

**JUDGMENT DATED 31.12.1986**

**Delivered by Justice K. Madhav Reddy, Chairman,  
CAT, Principal Bench, New Delhi**

**P.N.Kohli & Others vs Union of India  
(CWP No. 3855/1982 in High Court, Delhi)  
Transferred to CAT, Principal Bench, New Delhi  
(TA No. 729/1985)**

**Sub:**Assistant Engineers(Akashvani & Doordarshan Group  
'B' Posts)Recruitment Rules, 1982 notified by Ministry  
of I&B vide dated 7.7.1982 is discriminatory and  
violative of Fundamental Rights guaranteed under  
Articles 14 & 16 of the Constitution of India.

**HELD**

**That the quota-rota rule of Assistant Engineers  
( Akashvani & Doordarshan Group 'B' Posts)  
Recruitment Rules, 1982  
is discriminatory and violative of Fundamental Rights  
guaranteed under Articles 14 & 16 of the Constitution.**

Case No. S.11(C) JUDICIAL-II ..... Dated.....

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

Faridkot House,  
Copernicus Marg,  
New Delhi-110001.

Dated 20th Feb., 1987.

From:

The Registrar,  
Central Administrative Tribunal  
Principal Bench Delhi.

To,

PETITIONER:-

1. Shri P.N. Kohli, Sec,  
D-4, Radio Colony,  
Kingsway,  
Delhi-110 009.

V E R S U S

1. Union of India through the Secretary,  
Ministry of Information and Broadcasting,  
Shastri Bhawan,  
New Delhi-110 001.
2. The Director General,  
All India Radio,  
Akashvani Bhawan,  
Parliament Street,  
New Delhi-110 001.

Transfer Application No: T- 729/85 CU- 3855/82

Shri P.N. Kohli, Sec & Others \*\*\*\*\*APPLICANT(S)

V E R S U S

Union of India & Others \*\*\*\*\*RESPONDENT(S)

Sir,

I am directed to forward herewith a copy of Judgement/Order dated 31.12.86 passed by a Bench of this Tribunal comprising of Hon'ble Justice Mr. K. Madhava Reddy Chairman/~~XXXXXX~~ & Hon'ble Mr. Kaushal Kumar Member in the above noted case, for information and necessary action, if any.

Please acknowledge receipt



Yours Faithfully,

*[Signature]*  
Section Officer (J-II)  
For Registrar.

SD  
2/2/87

Central Administrative Tribunal  
Principal Bench  
Delhi.

Regn. No. T 729/85  
(CWP 3855/82)

Date of Judgment: 31.12.1986

1. P.N. Kohli
2. D.S. Majithia
3. Om Parkash
4. D.P. Sharma
5. G.C. Jindal
6. Hari Shanker Misra
7. P.N. Dutta



Petitioners

Versus

Union of India and others

Respondents

CORAM:

Shri Justice K. Madhava Reddy, Chairman  
Shri Kaushal Kumar, Member

For petitioners

Shri P.K. Aggarwal, counsel.  
Shri A.P.S. Ahluwalia,  
counsel.

For respondents

Shri P.H. Ramchandani,  
senior counsel.  
Shri M.K. Ramamurthi  
with Ms Kanwaljeet Kochhar  
Shri A.K. Sinha  
Shri R.L. Roshan



(Judgement of the Bench delivered by  
Shri Justice K. Madhava Reddy, Chairman)

The Principal question that arises for consideration in this petition received on transfer from the Delhi High Court is whether the Rule prescribing different qualifications, length of service in a particular grade or grades and quota for promotion for Graduate Engineers and non-Graduate

Engineers in the category of Senior Engineering Assistants (SEAs for short) for promotion to the post of Assistant Engineers (AEs for short) under the Assistant Engineers (Akashvani and Doordarshan Group 'B' posts) Recruitment Rules, 1982 (hereinafter referred to as the Rules), in particular, Col. 11 of the Schedule to the Rules is valid. It is challenged as discriminatory and violative of Fundamental Rights guaranteed under Articles 14 and 16 of the Constitution of India.

The petitioners who are non-Graduate SEAs pray for a writ of certiorari to quash the Notification dated 7.7.82 issued by the Government of India, Ministry of Information and Broadcasting under which the above Rules were published and also to quash the promotion order, No. 3/6/81-S-III(Pt. III) dated 19.8.1982, 24.8.82 and 10/14.9.82 and for a writ of mandamus not to discriminate between the petitioners on the one hand and Engineering Graduates on the other, in the matter of promotion

to the post of Assistant Engineers and treat the non-Graduate and Graduate SEAs as equal in all respects for the purpose of promotion to the category of Assistant Engineers. By order dated 19.8.82, 101 Senior Engineering Assistants and by order dated 24.8.82, 14 Senior Engineering Assistants and by yet another order dated 10/14.9.82, 15 Senior Engineering Assistants were appointed as Assistant Engineers in an officiating capacity. The post of Assistant Engineer is a Central Service Group 'B' (Gazetted) Non-Ministerial post, appointment to which is based on selection.

The method of recruitment, the age limit and other qualifications for recruitment to the post of Assistant Engineers are specified in Columns 5 to 13 of the Schedule to the Rules as Appendices 1, 2 and 3 thereto. The result of the petition turns upon the interpretation of the Schedule and Appendices which read as under:

SCHEDULE

Name of Post	Number of Post	Classification	Scale of pay	Whether selection or non-selection post	Age limit for direct recruits	Whether benefit of added years of service admissible under Rule 30 of the Central Civil Service (Pension) Rules, 1982
(1)	(2)	(3)	(4)	(5)	(6)	6(a)
Assistant Engineer	*371 (1902)	Central Service Group 'B' Gazetted Non-Ministerial	Rs 650-30-740-35-810-EB-35-880-40-1000-EM-40-1200.	Selection	Not applicable	Not applicable

\*subject to variation dependent on workload.

Educational and other qualifications for direct recruits

Whether age & educational qualifications prescribed for direct recruits will apply in the case of promotees.

Period of probation if any.

Method of recruitment whether by direct recruitment or by promotion/transfer and percentage of the vacancies to be filled in by various methods.

In case of recruitment by promotion/deputation/transfer, grades from which promotion/transfer to be made.

If a Departmental Promotion Committee exists, what is its composition.

Circumstances in which Union Public Service Commission is to be consulted in making recruitment.

(7) Not applicable

(8) Not applicable

(9) 2 Years

(10) By promotion

(11) Promotion (a) 50% of the promotion quota by selection in accordance with provision laid down in Appendix I to these rules. (b) 40% of the promotion quota on the basis of Departmental qualifying Examination conducted in accordance with provisions laid down in Appendix II and Appendix III to these Rules.

(12) Group 'B' Departmental Promotion Committee

1. Chief Engineer-Chairman.

2. An Engineer in Junior Administrative Grade - Member.

3. Director Personnel or Director(A&F) in Doordarshan or Akashvani -Member

(13) Consultation with the Union Public Service Commission not necessary while making selection for appointment to the post.

Note: The inter-seniority of officers who are selected under the above quotas shall be fixed on the basis of rotation of vacancies in the ratio of 2:3 starting with the officers selected against 40% promotion quota.

Note: The Chairman and Members shall be nominated by the Engineer-in-Chief, Akashvani. The Chairman or at least one of the Members shall be from Doordarshan.

APPENDIX I

(Rule 3 and Column 11 of the Schedule)

Promotion by selection (against 60% Quota)

- (1) The promotion by selection shall be made by the Departmental Promotion Committee as provided in column 12 of the schedule. The eligibility for consideration for promotion shall be as follows:
- (a) (i) Senior Engineering Assistants with 3 years regular service in the Grade;
- (ii) Failing (i), above, senior Engineering Assistants with 8 years regular service in the grade of Senior Engineering Assistant and Engineering Assistant combined together; and
- (b) Possessing Degree in Electrical/ Electronics/Telecommunication Engineering or Master's Degree in Physics with Electronics as a special subject from a recognised University or equivalent.
- (2) The eligibility for promotion shall be determined as on the 1st of January of the year in which the Departmental Promotion Committee meets.
- (3) The eligibility list for promotion shall be prepared as under:-
- (a) As on the date of commencement of these Rules, the existing All-India seniority list would form the basis in relation to officers included therein.
- (b) In respect of those appointed to the grade of Senior Engineering Assistants thereafter, the names of officers will be added on the basis of the dates of their regular appointment to the grade of Senior Engineering Assistant, subject to maintenance of their inter-se seniority in the respective regional cadres. In case of officers appointed in different regions on the same date, the date of their regular appointment to the grade of Engineering Assistant shall determine their inter-se-position.



APPENDIX II

(Rule 3 and Column 11 of the Schedule)

Promotion on the basis of Departmental qualifying examination against 40% quota.)

