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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 347 of 2002

New Delhi, this the 30th day of December, 2002

HON'BLE MR. V.K. MAJOTRA, MEMBER (A)
HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

1. Shri Rajendar Kumar
S/o Shri Om Parkash Garg
Assistant Engineer,
Ministry of Road Transport and Highways,
Parliament Street,
New Delhi.
2. Shri Purshottam Kumar Gupta
S/o Late Shri Chander Kiran
Assistant Engineer,
Ministry of Road Transport & Highways
Parliament Street,
New Delhi.
3. Shri B.T. Sridhara
S/o Shri Thimmiah
Assistant Engineer,
in the office of the
Superintending Engineer
Regional Office,
Ministry of Road Transport and Highways,
Bangalore (Karnataka).
4. Shri A.K. Krishna Prasad
S/o Nagaiah
Assistant Engineer,
on deputation to
National Highways Authority of India,
Vishakapatnam (Andhra Pradesh).
5. Shri V.V. Shastry
Assistant Engineer,
in the office of the
Superintending Engineer,
Regional Office
Ministry of Road Transport & Highways,
Hyderabad.

-APPLICANTS

(By Advocate: Shri R. Venkatramani, Sr. Counsel
with Shri B.S. Mainee, Counsel)

Versus

Union of India through

1. The Secretary,
Ministry of Road Transport & Highways,
Parliament Street,
New Delhi-110 001.
2. The Director General (Road Development) &
Additional Secretary to the Government of
India,
Transport Bhawan,
Parliament Street,
New Delhi..

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3. The Secretary,
Department of Personnel & Training,
North Block,
New Delhi-110 001.

4. The Secretary,
Union Public Service Commission,
Shahjehan Road,
New Delhi-110 011. **-RESPONDENTS**

(By Advocate: Shri M.M. Sudan, Senior Counsel)

O R D E R

By Hon'ble Mr. V.K. Majotra, Member (A)

Applicants, five in number, have challenged
the following:-

(i) UPSC advertisement dated 22.9.2001 inviting
applications for 30 posts of Executive Engineer (Civil).

(ii) Notification dated 31.3.1997 promulgating
Central Engineering Service Group "A" Rules, 1995 (for
short "1995 Rules").

2. Applicants are working as Assistant Engineer
under respondents and claim to their credit service of 5
to 7.1/2 years. They allege that for direct recruitment
to the post of Executive Engineer, Junior Engineers
having 5 years service and a degree are eligible, while
the applicants, who are Group "B" officers having degree
in Civil Engineering and working as Assistant Engineers
and have put in more than 5 to 7 years service are not
considered for promotion. They claim that they should be
considered for promotion to the post of Executive
Engineer by relaxing the rules by granting relaxation
under Rule 11 (ibid). The applicants have stated that
respondents have not reviewed the vacancy position after

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implementation of DOP&T instructions for restructuring the cadre. The applicants have sought the following reliefs:-

- (i) That this honourable tribunal may be please to allow this application and direct the respondents to consider the case of the applicants also for promotion to the post of Executive Engineers against the existing vacancy by giving relaxation under Rule 11 of the Recruitment Rules and promote those who are found fit for the promotion with relaxation of minimum period of service as Assistant Engineers.
- (ii) That this honourable tribunal may be further pleased to direct the respondents to consider the modification of the recruitment rules reducing the minimum period of service for consideration to the post of Executive Engineers from 8 to 5 years as has been provided for the direct recruitment.
- (iii) That any other or further relief which this honourable tribunal may be deemed fit and proper under the circumstances of the case may also be granted in favour of the applicants.

3. Learned counsel of the applicants has contended as follows:-

- (i) Rule 5(viii) and Schedule IV prescribing age limit of 40 years and relaxation of educational and experience qualifications for direct recruitment in 1995

Rules and UPSC advertisement dated 22.9.2001 for filling up 30 vacancies of Executive Engineer (Civil) by direct recruitment are arbitrary and discriminatory.

(ii) Respondents have not taken any decision that it has been necessary or expedient to resort to direct recruitment in terms of Rule 5 (viii) (ibid).

(iii) Direct recruitment to the post of Executive Engineer (Civil) blocks legitimate expectation of Assistant Engineers for promotion to the grade of Executive Engineer (Civil).

(iv) Applicants, who are serving Assistant Engineers, should be granted relaxation under Rule 11 (ibid) for filling up the post of Executive Engineer.

(v) Respondents are violating the instructions of Department of Personnel & Training (DOP&T) contained in Memoranda dated 6.6.2000 and 20.12.2000 inasmuch as they have not completed the exercise of restructuring the cadres and redistribution of posts in the revised scale of pay and the relevant recruitment rules have also not been amended appropriately within the prescribed period of 2 months.

4. Learned counsel of the respondents has stoutly controverted the pleas made by learned counsel of the applicants. He stated that as per 1995 Rules, as amended in 1997, the post of Executive Engineer (Civil) can be filled upto 75% from the grade of Assistant Executive Engineer (Civil) with 4 years regular service in the

grade on the basis of seniority-cum-fitness and 25% by selection on merit from amongst Assistant Engineer (civil) of the Central Engineering Service with 8 years regular service in the grade who have a degree in Civil Engineering. He further stated that there are 50 posts (39 + 11) in the feeder grade for promotion to 80 posts of Executive Engineer. When requisition for filling up 30 posts of Executive Engineer (Civil) was forwarded to UPSC in October, 2000, 42 posts of Executive Engineer were vacant against the sanctioned strength of 80 posts of Executive Engineer (Civil).

