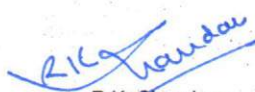


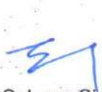



J		CWP No. & Title :- CWP No. 798 of 2007 titled as Sh. Om Parkash Kharab & others v/s Haryana Power Generation Corporation Limited & Others. [Flag-17]	
		Name of petitioners	Name of petitioners
1.	Om Parkash Kharab	24.	Yogendra Singh
2.	J.S. Brar	25.	Rajbir Singh
3.	Raj Kumar Sehgal	26.	Mahipal
4.	Bhajan Lal	27.	Rakesh Kumar Tewatia
5.	Ashok Saini	28.	Satyavir Singh Yadav
6.	Ranjeet Singh Lathwal	29.	Hakimuddin
7.	Chander Shekhar	30.	Satya Dev Phogat
8.	Satbir Singh Khatkar	31.	Surat Singh Yadav
9.	Jai Singh Lohan	32.	Virender Singh
10.	Desh Raj	33.	Jai Dev Gulia
11.	Ram Mehar	34.	Vijander Kumar Sharma
12.	Dharam Vir Singh	35.	Jitender Singh
13.	Dilbagh Singh	36.	Inder Singh Ranga
14.	R.S. Malik	37.	Sant Lal
15.	R.S. Dabas	38.	Rajbir Singh
16.	Mahabir Singh	39.	Vivek Jyoti
17.	Ravinder Kumar Malik	40.	Dalbir Singh
18.	Ramesh Kumar	41.	S.S. Payal
19.	Ashok Kumar	42.	Bharat Singh
20.	Ram Parshad Mor	43.	B.S. Rangi
21.	Avinash Kumar	44.	Varinder Pal Singh
22.	Ramesh Kumar Rohilla	45.	P.K. Kapila
23.	Krishan Kumar Rohilla		
Name of respondents			
No one was impleaded as private respondent.			
Prayer of the Petitioner in CWP:-			
1. For quashing the decision dated 09.08.2006 and for directing the respondents to prepare a common seniority list of the junior Engineers posted in Generation and Field Cadre for the purposes of their future promotion and not to discriminate the petitioner placed in Generation Cadre like the petitioner particularly when they are higher in merit to their counter parts posted in the Field cadre.			
2. To frame a uniform policy for giving option to the petitioners for placing in a particular cadre and to adhere such a policy without any pick and choose method and discrimination as has been done as per the impugned order.			
Main thrust of the Utility to CWP:-			
1. The petitioners earlier filed CWP No. 10195 of 1993 titled as Sh. Jaswant Singh Brar & others V/s H.S.E.B. & others.			
2. The candidates appointed were to be appointed either in the BBMB/BCB, thermal/Hydel Project or within or outside the State of Haryana in the field cadre as per the discretion of HSEB.			
3. The criteria adopted by the HSEB in the appointment of the candidates were that the candidates who were in the merit were posted in generation cadre and other were posted in the field cadre.			
4. Sh. Rajinder Singh Redhu & others who were working in Generation Cadre filed CWP No. 6557 of 1993 praying for deemed date promotion from the date their juniors in Field Cadre were promoted as AE. The CWP No. 6557 of 1993 was allowed and L.P.A. No. 657 of 1997 preferred by the erstwhile H.S.E.B. against the judgment rendered in CWP was dismissed.			
5. During the pendency of CWP No. 10195 of 1993 the petitioners moved an application that writ petition should be disposed off in terms of judgment rendered in L.P.A. No. 657 of 1997. However, the claim of the petitioners was rejected vide order dated 09/08/2006 whereas the judgment dated 17/12/2004 was implemented vide order dated 15/09/2005. Which was challenged by Sh. Parveen Arora & others vide CWP No. 16330 of 2005 and the implementation of the order dated 15/09/2005 was stayed.			



R.K. Chandan
Member
Secretary



Rajesh Khandelwal
Member-cum-GM/Admn,
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V.K. Jain
Member-cum-
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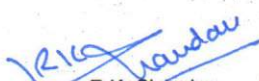

Sukarm Singh
Member-cum-
SE/Admn.-I,
HVPNL



R.R. Goel
Member-cum-
CE/Admn,
DHBVNL

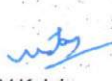

R.K. Bansal
Member-
CE/Admn.,
HPGCL



Poonam Bhasin
Chairperson-
cum-LR/HPUs.

