Secretary-Cum-Chief Engineer, Chandigarh

Vs

Hari Om Sharma and Others

Civil Appeal No. 5546 of 1995

(K. Venkataswami, S. R. Babu, S. Saghir Ahmad JJ)

29.04.1998

JUDGMENT

S. SAGHIR AHMAD, J. -

1. This appeal is directed against the judgment dated 14-12-1993 passed by the Central Administrative Tribunal, Chandigarh (for short "the Tribunal").

2. The dispute relates to the promotion on the posts of Junior Engineer I. Admittedly, promotion on the posts of Junior Engineer I are made from amongst Junior Engineers/SSOs/Meter Inspectors. Since there were three different feeder posts from which promotions were to be made, the appellant themselves fixed the respective quotas. 34 per cent of the posts were to be filled up by direct recruitment from the open market from amongst diploma-holders. 33 per cent of the posts were to be filled up by diploma-holder-linemen already working with the appellant. Another 33 per cent of the posts were to be filled up from amongst non-diploma-holder-linemen/meter readers who had put in 10 years of service.

3. In order to make promotions, an integrated seniority list of persons working in three categories of feeder posts was drawn up and it was from this seniority list that promotions were made and the quota system was not adhered to in view of the decision of this Court in Punjab SEB v. Ravinder Kumar Sharma. ((1986) 4 SCC 617 : 1987 SCC (L&S) 13). It is also stated by the appellant that 33 per cent quota, meant for non-diploma-holders, was quashed by this Court by its judgment dated 30-1-1987 in Punjab SEB v. Sukhdev Raj Sharma. (JT (1987) 1 SC 333 (1) (See below at p.90)). It was after this judgment that the recruitment rules were modified and it was provided that the posts of Junior Engineer I would be filled up, not on the basis of quota, but on the basis of integrated seniority-cum-merit.

4. The respondent was promoted as Junior Engineer I in 1990 and has been continuing on that post without being paid salary for that post or without being promoted on regular basis. It was in this situation that the respondent approached the Tribunal and the Tribunal, as pointed out earlier, allowed the claim petition with the direction that the respondent shall be paid salary for the post of Junior Engineer I and shall also be considered for promotion on regular basis on the basis of quota fixed for non-diploma-holders with 10 years of service. Admittedly, the respondent is the seniormost person in the cadre of non-diploma-holders and has also put in 10 years of service.

5. The decision in Punjab SEB v. Ravinder Kumar Sharma ((1986) 4 SCC 617 : 1987 SCC (L&S) 13) was overruled by this Court in P. Murugesan v. State of T. N. ((1993) 2 SCC 340 : 1993 SCC (L&S) 445 : (1993) 24 ATC 149). It was on this decision that the Tribunal placed reliance and came

to the conclusion that the promotions had still to be made on the basis of quota fixed for three different feeder categories and not on the basis of integrated seniority particularly as the classification on the basis of "educational qualification" was held to be valid by this Court.

6. Having regard to these facts, we are of the view that the Tribunal was fully justified in ordering that the respondent shall be promoted on the basis of "quota" fixed for non-diploma-holders with 10 years of service and not on the basis of integrated seniority. The Tribunal was also justified in ordering payment of salary to the respondent for the post of Junior Engineer I with effect from 1990 when he was made to work on that post. It is true that the respondent, to begin with, was promoted in stop-gap arrangement as Junior Engineer I but that by itself would make no difference to his claim of salary for that post. If a person is put to officiate on a higher post with greater responsibilities, he is normally entitled to salary of that post. The Tribunal has noticed that the respondent has been working on the post of Junior Engineer I since 1990 and promotion for such a long period of time cannot be treated to be a stop-gap arrangement.

7. Learned counsel for the appellant has placed reliance on Sreedam Chandra Ghosh v. State of Assam ((1996) 10 SCC 567 : 1997 SCC (L&S) 332) as also on State of Haryana v. S. M. Sharma (1993 Supp (3) SCC 252 : 1993 SCC (L&S) 1072 : (1993) 25 ATC 594 : JT (1993) 3 SC 740) to contend that since the respondent was promoted on the basis of stop-gap arrangement, he could not claim promotion as a matter of right nor could he claim salary for the post of Junior Engineer I as he was given only current duty charge of that post. Both the contentions cannot be accepted. The Tribunal has already held that the respondent having been promoted as Junior Engineer I, though in stop-gap arrangement, was continued on that post and, therefore, he has a right to be considered for regular promotion. Having regard to the facts of this case, there is no reason to differ with the Tribunal.

8. Learned counsel for the appellant attempted to contend that when the respondent was promoted in stop-gap arrangement as Junior Engineer I, he had given an undertaking to the appellant that on the basis of stop-gap arrangement, he would not claim promotion as of right nor would he claim any benefit pertaining to that post. The argument, to say the least, is preposterous. Apart from the fact that the Government in its capacity as a model employer cannot be permitted to raise such an argument, the undertaking which is said to constitute an agreement between the parties cannot be enforced at law. The respondent being an employee of the appellant had to break his period of stagnation although, as we have found earlier, he was the only person amongst the non-diploma-holders available for promotion to the post of Junior Engineer I and was, therefore, likely to be considered for promotion in his own right. An agreement that if a person is promoted to the higher post or put to officiate on that post or, as in the instant case, a stop-gap arrangement is made to place him on the higher post, he would not claim higher salary or other attendant benefits would be contrary to law and also against public policy. It would, therefore, be unenforceable in view of Section 23 of the Contract Act, 1872.

9. For the reasons stated above, we find no merit in this appeal which is dismissed without any order as to costs.