

PETITIONER:
U.P. STATE ELECTRICITY BOARD, LUCKNOW

Vs.

RESPONDENT:
P.L. KELKAR, ETC. ETC.

DATE OF JUDGMENT 07/05/1987

BENCH:
KHALID, V. (J)
BENCH:
KHALID, V. (J)
SEN, A.P. (J)

CITATION:
1987 AIR 1701 1987 SCR (3) 335
1987 SCC (3) 161 JT 1987 (2) 564
1987 SCALE (1) 1192

ACT:
U.P. Electricity Board Service of Engineers (Integration and Seniority) Regulations, 1976--Regulation 7(iv)(b)--Directly recruited Engineers--Seniority of--Advance increments allowed at the time of recruitment--Advantage of--Whether to be taken into account while determining the seniority.

HEADNOTE:

The first respondent in the Appeal, a Superintending Engineer, was directly recruited by the U.P. Electricity Board as an Assistant Engineer on October 7, 1964. He was given nine advance increments by reason of his varied experience in different governmental and other organisations, as against two advance increments given to others. The petitioners in the connected special leave petition also working as Superintending Engineers were Assistant Engineers in the Irrigation and Power Department and were placed on deputation with the Electricity Board by the State Government from the year 1960 onwards, and were confirmed as Assistant Engineers with effect from April 1, 1975. There was no seniority list of Assistant Engineers in the Board nor were there any rules of seniority at the time when the first respondent joined service.

The Electricity Board, in exercise of the power conferred under section 79(c) of the Electricity (Supply) Act, 1948 framed the U.P. Electricity Board Service of Engineers (Integration and Seniority) Regulations 1976. Regulation 7(iv)(b) provided that "while determining the seniority under clauses (ii) and (iii), Engineers directly recruited by the Board before the commencement of these regulations shall be given advantage of as many years of service as was the number of advance increments which were allowed to them at the time of recruitment by the Board." It also provided that "in doing so, no officer shall, however, be given advantage beyond the date of his initial regular appointment in the Government department or the other organisations."

The Board amended the regulation to remove certain anomalies and to give effect to the intention of the Board in framing the rule of seniority. The amended regulation substituted the words "U.P.

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Government or Central Government Department in consideration of the service for which advance increments were so allowed."

The Board, in accordance with the amended regulation, published the integrated seniority list in which the name of the first respondent figured at SI. No. 12 below other officers working as Superintending Engineers including the petitioners in the connected special leave petition.

The first respondent made a representation to the U.P. Services Tribunal challenging the amended regulation which was allowed. The Tribunal held that in terms of Regulation 7(iv)(b) of the Regulations, the first respondent having been granted seven advance increments was entitled to the benefit of as many years of service as the number of advance increments given to him at the time of his recruitment.

A batch of writ petitions seeking to quash the order of the Tribunal was filed in the High Court, which upheld the order of the Tribunal.

The Appeal by special leave by the Electricity Board, the connected Special Leave Petition of the aggrieved petitioners and the Writ Petition challenged the construction and application of Regulation 7(iv)(b).

Dismissing the Appeal, the Special Leave Petition and the Writ Petition, the Court

HELD: (1) Regulation 7(iv)(b) of the U.P. State Electricity Board of Service of Engineers (Integration and Seniority) Regulations, 1976 comprises of two parts. The first part referred to the advantage of advance increments. This advantage is based on special qualification and past experience and its consequent effect on seniority. The Regulation before its amendment, mentioned 'Government departments or other organisations' but after its amendment it was changed to 'in the U.P. or Central Government Department.' This change showed a deliberate attempt to deny its benefit to employees who came from service not comprised in either U.P. or Central Government Departments. It would be neither just nor fair to give a limited meaning to the second part of the amended regulation and thereby to deny its benefit to those Engineers who came from other departments or corporations etc. [343D-F; 344B]

2. The first part of the regulation does not speak of Engineers in the U.P. or Central Government Departments. It speaks only of Engineers

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directly recruited by the Board before the commencement of the regulation, which expression takes in, Engineers who came into the service of the Board from all sources. It would not be proper to completely eliminate Engineers who came from other sources from the benefit of the regulation giving a restricted meaning to the expression 'in doing so'. [343H; 344A]

