BHEY RAM AND ORS. ETC. ETC. A

*v.*

THE HARYANA STATE ELECTRICITY BOARD AND ORS. ETC. ETC.

SEPTEMBER 8, 1993 B

[S.C. AGRAWAL AND N.P. SINGH, JJ.]

*Secvice Law—Seniority—Haryana State Electricity Board—Assistant EngineersClass II—Appointment by same process at different times—Mode of determination of seniority—Held date of entering service is relevant—Persons appointed first shall rank senior to those who entered service later.* C

**Pursuant to an advertisement dated June 30, 1967 of the Haryana State Electricity Board, the appellants were selected and appointed as Assistant Engineers Class II on April 18, 1969 with effect from January 1, 1969 after completion of training in terms of the advertisement and the offer of appointment.** D

**Pursuant to another advertisement of the Board dated July 14, 1968 Respondent Nos. 2 to 29 were selected and appointed as Assistant Engineers Class II between October and December, 1968 i.e. prior to the appointment of appellants. Out of these respondents, Respondent Nos. 6, 16, 17 and 28 were also appointed prior to the appointment of appellants. However, they joined later but before the appointment date of appellants. Since the respondents were appointed prior to appointment of the appellants they were shown senior to the appellants in the seniority list. The appellants filed a writ before the High Court, claiming seniority over Respondent Nos. 2 to 29 which was dismissed. The appeal filed by them was also dismissed.** E F

**In appeal to this Court it was contended on behalf of the appellants that as at had been stated in the advertisement that they had to undergo apprenticeship for a period of six months, after expiry of that period they should have been appointed as Assistant Engineers Class II. It was urged that if they had been appointed as Assistant Engineers Class II just after the expiry of the period of six months of apprenticeship, they would have ranked senior to the respondents.** G H

A **Dismissing the appeals, this Court**

**HELD : 1. While determining the *inter se* seniority amongest officers recruited from lifferent sources or between officers appointed by the same process at different times, the date of entering in the service is relevant. A person who enters in the service first shall rank senior unless there is some**
B **Rule providing otherwise which can be held to be consistent with Articles 14 and 16 of the Constitution. [223-C]**

*N.K. Chauhan* **v.** *State of Gujarat,* **A.I.R. (1977) S.C. 251;** *Paramjit Singh* **v.** *Rakha Nal,* **A.I.R. (1983) S.C. 314;** *A. Janardhana* **v.** *Union of India,*
C **A.I.R. (1983) S.C. 769;** *A.N. Pathak* **v.** *Secy. to the Govt. Ministry of Defence,* **A.I.R. (1987) S.C. 716 and** *Direct Recruit Class II Engineering Officers' Association* **v.** *State of Maharashtra,* **[1990] 2 S.C.C. 715, referred to.**

**2. The respondents shall rank senior to the appellants, as they entered in the cadre of Assistant Engineers Class II of the Board before the**
D **appellants. [223-F]**

**3.1. While determining the seniority of an officer, the date of his appointment is more important factor than the date of his joining. In many compelling circumstances like accident, the distance at which a particular candidate resides and the time taken by him to join, cannot be ignored.**
E **[222-H]**

**3.2. In the instant case, Respondent Nos. 6, 16, 17 and 28 were not only appointed before the appellants but they joined also before April 18, 1969 the date of the appointment of the appellants. The notional seniority given to the appellants with effect from 1.1.1969 cannot affect the seniority**
F **of even respondent Nos. 6, 16, 17 and 28. [223-A]**

**4. While challenging the seniority list the appellants cannot make a grievance in respect of the period of apprenticeship which was specifically mentioned in the advertisement and in the offer of appointment. If the appellants were required to undergo apprenticeship for a period exceeding**
G **six months, no injustice has been done to them and that cannot be a ground for questioning the seniority list. [224-C]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4152 of 1983.

H From the Judgment and Order dated 18.10.82 of the Punjab and

Haryana High Court in L.P.A. No. 1098/82. A

WITH

Civil Appeal No. 4153 of 1983.

AND B

Civil Appeal No. 3630 of 1993.

O.P. Malhotra and D.B. Vohra for the appellants.

Arun Jaitley, Pramod Dayal, Ajay K. Jain, R. Anand Padmabhan and C
S.C. Patel for the respondents.

The Judgment of the Court was delivered by

**N.P. SINGH, J.** The appellants in three appeals filed a writ application before the High Court, claiming seniority over respondent nos. 2 to 29 D
of the said application and sought a direction from the High Court, for correction of the seniority list of Assistant Engineers Class II, published by the Haryana State Electicity Board (hereinafter referred to as "the Board"). The said writ application was dismissed by a learned Judge of the High Court. The appeal filed on behalf of the appellants was also dismissed by E
the said High Court.

An advertisement dated June 30, 1967 was published by the Board inviting applications for the posts of Assistant Engineers Class II (Electrical) and Apprentice Engineers (Electrical). Pursuant to the said advertisement, the appellants made applications for Apprentice Engineers F
(Electrical). The advertisement prescribed three conditions. The first condition was in respect of the academic qualifications. The second condition relating to the period of apprenticeship was as follow :-

> "He will have to undergo apprenticeship for a period of six G
> months or such period as may be decided by the Board which can be extended upto a maximum of three years. After completion of the said training, they will be considered for appointment to the post of Assistant Engineer Class II in the scale of Rs. 350-25-450/40-600/40-800 with starting salary of Rs. 350 P.M. on the basis of their work and conduct." H

A The third condition was in respect of giving an undertaking in writing that the candidate shall serve the board for a period of two years after completion of his training. In the offer of appointment issued to the appellants, it was said :-

B

> "APPRENTICESHIP : You will have to undergo apprenticeship for a period of one year or such period as may be decided by the Board. After completion of the above said training, you will be considered for appointment to the post of Asstt. Engineer Class-II in the scale of Rs. 350-25-450/30- 600/EB-40-800 at the basic pay of Rs. 350 P.M. on the basis of your work and conduct."

