



2026 INSC 878

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOS. OF 2026
**(Arising out of Special Leave Petition (C) Nos. 12017-12018 OF
2023)**

HEMANT KUMAR & ORS. **APPELLANT(S)**

VERSUS

STATE OF HARYANA **RESPONDENT(S)**

WITH

CIVIL APPEAL NOS. OF 2026
**(Arising out of Special Leave Petition (C) Nos. 7597-7600 OF
2023)**

CIVIL APPEAL NOS. OF 2026
**(Arising out of Special Leave Petition (C) Nos. 7506-7508 OF
2023)**

CIVIL APPEAL NO. OF 2026
(Arising out of Special Leave Petition (C) No. 8142 OF 2023)

CIVIL APPEAL NO. OF 2026
(Arising out of Special Leave Petition (C) No. 8004 OF 2023)

CIVIL APPEAL NOS. OF 2026
**(Arising out of Special Leave Petition (C) Nos. 20961-20967 OF
2024)**

CIVIL APPEAL NOS. OF 2026
**(Arising out of Special Leave Petition (C) Nos. 19938-19941 OF
2023)**

CIVIL APPEAL NO. **OF 2026**
(Arising out of Special Leave Petition (C) No. 18809 OF 2023)

UJJAL BHUYAN, J.

2. Since the issues involved in all the appeals are inter-related, arising out of the same subject matter, those were heard together and are being disposed of by this common judgment and order.

3. The core issue involved in this batch of appeals is the legality and validity of the deputation of four officers of the Development and Panchayat Department, Government of Haryana viz. Shri Pradeep Atri, Shri Praveen Chaudhary, Shri Pankaj Gaur and Shri Arun Bhatia in the cadre of Sub-Divisional Officer to the Public Works Department (Building and Roads), Government of Haryana, briefly 'the PW (B&R) Department hereinafter, and the subsequent absorption of the aforesaid four officers in the PW (B&R) Department in the cadre of Assistant Engineer (Civil)/Sub-Divisional Engineer.

An associated issue is the seniority position assigned to the aforesaid four officers upon their absorption in the PW (B&R) Department.

4. The High Court of Punjab and Haryana (High Court) *vide* the impugned judgment and order dated 15.03.2023 disposed of nine writ petitions filed by the contesting parties holding that the deputation to and absorption of Shri Pradeep Atri, Shri Praveen Chaudhary, Shri Pankaj Gaur and Shri Arun Bhatia in the PW(B&R) Department, Government of Haryana as Assistant Engineer (Civil) is bad in law. However, the High Court took the view that these four officers no longer had *lien* in their parent Department i.e. the Development and Panchayat Department, Government of Haryana and further as they have been in service since the year 2005, their deputation and absorption as Assistant Engineer in the PW (B&R) Department, Government of Haryana was not disturbed. But the High Court declared that they (deputationists) cannot claim seniority over the direct recruits appointed on 07.12.2007 or over persons promoted against vacancies which arose before 01.07.2006 or

2009 in the cadre of Assistant Engineer (Civil) in the PW (B&R) Department.

5. This finding of the High Court is under assailment by the rival parties in the present batch of appeals.

6. Before we embark on a narration of the relevant facts, it would be appropriate to note the trajectory of the present batch of appeals.

6.1. *Civil Appeal Nos. _____ of 2026
(Arising out of SLP (C) Nos. 12017-12018 of 2023)*

6.1.1. The related special leave petitions have arisen out of two writ petitions i.e. CWP. No. 18515 of 2012 and CWP No. 5465 of 2018.

6.1.2. Appellants are direct recruits in the cadre of Assistant Engineer (Civil) in the PW (B&R) Department and were the writ petitioners in the two related writ petitions before the High Court. In CWP No. 18515 of 2012, the challenge was to the absorption and seniority of the four deputationists. The writ petitioners sought for a direction to repatriate the deputationists to their parent department or in the alternative, to assign them seniority positions below the writ petitioners

who are directly recruited. Thus, the direct recruits sought seniority over the deputationists.

6.1.3. In the other writ petition i.e. CWP No. 5465 of 2018, the challenge was to the seniority assigned to Shri Pankaj Gaur and Shri Arun Bhatia (deputationists) and their consequential promotions. Further challenge was made to their absorption in the PW (B&R) Department.

7. *Civil Appeal Nos. _____ of 2026
(Arising out of SLP (C) Nos. 7597-7600 of 2023)*

7.1 The related special leave petitions have arisen out of four writ petitions i.e. CWP No. 12882 of 2020, CWP No. 11848 of 2020, CWP No. 18515 of 2012 and CWP No. 585 of 2021.

7.1.1 Appellant Shri Praveen Chaudhary is one of the four officers of the Development and Panchayat Department, Government of Haryana who was sent on deputation to the PW (B&R) Department, Government of Haryana in the cadre of Assistant Engineer (Civil) and subsequently absorbed in the PW (B&R) Department.

7.1.2. In CWP No. 12882 of 2020, the writ petitioners, who are the direct recruits, challenged the seniority assigned to the deputationist Shri Praveen Chaudhary on absorption in the PW (B&R) Department particularly his placement above the direct recruits.

7.1.3. CWP No. 11848 of 2020 was filed by a direct recruit assailing the seniority assigned to one of the deputationists Shri Praveen Chaudhary in the cadre of Assistant Engineer (Civil) in the PW (B&R) Department etc.

7.1.4. As already noticed above, the writ petitioners in CWP No. 18515 of 2012 are direct recruits in the cadre of Assistant Engineer (Civil) in the PW(B&R) Department. They challenged the absorption of the four deputationists in the cadre of Sub-Divisional Engineer/Assistant Engineer (Civil) in the PW (B&R) Department and also sought for quashing the final seniority list in the cadre of Sub-Divisional Engineer to the extent that the deputationists were placed above the direct recruits in the seniority list.

7.1.5. CWP No. 858 of 2021 was filed by two direct recruits challenging the seniority assigned to one of the deputationists Shri Praveen Chaudhary over the direct recruits in the PW (B&R) Department.

8. *Civil Appeal Nos. _____ of 2026
(Arising out of SLP (C) Nos. 7506-7508 of 2023)*

8.1. The related special leave petitions have arisen out of three writ petitions i.e. CWP No. 18075 of 2011, CWP No. 18515 of 2012 and CWP No. 7706 of 2011.

8.1.1. Appellant in this appeal is Shri Pradeep Atri who is one of the four officers of the Development and Panchayat Department, Government of Haryana and sent on deputation to the PW(B&R) Department in the cadre of Assistant Engineer (Civil). He was subsequently absorbed in the PW(B&R) Department.

8.1.2. In CWP No. 18075 of 2011, the writ petitioners are the direct recruits in the cadre of Assistant Engineer (Civil) in the PW(B&R) Department. They have challenged the seniority assigned to the appellant Shri Pradeep Atri who was on deputation to the said Department and thereafter absorbed therein. On absorption, he was assigned seniority position above the direct recruits selected in the year 2006 which came to be challenged in CWP No. 18075 of 2011.

8.1.3. The writ petitioners in CWP No. 18515 of 2012 are direct recruits in the cadre of Assistant Engineer (Civil) in the

PW(B&R) Department. They had challenged the absorption of the four deputationists including the appellant in the cadre of Sub-Divisional Engineer/Assistant Engineer (Civil) in the PW(B&R) Department. They sought for quashing the seniority list in the cadre of Sub-Divisional Engineer/Assistant Engineer (Civil) in the PW(B&R) Department to the extent that the deputationists on absorption were assigned seniority position above the direct recruits.

8.1.4. CWP No. 7706 of 2011 was filed by the direct recruits challenging the absorption of the deputationists as Sub-Divisional Engineer in the PW(B&R) Department and sought for their repatriation to their parent Department.

9. *Civil Appeal No. _____ of 2026
(Arising out of SLP (C) No. 8142 of 2023)*

9.1. The related special leave petition has arisen out of writ petition CWP No. 18515 of 2012.

9.1.1. Appellant is Shri Jagbir Singh who was also the writ petitioner in CWP No. 18515 of 2012. He is a direct recruit in the cadre of Assistant Engineer (Civil) in the PW(B&R) Department. In the writ petition, he alongwith another had challenged the absorption of the four deputationists in the

cadre of Sub-Divisional Engineer/Assistant Engineer (Civil) in the PW(B&R) Department and assigning them seniority position above all the direct recruits.

10. *Civil Appeal No. _____ of 2026
(Arising out of SLP (C) No. 8004 of 2023)*

10.1. The related special leave petition has arisen out of writ petition CWP No. 7706 of 2011.

10.1.1. Shri Sukhbir Singh, Shri Abhishek, Shri Vikas Kumar, Shri Sandeep Kumar Goel and Shri Bhupinder Singh are the appellants. They were also the writ petitioners in CWP No. 7706 of 2011. The appellants are direct recruits in the cadre of Sub-Divisional Engineer/Assistant Engineer (Civil) in the PW(B&R) Department. In the related writ petition, appellants had challenged the absorption of the four deputationists as Sub-Divisional Engineer/Assistant Engineer (Civil) in the PW(B&R) Department.

11. *Civil Appeal Nos. _____ of 2026
(Arising out of SLP (C) No. 20961-20967 of 2024)*

11.1. The related special leave petitions have arisen out of seven writ petitions. These writ petitions are: CWP No. 18515 of 2012, CWP No. 15685 of 2017, CWP No. 18075 of

2011, CWP No. 5465 of 2018, CWP No. 12882 of 2020, CWP No. 858 of 2021 and CWP No. 11848 of 2020.

11.1.1. In these appeals, State of Haryana and its officers in the PW(B&R) Department are the appellants.

11.1.2. We have already given the gist of CWP No. 18515 of 2012 in the preceding paragraphs. Similarly, we have also given the gist of CWP No. 18075 of 2011, CWP No. 5465 of 2018, CWP No. 12882 of 2020, CWP No. 858 of 2021 and CWP No. 11848 of 2020.

11.1.3. In so far CWP No. 15685 of 2017 is concerned, this case was filed by Shri Kamaldeep Singh Rana, Shri Ashwani Kumar, Shri Varun Gupta, Shri Sandeep Singh and Shri Tilak Raj Gupta assailing the seniority position assigned to Shri Pankaj Gaur and Shri Arun Bhatia on their absorption over the writ petitioners in the cadre of Sub-Divisional Engineer/Assistant Engineer(Civil) in the PW(B&R) Department.

12. *Civil Appeal Nos. _____ of 2026
(Arising out of SLP (C) Nos. 19938-41 of 2023)*

12.1. There are four special leave petitions in this batch of civil appeals. The related special leave petitions have arisen

out of four writ petitions, which are: CWP No. 18515 of 2012, CWP No. 15083 of 2010, CWP No. 15685 of 2017 and CWP No. 5465 of 2018.

12.1.1. In these appeals, two of the four deputationists i.e. Shri Pankaj Gaur and another are the appellants.

12.1.2. Brief outlines of CWP No. 18515 of 2012, CWP No. 15685 of 2017 and CWP No. 5465 of 2018 have already been mentioned in the preceding paragraphs.

12.1.3. In so far CWP No. 15083 of 2010 is concerned, Shri Praveen Chaudhary and others are the writ petitioners. They have questioned the restrictions imposed on them *qua* their seniority in their absorption orders. They have also challenged the proviso to Rule 12(5) of the Punjab Service of Engineers, Class II, P.W.D.(Buildings and Roads Branch) Rules, 1965, as made applicable to the State of Haryana.

13. *Civil Appeal No. _____ of 2026
(Arising out of SLP (C) No. 18809 of 2023)*

13.1 This civil appeal arises out of SLP(C) No. 18809 of 2023. The said special leave petition has arisen out of the contempt proceedings being COCP No. 1519 of 2023 filed by few of the direct recruits.

13.1.1. The contempt petition was filed alleging wilful disobedience to the impugned judgment and order dated 15.03.2023 passed by the High Court in CWP No. 18515 of 2012 and other connected writ petitions. Appellants were the petitioners in the related contempt petition.

13.1.2. By the order dated 17.07.2023, the High Court dismissed the contempt petition by taking the view that all the parties have filed special leave petitions before this Court and till such time those were decided, it could not be said that the State and the other respondents are in wilful disobedience of the judgment and order dated 15.03.2023.

Facts

14. Following a regular recruitment process, Shri Pradeep Atri was appointed on 06.12.2004, on a temporary basis, as Sub-Divisional Officer (Panchayati Raj) in the Development and Panchayat Department, Government of Haryana, alongwith others on the recommendation of the Haryana Public Service Commission. However, it was mentioned that he would be on probation for a period of two years, extendable by a further period not extending one year, if considered necessary.

14.1. Even before completion of one year's probation, Shri Atri wrote to the Engineer-in-Chief, PW(B&R) Department, Government of Haryana on 14.07.2005 to take him on deputation in the said Department. On 03.08.2005, the case of Shri Pradeep Atri for deputation to the PW(B&R) Department was recommended by the Engineer-in-Chief of the said Department to the Financial Commissioner and Principal Secretary on the ground of shortage of Sub-Divisional Engineers(Civil) in the Department. It was proposed that Shri Atri's deputation may be against one of the posts earmarked for direct recruits and such deputation should be till joining of the direct recruits. No objection to such recommendation for the deputation of Shri Pradeep Atri to the PW(B&R) Department was given by the parent Department i.e. Development and Panchayat Department.

14.2. However, it appears that Shri Pradeep Atri's request for deputation was 'filed' by the State Government on 24.08.2005.

14.3. Even before completion of one month of such 'filing', Shri Pradeep Atri again on 12.09.2005 made a request to the PW(B&R) Department that he should be taken on deputation. He reiterated his request on 15.09.2005 saying

that he was very keen to serve in the PW(B&R) Department to utilize his full potential. On the same day, i.e. on 15.09.2005, case of Shri Pradeep Atri was recommended by the PW(B&R) Department for deputation purely as a stop gap arrangement, till the joining of direct recruits, considering about 50 vacancies of Sub-Divisional Engineers earmarked for direct recruits.

14.4. By a file noting dated 19.10.2005, Shri Pradeep Atri's case for deputation was accepted as a stop gap arrangement subject to the condition that he could be sent back to his parent Department at any time.

14.5. Accordingly, on 16.11.2005, Shri Pradeep Atri was relieved from the Development and Panchayat Department for joining the PW (B&R) Department on deputation *vide* the order dated 16.11.2005 issued by the Financial Commissioner and Principal Secretary, Development and Panchayat Department. It was stated therein that services of Shri Pradeep Atri was placed at the disposal of the PW(B&R) Department for a period of one year. However, it was mentioned that the terms and conditions of deputation would be issued separately.

14.6. Immediately thereafter, on 17.11.2005, Shri Pradeep Atri joined the PW(B&R) Department on deputation for a period of one year.

14.7. On 24.02.2006, Shri Pradeep Atri requested the PW(B&R) Department through the Engineer-in-Chief that he should be absorbed in the said Department. This was just after three months of him coming to the said Department on deputation. Shri Atri stated that about 40 posts of Sub-Divisional Engineer were lying vacant; he was keen to serve the PW(B&R) Department so as to utilize his energy and potential in an effective manner. According to him, it would not only increase his experience and knowledge but would also prove to be an asset to the PW(B&R) Department.

14.8. A requisition was sent to the Haryana Staff Selection Commission on 03.03.2006 for filling up 44 vacancies of Sub-Divisional Engineer in the PW(B&R) Department.

14.9. A file noting was made by the Superintending Engineer of PW(B&R) Department on 24.03.2006 regarding the request of Shri Pradeep Atri for absorption. It was noted that requisition for direct recruitment to 44 posts was under way. There was no vacancy to accommodate Shri Atri. However, it

was mentioned that if vacancy arose in future, the case of Shri Pradeep Atri for absorption may be considered after obtaining permission of the Haryana Staff Selection Commission.

14.10. The file regarding Shri Pradeep Atri's absorption progressed and the Joint Secretary, PW(B&R) Department made a file noting on 17.04.2006 to the effect that Rule 10 of the Punjab Service of Engineers, Class II, P.W.D. (Building and Roads Branch) Rules, 1965 (briefly 'the 1965 Rules' hereinafter) allows such appointment in special circumstances. It was noted that while the process of direct recruitment was initiated, the procedure would at the very least take six months. In addition, there would be vacancies in the near future. Therefore, Shri Pradeep Atri could be absorbed as the PW(B&R) Department was facing acute shortage of staff.

14.11. In the meanwhile, PW(B&R) Department issued advertisement dated 07.05.2006 for filling up 44 posts of Sub-Divisional Engineer/Assistant Engineer(Civil) by way of direct recruitment through the Haryana Staff Selection Commission.

14.12. On 12.06.2006, the Finance Commissioner directed that opinion of the Legal Remembrancer should be taken to avoid any litigation. The Legal Remembrancer in turn

opined on 12.06.2006 itself that appointment of Shri Pradeep Atri by way of transfer is permissible, if special circumstances existed; however, the Staff Selection Commission should approve such appointment. This was followed by a file noting dated 07.08.2006 wherein the Joint Secretary stated that Shri Pradeep Atri was a competent officer and could be appointed in the PW(B&R) Department.

14.13. The Finance Commissioner on 25.09.2006 conveyed to the Minister-in-Charge of PWD that there was no legal impediment to the absorption of Shri Pradeep Atri. On 29.09.2006, the PWD Minister recommended the absorption of Shri Pradeep Atri on the basis of the note forwarded by the Finance Commissioner. However, on 04.10.2006, it was noted that before issuing order of absorption of Shri Pradeep Atri, prior approval of the Staff Selection Commission was required. However, considering that the endorsement of the Minister had already been made, it was noted that the absorption order could be issued subject to the approval of the Staff Selection Commission.

14.14. On 06.10.2006, Shri Pradeep Atri was absorbed in the PW(B&R) Department against one of the vacancies of Sub-

Divisional Engineer (Civil) under the direct recruitment quota (arisen on 01.07.2006) *vide* the order dated 06.10.2006 issued by the Financial Commissioner and Principal Secretary, PW(B&R) Department. However, his absorption was made subject to the approval of the Haryana Public Service Commission/Haryana Staff Selection Commission. The absorption order made it clear that Shri Pradeep Atri would be absorbed against one of the resultant vacancies of direct recruit quota arisen on 01.07.2006 due to retirement of senior officers.

