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H.P. STATE ELECTRICITY BOARD

v

SHRI K.R. GULATI

FEBRUARY 3, 1998

B

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

Service Law :

C *Himachal Pradesh State Electricity Board Recruitment and Promotion (Regulations) for Ministerial Employees of the Board, 1972: Promotion—Substantive Junior Scale Stenographer—Promoted on adhoc basis to the post of Head Clerk—18 Posts of Junior scale Stenographers upgraded to Senior scale Stenographers—Departmental Promotion Committee holding him unsuitable for the post of Senior Stenographer on the ground that he has lost touch in stenography—Tribunal's direction to treat him as promoted with retrospective effect with all consequential benefits—On appeal, held, the respondent being a substantive Junior Scale Stenographer, entitled to be considered for promotion to the post of Senior scale Stenographer—The Departmental Promotion Committee erred in holding him unsuitable merely on the ground that he had lost touch in stenography—Direction of the Tribunal is wholly without jurisdiction and unsustainable in law—Constitution of India; Articles 14 and 16.*

F **The respondent initially joined the Public Works Department as a Clerk and was subsequently appointed and confirmed on the post of Stenotypist. On the constitution of the appellant-Board the Department of Multi Purpose Project & Power was closed. The said Board took over the services of all the erstwhile employees of the Department on fresh contract. The appellant —Board issued an offer of appointment to the respondent, which he accepted and became an employee of the appellant-Board as Junior Scale Stenographer. Subsequently he was promoted on adhoc basis to the post of Head Clerk. In the meantime 18 posts of Junior Scale Stenographers were upgraded to Senior scale Stenographers, but respondent was not considered for the upgraded post of Senior Stenographer.**

H **Aggrieved, he filed a writ petition and the High Court held that the respondent should be considered for promotion to the post of Senior Stenographer. However, the Departmental Promotion Committee taking the**

view that the respondent has lost touch with Stenography and typing, did not recommend his case for the post of Senior Scale Stenographer. The respondent filed a contempt petition which was dismissed. The second contempt petition filed by the respondent with others also stood dismissed. The respondent then approached the Tribunal which directed the appellant-Board to treat the respondent as having been promoted as Stenographer w.e.f. 31.5.1996 with all consequential benefits on the ground that the respondent being the holder of the post of Steno-typist on substantive basis was entitled to be considered for promotion in his own stream; since an employee junior to the respondent was promoted to the post of stenographer, respondent would be entitled to consequential benefits above him.

Aggrieved by the decision of the Tribunal, the appellant-Board has filed the present appeal,

On behalf of the appellant-Board it was contended that the Tribunal could not have given a direction to the Board to promote the respondent w.e.f. 31.5.1996 when the Board itself was not in existence on that date; the Tribunal erred in issuing the impugned directions in the absence of State Government and the junior employees being made party to the proceedings; when the respondent has accepted the post of Lower Division Clerk and having been promoted to the post of Head Clerk, there is no infringement of his rights in not considering him for the upgraded post of Senior Stenographer.

Allowing the appeal, this Court

HELD : 1. In the impugned order the direction of the Tribunal to treat the respondent as having been promoted as a Stenographer with effect from 31st May, 1966 is wholly without jurisdiction inasmuch as such a direction could not have been given to the Board when the Board itself was not in existence on that date. The respondent was an employee of the state Government but it was not a party to the proceedings before the Tribunal. The aforesaid direction was given since an employee junior to the respondent in his erstwhile post of steno-typist got promotion to the post of Stenographer and he was also not a party to the proceedings. A cause of action which arose on 31.5.1966 could not have been assailed before the Tribunal by filing an application in the year 1992; allowing such a belated and stale claim, would upset the entire cadre management and will not be in the interest of justice.

