

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

+ **WRIT PETITION (CIVIL) No. 6523/2011**

% **Reserved on:** 14th February, 2017
Date of Decision: 19th July, 2017

R.P. BHARAL AND OTHERS ...Petitioners
Through Mr. M.K. Bhardwaj, Advocate.

Versus

DELHI DEVELOPMENT AUTHORITY AND OTHERS ...Respondents
Through Mr. Arun Birbal and Mr. Sanjay Singh,
Advocates for DDA.
Mr. Rajat Rathee, Advocate for respondent Nos. 2 & 19
to 27.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J.

The challenge raised in the present writ petition is to the order dated 12th January, 2011 passed by the Full Bench of the Central Administrative Tribunal, Principal Bench, New Delhi in Transfer Application No. 86/2009, *R.K. Mittal and Others versus Delhi Development Authority and Others*, OA No. 82/2008, *Amarjeet Singh and Others versus DDA and Another* and CM No. 16292/2007 for impleadment filed by 9 applicants who were similarly placed. The Tribunal in the impugned order has allowed the transfer application and dismissed the original application observing that the issue was covered by earlier decisions, inter alia holding that hybrid Junior

Engineers, who were originally diploma holders and had subsequently acquired degrees in Engineering, would be considered in the quota meant for degree holders from the date they had acquired the degree in Engineering. The said hybrid diploma holders would be junior to degree holder Junior Engineers appointed before the date of acquisition of degree by the diploma holders.

2. The dispute pertains to the promotion of Junior Engineers to the post of Assistant Engineers in the Delhi Development Authority (DDA, for short), the first respondent before us. The Recruitment Rules for the post of Assistant Engineer stipulate that 50% of the posts are to be filled by direct recruitment or deputation from Graduates in Engineering and 50% by way of promotion from Junior Engineers. The promotional quota is further bifurcated. One half of the promotional quota posts are to be filled by Junior Engineers possessing a degree in Engineering with three years' service and the other half by Junior engineers who are diploma holders possessing eight years experience.

3. The present controversy is antiquated as the first round of litigation commenced in 1984. For the sake of clarity, we would in brief, trace the history to explain the genesis and then decide the dispute:-

(i) The issue of promotion between degree holders and diploma holders first arose when Junior Engineers and Assistant Engineers who were diploma holders assailed the constitutional validity of the Recruitment Rules promulgated vide resolution dated 13th November 1963 and adopted with effect from 6th December, 1982, for stipulating differential experience criteria for diploma holders and degree holders for the purpose of promotion. The resolution permitting drawing distinction between degree holders and diploma holders and prescribing longer experience for the latter

was struck down by the High Court in the decision reported as ***Kimti Lala Kathuria Vs. Delhi Development Authority*** (1988) 1 SLR 293.

(ii) The said decision was however reversed by the Supreme Court in ***Roop Chand Adlakha and Others versus Delhi Development Authority and Others***, (1981) Supp. 1 SCC 116.

(iii) This ushered in the second phase of litigation vide W.P.(C) No. 591/1989 filed by S.P. Dubey and W.P.(C)1427/1989 filed by N.K. Gera. The two writ petitions were filed challenging the alleged discrimination in the matter of promotion of degree holders and diploma holder. Similarly, the Slum Wing Graduate Engineers Association filed W.P. (C) No. 250/1990 seeking a direction that DDA should fill up posts of Assistant Engineers belonging to the degree holders quota and vide decision dated 5th March, 1991, a Division Bench directed the DDA to hold Departmental Promotion Committees for the years 1988.1989, and 1990 and make promotions in a manner that ensured parity between degree holders and diploma holders as far as possible.

(iv) In the meantime, the DDA had issued memorandum dated 20th September, 1990 directing that diploma holders who had acquired the degree during the course of service would be treated as degree holders for the purpose of promotion and the date of acquisition of degree was irrelevant for the said purpose.

(v) The memorandum dated 20th September, 1990 was successfully challenged and struck down by the Single Judge in W.P. (C) No. 3336/1990 titled ***R.K. Mittal Vs. Union of India and Others*** reported as (1991) 45 DLT 589 on the limited ground as being violative of principles of natural justice.

