A

STATE OF JAMMU & KASHMIR

v.

TRILOKI NATH KHOSA & ORS.

September 26, 1973

[A. N. RAY, C.J., D. G. PALEKAR, Y. V. CHANDRACHUD,

B P. N. BHAGWATI AND V. R. KRISHNA IYER, JJ.]

Constitution of India, 1950, *Articles* 14, 16—*Jammu and Kashmir Engineering (Gazetted) Service Recruitment Rules,* 1970—*Persons appointed directly and by promotion integrated into common class of Assistant Engineers—If for purpose of promotion as Executive Engineers they could be classified on the basis of educational qualifications—Classification if violative of articles* 14 *and* 16.

C Under the Recruitment Rules of 1939, recruitment to the cadre of Assistant Engineers in the Jammu and Kashmir Engineering Service was to be made by direct recruitment of degree holders in Civil Engineering or by transfer of degree or Diploma holders who have served as Supervisor for a period of not less than 5 years. The rules further provided that appointments by transfer (that is by promotion) to the cadre of Executive Engineers could be made only from the cadre of Assistant Engineers on the basis of merit, ability and the previous record of the candidates. The Jammu and Kashmir Engineering D (Gazetted) Service Recruitment Rules, 1970, provided that recruitment to the post of Executive Engineers and above was to be made only by promotion. And, as regards promotion to the post of Executive Engineers, and to those only, it was provided that only those Assistant Engineers who possessed a degree in Engineering would be eligible for promotion. Diploma holders in Engineering, like the respondents, were thus rendered ineligible for promotion as Executive Engineers. The respondents challenged the constitutionality of the Rule. The classification, according to the appellants, was made with a view to achieving administrative efficiency in the Engineering Service. The High Court, E took the view that the impugned Rule was violative of articles 14 and 16 of the Constitution.

In appeal to this Court it was contended on behalf of the State that it is always open to the Government to classify its employees so long as the classification is reasonable and has nexus with the object thereto; that if there are different sources of recruitment, the employees recruited from different sources can either be allowed different conditions of Services and so continue to belong F to different classes or the Government may integrate them into one class; that once the employees are integrated into one class they cannot for the purposes of promotion, be classified again into two different classes on the basis of differences existing at the time of recruitment; but, after integration into one class, the employees can, in the matter of promotion be classified into different classes on the basis of any intelligible differentia as, for example, educational qualifications, which has a nexus with the object of the classification, namely, efficiency in the post of promotion. The respondents urged that the Rules of 1939 G did not make any distinction between diploma-holders and degree-holders; that the rules governing conditions of Service could not be changed retrospectively to classify employees on the basis of educational qualifications so as to deny promotion to the diploma-holders; that having regard to the fact that from 1939 to 1970 holders of diploma and degree were treated alike, the onus lay heavily on the appellants to prove the necessity for differentiating between the two, which onus was not discharged on the record of the cases; that there was no nexus between the classification and the objects to be achieved thereby and in fact the classification defeated that object; that if chances of promotion were H denied to a few within a class of equals, there was an inherent vice attaching to the classification and no question of reasonableness of the new yardstick could possibly arise; that the unreasonableness of the classification was patent from the fact that a degree qualification was considered as a pre-condition for the promotion to the posts of Executive Engineers but not to higher posts; and

that if persons recruited from different sources were integrated into one class, they could not thereafter be classified so as to permit in favour of some of them a preferential treatment as against others. A

HELD : 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. The rule providing that graduates shall be eligible for such promotion to the exclusion of diploma holders does not violate articles 14 and 16 of the Constitution. B

(i) It is wrong to characterise the operation of a Service rule as retrospective for the reason that it applies to existing employees. A rule which classifies such employees for promotional purposes, undoubtedly operates on those who entered service before the framing of the rule but it operates in future in the sense that it governs the future right of promotion of those who are already in service. It is well settled that a Government servant acquires a 'status' on appointment to his office and as a result his rights and obligations are liable to be determined under statutory or Constitutional authority which for its exercise requires no reciprocal consent. [779 E] C

(ii) It is no part of the appellant's burden to justify the classification or to establish its constitutionality. A classification founded on variant educational qualifications is, for purposes of promotion to the post of a Executive Engineer, to say the least, not unjust on the face of it and the onus therefore cannot shift from where it originally lay. [780 G] D

Shri Ram Krishan Dalmia v. *Justice S. R. Tendolkar & Ors.* [1959] S.C.R. 279, 297; *State of Uttar Pradesh* v. *Kartar Singh* [1964] 6 S.C.R. 679, 687 and *G. D. Kerkar* v. *Chief Controller of Imports and Exports* [1967] 2 S.C.R. 29, 34, referred to.

(iii) Classification is primarily for the legislature or for the statutory authority charged with the duty of framing the terms and conditions of service; and if, looked at from the standpoint of the authority making it, the classification is found to rest on a reasonable basis, it has to be upheld. Discrimination is the essence of classification and does violence to the constitutional guarantee of equality only if it rests on an unreasonable basis. [781 C] E

(iv) There is no justification for the respondent's plea that the record does not disclose the necessity for the impugned rule of 1970. The records show that till about 1968 there was a dearth of Engineering graduates. In 1962 the ratio between graduates and diploma holders was 1 : 2 and in 1968 it became almost 2 : 1 and in 1970 the position remained more or less unchanged. The appellants were entitled to take into account this spurt in the availability of persons with higher educational qualifications for manning the next higher post of promotion. Further, it cannot be overlooked that even under the recruitment rules of 1939 graduates in Civil Engineering were alone eligible for direct recruitment as Assistant Engineers in the Kashmir Engineering Service. [783 B] F

(v) The argument that if the nature of duties and responsibilities of the post of Executive Engineer has undergone no significant change, there would be no justification for restricting the field of choice to graduates assumes in the Court a right of scrutiny somewhat wider than is generally recognised. The concept of equality has an inherent limitation arising from the very nature of the constitutional guarantee. Equality is for equals. That is to say, those who are similarly circumstanced are entitled to an equal treatment. G

Classification, however, is fraught with the danger that it may produce artificial inequalities and therefore, the right to classify is hedged in with salient restraints; or else, the guarantee of equality will be submerged in class legislation masquerading as laws meant to govern well-marked classes characterized by direrent and distinct attainments. Classification, therefore, must be H

A truly founded on substantial differences which distinguish persons grouped together from those left out of the group and such differential attributes must bear a just and rational relation to the object sought to be achieved.

Judicial scrutiny can therefore extend only to the consideration whether the classification rests on a reasonable basis and whether it bears nexus with the object in view. It cannot extend to embaring upon a nice or mathematical evaluation of the basis of classification, for, were such an inquiry permissible, B it would be open to the courts to substitute their own judgment for that of the legislature or the rule-making authority on the need to classify or the desirability of achieving a particular object. [784 A—C]

(vi) So judged, the classification of Assistant Engineers into degree holders and diploma holders cannot be said to rest on any unreal or unreasonable basis. If the classification was made with a view to achieving administrative efficiency in the Engineering Service, the classification is clearly cor-related, to C it, for, higher educational qualifications are at least presumptive evidence of a higher mental equipment. On the facts of the case the classification cannot be said to rest on any fortuitous circumstances. educational qualifications have been recognised by this Court as a safe criteria for determining the validity of classification. [784 D; 785 E]

State of Mysore & Anr. v. *P. Narasing Rao,* [1968] 1 S.C.R. 407, and *The Union of India* v. *Dr. (Mrs.) S. B. Kholi,* A.I.R. 1973 S.C. 811, D 813.