[512-A-C]

2.1. The decision of the Departmental Promotion Committee that the

A respondent is unsuitable for the post of Senior Stenographer merely on the ground that he lost touch in Stenography was wholly erroneous. Since under the Himachal Pradesh State Electricity Board Recruitment and Promotion (Regulations) for Ministerial Employees of the Board, 1972 as well as the Appendix, the criteria for promotion to the non-selection post being seniority, the Departmental Promotion Committee could not have held the respondent
 B unsuitable for the post of Senior Stenographer. [511-C-D]

2.2. The respondent had been regularly absorbed as a Junior Stenographer under the Board. Under the Regulations read with Appendix 'A', promotion to the post of Head Clerk, no doubt, was permissible both from
 C UDCs as well as from Junior Scale Stenographers in the ratio of 9:1 and the respondent had been promoted to the post of Head Clerk merely on an adhoc basis and he had no substantive right to the post of Head Clerk on that date. The posts of Junior Stenographers were upgraded to Senior Scale Stenographers. The respondent being a substantive Junior Scale Stenographer had therefore, a right to be considered for promotion to the
 D post of Senior Scale Stenographer and by such non-consideration there has been an infringement of Article 16 of the Constitution. [510-G-H; 511-A]

3. The respondent could not have re-agitated the claim by filing a fresh application before the Tribunal challenging the very same cause of action
 E against which he did file a writ petition and withdrew the same. [511-H]

4. The respondent has been continuing in the clerical line ever since 1974 on being promoted to the post of Head Clerk. In the meantime he got further promotions in the said line and has ultimately retired from the services on attaining the age of superannuation. At this length of time it
 F would not be in the interest of justice to direct the Board to reconsider the question of his promotion in the Stenography line and give consequential promotional benefits thereon. [512-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10189 of
 G 1995.

From the Judgment and Order dated 14.7.95 of the Himachal Pradesh Administrative Tribunal, Shimla, in O.A. No. 1374 of 1992.

Raju Ramachandran, K.K. Lahiri, Ejaj Maqbool, Braj K. Mishra and
 H Gaurav Kumar for the Appellant.

Devendra Singh, Ms. Diva Singh and Ms. Manu Mridul for the Respondent. A

The Judgment of the Court was delivered by

G.B. PATTANAİK, J. This appeal is directed against the judgment dated 14th July, 1995 passed by the Himachal Pradesh Administrative Tribunal in O.A. No. 1374 of 1992. By the impugned judgment the Tribunal has directed the appellant Board to treat the respondent as having been promoted as Stenographer in the pay scale of RS. 106-200 with effect from 31st May, 1966 and give him all consequential benefits flowing therefrom in his own stream of Stenography. It was further directed that there should be no recovery from the respondent who has worked against various posts in the meantime. B C

The brief facts leading to the filing of application by the respondent before the Tribunal may be stated hereunder. The respondent joined the Public Works Department of the Government of Himachal Pradesh as a Clerk in November, 1958. While so continuing he was appointed as a Steno-typist on July 18, 1964 and was confirmed against the said post with effect from 1st January, 1972. On 2nd April, 1971, the Himachal Pradesh State Electricity Board (hereinafter referred to as 'the Board') was constituted in exercise of powers under Section 5 of the Indian Electricity (Supply) Act, 1948. With effect from 31st August, 1971 the Department of Multi Purpose Project & Power of the Government of Himachal Pradesh was closed. On account of the creation of the Board on and from the said date, on abolition of the Multi Purpose Project & Power Department of the Government, the Board took over the services of all the erstwhile employees of the department on fresh contract of employment being executed by those employees but it was clearly stipulated that the employees will continue as employees of the Government until their final absorption by the Board or their services stand terminated in accordance with law. It may be stated that the department of Multi Purpose Project & Power of the Government issued the notice of discharge of the respondent from the service on account of the closure of the department by letter dated 31st August, 1971. On September 9, 1971 the appellant Board issued an offer of appointment to the respondent intimating therein that the Board would be prepared to take the respondent on semi permanent basis as a Lower Division Clerk in the grade of RS. 110-250 and in ad hoc capacity as Stenographer in the grade of RS. 160-400. It was also clearly stipulated that the respondent will have no right for continuance against the post of Stenographer until he is appointed against the said post on regular basis by a competent authority D E F G H

