

Roop Chand Adlakha And Ors vs Delhi Development Authority And Ors on 26 September, 1988

Equivalent citations: 1989 AIR 307, 1988 SCR SUPL. (3) 253, AIR 1989 SUPREME COURT 307, 1989 LAB. I. C. 1268, (1988) 4 JT 114 (SC), 1988 20 REPORTS 346, 1988 4 JT 114, (1988) 2 KER LT 101, 1989 SCC (SUPP) 1 116, (1988) 2 CURLR 680, 1989 SCC (L&S) 235, (1989) 58 FACLR 549, (1989) 1 LAB LN 268

Author: Misra Rangnath

Bench: Misra Rangnath

PETITIONER:

ROOP CHAND ADLAKHA AND ORS.

Vs.

RESPONDENT:

DELHI DEVELOPMENT AUTHORITY AND ORS.

DATE OF JUDGMENT 26/09/1988

BENCH:

VENKATACHALLIAH, M.N. (J)

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VENKATACHALLIAH, M.N. (J)

MISRA RANGNATH

CITATION:

1989 AIR 307 1988 SCR Supl. (3) 253

1989 SCC Supl. (1) 116 JT 1988 (4) 114

1988 SCALE (2) 897

ACT:

Constitution of India, 1950 Articles 14 and 16 Services-Appointment and promotion-State entitled to prescribe that a candidate should have a particular qualification plus a stipulated quantum of service experience.

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Civil Services-D.D.A.-Engineering Cadre Promotion of Junior Engineers to Assistant Engineers and Assistant Engineers to Executive Engineers-Different conditions of eligibility of Diploma-Holder and Graduates-Prescription of-Whether violative of Articles 14 and 16.

HEADNOTE:

The Rules of the Central Public Works Department (CPWD) adopted by the Delhi Development Authority (DDA) stipulate and provide that 50% of the posts of Assistant Engineers in DDA be filled-up by promotion from the cadre of Junior Engineers comprising of both Graduates in Engineering and Diploma-Holders in Engineering in the equal ratio (50:50%) of the promotional posts. Half of it, i.e. 25% were to be filled up by promotion of Graduate Junior-Engineers with three years' service experience as Junior-Engineers; the other 25% to be filled up from Diploma-Holder Junior-Engineers. who had X years service experience as Junior-Engineers. The Rules further provide that the Executive Engineers' post in DDA were purely promotional and Graduate Assistant Engineers with 8 years' service-experience and Diploma-Holder Assistant Engineers with 10 years' service-experience were eligible for promotion. No inter se quota between the two class of officers; was prescribed.

The Diploma-Holders in the Cadres of Junior Engineers and Assistant Engineers filed separate writ petitions in the High Court assailing the constitutional validity of the prescriptions made by the rules in the matter of requirement of differential service-experiences between the Graduates and the Diploma-Holders for promotion to the higher cadres of Assistant Engineers and Executive Engineers respectively. They also assailed the promotion of Graduate Engineers to the higher cadres made on the strength of the Rules.

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The High Court allowed the writ petitions and declared the different standards of service-experience prescribed for Degree-Holders and Diploma-Holders in respect of both the cadres as violative of Articles 14 and 16 of the Constitution.

In the appeal to this Court, on behalf of appellants it was contended; (1) that the view taken by the High Court is demonstrably erroneous and opposed to well settled principles; (2) that the High Court took an erroneous view that in Shujat Ali's case (1975 (1) SCR 449) this Court struck down the service rule impugned in that case; (3) that the fundamental distinction between Triloki Nath Khosa's, case [1974] 1 SCR 771 and Shujat Ali's case was lost sight of by the High Court; (4) that the present case was not one in which the Diploma-Holders, proprio vigore and without more, were held eligible for promotion. The educational qualification of a Diploma in engineering was not treated as equivalent to a Degree for purposes of determining eligibility. Nor the Degree itself was determinative of eligibility for promotion. The eligibility of promotion is based on a combination of factors which vary according to the basic educational qualification of the two classes of engineers; (5) that this distinction was germane to the

requirements of higher technical and academic quality for the higher posts which involved expertise in structural design. etc. and (6) that even where recruitment to a particular cadre was made from different sources, resulting in the formation of a single homogeneous cadre it was not impermissible to make a further classification amongst the members of such a cadre for purposes of further promotion based on the higher educational qualification of the candidates.

