

Before D. V. Sehgal, J.

JATINDER SINGH and others,—Petitioners

versus

PUNJAB STATE ELECTRICITY BOARD and others,—Respondents.

Civil Writ Petition No. 4182 of 1978

February 17, 1986.

Constitution of India, 1950—Articles 14 and 16—Punjab State Electricity Board Service of Engineers (Electrical) Regulations, 1965—Regulations 2(c) & (g), 6 and 9—Regulations providing for promotion to the rank of Assistant Engineers from different categories of departmental employees—Petitioners as also respondents Line Superintendents constituting one such category—Regulation 9(7) providing for appointment from amongst departmental employees who cleared A.M.I.E examination or obtained degree in Electrical Engineering during the service and having at least 5 years service in the Board—Regulation 9(9) providing for only three years such experience for promotion in case of employees having graduate or post-graduate qualifications—Petitioners senior in service to respondents but lacking five years experience as provided under Regulation 9(7)—Respondents eligible in terms of Regulation 9(8) and therefore, promoted—Regulation 9(7) vis a vis Regulation 9(9) providing for different periods of experience for same class of employees—Whether discriminatory and violative of Articles 14 and 16—Promotion made under the aforesaid regulation—Whether liable to be struck down.

*Held, that reading of Regulations 2(c) & (g), 6 and 9 of the Punjab State Electricity Board Service of Engineers (Electrical) Regulations, 1965 would show that appointment/promotion to the service is to be made from various sources. Regulation 9 provides for qualifications for appointment by promotion and also provides *inter alia* the percentage of the number of cadre posts available in the service which shall be filled by promotion out of the different categories of Engineering subordinates. It is also clear from a reading of regulation 2(g) that Engineering subordinates/Technical subordinates/subordinate class who were to be considered for promotion under Regulation 9(7) and 9(9) are not only the Line Superintendents but include also other categories of employees. Any graduate engineer joining any of these services can be considered for promotion against the posts reserved for such category for promotion to the post of Assistant Engineer after having a minimum experience of three years on the subordinate posts. Likewise, any diploma-holder working against any of these posts who attains the qualifications of A.M.I.E. or degree in Engineering is considered against the posts of Assistant Engineer after putting in minimum of five years*

on any of the subordinate posts. More weightage is given to those who are initially graduates in Engineering as compared to those who are not. It is always open to the Government or the employer to classify its employees as long as the classification is reasonable and has a nexus with the object sought to be achieved. Moreover, classification is primarily for the Legislature or for the statutory authority charged with the duty of framing the terms and conditions of service and if the classification is found to rest on a reasonable basis it has to be upheld. Judicial scrutiny can, therefore, extend only to the consideration whether the classification rests on a reasonable basis and it cannot extend to embarking upon a mathematical evaluation of the basis of classification. The prescription of separate reservation of posts for graduates who join subordinate service and the diploma-holders who join service and attain the qualification of degree in Engineering in the course of service is, therefore, valid. As a natural corollary, there is variance in the requisite experience gained by them in the subordinate posts for their eligibility to promotion to the higher post of Assistant Engineers. No doubt, incentive is there for the diploma-holders to attain degree in Engineering or its equivalent to make themselves eligible for promotion as Assistant Engineers but separate reservation and longer experience provided for them has a rational basis and cannot be considered to be arbitrary. As such Regulation 9(7) is not discriminatory and violative of the Constitution of India, 1950 and any promotions made under the Regulations are not liable to be struck down. (Paras 5, 6, 7 and 8)

Petition under Article 226 of the Constitution of India praying that a Writ of Certiorari, Mandamus or any other suitable Writ, Direction or Order be issued, directing the respondents:—

