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RAMESH KUMAR CHOUDHA AND ORS.

v.

STATE OF M.P. AND ORS.

SEPTEMBER 20, 1996

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[K. RAMASWAMY AND G.B. PATTANAİK, JJ.]

Service Law :

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M.P. Irrigation Engineering Services (Gazetted) Recruitment Rules, 1968 :

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Rules 7, 15, 16—Promotion—Assistant Engineer—Eligibility as on 1st January of the year—Graduate Engineers to have a minimum 8 years experience—Diploma Engineers to have a minimum of 12 years experience—If the Diploma Engineers acquire graduation they become eligible for promotion after 8 years—But cut-off date being 1st January, even if they had acquired degree, prior to that date, their eligibility would be taken into account after the cut-off date—Those promoted prior to their eligibility on the basis of Tribunal's orders—To be treated ad hoc and de hors the rules—Not entitled to seniority from that date—DPC to sit every year in February or March—DPC to sit and consider the candidates for filling up the vacancies from 1992 to 1996.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 12859-69 of 1996.

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From the Judgment and Order dated 12.8.94 of the Madhya Pradesh Administrative Tribunal at Bhopal Bench in O.A. No. 180. of 1993.

S. B. Sanyal and R.D. Upadhyay for the Appellants.

B.S. Banthia for the Respondents.

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S.K. Agnihotri and Sakesh Kumar for the State.

The following Order of the Court was delivered :

Delay condoned.

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Leave granted.

We have heard learned counsel on both sides.

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These appeals by special leave arise from the orders of the Madhya Pradesh State Tribunal made on October 1, 1994 in O.A. No. 616/93 and batch.

The admitted position is that the appellants as well as the respondents are governed by the provisions of M.P. Irrigation Engineering services (Gazetted) Recruitment Rules, 1968 issued by the Governor in exercise of the power under proviso to article 309 of the Constitution. Rule 7 of the Rules prescribes the mode of recruitment either by direct recruitment or by promotion of substantive or officiating feeder cadre, i.e., sub-Engineers, or by transfer of person who held in a substantive capacity such post as may be specified by the State Government in that behalf. Eligibility criteria has been prescribed under Rule 15 and procedure for consideration under Rule 16 which read as under :

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"15. Condition of eligibility for promotion:

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(1) Subject to the provisions of sub-rule (2), the committee consider the cases of all persons who on the 1st day of January of that year had completed the prescribed years of service (whether officiating or substantive) on the post/service mentioned in column 2 of Schedule IV or any other post or posts declared equivalent thereto by the Government as under and are within the zone of consideration as per sub-rule (2): -

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(i) Sub-Engineers Head Draftsman/Draftsman to the post of Assistant Engineers minimum *Service of 12 years as Sub-Engineers, Head Draftsman/Draftsman.

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Provided that a sub-Engineer head Draftsman/Draftsman who completed a minimum of 8 years service and possessed degree in Civil/Electrical/Mechanical Engineering from recognised University or qualifications declared equivalent thereto by the State Government will also be eligible for promotion to the post of Assistant Engineer and will be considered each time, just after the zone of consideration and the final selection list shall be made from both the groups on the basis of merits, for example, if ten posts are vacant in the cadre of Assistant Engineer to be filled by

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- A promotion of sub-Engineers then 10 x 5-50 diploma holders sub-Engineers from working list be considered first and thereafter the eligible graduate sub-Engineers be considered in the order of their seniority for promotion.
- B (ii) Junior Engineers to the post of Assistant Engineers minimum Service of 2 years as Junior Engineers. (iii) Research Assistants to the post of Assistant Research Officers—Minimum Service of 8 years as Research Assistant.
- C (iii) Embankment Inspector/Silt Analysts to the post of Assistant Research Officers—minimum service of 8 years as Embankment Inspector/Silt Analyst.
- (iv) Assistant Engineers promoted from sub-Engineers Head Draftsman/Draftsman cadres to the post of E.E. minimum 18 years of total service out of which at least 6 years should be as Assistant Engineers.
- D (v) Assistant Engineers to the post of Executive- Engineers minimum 6 years as Assistant Engineer.
- E (vi) Superintending Engineers to the post of Chief Engineers—Minimum Service 6 years as Superintendent Engineers.
- (2) The field of selection shall ordinarily be limited to five times the number of officers to be included in the select list, provided that if the required number of suitable officers are not available in the field so determined the field may be enlarged to the extent considered necessary by the Committee by mentioning the reasons in writing.
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- G 16. Preparation of list of suitable officers :
- (1) The committee shall prepare a list of such persons as satisfy the condition prescribed in the Rule 15 above and are held by the committee to be suitable for promotion to the service. This list shall be sufficient to cover the anticipated vacancies on account of retirement and promotions during the course of one year from the
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date of preparation of the select list. A reserve list consisting of 25% of the number of persons included in the said select list shall be prepared to meet the unforeseen vacancies occurring during the course of the aforesaid period. A