(vi) LPA No. 43/1991, challenging this decision was filed by the diploma holders.

(vii) Notwithstanding the decision, establishment order promoting diploma holders on a current duty-charge basis was issued on 5th February, 1991. This order was challenged in W.P. (C) No. 2382/1991 titled ***Slum Wing DDA Graduate Engineers Association (Regd.) & Ors. Vs. Delhi Development Authority and Ors.***

(viii) This writ petition and LPA No. 43/1991 were decided vide judgment dated 12th February, 1992, directing the DDA to revise and consider all promotions in terms of the directions given, holding that the period of three years service in the grade of Junior Engineers for a diploma holder subsequently attaining a degree was to be counted from date of acquisition of degree.

(ix) Consequent to the directions in the *Slum Wing DDA Graduate Engineers Association* (supra) case, a tentative seniority list dated 30th October was issued by the DDA followed by a final seniority list dated 19 March, 1993.

(x) The final seniority list was challenged by S.P. Dubey in W.P.(C) No. 1664/1993. The same was decided by a Full Bench decision dated 25th January, 2002, along with several other writ petitions. The final seniority list was struck down.

(xi) This decision has been overruled and the issue was finally decided by the decision of the Supreme Court in *Shailendra Dania and Others versus S.P. Dubey and Others*, (2007) 5 SCC 535.

4. The arguments raised by the parties in *Shailendra Dania and Others* (supra) were crystallised in paragraphs 23 and 24, which are relevant to the present case and are reproduced below:-

“23. It is urged by Shri Jawahar Lal Gupta and Dr. Rajeev Dhavan, the learned Senior Counsel for the appellants, that under the promotion rule for promotion to the post of Assistant Engineer two separate channels are provided for diploma-holders and degree-holders within their respective quota and there would be no violation of the Rules if requisite experiences required on the post of Junior Engineer as diploma-holder and degree-holder are treated differently and it would be open for the Government to lay down and treat different period of experience as qualitatively different for two classes for further promotion to the post of Assistant Engineer.

24. On the other hand, it is urged by Shri G.D. Gupta, the learned Senior Counsel for the respondents, that 50% of the promotion

quota for degree-holder Junior Engineers is provided under the Rules irrespective of the fact whether a person has joined the post of Junior Engineer as a degree-holder or a diploma-holder and, therefore, on correct interpretation of the Rule the period of three years' experience required is inclusive of the period of service on the post prior to the acquisition of the degree qualification. The plain meaning of the words in the Rule suggests only one interpretation that two qualifications, namely, degree in Engineering and three years' service are disjunctive. Therefore, a Junior Engineer who obtains degree while in service, is required to satisfy only two requirements to become eligible for promotion to the post of Assistant Engineer i.e. a Junior Engineer should have degree in Engineering or its equivalent qualification in addition to three years' service experience as Junior Engineer. The Rule refers to three years' service experience on the post of Junior Engineer and not the experience as qualified degree-holder Junior Engineer. It is further urged that even otherwise for appointment to the post of Assistant Engineer by direct recruitment, the qualification required is degree in Engineering without there being any requirement of experience, which shows that the degree-holder with no prior experience is considered competent to perform the duties attached to the post of Assistant Engineer. There can be no justification that for promotion to the post of Assistant Engineer, a Junior Engineer must possess three years' service experience as Junior Engineer after obtaining degree in Engineering. While construing the relevant rule, the Court has to take into consideration the fact situation in the service and on due consideration of the facts the experience required for promotion could only mean the experience on the post of Junior Engineer and not after obtaining the degree for the purpose of promotion in the quota of degree-holders.”

