

**CWP No. 19334 of 2010 (O&M),
CWP No. 16710 of 2011 (O&M) &
CWP No. 8896 of 2014 (O&M)**

-1-

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

1. CWP No. 19334 of 2010 (O&M)

Gulshan Kumar and others ...Petitioners

Versus

Haryana Power Generation Corp. Ltd. & Ors. ...Respondents

2. CWP No. 16710 of 2011 (O&M)

Surat Singh Yadav and others ...Petitioners

Versus

Haryana Power Generation Corp. Ltd. & Ors. ...Respondents

3. CWP No. 8896 of 2014 (O&M)

Satpal and others ...Petitioners

Versus

Uttar Haryana Bijli Vitran Nigam Ltd. & Ors. ...Respondents

Date of Decision:- 16.03.2016

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

- 1. Whether Reporters of local papers 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? Yes**

Present:- Mr. D.S. Patwalia, Senior Advocate
with Mr. Kannan Malik, Advocate
for the petitioner (in CWP-19334-2010).

Mr. Anurag Goyal, Advocate
for the petitioner(s) (in CWPs-16710-2011 & 8896-2014).

Mr. Pradeep Singh Poonia, Advocate
and Mr. Gourav Mohunta, Advocate
for respondent Nos.1 and 2.

Mr. Dinesh Kumar, Advocate
for respondent Nos.3, 13, 18, 19, 22, 24, 26 to 28, 31, 36 to 38
(in CWP-19334-2010) and for respondent Nos.8, 13, 14, 18,
21, 22, 28, 29 & 30 (in CWP-16710-2011).

Mr. Keshav Partap Singh, Advocate
for respondent No.30 (in CWP-19334-2010).

Mr. Ashok Gupta, Advocate
for respondent No.4, 10, 21 & 22 (in CWP-19334-2010).

RITU BAHRI, J. (Oral)

This order shall dispose of the above three petitions as common question of facts are involved in all these petitions. However, for the facility of reference, the facts are being taken from CWP No.19334 of 2010.

The petitioners have filed this writ petition under Article 226 of the Constitution of India for quashing of impugned orders dated 07.10.2010 and 14.10.2010 (Annexures P-12 & P-13) whereby private respondent Nos.5 to 38 were ordered to be promoted to the post of Assistant Engineers although they were juniors to the petitioners simply on the ground of date of acquiring qualification of AMIE/BE and further

quashing of impugned order of promotion of respondent Nos.3 and 4 dated 28.11.2008 (Annexure P-7).

Petitioners are working as Junior Engineers in the Panipat Thermal Power Station in the Haryana Power Generation Corporation Ltd., and the services were governed under the Punjab State Electricity Board Service of Engineers (Electrical) Regulations, 1965 (for brevity 'the Board'). As per rules of the Board, under Rule 6(a) it is provided that the recruitment to the post of Assistant Engineer shall be made by direct recruitment as well as by promotion and transfer. One of the condition as per Rule 11 of the Board that the promotion for the post of Assistant Executive Engineer is that he should pass the Departmental Accounts Examination and Safety Code Examination prescribed for Engineering Officers. As per Rule 11 of the Board, the promotion shall be made on the basis of merit and suitability in all respects with due regard to seniority. Vide office Order No.33 dated 27.02.1989 (Annexure P-1), promotion to the post of Assistant Engineers from Engineering Subordinate possessing AMIE/BE qualification in 12½% quota as provided in Regulation 9 of the Board, some directions were given whereby it was provided that the ranking list of Engineering Subordinates for their promotion as AE after having qualified the AMIE/BE Examination and completion of five years of service in the cadre. The ranking list was to be prepared on 1st day of January each year and the names of eligible candidates in the ranking list will be arranged in order of their date of passing AMIE/BE Examination.