14.15. It may be mentioned that the Haryana Public Service Commission *vide* the communication dated 14.11.2006 informed the Financial Commissioner and Principal Secretary to the Government of Haryana, PW(B&R) Department that Haryana Public Service Commission had considered the case of absorption of Shri Pradeep Atri in the PW(B&R) Department as proposed by the Government and thereafter approved such absorption of Shri Pradeep Atri.

15. Following a regular recruitment process, Haryana Public Service Commission recommended Shri Pankaj Gaur, Shri Arun Bhatia and Shri Praveen Chaudhary for

appointment as Sub-Divisional Officer (Panchayati Raj) in the Development and Panchayat Department, Government of Haryana. Thereafter, Financial Commissioner and Principal Secretary to the Government of Haryana, Development and Panchayat Department issued letter dated 18.10.2005 appointing Shri Pankaj Gaur, Shri Arun Bhatia and Shri Praveen Chaudhary amongst others as Sub-Divisional Officer (Panchayati Raj). It was mentioned therein that they would be on probation for a period of two years, extendable for a further period not exceeding one year, if considered necessary.

15.1. Within one month of appointment as Sub-Divisional Officer (Panchayati Raj) in the Development and Panchayat Department, the Revenue Minister wrote to the Financial Commissioner and Principal Secretary to the Government of Haryana, Development and Panchayat Department on 23.11.2005 that Shri Praveen Chaudhary may be sent to the PW (B&R) Department on deputation basis. Similar letter dated 23.11.2005 was also written by the Transport Minister to the effect that Shri Praveen Chaudhary should be sent on deputation to the PW(B&R) Department.

15.2. The Engineer-in-Chief, PW(B&R) Department in his note dated 29.12.2005 stated that there is acute shortage of Sub-Divisional Engineers in the PW(B&R) Department. Referring to the case of Shri Pradeep Atri, he recommended that services of Shri Praveen Chaudhary may be taken in the PW(B&R) Department on deputation basis.

15.3. The Revenue Minister on 23.02.2006 reiterated his recommendation for deputation of Shri Praveen Chaudhary to the PW(B&R) Department against a vacant post.

15.4. An order was passed on 25.04.2006 by the Financial Commissioner and Principal Secretary to the Government of Haryana, Development and Panchayat Department placing the services of Shri Praveen Chaudhary at the disposal of the PW(B&R) Department on deputation for a period of one year for which reason he was relieved from the Development and Panchayat Department with immediate effect. It was mentioned therein that the terms and conditions of deputation would be issued separately. It is stated that pursuant to such order, Shri Praveen Chaudhary joined in the PW(B&R) Department on deputation on 02.05.2006.

15.5. Immediately, after the joining of Shri Praveen Chaudhary in the PW(B&R) Department on deputation, the Transport Minister addressed a communication dated 03.05.2006 to the Chief Minister requesting that Shri Praveen Chaudhary should be permanently absorbed in the PW(B&R) Department against a vacant post of direct recruitment quota. It may be mentioned that the aforesaid communication of the Transport Minister regarding absorption came just one day after Shri Praveen Chaudhary joined the PW(B&R) Department on deputation.

15.6. The Office of the Chief Minister issued a direction on 04.05.2006 stating that the Hon'ble Chief Minister had seen the note of the Transport Minister and that he desired that the request for absorption of Shri Praveen Chaudhary should be examined.

15.7. On 24.07.2006, the Financial Commissioner and Principal Secretary to the Government of Haryana, PW(B&R) Department informed the Engineer-in-Chief of the said Department that the Government had approved the deputation of Shri Praveen Chaudhary to the PW(B&R) Department on the following three conditions:

- (i) he will have no right or claim for his absorption in the PW(B&R) Department;
- (ii) he will submit an undertaking to the effect that he will not claim any benefit of absorption in the PW(B&R) Department or file any suit/writ in any court in this regard; and,
- (iii) he can be sent back at any time to his parent Department on receipt of recommendation from the Staff Selection Commission to fill up the direct quota posts of Assistant Engineer (Civil)/Sub-Divisional Engineer.

15.8. On 25.09.2006, the Financial Commissioner while conveying to the PWD Minister that there was no legal problem in the absorption of Shri Pradeep Atri, also mentioned that Shri Praveen Chaudhary who has been sent on deputation to the PW(B&R) Department may also make a request for permanent absorption in the PW(B&R) Department.

15.9. It appears that thereafter Shri Praveen Chaudhary made a request to the Financial Commissioner and Principal Secretary, Government of Haryana, Development and Panchayat Department on 11.10.2006 seeking a no objection certificate for

his absorption in the PW(B&R) Department. On 18.10.2006, the said Financial Commissioner and Principal Secretary sent a letter to the departmental Minister stating that the Department should have no objection to the absorption of Shri Praveen Chaudhary.

15.10. A recruitment process was undertaken by the Haryana Staff Selection Commission for recruitment to the post of Assistant Engineer (Civil) in the PW(B&R) Department. Shri Pradeep Atri, Shri Pankaj Gaur and Shri Arun Bhatia had applied for the said post pursuant to the advertisement dated 07.05.2006. On 13.11.2006, the list of selected candidates was published wherein the names of Shri Pradeep Atri, Shri Pankaj Gaur and Shri Arun Bhatia did not appear. In other words, they did not qualify. It may be mentioned that Shri Praveen Chaudhary did not even participate in this recruitment process. On the next day i.e. on 14.11.2006, recommendation was made by the Haryana Staff Selection Commission for appointment of the selected candidates.

15.11. Member of Legislative Assembly (MLA) representing the Bahadurgarh Constituency wrote to the Chief Minister on 19.03.2007 seeking absorption of Shri Praveen Chaudhary in

the PW(B&R) Department against a direct recruit quota vacancy citing the example of Shri Pradeep Atri.

15.12. On 20.04.2007, PW(B&R) Department sent a requisition to various departments of the Government of Haryana for deputation of 10 suitable and willing Sub-Divisional Engineers to the PW (B&R) Department.

15.13. It may be mentioned that on 09.05.2007, Shri Praveen Chaudhary submitted a representation before the Engineer-in-Chief, PW(B&R) Department seeking extension of his deputation period for a further period of one year.

15.14. In the month of May, 2007 itself, Shri Praveen Chaudhary made a request before the Engineer-in-Chief, PW(B&R) Department conveying his consent for permanent absorption in the PW(B&R) Department in view of the fact that number of posts of Sub-Divisional Engineer/Assistant Engineer (Civil) were lying vacant in the said Department. He requested that his case for permanent absorption be considered on similar lines as that of Shri Pradeep Atri.

15.15. On 11.07.2007, the Chief Minister approved absorption of Shri Praveen Chaudhary in the PW(B&R)

Department citing the example of Shri Pradep Atri. However, it was mentioned that such observation would be subject to the approval of Haryana Public Service Commission/Haryana Staff Selection Commission. It was also mentioned that seniority of Mr. Praveen Chaudhary would be at the junior most level not only amongst the Sub-Divisional Engineers who were then posted in the Department but also lower than the persons who might get posted against vacancies which had arisen before 01.07.2006 as Shri Praveen Chaudhary was being absorbed against one of the vacancies which had arisen after 01.07.2006.

15.16. Commissioner and Secretary to the Government of Haryana, PW(B&R) Department issued an order on 18.07.2007 stating that Governor of Haryana was pleased to absorb Shri Praveen Chaudhary, Sub-Divisional Officer, Development and Panchayat Department, then on deputation to the PW(B&R) Department, in the latter Department as Sub-Divisional Engineer (Civil) subject to the following conditions:

- (i) it should be approved by the Haryana Public Service Commission;

- (ii) it would be subject to the decision/undertaking given by the Department in various writ petitions pending before the High Court relating to appointment of Sub-Divisional Engineers in the PW(B&R) Department;
- (iii) confirmation of possession of degree of civil engineering by a duly recognised University;
- (iv) seniority of Shri Praveen Chaudhary would be at the junior most level not only amongst the Sub-Divisional Engineers who were then posted in the PW(B&R) Department but also below persons to be appointed against vacancies arisen before 01.07.2006 as Shri Chaudhary was being absorbed against one of the vacancies which had arisen due to retirement of Sub-Divisional Engineers after 01.07.2006; and,
- (v) he would be posted against one of the vacancies of direct recruits.

15.17. It may be mentioned that immediately after the absorption of Shri Praveen Chaudhary, 28 officers were

promoted to the post of Sub-Divisional Engineer in the PW(B&R) Department.

15.18. Haryana Public Service Commission on 06.08.2007 approved the absorption of Shri Praveen Chaudhary ostensibly in accordance with Rule 10 of the 1965 Rules. Consequent upon the absorption of Shri Praveen Chaudhary in the PW(B&R) Department, the *lien* of Shri Praveen Chaudhary with the Development and Panchayat Department was suspended *vide* order dated 24.08.2007 issued by the Financial Commissioner and Principal Secretary to the Government of Haryana, Development and Panchayat Department.

16. It may be mentioned that a number of writ petitions, the lead writ petition being CWP No. 1606 of 2000 (*Jai Prakash Vs. State*), were filed by the selected candidates of the PW(B&R) Department in the cadre of Sub-Divisional Engineer following the recruitment processes undertaken by the said Department questioning non-issuance of appointment letters to them for various reasons. During pendency of the said proceedings, an interlocutory application being CM No. 14464 of 2006 was filed seeking stay of fresh appointments on the basis of recommendation of the Haryana Public Service

Commission following the 2006 recruitment process. The High Court recorded an undertaking given by the State counsel that appointment letters pursuant to the 2006 recruitment process i.e. select list of 14.11.2006 would not be issued *vide* the order dated 29.11.2006. On 03.12.2007, CWP No. 1606 of 2000 (*Jai Prakash Vs. State*) and the other connected writ petitions were dismissed by the High Court leading to vacation of the assurance of the State counsel recorded in the order dated 29.11.2006. Though Letters Patent Appeals were filed against the dismissal of the writ petitions, being LPA No. 96 of 2008 and batch, those were, however, dismissed by the Division Bench of the High Court on 14.07.2008.

16.1. Thereafter, 29 of the selected candidates of the select list dated 14.11.2006 were issued appointment letters on 05.12.2007. They were appointed as Sub-Divisional Engineers (2007 Batch) in the PW(B&R) Department.

17. Following the memo dated 18.10.2007 of the Financial Commissioner and Principal Secretary to the Government of Haryana, Development and Panchayat Department, the Commissioner and Secretary to the Government of Haryana, PW(B&R) Department issued order

dated 23.11.2007 stating therein that the Governor of Haryana was pleased to take the 10 Sub-Divisional Officers (Civil), Development and Panchayat Department, Haryana on deputation to the PW(B&R) Department with immediate effect. The 10 officers on deputation included Shri Pankaj Gaur at Sr. No. 8 and Shri Arun Bhatia at Sr. No. 9. A request was made to the Development and Panchayat Department to see to it that the Sub-Divisional Officers (Civil) taken on deputation in the PW(B&R) Department be relieved immediately from the Development and Panchayat Department to enable them to join the PW(B&R) Department.

17.1. Pursuant to the order of deputation dated 23.11.2007, Shri Pankaj Gaur and Shri Arun Bhatia joined the PW(B&R) Department on deputation on 05.01.2008.

17.2. Just a month after joining the PW(B&R) Department on deputation, Shri Pankaj Gaur submitted a representation dated 16.02.2008 before the Commissioner and Secretary, Government of Haryana, PW(B&R) Department requesting that he be absorbed in the PW(B&R) Department citing the examples of Shri Pradeep Atri and Shri Praveen Chaudhary. It may be mentioned that the said representation of

Shri Pankaj Gaur was recommended by Shri Naresh Kumar, MLA of Badli Constituency.

17.3. Similarly, Shri Arun Bhatia also submitted a representation before the Financial Commissioner and Principal Secretary, PW(B&R) Department, Haryana on 07.03.2008 requesting for his permanent absorption in the said Department.

17.4. Office of the Commissioner and Special Secretary, PW(B&R) Department sought for comments of the Engineer-in-Chief on the representation of Shri Pankaj Gaur on 10.03.2008. At this stage, the MLA of Narnaul Constituency also made a request to the departmental Minister for permanent absorption of Shri Pankaj Gaur in the PW(B&R) Department *vide* his endorsement dated 17.03.2008.

17.5. The Engineer-in-Chief reverted back to the Commissioner and Secretary to the Government of Haryana, PW(B&R) Department *vide* the letter dated 27.03.2008 referring to the note of the PWD Minister dated 17.03.2008 which is as under:

‘Please examine and put up proposal on file. How many posts of SDOs are lying vacant in PW(B&R) Department.’

17.5.1. It was mentioned that the matter was examined in detail following which it has been observed that entertaining such kind of requests would increase litigation. Therefore, it was opined that the request of Shri Pankaj Gaur should be rejected. Further, a requisition had already been sent to the Government for onward transmission to the Haryana Staff Selection Commission to fill up 30 posts of Assistant Engineer (Civil) pertaining to the direct recruitment quota. The case for assigning current duty charge to the seniormost Junior Engineer was under consideration of the Government.

17.6. In the meanwhile, the departmental Minister put up a note on 05.06.2008 to the effect that Shri Arun Bhatia who was on deputation to the PW(B&R) Department since January, 2008 was performing his duties satisfactorily. Therefore, the proposal for his absorption in the PW(B&R) Department may be put up.

17.7. The Engineer-in-Chief, PW(B&R) Department in his letter dated 29.07.2008 informed the Financial Commissioner and Special Secretary to the Government of Haryana, PW(B&R) Department that the matter regarding permanent absorption of Shri Pankaj Gaur, Shri Arun Bhatia

and another was considered in detail but it has been observed that acceptance of such kind of request will increase litigation at a later stage and will result in demoralisation of the recruited staff. Therefore, the Engineer-in-Chief categorically stated that the request of Shri Pankaj Gaur, Shri Arun Bhatia and another for permanent absorption in the PW(B&R) Department could not be recommended. Request was made to bring this position to the notice of the departmental Minister.

17.8. The above view has been reiterated in subsequent file notings also. Notwithstanding the clear view of the Engineer-in-chief, the Financial Commissioner and Principal Secretary to the Government of Haryana, PW(B&R) Department in the file noting dated 21.08.2008 noted that both Shri Pankaj Gaur and Shri Arun Bhatia are M.Techs; there is no issue in taking them in the PW(B&R) Department; otherwise, they would be juniormost in so far *inter se* seniority was concerned in the Development and Panchayat Department. It was mentioned that the Engineer-in-Chief had also agreed with the above in the 'discussion' on 21.08.2008 morning.

17.9. The PWD Minister agreed with the note of the Financial Commissioner and Principal Secretary and approved

the same on 20.09.2008 in view of the reasons given. As noted above, the two reasons given by the Financial Commissioner and Principal Secretary for absorption of Shri Pankaj Gaur and Shri Arun Bhatia were that they were both M.Tech degree holder and if they were repatriated back to the Development and Panchayat Department, they would be the juniormost.

17.10. The MLA of Mahendargarh constituency who was the Parliamentary Secretary to the Government of Haryana, Incharge of Transport Department, also wrote to the Financial Commissioner and Principal Secretary to the Government of Haryana, PW(B&R) Department on 17.02.2009 requesting absorption of Shri Pankaj Gaur in the PW(B&R) Department.

17.11. PW(B&R) Department sought the approval of the Haryana Public Service Commission on 23.06.2009 to the absorption of Shri Pankaj Gaur and Shri Arun Bhatia. In response thereto, Haryana Public Service Commission wrote back to the Financial Commissioner and Principal Secretary to the Government of Haryana, PW(B&R) Department on 07.07.2009 stating that appointment by transfer in the PW(B&R) Department was governed by Rule 10 of the 1965 Rules as per which the Government may, in 'special

circumstances', with the approval of the Public Service Commission, appoint an officer to the service by transfer. It was pointed out that as per Rule 10, appointment by transfer in the PW(B&R) Department can be made in 'special circumstances' only. A perusal of the papers received alongwith the letter dated 23.06.2009 did not reveal the existence of any 'special circumstances' that would justify the absorption of the two officers. Therefore, it was requested that the Public Service Commission should be intimated about the 'special circumstances' under which the absorption was proposed to be made.

17.12. In response thereto, the Financial Commissioner and Principal Secretary, PW(B&R) Department wrote to the Secretary, Haryana Public Service Commission on 30.07.2009 informing that the absorption of Shri Pankaj Gaur and Shri Arun Bhatia were for the following special circumstances:

- (i) both are M.Tech in the field relevant to roads and building engineering;
- (ii) they have been recruited through a proper process by the Haryana Staff Selection Commission; and

(iii) they had spent time in the Department and they have been found good in their work.

17.12.1. It was further stated that it was very difficult to find M.Tech qualified persons as Sub-Divisional Engineers. Therefore, it was requested to allow the two officers to be absorbed in the PW(B&R) Department.

17.13. In the meantime, a list of 29 candidates recommended by the Haryana Staff Selection Commission was received whereafter the Government issued letter dated 19.08.2009 offering appointment to 25 such candidates for the post of Assistant Engineer (Civil) in the PW(B&R) Department (the 2009 direct recruit batch).

17.14. Following the same, the office of Engineer-in-Chief wrote to the Financial Commissioner and Principal Secretary to the Government of Haryana, PW (B&R) Department on 20.08.2009 stating that the Government in the PW(B&R) Department had taken the services of 14 Sub-Divisional Engineers (Civil) from the Development and Panchayat Department on deputation basis with the condition that they would be reverted back to their parent Department if they were no longer required or candidates are recommended against

their posts. It was mentioned that out of the 14 officers on deputation, only 9, whose names were mentioned in the said letter, were in position. Since Government had issued appointment letters to 25 candidates under the direct recruit quota, Government was requested to repatriate the 9 Sub-Divisional Engineers (Civil) to their parent Department i.e. Development and Panchayat Department, Haryana at an early date so as to facilitate the journey of the direct recruits. These 9 included Shri Pankaj Gaur and Shri Arun Batia.

