

Before Arun B. Saharya, C.J. & V. K. Bali, J

JAGJIT SINGH SANDHU,—*Appellant*

versus

THE STATE OF PUNJAB & OTHERS,—*Respondents.*

L. P. A. 951 of 1991

30th November, 1999

Punjab Service of Engineers, Class II, PWD (Building and Roads Branch) Rules, 1965—Rls. 6, 6(2), 9, 10 & 12—*Inter se* seniority—Direct recruits and promotees from source 4 i.e. A.M.I.E. holders—40 point roster laid down in rule 6 for recruitment from different sources to Class II—Non-availability of eligible officials of source 4—Rl. 6(2) permitting diversion of such vacancies to direct recruits—Rl. 6(2) whether directory or mandatory—Language of rule 6(2) leaves no choice with the Government but to make appointment from source 1 i.e. direct recruits to the vacant slots otherwise meant to be occupied by promotees of source 4—Recruitment of source 1 officials i.e. direct recruits against source 4 would exhaust the slots and, therefore, direct recruits would rank senior—Necessarily the roster would stand modified—Such recruitment cannot be termed as stop gap arrangement or *ad hoc*—AMIE holders not entitled to be placed against such roster points on their becoming eligible after passing AMIE examination later on.

Held, that in case a slot meant to be occupied by a person belonging to source 4 is lying vacant and a person from the said source is not available for whatever reasons, in the present case not having the requisite but necessary qualification of AMIE that alone clothes him with eligibility for promotion, the slot meant for him in the 40 point roster has to go to a direct recruit, if available.

(Para 27)

Further held, that from reading of sub rules (3) and (4) of rule 6, it clearly emerges that when candidates from source 1 and 3 are not available, it is possible to make appointments on temporary basis which shall have to be termed as an ex-cadre post. It further emerges very pertinently that any such appointment made would not clothe such person with any right under the rules as he has to be necessarily reverted when candidates from sources 1 and 3 become available for appointment. What further emerges from reading of sub rules (3) and

(4) and which really seals the contentions raised on behalf of respondents belonging to source 4 is that stop gap arrangement can be made only in case candidates from source 1 and 3 are not available and not when candidates from the said source i.e. source 4 are not available. In the later eventuality i.e. when suitable candidates are not available from source 4, sub rule (2) of rule 6 really takes care of that. The said sub rule quite in contrast to sub rules (3) and (4), does not talk of stop gap arrangement or appointment to an ex-cadre post. That being the situation, it is not only sub rule (2) of rule 6 which lends support to the contention raised by Mr. Sibal, but sub rules (3) and (4) of the same very rule really clinch the issue beyond any pale of controversy.

(Para 27)

Further held, that as per clauses (1) and (2) of rule 12, *inter se* seniority of the members of service has to be determined in the order of recruitment as provided under rule 6, as held by the learned Single Judge, but this proposition, would hold true for sources other than source 4. Insofar as source 4 is concerned, sub rule (2) of Rule 6 takes care of the situation when candidates from source 4 are not available. The language employed in sub rule (2) of rule 6 leaves no choice with the Government but for to make appointments and that too only by direct recruits to the vacant slots otherwise meant to be occupied by the candidates from source 4. If sub rule (2) of rule 6 is resorted to and which has to be obviously slot in the 40 point roster meant to be occupied by a candidate from source 4 would stand exhausted. Sub rule (2) of rule 6 is an exception to rule 6 (1).

(Para 31)

Further held, that the very mention of rule 6, sans sub rule (1) or (2), would take in its sweep whole of the rule and not a part thereof. If that be so, the slot meant to be occupied by a candidate from source 4, in the event the candidate from the said source is not available, stands exhausted by the direct recruit and it is after operation of whole of rule 6 that rule 12 with regard to seniority will come into play. In other words, slot meant to be occupied by candidate of source 4, which has since been diverted to direct recruit, shall be deemed to be as if filled from source 4 only and it is in that way only that *inter se* seniority of the members of service shall be in order of recruitment in service, as mentioned in sub rule (2) of rule 12.

(Para 31)

Further held, that there is nothing mentioned in sub rule (2) from which it may be permissible, even by implication, to hold that such

vacancy shall have to be filled only by temporary arrangement in contrast to the situation given in sub rules (3) and (4) of the same very rule.

(Para 32)

Further held, that providing for entirely a different rule for source 4 in contrast to the one provided for sources 1 and 3, in the same eventuality, i.e. non-availability of a candidate from these sources, clearly goes to show that the legislature intended that when candidate from source 4 is not available, his slot must go to a candidate from source 1, i.e. direct recruit. It is further significant to note that such a replacement in the 40 point roster can be done only by source 1 and not by sources 2 and 3. This further clarifies the intention of legislature in doing away with the slot meant for source 4 if the candidate from the said source is not available and that too on permanent basis and not on temporary or adhoc basis.

(Para 32)

H. L. Sibal, Sr. Advocate with V. K. Sibal, Advocate and Rita Kohli, Advocate,—*for the Appellants.*

G.S. Dhillon, Addl. AG (PB)

Rajiv Atma Ram, Advocate

G.L. Sadana, Advocate,—*for the Respondents.*

JUDGMENT

V. K. BALI, J.

(1) Perennial tangle of *inter se* seniority between direct recruits and promotees once again engages the attention of this Court in this bunch of cases. The race between direct recruits and promotees in the present case, is for appointment to the Class I service, which has been defined to mean “the Punjab Service of Engineers, Class-I P.W.D. (Buildings and Roads Branch) P.W.D. (Irrigation Branch) and P.W.D. (Public Health.)” This service is governed by the Punjab Service of Engineers, Class II PWD (Buildings and Roads Branch) Rules, 1965 (hereinafter referred to as the Rules of 1965). By virtue of provisions contained in the 1965 Rules, recruitment to the service for cadre and ex-cadre posts is from four different sources, namely direct appointment, promotion from the members of the Punjab PWD (B&R) Sectional Officers (Engineering) Service, promotion from draftsmen members of the Draftsmen and tracer service ; and promotion from members of the Punjab PWD (B&R) Sectional Officers (Engineering) Service and the

Draftsmen member of the Draftsmen and Tracer Service possessing qualifications prescribed in Appendix "B". Admittedly, a candidate of source 4 can be promoted only if he has qualifications as provided in Appendix 'B' i.e. A.M.I.E. The dispute herein is between source 1, i.e., direct recruits and source 4, i.e., those who have the qualification of A.M.I.E.

(2) What came to be focussed before the learned Single Judge were rules 6 and 12 of the Rules of 1965. Rule 6 contains 40 point roster. 40 posts have been divided in five lots consisting of 8 posts each. The posts to be filled by four different sources, as referred to above, have been earmarked in each lot of 8 posts. Recruitment to service for cadre and ex-cadre posts, as per rule, has to be made in the proportion and order indicated against block of 40 vacancies. Rule 12 deals with seniority and while making reference to rule 6, it has been said in sub rules (2) and (4) of the said rule that *inter se* seniority of the members shall be in order of recruitment provided in the said rule, i.e., rule 6.

(3) Learned Single Judge, by a common judgement, recorded in Civil Writ Petition Nos. 5265 of 1983 filed by the direct recruits and 6758 of 1986 and 7829 of 1988 filed by promotees from source 4, held that "seniority of the petitioners, i.e., representing source 4, had to be fixed in the order prescribed under rule 6 (1) and further that clause (2) contemplates that if suitable persons are not available from source No. 4 for appointment to the service, the vacancies shall be filled by direct recruitment". It has further been held that "while the rule enables the State Govt. to divert the vacancies available for being filled up from source No. 4 to direct recruitment, the slot is not altered. (Emphasis supplied) and that clauses (3), (4) and (5) are not relevant for the decision of controversy in the present case". It has further been held that rules 8 and 9 lay down the procedure for direct recruitment and promotion respectively and that clauses (3) and (4) would show that *inter se* seniority within the group of persons selected for direct recruitment for appointment by promotion from a particular source, has to be in the order of merit determined in accordance with the provisions of rules 8 and 9 and that according to clauses (1) and (2), the *inter se* seniority of the members of the service has to be determined in the order of recruitment provided under rule 6, meaning thereby, the sequence of appointment contemplated under rule 6 (1) has to be reflected in the seniority." By so holding, it has been declared that the seniority of the persons mentioned in the order dated 28th May, 1980 having been determined, their claim for promotion had to be considered whenever any person junior to them was considered for promotion. A direction was then issued to the official respondents to consider the claims for

promotion to various posts in accordance with the seniority as reflected in the list dated 28th May, 1980.

