
(1996) 01 KAR CK 0026

In the Karnataka High Court

Case No : Writ Appeal Nos. 1416 to 1465 of 1995

Karnataka Electricity Board, Bangalore

APPELLANT

Vs

G.R. Lakshmaiah and Others

RESPONDENT

Date of Decision : 17-01-1996

Acts Referred:

Constitution of India, 1950 — Article 14
Electricity (Supply) Act, 1948 — Section 79(C)

Citation : (1997) 2 KarLJ 591

Hon'ble Judges : M. L. Pendse, C.J.; B. N. Mallikarjuna, J

Judgement

M.L. Pendse, C.J.-Karnataka Electricity Board is constituted under Section 12 of the Electricity (Supply) Act, 1948 ("the Act"). Section 79 of the Act confers powers on the Board to make regulations to prescribe for the duties of the officers and other employees of the Board and their salaries, allowances and other conditions of service. In exercise of powers conferred under Section 79(c) of the Act, the Board has framed the Recruitment and Promotions Regulations. Chapter-V of the Regulations sets out the category of post and nature of recruitment as well as minimum qualification. One of the posts categorised is of Junior Engineers and the nature of recruitment is 60% of the posts by direct recruitment, while 35% by promotions from the lower cadre of Operators/Meter Readers/Overseers on the basis of seniority-cum-merit. The minimum qualification required for direct recruits is a Diploma in Electrical or Mechanical Engineering of a Polytechnic of the State of Karnataka or the equivalent qualification. In respect of candidates to be promoted from the lower cadre, the minimum qualification in case of candidates, who are having I.T.I. Certificate, is minimum experience of 5 years as Operators/Meter Readers/Overseers. In case of candidates, who are non-S.S.L.C., and S.S.L.C., they should have put in not less than 15 years of service.

The posts of Operators/Meter Readers/Overseers are filled in both by direct recruitment and promotion. The cadre lower than that of Operator/Meter Reader/Overseer is Wireman and Mechanic Grade-II/Shift Mechanics. The minimum

qualification for being directly recruited to the post of Operators/Overseers is holding of I.T.I. Certificate of 18/24 months course in Electrician or Telecommunication and/or Electronics from the Government Industrial Training Institute or Certificate in Lineman Trade issued by the Karnataka Electricity Board.

2. In exercise of the powers conferred under Section 79(c) of the Act, the Board issued a notification dated February 3, 1982, amending the Karnataka Electricity Board Recruitment and Promotions of Employees of the Board Service Regulations in respect of the cadre of Junior Engineers. The amendment provided as follows:

"Ratio for promotion between Diploma, I.T.I. qualified Meter Readers/Operators/Overseers and non-S.S.L.C. and S.S.L.C. Meter Readers shall be maintained at 1:1".

The result of the amendment was that the Operators, who were directly recruited to the post of Operators/Meter Readers, were entitled to promotion in respect of half number of posts available as Junior Engineers and the remaining half were to go to those promotees to the cadre of Operators and who did not possess the technical qualifications. The broad division is that of technically qualified Operators, that is, those diploma holders and holders of certificates issued by the I.T.I. and non-technical Operators who are promoted from the lower cadres. The Board had maintained separate seniority lists in respect of technically qualified Operators and non-technical Operators. The technically qualified Operators were entitled to be considered for promotion to the post of Junior Engineers after a duration of 5 years in service as Operators, while in case of non-technical Operators, the eligibility rule was total service for a duration of 15 years. It is not in dispute that the technically qualified Operators were not only entitled to the promotion as Junior Engineers, but to further promotions in the higher cadres of Assistant Engineers, Executive Engineers etc., while for non-technical Operators, the final promotion is to the cadre of Junior Engineers.

3. Several writ petitions under Articles 226 and 227 of the Constitution were filed by the technically qualified Operators in the year 1990 onwards before the learned Single Judge to challenge the amendment of the rule providing for quota of 1:1 for promotion from the cadre of Operators/Meter Readers/Overseers to the cadre of Junior Engineers. The gravamen of the complaint in the petitions was that on appointment to the post of Operators/Meter Readers/Overseers either by direct recruitment or by promotion from the lower cadres, an integrated cadre came into existence and it is not permissible for the Board to provide quota or ratio for promotion of different categories of employees on the basis of educational qualifications. The direct recruits claimed that the promotions to the cadre of Junior Engineers should be strictly on the basis of seniority-cum-merit and reservation of quota for non-technical Operators has caused serious prejudice to the chances of direct recruits for further promotion. The direct recruits further pleaded that the merit reflected by the qualifications acquired was denied its due weightage by prescribing quota of 1:1 between the direct

