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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.815/92

Date of Judgement : 5th July '93

1. D.Apparao
 2. M.Seetha Rama Rao
 3. R.Kasinadh
 4. M.V.Satyanarayana
 5. C.V.Raman
 6. V.Adi Reddy
 7. R.Govinda Rajan
 8. R.R.K.Sarma
 9. V.Ranganathan
 10. V.Madhava Rao
 11. P.K.Karthikeyan
 12. K.K.Prakasham
 13. P.Venkateswara Rao
 14. P.T.Sambandam
 15. A.Satyanarayana Setty
 16. Thomas Thomas
 17. D.S.Rao
 18. R.Krishna Murthy
 19. V.Raja Sekhar
 20. K.Lakshmikantha
 21. S.P.Ranganadham
 22. P.Krishna Rao
- .. Applicants

Vs.

1. Union of India,
Rep. by its Secretary,
Min. of Urban Development,
Nirman Bhavan,
New Delhi.
 2. Director-General of Works,
Central Public Works Dept.,
Nirman Bhavan,
New Delhi.
 3. Chief Engineer,
Central Public Works Dept.,
140, Marshals Road, Egmore,
Madras-8.
 4. Superintending Engineer,
Hyderabad Central Circle,
Central Public Works Dept.,
Nirman Bhavan, Sultan Bazar,
Hyderabad.
 5. Union Public Service Commission,
Rep. by its Secretary,
Dholpur House, Shajahan Road,
New Delhi.
- .. Respondents

Counsel for the Applicants :: Shri P.B.Vijaya Kumar

Counsel for the Respondents:: Shri N.R.Devaraj, Sr. CGSC

18/8/93

C O R A M:

Hon'ble Shri A.B.Gorthi : Member(A)

Hon'ble Shri T.Chandrasekhar Reddy : Member(J)

{ Judgement as per Hon'ble Shri A.B.Gorthi : Member(A) }

All the respondents herein are the Junior Engineers (J.Es for short) of the Central Public Works Department (C.P.W.D. for short). Their prayer is for a direction to the respondents to adjust the applicants in the available posts of Asst. Engineers and to grant them all the consequential benefits. The applicants further challenge the validity of Rule 24(ii) of the Central Engineering Service Class II Recruitment Rules, 1954.

2. The applicants are J.Es who are enjoying the higher scale of pay of Rs.2000-3500, which is applicable to Asst. Engineers, w.e.f. 1.1.91 in terms of Govt. of India Min. of Urban Development (Works Division) letter dt. 22.3.91. There are two scales of pay for J.Es viz: Rs.1400-2300 and Rs.1640-2900. Vide Ministry's letter dt. 22.3.91, the J.Es who completed 15 years of service were allowed the scale of pay applicable to the Asst. Engineers, i.e., Rs.2000-3500. As per the said policy letter, only the benefit of higher scale of pay was given but the applicants were to continue to work as J.Es only. However, the policy letter clarified that the candidates drawing the scale of pay of Rs.2000-3500 would be adjusted against regular vacancies in the cadre of Asst. Engineers as and when such vacancies arise. The contention of the applicants is that a large number of vacancies in the posts

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of Asst. Engineers became available but the respondents instead of adjusting the applicants in the said vacancies have taken resort to notifying the said vacancies for being filled up through a Limited Departmental Competitive Examination (L.D.C.E. for short) ^{which} for the departmental candidates with minimum 4 years service would be eligible. Aggrieved by the said notification they have approached the Tribunal.

3. The respondents while admitting the facts averred in the application have stated that as per the recruitment rules of the Central Engineering Service Class II, the posts of Asst. Engineers(Civil) in C.P.W.D. are to be filled up 50% by selection on the basis of merit from amongst permanent J.Es(Civil) in C.P.W.D. and 50% by selection on the basis of L.D.C.E. As per the rules for the examination, J.Es with minimum 4 years regular service are eligible to appear for the examination. Accordingly, the L.D.C.E. for 1992 was scheduled to be held on 23.12.92. The number of vacancies sought to be filled up was 227 in the grade of Asst. Engineers(Civil) and 36 in the grade of Asst. Engineers (Electrical). The contention of the respondents is that the applicants were at liberty to appear for the L.D.C.E. provided they were eligible in all other aspects. So far as their regular promotion to the grade of Asst. Engineers is concerned, they can claim to be promoted only against the 50% quota meant for promotees. As there is some stagnation in the posts of J.Es, the applicants will have to wait for their turn to get promoted in accordance with their seniority.

