

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

SWP No. 1332/2010

MP Nos. 3227/2014 & 1882/2010

Date of decision:09.07.2015

Dr. Amit Sharma **vs.** **State of J&K and others**

Coram:

Hon'ble Mr. Justice Janak Raj Kotwal, Judge

Appearing counsel:

For the petitioner(s) : Mr. S. K. Shukla, Advocate

For the respondent (s) : Mr. D. C. Raina, Sr. Adv. with

Mr. F. A. Natnoo, Adv. for No. 2

Mr. Z. A. Shah, Sr. Adv. with

Mr. Vipin Gandotra, Adv. for No. 3

- i. Whether approved for reporting in Press/Media : Yes/No
- ii. Whether to be reported in Digest/Journal : Yes/No

1. This is a petition seeking **writ of certiorari** for quashing selection of respondent No. 3 as 'Research Officer' in Public Works Department of the State made by the State Public Service Commission/respondent No. 2 (hereinafter for short the PSC) in terms of select list dated 19.05.2010 and **writ of mandamus** commanding the PSC to declare the petitioner as having been selected and commanding respondent No. 1 to appoint the petitioner against the said post.
2. A brief resume of some undisputed facts is necessary: The post of 'Research Officer' is borne on the cadres of the Jammu and Kashmir Engineering (Gazetted) Service

governed by the Jammu and Kashmir Engineering (Gazetted) Service Recruitment Rules, 1978 (for short the Rules). The Rules as per Rule 5 read with the Schedule prescribe the qualification and method of recruitment of the members of the Service. Recruitment to the post of Research Officer is provided by direct recruitment and by promotion on 50:50 bases. The PSC by Vacancy Notification No. 9-PSC of 2009 dated 17.03.2009 *inter alia* called for applications for one post of Research Officer in the Public Works Department by direct recruitment in Open Merit Category. Last date for receipt of applications was fixed as 30.04.2009. In the said Notification, the requisite qualification for the said post in line with the Rule position was given as:

“Master’s Degree in Civil Engineering with at least three years research experience in a Laboratory or in the Field Station provided that Engineering Graduates working in the Department with outstanding Road Research Work borne out by papers published by them in Scientific Journals of repute having at least five years experience shall also be eligible.”

(underlining by me)

Petitioner as well as respondent No. 3 among others applied by submitting applications to the PSC. As only few candidates seem to have applied for the various posts so advertised, the PSC straightway vide a Notice dated 12.05.2010 published a list of candidates to be called for interview. This list contained name of respondent No. 3 alone for the post of Research Officer.

Notice was published in the newspaper on 13.05.2010 and date of interview was fixed as 18.05.2010. Petitioner feeling aggrieved by exclusion of his name, submitted representation to the PSC with its copy each to Hon'ble the Governor, Hon'ble the Chief Minister and Commissioner Vigilance. The PSC called the petitioner also for the interview. Interview was conducted on 18.05.2010 and within twenty four hours, the PSC issued select list. As per the record produced on behalf of the PSC, respondent No. 3 secured 68.65 points out of 100 and the petitioner 64.71 points as per following break up:

S. No.	Name of Candidate	Basic Qual	Higher Qual	Exp.	Sports	NCC	Special Attributes	Viva-Voce	Total
		30	5	5	3	2	5	50	100
1.	Ajaz Masood	28.65	-	2	-	-	2	36	68.65
2.	Amit Sharma	28.71	-	-	-	-	-	36	64.71

Respondent No. 3 was selected and the petitioner not. Petitioner feeling aggrieved filed this writ petition. Contention of the petitioner in a nut-shell is that respondent No. 3 did not possess the requisite three years' 'research experience'.

3. Heard. I have perused the record including that produced by the PSC. Besides submissions at bar, counsel for petitioner and counsel for respondent No. 3 have supplemented their arguments by providing written submissions in the intervening period, which shall form part of record.

4. The eligibility clause as provided in the Rules and reflected in the Vacancy Notification on its plain reading provides for two categories of eligibility. **First**, Master's Degree in Civil Engineering with at least three years 'research experience' in a Laboratory or in field station and **second**, Engineering Graduates working in the Department, that is, Public Works Department, with outstanding Road Research Work borne out by papers published both in scientific journals of repute having at least five years experience.
5. It emerges from the pleadings and the record produced on behalf of the PSC, as it may be explained hereafter, that the petitioner as well as respondent No. 3 had claimed eligibility under the first category and their cases were considered by the PSC accordingly, that is, both of them claimed possessing Master's Degree (M.Tech.) in Civil Engineering and three years' 'research experience'. In this relation, it is noticed that petitioner in second part of para 3 of the writ petition has clearly stated that he submitted his application, being M. Tech. in Civil Engineering and having done his Doctorate in the same subject and having more than three years' research experience in various laboratories of Indian Institute of Technology, Delhi. Respondent No. 3, however, it appears, chose to remain a bit uncommitted in his objections in regard to the category under which he had applied for whereas in the submissions at bar

