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A.N. SEHGAL AND ORS.

v.

RAJE RAM SHEORAN AND ORS.

MARCH 31, 1995

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[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

*Contempt*

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*Fixation of seniority—Directions given by Supreme Court—Inter se fitment of direct recruits and promotees done in violation of directions given—Held there was no sincerity on part of authorities to implement the directions—Held implementation was designed to favour promotees—Directions given for rectification of illegality.*

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**This Court in *A.N. Sehgal & Ors. v. Raje Ram Sheoran & Ors.*, [1992] Supp. 1 SCC 304 interpreted the Haryana Service Engineers Class-I P.W.D. (Roads and Buildings Branch) Rules, 1960 and gave directions regarding reckoning of seniority between direct recruits and promotees that: (i) the promotees from Class II service shall not exceed 50 per cent of the posts in the service and the remaining 50 per cent shall be kept open only to the Assistant Executive Engineers who were directly recruited but later were found eligible and fit for promotion as Executive Engineers; and (ii) the promotees occupying the post within 50% quota of the direct recruits acquired no right to the post and should yield place to the direct recruit, though promoted later to him, to the senior scale posts, i.e. Executive Engineer, Superintending Engineer and Chief Engineer. The respondents were directed to comply with these directions and determine the cadre strength accordingly. On their failure to do so the present contempt petition has been filed.**

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Disposing the petition, this Court

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**HELD:** Even after the contempt proceedings, while notice was issued, though time was repeatedly taken, the respondent have done the exercise at a snail's pace. These facts clearly show that the respondents have deliberately delayed in finalisation of seniority list to benefit the existing promotees till they retired from the service. This impression gets fortification from a cursory glance at the mandatory time frame fixed in the

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judgment, orders passed from time to time and final list prepared by the respondents. Even then the fitment itself has not been done as per the specific and unambiguous findings recorded and directions given. It is clear from the fitment made *vis-a-vis* promotees and direct recruits as is evident from the seniority list prepared by the respondents. The fitment given to direct recruits has gone directly in the teeth of the direction given by this Court. There is no sincerity on the part of the respondents in implementation of Rules as directed by this Court. This conduct is wilful and the impugned action was designedly done to give a twist to the orders so as to favour the promotees for whom the respondents already fought for but lost. The respondents are directed to rectify the illegality within one week from the date of the order. [107-C, D, G, 108-D, E]

CIVIL APPELLATE JURISDICTION : Contempt Petition No. 39/92.

IN

Civil Appeal No. 4094 of 1984.

From the Judgment and Order dated 9.7.84 of the Punjab & Haryana High Court in C.M. No. 1458/83 in C.W.P. No. 5371 of 1981.

Janendra Lal for the Appellants.

Madhava Reddy, Mahabir Singh and S.C. Patel for the Respondents.

Gopal Subramaniam, Ms. Nisha Bagchi, Indu Malhotra for the State intervenor-in-person.

The following Order of the Court was delivered :

This Court in *A.N. Sehgal & Ors. v. Raje Ram Sheoran & Others*, [1992] Supp 1 SCC 304, while interpreting the Haryana Service of Engineers, Class I, PWD (Roads and Buildings Branch) Rules, 1960, held that:-

"On a conjoint reading of Rules 12(3) and 12(5) it is clear that the year of allotment of the Assistant Executive Engineer in the post of Executive Engineer, shall be the calendar year in which the order of appointment as Assistant Executive Engineer had been

A made. Thus his seniority as Executive Engineer, by fiction of law, would relate back to his date of initial appointment as Assistant Executive Engineer and in juxtaposition to Class II officers' seniority as Executive Engineer is unalterable. The date of the seniority of Mr. R.R. Sheoran thus shall be August 30, 1971. His seniority as Executive Engineer shall accordingly be reckoned."

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While Mr. R.S. Sheoran's seniority as Executive Engineer has determined as above, with effect from August 30, 1971, as regards the promotees, this Court held that:-

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"A reading thereof clearly manifests the legislative animation, namely, that the promotees from Class II service shall not exceed 50 per cent of the posts in the service. The word 'shall' indicates that it is mandatory that the remaining 50 per cent shall be kept open only to the Assistant Executive Engineers who were directly recruited but later were found eligible and fit for promotion as Executive Engineers."

