

JOYACHAN M. SEBASTIAN  
v.  
THE DIRECTOR GENERAL AND ORS.

AUGUST 23, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

*Service Law—Seniority—Reckoning of—Employee—Initial appointment at Kohima—Abolition of post—Subsequent to abolition of post employee transferred and posted at his option to Tamil Nadu Doordarshan at Salem Kendra—Further transfer to Trivandrum at his own request—Undertaking by employee that he would not claim his seniority at Salem station—Claim for seniority from the date of initial appointment at Kohima—Rejection by Tribunal—Appeal—Held Tribunal was right in rejecting the claim of seniority from initial appointment—On abolition of post holder of post has no right to continue on that post—His accommodation in an available vacancy must be deemed to be a fresh appointment for the purposes of seniority—Employee would take his seniority as juniormost among the confirmed employees in the transferred region.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11481 of 1996.

From the Judgment and Order dated 6.7.94 of the Central Administrative Tribunal in Ernakulam Bench in O.A. No. 932 of 1994.

E.M.S. Anam for the Appellant

T.C. Sharma and B.K. Prasad for the Respondents.

The following Order of the Court was delivered :

Leave granted.

We have heard the learned counsel on both sides.

The only question for consideration is : whether the appellant is entitled to seniority from September 21, 1983 when after passing the All India Clerk Grade-II Examination he was posted as Clerk Grade-II at

A Television Station, Kohima or from March 26, 1987 when he was transferred to and posted at the Television Station, Trivandrum?

B The admitted position is that after his initial appointment on September 21, 1983, the post which he was holding came to be abolished on account of administrative exigencies, on June 8, 1983. Thereupon, he was transferred and posted at his option to Tamil Nadu Doordarshan Kendra to Salem on August 6, 1984. He was further transferred to Trivandrum at his request on March 26, 1987. It is seen that when the seniority list was prepared as per the order of appointment, his seniority was shown not from the date of his initial appointment at Kohima. C Therefore, he filed OA in the Central Administrative Tribunal, Ernakulam Bench. The Tribunal by the impugned order dated July 6, 1994 made in OA No. 932 of 1994 dismissed the same. Thus this appeal by special leave.

D It is also not in dispute that he has mentioned in his application for transfer to Doordarshan Kendra, Trivandrum that he would not claim his seniority held in Salem w.e.f. August 19, 1984.

E Shri E.M.S. Anam, learned counsel for the appelland contended that since the transfer had come to be made due to administrative exigencies, viz., abolition of the post and creation of the post and availability of the vacancy in Tamil Nadu, the transfer was not on account of the request made by the appelland and that, therefore, the seniority had to be reckoned from the date of his initial appointment, i.e., September 21, 1983. We find no force in the contention. F

G It is now settled legal posited that no abolition of the post, the holder of the post has no right to continue on the post. Instead of retrenching him as surplus, the Government have accommodated him in the available vacancy and, therefore, it must be deemed to be a fresh appointment for the purposes of seniority. After joining in Salem in Tamil Nadu, he made a request for transfer to Trivandrum and it is at his request that he was transferred. Consequently, on his undertaking in the application that he would not claim his seniority at Salem Station, the transfer was effected at his request. It is settled legal position that he H would take his seniority as junior-most among the confirmed employees

in the transferee-region.

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Considered from this perspective, we are of the view that the Tribunal has not committed any error of law warranting interference.

The appeal is accordingly dismissed. No costs.

T.N.A

Appeal dismissed.

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