

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

1) **CWP No.22386 of 2011**
Date of decision: **December 17, 2015**

Michal

..... Petitioner

Versus

State of Punjab and others

..... Respondents

2) **CWP No.3558 of 2012**

Sanjeev Devgun

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present:- Mr. D.S.Channan, Advocate,
for the petitioner in CWP No.3558 of 2012.

Mr.Amit Arora, Advocate,
for the petitioner in CWP No.22386 of 2011.

Ms. Monica Chhibber Sharma, DAG, Punjab

Mr. Ashok Bazaz, Advocate,
for respondent No.3 in CWP No.3558 of 2012
and respondents No.3 and 4 in CWP No.22386 of 2011.

Mr. Namit Kumar, Advocate,
for respondent No.5 in CWP No.22386 of 2011.
(Respondent No.4 in CWP No.3558 of 2012).

1. To be referred to the Reporters or not? **Yes.**

2. Whether the judgment should be reported in the Digest?

AMOL RATTAN SINGH, J.

The petitioners in these two petitions challenge the promotion of Rajinder Sharma (respondent No.4 in CWP No.3558 of 2012 and respondent No.5 in CWP No.22386 of 2011) to the post of Assistant Town Planner, vide the order of respondent No.2, dated 24/31.10.2011 (Annexure P-5 with both the petitions).

2. The essential facts are first being taken from CWP No. No.22386 of 2011, both, for the sake of convenience, as also due to the fact that the petitioner in this case, i.e. Michal, is shown to be the senior most amongst both the petitioners and respondent Rajinder Sharma, in the feeder cadre of Building Inspectors (Technical), from which post the said respondent has been promoted to the post of Assistant Town Planner (ATP for short).

3. As per the petition (CWP No.22386 of 2011), the petitioner, Michal, was appointed on 12.11.1984 (as Baildar/Peon as per the respondents), in the Department of Local Government, Punjab and thereafter, was appointed as a Building Inspector, vide order dated 26.12.2001, Annexure P-1.

Rajinder Sharma (hereinafter to be referred to as respondent No.5), was appointed as a Junior Engineer in the Operations & Maintenance Cell and thereafter, was transferred by respondent No.3, i.e. the Commissioner, Municipal Corporation, Amritsar, to the Municipal Town Planning Department, on 25.06.2004, as stated in the petition.

On 27.11.2006, respondent No.5 as also the petitioner in CWP

No.3558 of 2012 (Sanjeev Devgun), were both declared to be Building Inspectors (Technical), with immediate effect, vide order Annexure P-3, by respondent No.1. It was stated in the said order that the seniority of both these persons would be considered in the cadre of Building Inspectors (Technical), from the date of their joining in the cadre.

4. The petition goes on to state that in the year 1997, the Town Planning Wing was carved out in the Municipal Corporations of the State of Punjab and the post of Building Inspector (Technical) was also created. The qualifications set down for the post were that a person to be so appointed, should hold a Diploma in Civil Engineering and should have worked in the Town Planning Wing. All the posts of non-technical Building Inspectors are stated to have been converted into Building Inspectors (Technical) and thereafter, rules were also notified with regard to appointments to the said post, on 17.11.1998.

The qualifications for the next higher post, of Assistant Town Planner, were laid down as follows, in Schedule 'B' of the Punjab Municipal Corporation Services (Recruitment and Conditions of Service) Rules, 1978 (hereinafter referred to as the Rules):-

Qualifications for Direct recruitment	Qualifications for promotion
A post Graduate degree or Diploma in Town Planning or Regional Planning recognized by the institute of Town Planners (India) for Associate Membership	(i). 12½% of the posts of Planning Officers having at least three years experience as P.O. (ii) 12½% posts to Head Draftsman having at least 7 years of service of experience in Town Planning wing. (iii)25% posts of Building Inspector (Technical) having 10 years of experience in Town Planning wing OR Building Inspector with a degree in Civil Engineering and having an experience of working as such for minimum period of 2 years in the Town Planning wing

5. On 24.01.2011 the rules were amended and the following

qualifications were laid down for the post of Assistant Town Planner:-

Qualification for direct recruitment	Qualification for promotion
Should have passed Diploma in Architecture from a recognized university/institution	Should be a Corporation employee and has passed Diploma in Architecture or Civil Engineering from a recognized university/ institution and has experience of working for a period of three years

Thus, the ratio dividing the posts between the feeder cadres of Planning Officers, Head Draftsmen and Building Inspectors (Technical), was done away with, alongwith any experience required in the case of each feeder cadre post, for promotion to the post of ATP. The promotee to the said post, now, simply must be an employee of a Municipal Corporation, with three years experience and be in possession of a Diploma in Architecture or Civil Engineering, from a recognized University/Institution.

