

Bhakra Beas Managing Board v. Rajinder Singh Patpatia 419
& another (M.M Kumar, J.)

Before S.S. Nijjar & M.M Kumar, JJ

BHAKRA BEAS MANAGEMENT BOARD,—*Appellant*

versus

RAJINDER SINGH PATPATIA AND ANOTHER—*Respondents*

L.P.A. No. 1127 of 1999

13th August, 2001

Constitution of India, 1950—Arts. 14 & 226—Punjab Service of Engineers (Irrigation Branch) Class-II Rules, 1941—Rls. 3, 4, 5 and 19—P.S.E.B. Service of Engineers (Civil) Recruitment Regulations, 1965—Regs. 7-A(ii) and 10—Circular letters 30th April, 1990 and 24th May, 1990 issued by the P.S.E.B and adopted by the B.B.M.B—Circular letter dated 26th June, 1992 issued by the B.B.M.B—Promotion of the petitioner to the post of S.D.O—Petitioner claiming benefit of circular dated 26th June, 1992 giving time bound promotional/revised promotional scale after completion of 9/16 years of service—Rejection thereof on the ground that higher pay scale admissible only to those directly recruited or who were promoted within AMIE quota—All promotees equated with direct recruits by deeming fiction under Reg. 7-A(ii) read with Reg. 10- Reg. 10.2 does not require the qualification of degree or AMIE but requires possession of diploma only—Petitioner entitled to the benefit of higher pay scale on completion of 16 years of service—Appeal dismissed while upholding the order of learned Single Judge.

Held, that Regulation 10.2 deals with Circule Head Draftsman and Chief Head Draftsman. It requires only possession of diploma. Hence, it does not require the qualification of degree or A.M.I.E. The circular letter dated 24th May, 1990 is not confined only to the category of those who have been given promotion under Regulation 10.4. Therefore, the basic argument that degree/A.M.I.E. qualification is required for the purpose of earning the scale of Rs. 4,500-6,300 after completion of 16 years of service is not supported by the reading

of Regulation which deals with Circle Head Draftsman as the case of the petitioner is. Moreover, by deeming fiction all promotees have been treated as direct recruits and there is no requirement for them to possess degree/A.M.I.E. qualifications. Any other construction of the circular would render Clause 2 of the Circular as otiose and illusory. The benefit of higher scale⁴ of pay cannot be confined by the B.B.M.B. to those engineers who have come from P.S.E.B. only. The benefits are meant for all the engineers working in the B.B.M.B. who are covered by circular letter dated 24th May, 1990.

(Para 12)

D.S. Nehra, Senior Advocate with N.S. Bawa, Advocate for the appellants

K.L. Arora, Advocate for the respondents.

JUDGMENT

M.M. KUMAR,, J

(1) This Letters Patent Appeal filed under Clause X of Letters Patent is directed against the judgment of the learned Single Judge dated 26th August, 1999 allowing the writ petition of the respondents being Civil Writ Petition No. 9162 of 1994.

(2) Brief facts of the case are that the petitioner was appointed as Draftsman in the Irrigation Department of the Punjab Government on 7th June, 1951. On the strength of his good record of service, he was promoted as Divisional Head Draftsman on 28th February, 1957 and as such his services were transferred to the Bhakra Beas Management Board (for short 'the B.B.M.B.') which is an inter state body and he continuously worked with the B.B.M.B. On 28th January, 1963, he was promoted as Circle Head Draftsman. It is pertinent to mention that the petitioner had passed the Departmental Professional Examination on 29th July, 1962 and also passed the Departmental Revenue Accounts Examination on 21st October, 1963. The passing of the afore mentioned examinations is a necessary qualification for promotion to the post of SDO/ADE. For further promotion to Class-II service there are statutory rules which are known as Punjab Service

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of Engineers (Irrigation Branch) Class-II Rules, 1941, (for brevity the 1941 Rules). Rules 3, 4, 5 and 19 of the 1941 Rules are relevant and are reproduced hereunder :

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

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

re-vaccinated for smallpox not earlier than one year previous to the first day of January of the year in which he is appointed or has had smallpox and shows obvious scars thereof.”