(vii) The seniority list of January 1, 1971 shows how unreal the argument is that the qualification rule not having been extended to the higher echelons of service, it can bear no nexus with the attainment of administrative efficiency in a comparatively lower hierarchy of Assistant Engineers. Dealing with practical exigencies, a rule making authority may be guided by the realities of life, just as the legislature, while making a classification, "is free to recognize degrees of harm and it may confine its restrictions to those classes of cases E where the need is deemed to be the clearest." If the law presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied, [785 C, G]

Bain Peanut Co. v. *Pinson* 75 L. ed. 482, 489, *Miller* v. *Wilson,* 59 L.ed. 632 and *Keekee Gonsol, Coke Co.* v. *Taylor* 58 L.ed. 1288, 1289.

(viii) This Court's decision in *Roshan Lal's* case is no authority for the F proposition that if direct recruits and promotees are integrated into one class, they cannot be classified for purposes of promotion on a basis other than the one that they were drawn from different sources. All that *Roshan Lal's* case lays down is that direct recruits and promotees lose their birthmarks on fusion into a common stream of service and they cannot thereafter be treated differently by reference to the consideration that they were recruited from different sources. Their genetic blemishes disappear once they are integrated into a common class and cannot be revived so as to make equals unequals once G again. In the instant case classification rests fairly and squarely on the consideration of educational qualifications : Graduates alone shall go into higher post, no matter whether they were appointed as Assistant Engineers directly or by promotion. The discrimination, therefore, is not in relation to the source of recruitment as in *Roshan Lal's* case. [789 C]

Roshan Lal Tandon v. *Union of India,* [1968] 1 S.C.R. 185, *Mervyn Coutindo & Ors.* v. *Collector of Customs, Bombay & Ors.,* [1966] 3 S.C.R. 600 and *S. M. Pandit* v. *State of Gujarat,* A.I.R. 1972 S.C. 252, ex- H plained and held inapplicable.

[The Court emphasized the necessity of adopting a pragmatic approach in order to harmonize the recruitments of public service with the aspirations of public servants and cautioned against evolving, through imperceptible exten-

sions, a theory of classification which may subvert, perhaps submerge, the previous guarantee of equality.] [790 G] A

Per Bhagwati and Krishna Iyer, JJ: (concurring): (i) The proposition that all men are equal has working limitations, since absolute equality leads to procrustean cruelty. An imaginative and constructive *modus, vivendi* between commonness and excellence must be forged to make the equality clauses viable. The social meaning of articles 14 to 16 is neither dull uniformity nor specious 'talentism'. It is a process of producing quality out of larger areas of equality extending better facilities to the latent capabilities of the lowly. [791 B—C] B

(ii) In the present case, in the past decades, few Engineering graduates in the State and few Engineering Colleges in the country compelled Government to recruit diploma holders and promote them to higher offices. But circumstances have changed, needs have increased, availabilities have expanded and inequalities at the educational level have been partly eliminated. And so personnel policy, with an eye on efficiency have changed. [791 G—H] C

(iii) However, while striking a balance between the long hunger for equal chance of the lowlier and the disturbing concern of the community for higher standards of performance, the State should not jettison the germinal principle of equality altogether. The dilemma of democracy is as to how to avoid validating the abolition of the difference between the good and the bad in the name of equality and putting to sleep the constitutional command for expanding the areas of equal treatment for the weaker ones with the dope of 'special qualifications' measured by expensive and exotic degrees. These are perhaps meta-judicial matters left to the other branches of Government, but the Court must hold the Executive within the leading strings of egalitarian constitutionalism and correct, by judicial review, episodes of subtle and shady classification grossly violative of equal justice. That is the heart of the matter. That is the note that rings through the first three fundamental rights the people have given to themselves. [792 B] D

The judgment of A. N. RAY, C. J., D. G. PALEKAR and Y. V. CHANDRACHUD J.J. was delivered by Chandrachud, J. KRISHNA IYER, J. delivered a separate concurring Opinion on behalf of Bhagwati, J. and himself. E

CHANDRACHUD, J. If persons drawn from different sources are integrated into one class, can they be classified for purposes of promotion on the basis of their educational qualifications? That is the issue for consideration before us. F

Respondents, who are Diploma Holders in Engineering, filed in the High Court of Jammu and Kashmir a petition under article 226 of the Constitution to challenge the validity of certain Service Rules framed by the Government of Jammu and Kashmir. A Learned single Judge dismissed the petition but in appeal a Division Bench of the High Court took the view that the impugned rules were violative of articles 14 and 16 of the Constitution. The correctness of that view is challenged by the State of Jammu and Kashmir in this appeal by special leave. G

Respondents, who are serving in different branches of the Engineering Service of the appellants, were appointed as Assistant Engineers between 1960 and 1966 by promotion from the Subordinate Engineering H

A Service. Their conditions of service were then governed by the rules published under Order No. 1328-C of 1939. Those rules, to the extent material, read thus :

"The following rules prescribing the procedure relating to recruitment to the gazetted services are sanctioned :—

* * * * *

B (3) *Special qualifications.*—Under rule 18 of the Kashmir Civil Services Rules (General), the following special qualifications are prsecribed in the case of candidates for direct recruitment or recruitment by transfer, as the case may be, to the services mentioned below :—

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C

KASHMIR ENGINEERING SERVICE

Category 2 of Class II. (Assistant Engineer).	Direct	Degree in Civil Engineering of any recognised University;
	By transfer	(i) Degree or Diploma in Civil Engineering of any recognized University or Upper Subordinates Diploma of any recognised College of Engineering and
D		(ii) Service as a Supervisor for a period of not less than 5 years on duty.
E Class III (Ground Engineer) ..	Direct	Certificate of Ground Engineering prescribed by the Government of India.

KASHMIR ELECTRICAL SERVICE

F Category 2 of Class II. (Assistant Electrical Engineer).	Direct	(i) Degree in Electrical Engineering of any recognised University, and
		(ii) Practical training in an Electrical Power Station.
	By transfer	(i) Degree or Diploma in Electrical Engineering of any recognised University and
G		(ii) Practical experience in an Electric Power Station."

