on absorption in regular service.

13. From a plain reading of this un-amended para, it would not be difficult for us to find out that casual labourers who are treated as temporary are entitled to all the rights and privileges admissible to temporary railway servants which include the benefits of the Disciplinary and Appeal Rules. However, their service prior to the date of completion of six months continuous service will not be counted for any other purpose like recalling of retiral benefits, seniority etc. However, they will be allowed to carry forward their leave to the new post on absorption in the regular service.

The amended para reads as follows:

Casual labour treated as temporary are entitled to all the rights and benefits admissible to temporary railway servants as laid down in Chap XXIII of this Manual. The rights and privileges admissible to such labour also include the benefit of Disciplinary and Appeal Rules. However, their service prior to absorption in temporary/permanent regular cadre after the required selection /screening will not count for purpose of seniority and the date of their regular appointment after screening/selection shall determine their seniority vis-a-vis other regular employees. This is, however, subject to the proviso that if the seniority of certain individual employees has already been determined in any other manner either in pursuance of judicial decision or otherwise the seniority so determined shall not be altered. Casual labour shall be eligible to count only half the period of service rendered by them after attaining temporary status on completion of prescribed days continuous employment and before regular absorption as qualifying service for the purpose of pensionary benefits. Such casual labour who have attained temporary status will also be allowed to carry forward the leave at their credit to the new post on absorption in regular service. Daily rated casual labour or labour employed on projects will not be entitled to these benefits.

14. At this stage, we may remind ourselves that the correctness of the earlier decisions that is before the amendment of Para 2511(a) of the Manual, as noted herein earlier, in which a question arose whether the amended or the un-amended Para 2511(a) of the Manual would be applicable or not. The stand of the Union of India before us was based upon the amended Para 2511(a) of the Manual. We have already quoted both the un-amended and amended Para 2511(a) of the Manual. The stand of the Union of India was that as soon as amendment had come into force, the seniority list must be published/prepared only in accordance with the said amendment. If this stand is accepted, we cannot but hold that the relief sought for cannot be granted. This dispute was cleared by this Court in the case of V. Kameshwari (supra). The High Court in previous writ petitions, while deciding the applicability of the amendment to 2511(a) of the Manual observed as follows:

There is nothing to show that the amendment effected in the Railway Board's letter is retrospective in nature. It neither says so expressly, nor such an inference follows by necessary implication. Indeed no attempt was made to submit that it is retrospective. Once it is held to be prospective the question is what does prospectivity mean. It can only mean one thing, according to us, viz. that only those persons who completed their six months continuous service and acquired temporary status prior to the coming into force the amended paragraph 2511(a). To elaborate the point take the case of person, who had completed six months continuous service and acquired temporary status on 1-1-1980. Such a person acquired a right under the previous rule to count his seniority from 1-1-1980

onwards, notwithstanding the fact that he is absorbed on 1-1-1984. But according to the amended paragraph 2511 (a) he will count his seniority only from 1-1-1984 and not from 1-1-1980. If the submission of the learned standing counsel is accepted, it would mean depriving the said person of his seniority between 1-1-1980 and 1-1-1984, which could be done only if the amended rule is retrospective in its operation and not otherwise. Apart from the above, there is an indication in the amended rule itself, which militated against the contention of the learned standing counsel. The amended paragraph 2511 (a) inter alia stated: This is however, subject to the proviso that if the seniority of certain individual employees has already been determined in any other manner, either in pursuance of judicial decisions or otherwise the seniority so determined shall not be altered.' Now this clause means that if certain persons have already obtained a judgment from this or any other Court in terms of the old rule and their seniority is determined accordingly, that shall not be disturbed. Now, if we accept the contention of the learned standing counsel for the Railways, it would mean that persons similarly situated to such persons, but who have not approached the Court and have not obtained a decision from it will be deprived of the benefit of the old rule. We do not think such a course can be permitted. This Writ Petition was filed in 1982. Suppose, it was allowed in 1982 itself or at any rate before May, 1983, following the Bench decisions. Just because there has been a delay in the disposal of the writ petition, the rights which accrued to the petitioners by virtue of rules, cannot be taken away.

15. Only the validity of the amendment was considered by this Court in the case of V. Kameshwari (supra). In this case this Court has made it abundantly clear that the amended Para 2511(a) of the Manual has retrospective effect. We may reiterate, at the risk of repetition, that the Tribunal and the High Court held that the amendment to Para 2511(a) of the Manual would be effective prospectively. Keeping in mind that the amended Para 2511(a) would be applicable, this Court in V. Kameshwari's case (supra) made it clear that casual labourers treated as temporary who were subsequently absorbed in temporary/permanent cadre is to be reckoned on the basis of the date of their regular appointment after screening/selection and their service prior to the absorption in temporary/ permanent cadre after the required screening/selection would not be counted for the purpose of seniority. In this connection, this Court made the following observation:

