A D. STEPHEN JOSEPH

v.

UNION OF INDIA AND ORS.

APRIL 25, 1997

B [G.N. RAY AND G.B. PATTANAIK, JJ.]

Service Law :

Promotion—To the post of Assistant Engineer—50% quota reserved for persons possessing degree in Electrical Engineering with three years regular service in the grade of Junior Engineers—Three years to be counted from date of acquiring the degree in Electrical Engineering—Tribunal holding that reckoning of three years from date of acquisition of degree in Electrical Engineering invalid—On appeal held, any past practice dehors the Rule cannot be taken into consideration as practice consistently followed for long by interpreting the Rule—Hence no interference called for.

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M.B. Joshi and Ors. v. *Satish Kumar Pandey and Ors.*, **[1993] Suppl. 2 SCC 419, Relied on.**

N. Suresh Nathan and Anr. v. *Union of India & Ors.*, **[1992] Suppl. 1** E **SCC 484, distinguished.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3118 of 1997.

From the Judgment and Order dated 4.6.93 of the Central Ad- F ministrative Tribunal, Madras in O.A. No. 577 of 1993.

R. Venkataramani and S.M. Garg for the Appellant.

K.N. Shukla, Avatar Singh Rawat, D.S. Mehra, Chandan Ramamurthi and V.G. Pragasam for the Respondents.

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The following Order of the Court was delivered :

Leave granted.

Heard learned counsel for the parties. The short question that arises H for decision in this case is whether for promotion to the post of Assistant

Engineer in the 50% promotion quota reserved for the person possessing degree in Electrical Engineering from a recognised University or an equivalent with three years' regular service in the grade of Junior Engineers in the electricity department. Government of Pondicherry, three years' experience as Junior Engineer in the grade is to be counted from the date of acquisition of the degree in Electrical Engineering or the length of service in the grade of Junior Engineers is to be reckoned if the incumbent at the time of promotion to the 50% quota also possesses degree in Electrical Engineering.

The Central Administrative Tribunal, Madras Bench by the impugned order has held that the respondents who are holding the post of Junior Engineers and have three years' regular service in that grade and also possess degree in Electrical Engineering will be entitled to get such promotion to 50% reserved quota and their experience of three years is not to be reckoned from the date of acquisition of the degree in Electrical Engineering. Such decision of the Central Administrative Tribunal is being impugned in this case.

Mr. Venkataramani, learned counsel appearing for the appellant has contended that the plain language of the Rule need not be followed in all cases and in applying the rule for promotion to 50% quota from amongst Junior Engineers with degree in Electrical Engineering, past practice is required to be considered as held by this Court in *N. Suresh Nathan and Anr.* v. *Union of India & Ors.*, [1992] Suppl. 1 SCC page 484. If the past practice is taken into consideration for the purpose of interpreting the said Rule, it will be quite evident that experience of three years had always been reckoned from the date of the acquisition of the degree in Electrical Engineering. Therefore, the decision of the Tribunal cannot be sustained and the promotion of private respondents in the 50% quota earmarked for the persons holding degree in Electrical Engineering could not have given to the said Private respondents.

It appears to us that the State Government is labouring under a wrong impression as to the applicability of the past practice as indicated in *Suresh Nathan's* case. This Court in the said decision, has only indicated that past practice should not be upset provided such practice conforms to the rule for promotion and consistently for some time past the rule has made applicable in a particular manner. In our view, the decision in

A *Nathan's* case only indicates that past practice must be referable to the applicability of the Rule by interpreting it in a particular manner consistently for some time. Any past practice *dehors* the rule cannot be taken into consideration as past practice consistently followed for long by interpreting the Rule. It may be indicated here that a similar question also came up for consideration before this Court in *M.B. Joshi and Ors.* v. *Satish* B *Kumar Pandey and Ors.*, [1993] Suppl. 2 SCC 419. The decision in *Suresh Nathan's* case distinguished in the facts of that case and it was indicated that when the language of the Rule is quite specific that if a particular length of service in the feeder post together with educational qualification enable a candidate to be considered for promotion, it will not be proper C to count the experience only from the date of acquisition of superior educational qualification because such interpretation will violate the very propose to give incentive to the employee to acquire higher education.

In the instant case, there is no dispute that the rule for promotion to 50% quota came into effect in 1982 and in 1987 and thereafter only some D *ad hoc* promotions were given. Therefore, there is no occasion to proceed on the footing that the Rule for promotion since effective from 1982 has been followed differently by giving an interpretation of the Rule as was noted in the decision in *Suresh Nathan's* case. Therefore, in our view, the decision in *Suresh Nathan's* case, which is an exception to the accepted E principle of interpretation of the Rule on the plain language, only under special circumstances, has no manner of application in the facts of the case. We, therefore, find no reason to interfere with the ultimate decision of the Tribunal. This appeal, therefore, fails and is dismissed without any order as to costs.

F G.N. Appeal. dismissed.