

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO.704/88

DATE OF DECISION: 30.4.1990.

J.N. GOEL & OTHERS
SHRI J.P. GUPTA

APPLICANTS
ADVOCATE FOR THE APPLICANTS

VERSUS

UNION OF INDIA & OTHERS
SHRI P.H. RAMACHANDANI
SHRI G.D.GUPTA & SHRI G.K.AGGARWAL

RESPONDENTS
ADVOCATE FOR RESPONDENTS 1-3
ADVOCATES FOR OTHER
RESPONDENTS

AND

O.A.910/89

SHRI G.L. GUPTA & OTHERS

APPLICANTS

SHRI G.D.GUPTA & SHRI G.K.AGGARWAL

ADVOCATES FOR APPLICANTS

VERSUS

UNION OF INDIA
SHRI P.H. RAMCHANDANI
SHRI J.P. GUPTA

RESPONDENTS
ADVOCATE FOR RESPONDENTS 1-4
ADVOCATE FOR OTHER
RESPONDENTS.

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

J U D G E M E N T

(Of the Bench delivered by the Hon'ble Mr. I.K. Rasgotra, Member(A))

In this case we are dealing with OA No. 704/88 filed by Shri J.N. Goel and Others, Assistant Engineers (AE) who are degree holders and OA No. 910/89 by Shri G.L. Gupta and others Assistant Engineers who are diploma holders. The case of Shri J.N. Goel & Others is that the diploma holder AEs should be promoted to the grade of Executive Engineer (EE) in relaxation of the educational qualifications only when they have 'outstanding

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ability and record' as provided in Rule 21(3) of the Recruitment Rules (RR) for Central Engineering Service Group A (SRO 1841 dated 21st May, 1954 as amended). They further contend that the diploma holder Assistant Engineers who do not possess 'outstanding ability and record' are not eligible for promotion to the grade of Executive Engineer and therefore cannot be considered for promotion on the basis of seniority-cum-fitness at par with graduate AEs. The case of S/Shri G.L. Gupta, B.D. Punjwani and others in OA No. 910/89 is that the proviso under Rule 21(3) of the recruitment rules is discriminatory and is violative of articles 14 and 16 of the Constitution of India and therefore may be declared unconstitutional.

The applicants in both the cases belong to the cadre of Civil Engineers and Electrical Engineers of the Central Public Works Department (CPWD). The Recruitment Rules for Central Engineering Service Group A belonging to Civil Engineering branch are notified in SRO 1841 dated 21.5.1954 as amended from time to time, and the corresponding Recruitment Rules regulating the conditions of service of Electrical Engineers are notified in SRO 1843 dated 21.5.1954 as amended from time to time. As the issues agitated in both the petitions represent different facets of the same problem, we are dealing with the two cases through this common judgement.

2. Before going into the merits of the case, we would like to briefly mention the organisation of the CPWD and the method of recruitment and channel of promotion of the categories which will

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be coming up for discussion hereinafter.

3. The post of the Junior Engineer (JE) is the lowest post in the Engineering hierarchy in the CPWD. The appointment to the grade of JE is made through All India Competitive Examination through UPSC. The minimum qualification for the competitive examination is a Diploma in Civil/Electrical/Mechanical Engineering. As Diploma is the minimum qualification, candidates with a degree in civil/electrical engineering are also eligible for appearing in the competitive examination and in fact quite a few of degree holders are appointed as JEs. Further some diploma holder JEs also acquire degree/equivalent qualification while in service to improve their career prospects. Thus the cadre of Junior Engineers comprises diploma holders as well as degree holders in CPWD.

4. The next promotional post for the Junior Engineers is that of an Assistant Engineer. The recruitment to the grade of Assistant Engineer (Class II) is made from the grade of Junior Engineer:

- (a) 50% by selection on the basis of Limited Departmental Competitive Examination held in accordance with the Rules made by the Central Government after consultation with the UPSC. The Junior Engineers (both degree and diploma holders) with four years of regular service in the grade are eligible to appear in the Limited

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Departmental Competitive Examination;

- (b) by selection from among the permanent Junior Engineers on the basis of merit-cum-seniority.

