

Reportable

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
Civil Appeal No 5582 of 2021  
(Arising out of SLP (C) Nos. 11781 of 2019)

Chandan Banerjee & Ors

....Appellants

Versus

Krishna Prosad Ghosh & Ors.

.... Respondents

J U D G M E N T

Dr Dhananjaya Y. Chandrachud, J

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1 The appeal arises from a judgment of the Division Bench of the High Court of Calcutta dated 25 January 2019. The Division Bench upheld a circular dated 3 July 2012 of the Kolkata Municipal Corporation<sup>1</sup> which prescribed separate conditions for diploma and degree holder Sub-Assistant Engineers<sup>2</sup> for supernumerary appointments as Assistant Engineers<sup>3</sup>. The gradation list dated 5 July 2012 prepared in pursuance of the impugned circular has also been upheld.

2 The appellants, who are SAEs possessing a diploma in engineering, instituted a writ petition before the High Court challenging the circular dated 3 July 2012 and gradation list on the ground that classification within the same cadre of SAE for the purpose of appointment to supernumerary posts violates Articles 14 and 16 of the Constitution of India. By a judgment dated 6 October 2015, the Single Judge of the High Court allowed the writ petition and held the circular to be arbitrary and unconstitutional. In a Letters Patent Appeal, the Division Bench, reversed the decision of the Single Judge and held that classification made on the basis of educational qualifications for supernumerary appointments to the higher post of Assistant Engineer, is valid.

## **A Facts**

3 KMC, the twentieth respondent, has two distinct service cadres in the Engineering Department : (i) Subordinate Engineering Service and (ii) Engineering Service. The entry post in the Subordinate Engineering Service is a Sub-ordinate Assistant Engineer (SAE), for which the minimum qualification is a diploma in engineering in civil/mechanical/electrical branches. Although the

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<sup>1</sup> "KMC"

<sup>2</sup> "SAE"

<sup>3</sup> "AE"

minimum requirement is that of a diploma, a person holding a degree in engineering is also eligible to participate in the selection process. The selection process involves a written examination, followed by an interview conducted by the Municipal Service Commission. Pursuant to this, a merit list is prepared. The cadre of Subordinate Engineering Service comprises of persons holding a diploma or degree in engineering, many of the degree holders having acquired the qualification after appointment. The first promotion from the post of SAE is as an Assistant Engineer (AE), after which an SAE can aspire for successive promotions, right up to the post of Chief Engineer. The AE is the entry level post in the Engineering Service cadre, for which direct recruitment is conducted from persons holding an engineering degree. Thus, the post of AE may be filled through direct recruitment or through promotion of SAEs.

4 On 23 December 1994, the Calcutta Municipal Corporation Services (Common Cadres) Regulations<sup>4</sup> were notified under Section 20 of the Calcutta Municipal Corporation Act 1980. The Recruitment Regulations apply to the employees under all departments and offices and provide for the management and control of common cadres; seniority and recruitment, among other conditions of service. Rule 9 of the Recruitment Regulations provides the method of recruitment for the post of AE and SAE, which is contained in the table below:

Assistant Engineer (Civil/Mechanical/Electrical)	50% posts of the total cadre strength of Assistant Engineer shall be filled up by promotion from the posts borne in the Common Cadre for Sub-Assistant Engineer  AND  50% posts of the said cadre strength
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<sup>4</sup> Circular No 69 of 1994-95; hereinafter "Recruitment Regulations"

	<p>shall be filled up by direct recruitment observing necessary formalities</p> <p><u>Qualifications for direct recruitment</u></p> <p>A degree in civil/Mechanical/Electrical Engineering of a recognised University or its equivalent.</p> <p>Age not more than 35 years on the 1<sup>st</sup> January of the year of advertisement.</p> <p>Desirable: one year's post-graduate practical training or study or research of practical Engineering Experience.</p>
Sub-Assistant Engineer (Civil/Mech./Electrical)	<p>Only by direct recruitment observing necessary formalities</p> <p><u>Qualifications for direct recruitment</u></p> <p>A diploma in Civil/Mechanical/Electrical Engineering from the state council for Engineering and Technical Education, West Bengal or its equivalent.</p> <p>Age not more than 35 years on the 1<sup>st</sup> January of the year of the advertisement.</p> <p>Desirable: One year's practical training or study or research or practical Engineering experience.</p> <p>Note: Each Cadres of Deputy Chief Engineer, Executive Engineer, Assistant Engineer, and Sub-Assistant Engineer will be streamwise i.e. for Civil, Mechanical and Electrical.</p>

5 The Recruitment Regulations were modified on 7 August 1997 to provide three modes of appointment to the post of AE: (i) promotion of SAEs having at least 10 years' experience in the post below AE; (ii) direct recruitment; and (iii) promotion by selection of SAEs from all disciplines having a degree. The quota for the above three streams was fixed at 45% : 45% : 10%. The modified Regulations are produced below:

	For Promotion
Assistant - Engineer (Civil)/Mechanical/Electrical.	45% of the post of the total Cadre strength of Assistant Engineer shall be filled up by promotion from the posts borne in the common cadre for Sub-Assistant Engineer having at least 10 years experience in the post below Assistant Engineer and 45% of the said cadre strength shall be filled up by direct recruitment observing necessary formalities and 10% of the posts should be kept for reserved for promotion by <u>selection</u> to the post of Assistant Engineer from Sub-Assistant Engineer of all Disciplines having a Degree. The promotion will be made strictly on merit basis from among the Sub-Assistant Engineer holding Engineering Degree in respective disciplines having 10 (ten) years experience in the post of sub-Assistant Engineer.