Further clarification was issued on 20.10.1993 (Annexure P-2), in which it was clarified that the determination of the eligibility for promotion will be the acquisition of qualification of AMIE/BE and completion of five years of service in the Cadre of Engineering Subordinates and the eligibility shall be determined on satisfying both the conditions. Vide notification dated 19.02.1988 (Annexure P-3), it was provided that recruitment to the post of Assistant Engineer shall be made in the ratio of 65: 35 whereby 65% quota was to be made for direct recruitment and 35% for promotion. Further in 35% quota for promotion, the 22½ % quota shall be made from amongst the Engineering Subordinates of Generation Cadre with five years' service as Controllers/Master Foremen and Senior Supervisors and for rest of the quota of 12½% promotion shall be made from amongst the Engineering Subordinates of Generation Cadre possessing AMIE/BE qualification and having five years service.

The petitioners after joining the department as Junior Engineers acquired the qualification of AMIE/BE. The tentative seniority list of Junior Engineers (Generation) was prepared on 31.05.1993 (Annexure P-5). The petitioners acquired the qualifications of AMIE/BE on the following dates: -

Petitioner No.1	22.03.2002
Petitioner No.2	18.03.2002
Petitioner No.3	14.03.2009
Petitioner No.4	04.09.2001
Petitioner No.5	05.08.2004
Petitioner No.6	12.04.2001

As per the tentative list as it stood on 01.01.2001 was issued vide letter dated 10.11.2008 (Annexure P-6) and the names of the petitioners did not figure in the tentative list as they had not acquired the qualification of AMIE/BE by 01.01.2001. No ranking list was issued up to 17.05.2010 and during this period on 28.11.2008, respondent Nos.3 and 4 were ordered to be promoted as Assistant Engineers, vide order dated 28.11.2008 (Annexure P-7). On 28.11.2008, some petitioners were eligible for promotion to the post of Assistant Engineers and as per the seniority list (Annexure P-5) respondent Nos.3 and 4 were at Sr. Nos.372 and 374 respectively. Another ranking list was issued on 16.09.2009 (Annexure P-8) in which the names of the petitioners did not figure.

On 10.05.2010, the respondent's Corporation sought information in respect of 30 senior most Engineering Subordinates possessing AMIE/BE qualification for promotion to the post of Assistant Engineers whereby again the names of the petitioners were not mentioned and all the 30 officers whose names mentioned in the letter dated 10.05.2010 were juniors to the petitioners as per seniority list (Annexure P-5). Another ranking list was prepared on 17.05.2010 (Annexure P-10) where the names of the petitioners was below 30 officers on the ground that they acquired the qualification of AMIE/BE after the 30 officers. Petitioners filed CWP No.10437 of 2010, which was disposed of vide order dated 28.05.2010 and directions were issued to the respondents to decide the representations of the petitioners. In pursuance of the order

passed by this Court (Annexure P-11), the claim of the petitioners were

rejected vide order 07.10.2010 (Annexure P-12). As per order dated 14.10.2010 (Annexure P-13), all the private respondents were promoted to the post of Assistant Engineers. Hence, the present writ petition seeking quashing of orders dated 07.10.2010 and 14.10.2010 (Annexures P-12 & P-13) respectively.

Mr. D.S. Patwalia, learned senior counsel for the petitioners has argued that as per Regulation 9 of the Board, 12½% quota meant for promotion of Engineering Subordinates is after possessing AMIE/BE qualification and having five years services. For the purpose of getting promotion in this quota the Junior Engineer become eligible after serving for five years as Junior Engineers and has acquired the qualification of AMIE/BE as provided by the Regulation of the Board issued vide order dated 20.10.1993 (Annexure P-2). Further how this quota was to be maintained as provided as per order (Annexure P-2) and a ranking list of the Subordinates Engineer, who acquired the qualification of AMIE/BE is to be prepared on 1st of January of each year and the names of the eligible candidates in the ranking list will be entered strictly from the date the official fulfills both the conditions i.e. passing of AMIE/BE examination and completion of five years service. The order (Annexure P-2) is for preparation of ranking list and it does not lay down that after acquiring the essential qualification a junior Subordinate Engineer would become senior from that date. The purpose of making a ranking list every year is to collect the data of the eligible candidates, who have acquired the qualification as

well as five years experience of promotion. As per order (Annexure P-2) the Regulation in no term disturb the seniority of the Engineer Subordinates. The seniority of Engineer Subordinates for all intents and purposes would be continuous length of service from the date they have joined the department. The promotion of the private respondents in the department after 2001, no ranking list was prepared and private respondents though acquired eligibility of AMIE/BE before the petitioners but juniors to them in the seniority list (Annexure P-5). At the time of promotion on 14.10.2010, the petitioners had been wrongly ignored to the post of Assistant Engineers, taking the ranking list as seniority for the purpose of promotion.