5. The next promotional post in the cadre is that of Executive Engineer in Group 'A'. Recruitment to the post of Executive Engineer, Group 'A' is made:

- (a) from the grade of Assistant Executive Engineers (AEE) Group 'A' on seniority-cum-fitness basis. AEE Group 'A' are recruited through the Combined Engineering Services Examination held by the UPSC.
- (b) from the grade of Assistant Engineer Group 'B' by selection as provided in Part IV of the Recruitment Rules.

From 1.4.1972 the vacancies are filled up in the ratio of 1:1 from the grade of AEE (GR.A) and AE (Gr.B).

6. The grievance of the Diploma Holders AEs agitated in OA No.910/89 relates to the provisions made in the part IV of the Recruitment Rules providing induction from the cadre of Assistant Engineers to the post of Executive Engineer Group 'A'. The Relevant Rule 21(1), (2), (3) are reproduced below:

"21(1) No Assistant Engineer, Class II, shall be promoted as Assistant Executive Engineer, Group 'A'.

(2) Recruitment by promotion to the grade of Executive

Engineer, Group 'A' shall be made by selection from among permanent Assistant Engineer in the Central Engineering Service, Class II, after consultation with the Commission. No officer shall have any claim to such promotion as of right.

(3) No Assistant Engineer shall be eligible for promotion to the service, unless he:-

(a) would, but for age, be qualified for admission to the competitive examination under Part III of these rules.

(b) has rendered at least three years' service in a permanent or temporary capacity as an Assistant Engineer and subordinate under the Central Government, and

(c) satisfies the Commission that he is in every respect suitable for appointment to the service

*Provided that Government, in consultation with the Commission may promote an Assistant Engineer of outstanding ability and record, to Group 'A' service in relaxation of the educational qualification provided in clause (a).

7. Rule 21(2) provides for promotion to the grade of Executive Engineer Group 'A' by selection from among permanent Assistant Engineers in the Central Engineering service Class II in consultation with the UPSC. Sub-rule 3(a) however debars Assistant Engineers from promotion to the grade of Executive Engineer unless they possess a degree in Engineering (which is the prescribed qualification required for admission to the

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competitive examination vide Part II of Recruitment Rules. The proviso under Rule 21 (3) allows promotion of non-degree holder Assistant Engineers to the grade of Executive Engineer, if they have 'outstanding ability and record' in relaxation of the educational qualification. It is this proviso which is under attack in OA No. 910/89.

The applicants in OA No. 704/88 on the other hand are agitating for making promotions to the grade of EE strictly in accordance with Rule 21(3) from among diploma holder AEs. They are feeling aggrieved as the DPCs held in 1965, 1968 and 1971 considered besides the graduate AEs all the diploma holder AEs coming in the zone of consideration even where they were not graded as having "outstanding ability and record". The respondents (the Government) continued to make adhoc promotion even thereafter on the same basis till the Tribunal restrained them from making such promotions vide interim orders passed on 2.5.1989.

8. Shri G.D. Gupta and Shri G.K. Aggarwal learned counsel for the applicants in OA 910/89, argued that the Junior Engineers, irrespective of the fact whether they possess a diploma or a degree, are borne on a common seniority list and that they work on identical jobs and therefore form a single homogeneous class. There is no distinction made between the degree holder and diploma holder Junior Engineers, for promotion to the post of AEs. Although the diploma holders were not considered eligible for the post of Executive Engineers in the Recruitment Rules of 1954, realising the injustice done to them, the Department made

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the diploma holder Assistant Engineers eligible for promotion to the post of EEs by executive instructions issued in 1956. Subsequently, the Recruitment Rules, 1954, were amended in 1972 retrospectively to give the executive instructions of 1956 statutory force by introducing a proviso under Rule 21(3) and to regularise the promotions made earlier. It was further stated that in accordance with the amended rules, only diploma holder Assistant Engineers having "outstanding ability and record" were to be promoted to the post of Executive Engineer, but in actual practice all eligible Assistant Engineers had been considered for promotion on the basis of seniority-cum fitness for the last 30 years. It was further contended that assessment of outstanding ability and record of a diploma holder Assistant Engineer is based on Annual Confidential Reports, and even in most objective ACRs the element of subjectivity cannot be totally eliminated. In this connection, the learned counsel referred to part III and Part IV of the A.C.R. Form, in support of his arguments. It was stressed that Diploma holder AEs cannot be treated differently from Degree holder AEs as they constitute one single class. There cannot be different norms for promotion to the grade of Executive Engineer diploma holder and degree holder AEs, as there was no difference between the duties of the AEs and EEs. Even the respondents (Government) have conceded that the only additional duty, an EE as compared to the AE, has to do, relates to design and planning work. The learned counsel submitted that the diploma course covers the subjects of planning and design, and therefore, the diploma holder AEs are capable of undertaking design and planning etc. which an Executive Engineer has to do,

