

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 2237/99

New Delhi this the 20th day of December 1999

Hon'ble Mr. Justice V. Rajagopala Reddy, VC (J)
Hon'ble Mr. R.K. Ahooja, Member (A)

1. All India CPWD
Scheduled Caste/Scheduled Tribe
Association (recognised)
through its Secretary,
Room: 109B, I-Floor, IP Bhawan,
New Delhi-110002.
2. ML Sahni,
Asstt. Engr (Elect), CPWD,
141/XII, R.K. Puram,
New Delhi-110066

...Applicants
(By Advocate: Shri G.K. Aggarwal)

Versus

1. Union of India through
Secretary, Ministry of
Urban Affairs & Employment
Nirman Bhawan, New Delhi-110011
2. The Director General (Works)
Central Public Works Deptt.
Nirman Bhawan, New Delhi-110011
3. The Secretary,
Union Public Service Commission
Shahjehan Road, New Delhi-110011

...Respondents
(By Advocate: Shri D.S. Mahendru with
Shri R.N. Singh and
Shri Sohan Lal)

ORDER (Oral)

By Mr. R.K. Ahooja, Member (A)

The applicants herein are a recognised
Association of Scheduled Castes and Scheduled
Tribes Engineers in CPWD. Applicant No.2 is a
member of the Association. He is a regular
Asstt. Engineer (E) since 30.3.1979 and is a
diploma holder in Mechanical Engineering.

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2. It is stated that the respondents held a DPC on 29.9.99 for promotions from the posts of Asstt. Engineers to Executive Engineers in CPWD. The applicants who are diploma holders are aggrieved that they have not been considered even though they come within the extended zone of consideration. The respondents on the other hand have stated that the applicants are not entitled to be considered under the 1954 rules because they do not fulfil the minimum eligibility qualifications.

3. We have heard the counsel. Shri G.K. Aggarwal learned counsel for the applicant has drawn our attention to Rule/23 A in regard to relaxation for Scheduled Castes and Scheduled Tribes.

4. Rule-21(3) and Rule 23(A) reads as follows:-

Rule-21 (3)

No Assistant Engineer shall be eligible for promotion to the service, unless he:-

(a) would, but for age, be qualified for admission to the competitive examination under Part-III of these rules.

(b) has rendered at least three years' service in a permanent or temporary capacity as an Assistant Engineer and subordinate under the Central Government, and

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(c) satisfied the Commission that he is in every respect suitable for appointment to the service".

Rule-23-A

" Saving- Nothing in these rules shall effect reservations, relaxations of age limit and other concessions required to be provided for persons belonging to the Scheduled Castes and Scheduled Tribes and other special categories of persons in accordance with the orders issued by the Government from time to time".

5. In a nutshell the Asstt. Engineers to be eligible for promotion to the grade of Executive Engineers should have the minimum educational qualification which would entitle them for direct recruitment in the competitive examination i.e. they should have a degree in a relevant line of Engineering. However, as per the amendment introduced in 1972 the proviso to the said rule laid down that an Assistant Engineer of "outstanding ability and record" will also be entitled for consideration "in relaxation of the educational qualifications provided in clause (a)".

6. It is the case of the applicants that in terms of rule 23-A all the reservations, relaxations of age limit and other concessions to be provided for persons belonging to the Scheduled Castes and Scheduled Tribes are applicable in their case and would also provide for consideration of Asstt. Engineers belonging to Scheduled Castes for promotion to the grade of Executive Engineers even if they do not fulfil

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the requirement of outstanding merit laid down in proviso to rule-21 of the rules. On the other hand the case of the respondents is that the proviso itself is a relaxation to the minimum educational qualifications and, therefore the relaxation provided in Rule-23A cannot further extend the scope of this relaxation.

7. Shri Aggarwal learned counsel for applicant has vehemently argued that if the interpretation of the respondents were not to be ~~selected~~ ~~extended~~ then rule 23-A would become redundant and will have no meaning. He relied on the case of Krishan Kumar and others Vs. Union of India & Others in OA-2730/93 decided on 7.9.99 in which this Tribunal held, relying on the Supreme Court decision in U.P. Rajya Vidyut Parishad SC/ST Karamchari Kalyan Sangh Vs. U.P. State Electricity Board and others that the SC/ST candidates will not be clubbed with the general category in the matter of ascertaining the zone of consideration and also that the benchmark for promotion would not be applied to the SC candidates. According to the learned counsel the stipulation in regard to outstanding merit in proviso to Rule-21 is a benchmark and hence in terms of the judgment in Krishan Kumar's case (supra), this requirement of benchmark would not be applicable to the SC Asstt. Engineers.

8. We are unable to agree with this interpretation. The minimum eligibility requirement for promotion of Asstt. Engineers to

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the grade of Executive Engineers is a degree in Engineering and ~~an~~ Asstt. Engineers belonging to the Scheduled Castes who possess a degree in Engineering may be considered if his name falls within the extended zone of consideration as provided in the Government orders of relaxation in respect of SCs. If there is a benchmark for promotion of Asstt. Engineers to Executive Engineers, even when such Asstt. Engineers have ~~the~~ requisite educational qualification of degree the same benchmark cannot be applied to the SC candidates. We have, however, a situation in which there are two alternative eligibility qualifications. One is that the Asstt. Engineer may possess a degree in Engineering, alternatively he may possess a diploma but should be of outstanding merit. In either case it is an essential qualifications for being eligible for consideration. This is not to say that the mere posession of this minimum qualification automatically entitles them to promotion. As pointed out by the learned counsel for private respondents the Supreme Court has also held in S. Vinod Kumar and Anr. Vs. Union of India and others JT 1996 (8) SC 643 that reservations for OBC/SC/ST in promotion cannot be made over-looking the efficiency of the administration. It was also pointed out by the Supreme Court that provision of lower qualifications is not permissible under Article 16(4) of the Constitution in view of the command contained in Article 335. Therefore, if a person cannot be promoted from the rank of Asstt.

Ques

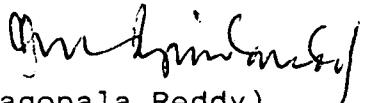
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Engineer unless he possess a degree in Engineering, it is the minimum qualification for SC candidates also. He can equally not be promoted as Executive Engineer if he is only a diploma holder but does not have the added requirement of outstanding merit. The deficiency which a diplomaholder suffers as a educational qualifications is made good only if he has shown outstanding merit as an Asstt. Engineer. Therefore, unless the SC candidates do not have the requirement laid down in proviso to Rule-21 they cannot be considered eligible for consideration for promotion to the rank of Executive Engineer.

9. In view of the above discussion, we do not find any merit in the OA. The OA is dismissed. No costs.


(R.K. Ahooja)

Member (A)


(V. Rajagopala Reddy)

Vice-Chairman (J)

cc.