

Kuldeep Kumar Gupta & Ors vs H.P.S.E.B. & Ors on 12 December, 2000

CASE NO.:

Appeal (civil) 12446-12447 1996.

PETITIONER:

KULDEEP KUMAR GUPTA & ORS.

Vs.

RESPONDENT:

H.P.S.E.B. & ORS.

DATE OF JUDGMENT: 12/12/2000

BENCH:

G.B.Pattanaik, B.N.Agrwal

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T..J JUDGMENT PATTANAIAK,J.

These appeals are directed against the order of the Himachal Pradesh Administrative Tribunal, disposing of O.A. No. 276/87 with O.A. No.226 of 1989. The applicants before the tribunal were Junior Engineers, working in Himachal Pradesh State Electricity Board. The dispute centres round the question as to whether it is permissible for the employer to frame Regulations, providing a separate quota of promotional avenues for the less qualified junior Engineers in preference to the claim of the qualified diploma holder Junior Engineers. The feeder category for promotion to the post of Assistant Engineer is Junior Engineer. In the cadre of Junior Engineer, 95% of the vacancies are filled up by direct recruitment of persons, who are diploma holders and only 5% is by promotion from amongst the lower category, who are usually matriculates with I.T.I.certificate. So far as the promotion to the post of Assistant Engineers is concerned, the Board has been amending the promotion Regulation from time to time, providing for a ratio between the direct recruits and promotees and again, further providing a quota within the promotion quota, to be filled up by Junior Engineers(qualified) and Junior Engineers(unqualified). The original Regulation of the year 1973 has been amended from time to time in 1979, 1983 and 1986 and under the 1986 Regulations, 46% of the posts in the cadre of Assistant Engineer was available in promotion quota and out of the same, 28% were to be filled up by Junior Engineers (qualified), 8% by Junior Engineers(unqualified), 6% from amongst those who have passed Section A and B examination of the Institute of Engineers(service) and 4% from Draftsman. It may thus be noticed that from the inception of the service, a specified percentage of quota has been made available in the promotional cadre of Assistant Engineer for the unqualified Junior Engineers notwithstanding the fact that

Junior Engineers form one cadre. In December, 1987, the direct recruits qualified Junior Engineers filed application before the Himachal Pradesh Administrative Tribunal, praying for quashing of the quota rule vis-a-vis them and the unqualified Junior Engineers, essentially on the ground that there has been a total integration of both categories of Junior Engineers and they discharge identical functions, their duties being interchangeable and inter-transferable and from the fused cadre, it is not permissible to provide a different quota for promotion to the higher post and the said provision must be held to be arbitrary and irrational and as such is liable to be struck down. The Board took a decision to prepare separate seniority list of the Junior Engineers, which is the feeder category for promotion to the post of Assistant Engineer. The separate seniority list in the cadre of Junior Engineer, one for diploma holder Junior Engineers and another for unqualified Junior Engineers was prepared in November, 1989. As by preparation of such seniority list, the original application filed by the direct recruit qualified Junior Engineers before the tribunal became infructuous, they approached this Court in Special Leave Petition No.1072/89. A petition under Article 32 was also filed, which was registered as Writ Petition No. 91/89, challenging the self- same issue of preparation of two seniority lists. Notwithstanding the filing of Special Leave Petition in this Court, a separate application was filed before the tribunal also, which stood registered as O.A.No. 226/89, challenging the issue of separate seniority lists. The Special Leave Petition filed in this Court stood disposed of by order dated 5.10.1993 with the directions that pending applications before the Administrative tribunal should be disposed of within six months. The tribunal ultimately disposed of the applications filed before it by order dated 29.9.1995. Out of the three members of the tribunal, the majority judgment upheld the validity of the Regulations, providing for a different quota for promotion in respect of the unqualified Junior Engineers inter alia on the ground that it is permissible for the employer to provide for promotion on the basis of educational qualification and the Junior Engineers who are matriculates and I.T.I. qualified from a different class, than the direct recruit diploma holder Junior Engineers, who are otherwise called qualified Junior Engineers and this position has been maintained right from the inception of the service and the Regulation providing such a position cannot be held to be arbitrary or discriminatory. The minority view was that of Vice Chairman, Shri M.G. Chitkara, who came to the conclusion that there has been a complete fusion between qualified and unqualified Junior Engineers and after such fusion, it is not legally permissible to provide a different quota for promotion to the post of Assistant Engineer. The applications before the tribunal having been dismissed in view of the majority judgment, the present appeals have been filed by the direct recruits qualified Junior Engineers.

