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D. K. JAIN AND ORS. ETC. ETC.

v.

STATE OF HARYANA AND ORS.

NOVEMBER 25, 1994

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[R. M. SAHAI AND N. P. SINGH, JJ.]

SERVICE LAW

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Punjab Government National Emergency (Concession) Rules 1965—Rule 3 (iii)—Appointment to posts of Assistant Engineers in Haryana State Engineers Service, Class II—Relaxation of minimum qualification in favour of persons in military service during proclamation of emergency—Counting period of their military service for purpose of seniority—Whether valid—Held, Yes.

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Punjab Service of Engineers, Class I, PWD (Public Health Branch), 1961—Rules 6 and 9 as amended by Haryana First Amendment Rules, 1986—Promotion from posts of Assistant Engineer to Executive Engineer under old rules—Relaxation in respect of degree—Claim of promotion to posts of Superintending Engineer—Whether bar prescribed by proviso to Rule 9 introduced by Amending Rule of 1986 shall be applicable—Held, Yes.

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A decision had been taken by the State of Haryana to relax the minimum qualification in favour of ex-military personnel, who had served the nation, during the emergency while appointing them to the posts of Assistant Engineer in Haryana State Engineer Service, Class II, of Public Works Department. The respondents, being in military service during the proclamation of emergency, were appointed as Assistant Engineers in the year 1969, although being diploma holders they were also given seniority, taking into account the period while they were in military service in accordance with the provisions of the Punjab Government National Emergency (Concession) Rules 1965.

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Writ Petition was filed on behalf of the appellants, questioning the validity of the Order of the State Government, counting the period, while the respondents were in military service for the purpose of their seniority. It was dismissed. In the Writ Petition filed on behalf of the respondents it was claimed that although they were diploma holders, still the Amended Rules 6 and 9 shall not be bar for their being

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considered for the posts of Superintending Engineer. The High Court allowed the petition holding that inspite of the Amendments introduced in rules 6 and 9, the respondents who were petitioners in Writ Petition shall not be debarred from being considered for promotion to the posts of Superintending Engineer. The High Court had taken the view that it was not open to amend the Rules retrospectively w.e.f. 2.6.1961.

These appeals were filed for setting aside the judgments of the High Court, dismissing the Writ Petition filed by appellants. The appellants also challenged the judgment of the High Court questioning the validity of the Punjab Service of Engineers, Class I, PWD (Public Health Branch) Haryana First Amendment Rules, 1986. Rules 6 and 9 of the Punjab Service of Engineers, Class I, PWD (Public Health Branch), 1961 were amended retrospectively w.e.f. 2.6.1961 by the Amending Rules.

The respondents submitted that once the minimum qualification prescribed for the posts of Assistant Engineer i.e. degree was relaxed in exercise of the power under Rule 3(iii) of the National Emergency Rules at the stage of their appointment as Assistant Engineers, it shall be deemed that their diploma was treated to be equivalent to degree. By a statutory fiction they will be deemed to be the holders of degree although in fact they were holders of diploma only and this benefit which was extended to them for having served the nation during the emergency shall be available to them till their date of superannuation. It was further submitted that once the respondents were appointed as Assistant Engineers and promoted to the post of Executive Engineers although they were diploma holders, they could not be deprived of their right to be considered for promotion for the posts of Superintending Engineer. It was pointed out that the degree holders and diploma holders both were holding the posts of Executive Engineer; they formed one class and thereafter they had to be treated as a class and for purpose of promotion to the posts of Superintending Engineer they cannot be put under two classes of Executive Engineers. According to respondents the proviso to Amended Rule 9 purported to create a class within class by imposing a bar on the promotion of such Executive Engineers, who were holders of diploma only, which was violative of Articles 14 and 16 of the Constitution.

