

GOVERNMENT OF ANDHRA PRADESH ETC. ETC.

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v.

P. DILIP KUMAR AND ANR. ETC. ETC.

FEBRUARY 3, 1993

[A.M. AHMADI AND M.M. PUNCHHI, JJ.]

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Andhra Pradesh Engineering Service Rules 1966—Rule-4—Recruitment to various posts in the cadre of Deputy Executive Engineers in different services—Preference to Post Graduates—Validity of recruitment.

The Andhra Pradesh Public Service Commission (in short PSC) invited applications for vacancies in the cadre of Deputy Executive Engineers in different services, to be filled by direct recruitment. Pursuant to the said advertisement both graduates and post graduates applied for the posts and were subjected to a written test and those who secured the qualifying marks, were called for oral test/interview.

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The PSC on an interpretation of Rule 4 of the A.P. Engineers Service Rules and following the decision of the High Court of A.P. in Writ Feticion No. 2568 of 1982 decided by Waghrey, J. on March 14, 1986 treated the Post Graduates as a class and gave them preferential treatment by selecting the post-graduates first who secured more than the qualifying marks in the open category and since sufficient number of post-graduates were available, no graduate was selected. In the case of reserved categories also post-graduates to the extent they were available were selected and in the case of non-availability of post-graduates, graduates were selected for appointment to the posts in question.

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The validity of the recruitment and the procedure followed by the A.P.P.S.C. were challenged before the Andhra Pradesh Administrative Tribunal. The Tribunal upon hearing the application, took a view contrary to the one taken by the learned single Judge of the High Court in W.P. No. 2568 of 1982 and quashed the select list.

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In appeal to this court,

HELD : 1.01. Rule 4 prescribes the qualification for appointment to certain posts including the post of Deputy Executive Engineer by direct recruitment, promotion or transfer. Note 1 forms part of the said rule.

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- A Before the insertion of the second part to Note 1 by GOMs No. 180 of 1983, the instructions contained in the Memo of 13th October, 1978 provided guidance in the matter of grant of preference to post-graduates for entry by promotion to the post of Deputy Executive Engineer. The subject clause of the memo undoubtedly refers to preference to be granted to post-graduates in the matter of promotion and the use of the expression 'seniority' in paragraph 2 thereof is undoubtedly indicative of the fact that its application was limited to laying down guidelines for application of the preference clause found in Note 1 to the rule in the matter of promotion. [446F-H]

- 1.02. There can be no question of arranging post-graduates according to seniority where they are seeking appointment by direct recruitment. In that case the list would have to be prepared on the basis of merit and not seniority. Therefore, the use of the expression 'promotion' in the subject clause and the expression 'seniority' in paragraph 2 of the memo is indicative of the fact that the instructions concerned appointment by promotion. In paragraph 2 it is said that candidates with post-graduate qualification will be arranged in the order of their seniority and they shall be considered *first* and only *after* such a list is considered, the case of ordinary graduates shall be considered and selection made on merit and ability. Paragraph 3 then says that the expression 'preference shall be given' used in Note 1 means that other things being equal, holders of post-graduate qualifications will be given preference and *after* that the claims of less qualified candidates would be considered for appointment. The use of the word *after* in both the paragraphs is significant and is indicative of the manner in which the preference clause is to be worked out. [447C-E]

- F 1.03. It is indeed true that under paragraph 2 of the memo it was directed that 'the list of eligible candidates with post-graduation qualification shall be *first* considered.....and only *after* such a list is considered'; others will be considered, albeit on the basis of merit and ability. The language of this paragraph leaves no manner of doubt that the turn of ordinary graduates for consideration came only after the list of eligible post-graduates was settled. The order in which the cases of post-graduates and ordinary graduates will be considered is made clear in this paragraph. But paragraph 3 of the Memo says that the expression 'preference shall be given' occurring in Note 1 would mean that, other things e.g. passing of prescribed tests, maintaining merit, suitability, fitness, etc., being equal,

preference shall be given to holders of post-graduate qualifications. The latter part of this paragraph adds 'after giving the said preference', the claims of less qualified candidates would be considered. This would mean that after a comparative study is undertaken those post-graduates who are found entitled to preference would be first promoted and thereafter cases of less qualified candidates would be considered. [447H, 448A-C]

1.04. In the present case also the zone of consideration was narrowed by eliminating candidates who did not succeed in the qualifying test and out of those who succeeded in the qualifying test and secured the minimum marks after interview were considered and thereafter in the process of selection the preference rule was applied by first choosing the post-graduates and thereafter the graduates. We have already pointed out above that classification on the basis of higher educational qualification with a view to achieving improvement in administrative performance is not abhorrent to Articles 14/16 of the Constitution. We are, therefore, of the opinion that the view taken by the learned Single Judge of the High Court on a true interpretation of the relevant rule in the context of the historical background was a plausible view and should commend acceptance as it would advance the cause of efficiency in a highly technical service. [453D-E]

