

CENTRAL ADMINISTRATIVE TRIBUNAL

JAMMU BENCH, JAMMU

Hearing through video conferencing

T.A. No. 61/43/2020

Order reserved on 29.01.2021

Order pronounced on 04.03.2021



HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

HON'BLE MR. ANAND MATHUR, MEMBER (A)

1. Janak Sharma, aged 54 years, S/o Late Jagpati Sharma, R/o H. No. 25-A, Lane No. 27-A1, Tawi Vihar, Sidhra, Jammu.
2. Subash Chander, aged 55 years, S/o late Nandlal, R/o H. No. 88, Housing Colony, Udampur.
3. Anil Gupta, aged 54 years, S/o Shri Bansi Lal Gupta, R/o H. No. 25-B, Lane No. 27, Tawi Vihar, Sidhra, Jammu.

.....Applicants

Advocate: Mr. Pranav Kohli

Versus

1. Union Territory of Jammu & Kashmir through Commissioner-cum-Secretary to Government, Public Health Engineering Department, Irrigation and Flood Control Department, Civil Secretariat, Jammu.
2. Special Secretary to Department, PHE, Irrigation and Flood Control, Civil Secretariat, Srinagar.
3. Dy. Secretary to Government (HRM), PHE/I&FC Department, Civil Secretariat, Jammu.
4. Ashwani Kumar
5. Rajeev Kumar
6. Braham Jyoti Sharma



7. Ashok Kumar Gupta
8. Anil Gupta
9. Sunil Kumar Sharma
10. Ajay Kumar Talwar
11. Ram Kumar Gupta
12. Vijay Kumar Sharma

.....Respondents

Advocate: Mr. Amit Gupta, Additional Advocate General

(ORDER)

(DELIVERED BY HON'BLE MR. RAKESH SAGAR JAIN, MEMBER-J)

Applicants Janak Sharma, Subhash Chander and Anil Gupta have filed this T.A. seeking the following reliefs:-

- i. Certiorari seeking quashment of the Government Order No. 454-PW (Hyd) of 2019 dated 02.12.2019 by virtue of which claim of the petitioners in the light of directions passed by the Hon'ble Court on 02.08.2019 and 20.09.2019 in SWP No. 3272/2019 has been rejected by the respondents.
- ii. Certiorari seeking quashment of Promotion/adjustment Order bearing No. 42-PW (Hyd) of 2010 dated 31.01.2020 by virtue of which charge has been assigned to various AEEs as XeNs.
- iii. Mandamus commanding upon the respondents to implement SRO 14 dated 15.01.2016 and grant consequent promotion to the petitioners to the post of Executive Engineers in terms of amended schedule for Class-III category –'A' of J&K Engineering (Gazetted) Services Recruitment Rules, 1978.
- iv. Prohibition restraining the respondents from making any further promotions/temporary arrangements to the post of Executive Engineer from the Feeding Cadre of Assistant Executive Engineer (Hydraulic) in violation of Rule 61 and 62 of J&K Civil Service (Leave) Rules, 1979 read with SRO 346 dated 17th October, 2012.



- v. Mandamus commanding upon the respondents to accord charge of the post of Executive Engineer in favour of petitioners as being eligible in the light of SRO 14 datd 15.01.2016.
- vi. Mandamus commanding upon the respondents to grant the promotion to the petitioners to the post of Executive Engineer and place them appropriately with retrospective effect in the seniority list of Executive Engineers with all consequential benefits.
- viii. Any other appropriate order, direction or command which this Hon'ble Court may deem fit and proper in the given facts and circumstances of the case may kindly be passed in favour of the petitioners as against the Respondent."