The Junior Engineers holding a degree had submitted that there were two separate quotas for diploma-holders and degree-holders and the Rules had postulated that they would be treated differently and therefore were to be considered as two separate classes for the purpose of further promotion to the post of Assistant Engineer. The diploma-holders who had

subsequently acquired the degree had argued that experience prior to the acquisition of degree qualification was at the post of Junior Engineer and, therefore, would be counted towards the cumulative experience required to meet the essential qualifications. In other words, a diploma holders having acquired a graduate degree during the course of service was required to satisfy only two requirements to become eligible for promotion to the post of Assistant Engineer, i.e., Junior Engineer should have a degree in Engineering or its equivalent qualification in addition to three years' service experience as Junior Engineer. The Rule did not refer to experience as a qualified degree-holder Junior Engineer

5. The Supreme Court referred to *N. Suresh Nathan and Another versus Union of India and Others*, (1992) SUPP 1 SCC 584 [*N. Suresh Nathan (I)*] wherein a similar dispute had arisen between graduate engineers and diploma-holders in the grade of Junior Engineers. After referring to Rule position and the past practice, which was plausible, it was held that service rendered by the diploma- holders prior to obtaining of the degree cannot be counted for the purpose of promotion. Thereafter, reference was made to *M.B. Joshi and Others versus Satish Kumar Pandey and Others*, (1993) SUPP (2) SCC 419, which related to dispute between diploma-holders, who had completed 12 years of service, Draftsmen and Head Draftsmen, who had completed 12 years of service, and graduate engineers, who had completed 8 years of service. The Supreme Court in this case was called upon to consider whether the period of eight years could be counted from the date when the diploma-holders had acquired the degree of Engineering and not prior to the said date. Referring to the Rule position,

it was held that the qualifying service had no relation with the degree of Engineering and, therefore, the decision in the case of *N. Suresh Nathan (I)* (supra) could be distinguished. It was also highlighted that *N. Suresh Nathan (I)*'s case (supra) was based upon past practice. Reference was also made to *D. Stephen Joseph versus Union of India and Others*, (1997) 4 SCC 753 to observe that the State Government in the said case was labouring under the wrong impression that *N. Suresh Nathan (I)*'s case (supra) was only predicated on past practice. It was observed in *D. Stephen Joseph* (supra) that the Rule itself was interpreted in a particular manner in *N. Suresh Nathan (I)*'s case (supra) and in that context, it was indicated as a secondary reason that past practice should not be upset. In *D. Stephen Joseph* (supra), it was held that a reading of the plain language of the Rule would indicate that the essential requirement was three years' experience as Junior Engineer in the grade and not experience post acquisition of the degree in electrical engineering. The rule position in *M.B. Joshi and Others* (supra) and *D. Stephen Joseph* (supra) was different from the Rule applicable in the case of *N. Suresh Nathan(I)*'s case (supra). Consequently, whether the experience at the lower post should be counted post obtaining the degree or whether experience gained prior to the degree would also be counted depends upon Rule position. The decision in *Anil Kumar Gupta and Others versus Municipal Corporation of Delhi and Others*, (2000) 1 SCC 128 was also quoted to observe that this judgment decided the issue on interpretation of the extant Rule and the Court had found support to that interpretation from past practice to distinguish the decision in the case of *N. Suresh Nathan (I)*'s case to hold that professional experience required cannot be read to have any connection with the degree in Civil Engineering.

Accordingly, professional experience in the service irrespective of a degree in Civil Engineering would be considered for allocating marks. The decision in the case of ***A.K. Raghumani Singh and Others versus Gopal Chandra Nath, and Others***, (2000) 4 SCC 30, was referred to emphasized that the issue in question should be interpreted on the basis of the language of the extant Rule. In ***Indian Airlines Limited and Others versus S. Gopalakrishnan***, (2001) 2 SCC 362, referring to the Recruitment Rule which had prescribed experience in addition to qualification, it was held that the Rule required acquisition of experience after obtaining necessary qualification and not before obtaining such qualification. Referring to the ratio of the decisions, in ***Shailendra Dania and Others*** (supra), it was held as under:-