5. According to the learned counsel the latest position regarding the sanctioned strength, strength in position and vacancy position, 35 officers are in position of Executive Engineer against the sanctioned strength 80 and 45 posts are vacant. Of 35, 7 officers are on deputation to NHAI and 11 officers are on deputation with the respondents from outside. As such, 41 positions are available. In the feeder categories of Assistant Executive Engineer and Assistant Engineer strength of 28 and 8 respectively is available. In this manner the learned counsel maintained that number of posts in the grade of Executive Engineer have remained vacant for a long time due to non-availability of required number of eligible candidates in the feeder grades of Assistant Executive Engineer and Assistant Engineer. In these exceptional circumstances, new Rule 5 (viii) and Schedule IV were introduced stating that if in the opinion of the Government it is necessary or expedient to do so, it may for reasons to be recorded in writing and in consultation with UPSC fill a duty post in the grade of Executive

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Engineer by direct recruitment; the qualifications, experience and other matters concerning such recruitment shall be specified in Schedule IV. Learned counsel stated that Government made efforts to fill up the posts of Executive Engineer through promotion on deputation. When these efforts failed, decision was taken to resort to direct recruitment for filling up 13 vacancies of Executive Engineer (Civil). Learned counsel further stated that even if these 30 vacancies of Executive Engineer (Civil) are filled up by direct recruitment, sufficient number of vacancies of the post of Executive Engineer shall still be there for promoting eligible candidates from the feeder categories.

6. As to the argument raised on behalf of the applicants that Rule 5 (viii) and Schedule IV of the amended rules and UPSC advertisement dated 22.2.2001 for filling up 30 vacant posts of Executive Engineer (Civil) are arbitrary and discriminatory, ^{if h} _h has been refuted by the respondents.

7. Respondents have explained that Ministry has been facing acute shortage of officers at the level of Executive Engineer (Civil) for a long time due to non-availability of eligible officers in the feeder categories and also that efforts to obtain sufficient ^h number of people on deputation have not borne fruit, ^{as such} provisions of Rule 5 (viii) were inserted by amending the 1995 Rules. Similarly Schedule IV was also provided in view of the requirements of Rule 5 (viii). It has not

been established on behalf of the applicants in what manner Rule 5 (viii) and Schedule IV etc. have been arbitrary and discriminatory.

8. Next point taken up on behalf of the applicants is that 30 posts of Executive Engineer (Civil) have been advertised for filling up by direct recruitment without compliance of the requirement of Rule 5 (viii).

9. Respondents have stated that posts of Executive Engineers remained vacant due to non-availability of requisite number of eligible candidates in feeder grades of Assistant Executive Engineer and Assistant Engineer. The Ministry also made efforts to fill up these positions by deputation. Failing in both modes, Ministry had no option but to resort to the third mode, i.e., direct recruitment. It is thus not acceptable that requirement of Rule 5 (viii) has not been fulfilled before resorting to mode of direct recruitment for filling up 30 posts of Executive Engineer.

10. As regards the contention of the applicants that respondents action towards filling up vacancies of Executive Engineer through direct recruitment will block promotional avenues of the Assistant Engineers, ^{if} ~~which~~ also does not hold water. Out of a total of 80 sanctioned posts of Executive Engineer (Civil), only 30 are being filled up by direct recruitment through UPSC. The remaining 50 posts in the grade are still open for filling up by promotion from 39 posts of Assistant Executive Engineer (28 at present) and 11 posts of

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Assistant Engineer (8 at present). Besides this as and when any post of Executive Engineer would fall vacant through direct recruits due to their promotion, resignation or otherwise, the same would also be available for promotion for Assistant Executive Engineer/Assistant Engineer.

11. The learned counsel of the applicants had further stated that relaxation under Rule 11 should be made available for serving Assistant Engineers instead of filling up the posts of Executive Engineer by direct recruitment. It may be stated that relaxation under Rule 11 is not a routine measure. It cannot be extended beyond a limit. Promotion to higher post requires assumption of higher duties/responsibilities. It has been contended on behalf of the respondents that they had granted relaxation of 6 months to one year for making ad hoc promotions from Assistant Executive Engineers to Executive Engineers keeping in view large number of vacancies. However, relaxation cannot be resorted to time and again as a routine just to avoid direct recruitment even under "failing which" circumstances.

12. Lastly the learned counsel for the applicants had stated that DOP&T instructions dated 6.6.2000 and 20.12.2000 requiring restructuring of cadres and redistribution of posts has not been completed within the stipulated period of 2 months. Respondents have explained that they had initiated action for amendment in the recruitment rules immediately. However, it is a time consuming process requiring inter-ministerial and institutional consultations/discussions. It has been

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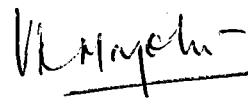
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stated that till the finalisation of the revised recruitment rules the posts cannot be kept vacant as it would adversely affect the smooth functioning of Ministry's work. We are in agreement with the contention of the respondents.

13. Lastly learned counsel of the respondents also relied upon order dated 2.11.2001 in OA 2630/2001 Kishore Chandwani and Others Vs. Union of India and Others in which similar issues had been raised and vires of Rule 5 (viii) and Schedule IV of 1995 Rules and advertisement 22.9.2001 for direct recruitment in respect of 30 posts of Executive Engineer (Civil) had been challenged. After considering detailed contentions of the parties, the OA was dismissed finding no merits in the case. The ratio of that case is squarely applicable to the present case as well.

14. Having regard to the reasons and discussion made above, the OA is dismissed being devoid of merit. No costs.


(KULDIP SINGH)
MEMBER(JUDL)


(V.K. MAJOTRA)
MEMBER (A)

Rakesh