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B. THIRUMAL

v.

ANANDA SIVAKUMAR AND ORS.
(Civil Appeal Nos.10660-62 of 2013)

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NOVEMBER 27, 2013

[T.S. THAKUR AND VIKRAMAJIT SEN, JJ.]

Service Law:

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Promotion – 25% quota reserved for promotion to the members of State Subordinate Engineering Service (Diploma holder Junior Engineers) – 75% quota reserved for promotion to the Assistant Engineers – Upgradation/re-designation of Junior Engineers to the post of Assistant Engineers on their acquiring degree – After upgradation, degree-holder junior engineers/Assistant Engineers considered for promotion to the next post in both the categories i.e. 25% as well as 75% quotas – Held: Re-designation of junior engineers to the post of Assistant Engineers was only an upgradation to encourage them for having attained degree – It was not an re-designation by transfer, which would tantamount to promotion – Despite being re-designated as Assistant Engineer, they continued to hold the post of Junior Engineer – Hence consideration of such degree-holder redesignated Assistant Engineers for promotion against 25% quota cannot be found fault with – However, consideration of such officers against the quota of 25% as well as 75% cannot be justified – Hence they cannot be considered against 75% quota.

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The appellant-a diploma-holder Engineer (Electrical) in the Tamil Nadu Public Works Department, filed representations seeking discontinuation of practice of Asstt. Engineers (Electrical) being empanelled for promotion to the post of Asstt. Executive Engineer (Electrical) against 25% quota reserved for the members

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of Subordinate Engineering Service (to which the post of Junior Engineer belonged) because the same was against State Engineering Service. The plea of the appellant was that though some vacancies in the cadre of Asstt. Executive Engineers were earmarked for Junior Engineers, the same were being filled up by appointment of re-designated Asstt. Engineers. The representations were rejected by the authorities concerned.

He filed writ petitions seeking direction reserved for the members of Subordinate service i.e. diploma-holder Junior Engineers. Single Judge of High Court allowed both the writ petitions. The order of the Single Judge was set aside by Division Bench of High Court. Hence the present appeals.

The respondents *inter alia* contended that re-designation of diploma-holder Junior Engineers (Electrical) as Asstt. Engineers (Electrical) upon their acquiring decree was not re-designation by transfer, but it was simple re-designation on the basis of their higher qualification and such re-designation did not snap their lien with their parent service i.e. Subordinate Engineering Service and thus they continued to be eligible for promotion against 25% quota meant for Subordinate Engineering Service despite their re-designation as Asstt. Engineers (Electrical).

Dismissing the appeals, the Court

HELD: 1.1. No reference to the Tamil Nadu State Public Service Commission was made nor was any other process of selection undertaken for re-designation of degree holder Junior Engineers, which was based entirely on the degree qualification of the incumbent and was granted with effect from the date the qualification was acquired. The re-designation had similarly nothing to do with the number of vacancies available in the State

A Engineering Service. Availability of vacancies in the
 cadre of Assistant Engineers was an essential condition
 precedent for any recruitment to that cadre whether by
 transfer or otherwise. Not only that, re-designation did
 not result in the occurrence of any vacancy in the cadre
 B of Junior Engineers as it should ordinarily have, when
 someone holding the post of Junior Engineer got
 appointed to another service, resulting in the termination
 of his lien in the parent service. This implied that even
 though re-designated as an Assistant Engineer
 C (Electrical) the incumbent continued to hold the post of
 Junior Engineer after re-designation. All this leads to the
 irresistible conclusion that except financial benefit and
 status, re-designation did not bring about any other
 change. Even the duties of such re-designated officers
 D remained the same as before. According to the State
 Government, the two positions *viz.* Junior Engineer
 (Electrical) and Assistant Engineer (Electrical) are
 synonymous insofar as the nature of work and duties are
 concerned. There is no element of recruitment to the
 State Engineering Service by direct recruitment or by
 E transfer. Those re-designated did not stand appointed
 to the cadre of Assistant Engineers (Electrical) in State
 Service. [Paras 14 and 15] [1090-G,1091-D-E]

1.2. Upgradation which is synonymous to re-
 F designation in the facts of the present case, simply
 confers a financial benefit by raising the scale of pay of
 the posts without there being movement from a lower
 position to a higher position. In the case of upgradation,
 the candidate continues to hold the same post without
 G any change in the duties and responsibilities but merely
 gets a higher pay scale. Not only that, where the
 advancement to a higher pay-scale without change of
 post is available to everyone who satisfies the eligibility
 conditions, without undergoing any process of selection,
 H it will be upgradation. But if advancement to a higher

pay-scale without change of post is accompanied by some process which has the element of selection, then it will be a promotion to a higher pay-scale. [Para 16] [1094-F-H; 1095-A-B]

