

PETITIONER:
A. S. PARMAR & OTHERS

Vs.

RESPONDENT:
STATE OF HARYANA & OTHERS

DATE OF JUDGMENT 24/01/1984

BENCH:
VENKATARAMIAH, E.S. (J)
BENCH:
VENKATARAMIAH, E.S. (J)
MISRA, R.B. (J)

CITATION:
1984 AIR 643 1984 SCR (2) 476
1984 SCALE (1) 113
CITATOR INFO :
E&R 1987 SC 415 (1, 2, 3, 8, 9, 14, 15)
E&R 1987 SC 424 (11)
R 1989 SC 2082 (3, 4, 6, 11, 12, 15)

ACT:
Constitution of India, Article 311 and 305 proviso thereto-Promotion employees from Class 11 service to class I service in the P.W.D. (Irrigation branch Punjab-Possession of a degree is not a pre-requisite for promotion from class 11. class I Service-Punjab service of Engineer Class 1, P.W.D. (Irrigation Branch Rules, 1964 Rule 6(a), interpretation of

Promotion of Assistant Engineers in class 11 service, not possessing degree to the cadre of Executive Engineers Class 1, but satisfying the requirements of clause (b) of Rule 6 of class I Rules-whether in order or whether Rule 6 (a) will be applicable- Comparison between Punjab Service of Engineers class 11 P.W.D, (Buildings and) Roads Branch) Rules 1965, Rules 6 & 7 with Punjab Service of Engineers class I.P. W.D. (Buildings and Roads Branch) Rules 6 (a) and 6 (b).

HEADNOTE:

Eight officers including the appellants entered the class II service in accordance with the Punjab Service of Engineers class II, P.W.D. (Buildings and Roads Branch) Rules, 1965. They are all holders of diplomas in Engineering. They were promoted alongwith nine others from the class II service to the class I service by an order dated May 7, 1981, passed by the Haryana State Government on a temporary basis subject to approval of the Haryana Public Service Commission. In the case of these officers, the Government of Haryana passed an order relaxing the condition of degree qualification in public interest. The above orders of promotion in so far as these persons were concerned were questioned by eleven officers in the class II service, who were below them in the gradation list of the class II service having entered that service in 1972 in the writ petition out of which these appeals arise. The officers who filed the said petition were all holders of degrees in Engineering. Their principal contention was that an officer in the class II service could not be promoted to the class I

service unless he possessed a degree in Engineering as prescribed by Rule 6(a) of the Punjab Service of Engineers, class I, P.W.D, (Buildings and Roads Branch) Rules, 1960 which governed the recruitment to the class I service in the State of Haryana and the relaxation of that requirement alleged to have been ordered by the State Government in exercise of the power under the proviso to Rule 6 (a) in the case of the officers whose promotions had been challenged was illegal and void. The Punjab & Haryana High Court accepted the said contention and dismissed the petition. Hence the appeals after obtaining special leave of the Court,

Allowing the appeals the Court,

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HELD: 1.1. A degree is not a pre-requisite for being promoted from the class II service to the class I service. [493 D]

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1.2. A comparison between the 1956 Rules and the 1964 Rules makes it clear that there was no insistence upon the qualification of a degree in the said 1956 Rules in the case of the promotees from the class II service. When the 1964 Rules of the Irrigation Branch, class I were promulgated, the pattern of the Rules was changed. While doing so, in the new Rule 6, the word "directly" which was in the old Rule 7 was no doubt omitted but the new Rule 6 referred to both kinds of appointment namely direct recruitment and promotion from the class II service. It was not a case of just reproducing the old Rule 7 and omitting one word therefrom, but the introduction of a new Rule 6 with a different structure. [493A-B]

O.P. Bhatia & Anr. v. State of Haryana & Ors., ILR[1980]1 Punjab & Haryana 470. Overruled.

