

18

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 764/1988
T.A. No.

199

DATE OF DECISION 08.03.1991.

Association Engineering Staff (E) Petitioner

Mrs. Shyamla Pappu, Sr. Counsel Advocate for the Petitioner(s)
with T.C. Aggarwal Counsel

U.O.I. through the Secretary, Respondent
Min. of Information & Broadcasting & Others
Shri P.H. Ramchandani Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN (J)

The Hon'ble Mr. D.K. CHAKRAVORTY, 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. Whether it needs to be circulated to other Benches of the Tribunal ? No

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,
Vice Chairman (J))

The applicant Association represents the Junior Engineers/Assistant Engineers of the Civil Construction Wing, All India Radio, New Delhi. Their grievance relates to the recruitment rules notified on 28.3.1988 whereby the Diploma Holder Junior Engineers have been placed at a disadvantage in the matter of promotion to the posts of Assistant Engineer and Executive Engineer.

2. Under the unamended Rules, Junior Engineers with 8 years service were eligible for promotion as Assistant Engineers and

Q

Assistant Engineers with 8 years service were eligible for promotion as Executive Engineers. There was no distinction between Junior Engineer (Electrical/Civil)- Diploma or Degree Holders.

3. Under the amended Rules, for promotion to the post of Assistant Engineer, a Junior Engineer with a diploma should have 8 years regular service as Junior Engineer and a degree-holder Junior Engineer will be eligible for promotion with 5 years regular service in the grade. For promotion to the post of Executive Engineer only Assistant Engineers who have a degree will be eligible. Assistant Engineers with a diploma, are however not eligible for promotion to the post of Executive Engineer.

4. The applicant has stated that the Civil Construction Wing, All India Radio, i.e., Respondent is working on the pattern of C.P.W.D. and the C.P.W.D. Manual/other Rules applicable to the C.P.W.D. are invariably made applicable to the staff employed in similar categories, by the Respondent. As a matter of fact, respondents have described their organisation as Replica of the C.P.W.D.

4A. No such amendment as envisaged in the impugned Recruitment Rules exists in the other organisations e.g. C.P.W.D., P&T Department etc.

5. The respondents have stated in their counter-affidavit that at the time of promulgation of earlier recruitment rules dated 9.1.1975 Civil Construction Wing of All India Radio was a tiny organisation handling very much lesser quantum of work. Subsequently, however, the workload increased steeply and the department expanded very fast. Unlike other Government construction organisations, Civil Construction Wing of All India Radio has been handling major works of highly specialised nature like RCC T.V. Towers, Studio and transmitter buildings etc. etc. During the course of past few years it has been felt that there should be sufficient Engineering expertise at various levels to handle designing and execution of highly intricate structures. There is need of adequate number of Graduate Engineers even at the level of Junior Engineers for proper functioning of the department. In the New Recruitment Rules, for the post of Assistant Engineer, eligibility period for promotion for Junior Engineers holding degree in Engineering has been kept as 5 years as against 8 years in respect of diploma holder Junior Engineers. The main reasons for this distinction are as under:-

- (i) In the New Recruitment Rules for the post of Assistant Engineer promotion quota has been increased from 50% to 60% thus reducing direct recruitment quota

to 40%. Whereas direct recruits ~~are~~ through Union Public Service Commission are invariably Graduates, departmental promotees may or may not be. The intake of Graduate Engineers is, therefore, likely to be reduced.

(ii) In view of the nature of jobs being handled by Civil Construction Wing it is important that the posts of Assistant Engineers should be filled by persons who have good deal of technical and in depth knowledge of the subject, which can be acquired by a systematic study in an institution as in the case of Graduates, plus they should also have practical experience in the field. There is dire need of having adequate number of Graduate Engineers at the level of Assistant Engineer. The distinction in eligibility period, as now provided, will not only provide incentive to the degree holders for initial recruitment at the level of JE but shall also make up for the reduction in the intake of graduate officers at the level of AE due to reduction in direct recruitment quota.

(iii) Department, with this change in the recruitment rules, is likely to have adequate number of graduate officers essential for handling design as well as execution jobs of complicated structures.