2. The case of the applicants is that applicant no. 3 secured Masters in Engineering/M.Tech in Irrigation and Hydraulic before joining the service as Junior Engineer in 1994. Whereas applicant no. 1 and 2 during the currency of their service as junior engineers got sponsored by the Government and granted study leave whereby they obtained higher qualification of post graduation in M.Tech in Environmental Engineering and Management from IIT/NIT. It is the case of the applicants that before grant of study leave the Government on seeking information from the concerned Chief Engineers were informed vide communication dated 27.06.2016 (Annexure No. VII and VIII) that the post graduate course to be undergone by the said applicant no. 1 and 2 is of definite advantage from the point of view of public interest and is aimed at capacity building of in service engineers by updating the technical knowledge, and the same would help in better service to the common public and that there is dearth of M.Tech Engineers in the Department.

3. It is the further case of the applicants that SRO 14 dated 15.01.2016 was issued whereby the schedule annexed J&K Engineering (Gazetted) Services Recruitment Rules, 1978 (hereinafter referred to as rules) was amended. It would be fruitful to refer to reproduce the rules pertaining to promotion to the post of

Executive Engineer in this regard. The Schedule to J&K Engineering (Gazetted) Services Recruitment Rules, 1978 is reproduced below:-



III	A	(1) Executive Engineer (2) Dy. Director (3) Tech PA to C.E. (4) Officer on Special Duty	(a) 80% by promotion from Class IV Category A amongst persons possessing Bachelor's Degree in Engineering or AMIE Section (A&B) India, with atleast 8 years of total Gazetted Service in the same branch of Engineering in which appointment is to be made with at least 4 years experience as Asstt. Executive Engineer.
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4. SRO-14 dated 15.01.2016 (Annexure-IX) made the following amendment:-
 "SRO-14.- In exercise of the powers conferred by the proviso to section 124 of the Constitution of Jammu and Kashmir, the Governor hereby directs that in the Schedule annexed to the Jammu and Kashmir Engineering (Gazetted Service) Recruitment Rules, 1978, as amended vide SRO-297 of 2006, the following amendments shall be made; namely:-

Against Class-III, Category 'A' in column (5) under the heading qualification and method of recruitment, at the end of entry (a), the following proviso shall be added:

"Provided that for promotion against 10% of the vacancies preference shall be given to available eligible persons having an additional qualification of post-graduation in the relevant field of Engineering."



5. It is the case of the applicants that they fulfil the qualifications required for their promotion from the post of Assistant Executive Engineers to the post of Executive Engineer in terms of the aforementioned rules and amendment (SRO-14). It is averred in the petition that the respondents in violation of the rules as well as SRO-14 have made promotions after issuance of SRO-14 as detailed in the petition as well as Annexure-XI. As per the promotions detailed in the petition, out of the hundred promotions to the post of Executive Engineers, the post graduate Assistant Executive Engineers are entitled to preferential promotion. However, respondents have promoted only two post graduates against the entitlement of the post graduate engineers to be promoted against 10 post. The applicants are figuring at serial no. 214, 257 and 258 in the seniority list of junior engineers and therefore, entitled to be promoted to the post of Executive Engineers on the basis of holding the post graduate degrees. It is their case, that all the aforementioned promotions are either temporary adjustments or placement orders and that respondents have not made any substantial promotions in the department. That the promotions being made in contravention of SRO-14 are null and void and the seniority of Executive Engineer is required to redrawn and the applicants are required to be promoted and given seniority from the date of their entitlement for promotion to the post of Executive Engineers. It is also averred in the petition that the applicant had filed writ petition no. SWP No. 702/2019 titled Janak Sharma and ors vs State seeking preferential quota of 10 percent in promotions and implementation of SRO-14 dated 15.01.2016 in future promotions, which was disposed of Hon'ble High Court vide order dated 02.09.2019 (Annexure No. XIX) by giving the following directions:-

- “3. In view of the innocuous prayer made by learned counsel for the petitioners, this writ petition is disposed of with a direction to the respondents that in the event, respondents decide to make promotions against the post of Executive Engineers, the same be

done strictly in accordance with the rules governing the field and as per SRO 14 of 2016 dated 15.01.2016.

