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D.K. SAHNI

v.

MANAGING DIRECTOR, MANGANESE ORE INDIA LTD. AND ORS.

B

AUGUST 12, 1992

[A.M. AHMADI AND K. JAYACHANDRA REDDY, JJ.]

Manganese Ore (India) Recruitment and Promotion Rules, 1977:

C *Rules 4 and 7—Mining Engineering Cadre—Promotion to the post of Chief Mining Engineer—Eligibility criteria—Qualifications prescribed for direct recruitment applicable, failing which double the experience specified to be fulfilled—Chief Mining Engineer not satisfying the requirement prior to promotion, but becoming eligible on modification of the relevant entry in the Rules—Whether should be reverted—Whether should seek re-entry into the* D *cadre of Chief Engineer on the acquisition of eligibility on modification of the relevant entry in the Rules.*

The appellant joined the respondent-company in 1966 as Assistant Mining Manager and rose to the position of Chief Mining Engineer in E **1980. Subsequently, pursuant to the selection made by the Departmental Promotion Committee, after interviewing the Chief Mining Engineers, the appellant who ranked fifth in seniority, was promoted as Deputy General Manager, in preference to his seniors.**

The superseded officers represented to the authorities that since the F **appellant did not possess the requisite educational qualifications prescribed for appointment as Chief Mining Engineer he could not be promoted to the next higher post of Deputy General Manager. The representation was rejected on the ground that the post of Deputy General Manager, being an ex-cadre post, the question of the appellant possessing** G **the requisite qualifications did not arise. Thereupon, one of the superseded officers filed a writ petition before the High Court challenging the appellant's appointment.**

During the pendency of the petition the company decided to restructure the Personnel and Technical Department and on the basis of the H **recommendations of a sub-committee, the appellant was appointed as**

General Manager (T).

Thereafter, the High Court allowed the Writ Petition filed by one of the superseded Chief Mining Engineers, holding that the post of Chief Mining Engineer was a promotional post and since the appellant did not possess the educational qualifications prescribed for the post of Chief Mining Engineer, his entry into that cadre was not legal and consequently, his further promotion to the post of Deputy General Manager and later as General Manager (T) were legally unsustainable. Accordingly, it quashed the appointment of the appellant as Deputy General Manager and also General Manager (T) and directed the authorities to pursue a fresh process of selection in accordance with the rules framed on 6/12th October, 1983.

In the appeal before this Court on behalf of the appellant it was contended that under Rule 7 of the Recruitment and Promotion Rules, 1977 it had been made clear that the educational qualification would not be insisted upon in deciding the promotion of a departmental candidate, that according to the said rule, the appellant was only required to show that he had the requisite experience for entry by promotion into the higher post, and so when the appellant was promoted as Chief Mining Engineer he was merely required to possess the requisite qualification for qualified candidates and nothing more and, similarly, for entry to the cadre of Deputy General Manger also he had merely to show that he had satisfied the experience criterion and was not required to show that he possessed the educational qualification prescribed for direct recruitment, that by subsequent office orders dated 22nd January 1982 and 1/12th October, 1983 certain modifications were made in the Annexure to the Recruitment and Promotion Rules, 1977 pertaining to the qualifications and experience in respect of the posts of Chief Mining Engineer (Production/Planning) and Deputy General Manager (T), that once the appellant was shown to possess the first class Mine Manager's Certificate and the prescribed experience he was eligible to be considered for promotion as Deputy General Manager regardless of whether or not he held the position of Chief Mining Engineer and that in any case the appellant could not be asked to revert since he had held the post since quite some time, that since the appellant had secured the First Class Mine Manager's Certificate, he possessed the requisite educational qualification and, therefore, it was not necessary for him to possess double the experience prescribed for those

A without the required educational qualification; that even if it was assumed that the appellant was not qualified to be promoted to the post of the Chief Mining Engineer in April, 1980, he, at any rate, became eligible for promotion on the modification of the relevant entry in the Annexure with effect from 17th October, 1981 and even if his promotion was regularised or deemed to have been regularised by the company from the said date, he B was entitled to be considered for further promotion in the cadre of Deputy General Manger and later General Manager (T) of the company.

