

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH NEW DELHI

(19)

O.A. No. 3331/1992

New Delhi this the 24<sup>th</sup> Day of December, 1993

The Hon'ble Mr. S. R. Adige, Member (A)

The Hon'ble Mr. B. S. Hegde, Member (J)

Sh. J. D. Kapoor, Principal, ITI, Pusa,  
New Delhi-110012.

Residence C-03, Suraj Mal Vihar,  
Delhi-110092

.. Applicant

(By Advocate Sh. Rakesh Khanna )

Versus

1. The Administrator,  
Govt. of the National Capital Territory of  
Delhi, Raj Niwas, Delhi

2. The Chief Secretary, Govt. of the National  
Capital Territory of Delhi, 5-Shamnath Marg,  
Delhi-110054

3. Union Public Service Commission,  
through Secy. Dhaulpur House,  
Shahjahan Road, N/Delhi

.. Respondents

(By Advocate Sh. Anoop Bagai )

4. Sh. Ram Nath Ram, Principal, ITI,  
Arab-Ki-Sarai, New Delhi  
R/O D-2 Staff Qrts. Pushp Vihar, MB Road,  
Delhi-110017

(By Advocate Sh. R.K. Kamal, counsel for respondent)

O.A. No. 2223/92

Sh. Ram Nath Ram, Principal, ITI,  
Arab-Ki-Sarai, D.A.R/O D-2 Staff Qrts.  
Pushp Vihar, MB Road, Delhi-17

.. Applicant

(By Advocate Sh. R.K. Kamal )

1. Delhi Admn. through Lt. Governor of  
Delhi Union Territory, Raj Niwas, Delhi

.. Respondent

(By Advocate MS Ashoka Jain )

2. Sh. J. D. Kapoor, Principal, ITI  
R/C-03, Suraj Mal Vihar, Delhi-110092

(By Advocate Sh. Rakesh Khanna, )

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Hon'ble Shri B.S. Hegde, Member (Judicial)

The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 aggrieved by the impugned orders dated 8.12.1992 (Annexure 'J') and dated 15.12.1992 (Annexure 'K') against non-promotion to the post of Deputy Director (Trainee) and again making an attempt to fill the post by transfer in violation of the recruitment rules.

Accordingly, the applicant prays for the following reliefs :-

(a) That the respondents be directed to promote the applicant to the post of Deputy Director (Trg.) in the payscale of Rs. 3000-4500 with effect from 1.9.92 with all consequential benefits etc.

(b) To quash the orders dated 8.12.92 (Annexure 'J') and dated 15.12.92 (Annexure 'K') as ultra vires to the provisions of the Constitution.

2. During the course of hearing, on behalf of Shri Ram Nath Ram, learned counsel, for the Petitioner Shri R.K. Kamal, filed M.P. No. 1006/93 seeking his impleadement as the intervenor in this O.A. as one of the respondents

and prays for clubbing of O.A. No. 2223/92 for hearing of determination of the issues involved on the plea that his interest and legal rights shall be adversely affected by grant of any relief to the applicant in O.A. No. 3331/92 if the petitioner is not impleaded as respondents in the said O.A. After hearing the parties, M.P. was allowed. The O.A. No. 2223/92 has been tagged on with O.A. No. 3331/92 filed by the applicant.

3. Similarly, the learned counsel for the applicant, Shri Rakesh Khanna, also filed M.P. No. 1491/93 seeking impleadement of the petitioner, Shri J.D. Kapoor as additional respondents in O.A. No. 2223/92 filed by Shri Ram Nath Ram and the same was allowed.

