

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Reserved on: 24.07.2025.

Date of pronouncement: 25.08.2025

1. CWP No. 6374 of 2000 (O&M)

Anil Kumar Gupta

.... Petitioner

versus

The State of Haryana and others

.... Respondents

2. CWP No. 14371 of 2020 (O&M)

Pardeep Kumar Jain

.... Petitioner

versus

The State of Haryana and others

.... Respondents

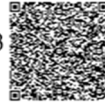
**CORAM: HON'BLE MR. JUSTICE ASHWANI KUMAR MISHRA
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Sanjiv Gupta, Advocate, for the petitioners.

Mr. Bhupender Singh, Additional Advocate General, Haryana,
for the respondent-State.

ASHWANI KUMAR MISHRA, J.

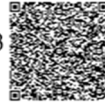
These two writ petitions have been filed primarily assailing Rules 9 and 12 of the Punjab Service of Engineers Class-II, Public Works Department (Public Health) Rules, 1966 (for short "the 1996 Rules") as ultra vires to the Constitution of India, insofar as they do not provide for promotion from the post of Junior Engineer (Civil) to the post of Sub-Divisional Engineer (Civil) upon acquiring the qualification of AMIE, as provided in Rule 7(3)(ii) of the Rules of 1966, from the date of acquiring the requisite qualification/eligibility. In addition, thereto, an order passed on



18.06.2020 rejecting the claim of petitioner – Pardeep Kumar Jain is assailed in CWP No. 14371 of 2020. The petitioners have also prayed for a direction to consider them for promotion to the post of Sub-Divisional Engineer (Civil) from the date of attaining eligibility i.e. requisite qualification of AMIE. Petitioner- Anil Kumar Gupta has also prayed that he be held senior to respondent nos. 4 to 23 in CWP No. 6374 of 2000. Both the writ petitions were clubbed together and are being disposed of by this common judgment after hearing learned counsel for the parties.

2. Petitioner Anil Kumar Gupta was appointed as a Junior Engineer (Civil) on *ad hoc* basis in the Public Works Department (hereinafter to be referred as ‘PWD’), Public Health Division, Haryana, on 09.11.1982. His services came to be regularized with effect from 01.11.1986 pursuant to a government notification issued on 26.08.1987. He acquired qualification of AMIE in the year 1987. Inter se seniority under the policy notified on 26.08.1997 was to be determined on the basis of original date of joining on *ad hoc* basis. Petitioner’s seniority was also fixed accordingly. Claim of those against whom disciplinary proceedings were pending were, however, overlooked.

3. Service conditions of junior engineers in the Public Health Branch is governed by the Public Health Branch, Junior Engineer Service Rules, 1966, however, for promotion to the post of SDE (Civil), the provisions of Punjab Service of Engineers Class-II, Rules 1966 are applicable.



4. In order to consider petitioners' claim in the writ petitions, it would be appropriate to refer to certain provisions of the 1996 Rules, which are as under:-

“6. Recruitment to the service for Cadre and ex-cadre post shall be made-

(a) 57% by direct recruitment

(b) 43% by promotion from the following categories

(i) From the members of the Haryana PWD Public Health, Junior Engineer (Engineering) service – 25%

(ii) From Draftsmen members of the Draftsmen and Tracers Service - 6%

(iii) From members of the Draftsmen and Tracers Service possessing qualifications prescribed in appendix ‘B’ -12%

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(Vide amendment dated 29.03.2004, the said percentage from source (ii), (iii) & (iv) has been changed to 30%, 6% and 14% respectively)

7. Qualifications:- no person shall be appointed to the services, unless he:

(3) in case of appointment by promotion from source 4 under case 6(1)-

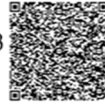
(i) is a member of the Punjab PWD (Public Health) Sectional Officers (Engineering) Service of a Draftsmen members of the Public Health Branch, Draftsmen in Tracers Service;

(ii) possesses any of the qualification included in Appendix ‘B’ and has put in five years service in case he possesses A.M.I.E qualifications and two years service in case he is a degree holder;

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9. *Appointment by promotion-* (1) *Appointment by promotion to the service shall be made on **seniority-cum-merit** basis by the Govt. in consultation with the Commission.*

However, no person shall have any right for promotion merely on the basis of seniority.

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12. *Seniority.- (1) Except as provided in Sub-rule (5) of this rule relating to officers appointed by transfer, **the seniority of the members of the Service shall be determined by the order of their appointment in service according to rules 6,8 and 9 irrespective of their date of joining:***

Provided that where the period of probation of an officer of an officer has been extended, the order of appointment shall be deemed to have issued on a date determined by adding to the original date the extended period of probation.