While supporting the appellant's contentions, on behalf of the management it was submitted that under Rules 7(c) and (d), the power to C relax the minimum experience or to resort to direct recruitment was reserved to the management and hence if the experience requirement fell short, it must be deemed to have been relaxed, and that it always treated the appellant as eligible for being promoted to the higher posts of Deputy General Manager and General Manager (T).

D On behalf of the superseded officers it was contended that the appellant did not answer the requirement of both the educational qualification and experience to be promoted as Chief Mining Engineer as well as Deputy General Manager and later General Manager (T) and hence he was a usurper and was not entitled to the protection of this E Court, and that once the Court held that the initial entry of the candidate was in violation of the promotional criteria, his entry must be treated as void and unless the DPC reconsidered his case for promotion along with others his entry in the cadre could not be regularised on a deeming fiction; that no such case was put up before the High Court and, therefore, this Court should not permit it to be placed for the first time in proceedings F under Article 136 of the Constitution and that Article 136 jurisdiction must be exercised sparingly.

Disposing of the appeals, this Court,

G HELD : 1.1. Under the rule position as it existed at the date of the appellant's promotion to the post of Chief Mining Engineer, i.e. on 19/21st April, 1980, the appellant was not eligible for appointment to the said post by promotion. However, on the change brought about in the relevant entry by the order of 22nd January, 1982 with effect from 17th October, 1981, the appellant became eligible for promotion and even if his placement in H the cadre of Chief Mining Engineer is reckoned from that date he was

clearly eligible for upward promotion. [815 E] A

1.2. The appellant's promotion made under the order of 19th April, 1980 was sought to be undone only after his promotion to the higher post. There is no charm in directing the reversion of the appellant for a short period from 21st April, 1980 to 16th October, 1981 when it is found that under the revised or modified criteria he was elegible for appointment as B Chief Mining Engineer on 17th October, 1981. He was placed junior to others and even if he is considered as promoted with effect from 17th October, 1981, he would continue to rank junior. He was selected for the higher post on merit though he was junior to others. Therefore, it is not a case where he had received weightage because he was shown senior when C the DPC selected him for the higher post. He has served on the promotion post of Deputy General Manager (T) since July, 1983. In the circumstances, it would be harsh and shocking to revert him after so many years only on the ground that he must seek re-entry in the cadre of Chief Mining Engineer with effect from 17th October, 1981, when he acquired eligibility D on the modification of the relevant entry in the annexure to the Rules.

[816A-D]

2.1. Schedule I appended to the Recruitment and Promotion Rules, 1977 of the Managanese Ore (India) Ltd. indicates the posts in the Mining Engineering Cadre of the company carrying a scale of pay of Rs. 500-800 E and above. The post of Chief Mining Engineer in the pay scale of Rs.1800-2250 is a cent per cent promotion post and is to be filled in by selection. The educational qualifications and experience set out in Column 7, which is meant for direct recruitment are (1) degree or equivalent diploma in Mining from a recognised University or Institute, (2) Ist Class Mine F Manager's Certificate of competency under Metalliferous Mines Regulations, and (3) at least 15 years' experience of which 7 years in a responsible position in an underground Mine such as Senior Mining Engineer or Deputy Planning and Design Engineer. In Column 8 meant for indicating the grade from which promotion will be made it is stated "Senior Mining G Engineer". Thus, a Senior Mining Engineer or a Mine Engineer could be promoted as Chief Mining Engineer. [811D, F-H, 812A]

2.2. The qualification and experience set out in Column 7 being for direct recruitment would not ordinarily apply where the post is required to be filled by promotion by selection. Rule 7 makes this position clear. It H

A in no uncertain terms says that educational qualifications should not be insisted upon in deciding the promotion of a departmental candidate provided he possesses twice the experience stipulated for a qualified candidate. [812B]

B 2.3. On a plain reading of Rule 7 with the instance quoted therein it is clear that if a Senior Mining Engineer or a Mine Manager does not possess the educational qualifications set out in Column 7 for direct recruitment as Chief Mining Engineer, he must have double the experience requirement set out in that column to be eligible for promotion to the higher post. In other words, going by direction in Rule 7, a Senior C Mining Engineer/Mine Manager, who does not possess the educational qualification for entry into the Chief Mining Engineer's Cadre, must show that he possessed experience of thirty years in the department. [812F-G]

