

A HIMACHAL PRADESH STATE ELECTRICITY BOARD

v.

SOMDUTT UPPAL AND ANR.

DECEMBER 17, 1992

B [KULDIP SINGH AND P.B. SAWANT, JJ.]

C *Civil Service—Himachal Pradesh State Electricity Board Recruitment and Promotion Regulations for Ministerial Services of the Board, 1972—Rule 8, Appendices A & B—Seniority in the post of Superintendent—Whether on the basis of date of passing SAS Examination or on the basis of seniority in lower feeding cadre of UDC/Assistant/Internal Auditors/Head Clerks—Letters dated 2.8.1968 and 31.7.1976—Importance of—Applicability of 1973 Regulations.*

D The case of the respondent No. 2 (in C.A.Nos. 2698-99 of 1992 who was also the appellant in C.A.Nos. 2700-01 of 1992) before the Central Administrative Tribunal was that he was junior as U.D.C. to respondent No. 1 (in all appeals). But he took his examination for the post of the Superintendent in June 1972 and passed the same on 30.10.1972. After passing the examination, a meeting of the Departmental Promotion Committee ('DPC') was held in which he was selected and appointed regularly in officiating capacity to the post of Superintendent w.e.f. 6.4.1973. Respondent No. 2 was also confirmed in the substantive capacity w.e.f. 1.11.1989. Respondent No. 1, passed the examination in December 1973. He was considered for appointment as Superintendent by the DPC and was appointed to that post in officiating capacity w.e.f. 24.8.1974. He was appointed in substantive capacity to the said post w.e.f. 7.7.1990. Hence, F respondent No. 2 contended before the Tribunal that he was entitled to seniority over respondent No. 1, in the cadre of Superintendents.

G The Tribunal relying upon two documents - a letter dated 2.8.1968 (addressed by the Chief Engineer of the Department of M.P.P. & Power of the State Government to the Superintendent on the subject of training) and a promotion order dated 31.7.1976 (to the post of Superintendent on the cadre of Finance and Accounts Wing of one Narinder Pal Sharma), held that the passing of the qualifying examination was not a pre-requisite for being promoted to the post of Superintendent and that the letter dated H 2.8.1968 was prior to the coming into operation of the 1972 Regulations.

In the two groups of appeals, viz., C.A. Nos. 2698-99 of 1992 filed by the 'Board' and C.A.Nos. 2700-01 of 1992 filed by the aggrieved employee of the Board, the short point involved in this case was whether the seniority in the higher post of Superintendent was to be determined on the basis of the date of passing the 'Subordinate Accounts Service' (S.A.S.) Examination or on the basis of their seniority in the lower feeding cadre of Upper Division Clerks (UDC)/Assistants/Internal Auditors/Head Clerks.

Allowing the appeals of the employee, this Court

HELD: 1.1. The promotion to the post of the Superintendent is governed by the Himachal Pradesh State Electricity Board Recruitment and Promotion Regulations for Ministerial Services of the Board, 1972 which are made in exercise of powers conferred by section 79(c) read with Section 15 of the Electricity (Supply) Act, 1948. The Regulations came into force w.e.f. 1.7.1972. [677-B]

1.2. To be eligible for promotion to the post of Superintendent, the employee concerned must have put in a minimum of four years' service as UDC/Assistant/Internal Auditor/Head Clerk at the time of appearing for the examination, and he must pass the examination. [677-E]

1.3. The seniority of an employee in the cadre of Superintendents would depend upon the date on which he enters that cadre after satisfying the two conditions. The seniority in the lower feeding cadre of UDC etc. is irrelevant for considering the seniority in the cadre of Superintendents except when both the eligible employees pass the examination on the same date. [677-F]

1.4. The letter dated 2.8.1968 (addressed by the Chief Engineer to the Superintendent) and letter dated 31.7.1976 (the promotion order) are internal communications from one officer to another and their contents cannot override the express provisions of the Regulations made under the Act. The contents of the letter dated 2.6.1968 at no time were adopted, ratified or approved by the Board. In any case, the said letter cannot override the statutory regulations. [678-F,G]

1.5. In the present case, the examination was taken and the appointment was made under the 1972 Regulations. Further the 1973 Regulations

