

U. P. State Electricity Board and Another

Vs

Kharak Singh and Another

Special Leave Petition (Civil) No. 15630 of 1985

(B. C. Ray, S. R. Pandian JJ)

19.10.1989

ORDER

1. We have heard learned counsel Mrs. Dikshit in support of the special leave petition.
2. The facts are in a very short compass. Respondent 1 viz. Kharak Singh was appointed on May 15, 1966 as Junior Engineer (ordinary grade) and thereafter, he was confirmed in the same post. On April 4, 1977, the Chief Engineer promoted 69 Junior Engineers. of them 27 persons were junior to him w. e. f. April 1, 1976 in the selection grade. But the petitioner was not promoted due to adverse entries recorded in his service book. On September 7, 1977, 88 Junior Engineers were further promoted by the Chief Engineer in selection grade, by passing respondent 1 by deferring his case. On February 14, 1978, 37 engineers including 8 engineers junior to respondent 1 were promoted to the post of Assistant Engineers but respondent 1 was not considered. Five engineers belonging to Scheduled Caste and Junior to respondent were also promoted to the post of Assistant Engineer. Respondent 1 who belongs to the Scheduled Cast was not promoted in spite of the fact that he was senior and suitable. The said respondent 1, therefore, made an application before the U. P. Public Service Tribunal, assailing the refusal to consider his case for promotion to the post of Junior Engineer in the selection grade as well as for further promotion to Assistant Engineer, contending inter alia that all the adverse reports for the period May 23, 1972 to July 23, 1973 in the year of 1972-73 and from July 24, 1973 to November 30, 1973, against which he filed representations, were expunged by an order dated May 5, 1979, passed by the Chief Engineer. He has also pleaded that besides these adverse entries no other adverse reports were communicated to him and, as such, his case was entitled to be considered by the authorities concerned and he should have been given the promotion due to him, as has been given to other engineers, though some of them are juniors to him.
3. The Tribunal on hearing the parties passed its judgment on October 17, 1984 in Claim Petition No. 208/ (p) /479, holding, inter alia that :

Though the case of respondent 1 was considered but it was left out every time of selection from 1977 to 1979 and the only reason for not giving promotion to respondent 1 was that his work was not satisfactory and many adverse entries were found in his character rolls. It has been further found that besides the adverse reports for the year 1972-73, which were expunged by the order of the Chief Engineer dated May 5, 1979, there was no other adverse report. The Tribunal, therefore, after considering entire facts and circumstances of the case passed the following order :

"This claim petition is allowed and respondents are directed that they should promote the petitioner in the selection grade from the date on which juniors to him were

promoted and the petitioner should be further promoted to the post of Assistant Engineer from the date when juniors to him were promoted. He should be paid all the other benefits and arrears of salary and seniority accordingly. These directions should be complied with within two months."

4. This order was challenged by U. P. State Electricity Board before the High Court in Writ Petition No. 3555 of 1986 and the High Court confirmed the said order of the Tribunal vide its order dated July 3, 1985 and dismissed the writ petition.

5. Feeling aggrieved the Board has come with the instant special leave petition before this Court.

6. Mrs. Dikshit has mainly contended before us that in 1977, the case of the petitioner was considered twice and was deferred because the reports regarding his service were awaited from the field and in support of this contention she produced before us the minutes of the Selection Committee. It appears from the said minutes that the following remarks has been recorded therein."Reports are awaited from field". For the third time his case was considered in respect of the quota of 1976 and it was found that he was unfit for next promotion in the selection grade. Thereafter, his case was considered in 1981 and he was promoted to the selection grade w. e. f. September 1, 1977.

7. Mrs. Dikshit has contended very eloquently that the Tribunal instead of making an order directing for promoting him along with his juniors on the dates they were promoted to the selection grade and also for further promoting him to the post of Assistant Engineer from the date when juniors to him were also promoted and further directing the payment of all other benefits, including arrears of salary and seniority etc., should have directed the Board to consider his case for promotion. Mrs. Dikshit also submit that this order should be set aside and this Court may given directions to the government to form a committee to consider his case for further promotion to the grade of Assistant Engineer in accordance with the existing rules and practice.

8. After considering the fact and circumstances of the case very carefully and also considering the findings arrived at by the Tribunal, more particularly the finding that there was no adverse report after November 30, 1973, which was also expunged by the Chief Engineer, we do not find any infirmity in the order of the Tribunal. On the other hand, the order of the Tribunal, in our considered opinion, is unexceptional. All the adverse remarks, on the basis of which the case of respondent 1 herein for promotion in the selection grade and further promotion to the post of Assistant Engineer was left over, have been expunged some time in the year 1979 i. e. May 5, 1979 by the Chief Engineer. The said respondent 1, therefore, is entitled to be considered from the date when his case was first considered by the Selection Committee. As such the Tribunal has rightly come to the findings as regards the promotion to be given to respondent 1 in 1977 when his juniors were considered for promotion to the selection grade w. e. f. April 1, 1976 and, secondly when his juniors were further promoted some time in February 14, 1978 to the posts of Assistant Engineer.

9. Having considered all these facts, we deem it just, proper and equitable not to interfere with the order passed by the Tribunal Accordingly, we affirm the order of the Tribunal and dismiss the special leave petition with no order as to costs. We also grant three months time to the petitioner Board to implement the order.

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