

PETITIONER:

M.P. JUNIOR ENGINEERS' ASSOCIATION AND SANGARSH SAMITY & ORS.

Vs.

RESPONDENT:

STATE OF MADHYA PRADESH & ANR.

DATE OF JUDGMENT 16/02/1990

BENCH:

RANGNATHAN, S.

BENCH:

RANGNATHAN, S.

RAMASWAMI, V. (J) II

CITATION:

1990 AIR 2010	1990 SCR (1) 424
1990 SCC Supl. 229	JT 1990 (1) 374
1990 SCALE (1) 219	

ACT:

Madhya Pradesh Irrigation Department (Non Gazetted) Service Recruitment Rules, 1969: Rule 7(4)--State Government competent to promote members of Non-Gazetted Service to Gazetted Service--Cadre of J. E. 's abolished--Promotional chances not to be affected.

HEADNOTE:

In August 1982 the Government of Madhya Pradesh decided to abolish the Madhya Pradesh Lift Irrigation Corporation. It was also decided to merge the surplus staff of the Corporation in the equivalent posts of the Irrigation Department of the State Government. Accordingly, with effect from 8.10.1982 the appellants, who were serving as Senior Technical Assistants (S.T.As.) in the Corporation, became Junior Engineers in the Irrigation Department but their seniority therein was fixed below the erstwhile Junior Engineers of the State Department. For this purpose, an equivalent number of posts were deemed to have been created in the dying cadre of Junior Engineers. Similarly, the Junior Technical Assistants in the Corporation were absorbed in the lower cadre of Sub-Engineers.

The Junior Engineers of the State Department on completion of two years' service as Junior Engineers, were entitled to be considered for promotion to the gazetted post of Assistant Engineers. Sometime in 1984, the appellants who were at the bottom of the seniority list of Junior Engineers became eligible for promotion as Assistant Engineers. Their legitimate claims in this regard were being stalled by the State, and so the appellants filed a writ petition in the High Court of Madhya Pradesh in 1986.

Later, the whole scheme of merger, as envisaged in the order dated 8.10.1982, was sought to be upset to the detriment of the appellants, and towards that end the order issued on 8.10. 1982 was amended on 1.3.1986. The effect of this amendment was that the Senior Technical Assistants were to be absorbed in the lower posts of Sub-Engineers retrospectively with effect from 8.10.82. The amendment however, provided that they shall be eligible for promotion to the posts of Assistant

Engineers from the quota of Graduate Sub-Engineers. This amendment vitally affected the interests of the appellants in so far as their status and chances of promotion were concerned.

Having failed before the High Court, the appellants have come to this Court by way of special leave.

Before this Court it was contended on behalf of the appellants that they having been given the right at the time of absorption in 1982 that they will be eligible for promotion in the same way as the erstwhile Junior Engineers of the State Department, this right could not be done away by invoking an earlier amendment of the rules.

On behalf of the respondent State it was inter alia contended that (1) the decision of the State Government to absorb the appellants as Junior Engineers had overlooked the fact that on 8.10.1982 there was no cadre of Junior Engineers because that cadre had been abolished in July 1979, and therefore this mistake was rectified on 1.3.1986 by absorbing the appellants in the lower cadre of Sub-Engineers; (2) the appellants when they opted to join as Junior Engineers were aware that according to the rules prevailing on that date there was no avenue of promotion for them as Assistant Engineers; (3) after 27.7.81 the relevant recruitment rules had been amended which made it clear that after that date there could be no promotion to the posts of Assistant Engineers from amongst Junior Engineers; and (4) the Junior Engineers belonging to the State Service had a right of promotion earlier and this was continued even after the amendment whereas the appellants became Junior Engineers at a time when there was no further promotion available to them and this made all the difference.

Allowing the appeal, this Court,

HELD: (1) The assumption of the respondents that the cadre of Junior Engineers had ceased to exist long before the absorption of the appellants into the Department is incorrect. Though the decision to abolish the cadre was taken in 1979 and the existing posts were converted into those of Assistant Engineers/sub Engineers on 27.5.1980, the cadre did not die, for the Junior Engineers of the Department who were then functioning continued to function as before until they were promoted in due course as Assistant Engineers. [438E-F]

(2) It is also not correct to say that this crucial fact had been overlooked at the time of passing the merger order of 8.10.82. On the

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contrary, the State was fully conscious of its earlier decision and the order of 8.10.82 specifically mentions that the posts of Senior Technical Assistants will be merged in the posts of Junior Engineers and an equivalent number of posts shall be deemed to have been created in the dying cadre of Junior Engineers. [438F-G]

