

SUPREME COURT OF INDIA

Coal India Ltd.

Vs.

Navin Kumar Singh

C.A.No.6491-6492 of 2014

(Dipak Mishra,CJI., A.M.Khanwilkar and Dr.D.Y.Chandrachud,JJ.,)

25.09.2018

JUDGMENT

A.M. Khanwilkar,J.,

1. These appeals emanate from the judgment and order dated 20th May, 2010 passed by the Division Bench of the High Court of Jharkhand at Ranchi in L.P.A. No.546 of 2003 and order dated 11th December, 2013 passed in Civil Review No. 68 of 2011, whereby the High Court upheld the decision of the Single Judge, with minor modifications and declared that the past service of the respondent in the previous company of the appellant could not be forfeited for all purposes in the event of an inter-company transfer on personal grounds at his request and dismissed the review petition against the said judgment on the ground of unexplained delay.

2. The respondent, a graduate in Chemical Engineering, was appointed on 27th June, 1990 in E-2 Grade and joined the same on 4 th August, 1990 in Dankuni Coal Complex (for short 'DCC'), of the appellant company. On a request made by the respondent, the Personnel Manager of the appellant company issued a transfer order being No.C-5A(iii)/51434(Trans)/199 dated 23rd April, 1991 transferring the respondent from DCC to Central Mine Planning and Design Institute Limited (for short 'CMPDIL'), a subsidiary of the appellant company, in his existing capacity i.e. E-2 Grade. The transfer notice made it clear that since the transfer had been made at the instance of the respondent himself, his seniority in the E-2 Grade would be reckoned from the date he joined the new organisation, CMPDIL. Accordingly, the respondent joined CMPDIL on 15th May, 1991. The prevailing policy for determination of seniority of executives on inter-company transfers at the time of the joining of the respondent, was as follows:

“11. Determination of seniority of executives in E-1 to E-4 grades on inter-company transfers This issue has two aspects:

(a)Inter-company transfer effected on administrative grounds:-

(b) Inter-company transfer effected at the request of the executive concerned on personal grounds.

According to the existing system, the officers in E-1 to E-4 grades belong to the respective company cadres on as- in-where-is basis. Their career growth upto E-5 grade is within the company. When an executive in these grades moves from one company to the other, he gets absorbed in the appropriate cadre of that company.

11.1 The Committee recommends that:

(i) When an inter company transfer is effected on administrative grounds the seniority of the executive shall be fixed in the company to which he is transferred taking into account his date of entry into the grade.

(ii) When the inter-company transfer is effected on personal grounds at the request of the executive concerned, his seniority in the company to which he is transferred, shall be fixed as if he entered the grade on the date of his assumption of charge in the new company. In other words, such executive will lose his past seniority in the grade.”

This policy was further clarified by way of an Office Memorandum dated 5th June, 1985, issued by the General Manager (Personnel) which read as follows:

“Under the present policy of the company, when the inter-company transfer is effected on personal grounds at the request of the executive concerned, his her seniority in the company to which he/she is transferred, is fixed as if he/she entered the grade on the date of his/her assumption of charge in the new company and the executive loses his/her past seniority in the grade. An issue has been raised whether in such cases the period of service in a grade put in by the executive in the previous company will also count towards eligibility for promotion or not.

2. In this connection, it is clarified that while the name of the officer transferred on request will be placed at the bottom of the seniority list in his/her grade in the new company when the officer immediately senior to his/her in the new company becomes eligible for promotion, say after one year, the transferee will also become eligible for consideration for promotion provided he/she put in the minimum prescribed grade in the previous company. However, if the Officer immediately senior to the transferee in the new company has put in less than the minimum prescribed period of service, say six months, in the grade the transferor becomes eligible for promotion even though the transferee might have put in more than the requisite service in the grade prior to his/her transfer.

3. Pending cases may be disposed of on the basis of the above clarification. However, past cases will not be re-opened.

This issues with the approval of Competent Authority.”

