

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 5284 OF 1995@@
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TARLOCHAN SINGH APPELLANT (S)

VERSUS

U.T. OF CHANDIGARH & ORS. . . . Respondent (s)
(With Appln(s). for exemption from filing c/c of the impugned
Judgment and with office report)

WITH SLP(C)No.20988/1997-(With prayer for interim relief)
WP(C)No.158/1998-(With appln.(s) for stay and with office report)
C.A.Nos.3415-3416/1996, 4474/1998-(With office report)

Date : 23/10/2002 These matters were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE G.B. PATTANAIAK
HON'BLE MRS. JUSTICE RUMA PAL
HON'BLE MR. JUSTICE BRIJESH KUMAR

For Appellant (s)
in CA 5284/95 Mr. A.V. Palli, Adv.
Mr. Atul Sharma, Adv.
Ms. Rekha Palli, Adv.

in SLP(C)20988/97 Mr. L.N. Rao, Sr. Adv.
& WP(C)158/98 Mr. Ashok K. Mahajan, Adv.

in CA 4474/98 Mr. K.G. Bhagat, Adv.
Mr. Vineet Bhagat, Adv.
Mr. Kamal Baid, Adv.
Mr. Manohar Singh Bakshi, Adv.
Mr. Debasis Misra, Adv.

in CA 3415-16//96 Ms. Kamini Jaiswal, Adv.

For Respondent (s)

Mr. V.A. Mohta, Sr.Adv.
Mr. P.K. Manohar, Adv.

Ms. Abha R. Sharma, Adv.

State of Pb. Mr. Ranbir Yadav, Adv.
Mr. R.S. Suri, Adv.
Dr. Ajay Kumar, Adv.

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C.A.Nos.5284/1995 :@@
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Mr. A.V. Palli, learned counsel appearing for the appellant started his arguments at 2.40 p.m. and concluded at 3.10 p.m. After that, Mr. V.A. Mohta, learned senior counsel appearing for the private respondent argued till 3.30. Then Mr. L.N. Rao, learned senior counsel appearing for petitioners argued for 10 minutes.

The appeal is allowed in terms of the signed order.

C.A.Nos.3415-16/96 and 4474/98 : The appeals are@@
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disposed of in view of the order in C.A.No.5284/1995.

SLP(C)No.20988/97 :@@
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By order dated 24.11.1997 this matter has been tagged with C.A.No.5284/1995 even no notice has been issued. In this view of the matter, this matter is delinked.

Notice may be issued to the private respondent indicating that the matter would be disposed of at the SLP stage itself.

Put up after service is complete on the private respondent.

WP(C)No.158/98 :@@
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To be taken up alongwith SLP(C)No.20988/97.

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Sarita (Suneet Bala Sharma)@@
AA
Assistant Registrar@@
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(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5284 OF 1995@@
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TARLOCHAN SINGH ...APPELLANT

VERSUS

U.T. OF CHANDIGARH & ORS. ...RESPONDENTS

With C.A.Nos.3415-16/96 and 4474/98

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This appeal is directed against the order of the Central Administrative Tribunal, Chandigarh. The appellant being a Section Officer, had acquired AMIE qualification on 6/3/1983 and was eligible to be considered for promotion in the year 1986 to the post of Sub-Divisional Engineer and had also been promoted which

promotion has been annulled by the Tribunal, the private respondent having approached the Tribunal for the same. The Chandigarh Administration also has assailed the same order of the Tribunal in O.A.No. 116/CH/88. The dispute centres around the interpretation of the provisions of the recruitment rules called the "Punjab Service of Engineers, Class-II P.W.D. (Buildings and Roads Branch) Rules, 1965 framed by the Governor of Punjab under proviso to Article 309 of the Constitution which has been adopted by the Chandigarh Administration. Under the ..2/-

