

Ramesh Prasad Singh

Vs

State of Bihar and Others

Civil Appeal No. 1825 of 1969

(Jaswant Singh, Syed M. Fazal Ali JJ)

04.11.1977

JUDGMENT

JASWANT SINGH, J.

1. This appeal by certificate granted by the High Court of Judicature at Patna under Article 133(1)(a) and (b) of the Constitution is directed against the judgment and order dated May 13, 1969 of that Court whereby Civil Writ Petition 460 of 1968 filed by respondents 3 to 28 herein was allowed. Notification SS/A1-10B/68/2676/EB dated June 24, 1968 issued by the Bihar State Electricity Board, respondent 2, appointing the appellant as officiating temporary Executive Engineer (Tele-Communication), Tele-Communication Division, Patna, was quashed and a writ of mandamus commanding respondent 2 to fill up the post of the Executive Engineer (Tele-Communication) after considering the case of respondents 3 to 28 and specially of respondents 3 and 4 along with the case of the appellant or with the case of any other Assistant Engineer whose case in the opinion of the Board may be fit to be considered in the light of the said judgment was issued.

2. The circumstances giving rise to this appeal lie in a short compass. It appears that the appellant who passed the final examination of Bachelor of Science (Engineering) in Tele-Communication of the Ranchi University held in August, 1962 was appointed by the Bihar State Electricity board (hereinafter referred to as 'the Board') as Assistant Engineer (Tele-Communication) in September, 1963 on a salary of Rs. 245 per month in the pay scale of Rs. 220-25-320-EB-25-670-EB-30-750. A few weeks after his recruitment, the appellant was sent by the Board to the head quarters of Messrs Brown Boveri and Company Limited, Baden, Switzerland for six months specialised training in power line carrier, tele-metering and tele-control equipment in the modern power system. On his return from Switzerland and resumption by him of his duty as Assistant Engineer (Tele-Communication) the appellant was deputed to look after the entire tele-communication system of the Board. In June, 1968, the Board felt the necessity of maintenance of efficient communication service between the vital centres of generation, utilization and administration for ensuring reliability and continuity in power supply which would facilitate quick supervision and checking of the then existing arrangements at the generating stations, receiving sub-stations and distributing areas as also the necessity of proper supervision and handling by trained and qualified personnel of a large number of wave-change-over communication equipments on 33 KW Transmission line which had been installed in the Tele-Communication Sub-Division of the Board at Patna and were maintained and aligned with the help of special electronic instruments. Accordingly, the Board accorded sanction to the creation of a temporary Tele-Communication Division with headquarters at Patna as also the creation of a temporary post of Executive Engineer (Tele-Communication) in the replacement scale of pay Rs. 730-35-870-40-1070-EB-45-1250 for the said Tele-Communication

Division with effect from June 22, 1968 to February 28, 1969. Acting on the recommendation of its expert selection committee to the effect that the appellant was fit to be promoted to the rank of the Executive Engineer (Tele-Communication) in view of the fact that he had a consistently good record of service, possessed the degree in Tele-Communication Engineering, had undergone special training in Switzerland in Tele-Communication, had ever since his return from Switzerland been satisfactorily performing the onerous and complex duties assigned to him and had been looking after the entire Tele-Communication system of the Board and had thus acquired a valuable practical experience in that field which was necessary to man the post of Executive Engineer (Tele-Communication) and that the Assistant Electrical Engineers of 1960 batch were being considered for promotion as Electrical Executive Engineers, the Board issued the aforesaid notification temporarily promoting the appellant to the post of Executive Engineer (Tele-Communication). Thereupon, respondents 3 to 28, who had been appointed as Assistant Electrical Engineers in September, 1960 moved the High Court at Patna by means of a writ petition under Article 226 of the Constitution challenging the aforesaid notification averring inter alia that the promotion of the appellant was mala fide, that though they were senior to the appellant and possessed the requisite qualification and two of them viz. Harkishore Singh and Dina Nath Singh had studied Tele-Communication as one of their subjects in the final examination of B.Sc. in Electrical Engineering, they had not even been considered by the Board for appointment to the aforesaid post of Executive Engineer and that they had been superseded and unreasonably discriminated against in violation of the guarantee of equality of opportunity contested by the appellant as also the State of Bihar and the Board who contended that the appellant was holding an extra-cadre post of Assistant Engineer (Tele-Communication) which was created separately from that of the other Assistant Electrical Engineers; that respondents 3 to 28 not being holders of degree in Tele-Communication (Engineering) were not qualified for appointment as Executive Engineer (Tele-Communication) and had no right to maintain the petition and that there was no question of violation of equality of opportunity guaranteed under Articles 14 and 16 of the Constitution. On a consideration of the rival contentions of the parties, the High Court while granting that the appellant possessed the degree of B.Sc. Engineering in Tele-Communication; that the post of Executive Engineer (Tele-Communication) might be an extra-cadre post as claimed by the Board and that it was not for the Court but for the Board to decide on the basis of the opinion of experts or selection committee as to who was fit and suitable for that post, quashed and aforesaid notification promoting the appellant mainly on the grounds that neither a separate cadre of Executive Engineer (Tele-Communication) had been constituted nor had any special and that respondents 3 to 28 who were senior to and had better experience and academic career than the appellant had been unjustifiably ignored by the Board violating the protection of equal opportunity guaranteed to them under Article 14 and 16 of the Constitution. It is this judgment that is impugned in this appeal.

