
(1994) 09 SC CK 0040

In the Supreme Court Of India

Case No : Special Leave Petition (C) No. 4117 of 1993

Puranjit Singh

APPELLANT

Vs

Union Territory of Chandigarh and others

RESPONDENT

Date of Decision : 22-09-1994

Acts Referred:

Punjab Service of Engineers (Class II) Public Works Department (Buildings and Roads Branch) Rules, 1965 — Rule 12.5

Citation : AIR 1994 SC 2737 : (1994) 6 JT 239 : (1994) 3 SCC 471 Supp : (1994) 2 UJ 629

Hon'ble Judges : P. B. Sawant, J;G.N. Ray, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The petitioner was appointed as Assistant Engineer in the Irrigation Department of the Punjab Government on 15 July, 1968. He was, thereafter, given an option to join the Public Works Department (Buildings & Roads) [hereinafter referred to as PWD (B&R)] of the said Government. He accepted the offer and resumed his duties in the new Department on 14 January, 1969. In 1972, the PWD [B&R] invited applications for direct recruitment for the post of Assistant Engineer. The petitioner applied for one of them and he was formally appointed as a direct recruit in the said Department on. 18 August, 1972. On 30 September/6 October, 1972, the Irrigation Department passed formal order relieving him from the Department which in fact ought to have been done on 14 January, 1969 when the petitioner had opted to join the PWD [B&R]. It appears that on his appointment in the PWD [B&R] as a direct recruit, he was sent on deputation to the Chandigarh Administration [Engineering Department] on 7 October, 1972.

2. In March, 1978, the petitioner made a request to the Chandigarh Administration to absorb him in their service by giving him the benefit of service in the State Government right from 15 July 1968. By their letter of 17 June,

1978, the Chandigarh Administration informed him that they were not agreeable to do so. On the other hand, the Administration informed him that since the absorption was at his request, it will affect his past service rendered in the Punjab State and he should give his consent for being placed at the bottom of the gradation list of officers of his category in the Chandigarh Administration. However, within a few days thereafter, i.e., 30 June, 1978, the Administration sent another letter changing its earlier stand and stated that the petitioner's seniority on absorption shall be fixed as per the service rules which inter alia provides for appointment of an officer to the service by transfer from the State Government or the Central Government. The letter further stated as follows:

...Such an appointment for obvious reasons, is not to be treated as a direct appointment for the purpose of determining seniority. In short, Sh. Puranjit Singh will be entitled to count past service (in his parent State) in the matter of fixation of his seniority on absorption in Chandigarh Administration....

3. Against this decision of the Chandigarh Administration, two writ petitions were filed by the employees affected by it. They were dismissed as being premature since by that time the seniority list was not prepared. On 9 February, 1979, the Chandigarh Administration passed an order to appoint the petitioner as Assistant Engineer [Civil] Class II in its Engineering Department on B & R side by transfer from the PWD [B & R] and it stated that the appointment is also subject to the provisions of Punjab Service of Engineers, Class II P.W.D. Rules, 1965. Against this transfer order, another writ petition was filed by some of the aggrieved employees. This writ petition was also dismissed since no seniority list was prepared, with a direction to the Administration to fix the seniority of the petitioner.

4. On 14 January, 1980, a notification was issued by the Administration determining the seniority in accordance with Rule 12.5 of the Punjab Service of Engineers, Class II] P.W.D. Rules, 1965 giving him seniority w.e.f. 7 October, 1972. The notification stated that the Administration had considered all the circumstances of the case and had also kept the public interest in view in fixing the seniority with effect from that date.