17.15. At this stage, it may be mentioned that the recruitment of officers *vide* the Government letter dated 19.08.2009 (2009 recruits) was challenged before the High Court in CWP No. 19993 of 2009 (*Kashmir Chand Kamboj Vs. State of Haryana*) on various grounds.

17.16. Notwithstanding the request letter of the Engineer-in-Chief dated 20.08.2009, Haryana Public Service Commission *vide* the letter dated 17.09.2009 informed the Financial Commissioner and Principal Secretary, PW(B&R) Department that it had considered the matter and had approved the absorption of Shri Pankaj Gaur and Shri Arun Bhatia, Sub-Divisional Officers, Development and Panchayat

Department in the PW(B&R) Department as proposed by the Government. Following the same, Government of Haryana in the PW(B&R) Department issued order dated 23.10.2009 absorbing Shri Pankaj Gaur and Shri Arun Bhatia, Sub-Divisional Engineers of the Development and Panchayat Department on deputation to the PW(B&R) Department as Sub-Divisional Engineers (Civil) subject to the following conditions:

- (i) their seniority shall be at the junior most level not only amongst the Sub-Divisional Engineers who were then posted in the PW(B&R) Department but also lower than the candidates who would get posted against the vacancies which had already arisen;
- (ii) they shall be posted against the vacancies of the direct recruits;
- (iii) their absorption would be subject to the decision/undertaking given by the Department in various writ proceedings pending in different courts including the High Court relating to appointment of Sub-Divisional Engineers in the PW(B&R) Department; and,

- (iv) it would be subject to the confirmation of possession of the degree of civil engineering by a duly recognised university.

17.17. On 21.12.2009, Shri Praveen Chaudhary submitted a representation before the Financial Commissioner and Principal Secretary to the Government of Haryana, PW(B&R) Department regarding fixation of his *inter se* seniority. He requested that condition No. 4 of his absorption order which said that he would be junior to all the direct recruits who had joined the Department in December, 2007 should be deleted and he should be made senior to all the candidates who had joined the Department after 18.07.2007 (i.e. the date of his absorption) by way of direct recruitment or by way of promotion. In this connection, he referred to Rules 10, 11 and 12 of the 1965 Rules.

17.18. In the month of January, 2010, a tentative seniority list of Assistant Engineers (Civil) in the PW(B&R) Department was prepared in which Shri Pradeep Atri was placed at Sr. No. 17 above the direct recruits who were appointed on 05.12.2007 (pursuant to the 2006 recruitment). These direct recruits were placed at Sr. Nos. 27 to 56 in the said seniority list and Shri Praveen

Chaudhary at Sr. No. 57. This was objected to by many of the direct recruits appointed on 05.12.2007. In this regard, Seema Dhankhar and others who were direct recruits appointed on 05.12.2007 submitted a representation to the Government on 27.01.2010 for correction of the seniority list opposing the placement of Shri Pradeep Atri above the direct recruits.

17.19. The representation submitted by Shri Praveen Chaudhary on 21.12.2009 regarding fixation of his *inter se* seniority was rejected by the State Government keeping in view the conditions of absorption dated 18.07.2007. This was informed to the petitioner by the office of the Financial Commissioner and Principal Secretary *vide* letter dated 22.03.2010.

17.20. Alleging non-consideration of their representation, Seema Dhankhar and others approached the High Court by filing CWP No. 8481 of 2010 which was however disposed of by the High Court *vide* the order dated 11.05.2010 directing the Government to consider the objections to the tentative seniority list.

17.21. A tentative seniority list of Assistant Engineer (Civil) as on 01.06.2010 was circulated by the Government on

02.07.2010. In the said seniority list, Shri Pradeep Atri was placed at Sr. No. 39 below the direct recruits appointed on 05.12.2007 who were placed at Sr. Nos. 10 to 38. While Shri Praveen Chaudhary was placed at Sr. No. 48, Shri Pankaj Gaur and Shri Arun Bhatia were placed at Sr. Nos. 122 and 123 respectively.

17.22. In the meanwhile, the Special Secretary, PW(B&R) Department made a detailed recommendation on 17.08.2010 on the subject of illegal appointment of Sub-Divisional Engineers in the PW(B&R) Department. It was specifically regarding the appointment of Shri Pradeep Atri brought on deputation from the Development and Panchayat Department to the PW(B&R) Department. Amongst other points, the Special Secretary mentioned that in the entire process of absorption of Shri Pradeep Atri, the Department did not mention any 'special circumstance' on the basis of which Shri Pradeep Atri was absorbed. It was pointed out that the mere fact that there was an acute shortage of officers in the Department was no ground to absorb Shri Pradeep Atri, more so, because by the time he was absorbed, the select list was announced. He also pointed out that the matter of absorption of Shri Pradeep Atri would

attain scandalous proportion because the Government could be accused of making a backdoor entry for Shri Pradeep Atri who otherwise failed to clear his PW(B&R) Department SDO recruitment examination. He, therefore, proposed that Shri Pradeep Atri be repatriated to the Development and Panchayat Department on the following grounds:

- (i) as per the 1965 Rules, direct recruitment would mean an appointment by open competition but it does not include an appointment made by promotion and an appointment by transfer of an officer already in service of a State Government or of the Government of India;
- (ii) he had not completed the probationary period in the Development and Panchayat Department nor in the PW(B&R) Department;
- (iii) the vacancy against which he had to be absorbed *vide* condition No. 4 of his absorption order had not been finalised; and,
- (iv) the conditions of deputation were contrary to Rule 2 of the 1965 Rules and as such he had not been

technically absorbed in the PW(B&R) Department. Government had not issued any order mentioning as against which vacancy Shri Pradeep Atri would be absorbed.

17.23. In a note dated 11.09.2010, the Financial Commissioner and Principal Secretary described the deputation of Shri Pradeep Atri to the PW(B&R) Department as a backdoor entry. It was pointed out that those who were directly recruited through the same examination in which Shri Pradeep Atri had failed could not be treated as junior to Shri Pradeep Atri. Therefore, the seniority of Shri Pradeep Atri would have to be considered below those who were directly recruited or promoted in the year 2006.

18. Shri Praveen Chaudhary, Shri Pankaj Gaur and Shri Arun Bhatia filed CWP No. 15083 of 2010 assailing, amongst others, the seniority list dated 02.07.2010 by seeking seniority over the direct recruits. Likewise, Shri Pradeep Atri filed CWP No. 17474 of 2010 questioning the revised seniority list.

18.1. In its counter affidavit filed by the State of Haryana in the PW(B&R) Department to CWP No. 17474 of 2010, the

stand taken was that placement of Shri Pradeep Atri below that of the 2006 direct recruits was in line with Rule 12(5) of the 1965 Rules. Similarly, State of Haryana in the PW(B&R) Department in its counter affidavit filed to CWP No. 15083 of 2010 took the stand that Shri Praveen Chaudhary, Shri Pankaj Gaur and Shri Arun Bhatia having consented to the conditions of absorption were estopped from questioning assignment of their seniority position below the 2006 direct recruits. There was no need for the writ petitioners to have been deputed to the PW(B&R) Department or absorbed therein; these officers had landed up in the PW(B&R) Department on their own request. Therefore, they could not later on resile from the conditions of their absorption.

18.2. The Special Secretary-cum-Chief Vigilance Officer made a detailed note observing that there was no exceptional circumstances for absorption of the deputationists i.e. Shri Pradeep Atri, Shri Praveen Chaudhary, Shri Pankaj Gaur and Shri Arun Bhatia. It was clearly discernible that it was simply a case of pick and choose method adopted for such absorption. If the Department was in dire need of Sub-Divisional Engineers, it should have circulated the posts to be filled up by transfer

from the other departments and should have chosen from amongst the applicants which is the laid down procedure. Pointing out various lacuna in the deputation and absorption of the above four officers, the Special Secretary-cum-Chief Vigilance Officer advised that the Department should repatriate the four officers to their parent Department.

18.3. In fact, there were similar file notings also where the Chief Secretary, the Financial Commissioner and the PWD Minister observed that the absorption of the deputed officers was in conflict with the service rules.

19. It appears that pursuant to the query of the PW(B&R) Department, the Development and Panchayat Department informed the former *vide* letter dated 27.05.2011 that upon absorption of the four officers in the PW(B&R) Department, the *lien* of those officers was not retained in the parent Department.

20. CWP No. 7706 of 2011 (*Abhishek Vs. State*) was filed by the direct recruits challenging the absorption of Shri Pradeep Atri, Shri Praveen Chaudhary, Shri Pankaj Gaur and Shri Arun Bhatia. To this, the State Government filed its counter affidavit justifying their absorption on the ground

that there was shortage of Sub-Divisional Engineers in the PW(B&R) Department which necessitated their absorption.

21. In between, on a note put up by the PWD Minister dated 12.08.2011, the Honourable Chief Minister ordered on 24.08.2011 that the seniority of the Sub-Divisional Engineers Class II be fixed strictly keeping in view the express provisions of the statutory rules particularly Rule 12.

22. The final seniority list of Assistant Engineer (Civil) in the PW(B&R) Department as on 24.08.2011 was issued on 02.09.2011. In this seniority list, Shri Pradeep Atri was placed at Sr. No. 6, Shri Praveen Chaudhary at Sr. No. 44, Shri Pankaj Gaur at Sr. No. 111 and Shri Arun Bhatia at Sr. No. 112. The direct recruits who were appointed on 05.12.2007 were made junior to Shri Pradeep Atri but senior to Shri Praveen Chaudhary, Shri Pankaj Gaur and Shri Arun Bhatia.

23. CWP No. 18075 of 2011 (*Sukhbir Singh Vs. State*) was filed before the High Court challenging the seniority assigned to Shri Pradeep Atri. Likewise, CWP No. 18515 of 2012 (*Jagbir Singh Vs. State*) was filed by the 2006 direct recruits assailing the absorption of and seniority assigned to the deputed officers upon absorption.

24. It may be mentioned that Shri Pradeep Atri along with the direct recruits of the 2006 selection were promoted as Executive Engineer but the seniority of Shri Pradeep Atri *vis a vis* the direct recruits was maintained i.e. Shri Atri was placed above the direct recruits.

25. On 27.07.2015, the High Court disposed of CWP No. 19993 of 2009 (*Kashmir Chand Kamboj Vs. State of Haryana*) upholding the challenge to the recruitment of the 2009 direct recruits on various grounds. However, in view of the fact that the said recruits had already served for more than 5 years and that posts of Assistant Engineer (Civil) were lying vacant, their selection was not set aside.

26. Shri Praveen Chaudhury was also promoted as Executive Engineer on 29.12.2016.

27. After several rounds of file notings, Shri Pankaj Gaur and Shri Arun Bhatia were given seniority in the cadre of Assistant Engineer in the PW(B&R) Department with effect from 05.01.2008. In the order dated 01.05.2017 passed by the Additional Chief Secretary to the Government of Haryana, PW(B&R) Department, it was mentioned that the Government had decided to grant the benefit of seniority with all

consequential benefits to Shri Pankaj Gaur and to Shri Arun Bhatia from the date of their joining the PW(B&R) Department on deputation basis i.e. from 05.01.2008 as per Rule 12(5) of the 1965 Rules considering their continuous and uninterrupted service.

28. CWP No. 15685 of 2017 (*Kamaldeep Singh Vs. State*) was filed before the High Court assailing the aforesaid order dated 01.05.2017. Similarly, CWP No. 5465 of 2018 (*Nishant Singh Vs. State*) was filed by the 2009 direct recruits assailing the legality and validity of the order dated 01.05.2017.

29. In the meanwhile, Government of Haryana in the PW(B&R) Department directed the Engineer-in-Chief to prepare and circulate a revised tentative seniority list of Assistant Engineer (Civil). Following the same, a tentative revised seniority list was prepared on 29.09.2017 in which Shri Pankaj Gaur and Shri Arun Bhatia were placed at Sr. Nos. 2 and 3 respectively above the 2009 direct recruits.

29.1. Lot of correspondence took place following the issuance of the aforesaid tentative seniority list. Objections were raised by the 2009 direct recruits who were given a hearing. However, the final seniority list of Assistant Engineer

(Civil)/Sub-Divisional Engineer (Civil) as on 01.07.2017 was issued on 04.04.2018 where Shri Pankaj Gaur and Shri Arun Bhatia were shown as senior to the 2009 direct recruits.

30. In the midst of such uncertainty, Shri Pradeep Atri was promoted from the post of Executive Engineer (Civil), PW(B&R) Department to the post of Superintending Engineer in the said Department with effect from 01.10.2019 *vide* the order dated 20.09.2019 issued by the Additional Chief Secretary to the Government of Haryana, PW(B&R) Department.

31. Shri Praveen Chaudhary again submitted representation dated 25.09.2019 before the Government seeking seniority with effect from 02.05.2006 i.e. from the date of his deputation to the PW(B&R) Department. This time, his prayer was accepted by the Department on 01.10.2019 whereafter a tentative seniority list of Executive Engineers (Civil) in the PW(B&R) Department as on 01.10.2019 was issued on 03.10.2019 where Shri Praveen Chaudhary was placed at seniority position No. 4 above the direct recruits. Objections were called for from all the Executive Engineers (Civil), whereafter the objections were heard. Thereafter, the Additional Chief Secretary to the Government of Haryana,

PW(B&R) Department issued order dated 17.07.2020 granting seniority to Shri Praveen Chaudhary with effect from 02.05.2006 i.e. from the date of his deputation instead of 18.07.2007 i.e. the date of absorption, in terms of Rule 12(5) of the 1965 Rules. It was mentioned therein that Shri Praveen Chaudhary would be placed below Shri Pradeep Atri. Following the same, the tentative seniority list of Executive Engineers (Civil) in the PW(B&R) Department as on 01.10.2019 was prepared and circulated on 28.07.2020 in which Shri Praveen Chaudhary was placed at Sr. No. 4 above the direct recruits appointed on 05.12.2007.

32. CWP No. 11848 of 2020 (*Abhishek Vs. State*) was filed by the direct recruits of the 2006 batch challenging the tentative seniority list dated 28.07.2020. This tentative seniority list was also challenged in CWP No. 2882 of 2020 (*Hemant Kumar Vs. State*). Similarly, CWP No. 858 of 2021 (*Sukhbir Singh Vs. State*) was filed by the direct recruits of the 2006 batch challenging the aforesaid tentative seniority list.

33. Shri Pankaj Gaur and Shri Arun Bhatia were promoted to the post of Executive Engineer (Civil) *vide* the order

dated 23.08.2022 passed by the Additional Chief Secretary to the Government of Haryana, PW(B&R) Department.

34. The following writ petitions were heard together by the High Court:

- (i) CWP No. 15083 of 2010 (*Praveen Chaudhary Vs. State of Haryana*);
- (ii) CWP No. 7706 of 2011 (*Abhishek Vs. State of Haryana*);
- (iii) CWP No. 18075 of 2011 (*Sukhbir Singh Vs. State of Haryana*);
- (iv) CWP No. 18515 of 2012 (*Jagbir Singh Vs. State of Haryana*);
- (v) CWP No. 15685 of 2017 (*Kamaldeep Singh Rana Vs. State of Haryana*);
- (vi) CWP No. 5465 of 2018 (*Nishant Vs. State of Haryana*);
- (vii) CWP No. 11848 of 2020 (*Abhishek Vs. State of Haryana*);

(viii) CWP No. 12882 of 2020 (*Hemant Kumar Vs. State of Haryana*);

(ix) CWP No. 858 of 2021 (*Sukhbir Singh Vs. State of Haryana*);

34.1. *Vide* the judgment and order dated 15.03.2023, the High Court disposed of all the writ petitions in the following manner:

- (i) there was no justification for the deputation of these four officers to the PW(B&R) Department;
- (ii) there were no special circumstances for invoking Rule 10 of the 1965 Rules and absorption of Shri Pradeep Atri, Shri Praveen Chaudhary, Shri Pankaj Gaur and Shri Arun Bhatia was contrary to the 1965 Rules and was not *bona fide*. It amounted to backdoor entry with persistent interference of politicians clearly discernible.
- (iii) therefore, the orders of deputation of these four officers and their subsequent absorption in the PW(B&R) Department are not valid in law and are the product of political machinations;

- (iv) though the High Court held the deputation to and absorption of the above four officers in the PW(B&R) Department in the post of Assistant Engineer (Civil) as bad in law yet the High Court, considering the fact that these officers had no longer *lien* in their parent Department i.e. the Development and Panchayat Department and that they had been rendering service in the PW(B&R) Department for a long time, took a sympathetic view not to disturb their deputation and absorption as Assistant Engineer (Civil) in the PW(B&R) Department. However, the High Court clarified that the four officers would not be allowed to have seniority over the direct recruits appointed on 07.12.2009 or in the year 2009/persons promoted against vacancies which arose before 01.07.2006 or in 2009 in the cadre of Assistant Engineer (Civil) in the PW(B&R) Department;
- (v) consequently, Shri Pradeep Atri and Shri Praveen Chaudhary cannot be given seniority over any direct recruit or promotee who were appointed against vacancies which arose prior to 01.07.2006; and

(vi) the State was also not justified in giving seniority to Shri Pankaj Gaur and Shri Arun Bhatia over the direct recruits or promotees who were appointed against the vacancies which arose before 23.10.2009 i.e. the date of their absorption in the PW(B&R) Department.

Submissions

35. Mr. Ranjeet Kumar, learned senior counsel appearing for the appellants in the civil appeals arising out of SLP (C) Nos. 12017-12018 of 2023 has assailed the impugned judgment and order of the High Court to a limited extent. He submits that the High Court having accepted the contention of the appellants that the deputation and absorption of the four officers were bad in law and were made for extraneous reasons under political influence, ought to have terminated their services; instead, the High Court has sustained their absorption in the PW(B&R) Department. He submits that exercising power under Article 226 of the Constitution of India the High Court could not have sustained the illegal absorption of the four officers; rather, the High Court should have terminated their absorption in the PW(B&R) Department.

