

Union Of India And Anr vs V.N. Bhat on 16 October, 2003

Equivalent citations: AIR 2004 SUPREME COURT 3200, 2004 AIR SCW 1399, 2003 LAB. I. C. 4039, 2004 (2) SERVLJ 62 SC, 2004 (104) FJR 427, 2004 (1) LABLN 38, 2004 (1) ALL CJ 314, 2004 (13) INDLD 970, 2004 (1) MADLJ79, 2003 (4) SCT 922, (2004) 13 ALLINDCAS 542 (SC), (2003) 4 KHCACJ 610 (SC), (2004) 2 SERVLJ 62, (2004) 1 JCR 175 (SC), 2004 ALL CJ 1 314, 2003 (4) KHCACJ 610, 2003 (8) SCC 714, 2003 (3) JKJ 117, 2003 (9) SCALE 517, 2004 SCC (L&S) 167, (2004) 1 SERVLR 21, (2003) 8 SUPREME 48, (2003) 5 ESC 1

Author: S.B. Sinha

Bench: S.B. Sinha

CASE NO. :

Appeal (crl.) 8375 of 1997

PETITIONER:

UNION OF INDIA AND ANR.

RESPONDENT:

V.N. BHAT

DATE OF JUDGMENT: 16/10/2003

BENCH:

V.N. KHARE CJ & S.B. SINHA

JUDGMENT:

JUDGMENT 2003 Supp(4) SCR 857 The following Order of the Court was delivered : Leave granted in S.L.P. (C) No. 21749 of 1997.

As identical questions of fact and law being involved in these appeals, we, therefore, propose to dispose of these matters by this common order. However, for appreciating the controversy, we are referring the facts asserted in Civil Appeal No. 8375 of 1997.

The respondent was previously working as a Lower Division Clerk in the Ministry of Defence since the year 1962. He sought transfer from the Ministry of Defence to the office of the Chief Post Master General. The Directorate, by an order dated 26th April, 1982, allowed the aforesaid transfer, as a result of which the respondent joined the service in the Postal Department on 24th May, 1982 as Lower Division Clerk. He took the seniority at the bottom of the gradation list as per departmental rules. On 17th December, 1983, the appellants herein introduced the time bound promotion scheme in the operative cadres in the Post and Telegraph Department, for providing relief to the employees

stagnating in the lower grades by improving their promotional avenues. The Postal Department decided to extend 'One Time Bound Promotion Scheme' and 'B.C.R. Scheme' for those employees who have rendered 16 years and 26 years of service as Postal Assistant respectively. These schemes were applicable to the administrative staff working in the Circle Office and to the office in which the respondent was working by converting the posts of Lower Division Clerks into Postal Assistant. The respondent was given the benefit of the said scheme and his post was converted to that of Postal Assistant. Subsequently, on an enquiry from the Postal Directorate by the Department of Posts, a clarification was received on 8th June, 1994, wherein it was stated that these schemes will be operative only in regard to the officials who have rendered service of 16/26 years in the Postal Department. As per this clarification, the benefit under the B.C.R. Scheme given to the respondent was withdrawn and he was reverted to the post earlier held by him. It is under such circumstances, the respondent on 15th November, 1996, filed an Original Application before the Central Administrative Tribunal, Chandigarh Bench, Challenging his withdrawal of one time bound promotion. The Central Administrative Tribunal, by the impugned order allowed the Application and set aside the order of withdrawal of one time bound promotion given to the respondent. It is against the said order and judgment of the Tribunal, the Union of India is in appeal before us.

The submission of the learned counsel for the appellants in short is that having regard to the admitted fact that the respondent herein has not completed 16/26 years in the postal service, the One Time Bound Promotion Scheme or B.C.R. Scheme is not applicable in his case. The fact that the respondent herein had completed 18 years of service in the Ministry of Defence is not disputed. The question which, therefore, arises for consideration is as to whether the period of service rendered by the respondent in the Ministry of Defence should be wiped off for all purposes? The well settled principle of law that even. In the case where the transfer has been allowed on request, the concerned employee merely loses his seniority, but the same by itself would not lead to a conclusion that he should be deprived of the other benefits including his experience and eligibility for promotion. In terms of the Schemes aforementioned, promotion is to be granted for avoiding stagnation only within the said parties. The said Schemes have been framed because they are beneficial ones and thus required to be implemented. The Scheme merely perused that any person having rendered 16/26 years of service without obtaining any promotion could be entitled to the benefit therefor. It is, therefore, not a case where promotion to the higher post is to be made only on the basis of seniority. Even in a case where the promotion is to be made on the selection basis, the concerned employee, even if he be placed at the bottom of the seniority list in terms of the order of transfer based in his favour, he cannot be deprived of being considered for promotion to the next higher post if he is eligible therefor. This aspect of the matter is clearly covered by the three decisions of this Court, namely, A.P. SEB v. R. Parthasarathi, [1998] 9 SCC 425; Scientific Advisor to Raksha Mantri v. V.M. Joseph, [1998] 5 SCC 305 and Renu Mullick v. Union of India, [1994] 1 SCC 373.

The aforementioned decisions have been followed by this Court in Dwijen Chandra Sarkar and Anr. v. Union of India and Ors., [1999] 2 SCC 119 in following paras :

"(14) The words "except seniority" in the 1983 circular, in our view, mean that such a benefit of a higher grade given to the transferees will in no way affect the seniority of employees in the P&T Department when the turn of the P&T employees comes up for

promotion to a higher category or post.

The said words "except seniority" are intended to see that the said persons who have come from another Department, on transfer do not upset the seniority in the transferee Department. Granting them higher grade under the Scheme for Time-bound Promotion does not, therefore, offend the condition imposed in the transfer order. We are, therefore, of the view that the appellants are entitled to the higher grade from the date on which they have completed 16 years and the said period is to be computed on the basis of their total service both in the Rehabilitation Department and the P&T Department.

(17) On the facts of the present case and especially in view of the aforesaid decisions, we are of the view that when the transfer is in public interest and not on request, the two employees transferred cannot be in a worse position than those in the above rulings who have been transferred on request and who in those cases accepted that their names could appear at the bottom of the seniority list. Even in cases relating to request transfers, this Court has held, as seen above, that the past service will count for eligibility for certain purposes though it may not count for seniority."

As the contention raised by the appellants herein is squarely covered by this Court in Dwijen Chandra Sarkar (*supra*), we do not find any merit in these appeals. They are, accordingly, dismissed. There shall be no order as to costs.