
Before J. S. Narang & Baldev Singh, JJ.

TARJIT SINGH & OTHERS,—*Petitioner*

versus

STATE OF PUNJAB & OTHERS,—*Respondents*

C.W.P. No. 9715 of 2005

18th October, 2005

Constitution of India, 1950—Art. 226—Punjab Service of Engineers, Class II (Irrigation Branch) Rules, 1941—Rls. 3, 4 & 5—Punjab Irrigation Department (Group A) Service Rules, 2004—Instructions dated 1st October, 1999 & 29th December, 2000 issued by the Government—Petitioners, diploma holders, J.Es. seeking promotion to the post of S.D.Os—1941 Rules prescribe Degree in AMIE minimum qualification for the post of S.D.O.—Under Rule 5 of 1941 Rules Government has power of relaxation to promote a J.E. of 'outstanding merit' with diploma holder qualification—Instructions dated 1st October, 1999 & 29th December, 2000 provide that a person in the rank of J.E. having 18 to 20 marks in the A.C.R. in the last 5 years shall be graded as of 'outstanding merit'—Recommendation of the case of petitioners being persons of 'outstanding merit' for promotion to the post of S.D.O.—Current duty charge to the post of S.D.O. given to the petitioners—Petitions challenging the grant of 'current duty charge' to the petitioners dismissed as withdrawn—High Court in a separate petition also staying the order of withdrawal of current duty charge of the post of S.D.O. from diploma holders—S.D.Os who have been given current duty charge to the next higher post of Executive Engineers regularly promoted to the said post—J.Es with AMIE degree who were given current duty charge also regularly promoted but petitioners were not given regular promotions to the post of S.D.O.—Government deleting the provision for promotion of J.E. without the requisite academic qualification in the 2004 Rules—Petitioners have been working on the post of S.D.O. holding current duty charge since 2001—Withdrawal of current duty charge in the post of S.D.O.—Challenge thereto—Posts of S.D.Os available prior to the promulgation of the 2004 Rules—Whether the petitioners entitled to promotion to the posts of S.D.Os against posts which had fallen vacant prior to promulgation of 2004 Rules by applying the eligibility

criteria as contained in the 1941 Rules—Held, yes—Instructions dated 27th April, 1982 issued by State Government provide that the date of occurrence of vacancy shall be taken as the relevant date for determining the eligibility for promotion to higher post—Action of Government withdrawing the current duty charge from the petitioners is not fair—Posts which had fallen vacant and which were amenable to the 1941 rules would not give the right to the Government to consider the cases of the eligible candidates for being promoted to the posts of S.D.Os by applying the 2004 Rules—Petition allowed while directing the respondents to fill the posts of S.D.Os which have fallen vacant prior to 31st March, 2001, the date of recommending petitioners for promotion, by applying 1941 Rules.

Held, that over the time, it has been noticed that the Government has been giving Current Duty Charge of the posts of Sub Divisional Officers, before any regular selection could be made. This act on the part of the Government created problem on the premises that the persons, who were junior in the seniority list, were asked to man the posts of Sub Divisional Officers by holding Current Duty Charge. At a given point of time, the Government did issue explanatory instructions,—*vide* order dated 27th April, 1982. It is indicative therefrom that promotion cases of certain employees are some times deliberately delayed with a view to allowing sufficient time to the concerned individual(s) to acquire necessary qualifications/experience prescribed for the relevant higher post(s). Such practice was not appreciated by the Government and the instructions had been issued that, in future, the date of occurrence of vacancy shall be taken as the relevant date for determining the eligibility, for promotion to higher post(s). This communication was an explanatory instruction to the terms which had already been spelt out by the Government,—*vide* letter dated 8th/11th September, 1961 and letter dated 12th November, 1971. Thus, the posts which had fallen vacant prior to 31st March, 2001 were required to be filled in by applying the eligibility criteria as contained in the 1941 Rules.

(Para 27)

Further held, that in the 1941 Rules, it has been specifically provided under Rule 5—as to how the appointment to the engineering service is to be made by the Government. It is the primary ingredient that no person shall be appointed unless he possesses the qualifications

specified in Rule 3. Further, other ingredients have been provided accordingly. By virtue of proviso to the afore-stated Rules, the Government has been given the power to relax the conditions contained in the afore-stated Rules, but, of course, upon the recommendation of the Chief Engineer. Only that person would earn the relaxation, if his service is of "outstanding merit". Defining the "outstanding merit", fell within the domain of the Chief Engineer.

(Para 28)

Further held, that by promulgating the new rules, the posts which had fallen vacant and which were amenable to the 1941 Rules, would not give the right to the Government to consider the cases of the eligible candidates for being promoted to the posts of Sub Divisional Officers by applying the 2004 Rules. It is the settled law that the rules applicable would be, when the post had fallen vacant in the case of promotees and this has been stand of the Government as is evident from the instructions dated 27th April, 1982.

Rajive Atma Ram, Senior Advocate with Ms. Madhu Dayal,
Advocate, *for the petitioners.*

Sanjiv Sharma, Additional Advocate General, Punjab,
for respondent No. 1.

Girish Agnihotri, Advocate, *for respondents No. 2 and 3.*

Civil Writ Petition No. 9716 of 2005

AURN KUMAR AGGARWAL & OTHERS

versus

STATE OF PUNJAB & OTHERS

Rajiv Atma Ram, Senior Advocate, with Ms. Madhu Dayal,
Advocate, *for the petitioners.*

Sanjiv Sharma, Additional Advocate General, Punjab.

Girish Agnihotri, Advocate.

Kapil Kakkar, Advocate.

Civil Writ Petition No. 9724 of 2005

RAJESH KUMAR & OTHERS

versus

STATE OF PUNJAB & OTHERS

Akshay Bhan, Advocate, *for the petitioners.*

Sanjiv Sharma, Additional Advocate General, Punjab.

S. S. Narula, Advocate, *for respondents Nos. 4 to 7.*

Girish Agnihotri, Advocate, *for respondent Nos. 8 and 9.*

Civil Writ Petition No. 10132 of 2005

SURINDER KUMAR & OTHERS

versus

STATE OF PUNJAB & OTHERS

Amarjit Singh, Advocate, *for the petitioners.*

Sanjiv Sharma, Additional Advocate General, Punjab.

S.S. Narula, Advocate, *for respondents Nos. 3 to 5.*

Civil Writ Petition No. 11890 of 2005

SARTEJ SINGH & OTHERS

versus

STATE OF PUNJAB & OTHERS

Amarjit Singh, Advocate, *for the petitioners.*

Sanjiv Sharma, Additional Advocate General, Punjab.