3. The Board's advertisement in the instant case, inviting applications provided higher start for those having special qualifications and experience irrespective of the source of the service held by them. The second part of the regulation has, therefore, to be construed only as a proviso to the first part confining its scope to the employees of the U.P. as well as Central Government Departments and not to affect the generality as contemplated in the first part. [344B]

4. The Tribunal was right in holding, and the High Court in agreeing with it, that the second part was in the nature of proviso limited to persons who had been in service of either U.P. or other Central Government Departments and who

had been given advance increments in consideration of such service. [344G-H]

5. In the instant case, the first respondent was given nine increments taking into consideration his special qualification and experience as against two increments common to all, and thus, giving him seven extra increments. It is apparent that if these extra increments on the basis of his experience and special qualification did not carry with it seniority in the Board, he would not have either applied or accepted the job. It cannot be assumed that he would have joined the Board willingly as a new entrant. Under these circumstances, the Tribunal was right in holding that the first respondent should be deemed to have been appointed with effect from October 7, 1957, giving him the advantage of extra increments under the second part of Regulation 7(iv)(b). The seniority will have to be fixed in accordance with the number of increments excluding the original two increments given to the entrants in the Board both from U.P. and the Central Government Departments and from other sources. [344E-G; 345B]

JUDGMENT:

CIVIL ORIGINAL APPELLATE JURISDICTION: Civil Appeal No. 3092 of 1985 etc.

From the Judgment and Order dated 1.2.1985 of the Allahabad High Court in W.P. No. 1535 of 1972.

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S.N. Kacker, R.B. Mehrotra, Gopal Subramaniam, Mrs. S. Dixit, S. Balakrishnan and Ifran Ahmad for the Appellants.

T.S. Krishnamoorthi Iyer, Mukul Mudgal, S. Balakrishnan and Rajesh for the Respondents.

The Judgment of the Court was delivered by

KHALID, J. This appeal by special leave and the connected special leave petition and the writ petition directed against the judgment and order of the Allahabad High Court dated February 1, 1985 raise a question of construction of Regulation 7(iv)(b) of the U.P. State Electricity Board Service of Engineers (Integration & Seniority) Regulations, 1976, framed under s. 79(c) of the Electricity (Supply) Act, 1948. By the judgment, a Division Bench of the High Court has disallowed a batch of writ petitions seeking to quash an order of the U.P. Public Services Tribunal, Lucknow dated April 3, 1978. Allowing a representation made by respondent no. 1, presently working as Superintending Engineer in the U.P. State Electricity Board, the Tribunal held that in terms of Regulation 7(iv)(b) of the Regulations, respondent no. 1 having been granted seven advance increments was entitled to the benefit of as many years of service as the number of advance increments given to him at the time of his recruitment. The High Court has upheld the order of the Public Services Tribunal. As a result, respondent no.1 who figures at serial no. 12 in the integrated seniority list of Assistant Engineers (Civil) i.e. below other Superintending Engineers including the six petitioners in the connected special leave petition no. 8835/85, would take his place at serial no.1 in the seniority list i.e. above them.

The short question involved in this appeal is whether respondent no. 1 on a proper construction was entitled to the benefit of as many years of service-as the number of advance increments given to him at the time of his recruitment, as held by the Public Services Tribunal and the High Court. That turns on a construction of the amended Regulation 7(iv)(b) of the Regulations. Regulation 7(iv)(b) as

originally framed provided:

"While determining the seniority under clauses (ii) and (iii) above, Engineers directly recruited by the Board before the commencement of these regulations shall be given advantage of as many years of service as is the number of advance increments which were allowed to them at the time

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of recruitment by the Board. In doing so, no officer shall however be given advantage beyond the date of his initial regular appointment in the Government department or the other organisations."