H The rules further provided that appointments by transfer (that is, by promotion) to the cadre of Divisional Engineers (now known as Executive Engineers) could be made only from the cadre of Assistant Engineers. Promotions to the cadre of Assistant Engineers could, in turn, be made only from the cadre of Supervisors in the Subordinate

Service. Recruitment by transfer was to be made "on the basis of merit, ability and the previous record of the candidates, seniority being considered only in case of equality of merit, ability and excellence of record". The scale of pay admissible to the Assistant Engineers was Rs. 300-20-500. A

In 1962, the appllants undertook a general revision of pay scales and framed "Jammu and Kashmir Civil Services (Revised Pay) Rules", which were gazetted on August 6, 1962. Rule 12 divided the Assistant Engineers into two categories, datewise. Those appointed prior to August 1, 1960 were placed in Grade I while those appointed subsequently were placed in Grade II, regardless of whether appointments to the posts of Assistant Engineers were made directly or by promotion and whether the incumbents held a degree or a diploma. Those in Grade I were put in the pay scale of Rs. 300-700 while those in Grade II were put in the scale of Rs. 250-600. Officers in Grade II were entitled to go into Grade I after completing two years' service, subject to the availability of vacancies. B C

A further revision of pay scales was effected under the "Jammu and Kashmir Civil Services (Revised Pay) Rules, 1968" which were gazetted on February 27, 1968. Under Rule 10 (IIB) (i), Assistant Engineers were granted a new pay scale of Rs. 300-30-540-EB-35-610-QB-35-750, but it was provided that the "QB at Rs. 610/- will not be crossed by Assistant Engineers with Diploma Course". This rule was challenged by the respondents in so far as it denied to them an opportunity to cross the qualification bar. D

Then came the "Jammu and Kashmir Engineering (Gazetted) Service Recruitment Rules, 1970", gazetted on October 12, 1970. These rules provide for appointments to the gazetted posts in various branches of the Engineering Service of the appellants and supersede the old rules on the subject. By rule 3(f) 'promotion' is defined to mean promotion from one class, category or grade to another class, category or grade on the basis of merit and efficiency, seniority being considered only when merit was equal. Under the Schedule annexed to these Rules, recruitment to the cadre of Executive Engineers and above was to be made only by promotion. But as regards promotion to the posts of Executive Engineers, and to those only, it was provided that only those Assistant Engineers would be eligible for promotion who possessed a bachelor's degree in engineering or held the qualification of A.M.I.E., Section A & B and who had put in at least 7 years service in the J. K. Engineering (Gazetted) Service. This is the second of the two Rules impugned in this appeal. E F G

The case of the respondents as disclosed in their petition was that under the rules of 1939, Assistant Engineers were entitled to be promoted to the higher cadre on the basis of their merit and record and no distinction was made between degree-holders and diploma-holders for the purposes of such promotion. The discrimination made by the impugned rules between degree-holders and diploma-holders was arbitrary and capricious because academic or technical qualifica- H

A tions could be germane only at the time of recruitment. For purposes of promotion, efficiency and experience alone must count. Respondents further contended that once the Government appointed candidates with different academic or technical qualifications to the same cadre, having the same pay scale and similar duties, such candidates would form one class and they cannot be further classified for purposes of pro-
B motion on the basis of their educational qualifications. The impugned rules, according to the respondents, brought about a reduction in rank, deprived them of equal opportunity in the matter of promotion and were violative of articles 14 and 16 of the onstitution of India. Finally, the respondents contended by their petition that it was not competent to the Government to change the service conditions unilaterally to the disadvantage of its employees so as to deprive them of their vested right
C of promotion by giving retrospective effect to the rules.

The appellants, by their counter affidavit, traversed these averments thus : It was within the competence of the Government to grant a higher pay scale to persons with higher educational qualifications. Under the Rules of 1968 a higher slab of pay was sanctioned for Assistant Engineers with higher educational qualifications and the quali-
D fication Bar was imposed so as to exclude diploma-holders, with a view to ensuring administrative efficiency in the Engineering service. Under the Rules of 1970, the Governor had laid down the method of recruitment and had prescribed qualifications for appointment to various categories of posts in the engineering department keeping in view the nature of duties and responsibilities attached to those
E posts. Classification, for purposes of promotion, on the basis of educational qualifications has an intelligible differentia and was therefore not violative of the constitutional provisions of equality. Lastly, the appellants disputed that application of the Rules to existing employees made the Rules "retrospective" in any sense.

F The learned single Judge who heard the petition rejected the respondents' contentions but that judgment was reversed in appeal by a Division Bench of the High Court. Briefly, the Division Bench held that though it was open to the Government to make a reasonable classification of its employees, where the employees were grouped together and integrated into one unit without reference to their qualifications, they formed a single class in spite of initial disparity in
G behalf of their educational qualifications and no discrimination could thereafter be made between them on the basis of such qualifications; that the discrimination made under the Rules of 1968 between diploma-holders and degree-holders was unconstitutional and that having prescribed diploma or a degree in engineering with practical experience as a minimum qualification for entry into service, it was not open to the Government to prescribe higher educational qualifications
H for promotion from the cadre of Assistant Engineers to that of Executive Engineers. The main judgment was delivered by Mufti Bahauddin J. who confined his view to the vice attaching to the rules by reason of their reprospectivity. The learned Chief Justice, by a concurring

judgment, struck down the rules for all time. They were, according to him, bad in so far as they applied to existing employees and would be bad if applied to those who may join the cadre in future. A

The learned Attorney General, who appears on behalf of the appellants, contends that it is always open to the Government to classify its employees so long as the classification is reasonable and has nexus with the object thereof; that a classification cannot be held to infringe the equality clause unless it is actually and plapably arbitrary; that if there are different sources of recruitment, the employees recruited from different sources can either, be allowed different conditions of service and so continue to belong to different classes or the Government may integrate them into one class; that once the employees are integrated into one class, they cannot, for purposes of promotion, be classified again into two different classes on the basis of differences existing at the time of recruitment; but, after integration into one class, the employees can, in the matter of promotion, be classified into different classes on the basis of any intelligible differentia as, for example, educational qualifications, which has a nexus with the object of classification, namely efficiency in the post of promotion. B C

Mr. Setalvad who led for the respondents contended that neither at the time of appointment to the post of Assistant Engineers nor for the purposes of promotion to the post of Divisional Engineers (now called 'Executive Engineers'), was any distinction made by the rules of 1939 between diploma holders and degree-holders; that rules governing conditions of Service could not be changed retrospectively to classify employees on the basis of educational qualifications so as to deny promotion to the diploma-holders; that there was in the instant case no nexus between the classification and the object sought to be achieved thereby and in fact the classification defeated that object; that having regard to the fact that from 1939 to 1970 holders of Diplomas and Degrees were treated alike, the onus lay heavily on the appellants to prove the necessity for differentiating between the two, which onus was not discharged on the record of the case; and that, if the object of the classification was the attainment of efficiency, the Government could have achieved that object, and perhaps in a better measure, by making talent, experience and efficiency as criteria for determining promotional opportunities. D E F

Mr. Gupte, appearing for Respondents 18 to 29, took the stand that once there is a class of equals no discrimination can be made among them on any ground whatsoever. Therefore, if chances of promotion are denied to a few within a class of equals, there is an inherent vice attaching to the classification and no question of the reasonableness of the new yardstick can possibly arise. In the alternative, Mr. Gupte contended, possession of a degree qualification was not a reasonable basis for segregating degree-holders and diploma-holders into water tight compartments. The impugned rule of 1970 was made in the awareness that only some Assistant Engineers were graduates and the facts of the case disclosed no reasonable basis for differentiation between them and the diploma-holders in regard to promotion as Executive Engineers. Finally, the learned counsel contended that the G H

A unreasonableness of the classification was patent from the fact that a degree qualification was prescribed as a pre-condition for promotion to the post of Executive Engineers but not to higher posts. There was neither rhyme nor reason in a rule which permitted a Diploma-holder to occupy the post of a Superintending Engineer or the highest post of a Chief Engineer but barred him from being considered for a lower post in the cadre of Executive Engineers.

