

K. NARAYANAN AND OTHERS
v.
STATE OF KARNATAKA AND ORS.

SEPTEMBER 2, 1993

[S.C. AGRAWAL AND R.M. SAHAI, JJ.]

Service Law—Karnataka Public Works, Engineering Department Service (Recruitment) Rules, 1985—Appointment—Seniority—Whether retrospective appointment and seniority can be given prior to date of eligibility—Held, retrospective operation is exceptional—Nexus with objective necessary—Rules discriminatory and affect vested rights—Violative of Articles 14 and 16 of the Constitution.

Constitution of India, 1950—Articles 14 and 16—Karnataka P.W.D. Service (Recruitment) Rules, 1985—Whether violative of.

When Karnataka Public Service Engineering Department Service (Recruitment) Rules, were framed in 1968, two principal sources of recruitment were, Assistant Engineers and Junior Engineers, the minimum qualification for the two, being degree and diploma respectively in Civil/Mechanical engineering. There was further sub division in the Cadre of Junior Engineers. Some were appointed as Junior Engineers and others as Supervisors and draftsmen. In 1969, the Rules were amended and 50% of Junior Engineers were to be graduates. Pay scales of the two cadres were not the same. The State Government maintained distinction between the two classes of Junior Engineers. They were not given the same scale of pay and the non-graduate Junior Engineers were encadred separately. Promotional avenue for degree holders being better, diploma holder used to acquire degree, while continuing in service. In 1975, Diploma holders working as Junior Engineers Grade II, made representation for increase of their pay scales to the scale of pay of Junior Engineers Grade I and for maintaining a separate cadre, for promotion to the post of Assistant Engineers, by deducting 4 years service as junior Engineers. It was founded on the premise that nature of work performed by the two was the same. In 1977 the Secretary to the Government recommended that 10% vacancies of Junior Engineers Division I may be reserved for Junior Engineers Division II, who acquired B.E. degree. There after the Diploma Holders

A staked their claim for promotion as Assistant Engineer. The State Government did not accept the recommendation of the Board of Chief Engineers in this regard, as cadre of Assistant Engineers (later designated as Assistant Executive Engineers) and Junior Engineers (later designated as Assistant Engineers), were different, with different scales of pay. The
B Diploma Holders made a demand for sanctioning 4 advance increments and for absorbing Junior Engineers Division II as Junior Engineer Division I from the last date of examination. In 1984, better promotional avenues were provided and one-sixth of the cadre strength was reserved for Junior Engineers to be promoted as Assistant Engineer Division II. Meanwhile, Engineer Subordinate Service Rules in Andhra Pradesh were
C amended and the Supervisors and Draftsman who acquired engineering degree became eligible for the post of Assistant Engineer by transfer subject to satisfying certain conditions. This Court upheld (*Devi Prasad & Ors. v. Government of Andhra Pradesh & Ors.*, [1980] Supp. SCC 206 the rule.

D The Diploma Holders submitted alternative proposal, for counting 1/3 of their previous service and to absorb in the cadre of Assistant Engineers from the date of passing the examination. It was based on assumption that nature of work performed by Junior Engineers and the Assistant Engineers was same. Similar claim was made before the pay
E Commission. It was not accepted. In 1985, the Cabinet decided that the assumption of law department that the work of Junior Engineers and Assistant Engineers was substantially similar, was correct. On that basis, the Rules were amended (in 1985). The amendments were deemed to have come into force on January 1, 1976. The amended Rules *inter alia* provided
F direct recruitment by to posts of Assistant Engineers, by transfer of Junior Engineers, who held degree in Civil Engineering or mechanical engineering. According to note 2 of the Rules, the transfer would be effective from the date of graduation, subject to availability of vacancies. Note 3 of the Rules, entitled the Junior Engineers appointed by transfer as Assistant
G Engineers on or after 1.1.1976, to count one-third of service rendered as Junior Engineer prior to appointment as Assistant Engineer, subject to maximum of 4 years, for the purpose of promotion to next higher post i.e. Assistant Executive Engineer Division I. Seniority of Junior Engineer appointed as Assistant Engineer was to be fixed with reference to notional date arrived at after giving weightage of service, as aforesaid.
H

Validity of the amended rules was challenged before the Karnataka Administrative Tribunal. The Tribunal did not find any violation of Article 14 or 16. The Tribunal construed note 2 of the Rules as providing eligibility only. In the seniority list, published in 1988, Junior Engineers appointed as Assistant Engineers, by transfer, were given seniority by giving benefits, both under note (2) and (3). Hence the Junior Engineer, who acquired degree in July, 1976, was deemed to have been appointed as Assistant Engineer, against vacancy in December, 1976 and he was also given benefit of weightage of service for 4 years. Therefore, he came to be placed as Assistant Engineer from December 1972. Validity of the Rules was challenged in another claim petition filed before the Administrative Tribunal. It was dismissed on the ground that weightage had been given as provided in the rules.