It is specifically to be noticed that whereas, earlier, the condition for promotion to the 25% posts of Assistant Town Planners, (as fell to the share of Building Inspectors (Technical)), of possessing a degree in Civil Engineering, with a minimum of two years' experience, as an alternate to simply having worked for ten years in the Town Planning Wing, was done away with and a minimum qualification of possessing a Diploma in Architecture/Civil Engineering, alongwith a work experience of three years, came to be prescribed in the rules.

6. It is further stated in the petition, that one post of Assistant Town Planner was vacant and the service particulars of the petitioner, respondent No.5 and the petitioner in the other petition, were called for by respondent No.2 from respondent No.3, vide letter dated 19.08.2011 (Annexure P-4).

Eventually, respondent No.5 was promoted vide order dated

31.10.2011, in preference to both the petitioners in these two petitions.

The grievance of the petitioner of this petition, therefore, is that though he is admittedly senior to respondent No.5, in the cadre of Building Inspectors, he has been ignored for promotion in a wholly arbitrary manner.

7. In the reply filed by the State (Respondents No.1 and 2), the essential facts have been admitted. However, it has been stated that the petitioner was under suspension for showing dereliction of duty, vide order dated 30.08.2007 but was reinstated on 22.05.2009, pending disciplinary proceedings.

Further down in the reply, it has been admitted that, thereafter, the suspension period of the petitioner has been treated to be duty period.

Other than the above, it has been further stated that the process of finalization of the seniority list in the cadre of Building Inspectors (Technical) had (now) been started and that since the petitioner had acquired the requisite experience as a Building Inspector (Technical), he is now eligible for promotion as an Assistant Town Planner and as such, the petition is “premature” and liable to be dismissed.

The justification given by the respondents for promoting respondent No.5 over and above the petitioners in both these cases, would be discussed later, alongwith the reply given to the other petition.

8. On behalf of respondents No.3 and 4, i.e. the Municipal Corporation, Amritsar, the stand taken is the same as has been taken by respondents No.1 and 2 and additionally, it has been stated that respondent No.5 was appointed as a Junior Engineer on 16.02.2001 and was working as a Building Inspector since 31.05.2001. Thereafter, he was again posted out to the Engineering Wing (date not given) and was posted back to work as a

Building Inspector on 26.05.2004 vide order, Annexure P-2.

It is also important to note that in reply to the contention of the petitioner that the post of Building Inspectors (Technical) were created for the first time in 1997, it has been stated in para 4 of the written statement of the Corporation, that the recruitment of Building Inspectors was made in the year 1980-81 and the minimum qualification prescribed was a three year Diploma in Civil Engineering. Thereafter, no further recruitment was made and employees working as Junior Engineers in the Town Planning (Building) Branch were posted to work as Building Inspectors because the qualifications and the pay scale attached to both the posts (Junior Engineer and Building Inspector), were the same. It has also been admitted, in para 3 of the said reply, that Junior Engineers were posted from time to time in the Town Planning Wing, to perform the duties of Building Inspectors, even prior to the 'constitution' of the post of Building Inspector (Technical).

CWP No.3558 of 2012

9. The grievance of the petitioner in this petition (Sanjeev Devgun) is also similar, but in his case it is not admitted by the respondents that he is senior to respondent No.5, inasmuch as, they were both declared to be Building Inspectors (Technical), vide order dated 27.11.2006, Anneuxre P-3.

As regards seniority, the stand of the petitioner in this petition, Sanjeev Devgun, is that he was appointed as a Junior Engineer in Municipal Corporation, Ludhiana, on 24.04.1997 and thereafter was transferred in the same capacity to the Municipal Corporation, Amritsar, in September 1998

and posted as Junior Engineer (Operations & Maintenance).

After that, vide order dated 14.05.2001 (Annexure P-1 in this petition), he was transferred to the Town Planning Department/Wing of the Municipal Corporation.

It is stated in this petition too, that the pay scales of both, Building Inspectors (Tech) and Junior Engineers, is the same and that as a matter of fact, he was discharging the duties of a Building Inspector since 14.05.2001, vide order Annexure P-1.

On the other hand, respondent No.5 was appointed as a Junior Engineer (Operations & Maintenance) four years after him, in April 2001 and transferred to the Planning Wing of the Municipal Corporation on 25.06.2004. Thus, by length of service alone, it is contended that respondent No.5 is junior to the petitioner.

It has also been alleged that the degree of civil engineering possessed by respondent No.5, is not from a recognized institution.

10. In the reply filed by respondents No.1 and 2, the basic facts have again been admitted.

In the reply filed by the Municipal Corporation, the essential stand again is the same as taken by the Corporation in reply to CWP No.22386 of 2011, as also by respondents No.1 and 2 in the two petitions. In addition, the different dates etc. on which the petitioner and respondent No.5 joined service, have been given.

In this reply also, it has been stated that respondent No.5 joined the Municipal Corporation services, not in April 2001 but on 16.02.2001. It has been stated here too, that he was working as a Building Inspector from 31.05.2001 onwards.

