

CIVIL MISCELLANEOUS

Before D. K. Mahajan and Prem Chand, Pandit, JJ.

PRITAM SINGH,—*Petitioner*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 1093 of 1966

July 26, 1968.

Punjab Service of Engineers (Electricity Branch) (Condition of Service) Rules (1939)—Rule 7-A—Proviso—Scope of—Whether restricted to fixation of inter se seniority between “members of the service” and “subordinates” and up to class II only—Clauses Secondly—To whom applicable.

Held, that according to the proviso to Rule 7-A of the Punjab Service of Engineers (Electricity Branch) (Condition of Service) Rules (1939), if the members of the service had been promoted, whether substantively or temporarily, to the posts in the same class, their *inter se* seniority would be determined according to their relative seniority in the class from which they had been promoted. But there is one exception added to this proviso and that is that if a member of the service had been substantively promoted earlier than the other member who was senior to him and the latter had been passed over on the ground of inefficiency, then the junior member would be considered senior to him in the higher class. A reading of proviso clearly shows that it deals with the *inter se* seniority between ‘members of the service’ and the ‘subordinates’. Moreover, the proviso is not restricted only to the fixation of seniority *inter se* between the two categories up to Class II only. The words used in the proviso referred to ‘promotion in the same class’, which obviously is not restricted to Class II only. It included the promotion from Class II to Class I and Class I to the class of Executive Engineers and so on. If the proviso is to be restricted to the fixation of seniority up to Class II only, then there will be no rule governing the *inter se* seniority of officers promoted from Class II upwards. (Paras 6 and 8).

Held, that Clause Secondly in part 7-A deals with the case of persons who had not been confirmed. In that case, their *inter se* seniority would be fixed from the dates of their appointments to the class in which the seniority has to be determined. It refers to the dates of ‘appointments’, which obviously means appointments to the class in which the said seniority is going to be fixed. The said appointments can be by two methods, either by way of direct recruitment or

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by promotion. Since the provision to it deals with the promotees Clause Secondly obviously deals with direct appointees and not promotees, because otherwise the proviso would become redundant. (Para 12)

Case referred by the Hon'ble Mr. Justice P. C. Pandit on 7th March, 1968 to a Division Bench for decision of an important question of law involved in the case. The Division Bench consisting of the Hon'ble Mr. Justice D. K. Mahajan and the Hon'ble Mr. Justice P. C. Pandit finally decided the case on 26th July, 1968.

PETITION under Articles 226 and 227 of the Constitution of India, praying that an appropriate writ, order or direction be issued quashing the order, dated 13th June, 1961, 1st June, 1963, 22nd April, 1964 and 11th May, 1965 confirming the respondents No. 3 to 19 and orders, dated 11th March, 1966 and 23rd March, 1966 promoting respondents Nos. 3 and 4 as Superintending Engineers and orders, dated 19th March, 1966 rejecting the petitioner's representations and further directing respondents 1 and 2 to fix his seniority afresh and thereby treat him as senior to respondents Nos. 3 to 19 at all times and to give the consequential benefits by declaring him as promoted to the post of the Superintending Engineer with effect from 11th March, 1966, i.e., the date when his junior was promoted as Superintending Engineer, and further praying that the final joint seniority list published in the gazette, dated 29th April, 1966 be quashed and respondents Nos. 1 to 20 and 21 be directed to fix the petitioner's seniority in accordance with the provisions of rule 7-A of the Punjab Service of Engineers (Electricity Branch) Conditions of Service Rules, 1939.

H. L. SIBAL, SENIOR ADVOCATE, WITH M/s. M. R. AGNIHOTRI AND D. S. NEHRA, ADVOCATES, for the Petitioner.

S. K. JAIN, ADVOCATE, FOR ADVOCATE-GENERAL (PUNJAB).

D. N. AWASTHY, ADVOCATE, WITH S. S. SODHI, ADVOCATE, for Respondent No. 2.

V. P. SHARDA, ADVOCATE, WITH S. K. SANWALKA, ADVOCATE, for Respondents Nos. 3 to 10, 12 and 19.

D. N. AGGARWAL, SENIOR ADVOCATE, WITH B. N. AGGARWAL, ADVOCATE, for Respondent No. 11.

RAM KARAN DASS BHANDARI, ADVOCATE, for the newly impleaded Respondent No. 23.

JUDGMENT

Pandit, J.—This is a petition under Articles 226 and 227 of the Constitution filed by Pritam Singh, Senior Design Engineer in the Punjab State Electricity Board, challenging the legality of certain orders of confirmations and promotions passed by the State of Punjab and the Punjab State Electricity Board.