(3) Rule 6(iv) of the Non-Gazetted Service Rules, read with Schedule I, clearly empowered the Government, in the exigencies of the situation, to continue the cadre for limited purposes and augment the same by the number of Senior Technical Assistants absorbed from the Corporation. [439H; 440A]

(4) On the terms of the relevant rules as on the language of the order of 8.10.1982, the appellants, viz. Senior Technical Assistants absorbed from the Corporation were constituted as a part of the cadre of Junior Engineers, placed on complete par with the Junior Engineers of the department already in service and given the same promotional eligibility and opportunities as the latter. [440A-B]

(5) It was open to the State, in view of rule 7(4) of the Gazetted Service Rules of 1968, to promote members of the non-gazetted services also to the Gazetted Service to the extent of a prescribed quota. The restricted language of rule 7, cannot therefore, be construed in such a way as to render redundant the specific provision in the Schedule entitling several persons from the Non-Gazetted services to promotion. [440G-H]

(6) In interpreting these rules and Government orders one should bear in mind that the promotional stipulations in Schedule II should be read in the light of rule 7(4) which permits a wide latitude to the Government in making recruitments, by way of promotion, even otherwise than in the manner outlined in rule 7(1). Reading the rules and the Government orders issued from time to time harmoniously, the effect of the cabinet order of July 1979 was that all J.Es., in position as such, should continue to be promoted until all of them became Assistant Engineers. [442F-G]

(7) It is seen from the records that such of the Junior Engineers, belonging to the cadre as had been in service with the State Department have continued to get their promotions even after the 1981 amendment. If that be so, then, clearly the Department cannot discriminate as between officers belonging to the same cadre by promoting some of them and denying promotion to others. A discrimination between them would be totally arbitrary and contrary to the scheme of absorption envisaged in 1982. [441F-G; 442B]

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(8) The truth of the matter is that, when abolition of the cadre of Junior Engineers was thought of, the State decided that this should not affect the existing Junior Engineers and their promotional chances. Again, when the merger of the Corporation and State services was thought of, the decision was that the Senior Technical Assistants should be placed on par with the Junior Engineers of the State Service. This was a conscious and equitable decision and to go back upon it has resulted in arbitrary discrimination against the appellants. By the decision of 1986, they lose their status as Junior Engineers (and are equated to Sub Engineers, which is the status also accorded to the Junior Technical Assistants, their subordinates in the erstwhile Corporation), they lose their right to promotion, they lose seniority by being placed at the bottom of the Sub Engineers of the State services, and the promotional quota now allotted to them is illusory. [443B-D]

(9) Gross injustice has been done to the appellants by the decision of 1.3.1986. This decision is therefore quashed. Accordingly, the appellants will be entitled to be considered for promotion as Assistant Engineers in the same manner and to the same extent as the Junior Engineers of the State service have been considered and not on the basis of the percentages prescribed for Sub Engineers under the amended rules. [443F-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No, 1191 of 1990.

From the Judgment and Order dated 15.7.1988 of the Madhya Pradesh High Court in M.P. No. 600 of 1985.

A.K. Sen, A.K. Gupta and N.P. Mahendra for the Appellants.

R.B. Datar, Satish K. Agnihotri, Devender Singh, Ashok Singh and R.B. Misra for the Respondents.

The Judgment of the Court was delivered by

RANGANATHAN, J. The controversy in this Special Leave Petition arises out of the merger, with effect from 1.10.1982, of the staff of the Madhya Pradesh Lift Irrigation Corporation (hereinafter referred to as 'the Corporation') with that of the Irrigation Department of the State Government consequent on the abolition of the Corporation. We have heard counsel on both sides and we are of opinion that these matters should be disposed of finally even at this

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stage. We therefore grant leave in the Special Leave Petition and proceed to dispose of the appeal.

Appellants 2 to 17 and certain other writ petitioners in the High Court were serving as Senior Technical Assistants (S.T.A.) in the Corporation. The cadres of S.T.As. and the lower cadre of Junior Technical Assistants (J.T.As.) in the Corporation were equivalent respectively to the cadres of Junior Engineer (J.E.) and Sub-Engineers (S.E.) in the Irrigation Department of the State. It is common ground that the qualifications for appointment to the two sets of posts were the same and that their pay scales were also the same. The appellants claim that they are entitled, after the merger of the Corporation into the Irrigation Department, to be treated as Junior Engineers and considered for promotion as Assistant Engineers on completion of two years of service but that this avenue of promotion is being denied to them by the State.

