

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 22.07.2016

Pronounced on: 21.12.2016

+ **LPA 266/2013, C.M. APPL.15531/2013 & 2812/2016**

SHAILENDRA DANIA AND ORS.Appellants

Versus

DELHI URBAN SHELTER IMPROVEMENT BOARD AND ORS.

.....Respondents

+ **LPA 605/2013**

DELHI URBAN SHELTER IMPROVEMENT BOARD AND ANR.

.....Appellants

Versus

DELHI (SLUMS) SC/ST ENGINEERS ASSOCIATION (REGD)
AND ORS.Respondents

Through: Ms. Jyoti Singh, Sr. Advocate with
Sh. Pramod Gupta, Advocate, for petitioner
in LPA 266/2013.

Sh. Parvinder Chauhan, Advocate, for
DUSIB.

Sh. R.R. Kishore, Advocate, for Respondent
Nos. 2 to 6 in LPA 266/2013 and for
Respondent Nos. 1 to 5 in LPA 605/2013.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT

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1. These appeals impugn the common judgment and order of a learned Single Judge delivered on 21.12.2012, allowing the writ petition of the Respondent Nos. 2-6 (hereafter called "the writ petitioners" or "contesting respondents").

2. The writ petitioners had impleaded the Delhi Development Authority (DDA) and the official head of the Slum Wing of the DDA in the proceedings under Article 226 of the Constitution of India. It had, however, not impleaded the present appellants- in LPA 266/2013. In the proceeding, they sought declaration that they ought to be considered for promotion to the post of Assistant Engineer (Civil) under the DDA Slum Wing - subsequently transferred to the Delhi Urban Shelter Improvement Board, i.e. the first respondent in the present appeal (and hereafter referred to as "the Board"). It was contended that the omission to promote the writ petitioners and the proposal to de-reserve 14 posts of Assistant Engineers (AE) in the Civil Department of the Board, was contrary to the Constitution.

3. The petitioners argued that even though the post of AE could be filled through two distinct channels - i.e. 50% by direct recruitment or deputation and 50% from amongst promotions of eligible Junior Engineers, the Board abandoned the direct recruitment route and had been filling up the post through promotion exclusively. It was contended that the Board had promoted 68 Junior Engineers (Civil) [hereafter "JE(C)"] as Assistant Engineers (Civil) [hereafter "AE(C)"] as against 68 sanctioned posts. The contesting respondents/writ petitioners stated that as against the clear quota of 16 posts out of 68 posts for SC/ST candidates, only 7 were promoted. Therefore, directions in the writ petition were sought specifically on the ground that the Board failed to implement the policies of reservation mandated by the Constitution and the Central Government and that 9 posts of AE(C) were available for SC/ST candidates. It was stated that 18 posts of AE(C) were vacant in the Board and in conformity with the 40-point roster

policy, 5 of those should have gone to the SC/ST categories amongst JE(C) incumbents. It was, therefore, stated that if the model roster were operated efficiently and correctly, the writ petitioners/contesting respondents herein would have secured promotion. It was also stated that they were working as AE(C) and discharging their duties satisfactorily since 05.02.1991. The petitioners relied upon representations to the official respondent/Board from time to time.

4. The Board, in its reply, had stated that several JEs(C) were promoted as AEs. It also stated that 2 ST candidates were directly recruited. In all, 15 roster points which were to be filled by SC/ST candidates during the period between 1974 and 1987 could be filled- up to 66 roster points. 5 roster points were filled up by promotion of 5 diploma holder JEs belonging to SC categories. It is also stated that Departmental Promotion Committee (DPC) meetings were convened on 22.10.1990, 01.05.1991, 05.07.1991 and 08.10.1992 to fill up the vacant posts by promotion of JEs and that the candidates of reserved category officials too were considered. However, none materialized.

