

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.511/95

Wednesday, this the 10th day of July, 1996.

C O R A M

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN
HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

....

1. SR Nair, Junior Engineer (Electrical),
Postal Electrical Sub Division,
Trivandrum--1.
2. S Mohan Das, Junior Engineer (Civil),
Telecom Civil Sub Division,
Alleppey.
3. N Surendran, Junior Engineer (Civil),
Postal Civil Sub Division,
Trivandrum.
4. N Ajaykumar, Junior Engineer (Civil),
Telecom Civil Division,
Trivandrum--14.
5. R Chandrababu, Junior Engineer (Electrical),
Telecom Electrical Sub Division No.II,
Ernakulam, Cochin--16.
6. TG Babu Kammath, Junior Engineer (Electrical),
Telecom Electrical Sub Division No.I,
Ernakulam.

....Applicants

By Advocate Shri TM Abdul Latiff.

vs

1. Union of India represented by Secretary,
Ministry of Communications,
Department of Telecommunications,
Sanchar Bhavan, New Delhi--1.
2. Director General,
Department of Telecommunications,
Sanchar Bhavan, New Delhi--1.
3. Assistant Director General,
Departmental Examinations Section,
Dak Bhavan, Parliament Street,
New Delhi--1.
4. Chief General Manager,
Kerala Telecom Circle,
Trivandrum.

....Respondents

By Shri TPM Ibrahim Khan, Sr Central Govt Standing Counsel.

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The application having been heard on 3rd July, 1996, the Tribunal delivered the following on 10th July, 96:

O R D E R

PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicants are Junior Engineers in the Telecom Department. They were governed by the Telegraphic Civil Engineering (Civil Gazetted Officers) Recruitment Rules, 1976 (the 1976 Rules for short) which provided that the vacancies of Assistant Engineer (AE) would be filled 50% by promotion of Junior Engineers (JE) who have qualified in the departmental examination and have rendered not less than eight years' regular service in the grade. JEs who have five years of service were also eligible to take the qualifying departmental examination (QDE for short). Applicants passed the qualifying examination. While awaiting their promotion as AE after completing eight years of service, the 1976 Rules were superseded by the Department of Telecommunications and Department of Posts, Civil Engineering Wing (Group 'B' Gazetted Officers) Recruitment Rules, 1992 (the 1992 Rules for short). The 1992 Rules (A-5) provided for promotion to 50% of the vacancies of AEs by a Limited Departmental Competitive Examination (LDCE for short) from JEs who has four years of regular service. Applicants contend that both the LDCE and the QDE are similar examinations, and since they had passed the QDE, they should be considered for promotion as AE under the 1976 Rules and not made to appear for the LDCE. They contend that the 1992 Rules do not have retrospective effect and should not be applied to persons like the applicants who had passed the QDE before the 1992 Rules were notified. They challenge the 1992 Rules on the ground that persons who had already passed the QDE are not provided for in the Rules and are thus discriminated against. They contend that the 1992 Rules should be implemented

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only after all the persons who had qualified by passing the QDE under the 1976 Rules are promoted. According to the applicants, they have acquired a vested right by passing the QDE which cannot be taken away retrospectively by the 1992 Rules and they cannot be made to take a LDCE along with their juniors. Applicants pray for a declaration that the 1992 Rules (A-5) do not apply to them and that A5 is unconstitutional and pray for a direction to promote them before A-5 Rules are implemented.

2. Respondents state that JE is a Circle Cadre, while AE is an All-India Cadre. JEs with eight years' regular service who have passed the QDE are placed on an All-India Eligibility List in the order of their regular appointment as JE, but that did not give them a right for promotion. It was decided that 50% of the vacancies reserved for direct recruitment in the 1976 Rules would be filled by JEs who pass a LDCE so that all the posts of AE would be available for promoting JEs. The amended Recruitment Rules came into force in 1992. Respondents contend that the LDCE is introduced in place of the direct recruitment quota filled by examinations conducted by the Union Public Service Commission (UPSC) and applicants who are in the promotional channel could not claim to be adversely affected by it. On the other hand, the 50% quota available earlier for JEs had now become enlarged to 100% and while earlier a JE could not hope for a promotion without passing the QDE, now a JE becomes eligible for promotion by merely completing eight years of regular service. Respondents also state that the LDCE is of a higher standard than QDE, and a mere pass is not enough but the most meritorious up to the level of the vacancies earmarked can alone get promoted; the others get rejected and have to compete again in a subsequent examination for consideration under this quota, whereas a pass in the QDE once is adequate for eligibility for

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promotion under the 1976 Rules. Respondents also submit that after the 1992 Rules came into force, promotion to AE level can only be done in accordance with the 1992 Rules.

