

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

CWPOA No. 543 of 2019
Reserved on: 28.02.2026
Decided on: 24.03.2026

Pradeep Singh

...Petitioner

Versus

State of Himachal Pradesh & others

...Respondents

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

*Whether approved for reporting?*¹ Yes

For the petitioner: Mr. Surinder Saklani, Advocate.

For the respondents: Mr. Sikander Bhushan, Deputy
Advocates General for
respondents No. 1 & 2-State.

Ms. Shivani Priya, Advocate, vice
Mr. Vikrant Thakur, Advocate, for
respondent No. 3.

Mr. Hamender Singh Chandel,
Advocate for respondent No. 4.

Jiya Lal Bhardwaj, Judge

By way of present petition, the petitioner has
prayed for following substantive relief:-

*“(i) That impugned Annexure A-4 may kindly be
quashed and set aside with further directions to the
respondents to give appointment to the applicant
who was recommended along with all other*



candidates in DPC held on 30.05.2003 with all consequential benefits of pay, seniority etc.”

2. Shorn of unnecessary details, the key facts of the case are that the petitioner was appointed as Junior Draughtsman in the year, 1997 with the respondents-Department and had acquired the qualification of AMIE in September, 1999. The respondent-Department forwarded a memorandum for convening Departmental Promotion Committee (hereinafter referred to as DPC) for filling up of vacant/anticipated posts of Assistant Engineer (Civil), that arose in the year 2002 to respondent No.3-Commission to consider the eligible candidates for promotion as on 01.01.2002. The name of the petitioner was also forwarded for promotion to the post of Assistant Engineer (Civil), since he was found eligible as per the requirement laid down in Para 16.8 of the Handbook on Personnel Matters, Vol.-I, wherein it has been clearly provided that for calculating the number of vacancies for the current year, all vacancies anticipated during the next 12 months from 1st January to 31st December shall be taken into account. Respondent No.3-Commission convened DPC on 30.05.2003 and forwarded the recommendation to the respondent-



Department and the name of the petitioner was also recommended. However, before offering appointment to the petitioner as per the recommendations made by respondent No.3-Commission, respondent No.4, who otherwise was not eligible at the time of initiation of process to fill up the post of Assistant Engineer (Civil) for which cut of date was fixed as 01.01.2002, approached the erstwhile Himachal Pradesh Administrative Tribunal (hereinafter referred as the Tribunal), to seek directions that the petitioner is junior to him and, therefore, his claim should also be considered in the above-stated DPC. The Tribunal vide order dated 02.06.2004 disposed of the Original Application with a direction to decide the representation made by respondent No.4 within a period of four weeks after hearing respondent No.4 as well as the petitioner. However, in the meantime, the respondents were directed not to fill up the post of Assistant Engineer meant for Draughtsman Cadre out of 1% quota having AMIE qualification till the decision on the representation.

3. It has been averred in the petition that in reply to the Original Application filed by respondent No.4, the respondents-State had taken the stand that respondent



No.4 was not eligible as per the required laid down norms in Para 16.8 of the Handbook on Personnel Matters, wherein it is clearly provided that for calculating the number of vacancies for the current year, all vacancies anticipated during the 12 months, from 1st January to 31st December shall be taken into account. Thus, those officers who were found eligible for promotion as on 01.01.2002, were recommended by the respondent-Department vide DPC memorandum dated 11.07.2002. Since respondent No.4 was not having requisite degree of AMIE from the recognized institution on the said date, there were no occasion and reason for forwarding his name in the list of eligible candidates in AMIE category, i.e. those who have passed the said AMIE examination as on 01.01.2002. It is apt to note here that the petitioner had acquired the degree of AMIE in September, 1999 whereas, respondent No.4 became eligible in the month of November, 2002.

