

S. Soundara Raj Vs. Union of India (Uoi) and ors.

S. Soundara Raj Vs. Union of India (Uoi) and ors.

SooperKanoon Citation : sooperkanoon.com/54767

Court : Central Administrative Tribunal CAT Ernakulam

Decided On : Mar-09-2006

Reported in : (2007)(1)SLJ360CAT

Judge : R A N., G Paracken

Appellant : S. Soundara Raj

Respondent : Union of India (Uoi) and ors.

Judgement :

1. The applicant's grievance in the present O.A. is against the manner in which the orders of the Tribunal dated 4.4.2003 in O.A. 283/03 was implemented vide A-14 memorandum dated 29.7.2003.

2. The brief facts of the case are that, the applicant was appointed as Lower Division Clerk under the Government in NCT of Delhi on 27-2-82.

He was promoted as a Data Entry Operator in the scale of Rs. 1200-2040 with effect from 26.8.86 in the same office. Pursuant to the Annexure-A1 O.M. dated 28.3.88 (A1), inviting application to fill up 54 posts of Data Entry Operators in the Directorate of Inspection (Systems), New Delhi, on transfer on deputation basis in the same scale, the applicant applied for the said post and on selection he was appointed as Data Entry Operator in scale Rs. 1200-2040 with effect from 19.4.89, under the 3rd respondent, namely, the Chief Commissioner of Income Tax, Kochi. While working as a deputationist, he submitted a request for absorption which was rejected on the ground that, the Chief Commissioner of Income Tax has not been vested with any power for transfer of an official from another department. However, since there was provision to fill up vacancies under the Recruitment Rules by "Transfer on deputation/transfer", and the applicant being a well experienced Data Entry Operator, he was absorbed on permanent basis with effect from 25.3.1992 vide A3 order dated 25.3.1992 with the condition that the service rendered by him in departments other than the Income Tax Department, Kerala will not be counted for the purpose of determining seniority or for the purpose of promotion/ appointment to any higher post/grade/cadre.

3. However, after his absorption the applicant approached this Tribunal vide O.A. 1128/94 to reckon his seniority from 19.4.89, the date on which he was appointed as Data Entry Operator on deputation basis under the third respondent. Vide A4 order dated 16.8.94 this Tribunal disposed of the aforesaid O.A. No. 1128/94 with a direction to the third respondent to consider his representation. However, the third respondent rejected the representation on 5.10.94 and the applicant has made another representation to the second respondent, namely, the Chairman, Central Board of Direct Taxes, Ministry of Finance, New Delhi against the said rejection of the third respondent. During the pendency of the said representation, the applicant filed O.A. 182/95 which was also disposed of vide order dated 7.3.96 (A5) with a direction to the second respondent to pass appropriate orders on the representation within two months as the said representation was pending consideration for about 15 months. On rejection of his request, the applicant again filed O.A. 1176/96. His prayer was that his seniority should be fixed from 19.4.89, the date on which he joined duty on deputation basis, under the third respondent. The respondents have submitted that only those employees who were

absorbed on regular basis in public interest were entitled to have their seniority fixed from the date they have been holding the post on deputation or the date from which they were appointed on regular basis to the same or equivalent grade in their parent department, whichever is later. The applicant was appointed on deputation on the basis of his request. The absorption on public interest will arise only at the end of deputation period for which separate proceedings are to be initiated by the respondents themselves, if they are of the opinion that the applicant's continued retention in the department is absolutely essential for the functioning of the department. As the applicant got himself absorbed on his request, he cannot claim any such benefits. This Tribunal agreed with the contention of the respondents and dismissed the O.A. vide Annexure-A6 order dated 18.6.98 directing them to determine the seniority of the applicant from the date on which he was absorbed. Thus the issue raised by the applicant regarding his seniority in the absorbed department came to a rest.