(4) In this batch of five Letters Patent Appeals bearing Nos. 950, 951, 966, 1533 and 1534 of 1991, whereas two appeals bearing Nos. 1533 and 1534 of 1991 have been filed by the State of Punjab against the judgment of learned Single Judge recorded in the aforesaid writ petitions, the other three appeals have been filed by direct recruits from source 1, L.P.A. Nos. 852 and 853 of 1992, which too have been tagged with the bunch of these LPAs have been filed by the promotees from source 4, i.e., those who hold the qualification of AMIE but these appeals have been directed against a separate judgment of learned Single Judge of this Court (N.K. Sodhi, J.) recorded in Civil Writ Petition Nos. 3523 and 3525 of 1988 decided on 25th July, 1991. The promotees from Source 4 in the aforesaid two writ petitions had claimed seniority over the direct recruits on the plea that the posts that have fallen to their share in the third block of 40 vacancies should have been given to them and as the same had not been done, the respondents, who came to be recruited by way of direct recruitment, had wrongly been shown senior to them. Their plea is in tune with the judgment recorded by the learned Single Judge in CWP No. 6758 of 1986 giving rise to LPAs, referred to above and it is for that precise reason that in these LPAs promotees from source 4 are the appellants before us.

(5) Tagged with this bunch of LPAs, are also some writ petitions which have been ordered to be heard alongwith present LPAs. Civil Writ Petition Nos. 5416 of 1991, and 9602 of 1996 have been filed by promotees from source 4, other petitions bearing Nos. 2007 of 1992, 14648, 14527 and 14533 of 1993 have been filed by direct recruits from source 1, on the same plea and for the same result as was the subject matter of dispute in CWP Nos. 3523 and 3525 of 1988, giving rise to LPA Nos. 852 and 853 of 1992 decided by learned Single Judge of this Court (N. K. Sodhi, J.).

(6) The crucial question that needs determination and on which alone the learned counsel for the parties have focused our attention is as to whether, by virtue of Rule 6 and 40 point roster, which is part of Rule 6, Rules 8, 9 and 12, a candidate belonging to source 4, should be accommodated against the vacancy meant for him in the said roster when the same falls vacant irrespective of his eligibility/availability on

the said date. Whereas, it is the case of direct recruits that a vacant point in 40 point roster meant to be otherwise occupied by a candidate belonging to source 4, on account of his non-availability on the said date, must be diverted to their source, the clamour of promotees from source 4 is that irrespective of date when they might become eligible or available, they must be accommodated on the roster point meant for them from the date the vacancy became available. The direct recruit, in that event, even though might have temporarily occupied the post meant for them, must vacate the said roster point on their availability/eligibility. Such being the rival contentions of learned counsel for the parties, relevant rules would need an immediate attention of this Court but, before that is done, even though not absolutely necessary, it would yet be useful to give backdrop of events that led petitioners, in each set of writs, to approach this Court, with the result, mentioned above.

(7) Civil Writ Petition No. 5265 of 1983, as mentioned above, was filed by direct recruits-Davinder Pal Singh Sandhu and 16 others. They prayed for writ in the nature of *certiorari* so as to quash roster-cum-seniority issued by the State of Punjab under the Rules of 1965 being against Rules 6 and 12 of the said Rules and further sought direction to the respondents to frame the roster-cum-seniority in accordance with the law. It was, *inter alia*, pleaded by them that they were members of the Punjab Service of Engineers, Class II and their service conditions were governed by statutory rules of 1965. After obtaining degree in Civil Engineering from recognised University, they were directly recruited to P.S.E.-II service after being selected and recommended by the Punjab Public Service Commission and each one of them joined in September, 1972. After reproducing the relevant rules of 1965, they further pleaded that in case candidates from Source 4, i.e., AMIE, were not available, the vacancies meant to be occupied by them in 40 point roster, shall have to be filled in by direct recruits. In other words, point Nos. 16, 24, 32 and 40 in a block of 40 vacancies would also go to the direct recruits. When, in the year 1972, petitioners were recruited to the service by way of direct recruitment, candidates from source No. 4 were not available. Consequently direct recruitment, was resorted to under rule 6(2) of the Rules against the vacancies meant for source No. 4. All the private respondents, so arrayed in the writ petition, happened to belong to source No. 4 as all of them had obtained AMIE degrees in the year 1973 or thereafter and became eligible for appointment to service by promotion under Rule 7 (3) in the year 1973

or thereafter. Date of passing of AMIE Examination by the respondents and the date of their becoming eligible for promotion to Class-II service were given as under :—

Sr. No.	Name	Original Service	Year of passing AMIE/ degree	Date of eligibility u.r. 7 (3)
96.	Tirath Singh Chohan	Section Officer	1973	1-1-1974
104.	G.D. Gupta	-do-	1973	1-1-1974
112.	N. K. Mittal	-do-	1969	1-1-1973
144.	Avtar Singh Basra	-do-	1972	1-1-1973
152.	Rajbir Jindal	-do-	—	1-1-1975
160.	Inder Mohan	-do-	1974	1-1-1975
176.	Krishan Lal Aggarwal	-do-	1975	1-1-1976
184.	S.P. Goel	-do-	1972	1-1-1973
192.	Tej Bahadur Singh	-do-	1976	1-1-1977
200.	Davinder Pal Sharma	-do-	1976	1-1-1977
216.	Parshotam Dass	-do-	1978	1-1-1979
224.	Hari Paul	-do-	1978	1-1-1979
232.	Balkar Singh	-do-	1971	1-1-1975

(8) The Government of Punjab issued a tentative roster in the year 1972. It is pleaded that in fact, this roster of vacancies was treated as the seniority list by the department as well. In the tentative seniority roster, the respondents, who were appointed to service from source 4 in the year 1974 or thereafter, i.e., much after the petitioners, were shown in roster at points 96, 104, 112, 120, 136, 144, 152, 160, 176, 184, 192, 200, 216, 224 and 232. It is the case of the petitioners that these points should have gone to petitioners as the said respondents could not be shown at the above-mentioned points in roster inasmuch as they were not available and eligible in the year 1972 when the petitioners were appointed by direct recruitment and since they were not available or eligible, the vacancies meant to be occupied by persons belonging to source No. 4, were also filled in by direct recruitment, i.e. petitioners.

Petitioners, however, came to know that after deciding various objections that were filed by various persons, the Government of Punjab stuck to the tentative roster and sent final roster to the Chief Engineer, Punjab, PWD-respondent No. 2 for onward transmission to each member of the service but till date, respondent No. 2 had not circulated the final roster as approved by the Government of Punjab to any member of service, especially to the petitioners. Since official respondents were acting on the basis of the roster, treating it to be the seniority list, petitioners made a representation. Latest representation dated 24th June, 1983 which was given by the General Secretary of the Haryana Construction Sub Division, Hoshiarpur, was attached with the writ petition as Annexure P-3. No reply was, however, received by the petitioners to this representation. It was further pleaded that the roster-cum-seniority, Annexure P-2, was wholly illegal and against service rules inasmuch as when petitioners came to be recruited to service, private respondents were not eligible for appointment to service from source 4 as none of them had passed AMIE or did not have five years' service as Sectional Officer. The provisions contained in Rules of 1965 left no choice with the respondents but for to fill the said vacant slots by way of direct recruitment under Rule 6(2) of the said Rules. It is on these basic pleadings that the writ, for the reliefs, as referred to above, was filed.