(2) According to the petitioner, he joined the service of the Government of the Punjab (Electricity Branch) as an apprentice

engineer on 10th of April, 1948. On 28th of February, 1949, he was promoted as an Assistant Engineer, Class II and he was later confirmed as such by the State of Punjab, respondent No. 1, on 11th May, 1956, with effect from 19th November, 1952. R. D. Gupta, T. S. Viridi, L. R. Malik, B. P. Chandra, K. S. Bardwaj, H. L. Sharma, R. K. Shingal, M. L. Sachdeva, A. K. Chopra, B. N. Rampal, G. S. Bains, J. M. Gupta, J. C. Kalra, K. K. Aggarwal, K. N. Bhatia, B. D. Singh and S. S. Sarwal, respondents 3 to 19, were all junior to him had been confirmed as Assistant Engineers, Class II with effect from different dates. On 10th of April, 1956, the petitioner was promoted as Assistant Engineer, Class I in an officiating capacity and was confirmed on the said post by order, dated 21st March, 1958, with effect from 1st September, 1956. While the petitioner was working as Assistant Engineer, Class II, respondents 3—10 except respondent Nos. 7, 11 to 15 and 16 to 19, were promoted to Class I on an officiating basis in July, 1953, September, 1953 and March, 1954, respectively. All of them were, however, confirmed by the order, dated 21st March, 1958, with effect from 1st September, 1956. On 19th of June, 1958, the petitioner was promoted as an Executive Engineer and he was confirmed on this post on 11th May, 1965, with effect from 1st January, 1965. In the meantime, however, respondents 3 to 19 had been promoted as Executive Engineers in an officiating capacity earlier than the petitioner. They, except respondent No. 18, were confirmed as such on different dates as mentioned below:—

	With effect from	Dated of order
R. D. Gupta	7-2-1958	13-6-1961
T. S. Viridi	18-9-1960	13-6-1961
L. R. Malik	4-11-1960	13-6-1961
B. P. Chandra	5-1-1961	13-6-1961
K. S. Bhardwaj	5-1-1961	1-6-1963
H. L. Sharma	5-1-1961	1-6-1963
R. K. Shingal	5-1-1961	1-6-1963
M. L. Sachdeva	6-1-1961	1-6-1963
A. K. Chopra	18-1-1961	1-6-1963
B. N. Rampal	1-3-1961	1-6-1963
G. S. Bains	1-3-1961	1-6-1963
J. M. Gupta	11-6-1962	22-4-1964
J. C. Kalra	5-9-1962	22-4-1964
K. K. Aggarwal	15-11-1962	22-4-1964
K. N. Bhatia	17-12-1963	22-4-1964
S. S. Sarwal	1-1-1965	11-5-1965

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Respondent No. 19 was thus confirmed with effect from the same date as the petitioner, while respondent No. 18 was still unconfirmed. In 1959, the Punjab State Electricity Board (hereinafter called the Board), respondent No. 2, was constituted under the Electricity Supply Act, 1948 and the petitioner's services were transferred to the Board with effect from 31st January, 1963, along with the other employees of the Electricity Department. It was then clearly provided that the terms and conditions of the petitioner's services would continue to be the same and would not be changed or altered to his disadvantage. Rule 7-A of the Punjab Service of Engineers (Electricity Branch) (Conditions of Service) Rules, 1939, contained in Appendix 1-B of the Manual of Orders, Punjab Public Works Department Electricity Branch, published by the Punjab Government, stated as under:—

“The order of seniority of members of the service serving in any class of appointment specified in Appendix ‘A’ and appointed substantively to a post in the service on or after the 17th November, 1943, shall be determined as follows:—

Firstly—Those who have been confirmed in such class, according to their respective dates of confirmation:

Provided that where two or more members were confirmed on the same date they shall retain the order in which they stood with respect to each other immediately prior to confirmation;

Secondly—Those who have not been confirmed, in the order of their dates of appointment or if such dates be the same for two or more members, in the order of the salaries allowed to them on such date, the higher paid being placed above the lower paid, or if both the date of appointment and the salary be the same, in the order of age, the older being placed above the younger:

Provided that the members of the Service and holders of subordinate posts in the Electricity Branch (hereinafter referred to as “Subordinates”) who are promoted whether substantively or temporarily to the posts in the same class shall take rank, *inter se* according to their relative seniority in the class or classes from which they were promoted, unless it be that a member of subordinate is

substantively promoted earlier than another member or subordinate who is senior to him and has been passed over on the score of inefficiency in which case the member or subordinate first promoted shall take rank in the higher class above such other member or subordinate if and when the latter is promoted to the same class.

* * * * *

(2) Promotion to posts on a higher scale of pay will not be made on consideration of seniority alone but by selection."

(3) The petitioner had been previously ignored when promotions were being made to Class I, on account of some adverse remarks stated to exist against him, which were later on expunged on his representation. As he was also promoted to Class I and was confirmed there by the same order, dated 21st March, 1958 and with effect from the same date as the other respondents, he bona fide believed that according to the correct interpretation of rule 7-A, his seniority would remain undisturbed. Soon after his promotion to class I, he submitted representations to the Government and the Governor of Punjab, for restoring his seniority according to rules as it originally stood in Class II, but no relief was given to him. Although under the law, the petitioner was senior to respondents 3 to 19 according to the rules of service, respondents 1 and 2 by placing an erroneous interpretation on the rules, treated them as senior to him and confirmed them as Executive Engineers earlier than the petitioner. The representations made by the petitioner against this action of the authorities did not receive favourable consideration at their hands. The question relating to the correct interpretation of rule 7-A for determining the seniority of officers of the different cadres was under consideration of respondents 1 and 2 and it remained so until 1965. It was finally decided in that year. In September, 1965, the revised seniority list, as it stood on 8th of September, 1965, was prepared and the petitioner was shown junior to respondents 3 to 19. The petitioner made representations against the said list on different dates, namely, 3rd January, 1966, 5th March, 1966 and 16th March, 1966. On 19th March, 1966, the Board rejected the representation, dated 3rd January, 1966. In the meantime on 11th March, 1966, respondent No. 3 was promoted in an officiating capacity to the post of Superintending Engineer. Similarly, on 23rd March, 1966, respondent No. 4 was also promoted as such. Both these respondents were, however,

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junior to the petitioner. In April, 1966 the joint seniority list prepared by the Government of India under section 115 of the States Reorganisation Act 1956; was published by the State Government, Integration Department, and the petitioner was shown junior to respondents 3 to 19 in that list. That led to the filing of the present writ petition in May, 1966.

