

**Reserved****AFR**

Neutral Citation No. - 2023:AHC-LKO:42505

**1. Case :- Writ-A No.3814 of 2022**

Petitioner :- Kishan Kumar and another

Respondent :- State of U.P. Thru. Prin. Secy. Public Works Deptt. and 10 others

Counsel for Petitioner :- Sameer Kalia, Srideep Chatterjee

Counsel for Respondent :- C.S.C., Raj Kumar Upadhyaya  
(R.K.Upadhyaya), Ratnesh Chandra, Tushar Verma**2. Case :- Writ-A No.1305 of 2022**

Petitioner :- Mahendra Kumar Singh and others

Respondent :- State of U.P. Thru. Addl. Chief Secy. Public Work Dept. Lko. And Others

Counsel for Petitioner :- Girish Chandra Verma, Abhishek Kumar Pandey

Counsel for Respondent :- C.S.C., Ashok Shukla, Raj Kumar  
Upadhyaya (R.K.Upadhyaya), Sameer Kalia

and

**3. Case :- Writ-A No.1514 of 2022**

Petitioner :- Shiv Mangal Kumar and others

Respondent :- State of U.P. Thru. Its Addl. Chief Secy. Public Works Deptt. Lko.  
and others

Counsel for Petitioner :- Sameer Kalia, Srideep Chatterjee

Counsel for Respondent :- C.S.C., Girish Chandra Verma, Tushar Verma

**Hon'ble Dinesh Kumar Singh, J.**

1. The core controversy involved in the present batch of writ petitions is promotion on the post of Assistant Engineer (Civil) in the U.P. Public Works Department under 50% quota as provided under the Uttar Pradesh Public Works Department "Group-B" Civil Engineering Service Rules, 2004 (for short 'Rules, 2004').

2. These writ petitions have been filed by the petitioners, who are Junior Engineers (Technical). The cadre of Junior Engineer (Technical) is consisting of two sets of Junior Engineers (i) Junior Engineer (Technical)/Computers having been appointed under the Sarvajanic Nirman Vibhag Sangdak Sewa Niyamawali, 1968 (for

short 'Rules, 1968') in the U.P. Public Works Department, who were directly recruited as Junior Engineer (Technical)/Computers through U.P. Public Service Commission; and (ii) who were initially appointed as Draftsman having two years Engineering Diploma in any trade (Civil/Mechanical/Draftsman) from Industrial Training Institute (ITI) or any other qualification as prescribed under the Rules, 1968 and, as per the provisions contained in Part-VI (Rule 19) of the Rules, 1968, who got promoted as Junior Engineer (Technical) under 20% quota prescribed for them having rendered ten years substantive service as Draftsman and, subject to passing of the departmental examination (condition of passing of departmental examination was relaxed in the year 1975) pursuant to the recommendations of the U.P. Public Service Commission.

3. Rules, 1968 were amended in the year 1992, whereby the promotion quota was increased from 20% to 50%. Part-VI (Rule 19) of the Rules, 1968 provides the eligibility and procedure for promotion of the Draftsman to the post of Junior Engineer (Technical). Appointment on the post of Draftsman is made under the Uttar Pradesh Sarvajanic Nirmaan Vibhaag Rekhankan Adhithaan Sewa Niyamawali, 1984 ( for short 'Rules, 1984'). Rule 5 of the said Rules prescribes the source of recruitment and Rule 8 prescribes qualification for appointment on the post of Draftsman. The qualification as prescribed under Rule 8 of the Rules, 1984 is High School examination from the U.P. Board or any other examination recognized by the Government equivalent thereto and any other qualification as prescribed under Appendix-C of the said Rules. Appendix-C of the said Rules, 1984 would read as under:-

*“See Rule 8(2)*

*Certificates required for the post of Draftsman*

*(1) The Certificate of Draftsman from*

*(i)(a) Thompson College of Engineering, Roorkee or Roorkee University or Uttar Pradesh or any other institution recognized in Uttar Pradesh or any other State; or*