As regards petitioner Sanjeev Devgun, it has been stated in the reply filed to his petition, that it is not reflected in his service book that he has been working in the Building branch from 14.05.2001 onwards and that the order of that date (Annexure P-1 with CWP No.3558 of 2012), was only an “internal arrangement”.

11. The common stand of the State, in both the cases, further is that, as on 24.01.2011, i.e. the date when the rules were amended, the total strength of the cadre of Assistant Town Planner (ATPs) was 18 and as such, 9 posts were to be filled up by way of promotion, of which 4.5 posts (25% of 18) were to be filled up from amongst Building Inspectors (Technical), who had either ten years experience in the Town Planning Wing or possessed a degree in Civil Engineering, with a minimum of two years experience in the said wing.

It is further stated that one post of the said 4.5 posts, fell vacant prior 24.01.2011 and (since it was lying vacant before the amendment of the rules) had to be filled up in accordance with the unamended rules. Consequently, since neither of the two petitioners in these two petitions possessed a degree in Civil Engineering, nor had they acquired ten years experience as Building Inspectors (Technical) on 24.01.2011, were they eligible to be promoted as ATPs.

On the other hand, it is contended, that respondent No.5 possessed a degree in Civil Engineering and had more than two years experience as a Building Inspector (Technical) and as such, was eligible to be so promoted and was, consequently, promoted vide the impugned order dated 24/31.10.2011.

12. The private respondent, Rajinder Sharma has also filed

individual replies to both the petitions, in which he has, essentially, taken the same stand to justify his promotion as ATP, as has been taken by the official respondents.

As regards the allegations that he does not possess a valid degree in Engineering, as has been alleged by the petitioners, respondent No.5 has stated that he had obtained the degree from the Institute of Advanced Studies in Education, Sardar Shahar, Rajasthan, which is a deemed University, in the First Division, after he had taken prior permission to pursue such degree, from respondent No.3 and such permission was granted to him on 20.09.2004.

It has further been stated that this Court, vide judgment dated 27.01.2012 (passed in CWP No.6243 of 2010, titled as Swaran Singh and others v. The Punjab State Electricity Board), has held that consequent upon the Central Governments' decision to confer the status of deemed University to the aforesaid Institute in Rajasthan, all those who have passed the degree of Bachelor of Technical Education from this Institute, are to be considered as graduates in Engineering for all intents and purposes. He has also referred to a judgment of the Himachal Pradesh High Court, passed in CWP No.3206 of 2010, on 05.04.2011, in this regard.

13. Learned counsel appearing on both sides addressed arguments as per their pleadings.

Mr.Namit Kumar, learned counsel appearing for respondent No.5, in addition, argued that respondent No.5 having admittedly worked, at least since 31.05.2001 onwards, as a Building Inspector, even as per the reply filed by the Municipal Corporation itself, the work experience gained by him before his formal designation as such Building Inspector

(Technical), vide order dated 27/29.11.2006, would have to be counted as experience gained as a Building Inspector; and even if such experience is to be counted only in his capacity as a person holding current duty charge on the said duty/post, the experience gained cannot be denied to him.

In this regard, he cited a judgment of a Division Bench of this Court in D.P.Mehta (Dr.) v. P.G.I. and its Governing Body (1996) 4 SCT 520.

14. Having considered the arguments raised on both sides and the pleadings before this Court, the issue that would first have to be addressed is with regard to who amongst the petitioners and respondent No.5 is senior and, thereafter, if the petitioners are found to be senior, whether respondent No.5 was correctly promoted, he being junior.

The petitioner in CWP No.22386 of 2011, Michal, as already noticed, was appointed as a Building Inspector on 26.12.2001, before which he was working as a Sevadar (Peon) since 1984.

As already noticed, in the reply filed by the respondent Municipal Corporation, to Sanjeev Devugns' petition, it has been stated that both he and respondent Rajinder Sharma were working as Junior Engineers since 24.04.1997 and 16.02.2001 respectively and that both were designated as Building Inspectors (Technical) on 27.11.2006. The same stand, with regard to their being 'declared' as Building Inspectors in the Corporation service, on 29.11.2006 (the date of endorsement of the order dated 27.11.2006 being 29.11.2006), has been taken by respondents No.1 and 2 in their reply as well. Thus, on the date of actual induction into the cadre of Building Inspectors, qua the petitioner in CWP No.3558 of 2012 and respondent No.5, there is no dispute as regards the stand of the respondents.

However, the Municipal Corporation has further taken a stand

in its reply that respondent No.5 was working as a Building Inspector since 31.05.2001 (before his formal induction into the cadre, alongwith petitioner Sanjeev Devgun).

Respondent No.4 has taken the stand that he was working in the Town Planning Wing since 23.05.2001 and but for a gap of 20 days in the month of June 2004, he has been continuously working as a Building Inspector (Technical) from that date onwards.

