

(1990) 09 P&H CK 0129
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7966 of 1987

Prithvi Raj Grover

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 13-09-1990

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227, 309
Punjab Reorganisation Act, 1966 — Section 115(7), 155(7), 82, 82(1), 82(2)
Punjab Service of Engineers (Class I) Public Works Department (Buildings and Roads Branch) Rules, 1960 — Rule 5, 6, 9(1)
Punjab Service of Engineers (Class II) Public Works Department (Buildings and Roads Branch) Rules, 1965 — Rule 12, 15, 2(7), 6, 6(4)

Citation : (1992) 1 ILR (P&H) 220

Hon'ble Judges : J.S. Sekhon, J

Bench : Single Bench

Advocate : Inderjit Malhotra, for the Appellant; Madan Dev, for State, H.L. Sibal K.K. Jagia, R.K. Handa and Gurdeep Singh, for the Respondent

Judgement

J.S. Sekhon, J.—Prithvi Raj Grover, Petitioner joined as Sectional Officer in the Punjab P.W.D. B&R Branch on 8th January, 1963, after doing his Diploma in Mechanical Engineering. On the reorganisation of the State of Punjab, the Petitioner was allocated to the State of Haryana as Sectional Officer. On 19th June, 1971, the Petitioner was promoted as Sub-Divisional Officer and was appointed to the Haryana Service of Engineers Class II Service with effect from the same date, i.e., 19th June 1971 in accordance with the Punjab Service of Engineers Class II P.W.D. (B&R Branch) Rules, 1965, hereinafter referred to as the Class II Rules. Rule 6 of Class II Rules provides the method for recruitment to Class II Service from the following sources:

- (i) Direct appointment;
- (ii) By promotion from the members of Haryana P.W.D. B&R. Sectional Officer (Engineering);

- (iii) By promotion from draftsmen, members of Draftsmen and Tracers Services;
- (iv) By promotion from members of the Haryana P.W.D., (B&R) Sectional Officers (Engineering) Service and Draftsmen and Tracers Services possessing qualifications prescribed in Appendix "B" to these rules.

Rule 6 also provides a fixed quota for each category for recruitment to Class II Service and the seniority of the members of the Service is also fixed under Rule 12 in accordance with the quota for each category according to the order for recruitment. Sat Pal Sikka, Respondent No. 2 and Ishwar Kumar Madan, Respondent Nos. 2 and 3 joined the Class II Service as Assistant Engineers directly on 21st June, 1973 and 9th May, 1973, respectively after obtaining a degree in Mechanical Engineering. The Petitioner contends that Respondents 2 and 3 had joined the Class II Service after the promotion of the Petitioner to this Service. Thus, the Respondents were junior to him and that in the Gradation List of Haryana Service of Engineers, Class I, Class II and other Gazetted Officers of the Haryana P.W.D. Building & Roads Branch, corrected upto 1st April, 1972, hereinafter referred to as the Gradation List, the names of Respondents 2 and 3 did not figure because these Respondents had not joined the service by then. The name of the Petitioner figured at Section No. 2 of the Gradation List of Officiating Sub-Divisional Engineer/promoted from Sectional Officers. In the Gradation List corrected upto January, 1973, the names of the Temporary Assistant Engineers recruited after 31st October, 1966 were shown at Section No. 36 and the names of Respondents 2 and 3 figured at Section Nos. 5 and 6 at the page 36 and the promoted Sub-Divisional Officers from Sectional Officers appointed to Class II Service were shown at page 37 and the name of the Petitioner in that list was at Section No. 2-A, note has been given in the Gradation List that inter se seniority of categories 3 to 5 i.e., temporary Assistant Engineers recruited after 31st October, 1966, officiating Sub-Divisional Engineers promoted from Sectional Officers and Officiating Sub-Divisional Engineers promoted from Draftsman will be decided in due course. It is further averred by the Petitioner that in the Gradation List corrected upto 1st January, 1984, again a note figures that inter se seniority of categories IV to IX will be decided in due course. The seniority was not finalised by the Government till 1987, when it was for the first time communicated to the Petitioner,--vide their letter dated 27th February, 1987 (copy Annexure P-3), wherein the name of the Petitioner was shown at Section No. 7 and that of Respondent Nos. 2 and 3 had been depicted at Section Nos. 9 and 10, respectively. Before the determination of inter-se seniority between the members of Class II recruited from different sources, the Petitioner averse that in the year 1978, two vacancies of Executive Engineers fell vacant which were to be filled by promotion from the members of Class II Service in accordance with the provisions contained in Punjab Service of Engineers, Class I, P.W.D. (Building & Roads) Branch Rules, 1960, hereinafter referred to as Class I Rules. The Petitioner apprehending that his name was not being sent in the panel for promotion for Executive Engineer and the name of Respondent No. 2, Sat Pal Sikka, who was junior to him, was being considered,

