

(2011) 08 UK CK 0020

In the Uttarakhand High Court

Case No : Writ Petition No. 267 of 2010 (S/B)

S.K. Singh and Others

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 25-08-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309
Contract Act, 1872 — Section 21

Citation : (2012) 2 UC 1175

Hon'ble Judges : Barin Ghosh, C.J.;V.K. Bist, J

Bench : Division Bench

Advocate : A.S. Rawat, for the Appellant; B.D. Upadhyaya, A.A.G. for State of Uttarakhand/Respondent Nos. 1 to 3, Mr. B.D. Kandpal, Advocate for Respondent No. 4, Mr. Manoj Tiwari , Mr. Sandeep Adhikari, Advocate for Respondent Nos. 5, 6 and 9, Mr. D.S. Patni, Advocate for Respondent Nos. 7 and 8 and Mr. Pankaj Purohit, Advocate for the Interveners in CLMA No. 6315 of 2011, for the Respondent

Judgement

Barin Ghosh, C.J.—Intervention Application is allowed. Heard.

2. This writ petition was filed on 22nd November, 2010, whereby provisions of Rule 5(a)(iii) of the Uttaranchal Service of Engineers (Irrigation Department) (Group "B") Rules, 2003, notified on 18th February, 2003 and amended on 4th February, 2004, has been challenged on the ground that the same is ultra vires to Articles 14 and 16 of the Constitution of India. By the said Rule, a quota has been specified for promotion of degree holder Junior Engineers to the posts of Assistant Engineers. On 4th January, 2011, this Court restrained the State Government from giving any further promotion on the basis of such quota and also from giving any further progression to those who have been promoted on the basis of such quota, as and by way of interim measure.

3. Before we consider the Rule in question, it would be appropriate to understand the historical background, which may have prompted the rule makers to make

the said Rule. In the State of Uttar Pradesh, Rules known as U.P. Service of Engineers (Buildings and Roads Branch) (Class II) Rules, 1936 (hereinafter referred to as the "1936 Rules") were in force. Before 28th July, 1969, one of the sources of recruitment to the posts of Assistant Engineers was by promotion of members of the United Provinces Subordinate Engineering Service or of Upper Subordinates in the Public Works Department (Buildings and Roads Branch) and also Computers of Public Works Department, who have shown exceptional merit. Rule 9(ii) of the 1936 Rules, at that time, made it clear that no member of such services shall be promoted unless he has passed qualifying examination, which the Government may prescribe. Remaining sources of recruitment insisted that the person, to be appointed, should be a Graduate Engineer. On 28th July, 1969, the 1936 Rules were amended. Thereby, 25 per cent of the vacancies were to be filled up by promotion of members of the Public Works Department Subordinate Engineering Service and the Public Works Department Computers Service. By suitably altering Rule 9, it was made clear that members of the said services must pass such qualifying examination as the Government may prescribe or unless he possesses qualification of a Graduate Engineer. The then Rule 12 visualized recruitment by promotion would be by selection on merit. The amendment also sought to alter status of Assistant Engineers appointed by direct recruitment but working in temporary or officiating vacancies in terms of the unamended Rules. In *P.D. Aggarwal and Others Vs. State of U.P. and Others*, , the amendment made to that extent was struck down. By Amendment Rules, 1987, notified on 4th August, 1987, while certain changes were made in the 1936 Rules, the provisions contained in Rule 9(ii) thereof were omitted. Thereafter, by the Amendment Rules, 1992, the criterion of merit for promotion was changed to seniority subject to rejection of unfit. By the 1987 Amendment, while 25 per cent of the vacancies were retained for promotees, it was insisted that they must put in at least 7 years' continuous service in the feeder post and, at the same time, 8 1/3rd per cent of the vacancies were introduced for the first time for promotees possessing Bachelor's Degree. By the 1997 Amendment, introduced on 25th September, 1997, 25 per cent of the vacancies available for promotees was increased to 33.33 per cent. That was challenged principally by the degree holder Junior Engineers before the Hon'ble Allahabad High Court. One of the questions that cropped up in the said litigation was, whether the classification of the members of the feeder cadre, based on qualification, is violative of Articles 14 and 16 of the Constitution of India. By the judgment and order, rendered on 22nd March, 2002, Hon'ble Allahabad High Court held that fixation of separate quota for degree holder Junior Engineers and diploma holder Junior Engineers is discriminatory and violative of Articles 14 and 16 of the Constitution of India. We are told that the Hon'ble Supreme Court has rejected Special Leave Petitions filed against the said judgment.

4. In the meantime, by carving out a part of the State of Uttar Pradesh, State of Uttarakhand was created on 9th November, 2000.

5. The Uttar Pradesh Irrigation Department Civil Engineers Subordinate Service

Rules, 1992 (hereinafter referred to as the "1992 Rules"), made under proviso to Article 309 of the Constitution of India, is applicable to the State of Uttarakhand. By and under the said 1992 Rules, the posts of Junior Engineers (Civil) were created in the service, known as Uttar Pradesh Irrigation Department Civil Engineers (Subordinate) Service, having status of Group "C" posts. The Rules prescribed only one scale of pay for all the members of the service. In terms thereof, 90 per cent of the source of recruitment was by direct recruitment and 10 per cent by promotion through selection from amongst substantively appointed Tracers and Group "C" employees of the Irrigation Department, who have completed 10 years' service and who possess the qualifications prescribed under Rule 8 thereof, on the first day of the year of recruitment. Rule 8 of the said 1992 Rules prescribed academic qualification for direct recruitment and also for promotion and, thereby, prescribed qualification of Diploma alone. Therefore, in terms of the said 1992 Rules, in order to be appointed on the post of Junior Engineer (Civil), the candidate is required to possess only the qualification of Diploma in Civil Engineering. Thus, since 1992, in Uttar Pradesh the distinction between diploma holder and degree holder Junior Engineers was given a go by in the matter of promotion to the post of Assistant Engineers by removing the requirement of passing qualifying examination or having a degree. Of course, two separate quotas were existing for them, which has since been struck down.