On behalf of the respondent Diploma-Holders it was contended(1) that this Court had, more than once. cautioned against undue accent, in the matter of promotional opportunities, on academic-qualification alone which might lead to elitist preferences and tend to obscure the egalitarian principle and social justice; (2) that the effect of the distinction is really an imperceptible extension or magnification of insubstantial factors subverting the precious guarantee of equality and(3) that to discriminate between Diploma-Holders and Graduates who belong to the same cadre and hold inter-changeable posts, both in the present cadre and in the prospective promotional posts, on the mere lack of some higher academic attainment is to place a high premium on these social and economic pursuits for the economically disadvantaged difficult.

Allowing the Appeals,

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HELD: 1. The inherent distinction between a person with a Degree and one who is merely a Diploma-Holder is much too obvious. But the question for consideration, in the present context, is whether the differences have a reasonable relation to the nature of the office to which the promotion is contemplated. The idea of equality in the matter of promotion can be predicated only when the candidates for promotion are drawn from the same source. If the differences in the qualification has a reasonable relation to the nature of duties and responsibilities. that go with and are attendant upon the promotional post, the more advantageous treatment of those who possess higher technical qualifications can be legitimised on the doctrine of classification. There may, conceivably, be cases where the differences in the educational qualifications may not be sufficient to give any preferential treatment to one class of candidates as against another. Whether the classification is reasonable or not must, therefore, necessarily depend upon facts of each case and the circumstances obtaining at the relevant time. When the State makes a classification between two sources, unless the vice of the classification is writ large on the face of it, the person assailing the classification must show that it is unreasonable and violative of Article 14. [263A-C]

2. A wooden equality as between all classes of employees irrespective of all distinction or qualifications, or job-requirements is neither constitutionally compelled nor

practically meaningful. [263D]

The process of classification is in itself productive of inequality and in that sense antithetical of equality. The process would be constitutionally valid if it recognises a pre-existing inequality and acts in aid of amelioration of the effects of such pre-existent inequality. The the process cannot merely blow-up or magnify in-substantial or microscopic differences on merely meretricious or plausible. The over-emphasis on the doctrine of classification or any anxious and sustained attempts to discover some basis for classification may gradually and imperceptibly deprive the article of its precious content and end in re-placing doctrine of equality by the doctrine of the classification.[264C-D]

4. The presumption of good faith in and of constitutionality of a classification cannot be pushed to the point of predicating some possible or hypothetical but undisclosed and unknown reason for a classification rendering the precious guarantee of equality "a mere rope of sand". [264E]

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Central Railway v. A.V.R. sidhanti, [1974] 3 SCR 207 at 214 and T.Devadasan V. The Union of India, [1964] 4 SCR at 689 & 690 followed.

5."To overdo classification is to undo equality". The idea of similarity or dissimilarity of situations of persons to justify classification, cannot rest on merely differentia which may, by themselves rational or logical, but depends on whether the differences are relevant to the goals sought to be reached by the law which seeks to classify. The justification of the classification must, therefore, be sought beyond the classification. All marks of distinction do not necessarily justify classification irrespective of the relevance or nexus to objects sought to be achieved by the law imposing the classification. [264F-G]

State of Jammu & Kashmir v. Triloki Nath Khosa & Ors.,[1974] I SCR 771; Bidi Suppy Co.v. Union of India, [1956] SCR 182, relied no; Mohammad shujat Ali v. UOI and others, [1975]1 SCR 449; H.C. Sharma and Ors. v. Municipal Corporation of Delhi and Ors., [1983]3 SCR 372 and Punjab State Electricity Board, Patiala, and Anr.v. Ravinder Kumar Sharma & Ors.,[1986] 4 SCC 617 distinguished; State of Mysore v. Narasinga Rao, [1968] 1 SCR 401 and Union of India v. Mrs. S.B. Kohli, [1973]3 SCR 117, referred to.