Therefore, the question for consideration was whether on the basis of the relaxation given in respect of qualification regarding holding of degree to the respondents at the stage of their initial appointment as

- A Assistant Engineers and at the stage of promotion from the posts of Assistant Engineer to the Executive Engineers, in terms of Rule 3(iii) of the National Emergency Rules and proviso to Rule 6 of the Punjab Service of Engineers, Class I, PWD (Public Health Branch), Rules, 1961 respectively will enure to their benefit even while they were to be considered for promotion to the posts of Superintending Engineer and the bar prescribed by proviso to Rule 9 which was introduced by aforesaid Amending Rule of 1986 shall not be applicable in their case.
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Allowing the appeal, this Court

- C HELD : 1.1. Different States have framed rules under Article 309 of the Constitution of India similar to the National Emergency Rules, in order to give benefit of seniority to persons, who were commissioned in armed forces when the nation was faced with foreign aggression. Such persons offered themselves to serve the nation by joining the armed forces at a time when the nation was in peril. In this background they have been treated as a separate class for extending the benefit in the matter or relaxation of qualification, seniority, increment and pension. They belong to a separate class even in the light of Articles 14 and 16 of the Constitution. [109 H, 110A]
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- E *Dhan Singh v. State of Haryana*, [1990] Supp. 3 SCR 423; *Union of India v. Dr. S. Krishna Murthy*, [1990] 1 SLJ 67; and *Narender Nath Pandey v. State of U.P.*, AIR [1988] SC 1648 and *Ram Janam Singh v. State of Uttar Pradesh* [1994] 2 SCC 622, relied on.

- F 1.2. Rule 3 (iii) of National Emergency Rules does not purport to provide that a person who has rendered military service, although he does not possess the minimum qualifications prescribed for any service or post, he shall be deemed to possess the said qualifications, throughout, while in service. Rule 3 (iii) only provides that in case a person, who has rendered military service, but does not possess the minimum qualification prescribed for any service or post, he shall be deemed to possess the qualification. "If the appointing authority certifies that such a person has acquired by experience or otherwise qualifications equivalent to those prescribed for that service/post." In other words, on the basis of the certificate of the appointing authority that such person has acquired by experience or otherwise qualifications which are equivalent to those prescribed for that service or post, such person shall be deemed to possess the qualifications in question. The
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words 'equivalent to those prescribed for that service or post' are relevant because on basis of the certificate granted by the appointing authority that such person was possessing equivalent qualification to the prescribed one for the service and post, he shall be deemed to possess the qualifications prescribed. The Rule does not say that although such a person does not possess the prescribed qualifications, as he has rendered military service, it shall be deemed that he has been possessing the prescribed qualifications. On the basis of the Certificate granted by the appointing authority, the concerned person shall be deemed to possess the qualifications equivalent to the qualifications prescribed for being appointed to the service and the post. It cannot be held that on the basis of that certificate it shall be deemed that such a person possesses the qualifications in questions. It is well settled that a statutory fiction cannot be extended beyond the purpose. [113 C to G]

Bengal Immunity Co. v. State of Bihar, AIR (1955) SC 661; *Commissioner of Sales Tax, U.P. v. Modi Sugar Mills Ltd.*, [1961] 2 SCR 189; *Braithwaite and Co. v. E.S.I. Corporation*, [1968] 1 SCR 771 and *K.S. Dharmadatan v. Central Government*, [1979] 3 SCR 832, relied on.

1.3. The appellants were degree holders, whereas the respondents were diploma holders. The cases of the appellants and the respondents had to be examined in the light of the proviso, which was introduced in Rule 9 by the Amending Act 1986 saying that a member of the service who does not possess one of the degree or other qualifications prescribed in Appendix 'B' to those Rules shall not be eligible for promotion to the post of Superintending Engineer or above, till he has acquired the requisite qualifications. Although, the respondents had served the nation in the hour of peril by offering themselves for service in the Armed Forces, it could not be held that benefit extended to them by Rule 3 (iii) of National Emergency Rules on the eve of initial appointment, had to be extended, even while they were being considered for promotion to higher post. This was not possible because of the specific bar prescribed by the proviso to Rule 9 introduced by Amending Rule of 1986, which cannot be held to be unconstitutional, invalid or violative of Articles 14 and 16 of the Constitution. The High Court was not justified in ignoring the proviso to Rule 9 while coming to the conclusion that the said respondents were entitled to be considered for the posts of Superintending Engineers. The proviso to Rule 9 had to be kept in view while considering the cases of respondents for promotion to the posts of Superintending Engineer.

