

(2010) 03 BOM CK 0115

In the Bombay High Court

Case No : Writ Petition No. 3350 of 2001

K.K. Bhaskaran and Sarjeet Singh

APPELLANT

Vs

Administrator of Daman and Others

RESPONDENT

Date of Decision : 22-03-2010

Acts Referred:

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

Goa, Daman and Diu Reorganisation Act, 1987 — Section 60(6)

States Reorganisation Act, 1956 — Section 115(7)

Citation : (2010) 03 BOM CK 0115

Hon'ble Judges : R.G. Ketkar, J;P.B. Majmudar, J

Bench : Division Bench

Advocate : Sanjay Udeshi, M. Londhe and Rema Bangale, instructed by Sanjay Udeshi and Co, for the Appellant; Girish Kulkarni and Shrishailya S. Deshmukh for Respondent No. 1 and Y.S. Bhate and D.A. Dubey for Respondent Nos. 2 to 4 and Saikumar Ramamurthy, for the Respondent

Final Decision : Dismissed

Judgement

P.B. Majmudar, J.—Whether it is open to the department to prescribe a certain percentage of quota between degree holders and diploma holders in the matter of promotion from the post of Junior Engineer to the Assistant Engineer is the question which is raised in the present petition at the instance of the petitioners.

2. The petitioners are working as Junior Engineers in the Electrical Department of the Administration of Union Territory of Daman and Diu. The petitioners are the diploma holders in Electrical Engineering and are serving with respondent No. 1 since 1983. The post of Junior Engineers comprises of diploma holders as well as degree holders. The graduate engineers are those who have attended a five year Degree Course in Engineering and obtained the qualification of Bachelor of Engineering (B.E.) whereas diploma holders are those who have attended a three year diploma course in Engineering.

3. So far as the post of Junior Engineer is concerned, the same is Assistant

Engineer (Electrical), which is a Group B gazetted post in the Electrical Department under the Administration of Daman and Diu. Initially, the incumbent holding the post of Junior Engineer was considered for promotion to the post of Assistant Engineer (Electrical), on the basis of common seniority, irrespective of whether one may be a Graduate Engineer or a Diploma holder.

4. Initially, as per the recruitment Rules prior to 1999, the Junior Engineers were eligible for promotion to the post of Assistant Engineer, who have put in four years of service, if they are degree holders, or eight years of service, if they are diploma holders. Subsequently, the said Rules were amended in the year 1999. The said amended rules were notified on 16th July, 1999 and as per the amended Rules, for promotion to Assistant Engineers, 75 per cent be promoted from the cadre of Junior Engineers who are diploma holders having eight years regular service and 25 per cent be promoted from the cadre of Junior Engineers who are Degree holders in Electrical Engineering with five years regular service. Accordingly, by the aforesaid Rules of 1999, 75 per cent posts are reserved for promotion for diploma holders and 25 per cent for the degree holders serving as Junior Engineer in the feeder post. It is the case of the petitioners that when initially entire 100 per cent posts of Assistant Engineers were to be filled in by promotion, irrespective of whether such Junior Engineers are diploma holders or degree holders. To prescribe the ratio of 75 : 25 per cent between diploma holders and degree holders is arbitrary and discriminatory and the promotional posts should be filled in only on the basis of common seniority and there should not be any quota prescribed between degree holders and diploma holders. 25 per cent of the posts which is kept apart for the degree holders was accordingly challenged by the petitioners before the Central Administrative Tribunal, Mumbai Bench, by way of Original Application No. 986 of 1999. The Administrative Tribunal came to the conclusion that the classification between the diploma holders and degree holders is reasonable and it was found that such classification cannot be said to be irrational or arbitrary in any manner. It was found that the quota fixed for promotion to the post of Assistant Engineer between diploma holders and degree holders under the impugned 1999 Rules is valid. The original application filed by the present petitioners accordingly was dismissed by the Tribunal, which judgment is impugned in the present petition at the instance of the petitioners.