1.3. The rationale behind upgradation not being considered tantamount to promotion would apply with full force even to a case where the upgradation/redesignation is sought to be termed as a case of recruitment by transfer. If the process of upgradation/redesignation has no correlation to the vacancies available in the State Engineering Service and if such upgradation/redesignation is granted as a matter of course without any selection process and merely on the incumbent acquiring a degree qualification, such upgradation/redesignation should not be treated as a case of appointment to the said service by transfer. What could not constitute promotion (assuming that the post of Assistant Engineer (Electrical) was a part of the Subordinate Service) cannot obviously be considered to be a case of appointment by transfer. [Para 17] [1095-D-F]

1.4. The upgradation/re-designation granted to the members of the Subordinate Engineering Service upon their acquiring a degree qualification was meant only to encourage or recognize their getting such higher qualification. Such upgradation may involve a higher designation and better emoluments for the incumbents but neither of those two benefits could constitute promotion or recruitment by transfer. [Para 18] [1095-G-H, 1096-A]

1.5. It is true that the State has shown the upgraded engineers in the seniority list of the Assistant Engineers (Electrical) and even considered and promoted them against vacancies available in 75% quota, meant for that source but such inclusion, consideration and promotion cannot by itself be treated to be ground for holding that

- A the re-designation had the effect of appointing the incumbents by transfer. At any rate, there is nothing to show that the State had taken the lien of the incumbents in their parent service to have been terminated. On the contrary, the State has been considering such re-designated officers for promotion even against 25% quota meant for the Junior Engineers serving in the Subordinate Service. [Para 19] [1096-B-D]

- C *BSNL vs. R. Santhakumari Velusamy and Ors.* AIR 2011 SC 3793; 2011 (14) SCR 502; *Union of India vs. S.S. Ranade* (1995) 4 SCC 462; 1995 (3) SCR 773; *Union of India vs. V.K. Sirothia* (2008) 9 SCC 283; *Lalit Mohan Deb and Ors. vs. Union of India and Ors.* (1973) 3 SCC 862 – relied on.

- D 2.1. The High Court has, while dealing with the question whether Junior Engineers re-designated as Assistant Engineers could have the “best of both worlds” by availing of both the 25% and 75% quotas, upheld that practice on the ground that it only served to reward pursuit of higher studies without causing any undue disadvantage to diploma-holder Junior Engineers, or to directly recruited Assistant Engineers. [Para 20] [1096-E-F]

- F 2.2. An incumbent in service cannot hold lien in two different cadres at once. It is also not correct to say that the two services are in essence one. The distinction is obvious and clear enough from the rules, that provide for method of recruitment, promotion and conditions of eligibility for the two separately. That is so, also because the quotas for promotion to the posts of Assistant Executive Engineers are separate for the members of the two services and one cannot be utilized for the benefit of the other. That apart, the High Court was not correct in holding as if a degree holder could be redesignated as an Assistant Engineer against his will and only because he had acquired a degree qualification. The State has

made it clear in the additional affidavit filed on its behalf that redesignation was ordered on the basis of requests made by the members of the Subordinate Engineering Service. It was, therefore, not correct to suggest as though redesignation was thrust upon unwilling members of the Subordinate Service. Suffice it to say that even the High Court has held that the redesignated Assistant Engineers did not become full-fledged members of the State Service. If that be so, there is no half way house, for either they are members of Subordinate Service or they are not. They cannot be members of the Subordinate Service and State Service both, at one and the same time. [Para 21] [1098-D-H, 1099-A-B]

2.3. Thus, the degree holder Junior Engineers continue to be members of the Subordinate Engineering Service even after they are redesignated as Assistant Engineers upon them getting a degree qualification. They can, therefore, be considered only against the 25% quota reserved for the Subordinate Service and not against 75% reserved for the State Service members directly recruited to that service or appointed by transfer in terms of the Rules. To the extent the redesignated Assistant Engineers have been considered in the past for promotion in the quota reserved for Assistant Engineers in the State Service, the consideration was legally bad. However, the Court does not propose to interfere with what has been done in the past especially when there is no challenge before this Court to the appointment of the re-designated Assistant Engineers as Assistant Executive Engineers against vacancies falling in 75% quota. [Para 22] [1099-B-E]

Case Law Reference:

2011 (14) SCR 502

relied on

Para 15

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- A **1995 (3) SCR 773** **relied on** **Para 15**
 (2008) 9 SCC 283 **relied on** **Para 15**
 (1973) 3 SCC 862 **relied on** **Para 15**

- B **CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10660-10662 of 2013.**

From the Judgment and Order dated 04.08.2009 of the High Court of Judicature at Madras in Writ Appeal Nos. 1155, 1156 and 1346 of 2008.

