CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 2091/2003

New Delhi this the 22nd day of September, 2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman.
Hon'ble Mr. S.K. Naik, Member (A)

1. Surjit Singh
S/o Shri Chhaju Ram,
Village – Nilothi,
PO Nangloi,
Delhi – 110 041.

2. Raju Johnson,
230, Lancer Road,
Jawahar Market,
Delhi.

3. Ramesh Verma,
Sector 4, Qr No. 47,
Timarpur, Delhi-7.

4. Dharam Singh,
S/o Shri Gobar Singh,
E-21, Harswaroop Colony,
Fatehpur Beri,
New Delhi-110 030.

5. Nafe Singh,
S/o Shri Hoshiar Singh,
Jakhoda Gaon,
Bahadurgarh,
Distt. Rohtak,
Haryana.

6. Rajinder Rai,
17/108 Kalyanpuri,
Delhi-110 091. .... Applicants.

(By Advocate Shri S.C. Pandey)

Versus

1. Govt. of NCT of Delhi
(Through Chief Secretary),
5, Sham Nath Marg,
Delhi – 110 054.

2. The Secretary,
Environment & Forest,
Delhi Secretariat, (Near ITO Bridge)
New Delhi.

3. The Conservator of Forest,
Land & Building,
Vikas Bhawan 3rd Floor,
I.T.O. New Delhi.

4. The Secretary,
Delhi Subordinate Services,
Selection Board,
UDCS Building,
Behind, Karkardooma, Courts Complex,
Biswas Nagar,
Shahdara, Delhi-32. ... Respondents.

(By Advocate Shri George Paracken)

ORDER

Justice V.S. Aggarwal:

The applicants by virtue of the present application seek quashing of the Recruitment Rules notified on 8.12.1993 to be arbitrary, mala fide and vindictive and also the advertisement dated 23.7.2003 so far as it relates to filling up the post of Forest Ranger in Forest Department. They also seek a direction to the respondents to consider the applicants for promotion to the post of Forest Ranger as was done in Lakhi Singh's case in September, 1965.

2. Some of the facts can be delineated to precipitate the question in controversy. The applicants are working as Deputy Ranger with the Conservator of Forest, Land & Building, New Delhi. Earlier, the method of recruitment to the next higher post of Forest Ranger was 50% by promotion and 50% by direct recruitment. In the case of recruitment by promotion/deputation or transfer, Field Assistants (Forest) in the scale of Rs.975-1540 were eligible. On 8.12.1993, the Recruitment Rules had undergone a change. Presently, the promotion was made permissible for Deputy Forest Rangers with 10 years regular service in the grade. It was made 100% by promotion. However, the essential qualifications prescribed

were Graduation with Forestry as one of the subjects with experience in Forestry work in any State or Union Territory or 12th pass in Science Stream with Diploma of Forest Ranger of successful training in Forest from recognized Forestry Training Institution.

3. The precise grievance of the applicants is pertaining to the amendment made whereby it is made mandatory that in the case of promotees, he must be 12th pass with science subjects. According to the applicants, the said qualification prescribed is illegal, unreasonable and, therefore, should be quashed and that applicants should be considered for promotion.

4. Needless to state that in the reply filed, the petition has been contested. The respondents had stated that as per the qualification prescribed, none of the applicants is eligible for promotion to the post of Forest Ranger. Because of non-availability of the candidates for promotion, the advertisement was issued for direct recruitment as per the Recruitment Rules. Till date, not a single official of the Department had represented against the Recruitment Rules, which were notified in the year 1993.

5. We have heard the parties' counsel and have seen the relevant records.

6. Learned counsel for the applicants had argued that promotions must be granted to all the posts or in other words avenues of promotion should be awarded. In any case, it was urged that their experience should be counted as a sufficient qualification so that they could be considered for promotion and that the change of Rules is mala fide. As against this, the respondents' contention, as has already been drawn and conjoled from the reply, was that it was primarily within the domain of the Government to amend the Rules and the same had been done keeping in view the requirements of the posts. No mala fide in this regard could be attributed or can be considered in the facts of the present case.