5. After hearing the contesting respondents and the Board, and considering the records available, the learned Single Judge found that the writ petitioners/contesting respondents joined as JEs on 10.08.1981, 20.04.1983 and 20.03.1983 and became eligible for promotion as AEs on 10.08.1989, 20.04.1991 and 20.03.1991. One of the petitioners was a degree holder and joined service as JE and became eligible to be promoted as AE on 04.06.1987. It was held that the Board did not follow the procedure prescribed by the Department of Personal and Training ("DOPT") dated

10.07.1990 which had stated that where recruitment to a grade is made both by promotion and direct recruitment, i.e. where separate quotas for promotion and direct recruitment are prescribed in the recruitment rules, reserved vacancies falling in the promotion quota which cannot be filled due to non-availability of eligible persons belonging to SC/STs in the feeder cadre may be temporarily diverted to the direct recruitment quota and filled by SC/ST categories in accordance with the provisions relating to direct recruitment. For subsequent years, when reserved vacancies in the direct recruitment quota become available they may be diverted to the promotion quota to make up for the vacancies diverted earlier and filled from SC/ST candidates in the feeder cadre who might have become eligible for promotion. It was further held that the concurrence of the DOPT was essential and that the Board failed to establish that they obtained concurrence to divert the quota meant for reserved categories and that this clearly showed that the mandatory provisions for filling up SC/ST quota had not been followed. Noticing that a review meeting was held on 28.01.2010, the question of promotion of AEs was taken into consideration. Learned Single Judge's conclusions and directions are as follows:

"55. Undisputedly, since 1974, the Posts of AE (Civil) had been filled up by way of promotion except the direct recruitment made in 1989. From the year 1974 to 01.07.1997, the scheme of reservation had been regulated in accordance with the vacancy based roster. As per the vacancy based roster, the review committee of the respondent recommended the notional promotion for SC / ST category including the petitioners. Thus the respondent department also clearly admits the claim of the petitioners in respect of the promotion to the post of Assistant Engineers (Civil).

56. It will not be out of place to mention, what has been recorded by the review DPC in its meeting as per the Table in Para 42 above, that if the above JEs/AEs (C) of reserved category may be given relate back notional promotion at the point, as stated above, when the reserved points became available, the Review DPC also observed that there will be the following repercussions:

(a) The above position may be appraised to the Hon'ble High Court of Delhi, Central Administrative Tribunal and National Commission for the SCs as a number of court cases are pending for adjudication.

(b) If the above recommendations are implemented by the Department, then the same shall be subject to the outcome of the various Court cases filed by various group of engineers and are pending for adjudication in the Hon'ble High Court of Delhi and Central Administrative Tribunal.

(c) Some degree Holder AEs promoted in 1988, 1989 and 1990, who have recently been assigned Current Duty Charge of the post of EE(C), will be reverted back to the post of AE(C), as the same was assigned as per orders of High Court of Delhi in C.C.P. in CWP No. 250/00.

(d) Sh. P.D. Ashok of SC category having Degree qualifications will be placed below the Diploma Holder SC Candidates who became eligible prior to Sh. P.D. Ashok.

57. In view of the above, the admitted fact is that the petitioners are entitled to get promotion to the post of Assistant Engineers as per the vacancy based roster, which was prevalent at that time. Subsequent to 1987, the scheme of reservation for the special class under the Constitution is implemented in the nature of post-based roster system. During the pendency of this Writ Petition, the policy of reservation has been changed from the nature of vacancy-based roster system to post-based roster."

6. The appellants are aggrieved by the above directions. Their senior counsel, Ms. Jyoti Singh, referred to the establishment of the Board since 1974 as a wing of the DDA and state that it had consistently followed the recruitment rules and policies of DDA with respect to posts in engineering cadre, including the Civil cadre. In this regard, it is stated that the post of AE is filled from amongst degree holders through direct recruitment to the extent of 50%; the balance 50% by promotion from amongst JEs. At the relevant time, 50% through promotion quota required *inter alia* that JEs with degree qualifications had to possess three years' service for the purpose of promotion and those with diploma had to undergo minimum qualifying service of 8 years. In other words, 25% of the total number of vacancies were reserved for each such category. It is stated that the differential qualifying service for diploma holders rankled them and led to repeated litigations. The appellants cited *Kunti Lal v. DDA* 1988 (1) SLR 293; *Roop Chand Adlakha and Others v. Delhi Development Authority and Others* 1989 (Supp) 1 SCC 116; a Division Bench ruling in *Slum Wing Delhi Development Authority Graduate Engineers' Association (Regd.) & Others v. D.D.A. & Others* 1992 DLT 486 and a later Full Bench judgment. The last in the series, i.e. the Full Bench judgment of this Court held that a distinction could be made at the time of initial recruitment but having once entered the cadre, differentiation could not be made. This judgment was challenged before the Supreme Court in appeal and decided by the judgment reported as *Shailendra Dania v. S.P. Dubey* 2007 (5) SCC 535.