D 2.4. Indisputably, the appellant who had joined the service in 1966 had not put in thirty years of service when he was promoted as Chief Mining Engineer. However, certain modifications were made in the Annexure attached to the Recruitment and Promotion Rules, with effect from 17th October, 1981 vide office order of 22.1.1982. Column 8 of the modified entry reads as Senior Mining Engineer with (a) Degree in Mining of a E recognised University/Institute or equivalent, (b) Ist Class Mine Manager's Certificate of competency under Metalliferous Mines Regulations (UR) and (c) 3 years service in company in the scale of Rs.1500-2000. Thus, under the modified entry the eligibility criteria for direct recruits remains the same except for a slight change in the experience criterion, viz., the requirement of experience of 7 years in a responsible position in F an underground mine has been dispensed with. The significant change, however, brought about in Column 8 is to state the educational/experience qualifications for promotion separately. The experience criterion for promotion under the modified entry is reduced to three years service in the company in a post carrying a scale of Rs.1500-2000. Therefore, under the revised entry a Senior Mining Engineer possessing the educational G qualification at (a) and (b) and experience of three years service in the company on a post carrying a scale of Rs. 1500-2000 became eligible for promotion to the post of Chief Mining Engineer. Under Rule 7(a) of the Recruitment and Promotion Rules a Senior Mining Engineer who does not possess the requisite educational qualification, but possesses double the H prescribed experience, i.e. experience of six years service in the company

on a post carrying a pay scale of Rs. 1500-2000, would be eligible for promotion to the post of Chief Mining Engineer. [812G, 814D-H,815A-B] A

Narender Chadha & Ors. **v.** *Union of India & Ors.,* **[1986] 2 SCC 157 and** *Ujagar Singh & Anr. etc. etc.* **v.** *State (Delhi Administration) etc. etc.,* **[1979] 4 SCC 530, referred to.** B

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2933-34 and 2942-43 of 1992.

From the Judgment and Order dated 18.7.89 & 30.1.90 of the Bombay High Court in W.P.No. 2681/84 & C.A.No. 2259 of 1989. C

K.K. Venugopal, Ashok H. Desai, V.A. Bobde and R.K. Jain, P. Sreedhran Nair, T.G.N. Nair, S. Sukumaran and P.N. Misra for the appearing parties.

The Judgment of the Court was delivered by D

AHMADI, J. Special leave in all the matters granted.

The appellant, D.K. Sahni, began his service career in 1966 as an Assistant Mining Engineer and rose to the position of Chief Mining Engineer on his promotion to that post in 1980. The Board of Directors of the Company at its 143rd meeting on 22nd March, 1983 resolved to E upgrade three posts of Chief Mining Engineers to the level of Deputy General Managers. At that point of time amongst the Chief Mining Engineers of the Company, the appellant in the order of seniority ranked after (1) A.H. Dharmadhikari (2) S. Kumar (3) G.N. Misra and (4) T.N. Prasad. A high powered Departmental Promotion Committee (DPC) was ap- F pointed to select candidates from amongst Chief Mining Engineers for placement in the upgraded posts of Deputy General Managers. This Committee interviewed candidates and made its selection. Meanwhile A.H. Dharmadhikari was promoted to the post of Deputy General Manager in the vacancy arising on the demise of K.V.P. Singh. Pursuant to the selection made by the DPC the appellant was promoted and appointed as Deputy G General Manager in preference to his seniors. S.Kumar and others, therefore, filed a Writ Petition No. 2533 of 1983 challenging the appointment of the appellant. However, in the meantime S.Kumar was promoted in due course as Deputy General Manager whereupon he withdrew the Writ Petition. The other two, G.N. Misra and T.N. Prasad represented to the H