4. Writ Petition is, accordingly, disposed of, alongwith connected CMs.”



6. It is the case of the applicants that the respondents vide order dated 31.01.2020 made promotions without implementing 10 per cent preferential quota as given out in SRO-14 dated 15.01.2016. The applicants are also aggrieved by the Government Order No. 454-PW(Hyd) of 2019 dated 02.12.2019 whereby the claim of the applicants for promotions has been rejected by the respondents. Hence, the applicants seek quashment of impugned order dated 02.12.2019 (Annexure-I) whereby their claim for promotions in terms of SRO-14 has been rejected and as also the promotion order dated 31.01.2020 (Annexure-II). Besides a direction to the respondents to implement SRO-14 dated 15.01.2016 and grant promotion to the applicants to the post of Executive Engineers as per the rules and place them with retrospective effect in the seniority list of the Executive Engineers. The applicants seek the reliefs on the followings grounds:-

- a. Applicants being post graduates are entitled to preferential promotions as per SRO-297 dated 14.09.2006 read with SRO-14 dated 15.01.2016.
- b. The promotions/adjustments/placements made by the respondents are in violation of SRO-14 and denying the right of promotion to the applicants.
- c. Applicants are required to be promoted w.e.f., the date of the vacancies are approved and therefore, their seniority is to be fixed as per the date of their entitlement to the promotion to the post of Executive Engineers.
- d. The impugned order dated 02.12.2019 by virtue of which the claim of the applicants has been rejected by the respondents, is liable to



be quashed on the ground that it is evident from the information provided by the respondents under Right to Information Act wherein the respondent Department accepts the applicability of the SRO 14, dated 15.01.2016 and pertinently it has been stated that “02 posts were kept reserved in the previous proposal for M.Tech category candidates but orders were not issued at that time due to non availability of requisite information regarding qualification. One more vacancy has been made in the present proposal for M. Tech category candidates, thus, share as per SRO 14 is 03 vacancies for the said category”. Therefore, the information so provided by the respondents under RTI makes it abundantly clear that the respondents while making promotions from AEE to XENs have kept the share reserved for the M. Tech candidates and also depicts that as per the share, the vacancies in 2016 were notified to be 3. Now with the afflux of time and due to passing of various promotion/adjustment orders, number of vacancies in terms of SRO 14 dated 15.01.2016 has risen to 10. Thus, the rejection order issued by the respondents is contrary to the information so provided and is liable to be quashed.

- e. The respondents while according preferential treatment on the basis of higher qualification possessed by him on similar analogy have accorded benefit to Mr. Sanjay Kakroo, Incharge Assistant Executive Engineer (AEE) and promoted him to the post of Executive Engineer vide Order No. 58-PW(Hyd) of 2018, dated 06.02.2018. (Annexure-XXI) and therefore, the applicants are entitled equal treatment in the matter of promotions.
- f. The impugned order dated 13.09.2019 rejecting the representation of the applicants is devoid of any reasons and makes no mention of the information provided under the RTI as well as the interim order dated 13.09.2019 in WP (C) No. 3272/19 titled Janak Sharma and ors Vs State and ors which reads as follows (Annexure-XXII):-

“ It is contended that petitioners have filed an application under RTI Act, 2009 to ascertain as to whether the vacancies under SRO 14 of 2016 are available or not.

In response to the RTI, the respondents informed that two posts were kept reserved in the previous proposal for M. Tech. Category candidates, but orders were not issued at that time due to non-availability of information regarding qualification. One post is available in the present proposal for M. Tech. Category candidate. Thus, share as per SRO 14 is 03 vacancies for the said category.

Issue notice. Mr. K.D.S. Kotwal, learned Dy. AG waives notice on behalf of the respondents who shall file objections on or before the next date of hearing.

List against on 05.11.2019.

