

STATE OF UTTARAKHAND & ORS.

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v.

S. K. SINGH & ORS.

(Civil Appeal No. 10194 of 2013)

OCTOBER 14, 2019

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[SANJAY KISHAN KAUL AND M. R. SHAH, JJ.]

Service Law - Accelerated promotion on the basis of higher educational qualifications - State of Uttaranchal (now Uttarakhand) carved out of the State of Uttar Pradesh - 200 posts advertised for appointing Junior Engineers (JEs) in the Irrigation Department - Posts filled in by both, the one having the qualification of Diploma and the other having Degree in Engineering - 2003 Rules provided for recruitment to the next higher post, Assistant Engineers (AE, Civil), 50% by promotion from the JEs and the balance 50% through direct recruitment for which the qualification was, inter alia, Degree in Engineering - In this 50% by promotion, there was further break up, i.e., 40% through the normal route, on the basis of seniority and the remaining 10% promotion quota was given through accelerated promotion in which 2.67% was meant for certain categories, while 7.33% was meant for JEs (Civil) holding Degree in Civil Engineering with 3 yrs' service, whereas normal promotion required minimum 10 yrs service - Amendment in 2004 sought to change the ratio of appointment, reducing the direct recruitment quota to 40% and increasing the promotion quota to 60% - Writ petitions filed by the Diploma-holders - Accelerated promotion quota struck down - Impugned order stayed - Held: Though equality is the very bulwark of the provisions of the Constitution, in service jurisprudence, classifications are a matter of necessity and judicial pronouncements have sought to balance the equality principle with the principle of classification, dependent on the nexus for making the classification- Higher educational qualifications have been repeatedly emphasized as an aspect which can give exclusive promotion, earlier promotion or as in this case, an accelerated promotion - Higher degree of qualification intrinsically would bring in certain skills, though undoubtedly, that should be useful and

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- A *have a nexus with the job being performed - Examining this nexus has been left to the wisdom of the administrative authorities, best equipped to do so as held in M. Rathinaswami's case - Bringing forth from the direct recruitment quota (for which the qualification is the Degree) to the promotion quota and giving that through accelerated promotion for such persons who have degree can hardly have any intrinsic defects which could violate Arts.14 & 16 - Historical perspective also hardly supports the private respondents as even the State of Uttar Pradesh, as it existed earlier, and the Rules as they existed then, provided for such 7.33% quota, which was never assailed by any party - Impugned judgment*
- B *unsustainable and the challenge to the Rule is misplaced - Writ petition of the Diploma-holders dismissed - Constitution of India - Arts. 14, 16 - Uttaranchal Service of Engineers (Irrigation Department) (Group 'B') Rules, 2003 - Uttar Pradesh Public Works Department Assistant Engineers (Civil) Services Rules, 2003 - United Provinces Service of Engineers (Buildings and Roads Branch) Class II Rules - Uttar Pradesh Irrigation Department Civil Engineer (Subordinate) Service Regulation, 1992 -Uttar Pradesh Service of Engineers (Irrigation Department) (Group 'B') Service Rules, 1993.*
- C **Disposing of the appeals, the Court**
- D **HELD: Civil Appeal No.10194/2013**

- E **1.1 Both, for promotion and for direct appointment to AEs, Degree could be the essential qualification. Further the proposition could not be disputed that there are judicial pronouncements to support, providing for a differential in the period of service for two different sets of educational qualifications at the time of promotion. Thus, in a sense, the appellant would be within its right to provide for different periods of experience as JEs for Degree-holders and Diploma-holders, for the purposes of promotion. This is apart from the plea of the appellants that the accelerated promotion is to encourage the JEs to acquire higher qualifications, and once they acquire the higher qualification, whether they possess that qualification at the stage of entry or not would be immaterial (again a principle settled through judicial pronouncements). [Para 16] [808-C-E]**
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1.2 Though equality is the very bulwark of the provisions of the Constitution, in service jurisprudence, classifications are a matter of necessity and judicial pronouncements have sought to balance the equality principle with the principle of classification, dependant on the nexus for making the classification. Higher educational qualifications have been repeatedly emphasized as an aspect which can give exclusive promotion, earlier promotion or for that matter, as in this case, an accelerated promotion. A higher degree of qualification intrinsically would bring in certain skills, though undoubtedly, that should be useful and have a nexus with the job being performed. As to who should examine this nexus, that has been left to the wisdom of the administrative authorities, who are best equipped to do so. It has also been opined that even where persons having two different qualifications are given the opportunity of promotion, there cannot be an absolute equality for the reason that the administration may consider giving the lesser qualified an opportunity of promotion on different terms, rather than completely prohibiting them from promotion. In further posts, higher than AE, there is no distinction between persons having different qualifications. There are no direct appointments. The posts are filled in only through promotions. All that has been done is that, at a particular promotion stage, in the wisdom of the administration, recognising higher skills developed through higher qualifications, and as an incentive to others to acquire these higher qualifications, an accelerated promotion on a small percentage of posts had been granted. [Paras 26-28] [816-A-F]

