

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CWP-4399-2018 (O&M)
Date of Decision: 04.02.2021**

M.P. SHARMA

..... PETITIONER(s)

Versus

STATE OF HARYANA AND OTHERS

..... RESPONDENT(s)

with

CWP-9559-2019 (O&M)

VIJENDER KUMAR MALIK AND ANOTHER PETITIONER(s)

Versus

STATE OF HARYANA AND OTHERS

..... RESPONDENT(s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Puneet Jindal, Sr. Advocate with
Mr. Amandeep Singh, Advocate
for the petitioners (in CWP-9559-2019) and
for respondent no.5 (in CWP-4399-2018).

Ms. Upasana Dhawan, AAG, Haryana.

Mr. Ashwani Talwar, Advocate
for the petitioner (in CWP-4399-2018) and
for respondent no.4 (in CWP-9559-2019).

Mr. Deepak Balyan, Advocate
for respondent no.2-HUDA (in CWP-4399-2018).

Mr. Rajesh K. Sheoran, Advocate
for the respondent-HUDA (in CWP-9559-2019)

Mr. Karan Nehra, Advocate
for respondents no.3 and 7 (in CWP-4399-2018).

LISA GILL, J.

These matters are being taken up for hearing through video conferencing due to the outbreak of pandemic, COVID-19.

Both these writ petitions (CWP-4399-2018 and CWP-9559-2019) were listed together and are taken up together for hearing and decision.

Question sought to be agitated in both the writ petitions is whether experience of service prescribed in Rules/Regulations namely Haryana Urban Development Authority Services Regulation, 1989 (Sub Divisional Engineer), for the purpose of accelerated promotion to the post of SDE is to be counted prior or post acquisition of qualification of AMIE?

Petitioners in CWP-9559-2019 seek quashing of promotion order dated 25.03.2019 whereby respondent no.4 namely M.P. Sharma (petitioner in CWP-4399-2018) has been promoted to the post of SDE along with others, pursuant to the 75th meeting of the Personnel Committee of Haryana Urban Development Authority, held on 8.03.2019 (Annexure P-11). Petitioners in CWP-9559-2019 claim to be senior to respondent no.4, besides being highly qualified and meritorious, therefore, entitled to promotion on the basis of seniority and that as per the Haryana Urban Development Authority Services Regulations, 1989, (for short HUDA Regulations, 1989) condition of experience of five years is not required to be counted subsequent to the acquisition of the AMIE degree. While referring to the final seniority list (Annexure P-2), said petitioners claim to be senior to respondent no.4 – M.P. Sharma.

Per contra, respondent no.4 – M.P. Sharma, who had filed CWP-4399-2018 prior to passing of order dated 25.03.2019, has set forth a specific claim to accelerated promotion prior to the petitioners in CWP-9559-2019 and others, having secured the degree of AMIE much prior to the said employees. It is the case of M.P. Sharma that requirement of experience necessarily has to be counted from the date of acquisition of relevant educational qualification/degree.

CWP-4399-2018 filed by M.P. Sharma was disposed of on 08.07.2019 on the statement of counsel for the State that M.P. Sharma had been promoted to the post of SDE (Civil) w.e.f. 25.03.2019 as per decision taken in the meeting of DPC held on 08.03.2019. It is observed in order dated 08.07.2019 that in case, statement is found correct, writ petition is rendered infructuous and in case, statement of learned State counsel was found incorrect, liberty was granted to the petitioner to revive the writ petition. CM-10313-2019 was thereafter filed in CWP-4399-2018 for revival of the writ petition by M.P. Sharma - petitioner therein, claiming mere part compliance of the prayers as raised by him. He sought to press for other reliefs claimed by him. Considering the same, said writ petition was posted for hearing along with CWP-9559-2019.

