

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

Date of decision: 29.11.2016

CWP No.22687 of 2015 (O&M)

Vinay Kumar Kakkar

...Petitioner

Vs.

State of Haryana & others

...Respondents

CWP No.18977 of 2013 (O&M)

Ram Swaroop & others

...Petitioners

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Amit Jhanji, Advocate, for the petitioner(s)
in both the cases.

Ms. Shruti Jain Goyal, AAG, Haryana.

Mr. R.D.Bawa, Advocate, for respondents No.2 & 3
in CWP No.22687 of 2015.

Mr. Pankaj Gupta, Advocate, for respondent No.4
in CWP No.22687 of 2015.

Mr. Padamkant Dwivedi, Advocate, for respondents No.2 & 3
in CWP No.18977 of 2013.

Mr. Anurag Goyal, Advocate, for respondent No.4
in CWP No.18977 of 2013.

Mr. Sandeep Panwar, Advocate, for respondent No.5
in CWP No.22687 of 2015.

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RAJIV NARAIN RAINA, J.

This order will dispose of the aforementioned two writ petitions i.e. CWP No.22687 of 2015 preferred by a single petitioner and CWP No.18977 of 2013 preferred by three others. The cause and the issue involved in both the cases is common and identical, therefore, both the petitions can be conveniently decided by a single order, as the question of law and facts are the same. The main case by consent is CWP No.22687 of 2015 argued by Mr.Amit Jhanjhi, Advocate to cover ground in both the cases. Pahel Singh - respondent No.4 in CWP No.18977 of 2013 and respondent No.5 in CWP No.22687 of 2015 against whom the actions are brought are represented by Mr. Anurag Goyal, Advocate, while Mr. Pankaj Gupta, Advocate, appears on behalf of respondent No.4 i.e. Haryana State Electronics Development Corporation Limited (hereinafter 'the Corporation'), which was the parent employer of respondent No.5 before he came to respondent No.3 i.e. Haryana State Agricultural Marketing Board (hereinafter 'the Board'), which is the contesting respondent and whose actions in favour of Pahel Singh - respondent No.5 are challenged in both the cases.

Suffice it to say at the outset, the petitioners have sufficient locus standi to challenge the absorption of respondent No.5 in the Board in a service which was foreign to respondent No.5 since he was taken on deputation from the Corporation. The moot issue is the character of entry of respondent No.5 into the services of the Board and his subsequent absorption, which is said to be against the rules of service thereby seriously affecting the rights of the petitioners to seniority and promotion to higher posts in the Board, which is their parent organisation.

The relevant facts necessary to the understanding of the case are that the petitioners in CWP No.18977 of 2013 have been working in the Board as Sub Divisional Engineer (Electrical) while one of them as Executive Engineer (Electrical) on Current Duty Charge (CDC) at Hisar, when the petitions were filed. They have been working since the last 20 years. The petitioner in CWP No.22687 of 2015 was appointed as Junior Engineer (Electrical) on regular basis on 12.11.1981 and was a diploma holder in Electrical Engineering when he was inducted to service. He was promoted as Sub Divisional Engineer (Electrical) w.e.f. 08.08.2005 on ad hoc basis and continues to work in the same capacity.

Respondent No.5 – Pahel Singh has entered appearance. He has filed separate replies in both the petitions contesting the case. He says that he was working as Deputy Engineer (Electrical) in the Corporation was brought on deputation on temporary basis for one year vide order dated 13.09.2007 in the first instance on the terms and conditions of deputation of Corporation sent to the Board vide office order dated 21.08.2007. By office order passed by the Corporation on 14.09.2007, Pahel Singh was relieved of his duties w.e.f. 14.09.2007 (A/N) in the Corporation to enable him to join his duties with the Board vide joining report of even date. On deputation in the Board, he became Sub Divisional Engineer (Electrical) in the pay scale of ₹8000-13500/- for one year at first instance to be posted at Panchkula. This is how the transition took place on deputation basis from the post of Deputy Engineer (Electrical) held by Pahel Singh in the Corporation to the post of Sub Divisional Engineer (Electrical) in the Board. On the date of deputation, the services of the employees of the Board were governed by the provisions of the Haryana State Agricultural Marketing Board Rules, 1974 (hereinafter to be referred as ‘the

Rules’). As per these Rules, the appointment to the post of Sub Divisional Engineer (Electrical) could be made by either direct recruitment or by promotion or by transfer or deputation to be filled up in the manner provided under the Rules. Rule 7 of the Rules prescribing the ‘Qualifications’ reads as follows:

“7. Qualifications – No person shall be appointed to the Service, unless he is in possession of qualifications and experience specified in column 2 of Appendix B to these rules in the case of direct recruitment and those specified in column 3 of the said Appendix in the case of recruitment other than by direct recruitment.”

Rule 10 dealing with the ‘method of recruitment’ reads as follows:

“10. Method of recruitment – (1) Recruitment to the Service shall be made in the manner as specified in column 4 of Appendix B to these rules.

Note 1– All promotions shall be made on the basis of seniority-cum-merit.

Note 2- Unless otherwise provided, where appointment is to be made both by direct recruitment and other than by direct recruitment 33-1/3 percent posts shall be filled in by direct recruitment and 66-2/3 percent posts by other than direct recruitment.

Recourse to direct appointment or appointment by transfer or deputation shall be made only if suitable candidates are not available from within the Service.”

It is clear that Rule 10 lays down that recourse to direct appointment or appointment by transfer or deputation shall be made only if suitable candidates are not available from within the Service of the Board. The Appendix to the Rules regarding the post of Sub Divisional Officer fell at Sr.No.6 and reads as follows:

Sr. No.	Designation of post	Academic qualifications and experience, if any, for direct recruitment	Academic qualifications and experience, if any, for appointment other than by direct recruitment	Method of recruitment.																																			
1	2	3	4	5																																			
xx	xx	xx	xx	xx																																			
6.	Sub Divisional Officer	B.Sc. Engineering in respective branch of Engineering or its equivalent.	Diploma in the respective branch of Engineering or Draftsman (Civil) with ten years experience as Junior Engineer or Assistant Draftsman; or (ii) in case of Junior Engineer or Assistant Draftsman who possesses A.M.I.E. qualification five years experience and two years experience in the case of degree holders	(i) by direct recruitment; or (ii) by promotion; (iii) by transfer or deputation; to be filled in the manner as under: <table><tr><th>Post allotted in various categories in a lot of 15 posts divided into 3 blocks of 5 posts of each</th><th colspan="4">Total of each category</th></tr><tr><td></td><td>I</td><td>II</td><td>III</td><td>Total</td></tr><tr><td>(i) by direct recruitment</td><td>2</td><td>2</td><td>2</td><td>6</td></tr><tr><td>(ii) by promotion from Sectional Officer</td><td>1</td><td>3</td><td>2</td><td>6</td></tr><tr><td>(iii) by promotion from Asstt. Draftsman</td><td>1</td><td>-</td><td>-</td><td>1</td></tr><tr><td>(iv) by promotion from Sectional Officer Asstt. Draftsman possessing qualification of A.M.I.E.</td><td>1</td><td>-</td><td>1</td><td>2</td></tr><tr><td>Total</td><td>5</td><td>5</td><td>5</td><td>15</td></tr></table>	Post allotted in various categories in a lot of 15 posts divided into 3 blocks of 5 posts of each	Total of each category					I	II	III	Total	(i) by direct recruitment	2	2	2	6	(ii) by promotion from Sectional Officer	1	3	2	6	(iii) by promotion from Asstt. Draftsman	1	-	-	1	(iv) by promotion from Sectional Officer Asstt. Draftsman possessing qualification of A.M.I.E.	1	-	1	2	Total	5	5	5	15
Post allotted in various categories in a lot of 15 posts divided into 3 blocks of 5 posts of each	Total of each category																																						
	I	II	III	Total																																			
(i) by direct recruitment	2	2	2	6																																			
(ii) by promotion from Sectional Officer	1	3	2	6																																			
(iii) by promotion from Asstt. Draftsman	1	-	-	1																																			
(iv) by promotion from Sectional Officer Asstt. Draftsman possessing qualification of A.M.I.E.	1	-	1	2																																			
Total	5	5	5	15																																			

- Note-1.

