

PETITIONER:

SUBHASH CHANDER SHARMA & ANR, STATE OF PUNJAB & ORS.

Vs.

RESPONDENT:

HARI KRISHAN & ORS.

DATE OF JUDGMENT: 14/05/1999

BENCH:

G.T.Nanavati, S.N.Phukan

JUDGMENT:

NANAVATI. J.

Leave granted. Heard learned counsel for the parties.

The appellants are working as Junior Engineers/Overseers in the Punjab Overseers Service, Irrigation Branch, P.W.D. since about 1962. They hold diploma in engineering. For Junior Engineers/Overseers the next post of promotion is the post of Assistant Engineer. Infact, the Assistant Engineer constitute Punjab Service of Engineers, Class II (irrigation Branch). The recruitment to the post of Assistant Engineer is governed by the Punjab Service of Engineers, Class II, (Irrigation Branch) Rules, 1941.

On August 20, 1957 the Secretary to the Government of Punjab, P.W.D. (Irrigation Branch) issued a letter regarding recruitment to PSE Class II. It was stated therein that in view of large number of temporary engineers being in employment in irrigation branch due to heavy expansion of Bhakra Nangal and other projects, the Government has decided that till further orders no officer shall be appointed by direct recruitment to P.S.E. Class II and henceforth the same shall be filled by promotion from amongst temporary engineers and section officers and head draftsman in the ratio mentioned in the letter. Later on the said percentage was revised in October 1969, May 1972 and February 1974 but it is not necessary to go into those details. Again by a notification dated April 23, 1992 the percentage was fixed as under:

"1. Direct recruitment: Temporary Engineers. 55%

II. By promotion

i) from Junior Engineers (Civil) 20% ii) from Junior Engineer (Mech.) 5% iii) from members of Drawing staff 6% iv) From A.M.I.E. qualified

Junior Engineers 11% Drawing staff 3 % 14%"

This notification was challenged by those Junior Engineers who are graduates in engineering by filing writ petitions in the Punjab & Haryana High Court on the ground that no promotion can be made of those Junior Engineers who do not have the requisite educational qualifications

prescribed by Rule 3 and, therefore, no quota could have been legally fixed for their promotion. The Division Bench of the High Court agreeing with the reasoning of the Single Judge of the High Court in R.C. Tondon vs. State of Punjab 1995 (6) Services Law Reporter 307 held that the Junior Engineers who do not possess university degree or other qualifications prescribed in Appendix A to the Rules are not eligible for promotion under Rule 5 except in cases where relaxation in that behalf is made by the Government in exercise of its power under the last proviso to Rule 5 read with Note 2 to Rule 3 of the Rules. Taking this view the High Court dismissed both the writ petitions.

Mr. Tulsi, learned Senior counsel appearing for the appellants submitted that the High Court has not only over-looked the fact that if Junior Engineers, who do not possess graduate degree or an equivalent question is held ineligible for promotion then they will not have even one chance of promotion throughout their career but has also-mis-interpreted Rule 5. He submitted that the second proviso to Rule 5 which is in respect of promotion of temporary engineers, is an independent provision and keeping the object of the provision in mind it ought to have been held that for promotion of a temporary engineer to the post of Assistant Engineer the eligibility criteria is (1) he has been declared by the Commission on the report of the Chief Engineer to be fit for the service; (2) has held an appointment for not less than two years continuously before the date of entry into the service; (3) is not less than 26 years or more than 50 years of age on the first day of June, immediately preceding the date on which taken into the service and (4) in case of promotion of a member of the Overseers Engineering Service or Draftsmen Service unless he has passed both the departmental professional and revenue examinations of irrigation Branch. He also submitted that third or the last proviso to Rule 5 is again an independent provision made in respect of Junior Engineers possessing outstanding merit. He also submitted that it could not have been intended by the rule making authority that temporary junior engineers apart from the qualification of a degree in engineering should satisfy the other conditions also mentioned in the second proviso to Rule 5. On the other hand, Mr. P.P. Rao, learned Senior counsel appearing for the respondents submitted that on correct interpretation of Rule 5 it should be held that the qualification of a degree in engineering is a must for an appointment as Assistant Engineer and unless that condition is relaxed either by exercising the power available under the third or the last proviso to Rule 5 or the general power of relaxation under Rule 19 Junior Engineer, who is a diploma holder, cannot be promoted to the post of an Assistant Engineer.

The Rules relevant for consideration of the rival contentions are as under:

"(2) In these rules, unless there is anything repugnant in the subject or the context -

(a) xxx xxx xxx xxx (b) xxx xxx xxx xxx (C) xxx xxx xxx xxx (d) xxx xxx xxx xxx (e) xxx xxx xxx xxx

(f) "Temporary Engineer" means an Engineer in the service of the Public Works Department, Punjab, whose appointment is temporary within the meaning of the

Fundamental Rules, is nonpensionable and who is not a member of any regular service.