1.3 It was put to the counsel for the private respondents if they could have been shut out from promotion, or if the time periods could have been different for promotion, then the result would have been the same as their grievance today, i.e., some of the Degree-holders would rank higher than the Diploma-holders. Thus, this is not something out of the ordinary which has happened, or would result in a situation which can be categorised extraordinary by reason of accelerated promotion to the Degree-holder. The direct recruitment to the post of AE required a candidate to be a Degree-holder. 50% of the posts were reserved for Degree-holding direct recruits. In the 50%

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- A **promotion quota, a 10% promotion quota was carved out, leaving only 40% for promotion through the normal route. Possibly with the intention of obviating any grievance which the promotees may have, the normal promotion route was sought to be maintained at 50%, without any accelerated promotion in that portion, by bringing in 10% from the direct recruitment quota to the promotion quota, and that being utilised for accelerated promotion, for promotees with a Degree. Had this quota not been there at all, whether earlier or later, but the direct recruitment in promotion quota had been maintained in equal ratio, the Diploma-holders could, in any case, have had no grievance. The bringing forth from the direct recruitment quota (for which the qualification is the Degree) to the promotion quota and giving that through accelerated promotion for such persons who have a degree can, thus, hardly be said to have any intrinsic defects which could violate Articles 14 & 16 of the Constitution.**
- B **The historical perspective also cited before us hardly supports the private respondents as even the State of Uttar Pradesh, as it existed earlier, and the Rules as they existed then, provided for such 7.33% quota, which was never assailed by any party. There exist inconsistencies, pointed earlier in para 16, in the principles laid down in the impugned judgment in para 30. The impugned judgment cannot be sustained and the challenge to the Rule is misplaced. The consequence would be the dismissal of the writ petition by the Diploma-holders and the appeal of the Government being allowed. [Paras 29-33] [816-G-H; 817-A-F]**
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Civil Appeal No.1317/2015

- F **1.4 The appeal is dismissed in view of the order passed in CA No.10194/2013 as the appellant sought a greater relief than even that which was granted in the impugned order. [Para 34] [817-G]**

Civil Appeal No.11307/2013

- G **1.5 The appeal concerns the Uttar Pradesh Public Works Department Assistant Engineers (Civil) Services Rules, 2003. The relevant portion of the Rules, providing for accelerated promotion/sub quota for Degree-holders was struck down, relying upon the judgment of the High Court in WP No.267/2010 H (S/B), which order has been set aside by in CA No.10194/2013.**

The result of the aforesaid is that this appeal is allowed and the impugned order set aside, upholding the relevant Rule. [Paras 35, 36] [817-H; 818-A]

IA No.88765/2018 in CA No.10194/2013

IA No.7/2016 in CA No.11307/2013

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1.6 In view of the disposal of the appeals, no further orders are called for on these applications and the same stand disposed of. [Para 37] [818-C]

State of Jammu and Kashmir v. Triloki Nath Khosa [1974] 1 SCC 19 : [1974] 1 SCR 771 – followed. C

P. Murugesan & Ors. v. State of Tamil Nadu & Ors. (1993) 2 SCC 340 : [1993] 1 SCR 405 ; *Roop Chand Adlakha & Ors. v. Delhi Development Authority & Ors.* (1989) Supp 1 SCC 116 – relied on. D

Arunvendra Kumar Garg & Ors. v. State of U.P. & Anr. 2002 SCC OnLine ALL 196 : (2002) 2 AWC 1489 ; *Mohammad Shujat Ali & Ors. v. Union of India & Ors.* (1975) 3 SCC 76 : [1975] 1 SCR 449 ; *Punjab State Electricity Board, Patiala & Anr. v. Ravinder Kumar Sharma & Ors.* AIR 1987 SC 367 : [1987] 1 SCR 72 ; *M. Rathinaswami & Ors. v. State of Tamil Nadu & Ors.* (2009) 5 SCC 625 – referred to. E

Case Law Reference

(2002) 2 AWC 1489	referred to	Para 10	F
[1975] 1 SCR 449	referred to	Para 18	
[1974] 1 SCR 771	followed	Para 19	
[1987] 1 SCR 72	referred to	Para 21	G
[1993] 1 SCR 405	relied on	Para 21	
(1989) Supp 1 SCC 116	relied on	Para 22	
(2009) 5 SCC 625	referred to	Para 25	H

- A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10194 of 2013.

From the Judgment and Order dated 25.08.2011 of the High Court of Uttarakhand at Nainital in Writ Petition (S/B) No. 267 of 2010.

With

- B Civil Appeal Nos. 1317 of 2015, 11307 of 2013.

Sanat Kumar, AAG, Jatinder Kumar Sethi, Dy. AG, P. S. Patwalia, Sanjay Parikh, Sr. Advs., Ashutosh Kumar Sharma, Rajeev Dubey, Kamlendra Mishra, Anurag Dubey, Rajesh Pathak, Abhishek Chakraborty, Pramod Kumar, Bhupender Bhardwaj, S. R.

