

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

RA No.269/94 in OA No.1187/89.

NEW DELHI THIS THE 2nd DAY OF SEPTEMBER, 1994.

MR.JUSTICE S.K.DHAON, ACTING CHAIRMAN
MR.P.T.THIRUVENGADAM, MEMBER(A)

1. Shri Ram Pal Singh
2. Shri S.S.Dang
Senior Radiographers
Safdarjung Hospital
New Delhi.

APPLICANTS

BY ADVOCATE SHRI B.S.MAINEE.

vs.

1. The Secretary
Ministry of Health and Family Welfare
Nirman Bhawan
New Delhi.
2. The Director General of Health Services
Nirman Bhawan
New Delhi.
3. The Medical Superintendent
Safdarjang Hospital
New Delhi.
4. Sh.M.L.Sharma
S/o Shri Chhada Lal Sharma
R/o L-1/127 A DDA Flats
Kalkaji
New Delhi-110019.
5. Shri P.C.Chopra
S/o late Shri Gian Chand
R/o ZZ-358, Sri Nagar
Shakur Basti
Delhi-110030.

RESPONDENTS

ORDER

Justice S.K.Dhaon:

This is an application seeking the review of a well-reasoned and detailed judgement dated 4.4.1994 given by Hon'ble Mr.Justice V.S.Malimath, the then Chairman of this Tribunal while presiding over a Division Bench.

2. The controversy pertains to the promotion to the posts of Radiographers(Supervisors) and Senior Radiographers(Supervisors).

3. The applicants, on the relevant date, Senior Radiographers in Safdarjung Hospital, New Delhi. The Safdarjung Hospital, New Delhi Group 'C' Recruitment Rules, 1987 framed under the proviso to Article 309 of the Constitution prescribed the mode of filling up the said posts as promotion by selection. The eligibility

criteria has been prescribed by the rules. The feeder category is the Senior Radiographer with three years regular service in the grade of Rs.425-700(pre-revised) with Diploma/Certificate in Radiography from a recognised institution of two years duration. The rules exclude from consideration Senior Radiographers with three years regular service in the grade of Rs.425-700 who have not obtained a Diploma or Certificate in Radiography from a recognised institution of two years duration. The applicants who were and are in the feeder category of Senior Radiographers with the requisite length of three years service in the scale of Rs.425-700 admittedly did not possess a Diploma or Certificate in Radiography from a recognised institution of a duration of two years. They challenged the constitutionality of the aforesaid rules. This Tribunal repelled the challenge. While doing so, amongst others, it observed that classification on the basis of qualification is permissible under Article 14 of the Constitution. It would be justified if such qualification has nexus with the object sought to be achieved. The object sought to be achieved for promotion is to secure persons with adequate experience and equipment necessary to discharge his duties and responsibilities of the higher post to which they are considered for promotion. As long as the higher qualifications prescribed have just relation or nexus with the functions, duties and responsibilities of the higher post, the prescription of the higher qualifications for promotion would be justified and not violative of Article 14 of the Constitution.

4. The learned counsel for the applicants has objected to the observations " the object sought to be achieved

for promotion is to secure persons with adequate experience and equipment etc." Relying upon the aforequoted observations, the counsel for the applicants has urged that this Tribunal committed an error on the face of its judgement because the object as aforequoted was not the real object for creating the higher grade posts. The object, in fact, was to provide avenues of promotion to Senior Radiographers as has been recommended by the Staff Inspection Unit of the Safdarjung Hospital as contained in their letter dated 22.5.1986 which has been admitted in the counter-affidavit. In our opinion, the counsel is not justified in extracting certain observations detracted from the context and the settings in which they have been used. If what has been observed after the quoted observations is read carefully, it would be immediately seen that the learned Members of the Tribunal were answering the contention of the applicants that the said rules are violative of Articles 14 and 16 of the Constitution. Furthermore, the learned counsel ignores the distinction between the reasons for creating promotional posts and the object of the prescription of the qualifications for filling up the said posts. Admittedly, there were a limited number of promotional posts. Therefore, some criteria or rule had to be adopted for filling up the said posts. It is in that context while examining the object of the rules and the purpose for which the promotional posts had been created, the aforequoted observations were made. We are, therefore, convinced that this Tribunal did not commit any error much less an error apparent on the face of the record.

