

**(1992) 12 RAJ CK 0013**

**In the Rajasthan High Court**

**Case No :** Civil Writ Petition No. 327 of 1984 and 1490 of 1989

B.N. Bhootra

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

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**Date of Decision :** 09-12-1992

**Acts Referred:**

Rajasthan Service of Engineers (Public Health Branch) Rules, 1968 — Rule 9

**Citation :** (1992) WLN 275

**Hon'ble Judges :** Jasraj Chopra, J

**Bench :** Single Bench

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## **Judgement**

Jasraj Chopra, J.—These two writ petitions raise almost identical questions of law and facts and, therefore, they were heard together and are being disposed of by a common order.

2. The facts necessary for the disposal of these two writ petitions briefly stated are: that the petitioner Shri B.N. Bhootra being an Engineering Graduate joined his service as Junior Engineer with the State of Rajasthan in Public Works Department (B&R) on 15.7.1961 and was selected for the same post by the RPSC in the year 1963. Before his confirmation as Junior Engineer, he applied for selection to the post of Assistant Engineer as a direct recruit and he was selected by the RPSC on the post of Assistant Engineer and he was appointed as Assistant Engineer vide order dated 5.7.1965. However, when the petitioner was not confirmed as Junior Engineer with effect from 31.12.1963 and was not further considered for promotion in the year 1965 as Assistant Engineer, he filed an appeal before the Rajasthan Civil Service Appellate Tribunal, Jaipur (for short "the Tribunal"), which came to be decided vide order dated 7.12.1981. The learned Tribunal has observed as under:

We, therefore, accept this appeal and direct to confirm the appellant with effect from 31.12.1963 and to consider his case regarding eligibility as Assistant Engineer in Departmental Promotion Committee of 1975 for according promotion under backlog rules within two months. The 19 75 DPC allotted year of 1965 to

the appellant as direct recruit consequent upon his confirmation as Engineering Subordinate with effect from 31.12.1963, he acquires eligibility for the post of Assistant Engineer in 1965 and has then a right to be considered under earlier vacancy rules in promotion quota of 1965. Likewise, the respondents Shri D.R. Calla and S.D. Vyas would be benefited. Naturally, under promotion quota they would rank senior of these officers of direct recruitment quota in the same year and the seniority list be revised accordingly. This should also be done within two months after issuance order of confirmation of appellant with effect from 31.12.1963 by PWD (B&R).

However, in pursuance of the aforesaid order of the Tribunal, the petitioner was confirmed as Engineer with effect from 1.9.1965. It was contended by the petitioner that he having been ordered to be confirmed with effect from 31.12.1963 and having become entitled to be promoted as Assistant Engineer in the vacancies of the year 1965 has become eligible for promotion as Executive Engineer in the year 1969.

3. According to the petitioner, the Public Health and Engineering Department, which formerly was a part of the Public Works Department bifurcated from its parent Department with effect from 30.8.1965 and so, the petitioner gave his option for being absorbed in the Public Health and Engineering Department. His grievance is that he was not considered and promoted to the post of Executive Engineer in the year 1969, when he became entitled for that post because by that time no adverse entries existed against him. He has submitted that an adverse entry came to be recorded against him in the year 1967-68 which came to be expunged in the year 1974. Thereafter, adverse entries were recorded in the year 1969-70, 1970-71 and 1971-72 but they were conveyed to him after the DPC met on 13.1.1975 and 17.1.1975 and, therefore, they could not have been considered. He has submitted that a DPC met in the year 1973 but it did not approve him on account of adverse entries of the year 1967-68 and, therefore, he was sought to be reverted to the post of Assistant Engineer.

