

In the High Court of Punjab and Haryana, at Chandigarh

1. Civil Writ Petition No. 22823 of 2017 (O&M)

Rakesh Kumar Krail

... Petitioner(s)

Versus

State of Punjab and Another

... Respondent(s)

AND

2. Civil Writ Petition No. 2974 of 2020 (O&M)

Sukhinder Singh

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

Date of Decision: 24.11.2020

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Ravinder Singh Bains, Advocate
for the petitioner (In CWP-22823-2017)

Ms. Supriya Garg, Advocate
for the petitioner (In CWP-2974-2020).

Ms. Akshita Chauhan, Assistant Advocate
General, Punjab for the respondents.

Anil Kshetarpal, J.

This judgment shall dispose of the afore-referred two writ petitions wherein the following common question requires adjudication:-

Whether it is appropriate on the part of the official respondents to deny promotion to the posts of Superintending Engineers (hereinafter referred as S.E.) in the department on the ground that the officials have passed AMIE but does not hold a Bachelor's degree in Engineering, particularly when for the

purpose of promotion to the posts, lower in the hierarchy i.e. Sub Divisional Engineer, the qualifications of AMIE and Bachelor's degree in Engineering are considered equal/at par and in the Service Rules, no distinction has been made for the purpose of promotion?

The petitioner-Rakesh Kumar Krail was appointed as Junior Engineer under the physically handicapped quota on 21.09.1983. He, during the service, cleared Part A and B Examination conducted by the Institution of Engineers, Kolkata (commonly known as "AMIE"). He was promoted as Sub Divisional Officer in the year 2004 as per the Punjab Irrigation Department (Group-A) Service Rules, 2004 (hereinafter referred to as "the 2004 Rules"). The petitioner was, thereafter, promoted to the post of Executive Engineer on 04.08.2010. The department finalized the seniority list of Executive Engineers in the month of September, 2015 and the petitioner was placed at serial No. 121. The petitioner claims that on completion of six years of regular service as Executive Engineer, he became eligible to be considered for promotion to the post of S.E. A meeting of the Departmental Promotion Committee (hereinafter referred to as DPC) was held on 22.06.2017, however, it is claimed that he was not promoted on the ground that he does not hold a Degree in Engineering in any line from the recognized University/Institution. He claims that in the year 2007, Sh. D.K.Syal, Executive Engineer and in the year 2012, Sh. A.S.Bakshi and Sh. Vipin Chawla, who all had similarly passed AMIE, were promoted to the posts of S.E. under the 2004 Rules..He claims that he has been wrongly

during the pendency of the present petition, another meeting of the DPC was scheduled, prompting him to file a miscellaneous application wherein the Court directed that one post of the S.E. under the physically handicapped quota be reserved. During the pendency of the writ petition, in the meeting of the DPC held on 27.09.2019, Gurdeep Singh, another Executive Engineer, with similar qualification of AMIE has been promoted to the post of S.E. Still further, in yet another meeting of the DPC held on 23.06.2020, two more Executive Engineers, namely, Sher Singh and Karanpal Singh, with AMIE qualification, have also been ordered to be promoted as S.E.(s).

Civil Writ Petition No. 2974 of 2020 has been filed by Sukhinder Singh. He has also similarly passed AMIE after having been appointed in the service. He was promoted as Sub Divisional Engineer in the month of August, 1994 and thereafter, promoted as Executive Engineer on 04.08.2010. He claims that he was considered for promotion on 27.09.2019 but was ignored on the ground that the petitioner lacks necessary minimum qualification. He has attained the age of superannuation on 29.02.2020, however, he continues to be in the service on account of extension of one year granted to him as per the policy of the State Government.

Both the writ petitions have been contested. The respondents have defended their action on the ground that in the Service Rules, the phrase used is “a Degree in Engineering in any line from a recognized University or Institution” and therefore, AMIE qualification is not recognized equivalent to the B.E. degree. It is admitted that on two earlier occasions i.e. in the years 2007 and 2012, three officials referred to above

follow bad precedents. The promotion of 3 more official referred to above is defended on the ground that Gurdeep Singh had passed Master of Engineering, a higher qualification after having cleared AMIE and hence, he possessed a higher qualification whereas promotions of two more officials with AMIE qualification in the year 2020 referred to above are sought to be justified on the ground that these officials at the time of recruitment had cleared the examination held by the Punjab Public Service Commission.

This Court has heard learned counsel for the parties at length and with their able assistance, perused the paper-books.