(9) The cause of petitioners was opposed by the official respondents and in the written statement filed on behalf of respondents 1 and 2, it was, *inter alia*, pleaded that even though it may be correct that as per Rules of 1965, if candidates from source 4 were not available, these vacancies shall have to be filled in by direct recruitment, point Nos. 16, 24, 32 and 40, which were meant to be occupied by candidates from source 4, could be filled from the said source only as candidates from source 4 were available and were appointed as such against these points. Some candidates from source 4 were available but could not be appointed to PSE-II on regular basis and were promoted on *ad hoc* basis, subject to approval by the Public Service Commission. It was admitted that insofar as private respondents are concerned, they belong to source 4. It was, however, denied that all of them obtained AMIE degree in 1973. It is stated that Shri S.B. Goel and A.S. Basra passed AMIE in the year 1972. Similarly, Shri N. K. Mittal, who is decree holder, had also acquired requisite qualification in 1972 and insofar as A.S. Basra is concerned, he did not possess five years service as member of Punjab PWD (B&R) Sectional Engineering Service and as such he was not eligible for promotion in PSE-II service in 1972. As regards Rajbir Jindal, he became eligible for appointment in PSE-II on 1st January, 1976 and not on 1st January, 1975. It was admitted that

tentative roster in the year 1979 was circulated by State of Punjab and the posts meant for private respondents were shown at point Nos. 112, 120, 136, 144, 152, 160, 176, 184, 192, 200, 216, 224 and 232 against their quota posts. The tentative roster was finalised partly,—*vide* letters dated 2nd September, 1977 and 23rd September, 1979. It is then pleaded that the posts meant for candidates belonging to source 4 were kept reserved for them and none of the petitioners was appointed against the posts. Though, in the year 1972, Shri S. B. Goel and N. K. Mittal, private respondents, were not eligible, but later on they became eligible and were appointed initially on *ad hoc* basis and later on appointed to PSE-II against the posts meant for their quota which were kept vacant and reserved for them and as such the petitioners had no claim against the posts meant for the candidates belonging to source 4. Moreover, the petitioners did not represent at that time against the posts kept vacant/reserved for the candidates belonging to source 4 and as such the claim of petitioners at this stage was time barred. It is significant to mention at this stage that even though in para 1 of the written statement it was admitted that in case candidates from source 4 were not available, these vacancies shall have to be filled in by direct recruits and it was then pleaded that at points 16, 24, 32 and 40 and 40 candidates from source 4 were available and were appointed as such, it has been mentioned in para 11 of the written statement that but for S. B. Goel and N.K. Mittal were not eligible, but later on they became eligible and appointed initially on *ad hoc* basis and later on to PSE-II against the posts meant for their quota as the posts meant to be occupied by them were kept reserved.

(10) Respondents 3, 6, 7 and 8 filed separate written statement opposing the cause of petitioners on identical lines, as has been opposed by official respondents 1 and 2. So is the position with regard to respondents 10, 13, 14, 15 and 16. Respondents 11 and 12 filed separate written statements but with identical pleadings.

(11) Culled from the pleadings of the parties, as reflected above, the point that emerges for adjudication is the one which has already been noted by us in earlier part of the judgment and needs no reiteration.

(12) As mentioned above, two separate writ petitions were filed by the candidates belonging to source 4. These writ petitions are CWP Nos. 6758 of 1986 and 7829 of 1988. Civil Writ Petition No. 6758 of 1986 was filed by G. D. Gupta, who prayed for issuance of writ in the nature of mandamus directing respondents 1 and 2 to consider and promote him as Executive Engineer w.e.f. the date his juniors, i.e. respondents 3 to 8 were promoted as such upholding the final seniority

list circulated by the State of Punjab,—*vide* notification dated 28th May, 1980. Annexure P-3 and to quash order dated 3rd March, 1986,—*vide* which respondents 3 to 11 were promoted as Executive Engineers. There is no need to give detailed pleadings of this writ petition or for that matter CWP No. 7829 of 1988, which too was filed by the candidates belonging to source 4. Suffice it however, to say that they plead converse to what was pleaded by the direct recruits, who filed CWP No. 5265 of 1983. The case pleaded by them was that irrespective of date of their becoming available or passing AMIE examination, they must be accommodated against a roster point meant to be occupied by them in 40 point roster and in case direct recruits were accommodated against the said roster point, they must make place for them against those very roster points irrespective of fact as to whether they came to be appointed earlier to their becoming eligible or passing AMIE examination.

(13) Before the court might take into consideration the brief pleadings in CWP Nos. 3523 and 3525 of 1988, resulting into filing of LPA Nos. 852 and 853 of 1992, it would be relevant to mention that even though State of Punjab initially opposed the cause of direct recruits in CWP No. 5265 of 1983 filed by direct recruits and CWP Nos. 6758 of 1986 and 7829 of 1988 filed by promotees from source 4, they are aggrieved of the judgment rendered by learned Single Judge (J. L. Gupta, J.) and have filed appeals against the said judgment, now canvassing the proposition which happens to be in tune with the cause of direct recruits.

(14) Civil Writ Petitions Nos. 3523 and 3525 of 1988, which came to be decided on 25th July, 1991 by N. K. Sodhi, J. were filed by candidates from source 4, i.e., promotees holding AMIE qualifications. It is conceded position that 1965 Rules applicable to Punjab, are in terms applicable to the State of Haryana as well. CWP No. 3523 of 1988 was filed by K. R. Singal and five others. As many as 80 candidates belonging to source 1, direct recruits, were arrayed as party-respondents. Petitioners prayed for writ in the nature of certiorari so as to quash seniority list of Haryana Service of Engineers Class II officers which was issued on 17th January, 1984. In consequence of setting aside of seniority list, referred to above, they further prayed that official respondents be directed not to act upon the same for any purpose to the detriment of the petitioners and further to direct the official respondents to frame the seniority list in accordance with Rules of 1965. Inasmuch as respondents 3 to 14 and 82 had since been promoted, they prayed that orders promoting them be also quashed. While laying foundation for the claim as detailed above, they pleaded that all of them, except petitioner No. 5, had passed AMIE examination. Petitioner No. 5 had obtained a degree of Engineering. They were

promoted as Sub Divisional Engineers. The dates of their joining department as Junior Engineer, obtaining AMIE/Engineering degree and promotion as Sub Divisional Engineers, as pleaded by them in para 2, are as follows :—

Sr. No.	Name of Officer	Date of joining as SO/JE	Date of acquiring AMIE/Engg. degree	Date of appointment as S.D.E.
1.	K. R. Singal	22-8-1960	May, 1973	May, 1975
2.	M.R. Balain	1-4-1969	Nov., 1973	15-1-1976
3.	M. R. Bansal	14-2-1969	Nov., 1972	3-12-1976
4.	K. C. Bhardwaj	6-7-1971	May, 1971	16-1-1976
5.	R. R. Anand	13-5-1972	May, 1968	Jan., 1976
6.	R. K. Aggarwal	15-6-1972	May, 1970	6-12-1976

(15) After quoting same very rules, i.e., rules 6 and 12, they pleaded that in a block of 40 vacancies, they were entitled to occupy four posts. The State of Haryana started, the roster for the purpose of the Rules w.e.f. 1st November, 1966 and,—*vide* letter dated 7th October, 1976 respondent No. 2 circulated integrated seniority list of Sub Divisional Engineers and representations were invited against the said seniority list. The seniority list was purported to have been drawn on the basis of rotation as provides under Rule 6 of the Rules but in fact it was wholly erroneous and no proper rotation between the four sources had been done to show various officers at their proper places. In the said seniority list, only petitioner No. 1 was shown whereas other petitioners were not included. They made representations against the tentative seniority list but without deciding the same, Government was acting on the basis of that tentative seniority list for the purpose of promotion which was detrimental to their cause. Constrained, in the circumstances mentioned above, petitioners 1 and 2, filed Civil Writ Petition No. 3296 of 1981 which was disposed of by passing following order :—

“Undoubtedly, the relief claimed herein is with regard to seniority. In para No. 13 of the written statement it has been averred that the representations of effected persons including the petitioners are receiving the attention of the State Government. Mr. Bishnoi states that these representations as also the seniority of petitioners, vis-a-vis, the others be finalised

within four months from today. Mr. Bishnoi further states that none from the array of the respondents of this writ petition will be promoted in the meanwhile. In view of this, Mr. Kuldip Singh does not press this writ petition. Dismissed”.