4. Aggrieved against this, he filed a writ petition before this Court and that writ petition came to be decided by this Court on 15.10.1974 see *Umed Med Lodha and Ors. v. State of Raj. and Ors.* 1974 WLN 945. In that writ petition, a learned single Judge of this Court passed the following order:

In the result, therefore, I order that a DPC shall be convened within a period of three months to consider the cases of the petitioners as respondents No. 3 to 17 in Shri Umedmal's case. The writ petition of Shri N.C. Rajvanshi is dismissed against respondents No. 3 to 11 and Nos. 12 to 27. It is allowed against respondents Nos. 28 to 44 in Shri Rajvanshi's case and such of the respondents who are found eligible by the DPC shall be considered for promotion alongwith the writ petitioners. The orders passed in Shri Rajvanshi's case shall govern the writ petitions of Shri Badri Narain and Shri Shyamdass. The writ petitioners Sarvashri N.C. Rajvanshi, Badri Narain and Shyamdass, who are working on temporary basis as Executive Engineers like respondents No.3 to 11 (viz.,

Sarvashri S.S. Shekhawat, V.S. Ahlawat, D.K. Karnawat, P.C. Jain, H.C. Nakra, D.S. Pardi, Dhanraj, M.L. Bohra and Niranjana Purohit) as also these respondents will continue to work as such till the DPC makes its recommendations afresh and the Govt. in pursuance make fresh appointments according to law.

The petitioner has submitted that in pursuance of the directions given by this Court in the aforesaid Judgment, the DPC was convened and it met on 13.1.1975 and 17.1.1975 but it did not approve the petitioner for promotion to the post of Executive Engineer against the vacancies of the year 1973 but he was approved for promotion to the post of Executive Engineer against the vacancy of the year 1974. He has submitted that as a departmental enquiry was initiated against him in the year 1974, the recommendations of the DPC were kept in a sealed cover. However, the petitioner continued to work as Executive Engineer from the year 1969 when he was temporarily promoted as Executive Engineer. An order to that effect was passed on 31.3.1975 by the Secretary to the Govt., Medical and Public Health Department, Gr. III, Jaipur whereby it was ordered that the cases of Shri S.D. Vyas and Shri B.N. Bhootra for promotion to the post of Executive Engineer (Civil) were considered by the DPC on 13.1.1975 and 17.1.1975 but since the DPC has reserved its recommendations in their cases for the present, the question of their promotion is under consideration and two vacancies have been reserved for them. It was further ordered that till the matter regarding their promotion is decided, Shri S.D. Vyas and B.N. Bhootra are allowed to continue as Executive Engineers on temporary basis. It is alleged that vide order Annexure-7 dated 12.1.1984, it was held that consequent upon the determination of year wise vacancies of Executive Engineer (Civil) and in continuation of the earlier order dated 31.3.1975, the case of Shri B.N. Bhootra was considered by the DPC for promotion in the year 1974 and on the recommendations of the DPC, it has been decided to reserve one post of Executive Engineer (Civil) in the year 1974 for Shri B.N. Bhootra. It was further ordered that the recommendations of the earlier DPC of 1975, regarding his promotion and regular selection on the post of Executive Engineer (Civil) may continue to be kept in a sealed cover.

5. The contention of the petitioner is that in the mean while, vide Order Annexure-20 dated 27.10.1979, the enquiry initiated against him vide order dated 4.1.1974 was withdrawn and dropped by His Excellency the Governor of Rajasthan. However, liberty was granted to the State Govt. to frame fresh charges. He has submitted that when the departmental enquiry initiated against him vide order dated 4.1.1974 has been dropped vide order Annexure-20 dated 20.10.1979, his promotion orders could not have been kept in the sealed cover and he should have been confirmed as an Executive Engineer.

6. As regards his selection to the post of Executive Engineer, his contentions are three-fold: firstly that he should have been promoted as Executive Engineer in the year 1969 when there was no adverse record against him; secondly, he should have been selected on the regular post against the vacancies of the

Executive Engineer falling in the year 1973 because the adverse entries which were recorded against him in the year 1967-68 were expunged by the Govt. and the adverse entries of the later years were communicated to him on 31.7.1975, whereas the DPC met on 13.1.1975 and 17.1.1975 and so, it could not have considered those adverse remarks which have not been communicated to him; and thirdly, even if he has been promoted against the vacancy of the year 1974, that promotion should have been made on regular basis and should not have been kept in a sealed cover because the departmental enquiry, on the basis of which those recommendations were kept in a sealed cover, was withdrawn vide order Annexure-20.