In case suitable candidates are not available from source No.(iv) the vacancy shall be filled by direct recruitment.
- Note-2.

In case a candidate is not available from source (i) or (iii) and a person has to be appointed in public interest as a stop-gap arrangement from other than the allotted source, such a person shall be liable to be reverted to his original cadre when a candidate from the allotted source is available and the period of service rendered by such person will not be reckoned for the purpose of seniority.

The Haryana State Agricultural Marketing Board Rules, 1974 were repealed by new Rules enacted on 04.01.2008 notified in the style of the ‘Haryana State Agricultural Marketing Board Service Rules, 2008’ (hereinafter to be referred as ‘2008 Rules’). These Rules came into force on 04.01.2008

vide Haryana Government, Agriculture Department, notification of even date issued in exercise of powers conferred by sub-section (1) read with clauses (xxviii), (xxix) and (xxx) of sub-section (2) of Section 43 of the Punjab Agricultural Produce Markets Act, 1961 (Punjab Act 23 of 1961) as applicable to Haryana. Rule 7 of the 2008 Rules provides for qualifications described under Rule 6 and in the Appendix to the rules. The said Rule reads as follows:

“7. No person shall be appointed to any post in the Service, unless he is in possession of qualifications and experience specified in column 3 of Appendix B to these rules in the case of direct recruitment and those specified in column 4 of the aforesaid Appendix in the case of appointment other than by direct recruitment.

Provided that in case of direct recruitment of reserved categories of employees, the condition regarding experience shall be relaxable to the extent of 50% at the discretion of the appointing authority in case sufficient number of candidates belonging to Scheduled Castes, Backward Classes, Other Backward Classes, Ex-servicemen and Physical Handicapped categories, possessing the requisite experience are not available to fill up the vacancies reserved for them, after recording reasons for so doing in writing.”

Rule 10 deals with the ‘method of recruitment’ and prescribes as follows:

“10. Recruitment to the Service shall be made in the manner as specified in Appendix B to these rules.”

Seniority of the members of service is governed by the provisions of Rule 13, which read as follows:

“13. Seniority inter se of the members of the Service shall be determined by the length of their continuous service on any post in the Service:

Provided further that in the case of members appointed by direct recruitment, the order of merit determined by the

appointing authority mentioned in these rules shall not be disturbed in fixing the seniority;

Provided further that in the case of two or more members appointed on the same date, their seniority shall be determined as follows:

- (a) a member appointed by direct recruitment shall be senior to a member appointed by promotion or by transfer;
- (b) a member appointed by promotion shall be senior to a member appointed by transfer;
- (c) in the case of members appointed by promotion or by transfer, seniority shall be determined according to the seniority of such members in the appointments from which they were promoted or transferred, and;
- (d) in the case of members appointed by transfer from different cadres, their seniority shall be determined according to pay, preference being given to a member, who was drawing in higher rate of pay in his previous appointment and if the rates of pay drawn are also the same, then by the length of their service in the appointments and if the length of such service is also the same, an older member shall be senior to a younger member.

Note: Seniority of members of the Service appointed on purely provisional basis or on daily wages/contractual person shall be determined as and when they are regularly appointed in view of the date of such regular appointment.”

While working on deputation as Sub Divisional Engineer (Electrical), Pahel Singh was absorbed on a request made by him in writing on 07.06.2010 vide memo dated 11.08.2010 (Annex P-10) in the services of the Board in the pay scale of ₹9300-34800+5400 GP. Clauses 1 & 4 of the absorption order (Annex P-10) are relevant to determine the rights of Pahel Singh in the Board as against the rights of the petitioners, who are aggrieved by

the absorption order that these two clauses promote their case in addition to other arguments that were addressed during the hearing. Clauses 1 & 4 are as follow:

“1. Your appointment by transfer will be on purely temporary basis against a temporary vacancy and terminable on one month notice without assigning any reason on either side except in case of removal for your antecedents having been found to be unsatisfactory in which case your services shall be terminated without any notice. It will, however, be open to the Board to pay emoluments in lieu of the notice or for the period to which the said notice falls short of a month. Similarly, if you will resign/quit your post you may do so by depositing to the Board emoluments for the one month in lieu of the notice for a period by which the said notice falls short of a month.

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4. You will be given the seniority benefits with immediate effect and any past service benefits will not be given except pay benefit.”

Clause 1 recites that the appointment by transfer will be on purely temporary basis against a temporary vacancy and terminable on one months’ notice without assigning any reason on either side except in cases of removal for antecedents having been found to be unsatisfactory in which case his services could be terminated without any notice etc. Clause 4 stipulates that Pahel Singh will be given seniority benefits with immediate effect and any past service benefits will not be given except pay benefits. His services were ordered to be governed by the rules and regulations and other conditions of service as are applicable or may be framed in future for the employees of the Board from time to time.

The respondent – Board has issued a gradation list of Sub Divisional Engineer (Electrical)/Junior Engineer (Electrical) vide memo dated 29.08.2014 in which his (Pahel Singh) name figured at Sr.No.3 as a diploma

holder. In the column 'whether confirmed or temporary', it was clearly indicated as 'Tem.', meaning temporary. The date of entry into service was shown as 11.08.2010 i.e. from the date of absorption in the cadre of Sub Divisional Engineer (Electrical). The names of the petitioners fell in the running gradation list of the post of Junior Engineer (Electrical). By this gradation list, Pahel Singh became senior to the petitioners. It may be mentioned with reference to the tentative seniority list of Sub Divisional Engineers and Junior Engineers circulated in the Board as it stood on 31.06.2014 (at Pg.98) that at present 6 posts of Sub Divisional Engineers are sanctioned in the Board. 4 more posts of Sub Divisional Engineers (Electrical) were created on 10.12.1985 and 2 posts of Sub Divisional Engineers were created on 30.07.2004. In all, there are 12 posts of Sub Divisional Engineers. It is later explained only 6 are operational. Pahel Singh's name as per qualifications and roster points to the post of Sub Divisional Engineer in terms of Rules applicable prior to 21.07.2005 was shown at Sr.No.10. In the remarks column, it has been pointed out that '*He was absorbed in the Board w.e.f. 11.08.2010 against a temporary (expansion) post. At that time, he did not fulfill qualification for direct recruitment. His absorption in the Board has been challenged in the Hon'ble Punjab & Haryana High Court. He is adjusted against roster point No.2 meant for direct quota and placed at seniority No.3 below Sh. Devki Nandan in view of his absorption on 11.08.2010. However, his seniority is subject to final outcome of the court case*'. In short, Pahel Singh was absorbed on 11.08.2010 against a temporary (expansion) post. Remarkably, at that time, he did not fulfill the qualification for direct recruitment. It was recorded that absorption is under challenge in the High Court and he was accordingly adjusted against Roster Point No.2 meant for direct quota and placed at Sr.No.3 below Sh. Devki Nandan, in view of his

absorption. His seniority was however kept open subject to final outcome of the court case. On the other hand, it is pointed out that Vinay Kumar was shown next below Pahel Singh. In the remarks column, it has been recorded that he was promoted as SDE (E) w.e.f. 08.08.2005 on ad hoc basis. He is still continuing on ad hoc basis. In the absence of availability of post of relevant quota, the Board says that he cannot be regularized as SDE (E).