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Recruitment Rules the appointment to the post of Sub-Divisional Engineer could be made as provided in Rule 6 by four different modes, one of them being by promotion from members of the Punjab Works department (B&R) Sectional Officers (Engineering Services) and the Draughtsmen of the Draughtsmen and Tracer Services possessing the qualification prescribed in Appendix - 'B'. We are concerned in the present case with the promotion made from this category of persons. The appellant and the private respondent belonged to that category. Sub-Rule (2) of Rules 6, however, provides that if suitable candidates are not available from source No.(4), then the vacancies could be filled by direct recruitment. We are, however, not concerned with the said question in the case in hand. The qualification for recruitment is provided in Rule 7. Sub-Rule (3) of Rule 7 provides that for being eligible for consideration for promotion from source No.(4) a candidate must possess any of the qualification prescribed in Appendix - 'B' and has put in five years service in case he possesses AMIE qualifications and two years service in case he is a degree holder. It is undisputed that both the appellant ..3/-

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and the private respondent possessed the qualification of AMIE and had the necessary 5 years service as required for being eligible for consideration. Rule 9 is the rule for appointment by promotion. The aforesaid Rule 9 is extracted hereinbelow in extenso since the controversy centres around the interpretation of the aforesaid Rule :

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"9. Appointment by Promotion - (1) A@@
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committee consisting of Chairman of the Punjab Public Service Commission or where the Chairman is unable to attend any other member of the Commission representing it, Secretary, P.W.D. Buildings and Roads Branch and Chief Engineers of P.W.D. Buildings and Roads, shall be constituted.

(2) The Chairman or the member of the Commission as the case may be shall preside over the meeting of this Committee.

(3) The Committee shall meet at intervals, ordinarily not exceeding one year and consider the cases of all eligible

officials for promotion to the service, as on the first day of January of that year.

(4) The Committee shall prepare a list of officials suitable for promotion to the service. The selection for inclusion in such list shall be based on merit and suitability in all respects with due regard to seniority.

(5) The names of the officers included in this list shall be arranged in order of seniority in Punjab P.W.D. (B&R) Sectional Officers (Engineering) service and Members of

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Draftsmen and Tracers Service. Provided that any junior officer, who in the opinion of the Committee, is of exceptional merit and suitability may be assigned a place in the list higher than that of officers senior to him in his own class.

(6) The list so prepared shall be revised every year.

(7) If in the process of preparing the list or its revision it is proposed to supersede any eligible candidate, the Committee shall drop a list of such officials and may record its reasons for the proposed supersession.

(8) The list prepared or revised in accordance with sub-rules (4), (5) and (6) shall then be forwarded to the Commission by Government along with :-

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(i) the records of all officials included in the list:

(ii) records of all officials proposed to be superseded as a result of the recommendations made by the Committee:

(iii) the reasons, if any, recorded by the Committee for the proposed supersession of any official: and

(iv) the observations, if any, of the State Government on the recommendations of the Committee.

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(9) The Commission shall consider the list prepared by the Committee along with other documents received from the State Government and unless it considers any change necessary, approve the list.

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(10) If the Commission considers it necessary to make any changes in the list received from Government, the Commission shall make the changes it proposes and forward the list it considers suitable to the State Government.

(11) Appointment to the service shall be made by the Government from this list in the order in which names have been placed by the Commission.

(12) Appointment by promotion may be made to an Ex-cadre post, or to any post in the cadre in an officiating capacity from the list prepared under this Rule.

Note : This Rule will also apply for assessing the suitability of Temporary Assistant Engineer, for the Service, as provided in Appendix (G)."

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In the case in hand the appellant was the Section Officer since 13/5/1977 and acquired the AMIE qualification on 6/3/1983, whereas the private respondent was a Section Officer since 25/10/1977 and had acquired the AMIE qualification 28/8/1982. The Selection Committee was constituted for purposes of selecting the candidates for promotion in the year 1986 and they selected the appellant to which he was promoted on 8/6/1987. The appellant was confirmed in the said post on 8/7/1988. Be it stated that in the year 1986 there was only one vacancy available for promotion as Sub-Divisional Engineer to which four eligible
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candidates were considered. The respondent filed an application before the Central Administrative Tribunal alleging inter-alia that the said respondent having passed AMIE earlier than the appellant on 28/8/1982, was entitled to be considered for promotion earlier than the appellant and inaction on the part of the authority in constituting the Selection Committee in January, 1983, which is a mandatory requirement of the Rule, has infringed the rights of the applicant for being included in the list of the year 1983. The present appellant who was the respondent before the Tribunal as well as the Chandigarh Administration contended before the Tribunal that on the date when the vacancy was available, both the appellant and the private respondent were eligible for being considered having acquired the necessary higher qualification as well as having possessed the requisite experience in service and therefore, the Selection Committee adopting the criteria for promotion, i.e., the merit and suitability in all respects with due regard to seniority, selected the appellant who was also