*(ii) Diploma in Architectural Design and Draftsman from Cultural Work and Scientific Research Department, Government of Uttar Pradesh; or*

*(iii) Diploma in Architectural Assistant from Uttar Pradesh Technical Education Board or similar Diploma from any other State ; or*

*(iv) Diploma in Civil Engineering or Draftsman from a University established by .. or*

*(v) Diploma in Draftsman (Civil) or Mechanical from ITI established by Training and Employment Directorate, Uttar Pradesh or similar Diploma from any other State from a recognized institution.”*

4. The petitioners have challenged the order dated 28.5.2022 issued by the State Government, by means of which the eligibility list including the names of promotee Junior Engineers (Technical) along with direct recruitee of Junior Engineer have been forwarded to the U.P. Public Service Commission for making promotion on the post of Assistant Engineer.

5. Sri S.K. Kalia, learned Senior Advocate, assisted by S/Sri Sameer Kalia, Srideep Chatterjee, learned counsels appearing for the petitioners in Writ-A Nos.3814 of 2022 and 1514 of 2022 has submitted that though the petitioners were appointed as Computer, but in terms of the Office Memorandum dated 16.6.1973 issued by the State Government, the Computers holding Diploma in Engineering were designated as Junior Engineer (Computers) as nomenclature of their post was changed to Junior Engineer (Computers). The petitioners having Diploma in Civil Engineering are the direct recruits on the post of Junior Engineer (Technical) through the U.P. Public Service Commission.

6. Rule 5 of Rules, 1968 lays down the source of recruitment for the post of Computer/Junior Engineer (Technical), which includes direct recruitment as well as promotion. Sub-rule(2) of Rule 5 provides that

Engineer-in-Chief shall decide the source/feeder post from which promotion is to be made on the post of Computer and the promotion is to be carried out as per the provisions contained in Chapter-VI of the Rules, 1968. A conjoint reading of Rules 5 and 19 of the Rules, 1968 would make it clear that Draftsman is not the only feeder post from which promotion can be made to the post of Computer, but it is also the prerogative of the Engineer-in-Chief to decide the source/feeder post for promotion to the post of Computers.

7. Rule 19 of the Rules, 1968 only lays down certain essential eligibility conditions which are to be fulfilled in order to consider the Draftsman for promotion, as such, a harmonious reading of Rules 5 and 19 of the Rules, 1968 would make it clear that source/feeder post for promotion to the post of Computers/Junior Engineer (Technical) can also be any post other than Draftsman as may be decided by the Engineer-in-Chief.

8. The validity of Rule 5(2) of the Rules, 1968 was challenged by filing Civil Misc. Writ Petition No.9 of 1981 praying, *inter alia*, that the promotional quota should be increased to 100% as was available in Irrigation, Hydel and Rural Engineering Services Departments. This Court dismissed the said writ petition vide judgement and order dated 26.7.1984, however, left it open to the State Government to decide the question of increasing the quota of promotion. In the said writ petition, the State took a stand that the post of Draftsman is a non-technical post and percentage of 20% was fixed for promotion of Draftsman to Computer/Junior Engineer (Technical) to maintain the efficiency in service. After the said judgment, the State Government on 13.8.1984 framed the Rules, 1984 in super-session of all available Rules and orders, which regulated the terms and conditions of service of Draftsman, Head Draftsman, Tracer, Architectural Draftsman and Architectural Head Draftsman

9. Sri Kalia, learned Senior Counsel has further submitted that on coming into force the Rules, 1984, the channel of promotion as provided under Rule 19 of the Rules, 1968 for Draftsman to the post