4. The brief facts of the case are, that the applicant was appointed on probation for a period of two years to the post of Principal, Assistant Inspector of Training, Vice-Principal, Industrial Training Institute in the payscale of Rs. 350-900 by the Chief Secretary, Delhi Administration on 1.7.70. In 1974, he was again appointed on probation for a period of two years to the post of Principal (Class I Junior) by the respondents and he completed period of probation satisfactorily. He was further promoted to the

substantive/regular post of Assistant Director/Principal, (BTC) Basic Training Centre/in the Directorate of Training and Technical Education in the payscale of Rs. 1100-1600, being the senior-most eligible person and he was allowed to continue on ad hoc basis till 1977. The applicant continued to work in the promoted post of Assistant Director/Principal in the Basic Training Centre/Assistant Apprenticeship Advisor on adhoc basis. He was allowed to continue from time to time in the said post by the Administrator with the prior approval of the UPSC upto 27.2.1990 on adhoc basis in the scale of Rs. 1100-1600 without any break. Though the applicant continued on adhoc service and made various representations vide dated 30.9.87 and 16.10.1992 respectively requesting for confirmation. However, he was confirmed only on 27.2.90 along with others in the above post.

5. It is an undisputed fact that at the time of appointment of the applicant, there were no recruitment rules exist for the appointment of the post of Assistant Director/Principal, BTC/Assistant Apprenticeship Advisor. Both the posts carry same payscale of Rs. 1100-1600 and are equivalent posts. However, the recruitment rules were promulgated by the Lt. Governor only in 1981 for the

appointment/promotion to the aforesaid posts.

6. The rules regarding the promotion to the post of Principal/Assistant Director/Assistant Apprenticeship Advisor which were framed in the year 1981 as also the promotion of the applicant was challenged before the Supreme Court in writ petition No. 6944/81. In the said petition the respondents herein filed their affidavit wherein it was specifically averred that there was no irregularity in the appointment of the applicant and his appointment was made following the due procedures as prevailed in the year 1976. The same has not been denied by the respondents in this petition. Therefore, the learned counsel for the applicant contends that it is incorrect on the part of the respondents to say at this stage that the petitioner was appointed without following the proper selection process as Principal, BTC. As stated above, the said rules were challenged in the Supreme Court by way of writ petition filed by one of the diploma holders, Shri S.K. Mishra. The challenge was on the ground that the diploma holders were excluded totally from the purview of promotion. It is not in dispute that the applicant had been working in the payscale of Rs. 1100-1600 eversince 1976 without any break. Ultimately, the writ petition filed by Shri S.K.

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Mishra was dismissed in limini as early as 16th November,

1981.

7. The post of Deputy Director fell vacant with effect from 1.9.92 and the applicant being the senior-most was eligible candidate for promotion to that post. Nevertheless, the respondents did not promote the applicant to the said post on the plea that under the recruitment rules, only an officer with "three years regular service possessing a degree is eligible" since the applicant was confirmed only on 27.2.90, he had not completed 3 years' regular service as required under the rules in the year 1992.

8. The learned counsel for the applicant, Shri Rakesh Khanna, contended that despite third respondents reply dated 15.12.92, the Director of Technical Education vide his letter dated 18.12.92 has written to the UPSC to consider the case of the applicant for promotion as "Deputy Director" as the applicant had been working in the post continuously for 15 to 16 years and also stated that non-confirmation of the applicant was due to the reasons beyond his control and because of the lapses on the part of the Government and requested for fresh DPC to be convened.

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Having not acceded to the request of the applicant, he has challenged the impugned orders on the following grounds:-

(1) That the respondents intend to fill up the post of Deputy Director by transfer which is totally arbitrary and violative of the rules. According to the recruitment rules for the post of Deputy Director, the respondents are to fill up this post in the first instance by way of promotion from amongst the Assistant Director/Principal, ITI/Assistant Apprenticeship Adviser who have three years experience in the said post. Therefore, the action of the respondents in trying to fill up that post by way of transfer is totally arbitrary.

(2) Since the applicant has been working in the feeder cadre post ever since 1976 continuously and regularly without any break he ought to have been considered for the post of Deputy Director as and when a vacancy occurs.

(3) In view of the well-settled principle of law as laid down by the Supreme Court in the case of Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra ( A/990 S.C. 1607) wherein it is categorically held that once an incumbent is appointed to a post whether following the rules or not his seniority is to be counted from the date of his initial appointment and not from the date of his confirmation etc. In that view of the matter, the petitioner is fully entitled

to get the benefit of seniority and to be considered for the post of Deputy Director.