Civil Writ Petition No. 12638 of 2005

NANAK SINGH & OTHERS

versus

STATE OF PUNJAB & OTHERS

Kapil Kakkar, Advocate, *for the petitioners.*

Sanjiv Sharma, Additional Advocate General, Punjab.

Civil Writ Petition No. 12696 of 2005

HARBANS SINGH BRAR & OTHERS

versus

STATE OF PUNJAB & OTHERS

Deepak Sibal, Advocate, *for the petitioners.*

Sanjiv Sharma, Additional Advocate General, Punjab.

Civil Writ Petition No. 13341 of 2005

LAKHWINDER SINGH & ANOTHER

versus

STATE OF PUNJAB & OTHERS

Kapil Kakkar, Advocate, *for the petitioners.*

Sanjiv Sharma, Additional Advocate General, Punjab.

Civil Writ Petition No. 13375 of 2005

SUKHDEV RAM & ANOTHER

versus

STATE OF PUNJAB & OTHERS

Kapil Kakkar, Advocate, *for the petitioners.*

Sanjiv Sharma, Additional Advocate General, Punjab.

Civil Writ Petition No. 13281 of 2005

GURCHARAN SINGH

versus

STATE OF PUNJAB & OTHERS

Kapil Kakkar, Advocate, *for the petitioners.*

Sanjiv Sharma, Additional Advocate General, Punjab.

Civil Writ Petition No. 13288 of 2005

NARINDER GOYAL

versus

STATE OF PUNJAB & OTHERS

Kapil Kakkar, Advocate, *for the petitioner.*

Sanjiv Sharma, Additional Advocate General, Punjab.

Civil Writ Petition No. 13599 of 2005

RANJIT SINGH & OTHERS

versus

STATE OF PUNJAB & OTHERS

Kapil Kakkar, Advocate, *for the petitioners.*

Sanjiv Sharma, Additional Advocate General, Punjab.

JUDGMENT

J.S. NARANG J.

(1) This judgment would dispose of the aforesaid Civil Writ Petitions as common questions of law and facts are involved and that the relief claimed is also almost common in all these cases.

(2) For brevity, the facts are being taken from Civil Writ Petition No. 9715 of 2005.

(3) It has been averred that the petitioners had been appointed as Junior Engineers in the Department of Irrigation, Government of Punjab, on various dates. Such and similar is the status with regard to other petitioners as reflected in the other petitions, which have been preferred and mentioned hereabove. It is not necessary to refer to the dates of appointments of all the petitioners in all the petitions. However, such details of the petitioners, in this petition, have been appended as Annexure P-1. It is also the case of the petitioners that they are diploma holders in engineering accordingly. It has been further averred that as per the rules, the next promotion from the post of Junior Engineer is to the post of Sub-Divisional Officer (S.D.O.). Prior to

2004, the petitioners were governed under the Punjab Service of Engineers, Class-II (Irrigation Branch) Rules, 1941 (hereinafter referred to as "the 1941 rules"). The relevant applicable rules, as relied upon by the petitioners are rules 3, 4 and 5 of the said rules, which read as under :—

"3. No person shall be appointed to the Service unless he—

- (a) (i) is a British subject as defined in Section 1 of the British Nationality and Status of Aliens Act, 1914, and is domiciled in the Punjab or Delhi. The condition regarding a Punjab or Delhi domicile may be waived in the case of a European or an Anglo-Indian candidate if it is satisfactorily proved that such candidate was born of parents habitually resident in India and not established there for temporary purposes only ; or
- (ii) is a person who is eligible under the provisions of Section 262 of the Government of India Act, 1935 ;
- (b) has satisfied the Commission, whose decision in the matter shall be final, that his character and antecedents are such as to qualify him for appointment to the Service ; and
- (c) possesses one of the University degrees or other qualifications prescribed in Appendix 'A' to these Rules ;
- (d) (i) (in the case of persons to be appointed to the Service by direct recruitment) has obtained from the Standing Medical Board at Lahore or from such Medical authority in England as the High Commissioner for India may deem expedient, a certificate of mental and physical fitness as prescribed by the regulations in Appendix 'B' and is considered by the Medical authority to be fit in all respects for active outdoor duty ;
- (ii) has obtained from the Standing Medical Board at Lahore, or from such Medical authority in England as the High Commissioner may deem expedient, a certificate that he has been vaccinated or re-vaccinated for small pox not earlier than one year previous to the first day of January of the year in which he is appointed or has had small pox and shows obvious scars thereof.

Note.—Clause (c) may be waived in the case of members of the Overseer Engineering Service, Irrigation Branch, Punjab, to be promoted to the Service, under the proviso at end of Rule 5 of Part-II, appointment rules.”

No.2772/E/82/1949, dated 22nd April, 1954. In exercise of the powers conferred by the proviso to Article 309, the Constitution of India and all other powers enabling him in this behalf, the Governor of Punjab is pleased to make the following amendments to the Punjab Service of Engineers Class-II (Irrigation Branch) Rules, 1941.

AMENDMENTS

For the existing rules 4 and 5 of the said Rules, the following shall be substituted, namely :—

“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 service.

Note: Direct appointment means that only persons not already in pensionable service under Government are eligible for consideration under this category.”

“5. Appointment to the Service, Government may make appointments to the service from the classes mentioned in rule 4, provided that no persons shall be appointed unless he possesses the qualifications specified in rule 3, and provided further, that no Temporary Engineers 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 years 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 service and in the case of promotion of a member of the Overseers Engineering service or Draftsman Service unless he has passed both the Departmental Professional and Revenue Examinations or 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 then Overseer Engineering Service of Irrigation Branch, Punjab, or Irrigation Branch (Provincial Draftsman and Tracers) service of **outstanding merit**, who may not possess the qualifications specified in rule 3.

Note : A Temporary Engineer whose age is within the limits fixed in rule 6 may be permitted by Chief Engineer to apply for an appointment under 4 (c)".

(4) It has been further averred that as per the afore-stated rules, the minimum qualification prescribed for the post of Sub Divisional Officer is "degree". However, this condition of minimum qualification can be relaxed by the Government on the recommendation of the concerned Chief Engineer, if the Junior Engineer is of "outstanding merit". In regard to the status of rule 5, it has been averred that government had earlier provided a quota in the category of Junior Engineers with Diploma as qualification for the post of SDO, which was challenged by way of CWP No. 16691 of 1979, in re: **Gurmej Singh and another versus State of Punjab and others**. The petition was allowed *vide* judgment dated 7th January, 1998 and that the quota so provided was struck down. It has also been averred that the power of the Government to promote the Junior Engineers with diploma holder qualification but having "outstanding merit", pursuant to the proviso to rule 5 of 1941 rules, was upheld. Against the aforestated judgment Civil Appeal No. 3174 of 1999 in re: **Subhash Chander Sharma and another versus State of Punjab and others**, was dismissed and that the decision of this Court, in the afore-stated petition, was upheld. The judgment of the Hon'ble Supreme Court has been reported (1).

