
(2005) 01 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : C.W.P No. 947 of 2003

Ram Sarup Kalia and Others

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 07-01-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(4), 226, 309
Punjab Medical College Education Service (Class I) Rules, 1978 — Rule 9

Citation : (2005) 1 ShimLC 427

Hon'ble Judges : V.K. Gupta, C.J;Deepak Gupta, J

Bench : Division Bench

Advocate : Ajay Mohan Goel, for the Appellant; Abhilasha Kumari, A.A.G. and J.K. Verma, D.A.G. for Respondents 1 and 2, Shrawan Dogra, for Respondents 3 to 46 and Rajiv Sharma and Surinder Sharma, for Respondents 47 to 52, for the Respondent

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—This petition under Article 226 of the Constitution of India is directed against the order of the learned Himachal Pradesh State Administrative Tribunal (hereinafter referred to as the Tribunal) dated November 10, 2003, whereby the Original Application filed by the present Petitioners challenging the Recruitment and Promotion Rules for the post of Assistant Engineer (Civil), has been rejected.

2. Briefly stated, the facts relevant for the decision of the present petition are that the State of Himachal Pradesh had promulgated the Rules known as the Himachal Pradesh Public Works Department Assistant Engineer (Civil) (Class-1 Gazetted) Recruitment and Promotion Rules, 1995 (hereinafter referred to as the 1995 Rules.). These Rules were later on replaced by the similarly titled Recruitment and Promotion Rules of 2002 (hereinafter referred to as the 2002 Rules). Finally during the pendency of the present petition the State of Himachal Pradesh has amended the Rules of 2002 vide notification dated 16th March, 2004

and these amended Rules are hereinafter referred to as the 2004 Rules.

3. All the three Rules provide that 30% recruitment to the post of Assistant Engineer (Civil) shall be by means of direct recruitment and 70% by means of promotion from amongst Junior Engineers (Civil) and Draughtsman Cadre. The main dispute raised in the present petition is with regard to the replacement of the word "vacancies" by the word "posts" in column 10 of the rules. Column 11 provides for the quota/percentage according to which recruitment by promotion from amongst various categories of Junior Engineers has to be made. Both columns of the said Rules i.e. Rule of 1995, Rule of 2002 and Rule of 2004 are reproduced hereinbelow:

1995 Rules

2002 Rules

Column Nos.

Column Nos.

10. Method of (i) By direct 10. Method of recru- (i) By direct re
recruitment whether recruitment -- 30% itment whether by dir- cruitment
by direct recruitment (ii) By promotion ect recruitment or by - 30%
or by promotion, amongst the Junior promotion, deputation, (ii) By
or by promotion, Engineers (Civil) transfer and the per- promotion -- 70%
and percentage of and Draughtsmen centage of posts to be
vacancies to be filled cadre -- 70% filled in by various
in by various methods.

The provisions of Column No. 10 of the 2004 Rules are identical to the provisions against column No. 0 of the 2002 Rules, hence not being reproduced above.

11. 1995 Rules (iii) Junior Engineer (Civil) who possesses De- gree in Civil Engineering or its equivalent at the time of appointment as Junior Engineer (Civil) having three years regu. lar or regular combined continuous adhoc (ren- dered upto 31.3.91) serv- ice in the grade. --- 10% (iv) Draughtsman cadre who have passed at least Matriculation or its equivalent examination and possess two years di- ploma in Draughtsman- ship course from recog- nized Institution and hay- ing 10 years regular or regular combined with continuous adhoc (ren- dered upto 31-3-1991) service in the grade. The roster will be re- peated after every 20th vacancy, 2002 Rules three jears regular or regular combined with continuous adhoc (rendered upto 31.3.98) service in the grade. --- 10% (iv) Draughtsman cadre who have passed at least Matricula- tion or its equivalent examina- tion and possess two years di- ploma in Draughtsmanship course from recognized Institu- tion and having 10 years regu- lar or regular combined with

