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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. 2630/2001

New Delhi this the 2nd day of November, 2001

Hon'ble Smt Lakshmi Swaminathan, Vice Chairman(J).

Hon'ble Shri Govindan S. Tampi, Member(A).

- 01 Kishore Chandwani (MTech) (01.06.98)
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- 03 Anand Mohan Prasad (BE)(27.07.01)
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- 04 Brijesh Galav (ME) (06.08.98)
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- 05 Dheeraj(ME) (. .00)
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- 06 KL Meera (MTech) (. .01)
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- 07 Lalatendu Behera (MTech) (01.02.01)
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- 08 M Riten Kumar Singh (ME) (03.07.00)
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- 09 Narendra Sharma (ME) (16.06.99)
O/O: Regional Officer
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Highways DCM, JAIPUR
- 10 Pankaj Singh (ME) (. . 01)
LIG-30, Hastal, Vikaspuri
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- 11 Pawan Kumar Gupta (ME) (28.04.00)
17/F/109, Vasundhara
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- 12 Pooran Singh (AMIE) (16.11.99)
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- 13 Rajesh Kumar (ME) (. .)
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- 14 Rakesh Prakash Singh (BE) (15.06.99)
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- 16 Rajneesh Kapoor (MTech) (18.03.99)
B-2/178, Paschim Vihar
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- 17 Rananjay Singh (ME) (26.06.00)
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- 18 Rewti Raman Roy (ME) (03.07.00)
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- 19 Shiva Kumar Kushwaha (AMIE) (20.09.01)
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- 20 Shrawan Kumar Singh (ME) (05.07.99)
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- 21 Udeep K Singhal (MTech) (19.03.01)
S-444, Saccarpur
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- 22 Vinay Kumar Bansal (BE) (05.03.01)
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(By Advocate Shri G.K. Aggarwal)

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Applicants

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1. Union of India through Secretary, Ministry of Road Transport and Highways, Transport Bhawan, Sansad Marg, New Delhi-110001.
2. The Secretary, Department of Personnel & Training, North Block, New Delhi-110001.
3. The Director General (Roads Development), Transport Bhawan, Sansad Bhawan, New Delhi-110001.
4. The Secretary, Union Public Service Commission, Shahjahan Road, New Delhi-110011.

(By Advocate Shri M.M. Sudan)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).

This application has been filed by 25 applicants who have challenged the vires of Rule 5 (viii) and Schedule IV of the Ministry of Surface Transport (Roads Wing), Central Engineering Service (Roads) Group 'A' Rules, 1995, as amended (hereinafter referred to as 'the 1995 Rules'). Rule 5 (viii) and Schedule IV have been introduced by the Ministry of Surface Transport (Roads Wing), Central Engineering Service Group 'A' Amendment Rules, 1997 (hereinafter referred to as 'the 1997 Rules'). Under these Rules, the respondents have issued an advertisement dated 22.9.2001 through Respondent 4/UPSC for direct recruitment in respect of 30 posts of Executive Engineers (Civil) (EEs) by interview which has also been challenged by the applicants.

2. The Tribunal by interim order dated 10.10.2001 noting that the respondents have resorted to direct

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recruitment as per the aforesaid Notification issued by the UPSC in pursuance of the amendment to the Rules vide Rule 5 (viii), had directed that while the process of selection may go on in pursuance of the advertisement, the results shall not be declared till 2.11.2001.

3. The impugned Rules notified by the respondents on 31.3.1997 in the Ministry of Surface Transport (Roads Wing), Central Engineering Service Group 'A' Rules, 1995 read as follows:

"(a) In rule 5, after sub-rule (vii), the following shall be added, namely:-

(viii) Notwithstanding anything contained in this rule, where the Government is of the opinion that it is necessary or expedient so to do, it may, for reasons to be recorded in writing and in consultation with Commission, fill a duty post in the grade of Executive Engineer by direct recruitment, the qualifications, experience and other matters concerning such recruitment shall be as specified in Schedule-IV"

Schedule-IV to Rule 5 (viii) provides, inter alia, that the educational qualifications and experience for direct recruitment to the post of EEs are subject to relaxation, as provided in Note-I which reads as follows:

"Qualifications are relaxable at the discretion of the UPSC in case of candidates otherwise well qualified".

4. The educational qualifications of the candidates applying under the aforesaid Rule read with Schedule IV required a degree in Civil or Mechanical Engineering, as the case may be from a recognised University or equivalent; and 5 years' experience of

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designs/construction of Highways and the machinery used in construction of Highways.

5. Rule 11 of the 1995 Rules as unamended provides as follows:

"Power to relax.- Where the Government is of the opinion that it is necessary or expedient to do so, it may, by order, for reasons to be recorded in writing, and in consultation with the Commission, relax any of the provisions of these rules with respect to any class or category of persons".

