(1986) 1 JT 743 : (1987) 1 LLJ 115 : (1986) 2 SCALE 690 : (1986) 4 SCC 617 : (1987) 1 SCR 72 : (1987) 1 SLJ 128 : (1987) 1 UJ 273

Supreme Court of India

Case No: Civil Appeal No"s. 3341-42/43 and S.L.P. No. 2693 /84 and Special Leave Petition No. 2693 of 1984

Punjab State Electricity Board, Patiala and Another		APPELLANT
	Vs	
Ravinder Kumar Sharma and Others		RESPONDENT

Date of Decision: Oct. 27, 1986

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 309

Citation: (1986) 1 JT 743 : (1987) 1 LLJ 115 : (1986) 2 SCALE 690 : (1986) 4 SCC 617 : (1987) 1 SCR 72 : (1987) 1 SLJ 128 : (1987) 1 UJ 273

Hon'ble Judges: B. C. Ray, J; A. N. Sen, J

Bench: Division Bench

Advocate: Hardev Singh, R.S. Sodhi and C.S. Vaidyanathan, for the Appellant;

Final Decision: dismissed

Judgement

JUDGMENT

B.C. Ray, J.

These two appeals by special leave one by the Punjab State Electricity Board, Patiala and the other by Gurdial Singh and Ors. who were defendant-respondent Nos. 3,4,6 and 7 in Civil Suit No. 293T/16-1-181/17-7-80 passed in R.S.A. No. 254/38 whereby the judgments and the decrees of the courts below were affirmed decreeing the plaintiff respondent"s suit declaring that the plaintiff-respondent be deemed to have been promoted from the date when his juniors as mentioned in the suit were promoted to the posts of Line-Superintendents.

2. The case of the plaintiff in short is that the plaintiff-respondent Ravinder Kumar Sharma joined the service under the respondent No. 1, Punjab State Electricity Board as a Line-Man on 25th December, 1969 and he worked as apprentice Line-Man from 29.12.1969 to 28.12.1970 on a fixed salary of Rs. 140 per month. Thereafter he was allowed regular scale of pay of Rs. 110-330 since the date of his joining as a Line-Man. The terms and conditions of the service of the Line-Men as well as of the Line-Superintendent are governed by the rules framed by the Punjab Government in exercise of its powers under Article 309 of the Constitution of India which were termed as P.W.D. (Electricity Branch) Provisional Class III (Subordinate posts) Rules 1952. Subsequently the State Electricity Board came into being and the Electricity Department came under the administration of the State Electricity Board.

3. The Plaintiff has stated in the plaint that as a Line-Man he had been performing his duties efficiently and honestly and there was never any complaint against his work. His work and conduct had always been appreciated by his superiors from time to time. He possesses the following qualifications:

1. B.A.

2. I.T.I. (in the trade of Electrician 2 year''s duration).

3. National Apprentice Certificate in the trade of Line-Man (3 year''s duration).

4. All the Line-Men under the defendant No. 1, that is, Punjab State Electricity Board are either diploma holders or I.T.I. trained or non-diploma holders and they form and constitute one common cadre known as Line-Man and in the same scale of Rs. 110-330. The seniority list of all these Line-Men is common and joint. It has been further alleged that defendant No. 1 had been promoting officials from Line-Men to the Line-Superintendent on a pick and choose basis-in consideration of the qualifications by fixing a quota between the diploma holders and non-diploma holders and this has resulted in arbitrary discrimination between the diploma holders and non diploma holders Line-Men thereby adversely affecting the promotional prospect of the non-diploma holders Line-Men. It has been further stated that this policy of the defendant No. 1 was set aside by the Punjab and Haryana High Court in L.P. No. 618, 619 of 1975 fixing the quota between diploma holders and non-diploma holders Line Superintendents by orders dated 12.1.1965 and 27.6. 1974. Though the minimum qualification for promotion of Line-Man to Line-Superintendent is however matriculation. The plaintiff also stated that by order dated 12.7.1977 the respondent No. 1 promoted Gurdial Singh whose name appeared at S. No. 1451 in the common seniority list and also the defendant Jaswant Singh whose name appeared at S. No. 1546 in the said list as well as Ramesh Kumar standing at S. No. 2309 in the said seniority list to the post of Line-Superintendent even though the plaintiff''s position in the seniority list was at S. No. 995 and he was senior to these officials. Thus the plaintiff was passed over while his juniors were promoted. This policy of pick and choose, it has been stated, in promoting the officials is wholly illegal