made a representation on 28th May, 1978, (Annexure P-1) to Respondent No. 1 requesting for fixation of inter se seniority of the Sub-Divisional Engineers (Mechanical) and considering his case for promotion to the post of Executive Engineer (Mechanical), but Respondent No. 1 promoted Respondent No. 2. Shri Sat Pal Sikka,--vide its order dated 5th October, 1978 (Annexure P. 2). Similarly, Shri Ishwar Kumar Madan (Respondent No. 3) was promoted on purely temporary ad hoc basis. These promotions were made without deciding the claim of the Petitioner, who was senior to both Respondents No. 2 and 3 and having 7 years experience while Respondents No. 2 and 3 had 5 years experience in Class II Service. The Petitioner contends that it appears that he was ignored because he is a Diploma holder and Respondent No. 1 took the erroneous view that degree in Engineering is a prerequisite condition, for promotion from Class II to Class I Service. It is further maintained that in the year 1980, a vacancy of Executive Engineer (Mechanical) fell vacant and the name of the Petitioner was approved by the Screening Committee but Respondent No. 1 promoted Shri O.P. Behal who was earlier reverted on 22nd December, 1976 and his reversion was set aside by the High Court in C.W.P. No. 1012 of 1978, decided on 18th March, 1980. It is further stated that Respondent No. 3 earlier promoted on ad hoc basis to Class I was reverted on 6th February, 1981 and in his place, Shri Harbans Lal was promoted by the Government with effect from the same date, but his promotion was made retrospective with effect from 14th December, 1978, when person junior to him i.e. Sat Pal Sikka was promoted. The Petitioner then made numerous representations to Respondent No. 1 for fixing inter se seniority and for consideration of his case for promotion, but to no effect. Again, a vacancy of Executive Engineer (Mechanical) had occurred and Respondent No. 1 was again trying to ignore the Petitioner and wanted to promote Ishwar Kumar Madan, Respondent No. 3 although the latter is junior to the Petitioner. It is further averred that promotion to Class I Service from Class II Service is governed by Rules 5 and 6 of the Class I Rules. Rule 5 provides the method of recruitment to the Service while Rule 6 prescribes the requisite qualifications. According to Rule 6(b), the Petitioner was fulfilling the condition for promotion from Class II to Class I Service and that degree in Engineering is not a pre-requisite condition for promotion to Class I Service from Class II Service, as interpreted by the Apex Court in the case of A.S. Parmar etc. v. State of Haryana and Ors. 1984 (1) S.L.R. 54.

2. The Petitioner further avers that in order to nullify the effect of the judgment of the Apex Court in A.S. Parmar's case (supra), the Haryana Government amended the Rules,--vide notification issued on 14th January, 1985. This amendment was made retrospective from 18th March, 1960, i.e. from the day from which the Class I Rules were framed and Rule 6 was amended by substituting new clauses in this rule and in Rule 9, Sub-rule (1) proviso was substituted by a new proviso making the members of Class II Service with Diploma qualifications entirely ineligible for promotion to Class I post. The Petitioner contends that these amendments having been made without the prior

approval of the Central Government as required u/s 82 of the Punjab Reorganisation Act, 1966 because it tantamount to taking away accrued right of the Petitioner and were ultra vires. The State Government also violated Articles 14 and 16 of the Constitution of India. It is further maintained that the Haryana Government made similar amendments in the Punjab Service of Engineers Class I, P.W.D. (Irrigation Branch) Rules, 1964 by issuing notification dated 22nd June, 1984. That notification was challenged in the Apex Court in T.R. Kapur and Others Vs. State of Haryana and Others, and the Apex Court quashed the notification being violative of Articles 14 and 16 of the Constitution as well as violative of Section 82 of the Punjab Reorganisation Act, 1966. It is further averred that Notification dated 14th January, 1985 Annexure P.4 was quashed by this Court in B.M. Sharma v. The State of Haryana 1987 (5) S.L.R. 531. The Petitioner again made representation to Respondent No. 1 to consider his case on the basis of the judgment of the Supreme Court in T.R. Kapur's case and of the Division Bench of this Court in B.M. Sharma's case as the Petitioner is being ignored for promotion only on the ground that he is a Diploma Holder and thus not eligible for promotion. But on getting no response from the department and on learning that after the decision of the High Court in B.M. Sharma's case, Respondent No. 1 is bent upon promoting Ishwar Kumar Madan, Respondent No. 3 by ignoring the Petitioner and the promotion papers of Respondent No. 3 had been sent to the Chief Minister for approval, the Petitioner had filed this writ petition under Articles 226 and 227 of the Constitution for issuing a writ in the nature of Madamus directing Respondent No. 1 to consider and promote the Petitioner from the date the person junior to him was promoted as Executive Engineer in Class I Service and writ of Prohibition or other writ or order directing Respondent No. 1 not to issue the order of promotion of Respondent No. 3 and to consider the case of the Petitioner for appointment on this post by ignoring the provisions of amended Rule Annexure P.4. The Petitioner had raised the following law points in the petition:

