

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

O.A.No. xxx
T.A.No. 98

198 x
1986

DATE OF DECISION 23.1.1987

Shri S.P.Sonowal & Ors. Applicant/s.

Shri V.B.Rairkar Advocate for the Applicant/s.

Versus

Union of India & Ors. Respondent/s.

Shri H.V.Mehta Advocate for the Respondent(s).

CORAM:

The Hon'ble Vice-Chairman B.C.Gadgil
The Hon'ble Member J.G.Rajadhyaksha

1. Whether Reporters of local newspapers may be allowed to see the Judgment? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether to be circulated to all Benches? Yes.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Tr. Application No.98/86.

1. Shri S.P.Sonowal,
CIE Residential Complex,
Aundh Camp,
Pune - 411 027.
2. Shri S.L.Subbarayan,
CIE Residential Complex,
Aundh Camp,
Pune - 411 027.
3. Shri S.U.Kabade,
CIE Residential Complex,
Aundh Camp,
Pune - 411 027.
4. Shri D.K.Banerjee,
CIE Residential Complex,
Aundh Camp,
Pune - 411 027.

... Applicants

V/s.

1. Union of India,
Learned Additional Govt.
Pleader, High Court,
Bombay.
2. The Secretary,
Department of Defence Production,
DHQ P.O. New Delhi - 110 011.
3. The Director General of Inspection,
Ministry of Defence, DHQ,
New Delhi - 110 011.

... Respondents.

Coram: Hon'ble Vice-Chairman, B.C.Gadgil,
Hon'ble Member(A), J.G.Rajadhyaksha.

Appearances:

Shri V.B.Rairkar, Advocate
for the applicant and
Shri H.V.Mehta(for Mr.M.I.Sethna)
for the Respondents.

JUDGMENT:

(Per B.C.Gadgil, Vice-Chairman)

Dated:

1. The applicants had filed Writ Petition No.5291/84 in the High Court of Bombay. The said writ petition has been transferred to this Tribunal and is numbered as Transferred Application No.98/86.

...2.

2. Originally four applicants filed said Writ Petition. However, at the time of the argument of this application Mr. Rairkar for the applicants frankly stated that he is not pressing the claim of applicant No. 4 and that this application should be treated as that of applicants 1 to 3 only. Thus, whenever we refer in the Judgment to the applicants, that reference is to applicant Nos. 1 to 3 only.

3. All the applicants are employees working under the organization known as Directorate General of Inspection, Ministry of Defence, New Delhi. There is a Regional Office at Pune and the applicants are employed therein. Prior to 1979, the recruitment to the various categories of the staff members was governed by orders known as Statutory Routine Orders. The SRO No. 109 of 1964 dealt with the recruitments beginning from the post of Technical Supervisor-III to the promotional post of Foreman. There are intervening promotional posts prior to the promotion to the post of Foreman. This SRO covers such promotees also. However, those details are not necessary. SRO 51 of 1967 lays down the recruitment rules for the promotional posts from Foreman to Junior Scientific Officer, and subsequent promotional posts such as Senior Scientific Officer Gr. II, Gr. I etc. The applicants are Diploma holders in the engineering branch. They were initially appointed to the posts lower than those of Foremen and in due course they were promoted as Foremen. Promotion from the post of Foreman is to the post of Junior Scientific Officer. But in the present litigation we are concerned with the promotion from the post of Junior Scientific Officer to the post of Senior

Scientific Officer Gr.II. Under SRO 51 of 1967, the Junior Scientific Officer was eligible for promotion as Senior Scientific Officer Gr.II on certain terms. However, what is material ^{is} ~~was~~ that it was not necessary for such persons to have any engineering degree or some other higher qualifications for such promotions. Prior to 1979 applicants 1 & 2 were Foremen while applicant No.3 was, on ad hoc promotion, a Junior Scientific Officer though his substantive post was that of Foreman. On 19.9.1979, the Government framed rules known as Defence Quality Assurance Service Rules (for short DQAS Rules). By these rules it was prescribed that for promotion to the post of Senior Scientific Officer Gr.II the Junior Scientific Officer should fulfil the following conditions:

"Junior Scientific Officer with 3 years regular service in the grade and possessing a degree in Engineering/Master's Degree in Science or equivalent qualification. The requirement of educational qualification shall not apply to those who are holding the post of Junior Scientific Officer on regular basis on the date of promulgation of these rules".

