

SCIENTIFIC ADVISOR TO RAKSHA MANTRI

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v.
V.M. JOSEPH

JANUARY 14, 1989

[S. SAGHIR AHMAD AND D.P. WADHWA, JJ.]

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Service Law :

Promotion—Eligibility—LDC in Ministry of Defence—Rendered more than 3 years of service as permanent employee—Transferred on compassionate ground on request of employee—Employee placed at the bottom of seniority list at transferred place—Held, period of service rendered by the employee at earlier place cannot be excluded from consideration in determining his eligibility for promotion—Eligibility and seniority are two distinct and different factors.

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Respondent was a Lower division Clerk in the Ministry of Defence. He appointed as a Store Keeper and become permanent on April 27, 1971. On June 6, 1977 he was transferred, on his request on compassionate ground and was placed at the bottom of the Seniority list of Store Keeper there. On August 22, 1980 the respondent was promoted to the post of Senior Store Keeper.

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In the meanwhile, a new post of Senior Store Keeper, Grade-1 was created as an intermediate grade between Senior Store Keeper and Store Superintendent. One of his immediate senior was promoted to this intermediate grand. The respondent claimed that he should have also be promoted to the intermediate Grade-1 along with his senior as he should have been promoted to Senior Store Keeper on January 31, 1978 instated of February 22, 1980. When his claim was not entertained he filed a writ petition. High Court directed the appellants to consider the claim of the respondent for ante-dating his promotion on *ad hoc* basis by applying the same rules and principles on which his immediate senior was promoted.

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The Departmental Promotion Committee after considering the claim passed an order that the respondent had completed 3 years of his regular service as Store Keeper commencing from June 6, 1977, only of June 7, 1980 and he could not be promoted as Senior Store Keeper earlier than

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A 1980. The respondent challenged the order before the Central Administrative Tribunal, which allowed the claim of the respondent and directed the appellants to reckon the period during which the respondent worked as a permanent Store Keeper prior to his transfer as a period of qualifying service for the purpose of eligibility for promotion and consider the respondent for promotion as Senior Store Keeper, Grade-I with effect from the date could be deemed to have put in three years of regular service as Senior Store Keeper. Hence, this appeal.

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C The appellant contended that since the respondent had been transferred on compassionate ground, on his own request to the post of Store Keeper and was placed at the bottom of seniority list, the period of 3 years could be deemed to commence only from the date on which he was transferred.

Dismissing the appeal, this Court

D HELD : 1. 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. So, the direction of the Tribunal does not suffer from any infirmity. [181-B-D]

E *Union of India & Ors. v. C.N. Ponnappan*, AIR (1996) SC 764 = [1996] 1 SCC 524, relied on.

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3749 of 1992.

From the Judgment and Order dated 23.2.88 of the Central Administrative Tribunal, Madras High Court in O.A. No. 573/86.

G Ms. Sashi Kiran, Ms. Anil Katiyar and P. Parmeshwaran for the Appellants.

Ms. Malini Poduval for the Respondent.

The Judgment of the Court was delivered by

H S. SAGHIR AHMAD, J. The respondent was appointed as a Lower Division Clerk on November 15, 1969 in the Ministry of Defence. Subsequently,

in the same Department, he was appointed as a Store Keeper on 27th April, 1971 in the Central Ordnance Depot, Pune. He got the status of quasi permanent on 27th April, 1974 and became permanent with effect from 1st May, 1974. The respondent made a request for his transfer as a Store Keeper in the Naval Physical Oceanographic Laboratory (NPOL), Cochin, which was accepted on compassionate ground and on 6th June, 1977, he was transferred to that post, but was placed at the bottom of the seniority list of Store Keepers there. On 22nd August, 1980, the respondent was promoted to the post of Senior Store Keeper.

On 15th July, 1980, a new post of Senior Store Keeper, Grade-I was created as an intermediate grade between the posts of Senior Store Keeper and Store Superintendent. One A.K. Anujan, who was the immediate senior of the respondent in the Grade of Senior Store Keeper was promoted to this intermediate post of Senior Store Keeper, Grade- I on 31st August, 1982. The respondent raised a claim that he should have been promoted as Senior Store Keeper on 31st January, 1978 instead of 22nd February, 1980 and should have been further promoted to the post of Senior Store Keeper, Grade-I, on 31st August, 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 (No. O.P. 10013 of 1982-J) which was allowed on 30.7.85 and a direction was issued to the present appellants to consider the claim of the respondent for ante-dating 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 Store Keeper, Grade-I.

In pursuance of the above judgment, the case of the respondent was considered by the Review Departmental Promotion Committee on 15th October, 1985, which was of the opinion that, since the respondent had completed 3 years of regular service as Store keeper commencing from 6th June, 1977, only on 7th June, 1980, he could not be promoted as Store Keeper earlier than 1980. With regard to his promotion to the post of Senior Store Keeper, 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 Store Keeper only on 23rd August, 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 7th November, 1981.

On the basis of the decision of the Departmental Promotion Committee, H

A the order dated 30th October, 1985 was passed by the appellants, which was challenged by the respondent before the Central Administrative Tribunal, Madras Bench, which by its judgment dated 23rd February, 1988, has allowed the claim petition and issued the following directions:-

B “(a) The applicant’s service as Store Keeper at Pune at least from 1.5.1974 when he was made a permanent Store Keeper should be reckoned as qualifying service for the purpose of eligibility for promotion as Senior Store Keeper at NPOL, Cochin.

C (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 31.1.78 and 22.8.80.

(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 ante-dating his promotion from 22.8.80.

D (d) The respondents should identify the un-filled 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 22.8.80 or on earlier date with effect from which the Review DPC recommends his name for regular promotion as per promotion as per (b) above.”

E From the facts set out above, it will be seen that promotion was denied to the respondent on the post of Senior Store Keeper on the ground that he had completed 3 years of regular service as Store keeper on 7th June, 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 Store Keeper for the period from 27th April, 1971 to 6th June, 1977. The appellants contended that, since the respondent had been transferred on compassionate ground, on his own request to the post of Store Keeper 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 Store Keeper. 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. A

This Court in *Union of India & Ors. v. C.N. Ponnappan*, AIR (1996) SC 764= [1996] 1 SCC 524, has held that, where an employee is transferred from one unit to another on compassionate ground 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. B

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 Store Keeper from an earlier date and the further direction concerning respondent's promotion to the post of Senior Store Keeper, 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. C

B.K.S.

Appeal dismissed. D