[115 E to G 118 F] H

A *State of Jammu and Kashmir v. Triloki Nath Khosa*, [1974] 1 SCR 771 (Constitution Bench) and *P. Murugesan v. State of Tamil Nadu*, [1993] 2 SCC 340, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7892-93 of 1994 Etc.

B From the Judgment and Order dated 6.7.93 of the Punjab and Haryana High Court in L.P.A. Nos. 164/91, 246/91 and C.W.P. No. 3614 of 1991.

C Arun Jaitley, P.P. Rao, S. Markendeya, Ms. Chitra Markendeya, Ajay Singh, H.P. Sharma, Ms. Indu Malhotra, B.A. Mohanty, A. Mariaruptham, for Arputham Aruna and Co., K.G. Bhagat, Kamal Baid, Ranbir Yadav, A.D. Sikri, Pradeep Gupta, K.K. Mohan, Rajesh and R.K. Gupta for the appearing parties.

The Judgment of the Court was delivered by

D **N.P. SINGH, J.** Leave granted.

E The appeals on behalf of D.K. Jain, C.P. Taneja and other have been filed for setting aside the judgment of the High Court, dismissing the Writ Petition No. 1277 of 1988 filed on behalf of the said appellants, questioning the validity of the Order of the State Government, counting the period, while the respondents were in military service, during the proclamation of emergency, for the purpose of their seniority. The appellants have also challenged the judgment of the High Court allowing the Writ Petition No. 3184 of 1988, filed on behalf of the respondents, questioning the validity of the Punjab Service of Engineers, Class I, PWD (Public Health Branch), Haryana First Amendment Rules, 1986 (hereinafter referred to as 'Amending Rules'). Rule 6 and Rule 9 of the Punjab Service of Engineers, Class I, PWD (Public Health Branch), 1961 were amended retrospectively with effect from 2.6.1961 by the aforesaid Amending Rules. The High Court has held that inspite of the amendments introduced in rules 6 and 9, the respondents who were petitioners in Writ Petition No. 3184 of 1988, shall not be debarred from being considered for promotion to the posts of Superintending Engineer.

G The respondents, admittedly were in military service, during the proclamation of emergency and after release from the military service, they were appointed as Assistant Engineers, on basis of an advertisement issued by the Haryana Public Service Commission, in the year 1969. A decision had been taken by the State of Haryana to relax the minimum qualification

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in favour of those ex-military personnel, who had served the nation, during the emergency, while appointing to the posts of Assistant Engineer in Haryana State Engineer Service, Class II, of Public Works Department. In respect of the respondents, not only the minimum qualification prescribed for the Assistant Engineer was relaxed but they were also given seniority, taking into account the period while they were in military service in accordance with the provisions of the Punjab Government National Emergency (Concession) Rules 1965 (hereinafter referred to as 'the National Emergency Rules'). The said respondents were the holders of diploma only. But in view of Rule 3 (iii) of the National Emergency Rules, on basis of the certificates granted by the appointing authority that they had acquired by experience or otherwise qualifications equivalent to those prescribed for the post of Assistant Engineers, they were appointed as Assistant Engineers although being diploma holders.

Rule 2 says that for the purpose of those rules, the expression 'military service' means enrolled or commissioned service in any of the three wings of the Indian Armed Forces (including service as a Warrant Officer) rendered by a person during the proclamation of emergency on 26.10.1962. Rule 3 (iii) with which we are concerned is as under :

"3. (iii) In case a person who has rendered military service does not possess the minimum qualifications prescribed for any service or post, he shall be deemed to possess these qualifications if the appointing authority certifies that such a person has acquired by experience or otherwise qualifications equivalent to those prescribed for that service/post."

The relevant part of Rule 4 :

"4. *Increment, seniority and pension*— Period of military service shall count for increments, seniority and pension as under :

(ii) *Seniority* : The period of military service mentioned in clause (i) shall be taken into consideration for the purpose of determining the seniority of a person who has rendered military service."