A Board pointing out that the appellant did not possess the requisite educational qualification for appointment as Chief Mining Engineer and consequently he could not be promoted to the next higher post of Deputy General Manager. That representation was rejected on the ground that the post of the Deputy General Manager being an ex-cadre post, the question
B of the appellant possessing the requisite educational qualification did not arise. Thereupon G.N. Misra filed another Writ Petition No. 2681 of 1984 under Article 226 of the Constitution challenging the appellant's appointment. In that petition although the appellant was impleaded as a co-respondent along with the Managing Director and Chairman of the company he did not choose to enter an appearance, presumably because the company
C was expected to defend its action. Pending the hearing and disposal of the petition the company decided to restructure the Personal & Technical department of the company. A sub-committee was entrusted the task to undertake this exercise and select candidates from amongst the officers of the company to occupy higher posts that may be created. Accordingly one
D Pillai was appointed as General Manager (P) while the appellant was selected and appointed as General Manager (T). The Writ Petition No. 2681 of 1984 was allowed by a Division Bench of the High Court on 18th July, 1989.

The High Court in its impugned judgment points out that the post
E of the Chief Mining Engineer was a promotion post to be filled in by selection. The minimum educational qualification for entry into the said promotional post was (i) a degree or equivalent diploma in mining from a recognised university or institute and (ii) First Class Mine Manager's certificate of competency under Metalliferous Mines Regulations. In addition the candidate was required to have at least 15 years experience of
F which 7 years in a responsible position in an underground mine e.g. Senior Mining Engineer, Deputy Production Manager or Deputy Planning and Designing Engineer. The High Court found that the appellant possessed the required certificate as well as experience but did not possess the educational qualification for entry into the promotional cadre of Chief
G Mining Engineers. The High Court rejected the management's contention that the appellant was qualified to be appointed the Deputy General Manager because the only requirement for that post was three years experience as Chief Mining Engineer which the appellant undoubtedly possessed. The High Court held:

H "If a person to be considered held a particular post, his entit-

lement to hold that post would also have to be considered if holding that post made him eligible for being considered to the promotional post of the Deputy General Manager."

The High Court, therefore, held that since the appellant did not possess the educational qualification prescribed for the post of Chief Mining Engineer his entry into that cadre was not legal and consequently his further promotions to the post of Deputy General Manager and later General Manager (T) were legally unsustainable. The High Court also brushed aside the submission that since the appellant's appointment as Chief Mining Engineer had never been challenged during the entire tenure in that office it should not be permitted to be challenged belatedly by pointing out that in the cadre of Chief Mining Engineers the appellant was junior to Mr. G.N. Misra and others and, therefore, there was no need for them to challenge his appointment as such but now that their seniority and career advancement stand jeopardised, they have a cause of action and are, therefore, entitled to challenge the same. Lastly the High Court held that since the appellant did not hold a diploma in Mining with a pass which was equivalent to a degree as per Schedule I he was not eligible for the post of Chief Mining Engineer and hence the exemption stated to have been granted by the Institute of Engineers (India) is of no consequence whatsoever. On this line of reasoning the High Court allowed the Writ Petition and quashed the appointment of the appellant before us as Deputy General Manager and General Manager (T) and directed the authorities to pursue a fresh process of selection in accordance with the rules framed on 6/12th October, 1983. The rule was made absolute accordingly.

When the appellant before us learnt of the adverse order against him, he filed a Civil Application No. 2259 of 1989 in the said proceedings praying for a re-hearing on the ground that he had not been served with the notice of the Writ Petition and, therefore, had no opportunity to defend himself. The notice of the Writ Petition had been admittedly served on the Despatch Clerk in the officer of Manganese Ore (India) Ltd. The appellant contended (i) the said Despatch Clerk had no authority to accept the notice on his behalf and (ii) he had in any case failed to forward it to him. The High Court rejected this stand taken by the present appellant and held that the appellant was aware of the service of the notice to the Despatch Clerk and was in full know of the pendency of the Writ Petition and had in fact spoken about it to his colleagues. We have perused the order of the

A High Court on the said application and we are in complete agreement with the High Court on the view it had taken and the consequential order it passed rejecting the application. It is unfortunate that the present appellant made certain inaccurate and untenable averments in the application to secure a rehearing.

