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UNION OF INDIA AND ANR. ETC.

v

R. IYYASWAMY AND ORS.

SEPTEMBER 9, 1997

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[S.C. AGRAWAL AND G.T. NANAVATI, JJ.]

Service Law :

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Assistant Engineers (Akashwani and Doordarshan Group 'B' Posts) Recruitment (Amendment) Rules, 1985—Rule 2(i) (a) and (b)—Promotion to the post of Assistant Engineer—25% promotion quota by Departmental Selection Committee—Validity of—Held, no distinction between degree and diploma holders at the subordinate level—Constitute Single undivided cadre—Treated equally in the matter of pay, duties and responsibilities—Unequals are not made equals—Amendment Rules held valid.

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Constitution of India 1950 : Articles 14 and 16—Assistant Engineers (Akashwani and Doordarshan Group 'B' Posts) Recruitment (Amendment) Rules, 1985,—Rule 2(i) (a)—25% promotion quota—Held, not discriminatory or arbitrary.

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In All India Radio and Doordarshan the channel of promotion in the Engineering Section was from the post of Engineering Assistant to the post of Senior Engineering Assistant and then to the post of Assistant Engineer (Gazetted). Under the Rules 60% posts of Engineering Assistants were reserved for departmental Engineering Assistants who were degree holders and 40% posts were filled up by direct recruitment by UPSC. In the year

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1985, Assistant Engineer (Akashwani and Doordarshan Group 'B' Posts) Recruitment Rules were amended. Rule 2(i)(b) of the amendment Rules provided for filling of 75% of the posts in the promotion quota by selection on the basis of departmental competitive examination. By Rule 2(i)(a) the remaining 25% quota was filled up through selection by departmental

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promotion Committee. Both degree holders and diploma holders were considered for promotion on the basis of their seniority. The Amendment Rules were challenged by the respondent as no distinction between degree holders and diploma holders was made in the Rules. The Tribunal partly allowing the appeal held that rule 2(i) (a) relating to 25% promotion quota was bad,

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discriminatory and violative of Constitution. Hence the present appeals by the

Union of India and two of the employees. A

The contention of the appellants was that decision of the Tribunal was wrong because it was based upon an incorrect premise that degree and diploma holders enter the cadre of Engineering Assistants through different channels at which stage the minimum qualifications for them are different. It was also contended that decision of the Tribunal was inconsistent with the decision of this Court in *N. Abdul Basheer v. K.K. Karunakaran*, [1989] Supp. 2 SCC 344. B

Allowing the appeal, this Court

HELD : 1.1. Rule 2(i) (a) of the Assistant Engineers (Akashwani and Doordarshan Group 'B' posts) Recruitment (Amendment) Rules 1985 is valid. By adopting the new policy contained in Rules 2(i)(a) and (b) of the Amendment Rules, the Government appears to have made an attempt to balance the advantages arising out of merit and experience based on long service. The policy underlying Rule 2(i)(a) and (b) therefore, cannot be regarded either as discriminatory or arbitrary. It is also not correct to say that by providing for promotion by selection by Departmental Promotion Committee against the 25% promotion quota the Court has made unequals equal. C D

[22-G-H; 23-A; 24-A]

N. Abdul Basheer v. K.K. Karunakaran, [1989] Supp. 2 SCC 344, relied on. E

1.2. The Tribunal was wrong in proceeding on the basis that the degree holders and diploma holders enter the cadre of Engineering Assistant through different channels and that on the stage of entry, the requisite qualifications are also different. Minimum qualification for direct recruitment as Engineering Assistant is diploma in Engineering or B.Sc. degree with Physics as the main subject. All those who are recruited as Engineering Assistant constituted one single cadre. There is no difference as regards their pay or other emoluments on the ground that they are degree-holders or diploma holders. The nature of duties and responsibilities of diploma holders is not different from those of degree holders. Thus no distinction is recognised between graduates and diploma holders at the level of Engineering Assistants and they all are considered as equals. [21-G-H; 22-A-B] F G

2. Just because certain percentage of the posts of Assistant Engineers were reserved for graduate Engineers in the past did not create any vested right in their favour. If merit and efficiency are the consideration while making H

A promotions to the higher posts, there is no reason why a certain percentage of posts of Assistant Engineers should be reserved for graduate Engineers and they should not be made to compete with diploma holders.[22-G-H; 23-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6122 of 1997
Etc.

