A VIJAY SINGH DEORA ETC. ETC.

v.

STATE OF RAJASTHAN AND ANR. ETC. ETC.

OCTOBER 3, 1996

B [K. RAMASWAMY AND K. VENKATASWAMI, JJ.]

Service Law :

Rajasthan Engineering Subordinate Service (Irrigation Branch) Rules, C *1967 :*

Rules 2(1), 6 and 27—Inter se seniority of Junior Engineers called Group A Officers, Group B Officers and Group C Officers—Held, seniority of Graduate Junior Engineers i.e. Group A Officers, appointed to the posts D *prior to 30.6.1978 should be reckoned from the respective dates of either initial appointment on the date availability of substantive vacancy whichever is later—Group B Officers who were appointed subsequently to 30.6.1978 and obtained degree qualifications thereafter would get into the quota prescribed for direct recruitment of Graduate Engineers from the respective dates on which they obtained degree qualification or on which substantive vacancy* E *become available, whichever is later—Seniority of Group C Officers would be reckoned either from the actual date of their respective appointment against substantive vacancy or from the date when the substantive vacancies became available to them whichever occurred later since they were appointed by transfer to the Junior Engineers degree holders quota—Eligibility for promo-* F *tion of Group A Officers as Assistant Engineers would be determined from the dates the substantive vacancies became available for them though they might have been appointed earlier on temporary basis—Their qualifying service should be counted accordingly—Qualifying service of Group B Officers would be reckoned from their respective dates of coming into substantive vacancies—If there is short-fall in qualifying service, the balance period be* G *taken into consideration from their one third service rendered as diploma holder Junior Engineers—Seniority of Group C Officers would be reckoned from the date of appointment by transfer or from the date of availability of substantive vacancy whichever is later—If there is any shortfall in qualifying service, one third of service rendered by them as Sub Engineers would be* H *taken into account only for making good the balance of qualifying service—In*

case even one third of service as Sub Engineer was not sufficient as qualifying service, they would not become qualified for promotion.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 119 of 1994 Etc.

From the Judgment and Order dated 4.9.91 of the Rajasthan High Court in D.B.C.M.P. No. 117 of 1991 in D.B.C.W.P. No. 1711 of 1989.

Tapas Ray, Yogeshwar Prasad, M.N. Krishnamani, Sushil Kr. Jain, A.P. Dhamija, Aruneshwar Gupta, Pradeep Agrawal, Mrs. Rachna Gupta, P.K. Bajaj and S.R. Setia for the appearing parties.

The following Order of the Court was delivered :

Delay condoned.

Leave granted in the special leave petition.

I.As. are allowed.

These appeals by special leave arises from the judgment of the Division Bench of the Rajasthan High Court dated July 29, 1991 made in W.P. Nos. 4983/89 and batch. Due to long drawn history of litigation and frequent amendments made to rules, there is lot of confusion in this case. But for the purpose of disposal of these appeals, it is not necessary to traverse the whole gamut of litigation. Suffice it to state that there are three sets of officers in Rajasthan Civil Engineering Subordinate Service (Irrigation Branch). Graduate Junior Engineers appointed temporarily prior to June 30, 1978 drawn from the Department of Manpower are called Group A officers. Sub-Engineers, who are diploma-holders, were appointed by advertisement. Thereafter, they acquired degree of Engineering, either B.E. or A.M.I.E. and are called Group-B Officers. Sub-Engineers with diploma who were appointed substantively in the lower cadre, on acquiring degree qualifications were appointed by transfer to the cadre of Junior Engineers and they are called Group-C Officers, Rules prescribe 20% of the quota for direct recruitment of Graduate Junior Engineers. Earlier, Junior Engineer Graduates and Junior Engineers Diploma-holders were two distinct cadres but later, by amendment dated December 7, 1985, the distinction was done away. The question relates to integration and fixation of seniority

among these three sets of officers for the purpose of promotion to the cadre of Assistant Engineers which is the next channel of promotion.

