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appeal is liable to be dismissed on another ground also, that is, the necessary and proper parties have not been impleaded in the appeal. The writ petition was filed by Mohan Singh against the three Financial Commissioners, the State of Punjab, the Punjab Public Service Commission, the Commissioner, Jullundur Division and 9 persons whose appointments had been made as 'B' Class Tehsildar candidates, which had been challenged. In this appeal, the appellants are Banarsi Dass, Narinder Singh and Sujan Singh Bedi and the only person impleaded as a respondent is Mohan Singh. The other respondents to the writ petition have not been made parties to the appeal. The learned Single Judge, while dealing with the case of the present appellants, observed that he was not inclined to go into the disputed question as to whether the tenth, thirtieth and fiftieth vacancy had to go to Canal Zilledars and if Canal Zilledars were to be excluded, those vacancies could not have gone to the category of Mohan Singh. In view of this observation of the learned Judge, it was absolutely necessary for the appellants to implead all the other respondents to the writ petition as respondents to the appeal. That not having been done, the appeal, as framed, is not competent.

MEHAR SINGH, C.J.—I agree.

K. S. K.

CIVIL MISCELLANEOUS

Before Prem Chand Pandit and H. R. Sodhi, JJ.

PRITPAL SINGH SANGHERA,—*Petitioner.*

versus

THE SECRETARY TO GOVERNMENT, PUNJAB AND OTHERS,—
Respondents.

Civil Writ No. 2974 of 1968

March 13, 1969

Punjab Service of Engineers, Class I, P.W.D. (Buildings and Roads) Rules (1960)—Rules 6, 9 and Appendix B—Constitution of India (1950)—Article 16—Rule 9—Scope of—Rule 6 and Appendix B—Expression "after full three years course" occurring in Appendix B with relation to Aligarh University—Meaning

of—Three years' course condensed to 27 months—Whether amounts to full three years course—Candidate passing such course—Whether qualified for promotion—State Government misinterpreting a rule and not considering a candidate for promotion—Article 16 of the Constitution—Whether violated.

Practice and Procedure—Acceptance by the Government of a representation of one Government servant as against the other in relation to promotion—Government—Whether acts quasi-judicially.

Held, that a bare reading of rule 9 of Punjab Service of Engineers, Class I, P.W.D. (Buildings and Roads) Rules, 1960, makes it clear beyond dispute that all that is necessary for being eligible for promotion to any post in the service is that an officer must be a member of the service and he should have merit and suitability in all respects. No officer shall, however, have any claim to promotion as a matter of right or on the basis of seniority alone. In other words, the qualifications required are membership of the service and merit and suitability, seniority alone not sufficient. If in the case of an officer certain qualifications as required under rule 6 read with Appendix 'B' had been waived at the time of his initial entry into service, that officer should acquire the necessary qualifications before he becomes eligible for promotion to the post of Superintending Engineer or above. (Para 10)

Held that the expression "after full three years course" occurring in Appendix B to the Rules with relation to Aligarh University has not been defined in the Rules but it can possibly have no other meaning except that the course prescribed is three years' course. If the subjects which are to be studied in three years were taught in two years and seven months and the summervacation were not allowed to be enjoyed by the students because of the war emergency, it could not be said that a candidate had not done three years course. In this situation the courses of study are not reduced but the period is condensed from three years to two years and seven months. A candidate passing such a condensed course is deemed to have passed "full three years course" and is duly qualified for promotion to Class I service. (Para 14)

Held that Article 16 of the Constitution of India guarantees to Government servants an equality of opportunity not only in the matter of initial appointment but also in the matter of promotion. If the State Government by its arbitrary action by misinterpreting rule 6 of the Rules, undoes its earlier decision whereby a candidate was accepted in Class I service as having been fully qualified and ignores him for promotion, it denies the fundamental right of equality guaranteed to him in regard to his further promotion. He has the right to be considered for promotion which is taken away from him. Article 16 of the Constitution of India is thus violated. (Para 19)

Held that the Government in accepting a representation of Government servant as against the other in relation to promotion does not exercise any quasi-judicial functions. It is an administrative act requiring no judicial approach of

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the type which a court or any administrative authority exercising quasi-judicial functions is expected to make. There can be no lis between the parties nor does it create such a situation between the two contesting officers so as to bring into operation the rule prohibiting review by judicial or quasi-judicial tribunals except in specified circumstances and barring a fresh decision. (Para 22)

Case referred by Hon'ble Mr. Justice Prem Chand Jain on 16th December, 1968, to a larger Bench for decision of an important question of law involved in the case. The case was finally decided by a Division Bench consisting of Hon'ble Mr. Justice Prem Chand Pandit & Hon'ble Mr. Justice H. R. Sodhi on 13th March, 1969.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari, mandamus or any other appropriate order or direction be issued quashing the order of the Government by which the Government have decided to revert the petitioner and promote respondent No. 3 in the place of petitioner and further praying that during the pendency of the writ petition, reversion of the petitioner be stayed from the post of Superintending Engineer.

KULDIP SINGH AND R. S. MONGIA, ADVOCATES, for the Petitioner.

