

(2000) 03 KL CK 0032
In the High Court Of Kerala
Case No : O.P. No. 2026/99

Sunu Varghese

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-03-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(1), 235, 309
Telegraphs Civil Engineering Wing junior Engineer (Civil) and Junior Engineer (Electrical) Recruitment Rules, 1992 — Rule 6

Citation : (2000) 03 KL CK 0032

Hon'ble Judges : Arijit Pasayat, C.J.; K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : Bechu Kurian Thomas and T.K. Ananda Padmanabhan, for the Appellant; K. Ramakumar, for Respondent 1st to 3rd, M.K. Chandra Mohan Das, for Respondent 4 and 12 to 17, A.S.P. Kurup, for Respondent 5, O.V. Radhakrishnan, for Respondent 6 to 10, S.P. Aravindakshan Pillai, for Respondent 19 and 20 to 23 and M.P. Krishnan Nair, for Respondent 24 to 27, for the Respondent

Final Decision : Allowed

Judgement

K.S. Radhakrishnan, J.—Department of Telecommunications, Government of India, issued Ext. P-2 notification, dated 1st July 1998 inviting applications for recruitment in the cadre of Junior Engineer (Civil/Electrical) under Kerala Telecom Circle. Notification stated that candidates who have obtained Diploma in Electrical/Mechanical Engineering after a full-time course of three years (after matriculation) from a recognised Institution, or Board which has been recognised by Central Government or State Government are eligible for applying for the post of Junior Engineer (Electrical). Notification further stated that candidates should have the requisite qualification on the date of the application, and that the selection would be made through a open competitive examination. The last date fixed for receipt of applications was 30th July 1998.

2. Petitioner, a Diploma holder in Electrical Engineering applied for the post of

Junior Engineer (Electrical). Some of the contesting Respondents possessing Degree in Electrical/Mechanical Engineering, also applied for the post. Department entertained those applications as well and allowed them to participate in the open competitive examination which was later held on 28th February 1999. On the basis of the competitive examination, a select list was prepared. Out of 45 candidates selected, 24 were Diploma holders, and 21 were Degree holders. Petitioner, a Diploma holder, aggrieved by the action of the Department in entertaining applications of the Degree holders, and including them in the select list, filed O.A. No. 844 of 1999 before The Central Administrative Tribunal, Ernakulam Bench, hereinafter called the "Tribunal", for quashing" the select list and also for a direction to the Department to exclude the degree holders from the select list. Petitioner contended before the Tribunal that, having prescribed Diploma as the requisite qualification for the post, the Department was not justified in entertaining applications from Degree holders.

3. Application preferred by the Petitioner was rejected by the Tribunal at the admission stage stating that though the qualification prescribed for appointment to the post of Junior Engineer (Electrical) is a diploma in Electrical Engineering, the Department cannot deny consideration for Degree holders in Engineering as that would be against the provisions of Article 16(1) of the Constitution of India. Petitioner is aggrieved by the said order, and has filed the present Writ Petition.

4. Counsel for the Petitioner, Sri Bechu Kurian Thomas, submitted that notification, Ext. P-2, was published by the department on the basis of the Posts and Telegraphs Civil Engineering Wing Junior Engineer (Civil) and Junior Engineer (Electrical) Recruitment Rules, 1992. Counsel submitted as per the Rules, the requisite qualification prescribed for the post of Junior Engineer (Electrical) is Diploma in Electrical Engineering from recognised Institution or Board which has been recognised by" the Central Government or State Government, Counsel submitted, having prescribed the requisite qualification under the Rules and the notification, department was not justified in entertaining applications from candidates who did not have the prescribed qualification.

5. Counsel appearing for some of the contesting Respondents, Sri Q.V. Radhakrishnan, on the other hand, submitted that the Commission that candidates with higher qualification in the respective discipline are also eligible to apply is an inadvertent mistake. Counsel also referred to previous notifications issued in the years 1995 and 1997 wherein, Counsel submitted, it was stipulated that candidates with higher qualification in the respective discipline would also be eligible to apply. Counsel further submitted that since Petitioner had already participated in the selection process, he cannot subsequently challenge the select list and the notification issued by the department. Counsel also submitted that if degree holders are not permitted to apply for the post of Junior Engineer, that would violate their fundamental rights guaranteed under Articles 14 and 16 of the Constitution of India.