- (1) The promotion shall be made by Departmental Promotion Committee as provided in Column 12 of the Schedule, from All-India list prepared for the candidates who pass the Departmental qualifying examination in accordance with the standard and syllabus prescribed in Appendix III. The examination shall normally be held once in a calendar year and the maximum number of chances which could be availed of by a candidate shall be restricted to three.
- (2) The eligibility for appearing in the said Departmental qualifying examination shall be as follows:-
  - (a) Senior Engineering Assistants who have completed five years of regular service in the grade or ten years of total regular service as Senior Engineering Assistant and Engineering Assistant, on the 1st of January of the year in which the examination is held; and
  - (b) Possess qualifications prescribed for direct recruitment to the post of Engineering Assistant or have joined as direct recruit Engineering Assistant.

Note: The above eligibility criteria shall be reviewed after a period of 5 years from the date of commencement of these rules.
- (3) A list of candidates who pass the Departmental qualifying examination shall be made on the basis of their seniority in the grade of Senior Engineering Assistant in the same manner as specified in paragraph 3 of Appendix I. This list will be considered as eligibility list for consideration by the Departmental Promotion Committee for promotion.
- (4) The officials who qualify in subsequent examinations would rank junior to the officials who have qualified in any earlier examination for the purpose of the list of eligible candidates for consideration for promotion by the Departmental Promotion Committee.

Note: After the commencement of these rules, as a one time exception, the vacancies arising initially will be filled, without conducting the Departmental qualifying examination, on the basis of selection on merit by the Departmental Promotion Committee from the Senior Engineering Assistants who fulfil the conditions of eligibility for appearing in the examination mentioned in Paragraph 2 and on the basis of All-India seniority list referred to in sub-paragraph (a) of paragraph 3 of Appendix I. The number of vacancies will be estimated on the basis of anticipated vacancies within one year from the said date. The officials so promoted prior to holding of the first examinations shall have to pass the prescribed Departmental qualifying examination subsequently. Those who fail to qualify in three attempts shall not be eligible for further promotion.

APPENDIX III

(Rule 3 and Column 11 of the Schedule)

Standard and syllabus of qualifying Departmental examination.

1. The subjects for the Departmental qualifying examination shall be as follows:-

- (i) One paper on Broadcast Engineering of general standard in 100 marks.
  - (a) Sound Broadcasting, or
  - (b) Television Broadcasting
- (ii) One paper on specialised subjects -- 100 marks
  - (a) Sound Transmitters and Aerials, or
  - (b) Sound Studios, Audio Recording, Receiving Centres and outside Broadcasts, or
  - (c) Television Transmitters and Aerials, or
  - (d) Television studios, Video Recordings, T.V. Receivers and outside Broadcasts.
- (iii) One paper on general subjects -- 100 marks
  - (a) Safety precautions including first aid store purchase rules etc. and Fire Fighting - 50 marks
  - (b) Principles of power supply system, Airconditioning and Ventilation and Diesel Generators - 50 marks

Note: If a candidate takes paper (i)(a) he will have to take paper (ii)(a) or (ii)(b), if he takes (i)(b) then he will have to take (ii)(c) or (ii)(d). Paper (iii) will be compulsory.

2. The minimum pass marks for each paper shall be 40% for general candidates and 35% for the Scheduled Caste and Scheduled Tribe candidates. For passing the examination, the minimum marks on aggregate of 3 paper shall be 50% for general candidates and 45% for the Scheduled Caste and Scheduled Tribe Candidates.

3. The standard and syllabus of the examination shall be such as Directorate General (Staff Training Institute (Technical)) of Akashvani may specify from time to time.

It would be seen from <sup>the</sup> above that appointment to  
of Assistant Engineer  
the post/is by way of promotion from the category of  
both Graduate and non-Graduate SEAs. 60% of the  
promotion quota is by selection in accordance with the  
provisions laid down in Appendix I to the Rules and  
40% of the promotion quota is by selection on the basis  
of Departmental Qualifying Examination conducted in accor-  
dance with the provisions laid down in Appendix II and  
Appendix III to the Rules. The seniority of officers  
who are selected under the above quota is to be fixed  
on the basis of rotation of vacancies in the ratio of  
2:3 starting with the officer selected against 40%  
promotion quota. 60% of the promotion quota, as laid  
down in Appendix I is reserved for those "possessing  
Degree in Electrical/Electronics/Tele communication  
Engineering or Master's Degree in Physics with  
Electronics as a special subject from a recognised  
University or equivalent". Such Graduate  
SEAs should have put in either three years regular  
service in the grade and if such SEAs are not  
available, SEAs with eight years regular service

in the grade of SEAs and EAs put together are also eligible. In other words, those SEAs who do not possess a Degree in Electrical/Electronics/Telecommunication Engineering or a Master's Degree in Physics with Electronics as a special subject even after putting in the requisite length of service in the grade as prescribed for those possessing such degrees by clause (1)(a)(i) and (i)(a)(ii) of Appendix I to the Rules, are not eligible to be considered against the 60% quota referred to in column 11(a) for the posts of AEs. They can compete only for the 40% of posts referred to in column 11(b) of the promotion quota of AEs provided they fulfil the qualifications prescribed in Appendix II of the said Rules. Non-Graduate Senior Engineering Assistants may also qualify for promotion only against the 40% quota reserved for them provided they have "completed five years regular service in the grade or ten years of total regular service as Senior Engineering Assistant and Engineering Assistant' on the 1st of of the year January/in which the examination is held and possess qualifications prescribed for direct recruitment to the post of Engineering Assistant or have joined as direct recruit Engineering Assistant ." For this, they have to pass a Departmental qualifying Examination of the Standard and with the syllabus prescribed in Appendix III

of the Rules. After the commencement of the Rules, as a one time exception, the vacancies arising initially were to be filled <sup>in</sup> without conducting the Departmental Qualifying Examination on the basis of selection on merit by the Departmental Promotion Committee from the Senior Engineering Assistants who fulfil the conditions of eligibility for appearing in the examination as mentioned in paragraph 2 and on the basis of an All-India Seniority List referred to in sub-paragraph (a) of paragraph 3 of Appendix I. It is not necessary for the purpose of this case to refer to Appendix III.

From the above Rules, it would be clear that the promotion quota of Assistant Engineers could be filled in from out of the category of Senior Engineering Assistants. However, 60% of the promotion quota is reserved for Graduate Engineers and 40% for non-Graduate Senior Engineering Assistants. Further, while Graduate Engineers qualify after putting in three years regular service in the grade of Senior Engineering Assistants or 8 years regular service in the grade of Senior Engineering Assistants and Engineering Assistants put together, the non-Graduate Senior Engineering Assistants qualify only after putting in 5 years regular service

in the grade of Senior Engineering Assistants or 10 years of total regular service as Senior Engineering Assistants and Engineering Assistants put together. The non-Graduate Engineers in addition, are required to pass the Departmental Qualifying Examination in accordance with the standard and syllabus prescribed in Appendix III. No such examination is prescribed for Graduate Engineers.

It is the prescription of these different eligibility criteria of (a) length of service, (b) Departmental qualifying examination and (c) fixed quota of 60% for Graduate SEAs and 40% quota for non-Graduate Senior Engineering Assistants all of whom form a single class of service in the matter of their appointment by way of promotion to the post of Assistant Engineer that is attacked as arbitrary and discriminatory and violative of Articles 14 and 16 of the Constitution.

The petitioners in CWP 3855/82 are Diploma Holders (Non-Graduates) holding the post of Senior Engineering Assistant and fulfil the qualification of length of service prescribed by

Appendix II of the Rules and are eligible to appear for the Departmental Qualifying Examination and to be appointed as Assistant Engineers if they pass the said examination. It is their grievance that the Graduate Engineers, who according to their length of service are junior to them, were promoted under the impugned orders dated 19.8.1982, 24.8.1982 and 10/14.9.1982 and they are ignored. The petitioners point out that all Senior Engineering Assistants irrespective of whether they are Engineering Graduates or Diploma Holders or M.Sc., or B.Sc., whether they are Departmental promotees or direct recruits, are assigned duties which are interchangeable; they shoulder the same responsibilities and discharge the same functions and duties. Further, different shifts at the same duty posts are manned by Senior Engineering Assistants irrespective of whether they are promotees or direct recruits, Graduates or non-Graduates. This is clear from the AIR Manual(Appendix B) published by the Ministry of Information and Broadcasting Endt.No.16/20/69-B(D) dated 30.3.1970 and also from the Duty Chart(Annexure 'C'). In the category of Senior Engineering Assistants, the number of Graduates is very small as compared to the large number of non-Graduates. It is contended

that the preferential treatment given to <sup>the</sup> and/benefit conferred on the Graduate Senior Engineering Assistants <sup>the</sup> in/matter of promotion to the category of Assistant Engineers has no rational basis and is wholly disproportionate particularly because most of the Engineering Graduates have no specialised training in Electronics and are <sup>drawn</sup> from diverse fields, such as Electrical, Telecommunication, M.Sc., with electronics as a special subject.