- C M.N. Krishnamani, Nikhil Swami, Konar Tyaki, Prabha Swami, for the Appellant.

- D C. Selvaraju, Anil Kaushik, Arunima Dwivedi, G.S Chauhan, Shiv Prakash Panday, B.Balaji, R. Rakesh Kr. Sharma, G. Natarjan, R.Ramesh, A. Sumathi, Advs. for the Respondents: -

The Judgment of the Court was delivered by:

- E **T.S. THAKUR, J. 1. Leave granted.**

- F 2. These appeals arise out of a judgment and order dated 4th August, 2009 whereby a Division Bench of the High Court of Judicature at Madras has allowed Writ Appeals No. 1155, 1156 and 1346 of 2008 setting aside the order passed by the learned Single Judge and dismissed Writ Petitions No.25871 of 2006 and 8925 of 2007 filed by the appellant.

- G 3. The appellant was, at the relevant point of time, working as a Junior Engineer (Electrical) in the Tamil Nadu Public Works Department. He was appointed to the said post by direct recruitment through the Tamil Nadu Public Service Commission in the year 1984-85 and was governed by the Special Rules applicable to Tamil Nadu Engineering Subordinate Service (hereinafter referred to as the "Subordinate Engineering Service"). Aggrieved by the prevalent practice of Assistant
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Engineers (Electrical) being empanelled for promotion to the post of Assistant Executive Engineer (Electrical) against 25% quota reserved for members of the Subordinate Engineering Service, the appellant filed a representation to the Engineer-in-Chief, Public Works Department, praying for discontinuation of the said practice on the ground that such empanelment and consideration of Assistant Engineers (Electrical) was contrary to Special Rules applicable to the Tamil Nadu Engineering Service, which is a State Service (hereinafter referred to as the "State Engineering Service"). The Chief Engineer (General), PWD, however, rejected that representation in terms of a communication dated 18th January, 2006, *inter alia*, pointing out that seniority assigned to the Junior Engineers (Electrical) in the cadre could not be altered even after they obtained a degree qualification and were re-designated as Assistant Engineer (Electrical). The Chief Engineer was of the view that re-designation of a diploma-holder as an Assistant Engineer (Electrical) after his acquiring a degree qualification was not tantamount to 'promotion' or appointment to State Engineering Service so as to snap his lien in the Subordinate Service of which he is a member.

4. Dissatisfied by the rejection, the appellant submitted yet another representation pointing out that although some vacancies in the cadre of Assistant Executive Engineers (Electrical) were earmarked for Junior Engineers (Electrical) yet the same were being filled up by appointment of re-designated Assistant Engineers (Electrical). This representation was soon followed by the appellant filing Writ Petition No.25871 of 2006 in which the appellant prayed for a mandamus directing the respondents to consider his case against 25% vacancies reserved for members of the Subordinate Service and a certiorari quashing memorandum dated 18th January, 2006 whereby the Chief Engineer had rejected the representation filed by the appellant. A second representation filed by the appellant on 16th March, 2006 was, in the meanwhile, rejected by the Secretary to the Government, Public Works Department,

- A Chennai, which rejection too was challenged by the appellant in Writ Petition No.8925 of 2007. The appellant prayed for a mandamus directing the respondent to consider and include his name in the panel for appointment to the post of Assistant Executive Engineer (Electrical) against the quota reserved for
- B the diploma holder Junior Engineers. By a common order dated 29th August, 2008 a Single Bench of the High Court of Madras allowed both the writ petitions and directed the State Government to apply Rule 5(3)(b), Branch V – Electrical of the Special Rules applicable to the State Engineering Service in
- C its letter and spirit and determine the seniority and entitlement of promotion on that basis.

5. Three Junior Engineers (Respondents No. 1, 2 and 3 in these appeals), who had been re-designated as Assistant Executive Engineer (Electrical) after they had acquired a
- D degree qualification challenged the aforementioned order passed by the Single Bench in Writ Appeals No.1155 and 1156 of 2008. Their principal contention was that the re-designation of a Junior Engineer on his acquiring a degree was not tantamount to his promotion to the cadre of Assistant Engineers
- E which is governed by a separate set of rules - the Special Rules relevant to the State Engineering Service. The Tamil Nadu Engineering Association also assailed the order passed by the Single Judge in Writ Appeal No.1346 of 2008 which were all heard and allowed by the Division Bench of the High Court of
- F Madras in terms of order impugned before us in the present appeal.

