

N.Suresh Nathan and another

Vs

Union of India and others

(L. M. Sharma, J. S. Verma, S. C. Agarwal JJ)

Civil Appeal No. 4542 of 1991

22.11.1991

JUDGEMENT

VERMA, J.:-

1. The Recruitment Rules for the Post of Assistant Engineer in the Public Works Department, Pondicherry, prescribe the educational and other qualifications for appointment by direct recruitment and promotion. For direct recruits, the qualification prescribed is a Degree in Civil Engineering of a recognised University or Diploma in Civil Engineering from a recognised institution with three years' professional experience. For appointment by promotion of Section Officers now called Junior Engineers, the qualification prescribed is as under:-

1. Section Officers possessing a recognised Degree in Civil Engineering or equivalent with three years' service in the grade failing which Section Officers holding Diploma in Civil Engineering with six years service in the grade -50%.
2. Section Officers possessing a recognised Diploma in Civil Engineering with six years' service in the grade -50%."

2. The dispute in the present case is whether a Diploma-holder Junior Engineer who obtains a Degree while in service becomes eligible for appointment as Assistant Engineer by promotion on completion of three years' service including therein the period of service prior to obtaining the Degree or the three years service as a Degreeholder for this purpose is to be reckoned from the date he obtains the Degree. The Diploma-holders contend that they are entitled. to include the earlier period and would be eligible for promotion in this category on obtaining the Degree if the total period of service is three years inclusive of the earlier period. The Degree-holders contest this position and contend to the contrary. According to the Degree-holders, these are two distinct categories. In the first category are Degree-holders with three years' service in the grade as Degree-holders, the period of three years being subsequent to the date of obtaining the Degree as in the case of the Junior Engineers, who join the service with a Degree; and the other category is of Diploma-holders with six years experience.

3. The Diploma-holder went to . the Central Administrative Tribunal with this contention and the Tribunal has upheld their claim and directed as under:

"In the light of the above, we hold that the applicants are entitled to the relief asked for and accordingly we direct the respondents to consider them for promotion. to the post of Assistant Engineer on par with the other Degree-holder. Junior Engineers,

taking due note of their total length of service rendered in the grade of Junior Engineer. Such a consideration should be along side other Junior Engineers who might have acquired the necessary Degree qualification earlier than the applicants, while holding the post of Junior Engineer. For this purpose, the first three respondents shall take necessary action to convene a review. D.P.C. and pass orders on the basis of the recommendations of that D.P.C. within a period of three months from the date of receipt of a copy of this order.

The application is allowed as above."

Hence this petition for grant of special leave by the Degree-holders. Leave is granted.

4. In our opinion, this appeal has to be allowed. There is sufficient material including the admission of respondents Diploma-holders that the practice followed in the Department for a long time was that in the case of Diploma-holder Junior Engineers who obtained the Degree during service, the period of three years' service in the grade for eligibility for promotion as Degree-holders commenced from the date of obtaining the Degree and the earlier period of service as Diploma-holders was not counted for this purpose. This earlier practice was clearly admitted by the respondents Diploma-holders in para 5 of their application made to the Tribunal at page 115 of the paperbook. This also appears to be the view of the Union Public Service Commission contained in their letter dated December 6, 1968 (extracted) at pages 99-100 of the paperbook in the counter affidavit of respondents 1 to 3. The real question, therefore, is whether the construction made of this provision in the rules on which the past practice extending over a long period is based is untenable to require upsetting it. If the past practice is based on one of the possible constructions which can be made of the rules then upsetting the same now would not be appropriate. It is in this perspective that the question raised has to be determined.

5. The Recruitment Rules for the post of Assistant Engineers in the P.W.D., (Annexure-C) are at pages 57 to 59 of the paperbook. Rule 7 lays down the qualifications for direct recruitment from the two sources, namely, Degree-holders and Diploma-holders with three years' professional experience. In other words, a Degree is equated to Diploma with three years professional experience. Rule 11 provides for recruitment by promotion from the grade of Section Officers now called Junior Engineers. There are two categories provided therein one is of Degree-holder Junior Engineers with three years service in the grade and the other is of Diploma-holder Junior Engineers with six years' service in the grade, the provision being for 50% from each category. This matches with R. 7 wherein a Degree is equated with Diploma with three years' professional experience. In the first category meant for Degree-holders, it is also provided that if Degree-holders with three years' service in the grade are not available in sufficient number, then Diploma-holders with six years' service in the grade may be considered in the category of Degree-holders also for the 50% vacancies meant for them. The entire scheme, therefore, does indicate that the period of three years' service in the grade required for Degree-holders according to R. 11 as the qualification for promotion in that category must mean three years service in the grade as a Degree-holder and, therefore, that period of three years can commence only from the date of obtaining the Degree and not earlier. The service in the grade as a Diploma-holder prior to obtaining the Degree cannot be counted as 'service in the grade with a Degree for the purpose of three years' service as a Degree holder. The only question before us is of the construction of the provision and not of the validity thereof and, therefore, we are only required to construe the meaning of the provision. In our opinion, the contention of the appellants Degree-holders that the rules must be construed to mean that the three years service in the grade of a Degree-holder for the purpose of R. 11 is three years from the date of obtaining the

Degree is quite tenable and commends-to us being in conformity with the past practice followed consistently. It has also been so understood by all concerned till the raising of the present controversy recently by the respondents. The Tribunal was, therefore, not justified in taking the contrary view and unsettling the settled practice in the Department.

6. Consequently, the appeal is allowed. The impugned order of the Tribunal is set aside resulting in dismissal of the respondents' application made in the Tribunal. The Department will now consider the question of promotion in accordance with this decision. No costs.

Appeal allowed.

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