3. We have heard learned Counsel for the appellant and respondents 1 and 2 viz. State of Bihar and the Board but have had not the advantage of hearing respondents 3 to 28 or any one on their behalf, as they have chosen not to appear despite personal service.

4. The Learned Counsel appearing on behalf of the appellant and respondents 1 and 2 have vehemently urged that Tele-Communication is a highly specialised subject quite distinct from that of general Electricity; that respondents 3 to 28 who were mere graduates of Science in Electrical Engineering were not qualified for the post of Executive Engineer (Tele-Communication) and had no right to maintain the writ petition out of which the present appeal has arisen and that in the facts and circumstances of the instant case, there was no question of any breach or violation of the guarantee of equality of opportunity contained in Articles 14 and 16 of the Constitution as was contended by them. There is, in our opinion, considerable force in these submissions.

5. Regarding the observation of the High Court that in the absence of rules laying down qualifications for appointment and promotion to the post of Executive Engineer (Tele-Communication), respondents 3 to 28 could not be excluded from consideration for appointment to that post we would like to say that though it cannot be gainsaid that before initiation of the proposal for creation of the post of Executive Engineer (Tele-Communication), respondents 1 and 2 had not framed any rules prescribing etc., before a service is constituted or a post is created or filled up. As is well known, the process of rule-making is a protracted and complicated one involving consultation with various authorities and compliance with manifold formalities. It cannot also be disputed that exigencies of administration at times require immediate creation of service or posts and any procrastination in that behalf cannot but prove detrimental to the proper and efficient functioning of public departments. In such like situations, the authorities concerned would have the power to appoint or terminate administrative personal under the general power of administration vested in them as observed by this Court in *B. N. Nagarajun v. State of Mysore* ((1966) 3 SCR 682 : AIR 1966 SC 1942 : (1967) 1 Lab LJ 698) and *T. Cajee v. U. Jormanik Siem* ((1961) 1 SCR 750, 764 : AIR 1961 SC 276 : (1961) 1 Lab LJ 652). It follows therefore, that in the absence of rules, qualifications for a post can validly be laid down in the self-same executive order creating the service or post and filling it up according to those qualifications. In the instant case, it is evident from a perusal of the proposal for creation of a Tele-Communication Division at Patna and the aforesaid recommendation made by the Selection Committee in favour of the appellant that for ensuring reliability and continuity in power supply it was absolutely essential that maintenance of the sophisticated wave-change-over communication equipments of 33 KW installed by the Board in the Tele-Communication Sub-Division should be entrusted to specially trained, experienced and qualified officer possessing specialized theoretical and practical knowledge of Tele-Communication which is a subject quite distinct from that of general Electricity and covers according to *New Encyclopaedia Britannica* (15th Edition) and *Webster's Third New International Dictionary* all types of communication at a distance as by cable, radio, telegraph, telephone, tele-typewriter and facsimile. Judged in this background, it is obvious that it was only the appellant who possessed degree in B.Sc. Engineering in Tele-Communication, was separately recruited and specially trained in Switzerland and had thus acquired specialized knowledge therein and acquitted himself creditably in the field for five years, who could be said to possess the requisite qualification and be considered fit and suitable for the job in question and not any one of respondents 3 to 28 who were mere graduates in Electrical Engineering, nor even respondent 3 and 4 who had studied Tele-Communication only as one of the subjects in their final B.Sc. Engineering Examination. It is patent, therefore, that the High Court was in error in thinking that respondents 3 to 28 possessed qualification equal to the appellant or that they were eligible for the job.

