

Rajasthan State Electricity Board Accountants Association, Jaipur

Vs

Rajasthan State Electricity Board and Another

Civil Appeal No. 7257 of 1996

(G. B. Pattanaik, S. C. Agarwal JJ)

04.02.1997

JUDGMENT

S. C. AGRAWAL J.

The question that falls for consideration in this appeal is whether Entry 19 of the Schedule to the Rajasthan State Electricity Board Officers (Recruitment, Promotion & Seniority) Regulations, 1974 (hereinafter referred to as "the 1974 Regulations") is violative of the provisions of Articles 14 and 16 of the Constitution. The said entry relates to promotion to the post of Asstt. Accounts Officer/Asstt. Audit Officer/Asstt. Revenue Officer in the Rajasthan State Electricity Board (hereinafter referred to as "the Board"). It prescribes that 75% of the vacancies shall be filled by promotion on merit basis from Accountants with at least 7 years' service as Accountant and 25% of the vacancies shall be filled by promotion on merit basis out of the Accountants possessing an Intermediate of Cost & Works from the Institute of Cost & Works Accountants, Calcutta with five years' experience as Accountant in the Board or a graduate holding a diploma in Cost & Works from a University established by law in India with five years as Accountant in the Board.

2. The 1974 Regulations came into force on 30-10-1974. Prior to the making of the 1974 Regulations, appointment on the post of Asstt. Accounts Officer was regulated by the Rajasthan Subordinate Accounts Service Rules, 1963 which had been made applicable to the Board. Under the said Rules Accountants with five years' experience as Accountants were eligible for promotion to the post of Asstt. Accounts Officer. The next post higher to the post of Assistant Accounts Officer is that of Accounts Officer and under Entry 16 of the Schedule to the 1974 Regulations, appointment to the said post is by direct recruitment as well as by promotion from amongst Assistant Accounts Officers.

3. Appointment to the post of Accountant is governed by the RSEB Ministerial Staff Regulations, 1962 (hereinafter referred to as "the 1962 Regulations") and is made in a prescribed ratio, through (i) departmental competitive examination, (ii) promotion of junior Accountants and Upper Division Clerks and above, and (iii) direct recruitment [Regulation 6(1)(xii)]. Rajasthan Rajya Vidyut Karmachari Federation, a registered body of the staff employed with the Board filed a writ petition (DB Writ Petition No. 5720 of 1990) wherein Entry 19 of the Schedule to the 1974 Regulations was assailed on the ground that it is violative of Articles 14 and 16 of the Constitution. The said writ petition was dismissed by a Division Bench of the High Court by judgment dated 3-1-1991. Thereafter another writ petition (DB Civil Writ Petition No. 338 of 1991) was filed by the RSEB Accountants Association, appellant herein. The said writ petition came up for consideration before another Division Bench of the High Court and the learned Judges were not in agreement with the view taken earlier in the case of Rajasthan Rajya Vidyut Karmachari Federation (supra) as regards

the validity of Entry 19 of the Schedule to the 1974 Regulations and by Order dated 21-2-1991, the following question was referred for consideration by a Full Bench :

"Whether in the Schedule to the Rajasthan State Electricity Board Officers (Recruitment, Promotion and Seniority) Regulations, 1974 under Entry 19 providing quota of 25% for promotion of Accountants holding the qualification of Intermediate with ICWA or Graduate with DCWA is valid and is not violative of Articles 14 and 16 of the Constitution ?"

4. By judgment dated 30-6-1995, the Full Bench answered the said question in the affirmative and held that Entry 19 of the 1974 Regulations is not violative of Articles 14 and 16 of the Constitution. The matter was thereafter again placed before a Division Bench of the High Court and in view of the judgment of the Full Bench, the writ petition filed by the appellant was dismissed by Order dated 3-8-1995. Hence this appeal.

