

MONIKA RANI
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I attest to the accuracy and
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This common order shall dispose of aforesaid two petitions since similar facts and law are involved in the same. For the sake of brevity, the facts are being taken from the lead case being CWP-9138-2023.

2. The present civil writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the impugned orders dated 08.03.2018, 27.05.2019, 27.06.2019, 09.08.2019, 17.06.2020, 25.05.2022 and 05.07.2022 (Annexures P-3 to P-9) whereby deemed dates of promotion have been granted to the private respondents as Municipal Engineers and Executive Engineers; and for quashing the impugned tentative seniority lists of Executive Engineers dated 22.04.2021 (Annexure P-10) and 12.11.2021 (Annexure P-11) and the impugned order dated 15.03.2023 (Annexure P-14) whereby the representation submitted by the petitioner has been rejected.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner was directly recruited on the post of Municipal Engineer vide order dated 20.09.2012 and promoted to the post of Executive Engineer on 08.03.2019. He refers to the Haryana Municipal Services (Integration, Recruitment and Conditions of Service) Rules, 2010 (hereinafter referred to as the “2010 Rules”), which govern the service conditions of the petitioner. A copy of the 2010 Rules is annexed as Annexure P-1, and submits that as per the 2010 Rules, there is a prescribed quota-rota system for appointment to the post of Municipal Engineer, 50% by direct recruitment and 50% by promotion from amongst Junior Engineers. The



private respondents were initially appointed as Junior Engineers on various dates between 2007 and 2012 and were later promoted as Municipal Engineers on dates subsequent to the petitioner's appointment. However, vide the impugned orders (Annexures P-3 to P-9), the private respondents have been granted deemed dates of promotion as Municipal Engineers with retrospective effect, mostly from 19.04.2012, which is prior to the petitioner's appointment on 20.09.2012. Consequently, the petitioner has been shown junior to the private respondents in the tentative seniority lists of Executive Engineers (Annexures P-10 and P-11) and in the final seniority list dated 23.10.2024 (Annexure R-1).

4. Learned counsel for the petitioner further submits that the very foundation of the impugned orders stands demolished by the material on record. He refers to Annexure P-15, which is a list of Municipal Engineers promoted from the feeder cadre of Junior Engineers who were already working in the year 2012. The said list shows that there were already 53 promotees working as Municipal Engineers in the year 2012, whereas the total sanctioned strength of Municipal Engineers is 99 and the promotion quota is only 49 posts. Therefore, the promotion quota was already exhausted in the year 2012, and no further promotions, much less deemed promotions with retrospective effect, could have been granted to the private respondents against the promotion quota. The impugned orders granting deemed dates of promotion are, thus, contrary to the statutory quota rule and are liable to be set aside.

5. Further, the Learned counsel also contends that no opportunity of hearing was granted to the petitioner and other similarly situated



Municipal Engineers before passing the impugned orders, which have unsettled the settled seniority position that existed since long.

6. *Per Contra*, Learned counsel for the respondents submits that the scope of judicial review in service matters pertaining to promotions and seniority is very narrow. It is not a case that the impugned orders were passed in violation of statutory rules or principles of natural justice. He contends that the private respondents were granted deemed dates of promotion strictly in accordance with the 2010 Rules as they possessed the requisite degree in Civil Engineering since the year 2011, which was mandatory for promotion under Rule 7 (Appendix-B) of the 2010 Rules. He further argues that the then Competent Authority, after due examination, granted the benefit of promotion with retrospective effect, which is a permissible exercise of administrative power.

7. Further the counsel submits that the petitioner entered service only in September 2012, whereas the private respondents were already in the cadre of Junior Engineers much before that date. Therefore, their seniority has been correctly fixed by the competent submits that the private respondents were granted deemed dates of promotion as they possessed the requisite degree in Civil Engineering and were eligible for promotion retrospectively, and therefore, their seniority has been correctly fixed.

8. I have heard learned counsel for the parties and perused the record with their able assistance.

9. Admittedly, it is undisputed that the 2010 Rules prescribe a quota-rota system for appointment to the post of Municipal Engineer. Rule



7 read with Appendix-B of the 2010 Rules provides that 50% of the posts of Municipal Engineers shall be filled by direct recruitment and 50% by promotion from amongst Junior Engineers. The total sanctioned strength of Municipal Engineers is 99, meaning thereby that only 49 posts can be filled by promotion.

