

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

LPA No.1515 of 2015 (O&M)

Date of decision: 09.08.2018

Sukhdev Singh and others

.....Appellants

versus

Haryana Power Generation Corporation Limited and others

.....Respondents

LPA No.37 of 2016 (O&M)

Haryana State Electricity Board and others

.....Appellants

versus

Dharam Pal and others

.....Respondents

LPA No.958 of 2016 (O&M)

Ranbir Singh and others

.....Appellants

versus

Gulshan Kumar and others

.....Respondents

LPA No.1066 of 2016 (O&M)

Ved Parkash Gupta and others

.....Appellants

versus

Uttar Haryana Bijili Vitran Nigam Limited and others

.....Respondents

LPA No.1073 of 2016 (O&M)

Ranbir Singh and others

.....Appellants

versus

Haryana Power Generation Corporation Limited and others

.....Respondents

LPA No.1515 of 2015 (O&M)

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LPA No.1402 of 2016 (O&M)

Uttar Haryana Bijili Vitran Nigam Limited and another

.....Appellants

versus

Satpal and others

.....Respondents

LPA No.1537 of 2016 (O&M)

Haryana Power Generation Corporation Limited and others

.....Appellants

versus

Gulshan Kumar and others

.....Respondents

LPA No.1558 of 2016 (O&M)

Haryana Power Generation Corporation Limited and others

.....Appellants

versus

Surat Singh and others

.....Respondents

LPA No.111 of 2017 (O&M)

Haryana Vidyut Prasarn Nigam Limited and others

.....Appellants

versus

Virender Kumar and others

.....Respondents

LPA No.1636 of 2017 (O&M)

Jaspreet Gulati and others

.....Appellants

versus

Haryana Vidyut Prasarn Nigam Limited and others

.....Respondents

**CORAM: Hon'ble Mr.Justice A.B.Chaudhari
Hon'ble Mr.Justice Kuldeep Singh**

**Present: Mr.B.R.Mahajan, Senior Advocate with
Mr.R.S.Longia and Ms.Anupama Sharma, Advocates
for the appellants in LPA-37, 1402, 1537, 1558-2016,**

111-2017 and for respondents in LPA-1515-2015, 958, 1066, 1073-2016, 1636-2017

Mr.Ashwani Talwar and Mr.Akshay Bansal, Advocates for the appellants in LPA-1515-2015

Mr.Girish Agnihotri, Senior Advocate with

Mr.Saurabh Gulia, Advocate for respondent nos.5, 6, 7, 9, 13

Mr.Dinesh Kumar, Advocate for respondent Nos.5 to 12

Mr.Kuldeep Tewari, Standing Counsel for

respondent no.14-BBMB in CM-3246-LPA-2015

in LPA-1515-2015

Mr.Akshay Bhan, Senior Advocate with

Mr.Amandeep Singh Talwar, Advocate for the appellants and

Mr.D.S.Patwalia, Senior Advocate with

Mr.Harmanpreet Sehgal and Mr.Lalit Rishi, Advocates

for respondents Nos.1, 3, 4 in LPA-958-2016

Mr.Vijay Jindal, Senior Advocate with

Ms.Jhanvi Sirohi, Advocate

for appellants in LPA 1636-2017 and

for respondents nos.7 to 25 in

LPA-111-2017, LPA-958-2016

Mr.Arjun Sheoran, Advocate for respondents in

CM-897-LPA-2018 in LPA-111-2017

Mr.Sanjay Kaushal, Senior Advocate with

Mr.Lalit Rishi, Advocate for respondent Nos.1 to 6 in

LPA-111-2017

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?

Kuldip Singh, J.

By this common judgment, we shall dispose of LPA Nos.1515 of 2015, 37 of 2016, 958 of 2016, 1066 of 2016, 1073 of 2016, 1402 of 2016, 1537 of 2016, 1558 of 2016, 111 of 2017 and 1636 of 2017, involving common question of law.