A do not in any manner modify or affect the 1972 Regulations. The provisions of 1973 Regulations had not affected the position of respondent No. 2, as against that of respondent No. 1. Respondent No. 2 passed the examination earlier than respondent No. 1. [678-H]

B 1.6. The Tribunal erroneously assumed that respondent No. 2, had not completed four years before appearing for the examination which was the qualifying period for such appearance. Record shows that respondent No. 2 had served as UDC in regular capacity w.e.f. 24.2.1967 and as Head Clerk/Assistant w.e.f. 19.12.1968 in an *ad hoc* capacity, and as officiating Head Clerk/Assistant w.e.f. 16.2.1972. Hence on the date of examination, more than five year's service was to his credit in the requisite capacity [679-G]

C 1.7. What the Tribunal forgot was that whereas 1973 Regulations came into effect after April 1973, respondent No. 2, was appointed to the post of Superintendent on and from 6.4.1973. In any event, the 1973 Regulations on which reliance is placed by the Tribunal would not govern the present case. [679-E]

D CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2698-99 of 1992.

E From the Judgment and Order dated 9.7.1991 of the Himachal Pradesh Administrative Tribunal in T.A. NO. 754 of 1986 and Review Petition No. 23 of 1991.

WITH

Civil Appeal Nos. 2700-2701 of 1992.

F Dr. A.M. Singhvi, S.K. Jain, P.K. Bansal and Indra Makwana for the Appellant.

Devendra Singh for the Respondents.

G The Judgment of the Court was delivered by

H SAWANT, J. These are two groups of appeals, viz., C.A. Nos. 2698-99 of 1992 filed by the Himachal Pradesh State Electricity Board (the 'Board') and C.A. Nos. 2700-01 of 1992 filed by the aggrieved employee of the Board, Shri Mehta. The short point involved in this case is whether the seniority in the higher post of Superintendent is to be determined on the

basis of the date of passing the 'Subordinate Accounts Service' ('S.A.S.') Examination or on the basis of their seniority in the lower feeding cadre of Upper Division Clerks (UDC)/Assistants/Internal Auditors/Head Clerks. The promotion to the post of the Superintendent is governed by the Himachal Pradesh State Electricity Board Recruitment and Promotion Regulations for Ministerial Services of the Board, 1972 (the '1972 Regulations') which are made in exercise of powers conferred by Section 79 (c) read with Section 15 of the Electricity (Supply) Act, 1948 and which came into force w.e.f. 1.7.1972. Rule 8 of the 1972 Regulations provides that the method of recruitment to the posts under the Board shall be by written or oral test or by both, or by promotion. It further states that the method of recruitment, promotion, minimum qualifications, period of probation etc. for each of the Board's services shall be as set forth in Appendices A & B of the 1972 Regulations. Clause 10 of Appendix A lays down the method of selection to the post of Superintendent. It states that at Superintendent level, there would be a Subordinate Accounts Service. The eligibility for this Service shall be passing of S.A.S. Examination. All UDCs having four years' service shall be eligible for appearing in the examination in addition to Assistants/Internal Auditors/Head Clerks. For the initial constitution, however, Superintendents having three years' service on the Accounts side may also be considered. The said clause 10, therefore, makes it clear that to be eligible for promotion to the post of Superintendent, two conditions have to be satisfied. The first is that the employee concerned must have put in a minimum of four years' service as UDC/Assistant/Internal Auditor/Head Clerk at the time of appearing for the examination, and the second is that he must pass the examination. It is obvious that no employee can be promoted to the post of Superintendent unless he satisfies the two conditions. Hence, the seniority of an employee in the cadre of Superintendents would depend upon the date on which he enters that cadre after satisfying the two conditions. The seniority in the lower feeding cadre of UDC etc. is irrelevant for considering the seniority in the cadre of Superintendents except when both the eligible employees pass the examination on the same date.

2. There is no dispute that Shri D.R. Mehta who is respondent No. 2 in the Board's appeals, viz., C.A. Nos. 2698-99 of 1992 and is appellant in C.A. Nos. 2700-01 of 1992, was junior as U.D.C. to Shri Uppal who is respondent No.1 in both the groups of appeals. However, he took his examination for the post of the Superintendent in June 1972 and passed the same on 30.10.1972. After passing the examination, a meeting of the Departmental Promotion Committee ('DPC') was held in which he was selected and appointed regularly in officiating capacity to the post of

- A Superintendent w.e.f. 6.4.1973. He was also confirmed in the substantive capacity w.e.f. 1.11.1989. As against this, respondent No. 1, Uppal passed the examination in December 1973. He was considered for appointment as Superintendent by the DPC and was appointed to that post in officiating capacity w.e.f. 24.8.1974. He was appointed in substantive capacity to the said post w.e.f. 7.7.1990. Hence, respondent No. 2, Mehta was entitled to seniority over respondent No. 1, Shri Uppal, in the cadre of Superintendents.