MELA RAM SHARMA, ADVOCATE, FOR A. G., PUNJAB, for Respondents No. 1 and 2. BHAGIRATH DASS, M. R. AGNIHOTRI, B. K. JHINGAN, ADVOCATES, for Respondent No. 3.

JUDGMENT

SODHI, J.—This writ petition has come up before us on a reference made by a learned Single Judge of this Court who after considering the various contentions raised by the learned counsel for the parties was of the view that it involved some legal points and should preferably be disposed of by a Division Bench.

(2) The petitioner is Pritpal Singh Sanghera officiating Superintending Engineer, who was appointed as such by an order of the State Government, during the time of the last popular ministry, passed on 17th May, 1968, and filed as annexure 'A' with the writ petition. The appointment was made against a newly created post. The petitioner originally joined service in October, 1957 after passing his B.Sc. (Civil Engineering) from the Punjab University as Sub-Divisional Officer in Class II of the service of Engineers. He was promoted as officiating Executive Engineer in February, 1958, and appointed to Class I of the service of Engineers in the year 1961. Recruitment to this service and promotions therein are regulated by the Punjab Service of Engineers, Class I, P.W.D. (Buildings and Roads Branch) Rules, 1960, hereinafter called the Rules. The method of recruitment to the service as envisaged in rule 5 is by direct appointment. by transfer of an officer already in service of a State

Government or of the Union, and, by promotion from Class II Service. Qualifications to make a person eligible for appointment to Class I Service are given in rule 6 read with Appendix 'B' of the Rules. Rule 6 along with the relevant part of the appendix is reproduced below in extenso:—

"6. Qualifications.—No person shall be appointed to the Service, unless he—

(a) possesses one of the University Degrees or other qualifications prescribed in Appendix B of these rules :

Provided that Government may waive this qualification in the case of a particular officer belonging to Class II Service;

(b) in the case of an appointment by promotion from Class II Service has 8 years completed service, in that class and has passed the departmental examination, as provided in rule 15;

(c) being a person to be appointed to the Service by direct recruitment, obtain from the Standing Medical Board a certificate of mental and physical fitness after being examined in accordance with the regulations prescribed in Appendix C and is considered by the Medical Authority to be fit in all respects for active outdoor duties;

(d) is a person with a satisfactory character and antecedents, verification in respect of which shall be arranged through appropriate Government Agency, except in cases where such verification may have already been made at the time of his entry into Government Service;

(e) has not more than one wife living or, in the case of a woman, is not married to a person already have a wife living :

Provided that Government may, if satisfied that there are special grounds for doing so, exempt any person from the operation of this condition.

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APPENDIX 'B'

(See Rule 6)

A. Punjab University	.. B.Sc. (Engg.) degree in Civil, Mechanical or Electrical.
Agra University	.. B.Sc. in Electrical or Mechanical Engineering from June, 1954.
Aligarh University	.. B.Sc. (Engg.) from 1948; also degree prior to 1948 after a full three years' course.
Andhra University	.. B.E., Civil Mechanical or Electrical from 1950.

* * * * *

All-India Council of Technical Education—National Diploma
in Civil, Mechanical or Electrical Engineering.

* * * * *

Parts 'A' and 'B' of the Associate Membership Examination of
the Institution of the Engineers (India) Civil, Mechanical
or Electrical.

(B.Sc. Engineering Degree or its equivalent in Civil, Mechanical
or Electrical of any University.)

Foreign Universities.

B. Must have passed any of the following :—

- (1) The examination for the Diploma or Farady House, London.
- (2) The examination for such Degree and Diploma as entitle their holders to exemption from sections 'A' and 'B' of the Associate membership examinations of the Institutions of Civil, Mechanical and Electrical Engineers, London.

* * * * *

- (10) B.Sc. (Internal Degree) in Engineering ordinary or with Honours (not including the B. Sc. in Engineering (Mining) or the B.Sc. in Engineering (Metallurgy) of London University). The external Degree is also accepted to the same extent, provided it is recognized by the Institution of Civil Engineers as exempting from sections 'A' and 'B' of the A.M.I.C.E. Examination:

* * * * *

C. The examination for such other Diploma or distinction in Engineering as the Government of Punjab in the concerned Department on the advice of the Punjab Public Service Commission may specify in this behalf."

* * * * *

Rajinder Nath, respondent No. 3, on obtaining the degree of B.Sc. Engineering from Aligarh University in the year 1946, joined Government service as a temporary Assistant Engineer in the year 1948 in Public Works Department (Buildings and Roads Branch) on a selection by the Punjab Public Service Commission. He was confirmed in P.S.E. Class II on 1st January, 1956 and was appointed as officiating Executive Engineer with effect from 4th October, 1956. He was appointed to Class I service in the year 1960. By Government notification No. 11993-B&RII(2)-60/15481, dated 23rd May, 1961, the petitioner and the respondent No. 3 were appointed as Executive Engineers in the senior scale of P.S.E. Class I Public Works Department (Buildings and Roads Branch). In the order of seniority, respondent No. 3 was shown at number 12 whereas the petitioner at number 18. There was then another notification issued on 16th November, 1963, copy whereof is appended as annexure R.3/A, in which dates of appointment of the various officers were specified in order to fix their seniority. By this notification, appointment of some officers had been made in relaxation of rules 6(a) and 6(b) but no mention was made therein of respondent No. 3 implying thereby that the Government did not think that any relaxation was necessary to be made in his case under proviso to rule 6. In other words, he was deemed to be possessed of necessary qualifications as required by the Rules. There is no dispute that the respondent is senior to the petitioner and it has been conceded by the learned counsel for the parties that the service record of both the contesting officers is without any blemish so as to make it difficult for either of them to contend as to which officer possess more merit.