(4) In the return filed by respondent No. 2, it was stated that the writ petition was very much belated. The position regarding the seniority of the petitioner vis-a-vis respondents 3—6, 8—14, 16, 19 and others was fixed on 17th of September, 1956 when his representation against his supersession was turned down by the Chief Engineer. This position was again confirmed by the Government after consulting the Public Service Commission, when his time-barred memorial, dated 9th May, 1957 followed by an additional representation, dated 19th July, 1958 were rejected by the Government on 13th November, 1959. This rejection was duly communicated to the petitioner on 30th November, 1959. The petitioner's claim for seniority vis-a-vis the respondents, thus, stood finally settled in November, 1959, at the latest. All these decisions were made when the petitioner was either in the service of the Government or was on deputation with the Board. The petitioner was superseded from time to time in the matter of officiating promotion from Assistant Engineer, Class II to Class I, on account of his unsatisfactory record of service. The seniority was finally re-fixed in the order containing the confirmations of the various officers, including the petitioner, as Assistant Engineer, Class I and the respondents were shown senior to him in this confirmation order. The matter could not be re-opened now, especially when the petitioner had acquiesced in that position for all these years. There had been no infringement of any legal right of the petitioner by the impugned confirmation order and by the promotion of respondents 3 and 4. The said orders were passed in 1961, 1963, 1965 and, finally in May, 1965. The promotion of respondents 3 and 4 as Superintending Engineers was on the basis of merit with due regard to seniority. That office being a selection post, merit was the prime consideration. It was admitted that respondents 3 to 6 and 8 to 19 were promoted to Class I in an officiating capacity earlier than the petitioner whose promotion was delayed till 10th of April, 1956. The petitioner's promotion was with held because of his unsatisfactory record of service. It was incorrect that the adverse remarks against him

were expunged on his representation. However, a warning administered to him in April, 1965, in a different context was withdrawn. On the other hand, after careful consideration and reference to the Public Service Commission, those adverse remarks were allowed to stand, though ultimately the petitioner was promoted to Class I on 10th of April, 1956, after he was declared suitable for promotion by the Public Service Commission. Every time when the matter of promotion came up, the petitioner's name was also considered along with others, but he was not approved for promotion by the Public Service Commission and that is why the other respondents were promoted first. The petitioner was assigned position in the seniority of Assistant Engineer, Class I from the date of his promotion after supersession as mentioned earlier. It was significant that according to the petitioner's own admission, he never made any representation against his supersession until he was promoted in an officiating capacity on 10th April, 1956. The supersession took place in July, 1953, when respondents 3-6 and 8 to 10 were approved for promotion. He was again superseded in September, 1953, when respondents 11 to 15 were promoted in an officiating capacity in Class I. His next supersession was in March, 1954, when respondents 16 to 19 were selected in preference to him for officiating promotion in Class I. On 5th of July, 1956, the petitioner made a belated representation against the above supersessions and loss in seniority. This representation was rejected in September, 1956. The petitioner again submitted a memorial to the Governor in that connection on 9th of May, 1957, which was found time-barred. Besides various reminders in that connection, he also made a representation, dated 19th July, 1958. The matter was given close consideration at all levels and was finally sent to the Public Service Commission for their advice. After obtaining the said advice, the petitioner's representation was finally rejected on 13th November, 1959. This rejection was duly communicated to him on 30th November, 1959. The matter was thus finally settled and it was now too late in the day for the petitioner to re-agitate the same which had become too stale. It was admitted that respondent No. 18 was not confirmed so far, but a vacancy had been kept reserved for him. It was stated that the promotions and confirmations of the respondents were correctly made and no injustice had been caused to the petitioner thereby. It was asserted that the promotion to the post of an Executive Engineer, like that of a Superintending Engineer, was not to be made on mere seniority. These were selection posts and appointments were made on merits

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with due consideration of seniority. The various orders confirming the respondents as Executive Engineers and promoting respondents 3 and 4 as Superintending Engineers were perfectly just, proper and in accordance with the rules. The petitioner was superseded thrice for unsatisfactory record of service in the matter of promotions from Class II to Class I in the pre-integration Punjab Service of Engineers. On 31st October, 1956, therefore, he was junior to respondents 3 to 6 and 8 to 19. This was the petitioner's clear position in the parent State of Punjab and this could not be altered in the joint seniority list which gave the order of seniority in the integrated State of Punjab as on 1st November, 1956. The main thing to be noticed was that the petitioner was junior to respondents 3 to 19 and had been shown as such in both the provisional as well as the final joint seniority lists.