3. However, in the impugned decision, the Central Administrative Tribunal ('the Tribunal') took the view, firstly that the passing of the qualifying examination was not a pre-requisite for being promoted to the post of Superintendent. For this purpose, the Tribunal relied upon two documents. The first is a letter dated 2.8.1968 addressed by the Chief Engineer of the Department of M.P.P. & Power of the State Government to the Superintendent in his own office, on the subject of training, whereby the Superintendent was informed by the Chief Engineer that seniority was not considered for sponsoring the candidates in undergoing the S.A.S. Part-I training and that the training would not confer any special rights on the trainees. The second document is a promotion order dated 31.7.1976 to the post of Superintendent on the cadre of Finance and Accounts Wing of one Narinder Pal Sharma wherein it is mentioned that the promotion given to the said Sharma was subject to the condition that he should qualify in the examination within a period of three years. Admittedly, both these letters are internal communications from one officer to another and their contents cannot override the express provisions of the regulations made under the Act. Secondly, the letter of 2.8.1968 is obviously prior to the coming into operation of the 1972 Regulations. In fact, the letter refers to the period when the Board itself had not come into existence and when the matter was being handled by the predecessor of the Board, viz., the Department of M.P.P. & Power of the State Government. The contents of this letter at no time were adopted, ratified or approved by the Board. In any case, as stated earlier, the said letter cannot override the statutory regulations.

4. The tribunal has also relied upon 1973 Regulations which came into effect only from April 1973. In the present case, the examination was taken and the appointment was made under the 1972 Regulations. Further, the 1973 Regulations do not in any manner modify or affect the 1972 Regulations. Clause 8 (ii) of the 1973 Regulations reads as follows:

"A person who passes SAS Exam. in an earlier exam. shall have precedence in appointment to the service over a person who passes in a later exam. As amongst persons who pass the same exam., the total length of service as UDC/Assistant/Divisional Accounts (sic.) shall be determining factor in offering the appointment."

The provisions of this clause in fact are against the view taken by the Tribunal. Admittedly, in the present case, respondent No.2, Mehta passed the examination earlier than respondent No. 1, Uppal. It was not a case of both passing the same examination. The Tribunal, unfortunately, also did not notice clause 15 of the 1973 Regulations which reads as follows:

"On and after the commencement of these rules and until persons are appointed to the service in accordance with the provisions of the rules, such posts may continue to be held by persons appointed thereto as if these rules have not come into force."

5. Furthermore, what the Tribunal forgot was that whereas 1973 Regulations came into effect after April 1973, respondent No. 2, Mehta was appointed to the post of Superintendent on and from 6.4.1973. As stated earlier, in any event, the 1973 Regulations on which reliance is placed by the Tribunal would not govern the present case. We have already pointed out earlier that in fact the provisions of 1973 Regulations had not affected the position of respondent No. 2, Mehta as against that of respondent No. 1, Uppal.

6. We also find from the impugned decision of the Tribunal that it has erroneously assumed that respondent No. 2, had not completed four years before appearing for the examination which was the qualifying period for such appearance. The indisputed record shows that respondent No. 2 had served as UDC in regular capacity w.e.f. 24.2.1967 and as Head Clerk/Assistant w.e.f. 19.12.1968 in an *ad hoc* capacity, and as officiating Head Clerk/Assistant w.e.f. 16.9.1972. Hence on the date of examination, more than five year's service was to his credit in the requisite capacity.

7. In the circumstances, the impugned judgments of the Tribunal, viz., the main judgment dated 9.7.1991 and the judgment in review dated

A 15.11.1991 are hereby set aside and respondent No. 2, Mehta is directed to be given seniority over respondent No. 1, Uppal.

The appeals are allowed accordingly. In the circumstances of the case, there will be no order as to costs.

V.P.R.

Appeals allowed.