6 The Recruitment Regulations for the post of AE were modified by KMC and notified by a circular<sup>5</sup> dated 20 February 2002, which stated that:

- (i) 50% of the total cadre strength of AE shall be filled up by promotion from the posts borne in the common cadre for SAE having at least ten years' experience as an SAE;
- (ii) 15% of the post of total cadre strength of AE shall be filled up by promotion from amongst SAEs having an engineering degree or equivalent from a recognized University; and having at least ten years' experience as an SAE, out of which a minimum of five years should be as a degree (of equivalent) holder SAE in respective streams; and

<sup>5</sup> D.M.C.(P)'s Circular No./4/2001-2002

(iii) 35% of the total cadre strength would be filled up by direct recruitment observing necessary formalities.

7 This circular was challenged in a writ petition<sup>6</sup> before the High Court, which was disposed of with a direction to the petitioners in that case to make a representation before the KMC.

8 The KMC, in an effort to remove stagnation in promotion to the next higher post of AE from the post of SAE, issued a circular<sup>7</sup> dated 17 June 2008. The circular, also known as the first career advancement scheme, stipulated awarding the basic scale of pay (Rs. 8,000 - 275/- 1000) of an AE to SAEs who have completed twenty years of satisfactory service in the KMC.

9 In 2012, a proposal was circulated by the Personnel Department of KMC for creation of supernumerary posts in the rank of AEs for opening promotional avenues for SAEs. The rationale for the proposal was to rectify the stagnation faced by SAEs who, despite having completed twenty to twenty-five years of service, had not been promoted and were thus, demotivated. In addition to this, some SAEs had acquired an engineering degree while in service, and yet had not been promoted. The proposal sought to create a distinction between SAEs holding a diploma and those holding a degree (acquired prior to joining KMC as an SAE, or during the service). The former would be promoted to the post of an AE if they had completed twenty-five years of service, while the latter would be if they had completed thirteen years of service or more, out of which five years were served as a degree holder.

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<sup>6</sup> Manas Kumar Sinha v. The State of West Bengal & Ors., Writ Petition 3720(W) of 2008

<sup>7</sup> D.M.C(P)'s Circular No. 06/IIIB/2008-09; hereinafter "**First Career Advancement Scheme**"

10 The proposal, which was considered to be the second career advancement scheme, was implemented by the impugned circular dated 3 July 2012. The circular stipulates the creation of supernumerary AE posts for SAEs holding a diploma and having completed twenty-five years of service and SAEs holding a degree and having completed thirteen years of service (out of which five years were as a degree holder). Clause 3 of the impugned circular states that the supernumerary posts will be adjusted against the permanent vacancies as and when a vacancy becomes available within the sanctioned posts of AE. Further, Clause 5 of the impugned circular provides that there is no change in the existing Recruitment Regulations for the posts of AE. In pursuance of the impugned circular, an office order dated 5 July 2012 published a list of SAEs who had been promoted to the post of AE against the supernumerary posts. Both the impugned circular and the subsequent gradation list have been challenged before the High Court and this Court.

11 The Single Judge of the High Court held that when persons having different educational qualifications are subject to a common recruitment process and are selected thereafter, a subsequent classification in that cadre would be in violation of Articles 14 and 16 of the Constitution. The Single Judge also observed that the classification for promotion was not made to reward those SAEs who had improved their educational qualification during service, but instead was a benefit granted to all degree holders. On the contrary, in appeal, the Division Bench of the High Court upheld the validity of the impugned circular and gradation list and while reversing the view of the Single Judge observed that:

- (i) The quota for promotion from SAEs to AEs on the basis of educational qualification and experience was created on 7 August 1997, and not by the impugned circular. The previous circulars making such a distinction have not been challenged and have remained in operation;
- (ii) Irrespective of their qualification, the SAEs are given the basic pay scale of an AE on completion of twenty years of service. The impugned circular by creating supernumerary posts, merely designates SAE as AEs. No other benefit is granted apart from this designation;
- (iii) The impugned circular does not modify the existing promotional avenues, but only supplements them by conferring the title of AE on certain eligible SAEs. These supernumerary posts are subject to adjustment against permanent vacancies on being created. Thus, the normal strength of the AE cadre is not increased;
- (iv) The impugned circular does not alter the promotional avenues of an SAE holding a diploma, nor does it enhance the promotional avenues of a degree holder. Thus, the quota of posts created by the circular dated 20 February 2002 (modified by circular dated 17 June 2008), has not been superseded by the impugned circular; and
- (v) In **State of Jammu & Kashmir v. Shri Trilokinath Khosa**<sup>8</sup>, this Court held that a classification made on the basis of educational qualifications to achieve administrative efficiency is not arbitrary or impermissible under Articles 14 or 16 of the Constitution. The classification made by KMC to increase efficiency by removing frustration amongst stagnated SAEs is also a similar policy decision, which must not be interfered with.