7. The Supreme Court set aside the judgment of the Full Bench and held that there were water-tight compartments for direct recruitment diploma

holders and that they were entitled for promotion in their quotas. Neither diploma holders could claim promotion in the quota of degree holders nor could degree holders claim promotion in the quota fixed for diploma holders (also within the quota of JEs for promotion to AEs). It is also held that even if a diploma holder later acquired the degree qualification, he had to complete three years' qualifying service to be eligible in the quota for degree holders for promotion as AEs.

8. Learned senior counsel for the appellants referred to a previous judgment of this Court dated 05.03.1991 in CWP 250/1990 to say that between 1974 to 1991, 52 diploma and 19 degree holder JEs were promoted even though the rules prescribed 50% quota between the two. Reliance is place upon the affidavit filed by the Board dated 22.02.1991 in CWP 250/1990. It is stated that in the DPC held on 22.03.1993, in compliance of the Court's order, the year-wise promotions were made with effect from January 1988 to 1992 to achieve parity in promotions between the degree and diploma holders. In all 16 JEs were promoted as AEs, including one, i.e. contesting fifth respondent belonging to SC category. In the case of other degree holders belonging to SC category, they could not be promoted since they were ineligible. The appellants contend that they were promoted on 12.03.1993 and that this was within the knowledge of the writ petitioners but they were intentionally not impleaded because the answering respondent's case was that 14 posts fell in the reserved category and had wrongly lapsed and that general category candidates were promoted as against those posts. It was argued that not only is the impugned judgment unsound in law, it is also incorrect on facts, because it proceeded on the assumption that the quota

available for SC/STs had not been filled by those candidates, but other, general category candidates.

9. The Board too has preferred an appeal (LPA 605/2013). It supports the appellants' contentions that vacancies reserved for promotion of degree holders belonging to SC/ST could not be legally filled by diploma holders of SC/ST category. Mr. Parminder Chauhan, learned counsel for the Board, states that the impugned judgment suffers from this fallacy. It is also highlighted that the learned Single Judge also assumed that mere acquisition of qualifications of degree by an incumbent JE who otherwise was not in the category was sufficient for him to be entitled to promotion from the date of acquisition of qualification. This, it is highlighted, is contrary to the binding judgment in *Shailendra Dania (supra)* which categorically held that for that post, degree and three years' qualification is essential. It is also stated, based upon the additional affidavit, with the leave of the Court that the minutes made on 22.03.1993 of the DPC clearly showed that Sh. Ram Dass, fourth writ petitioner/contesting respondent was recommended for promotion as AE(C) in the degree quota. It was stated that this was because he acquired his degree qualification in 1987 and could therefore, be eligible subsequently as against a vacancy only after the requisite qualifying service had been completed by him. The minutes of meeting of 03.08.1996 are also relied upon to state that four reserved category posts (1 SC and 3 ST) in the degree holder category and 6 posts in the diploma holder category (2 SC and 4 ST) posts were vacant. The DPC recommended the names of 2 reserved category candidates because only 2 were eligible in accordance with the rules. One of these was Sh. Phool Singh, the second writ petitioner/contesting respondent.

It is stated that again on 06.08.1996, as against the vacancies for degree holder, JEs Sh. Pawan Khosla and Sh. Priyadarshi Ashok were promoted whereas Sh. Phool Singh and Kamal were promoted as AEs against posts reserved for diploma holder JEs. Likewise, it is stated that Rajender Singh was later recommended against the diploma holders' quota for reserved ST candidates of JEs, to the post of AE. All these recommendations were in respect of past unfilled vacancies. Therefore, the mandate of filling the reserved quota of vacancies was not violated as held by the learned Single Judge.

10. The writ petitioners/contesting respondent submit- and their learned counsel, Dr. R.R. Kishore, argues that the subject matter of these proceedings are promotions for the period 1981-1991. Counsel urged that even diploma holders were eligible for direct recruitment. The contesting respondents argue that instead of following the Recruitment Rules which contemplate appointments on the posts of AE(C), 50% by direct recruitment and 50% by promotion, the appellants, for unknown reasons, in violation of Recruitment Rules, abandoned the process of direct recruitment. This- it is urged, was admitted by the Board in the counter affidavit filed in CWP No.3126/1992 which did not cite any reasons for inaction. Stating this as a serious illegality it is urged that promotions made in excess of the 50% promotional quota are illegal. The writ petitioners say they suffered severe and irreparable loss due to this illegality because all of them were eligible for being directly appointed as AEs but were denied this opportunity.

