

DDA Graduate Engineers' Association and Others

Vs

The Lieutenant Governor of Delhi

Civil Appeal No. 3757 of 1992

(P. B. Sawant, G. N. Ray JJ)

09.09.1992

JUDGEMENT

SAWANT, J.:-

1. Leave granted. What is involved in this appeal is the interpretation of Resolution No. 105 of the respondent-Delhi Development Authority ('DDA' for short) passed on 16th June, 1971. The relevant portion of the Resolution reads as follows:

"Resolved that the same rules of promotion should be made applicable in the DDA as are in vogue in the Central PWD and no consideration for private service would be allowed.

2. The first appellant is an Association of the graduate Engineers and appellants 2 to 4 are members of the said Association and are at present employed as Assistant Engineers in the DDA. Respondents 4 to 12 are the diploma-holder engineers and are at present employed as Executive Engineers in the DDA. According to the appellants, under the Central Engineering Service, Class 1, Recruitment Rules, 1954 (hereinafter referred to as '1954 Rules') no Assistant Engineer who is a diploma-holder is qualified to be promoted to the post of Executive Engineer. This, they contend, is the result of reading together of Rules 3, 4, 13 and 23 of the 1954 Rules. Since this position arising out of the 1954 Rules is not disputed before us on behalf of the respondents, it is not necessary to reproduce them here. However, it is contended on behalf of the respondents that for the promotion to the post of Executive Engineer in the DDA, what were made applicable by the said 1974 Resolution were the instructions contained on the subject in the Manual as applicable to the Central Public Works Department. According to paragraph 13 of Section 7 (dealing exclusively with promotions) of Volume I of the said CPWD Manual, (1970 Edition), diploma-holder, Assistant Engineers are eligible for promotion to the post of Executive Engineer if they have put in 10 years service in the Grade as against Graduate Engineers who have to put in 8 years' qualifying service for being entitled to the said post. The said paragraph 13 reads as follows:

"13. In case of Executive Engineers, the Departmental candidates promoted from the lower rank of Sectional officer to Class II Services of Assistant Engineers are also to be considered along with Class I and II directly recruited Officers in ratio of 1 : 2. The eligibility criteria is as under:

(i) Assistant Executive Engineers (Direct Recruit Class I) - 5 years in the grade.

- (ii) Assistant Engineers (Direct Recruits Class II) - 8 years service in the grade.
- (iii) Assistant Engineers (Promotees Class II)
 - (a) Graduates - 8 years service.
 - (b) Diploma Holders - 10 years service in the grade.
 - (c) Unqualified - 10 years service in the grade with outstanding record."

3. On behalf of the appellants, it is no disputed that if the aforesaid paragraph 13 of the CPWD Manual has a valid application diploma-holder Assistant Engineers would be eligible to be promoted to the post of Executive Engineer. However, Shri Rama murthy on their behalf contended that the CPWD Manual cannot override 1954 Rules and the 1971 Resolution passed by the DDA speaks of the Rules and not of the instruction contained in the Manual. It was also contended by him that it is not shown by the respondents as to how the said paragraph 13 had modified the 1954 Rules. Neither the Government resolutions nor any other document has been produced to support the encroachment made by the said paragraph 13 on the 1954 Rules. He also pointed out to us that the Central Administrative Tribunal, Principal Bench, New Delhi in its judgment in O.A. No. 704 of 1988 had on 13th April, 1990 struck down the added proviso to sub-rule (3) of R. 23 of 1954 Rules as being arbitrary and discriminatory. The said amended proviso read as follows:

"Provided that the Government, in consultation with the Commission, may promote an Engineer of outstanding ability and record, to Class I Service in relaxation of the educational qualifications provided in clause (a)."

While doing so in paragraph 16 of its judgment, the Tribunal observed as follows:

"16. In the facts and circumstances of the case, we are of the view that the proviso under R. 21(3) (sic) is arbitrary and discriminatory. The proviso, therefore, requires to be substituted by a rational and just criterion e.g., holding of a qualifying test for diploma holder AEs, annually or as may be necessary, to obviate the element of arbitrariness and make the rule reasonable. Those who qualify in such a departmental test should be considered along with graduate AEs for promotion to the next higher grade by the DPC by following the normal procedure."