4. However, when respondent No.1 passed the order on 27.07.2004 (Annexure A-4) in sequel to the directions given by the Tribunal in the Original Application preferred by respondent No.4, a new stand was taken that amendment in Recruitment and Promotion Rules



(hereinafter referred to as R&P Rules), providing 1% quota to AMIE Draughtsman Cadre was notified on 30.05.2002 and hence, the same is applicable prospectively. As per roster prescribed in the R&P Rules, share of AMIE is 5th post i.e. 100 point or so. This category will get post only if 100 vacancies are filled up, whereas, the DPC held on 30.05.2003 by respondent No.3-Commission considered only 43 posts to be filled up by promotion, as such no post goes to the share of the AMIE category and rejected the representation made by respondent No.4.

5. The petitioner feeling aggrieved by the said order of rejection has filed the present petition taking a plea that once in the Original Application preferred by respondent No.4, respondent No.1 had taken a specific stand that respondent No.4 was not eligible as on 01.01.2002, and the list of eligible candidates in AMIE category, who had passed AMIE examination as on 01.01.2002 were to be considered, the petitioner ought to have been offered appointment as Assistant Engineer (Civil) since his name was included in the memorandum dated 11.07.2002 and further, his name was recommended by the DPC conducted by respondent No.3-Commission. However,



respondent No.1 while deciding representation of respondent No.4 had given a new dimension to and exceed his jurisdiction. Respondent No.4 had become eligible only in the month of November, 2002 and names of only those candidates were to be considered, who were eligible as on 01.01.2002 and since the petitioner was eligible and his name was included in the list of eligible candidates, he ought to have been considered for appointment as Assistant Engineer (Civil) under 1% quota meant for AMIE Draughtsman. Further, if the view taken by respondent No.1 that the Recruitment and Promotion Rules notified on 30.05.2002 are to be applied prospectively, then as per the DPC, the promotion of all other 42 persons will become illegal, whereby the incumbents have been promoted and working. Respondent No.1 cannot adopt two different yardsticks, one for the petitioner, where he has stated that the R&P Rules are to be made applicable prospectively and for other candidates, whose names were sent, recommended by the DPC and their results have been declared and offered the appointment as Assistant Engineer (Civil).

6. Respondents No.1 & 2 filed reply to the petition



and took stand that vide memorandum of DPC for filling up of vacant/ anticipated posts of Assistant Engineer, which arose during the year, 2002, the case was forwarded to respondent No.3-Commission to consider the eligible candidates for promotion to the post of Assistant Engineer (Civil) on 11.07.2002, along with list of eligible candidates, who were found eligible for being considered, as such for the aforesaid post. On the said date i.e. 01.01.2002, the petitioner was also found eligible as per the requirements laid down in Para 16.8 of the Handbook of Personnel Matters and those officials who were found eligible for promotion as on 01.01.2002, were recommended by respondent No.1 vide memorandum dated 11.07.2002. Consequent to the said memorandum, a meeting of DPC was held on 30.05.2003, in respondent No. 3-Commission and the DPC had considered the name of the petitioner for the post of Assistant Engineer (Civil) and recommended him for promotion to the post of Assistant Engineer (Civil). However, he could not be promoted to the post of Assistant Engineer (Civil) as one candidate belonging to Draughtsman category namely Sh. Karam Chand (now respondent No. 4) was senior to him and had also acquired AMIE degree before the



DPC held on 30.05.2003. It has been averred that as per amendment in the R&P Rules, 1% quota to AMIE Draughtsman Cadre was notified on 30.05.2002 and as per roster prescribed in the R&P Rules, share of AMIE is 5th post i.e. 100 point or so. Hence, this category will get post only if 100 vacancies are filled up after notification of amendment in Rules on 30.05.2002 and thus, no post goes in the share of AMIE category. Therefore, the promotion order of the petitioner could not be issued as per the recommendations of respondent No.3-Commission.

7. Respondent No.3-Commission filed its reply and admitted that a memorandum for consideration of eligible officials for promotion to the posts of Assistant Engineer (Civil) by the respondent-Department was sent on 11.07.2002 to respondent No.3-Commission and name of the petitioner, AMIE degree holder Junior Draughtsman was also included in the list of eligible officials supplied and his name was considered and recommended for promotion to the post of Assistant Engineer.