LPA Nos. 958 of 2016, 1066 of 2016, 1073 of 2016, 1402 of 2016, 1537 of 2016, 1558 of 2016 are directed against orders dated 16.3.2016 and LPA nos.111 of 2017 and 1636 of 2017 are directed against order dated 30.5.2016 passed by a Single Bench of this Court, vide which, writ petitions were allowed and the impugned orders were set aside and respondents were directed to consider the case of the petitioners for

promotion keeping in view the seniority list and ranking list in question by giving preference to the seniority of the petitioners and not from the date of acquiring qualification of A.M.I.E./B.E. The exercise was ordered to be completed within four months from the date of receipt of a certified copy of the order.

In LPA Nos. 1515 of 2015 and 37 of 2016, challenge is to the order dated 22.7.2015 passed by another Single Bench of this Court in CWP 18198 of 1997, vide which, impugned orders were quashed and the respondents were directed to consider the matter of impugned promotion afresh in the light of the law laid down by the Hon'ble Supreme Court in K.K.Dixit and others vs. Rajasthan Housing Board and another, 2014(4) SCT 220. The same was ordered to be done within three months. In K.K.Dixit's case (supra), it was held that the experience must be acquired after obtaining the qualification or degree of A.M.I.E. In this way, both the judgments are contradictory to each other.

For the reasons mentioned in the applications, the delay in filing the aforesaid appeals is condoned.

The facts of the case are extracted from LPA NO.1515 of 2015. All the petitioners joined service under Haryana State Electricity Board on various dates. Haryana State Electricity Board later on bifurcated into different wings. Petitioners are diploma holders. The dispute is regarding their promotion to the post of Assistant Engineer against 12 ½% quota which is meant to be filled amongst the Engineering Subordinates of Generation Cadre possessing A.M.I.E./B.E. qualification and having five years service as such.

One set of the petitioners claim that five years experience to be

counted after the Engineering Subordinates acquire the qualification of A.M.I.E./B.E. Another set of petitioners claim that five years service has to be counted from the date of joining as Junior Subordinate irrespective of the date when one acquires A.M.I.E./B.E. qualification. Still there is 3rd set of petitioners who claim that even if they acquire A.M.I.E./B.E. qualification later than their juniors who acquire A.M.I.E./B.E. qualification earlier, they are to still stand senior as no ranking list was prepared.

It is necessary to examine the Rules in this regard. Admittedly, under Section 79(c) of Electricity (Supply) Act, 1948, Haryana State Electricity Board was empowered to frame Regulations pertaining to duties of officers and other employees of the Board and their salaries, allowances and other conditions of service. In pursuance to the said Section 79(c), of Electricity (Supply) Act, 1948, Punjab State Electricity Board Service of Engineers (Electrical) Recruitment Regulations, 1965 (in short, 'Regulations') were notified on 1.9.1965. The erstwhile Haryana State Electricity Board upon its inception adopted the said Regulations. The said Regulations were amended from time to time.

Clause 6 of the said Regulations provide for recruitment to the post of Assistant Engineers from the three following sources:-

(i) By direct appointment

(ii) By promotion as provided in Regulation 9

(iii) By transfer of an officer already in the service of a Government or any other State Electricity Board or an Undertaking of Government.

The said Regulations were amended from time to time on 19.2.1988 (Annexure P2), 27.2.1989 (Annexure P5), 13.2.1991 (Annexure P3),

12.10.1993 (Annexure P1), 20.10.1993 (Annexure P6) and 17.10.1995 (Annexure P4). The definition of Engineer Subordinates is given in Section 2(g) of Regulations:-

As per the Regulation dated 17.10.1995 which is applicable at present:-

“Engineering Subordinates” means Junior Engineers-1 (Thermal) and Junior Engineers-1 (Thermal), Boiler Controllers and Foreman Grade-1, who possess at least 3 years Diploma in Electrical or Mechanical or Electronics Engineering”

All the petitioners are covered under the said definition and belong to the electrical wing.