3. The respondent claims that in September 1993, the appellant company held its departmental promotion committee after which several employees were promoted from the E-2 Grade to the E-3 Grade but the respondent was overlooked for promotion. The reason given to the respondent was that his transfer to CMPDIL was done at his own request and his promotion would be considered only after he completed 3 (three) years of work experience at CMPDIL, which was the requisite period for promotion from E-2 to E-3.
4. Subsequently, the respondent was promoted to the „E-3’ Grade vide order dated 12th December, 1994, which also mentioned that his seniority would be decided separately, since he had been promoted under the cluster concept in the centralised cadre. This order was modified on 2 nd January, 1995 to change his designation to Executive Engineer (Chemical).
5. Post-promotion, the respondent challenged the appellant’s decision to exclude his work experience at DCC (i.e. 4th August, 1990 to 14th May, 1991) while considering his eligibility for promotion, by filing a writ petition being CWJC No.2074/1997 before the High Court of Jharkhand praying for grant of notional seniority to him to the post of Executive Engineer (Chemical) in the E-3 Grade with effect from 12th November, 1993. The Single Judge disposed of the writ petition vide order dated 18th November, 1998, by merely directing the appellant company to consider the representation of the respondent within 3 (three) months from the date of the order.
6. Thereafter, the Chief General Manager (Personnel) of the appellant company, after considering the respondent’s representation, issued an order on 16th February, 1999, rejecting the same inter alia on the ground that the applicable policy at the time of considering the respondent’s seniority was that an employee would lose his past seniority in his existing Grade in the event of an inter-company transfer, if the request for transfer was made by the employee himself and further, as per the office memorandum of 5th June, 1985, since there was no senior executive above the respondent’s Grade, the question of the application of the said office memorandum did not arise. The said order reads thus:

“Shri Singh was transferred from Dankuni Coal Complex, Dankuni (West Bengal) to CMPDIL, Ranchi vide Order No.:C- 5A(iii)51434(Trans)/109 dated 23rd April 1991 on his own request. In terms of policy followed prior to 1st April 1993 (i.e. the date from which the career growth of all executives was centralized at CIL level), one had to lose his past seniority in his existing grade in the event of his transfer from one company to another on “request basis”. This policy was followed very strictly without any exception.

The Office Memorandum dated 5th June 1985 only clarifies with regard to procedure to be followed for consideration of such transferred executive, when his immediate senior executive in the transferee company is considered for promotion. In the case of Shri Singh since there was no senior executive above him the question of application of the above O.M. dated 5th June 1985 could not arise. Moreover, Shri Singh having not been completed the requisite period in the transferee company was not eligible for consideration of his promotion as the period of service rendered in the previous

company can not be taken into consideration for the purpose of eligibility for promotion. In the premises, I am of the view that there is not merit in the representation of Shri Singh (the petitioner) and his request for the grant of Notional Seniority is rejected.”

7. Aggrieved by the aforementioned decision, the respondent filed a fresh writ petition being CWJC No.4177 of 2000 before the High Court of Jharkhand, inter alia, seeking to quash the order dated 16 th February, 1999, and praying that he may be granted notional seniority with effect from 12 th November, 1993 in the E-3 Grade with all consequential benefits. This writ petition was allowed by the learned Single Judge vide order dated 20 th June, 2003 who observed that although the respondent may have been at the top in the seniority list of CMPDIL when he joined in that company, at the time of consideration of promotion to E-3 Grade, his service at DCC could not be overlooked and therefore, denial of promotion to him in E-3 Grade at the time was incorrect and accordingly, the appellant company was directed to revise the date of promotion of the respondent.

8. The appellant company challenged the order of the learned Single Judge by way of LPA No.546/2003. Pending the outcome, the respondent was promoted from E-3 to E-4 Grade and then from E-4 to E-5 Grade. On 20th May, 2010, the Division Bench disposed of the appellant’s appeal, observing that there was nothing in the policy to indicate that past service in the previous company, from which transfer has been sought, could be forfeited for all purposes, except that on the strength of that past service he would not be entitled to supersede the employees working in the new company in the grade in which he had joined.