6. It is common ground that the post of Assistant Engineer (Electrical) is not a part of the cadre of the Tamil Nadu Engineering Subordinate Service. There is, therefore, no
- G question of a member of the said service being promoted as an Assistant Engineer (Electrical). The only question that falls for our determination in that view is whether the re-designation of the diploma holder Junior Engineers as Assistant Engineers (Electrical) upon their acquiring a degree qualification was
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tantamount to recruitment by transfer within the meaning of the State Engineering Service Rules.

7. Appearing for the appellant Mr. Krishnamani, argued that re-designation of the diploma holder Junior Engineers was nothing but appointment of such Engineers as Assistant Engineers (Electrical) in the State Engineering Service by transfer within the meaning of Para 3 of the Table attached to the Special Rules to the State Engineering Service which specifically provides for appointment to the posts of Assistant Engineers (Electrical) by direct recruitment or by transfer in the category of Junior Engineer (Electrical) in the Tamil Nadu Engineering Subordinate Service of those who possess a degree in Electrical Engineering. The rules also provide for Junior Electrical Inspectors in the Tamil Nadu Electrical Inspectorate Service being recruited to the post of Assistant Engineer (Electrical) by transfer.

8. Per contra, learned counsel for the respondents argued that re-designation of a Junior Engineers (Electrical) as Assistant Engineers (Electrical) upon their acquiring degree qualification was not the same thing as recruitment by transfer. Any such recruitment, argued the learned counsel, could be made only by constituting a Departmental Promotion Committee for consideration of the claims and *inter se* merit of all eligible candidates. No such procedure was, however, followed while re-designating Junior Engineers (Electrical) as Assistant Engineers (Electrical) in the instant case. The result was that Junior Engineers (Electrical) were simply re-designated as Assistant Engineers (Electrical) on the basis of their higher academic qualification and that such re-designation did not snap their lien with the parent service, namely, Tamil Nadu Engineering Subordinate Service. Such being the case the re-designated Assistant Engineers (Electrical) continued to be eligible for promotion against 25% quota meant for the members of the Subordinate Engineering Service, their re-designation as Assistant Engineers (Electrical) notwithstanding.

- A 9. We had after noticing the rival contentions of the parties passed an order on 12th April, 2012 by which we had directed the State Government to file an affidavit stating whether or not the re-designation of such Junior Engineers was granted at the request of such Junior Engineers or came about automatically.
- B The State was also directed to place on record Government Orders and Circulars issued from time to time regarding recruitment to the State Engineering Service by transfer from the Subordinate Engineering Service as a source of such recruitment and in case the State had treated the re-designated
- C members of the Subordinate Service to have been recruited by transfer the process that was followed for making such recruitment. In compliance with that order an affidavit was filed by Shri K. Eswantha Rao, Deputy Secretary to Government, Public Works Department, Chennai on 4th October, 2012. A
- D reading of the affidavit shows that re-designation is granted only on receipt of an application from the Junior Engineer concerned. The Affidavit states:

E *"As per the said rule provisions, on receipt of application from the Junior Engineer concerned informing the fact of acquisition of B.E. degree by him and requesting redesignation, he is granted redesignation as Assistant Engineer with effect from the date of acquisition of B.E. degree by recruitment by transfer."*

- F 10. By another order dated 14th August, 2013 passed by this Court, the respondent-State was directed to file a further affidavit stating whether the re-designated Assistant Engineers are considered for promotion against the 75% quota reserved for the Assistant Engineers for promotion to the cadre of Assistant Executive Engineer. The State was further directed
- G to indicate whether upon re-designation the Junior Engineers are shown in the final seniority list of Assistant Engineers and also to furnish details about the sanctioned cadre strength of Assistant Engineers in the State Service for the past ten years. Copies of the seniority lists and the relevant Rules were also
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directed to be filed. An additional affidavit pursuant to the said directions has been filed in which it is stated that Assistant Engineers upon their re-designation are being considered for promotion as Assistant Executive Engineers against 75% quota earmarked for Assistant Engineers based on the seniority fixed in the cadre of Assistant Engineers. The affidavit goes on to state that such Assistant Engineers are also being considered for promotion as Assistant Executive Engineers against 25% quota reserved for diploma holder Junior Engineers. The following passage from the affidavit is, in this regard, noteworthy:

"It is submitted that redesignated Assistant Engineers are being considered for promotion as Assistant Executive Engineers in the 75% quota earmarked for Assistant Engineers based on the seniority fixed in the post of Assistant Engineers. It is further submitted that as a convention, redesignated Assistant Engineers are also being considered for promotion as Assistant Executive Engineers based on their seniority in the post of Junior Engineer in the 25% quota if their turn for promotion comes first in the seniority list of Junior Engineers, which is an additional benefit conferred on them for having acquired higher qualification."