As per Regulation 9 of the Regulation dated 12.10.1993 (Annexure P1), recruitment to the post of Assistant Engineer shall be made as under:-

(a) By direct recruitment 65%

(b) By promotion for General Cadre in the manner 33%

as under:-

i) From amongst Engineering subordinates as

defined for General Cadre under Regulation-2(9)

(i) with 5 years service as Junior Engineer-I 22 ½%

ii) From amongst Engineering subordinates of

General Cadre possessing AMIE/BE qualification

and having 5 years service as such 12 ½%

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

*(i) From amongst Engineering subordinates
of Generation Cadre as defined in Regulation
2(g)(ii) with 5 years service as JE-I/ Boiler*

Controllers

22 ½%

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

12 ½%

*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, either 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.*

The above noted criteria clearly shows that there were three channels of promotion, first by direct recruitment, second by promotion for general cadre in which all the Junior Engineer having five years experience were made eligible. Then third clause was for accelerated promotion wherein a provision was made for accelerated promotion from amongst the Engineering Subordinates of Generation Cadre, who possess A.M.I.E./B.E. qualification and have five years service as such. They had 12 ½% quota for the promotion.

In order to implement the promotion policy to the post of Assistant Engineer office, a notification was issued on 27.2.1989 (Annexure

P5), giving guidelines for promotion to the post of Assistant Engineer from the Engineering Subordinates possessing A.M.I.E./B.E. qualification in 12 ½% quota contained in Regulation 19(1)(b)(ii) and following directions were issued:-

(i) The Ranking List of Engineering Subordinates for their promotion as A.E. 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 names of eligible candidates 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.

2. This issues with the approval of the Board in its meeting held on 19.12.88 and continued upto 20.12.88.

This notification was superseded by another notification dated 20.10.1993 (Annexure P6) and for the said promotion following guidelines were provided:-

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 of the official will be entered in the ranking and experience. The name(s) of list from the date they complete both the conditions. If a candidate is recruited as Engineering Subordinates having qualification of AMIE/BE, his eligibility for promotion will

also be considered after he attained 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 of 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 fulfills 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.

Notification dated 20.10.1993 (Annexure P6) is the relevant notification, which was applicable for the purpose of present LPA. The guidelines provided that eligibility for promotion will be acquisition of qualification of A.M.I.E./B.E. and completion of five years service in the cadre of Engineering Subordinates. It was further laid down that the ranking list of the 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 names of eligible candidates in the ranking list will be entered strictly from the date the official fulfills both the conditions i.e. passing of A.M.I.E./B.E. examination and completion of 5 years service of Engineering Subordinates.

Admittedly, in this case, no ranking list was issued for several years and it is stated to have been issued for the first time on 15.3.2006. It

appears that at that time in addition to some other junior subordinates who had fulfilled the criteria, some of their senior also acquired the said qualification later on and therefore, seniority dispute arose. In the meanwhile, the department prepared the list following criteria of 5 years service irrespective of date of acquiring of qualification the A.M.I.E./B.E. and by including service rendered as junior subordinates and accordingly promotions were also made.

The department in the written statement as well as before this Court took a stand that to qualify for the promotion for Assistant Engineer, 5 years service is required, including service as Engineering Subordinates and not 5 years after acquiring A.M.I.E./B.E. qualification.

We have heard learned counsel for the parties and have also carefully gone through the file.

The short question arising for consideration before this Court in the present case is as to whether for promotion from Engineering Subordinates of general cadre, possessing A.M.I.E./B.E. qualification and having 5 years service as such, said 5 years service is to be counted from the date of possessing A.M.I.E./B.E. qualification or it include the entire service including as Engineering Subordinates to qualify for 12 ½% quota for accelerated promotion.