10. The petitioner has placed on record Annexure P-15, which indicates that in the year 2012, there were already 53 promotees working as Municipal Engineers. This fact has not been rebutted by the respondents. Thus, it is evident that the promotion quota was already exceeded in the year 2012. In such a situation, granting deemed dates of promotion to more 9 private respondents w.e.f. 2012 has undisputedly raised the number of promotees to 62.

11. The legal position regarding the strict adherence to the quota rule is well-settled. A Constitutional Bench of the Hon'ble Apex Court in ***S.G. Jaisinghani v. Union of India 1967 AIR SC 1427***, while speaking through Justice V. Ramaswami observed that,

“12. The Solicitor-General on behalf of respondents 1,2, and 3 submitted that the quota rule was merely an administrative direction to determine recruitment from two different sources in the proportion stated in the rule and a breach of the quota rule was not a justiciable issue. The Solicitor-General said that there was, however, substantial compliance with the quota rule. But in the absence of figures of permanent vacancies in Class 1, Grade II for the relevant years the Solicitor-General was unable to say what extent there had been deviation from the rule. We are unable to accept the argument of the Solicitor-General that the quota rule was not legally binding on the Government. It is not disputed that rule 4 of the Income-tax Officers (Class 1, Grade II) Service Recruitment Rules is a statutory rule and there is a statutory duty cast on the Government under this rule to determine the method or methods to be employed for the purpose of filling the vacancies and the number of candidates to be recruited by each method. In the letter of the Government of India dated October 18, 1951 there is no specific reference to rule 4, but the quota fixed in their letter must be deemed to have been fixed by the Government



*of India in exercise of the statutory power given under rule 4. **Having fixed the quota in that letter under rule 4, it is not now open to the Government of India to say that it is not incumbent upon it to follow the quota for each year and it is open to it to alter the quota on account of the particular situation** (See Para 24 of the counter affidavit of respondents 1 to 3 in Writ Petition No. 5 of 1966). **We are of opinion that having fixed the quota in exercise of their power under rule 4 between the two sources of recruitment, there is no discretion left with the Government of India to alter that quota according to the exigencies of the situation or to deviate from the quota, in any particular year, at its own will and pleasure. As we have already indicated, the quota rule is linked up with the seniority rule and unless the quota rule is strictly observed in practice, it will be difficult to hold that the seniority rule, i.e. rule 1(f) (iii) and (iv), is not unreasonable and does not offend Article 16 of the Constitution.**”*

12. Further, a Two Judge bench of the Hon’ble Supreme Court in *Sonal Sihimappa v. State of Karnataka 1987 AIR SC 2359*, while speaking through Justice Ranganath Misra observed that,

*“10. Badami's case referred to several authorities of the Court and clearly drew out the judicial consensus on the point in issue by concluding that the **quota rule had to be strictly enforced and it was not open to the authorities to meddle with it on the ground of administrative exigencies.**”*

13. Similarly, A Three Judge Bench of the Hon’ble Supreme Court in *M. Subba Reddy v. A.P. State Road Transport Corporation, (2004) 6 SCC 729*, while speaking through Justice S.H. Kapadia observed that,

*“We are of opinion that **having fixed the quota between the two sources of recruitment, there is no discretion with the corporation to alter the quota or to deviate from the quota.**”*

14. Once a quota rule is fixed between different sources of recruitment or promotion under statutory rules or in exercise of statutory powers, it is mandatory and legally binding on the concerned authority. The rule must be strictly enforced and cannot be altered, deviated from, or disregarded at the discretion of the administration based on administrative



exigencies, convenience, or situational demands. Any breach of the quota rule not only violates the statutory framework but also adversely impacts the seniority and career progression of employees, thereby raising issues of arbitrariness and infringement of constitutional guarantees under Article 14 and Article 16 of the Constitution of India.

15. In the present case, since the promotion quota was already exceeded in 2012, the grant of deemed promotions to the private respondents w.e.f. 2012 is clearly impermissible and violates the quota rule.