11. The affidavit goes on to explain the reason for such duality of consideration for promotion in the following words:

"It is submitted that there is no explicit provision in the special rules for Tamil Nadu Engineering Services to provide promotion to the redesignated Assistant Engineers on the basis of their seniority in the post of Junior Engineer if their turn for promotion as Assistant Executive Engineers comes earlier in the seniority list of Junior Engineers than in the seniority lists of Assistant Engineers. However, this procedure is being followed conventionally and more than twenty persons both in the category of Civil and Electrical in this Department have

A *been promoted as Assistant Executive Engineers."*

12. We have referred to the affidavits in detail only to highlight the fact that the procedure followed by the State Government is not sanctioned by any rule and yet is being followed in the name of a convention. We, however, fail to appreciate how an officer could be considered for promotion in two different channels of promotion. Nor is it possible to appreciate how an engineer or any other civil servant could be a member of two distinct services at the same time or claim a lien or consideration for promotion on that basis.

13. Time now to refer to the provisions of 'Branch V – Electrical' of the Special Rules applicable to State Engineering Service which recognises three categories of officers, namely, Electric Engineers in Category-I, Assistant Executive Engineers (Electrical) in Category-II and Assistant Engineers (Electrical) comprising Category-III. Rule 2 and the Table below the same prescribe the category and the method of recruitment. It reads:

"2 Appointment:- (a) *Appointment to the categories specified in column (1) of the Table below shall be made by the methods specified in column (2) thereof:-*

TABLE

	Category (1)	Method of recruitment (2)
F	1. Electrical Engineer	(i) By Promotion from Assistant Executive Engineer (Electrical) in category 2. (ii) By recruitment by transfer from the category of Electrical Inspector in the Tamil Nadu Electrical Inspectorate service.
G	2. Assistant Executive Engineer (Electrical)	(i) By promotion from Assistant Engineer (Electrical) in category 3; or (ii) By recruitment by transfer from
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		the category of Junior Engineer (Electrical) in the Tamil Nadu Engineering Subordinate Service or from the category of Assistant Electrical Inspector in the Tamil Nadu Electrical Inspectorate service; or (iii) By direct recruitment, if qualified hands are not available for appointment by the above methods.	A B
3.	Assistant Engineer (Electrical)	(i) By direct recruitment; or (ii) By recruitment by transfer from the category of Junior Engineer (Electrical) in the Tamil Nadu Engineering Subordinate service who possess a Degree in Electrical Engineering; or from the category of Junior Electrical Inspectors in the Tamil Nadu Electrical Inspectorate service.	C D

(b) Promotion to the category of Electrical Engineer shall be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal.

(c) So far as qualified and suitable candidates are available out of every four vacancies successively arising in the category of a Assistant Executive Engineer (Electrical), the first three vacancies shall be filled in or reserved to be filled in by promotion from among the category to Assistant Engineer possessing B.E.degree (Electrical) and the fourth vacancy shall be filled in or reserved to be filled by recruitment by transfer from the category of Junior Engineer (Electrical) possessing the diploma in Electrical Engineering."

14. A bare glance at the above would show that appointment to the category of Assistant Engineer can be made by direct recruitment or by transfer from the category of Junior

- A Engineer (Electrical) in the Tamil Nadu Engineering Subordinate Service from among those who possess a degree in Electrical Engineering or from the Junior Electrical Inspectors to the Tamil Nadu Electrical Inspectorate Service. The question as noticed earlier is whether the re-designation of degree holder Junior
- B Engineers was by itself tantamount to appointment by transfer to the State Engineering Service. It is common ground that no reference to the Tamil Nadu State Public Service Commission was made nor was any other process of selection undertaken for such re-designation which was based entirely on the degree
- C qualification of the incumbent and was granted with effect from the date the qualification was acquired. The re-designation had similarly nothing to do with the number of vacancies available in the State Engineering Service. Availability of vacancies in the cadre of Assistant Engineers was an essential condition
- D precedent for any recruitment to that cadre whether by transfer or otherwise. Not only that, re-designation did not result in the occurrence of any vacancy in the cadre of Junior Engineers as it should ordinarily have, when someone holding the post of Junior Engineer got appointed to another service, resulting in the termination of his lien in the parent service. This implied that
- E even though re-designated as an Assistant Engineer (Electrical) the incumbent continued to hold the post of Junior Engineer after re-designation. All this leads to the irresistible conclusion that except financial benefit and status, re-designation did not bring about any other change. If the version of the respondents is
- F believed as we are inclined to do, even the duties of such re-designated officers remained the same as before. According to the State Government the two positions *viz.* Junior Engineer (Electrical) and Assistant Engineer (Electrical) are synonymous insofar as the nature of work and duties are concerned. To sum
- G up :
- (i) The re-designation comes as a natural and inexorable consequence of the higher qualification acquired by a Junior Engineer, no matter on an
- H application filed by the incumbent.

