

CASE NO.:
Appeal (civil) 6312 of 1994

PETITIONER:
CHANDIGARH ADMINISTRATION ETC. ETC

RESPONDENT:
K.K. JERATH

DATE OF JUDGMENT: 27/09/1994

BENCH:
R.M. SAHAI & N.P. SINGH

JUDGMENT:
JUDGMENT

WITH

Special Leave Petition (C) No. 16833 of 1994.

1994 SUPPL. (4) SCR 35

The Judgment of the Court was delivered by

R.M. SAHAI, J. Who is eligible to be considered for the post of Chief Engineer in Buildings & Roads Department in the Union Territory of Chandigarh - a Superintending Engineer from any of the disciplines - electrical, mechanical, housing - or a Superintending Engineer (Civil) alone? Do the Punjab Service of Engineers, Class I, P.W.D. (Buildings & Roads Branch) Rules, 1960 (for short 'the Rules') contemplate that whenever a vacancy of a Chief Engineer arises in the Union Territory of Chandigarh it is always to be filled by transfer or deputation from a Superintending Engineer of Punjab? These interesting questions arise in this appeal filed, primarily, by no one else than Chandigarh Administration itself against the order of Central Administrative Tribunal, Chandigarh Bench, Chandigarh directing that the respondent, a Superintending Engineer (Electrical) of Chandigarh was eligible to be considered for promotion to the post of Chief Engineer. The entire thrust of the attack on the direction was concentrated on the prevalent practice of appointing officers in different services in Chandigarh from Punjab Service. So much so that the State of Punjab which has filed an application seeking leave to appeal against the impugned order has claimed that when recruitments were made in the State services it took into consideration not only the vacancies which were existing or were likely to arise in its own State but a larger number of officers, were appointed in expectation that they shall be transferred to the Union Territory of Chandigarh. Whatever be the merit of such a claim by the State of Punjab and irrespective of the practice which is being observed since the Union Territory of Chandigarh was created, the correctness of the order passed by the Tribunal depends not on such claim advanced either by State of Punjab or the State of Haryana but on the rules which are applicable and which provide for eligibility of a candidate for being considered for the post of Chief Engineer.

The respondent Shri K.K. Jerath, a graduate in Electrical Engineering was recruited as Assistant Engineer in the service of the Union Territory of Chandigarh through the Union Public Service Commission on 26th June 1968. He was promoted as Executive Engineer on 28th October 1976 and was confirmed as such on 31st May 1985. He was granted selection grade with effect from 28th October 1983. He was promoted to the post of Superintending Engineer on 17th February 1987 by order dated 11th May 1987 on recommendation of the Departmental Promotion Committee Class I as per letter dated 22nd April 1987 from the Union Public Service Commission, New Delhi. He completed his period of probation for one year on 16th February