of Computer/Junior Engineer (Technical) stood rescinded. After coming into force the Rules, 1984, the Draftsman appointed under the said Rules or prior became members of the Rekhankan Adhistan Sewa, which is a distinct service from the one which is regulated under the Rules 1968. The private opposite parties have been appointed on the post of Draftsman after coming into force of the Rules, 1984 and, therefore, they were members exclusively of the Uttar Pradesh Sarvajanik Nirman Vibhag Rekhankan Adhistan Sewa. He has further submitted that amendment was brought in Rules, 1968 on 2.7.1992, whereby the promotional quota to the post of Junior Engineer (Technical)/Computer was increased from 20% to 50%. However, this would not make the Draftsman eligible for promotion under the Rules, 1968 inasmuch as it is the sole prerogative of the Engineer-in-Chief to determine the source of feeder post for promotion to the post of Junior Engineer (Technical)/Computer. The channel of promotion to Draftsman is provided under Rule 5 of the Rules, 1984 itself, under which the private opposite parties are appointed i.e. promotion to the post of Head Draftsman.

10. Sri Kalia, learned Senior Counsel has further submitted that promotion of the private opposite parties to the post of Junior Engineer (Technical)/Computer was illegal and, therefore, challenge to the said promotion even after twelve years, would not be barred on the ground of inordinate delay or laches as there is no concept of adverse possession or holding over in service jurisprudence. The private opposite parties at the best, could have been promoted to the post of Computer and, therefore, nomenclature of Junior Engineer (Technical) given to them instead of Computer is wholly illegal. Rules, 1968 provide for promotion to the post of Computer and not to the post of Junior Engineer (Technical). In view of the Government Order of 1973, those Computers, who possess Diploma in Engineering are designated as Junior Engineer. Submission is that even if it is assumed that after promulgation of Rules, 1984, the avenue of promotion of Draftsman to the post of Computers is still

available under Rules, 1968, then also the promotion can only be on the post of Computers and those Draftsman, who possess Diploma in Engineering would be designated as Junior Engineer (Technical).

11. Sri Kalia, learned Senior Counsel has further submitted that under Uttar Pradesh Public Works Department Group-B Civil Engineer Service Rules, 2004 (Rules, 2004), 50% of the posts of Assistant Engineer (Civil) are to be filled up from amongst substantively appointed Junior Engineers (Technical), who have completed seven years substantive service on the first day of the year of recruitment. Out of these 50%, 90% posts of 50% promotional quota are to be filled up by Junior Engineer (Civil) and 10% of 50% is to be filled up by direct Junior Engineer (Technical). He has submitted that the private opposite parties are not the diploma holders and they are not the Junior Engineer (Technical) even after their promotion to the post of Computer under Rules, 1968 and they are only Computer. Rule 5 of Rules, 2004 does not provided promotion to the post of Assistant Engineer (Civil) from Computers and, therefore, including the names of Computers, who are not the diploma holders in the ineligibility list, is contrary to Rule 5 of Rules, 2004.

12. Sri Kalia, learned Senior Counsel has also submitted that the Engineer-in-Chief/Head of Department has forwarded the names of persons, who had been directly recruited on the post of Junior Engineer (Technical) before 2010 and whose seniority had been finalised much earlier to the State Government on 26.8.2021 for promotion. Though 18 posts were available, but only five direct recruit Junior Engineers (Technical) were found eligible for promotion and these five persons have been granted promotion vide Government Order dated 30.11.2021 to the post of Assistant Engineer (Civil). Learned Senior Counsel has also made emphasis that till date promotee Junior Engineers (Technical) have never been considered for promotion to the posts of Assistant Engineer (Civil).

13. In pursuance to the order passed by this Court on 7.1.2022 in Writ-A No.15161 of 2021, the Engineer-in-Chief on 24.2.2022 forwarded

the names of directly recruited Junior Engineers (Technical). The aforesaid order was challenged by a few Junior Engineers (Technical), who claimed to have to their credit Diploma in Civil Engineering by filing Writ-A No.1305 of 2022.

14. Sri Kalia, learned Senior Counsel has also relied upon paragraph 18 of the counter affidavit filed on behalf of the State in Writ-A No.1514 of 2022, in which the promotion granted to the private opposite parties to the post of Junior Engineer (Technical) is under challenge. It appears that the State Government has said that under Rules, 1984, promotion of Draftsman is to be made to the post of Head Draftsman and under the said Rules, there is no provision for further promotion to the post of Assistant Engineer and, therefore, Draftsman were not eligible for promotion to the post of Assistant Engineer.