Mr. Channan, learned counsel for petitioner Sanjeev Devgun, had, on the other hand, submitted that in view of the wordings of the order dated 27/29.11.2006, to the effect that it is the date of joining in the cadre of Building Inspectors, from which their seniority is to be counted, Sanjeev Devgun having been posted to the Town Planning Wing since 14.05.2001 and respondent No.5 having joined in that Department/Wing in 2004, the petitioners' seniority would start running from the year 2001 itself. In any case, he submitted, that even if respondent No.5 is to be taken to be in the same wing since 31.05.2001, as stated by the Municipal Corporation, that date is still after 14.05.2001.

15. That controversy would, therefore, need to be gone into first, because if the seniority of petitioner Sanjeev Devgun, as a Building Inspector (Technical), is to be considered to be running from 14.05.2001, then it would actually make him senior even to the petitioner in the other petition, Michal, who admittedly was appointed as a Building Inspector (Technical), only on 26.12.2001.

16. In order to consider this issue, the order dated 27/29.11.2006 is reproduced below:-

“ GOVERNMENT OF PUNJAB

DEPARTMENT OF LOCAL GOVERNMENT

(L.G.I. BRANCH)

ORDER

Sh. Rajinder Sharma and Sh. Sanjeev Devgun, Junior Engineer (O&M), Municipal Corporation, Amritsar are declared as Building Inspector (technical) with an immediate effect. The seniority of these employees in the Building Inspectors (technical) cadre will be considered from the date of their joining in this cadre.

Sd/-

B.R.Bajaj.

Dated:27.11.2006

Chief Secretary to Govt. of Punjab
Department of Local Government.

Endst. No:2/139/2006-1 SS-1/006

Dated :29.11.2006”

Further, the relevant rule needs to be looked at, i.e. Rule 10 of the Rules. The said rule runs as follows:-

“10. Seniority of members of Service.- The seniority inter se of the members of a Service shall be determined by the length of their continuous appointment on a post in that Service:

Provided that in the case of members appointed by direct recruitment their inter se seniority shall be in the order or merit in which they have been placed by the Selection Committee:

Provided further that in the case of two or more members appointed on the same date, a member appointed by direct recruitment shall be senior to a member appointed otherwise:

[Provided further that in the case of members recruited under sub-rule (1) of rule 5, their inter se seniority shall be determined by the length of their continuous service on a corresponding post in that Service]”

Thus, as per the third proviso to the said rule, the *inter se* seniority between those members of the service, as have been recruited in terms of Rule 5 (1) of the aforesaid rules, is to be determined by the length of their continuous services on a corresponding post

in the service.

Rule 5 runs follows:-

“5. Method of recruitment.- (1) Recruitment to the posts in a Service at the time of its initial institution shall be made by the appointing authority by absorption of persons already in the service of a Municipal Corporation in a corresponding post at the time of the constitution of the Service, provided they are found fit by an authority appointed by the Government in this behalf for becoming members of the Service after taking into consideration their qualifications and service record.

[(2) After filling up the vacancies in terms of the provisions of sub-rule (1) the remaining vacancies and the vacancies which may occur thereafter, shall be filled up in the following manner, namely:-

(i) in so far as the Punjab Services of Corporations Supdt. Gr.-II specified at serial No.4 of 'Appendix A' to the rules is concerned by promotion; and

(ii) in so far as the Services other than the Punjab Services of Corporation Assistant Commissioner, Engineer and Corporation Supdt. Gr.-II are concerned fifty per cent by direct recruitment and fifty per cent by promotion on seniority-cum-merit basis:

[Provided that recruitment to the post of Building Inspectors (Technical) shall be 75% by direct recruitment and 25% by promotion on seniority-cum-merit basis]

Provided that if no suitable candidate is available for appointment by promotion, the vacancy may be filled up by the transfer or on deputation of a person holding an indetical or similar post under a State Government of India.”

XXXX

XXXX

XXXX”

17. It is the admitted case, that petitioner Sanjeev Devgun and respondent No.5 were both working on a corresponding post, in terms of pay scales, i.e. the post of Junior Engineers, before they were designated as Building Inspectors. Petitioner Michal was not working on a corresponding post but was working as a Peon (Sewadar), from which he was directly promoted as a Building Inspector on 26.12.2001.

The dates on which the petitioners and respondent No.5 joined service at the initial stage and have been working in the Town Planning Wing and the dates on which they were formally appointed/designated as Building Inspectors (Technical), can be seen from the following chart:-

Name of petitioner/respondent	Date of induction into Municipal Corporation service with designation	Date of transfer into Town Planning Wing other than as a designated Building Inspector	Date of appointment in the cadre of Building Inspector(Technical)
Michal	12.11.1984 as a Baildar/Peon	Not given (as a Peon)	26.12.2001
Sanjeev Devgun	24.04.1997 as Junior Engineer	14.05.2001 as a Junior Engineer	27/29.11.2006
Rajinder Sharma	16.02.2001 as Junior Engineer	31.05.2001 &} as a Jr.Engineer 02.05.2004 }	27/29.11.2006

18. The stand of the Municipal Corporation, as regards respondent Rajinder Sharma, is that, even before his formal induction/designation as a Building Inspector, he was working as such since 31.05.2001, whereas in the case of petitioner Sanjeev Devgun, the stand is that there is no official entry in his service book to the effect that he was posted to the Town Planning Wing; and further, that the order dated 14.05.2001 (Annexure P-1 in CWP No.3558 of 2012), whereby Sanjeev Devgun alongwith the three other persons was posted from the Engineering Department to the Municipal Corporation/ Town Planning Department, was an “internal arrangement”.