6. In the present case, the possession of a diploma. by itself and without more, does not confer eligibility. Diploma, for purposes of promotion, is not considered equivalent to the degree. [268d]

7.If the educational qualification by itself was recognised as conferring eligibility for promotion, then the super-imposition of further conditions such as a particular period of service, selectively, on the Diploma Holders alone to their disadvantage might become discriminatory. This does

not prevent the State from formulating a policy which prescribes as an essential part of the conditions for the very eligibility that the candidate must have a particular qualification plus a stipulated quantum of service experience. [268G-H;269A]

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos.896 to 899 of 1988 and Civil Appeal No. 3352 of 1988. From the Judgment and Order dated 2.9.1987 of the Delhi High Court in C.W.P. No. 2131,2082 of 1984 respectively.

PG NO 257 G. Ramaswami, Additional Solicitor General, R.K. Jain, P.P. Rao, M.S. Gujaral, S. Rangarajan, A.K. Sanghi, Mrs. Madhu Kapur, Arun Kr. Vijayesh Roy, Sanjay Kr. Kaul, Sardar Bahadur, V.B. Saharaya, R.K. Khanna, Vishnu Mathur, Ashok Aggarwal, R.N. Keswani and R.S. Sodhi for the appearing parties.

The Judgment of the Court was delivered by VENKATACHALIAH, J. These four Civil Appeals by Special Leave and the Special Leave Petition arise out of and are directed against the common Judgment dated 2.9.1987, of the High Court of Delhi in C.W.P. No. 2132 and C.W.P. No. 2082 of 1984 in which the principal controversy was whether the Rules prescribing different conditions of eligibility for Diploma-Holders and Graduates for promotion from the cadre of Junior-Engineers to that of Assistant-Engineers and from the cadre of Assistant-Engineers to that of Executive-Engineers in the Public Works Department of the Delhi Development Authority (DDA) is violative of Articles 14 and 16 of the Constitution and would, therefore, require to be declared void.

The High Court, in the writ petitions filed by the Diploma-Holders, has held that such differential treatment of Diploma-Holders and Graduates by the prescription of different standards of service-experience for purposes of eligibility for promotion to the higher cadres is unconstitutional.

2. The D.D.A. which is the appellant in Civil Appeals No.898 of 1988 and No. 899 of 1988 assails the correctness of the view taken by the High Court. Civil Appeals No. 896 of 1988 and 897 of 1988 are by the Graduate-Engineers who were respondents before the High Court and who are, similarly, aggrieved by the decision under appeal SLP 6181 of 1988 is by the DDA Graduate Engineers Association" which seeks to espouse the cause of the Graduate-Engineers. We grant Special Leave in SLP. All the five appeals are heard and disposed of by this common judgment.

PG NO 258 C.A.899 of 1988, C.A. 896 of 1988 and SLP 6181 arise out of C.W.P. 2132 of 1984. C.A. 898 of 1988, C.A. 897 of 1988 arise out of C.W.P. 2082 of 1984.

3. The D.D.A. by its resolution No. 574 dated 13.11.1963 adopted, pro-tanto, the rules of the Central Public Works Department (CPWD) in regard to the mode of recruitment-both by direct recruitment and by promotion-to the posts of Asst. Engineers. The rules, so adopted, in substance, stipulate and provide that 50% of the posts be filled by direct recruitment or by deputation and that the other 50%

be filled-up by promotion from the cadre of Junior-Engineers. The cadre of Junior-Engineers itself comprises of both Graduates in Engineering and Diploma-Holders in Engineering. The two categories of officers in the cadre of Junior-Engineers were provided with promotional opportunities to the post of Asst. Engineers in the equal ratio (50%:50%) of the promotional-posts. Half of it, i.e., 25% was to be filled up by promotion of Graduate-Engineers with three years' service-experience as Junior-Engineers; the other 25% to be filled-up from Diploma-Holder Junior-Engineers who were diploma holders who had 8 years' service-experience as Junior-Engineers.