(1) AIR 1999 S.C. 2077

(5) The government issued executive instructions on 1st October, 1999 and on 29th December, 2000, *vide* which it has been provided that a person in the rank of Junior Engineer, who has 18 to 20 marks in the annual confidential report in the last five years, shall be graded as of "outstanding merit", the copies of the aforesaid instructions have been appended as Annexures P3 and P4 respectively. Resultantly, the Chief Engineer (Canals) called for the annual confidential reports of the Junior Engineers, who have outstanding reports in the last five years. The cases of the petitioners were considered and the appropriate recommendations were made for being promoted to the post of SDO, pursuant to the proviso to rule 5 of the 1941 rules. It has also been mentioned that on the date of recommendation, in all 169 vacancies of Sub Divisional Officers existed i.e. as on 31st March, 2001. Such position has been depicted in the document appended as Annexure P-8.

(6) In view of the above, the promotions were not made but the "current duty charge" of the post of SDO was given to all the petitioners *vide* order dated 21st June, 2001, except petitioner No. 3, who had already been given such charge *vide* order dated 8th May, 2000, copy of this order has been appended as Annexure P-9. Some of the Junior Engineers, being aggrieved of the granting of current duty charge to the petitioners, filed Civil Writ Petition No. 9039 of 2001 in re: **Ashok Kumar Tuli versus State of Punjab and others** and Civil Writ Petition No. 10222 of 2001 in re: **Gurdev Singh versus State of Punjab and others**. In these cases the stand of the government has been that the petitioners are the persons of outstanding merit, therefore, had been given the current duty charge correctly and which is in consonance to the proviso to rule 5 of 1941 Rules. Resultantly, defended the aforesaid order. The relevant para contained in the written-statement has been reproduced in the petition, which reads as under :—

"The record of the private respondents were received with the recommendations of their respective officers which was assessed in the office of the Chief Engineer. On the report received from the field offices, the Chief Engineer where over found in order and fit case of outstanding merit, the recommendation was made to the Government. Moreover the private respondents received various recommendation

certificates from S.D.M/D.C./C.E. and various other authorities like defence, civil authorities which were also considered while assessing their case.”

However, both the afore-stated petitions have been dismissed as withdrawn *vide* order dated 24th September, 2004.

(7) On the date i.e 21st June, 2001, when the petitioners had been given the current duty charge in the post of Sub Divisional Officers, 23 S.D.Os working with the same department, were given the current duty charge in the next higher post of Executive Engineers *vide* a separate order of even date. It is also the case of the petitioners that subsequently, the afore-stated persons were regularly promoted to the post of executive Engineers. However, obviously to their detriment. It has also been averred that some of the Junior Engineers with “A.M.I.E” (Associate Member of the Institute of Engineers) were also given the current duty charge in the post of Sub Divisional Officer *vide* order dated 9th April, 2001 and subsequently were regularly promoted in the said posts *vide* order dated 10th December, 2001. Such act on the part of the government is discriminatory, arbitrary, unreasonable and against the canons of principles of natural justice.

(8) It has also been averred that the meeting of “Departmental Promotion Committee” (D.P.C.) had been fixed on a number of occasions i.e. March 2001, April 30, 2001, November 8, 2001, November 21, 2001, January 9, 2002 and May 29, 2002, but every time the meeting was postponed. On one occasion, the meeting had been postponed probably on the ground that a ban had been imposed by the Election Commission, regarding the promotions. However, in this regard, reference has been made to a communication dated January 05, 2002, addressed by the Election Commission to the respondent-department, that the meeting of the DPC can be held as scheduled but the result thereof be declared after the completion of the election process in the State, instead the meeting was deferred.

(9) It is also the case of the petitioners that in utter violation of rule 5 of 1941 rules, the persons without fulfilling the conditions or being accepted as persons with “outstanding merit” had been given the current duty charge *vide* order dated May 02, 2000. However, in view of the judgement rendered by this Court in re: Gurmej Singh’s

case(supra) and the Hon'ble Supreme Court in re: **Subhash Chander Sharma's case**(supra), the Current Duty Charge was withdrawn from such diploma holders *vide* order dated 4th April, 2001. This order was challenged by them *vide* Civil Writ petition No. 5811 of 2001. The afore-stated order had been stayed by this Court *vide* order dated 24th April, 2001, copy appended as Annexure P-16, such persons are still continuing to hold Current Duty Charge of the post of Sub Divisional Officer. The afore-stated Civil Writ Petition No. 5811 of 2001 is now posted for motion hearing on 20th October, 2005 along with other connected petitions.

(10) Subsequently, the government framed the new rules i.e. Punjab Irrigation Department (Group-A) Service Rules, 2004 (hereinafter referred to as "2004 Rules") which have been duly notified *vide* notification dated 30th June, 2004, copy Annexure P-17. Under these rules, the provisions for promotion of the Junior Engineers with outstanding merit but without the requisite academic qualification, has been deleted.

(11) It is also the case of the petitioners that since 21st June, 2001, the petitioners have been working on the post of Sub Divisional Officer though by holding Current Duty Charge and that all of them have earned "good", "very good" and "outstanding" remarks. In fact, the petitioners had been transferred from one place to the other while holding current duty charge in the post of Sub Divisional Officer.

(12) The Government has now issued an order dated 22nd June, 2005, *vide* which the current duty charge in the post of SDO, held by the petitioners, has been withdrawn, copy of the communication dated 22nd June, 2005, has been appended as Annexure P-18. As per the petitioners, they have not handed over the charge of the post of SDO till date of filing of the petition. It is also the case of the petitioners that the meeting of the DPC is scheduled to be held on 13th July, 2005. However, the date is stated to have been deferred to 20th July, 2005. This Bench gave an interim direction *vide* order dated 19th July, 2005, passed in Civil Writ Petition No. 9716 of 2005, which reads as under :—

“ Learned counsel for the petitioners contends that the Departmental Promotion Committee (DPC) shall be held on 20th July, 2005 at 3.00 p.m. and that the petitioners

shall suffer immensely if they are not allowed to participate in the aforesaid DPC. It is also the case of the petitioners that their names have not been recommended to be considered in the said DPC. It is further contended that they had become eligible to be considered for the post of Sub Divisional Engineer as per the old Rules i.e. Punjab Service of Engineers Class II (Public Works Department, Irrigation Branch) Rules, 1941. The respondents have now promulgated new Rules, which are known as Punjab Irrigation Department, Group A Service Rules, 2004. Though the petitioners would be eligible under the new Rules as well but as per the new Rules, the diploma holders shall also become eligible. It is further contended that the posts had fallen vacant earlier i.e. prior to the promulgation of the new Rules, resultantly, the petitioners are required to be considered as per the old Rules and not the new rules.