(16) Even though States of Haryana had asked for only four months to finalise the seniority list but it took its own time to issue seniority list. *Vide* letter dated 17th Januray, 1984 respondent No. 2 issued a tentative seniority list of Haryana Service of Engineers Class-II officers in PWD (B&R) Branch. Against this seniority list representations were invited which were to be filed within 15 days. In this seniority list, petitioners were shown at Sr. Nos. 218, 226, 234, 258 and 266. It is the case of petitioners that if seniority list had been prepared in accordance with rule 6(1) of the 1965 Rules, the petitioners should have been placed at Sr. Nos. 122, 138, 146, 154, 162 and 178. Petitioners did make representations against tentative seniority list but no orders were passed thereon. The earlier tentative seniority list remained the same with the only change that some of those, who had joined Army at the time of emergency, were given enhanced seniority. It was then pleaded that without deciding the objections and issuing final seniority list, promotions were being made. It is in these circumstances that promotees from source 4 filed aforesaid writ petition. Identical was the case in CWP No. 3525 of 1988, which, as mentioned above, was also filed by candidates from source 4.

(17) The writ was opposed by the official respondents, who filed written statement and pleaded that even though some posts meant to be occupied by the candidates belonging to source 4 fell vacant during the year 1971-72, no eligible AMIE/Engineering, Degree holder was available in the department for being promoted. Hence, as per rule 6 (2) these posts were filled up by direct recruits and became unavailable for any promotion thereafter. It is basically on this plea that the cause of petitioners has been opposed. That being so, there is no need to give other details of the written statement filed on behalf of the respondents.

(18) As mentioned above, Civil Writ Petition Nos. 5416 of 1991 and 9602 of 1996 have been filed by promotees from source 4, Civil Writ Petition Nos. 2007 of 1992, 14648, 14527 and 14533 of 1993 have been filed by direct recruits from source 1. Civil Writ Petition No. 5416 of 1991 has been filed by Harvinderjit Singh Sahota. He claims writ in the nature of certiorari so as to quash impugned seniority list dated 4th December, 1990 and then to declare that petitioner was rightly placed at Sr. No. 19 in the seniority list against 16th point of roster. It is his case that he was appointed on the post of Sectional Officer (Civil) on 13th November, 1981. Petitioner herein is an employee of Punjab

Housing Development Board. It is his case that in exercise of powers vested in it under Section 99 of the Punjab Housing Development Board Act, 1972, the Board has power to make its own regulations. However, the Board did not make its own regulations and conditions of service as envisaged by the Rules of 1965 were made applicable to the employees at the status and level of the petitioner. Petitioner then refers to Rules 6 and 12 of the Rules of 1965 and further pleads that he became eligible for promotion to the post of Sub Divisional Engineer from source 4 on completion of two years service as Sectional Officer. In seniority list, Annexure P-4, seniority was shown upto Sr. No. 37 and yet various vacant positions were indicated in the said list. Point No. 19, which was meant to be occupied by the petitioner, was shown as vacant. Earlier, the same very roster point had come to the petitioner and he was given retrospective promotion but while issuing seniority list, Annexure P-4, his position was altered to his detriment. He was relegated to the position inferior to respondents 3 to 10. The petitioner, thus, made a complaint with regard to altering his seniority position when seniority list Annexure P-4 was issued.

(19) In the written statement filed on behalf of respondents, it has, however, been pleaded that vacancy at Sr. No. 19 came into existence on 14th/17th August, 1978. The petitioner could not be given the said post as he was appointed as Junior Engineer on adhoc basis on 22nd August, 1978 and he was not even member of service at the relevant time. He being a degree holder could become eligible for promotion as Assistant Engineer only after he had put in two years service as Junior Engineer and as such he could not be promoted as Assistant Engineer at any date before 22nd August, 1980. Insofar as private respondents were concerned, they were appointed from 27th October, 1978 to 1st February, 1980. It is further the case of respondents that point No. 19 was meant for a candidate from source 4 but on the date same became available, none was available, and as per rule 6 (2) the said point ought to have been filled by direct recruit. On this ground as also on others, which need not be mentioned, cause of petitioner was opposed.

(20) Civil Writ Petition No. 9602 of 1996 was filed by D.P. Sharma, an Executive Engineer, claiming writ in the nature of certiorari so as to quash Annexure P-1,—*vide* which he has been reverted to the post of Sub Divisional Engineer. He joined as Sectional Officer on 17th December, 1970 and was promoted as Sub Divisional Engineer on 7th November, 1979. A joint seniority list was issued in 1980. Thereafter, he was promoted to the post of Executive Engineer pursuant to orders passed by this Court, Annexure P-2. Despite orders passed by this Court, which were given effect to while promoting the petitioner to the post of

Executive Engineer, it is his case, he was being reverted quite in defiance of orders passed by this Court in CWP Nos. 6758 of 1986 and 7829 of 1988.

(21) Civil Writ Petition No. 2007 of 1992 has been filed by Ved Parkash Trehan, claiming writ in the nature of prohibition restraining the respondents from reverting him from the post of Executive Engineer. It is the case of petitioner that he was appointed to the Punjab Service of Engineer Class II, PWD (B&R) Service in the year 1972 on regular basis through Punjab Public Service Commission. He joined in September, 1972 as such. After quoting Rules 6 and 8, he pleads that perusal of the same would show that for the purposes of making appointment, a Committee has to be constituted under Rule 8 (1), known as Screening Committee. This Committee has to meet every year and consider the cases of all eligible officers for promotion to the post of Executive Engineer against the vacancies in existence as on the first day of January of that year. The list, so prepared by the Committee is to be sent to the Commission which approves the same and thereafter it is notified and becomes final list in accordance with which promotions have to be made to Class I service. No such committee was constituted from 1979 to 1989. To meet the situation that arose during those years and fill up the vacancies on the post of Executive Engineer, Government made promotions in the first instance on adhoc basis and thereafter by giving Current Duty Charge to the Sub Divisional Engineers in their own pay scale. Petitioner was also given Current Duty Charge of the post of Executive Engineer on 20th September, 1988 and since then he was discharging his duties against the said post without any break. He has also been declared as a select Executive Engineer,—*vide* order dated 2nd January, 1992. This declaration is stated to be issued on the basis of work and conduct and length of service. In the year 1989 a Screening Committee was constituted by the Government which considered the cases of all eligible officers w.e.f. 1983. Petitioner was eligible to be appointed against a vacancy in existence as on 1st January, 1988. The Screening Committee considered the case of petitioner and found him fit to be promoted and included his name in the list of eligible persons to be promoted in that year. The list was then forwarded to the Commission under Rule 8 (8) of the Rules of 1965 which considered and approved it under Rule 8 (10). The approved list was finally notified by the Government by a notification dated 13th May, 1991 and petitioner was appointed to Class I service as an Executive Engineer w.e.f. 1st January, 1988. As per the said notification, petitioner was deemed to have successfully completed his probation period. As per the notification aforesaid, cases of 13 other officers were kept under consideration, who were working on adhoc basis as Executive Engineers.

Two officers, namely, Manmohan Pal and Kultar, who were working as Executive Engineer on adhoc basis, were considered unfit by the Screening Committee and, therefore, their names did not find mention in the notification. It is then pleaded that there was a dispute of seniority between the Sub Divisional Engineers who were directly recruited in the year 1972 including the petitioner and certain promotees of Class III service, who were promoted under Rule 6 of the Rules of 1965. as per rule 6(1) in a lot of 40 vacancies, 36 vacancies have to be filled up by direct recruitment and four by promotion from the members of Class III service, who possess the AMIE degree. As per rule 6 (2) in case suitable candidates were not available from source 4 the vacancies shall have to be filled up by direct recruitment. Petitioner was directly recruited in the year 1972 and at that time candidates from source 4 were not available, as a consequence of which direct recruitment was made under Rule 6 (2) against the vacancies meant for the AMIE candidates. However, when the department prepared the seniority list, names of the AMIE candidates, who became eligible after 1972 and were promoted in the year 1979 to Class II service, were given seniority in between the 1972 batch on wrong interpretation of Rule 6 (1), (2) and Rule 12 of the Rules of 1965. This roster was challenged by AMIE candidates by way of Writ Petition Nos. 6758 of 1986 and 7829 of 1988. Insofar as petitioner is concerned, he was not made a party-respondent in either of the aforesaid writ petitions. Learned Single Judge of this Court allowed the writs filed by AMIE candidates and dismissed the one filed by direct recruits, i.e., CWP No. 5265 of 1983. It is further the case of petitioner that since he was not a party to the said writ petitions, decision thereof was not binding upon him. Petitioner, thus, approached this Court for a direction that the said judgment be declared ineffective in his case as he was not a party-respondent. It appears that in view of the fact that while giving effect of judgment recorded in CWP Nos. 6758 of 1986 and 7829 of 1988, when petitioner was going to be reverted from the post of Executive Engineer, he filed the present writ.