At the time of the argument Shri Rairkar told us that all the applicants have been appointed as Junior Scientific Officers on regular basis on 26.6.1980. The applicants (who are now Junior Scientific Officers) have a grievance about this change of rules for the promotion to the next post viz. Senior Scientific Officer Gr.II. Though a number of contentions have been raised in the Writ Petition (which was subsequently amended in the High Court) Mr.Rairkar has restricted his submissions only to some points.

Hence we would like to refer to those contentions. It is the case of the applicants that a provision for additional educational qualifications as mentioned above would be discriminatory, and that such a provision in the rules of 1979 should not be permitted to operate prejudicially against those employees who have already entered service prior to the new rules of 1979. The next contention is that this necessity of particular educational qualifications is not required for the higher posts viz. Scientific Officer Gr.I and others. According to the applicants such a position should not be allowed to stand. Another contention of the applicants is that the rules have prescribed an arbitrary dividing line viz. 19.9.1979 by saying that those employees who are regular Junior Scientific Officers need not have the said higher educational qualification while for others (i.e. those who would become regular Junior Scientific Officer after 19.9.1979) such a qualification is necessary. There are one or two more submissions made by Mr.Rairkar to which we would make reference in due course.

4. The Respondents have resisted the application by filing an affidavit in reply in the High Court. Thereafter, one Mr.Raina has filed an additional affidavit before this Tribunal but later on the respondents made a Miscellaneous Petition No.1/87 that instead of Raina's affidavit, the affidavit of Mr.Zakhmi should be read. During the course of the arguments this prayer was not opposed by Mr.Rairkar ~~and hence Mr.Rairkar~~ and hence Miscellaneous Petition No.1/87 stands allowed. The net result is that the Respondents have opposed the application by their affidavit in reply filed in the High Court and also

by the affidavit of Mr. Zakhmi. It is not necessary to give ^{any} details of the said affidavits. Suffice it to say that the respondents contended that the rules of 19.9.1979 and the prescription of the above mentioned qualifications for promotion to the post of Senior Scientific Officer Gr. II is quite legal and proper and that the said provision is neither arbitrary nor discriminatory. The contention of the respondent is that rules so framed in 1979 are legally applicable and they are not bad in any way.

5. Mr. Rairkar relied upon the decision of the Jammu & Kashmir High Court in the case of Triloki Nath Khosa V/s. State of Jammu & Kashmir reported in 1973(1) SLR 64. It is a case for promotion to the posts of Executive Engineers from the lower posts of Assistant Engineers. A diploma holder as also a degree holder were eligible for the post of Assistant Engineers. Subsequently, the Government revised the promotional rules to the post of Executive Engineers by providing that those Assistant Engineers who have a degree in Engineering can alone be considered for the post of Executive Engineer. This provision was challenged in the Jammu & Kashmir High Court. A single Judge dismissed the application. The Division Bench allowed the Letters Patent appeal No. 1974. The appellate court held that the diploma holders as also the degree holders who were Assistant Engineers were grouped together as one class and there could not be any discrimination for their promotion to the post of Executive Engineers. It is true that this decision of the Jammu & Kashmir High Court supports the contention of the present applicants. However,

that decision of the High Court is of no use and Mr. Rairkar would not be able to rely upon it particularly because the said decision of the High Court has been set aside by the Supreme Court. What is important is that the State of Jammu & Kashmir preferred an appeal 2134/72 against the High Court judgment and the Supreme Court has allowed the appeal by holding that the provision in question was legal and quite proper and there is no question of discrimination or arbitrariness. The decision of the Supreme Court is reported in 1974 SCC(L&S) 49. The question that was required to be decided by the Supreme Court *has been formulated by the Supreme Court* itself in the following words:-

"If persons drawn from different sources are integrated into one class, can they be classified for the purpose of promotion on the basis of their educational qualification?"