Direct Recruit Assistant Engineers, approached this court by appeals and Writ Petitions.

Allowing the appeals and Writ Petitions, this Court

HELD : 1. Diploma Holder Junior Engineers form a different class than degree holder Junior Engineers. Cadre of Assistant Engineer was different from Junior Engineers. Distinction was founded on valid classification both on nature of job and qualifications. [116-F-H]

2. Eligibility to be appointed to a particular post does not mean that the candidate, who acquires qualification stands automatically appointed to that post. [117-A]

3. A Junior Engineer acquiring qualification may become entitled to be promoted as Assistant Engineer, and for that purpose, the period of service may be reduced, where a diploma holder Junior Engineer could be promoted as Assistant Engineer after longer service. It is equation between two classes of Junior Engineers, in the same cadre. [117-C-D]

State of Gujarat v. C.G. Desai and Others, [1974] 1 S.C.C. 188; *Devi Prashad and Others v. Government of Andhara Pradesh and Others*, [1980] Supp. SCC 206 and *Mohammad Shujat Ali and Others v. Union of India & Ors.*, [1975] 3 S.C.C. 76, relied on.

4. Demarcation of cadres or gradation in the same cadre, on higher and lower qualification, is a common phenomenon for fixing hierarchy in

A services. It is a valid basis of classification. [117-G]

State of Mysore and Others v. P. Narasing Rao, [1968] SCR 407; *The Union of India & Others v. Dr. (Mrs.) S.B. Kohli & Anr.*, [1973] 3 SCC 592; *State of Jammu & Kashmir v. Tirloki Nath Khosa & Ors.*, [1974] 1 SCC 19 and *P. Murugesan & Ors. v. State of Tamil Nadu & Others*, JT (1993) 2 SC 115, relied on.

B 5. A policy decision taken by the Government is not liable to be interfered unless the Court is satisfied that the rule, making authority has acted arbitraritly or in violation of fundamental rights guaranteed under Articles 14 and 16. [118-B]

C 6. Appointment by transfer from lower to higher cadre, not by promotion but by direct appointment only because the incumbent became eligible, without selection test or criteria, is not in consonance with service discipline. [118-C]

D 7. Giving a higher post in a different cadre, in which the employee never worked, because he became eligible earlier, is violation of right of equality. Such employee cannot be given precedence, over those who are working from before. Seniority is an incidence of service, which cannot be eroded or curtailed by a rule which operates discriminately. [118-D, F]

E 8. There can be no functional parity between employees of two different cadres. [119-B]

F 9. Rule which attempts to bypass regular method of recruitment is violative of Article 14. [119-C]

R.N. Nanjundappa v. T. Thimmiah & Anr., [1972] 2 SCC 409 and *State of Andhra Pradesh & Another v. K.S. Muralidhar & Ors.*, [1992] 2 SCC 241, relied on.

G 10. 'Recruitment' is a comprehensive term and includes any method provided for inducting a person in public service. Rule framed under Article 309 of the Constitution to regulate recruitment is subject to other provisions of the Constitution. Therefore, it has to be tested on rule of equality. Transfer made in a different and higher cadre, must not be violative of constitutional guarantee and the rule of fairness. Providing for H appointment of a diploma holder from the cadre of Junior Engineer to

Assistant Engineer from back date, without any test or selection on eligibility only does not sound reasonable and fair. [119-E-F]

11. Rules operate prospectively. Retrospectivity is exception. Exercise of power to frame rule with retrospective effect, must not operate discriminate or in violation of any constitutional right, so as to affect vested right. [121-B]

12. The Service Rules made in 1985, permitting appointment by transfer, and making it operative from 1976, subject to availability of vacancy results in appointing a Junior Engineer in 1986 with effect from 1976. It operates viciously against the Assistant Engineers, who were appointed between 1976 to 1985. [121-C]

Ex-Capt. K.C. Arora & Anr. v. State of Haryana & Ors., [1984] 3 SCC 281; *P.D. Aggarwal & Ors. v. State of U.P. & Ors.*, [1987] 3 SCC 622 and *B.S. Yadav & Ors. etc. v. State of Haryana Ors. etc.*, [1981] 1 SCR 1024, relied on.