(22) In the written statement that has been filed on behalf of official respondents, judgment of learned Single Judge (J. L. Gupta, J.) has been pressed into service to deny to the petitioner claim made by him.

(23) Pleadings made in Civil Writ Petition Nos. 14527, 14533 and 14648 of 1993 are no different than the one made in CWP No. 2007 of 1992.

(24) Time is now ripe to notice the relevant rules of 1965 and the rival contentions of learned counsel representing the parties, based

on the said rules. Sub rule (2) of Rule 2 defines "appointment to service" so as to include an appointment, made according to the terms and provisions of the rules, to an officiating vacancy or an ex-cadre post. There is, however, a proviso attached to the said definition which says that an officer so appointed shall not be deemed to have become a member of the service as defined in clause (12). Sub rule (4) of Rule 2 defines "cadre post" to mean a permanent post in the service, Sub rule (10) of Rule 2 defines "ex-cadre post" to mean a temporary post of the same rank as a cadre post and term "member of service" has been defined in sub rule (12) of rule 2 to mean an officer appointed substantively to a cadre post and includes (a) in the case of a direct appointment an officer on probation or an officer, who, having successfully completed his probation, awaits appointment to a cadre post ; and (b) in the case of an appointment by transfer, an officer, who is on probation or who, having successfully completed his probation awaits appointment to a lien on a substantive post in any Government Department.

(25) Rule 6 deals with recruitment in service Rules 7 and 8 deal with qualifications and other conditions of appointment by way of direct recruitment. Rule 9 deals with appointment by promotion whereas rule 12 deals with seniority. We shall make a reference to rules 7 and 8 wherever required but, inasmuch as, the contentions raised by learned counsel for the parties centre around the interpretation of Rules 6, 9 and 12, same need to be reproduced in ex-tenso :-

6. Recruitment to service :—(1) Recruitment to the Service for cadre and ex-cadre post shall be made in the following manner only from the sources listed below in the proportions and the order indicated against a lot of every 40 vacancies :—

Method of Recruitment	Proportion	Allocation to each source in a lot of 40 vacancies				
1. Direct appointment	26	5	6	5	5	5
2. Promotion from the members of the Punjab PWD (B&R), Sectional Officers (Engineering) Service	8	2	1	2	1	2
3. Promotion from Draftsmen members of the Draftsmen and Tracer Service	2	1	—	—	1	—
4. Promotion from the members of the Punjab PWD (B&R) Sectional Officers (Engineering) Service and the Draftsmen	4	—	1	1	1	1

member of the Draftsmen
and Tracer Service possessing
qualifications, prescribed in
Appendix "B".

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- (2) In case suitable candidates are not available from source No. (4), the vacancies shall be filled by direct recruitment.
- (3) In case a candidate is not available from sources 1 and 3 and a person has to be appointed, in public interest, as a stop gap arrangement from other than the allotted source such a person shall be liable to be reverted to his original cadre when a candidate from the allotted source is available and the period of service rendered by such person will not be reckoned for the purpose of seniority.
- (4) The Government may fill a short term vacancy, in the exigencies of the Public service, after recording specific reasons, for a period not exceeding six months in each case by local arrangement from among the members of the Punjab P.W.D. (B&R) Sectional Officers (Engineering) Service, without resorting to the select list prepared under rule 9.
- (5) No person, except to the extent provided under sub rule (4)-
- (a) who is not substantive member of the P.W.D. (Building and Roads Branch) Class II Service or a member of P.S.E. (B&R) Class I Service in the Junior Scale on the date of enforcement of these rules, or
- (b) who is not considered suitable for appointment to the Service as provided in rule 7 read with Appendix 'G' shall hold the post of a Sub Divisional Officer, even in an officiating capacity, unless he is declared within a period of six months from the date of enforcement of these rules, as, suitable for appointment to the Service under the provisions of these rules.

9. Appointment by promotion—(1) A committee consisting of Chairman of the Punjab Public Service Commission or where the Chairman is unable to attend any other member of the Commission representing it, Secretary PWD, Building and Roads Branch and Chief Engineer of P.W.D., Buildings and Roads shall be constituted.

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- (2) The Chairman or the member of the Commission, as the case may be, shall preside over the meeting of this Committee.
 - (3) The Committee shall meet at intervals, ordinarily not exceeding one year and consider the cases of all eligible officials for promotion to the Service, as on the first day of January of that year.
 - (4) The Committee shall prepare a list of officials suitable for promotion to the Service. The Selection for inclusion in such list shall be based on merit and suitability in all respects with due regard to seniority.
 - (5) The names of the officers included in this list shall be arranged in order of seniority in Punjab P.W.D. (B&R) Sectional Officers (Engineering) Service and members of Draftsmen and Tracers Service. Provided that any Junior Officer, who, in the opinion of the Committee, is of exceptional merit and suitability may be assigned a place in the list higher than that of officers senior to him in his own class.
 - (6) The list so prepared shall be revised every year.
 - (7) If in the process of preparing the list or its revision, it is proposed to supersede any eligible candidate, the Committee shall draw up a list of such officials and may record its reasons for proposed supersession.
 - (8) The list prepared or revised in accordance with sub-rules (4), (5) and (6) shall then be forwarded to the Commission by Government along with :—
 - (i) the records of officials included in the list ;
 - (ii) records of all officials proposed to be superseded as a result of the recommendations made by the Committee ;
 - (iii) the reasons, if any, recorded by the Committee for the proposed supersession of any official ; and
 - (iv) the observations, if any of the State Government on the recommendations of the Committee.
 - (9) The Commission shall consider the list prepared by the Committee along with other documents received from the State Government and unless it considers any change necessary, approve the list.

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- (10) If the Commission considers it necessary to make any changes in the list received from Government, the Commission shall make the changes proposed and forward the list it considers suitable to the State Government.
- (11) Appointment to the service shall be made by Government from this list in the order in which names have been placed by the Commission.
- (12) Appointment by promotion may be made to an ex-cadre post, or to any post in the cadre in an official capacity from the list, prepared under this rule."

12. *Seniority* :—(1) Except as provided in sub-rule (5), of this rule relating to officers appointed by transfer, the seniority of the members of the Service shall be determined by the order of appointment in service according to rule 6, 8 and 9 irrespective of their date of joining :

Provided that where the period of probation of an officer has been extended the order of appointment shall be deemed to have issued on a date determined by adding to the original date the extended period of probation.

- (2) The *inter se* seniority of the members of the service shall be in the order of recruitment provided under rule 6 :

Provided that in case an officer does not join his appointment within six months of the date of order of appointment his seniority shall be determined by Government on an *ad hoc* basis after taking into consideration all the circumstances of the case.

- (3) The *inter se* seniority within the group of direct recruitment shall be as in the merit grading under rule 8.
- (4) The inter-se seniority within the group of promoted officers (from a particular source) shall be as in the list approved under rule 9.
- (5) In the case of an officer appointed by transfer as an Assistant Engineer, while normally he would be placed junior to all the officers appointed directly or by promotion as Assistant Engineers in a particular year, the Government may, in the interest of the public service and taking into consideration all the circumstances of the case, fix his seniority on an *ad hoc* basis :

Provided that the seniority thus fixed shall, in no case, be more favourable than the seniority determined after allowing him credit for the period of service rendered by him in previous appointment as Assistant Engineer or on a post the duties of which, in the opinion of the Government, are of equivalent or greater responsibility. The decision of Government on this point shall be final :

Provided further that the provisions of proviso to sub-rule (1) shall apply to such an officer if his period of probation is extended.