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besides the other duties and responsibilities attached to that post. He referred to the respondent's affidavit filed in Civil Writ No. 703 of 1978 in the case of C.K. Bhaskaran Vs. Union of India and Others where the respondents had accepted that "structural design" was no longer exclusive preserve of the Degree holders, as Diploma holders, too, were employed on such jobs.

9. It was further submitted that higher mental equipment acquired by virtue of higher educational qualification may not necessarily yield more competitive performance as eventually the application of the mental equipment alone can determine the results. While the Tribunal can "read down" the words of Rule 21(3), it was prayed that in the interest of justice, the proviso under Rule 21(3) should be declared unconstitutional and should be struck down as violative of Articles 14 and 16 of the Constitution.

10. The learned counsel for Shri J.N. Goyal & Others, Graduate AEs in OA 704/88 submitted that the respondents have been making promotions of the Assistant Engineers in relaxation of the educational qualification in contravention of Rule 21(3) of the Recruitment Rules. The learned counsel submitted that before 1972, the non-graduate Assistant Engineers were not eligible for promotion to the grade of Executive Engineers, as per the Recruitment Rules, which was in consonance with the intention of the legislature. Since, promotions to the grade of EE were being made by the respondents, in accordance with the executive

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instructions issued in 1956, one Shri C.P. Gupta, a degree holder Assistant Engineer challenged the action of the respondents (Government) in Delhi High Court by filing Civil Writ Petition No. 818 of 1972. This case, remained pending till it was transferred to the Central Administrative Tribunal and registered under No. T-52 of 1985. The Tribunal in its judgement dated December 19, 1986 held that administrative instructions cannot over-ride the statutory provisions and that the promotions made on the basis of administrative instructions contrary to the Statutory Rules were therefore invalid. It was further held that retrospective amendment of the rules was not permissible if it seeks to regularise illegal promotions or takes away accrued rights of similarly placed persons. Despite the Tribunal's decision in C.P. Gupta's case, the respondents continued to promote diploma holder Assistant Engineers in relaxation of the educational qualifications to the grade of Executive Engineer, even when not assessed as having "outstanding ability and record", in violation of the Recruitment Rules. The respondents, appear to have taken the view that the statutory rules apply only to regular promotions and not to adhoc promotion and have continued to make promotions on adhoc basis. Even the UPSC has refused to associate itself with the adhoc promotion being made by the respondents. He submitted, even if the proviso to Rule 21(3) is declared illegal, the Tribunal has no power to direct as to who out of the diploma holder Assistant Engineers, should be considered for promotion. The learned counsel further submitted that very few diploma holder AEs were found fit for design and planning etc. as this subject and allied extentions thereof, are

not covered adequately/fully in detail in the syllabus for the diploma course.

11. The learned senior counsel for the respondents (Government) in both the OAs, submitted that the proviso to Rule 21(3) of the Recruitment Rule is fair and just and cannot be termed as discriminatory. Some system of assessing the diploma holder Assistant Engineers has to be devised as admittedly a diploma in engineering is not comparable to a degree in engineering. The assessment of "outstanding ability and record" of the diploma holder Assistant Engineers, is done by the Departmental Promotion Committee (DPC), which is chaired by a Member of the UPSC. There is no reason to detract us from placing faith in the judgement of the DPC, comprising UPSC and seasoned administrators, in assessing individuals, based on the over all record of 10 years' service. The collective wisdom of the DPC has stood the test of time and the procedure evolved by the DPC for regulating its proceedings ensures the maximum possible objectivity in arriving at the assessment. He submitted that subjectivity is one of the factors in life to be reckoned with and so long as this element is contained within the bounds of acceptability, it should not bother us, as it would not lead to arbitrariness. In the interest of efficiency, selectivity has to be exercised in finding suitable persons to man higher posts. The learned senior counsel referred to relevant part of the CPWD manual detailing the duties and responsibilities of the Assistant Engineers and Executive Engineers. He submitted that the post of

