

BRIEF NOTE ON THE JUDGEMENT OF THE HON'BLE CAT, PB, NEW DELHI IN  
O.A NO.1947/2010 UMESH CHANDRA TYAGI VS. GOVERNMENT OF NCT OF  
DELHI

In the judgement dated 15.3.2011, the Principal Bench, CAT, New Delhi, in O.A No.1947/2010 Umesh Chandra Tyagi Vs. Government of NCT of Delhi, has held that challenge to the recruitment rule cannot be sustained in law simply on the ground that it does not suit one individual.

2. Citing the decision of the Hon'ble Supreme Court in P.U Joshi & Others Vs. Accountant General, Ahmedabad & Others reported in 2003 (2) Supreme Court Cases 632, the Hon'ble Tribunal observed that it is not within the domain of the courts to decide how the recruitment rules should be framed. It is the job of the Department or the U.P.S.C to decide how best the RRs can serve the purpose of the Department.

3. The Applicant in the above case is a Graduate in Engineering, working as Assistant Engineer (Electrical & Mechanical) with the Delhi Jal Board (DJB). He has challenged the Notification dated 21.12.2009 issued by the Government of NCT of Delhi in which the recruitment rule of the post of Executive Engineer (E&M) of DJB was published. In the recruitment rules for the post of Executive Engineer (E&M) notified on 21.12.2009, following categories of officials were made eligible for promotion to the post of Executive Engineer (E&M) (pre-revised pay scale Rs.10000-15200/-):-

- i) Assistant Engineer (E&M) in the pre-revised pay scale of Rs.6500-10500/- with 8 years of regular service and possessing a Degree in Electrical or Mechanical Engineering; and
- ii) Assistant Engineer (E&M) with ten years of regular service and possessing a Diploma in Electrical or Mechanical Engineering

(contd...2/-)

4. The applicant had challenged the Notification dated 21.12.09 on various grounds, including, inter-alia, that the RRs confer equality to Diploma and Degree holders in the matter of promotion from the Grade of Assistant Engineer (E&M), which has put the Degree holders in a disadvantageous position.

5. The applicant had prayed that (i) the recruitment rules approved by the Commission and notified in the Gazette dated 21.12.2009 may be quashed and set aside: and (ii) direct the UPSC to concur in with a revised proposal subsequently sent by DJB in which separate promotion quota for Degree holders and Diploma holders was proposed.

6. While dismissing the O.A, the Ld. CAT relied on the judgement of the Hon'ble Supreme Court in the P.U Joshi & Others Vs. Accountant General, Ahmedabad & Others, in which it was , inter-alia, observed that determination of conditions of service, alteration thereof by amending rules, constitution, classification or abolition of posts, cadres or categories of service, amalgamation, bifurcation of departments, reconstitution, restructuring of the pattern etc. all pertain to executive policy and within the exclusive discretion of the State, subject to limitations and restrictions envisaged in the Constitution. Government servants have a right only to safeguard the rights and benefits already earned, acquired or accrued, but they cannot challenge the authority of the State to make amendments and alterations in the recruitment rules.

7. A copy of the judgement dated 15.3.2011 of the Hon'ble CAT, PB, New Delhi in the above case is annexed.

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

OA No. 1947/2010

New Delhi, the 15th day of March, 2011.

Honble Mr. L.K. Joshi, Vice Chairman (A)  
Honble Mrs. Meera Chhibber, Member (J)

Umesh Chandra  
S/o Late Shri K.C. Sharma  
R/o Flat No. 1466, Sector-A, Pocket-B,  
Vasant Kunj, New Delhi. ..Applicant

By Advocate: Shri Aman Walesha with Shri Rakesh Tikku, Sr. Counsel.

Versus

1. Government of NCT of Delhi  
Through Principal Secretary,  
Department of Urban Development,  
10th Level, C Wing, Delhi Secretariat,  
I.P. Estate, New Delhi-110 002.
2. Delhi Jal Board  
Through its Chief Executive Officer,  
Varunalaya, Phase-II, Karol Bagh,  
New Delhi.
3. Union Public Service Commission,  
Through its Secretary,  
Shahjahan Road,  
New Delhi. ..Respondents

By Advocate: Shri Nishikant Pandey for respondent No.2.

Shri Rajat Rai Dua for respondent 1.

