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**(1991) 08 DEL CK 0044**

**In the Delhi High Court**

**Case No : Civil Writ Appeal No. 3336 of 1990**

R.K. Mittal and Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision :** 19-08-1991

**Acts Referred:**

Constitution of India, 1950 — Article 14

**Citation :** (1991) 45 DLT 589 : (1992) 2 LLJ 428

**Hon'ble Judges :** S.N. Sapra, J

**Bench :** Single Bench

**Advocate :** Arun Jaitley, Mukul Rohatagi, Atul Bal, Maninder Singh, E.X. Joseph, R.K. Vaishney, S.C. Gupta, B.T. Kaul, M.K. Gupta and G.D. Gupta, for the Appellant;

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## **Judgement**

S.N. Sapra, J.

(1) By this writ petition, filed under Articles 226 and 227 of the Constitution of India, petitioners seek to challenge the order dated September 20, 1990, (annexure A), issued by Delhi Development Authority, respondent no. 2 herein, in short Dda, thereby interpreting the Recruitment Rules, for promotion from the post of Junior Engineer to that of Assistant Engineer.

(2) For better appreciation of the questions, involved in this writ petition, and the contentions, urged before me, by learned Counsel for parties, it is necessary to state in brief, the facts and circumstances of the case.

(3) Petitioners, who hold degree in Engineering, were appointed as Junior Engineers (Civil) in the DDA. From the post of Junior Engineers (Civil) & (Electrical), the next promotion is to that of Assistant Engineer. The Recruitment Rules, as laid down by the Dda, vide resolution No. 574 dated November 13, 1963, for the post of Assistant Engineer, provide as under :

"1. Direct or deputation 50% 2. Promotion from Jr. Engineer (C) 50% For promotion. Junior Engineer (civil) should be: (a) Graduate in Engineering with 3

years service (50% of the promotion quota). (b) Diploma holders with 8 years service who are permanent J.E. (50% of the promotion quota).

(4) In the year 1971, the Dpc, constituted to select Assistant Engineers, in the DDA, made a concession for the Diploma Holders, by laying down a note on the bottom of the Recruitment Rules, to the effect that in the event of a Diploma Holder Junior Engineer, acquiring a degree during the course of his service, the three years service required as Graduate Engineer, would be calculated on the following basis :

(1) A minimum of 2 years regular service, as Graduate Engineer, after obtaining the degree; (2) 3/8th weightage would be given subject to a maximum of one year for the period of service, put in by Diploma Holder In service, as Junior Engineer.

(5) The aforesaid practice, for the appointment to the post of Assistant Engineer, by promotion, continued till September, 1990. Vide memorandum No. F.7(99)89/PF.I/4387 dated September 20, 1990 the decision of the Dda was communicated to the effect that a Diploma Holders, who have subsequently acquired degrees, would be treated, as degree holders, for purposes of promotion, irrespective of the date of acquiring graduate qualification. It was further clarified that the Recruitment Rules recognised only a degree or diploma, for the purpose of promotion, and these Rules did not stipulate any minimum experience, after acquisition of degree.

(6) According to petitioners, the affect of the circular will be adverse to so many graduate Junior Engineers, as the Diploma Holders, appointed earlier in time, subsequently, on obtaining degrees, will be created senior to the degree holders. It is further alleged in the petition that, if the impugned order Is implemented, then in that case, petitioners and other Graduate Junior Engineers, will loose their promotional avenues, in spite of their having more experience, as degree holders, because of this administrative anomaly created by respondents 2 and 3. Various instances and examples have been given in the petition, in support of this allegation.

(7) It is also alleged that the Diploma Holder and Degree Holder Junior Engineers, do not perform exactly the same duties. The Degree Holder Junior Engineers are assigned the job of structural designing. Project Planning, like Pert and Cpm and other specialised jobs, in addition to their normal duties. In other words, the Junior Engineers, holding degrees, and the Junior Engineers. holding Diploma, are not equal. The interpretation, given by the Dda to the Recruitment Rules, by means of the impugned circular dated September 20, 1990, is contrary to the plain languages of the Rules and is otherwise illegal.