Thus, obviously, the Municipal Corporation is favouring

respondent No.5 by virtually trying to nullify the aforesaid order, Annexure P-1. However, neither the Municipal Corporation, nor even respondent Rajinder Sharma himself, or respondents No.1 and 2, have placed on record any order by which respondent No.5 was posted to the Municipal Town Planning Department/Wing as a Building Inspector (Technical), even to hold charge on current duty basis/as an additional charge. In fact, none of the respondents have annexed even the posting orders of respondent No.5 to the Town Planning Wing in the year 2001, though petitioner Michal has annexed as Annexure P-2 with his petition (CWP No.22386 of 2011), an order dated 25.06.2004, passed by the Commissioner, Municipal Corporation, Amritsar, posting Shri Rajinder Sharma, Junior Engineer (Operations and Maintenance Cell), to the 'MTP' department, without specifying any post to which he was posted.

The said order does not, in any manner, show that he was posted to work as a Building Inspector.

Strangely, despite having taken a stand in the reply that respondent No.5 is working as a Building Inspector since 31.05.2001, the annexure filed by the Corporation, in its reply to CWP No.22386 of 2011, is a letter dated 03.02.2009, addressed by the Commissioner of the Corporation to the Government (respondent No.2), stating therein that both Rajinder Sharma and Sanjeev Devgun are working as Building Inspectors (Technical) since 30.11.2006, pursuant to the order of the Government dated 29.11.2006.

Thus, it is very obvious that there is no such order by which respondent Rajinder Sharma was specifically posted, even in a temporary capacity, as a Building Inspector (Technical), prior to 27/29.11.2006, when

he, alongwith petitioner Sanjeev Devgun, were both formally inducted into that cadre.

18-A. Therefore, though experience gained in the Town Planning Wing may be important for the purpose of promotion of Building Inspectors to the post of ATPs and that aspect would be considered at a slightly later stage in this judgment, however, for the purpose of seniority, there is nothing in the rules to suggest that experience gained in the Town Planning Wing/Department, is a criterion to be considered for determining *inter se* seniority amongst those in the cadre of Building Inspectors (Technical).

What is to be considered, in terms of Rule 10 and Rule 5(1), is the date on which the employees were appointed as Building Inspectors (Technical) and the date on which each employee was appointed to a corresponding post, so as to determining *inter se* seniority of each person holding a particular post in a cadre.

Thus, applying the aforesaid rules, respondent No.5 and petitioner Sanjeev Devgun, though designated on the same date as Building Inspectors (Technical) on 27.11.2006, were holding corresponding posts in the same pay scale, prior to that date, i.e. they were holding the post of Junior Engineers, with Sanjeev Devgun having been appointed as such on 24.04.1997 and Rajinder Sharma, as per the respondents, having been appointed to the said post of Junior Engineer on 16.02.2001. Hence, *inter se* Sanjeev Devgun and respondent Rajinder Sharma, obviously, Sanjeev Devgun is senior, to which fact in any case there is no dispute. However, it was to be clarified to repel the contention of this petitioner and respondent No.5 both, that they are to be taken to have joined in the cadre of Building Inspectors from the date that they were posted to the Town Planning Wing.

That contention is rejected and clarified as held above.

As regards petitioner Michal, even though he is shown to be senior to Sanjeev Devgun and Rajinder Sharma both, however, in the opinion of this Court, if Rule 10, read with Rule 5(1), is to be properly applied, both Rajinder Sharma and Sanjeev Devgun would have to be considered senior to Michal in view of the fact that before his (Michals') appointment as a Building Inspector (Technical) on 26.12.2001, he was not working on a corresponding post but was working as a 'Sewadar' (peon), as is even reflected in the order (Annexure P-1), promoting him from that post to Building Inspector (Technical).

However, since Michals' seniority would not eventually be relevant to his promotion to the post of ATP, in view of what shall be discussed further in this judgment, due to his lack of requisite experience at the time of promotion of respondent No.5, that issue (of Michals' seniority) is not being commented upon finally by this Court, since his seniority is not under challenge either by petitioner Sanjeev Devgun, or by respondent No.5, Rajinder Sharma. As such, for the purpose of these petitions, that issue is not essential to be adjudicated upon.

19. The next question is, as to whether the vacancy in the cadre of ATPs, to which Rajinder Sharma has been promoted, already existed prior to the coming into force of the amendment of the rules on 24.01.2011, though filled in, by his promotion, only vide the impugned order dated 31.10.2011, i.e. 9 months and one week after the amendment.

