

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: February 06, 2015*

+ **W.P.(C) 3149/2014**

S.P. KALA & ORS. Petitioners

Represented by: Mr.S.D.Raturi, Advocate

versus

UNION OF INDIA & ORS. Respondents

Represented by: Mr.Sanjay Jain, ASG instructed by
Mr.Rajesh Gogna, CGSC, Ms.Noor
Anand and Ms.Pallavi Shah,
Advocates for UOI
Ms.Divya Sunderrajan, Advocate
with Mr.Ankur Chhibber, Advocate
for R-5

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. Promotion to the post of Superintendent (Electrical and Mechanical) Grade II under the General Reserve Engineer Force was governed by the General Reserve Engineer Force Group 'C' & Group 'D' Recruitment Rules, 1982. As amended on May 20, 1996, appointment to the post of Superintendent (Electrical and Mechanical) Grade II was by promotion as under:-

“a) 60% vacancies by promotion of Charge Mechanic/Charge Electrician having recognized three years Diploma in Mechanical/Electrical/Automobile Engineering with 5 years regular service in the grading General Reserve

Engineer Course, failing which by promotion of personnel having qualification as at (b) and (c) below :

b) 30% vacancies by promotion of Charge Mechanic/Charge Electrician having passed matriculation or equivalent and possessing certificate in Mechanic Motor/Vehicle/Diesel/Fitter/Internal Combustion Engine/Electrical/Instruments Holder issued by Industrial Training Institute/Industrial Training Certificate/National Council of Technical Vocational Training/Defence Trade Certificate with 8 years regular service in the grade in General Reserve Engineer Force, failing which by promotion of personnel having qualification as at (a) above and (c) below :

(c) 10% vacancies by promotion of Group 'C' Employees in possession of Diploma Course in Electrical and Mechanical Engineering from college of Military Engineering Pune with 5 years regular service in the grade in General Reserve Engineer Force, failing which by promotion of personnel having qualifications as at (a) and (b) above."

2. The reason why 10% vacancies were required to be filled up by promotion from the eligible Group 'C' employees having diploma in Electrical and Mechanical Engineering from the college of Military Engineering Pune was that the said college was having a two years' diploma course. All other institutions were awarding diplomas in Electrical Mechanical Disciplines after three years of study.
3. The post of Superintendent (Electrical and Mechanical) was re-designated as that of Junior Engineer (Electrical and Mechanical).
4. On October 03, 2012, the rules of 1982 were superseded by the Ministry of Road Transport and Highways, Border Roads Development Board, General Reserve Engineer Force (Border Roads Organization), Junior Engineer (Electrical and Mechanical), Group 'B' Post, Recruitment Rules, 2012.

5. As per the amended rules, vide column 10, 75% posts had to be filled up by direct recruitment. 15% by deputation/re-employment of personnel serving in the armed forces and only 10% by promotion through a Limited Departmental Competitive Examination from the Group 'C' employees who had rendered 5 years' regulation service in the respective grades and possessed educational qualification and experience prescribed for direct recruits as under column 7 of the recruitment rules of the year 2012.

6. Under column 7, educational qualification prescribed was 3 years diploma in Engineering (Electrical or Mechanical) from a recognized university or institute.

7. Thus, Group 'C' employees under the respondents who had a diploma in Electrical and Mechanical Engineering from the college of Military Engineering at Pune were left without any promotional avenue, and this is their grievance in the writ petition.

8. Sh.Sanjay Jain learned Additional Solicitor General for the respondents drew our attention to a communication dated December 10, 2014 addressed to UPSC by the Cadre Controlling Ministry of GREF/BRO i.e. the Ministry of Road Transport and Highways. Recognizing the problem faced by the petitioners, concurrence of UPSC is sought to amend the recruitment rules of the year 2012 by inserting in column 7 of the rules the educational qualifications as under:-

“3 years Diploma in Mechanical/Automobile/Electrical or equivalent from a recognized Institution; or, Diploma Course in Electrical and Mechanical Engineering from College of Military Engineering, Pune”.

9. Learned counsel submits that the Government of India is conscious of the problem which has arisen and has even shown to us a draft of the proposed amendments desired to be incorporated in the recruitment rules of

the year 2012.

10. Sh.Sanjay Jain learned Additional Solicitor General states that to ensure that no prejudice would be caused to the petitioners, 23 posts of Junior Engineers would not be filled up because of the 220 vacancies, 23 (10%) would be available to be filled up by promotion based on LDCE as per the rules of the year 2012. The Limited Departmental Competitive Examination from the existing Group 'C' post employees would be held after the recruitment rules are amended so that apart from existing Group 'C' employees who have a three years diploma from a recognized university or institute, those who have a two years' diploma from the College of Military Engineering Pune would also be eligible.

11. Learned counsel for the petitioner had sought to urge that vacancies prior to the amendment made in the year 2012 should be directed to be filled up as per the previous rules in view of the settled legal position being that vacancies have to be filled up in the year of the vacancy from out of the eligible candidates of the year of the vacancy and as per the rules applicable at said point of time.

12. This argument of the petitioner overlooks that in law if a conscious decision is taken not to fill up vacancies till the rules are amended, it would be permissible for the appointing authority to defer filling up the vacancies till the rules are amended.

13. In respect of the latter position there are no pleadings in the writ petition concerning what were the vacancies available in the past. Notwithstanding there being a prayer that vacancies should be filled as per the year of the vacancy, we decline to grant said relief for the reason if the petitioners would have pleaded their case that vacancies existed prior to the rules being amended in the year 2012 with further pleadings that no DPCs

were held in the year of the vacancy the respondent would have had an opportunity to lay bare its defence and we do not know what it would have been. It is possible that the respondents could have pleaded a conscious decision taken not to fill up the vacancies pending amendment to the rules.

14. While dismissing the writ petition we would direct the respondents to ensure that the recruitment rules of the year 2012 are amended as per the proposal of the respondent within six months from today and action taken to fill up the 23 vacancies through the Limited Departmental Competitive Examination. We grant liberty to the petitioners to file a petition with respect to vacancies required to be filled up in the year of the vacancy prior to the amendments made in the year 2012 for the reason the second prayer made in the writ petition has been declined by us on account of lack of pleadings. If the petitioners can make out an actionable cause with respect to vacancies required to be filled up in the year of the vacancy as per recruitment rules in vogue in the year of the vacancy they would be at liberty to file a fresh petition on that cause.

15. Interim stay granted is vacated.

16. The writ petition is disposed of.

17. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

FEBRUARY 06, 2015

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