M.P. Sharma had earlier filed CWP-14055-2006 claiming seniority from the date of acquiring the requisite degree. Said writ petition was disposed of on 05.09.2006, with a direction to the Chief Administrator, HUDA to decide his claim, which was rejected. Appeal filed against the said order was also dismissed vide order dated 26.11.2016 (Annexure P-3 in CWP-9559-2019). A Committee of three Officers was thereafter constituted

to look into the aspect of fixing seniority on the basis of length of service or from the date of passing the degree and it was observed by the said Committee in its report Annexure P-4 in CWP-9559-2019, that in order to make a ranking list from the date of acquisition of degree, an amendment in the Haryana Urban Development Authority Services Regulation, 1989 would be required. M.P. Sharma again filed CWP-4399-2018, claiming re-arrangement of seniority of Junior Engineers for the purpose of promotion to the post of SDE from the date of clearing AMIE degree while relying upon decision dated 09.08.2018 in LPA-1515-2015, Sukhdev Singh and others Vs. Haryana Power Generation Corporation Limited and others as well as the Hon'ble Supreme Court in Civil Appeal No.7076-2010. In its 75th Meeting, held on 08.03.2019, Personnel Committee of HUDA, while taking note of decision of Hon'ble Supreme Court in *Parveen Gera Vs. Haryana State Electricity Board and others, 2018(1) SLR 668* and Division Bench decision in Sukhdev Singh's case, recommended in supercession of its earlier recommendations in 74th Meeting that case of M.P. Sharma along with J.S. Beniwal, Punnu Ram and H.S. Jakhar be considered for promotion. Thereafter, during pendency of CWP-4399-2018 order dated 25.03.2019 was passed promoting M.P. Sharma alongwith others (holding CDC charge of SDE) to the post of SDE w.e.f. the date they assume charge. CWP-9559-2019 was then filed by Vijender Kumar Malik and Ramphal Singh challenging order dated 25.03.2019 being contrary to decision of 74th Meeting of Personnel Committee and the applicable Rules.

Mr. Puneet Jindal, Sr. Advocate, learned counsel for the petitioners in CWP-9559-2019 and Mr. Karan Nehra, learned counsel for

respondents no.3 and 7 in CWP-4399-2018, vehemently argued that decision dated 09.08.2018 of the Hon'ble Court in LPA-1515-2015, *Sukhdev Singh and others Vs. Haryana Power Generation Corporation Ltd.* and of the Hon'ble Supreme Court in *Parveen Gera Vs. Haryana State Electricity Board and others 2018(1) SLR 668*, is being mis-interpreted and said decisions are in fact not applicable in the factual matrix of the case, as the applicable Service Rules are different. It is submitted that as per Appendix-B of Haryana Urban Development Authority Services Regulation, 1989, requirement for accelerated promotion to the post of SDE's of Junior Engineer having a degree in Civil Engineering in SDE (Civil) or degree in Mechanical SDE Electrical or equivalent **with 2 years' experience** and that of AMIE degree **with 5 years' experience**. It is submitted that in *Parveen Gera's* case Regulation 9 of the Punjab State Electricity Board Services of Engineers (Civil) Recruitment Regulations, 1965, as applicable to the Haryana State Electricity Board, provided for 12.5% promotion to the post of Assistant Engineer (Civil) amongst the engineering subordinates possessing AMIE/BE qualification with 5 years' services '**as such**'. It is vehemently argued that it is in the light of specific provisions providing for 5 years' service '**as such**' that Hon'ble Supreme Court held the experience attained after securing qualification of AMIE, to be taken into consideration. In the present case, it is urged that there is no such specification or stipulation in the Rules. In such a situation, seniority would be of paramount consideration and importance irrespective of the date on which the AMIE/BE degree has been secured. It is contended that as long as on the date of consideration, an employee was in possession of the requisite degree, the entire length of service has to be considered without reference to the date of securing the degree.

