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C.A.No. 921-922 OF 1999
ITEM No. 104

COURT NO. 10

SECTION IV

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

CIVIL APPEAL NOS.921-922 OF 1999@@
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S.C. PANDEY ...APPELLANT

VERSUS

STATE OF M.P. & ORS. ...RESPONDENTS
(With prayer for interim relief and office report)

WITH C.A.Nos.923-924/1999, 4887/99

Date : 25/03/2003 These appeals were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE MR. JUSTICE ARIJIT PASAYAT

For Appellant (s) Mr. A.K. Ganguli, Sr.Adv.
Mr. V. Krishnamurthy, Adv.
Mr. Rakesh K. Sharma, Adv.

For Respondent (s) Mr. Anoop G. Chaudhary, Sr.Adv.
State of MP Ms. Geetanjali Mohan, Adv.
Mr. Satish K. Agnihotri, Adv.

Mr. Rajesh, Adv.

Mr. Vinay Kumar Garg, Adv.

UPON hearing counsel the Court made the following
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Mr. Anoop G. Chaudhary, learned senior counsel started his arguments at 12.05 p.m. and concluded at 1.00 p.m. Mr. Vinay Kumar Garg, learned counsel made his submissions for 10 minutes.

Civil Appeal Nos. 921-922/1999 and 923-924/1999:@@
EE

The civil appeals are dismissed as having become infructuous. No costs.

Civil Appeal No.4887/1999 :@@
EE

The civil appeal is dismissed in terms of the signed order. No costs.

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Sarita (Shelly Sengupta)@@
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Court Master@@
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(Signed order is placed on the file)

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CIVIL APPEAL NOS. 921-922 OF 1999@@
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S.C. PANDEY

...APPELLANT

VERSUS

STATE OF M.P. & ORS.

...RESPONDENTS

WITH C.A.NOS.923-924/1999 AND 4887/1999@@
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Civil Appeal Nos. 921-922/1999 and 923-924/1999:@@
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The learned counsel for the parties submitted that the appellants and the contesting respondents have since retired, these appeals have become infructuous.

Accordingly, the civil appeals are dismissed as having become infructuous. No costs.

Civil Appeal No.4887/1999 :@@
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The respondent No.1 had approached the Madhya Pradesh Administrative Tribunal, Gwalior aggrieved by the orders dated 23/9/94 and 20/4/95 by which the juniors to him had been promoted. He sought direction for consideration for his promotion to the post of Chief Engineer from the date when his juniors were promoted with consequential benefits. At the time he approached
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the Tribunal he was holding the post of Superintending Engineer and was posted as Superintending Engineer (E&M) Circle, Gwalior. He had joined PWD service as Junior Engineer (E&M) in the year 1969, was promoted as Assistant Engineer on 22/12/1972, to the post of Executive Engineer vide order dated 6/5/1980 and then to the post of Superintending Engineer on 5/5/1988. According to him, he was senior on the post of Superintending Engineer to the private respondents in the original application that was filed before the Tribunal. The Tribunal after considering the respective contentions and keeping in view Rule 4 and Rule 6 of the M.P. Public Works Department (Engineer in Chief and Chief Engineer) and Conditions of Service Rules, 1983, allowed the application and directed the Authorities to hold a Review DPC for the year in which some of the Superintending Engineers were promoted to the post of Chief Engineer and to consider his case for promotion to the post of Chief Engineer over and above his juniors and if he was found fit, he could be promoted with retrospective effect giving all consequential benefits. Aggrieved by the said order of the Tribunal, the State of Madhya Pradesh filed

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Writ Petition No.1356/98 questioning its correctness and validity. The High Court disposed of the Writ Petition by a short order stating that the view taken by the Tribunal based on the Division Bench decision was correct. Consequently, dismissed the Writ Petition. Hence this appeal.