6. Turning to the other ground on which the judgment under appeal rests viz., the violation of guarantee of equality enshrined in Articles 14 and 16 of the Constitution, we would like to reiterate and re-emphasize what has been repeated by this Court viz., that the doctrine of equality before law and equal protection of laws and equality of opportunity in the matter of employment and promotion enshrined in Articles 14 and 16 of the Constitution which is interfered to advance justice by avoiding discrimination is attracted only when equals are treated as unequals or where unequals are treated as equals. (See *Md. Usman v. State of Andhra Pradesh* ((1971) 2 SCC 188 : AIR 1971 SC 1801)) The guarantee of equality does not imply that the same rules should be made applicable to all persons in spite of differences in their circumstances and conditions. (See *Chiranjit Lal Chowdhuri v. The Union of India* (1950 SCR 869, 911 : AIR 1951 SC 41)). It is also well recognized that although Articles 14 and 16 of the Constitution forbid hostile discrimination they do not forbid reasonable classification and equality of opportunity in matters of promotion means

equality as between members of the same class of employees and not equality between the members of separate and independent classes. (See All India Station Masters' & Assistant Station Master's Association v. General Manager, Central Railway ((1960) 2 SCR 771 : (1974) 1 SCC 19 : 1974 SCC (L & S) 49)). It must always be remembered that though the concept of equal protection and equal opportunity undoubtedly permeates the whole spectrum of an individual's employment from appointment through promotion and termination of the payment of gratuity and pension, it has an inherent limitation arising from the very nature of the constitutional guarantee. Equality is for equals, that is to say those who are similarly circumstanced are entitled to an equal treatment but the guarantees enshrined in Articles 14 and 16 of the Constitution cannot be carried beyond the point which is well-settled by a catena of decisions of this Court.

7. The instant case, in our opinion, is completely covered by the decisions of this Court in State of Jammu & Kashmir v. Triloki Nath Khosa ((1974) 1 SCR 771 : (1974) 1 SCC 19 : 1974 SCC (L & S) 49)) (with which both of us had something to do at one stage or the other), State of Mysore v. P. Narasing Rao ((1968) 1 SCR 407 : AIR 1968 SC 349 : (1968) 2 Lab LJ 120), Ganga Ram v. Union of India ((1970) 3 SCR 481 : (1970) 1 SCC 37) and the Union of India v. Dr. (Mrs.) S. B. Kohli (AIR 1973 SC 811 : (1973) 3 SCC 592 : 1973 SCC (L & S) 136).

8. In the State of Jammu & Kashmir v. Triloki Nath Khosa where after integration of diploma holder and degree holder Assistant Engineers in one class, it was provided by the J & K Engineering (Gazetted) Service Rules, 1970 that only those Assistant Engineers who possessed a degree in Engineering would be eligible for promotion to the post of Executive Engineer and the diploma holder Assistant Engineers who were rendered ineligible for promotion to the post Executive Engineer filed a writ petition challenging the constitutionality of the rule and the classification on which it was claimed to be based on the ground that once the employees are intergraded into one class, they cannot for purposes of promotion be classified again into two different classes on the basis of educational differences existing at the time of recruitment, the Constitution Bench held rejecting the contention of the diploma holder Assistant Engineers that formal education may not always produce excellence but a classification founded on variant educational qualifications is, for purposes, of promotion to the post of an Executive Engineer, to say the least, not unjust on the face of it and the onus therefore cannot shift from where it originally lay.

