

(1993) 07 GUJ CK 0010
In the Gujarat High Court

A.C. Shah and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 30-07-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309

Deputy Engineer (Electrical) Recruitment Rules, 1978 — Rule 2(a)

Citation : (1993) 2 GLR 1829

Hon'ble Judges : S.D. Shah, J;R.D. Vyas, J

Bench : Division Bench

Judgement

S.D. Shah, J.—A perennial dispute of inequality of opportunity in the matter of promotion to the post of Deputy Engineer in the Electrical Engineering Branch of Public Works Department of the State of Gujarat between Junior Engineers (Degree Holders) and Supervisors (Diploma Holders) was brought to the Court as back as 1975 and the following directions issued by the Supreme Court of India in Civil Appeal No. 1749 of 1980 has revived this petition for our decision. By judgment and order dated 16th March, 1993 reported in State of Gujarat Vs. A.C. Shah and others, the Supreme Court observed as under (at page No. 1306 para 4):

We stand deprived of the pleadings of the parties before the High Court. The pleadings now introduced do not help us. Significantly, the High Court judgment is silent as to the basis on which it was persuaded to strike down of 2 : 1 for Junior Engineers and Supervisors respectively. The tenor of the judgment of the High Court does however suggest that the executive flexibility, with which the Government works could not justify the fixation of the ratio of 2:1. The High Court could not and did not substitute what was the right ratio in the circumstances and left it to the Government to devise another ratio. Had the factum of the legislation on the subject the Rules dated 4-7-1978, been brought to its notice, perhaps the High Court's angle of vision would have been different. State has no doubt compulsively carried out the mandate but has done so with reservation so as to meet the eventuality. No such measure can ever be

permanent that would hold good for all times, to meet not only the present needs but also future exigencies as well. Hands of the State cannot be so tied down. That would be step retrograde to the growth and working of a democracy. The State is now left to devise a ratio other than the ratio of 2:1 and cause a variation. It cannot come to that ratio again. This appears to us an undesirable situation. It must be left to the State to get at it again. Though obeying the mandamus of the High Court the State must be free to arrive at the original ratio of 2:1. On some basis the Governor of the State appears to have legislated on the subject. It was on the writ petitioner's (now respondents) to lay data before the High Court and bear the onus to show that the legislative measure was unfair and arbitrary, violative of Article 14 of the Constitution. As said before no such data appears to have been placed before the High Court.

2. As regards one of the questions regarding difference of length of qualifying service, the Supreme Court has directed that the controversy with regard to the said contention does not survive in view of *Roop Chand Adlakha and Ors. v. Delhi Development Authority and Ors.* reported in 1989 Supp. (1) SCC 116 and therefore, This Court is directed not to advert now to the disparity in length of qualifying service from two sources of promotion. The further observations made in the operative part of the judgment read as under:

In these terms we allow the appeal and set aside the judgment. The High Court may pass appropriate orders afresh, after permitting the parties to amend the pleadings, if necessary, and putting the onus on the writ petitioners to prove unfairness in the 1978 Rules or violation of Article 14 of the Constitution.

3. In view of the aforesaid directions, the judgment and order of the Division Bench of This Court dated 26th March, 1980, allowing the petition of the Supervisors is quashed and set aside and the said petition is revived before us to decide precisely the question of prescription of ratio between Junior Engineers (Degree Holders) and Supervisors (Diploma Holders) fixed under Deputy Engineer (Electrical) Recruitment Rules, 1978 issued vide Notification dated 4th July, 1978. By Rule 2(a) of the said Rules ratio of 2:1, i.e., 2 Junior Engineers by one Supervisor is fixed for promotion to the cadre of Deputy Engineers (Electrical) and validity and constitutionality of fixing of this ratio by statutory rule which is to be decided by This Court in light of the pleadings to be made by the petitioners so as to prove unreasonableness or unfairness of the 1978 Rules. The two Division Benches of This Court thereafter on receipt of the writ of the Supreme Court called upon the petitioners to suitably amend the memo of the Spl. Civil Application consistent with the direction issued by the Hon'ble Supreme Court of India. However, the proposed amendment to the memo of the Spl. Civil Application was moved before This Court for the first time on 27th of July, 1993. The proposed amendment was granted and the memo of Spl. Civil Application accordingly stands amended by introduction of para 29.1 to 29.3. It may be mentioned that para 29.3 contains sub-para I to XV. The prayer clause of the petition is also amended by introduction of para 30(2a) inter alia introducing the

prayer for issuance of appropriate writ, order or direction for striking down Rule 2(a) of the Deputy Engineers (Electrical) Recruitment Rules, 1978 by declaring them as ultra vires, unfair, arbitrary and violative of Article 14 of the Constitution of India.