15. The State Government has taken a 'U' turn and vide orders dated 8.4.2022 and 13.4.2022 directed the Engineer-in-Chief that recruitment whether it is to be made directly or by way of promotion to the post of Assistant Engineer (Civil), the same is to be made as per the provisions of Rule 5 of the Rules, 2004. In compliance to the said direction, the Engineer-in-Chief has forwarded the names of the promotee Junior Engineers (Technical) for promotion to the post of Assistant Engineer (Civil). Despite admitting that the Draftsman cadre is a non-technical cadre in the counter affidavit filed in Writ-A No.1514 of 2022, the State Government has sent the list on 28.5.2022 to the U.P. Public Service Commission for promotion to the post of Assistant Engineer (Civil), which includes the names of private opposite parties. It is, therefore, submitted that the Draftsman, who are not eligible to be promoted to the post of Assistant Engineer (Civil), were illegally promoted to the post of Junior Engineer (Technical) and, therefore, their names should be struck off from the list of eligible persons to be promoted to the post of Assistant Engineer (Civil)

16. On the other hand, Sri V.K. Bajpai, learned Standing Counsel has submitted that the word “Draftsman” means a person, who draws plans and sketches as of machinery or structures. From perusal of the technical qualification, which has been mentioned and prescribed under the Rules, 1984 for appointment as Draftsman, it is evident that the cadre of Draftsman is a technical cadre and the only difference between the Draftsman’s qualification and to that of Junior Engineer (Technical)/Computer is that for initial appointment on the post of Draftsman, two years Diploma course from ITI or other institutions as mentioned in Appendix-C to Rules, 1984 is required, whereas for Junior Engineer (Technical)/Computers, three years diploma course is required. Both i.e. Junior Engineer (Technical)/Computer and the Draftsman are technical cadres.

17. Learned Standing Counsel has further submitted that by enacting the Rules, 1984, Rules, 1968 did not get omitted. Rules, 1968 prescribe the eligibility and procedure for promotion to the post of Junior Engineer (Technical)/Computer from the post of Draftsman. Rules, 1968 got amended in the year 1992, whereby the earlier quota of 20% promotion for the post of Junior Engineer (Technical)/Computers got increased to 50%. He has further submitted that Rules, 1984 provide one more avenue of promotion to the Draftsman i.e. Head Draftsman, but that does not mean that Rules, 1968 were rescinded and the promotion of the Draftsman to the post of Junior Engineer (Technical)/Computers is not possible. After promotion of Draftsman to the post of Junior Engineer (Technical), they become the part of the same cadre i.e. Junior Engineer (Technical)/Computer and their promotion as per Rule 5 of Rules, 2004 is to be considered along with the directly appointed Junior Engineer (Technical)/Computer and there cannot be a class within the class for the purposes of further promotion.

18. Sri Bajpai has further submitted that the Draftsmans after their promotion to the post of Junior Engineer (Technical)/Computer and complete seven years on the post of Junior Engineer



(Technical)/Computer as on the first day of the year of recruitment, they become eligible for promotion to the post of Assistant Engineer (Civil). He has further submitted that directly recruited Junior Engineers (Technical) had approached this Court at Allahabad by filing Writ-A No.15161 of 2021, Manoj Kumar Singh and others Vs. State of Uttar Pradesh and others and this Court vide order dated 7.1.2022 disposed of the said writ petition by following order:-

*“In view of the above, therefore, there remains no controversy with regard to further recommendations, if made, against the remaining 18 vacant positions of Assistant Engineer (Civil) as per the note made in the recommendations earlier made on 24th August, 2021 that promotion process on 18 vacant positions had been put on hold for finalization of the seniority list.*

*Accordingly, it is ordered that respondents concerned shall forward the name of further 18 candidates' names from the finalized seniority list of Junior Engineer (Technical) against the 18 vacant positions to the U.P. Public Service Commission, Prayagraj strictly in accordance with law looking to the criteria laid for the said purpose and then U.P. Public Service Commission shall proceed to finalize the matter of promotion accordingly.*