and the written submissions an attempt has been made to show as if respondent No. 3 fulfilled eligibility under both the categories. Stance of respondent No. 3 notwithstanding, the reply filed by and record produced on behalf of the PSC sets the record straight as it reveals that the case of respondent No. 3 was considered as per the first category and not the second. In this relation as per para V (iii) of the objections and the record produced on behalf of the PSC, experience of respondent No. 3 has been calculated as 5 years and 4 months, pre and post the Master's Degree (M. Tech.) collectively and it is mentioned in para V (iv) that respondent No. 3 possessed three years' research experience as required under the Rules. In no way, however, case of respondent No. 3 could have been and can be accorded consideration under second category of the eligibility clause because eligibility under the said category relates to in-service Engineering Graduates of the Department having at least five years' experience making it clear that this benefit is available only to those in-service Engineering Graduates of the Department who have completed five years' service. Whatever impression being created by respondent No. 3 that he was eligible under the second category also therefore, is liable to be rejected for the reason that he, having been appointed as Assistant Engineer in the Department in the year 2008, cannot claim to have completed five

years' qualifying service. The PSC found that respondent No. 3 on the basis of the documents produced by him along with his application form, besides being M. Tech. was possessing research experience of five years and four months. In regard to the petitioner, the stand of the PSC is that the PSC had found him ineligible for want of relevant experience but on his representation he was also considered provisionally and called for the interview.

6. Petitioner assails selection of respondent No. 3 on two grounds mainly. Firstly, that respondent No. 3 did not possess the requisite 'research experience' as on the cut-off date and secondly, that experience, if any, gained by respondent No. 3 prior to acquiring of the basic qualification of Master's Degree (M. Tech.) in Civil Engineering is not relevant.
7. Before taking up the case set up by the petitioner, the manner in which 'research experience' of respondent No. 3 and the petitioner have been calculated by the PSC is noticed and needs to be mentioned here to pave way for according consideration to the questions arising in this writ petition. As per the case set up by the PSC and the record produced on its behalf, only eleven candidates had applied for the post of Research Officer and initially on scrutiny of application forms and documents provided by the candidates, the PSC had

found respondent No. 3 as the only eligible candidate.

In the 'Bio-Data' format of respondent No. 3 prepared by the PSC following were taken as the periods during which respondent No. 3 as per the PSC had acquired the research experience:

"

Experience in relevant subject	year	Month	days	Name of the Institution
W. E. F. 05/2000 to 04/2004 & 04/2006 to 12/2006 and 08/2008 to 30.04.2009	05	05	00	DOP CIVIL ENGG. & DESIGN. INSPECTION & QUALITY CONTROL, PWD.
ELIGIBILITY EXP.	03	00	00	
THEREFORE NET EXP.	02	02	00	POINTS: 2.00

"

Corresponding detail about qualification and the 'research experience' of respondent No. 3 is given in para V (iii) of the preliminary objections in the reply filed by the PSC as under:

a) July 2004- April 2006 M. Tech (GEOTECHNICAL ENGINEERING), Indian Institute of Technology, Bombay-(IITB) (CGPA-9.55) on 10 Point scale, 2nd Rank in the Department of Civil Engineering, (IITB).

b) Aug 1995-Aug 1999 Bachelor Engineering (CIVIL); BU (India) Division: First with Distinction (76.6%)-Institute Rank: 1st, University Rank: 9th.

c) May-2000-April 2004 Worked as Research/Faculty member & Design Member of Geotechnical and May, 2006-Dec-2006 Structural Consultancy Division at Department of Civil Engineering, NATIONAL INSTITUTE OF TECHNOLOGY, Srinagar (J&K)= 4 years 8 months.

d) From 01.01.2008 to 18.08.2008 Worked as A. E. in (PMGSY)

e) From 19.08.2008 to 30.04.2009 Worked as I/C Research Officer, RR&MTL, Design Inspection and Quality Control Department.

TOTAL EXERIENCE 5- YEARS & 4 MONTHS
Certified Experience
(Research/Laboratory
Oriented) of respondent

No. 3=

(underlining by me)

Similar is the stand taken by respondent No. 3 in his counter affidavit.

8. What thus clearly emerges is that the five years and taking the view that respondent No. 3 possessed the requisite 'research experience' of minimum three years' and extra experience of over two years, comprises of the four years (05/2000 to 04/2004) of his engagement in the National Institute of Technology, Srinagar prior to his obtaining Master's Degree (M. Tech.), eight months (May, 2006 to December, 2006) similarly in the same institute after the Master's Degree and nine months (08/2008 to 30.04.2009) as I/C Research Officer after his appointment as Assistant Engineer in Public Works Department. To say precisely, respondent No. 3 has been found eligible on the basis of four years' research experience said to have been gained by him prior to obtaining the Master's Degree and seventeen months experience gained after obtaining Master's Degree.
9. As regards the petitioner, the PSC, as said above, initially had not found him possessing the relevant experience and his name was not notified in the notice dated 12.05.2010 published on 13.05.2010 calling the candidates for interview to be held on 18.05.2010. Against the absence of his name in the notice, the petitioner had made a representation to the PSC with

copy *inter alia* to Hon'ble the Governor. The petitioner claims to have gained the requisite 'research experience' by 'extensive laboratory testing of material used in 'Rail Road Construction in the laboratories of Indian Institute of Technology, Delhi, while undergoing three years' Doctorate (Ph.D.) course from that Institute.' Record produced on behalf of the PSC would, however, show that on 13.05.2010 the PSC took the view that 'the research experience during Ph. D. would count for research experience if the period of research is three years' and decided to call the petitioner for the interview too. The PSC had thus taken into account the research experience said to have been acquired by the petitioner in the laboratories of Indian Institute of Technology, Delhi while undergoing three years' Doctorate (Ph.D.) course from that Institute.

