



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

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CWP-20759-2016 (O&M)

Date of decision: 04.04.2025

Mukesh Kumar and others

...Petitioner

VERSUS

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Sourabh Goel, Advocate and
Ms. Samridhi Jain, Advocate for the petitioner(s).

Mr. Tapan Kumar, DAG Haryana.

Mr. Jitender Singh Kundu, Advocate
for respondents No.3, 4 and 6.

VINOD S. BHARDWAJ, J. (Oral)

1. Seeking setting aside of the selection of respondents No.3 to 6 as Sub-Divisional Officer, who were promoted vide order dated 11.05.2015, the instant writ petition has been filed on the ground that the said promotion order has been passed in violation of the Rules and having been promoted against the quota meant for the petitioners.

2. Learned counsel appearing on behalf of the petitioners contends that the petitioners were initially appointed as Junior Engineers (Civil) in the respondent-Department on the recommendation of the Haryana Staff Selection Commission. They were subsequently promoted as Sub-Divisional Officers vide order dated 11.05.2016. He contends that as per the service Rules, the promotional post for J.E.(Civil) is Assistant Sub-Divisional Engineer and thereafter, Sub-Divisional Officer(Civil). The



services of the petitioners are governed by the service rules i.e. Haryana Service of Engineers, Class-II, Public Works Department (Irrigation Branch) Rules, 1970, hereinafter referred to as '**the Rules of 1970**'. He contends that as per Rule 6, recruitment to Service is to be done as per the Ratio indicated in the table mentioned thereunder. He contends that the aforesaid table initially incorporated in the Rules, 1970 was eventually amended by the respondent on 11.05.2004, as per which Sub-Rule 1 was substituted for the following Rule:

“(i) Recruitment to the service for cadre and ex-cadre posts shall be made;

- (a) 50% by direct recruitment.*
- (b) 50% by promotion from the following categories :-*
 - (i) from the members of the Haryana 25%
Public Works Department
(Irrigation Branch) Junior
Engineers (Civil Engineering)*
 - (ii) from the members of the Haryana 5%
Public Works Department
(Irrigation Branch) Junior
Engineer's (Mechanical/ Electrical
Engineering)*
 - (iii) from Draftsmen, members of the 6%
draftsmen and Tracers Service.*
 - (iv) from the members of the Haryana 10%
Public Works Department
(Irrigation Branch) Junior
Engineers (Civil Engineers),
possessing qualification*



- prescribed in Appendix-B.
- (v) from the members of the Haryana 2%
Public Works Department
(Irrigation Branch) Junior
Engineer(s)
(Mechanical/Electrical
Engineering) possessing
qualifications prescribed in
Appendix-B.
- (vi) from the members of Draftsmen 2%
 and Tracers Service, possessing
 qualifications prescribed in
 Appendix-B

- Note- (i) The above percentage shall be maintained from time to time.
- (ii) To cover the shortfall, if any, in any categories, the future vacancies shall be filled from the category till the shortfall is completed. However, to complete the shortfall no reversion/retrenchment shall be made
- (iii) The vacancies arising due to retirement, promotion / dismissal or death etc. shall be filled in from the category from which the vacancy falls vacant.”

(emphasis supplied)

3. It is thus contended that all the posts, insofar as they relate to the quota meant for the appointment by way of promotion, were to be filled-up from amongst the members possessing the qualification of Civil Engineering as prescribed in Appendix B to the extent of 10%, while only 2% quota was fixed for the members of the Service falling in the



Mechanical/Electrical Engineering Cadre possessing the qualification.

4. The Government of Haryana had issued the instructions bearing U.O. No.2/17/2004-2GSI dated 11.10.2004 regarding validity of the recommendation of the Departmental Promotion Committee (DPC) for promotion to Group A & B. the relevant extract thereof reads thus:

“xxxxxx

The matter has been considered by the State Government in consultation with the Haryana Public Service Commission. It has been observed that the recommendations of the D.P.C. against the existing and anticipated vacancies are based on the calendar year. Hence, it has been decided that the recommendations of the D.P.C. regarding promotions to Group A & B posts shall remain in force till the last day of the calendar year i.e. 31st December and if the officers/ officials found suitable in the D.P.C. meeting could not be promoted up to that date for want of vacancies or for any other reason, the list/recommendations of the D.P.C. should not be carried forward suo moto for the succeeding calendar year and the cases of such officers/ officials shall again be placed before the D.P.C. in the next calendar year for adjudging their suitability for promotion.