(2) the inter-se seniority of the members of the Service shall be in the order of recruitment provided under rules 6:

Provided that in case an officer does not join his appointment within six months of the date of order of appointment the seniority shall be determined by Govt. on an adhoc basis after taking into consideration all the circumstances of the case.

(3) The inter-se seniority within the group of direct recruitment shall be as in the merit grading under rule.

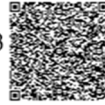
(4) The inter-se seniority within the group of promoted officers (from a particular source) shall be as in the list approved under rule 9.

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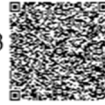
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5. Petitioner – Anil Kumar Gupta claims that he had already completed 5 years of requisite service as Junior Engineer when he passed the higher qualification of AMIE and therefore, he ought to have been considered for promotion to the post of SDE (Civil) prior to the persons who



acquired such higher qualification afterwards. The petitioners place reliance upon the judgments in *Prithi Singh vs Haryana State Electricity Board*, 1993 (4) SCT 647; *Rajpal vs Haryana State Electricity Board*, 1996 (2) SCT 312; *N. Suresh Nathan and others vs Union of India and others*, 2010 (5) SCC 692; and *Parveen Gera vs Haryana State Electricity Board and others*, 2018 (1) SLR 668.

6. The claim of Anil Kumar Gupta is contested by the State stating that the *ad hoc* services rendered on the post of Junior Engineer (Civil) could not have been counted for the purposes of considering his eligibility for promotion. It is urged that the petitioner was regularized on 01.11.1986 and, therefore, his 5 years of substantive service as Junior Engineer with higher qualification of AMIE would be completed only in the year 1992. Petitioner's claim for promotion with effect from 1987 is accordingly opposed by the State. It is also urged that the Service Rules do not provide for maintaining seniority in the feeding cadre from the date of acquiring qualification. It is also submitted that recruitment to the post of Sub-Divisional Engineer by way of promotion is from different channels of promotion i.e., diploma holders and degree holders, etc. under Rule 6 and, therefore, the petitioner could be considered for promotion only under his quota, as per the principle of seniority-cum-merit depending upon the availability of post. The respondents further contend that none of the juniors possessing AMIE/BE qualification has been promoted or given current duty charge on the post of SDE. The respondents further contend that private respondent nos. 4 to 23 are senior to the petitioner in the feeding cadre of Junior Engineers.

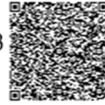


7. So far as petitioner Pardeep Kumar Jain is concerned, he was appointed as Junior Engineer in Haryana State Minor Irrigation Tubewell Corporation (HSMITC) on 24.07.1981. He acquired the qualification of Bachelor in Engineering (Civil) from Regional Engineering College, Kurukshetra in July, 1991 as sponsored candidate from the Department. He was sent on deputation to the Public Health Engineering Department on 08.01.1997 and was subsequently absorbed in the borrowing department on 09.12.1999. He has claimed seniority over one Ashok Yadav on the ground that Ashok Yadav, although had obtained BE Degree in August 2007, but has been promoted in June, 2014, whereas the petitioner has been promoted in May, 2017, even though he had obtained BE degree in the year 1991.

8. Petitioner Pardeep Kumar Jain filed CWP No. 7311 of 2020 before this Court, wherein a direction came to be issued to the respondents to consider his claim for promotion. Pursuant to such direction his claim came to be considered by the department vide order dated 23.06.2020. The respondents took note of petitioner's absorption order dated 09.12.1999, which contained the following stipulation: -

“He will be treated as fresh appointee in this department. His seniority will be reckoned with effect from the date of joining on regular basis in this department and he will be treated junior most Junior Engineer in this Department. He would have no right of seniority and other benefits because of his old service in the HSMITC.”

9. Relying upon the aforesaid clause, the respondents assert that the petitioner since has acquiesced to the order dated 09.12.1999, as such his seniority in the feeding cadre of Junior Engineers has been fixed only from

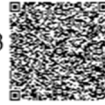


09.12.1999. A notification issued by the Haryana Government on 29.03.2004 has been relied upon which provided that following percentage would be maintained for recruitment to the post of SDE i.e., 50% by direct recruitment, whereas remaining 50% by promotion from the following categories: -

- i) 30% from the Members of Haryana PWD, Public Health Junior Engineers Services.
- ii) 6% from Draftsmen members of Draftsmen and Tracers service; and
- iii) 14% from Haryana PWD Public Health Junior Engineer Service and Draftsmen Members of the Draftsmen and Tracers Service, possessing requisite qualification.