Different States have framed rules under Article 309 of the Constitution of India similar to the National Emergency Rules, in order to give benefit of seniority to persons, who were commissioned in armed forces when the nation was faced with foreign aggression. Such persons

A offered themselves to serve the nation by joining the armed forces at a time when the nation was in peril. In this background they have been treated as a separate class for extending the benefit in the matter of relaxation of qualification, seniority, increment and pension. They belong to a separate class even in the light of Articles 14 and 16 of the Constitution. Reference in this connection may be made to the judgments of this Court in the cases

B of *Dhan Singh v. State of Haryana*, [1990] Supp. 3 SCR 423, *Union of India v. Dr. S. Krishna Murthy*, (1990) 1 SLJ 67 and *Narender Nath Pandey v. State of U.P.*, AIR (1988) SC 1648 = [1988] 3 SCC 527 and in the case of *Ram Janam Singh v. State of Uttar Pradesh and Anr. J.T.*, (1994) 1 SC 187. The High Court rightly dismissed the Writ Petition filed on behalf of the appellants, questioning the validity of the order of the State

C Government, counting the period of military service for the purpose of seniority in accordance with the National Emergency Rules. We find no reason to interfere with the order of the High Court dismissing the Writ Petition No. 1277 of 1988 filed on behalf of the appellants.

D In the Writ Petition No. 3184 of 1988 filed on behalf of the respondents, it was claimed that although they were diploma holders, still the Amended Rules 6 and 9 shall not be bar for their being considered for the posts of Superintending Engineer. The relevant part of the Amending Rules of 1986:

E “1. (1) These rules may be called the Punjab Service of Engineers, Class I, PWD (Public Health Branch), Haryana First Amendment Rules, 1986.

(2) They shall be deemed to have come into force with effect from the 2nd June, 1961.

F 2. In the Punjab Service of Engineers, Class-I, P.W.D. (Public Health Branch), Rules 1961, (hereinafter called the said rules), in rule 6, for clauses (a) and (b), the following clauses shall be substituted, namely:—

G “(a) In case of appointment by direct recruitment, possesses one of the University degrees or other qualifications prescribed in Appendix ‘B’ to these rules;

H (b) in the case of an appointment by promotion from Class II Service, has in addition to the qualifications provided in Clause (a) eight years completed service and has passed the departmental examination prescribed under rule 15;

Provided that the Government may waive off the requirement of qualification mentioned in clause (a), for appointment to the service by promotion from Class-II Service, in case of a particular officer;

Provided further that the Government may relax the condition of eight years service in the case of an officer who has completed five years service;

Provided further that such an officer shall earn the first increment as an Executive Engineer on the completion of nine years service.

Explanation: For the purpose of computing eight years service, the service in Class-II as well as in Class-I, shall be counted.

3. In the said rules, in Rule 9, in sub-rule (1) for the existing proviso, the following proviso shall be substituted, namely:—

“Provided that a member of the Service who does not possess one of the University degrees or other qualifications prescribed in Appendix B to these rules, shall not be eligible for promotion to the post of Superintending Engineer or above, till he has acquired the requisite qualifications.”

The Amending Rules were brought in force with effect from 2.6.1961. The High Court has taken the view that it was not open to amend the Rules retrospectively with effect from 2.6.1961 even on basis of the judgment of the Constitution Bench of this Court, in the case of *B.S. Vadera v. Union of India*, AIR (1969) SC 118. It was pointed out that in the facts and circumstances of the present case if the Rules are enforced retrospectively it shall effect the vested right of the officers concerned as such shall be violative of Articles 14 and 16 of the Constitution. During the hearing of the appeals, none of the parties have questioned that part of the judgment of the High Court and they have proceeded on the assumption that the Rules shall be deemed to be prospective in nature *i.e.* they shall be deemed to have come in force with effect from 26.9.1986, the date of the Notification. This stand has been taken because of the fact that all posts of Superintending Engineer became vacant after the Amending Rules had come in force.