Md. Usman & Ors. v. State of Andhra Pradesh, [1971] Supp. SCR 549; *Roshan Lal Tandon v. Union of India*, [1968] 1 SCR 185; *State of J & K v. Trilok Nath Koosa*, [1974] 1 SCC 19; *Md. Sujat Ali v. Union of India*, [1975] 3 SCC 76; *Roop Chand v. DDA*, [1989] Supp. 1 SCC 116; *V. Markandeya v. State of A.P.*, [1989] 3 SCC 191; *Sanatan Gauda v. Berhampur University*, [1990] 3 SCC 231; *G.K. Ajjappa v. State of Mysore & Ors.*, (1969) (1) Labour & Industrial Cases 364 and *Gujarat State Sales Tax Non-Gazetted Employees' Association v. The State of Gujarat and another*, (1977) 1 SLR 452, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1710 of 1990 etc. etc.

From the Judgment and Order dated 31.12.1987 of the Hyderabad High Court in R.P. No. 1551/1986.

K. Madhava Reddy and Guntur Prabhakar for the appellants in C.A. No. 1710/90.

A H.N. Salve, S.K. Gambhir and Vivek Gambhir for the appellants in C.A. Nos. 1011-1024/92.

M.K. Ramamurthi, M.A. Krishnamoorthy, Ms. C. Ramamurthy, T.V.S.N. Chari and J.M. Khanna for the respondents in C.A. Nos. 1011-1024/92.

B M.K. Ramamurthi, Ms. C. Ramamurthy, M.A. Krishnamoorthy and M.A. Chinnaswamy for the petitioner in W.P. No. 96/92.

H.N. Salve, S.K. Gambhir, Vivek Gambhir and T.V.S.N. Chari for the respondents in W.P. No. 96/92.

C H.S. Gururaja Rao and Y.P. Rao for the appellant in C.A. No. 720/88.

D A. Subba Rao, A.D.N. Rao, TVSN Chari and K. Ram Kumar for the respondents in C.A. No. 720/88.

T.V.S.N. Chari for the appellant in C.A. No. 721/88.

H.S. Gururaja Rao, A. Subba Rao and Y.P. Rao for the respondents in C.A.No. 721/88.

E S. Padmanabhan, Ms. Anjani N. Shridhar and K. Ram Kumar for the appellants in C.A. No. 1260/90.

T.V.S.N. Chari for the respondents.

The Judgment of the Court was delivered by

F AHMADI, J. By an Advertisement No. 6/88 dated 1st December, 1988 the Andhra Pradesh Public Service Commission (for short 'PSC') invited applications for 60 vacancies in the cadre of Deputy Executive Engineers in different services : (a) R&B Engineering Service, (b) P.H. & M. Engineering Service, (c) Engineering Service and (d) Panchayat Raj
G Engineering Service in the common scale of Rs. 1980-3500 to be filled by direct recruitment. These vacancies were shown in the advertisement at Code G-I under the head Central Recruitment. The educational and other qualifications for the posts in question were set out to be Bachelor of Engineering degree (Highways, Civil or Mechanical) of a recognised
H University for (a) and (d) services, a degree in Civil or Mechanical En-

gineering of a recognised University for (b) service and a degree in Bachelor of Engineering. Civil or Mechanical of a recognised University for (c) service. Insofar as (b) category is concerned, it was mentioned that preference shall be given to persons possessing five years experience in Irrigation or Execution of Water Supply and Drainage Scheme. In respect of posts in (a) & (c) categories, it was further mentioned that post-graduate qualification of an Indian or Foreign University shall be treated as 'an additional qualification' and preference shall be given to such candidates. Para 7 of the advertisement stated that the selection will be made on the basis of written examination to be followed by oral test/interview for the post in Code G-I. The scheme of examination was detailed in Annexure 6 of the advertisement. Pursuant to the said advertisement both graduates and post-graduates applied for the posts in question and were subjected to a written test and those who secured the qualifying marks were called for oral test/interviews. Some candidates who did not secure the qualifying marks and were not called for oral test/interviews filed O.A. Nos. 1736 to 1739 of 1990 contending that they ought to have been called and the total number of marks secured both at the written examination and oral test should have been taken into consideration for the purpose of determining the successful candidates to be empanelled for appointment to the posts in question.