B

Mr. Garg, who appears for one of the respondents, laid particular stress on the question of onus. He contended that the heavy onus which lay on the appellants to justify the classification remained wholly undischarged in the context, especially, of the background that between 1939 and 1970 holders of Degrees and Diplomas were treated alike in the matter of promotion from the post of an Assistant C Engineer to that of an Executive Engineer. A system which had stood the test of time, could not, reasonably, be proclaimed unworkable or inefficacious unless the entire context and requirements of the system had undergone some significant change. Of that, says the counsel, there is just no evidence.

Most of the arguments advanced for the respondents have been D considered and rejected by this Court in some case or the other but before coming to that, a few points may be kept out of way.

An argument which found favour with Mufti Bahauddin J., one of the learned Judges of the Letters Patent Bench of the High Court, and which was repeated before us is that the "retrospective" application of the impugned rules is violative of articles 14 and 16 of the E Constitution. It is difficult to appreciate this argument and impossible to accept it. It is wrong to characterise the operation of a service rule as retrospective for the reason that it applies to existing employees. A rule which classifies such employees for promotional purposes, undoubtedly operates on those who entered service before the framing of the rule but it operates *in futuro*, in the sense that it governs the future right of promotion of those who are already in service. The F impugned rules do not recall a promotion already made or reduce a pay-scale already granted. They provide for a classification by prescribing a qualitative standard, the measure of that standard being educational attainment. Whether a classification founded on such a consideration suffers from a discriminatory vice is another matter which we will presently consider but surely, the rule cannot first be assumed to be retrospective and then be struck down for the reason G that it violates the guarantee of equal opportunity by extending its arms over the past. If rules governing conditions of service cannot ever operate to the prejudice of those who are already in service, the age of superannuation should have remained immutable and schemes of compulsory retirement in public interest ought to have foundered on the rock of retroactivity. But such is not the implication of service rules nor is it their true description to say that because they affect H existing employees they are retrospective. It is well-settled that though employment under the Government like that under any other master may have a contractual origin, the Government servant acquires a 'status' on appointment to his office. As a result, his rights and obliga-

tions are liable to be determined under statutory or constitutional authority which for, its exercise, requires no reciprocal consent. The Government can alter the terms and conditions of its employees unilaterally and though in modern times consensus in matters relating to public services is often attempted to be achieved, consent is not a pre-condition of the validity of rules of service, the contractual origin of the service notwithstanding.

The argument on the question of onus is largely founded on the context of facts obtaining in the case. It is urged that for purposes of promotion to higher posts diploma-holders were treated on par with degree-holders from 1939 to 1970 and therefore, the onus must be on the appellants to prove facts and circumstances which necessitated a radical departure from the old and established order. If diploma-holders could competently fill higher posts for over three decades, reasons leading to the rule which renders them wholly ineligible even from being considered for promotion to the post of Executive Engineer ought to be established by the appellants and, it is urged, no evidence is disclosed in support of such reasons.

This submission is erroneous in its formulation of a legal proposition governing onus of proof and it is unjustified in the charge that the record discloses no evidence to show the necessity of the new rule. There is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles.(1) A rule cannot be struck down as discriminatory on any *a priori* reasoning. "That where a party seeks to impeach the validity of a rule made by a competent authority on the ground that the rules offend Art. 14 the burden is on him to plead and prove the infirmity is too well established to need elaboration."[1] The burden thus is on the respondents to set out facts necessary to sustain the plea of discrimination and to adduce "cogent and convincing evidence" to prove those facts for "there is a presumption that every factor which is relevant or material has been taken into account in formulating the classification"(2). In *G. D. Kelkar* v. *Chief Controller of Imports and Exports*(3), Subba Rao C.J. speaking for the Court has cited three other decisions of the Court in support of the proposition that "unless the classification is unjust on the face of it, the onus lies upon the party attacking the classification to show by pleading the necessary material before the court that the said classification is unreasonable and violative of Art. 16 of the Constitution."

Thus, it is no part of the appellants' burden to justify the classification or to establish its constitutionality. Formal education may not always produce excellence but a classification founded on variant educational qualifications is, for purposes of promotion to the post of an

(1) Shri Ram Krishan Dalmia *V.* Justice S. R. Tendolkar & Ors. [1959] S. C. R. 279. 297 (b).
(2) State of Uttar Pradesh *V.* Kartar Singh [1964] (6) S. C.R. 679, 687.
(3) [1967] (2) S. C. R. 29, 34.

A Executive Engineer, to say the least, not unjust on the fact of it and the onus therefore cannot shift from where it originally lay.

Respondents have assailed the classification in the clearest terms but their challenge is purely doctrinaire. 'Academic or technical qualifications can be germane only at the time of initial recruitment; for purposes of promotion, efficiency and experience alone must count'— this is the content of their challenge. The challenge, at best, reflects the B respondents' opinion on promotional opportunities in public services and one may assume that if the roles were reversed, respondents would be interested in implementing their point of view. But we cannot sit in appeal over the legislative judgment with a view to finding out whether on a comparative evaluation of rival theories touching the question of promotion, the theory advocated by the respondents is not C to be preferred. Classification is primarily for the legislature or for the statutory authority charged with the duty of framing the terms and conditions of service; and if, looked at from the standpoint of the authority making it, the classification is found to rest on a reasonable basis, it has to be upheld.

Our reason for saying this is to emphasize that the respondents D ought to have furnished particulars as to why, according to them, the classification between diploma-holders and degree-holders is not based on a rational consideration having nexus with the object sought to be achieved. In order to establish that the protection of the equal opportunity clause has been denied to them, it is not enough for the respondents to say that they have been treated differently from others, not even enough that a differential treatment has been accorded to E them in comparison with others similarly circumstanced. Discrimination is the essence of classification and does violence to the constitutional guarantee of equality only if it rests on an unreasonable basis. It was therefore incumbent on the respondents to plead and show that the classification of Assistant Engineers into those who hold diplomas and those who hold degrees is unreasonable and bears no rational nexus with its purported object. Rather than do this, the respondents F contented themselves by propounding an abstract theory that educational qualifications are germane at the stage of initial recruitment only. Omission to furnish the necessary particulars was construed by this Court in two cases as indicating that the plea of unlawful discrimination had no basis (1). Such an infirmity in leadings led this Court in *State of Madhya Pradesh* v. *Bhopal Sugar Industries Ltd.* (2) to remand the matter to the High Court in order to enable the petitioner therein G to amend its petition.