“4. Constitution of the Service—The Service shall consist of —

- (a) existing members of the Service,
- (b) officers transferred or promoted from another State Service, whether in the same or another State, or promoted from the Overseers Engineering Service, Irrigation Branch, Punjab, or Irrigation Branch (Provincial Draftsmen and Tracers) Service, or temporary engineers take into the service.
- (c) officers directly appointed by Government.

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

“5. Appointment to the Service, Government may make appointment to the Service from the Classes mentioned in rule 4, provided that no person shall be appointed unless he possesses the qualification specified in rule 3, and provided further, that no Temporary Engineer shall be taken into and no member of the Overseers Engineering Service or Draftsmen Service shall be promoted to the Service unless he has been declared by the Commission on the report of the Chief Engineer to be fit for the service, is serving in the Department, has held an appointment for not less than 2 years continuously before the date of entry into the service, and is not less than 26 years or more than 50 years of age on the first day of June immediately proceeding the date on which taken into the service and the case of promotion of a member of the Overseers Engineering Service or Draftsmen Service unless he has passed both the

Departmental professional and Revenue Examinations
of Irrigation Branch :

Provided that this rule may be relaxed by Government on the recommendations of Chief Engineers in order to admit the promotion of a member of the Overseer Engineering Service, of Irrigation Branch, Punjab or Irrigation Branch (Provincial Draftsmen and Tracer Service of outstanding merit, who may not possess the qualification specified in rule 3.

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

“19. Relaxation. Where the Government is satisfied that the operation of any of these rules causes undue hardship in any particular case, it may by order dispense with or relax the requirements of that rule to such extent and subject to such condition as it may consider necessary for dealing with the case in a just and equitable manner.”

(3) A co-joint perusal of the above rules show that a member belonging to the Draftsman and Tracer service and possessing qualifications prescribed in Appendix 'B' is eligible to be considered for promotion. There is further provision in Rule 19 for relaxation of the rules requiring the possession of qualification. The petitioner was promoted to the post of SDO/ADE from Draftsmen and Tracers service on 25th August, 1971 on officiating basis. His regular promotion order was issued on 8th September, 1982 w.e.f. 1st May, 1979. His name in the order appears at serial no. 64. Note 2 at the end of the order specifically deals with the relaxation of qualification of degree in respect of diploma holders enabling them to become eligible for appointment to Class II posts. Note 2 is reproduced hereunder;

“Qualification of Degree in Engineering as required under Rule 3(c) of the Punjab Service of Engineers (Irrigation Branch) Class II Rules 1941 has been relaxed under the provision (proviso ?) to rule 5 *ibid* in respect of Diploma

holders for making them eligible for appointment to Punjab Service of Engineers (Irrigation Branch) Class-II.”

(4) The petitioner worked on this post till his superannuation on attaining the age of 58 years on 30th November, 1990.

(5) The petitioner filed writ petition to claim the benefit of circular issued by the BBMB on 26th June, 1992 which gives time bound promotional/revised promotional scales after completion of 9/16 years of service in accordance with the instructions contained in Punjab State Electricity Board office order No. 197/Fin/PRC/1988 dated 30th April, 1990 and 205/Fin/PRC/1988 dated 24th May, 1990 as amended from time to time. The petitioner also claimed that he was given the benefit of higher pay scale in the scale of Rs. 3000—4500 after completion of 8 years of service w.e.f. 1st September, 1986. It is appropriate to mention that the benefit is available w.e.f. 1st January, 1986 with liberty to exercise option. The petitioner had exercised the option to switch over to the new pay scales w.e.f. 1st September, 1986. He claimed that on the basis of the instructions issued by the BBMB on 26th June, 1992, he is entitled to the grant of higher pay scale of Rs. 4500—6300 as he had completed 16 years of service before his retirement as Assistant Divisional Engineer. He submitted representation to that effect seeking next higher pay scale. His representation having been rejected, he filed the writ petition out of which present appeal has arisen. The ground of rejection contained in the orders dated 25th June, 1993 and 13th August, 1993 is that higher pay scale was admissible only to those SDOs. who were either directly recruited or to those who possessed qualifications of AMIE and were promoted within the quota fixed for AMIE category.