10. The notification further provides that percentage indicated above would be maintained from time to time and any shortfall in the category would be made good from the future vacancies. However, no reversion/ retrenchment was to be made to facilitate filling up of such shortfall. The notification further provides that vacancies arising due to retirement, from promotion/ dismissal or death, etc. shall be filled from the category to which the vacancy belongs.

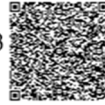
11. The respondents have accordingly rejected the claim of petitioner Pardeep Kumar Jain on the ground that the higher qualification was already possessed by the petitioner when he was absorbed in the department and, therefore, his promotion to the post of SDE was to be based on the seniority of Junior Engineers in the feeding cadre. The Junior Engineers, who were seniors to the petitioners as per the seniority list of Junior Engineers and were possessing higher qualification and have requisite



experience after such higher qualification, could not be ignored. The respondents further asserted that the petitioner was placed at Sr. No. 241 in the seniority list, whereas Ashok Kumar Yadav was at Sr. No. 127. He also possessed the higher qualification and had completed the requisite 5 years' experience with prescribed higher qualification. Petitioner's claim for further promotion to the post of Executive Engineer was, therefore, rejected on the ground that he was to retire on 30.06.2020 by when the requisite 3 years working on the post of SDE would not be complete, as he had been promoted as SDE only on 21.07.2017. Consequently, his claim for promotion came to be rejected on 23.06.2020. The petitioner, therefore, has not only assailed the order dated 23.06.2020 but has also challenged the vires of the Service Rules as is the case in the writ petition filed by Anil Kumar Gupta.

12. We have heard Mr. Sanjiv Gupta learned counsel for the petitioners and Mr. Bhupender Singh learned Additional Advocate General, Haryana.

13. Rule 6 of the 1966 Rules specifies the different sources for appointment to the post in a fixed ratio. The Junior Engineer having 5 years' experience of the post with higher qualification of AMIE/BE has a separate quota for promotion to the post of Sub-Divisional Engineer (SDE). Rule 7 provides for qualifications for appointment by way of direct recruitment as well as by promotion. As per Rule 7 (3)(ii) of the 1966 Rules, an appointment by promotion from the source under Rule 6(1) requires the employee to possess any of the qualifications included in Appendix-B, i.e.

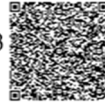


he has put in 5 years of service in case he possesses AMIE qualification and 2 years service in case he is a degree holder.

14. Rule 9 of the 1966 Rules lays down the mode of promotion as per seniority-cum-merit. The inter se seniority of the members is determined as per Rule 12. In case of promoted officers from a particular source, it has to be as per the list approved under Rule 9. When the statutory Rules are cumulatively analyzed, it becomes clear that separate seniority is not required to be maintained of a candidate from the date of acquiring his higher qualification. As and when the post meant for a particular category becomes available, the senior most incumbent possessing requisite qualification is then to be considered for promotion irrespective of the date of acquiring the higher qualification.

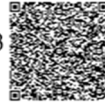
15. The petitioners' submission, that promotions ought to be made on the basis of seniority reckoned from the date of acquiring higher qualification alone, does not flow from the provisions of the applicable service rules. Rule 9 read with Rules 7 and 12 of the Rules clearly postulate that promotions are to be based on seniority-cum-merit, subject to availability of posts and satisfaction of eligibility criteria.

16. The petitioners have assailed Rules 9 and 12 of the 1966 Rules on the ground that they do not specifically provide for promotion of a Junior Engineer (Civil) to the post of Sub-Divisional Engineer (Civil) after attaining the higher qualification of AMIE, etc. as is provided for in Rule 7(3)(ii) of the 1966 Rules. The underline premise on which such submission is made is that the eligibility for promotion having been acquired by the incumbent, he becomes entitled to be promoted. This premise, however, has



no sanctity in law. It is by now well settled that mere eligibility does not confer any right of promotion for the incumbent. We may refer to the judgment of the Supreme Court in **I. Chuba Jamir and others vs The State of Nagaland and others** 2009 (15) SCC 169, wherein it has been held as under: -