5. Mr. Sanjay Udeshi, learned Counsel appearing for the petitioners, vehemently submitted that both the degree holders and diploma holders are doing the same work and they are in the same pay scale in the feeder cadre of Junior Engineer and, therefore, for further promotion, no quota between diploma holders and degree holders can be prescribed as, according to him, all the posts should be filled in by promotion, irrespective of whether one may be a degree holder or diploma holder. Mr. Udeshi further submitted that if 25 per cent of the promotional posts are reserved for degree holders, then some of the diploma holders may not get the chance at all for promotion during their entire service career. Mr. Udeshi further submitted that the quota prescribed for future

promotion is arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India especially when both the degree holders and diploma holders are discharging same duty, so far as feeder cadre of Junior Engineer is concerned. It is also submitted by Mr. Udeshi that in any case such amendment in Rules should not be made applicable retrospectively as, at the time when the petitioners joined the services, 100 per cent promotional posts were to be filled in by promotion and there was no quota either for degree holders or diploma holders. Mr. Udeshi further submitted that under Sub-section (6) of Section 60 of the Goa, Daman & Diu Reorganisation Act, 1987, the service conditions of the petitioners should not be altered which may be detrimental to the claim of the concerned employee. It is submitted by Mr. Udeshi that even otherwise such qualification by which percentage is prescribed for promotion between degree holders and diploma holders is violative of Article 16 of the Constitution of India and the aforesaid Rule of 1999, therefore, is required to be struck down.

6. Mr. Kulkarni, learned Counsel appearing for respondent No. 1, as well as Mr. Ramamurthy, learned Counsel appearing for respondent Nos. 5 and 6, on the other hand, submitted that there is no justification in the claim of the petitioners in any manner. It is submitted that mere chance of promotion is not a service condition and the Administration has taken conscious decision, after consulting the Union Public Service Commission. It is submitted that in a given case, even if the chances of promotion are reduced is no ground for striking down any Rules which are framed under Article 309 of the Constitution of India. It is submitted that as per the recruitment Rules, for the post of Executive Engineer, only degree holders are eligible for being appointed and with a view to see that such promotional posts may not be kept vacant for want of qualified degree holders, the Department has taken conscious decision to provide certain percentage in the promotional Rules for degree holders. It is further submitted that in any case, only 25 per cent of the posts are reserved for graduate engineers so far as promotional post of Assistant Engineer is concerned and the percentage of the post available to the diploma holders is 75 and, therefore, the said Rules cannot be said to be arbitrary in any manner. It is also submitted that in the earlier recruitment Rules prior to 1999, qualifying service was already provided for promotion between degree holder and diploma holder and by 1999 Rules it is further classified by which 25 per cent posts are kept reserved for degree holders and remaining 75 per cent diploma holders. It is submitted on behalf of the respondents that it can never be said that the aforesaid Rules of 1999 are in any way discriminatory or arbitrary and simply because the petitioners chances of promotion have been decreased by the said amendment, same cannot be a ground for striking of the said recruitment Rules.

7. We have heard the learned Counsel appearing for the parties and have also gone through the order of the Tribunal as well as the judgments cited at the Bar by the learned Counsel appearing for the parties.

8. It is required to be noted that prior to 1999, promotions to the post of

Assistant Engineer were given on the basis of seniority amongst the employees serving in the feeder cadre of Junior Engineer. Prior to 1999, the Junior Engineers who are degree holders were eligible for promotion to the post of Assistant Engineers who have put in five years of service and for diploma holders, the requirement of eight years of service was prescribed. The question which requires consideration is as to whether the prescription of certain percentage of quota in the matter of promotion and whether such Rules could have been made applicable to the petitioners who were recruited prior to the aforesaid 1999 Rules. It is true, as argued by the learned Counsel for the petitioners, that at the initial recruitment in the feeder cadre, the pay scale prescribed for diploma holders and degree holders is the same as they are discharging the same work and duty assigned to them. If that be so, whether at the time of considering the claim for promotion, any ratio can be provided in the matter between the degree holder and diploma holder. In this behalf, the judgments cited at the Bar by the learned Counsel appearing for the parties in connection with the point in issue is required to be taken into consideration.