6. On 18th February, 2003, in exercise of power conferred by the proviso to Article 309 of the Constitution of India and in supersession of all existing rules and orders on the subject, State of Uttarakhand made the Uttaranchal Service of Engineers (Irrigation Department) (Group "B") Rules, 2003 (hereinafter referred to as the "2003 Rules"). In terms of the 2003 Rules, the Uttaranchal Service of Engineers (Irrigation Department) (Group "B") is a State service comprising of Group "B" posts. By the 2003 Rules, the posts of Assistant Engineer (Civil) and Assistant Engineer (Mechanical), carrying three different scales, were created. In terms of Rule 22, higher scales are allowable in individual cases on the criterion to be laid down, but it is no body's case that till today any criterion has been laid down to allow any of the higher scales to degree holders. 50 per cent of those posts were to be filled in by direct recruitment. For direct recruits, Rule 8 thereof provided that the candidate must be a degree holder or an Associate Member of the Institution of Engineers (India). The rest of the 50 per cent of the posts were to be filled in by promotion. 40 per cent thereof, in the civil Branch, from amongst Junior Engineers (Civil), who have completed 10 years of service as such, on the first day of the year of recruitment and 7.33 per cent from amongst substantively appointed Junior Engineers (Civil), who possess Bachelor's Degree in Civil Engineering from a recognised institution or are Associate Members of Institution of Engineers (India) (Civil Engineering Branch) and who have completed 3 years' service as such, on the first day of the year of recruitment. It was provided that if candidates are not available, then the same will be filled up by Junior Engineers (Civil), who have completed 10 years' service as such, on the first day of the year of recruitment. Rule 16 of the 2003

Rules provided that the criteria for promotion shall be seniority subject to rejection of unfit. Posts superior to the posts of Assistant Engineer are the posts of Executive Engineer, Superintendent Engineer and Chief Engineer. All of them are promotional posts requiring no minimum qualification. Therefore, a promotee diploma holder Assistant Engineer can be promoted to the post of Chief Engineer.

7. It is the contention of the petitioners, who are Junior Engineers (Civil), that, since for being appointed in the post of Junior Engineer, the Rules never contemplated that a degree holder may also be appointed, the degree holders, who were appointed as Junior Engineers, should be deemed, despite having a degree, to be equal to the other Junior Engineers, who were appointed as Junior Engineers having the required qualification of Diploma. Accordingly, there was and is no just reason for providing a scheme for accelerated promotion to degree holder Junior Engineers. Such a scheme tantamounts to making a class within the class, which is not permissible, as there is no intelligible differentia and there is no object to be achieved by making such differentiation. It was contended that, for being promoted to the post of Assistant Engineer, qualification of Diploma is good enough. Therefore, no object was to be achieved by giving accelerated promotion to degree holders, who could, having had the degree, be appointed directly to the posts of Assistant Engineers.

8. It is the contention of the State that a separate treatment to degree holder Junior Engineers was given in order to encourage Diploma holder Junior Engineers to become degree holders.

9. Learned counsel for the parties cited a large number of decisions of the Hon'ble Supreme Court. We shall deal with them hereafter. In terms of the Rules applicable for selection to the post of Sub Engineer (Electrical) in Kerala State Electricity Board, the requisite qualification was Diploma. The Commission refused to acknowledge degree holders as eligible. Hon'ble Supreme Court, in *Jyoti K.K. and Others Vs. Kerala Public Service Commission and Others*, , held that under the relevant Rules for the next higher post, degree in Engineering has been prescribed and, accordingly, degree is definitely higher qualification than diploma, being the qualification prescribed for the lower post and, as such, acquisition of higher qualification pre-supposes acquisition of lower qualification and, thus, Rules do not disqualify degree holders for being appointed to the lower post. The ratio of the said judgment squarely applies to the instant case, inasmuch as, for direct recruitment to the posts of Assistant Engineer, the prescribed qualification is Degree in Engineering and, accordingly, for the inferior post of Junior Engineer, a degree holder has requisite qualification. In terms of the rules governing the field, a Degree in Engineering is a higher qualification than a Diploma in Engineering, and as such, in order to entice people having lower qualification to obtain higher qualification, a suitable scheme may be framed. The question, however, remains, could it be done in the manner it has been done in the instant case, i.e. by providing for a degree holder an accelerated path of being promoted to the post of Assistant Engineer?