13. Retrospective operation of the impugned rule attempts to disturb a system, which has been existing for more than 20 years and that too without any rationale. Absence of nexus apart, no rule can be made retrospectively to operate unjustly and unfairly against other. Retrospective operation of the rule with effect from 1st January, 1976 is discriminatory and violative of Articles 14 and 16 of the Constitution. [122-B]

14. It is not only desirable but just and proper that the States by common consensus may adopt same set of rules, which may pave the way for promoting national integrity eliminating disparity amongst employees, reducing litigation and improving harmony. [110-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 630-32 of 1989.

From the Judgment and Order dated 21.10.1988 of the Karnataka High Court in Application Nos. 4298 and 4299 of 1988.

WITH

Writ Petition (Civil) No. 939 of 1989.

A (Under Article 32 of the Constitution of India.)

S. Rama Jois, and Ms. Kiran Suri for the appellants.

K. Madhava Reddy, M.R. Janardhan, S.R. Bhat, L.M. Bhat, N.R. Nath, Ms. Kiran Aneja, M. Veerappa and K.H. Nobin Singh for the respondents.

B

The Judgment of the Court was delivered by

R.M. SAHAI, J. Validity of the Karnataka Public Works Engineering Department Service (Recruitment) (Amendment) Rules 1985 has been challenged by the Assistant Engineers, recruited directly, both on the ground of constitutional invalidity as it treats unequals as equals and also for giving retrospective appointment to the diploma holders and seniority even prior to the date of their eligibility.

C

D

Engineering services in the Public Works Department (PWD) of the country can justly feel proud for having contributed largest number of decisions from this Court touching upon nearly every aspect of service law the most common being seniority. This has resulted to a large extent due to different set of rules framed in different States to accommodate and benefit one set of employees over other either to mitigate injustice arising out of peculiar circumstances as in the State of Andhra Pradesh due to merger of the State of Hyderabad, or because of sympathetic consideration of supposed injustice as in the State of Karnataka or due to pressure and pull depending on the strength of the Association of Employees of one or the other group coupled with if the Chief Engineer in the State was a promotee or direct. In either view in services such as engineering services where similar pattern prevails and same hierarchy is maintained between draftsman, designer, supervisor, junior engineer, assistant engineer, executive engineer throughout the country it is not only desirable but just and proper that the States by common consensus may adopt same set of rules which may pave the way for promoting national integrity eliminating disparity amongst employees reducing litigation and improving harmony. Necessity for it is demonstrated by these appeals and writ petitions as when facts are adverted it shall be clear how the State of Karnataka by erroneous understanding of a decision given by this Court on rules framed in the neighbouring States in Andhra Pradesh in completely different circumstances narrated in detail in *Mohammad Shujat Ali & Others v. Union of India*

E

F

G

H

& Others, [1975] 3 SCC 76 attempted to adopt it resulting in grave injustice. What was held to be reasonable and not shocking by this Court for one State has become discriminatory and unreasonable for other.

Reverting to the issues in dispute what was assailed, vehemently, in these appeals directed against the order of the Karnataka Administrative Tribunal (KAT) Bangalore was its failure to quash the gradation list issued by the Government in breach of its earlier order. It was also urged that the rules framed in 1985 having been made effective from 1976 were violative of Articles 14 and 16 of the Constitution but the tribunal in its first order having read down the rules the appellants did not challenge its correctness. How far these challenges are well founded and what relief can be granted can be comprehended better only after the background in which these rules were framed is narrated. When Karnataka Public Works Engineering Department Service (Recruitment) Rules were framed in 1960 the two principal sources of recruitment were Assistant Engineer and Junior Engineers. The minimum qualification for the two were degree and diploma, respectively, in civil and mechanical engineering. In the cadre of Junior Engineer it appears there was further sub-division. Some were appointed as Junior Engineers and others as supervisors and draftsman etc. The pay scales of the two were not the same. In 1969 the rules were amended and 50% of Junior Engineers could be degree holders. This amendment led to litigation between the two class of Junior Engineers the details of which and consequence thereof is narrated in the object and reasons of the Karnataka Civil Services (Classification) Amendment Act 9 of 1975. It was mentioned that even though the High Court on construction of the rule equated the graduate and non-graduate junior engineers in one cadre, 'it was never the intention of the State Government either to treat them as equals or to give the same scales of pay to both the categories and in fact the non-graduate junior engineers have been separately encadred also.' The Act provided that notwithstanding any judgment or decree or order of any Court or any equation of the posts made at any time,