and discriminatory. It has been further pleaded that by office order No. 899 dated 17.8.1977 the defendant No. 2, that is, the Chief Engineer of the Electricity Board further promoted Sudesh Kumar and Virender Kumar whose name stand at S. No. 1877 and 2279 in the joint seniority list as Line-Superintendent from the Line-Man. The petitioner, therefore, pleaded that the action of defendants Nos. 1 and 2 in fixing the quota between diploma holders and non-diploma holders Line-Men for the purpose of promotion to the post of Line-Superintendent and promoting the defendants 3 to 7 to the posts of Line-Superintendent from Line-Man is wholly illegal, unconstitutional and arbitrary. The plaintiff, therefore, prayed for a decree declaring that the orders dated 12.7. 1977 and 17.8. 1977 promoting the defendants 3 to 7 are illegal, discriminatory and null and void as it arbitrarily affects the rights of the plaintiff who is senior to them in not being promoted to the cadre of Line-Superintendent. The plaintiff also prayed for a direction that he be promoted to the post of Line-Superintendent from the date defendant Nos. 3 to 7 were promoted to the said post.

5. The defendant Nos. 1 and 2 contested the claim of the plaintiff by filing written statement stating that the terms and conditions of service of Line-Men and Line-Superintendent are governed by the rules framed by the Punjab State Government under Article 309 of the Constitution and are termed as P.W.D. (Electricity Branch) Provisional Service Class III (Subordinate posts) Rule 1952. It has been further stated that the State Electricity Board by office order dated 14.5.1970 prescribed a quota of 5% for diploma holders Line-Men for promotion to the post of Line-Superintendent. This quota of diploma holders Line-Men was increased to 20% by the Board by order dated 2.7.1973. On 9.5.1974 the quota of diploma holders Line-Men for promotion to the Line-Superintendent was further increased to 33% whereas the quota for promotion of non-diploma holders Line-Men to the post of Line-Superintendent was fixed at 33%. It has been stated that according to this quota the defendant Nos. 3 to 7 have been promoted and the fixation of quota on the basis of educational qualification cannot be questioned as arbitrary or discriminatory.

6. After hearing both the parties the Subordinate Judge, Ist Class, Patiala, held that the plaintiff was entitled to promotion to the post of Line-Superintendent and the orders dated 12.7.1977 and 17.7.1977 whereby the defendant Nos. 3 to 7 were promoted even though they were junior to the plaintiff are illegal and in violation of the rights of the plaintiff. The suit was decreed and the plaintiff was declared to have been promoted from the date when his juniors mentioned in the plaint were promoted to the post of Line-Superintendent.

7. Against this judgment and decree the Punjab State Electricity Board, Patiala filed an appeal being C.A. No. 4368 of 1982. The Additional District, Judge, Patiala after hearing the parties dismissed the appeal with costs holding that there was no reasonable nexus by fixing quota for promoting diploma holders Line-Men to the post of Line-Superintendent even though the non-diploma holder as well as the diploma holders formed the joint cadre of Line-Men for promotion to the post of Line-Superintendent. The

judgment of the trial court was affirmed and it was also held that the appeal was not competent inasmuch as there was no resolution of the board authorising the filing of the appeal. The cross objection filed by the plaintiff-respondent was allowed.

8. Against this judgment and decree the defendant Nos. 1 and 2 preferred an appeal being R.S.A. 254 of 1983. The said appeal was dismissed by the High Court of Punjab and Haryana and the judgment and decrees of the court below were affirmed. It is against this judgment and decree the aforesaid two appeals on SLP have been filed in this Court.