10. In *Roshan Lal Tandon Vs. Union of India (UOI)*, , vacancies in Grade "D" of Trained Examiners were to be filled-in by (a) direct recruits, i.e. Apprentice Trained Examiners; and (b) promotees from the class of skilled artisans, in the ratio of 50:50. Promotion from Grade "D" to Grade "C" was to be made on the basis of seniority-cum-suitability. In October, 1965, it was decided that 80 per cent of the vacancies, in Grade "C", would be filled-up from the class of Apprentice Trained Examiners recruited on or after 1st April, 1966 and the remaining 20 per cent from amongst Trained Examiners in Grade "D". It was also decided, simultaneously, that Apprentice Trained Examiners, who were absorbed in Grade "D" before April, 1966, would be accommodated in Grade "C" in the 80 per cent of the vacancies without undergoing any selection. With regard to the 20 per cent of the remaining vacancies, it was provided that the promotion would be on the basis of selection (sic) not on the basis of seniority-cum-suitability. Roshan Lal Tandon, a skilled Artisan, who was confirmed in Grade "D" as Trained Examiner contended that the decision, which gave favourable treatment to the Apprentice from Trained Examiners, who had already been absorbed in Grade "D"; was in violation of Articles 14 and 16 of the Constitution of India, inasmuch as, promotees and direct recruits in Grade "D" formed one class and, according to the conditions of service applicable to them, seniority was to be reckoned from the date of appointment in Grade "D" and promotion in Grade "C" was to be on the basis of seniority-cum-suitability, irrespective of the source of recruitment, and, accordingly, no differentiation could be made between a promotee and a direct recruit in the matter of promotion to Grade "C". The Hon'ble Court held that there was one class in Grade "D", formed of direct recruits and promotees, and the recruits from both the sources were integrated into one class and, accordingly, no discrimination could, thereafter, be made in favour of recruits from one source as against the recruits from the other source in the matter of promotion to Grade "C". The law, thus declared, was, when the recruits from both the sources to Grade "D" were integrated into one class, no discrimination could, thereafter, be made in favour of recruits from one source against the recruits from the other source in the matter of promotion to Grade "C". That was a case, where status of similarly placed people was sought to be altered.

11. In *State of Mysore and Another Vs. P. Narasing Rao*, , the cadre of Tracers was re-organised into two; one consisting of matriculate Tracers with the higher scale of pay and the other of non-matriculate Tracers in a lower scale. It was held that Articles 14 and 16 do not exclude laying down of selective test, nor do they preclude the Government from laying down qualifications for the post in question. It was, accordingly, held that it was open to the Government to give preference to candidates having higher educational qualifications. Therefore, it was held that, on the basis of qualification, it is open to give preference to candidates having higher educational qualification. It must be kept in mind that, in that case, two classes of Tracers were integrated into one and, while integrating them, two scales of pay were recommended on the basis of the qualification of Tracers, who stood integrated. In other words, on integration, two

different classes of people stood integrated, but the Government decided that, despite such integration, they shall be treated differently on the basis of their qualification by paying them different pay-scale and it was held that such an action on the part of the Government is not inappropriate. Therefore, even on integration, it is permissible to treat differently people, who stand integrated, on the basis of educational qualification.

12. In *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, , the applicable rules provided that the source of recruitment to the post of Assistant Engineer is direct recruitment and also by promotion. The rules prescribed that the direct recruitee must be a degree holder. Insofar as the promotees are concerned, the rules provided that a candidate may be a degree holder or a diploma holder and should have worked in the feeder post for a period not less than 5 years. In 1962, those Assistant Engineers, appointed prior to 1st August, 1960, were placed in Grade I, while those, appointed subsequently, were placed in Grade II, regardless of whether they were appointed directly or by promotion, or whether they held Degree or Diploma. It was also provided that the officers, in Grade II, would be entitled to go to Grade I after completing two years of service, subject to availability of vacancies. In 1968, while the scale of pay of Assistant Engineers was revised, it was provided that there will be an eligibility bar and an Assistant Engineer, with Diploma, will not cross the same. In 1970, new rules were introduced in supersession of the old rules. There, it was provided that recruitment to the cadre of Executive Engineers and above would be made only by promotion and degree holder Assistant Engineers would, alone, be eligible for promotion to the posts of Executive Engineers. In the said case, challenge was thrown to the validity of the efficiency bar and the decision to make Graduation as the basic eligibility for being promoted to the posts of Executive Engineers and above. While dealing with the case, the court noticed that the eligibility bar has been removed. Therefore, the only question that was to be answered by the court was, whether fixation of qualification of Graduation, as the basic minimum eligibility for being promoted to the cadre of Executive Engineers from the cadre of Assistant Engineers, which comprised of degree holders as well as diploma holders; was in breach of Articles 14 and 16 of the Constitution of India. The court noticed its decision in *Roshan Lal Tandon* (supra) and held that, if Apprentice Trained Examiners, who were recruited directly to Grade "D" as Trained Examiners, formed one common class with skilled Artisans, who were promoted to Grade "D" as Trained Examiners; no favoured treatment could be given to the former merely because they were directly recruited as Trained Examiners and no discrimination could be made as against the later merely because they were promotees and that is the true meaning of the observation made in *Roshan Lal Tandon* (supra) to the effect that, once the direct recruits and the promotees are absorbed into one cadre, they formed one class and they cannot be discriminated for the purpose of further promotion to the higher grade. The court, men, observed that though persons appointed directly and by promotion were

integrated into a common class of Assistant Engineers, in Triloki Nath Khosa (supra), but they could, for the purpose of promotion to the cadre of Executive Engineers, be classified on the basis of educational qualification and, accordingly, the rule, providing that Graduate shall be eligible for such promotion to the exclusion of diploma holders, does not violate Articles 14 and 16 of the Constitution of India. In the said case, the court, therefore, declared that, if a higher qualification is prescribed for being promoted to the next grade, fixation of such qualification will not violate Articles 14 and 16 of the Constitution of India, even if, in the feeder post, candidates have such qualification and also lesser qualification.