3. Learned Standing Counsel for respondents raised the contention that the claim of applicants is barred by limitation. He cited Ratan Chandra Sammanta and Others vs Union of India and Others, AIR 1993 SC 2276, Bhoop Singh vs Union of India and Others, AIR 1992 SC 1414, A Hamsaveni and Others vs State of Tamil Nadu and Another, (1994) 6 SCC 51, and State of Maharashtra vs Digambar, (1995) 4 SCC 683, to support his contention. Applicants in this case challenge the 1992 recruitment rules issued on 11.11.92 in supersession of earlier recruitment rules. In such cases, it is not necessary for a person to challenge the rules as soon as it is issued and he can challenge the rules when they have an adverse effect on him. We do not think that this application is barred by limitation.

4. The questions which arise for consideration are:

(a) Do the 1992 Rules have retrospective effect?

(b) Have any vested rights of the applicants been taken away by the 1992 Rules operating retrospectively?

(c) Do the 1992 Rules suffer from an infirmity as alleged by applicants which would render them unconstitutional?

5. The 1976 Rules provided for promotion of JEs as follows:

"50% by direct recruitment through the combined Engineering Services Examination conducted by the Union

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Public Service Commission, failing which by transfer on deputation and 50% by promotion failing which by transfer on deputation.

Promotion: Junior Engineers (Civil) who have qualified in the departmental examination and have rendered not less than 8 years' service in the grade after appointment thereto on a regular basis."

The 1992 Rules changed this and provided for promotion of JEs in the following manner:

Promotion: (i) 50% by Junior Engineer (Civil) with 8 years' regular service in the grade.

(ii) 50% by Limited Departmental Competitive Examination from amongst Junior Engineers (Civil) who have rendered not less than 4 years' regular service in the grade as on 1st July of the year of Examination."

A plain reading of the 1992 Rules shows that they have no retrospective effect. Indeed, respondents make no claim that the 1992 Rules would be implemented retrospectively. Merely because the 1992 Rules also apply to persons like the applicants who are already in service it does not mean that the Rules are retrospective. The 1992 Rules would only apply to promotions that are effected after the notification of the 1992 Rules. Therefore, their operation is only prospective.

6. Here, we would like to refer to The State of Jammu and Kashmir vs Shri Triloki Nath Khosa and Others, (1974) 1 SCC 19. That was a case dealt with by a Constitution Bench including the Chief Justice. That case dealt with Assistant Engineers in the Kashmir Engineering Service under the rules published under order No.1328-C of 1939. Assistant Engineers were entitled to be promoted

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to the higher cadre on the basis of their merit and record and no distinction was made between degree holders and diploma holders for the purpose of such promotion. In 1970, the Jammu and Kashmir Engineering (Gazetted) Service Recruitment Rules, 1970 were issued in which it was provided that only those Assistant Engineers would be eligible for promotion who possessed a bachelor's degree in engineering or held the qualification of AMIE (Section A & B) and who had put in at least seven years service in the J & K Engineering (Gazetted) Service. It was contended on behalf of the respondents therein that neither at the time of appointment to the post of Assistant Engineers nor for the benefit of promotion to the post of Divisional Engineers (Executive Engineers), was any distinction made by the Rules of 1939 between the diploma holders and degree holders, that rules governing conditions of service could not be changed with reference to classification of employees on the basis of educational qualifications so as to deny promotion to the diploma holders. The Supreme Court stated:

"An argument which found favour with Mufti Bahauddin, J., one of the learned judges of the Letters Patent Bench of the High Court, and which was repeated before us is that the 'retrospective' application of the impugned Rules is violative of Arts 14 and 16 of the Constitution. It is difficult to appreciate this argument and impossible to accept it. It is wrong to characterise the operation of a service rule as retrospective for the reason that it applies to existing employees. A rule which classifies such employees for promotional purposes, undoubtedly operates on those who entered service before the framing of the rule but it operates in future, in the sense that it governs the future right of promotion of those who are already in service. The impugned Rules do not recall a promotion already made or reduce a pay scale already granted. They provide for a classification by

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prescribing a qualitative standard, the measure of that standard being educational attainment. Whether a classification founded on such a consideration suffers from a discriminatory vice is another matter which we will presently consider but surely, the Rule cannot first be assumed to be retrospective and then be struck down for the reason that it violates the guarantee of equal opportunity by extending its arms over the past. If rules governing conditions of service cannot ever operate to the prejudice of those who are already in service, the age of superannuation should have remained immutable and schemes of compulsory retirement in public interest ought to have foundered on the rock of retroactivity. But such is not the implication of Service Rules nor is it their true description to say that because they affect existing employees they are retrospective. It is well-settled that though employment under the Government like that under any other master may have a contractual origin, the Government servant acquires a 'status' on appointment to his office. As a result, his rights and obligations are liable to be determined under statutory or constitutional authority which, for its exercise, requires no reciprocal consent. The Government can alter the terms and conditions of its employees unilaterally and though in modern times consensus in matters relating to public services is often attempted to be achieved, consent is not a pre-condition of the validity of rules of service, the contractual origin of the service notwithstanding."