(5) Learned counsel for the petitioner submitted that the order, dated 13th June, 1961, 1st June, 1963; 22nd April, 1964 and 11th May, 1965, passed by the Government and the Board confirming respondents 3 to 19 as Executive Engineers and the orders, dated 11th March, 1966 and 23rd March, 1966 promoting respondents 3 and 4 as Superintending Engineers, were not in accordance with law and had been passed by misinterpreting the rules of service governing the petitioner and, consequently, they were liable to be quashed. According to him, the petitioner was senior to the said respondents, when they were serving as Assistant Engineers, Class I. While promoting the respondents in the officiating capacity, his name was not considered by respondents 1 and 2 on the erroneous ground that he was junior to all the respondents in Class I. In arriving at that conclusion, they had misconstrued rule 7-A of the Punjab Service of Engineers (Electricity Branch) (Conditions of Service) Rules, 1939. The confirmation of the respondents as Executive Engineers prior to the petitioner on account of the fact that they had been promoted as Executive Engineers earlier than the petitioner, was consequently bad in law. Under the rules of service, the petitioner was entitled to be promoted and then confirmed as Executive Engineer earlier than the respondents, he being senior to all of them in Class I. On that very basis, he ought to have been promoted as a Superintending Engineer in preference to respondents 3 and 4. Learned counsel also submitted that the question relating to the correct interpretation of rule 7-A for determining the seniority of the officers in different cadres was under consideration

uptill 1965, when it was finally decided by respondent No. 3. According to the recent decision, which was different from the one taken earlier by the Government, the Board issued revised seniority lists of the Chief Engineers, Superintending Engineers, Executive Engineers and Assistant Engineers, Class I and II in September, 1965. In those lists, certain persons who had previously been shown junior were allowed the benefit of their original seniority and were, consequently, shown as senior in the final gradation list. The petitioner, however, had been denied the said benefit. If he had been given his due seniority for which he had been agitating for a number of years, he would have been promoted as an Executive Engineer and then Superintending Engineer prior to the respondents, according to the rules of his service. The impugned orders passed by respondents 1 and 2 were, thus, clearly illegal and *ultra vires* and contravened Articles 14 and 16 of the Constitution.

(6) The first question that requires determination is—what is the true interpretation of rule 7-A ? The said rule has already been re-produced in the earlier part of the judgment. It would come into play when one had to determine the *inter se* seniority of the members of the service then (a) those members were serving in any class of appointment specified in Appendix 'A' and (b) when they had been appointed substantively to a post in the service on or after the 17th of November, 1943. 'The service has been defined in rule 2(a) and it means the Punjab Service of Engineers in the Electricity Branch. In Appendix 'A' to the rules, the various classes of appointment have been mentioned and they are Chief Engineers, Superintending Engineers, Electric Inspector to Government, Punjab, Executive Engineers, Assistant Engineers, Class I, Senior Assistant to Electric Inspectors, Assistant Engineers, Class I, etc. The petitioner and the respondents were members of the service and were serving as Assistant Engineers, Class II, then Assistant Engineers, Class I and later on as Executive Engineers. It was undisputed that all of them had been appointed substantively to posts in the service after 17th of November, 1943. Since all of them had satisfied the two conditions laid down for the applicability of this rule, their *inter se* seniority will be governed by it. It was conceded by the counsel for the respondents that the petitioner was senior to all the respondents as Assistant Engineer, Class II. Now the question is as to what was his position *vis-a-vis* the respondents in Class I. The admitted facts were that some of

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the respondents had been promoted in July, 1953, others in September, 1953 and the remaining in March, 1954, while the petitioner had been promoted on 10th of April, 1956. All of them, including the petitioner, were later on confirmed on 21st March, 1958, with effect from 1st September, 1956. According to Firstly of rule 7-A, when two or more members of the service were confirmed on the same date, they would retain the order of seniority in which they stood with respect to each other, immediately prior to confirmation. What was the order of their seniority immediately before confirmation? It was suggested by the learned counsel for the petitioner that the phrase "immediately prior to confirmation" indicated that their position in Class II had to be seen. This does not seem to be correct. The word 'immediately' occurring before 'prior to confirmation' signifies that their position *soon before confirmation* was to be seen. It is undisputed that immediately before confirmation in Class I, all of them were acting as Assistant Engineers, Class I in an officiating capacity, they having been promoted on different dates. How was their seniority *inter se* at that stage to be fixed? The answer to this is undoubtedly not given in Firstly. For that purpose, one has to go to the proviso mentioned in the rule, because Secondly deals with the case of direct appointees. According to the proviso, if the members of the service had been promoted, whether substantively or temporarily, to the posts in the same class, their *inter se* seniority would be determined according to their relative seniority in the class from which they had been promoted. But there is one exception added to this proviso and that is that if a member of the service had been substantively promoted earlier than the other member who was senior to him and the latter had been passed over on the ground of inefficiency, then the junior member would be considered senior to him in the higher class. It is not the case of respondents 1 and 2 that respondents 3 to 19 had been substantively promoted to Class I. As a matter of fact, their case, in the return, was that they had been promoted in an officiating capacity. It was not stated in the return filed by the Board that no other Government servant held any lien on the posts to which the respondents had been promoted, because according to rule 3.11(c) of the Punjab Civil Services Rules, Volume I, Part I, a Government servant could not be appointed substantively to a post on which another Government servant held a lien. According to the proviso, two essential conditions, before which a junior officer could rank higher than his