9. In the case of the *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, , the Supreme Court has considered the question about classification in the matter of promotion on the basis of academic or technical qualifications. In the aforesaid case the Supreme Court has observed in paras 33 and 34 as under:

33. Judged from this point of view, it seems to us impossible to accept the respondents' submission that the classification of Assistant Engineers into degreeholders and diplomaholders rests on any unreal or unreasonable basis. The classification, according to the appellants, 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 presumptive evidence of a higher mental equipment. This is not to suggest that administrative efficiency can be achieved only through the medium of those possessing comparatively higher educational qualifications but that is beside the point. What is relevant is that the object to be achieved here is not a mere pretence for an indiscriminate imposition of inequalities and the classification cannot be characterized as arbitrary or absurd. That is the farthest that judicial scrutiny can extend.

34. On the facts of the case, classification on the basis of educational qualifications made with a view to achieving administrative efficiency cannot be said to rest on any fortuitous circumstance and one has always to bear in mind the facts and circumstances of the case in order to judge the validity of a classification. The provision in the 1939 Rules restricting direct recruitment of Assistant Engineers to Engineering graduates, the dearth of graduates in times past and their copious flow in times present are all matters which can be legitimately enter the judgment of the rule making authority. In the light of these facts, that judgment cannot be assailed as capricious or fanciful. Efficiency which comes in the trail of higher mental equipment can reasonably be attempted to be

achieved by restricting promotional opportunities to those possessing higher educational qualifications. And we are concerned with the reasonableness of the classification not with the precise accuracy of the decision to classify nor with the question whether the classification is scientific. Such tests have long since been discarded. In fact American decisions have gone as far as saying that classification would offend against the 14th Amendment of the American Constitution only if it is "purely arbitrary, oppressive or capricious" (7) and the inequality produced in order to encounter the challenge of the Constitution must be "actually and palpably unreasonably and arbitrary". (8) We need not go that far as the differences between the two classes - graduates and diploma holders - furnish a reasonable basis for separate treatment and bear a just relation to the purpose of the impugned provision.

After considering the judgment in the case of Roshan Lal Tandon Vs. Union of India (UOI), , it has been further observed in paragraphs 46 and 47 as under:

46. Roshan Lal's case is thus no authority for the proposition that if direct recruits and promotees are integrated into one class, they cannot be classified for purposes of promotion on a basis other than the one that they were drawn from different sources. In the instant case, classification rests fairly and squarely on the consideration of educational qualifications: Graduates alone shall go into the higher post, no matter whether they were appointed as Assistant Engineers directly or by promotion. The discrimination therefore is not in relation to the source of recruitment as in Roshan Lal's case.

47. It is relevant, though inconclusive, that the very bench which decided Roshan Lal's case held about a fortnight later in Narsing Rao's case that higher educational qualifications are a relevant consideration for fixing a higher pay scale and therefore matriculate Tracers, though their duties were identical. Logically, if persons recruited to a common cadre can be classified for purposes of pay on the basis of their educational qualifications, there could be no impediment on classifying them on the same basis for purposes of promotion. The ratio of Roshan Lal's case can at best be an impediment in favouring persons drawn from one source as against those drawn from another for the reason merely that they are drawn from different sources.

In paragraph 50, it has been observed that though the persons appointed directly and by promotion were integrated into a common class of Assistant Engineers, they could for the purpose of promotion to the 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 diplomaholders does not violate Articles 14 and 16 of the Constitution of India and must be upheld.

10. Mr. Udeshi has relied upon the decision of the Supreme Court in the case of Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others, . He has placed reliance on paragraphs 14 and 15 of the said judgment which read thus:

14. This contention rests on the applicability of the proviso to Section 115, subsection (7) of the State Reorganisation Act, 1956. Subsection (7) of Section 115 reads as follows:

Nothing in this section shall be deemed to affect after the appointed day the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to determination of the conditions of service of persons serving in connection with the affairs of the Union or any State.