The PSC on an interpretation of the relevant rule as placed by the High Court of Andhra Pradesh in Writ Petition No. 2568 of 1982 decided by Waghray, J. on March 14, 1986 first selected post-graduate engineers for the available vancancies under open competition and since sufficient number of post-graduates were available, no graduate was selected for the posts in question. In the category of reserved seats for backward classes, scheduled castes and scheduled tribes, post-graduates to the extent they were available were selected and in the case of non-availability of post-graduates, graduates were selected for appointment to the posts in question. It would at this stage be relevant to reproduce the rule in question :

"Rule 4 : Qualifications - No person shall be eligible for appointment to the category and by the method mentioned in columns (1) and (2) of the following table unless he possesses the qualifications prescribed in the corresponding entry in column (3) thereof :

A	Category	Method of	Qualifications
B	Dy. Executive Engineer	Direct Recruitment	(i) Must not have completed 28 years of age on first date of the July of the year in which the recruitment is made provided that those possessing post-graduate qualifications shall be allowed age concession to the extent of 2 years : (ii) Must possess the B.E. Degree (Civil or Mechl.) of a University in India, established or incorporated by/or under a Central Act, Provincial Act, or a State Act, or an institution recognised by the Central University Grants commission or an equivalent qualification.
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Note 1 : Post-Graduate qualification of an Indian or of Foreign University shall be treated as an additional qualification and preference shall be given to such candidates in the matter of direct recruitment, promotion and recruitment by transfer to the post of Deputy Executive Engineers.

The extent to which a post-graduate has to be given preference in the matter of promotion to the post of Deputy Executive Engineer is indicated below :

9th vacancy in 9 vacancies intended for appointment of Assistant Executive Engineers and Compressed Diploma Holders (DCEs) as Deputy Executive Engineers shall, however, be earmarked for post-graduate Assistant Executive Engineers.

(A similar rule - Rule 5 - is to be found for the post of Deputy Executive Engineers in Roads & Buildings Engineering Service Rules, 1987).

Subsequently, the State Government by a Memo dated 13th October, 1978 issued instructions to the Chief Engineer in the matter of promotion

to the category of Assistant Engineers (Deputy Executive Engineers) from the category of Junior Engineers (Assistant Executive Engineers). The said memo reads as under :

"The attention of the Chief Engineer (General) is invited to the reference cited and he is informed that under note (1) of Rule 4 of A.P.E.S. Rules, it is laid down that post-graduate qualification of an Indian or Foreign University shall be treated as an additional qualification and preference shall be given to each candidate in the matter of direct recruitment, promotion and recruitment by transfer to the post of Asstt. Engineer.

2. The above rule is not conditional or limited. Hence, for any particular year, the list of eligible candidates with post-graduate qualification shall be first considered in the order of their seniority and only after such a list is considered the cases of ordinary graduates shall be considered and selection has to be made on the basis of merit and ability.

3. The expression 'preference shall be given' occurring in the said rule would mean that, other things such as passing of prescribed tests, maintaining merit, suitability, fitness etc., being equal preference shall be given, at every selection or preparation of panel for appointment as Asstt. Engineers to the holders of post-graduate qualifications, and after giving the said preference the claims of less qualified candidates who are also eligible for appointment would be considered. Such preference is not conditional or limited."

On an interpretation of the relevant rule read with the above memorandum, the PSC following the decision of the High Court in Writ Petition No. 2568 of 1982 (supra) treated the post-graduates as a class and gave them preferential treatment by selecting those post-graduates who secured more than the qualifying marks in the open category and since they were available in sufficient number, graduates were kept out of selection. In the case of reserved categories also post-graduates to the extent they were available and had secured the qualifying marks for empanelment were

A selected and only where sufficient number of such post-graduates were not available graduates were selected in accordance with merit and placed below them in the list. This procedure was followed by the PSC in view of the guidelines laid down in the judgment of the High Court in the aforesaid writ petition. In that case, the learned Single Judge in the High Court held as under :

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C "So far as the interpretation of Rule 4 and its implementation contained in the note to Rule 4. I am clearly of the opinion that the post-graduate will have to be preferred as a class. This is also supported by the memo of the Government and the decision of the Supreme Court and the High Court. So long as the rule of preference stands. I do not see any justification for watering down of the said Rule in the way in which the Commission has done by reducing it only to the cases where there is equivalence of marks between a post-graduate and graduate. The very object of the preferential treatment is defeated by this procedure."

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E Writ Appeal No. 475 of 1987 was dismissed on August 25, 1987 on the ground that the Single Judge's order was implemented. The State Government's S.L.P. No. 13035 of 1987 was also dismissed on November 26, 1990.