- (i) to produce the complete records of the case;
- (ii) it be declared that the petitioners are senior to Respondents Nos. 2 to 9;
- (iii) quashing the orders at Annexure 'P-1' in so far as these relate to Respondents Nos. 2 to 9;
- (iv) A writ of Quo-Warranto be issued to Respondents Nos. 7 to 9 calling upon them to show cause as to how they are eligible to hold the posts of Assistant Engineers Class II;
- (v) a writ of Mandamus be issued directing the Respondent-Board to consider the claims of the petitioners with effect from the date the persons junior to them were promoted;
- (vi) the provisions of Rule 9(7) be declared ultra vires the Constitution and clause 9 insofar as it prescribes a period of five years experience;

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(vii) this Hon'ble Court may also pass any other Order, which it may deem just and fit in the peculiar circumstances of the case and grant all such other benefits to which the petitioners may be found entitled to ;

(viii) the costs of this petition may also be awarded to the petitioners.

J. L. Gupta, Sr. Advocate, with Rajiv Atma Ram, Advocate and Rakesh Khanna, Advocate, for the Petitioner.

Kirpal Singh, Advocate, for Respondent No. 1.

M. R. Agnihotri, Sr. Advocate, with Deepak Agnihotri, Advocate, for Respondent Nos. 2 & 3.

Kuldip Singh, Senior Advocate, G. C. Gupta, Advocate, for Respondent No. 7 to 9.

JUDGMENT

D. V. Sehgal, J.

(1) The petitioners joined the service of the Punjab State Electricity Board, respondent No. 1, as Line Superintendents on different dates in the years 1967 to 1974. At the time of their initial appointment, they held diploma in Electrical Engineering. While working as Line Superintendents, they passed section (A) and (B) of the Institution of Engineers (India) commonly known as A.M.I.E. They are eligible for promotion to the post of Assistant Engineer (Class II). Their seniority *inter se* as Line Superintendents is governed by rule 9 of the Punjab Public Works Department (Electricity Branch) State Service Class III (Subordinate Posts) Rules, 1952 and has been determined in the order of the dates of their appointment. The respondents Nos. 2 to 9 have also been working as Line Superintendents. Out of them, respondents Nos. 2 to 6 had degree in Electrical Engineering when they joined the post of Line Superintendent, the requisite qualification of which was diploma in Electrical Engineering. Respondents Nos. 7 to 9 proceeded on leave while in service as Line Superintendents and passed 3 years integrated course conducted by the Jodhpur University in Electrical Engineering in the year 1977. Respondents Nos. 2 to 9 were promoted to the post of Assistant Engineer Class II,—*vide* order August 23, 1978 (Annexure P.1.). The petitioners assert that respondents Nos. 2 to 9 were junior to them in the post of Line Superintendent and could not be promoted as Assistant Engineer

Class II through the impugned order over their head, without considering them for the said post. Thus being aggrieved by the impugned order, they filed the present writ petition praying for a writ of *certiorari* to quash the Order Annexure P-1 and also declare the provisions of rule 9(7) of the Punjab State Electricity Board Service of Engineers (Electrical) Regulations, 1965 (for short, the Regulations) as *ultra vires* and discriminatory.

(2) Written statements were filed on behalf of respondent No. 1 and respondent Nos. 2 to 9. It was contended that the impugned order was valid in law. Rule 9(7) of the Regulations is *intra vires* and is not discriminatory. It may be mentioned here that soon after the present writ petition was filed, respondent No. 1 issued letters to respondents Nos. 7 to 9 requiring them to show cause why they should not be reverted to the post of Line Superintendent. They filed in this Court Civil Writ Petition No. 5073 of 1978. This writ petition was disposed of by me on February 5, 1986. Counsel for respondent No. 1 stated at the Bar that the decision on show-cause notices issued to respondents Nos. 7 to 9 shall be taken after hearing them as also the other officers who might be affected by the decision which would ultimately be taken by respondent No. 1. No doubt, in the present writ petition, the petitioners have challenged the promotions of respondents Nos. 7 to 9 under Regulation 9(9) of the Regulations, firstly, by disputing the fact that three years integrated course passed by them is equivalent to a degree in Electrical Engineering and secondly on the ground that if at all their qualification could be treated as a degree, they acquired the same during the course of their service as Line Superintendents and as such they could not get promotion as Assistant Engineer Class II under Regulation 9(9). They ought to have fallen in queue with the petitioners for promotion under Regulation 9(7) of the Regulations. In view of my order in CWP No. 5073 of 1978, learned counsel for the parties have fairly stated at the Bar that the aforesaid questions raised by the petitioners should await the decision of the Board on the notices issued to respondents Nos. 7 to 9 and need not to be adjudicated upon and decided through the present writ petition.