11. Dr. Kishore argued that the recruitment rules enabled JE two different channels for promotion as AE, i.e. (1) by direct recruitment and (2) by

promotions. The Board, however blocked one channel, of direct recruitment. Had there been direct recruitment those JEs who were not inclined to wait till they were ripe for being promoted as AE would have chosen the path of direct recruitment and after going through the competition or selection process they would have been appointed as AE. It is argued, that in the event of direct recruitment the contesting respondents stood a very good prospect of being appointed to the post of AE for that in terms of the Department of Personnel and Administrative Reforms (DPAR) OM dated 23rd December, 1970 a clear condition existed:

"In promotions through departmental competitive examinations Scheduled Caste/Scheduled Tribe candidates who have not acquired the general qualifying standard should also be considered for promotion provided they are not found unfit for such promotion. The qualifying standard in such examination should be relaxed in favor of Scheduled Caste/Scheduled Tribe candidates in keeping with above criterion."

12. Dr. Kishore stated that a member of SC/ST is entitled to be recruited both as a general category candidate as well as reserved category candidate and as such he enjoys two entry points as against only one available to general category candidates. The reservation provided to SC/ST candidates in appointments and promotion does not disentitle them from evaluation of their merit list vis-à-vis unreserved candidates. If a member of SC/ST is found to possess higher merit than a general candidate, he is entitled to be appointed/promoted against a general category post. Thus, while holding DPC for promotion, all eligible candidates, i.e. general as well as SC/ST have to be considered against a general category/unreserved vacancy. As against this, when it comes to filling a vacancy in the reserved category, only

the SC/ST candidates are to be considered. The general category candidates cannot be considered for appointment/promotion on the post falling in the reserved category. The contesting respondents rely on the judgments reported as *Indira Sawhney v Union of India* (1992 Supp 3 SCC 217) *R.K. Sabharwal and Others v. State of Punjab and Others* (AIR 1995 SC 1371) and *M. Nagraj and Others v. Union of India* (AIR 2007 SC 71). Especially the following portions in *R.K. Sabharwal* are relied on:

"When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserved points, it has to be taken that the posts shown at the reserved points are to be filled from amongst the members of reserved categories and the candidates belonging to the general category are not entitled to be considered for the reserved posts. On the other hand, the reserved category candidates can compete for the non-reserved posts and in the event of their appointment to the said posts their number cannot be added and taken in to consideration for working out the percentage of reservation."

13. Again, the decision in *M Nagraj (supra)* to the following effect are relied on:

"In Indra Sawhney, Reddy, J, noted that reservation under Article 16(4) do not operate on communal ground. Therefore, if a member from reserved category gets selected in general category, his selection will not be counted against the quota limit provided to his class. Similarly, in R.K. Sabharwal, the Supreme Court held that while general category candidates are not entitled to fill the reserved posts; reserved category candidates are entitled to compete for the general category posts."

14. The OM dated 02.07.1997 of DPAR, Govt. of India also contains the above direction, i.e. *"persons belonging to reserved category who are*

appointed on the basis of merit and not on account of reservation are not to be counted towards the quota meant for reservation" and is relied on for this purpose.

15. It is stated that as such, when the appellants were promoted as general category JEs to the post of AE(Civil) the Board should have considered all eligible SC/ST candidates and those found superior in merit must have been promoted regardless of their caste/tribe/community status. This was not done and as such the promotions made by the Board were not legal. The recruitment rules are intimately linked to the rules governing reservation of vacancies for SC/STs and are to be interpreted and applied in the context of overall legal and factual matrix. These, urge the writ petitioners, were appreciated by the learned Single Judge, whose judgment does not call for interference.

16. It is argued that *Shailendra Dania* (supra) has no application to the present case; the argument is that it relates to promotional entitlements of degree holders vis-à-vis diploma holders. The judgment does not relate to promotional entitlements of SC/ST vis-à-vis non-SC/ST category candidates on the vacancies reserved for SC/ST candidates. There are distinctly laid down and specific statutory provisions concerning promotions and appointments of candidates belonging to SC/ST community in order to ensure that their vacancies are not usurped by non-SC/ST candidates.