B

Mr. K.K. Venugopal, while assailing the High Court's order dated 18th July, 1989, submitted that under Rule 7 of the Recruitment and Promotion Rules, 1977, it is made clear that the educational qualifications shall not be insisted upon in deciding the promotion of a departmental candidate if he possesses twice the experience stipulated for a qualified C candidate. According to the said rule, counsel submitted, all that the appellant was required to show was that he had the requisite experience for entry by promotion into the higher post. So when the appellant was promoted as Chief Mining Engineer, he had merely to possess 'twice the experience stipulated for a qualified candidate' and nothing more. Similarly D for entry into the cadre of Deputy General Manager also he had merely to show that he satisfied the experience criterion and was not required to show that he possessed the educational qualification prescribed for direct recruits. These rules were brought into force w.e.f. 5th June, 1978. In the alternative he invited our attention to a letter dated 26/27 November, 1976 of the Institution of Engineers (India), Calcutta, wherein it is stated that E the Council of the Institution had decided that persons who have passed First Class Mine Managers' Certificate Examination and possess atleast five years experience in a responsible position as an Engineer after passing the certificate examination shall be eligible to apply for admission to corporate Membership of the Institution. It further states that after assess- F ment of the qualification and experience of Shri D.K. Sahni (the appellant before us) by the Equivalence Committee of the Institution, Shri Sahni was elected as Associate Member of the Institution by granting him exemption from passing Sections A and B examinations which was otherwise essential to secure such membership. The letter then states that passing of Sections A and B examinations of the Institution in any branch of engineering is G recognised by the Govt. of India as equivalent to passing a degree examination in engineering in that branch for the purposes of recruitment to superior posts and services. This letter which was received by the Chief Personnel Manager of the Company was forwarded to the appellant by the letter dated 6/7th December, 1976. While forwarding the same Shri A.P. H Pillai stated:

"In view of what has been stated in this letter, we shall be treating your certificate as equivalent to degree." A

and advised the appellant to submit a formal application to the Ministry of Education, Govt. of India, New Delhi, requesting to extend recognition to the said equivalence. The Ministry of Education and Social Welfare by their communication No.F.RED.O.- 11023/4/77/7-7 dated 9th June, 1977 clarified that equivalence was granted to only those who had actually passed Sections A and B examination and not to those who had secured the Association Membership by securing exemption from passing the said examination. But by a subsequent office order No. 6(1) dated 22nd January, 1982 the Board of Directors made certain modifications in the Annexure to the Recruitment and Promotion Rules pertaining to qualification/experience prescribed for various posts in Mining and Geological cadres which were brought into force from 17th October, 1981. According to the said order the qualification for the post of Chief Mining Engineer (Production/Planning) was modified to include First Class Mine Manager's certificate as sufficient educational qualification and the experience requirement was specified as three years service in the company in the scale of Rs.1500-2000. By a further Office Order No.20/OFFR/CPM/83-84 dated 1/12th October, 1983 the Board of Directors approved the qualifications/experience for the post of Deputy General Manager (T) as annexure to the Recruitment and Promotion Rules of the company. The minimum educational qualification and experience prescribed hereunder is (i) Degree/equivalent Diploma in Mining Discipline from a recognised Institute/University (ii) First Class Mine Manager's certificate of competence under M.M.R.(U/R) and (iii) 18 years experience. Mr. Venugopal, therefore, submitted that once the appellant was shown to possess the certificate and the prescribed experience he was eligible to be considered for promotion as Deputy General Manager regardless of whether or not he held the position of a Chief Mining Engineer. Lastly he submitted that in any case the appellant cannot be asked to revert since he had held the post since quite some time now. In support of this contention he invited our attention to the observation in paragraph 26 of the decision in *Narender Chadha & Ors.* v. *Union of India & Ors.*, [1986] 2 SCC 157 which reads as under:

B C D E F G

"We are informed that some of the promotees and direct recruits who are governed by this decision have been promoted to higher grades. If as a result of the preparation of the seniority H

A list in accordance with the decision and the review of the promotions made to higher grades any of them is likely to be reverted such officer shall not be reverted. He shall be continued in the higher post which he is now holding by creating a supernumerary post, if necessary to accommodate him. His further promotion shall however be given to him when it becomes due as per the new seniority list to be prepared pursuant to this decision."

Mr. Ashok Desai for the management generally supported the submissions of Mr. Venugopal and said that under Rule 7(c) and (d) the power to relax the minimum experience or to resort to direct recruitment was reserved to the management and hence if the experience requirement falls short it must be deemed to have been relaxed.