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<sup>8</sup> (1974) 1 SCC 19



**B Submissions of parties**

12 Mr Bikash Ranjan Bhattacharya, learned Senior Counsel appearing on behalf of the appellants who are diploma holder SAEs, has made the following submissions:

- (i) The private respondents to the appeal are persons possessing an engineering degree, who had joined the cadre of SAE despite the minimum qualification for the said post being a diploma in engineering. These persons already have a separate reservation of 15 per cent for the promotion to the post of an AE according to circular dated 20 February 2002;
- (ii) The impugned circular sought to provide an incentive to stagnating SAEs for promotion. However, KMC had failed to notify that an existing SAE could obtain a higher qualification to avail of the benefit of promotion by creating supernumerary posts. In the absence of such a notice, differential treatment cannot be meted out to persons who have been recruited through a common process;
- (iii) The decisions of this Court in **Union of India v. Atul Shukla & Ors.**<sup>9</sup>; **Co. AS Iyer & Ors. v. Bala Subramanyan & Ors.**<sup>10</sup>; **Punjab State Electricity Board & Anr. v. Ravinder Kumar Sharma & Ors.**<sup>11</sup> indicate that once persons have become members of a service, they are equals and cannot be differentiated for the purpose of salary, seniority, promotion and conditions of service. A career advancement scheme is an incentive and a class amongst a class cannot be created to grant this benefit;

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<sup>9</sup> (2014) 10 SCC 432

<sup>10</sup> (1980) 1 SCC 634

<sup>11</sup> (1986) 4 SCC 617

- (iv) The impugned order of the High Court failed to appreciate the ratio of **Trilokinath Khosa** (supra), where this Court had upheld separate channels of promotion for degree holders and diploma holders as they had been recruited through different channels on the basis of their qualifications. In this case, the selection was through a common channel;
- (v) During the pendency of the appeal, KMC has issued a draft gradation list dated 4 March 2021, which indicates that the SAEs holding diplomas will have no effective promotional avenue as those promoted against supernumerary posts created will first occupy the substantive posts of AEs; and
- (vi) The effect of the impugned circular will be that a junior SAE, holding a degree, will be promoted faster than a senior SAE holding a diploma and having more experience.

13 Opposing the submissions of Mr Bhattacharya, Mr Sujoy Mondal, learned Counsel appearing on behalf of KMC, has submitted:

- (i) The Recruitment Regulations provide that educational qualification is one of the criteria for recruitment as well as promotion in the Engineering Service of KMC;
- (ii) The purpose of the impugned circular was to open promotional avenues for stagnating SAEs. However, by this circular, neither are SAEs given substantive promotional posts of AE, nor has any financial benefit been granted to them. They have only been awarded with a designation of AE for efficient administrative functioning;

- (iii) As an employer, KMC is entitled to create a differentiation for effective discharge of duty and to remove frustration of the SAEs; and
- (iv) In view of the decisions of this Court in **Trilokinath Khosa** (supra), **Roop Chand Adlakha v. Delhi Development Authority and others**<sup>12</sup>; **State of Uttarakhand v. SK Singh**<sup>13</sup> and other cases, even where persons having different qualifications are given an opportunity for promotion, absolute equality cannot be maintained as the administration may consider giving the lesser qualified a promotional opportunity on different terms, rather than prohibiting them altogether.

14 Mr Amit Sharma, learned Counsel appearing on behalf second, fifth, sixth, seventh, eighth and ninth respondents who are degree-holding SAEs, has supported the submissions of Mr Mondal and urged that:

- (i) None of the contesting respondents held engineering degrees at the time of recruitment to the post of SAE, and had acquired them during service;
- (ii) The first circular providing a quota for promotion from SAE to AE on the basis of educational qualifications was dated 7 August 1997, which has remained unchallenged till date. Similarly, the circular dated 20 February 2002 was challenged unsuccessfully and the circular dated 17 June 2008 was not challenged; and
- (iii) The present case is similar to the decision in **Roop Chand Adlakha** (supra), where the category of Junior Engineers comprised of both graduates and diploma holders and a rule providing for different length of qualifying service for promotion was challenged. This Court upheld the

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<sup>12</sup> 1989 Supp (1) SCC 116

<sup>13</sup> (2019) 10 SCC 49

rule, holding that differences in educational qualifications could be compensated by difference in length of experience required in the feeder post.