17. Dr. Kishore, counsel for the contesting respondents argued further that policies contained in OM No.27/25/68 Estt (SCT) dated 25th March, 1970; OM No.1/4/64-SCT(1) dated 2nd September, 1964; OM NO.16/5/74-Estt (SCT) dated 11th June 1994; DOPT No.36012/6/88 (SCT) dated 25.04.1989;

and DOPT No.36022/3/92 Estt (SCT) dated 31.12.1992 are relevant. The provision of conversion to direct quota from the promotional quota and vice-versa in order to fill the vacancies reserved for SC/ST candidates contained in DOPT OM No.AB14017/30/89-Estt (RR) dated 10th July, 1990, in the following terms, was relied on:

"A committee of Members of Parliament which has examined various matters relating to representation of SC/ST in government services has recommended that wherever substantial backlog is still persisting due to non-availability of candidates belonging to SC/ST in the feeder cadres, direct recruitment should be arranged to fill up the reserved vacancies.

The recommendation has been examined and it has been decided that where recruitment to a grade is made both by promotion and direct recruitment, i.e. where separate quotas for promotion and direct recruitment are prescribed in the recruitment rules, reserved vacancies falling in the promotion quota which cannot be filled due to non-availability of eligible persons belonging to Scheduled Castes and Scheduled Tribes in the feeder cadre may be temporarily diverted to the direct recruitment quota and filled up by recruitment of candidates belonging to Scheduled Castes or Scheduled Tribes as the case may be in accordance with the provisions relating to direct recruitment contained in the recruitment rules. In the subsequent year(s) when reserved vacancies in the direct recruitment quota become available they may be diverted to the promotion quota to make up for the vacancies diverted earlier and filled from Scheduled Caste/Scheduled Tribe candidates in the feeder cadre who might by now have become eligible for promotion. The exchange of vacancies in this manner will ensure that the structure and composition of the cadre remain unaffected over a period."

18. It is argued also that the rules contemplate relaxation of qualifying standard to accommodate the SC/ST candidates on the vacancies reserved

for them. The said provisions as contained in DOPT OM No.8/12/69-Est (SCT) dated 23.12.1970 have been annexed in CWP 3126/1992. The relevant portion of the said OM is reproduced below:

"In promotion through departmental competitive examinations Scheduled Caste/Scheduled Tribe candidates who have not acquired the general qualifying standard should also be considered for promotion provided they are not found unfit for such promotion. The qualifying standard in such examination should be relaxed in favor of Scheduled Caste/Scheduled Tribe candidates in keeping with above criterion."

19. It is argued that promotions made by Board against the vacancies in the cadre of AE(C) reserved for SC/ST candidates was illegal and such promotions were *void ab-initio*.

Analysis and Conclusions

20. The factual circumstances which led to the impugned judgment indicate that the answering respondents, including the SC/ST association, had approached this court earlier by filing another writ petition. That had been disposed with directions. However, the writ petitioners did not disclose those, in the writ petition in the present case. Furthermore, even more importantly, they chose not to implead any party who would have been affected adversely by the outcome of this petition. This was a fatal infirmity. The second important feature of this case is that when the Board filed its counter affidavit in the writ petition - it had stated that the cadre strength of AEs is 68. This position is not in dispute; nor is it in dispute that 7 AEs of the reserved category were in position. This meant that 8 vacancies were to be earmarked for JEs for promotion, in the reserved category for both SC/ST

class. Of the 7 in position, 2 JEs were ST direct recruit candidates. The Board's counter affidavit stated that 19 degree holder JEs had been promoted as against more than twice that number of diploma holder JEs, to the cadre of AEs.

21. *Shailendra Dania (supra)*, had decided that:

"Taking into consideration the entire scheme of the relevant rules, it is obvious that the diploma-holders would not be eligible for promotion to the post of Assistant Engineer in their quota unless they have eight years' service, whereas the graduate Engineers would be required to have three years' service experience apart from their degree. If the effect and intent of the rules were such to treat the diploma as equivalent to a degree for the purpose of promotion to the higher post, then induction to the cadre of Junior Engineers from two different channels would be required to be considered similar, without subjecting the diploma- holders to any further requirement of having a further qualification of two years' service. At the time of induction into the service to the post of Junior Engineers, Degree in Engineering is a sufficient qualification without there being any prior experience, whereas diploma-holders should have two years' experience apart from their diploma for their induction in the service. As per the service rules, on the post of Assistant Engineer, 50% of total vacancies would be filled up by direct recruitment, whereas for the promotion specific quota is prescribed for a graduate Junior Engineer and a diploma-holder Junior Engineer. When the quota is prescribed under the rules, the promotion of graduate Junior Engineers to the higher post is restricted to 25% quota fixed. So far as the diploma- holders are concerned, their promotion to the higher post is confined to 25%. As an eligibility criterion, a degree is further qualified by three years' service for the Junior Engineers, whereas eight years' service is required for the diploma-holders. Degree with three years' service experience and diploma with eight years' service

