

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 721/86. 198
T.A. No.

DATE OF DECISION 24.7.1987.

Shri Prem Shil Sharma & Ors. ~~Petitioner~~ Applicants.

Mrs. Pankaj Verma ~~Advocate for the~~ Applicants
~~Petitioner(s)~~

Versus

Union of India & Ors. Respondent^s

Mrs. Raj Kumari Chopra Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice J.D. Jain, Vice-Chairman.

The Hon'ble Mr. Birbal Nath, Administrative Member.

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

21/7/87
(BIRBAL NATH)
Member (A)

J. Dain
(J.D. DAIN)
Vice-Chairman

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PRINCIPAL BENCH
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Shri Prem Shil Sharma & Ors. ... Applicants.

Vs.

The Secretary, Min. of Defence, New Delhi & Anr. ... Respondents.

CORAM: Hon'ble Mr. Justice J.D. Jain, Vice-Chairman.

Hon'ble Mr. Birbal Nath, Administrative Member.

For the applicants: Mrs. Pankaj Verma, counsel.

For the respondents: Mrs. Raj Kumari Chopra, counsel.

JUDGMENT

(delivered by Hon'ble Mr. Birbal Nath, AM).

Sarvshri Prem Shil Sharma, K.C. Aggarwal, Surjit Singh
Gadhoke, Nirmal Kumar Sood and Prem Narayan Gupta, working as
Assistant Engineers Class II in the Department of Military
Engineering Service under the Ministry of Defence, Government
of India, have per their application dated 10th September, 1986,
under Section 19 of the Administrative Tribunals Act, 1985, filed in
the Tribunal, prayed for quashing sub-rule (b)(i) and (ii)
of the Military Engineer Services (Executive Engineer)
Recruitment Rules, 1986.

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2. The essential facts leading to the instant application can be briefly noted as follows.

The applicants are diploma holders in civil/mechanical/electrical engineering. On selection, they were appointed as Superintendent E/M B/R/SA Grade II in the Department of Military Engineering Service and were promoted as Grade I, Charge Holder and Assistant Engineer in the years as mentioned below:

Pay Scales as per Third Pay Commission	Year of joining as Supdt. Gde II	Year of promotion as		
		Supdt Gde I	Supdt Gde I Charge Holder	AE
	(GP 'C') (425-700)	(Gp 'C') (550-750)	(Gp 'C') (700-900)	(Gp 'B') (650-1200)
Name				
1. Sh. P. S. Sharma	1953	1961	1963	1977
2. Sh. K. C. Aggarwal	1952	1958	1964	1977
3. Sh SS Gandhok	1952	1960	1971	1977
4. Sh MK Sood	1957	1962	1973	1977
5. Sh PN Gupta	1953 (SA-II)	1958 (SA-I)	1968	1977

It may be noted that the posts of Superintendent Grade II, Superintendent Grade I and Charge Holder were Group 'C' non-gazetted posts. The applicants were promoted to the gazetted posts as Assistant Engineer in the year 1977. Their services were governed by the Military Engineering Services (M.E.S.) Class I (Recruitment, Promotion and Seniority Rules, 1949 and were eligible for promotion to Assistant

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Executive Engineer. The post of Assistant Engineer Class II was introduced in the scale of Rs. 650-1200 on 1.2.1977 vide Government of India, Ministry of Defence, letter No. 78681/CH/EIR/D (APPT.) dated 1.2.1977 (Annexure II). The said order stated that the existing post of Superintendent Grade I Charge Holder in the pay-scale of Rs. 700-900 will be converted to Assistant Engineer Class II gazetted in the pay-scale of Rs. 650-1200. It was further stated that the Assistant Engineer Class II will be eligible for promotion to the grade of Executive Engineer Class I. It is the case of the applicants that even after lapse of nine long years, no Recruitment Rules were issued and consequently, no Departmental Promotion Committee could be held for promotion of Assistant Engineers to the post of Executive Engineers. The Promotion Rules for the post of Executive Engineers were issued on 13th June, 1986 wherein in column 12 (b) (i) and (ii), the following qualifications are prescribed:

"(b) 33-1/3% of the vacancies shall be filled by Assistant Engineers having the following qualification:

- (i) 8 years regular service in the grade in the case of Engineering degree holders.
- (ii) 11 years regular service in the grade in the case of Diploma Holders."