B From the Judgment and Order dated 7.5.93 of the Central Administrative Tribunal, New Delhi in T.A. No. 85/87 in W.P. No. 10437 of 1985.

Altaf Ahmed , Additional Solicitor General, Hemant Sharma, S.D. Sharma, S.K. Dwivedi and V.K. Verma for the Appellants in C.A. No. 6122/97

C Ranjit Kumar and Ms. Anu Mohla for the Appellants in C.A.No.6123/
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M.A. Krishna Moorthy for the Respondents.

D The Judgment of the Court was delivered by

NANAVATI, J. Leave granted. Heard learned counsel for both the sides.

E Only question that arises for consideration in these appeals is whether Rule 2(1)(a) of the Assistant Engineers (Akashwani and Doordarshan Group 'B' Posts) Recruitment (Amendment) Rules, 1985 is discriminatory and, therefore, violative of Articles 14 and 16 of the Constitution. The Principal Bench of the Central Administrative Tribunal has held that it is challenging the decision of Tribunal, the Union of India and also P.N. Kohli and Malcher Malviya who were respondent Nos. 2 and 3 before the Tribunal, have filed these appeals.

F The All India Radio and Doordarshan have a common technical cadre. The channel of promotion in the Engineering section is from the post of Engineering Assistant to the post of Senior Engineering Assistant and then to the post of Assistant Engineer (Gazetted). Earlier, recruitment to the post of Assistant Engineer was made in accordance with the Recruitment Rules of 1972. Under those Rules, 60 per cent posts of Engineering Assistants were reserved for departmental Engineering Assistants who were degree-holders and 40 per cent posts were filled up by direct recruitment on the basis of Engineering Services Examination conducted by the Union Public Service Commission. Those Rules were replaced by the Assistant Engineers (Akashwani and Doordarshan Group 'B' posts) Recruitment Rules of 1982. Under these rules also, before they were amended in 1985, 60 per cent of the promotion

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H quota was filled up from amongst Graduate Engineers and remaining 40 per

cent posts from the Diploma-holders after they cleared the departmental examination. In 1985, the President made the following rules to amend the 1982 Rules: A

“(1) These rules may be called the Assistant Engineers (Akash-wani and Doordarshan Group 'B' posts) Recruitment (Amendment) Rules, 1985. B

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Schedule to the Assistant Engineers (Akashwani and Doordarshan Group 'B' Posts) Recruitment Rules, 1982. C

(i) In column 11, for the entry, the following entry shall be substituted namely :

“Promotion”.

(a) *25% of the promotion quota* D

By selection in accordance with provisions laid down in Appendix I to these rules.

(b) *75% of the promotion quota*

By selection on the basis of Departmental Competitive Examination conducted in accordance with provisions laid down in Appendices II and III to these rules. E

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xxx

xxx

(ii) For Appendix I, the following Appendix shall be substituted namely :

"APPENDIX-I"

(See rule 3)

Promotion by selection against 25% quota

(1) The promotion by selection shall be made by the Departmental Promotion Committee. The eligibility for consideration for promotion by the Departmental Promotion Committee shall be as follows:- G

(a) Senior Engineering Assistants with 8 years regular service in the grade; failing which senior Engineering Assistants with 8 years' combined regular service in the grades of senior Engineering H

- A Assistant and Engineering Assistants; and
- (b) Possessing educational qualifications not lower than those prescribed for direct recruits to the post of Engineering Assistant in the Akashwani and Doordarshan."

B We have not set out the remaining rules, as they have no bearing on the question to be decided in these appeals.