He has referred to a judgment passed by Division Bench of this Court in **LPA No.541 of 2009** titled **Risal Singh Vs. The State of Haryana and others**, decided on **01.07.2009**, where the rules for promotion to the post of Kanungo came up for consideration. It has been held that for promotion to the post of Kanungo from Patwari there was a requirement of passing of qualifying examination. Qualifying examination at the same time was held not to be a criteria for changing the seniority of the Patwari at the time of joining the cadre. The petitioner had been promoted giving the benefit of qualifying examination by ignoring the seniority of Patwari. Subsequently, he was reverted and he had challenged the reversion order. The writ petition was dismissed by the Single Bench and the LPA Bench while dismissing the LPA by holding that inter-se seniority between Patwari is to be fixed on the basis of continuous length

of service subject to availability and it is not to be fixed on the basis of date of acquiring eligibility of qualification.

Mr. Pardeep Singh Poonia, learned counsel for respondent Nos.1 and 2, has referred to a judgment of Single Bench of this Court in case **Raj Pal Vs. Haryana State Electricity Board, 1996(1) S.C.T. 312**, which has been reversed by the LPA Bench and submits that the seniority has to be determined from the date of attaining the qualification and not from the date of completing five years of service. In this process, some juniors may become seniors on attaining the qualification of AMIE/BE examination. This would not be a ground to set aside the promotion of juniors, who have become seniors and entitled to be considered for promotion.

Mr. Dinesh Kumar, learned counsel for private respondents, has referred a judgment of Supreme Court in case **K.K. Dixit and others Vs. Rajasthan Housing Board and another, 2014(4) SCT 220** and submits that five years service should be permissible prior to the acquisition of the degree. This five years service period should not include the period taken before acquiring the AMIE/BE degree. The above-said judgment of the Supreme Court has been followed by this Court in case **Dharam Pal and others Vs. Haryana State Electricity Board and others, 2015(4) SCT 317**, whereby the respondent(s) have directed to re-consider the matter of promotion afresh. The dispute in the present writ petition(s) is governed by Regulation 9 of the Promotion Policy circulated by Haryana State Electricity Board dated 12.10.1993 (Annexure P-4). As per this policy, it is provided that 65% post of Assistant Engineers shall be filled by direct recruitment; 35% by promotion. The promotion quota of 35% has been further bifurcated and 22½ % quota has

been earmarked for promotion from amongst Engineering Subordinates of Generation Cadre with five years service as JE-1/Boiler Controller and remaining 12½% quota has been earmarked for promotion from amongst Engineering Subordinates of Generation Cadre possessing AMIE/BE qualification and having five years service as such. The relevant portion is produced as under:-

“D Regulation-9 shall be substituted as under: -

***(9) (1) Recruitment to the post of Assistant Engineers shall be made –
xxxxxxxx***

(a) By direct recruitment 65%

(b) By promotion for General Cadre in the manner as under: 35%

i) xxxx

ii) xxxx

***(c) By promotion for Generation Cadre 35%
in the manner as under: -***

***(i) From amongst Engineering Subordinates 22½%
of Generation Cadre as defined in Regulation -2 (g)
with 5 years service as JE-I/Boiler Controllers.***

***(ii) From amongst Engineering Subordinates of Generation Cadre
possessing AMIE/BE qualification and having 5 years service as
such.***

***Provided further that share quota posts of AEs shall be calculated
on the vacancies which have arisen either by new creation, retirement,
promotion etc.***

***Provided further, if qualified candidates from b(ii) and C(ii)
above, are not available, their vacancies may be filled up by promotion of
excess number from the category b(i) and c(i) respectively on the
availability of qualified persons and vice versa”.***