By resolution No. 105 dated 16.6.1971 the DDA similarly adopted the relevant rules in the CPWD in the matter of recruitment to the posts of Executive-Engineers. The Executive-Engineers' post in the DDA thus became purely promotional and Graduate Asst. Engineers with 8 years' service-experience and diploma Asst. Engineers with 10 years' service-experience were eligible for promotion. No inter-se quota between the two class of officers was prescribed.

The following table delineates the effect and purport of the rules adopted under resolution No. 574 dated 13.11.1963 and No. 105 dated 16.6.1971. The table also indicates the mode of initial recruitment to the cadre of Junior-Engineers:

PG NO 259 EXECUTIVE ENGINEERS [By promotion] Asst. Engrs.' Asst. Engrs.'
[Degree] + [Diploma] 8 years +10 years service service ASSISTANT ENGINEERS
Graduates and Dimploma holders 50%by promotion 50%.By Direct recruitment 25%
25% Jr. Engr. Jr.Engr.

[Degree] +3 yrs. service	[Diploma] + 8 years service
JUNIOR ENGINEERS [Sectional Officers] Direct recruitment	
Graduates in Engineering [No prior experience Prescribed]	Diploma- holders [with 2 years experience]

In the years 1984 the Diploma-Holder in the cadre of Junior-Engineers and in he cadre of Asst. Engineers sought to assail, by means of two writ-petitions presented to the Delhi High Court, the Constitutional validity of the prescriptions made by the rules in the matter of requirement of differential service-experiences between the Graduates and Diploma-Holders for promotion to the higher cadres viz.

of Asst. Engineers and Executive-Engineers respectively. They also assailed the promotions of Graduate-Engineers to the higher cadres made on the strength of the Rules. CWP. 2132 of 1984 pertained to the resolution No. 574 dated 13.11.1963 adopting the relevant CPWD Rules prescribing 3 years' and 8 years' service-experience for Graduates and Diploma-Holders respectively and the

discrimination thus brought about between them. CWP No. 2082 of 1984 pertained to the constitutionality of the analogous provisions in the rules adopted by resolution No. 105 dated 16.6.1971.

PG NO 260 The High Court heard these two petitions together and by its common judgment dated 2.9.1987 upheld the challenge and declared the different standards of service-experience prescribed for Degree-Holders and Diploma-Holders in respect of both the cadres as violative of Articles 14 and 16 of the Constitution.

5. The principal question that arises in these appeals is whether, where, as here, recruitment to a particular cadre of posts is made, from two different sources, different conditions, based on the differences in educational qualifications, can be prescribed conditioning the eligibility for further-promotion to a higher cadre in service.

The High Court, by the judgment now under appeal, has held that such prescription of differential standards-based even on the differences in technical, educational qualifications-is violative of Article 14 and 16 of the Constitution. In reaching such conclusions as it did on the point, the High Court placed reliance on the pronouncement of this Court in Mohammad Shujat Ali v. UOI and Others,[1975] 1 SCR 449, H. C. Sharma and Ors. v. Municipal Corporation of Delhi and Ors., [1983] 3 SCR 372 and Punjab State Electricity Board,Patiala, and Anr. v. Ravinder Kumar Sharma & Ors.,[1986] 4 SCC 617 and T.R: Kapur and Others v. State of Haryana and Others, AIR 1987 SC 415. The High Court distinguished the decision of this (Court in State of Jammu & Kashmir v. Triloki Nath Khosa & Ors., [1974] 1 SCR 771. The High Court drew a distinction between the situation where diploma-holders were wholly excluded from eligibility for promotion to the higher cadre and the situation where, while they were considered eligible for promotion, however, were subjected to more onerous and less advantageous conditions for such promotion. The High Court distinguished Triloki Nath Khosa's case observing:

"7. This was a case where diploma holders were found completely ineligible for promotion to the higher post for lack of essential educational qualification but the considerations may vary if they are found eligible for promotion to the higher post but still certain conditions are laid as distinct from degree holders before they become eligible for promotion. The question then would arise whether such distinction can be justified and is based on any rationality or not .."