continuous adhoc (rendered upto 31-3-1998) service in the grade. --- 4% (v) The Draughtsman cadre who possess AMIE or its equivalent qualification and having three years regular or regular combined with continuous adhoc (rendered upto 31-3-1998) service in the grade failing which from amongst the draughtsman cadre against column 11 (iv). - 1% Note: The 20 point roster shall be rotated five times to complete 100 points and 10th point of the roster in the first cycle after completion of 100 points shall go to the Draughtsman cadre who possess AMIE degree or its equivalent and so on the same process shall go on repeating. (The roster will be repeated after every 20th vacancies till the representation to all the categories is achieved upto the given percentage. Thereafter, the Vacancy is to be filled up from the category which vacates the post.) Rules 2004 Engineer(Civil) having three years regular or regular combined with continuous adhoc service in the grade. - -- (iv) Draughtsman cadre who have passed at least Matriculation or its equivalent examination and possess two years diploma in Draughtsmanship course from recognized Institution and having 10 years regular or regular combined with continuous adhoc service in the grade. - -- (v) The Draughtsman cadre who possess AMIE or its equivalent qualification and having three years regular or regular combined with continuous adhoc service in the grade failing which from amongst the draughtsman cadre against column 11(iv) 1% The 20 point roster shall be repeated four times in the manner prescribed above and thereafter 10th point of the 5th cycle meant for Draughtsman cadre shall go to the share of Draughtsman cadre who possesses AMIE degree or its equivalent qualification. The roster will be repeated after every 20th vacancies till the representation to all the categories is achieved upto the given percentage. The roster qua the category which has achieved the prescribed quota shall remain suspended and shall revive again when percentage of the category falls below the prescribed for respective category shall be violated. However, the persons of particular category if found in excess of these quotas as per the present rule shall not be reverted and they shall be adjusted against future vacancies falling to their share.

4. All the three Rules also provide different rosters for filling up the said vacancies and posts. The main grouse of the Petitioners is with regard to the note appended to the roster in the 2002 and 2004 Rules quoted above.

5. The Petitioners are all Junior Engineers who have attained the higher qualification of A.M.I.E. during their service. Respondents 4 to 46 are either Diploma holder Junior Engineers or unqualified Junior Engineers. Respondents 47 to 52 are Degree Holder Junior Engineers. The Petitioners are hereinafter referred to as AMIE Junior Engineers; Respondents 4 to 46 as Diploma Holder Junior Engineers and Respondents 47 to 52 as Degree Holder Junior Engineers.

6. After the 2002 Rules were notified the present Petitioners filed Original Application No. 809 of 2003 before the H.R. State Administrative Tribunal. The Tribunal delivered a detailed order by which it rejected the prayer of the Petitioners for striking down the 2002 Rules. Aggrieved against the said order of

the Tribunal, Petitioners filed the present petition before this Court. During the pendency of the petition, the rules have again been amended as mentioned here in above.

7. The contention of the Petitioners is that as per the 1995 Rules the vacancies of Assistant Engineers were to be filled in according to the quota provided. The quota/percentage provided for different categories were applied to the vacancies and not to the posts in the cadre of Assistant Engineers. According to the Petitioners this was the only proper method and the amendment in the rules whereby the percentage is now being applied on the basis of posts in the cadre is totally illegal and ultra vires of Articles 14 and 16 of the Constitution of India. The Petitioners have urged that when the recruitment is from more than one source, then after promotion the candidates lose their birthmark i.e. the category from which they have entered the promotional post. Once the birthmark ceases to exist the prescribed quota should be applied on the basis of vacancies and not on the basis of the total number of posts in the cadre.

8. Mr. Ajay Mohan Goel, learned Counsel appearing on behalf of the Petitioners has submitted that as per 95 Rules all Junior Engineers fell within four categories (i) All Junior Engineers, (ii) AMIE Junior Engineers (iii) Degree Holder Junior Engineers (iv) Draughtsmen. Since the recruitment by promotion to the post of Assistant Engineer (Civil) was based on vacancies to be filled in, while filling the vacancy it did not matter as to who had retired and the vacancy was filled in strictly in accordance with the quota provided and the prescribed roster. After the amendment of the Rules the Respondents are filling in the posts by seeing who the person who has retired is and then identifying the class he belonged to as Junior Engineer and the vacancy is being filled in by a person from his category. According to Mr. Goel the quota is thereby violated, which is not permissible and has harmed the interest of his clients who are better qualified than the Diploma Holder Junior Engineers.