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4. Shri P.B.Vijaya Kumar, learned counsel for the applicants has challenged the validity of the action of the respondents on several grounds. Firstly he contended that in all the available vacancies in the posts of Asst. Engineers the applicants should first be adjusted primarily because they are already enjoying the scale of pay of Asst. Engineers and for the grant of the said higher scale they were already subjected to a fitness test and selection by the D.P.C. The policy letter issued by the respondents states that F.R.22 also would be applicable for fixation of their pay, which means that the grant of higher scale of pay of Rs.2000-3500 was considered to be a promotion though the applicants were made to continue to work as J.Es. It would be unjust according to the applicants' counsel to let the juniors to be promoted through a L.D.C.E. while seniors are stagnating in the same posts for years.

5. The next contention raised by the applicants' counsel is that Rule 24(ii) of the Central Engineering Service Class II Recruitment Rules, 1954 as amended in 1977 deserves to be struck down. Rule 24 is extracted below:-

"24. Recruitment by promotion shall be made--

- (i) 50 per cent by selection on the basis of merit from among permanent Junior Engineers employed on the Civil Engineering side of the Central Public Works Department;
- (ii) 50 per cent by selection from among Junior Engineers employed on the Civil Engineering side of the Central Public Works Department, after consultation with the Union Public Service Commission on the basis of a Limited Departmental Competitive Examination which shall be held in accordance with the rules to be made by the Central Government after consultation with the Union Public Service Commission."

The applicants' contention is that Rule 24(ii) allows J.Es who are far junior to the applicants to qualify in the

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examination and to become senior to the applicants who are left with no minimum hope of promotion which is unfair and unjust. The applicants who have rendered more than about two decades of service cannot be made to compete with youngsters with just about 4 years of service in the grade of J.Es for the departmental promotion to the posts of Asst. Engineers. If the said provision which enables the respondents to hold the L.D.C.E. is struck down, the applicants would be eligible to be promoted/adjusted in the available vacancies.

6. Shri N.R.Devaraj, learned counsel for the respondents stated that initially the recruitment to the post of Asst. Engineer was partly from Union Public Service Commission and partly from departmental candidates due for promotion. No direct recruitment, however, took place between 1972 and 1977. In 1977, the recruitment rules were amended so as to provide for 50% by selection on the basis of merit from amongst permanent J.Es and 50% by selection from amongst J.Es who qualify in the L.D.C.E. Subsequently, the L.D.C.E. was being held to fill up the vacancies against 50% quota as and when such vacancies arose. Shri N.R.Devaraj's contention is that the applicants cannot demand that all the vacancies should be filled up by promotees only and that the recruitment rules as amended in 1977 are absolutely fair and just.

7. The applicants' counsel elaborately contended that there was unbearable stagnation in the posts of J.Es of the C.P.W.D. and that this fact has been admitted

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by the respondents time and again. Our attention has been drawn to the recommendations of a Cadre Review Committee. It was observed therein that due to poor cadre management in the past and fluctuating policies regarding recruitment and promotion of J.Es, it resulted in a critical stage in which the J.Es(Civil) of the C.P.W.D. have landed. The Cadre Review Committee recommended purely as a temporary measure and until such time the stagnation in the level of J.Es is brought down to about 15 years, the suspension ~~with~~ of the holding of the L.D.C.E. The applicants' counsel thus contends that admittedly the J.Es of the C.P.W.D. were receiving a raw deal in the matter of their promotion to the posts of Asst. Engineers and that the respondents though fully cognizant of the situation are continuing to invoke Rule 24(ii) of the Central Engineering Service Class II Recruitment Rules, 1954 for the holding of the L.D.C.E. and thus promoting juniors over the heads of seniors.

8. We have heard the rival contentions raised by the learned counsel for both the parties. There can be no doubt that an unhealthy stagnation has crept into the cadre of ~~of~~ the J.Es of the C.P.W.D. From the material placed before us, we, however, do find that the respondents have taken several steps to ameliorate the service conditions of the J.Es. Firstly, they introduced two scales of pay for the J.Es viz: Rs.1400-2300 and after 5 years of service Rs.1640-2900. The introduction in the year 1991 of the grant of higher scale of Rs.2000-3500 (which is that of an Asst. Engineer)

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to the J.Es who have completed 15 years of service is also a right step taken by the department to remove to an extent the grievance of the J.Es.as regards their chances of promotion to the posts of Asst. Engineers.