- C Setia, Abhishek Atrey, Ms. Rashmi Nandakumar, Ms. Ayushma Awasthi, Shankar Narayan, Ms. Harshika Verma, Akshay Chadha, Saurabh Trivedi, Ashutosh Kumar Sharma, Abhishek Atrey, Jatinder Kumar Bhatia, Krishnan Mishra, Krishana Prakash Dubey, Samir Ali Khan, Ashwani Bhardwaj, Mrs. Vinay Bhardwaj, Chander Shekhar Ashri, Apoorv Shukla, Ms. Prabhleen Kaur, Karunakar Mahalik, Anil

- D Karnwal, Kunal Cheema, Shoaib Ahmad Khan, Mohd. Naved Mian, Sandeep Garausa, Lemax Lawyers, Advs. for the appearing parties.

The Judgment of the Court was delivered by

SANJAY KISHAN KAUL, J.

Civil Appeal No.10194/2013

- E 1. The dispute pertains to the Irrigation Department cadre of the Uttarakhand State, for promotion from the post of Junior Engineer (for short 'JE') to the post of Assistant Engineer (for short 'AE'), with two groups of these JEs arrayed on opposite sides - one having the qualification of Diploma and the other having the qualification of Degree

- F in Engineering. The promotion quota (the promotion quota is for AEs - they are also being directly recruited) has carved out a provision for accelerated promotion to the extent of 7.33% for the JEs holding a more advanced qualification, of a Degree in Civil Engineering, with which the JEs holding a qualification of Diploma are aggrieved.

- G **Facts:**

2. On the State of Uttarakhand (now Uttarakhand) being carved out of the State of Uttar Pradesh, an emergent need was felt for appointing *inter alia* JEs in different departments of the State and thus, an advertisement was issued on 27.11.2001, inviting applications on behalf of the Public Works Department, Irrigation Department, Rural

- H Engineering Service, Small Irrigation Department, Agriculture

Department, District Village Development Agency and Panchayati Raj Department for the said purpose. The minimum qualification provided was for a Diploma in Civil/Electrical/Mechanical/Agriculture Engineering. We are, at present, concerned with the Irrigation Department, where 200 posts were advertised for. These posts were filled in by both, the Diploma-holders and the Degree-holders.

3. In order to govern the service conditions of the Engineers in the Irrigation Department, the Uttaranchal Service of Engineers (Irrigation Department) (Group 'B') Rules, 2003 (hereinafter referred to as the 'said Rules') were notified on 18.2.2003 by the State Government, exercising power under Article 309 of the Constitution of India (hereinafter referred to as 'the Constitution'). The said Rules provided for recruitment to the next higher post, *inter alia* to the post of AE (Civil), through the process of 50% by promotion from the JEs and the balance 50% through direct recruitment for which the qualification was, *inter alia*, a Degree in Engineering. In this 50% by promotion, there was a further break up provided, i.e., 40% was to be through the normal route, on the basis of seniority, subject to rejection of unfit and the remaining 10% of the promotion quota was given to accelerated promotion. Out of this 10% accelerated promotions, 2.67% was meant for certain categories, with which we are not concerned, while 7.33% was meant for JEs (Civil) holding a Degree in Civil Engineering with three (3) years' service, whereas normal promotion required a minimum service of ten (10) years. An amendment was brought into force on 4.12.2004, which sought to change the ratio of the appointment to the post of *inter alia* AE (Civil), thereby reducing the direct recruitment quota to 40% and increasing the promotion quota to 60%. The result was that the normal promotion quota was made 50% and the additional 10%, in a sense, was meant for accelerated promotion, as in any case the educational qualifications for direct recruitment was a Degree in Civil Engineering and the accelerated promotion was based on a Degree in Civil Engineering as well. 50% quota for normal promotion was, thus, incorporated instead of the earlier 40%.

4. The effect of this was that persons who were holding a Degree in Engineering were entitled to be considered for promotion as AEs with only three (3) years' service, as against the requirement of ten (10) years' service under normal promotion, but this accelerated promotion was confined to 7.33%.

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- A 5. We have already stated that the effect of reduction in the direct recruitment quota, from 50% to 40%, effectively meant that the 10% reduction in quota of direct recruitment, for which a Degree is the essential qualification, was allotted to accelerated promotion, so as to ensure that the normal promotion quota without the accelerated promotion is maintained at 50%.
- B 6. The Diploma-holders in the post of JEs felt aggrieved as it would result in some of their juniors, who had Degrees, being promoted earlier and, thus, on their ultimate promotion to the post of AE, would rank senior to them. This was also stated in the context of the fact that for further promotions from AE upwards, the essential qualification was only a Diploma, without any quota or accelerated promotion being carved out for Degree holders. These would be all promotion posts without any direct recruitment.
- C 7. The aforesaid gave rise to writ proceedings being filed by the Diploma-holders before the Uttarakhand High Court, and in terms of the impugned order dated 25.8.2011, this accelerated promotion quota was struck down as violative of Articles 14 & 16 of the Constitution, and certain other directions were issued to work out equities on account of the promotions which may have already been made. There are also some other connected matters, which we will come to later, because
- D they are in a narrower compass and we have taken the broad contours of the dispute from the main matter in which the judgment was delivered, i.e., Civil Appeal No.10194/2013.
- E 8. The impugned order was, however, stayed, while issuing notice on 2.4.2012. Subsequent leave was granted and this interim order was maintained. The result has been that for these last eight (8) years, also, the Rules have operated as they are.
- F 9. It is in the aforesaid narrow compass that the present appeal has to be examined. We have heard learned counsel for the parties and given our thoughtful consideration to their arguments and the record before us.
- G **Historical Perspectives:**
- H 10. We are setting forth certain aspects of the former Rules in this behalf, in view of the great emphasis laid on the same by the private respondents (Diploma-holders). In its original *avatar* existed the United Provinces Service of Engineers (Buildings and Roads Branch) Class

