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**(1996) 04 AP CK 0068**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No. 2195 of 1990**

K. Krishna Murthy and Others

APPELLANT

Vs

Electronics Corporation of India Ltd.

RESPONDENT

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**Date of Decision : 08-04-1996**

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 2

**Citation : (1996) 3 ALT 189**

**Hon'ble Judges : Syed Saadatulla Hussaini, J**

**Bench : Single Bench**

**Advocate : P. Balakrishna Murthy, for the Appellant; K. Srinivasa Murthy, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

Syed Saadatulla Hussaini, J.—In this case, the petitioners seek a writ, order or direction directing the respondent to consider the petitioners' case for promotion to the post of Technical Officer/Systems Analyst with effect from the dates on which they have become eligible with all rights of seniority, pay and increments etc.,

2. The counsel for the petitioners submits that the first petitioner joined the respondent Corporation on 16-10-68 as Tradesman with Matriculation qualification and after obtaining permission from the respondent-Corporation, the petitioner studied B.Com, in the year 1975. The second petitioner has also passed B.A. even before joining the respondent Corporation and that in so far as the petitioners 3 and 4 are concerned, they have obtained the Degrees in B.Com. and B.A. respectively after obtaining permission from the respondent-Corporation. The petitioner No. 4, in due course, has also passed M. A. and LL.B.

3. The respondent Corporation has brought into effect an incentive scheme basing upon the degree qualification through Circular No. ECIL:PG: XI:7;75(IR):0224, dated: 12-1-1977. Under the said scheme, the graduates are

promoted after a lapse of two years from one post to the other, instead of making them to wait for a period of three years, as usually done in the Corporation in regard to the Matriculates. It is further stated that all the petitioners reached the post of Tradesman "E". Thereafter, the petitioners 1 to 3 were moved horizontally to the post of Charge Hand, A.F.M. and thereafter promoted as Assistant Foreman and subsequently as Foreman. With regard to petitioner No. 4, it is stated that he was moved from the post of Tradesman "E" to Console Operator through Circular No. ECIL:PG(R):CIR:26 dated 4-3-1983. Subsequently, he was also promoted as Assistant Foreman and presently he is holding the post of Foreman like petitioners 1 to 3. Thus, all the petitioners are working as Foreman at the time of filing of the writ petition. Under the normal procedure adopted and implemented by the Corporation, the petitioners have a right to be considered to the post of Technical Officer /Systems Analyst in view of their degree qualifications after putting in 3 years of service as Foreman. In so far as the matriculates are concerned, the respondent Corporation promotes them, if they put in 6 years of service as Foreman to the post of Senior Foreman and also entitled to go to the line of Technical Officer /Systems Analyst as those posts are meant for graduates.

4. It is stated that a representation to the Executive Director (P&A), Personnel Group, ECIL has been submitted by the petitioner No. 1 on 2-9-1988 requesting for promotion to the post of technical Officer/ Systems Analyst and brought to the notice of the respondent Corporation that they have gained enormous experience in the working that is to be discharged in the post of Technical Officer/ Systems Analyst. The Personnel Officer (E-P), through letter dated 17-11-1988, informed to the petitioner No. 1 that such post is only meant for B .Sc., (MPC) Group / Diploma in Engineering and they cannot be considered for promotion on par with the technically qualified personnel. The same applies to the petitioners 2 and 4 also as they are also entitled for promotion, but they have also been deprived of the promotion to the post of Technical Officer/Systems Analyst.

5. It is further stated that the petitioners have been handling the same work in the various posts of Tradesmen "A" to "E" and also in the present post of Foreman which is identical. They have the same work that is to be done in the post of Technical Officer/Systems Analyst and that the job involves preparation of pay slips of the employees, Company Balance Sheets, Sales Accounts, Bills of Accounts, Material Analysis and Data Feeding to the Computers etc., When once it is not disputed that the petitioners have been found to be fit with their qualifications, i.e. graduation in Arts, or Commerce to discharge the above functions all these years, the Respondent Corporation cannot deprive the promotion of the petitioners on the ground that they did not possess the degree in science or Diploma in Engineering. Though the post is styled as Technical Officer, the post does not involve any technical approach and the petitioners cannot be kept out of the said job. It is submitted that one B.L. Misra, Manager in E.D.P. Section is a holder with Post Graduation qualification in Hindi and he was not prevented to go from the post of Programmer onwards. The respondent

Corporation cannot change its stand from time to time contradicting its own earlier circulars and that the respondent Corporation has not stated as to how the Science Graduates and Diploma Holders in Engineering can only perform the functions and the petitioners are not eligible to discharge the said functions and in fact it is submitted that the petitioners are much better suited than the holder of B.Sc., (MPC) /Diploma Holders in Engineering, in view of the facets of the duties to be discharged by. the Technical Officer.