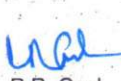
<p>6. As per provisions of Haryana Electricity Reforms (Transfer of Distribution Undertakings from HVPN Ltd. to Distribution Companies) Rules, 1999 in pursuance to the bifurcation of the erstwhile HSEB to HVPN, UHBVN, DHBVN and HPGCL were constituted.</p> <p>7. The petitioners were given the opportunity of giving their options vide Transfer Scheme notified on 01.07.1999.</p>
<p>It was therefore, contended that petition may be dismissed</p>
<p>Written submission of the Petitioners in Personal Hearing:-</p> <ol style="list-style-type: none"> 1. The seniority of the JE's selected in the year 13.08.1988 should be determined as per the decision rendered in LPA No. 657 of 1997 and CWP No. 16330 of 2005 and seniority of the JE's appointed in the year 13.08.1988 should be governed by the selection/seniority cum merit list irrespective of their placement in generation or field. 2. The Hon'ble High court has clearly directed to implement the decision as per LPA no. 657 of 1997 decided on 17.12.2004 and CWP-16330 of 2005 decided on 09-01-2014, in our case also. 3. The Hon'ble High Court in the decision dated 17.12.2004 directed that seniority of JE's selected and appointed against advt. no. CRA 104 dated 13.08.1988 in Power Department in the year 1989 will be governed by Selection/Seniority-cum-Merit list, declared by the selection board irrespective of placement of JE's in different wings of the power department. 4. The department must screen the Selection/Seniority-cum-Merit list of the year 1989 of JE's selected and appointed in erstwhile H.S.E.B. and ensure that senior is not victimized. 5. The petitioners have also clarified that no option has ever been given to them (1989 batch of JE's) to till date to choose the Company/ Corporation as the HPGCL/GENCO was not considering them in common cadre.
<p>Written submission of the private respondents in Personal Hearing:- No one was impleaded as private respondent.</p>
<p>Crux of the above mentioned pleadings:- They were selected as JE w.r.t. Advertisement No.CRA-104 in the year 1989. Their qualification at the time of appointment of JE was 3 years diploma in Mechanical/ Electrical/ Electronics Engineering, thus they fall in 22.5% quota meant for Diploma Holder for their further promotion as JE-I/AE. They have represented that their seniority and consequent promotion may be re-determined in the light of Judgement dated 17.12.2004 passed in LPAs no. 657 & 641 of 1997. The perusal of record reveals that officials senior to petitioners as JE/JE-I were yet to be promoted as AE against 22.5% quota upto 14.08.1998 i.e unbundling of erstwhile HSEB into HVPNL & HPGCL due to non availability of quota. Therefore, further promotion of petitioners as AE against their respective quota is required to be considered by the Utility to which they were allocated in terms of assigned seniority & availability of quota.</p>
<p>Recommendations of the Committee:- The petitioners were appointed as Junior Engineers in the year September-1989 against advertisement No. CRA-104. 254 no. Trainee Junior Engineers were recruited and were posted in Generation Cadre & Field Cadre. As such, merger of seniority list of Junior Engineers (Diploma Holder) from amongst Generation & Field Cadre has been made as per Para-20 sub-para-B) which is in terms of seniority of other batch-mates of directly recruited JEs during 1989 re-determined in pursuance to Judgement dated 17.12.2004 passed in LPAs no. 657 & 641 of 1997. For implementation of Judgement dated 17.12.2004 passed in LPAs no. 657 & 641 of 1997, respectively, 3 pronged action are required to be taken i.e. :- i. Merger of JE/Generation & JE/Field as it was a cadre of JEs. ii. Thereafter, placement in the seniority list. iii. Consideration of promotion as AE in terms of revised seniority list as per relevant regulations in vogue. All the above exercises have been carried out, as is evident from Para-20. This ensure the directions contained in judgement dated 17.12.2004 passed in LPAs no. 657 & 641 of 1997, readwith directions dated 09.01.2014 passed in CWP no. 16330 of 2005.</p>



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	After due consideration of factual and legal position in this regard, the committee is of the view that the contentions made by the Petitioners of CWP No. 798 of 2007 is feasible of acceptance to the extent of merger of JE/Generation & JE/Field by taking it to be a cadre of JEs. In so far as their further promotion as JE-I/AE is concerned, that will be considered in terms of relevant regulation and seniority assigned in the concerned Utility.		
K	CWP No. & Title :- CWP No. 16883 of 2006 titled as Sh. Sukhdev Singh & others V/s Haryana Power Generation Corporation Limited & others. [Flag-19]		
	Name of petitioners		Name of respondents
	1. Sukhdev Singh	1.	N.K. Khurana
	2. Rajesh Gulati	2.	P.L. Saluja
	3. Shiv Parkash	3.	Subhash Chand Mittal
	4. Suresh Kumar Bansal	4.	Rajinder Singh Redhu
	5. Ashok Kumar Parmar	5.	Nand Kishore
	6. Suresh Chand Jindal	6.	Satbir Singh
	7. Ashok Rathi	7.	Tilak Raj
		8.	Sushil Kumar Goyal
		9.	Sanjay Sidana
		10.	Seema Khurana
		11.	Ravinder Singh
		12.	Chanda Singh
		13.	Randhir Singh
		14.	Sanjeev Kumar
		15.	Dharam Pal
	Prayer of the Petitioner in CWP:- For directing the respondents to consider the case of the petitioners for promotion to the post of AE from the date juniors are promoted by the order of respondent department dated 15.09.2005 with all other consequential benefits.		
	Main thrust of the Utility to CWP:- 1. The petitioners joined the erstwhile H.S.E.B. and passed the AMIE/BE qualification on the dates mentioned except petitioner no 6 who passed the IME degree qualification on 16.02.1991 instead of 11.03.1991. 2. Erstwhile HSEB vide order dated 27.02.1989 framed a policy to prepare the ranking list of Engineering Subordinates who passed the AMIE/BE Examination, in order of their date of passing AMIE/BE Examination on completion of 5 years service in the cadre, to consider them for promotion against 12 ½% quota as per Regulation 9(i) (b) (ii) and 9(i) (c) (ii) of PSEB service of Engineers (Electrical) Recruitment Regulations -1965 notified vide order dated 19.02.1988. 3. The category of Foreman Grade-I which was initially brought under definition of Engineering subordinates vide order dated 12.04.1991 and notification dated 21.05.1991 was deleted from the purview of Engineering Subordinates vide order dated 11.10.1991. Petitioner no 3 and 7 are not entitled to be treated as Engineering Subordinates for promotion to the post of AE against 12 ½ % quota of AMIE/BE. The category of FM-I was again re notified as Engineering Subordinates vide order dated 17.10.1995. All the petitioners were promoted in terms of policy dated 19.02.1988 and notification dated 17.03.1989. 4. Sh. Baljit Singh and 15 other JEs working in field cadre were promoted during 1991-92 as AE(Adhoc) by erstwhile HSEB. There was no vacancy of AE against 12 ½% share quota posts of AMIE/BE Engineering Subordinates in Generation Cadre, and the petitioners and others who were posted in Generation Cadre could not get promotion as AE during 1991-92. The erstwhile HSEB vide notification dated 12.10.1993 again increased the period of service from 2 years to 5 years. 5. The erstwhile HSEB created two separate cadres of engineering subordinates vide O/o dated 19.02.1988 i.e. Generation Cadre for the Engineering Subordinates working in Thermal/Hydel Projects/BBMB and laid the criteria for direct recruitment to the post Assistant Engineer and by promotion from amongst the Engineering Subordinates fixing share quota posts for both cadres		