- (i) Whether the Petitioner is entitled to be considered for promotion to post of Executive Engineer in Class I Service from the day his juniors were promoted specially in the circumstances when the seniority of the Petitioner vis-a-vis Respondent No. 2 and 3 and other members of Class II Service was fixed for the first time in January 1987?
- (ii) Whether Respondent No. 1 can ignore the Petitioner for promotion to Class I post of Executive Engineer on the basis of amendment made in Class I Rules Annexure P.4 which has been declared ultra vires by the Hon'ble High Court while deciding the case of B.M. Sharma v. State of Haryana?
- (iii) Whether Respondent No. 1 can promote Respondent No. 3 a person junior to the Petitioner in seniority list by ignoring the Petitioner merely on the ground of not having a degree qualification in Mechanical Engineering contrary to the ratio of the decision given in the case of A.S. Parmar v. State of Haryana, reported in 1984 (1) S.L.R. 454?

(iv) Whether the action of the Respondent in not considering the case of the Petitioner for promotion from back date when persons junior to him were promoted is discriminatory and violative of Articles 14 and 16 of the Constitution specially in the circumstances when the Petitioner and Respondent No. 2 are members of the same class of service?

3. The writ petition was resisted by all the Respondents. In the return filed on behalf of Respondent No. 1, by Smt. Ved Kumari, Deputy Secretary to Government, Haryana, P.W.D. B & R Branch, it was averred that the Petitioner was promoted as Sub-Divisional Engineer H.S.E. Class 11 on provisional basis for a period of six months under Rule 6(4) of Class II Rules after giving relaxation in service experience from 10 years to 8 years under Rule 7(2) of Class II Rules as on the basis of experience he was not eligible for promotion on 19th June, 1971. The Petitioner was subsequently appointed to Class II on 25th October, 1972 retrospectively with effect from 19th June, 1971,--vide order Annexure P. 2 substituted,--vide Government subsequent letter bearing same number and date. It was further explained that Respondents 2 and 3 joined Class II Service on 21st December, 1972 and 9th November, 1972, respectively as temporary Assistant Engineers (Under Training) and not on 21st June, 1973 and 9th May, 1973 as represented by the Petitioner and that the above-referred dates quoted by the Petitioner are the dates when Respondents 2 and 3 completed their training. It was further admitted that seniority between the members of Class II Service (Mechanical Wing) was fixed under Rule 12 and was circulated for the first time in 1987. It was, however, averred that the representation dated 28th May, 1978 filed by the Petitioner was rejected by Respondent No. 1 and the Petitioner was accordingly informed through his controlling authority Superintending Engineer (Mechanical) Karnal --vide letter dated 22nd December, 1978 (copy Annexure R. 4) issued by the Engineer-in-Chief. It is further admitted that in the above-said seniority list, the seniority of the Petitioner was shown at Section No. 7 but now it is under assail as Respondents 2 and 3 had challenged the same. The allegation of the Petitioner that his name was not considered for the panel of promotion along with Respondents 2 and 3 on 17th April, 1978 and 20th June, 1979 was refuted. On the other hand, it was maintained that the name of the Petitioner was also considered at proper place i.e. above Respondents 2 and 3 but he was not found suitable for promotion being ineligible to be considered for promotion on account of his not fulfilling the conditions of eligibility as laid down in Rule 6(a) and (b) of Class I Rules as Degree in Mechanical Engineering and 8 years service experience was required and the Committee constituted for considering promotion allowed relaxation in service experience to Respondents 2 and 3, who are degree holders, from 8 years to 6 years, whereas in the case of the Petitioner two relaxations were required, i.e. relaxation in degree qualification and 8 years service experience. The Petitioner had no right to relaxation in service experience and degree qualification at each and every stage of promotion, especially when the Petitioner was allowed relaxation in service experience from 10 years to 8 years at the time of

