

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**CWPOA No.5012 of 2019****Decided on: 18.09.2026**

Keshav Chander Sharma and others

...Petitioners

Versus

State of Himachal Pradesh and others

...Respondents

*Coram***Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge***Whether approved for reporting?*¹ **Yes**

For the petitioners:

Mr. Anshul Jairath and Ms. Neha Thakur, Advocates.

For the respondents:

Mr. R.P. Singh, Deputy Advocate General, for respondents No.1 & 2.

Respondents No.3 & 4 ex-parte.

Jiya Lal Bhardwaj, Judge (Oral)

The petitioners by way of present petition have prayed for the following substantive reliefs:-

- "i) *That the action of the Respondents whereby the Private Respondents who are admittedly and undisputedly junior to the Applicants have been promoted to the Post of Executive Engineer as a temporary arrangement after being shown senior to the present Applicants in the Category of "Diploma Holder Junior Engineers" may be quashed and set aside.*
- ii) *That the respondents may further be directed to grant the Promotion to the post of Executive Engineers as has been done in case of the private respondents from the date on which they were actually entitled for promotion if they would have not been wrongly placed in the seniority*

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

list with all consequential benefits.”

2. Shorn of unnecessary details, the key facts of the case are that petitioner No.1 was appointed as Junior Engineer (Civil) on 18.07.1978 and petitioners No.2 and 3 on 20.07.1978, whereas private respondents No.3 and 4 were appointed on 21.07.1978 and 24.07.1978, respectively. As per the provisional seniority list of Junior Engineer (Civil) as it stood on 31.12.2007 circulated vide letter dated 07.11.2008 (Annexure A-1), petitioners No.1 to 3 have been shown at serial No.108, 117 and 118 respectively, whereas respondents No.3 & 4 have been shown at serial No.126 and 145, respectively. Respondents No.3 and 4 who belong to Scheduled Tribe category were promoted to the post of Assistant Engineer (Civil) on 17.07.2004 and 22.10.2005, respectively. Later on the petitioners were also promoted to the post of Assistant Engineer (Civil) on 31.03.2008. However, their seniority position was not corrected, though as per the law laid down by the Constitution Bench Judgment of the Supreme Court in ***Ajit Singh and others (II) vs. State of Punjab and others***, (1999) 7 SCC 209, they were to be treated senior to respondents No.3 and 4.

3. The petitioners have placed on record the final seniority list of Assistant Engineers (Civil) as on 31.12.2009, circulated vide office Memorandum dated 20.07.2010 (Annexure A-3), in which

petitioners No.1 to 3 have been shown at serial Nos.194, 205 and 207 respectively, whereas, respondents No.3 and 4 have been shown at serial No.76 and 108.

4. The petitioners feeling aggrieved by not assigning them the seniority after their promotion to the post of Assistant Engineer (Civil) as per their seniority position in the cadre of Junior Engineer (Civil) vis-à-vis respondents No.3 and 4, preferred a representation before the respondents-State to assign them seniority. However, when the same was not adjudicated upon, the petitioners approached this Court by way of CWP No.5142 of 2014-E, titled, ***Keshav Chander Sharma & Ors. vs. State of H.P. & Ors.*** and this Court vide order dated 23.07.2014 had directed respondent No.1 to decide the representation of the petitioners by passing a speaking/reasoned order within a period of 10 weeks. After the decision passed by this Court in the aforementioned petition, the petitioners made a detailed representation dated 13.08.2014 (Annexure A-5) to respondent No.1 to decide their representation and respondent No.1 after considering the issue raised in the representation and further in compliance with the direction given by this Court issued an office memorandum dated 14.01.2015 (Annexure A-6), thereby revising/amending the seniority list of Assistant Engineers (Civil) issued vide office memorandum dated

20.07.2010 as it stood on 31.12.2009 and respondents No.3 and 4, who were earlier assigned seniority at serial No.76 and 108 were assigned seniority position as 213-B and 248-A, respectively.