4. Consistent with the principle of fair play, natural justice as well as elementary principle of law of pleading, opportunity was provided to the respondents to file their reply to the amended petition and respondent No. 3 has filed further affidavit-in-reply to the amended petition on behalf of respondents Nos. 3 and 4. We may state that no further affidavit-in-reply is filed by State of Gujarat or the Chief Engineer (Electrical), respondents Nos. 1 and 2 herein. The respondents Nos. 1 and 2 have preferred to make oral submissions only in support of the constitutionality and validity of Rule 2(a) of the aforesaid Rules.

5. Before we deal with the actual challenge now raised by the petitioners to Rule 2(a) of the aforesaid Rules, bare minimum facts giving rise to the present remand of the matter to This Court are required to be stated which are as under:

(I) The service in the Public Works Department of the State of Gujarat were classified into Civil Engineering Branch, Mechanical Engineering Branch and Electrical Engineering Branch and dispute in this petition relates to Electrical Engineering Branch. Prior to 1972 there existed one unified cadre of Electrical Supervisor, to which both Degree Holders as well as Diploma Holders and even non-qualified persons were appointed though pay scale prescribed for them were different. Inter se seniority was fixed for such persons on the basis of length of service. The next stage of the promotion was to the post of Deputy Engineer, for which no special qualifying experience was prescribed. Promotion to the post of Deputy Engineer was provided on criterion of seniority-cum-merit and the seniority was determined on the principle of continuous officiation. In short no distinction existed between Degree Holders and Diploma Holders prior to 1972.

(II) By Government Resolution dated 10th July, 1972, the common cadre of Electrical Supervisor came to be bifurcated into (1) Junior Engineer (Degree Holder) - Rs. 350-600, (2) Supervisor (Diploma Holder) - Rs. 250-480 and (3) Overseer (non-qualified persons) - Rs. 175-345. We would hasten to add that the cadre of Overseer has since become extinct as only incumbent of the post has retired and virtually the Resolution has brought about bifurcation of the cadre into Junior Engineers and Supervisors.

(III) It must be mentioned that the said Government Resolution bringing about trifurcation of the cadre into three separate cadres was subject-matter of challenge before This Court in Spl. Civil Appeal No. 1855 of 1973 and learned single Judge of This Court (D.A. Desai, J., as His Lordship then was) by judgment and order dated 1st and 2nd April, 1975 negated the challenge to trifurcation of the unified cadre of Electrical Supervisor with effect from 1972. It may be mentioned that while upholding the trifurcation of the cadre, the learned single Judge also directed the State Government to prescribe a quota and rule so that

promotion of Junior Engineers and Supervisors to the post of Deputy Engineers is regulated. Some of the present petitioners and the respondents were parties to the said proceedings. The said decision was challenged by preferring Letters Patent Appeal No. 162 of 1975 which was summarily rejected by the Division Bench of This Court on 12th December, 1979 and thereafter the matter was not taken further to the Supreme Court. It rested there. In short challenge to the trifurcation of unified cadre of Electrical Supervisor having failed, we shall have to accept the trifurcation of cadre as valid and constitutional.

(iv) It appears that thereafter by Government Resolution dated 27th December, 1972 the Government decided that all posts of Junior Engineer in the subordinate service of the Electrical Engineering Branch should be given gazetted status.

(v) On 26th September, 1975, State of Gujarat passed two Government Resolutions. By the first resolution, it inter alia provided the ratio between Junior Engineers and Supervisors for promotion to the post of Deputy Engineers (Electrical) as 2: 1 respectively with effect from 1st May, 1972. By another resolution of the same date it modified rules for recruitment of Deputy Engineers (Electrical) and Rule-1 provided that Junior Engineer (Electrical) with three years qualifying service, Supervisor (Electrical) with eight years qualifying service or Overseer (Electrical) with thirteen years qualifying service of proved merit and efficiency shall be eligible for promotion. These Government Resolutions gave rise to the present petition and petitioners challenged the legality and constitutionality of these two Government Resolutions as violative of Articles 14 and 16 of the Constitution of India.