To appreciate the above contention, it is necessary to set out some historical background of the cadres in the State Department. Initially the Junior Engineer's post in the State Government was a non-gazetted post, governed by the Madhya Pradesh Irrigation Department (Non-Gazetted) Service Recruitment Rules, 1969. The Junior Engineers, on completion of two years' minimum service, were entitled to consideration for promotion to the gazetted post of Assistant Engineer, a post governed by the Madhya Pradesh Irrigation Engineering Service (Gazetted) Recruitment Rules, 1968. On March 19, 1973 the posts of Junior Engineers were declared to be gazetted posts. 75% of the posts of Assistant Engineers could be filled up by promotion from amongst Junior Engineers. On January 1, 1978 the Junior Engineer's post was once again converted into a non-gazetted post. The quota for such of those Junior Engineers as were working as gazetted officers immediately before the issue of this order was retained at 75% as before for a period of two years by which time it was expected that all of them would get promoted as Assistant Engineers. But for this, the posts of Assistant Engineers were to be filled up equally by promotion from subordinate cadres and direct recruitment. The promotion quota was distributed among the subordinate cadres in the following proportion:

Junior Engineers (Non-Gazetted)	-- 25%
Overseers (Sub-Engineers)	-- 20%
Head Draftsman/Draftsman	-- 5%

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In July, 1979 the Government decided to abolish the post of Junior Engineers in the State Irrigation Department. The relevant cabinet order set out the following terms therefore:

1. The posts of Junior Engineer in the three works departments should be abolished. The Junior Engineers presently working in these departments shall continue to work in their existing payscales under the existing service conditions till their promotion. (emphasis added)
2. The quota of recruitment for the post of Assistant Engi-

neer, which is at present 50% should be raised to 75%.

3. 25% posts in the Sub-Engineer cadre be converted into selection grade posts and selection for the selection grade post should be made on the basis of merit-cum-seniority.

4. The quota prescribed for promotion of the Draftsmen should be reduced from 5% to 3%. Promotion quota of 2% should be reserved for those Sub-Engineers/Draftsmen who obtain degree while in service.

5. The posts of Junior Engineer cadre, which presently exists, should be converted into the posts of Assistant Engineers and Sub-Engineers with the concurrence of the finance department".

Eventually, the State Government decided on 27th May, 1980 that the 941 posts of Junior Engineers in the Irrigation Department should be abolished by converting 658 of those posts into posts of Assistant Engineers and 233 posts into posts of Sub-Engineers (Overseers). It must be, however, pointed out that, though the existing posts of J .Es. or S.Es. stood abolished from 27.5. 1980, in fact, a number of Junior Engineers appointed earlier continued to function as before, under the memorandum of July 1979, until they received promotions as Assistant Engineers (A.Es.) in due course.

We now come to the details of the merger between the Corporation and the State Department. In August, 1982 a decision was taken to abolish the Corporation. The Government decided on the merger the surplus staff of the Corporation in the Irrigation Department and 8.10.82 was decided upon as the effective date of merger for purposes. We are concerned here with the formula for transition set out in the opening para of a memorandum of the above date regarding the

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merger of the posts of S.T.As. and J.T.As. It read thus:

- | | |
|---|---|
| <p>"2. Senior Technical Assistants
Equivalent Post-Junior Engineer
(Rs. 360-650)</p> <p>27 posts-Civil
Posts-Electrical
(Mechanical)
posts-Geologists
post-Geophysist</p> | <p>Sectioned posts--Nil
The above employees may be merged in the posts of Junior Engineers and an equivalent number of posts may be deemed to have been created in the dying cadre of Junior Engineers.</p> |
| <p>3. Junior Technical Assistants Equivalent post: (Sub-Engineer
(Rs.280-480)</p> <p>62 Posts-Civil</p> | <p>Sanction--30 posts (reserved).
These may be merged against the posts of Sub-Engineers which have been obtained by conversion of the posts of Junior Engineer. The posts reserved for Scheduled Castes and Scheduled Tribes may be made unreserved and appointments may be made against them also."</p> |

The memorandum of 8.10.1982 was followed up by a communication dated 10.11.1982. The enclosures to this letter described the absorptions as "ad hoc" but this word was deleted on 29.1. 1983 with reference to the posts with which we are concerned, making it clear that the absorption was to be permanent. The letter set out three conditions for the merger which admittedly are fulfilled by the appellants:

(i) The staff will be absorbed only subject to their fulfilling the qualifications prescribed for the posts against

which they are to be absorbed;

(ii) The inter-se seniority of the employees of the Corporation shall be in accordance with the seniority list cleared by the Managing Director. The inter-se seniority of the departmental employees and the employees of the Corporation shall be determined in accordance with the orders of the Government; and

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(iii) It was open to an employee of the Corporation to join the Government department or not to do so, for the employees were to be required to join duties at the place of their posting within 20 days from 10.11. 1982, failing which it was to be deemed that the appointment was not acceptable to them.