experience itself indicates qualitative difference in the service rendered as degree-holder Junior Engineer and diploma-holder Junior Engineer. Three years' service experience as a graduate Junior Engineer and eight years' service experience as a diploma-holder Junior Engineer, which is the eligibility criteria for promotion, is an indication of different quality of service rendered. In the given case, can it be said that a diploma-holder who acquired a degree during the tenure of his service, has gained experience as an Engineer just because he has acquired a Degree in Engineering. That would amount to say that the experience gained by him in his service as a diploma-holder is qualitatively the same as that of the experience of a graduate Engineer. The rule specifically made difference of service rendered as a graduate Junior Engineer and a diploma-holder Junior Engineer. Degree-holder Engineer's experience cannot be substituted with diploma-holder's experience. The distinction between the experience of degree-holders and diploma-holders is maintained under the rules in further promotion to the post of Executive Engineer also, wherein there is no separate quota assigned to degree-holders or to diploma-holders and the promotion is to be made from the cadre of Assistant Engineers. The rules provide for different service experience for degree-holders and diploma-holders. Degree-holder Assistant Engineers having eight years of service experience would be eligible for promotion to the post of Executive Engineer, whereas diploma-holder Assistant Engineers would be required to have ten years' service experience on the post of Assistant Engineer to become eligible for promotion to the higher post. This indicates that the rule itself makes differentia in the qualifying service of eight years for degree-holders and 10 years' service experience for diploma-holders. The rule itself makes qualitative difference in the service rendered on the same post. It is a clear indication of qualitative difference of the service on the same post by a graduate Engineer and a diploma-holder Engineer. It appears to us that different period of service attached to qualification as an essential criterion for promotion is based on administrative interest in the service. Different period of service experience for

degree-holder Junior Engineers and diploma-holder Junior Engineers for promotion to the higher post is conducive to the post manned by the Engineers. There can be no manner of doubt that higher technical knowledge would give better thrust to administrative efficiency and quality output. To carry out technical specialized job more efficiently, higher technical knowledge would be the requirement. Higher educational qualifications develop broader perspective and therefore service rendered on the same post by more qualifying person would be qualitatively different.

After having an overall consideration of the relevant rules, we are of the view that the service experience required for promotion from the post of Junior Engineer to the post of Assistant Engineer by a degree-holder in the limited quota of degree-holder Junior Engineers cannot be equated with the service rendered as a diploma-holder nor can be substituted for service rendered as a degree-holder. When the claim is made from a fixed quota, the condition necessary for becoming eligible for promotion has to be complied with. The 25% specific quota is fixed for degree-holder Junior Engineers with the experience of three years. Thus, on a plain reading, the experience so required would be as a degree- holder Junior Engineer. 25% quota for promotion under the rule is assigned to degree-holder Junior Engineers with three years' experience, whereas for diploma-holder Junior Engineers eight years' experience is the requirement in their 25% quota. Educational qualification along with number of years of service was recognized as conferring eligibility for promotion in the respective quota fixed for graduates and diploma-holders. There is watertight compartment for graduate Junior Engineers and diploma-holder Junior Engineers. They are entitled for promotion in their respective quotas. Neither a diploma-holder Junior Engineer could claim promotion in the quota of degree-holders because he has completed three years of service nor can a degree-holder Junior Engineer make any claim for promotion quota fixed for diploma-holder Junior Engineers. Fixation of different quota for promotion from different

channels of degree- holders and diploma-holders itself indicates that service required for promotion is an essential eligibility criterion along with degree or diploma, which is service rendered as a degree-holder in the present case. The particular years of service being the cumulative requirement with certain educational qualification providing for promotional avenue within the specified quota, cannot be anything but the service rendered as a degree-holder and not as a diploma- holder. The service experience as an eligibility criterion cannot be read to be any other thing because this quota is specifically made for the degree-holder Junior Engineers.