8. Respondent No.4 was not initially impleaded in the petition, however, on an application being filed by him, this Court vide order dated 07.03.2012, ordered for his



impleadment as respondent No.4 in the petition.

9. Respondent No.4 filed his reply and pleaded that the petition is not maintainable, since the petitioner was not eligible. The R&P Rules for the post of Assistant Engineer were notified on 03.05.2001, which were published on 01.06.2002. Prior to the R&P Rules, there was no quota prescribed for promotion to the post of Assistant Engineer from amongst the category of Draughtsman with AMIE qualification. Further as per note given in Rule 11(v), 20 point roster had to be rotated five times to complete 100 points and tenth point of the roster in the first cycle after completion of 100 points is to be given to Draughtsman Cadre with AMIE degree or its equivalent and so on. There was no quota to the category of the petitioner and further after acquiring requisite qualification in September, 2002, respondent No.4 became eligible for promotion against 1% quota. The respondents-State had filled up 43 posts on the recommendations of DPC and the R&P Rules are not retrospective.

10. The respondents-State filed a supplementary affidavit in pursuance of the order dated 24.12.2010, passed by this Court, wherein direction was given that why



the petitioner has not been promoted despite the fact that the DPC had recommended his name for promotion in the year, 2002. As per this affidavit, the respondents-State had submitted that the petitioner passed his AMIE degree in September, 1999, whereas respondent No.4, senior to him passed the AMIE degree on 20.09.2002. The proposal was sent to respondent No.3-Commission. Though the DPC in its meeting held on 30.05.2003 recommended the name of the petitioner for promotion, but meanwhile respondent No.4 filed the Original Application, wherein direction was given to the respondents not to make promotion to the post of Assistant Engineer against the 1% quota earmarked for Draughtsman AMIE, as he was senior, having done AMIE and has not been considered by the DPC. It was submitted that both the incumbents had been considered by the DPC in its meeting held on 07.03.2006 and 09.03.2006. The DPC had recommended the name of respondent No.4 against vacancy of the year 2003 and the name of the petitioner against the vacancy of the year 2005 and they have been promoted to the post of Assistant Engineer (Civil) on 05.04.2006 and placed on Serial Nos.6 and 78 in order of promotion as per roster provided in the R&P Rules of



Assistant Engineer (Civil).

11. The petitioner filed reply to the supplementary affidavit and averred that as per R&P Rules to the post of Assistant Engineer (Civil) 2002, 45% quota is earmarked for Diploma holder JEs and 5% for Draughtsman cadre (4% Diploma holder Draughtsman + AMIE Degree holder Draughtsman 1%) for promotion to the post of Assistant Engineer (Civil). Out of 43 posts, 42 were to be filled up by Diploma holder JEs and 1 person was to be promoted from Draughtsman Cadre (Diploma). It means 98% posts were to be filled up by Diploma holder JEs, having only 45% quota. If 100th post goes to AMIE Draughtsman Cadre, then not more than 19 posts should have been filled up by Diploma Holder JEs. As per R&P Rules to the post of Assistant Engineer (Civil), 2002, the 20 point roster shall be repeated four times in a manner prescribed in the roster and thereafter 10th point of the 5th cycle meant for Draughtsman Cadre shall go to the share of Draughtsman Cadre, who possesses AMIE Degree or equivalent and so on. The same process shall go on repeating till the representation to all feeder categories is achieved up to the given percentage. The roster qua the category, which had achieved the prescribed



quota shall remain suspended and shall revive again when percentage of that category falls below the prescribed quota.