The effect of this subsection is *inter alia* to preserve the power of the State to make rules under Article 309 of the Constitution in laying down the conditions of service of persons allotted to serve in connection with the affairs of the State. But there is a proviso which imposes a limitation on the exercise of this power and that proviso runs as under:

Provided that the conditions of service applicable immediately before the appointed day to the case of any person referred to in Sub-section (1) or subsection (2) shall not be varied to his disadvantage except with the previous approval of the Central Government.

The limitation imposed by the proviso is that the State cannot vary the conditions of service applicable immediately before November 1, 1956 to the disadvantage of persons allotted to serve in connection with the affairs of the State, except with the previous approval of the Central Government. The question which therefore, arises for consideration under this contention is whether the application of the Andhra Rules for promotion from the posts of Supervisors to the posts of Assistant Engineers from and after November 1, 1956 and the enactment of the Andhra Pradesh Rules on February 22, 1967 together with their amendment on January 12, 1968 varied to their disadvantage the condition of service in regard to promotion applicable to non graduate Supervisors from the erstwhile Hyderabad State immediately prior to November 1, 1956, without the prior approval of the Central Government. Now the only right in regard to promotion which the condition of service immediately prior to November 1, 1956 gave to nongraduate Supervisors from the erstwhile Hyderabad State was the right to be considered for promotion to fifty per cent of the posts of SubEngineers but the argument of the petitioners/appellants was that the posts of Sub Engineers were equated with those of Assistant Engineers, and, therefore, their right to be considered for promotion under the condition of service applicable to them immediately prior to November 1, 1956 extended to fifty per cent of the posts of Assistant Engineers. This was the premise which formed the basis of the contention of the petitioners/appellants that the condition of service applicable to nongraduate Supervisors from the erstwhile Hyderabad State immediately prior to November 1, 1956 was varied to their disadvantage without the prior approval of the Central Government. We will assume with the petitioners/appellants that this premise is correct, but even so, there are at least two answers which are sufficient to repeal this contention of the petitioners/appellants.

15. In the first place, it is not correct to say that there was any variation in the condition of service in regard to promotion applicable to nongraduate Supervisors from the erstwhile State of Hyderabad immediately prior to November 1, 1956. It is true that a rule which confers a right of actual promotion or a right to be considered for promotion is a rule prescribing a condition of service. This proposition can no longer be disputed in view of several pronouncements of this Court on the point and particularly the decision in *Mohammad Bhakar v. Y. Krishna Reddy* 1970 SLR 768 where this Court, speaking through Mitter, J. said "Any rule which affects the promotion of a person relates to his condition of service". But when we speak of a right to be considered for promotion, we must not confuse it with mere chance of promotion - the latter would certainly not be a condition of service. This Court pointed out in *State of Mysore v. G.B. Purohit* that though a right to be considered for promotion is a condition of service, mere chances of promotion are not. A rule which merely affects chances of promotion cannot be regarded as varying a condition of service. What happened in *State of Mysore v. G.B. Purohit* (supra) was that the district wise seniority of Sanitary Inspectors was changed to Statewise seniority and as a result of this change, the respondents went down in seniority and became very junior. This, it was urged, affected their chances of promotion which were protected under the proviso to Section 115, subsection (7). This contention was negated and Wanchoo, J. as he then was, speaking on behalf of this Court observed : "It is said on behalf of the respondents that as their chances of promotion have been affected their conditions of service have been changed to their disadvantage. We see no force in this argument because chances of promotion are not conditions of service." Now, here in the present case, all that happened as a result of the application of the Andhra Rules and the enactment of the Andhra Pradesh Rules was that the number of posts of Assistant Engineers available to nongraduate Supervisors from the erstwhile Hyderabad State for promotion, was reduced " originally it was fifty per cent then it became thirty three and one third per cent, then one in eighteen and ultimately one in twenty four. The right to be considered for promotion was not affected but the chances of promotion were severely reduced. This did not constitute variation in the condition of service applicable immediately prior to November 1, 1956 and the proviso to Section 115, subsection (7) was not attracted. This view is completely supported by the decision of a Constitution Bench of this Court in *Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others*, .