9. The following passages occurring in the leading judgment of our learned brother Chandrachud, J., in that case are worth quoting : (SCC pp 30 and 34, paras 21, 34 and 35)

In order to establish that the protection of the equal opportunity clause has been denied to them, it is not enough for the respondents to say that they have been treated differently from others, not even enough that a differential treatment has been accorded to them in comparison with others similarly circumstanced. Discrimination is the essence of classification and does violence to the constitutional guarantee of equality only if it rests on an unreasonable basis. It was, therefore, incumbent on the respondents to plead and show that the classification of Assistant Engineers into those who hold diplomas and those who hold degrees is unreasonable and bears no rational nexus with its purported object . . . On the facts of the case, classification on the basis of educational qualifications made with a view to achieving administrative efficiency cannot be said to rest on any fortuitous circumstance and one has always to bear in mind the facts and circumstances of the case in order to judge the validity of a classification Educational qualifications have been recognized by this Court as a safe criterion for determining the validity of classification. In State of Mysore v. P. Narasing Rao (supra) where the cadre of Tracers was reorganized into two, one consisting of matriculate Tracers with a higher scale of pay and the other of non-matriculいたes in the lower scale, it

was held that Articles 14 and 16 do not exclude the laying down of selective tests not do they preclude the Government from laying down qualifications for the post in question. Therefore, it was open to the Government to give preference to candidates having higher educational qualifications. In *Ganga Ram v. Union of India* (supra), it was observed that "the State which encounters diverse problems arising from a variety of circumstances is entitled to lay down conditions of efficiency for promotion in its different departments. " In the *Union of India v. Dr. (Mrs.) S. B. Kohli* (supra) as refined a classification as between an F.R.C.S. in general surgery and an F.R.C.S. in Orthopaedics was upheld in relation to appointment to the post of a Professor of Orthopaedics on the ground that the classification made on the basis of requirement of a post-graduate degree in particular speciality was not "without reference to the objectives sought to be achieved and there can be no question of discrimination."

10. The following observations made in *State of Mysore v. P. Narasing Rao* (supra) will also amply repay perusal :

It is well-settled that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. Where any impugned rule of statutory provision is assailed on the ground that it contravenes Article 14, its validity can be sustained if two tests are satisfied. The first test is that the classification on which it is founded must be based on an intelligible differential which distinguishes persons test is that the differential in question must have a reasonable relation to the object sought to be achieved by the rule or statutory provision in question. In other words, there must be some rational nexus between the basis of classification and the object intended to be achieved by the statute or the rule. As we have already stated. Articles 14 and 15 form part of the same constitutional code of guarantees and supplement each other. In other words, Article 16 is only an instance of the application of the general rule of equality laid down in Article 14 and it should be construed as such. Hence there is no denial of equality of opportunity unless the person who complains of discrimination is equally situated with the person who alleged to have been favoured. Article 16(1) does not bar a reasonable classification of employees or reasonable tests for their selection.

11. In the instant case, the qualification required for the post of Executive Engineer (Tele-Communication) as demonstrably reflected in the proposal for creation of that post and the aforesaid recommendation of the Selection Committee setting out various factors which went in favour of the promotion of the appellant appear to be founded on reasonable classification having an intelligible differential which distinguished the appellant from respondents 3 to 28 and the differentia had a reasonable relation to the object sought to be achieved. It is, therefore, crystal clear that respondents 3 to 28 did not stand at par with the appellant and had no legal right which they could claim to have been denied to them by an authority which had a legal duty to do something. With all respect the High Court was in our judgment, therefore, not right in writ of mandamus. It would be useful in this context to refer to the following observations made by Court in *Mani Subrat Jain v. State of Haryana* ((1977) 1 SCC 486 : 1977 SCC (L & S) 166) : (SCC p. 488 para 9)

It is elementary though it is restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to do something or to abstain from doing something. (See *Halsbury's Laws*

of England, 4th Ed. Vol. I paragraph 122; State of Haryana v. Subash Chander Marwaha ((1974) 1 SCR 165 : (1974) 3 SCC 220 : 1973 SCC (L & S) 488); Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed and Ferris : Extra-Ordinary Legal Remedies paragraph 198).

12. In view of the foregoing, we are unable to hold on the material before us that the criterion employed by the concerned authority in promoting the appellant was arbitrary or capricious or was not intended to increase the efficiency in the functioning of the department or was based on extraneous or irrelevant considerations or suffered from any other vice. In the result, we allow the appeal, set aside the judgment of the High Court and uphold the aforesaid Notification SS/AI-103/68/2676/EB dated June 24, 1968 issued by the Board promoting the appellant as officiating temporary Executive Engineer (Tele-Communication). As respondents 3 to 28 have not appeared and contested the appeal, we make no order as to costs.

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