

[Supreme Court of Pakistan]

Present: Faisal Arab and Syed Mansoor Ali Shah, JJ

SECRETARY REVENUE DIVISION/CHAIRMAN, FBR and another---Petitioners

Versus

MUHAMMAD ARSHAD HILALI---Respondent

Civil Petition No. 396 of 2017 and C.M.A. No. 1012 of 2017, decided on 26th April, 2019.

(Against the judgment dated 01.12.2016 of the Federal Service Tribunal, Islamabad in Appeal No. 72(P)CS/2015)

Civil service---

---Seniority---Civil servant transferred to another department after making a request for mutual transfer with another civil servant---Whether seniority of such civil servant was to be reckoned from date of his absorption in the new department or date of his initial appointment in his original department---Respondent was appointed as Preventive Officer (BS-11) in Customs House, whereas civil servant 'S' was working as Inspector (BS-11) in Collectorate of Customs and Central Excise---Both being in the Customs department holding posts in equal grade made a request for mutual transfer, which was accepted and the respondent was permanently absorbed as Inspector Customs, while "S" was absorbed as Preventive Officer---Held, that paragraph 6 of instructions contained in Serial No. 30, Chapter III, Part II of Estacode (1989 edition) clearly provided that where a person was transferred to another office in a situation where it was open to him to accept or refuse such transfer, his seniority was to be reckoned from the date of his transfer to the new office---Only exception to such rule was contained in paragraph 6(i)(b), which stated that where a person was compulsorily transferred to another office then he was allowed to count his service in the previous office towards his seniority in his new office---In the present case, the respondent sought his transfer to his new office on his own volition on the basis of mutual consent with another officer of the same grade; he was not compulsorily transferred at the instance of the department, hence the recognized practice contained in paragraph 6(i)(a) of Serial No. 30, Chapter III, Part II of Estacode (1989 edition) clearly disentitled him to count his previous service towards seniority in the new office---Petition for leave to appeal was converted into appeal and allowed and impugned judgment of the Service Tribunal was set aside.

Imran Fazal, Advocate Supreme Court for Petitioners.

Jehanzeb Raheem, Advocate Supreme Court for Respondent.

Date of hearing: 26th April, 2019.

JUDGMENT

FAISAL ARAB, J.---The respondent was appointed as Preventive Officer (BS-11) on 19.07.1988 and was posted in Customs House, Karachi. One Sultan Naeem Akhtar was working as Inspector (BS-11) in Collectorate of Customs and Central Excise, Peshawar. They being in the Customs department holding posts in equal grade made a request for mutual transfer, which was accepted in 1991 and the respondent was permanently absorbed as Inspector Customs in Peshawar, while Sultan Naeem Akhtar was absorbed as Preventive Officer and posted in Karachi.

2. In 2011 when FBR circulated the seniority list of the Inspectors of Customs department who were appointed upto the year 1990, the respondent found his name missing. He made representation claiming that as he was appointed as Preventive Officer in the year 1988 he be given seniority in the list of Inspectors from the date when he was initially appointed in 1988 and not from the date of his transfer in 1991. When the FBR issued the final seniority list of Inspectors in 2014, respondent was not given seniority from the date of his initial appointment i.e. from 1988 but from the date of his absorption as Inspector in 1991. He again made a departmental representation seeking his seniority to be reckoned from the date of his initial appointment i.e. 19.07.1988 which was not responded. He then preferred appeal in the Service Tribunal and succeeded in his endeavor by securing declaration that his seniority

in the array of Inspectors be reckoned from the date when he was initially appointed in 1988. In granting such declaration, the reason which prevailed with the Service Tribunal was that when the seniority of four Valuation Officers, who were later absorbed in service as Appraisers was reckoned from the date of their initial appointment as Valuation Officer (the posts of Appraisers and Valuation Officers being of the same grade), on the same analogy the respondent could not be discriminated and ought to have been given the same treatment. Against such decision, the Customs department has preferred this petition seeking leave to appeal.

3. Learned counsel for the petitioner argued that the respondent who was working as Preventive Officer in Karachi since 1988 was transferred to Peshawar in 1991 and absorbed on the post of Inspectors on the basis of mutual transfer with one Sultan Naeem Akhtar and not compulsorily transferred at the instance of the department, therefore, the respondent cannot claim seniority in the list of Inspectors from the date of his initial appointment and is entitled to claim seniority only from the date when he was transferred to Peshawar as Inspector.

4. Learned counsel for the respondent, on the other hand, argued that it is a clear case of discrimination as in the case of transfer of four officers of equal grade to another post i.e. from Valuation Officers to Appraisers, their seniority was reckoned from the date of their initial appointment and not from the date of transfer to the new post. When we called upon the counsel for the respondent that keeping aside the plea of discrimination for a moment on what principle of service law respondent claims that his seniority be reckoned from the date when he was initially appointed and not from the date of his transfer, learned counsel referred to paragraph 6 of instructions contained in Serial No. 30, Chapter III Part II of Estacode (1989 edition), which reads as follows:-

"6. Seniority on transfer from one office to another.---(i) The instructions in the foregoing paragraphs regulate the position of a deputationist in his parent office. As regards his seniority in the office to which he is transferred, it should be determined in the following manner:-

- (a) When it is open to the person concerned to accept or refuse an offer of appointment in another office, he should count his seniority in the new office from the date of his transfer to that office.
- (b) When a person is compulsorily transferred to another office as a result of conscription, or along with the post and his work, he should be allowed to count his previous continuous service in the grade towards seniority in that grade in the new office."

5. The import of paragraph 6(i)(a) above appears to be quite contrary to what respondent's counsel intend to advance before us. It clearly provides that where a person is transferred to another office in a situation where it was open to him to accept or refuse such transfer, his seniority was to be reckoned from the date of his transfer to the new office. The only exception to this rule is contained in paragraph 6(i)(b). It states that where a person is compulsorily transferred to another office then he is allowed to count his service in the previous office towards his seniority in his new office. In the case of transfer of four other officers of the department, example of which has been quoted as precedent in the present case, their seniority may have been reckoned from the date of their initial appointment but nothing was brought on the record as to the circumstances in which such transfers had taken place. In the present case, one thing is clear that the respondent sought his transfer to his new office on his own volition on the basis of mutual consent with another officer of the same grade. He was not compulsorily transferred at the instance of the department, hence the recognized practice contained in paragraph 6(i)(a) of Serial No. 30, Chapter III Part II of Estacode (1989 edition) clearly disentitles him to count his previous service towards seniority in the new office. When on a principle of law one upon his transfer is not entitled to seek seniority from the date of his initial appointment then if someone else has been granted seniority in violation of such principle, which too is not clear, the same cannot be made a ground to raise the plea of discrimination.

6. In the circumstances, we are of the view that the Service Tribunal committed error when it accepted the plea of discrimination and granted seniority to the respondent from the date of his initial

appointment in violation of the principle laid down in paragraph 6 of Serial No. 30 of Estacode for the simple reason that he could only be allowed to count his previous service towards seniority had he been compulsorily transferred at the instance of the department and not at his own. This petition is, therefore, converted into appeal and allowed and the impugned judgment is set aside.

C.M.A. No. 1012/2017

7. As the main petition has been converted into appeal and allowed, this C.M.A. for stay has become infructuous and is disposed of accordingly.

MWA/S-16/SC Appeal accepted.