promotion as Sub-Divisional Engineer from post of Junior Engineer in 1971. Thus, it was maintained that the Petitioner was rightly ignored by the department for promotion in the year 1978. The allegation of the Petitioner that the Screening Committee in the year 1980 had approved his name but it was rejected by Respondent No. 1. was contradicted. On the other hand, it was maintained that the Committee in its meeting held in the year 1980 considered the names of Sarvshri O.P. Behal and Harbans Lal who were undisputedly senior to the Petitioner. It was further averred that in the meeting of the Screening Committee held on 27th February, 1987 to consider the names of eligible Sub-Divisional Engineers (Mechanical) for promotion to the post of Executive Engineer, name of the Petitioner was not considered as he was not having Degree Qualification as required under Rule 6 (b) of Class I Rules duly amended.--vide notification dated 14th January, 1985. Respondent No. 3, who is a degree holder was found suitable for promotion against the post available during the year 1987. As the Petitioner became eligible for promotion after the amendment of the above Rules, and the vacancy cropped up on 1st September. 1987, it was not a case of retrospective application of the amended Rules and thus it was contended that the judgment of the Division Bench of this Court in B.M. Sharma's case is of no help to the Petitioner because in that case only the retrospective operation of the Rules was quashed and not the amended Rule itself. It was also asserted that the department had not amended the rules to nullify the ratio of the decision of the Supreme Court in A.S. Parmar's case. It was further denied that the said amendment had violated the provisions of the Punjab Reorganisation Act as the Petitioner was promoted as Sub-Divisional Engineer on 19th June, 1971 only after the formation of Haryana State and thus the provisions of the above-referred Reorganisation Act were not attracted. It was also maintained that the decision of the Supreme Court in T.R. Kapur's case is not applicable to the case of the Petitioner and that the Petitioner in the writ petition had misstated the facts for undue gain.

4. Respondents 2 and 3 had also filed joint return supporting the above-referred version of Respondent No. 1 besides contending that as the Petitioner was appointed as officiating Sub-Divisional Engineer only and had not been confirmed even till this date, he is not a member of Class II Service. They also claimed themselves to be senior to the Petitioner on the basis of quota and rota rule in accordance with Class II Rule. They also gave the details of availability of the earlier vacancies and the appointment of persons from different sources to Class II Service.

5. I have heard the learned Counsel for the parties besides perusing the record.

6. In the case in hand, there is no dispute between the parties that Prithvi Raj Grover, Petitioner, joined the service as Sectional Officer on 8th January, 1963 in the erstwhile State of Punjab after doing his diploma in Mechanical Engineering. It is also admitted in the return filed by Respondent No. 1 that the Petitioner was promoted as Sub-Divisional Engineer in Class II Service & on provisional basis

under Rule 6(4) of Class II rules after giving relaxation in the service experience from 10 years to 8 years, with effect from 19th. June, 1971. It is also admitted by Respondent No. 1 that the inter se seniority of the members of the Class II service from different sources was not settled till the year 1987 when admittedly the Petitioner was considered higher in seniority than Respondents 2 and 3. It is noteworthy that Respondents 2 and 3 after getting a degree in Mechanical Engineering had joined Class II Service as Sub-Divisional Engineers directly with effect from 21st December, 1972 and 9th November, 1972, respectively, and in the seniority list the name of the Petitioner figured at Section No. 7 while those of Respondents 2 and 3 at S. No. 9 and 10, respectively. Respondent No. 1 in para 8 of the return had asserted that the above-referred seniority is under examination on the representation of Respondent Nos. 2 and 3. This assertion is of no consequence as that representation had been filed very late probably during the pendency of this writ petition. Thus, there is no escape but to conclude that the Petitioner was senior to Respondents 2 and 3 in Class II Service. In the year 1978, two vacancies of Executive Engineers (Mechanical) in Class I fell vacant admittedly as per return filed by Respondent No. 1. The case of the Petitioner along with Respondents 2 and 3 was considered for promotion to the post of Executive Engineer (Mechanical) in Class I, but rejected as it involved the relaxation of two qualifications, i.e. regarding non-holding of degree in Mechanical Engineering and lack of requisite experience of 8 years under Rule 6 (a) and 6 (b) of Class I Rules, whereas in the case of Respondents 2 and 3 only one relaxation regarding service experience was involved. This averment figures in later part of para 8 of the return which reads as under:

It is not correct that the name of the Petitioner was not considered in the panel of promotion along with Respondents 2 and 3. While considering the panel 1 on 17th April, 1988 and 20th June, 1979 name of the Petitioner was also considered at proper place i.e. above Respondent No. 2 and 3 but he Was not found suitable for promotion being ineligible to be considered for promotion on account of his not fulfilling the conditions of eligibility as laid down in Rule 6(a) and 6 (b) of P.S.E. Class I Rules P.W.D. (Building and Roads Branch) 1960 (hereinafter referred to as Class I rules) i.e. Degree in Mechanical Engineering and 8 years" service experience. The Committee constituted for considering promotion to H.S.E. Class I under Rule 8 of Class I Rules allowed relaxation in service experience to Respondent No. 2 and 3 who are degree holders, from 8 years to 6 years and they were accordingly promoted whereas in case of the Petitioner two relaxations were required i.e. relaxation in Degree qualification and 8 years" service experience.

A bare glance through the above-referred averment in the return leaves no doubt that but for the factum that the Case of the Petitioner-for promotion to the post of Executive Engineer involved two relaxations, the Petitioner was found suitable for promotion and Could have been promoted if it had involved one relaxation regarding experience as was done in the case of Respondents 2 and 3. This conclusion of Respondent No. 1 is based upon erroneous construction on the

provisions of Rule 6(a) and 6 (b) of Class I Rules. The unamended Rule 6 of Class I Rules reads as under:

6. Qualifications. No person shall be appointed to the Service unless he--

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

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

(b) in the case of an appointment or promotion from Class II Service has eight years completed service and has passed the departmental examination prescribed in Rule 15.

(c) * *

(d) * *

(e) * *

A bare glance through the above-quoted Sub-rule (a) of Rule 6 leaves no doubt that the qualification of University Degree pertains to direct recruitment to Class I Service. The proviso appended to Sub-rule (a) further empowers the State Government to waive this condition in the case of officers of Class II Service which in turn implies that if an officer belonging to Class II Service seeks direct recruitment obviously through the State Public Service Commission then in that case, the Government has been empowered to waive this qualification of holding a degree in Engineering on the basis of departmental experience, whereas Sub-rule (b) relates to appointment by promotion from Class II Service and the requisite qualifications are 8 years completed service in Class II and passing of departmental examination of the department as provided in Rule 15. The apex Court in *A.S. Parmar and Ors. v. State of Haryana and Ors.* (supra), held that Rule 6(a) pertains to direct recruitment while Rule 6(b) of Class I Rules relates to appointment to Class I Service from Class II Service by promotion. It has dealt with this matter in para 7 and in a portion of para 8 as under:

7. Clause (a) of Rule 6 of the Class I Rules says that no person shall be appointed to the Service unless he possesses one of the University degrees or other qualifications prescribed in Appendix "B" of the Class I Rules. It is further provided therein that Government may waive this qualification in the case of a particular officer belonging to the Class II Service. Clause (a) of Rule 6 no doubt applies to all direct recruitments. If a Class II Officer seeks to enter the Class I service by direct recruitment i.e. by recruitment by open competition as provided by the Explanation to Rule 2(7), he should possess a degree as provided in Rule 6(a) unless under the proviso to Rule 6(a) Government waives the said qualification in his case. A direct recruit has also to satisfy the condition in Clause (c) of Rule 6 which deals with the production of a medical certificate as provided therein and the condition in Clause (d) of Rule 6 which provides for the

verification of his character and antecedents except where such verification may have already been made at the time of his entry into Government service. He should also not suffer from the disqualification mentioned in Clause (e) of Rule 6. A direct recruit shall also have to comply with Rule 15 of the Class I Rules which provides that unless he has not already done so, he should pass such departmental examination and within such period as may be prescribed by the Government. 8. Rule 6(b) of Class I Rules provides that "in the case of an appointment by promotion from Class II and has passed professional examination of the Department as provided in Rule 15". The question is whether an officer in the Class II Service should satisfy both the qualification mentioned in Clause (a) and the qualifications mentioned in Clause (b) of Rule 6 of the Class I Rules or he should satisfy only the qualifications under Clause (b) for purposes of promotion to Class 1 Service.

