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SURENDRA SINGH GAUR.

v.

STATE OF M.P. AND ORS.

SEPTEMBER 22, 2006

B

[S.B. SINHA AND DALVEER BHANDARI, JJ.]

Service law:

C *Benefit of past service—Transfer on the volition of the employee—From one Government Department to another—mentioned specifically in the transfer order that incumbent to be eligible for seniority from the date of absorption—Held, on facts, not permissible to be counted towards seniority.*

D Appellant was appointed on 18.10.1967 on the post of Assistant Agriculture Engineer in the Department of Agriculture in the State of Madhya Pradesh. Foreseeing that there were limited chances of promotion in the Agriculture department while there were greater chances of promotion in the Irrigation department, the appellant, on his volition, requested to be transferred and absorbed in the department of Irrigation. Both the departments are separate and maintain their separate seniority lists and the service conditions of the employees in both the departments are governed by their respective rules and guidelines. Seniority, in both the departments, is computed from the date of appointment in the department. By order dated 27.1.1981, the Irrigation department accepted the request for transfer and, consequently, he was permanently absorbed in the post of Assistant Engineer (Civil) in the Irrigation department from the date of taking over the charge.

F It was specifically mentioned in the order that he shall be eligible for seniority in the cadre of Assistant Engineer from the date of taking over the charge. The department of Agriculture, however, by order dated 16.7.1982, granted the appellant proforma promotion to the post of Agriculture services Class-I. The appellant made representation to the Irrigation department regarding

G ex-post facto merger (absorption) on the post of Executive Engineer. While refusing to grant relief to the appellant, the Irrigation department gave option to the appellant to go back to the Agriculture department. The Agriculture department refused to take back the appellant apparently on the ground that he had lost his lien in the department and the Agriculture department was

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not under any obligation to take back the appellant. The appellant filed writ petition before the High Court which was, subsequently, transferred to the M.P. Administrative Tribunal. The Tribunal did not find any infirmity in the approach of the respondents but directed, keeping in view the well established principles of 'pay protection' as applicable in Government service, to grant financial benefits which the appellant has become entitled to on account of the Performa promotion granted by order dated 16.7.1982 by the Agriculture department. The Irrigation department therefore was directed to give benefit of 'pay protection' to the appellant without giving higher rank. Hence the present appeal.

It was contended by the appellant that there is no provision in the Rules for transfer of an employee from one department to another on personal request of a Government servant.

On behalf of the respondent it was contended that the Irrigation department could not give benefit of past service in the Agriculture department to the appellant, more particularly, when the services of the appellant were not borrowed by the irrigation department but appellant voluntarily sought transfer and absorption in the Irrigation department and thus has lost his lien in the Agriculture department and ceased to be an employee of the Agriculture department.

Dismissing the appeal, the Court

HELD 1.1. Financial benefits accruing to the appellant because of proforma promotion by the Agriculture department by order dated 16.7.1982 with effect from 29.8.1979 was correctly given. [497-B]

2.1. Having sought transfer from Agriculture department, his parent department, to the Irrigation department in his own interest, the appellant can't be permitted to take a total somersault just because he was not extended the benefit of past service; moreover he has lost his lien in that department on absorption in the Irrigation department. [497-C, D, E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No, 3418 of 2003.

From the Judgment and Orderr dated 7.5.1996 of the Madhya Pradesh Administrative Tribunal, Bhopal Bench in T.A. No. 333/1998.

Petitioner-In-Person.

A Vibha Datta Makhija for the Respondents.

The Judgment of the Court was delivered by

B **DALVEER BHANDARI, J.** This appeal is directed against the judgment of the Madhya Pradesh Administrative Tribunal, Bhopal Bench at Bhopal, M.R in Transfer Application No.333 of 1988 dated 7.5,1996.

Brief facts which are necessary to dispose of this appeal are as under:

C The appellant was appointed on 18.10.1967 vide Order No.6857/8432/14-1 on the post of Assistant Agriculture Engineer in the department of Agriculture in the State of Madhya Pradesh. He on his own volition on 2.7.1975 requested to be transferred and absorbed in the department of Irrigation. The appellant made the request for transfer because there were limited chances of promotion in the department of Agriculture and there were greater opportunities of promotion in the Irrigation department.

D According to the stand of the respondents, the - department of Irrigation is a separate department from the Agriculture department and both the departments maintain their separate seniority lists. Both the departments were under the control of the State of Madhya Pradesh, but the service conditions of the employees in both the departments are governed by their respective rules and guidelines. In both the departments, the seniority is computed from the date of appointment in the- department. Therefore, according to Rules, the seniority of the appellant in the Irrigation department is computed from the date of his taking charge in. the Irrigation department. This position is clear and consistent in the government that when an employee, on his own volition, requests for transfer from one department to another department, then his seniority is computed from the date of joining that department and the employee is not entitled to get benefit of past service.