15 Having adverted to the submissions of the parties, we shall now address the issue at hand.

### **C Legal Position**

16 The issue before the Court lies in a narrow compass. The question for consideration is whether persons drawn from a common source who have been integrated into a cadre can be differentiated on the basis of educational qualifications for the purpose of promotion to supernumerary posts.

17 The challenge to the classification made for the purpose of promotion rests on the ground of equality and equal treatment in matters of public employment guaranteed by Articles 14 and 16 of the Constitution. The Constitution enshrines the principle of non-discrimination on the basis of religion, race, caste, sex, place of birth or descent for appointment to any office under the State. Under this guarantee, similarly situated persons are to be treated equally. Article 16 however does not a bar reasonable classifications by the State for selection of employees.

18 The locus classicus on the question whether educational qualifications can be used as a criteria for classification between persons integrated into one class for the purpose of promotion is the decision of a Constitution Bench of this Court in **State of Jammu & Kashmir v. Trilokinath Khosa**<sup>14</sup>. In this case, the post of

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<sup>14</sup> (1974) 1 SCC 19

an Assistant Engineer in the Engineering Service branch of the appellants was filled by way of direct recruitment or through promotion from the cadre of Sub-ordinate Engineering Service. A rule was introduced in 1970 restricting the promotion to the next higher post of an Executive Engineer only to those Assistant Engineers who possessed a degree in engineering or held the qualification of A.M.I.E and had put in seven years of service. The respondents, who were diploma holders and serving as Assistant Engineers, challenged the rule on grounds of discrimination. The Constitution Bench dealt with the question of whether persons recruited from different sources, that are integrated into one class, can then be classified to permit preferential treatment to some persons on the basis of their educational qualifications. Justice YV Chandrachud (as the learned Chief Justice then was), speaking for the Bench elaborated on the extent of judicial review in matters of classification in public employment and observed that

“32. Judicial scrutiny can therefore extend only to the consideration whether the classification rests on a reasonable basis and whether it bears nexus with the object in view. It cannot extend to embarking upon a nice or mathematical evaluation of the basis of classification, for were such an inquiry permissible it would be open to the Courts to substitute their own judgment for that of the legislature or the Rule-making authority on the need to classify or the desirability of achieving a particular object.

33. Judged from this point of view, it seems to us impossible to accept the respondents' submission that the classification of Assistant Engineers into degree-holders and diploma-holders rests on any unreal or unreasonable basis. **The classification, according to the appellants, was made with a view to achieving administrative efficiency in the Engineering services. If this be the object, the classification is clearly co-related to it, for higher educational qualifications are at least presumptive evidence of a higher mental equipment. This is not to**

suggest that administrative efficiency can be achieved only through the medium of those possessing comparatively higher educational qualifications but that is beside the point. What is relevant is that the object to be achieved here is not a mere pretence for an indiscriminate imposition of inequalities and the classification cannot be characterized as arbitrary or absurd. That is the farthest that judicial scrutiny can extend.

34. On the fact of the case, classification on the basis of educational qualifications made with a view to achieving administrative efficiency cannot be said to rest on any fortuitous circumstance and one has always to bear in mind the facts and circumstances of the case in order to judge the validity of a classification.”

(emphasis supplied)

On the issue whether educational qualifications can be recognised as a criterion for classification, the judgment referred to the decisions of this Court in **State of Mysore v. P Narasing Rao**<sup>15</sup>; **Ganga Ram v. Union of India**<sup>16</sup>, **Union of India v. Dr (Mrs) SB Kohli**<sup>17</sup> and **Roshan Lal Tandon v. Union of India**<sup>18</sup> and noted that:

“41. We have drawn attention to three decisions of this Court (*Narasing Rao case*, *Ganga Ram case* and *Dr (Mrs) Kohli case*) in which classification on the basis of educational qualifications was upheld. In *Narasing Rao case*, Tracers doing equal work were classified into two grades having unequal pay, the basis of the classification being higher educational qualifications. In *Dr (Mrs) Kohli case*, as refined a classification as between an F.R.C.S. in general surgery and an F.R.C.S. in Orthopaedics was upheld in relation to appointment to the post of a Professor of Orthopaedics. But these cases are sought to be distinguished on the authority of the decision of this Court in *Roshan Lal Tandon v. Union of India* [AIR 1967 SC 1889 : (1968) 1 SCR 185 : (1968) 1 SCJ 746] . That case is crowded with facts and requires a careful consideration for its proper understanding.

[...]

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<sup>15</sup> AIR 1968 SC 349

<sup>16</sup> (1970) 1 SCC 377

<sup>17</sup> (1973) 3 SCC 592

<sup>18</sup> AIR 1967 SC 1889

45. Thus, all that *Roshan Lal case* lays down is that direct recruits and promotees lose their birth-marks on fusion into a common stream of service and they cannot thereafter be treated differently by reference to the consideration that they were recruited from different sources. Their genetic blemishes disappear once they are integrated into a common class and cannot be revived so as to make equals unequals once again.

