

SUPERINTENDING ENGINEER AND ORS.

v.

A. SANKARAI AH

OCTOBER 17, 2003

[ASHOK BHAN, AND DR. AR. LAKSHMANAN, JJ.]

Service Law:

Retrenchment—On being declared surplus respondent redeployed as a fresh entrant under 1966 Office Memorandum of Central Government—1991 Office Memorandum providing higher pay scale on completion of 5 years service in present department—Benefit of past service for entitlement of higher pay scale—Held, the purpose of the two Office Memorandums was not to disturb the seniority of the existing employees—Hence, the past service cannot be taken into account.

The services of the respondent, who was appointed as Junior Engineer on 30.5.1980 in Central Government, was retrenched on being declared surplus. Government of India, by Office Memorandum (OM) dated 25.2.1966, provided a scheme for redeployment of surplus staff in other Government offices where vacancies exist. Under the scheme, the respondent was appointed as a Junior Engineer in CPWD on 19.8.1988 as a fresh entrant. The letter of appointment of the respondent specifically stated that he would not be granted the benefit of past service rendered by him prior to deployment for the purposes of seniority. The Central Government, by OM dated 27.3.1991, provided that with effect from 1.1.1986, the Junior Engineers of CPWD, on their completion of 5 years service in the entry grade pay scale, may be placed in the higher grade pay scale. The OM further clarified that the benefit of past service rendered prior to deployment would not be counted for fixation of revised pay scales. The CPWD under the OM granted revised pay scale to the respondent w.e.f. 19.8.1993 i.e. the date when he completed 5 years of service in the CPWD. The respondent filed a petition before Central Administrative Tribunal claiming revised pay scale w.e.f. 19.8.1988 by taking into account his past service. The Tribunal allowed the petition of the respondent. The

A review application filed by the appellant was dismissed by the Tribunal. Hence the appeal.

Allowing the appeal, the Court

B HELD : 1.1. Office Memorandum (OM) dated 25.2.1966, providing facility for re-deployment/alternative placement of the retrenched employees in other Government Offices, specifically mentioned that re-deployment of surplus staff was treated as transfer in public interest for the specific purposes like transfer-TA, joining time, joining time pay, leave and pension and for all other intents and purposes, the surplus staff on re-deployment would be treated as a fresh entrant in the service of the new department. The purpose behind this OM was not to disturb the seniority of the persons who were already working in the equivalent post in that department. This fact is re-enforced by the subsequent OM dated 16.8.1991 wherein it is mentioned that the intention behind the policy was that the benefit of past service could not be allowed to re-deployed employees so as not to affect the interest of the employees already senior in the office/organisation in which they are re-deployed. The subsequent OM also clarified that the Junior Engineers, re-deployed in the CPWD, are not entitled to the past service benefits for getting the benefit of two higher pay scales as the same benefit was not admissible to the Junior Engineers, who are senior to them. [929-D-F]

F 1.2. If the OM dated 27.3.1991 is understood and interpreted in the manner it has been done by the Tribunal, it would create an anomalous situation. Juniors in service would get higher pay than their seniors. To avoid such a situation, the policy framed for the re-deployment of the surplus staff made clear that the re-deployed staff in the new department would be treated as a fresh entrant and the service rendered by him in the previous department would not be counted towards seniority. [929-G, 930-A-B]

H 1.3 OM dated 27.3.1991 gives the benefit of revised higher pay scale to its Junior Engineers on completion of 5 years of service in CPWD in entry grade pay scale. The respondent could not be given for the benefit of working in the pre-revised scale in his previous

department. The emphasis in the OM was for the service of 5 years rendered in the CPWD and not for working in a particular grade in his service career, as understood by the Tribunal. The respondent was to be treated as fresh entrant and the benefit of the OM dated 27.3.1991 could be given to him on completion of 5 years of service in CPWD from the date of joining the CPWD. In case the interpretation put by the Tribunal is accepted, the very purpose of putting the term mentioned in the letter of appointment that on re-deployment the employee would not get the benefit of his past service would be nullified. This would go against the express condition contained in the policy as well as in the letter of appointment to the respondent. It was not an appointment by way of transfer as has been understood by the Tribunal. It was a fresh appointment for all intents and purposes. It is held that the respondent would be entitled to the benefit of the OM dated 27.3.1991 only after completion of 5 years of service as Junior Engineer in the CPWD. [930-D-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4449 of 1997.

