

V. J. THOMAS AND ORS.

v.

UNION OF INDIA AND ORS.

April 23, 1985

[D. A. DESAI AND RANGANATH MISRA, JJ.]

Civil Service—Telegraphic Engineering Service (Group B Posts) Recruitment Rules, 1981, Note to sub-clause (4) of Appendix 1—Constitutional validity of.

Clause (1) in Appendix I to the Telegraphic Engineering Service (Class II) Recruitment Rules, 1966 (1966 Rules, for short), provided that promotion of a Junior Engineer to the post of Assistant Engineer shall be entirely by promotion on the basis of selection of Junior Engineers through a qualifying departmental examination. Sub-clause (4) provided that the departmental qualifying examination shall be open to Junior Engineers who were recruited and absorbed in that grade against the vacancies of a year, ordinarily not less than five years prior to the year of announcement of the said examination. Sub-clause (4) of Appendix I to the Telegraphic Engineering Service (Group B Posts) Recruitment Rules, 1981 (1981 Rules, for short) which superseded the 1966 Rules envisaged a qualifying-cum-competitive examination for promotion to the post of Assistant Engineers, and the Note appended to sub-cl. (4) provides that for a period of 2 years after the commencement of the 1981 Rules, the first two examinations shall only be competitive for which the eligibility shall be restricted to only those officers who have already qualified in the Departmental Qualifying Examination held before the commencement of these Rules."

The appellants/Junior Engineers, who were recruited in the year 1973, challenged in the High Court the constitutionality of the Note appended to clause (4) of Appendix I to 1981 Rules on the ground that note 4 appended to clause I introduces discrimination in that Junior Engineers of 1972 and prior batches will alone be able, if they had cleared the qualifying examination, to take the competitive examination which would be held under 1981 Rules and as only the competitive examination was to be held, Junior Engineers of 1973 and subsequent batches, even if they have put in five years of qualifying service, would be denied an opportunity to take the examination, and that this is an invidious manner of denying them the opportunity to take the examination and thereby deny them equality of opportunity in the matter of promotion. The learned Single Judge held that the Note to clause (4) of Appendix I to the 1981 Rules was *ultra vires*. On appeal by the respondent Union of India, the Division Bench of the High Court held that the Note was not *ultra vires*.

A Dismissing the appeal by the appellants, the Court,

HELD : (1) By sheer passage of time, this appeal and even the main petition have become infructuous. Even in service jurisprudence the clock of history, sometimes, cannot be put back and even if it is found that the respondents have committed an error in implementing the statutory rules no relief can be granted. This is one such case. [885F-G]

B (2) If by 1982, nearly 4,000 Junior Engineers of pre-1973 batches had become eligible for taking competitive examination, the department would be perfectly justified in keeping the examination open only to persons who have put in such long service and leaving others to wait for the next examination. If for taking examination this aspect introduces classification, it is based on rational and intelligible differentia which has a nexus to the object sought to be achieved. By the note, for a period of two years only pre-1973 Junior Engineers who had cleared qualifying examination were given a chance to take competitive examination. If this introduces a classification, it is valid. It caters to a well-known situation in service jurisprudence that there must be some ratio of candidates to vacancies. And it is based on long experience as a rational basis for classification. Viewed from this angle, there is nothing in the policy underlying the note to rule (4) as being either discriminatory or arbitrary or denying equality of opportunity in the matter of promotion. It had the desired effect of not having a glut of Junior Engineers taking examination compared to fewer number of vacancies. Length and experience were given recognition by the note. The promotion can be thus by stages exposing the promotion avenue gradually to persons having longer experience. This seems to be the policy underlying the note and therefore there is nothing improper or unconstitutional in it. [888D-G]

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2183 of 1984.

From the Judgment and Order dated 28.3.1984 of the Kerala High Court in W. P. No. 131 of 1982.

F *M. K. Ramamurthi, V. J. Francis and N. M. Popli* for the Appellants.

G *G. D. Gupta, Ms. Halida Khatun, Subba Rao, R. N. Poddar, Ms. Subhadra, Ms. Alka, B. B. Tawakly and Mrs. Urmila Kapur* for the Respondents.