senior, were (1) that he must have been substantively promoted to the higher post earlier than his senior and (2) that the said senior had been passed over on the score of inefficiency. If the respondents, who were admittedly junior to the petitioner in Class II, had been substantively promoted to Class I, respondents 1 and 2 should have definitely said so in the return filed by them. That having not been done, it has to be assumed that they had been promoted only temporarily and not substantively. That being so, it is unnecessary to determine the further question as to whether the petitioner had been passed over on account of inefficiency or not. The exception mentioned in the proviso was, therefore, not attracted, with the result that according to the proviso, even though the respondents had been promoted to Class I on an officiating basis earlier than the petitioner, they would not rank senior to him in that class and the *inter se* seniority of the petitioner *vis-a-vis* the respondents would be the same as was in Class II from which all of them had been promoted. Consequently, immediately prior to confirmation in Class I, the petitioner was senior to respondents 3 to 19. On the basis of firstly then, in Class I where the petitioner and the respondents 3—19 had been confirmed on the same date, the petitioner would retain his seniority over respondents 3 to 19.

(7) Learned counsel for respondent No. 2 submitted that for determining the seniority of members of the service, both rules 7 and 7-A of the Punjab Service of Engineers (Conditions of Service) Rules, 1939, had to be read together. Rule 7-A dealt with the seniority of members appointed substantively to a post (permanent or temporary) in a particular class of the service; whereas rule 7 governed the seniority of the members of the service generally. Rule 7-A, according to the learned counsel, governed the case of appointees to the particular class substantively only, irrespective of the fact whether they had been confirmed or not. The proviso to rule 7A governed Secondly only. Moreover, it fixed *inter se* seniority amongst 'members of the service' and 'subordinates' who were promoted together in the particular class of service from their respective classes, prior to promotion. The proviso would, thus, apply only in the case of rival claims of 'members of service' and 'subordinates' who were pitted against each other in the particular class of promotion for the first time. This could, according to the learned counsel, happen only up to Class II level, because, according to him, the subordinates were eligible for promotion only up to

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Class II. The proviso, it was contended, operated to fix the *inter se* seniority of members and subordinates, when they were promoted substantively to permanent posts only. It had nothing to do with the seniority of officers who were promoted in an officiating capacity from Class II to Class I. That would be governed by rule 7(1)(b). Whenever seniority was to be fixed amongst persons officiating in any particular class of the service, according to the learned counsel, rule 7 applied. Rule 7-A on the other hand, only governed the fixation of seniority of persons holding posts, temporary or permanent, substantively in any class of service for the time being. It did not apply when at a particular moment, persons were serving in different classes of the service.

Rule 7 reads—

“7. (1) Except as provided in Rule 7-A. The seniority of Members of the Service shall be determined as follows :—

- (a) Members appointed to a higher scale of pay shall be senior to those appointed to a lower scale.
- (b) In the case of members appointed to posts on the same scale of pay, seniority shall be determined, in the first instance, by the date on which they joined their posts in that scale of pay, provided :—
 - (i) that if two or more members appointed to posts on the same date, the older member shall be considered senior to the other, unless the younger member has been first confirmed in the service, in which case the younger member shall be considered senior to the older; and,
 - (ii) that in the case of those who held gazetted posts in the Hydro-Electric Branch, before the Service was constituted seniority in a scale of pay shall be determined by the date on which they joined similar or higher appointments in the Hydro-Electric Branch, provided that service has been continuous from that date.

* * * * *

- (2) Promotions to posts on a higher scale of pay will not be made on consideration of seniority alone but by selection.”

(8) It starts with the expression "Except as provided in rule 7-A", meaning thereby that if the case was governed by rule 7-A, then rule 7 would have no application. As I have already mentioned above, Rule 7-A dealt with the seniority of members of the service, who were serving in any class of appointment specified in Appendix 'A' and who had been appointed substantively to a post in the service, on or after 17th of November, 1943. In the instant case, the petitioner and the respondents were members of the service and were serving as Assistant Engineers, Class II, Class I and as Executive Engineers, which posts were specified in Appendix 'A'. They were appointed to posts in the service after 17th of November, 1943 and it was not disputed that they had been so appointed substantively. That being so, they fulfilled the conditions precedent for the applicability of Rule 7-A and, therefore, the seniority of these officers would be governed by Rule 7-A and not Rule 7. This apart, it was not the position of respondent No. 2 in their return that Rule 7-A had no application. In the writ petition, the petitioner's main case was that Rule 7-A had been mis-interpreted by the Government and the Board while fixing his seniority. In the returns filed by the State and the Board, it was said that Rule 7-A had been correctly construed by them and the seniority had been rightly fixed. Under these circumstances, the Board could not be allowed to urge that the present case was governed by Rule 7 and not Rule 7-A. There is no merit in the contention of the learned counsel for respondent No. 2 that the proviso in Rule 7-A was applicable only when *inter se* seniority amongst 'members of the service', and 'subordinates' who had been promoted together in a particular class of service from their respective classes prior to promotion had to be determined and that it would apply only in the case of rival claims of those two categories when they were pitted against each other in the particular class on promotion for the first time and that it could happen only up to Class II. A reading of the proviso clearly showed that it dealt with the *inter se* seniority of two categories of persons, viz., 'members of the service' and 'holders of subordinate posts', when they were promoted. On their promotion, both the categories were to retain their seniority as it was in the class from which they were promoted. In case, however, the member or subordinate who was senior in the lower class was superseded for substantive promotion on account of inefficiency, the junior member or subordinate would rank senior in the higher class than the member or subordinate so superseded. It would.