F The Supreme Court's decision relied on by the learned Single Judge is the case of *Md. Usman & Ors. v. State of Andhra Pradesh*, [1971] Supp. SCR 549. Following the above dictum of the learned Single Judge of the High Court when the selections were made pursuant to the Advertisement No. 6/88, the PSC followed the procedure indicated by the High Court and prepared the Select List. This was once again put into issue by the graduates who were left out of selection in several applications filed in the Andhra Pradesh Administrative Tribunal at Hyderabad. A two-member Bench of the Tribunal heard this group of applications and by its judgment and order dated September 19, 1991 quashed the Select List prepared by the PSC on the following line of reasoning :

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H "According to us that rule only meant that other things being equal and the performance of a candidate possessing higher qualification and the candidate possessing min-

imum qualification is equal, a candidate possessing higher qualification may claim preference but not in case where the performance of a candidate possessing minimum qualification is better than the candidate who possessed the higher qualification. If the interpretation given by the learned Single Judge of the High Court is to be followed by the Public Service Commission, the very purpose of conducting written and oral test to assess the relative merit and suitability of the candidates for the purpose of preparing the Select List would be defeated. In this view of the matter, we differ with the conclusions reached by the learned Single Judge of the High Court in W.P. No. 2568/82. Therefore, the Select List prepared by the first respondent treating the post-graduates as separate class, irrespective of the marks secured by the post-graduates and graduates in written and oral tests, is contrary to the rules and ultra vires Articles 14 and 16 of the Constitution of India."

It will appear from the above facts that the PSC had earlier interpreted and applied the relevant rule as opined by the Tribunal but the same was struck down by the High Court in Writ Petition No. 2568 of 1982 holding that such a procedure would defeat the very object of preferential treatment. The learned Single Judge directed that the post-graduates should be treated as a preferred class and so long as post-graduates who had secured the minimum qualifying marks were available, they were to given preference to graduates notwithstanding the fact that the latter may have secured higher percentage of marks in the written as well as oral test/interview. Only when qualified post-graduates are not available could the names of the graduates be entered in the Select List on the basis of their *inter-se* merit. Since this decision of the learned Single Judge of the High Court was holding the field at the relevant point of time when selections were made pursuant to the Advertisement No. 6/88, the PSC followed the procedure outlined by the learned Single Judge and notwithstanding the fact that certain graduates had secured higher percentage of marks than post-graduates, the latter were selected in preference to the former and only in the reserved category where sufficient number of post-graduates were not available graduates were empanelled on the basis of their *inter-se* merit and placed below the post-graduates. Once again the

- A PSC got entangled in litigation and, as pointed out above, the tribunal by the impugned judgment took a view contrary to the one taken by the learned Single Judge of the High Court and upset the Select List. So far as the applicants of O.A. Nos. 1736 to 1739 of 1990 were concerned the tribunal upheld the decision of the PSC not to call them for oral test/interview since they had not secured the qualifying marks in the written test.
- B Their contention that notwithstanding their having failed to secure the qualifying marks in the written test, they should have been called for oral test/interviews and thereafter the total marks secured both in the written test and the oral test should have been compared with the total marks secured by others, did not find favour with the tribunal. The tribunal, therefore, dismissed their applications with no order as to costs. They too have approached this Court in appeal.
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- It is clear from the above that two views are canvassed on the true interpretation of the relevant rule. The view urged by the post-graduates is that in implementing the rule of preference in the matter of direct recruitment the PSC should first exhaust candidates having post-graduate qualifications if they have secured the minimum qualifying marks and if they are not available in sufficient number, then and then only, graduates should be selected on merits from among those who have secured the minimum qualifying marks and above. Learned counsel for the post-graduates submitted that if the rule is not so implemented the very purpose of granting preference to post-graduates will be lost as it will virtually boil down to a ridiculously low figure and the object of cadre-strengthening will not be achieved. This view found favour with the learned Single Judge of the High Court in Writ Petition No. 2568 of 1982 as mentioned earlier. The rival view canvassed by the learned counsel for the non-preference candidates is that the preference rule can come into play only where two candidates have secured equal marks in which case the candidate possessing post-graduate qualification will be preferred if the other candidate does not possess that qualification but not otherwise, that is, not if a graduate has secured higher number of marks than the post-graduate. In other words everything being equal between two candidates, the scale will tilt in favour of a post-graduate if the other candidate is merely a graduate. This view has found favour with the tribunal which is impugned before us. For us the question is which of the two views is correct. We may at this stage notice one further contention urged on behalf of the appellants and that is that it was not legally correct for the Tribunal to have upset the law already
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settled by the High Court which the PSC had applied in finalising the selection since it was a decision rendered much before (i) the Central Administrative Tribunals Act, 1985, came into force and (ii) the Tribunal was constituted thereunder. Alternatively it was urged that even if two views were reasonably possible on the construction of the relevant rule, the Tribunal should not have upset the selection made on the construction earlier placed by the High Court.