35.1. Mr. Kumar has taken the Court to various correspondences which are on record to show that the deputation of the four officers from the Development and Panchayat Department to the PW(B&R) Department itself was faulty. The basic principles underlying deputation were not complied with. The deputations were made purely on the request of the four officers. Proceeding further he submits that while the deputation of the four officers itself was illegal, such illegality was further magnified by the wholly unsustainable action of the authority in the PW(B&R) Department in absorbing them in the said Department. This is nothing but a backdoor entry. High Court had rightly described such appointment of the four officers by way of absorption as a backdoor entry.

35.2. Mr. Kumar submits that appointment to all public posts must follow a fair and transparent procedure. It must meet the test of fairness and equality as envisaged in Articles 14 and 16 of the Constitution of India. Such backdoor entry negates the principle of equal opportunity and fairness in public employment.

35.3. It is contended that Shri Pradeep Atri, Shri Pankaj Gaur and Shri Arun Bhatia had appeared in the direct recruitment examination to the post of Assistant Engineer (Civil) in the PW(B&R) Department pursuant to the advertisement dated 07.05.2006 but they did not qualify. Shri Praveen Chaudhary had not even applied for such direct recruitment process. These four officers have sought to do indirectly what is not possible directly by first seeking transfer on deputation and then absorption in the PW(B&R) Department. These officers were successful in getting appointment in the PW(B&R) Department by such method though they were unsuccessful in the examination for direct recruitment. Moreover, these four officers neither completed the probation period in their parent Department nor in the borrowing Department. This is clearly reflective of the *mala fide* intent of the authority when it ensured that these four officers were appointed by way of transfer on deputation and thereafter absorbed in the PW(B&R) Department, in the process giving a complete go-bye to all norms of fairness and transparency.

35.4. It is the High Court's own finding that the deputation and subsequent absorption of these four officers was unlawful. Such appointment was by backdoor method and not on merit. There was clear manifestation of political interference influencing the decision for deputation and absorption. Having found this, the High Court clearly fell in error in directing that the said four officers should be retained in the PW(B&R) Department.

35.5. Adverting to the case of the appellants, learned senior counsel submits that they were appointed after being selected in a competitive examination on merit. By virtue of the impugned judgment, Shri Pradeep Atri and Shri Praveen Chaudhary would continue to retain their seniority position over some of the appellants which is wholly untenable.

35.6 Learned senior counsel submits that the State had also taken contradictory stand in the proceedings before the High Court. It had taken a categorical stand in the counter affidavit filed in CWP No. 15083 of 2010 that there was no need for absorption of the four officers in the PW(B&R) Department and that the deputation was carried out not on administrative exigency but on the request of the said four officers.

Contradicting such stand, the State in its counter affidavit filed in a subsequent writ petition i.e. in CWP No. 7706 of 2011 justified the deputation and absorption of the four officers on the ground that there was acute shortage of officers in the PW(B&R) Department. But the fact of the matter is that there was no such shortage.

35.7. Even otherwise, the direction given by the High Court *qua* seniority in the impugned judgment is self-contradictory. The absorption order of Shri Praveen Chaudhary, Shri Pankaj Gaur and Shri Arun Bhatia clearly stated that they would be junior in service to all persons directly recruited in the PW(B&R) Department against vacancies which had arisen before 01.07.2006. Such a condition was not challenged by the deputationists and was raised only at the time when the seniority list was prepared in the year 2010. If the initial entry of these four officers was itself illegal, it would be wholly unfair and unjust to allow them to continue their service on absorption, that too, by retaining their so-called seniority.

35.8. Since the very appointment (by way of absorption) of the four officers was illegal, they could not have been

granted seniority over those who came through regular recruitment. Grant of seniority to the four officers over regularly recruited officers amounts to a premium on backdoor entry.

35.9. Referring to Rule 6 of the 1965 Rules, learned senior counsel submits that there are two modes of recruitment: 50 per cent by way of direct recruitment and the balance 50 per cent by way of promotion. Thus, it is clear that there are only two modes of regular recruitment.

35.10. Adverting to Rule 12 of the said Rules, it is submitted that appointment by way of transfer is not a regular mode of recruitment but it can only be done in special circumstances. As per Rule 12, Government may in special circumstances with the approval of the Public Service Commission, appoint an officer to the service by transfer. This Rule itself provides that there must be some special circumstances warranting deviation from the two modes of recruitment i.e. direct recruitment and promotion. Insofar the present case is concerned, no special circumstances are discernible to justify such appointment of the four officers.

35.11. In the circumstances, Mr. Ranjeet Kumar, learned senior counsel submits that this part of the impugned judgment passed by the High Court, being wholly unsustainable in law as well as on facts, is liable to be set aside. The four officers may either be repatriated back to their parent Department and if that is not possible, to terminate their illegal appointment.

36. Mr. Patwalia, learned senior counsel appearing for the appellant Shri Pradeep Atri in the civil appeals arising out of SLP(C) Nos. 7506-7508 of 2023 submits that the High Court was not justified in declaring the deputation as well as absorption of the appellant in the PW(B&R) Department as illegal, being influenced by political considerations. However, since the High Court has not disturbed the absorption of the appellant, to that extent, appellant is not aggrieved by the judgment of the High Court. But insofar as seniority is concerned, he submits that the decision of the High Court is erroneous and is, therefore, contested by the appellant.

36.1. Mr. Patwalia has extensively referred to the file notings placed on record to contend that it was a considered decision of the authority to send the appellant on deputation

to the PW(B&R) Department. He further submits that the authority had carried out extensive consultation including with the Public Service Commission whereafter it was decided that the appellant should be absorbed in the PW(B&R) Department. Question of political considerations influencing such decision did not arise at all; rather, there was no political endorsement whatsoever.

36.2. Learned senior counsel has also made elaborate submissions centering around the 1965 Rules including Rule 12(5) thereof and submits that decision of the High Court holding that seniority position of the appellant should be placed below the direct recruits is erroneous. He submits that in the case of Shri Pradeep Atri, the State Government did not invoke the proviso to Rule 12(5) to affix his seniority as in the case of the other three officers who were granted seniority from the date of deputation. In the case of Shri Atri, he was granted seniority from the date of his absorption. Moreover, no condition was imposed in his deputation or absorption order(s) that he would be placed below the direct recruits in terms of seniority.

36.3 According to Mr. Patwalia, the High Court has not appreciated the fact that the directly appointed candidates are seeking seniority from a date when they were not even borne in the cadre. He submits that there exists no indefeasible right in favour of selected candidates to seek appointment in the PW(B&R) Department. This fact would be more clear from the list of dates. While the appellant was appointed by way of deputation (transfer) and absorption in the PW(B&R) Department *vide* the order dated 06.10.2006, the direct recruits were appointed in the said Department on 05.12.2007. Referring to Rule 12(1) of the 1965 Rules, he submits that seniority is based on the date of appointment. Since the appellant was appointed in the PW(B&R) Department almost 14 months prior to the appointment of the direct recruits, by no stretch of imagination can the latter be made senior to the appellant.

36.4. Learned senior counsel submits that none of the decisions relied upon by the High Court to answer the question pertaining to seniority applies to the facts of the present case. Those decisions are clearly distinguishable.

36.5. Much stress was laid upon Rule 12(1) of the 1965 Rules on the basis of which Mr. Singh submits that service in the cadre will commence from the date of appointment. Therefore, none can claim seniority prior to the date of appointment. Adverting to the decisions of this Court in *K. Meghachandra Singh Vs. Ningom Siro*¹ and in *Shripal Bhati Vs. State of Uttar Pradesh*², learned senior counsel submits that law is well settled that a person is disentitled to claim seniority from the date he was not borne in the service.

36.6. It is further submitted that the appellant is highly qualified and his performance in the PW(B&R) Department was found to be without any blemish. Therefore, the authority after due consideration and consultation with all the stakeholders decided to appoint the appellant in the said Department on absorption. Such a power is traceable to Rule 10 of the 1965 Rules. Thus, appellant became a member of the service under Rule 2(12) upon such absorption.

36.7. Learned senior counsel submitted that the PW(B&R) Department had invoked Rule 10 of the 1965 Rules

¹ (2020) 5 SCC 689

² (2020) 12 SCC 87

in view of the 'special circumstances' that existed the time of absorption of the appellant. It is clear from the file notings that the authority was concerned with the severe shortage of staff with no certainty of fresh recruitment. This, coupled with the appellant's qualification and unblemished service in the Department, formed the 'special circumstances' justifying appointment by way of transfer and absorption.

36.8. After a long narration of facts, learned senior counsel submits that the High Court erred in not appreciating that the appellant was appointed by way of deputation (transfer) and absorption in the PW(B&R) Department for the following reasons:

- i. there was acute shortage of Sub-Divisional Engineers (Civil) in the Department since there was a stay on fresh recruitment due to pending litigation;
- ii. due to shortage of Sub-Divisional Engineers in the Department, official work was hampered;
- iii. the acute shortage of engineers in the Department and the inability of the Department to recruit fresh

engineers created a 'special circumstance' under Rule 10 of the 1965 Rules;

iv. appellant possessed the required qualification i.e. a Bachelor's degree in civil engineering for being recruited to the post of Sub-Divisional Engineer in the PW(B&R) Department;

v. appellant had already rendered service in the Department following his deputation and was fully conversant with the nature of work in the Department;

vi. appellant was absorbed after his representation to the Government showing his willingness to work in the PW(B&R) Department; and,

vii. no objection certificate was issued by the parent Department i.e. Development and Panchayat Department to the initial deputation and the consequential absorption of the appellant in the PW(B&R) Department.

36.9. According to Mr. Patwalia, the effect of the impugned judgment would be that Shri Pradeep Atri despite being in service prior to the direct recruits will be placed below

the 2014 direct recruits, and those direct recruits would be granted notional retrospective seniority from a date prior to them being borne in the cadre.

36.10. Mr. Patwalia finally submits that the High Court has erred in assigning the seniority position of the appellant below the direct recruits and this position needs to be rectified by this Court. Therefore, he prays for interference in the impugned judgment of the High Court to the aforesaid limited extent.

37. Mr. Nidhesh Gupta, learned senior counsel appearing on behalf of Shri Praveen Chaudhary, has laid great emphasis on the 1965 Rules and submits that appointment by transfer is recognised under the said rules as a mode of appointment. He has referred to Rules 2(9)(b), 2(12) , 7(4) and 10 to contend that a conjoint reading of the aforesaid rules would clearly show that appointment by way of transfer is an accepted mode of appointment under the said rules.

37.1. Referring to Rule 12(5), more particularly to the proviso thereto, he submits that though the substantive part of sub-rule (5) says that an Assistant Engineer appointed by way of transfer while normally would be placed junior to all

the officers appointed directly or by way of promotion in a particular year, the Government may in the interest of service and taking into consideration the circumstances of the case, fix his seniority on adhoc basis. Adverting to the proviso, he submits that seniority 'thus fixed' shall not be more favourable than the seniority determined after allowing him credit for the period of service rendered by him in the previous appointment as Assistant Engineer or on a post of equivalent or greater responsibility as may be determined by the Government. Therefore, he submits that appointment of the answering respondent Praveen Chaudhary by transfer cannot be questioned as being impermissible under the 1965 Rules. In this connection, he has placed reliance on a decision of this Court in *State of Rajasthan Vs. Anand Prakash Solanki*³.

37.2. Mr. Gupta submits that the deputation and absorption of Shri Praveen Chaudhary in the PW(B&R) Department in the cadre of Assistant Engineer is fully justified in the facts and circumstances of the present case. He submits that advertisement was issued on 07.05.2006 inviting applications for 44 posts of Sub-Divisional Engineer (Assistant

³ (2003) 7 SCC 403

Engineer); though it has come on record that there were 59 vacancies available at that point of time but requisition was sent for only 44 vacancies. In the meanwhile, 14 Assistant Engineers were promoted to the post of Executive Engineer. Therefore, 73 vacancies (59 + 14) became available in the said Department. Infact, in a cadre strength of 82, there were 73 vacancies. That apart, since the year 1993, there had been no direct recruitment to the cadre of Assistant Engineer (Civil). The Engineer-in-Chief in the PW(B&R) Department cited the acute shortage of engineers in the said Department as a reason for taking the answering respondent on deputation. Thus, the above factual position makes it abundantly clear that there were legitimate reasons for sending the answering respondent Shri Praveen Chaudhary on deputation to the PW(B&R) Department.

37.3. The vacancy position became further acute when in a writ proceeding arising out of CWP No. 16016 of 2000 which was filed by candidates who were selected in a selection process conducted prior to the year 2000 and who had claimed that it was they who were entitled to be appointed against the said vacancies, the State Government gave an undertaking

before the High Court that the selected candidates for the post of Sub-Divisional Engineer pursuant to the advertisement dated 07.05.2006 would not be appointed. He submits that the dispute in the said case pertained to the direct recruits *inter se* and had nothing to do with the deputation of Shri Praveen Chaudhary.

37.4. Learned senior counsel submits that the severe shortage of Assistant Engineers continued to plague the Department even after the deputation of the answering respondent. Therefore, a request was made for accepting atleast 20 Sub-Divisional Engineers (Assistant Engineers) with degree in civil engineering to be taken on deputation. In terms of Rule 10, the Government has the discretion to appoint an officer to the service by way of transfer. In the present case, the Government had decided to exercise the discretion as it was satisfied that special circumstances did exist for appointing the answering respondent to the service by way of transfer.

37.5. Reiterating the aforesaid submission, learned senior counsel asserts that the State of Haryana also accepted the existence of such 'special circumstances' when it

highlighted in an affidavit filed before the High Court that there was an acute shortage of officers in the Department and that the appointments were not being made for which the ongoing projects were getting delayed due to shortage of officers.

37.6. Referring to the decision of this Court in *PM Bayas Vs. Union of India*⁴, learned senior counsel submits that the overall factual position in the present case fully justifies the deputation and absorption of the answering respondent Shri Praveen Chaudhary in the PW(B&R) Department as the existence of 'special circumstances' justifying such appointment were clearly discernible.

37.7. Mr. Gupta has also questioned the impugned judgment and order of the High Court in so far it condoned the delay in challenging the deputation and absorption of the answering respondent. In fact, he submits that there was a considerable delay in challenging the deputation and absorption of the answering respondent before the High Court. Shri Praveen Chaudhary was sent on deputation on

⁴ (1993) 3 SCC 319

25.04.2006 and came to be absorbed in the PW(B&R) Department on 08.07.2007. However, the writ petition challenging the said appointment came to be filed after several years in 2011 and 2012. The reasoning given by the High Court while condoning such delay is *ex-facie* incorrect. In this connection, he has placed reliance on the following decisions of this Court:

- (i) *Rabindra Nath Bose Vs. Union of India*⁵;
- (ii) *PS Sadasivaswamy Vs. State of Tamil Nadu*⁶;
- (iii) *K.R. Mudgal Vs. RP Singh*⁷; and
- (iv) *Shiba Shankar Mohapatra Vs. State of Orissa*⁸.

37.8. Assailing the reasoning given by the High Court, he submits that if the reasoning of the High Court that no cause of action had arisen prior to the grant of seniority to the answering respondent over the direct recruits/promotees is accepted, then there would be occasion for the related special leave petitions to be entertained because as per the impugned

⁵ (1970) 1 SCC 184

⁶ (1975) 1 SCC 152

⁷ (1986) 4 SCC 531

⁸ (2012) 12 SCC 471

judgment and order, such seniority has been denied to Shri Praveen Chaudhary.

37.9. Learned senior counsel once again reiterated that ultimately it is for the concerned Government to take a decision as to whether to absorb a deputationist or not. This is the discretion available to the administrative authority and the exercise of such a discretion by the concerned Government should not be interfered with by a court of law.

37.10. Adverting to the meaning of the expression ‘special circumstances’ as finding place in Rule 10 of the 1965 Rules, learned senior counsel has referred to a decision of this Court in *Chief Engineering Vs. K.S. Brar*⁹ and submits that presence of ‘special circumstances’ is to be determined by the concerned authority and should not be ordinarily interfered with by the courts.

37.11. Referring to various file notings and documents placed on record, Mr. Gupta submits that the facts demonstrate that it is the answering respondent Shri Praveen Chaudhary who has been discriminated against and

prejudiced from time to time. In spite of the clear seniority of the answering respondent, he was not given due seniority for which he had filed CWP No. 15820 of 2010. It was only after Shri Pankaj Gaur and Shri Arun Bhatia were given seniority, the representation of the answering respondent was accepted whereafter he was granted his due seniority *vide* the order dated 01.10.2019 with effect from the date on which the answering respondent had joined the PW(B&R) Department as Assistant Engineer (Civil) i.e. on 02.05.2006. Referring to Rule 12(1) of the 1965 Rules, Mr. Gupta submits that seniority of the members of the service shall be determined by the order of their appointment in service irrespective of their date of joining. The only exception is provided in Rule 12(5) which prescribes that ordinarily an Assistant Engineer appointed by way of transfer would be junior to all the officers appointed directly or by way of promotion in a particular year; however, the Government may, in the interest of public service, fix his seniority on an adhoc basis. The proviso to Rule 12(5) makes it abundantly clear that seniority can be determined by giving credit for the period of service rendered in the previous appointment as Assistant Engineer. Therefore, the answering

respondent is entitled to seniority from 18.10.2005 i.e. the date of his appointment in the Development and Panchayat Department as Assistant Engineer (Civil); however, he has been granted seniority in the PW(B&R) Department only from the date of joining in the said Department. In this connection, learned senior counsel has placed reliance on the following decisions:

- (i) *K. Madhavan Vs. Union of India*¹⁰; and
- (ii) *Sub Inspector Rooplal Vs. Lieutenant Governor*¹¹.