1988, In May 1990 the post of Chief Engineer and Secretary, Chandigarh Administration fell vacant as the then occupant was appointed as Chairman, Chandigarh Housing Board, In the same month the appellant wrote to the Punjab Government to send a panel of eligible candidates to be promoted to the post of Chief Engineer. A panel was sent. But no one was found suitable. When similar request was made again the respondent, on coming to know of it, filed a claim petition before the Central Administrative Tribunal, Chandigarh in which an interim order was granted restraining the appellant from appointing Chief Engineer on deputation till 8th June 1990. The application for interim order was taken up finally on 8th June, 1990 and after hearing both the parties the Tribunal directed that the respondent and other eligible Superintending Engineers in the Union Territory cadre for the post of Chief Engineer be considered in accordance with the Rules. In pursuance of this direction a Committee consisting of the Home Secretary, the Finance Secretary, the Chief Engineer and Secretary and Law Secretary met on 26th June 1990 and it was of opinion that none of the Union Territory cadre Superintending Engineers were eligible for promotion as Chief Engineer. On 23rd October 1990 the State moved an application before the Tribunal bringing it to its notice that no Superintending Engineer from the Union Territory having been found to be eligible it may be permitted to appoint on a temporary basis an Engineer on deputation from outside. This was resisted by the respondent who claimed that the constitution of Committee was illegal and in any case the Committee was not justified in rejecting the claim of the respondent as he had completed three years of service as Superintending Engineer and was thus eligible for being considered. The Tribunal, therefore, passed an order directing the appellant to consider the respondent for the post of Chief Engineer, subject to suitability, considering him to be eligible for the post. This order was challenged by the appellant in this Court and the petition was disposed of on 4th March, 1991 by directing the Tribunal to dispose of the application pending before it on merits by 30th April 1991. Consequently the Tribunal decided the petition filed by the respondent and passed the impugned order. It held that the services of the engineers in the Buildings & Roads Department of the Union Territory of Chandigarh and their promotion to the post of Chief Engineer is regulated by the Rules, It found that the respondent being a member of the service as provided in the Rules he could not be excluded from consideration for the post of Chief Engineer on the plea that he belonged to the Electrical Wing, It was also held that the post of Chief Engineer was a post of merit and, therefore, no member of the service could be promoted to it nor any one could be appointed to it by transfer unless he satisfied the basic criteria of merit. The Tribunal was of opinion that there was no clear indication in the Rules if the post of Chief Engineer could be filled by bringing an officer from outside on deputation. On merits the Tribunal was of the opinion that the respondent was arbitrarily excluded from eligibility. Further the appellant attempted to appoint another person from Punjab Service contrary to the provisions of the Rules and to over-reach the order passed by the Tribunal. It also held that despite the direction issued by the Tribunal the appellant excluded the respondent from consideration by holding him unsuitable without following proper procedure for consideration and assigning any valid reason for the same. The Tribunal consequently quashed the appointment of a deputationist from Punjab Service as being violative of statutory rules and directed that fresh Departmental Promotion Committee may be constituted which may consider the eligible candidates in accordance with the provisions of statutory rules and the policy instructions on the subject issued by the Chandigarh Administration from time to time. The Tribunal further directed that in case it was found that no one suitable was available from Chandigarh Administration then only the appellant shall appoint the Chief Engineer by selecting a suitable person on deputation purely as an ad-hoc arrangement with a clear provision that the moment the Union Territory cadre Superintending Engineer becomes available for promotion to the post his claim would be duly considered for promotion to that post.

Since till now no rules have been framed by the appellant and the draft

rules are still awaiting approval the appointment and promotion to the post of Chief Engineer in the Union Territory of Chandigarh is undisputedly governed by the Rules. The 'service' under rule 3 comprises of Assistant Executive Engineers, Executive Engineers, Superintending En-gineers and Chief Engineers, Method of recruitment to the service is provided by rule 5. It contemplates appointment by direct recruitment, by transfer of an officer already in the service of a State Government or the Union Territory and by promotion from class-II service. Sub-rule (4) of rule 5 provides that 'all first direct appointments to the Service shall be to the posts of Assistant Executive Engineers' except in exceptional cases where an appointment for reasons to be recorded may be made directly to the post of Executive Engineer. All other posts, i.e., of Executive Engineer, Superintending Engineer and Chief Engineer are promotional posts. Rule 9 provides that 'subject to the provisions of sub-rules (2) and (3), members of the Service shall be eligible for promotion to any of the posts in the Service, namely, Executive Engineers, Superintending Engineers and Chief Engineers'. It is thus clear that the post of Chief Engineer is primarily a promotional post. The eligibility for being considered for appointment to the post of Chief Engineer is provided by clause (c) of sub-rule (3) of rule 9 which reads as under :

"R.9. - Promotion with service.-

(1).....

(2).....

(3) A member of the service shall not be eligible for promotion to the rank of -

(c) Chief Engineer, unless he has rendered three years service as Superintending Engineer:

Provided that, if it appears to be necessary to promote an officer in public interest the Government may, for reasons to be recorded in writing either generally for a specified period or in any individual case reduce the periods specified in clauses (a), (b) and (c) in such extent as it may deem proper".