4. This O.A. has been filed by the applicant again after the Hon'ble Supreme Court in its judgment dated 14.12.1999 in S.I. Rooplal and Ors.

v. Lt. Governor settled the law regarding absorption of deputationists. The operative portion of the said judgment is as under: 15. We will now take up the question whether the appellants are entitled to count their service rendered by them as Sub-Inspectors in BSF for the purpose of their seniority after absorption as Sub-Inspectors (Executive) in the Delhi Police or not. We have already noticed the fact that it is pursuant to the needs of the Delhi Police that these officials were deputed to the Delhi Police from BSF following the procedure laid down in Rule 5(h) of the rules and subsequently absorbed as contemplated under the said rules. It is also not in dispute that at some point of time in BSF, the appellants' services were regularised in the post of Sub-Inspector and they were transferred as regularly appointed Sub-Inspectors to the Delhi Police Force. Therefore, on being absorbed in an equivalent cadre in the transferred post, we find no reason why these transferred officials should not be permitted to count their service in the parent department. At any rate, this question is not res integra and is squarely covered by the ratio of judgments of this Court in more than one case. Since the earlier Bench of the Tribunal relied upon Madhavan case to give relief to the deputationists, we will first consider the law laid down by this Court in Madhavan case. This Court in that case while considering a similar question, came to the following conclusion : (SCC p.580, Para 21) 21. We may examine the question from a different point of view.

There is not much difference between deputation and transfer.

Indeed, when a deputationist is permanently absorbed in the CBI, he is under the rules appointed on transfer. In other words, deputation may be regarded as a transfer from one Government department to another. It will be against rules of service jurisprudence, if a Government servant holding a particular post is transferred to the same or an equivalent post in another Government department, the period of his service in the post before his transfer is not taken into consideration in computing his seniority in the transferred post. The transfer cannot wipe out his length of service in the post from which he has been transferred. It has been observed by this Court that it is a just and wholesome principle commonly applied where persons from different sources are drafted to serve in a new service that their pre-existing total length of service in the parent department should be respected and presented by taking the same into account in determining their ranking in the new service cadre. See R.S. Makashi v. I.M. Menon, Wing Commander J. Kumar v. Union of India.

16. Similar is the view taken by this Court in the cases of R.S. Makashi and Wing Commander J. Kumar which judgments have been followed by this Court in Madhavan case. Hence, we do not think it is necessary for us to deal in detail with the view taken by this Court in those judgments. Applying the principles laid down in the above-referred cases, we hold the appellants are entitled to count the substantive service rendered by them in the post of Sub-Inspector in BSF while counting their service in the post of Sub-Inspector (Executive) in the Delhi Police Force.

5. Prior to the aforesaid judgment of the Hon'ble Supreme Court in S.I. Rooplal's case (supra), the seniority of

persons absorbed after being on deputation was governed by the Government of India. The Department of Personnel & Training vide O.M. No. 20020/7/80-Est(D) dated 29.5.86 which provided as under: Department's O.M. 9/11/55-RPS, dated the 22nd December, 1959, mainly deal with cases where persons are straightaway appointed on transfer. It is, however, observed that, most of the cases of permanent absorption are those where the officers were taken on deputation initially under the method of "transfer on deputation/transfer" contained in the relevant recruitment rules.

This O.M. is intended to fill this gap in the existing instructions.

Even in the type of cases mentioned above, that is, where an officer initially comes on deputation and is subsequently absorbed, the normal principle that the seniority should be counted from the date of such absorption, should mainly apply. Where, however, the officer has already been holding on the date of absorption in the same or equivalent grade on regular basis in his parent department, it would be equitable and appropriate that such regular service in the grade should also be taken into account in determining his seniority, subject only to the condition that at the most it would be only from the date of deputation to the grade in which absorption is being made. It has also to be ensured that the fixation of seniority of a transferee in accordance with the above principle will not affect any regular promotions made prior to the date of absorption.