G The Irrigation department on 27.1.1981 accepted the request of the appellant for transfer and consequently he was permanently absorbed in the post of Assistant Engineer (Civil) in the Irrigation department from the date of taking over the charge. The relevant portion of the transfer order dated 27.1.1981 is reproduced hereinbelow :

H "Shri Surendra Singh Gaur, Agricultural Engineer (River Valley Project) .is merged/absorbed from the date of taking over charge of the post of Assistant Engineer (Civil) in the Irrigation department, and with the

consent of the Agriculture Department. From the date of taking over charge he shall be eligible for seniority in the cadre of Assistant Engineers.”

Therefore, the appellant from the very beginning was fully aware that his past service in the Agriculture department would not be counted in the Irrigation department in computing his seniority. The appellant opted and applied for transfer and absorption in the Irrigation department having the knowledge that there would be greater chances of promotion in the Irrigation department. On his absorption in the Irrigation department, the appellant ‘was released from the Agriculture department and consequently, he had lost his lien to the post previously held by him in the Agriculture department. Now, the appellant upon absorption in the Irrigation department had to be governed by the conditions of service in the Irrigation department.

It may be relevant to mention that the department of Agriculture by order dated 16.7.1982 gave the appellant proforma promotion to the post of Agriculture Engineer in the Agriculture Service Class-I.

The case of the respondents, is that the Irrigation department could not give benefit of past service in the Agriculture department to the appellant more particularly, when the services of the appellant were not borrowed by the Irrigation department but the appellant voluntarily sought transfer and absorption in the Irrigation department. In other words, the appellant was transferred on his own volition and request, therefore, his service conditions were governed by the rules of the Irrigation department.

In the counter-affidavit, the respondents further asserted that an employee has a right to continue in his department and maintain seniority, but according to Rules he cannot get transferred and be absorbed in another department and take benefit of the past service of the erstwhile department. Therefore, on transfer to the Irrigation department on his own request, wherein he was permanently absorbed from the date of his taking over charge, he had lost his lien in the Agriculture department and ceased to be an employee of the Agriculture department. Therefore, promotion, if any, could be given to the appellant on the basis of his service in the Irrigation department. The appellant made representation to the Irrigation department regarding ex-post facto merger (absorption) on the post of Executive Engineer. A reply to the representation was sent on 8.8.1983. The same is reproduced as under:

A "Major, Medium & Minor, Narmada Valley
Development Department

No.3(B)/189/P/31/18Q Bhopal, Dated 8.8.1983

To,

B Shri Surendra Singh Gaur,
Assistant Engineer (I.F.C.)
Office of Engineer-in-Chief,
Irrigation Department,
Bhopal.

C Sub:- Regarding ex post facto merger (absorption) on the post of
Executive Engineer.

Ref.:- Your Representation

D With reference to your above representation, it is informed as per
the order that your ex post facto absorption on pay scale .of Class
I post of Executive Engineer is difficult in Irrigation department. If you
want to go back to Agriculture department and that department is also
ready to take you back, this department has no objection.

Sd/-

(R.P. Verma)

E Under Secretary
Govt. of Madhya Pradesh
Major, Medium Minor & Narmada
Valley Development Department

Endt.No.3(B)/189/P/31/180 Bhopal, Dated 8.8.1983

F Copy forwarded to:-

The Secretary, Govt. of M.P., Agriculture Deptt., for information and
necessary action.

Sd/-

(R.P. Verma)

G Under Secretary
Govt. of Madhya Pradesh
Major, Medium Minor & Narmada
Valley Development Department"

H The Irrigation department gave the option to the appellant to go back
to the Agriculture department, but the Agriculture department refused to take

back the appellant because according to the Agriculture department he had lost his lien in the department and the Agriculture department was not under any obligation to take back the appellant. Thereafter, the appellant filed a writ petition before the High Court of Madhya Pradesh, Indore Bench at Indore (M.P.No. 145/87) praying that

“A writ direction or order as may be deemed fit be issued so that the petitioner is placed in service at his proper post with proper pay to which he has become entitled to. Cost of this petition be also awarded to the petitioner.”

By later amendment dated 19.12.1984, the appellant prayed for relief as follows:-

“A writ direction or order as may be deemed fit be issued that the petitioner be given his arrear claim/dues of promotion (position, pay-scale and pay fixation and arrears of pay) in agriculture service Class-I in Agriculture department effective from the date 29.8.1979 for which he has been entitled by the State Government, and also due to this, the further promotions (postings, pay-scale and pay fixations and pay) be given to the petitioner equally which have been given by the Government to his juniors in Agriculture Department in the Class-II and Class-I service as on the date 29.8.1979. The cost of this petition and the compensation due to this situation be also awarded kindly to the petitioner.”