(3) It appears that somewhere in the end of the year 1967, there was some sort of proposal to appoint a Superintending Engineer, by selection. The petitioner and one N. S. Sodhi, both Executive Engineers, seemed to believe that respondent No. 3 might be selected because of his seniority-cum-merit. They put in a representation in advance to guard against the possible selection of this respondent as Superintending Engineer, and alleged that the respondent and one D. V. Sahney did not possess the requisite qualifications as provided

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in rule 6(a) of the Rules. It was stated by them that the respondent who was a graduate from Aligarh University had not completed full three years course as referred to in Appendix 'B' to rule 6, prior to obtaining his B.Sc. Degree and was not, therefore, eligible for appointment to the service and consequently for appointment as Superintending Engineer. It was also mentioned in their representation that the appointment of Shri Sahney and the respondent as members of P.S.E. Class I was irregular inasmuch as no relaxation had been made by the Government in their cases under proviso to rule 6 though it had been done in some other cases where the officers did not possess the requisite qualifications. We have looked into the original file produced by the Department and find that this representation was processed in the office. Advice obtained but the Minister concerned did not accept the same and took the view that the respondent was not eligible for selection as Superintending Engineer since he was not possessed of the requisite academic qualifications in terms of the Appendix 'B' and no relaxation had been made by the Government in his case at the time of his initial appointment to the Service. The Chief Minister approved of the action taken by the Minister. The petitioner was, then selected as an officiating Superintending Engineer by an order made on 17th May, 1968 on the ground that the respondent was not eligible to hold the post of Superintending Engineer because the latter had obtained the degree from Aligarh University prior to the year 1948 without undergoing full three years course. As a matter of fact, the respondent was senior to the petitioner. On coming to know of his supersession on the basis of his ineligibility because of the alleged want of necessary academic qualifications, respondent No. 3 submitted a representation on 4th June, 1968 to the Government. It remained pending with the Ministry till ultimately the Chief Minister returned the file on 24th August, 1968 because of his having resigned from the office. This representation was ultimately considered by the Governor with the aid of his advisors. It may, however, be stated that before the representation of respondent No. 3 could finally be disposed of, the petitioner had also sent his representation pointing out that the respondent was not possessed of necessary academic qualifications and had been rightly passed over for selection to the post of Superintending Engineer. The Governor decided both the representations upholding the contention of respondent No. 3 and rejecting that of the petitioner.

(4) It was decided by the Government that on the acceptance of the representation of respondent No. 3, the petitioner was to revert to his original substantive post of Executive Engineer. No formal final order had actually been issued when on coming to know the acceptance of the representation and the decision of the Government to revert him to his substantive post, the petitioner filed this writ petition on 16th September, 1968. A notice of motion was issued for 30th September, 1968 and after hearing the Advocate-General who appeared for respondent Nos. 1 and 2, rule nisi was issued, returnable on 22nd October, 1968. The temporary reversion of the petitioner was, however, ordered to be stayed till the decision of the writ petition.

(5) Mr. Kuldip Singh, learned counsel for the petitioner, has raised the following contentions :-

(1) That respondent No. 3 was not eligible for appointment to Class I service as he was not possessed of the requisite qualifications as required under rule 6 and was, therefore, not eligible for selection to the post of Superintending Engineer under rule 9. The ineligibility for selection as Superintending Engineer is supported on the ground that since respondent was appointed to Class I Service when he was not holding requisite qualifications, the Government must be deemed to have waived those qualifications under proviso to rule 6 as a result whereof he could not be promoted to the post of Superintending Engineer or above till he acquired the necessary qualifications which he had not done.

(2) That the Government having taken a decision to select the petitioner could not review the same whether the earlier order of selection passed on 17th May, 1968 be treated as a quasi-judicial or an administrative one. The impugned decision of the Government to revert the petitioner though not yet communicated is violative of the rules of natural justice inasmuch as the petitioner was given no opportunity to be heard before the decision to revert him was taken.

(6) Mr. Bhagirath Dass, learned counsel for respondent No. 3 raised preliminary objections to the following effect :-

That the writ petition merits dismissal on the short ground of laches as, according to the learned counsel, what is sought

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to be challenged is really the order of appointment of the respondent to P.S.E. Class I as was notified on 23rd May, 1961. The contention is that there is no explanation to be found in the writ petition regarding inordinate delay of about eight years. The other objection is that the writ petition is pre-mature as no order of reversion has yet been passed and unless an order is actually communicated, the petitioner cannot have any grievance. Reliance in this respect is placed by the learned counsel on a case reported as *Bachittar Singh v. State of Punjab and another* (1).