It is the contention of the applicants that prescription of service of 11 years for Assistant Engineers with Diplomas as against 8 years for Degree Holders for promotion to the post of Executive Engineers is discriminatory and un-constitutional.

3. Through their counter, the respondents have maintained that the application was liable to be dismissed as the applicants had failed to implead the Union of India as a party and that they had not exhausted departmental remedies. It was averred that the allegation of stagnation since 1977 was without basis as the applicants were promoted from non-gazetted group 'C' posts of Charge

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Holders to Group 'B' post of Assistant Engineers with effect from 1st February, 1977. The respondents further maintained that the word 'conversion' has been mis-construed in the order of 1st February, 1977 when the post of Assistant Engineer Group 'B' was introduced to afford chances of promotion to the then existing Group 'C' persons. With regard to the applicability of the M.E.S. Class (Recruitment, Promotion and Seniority) Rules, 1949, it was averred that they could not be applicable to group 'C' personnel. With regard to late publication of the Recruitment Rules, it was averred that the Rules provided minimum of 8 years of qualifying service in Group 'C' for promotion to the Senior Time Scale post of Executive Engineer.

4. We have gone through the documents placed before us and given careful thought to the arguments advanced at the bar. So far as the preliminary objections are concerned, it is notable that the applicants had not impleaded the Union of India but had referred to the Union of India in the body of the application. Though not impleading the Union of India is a serious omission, yet their referring to the Union of India in the course of the application thus mitigates this omission. So far as the objection pertaining to not seeking departmental remedy is concerned, the applicants could not obviously question the validity of the Recruitment Rules which they have challenged before this Tribunal before the respondents.

On merits, it is found that the applicant's challenge to the validity of sub-rule (b) (i) and (ii) of the Recruitment Rules, 1980 is on the ground of discrimination. These Rules have been framed in the manner laid down by the Government of India per their consolidated instructions regarding framing of Recruitment Rules for posts/services or amendments thereto in terms of Department of Personnel & A.R. O.M. No. 14017/24/76-Estt.(RR) dated 22.5.1979. It has to be noted that these Rules framed under Article 309 of the Constitution were duly published vide S.R.O. 6(E) dated 13th June, 1986. The learned counsel for the applicants contended that the Rules were discriminatory as they prescribed different spans of service for degree holders and diploma holders i.e. 8 years and 11 years

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respectively under sub-rules (i) and (ii) of clause b of the Recruitment Rules (under column 12) and this amounted to discrimination and violation of the fundamental rights of the applicants guaranteed under the Constitution. In this connection, the learned counsel for the applicant relied on the Supreme Court judgment in the matter of Punjab State Electricity Board, Patiala and Anr. Vs. Ravinder Kumar Sharma & Ors.¹, wherein it was held as under:-

"...- Diploma holders and non-diploma holders Linemen forming common cadre of Linemen and having a common seniority list - qualification for promotion to the post of Line Superintendent as per Rules is either Diploma holder Linemen or non-diploma holder Linemen having passed 1½ years course in the trade of electrician - Orders promoting Diploma holder Linemen to the post of Line Superintendent on the basis of quota of Diploma holder Linemen based on such educational qualification, ignoring seniority...."

This judgment has to be distinguished on the ground that it concerns promotion on the basis of quota for Diploma Holders and the facts involved in the instant case are substantially different. The learned counsel for the applicants further argued that the Rules are arbitrary and violative of the fundamental rights of the applicants. It is to be noted that the applicants were not promoted from group 'C' to group 'B' through any process of selection. Their posts were converted. No D.P.C. was held when they were promoted as Assistant Engineers in 1977. The right of equality is not equality amongst unequals and the prescription of educational qualification is an intelligible differentia and the classification based on ^{such} educational qualification cannot be called as discriminatory. This question of different qualifications for promotion has been considered in detail by the Hon'ble Supreme Court in the case of State of Jammu & Kashmir / Vs. Shri Triloki Nath Khosa & Ors.² Their Lordships of the

9 Supreme Court, per paragraph 33 of the said judgment, have held that it was impossible to accept the submission that the classification of Assistant Engineers into degree-holders and diploma-holders rests on any unreal or unreasonable basis. The relevant portion of paragraph 33

1. A.T.R. 1986(2) S.C. 535.

2. (1974) 1 SCC 19

of the said judgment further reads as under:-

".... The classification, according to the appellants, was made with a view to achieving administrative efficiency in the Engineering services. If this be the object, the classification is clearly co-related to it, for higher educational qualifications are at least presumptive evidence of a higher mental equipment. This is not to suggest that administrative efficiency can be achieved only through the medium of those possessing comparatively higher educational qualifications but that is beside the point. What is relevant is that the object to be achieved here is not a mere pretence for an indiscriminate imposition of inequalities and the classification cannot be characterized as arbitrary or absurd. That is the farthest that judicial scrutiny can extend."

