



2025:DHC:579



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Decided on: 29.01.2025

+ W.P.(C) 7580/2008

D.C. GOEL

.....Petitioner

Through: Mr. Anand Mishra, Advocate

versus

B.S.E.S. YAMUNA POWER LTD.

.....Respondent

Through: Mr. Sandeep Prabhakar, Senior
Advocate with Mr. Amit Kumar
and Mr. Vikas Mehta, Advocates**CORAM:****HON'BLE MR. JUSTICE PRATEEK JALAN****PRATEEK JALAN, J. (ORAL)**

1. The petitioner, who retired as Assistant Vice President of the respondent- BSES Yamuna Power Limited ["BSES"], on 28.02.2019, has filed this writ petition, challenging a seniority list for promotion to the post of Assistant Engineer dated 28.06.2007.
2. The petitioner is a Degree-holder, having completed his Bachelor's in Engineering (Electrical) from Madan Mohan Malviya Engineering College, Gorakhpur in 1979. He joined the erstwhile Delhi Electric Supply Undertaking ["DESU"] as Inspector (Technical) in April, 1981. He was upgraded to the post of Superintendent (Technical) in October, 1992.
3. The next promotional post being that of Assistant Engineer, the



petitioner initially approached this Court in a writ petition¹, contending that DESU was illegally maintaining a common seniority list for Diploma-holders and Degree-holders for promotion to the post of Assistant Engineer. It was his contention that a separate seniority list was required to be prepared for the two categories in the feeder post, so that the distinct eligibility conditions could be given full effect. Although the posts of Inspector and Superintendent were merged into the post of Junior Engineer from August 1999, the petitioner continued to pursue the said writ petition, and filed applications with regard to each promotional cycle.

4. In view of the restructuring of DESU and then of the Delhi Vidyut Board, service of the petitioner came to vest in the respondent- BSES. He, therefore, withdrew the earlier writ petition by order dated 06.08.2008², and filed this writ petition for the following reliefs:

*“(i) Issue a writ in the nature of mandamus directing Respondent to remove the anomaly in seniority list of Assistant Engineer dated 28.06.2007 the same being based on defective common list supplied by DVB/DESU and non-application of Principal of rotation of vacancy.
(ii) Issue writ in the nature of mandamus directing Respondent to place Petitioner in his proper place on the fact he entered into consideration zone for Assistant Engineer in 1986 by application of principal of rotation of vacancy with all consequential benefits.
(iii) Issue writ in the nature of mandamus directing by Respondent for fixation of salary of Petitioner as per his exact position by applying principal of rotation of vacancy since 1986.”*

5. I have heard Mr. Anand Mishra, learned counsel for the petitioner, and Mr. Sandeep Prabhakar, learned Senior Counsel for the respondent.

6. The resolution of the petitioner’s grievance depends upon an

¹ WP(C) No. 3080/1995.

² Annexure P-16 to this writ petition.



interpretation of the Recruitment Regulations for the post of Assistant Engineer (Electrical & Mechanical), which were framed by DESU in the year 1980³. The Regulations provide for 66% of the vacancies at the level of Assistant Engineer to be filled by promotion, failing which by direct recruitment, and the remaining 34% to be filled by direct recruitment.

7. The present case concerns Clause 12 of the Schedule to the said notification, which prescribes the eligibility criteria for promotion as follows:

*“12. In case of rectt. by promotion/
Deputation/transfer, grades from
Which promotion/Deputation/
transfer to be made*

Promotion:

a) 75% of the promotion quota,

i) Superintendent (Tech.) with 3 Years Regular service in the grade in the case of Degree holder & 7 years regular Service In the case of Diploma holders.

ii) Failing (i) above, Superintendent (Tech.) with five years regular service in the grade Superintendent (Tech.) & Inspector combined together in the case of degree holders & 10 years regular service in the case of Diploma holders,

iii) Failing (i) and (ii) above Inspector with 5 years regular service in the grade in the case of degree holders 10 years regular service in the grade in the case of diploma holders.

NOTE: *The service in the grade of Superintendent (Selection grade) shall count towards qualifying Service in the grade of superintendent (Tech.)”⁴*

³ Notification dated 05.08.1980.

⁴ Emphasis supplied.



8. It is the contention of the petitioner that different periods of regular service have been prescribed for Degree-holders and Diploma-holders for the purpose of eligibility for promotion, but the longer service of Diploma-holders results in exhaustion of the promotional post without Degree-holders getting an opportunity for promotion. He submits that maintenance of separate seniority lists of Diploma-holders and Degree-holders in the level of Inspector and Superintendent, with rotation in the promotional post between the two, would alleviate this difficulty. By way of example, he submits that although the present petitioner completed five years of service as Inspector in April 1986, and three years of regular service as Superintendent in the year 1995, he was promoted to the level of Assistant Engineer only in July, 2004.

