

(1995) 05 SC CK 0038

In the Supreme Court Of India

Case No : Civil Appeal No's. 5383 with 5390 of 1995

Satpal Antil and others

APPELLANT

Vs

Union of India and another

RESPONDENT

Date of Decision : 05-05-1995

Acts Referred:

Citation : AIR 1995 SC 1858 : (1995) 3 SCALE 554 : (1995) 4 SCC 419 : (1995) 1 SCR 1 Supp : (1995) 2 SLJ 228

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

Bench : Division Bench

Advocate : N.S. Hegde and Raj Kr. metha, for the Appellant; Janaranjan Das, for the Respondent

Final Decision : Dismissed

Judgement

G.N. Ray, J.—Leave granted.

2. Heard learned Counsel for the parties. Both the appeals arise out of a common judgment dated January 11, 1993 passed by the Central Administrative Tribunal, Jaipur Bench in O.A.No. 152 of 1989 (Satpal Antil v. Union of India and Anr.) and in O.A.No. 98 of 1989 (Jitendra Kumar Gupta v. Union of India and Ors.) Both these appeals involving same question of law and similar facts have been heard together and are disposed of by this common judgment.

3. The appellant, Satpal Antil, was initially appointed as Junior Engineer (Civil) in the Telecommunication Department Civil Division on January 10, 1987. For promotion to the post of Assistant Engineer (Civil), a Notification was issued inviting the persons who are already in service as Junior Engineer (Civil) in the Telecommunication Department, Civil Division to appear in the qualifying examination scheduled to be held on 16/17.3.1987. Both the appellants Satpal Antil and Jitendra Kumar Gupta appeared in the said examination and were declared successful. It appears that previously an application was filed before the Tribunal by the appellants inter alia contending that even though qualified

persons like the appellants were available, the Department was making ad hoc promotions to the post of Assistant Engineer without holding the DPC by the Department for regular promotion. It appears that vide its Order dated November 4, 1988 in O.A.No. 359 of 1987 the Central Administrative Tribunal directed the respondents to convene the DPC for the purpose of filling up the vacancies in the cadre of Assistant Engineer (Civil) out of the promotion quota within a period of four months from the date of the decision and to give the benefits to the eligible candidates by way of promotion in accordance with the recommendations of DPC. After the said judgment of the Tribunal the Department of Telecommunications issued a letter dated November 21, 1988 duly signed so as to enable the Department to recast the all India eligibility of Junior Engineers. Pursuant to such letter, the Superintendent Engineer (Civil) sent the seniority list of Junior Engineers (Civil) of his circle vide letter dated January 5, 1989. The names of the appellants Satpal Antil and Jitendra Kumar Gupta had been shown respectively at Serial Nos. 20 and 27 in the Seniority List. On September 26, 1989, DPC considered the case of the eligible candidates. The appellants, however, contended that the appellants having passed qualifying examination in March, 1987, should be treated as senior to the persons who had passed the qualifying examination at a later date. The appellants also contended that promotion to the post of Assistant Engineer should be given in accordance with the para 206 of the P & T Manual Vol. IV. The appellants contended that the eligibility list on all India basis of the persons who were qualified to be promoted to the post of Engineers should be prepared first keeping in view the provisions of para 206 of P & T Manual and the judgments passed by the Calcutta and Madras Benches of Central Administrative Tribunal should be given effect to in this regard. The appellants also contended that they should be given promotion to the post of Assistant Engineer (Civil) with effect from the date on which the appellants had completed 8 years of qualifying service on the post of Junior Engineer with all consequential benefits. The respondents, however, contended before the Tribunal, Jaipur Bench, that the respondents had implemented the direction of the Jaipur Bench passed in O.A.No. 359 of 1987 and held DPC. It was also pointed out by the respondents that the Calcutta Bench of the Central Administrative Tribunal in O.A.No. 599 of 1986 had observed vide its order dated February 6, 1987 that the applicants who had lost two years in which examination should have been held, should be given another chance to appear in the examination to be held within a period of six months after the publication of the result of the March, 1987 examination, if any of such applicant had failed in the examination in March, 1987. The Calcutta Bench further directed that even though the candidate who failed in two examinations should be allowed to appear in the qualifying examination for the third time but in that case, the seniority of the applicants who would pass in the third chance, would not be protected and their regularisation to the post of Assistant Engineer would be from the date of passing the examination.

