

K.K.Dixit & Ors vs Rajasthan Housing Board & Ors on 5 September, 2014

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Author: Shiva Kirti Singh

Bench: Shiva Kirti Singh, Fakkir Mohamed Ibrahim Kalifulla

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 8479-8482 OF 2014
[Arising out of S.L.P.(C)Nos.19220-19223 of 2007]

K.K. Dixit & Ors. etc.

....Appellants

Versus

Rajasthan Housing Board & Anr. etc.

....Respondents

J U D G M E N T

SHIVA KIRTI SINGH, J.

Leave granted.

These appeals are further additions to the long list of service matters decided by High Courts and this Court resolving disputes between “Diploma Holder” and “Degree Holder” Engineers in the matter of eligibility for further promotion. All the appellants belonged to the category of degree holder engineers appointed as Project Engineers (Junior) in the service of Rajasthan Housing Board (for sake of brevity referred to as ‘the Board’). The contesting respondents also held the same post but initially only as diploma holder who later acquired qualification of AMIE which is admittedly equivalent to degree in Engineering.

Since all the appeals arise out of a common judgment passed by a Division Bench of the Rajasthan High Court at Jaipur Bench and the facts as well as issues of law are common, all the appeals have been heard together and are being disposed of by this common judgment.

At the outset, two important issues raised by way of questions of law in these appeals need to be noticed so that subsequent discussion of facts and law may be of help in answering both the issues/questions in controversy. The issues are :

Whether the Division Bench of the High Court has erred in holding that the Diploma Holder Project Engineers (Junior) upon acquiring degree / qualification of 'AMIE' would be entitled to count their experience of service prior to acquisition of such qualification for the purpose of eligibility of 3 years total experience of service for promotion to the post of Project Engineer (Sr.) in the quota fixed for Degree Holders? Whether the Division Bench has erred in setting aside the direction of the learned Single Judge for preparing two separate seniority lists for Diploma Holders and Degree Holders for the purpose of promotion in their respective quotas?

In exercise of the powers conferred by Section 53 of the Rajasthan Housing Board Act, the Board made Rajasthan Housing Board Employees Conditions of Recruitment and Promotion Regulations, 1976 (hereinafter referred to as 'the Regulations'). Chapter II of the Regulations contains Clauses (6) to (10) providing for Conditions of Recruitment and Promotion. Clause (6) provides the manner of filling up the posts created from time to time. In the context of absorption of employees working in the Board on deputation, the word 'category' has been used in the context of posts created and vacant. Clause (7) provides as follows :

"(7) The ratio of direct recruitment and promotion of employees in the service of the Board and qualification and experience required for various posts will be in accordance with the 'Schedule' appended to these Regulations." Clause (9)(A) of the Regulations pertains to promotion and provides as under :

"(9)(A) Promotion In respect of first promotion to higher post, promotion of eligible person shall be made on the basis of seniority-cum-merit. Second promotion shall be made on the basis of merit and seniority-cum-merit in the promotion of 50:50." Clause (9)(B) provides that "seniority lists for each category of employees will be prepared and maintained." Clause (10) pertains to 'seniority' and reads thus:

"(10) Seniority :

Amongst the persons recruited in the same year, the promotees will rank senior to those who will be appointed by direct recruitment. Amongst the promotees those who are appointed on the basis of seniority cum merit with rank senior to those who are appointed on the basis of merit with due regard to seniority. The inter se seniority of those appointed on the basis of merit will be in accordance with their relative seniority in the lower cadre."

6. Chapter III of the Regulations contains Miscellaneous Provisions and includes Clause (12) which empowers the Board to issue general instructions not inconsistent

with the Act and the Rules and Regulations made thereunder for the purpose of removing doubt, lacuna, inconsistency or anomaly which may arise in interpreting the Regulations or in giving effect to them or in putting them to application. The Regulations contain various schedules as appendices. In the case at hand “Schedule Technical” alone is of significance and that shows the post of Project Engineer (Junior) at the entry level. 97% of this post is to be filled by direct recruitment and 3% by Board employees. The basic qualification required is a Degree or Diploma in Civil Engineering. The next post in hierarchy, promotion to which is under issue, is Project Engineer (Senior). The source of recruitment for this post is 50% by direct recruitment, 20% by promotion of degree holder and 30% by promotion of diploma holder. For direct recruitment, the essential qualification is a Degree in Civil Engineering in First Division with at least one year’s experience in design and construction of building.

The 50% posts to be filled up by promotion of Project Engineer (Junior) require further minimum experience and qualification as laid down in Column 6 of the Schedule Technical. Since the contesting respondents have laid a great amount of emphasis on several words prescribing the minimum experience and qualification required for promotion, the provisions of relevant Column No.6 are extracted hereinbelow :

”Post to be filled in by promotion from amongst the P.E.Jr.’s who are degree holders with 3 years total experience of service.

