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W.P.No.23012 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

W.P.No.23012 of 2015

J.Soosairaj

... Petitioner

Vs.

1.Union of India,
Rep by the Commanding Officer,
INS Kattabomman Navel Base, Vijayanarayanam,
Tirunelveli – 627 119

2.S.Manoharan

3.The Registrar,
Central Administrative Tribunal,
Chennai – 600 104.

4.The Flag officer,
Commanding in Chief
(For Command Civilian personnel Officer) Headquarters,
Eastern Naval Command,
Naval Base,
Visakhapatnam – 530 104,
Andhra Pradesh.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, calling the records pertaining to the order of Full Bench of the 3rd respondent Tribunal (Chennai) made in O.A.No.1203 of 2009 dated 02.06.2015 and the Division Bench of the



W.P.No.23012 of 2015

Tribunal made in O.A.No.1203 of 2009 dated 08.07.2015 and quash the same consequent to direct the 1st respondent to grant promotion to the cadre of Engine Fitter HSK with all consequential benefits including monetary benefits to the petitioner.

For Petitioner	: Mr.R.Malaichamy
For Respondents	: Mr.Ar.L.Sundaresan, Additional Solicitor General of India asst. by Mr.S.Diwakar, Senior Panel Counsel (for R1-4) Mr.K.M.Ramesh, Senior Counsel for Mrs.R.Sandhya (for R2) Tribunal (R3)

ORDER

(Order of the Court was made by *S.M.SUBRAMANIAM, J.*)

Under assail is the order dated 02.06.2015 passed in O.A.No.1203 of 2009. The 2nd respondent before the Central Administrative Tribunal is the Writ Petitioner before us.

2. Mr.J.Soosairaj, the Writ Petitioner initially filed O.A.No.371 of 2007 to direct the respondents to consider his case for promotion to the next higher grade as Highly Skilled (HSK) in the Artisan cadre with service benefits.



3. The Tribunal vide order dated 26.06.2008 directed the respondents therein to consider the application. Mr.S.Manoharan, the 2nd respondent herein was not impleaded as party respondent in O.A.No.371 of 2007 filed by the Writ Petitioner herein. Pursuant to the direction issued by the Tribunal in O.A.No.371 of 2007, the Department passed the order dated 13.03.2009 in favour of the Writ Petitioner. Therefore, the 2nd respondent filed Original Application in O.A.No.1203 of 2009, challenging the said proceedings dated 13.03.2009, on the ground that the 2nd respondent is senior to the Writ Petitioner in the Unit i.e., INS Kattabomman and therefore, the promotion granted to the Writ Petitioner is erroneous. The Tribunal allowed the Original Application filed by the 2nd respondent, which resulted in filing of the present Writ Petition.

4. The legal principles governing the promotions are,

(i) Promotion *per se* cannot be claimed as an absolute right.

(ii) Consideration for promotion is a fundamental right of an employee.

(iii) All promotions are to be granted scrupulously in accordance with the service Rules applicable for such promotion.

(iv) Mere transfer of an employee would not dis-entitle him from claiming seniority based on his initial date of appointment in a particular cadre,



W.P.No.23012 of 2015

unless an order of forgoing the seniority has been passed by the competent authority in order of transfer.

(v) In the absence of any Rules relating to Unit Wise promotion, the general principle is that the date of appointment of an employee in feeder cadre is to be taken into consideration for grant of promotion to the higher post.

5. In the present case, the undisputed facts are that the Writ Petitioner Mr.J.Soorairaj was initially working at Visakapattinam, State of Andhra Pradesh. A New Unit was formed namely INS Kattabomman, Thirunelveli District, the State of Tamil Nadu. Options were invited from different establishments in the command for transfer to INS Kattabomman, since it was a new unit constituted by the Eastern Navel command. Senior employees were also invited, since their services may be required in the new unit i.e, INS Kattabomman. The Writ Petitioner also opted for transfer to INS Kattabomman. Accordingly, the vacancies were filled up in INS Kattabomman . The petitioner was transferred by Proceedings dated 17.06.1991 in the cadre of Engine Fitter (SK).

6. The order of transfer would indicate that “The transfer of personnel is in Public Interest and they are entitled joining time and TA/DA etc., as per



existing Rules.”