37.12. Rule 12(1) indisputably determines seniority on the basis of the order of appointment, the only exception being provided is under sub-rule (5). He submits that a careful and conjoint reading of Rule 12(1) and Rule 12(5) would make it clear that normally a transferee Assistant Engineer would be junior to all officers appointed directly or by way of promotion in a particular year in the cadre. Placing the transferee as the junior most officer would obviously be the worst case scenario for the said transferee Assistant Engineer. Any rule which seeks to place him junior to those who may be appointed in

¹⁰ (1987) 4 SCC 566

¹¹ (2000) 1 SCC 644

subsequent years would be *ex facie* illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India. Delineating Rule 12(5), learned senior counsel submits that the latter part of Rule 12(5) obviously permits fixation of seniority on better terms than the first part of Rule 12(5) which places a transferee Assistant Engineer junior to all officers appointed in a particular year. The proviso while speaking of the seniority 'thus fixed' refers clearly to the seniority fixed under Rule 12(5). He submits that the fixation of seniority mentioned in Rule 12(5) is a favourable fixation for the Assistant Engineer. However, the outer limit is placed by the proviso by ensuring that such an Assistant Engineer cannot get the benefit of more than the period of service rendered in previous appointment as Assistant Engineer. Thus, it is clear that the two limits, namely, the worst case scenario and the best case scenario, for the transferee are both provided under Rule 12(5). The worst case is under the substantive provision of Rule 12(5) and the best case is under the proviso to Rule 12(5).

37.13. Learned senior counsel submits that the direction of the High Court in the impugned judgment and order stating

that the answering respondent would be entitled to seniority only from 18.07.2007 i.e. the date of his absorption but at the same time holding that he cannot get seniority over any direct recruit or promotee appointed against vacancies which had arisen prior to 01.07.2006, besides being contradictory, is also against the settled principles of law as can be deciphered from the decisions cited supra.

37.14. That apart, by way of the impugned judgment, the High Court has granted seniority to the direct recruits from a date on which they were not yet borne in the cadre of Assistant Engineer (Civil). Though by the impugned judgment, seniority has been granted to the direct recruits from 29.11.2006, they were in fact appointed in the cadre of Assistant Engineer (Civil) on 05.12.2007. The date 29.11.2006 is totally irrelevant for the purpose of grant of seniority to the direct recruits. As a matter of fact, on the said date, only an undertaking was given by the State Government to the High Court that no appointments would be made to the post of Assistant Engineer following the recruitment process pursuant to the advertisement dated 07.05.2006. On the said date, the direct recruits had not even joined in the cadre. In addition to several

judgments of this Court which says that seniority cannot be granted from an anterior date prior to joining, the same is also contrary to the express language of Rule 12(1) itself which says that seniority has to be granted from the date of appointment.

37.15. In the circumstances, Mr. Nidhesh Gupta, learned senior counsel submits that it is extremely incongruous and unjust that the High Court has denied the benefit of seniority to the answering respondent from the date of appointment in the PW(B&R) Department, not to speak of his appointment in the Development and Panchayat Department; yet, the direct recruits have been given seniority from the date when they were not even borne in the cadre of Assistant Engineer (Civil) in the PW(B&R) Department. He submits that though certain conditions were laid down in the absorption order regarding seniority, those would not be applicable; the statutory rules i.e. the 1965 Rules would prevail over such administrative order. Thus, seniority of the answering respondent would be governed by Rule 12(5) and not by the conditions mentioned in the absorption order.

37.16. He, therefore, submits that the High Court was not justified in declaring the deputation and absorption of the

answering respondent Shri Praveen Chaudhary as illegal though High Court did not disturb such appointment. He further submits that the High Court fell in serious error in disturbing the seniority assigned to the answering respondent by the State. To that extent the impugned judgment and order is liable to be interfered with.

38. Mr. Guru Krishna Kumar, learned senior counsel appearing on behalf of Shri Pankaj Gaur and Shri Arun Bhatia, at the outset draws the attention of the Court to Rules 6 and 10 of the 1965 Rules. While Rule 6 speaks about the modes of recruitment to the service for both cadre and ex-cadre posts being 50 percent by direct recruitment and 50 percent by promotion, Rule 10 refers to appointment by way of transfer. Specifically pointing out to Rule 10, he submits that as per the said provision, the Government may, in 'special circumstances', with the approval of the Commission, appoint an officer to the service by transfer. A conjoint reading of the two rules would show that three modes of appointment are envisaged: direct recruitment, promotion and appointment by transfer. Therefore, the contention of the appellants (Shri Hemant Kumar and others) that the 1965 Rules do not

envisage appointment by transfer at all, particularly to the post of Assistant Engineer/Sub-Divisional Engineer, if accepted, would render Rule 10 *otiose*. This would also be contrary to the settled principles of interpretation which says that the statute would have to be read harmoniously so as not to render any provision *otiose*.

38.1. Learned senior counsel submits that Rule 10 is a specially crafted provision envisaging ‘special circumstances’ and ‘approval of the Commission’ to appointment to the service by way of transfer. Contention of the direct recruits that there were no ‘special circumstances’ in terms of Rule 10 of the 1965 Rules to justify the absorption of the deputationists is untenable. Mr. Kumar submits that the following factors were clearly taken into account by the PW(B&R) Department while considering absorption of Shri Pankaj Gaur and Shri Arun Bhatia:

- (i) both Shri Pankaj Gaur and Shri Arun Bhatia possess M.Tech. in the relevant field;
- (ii) they have been recruited through a proper process by the Haryana Public Service Commission; and,

- (iii) they have spent time in the Department and they have been found good in their work.

38.2. Adverting to Rule 12, Mr. Kumar, learned senior counsel, submits that determination of seniority of officers in a cadre has to be done in terms of Rule 12 of the 1965 Rules. After elaborately referring to Rule 12, he points out the salient features of the said provision as under:

- (i) Rule 12(1) provides for the manner of determination of seniority of the members of the service but carves out an exception as provided in sub-rule (5) of Rule 12; and
- (ii) sub-rule (5) of Rule 12 relates specifically to an officer appointed by way of transfer. Thus, the provisions contained in Rules 12(1) to 12(4) relate to determination of seniority of persons appointed otherwise than by way of transfer.

38.3. In accordance with sub-rule (5) of Rule 12 in the case of persons appointed by way of transfer as Assistant Engineer, though they would be normally placed junior to all officers appointed directly or by promotion as Assistant

Engineer in a particular year, the Government may in the interest of public service and taking into consideration all circumstances of the case, fix their seniority on an *ad hoc* basis. Thus, the authority of the Government to fix the seniority of the officers is hedged by three considerations: (i) the particular year of appointment; (ii) in the interest of public service; and (iii) all circumstances of the case. Rule 12(5), therefore, permits the Government to fix the seniority of an officer taking into consideration all relevant factors as enumerated above.

38.4. Referring to the proviso, learned senior counsel submits that an important qualification in such fixation is set out in the proviso which is couched in negative language. It says that the seniority so fixed shall not be more favourable than the seniority determined after allowing the officer (transferee) the credit for the period of service rendered by him in his previous appointment as Assistant Engineer or appointed to a post of equivalent or greater responsibility. A true and proper reading of the proviso would show that the Government can take into consideration the past service of an officer in his previous appointment as an Assistant Engineer

before his appointment by transfer to consider his seniority. In such circumstances, both Shri Pankaj Gaur and Shri Arun Bhatia would be entitled to seek the benefit of the service rendered by them as Assistant Engineer in the Development and Panchayat Department.

38.5. In support of his above submission, Mr. Kumar has referred to the decision of this Court in *K.S. Brar*. He submits that this Court in *K.S. Brar* has in clear terms held that for determining seniority, what one has to see is not Rule 10 but Rule 12(5) which in terms provides that any person appointed to the post in the service in question by transfer can be assigned seniority as of a date earlier than the date of absorption provided that this is done in the interest of public service.

38.6. Shri Guru Krishna Kumar, learned senior counsel submits that without in any manner undermining the case of Shri Pradeep Atri and Shri Praveen Chaudhary, there are certain factual distinctions in respect of the case of Shri Pankaj Gaur and Shri Arun Bhatia which sets apart their deputation and absorption from the two officers. He submits

that the following may be treated as the distinguishing features in respect of Shri Praveen Gaur and Shri Arun Bhatia:

- (i) deputation of Shri Pankaj Gaur and Shri Arun Bhatia was by requisition; 8 other Assistant Engineers were deputed alongwith Shri Pankaj Gaur and Shri Arun Bhatia;
- (ii) while considering absorption of Shri Pankaj Gaur and Shri Arun Bhatia, PW(B&R) Department had also considered the absorption of one Shri K.K. Bathla but rejected the same by assigning specific reasons;
- (iii) Shri Pankaj Gaur and Shri Arun Bhatia had completed their probation by the time they were sent on deputation;
- (iv) Haryana Public Service Commission had approved the absorption of Shri Pankaj Gaur and Shri Arun Bhatia prior to issuance of their absorption order;
- (v) Shri Pankaj Gaur and Shri Arun Bhatia have been assigned their seniority position from the dates of their deputation;

- (vi) Shri Arun Bhatia does not have any political recommendation; and,
- (vii) Both Shri Pankaj Gaur and Shri Arun Bhatia were placed above the 2009 batch of direct recruits whose selection process has been held to be illegal by the High Court in CWP No. 19993 of 2009.

38.7. Learned senior counsel has categorically denied any allegation of political interference in the absorption of Shri Pankaj Gaur and Shri Arun Bhatia. In fact, he has termed such allegations as wholly untenable. Since the direct recruit petitioners had alleged *mala fides* and political interference in the absorption and grant of seniority in favour of Shri Pankaj Gaur and Shri Arun Bhatia, it was incumbent upon them to have specifically pleaded such allegations and they ought to have impleaded the persons or public functionaries because of whose political influence or interference, Shri Pankaj Gaur and Shri Arun Bhatia came to be absorbed in the PW(B&R) Department. Referring to the decision of this Court in *Ratnagiri Gas and Power Private Limited Vs. RDS Projects Limited*¹², he

submits that it is a well settled principle of law that whenever allegations of *mala fides* are made, the person against whom such allegations are made should necessarily be impleaded as party to the proceeding so as to afford him an opportunity to answer the charge.

38.8. Even in case of Shri Pankaj Gaur, the recommendation of the MLA, Mahendergarh did not form the basis of decision to absorb him and to grant seniority. In fact, such recommendation came after the absorption proposal was approved by the Department. A careful perusal of the file notes would show that the recommendations of the elected representatives did not form the basis of the decision to absorb Shri Pankaj Gaur and Shri Arun Bhatia. Admittedly, there were no recommendations at all in the case of Shri Arun Bhatia. The High Court made a broad brush without considering the individual cases and the material on record.

38.9. In the circumstances, learned senior counsel submits that the High Court fell in serious error in interfering with the seniority assigned to Shri Pankaj Gaur and Shri Arun Bhatia by the State Government. While High Court was also wrong in terming their deputation and absorption as illegal

though the High Court did not interfere with the same. Therefore, to the limited extent as indicated supra, the impugned judgment and order of the High Court should be set aside and quashed.

39. Mr. Bijender Chahar, learned Additional Solicitor General appearing for the State of Haryana, submits that the High Court erred in holding that absorption of the deputationists was not *bona fide* and that the same was contrary to the 1965 Rules as there were no 'special circumstances' which justified such absorption. He submits that the material on record clearly indicated that the PW(B&R) Department was facing acute shortage of Assistant Engineers (Civil) with huge number of vacancies. Requirement of work and shortage of manpower are good reasons to make out a case that 'special circumstances' did exist warranting deputation and absorption of the four officers in the PW(B&R) Department which was in terms of Rule 10 of the 1965 Rules.

39.1. In so far seniority is concerned, learned Additional Solicitor General submits that the High Court has failed to appreciate the application of Rule 12 of the 1965 Rules which provides the conditions for grant of seniority and in particular

Rule 12(5) which gives discretion to the Government to grant seniority. The State Government has scrupulously followed the provisions of Rule 12 while granting seniority to the four absorbed deputationists. Therefore, the High Court was not justified in interfering with the grant of seniority to Shri Pradeep Atri, Shri Praveen Chaudhary, Shri Pankaj Gaur and Shri Arun Bhatia by the State Government. In this connection, he has referred to the decision of this Court in *K.S. Brar* which clearly says that for determining seniority of a member of the service, one has to follow Rule 12(5) of the 1965 Rules.

39.2. Learned Additional Solicitor General has also assailed the grant of seniority to the direct recruits from an anterior date by the High Court by referring to the decision of this Court in *K. Meghachandra Singh Vs. Ningom Siro*¹³ which categorically declares that direct recruits cannot claim notional seniority from a date earlier than the date of joining the service. A person is not entitled to claim seniority from a date when he was not even borne in the service.

39.3. He submits that the High Court ought to have considered that the deputation and subsequent absorption (which is appointment by way of transfer) of Shri Pradeep Atri, Shri Praveen Chaudhary, Shri Pankaj Gaur and Shri Arun Bhatia in the PW(B&R) Department were based on Rule 10 of the 1965 Rules and their seniority was correctly assigned by the State Government by applying Rule 12(1) and Rule 12(5) of the 1965 Rules. Concurrence of the Haryana Public Service Commission was duly taken before passing the orders of absorption.

39.4. While representation of some of the deputationists were forwarded by local MLAs or Ministers, that did not have any bearing on the ultimate decision taken by the State Government to absorb the four deputationists. The competent authority had duly considered all aspects of the matter and had taken the decision to absorb the four deputationists in accordance with law. Therefore, the observations made by the High Court that there was political influence and interference culminating in the absorption of the deputationists, is clearly unwarranted.

39.5. He further submits that when appointment by way of transfer is permitted by the statute, then no fault can be found in the assignment of seniority to such officers from the date of appointment of such officers in the transferred department. He points out that the direct recruits who have challenged the absorption and seniority assigned to Shri Pradeep Atri, Shri Praveen Chaudhary, Shri Pankaj Gaur and Shri Arun Bhatia had joined the PW(B&R) Department after the appointment of the aforesaid four officers. Therefore, the State Government was fully justified in assigning seniority to the four officers above the direct recruits.

39.6. In such circumstances, learned Additional Solicitor General appearing for the State of Haryana submits that the finding recorded by the High Court that the deputation of the four officers and their absorption were illegal, is not justified and requires interference. He further submits that interference by the High Court in the correct assignment of seniority to the four officers by the State Government is also wholly untenable and is liable to be set aside and quashed.

40. Mr. Gurminder Singh, learned senior counsel representing the appellants in the civil appeal arising out of Special Leave Petition (Civil) No. 8004 of 2023, has assailed the impugned judgment of the High Court on the ground that while the unequivocal conclusion of the High Court is that the appointment of the four officers by way of absorption in the PW(B&R) Department was obtained by exerting political influence, both at the stage of deputation as well as absorption, and that it was completely contrary to the 1965 Rules, yet the High Court by taking a 'sympathetic view' allowed the said officers to continue in service. He submits that while exercising its powers under Article 226 of the Constitution of India, the High Court could not have directed continuance of the illegal appointments.

40.1. He submits that the appellants have been directly recruited to the post of Sub-Divisional Engineer/Assistant Engineer in terms of Rule 6 of the 1965 Rules against the 44 vacancies advertised on 07.05.2006. However, the four officers were appointed to the said post *via* the backdoor through political interference. He submits and highlights the fact that three of these officers viz. Shri Pradeep Atri, Shri Pankaj Gaur

and Shri Arun Bhatia had appeared for the direct recruitment examination held pursuant to the advertisement dated 07.05.2006 but did not qualify. Shri Praveen Chaudhary did not even appear. Thus, the four officers sought to do indirectly what they could not do directly. In such circumstances, the High Court ought to have terminated the services of the said officers instead of sustaining it.

40.2. Mr. Singh submits that appointment to all public posts must be fair and done through a transparent process meeting the requirements of Articles 14 and 16 of the Constitution of India. Backdoor entry, such as the appointments of the four officers, negates the principle of equal opportunity and fairness in public employment.

40.3. While certainly the High Court has the power to mould the relief in a proceeding under Article 226 of the Constitution of India, it certainly does not have powers similar to the one conferred upon this Court by virtue of Article 142 of the Constitution of India. Therefore, allowing the four officers to continue in service after finding their appointments to be illegal is wholly untenable.

40.4. Thus, the High Court clearly erred in taking a ‘sympathetic view’ to sustain the appointments even after recording a finding that the absorption of the four officers as Sub-Divisional Engineer in the PW(B&R) Department is a backdoor entry, ignoring the law laid down by this Court in *M.P. State Cooperative Bank Limited Vs. Nanuram Yadav*¹⁴ wherein it has been held that those who come by the backdoor should exit through that door.

40.5. Referring to Rule 6 of the 1965 Rules, Mr. Singh submits that recruitment to the service is either through direct recruitment (50 percent) or by way of promotion (50 percent). Thus, there are only two modes of regular recruitment. Adverting to Rule 12, he submits that appointment by transfer is not a regular mode of recruitment but can only be done in ‘special circumstances’, that too, with the approval of the Public Service Commission. In so far the present case is concerned, there were no ‘special circumstances’ to justify appointment of the four officers by way of transfer. While the High Court agreed that the condition precedent as prescribed

¹⁴ (2007) 8 SCC 264

in Rule 12 was not satisfied, yet High Court did not interfere with the illegal appointments of the four officers.

40.6. Learned senior counsel also submits that in all the four cases of appointment by way of transfer, the probation period of two years was not complete when the deputation was sought for and granted.

40.7. Mr. Gurminder Singh has referred to the counter affidavit filed by the State of Haryana before the High Court in CWP No. 15083 of 2010 and submits that in the said affidavit, the State had taken a categorical stand that there was no need for absorption of the four deputationists in the PW(B&R) Department and that the same was resorted to only on the request of the four officers. Now the State cannot be permitted to take a diametrically opposite stand justifying the deputation and absorption of the four officers.

40.8. He, therefore, submits that the impugned judgment and order of the High Court should be appropriately interfered with by this Court.

41. Mr. V. Giri, learned senior counsel appearing for the direct recruits of the 2009 batch submits that the direct

recruits of the 2009 batch have been compelled to approach this Court because of the elaborate directions issued by the High Court *vide* the impugned judgment and order safeguarding the seniority of Shri Pradeep Atri and Shri Praveen Chaudhary over the 2009 batch despite holding their appointments to be illegal. Because of such directions of the High Court, both Shri Atri and Shri Chaudhary had been given promotion to the post of Chief Engineer subsequent to the impugned judgment despite being illegal appointees. He submits that there are only two posts of Engineer-in-Chief in the PW(B&R) Department and considering the long tenures of Shri Atri and Shri Chaudhary, with both of them holding the post of Engineer-in-Chief, the 2009 direct recruit batch will be left high and dry despite being regular appointees.