A of the Board. The respondent was called upon to indicate as to whether he would be agreeable to the terms and conditions mentioned in the offer of appointment as stated above. By letter dated 9th November, 1971, the respondent himself made an application for the post of Lower Division Clerk on permanent basis under the State Electricity Board and to allow him to continue on ad hoc basis against the post of Stenographer. The Board framed a set of Regulations to regulate the recruitment, promotion and confirmation of the ministerial services under the Board, in exercise of powers conferred by Section 79(c) read with Section 15 of the Electricity (Supply) Act, 1948 called the Himachal Pradesh State Electricity Board Recruitment and Promotion (Regulations) for Ministerial Employees of the Board, 1972 (hereinafter referred to as 'the Regulations') which became operative with effect from 1st July, 1972. The respondent became an employee of the Board as a Junior Scale Stenographer by order dated 7th June, 1973 with effect from 1st January, 1972. Under the Regulations appointment to different posts under the Board could be made by direct recruitment as well as by promotion and the criteria for promotion was on the basis of recommendation of a duly constituted departmental promotion committee which committee in turn would recommend in case of non-selection post by virtue of the seniority of the employee and in case of a selection post by virtue of merit which is apparent from Regulation 5 providing procedure for appointment. It was also indicated therein that the departmental promotion committee shall be guided by the procedure approved by the Board for selection post. Regulation 8 provided that the method of recruitment, promotion, minimum qualification, period of probation etc. for each of the Board's service are as set forth in the Appendices 'A' and 'B'. Under Appendix 'A' the post of Head Clerk/Head Assistant in the pay-scale of RS. 225-500 could be filled up by promotion from amongst the UDCs who opted for administration wing as well as by promotion from amongst the Stenographers in Junior scale who have qualified in the departmental examination meant for clerks. The post of Head Clerk was a non-selection post. The ratio between the two feeder cadres as indicated above is 9:1. In other words, as against 10 vacancies in the post of Head Clerk, 9 would be filled up from the UDCs and one from the Stenographer Junior Scale. The respondent had been promoted as a Head Clerk in accordance with the aforesaid procedure on 23rd August, 1974. While he was so continuing by order dated 27th March, 1976, 18 posts of Junior Scale Stenographers stood upgraded to Senior Scale Stenographers. As the respondent had already been promoted as Head Clerk since 23rd August, 1974 he was not considered for being appointed to any one of these upgraded posts of Senior Stenographers. H Feeling aggrieved by the aforesaid action of the Board he filed a writ petition

some times in June 1976 which was registered as Civil Writ Petition No. 336 of 1976. The Himachal Pradesh High Court allowed the said writ petition filed by the respondent by judgment dated 11th September, 1981, by coming to the conclusion that the respondent having been promoted to the post of Head Clerk merely on ad hoc basis could legitimately claim to be appointed against the upgraded post of Senior Stenographer by exercising his option to revert to his substantive post Jr. Stenographer. The High Court, therefore, directed the Board to consider the respondent's case for promotion to the post of Sr. Scale Stenographer under the Rules and Regulations existing when those posts became available. This decision of the learned Single Judge of the Himachal Pradesh High Court became final as the Letters Patent Appeal No. 35 of 1981 filed by the Board stood dismissed by the Division Bench on 18th November, 1991. A departmental promotion committee pursuant to the direction of the High Court in the aforesaid judgment considered the case of the respondent for promotion to the post of Senior Scale Stenographer but being of the view that the respondent has lost touch with the stenography and typing ever since his promotion and absorption as a Head Clerk in August, 1974, would not be suitable for the post of Senior Scale Stenographer, did not recommend his case for the post of senior stenographer. The departmental promotion committee, therefore, recommended the promotion of the respondent to the post of Head Clerk/ Head Assistant. The respondent then filed a contempt petition alleging that the direction of the High Court has not been carried out which stood dismissed by order dated 27th June, 1983 on a finding that in the facts and circumstances it cannot be held that there has been a violation of the court's direction. The respondent along with three others filed a second contempt petition, which was registered as CCP No. 2 of 1984 but that also stood dismissed by order dated 25th May, 1984. The respondent, therefore, filed a fresh writ petition which was registered as Civil Writ Petition No. 431 of 1984 but later on chose to withdraw the same as Board itself issued certain office orders on July 12, 1985 and the writ petition was dismissed as withdrawn by order dated 12th September, 1985. The respondent then filed a fresh writ petition along with one Narotam Dutt Sharma which was registered as CWP No. 1088 of 1985 and that petition stood transferred to the State Administrative Tribunal on constitution of the Tribunal and was registered as Transfer Application No. 741 of 1986. Shri Sharma had made a representation to the Secretary of the Board. The Tribunal being cognizant of the fact that a representation by one of the petitioners is pending before the Board, disposed of the application by order dated July 11, 1991 directing the Board to consider the representation and render a reasoned decision within two months. The Board took a final decision on the