Mr. Ashok Aggarwal, learned Additional Advocate General, Punjab states that the petitioners may be allowed to participate in the DPC and they would be considered under both the Rules and that their results shall be kept in the sealed cover and may be placed subject to the decision of the petition.

In view of the above and also de hors the contentions of the learned counsel for the parties, we consider it appropriate and in the interest of justice to direct that the petitioners be allowed to participate in the DPC, which is scheduled to be held on 20th July, 2005 at 3.00 p.m. It is made clear that all the petitioners shall be considered under the old Rules and also the Instructions applicable at that time and that they shall also be considered under the new Rules with the new Instructions applicable to all and that their results shall be kept in the sealed cover, which shall be subject to the decision of the petition. It is further clarified that this selection kept in the sealed cover shall not give any right to the petitioners, which shall be dependent upon the decision of the petition only.

Learned Additional Advocate General states that 20 seats out of the total vacancies be reserved for the petitioners and that the rest be allowed to be filled up. Accordingly, we

consider it absolutely just and fair. It is directed that the respondents shall not fill up 20 seats out of the total seats available as on date. It is further made clear that the appointments so made shall also be subject to the decision of the writ petition.

Learned Additional Advocate General, seeks time to file additional written statement in this case, which is allowed to be filed within two weeks with an advance copy to the counsel for the petitioners. If so desired, the petitioners may file replication accordingly within one week thereafter.

Adjourned to 22nd August, 2005 for consideration at 1.45 p.m.

Copy of this order under the the signatures of the Special Secretary of this Court, be supplied to the concerned counsel for onward transmission and compliance.”

We are informed that the D.P.C. has been deferred indefinitely, perhaps to await the decision of the petitions by this Court.

(13) The petitioners have challenged the order dated 22nd June, 2005 and applicability of criteria laid-down *vide* dated 25th September, 2003 and guidelines dated 19th April, 2005, by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, for issuance of a writ in the nature of certiorari quashing the afore-stated order dated 22nd June, 2005 as also quashing the 2004 Rules and further issuance of a writ in the nature of mandamus directing that the vacancies, available prior to the promulgation of the 2004 Rules, be filled up under the 1941 Rules by ignoring the criteria spelt out *vide* government instructions dated 25th September, 2003 and the guide-lines dated April 19, 2005.

(14) Further a writ of mandamus directing the respondents to fill up the vacancies available prior to the promulgation of 2004 Rules by applying proviso to Rule 5 contained under the 1941 Rules.

(15) Mr. Rajiv Atma Ram, Senior Advocate, learned counsel for the petitioners, has argued that it is the settled law that a vacancy which arises at a particular point of time, is required to be filled pursuant to the rules applicable at that time. It is also the settled proposition that the mannerism of consideration for the promotees and direct recruitees shall be different i.e. the post which

has to be filled up from the quota of the promotees, the rules applicable would be- when the post fell vacant and that in the case of the direct recruits the rules applicable shall be - on the date when the posts have to be filled. It is further contended that 169 posts of S.D.Os had fallen vacant prior to March 31, 2001, therefore, the posts shall have to be filled in by applying the 1941 Rules. It is also the contention that none of these posts are to be filled by way of direct recruitment. In support of his argument, learned counsel has placed reliance upon the ratio of judgement of Hon'ble the Supreme Court rendered in re: **Y.V.Rangaiah and others versus J. Sroeenivasa Rao and others**, (2).

(16) A reference has also been made to the instructions dated April 27, 1982 issued by the Government of Punjab for the purpose of filling the vacancies by applying the eligibility criteria applicable to the posts at that time. Copy of such instructions has been appended as Annexure P-20. Thus, by virtue of the afore-stated instructions as well, vacancies in the posts of S.D.Os having become available upto the year 2001, are required to be filled in by applying the eligibility criteria as contained in the 1941 Rules. It has also been contended that the afore-stated instructions have not been withdrawn to the knowledge of the petitioners.

(17) Further, the contention of the learned counsel is that the government issued the criteria *vide* instructions dated 25th September, 2003, which is again subsequent to the grant of current duty charge to the petitioners and, of course, after the said 169 posts of S.D.Os have fallen vacant upto 31st March, 2001. In fact, at the time of vacancies becoming available, instructions dated 1st October, 1999 and 29th December, 2000 (copies Annexures P-3 and P-4, respectively) were in force. It is the settled law that the executive instructions are to operate prospectively and not retrospectively.

(18) Learned counsel for the petitioners has also argued that the government is not entitled to take any protection by virtue of an order dated 4th February, 2003 passed by a Division Bench of this Court in Civil Writ Petition No. 8023 of 2001, by which a direction had been issued to the respondents to formulate a criteria for adjudging the "outstanding merit" for Junior Engineers for the onward promotions to P.S.E. Class-II. Pursuant to this order, the State Government

formulated the criteria,—*vide* order dated 25th September, 2003 and according to this not only last five years “outstanding merit” but overall service record should be outstanding and only then a Junior Engineer should be considered eligible under the departmental rules for promotion and that at no stage this quota should exceed 2 per cent of 100 posts of the S.D.Os. Further, the Junior Engineer should have risked his life for the protection of people during floods, earth-quake, spread of fire or natural calamity. In this regard, an appreciation letter should have been issued by the concerned authorities. The State Government issued fresh guide-lines,—*vide* letter dated 19th April, 2005 for granting current duty charge (C.D.C.) under special circumstances and in public interest on the basis of seniority of those, who fulfill the requisite eligibility/ experience. Such charge ought to be reviewed for continuity beyond six months with the approval of the Personnel Department. It is contended that such instructions, so issued, would be applicable prospectively and not retrospectively for prescribing the criteria for determining the “outstanding merit”. The guide-lines which have been promulgated pursuant to a direction of this Court, would not be applicable retrospectively but has to apply prospectively. Further, such instructions issued would not be taken to have amended the rules or can be read as explanatory statement to a particular rule, wherein such words need to be described and prescribed. The respondents have not been able to justify the issuance of such criteria in perpetration of the word “outstanding merit” used in 1941 Rules. The respondents have incorporated various reasons for passing the impugned order dated 22nd June, 2005,—*vide* which the current duty charge of the posts of S.D.Os has been withdrawn from the officials mentioned in the order; which includes the petitioners. It is also the clandestine stand of the Government while mentioning that the Government has notified the 2004 Rules on 30th June, 2004 and it has been decided to fill up the vacant posts of S.D.Os on regular basis from amongst the Junior Engineers by constituting Departmental Promotion Committee under the provisions of the new rules. This has also given a cause of action to the petitioners and that if this order had not been challenged and the petitioners would have proceeded to participate in the Departmental Promotion Committee for being considered to be promoted to the posts of S.D.Os, they would have subjected themselves to the rigor of the afore-stated new rules and, resultantly, to the criteria for determining the “outstanding merit”

defined by virtue of communication dated 25th September, 2003 as also the guide-lines issued,—*vide* letter dated 19th April, 2005 for the purpose of granting current duty charge. The government is not expected to create the confusion but is expected to decide the matters pursuant to the rules applicable at the relevant time in view of the judicial interpretations given by this Court as also the Hon'ble Supreme Court.

