

NIRMAL CHANDRA SINHA

v.

UNION OF INDIA & ORS.
(Civil Appeal No. 8058 of 2001)

MARCH 31, 2008

(H.K. SEMA AND MARKANDEY KATJU, JJ.)

Service Law:

Promotion and seniority – Grant of – Held: Promotion taken effect from the date of being granted and not from the date of occurrence of vacancy thereof – In the present case, in terms of the Rules, two years regular service in the lower post required before consideration for promotion – Rules cannot be violated – Hence, High Court erred in allowing notional promotion to the incumbent as he had not put in requisite service of two years in the lower post.

Appellant was promoted to the post of General Manager in the Indian Railways on 29.11.1996. His claim for notional promotion w.e.f. 13.3.1996 with consequential benefits including seniority was rejected by the authorities. He filed an Original Application before the Central Administrative Tribunal, which was rejected by the Tribunal. Aggrieved, the appellant filed a writ petition which was partly allowed by the High Court granting him notional promotion to the post of General Manager w.e.f. 13.7.96 but rejected his prayer for granting him seniority above respondent Nos. 3 & 4. Hence the present appeals were filed, both by the appellant as well as the Union of India.

Allowing the appeal filed by the Union of India and dismissing the appeal filed by the employee, the Court

HELD: 1.1 It has been held in a series of decisions of this Court that a promotion takes effect from the date of

A being granted and not from the date of occurrence of vacancy or creation of the post. (Para – 7) [638-B]

B *Union of India and others vs. K.K. Vadera and Others 1989 Supp (2) SCC 625; State of Uttaranchal and Another vs. Dinesh Kumar Sharma 2007 (1) SCC 683; K. V. Subba Rao vs. Government of Andhra Pradesh 1988(2) SCC 201 and Sanjay K. Sinha & others vs. State of Bihar and others 2004 (10) SCC 734 etc.- relied on.*

C 1.2 When the rule requires two years' actual service in the lower post before a person can be considered for promotion as General Manager, that rule cannot be violated by considering a person who has not put in two years' service in the lower post. (Para – 9) [638-F-G]

D *Union of India vs. B.S. Agarwal and another 1997 (8) SCC 89 - distinguished.*

E 2. In the present case, the appellant was promoted as General Manager on 29.11.1996, but he claimed that he should be deemed to have been promoted w.e.f. 13.3.1996 with consequential benefits. This relief cannot be granted to him. It is settled law that the date of occurrence of vacancy is not relevant for the purpose of promotion. (Para – 10) [639-B]

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8058 of 2001.

From the final Judgment and Judgment dated 14/12/1999 of the High of Judicature, Andhra Pradesh at Hyderabad in W.P. No. 25555/1998.

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Civil Appeal No. 8059/2001.

Siddharth Dave, Arvind Varma, Jamtiben AO and Sumita Ray for the Appellant.

H Dr. R.G. Padia, Shalini Kumari and Anil Katiyar for the

Respondents.

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The Judgment of the Court was delivered by

MARKANDEY KATJU, J. 1. These two connected appeals have been filed against the impugned judgment of the Andhra Pradesh High Court dated 14.12.1999 in Writ Petition No. 25555 of 1998.

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2. Heard learned counsel for the parties and perused the record.

3. Appellant Nirmal Chandra Sinha belongs to the Indian Railway Service of Mechanical Engineers (IRSME) having been appointed on 2.5.1958. When his turn came for consideration for promotion as General Manager, he was working as Chief Mechanical Engineer of Southern Eastern Railway. He was promoted to the post of General Manager on 29.11.1996. He claimed notional promotion w.e.f. 13.3.1996 with consequential benefits. His O.A. was rejected by the Central Administrative Tribunal, but against that order he filed a writ petition which was partially allowed by the High Court.

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4. Against the aforesaid judgment of the High Court appeals were filed both by appellant Nirmal Chandra Sinha as well as the Union of India.

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5. In the appeal filed by appellant Nirmal Chandra Sinha, the ground taken was that the High Court partially allowed the writ petition by giving him notional promotion as General Manager w.e.f. 13.3.1996 with consequential benefits, but the High Court has wrongly rejected his prayer that he should be senior to the contesting private respondent Nos. 3 & 4. On the other hand, in the appeal filed by the Union of India it was alleged that the High Court wrongly directed that appellant Nirmal Chandra Sinha should be notionally promoted as General Manager w.e.f. 13.3.1996 with consequential benefits.

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6. We are of the opinion that the appeal of appellant Nirmal Chandra Sinha being Civil Appeal No. 8058 of 2001 deserves

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A to be dismissed while the appeal filed by the Union of India being Civil Appeal No. 8059/2001 deserves to be allowed.

B 7. It has been held in a series of decisions of this Court that a promotion takes effect from the date of being granted and not from the date of occurrence of vacancy or creation of the post vide **Union of India and others vs. K.K. Vadera and others** 1989 Supp (2) SCC 625, **State of Uttaranchal and another vs. Dinesh Kumar Sharma** 2007 (1) SCC 683, **K. V. Subba Rao vs. Government of Andhra Pradesh** 1988(2) SCC 201, **Sanjay K. Sinha & others vs. State of Bihar and others** 2004 (10) SCC 734 etc.

C 8. Learned counsel for appellant Nirmal Chandra Sinha, however, relied on a decision of this Court in **Union of India vs. B.S. Agarwal and another** 1997 (8) SCC 89. We have carefully perused the decision and we are of the opinion that the said decision is distinguishable. In that case the facts were that, under the relevant rule for promotion as General Manager it was necessary to have at least two years' tenure on the lower post. The respondent did not actually have two years' tenure, yet this Court held that he was eligible for promotion since he had been empanelled and the vacancy on which he should be promoted had occurred before two years of his consideration for promotion.

F 9. In our opinion, the aforesaid decision in **Union of India vs. B.S. Agarwal** (supra) was given on the special circumstances of that case and on humanitarian considerations, but it cannot be said to be a precedent for other cases. When the rule requires two years' actual service in the lower post before a person can be considered for promotion as General Manager, that rule cannot be violated by considering a person who has not put in two years' service in the lower post. Moreover, in the aforesaid decision in **Union of India vs. B.S. Agarwal** (supra), the respondent had not actually been promoted as General Manager, but he only claimed that he was eligible to be considered for promotion as General Manager. This fact also

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makes the aforesaid decision distinguishable.

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10. In the present case, appellant Nirmal Chandra Sinha was promoted as General Manager on 29.11.1996, but he claims that he should be deemed to have been promoted w.e.f. 13.3.1996 with consequential benefits. We are afraid this relief cannot be granted to him. It is settled law that the date of occurrence of vacancy is not relevant for this purpose.

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11. For the reasons given above, the impugned judgment is set aside. Civil Appeal No. 8058 of 2001 is dismissed and Civil Appeal No. 8059 of 2001 stands allowed. There shall be no order as to costs.

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S.K.S.

Civil Appeal No. 8058 of 2001 dismissed
and Civil Appeal No. 8059 of 2001 allowed.