*Appropriate recommendations as ordered above shall be made within a period of 15 days from the date of production of certified copy of this order before appropriate authority.*

*With the aforesaid observations/ directions, this petition stands disposed of.”*

19. After the said judgement dated 7.1.2022, the earlier proposal dated 10.2.2022 forwarded by the Engineer-in-Chief to the State Government for promotion to the post of Assistant Engineer (Civil) from the Junior Engineer (Technical), which had names of only directly recruited Junior Engineer(Technical) was examined by the Department of Personnel and Appointment, Government of Uttar Pradesh. Vide letter dated 8.4.2022, the Government wrote to the Engineer-in-Chief (Design and Planing) for making available proposal as per the mandate of Rule 5 of the Rules, 2004 in order to ensure compliance of the order dated 7.1.2022 passed by this Court in Writ-A No.15161 of 2021. While the aforesaid process of forwarding the requisition was under way, Manoj Kumar Singh and others filed Contempt Application (Civil) No.3107 of 2022 alleging therein the

disobedience of the order passed by this Court dated 7.1.2022 in Writ-A No.15161 of 2021 and, this Court on 26.5.2022 issued contempt notice to the Engineer-in-Chief/Head of Department, U.P. Public Works Department.

20. Under the aforesaid circumstances, the requisition dated 28.5.2022 was forwarded to the U.P. Public Service Commission as per the direction issued by this Court vide order dated 7.1.2022 mentioning the names of the eligible candidates {Junior Engineer (Technical)} on the basis of their seniority in the cadre of Junior Engineer (Technical) irrespective of the fact that they are directly recruited or promotee {Junior Engineer (Technical)} treating them as one class as per mandate of Rule 5(ii) of Rules, 2004.

21. Sri Bajpai has further submitted that the State authorities have acted as per the mandate of the statutory rules framed under Article 309 of the Constitution of India and till the Rules are amended/modified, the authorities cannot deviate from the Rules. The requisition sent, is strictly in accordance with Rules, 2004 and there is no merit in the present writ petitions, which are liable to be dismissed.

22. Sri Ratnesh Chandra, learned counsel for the private opposite party nos.6 and 8 has submitted that opposite party nos.6 and 8, who were appointed as Draftsman on 6.3.1999 and 20.10.1987 respectively, were promoted to the post of Junior Engineer (Technical) on 13.8.2003 and 22.3.2010 respectively, and their promotions have never been challenged till date. The tentative seniority list of Junior Engineer (Technical) was issued on 11.6.2008 and the final seniority list was issued on 10.8.2010. The petitioners never challenged the said seniority list nor objected to opposite parties being placed in the said seniority list. He has, therefore, submitted that it does not lie in the mouth of the petitioners to challenge the inclusion of the private opposite party nos.6 and 8 in the list of eligible candidates for promotion to the post of Assistant Engineer (Civil) from the post of Junior Engineer (Technical) as per the Rules, 2004.

23. Sri Ratnesh Chandra has further submitted that earlier also three persons, namely Bhageroo Ram, Narain Singh Jagpal and Babu Lal, who were placed in the seniority list dated 10.8.2010 at serial nos.143, 144 and 167 respectively and who were appointed as Draftsman, were promoted to the post of Assistant Engineer (Civil).

24. Second seniority list was published on 4.6.2020, which was finalized on 14.9.2021. The petitioners and the private opposite parties have been placed in the said seniority list as per their length of service on the post of Junior Engineer (Technical). It is only four Junior Engineers (Technical), who were initially appointed as Draftsman, are eligible to be promoted to the posts of Assistant Engineer (Civil) against the available vacancies from the post of Junior Engineer (Technical). There has been seldom any occasion that the candidates from the post Draftsman could get promoted to the post of Assistant Engineer (Civil) as they used to be promoted at the very belated stage from the post of Draftsman to the post of Junior Engineer (Technical) and, therefore, they could not be eligible to be considered for promotion to the post of Assistant Engineer (Civil). He has further submitted that from the year 2010 till date, no Junior Engineer (Technical) from the cadre of Draftsman could be promoted to the post of Assistant Engineer (Civil) as no one was eligible in the cadre of Draftsman to be promoted to the post of Assistant Engineer (Civil).