7. We do not dispute the proposition enunciated by the Supreme Court in the case of Raghunath Prasad Singh Vs. Secretary, Home (Police) Department, Govt. of Bihar and Ors. reported as AIR 1988 SC 1033. In the cited case, till May, 1970 there was a combined police force in the State of Bihar raised under the Police Act, 1861 which included regular police personnel and those serving in the Signal (Wireless) Branch. In May, 1970, the Wireless Wing was separated. Raghunath Prasad Singh, who was the appellant before the Supreme Court, was recruited as a Constable in the Wireless Wing. One of the questions that came up before the Supreme Court was that there were no promotional avenues for him. The Supreme Court while dismissing the appeal made a pious wish that reasonable promotional avenues must be available in every wing of public service. That generates efficiency in service. The findings of the Supreme Court in this regard are:

> "...Reasonable promotional opportunities should be available in every wing of public service. That generates efficiency in service and fosters the appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospects, the service is bound to degenerate and stagnation kills the desire to serve properly..."

8. Can applicants take advantage of the ratio decidendi of this decision? In our opinion, the answer would be in the 'negative'. We have already referred to above the basic facts. Applicants or persons holding feeder cadre posts are not being deprived of promotion. Herein, promotional avenues are being provided because by amendment 100% posts are to be filled up by the promotees. The only dispute is about the educational qualifications. That was not the controversy before the Supreme Court in the case of Raghunath Prasad Singh and, therefore, we have no hesitation in concluding that the cited decision will not come to the rescue of the applicants. Confronted with this position, the learned counsel had drawn our attention to the decision of the Supreme Court in the case of Council of

Scientific & Industrial Research and Anr. Vs. K.G.S. Bhatt and Anr., reported as Judgments Today 1989 (3) 513. We are not dwelling into the details of the facts of that case. The reason being that every petition has its own docket. In brief, in the cited decision, K.G.S. Bhatt had remained in the same cadre and pay scale till 1981 while junior Scientific Officers and Junior Technical Officers were given periodical promotion under the bye laws. The CSIR had framed a separate Scheme for promoting Civil Engineers and other Administrative Officers. One of the controversies that came up for consideration was pertaining to the experience. The Supreme Court in this regard held:

> "8. It seems to us that the submission of counsel for the appellant is not unjustified. Apparently the bye-law governs only the promotion of junior scientific and technical staff grade-II who are engaged in the scientific work. One who is "engaged in the scientific work" is alone entitled to the benefit of the bye-law. It is a necessary qualification for being considered for accelerated promotion. A person who is not engaged in the scientific work, therefore, stands excluded from the bye-law. In other words, it has no application to the staff who are doing administrative work. Under the categorization of jobs, respondent-1, falls under the 'administrative' category and, therefore, stands excluded from bye-law 71 (b) (ii)'.

What is reproduced above clearly shows that the findings were confined to the peculiar facts of the particular case. Herein, there are specific Recruitment Rules and a person, therefore, cannot claim promotion de hors the Rules. There is no controversy pertaining to the experience that one has gained. If the Recruitment Rules prescribe a particular educational qualification in consonance with the requirements of the posts, there is no reason as to why it should be not insisted upon. Consequently, the cited decisions so much thought of will also not come to the help of the applicants.

9. The law on the said controversy has started taking a shape with the decision of the Constitution Bench of the Supreme Court in the famous case

of Roshan Lal Tandon Vs. Union of India and Ors. reported as 1967 SLR 832. It becomes indeed a futile exercise to go into the various facets of service jurisprudence that were considered in the case of Roshan Lal Tondon but the Supreme Court held that once a person is appointed and enjoys the post, he has no vested right with regard to the terms of service but acquires a status. Therefore, the rights and obligations are no longer determined by consent of the parties but would be governed by the Rules. The same could be changed unilaterally by the Government.

10. Another Constitution Bench decision of the Supreme Court in the case of The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Ors. reported as (1974) 1 SCC 19 was concerned with the qualifications prescribed pertaining to the classification. The Supreme Court did express certain reservations that classification is fraught with the danger and held:

> "31. Classification, however, is fraught with the danger that it may produce artificial inequalities and, therefore, the right to classify is hedged in with salient restraints; or else, the guarantee of equality will be submerged in class legislation masquerading as laws meant to govern well-marked classes characterized by different and distinct attainments. Classification, therefore, must be truly founded on substantial differences which distinguish persons grouped together from those left out of the group and such differential attributes must bear a just and rational relation to the object sought to be achieved.
>
> 32. Judicial scrutiny can, therefore, extend only to the consideration whether the classification rests on a reasonable basis and whether it bears nexus with the object in view. It cannot extend to embarking upon a nice or mathematical evaluation of the basis of classification, for were such an inquiry permissible it would be open to the Courts to substitute their own judgment for that of the legislature or the rule-making authority on the need to classify or the desirability of achieving a particular object".