If Clause (b) of Rule 6 had contained the words "also" or in addition to what is contained in Clause (a) or any other word or words conveying that meaning, there would have been no difficulty in construing that clause as then it would have clearly meant that an officer in the Class II service who seeks promotion to the cadre of Executive Engineers should possess a degree as provided in Clause (a) unless it has been waived by the Government and should also satisfy the conditions mentioned in Clause (b). But we do not find any such words in Clause (b) of Rule 6 of the Class I Rules. Clause (b) of Rule 6 of the Class I Rules opens with the words "in the case of an appointment by promotion from Class II Service". It deals with a separate and distinct class of persons who are to be recruited by promotion from Class II Service to the cadre of Executive Engineers.

In view of the above observations of the Apex Court, there is absolutely no doubt that the qualification of holding a University degree in Engineering is applicable to persons seeking direct recruitment to Class I Service and not in the case of appointment by promotion from Class II Service. It appears from Clause (b) that passing of departmental examination and 8 years experience in Class II Service has been considered sufficient to dispense with the holding of University degree in Engineering. Consequently there is no escape but to hold that while considering the Panel on 17th April, 1978 and 20th June, 1979, the case of the Petitioner was rejected for promotion to Class I Service on the wrong assumption that he did not possess the basic qualification, i.e. degree in Mechanical Engineer. The Petitioner admittedly joined the Class II Service on 19th June, 1971. Thus, while considering the panel for promotion on 20th June, 1979, the Petitioner had certainly attained the requisite experience of 8 years in Class II Service. Thus, it appears that Respondent No. 1 had wrongly withheld the promotion of the Petitioner to Class I service on 20th June, 1979 on the wrong assumption that his case involved relaxation of degree qualification as well as experience of 8 years service although the Petitioner was entitled to promotion being senior to Respondents 2 and 3 in Class II service.

7. There is considerable force in the contention of the learned Counsel for

Petitioner that the Haryana State had amended Class I Rules in the year 1985 in order to undo the effect of judgment in A.R. Parmar's case (supra) by making degree in Engineering qualification to be essential for promotion to Class I Service from Class II Service. This amendment was made in Rule 6 of Class I Rules under proviso to Article 309 of the Constitution,--vide notification published on 14th January, 1985, copy whereof is Annexure P.4. This amendment was given retrospective effect from 18th March, 1960, i.e., the day from which Class I Rules were framed. Rule 6 was amended by substituting new Clauses (a) and (b) in place of the existing ones and in Rule 9 in Sub-rule (1) for the existing proviso, new proviso was substituted. The amended provisions are as follows:

6. (a) In case of appointment by direct recruitment, possesses one of "the University Degrees or other qualifications prescribed in Appendix B of the rules.

(b) in the case of an appointment by promotion from Class II Service, has, in addition to the qualification provided in Clause (a), eight years completed service and has passed the departmental examination prescribed under Rule 15:

Provided that the Government may waive the requirement of qualification mentioned in Clause (a), for appointment to the service by promotion from Class II Service, in the case of a particular officer:

Provided further that the Government may relax the condition of eight years service in the case of an officer who has completed five years service and in such a case the officer shall earn the first increment as an Executive Engineer on the completion of nine years service.

Explanation : For the purpose of computing eight years service the service in Class II as well as in Class I shall be counted.

9. (1) * *

Provided that a member of the service who does not possess case of the University degrees or other qualifications prescribed in Appendix B of the rules, shall not be eligible for promotion to the post of Superintending Engineer or above, till he has acquired the requisite qualifications.

8. Thus, there is no doubt that the sum and substance of the amendment was only to make the officers of Class II Service holding Diploma in Engineering entirely ineligible for promotion to Class I Service and thus It had affected the right of the Petitioner for being considered for promotion to the post of the Executive Engineer in Class I Service.

9. Similar amendment with retrospective effect of the Punjab Service of Engineers Class I, P.W.D. (Irrigation Branch) was Rules, 1960 was struck down by the Apex Court in T.R. Kapur and Others Vs. State of Haryana and Others, . The wording of Rule 6(a) and 6 (b) of the Punjab Service of Engineers, Class I, (Public Works Department (Irrigation Branch) Rules, 1964 was word by word analogous to the provisions of Class I Rules in the case in hand. The Apex Court

