

CASE NO.:
Appeal (civil) 855 of 2007

PETITIONER:
Mangi Lal

RESPONDENT:
State of Rajasthan

DATE OF JUDGMENT: 20/02/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T
[Arising out of S.L.P. (Civil) No.12837 of 2006]

S.B. SINHA, J :

Leave granted.

Appellant herein was appointed as a Surveyor on 31.08.1979. His educational qualification then was Diploma in Mining. He did his AMIE in Mining in the year 1986. He claimed promotion to the post of Assistant Mining Engineer directly on the premise that he had acquired a degree in Engineering. He at the relevant time was working as Mines Foreman Grade-II. In terms of the rules, promotion to the post of Assistant Mining Engineer was to be granted from the feeder posts of Mines Foreman Grade-I, Head Draftsman or Senior Surveyor. His representation to appoint him to the post of Assistant Mining Engineer, therefore, was not acceded to. He filed a writ petition before the High Court which by reason of the impugned judgment has been dismissed.

Mr. Naresh Kaushik, the learned counsel appearing on behalf of the appellant, would submit that keeping in view the rules then operating in the field, the incumbents to the post of Mines Foreman Grade-II should have also been considered for the purpose of promotion to the post of Assistant Mining Engineer.

Mr. Aruneshwar Gupta, the learned counsel appearing on behalf of the respondent, however, would support the judgment.

Column 6 of the Rajasthan Mines & Geological Service Rules, 1960 (for short, 'the Rules') lays down the minimum qualification and experience required for promotion, which is in the following terms :

"3 years experience in case of holders of degree in Mining Engineering or equivalent and 7 years experience in case of Diploma Holders in Mining Engineering from a recognized Institution on any post in Subordinate Mines and Geological Service not lower than Mines Foreman Grade-II."

Indisputably, the terms and conditions of service of the appellant are governed by the said Rules. On or about 20.05.1977, the said Rules were amended, in terms whereof promotion to the post of Assistant Mining Engineer was to be made from amongst the persons holding the posts of either : (i) Mines Foreman Grade-I; or (ii) Head Draftsman; (iii) or any post in the subordinate Mines and Geological Service carrying scale of pay identical or higher than Mines Foreman Grade-II.

Indisputably, in terms of the Rules, 50% of the posts of Assistant Mining Engineer are to be filled up by direct recruitment; 30% by promotion from amongst the diploma holders and 20% from amongst the degree holders. The qualification necessary for being appointed as Assistant Mining Engineer is as under :

"Degree in Mining Engineering from University
Established by Law in India.

OR

AMIE (Mining Engineering Part A & B of Institution of
Engineers.

OR

Diploma in Mining Engineering from the Indian School
of Mines and Applied Geology, Dhanbad."

Appellant was admittedly not holding the post of Mines Foreman Grade-I at the relevant time.

Column 6 of the said Rules whereupon reliance has been placed by Mr. Kaushik speaks about experience required for filling up of the said post. Whereas three years' experience would satisfy the requirement in case the candidate is a holder of degree in Mining Engineering or equivalent, seven years' experience was necessary in case of the diploma holders in Mining Engineering from a recognized institution on any post, but the same should not be lower than the Mines Foreman Grade-II.

'Eligibility' and 'Experience' stand on different footings. For filling up the post by way of promotion, there must exist a channel. In absence of any channel, promotion cannot be effected.

The Rule must be read in its entirety. So read, there cannot be any doubt whatsoever that for the purpose of promotion to the post of Assistant Mining Engineer, the candidate must be a holder of a post of Mines Foreman Grade-I or Head Draftsman or Senior Surveyor. As the appellant did not hold any of the said posts, the question of promoting him to the post of Assistant Mining Engineer, did not arise.

With a view to satisfy ourselves we had directed the State to inform us as to whether during the relevant time persons belonging to the cadre of Mines Foreman Grade-I were available and had in fact been promoted. Before us a statement in writing has been made which is to the following effect :

"As per the record, the details of the posts of Asstt. Mining Engineer available vacant from the degree holder quota from the year 1984-85 to 1987-88 were as under :

Year	No. of Posts
1984-85	00
1985-86	01
1986-87	01
1987-88	00

Two posts for the post of Asstt. Mining Engineer from the degree holder quota could not be fulfilled as no eligible candidate from the feeder posts of Mines Foreman Gr. I, Head Draftsman and Sr. Surveyor were found to be eligible. These two vacant posts from the

degree holder quota for the year 1985-86 and 1986-87 were forwarded for the year 1988-89 where on more post for degree holder quota became available. So, for the year 1989-89, three posts of Asst. Mining Engineer from the degree holder quota were found to be fulfilled. From the list of eligible candidates, two candidates of degree holder were available in the year 1988-89 and Shri Shyam Lal Sukhwai and Shri Abdul Latif Sheikh were promoted on the post of Asstt. Mining Engineer in that year. These two candidates were working as Mines Foreman Gr. I and they were senior to Shri Mangilal.

It is relevant to mention here that any degree holder surveyor or the person working on any equivalent post junior to Shri Mangilal has never been promoted on the post of Asstt. Mining Engineer against the degree holder quota, because as per the rules, the feeder post for the Asstt. Mining Engineer are Mines Foreman Gr. I, Head Draftsman and Senior Surveyor."

The claim of the appellant, therefore, has no legal basis.

There is no merit in this appeal, which is dismissed accordingly. No costs.