9. The only issue raised in this appeal is whether the defendant No. 1, that is, the Punjab State Electricity Board is competent to discriminate between diploma holders and non-diploma holders Line-Men forming the common cadre of Line-Men having a common seniority list in promoting these Line-Men on the basis of quota fixed by the order of the State Electricity Board even though the requisite qualification for promotion for Line-Man to the post of Line-Superintendent is either the holding of diploma or certificate for electrical engineering from a recognised institute or the non-diploma holders having passed one and half year''s course in the trade of Electrician/Line-Man/Wire Man from recognised Industrial Training Institute and are matriculates and have worked for four years as Line-Man continuously and immediately before promotion, as has been provided by the office order No. 97/ENG/BET/G-33 dated 22.10.1968 the relevant excerpt of which is quoted herein below:

For Direct Recruitment:

a) Possess 3 years, certificate or diploma course in Electrical Engineering from any recognised Institute, or a certificate of having passed the N.C.C. Test conducted by the State Board of Technical Education/All India Council for Technical Education.

b) Have passed action of the Institution of Engineering (India) Exam. with Elementary Electrical Engineering as the optional paper.

For Pormotion

c) (i) Have passed 1 1/2 years course in the Electrical Trades of Electrician/Line-Man/ Wire-Man from recognised Industrial Training Institutes and are matriculates and have worked for 4 years as a Line-Man continuously and im mediately before promotion.

(ii) Have passed 1 1/2 years course in the Electrical Trades of Electrician/Line-Man/Wire-Man from recognised Industrial Training Institutes and are non-matriculates but are capable of preparing estimates, writing up measurement books accurately, keeping store accounts etc. and have worked for 4 years as a Line-Man continuously and immediately before promotion.

(iii) Persons holding diploma in Electrical Engineering of 3 to 4 years duration recruited as Line-Man against the reservation of 60% fixed for recruitment of persons holding

certificate of 1 1/2 years course in the Electrical Trades of Electrician/Line-Man/Wire-Man from recognised Industrial Training Institutes, have worked as Line-Man for 3 years continuously and immediately before promotion. On promotion as Line-Superintendent they will be given weightage of 2 years'' service as compared to non-diploma holders, at the time of fixation of their seniority and pay in accordance with the instructions contained in Board''s Memo No. 88774/84/BET/(33)L dated 29.12.1967.

D (i) Matriculates Line-Man having a total continuous service of 9 years as at A.L.M. and Line-Man out of which they should have worked as Line-Man for 4 years continuously and immediately before promotion.

(ii) Non-matriculates Line-Man having a total continuous service of 11 years as A.L.M. and Line-Man out of which they should have worked as Line-Man for four years, continuously and immediately before promotion, provided they are capable of preparing estimates, writing up measurement books accurately keeping store accounts and in addition are conversant with Consumer Accounts or possess a special experience for transmission line work.

10. The State Electricity Board by its order dated 14.5.1970 introduced the following quota for promotion to the cadre of Line-Superintendents:

1. Direct recruitment from the open market 62%

2. Diploma holders Line-Men 5%

3. Line Men non-diploma holders 33 %.

This quota of promotion for diploma holders Line-Man to the post of Line-Superintendent was further increased by office order No. 244 dated 2.7.1975 by fixing the quota fox promotion of diploma holders Line-Men already in service of the Board from 5% to 20%. Again by office order No. 78 dated 9.6.1974 the State Electricity Board further increased the quota of promotion of diploma holders Line-Man already in the service of the Board from 20% to 33%.