The seniority rule was announced much later, on 16.4.1984. It said:

"The regular officers/employees of the Corporation shall, in the event of merger in the Irrigation Department, be considered as Junior to the permanent officers/employees of the Department and their seniority in the lists of the temporary officers/employees of the department, shall be fixed on the basis of the dates of assuming office, without affecting the inter-se seniority of the Corporation".

The result of all this, according to the appellants, was that the S.T.As. of the Corporation became, w.e.f. 8.10./1982, J.Es. of the department but their seniority therein was below the J.Es. of the State Department who had been in office in July 1979 and continued to function as such even thereafter. It is stated that these Junior Engineers in the Department were being gradually promoted as A.Es. and it was only sometime in 1983 that the appellants who were at the bottom of the seniority list became eligible for promotion as A.Es. Their legitimate claims in this regard, it is alleged, were being stalled by the State and so the appellants filed a writ petition in the High Court in 1985.

Sometime later, the appellants allege, it came to light that the State, far from giving the petitioners their legitimate entitlement, was planning a volteface to upset the whole scheme of merger as envisaged earlier, to the detriment of the applicants. This they did, it is said, by issuing a memo on 1.3. 1986 which read thus:

"1. The State Government amends point No. 2 of paragraph 1 of the orders issued vide Irrigation Department's Memo No. 22(C)/43/32/P/37 dated 8.10.1982 as follows:

2, Senior Technical Assistants	] [	The above employees
equivalent to Junior Engineer (Rs.350-650)	] [	may be absorbed on the post of Sub-Engineer protecting

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27 posts--Civil	] [	the pay which they were drawing previously. Such
34 posts--Electrical	] [	absorbed employees shall be eligible for promotion to the posts of A. Es. from the quota of Graduate Sub-Engineers.

2. These orders shall come into effect from 8.10. 1982." This order vitally affected the interests of the appellants in four respects--

(a) Having been absorbed into the State Department as J.Es. in 1982, they were suddenly demoted to the post of S.Es. retrospectively, with the "saving grace" that their pay was

protected;

(b) Under the seniority rules of 1984 earlier referred to, they were at the bottom of the list of J.Es. but above the S.Es. But now they became juniors to all the Sub-Engineers of the Department;

(c) While previously a substantial quota for promotion from J.Es. to A.Es. was applicable to them, the quota now got reduced (as will be explained later) to 4%; and

(d) While previously an experience of 2 years was sufficient for their promotion, now they had to have a minimum experience of 8 years (as will be seen later).

The combined effect of all this is, it is alleged, that the appellants will become eligible for consideration for promotion as A.Es. in the distant future as follows:

Year	No. of posts available Graduate Sub-Engineers quota
1989	1
1997	3
2004	2
2007	1
2008	1

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In other words, only 8 persons will become eligible at distant dates whereas all of the appellants should have received promotions gradually since 1983 as and when vacancies occurred. The appellants contend that this is a great travesty of justice which should be set right by quashing the decision of 1.3.1986 and restoring the position as it actually prevailed on 8.10.1982 at the time of the merger.

Sri Datar attempted to counter this--what prima facie appeared to be a just and reasonable--plea with his usual persuasiveness. He urged that the contentions of the appellants overlook four important basic facts and that, if these are kept in mind, it will be seen not merely that no injustice has been done to the appellants but that, in fact, the State has come to their rescue by providing an avenue of promotion where none existed. These basic facts are, he says:

(1) As from 27.5.1980, there was no cadre of junior engineers at all in the State service. That cadre had been abolished by the decision of 1979 and the conversion, on 27.5.1980, of the existing posts of J.Es. into those of A.Es/S.Es.

(2) There had been an amendment on 27.7.81 to the relevant recruitment rules which made it clear that, after that date at least, there could be no promotions to the posts of A.Es. from among J.Es.

(3) When the Corporation was abolished in 1982, the State Government could have dispensed with the services of the appellants. Instead, they considered the appellants' cases sympathetically and decided to absorb them into the State service. In doing so, they purported to absorb them as J.Es. overlooking that, as on 8.10.1982, there was no cadre of J.E. in the State service. It is this mistake that was rectified on 1.3.1986 by absorbing the appellants as S.Es. (instead of as J.Es.) but protecting the pay they were drawing.

(4) The petitioners had an option to join or not to join the State service on 8.10.1982 as J.Es. When they decided to join, they were aware that, according to the rules prevailing on that date, there was no avenue of promotion for them as A.Es.