6. The petitioners have further stated that the respondent Corporation, in the year 1976, invited applications from the Graduates in Arts/Science/ Commerce/ Statistics for the post of Programmer which is a feeder post to the post of System Analyst vide Advertisement No. 5/76 dt. 1st November, 1976 and later another Advertisement was issued in the year 1983 through Circular No. ECIL/ PG(R):CIR: 26, dated 4-3-1983 calling the applications for the post of Junior Programmer from the persons holding the qualification of Matriculation only and it cannot be disputed that the post of Junior Programmer is a feeder post of Programmer and further promotion is to the post of Technical Officer/ System Analyst. It is further submitted that the Senior Manager (Personnel and Administration) has made a recommendation, that all graduate employees are entitled for the post of Technical Officer /Systems Analyst and basing upon the said recommendation, the Director of Personnel and Administration also made a recommendation on 11-1-1990 whereunder he clearly brought out that all the holders of Degree qualification whether B.A. or B.Com., be treated on par with B.Sc., (MPC). In the recommendations it is also stated that the holder of B. A., or B .Com., are performing the same duties as the holders of B.Sc., qualification and that on the face of these recommendations, the respondent Corporation has not taken any steps to promote the petitioners to the post of Technical Officer/ Systems Analyst and the respondent Corporation deprived them the due promotion.

7. The respondent Corporation" on has filed the counter affidavit stating that the petitioners have acquired degree qualifications with the permission of the Corporation which would not confer any special rights for them to claim promotion in the particular line of technical category and they would be considered for promotion from one category to the other in accordance with the promotional norms prescribed by the respondent Corporation.

8. It is further stated that the qualifications incentive scheme was issued in terms of this memorandum of settlement entered with ECIL Employees" Union u/ s 12(3) of Industrial Disputes Act, 1947. In accordance with the terms of the settlement, the workman category of E.D.P. (Electronic Data Processing) was changed from non-technical to technical and they were allowed accelerated promotions on par with technical category of employees as per the incentive scheme notified earlier vide Circular dated 27-12-1975. As one time exception the E.D.P. employees category was changed to technical line and the employees who were possessing graduation (B.A. / B.Com.,) were allowed growth under

incentive scheme on par with technically qualified employees of B.Sc., (MPC)/ Diploma in Engineering upto the post of Tradesman "E". In this settlement, there is also specific clause to the effect that the graduates (B.A./ B.Com.) are not eligible for promotion to the post of Scientific Assistant "A" (Supervisory post scale of which is equivalent to Tradesman "E") on par with B.Sc., (MPC)/Diploma in Engineering holders. In accordance with the said settlement, the employees who are possessing B.A./B.Com., qualifications in E.D.P. were not considered for promotion to the post of Scientific Assistant "A" and they were allowed promotional growth on par with similarly qualified employees of other technical areas i.e. to the post of charged and, Assistant Foreman, Foreman and Senior Foreman. It is submitted that in accordance with the prescribed norms of promotions in the respondent Corporation, the petitioners are eligible for consideration for promotion to post of Senior Foreman on completion of 6 years of service as Foreman and they are not entitled for promotion to the post of Technical Officer/Systems Analyst on completion of three years of service as Foreman on par with the Technically qualified employees.

9. It is further submitted that it is not correct to say that the nature of job being handled by the petitioners is similar to that of the Technical Officer/Systems Analyst. The nature of the job of the petitioners is completely different. The respondent Corporation is an organisation with advanced technology in many fields and in E.D.P. area, technically qualified employees would definitely perform their duties in a better way than the employees who are not technically qualified like the petitioners. The respondent Corporation is justified in operating the different career growth lines for the personnel who are technically qualified and those who do not possess the technical qualifications. In every organisation, the Management has a right to prescribe qualifications and promotional avenues indifferent categories of the employees according to the needs of the Organisation. With regard to Sri. B.L. Mishra, it is specifically submitted that he was inducted into the Officer category much earlier to the introduction of incentive scheme and the settlement referred to above and he was included when E.D.P. was newly introduced and when technically qualified persons were not available. The petitioners cannot take advantage of Sri. B.L. Mishra case for that was an exceptional case and that the petitioners are governed by the incentive scheme in the settlement. It is also stated that it is not fair on the part of the petitioners to seek promotional growth on par with the technically qualified employees having taken accelerated promotion in terms of the settlement long back. In other technical areas also, the employees who possess the qualifications of B.A./B.Com., are allowed promotional growth from the post of Foreman and Senior Foreman and hence no discrimination is shown between the employees who are similarly situated. The recommendations of the Manager, E.D.P. are not binding on the respondent and those recommendations do not confer any right on the petitioners and that the petitioners and the respondent are bound by the settlement. The petitioners were not considered, for the employees with Science back ground are more suited to do technical job than a Commerce graduate / Art

graduate.