(26) Mr. Sibal, learned counsel for the appellants-direct recruits and Mr. Dhillon, learned Additional Advocate General, Punjab, supporting him, contend, that sub rule (2) of Rule 6 contains a mandate to the effect that in case suitable candidates are not available from source 4, vacancy shall have to be filled by direct recruitment. It is this rule which is specifically pressed into service for the proposition as noted in the earlier part of the judgment. Other rules are pressed into service in support of what has been said in sub rule (2) of Rule 6. The counsel representing promotees from source 4, however, lay a discordant note with regard to mandate contained in the said rule. They plead that in view of rule 9, it is to be interpreted to mean that the same is directory in nature.

(27) We have given our anxious thoughts to the rival contentions of learned counsel representing the parties, as noted above, but, after examining the pleadings and relevant rules, we are of the firm view that in case a slot meant to be occupied by a person belonging to source 4 is lying vacant and a person from the said source is not available for whatever reasons, in the present case not having the requisite but necessary qualification of AMIE that alone clothes him with eligibility for promotion, the slot meant for him in the 40 point roster has to go to a direct recruit, if available. The recruitment to service is for both cadre and ex-cadre posts and has to be made only from the sources enlisted in 40 point roster in proportions and in order indicated therein. Ex-cadre post has been defined in sub-rule (10) of rule 2 to mean a temporary post of the same rank as a cadre post. Whereas, cadre post mean a permanent post in service as per sub rule (4) of rule 2, appointment to service, as mentioned above, includes appointments made according to the terms and provisions of the rules to an officiating vacancy or an ex-cadre post. However, an officer so appointed cannot be deemed to have become a member of service which in turn has been defined in sub-rule (12) of Rule 2 to mean an officer appointed substantively to a cadre post which, of course, includes, in case of direct appointment, an officer on probation. If one is now to read rule 6, it

would be quite apparent that there may arise a situation where appointment to an ex-cadre post, which is temporary one, has to be resorted to. Before we might proceed any further, it would, however, be very significant to mention that a person appointed to ex-cadre post, does not become a member of service. Sub rule (3) of rule 6 in terms states that in case a candidate is not available from source 1 and 3 and a person has to be appointed, in public interest as a stop gap arrangement from other than the allotted source, such a person shall be liable to be reverted to his original cadre when a candidate from the allotted source is available and the period or service rendered by him will not be reckoned for the purpose of seniority. The Government may also have to resort to filling up short term vacancy in exigency of public service. From reading of sub-rules (3) and (4) of rule 6, it clearly emerges that when candidates from source 1 and 3 are not available, it is possible to make appointments on temporary basis which shall have to be termed as an ex-cadre post. It further emerges very pertinently that any such appointment made would not clothe such person with any right under the rules as he has to be necessarily reverted when candidates from sources 1 and 3 become available for appointment. What further emerges from reading of sub rules (3) and (4) and which really seals the contentions raised on behalf of respondents belonging to source 4 is that stop gap arrangement can be made only in case candidates from sources 1 and 3 are not available and not when candidates from the said source, i.e. source 4 are not available. In the later eventuality, i.e., when suitable candidates are not available from source 4, sub-rule (2) of rule 6 really takes care of that. The said sub-rule quite in contrast to sub rules (3) and (4), does not talk of stop gap arrangement or appointment to an ex-cadre post. That being the situation, it is not only sub rule (2) of rule 6 which lends support to the contention raised by Mr. Sibal, but sub rules (3) and (4) of the same very rule really clinch the issue beyond any pale of controversy.

(28) Much stress has, however, been laid on rule 9 by counsel representing the respondents belonging to source 4. The contention raised on their behalf is that the Committee constituted under sub rule (1) of rule 9, shall meet at intervals, ordinarily not exceeding one year, and consider the cases of all eligible officials for promotion to the service, as on the first day of January of that year and the said Committee has then to prepare a list of officials suitable for promotion to the service. Selection for inclusion in such list has to be based on merit and suitability in all respects with due regard to seniority. This list, as per sub rule (6) has to be revised every year. It is argued that if, perhaps, constituted committee was to do the exercise enjoined upon it under rule 9, list of eligible persons for promotion would have been

prepared and promotions accordingly made. It is stated that the Committee was either not constituted or, if constituted, it did not do the exercise enjoined upon it. In these circumstances sub rule (2) of Rule 6 cannot be interpreted to be madatory in nature and, therefore, the direct recruit could not occupy the slot meant for source 4 candidate as per 40 point roster. We have absolutely no hesitation in repelling this argument.

(29) Before we might give our reasons for repelling the contention raised by learned counsel, as noted above, it may be relevant to mention here that in para 11 of the writ petition it has been specifically averred that the official respondents issued a tentative roster in the year 1972 and this roster was treated as seniority list as well by the department. In the tentative roster, the respondents, who were appointed to the service from source 4, in the year 1974, or thereafter, i.e., much after the petitioners' appointment by direct recruitment in the year 1972, were shown in roster at points 96, 104, 112, 120, 136, 144, 152, 160, 176, 184, 192, 200, 216, 224 and 232. It is then pleaded that these points should have gone to the petitioners and the respondents could not be shown at the aforesaid roster points inasmuch as they were not available/eligible in the year 1972 when petitioners were appointed by way of direct recruitment. It is further significant to note that as many as 105 direct recruits came to be appointed in one lot in 1972. The official respondents, while giving reply to these averments made in para 11 of the writ petitioner, admitted that the tentative roster was circulated in the year 1979 and the posts meant for private respondents were shown at serial numbers, as mentioned against their quota posts. This tentative roster was finalised partly,—*vide* letters dated 2nd September, 1979 and 23rd September, 1979. It is then pleaded that the posts meant for candidates belonging to source 4 were kept reserved for them and none of the petitioners was appointed against the posts. The private respondents, except S.B. Goel and N. K. Mittal, were not eligible but later on they became eligible and appointed initially on *ad hoc* basis and then to P.S.E. Class II against the posts meant for their quota which were kept vacant and reserved for them. Pleadings of the parties, thus, manifest that even though the posts meant to be occupied by candidates from source 4 were lying vacant when the petitioners directly came to be appointed, affect to sub rule (2) of Rule 6 was not given. Quite to the contrary, the posts meant to be occupied by candidates from source 4 in the 40 point roster, were kept reserved. The private respondents were, thus, accomodated in the slots meant for them in the 40 point roster when they obtained the qualification of AMIE but from a date when the post became vacant. It is, thus, not a case where because of non-exercise. required to be done

under rule 9, candidates from source 4 could not be promoted. In other words, even if Committee constituted under Rule 9 was to do the exercise, as mentioned above, candidates from source 4 would have not figured in the list meant for promotion from the quota of promotees. No occasion at all, thus, arises to even consider the contention raised by learned counsel for the respondents belonging to source 4 that for not making a list, as required under rule 9, sub rule (2) of rule 6 should not be held mandatory.

(30) Mr. Rajiv Atma Ram, learned counsel representing the respondents, however, relies upon a judgment of the Supreme Court in *Syed Khalid Rizvi & Ors. v. Union of India & Ors.* (1), in support of his contention that the Committee constituted under rule 9 had to do the exercise enjoined upon it. It has been observed by the Apex Court although in entirely different set of facts and circumstances, that preparation of select list every year is mandatory. Hon'ble Supreme Court was dealing with Section 3(3)(b) of the I.P.S. (Appointment by Promotion) Regulation, 1955. While observing that preparation of select list every year was mandatory, it was further observed that it would subserve the object of the Act and the rules and afford an equal opportunity to the promotee officers to reach higher echelons of the service and that the dereliction of the statutory duty must satisfactorily be accounted for by the State Government concerned". This judgment is of no assistance to the promotees from source 4.