From the Judgment and Order dated 15.11.1996 of the Central Administrative Tribunal at Hyderabad in RA. No. 88/96 in O.A. No. 929/95.

P.P. Malhotra, Ms. Rekha Pandey, V.K. Verma and D.S. Mahara for the Appellants.

R. Santhanakrishnan, for Dr. Sunil Kumar for the Respondent.

The Judgment of the Court was delivered by

BHAN, J. : The respondent herein was appointed as Junior Engineer in the Dandakarnya Development Authority on 30.5.1980 in the pay scale of Rs. 425-700. Subsequently, he was declared surplus in the said project. With a view to mitigate the hardship which would result from such retrenchment of employees, a scheme for re-deployment of surplus staff was formulated by the Government of India vide Ministry of Home Affairs, O.M. No. 3/27/65-CSII dated 25.2.1966 to provide facility for re-deployment/

- A alternative placement in other Government Offices where suitable vacancies exist. While the re-deployment of surplus staff was treated as transfer in public interest for specific purposes like transfer-TA, joining time, joining time pay, leave and pension, the surplus staff was treated as fresh entrants in the new office for the purpose of seniority and seniority based matters in that office.
- B

- In view of the above O.M. respondent was offered an appointment in CPWD as Junior Engineer which he jointed on 19.8.1988 as a fresh entrant. In the letter of appointment it was specifically stated that the appointment will take effect from the date he actually joins the duty. That he would be on probation for a period of 2 years and required to pass a departmental examination in simple accounts within two years from the date of appointment and in the event of his failure to pass the said test within the stipulated time the second increment and future increment would be withheld till he passes the test. The appointment was temporary and liable to be terminated at any time by giving one month's notice. That he would not be granted the benefit of past service rendered by him prior to deployment for the purposes of seniority.
- C
- D

- Directorate General of Works, Central Public Works Department vide O.M. No. A-11014/1/91EC /VI dated 27.3.1991 took a decision that with effect from 1.1.1986 the Junior Engineers (Civil and Electrical) and the Section Officers (Horticulture) of CPWD on their completion of 5 years service in the entry grade pay scale of Rs. 1400-40-1800-EB-50-2300 (Pre-revised pay scale of Rs. 425-15-500-EB-15-500-20-700) may be placed in the higher grade pay scale of Rs. 1640-60-2600-EB-75-2900 subject to the rejection of unfit and vigilance clearance by the DPC. In order to clarify that the benefit of past service rendered prior to deployment would not be counted for fixation of revised pay scales as per OM dated 27.3.1991 the Directorate General of Works, Central Public Works Department, issued O.M. No. A-26017/4/91/EC /VI dated 16.8.1991 clarifying that the Junior Engineers re-deployed in the CPWD shall not be entitled to take the benefit of past service for getting the benefit of two higher pay scales vide Memo dated 27.3.1991 as the same benefit was not admissible to the CPWD Junior Engineers who were senior to them with less than 5/15 years service. Relevant extract of O.M. dated 16.8.1991 is reproduced below:
- E
- F
- G
- H

“The matter has been considered and it has been observed A
that according to the instructions contained in the scheme of
re-deployed staff issued by the Government from time to
time the re-deployed staff are treated as fresh entrants in the
new offices/organisations for the purpose of fixing their
seniority and they are placed below the employees who have B
already joined the new offices/organisations wherein they
count the date of their seniority from the date of joining/
confirmation. The intention behind the policy is that the
benefit of past service should be allowed to them where it
does not adversely affect the interest of the employees C
already senior in the office/organisation to which they are
re-deployed. It has, therefore, been decided that the Junior
Engineer’s re-deployed in the CPWD are not entitled to the
past service benefit for getting the benefit of the two higher
pay scales vide this Directorate O.M. No. A 11014/1/91/EC/
VI dated 27.3.1991 as the same benefit is not admissible to D
the CPWD Junior Engineers who are senior to them with less
than 5/15 years service.”

O.M. dated 27.3.1991 was to work out as under:

- (a) Rs. 1400-40-1800-EB-50-2300 – At the entry stage. E
- (b) Rs. 1640-60-2600-EB-75-2900 – after completion of 5 years
of service in the entry grade effective from 1.1.1996.
- (c) Rs. 2000-60-2300-EB-75-3200-100-3500 – After completion F
of 15 years service effect from 1.1.1991.