C These Amendment Rules of 1985 were challenged by the graduate Senior Engineering Assistants/Assistant Engineers as discriminatory and violative of Articles 14 and 16 of the Constitution by filing a writ petition in the Madras High Court. It was subsequently transferred to the Madras Bench of the Tribunal and renumbered as T.A. No. 587 of 1986. It was then transferred to the Principal Bench of the Tribunal and renumbered as T.A. No. 85 of 1987. The contention of the applicants was that till 1972 all the higher posts were reserved for educationally better qualified persons and thereafter a certain percentage was reserved for them; but, as a result of the 1985 Amendment,

D the reservation in favour of educationally better qualified persons has been completely done away, with the result that they will now lose initiative in obtaining higher educational qualifications. It was submitted that now the Engineering graduates are equated with diploma-holders and the earlier distinction between graduate Engineers and diploma-holders, which was a recognized and valid distinction, has been obliterated to the detriment of

E degree-holder Engineers. The Tribunal rejected the contention raised on behalf of the applicants that Rule 2 (i) (b) of the Amendment Rules providing for filling up of 75 percent of the posts in the promotion quota by selection on the basis of departmental competitive examination was either discriminatory or arbitrary merely because it provided for competitive examination and made

F the diploma-holders eligible for competing with the degree-holders. It held that by permitting both the degree and diploma-holders to compete for 75 per cent promotion quota, the Government cannot be said to have made unequals equal, more particularly in view of the purpose and reason behind the said rule.

G As regards the rule relating to 25% promotion quota, the Tribunal, however, took a different view and held as under :

H "37. So far as the remaining 25% quota is concerned, as provided in rule 2 (i) (a) of the Appendix to that rule, this is to go by seniority. Degree holders and diploma holders have been placed on par. This

may tend to discourage person from pursuing degree course for getting higher and better promotional avenues if the same can be available after getting a diploma. Degree and diploma holders have come through different channels and they have entered service through their own channel, and at that stage requisite minimum qualifications are different. The trend of cases referred to above is that even if there is some discrimination as recognition of this difference, it would be within the constitutional limits and will not go against the constitutional provisions and aspirations.

38. The contention that complete obliteration of difference between degree and diploma holder by promoting them on seniority basis which may even give an edge to diploma holders over degree holders because of entry on a lower post earlier, may create frustration and take away initiative and impetus for higher educational and better standard, is not without force. They have been put on the same par so far as 75% posts are concerned as stated above. If for 25% posts also they are also put on the same par, with even some edge to diploma holders because of their longer period of service, the same tends to make unequals, equal. Inter-rotation of two channels may given them double benefits."

"40. So far as this part of the rule *viz.*, regarding 25% quota is concerned, it is apparent, that the same makes unequal as equal and does not fully fit in with the equality clause which stands in Article 14 of the Constitution of India which permits reasonable classifications. Thus, it being bad, discriminatory and violative of Articles 14 of the Constitution of India and legally barred, the same has got to be struck down"

In these appeals, the appellants have questioned that part of the decision of the Tribunal whereby Rule 2(i) (a) of the Amendment Rules of 1985 has been declared *ultra vires* Article 14 of the constitution. Mr. Altaf Ahmad, learned Additional Solicitor General appearing for the Union of India, has submitted that the decision of the Tribunal is wrong not only because it is based upon an incorrect premise that degree and diploma-holders enter the cadre of Engineering Assistants through different channels at which stage the minimum qualifications for them are different but also because it is inconsistent with the decision of this Court in *N. Abdul Basheer v. K.K. Karunakaran*, [1989] Supp. 2 SCC 344.