9. As regards the applicants' challenge to the validity of Rule 24(ii) of the Central Engineering Service Class II Recruitment Rules, 1954 it has not been shown to us as to how the said rule is either arbitrary or discriminative so as to offend Articles 14 and 16 of the Constitution. The mere contention that the said rule operates harshly so far as the applicants and similarly situated employees are concerned, cannot by itself be a sufficient ground to convince us to strike down the said rule. In this context we may refer to the judgement of the Hon'ble Supreme Court in the case of Asif Hameed Vs. State of Jammu and Kashmir (AIR 1989 SC 1899). The relevant portion of the said judgement is extracted below:-

"When a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and if not, the Court must strike down the action. While doing so the Court must remain within its self-imposed limits. The Court sits in judgement on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the Court is not an appellate authority. The Constitution does not permit the Court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive."

The facts of the case disclose that despite the continued stagnation of employees in the posts of J.Es the respondents are still continuing with the holding of the L.D.C.E. and thereby promoting juniors with much

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Copy to:-

1. Secretary, Ministry of Urban Development, Union of India, Nirman Bhavan, New Delhi.
2. Director-General of Works, Central Public Works Deptt., Nirman Bhavan, New Delhi.
3. Chief Engineer, Central Public Works Deptt., Central 140, Marshals road, Egmore, Madras-8.
4. Superintending Engineer, Hyderabad Central Circle, Central Public Works Deptt., Nirman Bhavan, Sultan Bazar, Hyderabad.
5. Secretary, Union Public Service Commission, Dholpur House, Shajahan road, New Delhi.
6. One copy to Sri. P.B.Vijaya Kumar, advocate, 1-9-312/6/A&B Atchayuta Reddy Marg, Vidyanagar, Hyd-44.
7. One copy to Sri. N.R.Devaraj, Sr. CGSC, CAT, Hyd.
8. One copy to Deputy Registrar(Judl.), CAT, Hyd.
9. One copy to Library, CAT, Hyd.
10. Copy to all Benches and Reporters as per standard list of CAT, Hyd.
11. One spare copy.

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9th April
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lesser service. It is thus apparent that Rule 24(ii) of the Central Engineering Service Class II Recruitment Rules, 1954 substantially diminishes the chances of promotion of persons in the category of the applicants. Even this contingency cannot affect the legal validity of Rule 24(ii). It has been held by the Hon'ble Supreme Court in the case of R.S.Deodhar Vs. State of Maharashtra (AIR 1974 SC 259) that a rule which merely affects the chances of promotion cannot be regarded as being a condition of service, so long an employee has a right to be considered for promotion he cannot complain on the ground that his chances of promotion have become meagre.

10. As regards the promotional policy followed in any particular department of the Government, it will be open to the Tribunal to examine it with a view to see whether the policy suffers from the vice of arbitrariness or discrimination. It is not for the Tribunal to interfere with the policy laid down by the Executive and dictate what avenues should be made available. That promotion policies should ~~first~~ best be left to the Executive to decide ^{been} ~~has~~ categorically laid down in the judgement of the Hon'ble Supreme Court in the case of Union of India and others Vs. Syed Mohd. Raza Kazmi and others X (1992) 21 ATC 830 X.

11. In the result, we are not inclined to grant the reliefs sought by the applicants in this application. The same is hereby dismissed. There shall be no order as to costs.

T. Chandrasekhar Reddy
(T.Chandrasekhar Reddy)
Member(J).

(A.B.Gorthi)
Member(A).

Dated: 5 July
June, 1993.

8/7/93
Dy. Registrar

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O.A-815/92

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COMPARED BY

CHECKED BY

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN
AND

THE HON'BLE MR. A. B. GORTY : MEMBER (AD)
AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY
MEMBER (J)

AND

THE HON'BLE MR. P. T. TIRUVENGADAM : M(A)

Dated : 5/7/93-1993

ORDER/JUDGMENT:

~~M.A. / R.A. / C.A. No.~~

O.A. No.

~~T.A. No.~~

(w.p.)

Admitted and Interim directions
issued

Allowed

Disposed of with directions

☒ Dismissed

Dismissed as withdrawn

Dismissed for default.

Rejected/ Ordered

No order as to costs.

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