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thus be seen that the proviso is not restricted to the fixing of *inter se* seniority between members of the service' and the 'subordinate' as contended by the learned counsel for respondent No. 2. Further there was no warrant for the submission that the proviso was restricted only to the fixation of seniority *inter se* between the two categories up to Class II only. The words used in the proviso referred to 'promotion in the same class', which obviously was not restricted to Class II only. It included the promotions from Class II to Class I and Class I to the class of Executive Engineers and so on. If the proviso was to be restricted to the fixation of seniority up to Class II only, as contended by the learned counsel for respondent No. 2, then there would be no rule governing the *inter se* seniority of officers promoted from Class II upwards. Counsel for respondent No. 2, however, submitted that such a seniority would be governed by Secondly, because according to him, the word 'appointments' in Secondly included 'dates of promotions' as well, as when a person is promoted to a certain class, he is considered as having been appointed to that class. There is no merit in this contention. In the first place, since the proviso specifically deals with the case of promotees, there is no point in taking resort to secondly and give an extended meaning to the word 'appointments' for that purpose, when the rule-makers have, in the same rule, used two different words, namely 'promotions' and 'appointments'. In the second place, if the interpretation suggested by the learned counsel was given effect, it would lead to very anomalous results, which can better be illustrated by giving an example. Assume, A, who is older in age to B, is senior to him in Class II. Both of them were then promoted to Class I on the same day, drawing the same salaries. According to the interpretation given to Secondly by the learned counsel for respondent No. 2, B would rank senior to A, because of his age, their dates of promotion and salaries being the same. Such a result could not obviously have been desired by the rule-makers. Thirdly, according to rule 5, the members of the service, on appointment, had to remain on probation for a period of two years in the first instance and this period could be extended up to four years at the discretion of the Government in certain contingencies. If the word 'appointment' also included the members of the service who had been promoted, then the officers who had been promoted to Class I would also remain on probation for a period of two years in the first instance, which was never the case of the Government or the Board. It is not understandable as to how it was contended by the

learned counsel for respondent No. 2 that the proviso operated to fix the *inter se* seniority of members and subordinates, when they were promoted substantively to *permanent posts only*. There was no such limitation in the proviso. Further learned counsel could not point out anything in support of his argument that the said proviso had nothing to do with the seniority of officers who were promoted in an officiating capacity from Class II to Class I. Similarly, learned counsel could not draw our attention to anything to show that whenever seniority was to be fixed amongst persons officiating in any particular class of the service, Rule 7 applied and that Rule 7-A was not applicable when at a particular point of time, officers were serving in different classes of the service.

(9) Learned counsel for respondent No. 2, in the alternative, contended that the petitioner's seniority in Class I would be determined on the basis of his officiating promotion in the said class. Since the other respondents had been promoted in an officiating capacity much earlier than the petitioner, they ranked senior to him, even though all of them had been confirmed with effect from the same date. It was also contended that the other respondents were promoted to Class I earlier than the petitioner, because his promotion was withheld on account of his un-satisfactory record of service. There were adverse remarks against him, which were not expunged even on his representation. Even after a reference to the Public Service Commission, those remarks were allowed to stand, although ultimately he was promoted to Class I on 10th of April, 1956, after he was declared suitable for that purpose by the Commission. Even in the order, dated 21st March, 1958, when all of them were confirmed in Class I, the petitioner had been shown at No. 27 and the respondents at earlier numbers.

(10) This contention ignores the fact that according to the proviso in Rule 7-A, the respondents, who were admittedly junior to the petitioner in Class II, could derive benefit from their earlier promotions in Class I, only if they had been substantively promoted after having superseded the petitioner on the score of inefficiency. As I have already said, it was not the case of the Board that any of the respondents had been substantively promoted earlier than the petitioner. The other question whether the supersession of the petitioner, on the basis of the adverse remarks referred to by respondent No. 2, was on account of inefficiency, need not be gone into, because none of the respondents had been substantively promoted

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before the petitioner, The fact that in the order,, dated 21st March, 1958, the petitioner was shown at a lower number than the respondents, would not make any difference, because all of them were confirmed on the same date and according to Firstly, read with the proviso in rule 7-A, as discussed by me above, the petitioner, who was admittedly senior to the respondents in Class II, will retain his seniority in Class I as well.

(11) Learned counsel for the State submitted that the proviso in rule 7-A had nothing to do either with Firstly or Secondly and it applied to an independent class who were promotees to Class II either from the holders of subordinate posts in Provincial Service Class III or from subordinate electrical engineers who were not in Class III. His argument, in the alternative, was that the proviso only applied to Secondly and not Firstly.