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7. The order of transfer of the Writ Petitioner from Visakappatinam to INS Kattabomman in Proceedings dated 17.06.1991 would reveal that, the transfer of personnel from different establishments were made to the newly constituted establishment INS Kattabomman in public interest and that is the reason why such employees transferred were granted the benefit of joining time and TA/DA etc. There is no mentioning about forgoing of seniority in the said order of transfer. There is no document to establish that the employees transferred have given an undertaking to forgo their seniority in the new unit i.e., INS Kattabomman. In the absence of any Rule and an undertaking by the employee concerned, the transfer made in the public interest is to be construed as general transfer and such transfer would not dis-entitle an employee from claiming seniority in the transferred unit.

8. It is admitted between the parties that there is no Service Rules/order are available, relating to Unit wise maintenance of seniority. In the absence of any such Rules or orders maintaining unit wise seniority, the employees transferred are entitled to seniority based on their respective date of appointment in the cadre, in which they are working.



W.P.No.23012 of 2015

WEB COPY

9. It is further not in dispute that the Writ Petitioner/Mr.J.Soosairaj is senior to the 2nd respondent/Mr.S.Manoharan in the cadre of Engine Fitter (SK) based on the date of initial appointment. In other words, the Writ Petitioner/Mr.J.Soosairaj was appointed earlier to the appointment of the 2nd respondent/Mr.S.Manoharan. In the context of admitted facts, the Department issued proceedings dated 13.03.2009, granting the benefit of seniority to the Writ Petitioner based on his initial date of appointment as Fitter at Visakapattinam Unit. The 2nd respondent/ Mr.S.Manoharan was appointed as Fitter after the appointment of the Writ Petitioner. The said benefit of seniority granted in favour of the Writ Petitioner was challenged by the 2nd respondent in O.A.No.1203 of 2009. The Tribunal proceeded on the basis that, in the New Unit namely INS Kattabomman, the 2nd respondent is senior, since he joined in the New Unit prior to the transfer of the Writ Petitioner from Visakapattinam to INS Kattabomman, by holding that the 2nd respondent is senior to the Writ Petitioner in the unit of INS Kattabomman, the said order granting the benefit of seniority to the Writ Petitioner in proceeding dated 13.03.2009 was set aside.



10. We are of the considered opinion that, in the absence of any Service Rules or an undertaking in specific by the transferred employee forgoing his seniority in the transferred place, the date of initial appointment in the particular cadre is to be reckoned for the purpose of fixation of seniority. Admittedly, in the present case, the Writ Petitioner/Mr.J.Soosairaj is senior to 2nd respondent/Mr.S.Manoharan in the initial cadre of appointment. Therefore, the department has rightly arrived at a conclusion that the Writ Petitioner is entitled for seniority based on his initial date of appointment in Visakapattinam Unit and consequently fixed seniority by placing the Writ petitioner above the 2nd respondent in the cadre of Engine Fitter. The Tribunal has not considered the fact that, there is no specific Rule or an undertaking by the employee, while effecting transfer from Visakapattinam to INS Kattabomman. In the absence of any such specific Rules or undertaking, the seniority of an employee cannot be infringed. Therefore, we are of the considered opinion that the Tribunal has not considered these aspect, which resulted in allowing the Original Application.

11. Mr.K.M.Ramesh, the learned Senior Counsel would submit that the Unit wise seniority was taken into consideration by the Central Administrative Tribunal. However, in this context, we are of the considered opinion that, there is no Rule or undertaking by the Writ Petitioner to that effect forgoing the



W.P.No.23012 of 2015

seniority in the transferred Unit i.e, INS Kattabomman.

WEB COPY

12. That being so, we are inclined to consider the present Writ Petition. Consequently, the order of Central Administrative Tribunal dated 02.06.2015 in O.A.No.1203 of 2009 is set aside. It is brought to the notice of this Court that the Writ Petitioner has already retired from service, on attaining the age of superannuation. Therefore, he would be entitled to get service and monetary benefits, as applicable under the Rules.

13. Accordingly, the Writ Petition stands allowed. No costs. The Connected Miscellaneous Petitions, if any, are closed.

[S.M.S., J.]

[M.J.R., J.]

18.11.2024

Index: Yes/No

Speaking/Non-speaking order

gd



W.P.No.23012 of 2015

To

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