

CASE NO.:
Appeal (civil) 5739 of 2005

PETITIONER:
UNION OF INDIA & ORS.

RESPONDENT:
M. MATHIVANAN

DATE OF JUDGMENT: 09/06/2006

BENCH:
ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT:
JUDGMENT

C.K. THAKKER, J.

This appeal is directed against an order dated April 3, 2002 passed by the Central Administrative Tribunal (CAT), Madras Bench in O.A. No. 1094 of 2001 and confirmed by the High Court of Judicature at Madras on April 16, 2003 in Writ Petition No. 25452 of 2002. The relevant facts leading to the present appeal are that the respondent herein, Mr. M. Mathivanan was selected for recruitment to the cadre of Postal Assistant on December 28, 1981 and was appointed as Postal Assistant on daily wages basis. He underwent necessary training and was placed in Reserve Training Pool (RTP), Postal Assistant to be absorbed as regular Postal Assistant and was posted to work in the post offices in Cuddalore Postal Division. In August 1983, the respondent, volunteered for enrolment in Army Postal Services (APS). By an order dated August 19, 1983 his request was accepted and he was appointed as Postal Assistant, Cuddalore with effect from August 27, 1983. The appointment was made subject to the following conditions.

i) The appointment is on purely adhoc and temporary basis and candidate will have no claim for regular absorption in preference to his seniors in the RTP list of this Division.

ii) The inter-se-seniority between the candidates who volunteered for APS and candidates who were appointed in the civil will not be disturbed merely by virtue of the above appointment of volunteers in the civil for deputation to APS.

iii) If the candidate is declared medically unfit for enrollment to the APS, he will revert back to the RTP list and take his chance for absorption as regular PA in the normal course as and when it is due.

In September, 1983, while he was working in Reserve Training Pool as Postal Assistant, he was asked

by the Superintendent of Post Offices, Cuddalore Division to appear before the authorities for selection in Army Postal Services. Accordingly, he appeared and was selected as Warrant Officer with effect from September 30, 1983. By an order dated October 20, 1983 the respondent was appointed as Postal Assistant in Cuddalore Division with effect from September 30, 1983 on the conditions mentioned in the said order. After his enrolment in the Army Postal Services, an order was passed by Hon'ble the President of India appointing him on the establishment of Regular Army with effect from September 30, 1983.

It was the case of the respondent that Time Bound Promotion Scheme was formulated by the authorities vide a Memorandum dated December 17, 1983. The instructions were sent to all the Heads of Circles (Postal). The scheme, inter alia, provided placing of officers in the 'next higher grade' who had completed sixteen years of service in Group 'C' and 'D'. The scheme came into effect from November 30, 1983. According to the respondent, he had shown his willingness vide letter dated January 29, 1988 for being governed by the said scheme. It is not in dispute that the respondent was appointed as Postal Assistant on 'regular' basis from July 18, 1989. He was transferred to Cuddalore Division and joined there on August 6, 1991. In 1999, the respondent made an application to the Superintendent of Post Office, Cuddalore Division for granting benefit of Time Bound Promotion Scheme as he had completed sixteen years considering the starting point of September 30, 1983. He also stated that he was in continuous service from 1983 and as such he was entitled to get the benefit from September 30, 1999. Unfortunately, however, his name was not included in the Time Bound Promotion Scheme. Finally, he was informed by a communication dated March 24, 2000 that his case for Time Bound Promotion would be considered only from 2007. His appeal against the said order also came to be dismissed by the Superintendent of Post Offices on October 18, 2000. Being aggrieved by the said orders, the respondent approached the Central Administrative Tribunal, Madras by filing Original Application. The Central Administrative Tribunal allowed his application holding that his services ought to have been considered from September 30, 1983 and since he had completed sixteen years in 1999, he was entitled to the benefit of Time Bound Promotion Scheme. Accordingly, the application was allowed. The Writ Petition filed by the appellant herein was dismissed by the High Court of Madras which order has been challenged by the appellants in the present appeal.

On January 23, 2004, notice was issued on Special Leave Petition by this Court since there was delay of 155 days in approaching this Court. Meanwhile, however, interim stay was granted against the operation of the orders passed by the CAT and confirmed by the High Court. On September 12, 2005, after hearing the parties, delay was condoned, leave was granted, appeal was admitted, while interim relief was ordered to be continued and the appeal was ordered to be expedited for final hearing.