The net result of these considerations is, says Sri

Datar, that, instead of completely denying the appellants any promotion altogether (as there was no right, under the rules, to any such promotion),

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the State has, equitably, decided to confer on these officers a right of promotion by treating them as S.Es. This was a generous gesture on the part of the State. The appellants should have been happy that an avenue for promotion had been opened out to them, instead of being disgruntled on the assumption that their promotion chances had dwindled by the action of the State. This was the only reasonable way of resolving the impasse that faced the appellants and the authorities.

Since Sri Datar has referred to the rules, it will be appropriate to pause here and notice the relevant service rules and the amendments made thereto:

Taking up the Non-Gazetted Service Rules of 1969 first, they provided, in Schedule I--read with rule 5--for 269 posts of Civil Engineers and 13 posts of Electrical/Mechanical Engineers in the cadre of Junior Engineers. Curiously enough these rules appear to have remained unamended notwithstanding the decision of 1979 to abolish these posts and the office order of 1980 converting these posts (these appear to have numbered 941 at the relevant time) into A.Es. or S.Es.

Turning next to the Gazetted Service Rules, the following provisions thereof are relevant:

Rules 7. Method of recruitment----

(1) Recruitment to the service, after commencement of the rules, shall be by the following methods, viz.:

- (a) by direct recruitment by selection;
- (b) by promotion of substantive/officiating member of the M.P. Irrigation Engineering Service (Gazetted); and
- (c) by transfer of persons who hold in a substantive capacity such posts in such services as may be specified in this behalf.

(2) The number of persons recruited under clause (b) or clause (c) of sub-rule (1) shall not at any time exceed the percentage shown in Schedule II of the number of duty posts (as specified in Schedule I).

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(3) Subject to the provisions of these rules, the method or methods of recruitment to be adopted for the purpose of filling any particular period of recruitment, and the number of persons to be recruited by each method, shall be determined on each occasion by the Govt. in consultation with the Commission.

(4) Notwithstanding anything contained in sub-rule (1) if in the opinion of the Govt., the exigencies of the service so require, the Govt. may, after consulting the General Administration Department, adopt such methods of recruitment to the service other than those specified in the said sub-rule, as it may by order issued in this behalf, prescribe.

Rule 15. Conditions of eligibility for promotions(1) Subject to the provisions of sub-rule (2), the Committee shall consider the case of all persons who on the 1st day of January of that year had completed the prescribed years of service (whether officiating or substantive) in the post/service mentioned in column 2 of Schedule IV or any other post or posts declared equivalent thereto by the Govt. as under and are within the zone of consideration, as per subrule (2)--

(i) Sub-Engineers, Head Draftsman/Draftsman to the posts of Assistant Engineers--Minimum service of 12 years as Sub-Engineers, Head Draftsman/Draftsman.

Provided that a Sub-Engineer and Head Draftsman/Draftsman who has completed a minimum of 8 years' service and possesses degree in Civi/Electrical/Mechanical Engineering from recognised university or qualification declared equivalent thereto by the State-Govt., will also be eligible for promotion to the post of Assistant Engineer and will be considered each time just after the zone of consideration and then final selection just will be made from both the groups on the basis of merit. For example, if ten posts are vacant in the cadre of Asstt. Engineer to be filled by promotion of Sub-Engineer, then 10x5=50 diploma holder Sub-Engineers from working list be considered first and thereafter the eligible graduate Sub-Engineers be considered in the order of their seniority for promotion.

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(ii) Junior Engineers to the posts of Assistant Engineers minimum service of 2 years as Junior Engineer.

XXX XXX XXX

Rule 18. Select list--(1)The Commission shall consider the list prepared by the Committee along with the other documents received from the Govt. and unless it considers any change necessary, approve the list.

(2) If the Commission considers it necessary to make any changes in the list received from the Govt. the Commission shall inform the Govt. of the changes proposed and after taking into account the comments, if any, as may in its opinion be just and proper.

(3) The list as finally approved by the Commission shall form the select list for promotion of the members of the cadres of Sub-Engineers, Head Draftsman/Draftsmen, Research Assistant and Junior Engineers of the M.P. Irrigation Engineering Service or its higher cadres, as the case may be.

(4) The selectee list shall ordinarily be enforced until it is reviewed or revised in accordance with sub-rule (4) of rule 16, but its validity shall not be extended beyond a total period of 18 months from the date of its preparation:

Provided that, in the event of a grave lapse in the conduct of performance of duties on the part of any person included in the select list, a special review of the select list, may be made at the instance of the Govt. and the Commission, may, if it thinks fit, remove the name of such person from the select list".