Before this Court examines and analysis the arguments of the respective counsels, it would be appropriate to extract Appendix-B of the 2004 Rule:-

APPENDIX “B”
(See rule 5)

Serial No.	Designation of the Post	Percentage for appointment by		Method of appointment, qualification and experience for appointment by	
		Promotion	Direct appointment	Promotion	Direct appointment
1	2	3	4	5	6
1	Chief Engineer	Hundred per cent	---	From amongst the Superintending Engineers, who have an experience of working as such for a minimum period of two years.	---
2	Superintending Engineer	Hundred per cent	---	From amongst the Executive Engineers, who possess a degree in Engineering in any line from a recognized university or institution and who have an experience of working as such for a minimum period of six years.	---
3	Executive Engineer	Hundred per cent	---	From amongst the Sub Divisional Engineers, who have an	---

Serial No.	Designation of the Post	Percentage for appointment by		Method of appointment, qualification and experience for appointment by	
				experience of working as such for a minimum period of eight years	
4	Sub Divisional Engineer	Forty per cent	Sixty per cent	(a)(i) Twenty-five per cent from amongst the Junior Engineers (20% Civil and 5% Mechanical) working under the control of the Chief Engineer, who posses a diploma in Civil or Mechanical Engineering and who have an experience of working as such for a minimum period of ten years. (ii) Thirteen per cent from amongst the Junior Engineers, working under the control of the Chief Engineer, who possess a degree in Engineering in Civil or Mechanical or who possess a degree of A.M.I.E. from a recognized university or institution, and who have an experience of working as such for a minimum period of three years after obtaining the aforesaid degree; (iii) Two per cent from amongst the Circle Head Draftsman and Divisional Head Draftsman who possess a degree in Civil Engineering or have passed degree of A.M.I.E. and who have an experience of working for a minimum period of two years in service as Head Draftsman; and (b) Should have qualified the	---

Serial No.	Designation of the Post	Percentage appointment by	for	Method of appointment, qualification and experience for appointment by	
				Departmental Examination in such papers and syllabi as may be specified by the Government from time to time.	

Mr. Ravinder Singh Bains, Advocate, who represents the petitioner-Rakesh Kumar Krail, contends that the reasons for denying the promotion to the petitioner are arbitrary. The qualification of AMIE and a Degree in Engineering is equal and at par and the department has already promoted three officials before filing of the writ petition i.e. in the years 2007 and 2012, whereas three more officials have been ordered to be promoted during the pendency of the writ petitions.

Ms. Supriya Garg, Advocate, who represents the petitioner-Sukhinder Singh, apart from adopting the arguments of Mr. Ravinder Singh Bains, Advocate, also contends that since as per the 2004 Rules, 100% posts of the S.E. are to be filled by way of promotion and there is no distinction between AMIE and a Degree in Engineering and therefore, denial of promotion to the posts of S.E. is erroneous. She drew attention of the Court to a Division Bench judgment of this Court in *Kartar Singh v. Union of India and Others (2012) 8 SLR 593*. She further relied upon the judgment rendered by the Supreme Court in *Orissa Lift Irrigation Corporation Limited v. Rabi Sankar Patro (2018) 1 SCC 468*. She contends that artificial distinction between the qualification of AMIE and a Degree in Engineering sought to be created for the purpose of promotion to the post of S.E., does not exist in the Rules.

Punjab has contended that in the Service Rules, the phrase used is “a Degree in Engineering in any line from a recognized University or Institution”, therefore, it does not include AMIE. Hence, an Executive Engineer is not entitled to get promotion to the post of S. E. unless he possess a Degree in any line from a recognized University or Institution. She reiterates that no doubt, three officials were promoted to the posts of S.E(s) in the years 2007 and 2012, but that was on account of error which the government does not wish to repeat. She further contends that Gurdeep Singh, no doubt, has been promoted in the year 2019, however, he after qualifying AMIE, had also passed M.E. which is higher qualification than a Bachelor's Degree in Engineering. She further submitted that two officials, who have been promoted in the year 2020, had cleared the recruitment examination held by the Punjab Public Service Commission and therefore, they have been treated as qualified. However, she admitted that Sher Singh and Karanpal Singh have also passed AMIE and do not possess Bachelor of Engineering.

This Court has considered the submissions of learned counsel for the parties carefully.