It is pointed out that no University in India imparts training in broadcasting as such and the proficiency in this field has to be acquired by Graduates or non-Graduates alike in the course of discharging their duties as Engineering Assistants or Senior Engineering Assistants.

It is the All India Radio and Doordarshan which impart necessary specialised training to Engineering Assistants and Senior Engineering Assistants while they are in service. Thus, both Graduates and non-Graduates would undergo the same type of training and <sup>both</sup> would be equally qualified for promotion to the post of Assistant Engineers after putting in the same period of service. There is, therefore, no justifiable reason for giving preferential treatment to Graduate Engineers in the matter of promotion to the category of Assistant Engineers. As a result of



this discriminatory treatment among Senior Engineering Assistants with different educational qualifications, Certificate holders from I.T.I., have been altogether debarred from further promotion to the of category of Assistant Engineers ~~as per~~ for under Appendix II the Rules prescribe that "minimum qualification for promotion to the cadre of Assistant Engineer shall be the intake qualification prescribed for direct entry at Engineering Assistants' level." It is pleaded that having regard to the large number of Diploma Holders and Certificate Holders from I.T.I. in the category of Senior Engineering Assistants, there will be large scale stagnation of non-Graduate Senior Engineering Assistants on the one hand and other hand on the  $\angle$  accelerated promotion of Graduate Senior Engineering Assistant to the category of Assistant Engineers which is wholly disproportionate to the number of Graduate Engineers in the category of Senior Engineering Assistants. Having declared all Senior Engineering Assistants, irrespective of whether they are Graduates or non-Graduates as eligible for promotion, prescribing a longer period of service for the non-Graduate Senior Engineering Assistants and requiring them to pass <sup>the</sup> Departmental Examination is arbitrary and violative of Articles 14 and 16 of the Constitution.

Until the impugned Rules came into force, non-Graduates were not eligible at all to be appointed as Assistant Engineers. The Rules were first framed in 1962 which provided for appointment of only Degree holders as Assistant Engineers; non-Graduates were not eligible at all. 5% of these posts were reserved for appointment by way of promotion of Graduate Senior Engineering Assistants and 95% of the posts were reserved for appointment of Graduate Engineers by way of direct recruitment. Under the 1967 Rules, while the quota of promotees was increased from 5% to 20% and that of direct recruits reduced from 95% to 80%, the appointments were still to be made <sup>from</sup> among the Engineering Graduates. Rules were amended in 1972 and the quota of promotees was raised from 20% to 60% and that of direct recruits reduced from 80% to 40% but still only Engineering Graduates were eligible for appointment as Assistant Engineers. It is under the impugned Rules that non-Graduates were made eligible for the first time for appointment to the post of Assistant Engineers against the <sup>ment and that</sup> quota reserved for direct recruit/60% of the posts falling in the promotion quota was to be filled in by Graduate Engineers in the category of Senior Engineering Assistants who fulfil the length of service prescribed under Appendix I and 40% quota was allotted to non-Graduate Senior Engineering Assistants

who have put in the requisite length of service as laid down under Appendix II and have passed the Departmental Qualifying Examination.

In support of his contention that this differential criteria prescribed for the members of the same class of Service is arbitrary and discriminatory, Shri P.K. Aggarwal, learned counsel for the petitioners very strongly relied upon the decision of the Supreme Court in MOHD. SHUJAT ALI Vs. UNION OF INDIA(1). Similar contentions came up for consideration before the Supreme Court in several decisions which were referred to in extenso during the course of the arguments before us. We may, therefore, examine the principles enunciated by the Supreme Court in these decisions.

In STATE OF MYSORE Vs. NARSING RAO (2) the Supreme Court held:

"Higher educational qualifications such as success in S.S.L.C. Examination are relevant considerations for fixation of higher pay scale for tracers who have passed the S.S.L.C. examination and the classification of two grades of tracers in Mysore State, one for matriculate tracers with higher pay scale and the other for non-matriculate tracers with lower pay scales

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(1) A.I.R. 1974 SC 1631

(2) A.I.R. 1968 SC 349

cannot be said to be violative of Article 14. The qualification for appointment to a post of Professor in Orthopaedics must have a post-graduate degree in particular speciality was upheld in Union of India Vs. Dr.(Mrs.) S.B.Kohli (3) on the basis that such a requirement was not "without reference to the objectives sought to be achieved and there can be no question of discrimination."

In MOHD. SHUJAT ALI V. UNION OF INDIA (1) considering the attack of unreasonable classification and discrimination under the Andhra Pradesh Engineering Service Rules 1966 which discriminated between Graduate Supervisors and non-Graduate Supervisors in the matter of promotion, the court held that "there was no violation of Article 14 or 16 of the Constitution." The Court further observed:

" To permit discrimination based on educational attainments not obligated by the nature of the duties of the high post is to stifle the social thrust of the equality clause. 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

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(\*) A.I.R.1973 S.C.811.

(1) AIR 1974 SC 1631

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 graduation 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."

In State of Jammu & Kashmir Vs. T.N. Khosa<sup>4</sup>, the classification of Assistant Engineers between Diploma holders and Degree holders for promotion as an Executive Engineer under the J & K Engineering (Gazetted) Service Recruitment Rules, 1970 and the exclusion of Diploma holders and preferring Graduates only in the matter of promotion to a higher post, came up for consideration before the Supreme Court and the question, the Supreme Court posed to itself was, "if persons drawn from different sources are integrated into one class, can they be classified for purposes of promotion on the basis of their educational qualifications?". Justice Chandrachud J., as he then was, speaking for the court after examining the case law on the subject held -

"Though persons appointed directly and by promotion were integrated into a common class of Assistant Engineer, they could, for purposes 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 diploma-holders does not violate Articles 14 and 16 of the Constitution and must be upheld".

In arriving at that conclusion, the learned judge observed -

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(4) AIR 1974 SC 1

"Since the Constitutional code of equality and equal opportunity is a charter for equals, equality of opportunity in matters of promotion means an equal promotional opportunity for persons who fall, substantially, within the same class. A classification of employees can, therefore, be made for first identifying and then distinguishing members of one class from those of another"

Judging from that point of view, the court held -

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

Thus, it is clear from the aforesaid judgements that from among the members of a particular cadre or category of servants, persons having higher educational qualifications could be preferred for appointment to a higher post by way of promotion ignoring the principle of seniority. That would not by itself be violative of Articles 14 and 16. If till 1982, only graduates among SEAs were eligible for promotion, no exception could be taken by the non-graduates on the ground that they were denied the right to be considered for promotion to the categories of AEs. If that be so, while declaring the

non-graduates also eligible for promotion, a longer period of service is prescribed to make them eligible, would it be violative of Articles 14 and 16 of the Constitution.?"

In *Devi Prasad vs. Government of Andhra Pradesh*(5)

the Supreme Court held -

"Supervisors (Diploma holders) and Junior Engineers (Degree holders) discharge substantially similar functions and Supervisors were given special weightage under the Andhra Pradesh Engineering Subordinate Service Rules only if they acquire A.M.I.E. which is equivalent to an Engineering Degree. Furthermore, the weightage given was only for half the period they have served as Supervisors.

"In the light of their wide experience and basic qualifications", the court observed, "we are unable to say that there is anything capricious in giving them the limited benefit or weightage under the new rule." The court further observed -

"It is a government policy to decide what weightage should be given as between two categories of government servants rendering somewhat similar kind of service ..... but mere hardship without anything arbitrary in the rules does not call for judicial interpretation specially when it flows out of a policy which is not basically illegal. The Andhra Pradesh Engineering Subordinate Service provided for two sources on initial recruitment to the service, those who possess diplomas are recruited to the post of Supervisors, those who possess engineering



degrees are recruited to the posts of Junior Engineers. The fact is that by and large, they discharge the same functions and it is wrong to say that there is no functional parity as between Supervisors and Junior Engineers. However, the academic superiority of the Junior Engineers is also a reality and has been recognised in the Rules framed. The promotion to the next higher rank is to the post of Assistant Engineers in the State Engineering Service and for the purpose of promotion to that rank, according to the rules, it was necessary for a degree holder like a Junior Engineer to put in five years of service while for a non-degree holder, that is a diploma holder like a Supervisor, a minimum service of ten years was prescribed\*.

This Rule was held to be valid.