6. Counsel appearing for the Department, Sri K. Ramakumar, submitted that as

per the notification, degree holders of Engineering are not disqualified from applying for the post. Counsel further submitted that no weightage was given to candidates who are having degree in Engineering and that the questions for the competitive examination were prepared based on the syllabus for the three year Engineering Diploma Course and consequently diploma holders were not put to any disadvantage. Counsel submitted that Government of India vide their letter, dated 20th August 1998 clarified that degree holders were also eligible to apply and could take part in the examination. Counsel submitted that in view of the said letter, department was justified in entertaining the applications from degree holders as well. Referring to paragraph 6 of the counter-affidavit, Counsel submitted that if only diploma holders are recruited and appointed as Junior Engineer, 50 per cent of the post of Executive Engineer earmarked from Assistant Engineer would remain vacant in future. Impleading petitions have been filed by some of the diploma holders who have been included in the rank list as well as degree holders, supporting and opposing the contentions raised on either side.

7. In order to appreciate the rival contentions, it is necessary to examine the scope of Recruitment Rules as well as the notification issued pursuant thereto. The method of recruitment to the posts of Civil and Electrical Engineering in the Civil/Engineering Wing of the Post and Telegraphs Department is governed by the Posts and Telegraphs Civil Engineering Wing Junior Engineer (Civil) and Junior Engineer (Electrical) Recruitment Rules, 1992, hereinafter called the "Rules". Rules were made by the President of India in exercise of powers conferred under the proviso to Article 309 of the Constitution of India. Rules apply for recruitment to the posts as specified in column 1 of the Schedule annexed thereto. The method of recruitment to the posts age limit, period of probation, qualifications and other matters connected therewith are all specified in columns 5 to 14 of the Schedule attached thereto. Qualification prescribed for the post of Junior Engineer (Electrical), method of recruitment, etc. are as follows:

SCHEDULE

Name of post	Educational and other qualifications required for direct recruits	Whether age and educational qualifications prescribed for direct recruits will apply in the case of promotees	Method of recruitment whether by direct recruitment or by promotion or by deputation	Transfer and percentage of the vacancies to be filled by various methods
Junior Engineer (Electrical)	Diploma in Ele. Engineering from any Institute recognised by Central or State Government	Yes as noted 1 in column 12	83- i% direct recruitment through all India open Competitive exam, conducted by Dept. of Telecom.	
			2. 16-S% by promotion amongst departmental "	officials through competitive exam.

(1) (8) (9) (11)

Junior Engineer (Electrical) Diploma in Ele. Engineering from any Institute recognised by Central or State Government Yes as noted 1 in column 12 1. 83- i% direct recruitment through all India open Competitive exam, conducted by Dept. of Telecom.

2. 16-S% by promotion amongst departmental " officials through competitive exam.

8. Government of India, Department of Telecommunications, on the basis of the above mentioned Rules, issued Ext. B-2 notification dated 1st July 1998 inviting applications for recruitment to the cadre of Junior Engineer, (Civil/Electrical) under the Kerala Telecom Circle. Notification stipulated the following qualifications:

Educational Qualification.-Candidates who have obtained Diploma in Civil Engineering after a full time course of three years (after matriculation) from a recognised Institute, Board or University (or its equivalent qualification) and which has been recognised by Central Government or State Government are eligible for applying for the post of Junior Engineer (Civil).

Candidates who have obtained Diploma in Electrical/Mechanical Engineering after a full time course of three years (after matriculation) from a recognised Institution or Board which has been recognised by the Central Government or State Government are eligible for applying for the post of Junior Engineer (Electrical).

The candidates should possess the requisite qualification on the date of application.

9. The Recruitment Rules as well as notification would specifically show the above-mentioned educational qualification as the requisite qualification to be possessed by a candidate on the date of the application. But degree holders who were not having diploma in Engineering also applied for the post. The Deputy General Manager (Admn.), Department of Telecommunications, Maharashtra Circle then sent a letter dated 3rd August 1998 to the Director (D.E. and V.P.), Department of Telecommunications, Government of India, New Delhi stating as follows:

... A number of applications received are from Bachelor of Engineering, Degree holders. The Recruitment Rules for the post of Junior Engineer (Civil/Electrical) circulated vide No. 2-1 /90-CSE dated 16th October 1992 do not indicate eligibility of degree holders. The qualification in the advertisement is given as mentioned in the recruitment rules. Kindly clarify whether Bachelor of Engineering, Degree holders, are to be allowed for this recruitment. If so, please intimate various branches of Engineering allowed or only three years Diploma (Civil/Electrical/Mechanical) holders are to be permitted.