(19) Learned Additional Advocate General, Mr. Sanjiv Sharma, has submitted that the stand of the respondents is that conferring of current duty charge does not mean granting of promotion and that withdrawal thereof would also not be punitive in nature. It is the settled law that current duty charge is given to an official to work in his own pay scale and that such charge is given to meet the exigencies or urgency having arisen or situation created or having come into existence accordingly. The petitioners would be considered for promotion, if found eligible, as per the rules. The order dated 22nd June, 2005 is crystal clear and the same has been passed, pursuant to the order passed by this Court as also the Hon'ble Supreme Court. It is also the stand of the government that the case of the petitioners is covered under Rule 20 of the Punjab Civil Services (General and Common Condition Services) Rules, 1994 (hereinafter referred to as "1994 Rules"). In view of the 1994 Rules coming into force, the petitioners are not entitled to claim governance or benefit of the proviso to Rule 5 of the 1941 Rules. Mere withdrawal of current duty charge with the observation that the required promotion to the post of S.D.O. shall be made pursuant to 2004 Rules, does not give any cause of action to the petitioners, as no legal right of the petitioners has been infringed. It is also the stand of the government that for according current duty charge or withdrawal thereof was to be governed by virtue of the government instructions dated 21st June, 2001, the relevant extract therefrom, reads as under :—

- “(a) The current duty charge/look after charge shall be based upon the facto-sanctions to be granted in accordance with the instructions dated 15th March, 2001 issued by the Personnel Department Punjab.
- (b) This charge is on the present pay scale of the employees and it can be withdrawn without any notice and the officer shall not claim any seniority.

- (c) The above officers shall not seek any promotion in accordance with Rule 3(1)(c) of PSE Class II Rules, 1941 on the basis of this current duty charge/look after charge.
- (d) The current duty charge/look after charge shall be based upon different cases going on in the different Courts.”

(20) In view of the above, it has been clearly mentioned that the current duty charge can be withdrawn without any notice and performing such duty would not culminate into a claim for seniority nor shall be the basis for seeking promotion in accordance with Rule 3, sub-rule (1) sub-clause (c) of the 1941 Rules. Thus, withdrawal of the current duty charge by the government by virtue of the order dated 22nd June, 2005, impugned in the present petition, does not cause any injury to the legal right of the petitioners as no legal right has ensued to the petitioners by virtue of granting current duty charge as is fundamentally clear from the Government instructions dated 21st June, 2001.

(21) It is further contended that right of promotion is always tampered with seniority and fulfilling the eligibility criteria as applicable under the rules i.e. 2004 Rules.

(22) It is also the stand of the Government that the criteria formulated on 25th September, 2003, is pursuant to the order passed by this Court in Civil Writ Petition No. 8023 of 2001 dated 4th February, 2003. In this regard, the judgment rendered in the afore-stated petition, copy Annexure R-4/1 (attached with Civil Writ Petition No. 9716 of 2005) has been referred to. It is the stand that the afore-stated directions had been issued for the purpose of correctly implementing the proviso to Rule 5 of the 1941 Rules. In the afore-stated petition, a specific direction had been asked from this Court that the Government must specify a criteria to determine the scope of the word “outstanding merit” set out in the proviso to Rule 5 of the 1941 Rules. The relevant extract of the afore-stated judgment reads as under :—

“In paragraph 10 of the writ petition, the petitioner has reproduced Chapter 11.4 of the Manual of Administration, which provides criteria for giving current duty charge on the higher post. According to the learned counsel for the

petitioner, even this procedure has not been followed while giving regular promotions. We are of the considered opinion that in order to implement proviso to Rule 5 of the Rules in its letter and spirit, it is necessary for the respondents to establish a proper criteria that would be fair and just to all aspirants. One, a criteria is laid down, it would reduce, to a large extent, any aspersions which may otherwise be cast upon the competent authorities for making the promotions arbitrary or for extraneous considerations. A well defined criteria, uniformly applicable, would ensure transparency, in the promotions made under the proviso.

In view of the above, present writ petition is allowed. The respondents are directed to formulate a criteria which would be suitable for adjudging the "outstanding merit" for Junior Engineers for promotion to PSE Class-II. The respondents are further directed to fix the criteria within a period of three months from the date of receipt of certified copy of this order. No costs."

(23) It is obvious that the criteria for accepting the person "outstanding" would also apply for the purpose of considering the persons for promotion as also giving Current Duty Charge. However, after the promulgation of 2004 Rules, the afore-stated may also not be applicable, as the criteria as promulgated under the 2004 Rules would be applicable accordingly.

(24) The stand of the private respondents i.e. respondents Nos. 2 and 3 is almost para materia with the stand of the government. However, additionally it has been averred that by virtue of laying down the criteria, pursuant to the directions of this Court, as afore-stated, the exercise of managing the names and the effort to manipulate would stand curbed. The petitioners should have no grievance if they find themselves within the ambit of the criteria laid-down for determining "outstanding merit". The petitioners are asking for the benefit against the government instructions and also the policy framed by the government, as they have certainly taken advantages by virtue of the undefined "grey area". It is also the stand that the 1941 Rules and 1994 Rules have been repealed along with the saving clause, which has been misinterpreted by the petitioners for making out a claim that the petitioners would still be protected under the old rules.

The saving clause would only save the actions/acts which have been taken or committed under the old rules, but this would not mean that the old rules would still hold the field. The ambiguities which had arisen by virtue of the grey areas in the repealed rules, have been duly explained and spelt out. In a way, the rights of the petitioners as also those of the respondents have not been jeopardised or are in violation of Article 14 and Article 16 of the Constitution of India. It is the settled law that mere explanation rendered to a rule which does not affect the rigors of the rule materially, would not be read in derogation but has to be read in supplementation. It is also the settled law that any prospective rule, provision or government instruction, which proceeds in abrogation of a right having accrued to a person under the old rules applicable at the relevant time, would be taken care of. No such case has been made out by the petitioners, therefore, are not entitled to challenge the criteria, guide -lines and the new Rules of 2004 promulgated.