13. The judgment rendered in Triloki Nath Khosa (supra) was considered in Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others, . In that case, the court was concerned with integration of supervisors of the erstwhile State of Hyderabad in the Engineering Service of the reorganised State of Andhra Pradesh. The court noticed that the organization and structure of Engineering Service in the erstwhile State of Hyderabad was quite different from the Engineering Service of the State of Andhra Pradesh, prior to their integration. The court noticed that, under the Hyderabad Rules, non-graduate supervisors were entitled to be considered for promotion to 50 per cent of the posts of Sub Engineers equated with those of Assistant Engineers from 1st November, 1956, but, after integration, according to Andhra Rules, only 33 1/3rd per cent of the posts of Assistant Engineers were available for promotion to non-graduate supervisors. The court noticed that, thus, the ratio of one to one, in the matter of promotion between graduate supervisors and non-graduate supervisors, was altered to two to one when the integration took place, but there was no grievance in regard to the said alteration. In 1960, a decision was taken, whereby a distinction was made in between the diploma holders. It was decided that the diploma holders, possessing LCE or LME or LEE, would be entitled to be considered for promotion on completion of 5 years of service and the remaining after 20 years of service. That was one of the controversies, which came to be decided in Mohammad Shujat Ali (supra). Meanwhile, in 1967, a rule was made under proviso to Article 309 of the Constitution of India and, thereby, it was provided that 37 ? per cent of the vacancies in the posts of Assistant Engineers shall be filled by direct recruitment and the remaining 62 ? per cent by promotion, but then, 2/3rd thereof shall be filled-in by Junior Engineers of Andhra Pradesh Engineering Subordinate Service and the remaining 1/3rd by supervisors, draughtsmen Special Grade and draughtsmen L. Grade of the Andhra Pradesh Engineering Subordinate Service, with a rider that, out of every three vacancies of Assistant Engineers to be filled by promotion from amongst supervisors or draughtsmen, the first two shall be filled by supervisors or draughtsmen with LCE or LEE diploma or equivalent qualification, and the third shall be filled by supervisors or draughtsmen holding such diplomas as mentioned in the said Rules. In 1968, the ratio of promotion was altered and, thereby, three out of four vacancies were to be filled by LCE or LEE diploma

holders and the remaining one by the others. This decision, too, was challenged. One of the questions that cropped up was, whether fixation of ratio of three to one between supervisors with LCE or LEE Diploma and others is violative of Article 14 of the Constitution of India. While answering the said question, the court noticed Triloki Nath Khosa (supra) in paragraph 28 of the Report and observed as under:

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 purpose of the classification or the quality and extent of the difference 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. It may be perfectly legitimate for the administration to say that having regard to the nature of the functions and duties attached to the post, for the purpose of achieving efficiency in public service, only degree holders in engineering shall be eligible for promotion and not diploma or certificate holders. That is what happened in State of Jammu & Kashmir v. Trilok Nath Khosa (supra) and a somewhat similar position also obtained in Union of India v. Dr. (Mrs.) S.B. Kohli (supra). But where graduates and non-graduates are both regarded as fit and therefore, eligible for promotion, it is difficult to see how, consistently with the claim for equal opportunity, any differentiation can be made between them by laying down a quota of promotion for each and giving preferential treatment to, graduates over non-graduates in the matter of fixation of such quota. The result of fixation of quota of promotion for each of the two categories of Supervisors would be that when a vacancy arises in the post of Assistant Engineer, which, according to the quota is reserved for graduate Supervisors, a non-graduate Supervisor cannot be promoted to that vacancy, even if he is senior to all other graduate Supervisors and more suitable than they. His opportunity for promotion would be limited only to vacancies available for non-graduate Supervisors. That would clearly amount to denial of equal opportunity to him. When there is a vacancy earmarked for graduate Supervisors, a non-graduate, Supervisor would be entitled to ask:

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

There can be no satisfactory answer to this question.

14. Despite the said observation, the court did not interfere with the matter for

the reasons also given in paragraph 28 of the Report in the manner as follows:

A rule of promotion which, while conceding that non-graduate Supervisors are also fit to be promoted as Assistant Engineers, reserves, a higher quota of vacancies for promotion for graduate Supervisors as against non-graduate Supervisors, would clearly be calculated to destroy the guarantee of equal opportunity. But even so, we do not think we can be persuaded to strike down the Andhra Pradesh Rules in so far as they make differentiation between graduate and non-graduate Supervisors. This differentiation is not something brought about for the first time by the Andhra Pradesh Rules. It has always been there in the Engineering Services of the Hyderabad and the Andhra States. The graduate Supervisors have always been treated as a distinct and separate class from non-graduate Supervisors both under the Hyderabad Rules as well as the Andhra Rules and they have never been integrated into one class. Under the Hyderabad Rules, the pay scale of graduate Supervisors was Rs. 176-300, while that of non-graduate Supervisors was Rs. 140-300 and similarly, under the Andhra Rules the pay scale of non-graduate Supervisors was Rs. 100-250, but graduate Supervisors were started in this pay scale at the stage of Rs. 150/- so that their pay-scale was Rs. 150-250. Graduate Supervisors and non-graduate Supervisors were also treated differently for the purpose of promotion under both sets of Rules. In fact, under the Andhra Rules a different nomenclature of Junior Engineers was given to graduate Supervisors. The same differentiation into two classes also persisted in the reorganised State of Andhra Pradesh. The pay-scale of Junior Engineers was always different from that of non-graduate Supervisors and for the purpose of promotion, the two categories of Supervisors were kept distinct and apart under the Andhra Rules even after the appointed day. The common gradation list of Supervisors finally approved by the Government of India also consisted of two parts, one part relating to Junior Engineers and the other part relating to non-graduate Supervisors. The two categories of Supervisors were thus never fused into one class and no question of unconstitutional discrimination could arise by reason of differential treatment being given to them. Contention E cannot, therefore, prevail and must be rejected.