Thereupon, the Apex court was of the view that it is not possible to accept the respondents' contention that the classification of Assistant Engineers into degree-holders and diploma-holders rests on any unreal or unreasonable basis.

If the classification was done with a view to achieve administrative efficiency, in Paragraph 33 the Supreme Court held:

> "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. This is not to suggest that administrative efficiency can be achieved only through the medium of those possessing comparatively higher 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 indiscriminate imposition of inequalities and the classification cannot be characterized as arbitrary or absurd. That is the farthest that judicial scrutiny can extend".

In fact, in the well known decision of T.R. Kothandaraman and Ors. Vs. Tamil Nadu Water Supply & Drainage Bd. And Ors. 1994 SCC (L&S) 1366, the Supreme Court scanned through the various decisions, including that of Triloki Nath Khosa (supra). The question of educational qualifications and if classification on that ground could be made again was raised before the Apex Court. The Supreme Court held that a quota based upon educational qualifications could be prescribed and in Paragraph 13, it was held as under:

> " 13. The aforesaid bird's-eye view of important decisions of this Court on the question of prescribing quota in promotion to higher post based on the educational qualification makes it clear that such a qualification can in certain cases be a valid basis of classification; and the classification need not be relatable only to the eligibility criteria, but to restrictions in promotion as well. Further, even if in a case the classification would not be acceptable to the court on principle, it would, before pronouncing its judgment, bear in mind the historical background. It is apparent that while judging the validity of the classification, the court shall have to be conscious about the need for maintaining efficiency in service and also whether the required qualification is necessary for the discharge of duties in the higher post".

Thereafter, the conclusions were drawn by the Supreme Court which are being reproduced below for facility:

"(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 jeopardizing 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 for this are being indicated later".

Similar view prevailed in the case of Arun Tewari & Ors. Vs. Zila Mansavi Shikshak Sangh and Ors. (1998 SCC (L&S) 541). A question again was raised as to if the qualifications prescribed were unfair or not? It was held that it could be so prescribed and the findings are:

"18. The next contention challenges the qualifications which are prescribed by the amendment to Schedule III as being unfair. The prescribed qualifications are Basic Training Certificate or a B.Ed. Degree. It was contended that the prescription of these qualifications is unreasonable and discriminatory because there are other qualifications which, according to the original applicant, are equivalent and which should have been included. It is urged that Montessori and Mahila Bal Sevika Prasikshan Pramanpatras and Diploma T are equivalent qualifications. It has been pointed out by the State that the BT Certificate qualification is superior to the qualifications of Diploma T, Montessori and Mahila Bal Sevika Prasikshan Pramanpatras. The criteria for selection of students, syllabus and period of training are all different for Pre-Primary Prasikshan (Montessori) and Bal Sevika Prasikshan. Minimum qualification for admission is middle school and High School and the period of training in both the courses is one year only. For Diploma T the minimum qualification for admission is a Higher Secondary School Education. For BTI the minimum qualification is passing of the Higher Secondary School Examination in the Second Division and the courses are also different. The State Council of Educational Research and Training considered the question of equivalence of BTI and Diploma T and concluded that both the courses are not equal and the course of Diploma T is inferior to that of BTI. This recommendation was accepted by the State Government. The State Government has, therefore, submitted that B.T. qualification is superior to the other training qualifications and, therefore, they have prescribed only B.T. qualification apart from a B.Ed.

> 19. Looking to the above reasons set out by the State Government for recognizing a B.T. qualification as superior to Diploma T and other qualifications, the exclusion of other qualifications cannot be held to be discriminatory or unreasonable. A higher qualification which is prescribed for a particular scheme cannot be considered as violative of Article 14. When candidates with higher qualifications are available, choosing them instead of candidates with inferior qualifications is not violation of Article 14 or 16".

Before drawing the necessary conclusions, we take advantage by referring to the decision in the case of Kuldeep Kumar Gupta & Ors. Vs. H.P.S.E.B. & Ors. (JT 2001 (1) SC 47). We are not concerned with the facts of that particular case but the Supreme Court held that if no quota is provided for such unqualified matriculates in the promotional cadre of Assistant Engineer then they may stagnate at that stage which will not be in the interest of administration. If the rule making authority on consideration of such stagnation, provides a quota for such unqualified promotee Junior Engineers, the same cannot be held to be violative of any constitutional mandate.