A In view of Amended Rule 6 (b) in the case of appointment by promotion from Class II Service to Class I Service, the person concerned should have qualifications provided in clause (a) *i.e.* a University Degree or other qualifications prescribed in Appendix "B" to the said Rules. The proviso to Rule 6 says that the Government may waive off the requirement of qualification mentioned in clause (a) for appointment to the service by

B promotion from Class II Service to Class I Service, in case of a particular officer. Posts of the Executive Engineer and the Superintending Engineer are Class I posts in Punjab Service of Engineers. There is no dispute that respondents were promoted from the posts of Assistant Engineer to the posts of the Executive Engineer, under the old Rules by relaxing the requirement of Degree as the qualification for the post of Executive

C Engineer. It appears that while appointing the respondents as Assistant Engineers in Class II Service, Rule 3 (iii) of the National Emergency Rules were applied; whereas while promoting from the posts of Assistant Engineer to the posts of Executive Engineer in the year 1976 with effect from 1972 relaxation in respect of degree was granted in terms of Rule 6 as it stood then.

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Now the question is whether on basis of the relaxation given in respect of qualification regarding holding of degree to the respondents at the stage of their initial appointment as Assistant Engineers and at the stage of promotion from the posts of Assistant Engineer to the Executive Engineers, in terms of Rule 3 (iii) of the National Emergency Rules and proviso to Rule 6 of the Punjab Service of Engineers, Class I, PWD (Public Health Branch), Rules, 1961 respectively will enure to their benefit even while they are to be considered for promotion to the posts of Superintending Engineer and the bar prescribed by proviso to Rule 9 which was introduced by aforesaid Amending Rule of 1986 shall not be applicable in their case.

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It is the stand of the respondents that once the minimum qualification prescribed for the posts of Assistant Engineer *i.e.* degree was relaxed in exercise of the power under Rule 3 (iii) of the National Emergency Rules at the stage of their appointment as Assistant Engineers, it shall be deemed that their diploma was treated to be equivalent to degree. By a statutory fiction they will be deemed to be the holders of degree although in fact they were holders of diploma only and this benefit which was extended to them for having served the nation during the emergency shall be available to them till their date of superannuation. Rule 3 (iii) of National Emergency Rules says ".....he shall be deemed to possess these qualifications if the appointing authority certifies that such a person has acquired by experience or otherwise qualifications equivalent to those

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prescribed for that service/post.” In respect of role of a deeming clause reference was made to the several judgments pointing out how the Courts are required to give full effect to such statutory fiction ignoring the realities and factual position. Recently in the case of *M. Venugopal v. The Divisional Manager, LIC of India, Machilipatnam, A.P.*, JT (1994) 1 SC 281 = [1994] 2 SCC 323, this Court after making reference to the well known case of *East and Dwellings Co. Ltd. v. Finsbury Borough Council*, (1952) A.C. 109 (B), pointed out that if one is bidden by a statute to treat an imaginary state of affairs as real, the Courts unless prohibited from doing so, shall also imagine as real the consequences and incidents which inevitably shall flow.

At this stage it shall be proper to determine the scope of Rule 3 (iii). Rule 3 (iii) According to us it does not purport to provide that a person who has rendered military service, although he does not possess the minimum qualification prescribed for any service or post, he shall be deemed to possess the said qualifications throughout, while in service. Reading the Rule 3 (iii) in proper context, it only provides that in case a person, who has rendered military service, does not possess the minimum qualification prescribed for any service or post, he shall be deemed to possess the qualification “if the appointing authority certifies that such a person has acquired by experience or otherwise *qualifications equivalent to those prescribed* for that service/post.” [emphasis supplied]. In other words, on basis of the certificate of the appointing authority that such person has acquired by experience or otherwise qualifications which are equivalent to those prescribed for that service or post, such person shall be deemed to possess the qualifications in question. The words ‘equivalent to those prescribed for that service or post’ are relevant because on basis of the certificate granted by the appointing authority that such person was possessing equivalent qualifications to the prescribed one for the service and post, he shall be deemed to possess the qualifications prescribed. The Rule does not say that although such a person does not possess the prescribed qualifications, as he has rendered military service, it shall be deemed that he has been possessing the prescribed qualifications. According to us, on the basis of the certificate granted by the appointing authority, the concerned person shall be deemed to possess the qualifications equivalent to the qualifications prescribed for being appointed to the service and the post. It cannot be held that on basis of that certificate it shall be deemed that such a person possesses the qualifications in questions. It is well settled that a statutory fiction cannot be extended beyond the purpose. In the case of *Bengal Immunity Co. v. State of Bihar*, AIR (1955) SC 661 = [1955] 2 SCR 603, this Court said :—

