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MANGI LAL  
v.  
STATE OF RAJASTHAN

FEBRUARY 20, 2007

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[S.B. SINHA AND MARKANDEY KATJU, JJ.]

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*Service Law—Promotion—Post of Assistant Mining Engineer—Incumbent holding post of Mines Foreman Grade II and degree of Mining Engineering claiming promotion directly—Entitlement of—Held: Not entitled since the incumbent was not holding post of Mines Foreman Grade-I or Head Draftsman or Senior Surveyor as required by the Rules—Rajasthan Mines and Geological Service Rules, 1960—Column 6.*

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In terms of the Rajasthan Mines and Geological Service Rules, 1960 promotion to the post of Assistant Mining Engineer was to be granted from the feeder posts of Mines Foreman Grade-I, Head Draftsman or Senior Surveyor. Appellant, diploma holder in Mining was appointed as a Surveyor. Thereafter, he did his Mining Engineering and claimed promotion directly to the post of Assistant Mining Engineer. At that time, the appellant was working as Mines Foreman Grade II. Appellant's claim was rejected. He filed writ petition which was also dismissed. Hence the present appeal.

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Dismissing the appeal, the Court

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HELD: 1.1. Column 6 of the Rajasthan Mines and Geological Service Rules, 1960 speaks about experience required for filling up of the post. 'Eligibility' and 'Experience' stand on different footings. For filling up the post by way of promotion, there must exist a channel. In absence of any channel, promotion cannot be effected. [Paras 9 and 10] [1004-H; 1005-B]

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1.2. The Rule must be read in its entirety. So read, there cannot be any doubt whatsoever that for the purpose of promotion to the post of Assistant Mining Engineer, the candidate must be a holder of a post of Mines Foreman Grade-I or Head Draftsman or Senior Surveyor. As the appellant did not hold any of the said post at the relevant time, the question of promoting him to the post of Assistant Mining Engineer did not arise. Also the claim of the appellant

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has no legal basis since the State informed that degree holder surveyor or the person working on any equivalent post junior to appellant has never been promoted on the post of Asstt. Mining Engineer against the degree holder quota, because as per the rules, the feeder post for the Asstt. Mining Engineer are Mines Foreman Gr. I, Head Draftsman and Senior Surveyor.

[Paras 8, 11 and 12] [1005-C; 1006-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 855 of 2007.

From Judgment and final Order dated 1.3.2006 of the High Court of Judicature for Rajasthan, Jaipur Bench, Jaipur in D.B. Special Appeal (Writ) No. 615/2005.

Naresh Kaushik, Lalita Kaushik, B.B. Methaila, Amita Kalkal and Anish Dhingra for the Appellant.

Aruneshwar Gupta, Naveen Kumar Singh, Mukul Sood and Shaswat Gupta for the Respondent.

The Judgment of the Court was delivered by

**S.B. SINHA, J.** 1. Leave granted.

2. Appellant herein was appointed as a Surveyor on 31.08.1979. His educational qualification then was Diploma in Mining. He did his AMIE in Mining in the year 1986. He claimed promotion to the post of Assistant Mining Engineer directly on the premise that he had acquired a degree in Engineering. He at the relevant time was working as Mines Foreman Grade-II. In terms of the rules, promotion to the post of Assistant Mining Engineer was to be granted from the feeder posts of Mines Foreman Grade-I, Head Draftsman or Senior Surveyor. His representation to appoint him to the post of Assistant Mining Engineer, therefore, was not acceded to. He filed a writ petition before the High Court which by reason of the impugned judgment has been dismissed.

3. Mr. Naresh Kaushik, the learned counsel appearing on behalf of the appellant, would submit that keeping in view the rules then operating in the field, the incumbents to the post of Mines Foreman Grade-II should have also been considered for the purpose of promotion to the post of Assistant Mining Engineer.

4. Mr. Aruneshwar Gupta, the learned counsel appearing on behalf of

A the respondent, however, would support the judgment.