Mr. R.K. Jain, the learned counsel for respondents Nos. 3 and 4 i.e. G.N. Misra and A.H. Dharmadhikari, submitted that this was not a fit case for exercise of power under Article 136 of the Constitution and in any case the High Court had, in the facts and circumstances of the case, taken a correct view on a proper appreciation of the relevant rules and hence no interference was called for. In support of this contention he placed reliance on the observations of this Court in *Ujagar Singh & Anr. etc. etc.* v. *State (Delhi Administration), etc. etc.,* [1979] 4 SCC 530 which run thus:

"It is time that it was realised that the jurisdiction of this Court to grant special leave to appeal can be invoked in very exceptional circumstances. A question of law of general public importance or a decision which shocks the conscience of the Court are some of the prime requisites for the grant of special leave."

On the merits of the case he supported the view of the High Court and submitted that the appellant did not answer the requirement of both the educational qualification and experience to be promoted as Chief Mining Engineer as well as Deputy General Manager and later General Manager (T) and hence he was a usurper and was, therefore, not entitled to the protection of this Court. Mr. Jain, therefore, submitted that there is no merit in the present proceedings and the same deserves to the dismissed with costs.

From the narration of the facts it becomes clear that the appellant joined service as an Assistant Mining Engineer in 1966 and was appointed Mine Manager in 1970. A decade later on 21st April, 1980 he was promoted as Chief Mining Engineer. The Recruitment and Promotion Rules, 1977 had come into force with effect from 1978. These rules were made applicable to all posts in the company except those to be filled in by the Central Government. The mode of recruitment provided in Rule 4 was (a) direct recruitment from (i) open market (ii) from amongst persons in the employ of the Central/State Governments, Government Industrial undertakings, local and other authorities and (iii) from deputationists serving the company (b) promotion of employees at the Head Office/Projects of the company and (c) by borrowing from pool officers from the CSIR and Ministry of Labour and Employment. Rule 5 provides the procedure for direct recruitment and Rule 6 provides the procedure to fill in the vacancy by deputation/appointment of employees of government and public sector undertakings. Rule 7 deals with the mode of appointment by promotion. Schedule I appended to the Rules indicates the posts in the Mining Engineering cadre of the company carrying a scale of pay of Rs.500-800 and above. Against each post shown in column 2 the method of recruitment is indicated in column 4. Where the recruitment is by direct selection as well as promotion, the percentages have been indicated therein, the criterion is set out in the next column 5 and the age limit is stated in column 6. Then comes column 7 which prescribes the 'minimum educational qualification and experience required for direct recruitment'. Column 8 indicates the grades from which promotion will be made. Column 9 provides for the composition of the D.P.C. The post of Chief Mining Engineer is shown at serial No.4 in the pay-scale of Rs. 1800-2250. It is a cent percent promotion post and is to be filled in by selection. The educational qualifications and experience set out in column 7 which is meant for direct recruitment is as under:

A B C D E F G H

> "1. Degree or equivalent Diploma in Mining from a recongnised University or Institute.
>
> 2. 1st Class Mine Manager's Certificate of Competency under Metalliferous Mines Regulations.
>
> 3. Atleast 15 years experience of which 7 years in a *responsible* position in an Underground Mine such as Sr. Mining Engineer

A or Deputy Planning and Design Engineer."

In column 8 meant for indicating the grade from which promotion will be made it is stated "Sr. Mining Engineer/Mine Manager". It will thus be seen that a Senior Mining Engineer or a Mine Manager could be promoted as Chief Mining Engineer. The qualification and experience set B out in column 7 being for direct recruitment would not ordinarily apply where the post is required to be filled by promotion by selection. Rule 7 of the 1977 Rules makes the position clear. It in no uncertain terms says 'educational qualifications shall not be insisted upon in deciding the promotion of a department candidate provided he possess twice the ex- C perience stipulated for a qualified candidate'. And illustration is then provided as under:

> "For instance an Office Superintendent who is not a graduate nor he has a diploma in Personnel Management shall be considered for promotion as Asstt. Personnel Officer only if he has D worked for 6 years as Office Superintendent."