Paragraph 34 of the same judgment throws more light. The relevant extract of this paragraph reads as follows:-

"34. On the facts of the case, classification on the basis of educational qualifications made with a view to achieving administrative efficiency cannot be said to rest on any fortuitous circumstance and one has always to bear in mind the facts and circumstances of the case in order to judge the validity of a classification....."

In view of the above referred dictum of the Supreme Court, the challenge to the vires of the Promotion Rules on the ground of discrimination cannot be upheld. As such, this challenge fails and the Promotion Rules are held to be non-discriminatory and based on reasonable classification with a view to secure better service for the community.

It was also contended by the applicants' counsel that there are no two different criteria for promotion of Assistant Engineers with degree in Engineering and diploma holders so far as promotion of Assistant Engineers to the post of Executive Engineers in C.P.U.D. is concerned. This argument has been rebutted by the respondents

of their counter. vide paragraph 11 (iv). In this regard, the learned counsel for the respondents also relied on letter No. 23/7/85-ECI dated 15.7.1987, issued by the Directorate-General of Works, Central Public Works Department, addressed to the Engineer-in-Chief, Coord. & Personnel

Directorate/CSCC Army Hqrs., New Delhi, wherein it has been officially intimated that the eligibility criterion for promotion of Assistant Engineers who are degreeholders is 8 years' service in the grade and for diploma holder Assistant Engineers, it is ten years' service with outstanding record of service to the post of Executive Engineers.

5. The next contention of the applicants is that their service as Charge Holders should be counted to compute their qualifying service for purposes of rule (b) (ii) for their promotion to the post of Executive Engineer. It was argued by the learned counsel for the respondents that the service rendered as Charge Holder was in the non-gazetted post and it could not be counted towards the service in the post of Assistant Engineer, which was a gazetted post. The respondents' contention was that the service rendered in group 'C' post cannot be counted towards the service rendered in group 'B' post. We find force in this argument and cannot accept the contention that the applicants be permitted to derive benefit of service rendered in group 'C' post for computing their service in group 'B' (gazetted). The learned counsel for the respondents relied upon the judgment rendered by a Division Bench of the Delhi High Court in the matter of G.S. Bhatia Vs. Union of India & ors. (C.W.P. No. 2059 of 1984). The relevant portion of this judgment reads as under:-

"The petitioners claim that their services as Superintendent Grade-I/Charge Holder should be counted while considering promotion to the Post of Executive Engineer which is a Class I Post. The petitioners, at present are occupying the post of Assistant Engineer which is a Class II Post, in the scale of Rs. 650-1200. Earlier the posts which the petitioners were occupying as Superintendent Grade-I/Charge Holder were in the grade Rs. 700-900.

In the guidelines which are filed as Annexure 'A' with the counter-affidavit, the qualifying service for

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promotion from Assistant Engineer to Executive Engineer is eight years in the grade of Rs. 650-1200.

The petitioners' contention is that their services as Superintendent Grade I/Charge Holder, which is a class III post, should also be counted while considering their qualifying services for promotion to Class I Post.

To say the least, there is no merit at all in the contention of the learned counsel for the petitioners. The guidelines clearly provide eight years qualifying service in the grade of Rs. 650-1200 and not in the grade of Rs. 700-900.

There is thus no merit in the writ petition."

We find that this judgment of the Delhi High Court fully covers the instant case.

6. In view of the discussion of foregoing facts and law, we cannot afford any legal relief to the applicants, though this is a hard case inasmuch as due to delay in formulation of Rules, their case could not be taken up earlier for promotion and the Rules came into force only when they were nearing retirement. The Tribuncal cannot go beyond the law in respect of the reliefs sought. If the extenuating circumstances are to be taken cognizance of, this can only be done by the respondents.

7. The Application is dismissed with no order as to costs.

24/7/87
(BIRBAL NATH)
Member (A)

J. D. Jain
(J.D. JAIN)
Vice-Chairman