senior to the respondent in the feeder cadre of service and as such there has been no infringement of the rights

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of the respondent who was the applicant before the Tribunal. The Tribunal, however, being of the opinion that acquisition of the higher qualification of AMIE by the private respondent earlier than the appellant made him eligible for being promoted earlier has annulled the promotion of the appellant and hence the present appeal.

It is contended on behalf of the appellant as well as by the Chandigarh Administration that the Tribunal misconstrued the provisions of the Recruitment Rules and the conclusion that acquisition of higher qualification earlier by the private respondent made him eligible for being promoted earlier is contrary to the relevant provisions of the Rules. Mr. V.A. Mohta, learned senior counsel appearing for the private respondent contended that it was imperative on the part of the authority to constitute a Selection Committee for preparing the list of the eligible candidates for promotion in January, 1983 to the post of Sub-Divisional Engineer, irrespective of the fact that there was any vacancy available in the promotional cadre or not and infraction of the mandatory requirement has infringed the rights of the respondent, who would have been

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included in the list had there been a list prepared in January, 1983 on which date the respondent could not have been included in the list as he had not acquired the qualification of AMIE. In this view of the matter the ultimate conclusion of the Tribunal cannot be held to be erroneous.

Having considered the rival submissions at the Bar and having considered the relevant provisions of the Recruitment Rules, more particularly Rule 9 thereof, we are of the considered opinion that it is not the requirement of law that every year a Selection Committee must be constituted and prepare a list of the candidates eligible for promotion even though there would be no vacancy available. The question of selecting persons for promotion to the promotional post of Sub-Divisional Engineer would arise only when a vacancy in the promotional cadre would be made available and it is for that reason possibly, the rule making authority has used the expression "ordinarily", in Sub-Rule (3) of Rule 9. It is more apparent from the fact that the aforesaid rule which has been adopted by the Chandigarh Administration has been amended which amendment makes it

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crystal clear that the Selection Committee would be constituted only when the vacancy would be available and they would consider the case of three times the number of vacancy available in the year in question. That being so, when there was only one vacancy available in the year 1986 and on that date both the appellant and the private respondent were eligible for being

considered for promotion, the appropriate authority having considered the appellant suitable and having given him the promotion to the post of Sub-Divisional Engineer as he was senior to the private respondent in the feeder cadre of officers, no infirmity can be said to have been made by the appropriate authority or by the Selection Committee. The Tribunal, in our view, was wholly in error in construing the relevant provisions to hold that a person who acquires the higher qualification of AMIE earlier would be eligible for being considered for promotion earlier and that would not be in consonance with the provisions of the Rules either in letter or spirit. The Rules also, however, provide for recruitment from source No. (4) in proportion to the ratio of number of

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vacancies available in a lot of 40 vacancies. This indicates that the question of recruitment would arise only when a vacancy would be available.

In the aforesaid premise, we have no hesitation to hold that the Tribunal was in error in annulling the promotion of the appellant to the post of Sub-Divisional Engineer. We, therefore, set aside the impugned order of the Central Administrative Tribunal and the O.A. filed by the private respondent stands dismissed.

The appeal is allowed.

C.A.Nos.3415-16/96 and 4474/98 : In view of the@@
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order passed in C.A.No.584/95, these appeals are disposed of.

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.....J.
(G.B. PATTANAIAK)

.....J.
(RUMA PAL)

New Delhi,
October 23, 2002.

.....J.
(BRIJESH KUMAR)