10. Case set up by the petitioner in the writ-petition in regard to the 'research experience' of respondent No. 3 is that respondent No. 3 did his M. Tech. somewhere in May/June, 2006 and cannot claim to have gained three years' research experience either in a laboratory or in field station as on 30.04.2009. He has contended also that respondent No. 3 cannot claim to have obtained three years' research experience even after his appointment in Public Works Department. When confronted with the manner in which the duration of 'research experience' of respondent No. 3 was counted

by the PSC as disclosed in the reply, treated as counter affidavit, filed by the PSC, petitioner by way of his supplementary affidavit has contended, firstly, that the experience said to have been gained by respondent No. 3 while working in the National Institute of Technology, Srinagar from May, 2000 to April, 2004 cannot at all be taken as 'research experience' as required under the eligibility clause provided under the Rules and secondly, that the relevant 'research experience' can only be acquired after obtaining Master's Degree in concerned subject.

11. Before taking up the core questions raised in this petition, objection in regard to petitioner's *locus standi* to maintain this writ petition needs to be taken up. Objection raised by respondent No. 3 is that petitioner did not possess the requisite 'research experience' and he was called for interview only under pressure inasmuch as no experience obtained by the petitioner while undergoing Ph.D. in 'Rail Road Construction' was relevant for the post of Research Officer in Public Works Department of the State. Argument of Mr. Z. A. Shah, learned Senior Advocate appearing for respondent No. 3 was that an ineligible candidate, as the petitioner is, cannot question selection of an eligible candidate. Mr. Shah relied upon *Kunda S. Kadam v K. K. Soman*, AIR 1980 SC 881. Objection on this score, however, would not carry any substance for

the simple reason that the PSC having found respondent No. 3 as well as the petitioner eligible for calling for the interview, each one of them have a right to question the decision of the PSC on the basis of Rule position by invoking power of judicial review of this Court and this Court has the jurisdiction to intervene in case the view taken by the PSC is found contrary to or in conflict with the Rule position. This writ petition, therefore, cannot fail simply on the basis of a contention that petitioner was not eligible. Objection in this regard, therefore, is liable to be rejected without any more discussion.

12. Primary and the important question mooted for debate and adjudication is, whether the three years' 'research experience' as contemplated under the eligibility clause of the Rules and reflected in the vacancy notification must have been gained after acquiring the **Master's Degree (M. Tech.) only or any such experience**, if gained prior to obtaining the Master's Degree is also relevant? Should the experience gained prior to the Master's Degree be relevant too, the next question would be whether respondent No. 3 acquired the requisite 'research experience' while working in the National Institute of Technology, Srinagar?

13. The clear and precise stand of the PSC in this regard is stated in para III of the preliminary objections in their reply which reads:

“That the present writ petition which is aimed at stalling the selection/appointment of the meritorious candidate that too on the basis of misconceived grounds of alleged in eligibility of the selectee on sheer misinterpretation of the eligibility clause is otherwise not maintainable and deserve an outright dismissal. It is submitted that the petitioner in sheer misinterpretation has tried to urge that the requirement of 3 years research experience for candidates with Masters Degree is of post P. G. Experience, which contention of the petitioner is again result of misconception as well as misinterpretation of the eligibility clause prescribed in the Notification having the source of Recruitment Rules of the service. It is submitted that perusal and plain reading of the eligibility clause itself makes it crystal clear that it no where provides for post P. H. Experience of three years, as such the writ petition filed by the petitioner deserves an outright dismissal on this ground alone.”

(underlining by me)

14. Mr. S. K. Shukla, learned counsel for the petitioner, submitted that to say that the three years' 'research experience' as contemplated under the Rules and provided in the vacancy Notification need not be gained after post graduation is a misconceived impression and contrary to settled position in law. Mr. Shukla argued that whenever a rule requires experience besides educational qualification, it only means acquiring experience after obtaining the

educational qualification and not *vice versa*. Mr. Shukla sought to dilate his point saying that for Engineering Graduation and Post Graduation, research work is always undertaken after post graduation either while pursuing Ph.D. course or working as Research Associates in some research project. Mr. Shukla in support of his arguments relied upon Indian Airlines Limited and others v S. Gopalkrishnan, (2001) 2 SCC 362 and submitted further that the question is no more *res integra* as Hon'ble Supreme Court has held that such an experience must have been gained after acquiring the requisite educational qualification. Mr. Shukla thus, submitted that respondent No. 3 at the most can be said to have gained research experience of a period of 08 months after his Post Graduation while posted as I/C Research Officer in Public Works Department and cannot be said to have gained any other 'research experience' after his Post Graduation.

