

State of Haryana

Vs

R.K.Aggarwal

(Sujata V.Manohar, D.P.Wadhwa JJ)

28.07.1997

JUDGMENT

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MRS. SUJATA V. MANOHAR,J.

1. Leave granted.

2. Prior to 7th of December, 1990 the respondent was holding the post of Superintending Engineer in the Public Works (B&R) Department of the State of Haryana. By order dated 7th of December, 1990 he was given the current duty charge as Chief Engineer (Roads) in his own pay-scale of Superintending Engineer. The order of 7th of December, 1990 in the "remarks" column states against the name of the respondent, "(1) Vice Shri A.N. Sehgal transferred; (2) in his own pay-scale of SE". The respondent was given promotion as Chief Engineer with effect from 8th of November, 1994 and was thereupon given the pay-scale of a Chief Engineer. The order of 8th of November, 1994 issued by the Haryana Government Public Works (B&R) Department, inter alia, states, "In pursuance of the directions of the Supreme Court of India, the Governor of Haryana is pleased to grant the pay-scale of Rs.5900-6700 of the post of Chief Engineer with effect from 1.11.1994 to Shri R.K. Aggarwal holding the acting charge of the post of Chief Engineer (National Highways); (2) The above pay-scale is granted subject to the final outcome of the representations received from various officers with regard to the seniority circulated vide order No. 13-70-B&R (E)-2-90 dated 7.4.1992 required to be disposed of as per the directions of Supreme Court of India." This order clearly states that Prior to 1st November, 1994 the respondent was holding acting charge of the post of Chief Engineer. There was litigation which was pending with regard to the inter-se seniority of various concerned officers. In pursuance of the directions given in that litigation by this Court substantive appointment to the post of Chief Engineer was given to the respondent with effect from 1st November, 1994. But this was made subject to the, final outcome of the various representations which had been received from officers with regard to their inter-seniority.

3. By another, order dated 8th of November, 1994 issued by the Haryana Government, Public Works (B&R) Department, the respondent was given the current duty charge of the post of Engineer-in-Chief in addition to his present duties. The order of 8th of November, 1994 expressly sets out that the current duty charge given to the respondent as Engineer-in-Chief was in addition to his present duties. Thereupon another order, of 20th of December, 1994 was issued effecting various postings/transfers of various officers. This order, inter alia, sets out that one Shri K.B. Lal Singal was posted as Chief Engineer (National Highways) relieving Shri R.K. Aggarwal i.e. the respondent of his duties as Chief Engineer (National Highways). Note 2 sets out that Shri R.K. Aggarwal will continue to look after the work of Engineer-in-Chief, PWD (B&R) Haryana, in his own pay-scale of Chief Engineer. Once again this was done on account of pending litigation regard to inter-se

seniority of the various concerned officers. He respondent was ultimately given promotion to the post of Engineer-in-Chief in the pay-scale of Rs.7300-7600 under an order of 16th of April, 1995.

4. After his retirement the respondent in 1996 filed Writ Petition No. 1156 of 1996 before the High Court of Punjab & Haryana claiming, inter alia, that for the period 10.12.1990 to 31.10.1994 he should be given the pay-scale of a Chief Engineer and that for the period 8.11.1994 to 15.4.1995 he should be given the pay-scale of Engineer-in-Chief. He further prayed that his retirement benefits should also be calculated on that basis. This claim of the respondent has been upheld by the High Court although the relief for payment of arrears is restricted to a period of 38 months from the date of the filing of the writ petition. The present appeal is filed from this judgment and order of the High Court.

5. From the orders which we have referred to above relating to the respondent being asked to hold the current duty charge first, as Chief Engineer and thereafter as Engineer-in-Chief, it is clear that substantive promotion was not given to the respondent during the impugned periods because of pending litigation relating to the inter-se seniority of the various officers concerned. No substantive promotion could be given until the question of inter-se seniority was finally decided. That is why even the order of 8th of November, 1994 giving promotion and pay-scale of Chief Engineer to the respondent mentions that it is subject to the representations received from various officers with regard to their seniority which are required to be disposed of as per the directions of this Court. The same is the position with regard to the respondent being given current duty charge as Engineer-in-Chief. In view of the clear terms of the concerned orders the respondent cannot claim substantive promotion either as Chief Engineer or as Engineer-in-Chief during the impugned relevant periods.

6. The respondent has relied upon a decision of this Court in the case of Smt. P. Grover v. the State of Haryana and Anr. (1983 (3) SCR 654). In that case the appellant was promoted as an acting District Education Officer but the order of promotion contained a super-added condition that she would continue to draw her salary on her existing scale of pay as a teacher. This Court held that in the counter-affidavit filed on behalf of the Govt. of Haryana no rational explanation was offered for denying the pay of District Education Officer to the appellant after she was promoted to act as a District Education Officer. In the absence of any rule justifying such refusal to pay to an officer promoted to a higher post the salary of such higher post, the same should be given from the date she was promoted to the post. This judgment will not apply to the facts of the present case. In the present case there is a rational explanation for not granting promotion to the respondent during the impugned periods. This was because the litigation was pending in relation to the inter-se seniority of various concerned officers. It was, therefore, not clear who would be ultimately promoted. It was only pursuant to the directions of this Court that the promotion was given to the respondent first as Chief Engineer and thereafter as Engineer-in-Chief the latter also being subject to a condition relating to the determination of seniority by the department pursuant to the directions of this Court. There was, therefore, a valid reason for not effecting the promotion of the respondent during the material period. In each of the posts of Chief Engineer and Engineer-in-Chief the respondent has been given his promotion from a subsequent date as the orders of promotion clearly show.

7. In these circumstances, during the impugned period when no promotion had been given to the respondent, he cannot claim the salary of the promotional post. The impugned order of the High Court is, therefore, set aside, the appeal is allowed and the writ petition is dismissed. In the circumstances, we make no order as to costs.