

PETITIONER:
N. SURESH NATHAN AND ANR.

Vs.

RESPONDENT:
UNION OF INDIA AND ORS.

DATE OF JUDGMENT 22/11/1991

BENCH:
VERMA, JAGDISH SARAN (J)
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VERMA, JAGDISH SARAN (J)
SHARMA, L.M. (J)
AGRAWAL, S.C. (J)

CITATION:
1992 AIR 564 1991 SCR Supl. (2) 423
1992 SCC Supl. (1) 584 JT 1991 (5) 354
1991 SCALE (2) 1106

ACT:
Civil Services:
Recruitment Rules for Assistant Engineers in the Public Works Department, Pondicherry:
Rules 7 and 11--Promotion of Degree-holder Junior Engineers with three years' service in the grade---Period of three years--Whether to commence from the date of obtaining Degree by Diploma-holders.

HEADNOTE:
The respondents, Diploma-holder Junior Engineers in the Public Works Department, Pondicherry, approached the Central Administrative Tribunal, with the plea that the period of service rendered by them before they obtained the Degree should be included for reckoning the period of three years' service prescribed in the Recruitment Rules for promotion to the post of Assistant Engineer in the category of those possessing Degree with three years' service and if the earlier period was so included, they would be eligible for promotion. However, Degree-holders opposed the respondents' plea contending that the period of three years prescribed in the Rules was subsequent to the date of obtaining the Degree.

The Tribunal upheld the respondents' claim and directed that they should be considered for promotion on par with the other Degree-holder Junior Engineers, taking due note of their total length of service rendered in the grade of Junior Engineer.
Hence the appeal, by the Special Leave, by the Degree holders.

Allowing the appeal, this Court,

HELD:1.1 The rules must be construed to mean that the three years' service in the grade of a Degree-holder for the purpose of Rule 11 of the Recruitment Rules, for promotion to the post of Assistant Engineer in the Public Works Department Pondicherry, is

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three years from the date of obtaining the Degree by a Diplomaholder. This is in conformity with the past practice followed consistently. The Tribunal was not justified in

taking the contrary view and unsettling the settled practice in the Department. [427 D]

1.2 Rule 7 of the Recruitment Rules lays down the qualifications for direct recruitment from the two sources, namely, Degreeholders and Diploma-holders with three years' professional experience. Thus, a Degree is equated to Diploma with three years' professional experience. Rule 11 provides for recruitment by promotion from the grade of Section Officers, now called Junior Engineers. There are two categories provided therein, viz., (1) Degreeholder Junior Engineers with three years' service in the grade and (2) Diploma-holder Junior Engineers with six years' service in the grade, the provision being for 50% from each category. This matches with Rule 7 wherein a Degree is equated with Diploma with three years' professional experience. In the first category meant for Degree-holders, it is also provided that if Degree-holders with three years' service in the grade are not available in sufficient number, then Diploma-holders with six years' service in the grade may be considered in the category of Degree-holders also for the 50% vacancies meant for them. The entire scheme, therefore, does indicate that the period of three years' service in the grade required for Degree-holders according to Rule 11 as the qualification for promotion in that category must mean three years' service in the grade as a Degree-holder and, therefore, that period of three years can commence only from the date of obtaining the Degree and not earlier. The service in the grade as a Diploma-holder prior to obtaining the Degree cannot be counted as service in the grade with a Degree for the purpose of three years' service as a Degree-holder. [427 G-H, 428 A-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4542 1991.

From the Judgment and Order dated 9.1. 1990 of the Central Administrative Tribunal, Madras in O.A. No. 552 of 1989.

P.P.Rao, Narsimha P.S. and Ms. Vijaylakshmi Menon for the Appellants.

Santosh Hegde, A.S. Nambiar, Ms. Sangeeta Garg, P.P.Tripathi, Mrs. Shanta Vasudevan, P.K. Manohar and K.R. Choudhary for the Respondents.

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The Judgment of the Court was delivered by

VERMA, J. The Recruitment Rules for the post of Assistant Engineer in the Public Works Department, Pondicherry, prescribe the educational and other qualifications for appointment by direct recruitment and promotion. For direct recruits, the qualification prescribed is a Degree in Civil Engineering of a recognised University or Diploma in Civil Engineering from a recognised institution with three years' professional experience. For appointment by promotion of Section Officers now called Junior Engineers, the qualification prescribed is as under:-

"1. Section Officers possessing a recognised Degree in Civil Engineering or equivalent with three years' service in the grade failing which Section Officers holding Diploma in Civil Engineering with six years' service in the grade - 50%.

2. Section Officers possessing a recognised

Diploma in Civil Engineering with six years' service in the grade - 50%".