9. Aggrieved, the appellant has approached this Court by way of special leave, asserting that the claim of the respondent is in the teeth of the policy under which he was transferred to CMPDIL at his request and that the Office Memorandum dated 5th June, 1985 had no application to the fact situation of the present case. Resultantly, the learned Single Judge as well as the Division Bench committed manifest error in granting relief to the respondent. The respondent, on the other hand, has supported the reasons recorded by the learned Single Judge and the Division Bench. It is submitted that the High Court noted the distinction between the matter of seniority and that of the length of service. The policy invoked by the appellant merely governs the matter of seniority and does not affect the length of service as such. Reliance has been placed on the decisions of this Court in *Union of India and Ors. Vs. C.N. Ponnappan* and Scientific Advisor to *Raksha Mantri and Anr. Vs. V.M. Joseph* . It is submitted that the appeals are devoid of merit and ought to be dismissed.

10. We have heard Mr. Anip Sachthey, learned counsel for the appellants and Mr. Manish Kumar Saran, learned counsel for the respondent.

11. The indisputable position emerging from the chronology of events, is that the respondent was appointed on 27th June, 1990 in E-2 Grade in DCC and joined that post on 4th August, 1990. He requested for a transfer from DCC to CMPDIL, which is a subsidiary of the appellant company. That request was considered favourably as a result of which the

respondent joined CMPDIL in existing E-2 Grade, pursuant to Office Order dated 23rd April, 1991. The said Office Order reads thus:

“COAL INDIA LIMITED “COAL BHAWAN”

10-NETAJI SUBHAS ROAD, CALCUTTA-700001 No.C-5A(iii)/51434 (Trans)/199
Dated: 23.04.1991

O R D E R

Shri Navin Kumar Singh, Chemical Engineer in E-2 grade presently posted at Dankuni Coal Complex is hereby transferred in his existing capacity/grade to Central Mine Planning & Design Institute Limited, till further orders.

2. On being released from Dankuni Coal Complex, Shri Singh will report to Director -in -Charge, CMPDI, Ranchi, for further assignment in that company.
3. Since the transfer is being made at his own request Shri Singh will not be entitled to any transfer TA/Settling in Allowance etc. and his seniority in E-2 grade as Chemical Engineer will be reckoned from the date he joins in CMPDI.
4. This issues with the approval of Competent Authority.

Sd/-

(A.K. Mukherjee) Personnel Manager (EE)

12. Indeed, the office order makes it amply clear that the seniority of the respondent will be reckoned from the date he joins CMPDIL. It is also seen that when the respondent joined CMPDIL on 15th May, 1991, there was no senior person working in E-2 Grade. The question is: whether the policy regarding the determination of inter-se seniority of the executives on inter-company transfers would come in the way of the respondent for reckoning his eligibility for promotion to the higher Grade i.e. E-3 Grade, whilst in the new transferred company (CMPDIL)? As the respondent was initially appointed in E-2 Grade on 4 th August, 1990 in DCC on completion of 3 years in September, 1993, he acquired the requisite eligibility for being considered for promotion to the next grade i.e. E-3 Grade. However, the department did not consider the respondent's case for promotion to E-3 Grade in the departmental promotional committee held at the relevant time. Instead, he was considered and promoted to E-3 Grade only in December, 1994.

13. On a fair reading of clause 11 of the policy, there is nothing to indicate that the transferee would lose his past service rendered in the parent company for all purposes. The policy of forfeiture of seniority in the parent company, however, is limited to the executives who seek inter-company transfer on personal grounds. That is to ensure that no prejudice is caused to the executives already working in the transferred company. For that reason, the seniority of the executives seeking inter-company transfer on personal request is fixed as if

he had entered the concerned Grade on the date of assumption of charge in the transferred company. It has been made explicitly clear that the executive seeking inter-company transfer on personal grounds will lose his past seniority in the Grade. No more and no less.