(2) The selection for inclusion in such list shall be based on merit and suitability in all respects with due regard to seniority. B

(3) The names of the officers included in the list shall be arranged in order of seniority in the (as in column II Schedule IV service at the time of preparation of each select list; provided that any Junior Officer, who is in the opinion of the committee, is of an exceptional merit and suitability, may be assigned in the list a higher place than that of officers senior to him. C

Explanation : A person whose name is excluded in the select list but who is not promoted during the validity of the list shall have no claim to seniority over those considered in a subsequent selection merely by the fact of his earlier selection. D

(4) The list so prepared shall be reviewed and revised every year.

(5) If in the process of the selection, review or revision, it is proposed to supersede any member of the service or members of Madhya Pradesh Irrigation Department (non-gazetted) Service, the committee shall record its reasons for the proposed supersession." E

A resume of these Rules would clearly indicate that the eligibility is considered as on 1st of January of the year. the incumbent must have completed the prescribed years of service, namely, 8 years of service for the Graduation Engineers and 12 years of service for the sub-Engineers. It is not in dispute that the appellants as on January 1992 had not acquired the Graduation qualification but some of them had completed 8 years of service. Similarly, the respondents who were promoted as per the directions of the Tribunal had admittedly acquired the qualifications of Graduation in October 1992. When the DPC met in December 1992 for filling up of the vacancies for the year 1992 their claims did not come up for consideration. So, the respondents filed OAs and the Tribunal has held that since they had completed 8 years of service and also acquired the graduation, they should be considered if found fit to be promoted. Thus F
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A they came to be promoted.

The case of the appellants is that though the respondents had completed the eligibility criteria as on January 1 of the year 1992, a fact that the graduation qualifications acquired subsequent to that date but before the DPC had considered their cases are not entitled to be promoted. The approach adopted by the Tribunal is illegal and contrary to Rules 15 and 16 of the Rules referred to hereinbefore. We find force in the contention. As seen Rule 15 is a clear mandate as to the eligibility criteria. Firstly, the diploma-holders should have minimum of 12 years qualifying service for eligibility to be considered for promotion as Assistant Engineers. If a diploma holder acquires graduation, he should complete minimum of eight years of service then only he becomes eligible for consideration for promotion as Assistant Engineer. He should hold the post as sub-Engineer in a substation or continuous officiating capacity as prescribed. But the cut off date for eligibility is 1st January of the year in which the eligibility was to be considered. Since the respondents acquired the qualifications in October 1992, They did not become eligible for consideration for promotion for the year 1992 though the DPC had met in December 1992. Consequently, the direction issued by the Tribunal and the appointments of the respondents made pursuant to the contempt orders are clearly illegal. We are informed that they have been already promoted. Therefore, their promotions should be treated to be *ad hoc* and *de horse* the rules. Though as per the orders of the Tribunal, they came to be promoted, such promotions do not confer any right to seniority over any other eligible candidates who acquired the qualifications as on January 1, 1992. Therefore, the DPC is directed to sit every year either in the month of February or March for consideration of respective claims of the candidates provided if any vacancy exists or is anticipated. As regards this year is concerned, they should sit in this year to consider the vacancies that had arisen between 1st January 1992 to 1st January 1996. The DPC should get identified the vacancies having arisen in each year and consider the cases of respective eligible candidates diploma-holders as well as Engineers, who have completed 12 years of service by the diploma holders or the diploma holders who acquire graduation before first day of January each year for promotion in accordance with rules. Such of the candidates found fit and recommended fit be given regular promotion provided they are substantive or substantively in officiating capacity in the lower ranking. It would appear that some of the candidates who approached the Government taking

advantage of the orders of the Tribunal and got promoted, also came to be considered and were promoted. All appointments are also to be treated as *ad hoc*. **A**

The appeals are accordingly disposed of. The orders of the Tribunal are set aside. No costs.

G.N.

Appeals disposed of. **B**