

B. N. Sinha

Vs

Union of India and Others

Civil Appeals No. 4610 of 1992 with Nos. 14563-64 of 1998

(S. Saghir Ahmad, D. P. Wadhwa JJ)

14.01.1998

JUDGMENT

S. SAGHIR AHMAD, J. -

Civil Appeal No. 4610 of 1992

1. The dispute in the present appeal relates to the post of Chief Engineer (Civil) Level II, on which the appellant was appointed after due selection.
2. The post of Chief Engineer (Civil) Level II in the Civil Construction Wing of All India Radio was created on 28-8-1986. At the time of the creation of the post, there were no Recruitment Rules. Consequently, the Government of India referred the matter to the Union Public Service Commission for its advice as to the mode and manner of making appointment to that post. The Commission, by its letter dated 9-9-1988 advised that till the Recruitment Rules are made, appointment on the post of Chief Engineer (Civil) Level II may be made by a composite method, namely, by promotion from amongst the suitable departmental candidates and if a suitable departmental candidate was not available, the post could be filled up by transfer on deputation.
3. In pursuance of the advice tendered by the Commission, an advertisement was made on 11th October, 1988 inviting applications for appointment on this post. The advertisement brought forth several outsiders as also departmental candidates, including the appellant and Respondent 4, who were interviewed by the Commission on 23-7-1990 and in the absence of a suitable departmental candidate, the appellant was selected and appointed to the post which he joined on 27-8-1990, on deputation from another department. It may be mentioned that the Recruitment Rules concerning the post in question were notified on 16-11-1990.
4. Respondent 4, who was one of the candidates for the post in question and was interviewed by the Commission, challenged the appointment of the appellant on the ground that in the absence of rules relating to this post, the Rules made under Article 309 of the Constitution for making appointment on the post of Chief Engineer (Civil) Level I should have been followed. This contention was upheld by the Tribunal, which by its impugned judgment dated 22-11-1991 held that the appointment of the appellant on the post in question was illegal. A direction was issued to the Government of India and other respondents concerned for making the appointment on the post in accordance with the Rules as they existed prior to 16-11-1990. The Tribunal indicated that, since the post of Chief Engineer (Civil) Level II was created in the cadre of Chief Engineer (Civil) Level I, this post should also be regulated by the Rules applicable for making appointment to the post of Chief Engineer (Civil) Level I. The judgment passed by the Tribunal, in our opinion, is wholly

erroneous and cannot be sustained.

5. The Civil Construction Wing in All India Radio was constituted in 1973. The Rules which were first promulgated for regulating service conditions in the Civil Construction Wing were known as "All India Radio, Civil Construction Wing (Class I and Class II Posts) Recruitment Rules, 1975" (for short Recruitment Rules). They came into force on 9-12-1975. The highest post indicated in these Rules was the post of Additional Chief Engineer (Civil Construction) which was abolished and in its place a post of Chief Engineer (Civil) was created, vide notification dated 23-12-1981. With the creation of this new post, the Recruitment Rules were amended.

6. The post of Chief Engineer (Civil Construction) was, however, abolished with effect from 17-9-1984, and in its place, the post of Chief Engineer (Level I) in the scale of pay of Rs. 2500-2750 was created. On 17-10-1985, the Recruitment Rules were amended and in place of the post of Chief Engineer, the post of Chief Engineer (Level I) was indicated in the Rules.

7. The post of Chief Engineer (Civil) Level II was created on 28-8-1986. It was a new post created with the sanction of the President. This post was not included in the Schedule appended to the Recruitment Rules (as amended) and therefore, these Rules were not made applicable to the said post. It was for this reason that the Government of India consulted the Commission and sought its advice regarding the manner and the mode of making appointment on that post. It was on the advice of the Commission that the Government of India adopted the "composite method" of making appointment by promotion on that post, failing which, by transfer on deputation. Recruitment Rules relating to this post were notified on 16-11-1990. These Rules are known as "All India Radio Chief Engineer (Civil) Level II Rules, 1990".