Mrs. Amita Kalkal with Shri Naresh Kaushik for  
Respondent No.3.

ORDER

Hon'ble Mrs. Meera Chhibber, Member (J)

Applicant has challenged Notification dated 21.12.2009 whereby Delhi Jal Board Recruitment Regulation, 2009 for the post of Executive Engineer (Electrical & Mechanical) have been notified.

2. It is submitted by the applicant he joined Delhi Jal Board in 1983 as Junior Engineer and was promoted as Assistant Engineer (Electrical & Mechanical) (hereinafter referred to as E&M) in 2001 on current duty charge. He had completed 4 years degree course in the Electrical Stream in 1994.

3. As per 1985 Recruitment Rules, a candidate having degree in Electrical or Mechanical was eligible for promotion to the post of Executive Engineer. However, these rules have been amended in 2009 by the respondent No.2, i.e., Delhi Jal Board only on the directions of UPSC without taking concurrence from Government of NCT of Delhi even though Department of Urban Development is the administrative Ministry of Delhi Jal Board, therefore, its approval was necessary.

4. Being aggrieved, applicant had given representation at the stage of proposed regulations itself but neither his representation was considered nor any reply was given to the applicant before amending the rules, thus principles of natural justice have been violated.

5. It is submitted by the learned counsel for the applicant that in the meeting held on 7.10.2009 between Delhi Jal Board and Government of NCT of Delhi, Delhi Jal Board was advised to recast the proposed RRs by incorporating ratio of 80%:20% between Degree Holders and Diploma Holders and to effect certain changes in order to bring uniformity amongst different agencies of the Government of Delhi. The changes were sent also to the UPSC for seeking their concurrence. However, UPSC advised DJB to first notify the approved RRs and then seek modification, if necessary. It was on the basis of this advice that the RRs have been notified in 2009 without taking into account the RRs of other agencies viz. CPWD and NDMC where there is definite quota rule between Degree holders and Diploma holders for promotion to the post of Ex. Engineer (E&M). He has thus prayed that the O.A. may be allowed.

6. M.A.No.1586/2010 was filed by Diploma holders Asstt. Engineers for being impleaded as party. They have stated that one Shri Subhash Chand, Diploma holder, A.E. had filed O.A. No.1692/2009 seeking the following relief :-

“To direct the Respondent No.1 and 2 to constitute and notify after seeking clearance from concerned authorities including UPSC and Hon’ble Lt. Governor of Delhi immediately the RRs for the post of E.E (E&M) in such a fashion thereby according equal opportunities to A.E (E&M) diploma holders as well as A.E (E&M) degree holders with varying experience so as to accord promotional avenues to the applicant and other employees who are diploma holders.”

7. The said O.A. was disposed of with following directions :-

“Mr. R.R. Dua, counsel representing the applicant, at this stage confines the relief, out of reliefs enumerated in the relevant paragraph, only with regard to direction to be issued to the respondents to finalize amendment in the rules, process of which has already started in June, 2007. It would appear from the records of the case, as per averments made in the Original Application, that the respondents are indeed considering amendment to the rules. One of the proposals in amending the rules is to give some percentage i.e. 33% promotion to the applicant and other similarly situate persons holding the post of Assistant Engineer to the post of Executive Engineer, and in the meanwhile, other persons, who are holding degree as compared to the applicant holding diploma have been promoted. It is urged that delay in finalizing the rules would be prejudicial to the applicant inasmuch as, if the rules are amended to give some percentage in promotion to the employees as the applicant, who are diploma holders, many posts may not be left out for promotion to them.

Considering the totality of facts and circumstances of the case, we direct the Chief Executive Officer, Delhi Jal Board, Varunalya, Phase-II, Karol Bagh, New Delhi, second respondent herein, to complete the exercise of amending the rules in the manner deemed just and proper, as expeditiously as possible and preferably within a period of three months from the date of receipt of certified copy of this order. We are conscious that without calling upon the respondents we would not have passed the above directions, but in view of the directions given above, there would be perhaps no need to have their

reply as surely, the amendment in the rules is in contemplation by the respondents and, as mentioned above, the process of which has already started in June, 2007. However, since we have passed the order aforesaid without calling upon the respondents to show cause, they are at liberty to approach this Tribunal, if they so desire.”