(underlining ours)

Schedule I to the rules specified the number of posts in each cadre. So far as Assistant Engineers (Class II) are concerned, the number of posts is put at 329 (253 permanent and 76 temporary) in the Civil Branch and 36 (22 permanent and 14 temporary) in the Electrical & Mechanical Branch. The description and contents of the relevant columns of Schedule II have to be set out a little more meticulously. They read:

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Name of Deptt.	Name of service	Total no. of duty post	M.P. Irrigation Engg. Service (Gazetted) P.T.T percentage of the number of duty posts to be filled in		
			By direct recruitment	By promo- non of the substantive members of the service	By transfer of persons from other service
			[vide rule 7(a)]	[vide rule 7(b)]	[vide rule 7(c)1]

(1)	(2)	(3)	(4)	(5)	(6)
Civil Irriga- tion Deptt.	AE, Class II	253 76	329 50	50 50	25% by promotion of JEs 20% by promotion of SEs (previously Overseers) 5% by promotion of Head Draftsman/ Draftsmen
Elec- trical & Mecha- nical Branch	-do-	22 34 36	50 50	As for A.E.	(underlining ours)

Schedule IV says that J.Es. (Class III) with minimum experience of two years as well as S.Es. and Head Draftsmen/Draftsmen with 12 years' experience (8 years in the case of degree holders) will be eligible for promotion as A.Es. (Class II) on selection by a departmental committee constituted as specified therein.

The interesting feature regarding the amendments of 1981 relied upon by Sri Datar is that they left the rules quoted above and Schedules I & IV untouched. They only amended Schedule II in two respects:

(1) In the heading of column 5, the words "By promotion" were

substituted for the words "By promotion of substantive members of the service [vide rule 7(b)]".

(2) The figures in columns 4 and 5 were substituted by the following in respect of both the Civil Branch and the Electrical/ Mechanical Branch:

(4)	(5)
60	40
	33% by SEs. who are diploma holders; 4% by SEs./Draftsmen who are Engineering Graduates; 3% by Draftsmen/Head Draftsmen who are not Engineering Graduates.

We have considered the submissions of the parties in the light of the above rules and amendments and come to the conclusion that there is force in the contention of the appellants that they are eligible for promotion as AEs. in the same manner as the erstwhile JEs. of the Irrigation Department. The assumption of the respondents that the cadre of JEs. had ceased to exist long before the absorption of the present appellants into the Department is incorrect. As pointed out earlier, though the decision to abolish the cadre was taken in 1979 and the existing posts were converted into those of AEs./SEs. on 27.5. 1980, the cadre did not die, for the JEs. of the Department who were then functioning continued to function as before until they were promoted in due course as AEs. It is also not correct to say that this crucial "fact" had been overlooked at the time of passing the merger order of 8.10.1982. On the contrary, the State was fully conscious of its earlier decision and the order of 8.10.1982 specifically mentions that the posts of STAs. will be merged in the posts of JEs. "and an equivalent number of posts may be deemed to have been created in the dying cadre of Junior Engineers". These words make it per-

fectly ,clear that the cadre of YES. was "dying" (but not dead) and the strength of the dying cadre was further enlivened by taking in the STAs. of the Corporation as JEs. Thus, the position is that, as on 8.10.82, the cadre of JEs. continued to subsist and comprised of the old JEs. of the Irrigation department and the STAs. engrafted from the Corporation. This conclusion is reinforced by the interesting circumstance that the refe-

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rence in Schedule I of the Non-Gazetted Service Rules to JEs. was not omitted despite the decisions of 1979 and 1980. It is true that the number of these posts was mentioned as 269 in the Civil Branch and 13 in the Electrical & Mechanical Branch. But the actual number had far exceeded these without a corresponding amendment in the Schedule. This, however, is inconsequential. Rule 6 of these Rules is in the following terms:

Rule 6. Method of recruitment--(i) Recruitment to the service, after the commencement of these rules, shall be by the following methods, viz.--

(a) by direct recruitment, by Selection/by Competitive Examination as shown in Schedule II,
(b) by promotion of substantive/officiating members of the service (as shown in the Schedule IV), and
(c) by promotion of persons who hold in a substantive capacity such posts in such services as may be specified in this behalf.

(ii) The number of persons recruited under clauses (b) and (c) of sub-rule (1) of the rule 6 shall not at any time exceed the percentage shown in the Schedule II.

(iii) Subject to the provisions of these rules, the method/methods of recruitment to be adopted for the purpose of filling any particular vacancy/vacancies in the Service as may be required to be filled during any particular period of recruitment, and the number of persons to be recruited by each method, shall be determined on each occasion by the appointing Authority.

