

O.A. No. 411/95

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O.A. No. 419/95

Date of Order: 28.4.1998

(1) R.S. Sharma s/o Shri Ram Chandra Sharma, D-14, Radio Colony Suratgarh, Distt: Sri Ganganagar, at present employed on the post of Asstt. Engineer (C), Group 'B' in Civil Construction Wing, AIR Sub-Division Office, Suratgarh.

... Applicant in O.A. No. 411/95

VERSUS

1. Union of India through Secretary to the Government of India, Ministry of Information and Broadcasting, Sashtree Bhawan, New Delhi.
2. Director General, All India Radio, Civil Construction Wing, P.T.I. Building, Parliament Street, New Delhi.
3. Executive Engineer, Civil Construction Wing, A.I.R. T.V. Complex, Jhalana Dungri, Jaipur.

... Respondents

(2) Pradeep Kumar s/o Shri Mahatma Singh, r/o Durga Niwas, Paota 'C' Road, Jodhpur, at present employed on the post of Assistant Engineer (C) Group 'B' in Civil Construction Wing, AIR Sub-Division Office, Jodhpur (Rajasthan).

... Applicant in O.A. No. 419/95

VERSUS

Union of India through Secretary to the Government of India, Ministry of Information and Broadcasting, Sashtree Bhawan, New Delhi.

2. Director General, All India Radio, Civil Construction Wing, P.T.I. Building, Parliament Street, New Delhi.
3. The Executive Engineer (Civil), Civil Construction Wing, A.I.R., 34 Vikas Colony, Paota 'C' Road, Jodhpur.

... Respondents

Mr. J.K. Kaushik, Counsel for the applicants.

Mr. K.S. Nahar, Counsel for the respondents.

CORAM:

Hon'ble Mr. A.K. Misra, Judicial Member

Hon'ble Mr. Gopal Singh, Administrative Member

O R D E R

Per Hon'ble Mr. Gopal Singh

The facts and circumstances as also the relief prayed for in both the applications are similar and, therefore, both these applications are being disposed of by this single order.

Gopal Singh

11

2. Both the applicants have prayed for setting aside the impugned order dated 27.6.1995 (Annex. A/1), reverting from the post of Assistant Engineer (for short, AE) to that of the Junior Engineer (for short, JE).

3. The case of the applicants is that both were appointed on the post of JE on 27.2.1985 and 15.9.1984 respectively. Both of them were having Diploma in Civil Engineering at the time of their first appointment into government service. They passed AMIE (Civil) in December, 1988 and June, 1988 respectively. Both of them were promoted as AE in the year 1990 and both the applicants were reverted as JE by the impugned order dated 27.6.1995. This reversion order was issued by the respondents' department in compliance with the order dated 6.5.1994 of CAT, Calcutta, in O.A. No. 1978/89, N.C. Burman and Others' case. Both the applicants have filed the present applications to set aside the aforesaid impugned order dated 27.6.1995.

4. WE have heard the learned counsel for the parties and have perused the records of the case.

5. The basic question before the CAT, Calcutta, was the essential qualification for promotion of JEs as AES. It would be relevant to reproduce the required qualification for promotion of JE as AE as per the recruitment rules;

In case of recruitment by promotion/deputation/transfer, grades from which promotion/deputation transfer to be made.

Promotion:

- (i) Junior Engineers holding degree in Civil Engineering with 5 years regular service in the grade.
- (ii) Junior Engineers holding Diploma in Civil Engineering with 8 years regular service in the grade.