(8) In its counter affidavit, Dda has not disputed the laying down of the Recruitment Rules, by Dda, for the post of Assistant Engineers, vide resolution dated November 13, 1963, and the subsequent concession, made on the recommendation of the Dpc, in the year 1971, as mentioned above. However, the

stand of Dda is that all the Junior Engineers, whether holding Degrees or Diplomas, are on the same seniority list. In other words, there is a common cadre of Junior Engineers, having common seniority.

(9) According to Dda, the Dpc, in its meeting held on July 31, 1990, made the following recommendations, regarding promotion. In case of Executive Engineers:

"A Diploma Holder who has subsequently acquired Degree, will be treated as "Degree Holder" for the purposes of promotion irrespective of the date of acquiring graduate qualifications. The Recruitment Rules recognise only a "Degree" or a "Diploma" for purposes of promotions. They do not stipulate any minimum experience after acquisition of degree. Accordingly, even If an officer has acquired his degree just before Dpc meets, he will be considered as a "Degree Holder" for that and any subsequent DPC".

(10) According to the Dda, the aforesaid principle. It was decided, to be followed in the case of promotion of Junior Engineer to A.E. (Civil) & (Electrical) also. The plea of Dda Is that the Rule, with regard to the experience In service. In case of those Diploma Holder Junior Engineers, who subsequently acquire Degrees, has been clarified. Dda has also denied that the service conditions of the Junior Engineer, holding Degrees, have been adversely affected.

(11) The other respondents, who were imp leaded subsequently on their applications, also filed replies, to the writ petition. In their replies, these respondents have alleged that promotion to the post of Assistant Engineer, is exclusively on the basis of the seniority, in the feeder grade. The seniority of all Junior Engineers (Civil) is common, irrespective of their qualification and their dates of joining in Dda, as Junior Engineer (Civil) & (Electrical). According to these respondents, the Recruitment Rules, nowhere provide that the Diploma Holder, who has already rendered 3 years service, as Junior Engineer, on acquiring the Degree in Engineering, has to render further service of 3 years as Junior Engineer, for becoming eligible for promotion to the post of Assistant Engineer. It Is alleged that for the purpose of promotion, to the post of Assistant Engineer, the Junior Engineer, who has rendered 3 years service and has a Degree in Engineering, whether, he has acquired a Degree at the time of his initial appointment or subsequently, is of no consequence. In other words, the requirements, under the Recruitment Rules, are 3 years service, as Junior Engineer in Dda, and holding of a Degree in Engineering.

(12) No doubt, the principal controversy in the writ petition is, with regard to the Diploma Holder Junior Engineers, who, after joining the service, obtain degrees in Engineering, and the Interpretations, given by the Dda, in its : impugned circular dated September 20, 1990.

(13) But, there are other questions, involved in the present case, which I would like to decide first. These questions are, whether, the impugned decision, thereby, treating those Diploma Holder Junior Engineers, who subsequently obtain degrees, equal with the Degree Holder Junior Engineers, with regard to

the minimum experience, have adversely affected the service conditions of Degree Holder Junior Engineers. If so, whether, the Dda was required to invite objections, from and to give opportunity of being heard to Junior " Engineers, both Degree Holders and Diploma Holders. In not doing so, whether, the Dda has violated the principles of natural justice and if so, what is its legal effect.

(14) Mr. Arun Jaitley, appearing for petitioners, argued that ever since, the recruitment rules were framed in the year 1963, the Dda Interpreted the same, to clearly mean, that the Degree Holder Junior Engineer, would be eligible, for promotion from the post of Junior Engineer to that of Assistant Engineer, after 3 years of service, as Graduate Engineer. Similarly, in case of Diploma Holder, acquiring a degree, during his service as Junior Engineer, he would still be required to put in 3 years of service, as Graduate Engineer, before becoming eligible for consideration, for promotion to the post of Assistant Engineer.