Applying the principle enunciated by the Supreme Court therein, if we examine the present rule, what it seeks to do is to confer on the non-Graduates among the SEAs who were hitherto ineligible for appointment to the post of AEs by way of promotion, the opportunity to be considered for promotion provided they have put in the prescribed period of service which is longer than the period prescribed for Graduate SEAs. Graduate Engineers have undoubtedly higher educational qualifications than those who have merely acquired a Diploma or are non-Graduates. Under these rules, for the purpose of promotion, they are sought to be equalised by requiring the non-Graduates to put in a longer period of service. But whether even after having acquired longer period of service

experience, they/<sup>have</sup>become equal to Graduate SEAs or not, is sought to be determined by conducting a Departmental Qualifying Examination. The syllabus prescribed and the standard required is laid down in Appendix III to the Rules. Non-Graduate SEAs possessing the requisite length of service and passing the said examination are treated as equal to the SEAs who are Degree holders with a lesser period of qualifying service for the purpose of promotion to the category of AEs. If prescribing a higher educational qualification for the purpose of promotion to the next category of service is not bad as held in Khosa(4)'s case, equally prescribing a longer period of service for those possessing a lesser educational qualification in the matter of promotion and prescribing a Qualifying Examination, in our opinion, cannot be deemed arbitrary and violative of Articles 14 and 16 of the Constitution. In so prescribing, no discrimination is made among the SEAs.

It is argued that so long as Graduate SEAs alone were declared eligible for promotion, it did not offend

Articles 14 and 16 but when non-Graduate SEAs also are declared eligible under the Rules to be qualified for appointment to the post of AEs prescribing a different qualification of longer period of service and passing a qualifying examination for them would be arbitrary and discriminatory. This presumption, in our opinion is erroneous. It will be clear from the rules that the rule-making authority never intended to declare non-Graduate SEAs as possessing the same qualifications as Degree holders. In prescribing a longer period of service and requiring them to pass a Departmental Qualifying Examination of a particular standard, the rule-making authority made its intention unmistakably clear that not every non-Graduate SEA, but only such of those Diploma holders as have gained experience after putting in reasonably long years of service in a particular category and who have passed a particular standard of examination would become equal to Graduate SEAs who have put in lesser period of service. While they continue in the category of SEAs, Graduate and non-Graduate SEAs may be appointed to discharge same functions and duties attached to the different posts in that cadre equally, but for shouldering the higher

responsibilities of AEs, the Rule Making Authority, in its wisdom, thought it necessary to prescribe<sup>a</sup> higher qualification in the shape of longer period of service and passing the Departmental Qualifying Examination for those who have a lower educational qualification. That, in our opinion, is quite reasonable and does not operate as an invidious discrimination among the SEAs as such. That only prescribes a higher qualification or different qualification for recruitment to the higher post of AEs by way of promotion.

No material has been placed before us to come to the conclusion that the higher educational qualification of Graduation or longer period of service and passing the Departmental Qualifying Examination in the case of non-Graduates is not obligated by the nature of the duties and responsibilities attached to the higher post of <sup>an</sup> Assistant Engineer. In our view, that portion of the Rule is not violative of Articles 14 and 16 of the Constitution as contended for the petitioners; it is accordingly upheld as valid.

The position with regard to fixing a quota and reserving 60% posts of AEs for Graduate SEAs and 40% of posts for non-Graduates, however, in our view, stands on a different footing; it constitutes an unreasonable classification which has no nexus to the object sought to be achieved. It is arbitrary and violative of Articles 14 and 16 of the Constitution. The offending portion of the Rule which occurs in Col. 11 of the Schedule to the Rules is

underlined and reads as follows:

Schedule

Columns 1 to 10, 12 and 13 \*\*\*\*\*

Col. 11

Column 11

In case of recruitment by promotion/  
deputation/transfer, grades from which  
promotion/transfer to be made

Promotion

(a) 60% of the promotion quota by selection in accordance with provision laid down in Appendix I to these rules.

(b) 40% of the promotion quota on the basis of Departmental qualifying Examination conducted in accordance with provisions laid down in Appendix II and Appendix III to these rules.

Note: The inter-seniority of officers who are selected under the above quotas shall be fixed on the basis of rotation of vacancies in the ratio of 2:3 starting with the officers selected against 40% promotion quota.

If both the Graduate SEAs with lesser qualifying service and non-Graduate SEAs with a longer qualifying service and a pass in the Departmental Qualifying Examination are equally suitable and eligible to be appointed to the post of AEs, we do not see how a further distinction could be made between them and how seniority could be ignored and certain percentage of AEs could be appointed from one or the other category of SEAs. Once they are treated as equal upon possessing or acquiring the qualifications prescribed for the post of AE, prescribing a quota for Graduate SEAs and non-Graduate SEAs would result in treating them as two different classes. Then the very purpose of prescribing a longer period of service and a Qualifying/Departmental Examination for non-Graduate SEAs would lose all its meaning and purpose; it would be arbitrary. If these qualifications are intended to bring non-Graduate SEAs, on par with Graduate SEAs, the reservation or fixation of a quota in the matter of promotion to the posts of AEs,

would deprive those who fall within the zone of consideration in view of their seniority, from being appointed ~~to~~ to that post only because they do not fall within the quota allotted to the category of Graduate SEAs or non-Graduate holders SEAs. That is an invidious distinction which cannot be sustained.

In Mohd Shujat Ali Vs. Union of India(1) the question of fixing a quota for promotion of Graduate Engineers and Engineers holding a Diploma came up for consideration. In that context, apart from considering the question whether/<sup>a</sup>higher qualification of possessing a Degree, as distinct from a Diploma, could be prescribed after merging both Diploma holders and Graduate Engineers into one category of Service, the Supreme Court also considered whether quotas could be prescribed for Graduate Engineers and Diploma holders for promotion to the next higher post, and whether the same offends Articles 14 and 16 of the Constitution and declared:

"To permit discrimination based on educational attainments not obligated by the nature of the duties of the higher post is to stifle the social thrust of the equality clause. 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

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(1) AIR 1974 SC 1631

promotion for Graduate Supervisors as against non-Graduate Supervisors would clearly be calculated to destroy the guarantee of equal opportunity...."

In that case, however, the Court did not strike down the rule fixing a quota, but observed:

"... 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.....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".

We would advert to this latter part of the dicta laid down by the Supreme Court ~~in~~ hereinafter. Suffice to note, at this juncture, that when once Graduate Engineers and non-Graduate Engineers are both fused into one Service, by prescribing a longer period of service for non-Graduate Engineers to be declared eligible for being considered for promotion to the post of Assistant Engineer, no differential treatment could be meted out to them in the matter of promotion, inasmuch as they form one class of Service. That would amount to saying "you non-Graduate SEAs are qualified to be promoted, you

are senior to the Graduate SEAs; but your number is very large. There are Graduate SEAs, their number is small. Although they are junior to you and are equal to non-Graduate SEAs who are now eligible under the Rules, we won't promote you; for eligible non-Graduate SEAs are so many that if no quota is prescribed, no Graduate SEAs., or very few of them can be appointed as AEs. Hence, we prescribe a quota for graduate and non-graduate SEAs., in the matter of promotion to AEs post."

But any such denial would offend the principle of equality before law; once non-graduate S.E.As. are found to be fit and as much eligible as Graduate S.E.As. to be appointed as AEs., depriving some of the qualified non-Graduate SEAs and may be in some years even Graduate SEAs of the right to be appointed to that post by promotion only because they do not fall within the quota prescribed would be arbitrary. The principle enunciated in MOHD. SHIJAT ALI's case is not dissented even to this day.

In H.C. SHARMA Vs. DELHI MUNICIPALITY (6) though Mohd. Shijat Ali's case was not expressly referred to, the principle laid down therein was followed in the matter of promotion of Graduate and non-Graduate Engineers to the category of Assistant Engineers according

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(6)AIR 1983 SC 881.



to a quota under the Delhi Municipal Corporation Act.

The Supreme Court held -

"Prayer No. 4 is to declare the petitioners Graduate Engineers as a separate category amongst Junior Engineers and give them equal quota like the Diploma holders Junior Engineers out of the 50% quota for promotion as Assistant Engineers. This cannot be done except by carving out two classes in the same category of Junior Engineers on the basis merely of their qualification which is not permissible in law though the creation of selection grade in the same category on the basis of merit and or seniority is well-known and permissible. The Junior Engineers do the same kind of work and bear the same responsibilities whatever their qualification, whether they are Degree holders or Diploma holders".

Several High Courts understood the decision in

Shujat Ali's case as laying down that, merely because

of the difference in educational qualifications,

persons falling within the same category of Service and

treated as equals, could not be deprived of promotion

by fixing a quota.

In Sukhdev Raj Vs. Punjab State Electricity Board (7), the Division Bench of the Punjab and Haryana Court, setting aside the judgment of the learned single Judge, declared-

"...If the Board thought it fit as a matter of policy taking into consideration all factors that non-Diploma holder Line Superintendents were fit enough to perform the duties of Junior Engineers after promotion, there was absolutely no warrant or justification to debar them from competing with their counterparts having Diploma as their qualification on the basis of equality and parity. A bare perusal of the judgment of the learned Single Judge, impugned in this appeal, makes it evident that Mohd Shujat Ali's case (supra) had not been brought under consideration".

