

Central Administrative Tribunal
Principal Bench

O.A. 2228/2000

New Delhi this the 14th day of January, 2002

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

Munni Ram,
S/o Shri Shiv Nandan Ram,
Deputy Director,
Central Water Commission,
R.K. Puram,
New Delhi.
R/o 312, Sector IV,
R.K. Puram,
New Delhi.

..... Applicant.

(By Advocate Shri G.S. Lobana)

Versus

1. Union of India through
its Secretary,
Ministry of Water Resources,
Shram Shakti Bhawan,
New Delhi.

2. Secretary,
Central Water Commission,
Sewa Bhawan, R.K. Puram,
New Delhi.

..... Respondents.

(By Advocate Shri N.K. Aggarwal)

O R D E R

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

The applicant has impugned the O.M. dated 26.4.2000 issued by the respondents rejecting his representation to grant him ad hoc promotion to the grade of Director/Superintending Engineer (SE), in which they have stated that the applicant is not eligible for promotion to the post of Director/SE as per the Central Water Commission (CWC) (Group 'A') Service Rules, 1995 which were prevailing at the time of the occurrence of the vacancies.

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2. The brief relevant facts of the case are that the applicant has a three years diploma course in Civil Engineering and joined service with the respondents, that is, CWC, as Junior Engineer in August, 1968. He had been subsequently promoted as Deputy Director (Senior Time Scale (STS)) w.e.f. 28.2.1990 vide order dated 20.2.1996. As per the Recruitment Rules dated 10.4.1982, prior to the amendment on 19.11.1995, officers in STS with five years regular service in the Grade were eligible for further promotion. In accordance with the amended Rules of 1995, only officers in STS with five years regular service and possessing a Degree in Engineering (Civil ^{or ~~ME~~} and Mechanical) or equivalent from a recognised University/Institute were eligible for consideration. The main grievance of the applicant is that although as per the earlier Recruitment Rules of 1982, he was eligible for promotion to the post of Director/SE sometime in 1995, prior to the enforcement of the amended Recruitment Rules, that chance has been denied to him by the amended Rules which came into effect in November, 1995. He has also contended that even after the amendment of the Recruitment Rules in 1995, several diploma holders have been promoted to the post of Director/SE by order dated 20.3.1998 (Annexure A-5). It is noted that the promotion order dated 20.3.1998 promoting these officers is on ad hoc basis which is a temporary and internal arrangement and had been made subject to the final orders in the judgements of the Delhi High Court and Tribunal mentioned therein. He has also submitted that a few other

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persons who were junior to him have also been promoted by order dated 11.10.1999 which is also an order promoting them on ad hoc basis. He has also referred to another promotion order dated 9.2.2000 (Annexure A-8) on the same lines promoting certain other officers on ad hoc basis. According to the applicant, he has been singled out in the matter of promotion in the grade of Director/SE in spite of the fact that there were vacancies before the amendment of the Recruitment Rules against which he could also have been promoted. Shri G.S. Lobana, learned counsel, has submitted that he has challenged the validity and justification of the amended Recruitment Rules which, according to him, are arbitrary and unjustified as these create unnecessary classification among those employees who had already put in more than requisite number of years prior to the amendment of the Rules. He has submitted that against the vacancies which occurred prior to the amendment of the Recruitment Rules, other eligible officers had been promoted, excluding the applicant and also that the vacancies have been clubbed together without breaking them up yearwise. Learned counsel has submitted that relaxation of the educational qualifications should also be given to the applicant as given to other four senior diploma holders, so that he too can be granted promotion on ad hoc basis as Director/SE. He has, therefore, prayed that the impugned order dated 26.4.2000 may be quashed and set aside with a direction to the respondents to consider the applicant to the post of Director/SE (Junior Administrative Grade - Ordinary Grade) with retrospective effect with all

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consequential benefits. He has also prayed that the amended Recruitment Rules should be declared as null and void. He has relied on a number of judgements, namely, R. Raanganathan and Anr. Vs. Govt. of Tamil Nadu & Ors. (1984 (3) SLR 165 - M.P. High Court), Punjab State Electricity Board, Patiala and Anr. Vs. Ravinder Kumar (AIR 1987 SC 367), The Employment of A.P. Dairy Development Co-operative Federation Ltd. Vs. Managing Director, A.P. Dairy Development Co-operative Federation Ltd. Hyderabad & Ors. (1988 (3) SLR 589 - Andhra Pradesh High Court), J.C. Yadav & Ors. Vs. State of Haryana & Ors. (JT 1990 (1) SC 278), Sandeep Kumar Sharma Vs. State of Punjab & Ors. (1997 (10) SCC 298).

3. We have seen the reply filed by the respondents and heard Shri N.K. Aggarwal, learned senior counsel. In the reply, they have stated that the vacancies of Director/SEs of 1994-95 onwards could not be filled on regular basis because of certain administrative reasons which were beyond their control. According to them, the applicant, as per his seniority position would have been covered in the zone of consideration for the vacancies of the year 2000-2001 but in the meantime, the CWE (Group 'A') Service Rules were amended and notified on 19.11.1995. Learned senior counsel has submitted that as the applicant did not fulfil the necessary qualifications as per the provisions of the amended Recruitment Rules of 1995, he is not entitled for any promotion, as claimed.