The Rajasthan Engineering Subordinate Service (Irrigation Branch) Rules, 1967 issued under proviso to Article 309 of the Constitution are applicable to this service. Group-A and Group-B officers came to be appointed under Rule 27 of the Rules. In other words, they were not appointed in accordance with Rule 6 of the Rules. Group-A officers were temporarily appointed prior to June 30, 1978 but were fully qualified for appointment. Group B and C officers were appointed subsequent to Group A officers. Group C officers were appointed by transfer into quota of Graduate Junior Engineers.

Rule 2(i) defines "substantive appointment" to mean "an appointment made under the provisions of these Rules to a substantive vacancy after the selection by any of the methods of recruitment prescribed under these Rules and includes an appointment on probation or as a probationer followed by confirmation on the completion of the probationary period". Rule 6 prescribes the method of recruitment. It envisages that recruitment to the service, after the commencement of the Rules, shall be made by the following methods in the proportion as is indicated in Column 3 of the Schedule (a) direct recruitment in accordance with Part IV of the Rules, and (b) promotion in accordance with Part I of the Rule. Sub-rule (1A) which was brought by amendment dated December 7, 1985 reads as under:

> "(1A) If a Diploma Holder Junior Engineer attains the qualification of B.E. (Civil/Mechanical/Electrical), or AMIE, he shall be entitled on his application and subject to availability of vacancy, to be appointed as Junior Engineer (Degree Holder), by transfer against the quota of direct recruitment but in that case his seniority amongst the Junior Engineers (Degree Holders) shall be determined from the date of occurrence of vacancy against which such Junior Engineer has been appointed on the post of Junior Engineer (Degree Holder) and one third of his previous experience shall be counted as experience on the post of Junior Engineer for the purpose of promotion to the next higher post."

The crux of the question is integration of the three groups of officers.

What will be the method or procedure for the purpose of determination of *inter se* seniority? Undoubtedly, the appellant and his companions were appointed temporarily under Rule 27 prior to June 30, 1978 and orders do indicate that they were appointed subject to the availability of the regularly recruited candidates in accordance with the Rules. Admitted position is that there was no regular recruitment made by the Chief Engineer in accordance with the Rules under Rule 6(a). The appointments temporarily made are now sought to be regularised by a screening committee appointed under the Rules in that behalf. Admittedly, the screening committee found them eligible for appointment as was done in the year 1984. The question is : whether the graduate qualified Engineers appointed temporarily in the initial appointment could be treated to have been substantively appointed to the post of Junior Engineers from the date of initial appointment after screening? In this behalf, one should not lose sight of the hard reality, namely, the Graduate Engineers Group-A officers have been substantively discharging the duties of the posts right from the date of their appointment. It is settled rule that a temporary appointee has no right to the post nor does he get seniority unless regularly recruited in accordance with the rules and seniority would be reckoned from the date of substantive appointment when he started discharging the duty of the post. If appointments were made *de hors* the Rules, the entire length of service was required to be treated as fortuitous and excluded. If appointments are made after due consideration and according to the procedure, though on temporary basis, the seniority would start from the date of appointment. But when recruitment was temporarily made and appointments are regularised later the question would be : from what date their seniority would be reckoned? Admittedly, on appointment made prior to 30.6.1978, Group A officers started with 10 advance increments from the inception. Group-B officers were appointed with diploma qualification and later as Group-A officers and acquired degree qualification subsequently. Group-C officers on acquiring degree qualification were appointed on application by transfer later to 30.6.1978. In other words, unqualified became qualified subsequent to the appointment of qualified graduates. The question is : whether Group-A officers, when appointed as per rules were made juniors to Groups B & C officers due to delay and laches on the part of Government in getting them screened and appointed regularly? Necessarily, therefore, when they were screened by the committee, all those found eligible for confirmation in the