Accordingly, it has been decided to add the following Sub-para.(iv) to Para 7 of general principles communicated vide O.M., dated the 22nd December, 1959: (iv) In the case of a person who is initially taken on deputation and absorbed later, (i.e. where the relevant recruitment rules provide for "Transfer on deputation/Transfer"), his seniority in the grade in which he is absorbed will normally be counted from the date of absorption) the same or equivalent grade on regular basis in his parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from: the date from which he has been appointed on regular basis to the same or equivalent grade in his parent department, The fixation of seniority of a transferee in accordance with the above principle will not however, affect any regular promotions to the next higher grade made prior to the date of such absorption. In other words, it will be operative only in filling up of vacancies in higher grade taking place after such absorption.

In cases in which transfers are not strictly in public interest, the transferred officers will be placed below all officers appointed regularly to the grade on the date of absorption.

All the Ministries/Departments are requested kindly to bring these instructions to the notice of all concerned in the Ministries/Departments and attached and subordinate offices under them for their guidance and to ensure their compliance.

6. After the Roopal's judgment, the aforesaid original circular dated 29.5.1986 dealing with the inter-se seniority of the persons like the applicant was amended vide O.M. No. 20011/1/2000-Estt.(D), dated 27.3.2001. The relevant part of the aforesaid O.M. is also reproduced here for convenience.

2. The Supreme Court has in its judgment, dated December 14, 1999 in the case of Shri S.I. Rooplal and Ors. v. Lt.-Governor through Chief Secretary, Delhi has held that the words "whichever is later" occurring in the Office Memorandum, dated May 29, 1986 and mentioned above are violative of Articles 14 and 16 of the Constitution and, hence, those words have been quashed from that Memorandum. The implications of the above ruling of the Supreme Court have been examined and it has been decided to substitute the term "whichever is later" occurring in the Office Memorandum, dated May 29, 1986 by the term "whichever is earlier".

3. It is also clarified that for the purpose of determining the equivalent grade in the parent department mentioned in the Office Memorandum dated May 29, 1986, the criteria contained in this Department Office Memorandum No. 14017/27/75-Estt. (D) (Pt.), dated March 7, 1984 (copy enclosed), which lays down the

criteria for determining analogous posts, may be followed.

4. These instructions shall take effect from December 14, 1999 which is the date of the judgment of the Supreme Court referred to above.

5. In so far as personnel serving in Indian Audit and Accounts Departments are concerned, these instructions are issued in consultation with the Comptroller and Auditor-General of India.

However, these orders (in keeping with Paragraph 4 of the Office Memorandum, dated May 29, 1986 as referred to above) will not be applicable to transfers within the Indian Audit and Accounts Department which are governed by orders issued by the C & AG from time to time.

6. The above instructions may be brought to the notice of all concerned for information, guidance and necessary action.

7. After the Hon'ble Supreme Court has laid down the law in Rooplal's case (supra) and with the issuance of the O.M. dated 27.3.2001 by the DOPT as mentioned above, the question as to whether the service rendered during the period of deputation till the date of absorption can be counted for determining seniority of the Government servants has again become alive. The applicant has therefore, submitted A-10 represented dated 12.9.2002 to the 2nd respondent claiming that his service rendered with effect from 26.6.86 in Delhi Administration should be taken as qualifying service for counting his seniority. He has also cited the case of the applicant in O.A. 2516/00 who had approached the Principal Bench of this Tribunal seeking similar relief in which the Principal Bench had relied upon the judgment of the Apex Court in K. Madhaven and Anr. v. Union of India and Ors.

, and held that the expression 'on a regular basis' would mean appointment to the post on a regular basis in contradistinction to appointment on ad-hoc or stopgap or purely temporary basis. Since the aforesaid representation dated 12.9.02 was not considered by the respondents, the applicant filed O.A. 283/03 which was disposed of vide order dated 4.4.03(A-13) directing the respondents to consider the applicant's representation in the light of the rules and instructions on the matter and more particularly in O.M.dated 27.3.2001 and to issue appropriate orders within three months.

The impugned A-14 order dated 29.7.03 has been issued in compliance of the aforesaid directions dated 4.4.03.