9. Mr. Rajiv Sharma, Senior Advocate appearing for Respondents No. 47 to 52 has supported the arguments of Mr. Goel and has further submitted that by changing the word vacancies to posts in column 10 injustice has been caused to the better qualified AMIE and Graduate Engineers. He further submits that in case the roster is applied only till the prescribed quota is achieved and thereafter it is suspended by applying the same to posts and not to vacancies then the lesser-qualified Junior Engineers will be appointed. He has submitted that the change from vacancies to posts is unconstitutional and is against the law laid down by the Hon"ble Supreme Court. In the alternative he has submitted that even if the amended Rules 2004 are not to be struck down then also harmonious construction has to be given to columns 10 and 11 and the word "posts" should be read as "vacancies".

10. On the other hand Ms. Abhilasha Kumari, learned Additional Advocate General appearing on behalf of the State of Himachal Pradesh has contended that the Petitioners have failed to show how injustice has been caused to them

by the amendment in the Rules. AMIE Junior Engineers and the Graduate Junior Engineers are included in and can be promoted amongst category (i) as Assistant Engineers. She further submits that in fact the benefit of accelerated promotion has been given to these categories of Junior Engineers due to their higher qualifications. All Junior Engineers regardless of qualification have to be considered on the basis of seniority for promotion to the post of Assistant Engineer in category (i) of the Rules. These categories are also considered for promotion on the basis of seniority inter se their own categories under categories (ii) and (iii). The Respondent State of H.R has submitted that while applying the 1995 Rules, it was found that very few diploma holder Junior Engineers were being promoted and their quota in the post of Assistant Engineer was never being filled in because Diploma Holder Junior Engineers become eligible for promotion only at the fag end of the career. It was keeping in view the stagnation of the Junior Engineers that the State replaced the word vacancies in column 10 by the word posts and also changed the note below the roster.

11. She has further submitted that the judgments relied upon by the Petitioners have no bearing on the facts of the present case since in none of the cases the rule in question was similar to the rule like in the present case. She has also submitted that the decision taken by the Respondents to change the rules is a policy decision, which can only be challenged on the touchstone of Articles 14 and 16 of the Constitution of India. She submits that the Petitioners have failed to show that this rule in any manner violates Articles 14 and 16 of the Constitution of India. Since diploma holders and un qualified Junior Engineers were stagnating and there were hardly any Junior Engineers from this category remaining in the total cadre of Assistant Engineers, the State keeping in view the entire facts of the case felt that the quota should be applied to the posts and not to the vacancies so that Diploma Holder Junior Engineers could also get some promotion before their retirement. She further submitted that a conscious decision has been taken by the Government to apply the quota to the posts instead of vacancies. She submits that this policy has not been challenged on the touchstone of Articles 14 and 16 of the Constitution of India. By the amendment in the Rules the Petitioners may have been affected inasmuch as their chances of promotion may be reduced. However, the right of an employee is not a right to be promoted but only a right to be considered for promotion. She submits that the power and scope of judicial review while challenging the Government policy changing the condition of service is very limited.

12. The stand of State of Himachal Pradesh justifying its action in amending the rules is stated in para 10 of the preliminary submissions, of its reply affidavit which reads thus:

10. That it would be pertinent to submit at this stage that the diploma holder Junior Engineers get promotion at the fag end of their career. While following the principle of applicability of quota to vacancies, the posts falling vacant in the cadre of Assistant Engineers on account of retirement of diploma holder Junior

Engineers used to be distributed on each occasion amongst different categories eligible for recruitment/promotion to the post of Assistant Engineers. As a result of this, in practice, the diploma holders Junior Engineers were getting very few opportunities of promotion despite there being a quota prescribed for them in order to give them adequate opportunities of promotion. Faced with this position, the department devised the new policy and provided that the quota prescribed for R and P would apply to the posts instead of vacancies and once the prescribed percentage in the cadre was achieved as per quota, the vacancies would be filled up thereafter from the same category, which vacated the post.

13. Mr. Shrawan Dogra, learned Counsel appearing for Respondents No. 3 to 46 has submitted that the present case is not a case of reservation but is a case of classification. He submits that all Junior Engineers who form one category. But they have been classified into different categories on the basis of educational qualifications. He submits that if the State is entitled to provide for a quota on the basis of educational qualification and the higher qualified persons are given the chances of accelerated promotion it is also within the power of the rule making authority to provide that the quota shall apply to the posts and not to the vacancies.