In Schedule I appended to the Rules the post of Assistant Personnel Officer is shown at serial No. 18. In column 7 the educational qualification set out is a degree of a recognised university or a diploma in one of the E disciplines indicated therein. So far as the experience criterion is concerned it is stated as three years. Now an office Superintendent who does not possess the educational qualification of a degree or diploma must have atleast six years experience to qualify for promotion as Assistant Personnel Officer. This much seems to be clear on a plain reading of Rule 7 with the instance quoted therein. Therefore, if a Senior Mining Engineer or a Mine F Manager does not possess the educational qualifications set out in column 7 for direct recruitment as Chief Mining Engineer, he must have double the experience requirement set out in that column to be eligible for promotion to the higher post. In other words going by the illustration in Rule 7 extracted earlier a Senior Mining Engineer/Mine Manager who G does not possess the educational qualification for entry into the Chief Mining Engineer's cadre must show that he possessed experience of thirty years in the department. Indisputably the appellant who had joined service in 1966 had not put in thirty years of service when he was promoted as Chief Mining Engineer in 1980.

H Realising this difficulty Mr. Venugopal fell back on Rule 7(c) which

reads as under:

> "No employee shall ordinarily be promoted from a lower post to higher post unless he has served in the lower post for minimum period of three years. The appropriate Departmental Promotion Committee; may, however, in special cases and for reasons to be recorded in writing, reduce the period of three years mentioned above."

In our view this rule has no application. It lays down a rule of general application that an employee seeking promotion to the next higher grade must have served for atleast three years at the lower level unless the D.P.C. reduces the said period. This sub-rule has to be read in conjunction with sub-rule (a) of Rule 7. Read together they convey that ordinarily employees who have not served in the lower level for atleast three years will not be considered for promotion to the higher level unless the D.P.C. reduces the requirement. This rule applies to cases where no experience criterion is prescribed or the criterion prescribed is for less than three years but cannot apply to cases where the criterion prescribed is higher. Much less would it apply to cases covered by sub-rule (a) which deals with specific cases where the incumbent does not possess the prescribed qualifications. Where educational qualifcation is to be waived altogether, Rule 7(a) expects that the incumbent must possess twice the experience prescribed for those with the required educational qualifcation. Therefore, reliance on Rule 7(c) is of no avail.

It was, however, submitted that since the appellant had secured the First Class Mine Manager's Certificate, he possessed the requisite educational qualification and, therefore, it was not necessary to possess double the experience prescribed for those without the required educational qualification. We have already pointed out earlier that by the letter of 26/27th November, 1976 the Institution of Engineers (India) Calcutta had conveyed that persons possessing such a certificate and having five years experience in a responsible postition as an engineer after acquiring the certificate shall be eligible for admissions to Membership of the Institution. The Equivalence Committee of the Institution had after evaluating the qualification and experience of the appellant admitted him as Associate Member after exempting him from passing the A & B examinations. True it is that on receipt of the said letter it was communicated to the appellant

A that his certificate will be treated as equivalent to a degree. But at the same time the appellant was advised to obtain a formal clearance from the Ministry of Education extending recognition to the said equivalence. Unfortunately for the appellant the Ministry clarified that equivalence could be granted only to those who had secured the certificate after passing the A & B examinations and not if exempted from passing the same. Therefore, B the recognition for equivalence proposed to be granted by the company could not ultimately be granted. The Tribunal rightly points out that 'the equivalence which was good for the purpose of Institution of Engineers (India) was not one which was recognised by the Central Government' and hence the appellant could not be said to be possessing a Diploma C equivalent to a degree to answer the eductional qualifications prescribed by the Rules. This approach of the Tribunal is, therefore, unassailable.

We may now turn to office order No. 6(1) dated 22nd January, 1982 wherably the Board of Directors approved certain modifications in the Annexure attached to the Recruitment and Promotion Rules. These changes D were made effective from 17th October, 1981. Column 8 of the modified entry reads as under :

"Sr. Mining Engineer with

E (a) Degree in Mining of a recognised University/Institute or equivalent.

(b) Ist Class Mine Manager's Certificate of competency under Metalliferous Mines Regulations (UR).

F (c) 3 years service in the company in the scale of Rs. 1500-2000.

