
(2004) 01 RAJ CK 0024

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3184 of 1999

Jeewan Lal Sinora

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 30-01-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(1), 309
Rajasthan Technical Training Service Rules, 1975 — Rule 26

Citation : (2004) 3 RLW 1635 : (2004) 2 WLC 676

Hon'ble Judges : H.R. Panwar, J

Bench : Single Bench

Advocate : P.P. Chaudhary, for the Appellant; Sagar Mal Mehta, General Tarun Joshi, for Respondent No. 3, A.K. Rajvanshy, for the Respondent

Final Decision : Dismissed

Judgement

H.R. Panwar, J.—By the instant writ petitions, petitioners seek quashing of the impugned order dated 20-8-1999 (Annex. 12); directing respondents to consider the case of the petitioners for promotion after granting them relaxation in experience and declaring Column No. 6 of serial No. 2 of the Schedule appended to the Rajasthan Technical Training Service Rules, 1975 (for short, "the Rules, 1975") ultra vires to Article 14 of the Constitution of India. Since identical questions of facts and law are involved in these four writ petitions, they are being decided by this common order taking SBCWP No. 3184/1999 as the leading case.

(2). Petitioners are possessing the qualification of Diploma in Engineering trade. They were initially appointed on the post of Superintendent I.T.I. and thereafter promoted to the post of Assistant Director. They were promoted on ad hoc/temporary basis to the post of Deputy Director vide order dated 17-2-1997 whereas respondent No. 4 was promoted to this post vide order dated 1-12-1997 but vide impugned order 20-8-1999 (Annex. 12), they have been reverted to the post of Assistant Director without assigning any reasons. Their grievance is that

respondent No. 4 is junior to them but still he has been promoted on the post of Deputy Director by giving relaxation in experience clause whereas such relaxation has not been provided to the petitioners. They have also assailed the criteria requiring ten years experience for the Diploma-holders and five years experience for Degree-holders on the ground that at the most the distinction can be drawn on the basis of qualification between the Degree-holders and Diploma-holders but not on the basis of experience because experience acquired by degree-holders and diploma-holders on the post in question is equal in amount and no distinction can be drawn with respect to experience for the purpose of further promotion. They made representations to respondents for mitigating their grievance but to no avail. Hence these writ petitions.

(3). Refuting the averments made in the reply and justifying their action in passing the impugned reversion order Annex. 12, the respondents have filed a detailed reply, to which there is no rejoinder-affidavit by the petitioners.

(4). I have heard learned counsel for the parties and perused the record.

(5). Vide Notification dated 1-9-1988, while exercising the powers conferred by the proviso to Article 309 of the Constitution of India, His Excellency the Governor of Rajasthan made the amendment in the Rules, 1975 to the effect that the posts of Deputy Director shall be filled-up 100% by promotion from the post of Assistant Director and the qualifications and experience required for promotion shall be: five years experience for degree-holders in Civil/Mechanical/Electrical engineering or equivalent qualifications and ten years for Diploma-holders in engineering trades or equivalent qualifications on the post of Assistant Director. There is no dispute that the petitioners are holding the qualification of Diploma in engineering trade whereas the respondent No. 4 is holding the qualification of Degree in Engineering. There is also no dispute that the petitioners were provided promotion on ad-hoc/temporary basis to the post of Deputy Director and after regular selections on the post of Deputy Director on the recommendation of the Departmental Promotion Committee (for short, "D.P.C."), petitioners were reverted to the post of Assistant Director vide impugned order Annex.12.