In that view of the matter, the rule fixing the quota for the Diploma-holder and non-Diploma-holder Line Superintendents for promotion to the post of Junior Engineers was quashed.

The Madras High Court in R. Ranganathan and another Vs. Government of Tamil Nadu and others(8) took the same view. After referring to the decisions in Kosha's and Sujat Ali's cases, the learned judges observed that Degree-holders and Diploma-holders could be treated as separate but once they are fused into one cadre, any fixation of quota in the matter of promotion to the next higher grade would offend Articles 14 and 16 of the Constitution.

The Kerala High Court in PUSHADHARAN Vs FOOD CORPORATION OF INDIA (9) also declared that, once direct-recruits and promotees are fused into one class, it is not competent for the authorities concerned to discriminate between them in the matter of further promotion to the post of Assistant, Grade II to which post both the direct-recruits and promotees are qualified.

By prescribing a longer period of service for non-Graduate SEAs and a shorter period for Graduate SEAs and requiring non-Graduate S.E.As to appear for a Departmental Examination and qualify themselves for being considered for promotion to the next higher grade, the Rules themselves treated such Diploma-holders as equal to Graduate Engineers. While prescribing a longer period of service and a pass in the Departmental Examination in the case of non-Degree holder SEAs may be justified but when once the Rules declare such non-Graduates to be also eligible for promotion along with Graduate Engineers with lesser period of service without requiring them to appear for the Departmental Qualifying Examination, in prescribing a quota, the Rules make an

invidious discrimination not warranted by the duties and responsibilities attached to the promotional post <sup>an</sup> of/Assistant Engineer. The Rules themselves treat the Graduate Senior Engineering Assistants with a lesser period of service equal to non-Graduate SEAs with longer period of service and a pass in the Departmental Qualifying Examination as one class. Once they are treated as a class, eligible for promotion, as held by the Supreme Court in SHUJAT ALI's case (1), a Rule of promotion which reserves a higher quota of vacancies for Graduate Supervisors (here SEAs) as against non-Graduate Supervisors (here SEAs) would clearly be calculated to destroy the guarantee of equal opportunity. Though in Shujat Ali's case, the Supreme Court upheld the quota rule ~~that was~~ on the ground that "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 .... The same differentiation into two classes also persisted in the re-organised State of Andhra Pradesh ..... The two categories of Supervisors were thus never fused into

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(1) A.I.R. 1974 SC 1631

one class and no question of unconstitutional discrimination could arise by reason of differential treatment being given to them." This is not the position here. Admittedly all SEAs, Graduates and non-Graduates are fused into one class. If for purpose of promotion, higher qualifications are prescribed, all SEAs, possessing these higher qualifications form one class even for the purpose of promotion. Hence, no further discrimination or categorisation can be made and quotas reserved for Graduate Supervisors and non-Graduate Supervisors in the matter of promotion to the post of Assistant Engineers. That would be invidious discrimination and destructive of the guarantee of equal opportunity ensured under Articles 14 and 16 of the Constitution. The rule prescribing a quota, and that too, a higher quota for Graduate Engineers and a lower quota for non-Engineers Graduate for promotion to the next higher cadre

of Assistant Engineers, cannot be sustained. This quota rule is violative of Articles 14 and 16 of the Constitution of India, <sup>and is</sup> therefore, void and unsustainable. Consequently, the note occurring in Col. 11 which directs that "inter se seniority of officers who are selected under the above quotas shall be fixed on the basis of rotation of vacancies in the ratio of 2:3 starting with the officers selected against 40% promotion quota" also cannot stand. The seniority would have to be fixed among the AEs., on the basis of the seniority the selected candidates possess in the category of SEAs. The note occurring in col. 11 of the Schedule also is declared void and is struck down along with the quota rule.

It was alternatively contended by Mr. Aggarwal, the learned counsel for the petitioners that if the rule prescribing a longer period of service and a qualifying examination for non-Graduate Engineers is justified, prescription of a quota being void and unsustainable, the rule, to that extent, must be struck down and promotions already made giving effect to the quota Rule should be quashed and all promotions should be directed to be made ignoring the quota rule irrespective of whether the SEAs are Graduates or non-Graduates provided they fulfil the other qualifications prescribed under the 1982 Rules which are upheld. Mr. Ramchandani, the learned counsel for the respondents, however, contended that this

portion of the Rules is not separable from the rest and if the quota Rule is violative of Articles 14 and 16, the Recruitment Rules of 1982 would have to be struck down.

This takes us to <sup>the</sup> question whether the offending portion of the rules is separable. While Shri Aggarwal, learned counsel for the petitioners argues that the offending portion could be severed and that alone can be struck down <sup>and</sup> not the remaining portion of Rules which are held to be valid, Mr. Ramchandani, learned counsel, vehemently contended that if any portion of the impugned rule is found to be ultra vires, the Rules would have to be struck down in their entirety, in which event the non-Graduate SEAs would be much worse off. The 1972 Rules would revive under which non-Graduate SEAs are <sup>not</sup> eligible to be appointed as AE either by way of promotion or by way of direct recruitment. He argues that the rules in so far as they prescribe the educational qualifications, longer period of service for non-Graduate SEAs and a qualifying examination for them and a quota for Graduate and non-Graduate SEAs are part of a scheme. If any <sup>portion</sup> of the 1982 Rules which so prescribe is bad and cannot be sustained, the <sup>entire</sup> scheme

fails and the ~~wazix~~ of 1982 Recruitment Rules would have to be struck down as a whole. The Rules form an integrated set embodying the policy of the Government to man the posts of Assistant Engineers which is a pivotal post in the hierarchy of the Engineering Service. No part of it can be saved. Under these rules, promotional avenues for non-Graduate Engineers were opened and a quota was prescribed. By reserving a certain quota, the non-Graduate SEAs are given an incentive to acquire higher educational qualifications like AMIE which is recognised as equivalent to B.E. Degree. The fact that earlier non-Graduate Engineers were not entitled to be promoted to the pivotal post of Assistant Engineer which is the first gazetted post and which serves as the feeder post for the other gazetted posts and entails shouldering of (higher responsibilities in diverse fields of engineering must be given due weightage. He pleads, in construing these rules as observed in *Bain Peanut and Co. vs. Pinson 75 Lawyers Edition 482(489)* "We must remember that the machinery of Government would not work if it were not allowed a little play in its joints". He also urges that as



observed by Justice Holmes in AIR SC 1 at page 42 "the effect of the changing pattern has to be given due recognition". The Government has bonafide framed the Rules with a view to remov<sup>ing</sup> the discontentment among non-Graduate Engineers and at the same time providing an efficient service by ensuring recruitment of Graduate Engineers as Assistant Engineers. These amendments are actually based on the recommendation of the Cadre Review Committee. He urged that 1982 Rules must be viewed from this angle and so viewed, deserve to be upheld even in so far as they prescribe the quota; that being the intention of the Rule Making Authority, the 1982 Rules would have to be upheld in their entirety or struck down as a whole. According to him, the result of striking down the Rules in their entirety is that 1972 Rules revive.

Principles governing separability of the offending rules have been well laid down by the Supreme Court. We may recall that we have held that the quota rules offend Articles 14 and 16 of the Constitution and, therefore, are void under Article 13 of the Constitution. It is not declared void on account of legislative incompetence. We have come to the conclusion that 1982 Rules in other respects are valid. Only the Rule fixing the

quota which occurs in Appendix I, Col. 11 of the  
 that  
 1982 Rules is held to be void and has to be struck  
 down.

In R.M.D.C. vs. Union of India(10), the

Supreme Court declared:

"When a statute is in part void, it will be enforced as regards the rest, if that is severable from what is invalid. It is immaterial for the purpose of this rule whether the invalidity of the statute arises by reason of its subject matter being outside the competence of the Legislature or by reasons of its provisions contravening constitutional prohibitions".

The Court then proceeded to consider what

tests should be applied to determine whether the offending provisions are separable and summarised them as follows:-

1. In determining whether the valid parts of a statute are separable from the invalid parts thereof, it is the intention of the legislature that is the determining factor. The test to be applied is whether the legislature would have enacted the valid part if it had known that the rest of the statute was invalid (vide Corpus Juris Secundum Vol. 82 p. 156; Sutherland on Statutory Construction, Vol. 2 pp 176-77).