The CAT, Calcutta, while disposing of O.A. No. 1078/89 observed as under:

"6. We have carefully perused the relevant Recruitment Rules of 1988 and heard the submission of the learned counsel of both the parties. Rule mentioned in Col. 12 contains two requirements one is a Degree in Engineering and the other is experience of five years regular service in the grade of Junior Engineers. While indicating these two requirement the word 'with' has been used

Capital

denoting thereby that the requirement of five years regular service clearly has to be read along with acquisition of Degree in the respective line of Engineering. In other words, five years service as Junior Engineers is applicable only in the case of Degree holders. Similarly, eight years experience is applicable only in the case of Diploma holders. We note that no specific different provision has been made for those persons who have acquired Degree during their service as Diploma holders. We note that such a practice is there in the case of the Junior Engineers in the Karnataka Government as is evident from the case reported in 1993 (S) SLR 290 (K. Narayan & Ors. Vs. State of Karnataka and others). As we observed, in the absence of such a specific and enabling provision in the instant Recruitment Rules we are unable to accept the contention of Mr. Das that the period of service of five years for Degree holder may be a composite service with Degree holder as well as Diploma holder.

7. For the reasons given above, we are of the view that the promotions given to the private respondents superceding the claims of the applicants to the post of Assistant Engineer are not according to law. The respondents are, therefore, directed to hold a review D.P.C. meeting and consider the cases of the applicants strictly in terms of the Recruitment Rules, if they are otherwise found eligible. The case is disposed of accordingly. No costs. The above action shall be taken within a period of four months from the date of this order.

It is also seen that the following clause was inserted in the promotion orders of the applicants "the promotion of above mentioned officers are subject to the final judgement of the Tribunal cases pending in various Tribunal Benches". The question before the CAT, Calcutta was whether the diploma holder JE, who acquire degree qualification during service would be treated at par with degree holder JEs in matter of promotion, meaning thereby that the diploma holder JE acquiring a degree during the period of his service would also be eligible for promotion with 5 years of service in terms of the Recruitment Rules. We are inclined to agree with the findings and observations of the CAT, Calcutta.

6. The learned counsel for the applicants has argued that the applicants were not a party in the said O.A. and as such the decision taken on that O.A. cannot be applied to the applicants. Here we may again mention that in the promotion orders of the applicants it was clearly mentioned that the promotion would be subject to the final outcome of various O.As. pending in various Tribunals. As the question involved in O.A. No. 1078/89 is the same as that in the present O.As., we feel that the department were justified in inserting this clause in promotion order of the applicants and later implementing the order of the CAT, Calcutta in respect of applicants also. This argument of the learned counsel for the applicants is, therefore, rejected.

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Vb

7. From the facts as are available in the files, it appears that the respective applicants were promoted to the post of AE in the year 1990 when none of them had either completed eight years of service as Junior Engineer or five years of service as JE degree holder. The Recruitment Rules do not mention any condition of giving promotion to a candidate who has acquired the degree of Bachelor of Engineering or equivalent during the course of employment. Therefore, the ruling reported in AIR 1993 SC 267 - M.B. joshi and Others Vs. Satish Kumar Pandey and Others etc. and cited by the learned counsel for the applicants is not helpful to the applicants. In the relevant rules, as cited in the above ruling, the circumstances of acquiring degree during the course of employment has been specifically mentioned for giving benefit of promotion, whereas no such beneficial clause has been mentioned in the relevant rules regarding promotion in the cases in hand. In another case cited in AIR 1992 SC 564, it was held that "...Promotion-Requirement of three years service as Degree holder - Diploma holder JE obtaining degree while in service - period of three years is to be reckoned from the date he obtains degree and not earlier". The rule propounded in the above judgement is directly applicable in the instant case in absence of any beneficial clause regarding promotion. Therefore, the impugned order (Annex. A/1) is in accordance with the provisions of the Recruitment Rules and the Law laid down by Hon'ble the Supreme Court. This is absolutely another matter that the applicants have now completed requisite conditions and qualifications for promotion and it is hoped that the department would look into the matter independently and from the date the requisite condition and qualification has been fulfilled. In the instant O.As., the applicants have not been able to make out a case for quashing the impugned order (Annex. A/1).

8. In view of what has been stated above, the O.As. are dismissed with no order as to costs.

Gopal Singh
(Gopal Singh)
Administrative Member

A.K. Misra
(A.K. Misra)
Judicial Member

Received
Drewry
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Rec'd

Part II and III destroyed
in my presence on 17-5-2004
under the supervision of
Section Officer () as per
order dated 31/12/2003

Section Officer (Record)