He submitted that this judgment has become final. According to the Tribunal, therefore, the diploma-holder Assistant Engineers would be eligible to be promoted to of the post of Executive Engineer only if they qualify in a departmental qualifying test, if beheld, as suggested by it to obviate the element of arbitrariness. Relying on the said observation, Shri Ramamurthi submitted that but for the said added proviso the diploma-holder Assistant Engineers were not eligible for promotion to the post of Executive Engineer, at all.

4. As against this, Shri Gupta, appearing for the respondent-diploma-holder Engineers, drew our attention to paragraph 15 of the same judgment of the Tribunal, which, among other things, states as follows:

"15. The eligibility for promotion to the grade of EE was conferred on the diplomaholder AEs by the amendment to the Engineering Service Group A

Recruitment Rules, initially under the executive instructions of 1956 and subsequently by amending the rules in 1972"

In this connection, he also referred us to paragraph 6 of the judgment of this Court in *Roop Chand Adlakha v. Delhi Development Authority*, 1989 Supp (1) SCC 116 at p. 119: (AIR 1989 SC 307 at p. 308) which reads as follows:

"By resolution No. 105 dated June 16, 1971 the DDA similarly adopted the relevant rules in the CPWD in the matter of recruitment to the posts of Executive Engineers. The Executive Engineers' post in the DDA thus became purely promotional and Graduate Assistant Engineers with 8 years' service experience and Diploma Assistant Engineers with 10 years' service experience were eligible for promotion. No inter se quota between the two class of officers was prescribed."

He submitted that the said observations of the Tribunal in its judgment in O.A. No. 704 of 1988 and of this Court in *Roop Chand Adlakha's case* (AIR 1989 SC 307) (*supra*) clearly show that there has been a long practice in the CPWD as well as in DDA of promoting both diploma-holder Assistant Engineers with 10 years' service experience and Graduate Assistant Engineers with 8 years' service experience to the post of Executive Engineer and this was being done in terms of paragraph 13 of the CPWD Manual. He, therefore, contended that there was no doubt that what the DDA had in its mind when it passed the resolution in question was the practice prevalent in CPWD based not only on the 1954 Rules but also a contained in paragraph 13 of the CPWD Manual.

5. We are of the view that the contention advanced by Shri Gupta has much force in it. The DDA came into existence 1957. It appears that there was a practice of filling in the higher posts by bringing staff of deputation from other organisations. There was, therefore, a good deal of resentment among the DDA staff, and in March 1971 a representation was made by the Assistant Engineers against the meagre promotional opportunities available to them. Hence on 16th June, 1971, the DDA took stock of the situation and passed the resolution in question. It will be worthwhile to reproduce the relevant extracts of the minutes which are Annexure 'C' to the petition:

"In March, 1971, representation has been made by the Assistant Engineers of the DDA to the Chairman, Delhi Development Authority, against the meagre promotional opportunities they got in the DDA's office. The present position of the recruitment rules have been explained to the Chairman, DDA and he has desired that percentage of promotion quota should be fixed whenever it has not been fixed under the recruitment rules of the Delhi Development Authority.

2. In pursuance of the above instructions of the LG/ Chairman/ DDA, the position has been examined, it has been noticed that percentage of promotion has not been fixed under the recruitment rules for the post of Executive Engineers and Executive Officers.

3. The matter is, therefore, placed before the Development Authority for deciding as to what percentage of promotion quota should be fixed for the two categories of posts.

4. In regard to the procedure for filling the posts of Executive Engineers in the Delhi Development Authority as laid down in Resolution No. 574 dated the 13th November,

1963 is that the post be filled in either by direct recruitment or by taking officers on deputation or by promotion as Assistant Executive Engineer/Assistant Engineers from the office as deemed fit by the Authority.

5. At present there are 30 posts of Executive Engineers in the Authority of which 8 are held by the officers of the DDA 6 directly recruited and 2 promoted from the office.

6. As regards the conditions of eligibility for promotion it is proposed that the same conditions as are applicable in the CPWD may be prescribed.

7. As regards the post of Executive Officers, there are at present 15 posts. Against these posts two officers promoted from the D.D.A. are working and the remaining are deputationist mostly from the 'State Civil Service.

RESOLUTION

Resolved that the same rules of promotion should be made applicable in the D.D.A. as are in vogue in the Central PWD and no consideration for private service would be allowed.

In regard to the Executive Officers, these (sic.) matter was postponed for further consideration."