We have heard the learned counsel for the parties. Mr. Parasaran, learned Additional Solicitor General, appearing for the appellants, contended that the Tribunal as well as the High Court committed an error of law in not considering in its proper perspective,

the Time Bound Promotion Scheme and by granting benefit of the said scheme to the respondent. According to him, the provision in the scheme is clear and an employee would be entitled to the benefit of Time Bound Promotion, only if he has completed sixteen years of 'regular' service. Admittedly, the respondent was regularly appointed in September 1989 and joined Cuddalore Division in 1991. The Department was, therefore, perfectly justified in rejecting the prayer of granting Time Bound Promotion as according to the Department, he was not entitled to such promotion. He also submitted that the respondent was initially appointed in 1981, but the scheme required completion of sixteen years of service on 'regular' basis. The counsel, therefore, submitted that the order passed by the Tribunal and confirmed by the High Court deserves to be set aside by upholding the action of the Department and by rejecting the prayer of the respondent. The learned counsel for the respondent-employee, on the other hand, supported the order passed by the Tribunal and confirmed by the High Court. He urged that the scheme had been properly interpreted by the Tribunal and benefit was extended to him which was confirmed by the High Court. He also relied upon decisions of this Court in which similar action had been set aside by this Court by granting benefits to the employees. He, therefore, submitted that the appeal deserves to be dismissed.

Having heard the learned counsel for the parties, in our opinion, the order passed by CAT and confirmed by the High Court deserves no interference. It is not in dispute by and between the parties that the respondent was enrolled as Reserve Training Pool Postal Assistant and was appointed initially as Postal Assistant in the year 1981. It is also not in dispute that in 1983, he volunteered for enrollment in Army Postal Services and was absorbed in August, 1983 by an order dated August 19, 1983. In the conditions referred to earlier, it was stated that the appointment was purely on ad hoc and temporary basis and the respondent would have no right to claim regular absorption in preference to his seniors in RTP list of the Division. It was also stated that the inter-se-seniority between the candidates who volunteered for such services and candidates who were appointed in Civil Wing would not be disturbed. It is also undisputed that pursuant to the willingness shown by the respondent, he was regularized in 1989. But it cannot be disputed and is not disputed before us that he was appointed as Warrant Officer in September, 1983. The order passed by Hon'ble the President of India appointing the respondent as Warrant Officer on the establishment of Regular Army reads thus:

"To

M. Mathivanan greeting:

You are hereby appointed to be a Warrant Officer on the establishment of the Regular Army, from the 30th day of September One thousand nine hundred and eighty three.

You are therefore carefully and diligently to discharge your duty as such; and you are to obey such orders and observe such directions as from time to time you shall

receive from me or any of your superior officers according to the rules, regulations and order for the governance of the Regular Army.

Given at New Delhi the sixth day of Magha of the Saka year One thousand nine hundred and eight correspondent to the Tuesday sixth day of the month of January of the year One thousand nine hundred and eighty seven A.D.

Sd/-
Zail Singh
President of India"

The learned counsel for the respondent, in our opinion, is right in relying on paragraph 1 of the Time Bound Promotion Scheme. Paragraph 1 which relates to placing of an employee in 'next higher grade' reads thus:

"1) The Scheme will come into effect from 30.11.1983. All officials belonging to basic grades in Group 'C' and Group 'D' to which there is direct recruitment either from outside and/or by means of limited competitive examination from lower cadres, and who have completed 16 years of service in that grade, will be placed in the next higher grade. Officials belonging to operative cadres listed in the Annexure A-1 to the agreement will be covered under the scheme."

Paragraph 2 speaks of 'promotion' and reads as under:

"The heads of circles/Divisional Superintendents/Heads of other functional units will take immediate action to identify the officials who have completed sixteen years of regular service in the cadres covered under the scheme as on 30.11.1983 as well as the officials who will complete 16 years of service from 1.12.1983 to 30.3.1984. Thereafter, action will be initiated by the Heads of Circles to convene departmental promotion committee meetings to consider promotion of the officials in the operative cadres to the next higher scale of pay. The Departmental Promotion Committee which will be constituted in accordance with the existing instructions applicable to the different cadres will assess the fitness of the identified officials for promotion to the higher scale of pay. The formalities in this regard should be complete within a period of three months. The promotion to the next higher scale of pay will be granted from the date following the date on which the identified officials complete sixteen years of regular service. In case of officials who have completed sixteen years of service before 30.11.1983, the promotions to the next higher scale of pay will take effect from

30.11.1983."

Reading of the above two paragraphs makes it abundantly clear that so far as placing of an officer in the 'next higher grade' is concerned, what is relevant and material is that such official belonging to basic grades in Group 'C' and 'D' must have completed "sixteen years of service in that Grade". The said paragraph, nowhere uses the connotation 'regular' service. Paragraph 2 which provides for Departmental Promotion Committee and consideration of cases of officials for 'promotion', provides for sixteen years of 'regular' service. The Tribunal, therefore, rightly considered paragraph 1 as relevant and held that basic eligibility condition for being placed in the next higher grade is that the officer must have completed sixteen years of service in the basic grade in Group 'C' and Group 'D'. Though in other paragraphs, the service was qualified by the adjective 'regular', the said qualification was not necessary for the purpose of paragraph 1. Since the employee wanted the benefit of placement in 'next higher grade', what was required to be established by him was that he had completed sixteen years of service in the grade and the said requirement had been complied with in view of the fact that with effect from September 30, 1983 he was appointed as Warrant Officer. He was, therefore, entitled to the benefit of 'next higher grade' under paragraph 1 from 1999. The authorities were, therefore, not justified in rejecting the claim and accordingly the petition was allowed. The High Court rightly upheld the direction of CAT.