There is no further indication in the rule whether the post of Chief Engineer shall be filled in by a Superintending Engineer (Civil,) (Mechanical) or (Electrical). Clause (4) of rule 2 defines a 'Chief Engineer' to mean a Chief Engineer of Public Works Department, Buildings & Roads Branch and includes a post declared by Government as of equivalent responsibility', A reading of this definition along with what is provided by rule 3 specifying the strength of service and the definition of Executive Engineer and Superintending Engineer make it abundantly clear that the Chief Engineer is at the apex of service which comprises of four layers. The Assistant Engineer is at the threshold. The next post in hierarchy is Executive Engineer who under sub-rule (9) of rule 2 means, 'an officer-in-charge of a division and includes an officer holding a post of equivalent responsibility". Over him is the Superintending Engineer defined in sub-rule (13) of rule 2 to mean, 'an officer-in-charge of an area known as a Circle or whose duties are of equivalent responsibility to the charge of a Circle'. The last promotional post under the Rules is from Superintending Engineer to Chief Engineer. It is further clear that the Rules contemplate three wings - civil, electrical and mechanical. Any officer appointed in any wing becomes a member of the service and under explanation under Sub-rule (1) of rule 9 he is liable to be promoted from one rank to another and such promotion is regarded as a promotion within the same cadre. Therefore, even through one officer may belong to one wing or the other, he continues to be a member of the service within meaning of sub-rule (14) of rule 2 which defines a service to mean, 'the Punjab Service of Engineers Class I, P.W.D. (Buildings and Roads Branch)'. To say, therefore, that the post of Chief Engineer is a post in the wing or cadre

of Civil Engineer, would not be correct. The engineer in the electrical or mechanical wing is as much a member of the service as a civil engineer. Therefore, when the Rules provide that the Superintending Engineer who has put in three years of service is eligible to be considered for promotion to the post of Chief Engineer then in absence of any rule to the contrary it has to be held that the field of eligibility is not confined to Superintending Engineer (Civil) only, but it extends and includes Superintending Engineer from other branches as well.

What was vehemently argued, however, to assail the order of the Tribunal, was that since these Rules are for Buildings and Roads Branch, it is only a Superintending Engineering (Civil) who could be appointed to the post of Chief Engineer. The learned counsel for the appellant and intervenors urged that the members of the Service under the Rules having been divided in three cadres, i.e., Civil, Electrical and Mechanical and the post of Chief Engineer being a promotional post only for Civil Engineers, the Tribunal committed an error of law in directing that the respondent who is Superintending Engineer (Electrical) shall be deemed to be eligible for it. The learned counsel submitted that a 'member of the Service' was eligible for promotion from one rank to another in his own cadre, i.e., from the rank of Assistant Executive Engineer to the rank of Executive Engineer and from Executive Engineer to Superintending Engineer. According to him any person appointed as Assistant Engineer (Mechanical) or (Electrical) was appointed to the cadre of such Engineer, therefore, he could be promoted in the cadre only. Reliance was placed on rule 6 which prescribes qualification for recruitment to the Service. It was urged that since no person could be appointed to the Service unless he possessed one of the university degrees or other qualifications prescribed in Appendix B of the Rules unless the qualification was waived by the Government, it was apparent that a person appointed to a particular cadre on the strength of his qualification could be promoted within the cadre from one rank to the other. In support of the submission, Note to Appendix B of rule 6 which reads as under was relied :

"The candidates to be appointed for Civil posts shall be recruited with qualification in Civil Engineering, where as those recruited in the Electrical Engineering Unit shall possess qualifications in Electrical Engineering. Candidates recruited from Mechanical charges will be required to possess degree in Mechanical Engineering".

