

PETITIONER:
V.K. SOOD

Vs.

RESPONDENT:
SECRETARY, CIVIL AVIATION AND ORS.

DATE OF JUDGMENT 14/05/1993

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
SINGH N.P. (J)

CITATION:
1993 AIR 2285 1993 SCR (3) 772
1993 SCC Supl. (3) 9 JT 1993 (3) 520
1993 SCALE (2) 921

ACT:
Constitution of India-Article 309 Proviso-Held, rules made under statutory-No motives can be attributed to Legislature in making law.

HEADNOTE:

The appellant had applied for recruitment as Examiner of Personnel in the Department of Civil Aviation, but was unsuccessful. He challenged the qualifications detailed in the advertisement as being discriminatory and tailor-made, with a view to exclude him. He contended that while he would have qualified under the 1969 Rules framed under the proviso to Article 309, the rules were amended in 1978 and 1989 with a view to deprive him of his chance.

He submitted that the court should regulate the prescription of higher qualifications and strict standards for navigators and pilots in view of the frequent air accidents.

Dismissing the appeal, this Court,

HELD: (1) In exercise of rule making power under Proviso to Art. 309, the President or authorised person is entitled to prescribe the method (of recruitment, educational and technical qualifications or conditions of service for appointment to an office or post under the State. These rules being statutory cannot be impeached as being tailor-made to suit specific individuals. (777-B)

B.s. Vadera v. Union of India & Ors., AIR 1969 SC 118; General manager, Southern Railway v. Rangachari [1962] 2 SCR 586 at 596; State of Mysore v. P.Narasim Rao [1968] 1 SCR 407 at 411; State of J & K v. Triloki Nath Khosa AIR 1974 SC 407 and State of Orissa v. N.N. Swamy [1977] 2 SCC 508, para 18, followed.

(2) No motives can be attributed to the Legislature in making the law. (777-C)

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(3) The prescribed qualifications and the suitability of the applicant would be tested by the UPSC. (777-C)

(4) It is for the rule making authority or for the Legislature to regulate the method of recruitment, prescribe qualifications etc. It is not for this court to trench into and prescribe qualifications, in particular where the matters are of a technical nature (777-F)

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2847 of 1993. From the Judgment and Order dated 31.8.1990 of the Delhi High Court in C.W. 2617 of 1989.

Yogeshwar Prasad, U.S Prasad, A.K. Lal Sinha, V.S. Pandey, Mrs. Nidhi Pandey and S.M. Tripathi for the Appellant.

V.C. Mahajan, and S.N. Terdol for the Respondents.

The Judgment of the Court was delivered by

K.RAMASWAMY, J. Special leave granted.

In response to the advertisement No. 33 dated August 19, 1989 the appellant had applied for recruitment to the post of Examiner of Personnel in the Department of Civil Aviation. He was unsuccessful in the selection. He later on challenged paras 3(i) and 3(ii) of the advertisement on the ground that the qualifications prescribed are discriminatory and were tailor made. He also contends that in 1969, for the said post the qualifications prescribed were 1st Class British or Indian Navigator or a British Flight Navigator licence with not less than 100 hours of air experience. The method of recruitment was direct recruitment and the age prescribed was 45 years relaxable to Government Servants. He claims that he is having the first Class licence with 100 hours of air navigation experience. With a view to deprive him of the change, the offending rules have been amended in 1978 substituting 300 hours of instructional flying and experience of not less than 2500 hours as Flight Navigator with category A and endorsement to fly VIPs and VVIPs on all routes in I.A.F. air crafts or should hold or have held or Indian Flight Navigator Licence. According to him this rule was made with a view to deprive him of his chance. The Delhi High Court dismissed the writ petition summarily. To appreciate the contention, it is necessary to read the rules. As per the 1969 rules 774

which are statutory made under proviso to Art. 309 of the Constitution, the method of recruitment with qualification prescribed thereafter are thus:

"Essential

(i) First Class British or Indian Navigators' Licence with not less than 100 hours air experience.

Desirable

(i) Degree in Mathematics or in Engineering.

(ii) Experience of Goedetic Surveying. In 1978 clause A was amended and in its place Clauses A(i) and (ii) were brought on the rules which reads thus :

"A(i) Experience of an minimum of 300 hours of instructional flying as qualified Navigation Instructor.

(ii) Experience of not less than 2500 hours as Flight Navioator with category "A" and endorsement to fly VIPs VVIPs on all routes in I.A.F. aircraft.

OR

"B" (i) Should hold or have held an Indian Flight Navigators' licence.

(ii) Experience of 2000 hours as Flight Navigator on international Routes.

Desirable

(i) Degree in Science with Physics and-Mathematics as subject of recognised

University or equivalent.

(ii) Experience as Navigation Instructor in a recognised Institution or in an Air Corporation.

(iii) Commercial Pilot's licence.

Method of recruitment is direct recruitment through the Union Public Service

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Commission. When the candidates in required number did not apply for, the rules have been further amended in 1989 with the following modified qualifications

Essential

1. 10+2 with Physics, Chemistry & Mathematics

2(i) should have held a senior Commercial Pilot's Licence.