On June 19, 1976 the Electricity Board in exercise of the powers under s. 79(c) of the Electricity (Supply) Act, 1948 amended Regulation 7(iv)(b) to remove certain anomalies and to give effect to the intention or the Board in framing the rule of seniority. It was felt by the Board that the expression 'other organisations' in the unamended Regulation 7(iv)(b) was susceptible of a construction that in the matter of determination of inter se seniority among directly recruited Engineers vis-a-vis Engineers on deputation with the Board from the Central Government or the State Government, the seniority of the Engineers had to be reckoned by giving them the benefit of as many years of service as the number of advance increments given to them by reason of their special experience or qualifications. The Board accordingly substituted the words 'U.P. or Central Government Department in consideration of the service for which advance increments were so allowed' for the words 'Government department or other organisations' in Regulation 7(iv)(b). The amended Regulation 7(iv)(b) now provides:

"While determining the seniority under clauses (ii) and (iii) above, Engineers directly recruited by the Board before the commencement of these regulations shall be given advantage of as many years of service as is the number of advance increments which were allowed to them at the time of recruitment by the Board. In doing so, no officer shall however be given advantage beyond the date of his initial regular appointment in the U.P. or Central Government Department in consideration of the service for which advance increments were so allowed."

Put very briefly, the essential facts are these. By a Government resolution dated March 30, 1959 all the officers of State Government i.e. Civil Engineers and the Electrical and Mechanical Engineers of the Irrigation & Power Department were transferred to the U.P. State Electricity Board constituted under s. 5 of the Electricity (Supply) Act, 1948 which came into existence on April 1, 1959. The services of these officers were placed on deputation with the Board. In 1964, the Electricity Board issued an advertisement calling for applications for appointment to 20 posts of Assistant Engineers (Civil). It was indicated that a higher start would be allowed to candidates with special qualifi-

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cations or experience and that the selected candidates were to become permanent on completion of three years' probation. Among those selected was respondent no. 1 P.L. Kelkar who by reason of his previous experience was given a higher start of Rs. 490 in the scale of Rs. 250-850 which meant that he was given nine advance increments as against two increments

given to others. Prior to his joining the Electricity Board, respondent no.1 had varied experience in different governmental and other organisations. After obtaining his degree in Bachelor of Engineering in the year 1957, he was recruited as a Junior Engineer, Public Works Department (Building) of the State of Madhya Pradesh on a scale of Rs. 150-300. In 1959 he was promoted as Assistant Engineer, Department of Housing, Madhya Pradesh on a scale of Rs. 250-600. Thereafter on June 9, 1960 he accepted appointment as Engineering Assistant Grade I in the Indian Refinery Limited, Guwahati, a Government of India undertaking, on a scale of Rs.300525 after leaving the services of the State Government of Madhya Pradesh. On May 10, 1961, he left Government service to take up employment in the private sector as Assistant Civil Engineer with the Associated Cement Company Limited, Bombay on an initial salary of Rs. 305 per month with annual increments. After the interviews of the candidates held on August 17, 1964, the Board in its letter of appointment dated August 22, 1964 offered respondent no. 1 two advance increments and stated that his seniority vis-a-vis the other candidates selected for appointment would be determined later. It seems that respondent no. 1 declined the offer and accordingly the Board by its letter dated August 29, 1964 decided to grant him a higher initial pay of Rs.490 i.e. nine advance increments because of his previous experience. It may be mentioned here that the Board also granted a higher initial pay of Rs.490 i.e. nine advance increments to Prakash Chandra Jain and Rs.430 i.e. seven advance increments to Naresh Chandra Gupta.

As against respondent no. 1 who had been directly recruited by the Board w.e.f. October 7, 1964 and is now working as a Superintending Engineer in the Electricity Board, the six petitioners in the connected special leave petition no. 8835/85 namely, V.N. Mathur, Mohd. Wasi Ahmad, Madan Mohan, Brajesh Sahai, Amba Prasad and O.P. Sharma who are also now working as Superintending Engineers in the Electricity Board were Assistant Engineers in the Irrigation & Power Department, were placed on deputation with the Board by the State Government from the year 1960 onwards. They were in due course confirmed as Assistant Engineers in the Irrigation & Power Department. It seems that respondent no. 1 as well as the petitioners were

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confirmed as Assistant Engineer w.e.f. April 1, 1975. There was no seniority list of Assistant Engineers in the Board nor any rules of seniority at the time when respondent no. 1 joined service. On April 29, 1976 the Board in exercise of the powers under s. 79(c) of the Electricity (Supply) Act, 1948 framed the U.P. State Electricity Board Service of Engineers (Integration & Seniority) Regulations, 1976. As already stated, the unamended Regulation 7(iv)(b) provided that while determining seniority, Engineers directly recruited by the Board before the commencement of the Regulations shall be given advantage of as many years of service as was the number of advance increments which were allowed to them at the time of their recruitment i.e. although respondent no. 1 was recruited on October 7, 1964, it should be deemed that he joined service of the Board on October 7, 1957. As a result of this representation the Board was constrained to amend Regulation 7(iv)(b) as indicated above. On May 19, 1977 the Board rejected the representation made by respondent no. 1. A few months thereafter i.e. on September 28, 1977 the Board in accordance with the amended Regulation 7(iv)(b) published the integrated seniority list in which the name of respondent no. 1 figures at serial no.