14. The parties have relied upon a number of cases.

15. In case *Paramjit Singh and Others Vs. Ram Rakha and Others*, the Supreme Court was concerned with construction of the Punjab Police Service Rules, 1959. The question was that when the Rules provided quota for recruitment from different sources whether the quota would apply only at the initial stage of recruitment or also at the time of confirmation. The Supreme Court held that this would apply also at the stage of confirmation. The Petitioners have relied upon this judgment to support their submission that when quota rule is prescribed for recruitment to a cadre it means that the quota should be co-related with the vacancies which are to be filled in. This judgment has been further explained by the Apex Court in *Paramjit Singh Sandhu and Others Vs. Ram Rakha Mal and Others*, where it was held thus:

There was no ambiguity in the Court's earlier judgment. What the Court meant was that quota should be co-related to the vacancies which are to be filled in. Who retired and from what source he was recruited may not be very relevant because retirement from service may not follow the quota rule. A roster had to be introduced which was to continue while giving confirmation. Introduction of roster only postulates ascertainment of available number of vacancies and proceeding to make recruitment keeping in view of the quota. If recruitment is strictly made according to quota there will be no difficulty in applying the very rule of quota even while giving confirmation.

16. In *State of Punjab and Others Vs. Dr. R.N. Bhatnagar and Another*, the Apex Court was dealing with the recruitment and promotion rules relating to the Punjab Medical College Education Service (Class 1) Rules, 1978. The Rule in

consideration before the Supreme Court reads thus:

9 Method of appointment.-

(d) In the case of Professors:

(i) 75 percent posts by promotion from amongst the Additional Professors, or where Additional Professors are not available, from amongst the Associate Professors, or, where Associate Professors are not available, from amongst the Assistant Professors, or by transfer of officials already in the service of the Government of India, or the State Government:

(i) 25 percent posts by direct recruitment.

17. It would also be relevant to mention that the roster in the said case provided that the first three posts would go to the promotees, the 4th post to direct recruit, posts 5th to 7th to promotees and 8th post to direct recruit and so on. It is in the light of the rules quoted above and the roster in the said case the Supreme Court held that the word post used in Rule 9 does not refer to total posts in the cadre but to the vacancies. The observations of the Supreme Court in this behalf are as under:

11....The quota of percentage of departmental promotees and direct recruits has to be worked out on the basis of the roster points taking into consideration vacancies that fall due at a given point of time. As stated earlier, as the roster for 3 promotees and one direct recruit moves forward there is no question of filling up the vacancy created by the retirement of a direct recruit by a direct recruit or the vacancy created by a promotee. Irrespective of the identity of the person retiring, the post is to be filled by the onward motion of 3 promotees and one direct recruit....

That is how the roster points were worked out by the Appellant for regulating the recruitment from two sources, i.e., promotees and direct recruits. Though the word "post" is used in Rule 9 of the Rules, it cannot be said that it must necessarily refer to total posts in the cadre and not to vacancies. It is obvious that recruitment to fill up the vacancies as may be existing from time to time in the cadre is controlled by the quota or percentage of posts earmarked for promotees as compared to direct recruits.

18. In All India Federation of Central Excise Vs. The Union of India and others, the Supreme Court was considering a rule wherein there were three feeder categories to fill in the posts in Group A service and the plea raised by the Petitioner was that the ratio of 6:1:2 between the three feeder categories should be maintained at all times whenever recruitment is made to the post of Superintendents of Central Excise in Group A and the number of promotees of Central Excise Superintendents Group B, should always be in proportion of 6 out of 9. The Court has held that neither in the proposal nor in the Rules of 1998 it was ever intended that in the promotee categories of Group A Officer there should always be 6 promotees from Central Excise Superintendents Group B for

every 9 posts in Group A. The judgment of the Supreme Court revolves around the rules and facts of the said case alone.

19. On behalf of the Respondents reliance has been placed on judgment in R.K. Sabharwal and others Vs. State of Punjab and others, where in a case dealing with the reservation under Article 16(4) of the Constitution, the Apex Court held as follows:

When the total number of posts in a cadre are filled by the operation of the roster then the result envisaged by the impugned instructions is achieved. There is no justification to operate the roster thereafter. The "running account" is to operate only till the quota provided under the impugned instructions is reached and not thereafter. The vacancies arising in the cadre, after the initial posts are filled, will pose no difficulty. As and when there is a vacancy whether permanent or temporary in a particular post the same has to be filled from amongst the category to which the post belonged in the roster....