5. Learned counsel next urged that this Tribunal while giving its judgement ignored two decisions of the Supreme Court.

(1) MOHAMMAD SHUJAT ALI AND OTHERS Vs. UNION OF INDIA AND OTHERS (AIR 1974 SC 1631).

(23)

There, a certain rule provided that degree holders in Engineering and diploma holders in Engineering were eligible and fit for promotion. However, the rule laid down a quota of promotion for each category and gave preferential treatment to Graduate over non-Graduate in the matter of fixation of such a quota. Their Lordships observed:

" It may be perfectly legitimate for the administration to say that having regard to the nature of the functions and duties attached to the post, for the purpose of achieving efficiency in public service, only degree holders in engineering shall be eligible for promotion and not diploma or certificate holders."

However, their Lordships further observed:

" ...It is difficult to see how, consistently with the claim for equal opportunity, any differentiation can be made between them by laying down a quota of promotion for each and giving preferential treatment to graduates over non-graduates in the matter of fixation of such quota. The result of fixation of quota of promotion for each of the two categories of Supervisors would be that when a vacancy arises in the post of Assistant Engineer, which, according to the quota is reserved for graduate Supervisors, a non-graduate Supervisor cannot be promoted to that vacancy, even if he is senior to all other graduate Supervisors and more suitable than they. His opportunity for promotion would be limited only to vacancies available for non-graduate Supervisors. That would clearly amount to denial of equal opportunity to him. When there is a vacancy earmarked for graduate Supervisors, a non-graduate Supervisor would be entitled to ask: "I am senior to the graduate Supervisors who is intended to be promoted. I am more suitable than he is. It is no doubt true that I am a non-graduate, but my not being a graduate has not been branded as a disqualification. I am regarded fit for promotion and, like the graduate Supervisors, I am equally eligible for being promoted. My technical equipment supplemented by experience is considered adequate for discharging the functions of Assistant Engineer. Then why am I being denied the opportunity for promotion and the graduate Supervisor is preferred?"

Their Lordships, therefore, observed:

" A rule of promotion which while conceding that non-graduate Supervisors are

also fit to be promoted as Assistant Engineers, reserves a higher quota of vacancies for promotion for graduate Supervisors as against non-graduate Supervisors would clearly be calculated to destroy the guarantee of equal opportunity."

In the present case, the relevant rules clearly laid down that only those who hold a diploma or certificate in Radiography from a recognised institution of a duration of two years should be considered for promotion. That, therefore, was the criteria. By necessary implication, those who do not fall in the eligibility criteria should not be considered for promotion. No quota has been fixed amongst those who were considered for promotion. This case is, therefore, distinguishable and this Tribunal did not commit any error in not referring the same in its judgement, even if it had been cited.

(2) BHAGWATI PRASAD Vs.DELHI STATE MINERAL DEVELOPMENT CORPORATION(AIR 1990 SC 371).

We have gone through this case and we find that it is not apposite at all. In that case the principle of 'equal pay for equal work' was under consideration. It is also laid down that the workers not possessing initial minimum prescribed educational qualification at the time of appointment and gaining sufficient experience for many years should not be refused confirmation on the ground that they did not possess the requisite qualification at the initial stage and they would not be entitled to pay equal to persons appointed on regular basis.

6. Learned counsel next urged that this Tribunal committed an error in discarding the duty list produced by the applicants. That is not so. This Tribunal considered the import of the duty list. It categorically observed that a bare perusal of the same makes it clear that the duties are not the same, the duties of the Radiographer

(Supervisor) are supervisory in character to supervise the work of the Senior Radiographer, the post held by the applicants. May be that this Tribunal had taken an erroneous view but that would not lead to the conclusion that the Tribunal committed an error apparent on the face of the record.

7. This application does not fall within the four corners of Order 47 Rule 1 CPC wherein the jurisdiction of this Tribunal to review its judgements is circumscribed.

8. This application is rejected summarily.

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(P.T.THIRUVENGADAM)
MEMBER(A)

S.K.D
(S.K.DHAON)
ACTING CHAIRMAN

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