The petitioners submit that Pahel Singh could not be adjusted against roster point No.2 against direct quota even when he is not qualified for direct recruitment since he does not possess a Bachelors Degree in Engineering and was only a diploma holder, like the petitioners. His occupation of roster point No.2 will consume a post in the cadre of SDE(E) and substantially reduce their chances of promotion. Aggrieved by the placement of Pahel Singh in the gradation/seniority list, the petitioner in CWP No.22687 of 2015 namely Vinay Kumar Kakkar responding to the objections sought from the persons likely to be affected by the memo dated 29.08.2014 submitted his response. He argued in the objections that the seniority list has not been prepared in terms of Rule 13 of the 2008 Rules, which is based on seniority inter se of the members of the Service to be determined by the length of continuous service. Vinay Kumar Kakkar was promoted to the post of SDE (E) and joined on 08.08.2005, but his name under the category of SDE(E) has not been indicated and he has been put in the category of Junior Engineer(E). He urged that the name of Pahel Singh at Sr.No.3 has been wrongly included since he holds the qualification of diploma and has not acquired qualification of B.E.(E), therefore, he cannot be treated as direct recruit. Moreover, the Board has not adopted the procedure for direct recruitment at the level of SDE(E). He prays that Pahel Singh's name should be removed from Sr.No.3. Besides, Rule 13 provides that a member appointed by promotion shall be senior to a member appointed by

transfer. Since his promotion was accorded on 08.08.2005, then he deserves to be shown senior to the transferee/deputationist. He claimed seniority at roster point No.3.

Without passing specific orders on the representation, the Board issued a final gradation list on 29.06.2015 continuing to show the name of Pahel Singh at Sr.No.2 even when he was temporary and had not become a member of the service.

The petitioner applied for information under the Right to Information Act, 2005 asking the Board for the incumbency/occupancy position with respect to the seniority list of SDE(E)/JE(E) as it stood on 30.06.2014. He has being supplied that information, which is Annexure P-16. From here is revealed the discussion on the objections filed by the parties including by Pahel Singh himself. This document makes interesting reading. Pahel Singh complained that Sh. Devki Nandan, Sh. Dilbag Singh and Sh. Pyare Lal have already been promoted as Executive Engineer (E) without fulfilling the required conditions for the promotion of Executive Engineers. It would be best to reproduce Pahel Singh's objections; petitioner – Vinay Kumar Kakkar's objections and the responses of the Board on their respective objections. The same in the tabulated form reads as follows:

2.	<u>Pahel Singh:-</u> He has intimated that Sh. Devki Nandan, Sh. Dilbag Singh and Sh. Pyare Lal have already been promoted as Executive Engineer(E) without fulfill the required conditions for the promotion of Executive Engineers. There are six sanctioned posts of Sub Divisional Engineer (E) in the board in which three posts are vacant for direct quota and one post from drawing branch. Only one Junior Engineer (E) can be promoted as per roaster of by-	In this regard, it is submitted that Sh. Pahel Singh was take on deputation in the Board on 14.09.2007 and permanently absorbed in the Board on 11.08.2010 against the temporary vacancy. Sh. Pahel Singh is not possessing in degree of
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laws of HSAM Board whereas twelve Junior Engineers and two no Assistant Draftsman has been promoted as Sub Divisional Engineer (E) on CDC/Adhoc against one post of promotion quota. Further, there are two no. sanctioned post of Executive engineer and CDC are given to three Executive Engineers. He have been submitted my objections as per receipt No.14686 dated 26.09.2014 in reference memo No.Admn-III-2014/69556-599 dated 29.08.2014 regarding above cited subject. Sh. Devki Nandan did not passed the Departmental Test and his service as Sub Divisional Engineer are to be considered on regular basis 31.07.2013. Thus, he does not fulfill the experience of six years for promotion to the post of Executive Engineer (E) and he has passed Diploma in Electrical Engineering. Sh. Dilbag Singh belongs to drawing branch. He passed 2 years trade certificate from ITI in Mechanical trade. Therefore, his promotion for the post of Head Draftsman has been given on conditional basis as per vide letter No.Admn 7-93/3114-23 dated 13.01.1992 in which it is clearly mentioned that “this promotion is ubject to the approval of the draft rules by the government.” The same draft rules are not approved till date. Thus, the same promotion is to be considered on adhoc basis and his name is to be considered in the list of Assistant Draftsman. His qualification does not fulfill for the post of Head Draftsman (E) as per by laws of HSAM Board as his qualification belong to Mechanical. In spite of that he has given the charge of Executive Engineer(E). Sh. Pyare Lal is not regular as Sub Divisional Engineer (E). His promotion was made on ad hoc basis on the post of direct	Electrical Branch, hence the officer is not fulfill the condition of the post of Sub Divisional Engineer (Elect.). The name of Sh. Pahel Singh shown in the gradation list of SDE(Elect.) at Sr.No.3. The name of Sh. Karam Singh was not included in the seniority list of the SDE because he has not fulfilled the requisite qualification of SDE (Elect.). Sh. Dilbag Singh was promoted to the post SDE (Elect.) on 11.01.1996 on regular basis against drawing quota post. As per roster point No.4, the post goes to drawing branch. Sh. Devki Nandan was appointed as Junior Engineer on 09.04.1979 and further promoted to the post of SDE (Elect.) on 10.02.1992 on adhoc basis. Sh. Pyare Lal Pahuja was promoted to the post of SDE (Elect.) on 05.11.1999 on adhoc basis and shown in the gradation list at Sr.No.4 below to Sh. Pahel Singh. S/sh. Dilbag Singh, Devki Nandan and Pyare Lal Pahuja