"(i) the category of posts of non-graduate Junior Engineers shall be and shall with effect from 1st November 1956 be deemed to have been classified as a category saeparate and distinct from the category of posts of Junior Engineers (Graduate);

(ii) the scale of pay admissible to such non-graduate Junior Engineers shall be and shall with effect on and from the such date,

- A be deemed to have been only those specified for such category of posts (and revised from time to time in the Government Order and Rules mentioned in the Schedule to this Act and not those admissible to the categories of posts of Junior Engineers (Graduates);"
- B The distinction between the two class of junior engineers on qualification was thus legislatively recognised. As has been seen earlier this distinction existed from before. And since the promotional avenue for degree holders was better, the diploma holders working in the department used to acquire degree while continuing in service. The department was sympathetic
- C towards such employees and even in 1965 the Board of Chief Engineers recommended that such Supervisors, draftsman and other officials should be granted four advance increments in their respective scales of pay or the minimum pay of Junior Engineers whichever was higher and then they may be absorbed as Junior Engineer below the person who was drawing pay
- D equal to them at the time of absorption. Later on it was recommended that the pay fixation should be done from the date the results of degree examinations were announced provided there existed a clear vacancy. In 1973 the Board again recommended for retrospective amendment of the rules since 1965. Whether these recommendations were accepted by the Government and if so to what extent is not clear as the Government has
- E not filed any affidavit which could have given a clear picture. However to complete narration even the Government of India was keen to improve the conditions of diploma holders. So much so that it issued letters to State Governments to organise part time degree courses in engineering colleges to enable the diploma holders to improve their qualifications. In pursuance
- F of this letter issued from the Ministry of Education and Youth Services the Government of Karnataka issued letter in 1971 to the Engineering College sanctioning scheme for part time evening classes. The course was started from 1973. After completing two years of the course the Association of Diploma Holders Working and Junior Engineers Grade II made representation that they were undergoing strenuous life by attending both the college and office to serve the department better therefore their pay scale
- G be increased to Junior Engineer Grade I and separate cadre be maintained for promotion to the post of Assistant Engineer by deducting four years of service as Junior Engineer. The representation was founded on the premise that nature of work performed by the two was same. In 1977 the Board of
- H Chief Engineers after considering the representation recommended for the

recruitment of Junior Engineer Division II and provide for filling up vacancies by promotion from the cadre of Junior Engineer Division II who acquire a B.E. degree or equivalent while in service in addition to existing procedure of recruitment. On this recommendation the Secretary in the Government in the same year recommended that 10% vacancies of Junior Engineer in Division I may be reserved for Junior Engineer Division II who acquired the B.E. degree. Having achieved equation of pay, status and even promotion in the cadre of Junior Engineer Division I the Diploma Holders staked their claim for promotion as Assistant Engineer. And the Board of Chief Engineers in January 1978 recommended to the Government that such of those who obtained degree while in service could be promoted to the post of Assistant Engineer and could be placed below the last directly recruited Assistant Engineer on the date of their acquiring degree. It was not accepted by the Government and in February 1978 they were informed that since the cadre of Assistant Engineer (now Assistant Executive Engineer) and Junior Engineer (now Assistant Engineer) were different with different scales of pay a Junior Engineer who incidentally happened to acquire a degree of Engineering could not be absorbed as Assistant Engineer. It was however suggested that proposal may be examined for making a provision in the rules for recruitment for Junior Engineer who possessed a degree in Engineering. Various proposals were considered, thereafter, and the cadre of Assistant Executive Engineer was increased with proportionate increase in promotional quota of Junior Engineer acquiring degree. This led to further demand of sanctioning four advance increments as recommended in 1965 and to absorb the Junior Engineer Division II as Junior Engineer Division I from the last date of examination. In 1984 better promotional avenues were provided and one-sixth of the cadre strength was reserved for junior engineer to be promoted as Assistant Engineer Division II. While all this was going on the Engineer Subordinate Service Rules in the neighbouring State of Andhra Pradesh were amended and the supervisor etc. who acquired the engineering degree became eligible for the post of Assistant Engineer by transfer subject to satisfying certain conditions. It was upheld by this Court in *Devi Prasad & Ors. v. Government of Andhra Pradesh & Ors.*, [1980] Supp. SCC 206 as the Court did not find that the rule giving weightage for having served as Junior Engineer was unreasonable or shocking. The Association of Diploma Holders therefore in response to Government's letter submitted alternative proposal stating therein,