(vi) It may be stated that during the pendency of the said Special Civil Application, on 4th July, 1978, the State of Gujarat framed statutory rules under proviso to Article 309 of the Constitution of India for regulating recruitment to the post of Deputy Engineer (Electrical) in the General States Service. The Rules were known as "The Deputy Engineer (Electrical) Recruitment Rules, 1978 and shall be hereinafter referred to as the said Rules. Though statutory rules were already framed, it appears that legality and validity thereof was not specifically challenged in this petition initially by specifically amending the petition and it appears that neither petitioners nor respondents made any reference whatsoever to the said statutory rules in the course of their submissions before the Division Bench of This Court.

(VII) By judgment and order dated 26th March, 1980, Division Bench of This Court decided the Spl. Civil Application so as to allow the petition and so as to declare invalid the prescription of quota of 2: 1 and prescription of longer qualifying service of eight years for Supervisor in contrast to three years qualifying service for Junior Engineer and consequently it directed that the Junior Engineers and Supervisors when they belong to the unified cadre of Electrical Supervisors were required to be treated alike and equally and, therefore, it struck down the aforesaid two Resolutions and issued direction to the respondents not to implement the said Resolutions.

(VIII) Being aggrieved by the aforesaid judgment and order of the Division Bench of This Court, the State of Gujarat preferred Civil Appeal No. 1749 of 1980 before the Supreme Court of India. The Supreme Court while granting Spl. Leave to Appeal to the State of Gujarat, refused order of stay on Civil Application and it would be appropriate at this stage to refer to the order of the Supreme Court passed on Interim Application. On 18th December, 1980, the Supreme Court passed the following order:

Having heard Learned Counsel, we direct that during the pendency of the Appeal, the officers who have been promoted will not be reverted. But, alternatively it will be open to the Government to create supernumerary post to accommodate them. It will also be open to the Government to frame fresh quota rules consistent with the High Court judgment under appeal for the purpose of making promotions during the pendency of the appeal.

(IX) It appears that consistent with the interim order passed by the Supreme Court, the State Government issued Notification dated 17th September, 1981 in exercise of powers conferred upon it by the proviso to Article 309 of the Constitution of India and enacted rules further to amend the Deputy Engineer (Electrical) Recruitment Rules, 1978, which came to be known as "Deputy Engineer (Electrical) Recruitment Rules, 1981. Rule 2(a) of the Rules of 1978 came to be substituted by following provisions:

2(a) By promotion of a person of proved merit and efficiency from amongst the persons working as Junior Engineers (Electrical) and Supervisors (Electrical) in the ratio of 1: 1 or

3. This amendment shall remain in force as an interim arrangement subject to the final disposal of the Civil Appeal No. 1749 of 1980 filed by the State of Gujarat in the Supreme Court against the judgment of Gujarat High Court in Special Application No. 1606 of 1975.

(X) Once again the State of Gujarat by Notification dated 12th April, 1982 further amended the said statutory rules so as to supersede amendment rules of 1981 and so as to introduce Clause (a) in the Rules of 1978 as under:

(a) by promotion of a person of proved merit and efficiency from amongst the persons working as Junior Engineers (Electrical) and Supervisors (Electrical) in the ratio of 1: 1. or.

(XI) We may mention that we have referred to these two notifications of the Government extensively as reference to them, would be absolutely essential while deciding the question as to what relief can be granted and as to whether relief is required to be modulated so as to cause no hardship or as little hardship as possible.

Submissions:

6. Mr. J.A. Adeshra and Mr. R.C. Jani, Learned Counsels appearing for the

petitioners have stated to the Court that excepting the amendment which they have made in the memo of Spl. Civil Application, the petitioners do not want to produce any other material nor do they want to raise any other submission based on the amended pleading. It was strenuously urged before This Court by the Learned Counsel that prescription of quota of 2:1 for Junior Engineer and Supervisor is unreasonable, irrational and arbitrary as Rule-making Authority has failed to take notice of the fact that prior to 1975 and prior to trifurcation of cadre in the year 1972, cadre was unified cadre of Electrical Supervisor and irrespective of educational qualification whether Degree Holders or Diploma Holders or Non-qualified persons, were treated alike and equally for all purposes. All of them were entitled to promotion to the post of Deputy Engineer. Their service conditions were similar, the duties to be performed and responsibilities to be shouldered by them were also similar. When such a unified class was trifurcated, different treatment in the matter of promotion ought not to be and should not be meted out as rights which were hitherto available to Supervisors (Diploma Holders) for promotion should not be denied to them by prescription of ratio which drastically curtails the chance of promotion and which renders the class of Supervisor into a helpless class liable to stagnate. It was, therefore, strenuously urged before This Court that prescription of quota into 2: 1 brings about inequality in the matter of promotion so far as Supervisors are concerned and there is no justification for such unequal treatment. In the alternative, it was very strenuously urged before us that when longer qualifying period of service is prescribed for Supervisor, on completion thereof, he becomes equal in every respect to the Degree Holder and, therefore, further distinction or indiscrimination between Junior Engineer and Supervisor was not permissible and, therefore, also prescription of ratio of 2: 1 is violative of ArticleS 14 and 16 of the Constitution of India. It was strenuously urged before This Court that administrative efficiency or recruitment of more qualified persons in the higher cadre cannot justify ratio of 2 : 1 as by promoting Junior Engineers it cannot be assumed that efficiency of higher services will be achieved. Supervisors are also efficient and can help in bringing about efficiency submits the Counsel for the Supervisor. Fact that at times occasionally Supervisors were transferred to perform duties of Junior Engineers was also pressed into service to bring home the point that they were in every respect equal to the Junior Engineers and were required to be treated equally in the matter of promotion.