Post to be filled in by promotion from P.E.Jr.’s who are diploma holders with 7 years total experience of service. (137.20) Govt. approved Dt.25.2.2000 w.e.f. 9.12.87 Or Qualification recognized by the State Govt. to be equivalent to Degree in Civil Engineering.”

7. There are four higher posts in the hierarchy above the post of Project Engineer (Senior). All of them are required to be filled up only by promotion and require a Degree in Engineering in Civil, except the post of Resident Engineer just above that of Project Engineer (Senior) which requires filling up “75% by degree holder and 25% by diploma holder by granting promotion to eligible Project Engineer (Senior)”. Column 6 of the Schedule Technical provides minimum experience and qualification for promotion to the post of Resident Engineer as (i) Degree Holder with 5 years’ experience and (ii) Diploma Holder with 13 years experience. A diploma holder, as noticed earlier, is not qualified for any further promotion.

8. From the facts available on record it appears that initially only diploma holders were appointed under the Regulations to the post of Project Engineer (Junior) and on their acquiring the certificate of AMIE while in service they were to be given benefit of their past service as diploma holders in the ratio of 3:7, i.e., 3 years of their service with AMIE was treated as 7 years of service as diploma holder for the purpose of eligibility for promotion. This benefit of past service in the prescribed ratio was on account of a Resolution of the Board dated 17.4.1979 which records that “the present practice of placing the Diploma Holder Engineers who have cleared AMIE examination in the bottom of the

list of Degree Holders, is appropriate. But it has also been decided that their experience should be determinant in the ratio of 3:7 (3 years degree holders equal to 7 years diploma holders)". Some diploma holders who were initially appointed as Project Engineers (Junior) purely on ad-hoc basis were not only regularized by the Board vide Order dated 18.5.1987 but they were also given benefit of their past service like the regularly appointed diploma holders and together with the latter category they also gained ad- hoc promotion to the post of Project Engineer (Senior) in the year 1992. In the meantime, pursuant to an advertisement of March 1988 issued by the Board, the appellants as degree holders applied and on selection, were appointed to the post of Project Engineer (Junior) on 18.3.1989. It appears that a common Provisional Seniority List of Project Engineer (Junior) including diploma, AMIE and degree holders had been issued on 11.8.1989 and although appellants had objected to the said seniority list, promotions were granted by the Board to few diploma holders on ad-hoc basis in January and February 1992, as noted above.

9. Appellants – K.K. Dixit and some others preferred writ petition challenging the Resolution of the Board dated 17.4.1979, the joint Provisional Seniority List dated 11.8.1989 and ad-hoc promotion of the Diploma Holders with AMIE. The writ petition was allowed by a learned Single Judge on 7.7.1993 after deciding only the issue relating to counting of experience and holding that only such service could count for eligibility for promotion which was rendered by the ad-hoc Project Engineer (Junior) after regularization. It was held that their experience as ad-hoc appointees shall not be taken into consideration.

10. The writ petitioners preferred a review petition praying for passing of judgment on the other two grievances raised in the writ petition. The first grievance was that seniority list of degree holders and diploma holders on the post of Project Engineer (Junior) should be prepared separately. The other grievance was that in view of the Resolution No.6 dated 17.4.1979 those diploma holders who passed AMIE examination while in service, should be placed below the degree holders of that year. Both the aforesaid claims or grievances were based upon the plea that as per recruitment rules there is separate quota for the degree holders and also a separate quota for diploma holders. The learned Single Judge, by Order dated 21.9.1993, allowed the review petition to the extent of directing that the Board shall prepare separate seniority lists for degree holders and diploma holders Project Engineer (Junior) and such of the Project Engineers (Junior) who have passed AMIE examination while in service, shall be placed lowest in that year in the seniority list of degree holder Project Engineers (Junior).

11. Aggrieved by the judgment dated 07.07.1993 passed by the learned Single Judge in the writ petition and also against order dated 21.9.1993 passed by the learned Single Judge in Review Petition, some of the affected diploma holders preferred D.B. Spl. Appeal (C) No.67 of 1993 and 64 of 1993 respectively. Five other matters including D.B. Civil Writ Petition Nos.20 of 1993 and 7063 of 1993 were also tagged with the Special Appeals. They were heard together and partly allowed by a common judgment dated 25.5.2007 which is under challenge in these appeals preferred by those who had entered Board's service as degree holders on the post of Project Engineers (Junior). Since these appeals arise from only four out of seven matters decided by the Division Bench of the High Court, it is not necessary to indicate details of the remaining three matters which were also disposed of by the common order under appeal.