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	quota for stop gap arrangement. Thus, he does not fulfill the experience of six years on regular basis for the promotion of Executive Engineer (E). As per tentative gradation list of Sub Divisional Engineer Sh. Pyare Lal is placed Junior to him. Further, he has already been issued charge under rule-7. In spite of that he has given the charge of Executive Engineer (E). However, he is working on regular basis as Sub Divisional engineer (Electrical), whereas Sh. Pyare Lal, Sh. Devki Nandan and Sh. Dilbag Singh are not regular as Sub Divisional Engineer. Thus, he is senior to all the Executive Engineer (E) and his promotion may be considered before them. All the above said officers are junior to him and working under them creates embarrassing situation for him. The ACR will be prepared by the reporting officer who is biased to him. Further, Sh. G.D.Sharma and Yogender Singh have also been promoted (CDC/adhoc) as Superintending Engineer(E) without any sanctioned post. As the instructions are issued vide memo No.C.S.Hr.No.62/30/2005-6GSI dated 09.06.2005, C.S.Hr. No.62/30/2005-6GSI dated 17.06.2006 and C.S.No.62/30/2005-6GSI dated 24.07.2007 vide which all the Departments/Organisations including HSAM Board are directed by the Haryana Government to stop the practice of assigning current duty charge, but in violation of the above said instructions, the officers mentioned are holding the current duty charge. The current duty may be withdrawn for maintaining my seniority. The name of Sh. Karam Singh was not included in the gradation list of Sub Divisional Engineer.	were assigned the duties of Executive Engineer (Elect.) in their own pay scale without any extra remuneration. S/sh. G.D.Sharma & Yoginder Singh are senior to Sh. Pahel Singh and they are working as Superintendent Engineer (Elect.) in the Board. Sh. Karam Singh was holding regularly to the post of SDE (Elect.) in the Board and he is senior most SDE (Elect.). The name of Sh. Karam Singh, SDE (Elect.) may be considered above to Sh. Gurnam Singh, SDE (Elect.) and the gradation list of SDE (Elect.) may be amended accordingly. Rest of the objection filed by Sh. Pahel Singh has no force and this may be filed please.
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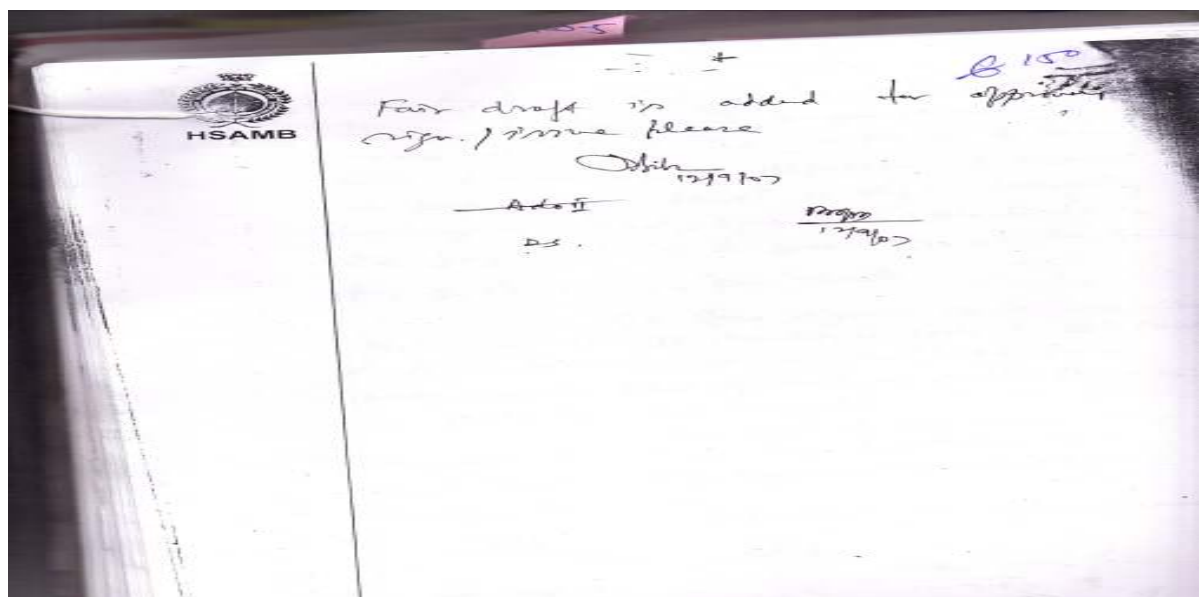
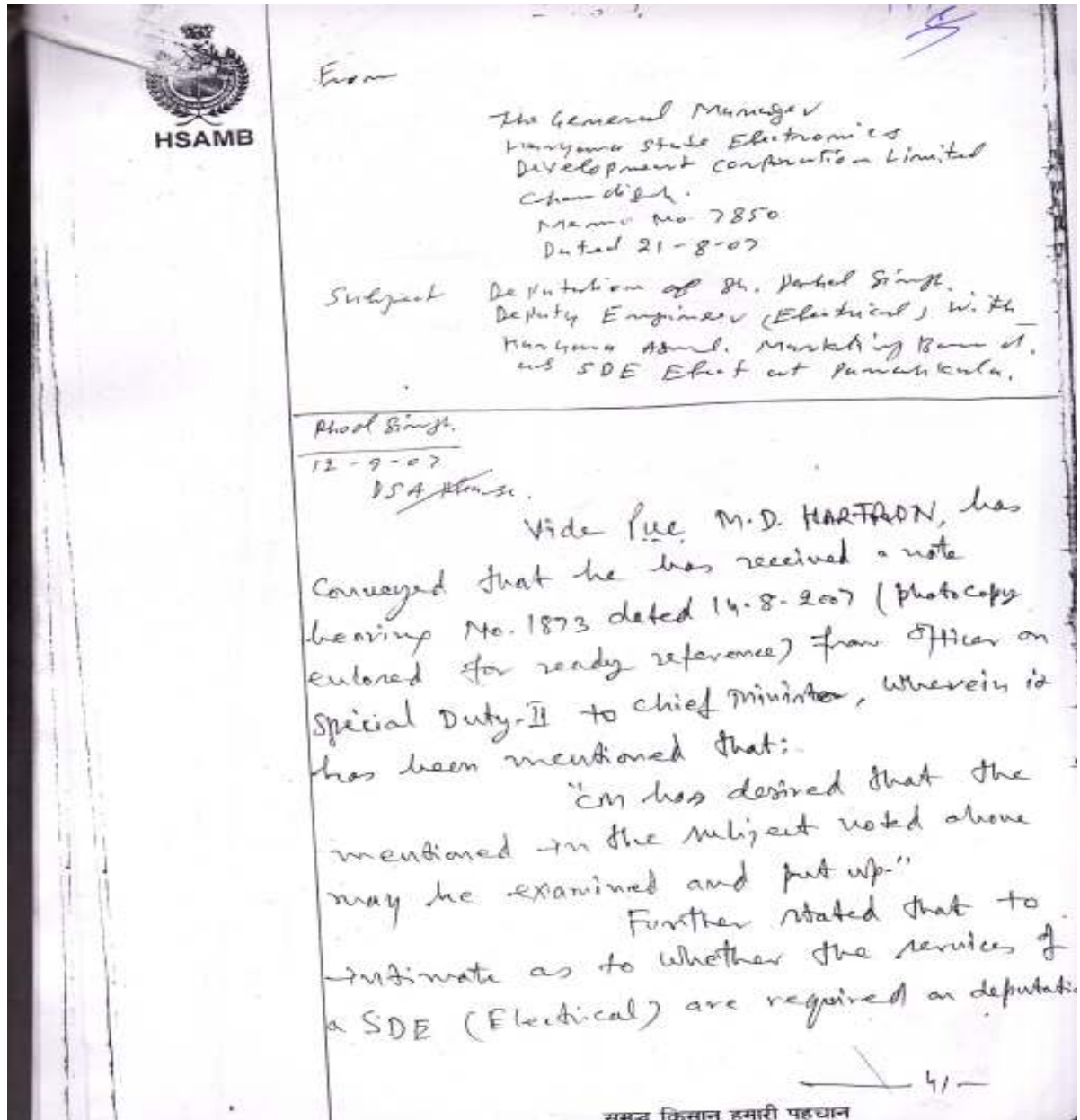
4.	Sh. Vinay Kakkar:- He has stated that as per provision of rule 13, it has been laid that seniority inter se off the members shall be determined by the length of continuous service. Whereas he was given promotion on the post of SDE(E) & joined as such on 08.08.2005, but his name under the category of SDE(E) has not been indicated. As such as per the gradation list he have not been regarded as SDE(E) but has been shown only under the category of JE(E) which is not correct as per rule 13 ibid. It