1.3. In these cases, the State Government having first consumed Rule 6 of the class I Rules required that a promotee should also have a degree, tried to relax that condition by making orders relaxing as it found that its construction had led to unjust results. In view of the fact that the question of interpretation of New Rule 6 of the class I Rules was raised, and service Rule 6 (a) of the class I Rules is not applicable to the class II officers who are to be promoted to the class I service, the question whether the order of relaxation made in the case of promotees is validly passed or not becomes non-est. [493 E; 494B]

2.1. It is indisputable that if the Government wishes to appoint only holders of degrees to the class I service, it may do so by promulgating appropriate rules. That power is beyond question, and classification on the basis of educational qualifications of officers belonging to a cadre for purposes of promotion to a higher cadre is permissible. But, the class I Rules as they now exist do not debar the promotion of an Assistant Engineer in the class II service who does not possess a degree to the cadre of Executive Engineers even when he satisfies the requirements of clause (b) of Rule 6 of the class I Rules and is selected by the Public Service Commission. [493 G-H]

2.2. Rule 6 of the class I Rules treats the possession of a degree plus the selection at the competitive examination and the passing of the departmental examination after appointment as sufficient for getting into the cadre of Assistant Executive Engineers or to the cadre of Executive Engineers when direct recruitment is made to those posts and the experience in the class II Service for a minimum period of eight years plus the passing of the

departmental examinations before promotion of an Assistant Engineer in the Class II Service as sufficient qualification for promotion to the cadre of Executive Engineers. [487 E-F]

2.3 The distinction between the two methods of filling the posts of Executive Engineer by promotion is clear. If that post is to be filled up by promoting an Assistant Executive Engineer, the Assistant Executive Engineer, concerned should possess five years experience and should have passed the Departmental Examination prescribed by Rule 15 of the Class I Rules. If that post is to be filled up by promotion of an Assistant Engineer in the class II Service, the Assistant Engineer to be promoted should possess eight years experience in the Class II Service and should have passed the Departmental Examination prescribed by Rule 15. That means that whereas an Assistant Executive Engineer who is a holder of a degree needs have only five years' experience in the Public Works Department, an Assistant Engineer in the Class [[Service who may or may not possess a degree should have eight years' experience in the Public Works Department for being promoted to the cadre of
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Executive Engineers. This extra experience of three years appears to have been treated as being sufficient to make good the deficiency, if any, that may arise by reason of the Assistant Engineer in the Class II Service possessing only a. diploma and nota degree. [487 H; 488 A-C]

2.4. In the circumstances it could not have been the intention of the rule making authority that no person without a degree should be allowed to enter the Class I Service. If the construction placed by the petitioners in the writ petition and the Government is accepted every diploma holder who is an Assistant Engineer would have to retire only as a Class II officer and cannot hope to become an Executive Engineer till his retirement. If that was the intention, Rule 6 (b) of the Class I Rules would have contained necessary words conveying that meaning. Clause (b) of Rule 6 appears to be exhaustive of the qualifications of the Assistant Engineers who can seek promotion from the Class II Service to the Class I Service. So Rule 6 of the Class I Rules will read in so far as the promotees are concerned as 'no person shall be appointed to the Service unless in the case of an appointment by promotion has eight years completed service in Class II and has passed the professional Examination of the department as provided in Rule 1 S" and clause (a) of Rule 6 should be read as being applicable to the other mode of recruitment. [490 B-D]

3. In such a case, it cannot be said that the expertness of the Class I Service would very much suffer if persons without degrees but with only diplomas are allowed to get into it. In administrative and professional services a combination of high educational qualifications and long experience is always preferred so that the services may be efficient by each of them supplementing the other. Experienced administrators have opined that in the higher cadres of services high educational qualifications alone or long experience alone would not be in the interests of the public. In order to see that there is no lack of proficiency in the higher post in the Class I Service, Rule S(2) of the Class I Rules expressly provides that recruitment to the Service shall be so regulated that the number of posts filled by promotion from the Class IT Service shall not exceed fifty per cent of the number of posts in the Class I Service excluding the posts of Assistant Executive Engineers. It provides for a healthy blend of the two classes. The effect of Rule S(2) is that more than fifty per