- A "This Association after examining the various aspects in this matter it is resolved unanimously to request the Chief Engineer (C&B) to recommend the Andhra Pattern i.e. counting 1/3 of the previous service and to absorb in the cadre of assistant engineers from the date of passing the examination. This Association though strongly feel that 50% of the previous service is the most reasonable period however considering the other factors has decided to recommend to Government at least 1/3 of the service."
- B

- C The basis for this claim was assumption that the nature of work performed by the Junior and Assistant Engineers was same. Similar claim was made before Pay Commissions as well. It was never accepted. And even though the Official (Pay) Committee of 1985 did not agree with the assertion of the diploma holders that the nature of their work was same as turned out by the Graduate Junior Engineers and observed, 'that contention of the Graduate that their services are utilised for superior type of work for which they have acquired competence by their higher qualification appears to be more acceptable', and agreed with the report of Narayan Pay Commission, yet the Cabinet in its meeting decided that the, 'assumption of law department that the work of Junior Engineer and Assistant Engineer are substantially similar' was correct. This furnished basis for amending rules in 1985 relevant portions of which are extracted below :
- D

- E 1. TITLE AND COMMENCEMENT : (1) These rules may be called the Karnataka Public Works Engineering Department Service (Recruitment) (Amendment) Rules 1985.

- F (2) They shall be deemed to have come into force on the first of January 1976.

- G 2. AMENDMENT OF THE SCHEDULE – In the schedule to the Karnataka Public Works Engineering Department Services (Recruitment) Rules, 1960, in the entries relating to the category of posts of "Assistant Engineer" for columns (2) and (3) the following shall be substituted, namely : –

'By direct recruitment or by transfer of a Junior Engineer.

for Direct recruitment :

- H Should be a holder of a degree in Civil Engineering or Mechanical

Engineering depending upon the requirements, as the case may be or of a Diploma Certificate from a recognised Institute of Engineers that he has passed parts A and B of the Associate Membership Examination of the Institute of Engineers or equivalent qualification. Age : Must not have attained the age of thirty five years.

For transfer :

Must possess B.E., or AMIE (India) qualification in Civil Engineering, or Mechanical Engineering.

Note 1 : The option of the Junior Engineer shall be obtained before such transfer within the time stipulated by the Government.

Note 2 : The transfer shall be effective from the date of graduation subject to the availability of vacancies without ignoring the inter-se seniority among those eligible for such transfer.

Note 3 : A Junior Engineer who is appointed by transfer as Assistant Engineer on or after 1.1.1976 shall be entitled to count one-third of the service rendered by him as Junior Engineer prior to appointment as Assistant Engineer, subject to a maximum of 4 years, as if he had been in the post of Assistant Engineer for the purposes of consideration for promotion to the post of Assistant Executive Engineer Division-I and subject to the following conditions, namely :-

- (i) The seniority of a Junior Engineer who is appointed as Assistant Engineer shall be fixed in the category of Assistant Engineers with reference to the notional date arrived at after giving weightage of service as aforesaid;
- (ii) A Junior Engineer who is appointed as Assistant Engineer shall put in a minimum service of two years, on duty as Assistant Engineer, after such appointment and a total service of five years as Assistant Engineer, inclusive of the service given as weightage to become eligible for promotion as Assistant Executive Engineer Division-I."

When these rules were promulgated its validity was challenged before the

- A KAT even before any appointment was made. The tribunal did not find any violation of Article 14 or 16 as similar rule giving weightage in the State of Andhra Pradesh had been upheld by this Court. But it construed Note (2) to the rules as providing eligibility only. In effect a diploma holder was entitled to appointment by transfer if he had acquired higher qualifications
- B but his placement could not be pushed beyond four years from the date of appointment. Yet when seniority list was published in 1988 the Junior Engineer appointed by transfer in 1988 were given their seniority by giving benefit both under Note (2) and (3). How did it work, can be explained by taking illustration of a Junior Engineer transferred in 1988? He has been
- C placed at serial no. 801 in the list. He acquired the degree qualification in July 1976. Since on notional working out the vacancy was found to exist in December 1976 his seniority was pushed to 1976 as rule having come in force on that day and he being qualified was deemed to have been appointed as an Assistant Engineer and thereafter he was given weightage of four years being one-third of the service he had rendered as Junior
- D Engineer. He thus came to be placed as Assistant Engineer from December 1972. Consequently a second claim petition was filed before the tribunal. It was dismissed as it did not find any illegality in placement of the diploma holder as the weightage of four years was given only from the date the rule is deemed to have come into force namely 1976.