41.1. Mr. Giri submits that once the absorption of the four officers have been found to be illegal by the High Court, the sequitur is that they should be repatriated to their parent Department. The direct recruits have questioned the absorption and grant of seniority to the four officers in the PW(B&R) Department and not their initial appointment in the Development and Panchayat Department.

41.2. Mr. Giri submits that by protecting the illegal absorption, the High Court has committed the very error it has found fault with in the conduct of the State. Placing reliance on the decision of this Court in *Secretary, State of Karnataka Vs. Umadevi*¹⁵, he submits that to perpetuate an illegality on judicial sympathy is to compound the error.

41.3. Clarifying the position, Mr. Giri points out that though the 2009 batch of direct recruits were not initially agitating the absorption and grant of seniority to Shri Pradeep Atri and Shri Praveen Chaudhary before the High Court, the issue was at large from the year 2010 itself whereby in the writ petition filed by Shri Praveen Chaudhary, Shri Pankaj Gaur and Shri Arun Bhatia (CWP No. 15083 of 2010), the 2009 batch of direct recruits were the respondents; in CWP No. 7706 of 2011 (*Abhishek Vs. State*), the absorption of the deputationists were under challenge at the instance of the 2007 batch of direct recruits.

41.4. Learned senior counsel asserts that even assuming but not admitting that the illegal entrants are not to

¹⁵ (2006) 4 SCC 1

be repatriated, they still cannot assert a right to seniority over the regularly selected officers. Placing reliance on a decision of this Court in *Nand Kumar Manjhi Vs. State of Bihar*¹⁶, learned senior counsel submits that even if the service of the illegal appointees are protected, such protection cannot be converted to a seniority advantage over regularly recruited persons.

41.5. On the aforesaid grounds, learned counsel seeks interference with the impugned judgment and order of the High Court.

42. In his reply submissions, Mr. Ranjit Kumar learned senior counsel submits that deputation of the four officers is illegal. Their absorption in the PW(B&R) Department is also illegal being contrary to Rule 10 of the 1965 Rules. There were no 'special circumstances' for their absorption and their absorption was a product of political machination. High Court has clearly endorsed this position. Yet the High Court has allowed the illegal appointments to continue.

42.1. In so far reliance placed by the learned senior counsel appearing on behalf of the four officers on the

judgment of this Court in *K.S. Brar* is concerned, he submits that in the said case, the challenge to such absorption of respondent No. 4 was given up by the petitioner. This Court specifically recorded that it did not go into the question as to whether such an appointment by transfer could be said to be invalid or irregular merely because no 'special circumstance' has been recited in the order as the challenge to the order appointing respondent No. 4 by transfer was specifically given up by the petitioner. He reiterates that in the present case, there were no 'special circumstances' to justify absorption of the deputationists.

42.2. Summing up his arguments, Mr. Kumar submits that the four deputationists have no reason to continue service in the PW(B&R) Department. Their services are either to be terminated or they should be repatriated back to their parent Department. At the most, if at all they are to continue in the PW(B&R) Department, then certainly they have to be placed below the candidates who have entered the service through the regular recruitment process.

Analysis

43. Submissions made by learned counsel for the parties have received the due consideration of the Court.

44. Upon hearing learned counsel for the parties and considering the materials on record, the following questions arise for consideration of this Court:

- (i) Whether the deputation of Shri Pradeep Atri, Shri Praveen Chaudhary, Shri Pankaj Gaur and Shri Arun Bhatia from the Development and Panchayat Department, Government of Haryana to the PW(B&R) Department in the said Government in the cadre of Assistant Engineer (Civil) is legal, valid and justified?
- (ii) Whether on the facts and in the circumstances of the case, the absorption of the four deputationists as Sub-Divisional Engineer/Assistant Engineer (Civil) in the PW(B&R) Department is legal, valid and justified?
- (iii) If the answer to the above questions is in the affirmative, then the further question arises as to

whether the seniority position assigned to the aforesaid four officers by the State upon their absorption in the cadre of Sub-Divisional Engineer/Assistant Engineer (Civil) in the PW(B&R) Department or reassigned by the High Court is legal, valid and justified?

45. Before we proceed to answer the above questions framed, it would be appropriate to briefly analyse the relevant provisions of the 1965 Rules.

46. The Punjab Service of Engineers, Class II, P.W.D. (Buildings and Roads Branch) Rules, 1965 (already referred to as 'the 1965 Rules' hereinabove) has been made in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. The 1965 Rules has since been adopted by the Government of Haryana.

46.1. Rule 2 is the definition clause of the 1965 Rules. As per Rule 2(3), 'Assistant Engineer' means an officer in charge of a Sub-Division and includes an officer holding a post of equivalent responsibility in the PW(B&R) Department. 'Cadre post' has been defined in Rule 2(4) to mean a permanent post in the service.

46.2. Rule 2(9) defines 'direct appointment' to mean an appointment by open competition but does not include:

- (a) an appointment made by promotion; and
- (b) an appointment by transfer of an officer already in service of a State Government or of the Government of India.

46.3. 'Ex cadre post' has been defined in Rule 2(10) to mean a temporary post of the same rank as a cadre post. Thus, while cadre post means a permanent post in the service, ex cadre post means a temporary post of the same rank as a cadre post.

46.4. Before we go to Rule 2(12), it would be appropriate to first deal with Rule 2(15) which defines 'service' to mean the Haryana Service of Engineers, Class II, P.W.D. (Buildings and Roads Branch). 'Member of Service' as defined in Rule 2(12) means an officer appointed substantively to a cadre post and includes:

- (a) in the case of direct recruitment, an officer on probation or an officer who, having successfully

completed his probation, awaits appointment to a cadre post; and

- (b) in the case of an appointment by transfer, an officer, who is on probation or who having successfully completed his probation awaits appointment to a cadre post provided such officer does not have a *lien* on a substantive post in any Government Department.

46.5. This brings us to Rule 6 which deals with recruitment to the service. As per sub-rule (1), recruitment to the service for cadre and ex cadre posts shall be made in the following manner :

- (a) 50 percent by direct recruitment; and
- (b) 50 percent by promotion.

46.5.1. It is not necessary to delve into the breakup of the categories from which the promotion quota is required to be filled up. However, we may refer to sub-rule (3) of Rule 6 which says that till such time the direct recruits are not available or for a period not exceeding six months, whichever is earlier, the Government may fill up the vacancies in a stop gap

arrangement by way of promotion from the different categories as provided in sub-rule (1). However, such a person shall be liable to be reverted to his original cadre when a candidate from the Haryana Public Service Commission is available and the period of service rendered by such person shall not be reckoned for the purpose of seniority.

46.6. Rule 7 which deals with qualification for being appointed to the service provides in sub-rule (4) that in case of appointment by transfer, the candidate must possess the qualifications prescribed for the members of the service.

46.7. While Rule 8 deals with direct appointment and Rule 9 deals with appointment by way of promotion, Rule 10 is appointment by transfer. This provision being relevant is extracted hereunder:

Government may in special circumstances with the approval of the Commission, appoint an officer to the service by transfer.

46.8. As per Rule 11(1), officers appointed to the service shall remain on probation for a period of two years and as per Clause (b), in the case of an appointment by transfer, any

period of work in the rank of Assistant Engineer or above prior to appointment to the service may, at the discretion of the Government, be allowed to be counted towards the period of probation fixed under this rule.

46.9. Seniority is dealt with in Rule 12. Sub-rule (1) says that except as provided in sub-rule (5) of Rule 12 relating to an officer appointed by transfer, the seniority of the members of the service shall be determined by the order of their appointment in service according to Rules 6, 8 and 9 irrespective of their dates of joining. Thus, Rule 12(1) says that seniority of the members of the service shall be determined by the order of their appointment. From this general rule, an exception has been carved out in sub-rule (5) which says that in the case of an officer appointed by transfer as an Assistant Engineer, while normally he would be placed junior to all the officers appointed directly or by promotion as Assistant Engineer in a particular year, the Government may, in the interest of public service and taking into consideration all circumstances of the case, fix his seniority on an *ad hoc* basis. There is a proviso to sub-rule (5) of Rule 12 which says that the seniority thus fixed i.e. in terms of sub-rule (5) shall in no

case be more favorable than the seniority determined after allowing the officer appointed by transfer credit for the period of service rendered by him in his previous appointment as Assistant Engineer or on a post which in the opinion of the Government is of equivalent or greater responsibility; the decision of the Government in this regard being final.

46.10. Finally, under Rule 21, the Government has the power to relax the operation of any of the rules of the 1965 Rules. As per sub-rule (1), where the Government is satisfied that the operation of any of the rules causes undue hardship in any particular case, it may, by order, dispense with or relax the requirements of that rule to such extent and subject to such condition, as it may consider necessary for dealing with the case in a just and equitable manner.

47. Before we examine the legality and validity of the deputation of the four officers from the Development and Panchayat Department to the PW(B&R) Department, it will be useful to analyse the concept of deputation. At this stage, it may be noted that there is no mention of the word deputation in the 1965 Rules; therefore, the 1965 rules does not deal with deputation *per se* but deals with deputation in the sense of

transfer. In service jurisprudence, both the concepts of deputation and transfer are distinct having their own connotations but it appears that in the 1965 Rules, deputation has been loosely identified or equated with transfer.

48. We may at this stage clarify that transfer and appointment by transfer are two different concepts. While transfer simpliciter means a change of posting (place of work), ordinarily within the cadre, appointment by transfer is a method of recruitment to a different service.

49. In *State of Punjab Vs. Inder Singh*¹⁷, a two-Judge Bench of this Court had examined the concept of deputation and held that the concept of 'deputation' is well understood in service law and has a recognized meaning. In simple terms, deputation means service outside the cadre or outside the parent department. Deputation would mean transferring an employee to a post outside his cadre i.e. to another department on a temporary basis and that after expiry of the period of deputation, the employee has to come back to his parent department. This Court clarified that there can be no

¹⁷ (1997) 8 SCC 372

deputation without the consent of the person so deputed so that he knows his rights and privileges on the deputation post.

Relevant portion of the judgment is extracted hereunder:

18. The concept of “deputation” is well understood in service law and has a recognised meaning. “Deputation” has a different connotation in service law and the dictionary meaning of the word “deputation” is of no help. In simple words “deputation” means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry of the period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the Recruitment Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post.....

50. A three-Judge Bench of this Court in *Umapati Choudhary Vs. State of Bihar*¹⁸, again examined the concept of

¹⁸ (1999) 4 SCC 659

deputation and held that deputation can be aptly described as an assignment of an employee (commonly referred to as the deputationist) of one department or cadre or even an organization (commonly referred to as the parent department or lending authority) to another department or cadre or organization (commonly referred to as the borrowing authority). It has been held that since the necessity for sending on deputation arises in public interest to meet the exigencies of public service, the concept of deputation has invariably to be consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not. Relevant portion of the judgment reads as under:

8. Deputation can be aptly described as an assignment of an employee (commonly referred to as the deputationist) of one department or cadre or even an organisation (commonly referred to as the parent department or lending authority) to another department or cadre or organisation (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of deputation

is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not. In the case at hand all the three conditions were fulfilled. The University, the parent department or lending authority, the Board, the borrowing authority and the appellant, the deputationist, had all given their consent for deputation of the appellant and for his permanent absorption in the establishment of the borrowing authority. There is no material to show that the deputation of the appellant was not in public interest or it was vitiated by favouritism or mala fide.....

51. Again in the case of *Kunal Nanda Vs. Union of India*¹⁹, a two-Judge Bench of this Court held that unless the claim of the deputationist for permanent absorption in the department where he works on deputation is based upon any statutory rule, regulation or order having the force of law, a deputationist cannot assert and succeed in any claim for absorption. It has been clarified that the basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position at the instance

¹⁹ (2000) 5 SCC 362

of either the lending department or borrowing department. There is no vested right in such a person to continue for long on deputation or to get absorbed in the department to which he had gone on deputation. Paragraph 6 of the aforesaid judgment reads as under:

6. On the legal submissions also made there are no merits whatsoever. It is well settled that unless the claim of the deputationist for a permanent absorption in the department where he works on deputation is based upon any statutory rule, regulation or order having the force of law, a deputationist cannot assert and succeed in any such claim for absorption. The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation.....

52. All the aforesaid judgments were analysed by a two-Judge Bench of this Court in the recent decision in *CBI Vs. Ramesh Chander Diwan*²⁰ whereafter the Bench has held that where exigency of public services requires the parent

department (lending authority) to send its employee on deputation to the receiving department (borrowing authority) and such an arrangement is preceded by a consensus amongst the three i.e. the lending authority, the borrowing authority and the officer/employee concerned, the statutory rules do normally provide for his repatriation. In such a case, there can be no severance of relationship with the parent department.

This Court has held thus:

20. Where exigency of public service requires the parent department (lending authority) to send its employee on deputation to the receiving department (borrowing authority) and such an arrangement is preceded by a consensus among the three, i.e., the lending authority, the borrowing authority and the officer/employee, the statutory rules do normally provide for his repatriation. In such a case, there can be no severance of relationship with the parent department. However, during the period the officer/employee is sent on deputation to the receiving department, the parent department may fill up the post vacated by the deputationist in accordance with law under the category of 'deputation vacancy', which also is not unknown in public service law, but it is only for a limited period till the officer/employee is repatriated.

53. From a careful analysis of the judicial precedents, what transpires is that deputation is a recognized concept in

service jurisprudence. Deputation is ordinarily from one department to another department. It is resorted to for exigencies of public service. At the time of deputation, there must be a consensus between the three stakeholders i.e. the parent department, the borrowing department and the officer/employee concerned. A deputationist *per se* has no right to claim absorption in the borrowing department unless the rules of the borrowing department provide for such absorption. Therefore, by its very nature, deputation can only be temporary. Once the exigency of public service or public interest is met or achieved and there is no requirement for continuing further with the deputation, a deputationist has to be repatriated back to the parent department. At the time of repatriation, no consent as such of the deputationist is required because he cannot claim continuance of his deputation period if the borrowing department is of the view that there is no further requirement for the deputationist or the deputation. In such an eventuality, he has to be repatriated back to the parent department. Since as a concept deputation envisages a temporary arrangement, the *lien* of the

deputationist with the parent department is not severed during the period of deputation.

54. Let us now deal with the individual cases of the four officers.

55. After undergoing a regular recruitment process and following recommendation of the Haryana Public Service Commission, Shri Pradeep Atri was appointed on 06.12.2004 as Sub-Divisional Officer (Panchayati Raj) in the Development and Panchayat Department, Government of Haryana alongwith others. It was mentioned in the appointment order that he would be on probation for a period of two years, which period could be extended for a further period not exceeding one year, if considered necessary.

56. After joining as Sub-Divisional Officer, which is equivalent to the post of Assistant Engineer (Civil), Shri Pradeep Atri wrote a letter to the Engineer-in-Chief of the PW(B&R) Department on 14.07.2005 stating about his engineering degree and his work as Sub-Divisional Officer in the Development and Panchayat Department. He stated that he was keen to serve the PW(B&R) Department to utilise his energy and potential in an effective manner. He assured that he would prove to be an asset to the said

Department. Therefore, he requested the Engineer-in-Chief to call him on deputation basis from his parent Department. Relevant portion of his request letter dated 14.07.2005 reads as under:

Keeping in view of the above facts, I request that your goodself will be kind enough to call me on deputation basis from my parent Department i.e. Development & Panchayat, Haryana.

56.1. At this stage, it may be mentioned that Shri Pradeep Atri had just about completed eight months as a probationer in the Development and Panchayat Department and without any requisition from the PW(B&R) Department seeking officers on deputation because of exigencies of public service, Shri Pradeep Atri himself requested the Engineer-in-Chief of the PW(B&R) Department to call him on deputation. As a probationary officer serving in the Development and Panchayat Department, Shri Pradeep Atri could not have addressed such a request letter directly to the head of another department seeking deputation, bypassing his own parent Department.

57. It appears that such request of Shri Pradeep Atri was not considered by the PW(B&R) Department and was ordered to be 'filed' on 24.08.2005.

58. Even before completion of one month of such 'filing', Shri Pradeep Atri again made a request to the PW(B&R) Department on 12.09.2005 stating that he was very keen to serve in the PW(B&R) Department. It was at that stage that a departmental note was put up stating that about 50 posts in the cadre of Sub-Divisional Engineer (Civil)/Assistant Engineer (Civil) meant for direct recruitment were lying vacant; filling up of such vacancies would take a long time. Therefore, it was suggested that Shri Pradeep Atri's case for deputation could be considered as a short-term arrangement till the joining of the direct recruits. Following the same, the case of Shri Pradeep Atri for deputation to the PW(B&R) Department was accepted by a file noting dated 19.10.2005 purely as a stop gap arrangement, subject to the condition that he could be sent back to his parent Department at any time.

59. Thereafter, the Development and Panchayat Department placed the services of Shri Pradeep Atri at the disposal of the PW(B&R) Department on deputation for one year, relieving him with immediate effect from the Development and Panchayat Department *vide* the order dated 16.11.2005. It was mentioned therein that the terms and conditions of deputation of Shri Pradeep

Atri to the PW(B&R) Department would be issued separately. Following the same, Shri Pradeep Atri joined the PW(B&R) Department on 17.11.2005.

59.1. However, the terms and conditions of deputation of Shri Pradeep Atri were never issued.

60. Following a regular recruitment process, Haryana Public Service commission recommended the names of Shri Pankaj Gaur, Shri Arun Bhatia and Shri Praveen Chaudhary among others for appointment as Sub-Divisional Officer (Panchayati Raj) in the Development and Panchayat Department, Government of Haryana. Thereafter, alongwith the others, the aforesaid three officers were appointed as Sub-Divisional Officer (Panchayati Raj) *vide* the appointment letter dated 18.10.2005 issued by the Financial Commissioner and Principal Secretary to the Government of Haryana, Development and Panchayat Department. In the said appointment letter, it was clearly mentioned that the appointees including the above three officers would be on probation for a period of two years which could be extended for a further period not exceeding one year, if considered necessary.