6. One of the main contentions of Shri G.K. Aggarwal, learned counsel for applicants, is that by the aforesaid impugned amendments, the basic feature of the service to which the applicants belong has been changed. He has submitted that the applicants belong to a Group 'A' Organised Service and have come after passing a very arduous examination, namely, the Combined Engineering Service Examination. He has submitted that in all such Group 'A' Engineering Services, there is no lateral entry in the higher posts whereas only in their Service, by the aforesaid amendments, the recruitment to the higher posts of EEs has been made by the direct recruitment method. Accordingly, he has submitted that the UPSC should have indicated clearly in the Notification issued with regard to the examination that there is a difference in this Service as compared to the other Group 'A' Services which is by way of an exception. Learned counsel has also submitted that the applicants have taken the first Combined Engineering Examination after the amendment of the Rules in 1997 and, therefore, the exception to the

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conditions in the other Services should have been spelt out by the UPSC which has not been done.

7. Shri M.M. Sudan, learned senior counsel, has correctly submitted that these submissions have been made only orally and there are no averments in the O.A. regarding the conditions or stipulations in the relevant examinations held in 1995 about the basic structure. He has, therefore, submitted that these averments cannot be relied upon by the applicants as he has not had a chance to either agree or refute the same. However, taking into account the peculiar facts and circumstances of the case, we do not consider that the O.A. should be dismissed on the ground that the applicants have no locus standi to impugn the amended Rules of 1997 as submitted by the learned senior counsel for respondents even though, admittedly at the relevant time when the Notification dated 31.3.1997 was issued, they were not qualified for consideration for promotion as EEs.

8. The other main argument of the learned counsel for the applicants is that Rule 5 (viii) and Schedule IV of the amended Rules defeats the very purpose of the Service by providing a very wide non-obstante clause that where the Government is of the opinion that it is necessary or expedient so to do, it may, for reasons to be recorded in writing and in consultation with the Commission, fill a duty post in the grade of Executive Engineer by direct recruitment. He has contended that

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Note-I in Schedule IV giving the power to the UPSC to relax the qualifications in case of candidates otherwise well qualified makes the qualifications provided in the Rules meaningless. He has submitted that a similar power of relaxation is also available under Rule 11 of the Rules where the Government is empowered to grant relaxation of any of the provisions of the Rules with regard to any class or category of persons. His contention is that if under the amended Rules, the UPSC is given power to relax the qualifications so as to recruit EEs by direct recruitment, there is no reason why the Government should not also have considered the case of the applicants for relaxation of the Rules, including their eligibility conditions of 4 years, under Rule 11. This, according to him, has not been at all considered by the competent authority. He has submitted that the applicants belong to an "elite" group of Engineers in a Service as they have successfully passed the Combined Engineering Examination, whereas what the respondents are trying to do arbitrarily and illegally is to bring in another set of Engineers from the open market, whom he refers to as of lesser quality and riff-raffs. He has vehemently contended that the fact that the respondents intend to relax the educational qualifications for outside candidates who do not possess the required qualifications as prescribed in the Rules and at the same time they are unwilling to do the same with regard to the applicants who are already in Government service shows arbitrariness and illegality. He has also submitted that some of the AEEs are discharging the functions of EEs and out of 25 applicants, 18 have M.Sc

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degrees. Therefore, according to him, they are better placed for getting the relaxation under Rule 11, rather than total outsiders and strangers who obviously could not get into Government service along with them and are of inferior quality as Engineers. In this connection, learned counsel has very vehemently submitted that it would have been another matter if the amended Rules had indicated that the five years experience required of the candidates should be in a "responsible" position which is not what has been prescribed. This, according to him, would invite applications from candidates with inadequate experience or experience in very mediocre or third grade Organisations and Institutions. In all these submissions, the thrust of his argument was that when the respondents have such qualified and elite Engineers, like the applicants available with them, what was the need for them to issue the advertisement for direct recruitment to the posts of EEs, without first relaxing the service conditions for the higher post under Rule 11 and affording them a chance of promotion as EEs. He has submitted that by such wrong and arbitrary procedures and Rules, the Government is following a wrong policy of not elevating its own employees which would result in these employees leaving Government service for better placements in other organisations, and loss to the Government. For these reasons, learned counsel has submitted that the amendments in the 1997 Rules should be declared as illegal and arbitrary and violative of the provisions of Articles 14 and 16 and proviso to Article 309 of the Constitution. Consequently, he has also prayed that the UPSC

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advertisement No. 18 dated 22.9.2001 should also be quashed and set aside.

9. We are unable to agree with the above contentions of learned counsel for applicants and find force in the submissions made by the learned senior counsel for respondents. Besides, from the reply filed by the respondents, it is clear that there are a number of posts at the level of EEs which are vacant. Those vacant posts are much larger than the feeder grade of AEEs to which the applicants belong. Apart from that, the presumption of the applicants that the UPSC will resort to the power of relaxation provided under Note-I of Schedule IV to Rule 5 (viii) of the amended Rules in case of the direct recruits who are otherwise well qualified, is only based on conjectures and surmises as the Commission may also get sufficient number of candidates who are qualified, as per the provisions of the Recruitment Rules. We also do not find merit in the submissions made on behalf of the applicants that they are "elite" Engineers because they are qualified through the Combined Engineering Examination whereas anybody else who is yet to be recruited into Government service as per the advertisement is a third grade Engineer and should be prevented from entering Government service. Such an argument if accepted would be counter productive and against the normal Rules which indeed provide several methods of appointments, including direct recruitment, promotions, deputation and transfer, etc. depending on the exigencies and circumstances of the case.