PG NO 261 Answering this point in favour of the "Diploma-Holders"

the High Court held:

"...The moment the diploma holders and degree holders are considered to constitute one class for purposes of promotion there cannot be any differentiation between the two vis-a- vis the qualification for promotion. It could be that for reasons of efficiency in administration the authorities may lay down that diploma holders are not at all eligible for promotion to the higher post and such a bar can be upheld in view of the

ratio laid down in the case of Triloki Nath Khosa but after the authorities considered them eligible for promotion there could be no rationale in their making any distinction between the degree-holders and diploma-holders for granting promotion to them to the higher post...."

(Emphasis Supplied) The point of distinction, as apprehended by the High Court, is that in the present case a Diploma, ipso-facto, qualifies for promotion. The real question is whether this assumption is correct and whether the relevant Rules determine the eligibility for promotion on the basis of a Diploma, or for that matter even a Degree, Or whether the eligibility for promotion is determined not with reference merely to the educational attainments but on the basis of educational qualifications plus a measure of service- experience, stipulated differently for Graduates and Diploma-Holders.

6. Learned counsel for the appellants, contended that the view that commended itself to the High Court is demonstrably erroneous and is opposed to principles which, by now, should be considered well-settled. They submitted that the High Court fell into an obvious error in its view that in Shujat Ali's case (1975) 1 SCR 449, this Court had stuck down the service-rule impugned in that case. Learned Counsel submitted that the fundamental distinction between the two sets of cases, one of which Triloki Nath Khosa's case is represents, and the other typified by Shujat Ali's case, was lost sight of by the High Court and the error pervading the judgment is the result of overlooking this essential distinction between the two sets of cases. It was contended for the appellants that the present case was not one in which the Diploma-Holders proprio- vigore, and without more, were held eligible for promotion. If the effect and intent of the rules were such as to treat PG NO 262 Diploma as equivalent to a Degree for purposes of further promotion then, the view of the High Court-that having considered both class of officers equally eligible for promotion on the mere strength of their educational qualifications, any further discrimination brought about by subjecting the Diploma-Holders alone to a more onerous and less advantageous stipulation for such promotion would violate, the constitutional pledge of equality-might have some qualification. But in the present case, counsel contended, that is not the position. The educational qualification of a Diploma in engineering was not treated as equivalent to a Degree for purposes of determining eligibility. Nor the Degree itself was determinative of eligibility for promotion. The eligibility for promotion is, it is urged, based on a combination of factors which vary according as the basic educational qualification of the two classes of engineers; that this distinction was germane to the requirements of higher technical and academic quality for the higher posts which involved expertise in structural- design etc. Learned counsel submitted that even where recruitment to a particular cadre was made from different sources, resulting in the formation of single a homogeneous cadre, it was not impermissible to make a further classification amongst the members of such a cadre for purposes of further promotion based on the higher educational qualification of the candidates. Learned counsel for the respondent-diploma-holders, while seeking to support the judgment of the High Court urged that this Court had, more than once, cautioned against undue accent, in the matter of promotional opportunities, on academic qualification alone which might lead to elitist preferences and tend to obscure the egalitarian principle and social-justice. It was, therefore, contended that the effect of the distinction, in the ultimate analysis, is really an imperceptible extension or magnification of insubstantial factors sub-verting the precious guarantee of equality. Sri Gujral, learned Senior

Counsel, sought to impart to the situation a dimension of social-justice and made an impassioned plea that to discriminate between Diploma-Holders and Graduates who belong to the same cadre and hold inter-changeable posts, both in the present-cadre and in the prospective promotional posts, on the mere lack of some higher academic attainment is to place a high premium on those social and economic ills of the society which rendered the further academic pursuits for the economically disadvantaged difficult.