Meanwhile, respondents shall consider the promotion/appointment of the petitioner against the vacancy available in terms of information supplied under RTI in Post-Graduate/M. Tech candidate if the petitioner fulfils the eligibility criteria and of course under rules.”

g. The impugned orders are in violation of article 14 and 16 of the Constitution of India

7. In the counter affidavit filed by the respondents have averred that SRO-14 dated 15.01.2016 provides the preference and no reservation and therefore the applicants have failed to make a case of violation of any right. It is further averred in the counter affidavit that objections were received regarding the issuance of SRO-14 and therefore, an enquiry officer was appointed vide order dated 28.03.2016 to enquire as to whether the proper procedure was followed in issuing the SRO. Aggrieved by the order dated 28.03.2016 a Writ Petition being SWP No. 734/2016 titled Muzamil Ahmad Rafique and others vs State was filed wherein the Hon'ble High Court vide order dated 05.04.2016 directed as under:-



“Notice. It is provided that while respondents would continue with the Enquiry ordered vide Government Order No. 97-PW (Hyd) of 2016 dated 28.03.2016, they shall maintain status quo in respect of SRO-14 of 15.01.2016 till next date before the Bench.”



8. It is the case of the respondents that SRO-14 is a preference and not a reservation wherein an officer has to be necessarily posted against a reservation slot and that officers are posted against the reserved slot as per roster point which accrued to them and since SRO-14 is a preference, there is no roster as per the act. It is also averred in the counter affidavit that enquiry is pending in the matter and in the meantime, the applicants in the instant case filed a writ petition and pursuant to the directions passed by the Hon'ble High Court the matter considered afresh and it has been felt that SRO 14 dated 15.01.2016 is a preference and not a reservation wherein an officer has to be necessarily posted against a reservation slot. Officers are posted against the reserved slot as per roster point which accrued to them. However, in terms of SRO-14 since it is being a preference there is no roster as per the Act.

9. It has been further averred that it is a settled principle that a mere rule of preference, meant to give weightage to additional qualification cannot be enforced as a rule akin to reservation or rule of complete precedence. The preference has to be given only when the claim of all candidates, who are eligible/suitable are taken for consideration when any one or more of them are found equally positioned by using the additional qualification tilting factor in their favour viz-a-viz others in the matter of promotion. It is submitted that from the perusal of records it has been found that though the applicants are eligible for promotion as Executive Engineer but there are a number of other officers who are ahead of the applicants in the seniority as such applicants can't be considered as such claim of the applicants were considered and rejected vide Government Order No. 454-PW (Hyd) of 2019 dated 02.12.2019.



10. In the rejoinder affidavit, the stand taken by the applicants is that the respondents have taken a contradictory stand and that as many as three officers in PHE (Jal Shakti Department) who were possessed of M.Tech Degrees have been promoted in accordance with SRO-14 to the higher posts and therefore, the applicants are entitled to be given similar treatment since they possess post graduate degrees.

11. So, the question arises for adjudication is whether the applicants by virtue of holding Post graduate degree are entitled to preference for promotion as per SRO 14.

12. We have heard and considered the arguments of learned counsel for applicants and learned AAG for respondents and gone through the material on record.

13. It has been submitted by learned counsel for applicant that the vires of the Amendment to Class III Category A of the Rules by promulgation of SRO 14 has not been challenged in any litigation, as such, the applicants are entitled to have preference in matter of promotion to the extent of 10 % on the basis of the applicants having higher educational qualification and which educational classification can be made the basis for classification of Government employees in getting accelerated promotions and therefore entitled to preference in promotions and placed reliance on State of J&K v/s Triloki Nath Khosa, (1974) 1 SCC 19, Rajasthan SEB Accountants Assn. v/s Rajasthan SEB, (1997) 3 SCC 103. Learned counsel for applicants further argued that the inter se correspondence and the various orders attached to the petition would further show that the applicants Janak Sharma and Subash Chander were permitted to undergo further studies in post graduate degree with a view to achieve administrative efficiency, public good and the fact there was dearth of M.Tech/Specialised Engineers in the department. It was also argued that the respondents cannot by any stretch of imagination contend that the statutory rules



