

United We Stand

**UNION OF AKASHVANI & DOORDARSHAN (PRASAR BHARATI)
ENGINEERING EMPLOYEES (UADEE)**

(Registered under Trade Union Act, 1926; Regn. No. 5135)

Head Quarter : C-4 D/ 81 B, Janakpuri, New Delhi-110 058

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Ref. No. 06/2006-2007

Date: 26.02.2007

The Chief Executive Officer,
Prasar Bharati (Broadcasting Corporation of India),
2nd Floor, PTI Building,
Sansad Marg, New Delhi.

Sub: Promotion of Diploma holder Assistant Engineers to JTS of IBES consequent upon judgments of Hon'ble Supreme Court and Cuttack Bench of CAT.

Ref: (1) Hon'ble Supreme Court's judgment dated 05.12.2003 in SLP (Civil) No. 21643/2003 (Annexure-1).

(2). Hon'ble Cuttack Bench of CAT's judgment dated 22.03.2004 in Original Application No. 538/1999 (Annexure-2).

Sir,

The amendment to Clause (b) of Sub-rule (2) of Rule (7) of IBES, Rules, 1971, Introduced through gazette notification dated 23.03.1989, had rendered all diploma/vB.Sc. degree holder Assistant Engineers (AE) ineligible for promotion to JTS of IBES. The amendment has been contested in a dozen of Benches of Central Administrative Tribunals by the affected Assistant Engineers. In one of such OAs filed by Shri R.C.Nadir & others in Lucknow Bench of CAT, honourable CAT has quashed the amendment made by the government through gazette notification dated 23.03.1989. Union of India, then filed writ petition in Lucknow Bench of Allahabad High Court which set aside the judgment of CAT. Thereafter, the applicants in the OA filed SLP(C) No. 21643/2003 in Supreme Court against the judgment of the High Court to revive and sustain the judgment of CAT which had quashed the amendment made by the govt. in 1989 in the IBES Rules, 1971. Thus, the issue before Hon'ble Supreme Court was to adjudicate the validity of amendment to Clause (b) of Sub-rule (2) of Rule (7) of IBES Rules, 1971 introduced in 1989.

Hon'ble Supreme Court, while deciding the SLP(C) No. 21643/2003, did not go in the merits of the case to distinguish it from T.N.Khosa's case which had entirely different facts and circumstances. Maintaining constitutional propriety, the apex court restrained from interfering in the "*statutory rules*" framed by the government under the proviso to *Article 309* of the Constitution of India, being the matter of policy. Hon'ble apex court, in its judgment dated 05.12.2003, however expressed its opinion in unambiguous terms on the need to amend the said Provisions of IBES Rules for removal of total impediment in the promotion of diploma/B.Sc. degree holder Assistant Engineers to JTS level....

“.....though the grievance may seem to be genuine but the remedy if any, would lie with the department since they pertain to matters of policy and it is for the department to consider such claims appropriately. We leave liberty with the petitioners or their representative bodies to pursue the matter before the appropriate authorities....” -(Annexure-1)

While deciding the later OA filed by Shri U.K.Sahu & others in Cuttack Bench of CAT, Hon'ble CAT, fully relying and citing the judgment of Hon'ble Supreme Court in SLP(C) No.21643/2003, passed an order on 22.03.2004 on the government to take appropriate and effective decision in the matter of promotion of applicants from Assistant Engineer to JTS of IBES. The order of Hon'ble CAT,Cuttack is annexed herewith and marked as Annexure-2.

Sir, several representations were made in the past to DG,AIR and your predecessor in the light of these judgments, but *status quo* remained unchanged due to a strong lobby in DG:AIR which was obdurate for the favour of a handful number of degree holders in Assistant Engineer's cadre. We wish to bring forth following facts in the matter for your kind perusal:

1. That, the cadre of Engineering Assistant is a single and undivided cadre to which degree and diploma holders get direct recruitment through the same recruitment method and without any quota or discrimination on the basis of qualification.
2. That, all EAs are equal in all respect whatsoever like duties and responsibilities, pay and allowances.
3. That, All EAs are put in the same seniority list and promoted to the next cadre of SEA on *seniority-cum-fitness* basis without any consideration of qualification.
4. That, All SEAs are put in a single seniority list and promoted to the next grade of Assistant Engineer without any discrimination on the ground of qualification.
5. That, the amendment in IBES, Rules, 1971 through notification dated 23.03.1989, envisages the promotion of only those Assistant Engineers to JTS of IBES who have qualification of degree in Engineering or equivalent. The amendment is thus opposed to and *ultra-vires* of provisions of Constitution of India as it discriminates between the equals.
6. That, with the amendment in IBES, Rules, 1971 through notification dated 23.03.1989, the prospect of diploma holder Assistant Engineers is completely sealed. The diploma holder AEs are now destined to languish in the same cadre for more than 25 years prior to their superannuation.
7. That, The diploma holders form 85% of each of the cadres of EA,SEA and AE. They are totally dispirited and demoralized because of total impediment in their career progression which as a consequence, will have adverse effect on their efficiency and the efficiency of the organization. The promotions in the course of service have been accepted as an external prop with a view to instill motivation in the employees which works as the real catalyst in the development of inner urge to put in their best.