7. A large number of authorities were cited on either side. We by first examine the cases relied upon by the High Court in support of its conclusion. The inherent distinction PG NO 263 between a person with a Degree and one who is merely a Diploma-Holder is much too obvious. But the question that falls for consideration, in the context such as the present one, is whether the differences have a reasonable relation to the nature of the office to which the promotion is contemplated. The idea of equality in the matter of promotion can be predicated only when the candidates for promotion are drawn from the same source. If the differences in the qualification has a reasonable relation to the nature of duties and responsibilities, that go with and are attendant upon the promotional-post, the more advantageous treatment of those who possess higher technical qualifications can be legitimised on the doctrine of classification. There may, conceivably, be cases where the differences in the educational qualifications may not be sufficient to give any preferential treatment to one class of candidates as against another. Whether the classification is reasonable or not must, therefore, necessarily depend upon facts of each case and the circumstances obtaining at the relevant time. When the state makes a classification between two sources, unless the vice of the classification is writ large on the face of it, the person assailing the classification must show that it is unreasonable and violative of Article 14. A wooden equality as between all classes of employees irrespective of all distinctions or qualifications, or job-requirements is neither constitutionally compelled nor practically meaningful. This Court in *Central Railway v.A.V.R. Siddhanti*, [1974] 3 SCR 207 at 214 observed:

"....A wooden equality as between all classes of employees regardless of qualifications, kind of jobs, nature of responsibility and performance of the employees is not intended, nor is it practicable if the administration is to run. Indeed, the maintenance of such a 'classless and undiscerning 'equality' where, in reality, glaring inequalities and intelligible differentia exist, will deprive the guarantee of its practical content. Broad classification based on reason, executive pragmatism and experience having a direct relation with the achievement of efficiency in administration, is permissible In *T. Devadasan v. The Union of India*,[1964]4 SCR 680 at 689 & 690 this Court observed:

"....What is meant by equality in this Article is, equality amongst equals. It does not provide for an absolute equality of treatment to all persons in utter disregard PG NO 264 in every conceivable circumstance of the differences such as age, sex, education and so on and so forth as may be found amongst people in general. Indeed, while the aim of this Article is to ensure that invidious distinction or arbitrary discrimination shall not be made by the State between a citizen and a citizen who answer the same description and the differences which may obtain between them are of no relevance

for the purpose of applying a particular law reasonable classification is permissible. It does not mean anything more.

But then the process of classification is in itself productive of inequality and in that sense antithetical of equality. The process would be constitutionally valid if it recognises a pre-existing inequality and acts in aid of amelioration of the effects of such pre-existent inequality. But the process cannot in itself generate or aggravate the inequality. The process cannot merely blow-up or magnify in- substantial or microscopic differences on merely meretricious or plausible differences. The over-emphasis on the doctrine of classification or any anxious and sustained attempts to discover some basis for classification may gradually and imperceptibly deprive the article of its precious content and end in replacing Doctrine of equality by the doctrine of classification. The presumption of good faith in and of constitutionality of a classification cannot be pushed "to the point of predicating some possible or hypothetical but undisclosed and unknown reason for a classification rendering the precious guarantee of equality "a mere rope of sand".

"To overdo classification is to undo equality". The idea of similarity or dissimilarity of situations of persons, to justify classification, cannot rest on merely differentia which may, by themselves be rational or logical, but depends on whether the differences are relevant to the goals sought to be reached by the law which seeks to classify. The justification of the classification must needs, therefore, to be sought beyond the classification. All marks of distinction do not necessarily justify classification irrespective of the relevance or nexus to objects sought to be achieved by the law imposing the classification.