(iv) Notwithstanding anything contained in sub-rule (i) if in the opinion of Engineer-in-Chief/Chief Engineer, the exigencies of the service so require, the said Engineering-Chief/Chief Engineer, may after consulting the Govt., may adopt such methods of recruitment to the service other than those specified in the said sub-rule, as he may, by order issued in this behalf, prescribe.

Rule 6(iv) read with the Schedule I clearly empowered the Govern_

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ment, in the exigencies of the situation, to continue the cadre for limited purposes and augment the same by the number of STAs. absorbed from the Corporation. We have, therefore, no hesitation in holding that, - on the terms of the relevant rules as well as on the language of the order of 8.10.1982, the appellants, viz. STAs. absorbed from the Corporation were constituted as a part of the cadre of J.Es., placed on complete par with the JEs. of the department already in service and given the same promotional eligibility and opportunities as the latter.

Counsel for the State contends that this conclusion would directly run contrary to the rules of the Gazetted Service particularly after their amendment in 1981 and that, after the date of said amendment, no AE could be recruited by promotion from among JEs. The objection on this account is two-fold. The first, not clearly articulated by counsel, is that rule 7(b) permits recruitment by promotion only from among the members of the service and that a Non-Gazetted JE

is not eligible for promotion. The second is that, after the 198/amendment, JEs have been excluded as one of the sources of recruitment by promotion. We shall deal with these two objections one after another.

It is true that rule 7(b) of the Gazetted Service Rules of 1968 provides only for JEs belonging to the said service being promoted as AEs. However, when the JE's post became a non-Gazetted one in 1978, the relevant Government orders made it clear that AEs will be recruited by promotion from among JEs to the extent of 25% out of the 50% quota available for promotion. The Schedule clearly mentioned this. As it also mentioned SEs and Head Draftsman as other sources from which promotion could be made, the reference to JEs was also clearly to the non-Gazetted JEs. Promotion of Gazetted JEs had been separately provided for as before. Thus, under the Schedule, non-Gazetted JEs were also clearly eligible for promotion despite the restriction in rule 7(b). This inconsistency between the Schedule and the rule was apparently noticed only in 1981 and the heading of Column 5 of Schedule II was amended to make it clear that the promotions therein referred-to were from the non-Gazetted service, although rule (b) was left unamended. The omission to amend rule 7, however, is not of much significance. It was open to the State, in view of rule 7(4), to promote members of the non-Gazetted Services also to the Gazetted Service to the extent of a prescribed quota. The restricted language of rule 7 cannot, therefore, be construed in such a way as to render redundant the specific provision in the Schedule entitling several persons from the non-Gazetted services to promotion.

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It is then argued that, at any rate, after the amendment of the relevant columns of Schedule II in 1981 there is no right in any J.E. to claim promotion as A.E. At least from that date, the promotional avenue for J.Es. stands abolished, claims Sri Datar. Sri Ashok Sen, for the petitioner, contended that the petitioners having been given a right, at the time of absorption in 1982, that they will be eligible for promotion in the same way as the erstwhile J.Es. of the State Department, this right cannot be taken away by invoking an earlier amendment of the rule. He cited some authorities in support of the proposition and pointed out that the petitioners had amended the original writ petition to include a prayer for quashing the amendment purportedly effected on 27.7.81. On the other hand, Sri Datar contends that no employee has a vested right to promotion and that it was in law open to the Government to change the conditions of service so as to take away a right to promotion that may have existed earlier. But, he pointed out, so far as the petitioners were concerned, there was no taking away of any right to promotion at all because, even as on 8.10.82 when they claim to have become J.Es., the rules provided for no promotional avenue at all and none was promised to them either by the order dated 8.10.82.

We do not think it is necessary for us to express any views on the question whether an amendment taking away the rights of promotion earlier available to a cadre of employees is constitutionally valid. We shall proceed on the assumption, as contended by the State, that this is permissible and that the effect of the amendment is that, on and from 27.7.81, no A.E. can be recruited, under the amended Schedule, from among the J.Es. Assuming this to be correct, this rule should apply to all the J.Es. in the "dying cadre". It is seen from the records placed before us that such of the J.Es. belonging to this cadre as had been in

service with the State Department have continued to get their promotions even after the 1981 amendment. This is clear from the gradation list filed by the appellants which shows that three Junior Engineers were promoted as AEs. on 17.8.83. Further, the specific averments to this effect in the affidavits filed on behalf of the petitioners at various stages have not been denied. The petitioners have also placed on record an order dated 18.10.1985 which shows that a J.E. of the State Department in the Electrical & Mechanical Branch (perhaps the last of that category) was promoted as A.E. If this be so, then, clearly, the Department cannot discriminate as between officers belonging to the same cadre by promoting some of them and denying promotion to others. Sri Datar emphasised that the J.Es. belonging to the State service had a right of promotion earlier and this was continued even after