(4) That the Respondents have failed to appreciate that the well settled principle of law is that the services on officiating basis/ad hoc period is to be counted towards regular service for the purpose of computation of the experience. This is reiterated in the case of UOI v/s M.P. Singh (1991) 16 ATC 459 1990 Supp. S.C.C. 70 )

(5) The respondents have erred in not taking into consideration the period of service rendered by the applicant as Assistant Director from 1976 to February, 1990 for computing his period of experience and denial of computation of period of service rendered by the petitioner on the same post before his confirmation for 14 years is arbitrary and violative under Articles 14 and 16 of the Constitution.

(6) The applicant is having a past experience of 16 years in the feeder cadre and is a degree holder and he is otherwise eligible to be promoted to the post of Deputy Director. As such the power of relaxation should have been exercised and not exercising the same is contrary to the provisions of the Constitution.

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9. In reply, the respondents did not controvert many of the facts narrated in the petition except stating that the applicant had been working on adhoc basis and not a confirmed officer. The respondents also contended by saying that he was allowed to work on adhoc basis capacity till a regular appointment is made in accordance with the rules. As the recruitment rules did not exist, as such, he was not appointed in accordance with the rules. According to the recruitment rules, 3 years regular service in the post is necessary which is a condition precedent and the applicant does not fulfil, as such, he is not eligible for promotion to the post of Deputy Director (Trg.). It is not denied by the respondents that the applicant was continued on adhoc capacity and this arrangement continued till a regular appointment is made in accordance with the recruitment rules.

10. We have heard the learned counsel for the parties and perused the records. In this connection, the following rules are relevant for the purpose for the post of Principal, ITI/Assistant Director/Assistant Apprenticeship Adviser. Originally, under the recruitment rules of 1981, only those who possess degree in mechanical/electrical/civil engineering technology of a recognized university or equivalent

with the 8 years service in the grade rendered after appointment thereto on a regular basis are eligible to be promoted from the feeder post.

11. Thus the diploma holders were precluded from getting any promotion to the aforesaid posts. As stated above, though they have challenged the recruitment rules before the Supreme Court, the same was dismissed in limine and, thereafter made representations to the competent authority which ultimately made the authorities to amend the recruitment rules in the year 1989 making the diploma holders eligible to be promoted to the post of Assistant Director/Principal, ITI/Assistant Apprenticeship Adviser with a note "The requirement about the educational qualification shall not be applicable in the case of departmental candidates holding the feeder post on regular basis on the date of promulgation of the rules."

12. In so far as the post of Deputy Director is concerned no change was effected in the year 1989 and a minimum eligibility criteria laid down under the rules, with 3 years regular service in the grade and possessing degree in mechanical/electrical/civil engineering of a recognized university or equivalent thereto.

13. In the light of the above, the question for consideration is whether the applicant is otherwise eligible

to be considered to the post of Deputy Director (Trg.) on 1.9.92 when the vacancy occurred after the retirement of one Shri S.C. Kapoor. It is an admitted fact that the applicant had been appointed to the post of Principal, BTC in the Directorate of Training and Technical Education in the year 1976 on adhoc basis initially till 1977 or till such time regular arrangement is made, whichever is earlier. It is contended that though he had been appointed initially for a temporary period, and as he was appointed to a substantial vacancy, his appointment had been extended from time to time with the prior approval of the UPSC till 1990.