The Judgment of the Court was delivered by

H DESAI, J. Chagrined by the failure of the attempt to pressurise junior engineers to boycott the examination and further irritated by the holding of the examination the appellants have knocked at the

doors of this Court, putting forth utterly unsustainable contentions. A

Appellants are junior engineers in the Telegraph Wing of the Post & Telegraph Department. The next avenue of promotion for a Junior Engineer is the post of Assistant Engineer. Promotions were governed by Telegraphic Engineering Service (Class II) Recruitment Rules, 1966 ('1966 Rules' for short). By these rules Telegraphic Engineering Service (Class II) was formed. The Rules were to apply to posts as specified in Clause (1) of the Schedule which specified the post of Assistant Engineer and other equivalent posts having allied designations. Clause (1) in Appendix I to the 1966 Rules provides that recruitment to the service shall be entirely by promotion on the basis of selection of Junior Engineers through a qualifying departmental examination. An approved list shall be prepared by a duly constituted Departmental Promotion Committee, by selection from amongst the officials who qualify in the departmental examination. Sub-Clause (4) provided that the departmental qualifying examination shall be open to Junior Engineers who fulfill, amongst others, the condition specified therein. It reads as under: B
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"Those recruited and absorbed in that grade against the vacancies of a year, ordinarily, not less than five years prior to the year of announcement of the said examination." E

These rules were in force till superseded by Telegraphic Engineering Service (Group B Posts) Recruitment Rules, 1981 ('1981 Rules' for short) enacted in exercise of the power conferred by the proviso to Article 309 of the Constitution with effect from May 7, 1981. The controversy centers round the Note appended to sub-clause (4) of Appendix I of 1981 Rules which reads as under: F

"40 There shall be normally one examination, consisting of two parts called Qualifying-cum-Competitive Examination for promotion to the Service and shall be held at least once in a calendar year in the manner and in accordance with the syllabus prescribed in Appendix III to these rules. G

Note: After the commencement of these rules, the first two examinations shall only be competitive for which the eligibility shall be restricted to only those officers who have H

A already qualified in the Departmental Qualifying Examination held before the commencement of these rules.”

B Appellants were recruited as Junior Engineers in the year 1973. In other words, they belong to 1973 batch. Their grievance is that they have completed five years of service which conferred on them eligibility to appear at an examination which was to be held under 1966 Rules. 1966 Rules contemplated only one examination styled as Qualifying Departmental Examination. 1981 Rules which superseded 1966 Rules provide for one examination to be held in two parts namely Qualifying Examination and Competitive Examination. Before one is permitted to take a Competitive Examination he has to clear Qualifying Examination. In short, if one has not qualified at the Qualifying Examination he can not take the Competitive Examination. The appellants' grievance is that from 1973 to 1982 or to be specific after 1978 when they became eligible to take Qualifying Examination no Qualifying Examination was held till May 7, 1981 when 1966 Rules were superseded by 1981 Rules which introduced the concept of Competitive Examination which could alone be taken after in qualifying the Qualifying Examination and for a period of two years as per the Note appended to clause (4) Qualifying Examination was not to be held. The contention is that this is an invidious manner of denying them the opportunity to take the examination and thereby deny them equality of opportunity in the matter of promotion.

F Appellants accordingly filed O.P. No. 5714/81 under Art. 226 of the Constitution in the High Court of Kerala impugning the constitutionality of the Note appended to clause (4) of Appendix I to 1981 Rules. A learned Single Judge of the High Court, before whom the petition came up for hearing, held that the policy reflected in the Note appended to clause (4) of Appendix I to 1981 Rules is irrational as it has no reasonable connection with the needs of the office or the object sought to be attained. A direction was given that the Note shall be applied to the appellants. By the judgment rendered on March 9, 1982, the learned Judge gave a further direction that the department can either hold the over-due qualifying examination of 1980 or it can hold the qualifying-cum-competitive examination but it must be done forthwith so that the appellants, who were petitioners before the High Court may not be altogether

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excluded from the examination or examinations to be held.