Thus the question of law that requires determination in the present writ petition is whether Regulation 9(7) *vis-a-vis* regulation 9(9) by virtue of which respondents Nos. 2 to 6 were promoted through the impugned order Annexure P.1 is discriminatory

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and violative of Articles 14 and 16 of the Constitution of India. With a view to fully appreciate the rival contentions of the learned counsel for the parties, I set out below some of the relevant provisions contained in the Regulations. Regulation 2(c) defines direct appointment, thus

“Direct appointment means an appointment made otherwise than by promotion to the service, or by transfer of an officer already in the service of any other Board or Government or any Undertaking of the Government.”

Regulation 2(g) defines ‘Engineering Subordinate/Technical Subordinates/Subordinates Class’; thus

“Engineering Subordinate/Technical Subordinate/Subordinate Class includes Junior Engineers, Line Supdts, Substation Operators etc. and members of the Drawing Estt. and holders of such other posts as may be specified by the Board from time to time.”

Regulation 6 provides for the mode of recruitment to the service. Clause (a) thereof makes provision for recruitment to the posts of Assistant Engineers Class II with which we are concerned in the present petition and is reproduced hereunder :

“6. Recruitment to the Service shall be made by any of the methods indicated below as the Board may determine in each case:—

(a) In case of posts of Asstt. Engineers Class II:—

(i) By direct appointment.

(ii) By promotion as provided in Regulation 9.

(iii) By transfer of an officer already in the service of a Government or any other State Electricity Board or an Undertaking of Government.”

Regulation 9 provides for qualification for appointment by promotion and also provides *inter alia* the percentage of the number of cadre posts of Assistant Engineers Class II, which shall be filled

by promotion out of the different categories of Engineering subordinates. We are mainly concerned in this petition with Regulations Nos. 9(7) and 9(9) which are reproduced hereunder :

“9(7) 10 per cent of the cadre of Asstt. Engineers Class II shall be reserved for Departmental employees (technical Subordinates and Drawing Staff) who during the period of their service cleared Sections (A) and (B) of A.M.I.E. Examination or obtained Degree in Electrical Engineering provided they have put in a minimum of five years service in all (instead of six years now obtainable) (This shall take effect from 20th August, 1971).

Note : Persons promoted against the above reservation will remain on probation for a period of one year in the promoted rank.

9(9). 5 per cent of the posts of Asstt. Engineers Class II, Electrical/Mechanical, may be reserved for promotion from amongst the graduates/post-graduates in Engineering, working as subordinates in the Board with a minimum experience of 3 years in the P.S.E.B.”

(4) The learned counsel for the petitioners has contended that the Engineering Subordinates like the petitioners who have cleared Sections (A) and (B) of A.M.I.E. examination or who obtained degree in Electrical Engineering during the course of service are required to have a minimum experience of 5 years service before they can be considered for promotion to the post of Assistant Engineer Class II and for them 10 per cent of the posts of Assistant Engineers Class II have been reserved. As against this, those who are graduate/post-graduate in Engineering when they enter service of the respondent No. 1 as subordinate are required to have only 3 years minimum experience for their eligibility for promotion to the post of Assistant Engineer, Class II and a separate quota of 5 per cent of the posts of Assistant Engineers, Class II has been fixed for them. He contends that the petitioners as also respondents Nos. 2 to 9 had been in the employment of respondent No. 1 as Line Superintendents. They were borne on the same seniority list. The petitioners were far higher in the ladder of seniority than the respondent Nos. 2 to 9. By virtue of Regulation 9(9), respondents Nos. 2 to 9 with less experience as Line Superintendents having 3 years experience have been promoted to the posts of Assistant Engineers, Class II while the petitioners who hold the qualification equivalent to degree in Engineering having passed sections (A) and (B) examination of A.M.I.E. have not