Mr. Garg asked for a remand so that the respondents could have an opportunity to plead the necessary facts but we declined to do so as we did not propose to allow the appeal on the narrow ground that the respondents' plea of discrimination was inadequate. Nor indeed

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(1) Katra Educational Society *V.* State of Uttar Pradesh & Ors. 1966, (3) S. C.R. 328, 336 and 337; Probhudas Morarjee Rajkotia & Ors. *V.* Union of India & Ors., A. I. R. 1966 S. C. 1044, 1047.

(2) [1964] 6. S. C. R. 846.

did the learned Attorney General press for a decision on any such ground. We have heard the learned counsel fully on the merits of the matter, especially as the question of onus was not presented before the High Court in the form in which it was presented before us. We will now advert to the merits of the other contentions. A

The Proviso to Rule 10(IIB) (1) of the 1968 Rules under which Diploma-holders were debarred from crossing the Qualification Bar placed at Rs. 610 need not detain us because the learned Attorney General states that the Bar has since been removed with retrospective effect. The 1968 scale of pay will therefore apply equally to the degree-holders and diploma-holders in the cadre of Assistant Engineers, with effect from the date on which the 1968 Rules came into force. Respondents, accordingly, will be eligible to reach the ceiling of the scale regardless of the fact that they hold a diploma and not a degree in Engineering. B C

The main question for decision arises out of the challenge to the Rules of 1970 under which diploma-holders in the cadre of Assistant Engineers are not entitled even to be considered for promotion to the next higher cadre of Executive Engineers. Under the Schedule to those Rules, recruitment to the cadre of executive engineers can be made only by promotion from amongst Assistant Engineers. To that is added the impugned rider that only those Assistant Engineers will be eligible for promotion who possess a bachelor's Degree in Engineering or who hold the qualification of A.M.I.E. (Section A and B) and who have put in at least seven years' service. Diploma-holders in Engineering, like the respondents, are thus rendered ineligible for promotion as Executive Engineers. D E

We have observed earlier while dealing with the question of onus that there was no justification for the respondents' plea that the record does not disclose the necessity for the impugned rule of 1970. We will draw attention to the relevant material, which is always admissible to show the reasons and the justification for the classification. Such reasons need not appear on the face of the rule or law which effects the classification(1). F

The seniority list of Assistant Engineers as of January 1, 1971 discloses a significant phenomenon. The list comprises 78 Assistant Engineers and omitting the very first amongst them who was only a matriculate, the remaining 77 were appointed as Assistant Engineers between October 19, 1960 and December 24, 1970. Prior to August 6, 1962 when the rules of 1962 came into force, only 7 Assistant Engineers held an Engineering Degree as against 13 who held a diploma. The position on February 27, 1968 when the rules of 1968 came into force was that the number of degree-holders had increased to 38 while that of diploma-holders went up from 13 to 21 only. On October 12, 1970 when the impugned rule now under consideration came into force, there were 48 degree-holders and 26 diploma-holders in the cadre of Assistant Engineers, excluding the last one at item No. 78 who was promoted after the promulgation of the rules but who is G H

(1) Shri Ram Krishan Dalmia v. Justice S. R. Tendolkar & Ors., [1969] S. C. R. 279, 307-8.

A also a degree-holder. We have advisedly taken no note of two instances in one of which the incumbent was not appointed as a regular Assistant Engineer and the other where, though appointed, the person concerned did not join the Department.

It is transparent from this analysis that till about 1968 there was a dearth of Engineering graduates. In 1962, the ratio between graduates and diploma-holders was 1 : 2. In 1968 it became almost B 2 :1 and in 1970 the position remained more or less unchanged. The appellants were entitled to take into account this spurt in the availability of persons with higher educational qualifications for manning the next higher post of promotion. In fact, it may not be overlooked, that even under the recruitment rules of 1939 graduates in Civil Engineering were alone eligible for direct appointment as Assistant Engi- C neers in the Kashmir Engineering Service. Only departmental promotions could be made from amongst diploma-holders and that too if they had put in 5 years' service in the cadre of Supervisors. There is therefore no substance in the contention that the record sheds no light on why a change was thought necessary in a system that had stood the test of time. In 1968 itself when there was a proliferation in the ranks of graduates, an attempt was made which was later rectified, to D offer a higher incentive to graduates by the placement of a Qualification Bar. We are not called upon to adjudge its validity for reasons already mentioned but it is obvious that the impact of the changing pattern had to receive its due recognition.

But then Mr. Setalvad contends that if the nature of duties and responsibilities of the post of Executive Engineer has undergone no significant change, there would be no justification for restricting the field E of choice to graduates. Talent and efficiency could be found in the ranks of diploma-holders in an equal measure and it is urged that rather than display a mere fancy for graduates and restrict its choice, the State should have in the interest of an efficient service, laid the promotional chances open to both the ranks on the basis of talent, experience and efficiency.

F This argument, as presented, is attractive but it assumes in the court a right of scrutiny somewhat wider than is generally recognized. Article 16 of the Constitution which ensures to all citizens equality of opportunity in matters relating to employment is but an instance or incident of the guarantee of equality contained in article 14. The concept of equal opportunity undoubtedly permeates the whole spectrum of an individual's employment from appointment through promotion G and termination to the payment of gratuity and pension. But the concept of equality has an inherent limitation arising from the very nature of the constitutional guarantee. Equality is for equals. That is to say that those who are similarly circumstanced are entitled to an equal treatment.

Since the constitutional code of equality and equal opportunity is a charter for equals, equality of opportunity in matters of promotion H means an equal promotional opportunity for persons who fall, substantially, within the same class. A classification of employees can therefore be made for first identifying and then distinguishing members of one class from those of another.

Classification, however, is fraught with the danger that it may produce artificial inequalities and therefore, the right to classify is hedged in with salient restraints, or else, the guarantee of equality will be submerged in class legislation inasquerading as laws meant to govern well-marked classes characterized by different and distinct attainments. Classification, therefore, must be truly founded on substantial differences which distinguish persons grouped together from those left out of the group and such differential attributes must bear a just and rational relation to the object sought to be achieved.

Judicial scrutiny can therefore extend only to the consideration whether the classification rests on a reasonable basis whether it bears nexus with the object in view. It cannot extend to embarking upon a nice or mathematical evaluation of the basis of classification, for were such an inquiry permissible it would be open to the courts to substitute their own judgment for that of the legislature or the rule-making authority on the need to classify or the desirability of achieving a particular object.

Judged from this point of view, it seems to us impossible to accept the respondents' submission that the classification of Assistant Engineers into Degree-holders and Diploma-holders rests on any unreal or unreasonable basis. The classification, according to the appellants, was made with a view to achieving administrative efficiency in the Engineering services. If this be the object, the classification is clearly cor-related to it for higher educational qualifications are at least presumptive evidence of a higher mental equipment. This is not to suggest that administrative efficiency can be achieved only through the medium of those possessing comparatively higher educational qualifications but that is beside the point. What is relevant is that the object to be achieved here is not a mere pretence for an indiscriminate imposition of inequalities and the classification cannot be charactersized as arbitrary or absurd. That is the farthest that judicial scrutiny can extend.