5. Dr. A.M. Singhvi, the learned Senior Counsel appearing for the Board, has raised an objection that the writ petition filed by the appellant was not maintainable and it was barred by the principle of res judicata. The submission is that members of the appellant Association were also members of the Rajasthan Rajya Vidyut Karmachari Federation which had filed DB Writ Petition No. 5720 of 1990 and that the Order dated 3-1-1991 on the said writ petition operates as res judicata and a fresh writ petition raising the same question regarding the validity of Entry 19 of the Schedule to the 1974 Regulations could not be filed. On behalf of the appellant, it is, however, stated that the appellant is a separate Association and that none of the members of the appellant was a member of the Rajasthan Rajya Vidyut Karmachari Federation which had filed the earlier writ petition and the members of the appellant are not bound by the earlier judgment and are not precluded from agitating the question as to the validity of Entry 19 of the Schedule to the 1974 Regulations. Since there is a dispute on facts as to whether any of the members of the appellant Association was a member of the Rajasthan Rajya Vidyut Karmachari Federation, we do not propose to go into the objection regarding the maintainability of the writ petition filed by the appellant and will deal with the matter on merits.

6. Entry 19 the Schedule to the 1974, Regulation provides as follows :

#-----	S. No.	Category	Method of Qualification	(1)	(2)	(3)	(4)-----
recruitment with % age-----	19.	Asstt. Accounts	100% by 1. 75% by promotion on Officer/Asstt. selection merit basis from the Audit Accountants with at least Officer/Asstt. 7 years' service as Revenue Officer Accountant in Rajasthan State Electricity Board.				
	2.	25% by promotion on merit basis out of Accountants possessing qualification/experience as given below :	(a) An Intermediate of Cost & Works from the Institute of Cost & Works, Calcutta with 5 years' experience as Accountant in RSEB. OR A Graduate holding a Diploma in Cost and Works from a University established by law in India with 5 years' experience as Accountant in RSEB. Note : In the event of non-availability, the vacancies may be filled in by the Accountants under Nos. (1) and (2) above and vice versa."				##

7. Shri Rajinder Sacher, the learned Senior Counsel appearing for the appellant, has urged that in column (4) of Entry 19 of the Schedule to the 1974 Regulations a distinction has been made between Accountants on the basis of the qualifications possessed by them inasmuch as an Accountant who is an Intermediate of Cost & Worked from the Institute of Cost & Works, Calcutta

or is a Graduate holding a Diploma in Cost & Works from a University established by law in India is eligible for promotion as Asstt. Accounts Officer/Asstt. Audit Officer/Asstt. Revenue Officer in the Board if he has five years' experience as Accountant in the Board while Accountants who do not possess these qualifications become eligible for promotion only after seven years' service as Accountant in the Board. It has also been submitted that reservation of 25% of vacancies for Accountants possessing the qualifications referred to above results in hostile discrimination against Accountants who do not possess those qualifications. In this context, the learned counsel has pointed out that all the Accountants in the Board, irrespective of their qualifications, are discharging the same functions and are similarly situated and that Entry 19 of the Schedule to the 1974 Regulations insofar as it makes a distinction in the matter of eligibility on the basis of qualification and prescribing a quota of 25% posts for Accountants possessing the prescribed qualifications is violative of the right to equality guaranteed under Articles 14 and 16 of the Constitution. The learned counsel has placed reliance on the decisions of this Court in *Mohd. Shujat Ali v. Union of India* [(1975) 3 SCC 76 : 1974 SCC (L&S) 454 : (1975) 1 SCR 449]; *Punjab SEB v. Ravinder Kumar Sharma* [(1986) 4 SCC 617 : 1987 SCC (L&S) 13] and *N. Abdul Basheer v. K. K. Karunakaran* [1989 Supp (2) SCC 344 : 1990 SCC (L&S) 153 : (1991) 17 ATC 160 : (1989) 3 SCR 201].

8. On behalf of the Board, it has been submitted by Dr. Singhvi that for the purpose of promotion it is permissible to make a classification on the basis of qualifications and that the provisions contained in Entry 19 of the Schedule to the 1974 Regulations prescribing lesser experience of five years' service as Accountant in respect of Accountants possessing higher qualifications and higher experience of seven years' service for the purpose of eligibility for promotion in respect of Accountants who do not possess such qualifications and prescribing a quota of 25% for Accountants possessing those qualifications do not offend the "right to equality" guaranteed under Articles 14 and 16 of the Constitution. Reliance has been placed on the decisions of this Court in *State of J & K v. Triloki Nath Khosa* [(1974) 1 SCC 19 : 1974 SCC (L&S) 49 : (1974) 1 SCR 771]; *Roop Chand Adlakha v. Delhi Development Authority* [1989 Supp (1) SCC 116 : 1989 SCC (L&S) 235 : (1989) 9 ATC 639 : 1988 Supp (3) SCR 253]; *Shamkant Narayan Deshpande v. Maharashtra Industrial Development Corpn.* [1993 Supp (2) SCC 194 : 1993 SCC (L&S) 419 : (1993) 24 ATC 416]; *P. Murugesan v. State of T.N.* [(1993) 2 SCC 340 : 1993 SCC (L&S) 445 : (1993) 24 ATC 149]; *Nageshwar Prasad v. Union of India* [1995 Supp (4) SCC 718 : 1996 SCC (L&S) 230 : (1996) 32 ATC 177] and *T. R. Kothandaraman v. T. N. Water Supply & Drainage Board* [(1994) 6 SCC 282 : 1994 SCC (L&S) 1366 : (1994) 28 ATC 276].