14. The main thrust of the arguments of the learned counsel is that since the applicant had been working right from 1976 without any break in the post of feeder cadre of Assistant Director/Principal, ITI/Assistant Apprenticeship Adviser, initially for want of recruitment rules, his services could not be regularised in the post in which he held and later on for want of vacancy till 1992, he could not be considered for the next higher post i.e. Deputy Director (Trg.). Further, his adhoc appointment has been made with the prior approval of the UPSC from time to time

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and the same should be considered as regular appointment which was made in accordance with law. Since his adhoc appointment was made with the prior approval of the UPSC for a considerable number of years, it can be construed as regular appointment initially in the absence of recruitment rules but later though a vacancy exist, they did not confirm/regularise him in the post which he held. In this connection, he relied upon the Delhi High Court decision in Chander Bhan Sharma v. Delhi Administration [I.L.R. 1977 II Delhi 188] case wherein the court held " that the provisional or adhoc appointment does not by itself confer any right on an appointee. Where, however, a person appointed on a provisional or on adhoc basis, without reference to a selection or in anticipation of rules or otherwise dehors the statutory rules, is eventually selected or confirmed or his initial appointment regularised, the selection, regularisation or confirmation, as the case may be, would relate back to the initial appointment because what is confirmed or regularised is the appointment already made." The regularisation or the selection is not a fresh appointment to the post of Principal, ITI was not a stop-gap arrangement but an arrangement made against a newly created regular vacant post of Principal, BTC subject

to the framing of rules which was extended from time to time until regularisation that too with the prior approval of the UPSC after following the prescribed procedure. The applicant further states the contention of the respondents that the delay in the finalisation of the recruitment rules was due to factors not within the control of the respondents and on account of the recruitment rules being challenged in the Supreme Court is not correct and not based on facts because immediately after the promulgation of the recruitment rules in 1981 the diploma-holders challenged the promotion of the applicant before the Supreme Court and the same was allowed to be withdrawn vide dated 16.11.1981 itself.

15. We are of the view, that there is considerable force in the aforesaid contention of the applicant. As a matter of fact, the recruitment rules 1981 provides for the post of Assistant Director/Principal, ITI/Assistant Apprenticeship Advisor, a person should possess a degree etc. Since the diploma holders challenged the said recruitment rules before the Supreme Court and later on made representation to the competent authorities that they should be given opportunities and make them eligible to be on par with the degree holders. The matter remained under consideration of the authorities till 1989 and accordingly the recruitment rules were

amended in 1989 making eligible the diploma-holders for the post of Assistant Director/Principal, ITI/Assistant Apprenticeship etc.

16. In the light of the foregoing discussions, we shall have to see whether the respondents are justified in not regularising the applicant in the post of Principal, BTC/Assistant Director/Principal, ITI/Assistant Apprenticeship Advisor etc. which he held for a period of 14 years.

The reply given by the respondents on the representations made by the applicant dated 16.10.92 stating that even for adhoc appointment to the post of Deputy Director since, he did not fulfil the requirement of 3 years regular service as required under the recruitment rules, his request could not be considered. *Prima facie*, such a contention is not tenable. 3 years regular service is required for the purpose of any promotion to be made in accordance with the rules. The applicant, in this case, in view of his impending retirement in the year April 1993 and consequent upon the retirement of Shri S.C. Kapoor on 30.8.92, had requested the authorities to promote him on adhoc basis to the post of Deputy Director. It is an undisputed fact, that the applicant is the senior-most eligible candidate to be promoted to the post of Deputy Director and in order to give an ad hoc promotion, it is not necessary to resort

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to the recruitment rules which envisages for any promotion to be made in accordance with the rules, the candidate should possess 3 years regular service. As stated above, it is not on account of non-availability of a post of Assistant Director/Principal, BTC/Assistant Apprenticeship etc. that he could not be confirmed/regularised in the aforesaid posts, although the recruitment rules came into being in the year 1981 and he was otherwise qualified to be regularised as per the recruitment rules. Further, the respondents cannot take advantage of the content of the UPSC's letter because they did not furnish the required particulars to the UPSC to convene the DPC immediately after the superannuation of Shri S.C. Kapoor, thereby the applicant's chances of promotion have been receded.