(6) Learned counsel for the petitioner had placed reliance particularly on the circular letter dated 24th May, 1990 issued by the PSEB and adopted by the BBMB. It will be useful to refer to the same which reads as under :

..... The next higher scale will thus be allowed as
under :

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| | | |
|------------|---|---|
| AE/AEE (i) | 2200-50-2400-60-2740 3000-100-4000-125-4250 (with initial start of Rs. 2400) | Basic Scale |
| (ii) | 3000-100-4000-125-5000 150-5600 | Next higher scale with a minimum pay of Rs. 3500 in the 10th year i.e. on the completion of 9 years regular service as A.E./A.E.E. |
| (iii) | 4500-125-5000-150 5200-200-6300 | Second next higher scale in the 17th year i.e. on completion of 16 years regular service as AE/AFE |
| XEN | 3000-100-4000-125 5000-150-5600 | Basic Scale |
| | 4500-125-5000-150 5900-200-6300 | Next higher scale after 16 years of regular service as AE/AFE/Xen. |

2. The above higher scales will only be available to the directly recruited Assistant Engineers as per Regulation 7-A(i) read with Regulation 9 of PSEB, Service of Engineers (Electrical) with regulation 9 of PSEB, Service of Engineers (Civil), Regulation, 1965. The case of Assitant Engineers appointment by promotion as per provision of the Regulation 7-A(ii) read with Regulation 10 of the Regulation *ibid*, will be governed by guide-lines circulated,—*vide* Secretary/Finance, office order

No. 197/PRC/Fin. 1988 dated 23rd April, 1990.

Note :—The Departmental Employees (Technical Subordinates and Drawing Staff) who while in service of the Board have been promoted to the post of AE (Electrical/Civil) against quota reserved for promotion from amongst them under

Regulation 7-A(ii) read with Regulation 10(7) on the Regulation 7-A(ii) read with Regulation 10(4) of the

PSEB Service of Engineers (Electrical)

PSEB Service of Engineers (Civil)

Regulations 1965

Regulation-1965

shall be deemed to have been appointed as Assistant Engineers like the Assistant Engineers appointed through direct appointment under Regulation 7A(i) read with Regulation 7A(i) read with Regulation 9 of the service of Engineers (Electrical) *ibid* Regulation 9 of the Service of Engineer (Civil) for the purpose of grant of above next higher scales after 9/16 years of regular service as Assistant Engineer/Assistant Executive Engineer/XEN, prescribed period to be counted from the date of joining the post of Assistant Engineer on regular basis—similarly Graduates in Electrical/Mechanical Engineer/AMIE qualified Civil Engineer AMIE qualified hands who possess this qualification before joining the service of the Board subsequently promoted as Assistant Engineers against quota reserved for promotion from amongst them in terms of provisions of

Regulation 7A (ii) read with regulation 10(9)

Regulation 8-a)ii) read with Regulation 10(6)

of Engineers (Electrical) Regulations 1965 will be treated as of Engineers (Civil) Regulations 1965

likewise.

This scheme for 9/16 years time bound placement in higher scales will take effect from 1st January, 1986. However, the payment

of arrears would be spread over to next three years”

(7) A perusal of Item No. 2 when read with the Note, makes it clear that Regulation 7-A(ii) with Regulation 10 of the P.S.E.B. Service of Engineers (Civil) Recruitment Regulation, 1965 by a deeming fiction treat Assistant Engineers appointed by promotion equivalent to Assistant Engineers appointed through direct appointment for the purposes of grant of next higher scale after completion of 9/16 years of regular service as Assistant Engineers. The promotees accordingly would be deemed to be direct recruits and would not require to possess degree in order to become eligible for claim of next higher pay scale after 9/16 years of regular service as Assistant engineers. The learned Single Judge while dealing with this aspect of the matter concluded as under :