12. By the judgment under appeal, the High Court has decided three questions under controversy between the parties. The High Court has summarized the three questions thus :

“1. Whether the Project Engineer (Junior) who were initially appointed on ad-hoc/officiating/urgent temporary basis, upon being screened and made members of service with reference to clause 3 of the Note below ‘Schedule Technical’ of the Rajasthan Housing Board Employees Condition of Recruitment and Promotion Regulations, 1976 are entitled to count the period of service rendered in that capacity for the purpose of seniority and experience for eligibility of promotion to the post of Project Engineer (Senior) as provided for in column No.6 of Sr. No.2 in the ‘Schedule Technical’ of Regulations of 1976?

2. Whether the Project Engineers (Junior) recruited on the basis of diploma, upon their acquiring the qualification of ‘AMIE’, are entitled to count their experience of service prior to acquisition of such qualification for the purpose of eligibility of ‘three years total experience of service’ for promotion to the post of Project Engineer (Senior) as provided for in column No.6 of Sr. No.2 of ‘Schedule Technical’ of Regulations of 1976?

3. Whether according to the Regulations of 1976 the diploma holders Project Engineers (Junior) on acquiring the qualification of ‘AMIE’ are liable to be placed in the seniority list of Project Engineers (Junior) below degree holders available as on the date of their acquiring such qualification and further whether according to the Regulations of 1976, a separate seniority list of Project Engineers (Junior) based on their educational qualification, viz.-degree and diploma, is required to be maintained?” On behalf of the appellants, learned counsel Ms. Shobha led the arguments.

It was categorical stand of the appellants that since Question no.1 was decided against the ad-hoc/officiating category of Project Engineer (Junior) and no one from that category has preferred any appeal, hence answer to that question has attained finality. Learned counsel for the appellants has seriously assailed the findings given against the appellants in respect of Question nos.2 and 3.

According to the High Court the Resolution of the Board dated 17.04.1979 affirming the alleged practice of placing the diploma holder engineers who have cleared AMIE examination in the bottom of the list of degree holders and giving them benefit of their experience in service as diploma holders only in the ratio of 3:7 is neither justified by past practice nor by the Regulations. It was also held that the learned Single Judge erred in directing the Board to prepare two separate seniority lists. Thus the Division Bench answered Questions nos.2 and 3 against the appellants by reversing the effect of order passed by the learned Single Judge in review and also by granting the benefit of entire past service once a diploma holder cleared AMIE examination.

Before deciding the two main issues raised on behalf of the appellants as noticed earlier, it may be useful to note certain subsequent developments which are not in dispute. Pursuant to the impugned

order of the High Court the Board issued a provisional common seniority list on 30.06.2007 and withdrew the Resolution dated 17.04.1979 on 06.07.2007. A final common seniority list was issued on 27.08.2007 and according to appellants it was prepared without deciding their objections. Provisional promotions have been granted to several persons to the post of Project Engineer (Senior) who cleared AMIE examination while in service and were allegedly much junior to the appellants with respect to the date of acquiring eligibility for such promotions. The Special Leave Petitions giving rise to the present appeals were preferred in this Court on 25.09.2007 or soon thereafter. While issuing notice in one such matter, on 26.10.2007 this Court directed that no coercive steps shall be taken in the meantime. On 19.07.2010, 200 posts of Project Engineer (Junior) were upgraded to the post of Project Engineer (Senior) and 31 such posts were abolished. As a consequence of upgradation, on 12.08.2010, 168 persons holding the post of Project Engineer (Junior) came to acquire the upgraded post of Project Engineer (Senior).

On account of the present dispute raised by appellants K.K. Dixit and some others through writ petitions filed in the year 1992, inter alia, against ad-hoc promotions, the Board has granted only ad-hoc promotions even subsequently and hence resolution of the dispute appears to be necessary to enable regularization of those promotions in accordance with law and the Regulations and also for making regular promotions to the next higher post of Resident Engineer. The issues under consideration relate only to eligibility for promotion against respective quotas and not to the Regulations providing for seniority and promotion.

The issues relating to Question no.3 decided by the High Court are not very contentious and hence those are taken up first. The learned Single Judge directed for preparation of two seniority lists, one for the degree holders and another for diploma holders only with a view to give effect to the Resolution of the Board dated 17.04.1979 without undertaking the necessary exercise for finding out whether the Resolution was in consonance or in conflict with the Regulations. Such exercise was undertaken by the Division Bench of the High Court which did not approve of the Resolution and held that it was contrary to the Regulations. It also rightly noticed that the earlier seniority list was only a common seniority list and there was no past practice of having any seniority lists.

Learned counsel for the appellants did not dispute the relevant facts noticed by the High Court on this issue. The High Court noticed that Schedule Technical and the Regulations provide for only one source of recruitment for the post of Project Engineer (Junior) that is by direct recruitment and the same selection process was applicable to both, the degree holders and the diploma holders and, therefore, only on account of difference in their academic qualification they could not be treated to be belonging to two different cadres in absence of any provision for this purpose in the Regulations. They were to be treated as two channels for next promotion because of separate quota for each channel and different eligibility criteria.