promulgated by them are unreasonable and violative of Articles 14 and 16 of Constitution of India more so, as recently as 2018, the Government has promoted officers on the basis of SRO 14 and to withhold the promotions of the applicants smacks of arbitrary, illegal, discrimination, favouritism, nepotism and an illegal denial of the rights to which applicants are entitled to in terms of article 14 and 16 of the Constitution of India and therefore the petition be decreed in the favour of applicants. Learned counsel for applicants laid emphasis on the observations of the Hon'ble Apex Court in the case of Rajasthan SEB Accountants Assn. (supra) that "Educational qualifications can be made the basis for classification of employees in State Service in the matter of pay scales, promotion etc. Provisions for giving higher pay scale to employees possessing higher qualification has also been held as valid. Similarly in the matter of promotion classification on the basis of educational qualification so as to deny eligibility for promotion to a higher post to an employee possessing lesser qualification or require longer experience for those possessing lesser qualification can be validly made.

14. On the other hand, it was argued by learned AAG that vide order dated 28.03.2016, an enquiry officer was appointed to enquire as to whether the proper procedure was followed in issuing the SRO 14 regarding which a writ petition was filed wherein the Hon'ble High Court vide order dated 05.04.2016 directed that status quo be maintained regarding SRO 14 and therefore, the decision in this case be deferred till disposal of the said petition. The contention has no force and to be rejected since the operation of the SRO has not been stayed by the Hon'ble High Court. In the rejoinder affidavit filed by applicants, they have quoted the reliefs sought by the petitioners of writ petition which does not include a challenge to SRO 14 of 2016.

15. The Hon'ble Supreme Court in a recent decision of State of Uttarakhand & Ors. Vs. S.K.Singh [2019] 10 SCC 49, has traced the history of various judicial

pronouncement where higher educational qualification had been repeatedly emphasized as an aspect which can give an faster promotion and observed that:



“24. On referring to the earlier judgments, including in the State of Jammu and Kashmir v. Triloki Nath Khosa case, it was, once again emphasized that minute and microscopic classification should not be permitted, nor should the Court countenance, in the words of Krishna Iyer, J. “mini-classifications based on micro-distinctions.” It is, however, also noticed that right from 1974, i.e., since the decision of the Constitution Bench in State of Jammu and Kashmir v. Triloki Nath Khosa case, this Court had been uniformly holding that even where direct recruits and promotees are integrated into a common class, they could for the purpose of promotion to the higher cadre, be classified on the basis of educational qualification. The conclusion, thus, was that if the Diploma-holders can be barred altogether from promotion, it was difficult to appreciate how and why the rule making authority can be precluded from restricting the promotion. Thus, “the rule-making authority may be of the opinion, having regard to the efficiency of the administration and other relevant circumstances that while it is not necessary to bar the diploma holders from promotion altogether, their chances of promotion should be restricted. On principle, there is no basis for the contention that only two options are open to a rule-making authority-either bar the diploma holders altogether or allow them unrestricted promotion on par with the graduates.”

“26. The spectrum of judicial opinions referred to aforesaid leaves us with little doubt that though equality is the very bulwark of the provisions of the Constitution, in service jurisprudence, classifications are a matter of necessity and judicial pronouncements have sought to balance the equality principle with the principle of classification, dependant on the nexus for making the classification. Higher educational qualifications have been repeatedly emphasized as an



aspect which can give exclusive promotion, earlier promotion or for that matter, as in this case, an accelerated promotion. A higher degree of qualification intrinsically would bring in certain skills, though undoubtedly, that should be useful and have a nexus with the job being performed. As to who should examine this nexus, that has been left to the wisdom of the administrative authorities, who are best equipped to do so.”

“28.We are conscious of the fact that in further posts, higher than AE, there is no distinction between persons having different qualifications. There are no direct appointments. The posts are filled in only through promotions. The question is what is really being done? In our view, all that has been done is that, at a particular promotion stage, in the wisdom of the administration, recognising higher skills developed through higher qualifications, and as an incentive to others to acquire these higher qualifications, an accelerated promotion on a small percentage of posts had been granted.”