cent of the Class I Service posts would always be held by direct recruits because the strength of promotees from the Class II Service cannot be more than fifty per cent of the total strength of the class I Service minus the number of Assistant Executive Engineers. The promotees from the Class II Service will, therefore, always be less than fifty per cent of the total strength of the Class I Service. Even amongst them 26 out of 40 are graduates because of Rule 6 of the Class II Rules which prescribes the quota of direct recruits who should always be the holders of degrees. So diploma holders who may get into the Class I Service by promotion will be only 14 out of 40 promotees. Therefore it cannot be said that the 28 diploma holders with the minimum length of experience prescribed by clause (b) of Rule 6 of the Class I Rules who are selected by the Public Service Commission on the basis of merit and suitability (see Rule 8 (43) of the Class I Rules) and with the educational qualifications they may possess as prescribed by the Class II Rules would dilute the Class I Service so much that the efficiency of the Class I Service would go down to such an extent that the Class I Service will become unequal to the tasks to be performed collectively by the entire service. Further, if a Class II officer is found wanting in merit and is otherwise unsuitable, he would not be selected by the Public Service Commission. This is not like a nurse in an operation the atre carrying out surgery. Nor is it like a laboratory assistant teaching stro-physics. [488D-H; 489A-B;F-G]

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 10585 & 10586 of 1983

Appeals by Special leave from the Judgment and order dated the 3rd March, 1983 of the Punjab & Haryana High Court in Writ Petition No. 2018 of 1981

F.S. Nariman and P.C. Bhartari for the Appellant in CA.10585/83

P.P. Rao and Prem Malhotra for the Appellant in CA.10586/83.

K.G. Bhagat, Addl. Solicitor General and R. N. Poddar for the State of Haryana.

S.K. Mehta, P.N. Puri, M.K. Dua and EMS Anam for Respondents in Both the Appeals.

The Judgment of the Court was delivered by

VENKATARAMIAH, J. These appeals are filed against the judgment dated March 3, 1983 in Civil Writ Petition No. 2018 of 1981 on the file of the Punjab and Haryana High Court quashing the promotion of eight officers of the Class II Engineering Service of the Haryana Public Works Department (Buildings and Roads Branch) (hereinafter referred to as 'the Class II Service') as Executive Engineers in the Haryana Service of Engineers, Class I, Public Works Department (Buildings and Roads Branch) (hereinafter referred to as 'the Class I Service'). The said officers are S.L. Gupta, I.C. Dewan, S.K. Chopra, Bodh Raj, A.S. Parmar, O.P. Gupta, Sumair Chand Jain and G.L. Sharma. They entered the Class II Service in accordance with the Punjab Service of Engineers, Class II, P.W.D. (Buildings and Roads Branch) Rules, 1965 (hereinafter referred to as 'the Class II Rules') on the dates mentioned against their names in the following table:

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Name	Date of entry into Class II Service	S. No. in the gradation list of Class II Service
1. S.L. Gupta	19.8.1969	54
2. I.C. Dewan	29.1.1970	68
3. S.K. Chopra	29.1.1970	63
4. Bodh Raj	14.8.1969	65
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5 A S Parmar	20.2.1970	66
6 O.P. Gupta	14.8.1969	70
7. Sumair Chand Jain	10.4.1970	71
8. G.L. Sharma	9.4. 1970	72

They are all holders of diplomas in Engineering. They do not possess a degree in Engineering. They were promoted along with nine others from the Class II Service to the Class I Service by an order dated May 7, 1981 passed by the Haryana State Government on a temporary basis subject to approval of the Haryana Public Service Commission. In the case of these officers, the Government of Haryana passed an order relaxing the condition of degree qualification in public 'C' interest. The above order of promotion in so far as these persons were concerned was questioned by eleven officers in the Class II Service, who were below them in the gradation list of the Class II Service, having entered that service in 1972 in the writ petition out of which these appeals arise. The officers who filed the said petition were all holders of degrees in Engineering. Their principal contention was that an officer in the Class II Service could not be promoted to the Class I Service unless he possessed a degree in Engineering as prescribed by Rule 6(a) of the Punjab Service of Engineers, Class 1, P.W.D. (Buildings and Roads Branch) Rules, 1960 (hereinafter referred to as 'the Class I Rules') which govern the recruitment to the Class I Service in the State of Haryana and the relaxation of that requirement alleged to have been ordered by the State Government in exercise of the power under the proviso to Rule 6(a) of the Class I Rules in the cases of the officers whose promotion had been challenged was illegal and void. It was, therefore, urged that the promotions of the said persons should be quashed. The State Government and the officers whose promotions had been challenged stated that the order of relaxation was justified in the circumstances of the case and the promotions were not liable to be annulled. The question whether the qualification of a degree in Engineering was necessary or not in the case of officers in the Class II Service for promoting them to the Class I Service was, however, not raised before the High Court. After hearing the parties, the High Court held that the order of relaxation passed by the State Government was unsustainable and hence the impugned promotions were liable to be set aside. Accordingly the writ petition was allowed quashing the impugned promotions. Aggrieved by the judgment of the High Court, these appeals have been filed by special leave of this Court.