(g)"the service" means the Punjab Service of Engineers. Class II (Irrigation Branch)

(h) "Assistant Engineer" means a member of Punjab Service of Engineers, Class II (irrigation Branch)

(3) No Person shall be appointed to service unless he

(a) xxx xxx xxx xxx (b) xxx xxx xxx xxx

(C) possesses one of the university degrees or other qualifications prescribed in Appendix 'A' to these Rules;

(d) xxx xxx xxx xxx

NOTE : Clause (c) may be waived in the case of members of the Oversear Engineering Service, Irrigation Branch, Punjab to be promoted to the Service, under the proviso at end of Rule 5 of Part II, appointment rules.

4. Constitution of the Service. The Service shall consist of -

(a) existing members of the Service, (b) Officers transferred or promoted from another State Service, whether in the same or another State, or promoted from the Overseers Engineering Service, Irrigation Branch, Punjab, or Irrigation Branch (Provincial Draftsman and Tracers) Service or temporary engineers taken into the service..

(c) Officers directly appointed by Government

NOTE: xxx xxx xxx xxx

5. Appointment to the Service: Government may make appointments to the service from the classes mentioned in rule 4, provided that no person shall be appointed unless he possesses the qualifications specified in Rule 3, and provided further, that no temporary Engineer shall be taken into and no member of the Overseers Engineering Service or Draftsman service shall be promoted to the service unless he has been declared by the Commission on the report of the Chief Engineer to be fit for the service, is serving in the Department, and has held an appointment for not less than 2 year" continuously before the date of entry into the service, and is not less than 26 years or more than 50 years of age on the first day of June. immediately preceding the date on which taken into the service and in the case of promotion of a member of the Overseers Engineering Service or Draftsmen Service unless he has passed both the Departmental Professional and Revenue Examinations of Irrigation Branch;

Provided that this rule may be relaxed by Government on the recommendations of Chief Engineers in order to admit the promotion of a member of the Overseers Engineering Service or Draftsmen Service unless he has passed both the Departmental Professional and Revenue Examinations of irrigation Branch.

Provided that this rule may be relaxed by Government on the recommendations of Chief Engineers in order to admit

the promotion of a member of the overseer Engineering Service of irrigation Branch, Punjab or Irrigation Branch (Provincial Draftsmen and Tracers) Service of outstanding merit, who may not possess the qualifications specified in rule 3.

NOTE: xxx xxx xxx xxx

19. Relaxation: Where the Government is satisfied that the operation of any of these rules causes undue hardship in any particular case, it may by order dispense with or relax the requirements of that rule to such extent and subject to such condition as it may consider necessary for dealing with the case in a just and equitable manner."

A reading of the above rules discusses that Rule 3 provides for qualification of a candidate, Rule 4 specifies the feeder category or the source of recruitment and Rule 5 provides for appointments out of those who are otherwise eligible for appointment including promotion to the post of an Assistant Engineer. Rule 3 in categorical terms provides that no person shall be appointed to the service unless he possesses one of the university's degrees or relevant qualification prescribed by the Rules. The only relaxation contemplated by the Rules in this behalf is to be found in Note to Rule 3 and the proviso at the end of Rule 5 and that relaxation is in respect of certain Overseers and Junior Engineers possessing outstanding merit. Only other rule left for consideration is Rule 5 and what is required to be considered is whether Rule 5 dispenses with the requirement of a degree or an equivalent qualification in the matter of promotion of temporary junior engineers.

Rule 5 first provides that the Government may make appointments to the service from the feeder cadre mentioned in Rule 4. Having thus positively provided generally both in respect of direct recruitment and promotion or transfer, it further provides that even out of the persons from those feeder cadre no person shall be appointed unless he possesses the qualifications specified in Rule 3 meaning thereby a degree or an equivalent qualification. This proviso to the general provision making all persons in the feeder cadre eligible for appointment including promotion has restricted the power of the Government by confining it to only those persons who possess the required educational qualification. Having provided like this it further provides by slating "and provided further" that no temporary engineer shall be taken into and no member of the Overseer Engineering Service or Draftsmen and Tracers Service shall be permitted to the service unless he satisfies the four conditions which we have referred to above. It was submitted by Mr. Tulsi that this proviso is a different proviso and should not be read as a proviso to the earlier proviso and has an additional condition of eligibility. On the other hand, Mr. Rao emphasised the words "and provided further" and submitted that they clearly indicate the intention of the rule making authority and leave no doubt that they are additional conditions of eligibility in respect of a certain category of persons in Class III service, namely, temporary engineers and overseers. He also submitted that in case of direct recruitment there is heavy competition but in case of promotion it is comparatively less and it was, therefore, thought fit by the rule making authority to impose those four additional conditions for persons like temporary engineers and overseers for their