“19. We may also add here that the validity and legality of the Government Order and the Notification effecting the encadrement of the post held by respondent no.3 in the PWD and Housing Department with the E and S Service does not seem to have been squarely challenged before the High Court. One can understand that the Court, on scrutiny, might find that the encadrement was wrong and illegal. In that case the Court would undoubtedly strike down the encadrement resulting in the posting of respondent No. 3 as Assistant Director in the E & S Service notwithstanding the fact that the decision was taken at the highest level in the government and the notification was issued with the approval of the highest government functionary. But the learned Single Judge accepted the validity of the encadrement and yet proceeded to direct the deemed promotion of the appellants-writ petitioners as Assistant Directors from a date prior to the appointment of respondent no.3 as Assistant Director. The only ground for passing such extra ordinary order was that when vacancies arose in the post of Assistant Director the appellants-writ petitioners were eligible for promotion. It is elementary and well settled that mere eligibility does not confer any right for promotion. The direction of the learned Single Judge, viewed from any angle was unsustainable. The Division Bench was perfectly right in setting aside the order of the learned Single Judge.”

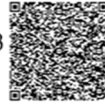


17. So far as right of an employee for promotion is concerned, the position in law is by now well settled as per which the limited right with the employee is to be considered for promotion, and that there is no vested right as such for promotion. Reference in this regard can be made to the judgment of the Supreme Court in **P. Sakthi vs The Government of Tamil Nadu and others**, 2025 INSC 620.

18. In **Nirmal Chandra Sinha vs Union of India and others** 2008 (14) SCC 29, the Supreme Court has clearly held that a promotion takes effect from the date it is granted and not from the date when the vacancy occurs on the promoted post, or the promoted post is created. The observations contained in para are reproduced as under: -

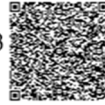
“7. It has been held in a series of decisions of this Court that a promotion takes effect from the date of being granted and not from the date of occurrence of vacancy or creation of the post vide Union of India and others vs. K.K. Vadera and others 1989 Supp (2) SCC 625, State of Uttaranchal and another vs. Dinesh Kumar Sharma 2007 (1) SCC 683, K. V. Subba Rao vs. Government of Andhra Pradesh, 1988(2) SCC 201, Sanjay K. Sinha & others vs. State of Bihar and others 2004 (10) SCC 734 etc.”

19. In **Union of India and another vs Manpreet Singh Poonam etc.** 2022 (6) SCC 105, the Supreme Court has held that a vacancy alone does not give an employee the right to a retrospective promotion, particularly when the rules for promotion include a prescribed selection process. Promotions and related benefits are governed by the specific rules for such posts and not by rules for a different post.



20. In the light of the principles settled by the Supreme Court in the aforesaid decisions, we have no hesitation in rejecting the petitioners' challenge to the vires of the Rules 9 and 12 of the 1966 Rules on the ground that they do not provide for promotion on mere attaining of higher qualification as is provided in Rule 7(3)(ii) of the 1966 Rules. The challenge to the vires of the Rules is, therefore, rejected.

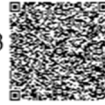
21. Coming to the issue of promotion, Mr. Sanjiv Gupta learned counsel for the petitioner, has placed reliance upon the judgment of Supreme Court in *Shailendra Dania and others vs S. P. Dubey and others* ; 2007 (5) SCC 535 to buttress petitioner's claim for promotion. In this case promotion to the post of Assistant Engineer was from separate channels of Junior Engineers possessing diploma and degree. 50% posts were to be filled up by direct recruitment, while 50% were to be filled by way of promotion. 50% promotion quota was equally divided between Junior Engineers possessing degree on completion of 3 years of service after obtaining Engineering Degree and 8 years' service for the diploma holders. The Supreme Court after analyzing the service rules held that service experience required for promotion from the post of Junior Engineer to the post of Assistant Engineer by a degree holder in the limited quota of degree holder Junior Engineers cannot be equated with the service rendered as a diploma holder nor can be substituted for service rendered as a degree holder. When the claim is made for a fixed quota, the condition necessary for becoming eligible for promotion has to be complied with. The two channels of promotion were held to be watertight compartments and a respective claim for promotion had to be made with reference to its specific quota. Neither a



diploma holder Junior Engineer could claim promotion in the quota of degree holder, nor can a degree holder Junior Engineer make any claim for promotion for the quota fixed for diploma holder. This principle laid down by the Supreme Court does not advance the cause of the present petitioners. There is no separate quota earmarked for promotion for degree holders vis-à-vis diploma holders. The criteria for promotion herein is seniority-cum-merit. Thus, the promotion can be offered to those who are senior and possess the eligibility and promotional post is available for them. It has not been shown by the petitioners that any ineligible person junior to them is promoted.