(25) We have heard the learned counsel for all the parties and have also perused the paper-book as also the orders impugned before us and the documents appended as also the case law cited at the Bar for substantiating their respective arguments.

(26) The point at issue raised by all the petitioners is that they are entitled to promotion to the posts of Sub Divisional Officers against 169 posts, which had fallen vacant prior to March 31, 2001 and that the right of consideration has to be carried out as per the rule of seniority-cum-merit and that the Rules applicable shall be 1941 Rules.

(27) Over the time, it has been noticed that the government has been giving Current Duty Charge of the posts of Sub Divisional Officers, before any regular selection could be made. This act on the part of the government created problem on the premises that the persons, who were junior in the seniority list were asked to man the posts of Sub Divisional Officers by holding Current Duty Charge. At a given point of time, the government did issue explanatory instructions,—*vide* order dated April 27, 1982 (copy Annexure P-20). It is indicative therefrom that promotion cases of certain employees are sometimes deliberately delayed with a view to allowing sufficient time to the concerned individual(s) to acquire necessary qualifications/ experience prescribed for the relevant higher post(s). Such practice was not appreciated by the government and the instructions had been

issued that, in future, the date of occurrence of vacancy shall be taken as the relevant date for determining the eligibility, for promotion to higher post(s). This communication was an explanatory instruction to the terms which had already been spelt out by the government *vide* letter No. 8401-4GS-61/33117, dated September 8/11, 1961 and letter No. 6256-SII (3)-71/2974—50, dated 12th November, 1971. Thus, the posts which had fallen vacant prior to 31st March, 2001, were required to be filled in by applying the eligibility criteria as contained in the 1941 Rules.

(28) In the 1941 Rules, it has been specifically provided under Rule 5 as to how the appointment to the engineering service is to be made by the government. It is the primary ingredient that no person shall be appointed unless he possesses the qualifications specified in Rule 3. Further, other ingredients have been provided accordingly. By virtue of proviso to the afore-stated Rules, the government has been given the power to relax the conditions contained in the afore-stated Rules, but, of course, upon the recommendation of the Chief Engineer. Only that person would earn the relaxation, if his service is of “**outstanding merit**”. Defining the “outstanding merit”, fell within the domain of the Chief Engineer. At a given point of time, the government had provided a quota for the afore-stated category of Junior Engineers with Diploma as qualification for the post of Sub Divisional Officer. The provision of quota was struck down by this Court, but defining the “outstanding merit”, which fell to the discretion of the Chief Engineer, remained untouched. The judgment of this Court rendered in **Gurmej Singh’s case** (supra), which was further upheld by the Hon’ble Supreme Court, held the field accordingly. Subsequently, the government issued executive instructions dated 1st October, 1999 (copy Annexure P-3) indicating that the previous guidelines regarding promotion on the basis of selection on merit or merit-cum-seniority, which are dated 23rd November, 1990 issued by the Government of India, were not being followed. A pointed reference had been made to para 6.3.1 of the afore-stated guidelines, which are as under :—

“6.3.1. The list of candidates considered by the D.P.C. and the overall grading assigned to each candidate, would form the basis for preparation of the panel for promotion by the

D.P.C. The following principles should be observed in the preparation of the panel :—

- (i) Having regard to the levels of the posts to which promotions are to be made, the nature and importance of duties attached to the posts a benchmark grade would be determined for each category of posts for which promotions are to be made by selection method. For all Group C, Group B and Group A posts upto (and excluding) the level of Rs. 3,700—5,000 excepting promotions for induction in Group A posts or Services from lower groups, the benchmark would be “Good”. All officers whose overall grading is equal to or better than the bench mark should be included in the panel for promotion to the extent of the number of vacancies. They will be arranged in the order of their *inter se* seniority in the lower category without reference to the overall grading obtained by each of them ; provided that each one of them has an overall grading equal to or better than the benchmark of “Good”.

Whenever promotions are made for induction to Group A posts or Services from lower groups, the benchmark would continue to be “Good”. However, officers graded as “outstanding” would rank en block senior to those who are graded as “Very Good” and officers graded as “Very Good would rank en block senior to those who are graded as “Good” and placed in the select panel accordingly up to the number of vacancies, officers with same graded maintaining their *inter se* seniority in the feeder post.

- (ii) In respect of all posts which are in the level of Rs. 3700-5000 and above, the benchmark grade should be “Very Good”. However, officers who are graded as “Outstanding” would rank en block senior to those who are graded as “Very Good” and placed in the select panel accordingly up to the number of vacancies, officers with same graded maintaining their *inter se* seniority in the feeder post.

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- (iii) Appointments from the panel shall be made in the order of names appearing in the panel for promotion.
- (iv) Where sufficient number of officers with the required benchmark grade are not available within the zone of consideration, officers with the required benchmark will be placed on the panel and for the unfilled vacancies, the appointing authority should hold a fresh D.P.C. by considering the required number of officers beyond the original zone of consideration.
- (2) It has come to the notice of the Department that these guide-lines are not being followed strictly by the D.P.Cs in which the Administrative Secretary of the concerned Department is the Chairman.

(29) It is, therefore, requested that where the promotion is to be made on the posts covered by the Punjab Services (Appointment by Promotion) Rules, 1962 or where there is specific provision in the Service Rules regarding promotion on the basis of merit-cum-seniority, the above procedure shall be scrupulously adhered to by the D.P.Cs."

(30) These instructions categorically provided that for effecting promotions, a benchmark grade would be determined for each category of posts for which promotions are to be made by selection method. Thus, all officers whose overall grading is equal to or better than the benchmark, should be included in the panel for promotion to the extent of the number of vacancies and that they shall be placed in seriatim in order of their *inter se* seniority in the lower category without reference to the overall grading obtained by each of them, provided each one of them, had an overall grading equal to or better than the benchmark of "Good". However, officers graded as "Outstanding" would rank en block senior to those who are graded as "Very Good" and that the officers graded as "Very Good" would rank en block senior to those who are graded as "Good" and they shall be placed in the select panel accordingly up to the number of vacancies, but the officers with same grading shall be maintained at the *inter se* seniority in the feeder post. The instruction also provides the answer, where sufficient number of officers with required benchmark grade are not available within the zone of consideration. Again, on December,