These instructions should be brought to the notice of all concerned for their information and compliance.

xxxxxx”



5. Referring to the above, it is argued that the recommendations of the DPC against the existing and anticipated vacancies are meant to be on the Calendar year basis and that the recommendations are to remain in force till the last date of the Calendar year i.e. 31st December of each year and if the officers/officials found suitable could not be promoted upto that date for want of vacancies or for any other reason, the list/recommendations of the DPC would not be carried forward to the succeeding Calendar year and the cases would have been placed afresh before the DPC for the next Calendar year for adjudging the suitability of the candidate for promotion. He contends that there were 16 vacancies for the post of Assistant Sub-Divisional Engineer with regard to the quota of the petitioners i.e. members of the Haryana Public Works Department (Irrigation Branch) J.E. (Civil Engineering) and from the Members of Draftsmen and Tracer. While 10 Posts belonged to the quota of the petitioners, 6 posts were to be filled up from amongst the Draftsmen and Tracers Service quota. The petitioners being the degree-holders in Civil Engineering were entitled to be promoted from the post of J.E. (Civil) to the Assistant Sub-Divisional Engineer and from that post to the Sub-Divisional Officer since they were at Sr. No.18, 19 and 20 of the seniority list. Representation was submitted by the petitioners to the respondents, however, for the reasons best-known to them, the statutory Rules were ignored by the official respondents. He contends that the respondents even ignored the provisions which mandate that if the members of the Draftsmen and Tracers service possessing the essential qualification for further promotion were not available, the said posts were to



be filled up by way of promotion amongst the J.E.(Civil) possessing the requisite qualification. Respondents No.3 to 6 were the J.E. in Mechanical field and as per the Rules, they were not entitled to be promoted against the post meant for being filled up from amongst the Draftsmen/Tracers as per the applicable service Rules, the said posts were to be offered specifically to the Graduates/AMIE members of the services at the post of J.E. (Civil). Apprehending that the official respondents would ignore the rightful claim of the petitioners to give undue benefit to the J.E. (Mechanical) degree-holders to be promoted as Sub-Divisional Officers instead of J.E.(Civil) degree-holders, certain persons namely Paramvir Singh and Sanjeev Singal, then working at Command Area Development Authority, Hisar preferred CWP-7353-2015 before this Court for seeking directions to the official respondent not to make further promotions to the post of Assistant Engineer in violation of the Rules till the pendency of the said writ petition. The said writ petition was dismissed vide order dated 22.04.2015 as premature by observing that undisputedly no promotion had been made till then and that the petition was based upon an apprehension and likelihood of the claim of the petitioners being rejected. He contends that the apprehensions of the petitioner came true when the respondents ignored the Note pertaining to Rule 6 of the Rules of 1970 and promoted the private respondents in violation of the statutory provisions to the post of Sub-Divisional Officers against the posts meant for J.E.(Civil) notwithstanding that the suitable candidates possessing requisite qualification were available. The present writ petition has been filed by the petitioners claiming that they would be entitled



to promotion with effect from 11.05.2015 when respondents No.3 to 6 were promoted illegally and arbitrarily against the quota meant to be filled-up by way of promotion from amongst J.E.(Civil), Tracers and Draftsmen and that they be placed over and above the said private respondents in the seniority list prepared by the official respondents. He has also drawn the attention of this Court to the separate gradation list maintained with respect to the J.E.s (Civil) as well as J.E.s (Mechanical) and J.E.s (Electrical) to contend that it was not an integrated common seniority and that a separate line seniority list was being maintained in relation to the different trades.