16. Therefore, according to the Hon'ble Supreme Court, higher educational qualification has relevance insofar as the holding of higher promotional post. Since the said judgment crystallizes the position of law as it exists as on date, it is not necessary to cite other judgments cited by learned counsel for applicants on the same proposition that in matters of service jurisprudence higher educational qualifications have been repeatedly emphasized as a criteria which can give exclusive higher or accelerated promotion. It is trite law that rule making authority can be of the opinion having regard to the efficiency of the administration that while it is not necessary to bar the Diploma holder from promotions altogether, their chances of promotion should be restricted. Equally, the law is well settled that it is permissible for the Government to prescribe appropriate qualifications in the matter of appointment or promotion to different posts.



17. A surprising feature of the present case is the course of action pursued by the Government. On one hand, the Government has misgiving about SRO 14 and appointed an Enquiry officer on 28.03.2016 to inquire into legality of the SRO but in communication dated 20.03.2019 of PIO of Public Health Officer, PHE, I&FC Deptt (Annexure XV) it is mentioned that "After examination of the Court case/rules, 02 posts were kept reserved in the previous proposal for M.Tech Category candidates, but orders were not issued at that time due to non-availability of requisite information regarding qualification. One more vacancy has been made available in the present proposal for M.Tech category candidate. Thus share as per SRO 14 is 03 vacancies for the said category. In order to avoid adverse orders from the Hon'ble Court, these vacancies may be filled as per the aforesaid court directions under SRO 14."

18. The importance of information supplied under RTI Act cannot be underrated or taken lightly. The information is assimilated from the files and issued to the applicant after taking the views of senior officers and HOD. The officers can be penalised for giving false information, as such, no PIO would give false or have baked information.

19. Respondents deny the benefit of SRO 14 to the applicants on the reasons mentioned in the impugned order dated 02.12.2019 as below:

" it has been found that the said SRO provides preference and not a reservation in promotion. The Officer can be given preference under the SRO as and when the Department requires expertise in the particular field provided the Officer fulfil eligibility/suitability criteria; and

Whereas it is a settled principle that a mere rule of preference, meant to give weightage to the additional qualification, cannot be enforced as a rule akin to reservation or rule of complete precedence. The preference has to be given only when the claim of



all candidates, who are eligible/suitable, are taken for consideration when any one or more of them are found equally positioned by using the additional qualification as tilting facto, in their favour vis - a-vis others in the matter of promotion; and

Whereas, from the perusal of records it has been found that though the petitioners are eligible for promotion as Executive Engineers but there are number of other officers who are ahead of the petitioners in the seniority list issued by the Department as such the petitioners cannot be considered over and above to their seniors for promotion by invoking the SRO – 14 of 2016.”

20. So, the stand of respondents can be illustrated by holding that:

If 10 AEEs out of 20 officers are to be promoted to the posts of Executive Engineer, the officer holding the Post Graduate degree would be entitled to preference in promotion only if they fall within the range of 10 AEEs.

It is only when the next 10 AEEs come up for promotions, the officer would be entitled to preference in this 2nd group of AEEs for accelerated promotion by virtue of holding post graduate degree in this group.

21. It has been argued by learned counsel for applicants that given the plain meaning of SRO 14 and clear intention of the legislature, the interpretation placed upon the said proviso by the respondents would render it meaningless and otiose and placed reliance upon Mool Ji Jetha v/s Khandesh Spinning and Weaving Mills, AIR 1950 FC 83.

22. SRO 14 lays down the phrase ‘preference shall be given’ to mean that other things (such as passing of prescribed test, maintaining merit, suitability, fitness, etc.) being equal, preference shall be given to holders of post-graduate qualifications, and after giving such preference the claim of less qualified



candidates would be considered. So far as the interpretation of SRO 14 and its implementation contained therein, we are clearly of the opinion that the post-graduates will have to be preferred in matter of promotions. So long as the rule of preference stands, we do not see any justification for watering down of the said rule in the way in which the respondents have done by reducing it only to the cases where the claim of all candidates, who are eligible/suitable, are taken for consideration when any one or more of them are found equally positioned by using the additional qualification as tilting facto, in their favour vis -a-vis others in the matter of promotion. The very object of the preferential treatment is defeated by this procedure or interpretation put forth by the respondents.