11. In paragraph 28, the Supreme Court has held that educational qualifications have been recognised as forming a valid basis for classification. After considering various judgments, the Supreme Court in the said case held as under:

28. 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 purpose 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. 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 qualifications, such classification must be held to be valid, irrespective of the nature and purposes 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 such case on its peculiar facts and circumstances....

In the said case, ultimately the classification was upheld by the Supreme Court. We are not in a position to agree with the submission of Mr. Udeshi that the ratio of the said judgment should be read as if the Supreme Court has disapproved such classification. On the contrary, the view taken in Triloki's case (supra) has been reaffirmed in the aforesaid decision.

12. Mr. Udeshi thereafter relied upon the decision of the Supreme Court in the case of N. Abdul Basheer and Others Vs. K.K. Karunakaran and Others, . In the aforesaid case, writ petitions were filed by nongraduate Excise Inspectors challenging the amendment to the Kerala excise & Prohibition Subordinate Service Rules. By the aforesaid Rules, ratio was prescribed between graduates and nongraduates in the matter of promotion from the post of Excise Preventive Officer to Second Grade Excise Inspectors. A single Judge of the Kerala High Court struck down the said Rules on the ground that the same is discriminatory. In the aforesaid case the amendment in the Rule was introduced prescribing a ratio of 1 : 3 between graduates and nongraduates which was introduced into the Special Rules in the matter of promotion from the category of Excise Preventive Officers to that of Second Grade Excise Inspectors and the amendment was deemed to have come into force retrospectively when the Special Rules were brought in. The plea of the non graduate Preventive Officers that there should be no preference in favour of the graduate officers was accepted by the learned single Judge. The appeal preferred against the order of the single Judge was dismissed by the Division Bench. The Supreme Court found that the learned single Judge as well as the Division Bench were right in holding that the prescription of a ratio dividing the quota of promotion between graduate Preventive Officers and nongraduate Preventive Officers was invalid on the ground that it violates Articles 14 and 16 of the Constitution of India. Relying on this judgment, Mr. Udeshi argued that in such a case also the ratio prescribed between graduate and diploma holders in the instant case should be struck down.

13. Mr. Udeshi also relied upon the decision of the Supreme Court in the case of Union of India (UOI) and Another Vs. R. Iyyaswamy and Others, wherein the Service Rules provided that 25 per cent of the promotion quota to be filled up by selection in accordance with provisions laid down in the Rules and 75% to be filled up by selection on the basis of departmental competitive examination

conducted in accordance with the provisions laid down in the Rules. The amended Rules were challenged by the Graduate Senior Engineering Assistants as discriminatory and violative of Articles 14 and 16 of the Constitution of India. In para 10, the Supreme Court held as under:

While dealing with the contention that the recognition of graduation is recognition of merit and that more merit in the post of Excise Inspector would be conducive to better administrative efficiency, this Court further observed thus: (SCC p. 351, para 15):

Ordinarily, it is for the Government to decide upon the considerations which, in its judgment, should underlie a policy to be formulated by it. But if the considerations are such as prove to be of no relevance to the object of the measure framed by the Government it is always open to the Court to strike down the differentiation as being violative of Articles 14 and 16 of the Constitution. In the present case, we have already commented on the circumstance that the conditions of employment and the incidents of service recognize no distinction between graduate and nongraduate officers and that for all material purposes they are effectively treated as equivalent. Accordingly, this contention must also be rejected.

14. Mr. Udeshi invited our attention to the judgment delivered by a Division Bench of this Court at Goa Bench in the case of Joaquim I.M. Dias v. R.S. Revonkar and Ors. 1990 (1) CLR 114. In the said case, the amended Rules were quashed and set aside by the Division Bench on the ground that equals and unequal cannot be clubbed together for the purpose of promotion from one to another. The Court also found that the Recruitment Rules were amended not with a bona fide purpose but in order to favour respondent No. 1 in the said petition.