(15) The contention of Mr. Jaitley was, that the relevant Recruitment Rule for promotion of Junior Engineers, to the post of Assistant Engineers, is very clear and admits of only one interpretation. In case of Graduate Junior Engineers, with three years service, meant that three years service, as Graduate Junior Engineer. If this was so, in case, a Diploma Holder obtains the degree in Engineering, subsequent to his joining service, then, he must put in 3 years service as Degree Holder, before becoming eligible for consideration to the post of Assistant Engineer, in promotion quota. The next contention, urged before me, by Mr. Jaitley was that the aforesaid practice was followed from 1963 to 1971. However, in 1971. a concession was made for the Diploma Holder Junior Engineers, to the effect that in the event of a Diploma Holder, acquiring a degree, during the course of service, then, the three years service, as Graduate Junior Engineer, would be calculated on the basis, that a minimum of 2 years regular service as Graduate Junior Engineer, after obtaining a degree, and 3/8th weightage would be given, subject to maximum of one year of the service, put in by a Diploma Holder as Junior Engineer. In other words, according to Mr. Jaitley, the concession implied that after obtaining a degree, a Diploma Holder Junior Engineer was to put in a minimum of 2 year service, as a Graduate Junior Engineer. The above practice, continued till September, 1990, when the impugned decision was taken.

(16) In the next place Mr. Jaitley contended that, the decision of interpreting the rule, was an executive act and, not a legislative function. The rule making function is a legislative function, but interpretation of the Rule, by executive decision, is an executive function. For 27 years. Rule was given a particular meaning, but by an executive decision, was reinterpreted, against the interest of the petitioners, and large number of Degree Holder Junior Engineers. Mr. Jaitley argued that this executive decision has serious, adverse and severe consequences, on the petitioners and other Degree Holder Junior Engineers. Moreover, the chances of promotion of the petitioners and others, have been diminished. Unequal have been treated more than equal to the petitioners. Before taking a decision, which is adverse to the interest of the petitioners, they

have not been given an opportunity of being heard. The service conditions of petitioners have been altered by an executive decision to their department, in violation of the principles of natural justice. It was also argued that petitioners had put in more than 10 years service with Dda but, the Diploma Holders, who are now becoming eligible, under the changed interpretation, have put in only 2/3 years of service, as the Graduate Engineers and are claiming superior rights over the petitioners.

(17) Mr. Jaitley placed reliance upon the judgments of the Supreme Court in K.I. Shephard and Others Vs. Union of India (UOI) and Others, and L.N. Mishra Institute of Economic Development and Social Change Patna and Another Vs. State of Bihar and Others, .

(18) Mr. Joseph, learned Counsel for Dda, submitted that the Authority has only clarified the relevant rule, so as to give it the true meaning. The rule has not been changed and, it has no adverse affect, on the service conditions of those Junior Engineers, who joined the service, while holding Degrees in Engineering. The Cadre of Junior Engineers is a common cadre, consisting of Degree Holder and Diploma Holder. There is a common seniority. Being a promotion post (Assistant Engineer), the zone of consideration is determined, on the basis of seniority, as a multiple of number of vacancies. Since there is common seniority list of Junior Engineers, irrespective, of whether, they are Degree Holders or Diploma Holders, anyone who falls, by virtue of his seniority as a Junior Engineer, within the zone of consideration, is entitled to be considered for promotion, subject to his fulfilling the two prescribed qualifications, namely, 3 years service as Junior Engineer, if he is a Degree Holder, and eight years service, if he is a Diploma Holder.