(31) What still survives for our consideration is the reasons given by the learned Single Judge to hold that rule 6(2) enables the Government to fill up a vacancy belonging to the share of persons from source 4 by direct recruitment and that by this provision the order of appointment laid down under rule 6(1) is not affected or, in other words, the sequence of appointment contemplated under rule 6 (1) has to be reflected in the seniority and further that even though rule 6 (2) enables the Government to divert the vacancy available for being filled up from source 4 to direct recruit, slot is not altered. Obviously, Mr. Rajiv Atma Ram, learned counsel representing the respondents defends the judgment, subject matter of appeal, on the reasons given by the learned Single Judge. Learned Single Judge, after reproducing the relevant service rules, observed that the controversy between the parties hinges primarily on the interpretation of rule 6, perusal whereof would reveal that recruitment to service could be made only from four specified sources. Specific quota has been assigned to each of the sources. Out of 40 posts, 26 have to be filled by direct recruitment, 8 by promotion from the members of the Punjab PWD (B&R) Sectional Officers

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(Engineering) Service etc., 2 posts have to be filled from amongst the members of the draftsmen and tracer service and 4 posts have been allocated to the category of Sectional Officers and Draftsman etc., who possess any of the qualifications specified in Appendix "B". It was further observed that the rule laid down that the recruitment has to be made in the "order" indicated therein. It was further held, from reading of sub-rule (1) of Rule 6, that the same clearly fixed that the appointment has to be made in the order specified therein. The observations of learned Single Judge further proceed by holding that the said rule postulates the 'manner' and the 'order' of recruitment to service and it does not merely lay down the sources and the manner in which the appointment has to be made, but also fixes the 'proportion and the order' of appointment. It was further observed that it did not merely lay down quota, but specified the vacancies which had to be filled from each source and that rule 6 (1) not only laid down quota but also 'rota'. There may not be any exception to what has been held by the learned Single Judge if the same was with regard to sources 1 and 3 but the controversy, which really veers thick, is on the interpretation given by learned Single Judge to sub rule (2) of Rule 6. Even though it was held that the rule enables the Government to divert the vacancies to be filled up from source 4 to direct recruit, it was further held that the slot is not altered. As mentioned above, direct recruits, in no unequivocal terms, suggest that by operation of sub rule (2) of rule 6, slot has to be necessarily altered. However, while holding that slot will not be altered, learned Single Judge relied upon rule 12 dealing with seniority. Sub rule (1) of Rule 12, no doubt provides that seniority of the members of the service has to be determined by the order of appointment in service according to rules 6, 8 and 9 irrespective of their date of joining. It is further true that as per clauses (1) and (2) of rule 12, *inter se* seniority of the members of service has to be determined in the order of recruitment as provided under rule 6, as held by the learned Single Judge, but this proposition, in our view, would hold true for sources other than source 4. Insofar as source 4 is concerned, sub rule (2) of Rule 6 takes care of the situation when candidates from source 4 are not available. The language employed in sub rule (2) of rule 6 leaves no choice with the Government but for to make appointments and that too only by direct recruits to the vacant slots otherwise meant to be occupied by the candidates from source 4. If sub rule (2) of rule 6 is resorted to and which, in our view, has to be, obviously slot in the 40 point roster meant to be occupied by a candidate from source 4 would stand exhausted. Sub rule (2) of rule 6 is an exception to rule 6 (1). Proportion and order indicated against a block of every 40 vacancies in rule 6 (1) has to be adhered to but the same is subject to sub rule (2) of Rule 6. If that, perhaps, was not so, there would have been no necessity

for the legislature to incorporate sub rule (2) of Rule 6. The matter can be looked from yet another angle. In accordance with sub rule (1) of Rule 12, *inter se* seniority of the members of service has to be determined by the order of appointment in service according to rules 6, 8 and 9 irrespective of their date of joining and as per sub rule (2) of rule 12, *inter se* seniority of members of service has to be in order of recruitment provided under rule 6. The mention in both, sub rule 1 and 2 of Rule 12 is of Rule 6 and not of rule 6 (1) only. The very mention of Rule 6, sans sub rule (1) or (2), would take in its sweep whole of the rule and not a part thereof. If that be so, the slot meant to be occupied by a candidate from source 4, in the event the candidate from the said source is not available, stands exhausted by the direct recruit and it is after operation of whole of rule 6 that rule 12 with regard to seniority will come into play. In other words, slot meant to be occupied by candidate of source 4, which has since been diverted to direct recruit, shall be deemed to be as if filled from source 4 only and it is in that way only that *inter se* seniority of the members of service shall be in order of recruitment in service, as mentioned in sub rule (2) of Rule 12.

(32) Before we may part with interpretation and application of rules 6 and 12, we would like to mention that it is well settled that rule must be interpreted by the written text. If the precise words used are plain and unambiguous, the court is bound to construe them in their ordinary sense and give them full effect. This was so held in *Dr. Ajay Pradhan v. Sanjay Kumar Shrivastava* (2). The Apex Court in *Dr. Ajay Pradhan's* case further held that the pleas of inconvenience and hardship is a dangerous one and is only admissible in construction where the meaning of the statute is obscure and there are alternative methods of construction. Where the language is explicit its consequences are for Parliament, and not for the Courts, to consider. Sub rule (2) of Rule 6, in our view has to be interpreted by its written text and the precise words used therein are plain and unambiguous. It has been clearly stipulated in sub rule (2) of Rule 6 that in case suitable candidates are not available from source 4, the vacancies shall be filled by direct recruitment. There is nothing mentioned in sub rule (2) from which it may be permissible, even by implication, to hold that such vacancy shall have to be filled only by temporary arrangement in contrast to the situation given in sub rules (3) and (4) of the same very rule. It may be recalled that in case a candidate is not available from sources 1 and 3 and a person has to be appointed in public interest as a stop gap arrangement from other than the allotted source, such a person shall be reverted to his original cadre when a candidate from the allotted source is available and the period of service rendered by

such person will not be reckoned for the purpose of seniority. The Government can also fill up a short term vacancy in exigency of public service. Non-availability of a person from sources 1 and 3 has been separately catered for by different method and with different results. Such vacancies can be filled only by way of stop gap arrangement and can well be said to be appointments on ex-cadre posts. If the legislature really intended that non-availability of a candidate from source 4 would result into making the stop gap arrangement, there was no difficulty in mentioning source 4 as well in sub rule (3). A separate rule dealing with non-availability of a candidate from source 4 has been provided for and the same cannot be without any meaning. We are sanguine that providing for entirely a different rule for source 4 in contrast to the one provided for sources 1 and 3, in the same eventuality, i.e., non-availability of a candidate from these sources, clearly goes to show that the legislature intended that when candidate from source 4 is not available, his slot must go to a candidate from source 1, i.e., direct recruit. It is further significant to note that such a replacement in the 40 point roster can be done only by source 1 and not by source 2 and 3. This further clarifies the intention of legislature in doing away with the slot meant for source 4 if the candidate from the said source is not available and that too on permanent basis and not on temporary or *ad hoc* basis.

(33) The primary rule of interpretation of statute is that words used in a section must be given their plain grammatical meaning. It is a very useful rule in the construction of a statute to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the Legislature to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified so as to avoid such inconvenience, but no further. If one is to go either by ordinary meaning employed in sub rule (2) of Rule 6 or by the intention of legislature, which, can well be gathered from sub rules 2 and 3, it would pertinently reflect that the intention of legislature was to replace the slot meant otherwise to be occupied by a candidate from source 4 in the event such candidate is not available when the vacancy in the said source occurs.

(34) As an up-shot to the above discussion, whereas, we are in confirmity with the interpretation given by learned Single Judge to rules 6 and 12 but we further hold that the same can be true only insofar as sources 1 and 3 are concerned. The discordant view that we are lying down is with regard to source 4 and to the extent that slot is not altered and further that direct recruit, on a vacant slot meant to be

occupied by source 4, does not occupy the post meant for the said source, i.e., source 4, temporarily.

(35) The controversy on interpretation of rules having been settled, what still survives for consideration is as to whether Civil Writ Petition No. 5265 of 1983 filed by direct recruits was belated or time barred, as has been held by the learned Single Judge. While giving facts of the case, learned Single Judge observed that it has been claimed by the petitioners, i.e., direct recruits that roster-cum-seniority list dated 28th May, 1980 is illegal and needs to be quashed. It has further been observed that this claim is based on the premises that the petitioners were recruited against the vacancies reserved for persons from source No. 4 and accordingly private respondents could not be senior to them. It has further been observed that on behalf of the respondents it was averred that no objection was raised by any of the petitioners against the tentative roster/seniority list issued,—*vide* letter dated 2nd May, 1979 and 19th October, 1979 and that final seniority list had been issued in May, 1980 and the writ petition had been filed after a lapse of more than three years on 3rd November, 1983. While so observing, learned Single Judge held that writ petition deserves to be dismissed on the short ground of delay as admittedly the impugned list had been issued on 28th May, 1980 and writ petition was filed on 3rd November, 1983. While dealing with the representation of the petitioners that was made on 24th June, 1983 it was observed that the same was submitted after more than three years from the date when impugned list had been circulated and for that there was no law under which the petitioners could have made representation. It has further been observed that representation if any, had to be made promptly and the petitioners having not done so, petition suffers from vice of delay and laches and deserves to be dismissed on that ground alone.