(7) Mr. Mela Ram Sharma, learned counsel for the State, has raised no such objections nor does he support them.

(8) The preliminary objections may first be disposed of. The record has been produced by the learned counsel for the State. There is no manner of doubt that the Governor on the advice of his advisors has taken a decision to revert the petitioner and but for the stay order granted by this Court on 17th September, 1968, formal notification about the reversion of the petitioner would have issued. This is probably why the learned counsel for the State has not taken a preliminary objection that the writ petition is pre-mature. The writ petition is certainly not pre-mature and the objection of the learned counsel for respondent No. 3 has no merit. It is not necessary that the petitioner should have waited till the order was communicated to him and he had relinquished the charge of the post, to which he had been selected, when the competent authority had in fact decided to revert him. He knew of the decision and had a grievance for which he could seek redress by filing a writ petition if he was otherwise entitled to any relief under Article 226 of the Constitution of India. In such circumstances as the present one, the application of the petitioner cannot be held to be pre-mature. The learned counsel for respondent No. 3 relied on *Bachittar Singh's* case (1) referred to above, but the facts of that case are clearly distinguishable. In that case, certain office noting by the Minister on the file was sought to be treated as an order. Their Lordships of the Supreme Court in such a situation observed that before something could amount to an order of the State Government two things were necessary, that is, it must be expressed in the name of the Governor and it had to be communicated. The

(1) A.I.R. 1963 S.C. 395.

possibility envisaged was that the Governor though normally would act on the advice of the Ministers but the latter might change the advice before it was finally accepted by the Governor. In the instant case the Governor has taken the decision with the aid of his advisors because of the State being under the President's Rule.

(9) The objection with regard to delay has some merit if the attack of the petitioner is directed against the initial entry of the respondent No. 3 into Class I service which took place as early as the year 1961. The petitioner was throughout placed lower to the respondent in order of seniority and he was aware that relaxation of qualifications had been made by the State Government with respect to some officers and that the name of respondent No. 3 was not to be found in that notification. He should have known that a person not entitled to be taken in the Service was being placed higher to him in the order of seniority which was bound to upset the petitioner's chances of future promotion. He never agitated against that matter all this time and has given no explanation in the writ petition for not doing so.

(10) On merits, the main contention of the learned counsel for the petitioner is that respondent No. 3 could not be promoted as Superintending Engineer in view of being ineligible for such a post under rule 9 which runs as under :—

“9. *Promotion within service.*—(1) Subject to the provisions of sub-rules (2) and (3) below members of the service shall be eligible for promotion to any of the posts in the Service, namely, Executive Engineers Superintending Engineers and Chief Engineers :

Provided that a member of the Service in whose case of the qualifications mentioned in clause (a) of rule 6 have been waived, shall not be eligible for promotion to the post of Superintending Engineer or above, till he has acquired the necessary qualifications.

Explanation.—Once an officer has been appointed a member of the Service, his promotion within it from one rank to another shall be regarded as promotion with the same cadre.

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(2) Promotions shall be made by selection on the basis of merit and suitability in all respects and no member of the Service shall have any claim to such promotion as a matter of right or mere seniority.

(3) A member of the Service shall not be eligible for promotion to the rank of—

(a) Executive Engineer unless he has rendered five years service as an Assistant Executive Engineer and has passed the Departmental Examination as provided in rule 15:

Provided that an officer who has rendered six years or more service as an Assistant Executive Engineer shall, unless he is considered unsuitable for promotion, be given preference for such promotion over an eligible Class II officer;

(b) Superintending Engineer, unless he has rendered seven years service as an Executive Engineer:

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

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

A bare reading of this rule makes it clear beyond dispute that all that is necessary for being eligible for promotion to any post in the Service is that an officer must be a member of the Service and he should have merit and suitability in all respects. No officer shall, however, have any claim to promotion as a matter of right or on the basis of seniority alone. In other words, the qualifications required are membership of the Service and merit and suitability, seniority alone not being sufficient. If in the case of an officer certain qualifications as required under rule 6 read with Appendix 'B' had

been waived at the time of his initial entry into Service, that officer should acquire the necessary qualifications before he becomes eligible for promotion to the post of Superintending Engineer or above.