As noticed earlier one Smt. K. Vijaya Kumari, who was senior to the appellant, was placed above her (at Sl. No. 4) in the order of merit and by virtue of seniority she would be entitled to be placed in the panel in the place of respondent No. 3. It, however, appears that Smt. Vijaya Kumari had opted for avenue as Khalasi on TRS pool and by order dated December 18, 1984, she was posted as Khalasi Helper in higher scale Rs. 210-290 with effect from April 1, 1981. From the additional affidavit dated February 7, 1992 filed on behalf of respondent Nos. 1 and 2, it appears that Smt. Vijaya Kumari has been promoted to Class III post with effect from January 2, 1990, and when she was asked about her interest to coming back she expressed her unwillingness to come to the post of Junior Clerk and has declined to stake her claim for the said post. Since Smt. Vijaya Kumari has declined to stake her claim for the post of Junior Clerk the appellant is the senior most person in the order of merit and is entitled to be promoted to the post of Junior Clerk in place of respondent No. 3 who was wrongly promoted to the said post. The appellant shall be treated to have been promoted to the post of junior clerk with effect from the date on which respondent No. 3 was promoted to the said post and her pay and seniority on that post shall be fixed on that basis. We find that the appellant moved the Tribunal on August 17, 1987, nearly four years after the promotion of respondent No. 3 on the post of junior clerk, and furthermore she moved this Court for special leave to appeal nearly two years after the passing of the impugned order by the Tribunal. Keeping in view the aforesaid circumstances, it is directed that from the date of this order, the appellant shall be

entitled to receive her emoluments on the basis of her pay fixed as a consequence of her promotion to the post of Junior Clerk and, by way of arrears, she shall be paid one-fourth of the amount of difference between the emoluments the appellant would have been entitled to draw as a consequence of her promotion as junior clerk as per directions of this Court and the emoluments that were actually drawn by her during this period.

16. Considering the above aspect of the matter, as rendered in the case of V. Kameshwari (supra) by this Court, we are of the considered view that the High Court was fully justified in making the following observations:

We therefore make it clear that such observations made by the Tribunal, which go contrary to the decision of the Supreme Court, have to be ignored and the authorities shall only take into consideration the principles laid down by the Supreme Court and prepare the seniority list, as directed.

Such being the position and in view of the decision of this Court, let us proceed keeping in mind that the amended Para 2511(a) of the Manual would be applicable.

17. We have herein earlier quoted the amended Para 2511(a) of the Manual. From a bare perusal of this para, it would be evident that under this amended para, the seniority of the casual labourers treated as temporary, who were subsequently absorbed in temporary/permanent cadre is to be reckoned on the basis of the date of their regular appointment after screening/selection and their service prior to the absorption in temporary/ permanent cadre after the required selection would not be counted for the purposes of seniority. In the amended Para 2511(a) only exception is in respect of the employees where the seniority has already been determined, either by way of judicial pronouncement or otherwise and that the seniority so determined shall not be altered.

18. In view of the discussions made herein above, we find that amended Para 2511(a) lays down the privileges of the temporary employees, the crux of which can be enumerated as follows:

1. Casual labour treated as temporary are eligible to rights and benefits admissible to temporary railway servants as laid down in Chapter XXIII of the Manual including the benefit of Disciplinary and Appeal Rules.

2. The employees shall not be eligible to count their service prior to the date of their being appointed as a temporary/regular employee for the purposes of determination of his seniority. Seniority would be calculated only from the date of the regular appointment.

3. The above provision shall not be applicable in cases where the seniority is determined in any other manner such as a judicial decision. In such situations, the seniority so determined would be applicable and beyond the scope of alteration.

4. For the purposes of pension, the employees shall be eligible to calculate only half their term of service after attaining temporary status on completion of prescribed days of continuous employment and before regular absorption as qualifying service.

5. The above pensionary benefit would be only to employees after their absorption in regular employment.

6. Casual labour who have attained temporary employment would be eligible to carry forward the leave available to them when they are absorbed in regular service.

7. These benefits, however, are not available to daily rated casual labour.

19. This Court in *V. Kameshwari v. Union of India* 1993 Supp (2) SCC 407 examined the said provision and was of the opinion that:

... under the amended provision of Para 2511 (a) the seniority of casual labour treated as temporary who were subsequently absorbed in temporary/permanent cadre is to be reckoned on the basis of the date of their regular appointment after screening/selection and their service prior to absorption in temporary/permanent regular cadre after the required selection selection/screening would not count for the purpose of seniority. The only exception, that has been made is in respect of the employees whose seniority had already been determined in any other manner either by any judicial decision or otherwise and it is provided that the seniority so determined shall not be altered.

(Underlining is ours)

20. Considering this, it is safe to conclude that the court was of the opinion that when a casual labour treated as temporary is absorbed as temporary/permanent cadre; his seniority would be calculated from date of regular appointment, i.e., the services rendered before the date of regular appointment would not be applicable for determination of seniority.

21. The High Court after quoting the above decision held that "the seniority list has to conform to the principles laid down by the Supreme Court and any clarification, which has got the effect of running contra to the principles laid down by the Supreme Court, have to be necessarily ignored, in view of Article 141 of the Constitution of India." It was the opinion of the High Court that the observations of the Tribunal, which run contrary to the decision of the Supreme Court, be ignored and directed the authorities to take into consideration the principles laid down by this Court while preparing the seniority list. Considering this, we are of the opinion that the High Court has not ignored the decision of this Court. Thus, in our opinion, the question of the High Court erring in ignoring the decision does not arise as it has adequately considered the decision before pronouncing its own judgment.

22. Coming to the second issue, the question raised before this Court is whether even after the preparation of a new seniority list by the authority in 2001, which was held to be correct, the list prepared in the year 2000 was still open to challenge. We are of the opinion that once the new seniority list comes into existence, it overrides the previous list. Considering this, it only appears common sense that once the new list has come into existence and had been held to be valid, the old list would be assumed to have been superseded, thus, making it redundant. In such a situation, it is difficult for us to hold that seniority list prepared by the Department in the year 2000 taking into consideration the proviso to the amended Rule 2511(a) is open to contest even though the 2001 list is held to be correct. We are of the opinion that seniority list prepared in the year 2000 is not open to challenge after the list of 2001 is held to be correct.

23. We hereby dismiss the appeal with no orders as to costs.