8. According to Annexure A-14 Memorandum dated 29.7.2003 the respondents have considered the applicant's claim in Annexure A-10 requisition in terms of O.M. Dated 27.3.2001 but rejected the same observing as under: Prior to issue of DOP&T's O.M. dated 27.3.2001 the general principle for fixing the seniority in deputation cases was as under: In the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant recruitment rules provided for "Transfer deputation/Transfer"), his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already (on date of absorption) the same or equivalent grade on regular basis in his parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from - the date he has been holding the post on deputation, or the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department - Whichever is later.

The fixation of seniority of a transferee in accordance with the above principle will not however, affect any regular promotions to the next higher grade made prior to the date of such absorption. In other words, it will be operative only in filling up of vacancies in higher grade taking place after such absorption.

In case in which transfers are not strictly in public interest, the transferred officers will be placed below all officers appointed regularly to the grade on the date of absorption.

9. "Vide DOP&T's O.M. dated 27.3.2001, the terms "Whichever is later" has been amended to "whichever is earlier" in pursuance to Supreme Court's judgment in the case of Shri Roop Lal and Ors. However, these revised instructions are to take effect from 14.12.99. According to the respondents, the relevant amendment carried out vide order dated 27.3.2001 is not relevant in the present case for the following reasons: (i) Shri Soundara Raj's deputation transfer and the subsequent absorption in the office of CCIT, Cochin was made on compassionate grounds and was not in public interest and that his seniority in the Income Tax Department was fixed neither from the date of deputation nor from the date of holding equivalent post in the parent department, but from the date of absorption in the Income Tax Department.

(ii) The instruction contained in O.M. dated 27.3.2001 have been given effect from 14.12.99, i.e. the date of the judgment of the Supreme Court. However, his seniority in the Income Tax Department has been fixed from 1.4.1992. As such, the instructions contained in O.M. dated 27.3.2001 otherwise, are not applicable to him.

In view of the foregoing, there is no merit in the representation and therefore, the same stands rejected.

10. The applicant challenged the aforesaid order dated 29.7.2003 in the present O.A. and sought the following reliefs: (a) Call for the records leading to the issue of Annexure A-14 and quash the same.

(b) Direct the respondents to reckon the whole of the applicant's service in the parent department from 26.8.1986 to 25.3.1992 in scale of Rs. 1200-2040/ 1350-2200 in terms of Annexure A-7, for the purpose of seniority upon his absorption as Data Entry Operator, and direct further to grant all the consequential benefits arising there from; (d) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

11. The challenge of the applicant in the O.A. is on the ground that the said order dated 29.7.2003 is arbitrary, discriminatory and contrary to law and therefore, violative of Articles 14 and 16 of the Constitution. He had taken the specific ground that the contention of the respondents that A-7 Memorandum would take effect from 14.12.99, is totally incorrect and factually untrue and no such interpretation is warranted because the Hon'ble Supreme Court did not say that the law declared by it in Rooplal's case would operate only prospectively.

Therefore, the first question to be considered in this O.A. is, whether the DOP&T's O.M. dated 27.3.2001 stating that the directions in the judgment of the Hon'ble Supreme Court will take effect only from 14.12.99 i.e. the date of passing the said judgment is valid or not? This question need not detain us any longer in view of the judgment of the Hon'ble Supreme Court in Swarankumar v. Madanlal Agarwal wherein it has been held as under: 15. For the first time this Court in Golak Nath v. State of Punjab accepted the doctrine of "prospective overruling". It was held : AIR p. 1669, Para 51 51. As this Court for the first time has been called upon to apply the doctrine evolved in a different country under different circumstances we would like to move warily in the beginning. We would lay down the following propositions: (1) The doctrine of prospective overruling can be invoked only in matters arising under our constitution: (2) it can be applied only by the highest Court of the country i.e. the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the Courts in India; (3) the scope of the retroactive operation of the law declared by the Supreme Court superseding its 'earlier decisions' is left to its discretion to be moulded in accordance with the justice of the cause or matter before it.

The doctrine of "prospective overruling" was initially made applicable to the matters arising under the Constitution but we understand the same has since been made applicable to the matters arising under the statutes as well. Under the doctrine of "prospective overruling" the law declared by the Court applies to the cases arising in future only and its applicability to the cases which have attained finality is saved because the repeal would otherwise work hardship on those who had trusted to its existence.