5. After assigning the seniority position to the petitioners above the private respondents No.3 and 4, the claim of the petitioners ought to have been considered for promotion to the post of Executive Engineer in terms of the Recruitment and Promotion Rules (in short 'R&P Rules') notified on 02.04.1997 (Annexure A-7) which provide that 70% posts are to be filled up from amongst graduate Assistant Engineer with 8 years regular service or regular combined with continuous adhoc (rendered up to 31.03.1991) service and in case the junior person becomes eligible for consideration by virtue of his total length of service in the feeder post, the senior to him in the respective category/post/cadre shall be deemed to be eligible for consideration. The petitioners were promoted to the post of Executive Engineer after respondents No.3 and 4, which is evident from perusal of Notification dated 22.06.2019 (Annexure P-13). Petitioners No.1 and 3 have been promoted for the vacancies of the year 2015, whereas respondents No.3 and 4 were allocated the year 2013 and 2014, respectively. Petitioners No.2 could not be considered for promotion to the post of Executive Engineer since he stood retired from service on

31.03.2015.

6. The precise grievance of the petitioners in the petition as highlighted by learned counsel representing them is that once they were promoted to the post of Assistant Engineer (Civil) on 31.03.2008 and respondents No.3 and 4, who were junior to them were not promoted further to the post of Executive Engineer, they have to be treated senior to them and furthermore, they were to be considered for promotion earlier to them to the post of Executive Engineer. But the respondents-State despite knowing the fact that the petitioners have been promoted to the post of Assistant Engineer (Civil) did not consider them earlier to respondents No.3 and 4, which action is illegal, arbitrary and discriminatory and thus, they may be held entitled to be promoted from the date when private respondents No.3 and 4 have been promoted to the post of Executive Engineer with all consequential benefits.

7. Respondents No.1 and 2 filed reply to the petition and in preliminary submission averred that as per the record, the petitioners were senior to the private respondents No.3 and 4 as Junior Engineer (Civil). However, respondents No.3 and 4 were promoted as Assistant Engineer (Civil) under the rule of reservation (ST category) on 17.07.2004 and 22.10.2005, respectively, whereas petitioners were promoted as Assistant Engineer (Civil) during the

year 2008. It has further been averred that respondents No.3 and 4 were promoted as Executive Engineer in terms of the pre-revised seniority during the year 2013 and 2014, whereas the regain seniority to the petitioners was given vide office memorandum dated 14.01.2015. The petitioners are claiming promotion to the post of Executive Engineer in place of respondents No.3 and 4 being senior to them. Respondents No.3 and 4 at the time of convening the meeting of Departmental Promotion Committee (in short 'DPC') in 2013 were fulfilling the eligibility criteria of 8 years of regular service as required in the R & P Rules of Executive Engineer (both of them have now retired as Executive Engineer), whereas, even if the petitioners are to be considered in terms of new revised seniority in the DPC held during the year 2013-2014, they do not complete the mandatory 8 years' service (regular combined with adhoc service) and have only 5 years of regular service as Assistant Engineer (Civil). They were promoted as Assistant Engineer (Civil) only during the year 2008. Further, the matter regarding their promotion was got examined from the Department, who are the expert body of the State and Personnel as well as Law Departments, who had observed that two incumbent respondents are of Scheduled Tribe category namely Sh. Ram Chand and Sh. Uttam Chand who were promoted as Executive Engineer in the proceedings of DPC held during the

year 2013-2014. The general category incumbent Sh. Keshwa Chand Sharma had filed a writ petition in this Court for re-casting the seniority as per instructions of the Government by giving the regaining seniority of entry grade over the reserved category candidate promoted earlier by the rule of reservation. As per the direction given by this Court, the seniority list of Assistant Engineers (Civil) was modified on 14.01.2015 and the unreserved category candidates were positioned senior to the reserved category candidates of entry grade who were given promotion by the rule of reservation. On the basis of revised seniority list, the petitioners had put their claim to promote them to the post of Executive Engineer from the date of their juniors were promoted as Executive Engineer under the provisions of proviso Rule 11 of R&P Rules, which provide that where a junior person becomes eligible for promotion by virtue of his total length of service in the feeder post in view of the provisions referred to above, all senior persons to him in the respective category/post shall be deemed to be eligible for consideration. In the instant matter, DPC was held during the year 2013-2014, when the petitioners were not eligible.