A representation of Shri Sharma and passed a reasoned order on 19th November, 1991 which was placed before the Tribunal and the Tribunal merely took that decision into consideration and held that the Transfer Application No. 741 of 1986 has become infructuous. The respondent then filed a fresh application before the Tribunal which was registered as O.A. No. 1374 of 1992 out of which the present appeal arises. The Tribunal disposed of the application in favour of the respondent by order dated 14th July, 1995 by issuing directions as already stated and hence the present appeal.

In the impugned judgment the Tribunal came to hold that the direction of the High Court dated 11th September, 1981 in CWP No. 336 of 1976 holding that the respondent was entitled to be considered for promotion in his own stream of stenography did not authorise the departmental promotion committee to hold him unsuitable for the post of Senior Stenographer and to recommend the promotion of the respondent to the post of Head Clerk which was done by the Board by order dated 11th August, 1982. The Tribunal, therefore, reiterated that the respondent being the holder of the post of Steno-typist on substantive basis was entitled to be considered for promotion in his own stream and that not having been done, the rights of the respondent have been infringed. The Tribunal also took into account the fact that the respondent has been promoted in the clerical line not only to the post of Head Clerk but to the still higher post of Office Superintendent and thought it fit not to quash the said promotion notwithstanding the earlier finding that the respondent was only entitled to be considered for promotion in his own stream of stenography. The Tribunal then considered the question as to what direction could be given and being of the view that the respondent was senior to one Shri S.S. Kaushal in the cadre of Steno-typist was entitled to be promoted to the post of Stenographer in the pay scale of Rs. 106-200 with effect from 31st May, 1996 and would be entitled to further consequential benefits above Shri Kaushal. Ultimately, the Tribunal directed the Board to treat the respondent as having been promoted as Stenographer with effect from 31st May, 1966 and further directed to give all consequential benefits flowing therefrom in his own stream of stenography only. It was further observed that there would be no recovery from the respondent who in the meantime has worked against several clerical posts.

Mr. Raju Ramchandran the learned senior counsel appearing for the Board contended that on 31st May, 1966 the Board itself had not been constituted and the Board came into existence only in August, 1971. On that date the respondent was an employee of the State of Himachal Pradesh. In