(11) It is a common ground that no relaxation in the matter of qualifications was made in the case of respondent No. 3 at the time of his entry into Class I Service which was necessary to be done and without that he could not enter into the Service if he was really not possessed of requisite qualifications. The record relating to original appointment of the contesting officers and others to Class I Service has been produced before us. When the case was taken up by the Government in the year 1961, the question of technical qualifications of certain officers, including respondent No. 3, did not crop up and was considered by the Chief Engineer or a reference by the Secretary to Government, Punjab, Public Works Department (Buildings and Roads Branch). It had to be then decided as to whether respondent No. 3 was qualified in the light of rule 6 read with appendix 'B' of the Rules. What in fact was to be ascertained and decided by the Government was whether the said respondent who had taken B.Sc. (Engineering) Degree prior to 1948 from Aligarh University had done so after full three years course. The Chief Engineer recommended to the Government that the respondent had completed three years course, and was, therefore, eligible for appointment to Class I Service. The Government accepted the recommendation it having been found that full course prescribed for three years had actually been completed in less than three years by not having any break for summer vacation. This position is fully explained in letter No. 5766, dated 13th December, 1950, from the Principal, Engineering College, Aligarh University, who made it clear that the shortened course did not entail any reduction in class hours and what had been curtailed was the vacation. According to him, there were really speaking, more classes held than during times when summer vacations were granted and the course of study prescribed for three years were completed in less than three years. The shortening of period was done as a matter of national service because of the war emergency.

(12) It was in these circumstances that the State Government at the time of appointing respondent No. 3 to Class I Service found him possessing requisite technical qualifications and did not include him in the category of those officers in whose cases relaxation as required by rule 6 was necessary. There was another aspect of the matter in

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regard to qualifications which was also before the Government. The condensed course of Aligarh University where the actual study was for less than three years, before the year 1948, because of the curtailment of the summer vacation, had been recognised by the Institution of Engineers (India) as exempting a person holding a degree on the basis of the condensed course from passing the examination of parts (A) and (B) of the Associate Membership of the Institution of Engineers (India). It may be mentioned that parts (A) and (B) of the Associate Membership of the Institution in Civil, Mechanical and Electrical Engineering were being recognised by the State Government and also by the Government of India as qualifications for appointment to P.S.E. Class I.

(13) The main attack of the petitioner is that the degree obtained after passing the condensed course of Aligarh University in the year 1946 did not qualify respondent No. 3 for appointment to Class I Service. The matter had been exhaustively considered by the State Government as early as the year 1961, when both the officers, the petitioner and respondent No. 3, were appointed by the same notification issued on 23rd May, 1961. Respondent No. 3 on the basis of technical qualifications, as referred to above, was held to be qualified for appointment and was duly made a member of the service from the date of his appointment. Being a member of the Service as contemplated by rule 9, there was no question of his ineligibility for selection to the post of a Superintending Engineer and the State Government was bound to consider his suitability by applying the test of seniority-cum-merit and not deny him his right to be considered for selection by taking up, on the so called representation of the petitioner, its earlier decision taken in the year 1961.

(14) The expression "after full three years course" has not been defined in the Rules but it can possibly have no other meaning except that the course prescribed is three years' course. If the subjects which are to be studied in three years were taught in two years and seven months and the summer vacations were not allowed to be enjoyed by the students because of the war emergency, it could not be said that a candidate had not done three years course. It is not suggested by the learned counsel for the petitioner that the courses had been reduced and the record also bears out that it was the period that was condensed from three years to two years and seven months. It was in these circumstances that the Government did not find any

case made out for relaxation of qualifications since the respondent lacked none and was duly qualified for promotion to Class I Service. This respondent, presumably because he was aware that some controversy might be raised by interested persons about his technical qualifications which had been accepted by the Government as early as the year 1960-61, obtained the additional qualifications by way of membership of the Institution of Engineers (India) in April, 1968 before the selection to the post of a Superintending Engineer was to be made. He acquired this membership without passing parts (A) and (B) examinations of the Institutions since the latter had by its resolution passed in the year 1959 adopted the degree of B.Sc. (Engineering) condensed Course taken from the Aligarh University before the year 1948 as an equivalent qualification for parts (A) and (B) examinations of the Associate Membership. The said resolution was in the following terms :—

“Recommendation of the Examination Committee that the B.Sc. Degree in Civil Mechanical and Electrical Engineering of the Aligarh University prior to 1948 with condensed course be recognised for exemption from sections (A) and (B). Resolved that the recommendation of the Examination Committee that the B.Sc. Engineering Degree in Civil, Mechanical and Electrical Engineering of the Aligarh University prior to 1948 with condensed course be recognised for exemption from sections (A) and (B) of the Associate Membership Examination of the Institution, be approved (Appendix I).”

We have been shown year-books of the Institution for the year 1959-60 and subsequent years. A candidate for admission to the Institution as a member is required to have passed (A) and (B) examinations or such other examination or examinations as may be recognised by the Council equivalent thereto. The condensed degree though covering full three years course but actually studied in twenty-seven months had been recognised as a good qualification entitling a candidate to claim exemption from (A) and (B) examinations. It has been contended by Mr. Bhagirath Dass that even if the respondent was originally not possessed of the technical qualifications and the same were deemed to have been impliedly relaxed because of his appointment to Class I Service, he had acquired the necessary qualifications in terms of rule 9 by becoming a member of the Institution of Engineers (India).

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(15) The other contention of Mr. Bhagirath Dass is that by virtue of an amendment in the year 1964 in Appendix 'B' of rule 6, by notification No. GSR 5(140)/Const./Art. 309/65, dated 6th January, 1964, introducing the last clause where B.Sc. (Engineering) Degree or its equivalent in Civil, Mechanical or Electrical or any University was considered to be a good qualification for appointment to Class I Service, the respondent was fully qualified and, therefore, eligible for selection. The contention is that the insertion of the new clause abolished the distinctions which had been made in the earlier clauses of the said appendix the one at serial number three in regard to degrees obtained before the year 1948 or afterwards from Aligarh University.