8. On merits, it has been averred that the provisions of the Rules are only applicable when the incumbent in the feeder post have rendered a part of their service on adhoc basis, whereas, in the

present case neither the private respondents nor the petitioners have rendered any adhoc service as provided in the Rules and, therefore, the proviso to note in Para 11(1) of the R&P Rules is not applicable in the instant case and as such prayed for dismissal of the writ petition.

9. The petitioners filed rejoinder to the reply of respondents No.1 and 2 and controverted the averments made therein.

10. The private respondents though served have not chosen to appear or file reply to the petition to controvert the averments made therein. They were ordered to be proceeded against ex-parte on 21.08.2026.

11. I have heard Mr. Anshul Jairath and Ms. Neha Thakur, learned counsel for the petitioners and Mr. R.P. Singh, learned Deputy Advocate General for the respondents and also perused the record carefully.

12. From the facts as noticed above, it is not in dispute that the petitioners were senior in the feeder category of Junior Engineer(Civil) to respondents No.3 and 4. Petitioner No.1 was appointed to the post of Junior Engineer(Civil) on 18.07.1978, petitioners No.2 and 3 were appointed on 20.07.1978 and respondents No.3 and 4 were appointed on 21.07.1978 and

24.07.1978, respectively, which is also evident from a perusal of the provisional seniority list of Junior Engineers (Civil) (Annexure A-1). Petitioners No.1 to 3 were assigned seniority position as per provisional seniority list at serial No.108, 117 and 118 respectively, whereas, respondents No.3 and 4 were assigned the seniority at serial No.126 and 145, respectively. Respondents No.3 and 4 were promoted to the post of Assistant Engineer (Civil) on 17.07.2004 and 22.10.2005, respectively, earlier to the petitioners, being from Scheduled Tribe category. Thereafter, the petitioners have been promoted to the post of Assistant Engineer (Civil) on 31.03.2008. As per the Constitution Bench judgment referred above in ***Ajit Singh's*** case, a senior candidate of general category at the lower level if reaches the promotional level later but before the further promotion of the reserve category candidate, he will have to be treated as senior at the promotional level to the reserve candidate, even if the reserve category candidate was earlier promoted to that level on the basis of catch-up principle. The principle of catch-up will not be made applicable in case, the junior person earlier promoted, further gets promoted to the next higher post. The relevant paragraphs of the judgment read as under:-

"77. We, therefore, hold that the roster-point promotees (reserved category) cannot count their seniority in the promoted category from the date of their continuous

officiation in the promoted post, - vis-à-vis the general candidates who were senior to them in the lower category and who were later promoted. On the other hand, **the senior general candidate at the lower level, if he reaches the promotional level later but before the further promotion of the reserved candidate - he will have to be treated as senior, at the promotional level, to the reserved candidate even if the reserved candidate was earlier promoted to that level.** We shall explain this further under Point 3. We also hold that Virpal and Ajit Singh have been correctly decided and that Jagdish Lal is not correctly decided. Points 1 and 2 are decided accordingly.

Point (3)

78. During the discussion under this "catch-up" point for purposes of convenience, - we take the example of the cadres in Ajit Singh i.e. there is for purposes of roster-point promotion for reserved candidates for promotion from Level 1 to Level 2 and from Level 2 to Level 3. There is no roster for promotion from Level 3 to Level 4.