observed that making retrospective amendment of Rule b(b) being wholly arbitrary, irrational and mala fide was violative of Articles 14 and 16 of the Constitution. It was also held that the amendment was ultra vires of the State Government as the prior approval of the Central Government was not taken u/s 82(1) of the Punjab Reorganisation Act, 1966. Faced with this difficulty, the learned Counsel for the Respondents contended that the provisions of Section 82(6) of the Punjab Reorganisation Act, 1966, would not be attracted to the case in hand as the Petitioner was not a member of the Class II Service in the year 1966 as he was promoted only on 16th September, 1971. Admittedly, the Petitioner had joined the Service as Sectional Officer on 8th January, 1963 after doing his Diploma in Mechanical Engineering. Thus, he was a member of the Class III Service and there being provision in Rule 6 of Class II Rules for promotion to the post of Sub-Divisional Engineering in Class II from the cadre of Sectional Officers (Engineering) even if the Sectional Officer was a Diploma Holder. It can be well said that the Petitioner was genuinely entitled to be considered for promotion to Class II Service and in due course to Class I Service. In view of the factum that Rule 6 of the Class I Rules also provided for promotion to the post of Executive Engineer from Sub-Divisional Engineers in Class II, there is considerable force in the contention of the Petitioner that the provisions of Section 82(6) of the Punjab Reorganisation Act would be attracted to the case of the Petitioner also. The apex Court in T.R. Kapur's case (supra) had also observed in para 11 of the judgment that Mr. T.R. Kapur was an Overseer belonging to Class III Service under the erstwhile State of Punjab and although he was promoted as Sub-Divisional Engineer in Class II Service subsequently in November, 1969, yet all the same, because Mr. T.R. Kapur and Ors. had not only the legitimate expectation that they would, in due course, be considered for promotion, but also had the right on such confirmation to be considered for promotion under the unamended rules, thus the contention of the other side was indirectly repelled that the provision of Section 82(6) of the Punjab Reorganisation Act would not be attracted in his case as he was not a member of Class II Service in November, 1966.

10. Faced with the above-referred situation, the learned Counsel for the Respondents contended that the permission of the Central Government to effect amendment of the rules framed under the proviso to Article 309 of the Constitution is well-covered by the circular letter dated May 11, 1954, issued by the Government of India to all the State Governments showing their agreement with the view expressed on behalf of the States representatives that it would not be appropriate to provide any protection in the matter of departmental promotion. This aspect of the matter was dealt with by the apex Court in T.R. Kapur's case (supra) in para 12 of the judgment as under:

It is not suggested that the State Government ever moved the Central Government seeking its prior approval to the proposed amendment of Rule 6(b) of the Class I Rules. In that connection, it is necessary to recall that prior to the reorganisation of the States under the States Reorganisation Act, 1956 a

conference of the Chief Secretaries of the States that were to be affected was held at Delhi on May 18 and 19, 1956 for the purpose of formulation of the principles upon which integration of services was to be effected. The Government of India by its circular dated May 11, 1957 to all the State Governments stated inter alia that it agreed with the views expressed on behalf of the States representatives that it would not be appropriate to provide any protection in the matter of departmental promotion. This circular has been interpreted as a prior approval of the Central Government in terms of the proviso to Sub-section (7) of Section 115 of the Act in the matter of change of the conditions of service relating to departmental promotions. These considerations however do not arise in the present case. Admittedly, there was no Chief Secretaries Conference as was held prior to the reorganisation of the States under the States Reorganisation Act, 1956. Nor was there any communication issued by the Central Government conveying its previous approval of the changes in the service Conditions which the States of Punjab and Haryana might make in terms of the proviso to Section 82(6) of the Punjab Reorganisation Act, 1966. Under the States Reorganisation Act, 1956 so also under the Punjab Reorganisation Act, 1966, the power of the Governor to make rules under the proviso to Article 309 of the Constitution had been controlled by the proviso to Section 155(7) of the former Act and Section 82(6) of the latter. It follows that the conditions of service applicable immediately before the appointed day to the case of any person referred to in Sub-section (1) or (2) of Section 82 of the Act could not be varied to his disadvantage except with the previous approval of the Central Government. That being so, the impugned notification issued by the State Government purporting to amend Rule 6(b) of the Class I Rules with effect from July 10, 1964 which rendered members of Class II Service who are diploma holders like the Petitioners ineligible for promotion to the post of Executive Engineer in Class I Service for making a degree in Engineering essential for such promotion although they satisfied, the condition of eligibility of 8 years' experience in that class of service, must be struck down as ultra vires the State Government being contrary to Section 82(6) of the Punjab Reorganisation Act, 1966.

11. In view of the above observations of the apex Court the above-referred letter is not applicable to validate the amendment of Class I rules dealing with the condition's of service of the Petitioner u/s 82(6) of the Punjab Reorganisation Act, 1966.