(16) Mr. Kuldip Singh, learned counsel for the petitioner, on the other hand, submits that the amendment made in the year 1964 could not have retrospective effect thereby nullifying all the requirements of academic qualifications from various Universities. According to the learned counsel, if the intention of the rule-making authority was to do away with the restriction referred to in the appendix all these provisions would have been expressly repealed as one omnibus clause as added in 1964 was quite sufficient.

(17) Mr. Kuldip Singh further submits that membership of the Institution as visualised in the appendix is the one obtained after having passed parts (A) and (B) examinations and not by way of exemption on a recognition of any other qualification as equivalent to the said examinations.

(18) In view of the fact that we have held that respondent No. 3 was duly qualified when he was appointed to Class I Service in the year 1961, it might not have been necessary to go into the respective merits of these contentions. It is correct that the newly introduced clause in the appendix in the year 1964 could not take effect retrospectively so as to completely repeal the earlier clauses and would, in our opinion, apply to those cases of appointment to Class I Service which arose after 6th January, 1964. We, however, express our opinion with regard thereto as well since they have been debated before us at great length. We are not inclined to accept the contention of the learned counsel for the petitioner that it was necessary for a candidate to have actually taken the examinations of parts (A) and (B) before the membership could be recognised as a good qualification for appointment to Class I Service. The intention appears to be that it was the

membership that had any significance and mattered, and the Institution alone was the judge whether a candidate had to be made a member after passing parts (A) and (B) examinations or because of his holding degree of any University or other qualifications which the Institution equated with parts (A) and (B) examinations.

(19) The State Government had in the year 1964 decided that technical/professional qualifications recognised by the Government of India for purposes of employment to the Services and posts under the Central Government would in future be considered to have been recognised by the State Government itself for purposes of employment to the Services and posts in the appropriate fields under it. A copy of the letter No. 4. E.V.-7529-64/16128, dated 11th September, 1964, from the Education Commissioner and Secretary to Government, Punjab, Education Department, to all Heads of Departments and others has been placed on the record as annexure R-3/H. There is a copy of an extract from the Union Public Service Commission (India) Pamphlet for Engineering Services Examination, 1961, appended as annexure R-3/I wherein it is specifically stated that a candidate in order to be eligible for appointment to Engineering Service must have obtained a degree in Engineering from any University incorporated by an Act of the Central or State Legislature in India. In the matter of passing parts (A) and (B) examinations of the Associate Membership of the Institution of Engineers (India), it has been thought quite enough if a candidate is possessed of educational qualifications recognised by the Institution of Engineers as exempting from passing these sections examinations. The avertments in annexures R-3/H and R-3/I have not been challenged by the petitioner either by way of any replication or before us. The submission, however, is that the respondent might have become qualified in the year 1968 but originally when he joined Class I Service he was not eligible. This argument again revolves itself into examining whether respondent No. 3 was duly qualified at the time of his entry into Class I service in the year 1961. This challenge to the qualifications as possessed by the petitioner at the time of entry into the service is not only much belated but wholly misconceived. The Government rightly held him to be duly qualified for appointment to Class I Service and the subsequent decision of 17th May, 1968 appointing the petitioner as Superintending Engineer and ignoring respondent No. 3 on the sole ground that the latter was not eligible to be considered for promotion to the post of Superintending Engineer because of his not possessing requisite technical qualifications was highly arbitrary and uncalled

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for. Article 16 of the Constitution of India guarantees to Government servants an equality of opportunity not only in the matter of initial appointment but also in the matter of promotion. The Government by its arbitrary action and by misinterpreting the rule, undid its earlier decision taken in the year 1960-61 and thereby denied the fundamental right of equality guaranteed to him in regard to his future promotion. He had a right to be considered for promotion which was taken away from him.

(20) The next contention of Mr. Kuldip Singh is that the Government could not review its earlier order passed on 17th May, 1968, selecting the petitioner as a Superintending Engineer, and revert him to the post of an Executive Engineer. The submission further is that even if the Government be held to have such power of review, it could not be exercised to the prejudice of the petitioner in violation of the rules of natural justice which included a right of the petitioner to be heard before any decision prejudicial to him was taken. We are afraid there is no merit in these contentions. The petitioner was appointed only as an officiating Superintending Engineer by way of departmental promotion but within a few days of his appointment, respondent No. 3 submitted his representation on 4th June, 1968. The respondent had a right to have his case for promotion considered under the statutory rules by applying the test of seniority-cum-merit alone. He was senior to the petitioner and it is not contended before us that the petitioner was selected on account of his better merit or that he was senior. He had been selected because the Government held respondent No. 3 to be ineligible for consideration on the ground of what was described as lack of necessary academic qualifications. This decision had been taken on a wrong interpretation of statutory rules and the earlier decision of the Government taken in the year 1961 when the respondent was held to have requisite qualifications was wrongly reversed. The decision of the Government in ignoring the respondent for promotion to the post of a Superintending Engineer, as already stated, was violative of Article 16 of the Constitution and the respondent, if so advised, could have come up to this Court to seek redress under Article 226 of the Constitution. Instead of rushing to Court, the petitioner legitimately and rightly put in his representation to the same Government which ultimately accepted it. The reversion of the petitioner is now taking place because of the acceptance of the representation of respondent No. 3 who had been illegally by-passed on patently erroneous grounds, in