9. As per the decisions of this Court the position is well settled that educational qualifications can be made the basis for classification of employees in State service in the matter of pay scales, promotion etc. Provisions for giving higher pay scale to employees possessing higher qualifications have been upheld as valid by this Court. (See *State of Mysore v. P. Narasing Rao* [(1968) 1 SCR 407 : AIR 1968 SC 349 : (1968) 2 LLJ 120] and *V. Markendeya v. State of A.P.* [(1989) 3 SCC 191 : 1989 SCC (L&S) 454 : 1989 11 ATC 3]. Similarly in the matter of promotion classification on the basis of educational qualifications so as to deny eligibility for promotion to a higher post to an employee possessing lesser qualification or requiring longer experience for those possessing lesser qualifications has been upheld as valid by this Court.

10. In *Triloki Nath Khosa* [(1974) 1 SCC 19 : 1974 SCC (L&S) 49 : (1974) 1 SCR 771] this Court has upheld the provisions of the Jammu & Kashmir Engineering (Gazetted) Service Recruitment Rules, 1970 confined to Assistant Engineers who possessed a degree in Engineering and Assistant Engineers, who were diploma-holders, were ineligible for such promotion. The said provision was

upheld on the ground that it was made with a view to achieving administrative efficiency in the Engineering Service. On behalf of the diploma-holder Assistant Engineers it was urged that degree-holders (direct recruits) and diploma-holders (promotees), having been appointed as Assistant Engineers on equal terms they constitute an integrated class and for purposes of promotion they cannot be classified on the basis of educational qualifications. Rejecting the said contention it was held 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.

11. In *Roop Chand Adlakha* [1989 Supp (1) SCC 116 : 1989 SCC (L&S) 235 : (1989) 9 ATC 639 : 1988 Supp (3) SCR 253] under the relevant rules Junior Engineers were eligible for promotion to the post of Assistant Engineers. Amongst Junior Engineers there were graduates in Engineering as well as diploma-holders. 50% of the posts of Assistant Engineers were required to be filled by promotion and 50% by direct recruitment. Out of the 50% posts required to be filled by promotion, half (25%) were to be filled from amongst degree-holder Junior Engineers having three years' service experience and the other half from amongst diploma-holder Junior Engineers having eight years' service experience. Similarly for promotion to the post of Executive Engineer a degree-holder Assistant Engineer was eligible for promotion after eight years' service experience as Assistant Engineer while a diploma-holder Assistant Engineer was so eligible after 10 years' service as Assistant Engineer. Upholding the validity of the said provisions this Court has held : (SCR p. 263, para 7)

"The inherent distinction between a person with a Degree and one who is merely a diploma-holder is much too obvious. But the question that falls for consideration, in the context such as the present one, is whether the differences have a reasonable relation to the nature of the office to which the promotion is contemplated. The idea of equality in the matter of promotion can be predicated only when the candidates for promotion are drawn from the same source. If the differences in the qualification has a reasonable relation to the nature of duties and responsibilities, that go with and are attendant upon the promotional post, the more advantageous treatment of those who possess higher technical qualifications can be legitimised on the doctrine of classification. There may, conceivably, be cases where the differences in the educational qualifications may not be sufficient to give any preferential treatment to one class of candidates as against another. Whether the classification is reasonable or not must, therefore, necessarily depend upon facts of each case and the circumstances obtaining at the relevant time. When the State makes a classification between two sources, unless the vice of the classification is writ large on the face of it, the person assailing the classification must show that it is unreasonable and violative of Article 14."

It was further observed : (SCR pp. 268-69, para 9)

"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 only to 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."