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been considered for promotion. Without any rational basis a separate quota for their promotion to the post of Assistant Engineer, Class II, i.e., 10 per cent has been prescribed by Regulation 9(7) and a minimum of 5 years experience has been provided for them simply on the ground that they have acquired the qualification equivalent to degree in Engineering during the course of their service as Line Superintendents. In brief, his contention is, that on the date respondents Nos. 2 to 9 were promoted as Assistant Engineers, Class II, the petitioners as also respondents Nos. 2 to 9 were holding the requisite qualification of degree in Engineering or qualification of sections (A) and (B) of A.M.I.E. examination, all of them were working as Line Superintendents borne on one and the same seniority list, the petitioners indubitably being senior to respondents Nos. 2 to 9, the promotion of these respondents over the head of the petitioners was clearly discriminatory. The application of Regulation Nos. 9(7) and 9(9) to the same class of employees, that is, Line Superintendents holding qualification of degree in Engineering and fixing separate quota for them, they all being in the same class and prescribing separate minimum experience for promotion is discriminatory and violative of the rule of equality of opportunity in the matter of employment. He placed reliance on *Mohammad Shujat Ali and others vs. Union of India and others* (1), *Sukhdev Raj Sharma and others vs. Punjab State Electricity Board and others* (2), and *Vinod Kumar Virmani and others vs. The Punjab State Electricity Board and others* (3), in support of his contentions. It has been held in *Md. Shujat Ali's case* (supra) that to permit discrimination based on educational attainments not obliged by the nature of the duties of the higher post is to stifle the social thrust of the equality clause. A rule of promotion which, while conceding that non-graduate Supervisors are also fit to be promoted as Assistant Engineers, reserves a higher quota of vacancies for promotion for graduate Supervisors as against non-graduate supervisors, would clearly be calculated to destroy the guarantee of equal opportunity. In *Sukhdev Raj's case* (supra), a Division Bench of this Court following *Shujat Ali's case* (supra) held that after promotion of Lineman as Line Superintendents or selection of Line Superintendents directly, both diploma holder and non-diploma holder Line Superintendents were integrated in one cadre and same scale of pay and grades were

(1) 1974(2) S.L.R. 508.

(2) 1980(3) S.L.R. 75.

(3) 1981(2) S.L.R. 346.

available to them. To make promotion to the post of Junior Engineers, 67 per cent out of the diploma holder Line Superintendents and 33 per cent out of non-diploma holder Superintendents was violative of the rule of equality and has no reasonable nexus with the object sought to be achieved. Likewise, J. M. Tandon, J., in *Vinod Kumar's case* (supra) held that the Assistant Executive Engineers whether diploma holder or degree holder constitute one cadre having joint seniority. They perform the same functions and their emoluments are also the same. In the light of these fundamentals it is difficult to hold that the diploma holder and degree holder constitute two distinct categories. To provide for longer experience for diploma holders for the post of Assistant Executive Engineers and shorter experience for the degree holders for the same post for purposes of promotion as Executive Engineers is violative of Articles 14 and 16 of the Constitution of India. The learned counsel for the petitioners thus contends that the ratio of law laid down in the aforesaid judgments being fully applicable to the case of the petitioners *vis-a-vis* respondents Nos. 2 to 9, provisions of separate quota and longer experience for the petitioners *vis-a-vis* the degree holders who join the same service as the petitioners, is equally hit by the Articles 14 and 16 of the Constitution.

