

Central Administrative Tribunal
Principal Bench

O.A. 1168/94

(2)

New Delhi this the 16th day of February, 2000

Hon'ble Shri S.R. Adige, Vice Chairman (A).
Hon'ble Smt. Lakshmi Swaminathan, Member (J).
Hon'ble Smt. Shanta Shastry, Member (A).

1. Shri I.P. Awasthi,
Assistant Engineer,
S/o late Shri Lekh Raj Awasthi,
1099 Sec.17, Faridabad,
Pin-101001.
2. M.D. Nagpal,
Assistant Engineer,
S/o late Shri Gulab Rai,
I 158, NIG, Faridabad.
3. M.S. Chauhan,
A.E.
S/o Shri B.S. Chauhan,
1031, Type IV NH 4,
Faridabad.
4. S.C. Arora,
A.E.
S/o late Shri Janki Ram,
1017, Type IV NH 4,
Faridabad.
5. S.P. Sharma,
S/o Shri Naval Kishore Sharma,
1005, Type IV, NH4,
Faridabad.
6. S.C. Chopra,
S/o late Shri K.N. Chopra,
49, Adarsh Apartment,
A/2, Paschim Vihar,
110063.
7. S.P. Bhatia,
S/o Shri Nebh Raj,
134, Sec.21A,
Faridabad-121001.

... Applicants.

By Advocate Shri K.B.S. Rajan.

Versus

1. Union of India through
The Secretary,
Ministry of Water Resources,
Shram Shakti Bhawan,
New Delhi.
2. The Chairman,
Central Ground Water Board,
Faridabad.

... Respondents.

By Advocate Shri Rajinder Nischal.

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ORDER

Hon'ble Smt. Lakshmi Swaminathan, Member (J).

The Full Bench constituted as per the Tribunal's order dated 30.7.1999 in O.A. 1168/94 has referred the following point for consideration:

"Whether the prescription of a ratio 20% to the Assistant Engineers and 80% to the Drillers/Driller-in-Charge for promotion to the post of Assistant Executive Engineers in the amended Recruitment Rules for the post of Assistant Executive Engineer in CGWB notified on 23.10.92 is liable to be struck down as arbitrary, unreasonable and discriminatory, against the Assistant Engineers".

2. The brief facts of the case are that the applicants, seven in number, who were Assistant Engineers (AEs) in the Central Ground Water Board (CGWB), have filed this application. They have questioned the vires of the revised Recruitment Rules for the post of Assistant Executive Engineers (AEEs) of the CGWB notified by Notification No. 21/3/89-GW-2518 on 23.10.1992 to the extent the quota for promotion from the category of AEs to the grade of AEEs has been fixed as 20%, while the category of Drillers-in-Charge/Drillers is given 80%. Prior to the revision of the Recruitment Rules, as per the Rules of 1981, the method of recruitment for the posts of AEEs was 50% by promotion, failing which by direct recruitment and 50% by direct recruitment. In case of recruitment by promotion/deputation/transfer, they have to be made from AEs, Store Officers and Drillers/ Drillers-in-Charge with 3 years regular service in the respective grades possessing at least a Diploma in Engineering of a recognised Institute in any subject as mentioned in the essential qualification. For direct recruitment to the post of AEs, the qualification prescribed is a degree in Engineering and for promotion the

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minimum qualification is a Diploma in Engineering. Therefore, all the AEs are either Engineering Graduates or Diploma holders. In the case of Drillers-in-Charge/Drillers, the qualification required for direct recruitment is a Degree or Diploma in Engineering and for promotion to the post of Drillers-cum-Mechanics, the qualification prescribed is 8 years of service in the grade on regular basis and a pass in matriculation. Therefore, it is seen that all the Drillers/Drillers-in-Charge need not be even Diploma holders in Engineering but it is sufficient for them to have 8 years in the grade plus matriculation certificate, whereas an AE has to be either a Graduate or a Diploma holder. Qualified Drillers-in-Charge/Drillers and AEs were treated on par for promotion to the next higher grade of AEEs, prior to the amendment of the Recruitment Rules in October, 1992.

3. At the time of the revision of the Recruitment Rules, admittedly, there were 96 posts of Drillers-in-Charge/Drillers and 27 posts as AEs. In O.A. 1168/94, it has been stated that while all the AEs were minimum Diploma holders, among the 82 Drillers-in-Charge as on the date when the application was filed against the sanctioned strength of 96, only 20 had at least a Diploma in Engineering. This being the ground reality, the Recruitment Rules have been amended for the post of AEEs vide Notification dated 23.10.1992. The amended Recruitment Rules provide the method of Recruitment for AEEs as follows:

- (a) 25% by direct recruitment; and
- (b) 75% by promotion.