The respondents, in their replies, have stated that one post of Assistant Town Planner, falling to the share of Building Inspectors (Technical), was existent prior to the coming into force of the new rules on

24.01.2011, as already discussed. The petitioners, of course, have raised the issue of no such post being existent. However, a perusal of the file noting produced by the learned Deputy Advocate General, would indicate that the post in question was vacated by one Tarlok Singh, upon his promotion from Assistant Town Planner to Municipal Town Planner, on 04.12.2006, after which it remained vacant.

Thus, the contention of the petitioners that the vacancy to which respondent no.5 was promoted did not arise before the amendment of the Rules on 24.01.2011, does not seem to be well founded, as per record produced before this Court.

Undoubtedly, the law well settled since the judgment in **Y.V.Rangaiah and others v. J. Sreenivasa Rao and others** (AIR 1983 SC 284), is that vacancies arising under the old rules must be filled in as per those rules, even after amendment in the rules. A departure from the above principle can be made if the appointing authority takes a conscious decision to not fill in the vacancies as per the old rules but only as per the new rules. The law in this regard is also long well settled, reiterated in **State of Punjab and others v. Arun Kumar Aggarwal and others** (2007) 10 SCC 402.

However, nothing from the replies of the respondents, or from a perusal of the file notings put up to this Court, shows any such decision having been taken. Therefore, it must be accepted that since the vacancy arose prior to 24.01.2011, upon promotion of Shri Tarlok Singh as a Municipal Town Planner, the vacancy, though filled in only on 31.10.2011, by promotion of respondent No.5, i.e. more than nine months after the amendment of the rules, it would still have to be filled in as per the unamended rules.

Yet, though a vacancy existing prior to the amendment of the rules, is to be filled in as per the old rules, the experience and necessary qualifications required for filling up such vacancy, are to be seen as on the date when the vacancy is actually filled up or, at best, when a decision to fill it is taken. That decision would be said to have been taken when respondent No.2 sought the particulars of the 3 contenders, vide letter dated 19.08.2011.

20. The old rules, as already reproduced earlier, envisaged that the post of ATP is to be filled in to the extent of 25% from the cadre of Building Inspectors (Technical), having ten years experience in the Town Planning Wing, or from amongst Building Inspectors with a degree in Civil Engineering, having an experience of working as such for a minimum period of two years in the Town Planning Wing.

As regards the alternate qualification, there is no doubt that, subject to the degree of respondent No.5 being valid, he is the only one amongst the three contenders, who possessed the said qualification.

Therefore, it is to be seen as to whether he alone could have been promoted in view of the stand taken by the respondents, or either of the two petitioners before this Court should have been promoted, if they had ten years experience in the Town Planning Wing.

21. Coming then, to the issue of experience gained by both the petitioners and respondent No.5, in the Town Planning Wing, as is necessary to be counted for the purpose of their promotion to the post of Assistant Town Planner, in terms of what is contained in Schedule 'B' of the Rules.

It is first important to notice that though the words used in the alternative qualification are “Building Inspector with a degree in Civil Engineering and having experience as such for a minimum period of two

years in the Town Planning Wing”, the words “as such” do not exist in the other qualification for Building Inspectors (Technical), i.e. for those Building Inspectors as have ten years experience in the Town Planning Wing.

Therefore, whereas in order to be promoted to the post of ATP, a degree holding Building Inspector was required to have an experience of two years, working in the Town Planning Wing as such, i.e. as a Building Inspector, however, for a Diploma holder to be promoted to the post of ATP from Building Inspector (Technical), he only required ten years experience in the Town Planning Wing.

In the present context, with the words “as such” not present in the rule that requires a Building Inspector (Technical) to have 10 years experience in the Town Planning Wing, the fact remains that both, petitioner Sanjeev Devgun and respondent No.5, had more than ten years experience in the Town Planning Wing, as on the date of promotion of respondent No.5, i.e. on 31.10.2011.

In fact, the petitioners are also not disputing the fact that Rajinder Sharma has been working in the Town Planning Wing, at least since May 2001, with a break in between, which the said respondent claims was only 20 days, in June 2004.

Therefore, as regards experience, it can be stated that respondent No.5 has experience of working in the Town Planning Wing since 31.05.2001 and if a period of 20 days is to be deducted therefrom, his experience can then said to be continuous from 20.06.2001.

Similarly, respondent No.5 also does not dispute that petitioner Sanjeev Devgun was posted to that wing on 14.05.2001. Hence, Devgun too is equipped with such experience since that date, in view of the order,

Annexure P-1 with his petition. Petitioner Michal would, however, be considered to have such experience, only from the date of his substantive appointment as a Building Inspector on 26.12.2001.

