CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH
LUCKNOW

ORIGINAL APPLICATION NO. 218 OF 1995
this the 28th day of October, 2002

Hon'ble Mr. Rafiq Uddin, Member (J)
Hon'ble Maj Gen. K.K. Srivastava, Member (A)

1. Romesh Chander Nadir, aged about 45 yrs.
S/o Sri Vidh Lal Nadir, at present working as
Assistant Engineer, Doordarshan Kendra,
24, Ashok Marg, Lucknow.

2. Hemant Kumar, aged about 42 yrs.
S/o Shri D.R. Malhotra,
R/o 47 Model House, Parmeshwari Das Lane,
Lucknow, Assistant Engineer,
Doordarshan Kendra, 24 Ashok Marg,
Lucknow. ..Applicants

By Advocate : Sri Surendran P.

Versus

1. Union of India through the Secretary,
Ministry of Information & Broadcasting,
New Delhi.

2. Director General, All India Radio,
Akashwani Bhavan, New Delhi.

3. Director General, Doordarshan,
Copernicus Marg, Mandi House,
New Delhi.

4. Director, Doordarshan Kendra,
Lucknow.

5. Sri V. Srinivasan, Assistant Engineer
S.P.T. All India Radio, Bangalore.

6. Sri A.K. Tikku, Assistant Engineer,
P. & D Unit, Akashwani Bhawan,
New Delhi. ...Respondents

By Advocate Sri A. Dixit for km. Kiran Kapoor.

O R D E R (ORAL)

RAFIQ UDDIN, MEMBER (J)

The applicants who were working as Assistant Engineer in the office of Director, Doordarshan Kendra, Lucknow ( respondent No.4) have challenged the amended clause (b) of sub-rule 2 of Rule 7 of the Indian Broadcasting ( Engineers) Service Rules 1981 ( in short Service Rules 1981) on the ground that the same is illegal, arbitrary and malafide.

2. Briefly stated the facts of the case are that the Service Rules which have been framed under Article 309 of the Constitution of India, has been amended by Indian Broadcasting ( Engineers) Service Rules 1989 ( in short Service Rules 1989). The relevant part of the Service Rules 1989 is as under:-

> " In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby makes the following rules further to amend the Indian Broadcasting ( Engineers) Service Rules, 1981, namely
>
> (i) These rules may be called the Indian Broadcasting (Engineers) Service (Amendment) Rules 1989.

(ii) They shall come into force on the date of their publication in the official Gazettee.

2. In the Indian Broadcasting (Engineers) Service Rules 1981 hereinafter referred to as the said rules so far clause (b) of sub-rule (2) of rule 7, the following clause shall be substituted, namely:-

(b) The remaining 50% vacancies in the Junior Time Scale shall be filled by the Controlling Authority by promotion of officers possessing qualifications prescribed for direct recruitment to Junior Time Scale in Schedule II of these rules from the relevant filed of promotion and possessing the minimum qualifying service as specified against serial number 6, in column 4 of Schedule III on the basis of selection on merit by a duly constituted Department Promotion Committee as provided in Schedule IV."

3. The unamended clause of Service Rules 1981 is as under:-

" (2) 50% of the substantive vacancies in the junior scale shall be filled by

direct recruitment on the results of a competitive examination conducted by the Commission on the basis of the educational qualifications and age limit specified in Schedule II and any scheme of examination that may be notified by Government, in constitution with the Commission, from time to time. The remaining 50% of the substantive vacancies and all temporary vacancies shall be filled by the Controlling Authority, by promotion of officers on the basis of selection on merit and included in a panel for the said grade in the order of seniority from the relevant field of promotion and the minimum qualifying service as specified in Schedule III."

4. The grievance of the applicants is that prior to the aforesaid amendment 50% of the vacancies were filled-up by the Controlling Authority by promotion of officers possessing the minimum qualifying service as specified in column 4 of Schedule III i.e. from the Assistant Engineers of the Akasvani/Doordarshan excluding those in Civil Construction Wing with 3 years regular service in the Grade, but now by way of

vacancies shall be filled up by promotion of officers possessing qualifications prescribed for direct recruitment. It is claimed that by making this amendment, a large number of employees like the applicants have been discriminated. The applicants are non-graduate Engineers in the category of electricial/electronics Engineering. The applicant No.1 was promoted as Assistant Engineer in the month of April, 88, whereas the applicant No.2 was promoted in the month of June 1988. However, as a consequence of the amended rules, the applicants along with other similarly situated persons upto the stage of Assistant Engineers are not entitled to get further promotion to Indian Broadcasting Service (in short IBS) cadre and their promotional avenues are blocked. It is also stated that after introduction of the amended rules the names of the applicants alongwith other similarly situated persons have been excluded from the list of eligible candidates for promotion to IBS cadre, whereas the name of the junior persons have been included in the list. The name of the applicants alongwith other similarly situated persons have been excluded only on the ground that they are not having any degree in Engineering. The action of the respondents is, therefore, illegal, arbitrary and discriminatory.

5. We have heard the learned counsel for the parties and have also perused the pleadings

on record.

6. It has been contended by the learned counsel for the respondents on the basis of the pleadings that the qualifications required for the post are laid down in the Recruitment Rules and, therefore, a person occupying such post should fulfill the eligibility criteria including possessing the minimum educational qualifications as per rules. The respondents have not stated about the case of the applicant that as a consequence of the amended rules, their promotion to the higher post namely IBS are completely blocked.

7. We have considered the rival contentions of the learned counsel for the parties and find that the contention of the learned counsel for the applicant has force. It is an admitted position that prior to the amendment, the applicants were eligible for promotion to IBS cadre, but after the amendment made in the clause, in question, they have been deprived for being promoted to that cadre. The applicants once have been found suitable for promotion to the post of Assistant Engineer, the action of the respondents by depriving them from their promotion to IBS cadre on the ground they do not possess the minimum qualification namely degree in

By doing so, the respondents have clearly discriminated, and amended clause is obviously, unreasonable clause, which deprives the applicants from their promotion to IBS cadre as such as a graduate Engineer is eligible for promotion to IBS cadre, whereas non-graduate Assistant Engineer is not eligible. We also find that there is no nexus to the object sought to be achieved by amending the clause as the classification made by the amended rules is not reasonable. It has rightly been pointed out by the learned counsel for the applicants that as a Assistant Engineer whether he is a graduate or non-graduate is discharging an identical functions, bears similar responsibility and acquire equal experience in their assignment, there is no material on record to justify the amendment in the rules and the same being unreasonable deserves to be quashed.

8. We accordingly quash the amended clause (b) of sub-rule 2 of rule 7 of the Indian Broadcasting (Engineers) Service Rules 1981 and direct the respondents to re-consider the case of the applicants for promotion to IBS cadre on the basis of unamended Service Rules 1981. The above directions shall be complied with within a period of six months from the date of communication of this order.

9. The O.A. stands allowed as above without any order as to costs.

Sd/-
MEMBER (J)

Sd/-
MEMBER (J)

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