8. Since directions were not complied with, Shri Subhash Chand had filed CP No.525/2009. It was during the pendency of the CP that the RRs were finally notified on 21.12.2009, as such CP was dropped on 23.12.2009.

9. They have further stated that they are eligible as per the amended rules to be considered whereas applicants in O.A. are not even eligible because they have been regularised as A.E (E&M) only on 02.03.2009, therefore, they are interested parties. Their interests would be adversely affected in case the OA is allowed. Moreover, they are on the verge of retirement, therefore, their request for impleadment may be allowed. Accordingly, MA 1586/2010 filed for impleadment was allowed.

10. UPSC has clarified that one of the mandated functions of the Union Public Service Commission (hereinafter referred to as ‘Commission’) is to be consulted in the framing of the recruitment rules for various civil posts/services under the Central Government/Union Territories as well as certain local bodies and organizations (including Delhi Jal Board (hereinafter referred to as ‘DJB’) by virtue of power vested in it under Article 320 and 321 of the Constitution of India. In terms of Section 54 (a) & (b) of the Delhi Water Board Act, 1998, the DJB is required to frame the Recruitment Rules for the posts of Executive Engineer (Electrical & Mechanical) under the Board in consultation with the Commission. Section 54(2) of the said Act further provides that in case of any difference of opinion between the Commission and the DJB on any matter, the DJB shall refer the matter to the Central Government and the decision of the Central Government thereon shall be final.

11. The provisions in the recruitment rules are prescribed by the Commission as per the requirements specified by the user Organisation and in conformity with the executive instructions and guidelines/norms laid down by the Department of Personnel and Training, Government of India. The Commission’s role is advisory in this respect as it scrutinizes proposals received from Ministry/Departments and tenders its advice keeping in view the extant guidelines.

12. They have explained that on 30.01.2008, a proposal for amending the recruitment rules for the post of Executive Engineer (Electrical & Mechanical) in the pre-revised scale of pay of Rs.1000-15200/- was received by the respondent Commission from the DJB. The DJB proposed to adopt the method of recruitment in vogue in their Civil Engineering Department where Assistant Engineer (Civil) with 8 years of regular service and possessing a Degree in Civil Engineering or with ten years of regular service and holding a Diploma in Civil Engineering (Civil) were eligible for promotion to the post of Executive Engineer (Civil). The recruitment rules of Executive Engineer (E&M) in force in DJB at that time allowed promotion of only those Assistant Engineers who possessed a Degree in Electrical or Mechanical Engineering.

13. After examining the proposal made by DJB, the respondent Commission concurred the proposal vide letter dated 09.05.2008 and Delhi Jal Board was requested to notify the recruitment rules as approved by the Commission within 10 weeks as required under the Ministry of Home Affairs (Department of Personnel & Administrative Reforms) OM No. AB-14017/12/87-Estt (RR) dated 18.3.1988. However, without notifying and giving effect to the recruitment rules approved by the Commission, the DJB again approached the Commission vide their letter dated 5th March, 2009 with a request to modify the approved version of the Recruitment Rules by fixing a quota of 66.67% for promotion of Assistant Engineer (E&M) with 7 years of regular service and having a Degree in Electrical/Mechanical Engineering and 33.33% for Assistant Engineer (E&M) with 9 years of regular service and having a Diploma in Electrical/Mechanical Engineering in view of the representations received from large number of Assistant Engineers (E&M) conveying their grievance in respect to the amendments approved by the Commission in May, 2008. No other reason, apart from the

representations made by the Assistant Engineers (E&M), was cited by the DJB while proposing further modification in the Recruitment Rules for the post of Executive Engineer (E&M).

14. While the proposal made by DJB again was being examined by the respondent Commission, the DJB brought to its notice, vide their letter dated 20th July, 2009, the following directions contained in the judgment order 1.7.209 of the Hon'ble CAT, PB, New Delhi in OA No.1962/2009:-

“considering the totality of the facts and circumstances of the case, we direct the Chief Executive Officer, Delhi Jal Board, Varunalaya Phase-II, Karol Bagh, New Delhi, Second respondent herein to complete the exercise of amending the recruitment rules in the manner deemed just and proper as expeditiously as possible and preferably within a period of 3 months from the date of receipt of the certified copy of this order”.