Two "catch-up" rules contended for by general candidates

79. Now, as stated earlier, the counsel for the general candidates argued for acceptance of two catch-up rules.

Extreme "catch-up" rule

80. So far as the extreme contention of the general candidates that at Level 3, the roster candidate must wait at Level 3 before being promoted to Level 4 - till the last senior general candidate at Level 1 reached Level 3, - we reject the same inasmuch as that will not amount to a reasonable balancing of the rights of the candidates in the two groups. Nor do we accept that posts must be kept vacant and no promotions of the roster candidates be made.

Other catch-up rule

81. As accepted in Virpal (see SCC at p. 702) and Ajit Singh (see SCC at p. 729), we hold that in case any senior general candidate at Level 2 (Assistant) reaches Level 3 (Superintendent Grade II) before the reserved b candidate (roster-point promotee) at Level 3 goes further up to Level 4 in that case the seniority at Level 3 has to be modified by placing such a general candidate above the roster promotee, reflecting their inter se seniority at Level 2. Further

promotion to Level 4 must be on the basis of such a modified seniority at Level 3, namely, that the senior general candidate of Level 2 will remain senior also at Level 3 to the reserved candidate, even if the latter had reached Level 3 earlier and remained there when the senior general candidate reached that Level 3. In cases where the reserved candidate has gone up to Level 4 ignoring the seniority of the senior general candidate at Level 3, seniority at Level 4 has to be refixed (when the senior general candidate is promoted to Level 4) on the basis of when the time of reserved candidate for promotion to Level 4 would have come, if the case of the senior general candidates was considered at Level 3 in due time. To the above extent, we accept the first part of the contention of the learned counsel for the general candidates. Such a procedure in our view will properly balance the rights of the reserved candidates and the fundamental rights guaranteed under Article 16(1) to the general candidates.

No difficulty in amending seniority list

82. One of the objections raised before us and which appealed to the Full Bench in Jaswant Singh case was that this "catch-up" principle would lead to frequent alteration of the seniority list at Level 3. We do not find any difficulty in this behalf. The seniority list at Level 3 would have only to be merely amended whenever the senior general candidate reaches Level 3.

Examples given by reserved candidates do not create any anomaly

83. Learned Senior Counsel Shri K. Parasaran and Shri Raju Ramachandran then adverted to a situation which according to them might create serious problems if a senior general candidate is to be treated as senior at the promotional level if he reaches that level before the roster promotee goes further up. The examples given refer to cases where after the roster-point promotee (reserved candidate) reaches the promotional level, there is direct recruitment or recruitment by transfer at that promotional level. Counsel submit that if a senior general candidate is thereafter promoted and placed above the reserved candidate, can he become senior to the direct recruit and transferee? We do not find any anomaly. The direct recruit or transferee who has no grievance against

the reserved candidate who was already there can have no grievance against a senior general candidate who has a superior claim, in law, against the reserved candidate. Even if seniority of roster-point promotee does not count, experience of both groups can be considered as part of merit for further promotion."

13. From the aforementioned authoritative pronouncement of the Hon'ble Supreme Court, it is crystal clear that in case a senior general category candidate at the lower level if reaches the promotional level later but before the further promotion of reserve candidate, he will have to be treated as senior. In the present case, admittedly the petitioners were promoted to the post of Assistant Engineer(Civil) prior to further promotion of respondents No.3 and 4 to the post of Executive Engineer, in view of the fact that the petitioners were promoted to the post of Assistant Engineer (Civil) on 31.03.2008 and respondents No.3 and 4 were considered for promotion to the post of Executive Engineer in the year 2013-2014. Thus, the petitioners were to be considered for promotion to the post of Executive Engineer prior to the respondents No.3 and 4, who were not promoted further to the post of Executive Engineer, when the petitioners were promoted to the post of Assistant Engineer (Civil).

