
(2009) 07 DEL CK 0113

In the Delhi High Court

Case No : Writ Petition (C) No. 4462 of 2008

Pradeep Kumar Chakraborty and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-07-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 309
MES Assistant Engineer (B and R) and Assistant Engineer (E/M) Recruitment Rules,
1978 — Rule 6

Citation : (2009) 07 DEL CK 0113

Hon'ble Judges : Suresh Kait, J; A.K. Sikri, J

Bench : Division Bench

Advocate : Vinay Kumar Garg, for the Appellant; Jyoti Singh and Ankur Chibber for Respondent No. 6, V.S.R. Krishna and A.K. Bharadwaj, for the Respondent

Judgement

A.K. Sikri, J.—Two OAs, registered as 2105/2007 and 10.98/2007, were taken up by the Central Administrative Tribunal together and decided vide its judgment dated 26.05.2008. Finding no merit therein, those applications were dismissed. There were as many as 19 applicants in one OA and 2 in the other. Certain similarly situated persons had also approached the Court for similar relief. Nine applications were filed by them, which were dismissed by the Tribunal on 26.05.2008. Following the earlier judgment dated 26.05.2008, one of these OAs was filed by the petitioners herein, i.e., OA No. 1540/2007, which was filed by as many as 7 applicants against the dismissal thereof the present writ petition is preferred. In these 9 OAs also, there were as many as 51 applicants in all. However, only two petitioners have felt aggrieved by the impugned orders. It appears that others have not filed any petition challenging the aforesaid orders of the Tribunal. The dispute relates to promotion of private respondents to the post of Assistant Engineers.

2. The petitioners as well as private respondents are working in the Civil Engineering Wing in the Ministry of Defence and thus they are civilians in the Military Engineering Services (MES).

3. It is not necessary to go into the history of the Constitution of MES established way back in the year 1923. Suffice is to mention that MES Superintendent (Building & Roads) Grade - I and II Rules were promulgated under proviso 2 of Article 309 of the Constitution. There were enforced from 10.11.1983. These Rules envisage two grades, i.e., Superintendent Grade-I and II. Insofar as the appointment to Superintendent Grade-II is concerned, 90% posts are to be filled up by way of direct recruitment and remaining 10% by promotion, failing which by direct recruitment. Superintendent Grade-I is a selection post to be filled to the extent of 87.5% by promotion and remaining 12.5% by direct recruitment. Superintendent Grade-II is a feeder cadre for promotion to Superintendent Grade-I. Minimum three years service for Superintendent Grade-II for those who are degree holders in Engineering and 5 years service for Superintendent Grade-II, who are diploma holder is the requirement stipulated in the Rules for making them eligible for selection as Superintendent Grade-I.

4. Next higher post in the hierarchy, i.e., Assistant Engineer was governed by the MES Assistant Engineer (B&R) and Assistant Engineer (E/M) Recruitment Rules 1978. As per these Rules, post of Assistant Engineer is a selection post to be filled up by promotion from amongst Superintendents (B&R) Grade-I with 3 years regular service in the Grade in the case of degree holders and 7 years regular service in the grade, in the case of diploma holders. In both cases, this service requirement is after having passed MES procedural examination.

5. The petitioners are diploma holders, who were appointed as Grade-II by way of direct recruitment on 29.11.1983 and 30.03.1987 respectively with the Chief Engineer, Shillong Zone, under the Eastern Command.

6. Ministry of Urban Development, Government of India issued Circular dated 22.03.1991, whereby two scales of pay for Junior Engineers/Sectional Officers working in CPWD were prescribed. They were to be placed in the pay scale of Rs. 1400-2300/-, which was to be treated as entry grade. The completion of 5 years service in the entry grade such Junior Engineers were entitled to be placed in the next higher grade. This higher scale, however, was not to be treated as promotional one, but is considered to be non-functional. Therefore, it is specifically stipulated that benefit of FR 22 will not be admissible while fixing the pay in the higher grade and there will be no change in duties and responsibilities. Decision contained in the said communication dated 22.03.1991 also provides that Junior Engineer who could not be promoted to the post of Assistant Engineer in the scale of Rs. 2000-3500/-, due to non-availability of vacancies in the said grade, they would not be allowed the pay scale of Rs. 2000-3500/- on personal basis, after completion of 15 years total service as Junior Engineer. This personal promotion is given on fitness basis and they are to be adjusted in the cadre of Assistant Engineer as and when regular vacancies arise.