On behalf of appellants, a submission was advanced that in Clause (9)(B) of the Regulations there is a mandate that seniority lists for each “category of employees” will be prepared and maintained and hence the Board should treat degree holders and diploma holders as separate category of employees for preparation of separate seniority lists for each of these categories. We do not find any merit in this submission. The words “category of employees” used in Clause (9)(B) in the context of the

Regulations can only mean category of posts held by the employees. The word “category” has been used in the context of posts only in Clause (6) of the Regulations, although in the matter of absorption of employees working in the Board on deputation. Clause (9)(A) which provides for promotion when read together with the Schedule Technical leaves no manner of doubt that in respect of first promotion to higher post, i.e., promotion from post of Project Engineer (Junior) to Project Engineer (Senior), promotion of eligible person is required to be made on the basis of seniority-cum-merit. The High Court has rightly held that the cadre of Project Engineer (Junior) cannot be bifurcated for the purpose of seniority alone, only on the ground that for promotion to the cadre of Project Engineer (Senior) there is provision for 20% quota for degree holders and 30% quota for diploma holders. The practical view of the High Court cannot be faulted that the Board can legitimately prepare separate eligibility lists of Project Engineer (Junior) holding degree and those holding diploma. Such eligibility list could not be mistaken for seniority list which must remain common based upon merit assessed at the time of selection for recruitment. Only if the selection process had been different, there could have been any scope to argue for separate seniority lists. In absence of any legal stipulation for altering the initial seniority, pre-determined on the basis of merit at the time of initial selection and date of regular appointment, the seniority list cannot be altered only because some diploma holder Project Engineers (Junior) acquired the qualification of AMIE equivalent to a degree. The three years’ or seven years’ experience of service will entitle the degree holders and the diploma holders respectively only for inclusion of their names in the eligibility lists for promotion so as to work out satisfactorily the provision for different quota for the degree holders and the diploma holders. Hence, we find no good ground to interfere with the decision of the High Court in respect of Question no.3. Further dispute between the parties is in respect of issues arising out of Question no.2. The primal question which requires to be answered is whether the diploma holders who acquired the qualification of AMIE during service should be given the benefit of experience of service rendered by them as diploma holders for promotion to the post of Project Engineer (Senior) against the 20% quota for the degree holders or they need to acquire further three years’ experience of service after acquiring the qualification of AMIE for availing such benefit.

In the context of issue noticed above, the stand of the appellants is that there is qualitative difference in the service rendered by a degree holder and that rendered by a diploma holder and, therefore, the Regulations provide that the degree holder Project Engineers (Junior) with three years’ service and diploma holder Project Engineers (Junior) with seven years’ service shall be eligible for promotion to the higher post of Project Engineer (Senior). Their further case is that by providing 20% and 30% of the posts as quota for the degree holders and diploma holders respectively, the Regulations have created a water-tight compartment for the two classes because they are entitled for promotion in their respective quota only. The fact that separate quota for promotion has been fixed for two different channels of degree holders and diploma holders, according to appellants, is a clear indication that the service of three years must be rendered as a degree holder in order to acquire the eligibility for promotion as is the case with a diploma holder who acquires eligibility only upon rendering seven years’ service as a diploma holder. The eligibility criterion of service experience cannot be read differently when the claim for promotion is made against a fixed quota. The aforesaid stand of the appellants is based squarely upon judgment of this Court rendered by a three Judges Bench in the case of *Shailendra Dania & Ors. v. S.P. Dubey & Ors.* (2007) 5 SCC

