

A THE SCHEDULED CASTE UPLIFT UNION AND ANR.

v.

UNION OF INDIA AND ORS.

APRIL 20, 1995

B [R.M. SAHAI AND B.L. HANSARIA, JJ.]

Service Law :

Defence Quality Assurance Rules, 1979 :

C *Rule 8—Schedule I.*

Junior Scientific Officer—Promotion to Senior Scientific Officer—Amendment of Rules—For Promotion amended rules prescribing three years service as Junior Scientific Officer and a degree in Engineering—Challenge to rules by persons who were empanelled as Junior Scientific Officers but were not satisfying either condition on the date of amendment of Rules—Held such persons were not affected by the rules.

The petitioners, with only Diploma qualifications, were empanelled for being promoted as Junior Scientific Officers. Subsequently, the service Rules viz. Defence Quality Assurance Rules, 1979 were amended and it was prescribed that a Junior Scientific Officer (Promotee) could be promoted only if he had put in three years regular service and possessed a Degree in Engineering. The petitioners filed a Writ Petition in this Court challenging the amended Rules contending that (i) the requirement of degree was applicable for direct appointments and not to promotees (ii) once a diploma-holder was selected as Junior Scientific Officer then the eligibility criteria of higher qualification could not be applied for purposes of his promotion; and (iii) the petitioners having worked for quite a long time petitioners were entitled to be promoted on the basis of experience and therefore the requirement of degree should not be adhered to.

G **Dismissing the petition, this Court**

HELD : .1 Under the amended Rules no one could be promoted unless he satisfied the eligibility criteria as laid down. The petitioners had no doubt been empanelled on the basis of earlier Rules for being promoted

to the post of Junior Scientific Officers, but that did not confer any right on them to be considered for higher post. They were not Junior Scientific Officers. They had not even acquired any experience as Junior Scientific Officer. Mere entitlement to be appointed as Junior Scientific Officer did not make them a Junior Scientific Officer. Since the petitioners were not working as Junior Scientific Officers they could not be said to have undergone three years' regular service as such. Further they are only diploma holders. Therefore, neither of the eligibility criteria was satisfied. Since on the date when Rules came into force they were not even Junior Scientific Officers they cannot successfully claim to have been affected by the rule. [637-D to F]

2. The submission that the requirement of possessing a degree for being appointed to the post of Senior Scientific Officer Grade II applied only to direct appointments and not to the promotion is not made out by Schedule I to 1979 Rules. [637-F]

3. The submission that the petitioners who were empanelled should be extended the same benefit as those who were working on regular basis too cannot be accepted as those who were empanelled could not be treated alike to those who were working and holding the post of Junior Scientific Officer. [637-H, 638-A]

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 390 of 1995.

(Under Article 32 of the Constitution of India.)

D. Goburdhan for the Petitioners.

N.N. Goswami, T.C. Sharma, Ms. Anil Katiyar, Ms. Neelam and Ms. A. Subhashini for the Respondents.

The following Order of the Court was delivered :

The petitioners working under the Directorate General of Quality Assurance and holding the post of Junior Scientific Officers, a Class-II post on the date the petition was filed, seek a direction that the amendment in the Rules which provide that Junior Scientific Officer (Promotees) in order to hold the post of Senior Scientific Officers-II should have a

A Master's Degree, be declared *ultra vires*. In the alternative it is claimed that since the petitioners were empanelled as Junior Scientific Officers Grade-II they were entitled to same benefit under the Rules framed by the Government as was extended to those promotees who were working on the post of Senior Scientific Officers Grade-II.

B Relevant Rules framed by Ministry of Defence are known as Defence Quality Assurance Rules, 1979. Rule 8 of it provides that 50% of the posts of Senior Scientific Officers are to be filled by promotion on basis of selection on merit from the grade of Junior Scientific Officers. The number of posts, designation, pay and eligibility are provided by Schedule I to the Rules. The post of Senior Scientific Officer Grade II is mentioned at serial no. 6. The entry is reproduced below :

D	Sl. No.	Designation of post	Scale of pay	No. of posts	Grade from which promotion is permissible and the minimum eligibility period prescribed
	1.			
	2.			
	3.			
E	4.			
	5.			
F	6.	Senior Scientific Officer Grade-II	Rs. 700-40-900EB-40-1100-50-1300	200	Junior Scientific Officer with 3 years' regular service in the grade and possessing degree in Engineering/Masters degree in Science or equivalent qualification. The requirement of educational qualification shall not apply to those holding the post of Junior Scientific Officer on regular basis on the date of promulgation of these rules.
G					
H					

A Junior Scientific Officer thus could be promoted as Senior Scientific Officer only if he had put in three years regular service and possessed a Degree in Engineering. The petitioners did not satisfy either condition. They were not working as Junior Scientific Officer on the date on which these Rules were enforced. They were only Diploma holders. What is urged on behalf of the petitioners is that the requirement of being possessed of a degree was applicable for direct appointments and not to promotees. The learned counsel vehemently urged that once a person holding diploma was selected as a Junior Scientific Officer then for purposes of promotion to the post of Senior Scientific Officer the eligibility criteria of higher qualification could not be applied to him. The learned counsel further urged that the petitioners having worked for quite long time they were entitled to be promoted on basis of their experience. And the requirement of degree should not be adhered to. The Rules came into force in September 1979. The feeder post for Senior Scientific Officer Grade II under Schedule I to the Rules is Junior Scientific Officer. Therefore, no one could be promoted unless he satisfied the eligibility criteria as laid down in the Rules. The petitioners had no doubt been empanelled on the earlier Rules, for being promoted to the post of Junior Scientific Officers, but that did not confer any right on them to be considered for higher post. They were not Junior Scientific Officers. They had not even acquired any experience of Junior Scientific Officer. Mere entitlement to be appointed as Junior Scientific Officer did not make them a Junior Scientific Officer. Since the petitioners were not working as Junior Scientific Officers they could not be said to have undergone three years' regular service as such. Further they are only diploma holders. Neither of the eligibility criteria was satisfied. Since on the date when Rules came into force they were not even Junior Scientific Officers they cannot successfully claim to have been affected by the rule. Even the submission that the requirement of possessing a degree for being appointed to the post of Senior Scientific Officer Grade II applied only to direct appointments and not to the promotion is not made out by Schedule I to 1979 Rules. The submission of the learned counsel that this provision should be read by bifurcating into two and the requirement of three years should be taken for promotion and engineering for the direct recruitment is without any substance.

The submission of the learned counsel that the petitioners who were

A empanelled should be extended the same benefit as those who were working on regular basis too cannot be accepted as those who were empanelled could not be treated alike to those who were working and holding the post of Junior Scientific Officer.

In the result, this petition fails and is dismissed.

B

T.N.A.

Petition dismissed.