The learned counsel urged that every post in the Service is classified as Civil, Electrical or Mechanical. And since the post of the Chief Engineer in the Engineering Department of the Chandigarh Administration belonged to the Civil Cadre, no other Superintending Engineer from any other branch or cadre could be considered to be eligible for it. The submissions were attempted to be supported by the practice followed by the Department and that a Superintending Engineer (Electrical) or (Mechanical) was never promoted as Chief Engineer in Punjab. It was further urged that in fact even though there were senior Superintending Engineers (Electrical) or (Mechanical) in Punjab Service, yet all the four posts of Chief Engineers were occupied by Superintending Engineers (Civil) only. It was also submitted that the Department has been following this practice as a Civil Engineer has to undergo and study the course for electrical and mechanical whereas it was not vice-versa. The learned counsel submitted that the Department has understood and construed these Rules in view of the Note to Appendix B of rule 6 so that a person appointed in the Cadre of Civil, Electrical, Mechanical or Building Department is entitled to move up on promotional ladder in his own cadre so much so that if a cadre closed at the level of Executive Engineer or Superintending Engineer, then no engineer of one cadre could claim promotion to the other cadre. Therefore, any Superintending Engineer in the Cadre of Electrical or Mechanical could not claim to be appointed as Chief Engineer in Buildings and Roads Departments as it was a post for promotion of Civil Engineer only.

Despite strenuous effort, none of the learned counsel could make good their

submissions that the post of Chief Engineer was a promotional post for Superintending Engineer (Civil) only. No rule supports the sub-mission that the post of Chief Engineer is a cadre post of civil engineer. Even otherwise, the submission does not bear close scrutiny. An engineer is no doubt appointed in different branches on the qualifications held by him. For instance, a graduate in civil engineering may not be eligible for being appointed as Assistant Executive Engineer (Mechanical) or (Electrical). These are different branches and the bifurcation is made not only in the service but the education itself is imparted for all these branches separately. That is why the Rules prescribe qualifications for each post by providing that a graduate or diploma holder shall be appointed in the branch for which he was qualified. But that does not help the appellant as even assuming that the Rules contemplate three different Cadres, namely, Civil, Electrical and Mechanical, and each Cadre may have promotional avenue depending on the strength of the Cadre which clearly depends on the workload etc. the question still is whether the post of Chief Engineer is a cadre post for Civil Engineer. It does not appear to be so from the Rules. The definition of 'Chief Engineer' shows that he is Chief Engineer, Buildings & Roads Branch. This branch comprises not only of civil engineer but electrical and mechanical as well. To argue, therefore, that the post of Chief Engineer is in the cadre of civil would not be in consonance with the Rules.

Nor is there any merit in the submission that there being no post for Electrical Superintending Engineer in Chandigarh, till recently, it was indicative that the post of Chief Engineer was a post to be filled from Superintending Engineer (Civil). It is common knowledge that the workload in civil branch is much more in P.W.D. than electrical and mechanical and, therefore, it may be that in the Cadres of Electrical and Mechanical, the promotional ladder may not be as extensive and high as civil. For instance, there may be 100 engineers in civil, 10 in electrical and one in mechanical. Consequently, there may be more posts of superintending engineer in civil than electrical and may be none in mechanical. And, therefore, whenever occasion arose in past a Superintending Engineer (Civil) was promoted. But once a post is created by the Government in mechanical or electrical then there is no indication in the Rules nor is there any rationale for excluding a Superintending Engineer appointed in the Electrical or Mechanical Branch from the field of eligibility for the post of Chief Engineer. It may be true that due to non-existence of post of Superintending Engineer in one branch, there may be Senior Executive Engineers who due to paucity of promotional avenues may be stagnating, but that cannot furnish any basis for excluding that Superintending Engineer who has reached the promotional avenue in his own cadre. The illustration given above may be examined again. If there is only one post of executive engineer (mechanical) and no post of superintending engineer then can it be said that in the other branch, namely, electrical where there are 10 posts of executive engineers and one post of superintending engineer no promotion can be granted from the post of executive engineer to superintending engineer as the senior Executive Engineers in Mechanical Branch were stagnating as Executive Engineer only. And if the answer is in negative as it undoubtedly appears to be then it is equally fallacious to argue that a Superintending Engineer of the Electrical Department cannot be eligible for being appointed to the post of Chief Engineer only because he might be junior in service to an Executive Engineer in the Mechanical Branch who might be stagnating due to absence of any post of Superintending Engineer.