Before we come to grips with the question regarding the true meaning and import of the rule, it may be advantageous to analyse the rule on its plain language. The opening line of the rule says that no person shall be eligible for appointment to the post in question unless he possesses the qualification prescribed therefor. For the post of Deputy Executive Engineers for direct recruitment the first requirement is that he must not have completed 28 years of age as on 1st July of the concerned year of recruitment but in the case of post-graduates a concession to the extent of two years is allowed. Insofar as the educational qualification is concerned he must possess a B.E. degree (Civil or Mechanical) of an Indian University or an institution recognised by the Central UGC or an equivalent qualification. So the minimum educational qualification prescribed for the post of Deputy Executive Engineer for direct recruitment is graduation. Thus far there is no difficulty. We now move on to Note 1. As is evident this note is in two parts. The first part says that post-graduate qualification shall be treated as an additional qualification and preference shall be given to such candidates. This part applies to all the three modes of recruitment. The second part indicates the extent to which a post-graduate is to be given preference in the matter of promotion to the post of Deputy Executive Engineer. It earmarks the 9th vacancy in 9 vacancies for a post-graduate Assistant Executive Engineer (redesignated Junior Engineer). It may be borne in mind that this second part was added by GOMs No. 180 dated 29th April, 1983 in exercise of powers conferred by the proviso to Article 309 of the Constitution. It will be seen from the above that while the first part of the note requires post-graduate qualification to be treated as an additional qualification and candidates possessing such qualification have to be given a preference irrespective of the mode of entry, the second part qualifies or explains the same insofar as it considers promotion. The second part, therefore, applies to entry by promotion and does not apply to entry by direct recruitment or transfer. This seems to be the purport of Note 1 on its plain reading.

- A We may now turn to the instructions issued through Memo dated 13th October, 1978 which is in three paragraphs. The first paragraph merely states the purport of Note 1. The second paragraph states that the list of eligible candidates with post-graduate qualification shall be first considered in the order of their seniority and only after it is considered, the cases of ordinary graduates shall be considered. The selection has, of course, to be made on the basis of merit and ability. Then comes the third paragraph which seeks to explain the phrase 'preference shall be given' to mean that other things (such as passing of prescribed test, maintaining merit, suitability, fitness, etc.) being equal, preference shall be given to holders of post-graduate qualifications, and after giving such preference the claim of less qualified candidates would be considered. It may at this stage be mentioned that the subject clause of the Memo dated 13th October, 1978 has some relevance and may be reproduced :
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"Sub: - Public Services - A.P. Engineering Service - Promotion to the category of Asstt. Engineers from Jr. Engineers category-preference to Post Graduates-Reg."

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- E From the use of the expression 'promotion' in the subject clause and 'seniority' in paragraph 2 of the memo it was argued that the said instructions applied to cases of promotion only and had no application when it came to filling up of the posts by direct recruitment. We will immediately deal with the said submission.

- F The Andhra Pradesh Engineering Service Rules, 1966 ('the Rules' hereafter) came to be enacted in exercise of powers conferred by the proviso to Article 309 of the Constitution. Rule 4 thereof prescribes the qualification for appointment to certain posts including the post of Deputy Executive Engineer by direct recruitment, promotion or transfer. Note 1 forms part of the said rule. Before the insertion of the second part to note 1 by GOMs No. 180 of 1983, the instructions contained in the Memo of 13th October, 1978 provided guidance in the matter of grant of preference to post-graduate for entry by promotion to the post of Deputy Executive Engineer. The subject clause of the Memo undoubtedly refers to preference to be granted to post-graduates in the matter of promotion and the use of the expression 'seniority' in paragraph 2 thereof is undoubtedly indicative of the fact that its application was limited to laying down
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- H guidelines for application of the preference clause found in Note 1 to the