From Appendix B, extracted above, it is apparent that hierarchy of the post in the department starts from the post of Sub Division Engineer. Junior Engineers, Circle Head Draftsmen and Divisional Head Draftsmen are eligible to be considered for promotion to the post of Sub Divisional Engineer. Amongst the Junior Engineers, the promotional quota is subdivided. 25% of the posts of Sub Divisional Engineers are allocated for promotion of the Junior Engineers who possess a Diploma in Civil and Mechanical Engineering and have experience of working as such for a

minimum period of ten years. Under Clause (ii) of Column 5, it is apparent 30% posts of the Sub Divisional Engineer are reserved for the Junior Engineers working under the control of the Chief Engineer, who possess a Degree in Engineering (Civil or Mechanical) or AMIE from a recognized University or Institution. In other words, from one of the feeder cadre i.e. Junior Engineer, the qualifications of Bachelor's Degree in Engineering (Civil or Mechanical) is treated as equivalent to AMIE. The next post in the hierarchy is that of Executive Engineer. On reading of Appendix-B, it is apparent that 100% of the posts are required to be filled by way of promotion from Sub Divisional Engineers. A Sub Divisional Engineers who has gained experience as such for a minimum period of eight years, is eligible to be considered for promotion to the post of Executive Engineer. The next post in the hierarchy is S.E. Again, 100% posts of the S.E. are required to be filled through promotion. In Column No. 5 of Clause (ii), it has been provided that the Executive Engineers, who possess a Degree of Engineering in any line from a recognized University or Institution and have experience of working as such for a minimum period of six years, are eligible to be considered. Now the question arises as to whether the 2004 Rules exclude AMIE qualification or not.

Having considered the arguments of learned counsel for the parties, this Court is of the considered view that such interpretation put-forth by the government would lead to a situation not intended by the Rules. The reasons for reaching on such conclusion are not far to seek. It is undisputed that while considering the Junior Engineers for the purpose of promotion to

Mechanical) is considered equivalent to AMIE. Infact AMIE is an alternate qualification. Once an official has been promoted to the post of Sub Divisional Engineer, they are become part of same service. Further, no minimum qualification is prescribed for the purpose of promotion to the post of Executive Engineer. Thereafter, the next post in the hierarchy is the S.E. No doubt, the Rules are not happily worded, however, the intention of the Rules has to be seen. It is apparent that the persons holding AMIE qualification have not been excluded. The language which has been used is that an Engineering Graduate is entitled to be considered for promotion. The question is whether for the purpose of promotion to the post of Superintending Engineer, AMIE qualification is equivalent/at par with a Degree in Engineering or not? The Rules itself do not make any distinction between a Graduate from possessing a Bachelor's degree in Engineering or AMIE. Still further, AMIE qualification has been considered to be equivalent to a Degree in Engineering for the purpose of promotion to the post of Sub Divisional Engineer. Only in service/working officials who have passed diploma in Engineering are qualified to write Section A and B of the AMIE examinations. The AMIE is granted by an Institution of Engineers, Kolkata, which is a well recognized institution.

Fortunately, the Court has the benefit of a detailed opinion given by the office of Advocate General, Punjab, in the year 2012 (Annexure P12). The then learned Additional Advocate General, Punjab in its opinion dated 14.09.2012, considered not only the various judgments passed by the Supreme Court and the judgments passed by this High Court in Civil Writ

also examined the notification issued by the Government of India on 16.02.2006 and letter dated 02.02.1978. The communication of Union Public Service Commission issued on 27.02.1978 was also taken into consideration. It was noticed that the Government of India has decided to recognize 15 courses of Section A and B examination conducted by the Institution of Engineers (India) as equivalent to the Degree in the appropriate branch of Engineering of the recognized Universities of India. A copy of the same was forwarded to all the Ministries of the Government of India, all the State Governments and Union Territories apart from Union Public Service Commission and Association of Engineers. In the year 1978, Government of India recognized AMIE as equivalent to Degree in Engineering for the purpose of recruitment to superior service and the posts under the Central Government. Further, the Union Public Service Commission recognized this qualification for the purposes of admission to competitive examination conducted by it for recruitment to non-technical services/posts viz. Assistant Grade and Combined Defence Services. It would be noted here that the detailed opinion of the learned Advocate General, Punjab also discusses the case law on the subject. After giving reference to the judgment in ***Roshan Lal Tandon v. Union of India (1968)1 SCR 185: (1974) 1 SCC 19*** and ***D.R. Kothandraman v. Tamil Nadu Water Supply & Sewerage Board (1994) 6 SCC 282*** opined that if the qualification of AMIE is not considered equivalent for the purpose of promotion to the posts of S.E., then such act may be constitutionally vulnerable being violative of Articles 14 and 16 of the Constitution of India.

been quoted in Annexure P10. The department forwarded the file when the turn of the petitioner-Rakesh Kumar Krail came for promotion to the post of S.E. within handicapped quota. The government directed that the name of the petitioner be included in the supplementary agenda. Still further, the department itself, after finding that there is anomaly in the Rules, has recommended amendment thereof which is pending consideration of the government. In para 3 of the preliminary objections to the counter affidavit filed, it has been pleaded as under:

“The amendment of the Punjab Irrigation Department (Group-A) Service Rules, 2004 of AMIE Engineers for promotion to the post of Superintending Engineer is under consideration-process with the government”.