16. Further, in the present case, the petitioner was appointed as a direct recruit on 20.09.2012 and admittedly the private respondents, who were promoted later, were placed above the petitioner by granting them deemed dates of promotion w.e.f. 19.04.2012 retrospectively.

17. A two Judge bench of the Hon'ble Supreme Court in *Uttaran-chal Forest Rangers' Asson. (Direct Recruit) v. State of U.P (2006) 10 SCC 346*, while speaking through Dr. Justice AR. Lakshmanan, observed that,

*“15. This Court has consistently held that no retrospective promotion can be granted nor any seniority can be given on retrospective basis from a date when an employee has not even borne in the cadre particularly when this would adversely affect the direct recruits who have been appointed validly in the meantime. In, *State of Bihar & Ors. v. Akhoury Sachidananda Nath & Ors., 1991 Suppl. (1) SCC 334*, this court observed that,*

“12. In the instant case, the promotee respondents 6 to 23 were not born in the cadre of Assistant Engineer in the Bihar Engineering Service, Class II at the time when the respondents 1 to 5 were directly recruited to the post of Assistant Engineer and as such they cannot be given seniority in the service of Assistant Engineers over the respondents 1 to 5. It is well settled that no person can be promoted with retrospective effect from a date when he was not born in the cadre so as to adversely affect others. It is well settled by several deci-



sions of this Court that amongst members of the same grade seniority is reckoned from the date of their initial entry into the service. In other words, seniority inter-se amongst the Assistant Engineers in Bihar Engineering Service, Class II will be considered from the date of the length of service rendered as Assistant Engineers. This being the position in law the respondents 6 to 23 can not be made senior to the respondents 1 to 5 by the impugned Government orders as they entered into the said Service by promotion after the respondents 1 to 5 were directly recruited in the quota of direct recruits. The judgment of the High Court quashing the impugned Government orders made in annexures, 8, 9 and 10 is unexceptionable."

*This court in **Vinodanand Yadav & Ors. v. State of Bihar & Ors., 1994 Suppl. (2) SCC 44**, held :*

*"On an issue regarding the interse seniority among the direct recruits and promotees the Court applying the ratio of **State of Bihar v. Akhouri Sachindranath** held that the appellants who were direct recruits shall be considered senior over the promotees not borne on the cadre when the direct recruits were appointed in service. Hence the gradation list drawn under which promotees were given seniority over direct recruits could not be sustained and was thereby set aside".*

18. It is a well-settled principle in service jurisprudence that no promotion can be granted with retrospective effect, nor can seniority be conferred retrospectively from a date when the promotees were not even borne on the cadre, especially if such retrospective benefits would adversely affect the legitimate rights of direct recruits who have been validly appointed in the intervening period. Seniority must be determined based on the actual inclusion in the cadre, and any artificial ante-dating of promotion or seniority to a date prior to an employee's substantive existence in the cadre is impermissible, as it would unjustly prejudice those who have been regularly appointed and are working in the cadre during that period.

19. In view of the discussions above, both the present writ petitions are allowed. The impugned orders dated 08.03.2018, 27.05.2019,

27.06.2019, 09.08.2019, 17.06.2020, 25.05.2022 and 05.07.2022 (Annexures P-3 to P-9) are hereby quashed. The impugned tentative seniority lists dated 22.04.2021 (Annexure P-10) and 12.11.2021 (Annexure P-11), the impugned order dated 15.03.2023 (Annexure P-14) and the final seniority list dated 23.10.2024 (Annexure R-1) are also quashed to the extent they place the petitioner below the private respondents.

20. The respondents are directed to re-determine the seniority of the petitioner and the private respondents accordingly within a period of three months from the date of receipt of a certified copy of this order.

21. All consequential benefits, including promotion and seniority, shall be granted to the petitioner forthwith.

22. No order as to costs.

23. A photocopy of this order be placed on file of connected case.

(HARPREET SINGH BRAR)
JUDGE

12.01.2026
monika

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|---------------------------------|---------|
| 1. Whether speaking/ reasoned : | Yes /No |
| 2. Whether reportable : | Yes /No |