It is to be considered that in the case of Michal, even as per his promotion order dated 26.12.2001, it is stated that he was posted as a 'Sewadar' (Peon) in the office of the Municipal Town Planner of the Municipal Corporation, Amritsar and from that post he was promoted to the post of Building Inspector. Thus, if the condition of ten years experience in the Town Planning Wing, as contained in Schedule-B of the Rules, is to be literally interpreted, it would mean that he too had sufficient experience in the Town Planning Wing before he was promoted as a Building Inspector on 26.12.2001. However, the fact that such experience was in the capacity of a Peon, in my opinion, cannot be equated with the experience gained in that wing by Rajinder Sharma and Sanjeev Devgun, as Junior Engineers. This would be so, both, in view of the fact that, admittedly, the Corporation has stated that Junior Engineers were routinely posted to work in place of Building Inspectors, as already noticed, and also in view of the fact that the pay scale of Junior Engineers is the same as that of Building Inspectors (Technical). Obviously, the pay scale of a Peon is not the same as that of a Junior Engineer/Building Inspector. Further, there is nothing contained in the replies of the State or the Corporation, stating that he was doing work similar to that of a Building Inspector, as has been stated in the case of Junior Engineers (the substantive posts held by Sanjeev Devgun and Rajinder Sharma prior to 27.11.2006) posted to the Town Planning Wing.

Hence, even though it is possible that petitioner Michal was doing work other than that of a peon, even while he was posted as such, yet

it is difficult to equate that experience with the experience gained by respondent No.5 and petitioner Devgun, while working as Junior Engineers in the Town Planning Wing, prior to their formal designation as Building Inspectors (Technical). Therefore, any experience gained by petitioner Michal in the Town Planning Wing, as a Peon, prior to his promotion as a Building Inspector, in the absence of any material placed on record showing the nature of the experience gained by him, cannot be termed as experience that would be countable for further promotion from the post of Building Inspector to the post of ATP.

22. Thus, with the vacancy having been filled up only on 31.10.2011, petitioner Sanjeev Devgun had acquired 10 years and 8½ months experience in the Town Planning Wing on that date and petitioner Michal had acquired 9 years, 10 months and 5 days experience. Respondent No.5 had acquired 10 years, 4 months and 10 days of such experience. Even if such experience is to be taken upto the date that a decision was taken by Government to fill in the post, i.e. 19.08.2011, Devgun and Sharma both had an experience of 10 years, whereas Michal did not.

Therefore, the longest experience, as is countable for promotion as an ATP, is that of petitioner Sanjeev Devgun, followed by respondent Rajinder Sharma and then by petitioner Michal.

23. It is further seen that as per the Rule 5(2)(ii), inserted vide amendment dated 24.03.2006, i.e. before the vacancy in the cadre of ATPs occurred on 04.12.2006, promotions to posts others than Assistant Commissioners, Engineers and Corporation Superintendents Gr.-II, are to be made on the basis of seniority-cum-merit.

Therefore, a senior employee in the feeder cadre, would be eligible to be considered for promotion to the higher cadre, before an employee junior to him; and unless the senior employees' merit is marred by

any adverse reports, punishment etc., he is to be promoted prior to the junior employee.

Seen from that point of view, respondent No.5, being junior to at least petitioner Sanjeev Devgun, (even if petitioner Michal, is taken to be senior to them both, as stated in Sanjeev Devguns' petition), he could not have been promoted before Sanjeev Devgun, with nothing adverse pointed out from Devguns' record.

24. Thus, though the stand of the official respondents is that the petitioners in both these petitions did not have an experience of ten years and as such, respondent No.5 was the only person eligible for promotion, having two years experience with a degree in Civil Engineering, however, in the considered opinion of this Court, that stand is not tenable, as discussed hereinabove, in the face of the order dated 14.05.2001, posting petitioner Sanjeev Devgun to the Municipal Town Planning Department, when such order is read with the reply of the respondent Corporation, to CWP No.22386 of 2011, stating therein that Junior Engineers were posted from time to time to the Town Planning Wing, to perform the duties of Building Inspectors, as there was no recruitment to the latter posts after 1980-81. Further, having admitted that the qualifications and pay scales attached to both the posts are the same, it is obvious that the experience gained by both, petitioner Sanjeev Devgun as also respondent No.5, from 2001 till the time of their actual designation as Building Inspectors (Technical) vide order dated 27/29.11.2006, was actually experience gained on the post of Building Inspectors and in any case, in the Town Planning Wing.

In that background, it is not possible to accept the contention of respondents No.3 and 4, in their reply to CWP No.3558 of 2012, that just

because there is no entry in the service record of petitioner Sanjeev Devgun, that he was working against the post of a Building Inspector, the experience would not count as such. Obviously, upon being posted to the Town Planning Wing, both, petitioner Sanjeev Devgun and respondent No.5, being Junior Engineers, were actually performing the work of Building Inspectors. Otherwise also, the requirement of the rule is that a Building Inspector (Technical) must have 10 years working experience in Town Planning Wing, in order to be eligible for promotion to the rank of ATP.