15. Mr. Shah, learned Senior Advocate, by his submissions at Bar and supplemented in writing, sought to carve out a case that respondent No. 3 is eligible under both the categories of eligibility as provided under the eligibility clause. An effort was made by Mr. Shah to make out, though contrary to the factual position as per the stand taken and record produced by the PSC as explained above, that respondent No. 3 is eligible under the first category as a post graduate (M. Tech.)

having three years' 'research experience' as well as under the second category as an in-service engineering graduate having five years outstanding experience in road research work.

16. Any discussion in regard to eligibility of respondent No. 3 under second category of eligibility clause, however, would be uncalled for and futile for the reasons, as explained above, firstly, that the PSC had taken respondent No. 3 as a case of post graduate having 'research experience' of five years and four months (4 year's experience having been gained at prior to Master's Degree while working in the National Institute of Technology at Srinagar and rest at post master's degree stage) and secondly, that respondent No. 3 did not possess five years qualifying service in the Department as on the cut-off date.
17. In support of eligibility under the first category, again it is noticed that Mr. Shah, contrary to the factual position as per the stand taken and record produced by the PSC, while maintaining that research experience gained at pre Master's Degree stage is equally relevant, sought to make an effort to show that three years research experience was gained by respondent No. 3 even after completing the Master's Degree.
18. While referring to the first category of eligibility clause provided under the Rules, Mr. Shah painstakingly

sought to explain that it does not say that the three years' experience should be before Master's Degree or after that. It also does not say whether the research experience should be in the Government or private laboratory or field station of the Government or of a private party.

19. Any contention that respondent No. 3 had gained requisite 'research experience' of three years even after Master's Degree cannot be entertained for the reason that the same would be contrary to the factual position as per the record produced by the PSC. To say at the cost of repetition, his selection is based on research experience of five years and four months comprising of four years prior to the Master's Degree as explained above. Even if such a contention is entertained it is noticed that as per the counter affidavit of respondent No. 3 and reply of the PSC, respondent No. 3 completed his Master's Degree (M. Tech.) in April, 2006. The cut off date, that is, the last date of receipt of application for the post in question was 30.04.2009. In the intervening period of three years, respondent No. 3 *inter alia*, firstly, came to be appointed as Junior Engineer in PWD(R&B) vide an order dated 10.04.2007 on which position he worked for eight months up to 31.12.2007 when he was appointed as Assistant Engineer (AE) vide a Government order dated 31.12.2007. After his

appointed as Assistant Engineer, respondent No. 3 remained posted as AE in PMGSY for eight months from 01.01.2008 to 18.08.2008. In no way respondent NO. 3 can claim that he gained the requisite 'research experience' of minimum three years after obtaining Master's Degree.

20. The discussion thus comes back to the question whether any research experience said to have been gained by respondent No. 3 prior to Master's Degree is relevant for calculating three years' 'research experience' as contemplated under the first category of eligibility clause under the Rules.
21. Mr. Shah has rightly pointed out that the eligibility clause as provided under the Rules does not say explicitly whether the three years' 'research experience' should be before Master's Degree or after that and the argument of Mr. Shah is that any experience gained prior to obtaining Master's Degree cannot be excluded. In support, Mr. Shah placed reliance on *A. K. Raghumani Singh and others v Gopal Chandra Nath and others*, (2000) 4 SCC 30.
22. To buttress their contrasting arguments, learned counsels for the petitioner and respondent No. 3 have relied upon two authorities of the Supreme Court, one each, which apparently state opposing legal position. In *A. K. Raghumani Singh*, relied upon by Mr. Shah, the

rules regulating recruitment to the post of Superintending Engineer of the State of Manipur provided that post of Superintending Engineer shall be filled up by promotion from 'Executive Engineer (Civil)/(Mech) and Surveyor of Works possessing Degree in Civil/Mechanical Engineering or its equivalent from a recognized institution **with six years' regular service in the grade**'. It was held in the writ petition by the High Court that requirement of six years was independent of requirement of educational qualification and the eligibility criteria was fulfilled even if requisite experience had been gained before obtaining educational qualification. Learned two-Judge Bench of the Supreme Court vide judgment dated 04.04.2000 after interpreting word 'with' in the rules upheld the view taken by the High Court. Supreme Court in this case distinguished earlier three-Judge Bench Judgement in N. Suresh Nathan, 1992 Supp. (1) SCC 584 and relied upon M. B. Joshi, 1993 Supp. (2) SCC 419, D. Stephen Joseph, 1997(4) SCC 753 and Anil Kumar Gupta (2000) 1 SCC, 128. Relevant portion of the judgment reads:

"6. There is no dispute that as on 1991 the respondent No. 1/writ petitioner had put in more than 6 years regular service in the grade. Of that period only a little over 2 years was after he was granted the AMIE Diploma. The controversy hinges on the interpretation of the word with used in the eligibility criteria.

7. The work with has been defined in the New Shorter Oxford Dictionary (1993), diversely, the meaning depending on the context in which it is used. But when it is used to connect two nouns it means "Accompanied by: having as an addition or accompaniment. Frequently used to connect two nouns, the sense and as well".