8. That, the bulk of posts i.e. 75% of vacancies in AE cadre are filled through rigorous Limited Departmental Competitive Examination (LDCE) of SEAs, irrespective of their degree or diploma qualifications on *selection-cum-merit* basis since 1985. The results of the various LDCEs since 1985 are testimony to the fact that the diploma/ B.Sc. holder SEAs not only out peer but also outnumber the engineering degree holder SEAs in the examinations. After the amendment in IBES Rules,1971, the diploma/ B.Sc. degree holder AEs are completely barred from the next promotion to JTS ,albeit, they might have excelled in the LDCE even in their first attempt and have impeccable service records. On the other hand, the degree holder AEs who had obtained lower positions in the merit list of the LDCE or had cleared the LDCE in subsequent attempts after failing in previous attempts, or became AE under 25% *seniority-cum-fitness* quota without passing LDCE, are made eligible for promotion to JTS. The amendment is thus ridiculous, anomalous and grossly unfair since more meritorious in the LDCE and service records is totally barred from promotion in lack of mere academic qualification (degree in engineering) acquired years back.
9. That, none of the 4 high level committees i.e. S.P.Bhatikar Committee(1989), U.C.Aggrawal Committee(1993), A.B.Mathur Committee(1999) and P. K. Bansal Committee(2001) constituted by the government to suggest promotional avenues for diploma/ B.Sc. Assistant Engineers have recommended for complete bar on their promotion to JTS. The Committee headed by Shri P.K.Bansal, Chief Engineer (Development),Akashvani has recommended for promotion of all the AEs directly to STS of IBES, irrespective of their academic qualifications.
10. That, promotion from Assistant Engineer to STS (Executive Engineer) is available for diploma holder AEs in Delhi Development Authority, CPWD and CCW of AIR & Doordarshan , with or without the direction of courts, on the criteria of differential length of service for Direct Recruit (AEE), Degree holder AEs and the Diploma holder AEs..
11. That, the 132 diploma holder Assistant Engineers promoted to JTS and further to STS of IBES under un-amended IBES Rules, 1971 have been working in the department as efficiently as the degree holder JTS/ STS.
12. That, it has, on more than one occasion, been held by the apex court that the framing of recruitment rules and service conditions being matter of policy, the government is fully competent to change the qualifications and the eligibility conditions for a post from time to time. While commenting on T.N.Khosa's case in *Roop Chand Adlakha v/s DDA (1989 Supplementary (1) SCC 116)*, Hon'ble Supreme Court, in their judgment dated 16.09.1988, held that "***the choice of the recruitment policy is not limited to only 2 choices i.e. either recognize diploma holders as "eligible" for promotion or wholly exclude them from as "not-eligible". It was held that government may formulate a policy prescribing different length of service experience for degree and diploma holders conditioning their eligibility for promotion to a post.***"

:4:

Sir, I therefore earnestly request you that to comply with Hon'ble Supreme Court's and the Cuttack Bench of CAT's judgments, and also to resurrect the sinking morale and motivation of diploma/ B.Sc. holder Assistant Engineers, the IBES Rules be appropriately amended to pay way for promotion of both the degree and the diploma holder Assistant Engineers.

I sincerely hope that in light of above mentioned facts, the diploma holder Assistant Engineers shall this time find favour at your hands and the discriminatory and detrimental amendment of 1989 to the IBES Rules, 1971 introduced through the gazette notification dated 23.03.1989 will appropriately be amended to make the engineering degree and diploma/B.Sc. holder Assistant Engineers eligible for promotion to the JTS/STS of IBES. We shall be obliged to have a meeting in the matter for more explanations.

With deep regards,

Yours sincerely,

[Ram Shanker]
General Secretary
Mobile: 9868 541097

Encl: Aneexure-1 (Supreme Court's judgment dated 05.12.2003)
Anexure-2 (CAT,Cuttack's judgment dated 22.03.2004)

Copy to: **PS to Director General, Akashvani, Akashvani Bhawan, Sansad Marg, New Delhi.**

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

732546

Petition(s) for Special Leave to Appeal (Civil) No.21643/2003

(From the judgement and order dated 24/10/2003 in WP 251/03
of The HIGH COURT OF Allahabad at LUCKNOW)

ROMESH CHANDER NADIR AND ANR.

Petitioner (s)

V E R S U S

UNION OF INDIA AND ORS.

Respondent (s)

(With prayer for interim relief)

Date : 05/12/2003 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DORAISWAMY RAJU
HON'BLE MR. JUSTICE ARIJIT PASAYAT

Certified to be true copy

K. M. M. M.
Assistant Registrar (Judl.)

2-12-03
Supreme Court of India

For Petitioner (s) Mr. Ranjit Kumar, Sr. Adv.
Ms. Binu Tamta, Adv.

For Respondent (s) Mr. Rajeev Sharma, Adv.

UPON hearing counsel the Court made the following

O R D E R

Heard the learned senior counsel for the petitioners.

In the light of the view taken by this Court in The State of Jammu and Kashmir vs. Shri Triloki Nath Khosa and others (1974 (1) SCC 19) no exception could be taken to the reasons assigned to reject the challenge to the amendment in question.

The learned senior counsel for the petitioners by relying upon some of the subsequent judgments contends that unless some relief in some other form to prevent the total stagnation of the claims for promotion, for the rest of their service career, is devised for mitigating such grievance there will be total impediment for any promotion resulting in an irreparable scar in the rest of

their service career. Though the grievance may seem to be genuine but the remedy, if any, would lie with the department since they pertain to matters of policy and it is for the department to consider such claims appropriately. We leave liberty with the petitioners or their representative bodies to pursue the matter before the appropriate authorities. With these liberties left with the petitioners and the rejection of the SLP may not stand in their way in this regard this special leave petition shall stand rejected.

Dasha Lal
6/12/03

(D.L.Chugh)
Court Master

AD
6/12/03
(Vijay Aggarwal)
Court Master

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6/12



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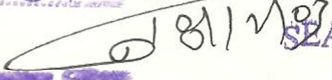
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