The learned counsel for the respondent is also right in placing reliance on the decision of this Court in *Dwijen Chandra Sarkar & Another v. Union of India & Others* (1999) 2 SCC 119. Almost in similar circumstances, the Court considered the extent and applicability of Time Bound Promotion Scheme and held that the benefit of the said scheme would be available to a person who had completed 'sixteen years of service' in the grade. In that case, two appellants were working in the Posts & Telegraphs Department and they had claimed the benefit of the scheme. Initially, they were serving in the Rehabilitation Department of the Government of India, but were transferred in the Department of Posts & Telegraphs afterwards. The question before the Court was whether the appellants were entitled to count the services rendered by them earlier in the Rehabilitation Department of the Government of India and whether they would be entitled to the benefit of the scheme by taking into account past services. The Court considered the scheme of December, 1983 and held that what was required under the scheme was completion of sixteen years of service in that grade. If the said requirement is complied with, an employee would be entitled to be placed in the next higher grade. It was observed that two concepts, namely, (i) 'time bound promotion', and (ii) 'regular promotion' were different. So far as the 'time bound promotion' was concerned, the Court observed that since there were large number of employees who were not likely to get promotion in near future because of their comparatively low position in the seniority, the Government thought it necessary that in order to remove frustration, the employees should be placed in the 'next higher grade' in terms of emoluments while retaining them in the same cadre. This is what is

generally known as the 'time-bound promotion'. Such 'time bound promotion' does not affect seniority of those higher up.

The Court then stated:

"12. If that be the true purpose of a time-bound promotion which is meant (to) relieve frustration on account of stagnation, it cannot be said that the Government wanted to deprive the appellants who were brought into the P & T Department in public interest -- of the benefit of a higher grade. The frustration on account of stagnation is a common factor not only of those already in the P & T Department but also of those who are administratively transferred by Government from the Rehabilitation Department to the P & T Department. The Government, while imposing an eligibility condition of 16 years' service in the grade for being entitled to time-bound promotion, is not intending to benefit only one section of employees in the category and deny it to another section of employees in the same category. The common factor for all these employees is that they have remained in the same grade for 16 years without promotions. The said period is a term of eligibility for obtaining a financial benefit of a higher grade". (emphasis supplied)

The Court added that for the purpose of 'regular promotions' to the higher cadre in the department, their seniority should be counted only from the date of their transfer in the Posts and Telegraphs Department.

The Court, therefore, concluded;

"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, 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."

It is no doubt true as observed by the High Court that Dwijen Chandra Sarkar was not an identical case, inasmuch as in that case, the appellants were transferred "in public interest", whereas in the instant case, the transfer was volunteered by the respondent-employee for enrolment in Army. That, however, in our opinion, does not make difference since to us, the language of paragraph 1 of the scheme is clear, unambiguous and leaves no room for doubt. That aspect was also considered in Dwijen Chandra Sarkar. But, in any case, even that point is also finally concluded by

another decision of this court in Union of India & Another v. V.N. Bhat, (2003) 8 SCC 714 in which the employee was initially appointed in the Ministry of Defence and voluntarily transferred himself to the office of the Post Master General. The question which came up for consideration was as to whether he would be entitled to get benefit of the scheme. Relying on Dwijen Chandra Sarkar, this Court held that the employee would be entitled to the benefit of the scheme on completion of sixteen years of service.

Relying on Dwijen Chandra Sarkar, this Court observed;

"The well-settled principle of law that even in the case where the transfer has been allowed on request, the employee concerned 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 are 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 therefore. It is, therefore, not a case where promotion to the higher post is to be made only on the basis of seniority."

Since the respondent had completed sixteen years of service in 1999, he would be entitled to the benefit of paragraph 1 of Time Bound Promotion Scheme and the action of the authorities in not granting the said benefit was illegal and contrary to law. The Central Administrative Tribunal as well as the High Court were, therefore, right in setting aside the said action and by directing the authorities to extend the benefit of the Scheme to the respondent. We see no infirmity in the reasoning adopted and conclusion recorded by the CAT or by the High Court and find no substance in the appeal of the appellants.

For the foregoing reasons, the appeal deserves to be dismissed and is accordingly dismissed with costs.