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CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH  
LUCKNOW

O.A. No. 138/91

M.C. Arya

Applicant

versus

1. Union of India  
2. Director General,  
R.D.S.O. Lucknow.

Respondents.

Shri R.B. Srivastava, counsel for applicant.  
Shri D.R. Singh counsel for Respondents.

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Hon. Mr. Justice U.C. Srivastava, V.C.  
Hon. Mr. K.Obayya, Adm. Member.

(Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicant who was working as Mistri in Electrical Maintenance Grade I (ELM.Gra.I) on regular basis from 1.4.83 in the scale of Rs 380-560(Rs)/ Rs 1320-2040, after having completed 3 years service became eligible for selection for the post of Chargeman 'B' (Electrival) in the scale of Rs 425-700(Rs) Rs 1400-2300 (RPS) on 1.4.86. The applicant prayed that he is entitled for selection on the vacant post of Chargeman 'B' on 25.4.86. On 13.8.86 the R&P Rules for Group C and D staff of R.D.S.O were framed in supersession of existing rules which is as follows:

"Nothing in these rules shall affect reservations and other concessions required to be provided for Scheduled Caste and

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Scheduled Tribes and other special categories of persons in accordance with the orders issued by the Central Government from time to time in this regard."

The method of recruitment for the post of Chargeman 'B' (Electrical) was 50% by promotion on the basis of selection from regular eligible departmental candidates and the minimum qualification for promotion of departmental candidates who besides passing the prescribed test and three years service as skilled Grade I (Electric) and should have passed Matriculation or its equivalent.

Prior to the above amendment it was not provided that the Matriculation will be the minimum qualification. The result was that the departmental candidates, who prior to the amendment were eligible, for appointment were deprived from getting the said promotional post. The applicant has challenged the said rules on the ground that it is violative of Articles 14 and 16 of the Constitution of India, in introducing the minimum qualification of Matriculation and depriving many persons like him from getting the said posts from all times to come.

The respondents have stated that these rules were issued on 29.9.86 and not on 13.8.86. R.D.S.O. is a premier organization of Indian Railways dealing with sophisticated Research and Development work and

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has prescribed a minimum qualification of Matriculation in the Recruitment and Promotion Rules for supervisory grade of Chargeman 'B' in the Electrical Department, and that is Matriculation and the Department has rightly prescribed ~~prescribed~~ the qualification and that is the basis for its prescription and as such it cannot be said that rules are illegal and ultra vires and the applicant being not eligible for the selection had no right to challenge the open market selection which has been made as per rules prescribed for promotion.

On behalf of the applicant it was contended that it was not a reasonable qualification. In this connection a reference was made to the observations made by the Hon'ble Supreme Court in the case of B.N. Saxena versus New Delhi Municipal Committee and others, 1990 LAB I.C. 1614 in which the question before the Hon'ble Supreme Court was whether the person having no Diploma qualification but having experience of service of six years as Senior and Junior Draftsman were entitled for promotion to the post of Head Draftsman. It was observed that the revised rule relevant to qualification of the Head Draftsman of the New Delhi Municipal Committee was divided into two limbs, the first of which prescribed a diploma with a minimum of three years of service as Senior Draftsman and the second limb provided for six six years of service as Senior and junior draftsman. It would be unreasonable to hold that in addition to this considerable experience one must also have the first part. It could not have been the intention of the rule

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making authority that persons who were designated as Senior Draftsman without any Diploma qualification should acquire such diploma qualification for further promotion. Such a view would not be consistent and coherent with the revised rule and its object. The second limb of the revised rule is independent of the first. Consequently, the Senior Draftsman having no Diploma qualification but having experience for six years of service as Senior and Junior Draftsman was entitled to be considered for promotion to the post of Head Draftsman."

The condition is here. The applicant gained experience and if the rules were not amended, he was eligible and was promoted to the post of Chargeman B. The applicant should have been given promotion on the basis of experience and the Matriculation qualification will not stand in his way. Even otherwise, the applicant was fully qualified and he would have been promoted. A reference may be made to the Case of Y.V. Rangaiiah and others vs. J. Sreenivasa Rao and others 1983(SCC(L&S) 382 in which it was held that if the vacancies pertain to the period ~~of~~ when the amendment was not made, the same could have been filled in and if not filled in a person eligible before the amendment of rules will be eligible for promotion. The said case was followed in the case of N.T. Bevin Kutti etc. v. Karnataka Public Service Commission and others (AIR 1990 Supreme Court 1233).

In view of what has been said above the applicant was wrongly deprived of the promotional post, as the Matriculation was introduced subsequently. It is not necessary to decide the question of validity of the said

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rules. The applicant is accordingly allowed. The respondents are directed to allow the applicant to appear in Supplementary Examination and in case he succeeds, he should be given promotion notionally from the date he would have been normally entitled but actually from the date he qualified in the test.

Adm. Member.

Vice Chairman.

Eucknow: Dated: 15<sup>th</sup>/12

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