Kindly clarify the above matter and an immediate reply may be given so that the scrutiny of the applications can be done early.

(Emphasis supplied)

10. In pursuance to the above-mentioned letter Government of India, Ministry of Telecommunications, sent a reply No. 42-I/98-DE (Pt.), dated 20th August 1998 stating as follows:

With reference to your letter No. Rectt.-III/45/JE (C/E)/OS/98/22 dated 3rd

August 1998 I am directed to clarify that the degree holders are also eligible for the above noted examination scheduled for 31st October, 1998.

On the basis of this clarification, according, to Department, they entertained the applications from degree holders as well.

11. We have already indicated that the Recruitment Rules, 1992 were enacted by the President of India in exercise of the powers conferred under the proviso to Article 309 of the Constitution of India. Rules made by the President of India under Article 309 constitute a law within the meaning of Article 235 of the Constitution of India. President of India who makes the rules under the proviso to Article 309 does not act in his executive capacity, but exercises his legislative power. Administrative instructions cannot override, enlarge or reduce the scope of a rule framed under the proviso to Article 309 of the Constitution of India. Supreme Court in A.K. Bhatnagar and Others Vs. Union of India (UOI) and Others, held that the rules framed in exercise of powers conferred under the, proviso to Article 309 of the Constitution are solemn rules having binding effect. Acting in a manner contrary to the rules does create problem and dislocation. Very often Government themselves get trapped on account of their own mistakes or actions in excess of what is provided in the Rules. Serious view of these lapses is taken and it is hoped that the Government both at the Centre and in the State would take note of the position and refrain from acting in a manner not contemplated by their own rules. Supreme Court also in Dr M.A. Haque and Others Vs. Union of India (UOI) and Others, Held that the rules made under Article 309 of the Constitution have to be followed strictly and not in breach. If a disregard of the rules and the bypassing of the Public Service Commissions are permitted, it will open a back-door for illegal recruitment without limit. Government will have no power to override the rules framed under the proviso to Article 309 of the Constitution of India by executive orders. In K. Kuppusamy and Another Vs. State of T.N. and Others, Supreme Court held that statutory rules cannot be overridden by executive orders or executive practice. Merely because the Government had taken a decision to amend the rules does not mean that the rule stood obliterated. Till the rule is amended, the rule applies.

12. We notice that notification published by the Government of India, Department of Telecommunications, is in accordance with the Rules and also in accordance with the qualifications laid down therein. As per the above-mentioned rules, only those candidates who have got diploma in Electrical Engineering alone could apply for the post notified and that was stated to be the requisite qualification, a candidate should possess on the date of the application. We may also notice that the department themselves have found that Recruitment Rules did not indicate the eligibility of degree holders and they had indicated so in the letter dated 3rd August 1998 stating that the qualification in the advertisement was given as mentioned in the Recruitment Rules. We are of the view that the clarification issued would go contrary to the Rules framed by the President of India in exercise of the power under the proviso to Article 309 of the

Constitution, and the notification issued pursuant to the rules.

13. We may notice in this connection that Rule 6 of the Recruitment Rules confers power of relaxation on the Central Government. Rules stipulated that where the Central Government is of opinion, that it is necessary or expedient so to do, it may by order, and for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons. Admittedly Central Government had not exercised powers of relaxation under Rule 6 of the Rules, prior to the issuance of the notification. In other words, the stand of the department is that notification was strictly in accordance with the qualification laid down in the Recruitment Rules. In any view after the issuance of the notification in the light of the qualification prescribed in the Recruitment Rules, Central Government have no jurisdiction to relax the qualification. Even for exercising the power under Rule 6 Central Government have to form an opinion, and also to state reasons for relaxation. It is necessarily so since rules were framed by the President of India in accordance with the proviso to Article 309 of the Constitution of India.