61. Unlike the case of Shri Pradeep Atri, in the case of Shri Praveen Chaudhary, just within one month of his appointment as

Sub-Divisional Officer (Panchayati Raj) in the Development and Panchayat Department, the Revenue Minister, who in any case had nothing to do either with the Panchayat Department or with the P.W.D., wrote to the Financial Commissioner and Principal Secretary to the Government of Haryana, Development and Panchayat Department on 23.11.2005 stating that Shri Praveen Chaudhary may be sent to the PW(B&R) Department on deputation basis. Similar letter dated 23.11.2005, that is on the same day, was also written by the Transport Minister who again had nothing to do either with the Development and Panchayat Department or with the PWD. This only goes to show that Shri Praveen Choudhury, an officer of the rank of Sub-Divisional Officer in the Development and Panchayat Department, that too on probation, had access to the two ministers outside his Department and had approached them for such recommendatory letters.

62. In view of such letters, the Engineer-in-Chief, PW(B&R) Department submitted a departmental note dated 29.12.2005 stating that there was acute shortage of Sub-Divisional Engineers in the PW(B&R) Department. Therefore, the services of Shri Praveen Chaudhary may be taken in the PW(B&R) Department on

deputation basis with the condition that he could be sent back to his parent Department at any time.

63. In the meanwhile, the Revenue Minister again reiterated his request on 22.03.2006 for sending Shri Praveen Chaudhary on deputation to the PW(B&R) Department.

64. It was under such circumstances that the Financial Commissioner and Principal Secretary, Government of Haryana, Development and Panchayat Department issued an order on 25.04.2006 placing the services of Shri Praveen Chaudhary, Sub-Divisional Officer (Panchayati Raj) at the disposal of the PW(B&R) Department on deputation for a period of one year. Accordingly, Shri Praveen Chaudhary was relieved from the Development and Panchayat Department to enable him to report to the PW(B&R) Department. It was mentioned therein that the terms and conditions of deputation of Shri Praveen Chaudhary would be issued separately.

64.1. Pursuant to such order dated 25.04.2006, Shri Praveen Chaudhary joined the PW(B&R) Department on deputation as Sub-Divisional Engineer (Civil)/Assistant Engineer (Civil) on 02.05.2006.

65. On 24.07.2006, Government of Haryana in the PW(B&R) Department approved the deputation of Shri Praveen Chaudhary, PW(B&R) Department. However, his deputation was subject to the following three conditions:

1. he will have no right or claim for his absorption in the PW(B&R) Department;
2. he will submit an undertaking to the effect that he will not claim any benefit of absorption in the PW(B&R) Department or file any suit/writ in any court in this regard;
3. he can be sent back at any time to his parent Department i.e. Panchayati Raj on receipt of the recommendation from the Staff Selection Commission to fill up the direct quota posts of AEs/SDEs.

65.1. Thus, it was made clear that Shri Praveen Chaudhary upon his deputation to the PW(B&R) Department would have no right or claim for his absorption in the said Department and in this regard, he was required to submit an undertaking. Further, it was clearly mentioned that Shri Praveen Chaudhary could be sent back to his parent Department at any time upon receipt of

recommendation from the Staff Selection Commission for filling up the direct quota vacancies in the said Department.

66. While Shri Pradeep Atri was still on deputation in the PW(B&R) Department, he had participated in the regular recruitment process which was undertaken by the Haryana Staff Selection Commission for recruitment to the post of Assistant Engineer (Civil) in the PW(B&R) Department pursuant to the advertisement dated 07.05.2006. Likewise, Shri Pankaj Gaur and Shri Arun Bhatia who were serving as Sub-Divisional Officer (Panchayati Raj) in the Development and Panchayat Department on probation had also applied for appointment to the post of Assistant Engineer (Civil) in the PW(B&R) Department and had participated in the said recruitment process which was undertaken by the Haryana Staff Selection Commission. On 13.11.2006, the list of selected candidates was published by the Haryana Staff Selection Commission but the names of Shri Pradeep Atri, Shri Pankaj Gaur and Shri Arun Bhatia did not appear in the select list which means that they were not selected. We may also mention that Shri Praveen Chaudhary who was appointed alongwith Shri Pankaj Gaur and Shri Arun Bhatia as Sub-Divisional Officer in the Development and Panchayat

Department did not even apply and participate in such recruitment process.

67. The deputation case of Shri Pankaj Gaur and Shri Arun Bhatia stand on a slightly different footing. It appears that on 20.04.2007, PW (B&R) Department sent a requisition for deputation of 10 suitable and willing Sub-Divisional Engineers to the PW (B&R) Department. It further appears that a memo dated 18.10.2007 was issued by the Financial Commissioner and Principal Secretary to the Government of Haryana, Development and Panchayat Department, pursuant to which the Commissioner and Secretary to the Government of Haryana, PW (B&R) Department issued order dated 23.11.2007 stating that the Governor of Haryana was pleased to take the 10 Sub-Divisional Officers (Civil) of the Development and Panchayat Department, which included Shri Pankaj Gaur and Shri Arun Bhatia, on deputation to the PW (B&R) Department with immediate effect. A request was made to the Financial Commissioner and Principal Secretary to the Government of Haryana, Development and Panchayat Department to ensure that the Sub-Divisional Officers taken on deputation be relieved immediately to join the PW (B&R) Department.

68. Pursuant to the order of deputation dated 23.11.2007, Shri Pankaj Gaur and Shri Arun Bhatia joined the borrowing Department i.e. the PW (B&R) Department on 05.01.2008.

69. Before proceeding to the next stage i.e. the stage of absorption of the deputationists, we may now analyse the legality of the deputation of the above four officers.

70. Insofar Shri Pradeep Atri is concerned, just after eight months of his appointment as a Sub-Divisional Officer in the Development and Panchayat Department and while undergoing the probation period, he directly made a request to the Engineer-in-Chief of the PW (B&R) Department on 14.07.2005 seeking deputation to the said Department. As a probationary officer serving in the Development and Panchayat Department, Shri Atri could not have addressed such a request letter directly to the head of another department for taking him on deputation to such department, by-passing his own parent Department. This is not only in violation of service discipline but completely alien to the very concept of deputation itself. There was no requisition from the PW (B&R) Department seeking officers on deputation for exigencies of public service. His own Department i.e. the

Development and Panchayat Department did not forward his name for being taken on deputation in the PW (B&R) Department. Therefore, the very initiation of the deputation process *qua* Shri Pradeep Atri is in violation of the principles governing deputation.

71. Therefore, very rightly, such request of Shri Pradeep Atri was not considered by the PW (B&R) Department and was accordingly 'filed'.

72. We have already noticed above that even before completion of one month of such 'filing', Shri Pradeep Atri again made a request to the PW (B&R) Department on 12.09.2005 reiterating his request for taking him on deputation, saying that he was 'very keen' to serve the PW (B&R) Department. It was thereafter that a departmental note came to be put up saying that there were vacancies in the cadre of Sub-Divisional Engineer (Civil)/Assistant Engineer (Civil) meant for direct recruitment which would take a long time to be filled up and, therefore, the request for deputation of Shri Atri was accepted by the PW (B&R) Department but purely as a stop gap arrangement, subject to the condition that he could be sent back to his parent Department at any time.

It is interesting to note at this stage that all this while, the parent Department of Shri Pradeep Atri i.e. the Development and Panchayat Department was nowhere in the picture. It was only after acceptance of the request of Shri Pradeep Atri for deputation by the PW (B&R) Department that the parent Department placed the services of Shri Pradeep Atri at the disposal of the PW (B&R) Department on deputation for a period of one year. However, as already noted above, the terms and conditions governing the services of Shri Pradeep Atri on deputation was never issued.

73. Thus it is apparent that the process of deputation of Shri Pradeep Atri was severely flawed. It was his initiative to go on deputation whereafter the required note to justify such deputation was put up by the borrowing Department keeping his parent Department completely in the dark. This is no deputation and cannot be sustained in the eye of law.

74. Coming to the case of Shri Praveen Chaudhary, just within one month of his appointment as Sub-Divisional Officer (Panchayat Raj) in the Development and Panchayat Department, that too, on probation, the Revenue Minister wrote to the Financial Commissioner and Principal Secretary

of the Development and Panchayat Department on 23.11.2005 that Shri Praveen Chaudhary should be sent to the PW (B&R) Department on deputation. On the same day i.e. on 23.11.2005, similar letter was written by the Transport Minister.

75. Both the Revenue Minister and the Transport Minister had nothing to do either with the Panchayat Department or with the PWD. They could not have known that there were exigencies of public service in the PW(B&R) Department warranting deputation, that too, of a solitary officer. It is thus apparent that Shri Praveen Chaudhary, an officer of the rank of Sub-Divisional Officer in the Development and Panchayat Department, who was then on probation, had approached the two ministers who were not his departmental ministers and obtained recommendatory letters. This is a clear case of service indiscipline insofar Shri Praveen Chaudhary is concerned and could not have been countenanced. This also reflects gross political interference.

76. Perhaps, because of such ministerial intervention, the Engineer-in-Chief of the PW (B&R) Department put up a departmental note on 29.12.2005 highlighting the acute

shortage of Sub-Divisional Engineers in the said Department and stating that because of such shortage of officers, the services of Shri Praveen Chaudhary could be taken in the PW (B&R) Department on deputation, subject to the usual condition of repatriation at any time. Even thereafter, the Revenue Minister again reiterated his request on 23.03.2006 for sending Shri Praveen Chaudhary on deputation to the PW (B&R) Department. It was then that services of Shri Chaudhary was placed by the parent Department at the disposal of the borrowing Department on deputation basis *vide* the order dated 25.04.2006. Shri Praveen Chaudhary upon being relieved by his parent Department joined the PW (B&R) Department on deputation on 02.05.2006. While approving the deputation of Shri Chaudhary by the Government on 24.07.2006, it was made clear that Shri Chaudhary would have no right or claim for his absorption in the PW (B&R) Department.

77. From the above it is evidently clear that all the principles governing deputation were completely abandoned in the case of Shri Praveen Chaudhary. The process for his deputation was initiated by two ministers, obviously on being

approached by Shri Choudhary, who had nothing to do with the working of either of the two departments. It is evident to the naked eye that the need for deputation was created subsequently by highlighting vacancies and shortage of officers in the borrowing Department.

78. We, therefore, have no hesitation in holding that the very deputation of Shri Pradeep Atri and Shri Praveen Chaudhary was completely vitiated and suffered from manifest illegality.

79. Though the deputation case of Shri Pankaj Gaur and Shri Arun Bhatia stands on a better footing than the cases of Shri Pradeep Atri and Shri Praveen Chaudhary inasmuch as the move for deputation was initiated by the borrowing Department on 20.04.2007 sending requisition for 10 Sub-Divisional Engineers to be taken on deputation in the PW (B&R) Department. It was thereafter that the parent Department i.e. the Development and Panchayat Department forwarded a list of 10 Sub-Divisional Officers (Civil), including Shri Pankaj Gaur and Shri Arun Bhatia, to the PW (B&R) Department for being taken on deputation. Following the same, order dated 23.11.2007 was issued by the PW (B&R)

Department taking the 10 Sub-Divisional Officers (Civil) of the Development and Panchayat Department, including Shri Pankaj Gaur and Shri Arun Bhatia, on deputation to the PW (B&R) Department.

80. However, like the cases of Shri Atri and Shri Chaudhary, in the case of Shri Pankaj Gaur and Shri Arun Bhatia also, the grounds cited to justify taking the officers on deputation was the vacancies in the cadre of Sub-Divisional Engineer and consequential shortage of officers affecting official work. At this stage we may refer to Rule 6 (3) of 1965 Rules. We have already noted that as per sub-rule (1), recruitment to the service shall be made in the ratio of 50% by direct recruitment and 50% by way of promotion. Rule 6(3) says that till such time the direct recruits are not available or for a period not exceeding six months, whichever is earlier, the Government may fill up the vacancies as a stop gap arrangement by way of promotion from the different categories as provided in sub-rule (1). However, it is clarified that such promoted persons shall be liable to be repatriated to their original cadre when direct recruits become available. Therefore, in the face of Rule 6 (3) of the 1965 Rules, there

would not have been any justification for acceptance of the four officers, who were still on probation in their parent Department, to be taken on deputation in the PW (B&R) Department. In fact, the State of Haryana in its counter affidavit to CWP No.17474 of 2010 filed before the High Court, though in the context of assignment of seniority of the four officers, made a categorical statement that there was no need for the four officers to have been deputed to the PW (B&R) Department or absorbed therein (we will deal with the absorption case in the succeeding paragraphs). It was stated on oath before the High Court that these four officers had landed up in the PW (B&R) Department on their own request.

81. In such circumstances, we are of the view that the deputation of Shri Pradeep Atri and Shri Praveen Chaudhary is clearly illegal. The deputation of Shri Pankaj Gaur and Shri Arun Bhatia may not be vitiated by the blatant illegality as noticed in the cases of Shri Atri and Shri Chaudhary, but it is still faulty in as much as it is contrary to Rule 6(3) of the 1965 Rules. However, that by itself may not be sufficient to hold the deputation of Shri Pankaj Gaur and Shri Arun Bhatia as illegal.

82. We may now turn to the circumstances leading to absorption of the four deputationists in the PW(B&R) Department.

83. Just three months after Shri Pradeep Atri had joined the PW(B&R) Department on deputation, he made a request through the Engineer-in-Chief on 24.02.2006 that he should be absorbed in the said Department. He cited the availability of vacancies and his keenness to serve the said Department. His request for absorption was thereafter processed. In the meanwhile, a requisition was sent to the Haryana Staff Selection Commission on 03.03.2006 to initiate recruitment process for filling up 44 vacancies of Sub-Divisional Engineer in the PW(B&R) Department which led to issuance of the advertisement dated 07.05.2006.

84. The Joint Secretary of the Department made a file noting on 17.04.2006 stating that Rule 10 of the 1965 Rules permitted appointment by way of transfer under special circumstances. Though the process for filling up vacancies through the direct recruitment process was being initiated, it would take some time. Therefore, he was of the view that Shri Pradeep Atri could be absorbed in the PW(B&R) Department.

85. Ultimately, the Finance Commissioner conveyed to the P.W.D. Minister on 25.09.2006 that there was no legal impediment to the absorption of Shri Pradeep Atri in the PW(B&R) Department. However, he pointed out that prior approval of the Staff Selection Commission should be taken.

86. On 06.10.2006, Shri Pradeep Atri was absorbed in the PW(B&R) Department against one of the vacancies of Sub Divisional Engineer (Civil) under the direct recruitment quota (arising on 01.07.2006). The absorption was however made subject to the approval of the Haryana Public Service Commission/Haryana Staff Selection Commission.

87. Haryana Public Service Commission *vide* the communication dated 14.11.2006 approved the absorption of Shri Pradeep Atri in the PW(B&R) Department.

88. It may be mentioned at this stage that the process for absorption (appointment by way of transfer) of Shri Pradeep Atri in the PW(B&R) Department was initiated by Shri Pradeep Atri himself and not by the Department. It was Shri Atri who tried to justify his absorption by citing large number of vacancies and his keenness to serve the PW(B&R) Department.

What is also important to note is that he was absorbed (appointed by transfer) against a direct quota vacancy.

89. Rule 9 defines direct recruitment to mean an appointment by open competition. It specifically excludes appointment by promotion and appointment by transfer. We also find that Rule 6 provides for only two modes of recruitment to the service i.e. 50 percent by direct recruitment and 50 percent by promotion. At this stage, we may also mention about Rule 10 which we have extracted supra. Rule 10 provides that the Government may in 'special circumstances' with the approval of the Commission (Haryana Public Service Commission), appoint an officer to the service by transfer. Thus, Rule 10 provides that in 'special circumstances', the Government may appoint an officer to the service by way of transfer with the approval of the Commission. Such an appointment i.e. appointment by transfer is not a regular mode of appointment envisaged under the 1965 Rules. We say this because Rule 6 provides for only two modes of recruitment i.e. by direct recruitment and by promotion, both in the ratio of 50 percent. Therefore, there is no place where an officer appointed by way of transfer can be

accommodated while considering that 100 percent of the vacancies are to be filled up only by direct recruitment and promotion (50 percent each). Rule 2(9) and Rule 9 rule out appointment by transfer within the ambit of direct recruitment. In such circumstances, Shri Pradeep Atri could not have been appointed by way of transfer against a vacancy earmarked for direct recruitment. But one of the conditions imposed in the absorption order of Shri Pradeep Atri was that he would be absorbed against one of the resultant vacancies of direct recruitment quota arising on 01.07.2006 due to retirement of senior officers which is clearly contrary to Rule 2(9) and Rule 9 of the 1965 Rules.

90. We refrain from entering into any analysis of Rule 12 because at this stage we are not discussing seniority. We are only discussing the scope of an appointment by transfer and the justification for it in terms of Rule 10.

91. Though learned senior counsel appearing for Shri Pradeep Atri, Shri Patwalia vehemently argued that acute shortage of Sub-Divisional Engineers (Civil) in the Department with there being stay on fresh recruitment due to pending litigation with the resultant hampering of official work due to

shortage of Sub-Divisional Engineers created 'special circumstances' within the meaning of Rule 10 of the 1965 Rules which clearly justified the absorption of Shri Pradeep Atri (appointment by transfer), we are not impressed by such a contention as the process was already underway for filling up of 44 vacancies of Sub-Divisional Engineer in the PW(B&R) Department. Any exigency could have been met by resorting to Rule 6(3) of the 1965 Rules. As regards stay on fresh recruitment in the pending litigation, we may mention that it was an undertaking given by the State before the High Court that the Government would not make recruitment from the select list during pendency of the litigation. We are afraid these factors would not create 'special circumstances' to warrant absorption by invoking Rule 10. Reliance placed on the decision of this Court in *K.S. Brar*, in our view, is also of no avail.

91.1. In *K.S. Brar*, challenge was made to the appointment of respondent No. 4 as Assistant Engineer under Rule 10 of the 1965 Rules as the order of appointment by transfer did not refer to any 'special circumstance'. However, this Court did not go into the question as to whether such an

appointment could be said to be invalid or irregular merely because no 'special circumstance' was recited in the order as the challenge to the order appointing respondent No. 4 by transfer was specifically given up by the petitioner. This Court proceeded to examine the question of seniority in which context it said that for determining seniority, what one has to see is not Rule 10 but Rule 12(5) of the 1965 Rules.

