

(2001) 08 JH CK 0076
In the Jharkhand High Court
Case No : LPA No. 113 of 2001

Ashok Kumar Mishra and Others

APPELLANT

Vs

Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 10-08-2001

Acts Referred:

Bihar State Electricity Board Junior Electrical Engineers (General) Cadre Rules, 1982 — Rule 7
Electricity (Supply) Act, 1948 — Section 79

Citation : (2001) 08 JH CK 0076

Hon'ble Judges : Vinod Kumar Gupta, C.J.; Gurusharan Sharma, J

Bench : Division Bench

Advocate : Anil Kumar Sinha and Sameer Saurabh, for the Appellant; Indrani Sen Choudhury, for the Respondent

Final Decision : Dismissed

Judgement

By the Court

1. This appeal is directed against order dated 30.1.2001, passed by learned Single Judge of this Court in CWJC No. 2461 of 1999(R) [reported in 2001 (2) JCR 267 (Jh)], whereby claim of writ petitioners for being absorbed straightway to the posts of Junior Electrical Engineers (General) Cadre in the State Electricity Board, which had fallen vacant upto 31.3.1992, without resorting to the selection process, was negated.

2. Pursuant to Employment Notice No. 1 of 1983, for appointment to the posts of Junior Electrical Engineers after appointment to the posts, of Junior Electrical Engineers after written and oral test, a penal of 790 candidates was prepared. From the said penal 447 candidates, according to merit list, were appointed on the available vacant posts of Junior Electrical Engineers and the remaining 343 candidates, including the appellants, who were writ petitioners and who could not be appointed on the posts of Junior Electrical Engineers, opted for the posts of Electrical Operator, with an undertaking not to claim the post of Junior Electrical

Engineers and were appointed on the said posts. Subsequently, appellants and others represented before the State Electricity Board and the State Government for being absorbed against vacant posts of Junior Electrical Engineers, on the basis of merit list and penal prepared in the year 1984. Subsequently, they filed C.W.J.C. Nos. 7183 and 7348 of 1989, which were disposed of on 12.12.1990, observing that under Rule 7 of the Bihar State Electricity Board Junior Electrical Engineers (General) Cadre Rules. 1982 (hereinafter referred to as "1982 Rules"), as amended by a new Rule 7 by notification dated 14.10.1988, issued u/s 79(c) of the Electricity (Supply) Act. 1948, a Selection Committee has to consider the cases of Diploma holders, who had acquired Diploma before joining the lower posts under the Board or has acquired Diploma while in service of the Board, for being appointed against the posts of Senior Electrical Engineers. In view of the said amended Rule, which came in to force on 14.10.1988, there was no question of absorption of the appellants outright without consideration of inter se merit by the Selection Committee. However, the Court further observed that it was open to the Board to consider the cases of the appellants along with others for appointment to the post of Junior Electrical Engineers in accordance with new Rule 7 referred to above.

3. Against the said order Special Leave to Appeal (Civil) Nos. 3859 and 7642 of 1991 were filed in the Supreme Court of India, which were dismissed on 10.4.1992 by a common order, with following directions:--

"Thus, taking in view the entire facts and circumstances of the case and in order to do full justice to all the persons concerned, we direct the Board to issue a fresh advertisement for filling of the posts of Junior Electrical Engineer having fallen due upto 31st March, 1992 and to make appointments in the ratio of 75 per cent by direct recruitment and 25 per cent by absorption as contemplated under Rule 7. It is further directed that age bar would not be considered as disqualification in respect of all those persons who were included in the penal list of 790 persons prepared in 1984."

4. Pursuant to aforesaid direction of the Apex Court, on 6.8.1992 the State Electricity Board constituted High Level Committee to calculate vacancy of Junior Electrical Engineers fallen upto 31.3.1992 and examine the recruitment on those posts. On the basis of report of the said Committee. Board advertised 26 posts of Junior Electrical Engineers (General) Cadre, vide Employment Notice No. 1 of 1993, under 25% quota for internal recruitment under amended Rule 7 of 1982 Rules. There was no vacancy in Junior Engineer (G.T.O) Cadre By notification dated 14.10.1988 Rule 7 of 1982 Rules was amended as under:

"Appointments to the posts of Junior Electrical Engineers from amongst the employees of the Board having Diploma in Electrical Engineering will be made on the basis of the recommendations of a section Committee which will be constituted by the Chairman of the purpose. The Selection Committee will examine the records and interview the candidates who obtained diploma in Electrical Engineering, while in the service of the Board along with those

employees, who had obtained diploma in Electrical Engineering before joining the service of the Board."

There was no rule/guideline framed by the Board to fill up posts of Junior Electrical Engineers (General) Cadre by absorption of/ Electrical Operators, except the aforesaid Rule 7.

5. The Board entrusted job of selection of suitable candidates to National Power Training Institute, New Delhi. On the basis of written test conducted on 11.10.1998 result was submitted, which was approved by Board on 27.2.1999.

6. The appellants had also appeared in the said written test held on 11.10.1998, but did not obtain qualifying marks and became unsuccessful therein. They also requested to relax the minimum qualifying marks, but the Selection Committee decided not to relax the same.

7. The appellants contention was that 26 posts of 25% quota were meant only for them and the written test was taken contrary to Rule 7. In this regard the Apex Court had clearly observed that in case of appointment to the posts of Junior Electrical Engineers, if made by absorption from amongst the employees of the Board serving on lower posts that has to be made through a process of screening by a Selection Committee.

8. The learned Single Judge rightly observed in the impugned order that after having taken part in the written test dated 11.10.1998 and having been not declared successful therein, now it was not open for them to challenge the said written test and ask for absorption without resorting to such selection.

9. The appellants appointment to the post of Junior Electrical Engineers (General) Cadre by absorption could have been made only after they were declared qualified through selection process under Rule 7. In view of large number of approximately 209 applications, mostly submitted by Diploma holder Electrical Operators, the Selection Committee rightly decided to hold written test to provide equal opportunity to each and every candidates. The appellants allegation that the Electricity Board violated the direction of Apex Court dated 10.4.1992 is not tenable.

10. There is no infirmity or illegality in the impugned order passed by learned Single Judge so as to require interference therewith.

11. There is no merit in this Appeal. It is dismissed accordingly.

12. Appeal dismissed.