Reliance was placed by the learned counsel appearing for the State of Punjab on Office Memorandum issued on 4th November 1966 on the subject, 'transaction of business in the Ministries of the Government of India in relation to matters concerning the Union Territory of Chandigarh.' It provided for creation and continuance of certain posts existing in the Union Territory of Chandigarh from 1st November, 1966. It further provided that except for the Department of Printing and Stationery, Architecture and Post Graduate Institute of Medical Education and Research, Chandigarh the post in the other departments under the control of the Chief Commissioner

will be filled up by deputation mainly from Pun-jab/Haryana State cadres. The learned counsel urged that this indicated that the appellant in filling the post of Chief Engineer from an eligible person from Punjab was acting in accordance with the Office Memorandum issued by the Union of India. The learned counsel emphasised the word 'mainly' used in the Memorandum and its construction by this Court in *Swaran Lata v. Union of India & Ors.*, [1979] 2 SCR 953. Suffice it to say that when the order was issued the Union Territory of Chandigarh had been constituted and, therefore, it was necessary to provide for the filling up of the posts which were in existence or were likely to arise in future from officers of Punjab and Chandigarh cadre. But it could not be construed as precluding the officers who have been appointed by the Chandigarh Administration in the meantime in different posts as it had to be filled by officers from Punjab and Chandigarh. That could not have been the purpose and objective of the Office Memorandum nor it can reasonably be construed in the manner as argued by the learned counsel. Further the word 'mainly' used in the Memorandum has not been construed by this Court to mean 'exclusively'. Therefore, if an officer who is eligible for being appointed to a post in Chandigarh cannot be excluded on the basis of this office Memorandum from the zone of eligibility.

Much was attempted to be made out from rule 10 which permits appointment by transfer in special circumstances with the approval of the commission to the service and the provisions in the Rules permitting appointment by transfer and it was urged that the Rules themselves contemplate that an officer of the Punjab Service could be appointed by the administration to the exclusion of any person in Chandigarh if the State was of opinion that it was in the interest of service. It is true that the Rules do permit appointment by transfer. But sub-clause (6) of rule 5 itself provides that appointment by transfer of an officer will normally be made to the rank of Executive Engineer except that specialists may be recruited to any rank. A reasonable reading of the rule would indicate that the appointing authority should not resort to appoint an officer above the rank of Executive Engineer by transfer. The appointment of specialist is no doubt permissible but that should be resorted to only if the officers in the State are not available. The Rules cannot be understood to confer an unfettered discretion in the State Government or the appointing authority who may appoint any person from outside to the exclusion of a person from the cadre unless it is found that the person concerned is not eligible and if eligible then not suitable. The appointment of specialist as provided in the Rules has to be resorted to in those exceptional circumstances where the officer brought on transfer is exceptional and the like of whom cannot be found in the State itself. If the word 'specialist' is understood as empowering the State to appoint anyone it considers appropriate it may lead to arbitrariness. It has, therefore, to be limited to those exceptional cases where public interest demands that a person from outside should be appointed as he is of extraordinary merit and a specialist in the branch in which he is being appointed and no officer from the State is available to be appointed.

In the written submissions filed on behalf of the appellant an attempt has been made to suggest that the present set up of Engineering Department of Chandigarh Administration is a continuation of the Capital Projects set up existing prior to reorganisation of the State of Punjab in 1966. It is stated that Capital Project reorganisation was created mainly by taking engineers from Punjab P.W.D., Buildings & Roads Branch, and the posts were created commensurate with the job requirements. A copy of the Order of Punjab Government dated 9.3.1953 indicated the sanction of the post is appended which shows that the posts in the Capital Project were sanctioned as follows :