(12) There is no warrant for the contention that the proviso was applicable only to the so-called independent, class mentioned by the learned counsel. In the first place, the proviso itself refers to two types of promotees, viz., from members of the service and holders of subordinate posts in the Electricity Branch. The service has been defined as the Punjab Service of Engineers in the Electricity Branch, which meant that the engineers of all classes, namely, Class III, II, I, Executive Engineers, etc., were included in the service. The proviso, therefore, was not restricted to the promotees from the holders of subordinate posts and subordinate electrical engineers, as submitted by the learned counsel for the State. Secondly, if the contention of the learned counsel was to be accepted, then we would be left with no provision in rule 7-A which would deal with the fixation of seniority amongst the promotees from Class II to Class I, from Class I to Executive Engineers, etc. As regards the alternative argument of the learned counsel, it is not understood how that interpretation would help the respondents. As a matter of fact, the petitioner stands to gain by the said construction of the rule. Secondly deals with the case of persons who had not been confirmed. In that case, their *inter se* seniority would be fixed from the dates of their appointments to the class in which the seniority has to be determined. It refers to the dates of 'appointments', which obviously means appointments to the class in which the said seniority is going to be fixed. The said appointments can be by two methods, either by way of direct recruitment or by promotion. Since the proviso

deals with the promotees. Secondly obviously deals with direct appointees and not promotees, because otherwise the proviso would become redundant. By virtue of the proviso, the petitioner maintains his seniority even in Class I on account of his being senior in Class II, as already discussed by me above.

(13) I would, therefore, hold that according to the true interpretation of rule 7-A, the petitioner retained his seniority in Class I as well against the respondents, when all of them were confirmed with effect from 1st September, 1956.

(14) It may be mentioned that the learned counsel for respondent No. 2, admitted before us that while deciding the case of an officer, the Chairman of the Board interpreted rule 7-A in the way the petitioner was suggesting and that interpretation was different from the earlier one given by the Government. The counsel, however, submitted that the Government's interpretation was in accordance with law.

(15) The second question that arises for consideration is as to what would be the position regarding seniority of the petitioner *vis-a-vis* the respondents in the class of Executive Engineers, if the petitioner was senior in Class I, as I have already held above. Learned counsel for the petitioner admitted that a number of respondents had been promoted as Executive Engineers in an officiating capacity in 1955, some in 1956 and others in 1958, while he himself was promoted on 19th of June, 1959. His contention, however, was that the Government and the Board had, by putting an erroneous construction on Rule 7-A, placed the petitioner as junior to all the respondents and not considered his case for promotion as Executive Engineer. It was also conceded by him that one set of respondents had been confirmed as Executive Engineers on 13th June, 1961, with effect from different dates, the other from 1st June, 1963, and the third on 22nd of April, 1964. The petitioner and respondent No. 19 had been confirmed on 11th May, 1965, with effect from 1st January, 1965. These confirmations are also being challenged on the same ground, namely that the petitioner had been illegally treated as junior to the respondents by giving an incorrect interpretation to rule 7-A. Counsel argued that since the petitioner was senior to the respondents in Class I, he should have got the first chance of being promoted as an Executive Engineer in an officiating capacity. Subsequently, it is he who should have been confirmed

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as an Executive Engineer in the first instance and earlier to the respondents. Counsel for the Board, on the other hand, argued that even on the interpretation of rule 7-A as put by the petitioner, the respondents had been correctly made senior to the petitioner, because all of them, except respondent No. 19, had been confirmed much earlier than him. Their *inter se* seniority in the class of Executive Engineers, therefore, had to be determined according to their respective dates of confirmation as provided in Firstly of rule 7-A. With regard to the promotion of the respondents as Executive Engineers in an officiating capacity, his submission was that nobody had a right to be promoted to a higher class. These posts had to be filled by selection as provided in sub-clause (2) of rule 7-A. The petitioner, even if he was senior to the respondents in Class I, could not, therefore, claim as a matter of right his promotion to the post of Executive Engineer earlier than the respondents.

(16) It is true that nobody has a right to be promoted to posts in a higher scale of pay. Such a promotion has not to be made on consideration of seniority alone, but it is by selection, of course, taking into consideration the factor of seniority as well. It is undisputed that a senior officer has a right to be considered for promotion to a higher post along with his juniors. In the instant case, it was alleged by the petitioner that although he was senior to the respondents, he was not considered for promotion to the post of Executive Engineer along with his juniors, because the Government and the Board had erroneously, by his-construing rule 7-A, treated him as junior to them. This averment was not specifically denied both by the Board and the Government, and from the returns filed by them, it is apparent that the allegation of the petitioner in that behalf was correct. The petitioner had been treated as junior to the respondents, because, according to respondents 1 and 2, he had been superseded thrice, once in July, 1953, then in September, 1953 and again in March, 1954, when the respondents had been promoted to Class I earlier than him. Both the Government and the Board then considered him as junior to the respondents in Class I, even though all of them had been confirmed on 21st March, 1958, with effect from one date, i.e., 1st September, 1956. That is why he was not considered for promotion as Executive Engineer along with the respondents who were junior to him. Similarly, he was entitled to be considered along with his juniors, when they were confirmed as Executive Engineers. Their confirmations, it appears, had been determined primarily on the basis of

their dates of promotion in an officiating capacity to the said posts. The entire trouble has arisen, because rule 7-A had, in my view, not been correctly interpreted by the Government. It is true that according to Firstly, the *inter se* seniority of the petitioner and the respondents in the class of Executive Engineers had to be determined according to their respective dates of confirmation in the said posts, but since, as I have already held, the petitioner was not considered along with his juniors, when they had been promoted as Executive Engineers in an officiating capacity and later on confirmed as such, those promotions and confirmations have to be reviewed after considering the claim of the petitioner who was senior to the other respondents, as found by me in the earlier part of this judgment. Those dates of confirmations, cannot, therefore, determine the seniority in the class of Executive Engineers. After the *inter se* seniority in the class of Executive Engineers is fixed, as mentioned above, the promotions to the posts of Superintending Engineers would then, if need be, re-considered.