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(10) A.I.R. 1957 S.C. 629

2. If the valid and invalid provisions are so inextricably mixed up that they cannot be separated from one another, then the invalidity of a portion must result in the invalidity of the Act in its entirety. On the other hand, if they are so distinct and separate that after striking out what is invalid, what remains is in itself a complete code independent of the rest, then it will be upheld notwithstanding that the rest has become unenforceable. (Vide Cooley's Constitutional Limitations, vol.1 at pp. 360-361; Crawford on Statutory Construction, pp 217-21.
3. Even when the provisions which are valid are distinct and separate from those which are invalid. If they all form part of a single scheme is intended to be operative as a whole, then also the invalidity of a part will result in the failure of the whole. (Vide Crawford on Statutory Construction, pp. 218-219).
4. Likewise, when the valid and invalid parts of a statute are independent and do not form part of a scheme but what is left after omitting the invalid portion is so thin and truncated as to be in substance different from what it was when it emerged out of the legislature, then also it will be rejected in its entirety.
5. The separability of the valid and invalid provisions of a statute does not depend on whether the law is enacted in the same section or different sections; (vide Cooley's Constitutional Limitations, Vol. I, pp.361-362); it is not the form but the substance of the matter that is material, and that has to be ascertained on an examination of the Act as a whole and of the setting of the relevant provision therein.
6. If after the invalid portion is expunged from the statute what remains cannot be enforced without making alterations and modifications

therein, then the whole of it must be struck down as void, as otherwise it will amount to judicial legislation. (Vide Sutherland on Statutory Construction, Vol. 2 p. 194).

7. In determining the legislative intent on the question of separability, it will be legitimate to take into account the history of the legislation, its object the title and the preamble to it. (Vide Sutherland on Statutory Construction, Vol. 22 p.. 177-178).

We may apply the above tests and find out what, having regard to the history of the Rules, the intention of Rule making power was and whether the offending portion of the Rules is so inextricably wound up with the valid portion of the Rules, that it cannot be severed and, if any such severance would render the entire Rules unenforceable or the rest of the Rules can be saved and enforced. Having considered the same, we are unable to hold that the quota rule is so inextricably mixed up with the other provisions of the rules that it is not separable and what remains is not in itself a complete code independent of the rest of the rules which the Rule making Authority could never have intended to frame. No doubt, if this quota rule forms part of a scheme and what is left after omitting the invalid portion is so thin and truncated as to be in substance different from what it was when it emerged out of the legislature, then also it will have to be struck down in its entirety.

It is true that prior to the promulgation of the impugned Rules, non-Graduate Engineers were not eligible to be considered for promotion to the post of Assistant Engineer. Assistant Engineers' posts were to be filled up by promotion entirely from among the Graduate SEAs only. Even for direct-appointment, only Graduate Engineers were eligible. In the result, non-Graduate SEAs had no avenues of further promotion unless and until they secured a Degree or any other educational qualification which was considered equivalent to a Degree. If the quota rule is not severable, then, undoubtedly, that would be the consequence and neither the non-Graduate SEAs who have challenged the quota Rule nor the Government which has framed this Rule, intend such a consequence to follow. The non-Degree holders <sup>would</sup> thus be wholly deprived of even this limited benefit of the quota rule in the matter of promotion; they cannot be promoted to the post of AEs at all.

Having regard to the history of these Rules of Recruitment and the circumstances that led to their amendment, to us it is very clear that the dominant intention of the Government in framing the impugned rule

was to relieve stagnation of a large number of non-Graduates at the level of SEAs and alleviate the dissatisfaction that was growing in the service. Several representations were made in this behalf and the Government was actively examining the various aspects of the problem and considering how best to solve it. A Cadre Review Committee was constituted which recommended that non-Graduate Engineers also should be considered for promotion subject to certain conditions. It was noticed as a fact that in the Engineering Service, Graduate Engineers as compared to non-Graduate Engineers were few in number. The Cadre Review Committee further noticed that even among the non-Graduate SEAs, there were several who by virtue of their long experience, were as much qualified as Graduate Engineers to man the higher post of Assistant Engineer. In amending the Rules, it can safely be concluded that the dominant intention of the Government was to make non-Graduate Engineers also eligible for promotion. Therefore, no exception can be taken and in fact is taken by any one concerned, as regards making non-Graduate SEAs

eligible for promotion. Of course, as contended by Mr Ramchandani, learned counsel for the Respondents, the Rule Making Authority thought it expedient to ensure that certain percentage of Graduate Engineers is also recruited to the post of Assistant Engineer and that the Government did by fixing quota for promotion among Graduate and non-Graduate SEAs. But any such rule must not offend the Constitutional guarantees under Part III of the Constitution. The Rule Making Authority which upto 1982 thought that only Graduate Engineers should be promoted, reviewed the situation, examined the question in the light of the Cadre Review Committee's recommendations and came to a categorical conclusion that there are sufficiently large number of non-Graduate Engineers with requisite experience who could be treated to be on par with Graduate Engineers. Thus, they wanted to assess their standard by subjecting them to a departmental qualifying test and those who passed the test were treated as equal to Graduate Engineers with lesser experience. The Rule Making Authority in the best

interest of the service personnel and efficiency of administration obviously thought it necessary to give representation to non-Graduate SEAs in the grade of A.Es. This, to our mind, was the dominant intention. When this was the dominant intention and the quota rule is not valid, the dominant intention of the Legislature cannot be allowed to be defeated by the invalid quota rule. If the quota rule is struck down and the remaining portion of the 1982 Rules is valid, this dominant intention of Rule Making Authority must be saved and given effect to. It is not as if, by giving effect to the remaining portion of the rule, the intention of the Rule Making Authority that there should be Graduate Engineers also among the Assistant Engineers cadre would be defeated. The Graduate Engineers with lesser period of service would still be available for promotion as AEs without being subjected to any Departmental Qualifying Examination. Only because the quota Rule is struck down, which is undoubtedly a part of the 1982 Rules, it cannot be said that the entire purpose of 1982 Rules is defeated.



The Supreme Court in *M/s Devi Das versus State of Punjab*(11) while considering the validity of Sections 4 and 5 of the Punjab Sales Tax Act (46 of 1948) held:

"Under Section 5 of the Punjab General Sales Tax Act, 1948 as it originally stood, an uncontrolled power was conferred on the Provincial Government to levy every year on the taxable turnover of a dealer a tax at such rates as the said Government might direct. Under that section, the Legislature practically effaced itself in the matter of fixation of rates and it did not give any guidance either under the section or under any other provisions of the Act. Hence, Section 5 is void".

Even while striking down Section 5 of the Act, their Lordships pointed out that:

"There is a clear distinction between chargeability and the quantification of tax. While it is true that the tax cannot be realised without it being quantified, the non-quantification of the liability will not destroy the liability under the charging section. The liability has to be distinguished from its enforceability. Hence, striking out Section 5 does not make Section 4 void, though till an appropriate section is inserted, it remains unenforceable".

In that context, the Court declared that:

"The charging Section 4 remains intact and what is struck down is Section 5 which provides for rates. It could not, therefore, be said that when Section 5 is struck out, Section 4 or other sections fell with it".

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(11) AIR 1967 SC 1895

The question of severability of the infringing provisions also came up for consideration in the context of the Gold (Control) Act, 1968 and the Supreme Court in *Harakchand Versus Union of India*(12) observed:

"Whether as a result of some of the sections of the impugned Act being struck down, what is left of the impugned Act should survive or whether the whole of the impugned Act should be declared invalid"

and opined

"that the provisions which are declared invalid cannot affect the validity of the Act as a whole. In a case of this description, the real test is whether what remains of the statute is so inextricably bound up with the invalid part that what remains cannot independently survive or as it is sometimes put whether on a fair review of the whole matter it can be assumed that the legislature would have enacted at all that which survives without enacting the part that is ultra vires"

and then referred to a passage in Cooley "On Constitutional Limitations", 8th Edn. at p. 360. To the extent it is relevant for our present purpose, it reads as follows:

"The point is not whether they are contained in the same section; for the distribution into sections is purely artificial; but whether they are essentially and inseparably connected in substance. If, when the unconstitutional portion is struck out, that which remains is

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(12) AIR 1970 SC 1453

complete in itself, and capable of being executed in accordance with the apparent legislative intent, wholly independent of that which was rejected, it must be sustained"

Applying that test, the Supreme Court came to the conclusion that:

"the provisions held to be invalid are not inextricably bound up with the remaining provisions of the Act. It is difficult to hold that Parliament would not have enacted the impugned Act at all without including that part which is found to be ultra vires. The Act still remains substantially the Act as it was passed, that is, an Act to provide for the control, production, manufacture, supply, distribution, use and possession of gold and gold ornaments and articles of gold".

So too in this case the dominant intention of the rule making authority to provide avenues of promotion to the non-Graduate Engineers without affecting the quality of the Assistant Engineers can be given effect to while not denying the chances of Graduate SEAs also being promoted as AEs. We, therefore, hold that the offending portion viz., the Rule prescribing the quota for Graduate Engineers and non-Graduate SEAs in the matter of promotion to the post of AEs contained in the Schedule is separable from the rest of the 1982 Rules and must be struck down. Even after striking down the said offending portion of the Rules, the remaining rules which are valid give effect to the dominant legislative intent of the Rule Making Authority and can be validly enforced.