(6). The first contention raised by the learned counsel for the petitioners is that the distinction can be drawn for promotion on the basis of qualification between the degree-holders and diploma-holders but not on the basis of experience acquired by such persons because experience acquired by them on the post in question is equal in amount. In support of his contentions, learned counsel for the petitioners has placed reliance upon the decisions of the Hon'ble Supreme Court in *Roshan Lal Tandon v. Union of India* (1), and *Food Corporation of India and Ors. v. Om Prakash Sharma and Ors.* (2). In *Roshan Lal Tandon's* case (*supra*), the Apex Court held that no discrimination can be made for future promotion while absorbing direct recruits and promotees in one cadre because the legal position of a Government servant is more one of status than of contract and the hall-mark of status is the attachment to a legal relationship of rights and

duties imposed by the public law and not by mere agreement by the parties. In Food Corporation of India's case (supra), the Supreme Court that the classification based on educational qualification is permissible if it has nexus with higher efficiency on promotional post but as no material was produced in this regard to show that graduates deserves preferential treatment vis-a-vis non-graduates, the prescription of shorter length of service for graduates and longer for non-graduates was held invalid. Comparison of diploma-holders with degree-holders is not permissible under the law because both of them are forming different classes and such classification is in consonance and in conformity with the equality clause enshrined under Article 14 of the Constitution of India.

(7). Vide impugned notification dated 1-9-1988, five years experience for Degree-holders and ten years experience for Diploma-holders is required for promotion from the post of Assistant Director to the post of Deputy Director and it is a statutory provision. In State of Mysore and Anr. v. P. Narasinga Rao (3), a Constitution Bench of the Hon'ble Supreme Court held that Article 14 does not forbid reasonable classification for the purpose of legislation. The Apex Court further held as under:-

"When an impugned order or 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 intelligible differentia which distinguishes persons or things grouped together from others left out of the group; and the second test is that the differentia in question must have a reasonable relation to the object sought to be achieved by the rule or statutory provision in question. 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 or persons who are alleged to have been favoured; Article 16(1) does not bar a reasonable classification of employees or reasonable tests for their selection. The provisions of Article 14 or Article 16 do not exclude the laying down of selective tests, nor do they preclude the Government from laying down qualifications for the post in question. Such qualifications need not be only technical but they can also be general qualifications relating to the suitability of the candidate for public service as such."

(8). Another Constitution Bench of the Supreme Court, in State of Jammu & Kashmir v. Shri Triloki Nath Khosa and Ors. (4), has held classification is primarily for the legislature or for the statutory authority charged with the duty of framing the terms and conditions of service; and if looked at from the stand point of the authority making it, the classification is found to rest on a reasonable basis, it has to be upheld. The Constitution Bench further held as under:-

"Discrimination is the essence of classification and does violate 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 Engineer into those who hold diplomas and those who hold degrees is unreasonable and bears no rational nexus with its purported object."

(9). Yet another Constitution Bench of the Hon"ble Supreme Court, in Mohammad Shujat Ali and Ors. v. Union of India and Ors. (5), has held that though the Constitution pledges protection of equal laws but the very idea of classification implies inequality and this paradox has been tackled by the Court by a doctrine of reasonable classification so that laws are equally applicable to persons similarly situated which means that there should be no discrimination if as regards the subject-matter of legislation the position of persons will be substantially the same; but the right to classification should not be carried on to an extreme extent because to overdo classification is to undo equality. The Apex Court further held as under:-

"According to Andhra Pradesh Rules, graduate supervisors and non-graduate supervisors were treated differently for promotion. The two categories of Supervisors were never fused into one class and no question of unconstitutional discrimination can arise."

(10). In Assam State Electricity Board and Ors. v. Gajendra Nath Pathak and Ors. (6), the Hon"ble Supreme Court held that classification between diploma-holders and graduate engineers is valid classification and it was not proper for the High Court to remove the classification merely because it was not informed as to why distinction was made between such set of persons.

(11). The qualification of Degree in Engineering is higher than the qualification of Diploma in Engineering trade and as such the intelligible differentia made vide impugned Notification is based on reasonable classification. Thus, there is nothing wrong in the impugned Notification for providing different period of experience for promotion to the post of Deputy Registrar.