may be mentioned here that members of the service have been detailed U/R-6 of appendix-A to rules-7 of the above rules (Previous by 9 Nos. post where shown), Now which 6 Nos. sanctioned post of SDE(E) have been indicated but the gradation list had only restricted the name of SDE(E) upto Sr.No.4. Accordingly his name as SDE(E) may be shown. It may be mentioned here that Sh. Dilbag Singh has got promotion as SDE(E) through irregular means as explained vide his representation dated 17.06.2013. Therefore, the name of Sh. Dilbag Singh is required to be removed from Sr.No.1 and may be shown at the appropriate place as per provisions of Rules-13 of these rules ibid. It is also stated here that the name of Sh. Pahel Singh, SDE(E) at Sr.No.3 has wrongly been included at Sr.No.3 when vide the seniority list Sh. Pahel Singh has been shown only to be holding qualification of diploma and he has not acquired the qualification of BE(E), therefore, not be treated as direct recruitment and the Board also has not adopted the procedure for direct recruitment as per Board rules. So, therefore, the objection raised vide his application dated 17.06.2013 may kindly be considered and his	Sh. Vinay Kakkar was appointed as Junior Engineer on 12.11.1981 and further promoted to the post of SDE (E) on 08.08.2005 on adhoc basis. He is still continue on adhoc basis. In the absence of availability of relevant quota post. He cannot be regularized as SDE(E). Sh. Pahel Singh was absorbed as SDE(E) on 11.08.2010 against temporary vacancy. The name of Sh. Pahel Singh is shown at Sr.No.3. No post of diploma holder available for regularization of Sh. Vinay Kakkar. The request of the officer may be filed.
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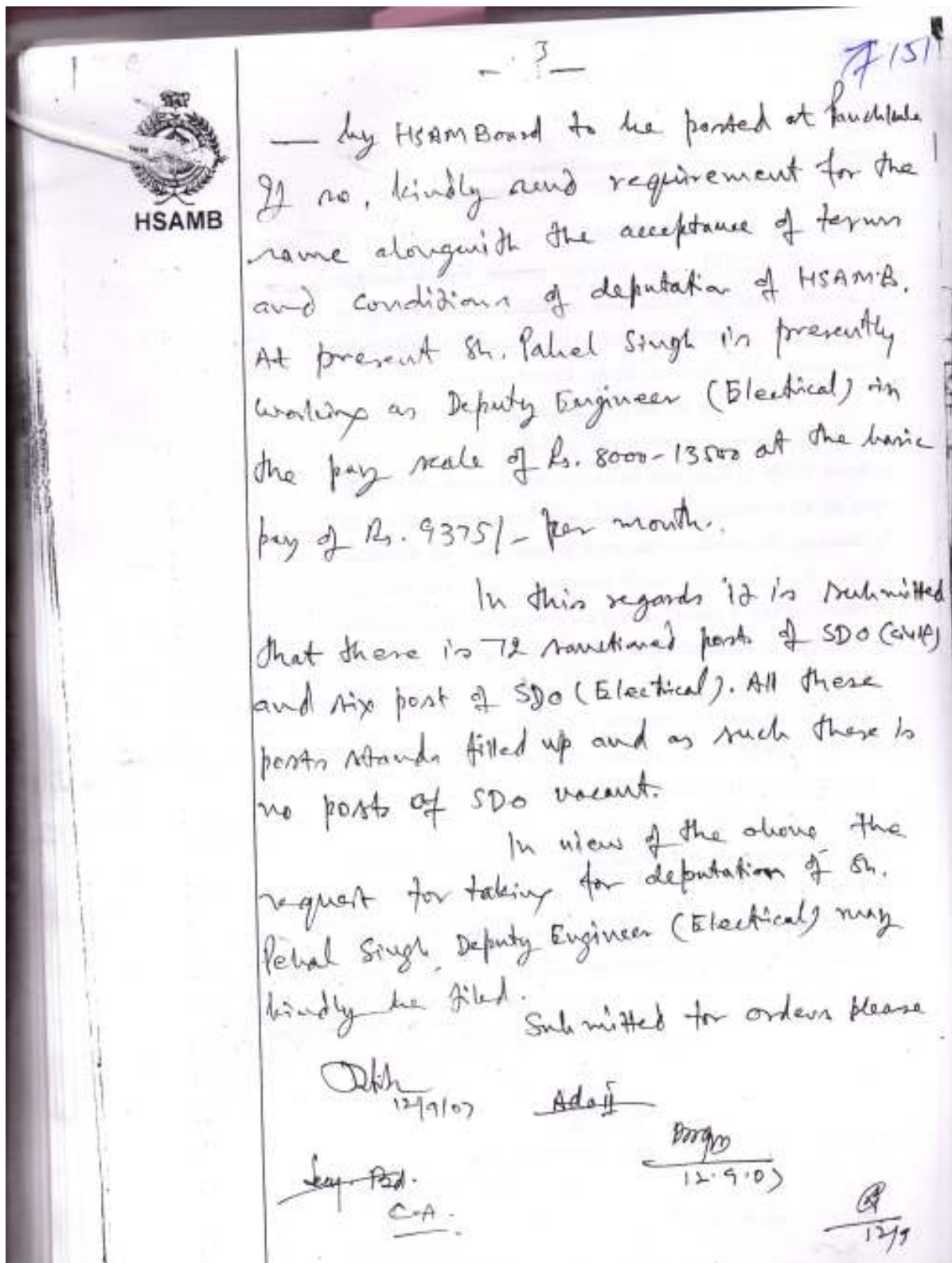
	name be removed from Sr.No.3 and be shown at appropriate place. It is further stated that Sh. Pahel Singh has joined the board on transfer and absorbed in the Board on dated 11.08.2010. But under provisions (b) of rules 13, it has been prescribed that a member appointed by promotion shall be senior to a member appointed by transfer. Since my promotion was accorded on 08.08.2005. He become senior to him against whom he have submitted by representative 17.06.2013 and further representation 09.06.2014 which are lying pending with your office. Therefore, his seniority place stands at Sr.No.3 and may be shown accordingly.	
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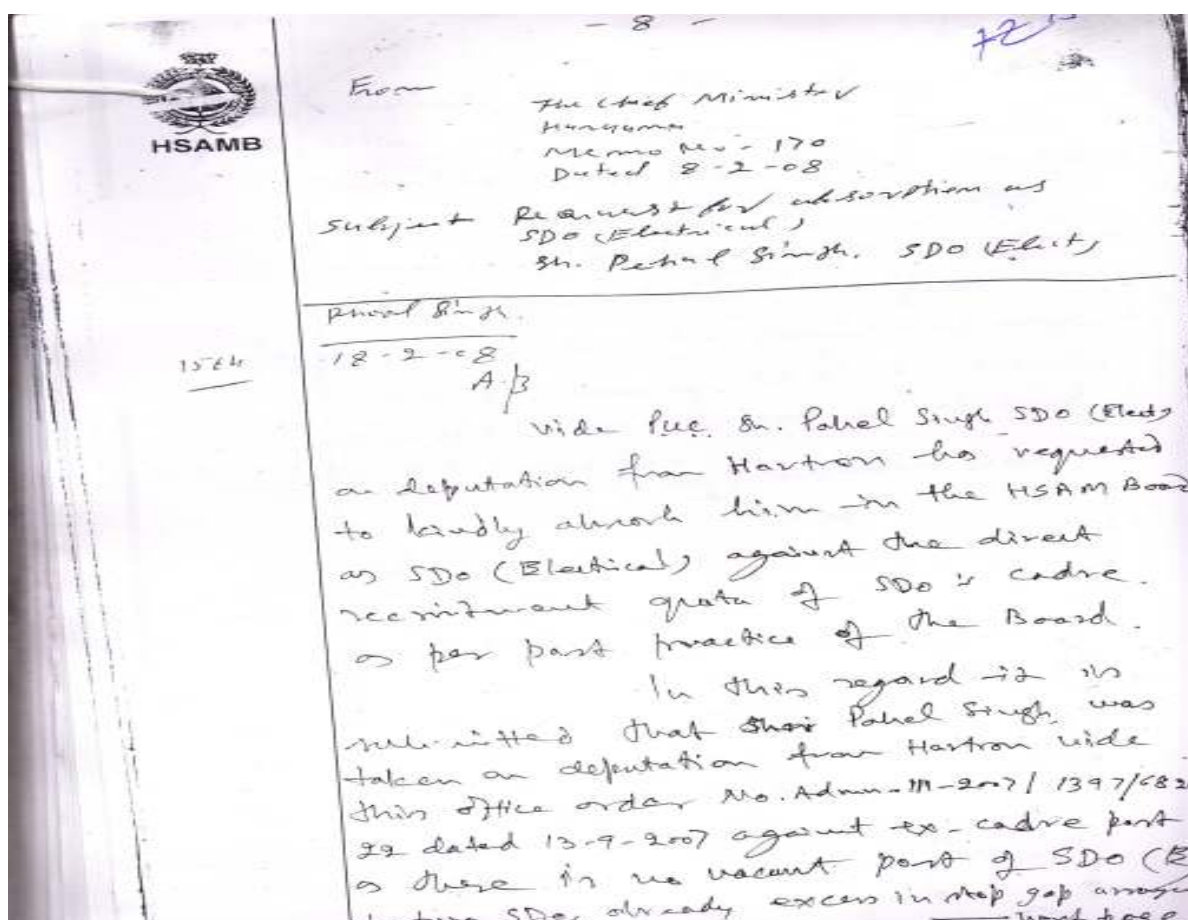
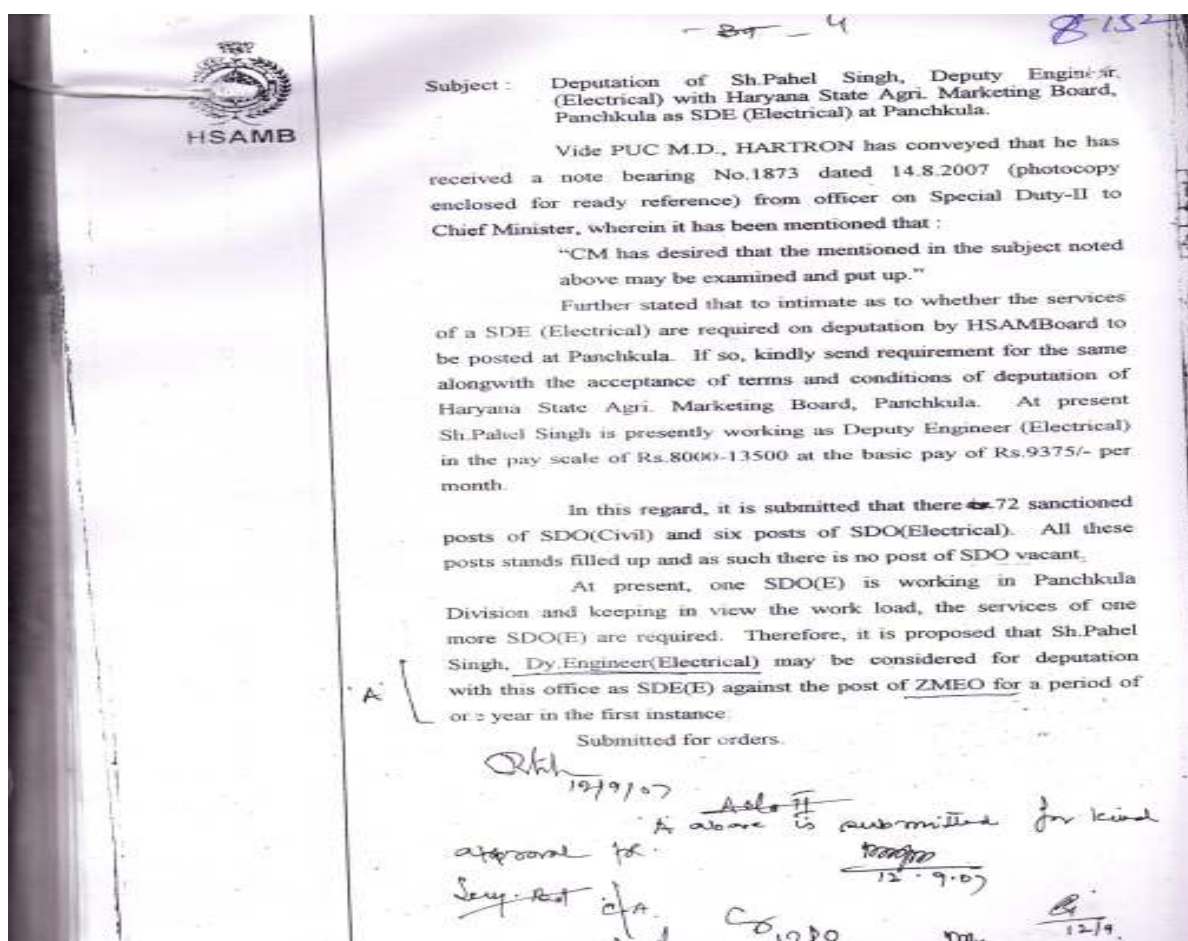
The Board has filed its reply defending its action in bringing Pahel Singh on deputation and then absorbing him and assigning him seniority at the right position. The Corporation in its reply does not say much, as the case relates to the Board. They do not even mention whether his lien has been terminated in the Corporation. This is important because in case the Court holds that the absorption of Pahel Singh in the Board was illegal, then the question of his repatriation and lien would arise otherwise he might be left without job.