As per above rules, in the normal course Junior Engineer is firstly promoted as JE-I and thereafter he is promoted to the post of Assistant Engineer against 22½ % quota on the basis of seniority as JE-I. So far as 12

½% quota of promotion to the post of Assistant Engineer is concerned, the said quota is made from amongst Engineering Subordinates of Generation Cadre possessing AMIE/BE degree and having five years service as such. This quota is based upon fulfillment of two requisite conditions. The Board had issued an office order dated 20.10.1993 (Annexure P-2), which regulated the promotion in the above said 12½ % quota, which provides as under: -

- i) *The determination of the eligibility for promotion will be the acquisition of qualification of AMIE/BE and completion of 5 years service in the cadre of Engineering Subordinates. The eligibility shall thus be determined on satisfying both the conditions i.e. passing of AMIE/BE examination and 5 years experience. The name(s) of the officials will be entered in the ranking list from the date they complete both the conditions. If a candidate is recruited as Engineering Subordinate having qualification of AMIE/BE, his eligibility for promotion will also be considered after he attached experience of 5 years on the post.*
- ii) *The ranking list of Engineering Subordinates for their promotion as AE, shall normally be prepared on 1st day of January of each year and duly notified to all concerned. The name(s) of the eligible candidate(s) in the ranking list will be entered strictly from the date the official fulfills both the conditions i.e. passing of AMIE/BE examination and completion of 5 years service of Engineering Subordinates. If two or more officials fulfill both the conditions on the same date, the names in the ranking list will be entered in accordance with their original seniority in the engineering subordinates.”*

Similar question came for consideration before this Court in case **Ram Kumar Sharma Vs. State of Haryana**, 1996(4) SCT 715 whereby the dispute was with regard to interpretation of Rules of promotion of members of Class III service to be eligible for promotion to the Class II service. As per Rules 6 and 7 of the Punjab Service of Engineers, Class II, PWD (Buildings

and Roads Branch) Rules, 1965, lay down the qualification and procedure for recruitment to the service for Cadre and Ex-cadre post and Rule 9 lays down the procedure for appointment by promotion. In the above said Rules, a Committee was constituted consisting of Chairman of the Punjab Public Service Commission, Secretary, PWD, Building and Roads Branch and the Chief Engineers of PWD, Building and Roads. The Committee was to prepare a list of officials suitable for promotion to the Service. The names of the officers were to be included in this list shall be arranged in order of seniority in Punjab PWD (B&R) Sectional Officers (Engineering) Service and members of Draftsmen and Tracers service. This list shall be revised every year. Under the Class II Rules, there are four sources for recruitment. Besides the direct recruitment, the members of the Overseers' Engineering Service as well as Draftsmen were eligible to be considered for promotion. Separate quota of 10% reserved for the persons, who possess any of the qualifications prescribed in Appendix 'B'. The eligibility has to be determined on the 1st day of January of the particular year. The names of the eligible candidates are to be brought on the list every year after they acquired the eligibility qualifications. In this case, the question for consideration before the Court was that whether the seniority of the members belonging to the Overseers Engineering Service has to be determined on the basis of the date of continuous appointment or it could be altered by the date of passing the qualifying examination or acquiring the eligibility. The writ petition was dismissed and it was held that the petitioners have to be considered for promotion in the order of their seniority as determined under the relevant rules and not on the basis of date of acquiring the qualification prescribed for the higher post. In paragraph 13 of the said

judgment, it was observed as under: -

"It is obvious from Rule 12 of the rules, quoted above that the *inter se* seniority between Surinder Mohan Sharma and Dinesh Kumar could only be fixed on the basis of continuous length of service in the cadre of Sub-Divisional Officers subject to the applicability of any of the clauses under proviso to the said rule. The rule nowhere provides that the seniority is to be fixed on the basis of the date of acquiring the eligibility qualifications. The rule which was before the Full Bench in Ashok Kumar Sehgal's case was entirely different than the rule in this case. The High Court became totally oblivious to Rule 12 of the Rules and fell into patent error in allowing the writ petition following the judgment in Ashok Kumar Sehgal's case which has no relevance whatsoever to the present case. We, therefore, allow the appeal with costs and set aside the order of the High Court dated February 1, 1993 and dismiss the writ petition filed by Surinder Mohan Sharma before the High Court. We quantify the cost as Rs. 11,000/- to be paid by respondent No. 1 Surinder Mohan Sharma to respondent No. 3 Dinesh Kumar."