(12). The next contention raised by the learned counsel for the petitioners is that the respondents have discriminated qua the petitioners by providing different period of relaxed experience and when the nature of the duties is identical, no further discrimination can be made by requiring different period of relaxed experience. A perusal of the record shows that as per the norms fixed by the Department of Personnel and Administrative Reforms, relaxation to the extent of 50% has been provided to the degree-holders and diploma-holders, meaning thereby the after relaxation in experience, a diploma-holder should have to his credit five years (50% of ten years) experience whereas a degree-holder should have two and half years (50% of five years) experience to his credit.

(13). A Constitution Bench of the Hon"ble Supreme Court, in The Direct Recruit Class-II Engineering Officers" Association and Ors. v. State of Maharashtra and Ors. (7), has held that where the rules permit the authorities to relax the provisions relating to the quota, ordinarily the presumption should be raised that there was such relaxation when there is a deviation from the quota rule.

(14). In *Rajasthan State Electricity Board Accountants Association, Jaipur v. Rajasthan State Electricity Board and Anr.* (8), the Apex Court held that in the matter of promotion, classification based on educational qualifications, so as to deny eligibility for promotion to a higher post to an employee possessing lesser qualification or requiring longer experience for those possessing lesser qualification has been held valid.

(15). In *P. Murugesan and Ors. v. State of Tamil Nadu and Ors.* (9), a Larger Bench of the Hon^{ble} Supreme Court held as under:-

"Since the decision of the Constitution Bench in *Triloki Nath Khosa* (supra), the Supreme Court has been holding uniformly that even where direct recruits and promotees are integrated into a common class, they could for purpose of promotion to the higher cadre be classified on the basis of educational qualifications. When the rules can be framed barring altogether the diploma-holders from promotion, the rule-making authority cannot be precluded from restricting the promotion. The rule-making authority may be of the opinion, having regard to the efficiency of the administration and other relevant circumstances that while it is not necessary to bar the diploma-holders from promotion altogether, their chances of promotion should be restricted."

(16). Thus, in view of the settled legal proposition, there is no illegality in fixing different period of experience for promotion for Diploma-holders and Degree-holders. Though degree-holders and diploma-holders belong to one class but they represent two different categories and as such they have rightly been treated differently.

(17). Petitioners, who are diploma-holders, were having three years and eight months experience on the post of Assistant Director whereas, as per the norms, after 50% relaxation, they must have got five years experience to their credit. Respondent No. 4 is a degree-holder and he had, also, three years and eight months experience on the post of Assistant Director and as such respondent No. 4 was having 50% of the relaxed experience, which comes to two and half years. As such, though the respondent No. 4, initially shown junior to the petitioners, was accorded promotion on the post of Deputy Director and the petitioners were reverted to the post of Assistant Director for want of requisite period of relaxed experience. Petitioners were holding the post of Deputy Director on temporary/ad-hoc basis and their promotion to these posts were made as a stop-gap arrangement. After regular selections on the post of Deputy Directors, the D.P.C. did not find them eligible for promotion for want of sufficient experience even after providing them the benefit of relaxation in experience as per the rules. Thus, there is no illegality in passing the impugned order of reversion qua the petitioners.

(18). The next contention raised by the learned counsel for the petitioners is that in the seniority list for the post of Assistant Directors dated 7-4-1998, the name of the respondent No. 4 was shown below their names and the respondents have

erred in reverting them and providing promotion to respondent No. 4 who is junior to them. A perusal of Annex.R/1/4 date 7-4-1998 makes it clear that the names of the petitioners have been shown as Assistant Directors (Training) whereas the name of the respondent No. 4 has been shown in the cadre of Deputy Director (Training). Likewise, the petitioners have come with the case that out of ten sanctioned posts, only seven incumbents are working and three posts are still lying vacant. This assertion of the petitioners is also bereft of any force because Annex.9 dated 12-12-97 clearly reveals that all the ten posts of Deputy Directors (Training) have been filled up by resorting to Rule 26 of the Rules, 1975. Thus, it is clear that the petitioners have not come with clean hands, clean mind and clean objective and they have tried to twist even the factual matrix of the case.

(19). In this view of the matter, I do not find any merit in these writ petitions and the same are hereby dismissed. There shall be no order as to costs. The stay petitions also stand dismissed.