Chief Engineer	1
Superintendent Engineer	1
Planning Circle	

Superintendent Engineer Construction Circle	1
Executive Engineer Construction Division	3
Executive Engineer Materials Division	1
Executive Engineer Electrical & Machanical Division	1

After the reorganisation continuation of temporary Group 'A' posts are stated to have been sanctioned by the Government of India, Ministry of Urban Development from time to time. Copy of one such sanction for the year 1991-92 has been attached. According to appellant, from this sanction it was clear that except for the post of Superintending Engineer (Electrical) and Executive Engineer (Horticulture), all other posts have no suffix added and are civil posts. From these, it has been attempted to support the argument advanced earlier that it was only the Superintending Engineer (Civil) who was eligible to be considered for the post of Chief Engineer. Suffice it to say that prior to reorganisation of State of Punjab in 1966 there might have been no post of Superintending Engineer (Electrical) or (Mechanical) but that cannot furnish basis for submitting that even after 1966 when such posts were created, the incumbents of that post could be excluded from eligibility to the post of Chief Engineer only because no such post existed in 1966. Nor is there any merit in the submission that since in 1992 the different post of engineers carried the suffix as Electrical or Horticulture, therefore, the inference arises in law that the post of Chief Engineer was a cadre post of Civil Engineers.

In Chandigarh the service has four branches - Civil, Electrical and Public Health and Roads and Horticulture. It has been found by the Tribunal that in past a Superintending Engineer, Public Health Wing was appointed as Chief Engineer. The effort on part of the intervenors in the written submission to dilute it when no objection was raised before Tribunal nor the appellant challenged it in the petition filed in the Court cannot be appreciated. However, on the construction of the rule, the Government in appointing a Superintending Engineer of Public Health as Chief Engineer did not commit any error of law. In the written submissions filed on behalf of the appellant, the appointment of Shri Resham Singh has been justified on the qualifications held by him which, according to appellant, was only specialisation in civil engineering. For the reasons which have already been mentioned earlier, it is not necessary to enter into this controversy as to whether a Superintending Engineer who held the qualification as were held by Shri Resham Singh could be considered to be a Specialist in civil engineering and the thus eligible for the post of Chief Engineer.

Before concluding it is necessary to point out that apart from the appellant the State of Punjab also filed a Special Leave Petition and an application for permission to file the S.L.P. Another application was filed by the intervenor who in the meantime claims to have become eligible for being appointed as Chief Engineer. Even though the application of the intervenor was not allowed at the time of hearing nor it appears necessary to allow it yet the learned counsel appearing for the parties were heard at length to ensure that no injustice is done to anyone. The intervenor also filed a written argument and attempted to bring on record certain facts which have been vehemently opposed in the written arguments filed by the respondent both on merits and for inaccuracy of statement of facts. Since the application for intervention is not being allowed and the appeal is being decided as a matter of law on construction of rule it does not appear necessary to say any further. The intervenor's Application Nos. I.A. No. 3/1991 is rejected. The application filed by the State of Punjab for intervention is also rejected. The application filed on behalf of the State

of Punjab to file the SLP is allowed.

In this connection it is necessary to mention that during hearing it transpired that all the four Chief Engineers working in the State of Punjab are from the civil side. The apprehension of those Chief Engineers expressed through their counsel and even by personal appearance by one of the Chief Engineers was that if the construction as given by the Tribunal is upheld a litigation may start which may result in reversion of the occupants of that office. It is clarified that the decision that is being rendered is in respect of the post of the Chief Engineer in Chandigarh. Further, so far as the State of Punjab is concerned the construction that is being placed on these Rules shall be prospective, as it has not been brought to the notice that anyone from the Punjab Service challenged the appointment of Chief Engineer from the Civil Branch.

In the result, this appeal fails and is dismissed. The SLP filed by the State of Punjab is also dismissed. The appellant is directed to open the sealed envelope containing the proceedings of D.P.C. held in the meantime in pursuance of direction of this Court and proceed in accordance with law as directed by the Tribunal. Time to comply with Tribunal's order is extended by one month from today.

Appeal and petition dismissed.