7. Rules were amended in 2001. All these Junior Engineers are now entitled to be considered for promotion to the post so Assistant Engineers on completion of three years if they are graduates and for diploma holders, requirement of

completing seven years service is prescribed.

8. Certain Superintendent Grade-II working in MES, Southern Command approached the Bangalore Bench of the Central Administrative Tribunal claiming the functional and other parities with the Junior Engineers in CPWD, who were given the aforesaid benefits by decision dated 22.03.1991. They wanted the extension of same benefits. In its judgment, Bangalore Bench accepted their plea and directed that same benefits as provided to the Junior Engineers of CPWD be extended to Superintendent Grade-II working in MES. This judgment of the Bangalore Bench was accepted by the official respondents by issuing the orders dated 25.04.1996. Reading of this order shows that it is on the same terms on which the benefits were given to Junior Engineers working in CPWD vide Circular dated 22.03.1991. With this, Superintendent Grade-II have also been given the entry grade of Rs. 14.00-2300/-, non-functional higher grade of Rs. 1640-2900/- after the expiry of 5 years and grade of Rs. 2000-3500/-, which is the grade of Assistant Engineer after the expiry of 15 years in case they are not promoted to the said post in the meantime. The petitioner and the private respondents had obtained the benefits of the above orders. After rendering 15 years of service all of them apparently have received the grade of Assistant Engineers, but not accommodation in regular promotional posts.

9. Some quarries were raised by the Chief Engineers of certain Commands on the implementation of the aforesaid decision, which were clarified by the Army Headquarters, Engineer-in-Chiefs Branch vide its communication dated 24.06.1996. It was inter alia in this communication that with the issuance of Circular dated 25.04.1996, distinction between the Superintendent (B & R/E & M) Grade-I and Grade-II and between the Surveyor Assistant Grade-I and Grade-II was eliminated. Thereafter, Ministry of Defence issued the orders dated 09.307.1999 re-designating the Superintendents (B&R/E&M) and Surveyor Assistants of MES. This re-designation provided in the following terms.

With the grant of time bound pay up-gradation to the Superintendents B&R/E&M and Surveyor Assistant of Military Engineer Services at par with the Junior Engineers of CPWD vide this Ministry's letter No. PC-90237/4603/EIC (Legal)/1993/D (Works) dated 15.04.1996 and No. 85605/RR/B & R I&II/CSCC/3040/D(Works) dated 31st July 1998, I am directed to convey the sanction of the President for re-designation of these posts as under:

----- Name of Posts			
To	be	redesignated	as

			(a)
Superintendent B&R Gde II	Junior Engineer (Civil)	Rs. 1400-2300.	Rs. 1400-2300 (entry grade) (revised Rs. 5000-8000) (revised Rs. 5000-8000)
Superintendent B&R Gde I	Rs. 1640-2900 (After 5 years)	Rs. 1640-2900	(revised Rs. 55500-9000) (Revised Rs. 5000-8000) Rs. 2000-3500 (after 15 years)
	(revised	Rs.	6500-105000)

			(b)

Superintendent E&M Gde II Junior Engineer (Electrical & Mechanical) (revised Rs. 5000-8000) Rs. 1400-2300 (Entry Grade)
 Superintendent E&M Gde I (revised Rs. 5000-8000) Rs. 1640-2900 Rs. 1640-2900 (after 5 years) (revised Rs. 5500-9000) (revised Rs. 5500-9000)
 Rs. 2000-3500 (after 15 years) (revised Rs. 6500-10500).