Mr. Puneet Jindal, learned Senior Advocate and Mr. Karan Nehra, Advocate have vociferously argued that in case condition of experience is to be counted from the date of securing the relevant degree, employees who are admittedly junior, would be able to steal a march, which would be against the very essence of the applicable service Regulations. It is brought to my notice that during the pendency of this writ petition, petitioners in CWP-9559-2019 have since been promoted in the 30% quota as per the service Regulations. It is thus, prayed by Mr. Puneet Jindal, learned Senior Advocate and Mr. Karan Nehra, Advocate that impugned order dated 25.03.2019 be set aside, CWP-9559-2019 be allowed and CWP-4399-2018 be dismissed.

Learned counsel for the State and Mr. Ashwani Talwar, Advocate, representing M.P. Sharma, submits that various decisions of this Court as well as the Hon'ble Supreme Court have laid the controversy to rest. Mr. Ashwani Talwar, Advocate referred to decisions of the Hon'ble Supreme Court in *Shailendra Dania and others Vs. S.P. Dubey and others, 2007(3) SCT 1, K.K. Dixit Vs. Rajasthan Housing Board, 2015(1) SCC 474, Parveen Gera Vs. Haryana State Electricity Board, 20185(1) SLR 668* as well as decision dated 09.08.2018 of the Division Bench of this Court in LPA-1515-2015, *Sukhdev Singh and others Vs. Haryana Power Generation Corporation Ltd.*, to submit that experience prescribed in the regulations necessary for promotion to the post of SDE necessarily has to be counted from the date of acquiring the AMIE/BE degree. Learned counsel further argues that in fact, it is incumbent upon the respondent-authorities to regularly prepare a ranking list keeping in view the date on which the

employee had secured the AMIE/BE degree and that the said employee would be entitled to promotion immediately on fulfilling the criteria as laid down in the Regulations. Mr. Ashwani Talwar, Advocate further argued that Mr. M.P. Sharma is entitled to promotion with effect from the date he became eligible and is at least entitled to notional promotion and the relevant benefits for the purpose of retrial benefits, in terms of order dated 18.01.2011 in CWP-1093-2019. Learned counsel submits that the very basis of having provision for accelerated promotion (12% quota) on the basis of qualification is to provide an incentive to the employee for the same as otherwise he would be considered for promotion in normal course on the basis of seniority in the 30% quota. It is thus prayed that CWP-9559-2019 be dismissed and CWP-4399-2018 be allowed in toto.

I have heard learned counsel for the parties and have gone through the files with their able assistance.

Factual aspect regarding date of joining as Junior Engineer by the concerned persons in both the writ petitions and date of acquisition of AMIE degree is not in dispute and is reproduced as hereunder:-

Srl. No.	Name and other details	Seniority number	Date of Joining as Junior Engineer	Date of passing AMIE
Petitioner no.1 in CWP-9559-2019	Vijender Singh Malik	104	01.04.1993	2002
Petitioner no.2 in CWP-9559-2019	Ram Phal Singh	101	01.04.1993	2015
Respondent no.4 in CWP-9559-2019 and petitioner in CWP-4399-2018	M.P. Sharma	107	01.04.1993	1991
Respondent no.3 in CWP-4399-2018	Satish Kumar Sharma	79	1986	2002

Respondent no.4 in CWP-4399- 2018	Pannu Ram	86	1986	1999 (B.E.)
Respondent no.6 in CWP-4399- 2018	H.S. Jakhar	96	01.04.1993	2000 (B.E.)

It is further not in dispute that question involved in the present writ petitions is with regard to the accelerated promotion available for the post of SDE to the extent of 12% as per the Haryana Urban Development Authority Services Regulations, 1989.

Regulations 9, 15(ii) and 21 of The HUDA Regulations, 1989, are relevant for adjudication of the matter and are reproduced as under:-

9. **Procedure of Promotion -** Promotion in respect of posts mentioned in Appendix A-I and A-II shall be made on the basis of seniority cum-merit. Seniority alone shall not give any right to such promotion.

15(ii). **Seniority of members of service** Seniority, inter-se of members of the Service shall be determined by the length of their continuous service on a post in the Service.