It was contended by the petitioner that the adverse A.C.Rs. of the year 1969-70, 1970-71 and 1971-72 should not be considered against him while according him promotion to the post of Executive Engineer because they were not communicated to him prior to 31.3.1975. He has made a representation against them after communication but his representation against the adverse ACRs for the year 1969-70 and 1970-71 has been rejected by the Govt. vide Order Annexure-15 dated 12.5.1976. He had submitted that his representation regarding adverse ACRs for the year 1971-72 has not been decided by the Govt. and nothing has been heard about it. Against rejection of his representation regarding adverse ACRs for the year 1969-70 and 1970-71, the petitioner filed a review petition and that also came to be rejected vide order Annexure-17 dated 13.7.1976. A petition (Annexure-18) was also filed before the Special Secretary, Department of Personnel (A), Govt. of Rajasthan, Secretariat, Jaipur.

7. Be that as it may, his contention is that as per his informations, all these adverse entries were toned down by the reviewing authority and therefore, they should not be looked into. He had submitted that the adverse entries of the year 1970-71 is nothing but recording of the fact as regards departmental enquiry, which has been instituted against him, and which has been later on withdrawn with liberty to issue fresh chargesheet vide order Annexure-20. Fresh chargesheet has been issued to him in the year 1975 and in respect thereof, an application was filed to amend the writ petition but the proceedings in that enquiry were not stayed and, therefore, probably because of that, he has not pursued that application for amendment of the writ petition.

8. Be that as it may, in the meanwhile, the petitioner's case for promotion to the post of Superintending Engineer was considered and he was provisionally promoted as Superintending Engineer (Civil) vide Order Annexure-2 dated 29.2.1980 and he is continuing on that post.

9. It was contended that a DPC was convened on 19.5.1980 to make recommendations for the purpose of appointment to the posts of Superintending Engineer (Civil). This DPC was called upon to make recommendations for 7 posts but it chose to make recommendations for only 6 posts and the 7th post was kept vacant to consider the case of the petitioner. Ultimately, 5 persons came to be appointed on regular basis vide order Annexure-3 dated 25.2.1981. However,

vide order Annexure-4 dated 26.3.1981, the petitioner has been informed that, since DPC has been held on 19.3.1980 and has reserved its recommendation as regards the case of the petitioner, the question of his promotion is under consideration and a vacancy has been reserved for him, meaning thereby that he was approved for the post of S.E. but his recommendation was kept under a sealed cover because of the proposed departmental enquiry to be held against him. According to the petitioner, this could not have been kept in a sealed cover because the departmental enquiry initiated against him has already been withdrawn and the proceedings were re-initiated against him in the year 1985. However, certain writ petitions were filed against this DPC and the petitioner alongwith others challenged the order Annexure-3 dated 25.2.1981 and the order Annexure-4 dated 26.3.1981 by way of appeals before the Tribunal and an interim order came to be passed by the Tribunal on 7.9.1981, which has been marked as Annexure-5 whereby it was ordered that the case of the petitioner for regular selection to the post of Executive Engineer followed by confirmation at appropriate time and thereafter for regular selection as Superintending Engineer to be followed by confirmation as and when the substantive posts are available may be considered and the DPC whenever it is convened would consider suitability of the petitioner for promotion to the post of Executive Engineer and Superintending Engineer and the Govt. would issue confirmation orders as and when substantive vacancies become available. Thereafter, vide order Annexure-7 dated 9.8.1985, that appeal came to be allowed and the the learned Tribunal has also quashed the DPC proceedings" in the appeals filed by Shri H.S. Rathore and Shri M.R. Parihar and the Govt. was directed to reconvene the DPC for the post of Superintending Engineer within three months and the case of the petitioner was also directed to be considered as per rules and law.