15. Mr. Udeshi lastly placed reliance on the decision of the Supreme Court in the case of A. Satyanarayana and Others Vs. S. Purushotham and Others, , which is a judgment of two Judges wherein it is held that the policy decision can be reviewed if it is arbitrary and irrational and that right to be considered includes right of promotional chances and the same cannot be foreclosed forever. In paragraph 30 of the said judgment, the Supreme Court has held thus:

Although mere chance of promotion is not a fundamental right, but right to be considered therefore is. In that view of the matter, any policy whereby all promotional avenues to be promoted in respect of a category of employees for all times to come cannot be nullified and the same would be hit by Article 16 of the Constitution of India.

16. On behalf of the Respondents, Mr. Ramamurthy relied upon the decision of the Supreme Court in the case of Shamkant Narayan Deshpande v. Maharashtra Industrial Development Corporation and Anr. AIR 1993 SC 1173. In the aforesaid case, the question was in connection with the promotion to the post of Superintendent Engineer and a classification was made between degree holder and diploma holder for further promotion. The issue which was raised before the

Supreme Court was on the point that no classification could have been made among the Executive Engineers on the basis of their educational qualifications for the purpose of promotion to the post of Superintending Engineer, since they belong to the same cadre of Executive Engineers and do the same work. Since there was a common seniority, such change could not have been effected by mere resolution unless the Rules are amended. The Supreme Court has considered the decision of a Constitution Bench in the case of Triloki (supra) and other judgments and it has been held that a valid classification can be made among the members holding the same post on the basis of their qualifications and it does not violate Articles 14 and 16 of the Constitution of India. 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 of India.

17. Mr. Kulkarni, learned Counsel appearing for respondent No. 1, on the other hand has relied upon the decision of the Supreme Court in the case of P. Murugesan and Others Vs. State of Tamil Nadu and Others, . In the aforesaid case, the ratio of 3: 1 was provided in the amended Rules and the Rules provided the said ratio between the degree holders and diploma holders for promotion to the post of Assistant Executive Engineers. In the aforesaid case, by resolution of 1965, certain promotions were made to the category of Assistant Executive Engineers in the year 1978 applying the ratio of 3:1 between the graduate Engineer and diploma holders. The said promotions were questioned by diploma holders by way of a bunch of writ petitions before the Madras High Court. The petition was dismissed by the learned single Judge but the Division Bench in appeal held that the statutory Rules framed did not provide for any such ratio and in that view of the matter the Division Bench set aside the promotions. The matter was taken up further before the Supreme Court but the SLP was dismissed. Thereafter, the Government amended the statutory Rules of 1969 and provided ratio of 3: 1 between degree holders and diploma holders in the matter of promotion to the post of Assistant Executive Engineer. The said amendment was challenged before the High Court by way of various petitions. The single Judge dismissed the writ petition upholding the validity of the said ratio. However, the Division Bench took a contrary view and caused the amendment prescribed in the ratio of 3 : 1. The Division Bench judgment was taken in appeal before the Supreme Court. In the said judgment, the Supreme Court after considering the judgment of the Constitution Bench of Supreme Court in the case of Triloki (supra) held as under in paragraph 11.

It is true that theory of classification should not be carried too far lest it may subvert, perhaps submerge, the precious guarantee of equality, as pointed out by Chandrachud, J. in State of J & K v. Triloki Nath Khosa. Minute and microcosmic classification should not be permitted nor should the Court countenance "mini classifications based on microdistinctions", as pointed out by Krishna Iyer, J. in the same case. Looked at from this broad angle, it may appear there is some force in what the respondents contend viz., that once the graduate engineers and diploma holder engineers constitute one class, perform same

duties and discharge same responsibilities, placing a restriction on the diploma holders alone (limiting their chances of promotion to one out of four promotions, as has been done by the impugned Amendment) is not justified but this may be a too simplistic way of looking at the issue. We cannot fail to take note of the fact that right from 1974 i.e. since the decision of the Constitution Bench in *Triloki Nath Khosa* this Court has been holding uniformly that 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.