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A temporary appointments made prior to June 30, 1978, must, of necessity and under equity and justice, be construed to have been regularly appointed to the post in the above factual backdrop. Since there was no recruitment made by the Chief Engineer, the qualified Group A officers need to be treated as appointed on regular basis. Otherwise, unqualified
B officers would become senior to the qualified graduates at the inception. The Chief Engineer necessarily, therefore, has to find out the following method in determining the *inter se* seniority of the three groups of officers. First, it is to be ascertained as to how many substantive vacancies are available within the quota of 20% of the direct recruit Graduate Junior
C Engineers. Seniority of the Graduate Engineers appointed, i.e., Group A Officers, to the posts of the Junior Engineer should be reckoned from the respective dates on which substantive vacancies were available and Group A officers were appointed to those posts. Their seniority reckons from the respective dates of either initial appointment or date of availability of substantive vacancies, whichever occurs later, i.e., if as on the date of initial
D appointment, there existed substantive vacancy, the seniority should be determined from the date of initial appointment or in its absence from the date of substantive vacancy.

The second step should be that the Group-B officers who were
E appointed through selection by advertisement subsequent to June 30, 1978 and obtained degree qualifications, thereafter would get into the quota prescribed for direct recruitment of the Graduate Engineers from the respective dates on which they became qualified, i.e., obtained degree qualification. Their seniority requires to be determined with reference to
F the date on which they acquired qualification or on which substantive vacancy became available, whichever occurred later. The *inter se* seniority among Group B Officers requires to be determined from the date of their acquiring qualification or availability of substantive vacancy of the Group B officers since all Group B officers were appointed as diploma-holder Junior Engineers subsequent to June 30, 1978. Group C officers also were
G appointed by transfer. Seniority of those who were appointed by transfer is required to be determined in the service and they are required to be fitted into service either from the actual date of their respective appointment against substantive vacancies available from the date when the substantive vacancies became available to them whichever occurred later since
H they were appointed, by transfer, to the Junior Engineers degree-holders

quota in the Subordinate Service (Civil Engineering). The general *inter se* seniority should be determined according to the above procedure following the rule of reservation and roster. A

The next question is : what is the *inter se* seniority for the purpose of promotion to the cadre of Assistant Engineers? Since Graduate Engineers were directly appointed substantively from the date when the substantive vacancies became available to them within the 20% quota, their eligibility for promotion as Asstt. Engineer requires to be determined from the date the substantive vacancies became available for them though they might have been appointed earlier on temporary basis. Their qualifying service should be counted accordingly. The qualifying service of all those Group-B officers appointed and fitted into the substantive vacancies from their respective dates of availability of the substantive vacancies should be reckoned from their respective dates of coming into substantive vacancies. If there is any short-fall of qualifying service prescribed for the post of the Asstt. Engineer, the balance period be taken into consideration from their 1/3rd service rendered as diploma- holder Junior Engineers. This should stop upsetting the general seniority determined in that order as laid down earlier. Regarding Group-C officers, their seniority, as stated, is to be reckoned from the date of the appointment by transfer or from the date of availability of substantive vacancy, whichever occurred later. In determining the qualifying service for promotion as Assistant Engineers if there is any shortfall, the one-third of the service rendered by them in the post of Sub-Engineers would be taken into account only for making good the balance of qualifying service but not the entire 1/3rd service to be tagged. In case even one third of service as Sub-Engineers was not sufficient as qualifying service, they would not become qualified for consideration for promotion. This procedure would do justice to all the three Groups and no one would jump over the other and would not illegitimately steal a march over the legitimate right of the other. Otherwise, in effect the qualified graduates would be pushed downwards and unqualified later entrants on acquisition of qualification would steal a march over the qualified. The High Court was not justified in treating amended Rule 6(1A) with retrospective effect, since admittedly it has been given prospective operation. The High Court also was not justified in striking down the latter clause of the rules for computation of one-third service for the purpose of next higher post. B C D E F G H

A The Government is, therefore, directed to determine *inter se* seniority in the light of above law and directions and prepare the seniority list accordingly. It would consider their respective claims for promotion to the next higher post i.e., Assistant Engineers and onwards accordingly.

The appeals are accordingly disposed of. The writ petitions in that B behalf stand disposed of. No costs.

R.P. Appeals disposed of.