11. From the aforesaid, the conclusions that can be conveniently drawn are that educational qualifications can be prescribed for purposes of promotion. It goes with the facts and circumstances of each case as to whether the qualification prescribed is reasonable or not. Higher qualifications can be the basis for barring promotion and restricting the scope of promotion. It should not seriously jeopardize the chances of promotion.

12. Before venturing into the facts of the present case, we, at this stage, deem it necessary to repeal the plea that there are mala fides attributed to the respondents. The Supreme Court in the case of V.K. Sood Vs. Secretary, Civil Aviation and Ors. reported as 1993 SCC (L&S) 907 held that when Rules have been framed in exercise of the powers under Article 309, it should not be impeached on the ground that the authorities have prescribed tailor-

made qualifications to suit the stated individuals. Herein, there are no stated individuals known.

13. Having pondered thus far into the arena of precedents, we can conveniently revert back to the facts of the case. We have already referred to above that unless it is done that there is a specific tilt towards any individual, it would not tantamount to mala fides towards him. In fact, we cannot attribute mala fides, on the ground that 100% posts are given to the promotees. The only rider is that they should be 12th pass. Unfortunately, the applicants do not have the educational qualifications. When such is the situation, it cannot be termed that the Rules suffer from the vice of arbitrariness or illegality. For sake of efficiency and as per the requirements of the respondents if such amendments are made , that is, that the candidates should be 12th pass, it cannot be termed that it must be held that in that event it is invalid.

14. More close to the facts of the present case is the decision of the Supreme Court in the case of State of Jammu and Kashmir Vs. Shiv Ram Sharma & Ors. reported as 1999 (3) SLJ 315. In the cited case, the rules made provision that the person for promotion should be a matriculate. None of the respondents before the Supreme Court possesses the qualification of matriculation. Therefore, they could not be promoted to higher grade. The Jammu and Kashmir High Court took the view that it was illogical and for such posts, service experience should be the sole criteria. The Supreme Court had set aside the judgment of the Jammu and Kashmir High court and held:

> "5. The law is well settled that it is permissible for the Government to prescribe appropriate qualifications in the matter of appointment or promotion to different posts. The case put forth on behalf of the respondents is that when they joined the service the requirement of passing the matriculation was not needed and while they are in service such prescription has been made to their detriment. But it is clear that there is no indefeasible right in the respondents to claim for promotion to a

higher grade to which qualification could be prescribed and there is no guarantee that those rules framed by the Government in that behalf would always be favourable to them. In Roshan Lal Tandon v. Union of India, (1968 (1) SCR 185, it was held by this Court that once appointed an employee has no vested right in regard to the terms of service but acquires a status and, therefore, the rights and obligations thereto are no longer determined by consent of parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. The High Court has also noticed that there was an avenue provided for promotion but the prescription of the qualification was not favourable to respondents. The principle of avoiding stagnation in a particular post will not be with reference to a particular individual employee but with reference to the conditions of service as such. As long as rules provide for conditions of service making an avenue for promotion to higher grades the observations made in T.R. Kothandaraman's case (supra) stand fulfilled. In that view of the matter, we do not think the High Court was justified in allowing the writ petitions filed by the respondents.

6. The case of J.R. Sharma stood altogether on a different footing who was appointed in the year 1962 and he was promoted to higher grades with effect from 1989, that is, prior to the coming into force of the Rules. In that view of the matter, we do not think that case could be taken note of in giving any directions in favour of the respondents".

Identical almost is the position before us. As per the requirements if it has been provided that a candidate should be 12th pass with a particular discipline before he can be promoted, we find no reason to hold that this would tantamount to illogical or illegal amendment to the Rules. Stagnation of few for not meeting the laid down qualifications cannot be a ground to quash the same. We hasten to add that the question of relaxation of the Rules was not agitated before us. Consequently, we dispose of the present petition holding:

(a) Recruitment Rules of 8.12.1993 cannot be described to be arbitrary, vindictive or mala fide;

(b) As a necessary corollary, there is no ground to quash the advertisement of 23.7.2003. Dismissed

(S.K. Naik)
Member (A)

(V.S. Aggarwal)
Chairman

'SRD'