

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 986 of 1999.

Dated this _____, the 18th day of April, 2000.

K. K. Bhaskaran & Another, _____ Applicants.

Shri G. K. Masand, _____ Advocate for the
applicants.

VERSUS

Union of India & Others, _____ Respondents.

Shri R. K. Shetty, _____ Advocate for the
Respondent Nos. 1 to 4.

Shri M.S. Ramamurthy alongwith _____ Advocate for
Shri I. J. Naik, _____ Respondent Nos. 5 & 6.

CORAM : Hon'ble Shri Justice R. G. Vaidyanatha,
Vice-Chairman.

Hon'ble Shri B. N. Bahadur, Member (A).

- (i) To be referred to the Reporter or not ? ye
- (ii) Whether it needs to be circulated to other Benches NO
of the Tribunal ?
- (iii) Library. ye


(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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Hon'ble Shri B. N. Bahadur, Member (A).

1. K. K. Bhaskaran,
Quarter No. C/1,
Electricity Colony,
Dalwada, Daman.
2. Sarjeet Singh,
residing at -
Maya Vansi Falia,
Opp : Govt. College,
Near Ramesh Pamsi House,
Dunetha, DAMAN.

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Applicants.

Both the applicants are working as
Junior Engineers in the Electrical
Deptt. of Administration of Daman
at DAMAN.

(By Advocate Shri G. K. Masand)

VERSUS

1. Administrator,
Administration of Daman,
DAMAN.
2. Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi - 110 011.
3. Department of Personnel &
Training,
Government of India, New Delhi.
4. Union of India through
The Secretary to the Govt. of India,
Ministry of Power, Shram Shakti
Bhavan, Rafi Marg, New Delhi.
5. Haresh D. Tandel.
6. Yogesh Tripathi.

Both the private respondents are working
as Junior Engineers in the Electricity
Department of Administration of Daman
& Diu, DAMAN.

(By Advocate Shri R. K. Shetty for R-1 to 4
and Shri M.S. Ramamurthy alongwith Shri I.J. Naik
for Private Respondent Nos. 5 and 6.)

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O R D E R

PER : Shri R. G. Vaidyanatha, Vice-Chairman.

This is an application filed under Section 19 of the Administrative Tribunals Act. The respondents have filed reply opposing the application. On the request of both counsels and since the point involved is a short point, we have heard the application on merits at the admission stage. We have heard Mr. G.K. Masand, the Learned Counsel for the applicants, Shri R. K. Shetty, the Learned Counsel for official respondents, namely - Respondent No. 1 to 4 and Mr. M. S. Ramamurthy alongwith Shri I. J. Naik, the Learned Advocate for private respondents.

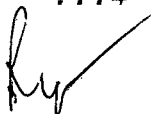
We hereby admit the O.A. and proceed to dispose it of on merits.

2. Few facts which are necessary for the disposal of this application are as follows :

The applicants and Respondent Nos. 5 and 6 are working as Junior Engineers in the Electrical Department of the Administration of Daman & Diu. The applicants are diploma holders whereas Respondent Nos. 5 and 6 are holders of Degree in Engineering. According to the recruitment rules prior to 1999, the Junior Engineers are eligible for promotion to the post of Assistant Engineers, who have put in four years service if they are Degree holders or 8 years service if they are diploma holders. Then came the impugned 1999 amendment to the Recruitment Rules. The amended rule is notified on 16.07.1999. According to this amendment, for the promotion of Assistant Engineers, it is now provided that 75% shall be promoted from

the cadre of Junior Engineers who are diploma holders having 8 years regular service in the grade and 25% of promotion shall be from Junior Engineers who are Degree holders in Electrical Engineering with five years regular service in the grade. The applicants are very much aggrieved by this amendment of prescribing a quota of 75% and 25% between diploma holders and degree holders. According to them, earlier entire 100% was by promotion from Junior Engineers irrespective of they being diploma holders or degree holders but now the new rule provides quota of 75% for diploma holders and 25% for degree holders. It is alleged that it is a case of hostile discrimination against diploma holders by providing 25% of the promotional quota to the degree holders. It is their contention that all Junior Engineers, whether they are diploma holders or degree holders, belong to one class or one group or one cadre and there cannot be a discrimination in that cadre on the basis of educational qualification like diploma or degree. It is stated that this is a discrimination which is hit by Articles 14 and 16 of the Constitution of India. That this rule has been made only to favour the graduates as against diploma holders. It is, therefore, alleged that the impugned rule is liable to be quashed.