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separately. 65% posts of AEs are filled up by direct recruitment and out of remaining 35% promotion quota posts of AEs, 22 ½% were to be filled up from amongst Engineering Subordinates of Generation Cadre as defined in Regulation-2(g)(ii) with 5 years service as JE-I/Boiler Controller and 12 ½% posts from amongst Engineering Subordinates having qualified the AMIE/BE, and on the basis completion of twin conditions i.e. 5 years service and passing of AMIE/ BE, on the basis of ranking list prepared in order of their date of passing AMIE/ BE examination.

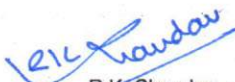
6. A candidate recruited as Engineering Subordinates having qualification of AMIE/ BE, could also be considered for promotion as AE after he attained experience of 5 years on the post as per order dated 19.02.1988 read with O/o dated 27.02.1989 and O/o dated 20.10.1993.
7. The petitioners who joined the post of Boiler Controller/Junior Engineer/ Foreman Grade-I in between the year 04.10.1985 to 25.08.1988 and passed the AMIE examination between the year 10.09.1990 to 11.03.1991 were promoted as AE on the basis of ranking list of AMIE/BE as per criteria laid in O/o dated 19.02.1988 read with O/o dated 20.10.1993 and notification dated 17.10.1995. The petitioners were further promoted to the post as AEE on the basis of seniority cum merit and passing of Departmental Accounts Examination. Petitioners at sr. no.1,4,5 & 6 were further promoted from AEE to Executive Engineer on the basis of seniority cum merit.
8. Sh. Baljeet Singh and 15 JEs were appointed against advertisement dated 13.08.1988 and promoted as AE(adhoc). Sh. Rajinder Singh Redhu & 15 other JEs filed CWP 6557 of 1993 praying for deemed date promotion from the dates their juniors (Baljeet Singh and others) were promoted. CWP 6557 of 1993 was allowed by the Hon'ble High Court vide order dated 29.07.1997. LPA No. 657 of 1997 preferred by erstwhile HSEB was dismissed vide order dated 17.12.2004. The judgment dated 17.12.2004 was implemented and deemed date promotion was given to Rajinder Singh Redhu and Others vide order dated 15.09.2005. These promotions were challenged by Parveen Arora and others vide CWP 16330 of 2005 and implementation of seniority list dated 15.09.2005 was stayed vide order dated 23.10.2006.


It was therefore contended that petition may be dismissed.

Written submission of the petitioners in Personal Hearing:-


While implementing the decision & framing the Inter-se seniority, following established facts already implemented in erstwhile HSEB or any of its utilities after bifurcation, may please be taken into consideration:-

