

PETITIONER:
CHIEF ENGINEER AND SECRETARY, ENGINEERING DEPARTMENT, U.T. CH

Vs.

RESPONDENT:
KAMLESH BABOO ETC. ETC.

DATE OF JUDGMENT 25/02/1993

BENCH:
KULDIP SINGH (J)
BENCH:
KULDIP SINGH (J)
KASLIWAL, N.M. (J)

CITATION:
1993 SCR (2) 121 1993 SCC Supl. (2) 628
JT 1993 Supl. 25 1993 SCALE (1) 716

ACT:
Civil Services :
Punjab Service of Engineers Class I (Buildings and Roads Branch) Rules, 1960-Rules 6(1), 8, 12-Post of Executive Engineer, Class I-Promotion and Seniority-Determination-1.1.1985 eligibility date for promotion-Promotion w.e.f. 21.1.1986-Whether legal.

HEADNOTE:
The respondent in C.A. No.182 of 1993 joined service as Section Officer under the appellant on 8.3.1971. On 29.12.1976 he was promoted to the post of Sub Divisional Engineer and was confirmed on 13.8.1985. With effect from 21.1.1986, the respondent was promoted as Executive Engineer (Civil).

The service particulars of the respondent in C.A. No.183 of 1993 were identical.

The respondents approached the Central Administrative Tribunal to determine their seniority in the cadre of Executive Engineers from the date of eligibility, i.e. 1.1.1985 and not from 21.1.1986.

The Tribunal allowed the applications of the respondents, against which the present appeals were filed by the Administration.

Allowing the appeals, this Court,

HELD:1.01. The selection to the post of Executive Engineer was to be done by following the procedure laid down under Rule 8 of the Punjab Service of Engineers, Class I (Buildings and Roads Branch) Rules 1960. Eligibility under Rule 6(b) of the Rules by itself does not give a right to a member of Class 11 service to be promoted to the post of Executive Engineer in Class I service. The promotion has to be made in accordance with the procedure laid down under Rule 8 of the Rules. No member of Class 11 service can claim

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promotion to the post of Executive Engineer on the ground of eligibility alone. Unless a Class II officer has been selected in accordance with Rule 8 of the Rules he cannot be promoted to the post of Executive Engineer. [125C-E]

1.02. The question of assigning seniority in Class I service only arises after a Class 11 officer has been

selected and appointed to the said service. The seniority in class I is determined under Rule 12 of the Rules, keeping in view the date of appointment as a result of selection under Rule 8 of the Rules. [125F]

1.03. The respondents in these appeals were appointed to the post of Executive Engineer, as a result of selection held under Rule 8 of the Rules, with effect from January 21, 1986. Their seniority has to be determined in Class I service keeping in view the date of their appointments as January 21, 1986. [125F-G]

1.04 The Tribunal grossly erred in directing the Chandigarh Administration to give seniority to the Respondents from the date of their eligibility. The respondents can neither be given the date of appointment as January 1, 1985 nor their seniority fixed from that date. The directions of the Tribunal in this respect are patently violative of the Rules. [125G-H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 182 and 183 of 1993.

From the Judgment and Order dated 6.6.86 of the Central Administrative Tribunal, Chandigarh in O.A./T.A. Nos.49 & 102 of 1986.

Raj Birbal for the Appellant.

Rajinder Sachher, Mahabir Singh and A.K Mahajan for the Respondents.

The Judgment of the Court was delivered by KULDIP SINGH, J. Kamlesh Baboo and V.K. Bhardwaj were promoted as Executive Engineer (Civil) with effect from January 21, 1986 in the Engineering Department of the Chandigarh Administration. The promotion was made on the basis of merit and suitability as determined under the provisions of the Punjab Service of Engineers, Class I (Buildings and Road Branch) Rules, 1960 (Rules) as applicable to the Chandigarh Administration. Both of them approached the Central Administrative

123 Tribunal, Chandigarh Bench seeking a direction to the effect that their 'seniority in the cadre of Executive Engineers be determined from the date when they became eligible to be considered for promotion under the Rules. In other words, they claimed January 1, 1985 the eligibility date as the date of their promotion to the post of Executive Engineer instead of January 21, 1986 when they were actually promoted. The Tribunal by its order dated June 6, 1986 granted the relief asked for by Kamlesh Baboo and V.K. Bhardwaj in the following terms:

"In view of the above discussion, we direct that the applicant, who was promoted as Executive Engineer from 21.1.1986 (vide Office Order dated 20.1.1986 and 2.5.1986) shall be continued as Executive Engineer even if the approval of the U.P.S.C. is not received within six months from the date of his promotion. For the purposes of seniority, the applicant shall be considered from the date when he became eligible. The promotion of the applicant as Executive Engineer, shall however, be subject to the approval by the U.P.S.C. and without prejudice to the decision of the competent court in the matter of seniority, which is in dispute."

These two appeals by the Chandigarh Administration are against the order of the Tribunal.