The contention of the respondents before the Supreme Court was that once there was a class of equals there can be no discrimination on the ground of educational qualifications. It was also suggested that such a provision by way of amendment to the existing rules would be retrospective and would violate the guarantee of equal opportunity as far as the promotional aspect is concerned. It was further urged that the classification between degree holders and diploma holders is unreal and unreasonable. The Supreme Court rejected this contention in the following words; (vide paragraph 33):-

"Judged from this point of view, it seems to us impossible to accept the respondents' submission that the classification of Assistant Engineers into degree-holders and diploma-holders rests on any unreal

or unreasonable basis. 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"...

In view of this law laid down by the Supreme Court it will not be possible for Mr. Rairkar to make any grievance about a provision requiring a higher educational qualification for promotion to the post of Senior Scientific Officer Gr. II.

6. It was next urged by Shri Rairkar that the said classification is unreal because a similar degree qualification is not prescribed for the higher post viz. Senior Scientific Officer Gr. I etc. This contention is also considered and rejected by the Supreme Court in paragraph 36 and 37 of the judgment. The relevant part of the judgment reads as follows:

"If it was thought necessary to prescribe a degree qualification in order to achieve efficiency in the post of Executive Engineers, ex hypothesi it should have been equally imperative, if not more so to provide for a similar condition in regard to promotion to higher posts - thus runs the argument. This argument means that any service reform must embrace every hierarchy or none at all. It is often impossible or at any rate inexpedient to reach and remedy all forms of evil, wherever present. Reform must begin somewhere if it has to begin at all and, therefore, the administrator who has nice and complex problems to solve must be allowed the freedom to proceed tentatively,

step by step...."

It is thus clear that the contention of Mr. Rairkar cannot be accepted as the Supreme Court has rejected it as mentioned above.

7. Mr. Rairkar relied upon the Supreme Court in the case of A.S. Parmar V/s. State of Haryana reported in 1984 (supplement) Supreme Court Cases.1. In fact that decision is not of any help to the applicant. It was a case of recruitment to the post of Executive Engineers. Rule.6 has prescribed that there will be direct recruitment as also promotion from Class.II service. An Engineering Degree was prescribed as a qualification for direct recruitment, while such educational qualification was not necessary for promotion from Class.II service. However, the appointing authority felt that it was not necessary and by exercising the powers of relaxation of such qualification (mentioned in the rules) certain class.II employees were promoted as Executive Engineers though they were not Engineering Graduates. Such relaxation was challenged. The Supreme Court held that on a proper construction of the rules, degree qualification was not essential for promotion from Class.II service and consequently a relaxation of such qualification was not at all necessary. The promotions of these persons not having degree qualification was found good. Thus the case and the decision, as such is not relevant for deciding the controversy before us. However, in paragraph 18 the Supreme Court has made the following observations which are relevant for the present case:

"It is indisputable that if the Government

...9.

wishes to appoint only holders of degrees to the Class.I service, it may do so by promulgating appropriate rules. That power is beyond question and it is not therefore necessary to refer to those decisions which lay down that classification on the basis of educational qualification of Officers belonging to a cadre for purposes of promotion to a higher grade is permissible.."

By these observations, the Supreme Court has laid down the same principle as is enunciated in the case of Triloki Nath Khosa V/s. State of Jammu and Kashmir. (supra).

8. There are different sets of rules known as Defence Research and Development Service Rules (for short D.R.D.S. Rules). These are the rules framed in 1979. It appears that these rules do not prescribe educational qualifications for promotion from Junior Scientific Officer to Senior Scientific Officer.II. It was urged that a provision giving different treatment to the Junior Scientific Officers under D.R.D.S. Rules and under D.Q.A.S. Rules would be discriminatory and arbitrary. It may be noted that the functions of the two organizations are different. One is dealing with the Defence Quality Assurance and the other is concerned with Defence Research and Development. It will not be possible for the applicant to validly contend a point of discrimination of arbitrariness simply because the Rules for another separate organization performing different duties have made different provisions about eligibility for promotion. Much will depend upon the need of particular educational qualifications in a particular branch or organization and it would be too risky to introduce a principle of discrimination on the basis of a

very vague and general statement that both the organizations are doing almost similar or identical work.

9. Mr. Rairkar relies on State of Punjab V/s. S.P. Sharma reported in (1973) 2 Supreme Court Cases, 466. It was a case in which the provisions of section 115(7) of the State Reorganisation Act, 1956 were to be construed, that sub section provides:

"that the conditions of service of the allocated servants shall not be varied to their disadvantage except with the previous approval of the Central Government."