recruits and the promotees and thereby the efficiency of the services is seriously hampered. It was also contended that the amendment of the regulation is in breach of the provisions of Section 79 of the Act. The relief sought was to quash the amended regulation providing for fixation of quota of 1:1 between the technically qualified Operators and non-technical Operators for consideration of promotion to the higher cadre of Junior Engineers. The petitions were resisted by the Board and the promotee-Operators on the ground that the challenge to the amended regulation was raised after several years and consideration of the challenge would lead to disturbance of the promotions already effected. It was claimed that the relief sought in the writ petitions should be denied on the ground of laches. On merits, it was claimed that the regulation was amended and quota or ratio of 1:1 was settled by taking into consideration the administrative efficiency needed to run the services. The Board claimed that it is not merely the qualification, but the experience, which counts in smooth functioning of the activities of the Board and it was incumbent to strike a balance between the qualifications on one hand and experience on the other. The contention of the direct recruits that the fixation of quota for promotion violated the rights guaranteed under Articles 14 and 16 of the Constitution, was denied.

4. The learned Single Judge disposed of all the writ petitions by the common judgment delivered on January 12, 1995. The learned Single Judge noticed that the direct recruits have approached the Court after considerable delay from the time of the amendment of the regulation. The learned Judge felt that the delay was not abnormal and moulding of the relief and providing that the amended regulation shall have no effect only from the date of the judgment, would subserve the ends of justice. On merits, the learned Judge felt that on the formation of integrated cadre of direct recruits who are technically qualified and promotees who are not, it was not permissible for the Board to prescribe that the promotion to the higher posts would be available on the basis of quota of 1:1. The learned Judge referred to the decisions of the Supreme Court in *Punjab State Electricity Board, Patiala and Another v Ravinder Kumar Sharma and Others*, AIR 1987 SC 367 and *N. Abdul Basheer and Others v K.K. Karunakaran and Others*, AIR 1989 SC 1624, to hold that it was not permissible for the Board to maintain two separate seniority lists of direct recruits and promotees and fixation of quota of 1:1 for the purpose of promotion to the higher cadre of Junior Engineers was arbitrary and irrational. The learned Judge, on the strength of this finding, struck down the amended regulation and directed the Board to prepare a common seniority list between the technically qualified and non-technical Operators/Meter Readers/Overseers within a period of three months from the date of the judgment. The learned Judge further directed that the promotions to the post of Junior Engineers shall not be made till the preparation of common seniority list and once such a list was prepared, the system of promotions on the basis of 1:1 shall be discontinued. The decision of the learned Single Judge is under challenge in this batch of appeals preferred by the Board. As the appeals are directed against the common judgment of the learned Single Judge, all the appeals are

disposed of by this judgment.

5. Mr. Sundaraswamy, learned Counsel appearing on behalf of the Board, submitted that the issue involved in this batch of appeals is no longer *res integra* and stands concluded by two decisions of the Supreme Court in *Shamkant Narayan Deshpande v Maharashtra Industrial Development Corporation and Another*, (1993) Supp. (2) SCC 194 and *P. Murugesan and Others v State of Tamil Nadu and Others*, (1993)1 SCR 405. The learned Counsel submitted that the attention of the learned Single Judge was not invited to these two decisions and the amended regulation was erroneously struck down with reference to the earlier decisions of the Supreme Court. The learned Counsel submitted that it is permissible to make a distinction on the basis of academic qualification for the purpose of promotion to the higher category and a rule providing for such distinction is not violative of Articles 14 and 16 of the Constitution. The learned Counsel also submitted that the learned Single Judge was not right in entertaining the petitions when the challenge was raised after several years from the date of amendment of the regulation. The learned Counsel led by Mr. Subba Rao appearing on behalf of the contesting respondents, on the other hand, urged that the two decisions of the Supreme Court in *Shamkant Narayan Deshpande's* case, *supra* and *Murugesan's* case, *supra*, are not applicable to the facts of the case, while the decision of the Supreme Court in *Mohammad Shujat Ali v Union of India*, (1975)1 SCR 449, still holds the field. In view of the rival submissions, the short question which falls for determination, is whether the amendment of the Regulation is hit by Articles 14 and 16 of the Constitution.