Civil Appeal No. 10585 of 1983 is filed by A.S. Parmar, I.C.

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Dewan and S.K. Chopra. Civil Appeal No. 10586 of 1983 is filed by S.L. Gupta, O.P. Gupta and Sumair Chand Jain. Bodh Raj and G.L. Sharma have already retired from service. Sumair Chand Jain is stated to have died in May, 1983 after the special leave petition was filed. When the special leave petitions out of which these appeals arise came up for orders on March 23, 1983, a Bench of this Court consisting

of three learned Judges (A.P. Sen, Venkataramiah and R.B. Misra, JJ) felt that Rule 6(1) of the Class I Rules was prima facie not applicable to promotions made from the Class II Service to the Class I Service and, therefore, specifically raised the said question and directed the parties including the State Government to address the Court on it. Then on November 25, 1983, a Bench of two Judges (A.P. Sen and Venkataramiah, JJ) after hearing all the parties granted special leave to appeal to this Court limited to the question whether this was a case of direct recruitment to the Class I Service and therefore, whether Rule 6(a) of the Class I Rules was applicable, on the assumption that if it was a promotion from the Class II Service to the Class I Service, Rule 6(a) would not be applicable. It should be mentioned here that this question was not argued before the High Court apparently because of the decision in O.P. Bhatia & Anr. v. state of Haryana & ors.(1) in which a similar question had arisen under the rules applicable to the Irrigation Branch of the Haryana Public Works Department. The only point now argued before us relates to the applicability of Rule 6(a) of the Class I Rules to the promotions referred to above. In order to determine the said question it is necessary to refer briefly to some of the provisions of the Class II Rules and of the Class I Rules.

Rule 6 of the Class II Rules provides that recruitment to the Class II Service for cadre and ex-cadre posts should be made against a lot of 40 posts in the following proportions: (i) direct recruitment-26 posts, (ii) promotion from the members of Punjab P.W D. (B & R) Sectional officers (Engineering) Service-8 posts, (iii) promotion from draftsmen members of the Draftsmen and Tracers Service-2 posts, (iv) promotion from members of the Punjab P.W.D. (B & R) Sectional officers Engineering Service and the Draftsmen members of the Draftsmen and Tracers Service and possessing qualifications prescribed in Appendix 'B' of the Class II Rules-4 posts. Rule 7 of the Class II Rules prescribes the qualifications for entry into Class II Service. It reads:

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"(7) Qualifications: No person shall be appointed to the service unless he:-

(1) in the case of person appointed by direct appointment.

(a) possesses one of the degrees of a recognised university or other qualification prescribed in Appendix 'B'.

(b) obtains from the Standing Medical Board a certificate of mental and physical fitness after being examined in accordance with the regulations prescribed in Appendix 'C' and is considered by the Medical Authority to be fit in all respects for active outdoor duties;

(c) is a person with a satisfactory character and antecedents, verification in respect of which shall be arranged through appropriate Government agency except in case where such verification may have already been made at the time of his entry into Government Service.

(2) In the case of appointment by promotion from sources 2 and 3 under rule 6(1) is a member of the Punjab PWD (B & R) Sectional officers (Engineering) Service, or a Draftsman member of the B & R Branch Draftsmen and Tracers Service and has put in a service of ten years;

(3)(i) In case of the appointment by promotion from source 4 under rule 6(1) is a member of the Punjab

PWD. (B & R) Branch Draftsmen & Tracers' Sectional officers Engineering Service or a Draftsman member of the B & R Branch Draftsmen and Tracers Service.

(ii) Possesses any of the qualifications included in Appendix 'B' and has put in five years service in case he possesses A.M.I.S. qualifications and two years service in case he is a degree holder.

(4) In case of appointment by transfer, possesses the qualifications prescribed for the members of the service.

(5) Has not more than one wife living or in the case of woman, is not married to a person already having a wife living.

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Provided that the Government may if satisfied that there are special grounds for doing so, exempt any person from the operation of this clause."

