

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No.960/93 + OA.185/96

Date of Order: 6.12.96

BETWEEN :

1. V.Gopala Krishna	X	
2. S.Lakshmana Rao	X	
3. G.Naga Sastrulu	X	
4. K.P.R.Selti	X	Applicants in OA.960/93
5. D.Rama Mohan	X	
6. K.Hema Latha	X	
7. V.S.Murthy	X	

1. G.V.S.Lakshmi	X	
2. Asha A.	X	
3. Ch.Janardhana Rao	X	Applicants in OA.185/96
4. B.Raj Pradhakar	X	
5. T.Veera Narayana	X	
6. B.Satya Sri	X	

AND

1. Union of India, rep. by its Secretary, Ministry of Information & Broadcasting, Sastry Bhavan, New Delhi.	X X X X X	
2. Director General, ALL India Radio, Akashvani Bhavan, Sansad Marg, New Delhi.	X X X X X	Respondents in OA.960/93 + 185/96
3. Director General, Doordarshan, Mandi House, Copernicus Marg, New Delhi.	X X X X X	

Counsel for the Applicants .. Mr.P.B.Vijay Kumar

Counsel for the Respondents .. Mr.V.Rajeswara Rao

CORAM:

HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

HON'BLE SHRI B.S. JAI PARAMESHWAR : MEMBER (JUDL.)

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J U D G E M E N T

(As per Hon'ble Shri B.S. Jai Parameshwar, Member (Judl.) X)

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There are 7 + 6 = 13 applicants in these two applications. The applicants joined duties as Engineering Assistants, were later promoted as Senior Engineering Assistants on the basis of seniority and that they subsequently were promoted to the posts of Assistant Engineers, at Doordarshan/AIR Stations.

2. The applicants in OA.185/96 also joined as Engineering Assistants and later promoted as Senior Engineering Assistants on the basis of seniority-cum-fitness and subsequently they were also promoted as Assistant Engineers. The applicants are holders of Diploma certificates in Engineering. The applicants are the employees in Doordarshan Kendra, Hyderabad and Ongole.

3. While they were in service Rule 7(2) of the Indian Broadcasting Engineering services (amendment) rule 1989 (herein after referred to as the rule 1989) for promotion to Group 'A' JTS post, came into force effective from 23.3.89.

4. In view of the amendment, the applicants apprehending that their promotional avenue has been shut, they have filed original said rule 7(2) of the Rule 1989.

5. Rule 7(2) 1989 reads as follows:-

"50% of substantive vacancies in the Junior scale shall be filled by direct recruitment on the results of a Competitive Examination conducted by the Commission on the basis of educational qualifications and age limit specified in Schedule-II and any scheme of examination to be notified from time to time. The remaining 50% of the substantive vacancies and all temporary vacancies shall be filled by the Controlling Authority, by

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promotion of officers on the basis of Selection on merit and included in a panel for the said grade in the order of seniority from the relevant field of promotion and the minimum qualifying service as specified in Schedule III".

6. The above said para was amended by the Ministry by its order No.2/7/85-S III/B/(D), dt. 23.3.89 whereby the promotional posts of Assistant Station Engineers are restricted only to degree holders from the cadre of Assistant Engineers. The amended sub-rule 2 of Rule 7 reads as under:-

"The remaining 50% vacancies in the Junior Time Scale shall be filled by the Controlling Authority by promotion of officers possessing qualifications prescribed for direct recruitment to Junior Time Scale, in Schedule-II of these rules from the relevant field of promotion and possessing the minimum qualifying service as specified against serial Number 6. in column 4 of Schedule-III on the basis of selection on merit by a duly constituted Departmental Promotion Committee as provided in Schedule-IV".

7. The applicants in these applications have challenged the validity of the Rule 7(2)(b) of rule 1989 on similar and identical grounds. Hence both these applications are clubbed together, and are being disposed off by this common order.