The respondents to the writ petition, the Union of India and others filed Writ Appeal No. 131 of 1982 which came up before a Division Bench of the High Court. The Division Bench disagreed with the learned Single Judge observing that the Note to Rule 4 is not ultra-vires but this was subjects to the further directions given by the Division Bench. Taking note of the fact that in the meantime, a competitive examination was conducted, a direction was given that the result be published and the candidates who are declared successful in the examination should be appointed to 33-1/3% of the vacancies which arose between May 7, 1981 and May 7, 1982. A further direction was given that the second competitive examination contemplated in note to clause (4) must be conducted after a qualifying examination as envisaged in 1966 and/or 1981 Rules is conducted within a period of six months from the date of the judgment and all those examinees found declared successful at the qualifying examination be permitted to take the competitive examination which must be held within six months from the date of the result of the earlier examination. A direction was given that the candidates declared successful at the competitive examination be appointed to 33-1/3% quota of posts in the vacancies that arose between May 7, 1982 and May 7, 1983. There was some further directions which are hardly material for the present purpose. The writ appeal was disposed of in these terms. Original petitioners aggrieved by the decision of Division Bench have filed this appeal by special leave.

By sheer passage of time, this appeal and even the main petition have become infructuous. Even in service jurisprudence the clock of history, sometimes, cannot be put back and even if it is found that the respondents have committed an error in implementing the statutory rules no relief can be granted. This is one such case.

Appellants are Junior Engineers of the 1973 batch belonging to the service styled as Telegraphic Engineering Service (Class II) re-designated as Telegraphic Engineering Service (Group B Posts). Appellants as Junior Engineers can look forward to become Assistant Engineers by promotion. Indisputably, the recruitment to the post of Assistant Engineer in the service is by promotion from

A. the cadre of Junior Engineers. Under the 1966 Rules, Junior Engineers would become eligible for promotion on qualifying at a qualifying examination. The eligibility criterion for taking the examination was service of five years. Appellants who are Junior Engineers of 1973 batch became eligible for taking the examination that may be held in 1978 and onwards. Once in November, 1980 and another in January, 1981, programme of holding qualifying examination, where 1973 recruits could have appeared, was announced but subsequently cancelled and on May 7, 1981, 1966 Rules were superseded by 1981 Rules.

C. 1981 Rules envisaged a qualifying-cum-competitive examination. Eligibility criterion for taking competitive examination was successful clearance of qualifying examination. Therefore, unless a qualifying examination is held one would have no chance to take competitive examination. For 1973 recruits no qualifying examination is held. In 1981 Rules by a note appended to clause (4) of Appendix I, it was provided that the next two examinations under 1981 Rules would only be competitive examination. The sum total of these developments would certainly come in the way of appellants who are of 1973 batch from taking competitive examination and unless they qualify at that examination they would not be eligible for promotion to the post of Assistant Engineer.

E. In 1982 a competitive examination was held. Junior Engineers who were recruited prior to 1973 and who had qualified at the qualifying examination held in August 1980 could appear at this competitive examination. As Junior Engineers of 1973 and subsequent batches were not admitted to qualifying examination held in 1982 and as no qualifying examination was held in November 1980 and January 1981 and as two examinations under the 1981 Rules were only to be competitive examination, certainly they have been denied an opportunity to take the examination. Appellants who similarly situated persons tried extra-constitutional methods to pressurise the powers that be, from holding the qualifying examination and subsequently from declaring its results. This Court had to interpose to put down such pressure tactics by a mandatory direction given at an interim stage that the results of the examination already held must be declared. We are informed that the results have been declared.

Mrs. Urmila Kapoor, learned counsel represented one such successful candidate. Even though the results are declared, the follow-up action of promotion and appointment has not been taken. We propose to give appropriate directions in this matter.