Promotions made under the 1976 Rules with reference to a pass in the QDE are not cancelled by the 1992 Rules. It is, therefore, clear that the 1992 Rules do not have retrospective effect and question (a) in para 4 is answered accordingly.

7. Since we have held that the 1992 Rules do not operate retrospectively in the true sense, question (b) does not require to

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be answered. However, we may notice that by passing the QDE, applicants have only acquired one of the conditions of eligibility for promotion under the 1976 Rules. Mere acquisition of eligibility for promotion confers no vested right for promotion. Indeed, administration is bursting at the seams with persons who are eligible for promotion, but who may never be promoted for want of vacancies or because they retire before their turn for promotion is reached or for many other reasons. The right to be considered for promotion arises only when a vacancy arises and the turn of an eligible person to be considered is reached. Applicants cannot complain, therefore, that their rights are affected adversely or that promissory estoppel operates against respondents. They cannot complain if their seniors who under the 1976 Rules were ineligible for promotion (for want of a pass in the QDE) are made eligible for promotion under the 1992 Rules. Due to exigencies of administration, eligibility criteria frequently undergo changes and no vested rights are created or destroyed thereby.

8. Learned counsel for applicants relied on TR Kapur and Others vs State of Haryana and Others, AIR 1987 SC 415, to show that by a retrospective amendment, vested rights cannot be taken away. In that case, the Supreme Court found that under Section 82(6) of the Punjab Reorganisation Act, 1966, the conditions of service applicable immediately before the appointed day in the case of any member of civil services affected by the reorganisation of the State could not be varied to his disadvantage except with the previous approval of the Central Government. The Supreme Court noticed that no such prior approval of the Central Government had been obtained, and therefore, struck down the State Government notification as being contrary to Section 82(6) of the Punjab Reorganisation Act, 1966. The Supreme Court also stated that on the view that was taken,

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there was no need to deal in detail with the other points raised, but would only touch upon them. Then, the Supreme Court stated that:

"It is equally well settled that any rule which affects the right of a person to be considered for promotion is a condition of service although mere chances of promotion may not be...an authority competent to lay down qualifications for promotion, is also competent to change the qualifications...the benefits acquired under the existing rules cannot be taken away by an amendment with retrospective effect, that is to say, there is no power to make such a rule under the proviso to Art 309 which affects or impairs vested rights. Therefore, unless it is specifically provided in the rules, the employees who are already promoted before the amendment of the rules cannot be reverted and their promotions cannot be recalled."

[Emphasis added]

It is clear that this decision does not help the applicants.

9. Learned counsel for applicant then cited VJ Thomas and others vs Union of India and others, AIR 1985 SC 1055. In that case, Junior Engineers were required initially under the Telegraphic Engineering Service (Class II) Recruitment Rules, 1966, to pass a qualifying departmental examination for promotion as Assistant Engineers. These Rules were superseded in 1981 under which the qualifying examination was replaced by a qualifying-cum- competitive examination. It was further provided that the first two examinations held after the commencement of these Rules shall only be competitive for which the eligibility will be restricted to only those officers who have already qualified in the departmental qualifying examination held before the commencement of these Rules. It is this provision that was challenged by persons who had become eligible to appear

contd.

for the qualifying departmental examination under the 1966 Rules, but since no qualifying examinations were held, they could not pass the qualifying examination whereby they also lost their chances for appearing for the first two qualifying-cum-competitive examinations held after 1981. The Supreme Court found, nothing improper or unconstitutional in this restriction stating that even though minimum eligibility criterion is fixed enabling one to take the examination, yet the examination can be confined on a rational basis to recruits up to a certain number of years and that it caters to a well-known situation in service jurisprudence that there must be some ratio of candidates to vacancies. This case has no application to the facts of the case before us, where there has been no attempt to restrict the number of candidates appearing for the competitive examination introduced by the 1992 amendment. On the other hand, the requirement for a qualifying examination has been done away with for the promotional channel.

10. Learned counsel for applicants cited AA Calton vs The Director of Education and another, AIR 1983 SC 1143. That was a case in which certain proceedings for selection of a Principal commenced prior to 18.8.75 and under the Act in force prior to that date, the Director was competent to make a selection. However, the Director exercised that power subsequent to 18.8.75 on which date, an amending Act taking away his power to make an appointment had come into force. The Supreme Court upheld the action of the Director stating that the amending law has no retrospective effect and did not have any effect on the proceedings which had commenced prior to 18.8.75 and which had to be continued in accordance with the law as it stood at the commencement of the proceedings, since the amending Act did not provide expressly that the amendment in question would apply to pending proceedings nor were there any

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words in it which by necessary intendment would affect such pending proceedings. This case also has no application to the facts of the case before us.

