

Supreme Court of India

Ram Pukar Singh vs Heavy Engineering Corpn on 31 August, 1994

Equivalent citations: 1995 AIR 251, 1994 SCC (6) 145

Author: P Sawant

Bench: Sawant, P.B.

PETITIONER:

RAM PUKAR SINGH

Vs.

RESPONDENT:

HEAVY ENGINEERING CORPN.

DATE OF JUDGMENT 31/08/1994

BENCH:

SAWANT, P.B.

BENCH:

SAWANT, P.B.

AGRAWAL, S.C. (J)

CITATION:

1995 AIR 251

1994 SCC (6) 145

JT 1994 (6) 26

1994 SCALE (3) 916

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. The issue in the present appeal is narrowed down to whether the appellants are entitled to be promoted as Assistant Personnel Officers w.e.f. 1-1-1986 and whether on that account they are entitled to the arrears of salary in the promotional post from the said date.

2. At the relevant time, in the Personnel and Administration Division of the respondent-Corporation there existed the following relevant hierarchy of posts:

I. Assistant Grade I/Senior Steno II. Office Superintendent/Personal Assistant (Supervisory) III. Assistant Personnel Officer/Private Secretary (Supervisory) IV. Junior Executive (Officer)/Senior Supervisory (P) It appears that on 9-8-1984 there was a strike of the employees and on 29-8-1984, a settlement was entered into between the Union of employees and the management whereby the

disputes were referred to one Dr Binod Kumar for arbitration. Dr Binod Kumar gave his report in July 1985 in which one of the recommendations was that the two posts of the Supervisory cadre should be replaced by one such post. Another recommendation was that time-bound promotion should be given after every 7 years to the holders of the abovesaid posts, among others, whether there were promotional posts or not. The time-bound promotees would carry the designation as well as salary of the promotional posts although they would continue to do the work of the post in which they were working, if there were no vacancies in the promotional posts. These recommendations were accepted by the management by their circular/letter of 14-10-1985. Pursuant to the acceptance of the said recommendation, the management converted the post of Office Superintendent (Supervisory) into the post of Office Superintendent (Non-Supervisory) and thus retained only one Supervisory post, viz., that of Assistant Personnel Officer. However, this affected the employees concerned in two ways. In the first instance, the Supervisory post of Office Superintendents became Non-Supervisory and secondly, compared to the posts on the same level in other divisions such as Finance and Accounts, the employees in Personnel and Administration Division had to wait for 7 years more to be appointed to the post of Junior Executive (Officer) since the post of Office Superintendent (Non-Supervisory) was an additional intermediate post to which they were first to be promoted before they were promoted to Supervisory post of Assistant Personnel Officer from which post alone they could be promoted to the post of Junior Executive (Officer). As far as the other divisions were concerned, there was promotion from the post equivalent to the post of the Assistant Grade-I straight to the Supervisory post. The employees of divisions other than Personnel and Administration Division had not, therefore, to traverse the hurdle of one more Non-Supervisory post such as that of Office Superintendent (Non-Supervisory) in the Personnel and Administration Division. Hence aggrieved by the conversion of the post of Office Superintendent (Supervisory) into that of Office Superintendent (Non-Supervisory), the appellants approached the High Court. The High Court dismissed their petition and hence an appeal was preferred to this Court. This Court in Nani Gopal Sarkar v. Heavy Engineering Corpn. Ltd.¹ set aside the decision of the High Court and directed the management to promote the appellants therein to the post of Junior Executive (Officer) w.e.f. 30-12-1985 or w.e.f. the date when they or any of them completed 7 years of service in the post of Office Superintendent/Personal Assistant. The Court also directed the management to pay them arrears of pay.

3. After the aforesaid decision which was given on 21-3-1990, a settlement was arrived at between the management and the Union under Section 12(3) read with Section 18 and other provisions of the Industrial Disputes Act, 1947 on 13-9-1990. The settlement, among other things, stated as follows:

"The question of implementation of one tier supervisory system in the Corporation under relevant provisions of Dr Binod Kumar Committee report has been under discussion with the Hatia Project Workers' Union (Recognised). After detailed deliberations on the subject taking into account the pros and cons of the issue and overall interest of the Corporation, the Management and the Hatia Project Workers' Union (Recognised) agreed to implement one tier supervisory system in the Corporation as indicated below:

1. Posts in the scales of pay of ... Office Superintendent (Non-Supervisory) and ... next below the posts in the scale of pay of ... Assistant Personnel Officer...

2. Incumbents of non-supervisory scales of ... OS(NS) ... will be placed as APO with effect from 13-9-1990. The pay in the scale of pay of APO will be provisionally fixed on the basis of their pay in the pre-revised scale of pay in ... B7 ... as on 31-12-1985 notionally brought forward to the date of placement in ... APO ... The fixation of pay will be at the same stage, if available, otherwise at the next higher stage. However, they will not be eligible for any arrears whatsoever on this account.

8. The next promotion of incumbents so placed in the scale of pay of ... APO ... to the post of Junior Executive will be on completion of seven years of service rendered as ... OS (NS) ... and ... APO ... taken together."

Pursuant to the said settlement, the appellants were appointed as Assistant Personnel Officers on 13-10-1990. It appears further that in between, on 14-5-1987, a settlement was entered into between the management and the Union for revision of the pay scales and under that settlement each of the 1 (1990) 3 SCC 173; 1990 SCC (L&S) 458; (1990) 14 ATC 699 appellants received arrears of salary of Rs 1600 plus revised pay scales in the post of Office Superintendent (Non-Supervisory) which they were holding.