----- (c) Surveyor
 Assistant Gde II Junior Engineer (Quantity Surveyor & Contracts) (revised Rs. 5000-8000) Rs. 1400-2300 (entry grade) Surveyor
 Assistant Gde I (revised 5000-8000) Rs. 1640-2900 Rs. 1640-2900 (after 5 years) (revised Rs. 5500-9000) (revised Rs. 5500-9000) Rs. 2000-3500 (after 15 years) (revised Rs. 6500-10500)

10. The aforesaid orders were, however, amended by subsequent orders dated 19.01.2000 making certain corrections, which are not material for our purposes. Though while extending the benefit of judgment of the Bangalore Bench of the Tribunal, orders were passed on 25.04.1996 and as a consequence, it was also clarified vide orders dated 24.06.1996 that with the implementation of the said judgment distinction between Superintendent Grade I and II stood eliminated and subsequently, the nomenclature in the MES was changed by redesignating all these Superintendents in various categories as Junior Engineers, no corresponding change was made in the 1983 Recruitment Rules immediately. Such an amendment in the Recruitment Rules was brought about only on 30.04.2001 when Notification in exercise of powers confirmed by the proviso (ii) of Article 309 of the constitution was issued. Vide this Notification, 1983 Rules were superseded and substituted by new Rules called the Military Engineers Services, Junior Engineer (Civil) and Junior Engineer (Electrical and Mechanical) Recruitment Rules, 2001. In a sense, the change that was brought about was the merger of Superintendent (B&R) Grade I and II and Superintendent (E&M) Grade I and II and they were redesignated as Junior Engineer (Civil) and Junior Engineer (E&M) respectively.

11. On the elimination of distinction between Grade I and II, certain consequences followed insofar as further promotions of the petitioner and private respondents are concerned. As mentioned above, the petitioners were appointed as Superintendent (B&R) Grade II on 29.11.1983 and 30.03.1987 respectively. They are the diploma holders. Private respondents on the other hand are degree holders. Under the 1983 Rules, next promotion was to the post of Superintendent (B&R) Grade I. As noted above for diploma holders, 5 years service in Grade II and for degree holders, 3 years services in Grade II was required for promotion to Grade-II. With the obliteration of any distinction between Grade I and II and re-designation as Junior Engineer, some of these degree holders approached the Principal Bench of the Tribunal, New Delhi by means of filing OA No. 1124/2005 seeking a direction to consider their case for promotion to the post of Assistant Engineer (Civil), since all of them had put up the requisite three years service which was the qualification laid down for the

Junior Engineer degree holders. This OA was decided vide orders dated 10.03.2006 issuing the directions to the Official respondents to consider their cases for promotion by holding a review DPC. The review DPC was held and those Junior Engineers were promoted as Assistant Engineers.

12. The petitioners herein as well as other diploma holders felt aggrieved by the aforesaid promotion of the private respondents to the post of Assistant Engineers on regular basis. They argued that they were senior to the applicants in OA No. 1124/2005 and were ignored for promotion and juniors were promoted as Assistant Engineer. They also contended that in OA No. 1124/2005, the applicants had not impleaded them as parties. Therefore, they are not bound by the directions given in the said case and had right to argue that those directions were wrongly given. The question of law, which was raised before the Tribunal by these petitions, diploma holders including present petitioners was that even if Bangalore Bench's judgment was implemented vide orders dated 25.04.1996 and posts were redesignated by orders dated 09.07.1999, new Recruitment Rules came into force only on 30.04.2001. Therefore, date of merger of the two grades, viz., Superintendent Grade-I and II could only be 30.04.2001 as till these Rules were promulgated Rules of 1983 held the field, as per which two grades remained separate. Submission in this behalf was that merely by administrative orders passed on 25.04.1996 or 09.07.1999, there could not have been an amendment to the statutory rules. Arguments before us remain the same.

13. The question which, therefore, fell for determination before the Tribunal was as to which is the date of merger. It is to be taken of 24.06.1996 when the judgment of Bangalore Bench was implemented and on introduction thereof it was categorically clarified on that date that there would be no distinction between the Grade I and II. Or else, it is to be taken as 09.07.1999 when there was redesignation of the post of Superintendent Grade II and I that of Junior Engineer with the sanction of the President. Or the relevant date would be 30.04.2001 when the Recruitment Rules were formally amended. Obviously, the outcome of the case depends upon the answer to this controversy.

14. The Tribunal before answering this question also took note of certain disputes about seniority agitated before Jodhpur Bench and Chandigarh Bench and the decision rendered therein. These facts are noted in Paragraph Nos. 10-11 in the impugned judgment in the following manner:

10. In the matter of fixation of seniority by this time applications had been filed before Jodhpur Bench and Chandigarh Bench. It was at the above point of time that one Chand Singh had filed OA 339 of 2004 before the Chandigarh Bench of the Tribunal. He claimed that he had been appointed as Superintendent Grade I on 26.02.1997 and after seven years of service, he was entitled to be promoted as Assistant Engineers and persons who were promoted overlooking him did not have the qualifying service and, therefore, promotions given to ineligible persons were to be cancelled. The Tribunal came to hold that promotions offered to some such persons were illegal and the case of the applicant was to be taken up as he had a

sustainable point, and a prior right for being considered for promotion.