The above case was of an allocated servant. A fresh provision was made that a Clerk for ^{getting} ~~paying~~ promoted as an Assistant must pass a particular examination. The Supreme Court held that this is a change in the conditions of service and contrary to the provisions of sec. 115(7). Such a change is permissible in sec. 115(7) only with the previous approval of the Central Government and in the absence of that approval that change was quashed. This decision has, therefore, nothing to do with the general principle of the amendment of the Recruitment Rules prescribing a higher educational qualification for promotional posts.

10. Shri Rairkar then relied upon another decision of the Supreme Court in the case of K.C. Arora V/s. State of Haryana reported in 1985 Supreme Court L & S 520. During the 1962 Emergency the Government wanted to recruit Emergency Officers and Servicemen as an emergent measure. The Punjab Government,

therefore, provided that certain concessions would be given to such Commissioned Officers whenever they would be seeking Government Service after their de-mobilization. One of the concessions was that the service rendered as a Commissioned Officer would be counted for seniority, promotion etc. Later on, the Rules were accordingly modified. On the basis of these provisions certain persons rendered Military Service as Commissioned Officers and after their de-mobilization they entered Government Service. They were thus entitled to have the benefits that the Military Service would be counted for seniority, promotion, etc. Later on, these Rules were amended. The effect thereof was that the service could not be counted for such purposes. The Supreme Court held that this amendment had the effect of disintegrating the service which had been integrated and that therefore it would be bad as contravening Articles 14 and 16. The Supreme Court, therefore, held that the amendment is bad so far as it affects prejudicially the persons who acquired their rights by entering service before the amendment. This decision is again of no use while deciding the present litigation. In the said case certain vested rights were sought to be nullified and it was held that this was not permissible. In the present case, there is no question of any vested rights of the applicants for getting promotions. Mere chance of promotion is not a condition of service and as held by the Supreme Court in ~~the case of~~ Triloki Nath's case prescription of additional educational qualifications is quite legal and proper.

11. The Recruitment Rule provides that the educational qualification shall not apply to those persons holding the post of Junior Scientific Officers on regular basis on the date of ~~the~~ promulgation of the Rules i.e. 19.9.1979. It was, therefore, contended that the Rules have introduced a dividing line by fixing the date 19.9.1979 for the purpose of deciding as to whether educational qualification is necessary or not. The argument is that such a dividing line is grossly discriminatory and arbitrary. In our opinion, this contention deserves to be rejected. The simple reason is that by the said provision, the rule making authority has protected the promotional chances of the Junior Scientific Officers who were regularly holding such posts. In fact, this type of provision cannot be treated as discriminatory. On the contrary, all persons who are Junior Scientific Officers on regular basis would be eligible for promotions even if they do not possess the educational qualification that was introduced by the Rules of 1979. Those employees who were not Junior Scientific Officers on regular basis on 19.9.1979 should obviously be governed by the new Rules and prescribing the additional educational qualification for such persons (holding posts below that of Junior Scientific Officers) is quite legal and proper.

12. To get over the above position Mr. Rairkar relied upon the decisions of the Supreme Court in the case of B. Prabhakar Rao V/s. Union of India reported in 1985 (supplement) Supreme Court Cases 432. In that case Andhra Pradesh Government on 28th of February, 1983 reduced the age of superannuation for its employees from

58 years to 55 years. However, there was a lot of agitation against this reduction of retirement age. A challenge was made in the Supreme Court. In addition there was an agreement between the Government and its employees that the retirement age should be again enhanced or increased to 58 years. It appears that this agreement was to be given effect to immediately after the judgment of the Supreme Court. However, the judgment was not pronounced till January, 1985. It appears that the Government thought it fit not to await the decision of the Supreme Court and hence on 23.8.1984 the Governor issued an Ordinance wherein the retirement age was increased to 58 years. However, that Ordinance provided that those persons who had retired (on the basis of retirement age being 55 years) between 28.2.1983 and 23.8.1984 would not get any benefit of this increased age. This provision was challenged on the ground that a discriminatory treatment was given to a group of persons who had completed 55 years of age after 28th February, 1983. The Supreme Court found that the said provision was bad. The purpose of the Ordinance was to set right or redress a wrong perpetrated by the earlier decision. This can be seen from paragraph.9 of the Judgment. In the background of that avowed object, the Supreme Court had held that the division of the employees into two groups as mentioned above had no nexus whatever to the object of redressing ~~any~~ thereof. This is what Supreme Court has held, in paragraph.20:

".... The final situation that emerges is that almost immediately after the age of super-annuation was reduced from 58 to 55 years,

it was realised by the Government of Andhra Pradesh that they had taken a step in the wrong direction and that serious wrong and grave injustice had been done to their employees. A decision was very soon taken to redress the wrong by reversing the decision but an unfortunate rider was added that they should wait till the pronouncement of the judgment of the Supreme Court, which was perhaps expected to be pronounced shortly Now if all affected employees hit by the reduction of the age of superannuation formed a class and no sooner than the age of superannuation was reduced it was realised that injustice had been done and it was decided that steps should be taken to undo what had been done, There was no reason to pick out a class of persons who deserved the same treatment and exclude from the benefits of the beneficent treatment by classifying them as a separate group merely because of the delay in taking the remedial action already decided upon."

It is in the peculiar situation arising from the facts of that case that the Supreme Court found the provision discriminatory. This can be clearly seen from the Judgment of Justice Balakrishna Eradi and more particularly from the following observations in paragraph 25 and 26:

".... I have thought it fit to add a few words of my own since I consider it necessary to make it absolutely clear that the conclusions reached by us in these cases are based entirely on the special facts and circumstances constituting the legislative history of the impugned Andhra Pradesh Ordinance 24 of 1986."

The decision in the case of B.Prabhakar Rao is not at all applicable to the facts of the present case where we deal with the Recruitment Rules.

13. Mr. Rairkar has advanced one argument particularly in favour of applicant No.3. This applicant was Junior Scientific Officer on ad hoc basis on 23.6.1979. The contention of Shri Rairkar is that at least applicant No.3 should have been protected on account of such ad hoc appointment as Junior Scientific Officer. One cannot forget that applicant No.3 was given regular appointment on 26.6.1980. Consequently, he was not a regular Junior Scientific Officer on the prescribed date i.e. 19.9.1979. It appears that applicant No.3 was appointed on ad hoc basis, as the Rules of 1979 were in contemplation. It is an accepted principle of law that an ad hoc appointment does not confer any right on the appointee so as to enable him ^{to} claim any benefits, thereunder. Shri Rairkar then relied upon Appendix 'A' to C.P.R.O. 127/77 and more particularly to para 11 & thereof. The said provision can be found on page 27 of the compilation which was shown to us. It is stated therein that in exceptional cases ad hoc appointments can be made. The argument is that there was no exceptional circumstance which required the Respondents to appoint Applicant No.3 on ad hoc basis on 23.6.1979. The fact that at that time new Amended Recruitment Rules were in the process of being framed cannot be denied. Such new rules were promulgated within about 3 months and there is nothing wrong if the Respondents thought it fit to appoint on ad hoc basis certain persons in the face of impending fresh Recruitment Rules.

14. It was then contended that the names of the applicants were included in the selected panel for the posts of Junior Scientific Officers and that by such inclusion they got a right to be considered for appointment as and when a vacancy would arise.

...16.

The argument is that, the applicants' would not be prejudicially affected simply because applicant Nos. 1 and 2 were appointed on ad hoc basis, after the promulgation of the new Recruitment Rules. This submission is fallacious, inasmuch as, one cannot forget that applicants Nos. 2 and 3 were not regular Junior Scientific Officers on the relevant date i.e. on 19.9.1979. The decision of the Supreme Court in the case of S.Govind Raju V/s.Karnataka State Road Transport Corporation reported in (1986) 3 S.C.C. 273 is relied upon by Shri Rairkar. But it is not at all applicable.

15. The result, therefore, is that the application fails and it is dismissed. There would however, be no order as to costs.

B.C. Gadgil

(B.C.GADGIL)
VICE - CHAIRMAN

[Signature]
(J.G. RAJADHYAKSHA)
MEMBER(A).

Received copy of Judgment
for respondent no. 3,
M. C. Co-
(B.N. JAGTAP)
28/11/1987 UDC