3. Both, the official respondents and the private respondents have justified the impugned amendment. It is stated that this is purely a policy matter, which the Government in its wisdom has decided to make classification on the basis of

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educational qualification, which is permissible in law. The Government wants to give chance to graduate engineers to come up within the 25% quota, so that they will be available for further promotion to the post of Executive Engineer, for which only an Engineering degree holders is entitled to be promoted. If all the Assistant Engineers are diploma holders, then they cannot be promoted to the post of Executive Engineer, since Degree in engineering is essential for promotion to the post of Executive Engineer. That the amendment of rule was necessary in administrative interest and as a policy decision taken by the Government. It is also stated that U.P.S.C's. approval has been taken for the amendment of the recruitment rules.

4. The Learned Counsel for the applicant contended that the impugned amendment is hit by Articles 14 and 16 of the Constitution of India, since it makes a discrimination between Degree holders and diploma holders, who form one common feeder cadre for ^{Promotion to} the post of Assistant Engineers. On the other hand, the Learned Counsel for the official respondents and private respondents have justified the amendment on the ground that it is permissible and reasonable classification on the basis of educational qualification and, therefore, it is not hit by Article 16 of the Constitution of India.

5. Though we find that there is some force in the contention of the Learned Counsel for the applicants that there cannot be discrimination between two sets of officers in the same common feeder cadre, after deeper scrutiny and examination of the

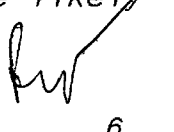
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records and the law bearing on the point, we find that the classification based on educational qualification is a reasonable and permissible classification, which is not hit by Article 16 of the Constitution of India. We will presently point out to some of the decisions of the Apex Court which we have come across, which clearly points out that there can be classification on the basis of educational qualification in the same cadre and it will not be in violation of Article 16 of the Constitution of India.

The Learned Counsel for the applicants placed reliance on the judgement of the Apex Court in Mohd. Shujat Ali's case reported in 1974 LAB I.C. 1103 = (AIR 1974 SC 1631). In that case also there was dispute between diploma holders and degree holders in the engineering service of Andhra Pradesh. Before the Supreme Court number of contentions were urged, many of which are not relevant for our present purpose. The nature of number of contentions urged are noted by the Apex Court in para 10 of the judgement, where the contentions are shown as A, B, C, and D. Then one more contention urged is mentioned in para 12 as E. Contentions A to C are not relevant ^{for} ~~four~~ our present purpose. Contention 'D' is relevant, which is about discrimination between graduate and non-graduate Supervisors. Nodoubt, contention 'E' is also relevant which also speaks about discrimination among Supervisors between graduate Supervisors and non-graduate Supervisors by providing further promotion in the ratio of 3:1.

In para 29 of the judgement it is specifically stated that the Apex Court has refused to consider contention 'D', since the plea is not covered by necessary pleadings and the likely affected parties are not before the Court.



Nodoubt, on contention 'E' the Supreme Court has made some general observations but still the Supreme Court did not quash the rule that was challenged in that case on the ground of discrimination between graduate and non-graduate Supervisors. Nodoubt, some general observations made appear to help the case of the applicants. But the impugned rule in that case was not quashed by the Supreme Court due to historical background. The Constitutional Bench referred to some earlier decisions and in particular, Triloki Nath Khosa's case (AIR 1974 SC 1) and Narsingh Rao's case reported in AIR 1968 SC 349 where the Supreme Court had taken the view that classification on the basis of educational qualification is perfectly valid and not liable to be struck down. It may also be noted that Triloki Nath Khosa's case was also a judgement of the Constitutional Bench of five Judges of the Apex Court. The latter Constitutional Bench in this case namely - Mohd. Shujat Ali's case did not ^{dissent} ~~descend~~ from the view taken in T.N. Khosa's case, which was also a Constitutional Bench Judgement of five Judges of the Apex Court. If the latter Bench wanted to disagree from the view of the Constitutional Bench in Khosa's case, then the matter would have been referred to still larger Bench to decide the question. Another thing to be noticed is that in M.S. Ali's case His Lordship Justice P. N. Bhagwati was the speaking Judge. All other Judges agreed with him. It is interesting to notice that Shri Justice Bhagwati, who is the speaking Judge in M.S. Ali's case was a Member of the earlier Constitutional Bench Judgement in T.N. Khosa's case. Further, Chief Justice A.N. Ray, who was also a Member of the Bench in M.S. Ali's case was also a party to Khosa's case.