10. It is alleged that against the judgment of the learned Tribunal in H.S. Rathore and M.R. Parihar's case, some writ petitions were filed and in those writ petitions bearing No. 32 and 26 of 1983 filed by Shri S.K. Saxena and Shri O.P. Goyal, the order passed by the learned Tribunal was stayed. The stay orders passed in these writ petitions have now been vacated by this Court vide its order dated 20.8.1992 and it has been ordered that-the DPC may be reconvened as scheduled.

11. It was next contended by the petitioner that the adinterim order passed by the Tribunal vide its order dated 7.9.1981 should be complied with i.e. the petitioner should be selected as S.E. and be confirmed and later he should be considered for promotion to the post of Addl. Chief Engineer, the later relief has been claimed by the petitioner through S.B. Civil Writ Petition No. 1490 of 1989. He has prayed that the respondent State be directed to place the name of the petitioner in the seniority list of Executive Engineer at No. 9 and at S.No.6 in the seniority list of Superintending Engineers and thereafter, promotion to the post of Addl. Chief Engineer should be considered and orders be passed accordingly.

12. The contention of the petitioner is that the order of the Tribunal dated

7.12.1981 is complied with, then the petitioner should be regularly promoted to the post of Assistant Engineer in the promotion quota of the year 1965, Executive Engineer in the promotion quota of the year 1969 and the Superintending Engineer in the promotion quota of the year 1980 and on that basis, he should be promoted as Addl. Chief Engineer in the promotion quota on and from a date, he becomes entitled. He has, therefore, prayed that the orders Annexures-1 and 7 dated 31.3.1975 and 12.1.1984 be quashed. Adverse entries should not be taken into consideration and any orders that have been passed during the pendency of the writ petition may also be quashed and all consequential orders be passed. It was further prayed that the respondent State may also be prohibited from holding any enquiry against the petitioner after the earlier enquiry has already been withdrawn because it is now more than 15 years old.

13. On behalf of the respondents, it was contended that the petitioner is not entitled to be confirmed as Junior Engineer with effect from 31.12.1963 but they were obliged to confirm him as Junior Engineer with effect from 31.12.1963 in pursuance of the order dated 12.2.1990 passed by this Court. A SLP was filed against that order and that came to be rejected and ultimately, the order Annexure-R. 1 dated 19.10.1984 came to be passed whereby the petitioner has been confirmed as Engineering Subordinate with effect from 31.12.1963. Thus, to this extent, the grievance of the petitioner stands removed. The order Annexure-R. 1 has been filed alongwith the affidavit of Shri V.B.L. Mathur, Chief Secretary, Govt. of Rajasthan, Jaipur (as he then was).

14. However, so far as his promotion to the post of Assistant Engineer against the promotion quota of 1965 is concerned, the respondents have taken the plea that the case of the petitioner as per the directions of the learned Tribunal vide its order dated 7.12.1981 has been considered. There were 15 posts and the zone of consideration was five times of the vacancies and therefore, only persons upto the seniority of 75 persons could be considered by the P.W.D. It was submitted that the petitioner being lower in seniority, his case could not be considered and he could not be promoted as A.En. in the promotion quota of the year 1965 but he has been selected directly by the Public Service Commission in the year 1965 and, therefore, he has been allotted seniority of direct recruits of the year 1965. This has been made clear in the affidavit that has been filed by Shri V.B.L. Mathur, Chief Secretary to the Govt. of Rajasthan.

15. It was further contended that the contention of the petitioner that he should have been considered for promotion on 1.1.1964 by the PHED and not by the PWD (B&R) cannot be accepted because when he cannot be confirmed as A.En. against the promotion quota of 1965 as he is much lower in seniority and so, he is not entitled to be promoted as Executive Engineer in the promotion quota of 1969. He was considered for promotion to the post of Executive Engineer in the DPC meeting held in the year 1973 but he was not found suitable because adverse entries were existing against him but that selection of the DPC was