8. The applicants challenged the amended rule 1989 on the grounds that the rule 1989 is illegal, arbitrary and takes away the channel of promotion and their right for being considered to the next higher promotional post and it leads to stagnation. The amendment cannot be applied to the employees already in service that the amendment is discriminatory on the grounds that it distinguishes the persons of the same category, in the cadre of the Assistant Engineers who were promoted earlier to the amendment and the persons denied promotion subsequent to the amendment that all persons alike right from entry level to the stage of Assistant Engineers are differentiated at this stage that at this distance of service differentiations on the basis of qualification, is unknown and that prescription of the qualification as intended for direct

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recruits to the departmental promotees is rather absurd. The impugned amendment is also not rational and the same is not made on any sound principles of law. The amendment is violative of Articles 14, 16 and 21 of the Constitution of India. The respondents having conducted the departmental eligibility test for promotion and having promoted certain persons who were diploma holders they are estopped from denying the similar benefit to them by misrepresenting the rule and subsequently.

9. In OA.185/96 further grounds are made to the effect that all the Senior Engineering Assistants promoted as Assistant Engineers after appearing for the competitive examination were sincerely working staff among the Senior Engineering Assistants that successful Senior Engineering Assistants in the rank they obtained in the ultimate merit list irrespective of their original seniority as Senior Engineering Assistants. This is being done even at the cost of the career development of majority of the Senior Engineering Assistants that their further promotion to the post of Junior Time Scale officer is governed by the amended rule is, therefore, violative and discriminatory.

10(A) In the reply affidavit the respondents stated that the amended rule came up for consideration in OA.920/94 before the Tribunal that the said OA was decided in May 1994 that according to the then recruitment rules 1981 appointment to Junior Time Scale Officer could have been made in the following manner i.e. :-

(a) 50% of the substantive vacancies in the Junior scale shall be filled by direct recruitment on the Commission on the basis of the educational qualifications and age limit specified in Schedule II and any scheme of examination that may be notified by Government in consultation with the commission from time to time.



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(b) The remaining 50% of the substantive vacancies and all temporary vacancies shall be filled by the Controlling Authority by promotion of officer on the basis of selection on merit and included in a panel for the said grade in the order of seniority from the relevant field of promotion and the minimum qualifying service as specified in Schedule-III.

(B) On the basis of this Rule, the eligible Assistant Engineers were promoted to the post of Junior Time Scale officers. Broadcasting is a specialised field and there is rapid advance in it's technology and a sophistication in the equipments used. In this rapidly developing sphere of electronics, the Engineers of All India Radio/Doordarshan need to be technically proficient to meet the needs of the Department, as well as its standards.

(C) Keeping these broad points in view, it was considered administratively essential and necessary as well as in the public interest to prescribe possession of a degree in Engineering or Electronics as a necessary condition for holding the post of Assistant Station Engineer, which is a Class I post. The Recruitment Rules of 1981 were, therefore, amended with effect from 23.3.1989.

11. Therefore, non-degree holders, namely, the Diploma holders-Assistant Engineers could not be considered for promotion as JTSO, and thus the case of the applicants could not be considered for promotion to JTSO. For direct recruits the minimum educational qualification for entry into service is a degree in engineering that with an intention to bring uniformity in service and in view of the requirement of technically qualified personnel in order to man the post in a more competent manner, it was decided to 50% promotion channel as well as, that the contention of the applicants that no discrimination could be



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made on the basis of academic qualification in the matter of promotion is not correct, that the C.A.T. Principal Bench, New Delhi, in the case of P.M.Kohli V Union of India held from among the members of the particular cadre or category of servants persons having higher educational qualifications could be preferred for appointment to a higher post by way of promotion ignoring the principles of seniority. That would not by itself be violative of Article 14 and 16 of the Constitution of India. The department has been unable to consider the case of the applicants for promotion to the next higher cadre of Assistant Station Engineer as they do not possess the minimum qualification prescribed in the amended rules as claimed by them and that the applications be dismissed with costs.

12. In OA.185/96 the respondents resisted the application on the above lines.

13. Heard Mr.P.B.Vijaya Kumar, learned counsel for the applicants and Mr.V.Rajeswara Rao, learned standing counsel for the respondents.