6. The Supreme Court, in *State of Jammu and Kashmir v Triloki Nath Khosa*, AIR 1974 SC 1, affirmed the principle that a classification must be truly founded on substantial differences which distinguished persons grouped together from those left out of the group and that such differential attributes must bear a just and rational relation to the object sought to be achieved. In the case before the Supreme Court, a classification of Assistant Engineers was made on the basis of degree holders and diploma holders. The Supreme Court held overruling the decision of Jammu and Kashmir High Court, that classification was brought about with a view to achieving administrative efficiency in the Engineering services. The Constitution Bench held that the distinction made on the basis of academic qualifications was always approved in the earlier decisions. The Supreme Court referred to the earlier decisions in *Roshan Lal Tandon v Union of India*, (1968)1 SCR 185 and *Mervyn Continho and Others v Collector of Customs, Bombay*, AIR 1967 SC 52 and observed:

"We are therefore of the opinion that though persons appointed directly and by promotion were integrated into a common class for Assistant Engineers, they could, for purposes of promotion to the cadre of Executive Engineers, be classified on the basis of educational qualifications. The rule providing that graduates shall be eligible for such promotion to the exclusion of diploma-holders does not violate Articles 14 and 16 of the Constitution and must be upheld".

The Supreme Court, in the later decision in *Roop Chand Adlakha v Delhi Development Authority*, (1988)3 SCR 253, held that diploma-holders could validly be excluded for promotion to the higher cadre. It was further held:

"...it does not necessarily follow as an inevitable corollary that the choice of the recruitment policy is limited only to two choices, namely either to consider them "eligible" or "not eligible". State, consistent with the requirements of the promotional-posts and in the interest of the efficiency of the service, is not precluded from conferring eligibility on diploma-holders conditioning it by other requirements which may, as here, include certain quantum of service-experience".

7. On behalf of the direct recruits, it was contended that the recruitment to the post of Operators/Meter Readers/Overseers was from two streams and after the coming into existence of an integrated cadre, it was not permissible to frame a rule fixing the quota for technically qualified and non-technically qualified Operators for the purpose of promotion. The creation of such quota leads to undue advantage to the promotees in securing promotions even while they are juniors in the cadre of Operators compared to the direct recruits. In support of the submission, strong reliance was placed on the decision of the Constitution Bench in *Mohammad Shujat Ali's case*, *supra*. The observations of Mr. Justice Bhagwati, as he then was set out hereinafter were strongly relied upon:

"But where graduates and non-graduates are both regarded as fit and, therefore, eligible for promotion, it is difficult to see how, consistently with the claim for equal opportunity, any differentiation can be made between them by laying down a quota of promotion for each and giving preferential treatment to graduates over non-graduates in the matter of fixation of such quota".

Reference was also made to the decision of the Supreme Court in *Punjab State Electricity Board's case*, *supra*, where the Bench comprising of Mr. Justice Sen and Mr. Justice Ray held that when diploma-holders and non-diploma-holders are recruited to a cadre, then they constitute one single category having a common seniority list and the distinction between the diploma-holders and non-diploma-holders for the purpose of promotion was discriminatory and bad. One more decision of the Supreme Court in *Abdul Basheer's case*, *supra*, was relied upon.

It is not necessary to examine all these decisions in greater detail in view of the fact that the later decision of the Supreme Court in *Murugesan's case*, *supra* has examined all these judgments and has concluded that it is permissible to the rule making authority, if it thinks it necessary in the interest of administration, to limit the promotional chances in appropriate quota on the basis of academic qualifications. After referring to all the decisions which were relied upon by the learned Counsel for the respondents, the Supreme Court held that if the non-qualified people can be barred altogether from promotion, then there is no reason why the chances of promotion cannot be restricted, curtailed or hedged in. In *Murugesan's case*, *supra*, the post of Assistant Engineers were filled in by

direct recruitment and by promotion from the category of Supervisors. The graduate Supervisors were required to put in a minimum of 5 years of service in the category of Supervisors for becoming eligible for promotion, whereas the diploma-holder-Supervisors were required to put in a minimum service of 10 years as Supervisors. The recruitment and conditions of service of Assistant Engineers were governed by the bye-laws made by the Corporation and in the matter of pay-scales, a distinction was maintained between graduates and diploma-holders even when they were in the same category of Supervisors. In the year 1990, the Corporation, by amendment, introduced the ratio of 3:1 while considering the promotion of graduates and diploma-holders.