23. We are in agreement with the view of the applicants that SRO 14 has been brought on the statute book so that the State may benefit from higher educational qualifications and better performance of its officers and if the rule is not so implemented the very purpose of granting preference to post-graduates will be lost as the object of cadre-strengthening and public good will not be achieved. The question of cadre strengthening and public good in case of the applicant attaining post graduate degree is substantiated by Government Order 269 – PW (Hyd) of 2017 dated 11.07.2017 especially the communications dated 27.06.2016 and 27.06.2016 (Annexure VII and VIII) of the Chief Engineers which mentions about the greater good to the department and the public due to the applicants No. 1 and 2 attaining higher educational qualification of Post Graduation.

24. We have gone through the language employed in SRO 14. The language employed in the Proviso is clear and plain that as and when the vacancies arise, preference of 10 % of the promotional vacancies arising shall be given to eligible persons having additional qualification of post-graduation in the relevant field of Engineering. The reasoning advanced by the respondents to deny promotion on the basis of higher educational qualification in the impugned Government Order dated 454- PW (Hyd) of 2019 dated 02.12.2019 is arbitrary and cannot be upheld. Resultantly, impugned order dated 02.12.2019 deserves to be set aside.



25. Applicant also seek the quashment of impugned order dated 42 – PW (Hyd) of 2010 dated 31.01.2020 whereby I/C Assistant Executive Engineers have been given the temporary charge of the post of Executive Engineers to the officers named therein. It be noted the order is hedged in by the following conditions: 1. Placement shall be temporary and on stop gap basis; 2. Shall not create any right etc as and when considered on substantive basis through Establishment- Cum – Selection Committee; 3. In case, placement is seized by any event, the incumbent/s shall not claim any benefit of equivalent post and will be reverted back,

26. Perusal of the impugned order dated 42 – PW (Hyd) of 2010 dated 31.01.2020 reveals that substantive promotions have not been made but that temporary charge has been given to the officers in their own pay and grade and definitely not in accordance with SRO-14. Although, the Incharge placement does not confer any right of promotion on the incumbent, but the seniors ought to be preferred for such arrangement. It is fairly well settled that even while making ad hoc or Incharge appointments to a higher post, the concerned authority shall be under an obligation to take into account the seniority in the lower category. It is only when the regular promotions are made, that the DPC can select the candidates and in the process, the senior can also be overlooked. Once, there is no selection process involved, the seniority deserves to be respected. Of course it is also a settled law that an adjustment on ad hoc or Incharge basis against such post by an officer who did not possess requisite qualification for holding the post would be illegal and is to be taken into consideration while ordering such temporary adjustments.

27. Looking to the fact of the case, more particularly the seniority list, direction is issued to the official respondents to revisit the impugned orders and lists and make the necessary corrections, in case the impugned lists have been prepared in violation of aforementioned principle of law regarding seniority to be

respected, within a period of two months from the date of receipt of certified copy of this order provided also that the candidates considered for temporary arrangement do not suffer from any impediment or disqualification.



28. However, before taking up the question whether the lists are to be corrected or not, the official respondents would consider whether the applicants are eligible to be considered for the posts in question. Though undoubtedly, the best step forward in a good administration would be to make regular promotions and not go in for ad hoc promotions for years altogether. The prayer of applicants seeking quashment of impugned order 42 – PW (Hyd) of 2010 dated 31.01.2020 cannot be accepted.

29. In view of the facts and circumstances of the case, the T.A. is partly allowed to the extent that Government Order dated 454- PW (Hyd) of 2019 dated 02.12.2019 is quashed. Rest of prayers of the applicants in the T.A. are disallowed. T.A. is accordingly disposed of. No costs.

(ANAND MATHUR)
MEMBER (A)

(RAKESH SAGAR JAIN)
MEMBER (J)

Arun/-