quashed by this Court in *Urrted Med Lodlia's* case (supra) and thereafter, when the DPC was reconvened in pursuance of the order of this Court on 13.1.1975 and 17.1.1975, the recommendations made by the DPC in respect to the petitioner were kept in a sealed cover against the promotion quota of the year 1974. He was not eligible to be promoted as Executive Engineer in the year 1973. So far as the post of Superintending Engineer is concerned, the DPC was convened on 17.5.1980 and so far as the case of the petitioner is concerned, the recommendation made by the DPC was kept in a sealed cover. 7 posts were notified by the DPC for making recommendations but the recommendations were made only for 6 persons. 5 persons were appointed as Superintending Engineer on regular basis whereas the recommendations made in respect of the petitioner were kept in a sealed cover. So far as the post of Addl. Chief Engineer is concerned, it has been contended that he is much lower in seniority and so, he cannot be considered at present. As regards the adverse ACRs are concerned, it was contended that those adverse ACRs were communicated to him and his representations have been rejected, except the ACRs of the year 1967-68, against which a representation which has been made by the petitioner has been accepted. It was also contended that the ACRs of the petitioner have never been taken down. Moreover, when the petitioner has been approved for promotion in the quota of 1974 as Executive Engineer, the adverse ACRs lose all importance. The case of the petitioner for promotion to the post of the Superintending Engineer has already been considered. These DPC proceedings for the post of Superintending Engineer were quashed by the learned Tribunal vide its order dated 9.8.1985, against which, writ petitions were filed and stay orders were granted by this Court and, therefore, the proceedings of the DPC held on 13.5.1980 held good but now those stay orders have been vacated and it has been ordered that the DPC be reconvened and so, the case of the petitioner will be considered as per the directions of the Tribunal also this Court. It was, therefore, prayed that the petitioner is entitled to no relief whatsoever.

16. I have heard Mr. M. Mridul, Senior Advocate assisted by Mr. R.S. Saluja for the petitioner and Mr. L.S. Udawat, the learned Additional Advocate General appearing for the State and have carefully gone through the record of the case. I have also carefully gone through the written arguments submitted by both the parties.

17. It may be stated here that the grievance of the petitioner that he should be confirmed as Engineering Subordinate with effect from 31.12.1963 stands redressed as he has been confirmed as Engineering Subordinate vide Order Annexure. Rule 1 dated 19.10.1984.

18. The contention of the petitioner is that he became entitled to be promoted as Assistant Engineer in the year 1965. The contention of the Department was that he did not possess three years experience in the year 1965 and therefore, he cannot be considered against the promotion quota vacancies of the year 1965. This contention of the Department was overruled by the learned Tribunal vide its

order dated 7.12.1981 and it was ordered that he should be considered for the post of Assistant Engineer against the promotion quota of 1965. that order has become final between the parties as no appeal has been filed against that order and, therefore, that order should be complied with. Shri V.B.L. Mathur, the Chief Secretary to the Govt. of Rajasthan filed an affidavit wherein he has stated that as per the directions of the learned Tribunal, the DPC was reconvened. There were 15 posts of A.En. in that year and as per the zone of consideration, only five times of the number of vacancies could be considered and so, the petitioner was not within consideration zone and, therefore, his case could not be considered. However, after the DPC held its meeting, it was revealed that two persons have wrongly been promoted as Assistant Engineers and, therefore, their promotions against the promotion quota of 1965 were recalled. The contention of Mr. Mridul is that this recall order is imaginary because it has not affected their postings as Executive Engineer and Superintending Engineer and nobody else has been promoted against their vacancies. When actually vacancies were not there, they could not be promoted and therefore, no question of promoting any other person in those vacancies could arise. These two persons are Shri Dhanraj and Shuri Ladlimohan. When the petitioner was not within consideration zone in the year 1965, although he was eligible as per the order of the learned Tribunal dated 7.12.1981, he could not have been promoted against the promotion quota vacancies of 1965 and, therefore, he has been assigned seniority as a direct recruitee of the year 1965 below the promotees of the years 1965.

