

# SUPREME COURT OF INDIA

Rakesh Sharma & Ors.

Vs.

M.D.Uttaranchal Power Corp.

C.A.No.3448 of 2008

(R.V.Raveendran and A.K.Patnaik,JJ.,)

03.08.2011

## JUDGMENT

**A.K.Patnaik,J.,**

1. IN CIVIL APPEAL NOS. 3448 OF 2008 AND 3476 OF 2008 These two appeals are against two separate orders passed by the Division Bench of the High Court of Uttaranchal on 28.02.2006 and arise out of the same set of facts and are accordingly being disposed of by this common judgment.

2. The facts very briefly are that written tests and interviews were conducted in the years 1977, 1979 and 1981 for promotion of Operating Staff (Technical Grade-II) to the post of Junior Engineer in the Uttar Pradesh State Electricity Board (for short 'the UPSEB') under Regulation 17 of the Uttar Pradesh State Electricity Board Subordinate Electrical and Mechanical Engineering Service Regulations, 1972 (for short 'the Regulations'). Mandip Singh and others, who had taken the written test and interview in 1977, moved the Allahabad High Court in a batch of Writ Petitions and on 28.08.1989 a Division Bench of the High Court by its order directed the UPSEB to declare the select list of candidates who had appeared in 1977 examination and the interview and after exhausting the same to make appointments from the select list of the candidates who had appeared in the 1979 written examination and interview. On 24.09.1999, the UPSEB issued an Office Memo cancelling the examination conducted in 1985 because it was not possible to promote the Technical Cadre employees to the post of Junior Engineer on the basis of examination conducted in the year 1985 till the order dated 29.08.1989 of the Allahabad High Court in the case of Mandip Singh & others was complied with. On 09.11.2000, the new State of Uttaranchal, now renamed as Uttarakhand, was carved out of the erstwhile State of Uttar Pradesh and the Uttaranchal Power Corporation Limited (for short 'the UPCL') became the successor of UPSEB for the State of Uttarakhand and started functioning with effect from 01.04.2001 and adopted the Regulations for its employees. On 05.04.2003, the Selection Committee of UPCL recommended that there was no hindrance for promoting the candidates selected on the basis of 1985 examination as there were vacancies to the post of Junior Engineer after promotion of the selected candidates of the years 1977 and 1979. Thereafter, a list of

employees, who had taken the examinations conducted by the UPSEB in the years 1977, 1979 and 1985, was prepared and they were promoted to the post of Junior Engineer by the Board of UPCL after relaxation under Regulation 31 of the Regulations.

3. These promotions were challenged in Civil Writ Petition Nos. 3 of 2003 (S/S), 979 of 2002 (S/S), 7195 of 2001 (S/S) and 803 of 2003 (S/S) in the High Court of Uttaranchal. The four Writ Petitions were heard by a learned Single Judge and allowed by a common order dated 25.10.2004. The learned Single Judge held that the promotions of employees of the cadre of Technical Grade-II to the post of Junior Engineer on the basis of 1985 examination cannot be said to be legal after cancellation of 1985 examination by the Office Memo dated 24.09.1999 of the UPSEB, unless either Regulation 17, which provides for promotion on the basis of written examination and interview, was amended or the order of cancellation of the 1985 examination was recalled. The learned Single Judge directed the UPCL to hold examination afresh complying with the provisions of Regulation 17 of the Regulations. The learned Single Judge quashed the seniority list of Junior Engineers dated 17.11.2001 which was based on the promotions held on the basis of 1985 examination and further observed that the promotions made on the basis of the examinations held in the years 1977 and 1979 shall remain unaffected. The learned Single Judge, however, observed that those already promoted or holding the charge of Junior Engineers will not be disturbed and their functioning shall be subject to the result of the fresh examination to be held.

4. Rakesh Sharma and others, who had been promoted as Junior Engineers on the basis of the 1985 examination, challenged the order of the learned Single Judge before the Division Bench of the High Court of Uttaranchal in Special Appeal Nos. 96 of 2004 and 103 of 2004 but the Division Bench of the High Court dismissed the Special Appeals by order dated 28.02.2006. The Division Bench agreed with the reasons given by the learned Single Judge, but observed that promotees on the basis of the 1985 examination shall be treated as working on ad hoc promotion and shall be allowed to continue subject to their appearance and passing in the examination and the interview in accordance with Regulation 17 of the Regulations and those selected afresh will be treated to have been appointed from the date of promotion. The UPCL also filed Special Appeal Nos.105, 107, 112 and 113 of 2008 against the order dated 28.02.2006 and by a separate order dated 28.02.2006 the Division Bench of the High Court sustained the order of learned Single Judge and disposed of the Special Appeals with the direction that those promotees, who had retired, shall not be affected by the order of the learned Single Judge.