15. In view of above, the Commission requested the DJB to notify the approved rules first and thereafter approach the Commission for further compliance with the Hon'ble CAT's directions to complete the process of amending the RRs of Executive Engineer (E&M) within 3 months was an overwhelming priority for the DJB, it is preposterous on the part of the applicant to say that the Notification dated 21.12.2009 was issued by the DJB at the behest of the respondent Commission. They have thus prayed that the OA may be dismissed.

16. Delhi Jal Board in their counter affidavit have stated that respondents have right to amend the service conditions as well as the RRs for better administration of the organization and same cannot be challenged simply on the ground that it does not suit some persons or it affects their promotional avenues.

17. Moreover, similar OA wherein Notification dated 21.12.2009 was challenged and was relied upon by the applicant herein has been dismissed as withdrawn on 13.8.2010, therefore, this OA may also be dismissed.

18. They have also explained that the expeditious amendment was necessitated in view of the direction of this Hon'ble Tribunal vide order dated 1.7.2009 in OA No.1692/2009 to complete the exercise of amending the rules within 3 months. Seniority and promotion is strictly and mandatorily governed by the DOP&T guidelines. Earlier the RRS was based on the 3rd Central Pay Commission which necessitated amendment after the implementation of the 5th Central Pay Commission in view of DOP&T's OM dated 25.5.1998 which mandates that all the ministries/departments to take steps to amend the existing Service Rules/Recruitment Rules to prescribe eligibility conditions with reference to the revised pay scale. Accordingly the RRs was amended and the eligibility condition for promotion from Assistant Engineer in the pay scale of Rs.6500-15200 to Executive Engineer in the pay scale of Rs.10,000-15200 was fixed at 8 years for Degree Holders while 10 years for Diploma Holders. It is not binding to fix the quota amongst the Diploma Holder and Degree Holder when both are discharging similar duties and responsibilities. In any case, the ratio as advised by the respondent No.1 was forwarded to the Respondent No.3 Commission who desired that the Delhi Jal Board should first notify the RRs which are already approved. Therefore, in view of the insistence of the Respondent No.3/UPSC to notify the RRs already approved coupled with the fact that this Honble Tribunal vide order dated 1.7.2009 in OA No. 1692/2009 had also directed to complete the exercise of amending the rules within 3 months, the RRs for the post of Executive Engineer (E&M) was notified by the Department of Urban Development, GNCTD in its present form. Answering respondent is fully empowered to frame its Regulation under clause (m) of the Section 109 read with Sections 7 and 51 of Delhi Water Board Act, 1998 (Delhi Act No.4 of 1998), being an autonomous body and respondent No.3 is also fully empowered under Section 53-54 of the Delhi Water Board Act, 1998 for conveying the concurrence to the answering respondent. There is no provision to get the prior approval of the respondent No.1 before framing/amending its regulation in terms of Delhi Water Board Act, 1998. Respondent No.1 is only nodal agency to notify the RRs as approved by the Delhi Water Board and concurred by the UPSC.

19. They have further stated that the representation of the applicant was examined and due weightage has been given to the Degree holder Assistant Engineer (E&M) by keeping their eligibility service at 8 years for promotion in comparison of 10 years for the Diploma Holders. They have further submitted that the Recruitment Rules are statutory in nature and are framed according to the requirement of job profile. There is no rule/policy to follow the practice of other departments. Different Government departments frame their RRs as per their own requirements.

20. They have also explained that the applicant is very junior to the Diploma Holder Assistant Engineer (E&M). He has been promoted as Assistant Engineer in the year 2009 only whereas the Diploma holders are working as Assistant Engineer (E&M) on regular basis since 1989 onwards. They have thus prayed that the O.A. may be dismissed and interim order may be vacated.

21. We have heard all the parties and perused the pleadings also. On 11.6.2001 this Tribunal had directed the respondents not to act on the impugned Notification dated 21.12.2009. Only two contentions were raised by the learned counsel for the applicant (a) RR couldn't have been amended by Delhi Jal Board without taking concurrence of Govt. of NCT of Delhi and that applicant who is a Degree holder has been put to an inferior and disadvantageous position as he has been brought at par with Diploma holder A.E.