The LPA Bench in the case of **Raj Pal (supra)** has interpreted the Regulation 9 of the Board, as applicable in the present case that it does not get any power to disturb the inter-se seniority/ranking of the petitioners from the date of acquisition of the eligible qualification i.e. AMIE/BE. The Division Bench set aside the judgment of the learned Single Bench and held that on the date of promotion on 01.10.1992 all the writ petitioners as well as private respondents were eligible as per the amended Regulation 9 of the Board and the petitioners who were seniors to the private respondents had a prior right of consideration for promotion to the 12½% quota meant for Junior Engineers. The Division Bench proceeded to clarify the amendment made in Regulation 9 of the Board on 19.06.1989, the clarification is as under: -

“Regulation 9

i) Recruitment to the post of Assistant Engineer (Civil) shall be :-

a) By direct recruitment	65.00%
b) By promotion in the manner as under	35.00%
i) From amongst Engineering subordinates as defined in regulation 2(g) with 5 years service as JE/Civil	22½% (share of quota of service as JE/Civil 35% of posts of AEs shall be calculated on the sanctioned strength of posts of Asstt. Engineers.
(ii) From amongst Engineering 12½ % subordinate as defined in reg 2(g) possessing AMIE/BE qualification with 5 years service as such.	
Provided that if qualified persons from para above are not available the vacancies may be filled up by promotion of equivalent number from the category (i) and vice-versa.	

CLARIFICATION:

The eligibility for consideration for promotion from AMIE/BE against 12½% quota shall be determined from the date of qualifying such examination provided that :-

- i) that ranking list of Engineering subordinates for their promotions as AE after having qualified the AMIE/BE examination and completion of 5 years service in the cadre, may normally be prepared on first day of January of each year and duly notified to all concerned.
- ii) The name(s) of eligible candidate(s) in the Ranking list, will be arranged in order of their date of passing AMIE/BE Examination. The name(s) of the JEs who qualify the AMIE/BE examination, during the subsequent years, will be added in the Ranking list below the name(s) of the candidates who have passed the said Exam in the earlier years."

The combined reading of Regulation 9(i) and (ii) was that the names of eligible candidates, who had acquired the qualification, were to be added in the ranking list on 1st of January every year. The correct interpretation of the amended Regulation 9 of the Board was that even if the names of the persons, who have acquired the qualifications and five years

experience was rendered in the ranking list for the purpose of seniority maintained in the Engineers Subordinates was to be followed. Any other interpretation would result in a great hardship and denial of equal treatment to eligible persons. The ratio of law laid down by the Division Bench was that a person acquiring AMIE/BE qualification earlier and also possessing five years experience earlier would be entitled to be placed higher than the person who passed AMIE/BE qualification later on. He may be junior in the lower cadre to the person placed lower than him. However, the original seniority in the Engineer Subordinates would not be disturbed for the purpose of promotion. The judgment in the case of **Raj Pal's (supra)** is answered in favour of the present petitioners.

The Supreme Court way back in **1999 SCC (L&S) 731** in the case of **Haryana State Agricultural Marketing Board Vs. S.M. Sharma and others**, while interpreting Rule 12 of the Haryana State Agricultural Marketing Board Service Rules, 1974 held that the inter-se seniority between promotees to the post of Sub-Divisional Officer in the service of the Haryana State Agricultural Marketing Board has to be fixed on the basis of continuous length of service in the cadre and not from the date of acquiring the eligibility qualifications.