rule in the matter of promotion. Paragraph 2 thereof while stating that rule 4 is not conditional or limited proceeds to add that for any particular year, the list of eligible candidates with post-graduate qualification shall be considered in the order of their 'seniority' and only after such list is considered the cases of ordinary graduates shall be considered and selection will be made on the basis of merit and ability. The question of seniority among post-graduates can arise only in regard to candidates who are in service and who are to be considered for promotion to the next higher post. There can be no question of arranging post-graduates according to seniority where they are seeking appointment by direct recruitment. In that case the list would have to be prepared on the basis of merit and not seniority. Therefore, the use of the expression 'promotion' in the subject clause and the expression 'seniority' in paragraph 2 of the memo is indicative of the fact that the instructions concerned appointment by promotion. In paragraph 2 it is said that candidates with post-graduate qualification will be arranged in the order of their seniority and they shall be considered *first* and only *after* such a list is considered, the case of ordinary graduates shall be considered and selection made on merit and ability. Paragraph 3 then says that the expression 'preference shall be given' used in Note 1 means that other things being equal, holders of post-graduate qualifications will be given preference and *after* that the claims of less qualified candidates would be considered for appointment. The use of the word *after* in both the paragraphs is significant and is indicative of the manner in which the preference clause is to be worked out. After the amendment of Note 1 by the introduction of the second part earmarking the slot of 9th vacancy for post-graduates, the mode of implementing the preference in the matter of appointment by promotion underwent a change rendering the memo of 13th October, 1978 *otiose*. But it can still be availed of as an aid to construction of Note 1 insofar as it concerns grant of preference in the matter of direct recruitment. Except for this limited use to which the Memo can be put, we are agreed that it related to grant of preference at the promotion stage only and has since become *otiose*.

It was emphasised on behalf of the post-graduates that the use of the expression *after* in paragraphs 2 and 3 makes it clear beyond any manner of doubt that the intention of the authorities was to treat post-graduates as a class and to consider them first and only thereafter could ordinary graduates aspire to seek entry into the higher post. It is indeed true that under paragraph 2 of the memo it was directed that 'the list of eligible

- A candidates with post-graduation qualification shall be *first* considered.....and only *after* such a list is considered the cases of ordinary candidates shall be considered'; albeit on the basis of merit and ability. The language of this paragraph leaves no manner of doubt that the turn of ordinary graduates for consideration came only after the list of eligible post-graduates was settled. The order in which the cases of post-graduates and ordinary graduates will be considered is made clear in this paragraph. But paragraph 3 of the Memo says that the expression 'preference shall be given' occurring in Note 1 would mean that other things e.g. passing of prescribed tests, maintaining merit, suitability, fitness, etc., being equal, preference shall be given to holders of post-graduates qualifications. The latter part of this paragraph adds 'after giving the said preference', the claims of less qualified candidates would be considered. This would mean that after a comparative study is undertaken those post-graduates who are found entitled to preference would be first promoted and thereafter cases of less qualified candidates would be considered. The combined reading of paragraphs 2 and 3 gives the impression that cases of post-graduates found entitled to promotion had to be first considered and only after their absorption would it be permissible to consider the claims of ordinary graduates i.e. less qualified candidates. This method of grant of preference in the matter of promotion was changed by GOMs No. 180 of 1983 probably because it was causing avoidable hardships. Similar changes were introduced in the rules concerning other engineering services also. By this amendment instead of granting preference to post-graduates in the matter of promotion under the aforesaid Memo, the 9th vacancy in 9 vacancies was earmarked for a post-graduate. We fail to see how such a provision granting preference to post-graduates on the basis of their higher educational qualification be said to conflict with the equality clause when the post-graduates constitute a separate class. More of it later.

- The interpretation on Note 1 has to be placed in background of the said historical fact. It is at the same time necessary to remember that so far as the PSC is concerned it placed the interpretation now placed by the Tribunal under the impugned order till it was disapproved by the learned Single Judge of the High Court in Writ Petition No. 2568/82. In doing so the High Court placed reliance on the decision of this Court in *Md. Usman's case* (supra). That was a case in which both UDCs and LDCs were placed in one class for the purpose of recruitment as Grade II Sub-Registrars. The rule was, therefore, challenged as violative of Article

14 on the ground that unequals were treated as equals. The second question was whether the recruitments were made in accordance with the relevant rule. The High Court answered the latter contention in the affirmative but struck down the rule on the first ground. In appeal this Court reversed the High Court's decision holding that there was no violation of Article 14 in clubbing UDCs and LDCs for the purpose of recruitment to Grade II - Sub-Registrars. Now the rule that prescribed the qualification for the said post also provided that preference shall be given to persons who, in addition to the prescribed qualification, possess a degree in law of University in the state or an equivalent qualification. In that case these persons who were entitled to preference were considered separately and recruited first and only thereafter others were recruited, as in the present case. This Court found this method for recruitment by transfer to 'the most reasonable one'. Those observations support the contention put-forward by the post-graduates and were relied upon by the learned Single Judge in the High Court in support of the view taken by him. The Tribunal has referred to this decision but has not expressed itself on the applicability or otherwise of the said view.