- (ii) The re-designation is granted with effect from the date the higher qualification is acquired. A
- (iii) The re-designation has no co-relation to the vacancies in the cadre of Assistant Engineers (Electrical). No vacancies are created to accommodate the officers being re-designated, which would be inevitable unless the vacancies equal to the officers being re-designated, were already available. B
- (iv) The nature of duties for the re-designated officers remained the same as for Junior Engineers. C
- (v) The re-designated officers continue to be considered for promotion in their parent service against 25% quota fixed for that source. D

15. The cumulative effect of the above, in our opinion, is that there is no element of recruitment to the State Engineering Service by direct recruitment or by transfer. The contention that those re-designated stood appointed to the cadre of Assistant Engineers (Electrical) in State Service must, therefore, fail. Considerable support for that conclusion is available from the decision of this Court in *BSNL v. R. Santhakumari Velusamy & Ors.* AIR 2011 SC 3793. That was a case where this Court was examining whether rules of reservation were applicable to promotions to Grade IV under the Biennial Cadre Review Scheme introduced by the Department of Telecommunications, Government of India with a view to remove stagnation of certain categories of employees serving in the said department. The Government had formulated the procedure regarding promotion to Grade IV according to which such promotions were to be granted on the basis of seniority in the basic grade from amongst the officers in Grade III subject to fitness determined in the usual manner of One Time Bound Promotion Scheme ('OTBP Scheme' for short). By a clarificatory Circular issued subsequently the Government had directed that promotions H

A would be subject to fulfilment of other conditions and that normal
 rules of reservation would apply to the same. The direction
 regarding application of rules of reservation to promotions to
 Grade IV was assailed by the All India Non Schedule Caste/
 Schedule Tribe Telecom Employees Association on the ground
 B that principles of reservation had no application for upgradation
 on existing posts which did not carry any change in duties and
 responsibilities. The Central Administrative Tribunal,
 Ahmedabad upheld that contention and directed that
 reservation will have no application while upgrading posts under
 C the BCR Scheme and directed that the department shall take
 appropriate action for effecting promotions to the upgraded
 posts without applying the reservation roster. The order passed
 by the Tribunal was upheld by the Gujarat High Court in a writ
 petition filed by the Government. The matter eventually reached
 D this Court by special leave. One of the main issues considered
 by this Court was whether upgradation of the posts under the
 BCR Scheme was tantamount to promotion. This Court upon
 a comprehensive review of the decisions rendered earlier
 including those rendered in *Union of India v. S.S. Ranade*
 (1995) 4 SCC 462, *Union of India v. V.K. Sirothia* (2008) 9
 E SCC 283 and *Lalit Mohan Deb and Ors. v. Union of India &*
Ors. (1973) 3 SCC 862 formulated specific principles relating
 to promotion and upgradation in the following words:

F “21. On a careful analysis of the principles relating to
 promotion and upgradation in the light of the aforesaid
 decisions, the following principles emerge:

G (i) Promotion is an advancement in rank or grade or both
 and is a step towards advancement to higher position,
 grade or honour and dignity. Though in the traditional
 sense promotion refers to advancement to a higher post,
 in its wider sense, promotion may include an
 advancement to a higher pay scale without moving to a
 different post. But the mere fact that both that is
 H advancement to a higher position and advancement to

a higher pay scale - are described by the common term 'promotion', does not mean that they are the same. The two types of promotion are distinct and have different connotations and consequences.

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(ii) Upgradation merely confers a financial benefit by raising the scale of pay of the post without there being movement from a lower position to a higher position. In an upgradation, the candidate continues to hold the same post without any change in the duties and responsibilities but merely gets a higher pay scale.

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(iii) Therefore, when there is an advancement to a higher pay scale without change of post, it may be referred to as upgradation or promotion to a higher pay scale. But there is still difference between the two. Where the advancement to a higher pay-scale without change of post is available to everyone who satisfies the eligibility conditions, without undergoing any process of selection, it will be upgradation. But if the advancement to a higher pay-scale without change of post is as a result of some process which has elements of selection, then it will be a promotion to a higher pay scale. In other words, upgradation by application of a process of selection, as contrasted from an upgradation simplicitor can be said to be a promotion in its wider sense that is advancement to a higher pay scale.