17. The learned counsel for the applicant contends that under the recruitment rules, 3 years' regular service means 3 years of regular experience and not that the incumbent should hold the post as a confirmed officer. He further contends that the date of confirmation is not the reasonable criteria for assessing the seniority. The crucial factor of assessing the seniority or eligibility is length of service without break, temporary or permanent.   
*Mr.*  
Under the recruitment rules, a discretion is given to the respondents to relax the qualification which is arbitrarily

not exercised in favour of the applicant in spite of various representations/recommendations. On behalf of the respondent No. 4, the learned counsel, Shri R.K. Kamal, contends that Annexure A-1 (recruitment rules) is meant for Direct Recruits and not for promotees. He further contends that the term 'qualification' include both degree and experience and not giving the benefit to the promotees amounts to discriminatory and contrary to the provisions of Articles 14 and 16 of the Constitution.

18. In the light of the above, one thing is clear that the applicant had been working continuously without any break since 1976 against a substantive post and in view of the various decisions of the courts including the Supreme Court of India, the date of confirmation is not the reasonable criteria for assessing the seniority, the crucial factor for assessing the seniority or eligibility is length of service without break whether temporary or permanent etc. The learned counsel for the applicant relied upon the following decisions in support of his contention:-

*Mr.*  
1. P.Y. Joshi vs. State of Maharashtra  
( 1969 (3) SCC 134 )

2. Direct Recruits Class II Engineering Association vs. State of Maharashtra  
( 1990 (2) SCC 715 )

Both are constitutional court's judgement.

3. Union of India vs. M.P. Singh  
( 1991 (16) ATC 459 )

4. S.P. Patwardhan vs. UOI  
(AIR 1997 SC 2051 )

5. Narendra Chadha vs. UOI  
( 1986 (2) SCC 157 )

19. Regarding power to relax educational qualifications,

he relied upon -

1) Mohd. Sujat Ali vs. UOI  
1975 (3) SCC 765

2) State of Andhra Pradesh vs. P. Daleep Kumar  
(1993 (2) SCC 310 )

3) M. Murgesan vs. State of Tamil Nadu  
( 1993 (2) SCC 340 )

which says that if persons belonging to different sources and integrated to one class, they can be classified for purpose of promotion on the basis of their educational qualification. Hence, Articles 14 and 16 would not be violative. It is further observed in Mr. Murgesan's case that since the decision of the constitutional Bench in T.N. Khosa (1974) case this court has been holding uniformly that even where Direct Recruits and Promotees are integrated into a common class, they could, for all purposes of promotion to the higher cadre, be classified on the basis of educational qualification."

20. It is true that courts have held that seniority alone

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is not the criteria for promotion to the next higher grade

eligibility is the first and foremost consideration for promotion having regard to the provisions of the recruitment rules. In the instant case, it is not the case of the respondents that the applicant was not eligible to be considered for regularisation in the post in which he held continuously for a period of 14 years and it is possible for the department to regularise him in the post of Principal, BTC immediately after the rules came into being. Any dispute that might have cropped up subsequent to the promulgation of the recruitment rules by the diploma holders should not hamper the prospects of the otherwise eligible candidates like the applicant.

Though the respondent No. 4 was promoted to the post of Assistant Director/Principal, ITI/Assistant Apprenticeship Advisor on adhoc basis in the year 1984 and he was confirmed in the year 1990 he was not eligible to be considered along with the applicant till 1989. Therefore, it is clear that respondent No. 4 was neither eligible for promotion to the post of Deputy Director under the unamended rules nor under the amended rules. Hence, the respondent No. 4's right was not infringed as he has not been divested by the impugned amendment of any right which he possessed before the unamended rules.