8. Applying the definition to the eligibility criteria it is clear that it requires the prescribed educational qualification and 6 years experience as well. Given the plain meaning of the phrase, the Court would not be justified in reading a qualification into the conjunctive work and imply the work subsequent after the work with.

9. Even on a point of principle it would be unreasonable to distinguish between the nature of the regular service required, as if the service in the grade subsequent to the obtaining of the necessary educational qualification were qualitatively different from the service in the grade prior thereto. In fact no such case has been made out."

(underlining by me)

23. In Indian Airlines Limited (*supra*), relied upon by Mr. Shukla, the requisite qualification for appointment as a Junior Operator in the Indian Airlines as set out in the employment notice *inter alia* was SSC with ITI Certificate or equivalent in associated trade of Mechanical/Electrical/ Automobile course and five years' experience in equipment operating or driving. Learned two-Judge Bench of the Supreme Court vide judgment dated 12.12.2000, while relying upon N. Suresh Nathan and Anil Kumar Gupta (*supra*) and Gurdial

Singh v State of Punjab, (1995) 3 SCC 333 held that 'when in addition to qualification, experience is prescribed, it would only mean acquiring experience after obtaining necessary qualification and not before obtaining such qualification'.

Relevant portion of the judgment which reads:

"3. The short point for consideration is as to what is the job requirement of the Junior Operator and they are set out in the employment notice which reads as under :

"To drive, position, connect and operate ground Support equipments, including driving of Transport Vehicles. To carry out refuelling, oiling, air-charging, battery replacement and daily checks of Group Support Equipment/Vehicles. To perform incidental paper work for recording, reporting incidents/ accidents, operations, maintenance, etc. To assist operators/technicians in performance of their jobs. To tow aircraft and other ground support equipment/dolleys, trolleys, etc. as per laid down procedures. To keep current licences/ permits required for operation/driving of vehicles/ equipments as laid down from time to time."

Under the relevant rules, the qualification prescribed is as follows:

"2.1 SSC or its equivalent with three years' Government recognised diploma in Mechanical/ Electrical/ Automobile Engineering and having two years' experience in equipment operations or driving and possessing current heavy vehicle driving licence.

or

2.2 SSC with ITI certificate or equivalent in associated trades of mechanical/ electrical/ automobile courses and having five years experience in equipment operating or driving

and possessing current heavy vehicle driving licence."

4. The respondent has obtained the ITI certificate in June 1994 and he had about five years of experience after obtaining the certificate and diploma in Mechanical Engineering was obtained in April 1996. In any event, it is clear that the experience obtained by him falls short of the requisite qualification. This Court in N. Suresh Nathan & Anr. vs. Union of India & Ors., 1992 Supp. (1) SCC 584; Gurdial Singh & Anr. vs. State of Punjab, 1995(3) 332 and Anil Kumar Gupta & Ors. vs. Municipal Corporation of Delhi & Ors., 2000(1) SCC128, has explained the necessity to obtain experience after obtaining the requisite qualification.

5. When in addition to qualification, experience is prescribed, it would only mean acquiring experience after obtaining the necessary qualification and not before obtaining such qualification. In the case of the respondent, he obtained the ITI certificate in the year 1994 and, therefore, did not possess five years of experience as required under the relevant rule. If his qualification as a diploma holder in Mechanical Engineering is taken note of, he has not completed three years of experience as he got the same in April, 1996 and on relevant date he did not possess such qualification. Indeed in prescribing qualification and experience, it is also made clear in the general information instruction at Item No.6 that "experience will be computed after the date of acquiring the necessary qualifications." Therefore, when this requirement was made very clear that he should have experience only after acquiring the qualification, the view taken by the High Court to the contrary either by the learned Single Judge or the Division Bench does not stand to reason."

(underlining by me)

24. The two authorities of the Coordinate Benches of the Supreme Court, one relied upon by each of the learned opposing counsels, of their own would not provide useful key for resolving the question under consideration. It is, however, noticed that in both the cases reference has been made to earlier three-Judge Bench decisions in Anil Kumar Gupta and S. Suresh Nathan. Besides, it is important to notice that the Raghuman Singh's case relates to appointment by promotion and the Indian Airlines Case relates to appointment by direct recruitment. This is the distinguishing feature if reliance is to be placed on these authorities alone and in that authority rendered in Indian Airlines shall prevail in the case on hand for the reason that it too relates to a case of direct recruitment. A more detailed survey of the case law by the learned counsels would have assisted the Court in a better way particularly when no authority of this Court on the point has been cited at bar. An effort, therefore, has been made to survey and examine case law on the point instead of restricting reliance to the two authorities relied upon by learned counsels for the parties.
25. Decision in N. Suresh Nathan (*supra*) rendered by a learned three-Judge Bench of the Supreme Court on 22.11.1991 appears to be the basic authority on the point whereas the subsequent decisions by and large

revolve around the same. Question arising in N. Suresh Nathan related to fifty per cent quota of promotion to the post of Assistant Engineer from the post of Section Officer in Public Works Department, Pondicherry. The relevant rule prescribed the qualification as under:

“1. Section Officers possessing a recognized Degree in Civil Engineering or equivalent with three years' service in the grade failing which Section Officers holding Diploma in Civil Engineering with six years' service in the grade-50 per cent.