Thus, the department also recognizes and does not dispute that there is ambiguity in the Rules.

Still further, it is not in dispute that six officials with AMIE qualification have been promoted in the department to the posts of S.E. The respondents have tried to explain that three promotions made in the years 2007 and 2012 are bad precedents and therefore, the government is not bound to follow. However, during the pendency of the writ petitions, three further promotions have been made. While promoting Gurdeep Singh in the year 2019, the proceedings of the Departmental Promotion Committee records that since he has also passed Masters in Engineering i.e. M.E. after having passed the examination of AMIE, therefore, he is entitled. On careful perusal of the Rules, if the interpretation put forth by the State Government

does not possess a Bachelor's Degree of Engineering in any line from a recognized University or Institution. Still further, in the year 2020 two more Executive Engineers with AMIE qualification have been ordered to be promoted. Their promotions are sought to be justified on the ground that those officials had come in service after clearing the recruitment test held by the Punjab Public Service Commission and therefore, they will be deemed to have qualified that degree examination. The justification/explanation put forth by the government cannot be accepted. The recruitment examination held by the Punjab Public Service Commission cannot be treated as equivalent to a minimum qualification required in the statutory Rules. The justification put forth by the government to say the least is neither logical nor plausible. Thus, it is apparent that in the department for the purpose of promotion from the post of Executive Engineer to Superintending Engineer, AMIE qualification has been considered equivalent to a bachelor's degree in Engineering.

In the above circumstances, there has been overwhelming recognition of the qualification of AMIE being equivalent to a Degree in Engineering for the purpose of promotion to the post of S.E(s) in the department. Thus, there is no valid and constitutionally sustainable basis for not considering the qualification of AMIE in the case of the writ petitioners.

A Division Bench of this Court in ***Kartar Singh v. Union of India and Others*** examined the examination of AMIE. After analyzing various aspects, the Division Bench went on to hold that the qualification of AMIE granted by the Institute of Engineers, Kolkata is a statutory qualification. The Division Bench judgment has also been approved by the

Supreme Court in ***Orissa Lift Irrigation Corporation Limited v. Rabi Sankar Patro*** (*Supra*). The division bench while endorsing the view of a previous division bench concluded as under:-

“203. In view of the above provisions of the statute, we respectfully endorse the view taken by the Division Bench in *Jagtar Singh’s case (supra)* that qualification of AMIE is relevant for the purposes of promotion and not for direct recruitment, as an Associate Member becomes eligible for Membership only if he is engaged in engineering profession.”

Still Further, the phrase used in the Rules is “a Degree in Engineering from any University or Institution”. In the Rules, there is no requirement that Degree in Engineering should be a Bachelor's degree of engineering. Thus, the Rules itself require that a Degree in Engineering, may be from any University or Institution. Once the AMIE examination has been held to be a statutory qualification in the field of Engineering, it would not be appropriate for this Court to shy away from recognizing the AMIE qualification at par with a Degree in Engineering for the purpose of promotion. A word of caution that this Court is not opining with regard to requirement of a Degree in Engineering in case of direct recruitment. The examination of AMIE can only be attempted by in-service official having Diploma in Engineering. Still further, the respondents themselves have been promoting persons with the qualification of AMIE since 2007 by treating both the qualifications to be equivalent. There has been consistent practice which has been followed in as many as on six various occasions noticed

other colleagues with identical qualification, have already been promoted. Although it is true that the Court normally is not required to look for equivalent qualification unless it is specifically mentioned in the Rules, however, in the present case, as noticed above, the requirement is a Degree in Engineering and not Bachelor's Degree in Engineering. The word used in the Rules is also "Institution". The Institution of Engineers is a statutory Institution.

In view of the aforesaid both the writ petitions are allowed. The respondents are directed to convene a meeting of the departmental promotion committee to consider the names of the petitioners in both the writ petitions for the purpose of promotion to the posts of Superintending Engineer within a period of three months from the date of this judgment.

The miscellaneous application(s) pending, if any, shall also stand disposed of.

**(Anil Kshetarpal)
Judge**

November 24, 2020

"DK"

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No