7. The pleadings introduced by amended Para 29.2 are to the effect that the Division Bench of the Gujarat High Court while striking down the two notifications of the year 1975 has in substance struck down Rule 2(a) of the Deputy Engineer (Electrical) Recruitment Rules, 1978. Unfortunately, it does not appear to be the position as is noticed by the Supreme Court and the person drafting the amended pleadings has not taken care to appropriately understand very clear observations of the Supreme Court on the point.

8. Mr. B.P. Tanna, Learned Counsel appearing for respondents Nos. 3 and 4 and M/s. Rekha Doshit, learned Assistant Government Pleader for respondents Nos. 1

and 2 on the other hand strenuously urged before This Court that prescription of ratio is a matter to be decided by Rule-making Authority and the Court of law would be loath to interfere with such exercise unless same is shown to be shockingly irrational and unreasonable as to strike at the very root of principle of equality. It is further submitted that since bifurcation of cadre is held to be constitutional, the separate cadre of Junior Engineer and that of Supervisor shall have to be accepted. The classification is made by the Rule-making Authority and such classification has come to stand as it is upheld as legal and valid. After bifurcation of the cadre, the Rule-making Authority has by framing rules and prior thereto by executive fiat prescribed ratio for promotion to the cadre of Deputy Engineer and it has also prescribed requirement of longer qualifying experience in the case of Supervisor vis-a-vis the Junior Engineer. The prescription of longer qualifying service for Supervisor (Diploma Holder) is now held to be valid and constitutional vide decision of the Supreme Court in the case of *Roop Chand Adlakha and Others Vs. Delhi Development Authority and Others*, . They further submitted that even prescription of different ratio for promotion to the cadre of Deputy Engineer is also not open to any challenge as that exercise is also held to be permissible by recent decision of the Supreme Court and, therefore, they submitted that prescription of ratio of 2:1, i.e., 2 to Junior Engineers and one to Supervisor for promotion to the cadre of Deputy Engineer should be upheld and Rule 2(a) of the aforesaid Rules should be declared constitutional and valid and direction should be given to the State Government to implement the ratio from the date the said Rules came into force.

9. Having set out the rival submissions of the parties, it will be appropriate at this stage to refer to Rule 2 of "Deputy Engineer (Electrical) Recruitment Rules, 1978. Rule 2 reads as under:

2. Appointment to the post of Deputy Engineer (Electrical) in the General State Service Class-11, under the Public Works Department shall be made either:

(a) by promotion of a person of proved merit and efficiency from amongst the persons working as Junior Engineers (Electrical) and Supervisors (Electrical) for about 3 and 8 years respectively, in the ratio of 2:1 or (b) by direct selection.

The aforesaid Rule prescribes ratio of 2:1 between Junior Engineers and Supervisors for promotion to the cadre of Deputy Engineer (Electrical). This Rule also prescribes the criteria for eligibility for being considered for promotion and it is of experience of three years as Junior Engineer and experience of eight years as Supervisor. It is clear that Junior Engineer of three years experience and Supervisor of eight years experience are eligible for being considered for promotion to the cadre of Deputy Engineer (Electrical). It is also required to be borne in mind that such promotion is to be of a person of proved merit and efficiency. It is also required to be kept in mind that promotion shall be in the ratio of 2:1. Prescription of longer period of experience for Supervisor was the bone of contention before the earlier Division Bench of This Court on behalf of the Supervisors. The challenge to the said prescription of longer period of

experience was accepted by earlier Division Bench of This Court. The said challenge now stands negated by the decision of the Supreme Court in the case of *Roop Chand Adiakha (supra)*. The Hon'ble Justice M.N. Venkatachaliah (as His Lordship then was) speaking on behalf of the Bench considered the prescription of eligibility for promotion on the basis of educational qualification plus service experience. In the case before the Supreme Court, differential service experience based on differences in educational qualifications was prescribed, and the constitutionality of such provision was under challenge. Based on the recommendations of the expert committee on the observations to which reference is made by the Court it was held by the Court that prescription of longer period of experience for the Diploma Holders to be eligible for the promotion was constitutionally permissible. The Court in this connection made following pertinent observations:

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 superimposition 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. It is stated that on the basis of the "Vaish Committee" report, the authorities considered the infusion of higher academic and technical qualify 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 cannot be struck down as unreasonable, capricious and arbitrary.

10. From the aforesaid observations it becomes clear that it is permissible for the Rule-making Authority to prescribe requisite service experience to render a class of employees eligible for promotion. Prescription of longer or shorter service experience in light of possession of educational qualifications may vary from one class to another. In the case before us the two cadres are legally and constitutionally separate and distinct since 1972. The Junior Engineers, therefore, cannot be equated with Supervisors or vice-versa as Rule-making Authority has classified them into separate cadres. Such classification is held to

be constitutional by This Court, which has become final. Therefore, if lesser experience is prescribed for Junior Engineer to render him eligible for promotion to the post of Deputy Engineer, keeping in mind his educational qualifications, no grievance can be made.

11. Next comes the question as to whether prescription of different ratio for these two admittedly distinct classes is permissible? It is required to be noted that the fixation of quota between two feeder cadres for promotion to the higher cadre or prescribing a ratio is a function of the Rule-making Authority. When there are two different, distinct and separate cadres, it is for the Rule-making Authority to decide as to which cadre will be eligible for promotion and if both cadres will be eligible for promotion, in what proportion they should be promoted and if Rule-making Authority decides that only one cadre shall be eligible for promotion to the exclusion of others, it is a permissible exercise of power. May be that such prescription of quota or ratio of promotion results into either total exclusion of a class from consideration for promotion or it may result into imposing a restriction in consideration of such a class. In the case of *P. Murugesan and Others Vs. State of Tamil Nadu and Others*, , an identical question of deciding validity of prescription of ratio of 3:1 for Degree Holders and Diploma Holders in the matter of promotion in Madras Corporation Engineering Services arose before the Supreme Court. The two cadres of Graduate Supervisors and Diploma Supervisors were treated as distinct and separate since 1969 in the matter of pay scale, designation, promotion, etc., though they have performed number of identical duties. For graduates, who were designated as Assistant Engineers five years qualifying service was prescribed while for Diploma Holders who were designated as Junior Engineers, ten years service was prescribed. By amendment in the Rules in the matter of promotion to the post of Assistant Executive Engineers, ratio of 3:1 was prescribed, i.e., out of four vacancies, only one was given to Diploma Holders while the remaining three were given to the graduates. The submission which is made by Mr. J.A. Adeshara, Learned Counsel appearing for the petitioners before us that on completion of period of experience, Supervisors render themselves equal to Junior Engineers was also pressed into service before the Supreme Court. The Supreme Court rejected the said submission in the following words:

It cannot be said in such a case that by prescribing a longer qualifying period of service for diploma holders, they had been equated with the graduates and that thereafter no further distinction was permissible. The distinction was also in the matter of promotion and not for any other purpose. If that distinction was not discrimination, it was difficult to see how and why another distinction created under quota rule was discriminatory.

12. For the very reasons which are stated by the Supreme Court, we are of the opinion that Supervisors who belong to a separate class since 1972 are not rendered equal to Junior Engineers even after completion of eight years service. By prescribing a different period of experience of service of eight years for

Diploma Holders, the Legislature has taken notice of the fact that they were a separate class and were required to be treated separately. By prescribing a longer period of experience, they were not rendered equal to Junior Engineers but they are simply rendered eligible for consideration for promotion to the post of Deputy Engineer. Acquiring the eligibility for consideration for promotion after putting in the requisite service is not equivalent to rendering an employee equal to a separate class of Junior Engineer which is differently treated by the Rule-making Authority. What is distinct is maintained all throughout distinct and separate by the Rule-making Authority and in our opinion it has never made an attempt to unify Supervisors with Junior Engineers. After their promotion to the cadre of Deputy Engineer, for further promotion to the cadre of Executive Engineer, no distinction is made and automatically unification takes place in the cadre of Deputy Engineer. It is, therefore, not permissible for us to attribute any intention to the Rulemaking Authority to the effect that it intended to treat Supervisors as equal to Junior Engineers on completion of eight years of service, nor does such interpretation sound to us to be reasonable and acceptable. For these reasons and those stated by the Supreme Court, we reject this submission of the Learned Counsel appearing for the petitioners as devoid of any substance.

