

(2009) 07 DEL CK 0498

In the Delhi High Court

Case No : Writ Petition (Civil) No. 7795 of 2009

Yogesh Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-07-2009

Acts Referred:

Constitution of India, 1950 — Article 335
Recruitment Rules — Rule 11, 12, 8

Citation : (2009) 07 DEL CK 0498

Hon'ble Judges : Madan B. Lokur, J;A.K. Pathak, J

Bench : Division Bench

Advocate : D.N. Goburdhan and Aakansha Munjal, for the Appellant; M.K. Bhardwaj, for R-1, Rajiv Nanda, for R-2 and Satish Dayanand, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Pathak, J.—Petitioner was appointed as Skilled Worker (Printing Technology) in the pay scale of Rs. 5000-8000/- and was posted in the Department of Printing Technology, Pusa Polytechnic, Pusa, Delhi on 4th January, 2000. Petitioner belongs to scheduled caste community. Petitioner made a representation on 1st of July, 2005 followed by a reminder of 6th September, 2005 for considering him for the next promotional post of Foreman Instructor on the ground that he was having experience of seven years and six months as Skilled Worker in Printing Technology and was eligible for vacancy against the said post lying vacant for long.

2. Finding no response from the Respondents, Petitioner filed an Original Application being OA No. 1222/2007 before the Central Administrative Tribunal, Principal Bench, New Delhi (for short hereinafter referred to as "the Tribunal") on the ground that the Petitioner was eligible for the post of Foreman Instructor since the vacancy against the said post was lying vacant for long and was reserved for scheduled castes and scheduled tribes community. As per the

Recruitment Rules, UPSC had the discretion to relax the experience in case of candidates belonging to scheduled castes and scheduled tribes community. Thus, Respondents can relax the eligibility clause in so far as experience was concerned because the Petitioner fulfilled all other requisite qualifications in terms of the Recruitment Rules.

3. As per the Respondents, Rule 12 of Recruitment Rules provided that Workshop Instructor/ Instrument Repairer/Mechanical/Motor Mechanic-cum-driver/ Electrician / Skilled Worker/ Laboratory Technician/Workshop Technician with eleven years of regular service in the grade were eligible for consideration for promotion to the post of Foreman Instructor. Power of UPSC to relax the experience, in terms of the Recruitment Rules, was in respect of the direct recruitment. Petitioner was not having experience of eleven years of regular service in the grade as he was appointed in Feeder grade only in the year 2000 and as such was not eligible for consideration for promotion to the post of Foreman Instructor in terms of the provisions of the notified Recruitment Rules.

4. Tribunal held that as per Rules there was no provision to relax the experience with regard to filling up of the vacancies by promotion. Para 8 of the Recruitment Rules related to the direct recruitment, thus, Petitioner could not take advantage of the said clause. Since the Petitioner was not having requisite experience, no directions could be given by the Tribunal to consider the Petitioner for the post Foreman Instructor de hors the Rules.

5. We have heard arguments of learned Counsel and perused relevant Recruitment Rules. We are not inclined to interfere with the impugned order passed by the Tribunal. Petitioner was appointed in the feeder grade in the year 2000 and as such was not having experience of eleven years of regular service. Department of Training and Technical Education framed Recruitment Rules which were notified on 13th January, 2004 and the said Rules were in supersession of earlier Rules notified vide notification of 2nd May, 1991. Rule 11 of the said Rules provide that the recruitment to the post of Foreman Instructor was to be done by promotion, failing which by deputation, failing both, by direct recruitment. As per Rule 12 of the said Rules, Workshop Instructor/Instrument Repairer/Mechanical/Motor Mechanic-cum-driver/Electrician/Skilled Worker/Laboratory Technician/ Workshop Technician with eleven years of regular service in the grade were eligible for the post. Note 1 further provides that the eligibility list for promotion shall be prepared with reference to the date of completion by the officers of the prescribed qualifying service in the respective grade/post. Admittedly, Petitioner was not having requisite experience of eleven years to be considered for the post. We do not find any provision in the Recruitment Rules vesting powers in the Respondent to relax the experience of eleven years of regular service in the grade while considering the candidates for the post of Foreman Instructor on promotion basis. Note 2 of Rule 8 provides that the qualification(s) regarding experience are relaxable at the discretion of the UPSC in case of candidates belonging to scheduled castes and scheduled tribes community, if at any stage of

selection, the UPSC was of the opinion that sufficient number of candidates from these communities possessing the requisite experience are not likely to be available to fill up the post reserved for them. However, Rule 8 relates to direct recruits and would not be applicable with regard to the appointments made by way of promotion. We are of the view that Tribunal has rightly held that no direction can be given to the Respondents to consider the petitioner for the post of Foreman Instructor de hors the rules.

6. Learned Counsel for the Petitioner has vehemently contended that by virtue of 82nd Amendment made in the Constitution one proviso has been added in Article 335 which provides that nothing shall prevent the making of any provision in favour of members of the Scheduled Castes and the Scheduled Tribes, for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State. Respondents have failed to take note of the amendment in Article 335 of the Constitution in the year 2000 while amending the Recruitment Rules. Respondents ignored this amended Constitutional provision while framing the Recruitment Rules for the post of Foreman Instructor vide notification dated 13th January, 2004. He has further contended that the new Recruitment Rules were nothing but a carbon copy of the earlier Recruitment Rules made in the year 1991. In view of the 82nd Amendment, a provision should have been made in the Recruitment Rules for relaxing the experience criteria of 11 years in case of Scheduled Caste candidates.

7. We do not find any merit in this contention of the learned Counsel for the Petitioner in as much as in the counter affidavit of respondent No. 2 filed before the Tribunal, it had been categorically mentioned that the rule of appointment/promotion had been framed by the Competent Authority by keeping in mind the mandate of provision of Article 335 of the Constitution as a whole and all the appointments/promotion have to be done in accordance with the Recruitment Rules. There is no reason to disbelieve the counter affidavit. We are of the view that the appointments by way of direct recruitment or by way of promotion, to the post of Foreman Instructor have to be made as per the prevailing Recruitment Rules.

8. Accordingly, we do not find any merit in this writ petition. The same is dismissed.