8. In Mohd. Sujat Ali's case the validity of a prescription of the rules of the State of Andhra Pradesh treating Graduate-Engineers, on the one hand, and engineers with diploma or equivalent qualification, on the other, differently for purposes of promotion arose for consideration. Strictly speaking, the High Court was not right in its under-standing of the actual result of the PG NO 265 ease. The High Court, in para 8 of the judgment observed:

"The Supreme Court had then struck down this rule as violative of fundamental rights enshrined in Articles 14 and 16 of the Constitution of India.."

But it is to be noticed that the writ-petitions were ultimately dismissed by this Court. There are, of course, certain observations which caution against too readily resorting to the expedience of classification. After referring to Triloki Nath Khosa's ease it was observed:

".....But from these decisions it cannot be laid down as an invariable rule that whenever any classification is made on the basis of variant educational qualification., such classification must be held to be valid irrespective of the nature and purpose of the classification or the quality and extent of the differences in the educational

qualifications. It must be remembered that "life has relations not capable always of division into inflexible compartments". The moulds expand and shrink. The test of reasonable classification has to be applied in each case on its peculiar facts and circumstances

(Emphasis Supplied) This echoes what Vivian Bose, J. had earlier said in *Bidi, Supply Co. v. Union of India* [1956] SCR 182:

"Article 14 sets out, to my mind, an attitude of mind, a way of life. rather than a precise rule of law ".....In a given case that it falls this side of the line or that and because of that decisions on the same point will vary as conditions vary, one conclusion in one part of the country and another somewhere else; one decision today and another tomorrow when the basis of society has altered and the structure of current social thinking is different. It is not the law that alters but the changing conditions of the times and Article 14 narrows down to a question of fact which must be determined by the highest Judges in the land as each case arises....."

Shujat Ali's case itself recognised the permissibility and validity of such classification if the nature of the PG NO 266 functions and duties attached to the promotional-posts are such as to justify the classification in the interest of efficiency in public service; but, where both graduates and non-graduates were regarded as equally fit and eligible for promotion, the denial of promotion to a person otherwise eligible and due for promotion on the basis of a quota was not justified. On this point it was observed by this Court in Shujat Ali's case:

".....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 Asst. 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. In the present appeals before us, the Graduates and Diploma-Holders were not treated equal in the matters of eligibility for promotion. What is, therefore, assailed is not the aspect of the mere fixation of a quota as between the Diploma-Holders and the Graduates in the promotional posts, but the very prescription of different standards or conditions of eligibility. In Shujat Ali's case the infirmity of the differential treatment stemmed from the fundamental basis that, at that point, both Graduates and Diploma-holders were equally eligible but the Rule operated to deny promotion to a Diploma-holder on the basis of a quota. The observations in that case pertained to a stage which arose after the equality of

eligibility for promotion between the two classes of persons had been recognised. But in the present appeals the different prescriptions for conditioning eligibility are themselves questioned which need to be decided on the basis whether the discrimination contemplated and brought about in the matter of promotional-opportunities between graduates and non-graduates, based on the differences in the quality of their technical qualifications, were relatable to, and justified on the PG NO 267 basis of, the requirements of the promotional-posts. It is relevant to mention here that the different standards and Conditions for eligibility were prescribed with a view to injecting a higher technical quality in the promotions-cadre based on the recommendations of a committee, called "Vaish- Committee", constituted for the purpose. H.C. Sharma's and Punjab State Electricity Board's cases were also matters where Graduates and Diploma-holders were merged into and formed part of a homogenous cadre with equal eligibility for promotion and what fell for consideration was the validity of the further prescription of quotas between them. Here-again, no question of the validity of the different standards prescribed for the very eligibility for promotion fell for consideration. The present cases, however, are those where, having regard to the requirements of the promotional-posts, different conditions of eligibility for promotion on the differences based on the educational qualifications and service-experience were prescribed.