6. The expressions "posts" and "vacancies", often used in the executive instructions providing for reservations, are rather problematical. The word "post" means an appointment, job, office or employment. A position to which a person is appointed. "Vacancy" means an unoccupied post or office. The plain meaning of the two expressions make it clear that there must be a "post" in existence to enable the "vacancy" to occur. The cadre-strength is always measured by the number of posts comprising the cadre. Right to be considered for appointment can only be claimed in respect of a post in a cadre. As a consequence the percentage of reservation has to be worked out in relation to the number of posts which form the cadre-strength. The concept of "vacancy" has no relevance in operating the percentage of reservation.

20. The Respondents also placed reliance on All India Judges' Association and Ors. v. Union of India and Ors. In this case, the Supreme Court in para 29 placing reliance on R.K. Sabharwal's case supra held thus:

29. Experience has shown that there has been a constant discontentment amongst the members of the Higher Judicial Service in regard to their seniority in service. For over three decades a large number of cases have been instituted in order to decide the relative seniority from the officers recruited from the two different sources, namely, promotees and direct recruits. As a result of the decision today, there will, in a way, be three ways of recruitment to the Higher Judicial Service. The quota for promotion which we have prescribed is 50 per cent by following the principle "merit-cum-seniority", 25 percent by direct recruitment. Experience has also shown that the least amount of litigation in the country, where quota system in recruitment exists, insofar as seniority is concerned, is where a roster system is followed. For example, there is, as per the rules of the Central Government a 40-point roster which has been prescribed which deals with the quotas for Scheduled Castes and Scheduled Tribes. Hardly, if ever, there has been litigation amongst the members of the service after their

recruitment as per the quotas, the seniority is fixed by the roster points and irrespective of the fact as to when the person is recruited. When roster system is followed, there is no question of any dispute arising. The 40-point roster has been considered and approved by this Court in *R.K. Sabharwal v. State of Punjab*. One of the methods of avoiding any litigation and bringing about certainty in this regard is by specifying quotas in relation to posts and not in relation to the vacancies. This is the basic principle on the basis of which the 40-point roster works. We direct the High Courts to suitably amend and promulgate seniority rules Court in *R.K. Sabharwal* case as early as possible. We hope that as a result thereof there would be no further dispute in the fixation of seniority. It is obvious that this system can only apply prospectively except where under the relevant rules seniority is to be determined on the basis of quota and rational system. The existing relative seniority of the members of the Higher Judicial Service has to be protected but the roster has to be evolved for the future. Appropriate rules and methods will be adopted by the High Courts and approved by the States, whenever necessary by 31-3-2003.

21. A perusal of the above judgment makes it absolutely clear that the Supreme Court relied upon the judgment in *R.K. Sabharwal*'s case and approved of the same. It has clearly upheld and approved of the policy of specifying quota in relation to the posts and not the vacancies.

22. It would be pertinent to mention that rules like those before us were not in consideration before the Supreme Court in any of the cases cited before us. In the present case the Respondent State, in its wisdom, has deliberately enacted a statutory rule whereby it has clearly stated that the recruitment shall be made by keeping into consideration the total number of posts and further in the note it has been specifically provided that 20 point roster will be followed only till all categories achieve their given percentage in the post of Assistant Engineer (Civil). Thereafter the quota shall remain suspended qua the category which has achieved the prescribed quota and shall revive when percentage of that category falls below the prescribed quota. In no case the quota prescribed for respective categories shall be violated. The only question is whether the amended rules violate the mandate of Articles 14 and 16 of the Constitution of India.

23. In case *Council of Scientific and Industrial Research and Another Vs. K.G.S. Bhatt and Another*, the Supreme Court has held as under:

9....It is often said and indeed, adroitly, an organization public or private does not "hire a hand" but engages or employs a whole man. The person is recruited by an organization not just for a job, but also for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organization. It is an incentive for personnel development as well. Every management must provide realistic opportunities for promising employees to move upward.