2. Section Officers possessing a recognized Diploma in Civil Engineering with six years' service in the grade-50 per cent.”

The Supreme Court on the basis of the scheme under the Rules held that the three years' service for a degree holder Section Officer shall commence only from the date of obtaining the Degree and not earlier thereto. Learned Court held further that the service in the grade as a diploma-holder prior to obtaining the degree cannot be counted as service in the grade with a degree for the purpose of three years' service as a degree holder. In support of the view so taken the Supreme Court also referred to similar practice prevailing in the Department.

26. The latest authority on the point may be the decision of the Supreme Court in *Shaileendra Dania v S. P. Dubey*,

AIR 2007 SC (Supp) 208. Matter in this case related to promotion from the post of Junior Engineer to the post of Assistant Engineer in Slum Wing Department under Delhi Development Authority (DDA). The DDA has adopted Recruitment Rules of CPWD qua the post of Junior Engineer, Assistant Engineer and Executive Engineer. The initial post in the hierarchy is that of Junior Engineer to be filled up hundred per cent by direct recruitment and qualification prescribed is 'Diploma Holders in Civil Engineering with two years experience'. Besides Diploma Holders, however, persons possessing Degree in Engineering are also eligible and such persons are not required to have any experience for appointment. The next higher post is that of Assistant Engineer. The Rule provided filling up of fifty per cent vacancies on the post of Assistant Engineer by those who possess a graduation degree in Engineering by means of direct recruitment or by deputation. The remaining fifty per cent vacancies are to be filled up on promotional basis from the pool of Junior Engineers. Out of this fifty per cent, one-half of such posts would be filled up by promotion of Diploma Holders with eight years qualifying service and remaining fifty per cent quota would be filled up from the Junior Engineers who were Graduate Engineering Degree Holders with three years' qualifying service. When the matter came up before learned Division

Bench of the Delhi High Court, the controversy raised was 'whether a Diploma Holder Junior Engineer, who obtains degree while in service becomes eligible for promotion as Assistant Engineer on rendering three years service would include therein the period of service rendered by him prior to obtaining of the degree or he has to render three years service after obtaining the Degree to become eligible for promotion to the post of Assistant Engineer'. Learned Division Bench relied upon N. Suresh Nathan and held that the three years' experience required for Degree Holders' eligibility quota had to be considered after acquiring the Degree. Matter ultimately after intervening litigation before Delhi High Court came up before the Supreme Court.

27. Learned three-Judge Bench of the Supreme Court in Shailder Dania surveyed the law on the point. Learned Bench started with referring to N. Suresh Nathan (*supra*). Supreme Court in Shailendra Dania's case also referred to learned two-Judge Bench Judgment in M. B. Joshi(*supra*). In that case, for promotion from the post of Sub Engineer to Assistant Engineer, rules provided twelve years qualifying service for Diploma Holders and eight years for Degree Holders. Learned two-Judge Bench have held that entire length of service as Sub Engineer, irrespective of the date of attaining of Degree has to be taken into

account in absence of a specific rule to the contrary. Learned Bench in M. B. Joshi distinguished N. Suresh Nathan mainly on the basis of existence of a past practice in that case. It is, however, noticed that in Shailendra Dania's case, learned three-Judge Bench did not agree that decision in N. Suresh Nathan was based upon past practice and observed that in that case the Court had considered and interpreted the relevant Service Rules and then found that interpretation given by the court was fortified by the past practice followed in the Department.

28. Supreme Court in Shailedra Dania also referred to A. K. Raghumani Singh (relied upon by Mr. Shah in this case) and Indian Airlines (relied upon by Mr. Shukla). Supreme Court also referred to Anil Kumar Gupta (*supra*). In Anil Kumar Gupta, the Municipal Corporation Delhi had invited applications for filling up 60 posts of Assistant Engineers. Essential qualification prescribed was Degree in Civil Engineering and two years professional experience. One of the questions taken up by the learned three-Judge Bench of the Supreme Court was 'whether, while deciding whether the respondents had two years' experience, the experience gained while holding Diploma could also be counted in addition to experience gained after obtaining degree?' Learned three-Judge Bench of the Supreme Court, while not following N. Suresh Nathan

and taking the view that the case was similar to *Subash v State of Maharashtra*, 1994 Supp.(3) SCC 332 held that 'the service rendered by the diploma holders before obtaining degree can also be counted'.