The Department of CPWD being of the opinion that on re-
deployment the respondent joined the CPWD as Junior Engineer (Civil)
on 19.8.1988 as a fresh entrant became eligible for the grant of higher
scale of pay of Rs. 1640-2900 after completion of 5 years in CPWD, gave him G
the benefit of higher pay scale on 19.8.1993, i.e., on completion of 5 years
of service in the CPWD.

Respondent feeling aggrieved against the order granting the benefit
of higher pay scale w.e.f. 19.8.1993 filed O.A. No. 929 of 1995 before the H

A Central Administrative Tribunal, Hyderabad Bench, hereinafter referred to as "the Tribunal", claiming that his past service in Dandakarnya Development Authority should have been taken into account for fixation of higher pay scale w.e.f. 19.8.1988. Appellant in its written statement took the stand that for the eligibility of higher pay scale the period of service rendered in the Dandakarnya Development Authority could not be counted for giving higher pay scale. For fixation higher scale of pay as per O.M. dated 27.3.1991, the only service, which could be counted was the service rendered in the CPWD.

C Tribunal following the judgment and order in OA No. 2241 of 1991 allowed the OA filed by the respondent. Against the order in OA No. 2241 of 1991 the appellant had filed special leave petition... CCP 328 of 1993 (*Union of India v. R.S. Saini*) in this Court but the same was dismissed on the ground of delay on 30.11.1993. Since CCP 328 of 1993 in OA No. 2241 of 1991 was not disposed of on merits the appellant filed Special D Leave Petition No. 421 of 1996 in this Court against the judgment and order in OA No. 929 of 1995 (filed by the respondent) which was disposed of on 10.9.1996 by observing that since this Court had not disposed of the special leave petition ...CCP 328 of 1993 in OA No. 2241 of 1991 on merits the decision rendered by this Court could not be taken as a precedent. E The special leave petition was disposed of reserving liberty with the appellant to file a review before the Tribunal within a period of 30 days. Thereafter the appellant filed Review Application No. 88 of 1996 before the Tribunal which has been dismissed by the impugned order. It was held that:

F "It clearly appears to us that the provisions of OM dated 27.2.1991 which speak of the requirement of completed 5 years of service in the grade mean the entry into the pay scale of Rs. 1400-2300 including pre-revised scale Rs. 425-700 and it has no reference to the post in which the employee has been re-deployed or to the post he was holding earlier under the Dandakarnya Project. Admittedly the applicant was in that pay scale at any rate since prior to 1983 and he had completed 5 years in that grade which was the entry grade by the date on which he was re-deployed i.e. on G 19.8.1988. In our view it would not be correct interpretation H

to be placed on the OM to read the length of period of 5 years as from the date of entry in the redeployed post. The applicant thus having fulfilled the requisite condition to get the scale of pay of Rs. 1640-2900 w.e.f. 19.8.1988 as held in the order under the review we see no reason to hold that there is an error apparent on the fact of the record or even otherwise any legal error therein. ”

Aggrieved by the order passed by the Tribunal the appellant has come up in this appeal.

Learned counsel for the parties have been heard at length.

In O.M. dated 25.2.1966 providing facility for re-deployment/ alternative placement of the retrenched employees in other Government Offices it was specifically mentioned that re-deployment of surplus staff was treated as transfer in public interest for the specific purposes like transfer-TA, joining time, joining time pay, leave and pension, but, for all other intents and purposes, the surplus staff on re-deployment would be treated as a fresh entrant in the service of the new department. The purpose behind this was not to disturb the seniority of the persons who were already working in the equivalent post in that department. This fact is reinforced by the subsequent O.M. dated 16.8.1991 wherein it is mentioned that the intention behind the policy was that the benefit of past service could not be allowed to re-deployed employees so as not to affect the interest of the employees already senior in the office/organisation in which they are re-deployed. O.M. dated 16.8.1991 was issued to clarify that the Junior Engineers re-deployed in the CPWD are not entitled to the past service benefit for getting the benefit of two higher pay scales as the same benefit was not admissible to the CPWD Junior Engineers who are senior to them with less than 5/15 years service.