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(iv) Generally, upgradation relates to and applies to all positions in a category, who have completed a minimum period of service. Upgradation, can also be restricted to a percentage of posts in a cadre with reference to seniority (instead of being made available to all employees in the category) and it will still be an upgradation simplicitor. But if there is a process of selection or consideration of comparative merit or suitability for granting the upgradation or benefit of

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- A *advancement to a higher pay scale, it will be a promotion. A mere screening to eliminate such employees whose service records may contain adverse entries or who might have suffered punishment, may not amount to a process of selection leading to promotion*
- B *and the elimination may still be a part of the process of upgradation simplicitor. Where the upgradation involves a process of selection criteria similar to those applicable to promotion, then it will, in effect, be a promotion, though termed as upgradation. A*
- C *(v) Where the process is an upgradation simplicitor, there is No. need to apply rules of reservation. But where the upgradation involves selection process and is therefore a promotion, rules of reservation will apply.*
- D *(vi) Where there is a restructuring of some cadres resulting in creation of additional posts and filling of those vacancies by those who satisfy the conditions of eligibility which includes a minimum period of service, will attract the rules of reservation. On the other hand, where the*
- E *restructuring of posts does not involve creation of additional posts but merely results in some of the existing posts being placed in a higher grade to provide relief against stagnation, the said process does not invite reservation."*
- F 16. On a careful reading of principles (ii) and (iii) above, it is evident that upgradation which is synonymous to re-designation in the facts of this case simply confers a financial benefit by raising the scale of pay of the posts without there being movement from a lower position to a higher position. In
- G the case of upgradation, the candidate continues to hold the same post without any change in the duties and responsibilities but merely gets a higher pay scale. Not only that, where the advancement to a higher pay-scale without change of post is available to everyone who satisfies the eligibility conditions,
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without undergoing any process of selection, it will be upgradation. But if advancement to a higher pay-scale without change of post is accompanied by some process which has the element of selection, then it will be a promotion to a higher pay-scale. This Court declared that up-gradation in that case was not promotion, also because the BCR Scheme did not involve creation of additional posts nor did the scheme involve consideration of *inter se* merit of the candidates or involve any selection process. The Court on that basis declared that BCR Scheme was only an upgradation intended to give relief against stagnation which was not tantamount to promotion. To such process of upgradation, the Reservation Rules had no application, declared this Court.

17. The rationale behind upgradation not being considered tantamount to promotion would, in our opinion, apply with full force even to a case where the upgradation/redesignation is sought to be termed as a case of recruitment by transfer. If the process of upgradation/redesignation has no correlation to the vacancies available in the State Engineering Service and if such upgradation/redesignation is granted as a matter of course without any selection process and merely on the incumbent acquiring a degree qualification, we see no reason why such upgradation/redesignation should be treated as a case of appointment to the said service by transfer. What could not constitute promotion (assuming that the post of Assistant Engineer (Electrical) was a part of the Subordinate Service) cannot obviously be considered to be a case of appointment by transfer.

18. Suffice it to say that the principles enunciated in *Velusamy's* case (*supra*) when applied to the facts of the case at hand, leave no manner of doubt that the upgradation/redesignation granted to the members of the Subordinate Engineering Service upon their acquiring a degree qualification was meant only to encourage or recognize their getting such higher qualification. Such upgradation may involve a higher

- A designation and better emoluments for the incumbents but neither of those two benefits could constitute promotion or recruitment by transfer.

B 19. It is true that the State has shown the upgraded engineers in the seniority list of the Assistant Engineers (Electrical) and even considered and promoted them against vacancies available in 75% quota, meant for that source but such inclusion, consideration and promotion cannot by itself be treated to be ground for holding that the re-designation had the effect of appointing the incumbents by transfer. At any rate, there is nothing to show that the State had taken the lien of the incumbents in their parent service to have been terminated. On the contrary, the State has been considering such re-designated officers for promotion even against 25% quota meant for the Junior Engineers serving in the Subordinate Service. The aberration of considering the redesignated officers as members of the State Service does not constitute a sufficient basis for us to depart from the legal parameters to which we have adverted earlier.