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Executive Engineer is the pivotal post in the engineering hierarchy and any dilution of standards in selecting persons to man this post would lead to compromising the administrative efficiency. Referring to the ground reality he contended that perverse or bad operation of a rule does not make the rule unconstitutional.

12. We have carefully considered the rival contentions and have gone through the case law relied upon by the learned Counsel of both the parties. While none of the judicial pronouncements deal with the factual situation as obtaining in the instant case, these dicta have moulded the policy of recruitment and promotion of junior/assistant engineers in the CPWD. Some of the land marks are as follows:-

(i) State of Jammu & Kashmir Vs. T.N. Khosa, AIR 1974 SC 1.

The Supreme Court observed;

"Since the Constitutional code of equality and equal opportunity is a charter for equals, equality of opportunity in matters of promotion means 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."

Viewing the matter from that angle, the Court held that the classification of Assistant Engineers into degree holders and diploma holders could not be held to rest on

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any unreal or unreasonable basis. The classification was held to be made with a view to achieving administrative efficiency in the Engineering services. If this be the object, the classification is clearly co-related to it, for higher educational qualifications are at least presumptive evidence of a higher mental ability.

ii) Mohd. Shujat Ali Vs. UOI AIR 1974 SC 1631. The Supreme Court refused to strike down the Andhra Pradesh Rules in so far as they made differentiation between graduate and non-graduate supervisors and allowed the graduate and non-graduate supervisors different treatment by way of different pay scales and for purpose of promotion.

iii) Roop Chand Adlakha and Ors. Vs. Delhi Development Authority and others - AIR 1989 SC 307. The Recruitment Rules prescribing different conditions of eligibility for diploma holder and graduate JEs for promotion to that of AEs, and from cadre of AEs to that of Executive Engineers, came up for a judicial review. The Court in the judgement delivered on 26.9.1988 observed that:

"State, consistent with the requirement of the promotional posts and in the interest of the efficiency of the service, is not precluded from conferring eligibility on diploma holder conditioning it by other requirements which may,

as here, include certain quantum of service-experience. In the present case the eligibility-determination was made by a cumulative criterion of a certain educational qualification + a particular quantum of service experience.

It cannot, in our opinion, be said "as postulated" by the High Court that the choice of the State was either to recognise diploma holders as eligible for promotion or wholly exclude them as 'not eligible'. If the educational qualification, by itself, was recognised as conferring eligibility for promotion, then the super-imposition of further conditions, such as a particular period of service, selectively on the diploma holders alone, to their disadvantage, might become discriminatory. This does not prevent the State from formulating a policy which prescribes as an essential part of the conditions for the eligibility that the candidates must have a particular qualification + a stipulated quantum of service."

iv). In PN Kohli Vs. UOI, ATR 1987 (2) CAT 172 upholding the validity of Assistant Engineers (Akashwani and Doordarshan) Group 'B' Posts Recruitment Rules, 1982, the Tribunal observed;

"It will be clear from the rules that rule-making

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authority never intended to declare non-Graduate SEAs as possessing the same qualifications as Degree holders. In prescribing a longer period of service and requiring them to pass a Departmental Qualifying Examination of a particular standard, the rule-making authority made its intention unmistakably clear that not every Graduate SEA, but only such of those Diploma holders as have gained experience, after putting in reasonably long years of service, in a particular category, and who have passed a particular standard of examination, would become equal to Graduate SEAs, who have put in lesser period of service. While they continue in the category of SEAs, Graduate SEAs may be appointed to discharge same functions and duties attached to the different posts in that cadre equally, but for shouldering the higher responsibilities of AEs, the Rule Making Authority, in its wisdom, thought it necessary to prescribe a higher qualification, in the shape of longer period of service and passing the Departmental Qualifying Examination, for those who have lower educational qualification. That, in our opinion, is quite reasonable and does not operate as an invidious discrimination among the SEAs as such. They only prescribe a higher qualification or different qualification for recruitment to the higher post

of AEs by way of promotion."

