

U.P. Jal Nigam

Vs

S.C. Atri and Another

Civil Appeal No. 300 of 1992

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

29.04.1998

ORDER

1. The respondent was an Executive Engineer in the U.P. Jal Nigam. He was considered for promotion to the post of Superintending Engineer along with certain other Executive Engineers but he was not promoted because on the date on which he was considered for promotion there existed an adverse entry for the year 1974-75 in his character roll, against which a representation, admittedly, was pending with the appellant. The representation was subsequently allowed on 10-8-1978 and by order dated 10-4-1979 he was promoted to the post of Superintending Engineer. The respondent approached the High Court under Article 226 of the Constitution of India by means of a writ petition for a direction that his seniority may be restored in terms of Regulation 23(6) of the U.P. Jal Nigam Service of Engineers (Public Health Branch) Regulations, 1978. By order dated 9-10-1991, the writ petition was allowed and the direction was issued to the appellant to reckon the respondent's seniority in accordance with Regulation 21(3) and treat him to be promoted on the post of Superintending Engineer with effect from the date on which his juniors were promoted vide order dated 6-8-1977. The appellant was also directed to give all consequential benefits to the respondent.

2. Regulation 23(6) is quoted below :

"23. (6) The inter se seniority of persons promoted to the post of Executing Engineer, Superintending Engineer or Additional Chief Engineer shall be the same as it was in the substantive post held by them at the time of promotion :

Provided that persons who were not promoted on account of unsuitability shall not, on promotion in any subsequent selection, reckon the seniority and their seniority in the post to which they are subsequently promoted shall be fixed below those who are promoted earlier."

3. This regulation provides that the inter se seniority of persons promoted to the post of Superintending Engineer shall be the same as in the substantive post held by them at the time of promotion. The only exception is contained in the proviso to this regulation which says that if any person senior to others was not promoted on account of unsuitability and is promoted subsequently, he would be treated as junior to persons already promoted.

4. On the date on which the respondent was considered along with other Executive Engineers for promotion to the post of Superintending Engineer, there was an adverse entry for the year 1974-75 in his character roll on account of which he was not promoted although a representation against the adverse entry was pending. Ibis adverse entry was subsequently expunged as his representation was

allowed. The effect of the order allowing the expunction of the adverse entry would be that on the date on which he was considered for promotion to the post of Superintending Engineer, there existed no adverse entry in his character roll. Subsequently, it cannot be said that the respondent was not promoted on account of his unsuitability. That being so, the High Court was justified in ordering that the respondent on being promoted, though subsequently, shall be entitled to reckon his seniority with effect from the date on which a person junior to him was promoted to the post of Superintending Engineer. We are also informed that the respondent has since retired from service. We do not, therefore, see any reason to interfere in the matter. The appeal is dismissed. No order as to costs.