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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 2133/89  
T.A. No.

1989

DATE OF DECISION 16.11.1989

Shri Ashok Kumar Sharma Applicant (s)  
and Others

Shri Lokesh Kumar Advocate for the Applicant (s)

Versus  
Union of India & Others Respondent (s)

Smt. Raj Kumari Chopra Advocat for the Respondent (s)  
Shri P.P. Khurana, Counsel for the U.P.S.C.

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. I.K. Rasgotra, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. To be circulated to all Benches of the Tribunal ? *No*

JUDGEMENT

(delivered by Hon'ble Shri P.K. Kartha, V.C.)

43 Junior Engineers working in the Central Public Works Department (C.P.W.D.) at New Delhi, filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying that Rule 3 of the Rules made by the Ministry of Urban Development on 23rd September, 1989 for a limited departmental competitive examination for promotion from the grade of Junior Engineer (Civil/Electrical) to the grade of Assistant Engineer (Civil/Electrical) in the Central Public Works Department to be held by the U.P.S.C. in 1989 be quashed on the ground that it is illegal, arbitrary and unreasonable. By way of interim relief, they have prayed that they should be allowed to appear in the examination scheduled to be

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held on 30.12.1989.

2. The application came up for admission on 9.11.1989, when we went through the records of the case carefully and heard the learned counsel for both the parties. It was felt that the application could be disposed of at the admission stage itself.

3. Rule 3 for the Limited Departmental Competitive Examination which has been impugned in the present application is as follows:-

"3. Regularly appointed officers of the Grade of Junior Engineer (Civil/Electrical) of the Central Public Works Department who on 1st July, 1989 satisfy the condition of having put in four years' service as Junior Engineers in the Department shall be eligible to appear at the examination.

NOTE - Junior Engineers of the Central P.W.D. who are on deputation to ex cadre posts with the approval of the competent authority will be eligible to be admitted to the examination, if otherwise eligible."

4. The examination is proposed to be held in accordance with the provisions of the Recruitment Rules which envisage filling up of 50 per cent of the vacancies by selection on the basis of merit and the remaining 50 per cent by selection from among Junior Engineers on the basis of a Limited Departmental Competitive Examination to be held in accordance with the rules to be made by the Central Government after consultation with the U.P.S.C.

5. A contention was raised at the Bar to the effect that the rules notified by the Ministry of Urban Development have not been made under the proviso to Rule 309 of the Constitution. In our opinion, this does not make any difference as regards the legal position urged before us.

6. Junior Engineers in the C.P.W.D. have 2 two avenues for promotion to the post of Assistant Engineer, viz., by selection on the basis of merit as well as by

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selection on the basis of limited departmental competitive examination. Thus, there are two channels of promotion open to them.

7. Limited competitive examinations have been held in the past. The applicants have referred to the examinations held in 1978, 1979, and 1981. The proposed examination in December, 1989 is being held after a gap of nearly 8 years. The records reveal that this is the last examination to be held under the auspices of the U.P.S.C. The respondents have stated that they will hold such examination from 1990 onwards without associating the U.P.S.C. in the conduct of the examination.

8. The main attack <sup>✓</sup> ~~against~~ Rule 3 mentioned above is that it lays down the cut-off date of 1st July, 1989 for the purpose of eligibility to appear at the examination. A Junior Engineer who has put in 4 years' service as on 1st July, 1989 alone will be eligible to appear at the examination. The applicants do not fulfil this eligibility criterion as they had joined as Junior Engineers after 1.7.1985 but before 30.12.1985. Had the respondents fixed the cut-off date as 1.7.1990, all the applicants would have been eligible to appear at the examination. This is precisely the grievance of the applicants.

9. In this context, the applicants have drawn attention to the departure made in the procedure for holding the examination in 1989 compared to the earlier examinations. This is sought to be illustrated by the following table:-

| Date of Notification                   | <u>1978</u> | <u>1979</u> | <u>1981</u> | <u>1989</u> |
|--|-------------|-------------|-------------|-------------|
| Date of Notification                   | 1.4.78      | 28.4.79     | 31.10.81    | 23.9.89     |
| Last date of submission of application | 15.5.78     | 11.6.79     | 14.12.81    | 30.10.89    |
| Date of eligibility (cut of date)      | 1.7.78      | 1.7.79      | 1.7.82      | 1.7.89      |
| Date of Examination                    | 18.7.78     | 18.9.79     | 6.4.82      | 30.12.89    |

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10. It will be noticed from the foregoing table that for the years 1978, 1979, and 1981, the cut-of date was fixed some months after the last date of submission of the applications while in the case of the proposed examination, the cut-of date has been fixed as prior to the last date of submission of the application. While the cut-of date is 1.7.1989, the last date of submission of the applications is 30.10.1989. The applicants contend that the crucial date should be the date of examination, which is 30th December, 1989 and not an arbitrary date which has been fixed in the rules, which is 1st July, 1989. They have, therefore, contended that the fixation of the date of 1st July, 1989 for the purpose of eligibility to appear at the 1989 Examination is illegal, arbitrary and unreasonable.