15. Therefore, in Mohammad Shujat Ali (supra), the court pronounced that, in the event, two classes, classified on the basis of educational qualifications that they have, are integrated into one; then a quota, on the basis of qualification, to segregate them in the matter of promotion, is not permissible, unless their identity has been kept separate despite integration.

16. In Punjab State Electricity Board, Patiala and Another Vs. Ravinder Kumar Sharma and Others, , the Hon''ble Supreme Court considered Mohammad Shujat Ali's case. In that case, the question was whether it was permissible to fix separate quota for diploma holder and non-diploma holder Line Men for promotion to the post of Line Superintendent. The court held that the same is not permissible, inasmuch as, rules permitted non-diploma holders to be

promoted to the post of Line Superintendent and Line Men formed a common cadre having a common seniority list, though they comprised of diploma holders and non-diploma holders. Although it has not been clearly mentioned in the said judgment, but it appears from clause (iii) of sub-paragraph (c) of paragraph 8 of the Report, that for being appointed as Line Man, there was no contemplation that the person concerned may be a diploma holder. However, in the rules for promotion to the post of Line Superintendent, it was provided that persons holding Diploma and recruited as Line Men, after having had worked for three years continuously, would be eligible for promotion; whereas non-diploma holders, as appears from clause (i) of sub-paragraph (d) of paragraph 8 of the Report would be required to work continuously for 9 years as at ALM and Line Men for 4 years for being eligible for promotion to the post of Line Superintendent.

17. In *Roop Chand Adlakha and Others Vs. Delhi Development Authority and Others*, , there were two sources of recruitment to the post of Junior Engineers by direct recruitment. One of those was Graduate Engineers without prior experience and the other was diploma holders with two years' experience. 50 per cent of the posts of Assistant Engineers were available for promotees. Half of them were available to degree holder Junior Engineers with three years' service and the remaining half to diploma holder Engineers having 8 years' service. Validity of the prescription in the matter of requirement of different service experiences between graduates and diploma holders for promotion to the posts of Assistant Engineers was questioned before the court. The court held, in paragraph 18 of the Report, that the inherent distinction between a person with a degree and one who is merely a diploma holder is much too obvious. But the question is, whether the differences have a reasonable relation to the nature of the office to which the promotion is contemplated. It then observed, 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... When the State makes a classification between two sources, unless the vice of the classification is writ large on the face of it the person assailing the classification must show that it is unreasonable and violative of Article 14. Therefore, the court pronounced that if there are two classes available in the feeder post, having distinct classifiable standard on the basis of educational qualification, then, if one of the qualifications has a reasonable relation (sic) the nature of duties and respondent (sic) the promotional post, more advantage (sic) treatment of those, who possess such qualification, can be legitimised on the doctrine of classification. To do so, therefore, in the feeder post, there must be presence of two classes of people having two different standards of education.

18. In *P. Murugesan and Others Vs. State of Tamil Nadu and Others*, ,

recruitment to the category of Supervisors was by direct recruitment of graduate Engineers as well as by promotion of lower category of Supervisors. Diploma holders were not eligible for direct recruitment as Supervisors; they were first appointed to the category of Overseers and then promoted as Supervisors. The category above the Supervisors was that of Assistant Engineers. Supervisors, whether directly recruited or promotees, were required to put in 20 years of service in the category of Supervisors to become eligible for promotion to the category of Assistant Engineers. In 1965, a ratio of 3:1 between graduates and diploma holders, in the matter of promotion to the category of Assistant Engineers, was introduced. In 1978, diploma holder Supervisors were designated as Junior Engineers and degree holder Supervisors were designated as Assistant Engineers and the post of Assistant Engineer was re-designated as Assistant Executive Engineer. In 1991, the same was incorporated in the statutory rules. All throughout, a distinction was maintained between graduates and diploma Engineers, including when they were Supervisors. In that view of the matter, alteration of their status was not interfered.

19. In *T.R. Kothandaraman and Others Vs. Tamil Nadu Water Supply and Drainage BD and Others*, , the rule, providing degree holders to have better promotional chance than diploma holders, was held valid on the premise that higher educational qualification is a permissible basis of classification. However, the facts of that case do not demonstrate that degree holders as well as diploma holders were not two distinct sources for appointment in the feeder post.

20. In *Nageswar Prasad v. Union of India*, 1995 Supp. (4) SCC 718 , it was observed that the prescription of the quota rule is obviously to ensure that, in the immediate promotional cadre, there is a fair mix of both degree holders and diploma holders because the vertical movement from that stage and upwards in the hierarchy is restricted to degree holders and, if they are not available in sufficient number in the feeding channel, the said channel would become virtually dry and sufficient number of degree holders would not be available for promotion to the next higher post and that efficacy of diploma holders has been recognised up to a particular stage in the hierarchy and, thereafter, it is realised that for manning higher posts, a degree in Engineering is a must. In that case, the quota of promotion to the post of Assistant Engineer as was fixed, was under challenge. It does not appear from the judgment that, in the feeder post, the requirement for eligibility was Diploma only. Be that as it may, the quota rule was upheld in order to ensure availability of sufficient number of persons to man the higher posts, which could only be held by people possessing a degree.