The dispute in the present case is whether a Diploma-holder Junior Engineer who obtains a Degree while in service becomes eligible for appointment as Assistant Engineer by promotion on completion of three years' service including therein the period of service prior to obtaining the Degree or the three years' service as a Degree-holder for this purpose is to be reckoned from the date he obtains the Degree. The Diploma-holders contend that they are entitled to include the earlier period and would be eligible for promotion in this category on obtaining the Degree if the total period of service is three years inclusive of the earlier period. The Degreeholders contest this position and contend to the contrary. According to the Degree-holders, these are two distinct categories. In the first category are Degree-holders with three years' service in the grade as Degree-holders, the period of three years being subsequent to the date of obtaining the Degree as in the case of the Junior Engineers who join the service with a Degree; and the other category is of Diploma-holders with six years' experience.

The Diploma-holders went to the Central Administrative Tribunal with this contention and the Tribunal has upheld their claim and directed as under:

"In the light of the above, we hold that the applicants are entitled to the relief asked for and accordingly we direct the respondents to consider them for promotion to the post of 426

Assistant Engineer on par with the other Degree holding Junior Engineers, taking due note of their total length of service rendered in the grade of Junior Engineer. Such a consideration should be along side other Junior Engineers who might have acquired the necessary Degree qualification earlier than the applicants, while holding the post of Junior Engineer. For this purpose, the first three respondents shall take necessary action to convene a review D.P.C. and pass orders on the basis of the recommendations of that D.P.C. within a period of three months from the date of receipt of a copy of this order.

The application is allowed as above".

Hence this petition for grant of special leave by the Degree-holders. Leave is granted.

In our opinion, this appeal has to be allowed. There is sufficient material including the admission of respondents Diploma-holders that the practice followed in the Department for a long time was that in the case of Diploma-holder Junior Engineers who obtained the Degree during service, the period of three years' service in the grade for eligibility for promotion as Degree-holders commenced from the date of obtaining the Degree and the earlier period of service as Diploma-holders was not counted for this purpose. This earlier practice was clearly admitted by the respondents Diploma-holders in para 5 of their application made to the Tribunal at page 115 of the paper book. This also appears to be the view of the Union Public Service Commission contained in their letter dated December 6, 1968 extracted at pages 99-100 of the paper book in the counter affidavit of respondents 1 to 3. The real question, therefore, is whether the construction made of this provision in the rules on which the past practice extending over a long period is

based is untenable to require upsetting it. If the past practice is based on one of the possible constructions which can be made of the rules then upsetting the same now would not be appropriate. It is in this perspective that the question raised has to be determined.

The Recruitment Rules for the post of Assistant Engineers in the P.W.D. (Annexure-C) are at pages 57 to 59 of the paper book. Rule 7 lays down the qualifications for direct recruitment from the two sources, namely, Degree-holders and Diploma-holders with three years' professional experience. In other words, a Degree is equated to Diploma with three years' professional experience. Rule 11 provides for recruitment by promotion from the grade of Section Officers now called Junior Engineers. There are two categories provided therein - one is of Degree-holder Junior Engi-
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neers with three years' service in the grade and the other is of Diplomaholder Junior Engineers with six years' service in the grade, the provision being for 50% from each category. This matches with Rule 7 wherein a Degree is equated with Diploma with three years professional experience. In the first category meant for Degree-holders, it is also provided that if Degree-holders with three years' service in the grade are not available in sufficient number, then Diploma-holders with six years' service in the grade may be considered in the category of Degree-holders also for the 50% vacancies meant for them. The entire scheme, therefore, does indicate that the period of three years' service in the grade required for Degree-holders according to Rule 11 as the qualification for promotion in that category must mean three years' service in the grade as a Degreeholder and, therefore, that period of three years can commence only from the date of obtaining the Degree and not earlier. The service in the grade as a Diploma-holder prior to obtaining the Degree cannot be counted as service in the grade with a Degree for the purpose of three years' service as a Degreeholder. The only question before us is of the construction of the provision and not of the validity thereof and, therefore, we are only required to construe the meaning of the provision. In our opinion, the contention of the appellants Degree-holders that the rules must be construed to mean that the three years' service in the grade of a Degreeholder for the purpose of Rule 11 is three years from the date of obtaining the Degree is quite tenable and commends to us being in conformity with the past practice followed consistently. It has also been so understood by all concerned till the raising of the present controversy recently by the respondents. The tribunal was, therefore, not justified in taking the contrary view and unsettling the settled practice in the Department.

Consequently, the appeal is allowed. The impugned order of the Tribunal is set aside resulting in dismissal of the respondents' application made in the Tribunal. The Department will now consider the question of promotion in accordance with this decision. No costs.

N.P.V.
allowed.

Appeal al-