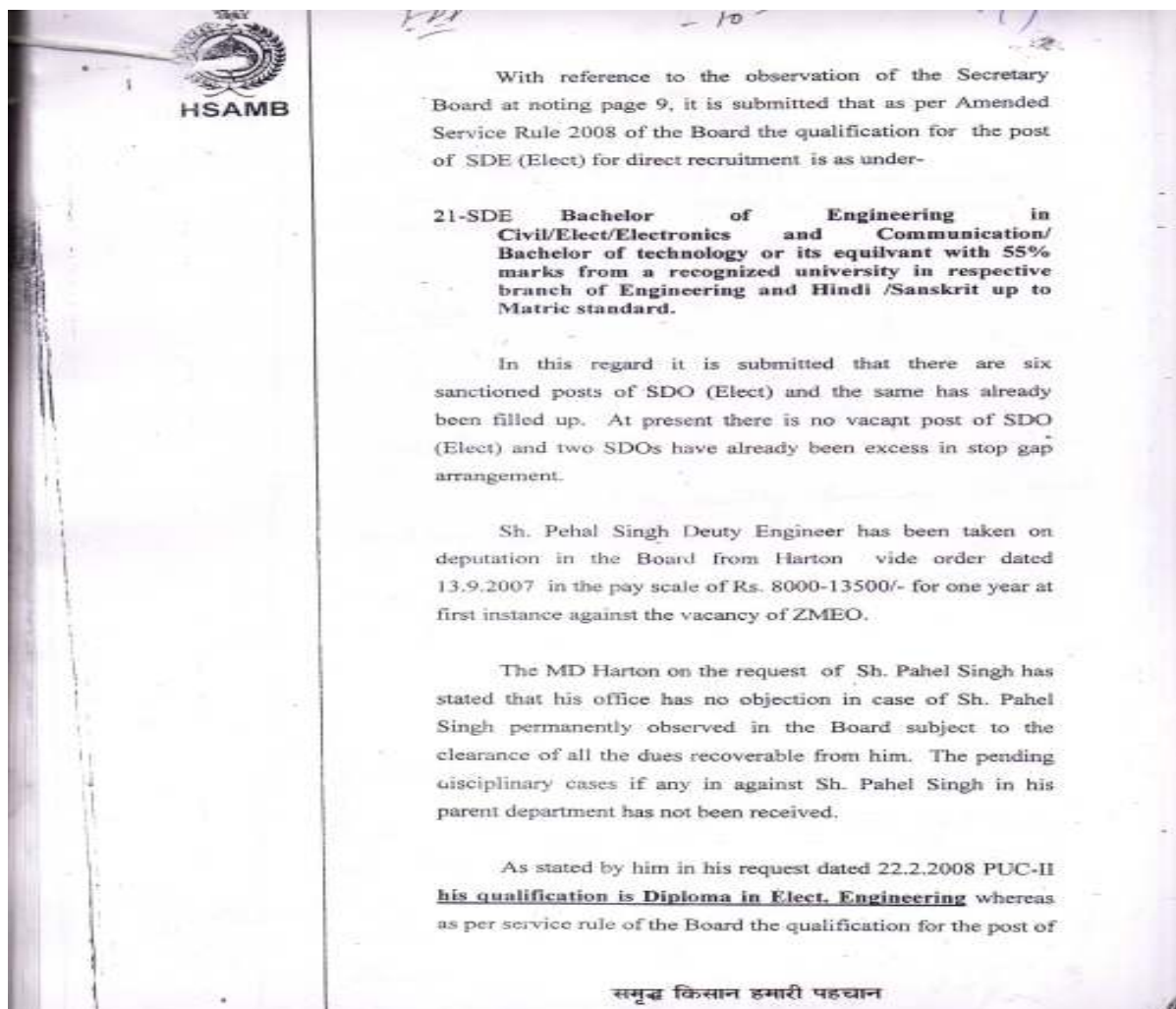
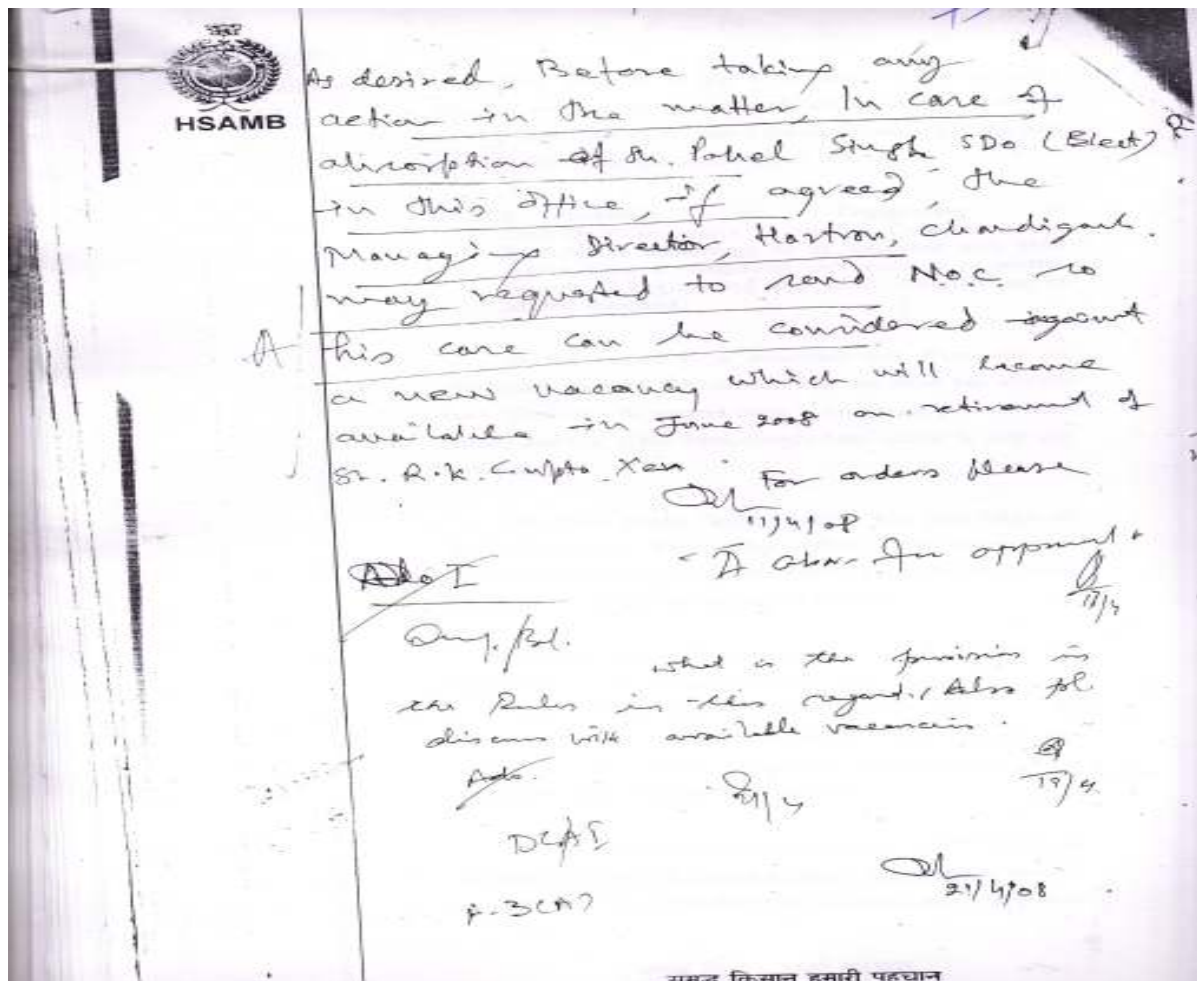
Mr. Amit Jhanji appearing for the petitioner argues on a broader canvass beyond service law on the issues involving rules, absorption and seniority. He argues on the strength of material placed on the file that Pahel Singh's entry in the Board was illegal and induced by the whip of the Chief Minister, Haryana. He has obtained the noting-sheets of the Board through Right to Information Act and its authenticated photocopies have been placed on record as Annexure P-17 collectively. The noting-sheets are self-speaking

