

(2016) 01 KAR CK 0149

In the Karnataka High Court

Case No : Writ Petition No. 16250/2014 (S-CAT) and Writ Petition Nos. 31512-31514/2014

The Garrison Engineer (1) R and D (East) Ors.

APPELLANT

Vs

K. Pooswamy

RESPONDENT

Date of Decision : 11-01-2016

Acts Referred:

Citation : (2016) 01 KAR CK 0149

Hon'ble Judges : Mohan M. Shantana Goudar and K.N. Phaneendra, JJ.

Bench : Division Bench

Advocate : H. Jayakara Shetty, C.G.C., for the Appellant; Basavaraj Veerabhadra, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Mohan M. Shantana Goudar, J.—1. The order dated 30th September 2013 passed by the Central Administrative Tribunal ("CAT" for short), Bangalore Bench, Bangalore in Original Application No. 357/2013 is called in question in these writ petitions.

2. The records reveal that the respondent was initially appointed at 652 Coy ASC (Civ GT) as Civilian Motor Driver on 20.2.1988. He made a request for transfer on compassionate grounds to another Unit i.e., Military Engineering Service Unit. Accordingly, on 16.9.1998 the respondent was transferred on compassionate grounds to Military Engineering Service Unit, GEAF, Bangalore and he joined the said Unit on 23.9.1998. However the respondent was inadvertently promoted on 30.4.2009 as Motor Driver Grade-II by the 3rd petitioner w.e.f. 1.4.1998 taking into account the seniority of the respondent from earlier Unit instead of the present Unit. However the petitioners realizing the said mistake, have issued show cause notice to the respondent on 5.8.2011 for cancellation of the promotion stating that the seniority in the department is to be reckoned from 23.9.1998 and not w.e.f. 20.2.1988. The respondent replied by opposing cancellation of the promotion order. Ultimately on 31.1.2012 the 3rd petitioner

has reviewed the selected panel and cancelled the promotion order granted in favour of the respondent. Questioning such order of cancellation, the respondent approached CAT in O.A. No. 357/2013. By the impugned order, the said application came to be allowed by the Tribunal and consequently the petitioners herein (respondents before the Tribunal) were directed to consider the service of the respondent from 1988 onwards for the purpose of promotion.

3. Heard the learned counsel for the petitioners and perused the records.

4. It is not in dispute that the respondent was initially appointed as Civilian Motor Driver at 652 Coy ASC (Civ GT) on 20.2.1988. It is also not in dispute that the respondent was transferred on compassionate grounds on 16.9.1998 to another Unit i.e., Military Engineering Service Unit, GEAF, Bangalore. However the respondent joined for duties in the said organization on 23.9.1998. Now the question to be decided is as to whether the service rendered by the respondent from 20.2.1988 till 16.9.1998 has to be taken into consideration for the purpose of promotion etc., or not?

5. The records reveal that the respondent was promoted to the post of Motor Driver Grade II in the Military Engineering Service Unit by taking into account the past service rendered by the respondent from 20.2.1988 to 16.9.1998. Subsequently such promotion was withdrawn by the department after having realized the mistake of promoting the respondent. The terms and conditions of service are found at Annexure-R1. Civilian Personnel Routine Order ("CPRO" for short) 11 deals with general principles for determining seniority of various categories of persons employed in central services. Reference is made to CPRO 73/73 also. The relevant portion of terms and conditions of service disclose that the revised principles of seniority are applicable from 1.7.1973. In view of the revised principles of seniority, the seniority of locally controlled staff transferred on compassionate grounds prior to 1.7.1973 will be determined as per the old seniority rules. However the seniority of the individual adjusted or transferred on compassionate grounds on or after 1.7.1973 will be determined in accordance with the revised principles of seniority. In other words, those adjusted/transferred on or after 1.7.1973 will not get the benefit of their previous service on their reporting to the new Units. From the above, it is clear that the seniority will be reckoned from the date of reporting for duty in the new Unit or establishment as per the revised instructions relating to seniority (reproduced in CPRO 73/73). It is not in dispute that the Military Engineering Service Unit to which the respondent was transferred on compassionate grounds is altogether a new and different Unit or establishment from 652 Coy ASC (Civ GT) establishment under which the respondent was initially appointed. Since the respondent was transferred from one Unit to another new Unit, that too on compassionate grounds, he cannot claim seniority based on the past service rendered by him in the earlier Unit from 20.2.1988 to 16.9.1988. The seniority of such transferred employees on compassionate grounds shall be reckoned from the date of reporting for duty in the new Unit or establishment as per the revised

instructions contained in Raksha Mantralaya letter No. 28(6)/67/D (Appts) dated 29.6.1973 (reproduced in CPRO 73/73). In view of the same, the Tribunal is not justified in directing the petitioners herein to consider the service of the respondent from 1988 onwards for the purpose of promotion. The Tribunal has not at all assigned any valid reason for coming to the conclusion.

6. The aforementioned view taken by us is fully supported by the Judgment of the Apex Court in the case of GURUSHARAN SINGH vs. UNION OF INDIA AND OTHERS reported in , AIR 1994 SC 1059 wherein it is observed thus:

"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. xxx xxx xxx 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, retrial benefits, pay fixation etc., he would not lose the length of service already put in xxx xxx.

In view of the above, writ petitions are entitled to be allowed and accordingly are allowed. The impugned order passed by the Tribunal stands quashed.