contravention of the statutory rules relating to the terms and conditions of his service. It cannot be said that the petitioner who had been selected to an officiating post of Superintending Engineer had acquired any right to hold that post and that his reversion is, in any way, by way of punishment causing a stigma on him so as to attract the applicability of Article 311 of the Constitution of India.

(21) It is not necessary, in the circumstances of the present case, to decide the larger question relating to the power of the Government to review its administrative decisions. Admittedly, in this case, the wrong done to respondent No. 3, has been remedied by the Government and no *mala fides* have been alleged or established. It will be too much to say that if the Government in the exercise of its executive power has illegally taken a decision adversely affecting the rights of a Government employee, it cannot undo the wrong done by it. In our opinion all that is necessary is that the Government must act *bona fide* and no averment alleging lack of *bona fides* on the part of the Governor and his advisers had been made.

(22) The contention of Mr. Kuldip Singh that the Government accepting the representation of the respondent was exercising quasi-judicial functions is totally fallacious. Neither the selection of the petitioner as Superintending Engineer was in exercise of any quasi-judicial functions nor has the State Government performed a quasi-judicial act in accepting the representation of respondent No. 3. They are all administrative acts requiring no judicial approach of the type which a court or any administrative authority exercising quasi-judicial functions is expected to make. There could be no *lis* between the parties. The mere fact that the petitioner had made a representation earlier before his appointment against the possible promotion of respondent No. 3 or that the latter submitted a representation against the selection of the petitioner did not create any *lis* nor such a situation between the two contesting officers so as to bring into operation the rule prohibiting review by judicial or quasi-judicial tribunals except in specified circumstances and barring a fresh decision.

(23) Reliance in this connection has been placed by the learned counsel for the petitioner on **Deep Chand's case** (2) reported as **Deep Chand and others v. Additional Director of Consolidation of Holdings, Punjab, and another** (2). He has also relied on the

(2) A.I.R. 1964 Pb. 249 (F.B.).

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judgment of Tek Chand J., in *Naranjan Dass Sehgal v. The State of Punjab and others* (3). Neither of these two decisions can help the petitioner. Deep Chand's case arose out of consolidation proceedings where the Additional Director recalled his previous order by which he had dismissed the petition under section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation Act), 1948, and passed a different order revising the earlier one made on merits. In that case, some broad and unqualified proposition laid down in another case decided earlier and reported as *Jagir Singh v. Settlement Commissioner, Pepsu* (4) was doubted and it has been held by a Full Bench of five Judges that judicial and quasi-judicial tribunals in the matter of limitation on their power of review are more or less equated with Courts and they cannot review an earlier erroneous and unjust order simply because it is later discovered that the order passed earlier was erroneous due to their mistake view on the merits of the controversy. The case of void orders or orders which are without jurisdiction was held to stand on a different footing. It has been held that an order which is a nullity or which is invalid does not require to be set aside and can be ignored. The power to correct apparent clerical or similar mistakes has been held to exist so long as they do not affect the substance of the decision. This was a case of a tribunal exercising judicial functions and cannot be of any assistance to determine the point in controversy in the present proceedings. Tek Chand, J., has undoubtedly made a reference to this Full Bench decision in *Naranjan Dass's* case (3) where a Government Official had been deprived of his seniority enjoyed for nine years without having been afforded any opportunity of hearing. The learned Judge in this context extended the principle of natural justice on equitable grounds and held that the official who was being deprived of the benefit of seniority was entitled to be given an opportunity of representing his case before any action prejudicial to him was taken. It was not a case where the issue involved was as to whether the Government, in the exercise of its executive power, could review its earlier decision or not. We do not propose to discuss, in the circumstances of the instant case, the general power of review which is claimed by the State for its administrative functionaries to enable them to rectify their mistakes if their earlier decision was found to be wrong. It is clear, in the circumstances of the present case, that the petitioner had not acquired any right of

(3) 1968 Service Law Reporter, 183.

(4) A.I.R. 1959 Pb. 457 (F.B.).

the post of the Superintending Engineer for which he was selected on a wrong basis inasmuch as respondent No. 3 was treated to be not eligible for being considered. It has been conceded before us by the learned counsel for the petitioner that Article 311 is not attracted. No doubt, the acceptance of the representation of respondent No. 3 by the State Government would result in depriving the petitioner of the higher post, but there is no provision of law which prevents the State Government from doing so. The Government could rectify its mistake and no question of review, as prohibited in the case of Courts or administrative authorities exercising judicial or quasi-judicial functions, arises. The Petitioner acquired no legal right which has been denied to him by taking away the benefit thereof from him. Once a civil servant, as observed by **Rajamannar** in **N. Devasahayan v. The State of Madras** (5), is unable to invoke the provisions of Article 311(1) or (2) in his aid there is no other provision under which he can challenge the validity of the order of the Government which might adversely affect his official career.