and therefore, it would be best to insert the scanned copy of the relevant sheets in this order for all to see. Their facsimile is as follows:









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HSAMB

SDO (E) is Bachelor of Engineering in Electrical for the direct recruitment. So he dose not fulfill the requisite qualification for the direct quota/post.

Keeping in view of the position explained above the case is submitted to the authorities for passing appropriate orders please.

Dy. Supt. 19/9/08

Adl. (O.L.) 20/9/08

Secy. Adl.

order pl. May kindly please for kind
c/a. 29/5

Is there any precedent? Will it affect the chance of promotion of any official? So we have post existing for purpose?

18/5/2009
20/5/08
A3 (O.L.)

DS-IF Adl. Secy समुद किस्मन इनामी मन्त्रालय

-12-

HSAMB

F.P.P.

In reply to the observations of the worthy CA Board at NP-11 ante, it is submitted that as per available record there is no such type of precedent in the Board regarding absorption of S.D.E. in the Board.

In case of absorption there will be no effect on the chance of promotion of any official.

There are six sanctioned posts of S.D.E. (Elect.) and the same have already been filled up. At present there is no vacant post of S.D.E. (Elect.) and two posts of S.D.E. (Elect.) have already been excess in stop gap arrangement. Sh. Pahel Singh, Dy. Engineer has been taken on deputation vide order dated 13.09.2007 from HARTRON against the vacancy of Z.M.E.O.

Keeping in view of the position explained above, the case is submitted to the authorities for passing further order please.

Dy. Supt. 19/6/08

Adl. I

Secy

c/a

18/6/08
16-6-08
11/6/08
17/3/07
19/6/08
15/6/08
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RAM

DS-IF Adl. Secy समुद किस्मन इनामी मन्त्रालय

Throughout the period in question, there was correspondence exchanged between the Board and the Corporation for extending deputation successfully and also to resolve difficulties arising out of such deputation where the borrowing organization had to pay to the Corporation before 7th of the following month contributing provident fund. The relevant extract from the noting-sheet dated 11.10.2007 is as follows:

“..... “During the period of deputation the borrowing organization shall pay to the Corporation before 7th of the following month contributing provident fund (at present @ 12% of the pay) alongwith the equal share of the employees which will be deposited with the Regional Provident Fund Commissioner, Chandigarh”. The share by the Board shall be deposited to the HARTRON after calculation the Basic Pay+DP+DA @ 12% or Basic+DP@12%. This may please be clarified. So that the share of the Deputationist could be deposited well in time in the HARTRON.”

The noting-sheets tell a sordid tale and the more one reads, the more one is convinced that heaven and earth was moved in the deputation, absorption and hijacking of the seniority list by a rank usurper of office at the behest of the powers that be. No basis has been shown by the respondents during the course of arguments from record when pointed out as to what is the power and authority of the Chief Minister to interfere in the internal functions of Corporations and Boards, which do not involve policies of governance and implementation in public interest or even general directions to these instrumentalities to fulfill the objects for which they are set up. There is no answer to this extraneous hand at work so explicitly on paper. No authority howsoever high can be seen acting against rules they are meant to adhere. Seniority in terms of Note to Rule 13 can run only from the date of regular appointment. As per Rule 7, no person could be appointed to the Service unless he possesses the qualifications for the post. Pahel Singh – respondent No.5

cannot be treated as a direct recruit since he has not come by competition from open market nor possesses the essential qualification for recruitment to the post he occupied by a fiat of the Chief Minister, Haryana throwing the law to the winds by sheer display of power. Recruitment can only be made in the manner provided under Rule 10 Appendix B. The 2008 Rules do not prescribe appointment by deputation, which the 1974 Rules provided for in case suitable persons were not available in the Board and when the Rules provide, if Pahel Singh came prior to the coming into force of notification of the 2008 Rules, then his appointment on transfer basis or deputation may have been possible, but in the face of the new 2008 Rules, he could not be absorbed in 2010. There was complete prohibition in the absorption of Pahel Singh on 11.08.2010 and, therefore, he can never become a member of the Service. Even under the 1974 Rules, Pahel Singh could come only if no suitable candidate was available from within the Service in terms of old Rule 10. Therefore, without an order passed in writing as to the suitability of candidates being not available, recourse to deputation under old Rule 10 could not be had. There was hardly any question of suitability or non-suitability arising for dispassionate consideration by an order in writing by the Board when Pahel Singh's suitability had been adjudged by the Chief Minister, Haryana and accordingly his grievance in case he is displaced by certiorari and mandamus can lie only before the Chief Minister to give him shelter elsewhere and promote his career. But that cannot be done at the expense of native dwellers in the Board.

Moreover, a deputation could only have been on a corresponding post. Pahel Singh was a Deputy Engineer (Electrical) and his duties attached to that post in HARTRON are not known and whether they were similar and identical to Sub Divisional Engineer (Electrical) in the Board. No one may had the guts to think of this when the hammer was in the hand of the all mighty

King. Looking from any angle, the entry of Pahel Singh into the Board was an act induced by fraud and fraud vitiates anything. The imprint of the Chief Minister, Haryana on the papers generated in the Board finding a passage for board and lodging of Pahel Singh to help him migrate illegally to the Board and make him permanent member of the cadre with seniority is writ large across the paper-book. These facts cannot be brushed under the carpet after the expose. Pahel Singh is declared a persona non grata in the Board.

Thus, the seniority list qua Pahel Singh is set aside. Henceforth, he will stand in No Rule Territory. There is old saying that those who live by the sword must perish by it. Abraham Lincoln famously said: *“You can fool all the people some of the time, and some of the people all the time, but you cannot fool all the people all the time.”*

Thus, I have no hesitation to quash the absorption order of Pahel Singh dated 11.08.2010 (Annex P-10) by declaring it as illegal, arbitrary and unconstitutional being a product of political interference and gross abuse of authority over which the Board could offer no resistance without incurring the wrath of the highest corridors of power. The consequential gradation/seniority list(s) must also fall. And as far as the rest is concerned, I can only leave it to the Board and the Corporation and the State Government to deal with the future of Pahel Singh-respondent 5 since he cannot be absorbed or made a permanent employee of the Board. In case he is sent back to the Corporation his lien could be revived as an exceptional case because this case is exceptional and out of the ordinary.

Consequently, both the writ petitions are allowed as prayed for.

29.11.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes
Yes