19. The contention of Mr. M. Mridul, the learned Counsel appearing for the petitioner is that the PHED separated from Public Works Department on 30.8.1965 and one vacancy arose before 30.8.1965 and, therefore, that vacancy should have been calculated as on 1.1.1966 as he should have been promoted in PHED Department against that vacancy. It was contended by Mr. Mridul that the very fact that the learned Tribunal has mentioned in the concluding para of its judgment dated 7.12.1981 that Shri D.R. Calla and Shri S.D. Vyas would be benefited by it clearly shows that in the opinion of the learned Tribunal these persons were liable to be promoted in the promotion quota available to them in the PHUED. I am unable to accept that contention of Mr. Mridul. I have gone through the judgment of the learned Tribunal dated 7.12.1981. On page 4 of this Judgment, it was contended on behalf of the petitioner that 11 posts of Assistant Engineers were available as on 30.8.1965 to be filled by promotion of the persons working in the lower cadre and out of these, five vacancies were permanent and remaining six were temporary. However, due to non-availability of eligible candidates only three permanent posts were filled in by promotion and the two were given over to the direct recruitment quota. It is therefore, clear than the contention of the petitioner before the learned Tribunal was that 11 vacancies existed upto 30.8.1965 when the Department of PHED did not separate from Public Works Department. Moreover, as per the Rajasthan Service of Engineers (Buildings and Roads Branch) Rules, 1954 as also the Rajasthan

Service of Engineers (PHED) Rules, 1968, the vacancies for a particular year have to be determined on the first day of January of that year as per Rule 9 of the these Rules and all anticipated vacancies that may come into existence during the year also have to be taken into consideration and, therefore, if the petitioner was to be promoted against the promotion quota of the year 1965, he could only have been considered against the promotion quota of the Assistant Engineers by the PWD because vacancies for the year 1965 had to be calculated on 1.1.1965. Thus, vacancies which are calculated on 1.1.1966 pertain to the quota of the year 1966 and not of the year 1965. The direction of the learned Tribunal was that the DPC of the year 1965 should be convened for according promotion under the backlog Rules within two months as the petitioner after his confirmation as Engineering Subordinate acquires the eligibility for the post of Assistant Engineer in the year 1965 and has a right to be considered under the backlog Rules in the promotion quota of 1965. Thus, as per the judgment of the learned Tribunal dated 7.12.1981, the petitioner cannot claim to be considered in the year 1966. His only contention was that he should be considered against the promotion quota of 1965 and that consideration has been given to him and he having not been found within consideration zone was not considered and therefore, the seniority which has been assigned to him on account of his direct recruitment as Assistant Engineer in the year 1965 cannot be disputed as it has rightly been assigned to him. Thus, to this extent, the judgment of the learned Tribunal dated 7.12.1981 stands complied with.

20. The next contention of the Mr. Mridul is that the petitioner should have been considered for promotion to the post of Executive Engineer in the year 1969 as he was appointed as Assistant Engineer in the year 1965. To be eligible and to be entitled are two different things. One may be eligible for promotion on account of certain qualifications and certain experience that he possesses but in spite of being eligible one may not be entitled to the promotion on account of non-existence of substantive vacancies or on account of his not coming within consideration zone and, therefore, simply because the petitioner was recruited as A.En. in the year 1965, he does not become entitled for promotion as of right in the year 1969 and therefore, to that extent, the contention of Mr. Mridul stands overruled.

21. A DPC was held in the year 1973 and in that DPC the petitioner was not found suitable for promotion on the ground that, some adverse ACRs were there against him in the year 1967-68. A representation was filed against those ACRs. for the year 1967-68 but that was rejected but on appeal before the State Govt., the State Govt. has expunged those ACRs in the year 1974. thus, when adverse entries were existing against the petitioner in the year 1973, the DPC was not at fault in not finding the petitioner suitable for promotion to the post of Executive Engineer. However, the recommendations made by the DPC in the year 1973 and 1974 have been quashed by this Court in Umed Mal Lodha's case (supra) and this Court directed to reconvene the DPC. The DPC was reconvened on 13.1.1975 and 17.1.1975. It is clear from the documents which have been filed by the

petitioner that the year 1975, adverse remarks of 1967-68 have been expunged against him and adverse remarks of the years 1969-70, 1970-71 and 1971-72 were not conveyed to the petitioner before 31.7.1975 and, therefore, those adverse remarks could not have been considered against him by the DPC in the year 1973 or 1974 or the DPC which met in on 13.1.1975 and 17.1.1975.

