

ANAND CHANDRA DASH
v.
STATE OF ORISSA AND ORS.

JANUARY 13, 1998

[S. SAGHIR AHMAD AND G.B. PATTANAİK, JJ.]

Service Law :

*Seniority—Fixation of—Service rendered in other departments—
Reckoning of—For determination of seniority—Employee while working as
Senior Auditor in Revenue and Excise Department was transferred to Labour
Department despite his unwillingness—He never agreed to the condition
imposed by the Labour Department that his seniority would be determined
from the date of his joining that Department—His request for being reverted
to parent department not granted—Held: Employee entitled to seniority in
Labour Department from the date of his joining as Senior Auditor in the
Revenue and Excise department—His promotion also directed to be given on
notional basis and retrial benefits re-calculated.*

**The appellant, while working as Senior Auditor in the Revenue and
Excise Department, was relieved and forced to join as Senior Auditor in the
Labour Department despite his unwillingness. The appellant had never agreed
to the condition imposed by the Labour Department that his seniority would
be determined on the basis of his date of joining the Labour Department. The
appellant's request for being reverted to his parent department was not
granted. In the seniority list prepared by the Labour Department the appellant
was shown as junior to the respondents. The State Administrative Tribunal
dismissed the petition filed by the appellant. Hence this appeal.**

Allowing the appeal, this Court

**HELD : 1. It is no doubt true that the Labour Department had indicated
that the seniority of the appellant will be determined on the basis of the date
of his joining the Labour Department itself but the appellant has at, no point
of time, agreed to the said condition and, on the other hand, unequivocally
expressed his unwillingness to come over to the Labour Department and
without consideration of the same the Revenue and Excise Department relived**

A him to join the Labour Department. Hence, the services of the appellant as a Senior Auditor in the Revenue and Excise Department shall be taken into account for determining his seniority in the cadre of Senior Auditor in the Labour Department. [84-C-F]

B 2. If the appellant is found suitable, notional promotion may be given to him and his retiral benefits may be re-calculated on that basis. [84-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3022 of 1990.

C From the Judgment and Order dated 21.7.1987 of the Orissa Administrative Tribunal in Transfor Application No. 116 of 1986.

Debasis Mohanty and Janaranjan Das for the Appellants.

C.S. Srinivasa Rao for the Respondents.

D The Judgment of the Court was delivered by

E **G.B. PATTANAİK, J.** The order dated 21st of July 1987 passed by the Orissa Administrative Tribunal dismissing the Transferred Application No. 166 of 1986 of the appellant is under challenge in this appeal. The appellant was appointed initially in the year 1956 as a Sevak in the Tribal and Rural Welfare Department and then later on was appointed as L.D. Clerk in the District Welfare Office, Phulbani. From the post of LD Clerk he was promoted to the post of Upper Division Clerk in April 1961 and was confirmed on that post in April 1969. Prior to his confirmation as Upper Division Clerk he was further promoted to the post of Senior Auditor, Board of Revenue, Cuttack on being recommended by the Collector Phulbani and on being selected. Later on his services were transferred to the Revenue and Excise Department, Bhubaneshwar as a Senior Auditor where he was continuing with effect from 1.8.1967. In the year 1970 the Labour & Employment & Housing Department issued a requisition to all the Government Departments for sending the names to fill up the post of Senior Auditor in the Labour Department. Appellant's name was also sent alongwith others by the Revenue Department. The appellant was selected for being absorbed in the Labour Department and he was asked to offer his willingness by Revenue & Excise Department by letter dated 31.10.1970. The appellant expressed his unwillingness to join the new department but notwithstanding the same the employer Revenue Department relieved him by order dated 7.11.1970 and the appellant was forced to join the