12 i.e. below other officers at present working as Superintending Engineers including the aforesaid petitioners in the connected special leave petition.

We however wish to mention that there is a controversy as to whether the petitioners in the connected special leave petition applied for and were not selected by the Board as Assistant Engineers (Civil) in 1968. Respondent no. 1 P.L. Kelkar has averred in paragraphs 7, 8 and 9 of the counter-affidavit that the aforesaid petitioners who were working on deputation with the Electricity Board did not consider it beneficial to leave their parent department viz. Irrigation & Power Department and join the services of the Board at the relevant time although the Board had again advertised the posts of Assistant Engineer (Civil) in the year 1965. He then goes on to aver in paragraph 9 that in order to build up the Civil Engineering cadre of the Board the Electricity Board readvertised the posts of Assistant Engineer (Civil) in the year 1968 and asserts that most of the petitioners applied for the post and the selection was made by a Selection Board on the basis of interview and record of past service and adds:

"However, all the petitioners except petitioners nos. 4 and 5 Panba Prasad and O.P. Sharma were not selected for the post of Assistant Engineer (Civil) as per the selection list published by the Board. The reason for the non-selection

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was obviously that they were not found fit for the post on the basis of their record and interview."

When this averment was brought to our notice by learned counsel for respondent no. 1 we called upon the Electricity Board to place before us the relevant records relating to the interviews held in the year 1968 and also to file a detailed affidavit. Learned counsel for the Electricity Board assured us that the Board will comply with the direction and place before the Court the relevant records and also file an affidavit. Learned counsel for the petitioners in the connected special leave petition however was baffled at the suggestion that the petitioners should have at all applied for the post of Assistant Engineer (Civil) advertised in the year 1968 when they were for a number of years actually functioning as officiating Executive Engineers in the Irrigation and Power Department. To set the matter at rest, we asked the parties to exchange affidavits on the subject although the hearing concluded on March 24, 1987 and the case was reserved for judgment. On April 3, 1987 M.S. Rizvi, Deputy Secretary, U.P. State Electricity Board has sworn an affidavit bringing the relevant facts on record. It is averted in paragraph 2 that the records in possession of the Board revealed that in July 1968 applications for the posts of Assistant Engineer (Civil) in the service of the U.P. State Electricity Board were invited and that interviews of the candidates who had applied in pursuance of the said advertisement were conducted during December 1968 and January 1969. In paragraph 3 the respective dates of promotion of the petitioners as Executive Engineers are given. In paragraph 4 however it is stated that the records relating to the applications in the interviews are not traceable inspite of the best efforts made by the senior officers of the Electricity Board.

In his rejoinder, respondent no. 1 P.L. Kelkar controverts the facts alleged. He submits that the affidavit filed by the Electricity Board does not state the facts correctly.

It is then stated:

"In fact in Petition No. 4888 (F) III/77 filed by Shri N.P. Malik & Ors. v. U.P. State Electricity Board it was averted in para 11 as follows:

"That respondents Nos. 2 to 15 applied against advertisement for selection of direct recruits as Civil Engineers in 1968. After an interview they were found to be unfit and were not selected for the substantive post. The list of 343

persons selected under s. 3.0. No. 2208-A/SEB/159-A/1968 dated 1.4.69 shows that they were not selected.

"In reply to the above submission in paragraph 11, it was averred by the Board before the Public Services Tribunal that the 'contents of paragraph 11 are admitted."

In view of the above reply, respondent no. 1 submits that it is wholly irrelevant whether the records are now available or not because the above affidavit in the Public Services Tribunal was made after perusing the records. We are rather surprised that the Electricity Board should file an affidavit by the Deputy Secretary stating that the relevant records of the interviews held in the year 1968 are not available unless they have been done away with.