535. For providing further support to the conclusions in the case of Shailendra Dania (supra), reliance has been placed also upon judgments in the case of N. Suresh Nathan & Anr. v. Union of India & Ors. 1992 Supp.(1) SCC 584; Indian Airlines Ltd. & Ors. v. S. Gopalakrishnan (2001) 2 SCC 362; Challa Jaya Bhaskar & Ors. v. Thungathurthi Surender & Ors. (2010) 13 SCC 348; Chandravathi P.K. & Ors. v. C.K. Saji & Ors. (2004) 3 SCC 734 and Vijay Singh Deora & Ors. v. State of Rajasthan & Anr. (1997) 3 SCC 118. On the other hand, counsels appearing for the respondents and representing the interest of the diploma holders who subsequently acquired the qualification of AMIE while in service, have made a spirited attempt to distinguish the facts of Shailendra Dania's case (supra). According to learned counsel appearing for the diploma holders there was a difference in the qualification required of degree holders and diploma holders at the time of very entry into the service in Shailendra Dania's case; while degree holders were eligible to apply only with their educational qualification for the entry post, the diploma holders were required to have additional two years' experience and hence the two were treated to be qualitatively different in the matter of service experience. In other words, the submission is that the qualitative difference in the services rendered by degree holders and diploma holders in Shailendra Dania's case was primarily on account of their having different birthmarks which does not exist in the present case. It is also the case of diploma holders that the words used in the Regulations laying down eligibility for promotion are different in the present case because of use of the word 'total' before the clause 'experience of service' and hence on a literal interpretation, as is warranted in the present case, the appellants cannot derive any advantage from the judgment in the case of Shailendra Dania (supra). Much emphasis has also been laid on the word, 'with' used in the Schedule Technical to contend that it be read as 'and' which will then not permit the cumulative eligibility criteria to be read as three years' total experience of service with degree but only as degree and three years' total experience of service. It is further case of the diploma holders that the use of the word 'total' clearly indicates the intent of counting not only experience of service with degree but also experience of service already gained with diploma. Mr. Manu Mridul, learned Advocate for some of the respondents, in support of the aforesaid contentions placed reliance upon judgments of this Court in the case of Anil Kumar Gupta & Ors. v. Municipal Corporation of Delhi & Ors. (2000) 1 SCC 128; M.B. Joshi & Ors. etc. v. Satish Kumar Pandey & Ors. etc. 1993 Supp.(2) SCC 419 and A.K. Raghumani Singh & Ors. v. Gopal Chandra Nath & Ors. (2000) 4 SCC 30. Appearing on behalf of another set of respondents in one of the appeals, Mr. Abhishek Gupta, Advocate placed reliance upon case of Roop Chand Adlakha & Ors. v. Delhi Development Authority & Ors. 1989 Supp.(1) SCC 116.

Mr. Vijay Hansaria, learned Senior Advocate appeared for the Board and supported the case of diploma holders by taking a stand that different service experience of three years and seven years for the purpose of eligibility have been prescribed for degree holders and diploma holders respectively not upon any qualitative difference in their experience but upon difference in the educational qualification alone. Thus, the stand of the Board before this Court which is diametrically opposite to its stand before the High Court is that a diploma holder who has service experience of three years and acquires the qualification of AMIE is qualified under the Regulations to claim eligibility for promotion in the 20% quota reserved for degree holders with three years' experience. Learned advocate appearing for some of the proforma respondents made it clear that the case of such proforma respondents who were degree holders is same as that of the appellants.

Before advertng to the rival submissions on the main issue noted above, in view of submissions advanced on behalf of some of the respondents as if the issue arising in these appeals relates to seniority position of individuals in the seniority list, it is necessary to clarify that the High Court was neither called upon to decide nor it actually decided any issue directly relating to inter se seniority of Project Engineers (Junior) or Project Engineers (Senior) and this Court is also not required to go into the correctness of any seniority list published by the Board. As noticed earlier, the main issue falling for determination in these appeals only relates to what value, if any, is to be given to the service experience of a diploma holder - turned degree holder - Project Engineer (Junior) rendered by him as a diploma holder for the purpose of claiming eligibility for promotion as a degree holder Project Engineer (Junior) against 20% quota allotted for the degree holders.

Initially there was a serious dispute raised on behalf of appellants whether the word 'total' before the clause 'experience of service' in the context of minimum experience and qualification required for promotion of Project Engineer (Junior) mentioned in the Schedule Technical is an illegitimate insertion in this Schedule or whether it was actually existing in the draft of the Schedule which was approved by the Board and the State Government. Learned senior counsel appearing for the Board placed before us the original records and made it clear that the word 'total' in the relevant clauses existed in the original draft of Schedule Technical which was duly approved. Matter has come to rest at that.

Coming to the rival contentions, it will be useful to refer to the concerned paragraphs from the judgment in the Shailendra Dania's case (supra) along with the relevant facts in order to appreciate the contention of the appellants that even in absence of the birthmark on account of two years' experience for diploma holders to enter into the service, which was peculiar to the facts of that case, the relevant facts and rule position are materially similar and hence the law laid down in that case is apt for deciding the present appeals on the same lines. In Shailendra Dania's case the rules provided for filling up 50% of total vacancies in the post of Assistant Engineer by direct recruitment and the remaining were to be filled up by promotion by providing specific quota for a graduate Junior Engineer and a diploma holder Junior Engineer. The eligibility criteria for promotion of diploma holders Junior Engineers was eight years' qualifying service and for graduate Engineering degree holders three years' qualifying service. Further promotion from the post of Assistant Engineer was to the post of Executive Engineer. For this post, the minimum qualifying experience for graduate engineers was eight years as Assistant Engineer and for diploma holders it was ten years in the grade of Assistant Engineer. However, for the initial post in the hierarchy, that is, post of Junior Engineer, the selection was only through direct recruitment and the qualification prescribed was "diploma holders in civil engineering with two years' experience". But there was no bar for persons having degree in engineering in applying for the post of Junior Engineer and they were not required to have any prior experience.