Labour, Employment & Housing Department. But the Labour Department insisted that the appellant cannot claim his seniority in the Labour Department. The appellant then filed a Representation to the Labour Department claiming his seniority by taking into account his services as a senior auditor from the date he has been so appointed in the Board of Revenue, Orissa, Cuttack but the Labour Department did not accept his request nor even communicated any refusal to him. When the tentative Gradation List of Senior auditors was prepared by the Labour, Employment & Housing Department inviting objections, the appellant filed his objection as his past services had not been taken into account. But before disposal of his objection the Labour Department decided to transfer the Audit Branch to the direct control of the Directorate of Employees State Insurance Scheme. The final Gradation List was published by the Labour Department on 25th March, 1977 and appellant was shown junior to the respondents. The appellant then filed a Representation challenging his seniority as shown in the Gradation List of Senior Auditors in the Labour Department and shortly thereafter he was transferred to the Directorate of Employees' State Insurance Scheme. Appellant then filed a Representation challenging his seniority as well as his transfer to the ESI Scheme but having failed in this attempt filed a Writ petition in the Orissa High Court and the same Writ Petition stood transferred to the Administrative Tribunal and finally was disposed of by order dated 21.7.1987. The Tribunal by the impugned order set aside the order dated 26.4.1977, transferring the appellant to the Directorate of ESI and further directed that he would be treated as Senior Auditor of the Labour Department, but his claim of seniority as Senior Auditor, in the Labour Department was not granted. In other Words his earlier services a Senior Auditor Under the Revenue Department was not taken into account for the purpose of his seniority in the cadre of Senior Auditor under the labour Department. The Tribunal in denying the relief of seniority claimed by the appellant in the Labour Department by taking into account services rendered by the appellant under the Revenue Department relied upon the fact of appellant joining the Labour Department and came to the conclusion that he willingly joined the Labour Department even after knowing the condition that his seniority in the Labour Department in the cadre of Senior Auditor will be determined on the basis of taking his services as a Senior Auditor in the Labour Department itself and not taking his past service into account.

Mr. Das, the learned counsel appearing for the appellant challenged the conclusion of the Tribunal on the ground that the appellant had never joined the Labour Department willingly but on the other hand, he was forced to join

A notwithstanding his unwillingness to join the Labour Department, by letter dated 6.11.1970. He was relieved by the Revenue & Excise Department on 7.11.1970. Mr. Das, learned counsel also further contended that the appellant have all along been requesting that he should be reverted to his Parent Department, namely, Revenue & Excise Department but even that prayer had not been granted and under these circumstances there is no justification for ignoring his past services as a Senior Auditor in the Revenue Department for the purpose of determining his seniority in the cadre of Senior Auditor in the Labour Department. We find sufficient force in the aforesaid contention of the learned counsel appearing for the appellant. That the appellant was appointed as a Senior Auditor on being duly selected by the Member, Board of Revenue on 28.10.1966 is not disputed. It is also not disputed that his services were brought over to the labour Department on requisition being made to all the Government Departments and on his name being sponsored by the Revenue Department. It is no doubt true that the Labour Department had indicated that the seniority will be determined on the basis of the date of joining of the Labour Department itself but the appellant had at no point of time agreed to the said condition and on the other hand, unequivocally expressed his unwillingness to come over to the Labour Department by letter dated 6.11.1970 and without consideration of the same the Revenue Department relieved him requiring him to join in the Labour Department. In the aforesaid premises we see no justification in ignoring the service rendered by the appellant as a Senior Auditor under the Revenue Department. The Tribunal, in our considered opinion, committed an error by directing that seniority of the appellant in the cadre of Senior Auditor will be determined by taking his services from the date he joined the Labour Department. In our considered opinion the services of the appellant as a Senior Auditor from 28.10.1966 shall be taken into account for determining his seniority in the cadre of Senior Auditor in the Labour Department. The appellant, we are informed, has already retired from the service. We, therefore, direct that the Labour Department would determine the seniority of the appellant in the cadre of Senior Auditor by taking into account his services from 28.10.1966 and on such determination if he would be entitled to consideration for promotion to any post at an earlier point of time that may be duly considered and thereafter if he is found suitable then notional promotion may be given and ultimately his retiral benefits may be recalculated on that basis. This may be done within a period six months of the receipt of this order.

Appeal is accordingly allowed. But in the circumstances there will be no order as a costs.

H v.s.s.

Appeal allowed.