Provided that in the case of members appointed by direct recruitment the order of merit determined by the Selection Committee or the appointing authority as the case may be, mentioned in these regulations shall not be disturbed in fixing the seniority;

Provided further that where there are different cadres in the service, the seniority shall be determined separately for each cadre;

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 be given to a member, who was drawing a higher rate of pay in his previous appointment and if the rates of pay drawn are also the same, than by their length of service in the appointments, and if the length of such service is also the same, the older member shall be senior to the younger member;

21. **Power of relaxation** Where the Authority is of the opinion that it is necessary or expedient to do so, it may, by order for reasons to be recorded in writing, relax any of the provisions of these regulations with respect to any clause or category of persons.

Appendix B to the said Regulation based on the method of promotion of JEs to the rank of SDE and is reproduced as under:-

Srl. No.	Designation of the posts	Academic qualifications, and experience, if any, for direct recruitment	Academic qualifications and experience, if any for appointment other than by direct recruitment	Remarks
	Sub Divisional Engineer		iii) Junior engineer/ Draftsman and degree in Civil/Mech./Elect. Engg. Or equivalent with 2 years experience or (iv) AMIE degree with 5 years experience as JE/Draftsman	The recruitment to the post of SDE will be made from the source listed below in the promotions and the order indicated against a lot of 100 vacancies. # (see below)
#				

**CWP-4399-2018 (O&M) and
CWP-9559-2019 (O&M)**

50% is by way of direct appointment and 50% by way of promotion in the categories as mentioned specifically. 30% of the posts are to be filled by way of promotion from Junior Engineers with diploma in Civil Engineering for SDE (Civil) and diploma in Electrical, Mechanical Engineering for SDE

(Electrical) or Mechanical with 10 years experience as Junior Engineer.

There is a provision for accelerated promotion to 12% of the posts in the case of Junior Engineers with a degree in Civil Engineering for SDE (Civil) and degree in Electrical/Mechanical Engineering for SDE (Electrical) or equivalent with two years experience as Junior Engineer or Junior Engineer Associate Membership of Institute of Engineers degree in Civil Engineering for SDE (Civil) and AMIE of Engineers degree in Electrical/Mechanical Engineering for SDE (Electrical) or equivalent with 5 years' experience.

Petitioners and private respondents in both the cases are admittedly Junior Engineers, possessing qualification of AMIE, acquired on different dates mentioned in the foregoing paras. Admittedly, there was a deliberation on these matters by the Department as is reflected in the proceedings of 74th Meeting of the Personnel Committee of Haryana Urban Development Authority, held on 28.02.2019 (Annexure P-9). 75th Meeting of the Personnel Committee of Haryana Urban Development Authority was held on 8.03.2019 (Annexure P-11). Opinion of the learned Advocate General on the two occasions is also a matter of record. The question sought to be agitated in these writ petitions is no longer res-integra.

Hon'ble Supreme Court in *Shailendra Dania's* case, after considering a number of its earlier decisions has specifically held that completion of the period of service as provided in the Regulations has to be after obtaining the degree specified therein. In Shailendra Dania's case it is noticed that entry point in service to the post of Junior Engineer in Municipal Corporation Delhi is by way of 100% direct recruitment. Educational qualification required is Diploma in Civil Engineering with 2

years' experience or graduate in Engineering. For the post of Assistant Engineer, 50% posts are to be filled by direct recruitment and 50% of the posts of Assistant Engineers are to be filled by promotion i.e. of Junior Engineers holding a degree plus 3 years' service and Junior Engineers holding a diploma plus 8 years' service. It is observed by the Hon'ble Supreme Court in the above said case that there is a distinction between the service rendered by the Engineer as a diploma holder and a graduate and that the service experience cannot be equated as claimed. Hon'ble Supreme Court has referred to its earlier decision in **Roop Chand Adlakha & Ors. v. Delhi Development Authority & Ors.** 1989 Supp. (1) SCC 116, wherein it was observed as under:-