14. Counsel for some of the contesting Respondents submitted that the notification only stated that candidates should possess the requisite qualification on the date of application, and that the educational qualification prescribed in the notification is only the minimum qualification, and therefore candidates who are having better qualification than Diploma could also apply pursuant to the notification. Counsel also submitted that in the previous notifications issued in the years 1995 and 1997 persons having higher qualifications were permitted to apply for the post. Counsel also highlighted the necessity for entertaining the applications of degree holders. We are of the view that the above-mentioned contention cannot be accepted. If the intention of the Department was to entertain applications from those persons who are having higher qualification, the same would have been indicated in the notification, as was done in the previous years, 1995 and 1997. The fact that such a stipulation was omitted in the present notification would only show that the department wanted to invite applications only from those persons who are having prescribed qualification in accordance with the Recruitment Rules.

15. Supreme Court in *District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another Vs. M. Tripura Sundari Devi*, held when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only because the appointing authority and the appointee is concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. Supreme Court held that it amounted to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. A Division Bench of this Court in *W.A. No. 213 of 1997* after analysing various

decisions on the point, including District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another Vs. M. Tripura Sundari Devi, laid down the following proposition;

1. If the notification itself does not indicate that equal qualification would also be considered, there is no power on the Public Service Commission to entertain the application stated to be equivalent to the one notified.
2. A higher qualification possessed by an applicant will not be an adequate substitute for the minimum qualification prescribed by the Public Service Commission.
3. When a particular qualification is prescribed there is no justification in saying that an over qualified candidate is desirable or required.
4. If a candidate does not possess the qualification that is prescribed by the rules, the question as to whether some other qualification possessed by him is higher or not does not arise for consideration, and
5. When advertisement mentions particular qualification and if appointments are made in disregard to the same, it amounts to a fraud on public.

It may be noted that as far as the qualification prescribed for the post of Junior Engineer (Civil) is concerned, it is open to the department to entertain applications from candidates who possess Diploma in Civil Engineering or its equivalent qualification. However this stipulation is absent as far as the post of Junior Engineer (Electrical) is concerned. The qualification prescribed for the post, was that candidate should have obtained Diploma in Electrical/Mechanical Engineering and not any equivalent qualification. Therefore it is not open to the department to search for equivalent qualification, especially when the notification has specifically stipulated the requisite qualification. Supreme Court in Ashok Kumar Sharma and Others Vs. Chander Shekhar and Another, held that an advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by it and it cannot act contrary to it. We are of the view that the above-mentioned decision squarely applies to the facts of this case as well and that the department was not justified in entertaining applications from those candidates who did not possess the requisite qualification mentioned in the Recruitment Rules and the notification.

16. Counsel for some of the contesting Respondents submitted that if the degree holders are not allowed to apply for the post in question, the same would be illegal and violative of Articles 14 and 16 of the Constitution of India. We are afraid, the above-mentioned contention cannot be accepted. What are all the qualifications which are necessary for a post is a matter to be decided by the rule-making authority or the appointing authority and not by the appointees. Court cannot subscribe its views, for that matter not even the applicants. Supreme Court in V.K. Sood Vs. Secretary, Civil Aviation and others, held that it is not the

function of the Court to prescribe qualifications, but the question as to whether the qualification prescribed by the notification is sufficient qualification is not for judicial scrutiny. Therefore contention raised by Counsel for the contesting Respondents, that if degree holders are also not allowed to apply for the post, that would violate their fundamental rights cannot be accepted.

17. Counsel appearing for the department, as we have already mentioned submitted that department did not give any weightage to the degree holders in the selection process, and that all the questions were prepared from the syllabus for Diploma Course and consequently diploma holders were not put to any disadvantage. We are of the view that this submission cannot stand. When degree holders were allowed to participate in the examination they would have advantage over diploma holders. A contention was also raised that Petitioner has not impleaded all the necessary parties. We notice that most of the diploma holders and degree holders have got themselves impleaded in the proceeding and contested the case. In any view we have found that department was not justified in entertaining the applications of degree holders which would go contrary to the Recruitment Rules as well as the notification itself.

18. Under the above-mentioned circumstances, we are of the view that the department is clearly in error in entertaining applications from degree holders in Electrical/Mechanical Engineering pursuant to the notification dated 1st July 1998. We declare that the clarification issued by the Central Government vide letter No. 42-1/98-DE (Pt.) dated 20th March 1998 permitting the degree holders to take the examination has no legal, effect since the same would go contrary to the notification and the Recruitment Rules. Consequently the present select list has to be recast excluding the degree holders, who do not possess diploma in the subject concerned. This should be done by the department at the earliest.

We therefore allow this Writ Petition and reverse the decision of the Tribunal.