E

Are the rules violative of Articles 14 and 16 of the Constitution? Do the rules framed in 1985 with effect from 1976 suffer from inherent vice of discrimination? What is the import of Notes (2) and (3) of the Rules? Does it mean that seniority should be taken back to the date of acquiring degree and then four years more for having rendered service as diploma engineer

F or four years in all from before the date of appointment by transfer? What is apparent from the historical background is that the diploma holder Junior Engineers formed a different class than degree holder Junior Engineers. They were treated differently by the rule making authority and when the High Court equated them the legislature intervened and they were classified as different class statutorily. It is further clear that the cadre of Assistant Engineer was different from Junior Engineer. The method of recruitment, selection, pay scale and promotional avenues were all different. A Junior Engineer could move up to Assistant Executive Engineer Division II whereas an Assistant Engineer was entitled to be promoted as Assistant Executive Engineer Division I. This distinction founded on valid

G

H classification both on the nature of job and the qualification existing in

service since long could not be obliterated and the two, that is, the Junior Engineer and Assistant Engineer belonging to two different cadres could not be treated as one only because the diploma holder in course of service acquired the degree. Eligibility to be appointed to a particular post does not mean that the candidate who acquires higher qualification stands automatically appointed to that post. It may be an ideal situation in which every diploma holder acquiring degree should be deemed to be appointed as Assistant Engineer. But that is not practical. It is bound to result in inequality. That is why this Court as far back as 1971 warned in *State of Gujarat v. C.G. Desai & others*, [1974] 1 SCC 188 against adopting any doctrinaire approach to such problems and recommended to resolve it in practical way. A Junior Engineer acquiring higher qualification may become entitled to be promoted as Assistant Engineer. And for that purpose the period of service may be reduced as happened in Andhra Pradesh where a diploma holder Junior Engineer could be promoted as Assistant Engineer after ten years of service. But if he acquired degree during service then, he was entitled to count 50% of his service rendered as supervisor prior to acquisition of such qualification subject to maximum of four years as if he had been in the post of Junior Engineers for purposes of consideration for appointment by transfer like degree holder Junior Engineer to the post of Assistant Engineer. That is it was equation between the two classes of Junior Engineers in the same cadre. That is why this Court in *Devi Prasad* (supra) did not find the rule unfair or shocking. But appointment of a diploma holder only because he has acquired degree as Assistant Engineer in a cadre where selection is made not because of degree but on competition and selection would not be practical. In *Devi Prasad* this Court distinguished *Desai's* (supra) case where period prior to appointment counted for determining seniority was not approved by this Court as the diploma holders in Andhra Pradesh were granted benefits under the rule. Therefore, it may now be examined if the impugned rules are fair and just.

Demarcation of cadres or gradation in the same cadre on higher and lower qualification is a common phenomenon for fixing hierarchy in services. It is a valid basis of classification as held by this Court in *State of Mysore & Anr. v. P. Narasing Rao*, [1968] SCR 407; *The Union of India & Ors. v. Dr. (Mrs.) S.B. Kohli & Anr.*, [1973] 3 SCC 592; *State of Jammu & Kashmir v. Triloki Nath Khosa & Others*, [1974] 1 SCC 19 and *P. Murugesan & Others v. State of Tamil Nadu & Others*, JT (1993) 2 SC 115. Engineering services throughout the country, normally, maintain distinction between Junior and Assistant Engineer on diploma and degree. It existed in the