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The 75% promotion quota is further divided into two, namely, (i) 20% of the posts to be filled by promotion of AEs and (ii) 80% by promotion of Drillers-in-Charge/Drillers, who have at least the qualification of Diploma in Engineering. The applicants are aggrieved by this amendment to the Recruitment Rules. According to them, they have been discriminated as the Drillers-in-Charge/Drillers have been given a much larger proportion of the posts by way of the promotion quota, which is not in proportion to the number of persons in that class who actually have the qualification of Diploma in Engineering. Shri K.B.S. Rajan, learned counsel has contended that this has led to an anomalous situation because in the case of Drillers-in-Charge/Drillers who acquire the qualification of Diploma in Engineering, almost immediately they will get promoted as AEEs, whereas an AE has to be considered for this post against a much smaller portion i.e. 20% when admittedly an AE is already either in possession of a Degree or of Diploma in Engineering. Learned counsel has submitted that the position existing before the Recruitment Rules were amended was quite satisfactory where the seniority list was maintained of eligible officers belonging to these two categories in the feeder posts.

4. Learned counsel for the applicants has further submitted that the respondents have not taken into account the correct factual position or the ground reality, namely, that only about 20 or so of the Drillers-in-Charge/Drillers are eligible to be considered for promotion as AEEs at any time as they have the minimum qualifications and not the others. He has contended that the promotee quota for these

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two categories as given by the amended Rules has, therefore, given an undue advantage to the Drillers-in-Charge/Drillers to the disadvantage of the other class to which the applicants belong, namely, the AEs. He has, therefore, submitted that either the respondents should continue with the Rules which existed prior to the amendment in 1992 or carry out a proper review of the persons who are qualified in each of the two categories at any point of time, taking into account the ground reality and arrive at a percentage which is reasonable and proportional between the two categories to be considered for promotion to the post of AEEs. He has relied on the judgement of the Supreme Court in **Govind Dattaray Kelkar & Ors. Vs. Chief Controller of Imports and Exports & Ors.** (AIR 1967 Vol.54 839). He has also submitted that the judgement of the Tribunal in **P.C. Rao & Anr. Vs. Union of India & Anr.** (O.A.1553/93 - Hyderabad Bench), decided on 8.1.1997, cannot be relied upon as the correct facts were not placed before that Bench, where wrong information had been given that the majority of the Drillers-in-Charge were Diploma holders which now the respondents are admitting is not the correct position. In the circumstances, learned counsel has prayed for quashing the percentage laid down for promotion to AEEs in the amendment notification dated 23.10.1992 as illegal and invalid. He has fairly added that the actual percentage may be left to the Government to work out within the frame work of accepted legal principles and reasonableness if they still want to prescribe the percentage between the two feeder categories for promotion to AEEs.

5. We have seen the reply filed by the respondents and heard Shri Rajinder Nischal, learned counsel. He has submitted that the Recruitment Rules have been amended after due consideration of the relevant instructions and guidelines issued by DOP&T and UPSC. He has submitted that there are at present 96 sanctioned posts of Drillers-in-Charge/Drillers in CGWB out of which 82 are in position. He has also submitted that the nature of work done by the respondents i.e. the CGWB requires more Drillers than AEs. He has submitted that the DOP&T instructions dated 18.3.1988 have been followed in fixing the ratio in the promotion quota, keeping in view the sanctioned strength of both the categories i.e. 96 posts for Drillers-in-Charge/Drillers and 26 for AEs. During the hearing, he has submitted that there were actually only 16 Drillers-in-Charge/Drillers who were eligible for promotion to the post of AEEs as they have the minimum qualification of Diploma in Engineering and the others do not possess the basic qualification for being considered for promotion. He has submitted that although at the moment there is an imbalance in the Recruitment Rules for promotion to the post of AEs, the respondents have taken into account the future probabilities and their need while amending the Recruitment Rules. He has further admitted that at present among the Drillers-in-Charge, as there are only 16 persons who have Diploma in Engineering, to this extent a wrong statement had been made before the Hyderabad Bench of the Tribunal in P.C. Rao's case (supra) that majority of them are Diploma holders in which the amendments to the Recruitment Rules were upheld and the O.A. filed by other AEs was dismissed. He has also

submitted that they have advertised 16 posts for direct recruitment as Drillers who will have the minimum qualification of a Diploma in Engineering.

6. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

7. In the amended Recruitment Rules notified on 23.10.1992, it is seen that there are 28 posts of AEEs. The method of recruitment to this post is (a) 25% by direct recruitment and (b) 75% by promotion, failing which by direct recruitment. In the case of promotion it is further divided into (i) 20% from AEs and (ii) 80% from Drillers/Drillers-in-Charge, with 3 years service in the grade and possessing at least Diploma in Engineering from a recognised Institute. Earlier, under the unamended Rules of 1981, in the case of recruitment by promotion, AEs, Store Officers, Drillers/Drillers-in-Charge with 3 years regular service in the respective grades and possessing at least a Diploma of a recognised Institute were qualified to be considered for promotion to the post of AEEs. The applicants are aggrieved by what they term as excessive percentage of 80% which has now been allocated to Drillers/Drillers-in-Charge for promotion to the higher post. The strength of AEs to Drillers/Drillers-in-Charge is 26:96. There is a material change in the facts which have been brought out in the present case by Shri Rajinder Nischal, learned counsel from the facts which were stated before the Tribunal (Hyderabad Bench) in OA 1158/98 which is that, while at the moment there are only 16 diploma holders among the Drillers-in-Charge, it was mentioned there that the majority of the Drillers-in-Charge were Diploma holders.

Therefore, taking into account these figures, we find force in the submissions made by Shri K.B.S. Rajan, learned counsel that it is possible that the moment a Driller-in-Charge acquires a Diploma in Engineering and 3 years service, he would be considered and promoted to the next higher grade against the 80% quota, whereas an AE would have to await a much longer period after fulfilling the eligibility conditions to come within the 20% quota, now allocated under the amended Rules. The contention of the learned counsel for the respondents that the proportion has been worked out strictly based on the sanctioned strength of the posts, namely, 26 for AEs and 96 for Drillers/Drillers-in-Charge, without taking into account the further eligibility conditions required for consideration of the latter category for promotion, has led to this anomalous situation. His contention that the respondents have followed the Instructions and guidelines contained in DOP&T O.M. dated 18.3.1988 is no answer as these are only guidelines and cannot be followed where it leads to an anomalous or absurd situation or an unreasonable conclusion, like in the present case. It was for the respondents to have computed the relative quota of the feeder categories, i.e. AEs and Drillers/Drillers-in-Charge for promotion, taking into account the relevant factors, including the proportion of the latter category who acquire the Diploma in Engineering necessary for ^{being} considered for promotion to the grade of AEE, before laying down the percentage for each category. This has evidently not been done by the respondents who have admittedly blindly followed the norms laid down in the DOP&T O.M. dt. 18.3.1988 without considering the ground realities. In the circumstances of the case, the conclusion

arrived at by the Hyderabad Bench of the Tribunal in OA 1553/93 based on incorrect facts cannot be held to be either binding or justifiable.

8. The learned counsel for the respondents had submitted that the respondents have advertised for recruitment of 16 Drillers-in-Charge who will have Diploma qualifications thereby increasing the numbers who will become qualified for promotion. This process would take a year from the date of publication of the advertisement. The impugned amendments to the recruitment rules have been notified w.e.f. 23.10.1992. Therefore, taking into account the facts, we see force in the submissions made by Shri K.B.S. Rajan, learned counsel that the respondents have failed to maintain equality of opportunity to the two categories of personnel in the feeder grades, namely, AEs and Drillers-in-Charge/Drillers. By the amendment notification, giving 80% of the promotion quota to Drillers/Drillers-in-Charge and 20% to AEs, without taking into account the ground realities that Drillers-in-Charge possessing Diploma in Engineering are still very much in the minority, is not justifiable.

9. In the result, we answer the question placed before us in the affirmative. Accordingly, the Notification dated 23.10.1992 so far as it prescribes a ratio of 20% to the Assistant Engineers and 80% to the Drillers/Drillers-in-Charge for promotion to the post of Assistant Executive Engineers is struck down as arbitrary, unreasonable and discriminatory against the Assistant Engineers. We, however, make it clear that it will be open to the respondents to re-consider the issue of any

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amendments to the recruitment rules for the post of AEEs and prescribe the percentage to be considered from the feeder categories.

10. In the above circumstances, O.A.1168/94 succeeds and is allowed. No costs.

S.R. Adige
(S.R. Adige)
Vice Chairman(A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

Shanta J
(Smt. Shanta Shastry)
Member(A)

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