13. If completion of longer period of experience does not render Supervisor equal to Junior Engineer and if they are simply render eligible for being considered for promotion, the question which we are called upon to consider is as to whether it is permissible for the Rule-making Authority to prescribe ratio of 2:1. In the case of P. Murugesan (*supra*) the validity of the 1990 amendments in the Madras Rules and in particular the introduction of ratio of 3:1 was under consideration. Now it is an accepted position that classification on the basis of academic qualifications is permissible classification. It is true that classification should not be too minute and microcosmic. It is also equally true that the same should not countenance mini classifications based on micro distinctions. Now the question that arises for our consideration is that the Junior Engineers and Supervisors having rendered themselves eligible for promotion to the cadre of Deputy Engineer by completion of prescribed experience whether can be subjected to further classification so as to restrict promotion of Supervisors. This very submission was projected before the Supreme Court in P. Murugesan 's (*supra*) case and in para 11 of the report the same is negated by holding that it is too simplistic way of looking at the issue. By referring to its earlier decision in the case of The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, , it has been uniformly held by the Supreme Court mat even where direct recruits and promotees are integrated into a common class, they could for purposes of promotion to the higher cadre be classified on the basis of educational qualifications.

14. It thus becomes clear that even when two cadres are integrated into one common class, classification thereof for the purpose of promotion to the higher cadre may be permissible. In the case before us it is not a case of unification of two cadres into one cadre. Two cadres have remained to be distinct and separate

for alt purposes since 1972. We fail to understand as to why a separate ratio cannot be prescribed for such two independent and separate cadres. Since these two cadres were treated separately and distinctly for all purposes, prescription of separate ratio is in every respect permissible. More so when as per the decision of the Supreme Court even in case; of unified class, prescription of separate ratio is permissible. It is also required to be noted that in what proportion promotional post should be provided for two separate and distinct classes is a matter exclusively within the dominion of the Rule-making Authority. Ordinarily, the Court of Law would not enter into arithmetical niceties thereof. As observed by the Supreme Court in the case of T.N. Khosa (supra) "if judicial scrutiny can therefore extend only to the consideration whether the classification rests on a reasonable basis whether it bears nexus with the object in view. It cannot extend to embarking upon a nice or mathematical evaluation of the basis of classification, for were such an enquiry permissible it would be open to the Courts to substitute their own judgment for that of the legislature or the Rule-making Authority on the need to classify or the desirability of achieving a particular object."

15. From the aforesaid observation it becomes at once clear mat unless it is shown to the Court that prescription of ratio of 2:1 for Junior Engineer and Supervisor is irrational, unfair and unreasonable so as to violate the equality clause, This Court would not undertake an exercise as to whether it is more beneficial to a class or other or as to whether it is going to cause more hardship, to one class or other. It is not the function of the Court.

16. Ms. Rekha Doshit, learned Assistant Government Pleader has tried to justify the prescription of ratio of 2:1 by contending that the Rule-making Authority has kept all relevant and germane factors into consideration while prescribing the ratio. It is submitted by her that efficiency in service and administrative exigencies are the twin factors which must enter consideration while prescribing for two separate cadres which feed the promotional cadre. The sanctioned strength of the feeder cadre in relation to the promotional cadre, educational qualification of incumbents of the feeder cadre, the nature of duties to be performed and responsibilities to be shouldered by the incumbents of the feeder cadre, the nature of duties and responsibilities to be performed and shouldered at promotional cadre and expediency and higher efficiency in the higher cadre arc but some of the most relevant considerations, which must enter the mind of Rule-making Authority. This list of relevant factors is not exhaustive but is simply illustrative. In every service, depending upon the nature of work and local situation, myriad other factors enter into consideration. If a Rulemaking Authority has taken into consideration, relevant factors and has prescribed the ratio of 2:1, can it be said by a Court of Law that prescription of ratio is impermissible or unconstitutional as it is likely to cause hardship to a class of employees! We are in this connection reminded of the folk-wing observations of the Supreme Court in the case of K.S. Vora and Others Vs. State of Gujarat and Others, .