It is thus seen that in the Class II Service 26 out of 40 vacancies are filled up by direct recruits who are holders of degrees in Engineering of recognised universities or other equivalent qualifications. 10 vacancies are filled up by promotion from sources (2) and (3) of Rule 6(1) of the Class II Rules of members who have put in ten years of service and the remaining 4 vacancies are to be filled up by promotions from the fourth source referred to in Rule 6(1) of the Class II Rules of persons who possess the prescribed qualifications and have put in five years or two years service, as the case may be. The direct recruitment is made on the basis of a competitive examination held by the State Public Service commission and promotions are made on the basis of recommendations made by a Selection Committee presided over by the Chairman or a Member of the Public Service Commission on the basis of merit and suitability with due regard to seniority. The members of the Class II Service are designated as Assistant Engineers (See Rule 4 of the Class II Rules) and they are officers incharge of sub divisions or incharge of posts of equal responsibility in the Public Works Department (Building and Roads Branch). They are Gazetted Officers.

We shall now proceed to deal with the Class I Rules. The Class 1 Service comprises of four cadres-Assistant Executive Engineers, Executive Engineers, Superintending Engineers and Chief Engineers (Rule 3). A member of service' means an officer appointed substantively to a cadre post and includes (a) in the case of direct appointment an officer on probation or such an officer who having successfully completed his probation awaits appointment to a cadre post and in the case of appointment by transfer an officer who is on probation or who having successfully completed his probation awaits appointment to a cadre post provided such officer does not have a lien on a substantive post in any Government Department (Rule 2(12)). Assistant Executive Engineer' means a member of the service in the junior scale of pay. (Rule 2(2)). All others in the Class I Service are in the senior scale or in a higher scale. Rule 5 of the Class 1 Rules provides that the recruitment to Class I Service shall be made by the Government in any one or more of the following methods (i) by direct appointment, (ii) by transfer of an officer already in the service of a State Government or of the Union or (iii) by promotion from Class II Service. All first direct appointments to the Class I Service can be only to the posts of Assistant Executive Engineer (Rule 5(4)). An

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officer promoted from the Class II Service has to be

recruited to the cadre of Executive Engineers (Rule 5(5)). The posts of Executive Engineers can be filled up by promotion of Assistant Executive Engineers also (Rule 9). 'Direct appointment' means an appointment by open competition but does not include (a) an appointment by promotion and (b) an appointment by transfer of an officer already in the service of a State Government or of the Union (Rule 2(7)). The Explanation to Rule 2(7) provides that a Class II officer who enters the Class I Service by open competitive selection shall, for the purposes of Class I Rules, be deemed to have entered the Class I Service by direct appointment. This means that a member of the Class II Service can either be recruited directly to the cadre of Assistant Executive Engineers (vide Rule 5(4)) or promoted to the cadre of Executive Engineers. (vide Rule 5(S)). Now we set out below Rule 6 of the Class I Rules which lays down the qualifications for entering the Class I Service. Rule 6 reads:

"6. Qualifications-No person shall be appointed to the Service, unless he-

(a) possesses one of the University Degrees or other qualifications prescribed in Appendix B of these rules: Provided that Government may waive this qualification in the case of a particular officer belonging to Class II Service,

(b) in the case of an appointment by promotion from Class II Service has eight years completed service in Class II; and has passed the Professional Examination of the Department as provided in rule 15 infra

(c) being a person to be appointed to the service by direct recruitment, obtains from the Standing Medical Board a certification of mental and physical fitness after being examined in accordance with the regulations prescribed in Appendix and is considered by the Medical Authority to be fit in all respects r.. , active outdoor duties:

(d) is a person with a satisfactory character and antecedents, verification in respect of which shall be arranged through appropriate Government Agency except in cases where such verification may have already been made at the time of his entry into Government service;

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(e) has not more than one wife living or, in the case of a woman is not married to a person already having a wife living;

Provided that Government may, if satisfied that there are special grounds for doing so, exempt any person from the operation of this condition.