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

**50. We are therefore of the opinion that though persons appointed directly and by promotion were integrated into a common class of Assistant Engineers, 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.”**

(emphasis supplied)

19 The dictum in **Trilokinath Khosa** (supra) was further expounded on by a subsequent decision of a Constitution Bench of this Court in **Mohammed Shujat Ali v. Union of India**<sup>19</sup>. In **Mohd. Shujat** (supra), the Court was faced with a challenge to a quota reserved in promotion to the higher post of Assistant Engineers for the graduate Supervisors as opposed to the non-graduate Supervisors. Justice PN Bhagwati (as the learned Chief Justice then was), speaking for the Bench, held that

“28. [...] **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**

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<sup>19</sup> (1973) 3 SCC 76

**of the nature and purposes of the classification or the quality and extent of the differences in the educational qualifications.** It must be remembered that "life has relations not capable always of division into inflexible compartments". The moulds expand and shrink. The test of reasonable classification has to be applied in such case on its peculiar facts and circumstances. 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. Triloki Nath Khosa* and a somewhat similar position also obtained in *Union of India v. Dr (Mrs.) S.B. Kohli*. 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.

[...]

**But even so, we do not think we can be persuaded to strike down the Andhra Pradesh Rules insofar 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 payscale 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.”

(emphasis supplied)

20 The Court observed that the service rules for the Engineering Department had consistently maintained a differentiation between graduate Supervisors and non-graduate Supervisors and they were never merged into one class.

21 In **Roop Chand Adlakha v. Delhi Development Authority**<sup>20</sup>, a two judge Bench of this Court dealt with the question of whether different conditions of eligibility for promotion could be provided between diploma holders and degree holders. In the facts of the case, the initial recruitment to the cadre of Junior Engineer in the Public Works Department of the respondent was made from two different sources- that is degree holders with no experience and diploma holders having two years of experience or more. For promotion to the cadre of Assistant Engineers, Junior Engineers holding a degree were required to have three years of experience, while Junior Engineers holding a diploma were required to have eight years of experience. Following the decision of this Court in **Trilokinath**

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<sup>20</sup> 1989 Supp (1) SCC 116

**Khosa** (supra), Justice MN Venkatachaliah (as the learned Chief Justice then was) observed that

“29. In *Triloki Nath case* [(1974) 1 SCC 19 : 1974 SCC (L&S) 49 : (1974) 1 SCR 771] diploma-holders were not considered eligible for promotion to the higher post. Here, in the present case, the possession of a diploma, by itself and without more, does not confer eligibility. Diploma, for purposes of promotion, is not considered equivalent to the degree. This is the point of distinction in the situations in the two cases. If diploma-holders — of course on the justification of the job requirements and in the interest of maintaining a certain quality of technical expertise in the cadre — could validly be excluded from the eligibility for promotion to the higher cadre, it does not necessarily follow as an inevitable corollary that the choice of the recruitment policy is limited to only two choices, namely, either to consider them “eligible” or “not eligible”. **State, consistent with the requirements of the promotional posts and in the interest of the efficiency of the service, is not precluded from conferring eligibility on diploma-holders conditioning it by other requirements which may, as here, include certain quantum of service experience. In the present case, eligibility determination was made by a cumulative criterion of a certain educational qualification plus a particular quantum of service experience. It cannot, in our opinion, be said, as postulated by the High Court, that the choice of the State was either to recognise diploma-holders as “eligible” for promotion or wholly exclude them as “not eligible”. If the educational qualification by itself was recognised as conferring eligibility for promotion, then, the superimposition of further conditions such as a particular period of service, selectively, on the diploma-holders alone to their disadvantage might become discriminatory. This does not prevent the State from formulating a policy which prescribes as an essential part of the conditions for the very eligibility that the candidate must have a particular qualification plus a stipulated quantum of service experience. It is stated that on the basis of the “Vaish Committee” report, the authorities considered the infusion of higher academic and technical quality in the personnel requirements in the relevant cadres of Engineering Services necessary. These are essentially matters of policy. Unless the provision is shown to be arbitrary, capricious, or to bring about grossly unfair results, judicial policy should be one of judicial restraint. The prescriptions may be somewhat cumbersome or produce some hardship in their application in some individual cases; but they cannot be struck down as**

**unreasonable, capricious or arbitrary.** The High Court, in our opinion, was not justified in striking down the rules as violative of Articles 14 and 16.

(emphasis supplied)

22 In another decision in **M Rathinaswami v. State of Tamil Nadu**<sup>21</sup>, directly recruited Assistants were placed above the promotee Assistants in the list for promotion to the post of Deputy Tehsildar. The minimum qualification for direct recruitment to an Assistant was a graduation degree, while promotee Assistants, who were promoted from the rank of Junior Assistant, were usually non-graduates. The Court observed that the classification made by the executive must have a rational basis. Thus, although the respondents could create a distinction between direct recruit graduate Assistants and non-graduate promotee Assistants on the basis of educational qualifications, those promotee Assistants who were graduates could not be discriminated against for the purpose of promotion.