A “Whichever view is taken of the Explanation it should be limited to the purpose the Constitution makers had in view when they incorporated it in clause (1). It is quite obvious that it created a legal fiction. Legal fictions are created only for some definite purpose.”

B In the case of *Commissioner of Sales Tax, U.P. v. Modi Sugar Mills Ltd.*, AIR (1961) SC 1047 = [1961] 2 SCR 189 again it was said:

“A legal fiction must be limited to the purposes for which it has been created and cannot be extended beyond its legitimate field.”

C In the case of *Braithwaite and Co. v. E.S.I. Corpn.*, AIR (1968) SC 413 = [1968] 1 SCR 771, it was said:

“A legal fiction is adopted in law for a limited and definite purpose only and there is no justification for extending it beyond the purpose for which the legislature adopted it.”

D The same was also pointed out in the case of *K.S. Dharmadatan v. Central Government*, AIR (1979) SC 1495 = [1979] 3 SCR 832.

E It was then submitted that once the respondents were appointed as Assistant Engineers and promoted to the post of Executive Engineers although they were diploma holders, they cannot be deprived of their right to be considered for promotion for the posts of Superintending Engineer. It was pointed out that the degree holders and diploma holders both are holding the posts of Executive Engineer; they formed one class and thereafter they have to be treated as a class and for purpose of promotion to the posts of Superintending Engineer they cannot be put under two classes of Executive Engineers. According to respondents the proviso to amended Rule 9 purports to create a class within class by imposing a bar on the promotion of such Executive Engineers, who are holders of diploma only, which is violative of Articles 14 and 16 of the Constitution. A Constitution Bench of this Court in the well known case of *State of Jammu and Kashmir v. Triloki Nath Khosa* [1974] 1 SCR 771 has considered this aspect of the matter. While pointing out that classification is fraught with the danger, that it may produce artificial inequalities and because of that the right to classify is hedged with restraints, still it was held that as the rule provided that only graduate shall be eligible for promotions to the exclusion of the diploma holders, it did not violate Articles 14 and 16 of the Constitution. The grievance that any such rule cannot operate on members of service who

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have entered before coming into force of such rules was also negative saying that a rule which classify such employees for promotional purposes, undoubtedly operates on those who have already entered in service before the framing of the rules but it operates in future in the sense that it governs the future right of promotion of those who are already in service. It was also said that a classification founded on variant educational qualifications, for purposes of promotion to the post of a Executive Engineer, cannot be held to be unjust. Recently a three Judges Bench in the case of *P. Murugesan v. State of Tamil Nadu*, [1993] 2 SCC 340 has pointed out that since the decision of the Constitution Bench in *Triloki Nath Khosa*, the Supreme Court has been holding uniformly that even where direct recruits and promotees are integrated into a common class, they could for purposes of promotion to the higher cadre be classified on the basis of educational qualifications. It was further said that when the rules can be framed barring altogether the diploma holders from promotion, the rule making authority cannot be precluded from restricting the promotion, because the rule making authority having regard to the efficiency of the administration and the other relevant circumstances may consider it necessary to bar the diploma holders from promotion altogether. According to us, the facts of the present case are no way different. The appellants and the respondents both are Executive Engineers. The appellants are the degree holders, whereas the Respondents are diploma holders. The cases of the appellants and the respondents have to be examined in the light of the proviso, which was introduced in Rule 9 by the Amending Act 1986 aforesaid saying that a member of the service who does not possess one of the degree or other qualifications prescribed in Appendix 'B' to those Rules shall not be eligible for promotion to the post of Superintending Engineer or above, till he has acquired the requisite qualifications. Although, the respondents have served the nation in the hour of peril by offering themselves for service in the Armed Forces, but it cannot be held that benefit extended to them by Rule 3 (iii) of National Emergency Rules on the eve of initial appointment, has to be extended, even while they are being considered for promotion to higher post. This is not possible because of the specific bar prescribed by the proviso to Rule 9 introduced by Amending Rule of 1986, which cannot be held to be unconstitutional, invalid or violative of Articles 14 and 16 of the Constitution. The High Court was not justified in ignoring the proviso to Rule 9 while coming to the conclusion that the said respondents were entitled to be considered for the posts of Superintending Engineers.