Clause (a) of Rule 6 of the Class I Rules says that no person shall be appointed to the Service unless he possesses one of the University degrees or other qualifications prescribed in Appendix 'B' of the Class I Rules. It is further provided therein that Government may waive this qualification in the case of a particular officer belonging to the Class II Service Clause (a) of Rule 6 no doubt applies to all direct recruitments. If a Class II officer seeks to enter the Class I Service by direct recruitment i.e. by recruitment by open competition as provided by the Explanation to Rule 2(7), he should possess a degree as provided in Rule 6(a) unless under the proviso to Rule 6(a) Government waives the said qualification in his case. A direct recruit has also to satisfy the condition in clause (c) of Rule 6 which deals with the production of a medical certificate as provided therein and the condition in clause

(d) of Rule 6 which provides for the verification of his character and antecedents except where such verification may have already been made at the time of his entry into Government service. He should also not suffer from the disqualification mentioned in clause (e) of Rule 6. A direct recruit shall also have to comply with Rule 15 of the Class I Rules which provides that unless he has not already done so, he should pass such departmental examination and within such period as may be prescribed by the Government

Rule 6(b) of the Class I Rules provides that "in the case of an appointment by promotion from Class II Service (the officer) has eight years completed service in Class II and has passed the professional examination of the Department as provided in Rule 15". The question is whether an officer in the Class II Service should satisfy both the qualification mentioned in clause (a) and the qualifications mentioned in clause (b) of Rule 6 of the Class I Rules or he should satisfy only the qualifications under clause (b) for purposes of promotion to the Class I Service. If clause (b) of Rule 6 had contained the words 'also' or in addition to what is contained in clause (a) or any other word or words conveying that meaning, there would have been no difficulty in construing that clause as then it would have clearly meant that an officer in the Class II Service who seeks promotion to the cadre of Executive Engineers should possess a degree as provided in

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clause (a) unless it has been waived by the Government and should also satisfy the conditions mentioned in clause (b). But we do not find any such words in clause (b) of Rule 6 of the Class I Rules. Clause (b) of Rule 6 of the Class I Rules opens with the words 'in the case of an appointment by promotion from Class II Service'. It deals with a separate and distinct class of persons who are to be recruited by promotion from the Class II Service to the cadre of Executive Engineers. The question whether all the clauses in Rule 6 should be read cumulatively or separately depends upon the structure of the sentences and the contents of the different clauses. In Rule 6, we do not have the word 'and' used at the end of any of the clauses (a) to (d), clause (e) being the last one. Clause (c) of Rule 6 deals with only direct recruits and does not apply to promotees and that is clear by its language. Clause (d) of Rule 6 applies only to direct recruits who enter the service for the first time and those persons who are already in Government service and in whose case the verification of character and antecedents has not already been done. Clause (e) of Rule 6 can apply only to those who enter the service for the first time and cannot apply to those who are already in the Class II Service before appointment to the Class I Service because there is a corresponding provision even in the Class II Rules creating a similar disqualification for being appointed to the Government service in Rule 7(5) of the Class II Rules. Now we are left with clauses (a) and (b) of Rule 6 of the Class I Rules. In Rule 7 of the Class II Rules (which is extracted in the earlier part of this judgment) which are analogous Rules dealing with the qualifications for entry into the Class II Service there is no room for doubt for clause (1) begins with the words 'in the case of person appointed by direct recruitment: clause (2) begins with the words 'in the case of appointment by promotion from sources (2) and (3) under Rule 6(1) clause (3) begins with the words 'in the case of the appointment by promotion from source 4 under Rule 6(1) and clause (4) begins with the words 'in the case of appointment by transfer'. Each of the above clauses is

apparently an independent clause. It means that persons falling under one clause do not fail under any of the other clauses and they start excluded from the other clauses. Each clause deals with a specific class. Even though the opening words of Rule 7 of the Class II Rules are "No person shall be appointed to the Service unless he" as they are found in Rule 6 of the Class I Rules also these words have to be read with each of the clauses (I) to (1) of Rule 7 of the Class II Rules. If the same method is adopted in the case of clauses (a) and (b) of Rule 6 of the Class I Rules, then there would be no room for ambiguity. Clause (a) of Rule 6 seems to apply to direct appointments to the