The respondents also contended that the petitioners were estopped from questioning the validity of the 1982 Rules. It was pointed out that the first petitioner was a Graduate and was considered for promotion but was not selected. The second petitioner who had only passed the intermediate examination was not considered as he was not eligible even under the 1972 Rules and therefore, has no locus standi to question the validity of 1982 Rules. The third petitioner, a diploma holder, was considered but was not selected earlier and has been selected in August, 1985. The 4th petitioner also <sup>a</sup> diploma holder was appointed as Engineering Assistant on 1-2-1968 and as Senior Engineering Assistant on 10-5-1977 and did not fall within the zone of consideration. The 5th petitioner also was a diploma holder who did not fall within the zone of consideration as he was appointed Engineering Assistant on 26-11-1968 and as Senior Engineering Assistant on 27-6-1977. The 6th petitioner was a graduate and was not selected earlier but was later selected on 3-11-1982. The 7th petitioner was only a matriculate who joined as Engineering Assistant on 6-9-1971 and became

Senior Engineering Assistant on 21-4-1975. He has also retired. It was also pointed out that the Rules were enforced on 7-7-1982 and the selections were made and promotions effected in the months of August and September, 1982. Some of the diploma holder-petitioners not having been selected because they appeared and failed at the qualifying examination, cannot be allowed to question the validity of these Rules. It is urged that having accepted the Rules as valid and <sup>having</sup> appeared at the Examination prescribed under the Rules, they are estopped from questioning the validity of the Rules. Reliance for this contention is placed on the judgment of the Supreme Court in D.NAGARAJ Vs. STATE OF KARNATAKA (17) wherein it was held:

"It is well established that a person who is not aggrieved by the discrimination complained of cannot maintain a writ petition"

The Supreme Court in I.L. HONNEGUDA Vs. STATE OF KARNATAKA (18) following the judgment in D. NAGARAJ Vs STATE OF KARNATAKA (17) noted:

"the appellant acquiesced to the 1970 Rules.

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(17) A.I.R. 1977 S.C. 876

(18) A.I.R. 1978 SC 28

By applying for the post of the Village Accountant, appearing before the Recruitment Committee for interview in 1972 and 1974 and taking a chance of being selected, the present appeal which questions the constitutionality of Rules 4 and 5 of the 1970 Rules cannot be allowed.

The Supreme Court did not lay down that if the Rules themselves are violative of fundamental rights guaranteed under the Constitution and void under Article 13, they cannot be questioned. It refused the appellants therein the relief because they had acquiesced in the Rules over several years. The petitioners herein cannot be accused of acquiescence. No sooner than the Rules were enforced on 7.7.1982, the non-Graduate SEAs immediately made representations both in regard to their validity and the discriminatory treatment meted out to them vis-a-vis the graduate engineers. The petitioners themselves did not apply or request for being considered for promotion under the 1982 Rules. No examination was held and none of them appeared. Under the Rules, SEAs falling within the zone of consideration are not required to file any application; the D.P.C. on its own accord considers all those that fall within the zone of consideration. If upon such consideration, some of the petitioners were not selected, it cannot be deduced

that they have acquiesced in the Rules so as to estop them from challenging their validity. Further, the petitioners did not sleep over the matter; in fact they did not allow any time to slip by. While the rules were enforced on 7--7--1982 and promotions were made on 19--9--1982, 24-8-1982 and 10/14-9-1982, writ petitions questioning the validity of the Rules as well as those promotions were filed without much loss of time on 16--11--1982. Even if a petitioner or two had taken the examination while making a representation against the validity of the Rules, they do not lose their right to question the validity of the Rules as violative of their fundamental Rights. In any case, certainly the petitioners who did not appear for the examination are not estopped.

In AIR INDIA Vs. MERGESH MEERZA (13)

the Supreme Court declared that:

"There can be no estoppel against statute much less against constitutional provisions. If, therefore, it is held that the particular provisions for termination and retirement are violative of Article 14 of Constitution as being unreasonable and arbitrary, the awards or the agreements confirmed by the award would be of no assistance".

The decision of the Supreme Court in OM PRAKASH Vs. AKHILESH KUMAR (14) relied upon for the contention that the person who has appeared for the test cannot contest the validity of the rules does not lay down any such proposition. That was a case where the validity of the rules was not in question. The question was whether an examination held under 1969 rules was a valid examination or whether it should have been held under the 1950 Rules or the Amended Rules of 1969. The Court held:

"The 1950 rules remained operative even in the year 1981 and the competitive examination held in accordance with 1950 rules cannot, therefore, be held as bad".

In that case, no rule was challenged as invalid, ultravires or void as being violative of fundamental rights and the Supreme Court did not lay down that if a Rule is challenged on any of the above grounds either estoppel or waiver would operate so as to preclude an aggrieved party from questioning their validity. The Supreme Court only held that a person who has appeared for an examination without protest under valid rules, finding that he would not succeed in the examination, could not be

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 (14) A.I.R.1986 S.C.1043



allowed to move the High Court for setting aside the results of the examination. The objection as to locus standi of the petitioner and the contention that they are estopped from challenging the validity of the 1982 Rules cannot be sustained and we accordingly reject it.

Shri R. L. Roshan, learned counsel for the respondents also contended that the vires of the Rules cannot be gone into by this Tribunal; their validity could be considered only by the High Court and the Supreme Court. The Tribunal has to take the Rules framed by the competent authority to be valid and decide the questions of fact and grant or refuse the relief to the applicants under the Rules on the findings of fact arrived at by it on the record before it. The Tribunal cannot strike down the rules and grant relief on that basis. He also points out that the proforma of the application to be filed under Section 19 of the Administrative Tribunals Act does not contain any column for any averment regarding vires of the rules. Before we consider the merit of this contention, we may point out the consequence of

accepting such a contention. An employee may be aggrieved by the decision of the competent authority prescribed under the Service Rules. His grievance in respect of such service matters may arise out of a wrong application of a valid rule. It may also arise out of the application of a void Rule offending the fundamental right to equality guaranteed under Articles 14 and 15 of the Constitution or because of violation of the protection guaranteed under Article 311 or in the matter of recruitment violating provisions of Article 15. If, as contended, this Tribunal is only empowered to decide questions of fact and not the validity of the Rule itself, he would not be entitled to approach the Central Administrative Tribunal which has been vested with the exclusive jurisdiction under Section 14 read with Section 28 of the Administrative Tribunals Act to consider and redress the grievance of such employees in respect of all Service matters. He has to approach the High Court or the Supreme Court to first get an adjudication on the validity of the Rules. The High Court and the Supreme Court themselves can merely declare the Rule to be either valid or void but cannot grant him any relief. For the relief itself, he would have to approach the Tribunal which, even according to the learned counsel, has exclusive jurisdiction in this behalf.

The Parliament in enacting Article 323-A or in enacting the Administrative Tribunals Act and constituting the Central Administrative Tribunal and vesting it with exclusive jurisdiction could never have intended that the employees should be driven to the High Court for getting adjudication upon the validity of the rules and once again approach the Tribunal for redressal of grievance upon adjudication of the facts by the Tribunal. The contention of Shri/Roshan ~~Lok~~, learned counsel for Resdt.No.61 no doubt finds support from the judgement of the learned Single Judge of the Karnataka High Court in S.M.Pattnaik Vs. Secretary to Govt. of India and others (19) We must, however, express our respectful disagreement with that view.

In SHRI SURINDER NATH & OTHERS Vs. UNION OF INDIA(Delhi)(20) this Tribunal has in a different context considered in a way this question at length and took the view that:-

" The Act thus after vesting jurisdiction in the Tribunal constituted under Section 4(1) of the Act in respect of service matters covered by Section 14, makes provision under Section 28 for excluding the jurisdiction of all courts  
 (19) W.P.No.1486/1984 dt.5.11.86 Karnataka High Court.  
 (20) AIR 1986(2) CAT 418

(except Supreme Court) in respect of these matters.... . The provisions of the Act thus do not stop with merely vesting jurisdiction in the Tribunal with regard to the service matters, they go further to totally exclude the jurisdiction of all courts in this behalf and vest exclusive jurisdiction in the Tribunal to deal with those matters .. All service matters pending in any court including the High Court on the 'appointed day' stand transferred to the Tribunal...."

This Tribunal held:

"the entire jurisdiction of the High Court in respect of the service matters covered by the Administrative Tribunals Act stand transferred to the Tribunals constituted thereunder. It is in respect of these service matters which now fall within the jurisdiction of the Tribunal that the entire jurisdiction, power and authority of the High Court stand excluded under Section 28 of the Act and that power includes the power to issue writs, directions or orders under Articles 226 and 227".