(17) There is one other matter which requires decision. It was strenuously contended by the learned counsel for the Board that this writ petition should be dismissed on the ground of laches. As mentioned in the return, the seniority of the petitioner, *vis-a-vis* the respondents was fixed on 17th of September, 1956, when his representation against his supersession by the respondents was turned down by the Chief Engineer. The petitioner made another representation on 19th of July, 1958, which was also turned down by the Government, on 13th November, 1959. This decision was communicated to the petitioner on 30th November, 1959. His claim for seniority, according to the Board, stood finally settled, in November, 1959, at the latest. It was also submitted that the petitioner should have approached this Court when a number of respondents had been promoted as Executive Engineers in 1955, 1956 and 1958. In any case, when the respondents were confirmed as Executive Engineers in 1961, 1963 and 1964, there was no reason for the petitioner to keep silent after that. He, having acquiesced in this position for all these years, should not now be permitted to re-open the entire matter which had become too stale.

(18) So far as the seniority in Class II is concerned, it was conceded by respondents 1 and 2 that the petitioner was senior to all the respondents in that class. It is true that a number of respondents had been promoted to Class I in an officiating capacity

in 1953 and 1954 much earlier than the petitioner. It is conceded that the petitioner was making representations against this supersession and those representations were turned down. But his grievance, however, was redressed when he and the other respondents had been confirmed on 21st March, 1958, with effect from one date, viz., 1st September, 1956. On the true interpretation of rule 7-A, he thought that he had become senior to all the respondents and consequently, he need not have taken any further step in that behalf. It is correct that a number of respondents had been promoted as officiating Executive Engineers in 1955, 1956 and 1958, but even if he did not challenge those officiating promotions, he could not seriously be blamed for that, because his grievance against his supersession in Class I had been redressed only on 21st March, 1958, by which time practically all the respondents had been promoted to the posts of Executive Engineers in an officiating capacity. This apart, according to the return of the Board itself, the seniority of the petitioner, *vis-a-vis* the respondents had been finally settled in November 1959, when the decision regarding the rejection of his representation against his supersession had been communicated to him. It is further true that a number of respondents had been confirmed as Executive Engineers in June, 1961, the petitioner was, however, justified in thinking that when he would be confirmed, the order might take effect from an earlier date, as was done in the case of all the respondents who were confirmed in 1961. Previously also, in Class I, the petitioner and the respondents had been confirmed on 21st March, 1958, with effect from 1st September, 1956. The petitioner could, therefore, legitimately presume that his confirmation as an Executive Engineer might take effect from an earlier date and if that was not done, he could then move in the matter. When subsequently he was confirmed on 11th May, 1965, he perhaps might not have made any grievance, if his confirmation had taken effect from 19th June, 1959, when he was promoted to the post of Executive Engineer in an officiating capacity, because in that case, he would have been junior to only respondent No. 3. This apart, some of the respondents had been confirmed in June, 1963 and some in April, 1964. There was yet another, namely, respondent No. 19 (S. S. Sarwal), who was confirmed along with the petitioner and with effect from the same date. There is one, respondent No. 18 (B. D. Singh), who has not been confirmed as yet. In spite of that, both respondents 18 and 19 have been made senior to the petitioner. It cannot possibly be argued that the writ petition was belated even as against respondents 18 and 19 and if on the true

interpretation of rule 7-A, they have to be held as junior to the petitioner, it does not look proper that the other respondents, who according to the same interpretation would rank junior to the petitioner, should be senior to him, simply because the petitioner moved this Court in May, 1966. It would be somewhat anomalous if in the same service, rule 7-A should be differently interpreted qua different officers. In the circumstances of this case, I am of the view that it could not be held that the writ petition was so much belated as it would merit dismissal on that score alone. It was conceded by the counsel for the parties that the acceptance of this petition was ultimately going to affect only one of the respondents, who was the junior-most out of them. It was not suggested by the learned counsel appearing for respondents 1 and 2 that the writ petition was bound to be dismissed on the ground of laches. All that they were contending was that we should not exercise our powers under Article 226 of the Constitution in favour a person who had approached this Court after a long time. As I have said, the present is not one of the cases where we should decline relief to the petitioner on the ground of delay alone.

(19) In view of what I have said above, I would accept this petition and hold that the petitioner was senior to respondents 3 to 19 in Class I. Respondents 1 and 2 are further directed to re-fix the seniority of the petitioner vis-a-vis the respondents in the class of Executive Engineers after considering the claim of the petitioner in the light of the interpretation of rule 7-A as given by me above. In the circumstances of this case, however, I will leave the parties to bear their own costs.

D. K. Mahajan, J.—I agree.

R. N. M.

CIVIL MISCELLANEOUS

Before R. S. Narula and S. S. Sandhawalia, JJ.

M/S RAM SARUP AND BROTHERS,—*Petitioners*

versus

THE PUNJAB STATE AND OTHERS,—*Respondents*

Civil Writ No. 1578 of 1966

July 31, 1968.

Punjab Agricultural Produce Markets Act (XXIII of 1961)—Ss. 23, 28 and 43—Punjab Agricultural Produce Markets (General) Rules (1962)—Rule 31(9)—Fee levied under section 23—Whether in the nature of tax on sales—Rule 31(9) permitting the imposition of penalties on a defaulter—Whether ultra vires section 43 or in excess of powers of rule making authority.