
(1971) 09 P&H CK 0019

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 428 of 1970

Satwant Singh

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 21-09-1971

Acts Referred:

Constitution of India, 1950 — Article 14
Punjab State Electricity Board Service of Engineers (Electrical/Civil) Recruitment Regulations, 1965 — Regulation 15, 15(1), 6, 6(a), 9

Citation : (1974) 1 ILR (P&H) 408

Hon'ble Judges : Harbans Singh, C.J; Bal Raj Tuli, J

Bench : Division Bench

Advocate : J.L. Gupta, for the Appellant; M.S. Pannu, for Respondent 2, M.R. Agnihotri, Suresh Aggarwal for Respondent 7, Inderjit Pipat and S.K. Pipat for Respondent 9, for the Respondent

Final Decision : Dismissed

Judgement

Bal Raj Tuli, J.—Satwant Singh Sandhu, Appellant passed his B. Sc. Engineering from the Punjabi University in 1964. After completing his studies he applied for a job to the various institutions and authorities and obtained employment in the Irrigation and Power Department of the Punjab Government on November 23, 1965. The Punjab State Electricity Board advertised for the posts of Assistant Engineers, Class II (Civil) and the Petitioner also applied for one of those posts. He was interviewed and selected. He joined his post on November 3, 1967.

2. The Punjab State Electricity Board framed regulations for the service of Engineers (Civil) known as the Punjab State Electricity Board Service of Engineers (Civil) Recruitment Regulations, 1965. Regulation 6, in so far as it is relevant, reads as under:

6. Recruitment to the Service shall be made by any of the methods indicated below as the Board may determine in each case:

(a) In case of posts of Assistant Engineers, Class II.

(i) By direct appointment.

(ii) By promotion as provided in Regulation 9.

(iii) By transfer of an officer already in the service of a Government or any other State Electricity Board or an Undertaking of Government.

In 1968, the Punjab State Electricity Board was in need of some experienced Civil Engineers and asked the Chief Engineer (Drainage) of the Punjab Irrigation Department to enquire from its temporary Engineers if any of them was willing to be transferred to the Service of the Board. The Irrigation Department furnished to the Secretary of the Board a list of 32 Engineers who had given their consent for such transfer by letter, dated May 16, 1968. The records of those Engineers were also, sent to the Board along with the letters. The Board selected 9 Engineers out of 32, whose names were sent, and requested the Chief Engineer (Drainage) to ask the selected candidates to submit their unqualified acceptance in writing for appointment as Assistant Engineers, Class II in the Service of the Board within a fortnight on the following terms and conditions:

(1) That they would get their own pay which would be fixed in the pay-scale of Assistant Engineer, Class II (Civil) in the Punjab State Electricity Board which is Rs. 350-25-450-30-600-EB-40-800, under the normal rules.

(2) Their seniority as Assistant Engineers, Class II (Civil) under the Punjab State Electricity Board would be fixed after deducting one year from their service as temporary Engineer.

3. Out of the nine candidates selected only two accepted the terms of the Board and joined service. They are Respondent 7 and 9. The Petitioner challenged the fixation of their seniority according to condition (2) of the offer set out above by filing a writ petition in this Court which was dismissed by a learned Single Judge, on April 17, 1970. The present appeal under Clause X of the Letters Patent is directed against that order.

4. The Regulation with regard to the seniority is Regulation 15 which reads as under:

15. The seniority of the members of the Service shall be determined as follows:

(1) PRIOR TO CONFIRMATION.-The seniority inter se of members of the Service in a particular class of post, viz., Assistant Engineers Class II, Assistant Engineers, Class I, Executive Engineers, Superintending Engineers and Chief Engineers shall be determined by the dates of their continuous appointments in that class.

Provided firstly, that in the case of members appointed by direct appointment, the order of merit determined by the Board shall not be disturbed so far as the seniority in the class of post to which direct appointment was made is concerned,

and persons appointed as a result of an earlier selection shall be senior to those appointed as a result of subsequent selection.

Provided, secondly, that in the case of two or more members appointed on the same date, seniority shall be determined as follows:

(a) in the order of the salaries allowed to them on such date, the higher paid being placed above the lower paid or if both the date of appointment and the salary be the same, in the order of age, the older being placed above the younger, and

(b) in the case of members of the Service appointed as

Assistant Engineers, Class II by promotion, according to their relative seniority in the subordinate class from which they were promoted, unless a member of a subordinate class is promoted earlier than another member of the subordinate class who is senior to him and the latter has been passed over on the score of unsuitability or ineligibility for promotion in which case the member of the subordinate class first promoted shall take rank in the higher class above such other member of the subordinate class, if and when the latter is promoted as Assistant Engineer, Class II.

Provided, thirdly, that a member of the Service who is appointed as Assistant Engineer, Class II, by direct appointment shall be senior to all members of the Service appointed as Assistant Engineers, Class II by promotion from the subordinate class, who may be appointed to the Service after the appointment of any member by direct appointment in the same batch of selection.

Provided, fourthly, that the seniority of a member of the Service appointed by transfer shall be determined by the Board on the merits of each case.

Provided, fifthly, that if a member of the Service is promoted temporarily to a post earlier than his senior, for reasons other than the inefficiency of the senior person or his ineligibility for promotion, they will rank inter se according to their relative seniority in the class from which they were promoted and the junior person thus promoted shall not be confirmed earlier than his senior in any case.