Under the modified entry the eligibility criteria for direct recruits remains the same except for a slight change in the experience criterion, viz., the requirement of experience of 7 years in a responsible position in an underground mine has been dispensed with. The significant change, G however brought about in column 8 is to state the educational/experience qualifications for promotion separately. The experience criteria for promotion under the modified entry is reduced to three years service in the company in a post carrying a scale of Rs. 1500-2000. Therefore, under the revised entry a Senior Mining Engineer possessing the educational H qualification at (a) and (b) and experience of three years service in the

company on a post carrying a scale of Rs. 1500-2000 became eligible for promotion to the post of Chief Mining Engineer. Now, if Rule 7(a) of the Recruitment and Promotion Rules is invoked a Senior Mining Engineer who does not possess the requisite educational qualification but possesses double the prescribed experience, i.e. experience of six years service in the company on a post carrying a pay scale of Rs. 1500-2000, would be eligible for promotion to the post of Chief Mining Engineer. The submission of Mr. Venugopal was that even if it is assumed that the appellant was not qualified to be promoted to the post of the Chief Mining Engineer on 19/21st April, 1980, he at any rate became eligible for promotion on the modification of the relevant entry in the Annexure extracted earlier with effect from 17th October, 1981 and even if his promotion is regularised or deemed to have been regularised by the company from the said date, he was entitled to be considered for further promotion in the cadre of Deputy General Manager and later General manager (T) of the company. Mr. Ashok Desai for the company supported this line of reasoning and contended that as far as the company is concerned, it always treated the appellant as eligible for being promoted to the higher posts of Deputy General Manager and General Manager (T). There is considerable force in this submission. The Tribunal's order does not deal with this aspect of the matter. We have agreed with the Tribunal that under the rule position as it existed at the date of the appellant's promotion to the post of Chief Mining Engineer, i.e. on 19/21st April, 1980, the appellant was not eligible for appointment to the said post by promotion. However, on the change brought about in the relevant entry by the order of 22nd January, 1981 with effect from 17th October, 1981, the appellant became eligible for promotion and even if his placement in the cadre of Chief Mining Engineer is reckoned from that date he was clearly eligible for upward promotion. But, submitted Mr. Jain, once the Court holds that the initial entry of the candidate was in violation of the promotional criteria, his entry must be treated as void and unless the DPC reconsiders his case for promotion along with others his entry in the cadre cannot be regularised on a deeming fiction. He also submitted that no such case was put up before the High Court and, therefore, this Court should not permit it to be placed for the first time in proceedings under Article 136 of the Constitution. According to him the Article 136 jurisdiction must be exercised sparingly and in support he invited our attention the observations (extracted earlier) from this Court's decision in *Ujagar Singh's* case. We are not impressed by this

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A approach. In the first place it must be remembered that the appellant's promotion made under the order of 19th April, 1980 was sought to be undone only after his promotion to the higher post. Secondly there is no charm in directing the reversion of the appellant for a short period from 21st April, 1980 to 16th October, 1981 when we find that under the revised or modified criteria he was eligible for appointment as Chief Mining B Engineer on 17th October, 1981. He was placed junior to others and even if he is considered as promoted with effect from 17th October, 1981 he would continue to rank junior. He was selected for the higher post on merit though he was junior to others. Therefore, it is not a case where he had received weightage because he was shown senior when the DPC selected C him for the higher post. He has served on the promotion post of Deputy General Manager (T) since July, 1983. Would it not be harsh and shocking to revert him after so many years only on the ground that he must seek re-entry in the cadre of Chief Mining Engineers with effect from 17th October, 1981 when he acquired eligibility on the modification of the relevant entry in the annexure to the Rules. We think it would result in D gross injustice to the appellant. We are, therefore, not impressed by the technical objection raised by Mr. Jain.

In the result the appeals insofar as they relate to the impugned order of the High Court dated 18th July, 1989 are allowed and the said order is E hereby set aside and the petition which gave rise to the same will stand dismissed. The appeals insofar as they are directed against the order passed by the High Court in review dated 30th January, 1990 shall stand dismissed on the setting aside of the order dated 18th July, 1989. There will be no order as to costs throughout.

N.P.V. **Appeals disposed of.**