II Rules (hereinafter referred to as the '1936 Rules'), which were published on 6.6.1936. With the passage of time and different departments coming into existence, specialised Rules were enacted for different departments, one of them being the Uttar Pradesh Irrigation Department Civil Engineer (Subordinate) Service Regulation, 1992 (hereinafter referred to as the 'said Regulations'), notified on 3.12.1992 by the State Government, exercising its powers under the proviso to Article 309 of the Constitution. The similarity is that the qualification for recruitment as JEs was, once again, a Diploma in Civil Engineering. The Uttar Pradesh Service of Engineers (Irrigation Department) (Group 'B') Service Rules, 1993 (hereinafter referred to as the '1993 Rules') were notified on 23.4.1993, and insofar as the posts of AEs were concerned, they were to be filled in the ratio of 2/3:1/3 by direct recruitment and by promotion, respectively. The 1/3 promotion quota was again bifurcated into 24% for promotees with qualification of ten (10) years' service, while 7.33% was for the persons possessing Bachelors Degree in Civil Engineering, who got an accelerated promotion by being considered after three (3) years of service. The remaining percentage was meant for various other cadres. Once again, direct recruitment required qualification of *inter alia* a Degree. The scrutiny of this historical aspect significantly shows a similar situation present in Uttar Pradesh. The emphasis on some litigation *qua* 1936 Rules, is on account of a judgment of the Allahabad High Court¹, on a challenge by the degree holders on enhancement of quota for diploma holders for promotion to the post of AE, opining that the fixation of separate quota for degree and diploma holders was unconstitutional.

The Controversy:

11. The impugned judgment is quite elaborate, discussing various possibilities and combinations and the judicial pronouncements from time to time. In para 30 of the impugned judgment, post such discussion, various principles have been culled out. We do not consider it necessary to extract all of them for the debate before us, as reference has been made to sub-paras 2, 4, 6, 8, 9 & 10 and the same read as under:

"30. From the above decisions, following emerges:

....

¹ Arunvendra Kumar Garg & Ors. v. State of U.P. & Anr.; 2002 SCC OnLine ALL 196: (2002) 2 AWC 1489

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- A 2. Status of similarly placed people cannot be altered even on the ground of educational difference.
....
- B 4. People having different educational qualifications may be integrated into one, but even then, it is permissible to treat them differently on the basis of their educational qualifications.
....
- C 6. When Degree holders and Diploma holders are both regarded as fit and, therefore, eligible for promotion, no differentiation can be made between them by laying down a quota of promotion for each and giving preferential treatment to Degree holders over Diploma holders.
....
- D 8. If the higher qualification, as that of Degree, is not contemplated as the required qualification for being appointed in the feeder post and, on the contrary, it is contemplated that a lower qualification, as that of Diploma, will do, then two different periods of experience, for being promoted to the next higher post, is not permissible.
- E 9. If it is contemplated that people with higher qualification, as that of Degree, and also people with lower qualification, as that of Diploma, may be appointed in the feeder post, then there is nothing wrong in fixing different service experience for Degree holders and Diploma holders for promotion to the next higher post.
- F 10. At the same time, when for direct recruitment to a post, Degree is the essential educational qualification, but at the same time, such a post can be filled-in also by promotion, it is permissible to provide a higher ratio for Degree holders to be promoted to the said post."
- G 12. On the scrutiny of the parameters set out in para 30 of the impugned judgment, the opinion of the High Court is based on the fact that since the required qualification for appointment to the feeder post was only a Diploma, the Rules governing the feeder post did not make any distinction between a Diploma-holder and a Degree-holder, and the
- H fact that any of the persons was holding a Degree could not be said to

be of significance. Not only that, there was no bar of a higher qualification to the next higher post, where both, the Degree-holders and the Diploma-holders could be promoted. The requirement of a Degree was only for direct recruitment to the post of AEs. Thus, it was opined that the Rules could not say that the experience of a Degree-holder shall be lesser than the experience of a Diploma-holder, for promotion to the next higher post of AE. Further, it was observed that the Rules could not prescribe a quota for Degree-holders in the feeder post as there was no intelligible differentia, nor object sought to be achieved by the aforesaid.