5. Mr. P. P. Rao, learned counsel for the appellants in Civil Appeal No.3476 of 2008, and Mr. D. K. Garg, learned counsel for the appellants in Civil Appeal No.3448 of 2008, submitted that the selection of candidates for promotion to the post of Junior Engineer made on the basis of written examination and interview held in 1985 was in accordance with Regulation 17 of the Regulations and the High Court has not found the selection of candidates to be illegal. They submitted that the selection of candidates made in the year 1985 was cancelled by the Office Order dated 24.09.1999 of the UPSEB because if the directions of the Division Bench of the Allahabad High Court in the case of *Mandip Singh & Ors. v. UPSEB & Ors.*<sup>1</sup> to first appoint the candidates selected on the basis of examinations

and interviews held in 1977 and 1979, had to be complied with, the candidates selected on the basis of the examination and interview held in 1985 could not be appointed. Learned counsel for the appellants further submitted that the High Court was under an erroneous impression that the Office Order dated 24.09.1999 cancelling the examination of 1985 had not been recalled. They referred to the minutes of the 14th Board of Directors' Meeting of UPCL held on 26.12.2003 and 24.01.2004 to show that the Board of UPCL had resolved that the employees who have qualified in the 1985 examination and had been absorbed in the services of the UPCL would be eligible to be promoted to the post of Junior Engineer. Learned counsel for the appellants submitted that the Board of UPCL, therefore, had in effect recalled the cancellation of the 1985 examination for promotion to the post of Junior Engineer and, therefore, the candidates, who have been selected on the basis of the 1985 examination were promoted to the post of Junior Engineer in accordance with Regulation 17 of the Regulations and their appointments could not have been declared to be invalid by the High Court.

6. Mr. B. Datta, learned counsel for the private respondents in both the appeals, on the other hand, submitted that the Board of the UPCL has committed a breach of the directions of the judgment of the Division Bench of the Allahabad High Court in the case of *Mandip Singh & Ors. v. UPSEB & Ors.* and has resolved in its meetings held on 26.12.2003 and 02.01.2004 to promote the employees who had qualified in 1985 examination. He submitted that the UPCL should have held another written examination and interview in accordance with Regulation 17 of the Regulations. He also submitted that the private respondents were not promoted even though they qualified in the oral tests and instead their juniors in the cadre of Technical Grade-II were promoted on the basis of the 1985 examination, which have been held to be illegal by the High Court.

7. We have considered the submissions of the learned counsel for the parties and we find that in the batch of Writ Petitions in the case of *Mandip Singh & Ors. v. UPSEB & Ors.*<sup>2</sup>, the Division Bench of the Allahabad High Court in its judgment dated 29.08.1989 did not hold that the selection of candidates made for promotion on the basis of 1985 examination was in contravention of Regulation 17 of the Regulations or was in any way illegal. The High Court only considered the grievances of the candidates, who had appeared in the 1977 and 1979 examinations and issued writs of mandamus granting some reliefs. Para 14 of the judgment of the Division Bench in *Mandip Singh & Ors. v. UPSEB & Ors.* is quoted hereinbelow:

"In the result, the writ petitions are allowed. A mandamus is issued directly to the U.P. State Electricity Board to declare the list of the candidates appeared in 1977 examination and after exhausting the same to make appointments from the list of the candidates appeared in 1979 examination. The months from the date of production of a copy of this order. A further mandamus is issued directing the UP State Electricity Board to declare the list of temporary Junior Engineers and thereafter to make appointments from that list in accordance with law. A mandamus is also issued to the U.P. State Electricity Board to reduce the marks for interview and oral test and to make selection accordingly and this shall also be done within two months from the date of production of a copy of this order. The U.P. State Electricity Board is also

directed to relax the qualifications only in accordance with law and taking into consideration the Regulation 31."

8. We further find that although in the judgment in *Mandip Singh & Ors. v. UPSEB & Ors*<sup>3</sup>, the Division Bench of the Allahabad High Court did not declare the selections made on the basis of 1985 examination and interview to be in any way illegal, the UPSEB cancelled the selections by Office Order dated 24.09.1999, which is quoted hereibelow :

"Uttar Pradesh State Electricity Board No.3726( )-AR-09(Ga)/Sachiv-99-20 F90G/88 (TC) Dated September 24, 1999 Office Order As per the note dated 17.12.1996 made by U.P. State Power Corporation the examinations held in the year 1985 could not be given effect. Unless the judgment and order dated 29.08.1989 passed by Hon'ble High Court of Allahabad (Allahabad Bench) in Writ Petition No. 4858/85 entitled Mandeep Singh vs. UPSEB is not complied with. Besides this, 100 marks were fixed for viva voce. After having kept the recommendations made by Power Service Commission on the aforesaid point the examinations held in the year 1985 for the promotion of Technical Grade-II on the post of Junior Engineer are hereby cancelled.