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4. With regard to the promotion of Shri K.V. Bhatt who is shown at Serial No. 95 of the seniority list of Deputy Directors/Executive Engineers (EEs), they have submitted that the DOP&T had relaxed the conditions of educational qualifications for him and, therefore, he was considered for promotion, inter alia, on ad hoc basis whereas that Department did not agree to relax the conditions in respect of the applicant. The applicant is at Serial No. 105 of the seniority list and the applicant ~~himself~~ has stated that after Shri K.V. Bhatt who was at Serial No. 95, he was ^{the 1st} next diploma holder in the seniority list. They have also clarified that although some of the juniors to the applicant were promoted, they were eligible as per the conditions laid down in the amended Recruitment Rules of 1995 and hence, they were promoted on ad hoc basis. They have also submitted that it was not only the applicant but two other officers, namely, S/Shri Ram Summiran and S.K. Maheshgauri who are next below to the applicant in the seniority list who also do not possess a Degree in Engineering, had not been promoted on ad hoc basis. They have also added that the DOP&T had granted relaxation of educational qualification in respect of S/Shri S.N. Chandrasekhara, H.R. Bhagat, Sri Chand and K.V. Bhatt who were, therefore, granted ad hoc promotion. With regard to these officers, they have stated that ^{a 1st} one time relaxation of educational qualification had been granted in respect of these four officers and the DPC had recommended their names for promotion to the JAG grade.

The vacancies against which these four persons have been considered who had come within the zone of consideration are for the vacancy years 1995-96 and 1998-1999. Learned counsel has relied on the judgement of the Supreme Court in State of J&K Vs. Shiv Ram Sharma (1999 (2) SLR 247). His contention is that the applicant has no indefeasible right to claim for promotion to a higher grade to which the qualification could be prescribed and there is no guarantee that those rules framed by the Government in that behalf would always be favourable to them, which in this case has been done by the amendment of the Recruitment Rules in November, 1995. He has, therefore, prayed that the O.A. may be dismissed.

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

6. We find some merit in the contentions of the applicant in the rejoinder, that his case was not properly processed along with the aforesaid four persons who have been admittedly granted ^a one time relaxation in respect of ^{the} educational qualifications. These four persons, namely, S/Shri S.N. Chandrasekhara, H.R. Bhagat, Sri Chand and Shri K.V. Bhatt are at Serial Nos. 13, 44, 45 and 95, respectively in the seniority list of Deputy Directors/Executive Engineers. From the averments made by the respondents themselves, it is seen that ^a one time relaxation had been granted to these four persons as they

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had come within the zone of consideration for the vacancy year of 1995-96 and 1998-99. It is not denied by the respondents, as also seen from the facts mentioned in their reply that the vacancies have arisen after coming into force of the amended Recruitment Rules of 1995. The applicant has also stressed on the fact that he is the next diploma holder after Shri K.V. Bhatt at Serial No. 105 who has admittedly not been given the relaxation which benefit has been given to others even after coming into force of the 1995 Rules. The reply of the respondents that the DOP&T had relaxed the conditions of educational qualifications in respect of the aforesaid four officers so that they could be promoted on ad hoc basis, has not been clarified as to what reasons prevailed on them to do so. In the impugned order dated 26.4.2000, the reason given by the respondents for rejecting his representation regarding ad hoc promotion to the post of Director/SE is that since he does not fulfil the requisite educational qualification, that is a Degree in Engineering, for that post as per the amended Rules, prevailing at the time of occurrence of the vacancies, he is not eligible for promotion. However, the same condition was relaxed in respect of the other four persons for whom relaxation had been given, even for the vacancies which arose after the amendment of the Rules. In the facts and circumstances, we find substance in the contention of the learned counsel for applicant that the applicant has been discriminated vis-a-vis other persons with similar qualifications like him who have been granted relaxation in possession of the educational qualifications,

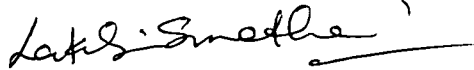
which has been denied to him. With regard to promotion of the persons who are junior to the applicant, who possess the Degree in Engineering (Civil or Mechanical), as required under the amended Rules, they stand on a different footing, as they admittedly fulfil the educational qualifications as prescribed in the amended Rules. But for the reasons given above, the impugned O.M. dated 26.4.2000 has to be quashed and set aside, as no reasons have been given by the respondents as to why a similar benefit has not been extended to the applicant and what was the distinguishing feature in his case which prevented them from relaxing the educational qualifications prescribed in the Rules which was done for the other four officers named above.

7. However, with regard to the submissions made by the learned counsel that the amended Rules are not justified, discriminatory, illegal or arbitrary, we find no merit in the same. The judgement of the Hon'ble Supreme Court in Shiv Ram Sharma's case (supra), is relevant wherein it has been held that "The law is well settled that it is permissible for the Government to prescribe appropriate qualifications in the matter of appointment or promotion to different posts". Therefore, this part of the claim for declaring the amended Recruitment Rules as null and void is without merit and ^{is} rejected.

8. In view of what has been stated above, the impugned O.M. dated 26.4.2000 issued by the respondents is

quashed and set aside and the O.A. is disposed of with the following directions:

Respondents are directed to reconsider the case of the applicant for promotion on ad hoc basis to the post of Director/SE in the same manner as they have done by relaxing the educational qualifications in respect of the aforesaid four officers which they had admittedly done earlier. In case there is need to reject the applicant's claim, the respondents shall pass a reasoned and speaking order giving the reasons for doing so, supported by the rules and regulations they rely upon and clearly show how his case is different from the other four persons, referred to above. This shall be done within three months from the date of receipt of a copy of this order, with intimation to the applicant. No order as to costs.



(Smt. Lakshmi Swaminathan)
Vice Chairman (J)



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

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