Learned counsel for the parties have taken us through various Regulations and the definition as per Regulations which kept changing from time to time. We are concerned with the definition as per Regulation dated 12.10.1993. It is to be noted that said Regulations are framed in the exercise of powers under Section 79(c) of Electricity (Supply) Act, 1948 and other enabling powers in this behalf. We are concerned with

accelerated promotion under 9(1)(b)(ii) for 12 ½% quota and to examine whether 5 years service is to be counted after junior subordinates acquires qualification of A.M.I.E./B.E. or whether it include the service as junior subordinates. This is to be read with the office order dated 20.10.1993, whereby the earlier office order dated 27.2.1989 was superseded and to implement the said promotion of 12 ½% quota certain guidelines were issued which provide that the eligibility of promotion will be acquiring of qualification of A.M.I.E./B.E. and completion of 5 years service in the 'cadre of Engineering Subordinates'. Further, the ranking list of Engineering Subordinates for their promotion as Assistant Engineer shall normally be prepared on the 1st day of January of each year and duly notified to all concerned. The names of eligible candidates in the ranking list will be entered strictly from the date of official fulfills both the conditions i.e. passing of A.M.I.E./B.E. examination and completion of 5 years service of Engineering Subordinates.

It is to be noted that the office order dated 20.10.1993 is not a Regulation issued under the exercise of powers under Section 79(c) of Electricity (Supply) Act, 1948 and cannot substitute/ override the amended Regulation 9 w.e.f. 12.10.1993 (Annexure P1). Therefore, this Court has to first interpret amended Regulation 9(1)(b)(ii).

Mr.Akshay Bhan, Senior Advocate for some of the writ petitioners has vehemently contended that 5 years service 'as such' means service after acquiring A.M.I.E./B.E. qualification in the cadre of Engineering Subordinates, whereas some other petitioners supported by the department have taken the stand that this 5 years service is to include the service as Engineering Subordinates irrespective of the fact as to when one

acquire A.M.I.E./B.E. qualification. Therefore, total 5 years service as junior subordinates is required. It has been vehemently contended that both the Courts have erred in giving wrong interpretation. Regarding judgment of Single Bench dated 16.3.2016, learned counsel for some of the petitioners have argued that it was wrongly held that entire service is to be counted whereas learned counsel for some other petitioners have contended that the authority in K.K.Dixit's case (supra) was wrongly applied by another Single Bench while deciding Civil Writ Petition No.18198 of 1997 on 22.7.2015. It has been contended that the said judgment in K.K.Dixit's case (supra) is regarding different facts and there controversy was regarding promotion of Project Engineer Junior to the post of Project Engineer Senior. The facts of the present case are different.

Before us, authorities in R.B.Desai vs. S.K.Khanolker, 1999(4) S.C.T. 194, Haryana State Agricultural Marketing Board vs. S.M.Sharma and others, 1999 SCC (L&S) 731 and Risal Singh vs. The State of Haryana and others (LPA No.541 of 2009) decided on 1.7.2009 have been referred to.

In the case of R.B.Desai (supra), the dispute was regarding eligibility list of Range Forest Officer (RFO) for next promotion as ACF. The reliance has been placed on the following observations of the Apex Court:-

9. We are unable to agree with this reasoning of the High Court. As noticed above, promotion to the post of ACFOs. is made from the post of RFOs to the extent of 75% of the vacancies. There is no dispute that both the appellants and the first respondent belong to the cadre of RFOs. The only

difference between them being that the appellants were promotees in the said cadre while the first respondent was a direct recruit. It is an accepted principle in service jurisprudence that once persons from different sources enter a common cadre, their seniority will have to be counted from the date of their continuous officiation in the cadre to which they are appointed. On facts, there is no dispute that the appellants entered the RFOs' cadre on a date anterior to that of the first respondent, therefore, in the cadre of R.F.Os., the appellants are seniors to the first respondent. However, to be considered for promotion, the Rule required the RFOs. to acquire the eligibility as provided therein. Therefore, the question for consideration is : can the acquisition of an earlier eligibility give an advantage to the first respondent as against the appellants when an avenue for promotion opens in the cadre of ACFs. even though at that point of time the appellants had also acquired the required eligibility. We are of the opinion that if at the time of consideration for promotion the candidates concerned have acquired the eligibility, then unless the Rule specifically gives an advantage to a candidate with earlier eligibility, the date of seniority should prevail over the date of eligibility. The Rule under consideration does not give any such priority to the candidates acquiring earlier eligibility and, in our opinion, rightly so. In service law, seniority has its own weightage and unless and until the Rule specifically exclude this weightage of seniority, it is not open to the authorities to