(2) After Confirmation.-Those who have been confirmed in a class, according to their respective dates of confirmation. Provided that where two or more members are confirmed on the same date, they shall retain the order in which they stood with respect to each other immediately prior to confirmation.

We are concerned in this case with the fourth proviso to Regulation 15(1). Two submissions were made before the learned Single Judge on behalf of the Appellant, namely, (1) that the manner in which Respondents 3 to 11 were sought to be brought into the Board or as a matter of fact Respondents No, 7 and 9 had been brought into the Service of the Board does not amount to their appointment to the Service of the Board "on transfer" within the meaning of that expression as used in Regulation 6(a)(iii) and in the fourth proviso to Regulation

15(1) and (2) if the first contention does not succeed, the fourth proviso to Regulation 15(1) is unconstitutional as being violative of Article 14 of the Constitution. Respondents 3 to 6, 8, 10 and 11 were unnecessarily made parties to the writ petition as well as the appeal as they never joined the Service of the Board. They have not chosen to appear, at the hearing of the appeal. Both the submissions made on behalf of the Appellant were rejected by the learned Single Judge and the learned Counsel for the Appellant has not pressed the first submission before us. The decision of the learned Single Judge on the first submission is, therefore, upheld.

5. The learned Counsel for the Appellant has argued that the fourth proviso to Regulation 15(1) is unconstitutional as being violative of Article 14 of the Constitution on the ground that no guidelines have been provided in the Regulation to determine the seniority of an officer appointed by the method of transfer and the power is capable of abuse. We are unable to agree. The case of appointment by transfer from another Electricity Board or Government Department is on a different footing from the cases of direct appointment and appointment by promotion. The appointment by transfer has to be made by negotiations with the officer to be "transferred and the Department or the Institution from where he is to be transferred. Naturally, such an officer likes to better his future prospects and at the same time not to lose the benefit of his past service. The impugned proviso gives the power to the Electricity Board to determine the seniority of a member of the Service appointed by transfer "on the merits of each case". These words afford a clear guide-line to the Board, that is, the matter of seniority will be determined on the merits of the case taking into consideration all the relevant facts, that is, the previous service of the officer appointed by transfer and the interest of the members of the Service already in the employment of the Board. It is pertinent to note that the Appellant did challenge that the term with regard to seniority offered to Respondents 7 and 9 was arbitrary or unfair or that the said Respondents did not deserve the seniority offered to them. No arguments on the merit of that term were addressed either to the learned Single Judge or to us in appeal. All that has been stated is that Respondents 7 and 9, having been appointed by transfer from the Government Department, could not be given priority over those members of the Service of the Board who were already in its employment.

That was a matter for consideration by the Board and as we have pointed out above, no officer would like to accept the service of the Board by transfer if his previous employment was not to be taken into consideration for the purposes of fixation of his pay, seniority, pension, leave or other allowances and privileges of service, etc. etc. An officer accepts service under a new employer by transfer only if the terms of appointment are more beneficial than the terms of his service from where he is transferred. As the learned Single Judge has observed, the power vested in the Electricity Board under proviso fourthly to Regulation 15(1) for determining the seniority of an appointee by transfer on the consideration of the merits of each case cannot be struck down as contended for by the learned

Counsel for the Appellant but any order passed under that proviso may be quashed if the Court is satisfied that it had not been passed on the merits of the case but was arbitrary or unfair or if successfully challenged on any other ground. The impugned proviso vests the power for fixation of the seniority, in the Board and not in any official against whom allegations of favouritism, etc., can be levelled. It has to be presumed that the Board will act fairly and reasonably in every case. The Appellant has also not alleged that the appointments of Respondents 7 and 9 were made with a view to favour them. As we have pointed out above, 32 Engineers originally offered to be transferred to the Service of the Board out of whom, only nine were selected and when the terms of employment were offered to those nine Engineers, only two of them accepted. This fact clearly shows that the terms of employment offered by the Board were by no means attractive or very favourable to the Engineers who had offered to join the Board's Service.

6. The learned Counsel for the Appellant lastly argued that the Electricity Board had no right or jurisdiction to appoint Respondents 7 and 9 from a date earlier than the one on which they joined its Service. Reliance is placed on the judgment of this Court in *K.D. Vasudeva and Ors. v. The Union of India and Ors.* 1971 S.L.R. 487. That case is clearly distinguishable. It related to the direct recruits to the Indian Administrative Service and the promotees from P.C.S. in whose case the condition precedent to their appointment to the Indian Administrative Service was that their names must be borne on the Select List prepared in accordance with the Indian Administrative Service (Appointment by Promotion) Regulations, 1955. Some of the promotees were assigned the year of allotment in which they were not on the Select List and in that context I held that their appointments to the I.A.S. could not be made from a date earlier than the one on which their names were brought on the Select List. On facts, therefore, that case is clearly distinguishable and the learned Counsel cannot derive any assistance there from. In the case of Respondents 7 and 9, their appointments were not made from an earlier date; they were only given the benefit of their past service which they had rendered in the Irrigation Department from where they were transferred to the Service of the Board. This submission of the learned Counsel for the Appellant is also repelled.

7. For the reasons given above, we find no merit in the submission of the learned Counsel for the Appellant that proviso fourthly to Regulation 15(1) is unconstitutional as being violative of Article 14 of the Constitution. The result is that this appeal fails and is dismissed with costs. Counsel's fee Rs. 100.00.