23 A decision relevant for the purpose for this case is **State of Uttarakhand v. SK Singh**<sup>22</sup>. Similar to the present case, the minimum eligibility requirement for the feeder post of a Junior Engineer was that of a diploma, not a degree, however, degree holders were considered eligible. 60 per cent of appointments to the higher post of an Assistant Engineer were made through promotions from the cadre of Junior Engineer, while the balance 40 per cent were through direct recruitment. Out of the said 60 per cent, 7.33 per cent was reserved for accelerated promotion where Junior Assistants holding a degree were entitled to promotion after three years of service, as against the normal promotion which required ten years of service. The High Court had held that if the higher

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<sup>21</sup> (2009) 2 SCC (LS) 101

<sup>22</sup> (2019) 10 SCC 49

qualification of a degree was not contemplated as a requirement for being appointed to the feeder post, then two different periods of experience could not be provided later for promotion to the next higher post. In reversing the decision of the High Court, a two judge Bench of this Court speaking through Justice Sanjay Kishan Kaul, upheld the different eligibility conditions for accelerated promotions for graduate Junior Assistants. The Court also went as far as to suggest that even if the non-graduates were completely shut out of promotion, or if the time periods (that is the experience) required for normal promotions were different between degree and diploma holders, those classifications would also be valid under law.

24 The appellants in their submissions have strongly urged this Court to follow a separate line of precedent, such as in the decisions in **AS Iyer v. V Balasubramanyam**<sup>23</sup>; **Union of India v. Atul Shukla**<sup>24</sup>, **Maharashtra Forest Guards and Foresters Union v. State of Maharashtra**<sup>25</sup>. The decisions of this Court in **AS Iyer** (supra) and **Atul Shukla** (supra) upheld the proposition of law that differentiation on the basis of 'source of recruitment' cannot be a valid ground of classification. Similarly, in **Maharashtra Forest Guards and Foresters Union** (supra), this Court struck down a rule prescribing micro-classification for promotion from a Forest Guard to a Forester, as promotion of non-graduate Forest Guards was entirely restricted.

25 In **Food Corporation of India v. Om Prakash**<sup>26</sup>, this Court adjudicated on the validity of a rule providing for different eligibility conditions between graduates

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<sup>23</sup> (1980) 1 SCC 634

<sup>24</sup> (2014) 10 SCC 432

<sup>25</sup> (2018) 1 SCC 149

<sup>26</sup> (1998) 7 SCC 676

and matriculates for promotion from the post of Assistant Grade II (AG II) to Assistant Grade I (AG I) as a typist or telephone operator. While the former were eligible for promotion after three years of service, the latter would be eligible after five years of service. The Court struck down the rule as there was no material to show that the nature of work in the posts of AG I or AG II required higher efficiency which could only be expected from graduates and not non-graduates. Thus, the nexus between the rule and the objective of achieving higher efficiency was absent.

26 The principles which emerge from the above line of precedents can be summarised as follows:

- (i) Classification between persons must not produce artificial inequalities. The classification must be founded on a reasonable basis and must bear nexus to the object and purpose sought to be achieved to pass the muster of Articles 14 and 16;
- (ii) Judicial review in matters of classification is limited to a determination of whether the classification is reasonable and bears a nexus to the object sought to be achieved. Courts cannot indulge in a mathematical evaluation of the basis of classification or replace the wisdom of the legislature or its delegate with their own;
- (iii) Generally speaking, educational qualification is a valid ground for classification between persons of the same class in matters of promotion and is not violative of Articles 14 and 16 of the Constitution;
- (iv) Persons drawn from different sources and integrated into a common class can be differentiated on grounds of educational qualification for the

purpose of promotion, where this bears a nexus with the efficiency required in the promotional post;

- (v) Educational qualification may be used for introducing quotas for promotion for a certain class of persons; or may even be used to restrict promotion entirely to one class, to the exclusion of others;
- (vi) Educational qualification may be used as a criterion for classification for promotion to increase administrative efficiency at the higher posts; and
- (vii) However, a classification made on grounds of educational qualification should bear nexus to the purpose of the classification or the extent of differences in qualifications.

27 We shall now proceed to examine the facts of the present case within the legal framework laid out above.

#### **D Analysis**

28 At the outset we must point out that the appellants have not contested the fact that educational qualification is not a valid ground for classification in matters of public employment, or that promotional avenues are not available to diploma holder SAEs to the post of AE. The appellants seek to challenge the impugned circular on the limited ground that the eligibility conditions for promotion to the supernumerary posts of AE are different for diploma-holder SAEs, who require twenty-five years of experience to be eligible, as opposed to degree-holder SAEs, who require thirteen years of experience.