The Full Bench of this Court way back in **1990 AIR (Punjab) 117** in the case of **Punjab State Electricity Board, Patiala and another Vs. Ashok Kumar Sehgal and others**, was considering the rules of the Electricity Board whereby the promotion from the cadre of Lineman to Line Superintendent was in question. The board had prescribed the different conditions for eligibility for promotion from Lineman to Line Superintendent

which were based on educational qualification and service experience respectively for non-diploma and diploma holders with regard to recruitment for promotion post. In the interests of efficiency of service, the eligibility criteria was the first dominant factor and thereafter comes the principle of seniority governing the fate when two equal eligible stake claim to the promotional post. The Bench held that in that situation, the senior person would get the promotional post on both acquiring eligibility on the same date, even though the promotional post falls vacant later. If on the date of promotion on an available vacancy, a junior has acquired the necessary experience and qualification, he has a right to be promoted and the senior who become eligible subsequently cannot claim promotion on the said post on the basis of seniority. It is only two persons stake claim of promotion after acquiring experience and qualifications it will be the senior who will be a preferential right of promotion to the post.

Recently, a Division Bench of this Court in **CWP No.2539 of 2012** titled **Baljinder Singh and others Vs. State of Punjab and others**, **decided on 10.02.2012**, whereby the petitioners were seeking directions to reconstruct Rule 6 of the Punjab Service of Engineers (Civil Wing), Department of Public Works (B&R Branch), Group 'A' Service Rules, 2005. The petitioners belonging to the category of Junior Engineers, who were to be promoted to the post of Sub-Divisional Engineers against 13 % quota of post meant for Junior Engineers, who possess a Degree in Engineering in Civil or Degree of AMIE from a recognized University or Institution and have an experience of working as Junior Engineer for a minimum period of three years after obtaining the aforesaid degree. The relevant rule which was to be

reconstructed to be notified as under:

“6. Method of appointment, qualifications and experience -

(1) Appointment to the Service shall be made in the manner, specified in Appendix 'B'.

Provided that if, no suitable candidate is available for appointment to the Service by promotion and by direct recruitment, then appointment to the Service shall be made by transfer of a person holding a similar or an identical post under a State Government or Government of India.

(2) No person shall be appointed to a post in the Service, unless he possesses the qualification and experience as specified against that post in Appendix 'B'.

(3) Appointment to the Service by promotion shall be made on seniority-cum-merit basis, but no person shall have any right to claim promotion on the basis of seniority alone :

Provided that promotion to the post of Chief Engineer, being Head of the Department, shall be made on merit-cum- seniority basis.”

The petitioners were claiming that the seniority should not be determined on the basis of joining the department and the same should be from the date of which the candidate obtains the Degree in Engineering in Civil or Degree of AMIE. While dismissing the writ petition the Division Bench held that it was the prerogative of the rule making authority to frame a rule with regard to eligibility and method of recruitment. The only condition was that such Rule should not be violative of the provisions of the Constitution of India. The seniority list prepared by the department was on the principle of seniority-cum-merit. The promotion made to the post of Sub-Divisional Engineers on the basis of seniority-cum-merit was upheld by the Division Bench and the writ petition was dismissed.

In Risal Singh case (supra) the Division Bench of this Court while relying upon the judgment of this Court in Ram Kumar Sharma Vs. State of Haryana, 1996(6) SLR 450 and upon judgment of Hon'ble the Supreme Court in Haryana State Agricultural Marketing Board Vs. Surinder Mohan Sharma and others, 1999 SCC (L&S) 731 held that passing of the qualified examination was a condition to make a candidate eligible for promotion, however, a senior could not be ignored simply on the ground that junior had acquired the eligibility of qualification earlier. If there was only one post of promotion, the senior has a preferential right to be promoted being eligible on the relevant date.

The judgment in the case of K.K. Dixit (supra), referred by Mr. Dinesh Kumar, learned counsel for private respondents, was a case of promotion to the post of Project Engineer (Senior). As per Chapter III of the Rajasthan Housing Board Employees Conditions of Recruitment and Promotion Regulations, 1976 and includes Clause (12), which empowers the Board to issue general instructions not inconsistent with the Act and the Rules and the Regulations made thereunder for the purpose of removing doubt, lacuna, inconsistency or anomaly which may arise in interpreting the Regulations. As per the "Schedule Technical" alone is of significance and that shows the post of Project Engineer (Junior) at the entry level. 97% of this post was to be filled by direct recruitment and 3% by Board employees. The next post in hierarchy was the post of Project Engineer (Senior) and the source of recruitment for was 50% by direct recruitment, 20% by promotion of degree holder and 30% by promotion of diploma holder. Column 6 of the Schedule Technical lays down the minimum experience and qualifications

required for promotion, which are extracted hereinbelow: -

”Post to be filled in by promotion from amongst the P.E.Jr.’s who are degree holders with 3 years total experience of service.