In the backdrop of these facts, can it be said that the appellants have been victimised or subjected to discriminatory treatment or have been denied equality of opportunity in the matter of promotion. Appellants do not question the legality of rules which prescribe a qualifying-cum-competitive examination for becoming eligible for promotion to the post of Assistant Engineer. Their grievance is that note 4 appended to clause I introduces discrimination in that Junior Engineers of 1972 and prior batches will alone be able, if they had cleared the qualifying examination, to take the competitive examination which would be held under 1981 Rules and as only the competitive examination was to be held, Junior Engineers of 1973 and subsequent batches, even if they have put in five years of qualifying service, would be denied an opportunity to take the examination. The learned Single Judge of the High Court held the note to be ultra-vires. We find it difficult to agree with the view of the learned Single Judge in this behalf. However the Division Bench has clearly opined that the note is not ultra-vires.

Mr. Ramamurthy, learned counsel for the appellants contended that the note inheres the pernicious tendency of denying equality of opportunity in the matter of taking examination because it permits the department to provide a bottleneck coming in the way of Junior Engineers of the 1973 batch from taking the competitive examination by not holding the qualifying examination. We see nothing wrong in the policy disclosed by the note. It was pointed out that by 1982 nearly 7,000 Junior Engineers had become eligible for taking competitive examination. There was some dispute about the figure but we are prepared to accept the figure as given by Mr. Ramamurthy, learned counsel that 4,000 Junior Engineers of pre-1973 batch were qualified for taking competitive examination. Mr. Ramamurthy contended that if the eligibility criterion is five years of service no artificial road-block could be created so as to come in the way of such qualified Junior Engineers from taking the examination. As an additional string to the bow, it was submitted that if the purpose of holding a competitive examination is to select best all eligible persons must be permitted to take the examination and

A no artificial barrier need to be created. It was submitted that not holding of the qualifying examination creates such an impermissible road-block in the way of Junior Engineers of 1973 and subsequent batches from taking competitive examination.

B If by 1982, more than 4,000 Junior Engineers of pre-1973 batch had become eligible to take the examination and if the accumulated number of vacancies was around 300, it is difficult to accept the submission of Mr. Ramamurthy that everyone who has just put in five years of service must be permitted to take the examination. It is a known-principle of service jurisprudence that even though minimum eligibility criterion is fixed enabling one to take the examination yet the examination can be confined on a rational basis to recruits upto a certain number of years. That constitutes recognition of long experience and not permitting some irate junior to score a march. If by 1982, nearly 4,000 Junior Engineers of pre-1973 batches had become eligible for taking competitive examination, the department would be perfectly justified in keeping the examination open only to persons who have put in such long service and leaving others to wait for the next examination. If for taking examination this aspect introduces classification, it is based on rational and intelligible differentia which has a nexus to the object sought to be achieved. By the note, for a period of two years only pre-1973 Junior Engineers who had cleared qualifying examination were given a chance to take competitive examination. If this introduces a classification, it is valid. It caters to a well-known situation in service jurisprudence that there must be some ratio of candidates to vacancies. And it is based on long experience as a rational basis for classification. Viewed from this angle, we find nothing in the policy underlying the note to rule (4) as being either discriminatory or arbitrary or denying equality of opportunity in the matter of promotion. It had the desired effect of not having a glut of Junior Engineers taking examination compared to fewer number of vacancies. Length and experience were given recognition by the note. The promotion can be thus by stages exposing the promotional avenue gradually to persons having longer experience. This seems to be the policy underlying the note and we see nothing improper or unconstitutional in it.

H However the situation has materially changed. More than 4 years elapsed since the note has appeared. One examination is

a ready taken. Even Junior Engineers of 1973 batch have by now put in more than 12 years of service. Therefore [while upholding the note and consequently rejecting the appeal we propose to give the following directions to remove the irritants:

(i) Successful candidates of 1982 competitive examination, results of which have been declared pursuant to the directions of this Court, must be given promotion as Assistant Engineer within a period of two months from today.

(ii) The next qualifying examination permitting all those who are eligible under the rules to appear at it must be held latest by July 31, 1985 and the results be declared by September 30, 1985.

(iii) The next competitive examination must be held by December 31, 1985 and the results by declared by February 28, 1986.

(iv) Consequent promotions keeping in view the vacancies available must be given within a period of three months after the result is declared.

This appeal is disposed of in these terms with no order as to costs.

M. L. A.

Appeal dismissed.