12. In *Shamkant Narayan Deshpande* [1993 Supp (2) SCC 194 : 1993 SCC (L&S) 419 : (1993) 24 ATC 416] promotion of Executive Engineers to the post of Superintending Engineer was on the basis of a quota whereunder 75% posts were reserved for degree-holders and 25% posts for diploma-holders. It was contended that no classification could be made among Executive Engineers on the basis of their educational qualifications for the purpose of promotion to the post of Superintending Engineer since they belong to the same cadre of Executive Engineers and do the same work and a common seniority list was being maintained. The said contention was, however, rejected on the basis of the decision in *Triloki Nath Khosa* [(1974) 1 SCC 19 : 1974 SCC (L&S) 49 : (1974) 1 SCR 771].

13. *P. Murugesan v. State of T.N.* [(1993) 2 SCC 340 : 1993 SCC (L&S) 445 : (1993) 24 ATC 149] related to promotion to the post of Assistant Executive Engineer. Diploma-Holders (Junior Engineers) as well as degree-Holders (Assistant Engineers) were eligible for such promotion. For diploma-holders to become eligible for promotion 10 years' service was required and for degree-holders the period of service required was five years. The promotion was to be made in the ratio 3 : 1 for degree-holders and diploma-holders. The said provisions were upheld. It was contended that since a longer qualifying period of service was prescribed for diploma-holders they had been equated with degree-holders and thereafter no distinction could be made between them by prescribing the quota amongst the two categories for the purpose of promotion. Rejecting the said contention it was observed that if the distinction in the matter of longer qualifying period of service is not discrimination it was difficult to see how and why another distinction in the matter of quota rule was discriminatory. It was stated : (SCC P. 354, para 23)

"Suppose, if these two requirements (i.e. longer qualifying service and quota rule) had been introduced at the same time, there could have been no room for the present argument. The rule would have been good. How does it become bad, if they are introduced at different times ? Both relate to their eligibility and chance of promotion."

14. In *Nageshwar Prasad v. Union of India* [1995 Supp (4) SCC 718 : 1996 SCC (L&S) 230 : (1996) 32 ATC 177] there was a quota of 50 : 50 for promotion to the post of Assistant Engineer and different periods of service experience were prescribed for diploma-holders and degree-holders. The Central Administrative Tribunal, while upholding the, difference in the experience criteria, had struck down the quota rule whereunder promotion of diploma-holders was limited to 50%. The said decision of the Tribunal was reversed by this Court on the view that the decision was clearly

inconsistent with the ratio of the decisions of this Court in *Roop Chand Adlakha* [1989 Supp (1) SCC 116 : 1989 SCC (L&S) 235 : (1989) 9 ATC 639 : 1988 Supp (3) SCR 253] and *P. Murugesan v. State of T.N.* [(1993) 2 SCC 340 : 1993 SCC (L&S) 455 : (1993) 24 ATC 149]. It was observed : (SCC p. 721, para 2)

"The prescription of the quota rule is obviously to ensure that in the immediate promotion cadre there is a fair mix of both degree-holders and diploma-holders because the vertical movement from that stage and upwards in the hierarchy is restricted to degree-holders and if they are not available in sufficient number in the feeding channel the said channel would be virtually dry and sufficient number of degree-holders would not be available for promotion to the next higher cadre. The efficacy of diploma-holders has been recognised up to a particular stage in the hierarchy and thereafter it is realised that for manning higher posts a degree in Engineering is a must. We, therefore, do not see how prescription of the 50 per cent quota is any manner arbitrary."

15. In *T. R. Kothandaraman v. T. N. Water Supply & Drainage Board* [(1994) 6 SCC 282 : 1994 SCC (L&S) 1366 : (1994) 28 ATC 276] this Court has upheld the proviso to Regulation 19(20)(b) of the Tamil Nadu Water Supply and Drainage Board Service Regulations, 1972 which permitted diploma-holder Assistant Engineers to become eligible for the promotion to the post of Executive Engineer only if they were to have exceptional merit in work and otherwise the diploma-holder was not eligible for such promotion. The said provision was upheld as valid in view of the law laid down in *Triloki Nath Khosa* [(1974) 1 SCC 19 : 1974 SCC (L&S) 49 : (1974) 1 SCR 771]. In the said case the Court has also upheld the provisions of Rule 2(b) of the Special Rules for Tamil Nadu Agricultural Engineering Service which prescribed the ratio of 3 : 2 for degree-holder Assistant Engineers and diploma-holder Assistant Engineers for promotion to the post of Executive Engineer. It was held that higher educational qualification has relevance insofar as the holding of the higher promotional post is concerned in view of the nature of the functions and duties attached to that post and that the classification had nexus with the object to be achieved. It was observed that the preference given to the degree-holders would give fillip to the desire to receive higher education.