The diploma-holders challenged the validity of the amendment by filing petitions before the Madras High Court. A learned Single Judge dismissed the petitions, while, on appeal, a Division Bench quashed the amendment and thereafter the matter was taken to the Supreme Court. The diploma-holders claimed before the Supreme Court that whether graduates or diploma-holders, they were all in the category of Supervisors and being only one category and performing identical functions and discharging identical responsibilities, it was not permissible for the Corporation to provide different tests and the quota for the purpose of promotion. Creating such a distinction, it was claimed, is not only unjust and inequitable, but also a clear case of hostile discrimination. The Supreme Court did not accept the contention of the diploma-holders. Mr. Justice Jeevan Reddy speaking for the Bench, observed that it is permissible for the rule making authority, if it thinks it necessary in the interest of administration, to limit the promotional chances of non-graduate to one out of four vacancies on the basis of academic qualifications. In support of the conclusion, the Supreme Court placed strong reliance upon the decision of the Constitution Bench in *Triloki Nath Khosa's case*, *supra*. The decision of the Supreme Court in *Murugesan's case*, *supra*, in our judgment, completely answers the challenge raised by the technically qualified Operators before the learned Single Judge. The Supreme Court approved the earlier decision in *Shamkant Narayan Deshpande's case*, *supra*, where an identical issue arose and it was held that the practice followed by the Maharashtra Industrial Development Corporation for promoting Executive Engineers as Superintending Engineers by providing 75% quota for degree-holders and 25% for diploma-holders was not violative of Articles 14 and 16 of the Constitution. It was further held that promotions given to the junior person on the basis of his qualification cannot amount to a discrimination. These two decisions, in our judgment, is a complete answer to the challenge of amended regulation and we have no hesitation in observing that if the attention of the learned Single Judge was brought to these two decisions, then the learned Single Judge would not have granted the relief.

8. It was vehemently contended by Mr. Subba Rao that in spite of the decisions of the Supreme Court in *Murugesan's case*, *supra* and *Shamkant Narayan Deshpande's case*, *supra*, the ratio laid down by Mr. Justice Bhagwati (as he then was) in the case of *Mohammad Shujat Ali's case*, *supra*, still holds the field and

consequently, the decision of the learned Single Judge need not be disturbed. In Murugesan's case, supra, the Supreme Court quoted the passage from the judgment in Mohammad Shujat Ali's case, and observed that the observations quoted cannot be read in isolation nor can they be read as running counter to the ratio of the earlier decision in Triloki Nath Khosa's case, supra. It was further observed that both the decisions were rendered by the Constitution Benches. The Supreme Court then stated "...there would be no justification in principle for holding that the rule making authority has only two options, namely, either to bar the diploma-holders altogether from promotion or to allow them equal opportunity with the graduate engineers in the matter of promotions". We are unable to find any merit in the contention that the decision in Shamkant Narayan Deshpande's case, supra and Murugesan's case, supra, should be ignored and the principle should be accepted that differentiation cannot be made between technically qualified and non-technically qualified Operators in the matter of promotion by fixation of quota. The submission that the promotion to the post of Junior Engineers should only be by rule of seniority-cum-merit, cannot be accepted. The contention that the amended regulation is not in conformity with the provisions of Section 79 of the Act, is also devoid of any merit. Section 79 of the Act confers upon the Board powers to make regulations not inconsistent with the Act and the rules made therein. It was contended that the amendment is inconsistent with the Act and the reference was made in support of the submission to Rule 4-B of the Indian Electricity Rules, 1956. The rule, inter alia, sets out qualifications of Officers appointed to assist the Inspectors and provides that no person shall be appointed as an officer to assist an Inspector unless he possesses a Degree in Electrical Engineering or its equivalent from a recognised University or Institution. It was submitted that some of the Operators, who were non-technical and promoted to the post of Junior Engineers, were assigned the work of assisting an Inspector and that was clearly impermissible and therefore the rule enabling promotion of non-technical Operators to the post of Junior Engineers should be struck down. The submission is totally misconceived and cannot be entertained. In the first instance, the petitions do not specifically state as to which Junior Engineers promoted from the lower cadre were not technically qualified and were appointed to assist an Inspector. In the absence of any factual data, it is not permissible to advance general arguments. Secondly, even assuming that such non-technical Operator so promoted to the post of Junior Engineer, was assigned the work of assisting an Inspector, the assignment may be bad, but that cannot have any impact on the validity of the rule or regulation permitting promotions of non-technical operators to the post of Junior Engineers. In our judgment, the challenge to the validity and legality of the amended regulation was without any substance and the petitions ought to have been dismissed.

9. Accordingly, all the appeals are allowed, impugned judgment dated January 12, 1995, is set aside and all the petitions stand dismissed. In the circumstances of the case, there will be no order as to costs.