Q

(iv) The duties performed by a Graduate JE are not exactly similar to those performed by a Diploma holder JE. Whereas a graduate JE can handle design jobs at Headquarters and can supervise execution of specialised structures, a diploma holder JE cannot perform these functions as he is not adequately qualified for the same. Because of higher qualification and nature of duties being performed by graduate JEs the eligibility period for promotion to the post of AE has been kept as 5 years as against 8 years for diploma holders, because it is felt that this larger length of experience will add up to his technical knowledge and equate him with a Graduate JE and make him fit for the job requirements of the post of AE.

However, no separate quota is kept for promotion purposes and graduate as well as diploma holder officers, after completing respective eligibility period of 5 and 8 years, are treated at par for promotion.

(v) This, in the long run, would be beneficial for building up the cadre and developing necessary expertise within the department which is handling highly specialised works unlike other Government construction organisations which are handling execution of normal building structures.

(vi) It is submitted that the provision of longer

α

period of service in the case of diploma holders, as compared to graduate Engineers, is obligated by the higher responsibilities of sanctions of the next higher post of Assistant Engineers.

As regard the post of Executive Engineer(C/E) the old recruitment rules provide for method of recruitment as "50% by promotion failing which by transfer on deputation and 50% by direct recruitment". Whereas minimum qualification of Degree in Engineering was kept for direct recruits it was not made applicable to departmental promotees. However, as stated above, CCW:AIr is handling major works of specialised nature requiring high degree of expertise. Moreover, as per duties as Executive Engineer should have minimum qualification of Degree in Engineering to perform his functions satisfactorily. An Executive Engineer when posted in Planning Office is required to check the designs of projects and when posted in Field Office is required to supervise the execution of major works. To perform these functions a thorough knowledge of Engineering is essential which can be attained only after acquiring a minimum of Degree in Engineering.

While taking up the modification of Recruitment Rules with DP&T and UPSC, the duties and

functions of various posts in the grade of Executive Engineer(C)/Executive Engineer(E) were reviewed and it was not found possible to earmark any post in these grades which can be handled by a Diploma holder.

6. The respondents have stated that Civil Construction Wing of All India Radio is following Central Public Works Department manual/codes for technical functioning, i.e., in respect of execution of works. However, it is not correct that organisational set-up of Civil Construction Wing is a replica of Central Public Works Department or any other organisation. In fact every organisation has its own set-up and even different sets of Recruitment Rules depending upon cadre strength and other functional and administrative aspects. To quote earlier recruitment rules of Civil Construction Wing: All India Radio for the post of Assistant Engineer/Executive Engineer mentioned by the applicant, do not tally with those of Central Public Works Department. It is, therefore, not possible for an organisation to follow Recruitment Rules of any other organisation in toto. Every organisation may frame its own Recruitment Rules to fit into functional and administrative requirements. *Qn*

As explained above the Recruitment Rules of various categories in any organisation, are prepared to fit into its functional and administrative requirements for effective and efficient working, in accordance with the guidelines on the subject. The existing recruitment rules for the post of Executive Engineer in Central Public Works Department, also provide distinction between degree and diploma holders for consideration of promotion from Assistant Engineer. As per these rules departmental Assistant Engineers having degree and 8 years regular experience in the grade are eligible for promotion. Whereas only outstanding diploma holder Assistant Engineers are to be considered for promotion after completion of 10 years regular service in the grade. Thus these rules even tend to discriminate one diploma holder from the other merely on the basis of grading as outstanding and not on firm grounds like qualification or eligibility period.

The proposals for the modifications of Recruitment Rules in respect of various cadres of Civil Construction Wing: All India Radio were taken up in the year 1982. The new rules have been promulgated after thorough review of all the aspects and after series of discussions/meetings in the

Ministry of Information and Broadcasting, Department of Personnel & Union Public Service Commission.