21. In *Rajasthan State Electricity Board Accountants Association Vs. Rajasthan State Electricity Board and Another*, , an Accountant was entitled to be promoted to the post of Assistant Accounts Officer/Assistant Audit Officer/Assistant Revenue Officer by selection. The rules provided a quota for those Accountants, who had certain qualification, with lesser experience than the other Accountants. The challenge thrown to reduction of the period of experience was rejected

holding that classification, based on educational qualification, is permissible. From the Report of the judgment it does not appear whether Rules contemplated people, having different qualifications, could be appointed to the feeder post of Accountant.

22. In AIR 1997 3127 (SC) , for promotion to Class I Engineer, degree qualification was made essential under the rules made in 1995. Before that, non-degree holders were also entitled to be promoted to the cadre of Class 1 Engineer. The court upheld the said rule by holding that the same inculcates searching competitive spirit among employees for continuing education in the subject of the charge and a spirit of competition, which helps improvement of efficiency of administration.

23. In Kuldeep Kumar Gupta and Others Vs. H.P.S.E.B. and Others, , diploma holders could be recruited to the posts of Junior Engineers by direct recruitment and non-diploma holders could be promoted as Junior Engineers. Junior Engineers could be promoted to the posts of Assistant Engineers. Posts of Assistant Engineers could be filled up by direct recruitment and also by promotion. In the quota of Junior Engineers, to be promoted to the posts of Assistant Engineers, there was a quota for diploma holders and another quota for non-diploma holders. That remained since inception of the rules, although the quota was amended from time to time. The challenge thrown thereto was rejected holding that, when in the feeder post, diploma holders and non-diploma holders were available, there was nothing wrong in making a separate quota for them for being promoted to the post of Assistant Engineer.

24. In Chandravathi P.K. and Others Vs. C.K. Saji and Others, , the post of Junior Engineer could be filled by direct recruitment of graduate Engineers and by promotion from 1st Grade Overseers possessing diploma or certificate. It was found that the avenues for promotion for degree holders and diploma holders were separate. It was also found that, by reason of amendment, promotions were sought to be given to those who although were diploma holders passed the degree in Engineering or Part A and Part B of AMIE examination; by way of accelerated promotions. The court further found that only upon acquiring such a degree, the diploma holder became eligible to exercise his option to be considered for promotion as a degree holder and that an option was required to be exercised for being promoted in the quota of degree holders or in the quota of diploma holders. The court held that giving of an option to diploma holders, who acquired a higher qualification, so as to enable them to either opt for promotion in the category of degree holders or diploma holders, cannot be called in question.

25. In Sanjay Kumar and Others Vs. Narinder Verma and Others, , Degree as well as Diploma in Engineering were considered as qualification for appointment as Junior Engineer. However, the rules provided for greater weightage to degree holders in the post-recruitment period, in the form of higher starting pay and lesser length of service for being eligible to be promoted to the next post. The

court held that there was sufficient inbuilt balance between the two categories of candidates. The court, however pronounced that, without challenging the rules making distinction between the two classes of persons, it was improper to equate those two classes of persons.

26. The said state of affair has been clarified by the Hon^{ble} Supreme Court in Shailendra Dania and Others Vs. S.P. Dubey and Others, . In that case, the situation prevalent after Roop Chand Adlakha (supra) was considered. In that case, rules were altered, whereby diploma holders, who acquired degree, were treated as degree holders for the purpose of promotion. On a challenge thrown to the said alteration, a Division Bench held that three years' experience, after obtaining degree, is a required eligibility for promotion. Later, a Full Bench held that the experience gained as Junior Engineers had to be counted for promotion. Thus, the matter reached the Hon^{ble} Supreme Court. The court held, in paragraph 43 of the Report, as follows:

43. Taking into consideration the entire scheme of the relevant rules, it is obvious that the diploma-holders would not be eligible for promotion to the post of Assistant Engineer in their quota unless they have eight years' service, whereas the graduate Engineer's would be required to have three years' service experience apart from their degree. If the effect and intent of the rules were such to treat the diploma as equivalent to a degree for the purpose of promotion to the higher post, then induction to the cadre of Junior Engineers from two different channels would be required to be considered similar, without subjecting the diploma-holders to any further requirement of having a further qualification of two years' service. At the time of induction into the service to the post of Junior Engineers Degree in Engineering is a sufficient qualification without there being any prior experience whereas diploma-holders should have two years' experience apart from their diploma for their induction in the service. As per the service rules, on the post of Assistant Engineer, 50% of total vacancies would be filled up by direct recruitment, whereas for the promotion specific quota is prescribed for a graduate Junior Engineer and a diploma-holder Junior Engineer. When the quota is prescribed under the rules the promotion of graduate Junior Engineers to the higher post is restricted to 25% quota fixed. So far as the diploma-holders are, concerned, their promotion to the higher post is confined to 25%. As an eligibility criterion a degree is further qualified by three years' service for the Junior Engineers, whereas eight years' service is required for the diploma-holders. Degree with three years' service experience and diploma with eight years' service experience itself indicates qualitative difference in the service rendered as degree-holder Junior Engineer and diploma-holder Junior Engineer. Three years' service experience as a graduate Junior Engineer and eight years' service experience as a diploma-holder Junior Engineer, which is the eligibility criteria for promotion, is an indication of different quality of service rendered. In the given case, can it be said that a diploma-holder who acquired a degree during the tenure of his service has gained experience as an Engineer just because he has acquired a Degree in Engineering. That would amount to say