9. Mr. Prabhakar, on the other hand, submits that distinction in the Recruitment Regulations is for the purpose of eligibility. The petitioner's legal right is to be considered for promotion when eligible, which has been complied with. He contends that the respondent is entitled to maintain a common seniority list, regardless of the educational qualification of persons at the same level of service. Mr. Prabhakar also cites a decision of the Division Bench of this Court in *BSES Yamuna Power Ltd. v. S.C. Kansal*⁵, which concerns the very same Recruitment and Promotion Rules.

10. The petitioner in *S.C. Kansal*⁶ was also a Degree-holder. Although the challenge was on a slightly different basis than the challenge asserted

⁵ LPA No. 741/2011, decided on 07.03.2012.

⁶ Supra (Note) 5.



in the present case, the Division Bench has explained the Recruitment Rules in the following terms⁷:

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8. What thus emerges is, that the current duty charge of the post of AE given to the respondent on 24th August, 1995 was against the vacant post of AE in the direct recruitment quota. The respondent could have been given regular promotion only in the promotion quota post of AE. There is nothing to show that there were any vacancies in the promotion quota post of AE till then. The categorical assertion of the appellant in the counter affidavit to the writ petition as also before us was/is of the respondent as per the seniority list being at serial no. 705 and having been promoted to AE in the year 2004. **It is settled principle in law that there is no right of promotion on acquiring eligibility. Promotion can be claimed only against a vacancy** (see *Union of India v. Ishwar Singh Khatri* 1992 Supp (3) SCC 84 and *Deepa Augustine v. Geetha Alex* (2008) 16 SCC 526. Infact in *A.K. Sarma v. Union of India* (1999) 2 SCC 178 ex post facto clarification that promotion was ad hoc was upheld for the reason that at the time of promotion since no regular vacancies existed, the promotion could not have been treated on regular basis.). **The respondent, even if after 3 years as Superintendent, had become eligible in 1994 to be promoted as AE, had no claim to be even considered for promotion until a vacancy occurred in the said post. According to the appellant, there was no vacancy. The respondent has been unable to show otherwise. The learned Single Judge also has not returned any finding in this regard; he has proceeded on the premise that because ad hoc promotions were being made and current duty charge as AE being assigned, there must be a vacancy.** However, that vacancy as aforesaid was in the direct recruitment quota posts and to which the respondent could not have been promoted. The Supreme Court in *State of Mysore v. C.R. Sheshadri* (1974) 4 SCC 308 observed that no promotion could be directed to be given from a back date unless the Court had the necessary data regarding the vacancy position and set aside the direction of the High Court granting such promotion without any finding as to the vacancy position.

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10. **As far as the argument of the respondent of Diploma holders having been given preference over Degree holders is concerned, the R & P Rules as aforesaid equate a Degree holder Superintendent of 3 years experience with a Diploma holder Superintendent with 7 years experience. It is thus well nigh possible that a Diploma holder**

⁷ Supra (Note) 5, paragraphs 8 & 10.



Superintendent with 7 years experience may be senior to the respondent even though a Degree holder. As aforesaid there appears to have been a stagnation for long in the post of AE by promotion. Thus a Diploma holder if had completed 7 years as Superintendent before the respondent though a Degree holder completed 3 years as Superintendent, would be senior to the respondent. Even otherwise the post as per the R & P Rules is a selection post. The appellant in its counter affidavit to the writ petition had relied upon the seniority list in which the respondent was placed at serial no. 705. The said seniority list was not under challenge. Though the respondent in the rejoinder to the counter affidavit of the appellant had generally controverted the seniority list but had not impleaded those ahead of him as parties thereto. In the absence of any challenge to the seniority, the same cannot be doubted.⁸

The Division Bench thus allowed the appeal of BSES, against a judgment of the learned Single Judge granting a declaration, effectively of retrospective promotion to the respondent therein.

11. I am of the view that the aforesaid Division Bench decision is decisive of the petitioner's rights in this case also. As explained by the Court, the difference between the Degree-holders and the Diploma-holders in the Regulation is at the level of eligibility for promotion. I have not been shown any authority in support of the contention that this necessarily implies that separate seniority lists have to be maintained, based upon the qualification with which the employee entered the service, or claims eligibility. The judgment of the Division Bench clearly notes that a Diploma-holder with greater experience may be senior to a Degree-holder with lesser experience. That is the case in the present case also. The root cause which has led to petitioner not being promoted is not attributable to any defect in the seniority list, but to the fact that sufficient vacancies were not available in the promotional posts.

⁸ Emphasis supplied.



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12. It may also be noted that although the seniority list has been challenged in this petition, none of the affected persons have been made parties to the writ petition.

13. For the aforesaid reasons, I do not find any reason to interfere with the seniority list, in exercise of power under Article 226 of the Constitution. The writ petition is, therefore, dismissed.

PRATEEK JALAN, J

JANUARY 29, 2025

'SV/Jishnu'