In Shailendra Dania's case this Court placed strong reliance upon judgment in the case of N. Suresh Nathan (supra) and explained that the three Judges Bench decided that case essentially on the interpretation of the rule and merely found support to that interpretation from the past practice followed in the Department. In N. Suresh Nathan (supra), the question involved was similar as in the case of Shailendra Dania (supra) and the present case. The relevant rule provided for

recruitment by promotion from the grade of Junior Engineers which consisted of two categories, viz., one of degree holder Junior Engineers with three years' service in the grade and the other of diploma holder Junior Engineers with six years' service in the grade. There, the quota was 50% from each category. The Court interpreted the rule in the light of entire scheme to conclude that the 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 degree cannot be counted as service in the grade with a degree for the purpose of three years' service as a degree holder. Besides explaining and following the judgment in N. Suresh Nathan's case (supra), the judgment in Shailendra Dania's case (supra) also considered and distinguished some later judgments on the basis of difference in facts and rules such as in the case of M.B. Joshi (supra); D. Stephen Joseph v. Union of India & Ors. (1997) 4 SCC 753; Anil Kumar Gupta (supra) and A.K. Raghumani (supra). In the case of Shailendra Dania (supra), this Court also took note of judgment in the case of Indian Airlines Ltd. (supra) on which the appellants have also placed reliance. Para 5 of the judgment in the case of Indian Airlines Ltd. (supra) begins by holding that "when in addition to qualification, experience is prescribed, it would only mean acquiring experience after obtaining the necessary qualification and not before obtaining such qualification". No doubt, in that case there was specific general information/instruction that experience will be computed after the date of acquiring the necessary qualifications. Instead of dilating the point further it will be useful to extract paragraphs 43 to 45 of the judgment in the case of Shailendra Dania (supra) which are as follows :

"43. Taking into consideration the entire scheme of the relevant Rules, it is obvious that the diploma-holders would not be eligible for promotion to the post of Assistant Engineer in their quota unless they have eight years' service, whereas the graduate Engineers would be required to have three years' service experience apart from their degree. If the effect and intent of the Rules were such to treat the diploma as equivalent to a degree for the purpose of promotion to the higher post, then induction to the cadre of Junior Engineers from two different channels would be required to be considered similar, without subjecting the diploma-holders to any further requirement of having a further qualification of two years' service. At the time of induction into service to the post of Junior Engineers, degree in Engineering is a sufficient qualification without there being any prior experience, whereas diploma-holders should have two years' experience apart from their diploma for their induction in the service. As per the service rules, on the post of Assistant Engineer, 50% of total vacancies would be filled up by direct recruitment, whereas for the promotion specific quota is prescribed for a graduate Junior Engineer and a diploma-holder Junior Engineer. When the quota is prescribed under the Rules, the promotion of graduate Junior Engineers to the higher post is restricted to 25% quota fixed. So far as the diploma-holders are concerned, their promotion to the higher post is confined to 25%. As an eligibility criterion, a degree is further qualified by three years' service for the Junior Engineers, whereas eight years' service is required for the diploma-holders. Degree with three years' service experience and diploma with eight years' service experience itself indicates qualitative difference in the service rendered as degree-holder Junior Engineer and diploma-holder Junior Engineer. Three years' service experience as a graduate Junior Engineer and eight years' service experience

as a diploma-holder Junior Engineer, which is the eligibility criterion for promotion, is an indication of different quality of service rendered. In the given case, can it be said that a diploma- holder who acquired a degree during the tenure of his service, has gained experience as an Engineer just because he has acquired a degree in Engineering. That would amount to say that the experience gained by him in his service as a diploma-holder is qualitatively the same as that of the experience of a graduate Engineer. The Rule specifically made difference of service rendered as a graduate Junior Engineer and a diploma-holder Junior Engineer. Degree-holder Engineer's experience cannot be substituted with diploma-holder's experience. The distinction between the experience of degree-holders and diploma holders is maintained under the Rules in further promotion to the post of Executive Engineer also, wherein there is no separate quota assigned to degree-holders or to diploma-holders and the promotion is to be made from the cadre of Assistant Engineers. The Rules provide for different service experience for degree-holders and diploma- holders. Degree-holder Assistant Engineers having eight years of service experience would be eligible for promotion to the post of Executive Engineer, whereas diploma-holder Assistant Engineers would be required to have ten years' service experience on the post of Assistant Engineer to become eligible for promotion to the higher post. This indicates that the Rule itself makes differentia in the qualifying service of eight years for degree-holders and ten years' service experience for diploma-holders. The Rule itself makes qualitative difference in the service rendered on the same post. It is a clear indication of qualitative difference of the service on the same post by a graduate Engineer and a diploma-holder Engineer. It appears to us that different period of service attached to qualification as an essential criterion for promotion is based on administrative interest in the service. Different period of service experience for degree-holder Junior Engineers and diploma-holder Junior Engineers for promotion to the higher post is conducive to the post manned by the Engineers. There can be no manner of doubt that higher technical knowledge would give better thrust to administrative efficiency and quality output. To carry out technical specialized job more efficiently, higher technical knowledge would be the requirement. Higher educational qualifications develop broader perspective and therefore service rendered on the same post by more qualifying person would be qualitatively different.

