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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3725 of 2011

Bharat Sanchar Nigam Limited ...Petitioners

Versus

S.Sadasivan ...Respondent

Mrs. Neeta Masurkar i/b. Vinay Masurkar for Petitioners.

Respondent Mr. Sadasivan in person.

CORAM:- A.M.KHANWILKAR &
R.Y.GANOO, JJ.

DATED:- 21st JUNE, 2011.

P.C.

1. Heard counsel for the petitioner and the respondent, who appears in person. The petitioner challenges the decision of the Central Administrative Tribunal, Bombay Bench, Mumbai dated 25th November, 2010 in Transfer Application No.6 of 2009. The Tribunal, after referring to the decisions relied upon by the parties, in substance, has opined that the seniority of the respondent ought to be

reckoned on the basis of his date of joining in the promoted post. It is not in dispute that the vacancy against which the respondent has been appointed had occurred in the year 2001. The respondent joined the promoted post against the said vacancy on 7th December, 2001.

2. The method of promotion is specified in the schedule to the rules which is reproduced at page 163, 164 of the paper book. The method of recruitment is by promotion from 75% on the basis of seniority cum fitness, 25% on the basis of departmental competitive examination. The respondent was appointed as against the first category of promotion i.e. seniority cum fitness, on 7th December, 2011. It is not in dispute that the vacancy for the later category i.e. 25% on the basis of departmental competitive examination was also notified on 20th April, 2001, but the examination for promotion against that category was conducted only on 1st December, 2002 and the result was declared on 15th December, 2003. The successful candidates in the said category were promoted on 26th May, 2004. However, according to the petitioner, it should be 17th April, 2004. Nothing turns on this discrepancy.

3. The question is : whether the Tribunal was right in answering the controversy on the principal that the correct date for reckoning seniority of the respondent ought to be taken as 7th December, 2001 which is his date of joining. In our opinion, there is no infirmity in the said view taken by the Tribunal.

4. To get over this position, in the first place, reliance was placed on note no.2 in the schedule which reads thus:

" Crucial date for determining the eligibility shall be first of July of year to which the vacancies pertain"

We fail to understand as to how this note can be decisive of addressing the controversy regarding fixation of seniority of the incumbents. This rule, at the best specifies that the candidate would be eligible from 1st July of years to which the vacancy pertains. That provision cannot be the basis to determine the inter se seniority of the candidates promoted against category (i) and category (ii), as the case may be. The fact that fortuitous circumstance of the vacancies to be filled in by candidates on the basis of departmental competitive examination had also arisen in April 2001, but the examinations were

conducted belatedly and the results were declared only in December, 2003, that would not impact the appointment and promotion of the respondent already made and who had joined against the vacancy as back as on 7th December, 2001. The Counsel for the petitioner relied upon the decision of the Apex Court in case of **Central Provident Fund Commissioner & Another vs. N. Ravindran & Others 1995 (8) SLR page 827**. Once again we fail to understand as to how this decision will come to the aid of the petitioner in countering the legal position expounded by the Tribunal on the basis of which the original application preferred by the respondent came to be allowed. This decision however predicates that both the categories of promotees should be treated as belonging to one single class of promotees and apply the method of rotation. This decision is not an authority on the proposition that the date of joining will be of no consequence and and instead notional date of appointment should be reckoned of the candidates so as to determine inter se seniority of both the categories albeit appointed at different point of time. In our opinion, there ought to be express Seniority Rules, to override the settled legal position that for reckoning the seniority, the date of joining is the relevant date for determining the seniority of the candidates inter se.

The learned Counsel for the petitioner, in all fairness, has accepted that there are no statutory rules in place providing for determination of inter se seniority of candidates promoted by two methods and who have joined the post at different point of time.

5. Reliance placed on schedule at page 163 and 164 of the paper book, which as aforesaid, does not take the matter any further for the department, for, the note no.2 contained therein is a provision for prescribing "eligibility of the candidates" and not for determining the inter se seniority amongst them on account of falling in different group or any fortuitous circumstances.

6. The counsel for the petitioner then contended that the Tribunal has relied upon the decision of the different benches of the Tribunal, which decision, however, are subject matter of challenge before the different High Courts. The Punjab & Haryana High Court has admitted the writ petition against the decision of Chandigarh bench of the Tribunal being TA 84-85/HR/2009. At the same time, it is fairly accepted that the Punjab & Haryana High Court has not granted stay to the operation of the judgment of Chandigarh Tribunal.

In that sense, the department is obliged to abide by the directions contained in the said judgment irrespective of the pendency of the proceeding before the said High Court. The Counsel for the petitioner then pointed out that the Tribunal has also adverted to the decision of Ernakulam Bench of the Tribunal in Original Application No.16 of 2009 decided on 23rd February, 2010 and that the said decision is subject matter of challenge before the High Court of Kerala, and the operation of the said judgment has been stayed. Even so, it is unfathomable that the Department can take conflicting position than the emanating from the decision of the Punjab & Haryana High Court declining to stay the operation of the decision of the Chandigarh Bench. In any case, in our opinion, pendency of the writ petition in other High Court by itself, can be no basis to defer the decision in the present petition. In as much as, we are of the opinion that the Tribunal has applied the correct legal position, that the date of joining is the only governing factor for determining the seniority of the promotee candidates interse, in absence of any statutory rules providing to the contrary.

7. In this view of the matter, we have no hesitation in dismissing the

present petition as it is devoid of merits. Hence the same is dismissed.

(R.Y.GANOO, J.) **(A.M.KHANWILKAR, J.)**