14. Indubitably, the respondent is not claiming seniority over any person already working in the new company (CMPDIL) before the date on which he assumed charge thereat on 15th May, 1991. The limited claim of the respondent however, is that the service rendered by him in the parent unit (DCC) from 4th August, 1990 in E-2 Grade be reckoned for the purpose of determining his eligibility for promotion to the post of E-3 Grade whilst working in CMPDIL. The High Court justly accepted the claim of the respondent that for determination of his eligibility for promotion, his length of service in DCC must be reckoned. That cannot be confused with the issue of seniority in CMPDIL as they are two different and distinct factors. The policy in the form of clause 11 deals with the latter. There is no express stipulation in the policy - be it clause 11 or any other official document - to even remotely suggest that on seeking inter-company transfer on personal grounds, the executive concerned would lose even his past service rendered by him in the parent unit (DCC) for all purposes. In absence of such a stipulation, the claim of the respondent could not have been rejected by the department. This proposition is reinforced from the dictum in C.N. Ponnappan (supra), which has been noted with approval in V.M. Joseph (supra). The two-Judge Bench of this Court in C.N. Ponnappan (supra), observed as follows:

“4. The service rendered by an employee at the place from where he was transferred on compassionate grounds is regular service. It is no different from the service rendered at the place where he is transferred. Both the periods are taken into account for the purpose of leave and retiral benefits. The fact that as a result of transfer he is placed at the bottom of the seniority list at the place of transfer does not wipe out his service at the place from where he was transferred. The said service, being regular service in the grade, has to be taken into account as part of his experience for the purpose of eligibility for promotion and it cannot be ignored only on the ground that it was not rendered at the place where he has been transferred. In our opinion, the Tribunal has rightly held that the service held at the place from where the employee has been transferred has to be counted as experience for the purpose of eligibility for promotion at the place where he has been transferred.”

(emphasis supplied)

15. This view has been restated by another two-Judge Bench of this Court in V.M. Joseph (supra), in paragraph 6 which reads as follows:

“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.”

(emphasis supplied)

16. In the present case, there is no dispute that the respondent had rendered service in E-2 Grade on regular basis in DCC from where he was transferred to CMPDIL, on personal grounds. The service rendered by him in DCC can be and ought to be taken into account for all other purposes, other than for determination of his seniority in E-2 Grade in the new company i.e. CMPDIL. Indeed, his seniority in CMPDIL in E-2 Grade will have to be reckoned from the date of his assumption of charge on 15 th May, 1991, but that can have no bearing while determining his eligibility criterion of length of service in E-2 Grade for promotion to E-3 Grade. For determining the eligibility for promotion to E-3 Grade, the service rendered by him in DCC in E-2 Grade with effect from 4th August, 1990, ought to be reckoned. The view so taken by the High Court commends to us. Hence, no fault can be found with the direction given by the High Court to assign notional date of promotion to the respondent in E-3 Grade with effect from 12 th November, 1993.

17. As regards the Office Memorandum dated 5th June, 1985, the same does not militate against the respondent. It is a different matter that it addresses the difficulty expressed about the denial of opportunity of promotion to the executives who opted for inter-company transfer. On a fair reading of this Office Memorandum, it is discernible that the department has clarified the position that if the concerned executive has already completed service for a specified period including the period of service with the old company, would become entitled to be considered for promotion to the higher Grade. If so, not granting similar advantage to the executive who opted for inter-company transfer on personal request and who incidentally enters at number one position in the seniority in the new company would be anomalous. Concededly, what is affected in terms of the policy for inter-company transfer on personal request, is only the seniority position in the new (transferred) company - which would commence from the date of assuming office thereat. By no stretch of imagination, it can affect the length of service in E-2 Grade in the parent company. The two being distinct factors, neither the policy nor the office memorandum would be any impediment for reckoning the period of service rendered by the respondent from August, 1990 in DCC, albeit a case of inter-company transfer on personal request. As a result, these appeals must fail.

18. Accordingly, the appeals are dismissed with no order as to costs.

Judgment Referred.

¹(1996) 1 SCC 0524

²(1998) 5 SCC 0305