6. It is clear from paragraph 6 of the minutes that the DDA wanted to enforce the same "conditions" of eligibility as were applicable in the CPWD. While, however, passing the resolution, instead of the word "conditions" the word "rules" of promotion was used. As pointed out above, it is clear from the observations made in the decision of the Tribunal in O.A. 704 of 1988 as well as by this Court in Roop Chand Adlakha's case (AIR 1989 SC 307) (supra) that the procedure given in paragraph 13 of the CPWD Manual was applicable for promotion to the post of Executive Engineer in the CPWD. Hence, what the DDA had in mind was not only the, statutory rules but also the procedure for promotion given in the CPWD Manual. That what was in fact intended to be adopted was the procedure given in the CPWD Manual is further evident from the fact that from that date onwards till today in fact both the diploma-holder Assistant Engineers with 10 years' service experience and graduate Assistant Engineers with 8 years' service experience have been promoted to the post of Executive Engineer. The eligibility of the diploma holder Assistant Engineers for promotion to the post of Executive Engineer based on the said Resolution was never questioned by the graduate Assistant Engineers till this day. This is obvious from the stand taken by the Graduate Assistant Engineers in Roop Chand Adlakha's case (supra). That was a case where the diploma-holder Assistant Engineers had approached the High Court by different writ petitions challenging the differential treatment accorded to them and the graduate Assistant Engineers by prescriptions of different standards of service experience for purposes of eligibility for promotion to the post of Executive Engineer and other higher posts. The High Court had accepted the contention of the diploma-holders declaring the differential treatment as unconstitutional. Against the said decision, both the graduate Engineers and the DDA had come in appeal to this Court. This Court set aside the decision of the High Court holding that there was nothing unconstitutional in prescribing different lengths of qualifying service experience for the diploma-holder Assistant Engineers and the graduate Assistant Engineers. What is relevant for our purpose is that the stand taken by the graduate Engineers there was not that the diploma-holders were not eligible for promotion to the posts of

Executive Engineers because of 1954 Rules. There the position taken by them was that the higher length of service experience required of the diploma-holders for promotion was justified and the diploma-holders could not make a grievance of discrimination between them and the graduate Engineers on the ground of differential length of qualifying service, viz., 10 years required of them as against 8 years required of the graduate Engineers. The appellants' contention that they became for first time aware of the fact that diploma-holders were not at all eligible for promotion to the post of Executive Engineer under the 1954. Rules cannot, therefore, be accepted.

Whatever may be the validity of the instructions contained in the CPWD Manual as against the 1954 Rules, which may or may not be open for questioning by the CPWD Engineers, as far as the Engineers in DDA are concerned, it is not open for them to challenge the same for the simple reason that what was accepted as the procedure for promotion by the DDA by its 1971 Resolution in question was the procedure for promotion as contained in CPWD Manual which was admittedly applicable to the promotion to the post of Executive Engineer, in CPWD.

7. We are also not sure in the absence of proper material before us that in fact the 1954 Rules were not suitably and validly amended to incorporate the procedure for promotion which is detailed in paragraph 13 of the CPWD Manual by making amendment to the 1954 Rules themselves. We have also no material before us to show that the 1954 Rules were made under Article 309 of the Constitution. If they were not made under Art. 309, there was nothing wrong in amending the same by executive instructions, since the mainrules themselves could be no better than executive instructions. However, as stated earlier, we have no proper data on the subject and we will express no opinion on the status of the said Rules or on the procedure by which the said Rules were amended. Nor is it necessary for us to do so in this case since, as is pointed out earlier, the only question that falls for consideration before us is the interpretation of the Resolution in question passed by the DDA and what exactly was the procedure for promotion which the DDA wanted to adopt. We have answered this question already.

8. We are afraid that although the High Court rightly dismissed the writ petition on the appellants, it did so for wrong reasons. The High Court dismissed the writ petition relying on the decision of this Court in Roop Chand Adlakha's case (AIR 1989 SC 307) (supra) the ratio of which decision has nothing to do with the point involved in the present case. The High Court failed to appreciate the grievance of the appellants who were the writ petitioners before it. However, for the reasons stated above, and not for the reasons given by the High Court, we find no substance in the grievance.

9. The appeal is, therefore, dismissed. In the circumstances of the case, there will be no order as to costs. Appeal dismissed.

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