If the OM dated 27.3.1991 is understood and interpreted in the manner it has been done by the Tribunal, it would create an anomalous situation. Juniors in service would get higher pay than their seniors. For instance, a person recruited fresh from the open market in the service of CPWD as a Junior Engineer in the year 1987 would get the benefit of higher grade in terms of O.M. dated 27.3.1991 in the year 1992 whereas the re-deployed Junior Engineer who joined the CPWD in the year 1988

A and placed junior to the person who joined in the year 1987, would get the benefit of higher scale of pay under the O.M. on the basis of the past service rendered by him earlier to the person senior to him. Precisely to avoid such a situation, in the policy framed for the re-deployment of the surplus staff, it was made clear that the re-deployed staff in the new department would be treated as a fresh entrant and the service rendered by him in the previous department would not be counted towards seniority. Appointment on deployment was to be treated as on transfer only for specified purposes like transfer-TA, joining time, joining time pay, leave and pension only. The Tribunal while interpreting the O.M. dated 27.3.1991 held that respondent's past service in Dandakarnya Development Authority was to be counted for fixation the higher pay scale, without considering the fact that respondent's re-deployment in the CPWD w.e.f. 19.8.1988 was totally a fresh appointment.

D O.M. dated 27.3.1991 was issued by the Department of CPWD to give the benefit of higher pay-scale/revised pay scale to its Junior Engineers on completion of 5 years of service in CPWD for the entry grade pay scale of Rs. 1400-40-1800-EB-50-2300 (Pre-revised pay scale of Rs. 425-15-500-EB-15-500-20-700) which could not be given to an employee who was taken on re-deployment in the CPWD who was working in the pre-revised pay scale of Rs. 425-15-500-EB-15-500-20-700, as they had not completed 5 years of service in the department of CPWD. The benefit of revised pay scale could be given only on completion of 5 years of service in the CPWD in the entry grade pay scale of Rs. 1400-40-1800-EB-50-2300. Respondent could not be given for the benefit of working in the pre-revised scale of Rs. 425-15-500-EB-15-500-20-700 in his previous department. The emphasis in the O.M. was for the service of 5 years rendered in the CPWD and not for working in a particular grade in his service career, as has been understood by the Tribunal. Tribunal has proceeded as if this benefit was given to a person who had rendered service in a particular grade in his service career including some other department. In our opinion, in the O.M. the emphasis was to give benefit to the Junior Engineers working in the CPWD of a higher grade on their completion of 5 years of service. The respondent was to be treated as a fresh entrant and the benefit of the O.M. dated 27.3.1991 could be given to him on completion of 5 years of service in CPWD from the date of his joining the CPWD.

H On re-deployment the respondent joined the service in the CPWD as

Junior Engineer on 19.8.1988 as a fresh entrant and in the offer of appointment dated 11.8.1988 it was clearly stipulated that his re-deployment in the CPWD will not get the benefit of his past service in Dandakarnya Development Authority and his seniority in CPWD will be reckoned from the date of his actual joining the CPWD as Junior Engineer. He had accepted this offer and joined the Junior Engineer in terms of letter of re-deployment in the CPWD. In case the interpretation put by the Tribunal is accepted the very purpose of putting the term mentioned in the letter of appointment that on re-deployment the employee would not get the benefit of his past service would be nullified. This would go against the express condition contained in the policy as well as in the letter of appointment to the respondent. It was not an appointment by way of transfer as has been understood by the Tribunal. It was a fresh appointment for all intents and purposes but in order to give certain specified benefits like transfer-TA, joining time, joining time pay, leave and pension the re-deployment was treated as transfer in public interest and not for any other purpose.

Since the respondent had not completed 5 years of service in CPWD in terms of O.M. dated 27.3.1991 he could not claim the benefit of O.M. dated 27.3.1991 from the date he joined the CPWD. He could claim the benefit only after completion of 5 years of service in the CPWD. It has to be appreciated that re-deployment of the respondent in the CPWD was only with a view to mitigate the hardship caused to him by his retrenchment from service in Dandakarnya Development Authority project. It was to protect his retrenchment from service. As per the terms of the policy and the letter of appointment, his re-deployment in the CPWD was to be treated as a fresh employment. His past service rendered in Dandakarnya Development Authority could not be counted for extending the benefit of O.M. dated 27.3.1991.

For the reasons stated above, the appeal is accepted and the order of the Tribunal is set aside. It is held that the respondent would be entitled to the benefit of the O.M. dated 27.3.1991 only after completion of 5 years of service as Junior Engineer in the CPWD. There will be no order as to costs.

B.S.

Appeal allowed.