“A plain reading of the aforesaid explanation contained in the “Note” leaves no room for any doubt that the departmental employees who were promoted to the post of the Assistant Engineer against the promotion quota, shall be deemed to have been appointed as Assistant Engineer like the direct recruits for the purpose of the next higher pay scale. This deemed provision is sufficient to raise a presumption in favour of the petitioner. There was no occasion to incorporate a deeming provision in the ‘Note’ after it was laid down that the next higher pay scale will be available to the direct recruits only. There is no dispute to the fact that there are three categories of Assistant Engineers, viz, (i) directly recruited graduate engineers, (ii) promotees and (iii) AMIE qualified engineers. While the next higher pay scale has been granted to the direct recruits and also to those who had acquired A.M.I.E. qualification, it has been denied to the category (ii) employees. There appears no valid reason nor a justification. The benefit of higher pay scale of Rs. 3000—4500 has already been given to the petitioner on completion of 9 years of regular service. That would mean that the BBMB found the petitioner eligible for the higher pay scale after completion of 9 years of service. A different yard stick could not be adopted after the petitioner completed 16 years of service so as to deny him

the benefit of the next higher pay scale. The order declining the next higher pay scale to the petitioner after completion of 16 years of service is found to be wholly unjust.”

(8) We have heard Shri D.S. Nehra, Senior Advocate assisted by Shri N.S. Bawa, Advocate, learned counsel for the appellant and Shri K.L. Arora, Advocate, learned counsel appearing for the respondents and have with their assistance perused the record.

(9) Shri D.S. Nehra, learned Senior Counsel criticising the judgment of the learned Single Judge had contended that the learned Single Judge ignored the provisions of Regulation 10.4 of the Punjab State Electricity Board (Electrical, Civil etc.) Regulations 1965 (for short the 1965 Regulations). According to him under Regulation 10.4 only those Junior Engineers could be considered for promotion who have acquired the qualification of A.M.I.E. during the service of the Board. In other words, the qualification of degree which is a prescribed qualification for appointment for direct recruitment is to be fulfilled even by the promotees. He further contends that it is well settled principle of law that educational qualification can be made the basis for providing different pay scales. In so far as the grant of higher pay scale to one Jaspal Singh is concerned, Shri D.S. Nehra submits that he had the degree qualification. In support of his submission, Shri D.S. Nehra relies on a judgment of the Supreme Court in *V. Markendeya and others vs. State of Andhra Pradesh*(1).

(10) On the other hand, Shri K.L. Arora, Advocate, learned counsel for the respondents submits that once by a deeming fiction, the promotees are equated with direct recruits then insisting on requirement of a degree for the purposes of higher pay scale of Rs. 4500—6300 after completion of 16 years of service is unwarranted. He further submits that the case of Shri Jaspal Singh is similar to the one of the respondent. Shri K.L. Arora does not dispute the proposition of law that the educational qualifications can provide a rational basis for granting different pay scales to the employees belonging to the same cadre but he submits that this principle of law is not attracted to the case in hand because the B.B.M.B itself by a deeming fiction have equated the promotees with the direct recruits. According to Shri K.L. Arora, Regulation 7-A would become otiose and

illusory if the authorities insist on A.M.I.E. qualification because the object of granting higher scale even to those who have acquired higher qualifications would be defeated.

(11) The argument of Shri D.S. Nehra that Regulation 7-A(ii) read with Regulation 10.4 of the 1965 Regulations invariably requires the qualification of degree is liable to be rejected. Regulation 10 of the 1965 Regulations prescribes qualifications for appointment by promotion and reads as under :—

“10. Qualification for appointment by promotion.—

- (1) (a) Sectional Officers (Civil) under the Board having their record above average and with not less than 10 year experience to their credit shall be eligible for appointment to the service as Assistant Engineer, subject to the condition that their number does not exceed 20% of the total number of cadre post of Assistant Engineers excluding the posts with B.B.M.B./B.C.B. and deputation posts or posts where P.S.E.B cannot directly post its officers i.e. Hydel Design Directorate, Chandigarh.