(24) The last contention of the learned counsel for the petitioner is that the decision of the Government reverting the petitioner, at any rate, offends against principles of natural justice inasmuch as the Governor acting with the aid of his advisers during the President's Rule did not give the petitioner an opportunity to be heard before an order accepting the representation of respondent No. 3 and reverting the petitioner was passed. This contention is also without substance. It is not necessary to decide whether, in the circumstances as the present one, the petitioner was entitled to any opportunity to be heard when he had no legal right to hold the post to which he was appointed in an officiating capacity. We find from the record which has been produced before us that before the Governor took the final decision the petitioner had also submitted a representation against his apprehended reversion and both the representations were considered together and disposed of by one order. This to our mind was a sufficient hearing. The contention is that the petitioner was not given a personal hearing to which, in our opinion, he had no right. A personal hearing is not the necessary concomitant of the rules of natural justice. The learned counsel, Mr. Kuldip Singh, cited before us a judgment of Mahajan, J. reported as **Balbir Singh v. Union of India and others** (6). The petitioner in that

(5) A.I.R. 1959 Mad. 1.

(6) 1968 S.L.R. 221.

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case was an employee of one of the covenanting States which merged into the Union of States known as Pepsu after the passing of the State Reorganisation Act, 1956. A seniority list was issued by the State Government in which the petitioner, Balbir Singh, was shown as senior to Hari Singh respondent there. Thereafter, another provisional joint seniority list was issued almost a year later in which Balbir Singh was shown as junior to Hari Singh. The date of the service of the petitioner Balbir Singh was changed. The petitioner in that case preferred appeals against the displacement of his seniority and also made several representations. The learned Judge did not accept the stand taken by the State, namely, that the department to which the petitioner was allotted came into being much afterwards and, therefore, respondent Hari Singh had to be treated as senior. The learned Judge was of the view that there was a clear error on the basis of which the seniority of the petitioner had been disturbed. There is nothing to indicate that the petitioner there had ever been given an opportunity of making a representation before actually disturbing his seniority though he made several representations thereafter. In this situation, the learned Judge, following the decision of the Supreme Court in *Union of India v. P. K. Roy*, (7) came to the conclusion that the petitioner was entitled to an opportunity of hearing before his seniority was upset. There were several matters of fact which the petitioner could explain there to the competent authority in order to show that he was entitled to be placed senior to respondent Hari Singh. It was in such circumstances that the learned Judge held that the petitioner was entitled to an opportunity of hearing. It is nowhere said that hearing implied personal hearing. In the case before us, the petitioner, Pritpal Singh, had already submitted his representation which had been considered alongwith that of respondent No. 3. The other judgment to which reference has been made by the learned counsel in that of *M. L. Chopra v. Union of India* (8) where Narula, J. has observed—

“Suffice to say that once a certain protection or benefit had been afforded to the petitioner, they were certainly entitled to be heard and entitled to be given sufficient and adequate opportunity to show cause against their being deprived of the same benefit particularly with retrospective effect. This is necessary in order to conform to the principles of

(7) 1968 S.L.R. 104 (S.C.).

(8) 1967 C.L.J. 351.

natural justice, which are enshrined in the guarantee of rule of law contained in Article 14 of the Constitution."

As already stated, the petitioner in this case had submitted his representation which was disposed of and nor is it a case where benefit, as referred to in **Chopra's** case is being withdrawn.

(25) For the foregoing reasons, we find no merit in this writ petition which is hereby dismissed. In the peculiar circumstances of this case, there will be no order as to costs.

Prem Chand Pandit, J.—I agree.

K.S.K.

REVISIONAL CIVIL

Before Gurdev Singh, J.

KARTAR SINGH,—*Petitioner.*

versus

HARI SINGH AND OTHERS,—*Respondents.*

Civil Revision No. 204 of 1968

March 14, 1969.

Code of Civil Procedure (V of 1908)—Section 115, Order 26 and Schedule 1, Appendix H, Form 7—Order of a Court issuing interrogatories for examination of witnesses—Interference of, in revision by High Court—Whether warranted—Interrogatories issued to a witness—Such witness—Whether can be put further questions orally—Open commission for examination of a witness—Court—Whether can specify points for such examination.

Held, that the various provisions of Order 26 of the Civil Procedure Code confer authority upon the Court to issue commission of various types, one of them being for the examination of witness, who on account of infirmity, sickness or statutory exemptions etc. are unable to attend the Court, as well as of those witnesses who are residing more than 200 miles beyond the jurisdiction of the Court and cannot be compelled to attend the Civil Court as witnesses. The parties or their counsel may well consider it advisable not to incur the expenditure of proceeding there personally and engaging a counsel or taking their lawyers with them, and their purpose may be adequately served by merely having interrogatories issued for the examination of such a witness. If in those circumstances,