92. 'Special circumstances' in our understanding means something which is more than normal or routine. Accrual of vacancies in a cadre is a routine phenomenon; this is not something which is unusual or abnormal. The so-called stay was not granted by the High Court but was a statement made by the State before the High Court. These circumstances cannot be termed as special within the meaning of Rule 10. We will analyse 'special circumstances' more in detail a little later. Therefore, the absorption of Shri Pradeep Atri in the PW(B&R) Department, styled as appointment by transfer, is contrary to Rule 10 of the 1965 Rules and cannot be sustained. Considering the manner in which Shri Atri came on deputation to the PW(B&R) Department and thereafter came to be absorbed is a clear case of backdoor entry. We may also

mention that neither did Shri Pradeep Atri satisfactorily complete his probation in his parent Department i.e. in the Development and Panchayat Department nor could he complete such probation upon deputation before absorption in the PW(B&R) Department. Without satisfactorily completing his probation period, he successfully managed to get himself absorbed in the PW(B&R) Department. At this stage, it may be pointed out that in the recruitment process, which was undertaken by the Haryana Staff Selection Commission on the requisition of the PW(B&R) Department for direct recruitment to the post of Sub-Divisional Engineer (Civil)/Assistant Engineer (Civil) pursuant to the advertisement dated 07.05.2006, Shri Pradeep Atri had participated but was unsuccessful; he did not qualify. After he had failed in the direct recruitment process, he managed to get appointment in the same post in the said Department by such absorption, thus achieving indirectly what he could not achieve directly.

93. In such circumstances, we have no hesitation to hold that there were no 'special circumstances' for invoking Rule 10 of the 1965 Rules and appointing Shri Pradeep Atri in the PW(B&R) Department by transfer (by way of absorption).

His absorption in the PW(B&R) Department is contrary to the 1965 Rules and is thus illegal and untenable.

94. Let us now take the case of Shri Praveen Chaudhary. We have already noted supra that Shri Praveen Chaudhary, a probationer in the Development and Panchayat Department, had initiated the move for his deputation to the PW(B&R) Department within one month of his appointment in the aforesaid Department as a Sub-Divisional Officer (Panchayati Raj) through the Revenue Minister and the Transport Minister. Ultimately, he was sent on deputation to the PW(B&R) Department pursuant to which he joined the said Department on deputation on 02.05.2006. On the very next day of joining on deputation i.e. on 03.05.2006, the same Transport Minister who had initiated the process for sending Shri Praveen Chaudhary on deputation this time wrote to the Chief Minister with the request that Shri Praveen Chaudhary should be permanently absorbed in the PW(B&R) Department against a vacant post of direct recruitment quota. As the proposal was processed, the Financial Commissioner and Principal Secretary, PW(B&R) Department in his letter dated 24.07.2006 referred to the deputation order of Shri Praveen

Chaudhary and pointed out that such deputation was conditional upon Shri Choudhary not having any right or not making any claim to absorption in the PW(B&R) Department. However, in his note to the P.W.D. Minister dated 25.09.2006, the Financial Commissioner pointed out that like Shri Pradeep Atri, Shri Praveen Chaudhary could also make a request for his permanent absorption in the PW(B&R) Department. It was only thereafter that Shri Praveen Chaudhary formally made a request to his parent Department on 11.10.2006 seeking no objection to his absorption in the PW(B&R) Department.

95. We have already noted that pursuant to the requisition made by the PW(B&R) Department, advertisement dated 07.05.2006 was issued for filling up 44 vacancies in the post of Sub-Divisional Engineer (Civil)/Assistant Engineer (Civil) in the PW(B&R) Department. Shri Praveen Chaudhary did not even apply and participate in such recruitment process.

96. In the meanwhile, the MLA of Bahadurgarh Constituency wrote to the Chief Minister on 19.03.2007 seeking absorption of Shri Praveen Chaudhary in the PW(B&R)

Department against a direct recruit quota citing the example of Shri Pradeep Atri.

97. Ultimately, *vide* order dated 18.07.2007 issued by the Commissioner and Secretary, PW(B&R) Department, Shri Praveen Chaudhary was absorbed in the said Department against a vacancy earmarked for direct recruits.

98. The same illegalities as are discernible in the case of Shri Pradeep Atri have also vitiated the absorption of Shri Praveen Chaudhary, termed as appointment by transfer. Additionally, political influence and interference in the case of Shri Praveen Chaudhary is writ large. Just like his deputation was initiated by the Revenue Minister and Transport Minister, within one day of him joining the PW(B&R) Department on deputation, the Transport Minister initiated the process of absorption. It was left to the Financial Commissioner and Special Secretary to point out to the P.W.D. Minister that Shri Praveen Chaudhary could also make a request for permanent absorption in the PW(B&R) Department. Therefore, in addition to the flaws which have vitiated the absorption of Shri Pradeep Atri, absorption of Shri Praveen Chaudhary is further vitiated by unwarranted political influence and interference. Though

Shri Nidhesh Gupta, learned senior counsel appearing for Shri Praveen Chaudhary vehemently argued that 'special circumstances' did exist warranting absorption of Shri Praveen Chaudhary which was endorsed by the State, we are not inclined to accept such a contention for the reasons cited supra. We are of the view that shortage of officers in a department cannot be construed to be a 'special circumstance' within the meaning of Rule 10 of the 1965 Rules.

99. Therefore, for the aforesaid reasons, absorption of Shri Praveen Chaudhary in the PW(B&R) Department, termed as appointment by transfer, is wholly illegal and cannot be sustained.

100. In so far Shri Pankaj Gaur and Shri Arun Bhatia are concerned, they had joined the PW(B&R) Department on deputation on 05.01.2008. Just one month after joining the said Department on deputation, Shri Pankaj Gaur submitted a representation dated 16.02.2008 before the Commissioner and Secretary of the said Department with the request that he should be absorbed in the PW(B&R) Department citing the examples of Shri Pradeep Atri and Shri Praveen Chaudhary. Interestingly, such representation of Shri Gaur was

recommended by Shri Naresh Kumar, MLA of Badli Constituency. Likewise, Shri Arun Bhatia also submitted a representation before the Financial Commissioner and Principal Secretary, PW(B&R) Department on 07.03.2008 seeking his permanent absorption in the said Department.

101. When the process was initiated by the PW(B&R) Department on the request of the aforesaid two officers for their permanent absorption, the MLA of Narnaul constituency also made a request to the P.W.D Minister on 17.03.2008 seeking permanent absorption of Shri Pankaj Gaur.

102. It was clearly pointed out at the departmental level that such kind of request should not be entertained. Moreover, it was pointed out that already requisition was sent to the Haryana Staff Selection Commission for recruitment to the vacant posts of Assistant Engineer (Civil) pertaining to the direct recruitment quota. It was highlighted that there was no justification for such absorption.

103. Out of the blue, the Departmental Minister put up a note on 05.06.2008 stating that Shri Arun Bhatia who was on deputation to the PW(B&R) Department was performing satisfactorily. Therefore, his case for absorption should be

considered. It is evident that the minister would not have issued such a letter unless approached. This is thus not only an instance of undue political interference but service indiscipline as well.

104. It was however pointed out by the Engineer-in-Chief of the PW(B&R) Department on 29.07.2008 that acceding to such a request will increase litigation and also result in demoralisation of the recruited staff. Therefore, he categorically stated that such request for absorption should be rejected.

105. Notwithstanding such a clear view and categorical stand of the Engineer-in-Chief, the Financial Commissioner and Principal Secretary put up a note on 21.08.2008 to the effect that Shri Pankaj Gaur and Shri Arun Bhatia are M.Techs and that there should be no issue in absorbing them in the PW(B&R) Department. He expressed the concern that if these two officers were repatriated, they would be the juniormost in their parent Department. It appears that the Engineer-in-Chief was 'persuaded' to accept such a line of reasoning of the Financial Commissioner and Principal Secretary in the

discussions stated to have been held in the morning of 21.08.2008.

106. Such grounds advanced by the Financial Commissioner and Principal Secretary that both Shri Pankaj Gaur and Shri Arun Bhatia were M.Tech. degree holders and if they were repatriated back to their parent Department, they would be the juniormost, found favour with the PWD Minister, who already had recommended absorption of Shri Arun Bhatia, and led to absorption of the above two officers. In the meanwhile, the MLA of Mahendergarh Constituency who also happened to be the Parliamentary Secretary, In Charge of Transport Department, made a request on 17.02.2009 for the absorption of Shri Pankaj Gaur.

107. As noticed above, 'the special circumstances' in terms of Rule 10 of the 1965 Rules which were highlighted to justify absorption of Shri Pankaj Gaur and Shri Arun Bhatia were:

- (i) both are M.Tech. degree holders;
- (ii) both were recruited through a proper process by the Haryana Staff Selection Commission; and

(iii) they had spent time in the PW(B&R) Department and they were found to be good in their work.

108. 'Special circumstances' is not a defined expression in so far as the 1965 Rules are concerned. Therefore, we have to fall back upon the popular parlance test. In paragraph 92 above, we have already stated that 'special circumstances' would mean something which is more than normal or routine. P. Ramanatha Aiyar's Advanced Law Lexicon, 6th Edition, defines 'special' to mean designed for a particular purpose; exceptional in character, quality or degree; appointed or employed for a particular purpose or occasion, relating to a single thing. Concise Oxford Dictionary has explained the word 'special' to mean out of the ordinary, peculiar or specific and not general.

109. What Rule 10 of the 1965 Rules therefore contemplates is that an appointment by transfer is to meet a special situation, may be an exigency of public service which cannot wait an appointment by direct recruitment or an appointment by way of promotion, the only two modes of regular recruitment as contemplated under Rule 6(1) of the 1965 Rules which would be time consuming. It may so

happen that for a particular project, specialised hands or a person or persons with certain specific qualifications or talent or skill are required. Rule 10 is meant for such an exigency and in the process to overcome the barrier posed by Rule 6 whereby 100 percent of the vacancies are to be filled up either by direct recruitment or by promotion (50 percent each, making up the entirety of 100 percent).

110. Various authorities had also understood the concept of 'special circumstances' as we have analysed hereinabove. Infact, when its approval was sought for on the proposal for absorption of Shri Pankaj Gaur and Shri Arun Bhatia, the initial response of the Haryana Public Service Commission as can be deciphered from its letter dated 07.07.2009 was that the materials on record did not reveal the existence of any 'special circumstances' that would justify absorption of the aforesaid two officers.

110.1. When it came to the absorption of Shri Pradeep Atri, the Special Secretary, PW(B&R) Department was quite emphatic in his views as expressed in his communication dated 17.08.2010 stating that it was illegal as no 'special

circumstances' existed for such absorption. According to him, the mere fact that there was an acute shortage of officers in the Department was no ground to absorb Shri Atri. Observing that the Government could be accused of making back-door appointment while absorbing Shri Atri which could attain scandalous proportions, he proposed repatriation of Shri Pradeep Atri to his parent Department.

110.2. The Financial Commissioner and Principal Secretary, PW(B&R) Department also described the deputation and absorption of Shri Pradeep Atri, as a back door entry because Shri Atri could not clear the direct recruit examination for the post of Assistant Engineer (Civil) but by the aforesaid method he got appointed to the very same post of Assistant Engineer (Civil) by transfer.

110.3. The Special Secretary-cum-Chief Vigilance Officer also observed that there were no exceptional circumstances justifying absorption of the four deputationists. Therefore, he advised that these four officers should be repatriated to their parent Department.

111. Ultimately, upon approval of the Haryana Public Service Commission, the Government of Haryana, PW(B&R)

Department issued order dated 23.10.2009 absorbing Shri Pankaj Gaur and Shri Arun Bhatia in the PW(B&R) Department making it clear that their appointment on transfer was against vacancies of the direct recruits.

112. The illegalities which have vitiated the absorption of Shri Pradeep Atri and Shri Praveen Chaudhary are also clearly visible in the case of Shri Pankaj Gaur and Shri Arun Bhatia. Political influence is clearly manifest in the process of absorption, more particularly in the case of Shri Pankaj Gaur. Even in the case of Shri Arun Bhatia, the departmental Minister had intervened endorsing his request for absorption on the ground that he was performing his duties satisfactorily. The Minister concerned would not have had any occasion to make such an endorsement, that too, for a lowly ranked officer in the rank of Assistant Engineer which is quite low in the hierarchy unless he was approached. This is not only violative of service discipline but smacks of political hobnobbing. Such kind of blatant political interference and favouritism cannot be countenanced. Merely because the two officers were M.Tech. degree holders and they were performing well and would be the juniormost if repatriated to their parent Department

cannot constitute 'special circumstances' within the meaning of Rule 10 to justify their appointment by transfer.

113. We are, therefore, of the view that the High Court is justified in holding that absorption of Shri Pankaj Gaur and Shri Arun Bhatia in the PW(B&R) Department is illegal being contrary to Rule 10 of the 1965 rules. Further, the High Court is fully justified in holding that the absorption of Shri Pradeep Atri, Shri Praveen Chaudhary, Shri Pankaj Gaur and Shri Arun Bhatia in the PW(B&R) Department is the product of political machination by them, rendering the same invalid in law.

114. Though the High Court held the deputation and absorption of Shri Pradeep Atri, Shri Praveen Chaudhary, Shri Pankaj Gaur and Shri Arun Bhatia as bad in law, yet it did not repatriate them to their parent Department on the ground that they did not have any *lien* on their parent Department. High Court also did not terminate their services on the ground that they had rendered service for more than 18 years since 2005 and terminating their service at this stage would result in their hardship. Therefore, taking a sympathetic view, the High Court did not disturb their deputation and absorption as

Assistant Engineer (Civil) in the PW(B&R) Department but did not grant them the seniority assigned to them by the Government. The High Court held as under:

Though we are of the opinion that the very deputation and absorption of the private respondents in PWD (B&R) Department as Asst. Engineers is bad in law, it is brought to our notice that they do not have lien in their parent department i.e. the PR Department.

Therefore, in the normal course we would have had to direct their termination from service.

But since they had been in service since 2005, they would suffer hardship if their services are terminated now, 18 years later.

Therefore taking a sympathetic view, we are not inclined to disturb their deputation and absorption as Asst. Engineers in PWD (B&R) Department at this stage, but they will not be allowed to have seniority contrary to the main part of Rule 12(5) or the conditions of their absorption i.e. they cannot be seniors to direct recruits appointed on 07.12.2007 or in 2009 /persons promoted against vacancies which arose before 1.7.2006 or in 2009 in the cadre of Asst. Engineers in PWD (B&R) Department.

115. We are afraid the High Court fell in grave error in allowing the aforesaid four officers to continue their services in the PW(B&R) Department even after declaring their deputation and absorption as illegal and bad in law. Illegality

means something which is contrary to law; something which is wrong right from the inception. It is *void ab initio*. Illegality cannot be cured and made legal and valid by lapse of time. Illegality, which is distinct and different from irregularity, cannot be regularized by taking a sympathetic view on the ground of long continuance in service. This position has been explained by a Constitution Bench of this Court in *Uma Devi*. If the appointment itself is in infraction of the rules, in this case the 1965 Rules, it is an illegality. Such an illegality cannot be cured by resorting to the novel method of absorption which has been explained as appointment by transfer.

115.1. In so far extinguishment of *lien* in the parent Department is concerned, it is no doubt true that when an employee becomes permanent in another service, his *lien* in the past service would stand extinguished. Analysing the concept of *lien*, a two-Judge Bench of this Court in *Ramlal Khurana Vs. State of Punjab*²¹ explained that *lien* is not a word of art; it just connotes the right of a civil servant to hold the post substantively to which he is appointed. Generally, when a person with *lien* against a post is appointed substantively to

²¹ (1989) 4 SCC 99

another post, he acquires a *lien* against the latter post. Then the *lien* against his previous post automatically disappears; the principle being that no Government servant can simultaneously have two *liens* against two posts in two different cadres. Therefore, if the deputation and absorption of the above four officers are terminated, being illegal, and they are directed to be repatriated back, then their *lien* against the substantive posts held by them in their parent Department would stand revived.

Conclusions

116. Reverting back to the questions framed in paragraph 44 supra, in so far question (i) is concerned, we are of the opinion that the deputation of Shri Pradeep Atri and Shri Praveen Choudhury is illegal whereas the deputation of Shri Pankaj Gaur and Shri Arun Bhatia is irregular. Question (ii) is answered entirely in the negative as we are of the unhesitant view that the absorption of all the above four deputationists as Assistant Engineer (Civil) /Sub-Divisional Engineer (Civil) in the PW(B&R) Department is illegal and void. Since we are holding their absorption as illegal and void and are directing their repatriation, it is not necessary to delve into

question (iii) to examine their seniority on an analysis of Rule 12(5) of the 1965 Rules.

117. Thus, having regard to the discussions made hereinabove, we hold and declare that the deputation of Shri Pradeep Atri and Shri Praveen Choudhury is illegal whereas the deputation of Shri Pankaj Gaur and Shri Arun Bhatia is irregular. We further hold and declare that the absorption of Shri Pradeep Atri, Shri Praveen Chaudhary, Shri Pankaj Gaur and Shri Arun Bhatia in the PW(B&R) Department is illegal, *non est* and void. The same is accordingly set aside and quashed. Consequently, their continuance in the PW(B&R) Department on deputation has become wholly untenable. The above four officers are therefore directed to be repatriated back to the Development and Panchayat Department, Government of Haryana where their cadre and seniority will be determined by the authority of the said Department placing them immediately above the candidates who were junior to them in order of seniority in the cadre of Sub-Divisional Officer (Panchayati Raj).

118. In view of the above, the decision of the High Court *vide* the impugned judgment and order dated 15.03.2023 not

to disturb the services of the aforesaid four officers in the PW(B&R) Department is hereby set aside. Consequential directions from Serial No. 4 onwards are accordingly set aside.

119. All the civil appeals are disposed of in the aforesaid terms.

.....J.
[MANOJ MISRA]

.....J.
[UJJAL BHUYAN]

**NEW DELHI;
AUGUST 18, 2026.**