Any formulation that may be devised to regulate the promotion policy of Diploma holder/Graduate AEs would have to follow the course and be within the framework envisaged in the above dicta.

13. It will be of advantage to look into the duties and responsibilities of EE as compared to the AE as detailed in the CPWD Vol.I extracted below:

Charge of an Executive Engineer

"A Divisional Office under the charge of an Executive Engineer, is an executive unit directly concerned with procurement of men, material and machinery for speedy and economic execution of the works in charge and is directly responsible for proper upkeep of the works accounts and implementation of the terms of contracts entered into the various parties viz. Contractors and Suppliers.

A Division has four to five Sub-Divisional units under it according to location and workload of the works under its charge. The workload of a construction Division had earlier been fixed at Rs. 50-60 lakhs per annum and that of a Maintenance Division, Rs. 16-20 lakhs per annum approximately. These limits are under revision in the light of

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upward revision of the cost index. A Division normally has 4 Assistant Engineers, 16 Junior Engineers and other regular Clerical and Drawing staff and Workcharged Staff according to yardstick laid down for the purpose.

The Executive Engineer being the Divisional Officer is also responsible for correct compilation of the Works Accounts through the Junior Account Officer/Divisional Accountant, attached to the Division. The Divisional Officer is primarily responsible for furnishing timely information in cases of likelihood of excess over the estimated costs of the works, under his charge. He is required to inspect at least once a year, the more important buildings and works under his charge and is responsible for proper measures to be taken to preserve them in good condition and prevent encroachment on Government land and buildings under his charge. Unlike in the Circle Office, different branches exist in the Divisional Office to deal with works, administration, accounts and contracts, and technical matters and to supply the Superintending Engineers, Chief Engineers and Central Office with preliminary data and information on several points for submission

to higher authorities/other Departments."

Charge of an Assistant Engineer

"A Sub-Divisional Office under the charge of an Assistant Engineer or Assistant Executive Engineer is the field unit responsible for supervision and execution of works, according to the norms and standards laid down in designs, drawings and estimates. The successful achievement of the targets fixed by the Department for completion of each Project, with due consideration for quality and economy and/or the proper maintenance of the buildings, structures, areas and equipment, under his charge, mainly depends on the faithful implementation by the Assistant Engineer/Assistant Executive Engineer and Junior Engineers working under him, of the policies and general order of the Department.

Preparation of the Works Accounts and Stores Accounts is the responsibility of the Assistant Engineer/Assistant Executive Engineer concerned. He has to ensure the proper maintenance of the stores under his charge, their Accounts both quantitatively as well as in monetary terms and weeding out unserviceable stores. He is also required to

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inspect the buildings, structures, areas and equipment under his charge, once in every six month (to inspect their conditions from safety point of view) and record a certificate to that effect....."

14. It will be naive to believe that the post of EE is comparable in respect of his duties and responsibilities to that of the AE. For instance, EE is responsible for procurement of men, material and machinery for speedy and economic execution of the works. The divisional office is the only field unit which has different branches to deal with works, administration, accounts and contracts and technical matters. The EE feeds information both, technical and administrative, to the higher authorities and disseminates technical and administrative information required for successful achievement of the targets/goals fixed for the AEs for execution of projects/implementation of programmes. The primary role of the AE is in the field of execution of assigned tasks according to the norms and standards laid down. The EE on the other hand plays a major role in laying down such norms and standards as he is concerned with designs, drawings and estimates. The capability for management of such a pivotal organisation is not merely a question of experience. It also requires adequate technical knowledge acquired by virtue of higher qualification to maintain a certain quality of technical expertise in cadre.