13. The private respondents who are the Diploma-holders have naturally supported the aforesaid view, which is sought to be assailed by the appellants/State of Uttarakhand. The inconsistencies in respect of the principles culled out in para 30 of the impugned judgment have been sought to be pointed out by learned counsel for the appellants. In this behalf, it has been submitted that sub-paras 2 and 4 are inconsistent as on the one hand sub-para 2 states that the status of similarly placed persons cannot be altered on the grounds of educational difference, yet sub-para 4 states that if people having different educational qualifications are integrated into one, even then it would be permissible to treat them differently on the basis of educational qualifications. The appellant specifically sought to assail sub-para 6, which concluded that if Degree-holders and Diploma-holders are both regarded as fit for promotion, no differentiation can be made between them by laying down quota for promotion for each and given preferential treatment to Degree-holders over Diploma-holders. Sub-para 8 was assailed as it sought to set forth a proposition that once the higher qualification of a Degree is not contemplated as a required qualification in the feeder post, then two different sets of periods of experience cannot be provided as the qualification to the next higher post.

14. Another aspect of inconsistency which is sought to be pointed out, is stated to emerge from sub-paras 6 and 9, while assailing sub-para 6. Sub-para 9 states that if people with both higher and lower qualifications can be appointed in the feeder posts, then there is nothing wrong in fixing different service experience for the two, i.e., the Degree-holders and the Diploma-holders, for promotion to the next higher post.

15. Learned counsel for the appellant also drew our attention to sub-para 10, which provides that, when for direct recruitment to a post,

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- A the essential qualification is a Degree, and at the same time the post can also be filled by promotion, it is permissible to provide a higher ratio for Degree-holders, to be promoted to the said post. It is submitted that this is what has actually been done and thus, conflicting principles have been culled out from the discussion.
- B 16. On the appreciation of the aforesaid pleas, we do find that there are inconsistencies in the different principles set forth. On a query posed to the learned senior counsel for the private respondents, it was conceded on the basis of various judicial pronouncements, that the appellant would be well within its right to provide a higher qualification for a promotion post. Thus, it could be very well said that both, for promotion and for direct appointment to AEs, Degree could be the essential qualification. He further could not dispute the proposition that there are judicial pronouncements to support, providing for a differential in the period of service for two different sets of educational qualifications at the time of promotion. Thus, in a sense, the appellant would be within its right to provide for different periods of experience as JEs for Degree-holders and Diploma-holders, for the purposes of promotion. This is apart from the plea of the appellants that the accelerated promotion is to encourage the JEs to acquire higher qualifications, and once they acquire the higher qualification, whether they possess that qualification at the stage of entry or not would be immaterial (again a principle settled through judicial pronouncements). On a specific query being posed, as to what was the real grievance of the private respondents, learned counsel submitted that the rub lay in the fact that the implementation of the Rules would result in persons with Degree occupying the post of JEs, ranking senior to the persons having Diploma, in the higher post of AEs, despite being junior to the Diploma holders, on account of their having accelerated promotion. Thus, the question would be whether such a grievance can form the basis of the Rule itself being struck down, as violative of Articles 14 & 16 of the Constitution.
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The precedents:

- G 17. The same set of judicial precedents were cited and debated before us by both the sides.
- H 18. The first in the sequence is the judgment of the Constitution Bench in ***Mohammad Shujat Ali & Ors. v. Union of India & Ors.***²

H ² (1975) 3 SCC 76

The judicial review of comparative merits of different educational qualifications was debated along with the Rules conferring the right of promotion or the right to be considered for promotion. It is in that context, observations have been made as to when the Rules can be said to suffer from infraction under Articles 14 & 16 of the Constitution. The discussion is in paras 23 to 28.

19. While recognising that equal protection of law is "pledge of the protection of equal laws", it was observed, "but laws may classify". While referring to the observations of Justice Brawer, "the very idea of classification is that of inequality", it was recognised that the Court had tackled the paradox over the years while neither abandoning the demand for equality, nor denying the legislature the right to classify. Thus, a middle course of realistic reconciliation was adopted, i.e., the doctrine of reasonable classification. As to what could be understood by the expression 'similarly situated' was then debated, recognising the right of the legislature, so that the test of being similarly situated does not denigrate into a rigid formula, to be blindly and mechanically applied. The doctrine of classification was not to be carried out to a point where instead of being a useful servant, it would become a dangerous master as otherwise, in the words of Y.V. Chandrachud, J. (as he then was) in the *State of Jammu and Kashmir v. Triloki Nath Khosa*³ "the guarantee of equality will be submerged in class legislation masquerading as laws meant to govern well-marked classes characterised by different and distinct attainments." There could not be an overemphasis on the doctrine of classification to deprive the guarantee of equality of its spacious content. The application of this principle was thereafter set out in para 28, where the earlier judgments have been debated. We consider it appropriate to extract the said para as under:

"28. Now, there are three decisions of this Court where educational qualifications have been recognised as forming a valid basis for classification. In *State of Mysore v. Narasing Rao* [(1968) 1 SCR 407] this Court held that higher educational qualifications such as success in S.S.L.C. examination are relevant considerations for fixation of higher pay scale for tracers who have passed the S.S.L.C. examination and the classification of two grades of tracers in Mysore State, one for matriculate tracers with higher pay scale, and the other for non-matriculate