A As noted by the Tribunal, minimum qualification for direct recruitment as Engineering Assistant is diploma in Engineering or B. Sc. degree with physics as the main subject. All those who are recruited as Engineering Assistants constitute one single cadre. There is no difference as regards their pay or their emoluments on the ground that they are degree-holders or diploma-holders. It is nobody's case that the nature of duties and responsibilities of diploma-holders is different from those of the degree-holders. Thus no distinction is recognised between graduates and diploma-holders at the level of Engineering Assistants and they are all considered as equals. The Tribunal was, therefore, wrong in proceeding on the basis that the degree-holders and diploma-holders enter the cadre of Engineering Assistants through different channels and that at the stage of entry, the requisite qualifications are also different. Even when the Engineering Assistants are considered for promotion to the higher post of Senior Engineering Assistants no distinction is made on the ground of their educational qualifications. The cadre of Senior Engineering Assistants is also a single undivided cadre and in the matter of pay, duties and responsibilities, all Senior Engineering Assistants are treated equally. Except that the post of Assistant Engineer is a Group 'B' gazetted post, no other reason could be advanced by the learned counsel appearing for the contesting respondents justifying a necessity to make a distinction between a graduate Engineer and diploma-holder while considering a Senior Engineering Assistants for promotion to that post. Simply because a certain percentage of the posts of Assistant Engineers was reserved for graduate Engineers in the past, that did not create any vested right in their favour. If merit and efficiency are the considerations while making promotions to the higher posts, there is no reason why a certain percentage of posts of Assistant Engineers should be reserved for graduate Engineers and they should not be made to compete with diploma-holders. A degree in Engineering is a better educational qualification than a diploma in Engineering; and, therefore, while competing for the posts of Assistant Engineers, the graduate Engineers will have an edge over the diploma-holders. By adopting the new policy contained in Rules 2(i)(a) and (b) of the Amendment Rules, the Government appears to have made an attempt to balance the advantages arising out of merit and experience based on long service. The 25 per cent promotion quota rule enables those Senior Engineering Assistants who have rendered long years of service but due to certain reason like age etc. do not desire to appear for the competitive examination but are otherwise fit for being promoted to such higher post. The policy underlying Rules 2(i)(a) and (b) of the Amendment Rules of 1985, therefore, cannot be regarded either as discriminatory or arbitrary. It is also not correct to say that by providing

for promotion by selection by Departmental Promotion Committee against the 25 per cent promotion quota what the Government has done is to make unequals equal. As stated earlier, the diploma-holders were treated as equals in all respects in the subordinate cadres of Senior Engineering Assistants and Engineering Assistants. A

In *N. Abdul Basheer's* case (supra), in the context of a rule fixing graduate-non graduate ratio for filling up the promotional post of Excise Inspector, this Court observed as under : B

“13. ...This is not a case where the cadre of officers was kept in two separate divisions. It was a single cadre and they were all equal members of it. There is no evidence that graduate Preventive Officers enjoyed higher pay than non-graduate Preventive Officers. The High Court has noted that the nature of the duties of Preventive Officers whether graduate or non-graduate was identical, and both were put to field work. Non-graduate Preventive Officers were regarded as competent as graduate Preventive Officers. There is no evidence of any special responsibility being vested in graduate Preventive Officers. Once they were promoted as Excise Inspector there was no distinction between graduate and non-graduate Excise Inspector.” C D

While dealing with the contention that the recognition of graduation is recognition of merit and that more merit in the post of Excise Inspector would be conducive to better administrative efficiency, this Court further observed thus : E

“15. ...Ordinarily, it is for the government to decide upon the considerations which, in its judgment, should underline a policy to be formulated by it. But if the considerations are such as prove to be of no relevance to the object of the measure framed by the government it is always open to the court to strike down the differentiation as being violative of Articles 14 and 16 of the Constitution. In the present case, we have already commented on the circumstance that the conditions of employment and the incidents of service recognise no distinction between graduate and non-graduate officers and that for all material purposes they are effectively treated as equivalent. Accordingly, this contention must also be rejected.” F G

In view of this clear pronouncement of law, the contrary view taken by the Tribunal has to be regarded as bad. In the result, these appeals are H

A allowed. The order passed by the Tribunal is set aside. Rule 2(i)(a) of the Amendment Rules of 1985 is held to be valid and the T.A. No. 85 of 1987 filed by the contesting respondents, is dismissed. In view of the facts and circumstances of the case, there shall be no order as to costs.

S.V.K.I.

Appeals allowed.