7. The applicant has contended that the impugned Recruitment Rules are arbitrary and discriminatory while the respondents have contended that they are valid and constitutional. We have gone through the records of the case carefully and have considered the rival contentions. We have also duly considered the numerous decisions relied upon by both sides*. In Roop Chand Adlakha Vs. D.D.A., 1988(2) SCALE 897 at 902, the Supreme Court observed that "the idea of equality in the matter of promotion can be predicated only when the candidates for promotion are drawn from the same source. If the difference in the qualification has a reasonable relation to the nature of duties and responsibilities, that go with and are attendant upon the promotional post

*. Cases relied upon by the applicants:-

State of J&K Vs. Trilok Nath Khosa, AIR 1974 SC 1; AIR 1968 SC 718; AIR 1979 SC 621; AIR 1983 SC 848; 1985(4) SCC 369; 1988(1) SCC 440; JT 1988(2) SC 519; AIR 1989 SC 1624; 1972 SLR 44; 1987(3) SLJ 34; AIR 1986 SC 1839; 1980(4) 226; 1980 Sup. SCC 559; ATR 1989(1) SC 437; AIR 1989 SC 139.

* Cases relied upon by the respondents:-

AIR 1974 SC 1; 1987(1) ATR (P.N. Kohli & Ors. Vs. J.O.I. & Others); Decision of the Tribunal dt. 21.7.1989 in OA 333 of 1988; P. Narayanan Kutty and Others Vs. the Union of India.



the more advantageous treatment of those who possess higher technical qualification can be legitimised on the doctrine of classification.

There may, conceivably, be cases where the differences in the educational qualifications may not be sufficient to give any preferential treatment to one class of candidates as against another. Whether the classification is reasonable or not must, therefore, necessarily depend upon facts of each case and the circumstances obtaining at the relevant time.

8. In State of J&K Vs. Liloki Nath Khosa & Others, AIR 1974 SC 1, it was observed that "it cannot be laid down as an inviolable rule that whenever any classification is made on the basis of variant educational qualifications, such classification must be held to be valid irrespective of the nature and purpose of the qualification or the quality and extent of the differences in the educational qualifications". In that case, Graduate Engineers and Diploma Holders were in a common cadre of Assistant Engineers. But for the purposes of further promotion to the higher cadre of Executive Engineers only the Graduates were held eligible. Diploma Holders

were barred for promotion. Upholding this, the Supreme Court observed that "the classification was made with a view to achieving administrative efficiency in the Engineering services. If this be the object, the classification is clearly correlated to it for higher education qualifications are at least presumption evidence of a higher mental equipment".

9. In Roopchand Adlakha's case, the Supreme Court observed that "State consistent with the requirements of the promotional posts and in the interest of the efficiency of the service, is not precluded from conferring eligibility on Diploma Holders conditioning it by other requirements which may, as here, include certain quantum of service experience". It was further observed that "unless the provision is shown to be arbitrary, capricious, or to bring about grossly unfair results, judicial policy should be one of judicial restraint".

10. Thus, the question whether the classification is reasonable or not would depend on the facts of each case.

11. In the instant case, the respondents have stated that the nature & quantum of work of the Civil Construction Wing of All India Radio have increased

Or

tremendously in course of time. For handling major construction works of highly specialised nature, there is need for adequate number of Graduate Engineers for the proper functioning of the Department. After review of the matter in consultation with the Department of Personnel & Training and the UPSC, they have not found it possible to earmark any post in the grade of Executive Engineer which case be handled by a Diploma Holder. The prescription of different quantum of service experience in the post of Junior Engineer for promotion to the post of Assistant Engineer also appears to be reasonable in the instant case. The fact that the Recruitment Rules of corresponding posts in the P&T Deptt. and CPWD are not comparable to those of the impugned Recruitment Rules in the All India Radio is also not relevant. The other contentions raised by the applicant relating to stagnation and need for adequate promotional opportunities for Diploma Holders are essentially matters of policy.

12. At the same time, we feel that Diploma Holders can improve their prospects for promotion to the post of Executive Engineer by acquiring AMIE etc. which is equivalent to a Degree. The respondents should also

Ok

consider providing of adequate incentives and facilities to them in this regard.

13. In the light of the foregoing discussion, we are of the view that the application is devoid of any merit and the same is dismissed. There will be no order as to costs.

Deekshit —
8/8/91

(D.K. CHAKRABORTY)
ADMINISTRATIVE MEMBER

Deekshit —
8/8/91
(P.K. KUTTIPURAM)
VICE CHAIRMAN (J)