³ (1974) 1 SCC 19

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- A tracers with lower pay-scale, cannot be said to be violative of Article 14 or 16. So also in *Union of India v. Dr. (Mrs.) S. B. Kohli*, [(1973) 3 SCC 592], a Central Health Service Rule requiring that a Professor in Orthopaedics must have a post-graduate degree in particular speciality was upheld on the ground that the classification made on the basis of such a requirement was not "without reference to the objectives sought to be achieved and there can be no question of discrimination". A very similar question arose in *State of Jammu & Kashmir v. Triloki Nath Khosa* (*supra*) where a rule which provided that only degree holders in the cadre of Assistant Engineers shall be entitled to be considered for promotion to the next higher cadre of Executive Engineers and diploma holders shall not be eligible for such promotion, was challenged as violative of the equal opportunity clause. This Court repelled the challenge holding that "though persons appointed directly and by promotion were integrated into a common class of Assistant Engineers, they could, for the purposes of promotion to the cadre of Executive Engineers, be classified on the basis of educational qualifications" and "the rule providing that graduates shall be eligible for such promotion to the exclusion of diploma holders", was not obnoxious to the fundamental guarantee of equality and equal opportunity.
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(supra). **But where graduates and non-graduates are both regarded as fit and, therefore, eligible for promotion, it is difficult to see how, consistently with the claim for equal opportunity, any differentiation can be made between them by laying down a quota of promotion for each and giving preferential treatment to graduates over non-graduates in the matter of fixation of such quota.** The result of fixation of quota of promotion for each of the two categories of Supervisors would be that when a vacancy arises in the post of Assistant Engineer, which, according to the quota is reserved for graduate Supervisors, a non-graduate Supervisor cannot be promoted to that vacancy, even if he is senior to all other graduate Supervisors and more suitable than they. His opportunity for promotion would be limited only to vacancies available for non-graduate Supervisors. That would clearly amount to denial of equal opportunity to him. When there is a vacancy earmarked for graduate Supervisors, a non-graduate, Supervisor would be entitled to ask:

I am senior to the graduate Supervisor who is intended to be promoted. I am more suitable than he is. It is no doubt true that I am a non-graduate, but my not being a graduate has not been branded as a disqualification. I am regarded fit for promotion and, like the graduate Supervisor, I am equally eligible for being promoted. My technical equipment supplemented by experience is considered adequate for discharging the functions of Assistant Engineer. Then why am I being denied the opportunity for promotion and the graduate Supervisor is preferred?

There can be no satisfactory answer to this question. It must be remembered that many of these non-graduate Supervisors might not have been able to obtain degree in engineering because they came from poorer families and did not have the financial resources to pursue degree course in engineering and not because they lacked the necessary capacity and intelligence. "Chill penury" might have "repressed their noble rage". It is of the essence of equal opportunity for such persons with humble and depressing backgrounds that they should have opportunity, through experience or self- study, to level up with their more fortunate colleagues who, by reason of favourable circumstances, could obtain the

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- A benefits of higher education, and if they prove themselves fit and more suitable than others, why should they be denied an opportunity to be promoted in a vacancy on the ground that vacancy belongs to Supervisors possessing higher educational qualifications. As pointed out by Krishna Iyer, J., in the State of Jammu & Kashmir v. Triloki Nath Khosa (*supra*) "the soul of Art. 16 is the promotion of the common man's capabilities, overpowering environmental adversities and opening up full opportunities to develop in official life without succumbing to the sophistic argument of the elite that talent is the privilege of the few and they must rule". To permit discrimination based on educational attainments not obligated by the nature of the duties of the higher post is to stifle the social thrust of the equality clause. A rule of promotion which, while conceding that non-graduate Supervisors are also fit to be promoted as Assistant Engineers, reserves a higher quota of vacancies for promotion for graduate Supervisors as against non-graduate Supervisors, would clearly be calculated to destroy the guarantee of equal opportunity. But even so, we do not think we can be persuaded to strike down the Andhra Pradesh Rules in so far as they make differentiation between graduate and non-graduate Supervisors. This differentiation is not something brought about for the first time by the Andhra Pradesh Rules. It has always been there in the Engineering Services of the Hyderabad and the Andhra States. The graduate Supervisors have always been treated as a distinct and separate class from non-graduate Supervisors both under the Hyderabad Rules as well as the Andhra Rules and they have never been integrated into one class. Under the Hyderabad Rules, the pay scale of graduate Supervisors was Rs. 176-300, while that of non-graduate Supervisors was Rs. 140-300 and similarly, under the Andhra Rules the pay scale of non-graduate Supervisors was Rs. 100-250, but graduate Supervisors were started in this pay scale at the stage of Rs. 150/- so that their pay-scale was Rs. 150-250. Graduate Supervisors and non-graduate Supervisors were also treated differently for the purpose of promotion under both sets of Rules. In fact, under the Andhra Rules a different nomenclature of Junior Engineers was given to graduate Supervisors. The same differentiation into two classes also persisted in the re-organised State of Andhra Pradesh. The

pay-scale of Junior Engineers was always different from that of non-graduate Supervisors and for the purpose of promotion, the two categories of Supervisors were kept distinct and apart under the Andhra Rules even after the appointed day. The common gradation list of Supervisors finally approved by the Government of India also consisted of two parts, one part relating to Junior Engineers and the other part relating to non-graduate Supervisors. The two categories of Supervisors were thus never fused into one class and no question of unconstitutional discrimination could arise by reason of differential treatment being given to them. Contention E cannot, therefore, prevail and must be rejected.”