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In para 21 of the judgment, as to what a combined reading of Rule 5(2) read with Rule 12(6) and the operation of Sub-rule (3) to (5) of Rule 12 would bring about was made clear, namely, "the direct recruit is a member of the service of Executive Engineer from the date of year of allotment as an Assistant Executive Engineer. The result was that the promotee occupying the post within 50% quota of the direct recruits acquired no right to the post and should yield place to the direct recruit, though promoted later to him, to the senior scale posts, i.e. Executive Engineer, Superintending Engineer and Chief Engineer."

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It was also held that:

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"A direct recruit on promotion with his quota, though later to the promotee is interposed in between the periods and interjects the promotee's seniority; snaps the links in the chain of continuity and steals a march over the approved promotee probationer."

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"Mere officiating appointment by promotion to a cadre post outside the quota continuous officiation therein and declaration of probation would not clothe the promotee with any right to claim seniority over the direct recruits."

On that premise, appropriate directions have been given in paragraph 26, namely, to determine the cadre strength of the service under Rule 3(2) read with Appendix 'A' and to allot the posts in each year of allotment to the promotees and direct recruits 50:50 as contemplated under Rule 12 read with 5(2) and to issue appointment orders on substantive basis in the respective posts.

This Court on April 5, 1991, while delivering two judgments ordered that the respondents should comply with the directions within four months from the date of the receipt of the judgment. The contempt application was filed on 9.1.92. No time for extension was sought for. Even after the contempt proceedings, while notice was issued, though time was repeatedly taken, the respondent have done the exercise at a snail's pace. These facts clearly impress us that the respondents have deliberately delayed in finalisation of seniority list to benefit the existing promotees till they retired from the service. This impression gets fortification from a cursory glance at the mandatory time frame fixed in the judgment, orders passed from time to time and final list prepared by the respondents. Even then the fitment itself has not been done as per the specific and unambiguous findings recorded and directions contained therein. It is clear from the fitment made *vis-a-vis* promotees and direct recruits as is evident from the seniority list prepared by the respondents. Take for instance, the promotion of direct recruit, M.K. Aggarwal at Sl.No. 22 was effected in the year 1962. Up to January 11, 1962, no direct recruit was available. He was appointed for the first time on 11.1.62. As stated earlier, he is entitled to be treated as Executive Engineer with effect from 1962 though he was promoted after putting up 5 years service i.e. 1967 as 10 posts by then were available to the direct recruits. This is only fictional since, admittedly, 21 posts were occupied by the promotees. As a result of the operation of Rule 12, promotees are entitled to occupy only 10 or 11 posts. Therefore, notionally he was required to be treated and that he should be deemed to have been promoted with effect from 11.1.62 as Executive Engineer. Instead they have given him the fitment in 1966 as year of allotment. It has gone directly in the teeth of the direction given by this Court. R.A. Goel, although promoted earlier, he should have been found to be available only later to M.K. Agrawal, since all the promotees enmass occupied places in excess of their quota, namely, 10 posts.

Similarly, *vis-a-vis* the petitioner Sheoran in this contempt case and

- A R.K. Aggarwal standing at Sl. No. 39 would also demonstrate the deliberate action on the part of the respondents in repeating the same illegal fitment. It is already seen that Sheoran's seniority was determined with effect from 30.8.71 even as Executive Engineer. Here the reason was that 5 years' service was relaxed to all promotees and direct recruits and 50% quota to the direct recruits remained unfilled. But his seniority as Executive Engineer is given as October 8, 1973. Equally, while making *inter se* fitment of promotees and direct recruits, year of allotment has been designedly given to R.K. Agrawal as 1966. He was given fitment with effect from 1.1.72. But the year of allotment was 1966 in which year the promotees were in excess of 50% quota and pushed Sheoran to Sl. No. 44. The availability of posts within the quota of the promotees was admittedly to be 1.1.72. While the year of allotment as Executive Engineer was given to Sheoran as 8.10.73 but to Aggarwal, it was given as July 10, 1972 which obviously is illegal and was quite contrary to the Rules as interpreted by this Court in the judgment. This action shows that there is no sincerity on the part of the respondents in implementation of the Rules as directed by this Court. This conduct is wilful and the impugned action was designedly done to give a twist to the orders so as to favour the promotees for whom the respondents already fought for but lost.

- E Therefore, the respondents are directed to rectify this illegality as pointed out earlier and place the rectified order within one week. The concerned officer should be present on that day to receive appropriate orders on contempt.

Post the matter on 7.4.95.

T.N.A.

Petition disposed of.