Undoubtedly one of the consequences of the change in the basis was likely to affect prospects of promotion -a matter in future. Two aspects have to be borne in mind while considering the challenge of the appellants to this situation. It was a historical necessity and the peculiar situation that arose out of Government's decision to create a common cadre with four grades in the entire Secretariat. We would like to point out with appropriate emphasis that there was no challenge to creation of the common cadre and certainly Government was competent to do so. The second aspect to be borne in mind is that rules of seniority are a matter for the employer to frame and even though prospects of promotion in future were likely to be prejudiced by introduction of a new set of rules to regulate seniority, if the rules were made bona fide and to meet exigencies of the service, no entertainable grievance could be made. If these are the test to apply, we do not think the appellants have indeed any grievance to make.

17. Merely because the hopes and aspirations of Supervisors to get promotion to the post of Deputy Engineer may not be fulfilled or may be delayed or that operation of the prescribed ratio may result into stagnation of Supervisors compared to Junior Engineer cannot provide foundation to declare the prescription of ratio as being unreasonable, unfair or arbitrary. Except submitting before us that chances of promotion of Supervisors are reduced by prescription of this ratio, no further attempt is made to establish or prove before This Court as to how this ratio can be said to be unfair, unreasonable and arbitrary. Consistent with the need of the State to have better personnel in the higher echelon in the Engineering Service and to see that cadre of Deputy Engineer is manned by better equipped persons, if a ratio of 2:1 is prescribed between Junior Engineers and Supervisors, it cannot be said to be violative of Articles 14 and 16 of the Constitution of India. We, therefore, do not find any substance in the submission of the Learned Counsel appearing for the petitioners that since the prescribed ratio is likely to result into reduction of chances of promotion of Supervisors or since it is likely to result into their stagnation and consequent hardship to a class of employees, the provision should be declared as unconstitutional. It is required to be noted that when one class is totally excluded from consideration for promotion to the higher post, the Supreme Court has held such action to be permissible provided classification was permissible and it has reasonable nexus to the object sought to be achieved. Efficiency in the higher service is an object, which is sought to be achieved by the Rule-making Authority, and if the Rule-making Authority finds that class of Junior Engineer because of its educational qualification renders itself eligible for promotion earlier by lesser experience and if it finds a better seat for promotion so as to reserve more posts for Junior Engineers than the Supervisors. It is not for the Court to advise it as to in which proportion it should prescribe a ratio of promotion. The Rule-making Authority 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 the Rule-making Authority - either bar the Diploma Holders altogether or allow them unrestricted promotion on par with the graduates, vide P. Murugesan and Others Vs. State of Tamil Nadu and Others, .

18. We incidentally mention that prescription of ratio of 3:1 in the cadre of Executive Engineers for promotion to the post of Superintending Engineer was subject-matter of identical challenge in a recent case before the Supreme Court in the case of Shamkant Narayan Deshpande Vs. Maharashtra Industrial Development Corporation and another, . Hon''ble Justice R.B. Sawant speaking for the Court once again reiterated the well accepted principle laid down by the Supreme Court in the case of T.N. Khosa (supra) and upheld the prescription of the said ratio.

19. Except the aforesaid submissions no other submissions were made by the Learned Counsel for the petitioners and since we do not find any I substance in any of the submissions made, same are rejected. We hold that prescription of ratio of 2:1 between Junior Engineers and Supervisors by Rule 2(a) of the Deputy Engineer (Electrical) Recruitment Rules, 1978 is legal and constitutional and is not unfair, unreasonable or arbitrary. The said prescription of ratio is, therefore, upheld as constitutional.

What Relief:

20. Ordinarily when we declared that a provision of statutory rules is legal and valid and constitutional and is not hit by any of the provisions of the Constitution, the said provision must prevail and must be permitted to operate. However, in the peculiar facts and circumstances of this case, a situation has arisen whereby operation of ratio of 2:1 which was prescribed by Government Resolutions of 1975 (which also happens to be the ratio prescribed by the statutory rules) was struck down as unconstitutional by the Division Bench of This Court. Under the interim relief granted by the Supreme Court of India, Rule-making Authority of the State was permitted to make rule during the pendency of the petition and in exercise of power conferred by proviso to Article 309 of the Constitution by issuing two Notifications referred to hereinabove, the Rule-making Authority has prescribed ratio of 1:1. It is required to be noted that this is the prescription of statutory ratio by Rule-making Authority. It is that ratio which was permitted to be operated under the order of the Supreme Court. It is undoubtedly true that prescription of such ratio is only operative till appeal pending in the Supreme Court is decided by the Supreme Court. It is clearly stipulated in the Notification dated 17th September, 1981 that ratio of 1:1 shall remain in force as an interim arrangement subject to the final disposal of the Civil Appeal No. 1749 of 1980. The Supreme Court has while disposing of Civil Appeal No. 1749 of 1980 directed that status quo which was granted or which operated should be preserved. The substituted Rules 1982 are directed to operate till the decision of This Court and the promotions as before are directed to continue subject to the result of the judgment of the High Court. The question that now arises for consideration is as to whether Supervisors who have earned promotion because of operation of