16. Reference may now be made to the decisions on which reliance has been placed by Shri Sachar. In *Shujat Ali* [(1975) 3 SCC 76 : 1974 SCC (L&S) 454 : (1975) 1 SCR 449] in the matter of promotion of Supervisors as Assistant Engineers preferential treatment was given to graduate Supervisors over non-graduate Supervisors. Initially two out of every three vacancies, (and after the amendment, three out of every four vacancies) in the post of Assistant Engineer were reserved for promotion of graduate Supervisors. The said preferential treatment for graduate Supervisors was assailed on the ground that it was unreasonable and violative of Articles 14 and 16 of the Constitution. The said provision was upheld by this Court for the reason that the differentiation between the graduate and non-graduate Supervisors had always been there in the Engineering Service in the erstwhile Hyderabad State as well as in Andhra Pradesh State and that graduate Supervisors had always been treated as a distinct and separate class from non-graduate Supervisors and that they had never been integrated into one class. The Court has, however, dealt with the question whether such a preferential treatment on the basis of educational qualification would be in consonance with the "right to equality" guaranteed under Articles 14 and 16 of the constitution. It has been observed that though educational qualifications have been recognised as forming a valid basis for classification, it cannot be laid down as an invariable rule that whenever any classification is made on the basis of variant educational qualifications, such classification must be held to be valid irrespective of the nature and purpose of the classification or the quality and extent of the

difference in the educational qualifications and that the test of reasonable classification has to be applied in such case on its peculiar facts and circumstances. Referring to the decision in Triloki Nath Khosa [(1974) 1 SCC 19 : 1974 SCC (L&S) 49 : (1974) 1 SCR 771], It was said : (SCR p. 480 : SCC p. 106, para 28)

"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. ... 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."

17. Shri Sachar has placed strong reliance on the above-quoted observations in Mohd. Shujat Ali [(1975) 3 SCC 76 : 1974 SCC (L&S) 454 : (1975) 1 SCR 449]. These observations have, however, to be read in the context of the facts of that case where graduate as well as non-graduate Supervisors were both equally eligible for promotion to the post of Assistant Engineer. This is evident from the question which was posed by the Court in the following words : (SCR P. 480 : SCC P. 106, para 28)

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

While saying that "there can be no satisfactory answer to this question" the Court has proceeded to hold : (SCR p. 480 : SCC p. 106, para 28)

"It is of the essence of equal opportunity for such persons with humble and depressing backgrounds that they should have opportunity, through experience or self-study, to level up with their more fortunate collages who, by reason of favorable circumstances, could obtain the benefits of higher education, and if they prove themselves fit and more suitable than others, why should they be denied an opportunity to be promoted in a vacancy on the ground that vacancy belongs to Supervisors possessing higher educational qualifications."

18. The decision in Mohd. Shujat Ali [(1975) 3 SCC 76 : SCC (L&S) 454 : (1975) 1 SCR 449] thus gives recognition to the principle that difference in educational qualifications can be made up by

longer experience. This principle was given effect to in the various provisions which came up for consideration before this Court in the cases referred to earlier wherein longer experience was prescribed for employees possessing lesser qualifications as compared to employees possessing higher qualifications for the purpose of promotion to higher post and such provision were upheld as valid.

19. In *Roop Chand Adlakha* [1989 Supp (1) SCC 116 : 1989 SCC (L&S) 235 : (1989) 9 ATC 639 : 1988 Supp (3) SCR 253] this Court has taken note of the observations in *Mohd. Shujat Ali* [(1975) 3 SCC 76 : 1974 SCC (L&S) 454 : (1975) 1 SCR 449] on which reliance has been placed by *Shri Sachar* and has observed : (SCR pp. 265-266 : SCC pp. 125 and 126, paras 24, 25)

"*Shujat Ali* case [(1975) 3 SCC 76 : 1974 SCC (L&S) 454 : (1975) 1 SCR 449] itself recognised the permissibility and validity of such classification if the nature of the functions and duties attached to the promotional posts are such as to justify the classification in the interest of efficiency in public service; but, where both graduates and non-graduates were regarded as equally fit and eligible for promotion, the denial of promotion to a person otherwise eligible and due for promotion on the basis of a quota was not justified.