the absence of State of Himachal Pradesh being a party to the proceedings and in the absence of said Shri Kaushal a party to the proceedings the Tribunal could not have issued the impugned direction of promoting the respondent as a Stenographer with effect from 31st May, 1966 and the said direction on the face of it is without jurisdiction. Mr. Raju Ramchandran the learned senior counsel further contended that under the Board when the respondent accepted the post of Lower Division Clerk and under the Regulations of the Board even a junior stenographer could be promoted to the post of Head Clerk, there was no infirmity with the promotion of the respondent as Head Clerk since 23rd of August, 1974 and under such circumstances non-consideration of the respondent for one of the upgraded posts of senior stenographer in 1976 does not constitute an infraction of his right of consideration under Article 16 of the Constitution. Mr. Raju Ramchandran also further contended that the respondent having filed a writ petition which was registered as CWP No. 431 of 1984 challenging the decision of the departmental promotion committee which considered the case of the respondent for promotion in accordance with the direction of the High Court in CWP No. 336 of 1976 but found him unsuitable to hold the post of senior stenographer in view of respondent having lost touch with stenography and ultimately withdrawing the said writ petition itself would indicate that the respondent accepted the position of continuance in the clerical line. Mr. Raju Ramchandran the learned senior counsel lastly contended that the respondent ever since his promotion to the post of Head Clerk in 1974 having continued in the clerical line and having been promoted to the next higher grades and in the meantime having retired on attaining the age of superannuation, the impugned direction of the Tribunal will be futile exercise and will not be in the interest of justice. The learned counsel for the respondent on the other hand vehemently argued that the respondent has all along been agitating the fact that he should be considered for promotion in his own stream namely in the stenography line and notwithstanding the earlier direction of the High Court in favour of the respondent the Board has been ignoring the same and as such the rights of an employee under Article 16 of the Constitution has been grossly infringed and the Tribunal was fully justified in issuing the impugned directions. The learned counsel, however, fairly stated that the direction of the Tribunal to the effect that the respondent should be treated as a Stenographer with effect from 31st May, 1966 in the absence of the State Government and Shri Kaushal being a party to the proceedings was probably not proper. But in any event the rights of the respondent for being considered for promotion in the stenography line could not have been infringed in the manner in which the Board has refused to consider particularly when the

A promotional posts in the stenography line are non-selection posts where promotion is based merely on the seniority, justifies the direction the Tribunal and this Court can modify the same to the extent required since part of the direction has become unimplementable by the Board. The learned counsel also urged that no doubt the respondent has retired in the meantime but by considering his case for promotion in stenography line may ultimately get him some pensionary benefits and that should not be denied to him.

Having considered the rival submissions and having examined the Regulations of the Board as well as different orders passed by the Board promoting the respondent as a Head Clerk and further promoting him to still higher grades in the clerical line the questions that arise for our consideration are:

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1. Whether non-consideration of the respondent for being promoted against an upgraded post of Senior Stenographer constitutes an infraction of his right of consideration under Article 16 of the Constitution?
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2. Whether in the facts and circumstances of the present case it can be said that the respondent accepted his continuance in the clerical line, and therefore, should not be allowed to claim again his reversion to the stenography line?
- E
3. Whether the impugned directions of the Tribunal are at all justified particularly in the context of the facts in relation to a state of affairs in the year 1966 when the Board itself had not come into existence and in the absence of the State Government as a party to the proceedings and so also in the absence of Shri Kaushal as a party to the Proceedings?
- F
4. The respondent having continued in the clerical line since his promotion as Head clerk in the year 1974 and having been granted further promotion in the said line and ultimately having retired, whether it is at all necessary to direct the Board to reconsider his case for promotion in the Stenography line?

G So far as the first question is concerned, it is an admitted fact that the respondent had been regularly absorbed as a Junior Stenographer under the Board by order dated 7th June, 1973 with effect from 1st June, 1972. Under the Regulations read with Appendix 'A' promotion to the post of Head Clerk no doubt was permissible both from the UDCs as well as from the stenography junior scale in the ration of 9:1 and the respondent had been promoted to the post of Head Clerk on 23rd August, 1974 but the said promotion of the

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respondent was merely on an ad hoc basis and he had no substantive right to the post of Head Clerk on the date the posts of Junior stenographers were upgraded to the senior scale stenographers i.e. on 27th March, 1976. The respondent being a substantive junior scale stenographer had therefore a right to be considered for promotion to the post of senior scale stenographer in March, 1976 and by such non-consideration there has been an infringement of Article 16 of the Constitution. In fact the High Court held so by its judgment dated 11th September, 1981 passed in CWP No. 336 of 1976 which was upheld by the Division Bench by order dated 18th November, 1981 in dismissing the Letters Patent Appeal No. 35 of 1981.