E 20. The Division Bench of the High Court has, while dealing with the question whether Junior Engineers re-designated as Assistant Engineers could have the "best of both worlds" by availing of both the 25% and 75% quotas, upheld that practice on the ground that it only served to reward pursuit of higher studies without causing any undue disadvantage to diploma-holder Junior Engineers, or to directly recruited Assistant Engineers. The Division Bench observed:

G *"14...A Diploma-holder Junior Engineer, who on acquisition of Degree in Electrical Engineering is re-designated as Assistant Engineer, is placed below the directly recruited graduate Engineer during the year concerned. Therefore, obviously he does not steal march over such directly recruited Assistant Engineer having Degree in Engineering. Similarly it cannot be said that he is stealing march over the Diploma-holder Junior*

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Engineers who continue as such in as much as such a person only gets a better opportunity because of his perseverance in pursuing further study and acquisition of a higher qualification subsequently adds to the quality of work done by such person. A Diploma-holder Junior Engineer, who subsequently acquires a degree in Engineering, does not become senior above any Diploma-holder Junior Engineer. While he retains his seniority, he only gets an additional avenue as he is also redesignated as Assistant Engineer. Ultimately, the benefit goes to a person who pursues higher studies. It cannot be said that there is anything inherently arbitrary in such a scenario in as much as a person ultimately gets some reward for his pursuit of higher study and because of his perseverance in obtaining a higher degree.

If a Diploma-holder Junior Engineer on acquisition of higher qualification is to be compulsorily moved out of the category of Junior Engineer, anomalous position may crop up. Since such a person would be placed below all the existing graduate Assistant Engineers, his chance of being promoted within the quota of 3/4th meant for graduate Assistant Engineers would be practically nil. It is of course true that on being re-designated as Assistant Engineer, such a person receives higher salary, but when he is compulsorily "kicked upstairs" (if we may permitted to observe so) the Diploma-holder Junior Engineer, who were below him, would be in a better position for being promoted, even though less qualified than him. The convention which was being hitherto followed in the Department does not prejudice a graduate Engineer in the Assistant Engineer cadre nor it has the effect of blocking the promotional prospects of any Diploma-holder Junior Engineer, who was senior to such other Diploma-holder Junior Engineer who subsequently acquires the higher qualification.

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B 19. *In our considered opinion, the Junior Engineers, on acquisition of higher qualification are re-designated as Assistant Engineers, but it cannot be said that they have become full-fledged members of any other service. It is to be noticed that though technically two services may be different, the nature of the work done is the same and, since two services are essentially same, the traditional concept of losing lien in the original service while absorbed or deputed in any other service does not strictly arise for consideration.*

C 20. *The convention, which was hitherto being followed by the Department, and now approved by us, has the effect of conferring additional benefit on a person who pursues the study for acquiring higher qualification."*

D 21. The observations made by the Division Bench in the above passages do not appear to be legally correct since an incumbent in service cannot hold lien in two different cadres at once. It is also not correct to say that the two services are in essence one. The distinction is obvious and clear enough from the rules, that provide for method of recruitment, promotion and conditions of eligibility for the two separately. That is so also because the quotas for promotion to the posts of Assistant Executive Engineers are separate for the members of the two services and one cannot be utilized for the benefit of the other. That apart, the High Court was not correct in holding as if a degree holder could be redesignated as an Assistant Engineer against his will and only because he had acquired a degree qualification. The State has made it clear in the additional affidavit filed on its behalf that redesignation was ordered on the basis of requests made by the members of the Subordinate Engineering Service. It was, therefore, not correct to suggest as though redesignation was thrust upon unwilling members of the Subordinate Service. Suffice it to say that even the High Court has held that the redesignated Assistant Engineers did

not because of redesignation become full-fledged members of the State Service. If that be so, there is no half way house, for either they are members of Subordinate Service or they are not. They cannot be members of the Subordinate Service and State Service both, at one and the same time.

22. The upshot of the above discussion is that the degree holder Junior Engineers continue to be members of the Subordinate Engineering Service even after they are redesignated as Assistant Engineers upon them getting a degree qualification. They can, therefore, be considered only against the 25% quota reserved for the Subordinate Service and not against 75% reserved for the State Service members directly recruited to that service or appointed by transfer in terms of the Rules. To the extent the redesignated Assistant Engineers have been considered in the past for promotion in the quota reserved for Assistant Engineers in the State Service, the consideration was legally bad. Having said that, we do not propose to interfere with what has been done in the past especially when there is no challenge before us to the appointment of the re-designated Assistant Engineers as Assistant Executive Engineers against vacancies falling in 75% quota. The settled position need not, therefore, be unsettled at this stage in these proceedings. With the above observations and clarification these appeals fail and are hereby dismissed, but in the circumstances without any orders as to costs.

Kalpana K. Tripathy

Appeals dismissed.