Invocation of the doctrine of "prospective overruling" is left to the discretion of the Court to mould with the justice of the cause or the matter before the Court. This Court while deciding Gian Devi Anand case did not

hold that the law declared by it would be prospective in operation. It was not for the High Court to say that the law laid down by this Court in Gian Devi Anand case would be prospective in operation. If this is to be accepted then conflicting rules can supposedly be laid down by this Court in Gian Devi Anand case or any other case. Such a situation cannot be permitted to arise. In the absence of any direction by this Court that the rule laid down by this Court would be prospective in operation, the finding recorded by the High Court that the rule laid down in Gian Devi Anand case by this Court would be applicable to the case arising from the date of the judgment of this Court cannot be accepted being erroneous.

This Court in Gian Devi Anand case did not lay down any new law but only interpreted the existing law which was in force. As was observed by this Court in Lily Thomas case the interpretation of a provision relates back to the date of the law itself and cannot be prospective of the judgment. When the Court decides that the interpretation given to a particular provision earlier was not legal, it declares the law as it stood right from the beginning as per its decision. In Gian Devi case the interpretation given by the Delhi High Court that commercial tenancies were not heritable was overruled being erroneous. Interpretation given by the Delhi High Court was not legal. The interpretation given by this Court declaring that the commercial tenancies heritable would be the law as it stood from the beginning as per the interpretation put by this Court. It would be deemed that the law was never otherwise.

12. The aforesaid position has been reiterated by the Apex Court in L.

Chandrakumar v. Union of India 1998(2)SLJ 124(SC) : 1997 (3) JT589. In that judgment the Apex Court has held as under.

96. The directions issued by us in respect of making the decisions of Tribunals amenable to scrutiny before a Division Bench of the respective High Courts will, however, come into effect prospectively i.e. will apply to decisions rendered hereafter maintain the sanctity of judicial proceedings, we have invoked the doctrine of prospective overruling so as not to disturb the procedure in relation to decisions already rendered.

13. The second question to be considered is seniority of persons absorbed after being on deputation not on public interest. According to the Department of Personnel & Training O.M. dated 29.5.1985 (supra), "in case in which transfers are not strictly in public interest, the transferred officers will be placed below all officers appointed regularly to the grade on the date of absorption." It is not disputed that the applicant was absorbed as Data Entry Operator on his request.

This Tribunal in the earlier order dated 18.6.98 in O.A. 1776 of 1996 (supra) has already rendered the following orders: In this case, it is clear that the applicant has requested for absorption as Data Entry Operator in the Income Tax Department. His appointment by transfer on deputation/ transfer was only adopted as a means to grant his request since it was not possible to absorb him under any other provision. For absorbing him in this manner A-5 has stated that his request may be considered favourably since the department would be getting the benefit of a well experienced Data Entry Operator. That would not amount to a decision taken by the department suo motu that continuance of the applicant in the department, as Data Entry Operator is essential for administrative reasons. That being so, we are unable to agree with the applicant that his absorption is to be treated as one in public interest.

Thus, it follows that the seniority of the applicant being fixed with effect from the date on which he was absorbed cannot be faulted.

14. There is no change in the aforesaid position even after the Apex Court has pronounced the judgment in Rooplal's case (supra). As observed by the Supreme Court, the appellant in the case was deputed from BSF to the Delhi Police was in public interest because it was pursuant to the need of the Police Department. In the case of the applicant he was absorbed on his request as Data Entry Operator under the 3rd respondent from 25.3.1992 in terms of the O.M. dated 29.5.1986.

There is already a finding by this Tribunal that (sic). deputation cannot be treated as on public interest. Therefore, we are of the considered view that, the judgment of the Apex Court in Rooplal's case will not come to the rescue of the applicant in re-agitating his case.

15. Resultantly O.A. fails and accordingly the same is dismissed. In the circumstances, there is no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com