14. In view of the contentions raised by the learned counsel for the parties, the following points arise for our consideration:-

(a) Whether the amended rule which came into force on 23.3.89 is arbitrary, discriminatory and violative of Articles 14, 16 and 21 of the Constitution of India ?

(b) To what order ?

15. Our Findings :-

Point (a) No

Point (b) as under --

REASONS:

16. The learned counsel for the applicants strongly relied on the observations made by the Hon'ble Supreme Court of India

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in the case of T.R.Kothandaraman and Ors. V Tamilnadu Water Supply & Drainage BD and ors reported in (1994) 28 A.T.C. 276. The Hon'ble Supreme Court considered the earlier decisions of the said Court and in para 16 was pleased to observe as follows:-

"From what has been stated above, the following legal propositions emerge regarding educational qualification being a basis of classification relating to promotion in public service. :

- (1) Higher educational qualification is a permissible basis of classification, acceptability of which will depend on the facts and circumstances of each case.
- (2) Higher educational qualification can be the basis not only for barring promotion, but also for restricting the scope of promotion.
- (3) Restriction placed cannot however go to the extent of seriously jeopardising the chances of promotion. To decide this, the extent of restriction shall have also to be looked into to ascertain whether it is reasonable. Reasons

The learned counsel for the applicant strongly relied on the observations made at sub-para 3 above.

17. It is to be noted that the Rule 7(2)(b) of the rule 1989 which came into effect in the case of Deepsingh Veersingh Parmar and Ors V Union of India and Ors. (1995) 30 ATC 676. Upholding the validity of the rule, the Bench observed as under:-

"The Supreme Court judgement in Khosa case also has settled the point that the fact that a decision is taken at a particular point of time does not mean that a particular class of employees got effected when that class was not effected earlier to the date of the decision.

We are also unable to agree with the contention of the counsel for the applicants that the ratio of the Central Administrative Tribunal, Full Bench judgement in the case of P.N.Kohli v. Union of India aids the contention made by them. The ratio of the judgement is particularly in respect of the prescription of different quotas within one cadre and does not go into the question of prescription of educational qualification in particular. The relevant extract from the judgement is as under:

"In sum, the Assistants (Akasbaniya) 1962 in so far as they prescribe a longer period of service for the non-graduate Engineers and a shorter period of service for the graduates Senior Engineering Assistants in the matter of promotion to the post

of Assistant Engineers and also require the non-graduate Senior Engineering Assistants to qualify at the Departmental Qualifying Examination before they could be considered for promotion are not violative of Articles 14 and 16 of the Constitution. But so far as they prescribe a quota for graduate Senior Engineering Assistants in the matter of promotion to the post of Assistant Engineer they are violative of Articles 14 and 16 of the Constitution....."

It is also significant to note that Supreme Court Judgement has thereafter in the case of Shamkant Narayan Deshpande v. Maharashtra Industrial Development Corporation has taken a different view even in the question of prescription of quota as between graduates and Diploma holders. In view of the legal position set down by the Supreme Court as above, the amendment in question cannot be faulted.

However, the Supreme Court while delivering its judgement in the case of J&K v T.N.Khosa, that the prescription of educational criteria in within the area of jurisdiction of the recruiting authority also remarked:

"This is not to suggest that administrative efficiency can be achieved only through the medium of those possessing comparatively high educational qualifications but that is beside the point. What is relevant is that the object to be achieved here is not a mere pretence for ~~an arbitrary criterion~~ cannot be characterised as arbitrary or abused. That is the farthest that judicial scrutiny can extend".

Their Lordship's have gone on further to add:

"Excellence is or ought to be, the goal of all good governments and excellence and equality are not friendly bedfellows. A pragmatic approach has therefore, to be adopted in order to harmonize the requirements of public service with the aspirations of public servants".