10. With regard to issuance of advertisement calling for the applications, for the various posts in the year 1975-76, from the graduates of Arts/Commerce/Science, it is submitted that the said advertisement was given prior to the settlement entered into with the Union introducing the qualifications of incentive scheme and none was recruited in pursuance of the said advertisement. Even in settlement, there is a provision to recruit suitable persons at higher level. With regard to junior programmers appointed against the internal circular dated 4-3-1983, it is stated that they were not allowed promotional growth to the post of Scientific Assistant "B", Assistant Technical Officer etc., on par with the technically qualified persons. It is stated that the Corporation has not shown any discrimination among the similarly situated employees. On examination of the representation of the first petitioner, it was decided by the competent authority that the employees who possessed qualification of B. A. /B.Com., cannot be considered for promotion on par with the technical technically qualified employees and the deviation from the policy of 1975-76 is unjust. The respondent Corporation is strictly implementing the settlement entered into with the Union. The right of promotion is not a Fundamental Right and hence no Fundamental Rights of the petitioners are violated by the respondent. It is the prerogative of the Corporation to prescribe the qualifications for promotions.

11. On the above pleas, Mr. Balakrishna Murthy, counsel for the petitioners submits that the ECIL has not framed any rules for promotion of their employees and that the promotions are effected in the Corporation on the time bound basis i.e. after completion of specified period of service. Mr. Srinivas Murthy submitted that there is no principle of time bound promotions that are being followed but the Corporation has not formulated any set of rules governing the promotions of the employees and that it has been issuing various Circulars as and when exigency arises. The same are termed as "existing promotional norms" and the Corporation is strictly adhering to those promotional norms.

12. At the very outset, it was disputed that whether the posts of Foreman which the petitioners are holding are covered by executive cadre/category or the workman. In this regard, it is relevant to see Section 2(s) of the Industrial Disputes Act, 1947 which defines the workman as under:-

"2(s) "Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be expressed or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such persons who has been dismissed, discharged or retrenched in connection with; or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-----"

13. A perusal of the personnel manual issued by the respondent Corporation

would go to show that the scales of pay of various posts at pages 55 to 57 and that the post of Foreman is included in the executive cadre with time scale of Rs. 900-50-1450. Thus, a reading of Section 2(s) of the I.D. Act with the perusal of Personnel manual of the Corporation, it goes to show that the posts of petitioners are that of executive cadre. At page 65 of the Personnel Manual under the heading "Promotion System" it is mentioned as under at para No. 1:

"Human Resource development is one of the important corporate objectives of ECIL. In order to keep-up the morale and to motivate the employees towards higher productivity, ECIL has drawn up a career growth plan for its employees in various categories. In terms of this plan, employees who put in a minimum length of service varying from 3 to 7 years will be eligible for promotion to the next higher grade, subject to suitability. By and large, the promotion system is based on merit-cum-seniority basis, and availability of vacancy is a pre-condition only for a small number of posts. For promotion from one cadre to other cadre like workmen to Supervisory cadre, Supervisory to Executive cadre, availability of vacancies is also one of the conditions stipulated."

In Annexure-VIII of the Personnel Manual, Promotion Norms Chart (Technical) is given.

14. Mr. Balakrishna Murthy's submission is that the petitioners have already completed three years of service in the cadre of Foreman, as such they are entitled to the next higher post i.e. to the post of Technical Officer but they are arbitrarily denied of their promotion. Out of the four petitioners, only the petitioner No. 3, on the date of filing of the writ petition, had not completed the period of three years but during the pendency of the writ petition, the petitioner No. 3 has also completed the period of three years, as such all the petitioners are qualified for the next higher post i.e. the post of Technical Officer.

15. Mr. Srinivas Murthy, the Counsel for the respondent takes exception to this and submits that as per the promotional norms followed by the Corporation, the petitioners are not entitled to and that the contention of the petitioners that the promotions are time bound promotions, is incorrect. He contends that earlier the petitioners, as workmen, have taken the advantage of the settlement between the workers and the Corporation and got accelerated promotions in terms of the said settlement and it is neither fair nor proper for them to seek promotions on par with the technically qualified employees and that the petitioners have had the benefit of incentive scheme and it is not now open to them to challenge it. u/s 12(3) of the I.D. Act the settlement entered into between the Corporation and the Union, is binding on all the employees whether they are members of the Union or not and as workmen, they could raise an industrial dispute only and not entitled to invoke the jurisdiction under Article 226 of the Constitution of India.