- A State of Karnataka right from the day the rules were framed. It has been done away with on assumption by the Cabinet that some of the duties performed by the two were common. The tribunal did not agree with it, and in our opinion rightly. But that alone is not sufficient to strike down the rule. A policy decision taken by the government is not liable to interference, unless the Court is satisfied that the rule making authority has acted arbitrarily or in violation of the fundamental right guaranteed under Articles 14 and 16. Appointment by transfer in the same service or from the different cadre or service but equal in rank and status is well known. But transfer from lower to higher cadre not by promotion but direct appointment only because the incumbent became eligible without any selection, test or criteria may not be in consonance with service discipline.
- B What the rules contemplate is that once a junior engineer acquires a degree qualification then he automatically should be deemed to have become an Assistant Engineer. An employee occupying a higher post in different cadre may on regularisation be entitled to claim his seniority from the date he was holding the post but giving a higher post in different cadre in which the employee has never worked either as officiating or temporary or even *ad hoc* because the employee became eligible earlier would be violative of the right of equality. The methodology adopted in the rules by transferring such a person and placing him in the category of direct recruits from the date of acquiring the degree the Government in our opinion violated the basic norms of appointment and recruitment to any particular service. The Government may appoint all the Junior Engineers *en bloc* after framing of the rule and place them below all those who were working as Assistant Engineers on that date but they cannot be so appointed as to get precedence over those who are working from before. It would result in artificially making unequals as equals. Any person entering the service can justly feel secure of equality in continuance, promotion etc. Any executive action violating it cannot be upheld. Seniority is an incidence of service which cannot be eroded or curtailed by a rule which operates discriminately. The purpose of opening evening classes and permitting diploma holders to study was to improve efficiency in service and provide better service conditions. When rules were framed and provision for appointment by transfer was made both these objectives were achieved. But operation of the rule with retrospective effect has no nexus with either except that it may result in undue benefit to one class of employees over the other. The impugned rules having been framed in 1985 with effect from 1976 result in entry of diploma holders as Assistant Engineer only because they became qualified as against those who entered in service before or after 1976 by
- C
- D
- E
- F
- G
- H

competitive process. *Devi Prasad* (supra) was upheld by this Court because it was found, 'as reasonable and in the circumstances fair'. The dispute was between non-graduate diploma holders working as supervisor etc. and graduates working as Junior Engineer. Since the Court found that there was functional parity between supervisors and Junior Engineers the rule framed by the government giving weightage of four years to supervisors to make them eligible for appointment as Assistant Engineer was not invalid. But there can be no functional parity between employees of two different cadres. It would be too dangerous to accept such assumption. In *R.N. Nanjundappa v. T. Thimmiah & Anr.*, [1972] 2 SCC 409 this Court struck down a rule for violation of Article 14 as it had attempted to bypass the regular method of recruitment by competitive examination or by selection or by promotion and provided for regularisation of a government servant working on deputation as deemed to have been appointed. In *State of Andhra Pradesh & Another v. K.S. Muralidhar & Ors.*, [1992] 2 SCC 241 the temporary supervisor who had succeeded before this Court in *Devi Prasad's* case claimed seniority from the date of academic qualification. It was repelled and it was held that it could be from the date of appointment only.

Article 309 of the Constitution empowers appropriate legislature to frame rules to regulate recruitment to public services and the post. 'Recruitment' according to dictionary means 'enlist'. It is comprehensive term and includes any method provided for inducting a person in public service. Appointment, selection, promotion deputation are all well known methods of recruitment. Even appointment by transfer is not unknown. But any rule framed is subject to other provisions of the Constitution. Therefore it has to be tested on rule of equality. Transfer is normally resorted in same cadre. But when it is made in a different and higher cadre it must not be violative of constitutional guarantee and the rule of fairness. Providing for appointment of a diploma holder from the cadre of Junior Engineer to Assistant Engineer from back date without any test or selection on eligibility only does not sound reasonable and fair. Why was it done is apparent from the following notings by the Secretary,

"The most important issue was regarding the date of transfer of the Junior Engineer acquiring graduate qualifications, the weightage of past service had to be taken into consideration. In the proposals submitted to the cabinet this crucial aspect was not outlined specifically and the impression that was created was that