11. There is no dispute, rather it is not controverted that the position of the plaintiff-respondent in the joint seniority list of Line-Men in the scale of Rs. 110-330 of the Punjab State Electricity Board from 1.6.1967 to 31.8.1974 which has been filed as additional document by the Punjab State Electricity Board in C.A. No. 3341 of 1983 that the plaintiff-respondent''s name was mentioned at S. No. 995 whereas names of defendant Nos. 3 to 7 appear in the said list in S. Nos. 1451, 1546, 2309, 1877 and 2279 respectively. Therefore all the defendant Nos. 3 to 7 are undoubtedly junior to the plaintiff-respondent as Line-Men in the joint seniority List of Line-Men comprising of both diploma holders and non-diploma holders Line-Men in the same cadre. It is also clear and evident from the office Order No. 97 dated 22.10.1968 that the qualification for promotion to the post of Line-Superintendent from Line-Men is either holding certificate or diploma in

electrical engineering from any recognised institute or having passed 1 1/2 years course in the electrical trade of Electrician/Line-Man/ Wire-Man from recognised Industrial Training Institute and are matriculates and have worked as Line-Man for four years continuously and immediately before the promotion. The petitioner who is an Arts Graduate and have I.T.I. Certificate (in the trade of electrician 2 years'' duration) and also have National Apprentice Certificate in the trade of Line-Man 3 years'' duration is eligible for promotion to the post of Line-Superintendent as he has fulfilled all the requisite qualifications. There is no gain saying that all the Line-Men either diploma holders or non-diploma holders are performing the same kind of work and duties and they belong to the same cadre having a common/joint seniority list for promotion to the post of Line-Superintendent. The orders dated 12.7.1977 being order No. 73 promoting defendant Nos. 3, 4 and 5 as well as office order No. 898 dated 17.8.1977 promoting defendant Nos., 6 and 7 on the basis of quota from diploma holders as fixed by the order of the State Electricity Board dated 9.5.1974 is wholly arbitrary, illegal, discriminatory and violative of the equality clause contained in Articles 14 and 16 of the Constitution of India inasmuch as it purports to promote defendant Nos. 3 to 7 who are admittedly junior to the respondent No. 1 in service as Line-Man in the State Electricity Board. It has been rightly held by following the decision in 291078 that the promotion of defendant Nos. 3 to 7 who are admittedly junior to the plaintiff-respondent in the service as Line-Man to the post of Line-Superintendent are illegal, arbitrary and discriminatory and so bad. It is pertinent to refer to the observations of this Court in the said case which read as follows:

But where graduates and non-graduates are both regarded as fit and, therefore, eligible for promotion, it is difficult to see how, consistently with the claim for equal opportunity any differentiation can be made between them by laying down a quota of promotion for each and giving preferential treatment to graduates over non-graduates in the matter of fixation of such quota. The result of fixation of quota of promotion for each of the two categories of Supervisors would be that when a vacancy arises in the post of Assistant Engineer, which, according to the quota is reserved for graduate Supervisors, a non-graduate Supervisor cannot be promoted to that vacancy, even if he is senior to all other graduate Supervisors and more suitable than they. His opportunity for promotion would be limited only to vacancies available for non-graduate SupervisOrs. That would clearly amount to denial of equal opportunity to him.

12. This observation apply with full force to the present case, and it has been rightly held by the High Court of Punjab and Haryana that the promotion of defendant Nos. 3 to 7 who are junior to the plaintiff-respondent from Line-Man to the post of Line-Superintendent is wholly bad and discriminatory and directed that the petitioner be deemed to have been promoted to the post of Line-Superintendent from the date the said defendants 3 to 7 had been promoted from Line-Man to Line-Superintendent. In our considered opinion there is no infirmity in the judgment of the High Court affirming the judgment and decree of the courts below and we agree with the reasonings and conclusions arrived at by the courts below. The two appeals on special leave are, therefore, dismissed with costs, quantified

at Rs. 5000 to be paid by the appellant of C.A. No. 3341 of 1983 to the respondent No. 1.

13. The Punjab State Electricity Board, Patiala also filed SLP (Civil) No. 2693 of 1984 against the judgment and order dated 14.2.1984 passed in Civil Revision No. 407 of 1984 by the High Court of Punjab and Haryana dismissing the Revision Petition. This Revision Petition was filed against the order rejecting the appellant''s application for correction of the decree. As we have already dismissed the appeals there is no merit in this SLP and the same is accordingly dismissed.