10. This appears to have triggered further litigations. The private respondents here had come up with a similar claim they contending that after three years of working as Junior Engineers in the merged position, they were entitled to promotion as Assistant Engineers, being graduates as warranted by the 1978 rules. Although the Bench had noticed that new Recruitment Rules after the decision of the Bangalore Bench had come to operation in the year 2001 alone, nevertheless taking notice of the purport of the 1978 rules, which provided for promotion of eligible's, the applicants were held as entitled to be considered for promotion. There were no private respondents in the array of parties. The above decision had resulted in the convening of a revised DPC and the impugned orders had come to be issued.

15. Taking note of the aforesaid judgments of the different Benches in the aforesaid cases as well as other attendant factors and material on record, the Tribunal held that merger of Superintendent Grade II and I had taken place on 09.07.1999 with a Presidential Order. It rejected the contention of the private respondents who had suggested that the date of merger should be 24.06.1996. It also did not accept the argument of the petitioners that the date of merger should be treated as on promulgation of Rules in 2001. The position in this regard is explained in the following manner in its judgment:

13. A merger of Superintendents Grade II and Grade I has taken place, on 9.7.1999 with a Presidential Order and this position is indisputable although there is an attempt to suggest that alternatively to the contentions raised, the date is to be adjudged as 24.06.1996, the date of order of the Chief Engineer. It may relate back to that date, it is argued because of the order dated 19.01.2000, but, however, it does not appear to be correct. Following the order of Chief Engineer, further proceedings required to be introduced. There was no Superintendent Grade II and Grade I after 1999, as the posts were redesignated. We do note that reliance had been placed on certain orders where reference to such designations were nevertheless made, but we feel that it can only be for convenience and for nothing else, and as recognized by the 2001 rules, the date of merger can be only July, 1999.

14. Therefore, as of now, we have to take notice on the stipulations in special rules governing the category of Assistant Engineers to appreciate the veracity of the arguments. A common sense approach would be to assume that the Superintendent Grade I referred to therein has to be understood as a Junior Engineer, and those who are in the higher pay scale of Rs. 1640-2900 to make it sensible. The contra argument would be too technical and would not advance the cause of justice. When the nomenclature, superintendent Grade I is discontinued, there cannot be a vacuum, and the replaced designation fits to the bill. The strictness attached to the supremacy of statutory rules vis-a-vis executive instructions has little application or relevance here. When statutory rules were later on amended in the year 2001, by SRO 78 Notification dated 30.04.2001

(Annexure 6) the schedule to the rule also referred to the change of the designation that had been brought in. Note-I specifically refers to the circumstance in the following manner:

Note-I. Erstwhile post of Superintendents (B/R) Grade-I and Superintendents (B/R) Grade-II have been redesignated as Junior Engineers (Civil) vide Ministry of Defence letter No. 85605/RR/B/R-I and II CSCC/2742/D (Works) dated 9.7.1999 as amended vide letter No. 85605 dated 19.1.2000.

15. Therefore, recognition of a claim of a Junior Engineer as equal to one, earlier designated as Superintendent-I could not have been violent, irregular or illegal. The orders of the Bangalore Tribunal as confirmed by the Supreme Court, had become final. The special rules are required to be understood and applied in the background of the judicial pronouncement. Thus when the private respondents had shown that they have become eligible as per the purport of the special rules for promotion and when this position was duly recognized by a Bench of this Tribunal, the consequential orders passed by the respondent, impugned in the present applicants, are to be deemed as valid and regular. The relevant date for assessment of eligibility is 09.07.1999 as positively suggested even by the Rules of 2001, and the claim of the graduate Junior Engineer that he became eligible for promotion after putting in three years in the higher grade for being promoted to the post of Assistant Engineer was straightforward. The interpretive process, which ignores the apparent, and compels one to grope in darkness by sticking on to technicalities, will be rather outdated. The promotion was, therefore, regular, especially since the applicants were yet to attain promotability.

