

PETITIONER:
UNION OF INDIA & ORS.

Vs.

RESPONDENT:
K. SAVITRI & ORS.

DATE OF JUDGMENT: 04/03/1998

BENCH:
S. SAGHIR AHMAD, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

PATTANAIK, J.

These appeals are directed against the orders of the Central Administrative Tribunal, Cuttack Bench, date 27.5.1994 and 27.10.1994 passed in Original Application Nos. 160, 161 and 163 of 1993. It may be stated that the Union of India preferred applications for review but the Tribunal dismissed those Review Applications by order dated 27.10.1994 holding that there is no error apparent on the face of the record.

The question for consideration in these appeals is whether surplus employees having been rendered surplus in the parent department, on being redeployed under the provisions of Central Civil Services (Redeployment of Surplus Staff) Rules, 1990 (hereinafter referred to as 'the Rules') can claim the benefit of the counting of past services rendered by them for the purpose of seniority of experience in the redeployed organisation.

The brief facts are the respondents were the employees in the office of the Rehabilitation and Reclamation Organisation having joined the said organisation in February 1987. they became surplus in the parent organisation and thereafter under the provisions of the Rules were appointed in the All India Radio on different dates. In drawing up the seniority list of the employees in the All India Radio as their past services were not taken into account and their experience in the parent organisation was not taken as the requisite experience required for promotion in the All India Radio, they approached the Central Administrative Tribunal by filing different OAs. The Administrative Tribunal having allowed those OAs and having held that the past services rendered in the parent organisation would count for the purpose of seniority as well as experience the Union of India has come up in appeals.

Though the respondents have been duly served with the notices but none of them have entered appearance. But some of the respondents have sent their submissions to this Court which are on record and we have, therefore, perused those submissions.

Mr. N. Goswami, the learned senior counsel appearing

for the appellant - Union of India submitted that under the Rules an employee after redeployed is not entitled to take the benefit of his past service rendered prior to redeployment either for the purposes of seniority or even as experience for promotion in the redeployed organisation in view of the specific provisions to that effect in the rules itself. The Tribunal, therefore, committed serious error in directing that the past services should be taken into account. We find considerable force in the aforesaid contentions. The President of India made the Rules in exercise of powers conferred by the proviso to Article 309 of the Constitution for regulating the redeployment and readjustment of surplus staff against vacancies in the Central civil Services and Post. The expression 'redemption' has been defined in rule 2(f), thus:

"2(f) 'Redemption' means the appointment of a surplus employee against a vacancy in a Central Civil Service or post in accordance with these rules,"

The expression 'surplus staff' and 'surplus employee' have been defined in Rule 2(g) thus:

"2(g) 'Surplus staff' and 'surplus employee or employees' means the Central Civil Servants (other than those employed on ad hoc, casual, work-charged or contract basis) who-

- (a) are permanent, or, if temporary, have rendered not less than five years' regular continuous service; and
- (b) have been rendered surplus along with their posts from the Ministries, Departments, Offices of the Government of India, as a result of-

- (1) administrative and financial reforms, including inter alia, restructuring of an organisation, zero base budgeting, transfer of an activity to a State Government, Public Sector Undertaking or other autonomous organisation, discontinuation of an on-going activity, and introduction of changes in technology; or

- (2) studies of work measurement undertaken by the Staff Inspection Unit of the Ministry of Finance or any other body set up by the Central Government or the Ministry/Department concerned; or

- (3) abolition or winding up either in whole or in part of an organisation of the Central

Government,

Rule 9 provides that the fixation of seniority and pay of the surplus employee and counting of his previous service for various other purposes in the new post to which he is appointed on redeployment under the rules shall be regulated in accordance with the instructions issued from time to time by the Government of India in this behalf. The provisions of rule 9 is extracted hereinbelow in extenso:

9. Fixation of pay and seniority, counting of previous service for various other purposes and carrying over of lien/classification- The fixation of seniority and pay of the surplus employee and counting of his previous service for various other purposes and carrying over of lien/classification in the new post to which he is appointed on redeployment under these rules shall be regulated in accordance with the instructions issued from time to time by the Government of India in this behalf.

In exercise of the power under Rule 9 of the Rules, Government of India has issued the revised scheme indicating the manner in which and the extent to which surplus staff on being redeployed under the Rules can be given the benefit of their past services. Paragraph 11 of the revised scheme deals with the question of benefit of past service after redeployment. Para 11.1 clearly stipulates that the past services rendered prior to redeployment should not count towards seniority in the new organisation. Para 11.1 is extracted hereinbelow in extenso:

11.1 No change is contemplated in the present policy that the past services rendered prior to redeployment should not count towards seniority in the new organisation/new post which a surplus employee joins after he is redeployed. The same rule will also have to be applied in the case of those readjusted after redeployment.

The service conditions of the redeployed employees under the Rules being governed by the provisions in the rules as well as the instructions issued from the Government of India from time to time and in view of the clear unambiguous language in para 11.1 of the instructions referred to above the conclusion is irresistible that the past services of the redeployed staff cannot be counted for seniority in the new organisation. The Tribunal, therefore, committed serious error in directing that the past services would counted for the seniority of the employees in the All India Radio.

Coming now to the question whether the said past services can be counted as experience for promotion, it appears that under Recruitment Rules for various posts in the All India Radio called All India Radio (Class III Posts) Recruitment Rules, 1964 (hereinafter referred to as 'the Recruitment rules') as amended from time to time the post of Head Clerk is filled up by promotion to the extent of 50% from amongst the Clerk Grade II/Clerk Grade I/Stenographer with a minimum of five years of service in the grades on the basis of a qualifying departmental examination and the

criteria for promotion is seniority-cum-fitness. In that view of the matter, since the past services of redeployed surplus employee cannot be counted for his seniority in the new organisation, equally the past experience also would not count as the so-called past services rendered will not be service in the grade. Similarly for promotion to Clerk Grade I which is made on the basis of seniority-cum-fitness from amongst the Clerks Grade II five years of service in the grade is required for being considered for promotion. Obviously, therefore, an employee should have five years of experience in Clerk Grade II of the All India Radio after being redeployed under the Rules in order to be eligible for being considered for promotion. The Tribunal, therefore, was wholly in error in directing that the past services of the employees should be counted for granting them the benefit of seniority and experience for promotion in the All India Radio. In the aforesaid premises, the impugned orders of the Central Administrative Tribunal, Cuttack Bench, in Original Application Nos. 160, 161 and 163 of 1993 are set aside and those OAs are dismissed and these appeals are allowed but in the circumstances there will be no order as to costs.