... In *Shujat Ali* case (1975) 3 SCC 76 : 1974 SCC (L&S) 454 : (1975) 1 SCR 449] the infirmity of the differential treatment stemmed from the fundamental basis that, at that point, both graduates and diploma-holders were equally eligible but the rule operated to deny promotion to a diploma-holder on the basis of a quota. The observations in that case pertained to a stage which arose after the equality of eligibility for promotion between the two classes of persons had been recognised."

20. Again in *P. Murugesan v. State of T.N.* [(1993) 2 SCC 340 : 1993 SCC (L&S) 445 : (1993) 24 ATC 149] this Court has taken note of the observations in *Mohd. Shujat Ali* [(1975) 3 SCC 76 : 1974 SCC (L&S) 454 : (1975) 1 SCR 449] and has observed that the said observations cannot be read in isolation nor can they be read as running counter to the ratio of *Triloki Nath Khosa* [(1974) 1 SCC 19 : 1974 SCC (L&S) 49 : (1974) 1 SCR 771].

21. In *Punjab SEB v. Ravinder Kumar Sharma* [(1986) 4 SCC 617 : 1987 SCC (L&S) 13] (decided by a two-Judge Bench) diploma-holder linemen as well as non-diploma-holder linemen were both eligible for promotion to the post of Line Superintendent and a quota of 33% was fixed for diploma-holder linemen and 33% was fixed for non-diploma-holder linemen. In respect of diploma-holder linemen it was prescribed that they should have worked as linemen for three years continuously and immediately before promotion while non-diploma-holder linemen who had passed 1 1/2 years' course in the Electrical Trades of Electrician/Lineman/Wireman from recognised Industrial Training Institutes were required to have worked for four years as linemen continuously and immediately before promotion. The validity of the fixation of quota in the matter of promotion of diploma-holder and non-diploma-holder linemen to the post of Line Superintendent was held to be violative of the equality clause contained in Articles 14 and 16 of the Constitution on the ground that Linemen, either diploma-holders or non-diploma-holders, were performing the same kind of work and duties and they belong to the same cadre having a common/joint seniority list for promotion to the post of line Superintendent and reliance was placed on the observations in *Mohd. Shujat Ali* [(1975) 3 SCC 76 : 1974 SCC (L&S) 454 : (1975) 1 SCR 449] on which reliance has been placed by *Shri Sachar*. No reference was made to *Triloki Nath Khosa* [(1974) 1 SCC 19 : 1974 SCC (L&S) 49 : (1974) 1 SCR 771]. In *P. Murugesan v. State of T.N.* [(1993) 2 SCC 340 : 1993 SCC (L&S) 445 : (1993) 24

ATC 149], (decided by a three-Judge Bench) while referring to the said decision in Ravinder Kumar Sharma [(1986) 4 SCC 617 : 1987 SCC (L&S) 13], it has been observed : (SCC p. 353, para 19)

".... it is evident that non-consideration of T. N. Khosa [(1974) 1 SCC 19 : 1974 SCC (L&S) 49 : (1974) 1 SCR 771] and other decisions relevant under the subject has led to the laying down of a proposition which seems to run counter to T. N. Khosa [(1974) 1 SCC 19 : 1974 SCC (L&S) 49 : (1974) 1 SCR 771]. With great respect to the learned Judges who decided that case, we are unable to accept the board proposition flowing from the case."

22. In *N. Abdul Basheer v. K. K. Karunakaran* [1989 Supp (2) SCC 344 : 1990 SCC (L&S) 153 : (1991) 17 ATC 160 : (1989) 3 SCR 201] graduate as well as non-graduate Excise Preventive Officers were eligible for promotion to the post of Second Grade Inspectors. Earlier such promotions were to be made in the ratio of 3 : 1 between graduates and non-graduates which ratio was subsequently reserved to 1 : 3. The fixation of the said ratio in the matter of promotion of graduate and non-graduate Excise Preventive Officers was held by this Court to be violative of the provisions of Articles 14 and 16 of the Constitution. Taking note of the history of the evolution of the Kerala Excise and Prohibition Subordinate Service it was observed that a consistent or coherent policy in favour of graduates was absent and that originally more emphasis was laid on the induction of graduates and the ratio of graduate and non-graduate officers was maintained at 3 : 1 but subsequently the ratio was changed inversely to 1 : 3 and more non-graduates were inducted in the Service. The Court rejected the contention that the ratio 3 : 1 between graduates and non-graduates was justified on the ground that the recognition of graduation is recognition of merit and that more merit in the post of Excise Inspectors would be conducive to better administrative efficiency on the view that the conditions of employment and the incidents of service recognise no distinction between graduate and non-graduate officers and that for all material purposes they are effectively treated as equivalent. The said decision has, therefore, to be considered in the light of its facts. It falls within the principles laid down in *Mohd. Shujat Ali* [(1975) 3 SCC 76 : 1974 SCC (L&S) 454 : (1975) 1 SCR 449] since graduates and non-graduates were both equally eligible for promotion to the higher post.