promotion. In support of his submissions Mr. Tuisi relied upon A.S. Parmar vs. State of Haryana 1984 (Supp) SCC 1, In that case, this Court was called upon to examine Punjab Service of Engineers, Class I P.W.D. (Buildings and Roads Branch) Rules, 1960. This Court was also required for the purpose to consider the Punjab Service of Engineers Class II P.W.D. (Building and Roads Branch) Rules, 1965. After taking into consideration Rule 7 of Class II Rules and Rule 6 of Class I Rules this Court observed as under:

"Clause (b) of Rule 6 which specially deals with appointments by promotion from the Class II Service to the posts of Executive Engineers exhaustively deals with the qualifications of officers to be promoted from the Class II Service. The special clause excludes the application of the general. That appears to be the intention of the rule making authority because clause (a) of Rule 6 deals with educational qualifications and clause (b) deals with the qualification of experience for eight years in the Class II Service and the passing of the departmental examination. So far as direct recruitment through competitive examination is concerned the minimum educational qualification has to be prescribed in the Class I Rules themselves and it is accordingly prescribed by clause (a) of Rule 6. So far as recruitment by promotion from the Class II Service to the post of Executive Engineer is concerned it is seen that as regards Class II officers the minimum educational qualifications which they should possess have been fixed in the Class II Rules where 26 out of 40 vacancies are to be filled up by the holders of degrees in engineering of recognised universities and the remaining are to be filled up by promotion from amongst persons which certain educational qualifications and experience of ten years in the lower cadre or such other experience as stated in the Class II Rules. Rule 6 of the Class I Rules treats the possession of a degree plus the selection at the competitive examination and the passing of the departmental examination after appointment as sufficient for getting into the cadre of Assistant Executive Engineers or to the cadre of Executive Engineers when direct recruitment is made to those posts and the experience in the Class II Service for a minimum period of eight years plus the passing of the departmental examinations before promotion of an Assistant Engineer in the Class II Service as sufficient qualification for promotion to the cadre of Executive Engineers."

The Court further observed that:

"We are of the view that in the circumstances it could not have been the intention of the rule making authority that no person without a degree should be allowed to enter the Class I Service. If the construction placed by the petitioners in the writ petition and the Government is accepted every diploma holder who is an Assistant Engineer would have to retire only as a Class II officer and cannot hope to become an Executive Engineer till his retirement. If that was the intention, Rule 6(b) of Class I Rules would have contained necessary words conveying that meaning as it is pointed out earlier. We feel that clause (b) of Rule 6 appears to be exhaustive of the qualifications of the Assistant Engineers who can seek promotion from the Class II Service to the Class I Service. So read Rule 6 of the Class I Rules will read insofar as the promotees are concerned as "no person shall be appointed to the Service unless in the

case of an appointment by promotion has eight years completed service in Class II and has passed the professional examination of the department as provided in Rule 15" and clause (a) of Rule 6 should be read as being applicable to the other mode of recruitment."

Relying upon these observations it was submitted by Mr. Tulsi that Rule 5 of the Rules with which we are concerned is substantially the same, that it is similarly worded except that different categories of persons have been referred to for appointed in Class I service. Rule 5 of the Rules with which we are concerned provides for the same thing by adopting the method of including in a proviso an independent clause. We do not think that Mr. Tulsi is right in his submission that Rule 5 is substantially the same as Rule 6 of Class I rules dealt by this Court in A.S. Parmar's case (supra). As this Court found that each of those clauses was dealing with the persons failing under those clauses independently, in other words each clause was dealing with a specific class, they deserved to be considered as independent clauses. The appellants in that case were the members of Haryana Public Works. Department. It was under those circumstances that this Court held in that case that the High Court was not right in holding that degree is a pre-requisite for being promoted to class III, class II and class I service.