So far in the appeal arising out of SLP (c) No. 17358/93 filed on behalf of the State of Haryana against the same judgment, the main grievance which has been made on behalf of the State in that although all the relevant

A materials had been produced before the High Court to show that
requirement of Section 82(6) of the Punjab Reorganisation Act, 1966 had
been complied, with the High Court preferred to rely on the judgments of
this Court in the case of *T.R. Kapur and Ors. v. State of Haryana and Ors.*,
AIR (1987) SC 415 = [1986] (Suppl.) SCC 584. It was pointed out before
the High Court that unfortunately the relevant documents relating to
B previous approval of the Central Government could not be produced in the
case of *T.R. Kapur and others v. State of Haryana and others*, (supra) and
because of that this Court observed that State Government never moved the
Central Government seeking its prior approval to the proposed amendment
of Rule 6 (b) of the Class I. Rules which was under consideration in that
case. It was said:

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“Admittedly, there was no Chief Secretaries conference as
was held prior to the reorganisation of the States under the
States Reorganisation Act, 1956. Nor was there any
communication issued by the Central Government conveying
its previous approval of the changes in the service conditions
which the States of Punjab and Haryana might make in terms
of the proviso to section 82 (6). Punjab Reorganisation Act,
1966. Under the States Reorganisation Act, 1956, so also
under the Punjab Reorganisation Act, 1966, the power of the
Governor to make rules under the proviso to Article 309 of
the Constitution had being controlled by the proviso to
Section 115 (7) of the former Act and Section 82 (6) of the
latter. It follows that the conditions of service applicable
immediately before the appointed day to the case of any
person referred to in sub-section (1) or (2) of Section 82 of
the Act could not be varied to his disadvantage except with
the previous approval of the Central Government. That being
so, the impugned notification issued by the State Government
purporting to amend Rule 6 (b) of the Class I Rules with
effect from July 10, 1964 which rendered members of Class
II Service who are diploma holders like the petitioners
ineligible for promotion to the post of Executive Engineer in
Class I Service making a degree in Engineering essential for
such promotion, although they satisfied the condition of
eligibility of 8 years’ experience in that class of service, must
be struck down as *ultra vires* the State Government being
contrary to Section 82 (6), Punjab Reorganisation Act,
1966.”

So far as the present case is concerned, the approval of the Central Government given in the year 1968, as required by sub-section (6) of Section 82 of the Punjab Reorganisation Act, 1966 was produced before the High Court. Before the High Court a copy of the letter dated 27.3.1957 from the Deputy Secretary to the Government of India, Ministry of Home Affairs to the Chief Secretary to the different State Governments was also produced in respect of protection of the service condition of State service personnel. In paragraph 3 of the said communication, it was said that the question whether protection should be given in respect of rules and conditions applicable to Government servants affected by reorganisation immediately before the date of reorganisation in the matter of travelling allowance, discipline, control, classification, appeal, conduct, probation and departmental promotion was also considered and that the Government of India was of the view that "it would not be appropriate to provide for any protection in the matter of these conditions."