Post to be filled in by promotion from P.E.Jr.’s who are diploma holders with 7 years total experience of service. (137.20) Govt. approved Dt.25.2.2000 w.e.f. 9.12.87 Or Qualification recognized by the State Govt. to be equivalent to Degree in Civil Engineering.”

While interpreting the above-said Column 6, the Supreme Court held that to be eligible to be promoted to the post of Project Engineer (Senior), a Project Engineer (Junior) should have a degree with three years total experience. Similarly, to be eligible for promotion to the post of Project Engineer (Senior), a Project Engineer (Junior) who had a diploma with 7 years total experience. The Supreme Court further held that the Project Engineers (Junior) recruited on the basis of diploma, upon their acquiring the qualification of ‘AMIE’, would not entitle to count their experience of service prior to acquisition of such qualification for the purpose of eligibility for promotion to the post of Project Engineer (Senior) against 20% quota fixed for promotion of degree holder Project Engineer (Junior). In order to claim a promotion against such 20% quota the three years’ experience of service must be acquired after obtaining the qualification of degree of AMIE. The case before the Supreme Court was that in the 50% quota which was to be filled by promotion, 20% quota was kept for degree holder and 30% quota for promotion for diploma holders. It was a water-tight compartment for both the degree holder and diploma holder. Neither the diploma holder could claim a post meant for degree holder and vice-versa. Hence, if a diploma holder

completes three years experience and if a diploma holder acquired a degree in AMIE he would have to complete three years experience in service to stake a claim for promotion to the 20% posts meant for degree holder. In this background, the Supreme Court held that the diploma holders were acquired the qualification of AMIE should have three years experience after acquiring the qualification to be eligible for promotion in the 20% quota posts meant for promotion of degree holders. The judgment of the Supreme Court cannot be applied to the present case as Regulation 9 of the Board in the case of present petitioners, 12½% are reserved for amongst the Engineering Subordinates of General Cadre possessing AMIE/BE qualification and having five years experience as such. This quota of post is meant for those Subordinates Engineer, who during their service acquired the degree of AMIE/BE qualification and have five years experience as such. While interpreting Regulation 9 of the Board and similar Regulation in the case of **Risal Singh case (supra)**, the consistent view is that even if a junior acquire the qualification of AMIE/BE prior to a senior on the date of consideration for promotion it would be the senior who had a preferential right of promotion, as the seniority in the Engineer Subordinates cannot be altered simply on account of acquiring the qualification of AMIE/BE. Further, for taking the claim to the quota of 12½ % posts, the acquisition of qualification eligibility criteria as Engineer Subordinates on account of their seniority without a degree have a right to get promotion in 22½% posts meant for promotion to the post of Assistant Engineers. However, in the compartment of Subordinates Engineer acquiring the degree, the seniority of Engineer Subordinates is not to be disturbed. The ranking list is prepared on 1st of January every year and at the

time of considering of claim for promotion a senior is to be given preference and there is no question of having five years experience after acquiring the qualification of AMIE/BE qualification. The Rules in the case of K.K. Dixit (supra) are separate where there were separate quota for engineers as well as diploma holders for promotion. A diploma holder could stake a claim for promotion in the category of degree holder only after acquiring qualification and with three years experience. Hence, this judgment would not help the case of the respondents.

Regulation 9 of the Board has been interpreted in number of judgments discussed here-in-above. Accordingly, the present writ petitions are allowed and the impugned orders are set aside and the respondents are directed to consider the case of the petitioners for promotion keeping in view the seniority lists and ranking lists in question, by giving preference to the seniority of the petitioners and not the date of acquiring qualification of AMIE/BE. The above-said exercise shall be completed within a period of four months from the date of receipt of certified copy of this order.

March 16, 2016
naresh.k

(RITU BAHRI)
JUDGE