16. Mr. Srinivasa Murthy, Counsel for the respondent submits that a Circular bearing No. ECIL:PG:XI:7:75(IR):0224 dated 12-1-1977 has been issued by the respondent with regard to categorisation of employees in E.D.P. section of PAG

and CMG as technical cadres and extension of qualification incentive scheme and states that as the petitioners are not technically qualified i.e. they do not possess B.Sc., (MPC)/Diploma in Engineering, they are not qualified to be considered for the post of Technical Officer and this technical qualification and related experience is very essential. The respondent is always competent to prescribe the qualifications for the various cadres and that the petitioners cannot challenge the same. He also disputes the fact that the nature of the job of the petitioners is similar to that of the Technical Officer/Systems Analyst. The nature of the job of the petitioners is entirely different and as the respondent Corporation is an Organisation with advanced technology in many fields in EDP area, technically qualified employees would definitely perform the duties well, as such the respondent Corporation is justified in operating the different career growth lines for personnel who are technically qualified and who are not technically qualified and that the Management has a right to prescribe qualifications and promotional avenues in different categories for its employees according to the needs of the Organisations.

17. A perusal of the Circular dated 12-01-77 with regard to categorisation of employees in EDP Section of PAG and CMG as technical cadres and extension of qualifications incentive scheme and the qualification entered into with the memorandum of settlement will be enforceable only upto 25-11-77.

18. It must be remembered that the petitioners, after promotions to the posts of Foremen which is covered by the executive cadre, ceased to be workmen within the terms of Section 2(s) of I.D. Act, as such the memorandum of settlement dated 25-11-75 has ceased to be operational against them and this plea of the Corporation shall not be effective against the petitioners.

19. It is not disputed that the Management has always a right to prescribe qualifications and promotional avenues in different categories of its employees and in fact, Mr. Balakrishna Murthy, the Counsel for the petitioners does not dispute this, but his submission is that as per the promotional chart and the promotional system in the Corporation which is based on time bound system and that the petitioners have a right to be promoted. He further submits that the duties performed by the petitioners and the Personnel working in E.D.P. are not different and that the nature of job being handled by the petitioners is similar to that of Technical officer/System Analyst. To substantiate his contention, he relies on an Advertisement given by the respondent Corporation during the year 1975-76 to fill up the post of Computer Programmers vide Advertisement No. 5/76 Dated: 1-11-1976. Under the heading "Computer Programmer" runs as follows:-

"Computer Programmer: (Scale Rs. 600-25-850): Preferably first class graduate in Arts/Science with Mathematics or Statistics/Commerce or Diploma In Engineering with minimum seven years of experience including adequate and useful experience in IBM 1401 computer System. Applicants with experience in COBOL will be given preference."

The Counsel for the petitioners submits that if the work in E.D.P. section is also of a very sophisticated nature wherein all the graduates in Arts/Science/ Commerce or Diploma in Engineering were qualified, there is no reason why the respondent to insist for promotion from Foremen to the Technical officer on completion of three years of service as Foremen on par with other employees and that prescription of B.Sc., (MPC) qualification for promotion to the post of Technical Officer has no intelligible basis. To a question to the Counsel for the respondent why the respondent Corporation is insisting B.Sc. (MPC) qualification for promotion to the post of Technical Officer, he expressed his inability why the Science/mathematics is prescribed. Though the Courts are to be very cautious and cannot dwell upon the prescribed qualifications as it is within the arena of Technical Experts to decide but the Court cannot mutely accept such unintelligible restrictions. The prescription of qualification should have rationale approach in relation to the job on their promotion. To know whether it suffers from vice of discrimination, the Counsel for the petitioners relied on the unreported Judgment of Division Bench of this Court in W. P. No. 6265/82 and 15430/86 dated 9-4-1987 wherein Their Lordships have relied on the Judgment in W.P.No. 7289/1979 to examine the question of discrimination. In the Judgment in W.P.No. 7289/1979 it is held as under:-

"unless it is shown that it has any specific purpose, discrimination cannot be allowed to stand. We see in the instant case a graduate or a B.E. degree graduate duties are alike and service rendered are in no way different., Thus, there is no reason as to why the petitioners to wait for seven years for eligibility, whereas engineers secure eligibility in five years. The rule obviously offends Article 14 of the Constitution of India."