It is in this context an ancillary question required to be answered namely whether the departmental promotion committee could have held the respondent unsuitable for the post of senior stenographer merely on the ground that he has lost touch in stenography. The answer to this must be in the negative. Since under the Regulations as well as the Appendix, the criteria for promotion to the non-selection post being seniority the departmental promotion committee could not have held the respondent unsuitable for the post of senior stenographer. The decision of the departmental promotion committee, therefore, was wholly erroneous.

Coming now to the second question, it would appear from the facts already narrated as well as the records of this appeal which we have carefully scrutinised, the respondent has all along been continuing in the clerical line ever since 23rd of August, 1974. Subsequent to the decision of the High Court in CWP No. 336 of 1976 and the recommendation of the departmental promotion committee which considered the case of the respondent pursuant to the direction given by the High Court in the aforesaid writ petition, the Board passed an order on 11th August, 1982 reverting the respondent to the scale of junior stenographer with effect from June 8, 1976 and by yet another office order said respondent was again promoted to the post of Head Clerk. The respondent having failed in the contempt proceedings initiated at his behest did file a writ petition No. 431 of 1984 but withdrew the same on September 12, 1985. Under these circumstances, we are inclined to accept the submission of Mr. Raju Ramchandran the learned senior counsel appearing for the Board that the respondent accepted his promotion in the clerical line and continued thereunder and as such was not entitled to re-open the matter again by filing a fresh petition before the Tribunal. On the facts and circumstances of the present case, we are of the considered opinion that the respondent could not have re-agitated the claim by filing a fresh application before the Tribunal challenging the very same cause of action which arose on 11th August, 1982

A against which the respondent did file a writ petition No. 431 of 1984 and withdrew the same on 12th September, 1985.

Coming Now to the third question on the face of the impugned order the direction of the Tribunal to treat the respondent as having been promoted as a Stenographer with effect from 31st May, 1966 is wholly without jurisdiction
B inasmuch as such a direction could not have been given to the Board when the Board itself was not in existence on that date. Secondly, on that date the respondent was an employee of the State Government and the State Government was not a party to the proceedings before the Tribunal. Thirdly, the aforesaid direction has been given as one S.S. Kaushal who was junior to the respondent
C in his erstwhile post of Steno-typist got promotion to the post of Stenographer and that Shri Kaushal was not a party to the proceedings. Lastly, a cause of action, if at all, which arise on 31st May, 1966 could not have been assailed before the Tribunal by filing an application in the year 1992 and by allowing such belated and stale claim, would upset the entire cadre management and will not be in the interest of justice. Learned counsel for the respondent,
D therefore in course of hearing very fairly stated that the said direction of the Tribunal was probably not proper and we have, therefore, no hesitation in holding that the aforesaid direction is wholly unjustified and unsustainable in law and we accordingly quash the same.

The only question that survives for consideration is whether in the
E facts and circumstances as narrated above it would at all be necessary for this Court to issue any direction to the Board in modification of the one given by the Tribunal and to direct that the question of promotion of the respondent in the stenography line be reconsidered. As has been stated earlier the respondent has been continuing in the clerical line ever since 1974 on being
F promoted to the post of Head Clerk. In the meantime he has got further promotions in the said line and has ultimately retired from the services on attaining the age of superannuation. At this length of time it would not be in the interest of justice to direct the Board to reconsider the question of his promotion in the stenography line and give consequential promotional benefits thereon notwithstanding our conclusion on the first question formulated
G above.

In the aforesaid premises, we allow this appeal, set aside the impugned judgment of the Himachal Pradesh Administrative Tribunal in O.A. No. 1374 of 1992 and dismiss the said O.A. There will be no order as to costs.

H S.V.K.I.

Appeal allowed.