

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

**CWP no. 19332 of 2014(O&M)**

**Date of Decision : 08.12.2015**

Rambir and others

....Petitioner

Versus

State of Haryana and others

...Respondents

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER**

1)Whether reporters of local newspapers may be allowed to see the judgment?

2) To be referred to the Reporters or not?

3) Whether the judgment should be reported in the Digest?

Present : Mr.R.K.Malik, Sr. Advocate with  
Mr. Samrat Malik, Advocate for the petitioners

Mr. Ashok S Chaudhary, Addl. AG, Haryana

Mr. R.P.S.Ahluwalia, Advocate for respondent no.4.

Mr. Satbir Gill, Advocate for respondents no. 5 to 9

**MAHESH GROVER, J.**

Learned counsel for private respondents prays for some time to file their reply. Prayer is granted, subject to payment of Rs.10,000/- as costs.

At this stage, learned counsel for the private respondents state that they adopt the reply filed by official respondents.

The petitioners while pressing their claim for prior consideration to

be promoted as Junior Engineer, simultaneously question the promotion granted to the private respondents. The petitioners are all working as Road Inspectors having been promoted as such on various dates i.e. 19.2.1995, 17.5.1995, 22.1.1995, 6.7.1995 and 24.3.1994. Their service conditions are governed by The Haryana Public Works Department, Building & Road Branch, Junior Engineer (Group C) Service Rules, 1998.

Rule 9 which governs the method of recruitment to the post of Junior Engineer and is relevant for the controversy is extracted herebelow:-

**“Method of recruitment:-**

9. (1) Recruitment to the service shall be made,

(I) in case of Junior Engineers (Civil), ---

(i) 10% by promotion amongst Road Inspectors, Work Inspectors, Work Mistries, Work Supervisors or Surveyors; and

(ii) 90% by direct recruitment; or

(iii) by transfer of Junior Engineer (civil) already in the service of any State Government or Government of India.”

Petitioners would thus fall within 10% if they have to be promoted to the post of Junior Engineer. It is pertinent to mention here that rules extracted aforesaid provide various feeder posts such as Road Inspectors, Work Inspectors, Work Mistries, Work Supervisors or Surveyors and club them together in so far as promotion to the extent of 10% as Junior Engineer is concerned. There is no further segregation in the quota to be allocated to each of these feeder posts.

The eligibility conditions for promotion to the post of Junior Engineer have been explained in Appendix B and are extracted herebelow:-

Appendix B  
(See rule 7)

| Sr.no. | Designation of post     | Academic qualification and experience, if any, for direct recruitment or for appointment by transfer                                                                                                                  | Academic qualifications and experience, if any, for appointment by Promotions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|--------|-------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1      | 2                       | 3                                                                                                                                                                                                                     | 4                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 1      | Junior Engineer (civil) | (i) has passed three years National Certificate (Theoretical) course in Civil Engineering conducted by the State Board or has qualified the same from any other recognized institution; and<br>(ii) Hindi upto Matric | (i) For employees with certificate course.<br>(ii) Two years experience on the post of Road Inspectors, Work Inspectors, Work Mistries, Work Supervisors or Surveyors who have passed three years National certificate (Theoretical) Course in Civil Engineering conducted by the State Board or has qualified the same from any other recognized insitution;<br>or<br>For employees without certificate courses<br>(a) Matric or its equivalent<br>(b) 8 years experience as Road Inspector or 12 years experience as Work Inspectors, Work Mistries, Work Supervisors or Surveyors and<br>(ii) Hindi upto Matric Standard |

The learned counsel for the petitioners contends with reference to the pay structure of Road Inspectors, Work Inspectors, Work Mistries, Work Supervisors or Surveyors that since they are placed in a higher pay bracket they are deemed to be senior to those who have lesser pay bracket by applying the principle of law that a junior cannot have a higher pay than his senior. For the purpose of reference pay structure of these two are extracted herebelow:

|  |                |                                                |
|--|----------------|------------------------------------------------|
|  | Road Inspector | Work Inspector/Work Supervisor / Work Mistries |
|--|----------------|------------------------------------------------|

|                   |                           |                            |
|-------------------|---------------------------|----------------------------|
| Prior to 1.1.2006 | 5000-7800/-               | 3050-4300/3050/4450        |
| After 1.1.2006    | 9300-34800/-G.P Rs.3200/- | 5200-20200/-+G.P Rs.2400/- |