In Khoza's case, His Lordship Justice Y.V. Chandrachud gave ^{the} ~~a~~ leading judgement on behalf of himself and two other Judges. Then there was a separate judgement by Justice V.R. Krishna Iyer on behalf of himself and Justice Bhagwati, who concurred fully with the view expressed by Justice Chandrachud in the leading judgement. In this Constitutional Bench Judgement of the Apex Court it is clearly held that in the case of a common cadre, though the source of recruitment was by different means, by direct recruitment and by promotion and though they are integrated into one cadre, but still for the purpose of further promotion to the cadre of Executive Engineer, there could be valid classification on the basis of educational qualification. Infact, in that case, the rule was amended to provide that for further promotion from Assistant Engineer to Executive Engineer only graduate Assistant Engineers are entitled for promotion. The same argument which was pressed into service by Mr. G.K. Masand, the Learned Counsel for the applicant in this case, that in a common cadre, there cannot be further discrimination on the basis of diploma engineers or degree engineeers and all of them belong to one cadre and do the same duties and same designation, etc. was also pressed into service before the Apex Court, before the Constitutional Bench in T.N. Khosa's case and Supreme Court rejected that argument. There was one more challenge to another rule that diploma holders cannot cross the efficiency bar beyond the pay of Rs. 610/- and even that challenge was negatived by the Supreme Court. Therefore, the law laid down by the Constitutional Bench clearly holds that there can be valid classification on the basis of higher educational qualification and such a classification is permissible in law.

Then we may make useful reference to another Constitutional Bench judgement of the Apex Court in P. Narasinga Rao's case reported in AIR 1968 SC 349. Even this case has been referred to in Mohd. Shujat Ali's case but not ^{dissenting} ~~descended~~. Here, among the cadre of Tracers, different pay scales were given to matriculate Tracers and non-matriculate Tracers. The challenge was that the Tracers were one class and there cannot be discrimination between one set of Tracers and another set of Tracers on the ground of their qualification, namely - whether they are matriculate or non-matriculate. The Supreme Court held that such a classification on the basis of educational qualification was valid and the challenge was negatived by the Constitutional Bench.

Then we may refer to a Division Bench judgement of the Supreme Court in Shamkant Narayan Deshpande V/s. Maharashtra Industrial Development Corporation and Another reported in 1993 (24) ATC 416. That is an exactly identical case when compared to the facts of the present case. It was a case of promotion from the post of Executive Engineers to Superintending Engineers. Earlier, it was on the basis of seniority in the cadre of Executive Engineer. Subsequently, the rule was amended to provide quota for the purpose of promotion to the post of Superintending Engineer. The quota fixed was 75% to Degree holders and 25% for Diploma holders. Even in that case the challenge was the same, namely - that Executive Engineers form one cadre irrespective of their qualification, whether they are diploma holders or degree holders and there cannot be any classification among the class of Executive Engineers on the basis of educational qualification for the purpose of next

promotion to the post of Superintending Engineer. The Supreme Court, after referring to the earlier decisions, held that such a classification on the basis of higher qualification for the purpose of promotion is perfectly valid and justified and cannot be challenged.

Then, with advantage we may refer to T.R. Kothandaraman V/s. Tamil Nadu Water Supply & Drainage Bd. & Others' case reported in 1994 SCC (L&S) 1366 where also an identical question arose for consideration. The Apex Court referred to many of the earlier decisions, including the three Constitutional Bench judgements in Mohd. Shujat Ali's case, Narasinga Rao's case and T.N. Khosa's case and many other cases. That was also a case pertaining to Engineers in Tamil Nadu Water Supply department. The first challenge was that by amendment, the Assistant Engineers with diploma were given consideration for promotion only if they have exceptional merit, otherwise normally a diploma holder is not eligible for promotion. The second challenge which is relevant for our present purpose about the amendment of the rule which prescribed ratio of 3:2 between degree holders and diploma holders for promotion to the post of Executive Engineer. It was held that educational qualification can be a basis for the purpose of classification among members of the same cadre for further promotion and that ratio of 3:2 was a reasonable ratio.

In this connection, we may also notice a recent judgement of the Apex Court in the case of State of Jammu & Kashmir V/s. Shiv Ram Sharma & Others reported in 1999 SCC (L&S) 801. That was a case where the Government amended the rule prescribing qualification for promotion to the post of Drilling Assistant as

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Matriculate with five years service in the feeder cadre. Earlier there was no qualification required for that post, therefore, the challenge by the employees in that case was, when they joined the service there was no such matriculate qualification fixed for that post and now by amendment, qualification is fixed and most of the employees have become old and they cannot now appear and pass matriculation and, therefore, they are deprived of this opportunity and, hence, prescribing qualification by amendment was bad in law. Following Kothandaraman's case mentioned above and other cases, the Apex Court held that Government has right to amend recruitment rules providing qualification or eligibility criteria. Therefore, the right of the Government to amend the rules and prescribe qualification for higher promotion was held permissible in law and cannot be challenged.