20. The private respondents sought to take advantage of the observations of this para as a whole, and more specifically, to the portion set out in bold. But yet had to concede that after propounding the social philosophy, the fact remains that the Constitution Bench found it difficult, and actually did not give any relief, while quashing the Rule in question.

21. The private respondents also referred to the judgment of the two Judge Bench of this Court in *Punjab State Electricity Board, Patiala & Anr. v. Ravinder Kumar Sharma & Ors.*⁴, which had struck down the Rule in respect of quota being carved out between the Degree-holders and the Diploma-holders of line men. However, this would not be of much relevance, as this judgment was subsequently overruled in *P. Murugesan & Ors. v. State of Tamil Nadu & Ors.*⁵

22. In *Roop Chand Adlakha & Ors. v. Delhi Development Authority & Ors.*⁶, promotion from different sources, prescribing different eligibility conditions on the basis of educational qualifications and service experience as being violative of Articles 14 & 16 of the Constitution was debated. The inherent distinction between a person with a Degree and one with merely a Diploma was stated to be much too obvious. But, whether that difference has a reasonable relation to the nature of the office to which the promotion is contemplated was stated to be a different aspect. What was observed was that this may vary from case to case, and difference in qualification has to have a reasonable relation to the nature of duties and responsibilities that go with, and are attendant upon the promotion post. Thus, "to overdo

⁴ AIR 1987 SC 367

⁵ (1993) 2 SCC 340

⁶ 1989 Supp (1) SCC 116

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- A classification is to undo equality." The relevant aspect found in that was that different standards and conditions for eligibility were prescribed with a view to inject a higher technical quality in the promotional cadre, based on the recommendations of the committee. The Rules were, thus, once again upheld. The aspect which was stated to be of significance by learned counsel for the private respondents was that in the given facts of the case before us, there were no material placed to show the connect between the higher qualification and the greater efficiency in the promotional post. Now returning to the *P. Murugesan*⁷ case, the amended Rules introduced a ratio of 3:1 between graduate AEs and Diploma-holders JEs for promotion to the post of Assistant Executive Engineers. These Rules were held not to be violative of Articles 14 and 16 of the Constitution, opining that the Rule making authority was competent to impose a complete bar, as well as partial restrictions on the category of promotees, on the basis of educational qualifications.

23. It may also be noticed that the Rule making power, under D the proviso to Article 309 of the Constitution has been emphasised as legislative in nature and thus, the test to determine the constitutionality of any provision of such Rule is whether the legislature was competent to enact such a provision.

24. On referring to the earlier judgments, including in the *State of Jammu and Kashmir v. Triloki Nath Khosa*⁸ case, it was, once again emphasized that minute and microscopic classification should not be permitted, nor should the Court countenance, in the words of Krishna Iyer, J. "mini-classifications based on micro-distinctions." It is, however, also noticed that right from 1974, i.e., since the decision of the F Constitution Bench in *State of Jammu and Kashmir v. Triloki Nath Khosa*⁹ case, this Court had been uniformly holding that even where direct recruits and promotees are integrated into a common class, they could for the purpose of promotion to the higher cadre, be classified on the basis of educational qualification. The conclusion, thus, was that G if the Diploma-holders can be barred altogether from promotion, it was difficult to appreciate how and why the rule making authority can be precluded from restricting the promotion. Thus, "the rule-making authority

⁷ *supra*

⁸ *supra*

⁹ *supra*

may be of the opinion, having regard to the efficiency of the administration and other relevant circumstances that while it is not necessary to bar the diploma holders from promotion altogether, their chances of promotion should be restricted. On principle, there is no basis for the contention that only two options are open to a rule-making authority-either bar the diploma holders altogether or allow them unrestricted promotion on par with the graduates." A B

25. The last judgment to be cited, to be considered by us, is of the two Judges in *M. Rathinaswami & Ors. v. State of Tamil Nadu & Ors.*¹⁰ In a case of an integrated list of seniority between direct recruits and promotees, preferential treatment, thereafter, based on educational qualifications was held as valid for considering promotion. However, among equally qualified candidates, there could be no further classification. The similarity of factual matrix is reflected, as the Junior Assistants holding the post were both graduates and post-graduates, though the minimum educational qualification was SSLC. From the post of Junior Assistants, the promotion was to the post of Assistants, and there could also be direct recruitment through competitive examinations. The minimum qualification for direct recruitment of Assistants was graduation. The promotion of Assistants to the post of Deputy Tahsildar was in question. The directly recruited Assistants were given preferential treatment by making them eligible for promotion as Deputy Tahsildar on completion of five (5) years as Assistants, while placing them above the senior, graduate promotee Assistants. In that context, it was observed that once the directly recruited Assistants have been integrated into one cadre, there could not be a further classification between those who had acquired the graduation qualification, whether before joining as Junior Assistants or thereafter. It was also left to the State to decide whether their qualification has a reasonable relation to the nature of duties and responsibilities of the promotional post. Similarly, regarding the question whether the difference in educational qualification is sufficient to give preferential treatment to one class of candidates against another, it was opined to be ordinarily left to the executive authorities to decide, as they have expertise in administrative matters and, ordinarily, it would not be proper for the court to sit in appeal over their decisions, unless it is something totally arbitrary or shocking. C D E F G H