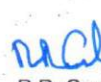
1. Regular Satisfactory Service as Engineering Subordinates, Apprentice & Training period cannot be considered towards regular service and Seniority should be reckoned from the date of regularization of service i.e. from the date of joining the regular service.
2. Copy of Secretary, HSEB, Panchkula Memo no. Ch-127/REG-137, Dated 22.11.91 (In continuation to its earlier Memo No. Ch-96/REG-137 dated 27.03.91) should be considered.
3. In Hon'ble Supreme Court of India Judgment dated 07.01.2013 arising out of SLP (C) No. 29987 of 2010 titled as Haryana Power Generation Corporation Limited & Others (appellant) Versus Harkesh Chand and others (Respondents), passed in favour of HPGCL the Board's stand was that the period spent during the training cannot be counted towards regular satisfactory service.
4. "As per the Regulation, the ranking list of Engineering Subordinates for their promotion as AE may be prepared on first day of January each year. (ii) After such list is prepared, Clause (ii) of regulation would operate and require the Board to include the name of candidates who became eligible in the subsequent year, below the name of earlier eligible candidates. (iii) 12.1/2 % quota was meant for the Engineering Subordinates who qualify AMIE/BE while in service after obtaining the permission from the department."
5. The eligibility criteria where "A person possessing/acquiring twin conditions earlier i.e. requisite qualification (AMIE/BE) and requisite experience should be placed higher in the ranking list than the person acquiring both the conditions later on".
6. The above established facts already implemented in erstwhile HSEB or any of

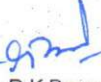

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its utilities after bifurcation and may please be taken into consideration while framing inter-se seniority list.

Written submission of the private respondents in Personal Hearing:-

1. High Court vide its order dated 09.01.2014 directed the department to make fresh exercise in terms of policy in vogue. Based upon the PSEB service of Engineers (Civil) Recruitment Regulation, any new interpretation of provision of PSEB service of Engineers (Electrical) Recruitment Regulation (as applicable to HSEB) amended vide Secretary/HSEB, Panchkula O/o No. 21/Reg-18 dated 19.02.1988 (Clarification 1 (ii) in vogue during 19.02.88 to 11.10.93 would be the violation of department proposal dated 15.05.2012 and Hon'ble High Court direction dated 09.01.2014.
2. Any attempt to draw analogy or application of the irrelevant orders or new interpretations of the provisions of PSEB service of Engineers (Electrical) recruitment regulation 1965 (as applicable to HSEB) amended vide Secretary/HSEB, Panchkula O/o No. 21/Reg-18 dated 19.02.1988 read with notification No. 89/Reg-31 dated 13.02.1991 implemented at the time of promotions of the juniors (respondents of CWP No. 6557 of 1993) would be highly misconceived and abuse of process of law.
3. Fore Man Grade-1 were specially appointed for projects in 1988 / 89. In terms of provisions of regulations vide order dated 19.02.88, promotions against 12.5% share quota shall be made from AMIE/BE Engineering Subordinates. The category of Fore Man Grade-1 was not covered under the definition of engineering subordinates till 12.04.91. On amendment in regulation vide notification No. 98/REG-18/L dated 12.04.91, category of Fore Man-1 was included in the definition of engineering subordinates of Generation Cadre / projects. Thus Fore Man-1 should be considered for promotion as AE against 12.5% quota after 12.04.91 for projects. Thus the claim of Fore Man-1 for their consideration prior to 12.04.91 is against the regulations.
4. Promotion of engineering sub-ordinates to the post of Assistant Engineer against AMIE/BE quota is not a promotion based upon the seniority or the length of service. This promotion quota is based on degree & required experience as engineering subordinate. In terms of provisions of PSEB service of Engineers (Electrical) recruitment regulation 1965 (as applicable to HSEB) amended vide Secretary/HSEB, Panchkula O/o No. 21/Reg-18 dated 19.02.1988 read with notification No. 89/Reg-31 dated 13.02.1991, engineering subordinates possessing AMIE/BE qualification having 2 year's experience as such is entitled for promotion against AMIE/BE share quota. JEs recruited in 1985, 1986, 1988, 1989 were appointed as JE/Thermal (Trainees) and JE/Filed (Trainees) and they hold the post of JE/Thermal or JE/Filed during the training. As such the period spent on training would be counted as service for experience of the post of JE/Thermal or JE/Filed.
5. In terms of instructions in vogue and implemented, the period spent on training was counted towards experience for promotion. In this regard, some implemented cases may be referred as below:-
 - a.) Sh. K.S. Pannu was promoted vide Secretary, HSEB vide office order 259/EG-5/DH-AMIE dated 24.5.91 by considering his training period towards experience as engineering subordinate in view of Secretary memo no. Ch.96/REG-137 dated 27.3.91.
 - b.) Sh. Kashmir Singh and Rajiv Mishra & others (respondents of CWP No. 6557 of 1993) were promoted as AE by considering his training period towards 2 years experience as engineering subordinate.
 - c.) Period spent on training has been counted as service for experience for promotion in respect of JEs recruited in 1985 as JE/Apprentice. Training period was counted towards completion of 5 years experience as Engineering Subordinates in respect of Sh. Ashok Kumar Miglani B.C, Balkishan Varma JE, V.M. Mahajan JE (refer ranking list as stood on 01.01.94 for Generation Cadre name's at Sr. No. 6,35,36).Annex-F-1.
 - d.) Period spent on training has been counted as service for experience for promotion in respect of JEs recruited in 07/1986 as JE/Apprentice, regularized w.e.f. 01.04.87. Training period was counted toward completion of 5 years experience as Engineering Subordinates in respect of Sh. Ashok Kumar Parmar