If the educational qualification by itself was recognized as conferring eligibility for promotion, then the superimposition of further conditions such as a particular period of service, selectively, on the Diploma Holders alone to their disadvantage might become discriminatory. This does not prevent the State from formulating a policy which prescribes as an essential part of the conditions for the very eligibility that the candidate must have a particular qualification plus a stipulated quantum of service experience. It is stated that on the basis of the "Vaish Committee" report, the authorities considered the infusion of higher academic and technical quality in the personnel requirements in the relevant cadres of Engineering Services necessary. These are essentially matters of policy. Unless the provision is shown to be arbitrary, capricious, or to bring about grossly unfair results, judicial policy should be one of judicial restraint. The prescriptions may be somewhat

cumbersome or produce some hardship in their application in some individual cases; but they cannot be struck down as unreasonable, capricious or arbitrary. The High Court in our opinion, was not justified in striking down the rules as violative of Articles 14 and 16."

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There can be no manner of doubt that higher technical knowledge would give better thrust to administrative efficiency and quality output. To carry out technical specialized job more efficiently, higher technical knowledge would be the requirement. Higher educational qualifications develop broader perspective and therefore service rendered on the same post by more qualifying person would be qualitatively different.

In *K.K. Dixit's* case, the Hon'ble Supreme Court was seized of the following issues:-

- (i) Whether the Division Bench of the High Court has erred in holding that the Diploma Holder Project Engineers (Junior) upon acquiring degree/qualification of 'AMIE' would be entitled to count their experience of service prior to acquisition of such qualification for the purpose of eligibility of 3 years total experience of service for promotion to the post of Project Engineer (Sr.) in the quota fixed for Degree Holders?
- (ii) Whether the Division Bench has erred in setting aside the direction of the learned Single Judge for preparing two separate seniority lists for Diploma Holders and Degree Holders for the purpose of promotion in their respective quotas?

The relevant Rule in the case of **K.K. Dixit** provided for promotion to the post of Project Engineer (Jr.) to the extent of 50% from amongst Project Engineer (Junior) in the following manner:-

“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 dated 25.2.2000 w.e.f. 9.12.87 Or

Qualification recognized by the State Govt. to be equivalent to Degree in Civil Engineering.”

Rest of the 50% posts of P.E.(Jr.) were to filled through direct recruitment. In K.K. Dixit’ case provisional promotions had also been granted to several persons to the post of Project Engineer (Senior) who cleared AMIE examination while in service and were allegedly much junior to the appellants with respect to the date of acquiring eligibility for such promotions. While referring to Shailendra Dania’s case the Hon’ble Supreme Court observed as under:-

30. As held in paragraph 36 of **Shailendra Dania’s** case (supra) we are required to decide the matter on the basis of the entire scheme of the rules, the facts and circumstances at the relevant time and the rules called in question, for independently giving meaning to the words, the principle involved and the past practice, if any. **In that view of the matter, the word ‘with’ occurring before the words, “three years’ service” or “seven years’ service” has to be given a natural meaning as understood in the common parlance and in the light of two water tight compartments created for the two classes for promotion with respective quotas of 20% and 30%, it must be held that three years’ total experience of**

service must be service as a degree holder. (emphasis added) This view is fortified by the provision in the Regulations that for similar promotion a diploma holder has to have seven years' total experience of service. The relevant regulation does not contemplate any reduced total experience for promotion for a diploma holder who may acquire degree or AMIE qualification while in service. **Even on acquiring such higher qualification the concerned diploma holder is neither given any advantage vis-à-vis other diploma holders nor is he ousted from the light of consideration against 30% quota provided for diploma holders. In such a situation in order to enter into the water-tight compartment of 20% quota for the degree holders with three years' experience of service, a diploma holder with AMIE qualification must show that he fulfills the entire eligibility criterion, i.e., he is a degree holder with three years' experience of service as a degree holder. Such water-tight compartment and separate quotas cannot be rendered meaningless so as to affect the prospect of promotion of the degree holders by inducting into that category a diploma holder who does not have three years' experience of service as a degree holder.** (emphasis added) In the absence of any such provision in the Regulations, no equivalence can be permitted in such a situation because even a diploma holder with seven years' experience of service is confined to a prospect or chance of promotion only against 30% quota for the diploma holders.