“**36.** From a reading of the decisions rendered by this Court, one thing is clear to us that the decisions in *N. Suresh Nathan* [1992 Supp (1) SCC 584 : 1992 SCC (L&S) 451 : (1992) 19 ATC 928] , *M.B. Joshi* [1993 Supp (2) SCC 419 : 1993 SCC (L&S) 810 : (1993) 24 ATC 688] , *D. Stephen Joseph* [(1997) 4 SCC 753 : 1997 SCC (L&S) 990] , *Anil Kumar Gupta* [(2000) 1 SCC 128 : 2000 SCC (L&S) 111] , *A.K. Raghumani Singh* [(2000) 4 SCC 30 : 2000 SCC (L&S) 452] and *Indian Airlines Ltd.* [(2001) 2 SCC 362 : 2001 SCC (L&S) 1036] are based on the interpretation of the respective rules called in question, giving meaning to the words used in the context of the entire scheme governing service conditions and the facts involved in each case and it cannot be said that the decisions rendered by this Court after the decision of *N. Suresh Nathan case* [1992 Supp (1) SCC 584 : 1992 SCC (L&S) 451 : (1992) 19 ATC 928] have taken a different view than what has been decided in *N. Suresh Nathan case* [1992 Supp (1) SCC 584 : 1992 SCC (L&S) 451 : (1992) 19 ATC 928] . Thus, we are required to decide the matter on the basis of the entire scheme of the Rules, the facts and circumstances at the relevant time and the Rules called in question before us, independently giving

meaning to the words, the principle involved and the past practice, if any, which is in consonance with the interpretation given by us to the Rule. If we find that two views are possible after interpreting the Rule, then the Rule would be interpreted keeping with the practice followed in the Department for a long time and thus the practice practically acquired status of rule in the Department.”

6. The Supreme Court then referred to the Rules regarding recruitment to the post of Junior Engineers and promotion to the post of Assistant Engineers and subsequently to the post of Executive Engineers in service. The post of Junior Engineer was the entry level post in the service, appointments to which were only by way of direct recruitment. Initially, the educational qualification prescribed for the post was a diploma in Civil Engineering with two years’ experience or graduate in Engineering. For promotion to the post of Assistant Engineer, the Rule prescribed 50% of the post would be filled by direct recruitment from candidates having educational qualification as graduate in Civil Engineering and remaining 50% of the post would be filled by promotion from the post of Junior Engineers. Under clause (a), however, the 50% promotion quota was bifurcated into 25% each to be filled up by way of promotion from the category of graduate Junior Engineers, i.e., persons who hold a degree at the entry point in Engineering and three years’ in service and under clause (b) 25% of the posts were to be filled by diploma holders with eight years of service. Thus, the Rule prescribe two sources of promotion from the post of Junior Engineers, i.e., graduate with three years’ service experience and diploma holders with eight years service experience. This distinction between graduate degree-holder Engineers and diploma-holders was maintained for promotion to the post of Executive Engineer by prescribing

different experience for promotion on the basis of a person being a graduate or a diploma-holder, though no separate quota was prescribed for graduates or diploma-holders.

7. Thereafter, reference was made to the decision in ***Roop Chand Adlakha and Others*** (supra) wherein the constitutional validity of the aforesaid Rule was examined on the ground of difference in service experience between graduate and diploma-holders for promotion to the higher cadres. The challenge was rejected observing that the eligibility determination was made on the basis of certain educational qualifications plus a particular quantum of service experience. This being matter of policy, unless shown to be arbitrary, capricious, and resulting in grossly unfair results, could not be invalidated. Some hardship in individual cases could not be a ground to strike down the policy as violative of Articles 14 and 16. Thereafter, the Supreme Court in ***Shailendra Dania and Others*** (supra) elucidating on the entire scheme of the relevant Rules had held:-

“43. 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 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 criterion 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 ten 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 specialised 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.

44. 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 recognised 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.”

In other words, the Supreme Court referring to the Rule position, held that the diploma-holder Junior Engineers who had obtained a degree in Engineering during the tenure of the service were required to complete three years’ service post the degree to be eligible for promotion to the higher post if they claim promotion in the quota reserved for degree-holder Junior Engineers, there being a separate quotas of 25% each for the diploma-holder Junior Engineers and degree-holder Junior Engineers. This is clear from paragraph 45 of this decision, which reads as under:-

“**45.** 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.”

8. One would have thought that the aforesaid decision would be conclusive and bring an end to the litigation surrounding the issue at hand. However, ingenuity can and would raise a different point or contention to conjure an argument even in cases where the issues have been resolved and settled.