R.K. Chaudan

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Member
Secretary

b

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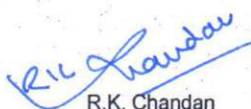
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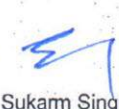
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<p>JE(petitioner), Satya Pal Malik JE, Suresh Kumar Bansal JE (petitioner), K.L. Banga JE, Jai Parkash Dhillon JE, Ashok Kr. Bansal BC, D.P.Singh JE etc. (refer ranking list as stood on 01.01.1994 for Generation Cadre name's at Sr. No. 3,4,5, 11,13, 15,16 etc.).</p> <p>e.) Period spent on training has been counted as service for experience for promotion in respect of JEs recruited in 1988 as JE/Training. Training period was counted toward completion of 5 years service experience as Engineering Subordinates in respect of Sh. Anil Kumar Gupta JE, Jashmer Singh JE, Ramesh Gupta JE, Vijay Kumar JE, Rajesh Kumar Gulati JE(petitioner), Hari Singh JE etc (refer ranking list for Generation Cadre as stood on 01.01.1994 names at Sr. No. 23, 24, 25, 26, 27, 28).</p> <p>6. Period spent on training has been counted as service for experience for promotion in respect of JEs recruited in 09/1989 as JE/Training in Field & Thermal. Training period was counted toward completion of 2 years experience as engineering subordinate during promotion from 18.12.91 to 11.10.93 and toward 5 years experience as Engineering Subordinates for promotion onwards 12.10.93 (refer ranking lists as stood on 01.01.95 for Generation / Field).</p> <p>7. The period spent on training has been counted as service for experience for promotion as per instruction/policy in vogue and implemented. Despite that, a group of employees misconceiving the authorities in their vested interest that seniority should be reckoned from the date of joining regular service after successful completion of training period. Reliance has been placed on order dated 0701.2013 of Hon'ble Supreme Court of India rendered in SLP No. 29987 of 2010.</p> <p>8. The promotion against AMIE/BE quota is based upon ranking position of an engineering subordinate in the ranking list and his completion of requisite 2 or 5 years experience as Engineering Subordinates and not based upon his seniority. Supreme Court order dated 07.01.13 is specific in the matter of grant of ACP to Plant Attendant Grad-II/Technician Grade-II, appointed as Apprentices ITI Trainee. They were not given any kind of post during training and they did not work on a post for which they claimed for grant of ACP under ACP scheme. So ACP rules are not applicable in the case of counting of JE/Trainee period towards experience for promotion.</p>
<p>Crux of the above mentioned pleadings:-</p> <p>The petitioners are praying for directions to the respondents to consider their case for promotion to the post of AE from the date their juniors have promoted by the department vide order dated 15/09/2005. The petitioners were appointed as Junior Engineers /Forman Grade-I in erstwhile HSEB from the year 1985 to 1988. All the petitioners acquired the qualification was AMIE during their service. The petitioners are praying that their names should be considered for promotion to the post AE from the date their juniors have been promoted.</p> <p>The perusal of record reveals that in compliance of decision of Hon'ble High Court in CWP No. 2953 of 1987 titled as S.P. Kapoor, JE & others Vs HSEB, options were invited from amongst all JEs (including present petitioners at Sr. no. 1 to 7) working in Thermal/Hydel Projects in HSEB vide memo no. 36/NGE/O-105 dt. 11.11.1987. After receipt of options, the suitability of such JEs being absorbed in Generation Cadre or otherwise was duly considered and the decision was circulated vide Memo No.Ch-81/NGE/G-105 dated 29.04.1988. They are estopped by their own conduct to challenge their allocation due to efflux of time.</p> <p>Thus, their allocation as JE/Generation or JE/Field had achieved finality which cannot be undone under the garb of directions contained in Judgement dated 17.12.2004 passed in LPAs no. 657 & 641 of 1997, as claimed by the petitioners.</p>
<p>Recommendations of the Committee:-</p> <p>The petitioners of CWP No 16883 of 2006 were promoted to the post of Assistant Engineer from different feeder post, as such, their claim is required to be considered on individual basis which is as below:-</p> <p>Sukhdev Singh JE, Suresh Kumar Bansal JE, Suresh Chand Jindal JE & Ashok Kumar Parmar JEs were working in erstwhile HSEB, may it be Hydel/Thermal, their options were called and they were absorbed in Generation/Field Cadre as per their suitability based upon their options received. Their list was duly circulated, which was never objected to by them prior to filing of the present petition. They are</p>



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estopped by their own conduct to challenge their allocation due to efflux of time. Thus, their allocation as JE/Generation or JE/Field had achieved finality which cannot be undone under the garb of directions in Judgement dated 17.12.2004 passed in LPAs no. 657 & 641 of 1997, as claimed by the petitioners. After due consideration of factual and legal position in this regard, the committee is of the view that the contentions made by the petitioners of CWP No. 16883 of 2006 are not feasible of acceptance.