Mr. Gopal Subramaniam, the learned senior counsel, appearing for the appellants, contended with vehemence that the Junior Engineers, having formed a cadre, people from two different sources being brought to the cadre namely the direct recruit qualified diploma holders and the promotee matriculate I.T.I. certificate persons, there cannot be any further differentiation amongst them, providing for quota for promotional post and the Regulation providing such quota must be struck down as violative of Article 14 and 16 of the Constitution. In support of this contention, the learned senior counsel relied upon Roshan Lal Tandon, 1968(1) SCR 185, Mervyn Coutindo, 1966(3) SCC 600 and Mohd. Shujat ali, 1975 (5) SCC 76. Mr. Subramaniam also further contended that in the cadre of Junior Engineer, which is the feeder cadre for promotion to the post of Assistant Engineer, a common seniority list having been drawn up, the employer cannot only for the purpose of promotion, direct preparation of two seniority lists and such a direction violates the equality clause,

engrafted in Article 16 of the Constitution. The learned counsel also urged that except in cases where constitution itself provides for a reservation in favour of a specified group of people, as provided in Article 16(4), there cannot be a reservation by any other mode and providing a quota in favour of unqualified Junior Engineers, tantamounts to reservation in their favour, which is not constitutionally permissible. According to the learned counsel, prescribing a quota in the promotional cadre itself is discriminatory and the decision of this Court in *Murugesan, 1993(2) SCC 340*, will have no application to the facts and circumstances of the present case.

Mr. V.A.Bobde, the learned senior counsel, appearing for the Board-respondent, on the other hand contended that right from the inception of the Regulations in December, 1973, the diploma holder direct recruits and the unqualified matriculate Junior Engineers have been treated differently and there has all along been a specified percentage of posts in the cadre of Assistant Engineer, made available to such qualified matriculate Junior Engineers, though such quota has been increased from time to time, depending upon the cadre strength and chances of promotion of such unqualified Junior Engineers and this being the position, the said Regulation cannot be struck down. According to Mr. Bobde, the Regulation, itself by suitable provisions balances the equity amongst the qualified diploma holder Junior Engineers and unqualified matriculate Junior Engineers, inasmuch as for a diploma holder Junior Engineer, mere seven years of service as Junior Engineer is sufficient for consideration of promotion to the post of Assistant Engineer, whereas in case of unqualified matriculate Junior Engineers, it is twelve and fifteen years of service, that is necessary. The Rule making authority have specified this condition notwithstanding the fact that all of them have been working as Junior Engineers. According to Mr. Bobde, the Regulation itself considers the diploma holder qualified Junior Engineers and matriculate unqualified Junior Engineers differently, obviously depending upon their respective qualification and such a differential treatment is permissible and does not violate Article 14 of the Constitution, as has been held by this Court in *Murugesan, 1993(2) SCC 340* as well as in the case of *S.N.Deshpande vs. Maharashtra I.D. Corpn., 1993 (Supp.) 2 SCC 194*. Mr. Bobde also urged that the direction to have two seniority lists is obviously dependant upon the provisions of separate quota for promotion to the post of Assistant Engineer, depending upon their basic qualification and the object of such direction is to have competition amongst equals and this is permissible under the Constitution. According to Mr. Bobde, providing quota for different category of persons available in the feeder cadre for promotion to the higher cadre only effectuates the guarantee of equal opportunity, enshrined in Article 16(1) and such a provision cannot be held to be reservation, as contemplated under Article 16(4). The learned counsel urged that the employer is duty bound to see that stagnation at a particular stage is avoided, if possible, which is conducive for the Administration and with that point in view, fixing of quotas to ensure an efficient service is a matter of policy for the employer to decide and unless the decision is arbitrary or irrational, cannot be interfered with by the Court, and therefore the majority judgment of the tribunal is unassailable.

Before we examine the correctness of the rival submissions, it would be appropriate for us to notice that under the provisions of Electricity (Supply) Act, a set of Regulation have been framed called the Himachal Pradesh State Electricity Board Regulation (relating to Recruitment and Promotion to the post of Junior Engineer) and this Regulation has been amended from time to time but such amendments are only in altering the percentage of posts available to different category of people.

