

SECRETARY-CUM-CHIEF ENGINEER, CHANDIGARH

v.

HARI OM SHARMA AND ORS.

APRIL 29, 1998

[S. SAGHIR AHMAD, K. VANKATASWAMI AND S. RAJENDRA  
BABU, JJ.]

*Service Law—Promotion—Feeder cadre—Quotas fixed for—Promotion made on the basis of integrated seniority list instead of making on quota basis—Validity of.*

*Service law—Promotion—Stop gap arrangement—Employee continuing for a long period—But neither paid salary for that period nor considered for regular promotion—Direction by Tribunal for payment of salary and to consider him for regular promotion—Held valid.*

*Indian Contract Act, 1872: Section 23.*

*Government service—Employee—Stop gap promotion—Continuing for a long period—Undertaking from employee that he would not claim salary of higher post or other benefits—Held contrary to public policy.*

In this case promotion to the post of Junior Engineer-I was being made from three different feeder posts. For promotion, quota was fixed for (i) direct recruitment from open market from amongst diploma holders; (ii) diploma holders line-man already working with the appellant; and (iii) non-diploma holders line man/meter readers who had put in ten years of service. However, an integrated seniority list of persons from three cadres was drawn up on the basis of which promotions were made without adhering to the quota system.

The respondent, a seniormost person in the cadre of non-diploma holders was promoted as Junior Engineer. However, he was neither paid salary for that post nor was he considered for regular promotion. On the other hand, while promoting him on a stop gap arrangement, an undertaking was taken from him that he would neither claim promotion as of right nor would he claim any benefit pertaining to that post.

The respondent approached the Central Administrative Tribunal,

A Chandigarh which directed that the respondent shall be paid salary for the post of Junior Engineer and shall also be considered for promotion on regular basis on the basis of quota fixed for non diploma holders with ten years of service. Against the decision of Tribunal an appeal was preferred before this Court.

B Dismissing the appeal, this Court

HELD : 1. 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. It 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. 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 rightly 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.

[102-E-H]

2. 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. [103-D]

F *Punjab State Electricity Board & Anr. v. Ravinder Kumar Sharma & Ors.*, [1986] 4 SCC 617, dissented from (Being already overruled).

*Punjab State Electricity Board v. Sukhdev Raj Sharma & Ors.*, JT (1987) 1 SC 333 and *T. Murugesan & Ors. v. State of Tamil Nadu & Ors.*, [1993] 2 SCC 340, referred to.

G *Shreedaran Chandra Ghosh v. State of Assam & Ors.*, [1996] 10 SCC 567 and *State of Haryana v. S.M. Sharma & Ors.*, JT (1993) 3 SC 740, distinguished.

H CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5546 of 1995.

From the Judgment and Order dated 14.12.93 of the Central Administrative Tribunal, Chandigarh in O.A. No. 433/CH/1993. A

Ujjagar Singh, G.C. Sharma and Naresh Bakshi for the Appellant.

Sunil Gupta, Ms. Indu Malthora and Ms. Kavita Walia for the Respondents. B

A.K. Mahajan (NP) for Respondent-Ex-Parte.

The Judgment of the Court was delivered by

**S. SAGHIR AHMAD, J.** This appeal is directed against the judgment dated 14.12.93 passed by the Central Administrative Tribunal, Chandigarh (for short, 'the Tribunal'). C

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/S.S.Os./Meter Inspectors. Since there were three different feeder posts from which promotions were to be made, the appellant themselves fixed the respective quotas. 34 percent 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 holders linemen already working with the appellant. Another 33 per cent of the posts were to be filled up from amongst non-diploma holders linemen/Meter Readers who had put in 10 years of service. D E

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 State Electricity Board and Anr. v. Ravinder Kumar Sharma & Ors.* [1986] 4 SCC 617. 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 30th of January, 1987 in *Punjab State Electricity Board v. Sukhdev Raj Sharma & Ors.*, JT (1987) 1 SC 333. It was after this Judgment that the recruitment rules were modified and it was provided that the posts of Junior Engineer-I would be filed up, not on the basis of quota, but on the basis of integrated seniority-cum-merit. F G

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 H

- A 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 State Electricity Board and Anr. v. Ravinder Kumar Sharma & Ors.*, (supra) was overruled by this Court in *T. Murugesan & Ors. v. State of Tamil Nadu & Ors.*, [1993] 2 SCC 340. 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 *Shreedaran Chandra Ghosh v. State of Assam & Ors.*, [1996] 10 SCC 567, as also on *State of Haryana v. S.M. Sharma & Ors.*, 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. A

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 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. B C D

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

T.N.A

Appeal dismissed.