We can notice one last judgement of a Division Bench of this Tribunal at Calcutta where also an identical question arose for consideration, in the case reported in 1993 (2) SLJ (CAT) 531 (Andaman Nicobar Physical Education V/s. Union of India & Others). The recruitment rules were amended in 1992 providing different norms for promotion to the post of Assistant Supervisors (Sports) in the Education Department by providing that 80% of vacancy shall be filled by promotion from Physical Education Teachers having a degree or diploma in Physical Education with five years service and 20% of the vacancies to be filled by promotion by Physical Education Teachers who are not having degree or diploma but with ten years regular service. After referring to number of decisions of the Apex Court, the Division Bench held that such classification based on educational qualification is perfectly valid.



6. In view of the above discussions, we hold that in the present case the amendment to the rule by providing quota for promotion to the post of Assistant Engineer as 75% for diploma holders and 25% for degree holders in the feeder cadre of Junior Engineers is a perfectly valid and reasonable classification. It may be in a given case if the Junior Engineers are deprived of the promotional chances or they are given a very low percentage like 10% or 15% and the entire balance is given to degree holders, then it can be argued that though the classification on educational basis is valid, still the rule may be bad by giving large weightage to degree holders and less weightage to diploma holders, which affects social justice and may affect the ^{poorer} ~~major~~ section of the Society, who may not be able to obtain degree, as pointed ~~by~~ in para 23 of the Apex Court judgement~~g~~ in Kothandaraman's case mentioned above. But here, the tilt is in favour of the diploma holders and not in favour of the degree holders. Earlier there was 100% promotion for all Junior Engineers irrespective of their qualification. Now, by virtue of the amendment, major portion of the benefit is still for the diploma holders being given 75% quota and degree holders are given only 25% quota. The ratio also is quite reasonable and does not offend Article 16 of the Constitution of India. Then we may also take into consideration the historical background for this discrimination or differential treatment on the basis of educational qualification. It may be recalled that in Mohd. Shujat Ali's case the Constitutional Bench, though made some general observations, still refused to quash the impugned rule in that case on the ground that there is historical background to show that from the beginning there was such discrimination between diploma holders and degree holders.

In the present case, we have the 1980 Rules, which is about twenty years back from now, a copy of which is at page 33 of the Paper Book. For the post of Executive Engineer, Superintending Engineer and Chief Engineer, degree in electrical engineering was an essential qualification. Then, for the post of Assistant Engineer, promotion can be made from Junior Engineers who have three years service in the case of Degree holders and seven years service in the case of Diploma holders. Therefore, even at that time there was a classification among Junior Engineers between Degree holders and Diploma holders about required minimum service for the purpose of promotion to the post of Assistant Engineer. Degree holders were treated with favour by providing only three years service for promotion, whereas diploma holders had to have seven years service. Then we come to 1994 Rules, where again there was some amendment and here Degree holders will have to put in four years service and diploma holders 8 years service for promotion to the post of Assistant Engineer. Even in the 1999 Rules, even after providing quota of 75% and 25% for diploma holders and degree holders respectively, there is further classification in providing 8 years minimum service for diploma holders and five years for degree holders for the purpose of promotion.

For one thing, the post of Executive Engineer and above, is kept only for graduate engineers. Diploma holders have no chance of entry to the post of Executive Engineer and above. If the Union Territory Administration has a very small cadre of four posts of Assistant Engineers, if all of them are diploma holders, then there can be no question of having a promoted Executive Engineer, since the essential qualification is degree in

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Engineering for an Executive Engineer. Therefore, the historical background also shows that there was some classification between diploma holders and degree holders among Junior Engineers ~~but~~ on the basis of educational qualification, it may be that the quota system is introduced for the first time in 1999. If in the circumstances, the administration feels as a policy decision that they would like to have atleast one graduate engineer among the four Assistant Engineers, which will be 25%, it cannot be said that the classification is excessive or irrational. Therefore, in the facts and circumstances of the case, we find that quota fixed for promotion to the post of Assistant Engineer between diploma holders and degree holders under the impugned 1999 Rule is valid and according to law in the light of decisions, including judgement of Constitutional Bench of Supreme Court, which we have mentioned above. Hence, we find no merit in the application and it has to fail.

In the view we have taken as above, we need not take into consideration that the P.W.D. Engineers' Rule is ^{not} on parimateria with the electrical engineers. We also need not go into the question that an earlier attempt to have such a quota was rejected in 1997 by the administration. We are testing the validity of 1999 Rule on the touch stone of Article 16 of the Constitution. We find that it is perfectly valid in view of the law declared by the Apex Court.



7. In the result, the O.A. fails and is hereby dismissed with no order as to costs. The interim order dated 06.12.1999 and continued from time to time is hereby vacated.

B. N. Bahadur

(B. N. BAHADUR)
MEMBER (A).

OS*

R. G. Vaidyanatha
18/4/2000
(R.G. VAIDYANATHA)
VICE-CHAIRMAN.