Learned counsel for the petitioners also places reliance on judgment of this Court appended to this writ petition itself as Annexure P-10 passed in CWP no. 14720 of 1998 decided on 27.2.2001 titled as **Gurcharan Singh vs. State of Haryana and others** wherein following observations have been made:-

“7. There is another way of looking at the matter. The petitioner, who is otherwise senior to respondent No.3 in C & V cadre, could not have been ignored merely because he was promoted as Master. He was in a higher scale. In the case of Rameshwar Dass and another Vs. the State of Haryana and others, Civil Writ Petition No.4196 of 1983 decided on 13.7.1992, this question had come up for consideration. This court while dealing with somewhat similar situation had held as under:

“.... If more than one categories are eligible for promotion to the next higher rank, it is always open to the State Govt. to provide certain quota for each category, but in the absence of any such quota, according to me, the higher rank has to be exhausted first before going to the lower rank, which may also be eligible for promotion to a particular post. It has not been suggested on behalf of the State Govt. that any quota has been fixed for all the eligible categories for being

promoted to class II service. this being the factual matrix, since the Inspectors, Cooperative Societies, are eligible for promotion to class II service, there is no reason to deny the same right of consideration for promotion to Statistical Assistants. The denial of such right would be, to my mind, violative of class II Rules as also the equality clause enshrined in Article 16 of the Constitution of India".

8. Once again in the case of Rattan Singh vs. the State of Haryana and others, 1999 (3) Recent Services Judgements 179, this question in another form arose. This Court again held as under:-

"We do not find any substance in the argument of the learned counsel for the respondents that as Assistants, the respondents had become eligible for consideration prior to the petitioner as Senior Scale Stenographer and, therefore, irrespective of their date of promotion as Personal Assistant or Head Assistant the date of attaining eligibility for promotion as superintendent would be relevant as to who has the prior right for consideration for promotion to the post of Superintendent. According to us, when the post by promotion is to be filled up, all eligible persons irrespective of the date of acquiring eligibility have to be considered in accordance with the

seniority as mentioned above. Since we are of the view that the petitioner is senior as Personal Assistant as compared to the private respondents in the rank of Head Assistant, he had a prior right of consideration for promotion as Superintendent."

From the above he desires the Court to infer that a person having higher pay structure would have to be construed as senior than the one who is placed in a lesser pay bracket.

The respondents have not given any clear reply as to how the posts are to be filled up from various feeder sources while making promotions to the extent of 10% for the post of Junior Engineer. They have merely stated that the promotions have been made strictly as per the Rule 9 on the basis of seniority cum fitness.

The private respondents have chosen not to file reply despite repeated opportunities and they have adopted reply filed by the official respondents.

I have heard learned counsel for the parties and I am of the opinion that the rules are absolutely silent as to how 10% quota assigned to Road Inspectors, Work Inspectors, Work Mistries, Work Supervisors or Surveyors is to be worked out inter se between them. The plea of the respondents that it has to be worked out on the basis of seniority is totally ambiguous. Nothing has been disclosed to the Court as to how inter se seniority has to be worked out

particularly when persons from all the feeder posts are available.

For example Appendix B would indicate the only eligibility for the promotees is to have two years experience and if the persons from all the sources having two years experience are available then how the exercise of filling up 10% would be achieved without doing any damage to respective claimants. This ambivalence in the rules has thus led to the instant situation and it is thus difficult to work out seniority or appreciate the claim of the petitioners and the private respondents.

The judgment relied upon by the petitioners does not seriously enhance their case as it does not specifically deal with the situation of a person having a higher pay structure being considered senior. In one of the cases which finds mention the aforesaid extracted observations is to be seen the incumbent therein was senior to the private respondent in C &V cadre and thus it was observed that he could not be ignored because he was promoted to the next post of Master as seniority would suggest that he was in higher rank. The next judgment noticed is that of Rattan Singh(supra) even that does not specifically address this issue.

In the considered view of this Court reply filed by the respondents is equally ambivalent as the rules itself. Even though it has been stated that rule of seniority and fitness has been adopted yet it does not address the core issue as to how the seniority inter se has been assessed. Consequently I direct that all

promotions in question made by the respondents -State qua Junior Engineers be set aside and the entire exercise be conducted afresh by providing a rationale to the process; to be reflected in a speaking order.

Let needful be done as expeditiously as possible.

Disposed of.

December 08, 2015  
rekha

(MAHESH GROVER)  
JUDGE