23. The decision in *Mohd. Shujat Ali* [(1975) 3 SCC 76 : 1974 SCC (L&S) 454 : (1975) 1 SCR 449] and the subsequent decisions in *Ravinder Kumar Sharma* [(1986) 4 SCC 617 : 1987 SCC (L&S) 13] and *Abdul Basheer* [1989 Supp (2) SCC 344 : 1990 SCC (L&S) 153 : (1991) 17 ATC 160 : (1989) 3 SCR 201] do not, therefore, detract from the law laid down in *Triloki Nath Khosa* [(1974) 1 SCC 19 : 1974 SCC (L&S) 49 : (1974) 1 SCR 771], *Roop Chand Adlakha* [1989 Supp (1) SCC 116 : 1989 SCC (L&S) 235 : (1989) 9 ATC 639 : 1988 Supp (3) SCR 253], *P. Murugesan v. State of T.N.* [(1993) 2 SCC 340 : 1993 SCC (L&S) 445 : (1993) 24 ATC 149], *Shamkant Narayan Deshpande* [1993 Supp (2) SCC 194 : 1993 SCC (L&S) 419 : (1993) 24 ATC 416], *Nageshwar Prasad* [1995 Supp (4) SCC 718 : 1996 SCC (L&S) 230 : (1996) 32 ATC 177] and *T. R. Kothandaraman* [(1994) 6 SCC 282 : 1994 SCC (L&S) 1366 : (1994) 28 ATC 276], wherein provisions prescribing higher experience on the basis of difference in educational qualifications for eligibility for promotion and prescribing a quota based on qualifications in the matter of promotion to higher post have been upheld.

24. Entry 19 of the Schedule to the 1974 Regulations insofar as it prescribes longer service of seven years for Accountants who do not possess the additional qualifications of an Intermediate of Cost & Works from the Institute of Cost & Works Accountants of India or a graduate holding a diploma in Cost & Works from a University established by law in India is in consonance with the decision in

Roop Chand Adlakha [1989 Supp (1) SCC 116 : 1989 SCC (L&S) 235 : (1989) 9 ATC 639 : 1988 Supp (3) SCR 253], and the said entry insofar as it prescribes a quota of 25% of vacancies in the higher posts of Asstt. Accounts Officer/Asstt. Audit Officer/Asstt. Revenue Officer for the purpose of promotion is in consonance with the decision in Shamkant Narayan Deshpande [1993 Supp (2) SCC 194 : 1993 SCC (L&S) 419 : (1993) 24 ATC 416], P. Murugesan [(1993) 2 SCC 340 : 1993 SCC (L&S) 445 : (1993) 24 ATC 149], Nageshwar Prasad [1995 Supp (4) SCC 718 : 1996 SCC (L&S) 230 : (1996) 32 ATC 177] and T. R. Kothandaraman [(1994) 6 SCC 282 : 1994 SCC (L&S) 1366 : (1994) 28 ATC 276].