The Himachal Pradesh State Electricity Board has framed the Regulations in exercise of power conferred under Section 79(c) and Section 15 of the Electricity (Supply) Act called the Recruitment and Promotion Regulations for the posts of Assistant Engineers and above and the said regulations also have all along provided a definite percentage of posts, meant for unqualified Junior Engineers having a specified years of regular service. Thus right from inception of the Board, a quota has been fixed in the cadre of Assistant Engineer for the unqualified matriculate Junior Engineers. The aforesaid history in the formation of service of Engineers under the Electricity Board should be borne in mind while deciding the question of law raised in these appeals.

From the facts asserted and the contentions raised in these appeals, following questions really arise for our consideration: 1. The feeder cadre of Junior Engineers, having been filled up from two recruitment sources, one by qualified diploma holders by way of direct recruitment and the other by unqualified matriculate I.T.I. Certificate holders by promotion, can there be a separate consideration for them in the matter of promotion to the post of Assistant Engineer and whether such separate consideration violates any constitutional mandate? 2. Providing a quota in the promotional cadre, whether can be said to be a reservation within the meaning of Article 16(4) and as such can it be held to be violative of Article 16(4) of the Constitution?

3. Administrative efficiency being the consideration, though it may be permissible to have a specified percentage of posts in the promotional quota on the basis of educational qualification, as held in *Murugesan*, can it be held to be violative of Articles 14 and 16, when such a quota is meant for unqualified persons in the feeder category?

So far as the first question is concerned, it is no doubt true that in earlier decisions of this Court in *Roshan Lal Tandon*, 1968(1) SCR 185 and *Mervyn Coutindo*, 1966(3)SCC 600, this Court has held that once the direct recruits and promotees were absorbed in one cadre, they form one class and they could not be discriminated against, for the purpose of further promotion to the higher grade. But this view has not been found favour with in the later Constitution Bench decision in *Triloki Nath Khosa*, 1974(1) SCC 19. It has been laid down in the aforesaid case that even where direct recruits and promotees are integrated into a common class, they could, for the purpose of promotion to the higher cadre be classified on the basis of educational qualification. It was held by this Court in *Triloki Nath* that classification in matters of promotion with academic or technical qualification as basis is a matter for legislative determination and such a classification is permissible unless it is found to be unjust on the face of it and the onus lies upon the party attacking the classification to show by pleadings the necessary material before the Court that the said classification is unreasonable and violative of Article 16. It is in that context the Court further observed that discrimination is the essence of classification and does violence to the constitutional guarantee of equality only if it rests on an unreasonable basis and that being the position, it would be for the party assailing such classification to establish that the classification is unreasonable and bears no rational nexus with its purported object. In the absence of furnishing necessary particulars, it must be construed that the plea of unlawful discrimination had no basis. In *Triloki Nath*, a word of caution has been indicated that the right to classify is hedged in with salient restraints. Classification must be truly founded on substantial differences which distinguish person grouped together from those left out of the group and such differential attributes must bear a just and rational relation to

the object sought to be achieved and judicial scrutiny extend only to the consideration whether the classification rests on a reasonable basis and whether it bears nexus with the object in view. It cannot extend to embarking upon a nice or mathematical evaluation on the basis of classification. In Triloki Nath, the court held that Roshan Lals case is no authority for the proposition that there cannot be a classification for the purpose of promotion on a basis other than the one that they were drawn from different sources. Triloki Nath, thus distinguishes both the earlier decision in Mervyn Coutindo and Rohan Lal Tandon. Trilokinath has been followed in Murugesan , where this Court held that it would be open for the rule making authority, having regard to the efficiency of the administration and other relevant circumstances to restrict the chance of promotion of the less qualified people in the feeder category. In Murugesan, the Court upheld the quota in the matter of promotion in favour of graduate engineers. It may be noticed that in Murugesan, the Court over-ruled the earlier decision in the Punjab State Electricity Board, 1986(4) SCC 617 distinguished in Abdul Basheers case, 1989 Supp.(2) SCC