Mr. Anoop G. Chaudhary, learned Senior Counsel representing the appellants contended that respondent No.1 had all along been working in E&M Formation of the PWD; he was appointed as Junior Engineer (E&M) and throughout he has been working even after promotion from time to time as Assistant Engineer, Executive Engineer and Superintending Engineer in E & M Branch. At the time he had claimed promotion he was working as Superintending Engineer (E&M). He pointed out that separate gradation lists are maintained for the Superintending Engineers(E&M) and Superintending Engineers(B&R); then he pointed out to the structure of the Department saying that the E&M Formation of the PWD is separate cadre and in that cadre as existing then, there was no post of Chief Engineer. The learned Counsel contended that the said Rules 4 and 6 referred above must be read having

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regard to the facts of the case, the PWD Manual and also the Amendments brought to the Rules in 1997 and 1999. He added that the High Court was not right in simply applying the decision of the Division Bench made in another case without examining the facts of the present case decided and in that view, the case may require remand to the High Court.

Per contra, the learned counsel representing respondent No.1 made submissions in support and justification of the impugned order. To appreciate the respective contentions it would be appropriate to notice the very relevant Rules 4 and 6 which read thus :

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"4. Appointments.- (1) Appointment to@@
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the post of Engineer-in-Chief shall be made by promotion of the persons on the posts of Chief Engineers in the Public Works Department and appointments to the posts of Chief Engineer shall be made by promotion of the persons on the posts of Superintending Engineers in the Public Works Department.

(2) Appointments to the posts of Engineer-in-Chief and Chief Engineers shall be made by the State Government.

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6. Condition of Eligibility for@@
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promotion.- (1) For promotion to the post of@@
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Engineer-in-Chief, the Promotion Committee shall consider the cases of all persons who have completed 3 years service on the post of

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Chief Engineer, whether in officiating capacity or in substantive capacity and for promotion to the post of Chief Engineer the Promotion Committee shall consider the cases of all persons who have completed 5 years service on the posts of Superintending Engineers in the Public Works Department.

(2) Selection for inclusion in the list of candidates for promotion shall be based on merit and suitability in all respects with due regard to seniority.

(3) The Promotion Committee shall prepare a list of such persons who satisfy the conditions prescribed in sub-rules (1) and (2) and are held by it to be suitable for promotion to the post of Engineer-in-Chief or Chief Engineer, as the case may be.

(4) If in the process of selection it is proposed to supersede any person, the Promotion Committee shall record its reason for the proposed supersession."

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The Tribunal, having regard to these clear Rules 4 and 6, arrived at the conclusion that respondent No.1 was entitled to be considered being a Superintending Engineer in the PWD irrespective of the fact whether he was Superintending Engineer (E&M) or otherwise. The Rules do not make any distinction when it comes to the question of consideration for promotion to the post of Chief Engineer from the post of Superintending Engineer. Although, the High Court did not consider the facts of the case and did not also look into the various

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contentions that were raised in the Writ Petition, but we are not in a position to say that the conclusion of dismissing the Writ Petition is wrong. Be that as it may, it is clear from the Rules 4 and 6 extracted above that all the Superintending Engineers working in the PWD were to be considered for promotion to the post of Chief Engineer, of course if they were found fit. The contention that respondent No.1 being Superintending Engineer (E&M) did not have the qualification of Engineering Degree in Civil could not be promoted to the post of Chief Engineer, cannot be countenanced so long as the Rules are clear as stated above, we are only concerned with the promotion of Superintending Engineer to the post of Chief Engineer in terms of the Rules extracted above. We may not spend much time in examining the applicability of the rule as amended in the years 1997 and 1999 they being subsequent. The direction given by the Tribunal was only for the consideration of the case of respondent No.1 for promotion to the post of Chief Engineer on merits and in accordance with law. The

High Court was right in not disturbing the said order.
It is a separate issue whether respondent No.1 was fit to
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be promoted or not. It is for the competent Authority to consider and decide based on the relevant Rules. This being the position, looking to the specific and clear Rules, we are not in a position to accept the arguments advanced by the learned Senior Counsel on behalf of the State. We find no merit in this appeal and as such it is dismissed. No costs.

The learned counsel representing respondent No.1 stated that respondent No.1 is attaining the age of superannuation by the end of May, 2003 and he has an anxiety that his case should be considered before that date. The learned Senior Counsel for the appellant states that in case the respondent No.1 succeeds, he will be entitled to all the consequential benefits. All that we can say is that the Authority will do well in considering his case for promotion before the date of his superannuation and pass appropriate orders.

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.....J.
(SHIVARAJ V. PATIL)

New Delhi,
March 25, 2003.

.....J.
(ARIJIT PASAYAT)