25. It has, however, been submitted that the said classification of the Accountants on the basis of qualifications has no nexus with the object sought to be achieved by the Regulations which is to secure efficiency in the Service. It has been pointed out that as per the qualifications prescribed for appointment on the higher post of Accounts Officer under entry 16 of the Schedule to the 1974 Regulations it is not necessary that a person should hold a diploma in Cost & Works or should be a Cost & Works Accountant of the Institute of Cost & Works Accountants of India and that a person having Master's degree in Arts or Science or Commerce from a University established by law in India with at least 55% marks in the degree as well as Master's degree examination is eligible for appointment as Accounts Officer by direct recruitment. On behalf of the Board it has, however, been pointed out that in the Board there are Sub-Divisional Accountant/Internal Auditor/Accountant and that though all the three categories of Accountants are in a common cadre but the Board is having watertight compartment meaning thereby an Accountant working in Revenue Section continues to work in Revenue Section and an Accountant posted in Audit Section will continue there and that when they are promoted to the post of Assistant Accounts Officer, they are assigned similar type of duties which they can discharge but a person who is holding ICWA or DCWA qualifications can be assigned any of the duties, whether it relates to Audit Section or budget preparation or account compilation and that the services of an Assistant Accounts Officer possessing higher qualifications can be better utilised in various projects taken up by the Board from time to time. It has also been pointed out that till 31-7-1972, 25% Accountants in the Board were appointed from amongst persons having ICWA or DCWA qualification and that since 30-10-1974 in the matter of direct recruitment on the post of Accountant weightage is given to persons possessing the qualification of DCWA. It has also been submitted that on 22-4-1966 the Board decided that to give a fillip to all working personal in the Board to study and equip themselves and persons qualifying the Intermediate examination of the Institute of Cost & Works Accountants of India may be offered the post of Assistant Accounts Officer and those qualifying the final examination that of Accounts Officer in the Board's services and that the personal of all levels may be freely allowed and encouraged to study for and appear in these examinations. With regard to the fixation of 25% quota for Accountants possessing the additional qualifications referred to above it has been submitted that one of the Unions known as Prantiya Vidyut Majdoor Federation had submitted a charter of demands as far back as on 1-2-1971 wherein one of the demands was that 25% posts of the Assistant Accounts Officer be filled the departmental graduates with Cost & Works diploma.

26. As regards qualifications prescribed for appointment on the post of Accounts Officer/Audit Officer/Revenue Officer in Entry 16 of the Schedule to the 1974 Regulations we find that in the matter of direct recruitment against 50% of the posts persons who were eligible for promotion are Chartered Accountants (Member of the Institute of Chartered Accountants of India) or Cost & Works Accountants of the Institute of Cost & Works Accountants of India or holders of Cost & Works Diploma of any recognised University in India with five years' experience in responsible position in Accounts Department of Public or Private Undertaking preferably Electricity Undertakings or SAS Accountant with five years' service as SAS Accountant or Master's degree in

Arts or Science or Commerce from University established by law in India with at least 55% marks in degree as well as Master's degree examination. It is no doubt true that ICWA/DCWA qualification is not compulsory for a person to be appointed on the post of Accounts Officer/Audit Officer/Revenue Officer and a person who does not possess the said qualification is also eligible. But it cannot be ignored that Entry 16 of the Schedule to the 1974 Regulations is not confined to the post of Accounts Officer and it also includes the posts of Audit Officer and Revenue Officer and the qualifications that are prescribed for direct recruitment have been prescribed keeping in view the needs for all the three posts. On the basis of the qualifications prescribed in Entry 16 of the Schedule to the 1974 Regulations, for the purpose of direct recruitment to the post of Accounts Officer/Audit Officer/Revenue Officer, it cannot be said that giving of preference in the matter of promotion to an Accountant who is an Intermediate of the Cost and Works from the Institute of Cost & Works, Calcutta or a graduate holding diploma in Cost and Works from a University established by law in India has no relation with improving the administrative efficiency of the Services in the Broad and has no nexus with the object sought to be achieved by the 1974 Regulations. We are, therefore, unable to hold that Entry 19 of the Schedule to the 1974 Regulations suffers from the vice of discrimination and is violative of the "right to equality" guaranteed under Articles 14 and 16 of the Constitution. The contention urged by Shri Sachar is accordingly rejected.

27. It was contended by Shri Sachar that the facility for obtaining the ICWA/DCWA qualifications can be availed only by these Accountants who are posted at Jaipur or Jodhpur and the same cannot be availed by Accountants posted in outlying places. There is no merit in this contention because, as pointed out on behalf of the Board, the Institute of Cost & Works Accountants of India imparts postal and oral courses and that in Rajasthan, oral courses are available at Jaipur, Kota, Udaipur and Jodhpur and that on the same guidelines and almost the same syllabus the various Universities in Rajasthan are conducting the DCWA course at Jaipur, Ajmer, Jodhpur, Bikaner, Laxmangarh and Ganganagar.

28. The appeal, therefore, fails and it is accordingly dismissed. But in the circumstances there is no order as to Costs.