The aforesaid petition was transferred to the Tribunal under Section 29 of the M.P. Administrative Tribunal Act (hereinafter referred to as the Act') by the order of High Court dated 21.9.1988.

The Tribunal gave opportunity to the - State Government to file its reply but for seven long years no reply was filed and ultimately the petition was disposed of by the Tribunal without hearing the State Government. The Tribunal after noting the relevant facts observed that according to the service jurisprudence, an employee has a right to continue in his department. He has no right to get transferred to some other department and thereafter claim benefit of his past service. The Irrigation department absorbed the appellant on his own request as an Assistant Engineer on transfer on permanent basis. As a result, the appellant had lost his lien in the Agriculture department He ceased to be an employee of the Agriculture department. The refusal of Agriculture department to accept him back on transfer in the Agriculture

A department, Engineering Services was well within the jurisdiction of the Agriculture department. The Tribunal did not find any infirmity in the approach of the respondents.

B The Tribunal however, observed that the appellant was given proforma promotion by the Agriculture department vide order dated 16.7.1982. This post facto promotion to Class-I post was effective from 29.8.1979. Therefore, according to the well-established rules of service jurisprudence, the Agriculture department was under an obligation to pay the difference of salary and pay, which the appellant had drawn in the Agriculture department as an Assistant Agriculture Engineer and the salary and allowance to which he became entitled to as a result of the proforma promotion to the rank of Agriculture Engineer. C The Agriculture department was directed to re-fix his salary in the higher post with effect from 29.8.1979. The difference between revised salary and the salary drawn by the appellant in the department for the period during which he worked in the Agriculture department should be worked out and disbursed by the Agriculture department within four months of the communication of those orders. D

E The Tribunal further observed that the Irrigation department had agreed to absorb the appellant on transfer only as an Assistant Engineer. The Irrigation department was well within its right and justified in their stand that the appellant cannot be absorbed as an Executive Engineer in the Irrigation department. However, having regard to the peculiar circumstances of the case, and keeping in view the well-established principles of 'pay protection' as applicable in Government service, it will be fair and proper that the Irrigation department, without giving higher rank, should give the benefit of 'pay protection' to the appellant. The Tribunal further directed that the difference F between the pay drawn by the appellant as an Assistant Engineer, Irrigation and the pay fixed by the Agriculture department in accordance with the directions given by the Tribunal may be treated as personal pay of the appellant. This difference (personal pay) will be absorbed in the future increments to be earned by the appellant in the Irrigation department. The Tribunal also directed that the arrears of personal pay thus derived may be G disbursed to the appellant within six months of the receipt of information from the Agriculture department regarding his revised salary at the time of transfer of service to the Irrigation department.

H The Tribunal observed that the Agriculture department cannot be directed to take back the appellant and give higher rank with reference to his

juniors in the Agriculture department. Since the appellant on his own volition had gone to Irrigation department and after his absorption in the Irrigation department had lost the lien in the Agriculture department, therefore no direction can be given now to the Agriculture department.

It may be pertinent to mention that the appellant has already superannuated from the service. As far as financial benefits accruing to him because of proforma promotion by the Agriculture department vide order dated 16.7.1982 with effect from 29.8.1979 are concerned, the Tribunal has correctly given direction so that the appellant can derive the fruits of promotion in pursuance to the order dated 16.7.1982 of the Agriculture department.

The appellant appeared in person. We have heard him at length and also considered his written submissions. The appellant argued that there is no provision in the Rules for transfer of an employee from one department to another on personal request of a Government servant. The appellant sought transfer to the Irrigation department in his own interest, but just because he was not extended the benefit of past service he cannot be permitted to take a total somersault. Despite this, on the appellant's representation, the Irrigation department vide order dated 8.8.1983 (which has been quoted in the preceding paragraph) mentioned that in case he wanted to go back to the Agriculture department, the Irrigation department had no objection. The Agriculture department refused to take back the appellant on the ground that on his absorption in the Irrigation department, he had lost his lien in the Agriculture department. In this view of the matter, in law, the Agriculture department cannot be given direction to take back the appellant and give him a higher rank. The Tribunal was justified in not directing the Agriculture department to take back the appellant because he had lost his lien in that department on absorption in the Irrigation department. However, the Tribunal appropriately gave direction for financial benefit to the appellant according to the provisions of the M.P. Fundamental Rules, 1960.

We have carefully considered the submissions of the appellant and the respondents. We find no infirmity in the impugned order of the Tribunal. No interference is called for. The appeal being devoid of any merit is accordingly dismissed. In the facts and circumstances of the case, we direct the parties to bear their own costs.

B.K.

Appeal dismissed.