4. The appellants before the Calcutta Bench had been officiating as Assistant

Engineers and they had been asked to appear in the departmental examination for regularisation of their service and the question of inter se seniority was not involved in the proceeding before the Calcutta Bench of Central Administrative Tribunal. The respondents also contended that provisions of para 206 of P & T Manual Vol. IV are applicable to the cadre of Telegraph, Engineering and Wireless Service Class I and the said provisions are not applicable to the applicants who do not belong to such service. It was also contended by the respondents that even otherwise, under the said para 206, the candidates passing the qualifying examination in a year irrespective of chances in a year would be senior to those passing in subsequent years. The respondents contended that the appellants were not entitled to claim seniority with reference to the date of passing the examination and accordingly not entitled to claim seniority over the candidates who had also passed the examination in the same year though in the second and third chances. The Tribunal, Jaipur Bench in disposing of the said O.A.No. 152 of 1989, O.A.No. 98 of 1989 inter alia came to the finding that from the plain reading of para 206 of P & T Manual Vol. IV it was quite clear that the said Rule was applicable to the cadre of Telegraph Engineering and Wireless Service only. The Tribunal pointed out that the heading in para 206 'Deputy Assistant Engineers Wireless' points out the applicability of the said para to the wireless service. The Tribunal also noted that the learned Counsel for the appellants also conceded before the Tribunal that the said para 206 was applicable for the cadre of Telegraph Engineering and Wireless Service. The Tribunal further noted that even under para 206, the officials who passed the examination held in 1956 would come en-block senior to these who passed in 1957. The said para 206, therefore, only provided that the persons who qualified in the examination held in the earlier year would become senior to those who passed in the subsequent year. The Tribunal also noted that the decision of the Allahabad High Court in P.N.Lals case was not produced. The Tribunal further indicated that so far as the judgment of the Calcutta Bench was concerned, the question involved in the proceedings was that of regularisation of Junior Engineer officiating as Assistant Engineer and the said decision did not support the contention of the applicants.

5. The appellants relied on the decision of the Madras Bench of Central Administrative Tribunal passed in O.A.No.5 of 1987 passed on June 15, 1987 (5. Anantharaman and Ors. v. Union of India and Ors.) before the Jaipur Bench. The Tribunal indicated that a bare perusal of the said judgment would show that the case for consideration in that case was regularisation of Junior Engineers (Civil) who had been working as Assistant Engineer (Civil) on ad hoc basis. The Madras Bench decided that the applicants had to appear in the departmental qualifying examination as a condition precedent for regularisation, and the applicants were entitled to get, in addition to the chance to appear in the examination in March, 1987, two more consecutive chances to appear in the qualifying examination.

6. In the impugned judgment of the Jaipur Bench of the Central Administrative Tribunal, it has been indicated that although Madras Bench had directed that if any of the applicant had qualified in the first attempt in the departmental

examination held in 1987, such candidates would be regularised with effect from the date of their completion of 8 years of service as Junior Engineer and this facility would not be available to the applicants if they would pass the examination to be held in future. The said decision of the Madras Bench had no application in the facts and contentions raised in the petitions filed by the appellants because the appellants had not been officiating on ad hoc basis as Assistant Engineer (Civil). The Jaipur Bench also held in disposing of the said applications of the appellants that there was no force in the contentions of the appellants that they should be considered as senior to the Junior Engineers who had also qualified in the subsequent qualifying examination although held in the same year. The Tribunal further held that the respondents were justified in preparing a combined list from out of those who had passed the qualifying examination held in 1987 and preparation of such combined list had not violated any rule. The Tribunal, Jaipur Bench, therefore, dismissed the said application made by the appellants.

7. Mr. Mukhoty, learned senior counsel appearing for the appellants, had contended that the candidates who had become eligible for promotion earlier by passing the qualifying examination at an earlier point of time, would rank en-block senior and would be entitled to be promoted earlier than the candidates who became eligible for promotion on subsequent occasions. Mr. Mukhoty has contended that para 206 of P & T Manual Vol. IV and the decision of the Madras Bench of the Central Administrative Tribunal in O.A.No. 5 of 1987 decided on June 15, 1987 clearly support the contentions of the appellants and the learned Tribunal, Jaipur Bench had misappreciated the case of the appellants and has wrongly decided their case. Mr. Mukhoty has contended that in Writ Petition No. 2739 of 1981 filed by Shri Parmanand Lal and Shri Brij Mohan, Junior Engineers Telephones of P & T Department, the decision rendered by the Allahabad High Court also supports the contention of the appellants. Such decision of the Allahabad High Court was challenged before this Court and the said decision of the Allahabad High Court has been upheld by the Supreme Court. It, therefore, cannot be contended that para 206 P & T Manual would not be applicable and it is not correct to contend that even though the subsequent examinations are held in the same year, candidates passing the said examination at any time in the year will not be affected by any other candidate passing the said examination earlier though held in the same year. Mr. Mukhoty has contended that para 206 P & T Manual Vol. IV is applicable to the appellants because the appellants are Junior Engineers (Civil) in the Engineering Branch of P & T Department. P & T Manual Vol. IV is equally applicable to officers of all the branches of P & T services. He has submitted that if a reference is made to para 1 and Chapter 7 of the said Manual, it will be quite evident that the manual was applicable to all branches of Post and Telegraph Services. Mr. Mukhoty has contended that although there are three section, para 206 under Chapter 7 is applicable to all the engineering branches equally. Mr. Mukhoty has also contended that the Recruitment Rules, 1976 for Civil Engineers (Gazetted Officers) are silent as to