6. Learned counsel appearing on behalf of the petitioner further refers to the proceedings of the Departmental Promotion Committee meeting held on 08.04.2015 to judge the suitability of Group-C officials for promotion to HSE Group-B officer as Assistant Engineer (SDO). He contends that that the quota of 10:2 i.e. members from amongst Junior Engineers (Civil Engineers) and J.E. (Mechanical/Electrical Engineering) were specified vide Notification dated 11.05.2004 which was claimed to be followed by the DPC at all stages. When the DPC meeting was convened for the year 2015 it specifically noticed the Rule, yet, it failed to properly assign respective quota and gave undue benefit in favour of the employees belonging to Mechanical/Electrical Engineering. The deliberations of the DPC in relation to filling-up the posts of SDO against the posts of Drawing Establishment AMIE/B.E. degree-holder category is extracted as under:-

“xxxxxx

There are total 408 sanctioned posts of Assistant



Engineers (SDOs). Rule-6 of HSE Group-B. PWD (Irrigation Branch) Rules, 1970 provides that the recruitment/appointment to the service shall be made 50% by direct recruitment and 50% by promotion. There are total 204 No. posts which are of promotional quota. The vacancies of SDOs of promotional quota available upto 30.6.2015 for each category as mentioned in above said service rules are as under:-

Category	%age quota out of total 408 posts	Share posts of each category	Officers in position as on 1.4.2015	Vacancy as on 1.4.2015	vacancies available on account of retirement in the month of April to June 2015	Vacancies upto 30.6.2015
ASDES/JES (Civil) Diploma holders	25%	102	78	24	15	39
ASDES/JES (Mech/Elec.) Diploma holders	5%	21	16	05	02	07
Drg Estt. Diploma holders	6%	24	22	02	03	05
ASDES/JE (Civil) AMIE/BE Degree holders	10%	41	35	06	04	10
ASDES/JES(Mech/Elect.) AMIE/BE Degree holders	2%	08	10	-02	01	01 excess
Drg Estt. AMIE/BE Degree holders	2%	08	---	08	----	08
Total	50%	204	161	43	25	68

Further one Sh. Ram Kumar Singh, ASDE (SDO/LAC) Mechanical Diploma Holder and another Sh. Inderjit Narula, ASDE (SDO/Civil) Degree holder category who found suitable for promotion to the post of SDO shall retire from Government service on 30.4.2015 and 31.5.2015 respectively. Therefore, these 2 more vacancies are to be considered for preparing the



select list.

It was also brought to the notice of the Committee that there are 8 posts of Drawing Establishment Degree holder category but no candidate of this category having Degree in Engineering is available. There is no specific provision in the service rule to the extent that in case the eligible candidates of Drg. Establishment Degree holder category are not available then from which category these vacancies are to be filled up. In the year 2014, the Government considered the matter and observed that 14 vacancies of this category available from time to time i.e. upto the year 2013 have been diverted into ASDEs/JEs (Civil) Degree holders and 7 more vacancies have been occurred in the year 2014. These $14+7=21$ vacancies should be diverted into ASDEs/JEs Civil and Mechanical Degree holder category in the ratio 10:2 i.e., according to their quota and decided that out of 7 vacancies for the year 2014, 4 vacancies be filled up from ASDEs/JEs (Mechanical) Degree holders and remaining from ASDEs/JEs (Civil) Degree holders category. Thus, one officer promoted from ASDE (Mechanical) Degree holder is excess from quota and will be charged against Drawing Establishment Degree holder category. The case of another Sh. B.R. Dalal, ASDE (Mechanical) Degree holder is separately under consideration with Government for deemed date promotion as SDO as his juniors have already been



promoted. These 2 officers are against Drawing Establishment Degree holder category posts and remaining (8-2) 6 vacancies of Drawing Establishment Degree holder category are to be diverted into ASDEs/JEs Civil or Mechanical Degree holders category.

This matter has been considered by the Committee at length and after due deliberations the Committee has decided that these 6 vacancies of Drawing Establishment Degree holders category be filled up from the senior most officials of ASDEs/JEs (Civil/Mech.) Degree holders on the basis of joint seniority based on date of appointment.