(5) Learned Council for the respondents on the other hand, have justified the separate provisions made for diploma holders who joined the subordinate services of the Board and acquired the qualification of degree or sections (A) and (B) of A.M.I.E. during service and the graduate Engineers who joined subordinate services for purposes of promotion to the post of Assistant Engineer, Class II. It is contended that the diploma holders who joined as Line Superintendents are not at the initial stage eligible to be appointed as Assistant Engineer, Class II. They acquired this qualification during the service. Therefore, the period of experience which is required to be gained by them for promotion is prescribed as 5 years because this is an incentive given to the employees of the Board to improve their qualifications. As against this, the graduate Engineers who joined the subordinate service of the Board are eligible for appointment as Assistant Engineer, Class II, right at the beginning. The Board has given incentive that they shall be considered for promotion when they have minimum experience of 3 years of the subordinate post. Placing reliance on *Ganga Ram and others vs. Union of India and others* (4), it is contended that respondent No. 1 is competent to lay down conditions

(4) 1970 S.L.R. 755.

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and other qualifications for securing best service. The reservation as well as the experience provided in Regulations 9(7) and 9(9) is after taking into consideration the various factors, such as the experience gained by the graduate subordinates and diploma holders and time taken by the diploma holders in acquiring qualifications equivalent to degree, etc.

(6) It has been further contended by the learned counsel for the respondents that the constitutional validity of rule 9(7) *vis-a-vis* rule 9(9) is to be tested not by comparison of the petitioners *vis-a-vis* respondents Nos. 2 to 9 but taking the different technical subordinates who become eligible for promotion as Assistant Engineers. It is contended that as defined in Rule 2(g), Engineering subordinates/ Technical subordinates/subordinate, class who are considered for promotion under Rules 9(7) and 9(9) are not only the Line Superintendents but include also Junior Engineers, Sub-station Operators, etc., and members of the Drawing Establishment. Any graduate engineer joining any of these services can be considered for promotion against 5 per cent of the posts of Assistant Engineer, Class II three years after he has worked on the subordinate post. Likewise, any diploma holder working against any of these posts who attains the qualifications of sections (A) and (B) of A.M.I.E. or degree in Engineering is considered against 10 per cent of the posts of Assistant Engineers, Class II after his having worked for five years on any of these posts. More weightage is given to those who are initially graduates in Engineering. This bears reasonable nexus to the object to be achieved.

(7) Learned counsel for the respondents have attempted to explain that diploma holders while working on subordinate posts can at any stage of their service attain the qualification of degree in Engineering and become eligible for promotion as Assistant Engineer, Class II. If for purposes of promotion as Assistant Engineer, Class II, the subordinates holding graduate qualification right at the initial stage are made to stand in queue and are not separately considered for promotion, graduate Engineers would not join the subordinate posts. This would deprive subordinate services of their valuable contribution. The graduate Engineers may prefer to remain unemployed and this might cause social problems and work as disincentive to those joining courses in degree in Engineering.

(8) Having considered the rival contention of the learned counsel, I find that by taking the solitary case of the petitioners, *vis-a-vis* respondents Nos. 2 to 9, Regulations 9(7) and 9(9) cannot be held to be

unconstitutional. The subordinates who come within the fold of these Regulations belong to different categories and are not confined to Line Superintendents alone. The basis to be taken into consideration to test the constitutional validity on the ground of discrimination of any statutory rule or legal provision have been culled out by I. S. Tiwana, J. in *B. S. Gill vs. The Punjab National Bank and another* (5), after relying on *The State of Jammu and Kashmir vs. Triloki Nath Khosa and others* (6), thus—

- “(i) It is always open to the Government or the employer to classify its employees as long as the classification is reasonable and has a nexus with the object sought to be achieved. In other words, a classification cannot be held to infringe the equality clause unless it is actually and palpably arbitrary. Discrimination is the essence of classification but it can be struck down as violative of constitutional guarantee of equality if it rests on an unreasonable basis.
- (ii) There is always a presumption in favour of the constitutionality of an enactment or a rule and the burden is on him who attacks it to show that there has been a clear transgression of the constitutional principles embodied in Article 16 of the Constitution.
- (iii) Classification or to classify is primarily for the Legislature or for the statutory authority charged with the duty of framing the terms and conditions of service; and if, looked at from the standpoint of the authority making it, the classification is found to rest on a reasonable basis it has to be upheld.
- (iv) Judicial scrutiny can, therefore, 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 of the basis of classification, for were such an inquiry permissible it would be open to the Courts to substitute their own judgment for that of the Legislature or the rule-making authority on the need to classify or the desirability of achieving a particular object.”