9. The petitioners, four in number, are diploma holder Junior Engineers, who were appointed in the year 1979. They subsequently acquired degree in Engineering in different years between 1986 and 1989. The degree holder Junior Engineers, respondent Nos. 2 to 18 in this writ petition were appointed as Junior Engineer in the year 1981. The said respondents would become eligible for promotion as Assistant Engineer in 1984. The petitioners, on the other hand, who had joined as Junior Engineer with diploma in 1979, would become eligible after eight years of service or after three years of having acquired degree, i.e., between the years 1989 to 1992. The said petitioners and the respondents were considered for promotion by the Departmental Promotion Committee held on 26th September, 1992. The petitioners claim that they are senior to the respondents as they were appointed as Junior Engineers in 1979 notwithstanding the fact that they were diploma holders at that time and had acquired the degree in Engineering between 1986 to 1988. The petitioners argue that the question of *inter se* seniority having been left unanswered, and they, i.e. the diploma-holders, having subsequently acquired the degree, would be senior to

degree-holders on acquisition of the degree in Engineering if they were senior at the initial induction on the post of Junior Engineers at that time as diploma-holders. Learned counsel for the petitioners had referred to paragraph 25 of the judgment in the case of *Shailendra Dania and Others* (supra) to submit that in the said decision, the Supreme Court had not decided the question whether diploma-holders after obtaining the degree could be compulsorily shifted to the group of graduate engineers as the Supreme Court had observed that large number of authorities were cited on both sides raising various issues, but it was not expressing any opinion on these points and was confining their decision to the specific issue raised before them and answered by the High Court. In other words, the contention raised is that diploma-holders would retain the seniority viz. the degree-holders on the date of joining/initial recruitment and would accordingly be considered for promotion three years post their acquiring the degree in Engineering. The petitioners have premised their argument on the distinction drawn between seniority and eligibility. There was a common seniority list of diploma-holder and degree-holder Junior Engineers. Vacancies in the promotional post of Assistant Engineer would be filled as per seniority amongst those Junior Engineers, who fulfil the eligibility condition, i.e., eight years' experience as a diploma-holder and three years' experience as a degree-holder in cases where the employee had a degree on date of joining or three years post acquisition of degree where the employee was a diploma-holder on the date of joining and had subsequently acquired a degree. Reliance is placed on *N. Suresh Nathan versus Union of India and Others*, (2010) 5 SCC 692 [*N. Suresh Nathan (II)*].

10. We do not think the observations in paragraph 25 in *Shailendra Dania and Others* (supra) had left this issue open to be raised in another round of litigation. We may mention that the Supreme Court in *Shailendra Dania and Others* (supra) had specifically referred to the first phase of litigation in the year 1984 and the second phase of litigation when one S.P. Dubey had filed Writ Petition No. 591/1981 in the High Court and the subsequent orders and decisions in the case of *R.K. Mittal versus Union of India*, (1991) 45 DLT 589, *Slum Wing DDA Graduate Engineers Association(Regd.) versus DDA*, (1992) 46 DLT 486 (DB), which had referred to *N. Suresh Nathan (I)* Reference was also made to the Full Bench decision dated 25th January, 2002, which had been made the subject matter of challenge before them. The Full Bench had held that the experience gained by diploma-holder Junior Engineers had to be counted for the post of Assistant Engineer when they had qualified as degree-holders.

11. In the event that we accept the contention of the petitioners, we would be negating and re-writing the very ratio of the reasoning given in paragraphs 43 to 45 of the decision in *Shailendra Dania and Others* (supra), which holds that there was water tight compartmentalisation of graduate Junior Engineers and diploma-holder Junior Engineers and they were entitled to promotion in the respective quota. There were two different channels for promotion from degree-holders and diploma-holders, which had prescribed essential eligibility criteria. Neither diploma- holders could claim promotion in the quota of degree-holders because they have completed three years of service, nor could a degree-holder Junior Engineer claim any promotion from the quota fixed for diploma-holder Junior

Engineers. Even if there was a common seniority list at the level of Junior Engineer, when it came to promotion as per the Rule position, in effect there would be two independent seniority lists; one of the diploma-holders and the other list would be of degree-holder Junior Engineers. Diploma-holder Junior Engineers, after the acquisition of a degree, would also become part of the degree-holder Junior Engineers from the said date and on completion of three years of service would be eligible for promotion in the quota of graduate Junior Engineers.