According to Mr. Jaitley, who appeared on behalf of the State of Haryana, in this appeal, in fact the requirement of Section 82 (6) of the Punjab Reorganisation Act, 1966 has been complied with inasmuch as a decision with the previous approval of the Central Government has been taken that no protection is to be given to the Government servants affected by reorganisation in the matter of departmental promotion. As such when the Amending Rules make degree a must for promotion to the post of Superintending Engineer under the proviso to Rule 9 it cannot be held to be in contravention of the requirement of Section 82 (6) of the Punjab Reorganisation Act, 1966. None of the counsel appearing for any of the appellants or respondents in the appeals questioned this factual position during the hearing of the appeal. It appears that the High Court on perusal of the materials referred to above was satisfied that requirement of Section 82 (6) of the Punjab Reorganisation Act, 1966 had been complied with and on that ground the Amending Rules cannot be held to be invalid. But the High Court observed:

"There may appear to be considerable substance in the contention raised but what confronts us is the binding judicial precedent of *T.R. Kapur's* case (supra). What we have before us is not a choice of following one view of the Supreme Court in preference to another, rather what we are, in fact, being asked to do, would virtually amount to disregarding a judgment of the Supreme Court directly applicable to the point in issue, which we are, with respect, not empowered to do. We are clearly bound by the judgment in the earlier *T.R.*

A *Kapur's* case (supra) and in terms thereof we cannot but hold the impugned amendment to be invalid for non-compliance with Section 82 (6) of the Re-organisation Act, 1966. This being so, the writ petitions must clearly be held entitled to be considered for promotion to the post of Superintending Engineers under the unamended rules with effect from the date when their juniors were so promoted *i.e.* October 18, 1989 and to be entitled to all consequential benefits.”

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It need not be pointed out that in *T.R. Kapur's* case (supra) the Supreme Court held the impugned notification issued by the State Government purporting to amend Rule 6 (b) of Class I Rules (18) which rendered number of Class II Service who were Diploma holders ineligible for promotion to the post of Executive Engineer in class I service, in view of the fact that no order of previous approval of the Central Government was produced before the High Court or this Court. But in the present case, the different orders as required by Section 82 (6) of the Punjab Reorganisation Act, 1966 were produced before the High Court. As such it shall not be proper to hold merely on basis of the observation of this Court in *T.R. Kapur's* case (supra) that even the Amending Act of 1986 with which we are concerned is also invalid being contrary to Section 82 (6) of the Punjab Reorganisation Act, 1966.

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Accordingly, the appeals are allowed and the judgment of the High Court in Writ Petition No. 3184 of 1988 holding that the proviso to Rule 9, introduced by Amending Rules 1986 shall not bar, in respect of the respondents, for being considered for the post of Superintending Engineers, is set aside. The proviso to Rule 9 has to be kept in view while considering the cases of respondents for promotion to the posts of Superintending Engineer. The judgment of the High Court in Writ Petition No. 1277 of 1988 filed on behalf of the appellants, challenging the initial appointment of the respondents by extending the benefit in Rule 3 (iii) of the National Emergency Rules and grant of seniority in terms of Rule 4 thereto is upheld and the appeals arising from that part of the judgment are dismissed. However, in the facts and circumstances, there shall be no orders as to cost.

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G A.G. Appeal allowed.

H **N.P. SINGH, J.** The Special Leave Petition (C) No. 20680 of 1994 has been filed on behalf of R.K. Jain and Anr., who were not impleaded as respondents in the writ application filed before the High Court. According to us, there is no occasion to grant permission to them to file the aforesaid

Special Leave Petition. They shall also be governed by the judgment delivered by this Court in the case of *D.K. Jain and Ors. v. State of Haryana and Ors.*, (Civil Appeal Nos. 7892-93) of 1994 [arising out of S.L.P. (C) Nos. 13543-44 of 1993]. The Special Leave Petition is accordingly dismissed. A

SPECIAL LEAVE PETITION (C) NO. 5367 OF 1994

B

The above mentioned Special Leave Petition has been filed on behalf of *State of Haryana* against *Prithvi Raj Grover and Ors.* We were informed that the respondents have since retired. Any way, even if they had not retired, their case would have also been governed by the judgment delivered by this Court, in the case of *D.K. Jain and Ors. v. State of Haryana and Ors.*, (Civil Appeal Nos. 7892-93 of 1994 (arising out of S.L.P. (C) Nos. 13543-44 of 1993). Accordingly, the Special Leave Petition is dismissed. C

A.G.

Petition Dismissed.