(36) Having heard learned counsel for the parties on the question of delay and laches, we are of the view that the reasons given by the learned Single Judge, in the context of the facts and circumstances of this case, cannot sustain. The Supreme Court in *Ramchandra Shankar Deodhar and Ors. v. The State of Maharashtra & Ors.* (3), held that “the rule which says that a Court may not inquire into belated or stale claims is not a rule of law” but a rule of practice based on sound and proper exercise of discretion and there is no inviolable rule that whenever there is delay the court must necessarily refuse to entertain the petition. The question is one of discretion to be followed on the facts of each case. It was further observed that “it may also be noted that the principle on which the court proceeds in refusing relief to the petitioner

on ground of laches or delay is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there was reasonable explanation for the delay. It may be noticed that the claim for enforcement of the fundamental right of equal opportunity under Article 16 is itself a fundamental right guaranteed under Article 32 and this Court which has been assigned the role of a sentinel on the *qui viva* for protection of the fundamental rights can not easily allow itself to be persuaded to refuse relief solely on the jejune ground of laches, delay or the like". While so holding Apex Court relied upon its earlier judgments in *Rabindra Nath Bose & Ors., v. Union of India & Ors* (4) and *Trilok Chand Motichand v. H.B. Munshi* (5). In the present case, it has been case of direct recruits that a tentative seniority list was initially prepared against which objections were raised. The direct recruits did raise objections to the tentative roster and even though final roster was approved, a copy of the same was not circulated to any of the members of service. That constrained the direct recruits to make representations. Last representation was made on 24th June, 1983 which was given by the General Secretary of the Haryana (Sic; Punjab) Construction Sub Division, Hoshiarpur. A copy of the said representation was annexed as Annexure P-3 with the writ petition. It is interesting to note that in reply to the averments made to the effect aforesaid, official respondents in the corresponding para stated that "Admitted to the extent that respondent No. 1 in the year 1980 approved the final roster and the same was sent to the respondent No. 2 for circulation amongst all the concerned officers in PSE Class II, but there being some omissions in the roster in question, the matter was again taken up by respondent No. 2 with respondent No. 1 to review the roster. The matter is still under consideration of respondent No. 1". It appears that attention of the learned Single Judge was not drawn to these averments made by the official respondents. Surely, if it was so done, no occasion at all would have arisen for learned Single Judge to have proceeded on the basis that a final seniority list/roster was prepared in the year 1980. It may be recalled that it is from this day that the learned Single Judge reckoned the delay and laches and the writ petition having been filed after three years, same was held to be belated or suffering from delay and laches. By the time direct recruits approached this Court by way of writ petition, it would, thus, be apparent that final seniority had not been prepared and the matter was still under consideration of the Government. Further, it was no where the case of any of the private respondents that some right had accrued to them by way of promotion or otherwise. The direct recruits were, thus, not even endeavouring to

(4) AIR 1970 S.C. 470

(5) AIR 1970 S.C. 898.

unsettle the settled position. Further, the petitioners are asking for a right that flows to them under the statute which, the Government, as on today atleast, accepts, has been wrongly interpreted by it. Such a right which flows to a citizen under a statute can not be simply rejected on the ground of delay and laches which, in any case, in the present case, as per the stand of respondents, is of not more than a little over three years. Mr. Rajiv Atma Ram, learned counsel for respondents has, however, relied upon *B. S. Bajwa v. State of Punjab & Ors.* (6), *B. V. Siyaiah & Ors. v. Addanki Babu and Ors.* (7), *The State of Punjab & Ors. v. Gurdev Singh Ashok Kumar* (8) and *G. C. Gupta & Ors. v. N. K. Pandey and Ors.* (9), so as to decline the relief to the direct recruits on the ground of delay and laches. We need not give the detailed facts of the cases, relied upon by learned counsel for the respondents as suffice it to say that it has been repeatedly held by the Apex Court that the rule which says that a court may not inquire into belated or stale claim is not a rule of law but a rule of practice based on sound and proper exercise of discretion. That apart, we have already held that there was no delay in this case inasmuch as seniority list/roster framed by the official respondents had since not been finalised and before that could be done, writ was filed.

(37) In view of what has been said above, L.P.A. Nos. 1533 and 1534 of 1991 filed by the State of Punjab are allowed. Other three LPA Nos. 950, 951 and 966 of 1991, which too have been filed against the same judgment of the learned Single Judge, by direct recruits, are also allowed. Resultantly, decision rendered by the learned Single Judge, dated 18th July, 1991,—*vide* which all the writ petitions giving rise to LPAs aforesaid, were decided, is set aside. Whereas, CWP No. 5263 of 1983 is allowed, CWP Nos. 6758 of 1986 and 7829 of 1988 filed by promotees from source 4, are dismissed.

(38) LPA Nos. 852 and 853 of 1992, which have been filed by promotees from source 4 against the judgment of learned Single Judge recorded in CWP Nos. 3523 and 3525 of 1988, on 25th July, 1991, are dismissed. The view taken by learned Single Judge (N.K. Sodhi, J.) in these cases, which, as referred to above, is contrary to the one taken by another learned Single Judge (J. L. Gupta, J.) in CWP Nos. 5265 of 1983, 6758 of 1986 and 7829 of 1988, is upheld. CWP Nos. 5416 of 1991 and 9602 of 1996 filed by promotees from source 4 are dismissed. CWP Nos. 2007 of 1992, 14527, 14533 and 14698 of 1993, which have been filed by direct recruits from source 1 are allowed.

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- (6) JT 1998 (1) S.C. 57
 - (7) AIR 1998 S.C. 2565
 - (8) JT 1991 (3) S.C. 465
 - (9) 1988 (7) SLR 706

(39) While disposing of the bunch of these cases, we direct the official respondents to prepare a final seniority list in view of law laid down by us in this judgment. Since a considerable time has already elapsed, we direct the official respondents to do the said exercise as enjoined upon them by virtue of rules 6 and 12 of Rules of 1965 as expeditiously as possible and preferably within six weeks from the date a certified copy of this judgment is received by them.

(40) In peculiar facts and circumstances of the case, parties are left to bear their own costs throughout.

R.N.R.

Before Iqbal Singh, J.

THE PUNJAB STATE THROUGH, THE EXECUTIVE ENGINEER,
CENTRAL WORKS DIVISION, P.W.D. & ANOTHER,—*Petitioners*

versus

M/S. PRITAM SINGH & SONS—*Respondent*

Civil Revision No. 4513 of 1998

4th June, 1990

*Arbitration & Conciliation Act, 1996, Ss.—13, 14, 15 & 27—
Official arbitrator—Retired—Succeeding officer continuing
proceedings—Parties not raising any objection—Whether succeeding
officer can continue as arbitrator.*

Held that, in addition to the circumstances referred to in section 13 or section 14, the mandate of an arbitrator shall terminate—(a) where he withdraws from office for any reason ; or (b) by or pursuant to agreement of the parties. The narration of the various dates in extenso above shows that Mr. T.S. Kamboj, the sole Arbitrator withdrew from the office on account of his retirement. He did not proceed with the matter after 24th February, 1998. In fact, once an Arbitrator had demitted his office on account of his retirement and proceedings were taken up by his successor and parties to the agreement never objected to the proceedings before the successor of the sole Arbitrator, it can be safely held that the parties agreed to get the matter being taken up by the successor of Mr. T.S. Kamboj, the sole Arbitrator.

J.S. Brar, D.A.G., *Pb. for the Petitioner*

Pawan Bansal, *Advocate for the Respondent.*