that the experience gained by him in his service as a diploma-holder is qualitatively the same as that of the experience of a graduate Engineer. The rule specifically made difference of service rendered as a graduate Junior Engineer and a diploma-holder Junior Engineer. Degree-holder Engineer's experience cannot be substituted with diploma-holder's experience. The distinction between the experience of degree-holders and diploma-holders is maintained under the rules in further promotion to the post of Executive Engineer also, wherein there is no separate quota assigned to degree-holders or to diploma-holders and the promotion is to be made from the cadre of Assistant Engineers. The rules provide for different service experience for degree-holders and diploma-holders. Degree-holder Assistant Engineers having eight years of service experience would be eligible for promotion to the post of Executive Engineer, whereas diploma-holder Assistant Engineers would be required to have ten years' service experience on the post of Assistant Engineer to become eligible for promotion to the higher post. This indicates that the rule itself makes differentia in the qualifying service of eight years for degree-holders and 10 years' service experience for diploma-holders. The rule itself makes qualitative difference in the service rendered on the same post. It is a clear indication of qualitative difference of the service on the same post by a graduate Engineer and a diploma-holder Engineer. It appears to us that different period of service attached to qualification as an essential criterion for promotion is based on administrative interest in the service. Different period of service experience for degree-holder Junior Engineers and diploma-holder Junior Engineers for promotion to the higher post conducive to the post manned by the Engineers. There can be no manner of doubt that Higher technical knowledge would give better thrust to administrative efficiency and quality output. To carry out technical specialized job more efficiently, higher technical knowledge would be the requirement. Higher educational qualifications develop broader perspective and therefore service rendered on the same post by more qualifying person would be qualitatively different.

27. The Court, thus, pronounced where for administrative efficiency and quality output, two classes are dealt dissimilarly, the same is permissible.

28. In *M. Rathinaswami and Others etc. Vs. State of Tamil Nadu and Others etc.*, , the minimum educational qualification for Junior Assistant was SSLC. Junior Assistants were entitled to be promoted to the post of Assistant and, at the same time, posts of Assistants could be supplied by direct recruitment. Minimum qualification for direct recruitment to the post of Assistant was Graduation. Assistants could be promoted to the post of Deputy Tehsildar. As Deputy Tehsildar, an Assistant is transferred from the Ministerial Service to the Revenue Subordinate Service. In 1992, it was decided that direct recruit Assistants could be considered for inclusion in the list for promotion as Deputy Tehsildar after completion of 5 years of service and placed at the top of the list, below the carried over vacancies and above the promotee Assistants. In 1995, necessary amendments were made in the rules. The said action was challenged. People, who threw the challenge contended that, at the time when they were

appointed as Junior Assistants, they were Graduates or Post Graduates and many completed their Graduation subsequently while in service. The court held that, even after integration, further classification for promotion, on the basis of higher educational qualification, can be a rational basis, but there can certainly be no further classification between direct recruits and those promotee Assistants, who have acquired the Graduation qualification, whether before joining as Junior Assistants or thereafter. Insofar as the non-graduate promotee Assistants are concerned, the court opined that, ordinarily, it is for the State Government to decide whether their qualification has a reasonable relation to the nature of duties and responsibilities that go with and are attendant to the promotional post of Deputy Tehsildar. In that case, as it appears to us, the post of Deputy Tehsildar was a superior post than the post of Assistant. In the post of Assistant, there were two types of people available; one, who have been directly recruited, and the other, who have been promoted; whereas, directly recruited were required to be graduates, but not the promotees. The court held that, in such situation, there was nothing wrong to provide, by amending the rules, that, henceforth, only directly recruited Assistants would be considered for promotion as Deputy Tehsildar and they shall be above the promotee Assistants, obviously those who have already become Deputy Tehsildars. Therefore, the decision in that case was to do away with people, who were non-graduates, to be promoted as Deputy Tehsildar. In *Triloki Nath Khosa (supra)*, the court has pronounced the same.

29. From the above decisions, following emerges:

1. In relation to a service, Degree in Engineering should be treated as higher qualification than Diploma in Engineering, when Degree in Engineering is considered relevant for administrative efficiency and quality output of the service, which is expressed by requiring Degree for any of the higher posts reachable by promotion.
2. Status of similarly placed people cannot be altered even on the ground of educational difference.
3. The right to lay down standard of educational qualifications and experience as the required eligibility for different posts is the exclusive privilege of the employer.
4. People having different educational qualifications may be integrated into one, but even then, it is permissible to treat them differently on the basis of their educational qualifications.
5. It is permissible to lay down that a particular post shall only be held by a Degree holder and, accordingly, a Degree holder in the feeder post, alone, shall be entitled to be promoted to the said post, although there may be Diploma holders in the feeder (sic) with Degree holders.
6. When Degree holders and Diploma holders are both regarded as fit and, therefore, eligible for promotion, no differentiation can be made between them

by laying down a quota of promotion for each and giving preferential treatment to Degree holders over Diploma holders.

