

Supreme Court of India

Gursharan Singh vs Union Of India And Others on 12 January, 1994

Equivalent citations: AIR 1994 SC 1059

Bench: A Ahmade, M Punchhi, N Singh

JUDGMENT

1. The appellant Gursharan Singh filed a suit for declaration that his claim based on seniority for promotion to the next higher post was wrongly ignored while promoting respondent Jit Singh by order dated February 19, 1979 given effect to from February 14, 1979. This, he contended, was by reason of the fact that Jit Singh who was transferred to his unit on compassionate grounds was wrongly shown as senior to him notwithstanding the fact that under the relevant rules a person transferred to another unit on compassionate grounds ranks junior to the junior-most in that unit. The learned trial Judge while answering the issues framed in this behalf came to the conclusion that Jit Singh had himself sought transfer on compassionate grounds as per his representation Exhibit D-1. It is also found on record that while granting transfer on the representation of Jit Singh it was clearly stated that no TA/DA would be admissible to him as the posting had been ordered at his own request. Although the transfer order did not state in so many words that it was on compassionate grounds a conjoint reading of the transfer order with his representation Exhibit D-1 left nothing to doubt that the transfer was on compassionate grounds. Therefore, the learned trial Judge was right in his conclusion that the transfer was on compassionate grounds.

2. The learned trial Judge, thereafter, relied on the instruction found in paragraph 2 of Exhibit P-1 which reads as under:

2. In accordance with the new seniority rules circulated vide Ministry of Defence Memorandum No. 28(6)67/ D (Appts.) dated 29th June, 1973(CPRO73/73), Government Servant rendered surplus and adjusted or transferred on compassionate/medical grounds after 1st July, 1973 do not get the benefit of their previous service on reporting to the new Units/establishments and their seniority is reckoned from the date of their joining new units establishments.

3. On a plain reading of the aforesaid instructions it becomes clear that transfers on compassionate grounds after 1st July, 1973 had to be regulated in accordance with that provision meaning thereby that the transferee-employee would not be entitled to carry his seniority from the original unit to the new unit. In other words he would rank junior to the junior-most in the transferred unit. A doubt had arisen in regard to the interpretation of this instruction whereupon Head Quarter Southern Command raised a query whether such individual should be treated as a fresh entrant for all purposes including pension, leave and quasi-permanency or whether the revised principle was to apply merely for the purpose of determining seniority. This point was clarified by stating that civilian employees transferred on compassionate grounds will not be treated as fresh entrants for the purpose of eligibility for pension, leave and quasi-permanency in the grade. However, they will not be given the benefit of their previous service for promotion and confirmation in the new units establishments. This clarification made it further clear that for the purposes of seniority the transferee employee was to be treated as a new entrant in the unit to which he sought transfer on compassionate grounds but for all other purposes, such as, retiral benefits, pay fixation etc., he

would not lose the length of service already put in. The trial Court, thereby, rightly came to the conclusion that for the purpose of seniority the instructions contained in paragraph 2 of the 1973 letter apply and Jit Singh who was transferred on compassionate grounds was not entitled to claim seniority over the appellant Gursharan Singh. The Tribunal, however, took the view that the said clarification applied to MES employees with effect from December 16, 1985 and, therefore, it did not regulate the case of the transfer of Jit Singh. That in our view is not correct. All that happened was that a doubt which had arisen in the minds of the officers of Head Quarters Southern Command in regard to the 1973 instruction was clarified subsequently but that did not alter the true content and meaning of the said instruction. It appears that the date 16-12-1985 is the date of judgment rendered by Kerala High Court to which reference is made in paragraph 3 of the Tribunal's order. However, it further appears from the letter dated 25-8-1989 that the communication dated 8th October, 1986 whereunder this cut off date was fixed was itself treated as invalid by the department. Therefore, the decision of the Tribunal based on that communication cannot be sustained.

4. In view of the above, this appeal succeeds. The order of the Tribunal is set aside and the order of the trial Court is restored. No order as to costs.