In paragraphs 16 and 18 in the aforesaid case it is held as under:

On the basis of the above observations it is argued that once the diploma holders are also held eligible for promotion, it is not permissible for the rule making authority to make any distinction between graduates and diploma holders. We cannot agree. As a matter of fact, this Court in *Shujat Ali* case upheld the validity of the Andhra Pradesh rule which made a distinction between the graduate supervisors and nongraduate supervisors in the matter of promotion to the higher categories on the ground that in the erstwhile States of Andhra and Hyderabad, graduate supervisors were always treated as distinct and separate from the non graduate supervisors, their pay scales were different; they were never really integrated into one class and graduate supervisors were called Junior Engineers. Accordingly it was held that reducing the chances of promotion of nongraduate supervisors visavis graduate supervisors was not discriminatory (As we shall presently point out the factual situation in *Madras Corporation Engineering service* is similar). The observations quoted above cannot be read in isolation nor can they be read as running counter to the ratio of *T.N. Khosa*. Both decisions were rendered by Constitution Benches. In any event, the facts and circumstances of the case before us are akin to those in *Shujat Ali*. Secondly as explained hereinbefore there would be no justification in principle for holding that the rule making authority has only two options namely either to bar the diploma holders altogether from promotion or to allow them equal opportunity with the graduate engineers in the matter of promotion. It must be remembered that the power of rule making under the proviso to Article 309 has been held to be legislative in character. (*Vadera*). If so, the test is whether such a restrictive view is permissible visavis a legislature. If not, it is equally impermissible in the case of the rule making authority under the proviso to Article 309. The only test that such a rule has to pass is that of Articles 14 and 16 and to that aspect we may turn now.

18. In *Shamkant Narayan Deshpande Vs. Maharashtra Industrial Development Corporation and another*, , a Bench consisting of P.B. Sawant and G.N. Ray, JJ. Took the same view as we do in this case. We also agree with the basis upon which the learned Judges distinguished the decision in *H.C. Sharma and Others Vs. Municipal Corporation of Delhi and Others*, .

In paragraph 19 of the said judgment, the Supreme Court has held as under:

The learned Counsel for the respondents relied upon the decision in Punjab State Electricity Board, Patiala and Another Vs. Ravinder Kumar Sharma and Others, a decision rendered by a Bench comprising A.P. Sen and B.C. Ray, JJ. The category of linemen in the service of the Punjab State Electricity Board comprised both diploma holders and others who may be referred to as nondiploma holders. They constituted one single category having a common seniority list. By means of the rules issued under the proviso to Article 309, a quota was prescribed for diploma holders, the result of which was that diploma holders who were far junior to the nondiploma holders were promoted ignoring the nondiploma holders. The rule was held to be bad by the learned Subordinate Judge, Patiala. On Appeal, the Additional District Judge, Patiala affirmed the judgment. It was affirmed by the High Court as well. The matter was brought to this Court. This Court affirmed the judgment of the High Court. A perusal of the judgment shows that the attention of the Bench was not drawn either to T.N. Khosa or to other decisions. Reference was made only to the observations in Shujat Ali quoted hereinbefore and it was held that the distinction made between the diploma holders and nondiploma holders was discriminatory and bad. Apart from the distinction on facts between that case and the case before us, it is evident that nonconsideration of T.N. Khosa and other decisions relevant under the subject has led to the laying down of a proposition which seems to run counter to T.N. Khosa. With great respect to the learned Judges who decided that case, we are unable to accept the broad proposition flowing from the case.

In the said case the Supreme Court has also considered the prescription of a longer qualifying period of service for diploma holders and held as under:

23. Another argument urged by the learned Counsel for the respondents is that by prescribing a longer qualifying period of service for diploma holders, they have been equated with the graduates and that thereafter no further distinction is permissible. We cannot agree. The distinction aforesaid was also in the matter of promotion and not for any other purpose. If that distinction is not discrimination, it is difficult to see how and why another distinction now created (quota rule) is discriminatory. Suppose, if these two requirements (i.e. Longer qualifying service and quota rule) had been introduced at the same time, there could have been no room for the present argument. The rule would have been good. How does it become bad, if they are introduced at different times? Both relate to their eligibility and chances of promotion. To wit, the basic question is - if they can be barred altogether from promotion as held in T.N. Khosa, why can't their chances of promotion be restricted, curtailed or hedged in.