22. In this respect, Mr. M. Mridul, the learned Counsel appearing for the petitioner has placed reliance on a decision of their lordships of the Supreme Court in Vijay Kumar, I.A.S. Vs. State of Maharashtra and Others, wherein their lordships of the Supreme Court have observed that the confidential reports relied on for the purpose were not conveyed to the delinquent officer by registered post and no evidence indicated that they were received by the Officer and therefore, denial of senior scale to Officer was arbitrary and unjustified.

23. A similar view has been taken by their lordships of the Supreme Court in Brij Mohan Singh Chopra Vs. State of Punjab, wherein it has been observed that the adverse remarks not communicated to the employee or against which representation in pending, such adverse remarks cannot be considered. Under these circumstances, these adverse remarks recorded against the petitioner in the year 1969-70, 1970-71 and 1971-72 could not have been considered by the DPC which met on 13.1.1975 and 17.1.1975.

24. It is not the case of the respondent that the petitioner was not entitled to be considered or was not within consideration zone when promotions in the year 1973 were considered by the DPC for the post of the Executive Engineer. When these adverse ACRs of the year 1967-68 have been expunged by that time and other adverse ACRs were not conveyed to the petitioner by that time, those adverse ACRs could not have been considered by the DPC and nothing was existing against the petitioner not to consider him suitable for promotion to the post of Executive Engineer in the promotion quota of the year 1973. A chargesheet has been served on the petitioner in the year 1974 and therefore, it could not have been considered for refusing him promotion against the vacancies of the year 1973.

25. My attention was also drawn to a decision of the Tribunal in Appeal No. 242 of 1981, B.N. Bhootra v. State of Rajasthan and Ors. decided on 9.8.1985, wherein the learned Counsel appearing for the appellant has categorically stated that he does not press the appeal with regard to the recommendations of the DPC of 1973 or 1975 for the post of the Executive Engineer. In that appeal, the appellant has made a grouse about these two DPCs and as regards his non-promotion against the quota of 1973 and when he has abandoned his claim about these two DPCs then the result of the DPC must stand. It may be stated here that the petitioner has been found suitable for promotion against the promotion quota for the year 1974. The adverse ACRs which have been recorded against him were toned down or not, they lose all importance because they now stand washed out on account of the promotion being approved in spite of those ACRs and therefore, to that extent, the petitioner's contention that they

should not be considered also loses importance.

26. When the departmental enquiry which was instituted against the petitioner was withdrawn vide order Annexure-20 dated 27.10.1979, the petitioner's recommendations for the post of Executive Engineer made by the DPC cannot be kept in a sealed cover. He should be promoted and confirmed on the post of Executive Engineer assigning him seniority of the year 1974.

27. It is not the case of the petitioner that he was entitled to be promoted as Superintending Engineer prior to 1980. His case for regular promotion to the post of Superintending Engineer was considered by the DPC which met on 13.5.1980 and his recommendation has been kept in a sealed cover, meaning thereby that his promotion has been approved but it has been kept in a sealed cover. When no enquiry was pending against the petitioner in the year 1980 because the earlier enquiry which was initiated vide order dated 4.1.1974 was withdrawn vide order Annexure-20 dated 27.10.1979 and fresh chargesheet has been served on the petitioner in the year 1985, Thus, his recommendations for the post of Superintending Engineer made by the DPC which met on 14.5.1980 could not have been kept in the sealed cover.