how the inter se seniority of qualified candidates could be prepared for the purpose of promotions. In the case of Junior Engineers (Telephones) the Recruitment Rules, 1976 and the modified rules 1981 are also silent as to how the fixation of seniority for the purpose of promotions should be made after passing the qualifying examination. In these circumstances, Shri. P.N. Lal approached the Allahabad High Court by filing Writ Petition and the Allahabad High Court held that question of seniority to be determined according to the provisions of P & T Manual Vol. IV para 206 (2). Mr. Mukhoty has contended that the Recruitment Rules of 1976 are also silent about the maintenance of inter se seniority applicable to the cases of the appellants and the appellants are entitled to claim inter se seniority according to the provisions of para 206 of P & T Manual Vol. IV. Mr. Mukhoty has contended that in the Notification inviting applications for appearing in the examination it was indicated that 'after passing the examination the Junior Engineers who had completed 8 years of service will be promoted on regular basis to the Grade of Assistant Engineer (Civil). Although the appellants passed the said examination at earlier point of time, the Junior Engineers who were unsuccessful in the first chance but had passed such examination in third or fourth chance were preferred and given promotion simply on the basis of their length of service. Mr. Mukhoty has contended that such course is not only contrary to para 206 P & T Manual but also contrary to equity and justice because person qualifying in the first chance of the examination is deprived of the fruit of his success and candidate failing in the first chance but qualifying in the second or third attempt is given premium over the successful candidate in the very first chance. Mr. Mukhoty has, therefore, contended that the decision of the Jaipur Bench has occasioned a grave failure of justice and the same should be set aside and the appeal should be allowed by directing the authorities to decide the question of promotion of the Engineers on the basis of their becoming eligible at earlier point of time by passing the examination and consequently being entitled to be considered for promotion before the other candidates passing the said examination at a later point of time.

8. Mr. Goswami, learned senior counsel appearing for the respondents, has, however, contended that para 206 P & T Manual Vol.IV is not at all applicable to the appellants and the learned Counsel appearing for the appellants before the Tribunal, Jaipur Bench fairly conceded that the said provisions were not applicable to the persons belonging to the P & T Engineering Division. Mr. Goswami has contended that such concession was not given on a wrong understanding of the position in law. He has contended that para 1 of the said Manual reads as follows:-

the following general rules apply equally to officers of all the different branches of the service unless it is otherwise expressly specified as applicable to a particular class of Government servants. The Special rules which are applicable to particular branches are laid down in Chapter V to XVIII.

9. Mr. Goswami has contended that admittedly the appellants are governed by

different set of rules known as Post and Telegraph Civil Engineering (Civil Gazetted Officers) Recruitment Rules 1976 which appear at pages 33 to 41 of the Paper Book of the Appeal preferred by Shri Satpal Antil. Para 205 of P & T Manual which governs Assistant Engineers of Telecommunication Branch has no applicability so far as the appellants are concerned. Mr. goswami has contended that a strong reliance has been placed by the appellants on the decision of the Calcutta and Madras Benches of Central Administrative Tribunal. Mr. Goswami has contended that the Madras Bench in its decision referred to the decision of the Calcutta Bench and relied on the decision of the Calcutta Bench to the following effect :-

(1) the applicants will have to appear in the departmental qualifying examination for regularisation in the post of Assistant Engineers.

(ii) the applicants are at liberty to appear in the examination to be held on March 16/17.3.1987. If the applicants pass in the said examination proposed to be held on 16/17.3.87, they will be deemed to have been regularised as Assistant Engineers with effect from the respective dates of their completion of 8 years of service as Junior Engineer.

(iii) if they fail in the examination to be held in March, 1987, the applicants therein will be given one more chance to appear in the departmental qualifying examination to be held within a period of

six months, after the publication of the results of the examination held in March, 1987.

(iv) in consideration of the fact that the applicants had already worked for 8 years as Assistant Engineers they should be allowed to appear in the departmental qualifying examination for the third time also in case they fail in the two consecutive chances. But in such a case, the seniority of the applicants who pass in the third chance will not be protected and their regularisation in the post of Assistant Engineers will be with effect from the date of passing their examination.

(v) none of the applicants will be reverted before he is given three chances to appear in the departmental qualifying examination, as aforesaid.