(19) Mr. Joseph further contended that these very Recruitment Rules, I.e. Recruitment Regulations of November 13, 1963, had come in for consideration, before their Lordships of the Supreme Court in Roop Chand Adlakha and Others Vs. Delhi Development Authority and Others, . According to Mr. Joseph, in the judgment, the Supreme Court nowhere speaks of any limitation of the counting of the period of service of Junior Engineers, nor of the stage from which the requisite three years service is to be reckoned, in case of Junior Engineers, who acquire Degrees. Throughout in the judgment, the Supreme Court speaks of "three years service experience as Junior Engineer" Mr. Joseph also argued that merely, the effect on the chances of promotion, gives no legal right to the petitioners, to challenge the clarification, made by the Dda in the Recruitment Rules.

(20) Mr. Joseph, argued that the object, underlying the interpretation of the Recruitment Rules, was to make it clear and, it is on the same lines on which Upsc had given its clarification on the Rules, raised by Municipal Corporation of Delhi, which Recruitment Rules, are identical to the DDA. Upsc, in its clarification dated September 13, 1985, sought by Mcd, wrote as under:

"The entire service rendered by an officer in the feeder grade shall be taken into account for purposes of counting qualifying service prescribed in the Recruitment Regulations for promotion. In other words, entire service rendered by an officer possessing a Diploma but who had subsequently acquired Degree will be counted for promotion."

(21) Mr. O.D. Gupta, argued on the same lines. He contended that the service conditions of petitioners and other Degree Holder Junior Engineers, have not been affected by the impugned decision.

(22) One of the questions in K.I Shephard and Others (supra), before their Lordships was, the compliance with the principles of natural justice, in case of administrative action, when such action would affect adversely and result in severe consequences, such as loss of livelihood. It was held :

"Mullan in Fairness : The New Natural Justice has stated : Natural justice co-exists with, or reflected, a wider principle of fairness in decision making and that all judicial and administrative decision making and that all judicial and administrative decision makers had a duty to act fairly. In the case of State of Orissa v. Dr. (Miss) Binapani Del, this Court observed: It is true that the order is administrative in character, but even an administrative order which involves civil consequences as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken : the High Court was, in our judgment, right in setting aside the order of the State. In A.K. Kraipak v. Union of India, a Constitution Bench quoted with approval the observations of Lord Parker in Re : (H) K (an infant. Hedge, J. speaking for the Court stated : (SCC p. 272, para 20). Very soon thereafter a third rule was envisaged and that is that quasi judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the Courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made in applicable to administrative enquiries. Oftentimes it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. These observations in A.K. Kraipak case were followed by another Constitution Bench of this Court in Chandra Bhavan Boarding and Lodging, Bangalore v. State

of My sore. In *Swadeshi Cotton Mills v. Union of India*, & three Judge Bench of this Court examined this aspect of natural justice. Sarkaria, J. who spoke for the Court, stated (SCC pp. 683-84 para 28). During the last two decades, the concept of natural justice has made great strides in the realm of administrative law. Before the epoch making decision of the House of Lords in *Ridge v. Baldwin*, it was generally thought that the rules of natural justice apply only to judicial or quasi-judicial proceedings; and for the purpose, whenever a breach of the rule of natural justice was alleged, Courts in England used to ascertain whether the impugned action was taken by the statutory authority or tribunal in the exercise of its administrative or quasi judicial power. In India also, this was the position before the decision dated February 7, 1967, of this Court in *Dr. Binapani Dei* case; wherein it was held that even an administrative order or decision 596 in matters involving civil consequences, has to be made consistently with the rules of natural justice. This supposed distinction between quasi judicial and administrative decisions, which was perceptibly mitigated in *Binapani Dei* case was further rubbed out to a vanishing point in *A.K. v. Kraipak Union of India*... On the basis of these authorities it must be held that even when a State agency acts administratively, rules of natural justice would apply. As stated, natural justice generally requires that persons liable to be directly affected by proposed administrative acts, decisions or proceedings be given adequate notice of what is proposed so that they may be in a position (a) to make representations on their own behalf; (b) or to appear at a hearing or enquiry (if one is held); and (c) effectively to prepare their own case and to answer the case (if any) they have to meet. Natural justice has various facets and acting fairly is one of them. Rbi which monitored the three amalgamations was required to act fairly in the facts of the case. The situation necessitated a participatory enquiry in regard to the excluded employees. Since the decision to exclude them from service under the transferee banks is grounded upon a set of facts the correctness whereof they deny, if an opportunity to know the allegations and to have their say had been afforded, they could have no grievance on this score. The action deprives them of their livelihood and brings adverse civil consequences and could obviously not be taken on the ipse dixit of RBI officers without verification of facts. It is quite possible that a manoeuvring officer of the banking company adversely disposed of towards a particular employee of such bank could make a report against such employee and have him excluded from further service under the transferee bank. The possibility of exclusion on the basis of some mistake such as to identity cannot also be ruled out. There is all the more apprehension of this type as the process has to be completed quickly and very often the records of a large number of employees have to be scrutinised. We are of the view that rules of natural justice apply to administrative action and in the instant cases the decision to exclude a Section of the employees without complying with requirements of natural justice was bad. Fair play is a part of the public policy and is a guarantee for justice to citizens. In our system of Rule of Law every social agency conferred with power is required to act fairly so that social action would be just and there would be furtherance of the well being of citizens. The rules of natural justice