¹⁰ (2009) 5 SCC 625

A ***Conclusion:***

26. The spectrum of judicial opinions referred to aforesaid leaves us with little doubt that though equality is the very bulwark of the provisions of the Constitution, in service jurisprudence, classifications are a matter of necessity and judicial pronouncements have sought to
- B balance the equality principle with the principle of classification, dependant on the nexus for making the classification. Higher educational qualifications have been repeatedly emphasized as an aspect which can give exclusive promotion, earlier promotion or for that matter, as in this case, an accelerated promotion. A higher degree of qualification intrinsically would bring in certain skills, though undoubtedly, that should be useful and have a nexus with the job being performed. As to who should examine this nexus, that has been left to the wisdom of the administrative authorities, who are best equipped to do so¹¹.
27. It has also been opined that even where persons having two different qualifications are given the opportunity of promotion, there cannot be an absolute equality for the reason that the administration may consider giving the lesser qualified an opportunity of promotion on different terms, rather than completely prohibiting them from promotion.
28. We are conscious of the fact that in further posts, higher than AE, there is no distinction between persons having different qualifications. There are no direct appointments. The posts are filled in only through promotions. The question is what is really being done? In our view, all that has been done is that, at a particular promotion stage, in the wisdom of the administration, recognising higher skills developed through higher qualifications, and as an incentive to others to acquire these higher qualifications, an accelerated promotion on a small percentage of posts had been granted.

29. We did put to the learned counsel for the private respondents if they could have been shut out from promotion, or if the time periods could have been different for promotion, then the result would have
- G been the same as their grievance today, i.e., some of the Degree-holders would rank higher than the Diploma-holders. Thus, this is not something out of the ordinary which has happened, or would result in a situation which can be categorised extraordinary by reason of accelerated promotion to the Degree-holder.

H ¹¹ M. Rathinaswami & Ors. v. State of Tamil Nadu & Ors. (supra)

30. We have noticed another important aspect, i.e., that the direct recruitment to the post of AE required a candidate to be a Degree-holder. 50% of the posts were reserved for Degree-holding direct recruits. In the 50% promotion quota, a 10% promotion quota was carved out, leaving only 40% for promotion through the normal route. Possibly with the intention of obviating any grievance which the promotees may have, the normal promotion route was sought to be maintained at 50%, without any accelerated promotion in that portion, by bringing in 10% from the direct recruitment quota to the promotion quota, and that being utilised for accelerated promotion, for promotees with a Degree. Had this quota not been there at all, whether earlier or later, but the direct recruitment in promotion quota had been maintained in equal ratio, the Diploma-holders could, in any case, have had no grievance. The bringing forth from the direct recruitment quota (for which the qualification is the Degree) to the promotion quota and giving that through accelerated promotion for such persons who have a degree can, thus, hardly be said to have any intrinsic defects which could violate Articles 14 & 16 of the Constitution.

31. The historical perspective also cited before us hardly supports the private respondents as even the State of Uttar Pradesh, as it existed earlier, and the Rules as they existed then, provided for such 7.33% quota, which was never assailed by any party.

32. We may also add before ending, that there exist inconsistencies, which we have pointed earlier in para 16, in the principles laid down in the impugned judgment in para 30.

33. We are, thus, unequivocally of the view that the impugned judgment cannot be sustained and the challenge to the Rule is misplaced. The consequence would be the dismissal of the writ petition by the Diploma-holders and the appeal of the Government being allowed. Parties are left to bear their own costs.

Civil Appeal No.1317/2015

34. The appeal is dismissed in view of the order passed in CA No.10194/2013 as the appellant sought a greater relief than even that which was granted in the impugned order.

Civil Appeal No.11307/2013

35. The appeal concerns the Uttar Pradesh Public Works Department Assistant Engineers (Civil) Services Rules, 2003. The

- A relevant portion of the Rules, providing for accelerated promotion/sub quota for Degree-holders was struck down, relying upon the judgment of the High Court in WP No.267/2010 (S/B), which order has been set aside by us in CA No.10194/2013.

36. The result of the aforesaid is that this appeal is allowed and
B the impugned order set aside, upholding the relevant Rule.

IA No.88765/2018 in CA No.10194/2013

IA No.7/2016 in CA No.11307/2013

37. In view of the disposal of the appeals, no further orders are
C called for on these applications and the same stand disposed of.

Divya Pandey

Appeals disposed of.