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the amendment whereas the appellants became J.Es. at a time when there was no further promotion available to them and that this makes all the difference. This argument runs somewhat contrary to the earlier argument of counsel that the amendment of 1981 should be treated as applicable to all claims for promotion after 27.7.81 and that the State is at complete liberty to deny promotion after that date even in respect of those who may have earlier had a right to such promotion. But even assuming that the distinction now sought to be pointed out by him marks a difference between the two categories of J.Es. on the cadre as on 8.10.82, a discrimination between them would be totally arbitrary and contrary to the scheme of absorption envisaged in 1982. It cannot be presumed that the State, when it absorbed the S.T.As. into the dying cadre of J.Es., was unaware that (though, since 1981, there were no promotional avenues for J.Es. as A.Es. under the rules) the incumbents of that cadre were entitled to such promotion under the cabinet orders dated 5.7.79. The order of 8.10.82 places the absorbed S.T.As. into that "dying" cadre by creating fictionally an equal number of posts to accommodate the persons so absorbed. The intention and effect of the order of 8.10.82 was to grant to all the S.T.As. so absorbed exactly the same status as was enjoyed by those already in the cadre. In other words, if the J.Es. already existing in the cadre has a right of promotion, as on 8.10.82, the new incumbents were also given that right; and if they had none after 27.7.1981, the new incumbents would have none either. The State has admittedly proceeded on the footing that, despite the 1981 amendment, the J.Es. from the State Department were eligible for promotion; in fact, they have been promoted since 1979 as A.Es. as and when vacancies arose. This being so, any differential treatment of the absorbed S.T.As. would clearly be discriminatory and unconstitutional. In interpreting these rules and Government orders, one should bear in mind that the promotional stipulations in Schedule II should be read in the light of rule 7(4) which permits a wide latitude to the Government in making recruitments, by way of promotion, even otherwise than in the manner outlined in rule 7(1). Reading the rules and the Government orders issued from time to time harmoniously, the effect of the cabinet order of July, 1979 was that all J. Es., in position as such, should continue to be promoted until all of them became A.Es. It is no doubt somewhat difficult to see how after 27.7.81, only a part of the pattern of recruitment in vogue earlier could stand side by side with that introduced on that date. One could have understood a stand on the part of the State that, as and from that date, promotions would be limited only to the new

feeder categories and would not be available to any J.E. at all. But if the subsequent variation of 1981 did not override this benefit extended to the former State

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J.Es. and has not been understood as having done so and the pattern of promotion indicated in the amendment of 1981 was subject to the right of such J.Es. in the cadre for promotion as per the cabinet order of 1979, it is difficult to see how a different rule could be applied to the S.T.As. who have been absorbed to augment that cadre. The truth of the matter is that, when abolition of the cadre of J.Es. was thought of, the State decided that this should not effect the existing J.Es. and their promotional chances. Again, when the merger of the Corporation and State services was thought of, the decision was that the S.T.As. should be placed on a par with the J.Es. of the State service and that the J.T.As. should be placed on par with the S.Es. This was a conscious and equitable decision (for, as is common ground, the post of S.T.A was equivalent to J.E.) and to go back upon it has resulted in arbitrary discrimination against the appellants. By the decision of 1986, they lose their status as J.E. (and are equated to S.Es. which is the status also accorded to the JTAs, their subordinates in the erstwhile Corporation), they lose their right to promotion, they lose seniority by being placed at the bottom of the S.Es. of the State service and the promotional quota now allotted to them is illusory. It is true that they had volunteered for absorption as JEs. in 1982, a date when there was no promotional avenue to a JE under the rules. But they did so because they were told that they would be placed on par with the J.Es. in the State service and never imagined that they would be denied promotion on the basis of the amended rules while the JEs in the State service continued to get promotions despite the amendment. The fact that they opted for the, State service does not, therefore, entitle the State to treat them differently from the JEs of the State service. We have, therefore, no doubt in our minds that gross injustice has been done to the appellants by the subsequent decision of the State Government. We, therefore, quash the decision of 1.3.86 and direct that the appellants will be entitled to be considered for promotion as A.Es. in the same manner and to the same extent as the J.Es. of the State service have been considered and not on the basis of the percentages prescribed for S.Es. under the amended rules. In the view taken by us that the rules and the amendment therein do not override the effect of the orders of 5.7.1979 and 8.10.82, it is not necessary for us to pronounce any opinion on the validity of the 1981 amendment to the Rules.

The appeals succeed to the extent indicated above. There will be no order as to costs.

R.S.S.
allowed.

Appeals

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