have developed with the growth of civilisation and the content thereof is often considered as a proper measure of the level of civilisation and Rule of Law prevailing in the community. Man within the social frame has struggled for centuries to bring into the community the concept of fairness and it has taken scores of years for the rules of natural justice to conceptually enter into the field of social activities. We do not think in the facts of the case there is any justification to hold that rules of natural justice have been ousted by necessary implication on account of the time frame. On the other hand we are of the view that the time limited by statute provides scope for an opportunity to be extended to the intended excluded employees before the scheme is finalised on that a hearing commensurate to the situation is afforded before a Section of the employees is thrown out of employment."

(23) In *Roop Chand Adlakha and Others* (supra), the main question involved was, whether, the recruitment rules of the Dda, prescribing different conditions of eligibility of Diploma Holders and Graduates, for promotion from the cadre of Junior Engineer, to that of Assistant Engineer and, from the cadre of Assistant Engineer to that of Executive Engineer, in the Public Works Department of the Dda, were violative of the Articles 14 and 16 of the Constitution of India, and would, Therefore, required to be declared void. On this, the High Court of Delhi had held that such different treatment of Diploma Holders and Graduates by the prescription of different standards of service experience, for purposes of eligibility for promotion, to the higher post was unconstitutional. Against this judgment, several appeals were before the Supreme Court. The Supreme Court observed :

"A large number of authorities were cited on either side. We may first examine the cases relied upon by the High Court in support of its conclusion. The inherent distinction 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 predicted only when the candidates for promotion are drawn from the same source. If the differences in the qualification have 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 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 of qualifications, or job requirements is neither constitutionally compelled nor practically meaningful. This Court in *G.M. South Central Railway v. A.V.R. Siddhanti*, observed : (SCC p. 343, Scc (L & S) p.298, para 20). 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. What is meant by quality in this article is, equality amongst equals. It does not provide for an absolute equality of treatment to all persons in utter disregard in every conceivable circumstances 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 insubstantial or microscopic differences on merely meretricious or plausible differences. The overemphasis on the doctrine of classification nor 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 a 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".

(24) While allowing the appeals and setting aside the judgments of the High Court, the Supreme Court further held:

"In *Triloki Nath* 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 to 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 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 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 cannot 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."

(25) NO-DOUBT, there is a common cadre of Junior Engineers, comprising of both Degree Holders and Diploma Holders, having common seniority. But, still for promotion to the post of Assistant Engineer, different period of experience, has been prescribed for Degree Holders and Diploma Holders. 50 per cent of the posts of Assistant Engineer, are filled up by direct recruitment or on deputation, the remaining 50 per cent by promotion. This 50% promotion quota is further divided equally between the Degree Holder Junior Engineers and Diploma Holder Junior Engineers. In other words, 25 per cent for the Graduates in Engineering, with 3 years service and 25 per cent for the Diploma Holders with 8 years service.