The respondents may therefore consider the question promotion to the senior scale or provide a selection grade in Class I for such of the employees as the present applicants who have put in a long period of service and who have also passed the required departmental examination. The promotion of Asst. Station Engineer as sought for by the applicants immediately would have meant the only question of promotion from a scale of Rs.2000-3000 to one of Rs.2200-4000".

copy of the judgement of this Bench in OA.920/93 while upholding Rule 7(2)(b) in para-16 this Bench observed as follows:-

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"Conditions for promotion is one of the policy matter. It can be varied/alterd/amended to suit the prevailing conditions. As the technology is changing fact, the department must have thought that only degree holders in the appropriate discipline can discharge their functions/responsibilities effectively. The question as to whether all the promotees to the cadre of Asst. Station Engineer should be degree holders or partly degree holders and partly diploma holders is one of policy. Hence, we do not find any reason to sit on the decision of the department in this connection".

19. The learned counsel for the applicants relied on the decisions of P.A.Chandran & Ors. V Board of Revenue (EXcise) & Ors. Reported in S.L.R. Vol.99 page-749. Kimti Lal Kathuria and ors v. Delhi Development Authority and ors reported in 1988 (2) L.L.J. 254. Ms. Bhavana Narula and ors v. Ms.Manju Chaudhary and ors. reported in 1996 SLR Vol.III 738.

20. The learned counsel relied on the above decisions to substantiate his contentions that the ... tory and violative of Articles 14 and 16 of the Constitution of India.

21. The respondents having felt the need of qualified personnel in the higher post and having regard to the advanced technology in the Broadcasting prescribed the degree in engineering as a minimum qualification for the promotion of Junior Time Scale Officers. The respondents contend that they felt the need for amendment with the sole object to maintain the standard in the Boordarshan and A.I.R. stations. They felt the need for amendment and hence they prescribed minimum qualification for JTSOs. It is submitted for the applicant that diploma holders in the a miniscule Doordarshan Kendra have formed/minority group that they have gained experience and they have passed the test and ^{that} therefore atleast they must be allowed for promotion to the post of JTSOs.

22. Once the rules are framed the applicants cannot claim promotion to the posts off JTSO only on the basis of experience.

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23. Merely because prior to the amendment of Rule 7(2)(b) certain diploma holder Assistant Engineers were promoted as JTSOs, the rule cannot be regarded as discriminatory. It is submitted that the diploma holder A-sst. Enginners form a miniscule majority and that they may be promoted as JTSO, taking into consideration their experience in the cadre. In fact, the respondents submit that the applicants and others who are similarly situated cannot be considered for promotion to the post of JTOS in view of the Rule 7(2)(b) of the rule 1989. This Tribunal while considering the vires of the Rule 7(2)(b) cannot say or interpret the rule in a manner to benefit the applicants. The Tribunal cannot have power to do so. When once the Tribunal holds that the Rule 7(2)(b) is valid and not discriminatory it cannot take any via-media course to benefit the applicants or others who are similarly placed.

24. It is for the respondents to consider that aspect. It is the case of the respondents that in view of the amended rules the applicants do not possess the prescribed qualification for the post of JTS. We cannot find any fault with the respondents. ~~the validity of the rule~~ 1989 was considered and felt that the said rule does not infringe Articles 14 and 16 of the Constitution of India. It is a policy matter left entirely at the discretion of the executive. It is not proper for this Tribunal to give any directions contrary to Rule 7(2)(b) of the rule.

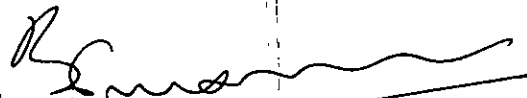
25. There are no reasons to hold that rule 7(2)(b) of the rules 1989 is violative of the Articles 14 and 16. The amended rule cannot be regarded as either discriminatory or arbitrary. We are satisfied that the rule 7(2)(b) of the rule 1989 is a valid rule based on sound principles


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26. Thus there are no merits in these two O.As. Hence
we feel it proper to dismiss the OAs.

27. Accordingly both these OAs are dismissed. No costs.

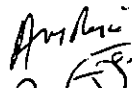

(B.S. JAI PARAMESHWAR)
Member (Judl.)


(R. RANGARAJAN)
Member (Admn.)

6/12/96

Dated: 6th December, 1996

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D.R. (J) 6/12/96