16. Submission of the learned Counsel for the petitioner, as noted above, was that the date of 09.07.1999 was clearly erroneous as the Recruitment Rules were framed only in the year 2001. Before the new Recruitment Rules were framed and came into force on 30.04.2001, earlier Rules of 1983, which are of statutory nature, prevailed and could not have been superseded by the Administrative instructions. Hence, there could not be any merger contrary to the Recruitment Rules of 1983. He referred to the following judgment in this behalf:

- a) Sant Ram Sharma Vs. State of Rajasthan and Another,
- b) O.P. Lather and Others etc. Vs. Satish Kumar Kakkar and Others,
- c) Dr. Rajinder Singh Vs. The State of Punjab and Others,
- d) Union of India (UOI) through Govt. of Pondicherry and Another Vs. V. Ramakrishnan and Others,
- e) Dhananjay Malik and Others Vs. State of Uttaranchal and Others,

He also submitted that statutory rules were to be strictly followed as held in Punjab Water Supply and Sewerage Board, Hoshiarpur Vs. Ranjodh Singh and Others, and merger of two posts could not be done by non-statutory orders in view of law laid down by Supreme Court in the case of Union of India (UOI) and

Another Vs. Central Electrical and Mechanical Engineering Service (CE and MES) Group "A" (Direct Recruits) Association, CPWD and Others, On that basis, he argued that the promotion, which was given to the private respondents was contrary to the Recruitment Rules of 1983 and was thus illegal. His further submission was that if Recruitment Rules of 2001 are to be taken into consideration where-under both Grades II and I became Junior Engineer (Civil), the matter was to be considered as per letter dated 07.06.2003 issued by the UPSC. By that letter, the UPSC had provided the mode of recruitment which is in the nature of administrative instructions. In view of the vacuum of feeder category for the 1978 Rules to the post of Assistant Engineer after enactment of 2001 Rules which made the category of Superintendent Grade I extinct, the UPSC had suggested that for Superintending Grade-I who became Junior Engineer (Civil), the required service was three years in case of degree holder and seven years in case of diploma holder. However, none of the petitioners or the private respondents belong to this category. For the other category of Junior Engineer (Civil), namely, those who were Superintendents Grade-II, this administrative instruction provides six years regular service in case of those who hold degree such as the private respondents and 10 years regular service for those who hold diploma. The word "in the grade" does not mean in the grade of Junior Engineer (Civil), but in the feeder grade i.e. Superintendent Grade-II. The UPSC is competent, under Rule 6 of 1978 Rules, to suggest the mode of recruitment and this method of recruitment has been verbatim incorporated in the 2001 Rules for the post of Assistant Engineer.

17. The learned Counsel also argued that it is held by the Supreme Court that:

a) Method of recruitment/scheme/administrative instructions can be framed by the Swaran Lata Vs. Union of India and Others,

b) In the absence of Rules, the administrative instructions filling the gap which later on finds place in the Rules can be relied upon Abraham Jacob and Others Vs. Union of India,

18. On behalf of the private respondents, Ms. Jyoti Singh and Mr. Krishna supported the reasoning given by the Tribunal and submitted that it was most equitable solution in the circumstances of the case and the action taken by the official respondent was in compliance with the directions of the Tribunal given in various judgments. Therefore, promotion of the private respondent based on those directions could not be faulted with. They extensively referred to the judgment of the Bangalore Bench and the orders passed by the Government from time to time implementing that judgment. According to them, the effect thereof was to put an end to Grade-II and Grade-I by merging them with redesignation as Junior Engineer, at least from the date of Presidential order, i.e., 09.07.1999.

19. Mr. Bharadwaj, learned Counsel for the official respondent was in a quandary. It is because of the reason that though the OA filed by the petitioners herein was

opposed by the Government which position is maintained in the counter affidavit to the present writ petition, as well, in the written submissions the department has taken a summersault and supported the case of the petitioners. In these circumstances, (with family) would go by the stand of the Government as taken before the Tribunal, which was the stand taken before other benches of the Tribunal as well. More significantly orders were passed by the Government in this behalf from time to time, which reflected that the merger of Grade-II and Grade-I with designation as Junior Engineer was contemplated on the implementation of the judgment of the Bangalore Bench and in any case on promulgation of the Presidential orders.