344. The contention of Mr. Subramaniam, is no doubt that there can be a classification in favour of the qualified people having regard to the efficiency of the administration but a classification in the manner of providing a quota for unqualified people cannot be held to be in the interest of administration and, therefore, cannot be sustained on the principles of Murugesan. We are unable to accept this contention of the learned counsel for the appellants. Once a classification is permissible notwithstanding that the feeder category is one, when the said classification is challenged being discriminatory, then unless and until sufficient materials are produced and it is established that it is unjust on the face of it by the persons assailing the classification, the Court would be justified in coming to the conclusion that such plea of unlawful discrimination had no basis, as was observed in Triloki Nath. Adjudged from the aforesaid stand point when the pleadings in the case in hand are examined, we do not find any materials to sustain the plea of discrimination raised by the appellants, who are direct recruits diploma holder Junior Engineers. In the case in hand, the Regulations from time to time on being examined, unequivocally show that right from the inception, quota has been provided for promotion in favour of the unqualified promotee Junior Engineers, though the quota has been changed from time to time and while providing such quota, the longer experience as Junior Engineer has been the basis for being eligible for promotion. Providing such a quota in the service history right from inception is also a germane consideration for the Court, while considering the question of alleged discrimination. That apart when the feeder category itself is filled up by direct recruit diploma holders and promotee unqualified matriculates and if no quota is provided for such unqualified matriculates in the promotional cadre of Assistant Engineer then they may stagnate at that stage which will not be in the interest of administration. If the rule making authority on consideration of such stagnation, provides a quota for such unqualified promotee Junior Engineers, the same cannot be held to be violative of any constitutional mandate and on the other hand would come within the ratio of Murugesan. In our considered opinion, therefore, there can be a separate consideration for the promotee unqualified matriculate Junior Engineers in the matter of promotion to the post of Assistant Engineer and the impugned Regulation providing a quota for them cannot be held to be violative of Article 14.

So far as the second question is concerned, we are unable to persuade ourselves to agree with the submission of Mr. Subramaniam that providing a quota tantamounts to reservation. Article 16 deals

with equality of opportunity in matters of public employment and Article 16(4) enables the State from making any provision for reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the State is not adequately represented in the services under the State. This Court in Indira Sawhneys case has held that no such reservation is permissible in the promotional posts and to get over the said decision Article 16(4A) has been inserted by the Constitution (Seventy seventh Amendment) Act. But we fail to understand as to how providing a quota for a specified category of personnel in the promotional post can be held to be a reservation within the ambit of Article 16(4). Providing a quota is not new in the service jurisprudence and whenever the feeder category itself consists of different category of persons and when they are considered for any promotion, the employer fixes a quota for each category so that the promotional cadre would be equi-balanced and at the same time each category of persons in feeder category would get the opportunity of being considered for promotion. This is also in a sense in the larger interest of the administration when it is the employer, who is best suited to decide the percentage of posts in the promotional cadre, which can be earmarked for different category of persons. In other words this provision actually effectuates the constitutional mandate engrafted in Article 16(1), as it would offer equality of opportunity in the matters relating to employment and it would not be the monopoly of a specified category of persons in the feeder category to get promotions. We, therefore, do not find any infraction of the Constitutional provision engrafted in Article 16(4) while providing a quota in promotional cadre, as in our view it does not tantamount to reservation.

So far as the third question is concerned, if it is permissible to have a specified percentage of posts on the basis of educational qualification, as has been held by this Court in Murugesan, we really fail to understand, as to why employer or the rule making authority would be debarred to allot a specific percentage in favour of unqualified matriculate promotee Junior Engineers. The Regulation provides that out of 46% of promotional quota in the cadre of Assistant Engineer, 28% will be available for qualified diploma holder Junior Engineers and 8% would be for unqualified matriculate Junior Engineers, 6% meant for A and B passed and 4% for draftsman. According to Mr. Subramaniam the quota available for A and B and Draftsman could come within the ambit of the decision of this Court in Triloki Nath or Murugesan, but not the respondents- unqualified matriculate Junior Engineers in whose favour 8% quota has been fixed. We are unable to accept this contention of the learned counsel. It may be noticed at this stage that so far as the unqualified Junior Engineers are concerned those of them who possess I.T.I. qualification must have twelve years of service in the grade for being eligible for promotion to the Assistant Engineers and those who are merely matriculates and without I.T.I. qualification, must have fifteen years of service in the grade for being eligible for promotion to the post of Assistant Engineer. These unqualified Junior Engineers have been brought to the cadre of Junior Engineers by promotion and in most cases they can maximum aspire to retire as Assistant Engineers. If the rule making authority considers that the stagnation at the stage of Junior Engineer will not be conducive for administration and provides the promotional avenue for them, by providing a quota in the promotional cadre and the service history itself indicates that such provision has been made right from the inception, we see really no constitutional infraction therein, so as to be interfered with by this Court. We, therefore, do not find any substance in submission of Mr. Subramaniam on this Score and in our considered opinion there is no bar for providing a quota in the promotional post, even in favour of unqualified matriculate Junior Engineers.

In the aforesaid premises, these appeals fail and are dismissed.