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7. He contends that the share of posts amongst the Drawing Establishment Degree-holders was 8 and the same were to be distributed in the ratio of 10:2. The respondents, however, assigned 04 vacancies for SDOs to be filled-up by way of J.E. (Mechanical Engineering), 02 vacancies for the J.E. (Civil), thus filling 06 vacancies on the basis of joint seniority list of Civil and Electrical/Mechanical, whereas on bifurcation of the posts in the ratio as approved, 7 posts were to go to the J.E.(Civil), while 01 vacancy could be filled-up from amongst J.E. (Mechanical) degree-holder, a bifurcation which was eventually done by the official respondents themselves while carrying out proceedings of the DPC held on 22.04.2016 for the next year. The relevant part of the proceedings of the DPC for the year 2016 is as under:-



“xxxxxxx

Similarly there is no official of Drawing Establishment category possessing Degree in Engineering and thus all 8 vacancies of this category are also diverted into other Degree holders category i.e. JE (Civil) Degree Holders category and JE (Mech/Elect/) Degree holders category according to their quota i.e. in the ratio 10:2. According to above said ratio, 7 vacancies will go to JEs (Civil) Degree holders category and 1 vacancy comes to the share of JEs(Mech.) Degree Holders category.

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8. Referring to the above, learned counsel appearing on behalf of the petitioners contends that if the ratio would have been applied correctly by the official respondents during the year 2015, the petitioners would have been promoted to the post of SDOs as against the private respondents were holding Electrical/Mechanical Degrees. The instant writ petition was thus filed impugning the said acts of the official respondents whereby they had wrongly allocated the posts, despite referring to the correct principle and thus gave an excess share to the J.E.(Mechanical/Electrical) and gave them the benefit of promotion by ignoring rightful claim of the petitioners.

9. Responding to the above, learned counsel for the respondents contend that there is no illegality in the proceedings undertaken by the DPC in its meeting held on 08.04.2015 since the said DPC proceedings had taken into consideration the total number of vacancies that had accrued amongst



the Drawing Establishment AMIE/B.E. Degree-holder cadre. It was noticed that upto the year 2013, as many as 14 vacancies from amongst the Drawing Establishment AMIE/B.E. Degree-holder category had fallen vacant and 07 more vacancies accrued in the year 2014, hence, a total number of 21 vacancies were required to be diverted into the Civil and Mechanical/Electrical Engineering Degree-holder cadre in the ratio of 10:2. Hence, while making recommendations for the 07 vacancies that had accrued in the year 2014, 04 vacancies were recommended to be filled-up from amongst the J.E. (Mechanical/Electrical) Degree-holders while the remaining vacancies were recommended to be filled-up from amongst the J.E. (Civil) Degree-Holders category. It is contended that the said DPC was thus enforcing the decision to maintain the ratio of 10:2 and ensuring that the Engineers belonging to Mechanical/Electrical Degree get their fair share in the allocation of the quota of Drawing Establishment Degree-holders which remained unfilled due to non-availability of suitable candidates from the said quota.

10. Responding to the above, counsel for the petitioners contends that the aforesaid exercise of the DPC was *sans* any authority. The DPC being convened to fill-up vacancies for a given year and all vacancies upto the year 2013 having been already filled-up by way of recommendations that had been made by the earlier respective DPCs, it did not fall upon the DPC for the year 2015 to re-examine those issues that had already attained finality and thereafter to sit in review over the decision(s) earlier taken and implement its decision as the 'just ratio' to be made applicable



retrospectively even with respect to the vacancies that already stood filled-up prior thereto.

11. No other argument has been advanced nor any judgment cited by the learned counsel for the respective parties.

12. I have heard the learned counsel for the respective parties and have gone through the documents appended with the present writ petition.

13. Undisputedly, the instructions of the Government prescribed that the DPC was to be convened on an year to year basis and they were to make recommendations for filling-up the posts that were vacant and/or anticipated to fall vacant in the said year. Further, it also remains undisputed that there was no specific provision in the statutory Rules about ways to fill-up any quota that remained unfilled on account of non-availability of suitable candidates and in what ratio the said quota could be distributed. The decisions in this regard were thus being taken by the respective DPCs which such decisions had been accepted by the competent authority from time to time. The said decisions continued to be implemented and there was no challenge to the same. Accordingly, the same attained finality. Accordingly, at the time when the DPC meeting of 08.04.2015 was held, the said DPC could not have sat in judgment over the decisions taken by the earlier DPCs that were convened for making recommendations for the vacancies that accrued in the relevant year. Undeniably, the DPC adopted the ratio of 10:2 i.e. the ratio already prescribed in the Rules for filling-up the promotional quota and for making recommendations from amongst the unfilled quota of any other category. The said principle thus would be