25. In respect of the Rules, 1968, 1984 and 2004, Sri Ratnesh Chandra, learned counsel for the opposite parties has adopted the arguments of Sri V.K. Bajpai, learned Standing Counsel.

26. Sri Ratnesh Chandra, learned counsel for the private opposite parties has also submitted that the present writ petitions have been filed for the purpose of enforcing the amendment in Rules, 2004, wherein a proposal has been made that so far promotion on the post of Assistant Engineer (Civil) is concerned, the same should be granted only to the persons, who have got degree or Engineering from any University or they should possess the Diploma in Civil Engineering by any institute recognized by the Government. However, the Rules,

2004 have not been amended till date. These Rules are to be enforced as they stand on the statute book. Rules, 2004 do not prescribe any qualification or eligibility of Diploma or Degree in Engineering for being promoted to the post of Assistant Engineer (Civil). The eligibility is that a Junior Engineer (Technical) should have rendered seven years of substantive service on the said post for promotion to the post of Assistant Engineer (Civil). The criteria for promotion is seniority subject to rejection of unfit.

27. Sri Ratnesh Chandra has further submitted that this Court cannot issue mandamus for amendment in the statutory Rules as it is the prerogative of the executive to amend the Rules. This Court should not take the legislative power in its hand. It is for the employer to prescribe the qualification and eligibility for a post and not the Court. So far the promotion to the post of Assistant Engineer (Civil) from the post of Junior Engineer (Technical) is concerned, the only criteria is seven years substantive service on the post of Junior Engineer (Technical) irrespective of the degree, diploma or any further qualification of the Junior Engineer (Technical). He, has, therefore, submitted that there is no substance in these writ petitions, which are liable to be dismissed.

28. Sri Tushar Verma, learned counsel appearing for opposite party nos.10 and 11 has also adopted the arguments of Sri Ratnesh Chandra, learned counsel for opposite party nos.6 and 8.

29. Sri G.C. Verma, learned counsel for opposite party nos.4 to 8 in Writ-A No.1514 of 2022 has submitted that opposite parties were promoted under the Rules, 1968 to the post of Junior Engineer (Technical) and their promotion to the post of Junior Engineer (Technical) cannot be challenged after a lapse of twelve years. The petitioners were also appointed under the Rules, 1968 vide appointment letters dated 22.7.2010 and 19.11.2013 respectively. Opposite parties were promoted vide order dated 22.3.2010. At the time of promotion of the opposite parties, the petitioners were not even born in the cadre of Junior Engineer (Technical) and, therefore,

they cannot challenge the promotion of the opposite parties at this belated stage.

30. Sri G.C. Verma, learned counsel for opposite party nos.4 to 8 has further submitted that these opposite parties are diploma holders and even otherwise they are entitled to be promoted to the post of Assistant Engineer (Civil). These opposite parties have filed Writ-A No.1305 of 2022 before this Court, wherein they have prayed for quashing of the order dated 10.2.2022 passed by the Engineer-in-Chief (Design and Planning), Public Works Department, U.P., Lucknow with further prayer for a writ of mandamus commanding the opposite parties to prepare the eligibility list for promotion on the post of Assistant Engineer (Civil) from the post of Junior Engineer (Technical) as per Rule 5 read with Rule 16 of the Rules, 2004 as per the seniority list dated 14.9.2021 issued by the Engineer-in-Chief Head of Department, Public Works Department, U.P., Lucknow and consider the case of the petitioners for promotion to the post of Assistant Engineer (Civil) as against eighteen posts for the Recruitment Year 2021-22. Even as per the petitioners' stand, the opposite parties are qualified to be promoted to the post of Assistant Engineer (Civil).