(ii) should have flying experience of not less than 2500 hours on multiengine aircraft of which not less than 250 hours should be as pilot-in-command.

OR

(i) should hold or should have held an Indian Flight Navigator's licence.

(ii) should have not less than 500 hours experience as Flight Navigator.

Desirable

1. Degree in Science with Physics and Mathematics of a recognised University or its equivalent.

2. Experience as Navigation Instructor in a recognised institute/Flying Club or in an Airline.

Method of recruitment-by direct recruitment failing which by transfer or deputation including short term contract).

Age: 50 years.

It is not in dispute that these rules have been made by the President exercising the power under proviso to Art. 309 of the Constitution which read thus :

"309. Recruitment and conditions of service of persons serving the Union or a State-Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:

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Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State to make rules regulating the recruitment, and the conditions of service of persons appointed, to such service and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this Article, and any rules so made shall have effect subject to the provisions of any such Act."

It would thus clear that the rules made by the President or authorised person under proviso to Art. 309 are subject to any law made by the Parliament and the power includes rules regulating the recruitment and the conditions of service or post. They are statutory and legislative in character. The

statutory rules thus made are subject to the law that may be made by the Parliament.

In *B.S. Vadera v. Union of India & Ors.* reported in AIR 1969 SC 118, this Court held that the rules made under the proviso to Art. 309 of the Constitution shall have effect subject to the provisions of the Act i.e. if the appropriate legislature has passed an Act, In its absence the rules made by the president or by such person as he may direct are to have full effect.

In *The General Manager, Southern Railway v. Rangachari* reported in [1962] 2 SCR 586 at 596 another Constitution Bench held that equality of opportunity need not be confused with absolute equality as such. What is guaranteed is the equality of opportunity and nothing more. Article 16(1) or 16(2) does not prohibit the prescription of reasonable rules for selection to any employment or appointment to any office or post. Any provision as to the qualifications for the employment or appointment to an office or post reasonably fixed and applicable to all citizens would certainly be consistent with the doctrine of the equality of opportunity. In *State of Mysore, & Anr. v. P. Narasing Rao* report in [1968] 1 SCR 407 at 411 this Court held that the provisions of Art. 14 or Art. 16 do not exclude the laying down of selective tests, nor do they preclude the Government from laying down qualifications for the post in question. Such qualifications need not be only technical but they can also be general qualifications relating to the suitability of the candidate for such service as such. The same was the view in another Constitution Bench decision reported in *The State of Jammu and Kashmir v. Triloki Nath Khosa & Ors.* AIR 1974 SC 1. In *State of Orissa & Anr. v. N.N. Swamy & Ors.* reported in [1977] 1 2 SCC 508 in paragraph 18, this Court held that

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the eligibility must not be confused with the suitability of the candidate for appointment.

Thus it would be clear that, in the exercise of the rule making power, the president or authorised person is entitled to prescribe method of recruitment, qualifications both educational as well as technical for appointment or conditions of service to an office or a post under the State. The rules thus having been made in exercise of the power under proviso to Art. 309 of the Constitution, being Statutory, cannot be impeached on the ground that the authorities have prescribed tailor made qualifications to suit the stated individuals whose names have been mentioned in the appeal. Suffice to state that it is settled law that no motives can be attributed to the Legislature in making the law. The rules prescribed qualifications for eligibility and the suitability of the appellant would be tested by the Union Public Service Commission.

It is next contended that several persons whose names have been copiously mentioned in the appeal were not qualified to hold the post of examiner and they were not capable even to set the test papers to the examiners nor capable to evaluate the papers. We are not called upon to decide the legality of their appointments nor their credentials in this appeal as that question does not arise nor are they before the court. It is next contended by Mr. Yogeshwar Prasad, the learned Senior Counsel that on account of inefficiency in the pilots' operational capability repeatedly air accidents have been occurring endangering the lives of innocent travellers and this Court should regulate the prescription of higher qualifications and strict standard to the navigators or to the pilots be instead on. We are afraid

that we cannot enter into nor undertake the responsibility in that behalf'. It is for the expert body and this Court does not have the assistance of experts. Moreover it is for the rule making authority or for the legislature to regulate the method of recruitment, prescribe qualifications etc. It is open to the President or the authorized person to undertake such exercise and that necessary tests should be conducted by U.P.S.C. before giving, the certificates to them. This is not the province of this Court to trench into and prescribe qualifications in particular when the matters are of the technical nature. It is stated in the counter affidavit that due to advancement of technology of the flight aviations the navigators are no longer required and therefore they are not coming in large number. Despite the repeated advertisements no suitable candidate is coming forward, We do not go into fault aspect also and it is not necessary for the purpose of this case. Suffice to state that pursuant to another advertisement made in July 1992, the appellant is stated to have admittedly applied for and appeared before the

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U.P.S.C. for selection and that he is awaiting the result thereof. Under these circumstances, we do not find any substance in this appeal. The appeal is accordingly dismissed. No costs.

U. R.

Appeal dismissed.

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