31. So far as the word 'total' occurring before the words 'experience of service' is concerned, from the circumstances and past history relating to the service, it must be understood in the context of service rendered in regular capacity along with service rendered on ad-hoc or officiating or temporary basis. The word 'total' cannot be construed to mean service rendered either as diploma holder or degree holder. If this had been the intention, the word 'total' would have been included

only in the context of three years' total experience of service of degree holders and not in the context of seven years' experience of service as diploma holders. A diploma holder in any case is required to have seven years' experience of service for being eligible for promotion and hence the word 'total' would be otiose or redundant in the aforesaid context. No doubt, the High Court has now clarified and held that service rendered on adhoc or officiating basis prior to regularization cannot be counted for acquiring eligibility for promotion and that aspect is no longer under controversy. **Hence the use of the word 'with' or 'total' in the relevant regulation does not make any difference and the judgment in the case of Shailendra Dania (supra) applies to the present case, as contended by learned counsel for the appellants.** (emphasis added)

32. The other judgments of this Court in the case of **Challa Jaya Bhaskar** (supra); **Chandravathi P.K.** (supra) and **Vijay Singh Deora** (supra) also support the view which we have taken on the basis of **Shailendra Dania's** case (supra). Para 29 of the judgment in the case of **Challa Jaya Bhaskar** (supra) clearly shows that in the said case this Court followed the views expressed in **N. Suresh Nathan's** case (supra) and **Shailendra Dania's** case (supra). In the case of **Chandravathi P.K.** (supra) rules for shifting by exercise of option from the category of diploma holders to that of degree holders on acquiring AMIE qualification was in place. In that context, in paragraph 30 this Court held that diploma holder officer on acquiring higher qualification during service could opt for promotion from the degree holders' quota or from diploma holders' quota but once he opts for promotion in the degree holders' quota, rule of seniority would apply as he acquired the qualification therefore subsequently. He would be placed at the bottom of the seniority list and his case could be considered only after the cases

of promotion of those who had been holding such degree qualification had been considered. In the case of **Vijay Singh Deora** (supra) the rule position was different but in paragraph 9 this Court permitted only a limited recognition of service rendered as diploma holder Junior Engineers for purposes of eligibility and justified the permitted procedure on the ground that it would do justice to all the three groups (as existed in that case) and no one would jump over the other and would not illegitimately steal a march over the legitimate right of the other, "otherwise, in effect the qualified graduates would be pushed downwards and unqualified late entrants on acquisition of qualification would steal a march over the qualified."

33. The judgments relied upon by learned advocate for the respondents have been noticed above. All those cases were noticed and distinguished or explained in the case of **Shailendra Dania** (supra) and we find that none of those cases are of any help to the respondents. In those cases, either there was no water-tight compartment and fixed quota for different categories or the advertisement and rules related only to initial recruitment or the contest was only between two groups of diploma holders. The judgment in the case of **Roop Chand Adlakha** (supra) in fact helps the case of the appellants because in that case this Court held that different service experience could be prescribed for conferring eligibility for promotion to the degree holders and diploma holders and such classification on the basis of educational qualification is permissible under Articles 14 and 16 of the Constitution of India.

34. In the light of aforesaid discussions, we find merit in these appeals and they are accordingly allowed to the extent of reversing

the views of the High Court in respect of Question no.2 as noted by the Division Bench in the common judgment under appeal. **We hold that the Project Engineers (Junior) recruited on the basis of diploma, upon their acquiring the qualification of 'AMIE', are not entitled 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 the 20% quota fixed for promotion of degree holder Project Engineers (Junior). In order to claim promotion against such 20% quota the three years' experience of service must be acquired after obtaining the qualification or degree of AMIE.**
(emphasis added)

It was held by the Hon'ble Supreme Court in *K.K. Dixit's* case that the Project Engineers (Junior) recruited on the basis of diploma, upon their acquiring the qualification of AMIE, are not entitled to count their experience of service prior to acquisition of such qualification for the purpose of eligibility of promotion to the post of Project Engineer (Senior), against 20% quota fixed for promotion of degree holder Project Engineers (Junior). In order to claim promotion against such 20% quota three years' experience of service must be acquired after obtaining the qualification or degree of AMIE.