The Tribunal also held:

"Since the High Court had jurisdiction, power and authority to issue all writs including the specific writs mentioned in Article 226 and other directions and orders not only for enforcement of fundamental rights conferred by Part III of the Constitution but also for any other purpose, the Tribunal too, in our opinion, stands vested with identical jurisdiction, power and Authority. This power, of course, is exercisable by the Tribunal only

in respect of matters covered by the Act i.e., service matters and only in relation to persons and against authorities mentioned in Sections 14, 15 and 16 of the Act and not with respect to any other matters and against any other persons or authorities, whereas the High Courts continue to be vested with the jurisdiction, power and authority under Articles 226 and 227 of the Constitution in respect of all other matters and against all other persons not covered by the Administrative Tribunals Act."

It is unnecessary to discuss this matter any further in view of the fact that the view taken by the Tribunal receives full support from the law declared by the Supreme Court in *Shri S.P.SAMPATH KUMAR Vs. UNION OF INDIA AND OTHERS* (Writ Petition No.12437 of 1985 dated 9--12--1986). In the majority judgment with which the learned Chief Justice expressed his agreement, considered the question of exclusion of the jurisdiction of the High Courts in service matters, its propriety as also its validity and held:

"that judicial review by this Court (Supreme Court) is left wholly unaffected and thus there is a forum where matters of importance and grave injustice can be brought for determination or rectification. Thus exclusion of the jurisdiction of the High Court does not totally bar judicial review. ....

The Tribunal has been contemplated as a substitute and not as supplemental to the High Court (emphasis supplied) in the scheme of administration of justice. To provide the Tribunal as an additional forum from where parties could go to the High Court would certainly have been a retrograde step considering the situation and circumstances to meet which the innovation has been brought about. Thus barring of the jurisdiction of the High Court can indeed not be a valid ground of attack."

When this Tribunal is constituted as a "Substitute Forum" for the High Court and other Courts in service matters, it is patent that the Tribunal has jurisdiction to decide both questions of fact and law including questions as to the validity of Rules raised by an employee for redressal of his grievance. Undoubtedly, the High Court had jurisdiction to go into the vires of every Act and Rule under Articles 226 and 227 for granting or refusing relief in service matters which jurisdiction, power and Authority now stands transferred to the Central Administrative Tribunal constituted under the Administrative Tribunal Act, 1985. The jurisdiction of the High Court in "Service matters" having been totally barred, and that jurisdiction having been exclusively vested in this Tribunal, which as held by the Supreme Court is contemplated as a substitute and not as

supplemental to the High Court, this Tribunal will have the same jurisdiction, power and authority which the High Court had in this behalf. Section 14 of the Administrative Tribunals Act, 1985 so enacts and the Supreme Court has so declared. It is also inconceivable that the Parliament being aware of the heavy backlog of cases in the High Courts and the resultant delay in the disposal of cases and having been authorised under Article 323-A to constitute the Tribunals with exclusive jurisdiction to deal with service matters and having enacted the Administrative Tribunals Act and constituted these Tribunals, would still have intended to drive the aggrieved employees to once again knock the doors of the High Court for decision on the validity of the Act and Rules and then to approach another specifically constituted **the** Tribunal to go into facts for securing relief. Any contention that this Tribunal has no jurisdiction to go into the validity of any rule and that the aggrieved employee must move the High Court and the Supreme Court for a decision on the validity of the Statute and the Rules, is devoid of all merit; it is accordingly rejected.

We have, therefore, to consider what directions could be appropriately given in the facts and circumstances of **the questions raised.** the case in the light of the conclusions we have reached on the

We have held that the Rules in so far as they prescribe a longer period of service and passing of a Departmental Qualifying Examination for Diploma holders and prescribe a shorter period of service for the Graduate Engineers and do not prescribe any qualifying examination for them to be considered eligible for promotion to the grade of Assistant Engineers are valid. But in so far as the Rules prescribe a quota even amongst the persons who fulfil these qualifications and are found eligible and fall within the zone of consideration, they are violative of Articles 14 and 16 of the Constitution and void. Any promotions made, refused or withheld in view of the quota rule cannot be valid. A fresh D.P.C. would, therefore, have to be held and all those Senior Engineering Assistants who are eligible under the 1982 Rules, irrespective of whether they are Graduates or non-Graduates, as upheld by us and who fall within the zone of consideration and are selected must be placed in the panel and promoted ignoring the quota rule.



In other words, ~~as~~ a person who is otherwise eligible and is selected to be promoted cannot be ignored only because he does not fall within the quota prescribed for the graduate Engineers or the non-Graduate Engineers; he should be promoted. If any Senior Engineering Assistant was promoted only because of the quota reserved for the graduate or non-graduate Senior Engineering Assistants, he should be reverted.

As already stated earlier, no sooner than promotions were made in August and September, the petitioners made a representation (Annexure H) on the 19--10--1982 and also filed writ petition on 17--11--1982. The High Court issued the Rule on 30-11--1982 and stayed further promotions on 11--1--1983. Upon a petition for vacating the stay being moved, the High Court modified the stay order on 27--1--1983 and permitted further promotions to be made subject to the result of the writ petition. Senior Engineering Assistants who were promoted subject to the result of the writ petition cannot ~~as~~ make any grievance, if they have to be reverted as a result of the

writ petition. Even those 101 Senior Engineering Assistants who were promoted on 19--8--1982, 14 Senior Engineering Assistants promoted on 24--8--1982 and 15 Senior Engineering Assistants promoted on 10/14--9--1982 cannot make any grievance if they face reversion. They were impleaded as party respondents in CWP.No.1386/85 and were heard. When there was absolutely no delay in filing the writ petition, merely because some of the Senior Engineering Assistants were actually promoted, only because of the quote rule, which is held by us to be void, the eligible Senior Engineering Assistants cannot be deprived<sup>of</sup> their legitimate right to be considered and promoted. All the promotions to the cadre of Assistant Engineers referred to above in so far as they are contrary to this judgment are quashed and promotions shall have to be made in the light of this judgment.

In sum, the Assistant Engineers (Akashvani and Doordarshan Group 'B' Posts) Recruitment Rules, 1982 in so far as as they prescribe a longer period of service for the non-graduate Engineers and a shorter period of service for the graduate Senior Engineering Assistants in the matter of promotion to the post of Assistant Engineers and also require the non-graduate/Senior Engineering Assistants to qualify at the Departmental Qualifying Examination before they could be considered for promotion, are not violative of Articles 14 & 16 of the Constitution. But in so far as they prescribe a quota for graduate Senior Engineering Assistants and non-graduate Senior Engineering Assistants in the matter of promotion to the post of Assistant Engineer they are violative of Articles 14 & 16 of the Constitution. To this extent, the Schedule appended to the Rules is struck down; in other respects the rules are upheld as valid. The petitioners being the affected parties, have locus standi to question the validity of the said Rules. They are not estopped from questioning the vires of the said Rules merely because some of them had appeared for the Qualifying examination and had failed or all of them had been considered for promotion and rejected. The quota Rule is severable. The dominant intention of the Rule Making Authority being that the non-graduate Senior

Engineering Assistants should be provided avenues of promotion, merely because the quota rule is found to be violative of Articles 14 and 16 of the Constitution and void, the entire Rules of 1982 cannot be struck down. The quota rule occurring in Column 11 <sup>or the Schedule</sup> being severable that alone is struck down and the remaining portion of the 1982 Rules are saved so as to provide avenues of promotion to the non-Graduate Senior Engineering Assistants also. That, that was the intention of the Rule Making Authority even under 1982 Rules is made further clear by the subsequent Rules of 1985 which while replacing the 1982 Rules gave a go by to the quota Rule. The Central Administrative Tribunal is a substituted forum for the High Court in regard to "service matters". Just as the High Court, the Central Administrative Tribunal too is competent to determine the question of validity of the Rules and if it finds that <sup>the</sup> Rules are violative of any of the Fundamental Rights guaranteed to a citizen or a public servant or that they are otherwise invalid or ultra vires, the Central Administrative Tribunal has jurisdiction, power and authority to strike them down and grant such relief to the aggrieved parties as they are entitled to. All promotions made from the category of Senior Engineering Assistants

to the category of Assistant Engineers giving effect to the quota rule, <sup>and</sup> <sup>promotions made</sup> ~~An particular~~ on 19.8.1982, 24.8.1982 and 10/14-9.1982 are unsustainable and are accordingly quashed and a direction to promote Senior Engineering Assistants to the category of Assistant Engineers in the period during which 1982 Rules were in force in accordance with the said Rules but without enforcing the quota, ~~xxx~~ shall issue.

In the result W.P.No.3855/82 (T.729/85)

is allowed to the extent indicated above. All promotions made during the relevant period shall be reviewed and readjusted in the light of this Judgment and the directions given above within a period of two months from today. In the circumstances, we make no order as to costs.

Sd/-

( Kaushal Kumar )  
MEMBER

31/12/86



Sd/-

(K. Madhava Reddy)  
CHAIRMAN

31/12/86