14. As per the Recruitment and Promotional Rules for the post of Executive Engineer called as "the Himachal Pradesh

Department of Irrigation and Public Health, Executive Engineer (Class-1 Gazetted) Recruitment and Promotion Rules 1997" (Annexure A-7), the post of Executive Engineer has to be filled up 100% by promotion, failing which by deputation. As per Rule 11 of the *ibid* Rules, in all cases of promotion, the adhoc service rendered in the feeder post up to 31.03.1991, if any, prior to regular appointment to the post shall be taken into account towards the length of service as prescribed in these Rules for promotion, subject to the condition that in all cases where a junior person becomes eligible for consideration by virtue of his total length of service (including the service rendered on ad hoc basis after 31.03.1991) in the feeder post in view of the provisions referred to above all persons senior to him in the respective category/post/cadre shall be deemed to be eligible for consideration and placed above the junior person in the field of consideration.

15. Respondents No.1 & 2 while filing reply to the petition have averred that since the petitioners were not possessing the requisite qualification of 8 years' service as Assistant Engineer (Civil) on the date of promotion of respondents No.3 and 4 during the year 2013-2014, for the reason that they were promoted to the post of Assistant Engineer (Civil) on 31.03.2008, they were not to be considered for promotion to the post of Executive Engineer.

However, the said plea cannot be accepted in teeth of the language of the Rule, which clearly provides that in case the junior person becomes eligible, a senior person will automatically be eligible for promotion. The relevant note appended in Rule 11 is reproduced herein under:-

*"Note:- (1) In all cases of promotion, the adhoc service rendered in the feeder post up to 31.3.91, if any, prior to regular appointment to the post shall be taken into account towards the length of service as prescribed in these Rules for promotion **subject to the condition that in all cases where a junior person becomes eligible for consideration by virtue of his total length of service (including the service rendered on adhoc basis up to 31.3.91) in the feeder post in view of the provisions referred to above all persons senior to him in the respective category / post / cadre shall be deemed to be eligible for consideration and placed above the junior person in the field of consideration;***

Provided that all incumbents to be considered for promotion shall possess the minimum qualifying service of at least three years or that prescribed in the Recruitment and Promotion Rules for the post, whichever is less;

Provided further that where a person becomes ineligible to be considered for promotion on account of the requirements of the proceeding proviso, the person (s) junior to him shall also be deemed to be ineligible for consideration for such promotion. Provided that inter-se-seniority as a result of confirmation after taking into account, adhoc service rendered up to 31.3.1991 shall remain unchanged.

Explanation:- *The last proviso shall not render the junior incumbents ineligible for consideration for promotion if the senior ineligible persons happened to be Ex-servicemen recruited under the provisions of Rule-3 of Demobilized Armed Forces Personnel (Reservation of vacancies in Himachal State Non-Technical Services) Rules, 1972 and having been given the benefit of seniority there under or recruited under the provisions of Rule-3 of Ex-servicemen (Reservation of vacancies in the Himachal Pradesh Technical Services) Rules, 1985 and having been given the benefit of seniority there under.*

(2) Similarly, in all cases of confirmation adhoc service rendered on the feeder post up to 31.3.91, if any, prior to the regular appointment against such post shall be taken into account towards the length of service.

Provided that inter-se-seniority as a result of confirmation after taking into account, adhoc service rendered up to 31.3.1991 shall remain unchanged."

16. Learned Deputy Advocate General representing the respondents-State vehemently argued that the petitioners could have raked up the issue regarding their promotion prior to the promotion of respondents No.3 and 4 and since they did not do so, they are not entitled to any relief. However, the said contention cannot be accepted for the reason that the petitioners had made the representation against the seniority list issued on 20.07.2010 (Annexure A-3) and when respondent No.1 had not decided the said representation, they had approached this Court by way of writ

petition referred above and this Court while disposing of the writ petition had given direction on 23.07.2014 to decide their representation by passing a speaking/reasoned order. In sequel to the said direction, respondent No.1 had issued an office memorandum dated 14.01.2015 (Annexure A-6) and assigned the seniority to private respondents No.3 and 4 below the petitioners. Once the respondents-State had rectified the seniority position, they were also under obligation to make promotion of the petitioners in view of the provisions contained in the R&P Rules referred to above.