44. After having an overall consideration of the relevant Rules, we are of the view that the service experience required for promotion from the post of Junior Engineer to the post of Assistant Engineer by a degree-holder in the limited quota of degree-holder Junior Engineers cannot be equated with the service rendered as a diploma-holder nor can be substituted for service rendered as a degree-holder. When the claim is made from a fixed quota, the condition necessary for becoming eligible for promotion has to be complied with. The 25% specific quota is fixed for degree-holder Junior Engineers with the experience of three years. Thus, on a plain reading, the experience so required would be as a degree-holder Junior Engineer.

25% quota for promotion under the rule is assigned to degree-holder Junior Engineers with three years' experience, whereas for diploma-holder Junior Engineers eight years' experience is the requirement in their 25% quota. Educational qualification along with number of years of service was recognized as conferring eligibility for promotion in the respective quota fixed for graduates and diploma-holders. There is watertight compartment for graduate Junior Engineers and diploma-holder Junior Engineers. They are entitled for promotion in their respective quotas. Neither a diploma-holder Junior Engineer could claim promotion in the quota of degree-holders because he has completed three years of service nor can a degree-holder Junior Engineer make any claim for promotion quota fixed for diploma-holder Junior Engineers. Fixation of different quota for promotion from different channels of degree-holders and diploma-holders itself indicates that service required for promotion is an essential eligibility criterion along with degree or diploma, which is service rendered as a degree-holder in the present case. The particular years of service being the cumulative requirement with certain educational qualification providing for promotional avenue within the specified quota, cannot be anything but the service rendered as a degree-holder and not as a diploma-holder. The service experience as an eligibility criterion cannot be read to be any other thing because this quota is specifically made for the degree-holder Junior Engineers.

45. As a necessary corollary, we are of the view that the diploma-holder Junior Engineers who have obtained a degree in Engineering during the tenure of service, would be required to complete three years' service on the post after having obtained a degree to become eligible for promotion to the higher post if they claim the promotion in the channel of degree-holder Junior Engineer, there being a quota fixed for graduate Junior Engineers and diploma-holder Junior Engineers for promotion to the post of Assistant Engineers." On behalf of respondents the difference in qualification at the time of induction into the service to the post of Junior Engineers as indicated in paragraph 43 was highlighted to distinguish the present case on the ground that for induction into the service on the post of Project Engineer (Junior) there is no requirement that the diploma holders should have two years' experience apart from their diploma. Literally, that distinction is valid but in our considered view the other considerations which were discussed in paragraph 43 are of much greater significance, particularly there being specific quota prescribed for graduate Project Engineers (Junior) and diploma holder Project Engineers (Junior). In the present case also, as an eligibility criterion, a degree is further qualified by three years' service whereas a diploma is further qualified by seven years' service. These distinctions are of much more vital significance than the birthmark at the time of induction into service. Absence of such birthmark in the present case is not material. Such birthmark was only an additional ground available in the case of Shailendra Dania (*supra*) but that, in our considered view, would not make any material difference in coming to the same conclusion that degree with three years' service experience and diploma with seven years' service experience by itself indicates qualitative difference in the service rendered as a degree holder and that rendered as a diploma holder.

As held in paragraph 36 of Shailendra Dania's case (*supra*) we are required to decide the matter on the basis of the entire scheme of the rules, the facts and circumstances at the relevant time and the rules called in question, for independently giving meaning to the words, the principle involved and the past practice, if any. In that view of the matter, the word 'with' occurring before the words, "three years' service" or "seven years' service" has to be given a natural meaning as understood in