28. Be that as it may, these proceedings of the DPC have been quashed by the Tribunal vide its Judgment dated 9.8.1985 and against that Judgment, writ petitions were filed by Shri S.K. Saxena and Shri O.P. Goyal bearing S.B. Civil Writ Petitions No. 32 and 26 of 1983 respectively. Initially, in those writ petitions, the judgment of the Tribunal was stayed. However, those stay orders have now been vacated by this Court vide order dated 20.8.1992 and, therefore, the petitioner's case for promotion to the post of Superintending Engineer will have to be considered afresh alongwith others for the vacancies of the year 1980. The respondent State is now directed to convene the meeting of the DPC for the post of Superintending Engineer (Civil), PHED within a period of three months from today and to decide the fate of all the eligible persons as regards promotion to the post of Superintending Engineer and promotions should be accorded accordingly. As a charge sheet has been served on the petitioner in the year 1985 vide Annexure-23. That will not come in the way of the declaration of the result of the DPC held for considering promotions to the post of S.E. (Civil) so far as the petitioner is concerned because in the year 1980, no departmental enquiry was pending against the petitioner. The proceedings of the enquiry which has been initiated against the petitioner in the year 1985 vide Annexure-23 dated 7.2.1985 have not been stayed by this Court and no such amendment in respect thereof has been allowed and therefore, that enquiry shall continue and whatever punishment is imposed on the petitioner, he will have to face them but the punishment so imposed on the petitioner will not come in the way of the petitioner in declaration of the result of the DPC, which will consider promotions to the post of Superintending Engineer (Civil) as against the vacancies of the year 1980. If the petitioner is found suitable for the post of Superintending Engineer by the DPC in the year 1980, then his result should be declared and he

should be confirmed as such and all future promotions should be accorded to him accordingly according to the Rules and as per the seniority assigned to him by the DPC. The proceedings of the departmental enquiry which has been initiated in the year 1985 cannot be stayed looking to the gravity of the charges levelled against him.

29. The reliefs sought by the petitioner that he should be assigned S. No. 9 in the seniority of Executive Engineers and S. No. 6 in the seniority of the Superintending Engineers cannot be granted to the petitioner. That will depend upon the seniority that is assigned to him on the basis of his placement and the recommendations of the DPC keeping in view the directions of this Court as regards his promotion as Executive Engineer against the promotion quota of the year 1974 and on account of his approval by the DPC to the promotion post of Superintending Engineer (Civil) and therefore, these reliefs sought by the petitioner in Writ petition No. 1490 of 1989 cannot be granted to him.

30. In the result, these writ petitions are allowed in part. The petitioner has already been confirmed as Junior Engineer with effect from 31.12.1963 and he has rightly been assigned seniority of a direct recruit of the year 1965 because he was not eligible to be considered against the promotion quota of the Assistant Engineer in the year 1965. The promotion granted to him by the DPC against the promotion quota of the year 1974 on the post of Executive Engineer is hereby approved. That result should be declared and he should be confirmed on the post of the Executive Engineer forthwith by assigning him proper seniority. So far as the DPC of the year 1980 is concerned, that has already been quashed by the Tribunal vide its order dated 9.8.1985 and, therefore, the meeting of the DPC to consider promotions to the post of Superintending Engineer (Civil) PHED as against the promotion quota of the year 1980 should be convened within a period of three months from today. The re-initiation of the departmental enquiry against him in the year 1985 will not come in the way of the declaration of the result of the DPC, which will be held to consider promotions to the post of Superintending engineer against the vacancies of the year 1980. If he is found suitable, then the result of the DPC should be declared and he be confirmed as per Rules and be assigned proper seniority in the cadre of Superintending Engineers. His future promotions should be considered on the basis of the seniority in the cadre of Superintending Engineers that is assigned to him.

31. However, his request for staying the proceedings of the departmental enquiry initiated against him in the year 1985 is refused. The relief sought by him that he should be assigned seniority No. 9 in the cadre of Executive Engineers and seniority No. 6 in the cadre of Superintending Engineers cannot be accepted. His seniority will depend on the seniority that is assigned to him in the year 1974 as an Executive Engineer and seniority that is assigned to him as Superintending Engineer in the DPC that will be convened for considering promotions to the post of Superintending Engineers (Civil) against the promotion quota of the year 1980. It is made clear that if the departmental proceedings initiated against the

petitioner in the year 1985 are decided and if any punishment is imposed against him, that will certainly affect his future promotions but that will happen only when the departmental proceedings are decided this way or that way.

32. In the facts and circumstances of this case, the parties are left to bear their own costs of these writ petitions.