Kamlesh Baboo joined service as Section Officer under the Chandigarh Administration on March 8, 1971. He was promoted to the post of Sub Divisional Engineer on December 29, 1976 and was confirmed as such on August 13, 1985. The service particulars of V.K. Bhardwaj are identical.

The conditions of service of the respondents are governed by the Rules. Rules 6(b) and 8 (1)(3)(4)(8)(9)(10)(11) which are relevant are reproduced hereunder:

"6 (b) in the case of an appointment by promotion from Class 11 Service has 8 years completed service, in that class and has passed the departmental examination, as provided in rule 15;

8(1) A Committee consisting of the Chairman of the Public
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Service Commission or where the Chairman is unable to attend, any other member of the Commission representing it, the Secretary, P.W.D. (Buildings and Roads Branch), and the Chief Engineers, Punjab, P.W.D. Buildings and Roads Branch, shall be constituted.

(3) The Committee shall meet at intervals, ordinarily not exceeding one year, and consider the cases of all eligible officers for promotion to the senior scale of the Service, as on the first day of January of that year.

(4) The Committee shall prepare a list of officers suitable for promotion to the senior scale of the Service. The selection for inclusion in such list shall be based on merit and suitability in all respects with due regard to seniority.

(8) The list prepared or revised in accordance with subrules (4), (5) and (6) shall then be forwarded to the Commission by Government along with

(i) the records of all officers included in the list;

(ii) records of all officers proposed to be superseded as a result of the recommendations made by the Committee;

(iii) the reasons, if any, recorded by the Committee for the proposed supersession of any officer;

(iv) the observations, if any of the State Government on the recommendation of the Committee.

(9) The Commission shall consider the list prepared by the Committee along with other documents received from the State Government and, unless it considers any change necessary, approve the list.

(10) If the Commission considers it necessary to make any, changes in the list received from Government, the 'Commission shall make the changes it proposes and forward the list it considers suitable to the State Government.

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(11) Appointments to the Service shall be made by Government from this list in the order in which names have been placed by the

Commission."

It is not disputed that the respondents in these two appeals completed eight years of service in Class 11 cadre, by the end of December 1984 and as such they were eligible to be considered for promotion to the post of Executive Engineer on January 1, 1985. The selection to the post of Executive Engineer was to be done by following the procedure laid down under Rule 8 of the Rules, reproduced above. Rule 8 of the Rules envisages a Selection Committee presided over by Chairman/Member of the Public Service Commission. The Committee considers the cases of eligible officers on the basis of merit and suitability, the list of the selected officers is sent to the Commission for final approval and thereafter the appointments are made out of the approved list in accordance with the merit assigned therein. It is thus obvious that eligibility under Rule 6(b) of the Rules by, itself does not give a right to a member of Class II service to be promoted to the post of Executive Engineer in Class I service. The promotion has to be made in accordance with the procedure laid down under Rule 8 of the Rules. No member of Class 11 service can claim promotion to the post of Executive Engineer on the ground of eligibility alone. Unless a Class 11 officer has been selected in accordance with Rule 8 of the Rules he cannot be promoted to the post of Executive Engineer. The question of Assigning seniority in Class I service only arises after a Class 11 officer has been selected and appointed to the said service. The seniority in class I is determined under Rule 12 of the Rules, keeping in view the date of appointment as a result of selection under Rule 8 of the Rules. Both the respondents in these appeals were appointed to the post of Executive Engineer, as a result of selection held under Rule 8 of the Rules, with effect from January 21, 1986. Their seniority has to be determined in class I service keeping in view the date of their appointments as January 21, 1986. The Tribunal grossly erred in directing the Chandigarh Administration to give seniority to the respondents from the date of their eligibility. The respondents can neither be given the date of appointment as January 1, 1985 nor their seniority fixed from that date. The directions of the Tribunal in this respect are patently violative of the Rules and cannot be sustained. Even otherwise both Kamlesh Baboo and V.K. Bhardwaj were working as

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Sub Divisional Engineer on January 1, 1985 and as such treating them to have been appointed to Class I service from that date and giving them benefit towards seniority on that basis would be wholly erroneous.

The question as to whether the deputationists from Punjab and Haryana should be permitted to continue to serve the Chandigarh Administration has no relevance to the controversy involved in these appeals. That is a matter of policy between the States of Punjab, Haryana and Union Territory of Chandigarh. The Tribunal was wholly unjustified in seeking support from the non-existent fact that because of the presence of many deputationists the respondents in these appeals were not being considered for promotion. As a matter of fact the respondents got their promotion at the earliest possible opportunity. They became eligible on January 1, 1985 and thereafter within a period of one year the procedure under Rule 8 was completed and they were promoted with effect from January 21, 1986.

We allow the appeals, set aside the order of the Tribunal dated June 6, 1986 and dismiss the applications filed by respondents Kamlesh Baboo and V.K. Bhardwaj before the

Tribunal. No costs.
V.P.R.
Appeals allowed.
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JUDIS