8. The Government of India being the employer, had the right not only to create a post but also to make Rules under Article 309 of the Constitution for making appointment on that post. The post of Chief Engineer Level I had already been created in place of the post of Chief Engineer (Civil) and the Rule was suitably amended in 1985 for making the recruitment to the post of Chief Engineer Level I. The post of Chief Engineer Level II was created subsequently for which separate Rules were made under Article 309 of the Constitution, on 16-11-1990. The post of Chief Engineer (Civil) Level II being a separate and distinct post, it could not be said that appointment on this post would be regulated by the Rules made for the post of Chief Engineer (Level I). It was this error which was committed by the Tribunal in coming to the conclusion that so long as the Recruitment Rules were not made for the post of Chief Engineer Level II, the Rules regulating a appointment to the post of Chief Engineer Level I would apply to this post. The Tribunal overlooked the vital fact that when the Recruitment Rules were made on 9-12-1975, it was indicated in Rule 2 that the Rules would apply to the posts specified in column 2 of the Schedule annexed thereto. In the Schedule, a number of posts were mentioned. The highest post was that of Additional Chief Engineer (Civil), which was indicated to be a selection post on which appointment was to be made by promotion, failing which by transfer on deputation. The Recruitment Rules were amended on 14-2-1983 and in the Schedule, instead of the post of Additional Chief Engineer (Civil), the post of Chief Engineer was substituted, which, however, still remained a selection post. The manner of appointment also remained the same. The Schedule was further amended on 17-10-1985 and in place of the post of Chief Engineer, the post of Chief Engineer Level I was mentioned, which was indicated to be a promotion post on which appointment was to be made by promotion, failing which by transfer on deputation.

9. When the post of Chief Engineer Level II was created on sanction from the President, it was not included in the Schedule. Since the applicability of the Rules was restricted to the posts mentioned

in the Schedule, the Recruitment Rules would not apply to a post not included in the Schedule, including that of Chief Engineer Level II, for which the Government itself made separate Rules known as "All India Radio [Chief Engineer (Civil) Level II] Recruitment Rules, 1990", which were published vide notification dated 16-11-1990. Even during the interregnum, namely, the period between the date on which the post of Chief Engineer (Civil) Level II was created and the date on which the Rules for that post were made, the Rules for making appointment on the post of Chief Engineer (Civil) Level I could not be made applicable to the post in question as their applicability was restricted to the posts mentioned in the Schedule.

10. The Tribunal, by the impugned judgment, by stretching the Recruitment Rules, 1975 to a post, namely, the post of Chief Engineer (Civil) Level II, has only attempted to legislate on a subject which was not its business. The Rules of Statutory Interpretation or the Rules relating to the interpretation of a subordinate legislation, including Rules made under Article 309 of the Constitution, do not empower any judicial or quasi-judicial body to apply the law to a situation or object which was not contemplated by the legislature while making a law, or by the Government while making the rule. The Tribunal, thus, committed a manifest error of law in holding that in the absence of any rule regulating the appointment on the post of Chief Engineer (Civil) Level II, the Recruitment Rules of 1975 would apply to that post.

11. In view of the above, the appeal is allowed and the impugned judgment dated 22-11-1991 of the Tribunal is set aside. The appointment of the appellant already made on the post of Chief Engineer (Civil) Level II is upheld in all respects. There shall be no order as to costs.

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12. Leave granted.

13. It was pointed out by the learned counsel for the appellant in Civil Appeal No. 4619 of 1992, that Respondent 4 in the said appeal, who had challenged the appellant's appointment before the Tribunal at Bombay had retired on 31-1-1993. These connected SLPs have been filed by the Union of India against the same judgment of the Tribunal.

14. In view of the judgment in Civil Appeal No. 4610 of 1992, these appeals are also allowed. There shall be no order as to costs.