12. The Division Bench of this Court in *B.M. Sharma v. The State of Haryana and Ors.* 1987 (5) S.L.R. 531 while interpreting the above-referred retrospective effect of the same rules had struck down the retrospective operation of the amended Rules 6 and 9 by holding the same to be ultra vires the powers of the Government. The Division Bench had relied upon the ratio of apex Court in *A.S. Parmar's* case and *T.R. Kapur's* case (supra) incoming to the conclusion that the impugned notification of 14th January, 1985 amending Rule 6 of Class I Service with retrospective effect violates Articles 14 and 16 of the Constitution of India.

and accordingly declared ultra vires the State Government.

13. The question then arises whether the Petitioner was guilty of laches or delay in filing the writ petition and if so, to what effect. In this regard, it is noteworthy that inter se seniority between the members of Class II Service recruited from different sources remained unsettled till the year 1987. Thus, even though if the case of Respondent No. 1 is taken to be true that the representations dated 28th March, 1978 and 19th July, 1978 against the promotion of Respondents 2 and 3 were declined in the year 1978 or that this rejection order was conveyed to the Petitioner through the Superintending Engineer, Mechanical, Karnal,--vide letter dated 20th December, 1978, it will be of no consequence as by then, the final seniority was not settled and the Petitioner was not sure about his status in the matter of seniority. However, the Petitioner continued agitating this matter before the concerned authorities whenever an occasion arose as in the year 1980 also the Petitioner did file similar representation. As a matter of fact, the Petitioner has been repeatedly crying for settlement of inter se seniority between members of Class II Service recruited from different sources since the year 1978. In para 11 of the petition, the assertion of the Petitioner that he had made numerous representations to Respondent No. 1 for fixing inter se seniority and for considering his case for promotion had not been specifically denied by Respondent No. 1 in corresponding para 11 of the return. It is simply averred that representations dated 28th May, 1978 and 19th July, 1978 of the Petitioner were duly considered and rejected and that the Petitioner was informed of the same through the Superintending Engineer, Karnal. The matter does not rest here as after the decision of the Apex Court in A.S. Parmar's case (supra) and T.R. Kapur's case (supra), the Petitioner had again filed representation to Respondent No. 1 to the effect that diploma holders in Engineering were illegally denied the benefit of the judgment in the above cases with mala fide intentionally issuing notification Annexure P. 4 amending Rules 6 and 9 of Class I Rules with retrospective effect from 18th March, 1960 when the original rules came into force. In corresponding para 18 of the return filed by Respondent No. 1, it is admitted that the representation dated 24th August, 1987 was received from the Petitioner for his promotion as Executive Engineer, but it is silent about the fate of this representation. Although the Petitioner could not claim the implementation of the above-referred judgments of the Supreme Court and of this Court as a matter of right, yet all the same, the State Government was expected to examine the representation with an open mind whether in the light of the interpretation put on unamended Rule 6 of Class I Rules, the Petitioner was entitled to any promotion. Anyhow, in view of the factum that the Petitioner had been agitating before the State Government till 24th August, 1987, that he has been wrongly ignored for promotion to Class I Service, it cannot be said by any stretch of imagination that he had filed the present petition on 27th October, 1987 belatedly. No doubt, the acceptance of this writ petition would amount to dislodging the promotion of Respondent 2 and 3 to Class I Service, yet all the same, the Petitioner cannot be allowed to suffer on this score only, especially

when he was fully eligible for promotion as per the unamended Rule 6 of Class I Rules on 20th June, 1979 when he was considered for promotion along with Respondent 2 and 3 as admitted by Respondent No. 1 in para 8 of the return. As already held, the Petitioner had by then had attained 8 years requisite experience in Class II Service since he was promoted to Class II Service with effect from 19th June, 1971 and was a Diploma Holder. It is not disputed that he has also passed departmental examination.

14. For the foregoing reasons notification dated 14th January, 1985 (Annexure P-4) amending Rules 6 and 9 of the Class I Rules is quashed being violative of the provisions of Articles 14 and 16 of the Constitution of India and ultra vires the State Government by accepting this writ petition. Respondent No. 1 is directed to promote the Petitioner with effect from 20th June, 1979 when he was considered for promotion along with Respondents 2 and 3, on the basis of seniority circulated in the year 1987, with all the consequential benefits, within two months of this order. The Respondent-State may, however, consider the desirability of creating a supernumerary posts, to avoid hardship to Respondents 2 and 3. The Petitioner shall also be entitled to the costs of this petition from Respondent No. 1 which are quantified at Rs. 1,000.