As a necessary corollary, we are of the view that the diploma-holder Junior Engineers who have obtained a Degree in Engineering during the tenure of service, would be required to complete three years' service on the post after having obtained a degree to become eligible for promotion to the higher post if they claim the promotion in the channel of degree-holder Junior Engineer, there being a quota fixed for graduate Junior Engineers and diploma-holder Junior Engineers for promotion to the post of Assistant Engineers."

22. The ratio in *Shailendra Dania (supra)* is forthright which is that:
- (a) A differentia exists between the diploma holder and degree holder categories of JEs; those with the former had to possess two years' eligibility experience whereas degree holders could apply after completing their education, without experience;
 - (b) The rules posited equal intake of both categories in the cadre of JEs;
 - (c) There was no discrimination in the prescription of longer eligibility experience (8years) for JEs with diploma, and a lesser period (3 years) for JEs with degree qualifications- for the purpose of promotion to AEs.

(d) In case a diploma holder JE acquired degree holder qualification, nevertheless he had to obtain 3 years' post degree experience, to be eligible as a degree holder, in the degree holder quota for promotion to AE. In other words, if a JE had 5 years experience as a diploma holder, upon his acquiring degree, he had to nevertheless serve as degree holder JE to be eligible in the quota for degree holders.

23. A logical corollary to the above propositions is that in any case, eligibility was a condition; the fulfillment of that condition did not necessarily lead to automatic promotion. In the present case, the entire premise upon which the learned Single Judge based his conclusions is that as and when diploma holder JEs acquired degree qualifications, they became eligible for promotion- and what is more, *they were entitled to it*. Both those premises are wrong. The fallacy in the impugned judgment, in this court's opinion is that it failed to take into account the Supreme Court *ratio*, in this regard, found in at least two places in *Shailendra Dania (supra)*:

"There is watertight compartment for graduate Junior Engineers and diploma-holder Junior Engineers. They are entitled for promotion in their respective quotas. Neither a diploma-holder Junior Engineer could claim promotion in the quota of degree-holders because he has completed three years of service nor can a degree-holder Junior Engineer make any claim for promotion quota fixed for diploma-holder Junior Engineers. Fixation of different quota for promotion from different channels of degree- holders and diploma-holders itself indicates that service required for promotion is an essential eligibility criterion along with degree or diploma, which is service rendered as a degree-holder in the present case. The particular years of service being the cumulative requirement with certain educational qualification providing for

promotional avenue within the specified quota, cannot be anything but the service rendered as a degree-holder and not as a diploma- holder.....we are of the view that the diploma-holder Junior Engineers who have obtained a Degree in Engineering during the tenure of service, would be required to complete three years' service on the post after having obtained a degree to become eligible for promotion to the higher post if they claim the promotion in the channel of degree-holder Junior Engineer, there being a quota fixed for graduate Junior Engineers and diploma-holder Junior Engineers for promotion to the post of Assistant Engineers."

24. This singular error in the judgment invalidates its premises and conclusions.

25. The other aspect of the matter is that even on facts, the impugned judgment omitted to note the relevant circumstances, which had occurred during the interregnum of its pendency. To understand what transpired in the 20 year period (which the court of first instance should have taken into account, but did not in a wholesome manner), a direction was issued to the Board to file an affidavit, indicating what DPCs (Departmental Promotion Committees) were held from time to time and how many of them recommended reserved (SC/ST) candidates. In response, the Board filed an affidavit, disclosing particulars of promotions recommended by DPCs for 35 posts, relatable to the period 1988 to 1997. These showed that 8 more promotions to SC category candidates- including almost all the writ petitioners, were recommended and acted upon. This was a salient disclosure omission on their part. It is a matter of record that all writ petitioners (save the association) were diploma holders: Mr. Phool Singh joined as JE on 10.08.1981; Mr. Dori Lal joined as diploma holder JE on 20.04.1983; Mr.