Sd/- Illegible"

9. It will be clear from the Office Order dated 24.09.1999 that the only reason given by the UPSEB to cancel the selection on the basis of the 1985 examination for promotion of Technical Grade-II staff to the post of Junior Engineer is that if the judgment of the High Court in the case of *Mandip Singh & Ors. v. UPSEB & Ors*<sup>4</sup>. was to be complied with, the selection made on the basis of 1985 examination could not be given effect to because there would be no vacancies in the post of Junior Engineer in which the selected candidates of 1985 could be accommodated.

10. We also find from the records that after the new State of Uttarakhand was formed and the UPCL became the successor of the UPSEB for the State of Uttarakhand, several posts of Junior Engineers were required to be filled up. Therefore, the Board of the UPCL deliberated over the matter afresh in its Meetings held on 26.12.2003 and 02.01.2004 and resolved as follows :

"As the erstwhile U.P. State Electricity Board did not take cognizance of the examination conducted in 1985 for promotion to the post of Junior Engineer from Operating Staff as per the Hon'ble High Court of Allahabad decision which stated that first the list of candidates appeared in 1977 examinations be exhausted, and not for any other reason, the employees qualified the 1985 Examination and absorbed in the Corporation services would be eligible for promotion to the post of Junior Engineer."

11. The facts discussed above clearly establish that the selection of candidates on the basis of the 1985 examination and interview have not been held by the Allahabad High Court to be illegal in the batch of Writ Petitions in the case of *Mandip Singh & Ors. v. UPSEB & Ors.* and the UPSEB had also not cancelled the selection of candidates for promotion on the basis

of 1985 examination on the ground that the selection was in contravention of Regulation 17 of the Regulations or was in any other way irregular and the only reason given by the UPSEB in its Office Order dated 24.09.1999 for cancelling the selection on the basis of 1985 examination was that the selection cannot be given effect to without complying with the directions of the High Court in the case of *Mandip Singh & Ors. v. UPSEB & Ors*<sup>5</sup>. If the successor of UPSEB, namely, the UPCL, found that a number of posts of Junior Engineers had to be filled up and this could be done by promoting the candidates, who had qualified in the 1985 examination and who had been absorbed in the services of the UPCL and resolved accordingly, the High Court could not have held in the impugned order that the promotions of the candidates on the basis of 1985 examination were contrary to Regulation 17 of the Regulations or in any way illegal. For these very reasons, we also cannot accept the contention of the learned counsel for the respondents that the Board of UPCL has committed a breach of the directions in the judgment of the Allahabad High Court in *Mandip Singh & Ors. v. UPSEB & Ors*<sup>6</sup>.

12. We also do not find any merit in the grievances of the private respondents that they were not promoted but their juniors in Technical Grade-II have been promoted on the basis of the 1985 examination. Clauses (2) and (3) of Regulation 17 of the Regulations are quoted hereinbelow:

"(2) The selection shall be based on a written test followed by a practical and oral test to which only such candidates would be admitted as have qualified in the written test.

(3) The names of the candidates who qualify in the practical and oral test shall be placed in a list in their order of merit. For computing the merit of a candidate the marks obtained by him both in the written test and the practical and oral test shall be added."

Thus, Clauses (2) and (3) of Regulation 17 are clear that promotion to the post of Junior Engineer from amongst the Operating Staff is to be made on the basis of selection based on a written examination followed by a practical and oral test to which only such candidates would be admitted as have qualified in the written test and the names of the candidates who qualified in the practical and written tests were to be placed in the order of merit. If the private respondents could not be promoted whereas their juniors were promoted because of their merit determined in the tests as provided in Clauses (2) and (3) of Regulation 17, the promotion of such juniors cannot be held to be in any way illegal.

13. For the aforesaid reasons, the appeals are allowed and the judgments of the learned Single Judge in Writ Petition Nos. 3 of 2003 (S/S), 979 of 2002 (S/S), 7195 of 2001 (S/S) and 803 of 2003 (S/S) and the impugned judgment of the Division Bench of the High Court are set aside. There shall be no order as to costs. IN SPECIA L LEAVE PETITION (C) NOs.5278-5279 of 2009 AND 4827 of 2009 These Special Leave Petitions were listed for hearing along with Civil Appeal Nos.3448 of 2008 and 3476 of 2008.

“2. At the time of hearing of the Civil Appeals, Mr. D. K. Garg, learned counsel for the petitioners, submitted that the Special Leave Petitions be listed after the disposal of the Civil Appeals.

3. We have today disposed of Civil Appeal Nos.3448 of 2008 and 3476 of 2008. These Special Leave Petitions may now be listed for hearing.”