On the facts of the case, classification on the basis of educational qualifications made with a view to achieving administrative efficiency cannot be said to rest on any fortuitous circumstance and one has always to bear in mind the facts and circumstances of the case in order to judge the validity of a classification. The provision in the 1939 Rules restricting direct recruitment of Assistant Engineers to Engineering graduates, the dearth of graduates in times past and their copious flow in times present are all matters which can legitimately enter the judgment of the rule-making authority. In the light of these facts, that judgment cannot be assailed as capricious or fanciful. Efficiency which comes in the trail of a higher mental equipment can reasonably be attempted to be achieved by restricting promotional opportunities to those possessing higher educational qualifications. And we are concerned with the reasonableness of the classification, not with the precise accuracy of the decision to classify nor with the question whether the classification is scientific. Such tests have long since been discarded. In fact American decisions have gone as far as saying that classification would offend against the 14th Amendment ot

A the American Constitution only if it is "purely arbitrary, oppressive or capricious"(1) and the inequality produced in order to encounter the challenge of the Constitution must be "actually and palpably unreasonable and arbitrary"(2). We need not go that far as the differences between the two classes—graduates and Diploma-holders—furnish a reasonable basis for separate treatment and bear a just relation to the purpose of the impugned provision.

B

Educational qualifications have been recognized by this Court as a safe criterion for determining the validity of classification. In *State of Mysore* v. *P. Narasing Rao*(3), where the cadre of Tracers was reorganized into two, one consisting of matriculate Tracers with a higher scale of pay and the other of non-matriculates in a lower scale, it was held that articles 14 and 16 do not exclude the laying down of selec-
C tive tests nor do they preclude the Government from laying down qualifications for the post in question. Therefore, it was open to the Government to give preference to candidates having higher educational qualifications. In *Ganga Ram* v. *Union of India*(4), it was observed that "The State which encounters diverse problems arising from a variety of circumstances is entitled to lay down conditions of efficiency and other qualifications for securing the best service for being eligible
D for promotion in its different departments." In *The Union of India* v. *Dr. (Mrs.) S. B. Kohli*(5), a Central Health Service Rule requiring that a professor in Orthopaedics must have a post-graduate degree in the particular speciality was upheld on the ground that the classification made on the basis of such a requirement was not "without reference to the objectives sought to be achieved and there can be no question of discrimination". The argument that a degree qualification was
E not the only criterion of suitability was answered laconically as "strange".

Under the Schedule to the 1970 rules, a degree qualification is prescribed as a condition for promotion to the post of an Executive Engineer from the cadre of Assistant Engineers. But there is no rule requiring a similar qualification for promotion to the post of Super-
F intending Engineer which is next higher to the post of Executive Engineer or for promotion to the apex post of the Chief Engineer. The Schedule provides that recruitment to these two categories of posts shall be made by promotion from amongst persons in cadres next below, who possess experience for a stated number of year. This circumstance is pressed into service by the respondents in support of their plea that the whole basis of classification is unreal and that the
G true object could not be the attainment of higher administrative efficiency. If it was thought necessary to prescribe a Degree qualification in order to achieve efficiency in the post of Executive Engineers, *ex*

(1) *Joseph Radice* v. *People of the State of New York*, 68 L. Ed. 690, 695, *American Sugar Ref. Co. v. Louisiana*, 45 L. Ed. 102, 103.

(2) 68 L. Ed. 690, 695; *Arkansas Natural Gas Co.* v. *Railroad Commission* 67
H L. Ed. 705, 710.

(3) [1968] (1) S. C. R. 407. State of Mysore & Anr. *vs.* P. Narasing Rao.

(4) [1970] (3) S. C. R. 481, 488.

(5) A. I. R. 1973 S. C. 811, 813.

hopothesi it should have been equally imperative, if not more to provide for a similar condition in regard to promotion to higher posts thus runs the argument. A

This argument means that any service reform must embrace every hierarchy or none at all. It is often impossible or at any rate inexpedient to reach and remedy all forms of evil, wherever present. Reform must begin somewhere if it has to begin at all and therefore, the administrator who has nice and complex problems to solve must be allowed the freedom to proceed tentatively, step by step. Justice Holmes gave in a similar context a significant warning that : "We must remember that the machinery of Government would not work if it were not allowed a little play in its joints".(1) B

The seniority list of January 1, 1971 shows how very unreal the argument is that the qualification rule not having been extended to the higher echelons of service, it can bear no nexus with the attainment of administrative efficiency in a comparatively lower hierarchy of Assistant Engineers. On January 1, 1971 which was soon after the publication of the 1970 Rules, there were 6 persons in the cadre of Superintending Engineers all of whom, except one, are graduates. The one at the top is an L.E.E. but he entered service in 1939 and must now be quite on the verge of retirement. There is therefore but slender chance that a non-graduate could climb into the top position of a Chief Engineer, which post can, under the rules of 1970, be filled only by promotion from amongst Superintending Engineers. Promotion to the cadre of Superintending Engineers can be made only from amongst Executive Engineers and the Seniority list shows that out of 22 Executive Engineers, 19 are graduates and only 3 are diploma-holders. Out of the 19, the first 15 according to seniority are all graduates so that the chances of a diploma-holder being promoted as a Superintending Engineer are rairly remote. With the new rules coming into force, all Executive Engineers will, after October 12, 1970, be appointed from amongst graduates in the rank of Assistant Engineers and therefore the cadre of Executive Engineers will soon consist of graduates exclusively. The Governor was entitled to give weight to these practical considerations and to restrict the operation of the impugned rule to cases where their application was imperative. Dealing with practical exigencies, a rule-making authority may be guided by the realities of life, just as the legislature, while making a classification "is free to recognize degrees of harm and it may confine its restrictions to those classes of cases where the need is deemed to be the clearest(2)." If the law presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied.(3) C D E F G

Only one point remains to be considered and it requires a close attention as it claims to have the authority of leading decisions rendered by this Court. We have relegated this point to a rear position because it was necessary, for a proper understanding thereof, to clear the ground of various other doubts dealt with above. A neat point can now be framed and discussed. H

(1). *Bain Peanut Co. v.* Pinson 75 L. ed. 482, 489.

(2). *Miler* vs. *Wilson,* 59 L. ed. 632.

(3). *Keoke Consol. Coke Co. v.* Taylor 53 L. ed. 1288, 1289.

A If persons recruited from different sources are integrated into one class, they cannot thereafter be classified so as to permit in favour of some of them a preferential treatment in relation to others. That is the argument before us which, applied to the facts of the case, means in plain terms this : Direct recruits and promotees having been appointed as Assistant Engineers on equal terms, they constitute an integrated class and for purposes of promotion they cannot be classified B on the basis of educational qualifications.