21. For the reasons stated above, this application is disposed of with the following directions :-

- (1) The impugned orders dated 8.12.92 (Annexure 'J') and dated 15.12.92 (Annexure 'K') respectively are hereby set aside and quashed.
- (2) We direct the respondents to regularise the service of the applicant in the post in which he held i.e. Principal, BTC considering his eligibility, qualification and experience in accordance with the rules, keeping in view of the recruitment rules 1981 as he was otherwise qualified to be considered for the same.
- (3) The amendment of the recruitment rules in the year 1989 which is applicable to the diploma holders and not the applicant, therefore, it would not come in the way of applicant's services being regularised in accordance with the rules much prior to 1989. It is not the case of the respondents that for want of vacancy that his services could not be regularised and it is an admitted fact that they did not regularise his services in the post which he held till the recruitment rules was amended in the year 1989. As such, his regularisation should take place prior to 1989 and be done in accordance with the rules.
- (4) Once he is regularised in the feeder cadre i.e. Principal, BTC. etc. he would automatically be eligible to be considered for the post of Dy. Director (Trg.) when the vacancy arose in the year 1992 thereby, he shall be qualified to be considered for the post of Dy. Director (Trg.). We further direct that since the applicant has retired from service w.e.f. 30.4.93, he shall not be entitled for any arrears of pay, but only he shall be considered for the post of Dy. Director (Trg.) w.e.f. 1.9.92 as prayed for. Further, if he is selected, consequential reliefs would be for the purpose of pensionary benefits <sup>only</sup>. In this connection, we direct the respondents to convene a fresh DPC and consider the promotion of the applicant to the post of Dy. Director (Trg.) w.e.f. 1.9.92 within a period of 3 months from the date of receipt of this order.



OA No. 2223/92

22. In this O.A., the learned counsel, Sh. Rakesh Khanna, seeks implementation of the petitioner, Sh. J.D. Kapoor as additional respondent.

23. The brief facts of the case are that the applicant holds a civil post of Principal in the pay scale of Rs 3000-4500 in the Directorate of Technical Education, Delhi Administration. He has been holding the post on ad hoc basis since 21.8.1984. Initially, he joined the Delhi Administration as Supervisor Instructor in the scale of Rs 250-380 in 1967 and promoted to the post of Foreman Instructor in the year 1974. In 1975 he was selected as Direct Recruit to the post of Principal, Delhi Administration, in the pay scale of Rs 400-950.

24. The contention of the learned counsel for the applicant, Shri R.K. Kamal, in this case is that the applicant is a diploma holder with required experience which was an alternative essential qualification instead of Degree in Engineering.

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The post of Principal in the scale of Rs 400-950

a feeder post for the higher post of Principal in the scale of Rs 1100-1600. As per Recruitment Rules, 1981

(Annexure-VI) Degree in Engineering is the minimum qualification prescribed for promotees for this post.

Since he is a diploma holder, he was barred from

promotion to the grade of Rs 1100-1600.; thereby

they protested and made representation against the

unjustified provisions which flopped their career

and amounts to discrimination between degree holders

and diploma holders. He further contends that pending

issue of recruitment rules, the respondents promoted the

petitioner on ad hoc basis w.e.f. 21.8.1984. against

a substantive vacancy. When the amended rules came

into being in 1989, the appointment of applicant alongwith  
were regularised

others/ w.e.f. 27.2.1990. The post of Principal in the

scale of Rs 1100-1600 is the feeder category post for the

higher post of Deputy Director in the scale of Rs 3000-5000

25. The main contention of the learned counsel for

the applicant, Shri Kamal, is that the petitioner was in

the zone of consideration for the post of Deputy Director

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in view of the respondent's order dated 23.3.90 giving

effect from 27.2.90 wherein the petitioner has been shown

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at serial No.6. Though the respondents amended the recruitment rules of 1981 in the year 1989 making eligible for the diploma holder for the post of Assistant Director/Principal, ITI/Apprenticeship Advisor, they did not take the next logical step of amending 1981 rules for the post of Deputy Director barring the promotees holding diploma only from further promotion is a discrimination vis - a - vis other person in the same cadre holding a degree. Further, the learned counsel draws our attention to the Recruitment Rules (Annexure A-1) that this is discriminatory in nature as it applies only for direct recruits and not promotees. He further contends that the word "qualification" are relaxable at the discretion of the UPSC in case of candidates otherwise well qualified. According to him, the relaxation provision is permissible both to the degree qualification as well as experience. In view thereof, it is open to the respondents to relax the required qualification if a candidate is otherwise possessing more than required experience etc. He further contends that the recruitment rules are arbitrary and discriminatory in nature between degree holder and diploma

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holders. Therefore, he prays for the following  
reliefs:-

(i) The portion of the Recruitment  
rules for the post of Deputy  
Director providing a degree as  
essential qualification for  
promotees be quashed and set aside.