11. Learned counsel for applicants cited P Mahendran and others vs State of Karnataka and others, AIR 1990 SC 405. That case related to the selection and appointment of Motor Vehicles Inspectors. An advertisement was published inviting applications for the posts of Motor Vehicles Inspectors, candidates were selected and intimated of their selection. Meanwhile, the recruitment rules were amended which had the effect of removing those with qualification of diploma in Mechanical Engineering from the eligible category. On a challenge by persons unsuccessful in the selection, the Karnataka Administrative Tribunal quashed the advertisement and the select list published by the Public Service Commission (PSC) and directed the PSC to notify the vacancies afresh and make selections in accordance with the amended rules. Aggrieved by this order, appellants who had been selected by the Commission for appointment and certain selected candidates approached the Supreme Court for a direction to the State Government to appoint the selected candidates. The Supreme Court held that the appellants' selection and appointment should not be held illegal as the process of selection had commenced in 1983 and had to be completed in accordance with law as it stood at the commencement of the selection. This decision was followed in another case cited by learned counsel for applicants, namely, NT Bevin Katti etc., vs Karnataka Public Service Commission and Others, AIR 1990 SC 1233, which refers to Mahendran's case and states:-

"..It is a well accepted principle of construction that a statutory rule or Government order is prospective

in nature unless it is expressly or by necessary implication made to have retrospective effect. Where proceedings are initiated for selection by issuing advertisement, the selection should normally be regulated by the then existing rules and Government orders and any amendment of the rules or the Government order pending the selection should not affect the validity of the selection made by the selecting authority or the Public Service Commission unless the amended rules or the amended Government orders issued in exercise of its statutory power either by express provision or by necessary intendment indicate that amended Rules shall be applicable to the pending selections."

In the case before us, there is no selection to posts involved which had commenced prior to the amendment or concluded thereafter. These two decisions also do not apply to the facts of this case.

12. Learned counsel for applicants then referred to A-5 and submitted that the 1992 Rules protected things done or attempted to be done before the supersession of the 1976 Rules and argued that persons like applicants who had already qualified in the QDE and were awaiting promotion should be given special protection. He cited Gunaru Karan and Others vs Revenue Divisional Commissioner and Others, 1991 Supp (2) SCC 291. In that case, appellants who had been selected and included in the list of selected candidates in accordance with the then existing rules were not appointed, since the rules were amended before they could be appointed. The Supreme Court held that the proviso to Rule 19 of the repealed rules was in the nature of a saving clause laying down that the new rule will not affect any action taken under the rules which have been repealed and the action shall be deemed to be under the amended Rules. The Supreme Court declared that appellants were entitled

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to appointment, notwithstanding enforcement of the 1985 Rules. This decision also does not apply to the facts of the case on hand, since here there is no selection of the applicants under the 1976 Rules.

13. The 1992 Rules actually provide that 100% of the vacancies of AEs are filled by promoting JEs whereas the 1976 Rules provide only for 50% of the posts to be filled by promoting JEs. The requirement of a pass in QDE for promotion has been removed. The contention that applicants have been adversely affected by the 1992 Rules cannot be accepted. We accordingly answer question (b) in para 4 in the negative.

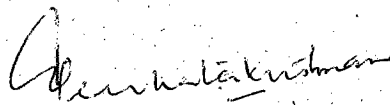
14. The 1992 Rules have created two channels for promotion—one by operation of the rule of seniority and one on consideration of merit as determined by a LDCE. This cannot be said to be discriminatory or arbitrary. Indeed, it is the pattern found most commonly in Government. The examinations conducted by the UPSC earlier is replaced by a LDCE which is made available to JEs so that JEs with merit have access to a fast track for promotion. Applicants who have passed the QDE cannot claim that they have the merit to take advantage of the fast track. They must compete inter se to establish merit by appearing in the LDCE. The QDE cannot do service for the LDCE. There is no discrimination shown in this procedure. Whether a set of JEs who have passed the QDE should be treated as a separate class to be given a separate quota/separate channel for promotion is a matter of policy and we do not propose to sit in judgement over the wisdom or otherwise of the respondents' decision not to treat JEs with QDE awaiting promotion as a separate class. The 1992 Rules do not suffer from the infirmity alleged by the applicants which would make them violative of Article

contd.

16 of the Constitution of India and we answer question (c) in para 4 in the negative.

15. The above discussion shows that the application is without merit. It is accordingly dismissed. No costs.

Dated the 10th July, 1996.


PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER


CHETTUR SANKARAN NAIR (J)
VICE CHAIRMAN

List of Annexure

Annexure A-5:- Copy of the notification published
in Part II Sec. 3 sub-sec.(1) of
Govt. of India Gazette dated 11.11.92
issued by the Asst. Director General.