12. This being the position, it is not possible for us to accept that diploma-holder Junior Engineers, who have subsequently acquired a degree would be considered in the quota of degree-holders based upon their seniority in the diploma-holders list. This would have the effect of not treating the two, i.e., diploma-holder Junior Engineers and degree-holder Junior Engineers as two separate and distinct quota categories. Therefore, if the argument of the petitioner is to be accepted, it would strike at the very foundation and edifice of the reasoning and ratio in the case of ***Shailendra Dania and Others*** (supra).

13. The petitioners have referred to judgment of the Supreme Court in ***N. Suresh Nathan(II)***. This decision holds that ***N. Suresh Nathan-I*** (supra) had not decided the question of seniority and to this extent would not operate as *res judicata* on the said aspect. After having held so, reference was made to the rule position as applicable and the decision of the High Court of Madras was set aside holding that the Government of Pondicherry was justified in counting service of eligible candidates only from the date of acquisition of degree in Civil Engineering and the decision of the Madras

High Court directing that the entire service of the eligible candidate prior and after acquisition of the degree in Civil Engineering should be counted was contrary to the extant rule position. While setting aside the judgment of the High Court of Madras, it was specifically directed that the Government of Pondicherry would consider cases of all Section Officers and Junior Engineers who had completed three years of service for promotion to vacancies in the post of Assistant Engineer in accordance with merits. Learned counsel for the petitioners submitted that the rule position would be different in the present case for three reasons. The post of Assistant Engineer in *N. Suresh Nathan-II* was a selection post, whereas the post of Assistant Engineer in DDA is a non-selection post. Secondly, appointment to the post of Junior Engineer in the DDA is by direct recruitment and the eligibility qualification as prescribed is diploma in Civil Engineering with two years' experience. There is no separate category or qualification for degree holders in Civil Engineering. It is also submitted that there is only one seniority list in the cadre of Junior Engineers.

14. The last contention, according to us, has been categorically answered against the petitioners in the case of *Shailendra Dania and Others* (supra) quoted above and cannot be argued. The first contention of the petitioners would falter and is unacceptable. *Shailendra Dania and Others* (supra) had interpreted the Rule position as applicable to Junior Engineers and Assistant Engineers in DDA. We would not re-examine the rule position. The second contention also has been answered in the case of *Shailendra Dania and Others* (supra). The Full Bench decision of the Delhi High Court in *S.P. Dubey's* case (supra) which was overturned by the Supreme Court in

Shailendra Dania and Others (supra) had accepted the identical argument as is presently raised by the petitioners, *inter alia*, holding that Junior Engineers whether diploma holders or degree holders have to be treated alike for the purpose of experience when it comes to promotion for being considered in degree holders quota for there is no difference in performance of duties between degree holders and diploma holders, and there being a common seniority list. This reasoning was rejected in ***Shailendra Dania and Others*** (supra) to hold that the experience post acquisition of degree in Civil Engineering will be counted for promotion as Assistant Engineer. Prior experience at the post of Junior Engineer would not be counted in such cases as there was a watertight compartmentalisation of the two feeder categories to the promotional post, i.e. that of degree-holders Junior Engineers and diploma holders Junior Engineers.

15. An identical contention was raised in LPA No. 473/2002, ***Vasdev Chhugani versus A.K. Kashyap and Others***, decided on 14th February, 2007. Vasdev Chhugani (the appellant) had joined the service as a diploma holder Junior Engineer on 16th March, 1972 . He had subsequently acquired degree in Civil Engineering on 3rd March, 1980 and completed eight years of service as a Junior Engineer on 15th March, 1980. He was promoted as Assistant Engineer with effect from 20th January, 1981. However J.S. Yadav, his junior was promoted on 29th October, 1980 consequent to which the appellant had appealed to the DDA and had claimed that he was eligible for promotion as Assistant Engineer and should be granted seniority with effect from the date of joining. This plea of the appellant was accepted by the DDA and his seniority was restored above J.S Yadav promoting him