7. If Degree holders and Diploma holders are available in the feeder post, but if they were treated differently at the time of entering the feeder post, treating them in the feeder post differently, and even thereafter, is not impermissible.

8. If the higher qualification, as that of Degree, is not contemplated as the required qualification for being appointed in the feeder post and, on the contrary, it is contemplated that a lower qualification, as that of Diploma, will do, then two different periods of experience, for being promoted to the next higher post, is not permissible.

9. If it is contemplated that people with higher qualification, as that of Degree, and also people with lower qualification, as that of Diploma, may be appointed in the feeder post, then there is nothing wrong in fixing different service experience for Degree holders and Diploma holders for promotion to the next higher post.

10. At the same time, when for direct recruitment to a post, Degree is the essential educational qualification, but at the same time, such a post can be filled-in also by promotion, it is permissible to provide a higher ratio for Degree holders to be promoted to the said post.

11. If a post in hierarchy is available only to Degree holders, it is permissible to prescribe a quota rule for Degree holders and Diploma holders for being promoted in the intervening posts in order to ensure availability of a fair mix of Degree holders and Diploma holders for vertical movement upwards in the hierarchy.

12. When Degree as well as Diploma in Engineering were prescribed qualifications for appointment, there is nothing wrong in giving greater weightage to Degree holders in the post recruitment period.

13. When the Rules prescribe that Degree holders as well as Diploma holders may be appointed in the feeder post and, at the same time, the Rules prescribe a shorter experience for Degree holders for being promoted to the next available post, the Rules make a qualitative difference in the service rendered in the feeder post and, accordingly, a Diploma holder, upon acquiring a Degree in course of service in the feeder post, will acquire qualifying service applicable to a Degree holder after obtaining the Degree and not while serving as a Diploma holder since such qualitative difference should be deemed to have been inserted in the Rules on administrative interest in the service.

14. In the event, people having higher qualification and lower qualification are integrated, even then, it is permissible for the employer to decide that, henceforth, people having higher qualification, alone, will be entitled to be promoted to the next higher post and they shall be above the people with lower qualification, who have already been promoted to the higher post.

30. From what has been stated above, it appears to us that when, in the instant case, the required qualification for appointment to the feeder post was only Diploma and there was no contemplation that a Degree holder may also be appointed in the feeder post, because for direct recruitment to the next higher post, Degree was made the essential qualification, for the feeder post, Degree was a higher qualification than Diploma and, on that analogy, a Degree holder could also be appointed in the feeder post. The Rules, governing the feeder post, did not make any difference in between a Diploma holder and a Degree holder. The Rules, governing the next higher post, though prescribed Degree as the minimum eligible qualification for direct recruitment, made it clear that a Diploma holder may also be promoted. The Rules, governing superior posts, did not prescribe requirement of a Degree. Therefore, a Diploma holder can also reach the highest post. In the circumstances, the conclusion would be that the Rules treated Degree holders and Diploma holders at par in the feeder post. Having had, thus, treated, the Rules could not say that the experience of the Degree holders shall be lesser than the experience of the Diploma holders for being promoted to the next higher post. At the same time, the Rules could not prescribe a quota for Degree holders, inasmuch as, in the feeder post, Degree holders were not contemplated at all by the Rules. There is, therefore, no intelligible differentia and there is no object to be achieved by making a differentiation in between the same class of people in the feeder post. It was an impermissible attempt to alter the status of same class of people. Articles 14 and 16 of the Constitution of India do not permit the same. If anything contrary is thought, the question posed in Triloki Nath Khosa, quoted above, will remain unanswered. There are means to entice people to acquire higher qualification, but this was not one of the available means. The State of Uttar Pradesh has corrected its mistake after the Hon''ble Allahabad High Court pointed out the same, but the State of Uttarakhand has done the same mistake by not noticing the judgment of the Hon''ble Allahabad High Court.

31. We, accordingly, strike down the Rule in question.

32. The question is, since when this judgment will take effect. Normally, it should take effect from the date the Rules in question were made, inasmuch as, the same are in violation of law and ultra vires to Articles 14 and 16 of the Constitution of India. Even if the same does not take effect from the date of making of the Rules, it must, in the normal course, take effect from the date of presentation of the writ petition. However, inasmuch as, until before 4th January, 2011, status of the people have been altered on the basis of the Rule in question, it would not be appropriate to give effect to the present judgment prior to 4th January, 2011, inasmuch as, Section 21 of the Indian Contract Act, 1872 does not declare a contract void because it was caused by a mistake as to any law in force in India. However, for all fairness, seniority of people in the feeder post shall be restored after they are promoted to the next higher post and a direction to that effect is issued.

33. Interveners have contended that they have been promoted on the basis of the said Rule after 4th January, 2011, but at or before they were thus promoted, they were not made parties and accordingly, their promotions should be saved by this Court. In other words, the effect of this judgment should be given prospectively from the date of the judgment. It is settled law that anything done contrary to an order of a court is per se illegal. On 4th January, 2011, this Court restrained the State Government from giving any further promotion on the basis of the quota provided in the said Rule. In the event, the State Government, in breach of the said order of this Court, has given promotion to the interveners, such promotion, being in contravention of an order of this Court, should be deemed to be null and void. The interveners, therefore, did not obtain any sustainable promotion. We, accordingly, strike down Rule 5(a)(iii) of the Uttaranchal Service of Engineers (Irrigation Department) (Group "B") Rules, 2003, w.e.f. 4th January, 2011 and allow the writ petition with direction as above regarding seniority.