12. The respondents-State filed an affidavit in compliance with the directions given by this Court on 21.03.2013, wherein this Court had specifically observed that in the earlier petition filed by respondent No.4, before the Tribunal, the stand of the State was that he was not eligible, whereas before this Court, the stand taken is that both the petitioner as well as private respondent were not eligible. Also what is to be considered is as to whether Clause 16.15 of the Handbook on Personnel Matters, Volume-I, was adopted by State or not. In pursuance of the said direction, respondent No.1 had filed an affidavit and took a stand that the law laid down by Hon'ble Supreme Court in **Shailender Dania's** case became applicable during the year, 2010 by delivering a verdict in **S.S. Kutlehria's** case dated 08.01.2010, in CWP No. 1356 of 2008, in the category of Assistant Engineer by this Court. The claim of the petitioner was that he had completed AMIE earlier to respondent No. 4, as such, he should have been promoted earlier to Sh. Karam Chand. The law as



implemented above in **Shailender Dania's** case, is that after gaining higher qualification, the length of service in feeder cadre from the date of gaining higher qualification, is to be considered, but not entire past service. Since the petitioner was appointed as Junior Draughtsman on 19.09.1997 and completed his AMIE during 1999, he became eligible during 1% quota directly to the post of Assistant Engineer (Civil) after putting five years of service as Draughtsman with AMIE, to be reckoned w.e.f. Year, 1999. There is no reference with respect to the Clause 16.15 of the Handbook on Personnel Matters, Volume-I, in the affidavit.

13. I have heard the learned counsel for the parties and perused the record carefully.

14. It is not in dispute that in the earlier round of litigation, the stand of the respondents-State was that the petitioner was eligible for promotion as on 01.01.2002. It is also not in dispute that respondent No.3-Commission had received the memorandum for consideration of eligible officials for promotion to the posts of Assistant Engineer (Civil) sent by the respondents-State on 11.07.2002 and recommended the name of the petitioner along with other



eligible persons. It is also not in dispute that the other candidates, who were recommended along with the petitioner, have been promoted and appointed to the posts of Assistant Engineer. It is also not disputed that the post of Assistant Engineer (Civil) from the category of Junior Draughtsman of AMIE Degree was not filled up only for the reason that respondent No.4 had preferred an Original Application, in which direction was given that until the time the representation made by respondent No.4 is decided, no promotion in their quota shall be made. It is also not in dispute that when the DPC was convened, the vacancies as on 01.01.2002 were considered and respondent No.4 was not considered for promotion since he had not acquired the requisite qualification of AMIE to be considered against the posts of Assistant Engineer from the category of Draughtsman after receipt of the memorandum dated 11.07.2002 by respondent No.3-Commission. It is also not in dispute that the petitioner had acquired the qualification of AMIE in the year, 1999, whereas, respondent No.4 acquired the said qualification in the month of September, 2002. It is also not disputed that the DPC in case of other categories had taken the vacancies of the year, 2002 as per the



Handbook on Personnel Matters and on the date of memorandum dated 11.07.2002 sent by the respondents-State to respondent No.3-Commission.

15. It is not in dispute that respondent No.4 was not eligible as on 01.01.2002, therefore, the respondents-State could not have rejected the claim of the petitioner by taking U-turn when the representation made by respondent No.4 was heard and decided vide impugned order dated 27.07.2004. The respondents-State had to offer the appointment to the petitioner as per the recommendations of respondent No.3-Commission, especially when in the cases of others, as per the past practice being adopted by the respondents-State, they were appointed as Assistant Engineers (Civil). The Tribunal had not directed to consider respondent No.4 for the vacancies of 2003 and once on the date of receipt of memorandum for consideration i.e. 11.07.2002, respondent No.4 was not eligible and the petitioner was eligible and the DPC had recommended the name of the petitioner for appointment as Assistant Engineer (Civil), respondent No.1 had wrongly denied the promotion to the petitioner taking different view.

16. Though a stand has been taken by the private



respondent that there were no Rules prior to 30.05.2002, and thus the petitioner could not have been considered for promotion cannot be accepted for the reason that the respondents-State, as per the pleading which was filed by them in the Original Application had not taken the said stand and further if there was no post of Assistant Engineer to be filled up from the candidate holding the post of Junior Draughtsman and further having the qualification of AMIE, the respondents-State could not have sent the requisition to respondent No.3-Commission recommending the name of one person under the said category.