4. The case of the appellants is that they were not members of the Union with which the settlements dated 14-5- 1987 and 13-9-1990 were entered into and, therefore, the said settlements were not binding on them. They contended that in terms of Dr Binod Kumar's report they were entitled to the post of Assistant Personnel Officer w.e.f. 1-1-1986 and hence to the arrears of salary in the said post from that date till they were appointed to the said post on 13-10-1990 in terms of the settlement of 13-9-1990.

5. We are not impressed by this contention. It is true that Dr Binod Kumar had recommended the abolition of one of the two Supervisory posts and retention of only one Supervisory post in between that of the Assistant Grade I and Assistant Personnel Officer. However, he had also recommended that one of the Supervisory posts should be phased out over a period of 10 years. The management had devised its own way of removing one of the Supervisory posts by converting it into the Non-Supervisory post. That could be one of the ways of implementing the said recommendations. However, when this step was taken by the management, it resulted in discontentment among the employees. Some of the employees had approached the High Court and thereafter this Court and this Court directed, as pointed out above, the appointment of the appellants in that case, to the post of Assistant Personnel Officer from 30-12-1985. A settlement was, however, arrived at between the management and the Union thereafter, whereunder it was, among other things, agreed that the employees who were holding the post of Office Superintendent (Non-Supervisory) would be deemed to have been appointed to the post of Assistant Personnel Officer from the date they were appointed as Office Superintendent (Non-Supervisory) and that the services rendered by them both in the post of Office Superintendent (Non-Supervisory) as well as in the post of Assistant Personnel Officer would together be taken into consideration as a qualifying period for promotion to the post of the Junior Executive Officer. It was further agreed that the employees concerned would not, however, claim any arrears of pay. This was done because the respondent-Corporation was in a bad financial shape. The contention that the settlement of 13-9-1990 is not binding on the appellants because they

were in a Supervisory category and were not workmen and hence the Union had no right to represent them, has no substance in it for two reasons. Firstly, in the settlement of 14-5-1987 arrived at with the Union they had not only received the benefit of the arrears of salary of Rs 1600 but also of the revised pay scales since then. They could not have had this benefit if they were not workmen and, therefore, considered themselves as belonging to the Non-Supervisory category. They had continued to be workmen, i.e., in Non-Supervisory category till the next settlement of 13-9-1990. Admittedly, there was only one Union representing all workers during all the relevant period. The settlement dated 13-9-1990 was admittedly under Section 12(3) read with Section 18 and other provisions of the Industrial Disputes Act. The settlement was, therefore, binding on all the workmen whether they were members of the Union or not. In the circumstances, we are of the view that the said settlement of 13-9-1990 is binding on the appellants. Under the said settlement it is solemnly agreed that they will not claim any arrears of salary, till 13-10-1990 on which day they were appointed to the post of Assistant Personnel Officer. According to us, the High Court has taken the correct view of the matter.

6. In the result, the appeal is dismissed with no order as to costs.

C.C.E. v. MADHYAPRADESH ELECTRICALS LTD. The Judgment of the Court was delivered by BHARUCHA, J.- Leave to appeal granted in SLP (C) No. 407 of 1984.

2. The point at issue in these civil appeals being the same, they can be disposed of by a common judgment. By way of illustration, the facts in the case of Madhya Pradesh Electricals Ltd. (CA No. 1046 of 1988) are set out.

3. The assessee manufactures copper and aluminium electrical conductors. It purchases duty paid wire rods of copper and aluminium of electrical grade and subjects them to the process of pickling and shaving. Thereafter, the wire rods are drawn to reduce their diameter. They are then passed through a wire flattening mill to obtain rectangular conductors. The conductors undergo the process of insulation.

4. The Assistant Collector of Excise took the view that the insulated strips merited classification under the residuary Tariff Item 65. The assessee appealed and the Collector (Appeals) held that classification under Tariff Item 68 was more specific but he restricted the period for which such assessment could be made. Before the Tribunal, the point in issue was whether the insulated copper or aluminium strips were liable to duty under Tariff Item 68 or whether they were more properly classifiable under Tariff Items 26-A and 27 respectively. The Tribunal took the view that the insulated copper or aluminium strips were not liable to duty again under Tariff Item 68 and the demand in that behalf could not be sustained.

5. The excise authorities are in appeal before us.

6. Tariff Item 26-A deals with copper; sub-item (2) thereof deals with manufactures of copper, including strips. Tariff Item 27 deals with aluminium and sub-item (b) thereof with its manufactures, including strips. Tariff Item 68 deals with "all other goods not elsewhere specified".

7.Mr Ashok Grover, learned counsel for the assesseees in Civil Appeal No. 1046 of 1988, and Mr K.J. John, learned counsel for the assesseees in the other civil appeals, stated that they were not questioning the assesseees' liability to pay excise duty a second time around, i.e., consequent upon the processing of the strips into insulated strips. In their submission, the assesseees' liability to pay excise duty upon the insulated strips was in terms of Tariff Items 26-A(2) for copper insulated strips and 27(b) for aluminium insulated strips. Mr Ganguli, learned counsel for the Revenue, submitted, on the other hand, that insulated strips were not specified in Tariff Items 26-B and 27 and, therefore, Tariff Item 68 was applicable thereto.

8.Copper and aluminium strips even though insulated remain copper and aluminium strips and fall within the manufactures of copper and aluminium respectively. Tariff Items 26-A and 27 are, therefore, closely related to and identifiable with insulated copper and aluminium strips respectively. Tariff Item 68, which speaks of goods which are not elsewhere specified in the schedule is consequently inapplicable. We are, therefore, of the view that the assesseees must be assessed upon the insulated wire under Tariff Items 26-A and 27.

9. The appeals are dismissed. There shall be no order as to costs.