29. The conclusion arrived at by the Hon'ble Supreme Court in *Shailendra Dania*, is that every case is to be decided on the basis of the scheme of applicable rules and facts and circumstances of that case. Nonetheless, it is sufficiently indicated that decision in *N. Suresh Nathan* still holds the field and decisions subsequent thereto cannot be said to have taken a different view than what has been decided in *N. Suresh Nathan*. The conclusion arrived at by the Hon'ble Supreme Court is stated in para 33 of the reporting which reads:

"From a reading of the decisions rendered by this Court, one thing is clear to us that the decisions in *N. Suresh Nathan*, *M.B. Joshi*, *D. Stephen Joseph*, *Anil Kumar Gupta*, *A.K. Raghumani Singh* and *Indian Airlines Ltd.* (*supra*), are based on the interpretation of the respective rules called in question, giving meaning to the words used in the context of the entire scheme governing service conditions and the facts involved in each case and it cannot be said that the decisions rendered by this Court after the decision of *N. Suresh Nathan's* case, have taken a different view than what has been decided in *N. Suresh Nathan's* case. Thus, we are required to decide the matter on the basis of the entire scheme of the rules, the facts and circumstances at the relevant time and the rules called in question before us, independently giving meaning to the words, the principle involved and the past practice, if

any, which is in consonance with the interpretation given by us to the rule. If we find that two views are possible after interpreting the rule, then the rule would be interpreted keeping with the practice followed in the Department for a long time and thus the practice practically acquired status of rule in the Department.”

30. In Shailendra Dania, as stated above, the rule provided *inter alia* for filling up of one-half of the promotional quota for the post of Assistant Engineer by promotion of Diploma Holder Junior Engineers with eight years qualifying service and the other half by promotion of Junior Engineers who were Degree Holders with three years' qualifying service. Matter before the Hon'ble Supreme Court related to the Degree Holder Junior Engineers, who obtained Degree while in service and the question was whether they were eligible on completion of three years' service after obtaining the Degree or the service rendered before obtaining the degree could also have been counted.
31. The Supreme Court, after examining the scheme of applicable recruitment rules arrived at a conclusion that 'Diploma Holder Junior Engineers who have obtained a Degree in Engineering during the tenure of service would be required to complete three years' service on the post after having obtained a Degree to become eligible for promotion to the higher post if they claim the promotion in the channel of degree holder junior engineer' It is noticed that in arriving at

such a conclusion, Supreme Court recognized the 'qualitative difference in service rendered as a degree-holder junior engineer and a diploma-holder junior engineer'. Supreme Court observed that 'degree with three years' service experience and diploma with eight years' service experience itself indicates qualitative difference in the service rendered as degree-holder Junior Engineer and diploma- holder Junior Engineer' and that 'three years' service experience as a graduate Junior Engineer and eight years' service experience as a diploma-holder Junior Engineer, which is the eligibility criteria for promotion, is an indication of different quality of service rendered'. It has been observed by the Supreme Court also that 'the rule specifically made difference of service rendered as a graduate Junior Engineer and a diploma-holder Junior Engineer. Degree-holder Engineer's experience cannot be substituted with diploma-holder's experience' and that there can be no manner of doubt that higher technical knowledge would give better thrust to administrative efficiency and quality output. To carry out technical specialized job more efficiently, higher technical knowledge would be the requirement. Higher educational qualifications develop broader perspective and therefore service rendered on the same post by more qualified person would be qualitatively different'. Supreme Court, thus, concluded that 'after

having an overall consideration of the relevant rules, we are of the view that the service experience required for promotion from the post of Junior Engineer to the post of Assistant Engineer by a degree-holder in the limited quota of degree-holder Junior Engineers cannot be equated with the service rendered as a diploma-holder nor can be substituted for service rendered as a degree-holder'. It is noticed that the learned three-Judge Bench in this case, unlike learned two-Judge Bench in A. K. Raghuman Singh (surpa) relied upon by Mr. Shah, recognized the qualitative superiority in the experience gained by a person having higher educational qualification in the subject than a person having lower qualification.

32. In view of the decision in N. Suresh Nathan and the latest decision in Shailder Dania, it would not be correct to say as a general principle that whenever the eligibility clause in the applicable recruitment rules prescribes educational qualification with a specific period of experience/ qualifying service, the period of experience/qualifying service gained prior to acquiring the prescribed educational qualification shall also be counted. Preponderance of authorities including the decisions in N. Suresh Nathan and Shailder Dania is that experience is related to the educational qualification and the experience/length of service refers to the period after acquiring the requisite

educational qualification. Experience gained by a person with lower qualification cannot be equated with the experience gained after acquiring higher qualification in the subject as higher the qualification superior would be the quality of experience gained. As a general principle only the experience gained after acquiring the requisite educational qualification will have to be counted, unless the rules governing a service expressly or by sufficient implication provide otherwise.

33. Contextually, I may refer again to the decision in *Anil Kumar* (*supra*) for the reason that this is a decision by a learned three-Judge Bench of the Supreme Court and has been referred to in the two decisions, one each relied upon by the counsel for petitioner and counsel for respondent No. 3 in support of their respective stands. Learned three-Judge Bench of the Supreme Court in *Anil Kumar*'s case firstly, did not rely upon *N. Suresh Nathan* for the reason that the decision in that case was based on past practice obtaining in the department and has been distinguished in *M. B. Joshi* (*supra*) and *D. Stephen* (*supra*). The decision in *Anil Kumar Gupta* has been referred to by the learned three-Judge Bench in *Shilendra Dania and Their Lordships* have observed

"We are afraid that the observation of the Court that *N. Suresh Nathan*'s case was decided

mainly on the past practice followed in the department would not be a correct reading of N. Suresh Nathan's case. This case was essentially decided on the interpretation of the rule and the court found support to that interpretation from the past practice followed in the Department. Thus, it appears from this judgment that essentially N. Suresh Nathan's case was not followed on the interpretation of the rule, which came in question for consideration before the Court and it was held that the professional experience required cannot be read to have any connection with the Degree in Civil Engineering and, therefore, the professional experience in service irrespective of a Degree in Civil Engineering would be considered for allotting marks by the Selection Board."