17. Furthermore, once the respondents-State did not object to the direction given by this Court when respondent No.1 was directed to decide the representation made by the petitioners. Once the seniority position was rectified, it was incumbent upon the respondents-State to promote the petitioners at least from the date when respondent No.3 was promoted to the post of Executive Engineer from the year 2013, when admittedly the petitioners were senior to him. Since respondents No.1 and 2 have not promoted the petitioners to the post of Executive Engineer knowing fully well that they had been promoted to the post of Assistant Engineer on 31.03.2008 and the private respondents No.3 and 4 were not further promoted to the post of Executive Engineer, the action on their part is arbitrary, discriminatory and violative of Articles 14 and 16 of the

Constitution of India. Once the Constitution Bench in the judgment referred to above had clearly and in unequivocal terms held that the senior after promotion to the post after the junior regains the seniority position, the respondents-State had to take the consequential actions and in not doing so, they have abdicated of their duties, which has caused injustice to the petitioners and as such the petitioners are held entitled for promotion to the post of Executive Engineer from the date when respondent No.3 has been promoted.

18. Learned Deputy Advocate General for the respondents-State argued that the proviso below rule 11 of the R&P Rules can be invoked only in cases where adhoc service has been taken into account while considering the incumbents for promotion and in the present case, the adhoc service rendered by the juniors to the petitioners has not been taken into account for their promotion to the post of Executive Engineer. However, the said contention cannot be accepted for the simple reason that in all cases, where a junior person becomes eligible for consideration by virtue of his total length of service whether adhoc or otherwise in the feeder post, all persons senior to him in the respective category/post/cadre shall be deemed to be eligible for consideration and placed above the junior person in the field of consideration for promotion. This is only the

import of the Note (1) inserted in Rule 11, which has been couched in such a language that where a junior person becomes eligible for consideration by virtue of his total length of service (including the service rendered on adhoc basis up to 31.3.91) in the feeder post in view of the provisions referred to above all persons senior to him in the respective category/post/cadre shall be deemed to be eligible for consideration and placed above the junior person in the field of consideration. The phraseology of the Rule 11 is that if the persons junior becomes eligible, senior shall automatically become eligible. There is another proviso added in the Rule 11, which says that all incumbents to be considered for promotion shall possess the minimum qualification of at least three years or that prescribed in the Rules for the post, whichever is less. The period of adhoc service has been inserted if the person takes the benefit of that service, but it does not mean that if the incumbent, who is junior becomes otherwise eligible, the senior will not be considered since the junior had not rendered the adhoc service or the adhoc service rendered by him has not been considered. The State Government has done away with the cut-off date as per letter dated 31.08.2002 and referred to in para 16.27(c)(3) as contained in Handbook on Personnel Matters (Vol.-1). In view of the above, the petitioners being senior to respondents No.3 and 4 were to be considered for

promotion to the post of Executive Engineer earlier to them and not considering them earlier is wrong, illegal, arbitrary, discriminatory and violative of Articles of 14 and 16 of the Constitution of India.

19. Consequently, the present petition is allowed and respondents No.1 and 2/competent authority are directed to promote the petitioners to the post of Executive Engineer from the date when respondent 3 was promoted, with all consequential benefits. In case the posts of Executive Engineers were not available, the supernumerary posts be created. The needful shall be done within three months from today. Further, the arrears shall be paid to the petitioners within a period of six months from today, failing which, the same shall carry interest @6% per annum from today, till actual payment. No order as to costs. Pending applications, if any, also stand disposed of.

18th September, 2026

(Anurag)

**(Jiya Lal Bhardwaj)
Judge**