20. Factual position which emerges and is to be taken note for deciding the controversy may again be recapitulated in brief. The trigger point of the entire controversy is the implementation of the orders dated 31.03.1995 of the Bangalore Bench. In this judgment, following directions were given:

We further direct the respondents to grant higher pay scales as that paid to JEs in CPWD in the scale of Rs. 1640-2900/- to the applicants in Grade-II Superintendents who as and when complete 5 years of service in the grade w.e.f. 01.01.1986 and who as and when complete 15 years of service in that grade the scale of Rs. 2000-3500/- w.e.f. 01.01.1991 on the same lines as contained in the communication of MUD dated 21.03.1991 addressed to DG (Works), CPWD as in Annexure A-II....

(emphasis supplied)

21. These orders of the Bangalore Bench were upheld by the Supreme Court as SLP filed by the Union of India was dismissed. Thereafter, the official respondents implemented the directions contained in the judgment of Bangalore Bench by issuing orders dated 25.04.1996. By these orders, for both the posts of Superintendent, viz., Grade-II and Grade-I, entry Grade of Rs. 1400-2300/- was specified and the higher scale of Rs. 1640-2900/- was to be given after completion of five years service, which was to be non-functional and non-promotional with clear stipulation that the benefit of FR 22(1) (a)(i) would not be admissible. Likewise, on completion of 15 years of service, these Superintendents including Superintendents Grade-II whether degree holder or diploma holders, received the benefits of the aforesaid orders. Thereafter, letter dated 24.04.1997 was issued. Intending the merger, the two scales of Superintendents in Grade-I scale were consolidated in one scale which came to be designated as the post of Junior Engineer. It was followed by the Presidential orders dated 09.07.1999. It is not in doubt that in this manner on the implementation of the judgment of the Bangalore Bench when orders dated 25.04.1996 were passed, with distinction between the two grades, viz., Grade-II and Grade-I was done away with. At the same time, all persons belonging to Grade-I were unblocked placed senior to those in Grade-II. However, formal redesignation of the two posts into that of Junior Engineer was accorded vide orders dated 09.07.1999. This order enacted that Superintendent Grade-II were

to be redesignated as Junior Engineer (Civil) in the scale of Rs. 1400-2300 (revised Rs. 5000-8000/-). Superintendent Grade I was to be given the scale of Rs. 1640-2900/- after five years and was to be revised as Rs. 2000-3500 (revised Rs. 6500-10,500/-) after 15 years. While all this was done, Recruitment Rules of 1987 remained unamended. In these Rules, nomenclature of only Superintendent Grade-II and Grade-I was given. These Rules also provided promotions from Grade-II to Grade-I. Though by that time, this designation had ceased to exist and officials in both the grades came to be known as Junior Engineer (Civil). It is obvious that under existing Rules, i.e., 1978 Rules further promotions could not be made. Rules were formally amended only in the year 2001 when 1978 Rules were superseded and Rules of 2001 came into force with effect from 30.04.2001 vide SRO 1978 Notification of that date.

22. In this background, we have on the one hand Presidential Orders dated 09.07.1999, whereby Superintendent Grade-I and Grade-II were merged and the nomenclature was changed to Junior Engineer. On the other hand, we have Notification dated 30.04.2001, which provides for promotion of Junior Engineers to that of Assistant Engineers. The Tribunal labeled this as a "common sense approach" and taken the view that if the date of notification, viz., 30.04.2001 treated as the date of merger, it would be too technical and would not advance the cause of action. The reasoning goes as under:

14. Therefore, as of now, we have to take notice on the stipulations in special rules governing the category of Assistant Engineers to appreciate the veracity of the arguments. A common sense approach would be to assume that the Superintendent Grade-I referred to therein has to be understood as a Junior Engineer, and those who are in the higher pay scale of Rs. .1600-2900 to make it sensible. The contra arguments would be too technical and would into advance the cause of justice. When the nomenclature, Superintendent Grade-I is discontinued, there cannot be a vacuum, and the replaced designation fits to the bill. The strictness attached to the supremacy of statutory rules vis-?-vis executive instructions has little application or relevance here. When statutory rules were later on amended in the year 2001, by SRO 78 Notification dated 30.04.2001 (Annexure-6) the schedule to the rule also referred to the change of the designation that had been brought in. Note-I specifically refers to the circumstance in the following manner:

Note-I. Erstwhile post of Superintendents (B/R) Grade-I and Superintendents (B/R) Grade-II have been redesignated as Junior Engineers (Civil) vide Ministry of Defence letter No. 85605/RR/B/R-I and II CSCC/2742/D (Works) dated 9.7.1999 as amended vide letter No. 85605 dated 19.1.2000.