5. Column 6 of the Rajasthan Mines & Geological Service Rules, 1960 (for short, 'the Rules') lays down the minimum qualification and experience required for promotion, which is in the following terms :

B "3 years experience in case of holders of degree in Mining Engineering or equivalent and 7 years experience in case of Diploma Holders in Mining Engineering from a recognized Institution on any post in Subordinate Mines and Geological Service not lower than Mines Foreman Grade-II."

C 6. Indisputably, the terms and conditions of service of the appellant are governed by the said Rules. On or about 20.05.1977, the said Rules were amended, in terms whereof promotion to the post of Assistant Mining Engineer was to be made from amongst the persons holding the posts of either : (i) Mines Foreman Grade-I; or (ii) Head Draftsman; (iii) or any post in the subordinate Mines and Geological Service carrying scale of pay identical or  
D higher than Mines Foreman Grade-II.

7. Indisputably, in terms of the Rules, 50% of the posts of Assistant Mining Engineer are to be filled up by direct recruitment; 30% by promotion from amongst the diploma holders and 20% from amongst the degree holders.  
E The qualification necessary for being appointed as Assistant Mining Engineer is as under :

"Degree in Mining Engineering from University Established by Law in India.

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OR

AMIE (Mining Engineering Part A & B of Institution of Engineers.

OR

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Diploma in Mining Engineering from the Indian School of Mines and Applied Geology, Dhanbad."

8. Appellant was admittedly not holding the post of Mines Foreman Grade-I at the relevant time.

H 9. Column 6 of the said Rules whereupon reliance has been placed by Mr. Kaushik speaks about experience required for filling up of the said post.

Whereas three years' experience would satisfy the requirement in case the candidate is a holder of degree in Mining Engineering or equivalent, seven years' experience was necessary in case of the diploma holders in Mining Engineering from a recognized institution on any post, but the same should not be lower than the Mines Foreman Grade-II. A

10. 'Eligibility' and 'Experience' stand on different footings. For filling up the post by way of promotion, there must exist a channel. In absence of any channel, promotion cannot be effected. B

11. The Rule must be read in its entirety. So read, there cannot be any doubt whatsoever that for the purpose of promotion to the post of Assistant Mining Engineer, the candidate must be a holder of a post of Mines Foreman Grade-I or Head Draftsman or Senior Surveyor. As the appellant did not hold any of the said posts, the question of promoting him to the post of Assistant Mining Engineer, did not arise. C

12. With a view to satisfy ourselves we had directed the State to inform us as to whether during the relevant time persons belonging to the cadre of Mines Foreman Grade-I were available and had in fact been promoted. Before us a statement in writing has been made which is to the following effect : D

"As per the record, the details of the posts of Asstt. Mining Engineer available vacant from the degree holder quota from the year 1984-85 to 1987-88 were as under : E

Year No.	of Posts
1984-85	00
1985-86	01
1986-87	01
1987-88	00

Two posts for the post of Asstt. Mining Engineer from the degree holder quota could not be fulfilled as no eligible candidate from the feeder posts of Mines Foreman Gr. I, Head Draftsman and Sr. Surveyor were found to be eligible. These two vacant posts from the degree holder quota for the year 1985-86 and 1986-87 were forwarded for the year 1988-89 where on more post for degree holder quota became F G H

A available. So, for the year 1989-89, three posts of Asst. Mining Engineer from the degree holder quota were found to be fulfilled. From the list of eligible candidates, two candidates of degree holder were available in the year 1988-89 and Shri Shyam Lal Sukhwal and Shri Abdul Latif Sheikh were promoted on the post of Asstt. Mining Engineer in that year. These two candidates were working as Mines Foreman Gr. I and they were senior to Shri Mangilal.

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C It is relevant to mention here that any degree holder surveyor or the person working on any equivalent post junior to Shri Mangilal has never been promoted on the post of Asstt. Mining Engineer against the degree holder quota, because as per the rules, the feeder post for the Asstt. Mining Engineer are Mines Foreman Gr. I, Head Draftsman and Senior Surveyor.”

The claim of the appellant, therefore, has no legal basis.

D 13. There is no merit in this appeal, which is dismissed accordingly. No costs.

N.J.

Appeal dismissed.