deemed to be valid for the recommendations to be made by the said DPC. It did not have the authority to re-examine the entire recommendations made by earlier DPCs upto the year 2013 and to take into consideration all the earlier recommendations that had been so made then. Significantly, the DPC in its meeting of 08.04.2015 has nowhere even made a reference to the respective basis of the recommendations made by respective DPCs upto the year 2013 and yet, it assumed that the decision taken by it for assigning the quota in the ratio of 10:2 to be the just ratio to be made applicable to the entire promotional cadre. In doing so, the DPC has clearly transgressed the scope of its jurisdiction and has travelled into the domain where it has entered into an arena of re-visiting the merits of the decision(s) taken by the earlier DPCs and to hold that such decision(s) were not in accordance with the principle which was approved by the DPC for the year 2014-15 in its meeting of 08.04.2015. The above principle could have been applied only for the vacancies that arose for its consideration and recommendation by the DPC in question. Accordingly, the ratio could have been applied with respect to the available vacancies i.e. 07 only and they could not have taken into consideration the total number of vacancies that had fallen vacant in the previous years and remained unfilled on account of non-availability of suitable candidate from Drawing Establishment Degree-holders till the year 2013 (14 vacancies).

14. Although an attempt was made by the counsel for the respondents to contend that the posts were carried forward posts, however, there is no such reflection from the proceedings of the DPC that the posts



earlier assigned by the respective DPC to the quota of Electrical/Mechanical Engineering had not been filled-up during the relevant year and had been carried forward. In the absence of any such reasoning having been recorded by the DPC in its meeting, such reasoning cannot be supplanted by the counsel for the respondents on his own during the course of arguments.

15. Counsel for the respondents have also failed to answer as to how and under what circumstances, the DPC being an equivalent authority could review the decisions of earlier DPC's and thereafter, confer upon itself the substantive power to do complete justice and to restore the overall balance notwithstanding that no earlier decision/recommendations of the DPC were ever made a subject matter of challenge before any competent authority in a manner known to law. It did not lie with them to re-examine the entire quota allocation over earlier years and to thereafter re-arrange the allocation as their role was only to make recommendation for the year in question. In applying its own sensibility against earlier recommendation in its effect amounts to holding that the recommendation made by way of quota allocation by earlier DPC's was incorrect. There is no discussion about bifurcation and allocation of vacancies by the then DPC's and how the same was invalid or lacked reasons and merit and whether it can go behind the earlier finalized recommendations and presume the same to have been done wrongly. Such an approach would inherently be an over-reach and beyond its scope. It not being an appellate authority could not set to undo what it believed to be wrong and was required to confine itself to the vacancies for which it was empowered.



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16. I thus find that the reasoning adopted by the DPC in assigning 04 vacancies to be filled-up from amongst the J.E.s possessing the Mechanical/Electrical Engineering Degrees out of the 07 vacancies that accrued in the year 2014 by applying the ratios of 10:2 was clearly a digression from the position in law. The said rationality thus does not withstand judicial scrutiny and is liable to be set aside.

17. At this juncture, counsel for the private respondents has pointed out that all the private-respondents have since then superannuated from service.

18. Under the said circumstances, this Court protects the promotion and notional as well as actual benefits already granted to the private-respondents who have since then superannuated. Hence, while directing the official respondents to grant the seniority and all other consequential notional benefits to the petitioners w.e.f. the date of promotion of the private respondents i.e. 11.05.2015 and subject to verification that the petitioners fell within the quota of 10:2 when applied to the 07 vacancies that were available for the DPC for the year 2014, the benefits already released to the respondents are ordered to be protected.

19. Let the needful be done by the official respondents within a period of 03 months from the receipt of a certified copy of this order.

20. **The instant writ petition is accordingly allowed.**

(VINOD S. BHARDWAJ)
JUDGE

04.04.2025

Mangal Singh

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