17. There is a set procedure prescribed in the Handbook on Personnel Matters and respondent No.3-Commission has been constituted for the purpose of making selection to the Class-I post. As per the provisions contained in the Handbook on Personnel Matters, more particularly Clause 16.15 lays down the procedure to be followed, when appointing authority does not agree with the recommendations of the DPC. The relevant clause is reproduced hereinbelow:-

16.15 Procedure to be followed when appointing authority does not agree with the recommendation of DPC



The D.P.C. is a recommendatory body and the recommendations made by it are subject to approval by the appointing authority. There may be certain occasions when, for valid reasons, the appointing authority may find it necessary to disagree with the recommendations of the duly constituted D.P.C.

In cases where the recommendations of the DPC/Commission are not acceptable to the appointing authority, a second reference with cogent reasons shall be made to the DPC/Commission. If after re-consideration a particular Department still feels that the recommendations made by the DPC/Commission should not be accepted, the Administrative Department with the approval of the Minister-in-Charge shall prepare a self-contained summary of the case and after obtaining advice of the Department of Personnel, place the matter before the Cabinet Sub-Committee convened, for the said purpose.

18. As per the *ibid* provision, no doubt DPC is a recommendatory body and the recommendation made by it are subject to approval by the Appointing Authority, however, where the Appointing Authority finds it difficult to agree with the recommendations of the duly constituted DPC/Commission, a second reference with cogent reasons shall be made to the DPC/Commission. If after re-consideration, a particular Department still feels that the recommendations made by respondent No.3- Commission should not be accepted, the Administrative Department, with the approval of the Minister-in-Charge shall prepare a



self-contained summary of the case and after obtaining advice of the Department of Personnel, place the matter before the Cabinet Sub-Committee convened for the said purpose. However, in the present case neither the said procedure has been adopted nor it is the case of the respondent-State that other persons, which were also recommended by respondent No.3-Commission, not offered the appointment. Once the respondents-State had accepted the recommendations made by respondent No.3-Commission and thereafter offered the appointment to the recommendees, the respondents-State could not have rejected the claim of the petitioner on the plea that the amendment in the R&P Rules provided 1% quota was notified on 30.05.2002, and hence applicable prospectively. As per roster prescribed in the R&P Rules, share of AMIE is 5th post i.e. 100 points or so, hence, this category will get post only if 100 vacancies are filled up, whereas, DPC was held on 11.07.2002. It is not understood that why the recommendations made by the respondent No.3-Commission was not accepted qua the petitioner, especially when on the said date when the memorandum was sent on 11.07.2002 to respondent No.3-Commission, respondent



No.4 was not eligible to hold the post, since he was not having the AMIE Degree. It is not even the case of the respondents that in other categories of cases, the vacancies of the year, 2003 have been considered. Respondent No.3-Commission had recommended the persons on the basis of the list sent by the respondents-State on 11.07.2002. The Tribunal vide order dated 02.06.2004 had only directed not to fill up the post of Assistant Engineer from Draughtsman Cadre out of 1% quota having AMIE qualification till the decision on the representation. It had nowhere stated that either the candidature of respondent No.4 be considered for the vacancies as stood on 01.01.2002 or reject the claim of the petitioner or not to accept the recommendations. Not only this, the DPC was convened on 30.05.2003 and respondent had approached the Tribunal thereafter by filing Original Application on 10.06.2003, which is also annexed with the petition.

