
(1979) 04 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 37 of 1979

A.V. Sharma

APPELLANT

Vs

State of Himachal Pradesh etc.

RESPONDENT

Date of Decision : 23-04-1979

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (1979) 8 ILR HP 210

Hon'ble Judges : T.U. Mehta, C.J.; T.R. Handa, J

Bench : Division Bench

Advocate : Inder Singh, for the Appellant; H.K. Paul, for the Respondent

Final Decision : Dismissed

Judgement

T.U. Mehta, C.J.—The Petitioner, Shri A.V. Sharma, was originally appointed as Junior Engineer, but with effect from 15-9-1970 he was appointed as Assistant Engineer, ad-hoc Rules of recruitment to the post of Assistant Engineer passed under Article 309 of the Constitution came into effect on 9-8-1973, when the Petitioner was still continuing as ad hoc Assistant Engineer. According to these rules, the method of recruitment to the post of Assistant Engineer was 50 per cent by promotion and 50 per cent by direct recruitment.

2. Thereafter on 30-1-1975, the Petitioner and his other colleagues, who were also given ad hoc promotion to the post of Assistant Engineer, were regularised on officiating basis on the post of Assistant Engineer.

3. Respondent No. 3 to this writ petition, whose name is R.C. Sharma, and Respondent No. 4, A.K. Kashyap, are the direct recruits. They were recruited respectively on 19-1-1971 and 14-1-1971.

4. Thereafter on 10-2-1978 a tentative seniority list of Assistant Engineers was published. This seniority list was published on the basis of rotation as between promotees and direct recruits working out the 50 : 50 per cent recruitment as contemplated by the above referred rules. As a result of this, Respondent No. 3

got his seniority at serial No. 4 and Respondent No. 4 got his seniority at serial No. 6 while the Petitioner got his seniority at serial No. 8. Intervening serial numbers, namely serial No. 5 and 7 were given to promotees on the working of the rotation.

5. Now the Petitioner makes a grievance that since he was given ad hoc appointment as Assistant Engineer right from 15-9-1970, Respondents Nos. 3 and 4, who were respectively recruited on 19-1-1971 and 14-1-1971 could not have been given seniority over him. In this connection it was further contended by the learned Advocate of the Petitioner that recruitment in a particular proportion does not necessarily imply the working of rotation as held by the Supreme Court in AIR 1977 251 (SC) and a Full Bench of Punjab High Court in Marinder Singh v. State of Haryana reported in 1978 (1) SLR 284.

6. After hearing the learned Advocate of the Petitioner at length and after considering the above referred two decisions, which were cited before us, we are of the opinion that these decisions are easily distinguishable inasmuch as the appointment of the Petitioner as Assistant Engineer in the month of September 1970 was purely ad hoc which conferred no right to him in his service conditions as Assistant Engineer, while the appointments which were considered by the Supreme Court as well as by the Full Bench of the Punjab High Court were regular appointments by virtue of which rights were created in favour of the promotees who occupied the quota of the direct recruits. The only effect of the Supreme Court judgment above referred to, is that in every case rotation cannot be presumed merely because a quota of a particular proportion is prescribed for different categories of recruitment. That would only mean that the question whether the principle of rotation should be applied to the recruitments which are expected to be made in accordance with a particular quota, would depend upon the peculiar circumstances and features of each case. In this connection it would be worthwhile to make reference to the following observations made by Krishna Iyer, J. in the above referred Supreme Court decision of N.K. Chauhan:

If exigencies of administration demand quick posting in the vacancy and one source (here, direct recruitment) has gone dry for a while, then the proper course is to wait for a direct recruit and give him notional date of entry as of the quota vacancy and manage to keep the wheels of government moving through improvised promotions, expressly stripping such ad hocist of rights flowing from temporary occupancy.

(Emphasis supplied)

It would appear from the observations to which we have supplied our emphasis that it is always open to the administration to keep the wheels of administration going on in cases wherein proper incumbents, who could be appointed in a particular quota, are not available. In such cases, with a view to see that administration runs on smoothly, it is open to the department to make ad hoc appointments. If such ad hoc appointments are made, it would mean that

technically the post in question is still vacant for the person who is found eligible to occupy the quota post. An ad hocist has got no right either of seniority or otherwise on the post on which his ad hoc appointment is made and his right to that post begins or comes into existence only from the date on which his services are regularised. Under the circumstances, it is not open to him to claim the benefit of the services on the post on which he has served merely as an ad hocist.

7. Under the circumstances, the decision by the Supreme Court in N.K. Chauhan's case has no application to the facts of the present case. For this reason, we see no point in this writ application which is dismissed without any order as to costs.