- A the transfer would take place with prospective effect. In such an event the weightage of previous service would have to be confined only upto date of graduation and this would not have been of any advantage to most of the Junior Engineers who have acquired the degree qualification several years ago. Even if the weightage of past service after graduation and upto the date of appointment as Junior Engineers was given the transferees would not have gained any significant advantage in the matter of notional seniority. The Karnataka Graduate Engineers have strongly represented on this issue and have urged that their transfer to the Assistant Engineer's cadre should be with retrospective effect i.e., from the date they have acquired graduate qualification. In support of their arguments they have pointed out that even in Andhra Pradesh a similar step was taken in that the transfer was allowed with retrospective effect. The points raised by the Graduate Engineers Association have been examined and it is felt that their demand to have to the transfer effected with retrospective effect has some justification in view of the long years of service rendered by the Junior Engineers before and after acquiring graduate qualification. If this benefit is not given, the amendment to the C&R Rules allowing for their transfer would be of little use for many of the senior members of the Graduate Engineers Association who have been fighting for this change for many years. Therefore taking an overall sympathetic view it is proposed that we may allow for the transfer of Junior Engineers who acquired graduate qualifications with retrospective effect from the date of acquisition of such qualification subject to the availability of vacancies at that time in the Assistant Engineer's cadre. It is seen that the first batch of the in-service Junior Engineers took their graduate degree in 1976 and hence the Notification amending the rules would have to be effective from 1.1.1976."
- G Rules were thus bent and made retrospective as a sympathetic consideration as many Junior Engineers who were working since long would not have derived any benefit otherwise. May be true but if the extension of such benefit impinges upon the constitutional guarantee of equality then it cannot be upheld. And that does stand disturbed. No further need be said. Nor it is necessary to pronounce on validity of a rule which in the class of
- H appointment by direct recruitment includes appointment by transfer result-

ing in entry of one class by competition or selection and other by acquisition of minimum qualification as the appellants did not challenge the rule of appointment by transfer but confined their claim to its operation retrospectively.

Rules operate prospectively. Retrospectivity is exception. Even where the Statute permits framing of rule with retrospective effect the exercise of power must not operate discriminately or in violation of any constitutional right so as to affect vested right. The rule making authority should not be permitted normally to act in the past. The impugned rule made in 1985 permitting appointment by transfer and making it operative from 1976 subject to availability of vacancy in effect results in appointing a Junior Engineer in 1986 with effect from 1976. Retrospectivity of the rules is a camouflage for appointment of Junior Engineers from a back date. In our opinion the rule operates viciously against all those Assistant Engineers who were appointed between 1976 to 1985. In *Ex-Capt. K.C. Arora & Anr. v. State of Haryana & Ors.*, [1984] 3 SCC 281 and *P.D. Aggarwal & Ors. v. State of U.P. & Ors.*, [1987] 3 SCC 622 it was held by this Court that the President or Governor cannot make such retrospective rules under Article 309 of the Constitution as contravene Articles 14, 16 or 311 and affect vested right of an employee. Even in *B.S. Yadav & Others etc. v. State of Haryana & Others etc.*, [1981] 1 SCR 1024 where the power to frame rules retrospectively was upheld it was observed,

"Since the Governor exercises a Legislative power under the proviso to Article 309 of the Constitution, it is open to him to give retrospective operation to the rules made under that provision. But the date from which the rules are made to operate must be shown to bear, either from the face of the rules or by extrinsic evidence, reasonable nexus with the provisions contained in the rules, especially when the retrospective effect extends over a long period as in this case."

As seen earlier there is no nexus between framing a rule permitting appointment by transfer and making it retrospective with effect from 1976. Appointing a person to a higher post in a different cadre in which he has never worked is violative of constitutional guarantee of those who are working in the cadre. It is against basic principle of recruitment to any service. Even in *Mohammad Shujat Ali* (supra) where the Constitution

A Bench while reiterating that distinction in qualification was valid criteria for determining eligibility for promotion except where both held the same post and perform same duty did not strike down the rules as the differentiation in same class of persons was not brought about for the first time but existed from before and the two were treated as distinct and separate class. The retrospective operation of the impugned rule attempts to disturb a system which has been existing for more than twenty years. And that too without any rationale. Absence of nexus apart no rule can be made retrospectively to operate unjustly and unfairly against other. In our opinion the retrospective operation of the rule with effect from 1st January 1976 is discriminatory and violative of Articles 14 and 16.

C So far weightage is concerned such provision has been upheld by this Court in *Devi Prasad*. Even the appellant candidly stated that they were not against weightage.

D For the reasons stated above these appeals and writ petition succeed and are allowed. The following directions are issued :

(i) The order of the tribunal dated 21st October 1988 is set aside. The second paragraph of the 1985 Amendment Rules making it operative from 1st January 1976 is struck down as *ultra vires*.

E (ii) Note 2 shall be read as providing eligibility only.

(iii) The respondents are directed to prepare fresh gradation list in light of observations made above.

F Parties shall bear their own costs.

I.S.G.

Appeals and Petitions allowed.