

K. TRIMURTHULU AND ORS.

A

v

M.V.N. MURTHY AND ORS.

FEBURARY 11, 1998

[S.SAGHIR AHMAD AND G.B. PATTANAİK, JJ.]

B

Service Law : Seniority : Ministry of Defence Circulars dt. 19.11.83/ 28.8.85—Fixation of seniority without counting the period of casual service—The appellants cannot be treated senior to the respondents on the basis of the casual service rendered prior to regularisation—The subsequent circular dated 26.6.95—Did not modify or cancel the earlier circulars.

C

The appellants, who joined initially as Temporary casual Skilled Fitters and were subsequently regularised, were promoted as Highly Skilled Fitters Grade-11 by the Naval Dockyard Notifications dt. 22.9.84 and 20.2.85. The respondents challenged the promotions in the Central Administrative Tribunal, contending that though they joined as skilled Fitters earlier to the appellants, the Naval Dockyard was not justified in treating the appellants, as senior to them by including the period of their casual service as regular service for the purpose of seniority. The Tribunal quashed the promotions on the basis of two circulars issued by the Ministry of Defence which provided that the seniority of casual employees would be reckoned from the date of their regular appointment and also directed the authority of consider the promotion of the respondents. Hence this appeal.

D

E

Dismissing the appeal, this Court

HELD : 1. The Tribunal did not commit any error in reckoning the seniority of the appellants from the date of their regular appointment and had acted strictly in accordance with the Circular Letters issued by the Ministry of Defence dt. 19.11.83 and 28.8.85. Since it was the consistent policy of the Ministry of Defence that benefit of seniority would be allowed to the casual employees only with effect from the date on which they were appointed on regular basis and the period of casual service would not be counted towards seniority, the Tribunal was fully justified in recording the findings that the respondents would be senior to the appellants and that the Naval Dockyard was in error in treating the appellants as senior to the respondents.

F

G

[809-H; 810-A]

2.1. The Circulars dt. 19.11.83 and 28.8.85 on which reliance had

H

A been placed by the Tribunal, had not been modified or cancelled by the circular letter dt. 26.6.95, which only purported to implement the judgment of the Bombay Bench of the Tribunal. That being so, there is no infirmity in the judgment of the Tribunal. [810-E]

B 2.2. If the appellants are entitled to any benefit other than the benefit of seniority, on the basis of the Circular letter dt. 26.6.95 the Government may, if approached, consider the cases of the appellants for that limited purpose. [810-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 880 of 1994.

C From the Judgment and Order dated 2.4.93 of the Central Administrative Tribunal, Hyderabad in O.A. No. 665 of 1990.

Mrs. K. Sarda Devi for the Appellants.

D K. Ram Kumar, Ms. Asha G.Nair, C. Balasubramani, Y.S. Rao, Santi Narayanan and R.N. Poddar for the Respondents.

The Judgment of the Court was delivered by:

E S. SAGHIR AHMAD, J. The appellants before us who challenge the judgment and order dated 2nd April, 1993 passed by the Central Administrative Tribunal, Hyderabad Bench were directly recruited on their names being sponsored by the Employment Exchange. They were initially appointed as Temporary Casual Skilled Fitters but were subsequently regularised on or after 15.5.83 on different dates. These appellants were also allowed to appear in the Departmental Qualifying Examination for promotion to the posts of Highly Skilled Fitter Grade-II which they passed and were, therefore, promoted, some with effect from 6.7.84 vide Naval Dockyard Notification dated 22.9.84 while others with effect from 1.2.85 vide Notification dated 20.2.85.