We have drawn attention to three decisions of this Court (Narsing Rao's case, Ganga Ram's case and Dr. Mrs. Kohli's case) in which classification on the basis of educational qualifications was upheld. In *Narsing Rao's* case(1), Tracers doing equal work were classified into two grades having unequal pay, the basis of the classification being C higher educational qualifications. In *Dr. (Mrs.) Kohli's* case(2), as refined a classification as between an F.R.C.S. in general surgery and an F.R.C.S. in Orthopaedics was upheld in relation to appointment to the post of a Professor of Orthopaedics. But these cases are sought to be distinguished on the authority of the decision of this Court in *Roshan Lal Tandon* v. *Union of India*(3). That case is crowded with facts and requires a careful consideration for its proper understanding.

D Vacancies in Grade 'D' of Train Examiners were filled in Roshan Lal's case by (a) direct recruits i.e., apprentice train examiners and (b) promotees from the class of skilled artisans, in the ratio of 50 :50. Promotion from Grade 'D' to Grade 'C' was to be made on the basis of seniority-cum-suitability. In October, 1965 the Railway Board issued a notification providing that 80% of the vacancies in Grade 'C' would be filled up from the class of apprentice train examiners recruited on E and after April 1, 1966 and the remaining 20% from amongst the train examiners in Grade 'D'. The notification further provided that apprentice train examiners who were absorbed in Grade 'D' before April 1966 would be accommodated *en bloc* in Grade 'C' in the 80% of the vacancies, without undergoing any selection. With regard to 20% of the remaining vacancies it was provided that the promotion would be on the basis of selection and not on the basis of seniority-cum-F suitability. The petitioner, Roshan Lal Tandon, who had entered Railway service in 1954 as a skilled artisan and was later selected and confirmed in Grade 'D' as a Train Examiner filed a writ petition in this Court challenging under articles 14 and 16 of the Constitution, that part of the notification which gave favourable treatment to apprentice train examiners who had already been absorbed in Grade 'D'. His case was that he, along with direct recruits, formed one class in Grade 'D' G and according to the conditions of service applicable to them, seniority was to be reckoned from the date of appointment as Train Examiners in Grade 'D' and promotion to Grade 'C' was to be on the basis of seniority cum-suitability, irrespective of the source of recruitment. His contention was that since he was appointed to Grade 'D' after undergoing the necessary selection and training and since he was integrated with the others who were appointed to Grade 'D' by direct recruitment, H no differentiation could be made as between him and the direct recruits in the matter of promotion to grade 'C'.

(1) [1968] (1) S. C. R. 407. (2) A. I. R. 1973 S. C. 811.
(3) [1968] (1) S. C. R. 185.

The Constitutional objection taken by Roshan Lal was upheld by this Court with these observations : A

> "At the time when the petitioner and the direct recruits were appointed to Grade 'D', there was one class in Grade 'D' formed of direct recruits and the promotees from the grade of artisans. The recruits from both the sources to Grade 'D' were integrated into one class and no discrimination could thereafter be made in favour of recruits from one source as against the recruits from the other source in the matter of promotion to Grade 'C'. To put it differently, once the direct recruits and promotees are absorbed in one cadre, they form one class and they cannot be discriminated for the purpose of further promotion to the higher grade 'C'. In the present case, it is not disputed on behalf of the first respondent that before the impugned notification was issued there was only one rule of promotion for both the departmental promotees and the direct recruits and that rule was seniority-cum-suitability, and there was no rule of promotion separately made for application to the direct recruits. As a consequence of the impugned notification a discriminatory treatment is made in favour of the existing Apprentice Train Examiners who have already been absorbed in Grade 'D' by March 31, 1966, because the notification provides that this group of Apprentice Train Examiners should first be accommodated *en bloc* in grade 'C' upto 80 per cent of vacancies reserved for them without undergoing any selection. As regards the 20 per cent of the vacancies made available for the category of Train Examiners to which the petitioner belongs the basis of recruitment was selection on merit and the previous test of seniority-cum-suitability was abandoned. In our opinion, the present case falls within the principle of the recent decision of this Court in *Mervyn* v. *Collector* [1966(3) S.C.R. 600]."

B C D E F

The key words of the judgment are : "The recruits from both the *sources* to Grade 'D' were integrated into one class and no discrimination could thereafter be made in favour of recruits from one *source* as against the recruits from the other *source* in the matter of promotion to Grade 'C' ". (emphasis supplied). By this was meant that in the matter of promotional opportunities to Grade 'C', no discrimination could be made between promotees and direct recruits by reference to the source from which they were drawn. That is to say, if apprentice Train Examiners who were recruited directly to Grade 'D' as Train Examiners formed one common class with skilled artisans who were promoted to Grade 'D' as Train Examiners, no favoured treatment could be given to the former merely because they were directly recruited as Train Examiners and no discrimination could be made as against the latter merely because they were promotees. This is the true meaning of the observation extracted above and no more than this can be read into the sentence next following : "To put it differently, once

G H

A the direct recruits and promotees are absorbed into one cadre, they form one class and they cannot be discriminated for the purpose of further promotion to the higher Grade 'C' ". In terms, this was just a different way of putting what had preceded.

Thus, all that Roshan Lal's case lays down is that direct recruits B and promotees lose their birth-marks on fusion into a common stream of service and they cannot thereafter be treated differently by reference to the consideration that they were recruited from different sources. Their genetic blemishes disappear once they are integrated into a common class and cannot be revived so as to make equals unequals once again.

Roshan Lal's case is thus no authority for the proposition that if C direct recruits and promotees are integrated into one class, they cannot be classified for purposes of promotion on a basis other than the one that they were drawn from different sources. In the instant case, classification rests fairly and squarely on the consideration of educational qualifications : Graduates alone shall go into the higher post, no matter whether they were appointed as Assistant Engineers directly or by promotion. The discrimination therefore is not in relation to the D source of recruitment as in Roshan Lal's case.

It is relevant, though inconclusive, that the very Bench which decided Roshan Lal's case held about a fortnight later in Narsing Rao's case that higher educational qualifications are a relevant consideration for fixing a higher pay scale and therefore Matriculate Tracers could be E given a higher scale than non-matriculate Tracers, though their duties were identical. Logically, if persons recruited to a common cadre can be classified for purposes of pay on the basis of their educational qualifications, there could be no impediment in classifying them on the same basis for purposes of promotion. The ratio of Roshan Lal's case can at best be an impediment in favouring persons drawn from one source as against those drawn from another for the reason merely that F they are drawn from different sources.

There is an aspect of Roshan Lal's case which may not be ignored. The Union of India had contended by its counter-affidavit therein that the reorganization of the service was made with a view to obtaining a better and more technically trained class of Train Examiners which had become necessary on account of the acquisition of modern types of G Rolling Stock, complicated designs of carriages and wagons and greater speed of trains under the dieselisation and electrification programmes. This contention, though mentioned in the affidavit, was not placed before the court as is transparent from the judgment. What is impact would have been on the ultimate conclusion need not be speculated, for it is enough for understanding the true ratio of the judgment to say that the case was decided on the sole basis that persons recruited from different H sources were classified according as whether they were appointed directly or by promotion. That is why the key passage cited by us from the judgment winds up by saying that the "case falls within the principle of..... the decision.... in *Mervyn* v. *Collector*".