29, 2000, the instructions of the year 1999 stood modified by the rule of supersession and modification. For the first time, marks had been ascribed and prescribed for "Outstanding", "Very Good", "Good" and "average". It is provided that Annual Confidential Reports for five years are to be taken into consideration for promotion and that out of the total of 20 marks, officers earning 10 to 14 marks will be graded overall "Good", those earning 15 to 17 marks will be graded overall "Very Good" and those earning 18 to 20 marks will be graded overall "Outstanding". The excerpt of the relevant portion of the afore-stated reads as under :—

"..... I am directed to refer to the subject noted above and to say that in supersession of policy letter No. 13/3/99-pp1/11889, dated 1st October, 1999 and modification of earlier instructions on the subject issued from time to time, the Government has framed the following policy on the subject :—

- (i) All classes pertaining to promotion as Head of the Department would be decided on the basis of merit-cum-seniority. The benchmark for promotion to such posts will be "Very Good" and the officer graded as "Outstanding" would rank senior to those graded as "Very Good".
- (ii) For promotion to posts falling on Group 'A' with existing pay scales of Rs. 12,000-16,350 and above the benchmark will be "Very Good" and officers graded as "Outstanding" would rank senior to those graded as "Very Good".
- (iii) In the case of promotion to posts with pay scales less than Rs. 12,000-16,350 the benchmark will be "Good". This benchmark will determine fitness of the officer and person graded "Very Good" or "Outstanding" will not supersede person graded "Good".
- (iv) Henceforth each Annual Confidential Report will be evaluated as under :—

"Outstanding"	:	4 marks
"Very Good"	:	3 marks
"Good"	:	2 marks
"Average"	:	1 marks

ACRs for 5 years are taken into consideration for promotion. Out of a total of 20 marks, officers earning 10 to 14 marks will be graded overall "Good" and those earning 15 to 17 marks will be graded overall "Very Good". Those earning 18 to 20 marks will be graded as "Outstanding". Departmental Promotion Committees while considering reports which are "Outstanding" must read all the entries in the ACR, the work must have been out of the ordinary and reasons for giving grading must be cogent and well spelt out, to be accepted as "Outstanding". If the ACR does not fulfill the above criteria the entry of "Outstanding" should be read as "Very Good" only. Officer will not be fit for promotion if is rated "Below Average" in any one of the 5 years".

(31) By keeping the aforesaid instructions in view, the promotions were not made but the Current Duty Charge was given—*vide* order dated June 23, 2001 and in some cases, perhaps, prior thereto as well. This act on the part of the Government was challenged by some of the allegedly aggrieved persons and that Civil Writ Petitions Nos. 9039 and 10222 of 2001 (*supra*) had been filed. The Government had taken a positive stand that on the basis of the reports received from the field officers, the Chief Engineer, wherever found in order and a fit case constituting "Outstanding Merit", the recommendations had been made accordingly to the Government. During this period, Civil Writ Petition No. 8023 of 2001 **Tirath Singh versus State of Punjab and others** had been filed seeking a direction to the respondent-State for framing a uniform policy for promotion of junior Engineers to the post of Sub Divisional Engineers/ Assistant Engineers/PSE Class II service by specifically laying down the criteria to determine the scope of the word "Outstanding" set out in the proviso to Rule 5 of the 1941 Rules. This petition was disposed of by a Division Bench of this Court,—*vide* order dated February 4, 2003 with a direction to the respondents to formulate a criteria, within a period of three months from the date of receipt of certified copy of the order, which would be suitable for adjudging the "Outstanding Merit" for Junior Engineers for onward promotions to PSE Class-II. The perusal of the judgment shows that, perhaps, the respondent-State did not bring to the notice of the Hon'ble Bench the criteria which already stood provided by virtue of the instructions dated

December 29, 2000 (copy Annexure P-4). Pursuant to the afore-stated directions of this Court, the Government promulgated criteria along with additional instructions,—*vide* order dated September 25, 2003 (copy Annexure P-31 appended in Civil Writ Petition No. 9716 of 2005), for giving promotion to the post of Sub Divisional Officer on the basis of “Outstanding Merit”. This order of the Government is not indicative that the criteria has been drawn in supersession of the earlier instructions i.e. October 1, 1999 and December 29, 2000 (copies Annexure P-3 and P-4, respectively), whereby the grading of the marks constituting overall “Outstanding Merit” is to be determined, which are to be allocated as per the annual reports earned by the officers for a period of five years, was prescribed. The excerpt of the aforesaid criteria i.e. September, 25, 2003, reads as under :—

- “.....1. When a Chief Engineer recommends the name of a Junior Engineer having “Outstanding Merit”, then at the time of the meeting of the Departmental Promotion Committee, the record of all those persons who are senior to him shall be considered.
2. The Junior Engineer having “Outstanding Merit” should have at least 15 years of regular service and his age should not be more than 50 years. His service record should at least be 75 to 100% “Outstanding” and his overall service record should also be Outstanding”. No departmental/vigilance case should be pending against him.
 3. The Junior Engineer should have passed the departmental examination and should be fully eligible for promotion as per the departmental rules.
 4. The Junior Engineer having outstanding record should not be having only the last 5 reports as outstanding, but his entire record should be outstanding and all columns in the ACR should be outstanding.
 5. That Junior Engineers who, in the time of war has helped the defence on the border and taken part in the security of the country and the defence authorities have given appreciation letter to him.

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6. If during floods, earthquake, fire or any other natural calamity or by facing any kind of emergency and protected the life and property of the people by risking his own life and the administration has issued an appreciation letter in this regard.
 7. Out of 100 posts of Sub Divisional Officer, the quota for this category will not exceed 2%.”

(32) So far as the 1994 Rules are concerned, they are of no significance as no reference has been made by either side that by virtue of the said Rules “Outstanding Merit” was ever defined or any guide-lines had been issued for determination thereof, as the word has been used in the 1941 Rules. The Government has also notified the 2004 Rules on June 30, 2004. Pursuant thereto, the impugned order dated June 22, 2005 (copy Annexure P-18) has been issued, by virtue of which the Current Duty Charge given to the petitioners has been withdrawn with the indication that as per the 2004 Rules, final selection shall be made by the Departmental Promotion Committee. A perusal of this order shows that criteria dated September, 25, 2003 had been formulated pursuant to the directions of this Court in Civil Writ Petition No. 8023 of 2001 decided on February 04, 2003 and that according to this criteria, the Junior Engineer should have not only last 5 years “Outstanding Reports”, but 75% of his service record should have been “Outstanding” and his overall service record should also be “Outstanding” and further should be eligible under departmental rules for promotion and, at no stage, this quota should exceed 2% of the 100 posts of the Sub Divisional Officers. Apart from the above, the other ingredients, as spelt out in the order dated September 25, 2003, have also been mentioned in the order, which need not be reproduced as the same have been noticed earlier. It is indicative from this order that the Government has also issued fresh guide-lines,—*vide* letter No. 4/11/04/3PP2/4756, dated April 19, 2005, for the purpose of granting Current Duty Charge under special circumstances in public interest, on the basis of seniority of those who fulfil the requisite eligibility/experience and that such charge is to be reviewed for continuity beyond six months with the approval of the Personnel Department. It has also been mentioned that a regular inquiry No. 28/2002 was registered by the Vigilance Bureau of Punjab for tampering/stage managing “Outstanding Reports” by the Junior Engineers for getting Current Duty Charge of the post of Sub Divisional Officer and that the same is still under investigation. So far as the