31. Sri G.C. Verma, learned counsel for the opposite parties has further submitted that the petitioners were appointed under the Rules, 1968, whereas the opposite parties were promoted under the said Rules. The petitioners cannot challenge the appointments and the promotions made under Rules, 1968 in absence of any challenge to the said Rules. He has, therefore, submitted that there is no substance in these writ petitions and as directed by this Court vide judgement and order dated 7.1.2022, the promotion to the post of Assistant Engineer (Civil) from the post of Junior Engineer (Technical) has to be made from the seniority list dated 10.8.2010 from the eligible Junior Engineer (Technical). He has, therefore, prayed for dismissal of Writ-A Nos.3814 of 2022 and 1514 of 2022.

32. Sri R.K. Upadhyaya, learned counsel for the Public Service Commission has submitted that the Public Service Commission is a proforma party. However, he has submitted that in reference to the Government letter dated 28.5.2022 for holding the supplementary Departmental Promotion Committee for promotion to the post of Assistant Engineer (Civil) from the post of Junior Engineer (Technical) for the selection year 2021-22, certain discrepancies were required to be removed by the Government as per the Commission's letters dated 9.1.2023 and 8.2.2023 respectively, but till date the Government has not removed those discrepancies. He has further submitted that the Public Service Commission is to follow the statutory rules. Once the Government removes the discrepancies as pointed out, the Public Service Commission will make recommendation for promotion of the eligible candidates from the seniority list forwarded by the State Government for promotion to the post of Assistant Engineer (Civil).

33. I have considered the submissions advanced on behalf of the learned counsel for the parties and perused the record.

34. The eligibility for promotion to the post of Assistant Engineer (Civil) as per Rule 5 of Rules, 2004 is seven years substantive service on the post of Junior Engineer (Technical)/Computer on the basis of seniority subject to rejection of unfit. The petitioners and the private opposite parties belonging to one cadre i.e. Junior Engineer (Technical). The petitioners were directly appointed to the post of Junior Engineer (Technical)/Computer, whereas the private opposite parties were promoted to the said post under the Rules, 1968. There is a common seniority list, which remains unchallenged.

35. In view thereof, I do not find much substance in the submission of Sri Kalia, learned Senior Counsel for the petitioners that after enactment of Rules, 1984, Rules, 1968 got omitted. Rules, 1968 provide eligibility and the procedure for promotion to the post of Junior Engineer (Technical)/Computer from the post of Draftsman. Under Rules, 1984, one more avenue of promotion to the Draftsman

i.e. Head Draftsman has been created, but the Rules, 1968 are not rescinded and very much in existence in the statute book. After promotion of the opposite parties from the post of Draftsman to the post of Junior Engineer (Technical)/Computer, the cadre of the petitioners and such promotees of Junior Engineer (Technical), became one i.e. the cadre of Junior Engineer (Technical). There cannot be a class within class for the purpose of further promotion.

36. The Court cannot lay down a new qualification for promotion, which is not prescribed under the statute/relevant service rules. This Court in Writ-A No.15161 of 2021 filed by the direct appointees of Junior Engineer (Technical), had given direction for forwarding the names of eighteen eligible candidates from the final seniority list of Junior Engineer (Technical)/Computer to the Public Service Commission for promotion to the post of Assistant Engineer (Civil). In compliance of the said direction, names of opposite parties, who are eligible for promotion, have been included in the impugned requisition sent to the Public Service Commission for promotion. I do not find that said requisition suffers from any illegality or is against the statutory prescription.

37. In view thereof, I find no error in the impugned requisition dated 28.5.2022 as it has been sent strictly as per the mandate of Rule 5(2) of Rules, 2004.

38. Accordingly, I do not find any substance in *Writ-A Nos.3814 of 2022 and 1514 of 2022, which are hereby dismissed, whereas Writ-A No.1305 of 2022 is allowed.*

( Dinesh Kumar Singh, J )

**Order Date:** 4<sup>th</sup> July, 2023  
Rao/-