(ii) The respondents be directed to count  
the entire service of the applicant  
from 21.8.84 as regular for the  
purpose of experience qualification  
for the post of Deputy Director and for  
the purpose of seniority.

(iii) The respondents be directed to  
consider the applicant for the post  
of Deputy Director, if necessary  
by relaxing the provisions of the  
rules.

(iv) The respondents be directed to grant  
all consequential benefits to the  
applicant with interest.

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26. In reply, the official respondent averred that there is no cause of action in favour of the applicant. The promotion of the applicant, along with others, to the post of Principal was done in accordance with the recruitment rules. In the recruitment rules for the post of Principal in the scale of Rs.3000-4500, departmental candidates holding the feeder post of regular basis are entitled for promotion to 2/3rd quota post. There is only one post of Deputy Director where promotion, degree in mechanical/electrical/civil engineering is provided in the recruitment rules. The applicant is only a diploma holder and does not possess a degree in engineering as laid down in the recruitment rules. The post is to be filled by promotion from the senior-most eligible person. Since the petitioner does not fulfil the required qualification as per recruitment rules, he could not be considered.

27. We have perused the records and heard the arguments of the counsel. The contention of the applicant is that since the applicant is holding the post of Principal in the scale of Rs.1100-1600 continuously without any break since 1984, his service from 1984 to 1990

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is being ignored for the purpose of continuing minimum regular service of 3 years for the post of Deputy Director (Trg.). Thus, he has been made ineligible for consideration on both counts of not holding a degree as well as not having minimum 3 years regular service in the feeder grade. Therefore, the prescription of degree as minimum qualification for promotion is contrary to Articles 14 and 16 of the Constitution in the same cadre.

28. If an adhoc appointment is made against a long-term vacancy and if an adhoc service is followed by regularisation according to rules, the entire service is counted as regular service and seniority.

29. Recruitment for the post of Deputy Director by providing a degree as an essential qualification deprived the applicant and others who are similarly situated in the feeder category is violative of Articles 14 and 16 of the Constitution. Relaxation is permissible for direct recruits and not for promotees would amount to discrimination.

30. Lastly, the provision of degree as essential qualification was deleted for the feeder category in 1989, why the same analogy is not extended.

31. It is an admitted fact that the applicant in this D.A. IS diploma holder and even in 1981 Rules itself degree was prescribed as essential qualification for holding the

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post of Principal, ITI/Assistant Director/Assistant

Apprenticeship and the same was relaxed to the promotees

holding diploma in the year 1989 only.

32. Regarding relaxation, the learned counsel for the applicant, Shri R.K. Kamal, contends that the qualification is relaxable at the discretion of the UPSC in case of candidates otherwise well-qualified would include both degree as well as experience. Further, relaxation provided only for the direct recruits is arbitrary and discriminatory. With great respect, we are not able to persuade ourselves to accept the plea of the learned counsel of the applicant, because in the recruitment rules essential qualification prescribed is degree both for the post of Assistant Director as well as Deputy Director. However, in the year 1989 promotees from the feeder cadre to the post of Assistant Director was made eligible to be considered for the aforesaid posts but the same logic has not been extended to the post of Deputy Director. The term 'otherwise well qualified' would only mean that the candidate should possess minimum qualification and more. In the event of his possessing higher than the minimum qualification prescribed, UPSC is empowered to relax regarding experience, desirable qualification or age in a particular case.