We have given above the necessary back-ground facts for appreciating the dispute involved in these cases. A decision in these cases depends upon the correct interpretation of Regulation 7(iv)(b) before and after its amendment. The regulation comprises of two parts. The first part refers to the advantage of advance increments. This advantage is based on special qualification and past experience and its consequent effect on seniority. The grant of subsequent increments by the Board after joining its service is not governed by, this regulation.

It is the second part of the regulation that gives a little difficulty and it was on this that considerable arguments were addressed before us. Special reliance was placed upon the expression 'in doing so' occurring in the regulation. What is contended is that this expression indicates the manner in which the first part is to be construed. The regulation, before its amendment mentioned Government departments or other organisations but after its amendment it was changed to 'in the U.P. or Central Government Department'. This change shows a deliberate attempt to deny its benefit to employees who came from service not comprised in either U.P. or Central Government departments. We do not think that it would be either just or fair to give a limited meaning to the second part of the amended regulation and thereby to deny its benefit to those Engineers who came from other departments or corporations etc. It is necessary to note that the first part of the regulation does not speak of Engineers in the U.P. or the Central Government Departments. It speaks only of Engineers directly recruited by the Board before the commencement of this regulation, which expression takes in, Engineers who came into the service of the

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Board from all sources. That being so, it would not be proper to completely eliminate Engineers who came from other sources from the benefit of the regulation giving a restricted meaning to the expression 'in doing so'. It is useful to note that the Board's advertisement inviting applications provided higher start for those having special qualifications and experience irrespective of the source of

the service held by them. The second part of the regulation has therefore to be construed only as a proviso to the first part confining its scope to the employees of the U.P. as well as Central Government and not to affect the generality as contemplated in the first part.

The injustice that will be meted out to the Engineers who came from outside if the restricted meaning is given to the second part of the regulation, can be best illustrated by referring to the case of Shri P.L. Kelkar. He was appointed as a Junior Engineer, P.W.D., M.P. on July 19, 1957 and was promoted as Assistant Engineer and posted in Housing Department on May 20, 1959. On June 9, 1960 he was appointed Engineer Assistant Grade I in Indian Refinery Limited, Guwahati, after leaving the services of the M.P. Government. Thereafter, he was appointed as Assistant Engineer on May 10, 1961, in Associated Cement Company Limited, Bombay. It was while working in that company that he came across the advertisement made by the U.P. State Electricity Board. He applied pursuant to such advertisement. He was selected by the Board and appointed as per order dated August 22, 1964. He joined service on October 7, 1964. He was given nine increments taking into consideration his special qualification and experience. Two increments were common to all. Thus, the extra increments given to him were seven. It is apparent that if this extra increment on the basis of his experience and special qualification did not carry with it, seniority in the Board, he would not have either applied or accepted the job. It cannot be assumed that he would have joined the Board willingly as a new entrant. Under these circumstances, the Tribunal was justified in holding that he should be deemed to have been appointed w.e.f. October 7, 1957, instead of October 7, 1964, when he joined the service of the Board. The Tribunal according to us justifiably repelled the contention that he was not entitled to the above advantage under the second part of the Regulation 7(iv)(b). In our view, the Tribunal was justified also in holding that second part is in the nature of proviso limited to persons who had been in service of either U.P. or the Central Government Departments and who had been given advance increments in consideration of such service. The High Court considered the question in detail with reference

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to the regulation under consideration and agreed with the Tribunal in the construction put by it regarding the second part of the regulation. We have also given our anxious consideration to the regulation before and after the amendment. We also come to the conclusion that the interest of justice will be advanced by agreeing with the High Court and the Tribunal in the construction given by them to this regulation. In our judgment, therefore, seniority will have to be fixed in accordance with the number of increments excluding the original two increments given to the entrants in the Board both from the U.P. and the Central Government Departments and from other sources. We do not think it necessary to answer other aspects of the case for this judgment. We do not think any interference is called for with the judgment of the High Court. We confirm the judgment, dismiss the appeal, writ petition and the special leave petition, with no order as to costs.

N.P.V.
dismissed.

Appeal and Petitions dis-

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JUDIS