status of Civil Writ Petitions Nos. 9039 and 10222 of 2001 (*supra*) is concerned, it is stated that on September 24, 2004, these petitions had been dismissed as withdrawn. An opinion from the Legal Remembrancer, Punjab, is also shown to have been obtained and a gist of the opinion has been mentioned to the effect that Rule 20 of the 1994 Rules provides that these rules shall be effective notwithstanding anything to the contrary contained in any rule for the time being in force, regulating the recruitment and conditions of service for appointment to public service. So far as Rule 5 of the 1941 Rules is concerned, it shall not have effect, to the extent it is contrary to the 1994 Rules. It has also been indicated that the government has decided to fill the vacant posts of Sub Divisional Officer on regular basis from amongst the Junior Engineers by holding Departmental Promotion Committee under the 2004 Rules.

(33) The government has not been able to spell out the clear-cut approach in regard to the promotions to be made from the feeder cadre to the posts of Sub Divisional Officers. The government has also not denied that the instructions dated October 01, 1999 and December 22, 2000 did not prescribe the criteria for assessing the grades - "Outstanding," "Very Good", "Good" and "Average". A specific averment has been made in Civil Writ Petition No.9716 of 2005, in which a detailed reply has been submitted by the government, and while submitting reply to para No.5, it has been only mentioned - "that the contents of this para is a matter of record." (It may also be noticed that no detailed written statement has been filed in the petition from which the facts have been noticed, but the written statement filed in Civil Writ Petition No.9716 of 2005 has been adopted by virtue of the short written statement filed by the Additional Secretary to Government, Punjab, Irrigation Department, which is dated July 11, 2005, as such, the written statement filed in Civil Writ Petition No.9716 of 2005 has been duly noticed). Perusal of the pleadings of the government shows that no serious mind has been applied while submitting reply to the averments contained in the petition. It has not been clarified as to what is or would be the status of the instructions dated October 01, 1999 and December 29, 2000. No doubt the criteria was formulated by the government on September 25, 2003 pursuant to a direction of this Court, but that would not mean that the government would not disclose the earlier criteria promulgated, or would not indicate that the earlier criteria shall stand superseded by virtue of the present criteria promulgated pursuant to a direction of this Court. Perusal of the directions of this Court issued *vide* judgment rendered

in Civil Writ Petition No.8023 of 2001 shows that government was only required to formulate criteria for adjudging the "Outstanding Merit" and was not required to issue instructions over and above the same. The government has certainly gone far beyond the directions without defining the status of earlier instructions as noticed above. This act has caused further confusion and is the reason for not giving clear answer to the averments made in the petition. It is evident that the government has not taken a categorical stand by disclosing that a criteria already had been notified by virtue of instructions dated October 01,1999 and December 29, 2000, which specifically provided the rating index for the person after having earned "Outstanding", "Very Good", "Good" and "Average" remarks in the 5 Annual Confidential Reports, while considering the person to make an overall grade under the word "Outstanding Merit" as existed in the 1941 Rules. The government is expected to take a clearcut and a positive stand by placing all the facts and figures before the Court, before the decisions are asked to be rendered upon the pleadings of the parties. We find that wherever the government did not have the answer, the plea has been set up that the documents indicated are matter of record.

(34) In view of what has been noticed above, we are of the considered opinion that approach of the government has not been very fair *vis-a-vis* issuing the impugned order, the facts disclosed have recapitulated the history, but minus the earlier instructions, especially the instructions dated October 01,1999 and December 29, 2000, which had given a good comprehensive answer for spelling out and determining the "Outstanding Merit" as used in the 1941 Rules.

(35) By promulgating the new rules, the posts which had fallen vacant and which were amendable to the 1941 Rules, would not give the right to the government to consider the cases of the eligible candidates for being promoted to the posts of Sub Divisional Officers by applying the 2004 Rules. It is the settled law that the rules applicable would be, when the post had fallen vacant in the case of promotees and this has been stand of the government, as is evident from the instructions dated April 27, 1982, which have been noticed above.

(36) We are not called upon to express our opinion with regard to the applicability of the rules in regard to the case of the direct recruitees, however, in this regard as well, the law stands settled by this Court as well as the Hon'ble Supreme Court.

(37) In view of the above, the petition is allowed and the impugned order dated June 22, 2005 (copy Annexure P-18) is quashed with a direction to the government to reconcile their own instructions by keeping in view the instructions issued on October 01, 1999 and December 29, 2000 in continuation of the other instructions. The sustainability of the instructions dated September 25, 2003, pursuant to a direction of this Court, shall also be kept in view as to whether they have been formulated strictly as per the directions, if not, may issue fresh instructions strictly as per the directions of this Court within three months from the date of receipt of certified copy of this order. Additionally, the instructions dated December 29, 2000 be kept in view and wherever the overriding effect or principle of supersession has to be applied, the same be indicated accordingly.

(38) It is clarified that so far as the posts, which have fallen vacant prior to March 31, 2001, are concerned, the same shall be filled by following the criteria indicative from the instructions dated October 01, 1999 and December 22, 2000 for determination of "Outstanding Merit" as used in the 1941 Rules; meaning thereby, for these posts, 1941 Rules shall be applicable.

(39) Learned counsel for the petitioners had given up their claim for challenging the vires of 2004 Rules, resultantly, we are not called upon to express our opinion in that regard.

(40) It shall be appreciated if the exercise for filling the vacancies prior to March 31, 2001, is carried out, as observed above, within six months from the date of receipt of a certified copy of this order.

(41) So far as the subsequent vacancies are concerned, the direction of this Court made in Civil Writ Petition No.8023 of 2001 be carried out, if so advised, within three months from the receipt of a certified copy of this order. The selection process for the same be completed within three months after the expiry of the period of three months, as aforesaid or from the advise as the case may be.

(42) The status of Current Duty Charge shall remain within the domain and shall abide the order of the competent authority till the final selection, as afore-stated, is made.

(43) Disposed of pursuant to the aforesaid observations and directions. No order as to costs.

R.N.R.