(26) It is an admitted fact that the Dda, by Its resolution No. 574 dated November 13.1963. adopted pro tanto, the rules of- Central Public Works Department, in regard to the, mode of recruitment, both by direct recruitment and by promotion to the post of Assistant Engineer. The Rules, in substance, stipulated and provided that 50 per cent of the posts, be filled by direct recruitment or by deputation and that the other 50 per cent be filled up by promotion, from the cadre of Junior Engineer. The two categories of officers, in the cadre of Junior Engineer, were provided with promotional opportunity, to the post of Assistant Engineer in equal ratio. Then, in the year 1971, a concession

was made for the Diploma Holder Junior Engineers.

(27) The Dda was constituted under an Act, in the year 1955. The recruitment rules, which were formulated in the year 1963, for appointment to the post of Assistant Engineers, were followed in a particular manner, till 1971, when a small concession was given to the Diploma Holder Junior Engineers. This practice was followed till the impugned decision was taken.

(28) In the rejoinder, it has been specifically alleged that petitioners, in the last DPC. were in the consideration zone of promotion but, now they have been ousted from the consideration zone. This is on account of the impugned decision. It is further alleged in the affidavit that with this interpretation, a person, who is at Serial No. 2 in the consideration zone, in one particular Dpc, will be out of consideration zone and will stand at 50th position, and with the passage of time, he will stand beyond even that. In the affidavit, which is not controverted, a statement has been made by petitioners, that more than 70 Diploma Holder Junior Engineers, who have subsequently acquired degrees, are likely to be considered before the petitioners. Petitioners joined as Junior Engineers, in May, 1981, when there were about 150 Diploma Holder Junior Engineers, who had joined the Dda earlier, to the petitioners, as Junior Engineers. Out of Diploma Holders, about 70 have already acquired degrees in the year 1988-89 and 1990, and another about 30 are about to acquire degree in another year or so.

(29) To say, that the decision has no adverse effect on the chances of promotion of petitioners, and other degree holders, will not be correct statement of Prima facie it appears that the impugned decision has minimised the chances of promotion of petitioners and other degree holders. A particular meaning was given to Recruitment Rules for about 27 years. Its abrupt change, may be by interpretation or clarification by Dda, affects adversely the rights of petitioners, as far as, the promotion is concerned. This is also an executive act and not legislative function. The contention of Mr. Joseph that the recruitment regulations were also framed by the executive authority and that the interpretation has also been given by the same authority, makes no difference, because the act of interpretation, remains an executive action. I am not expressing any opinion, whether the interpretation or the clarification, given by the impugned decision, is correct or not. I am, at present, concerned with the question, whether, the principles of natural justice have been complied with or not, and whether, the impugned decision has adversely affected the rights of petitioners. Admittedly, there were two channels of promotion. It prima facie appears that, by the impugned decision, the chances of promotion have been diminished, and affects the service conditions of petitioners.

(30) For these reasons, I am of the view that the impugned decision has been taken, in violation of the principles of natural justice, as, admittedly, no opportunity of being heard was given to the Degree Holders, as well as, the Diploma Holders. The result is that in my opinion, the case should be remanded back to the Dda, for taking the decision afresh, after inviting objections, or

comments, both from the Degree Holders and Diploma Holders Junior Engineers. The representatives of both these categories be also given opportunity of being heard. After this, it is for the Dda to interpret or clarify the rules.

(31) I am leaving all the other rival contentions of the parties open.

(32) Under the facts & circumstances, the Rule is made absolute. The impugned decision dated September 20, 1990, is quashed and set aside. I remand the matter back to the Dda, with direction to decide the matter afresh, within a period of six months, after inviting objections/comments from all concerns and after giving an opportunity of being heard, to the representatives of Degree Holder and Diploma Holder Junior Engineers. Parties are suit to bear their own costs.