temporary ratio of 1:1 should be asked to step down as we are upholding the prescription of ratio of 2:1. We are told at the Bar that approximately 6 to 7 Supervisors who are promoted as Deputy Engineers under the aforesaid ratio of 1:1 shall have to be reverted if ratio of 2:1 is to be operated from 1st May, 1972. It is required to be noted firstly, that prescription of ratio 2:1 was invalidating by the earlier Division Bench of This Court. Against such judgment and order of This Court, no stay was granted by the Supreme Court, The respondent-State was therefore, required either to create supernumerary posts to accommodate persons who were already promoted or to frame fresh quota rules consistent with the High Court judgment. The State of Gujarat has opted for the second chance and has framed fresh quota rule so as to frame ratio of 1:1. It is under such ratio which is prescribed in the year 1981 and 1982 by the aforesaid two Notifications that Supervisors and Junior Engineers were to be promoted in the ratio of 1:1 and six to seven Supervisors who could not be promoted under the ratio of 2:1 are already promoted. Since we are declaring the prescription of ratio 2:1 to be constitutional and permissible, the persons who are promoted outside their turn under the prescription of ratio of 1:1 shall have to be ordinarily reverted. However, in view of the fact that such Supervisors are already promoted and that too under the valid direction of the Supreme Court then existing as well as under validly framed temporary recruitment rule then framed, we do not think it would be just and proper to direct the respondents state to revert such incumbents of the post of Deputy Engineers to the post of Supervisors. At the same time, equality shall have to be balanced and Junior Engineers who are denied promotion by not operating ratio of 2:1 shall have to be provided promotion, if the ratio is to be made operative from the date the rules are framed. Mr. B.R. Tanna, Learned Counsel appearing for a class of Junior Engineers has stated to the Court that Junior Engineers are not claiming any financial benefits resulting from acceptance of their claim of promotion and they would be satisfied if State is directed to create supernumerary posts of Deputy Engineer and if deemed date of promotion is given to such Junior Engineers as if they were promoted on the date on which in their turn Supervisors were promoted without any financial burden or implications for the services.

21. He also points out to the Court that this type of direction would be consistent with the interim relief granted by the Hon"ble Supreme Court of India.

22. Ms. Rekha Doshit, learned Assistant Government Pleader on the other and submits that since the Court has upheld the ratio of 2:1 it would be consistent to direct the Government to give promotion to the post of Deputy Engineer on the basis of the said ratio and to operate said ratio with effect from the date from which it is made applicable. She further submits that in the present situation, it is not possible for the Government to bear any extra financial burden which would arise from creation of supernumerary posts and the Court should permit the respondents to revert Supervisors who were promoted to the cadre of Deputy Engineer out of their turn because of the judgment of the Division Bench of This Court and because refusal of stay by the Supreme Court of India. Having

given our anxious consideration to the aforesaid submission, we are of the opinion that it would be just and proper to pass the following order.

23. In the result the petition fails. It is declared that Rule 2(a) of the Deputy Engineer (Electrical) Recruitment Rules, 1978 is valid and constitutional and shall have to be treated as valid for all purposes from the date it has come into force. The respondents are directed not to revert any Supervisor who has been promoted to the post of Deputy Engineer by an operation of ratio of 1:1 under the Amended Rules of 1981 and 1982 with further direction to create necessary supernumerary posts so as to continue such Deputy Engineers till they are regularised in the course of time. The respondents are also directed to give deemed date of promotion to Junior Engineers who were entitled to be promoted to the cadre of Deputy Engineers and who were not promoted because of non-operation of ratio of 2:1. However, it is clarified that such persons shall only be entitled to deemed date of promotion and they have stated to the Court and it is directed that they shall not be entitled to any financial benefit accruing from their deemed date of promotion. It is further directed that seniority in the cadre of Deputy Engineers shall be fixed in accordance with ratio prescribed by the aforesaid rules, i.e., 2:1. Rule is discharged. There shall be no order as to costs.