C

After completion of the training in terms of the advertisement and the offer of appointment, the appellants were appointed as Assistant Engineers Class-II, w.e.f. January 1, 1969.

D It may be mentioned that another advertisement dated July 14, 1968 had been published by the Board for filling up the posts of Assistant Engineers Class II and pursuant to that advertisement, respondent Nos. 2 to 29 (hereinafter referred to as "the respondents") made applications and they were selected and appointed between October and December, 1968 as Assistant Engineers Class II. As the respondents aforesaid had been E appointed between October and December, 1968 and the appellants had been appointed w.e.f. 1.1.1969, in the seniority list which was published, the respondents were shown above the appellants. There is no dispute that so far the appellants are concerned, they were appointed as Assistant Engineers Class II by an order dated April 18, 1969, w.e.f. 1.1.1969 after F completion of their apprenticeship, whereas the respondents were appointed as Assistant Engineers Class II before 1.1.1969. There was some confusion in respect of respondent Nos. 6, 16, 17 and 28 as to whether they had also been appointed prior to 1.1.1969, but during hearing of the appeals, an affidavit was filed on behalf of the Board giving the dates of their appointments as 23.10.1968, 21.11.1968, 21.11.1968 and 6.12.1968 G respectively. Photo copies of their appointment letters have been annexed along with the affidavit. They, however, joined later. It is well-known that while determining the seniority of an officer, the date of his appointment is more important factor than the date of his joining. In many compelling circumstances like accident, the distance at which a particular candidate H resides and the time taken by him to join, cannot be ignored. So far the

present case is concerned, respondent nos. 6, 16, 17 and 28 were not only appointed before the appellants but they joined also before April 18, 1969 the date of the appointment of the appellants. The notional seniority given to the appellants with effect from 1.1.1969 shall not affect the seniority of respondent nos. 6, 16,17 and 28.

This Court has examined the question of fixation of seniority *inter se* between officers appointed from different sources i.e. by promotion and by process of direct recruitment. It is almost settled that while determining the *inter se* seniority amongst officers recruited from different sources or between officers appointed by the same process at different times, the date of entering in the service is relevant. A person who enters in the service first shall rank senior unless there is some Rule providing otherwise which can be held to be consistent with Articles 14 and 16 of the Constitution. Reference in this connection may be made to the cases of *N.K. Chauhan* v. *State of Gujrat,* AIR (1977) SC 251; *Paramjit Singh* v. *Ram Rakha Mal,* AIR (1983) SC 314; *A. Janardhana* v. *Union of India,* AIR (1983) SC 769 and *A.N. Pathak* v. *Secy. to the Govt., Ministry of Defence,* AIR (1987) SC 716. The same view was approved by a Constitution Bench of this Court in the case of *Direct Recruit Class II Engineering Officers' Association* v. *State of Maharashtra,* [1990] 2 SCC 715.

Once it is established that the appellants were appointed Assistant Engineers Class II on April 18, 1969 w.e.f. 1.1.1969, whereas the respondents had been appointed between October and December, 1968 as Assistant Engineers Class II, then the respondents shall rank senior to the appellants, as they entered in the cadre of Assistant Engineers Class II of the Board before the appellants. The High Court has rightly pointed out that in fact the appellants were appointed as Assistant Engineers Class II on April 18, 1969, but notional seniority was given to them with effect from January 1, 1969. In this process they cannot affect the seniority of even respondent nos. 6, 16, 17 and 28.

According to the appellants, as in the advertisement aforesaid, it had been said that they had to undergo apprenticeship for a period of six months, after expiry of that period they should have been appointed as Assistant Engineers Class II. It was urged that if they had been appointed as Assistant Engineers Class II just after the expiry of the period of six months of apprenticeship, they would have ranked senior to the respon-

A dents. It need not be pointed out that the advertisement while saying that the candidate concerned will have to undergo apprenticeship for a period of six months had also said that he will have to udergo training for such period, as may be decided by the Board, which can be extended upto a maximum of three years. Even in the offer of appointment, referred to above, it had been said in clear and unambiguous terms that the candidate B will have to undergo apprenticeship for a period of one year or such period as may be decided by the Board. We fail to appreciate as to how the appellants while challenging the seniority list can make a grievance in respect of the peiod of apprenticeship which was specifically mentioned in the advertisement and in the offer of appintment. According to us, if the C appellants were required to undergo apprenticeship for a period exceeding six months, no injustice has been done to them and that cannot be a ground for questioning the seniority list.

On behalf of the appellants, it was also pointed out that in past in respect of some of the candidates, the period of apprenticeship was for six D months only. That is of no consequence when in the advertisement as well as in the offer of appointment with which we are concerned, it had been clearly stated that such period of six months could be extended upto maximum of three years. Accordingly, the appeals fail. But in the facts and circumstances of the case, there shall be no orders as to costs.

T.N.A. Appeals dismissed.