In Mervyn Coutindo & Ors. v. Collector of Customs, Bombay & Ors.,(1) no question arose in regard to the validity of a classification based on educational qualifications. The question there was whether a rotational system for fixing seniority was discriminatory if the recruitment was partly by promotion and partly directly. It was held that there is no inherent vice in such a system if the service is composed in fixed proportion of direct recruits and promotees. The rotational system could therefore be adopted in fixing seniority in the cadre of Appraisers, to which recruitment was in actual practice made directly and by promotion in the ratio of 50 : 50. But different considerations were held to arise when the same system was applied for fixing seniority in the cadre of Principal Appraisers because, there was only one source from which the Principal Appraisers were drawn, namely Appraisers. The ratio of the judgment is : "The rotational system cannot.... apply when there is only one source of recruitment". This is the principle within which Roshan Lal's case was expressed to fall. Neither the one nor the other of the two cases was concerned with the question which arises for consideration before us. The classification of which we have to determine the validity is not made in relation to the source of recruitment. Therefore cases like Roshan Lal's, Mervyn Coutindo's and Pandit's (2) fall in a class apart. The case last mentioned is a typical instance of that class, where directly appointed Mamlatdars were accorded a favoured treatment *qua* the promotee Mamlatdars in the matter of promotion to the post of Deputy Collector. Mamlatdars, whether appointed directly or by promotion, constituted one class and therefore it was held that no reservation could be made in favour of the directly appointed Mamlatdars for promotion to the cadre of Deputy Collectors.

We are therefore of the opinion 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. The rule providing that graduates shall be eligible for such promotion to the exclusion of diploma-holders does not violate articles 14 and 16 of the Constitution and must be upheld.

But we hope that this judgment will not be construed as a charter for making minute and microcosmic classifications. Excellence is, or ought to be, the goal of all good government and excellence and equality are not friendly bed-fellows. A pragmatic approach has therefore to be adopted in order to harmonize the requirements of public services with the aspirations of public servants. But let us not evolve, through imperceptible extensions, a theory of classification which may subvert, perhaps submerge, the precious guarantee of equality. The eminent spirit of an ideal society is equality and so we must not be left to ask in wonderment. What after all is the operational residue of equality and equal opportunity?

For reasons indicated, we allow the appeal but there will be no order as to costs.

(1) [1966] (3) S. C. R. 600.

(2) *S. M. Pandit v. State of Gniarar*, A. I. R. 1972 S. C. 252

A KRISHNA IYER, J. We fully endorse what has been said by our learned brother Chandrachud, J., but the profound depths of equal justice in public employment touched in his final paragraph (with which we ardently agree) impel a few concurring observations of our own.

B In this unequal world the proposition that all men are equal has working limitations, since absolute equality leads to Precrustean cruelty or sanctions indolent inefficiency. Necessarily, therefore, an imaginative and constructive *modus vivendi* between commonness and excellence must be forged to make the equality clauses viable. This pragmatism produced the judicial gloss of 'classification' and 'differentia', with the by-products of equality among equals and dissimilar things C having to be treated differently. The social meaning of arts. 14 to 16 is neither dull uniformity nor specious 'talentism'. It is a process of producing quality out of larger areas of equality extending better facilities to the latent capabilities of the lowly. It is not a methodology of substitution of pervasive and slovenly mediocrity for activist and intelligent—but not snobbish and uncommitted—cadres. However, if the State uses classification casuistically for salvaging status and D elitism, the point of no return is reached for arts. 14 to 16 and the Courts jurisdiction awakens to dadden such manoeuvres. The soul of art. 16 is the promotion of the common man's capabilities, overpowering environmental adversities and opening up full opportunities to develop in official life without succumbing to the sophistic argument of the elite that talent is the privilege of the few and they must rule, wriggling out of the democratic imperative of arts. 14 and 16 by the E theory of classified equality which at its worst degenerates into class domination.

The relevance of these abstract remarks to the present case is obvious. Engineers with diplomas are likely to be drawn from poorer families and not necessarily because they are incapable of making the 'degree' grade. An opportunity for them to level up, through expe- F rience and self-study, with their more fortunate degree-holding meritocracy, is of the essence of equal opportunity for people with dragging backgrounds. If economically, and therefore educationally, handicapped men distinguish themselves, they are heroes and should be honoured and not kept humble through life on account of the original sin of inferior qualifications. Indeed, diploma holders in that Himalayan State were good enough, in the past decades, to go to the G top of the ladder, as the facts of this case admittedly disclose. However, in these young days few engineering graduates in the State and few engineering colleges in the country compelled Government to recruit diploma holders and promote them to higher offices. But circumstances have changed, needs have increased, availabilities have expanded and inequalities at the educational level have been partly eliminated. And so personal policy, with an eye on efficiency, has H changed. While we agree with counsel that 'chill penury' should not 'repress their noble rage', still during our transitional developmental stage the sacrifice of technical proficiency at the altar of wooden equality is an unreasonable injury the State cannot afford to self inflict. The

technology of equal opportunity is to assume diffusion of talent and to afford in-service facilities, through relaxation of rules and otherwise, to the weaker members to acquire better skills.

The wise and tonic words of our learned brother, if we may say so with great deference, are however portentous. While striking a balance between the long hunger for equal chance of the lowlier and the disturbing concern of the community for higher standards of performance, the State should not jettison the germinal principle of equality altogether. [The dilemma of democracy is as to how to avoid validating the abolition of the difference between the good and the bad in the name of equality and putting to sleep the constitutional command for expanding the areas of equal treatment for the weaker ones with the dope of 'special qualifications' measured by expensive and exotic degrees. These are perhaps meta-judicial matters left to the other branches of Government, but the Court must hold the Executive within the loading strings of egalitarian constitutionalism and correct, by judicial review, episodes of subtle and shady classification gross violative of equal justice. That is the heart of the matter. That is the note that rings through the first three fundamental rights the people have given to themselves.]

Mini-classifications based on micro-distinctions are false to our egalitarian faith and only substantial and straightforward classifications plainly promoting relevant goals can have constitutional validity. To overdo classification is to undo equality. If in this case Government had prescribed that only those degree holders who had secured over 70% marks could become Chief Engineers and those with 60% alone be eligible to be Superintending Engineers or that foreign degrees would be preferred we would have unhesitatingly voided it.

The role of classification may well recede in the long run, and the finer emphasis on broader equalities implicit in the concluding thought of the leading judgment will abide. The decision in this case should not—and does not—imply that by an undue accent on qualifications the Administration can out back on the larger tryst of equalitarianism or may hijack the founding and fighting faith of social justice into the enemy camp of intellectual domination by an elite. The Court, in extreme cases, has to be the sentinel on the *qui vive*.

K.B.N. Appeal allowed.