24. In *P.U. Joshi and Others Vs. The Accountant General, Ahmedabad and Others*, , the Apex Court held thus:

10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.

25. In case *P. Murugesan and Others Vs. State of Tamil Nadu and Others*, dealing with a similar question the Supreme Court held as under:

16....Secondly, as explained hereinbefore there would be no justification in principle for holding that the rule-making authority has only two options namely either to bar the diploma holders altogether from promotion or to allow them equal opportunity with the graduate engineers in the matter of promotion. It must be remembered that the power of rule making under the proviso to Article 309 has been held to be legislative in character (*Vadera*). If so, the test is whether such a restrictive view is permissible vis-a-vis a legislature. If not, it is equally impermissible in the case of the rule-making authority under the proviso to Article 309. The only test that such a rule has to pass is that of Articles 14 and 16 and to that aspect we may turn now.

26. In case *R.L. Bansal and others Vs. Union of India and others*, the Supreme Court has held thus:

Rules made under the proviso to Article 309 of the Constitution being legislative in character cannot be struck down merely because the Court thinks that they are unreasonable. They can be struck down only on the grounds upon which a legislative measure can be struck down.

27. From a perusal of the various judgments of the Apex Court the position, which clearly emerges, is that the State can lay down a policy with regard to promotion. The State also has the power to amend the policy even if it be to the detriment of certain class of employees. The only valid ground to challenge such a policy is that the same violates the mandate of Articles 14 and 16 of the Constitution of India.

28. The judgments relied upon by the Petitioners turned on the words of the rules, which were to be interpreted in each of those cases. From a perusal of the judgments of the Apex Court cited above it cannot be said that the Supreme Court has held that in every case where quota is prescribed for recruitment from two or more sources it should always be related to vacancies and in no case can it be applied to posts. This would depend on the rules in each case and the circumstances under which the rule has been framed. In fact the Supreme Court, itself in R.K. Sabharwal's case has deprecated the practice of operating a roster even after the quota has been reached. It has also stated that concept of vacancies has no relevance in operating the percentage of reservation. The argument of the Petitioners is that this judgment only relates to cases of reservations and not to cases of recruitment from two different sources. The answer to this argument lies in the observation of the Apex Court case in All India Judges' Association case wherein the Supreme Court has again, in no uncertain terms, stated that wherever there is a roster once the quota is filled then the roster should not be applied any further.

29. Examining the present case in the light of the aforesaid observations, it is noticed that all Junior Engineers regardless of their qualifications are eligible for promotion in category (i). The State keeping in view the higher qualification has given the benefit of accelerated promotion to those Junior Engineers who have acquired AMIE, and to those Junior Engineers who when they were recruited already possessed degree in engineering. The State also provided that out of the promotion quota 45% would be for all Junior Engineers, 10% for Junior Engineers who acquire A.M.I.E. and 15% for Graduate Junior Engineers. Now it is the case of A.M.I.E. and Degree Holder Junior Engineers that their interest has been jeopardised because by changing the word "vacancies" to "posts" a lesser number of such Junior Engineers would be promoted. This is obviously true and in fact the defence of the State is that because of frequent retirement of diploma holder Junior Engineers who are only promoted at the fag end of their career the quota in the level of Assistant Engineer was never being met because of the word "vacancies" in Column No. 10. It is due to this that the State changed the word "posts". It is well settled law that an employee cannot complain because the chances of his promotion are reduced. In the present case due to their higher

qualifications the A.M.I.E. Engineers and the Graduate Engineers have already been given the benefit of accelerated promotion. They are also eligible for promotion amongst the categories of Junior Engineer in category (i). They have failed to show that the amendment to the rules in any way violates Articles 14 or 16 of the Constitution. The main argument of the Petitioners is that after becoming Assistant Engineers all Engineers lose their birthmark and at the time of retirement the original source of recruitment should not be seen. In view of the judgments of the Apex Court in R.K. Sabharwal's case and All India Judges Association case *supra* this contention does not hold true. The State has given reasonable and plausible reasons for change of the rules. These rules do not in any way infringe any fundamental rights of the Petitioners. The mere fact that their chances of promotion may have been reduced is of no consequence.

30. In view of the above discussion, this writ petition is without merit and is rejected. The judgment of the Tribunal is upheld.