19. From the ibid facts, it is crystal clear that grave injustice has been caused to the petitioner, by the respondents-State only to favour respondent No.4 since in the earlier round of litigation instituted by respondent No.4, stand of respondents-State was that the petitioner was



eligible for promotion and his name was recommended in the DPC and respondent No.3-Commission had sent the list to the respondents-State. Furthermore, the respondents-State after receipt of the recommendations sent by respondent No.3-Commission had offered the appointment to 42 candidates on the posts of Assistant Engineer (Civil) taking the vacancies as on 01.01.2002 as per the Handbook on Personnel Matters and the petitioner could not be offered appointment only for the reason that the Tribunal had directed not to fill up the post of Assistant Engineer meant for Draughtsman Cadre out of 1% quota having AMIE qualification till the decision of the representation. But unfortunately, while considering the representation, respondents-State took a U-turn just to favour respondent No.4 ignoring the recommendations by the respondent No.3-Commission as well as the stand taken by the respondents-State in the earlier proceedings instituted by respondent No.4.

20. The plea taken by the respondents-State in the affidavit filed in pursuance of order dated 21.03.2013 that as per the judgment in **Shailender Dania's case**, the petitioner had to be considered only after putting in five



years' service after acquiring qualification of AMIE is also negated for the reason that in the year 2002, when DPC was convened, the said judgment was not in existence and once the respondents-State had been considering the claims on the basis of the qualification of AMIE acquired earlier by the persons for promotion to the posts of Assistant Engineer considering the past service too and also promoted the persons on the basis of the recommendations made by the respondent No.3-Commission, the said plea taken by the respondents-State is untenable and is rejected. Furthermore, it is settled law that where the rights have been determined, subsequent judgment of a Court or Tribunal taking contrary view would not alter the position. In the present case, once the respondents-State have offered the appointments to other recommendees to the posts of Assistant Engineer (Civil) as per the recommendations made by respondent No.3-Commission, the petitioner being similarly situated could not have been denied appointment to the posts of Assistant Engineer (Civil), by taking a view that no post was available to the category of the petitioner.

21. The plea taken by the respondents that as per roster prescribed in the R&P Rules, share of AMIE is 5th post



i.e. 100 point or so and the AMIE category of will post after only if 100 posts are filled up, cannot be countenanced for the reason that out of 43 posts to be filled up by promotion from various categories, 1 post was for Junior Draughtsman with AMIE Degree and this 100 point roster could not have been made applicable from post 1, especially when the total number of posts were not only 43. This could have been applied had there been only 43 posts. All these pleas were raised to nullify the recommendations, specifically with regard to the recommendation of the name of the petitioner for promotion to the post of Assistant Engineer (Civil).

22. It is settled law that equals cannot be treated unequally. However, in the present case, the respondents have treated the petitioner unequally, arbitrarily and discriminatorily for the reason that other recommendees by respondent No.3-Commission had been offered the appointments to the posts of Assistant Engineer (Civil), but the appointment of the petitioner was withheld only on account of pendency of the Original Application preferred by respondent No.4. Since on the date of sending the memorandum even as on 11.07.2002, respondent No.4 had not acquired the qualification of AMIE, which was essential



for promotion, the action on the part of the respondents-State in not offering the appointment to the petitioner is totally arbitrary, discriminatory and unjustified.

23. No doubt the State Government can reject the recommendations made by respondent No.3-Commission to offer the appointment to a person, if the candidate is ineligible, the procedure adopted is not transparent, arbitrary and discriminatory, but in the case of the petitioner, neither it is the case of the respondents-State that the petitioner was ineligible nor did the respondent No.3-Commission adopt a fair procedure. Therefore, to segregate the claim of the petitioner and deny him appointment despite the recommendations by respondent No.3-Commission is wholly unjustified and rejection of his claim warrants interference.

24. Consequently, the present writ petition is allowed and the impugned order dated 27.07.2004, passed by the respondents-State is quashed and set aside and the respondents-State is directed to offer the appointment to the petitioner as Assistant Engineer (Civil) on the basis of the recommendations made by respondent No.3-Commission of DPC held on 30.05.2003 within three months



from today and further grant him all consequential benefits, such as seniority, increments, promotions etc. No orders as to cost. Pending application(s), if any, also stand disposed of.

24th March, 2026

(Anurag)

**(Jiya Lal Bhardwaj)
Judge**