Ram Dass, on 04.06.1984 and Mr. Ravinder Kumar on 20.09.1983. Therefore, by operation of the eligibility rule, they would have been eligible for consideration, subject to availability of vacancy after they completed 8 years' service as JEs. It is a matter of record that Mr. Ram Dass obtained degree qualifications in 1987; this meant that he had to further acquire 3 years' post degree experience. This would have ended in 1990. In the normal course, without degree he would have been eligible as a diploma holder JE in 1993. As a matter of fact, he was recommended as a degree holder w.e.f. 01.01.1991, in the DPC held on 22.03.1993. No legitimate grievance could, therefore, have been made on his score. As far as the others are concerned, the affidavit and the minutes of meeting dated 2/3 August, 1996 took into account eligible candidates for 24 vacancies. Concededly, 8 SC candidates were recommended for promotion as AEs: these included Mr. Phool Singh, and Mr. Pawan Kumar Khosla (subject to sealed cover); Mr. Priyadarshi Ashok (SC)- both degree holders. Five others- diploma holders were recommended. Significantly, these five names were of diploma holder JEs in SC category, who became eligible in 1991. These figures showed that 15 posts were filled in the SC/ST category, for the cadre of AEs, as of 1991, (although the DPCs were held in 1993 and 1996). Being a cadre of 68, 15 posts fulfils the quota mandate, if one keeps in mind the *ratio* in *R.K. Sabharwal (supra)* that quotas and roster should be worked out, having in regard the cadre strength as a whole. Furthermore the teaching in *M. Nagaraj (supra)* is that adequacy of representation in the promotional post, is another aspect that appointing authorities and DPCs should be always aware of.

26. The last question is whether there was any infraction on the part of the Board in regard to ignoring the quota (for SC/ST officers) and diverting any vacancies to general category officers. On this aspect, the Board categorically averred in its counter affidavit, filed in the writ petition (on 17 March, 1993) that:

"the departmental candidates belonging to SC category became eligible for promotion only in August 1989 and onwards and no regular promotions have been made after 1987. DPC meetings were held in 1990, 1991 and 1992 to promote the Junior Engineer (Civil) but the minutes of the DPC Meeting could not be materialized due to various High Court orders in various court cases. Further as per 40 point roster maintained in the prescribed proforma, the candidates belonging to reserve category are duly considered in the DPC meetings. Not only this, to keep proper watch on reservation rules, an officer of reserved category is nominated as representative of SC/ST in the DPCs."

27. In none of the proceedings was there a refutation on this aspect; furthermore, the minutes of the DPC meetings of 2/3rd August, 1996 and 6th August, 1993 show that besides the coram, a special invitee- alluded to in the Board's affidavit, to keep watch over the interests of SC and other reserved category candidates was invited to and did participate in the deliberations. Having regard to all these, this court is of opinion that the Board's lament that it could not finalize promotion lists on account of various court cases, pending on the file of this court, is justified. This court notices that the history of this litigation is chequered: the judgment in *Shailendra Dania (supra)* arose out of a writ petition before this court (W.P.(C) 1664 of 1993), that sought quashing the above-mentioned seniority list and sought for directions that promotions to the post of Assistant Engineers be made on the

basis of the seniority list issued in 1984 and 1987. Several other writ petitions were filed, which questioned the same seniority lists. S.P. Dubey and others through another writ petition before this court (W.P.(C) 1923/1993) sought quashing the promotions to the post of Assistant Engineers made by order dated 22.03.1993. These petitions remained pending and on 12.03.2001, a Division Bench referred W.P.(C) 591 of 1989, 1427/ 1989, 1664 and 1923/1993 along with other petitions for decision by a Full Bench. The Full Bench decision was rendered on 25th January 2002; that became subject matter of an appeal, by special leave before the Supreme Court which decided the core issues in *Shailendra Dania (supra)*. Therefore, the matter remained in a state of flux, because even seniority lists: which would be the basis for promotion (and not eligibility only) could not be finalized.

28. In view of the above discussion, it is held that the learned Single Judge erroneously concluded that the quota earmarked for SC/ST category candidates was ignored while making promotions and that the writ petitioners were entitled to promotions upon their completing the eligibility conditions: those of them who acquired degrees, had to necessarily fulfill the 3 year experience condition, applicable to all. Similarly others, who were diploma holders were in fact considered. The materials also show that 15 posts of AEs (including two previously directly recruited officers) were filled by officers belonging to the SC/ST category: this fulfilled the mandate of 22.5% reservation of the total cadre of 68.

29. In view of the foregoing conclusions, the findings and conclusions of the learned Single Judge are held to be erroneous; the impugned judgment is

set aside. The appeals (LPA Nos. 266/2013 and 605/2013) are allowed.
There shall be no order on costs.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

DECEMBER 21, 2016
ajk