5. Against the fixation of his seniority w.e.f. 7 October, 1972, the petitioner made a representation on 15 January, 1980. While the said representation was pending, the petitioner preferred an application before the Central Administrative Tribunal, Chandigarh Bench challenging the order fixing his seniority on the ground that he has not given seniority on the basis of his past service from 1968. The Tribunal dismissed his application holding that he was not entitled to his past service being counted. Against the seniority given to the petitioner from 7 October, 1972, a writ petition was filed before the High Court by the aggrieved employees and this was later on transferred to the Tribunal and numbered as T.C. No. 5/80. The Tribunal decided the said application on 17 September, 1987 against the petitioner holding that it was not permissible to give the petitioner seniority w.e.f. 7 October, 1972 since the petitioner was absorbed in the service

at his own request; hence his seniority should have been counted from the date of his absorption, i.e., 17 June, 1978. Against the said decision of the Tribunal, both the Chandigarh Administration and the petitioner preferred Special Leave Petitions in this Court. By its decision dated 1 September, 1988, this Court held that under Rule 12.5, the Administration had power to give retrospective seniority and hence the seniority given to the petitioner w.e.f. 7 October, 1972 was valid. Thus, this Court by the said decision, confirmed the validity of the seniority given by the Administration to the petitioner from 7 October, 1972.

6. It appears that notwithstanding this decision, the petitioner continued to press his representation dated 15 January, 1980 made against the notification dated 14 January, 1980 giving him seniority from 7 October, 1972 and requesting for his seniority from 15 July, 1968. It appears that on this representation, the Home Secretary of the Chandigarh Administration on 14 May, 1992, put up a note to the Advisor to the Administrator recommending the counting of seniority of the petitioner as Senior Divisional Engineer from 15 July, 1968. On 25 May, 1992, the Advisor to the Administrator, wrote on this note "Please discuss", Thereafter, the Advisor discussed the matter with the Home Secretary and wrote on the said note as follows:

Discussed with H.S.

Since the matter is sub-judice we may not take any decision on the matter till the finalization of the Court cases.

In other words, the question of counting of the period of service of the petitioner from 15 July, 1968 to 7 October, 1972 remained undecided and it remains undecided till today.

7. In the meanwhile, it appears that on his posting on deputation in the Chandigarh Administration on 7 October, 1972, the petitioner was sent on deputation by the Administration to the Housing Board. In the Housing Board, he held current duty-charge as Executive Engineer from the 4 October, 1977. Subsequently on 23 December, 1980 he was appointed there as ad hoc Executive Engineer and became regular Executive Engineer there on 26 September, 1981. When he was holding the posts as current duty-charge as Executive Engineer and as ad hoc Executive Engineer in the Housing Board, his substantive post was that of Assistant Engineer. On 11 May, 1984, he was transferred back to the Engineering Department of the Chandigarh Administration as Executive Engineer. In this connection, it may be noted here that he became eligible to the post of Executive Engineer in his parent Department [Engineering Department of the Chandigarh Administration] on 7 October, 1980 i.e., after service as Assistant Engineer for eight years counted from 7 October, 1972. He was appointed to the said post on 23 December, 1980 on ad hoc basis for six months. On 15th October, 1981, the promotion was regularised. Again, he became eligible to hold the post of Superintending Engineer there after seven years of service as Executive Engineer under Rule 9, on 15th October, 1988. However, in the said

Department the first vacancy in the post of Superintending Engineer, after he became eligible to the said post occurred only on 1st December, 1988. He was appointed to the said post initially on ad hoc basis with effect from that date. The said appointment was regularised with effect from that date later on. It is not disputed that thereafter, the petitioner has been promoted in his parent Department as Chief Engineer in due course as per the Rules.

8. A relevant intermittent development may now be taken note of here. The petitioner continued on deputation to Chandigarh Housing Board till 11th May, 1984 when he was repatriated to the parent cadre in the Engineering Department of the Chandigarh Administration. In 1986, he was sent on deputation to a different organisation viz., the Marketing Board, Punjab, but he was again reverted to the parent Department in 1987. In the meanwhile, on 1st January, 1987, the post of Superintending Engineer fell vacant in the Chandigarh Housing Board.