29 The crux of the case of the appellants is that unlike **Trilokinath Khosa** (supra), where recruitment was through two different sources of recruitment (direct recruitment and through promotion) after which graduates and diploma

holders were integrated into a class, in the present case there was a common examination for recruitment of SAEs. It has been urged that once the graduates and diploma holders have qualified at the common examination, that is a single source of recruitment and any differentiation on the basis of educational qualification would be invalid. Thus, it has been submitted that the decision of this Court in **Trilokinath Khosa** (supra) would be inapplicable to the present case.

30 In our view, the reading of **Trilokinath Khosa** (supra) as urged by the appellants is fundamentally flawed. The appellants have sought to lay emphasis on the fact that the decision in **Trilokinath Khosa** (supra) was dependent on the existence of two different sources of recruitment, while in the present case there is a single source of recruitment. To read the decision in this light is to miss the wood for the trees. In **Trilokinath Khosa** (supra), the Court had adverted to the well-established principle that once direct recruits and promotees are integrated into a common pool, they cannot be treated differently based on the 'source of recruitment'. This however does not imply that they cannot be classified on other reasonable grounds. Thus, whether there are two different streams of recruitment, or a single source of recruitment merged into a common pool, the classification that was upheld in **Trilokinath Khosa** (supra) was based on educational qualification which was linked to the purpose of enhancing administrative efficiency in the organization. We are unable to agree with the submission of the appellants that the decision in **Trilokinath Khosa** (supra) is not applicable in the present case.

31 We shall now address the question of whether the classification made by KMC based on educational qualification was reasonable given the objective sought to be achieved.

32 The unamended Recruitment Regulations for KMC formulated in December 1994 provided that 50 per cent of the total cadre strength of AEs shall be filled through promotion from SAEs, while the remaining 50 per cent would be filled by direct recruitment. The SAEs in turn were to be recruited from candidates who had achieved the qualification of a diploma in engineering or above. Thus, the Recruitment Rules initially did not stipulate different conditions for promotion between diploma-holder SAEs or degree-holder SAEs.

33 On 7 August 1997, the Recruitment Regulations were modified and a quota was introduced for the promotion of degree-holder SAEs. By this amendment, 45 per cent of AEs were to be directly recruited; 45 per cent were to be promoted from SAEs (either diploma or degree holder) having ten years of experience and 10 per cent was reserved for degree-holders SAEs who had served for ten years. A classification was made between degree-holder SAEs and diploma-holder SAEs, giving the former a preference over the latter. However, the promotional avenues for diploma-holder SAEs were not completely restricted.

34 The Recruitment Regulations were modified again by a circular dated 20 February 2002. By this amendment, the proportion of AEs to be recruited directly was reduced from 45 per cent to 35 per cent. The advantage of this 10 per cent reduction was given to both sets of promotees, that is, the reservation for degree-holder SAEs was enhanced to 15 per cent, while the balance 50 per cent was to



be filled by promotion from SAEs (either diploma or degree holders) having ten years of experience. This circular was challenged unsuccessfully before the High Court.

35 The amendments made to the Recruitment Regulations indicate that in matters of promotion, KMC has repeatedly sought to create a distinction between degree-holder SAEs and diploma-holder SAEs since 1997, by introducing a quota for the promotion of the former. In doing so, it did not foreclose promotional avenues for diploma holder SAEs. In fact, in 2002, the promotional avenues were fairly enhanced for both degree and diploma-holder SAEs, while maintaining a preference for the former.

36 KMC also sought to provide career incentives to reduce stagnation amongst SAEs. The First Career Advancement Scheme was introduced in 2008 which stipulated increasing of the scale of basic pay of an SAE to that of an AE. In matters of pay, no distinction was made between degree or diploma-holder SAEs as the duties and work performed by both sets of SAEs remained the same.

37 The Second Career Advancement Scheme introduced by the impugned circular sought to create supernumerary AE posts. Promotion to these posts was made available to both SAEs holding degrees and diplomas. However, the eligibility conditions, in terms of the years of service of these SAEs in KMC, are different. A challenge has been raised against these conditions.

38 The Recruitment Regulations and their subsequent amendments by KMC suggest that the administration has continued to create a distinction between degree and diploma holder SAEs for the purpose of promotion. In regular

promotion, this distinction is made by way of a quota for degree-holder SAEs, while in terms of supernumerary promotion, it has been by way of difference in eligibility conditions. Be it one way or the other, it is evident that the administration has sought to employ a higher number of degree holders at the position of AE than diploma holders. In 1994, when the Recruitment Regulations were introduced, 50 per cent of posts were for direct recruits, who were degree-holders and in the balance 50 per cent which was to be filled by promotees it can be presumed that there must be some SAEs who were holding degrees. Thus, in total more than 50 per cent of AEs were to be degree-holders. When these Regulations were modified in 1997, 45 per cent of AEs were to be direct recruits holding degrees, 10 per cent of AEs were to be degree-holding SAEs, and the balance 45 per cent of posts were to be filled by degree/diploma holding SAEs. Thus, it was stipulated that more than 55 per cent of AEs would be degree holders. Similarly, in 2002, more than 50 per cent of the AE posts were to be filled by degree holders (35 per cent of AEs were direct recruits holding degrees, 15 per cent of AEs were to be filled by degree-holding SAEs and the balance 50 per cent were to be filled by degree/diploma holding SAEs). The reason for the increase in degree-holders for the post of AEs could be due to circumstances such as the higher level of technical expertise required for the superior post, increase in managerial and technical workload, and enhancement in supervisory functions. It is not amiss to draw a conclusion that a higher educational degree, coupled with stipulated years of experience, could bring in certain benefits to the position of an AE that the management desires. In any case, it is not for this Court to decide whether a higher educational qualification would fulfil the objectives of the management, as long as the nexus between the educational