22. As far as 1st point is concerned, it would be relevant to refer to Section 53, 54 and 109 ( 2) (m) of the Delhi Water Board Act, 1998, which read as under:-

“53. Consultation with Union Public Service Commission - No appointment to any post above the rank of Asst. Engineer shall be made except in consultation with the Union Public Service Commission (hereinafter referred to as “the commission”) Provided that no such consultation with the Commission shall be necessary in regard to the selection for appointment of any person.

(a) In a temporary capacity for a period not-exceeding one year;

(b) To a post when at the time of such appointment a person to be appointed thereto possesses the qualifications prescribed for such post and is in the service of the central government or of the government in the same or a higher scale of pay”.

54. (1) The commission may make regulations for the following matters namely: -

a. The procedure to be followed by the commission in advertising posts, inviting applications, scrutinizing the same and selecting candidates for interview.

b. The procedure to be followed by the commission for selecting candidates for appointment and by the Board for consultation with the commission.

c. Any other matter which is incidental to, or necessary for, the purpose of consultation with the commission,

(2) In the case of any difference of opinion between the commission and the Board on any matter, the Board shall refer the matter to the central government and the decision of the central government thereon shall be final.

109. (1) The Board may make regulations concerning any matter which is to be or may be prescribed by regulations under this Act or in respect of which this Act makes no provision or makes insufficient provision and such provision is, in the opinion of the Board, necessary for the implementation of this Act.

(2) Without prejudice to the generality of its power under sub-section (1), the Board may make regulations regarding the following matters, namely -

(m) Terms and conditions of service of officers and employees of the Board”.

23. From above, it is clear that it is the UPS Commission which is empowered to make the regulations and in case there is any difference of opinion between Delhi Jal Board and the UPSC, the matter has to be referred to the Central Government.

24. No rule could be produced by the counsel for the applicant in spite of opportunity given that the rules could not have been amended without taking concurrence of the Government of NCT of Delhi. On the contrary, respondents have specifically stated that there is no provision to get the prior approval of Government of NCT of Delhi. They have explained that Government of NCT of Delhi is only the Nodal Ministry for notifying the RRs as approved by DJB and concurred by the UPSC

25. Even otherwise, respondents have explained this amendment became necessary in view of the recommendations made by the VI<sup>th</sup> CPC and O.M. dated 25.5.1998 issued by DOP&T.

26. They have further explained that there was already a direction issued by the Tribunal in one of the cases to notify the amended RRs within the stipulated period, therefore, no further time could have been spent in processing further amendments. It was in view of the directions given by the Tribunal that UPSC had directed the DJB to issue the amended RRs as already concurred. In view of the facts as explained above, we do not find merit in the first contention. The same is accordingly rejected.

27. Counsel for the applicant next contended that he has been degraded by comparing himself with a Diploma Holder. This contention is also baseless because as far as Degree Holders are concerned, they have to have 8 years regular service as AE for becoming eligible for promotion the post of Executive Engineer whereas Diploma Holder AE would become eligible only after 10 years of regular service so the Degree Holders are on a better footing. It is thus wrong to suggest that they have been degraded. After all, if respondents felt Diploma Holder AE should also be made eligible for further promotion, Degree Holder AEs cannot have any valid objection to it. In any case it is not within the domain of courts to decide how RRs should be framed. It is the job of the Department or the UPSC to decide how best RRs can serve the purpose of the department.

28. In P.U.Joshi and others Vs. Accountant General, Ahmedabad and others reported in 2003 (2) Supreme Court Cases 632 the Honble Supreme Court has, inter alia, observed that determination of conditions of service, alteration thereof by amending rules, constitution, classification or abolition of posts, cadres or categories of service, amalgamation, bifurcation of departments, reconstitution, restructuring of the pattern etc. all pertain to executive policy and within exclusive discretion of the State, subject to limitations and restrictions envisaged in the Constitution. Government servants have only right to safeguarding rights or benefits already earned, acquired or accrued but they cannot challenge the authority of State to make such amendments or alterations in rules.

29. Challenge to RRs cannot be sustained in law simply because it does not suit one individual. We, therefore, find no merit in the second contention also. No other point was argued. The OA is accordingly dismissed being devoid of any merit. No costs.

(MRS. MEERA CHHIBBER)  
MEMBER (J)

(L.K. JOSHI)  
VICE CHAIRMAN(A)