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10. The respondents have also elaborately explained in their reply the reasons why they had to amend the Rules in 1997 by Notification dated 31.3.1997. It is relevant to note that the respondents were facing a peculiar problem as they were not getting sufficient number of persons in the feeder category for promotion to the posts of EEs, which number is much larger than the feeder grade. The policy decision taken by the respondents that they would grant relaxation only from six months to one year for ad hoc promotions from the grade of AEEs to EEs cannot also be faulted. In the circumstances, the contention of the learned counsel for applicants that under Rule 11 of the Recruitment Rules the eligibility conditions of 2 years or more should be relaxed in the case of the applicants and there should be a bar to direct recruitment to fill up the vacant posts of EEs, is not only unreasonable but unwarranted. The respondents have submitted that under the Recruitment Rules, all AEEs who fulfil the eligibility criteria of 4 years service get promotion as EEs immediately thereafter and there are more than 40 posts of EEs vacant for a number of years. They have also given the statement of the vacancy position in the grade of EEs and how they have never been able to fill up all these posts at any stage which required the amendment of the Rules to introduce the element of direct recruitment as an exception in this Service. We also find force in the submissions made on behalf of the respondents that the applicants should have been aware of the amended Rules and cannot impugn the same, especially when they themselves do not fulfil the eligibility conditions for

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promotion. Shri M.M. Sudan, learned senior counsel has submitted that it has been held in a catena of judgements that the applicants have no fundamental right for promotion but only for consideration for promotion. He has relied on a number of judgements, namely, Union of India & Ors. Vs. S. Krishnamurthy & Ors. (1989 (11) ATC 892); A.P. Saxena Vs. Union of India and Ors. (AIR 1968 SC 754); Paluru Ramkrishnaiah Vs. Union of India (1989(10) ATC 378); Syed Khalid Rizvi & Ors. Vs. Union of India & Ors. (1993(1) SLR 89); and State of J&K Vs. Shiv Ram Sharma & Ors. (JT 1999 (2) 483).

11. The learned counsel for applicants in reply to the submissions made on behalf of the respondents has fairly submitted that he does not have any problems with the legal propositions submitted by Shri M.M. Sudan, learned counsel based on the judgements referred to in paragraph 10 above. He, however, submits that the applicants have been deprived of promotion to the posts of EEs which legitimately they could have aspired for in 4 years, which has been totally destroyed and taken away by the respondents by virtue of the impugned amendments of 1997.

12. The contention of the learned counsel for the applicants to either give the applicants relaxation of at least 2 years service in the eligibility conditions under the unamended Recruitment Rules or perhaps in the alternative to keep the higher posts vacant till they qualify would neither be reasonable nor in the interest of

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administration. The presumptuous averments made on behalf of the applicants that they alone belong to the "elite" group of Engineers and so none-else should be recruited by Government in terms of the amended Recruitment Rules, cannot also be countenanced and is accordingly rejected. The reasons for amendment of the Recruitment Rules as spelt out by the respondents in the peculiar set of circumstances prevailing in the Ministry are sufficient to show that in the exigencies of service, there was need for resorting to direct recruitment method for EEs, which is not a method unknown to Service Law. If, as stated by Shri G.K. Aggarwal, learned counsel, he has no problems in accepting the law laid down by the Hon'ble Supreme Court in the aforesaid judgements relied upon by the learned senior counsel for respondents, then we do not find any infirmity in the actions and decisions of the respondents to amend the Recruitment Rules in 1997 to incorporate Rule 5(viii) and Schedule IV in the 1995 Rules. As held by the Hon'ble Supreme Court in **Lift Irrigation Corpn. Vs. P.K. Mohanty** (1991(1 SCALE 399), the policy decision taken by the competent authority is not open to judicial review unless it is mala fide, arbitrary or bereft of any discernible principle. That is not the position here and the reasons given by the respondents for amending the Recruitment Rules of 1995 fully justify the amendments and there is no discrimination against the applicants. As conceded by Shri G.K. Aggarwal, learned counsel, the Supreme Court has also held in a catena of judgements that there is no fundamental right for promotion but only for consideration


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for promotion to an employee subject to his fulfilment of the eligibility and other conditions laid down in the Recruitment Rules. We, therefore, find no justification to set aside the amended Recruitment Rules of 1997 or consequent UPSC advertisement dated 22.9.2001 for recruitment of EEs or any other subsequent actions taken by the respondents.

13. In the result, for the reasons given above, we find no merit in this case. The O.A. is accordingly dismissed. No order as to costs.


(Govindan S. Tampi)
Member (A)


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

'SRD'