

A

UNION OF INDIA AND ORS

v.

C.N. PONNAPPAN

DECEMBER 5, 1995

B

[S.C. AGRAWAL AND G.B. PATTANAİK, JJ.]

*Service Law :*

C *Transfer of employee on compassionate grounds—Service rendered in earlier unit—Held, has to be counted as experience for promotion.*

*Practice and Procedure :*

D *Central Administrative Tribunal—One Bench not inclined to agree with the view taken by another co-ordinate Bench—Course to be adopted—Explained.*

E On the question whether an employee, transferred from one unit to other on compassionate grounds and, as such, placed at the bottom of the seniority list, can have his service in the former unit counted as experience for the purpose of promotion in the latter unit, the Madras Bench of the Central Administrative Tribunal decided in favour of the transferred employee, whereas the Bangalore Bench decided against such an employee. Later, a Full Bench of the Tribunal agreed with the view of the Madras Bench. The present three appeals came to be filed against the decisions rendered by the Full Bench and the Madras Bench of the Tribunal.

F

Dismissing the appeals, this Court

G **HELD : 1.** The Tribunal has rightly interpreted the rules as they stood at the relevant time, and has rightly held that the service rendered at the place from where the employee has been transferred has to be counted as experience for the purpose of eligibility for promotion at the place where he has been transferred. The said service being regular service in the grade cannot be ignored only on the ground that it was not rendered at the place of transfer. Nor does the fact that the employee was placed at the bottom of the seniority list as a result of transfer wipe out his service  
H at the place from where he was transferred. [223-B-A]

2. Since the Bangalore Bench and the Madras Bench were the coordinate Benches of the Tribunal, the Bangalore Bench, when it felt inclined to take a view different from that taken by the Madras Bench, should have referred the question for consideration by a larger Bench.

[222-B]

CIVIL APPELLATE JURISDICTION : Civil appeal No. 1221 of 1987 Etc.

From the Judgment and Order dated 20.6.86/28.8.86 of the Central Administrative Tribunal, Madras in T.P. No. 770/86 O.P. No. 6288 of 1984.

K.N. Shukla, Hemant Sharma, Ms. Anil Katiyar, P. Parmeswaran for the Appellants.

K.M.K. Nair for the Respondent.

The following Order of the Court was delivered :

These three appeals raise a common question for consideration. The question is whether an employee who is transferred from one unit to other on compassionate grounds, and, as a result, is placed at the bottom of the seniority list can have his service in the earlier unit from where he has been transferred counted as experience for the purpose of promotion in the unit where he is transferred. There was a difference of opinion amongst the Benches of the Central Administrative Tribunal (hereinafter referred to as 'the Tribunal') on this question. In *C.N. Poonappan v. Union of India & Ors.* (Transfer Application No. 770 of 1986) decided on June 20, 1986, which has given rise to Civil Appeal No. 1221 of 1987, the Madras Bench of the Tribunal has taken the view that though on transfer on compassionate grounds the employee loses his seniority and is placed at the bottom of the seniority list at the transferred place but for the purpose promotion his earlier service in the unit from where he was transferred is not wiped out and the said service has to be treated as experience for the purpose of his eligibility for such promotion and if he is found eligible then the matter of promotion has to be considered on the basis of seniority at the transferred place. The Bangalore Bench of the Tribunal in *S. Abdul Khayyum & Ors. v. Union of India* (Applications Nos. 1282, 1283 and 1284 of 1986) decided on September 30, 1986 has, however, not agreed with the said view of the Madras Bench of the Tribunal in *Poonappan's* case (supra) and has held that an employee who is transferred on compassionate

A grounds and is placed at the bottom of the seniority list at the place where he is transferred cannot have his earlier service at the place from where he was transferred counted as experience for the purpose of eligibility for promotion. Since the Bangalore Bench and the Madras Bench were co-ordinate Benches of the Tribunal, it was expected that the Bangalore Bench, when it felt inclined to take a view different from that taken by the Madras Bench, should have referred the question for consideration by a larger Bench. Any way, the matter has been considered by a Full Bench of the Tribunal in Transfer Application No. 65 of 1987 wherein the Full Bench has agreed with the view of the Madras Bench in *Poonappan's* case (supra) and has held that a person who is transferred on compassionate grounds only loses his seniority but he does not lose the benefit of the past service in the previous unit for the purpose of his promotion.

Civil Appeal No. 1221 of 1987 has been filed against the Madras Bench of the Tribunal in *Poonappan's* case (supra). Civil Appeal No. 529 of 1989 has been filed against the judgment of the Madras Bench of the Tribunal dated March 15, 1988 in Civil Appeal No. 118 of 1987 filed by N. Kumarason. Civil Appeal No. 2320 of 1995 has been filed against the judgment of the Madras Bench of the Tribunal dated October 5, 1987 in Transferred Application No. 65 of 1987 filed by K.A. Balasubramaniam. Civil Appeals Nos. 1221 of 1987 and 2320 of 1995 relate to promotion from the post of Lower Division Clerk to Upper Division Clerk and Civil Appeal No. 529 of 1989 relates to promotion from the post of Stenographer Grade III to Stenographer Grade II .

We have considered the appeals in the light of provisions contained in the relevant rules. For promotion of a Lower Division Clerk to the post of Upper Division Clerk, which is in issue in Civil Appeals Nos. 1221 of 1987 and 2320 of 1995, the relevant rules required "eight years regular service in the grade." Similarly, for promotion from the post of Stenographer Grade III to Stenographer Grade II, which is in issue in Civil Appeal No. 529 of 1989, "five years of regular service in the post of Stenographer Grade III" was required.

The service rendered by an employee at the place from where he was transferred compassionate grounds is regular service. It is no different from the service rendered at the place where he is transferred. Both the periods are taken into account for the purpose of leave and retiral benefits. The

fact that as a result of transfer he is placed at the bottom of the seniority list at the place of transfer does not wipe out his service at the place from where he was transferred. The said service, being regular service in the grade, has to be taken into account as part of his experience for the purpose of eligibility for promotion and it cannot be ignored only on the ground that it was not rendered at the place where he has been transferred. In our opinion, the Tribunal has rightly held that the service held at the place from where the employee has been transferred has to be counted as experience for the purpose of eligibility for promotion at the place where he has been transferred.

It has been pointed out that subsequent to the judgment of the Tribunal in *Poonappan's* case (*supra*), the relevant rules governing promotion from Lower Division Clerk to Upper Division Clerk have been amended by notification dated June 30, 1986 and now the requirement is "with eight years regular service in the grade in the unit/office/establishment/laboratory/Centre/unit, etc. in which they are considered for promotion."

Since we are in agreement with the view of the Tribunal on the interpretation of the rules as they stood at the relevant time, the appeals fail and are accordingly dismissed. No costs.

R.P.

Appeals dismissed. E