Mr. Tulsi next relied upon T.R.Kapur vs. State of Haryana 1986 (Supp) SCC 584. In that case the petitioners were diploma holders in engineering who were in due course promoted to Class II service. The question which had arisen in that case was whether such diploma holders in Class II service could be promoted to Class I service in the absence of a university degree. This Court after referring to its earlier decision in A.S.Parmar's case (supra) observed as under:

"One should have thought that the controversy whether a degree in Engineering was an essential qualification for promotion of Sub-Divisional Officers in Class II Service to the post of Executive Engineer in Class I service under Rule 6(b) of the Class I Rules had ended with the decision of this Court in A. S. Parmar case. Curiously enough, learned counsel for the respondents strenuously contends that the decision of this Court in A.S. Parmar case was incorrect. He presses into service for our acceptance the decision of the High Court in O.P. Bhatia v. State of Punjab taking a view to the contrary. It is urged that in the erstwhile State of Punjab 3 degree in Engineering was essential for recruitment of Assistant Engineers in Class II service under Rule 3(c) of the 1941 Rules as held by the High Court in O.P. Bhatia case and that view was in consonance with the departmental instructions of the relevant rules in the State of Punjab and the State of Haryana as also in the erstwhile State of Punjab that Rule 6(b) required the promotees to have the essential qualification of a degree in Engineering. We do not think that it is open to question the correctness of the decision in A.S. Parmar case which expressly overrules the view taken by the High Court in O.P. Bhatia case. That apart, the proviso to Rule 5 of the 1942 Rules conferred power on the State Government to relax the requirement of Rule 3(c) on the recommendation of the Chief Engineer in order to admit the promotion of a member of the Overseers Engineering Service (Irrigation Branch), Punjab if he was an officer of

outstanding merit although he did not possess the qualification prescribed in Rule 3(c) i.e. the educational qualification of a degree in Engineering. The requirement of a degree in Engineering for recruitment to the Class II service was done away with in the 1370 Rules. The contention also fails to take note of the fact that the requirement of a degree in Engineering which was an essential educational qualification for purposes of direct recruitment of Assistant Executive Engineers in Class I service under Rule 6(a) of the Class I Rules could not be projected for promotion of Sub-Divisional Officers belonging to Class II service to the posts of Executive Engineers in Class I service under Rule 6(b) as they form two distinct sources from which the appointments to the posts of Executive Engineers could be made. As laid down in A.S.Parmar case, what was of the essence for purpose of promotion of Sub-Divisional Officers who were members of Class II service to the post of Executive Engineer under Rule 6(b) Class I Rules was not a degree in Engineering but 8 years' experience in that class of service i.e. Class II service."

Both the aforesaid decisions were not directly concerned with the Rules with which we are concerned in these appeals. Rule 5, as it is worded, leaves no doubt that the rule making authority intended by enacting the second proviso that a temporary engineer/overseer referred to therein should also satisfy other conditions before he can be promoted to Class II service. If the intention of the rule making authority was to do away with the requirement of degree qualification then it was not at all necessary to incorporate the last proviso in Rule 5. The second proviso also deals with a member of the Overseas Engineering Service or Draftsmen Service and the last proviso also deals with promotion of a member of the Overseas Engineering Service of irrigation Branch, Punjab or Irrigation Branch (Provincial Draftsmen and Tracers) Service. If a member of such a service without being a graduate was to be treated as eligible for promotion as an Assistant Engineer then it is difficult to appreciate how it became necessary to provide for relaxation of educational qualification in his favour again by enacting a separate proviso. Therefore, if we interpret second proviso to Rule 5 as suggested by Mr. Tulsi that would render the last proviso to Rule 5 otiose. The test proviso could not have been intended to enable the Government to relax the other conditions mentioned in the second proviso in case of class of persons referred to in the last proviso. Outstanding merit of a member of the Overseas Engineering Service or Draftsmen and Tracers service obviously could not have been ascertained unless he had completed at least his two years continuous service. Similarly a person having outstanding merit could have been easily declared by the Commission on the report of the Chief Engineer to be fit for service and, therefore, there was hardly any point in making a special provision for relaxation of such conditions. It is also not possible to believe that the said proviso was enacted for dispensing with the requirement of age. It would not have been difficult for a person having outstanding merit to have passed a departmental test and, therefore, it is not possible to believe that the last proviso was enacted with a view to dispense with the requirement of that condition. Moreover if only the conditions specified in the second proviso were intended to be relaxed then the last proviso

would have been worded in a different manner. The important words in this context in the last proviso are "this Rule may be relaxed". The Rule which is obviously referred to is the Rule .that no person shall be appointed unless he possesses the qualification specified in Rules. The Note to Rule 3 also specifically refers to the last proviso of Rule 5 and that is also indicative of the fact that educational qualification is to be relaxed only in respect of persons specified in the last proviso if they are of outstanding merit.

In our opinion the High Court was right in holding that a temporary Junior Engineer who does not possess a degree qualification is not eligible for promotion to the post of Assistant Engineer and, therefore, the impugned notification fixing quote for promotion was bad to that extent. These appeals are, therefore, dismissed with no order as to costs.