(5) 1985(1) S.L.R. 85.

(6) A.I.R. 1974, S.C. 1.

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when the above requisites are applied to the set of the Regulations in hand, I find that respondent No. 1, in its wisdom, has rightly provided separate reservation of posts for graduates who join subordinate services of the Board and the diploma holders who joined its service and attain the qualification of degree in Engineering in the course of service. As a natural corollary, there is variance in the requisite experience to be gained by them on the subordinate posts for their eligibility to promotion to the higher post of Assistant Engineer, Class II. It cannot be gainsaid that a Line Superintendent stands lower in rank to a Junior Engineer. Sub-station Operator is a class apart; likewise members of drawing establishment have nothing in common with any of the three classes of subordinate services aforementioned. All these have been clubbed together for consideration to the higher posts of Assistant Engineer, Class II. No one out of them can be treated senior to junior *vis-a-vis* the other, when they belong to these different categories of subordinates in the Board. No doubt, incentive is there for the diploma holders to attain degree in Engineering or its equivalent to make themselves eligible for promotion as Assistant Engineer, Class II but separate reservation and longer experience provided for them has a rational basis and cannot be considered to be arbitrary. It is worthwhile to mention here that Regulation 9(1) lays down that 22 per cent of the total number of posts of Assistant Engineers, Class II, shall be filled in by promotions out of Engineering subordinates with not less than 10 years service as Junior Engineer and those subordinates who are working as Line Superintendents, Sub-station Operators, Control Room Operators or on such other posts as may be declared by the Board to be equivalent to these posts, a minimum period of 2 years service of Junior Engineer is required for consideration for promotion against 22 per cent of the posts of Assistant Engineers, Class II so reserved. Besides, Engineering subordinates holding 3 or 4 years diploma in Electrical or Mechanical Engineering of Recognised Institute with 7 years minimum experience as Junior Engineer, and Line Superintendent, Sub-station Operator, Control Room Operator, etc., with minimum period of 2

years service as Junior Engineer are also to be considered against these 22 per cent posts so reserved. Thus the subordinate who attain the qualification of degree in Engineering in the course of service are made a class apart and get accelerated promotion with 5 years experience on the subordinate post without having worked as Junior Engineer against 10 per cent of the posts of Assistant Engineers, Class II separately reserved for them. They thus cannot make a grievance of the fact that 5 per cent posts have been separately reserved for graduate Engineers who join as subordinates and become eligible for promotion after 3 years of service.

The doctrine of equality cannot be applied in abstract. Its application takes into account practical differences and disparities which result in reasonable classifications on a rational basis. The Supreme Court summed up this aspect of law in *Shujat Ali's case* (supra); thus:

“The constitutional code of equality and equal opportunity, however, does not mean that the same laws must be applicable to all persons. It does not compel the State to run all its laws in the channels of general legislation. It recognises that having regard to differences and disparities which exist among men and things, they cannot all be treated alike by the application to them same laws. To recognise marked differences that exist in fact is living law; to disregard practical differences and concentrate on abstract identities is lifeless logic. The legislature must necessarily if it is to be effective at all in solving the manifold problems which continually come before it, enact special legislation directed towards specific ends and limited in its application to special classes of persons or things. Indeed, the greater part of all legislation is special, either in the extent to which it operates, or the objects sought to be attained by it.”

(9) I, therefore, find no merit in this petition which is hereby dismissed without any order as to costs.

H. S. B.