ignore the same.

Similarly, in S.M.Sharma's case (*supra*), it was held that inter-se seniority of the members of the service is to be determined by length of service. In Risal Singh's case (*supra*), the dispute was regarding promotion to the post of Kanungo under Haryana Kanungo Service (Group C) Rules, 1981. The said Rules were different than the Rules in the present case.

Mr.Akshay Bhan, Senior Advocate for some of the writ petitioners, who are pressing for counting 5 years service after acquiring A.M.I.E./B.E. qualification has relied upon the judgment of the Apex Court in Parveen Gera vs. Haryana State Electricity Board and others, (Civil Appeal No.7076 of 2010) decided on 13.9.2017, which involved interpretation of Regulation 9 of Punjab State Electricity Board Service of Engineers (Civil) Recruitment Regulations, 1965, as applicable to Haryana State Electricity Board. In the said case also, similar clause for 12 ½ % quota was in question. The Apex Court while interpreting the said clause laid emphasis on the word “as such” mentioned in the said clause and held as under:-

In our opinion, the clarification is worded in such a manner that it leaves no manner of doubt that the eligibility criteria have to be counted only from the date when the AMIE qualification is attained. It is only the experience which is obtained after passing the AMIE/BE examination which can be taken into consideration. This clarification was never challenged and, therefore, in our opinion, the learned Division Bench erred in setting aside the judgment of the learned Single Judge.

The Apex Court ruled that the experience which is obtained after passing A.M.I.E./B.E. examination is to be taken into consideration.

After making a conjoint reading of notification dated 12.10.1993 (Annexure P1), which is issued in exercise of powers under Section 79(c) of Electricity (Supply) Act, 1948, amending Regulation 9 with the Guidelines dated 27.2.1989 (Annexure P5) as superseded by the Guidelines dated 20.10.1993 (Annexure P6), we are of the view that the guidelines can never supersede the Regulation. The guidelines dated 20.10.1993 (Annexure P6) were never issued in the exercise of powers Section 79(c) of Electricity (Supply) Act, 1948. At the most these guidelines can explain what is laid down in the Regulation 9. The result will be that the Guidelines so far as these are contrary to Regulation 9, have to be ignored, being in violation of Regulation 9.

Now, 9(1)(b)(ii) provides that amongst the Engineering Subordinates of Generation Cadre possessing A.M.I.E./B.E. qualification and having 5 years experience “as such”, said 12 ½% promotions are to be made. “As such” word has been interpreted by the Apex Court as 5 years service after acquiring A.M.I.E./B.E. qualification. The department, if it wanted, in place of words “as such” could use word 5 years service as Junior Engineer or Engineering Subordinates. But specific words “as such” have been used which relate to the date of A.M.I.E./B.E. qualification. This was so interpreted by the Apex Court in Parveen Gera’s case (*supra*)

Therefore, we hold that for the purpose of accelerated promotion under clause 9(1)(b)(ii) Engineering Subordinates of Generation Cadre must have 5 years service as such i.e. from the date when he acquire A.M.I.E./B.E. qualification. The purpose of Rule is clear that the Engineering Subordinates, who are Diploma Holders, must have 5 years experience after they acquire A.M.I.E./B.E. to become eligible for out of

turn promotion to the post of Assistant Engineer.