with effect from the same date as the latter i.e. 29th October 1980. A.K. Kashyap, who had joined as a degree holder Junior Engineer and was promoted as Assistant Engineer on 31st December, 1980, had then challenged the seniority given to the appellant. The writ petition filed by A.K. Kashyap was allowed vide order dated 20th May, 2002 passed by the single Judge with the direction that he should be placed above the appellant in seniority. The appellant had then filed the LPA No. 473/2002. Agreeing with the single Judge, the Division Bench held that once the appellant had acquired the degree, he came into the channel of degree holder. The appellant could not claim seniority over a person, who was either senior to him in the line of degree holders or even those in the line of diploma holders like J.S. Yadav, who had acquired degree prior to the appellant. The appellant as a degree holder would get his position or seniority from the date he became eligible as a degree holder, i.e., on 3rd March, 1980, whereas A.K. Kashyap was a degree holder and his starting point for seniority would commence on 11th June, 1979 when he was appointed. In this context, the *inter se* seniority, if any, between the appellant and A.K. Kashyap had lost its significance.

16. In view of the aforesaid discussion, we have reached the following conclusions and findings:-

I. Upon examination of the rule position in ***Shailendra Dania and Others*** (*supra*), the Supreme Court held that diploma holder Junior Engineers on acquiring degree in engineering would be entitled to be treated as degree holder Junior Engineers from the date of acquisition of degree. Prior experience before acquisition of degree would not be counted. In order

to be eligible for promotion in the degree holders quota, the diploma holder Junior Engineers who had obtained a degree during the service tenure would be required to complete 3 years of experience in the grade after the date of acquisition of the degree.

II. The extant rules prescribing 8 years of service for diploma holder Junior Engineers and 3 years of service for degree holder Junior Engineers for being eligible for promotion as Assistant Engineer as interpreted in ***Shailendra Dania and Others*** (*supra*) imply quantitative difference in the service rendered as degree holder Junior Engineer and diploma holder Junior Engineer as indicative of different quality of service rendered. The 25% quota fixed for degree holder Junior Engineers with 3 years' experience and 25% quota for diploma holder Junior Engineers with 8 years' experience, it has been held, are water-tight compartment and constitute different channels. The argument of the petitioners with regard to determination of inter se seniority would thus be covered by the aforesaid ratio of the Supreme Court in ***Shailendra Dania and Others*** (*supra*) categorising degree holders and diploma holders as distinct channels. Thus, despite there being a common seniority list, the two would be separate categories with reference to the question of consideration for promotion.

III. The contention of the petitioners-diploma holder Junior Engineers that they being senior having been appointed earlier to the degree holder Junior Engineers should be considered for promotion before the degree holder Junior Engineers appointed post their appointment would be contrary to the aforesaid ratio in ***Shailendra Dania and Others*** (*supra*) and would negate the effect of the said decision. Seniority of diploma holder Junior Engineers, who acquire degree of engineering during tenure of service, in

the degree holder category or channel would not be counted from the date of initial joining but from the date when they acquire the degree.

IV. The aforesaid ratio and precept applied by us is as per the ratio in LPA No. 473/2002, *Vasdev Chhugani Vs. A.K. Kashyap & Ors.*, decided on 14th February, 2007. This decision clearly holds that a diploma holder Junior Engineer cannot claim seniority over a Junior Engineer, who is either senior to him in the line of degree holders or even those in the line of diploma holders, who had acquired degree prior to him for promotion as Assistant Engineer in the quota/channel of degree holder Junior Engineers. Such diploma holder Junior Engineers would get their position/seniority in the category/channel of degree holder Junior Engineers from the date they acquire the said degree and not from the date of appointment as diploma holder Junior Engineers. They retain their seniority in the category of diploma holder Junior Engineers from the date of appointment.

17. In view of the aforesaid, we are of the opinion that the present writ petition is nothing but a futile attempt to revive a dispute that has already been settled by the decision in *Shailendra Dania and Others* (supra). The writ petition is accordingly dismissed. There will be no order as to costs.

**Sd/
(SANJIV KHANNA)
JUDGE**

**Sd/
(CHANDER SHEKHAR)
JUDGE**

19th JULY, 2017 VKR/ssn