11. The respondents have denied the aforesaid contentions. According to them, the applicants have no legal right to file the present application as they do not possess the requisite service of four years in accordance with the rules for the Examination. They have sought to uphold the validity of Rule 3 which is impugned before us. In this context, they have stated in their reply affidavit that the rules for the examination have been framed in the larger interest of the employees and that whatever date is prescribed as the crucial date, it is bound to affect some candidates and it is not possible to satisfy each and every candidate. If the contention of the applicants that the date of holding the examination is to be reckoned as the crucial date is accepted, it would necessitate changing the crucial dates every time the

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schedule of an examination is changed and this would neither be administratively advisable nor in the interest of the candidates. The U.P.S.C. holds two more departmental examinations in respect of Section Officers' Grade and Under Secretary's Grade. The crucial date for those examinations is also taken as on 1st July every year as the examination is generally held in the latter half of the year.

12. The respondents have also sought <sup>to</sup> ~~assuage~~ the feelings of the Junior Engineers by adding that no upper age limit has been prescribed for appearing at the examination and that the candidates who are not eligible to take the 1989 examination, can take the 1990 examination. They have stated that the rules are being amended for this purpose and that the next examination will be held by the end of 1990 and thereafter, it will be conducted regularly and in time.

13. The applicants have made a point that the cut-off date for the purpose of eligibility to appear at the examination has been fixed not in the larger interest of the public, or the employees and that this will create a condition of stagnation (vide para.6 of the rejoinder affidavit filed by the applicants). All the applicants before us are between the age-group of 25 and 27 years and we do not think that they have any cause to complain about <sup>a</sup> while they are <sup>a</sup> stagnation ~~at~~ the threshold of their service.

14. The learned counsel for the respondents also mentioned during the oral arguments that about 3,000 candidates who fulfil the eligibility conditions under Rule 3, will be appearing at the 1989 Examination for

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84 vacancies on the Civil side and 15 vacancies on the Electrical side. Evidently, these candidates will be belonging to a higher age-group and removal of their stagnation would sub-serve public interest and promote better morale in the Service.

15. We see no illegality or arbitrariness, or unreasonableness in the fixation of 1st July, 1989 as the cut-of date for the purpose of eligibility. In this context, reference may be made to the decision of the Supreme Court in H.V. Pardasani & Others Vs. Union of India and Others, 1985 (2) S.C.C. 468 at 475 and 476. In that case, the Supreme Court considered the question of the validity of Note 2, appearing under Rule 12(5) of the Central Secretariat Service Rules, 1962 <sup>which</sup> ~~and~~ dealt with the definition of "approved" service as follows:-

"in case of persons included in the Select List for the Section Officers' Grade 'approved service' for the purpose of this rule shall count from July 1 of the year in which the names of the officers are included in the Select List, in the case of direct recruits to the Section Officers' Grade, such service shall count from July 1 of the year following the year of the competitive examination on the results of which they have been recruited provided that where there is a delay of more than three months in the appointment of any candidate, such delay is not due to any fault of his part."

It was contended that the fixation of July 1 of the year for counting approved service was arbitrary. The Supreme Court observed that a rational view has been taken of the situation and that Note 2 under Rule 12 (5) was not open to challenge as an arbitrary provision.

16. The observations made by the Supreme Court in Pardasani's case would equally apply in the case before us. Taking a rational view of the situation in the

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instant case, we are of the opinion that there is no justification for quashing Rule 3 of the Rules for the examination mentioned above. The applicants have also no case in equity for the reasons already brought out above. The applicants have not made out a prima facie case for admitting this application. We, therefore, dismiss the same at the admission stage itself. The parties will bear their own costs.

*I.K. Rasgotra*  
(I.K. Rasgotra) 16/11/87  
Administrative Member

*P.K. Kartha*  
16/11/87  
(P.K. Kartha)  
Vice-Chairman(Judl.)