18. Mr. Kulkarni relied upon the decision of the Supreme Court in the case of Roop Chand Adlakha and Others Vs. Delhi Development Authority and Others, wherein it is held that prescribing different conditions for diploma holders and graduates is not violative of Articles 14 and 16 of the Constitution of India.

19. Considering the matter from various angles as well as considering the judgments of the Supreme Court cited supra, we are of the view that the point

raised in this petition is completely answered by the judgment of the three Judge Bench in the case of Murugesan (supra) wherein the facts were practically akin and ratio was prescribed between degree holders and diploma holders in the matter of future promotion. In the matter of further promotions, a preference can be given on the basis of academic qualifications which has been done in the present case. It is required to be noted that the Rules of 1999 which are statutory Rules framed under Article 309 of the Constitution of India provides ratio of 75 per cent to the diploma holders and 25 per cent for degree holders. Even a justification is also given that for higher post of Chief Engineer only degree holders are eligible and a situation may come that such posts may be required to be kept vacant if no degree holders are available. Considering the said aspect, it cannot be said that the aforesaid recruitment rules in any way be described as discriminatory or offending Article 16 of the Constitution of India. The classification is reasonable and cannot be said to be arbitrary or discriminatory in any manner. Considering the judgment of the Supreme Court in the case of Murugesan (supra) which is based on interpreting the judgment in Triloki's case, it gives complete answer to the points raised by the petitioners in this petition. In view of the same, it cannot be said that the Rules in question are arbitrary or violative of Articles 14 and 16 of the Constitution of India.

20. Learned Counsel for the petitioners, however, submitted that the Rules cannot be made applicable retrospectively. In this connection, it is required to be noted that by amendment even if the chances of promotion have been effected to an extent, that can never be a ground for striking down the Rules. Mere chance of promotion cannot be said to be a service condition and that position of law is now well settled. We, therefore, do not find any substance so far as the aforesaid argument is concerned.

21. So far as the reference to Goa, Daman & Diu Reorganisation Act, 1987, is concerned, Part VIII deals with provisions as to services. The reference is made to subclause (6) of Rule 60 which provides as under:

Nothing in this section shall be deemed to affect, on or after the appointed day, the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to the determination of the conditions of service of persons serving in connection with the affairs of the State of Goa or the Union:

Provided that the conditions of service applicable immediately before the appointed day to the case of any person referred to in subsection (1) or subsection (2) shall not be varied to his disadvantage except with the previous approval of the Central Government.

Relying on the said provision, the learned Counsel for the petitioners submitted that service conditions could not have been altered without the previous approval of the Central Government. We do not find that any statutory rules have been framed under Article 309 of the Constitution of India. Apart from that, it cannot be said that by providing quota for further promotion it can never be said that

the service condition of the petitioners can be said to have been altered in any manner. Chance of promotion can never be equated with conditions of service in any manner. Reference to the said Rule, therefore, is not applicable so far as the issue with which we are concerned in this matter. In our view, the Tribunal has considered the matter from proper angle and it cannot be said that the Tribunal has committed any error in the claim of the petitioners and has rightly been found that the ratio prescribed in the Recruitment Rules is on the basis of the policy decision taken by the Administration with a view to see that in future the higher post of Chief Engineer may not be kept vacant for want of graduate Engineer as the said post can be filled in only from the graduate Engineer and diploma holders are not eligible for such promotion. The ratio prescribed is also reasonable and it cannot be said to be excessive.

22. Considering the aforesaid aspect and considering the law laid down by the Supreme Court on the subject, in our view, it cannot be said that the Rules are violative of Articles 14 and 16 of the Constitution of India. We, therefore, do not find any substance in this petition. The petition is accordingly dismissed. Rule is discharged. No order as to costs.