the common parlance and in the light of two water tight compartments created for the two classes for promotion with respective quotas of 20% and 30%, it must be held that three years' total experience of service must be service as a degree holder. This view is fortified by the provision in the Regulations that for similar promotion a diploma holder has to have seven years' total experience of service. The relevant regulation does not contemplate any reduced total experience for promotion for a diploma holder who may acquire degree or AMIE qualification while in service. Even on acquiring such higher qualification the concerned diploma holder is neither given any advantage vis-à-vis other diploma holders nor is he ousted from the right of consideration against 30% quota provided for diploma holders. In such a situation in order to enter into the water-tight compartment of 20% quota for the degree holders with three years' experience of service, a diploma holder with AMIE qualification must show that he fulfills the entire eligibility criterion, i.e., he is a degree holder with three years' experience of service as a degree holder. Such water-tight compartment and separate quotas cannot be rendered meaningless so as to affect the prospect of promotion of the degree holders by inducting into that category a diploma holder who does not have three years' experience of service as a degree holder. In the absence of any such provision in the Regulations, no equivalence can be permitted in such a situation because even a diploma holder with seven years' experience of service is confined to a prospect or chance of promotion only against 30% quota for the diploma holders. So far as the word 'total' occurring before the words 'experience of service' is concerned, from the circumstances and past history relating to the service, it must be understood in the context of service rendered in regular capacity along with service rendered on ad-hoc or officiating or temporary basis. The word 'total' cannot be construed to mean service rendered either as diploma holder or degree holder. If this had been the intention, the word 'total' would have been included only in the context of three years' total experience of service of degree holders and not in the context of seven years' experience of service as diploma holders. A diploma holder in any case is required to have seven years' experience of service for being eligible for promotion and hence the word 'total' would be otiose or redundant in the aforesaid context. No doubt, the High Court has now clarified and held that service rendered on ad-hoc or officiating basis prior to regularization cannot be counted for acquiring eligibility for promotion and that aspect is no longer under controversy. Hence the use of the word 'with' or 'total' in the relevant regulation does not make any difference and the judgment in the case of Shailendra Dania (supra) applies to the present case, as contended by learned counsel for the appellants.

The other judgments of this Court in the case of Challa Jaya Bhaskar (supra); Chandravathi P.K. (supra) and Vijay Singh Deora (supra) also support the view which we have taken on the basis of Shailendra Dania's case (supra). Para 29 of the judgment in the case of Challa Jaya Bhaskar (supra) clearly shows that in the said case this Court followed the views expressed in N. Suresh Nathan's case (supra) and Shailendra Dania's case (supra). In the case of Chandravathi P.K. (supra) rules for shifting by exercise of option from the category of diploma holders to that of degree holders on acquiring AMIE qualification was in place. In that context, in paragraph 30 this Court held that diploma holder officer on acquiring higher qualification during service could opt for promotion from the degree holders' quota or from diploma holders' quota but once he opts for promotion in the degree holders' quota, rule of seniority would apply as he acquired the qualification therefor subsequently. He would be placed at the bottom of the seniority list and his case could be considered only after the cases of promotion of those who had been holding such degree qualification had been

considered. In the case of Vijay Singh Deora (supra) the rule position was different but in paragraph 9 this Court permitted only a limited recognition of service rendered as diploma holder Junior Engineers for purposes of eligibility and justified the permitted procedure on the ground that it would do justice to all the three groups (as existed in that case) and no one would jump over the other and would not illegitimately steal a march over the legitimate right of the other, “otherwise, in effect the qualified graduates would be pushed downwards and unqualified late entrants on acquisition of qualification would steal a march over the qualified.” The judgments relied upon by learned advocate for the respondents have been noticed above. All those cases were noticed and distinguished or explained in the case of Shailendra Dania (supra) and we find that none of those cases are of any help to the respondents. In those cases, either there was no water-tight compartment and fixed quota for different categories or the advertisement and rules related only to initial recruitment or the contest was only between two groups of diploma holders. The judgment in the case of Roop Chand Adlakha (supra) in fact helps the case of the appellants because in that case this Court held that different service experience could be prescribed for conferring eligibility for promotion to the degree holders and diploma holders and such classification on the basis of educational qualification is permissible under Articles 14 and 16 of the Constitution of India.

In the light of aforesaid discussions, we find merit in these appeals and they are accordingly allowed to the extent of reversing the views of the High Court in respect of Question no.2 as noted by the Division Bench in the common judgment under appeal. We hold that the Project Engineers (Junior) recruited on the basis of diploma, upon their acquiring the qualification of ‘AMIE’, are not entitled to count their experience of service prior to acquisition of such qualification for the purpose of eligibility for promotion to the post of Project Engineer (Senior) against the 20% quota fixed for promotion of degree holder Project Engineers (Junior). In order to claim promotion against such 20% quota the three years’ experience of service must be acquired after obtaining the qualification or degree of AMIE.

We direct the Board and its authorities to treat the writ petitions filed in the High Court as disposed of in the light of our aforesaid views and to determine the controversies raised in the writ petitions in that light by granting relief to the eligible persons expeditiously and preferably within 4 months, without upsetting the transactions which had taken place earlier and were not under challenge in the writ petitions. In other words, the regular promotions made in the past prior to 1992, which were not subject matter of writ petitions filed in 1992 will not be re-opened on account of views expressed in this judgment.

In the facts and circumstances of the case, there shall be no order as to costs.

.....J. [FAKKIR MOHAMED IBRAHIM KALIFULLA]
.....J. [SHIVA KIRTI SINGH] New Delhi.

September 05, 2014.