15. The eligibility for promotion to the grade of EE was

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conferred on the diploma-holder AEs by the amendment to the Engineering Service Group A Recruitment Rules, initially under the executive instructions of 1956 and subsequently by amending the rules in 1972. The eligibility so conferred in relaxation of the educational qualification is, however, conditioned by the higher quality of performance and a longer work experience, assessed as "outstanding ability and record". This could be judged from the annual confidential reports. The assessment based on such reports in the case of diploma holder AEs cannot be used selectively for determining the eligibility to the grade of EE. ACR is a vehicle for assessment of comparative and competitive merit of the officers equally placed for the purpose of promotion. Such an assessment cannot quantify the compensatory element for the diploma holder AEs which is required to place them at the same pedestal as graduate AEs who admittedly have "higher mental equipment". The DPC that makes assessment for the purpose of promotion to the higher grade applies uniform norms for assessing the performance of the officers placed equally in the feeder grade. The procedure followed so far has not been in conformity with Rule 21 (3). According to Rule 21(3), the Department would require to screen the diploma holder AEs based on their total record of service to identify those persons who have 'outstanding record and ability'. The diploma holder AEs so identified would thereafter be placed at par with the graduate AEs and assessed for promotion to the grade of EE in accordance with the procedure followed by the DPC. This has never been followed, nor is it the function of the DPC to determine and assess the conditioning element required for equating an officer having

lower educational qualification with the one having higher educational attainments, unless specifically entrusted with this additional job. Screening diploma holder AEs, first for identifying those who have 'outstanding record and ability' in accordance with Rule 21(3) and thereafter assessing them along with the graduate AEs, on the basis of a segment of the same record for promotion to the grade of EE would, in effect, mean an application of more rigorous standard in the first stage of screening and later assessing them along with the graduate AEs by the DPC in accordance with the procedure followed by it for such selection. Both the assessments are made on the basis of the job performance - the work content of which is the same, both, for the diploma holders and graduates. That being so, Rule 21(3) contains an element of arbitrariness and discrimination. We, therefore, feel that the introduction of the proviso under Rule 21(3) of the Recruitment Rules for Central Engineering Service Group (A) Rules as presently worded cannot be legally sustained, being violative of Articles 14 & 16 of the constitution.

At the same time, we recognise that the declaration of the proviso under Rule 21(3) as violative of Articles 14 & 16 would result in withdrawing the eligibility, conferred on the diploma holder AEs since 1972 (and vide executive instruction of 1956) for promotion to the grade of E.E.. This will not be fair or just. It is therefore not our intention to hold that the diploma holder AEs should not have any avenues of promotion to the higher grade if they are fit and suitable. We also do not find it possible to ignore the fact that for the last three

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decades diploma holder AEs have been promoted on adhoc basis along with the graduates AEs, based on the appraisal of their confidential record. Even in the three DPCs held in 1965, 1968 and 1971, the select lists were prepared applying the selection norms uniformly to all the AEs, irrespective of their being diploma holders or degree holders. The DPCs treated all Assistant Engineers(graduates and non-graduates) as one category and proceeded to make the selection without first determining the eligibility of diploma holder AEs for the next promotion.

16. In the facts and circumstances of the case, we are of the view that the proviso under Rule 21(3) is arbitrary and discriminatory. The proviso, ^{and} ~~should~~ therefore, require ^{to} ~~to~~ be substituted by a rational and just criterion eg. holding of a qualifying test for diploma holder AEs, annually or as may be necessary, to obviate the element of arbitrariness and make the rule reasonable. Those who qualify in such a departmental test should be considered along with graduate AEs for promotion to the next higher grade by the DPC by following the normal procedure.

Accordingly, we order and direct respondents No.1-3 ^{to} ~~to~~ further ~~to~~ amend the Rules for Central Engineering Service Group (A), 1954, as amended, suitably, as expeditiously as possible but not exceeding ^{period of} six months from the date of communication of this order. Until the Rules are so amended, we further direct that no regular promotion of diploma holder AEs shall be made and that adhoc promotions already made shall be regularised in accordance with the amended Rules.

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Since the other reliefs prayed for in the OAs are consequential and related to the main relief, we are not dwelling on them.

The interim order already passed restraining the respondents from making adhoc promotion to the grade of EEs is hereby vacated.

There shall be no orders as to the costs.

I.K. Rasgotra
(I.K. Rasgotra)
Member (A) 20/4/90

T.S. Oberoi 20.4.90
(T.S. Oberoi)
Member (J)