Therefore, with Sanjeev Devgun having been posted to the Town Planning Wing on 14.05.2001, he completed experience in that wing, as required in Appendix-B of the Rules, on 13.05.2011. Thus, at the time when promotion to the post of ATP was made on 31.10.2011, he had more than ten years experience in the Town Planning Wing and had been designated, alongwith respondent No.5, as a Building Inspector (Technical) on 27/29.11.2006.

Petitioner Michal, on that date, i.e. 31.01.2011, fell short of experience of ten years by about two months, having been appointed as a Building Inspector (Technical) on 26.12.2001, without having any experience in the Town Planning Wing prior to that, as discussed earlier.

25. Having held as above, it is then to be seen as to whether, in the absence of any precedence shown in the source of recruitment, in the aforesaid Appendix-B, would it be open to the respondents to yet appoint an ATP with a higher qualification (Degree in Engineering) than a Diploma holder.

In the opinion of this Court, that also cannot be done, in view of the fact that Rule 5(2)(ii) specifically stipulates that promotion to the post in

question, is to be made on the basis of seniority-cum-merit and not merit-cum-seniority. Hence, an eligible senior person must be considered for promotion prior to a junior person, regardless of any higher qualification the junior employee may have, and only if there is something adverse against the senior employee, can he be ignored for promotion, by superseding him. Nothing adverse having been pointed out in the reply of the official respondents, as regards the record of petitioner Sanjeev Devgun, it has to be held that even applying the old rules, he had the necessary experience of ten years as on 31.10.2011 (actually even as on 13.05.2011), for promotion from the post of Building Inspector (Technical) to the post of Assistant Town Planner.

Of course, in the case of petitioner Michal, both, petitioner Sanjeev Devgun and respondent No.5 would steal a march over him, just because of the small shortage of experience that he had, as on the date of promotion of respondent No.5.

26. With the above finding, the question of validity of the degree (Bachelor of Technology) of respondent No.5 has become redundant; however, it would still be appropriate to notice and deal with the contentions made by petitioner Sanjeev Devgun in the replications filed to the written statement filed by the respondents. It has been stated that the degree of Bachelor of Engineering obtained by Rajinder Sharma, from the Institute of Advanced Studies in Education, Sardar Shahar, Rajasthan, a deemed University, is not a recognized degree in terms of the judgment of a Division Bench of this Court in **Kartar Singh v. Union of India** (2012) 4 SCT 741, decided on 06.11.2012.

However, the respondents have produced in Court the interim

order of the Supreme Court, in SLP (C) No.35793/35796 of 2012, dated 07.12.2012, which reads as under:-

“Issue notice returnable by 14th December, 2012 by dasti mode only. In the meanwhile no adverse action will be taken against the students whose Degrees have been declared to be illegal by the impugned order of the High Court.

A list of Special Leave Petitions challenging the very same order of the High Court has been given by Dr.Rajiv Dhawan and Mr. Ratnakar Dash, senior counsel for the respondents jointly. List all these petitions on 14th December, 2012 alongwith these petitions.”

No order of the Apex Court, thereafter, vacating the aforesaid interim order, has been brought to the notice of this Court. Hence, though undoubtedly the degree held by respondent no.5, has been held to be not a valid degree by this Court, on the ground that the deemed University in question did not have permission from the All India Council for Technical Education (AICTE), to impart education towards obtaining degrees in Bachelor of Engineering/B.Tech., however, the effect of the judgment, as is adverse to the students who had obtained such degrees, has been stayed by the hon’ble Supreme Court.

Therefore, at least for the present, respondent No.5 cannot be said to be not in possession of a valid Bachelors' Degree in Engineering.

Still, in view of what has been held by this Court, to the effect that petitioner Saneev Devgun was fully qualified to be considered for promotion, on the date that respondent Rajinder Sharma was promoted, the issue of the validity of Rajinder Sharmas' degree, till the decision of the aforesaid SLP, is only an academic question for the purpose of these petitions.

27. In view of the detailed discussion hereinabove, CWP No.3558 of 2012 is allowed and the impugned order dated 31.10.2011 is quashed. Respondents No.1 and 2 are directed to consider the petitioner in the said petition, i.e. Sanjeev Devgun, for promotion to the post of Assistant Town Planner w.e.f. 31.10.2011, within a period of two months from the date of receipt of a certified copy of this order. All consequential benefits, other than actual arrears of pay on the higher post, would also be granted to him. It is clarified that even though the arrears of pay on the higher post of ATP are not to be paid to him, he not having worked on that post, however, he shall be deemed to have actually received such higher pay, and all benefits flowing therefrom (other than actual arrears of pay), on the higher post, would be granted to him.

CWP No.22386 of 2011 is dismissed, petitioner Michal not having the requisite experience on the date of promotion of respondent Rajinder Sharma.

There shall be no order as to costs, in either of the two petitions.

December 17, 2015

dinesh

**[AMOL RATTAN SINGH]
JUDGE**