9. In *State of Mysore v. Narasinga Rao*, [1968] 1 SCR 40 1 higher educational qualifications were considered relevant for fixation of higher pay-scales. In *Union of India v. Mrs. S.B. Kohli*, [1973] 3 SCR 117 the requirement of a post graduate specialisation in the particular discipline was considered not irrelevant and a classification based on such specialisation was upheld.

Triloki Nath Khosa's case is more directly in point. There, Graduate-Engineers and Diploma-Holders were in a common-cadre of Asst. Engineers. But for purposes of further promotion to the higher cadre of Executive-Engineers only the Graduate were held eligible. Diploma-Holders were barred for promotion. Repelling the challenge to this provision made by the Diploma Holders, this Court said:

"The classification of Assistant Engineers into Degree- holders and Diploma-holders could not be held to rest on any unreal or unreasonable basis. The classification was made with a view to achieving administrative efficiency in the Engineering services. If this be the object, the classification is clearly correlated to it for higher educational qualifications are at least presumption evidence of a higher mental equipment."

"Classification on the basis of educational qualifications made with a view to achieving administrative PG NO 268 efficiency cannot be said to rest on any fortuitous circumstances and one has always to bear in mind the facts and circumstances of the case in order to judge the validity of a classification."

"Though persons appointed directly and by promotion were integrated into a common class of Assistant Engineers, they could, for purposes of promotion to then cadre of Executive Engineers, be classified on the basis of educational qualifications the rule providing that graduates shall be eligible for such promotion to the exclusion of diploma-holders does not violate Articles 14 and 16 of the Constitution and must be upheld. "

(Emphasis Supplied) In Triloki Nath's case diploma-holders were not considered eligible for promotion to the higher post. Here, in the present case, the possession of a diploma, by itself and without more, does not confer eligibility. Diploma, for purposes of promotion, is not considered equivalent to the degree. This is the point of distinction in the situations in the two cases. If Diploma-Holders-of course on the justification of the job-requirements and in the interest of maintaining a certain quality of technical expertise in the cadre-could validly be excluded from the eligibility for promotion to the higher cadre, it does not necessarily follow as an inevitable corollary that the choice of the recruitment policy is limited only two choices, namely either to consider them "eligible" or "not eligible". State, consistent with the requirements of the promotional-posts and in the interest of the efficiency of the service, is not precluded from conferring eligibility on Diploma-Holders conditioning it by other requirements which may, as here, include certain quantum of service-experience. In the present case, eligibility-determination was made by a cumulative-criterion of a certain educational qualification plus a particular quantum of service experience. It cannot, in our opinion, be said, as postulated by the High Court, that the choice of the State was either to recognise Diploma-Holders as "eligible" for promotion or wholly exclude them as "not-eligible". If the educational qualification by itself was recognised as conferring eligibility for promotion, then, the super-imposition of further conditions such as a particular period of service, selectively, on the Diploma-Holders alone to their disadvantage might become discriminatory. This does not prevent the State from formulating a policy which prescribes as an essential part of the conditions for the vary eligibility that the candidate must have a particular qualification plus a stipulated quantum of service-

PG NO 269 experience. It is stated that on the basis of the "Vaish- Committee" report, the authorities considered the infusion of higher academic and technical quality in the personnel requirements in the relevant cadres of Engineering Services necessary. These are essentially matters of policy. Unless the provision is shown to be arbitrary, capricious, or to bring about grossly unfair results, judicial policy should be one of judicial- restraint. The prescriptions may be somewhat cumbersome or produce some hardship in their application in some individual cases; but they can not be struck down as unreasonable, capricious or arbitrary. The High Court, in our opinion, was not justified in striking down the Rules as violative of Articles 14 and 16.

10. Accordingly, all the Appeals are allowed, the Judgment of the High Court dated 2.9.1987 set-aside and the Civil Writ Petitions No. 2 132 of 1984 and 2082 of 1984 in the High Court dismissed. However, the parties are left to bear and pay their costs, both here and below.

A.P.J .

Appeals allowed.