Similarly, in *Parveen Gera's* case it has been held that it is experience attained after obtaining the qualification of AMIE, which has to be taken into consideration.

Mr. Punit Jindal, learned Senior Advocate and Mr. Karan Nehra, Advocate have strenuously urged that Regulation 9 of the Punjab State Electricity Board Service of Engineers (Civil) Recruitment

Regulations, 1965 are qualified with the words 'as such', whereas no such qualification is present in the present case, therefore, there is no question of counting the required experience from the date of acquisition of the AMIE qualification.

I do not find merit in this argument, which though attractive at first flush, does not hold much substance keeping in view the crystal clear verdict in the case of K.K. Dixit wherein it is clearly held by the Hon'ble Supreme Court that use of the word 'with' or 'total' in the relevant Regulation does not make any difference. No doubt, Regulation 9 of the Punjab State Electricity Board Service of Engineers (Civil) Recruitment Regulations, 1965, which was under consideration in Parveen Gera's case provides for promotion from amongst Engineering subordinates as defined in Regulation 2G possessing AMIER/BE qualification with 5 years' service 'as such', however, the controversy clearly stands decided by the Hon'ble Supreme Court in the case of K.K. Dixit in a very succinct and clear manner. The absence of the words 'as such' in the present case cannot make a case for departure from the clear cut verdict of the Hon'ble Supreme Court. Therefore, the Authorities have correctly proceeded to carry out the promotions in the 12% quota while considering the experience from the date of acquisition of the AMIE qualification. There is equally no merit in the argument that respondent-authorities are estopped from taking a stand different from the one reflected in the Minutes of 74th Meeting of the Personnel Committee. The decision of respondent-authorities is in conformity with the decisions of the Hon'ble Supreme Court in the cases mentioned in the foregoing paras. It is apparent that for accelerated

promotion in the 12% quota, length of service after securing the requisite degree has to be counted.

At the same time, I also do not find any merit in the argument raised by Mr. Ashwani Talwar, Advocate that there has to be an alteration in the seniority of the Junior Engineers, keeping in view the date of acquisition of the AMIE degree. Learned counsel has been unable to point out any mandate in the Regulations which provides for preparation of a separate seniority list within the cadre, which entails preparation of separate select lists in a regular/periodic fashion as is sought to be urged. This issue has been categorically dealt with by the Hon'ble Supreme Court in K.K. Dixit's case (supra) while observing as under:-

“19. On behalf of appellants, a submission was advanced that in Clause (9)(B) of the Regulations there is a mandate that seniority lists for each “category of employees” will be prepared and maintained and hence the Board should treat degree holders and diploma holders as separate category of employees for preparation of separate seniority lists for each of these categories. We do not find any merit in this submission. The words “category of employees” used in Clause (9)(B) in the context of the Regulations can only mean category of posts held by the employees. The word “category” has been used in the context of posts only in Clause (6) of the Regulations, although in the matter of absorption of employees working in the Board on deputation. Clause (9)(A) which provides for promotion when read together with the Schedule Technical leaves no manner of doubt that in respect of first promotion to higher post, i.e., promotion from post of Project Engineer (Junior) to Project Engineer (Senior), promotion of eligible person is required to be made on the basis of seniority-cum-merit. The High Court has rightly held that the cadre of Project Engineer (Junior) cannot be bifurcated for the purpose of seniority alone, only on the ground that for promotion to the cadre of Project Engineer (Senior) there is provision for 20% quota for degree holders and 30% quota for diploma holders. The practical view of the High Court cannot be faulted that the Board can legitimately prepare separate eligibility lists of Project Engineer (Junior) holding degree and those holding diploma. Such eligibility list could not be mistaken for seniority list which must remain common based upon merit assessed at the time of selection for recruitment. Only if the selection process had been different, there could have been any scope to argue for separate seniority lists. In absence of any legal stipulation for