G 2. Both these Notifications were challenged by the Respondents (Nos. 1-43) (for short. 'the respondents') before the Tribunal on several grounds including that the appellants could not be treated as senior to them particularly as the respondents were admitted in the Naval Dockyard Apprentices School, Vishakhapatnam and after qualifying in various Trade Tests, were absorbed as Skilled Fitters on different dates between 12.11.79 and 27.1.83. It was contended that since the respondents had been absorbed as Skilled Fitters earlier than the appellants, they rank senior to them and the Admiral H Superintend, Naval Dockyard (respondent No. 44) was not justified in treating

the appellants as senior to the respondents by including the period of their casual service as regular service for purpose of seniority. A

3. Naval Dockyard did not dispute the contention of the respondents that the appellants were promoted to the posts of Highly Skilled Fitter Grade-II on the basis of their seniority over the respondents by taking into account the period of their casual service. B

4. The Tribunal, by the impugned judgment, allowed the claim of the respondents by observing as under:-

“ Since it is not denied that the promotion of the private respondents to the disadvantage of the applicants was done on account of seniority conferred on the private respondents taking into the account their casual service, we quash the promotion orders dt. 22.9.84 and 20.2.85 and direct the respondents to consider the promotion of the applicants (if not already done) in the light of the conclusions above. Thereafter, the seniority in the promotion cadre shall be arranged in such a matter that it reflects the discrimination in the grade of Skilled Fitters in which cadre the Casual services rendered is to be ignored. The application is disposed of this with no orders as to costs. C D

5. A perusal of the judgment passed by the Tribunal would indicate that the entire period of casual service of the appellants was excluded and their seniority was counted from the date of their regular adoption. For this purpose, the Tribunal placed reliance upon the Circular letter bearing No. 4(1)/83/D/C-IV/II dt. 19.11.83 issued by the Ministry of Defence wherein it was provided that persons employed on continuous casual basis would become eligible for seniority and promotion to the higher grade on the date on which their services are regularised. It was also provided in that Circular that the period of continuous casual service would not be counted for seniority and promotion. Another Circular letter of the Naval Dockyard, which was relied upon by the Tribunal, is the letter dated 28.8.85 in which it was again clarified that seniority of casual employees would be reckoned from the date of their regular appointment. E F G

6. We have gone through both the Circulars and are satisfied that the Tribunal while laying down that the seniority of the appellants could be reckoned from the date of their regular appointment did not commit any error and has acted strictly in accordance with the Circular letters issued by the Ministry of Defence. Since it was the consistent policy of the Ministry of H

A Defence that benefit of seniority would be allowed to casual employees only with effect from the date on which they are appointed on regular basis and that the period of casual service would not be counted towards seniority, the Tribunal was fully justified in recording the findings that the respondents would be senior to the appellants and that the Naval Dockyard was in error in treating the appellants as senior.

B

7. Learned counsel for the appellants has contended before us that the Bombay Bench of the Tribunal has already held that the casual workers, on their regularisation, would be entitled to reckon their seniority with effect from the date of their initial appointment and the entire period of casual service would be available to them for being added to the length of their service for determining their seniority. In order to implement the judgment of the Bombay Bench of Tribunal, the Ministry of Defence itself issued a Circular letter dated 26.6.95 in which it has been stated that the benefit of casual service, rendered by the employees of the Naval Dockyard, up to the date of their regularisation, would be available to them. It is contended that this benefit has also to be given to the appellants and, therefore, they would rank senior to the respondents.

C

D

8. The copy of the judgment passed by the Bombay Bench of the Tribunal had not been filed before us nor do we know the exact issues involved therein. Moreover, the earlier Circulars dated 19.11.83 and 28.8.85, on which reliance has been placed by the Tribunal in the impugned judgment, have not been modified or cancelled by the Circular letter dated 26.6.95 which only purports to implement the judgment of the Bombay Bench of the Tribunal. That being so, we do not find any infirmity in the judgment passed by the Tribunal. The appeal is accordingly dismissed with the observation that if the appellants are entitled to any benefit other than the benefits of seniority, on the basis of circular letter dated 26.6.95, the Government may, if approached, consider the cases of the appellants for that limited purpose.

E

F

H.K.

Appeal dismissed.