Rajesh Gulati JE of CWP No 16883 of 2006 was directly recruited in the year 1988 against advertisement No. CRA-95 wherein applications for 150 no. of posts of Trainee Junior Engineers (Field) was invited with a clear stipulation that on successful completion of the training they will be absorbed in regular service of HSEB as Junior Engineers (Field). Against CRA-95, a total of 55 No. were selected in January 1988. This settles the claim of the JEs who were selected in a specific cadre i.e. Field against CRA-95. As such, no merger of cadre is required to be made. After due consideration of factual and legal position in this regard, the committee is of the view that the contentions made by Rajesh Gulati JE is not feasible of acceptance.


After due consideration of factual and legal position in this regard, the committee is of the view that the case of Sh. Shiv Parkash & Sh. Ashok Rathi, Foreman Grade-I for their further promotion as AE under 12.5 % AMIE/BE quota meant for them as they are Engineering Subordinate in terms of regulation/notification no. 98/REG18/L dated 12.04.1991. Their cases are to be decided by the administrative department of concerned Utility independently as the directions contained in Judgement dated 17.12.2004 passed in LPAs no. 657 & 641 of 1997, because facts & circumstance of their case & Rajender Singh Redhu case are different.


L CWP No. & Title :- CWP No. 16898 of 2006 titled as Sh. Jagdish Parshad & others V/s Haryana Power Generation Corporation Limited & others. [Flag-20]


	Name of petitioners		Name of respondents
1.	Jagdish Parshad	1.	N.K. Khurana
2.	Baljit Singh	2.	P.L. Saluja
3.	Udai Bhan Singh	3.	Subhash Chand Mittal
4.	Shishu Pal Singh	4.	Rajinder Singh Redhu
5.	Prahlad Kumar	5.	Nand Kishore
6.	Baru Ram	6.	Satbir Singh
7.	Jai Parkash Sharma	7.	Tilak Raj
8.	Mohinder Pal	8.	Sushil Kumar Goyal
9.	Sajjan Kumar	9.	Sanjay Sidana
10.	Jagdish Rai	10.	Seema Khurana
11.	Rajesh Kumar Malik	11.	Ravinder Singh
12.	Ranbir Singh	12.	Chanda Singh
13.	Sham Lal	13.	Randhir Singh
		14.	Sanjeev Kumar
		15.	Dharam Pal


Prayer of the Petitioner in CWP:-


1. For quashing the impugned order dated 15.09.2005(P-8) whereby the private respondents no. 3 to 17 have been promoted to the rank of AE retrospectively w.e.f 1991 and 1992 out of quota as per order dated 15.09.2005 and by superseding the seniors (petitioners) by violating the fixed quota of 12 1/2 % for Engineering Subordinates and without qualifying the experience required for post of AE as per rules.
2. To rectify the mistake and further promote the petitioner in consonance with the quota who are entitled for promotion as per ranking list of 1995 in the light of instructions issued by the respondent department i.e. 12.10.1993 w.e.f. due date with all other consequential benefits.



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Main thrust of the Utility to CWP:-

1. The promotion of Engineering subordinates possessing AMIE/BE qualification to the post of AE against 121/2% quota posts are considered on the basis of their ranking no. in the ranking list prepared under the instructions contained in office order dated 20.10.1993.
2. In pursuance of the posts falling vacant in the Field Cadre, the JEs namely sube Singh, Virender Singh Kamboj, Rajiv Mishra, Naresh Kumar & others working in the field offices were promoted to the post of Asstt. Engg. (Adohoc) by the erstwhile HSEB. Sh. Sube Singh, Virender Singh Kamboj, Rajiv Mishra, Naresh Kumar and others were junior to Rajender Singh Redhu and others in common merit list. Sh. Rajinder Singh Redhu & others filed CWP No. 6557 of 1993 for their deemed date promotion on the ground that they are senior but working in Generation Cadre. The CWP No. 6557 of 1993 was allowed and L.P.A. No. 657 of 1997 preferred by the erstwhile H.S.E.B. was dismissed.
3. No junior Engineering subordinates possessing AMIE/BE qualification and junior to the petitioners has been promoted to the post of AE in the Generation Cadre except Rajender Singh Redhu and others who were given deemed date promotions as AE in compliance to the orders dated 17.12.2004 of the Hon'ble High Court passed in LPA no. 657 of 1997.
4. The decision was implemented vide office order dated 15/09/2005 which was challenged by Sh. Parveen Arora & others vide CWP No. 16330 of 2005 and the implementation of the order dated 15/09/2005 was stayed.
5. The petitioners were allocated to HPGCL "as on where basis" the petitioners never represented to the corporation against their allocation and posting in Generation Cadre which means accepted their posting as JE in Generation Cadre and after the formation of HPGCL in 08/1998 there is one Cadre that is Generation Cadre.
6. The petitioner neither passed the AMIE/BE qualification before the private respondents nor they were petitioners in CWP no. 6557 of 1993 titled as Rajender Singh Redhu and others.
7. As per the instructions contained in office order dated 20.10.1993 the eligibility for the promotion amongst the Engineering Subordinates against 12 ½ % quota post is counted from the date of acquisition of qualification of AMIE/BE and completion of 5 years service in the cadre of Engineering Subordinates. The names of engineering subordinates who satisfy both the condition that is passing of AMIE/BE examination and 5 years service are entered in the ranking list strictly from the date they fulfill both these conditions and not on the basis of their seniority from the date of their continuous appointment in their respective cadre.