(b) Over and above this reservation, Sectional Officers (civil) with requisite service/experience may be considered for additional vacancies of Assistant Engineer for field work without any fixed percentage.
- (2) The Chief Draftsmen/Circle Head Draftsmen under the Board having their record above average, possessing Diploma in Civil Engineering or Diploma/Certificate of a duration of two years either for combined course of Draftsmanship granted by the Punjab Government School of Engineering or in Civil Draftsmanship of some recognised Institute and with not less than 13 years experience as Divisional Head Draftsmen and on higher posts, out of which a minimum service of 5 years shall be as Circle Head Draftsman, shall be eligible for appointment to the service as Assistant Engineers, subject to the condition that their number does not exceed 3% of the total number of cadre post of Assistant Engineers excluding the posts with B.B.M.B./B.C.B. and deputation posts or posts where P.S.E.B cannot directly post its

officers i.e. Hydel Design Directorate, Chandigarh.

After selection as Assistant Engineers, the Chief Draftsmen/ Circle Head Draftsmen may be given practical training for six months before appointment as Assistant Engineers. During this period of training, they shall continue to draw pay in their previous scale of pay. (Effective from 17th November, 1981).

- (3) Persons appointed by promotion as Assistant Engineers under sub-Regulation (1) and (2) above shall not be eligible for promotion to the posts of Assistant Executive Engineer and above, unless they possess the qualification prescribed in Regulation 9.

Note :—As a result of conversion of the posts of Chief Draftsmen to that of Assistant Engineers the promotion of Chief Draftsmen as Assistant Engineers shall be in addition to the existing quota of promotion fixed for promotion from Chief Draftsmen/Circle Head Draftsmen to Assistant Engineers.

- (4) 9% of the cadre posts of Assistant Engineers (Civil) shall be reserved for Departmental employees (Technical Subordinates and Drawing Staff) who while in the service of the Board have qualified Section (A) and (B) of A.M.I.E. Examination and have completed three years' service. (This shall take effect from 15th April, 1983).

Note:—Persons promoted against the above reservation will remain on probation for a period of one year in the promoted rank."

(12) A perusal of the above regulation shows that Regulation 10.2 deals with Circle Head Draftsman and Chief Head Draftsman, It requires only possession of diploma. Hence, it does not require the qualification of degree or A.M.I.E. as contended by Shri D.S. Nehra. The circular letter, dated 24th May, 1990 (supra), is not confined only to the category of those who have been given promotion under Regulation 10.4. Therefore, the basic argument of Shri D.S. Nehra that degree/A.M.I.E. qualification is required for the purpose of earning the scale of Rs. 4,500—6,300 after completion of 16 years of service

is not supported by the reading of Regulation which deals with Circle Head Draftsman as the case of the petitioner is. Moreover, by deeming fiction all promotees have been treated as direct recruits and there is no requirement for them to possess degree/A.M.I.E. qualifications. Any other construction of the circular would render Clause 2 of the circular referred to in the preceding para as otiose and illusory. We are to be considered view that the benefit of higher scale of pay cannot be confined by the B.B.M.B. to those engineers who have come from P.S.E.B. only. The benefits are meant for all the engineers working in the B.B.M.B. who are covered by circular letter dated 24th May, 1990 (supra) whether they have come from P.S.E.B or from any other organisation. The B.B.M.B has adopted the circular dated 24th May, 1990 for its application to the engineers working with them. The petitioner was promoted as A.D.E./S.D.O. on 25th April, 1971 and was regularised as such with effect from 1st May, 1979. He completed 16 years of service in the year 1987 much before the date of his superannuation i.e. 30th November, 1990. Another reason for taking the view that the petitioner is entitled to the benefit of circular dated 24th May, 1990 is that these are beneficent provisions made for the breaking of stagnation to bring efficiency in the working of the officers. The petitioner has since retired on 30th November, 1990, no prejudice is likely to be caused to any employee in the service.

(13) For the foregoing reasons, this appeal is dismissed. We concur with the learned Single Judge. While upholding the order dated 26th August, 1999, the appellant directed to comply with the directions given by the learned Single Judge within a period of three months from the date of receipt of copy of this order.

R.N.R.

Before M.L. Singhal, J

SHER SINGH,—*Petitioner*

versus

STATE OF HARYANA & OTHERS,—*Respondents*

Crl. M. No. 40255/M of 1999

13th September, 2001

Code of Criminal Procedure, 1973—S.433-A—Haryana Government Instructions dated 4th February, 1993 (as amended on 17th July, 1997)—Para 2(a) & (b)—Murder of a woman—Accused