22. Reliance is also placed by the petitioners upon judgment of Supreme Court in **Parveen Gera's** case (supra), wherein while interpreting a similar provision in the recruitment rules, the Court held that the eligibility criteria for promotion has to be reckoned only from the date when AMIE qualification is obtained. It is only the experience, obtained after passing the higher qualification, which can be taken into consideration. This principle of law has to be applied in the particular service rules applicable to the petitioners. The submission advanced on behalf of the petitioners, to provide for separate maintenance of seniority or for grant of promotion, on acquiring the requisite experience with higher qualification, as a matter of right, finds no support from the judgment of the Supreme Court in this case.

23. In **N. Suresh Nathan's** case (supra), the question raised was different. The Court held that seniority between the degree holders and diploma holders for promotion to the post of Assistant Engineer was not



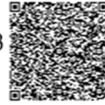
relevant since it was a selection post. The Recruitment Rules did not provide that seniority-cum-merit would be the criteria for promotion.

24. Reliance is also placed upon judgment of the Supreme Court in **Union of India and others vs N.R. Banerjee and others** 1997 (9) SCC 287.

This decision arose out of a direction issued by the Tribunal to constitute a Departmental Promotion Committee and to take confidential reports of the eligible candidates for a particular year. This direction was issued as the employees were to retire in the year 1994. Therefore, the confidential report of 1993 was to be looked into and not the confidential reports of 1994. This judgment has no applicability to the facts of the present case.

25. The judgment of the Supreme Court in **Union of India and others vs Vipincandra Hiralal Shah** 1996 (6) SCC 721, related to a distinct exigency i.e., clubbing of vacancies of a number of years while preparing the select list for promotion to the Indian Administrative Service from the State Civil Service. The Court endorsed the directions of the Tribunal to prepare a separate select list for each year based on vacancies arose in that particular year. This was a case on the facts of its own and its principles are not shown to have any applicability in this case.

26. The Division Bench judgment of this Court in **Sukhdev Singh and others vs Haryana Power Generation Corporation Limited and others** 2018 (4) SCT 716, also is a judgment on the facts of its own. This Court was interpreting Regulation 9 of the Regulations 92/12 which provided for separate channel of recruitment to the post of Assistant Engineer. It was held that 12½% quota for accelerated promotion based upon higher qualification



has to be filled on the basis of seniority of a candidate possessing requisite experience for the post with higher qualification.

27. The Division Bench judgment of this Court also in CWP No. 10931 of 1990 **Gian Singh vs The State of Haryana and another** decided on 18.01.2011, do not advance the cause of the petitioners urged in the present petitions, either.

28. The petitioners have also placed reliance upon a judgment of learned Single Judge in **Ram Kumar Sharma vs State of Haryana**, 1996 (4) SCT 715 wherein the petitioner has joined as Junior Engineer (Mechanical) in Haryana PWD on 27.09.1973. He passed AMIE examination in the year 1982. Consequently, he became eligible to be considered for promotion on 01.01.1983, as against respondent no.3 and 4, although they had joined as Junior Engineers on 17.10.1968 and 03.10.1961 but had obtained qualification only in the year 1983 and consequently became eligible to be considered for promotion on 01.01.1994.

29. The petitioners have also relied upon judgment of the Supreme Court in **Union of India and others vs N. C. Murali and others** 2017 (13) SCC 575, wherein it has been held that unless there is specific rule entitling the applicants to receive promotion from the date of occurrence of vacancy, the right of promotion does not crystallize on the date of occurrence of vacancy and the promotion is to be extended on the date when it is actually effected.

30. In the light of the discussions aforesaid, we have no hesitation coming to the conclusion that the petitioners' claim for promotion in the manner claimed in the writ petition cannot succeed. Claim for promotion



will, thus, have to be reckoned based upon seniority on the post of Junior Engineer as well as on attaining the qualification for promotion i.e. Degree or Diploma, with requisite experience of working, subject to suitability. On this touch stone, no illegality or perversity is shown to have been committed by the respondents in denying the petitioners claim for promotion. It has not been shown on facts that any person *junior* to the petitioners or ineligible otherwise has stolen a march over the petitioners. In light of the above, the writ petitions are dismissed and are consigned to records.

31. Pending miscellaneous application (s), if any, also stands disposed of.

(ASHWANI KUMAR MISHRA)
JUDGE

25.08.2025
vs

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No