It was therefore, contended that petition may be dismissed.


Written submission of the petitioners in Personal Hearing:-


The petitioners of Civil Writ Petition No. 16898 of 2006 Jagdish Parsad and others appearing at Sr.No.6 of the subject cited judgment hereby submit the following points for your kind consideration.

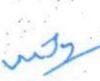
1. Our date of joining as J.E / F.M-1 is earlier than all the respondents No. 3 to 17 of Civil Writ Petition No. 16330 of 2005.
2. We are senior to all the respondents No. 3 to 17 of Civil Writ Petition No. 16330 of 2005 in the Ranking List of the Engineering Subordinates as it stood on 01.01:1994. Based on this Ranking List, we were promoted as A.E in 09/2007 whereas the respondents No. 3 to 17 i.e Sh. Rajender Singh Redhu & others were promoted as A.E in 09/2010
3. While implementing the directions of the Hon'ble High Court to frame revised ranking list / seniority or the engineering subordinates, we should be placed above the respondents No. 3 to 17 of Civil Writ Petition No. 16330 of 2005.


Written submission of the private respondents in Personal Hearing:-


- a.) The petitioners have chosen to challenge the order dated 15.09.2005, granting promotion to respondents interalia on the ground that they are promoted to the rank of AE retrospectively w.e.f. 1991 and 1992 out of quota and by superseding the petitioners. Petitioners have passed BE/AMIE exam in 1994 and were not eligible for promotion as AE on the deemed date promotion i.e.



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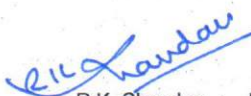
18.12.91, 19.02.92, 01.04.93. As such, they should not have any grievance to raise the issue of excess quota.

- b.) CWP No. 6557 of 1993 was allowed with all consequential benefits to the petitioners of CWP No. 6557 of 1993 at par with their junior respondents vide order dated 29.07.97 and 17.12.04. As such, petitioners of CWP No. 6557 of 1993 have been granted deemed date promotion w.e.f. 18.12.91, 19.02.92, 01.04.93 to bring them at par with their junior respondents vide order dated 15.09.05. It is well settled law that promotees could reckon their service for the purpose of seniority from the date the post in their own quota become available and they are adjusted against the same. As such, the period between the date of promotion of petitioners of CWP No. 6557 of 1993 vide order dated 15.09.05 and the date on which their own share quota post was available in erstwhile HSEB would be deemed to be hanging outside service. In this way, respondents of CWP No. 6557 of 1993 shall be assigned seniority inter-se with their juniors against their own quota in erstwhile HSEB and there is no violation of quota.
- c.) The claim of the Petitioners of CWP No. 16898 of 2006 being senior to the respondents is totally misconceived. In facts, Petitioners 1, 2, 11, 12 have passed AMIE examination on 08.04.1994 and Petitioners 3 to 10 & 13 have passed BE examination on 18.07.1994. Whereas all the respondents of CWP 16898 of 2007 have qualified AMIE examination between the periods of 31.10.1984 to 11.3.1991 i.e. prior to the petitioners.
- d.) In terms of provisions of PSEB service of Engineers (Electrical) Recruitment Regulation (as applicable to HSEB) amended vide Secretary/HSEB, Panchkula O/o No. 21/Reg-18 dated 19.02.1988, the eligibility for consideration for promotion from AMIE/BE against 12^{1/2}% quota, was determined from the date of qualifying such examination during the period of 19.02.88 to 11.10.93. All the promotions against AMIE/BE share quota were made by framing ranking list in order of date of passing the examination. In the findings of Hon'ble High Court orders dated 29.07.1997 and 17.12.2004, Rajender Singh Redhu & Others were declared senior to the respondents of CWP No. 6557 of 1993 in order of eligibility criteria of date of passing the AMIE/BE exam. Petitioners of CWP No. 16898 of 2007 had not qualified the AMIE / BE exam on 18.12.1991, 19.02.1992 & 11.10.1993 i.e. the deemed dates of promotion of the Respondents. Petitioners thus cannot claim promotion prior to the respondents as they were not eligible on the deemed date due to non passing of AMIE/BE qualification.
- e.) Quota vacancies of AE available during 19.02.88 to 11.10.93 had been filled on the basis of ranking list so prepared from the date of passing AMIE/BE exam as per regulations in vogue. After amendments in regulation vide notification dated 12.10.1993 read with notification dated 20.10.93. share quota vacancies available onwards 12.10.93 was filled on the basis of ranking list of AMIE/BE engineering subordinates prepared in order of date of satisfying both the conditions i.e. passing the AMIE / BE examination and five years experience (as it stood on 01.01.1994 & 01.01.1995). Thus, the claim of the Petitioners for promotion on the basis of seniority is totally misconceived and liable to be rejected on the basis of regulation in vogue during the relevant period.


Crux of the above mentioned pleadings:-

They were engineering subordinate prior to batch of JEs directly recruited in 1989 falling under 12.5% AMIE. The petitioners also filed CWP No. 18977 of 2005 which was disposed off with directions to pass speaking order on Legal Notices served by the petitioners. However legal notice served by the petitioners was rejected by passing speaking order hence the present writ petition.