10. Mr. Goswami has contended that it is apparent from the findings of the Calcutta Bench that some of the Assistant Engineers had continued on ad hoc basis for about 7 years. In such situation, the Calcutta Bench directed that they should be allowed three more chances for appearing in the qualifying test. It was, however, held that in case the Junior Engineers would pass the qualifying test in first two chances their seniority would be preserved and they should be regularised from the date of qualifying service as Junior Engineers. Mr. Goswami has contended that since concession was given before the Calcutta Bench to allow some of the Junior Engineers to pass in three chances, it was held that in case the candidate would pass a test in the third chance then his seniority would

not be preserved. Such finding of the Calcutta Bench does not indicate that para 206 of P & T Manual Vol. IV was made applicable. Mr. Goswami has contended that even if it is assumed that para 206 P & T Manual was made applicable such decision cannot be held to be proper and the decision correctly rendered by the Jaipur Bench since impugned in these appeals should not be interfered with. Mr. Goswami has also contended that the Rule regarding promotion in the 1976 rules is as under :-

Promotion: Junior Engineers (Civil) who have qualified in the departmental examination and have rendered not less than 8 years of service in the grade after appointment thereto on regular basis.

11. There is no provision in the said rules regarding determination of inter se seniority. Accordingly, the general rules of length of service in determining the seniority must be made applicable. Mr. Goswami has contended that it is well settled that on the face of specific rule governing a particular service, reliance to any other rule should not be made. Admittedly, the rules governing the appellants are 1976 rules and the provisions of para 206 P & T Manual Vol. IV which governs the Deputy Assistant Engineers Wireless do not apply to the cases of the appellants. Mr. Goswami has also contended that the decision of the Allahabad High Court in Parmanand Lal v. Union of India since relied on by the learned Counsel for the appellants is also not applicable in the facts and circumstances of the present appeals. The service of the Parmanand Lal was governed either by the said rules of 1976 or by service rules of 1981 which will be quite evident from the decision of the Allahabad High Court. Mr. Goswami has submitted that in 1992, the 1976 rules have been amended and as per the amended recruitment rules, the condition of passing the departmental examination to the post of Assistant Engineer for promotion has been deleted. Hence, for promotion from the promotion quota of 50%, the only condition prescribed now is that a Junior Engineer should complete 8 years of service in the grade. He has, therefore, submitted that no interference is called for against the decision of the Central Administrative Tribunal, Jaipur Bench and the appeals should be dismissed.

12. After considering the facts and circumstances of the case and the submissions made by the learned Counsel appearing for the parties, it appears to us that there is no express provision in 1976 rules which controls the inter se seniority between the candidates passing the departmental examination in the same year for being eligible to be promoted to the post of Assistant Engineer (Civil). It also appears to us that para 206 of P & T Manual, in terms are not applicable to the cadre of the service to which the appellants belong. The appellants are governed by different set of rules known as Post and Telegraph Civil Engineering (Civil Gazetted Officers) Recruitment Rules, 1976 and para 206 of P & T Manual governs the service of the Assistant Engineers Wireless. For promotion under the 1976 rules, the Junior Engineers (Civil) who have qualified in the departmental examination and have not rendered not less than 8 years of

service in the grade will be eligible for promotion. Such rules for promotion does not contain any provision for determining inter se seniority for the purpose of giving promotion earlier or later with reference to date of passing the qualifying examination. In our view, Mr. Goswami is justified in his contention that in the absence of any specific rule indicating inter se seniority to be observed with reference to the date of passing the qualifying examination and promotion to be given on the basis of such inter se seniority, general principle of length of service as a basis for promotion amongst eligible candidates with qualifying service should be made applicable. Para 1 of P & T Manual Vol. IV indicates that the general rules will apply equally to Officers of all the branches of service unless it is otherwise expressly specified to a particular branch of service. The special rules which are applicable to particular branches have been laid down in Chapter 5 to Chapter 8. Since the appellants are governed by the special rules known as Post and Telegraph Civil Engineer (Civil Gazetted Officers) Recruitment Rules, 1976, para 206 of P & T Manual is not applicable to the appellants. That apart, Para 206 of P & T Manual provides that persons who qualify in the examination in an earlier year would become senior to those who pass in subsequent year. Para 206 does not provide for any seniority to be given to a candidate passing in the same year but at different point of time. Hence, even under para 206 of P & T Manual a candidate though he has passed the qualifying test in the same year but at a later date availing of a further chance, cannot be bypassed for promotion by a candidate passing the same qualifying examination in the same year but at an earlier point of time even though the former candidate is otherwise senior in the cadre on the basis of length of service. We, therefore, find no merit in these appeals and the appeals are, therefore, dismissed without any order as to costs.