9. The claim of the petitioner to seniority and to the posts of Executive Engineer and Superintending Engineer is based upon [i] his service as A.E. in the Irrigation Department of the Punjab Government from 15th July, 1968, [ii] his officiation as in-charge Executive Engineer in the Chandigarh Housing Board w.e.f. 4th October, 1977 or at least from 23rd December, 1980 when he was regularly appointed there to the said post, and [iii] the vacancy in the post of Superintending Engineer which arose in the Housing Board on 1st January, 1987.

10. All these grounds of claim to the seniority and promotion are thoroughly misplaced and unknown to service law. As the acts narrated above show, although the petitioner was appointed on 15th July, 1968 as Assistant Engineer in the Irrigation Department of the Punjab Government, he had opted subsequently to join the P.W.D. [B & R] w.e.f. 14th January, 1969. On that day itself, he had severed his connections with the Irrigation Department. What is further, he applied for direct recruitment, and was appointed as a direct recruit to the post of Assistant Engineer in the said P.W.D. [B & R] Department on 18th August, 1972. Hence his service as Assistant Engineer whether in the Irrigation Department or the P.W.D. [B & R] prior to 18th August, 1972 was completely wiped out. There was no need of any formal order either from the Irrigation Department or from the P.W.D. [B & R] to relieve him from his earlier service. However, it appears that the Irrigation Department passed an order on 6th October, 1972 relieving him from the said Department which order ought to have been passed by the Department on 14th January, 1969 itself. When he started his fresh career as a direct recruit in the P.W.D. [B & R] of the Punjab Government, that Department sent him on deputation to the Engineering Department of the Chandigarh Administration on 7th October, 1972. On his own request in March, 1978, the Chandigarh Administration absorbed him in their service by their letter dated 17th June, 1978 which clearly specified that his seniority will rank at the bottom of the officers in his cadre. For reasons which are unknown, the Administration changed its stand thereafter on 30th June,

1978, and decided to give him seniority from 7th October, 1972 which was ultimately upheld by this Court being permissible under Rule 12.5 of the Service Rules. Hence, his parent Department from that date became the Engineering Department of the Chandigarh Administration and continued to be so. While he was in the Engineering Department of the Chandigarh Administration, he was sent on reputation to the Chandigarh Housing Board. There he held acting charge of Executive Engineer for some time and thereafter got promoted to the post of Executive Engineer but subsequently he was repatriated to his parent Department. As stated above, he was again sent on deputation to the Marketing Board.

11. The petitioner's seniority has therefore, to be counted in his parent Department which is the Engineering Department of the Chandigarh Administration, and he has also to earn his promotions in the said Department according to the rules and as and when the appointments are made to the vacancies which become available in that Department. He can neither count his seniority on the basis of his service prior to his fresh career as a direct recruit nor can he claim his promotion on the basis of the post of posts that he had held in the organisations to which he was deputed. However, in spite of the clear position in law, he has been pursuing his misplaced claim for counting his seniority prior to his fresh career of Assistant Engineer as a direct recruit and for promotions on the basis of the promotions which he had earned in the organisation where he was sent on deputation. For this purpose, he is relying upon certain notings either of the Chief Engineer or the Home Secretary of the Chandigarh Administration. Although it is not known how he came in possession of the said notings, it was improper on his part to produce these notings in the Court proceedings, assuming that he had come in possession of them authorisedly. As a responsible officer he ought to know that notings in the departmental files did not create any rights in his favour. It is the orders issued by the competent authorities and received by him which alone can create rights in his favour. This is apart from the fact that even those notings did not spell out any order in his favour. In the circumstances, the authorities on which the learned Counsel for the petitioner relied are inapplicable to the facts of the present case.

12. We, therefore, dismiss the SLP as being devoid of any substance. We would have been justified in saddling the petitioner with costs. However, we refrain from doing so since the petitioner continues to be in service holding the office of the Chief Engineer and is obviously misguided by his over enthusiasm to assert his alleged right.