

Certified to be true copy  
*J. Anand*  
Assistant Registrar (Judl.)  
16/8/97 .....189  
Supreme Court of India

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. <sup>6122</sup> OF 1997  
[Arising out of SLP (C) No.3181 of 1994]      **205396**

Union of India & Anr.      ... Appellants

Versus

R. Iyyaswamy & Ors.      ... Respondents

WITH

CIVIL APPEAL NO. <sup>6123</sup> OF 1997  
[Arising out of SLP (C) No.22848 of 1996]

P.N. Kohli & Ors.      ... Appellants

Versus

R. Iyyaswamy & Ors.      ... Respondents

J U D G M E N T

NANAVATI, J.

Leave granted. Heard learned counsel for both the sides.

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 the Tribunal, the Union of India and also P.N. Kohli and Malchar Malviya who were respondent Nos.2 and 3 before the Tribunal, have filed these appeals.

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 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:

"(1) These rules may be called the Assistant Engineers (Akashwani and Doordarshan Group 'B' Posts) Recruitment (Amendment) Rules, 1985.

(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

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

"Promotion".

(a) 25% of the promotion quota

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.

x      x      x      x      x      x      x      x

(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:-

- (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 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.

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

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, 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 degree-holder Engineers. The Tribunal rejected the contention raised on behalf of the applicants that Rule 2 (1) (b) of the Amendment Rules providing for filling up of 75 per cent 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 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.

As regards the rule relating to 25% promotion quota, the Tribunal, however, took a different view

and held as under:

"37. So far as the remaining 25% quota is concerned, as provided in rule 2 (1) (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 persons 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 (1) (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/s. K.K. Karunakaran [(1989) Supp. 2 SCC 344].

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 other 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 post of Assistant Engineers, the graduate Engineers will have an edge over the diploma-holders. By adopting the new policy contained in Rules 2 (1) (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 reasons 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 (1)

(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.

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:

"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 Inspectors there was no distinction between graduate and non-graduate Excise Inspectors."

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:

"15. ...Ordinarily, it is for the government to decide upon the considerations which, in its judgment, should underlie 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."

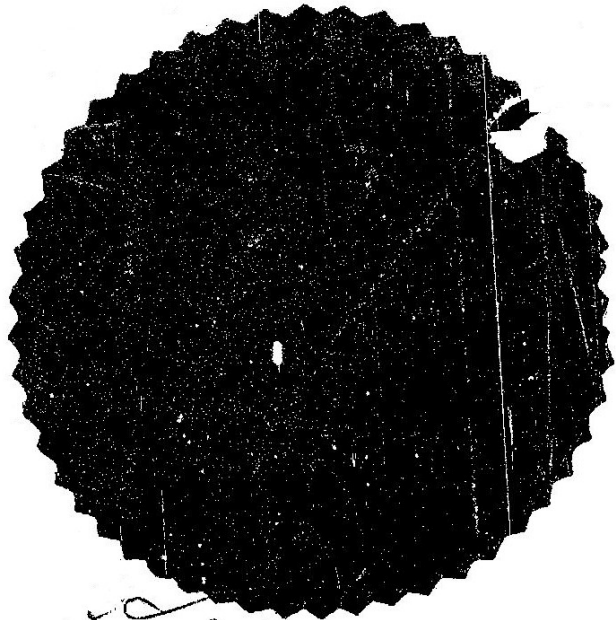
In view of this clear pronouncement of law, the contrary view taken by the Tribunal has to be regarded as bad. In the result, these appeals are

allowed. The order passed by the Tribunal is set aside. Rule 2 (1) (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.

.....J.  
[S.C. AGRAWAL]

.....J.  
[G.T. NANAVATI]

New Delhi,  
September 9, 1997.



|                 |        |       |
|-----------------|--------|-------|
| SERIAL No.      | 152522 | Of 18 |
| No. of (F.O's): | 12     |       |
| Costs including | ✓      |       |
| Certification   | ✓      |       |
| Fees            | 1000/- |       |

date of application for copy.....  
date of no-filing requisite stamps.....  
date of delivery of requisite stamps.....  
date which the copy was ready.....  
date of delivery of the copy.....

Section Officer  
Supreme Court of India

12

MAILED IN MY PRESENCE  
10/9/97