Keeping the decision of this Court referred to above in view, it is significant to note that as it is not disputed that the Director of Personnel and Administration has also made recommendation on 11-1-1990 that the holders of degree in B.A./ B.Com., shall be treated on par with the graduates in B.Sc., (MPC) as the graduates in B.A./B.Com., have been performing the same duties as that of graduates with B.Sc.(MPC).

20. The respondent Corporation has not brought to my notice that on the recommendation of Technical Experts of the Corporation the qualifications were prescribed. It is stated that the Board of Directors have taken the decision that only the graduates with B5c. (MPC) qualification should be promoted as Technical Officer /Systems Analyst. The only submission made by Mr. K. Srinivasa Murthy, Counsel for the respondent, is that the Board of Directors of the Respondent Corporation are not bound by the recommendations of the Director of Personnel and Administration. The Counsel for the petitioners has placed before me two promotional orders issued by the Corporation in Ref.No. ECIL/ PG(E.P)/1989-90/0893 dated 15-10-1990 promoting one of the employees of the Corporation Smt. Fahmida Iftekhar, Assistant Foreman to that of Foreman with effect from 1-4-1988 and the second promotional order of the same individual



dated; 1-4-1992 promoting from Foreman to Technical officer with retrospective effect from 1-4-1991 which establishes that the respondent Corporation is giving time bound promotions. This is also evident from Annexure VIII Promotion Norms Chart (Technical) and also from Promotion Norms Chart (Non Technical) of personnel manual of the respondent Corporation.

21. Mr. Srinivasa Murthy, Counsel for the respondent placed reliance on a decision of the Apex Court rendered in Civil Appeal No. 1387 of 1987 dated 17-7-1987 between State Bank Of India and others-Appellants and Mohd Mynuddin - Respondent AIR 1987 SC 1891 wherein their Lordships dealing with a case of promotion on the basis of merit held as follows:-

"Whenever promotion to a higher post is to be made on the basis of merit no officer can claim promotion to the higher post as a matter of right by virtue of seniority alone with effect from the date on which his juniors are promoted. It is not sufficient that in his confidential reports it is recorded that his /services are "satisfactory". An officer may be capable of discharging the duties of the post held by him satisfactorily but he may not be fit for the higher post. Before any such promotion can be effected it is the duty of the management to consider the case of the Officer concerned on the basis, of the relevant materials. If promotion has been denied arbitrarily or without any reasons ordinarily the Court can issue a direction to the management to consider the case of the officer concerned for promotion but it cannot issue a direction to promote the officer concerned to the higher post without giving an opportunity to the management to consider the question of promotion. There is good reason for taking this view. The Court is not by its very nature competent to appreciate the abilities, qualities or attributes necessary for the task, office or duty of every kind of post in the modern world and it would be hazardous for it to undertake the responsibility of assessing whether a person is fit for being promoted to a higher post which is to be filled up by selection. The duties of such posts may need skills of different kinds - Scientific, technical financial, industrial, commercial/ administrative, educational etc., The methods of evaluation of the abilities or the competence of persons to be selected for such posts have also become now-a-days very much refined and sophisticated and such evaluation should, therefore, in the public-interest ordinarily be left to be done by the individual or a committee consisting of persons who have the knowledge of the requirements of a given post to be nominated by the employer....."

22. The case on hand is altogether a different one and the above decision has no application. It is not the case of the Corporation that the petitioners were not selected on the basis of merit but the stress is that the petitioners are not having B.Sc., (MPC) qualification. As I have already stated the respondent Corporation has not placed any material to show that a body of Technical Experts have been appointed and that body opined that only the graduates in B.Sc. can only discharge the duties of Technical Officer/System Analyst. In the absence of such experts opinion and in view of the ratio decided in the Judgment of Division

Bench of this Court (Supra), I hold that denial of promotions to the petitioners to the post of Technical Officer/ Systems Analyst on completion of 3 years of service on the post of Foreman comes under the vice of discrimination and that all the petitioners are eligible for promotion to the post of Technical Officer/Systems Analyst.

23. It is now stated by Mr. Balakrishna Murthy, Counsel for the petitioners that after institution of this Writ Petition and during the pendency, the petitioners 1,2 and 4 have already been promoted as Senior Foremen which the petitioners have accepted under protest and the petitioner No. 3 has already completed the period of three years and due for promotion.

24. In view of what I have held above, the respondent is directed to consider the petitioners' case for promotion to the post of Technical Officer/Systems Analyst from the date of completion of three years of service as Foremen with all attendant benefits on par with the graduates in B.Sc. (MPC) as per promotional system.

25. With the above direction, the writ petition is allowed. No costs.