34. In the case on hand, the eligibility clause provided in the Rules and reflected in the Vacancy Notification, clearly and categorically provides for Master's Degree in Civil Engineering with at least three years' 'research experience' in a laboratory or a field station. On its plain reading, the eligibility clause indicates that the 'research experience' has to be in addition to the educational qualification of Master's Degree (M. Tech.) in Civil Engineering and also indicates that such experience has to follow the Master's Degree. It is important to note that the post applied for is that of a Research Officer which is a category other than those falling in the hierarchy of Engineers, that is, Junior Engineer, Assistant Engineer, Assistant Executive Engineer and upwards. As the name of the post indicates, the person appointed against this post has to

deal with research work. A candidate for his eligibility for direct recruitment has to have three years' 'research experience' in a laboratory or a field station and such experience would be meaningful and qualitatively superior if it is gained after obtaining Master's Degree. There is no indication in the Rules that the 'research experience' contemplated therein has no relation to the Master's Degree and may have been gained prior to obtaining the Master's Degree. It is noticed that what is contemplated under the eligibility clause of the Rules is not simply the experience or length of service but the 'research experience'. Neither it has been explained nor any material produced on behalf of the PSC or respondent No. 3 as to how any 'research experience' can be gained before obtaining Master's Degree. It would be beyond a good reason to say that 'research experience' can be gained after Bachelor's degree. To take a view that any 'research experience' said to have been gained prior to Master's Degree would suffice or shall be counted to satisfy the requirement under the Rules would infringe and defeat the purpose of the eligibility clause and the concept of qualitative superiority of higher educational qualification as recognised by the Supreme Court in *Shailendra Dania* (*supra*).

35. Viewed as above, benefit of four years' 'research experience', said to have been gained by respondent No. 3 while working in the National Institute of Technology, Srinagar, prior to obtaining the Master's Degree, cannot be counted against the 'research experience' as contemplated under the first category of eligibility clause under the Rules. Without going into sufficiency of the 'research experience' said to have been so gained by respondent No. 3, these four years are to be excluded and in that the experience of five years and four months as calculated by the PSC is reduced far below the requisite experience of three years and therefore, the respondent No. 3 cannot be held possessing requisite 'research experience' to fulfil the eligibility criteria.
36. The PSC does not seem to have shown sufficient seriousness while determining the eligibility of respondent No. 3. On perusal the record produced on behalf of the PSC indicates that opinion about the eligibility of respondent No. 3 and ineligibility of ten candidates including the petitioner was formed at a different level before submitting the file to 'Eligibility Committee particularly in respect of experience' 'for considered advice & determination of eligibility'. This was done on April, 4th and 5th, 2010. On 6th April, 2010, one-line opinion seemingly by the Eligibility Committee was recorded in terms that 'only S No. 6 is eligible'.

This seems to have been followed in succession by the notice calling respondent No. 3 for interview to be held on 18.05.2010, representation of the petitioner and a decision about sufficiency of petitioner's 'research experience' and calling him for interview too. Though no ground for commenting upon the manner of functioning of the PSC is available but one may not resist saying that the question relating to experience gained prior to eligibility qualification should have been dealt with more seriousness and by a speaking order.

37. Having found that the experience said to have been gained by the respondent No. 3 prior to obtaining Master's Degree could not have been counted towards the three years' 'research experience', it is held further that respondent No. 3 was not eligible for selection and appointment as Research Officer pursuant to vacancy Notification No. 9-PSC (supra) so his selection cannot sustain.
38. It is noticed that respondent No. 3 has questioned the eligibility of the petitioner. However, it is also noticed on reading the counter affidavit and the supplementary affidavit filed by respondent No. 3 that petitioner's qualification has been challenged with the purpose to oust him from maintaining the writ petition on the ground that he was not eligible for the post.

Decision of the PSC in holding the petitioner eligible and calling him for interview, though at a later stage, has not been challenged nor its quashing has been sought. No case for disputing the petitioner's eligibility, therefore, has been made out.

39. For all that said and discussed above, this writ petition has merit and is allowed. By issue of a **writ of certiorari** selection of respondent No. 3 for the post of 'Research Officer' in terms of Select List dated 19.05.2010 issued pursuant to Vacancy Notification No. 9-PSC of 2009 dated 17.03.2009 is quashed and by issue of a writ of **mandamus** the PSC (respondent No. 2) is directed to declare the petitioner as selected candidate and direction is issued to respondent Nos. 1 and 2 to take the follow up action.
40. Disposed of.

(Janak Raj Kotwal)
Judge

Jammu:
09.07.2015
Rakesh