The matter may be looked at from another view-point. The word 'preference' as understood in ordinary parlance means to preferring or choosing as more desirable, favouring or conferring a prior right. What then is the purpose and object sought to be achieved by the insertion of the preference clause in the rule? There is no doubt that preference was sought to be granted under Note 1 to post-graduates in the larger interest of the administration. How would the interest of the administration be served by granting preference to post-graduates? It is obvious that it was thought that on account of their higher mental equipment the quality of performance that the State will receive from highly qualified engineers would be better and of a high order. In other words the State considered it necessary to strengthen the engineering service by recruiting post-graduates to the extent available so that the State may benefit from their higher educational qualifications and better performance. If this was the objective surely it would not be realised unless post-graduates are treated as a class and given preference on block over the graduates. Since sufficient number of post-graduates may not be available from the feeder channels and even if available cannot be promoted out of turn without causing heart burns, it was thought desirable to resort to such large scale recruitment directly from the open market. The underlying idea of the Memo dated

- A 13th October, 1978 was the same but certain difficulties were felt in resorting to enforcement of the preference clause at the promotion stage and that is why the second part came to be inserted in Note 1 but no such difficulty would be experienced in strengthening the cadre through direct recruitment. But then it was said what was the need for the PSC to hold
- B the written test by inviting applications from graduates and subjecting them to test? That was for the reason that there was no guarantee that sufficient number of post-graduates would qualify for selection and appointment. But if the preference rule were to be implemented as held by the Tribunal it would apply only where the post-graduate and graduate candidates have secured the same number of marks. If the rule so implemented is carried
- C to its logical end it would ultimately resolve a tie only at the last rung of the ladder because ties at higher levels would be resolved by a post-graduate being followed by a graduate in the select list. The question of elimination would really arise at the last placement in the list and hence the real purpose of the preference rule would not be served. That is why
- D this Court in *Md. Usman's case* (supra) approved of this method of recruitment as most reasonable. There is nothing arbitrary or unreasonable in the employer preferring a candidate with higher qualification for service. It is well settled by a catena of decisions that classification on the basis of higher educational qualification to achieve higher administrative efficiency is permissible under our constitutional scheme. See *Roshan Lal Tandon v. Union of India*, [1968] 1 SCR 185; *State of J & K v. Trilok Nath Koosa*, [1974] 1 SCC 19; *Md. Sujat Ali v. Union of India*, [1975] 3 SCC 76; *Roop Chand v. DDA*, [1989] Supp. 1 SCC 116; *V. Markandaya v. State of A.P.*, [1989] 3 SCC 191 and *Sanatan Gauda v. Berhampur University*, [1990] 3 SCC 23. We, therefore, do not agree that treating post-graduates as a class
- E and giving them preference in this manner is violative of Articles 14/16 of the Constitution. We also do not see any vice in the relevant rule and in Note 1 as amended in 1983.
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- Before we part we may refer to two decisions to which our attention was invited. The first is a Division Bench decision of the Mysore High Court in the case *G.K. Ajjappa v. State of Mysore & Ors.*, [1969] 1 Labour & Industrial cases 364. That was a case in which the PSC had issued a notification for selecting four persons for the post of Superintendent of Fisheries and the petitioner had applied for the post in response thereto. After the interviews were taken, respondents Nos. 3 to 6 were selected for
- G appointment. Respondents Nos. 3, 4 and 5 belonged to the backward
- H

classes whereas respondent No. 6 belonged to the Scheduled Castes. Respondent No. 5 though belonging to the backward classes was selected on the basis of merit. The petitioner contended that he possessed higher qualification and was, therefore, entitled to preference under the relevant rule providing for 'preference being given to persons possessing higher qualification'. The contention was that so far as he was concerned, there was no question of interviewing him and in any case since he possessed higher qualifications he ought to have been preferred in the matter of selection and appointment to the post in question. Now the method of recruitment set out in Sub-rule (3) of Rule 4 of the Mysore Public Service Commission (Functions) Rules, 1957 was as under :

"Consider all applications received and when necessary interview such candidates as fulfill the prescribed conditions and whom it considers most suitable for appointment."

The High Court, therefore, came to the conclusion that the preference rule could not exclude an interview expressly authorised by Rule 4(3) extracted above. If the appointment had to be made by selection, and the 'most suitable' candidate had to be chosen for appointment, someone had to make the selection and the PSC was designated for the same and was charged with the duty to make the selection of the most suitable candidate or candidates and, therefore, a person with higher qualifications could not elbow out a more suitable person with lower qualifications for appointment. While conceding that higher academic qualification is generally a dependable index of superior merit, which endows in its turn suitability in many spheres, the High Court held that the selection had to be made strictly in terms of Rule 4(3) and, therefore, the quest had to be for the most suitable candidate and the superior qualification could turn the scale only if suitability was found in equal measure. It was for this reason that the High Court concluded that the determining criteria is not the higher qualification but suitability in the opinion of the PSC, the quest being for the most suitable. Higher qualification by itself would not earn a selection unless it stood reinforced and supplemented by suitability in other respects. It is, therefore, obvious that the decision turned on the language of Rule 4(3) of the Function Rules.