altering the initial seniority, pre-determined on the basis of merit at the time of initial selection and date of regular appointment, the seniority list cannot be altered only because some diploma holder Project Engineers (Junior) acquired the qualification of AMIE equivalent to a degree. The three years' or seven years' experience of service will entitle the degree holders and the diploma holders respectively only for inclusion of their names in the eligibility lists for promotion so as to work out satisfactorily the provision for different quota for the degree holders and the diploma holders. Hence, we find no good ground to interfere with the decision of the High Court in respect of Question no.3.”

In this situation, decision dated 18.01.2011 in CWP-10931-1990 does not come to the aid of M.P. Sharma. In my considered opinion, there is no justification for treating promotion of the said employee, from the date on which he became eligible, subject to availability of the post on that date. It is not the case of the employee M.P. Sharma, that any person junior to him has been promoted prior to his promotion.

CM No.13911-2019 has been filed by the petitioners in CWP-9599-2019 under Article 215 of the Constitution of India read with Section 10 – 12 of the Contempt of Courts Act, 1971, for initiating contempt proceedings against Members of the Selection Committee for non-compliance/defiance of interim order passed in CWP-4399-2018 and specifically orders dated 23.02.2018, 15.03.2018 and subsequent orders dated 05.04.2018 and 04.10.2018. It is stated therein that order of promotion dated 25.03.2019 is a clear cut defiance of the said order wherein it had been directed that the case of M.P. Sharma for promotion would be considered and the matter be kept in sealed cover.

I have heard learned counsel for the applicant/petitioners and I have also gone through order dated 16.10.2019, passed by a co-ordinate Bench in the present writ petitions.

CWP-4399-2018 was admittedly disposed of as infructuous on 08.07.2019 after passing of order dated 25.03.2019. CM-10313-2019 had been filed by M.P. Sharma in CWP-4399-2018 for revival of the said writ petition, wherein order dated 08.07.2019 was passed, which reads as under:-

“I am of the view that Department should have taken a considered decision to the objections and finalized the seniority list, in view of tentative seniority list. Things would have been different, had the seniority list dated 05.09.2013 was final but it is also tentative. Keeping in view the piquant situation, I am of the view that an appropriate direction is required to be issued to the respondents to consider cases of the petitioners in both writ petition i.e. Vijender Kumar Malik, Ramphal Singh and M.P. Sharma for the purpose of promotion as one amongst them is required to be promoted upon finalizing the seniority list strictly as per Regulations ibid.

In order to protect interest of petitioners, I deem it appropriate to observe that promotion of M.P. Sharma shall be subject to final outcome of the writ petition. This Court is sanguine of the fact that respondents will take decision on finalization of seniority list, taking into consideration tentative seniority list, as mentioned, above or any other tentative seniority list, which has not seen light of the day nor is part and parcel of these proceedings and after affording opportunity of hearing to all the parties to lis as well as other affected parties, strictly in accordance with Rules within a period of two months from the date of receipt of certified copy of this Court.

Post on 15.01.2020.”

Taking into consideration the facts as above and the sequence of events, no case is made out for proceeding against the Members/respondents for contempt as alleged. Application is accordingly dismissed.

Keeping in view the facts and circumstances of the matter, CWP-9559-2019 is accordingly dismissed and CWP-4399-2018 is rendered infructuous to the extent of relief claimed by M.P. Sharma that the period of

experience should be counted from the date of acquisition of the AMIE/BE degree, however, no ground is made out for grant of other reliefs claimed therein. CWP-4399-2018 is accordingly disposed of. Pending applications if any are disposed of accordingly.

04.02.2021
Sunil

(LISA GILL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No