In the scheme of things, this can be

extended only to the direct recruits in order to attract best available talents and it is the prerogative of competent authority/Government to lay down requisite qualification for a particular post. It is a well-settled principle right from 1974, the Supreme Court laid down categorically in T.N. Khosa v. J & K and, thereafter, holding informally that even where direct recruits and promotees are integrated into a common class, they could for purpose of promotion to the higher cadre be classified on the basis of educational qualification. The Apex Court in the case of Director, Lift Irrigation Corporation Ltd v. Pravat Kiran Mohanty and Others (1991) 16 ATC 467 has held "that the Government due to administrative exigencies, is entitled to and has power to reorganise the existing cadres or amalgamate some or carve out separate cadres. The decision to amalgamate the existing cadres by reorganising into two cadres was a policy decision taken on administrative exigencies. The policy decision is not open to judicial review unless it is mala fide, arbitrary or bereft of any discernible principle." In the light of the above, the contention of the learned counsel for the applicant is not tenable, because it is left to the discretion of appointing authority to prescribe requisite qualification which cannot be treated as discriminatory.

Therefore, at the most, the present applicant can seek for regularisation only after the amendment of rules came into force in 1989 and not anterior to that. Therefore, the question of discrimination, as alleged, does not survive in view of the aforesaid proposition laid down by the Apex Court. It is a prerogative of the competent authority to prescribe essential qualification and other conditions and lay down relevant rules for the purpose. Just because amended provisions of 1989 have not been extended to the post of Deputy Director that by itself does not amount to discrimination and violative of Articles 14 and 16 of the Constitution as alleged. In any event, the present applicant cannot be equated with that of the applicant, Shri J.D.Kapoor, in O.A. No. 3332/92, and both stand on different footing. As mentioned earlier, Shri J.D.Kapoor's services required to be regularised much earlier than the present applicant as he was otherwise qualified, whereas the applicant has been qualified by virtue of the amendment of the

recruitment rules in the year 1989 that too for the post of Assistant Director/Principal, II/I/Assistant Apprenticeship Advisor. The learned counsel for the applicant, Shri R.K.Kamal, cited two decisions in support of his contention i.e. ATR 1989(2) SC 341 and ATR 1990(1) SC 347. With great respect, both the decisions are distinguishable and not applicable to the facts of this case. The contention of the learned counsel for the applicant that the relaxation power provided to direct recruits and not for promotees is an unguided power is not correct and not based on facts.

33. In the light of the foregoing discussions, we are of the view, that there is no merit in the contentions of the counsel firstly because the relaxation power is applied by the competent authorities only in exceptional cases if the candidate is otherwise well-qualified more than the normal qualifications prescribed in the recruitment rules. Therefore, the essential qualification cannot be waived except the experience and the age as the case may be.

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34. In the facts and circumstances of the case, we hold that the question of setting aside the portion of recruitment rules does not arise. Normally, in the absence of any malafide, arbitrariness in the recruitment rules, the Court/Tribunal would not venture to interfere in the legislative action of the Government.

35. Regarding prayer No. 2, since the applicant has been regularised after the amendment of the recruitment rules, it is for the competent authority to consider and determine whether it is necessary to consider his adhoc service for the purpose of his seniority. Whereas in the case of Shri J.D. Kapoor, Principal, BTC he was otherwise eligible to be regularised in the post of Principal, BTC/ Assistant Director/Assistant Apprenticeship Advisor, all posts are of equal ranks and pay, however, he has not been regularised on account of inaction on the part of the respondent for which he should not suffer. Both the applicant and respondent 2 in this petition are unequal cannot be treated as equal in any sense. Further, the rules have no retrospective effect, it would have prospective effect, therefore, it could not impair the existing rights of officials who were appointed long prior to the rules came into force. Hence, the applicant can seek

regularisation only after the amendment to recruitment  
rules, 1989.

36. Since the applicant is not otherwise qualified  
for the post of Deputy Director, the question of relaxing  
the provisions of the rules lies with the Executive and  
it is not for the courts to interfere in such matters.

37. In the light of the above, we are of the view,  
that the application is devoid of merit and the same  
is liable to be dismissed. Accordingly, we dismiss the  
O.A. with no orders as to costs. Both the O.As. No.  
3331/92 and 2223/92 stand disposed of.

*B.S. Hegde*  
(B.S. Hegde) 24/12/93  
Member (J)

*S.R. Adige*  
(S.R. Adige)  
Member (A)