

PETITIONER:
SHRI BALBIR SINGH

Vs.

RESPONDENT:
STATE OF H.P. & ORS.

DATE OF JUDGMENT: 14/08/1999

BENCH:
R.P.Sethi, M.B.Shah

JUDGMENT:

SETHI, J.

The appellant was promoted, on adhoc basis, as Junior Engineer vide orders dated 21st July, 1986. He was promoted as Junior Engineer on officiating basis vide orders dated 2nd July, 1988. The Engineer-in-Chief Himachal Pradesh P.W.D. directed his reversion to the Electrician Grade-I, the post held by him before his promotion. Feeling aggrieved, the appellant approached the Himachal Pradesh Administrative Tribunal, Shimla (hereinafter referred to as "the Tribunal") for quashing the impugned orders. The claim of the appellant was resisted by the respondents on the ground that his promotion was erroneously made by way of reservation for a Scheduled Tribe candidate under the mistaken belief that such reservation was permissible for promotion from Electrician Grade-I to the cadre of Junior Engineer (Electrical). After finding that no reservation was permissible under the Rules and Instructions relating to reservation of Scheduled Castes/Tribes, the order was rectified and the appellant was reverted to his original post. The petition was dismissed by the Tribunal vide the impugned order herein, hence this appeal. It is admitted that promotions and appointments of Electrician Grade-I to the post of Junior Engineer (Electrical) are regulated by the Himachal Pradesh P.W.D. Subordinate Services Class-II Junior Engineer (Electrical) (Technical) Recruitment Rules, 1979 (hereinafter referred to as "the Rules"). The aforesaid Rules provide that 90% of the total posts of the cadre are to be filled by direct recruitment and 10% by way of promotion as prescribed under Rule 4 of the Rules. According to the respondents reservation roster is not required to be applied in promotion posts where the element of direct recruitment exceeds 66-2/3%. The appellant was alleged to be not entitled to promotion on the basis of reservation of the post for a Scheduled Tribe candidate. The Office Order dated 21st July, 1986 shows that the appellant was promoted as Junior Engineer in the pay-scale of Rs.700-25-850/30-1000/40-1200 purely on adhoc basis with effect from the date of his joining the said post. The Office Order dated 27th September, 1987 indicates that the appellant along with others was promoted on officiating basis until further orders with immediate effect in the public interest. One Shri B.L. Walia, Junior Engineer filed a writ petition against the promotion of the appellant which was seriously contested by the respondent-State. By way of objections filed in the High Court, the promotion of

the appellant was justified by stating: "As already stated above, the respondent No.3 was working as Electrician Grade I and possessed 2 years diploma I.T.I. after Matriculation and as such he was eligible to be considered for the post of Junior Engineer (Elect.) under sub.clause C of Rule 4(b) of the Rules known as Subordinate Services Class III Junior Engineer (Elect.) Technical Recruitment Rules, 1979. The plea of the petitioner that respondent No.3 is not eligible to be promoted is totally wrong and is not sustainable. It may also be relevant to state here that respondent No.3 stands confirmed as Electrician Grade I w.e.f. 28.11.85 by an order dated 17.12.1985 till the date of promotion of petitioner as Junior Engineer Electrician, Seven posts of Junior Engineer (Elect.) were filled up by promotion meant for various categories including Electrician, Grade I for 10% promotion quota. As per Govt. instructions Grade I out of seven posts, one post was to be filled up from the Schedule tribe candidate, but the post meant for Schedule Tribe was not filled up due to incomplete records in the office of the respondent No.2. Respondent No.3 Sh.Balbir Singh actually belongs to this category and on a representation from him, the whole matter was re- considered and finding that respondent No.3 was wrongly deprived of his promotion due to incomplete records, at the relevant time, he was promoted to the post of Junior Engineer Electrical and the petitioner who was the junior-most promotee and was holding ad hoc promotion was reverted."

The writ petition challenging the promotion of the appellant was disposed of by the High Court of Himachal Pradesh vide order dated 28th August, 1988 by holding: "In view of the affidavit-in-reply as well in view of the statement made by the learned Deputy Advocate General to the effect that there is only one common seniority list of all the Electricians Grade-I, there is no substance in this writ petition and it is summarily rejected."

It is surprising to note that prior to the disposal of the writ petition filed by Shri Walia, the appellant herein was reverted vide order dated 2.7.1988 allegedly on the ground that he had been promoted erroneously under a mistaken belief. The record reveals that the respondent-State had taken a conscious decision of promoting the appellant and was, therefore, not justified in reverting him allegedly on the ground of non-availability of reservation as per instructions of the Government. The respondents cannot be permitted to blow hot and cold in the same breath inasmuch as in the petition filed by Mr.Walia they justified the promotion of the appellant by stating that he was deprived of his promotion erroneously and when the question of his promotion came, it took the same plea of erroneously promoting him under mistaken belief. It is on record that till the promotion of the appellant as Junior Engineer seven such posts had been filled up by promotion meant for various categories including Electrical Grade-I from 10% promotion quota. He had been promoted upon his representation which was duly considered and appropriate orders passed in his favour. It is conceded before us that after his promotion the appellant has continuously been holding the post of the Junior Engineer. The Tribunal appears to have misdirected itself by not taking note of the relevant facts of the case and the stand of the Government justifying the promotion of the appellant which was upheld

by the High Court in the writ petition filed against him. Under the peculiar circumstances of this case, as noticed hereinabove, the appeal is allowed by setting aside the orders of the Tribunal dated 11.8.1989 and the orders of the respondent-State dated 2.7.1988 by which the appellant was reverted to the post of Electrician Grade-I. No order as to costs.

JUDIS