The perusal of record reveals that in compliance of decision of Hon'ble High Court in CWP No. 2953 of 1987 titled as S.P. Kapoor, JE & others Vs HSEB, options were invited from amongst all JEs (including present petitioners at Sr. no. 1 to 7) working in Thermal/Hydel Projects in HSEB vide memo no: 36/NGE/O-105 dt. 11.11.1987. After receipt of options, the suitability of such JEs being absorbed in Generation Cadre or otherwise was duly considered and the decision was circulated vide Memo No.Ch-81/NGE/G-105 dated 29.04.1988. Thus, their allocation as JE/Generation or JE/Field had achieved finality which cannot be undone under the garb of directions contained in Judgement dated 17.12.2004 passed in LPAs no. 657 & 641 of 1997, as claimed by the petitioners.

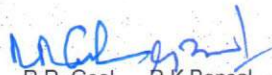

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<p>Recommendations of the Committee:- It is clear that petitioners of CWP No. 16898 of 2006 were working as engineering subordinates in erstwhile HSEB, may it be Hydel/ Thermal, their options were called and they were absorbed in Generation/Field Cadre as per their suitability based upon their options received. Their list was duly circulated, which was never objected to by them prior to filing of the present petition. Thus, their allocation as JE/Generation or JE/Field had achieved finality which cannot be undone under the garb of directions in Judgement dated 17.12.2004 passed in LPAs no. 657 & 641 of 1997, as claimed by the petitioners.</p> <p>After due consideration of factual and legal position in this regard, the committee is of the view that the case of Sh. Baljit Singh, Sh. Ranbir Singh & Sh. Rajesh Kumar Malik, Foreman Grade-I for their further promotion as AE under 12.5 % AMIE/BE quota meant for them as they are Engineering Subordinate in terms of regulation/notification no. 98/REG18/L dated 12.04.1991. Their cases are to be decided by the administrative department of concerned Utility independently as the directions contained in Judgement dated 17.12.2004 passed in LPAs no. 657 & 641 of 1997, because facts & circumstance of their case & Rajender Singh Redhu case are different.</p> <p>After due consideration of factual and legal position in this regard, the committee is of the view that the contentions made by the petitioners of CWP No. 16898 of 2006 are not feasible of acceptance.</p>					
<p>M CWP No. & Title :- CWP No. 5300 of 2007 titled as Sukhbir Singh Vs HPGCL and Others. [Flag-21]</p>					
	<table border="1"> <thead> <tr> <th>Name of petitioners</th> <th>Name of respondents</th> </tr> </thead> <tbody> <tr> <td>1 Sukhbir Singh</td> <td>1 N.K. Khurana</td> </tr> </tbody> </table>	Name of petitioners	Name of respondents	1 Sukhbir Singh	1 N.K. Khurana
Name of petitioners	Name of respondents				
1 Sukhbir Singh	1 N.K. Khurana				
<p>Prayer of the Petitioner in CWP:-</p> <ol style="list-style-type: none"> For quashing the impugned provision of the notification dated 19.02.1988 amendments (A), clarification II (ii) whereby the eligibility for consideration for promotion from AMIE/BE against quota is determined from the date of qualifying such examination instead of seniority, even when the junior and senior are eligible on the cut of date of promotion, being illegal, arbitrary, irrational and violative of settled law. For quashing the rejection order dated 10.05.2006 being arbitrary and against the law settled. For direction to the respondents to promote the petitioner to the post of AE w.e.f. the date junior i.e. respondent no 3 is promoted vide order dated 15.09.2005 with all other consequential benefits. 					
<p>Main thrust of the Utility to CWP:-</p> <ol style="list-style-type: none"> The petitioners joined the erstwhile H.S.E.B. and passed the AMIE/BE qualification. Erstwhile H.S.E.B. vide office order dated 27/02/1989 framed a policy to prepare a ranking list of Engineering subordinates who have passed AMIE/BE in order of their passing of AMIE/BE examination on completion of five years service in the cadre, to consider them for promotion to the post of AE against 12^{1/2} % quota. There was a policy of the Board dated 27.02.1989 whereby for promotion to the post of AE, the JE must have an experience of 5 years of service as JE with the qualification of AMIE/BE. The policy was changed on 13.02.1991 and the experience of five years was reduced to two years and the policy was again changed to five years. Sh. Rajinder Singh Redhu & others who were selected against the advertisement dated 13/08/1988 filed CWP No. 6557 of 1993 for their deemed date promotion on the ground that they are senior but working in Generation Cadre. The CWP No. 6557 of 1993 was allowed and L.P.A. No. 657 of 1997 preferred by the erstwhile H.S.E.B. was dismissed. The decision was implemented vide office order dated 15/09/2005 which was challenged by Sh. Parveen Arora & others vide CWP No. 16330 of 2005 and the implementation of the order dated 15/09/2005 was stayed. 					


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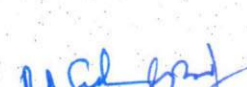
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