Mr.B.R.Mahajan, Senior Advocate appearing for the department has argued in the present case that department has counted entire service as Engineering Subordinate and has made promotions and that it will upset the entire promotion orders. The department apparently relied upon the guidelines 27.2.1989 (Annexure P5) as superseded by guidelines dated 20.10.1993 (Annexure P6), wherein it was laid down that completion of 5 years service should be in the cadre of Engineering Subordinates. Since, the said clause of 5 years service in the cadre of Engineering Subordinates is contrary to amended Regulation No.9, therefore, the amended provisions of Regulation 9 shall prevail, ignoring the guidelines which are contrary to the said Regulation. Therefore, the office order dated 20.10.1993 (Annexure P6), so far as contrary to the parent Regulation No.9, has to be ignored and quashed. Consequently, it has to be held that 5 years service has to be counted from the date Engineering Subordinate acquires A.M.I.E./B.E. Qualification.

As per Regulation 11, appointment by promotion is to be made on the basis of merit and suitability with due regard to the seniority. No officer shall have any claim to promotion as a matter of right on the basis of mere seniority.

Mr.D.S.Patwalia, Senior Counsel appearing for some of the writ petitioners, has argued that in this case, ranking list was first time prepared on 15.3.2006 and revised ranking list was prepared in 2008. Since, ranking list was not prepared till 2006, therefore, the Engineering Subordinates who acquire the qualification of A.M.I.E./B.E. later and have 5 years service as such and who are senior to the Engineering Subordinates

who had acquired such qualification earlier in time, have to be ranked senior.

We are of the view that it was fault of the department that they did not adhere to the guidelines of preparing ranking list on 1st day of January of each year. They did such exercise for the first time on 15.3.2006. For the negligence on the part of the department, officers are not to suffer. If the department prepared the ranking list late, they could always prepare the same in terms of Clause 2 of notification dated 20.10.1993 (Annexure P6) on 1st day of January of each year. Meaning thereby that the Engineering Subordinates who possess such qualification earlier in time have to be ranked senior and those who possess such qualification in the next year upto 1st January are to be ranked junior. The reason is that Engineering Subordinates, who acquire the eligibility of qualification of A.M.I.E./B.E. with 5 years service earlier, are more meritorious having acquiring the qualification earlier than their senior, who either could not qualify A.M.I.E./B.E. examination or did not dare to take such examination. Therefore, after having acquired the qualification and experience later, they cannot steal a march over their juniors who have already acquired such qualification and are to be placed in ranking earlier than their seniors for the purpose of accelerated promotion in 12 ½% quota.

As a result of the foregoing discussion, we pass the following order:-

- i) For the purpose of accelerated 12 ½% promotion to the post of Assistant Engineer as per amended Regulation 9(1)(b)(ii) of Punjab State Electricity Board Service of Engineers (Civil) Recruitment Regulations, 1965, as applicable to

Haryana State Electricity Board, service of 5 years has to be counted from the date when Engineering Subordinate acquires A.M.I.E./B.E. Qualification.

ii) The ranking list shall be prepared for every year as on 1st January of every year in terms of clause 2 of Guidelines dated 20.10.1993 (Annexure P6).

iii) The promotions shall be made strictly in accordance with the said ranking list.

iv) The department shall prepare such list within 3 months from the date of receipt of a certified copy of the order and the follow up action shall be taken by undoing the wrong promotions made and making promotions in terms of finding recorded above.

v) Order dated 16.3.2016 and 30.5.2016 passed by Single Bench are set aside and order dated 22.7.2015 is upheld with above noted modifications.

vi) All the contrary orders, guidelines or instructions so far as contrary to this judgment are quashed.

All the LPAs are accordingly disposed of.

Since the main cases have been decided, therefore, the pending CMs, if any, also stands disposed of.

A copy of the order be placed on the connected case files.

(A.B.Chaudhari)
Judge

(Kuldip Singh)
Judge

09.08.2018

gk

Whether speaking/ reasoned: Yes

Whether Reportable: Yes