15. Therefore, recognition of a claim of a Junior engineer as equal to one, earlier designated as Superintendent-I could not have been violent, irregular or illegal. The orders of the Bangalore Tribunal as confirmed by the Supreme Court, had become final. The special rules are required to be understood and applied in the background of the judicial pronouncement. Thus when the private respondents

had shown that they have become eligible as per the purport of the special rules for promotion and when this position was duly recognized by a Bench of this Tribunal, the consequential orders passed by the respondents, impugned in the present applications, are to be deemed as valid and regular. The relevant date for assessment of eligible for promotion after putting in three years in the higher grade for being promoted to the post of Assistant Engineer was straightforward. The interpretive process, which ignores the apparent, and compels one to grope in darkness by sticking on to technicalities, will be rather outdated. The promotion was, therefore, regular, especially since the applicants were yet to attain promotability.

23. We find that the aforesaid view of the Tribunal serves substantial justice and is most equitable in the facts and circumstances of the case. It is not contrary to law as well, under the given circumstances. No doubt, Rules for promotion were framed on 30.04.2001. But we find that due care is taken to meet the situation by adding Note-I in the rules itself, thus forming it as a part of the Rules. It reads as under:

Note-I. Erstwhile post of Superintendents (B/R) Grade-I and Superintendents (B/R) Grade-II have been redesignated as Junior Engineers (Civil) vide Ministry of Defence letter No. 85605/RR/B/R-I and II CSCC/2742/D (Works) dated 9.7.1999 as amended vide letter No. 85605 dated 19.1.2000.

24. Treating Superintendent Grade-I and II as Junior Engineer, date of 09.07.1999 has been specifically mentioned in the statutory Rules itself and to that extent, this aspect is given retrospective operation. When we look into the matter in the aforesaid perspective, argument of the learned Counsel for the petition that there could not have been any merger contrary to Recruitment Rules of 1993 or that statutory Rules could not be superseded by executive order, i.e., Presidential Orders dated 09.07.1999 loses its sheen. This argument and the judgments cited in support of this argument would not be applicable to the present case in view of the aforesaid specifically provision introduced in the Recruitment Rules of 2001 itself by means of aforesaid Note-I, which is also a part of Statutory Rules.

25. Moreover, the promotion to the post of Assistant Engineers are made in accordance with these rules only after the promulgation of the Rules. The only question was as to from which date three years of service for degree holders and seven years of service for diploma holders is to be counted. For this limited purpose, even when promotions were to be made vide Notification dated 30.04.2001, date of Presidential Orders, i.e., 09.07.1999 when two grades were merged and given the nomenclature of Junior Engineer could be taken into account. On the date when DPC was held in the year 2003-04, degree holders had put in three years of service, whereas diploma holders had not put in seven years of service. The petitioners were, therefore, not eligible on that date.

26. The matter can be looked into from another angle as well. Though

designations of Superintendent Grade-I and II cease to exist and were given the new designation of Junior Engineer on 09.07.1999, Rules were amended on 30.04.2001. Therefore, there was a vacuum in interregnum period. How this vacuum is to be filled or this period is to be treated is the question? Obviously, even when 1978 Rules were not formally amended, they could not have been operated. In the contemplation of the authorities, however, was that with re-designation of Superintendent Grade-I and II is Junior Engineer, further promotion is to be to the post of Assistant Engineer, which was formalized in the year 2001. Conscience of this, while promulgating the Rules vide Notification dated 30.04.2001, the Rule making authority specifically added Note-I in the said Notification which has been dealt with by us above.

27. We, therefore, are in agreement with the view taken by the learned Tribunal, which has taken the view of the matter considering all the relevant circumstances. Therefore, it would not be appropriate to interfere with the same in exercise of extra-ordinary jurisdiction under Article 226 of the Constitution. We accordingly dismiss this writ petition as devoid of any merit. However, parties are left to bear their own costs.