The second decision to which our attention was invited is a Judgment

- A of a learned Single Judge of the Gujarat High Court in *Gujarat State Sales Tax Non-Gazetted Employees' Association v. The State of Gujarat and another*, (1977) 1 SLR 452. In that case 120 posts of Sales Tax Inspectors were required to be filled in by direct selection. An advertisement was issued in the Newspaper and as many as 15,000 candidates applied in response thereto. This necessitated screening of the candidates at the threshold. It was found that more than 1000 applicants were holding first class degrees in different faculties of recognised Universities; 580 of them were first class Commerce graduates, 101 first class Arts graduates and about 500 first class Science graduates. Having regard to the number of vacancies the field of choice was restricted to first class graduates only and it was decided not to call for interview a second class or third class graduate including graduates having commerce degree with Accountancy as a subject. It was this decision which was put in issue before the learned Single Judge by candidates who were eliminated at the threshold from consideration. The relevant rule provided that the appointment to the post of Sales Tax Inspectors shall be made either (a) by direct selection or (b) by promotion. Insofar as direct selection was concerned, the educational qualification required was stated to be a degree of a recognised University. The proviso laid down as under :

- E "Provided that preference shall be given to a candidate who possesses the degree of B.Com with Accountancy or Chartered Accountants, or possesses a qualification recognised to be equivalent to such examination by the Govt. of Gujarat."

- F In the context of this preference rule it was observed in para 7 of the Judgment as under :

- G "To hold that the rule of preference was enacted to give to Commerce graduates with Accountancy or to candidates having other prescribed qualifications an absolute preference over the graduates of other faculties would be to denude the substantive provision of much of its force and effect and to covert the rule of preference into a rule of reservation thereby obliterating altogether the right of other candidates possessing degree of recognised Universities in various other faculties to be considered for the post."
- H

It is true that notwithstanding the preference rule it is always open to the recruiting agency to prescribe a minimum eligibility qualification with a view to demarcating and narrowing down the field of choice with the ultimate objective of permitting candidates with higher qualifications to enter the zone of consideration. It was, therefore, held that screening a candidate out of consideration at the threshold of the process of selection is neither illegal nor unconstitutional if a legitimate field demarcating the choice by reference to some rationale formula is carved out. Thus the challenge based on Articles 14/16 of the Constitution was repelled. We are in agreement with the ratio of this decision and that is enough to negative the claim of candidates who had preferred O.A. Nos. 1736 to 1739 of 1990 who were not called for interview on their failing to secure the minimum qualifying marks in the written test.

In the present case also the zone of consideration was narrowed by eliminating candidates who did not succeed in the qualifying test and out of those who succeeded in the qualifying test and secured the minimum marks after interview were considered and thereafter in the process of selection the preference rule was applied by first choosing the post-graduates and thereafter the graduates. We have already pointed out above that classification on the basis of higher educational qualification with a view to achieving improvement in administrative performance is not abhorrent to Articles 14/16 of the Constitution. We are, therefore, of the opinion that the view taken by the learned Single Judge of the High Court on a true interpretation of the relevant rule in the context of the historical background was a plausible view and should commend acceptance as it would advance the cause of efficiency in a highly technical service. We, therefore, think that even if two views were possible, the Tribunal ought not to have unsettled the legal position settled earlier by the High Court with which even this Court refused to interfere in SLP. For the foregoing reasons we do not approve of the view subsequently taken by the Tribunal.

Since we have on interpretation of the relevant rule in the context of the background provided by the Memo of 13th October, 1978 approved the learned Single Judge's view, we do not consider it necessary to examine the contention that since the judgment of the learned Single Judge was prior to the enactment of the Central Administrative Tribunals Act and the constitution of the Tribunal, the latter should have felt bound by the High Court's view. We express no opinion on the said point.

- A** In the result Civil Appeals Nos. 720 and 721 of 1988, 1260 and 1710 of 1990 and 1011 to 1024 of 1992 are allowed and the impugned orders of the Tribunal are set aside. Writ Petition No. 96 of 1992 is dismissed. Any action taken in pursuance of interim orders of this court during the pendency of the aforestated cases will be regularised in the light of our judgment but if it entails refund of payments already made, the same shall not be effected and shall be waived. Having regard to the facts and circumstances of the case. We make no order as to costs throughout in all the matters.
- B**

B.V.B.D

CA Nos. 720 & 721/88,
1260 & 1710/90 and 1011-
1024/92 allowed.
WP No. 96/92 dismissed.