qualification and the need for higher efficiency is not absurd, irrational or arbitrary. In a line of decisions, this Court has held that educational qualifications may be linked to higher administrative efficiency and thus classification on this basis is not in violation of Articles 14 and 16 of the Constitution.

39 The challenge before us however is not related to the classification made in matters of regular promotion. In fact, as the record indicates, the SAEs have not challenged the initial circulars dated 7 August 1997, or 20 February 2002 (which was challenged unsuccessfully before the High Court in another petition). The issue before us solely deals with the restrictions imposed for promotion to supernumerary AE posts.

40 The Oxford English Dictionary defines the term “supernumerary” as “present in excess of the normal or requisite number”, or “not belonging to a regular staff but engaged for extra work”<sup>27</sup>. A “supernumerary post” is defined as “a post exceeding the usual stated or prescribed number”<sup>28</sup>. The impugned circular indicates that these supernumerary posts were created for removal of stagnation amongst SAEs. Although that may be the stated goal of the impugned circular, KMC has urged before this Court that the distinction in education qualification for promotion has been made for the purpose of enhancing administrative efficiency. It cannot be denied that SAEs once promoted to the post of an AE in these supernumerary posts would be performing the task and functions of an AE. Thus, it is not merely a change in the designation of an SAE to an AE, but involves an increase in workload, supervisory functions, and performance of the regular functions of an AE. Since that is the case, we do not

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<sup>27</sup> The Concise Oxford English Dictionary (Judy Pearsall ed., 10<sup>th</sup> ed, 1999)

<sup>28</sup> P. Ramanatha Aiyar, THE LAW LEXICON, THE ENCYLOPAEDIC LAW DICTIONARY p. 1838 (Justice YV Chandrachud (Former Chief Justice, Supreme Court of India) ed., 1997)

find any reason why the rationale underlying the need for higher degree-holders in the AE cadre through regular promotion would not be applicable in the case of supernumerary posts. In other words, could a challenge to the impugned circular be sustained if, instead of providing different eligibility conditions, KMC had provided for creation of a fixed number of supernumerary posts out of which a proportion was reserved for degree-holder SAEs? We do not think so. By the very reason that these posts are supernumerary and depend on the number of eligible persons, a fixed number of positions could not have been anticipated. It is perhaps for this reason that KMC sought to digress from the regular method of granting promotion and opted to introduce separate eligibility conditions. Therefore, we find that the separate eligibility conditions for promotion to supernumerary AE posts on the basis of educational qualification is in line with the past promotion practices of KMC and is not an unreasonable classification.

41 Even otherwise, we note that Clause 3 of the impugned circular provides that these supernumerary posts would be adjusted as and when a vacancy becomes available within the sanctioned posts of an AE. Further, Clause 5 stipulates that there would be no change in the Recruitment Regulations for the posts of AE. What this means is that the regular promotion of degree or diploma holder SAEs is not impacted by way of the impugned circular. As and when vacancies arise in the sanctioned AE posts, the AEs holding supernumerary posts would be subject to the Recruitment Regulations and the selection process for promotion of an SAE to an AE. The supernumerary posts are personal to the eligible AEs and will lapse on their being promoted on a regular basis as AEs or ceasing to remain in service.

42 Another aspect to be considered is that while creating supernumerary posts, KMC has not completely restricted the promotional avenues of diploma-holder SAEs who have stagnated in their service. It has provided adequate opportunity to them to advance in their career, although on different terms and conditions. Thus, the promotional policy of KMC for supernumerary posts is not irrational or arbitrary or to the detriment of diploma holder SAEs. In matters of public policy and public employment, the legislature or its delegate must be given sufficient room to decide the quality of individuals it seeks to employ as against different positions. As long as these decisions are not arbitrary, this Court must refrain from interfering in the policy domain.

#### **E Conclusion**

43 Based on the discussion above, it is our view that the impugned circular dated 3 July 2012 and the subsequent gradation list do not suffer from the vice of arbitrariness and discrimination. Accordingly, we uphold the decision of the Division Bench of the High Court and dismiss the appeal.

44 Pending applications, if any, shall stand dismissed.

.....J.  
[Dr Dhananjaya Y Chandrachud]

.....J.  
[Vikram Nath]

.....J.  
[Hima Kohli]

**New Delhi;  
September 21, 2021**