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Class I Service which ordinarily can be to the posts of Assistant Executive Engineers in view of clause (4) of Rule 5 of the Class I Rules and only in exceptional circumstances for reasons to be recorded in writing to the posts of Executive Engineers. Clause (b) of Rule 6 which specially deals with appointments by promotion from the Class II Service to the posts of Executive Engineers exhaustively deals with the qualifications of officers to be promoted from the Class II Service. The special clause excludes the application of the general that appears to be the intention of the rule making authority because clause (a) of Rule 6 deals with educational qualifications and clause (b) deals with the qualification of experience for eight years in the Class II Service and the passing of the departmental examination. So far as direct recruitment through competitive examination is concerned the minimum educational qualification has to be prescribed in the Class I Rules themselves and it is accordingly prescribed by clause (a) of Rule 6. So far as recruitment by promotion from the Class II Service to the post of Executive Engineer is concerned it is seen that as regards Class II officers the minimum educational qualifications which they should possess have been fixed in the Class II Rules where 26 out of 40 vacancies are to be filled up by the holders of degrees in engineering of recognised universities and the remaining are to be filled up by promotion from amongst persons with certain educational qualifications and experience of ten years in the lower cadre or such other experience as stated in the Class II Rules. Rule 6 of the Class I Rule treats the possession of a degree plus the selection at the competitive examination and the passing of the departmental examination after appointment as sufficient for getting into the cadre of Assistant Executive Engineers or to the cadre of Executive Engineers when direct recruitment is made to those posts and the experience in the Class II Service for a minimum period of eight years plus the passing of the departmental examinations before promotion of an Assistant Engineer in the Class II Service a sufficient qualification for promotion to the cadre of Executive Engineers. We may here note that under Rule 9(3) of the Class I Rules an Assistant Executive Engineer who is recruited directly to the Class I Service would not be eligible for promotion to the post of Executive Engineer unless he was rendered five years service as an Assistant Executive Engineer and has passed the Departmental Professional Examination as provided in Rule 15 of the Class I Rules.

The distinction between the two methods of filling the posts of Executive Engineers by promotion is now apparent. If that post is to be filled up by promoting an Assistant Executive Engineer, the

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Assistant Executive Engineer concerned should possess five

years experience and should have passed the Departmental Examination prescribed by Rule 15 of the Class I Rules. If that post is to be filled up by promotion of an Assistant Engineer in the Class II Service the Assistant Engineer to be promoted should possess eight years experience in the Class II Service and should have passed the Departmental Examination prescribed by Rule 15. That means that whereas an Assistant Executive Engineer who is a holder of a degree need have only five years' experience in the Public Works Department, an Assistant Engineer in the Class II Service who may or may not possess a degree should have eight years' experience in the Public Works Department for being promoted to the cadre of Executive Engineers. This extra experience of three years appears to have been treated as being sufficient to make good the deficiency, if any, that may arise by reason of the Assistant Engineer in the Class II Service possessing only a diploma and not a degree.

It is seriously urged that the expertness of the Class I Service would very much suffer if persons without degrees but with only diplomas are allowed to get into it. It is not, however, suggested that no diploma holder has ever been promoted to the Class I Service in our country. While we are aware of the difference between the proficiency of a person with a degree who enters service by direct recruitment and of a person who is promoted after he has acquired certain experience in the same kind of work in a lower cadre, we should state that in administrative and professional services a combination of high educational qualifications and long experience is always preferred so that the services may be efficient by each of them supplementing the other. Experienced administrators have opined that in the higher cadres of services high educational qualifications alone or long experience alone would not be in the interests of the public. It is true that it is not wise to have only persons with diplomas in all the posts in the Class I Service. In order to see that there is no lack of proficiency in the higher posts in the Class I Service, Rule 5(2) of the Class I Rules expressly provides that recruitment to the Service shall be so regulated that the number of posts filled by promotion from the Class II Service shall not exceed fifty percent of the number of posts in the Class I Service excluding the posts of Assistant Executive Engineers. It provides for a healthy blend of the two classes. What is the effect of this clause? More than fifty percent of the Class I Service posts would always be held by direct recruits because the strength of promotees from the Class II Service cannot be more than fifty per cent of the total strength of the Class I Service minus the

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number of Assistant Executive Engineers. The promotees from the A Class II Service will, therefore, always be less than fifty per cent of the total strength of the Class I Service. Even amongst them 26 out of 40 are graduates because of Rule 6 of the Class II Rules which prescribes the quota of direct recruits who should always be the holders of degrees. S..) diploma holders who may get into the Class I Service by promotion will be only 14 out of 40 promotees. It would be easier to ascertain now many non-degree holders can get into the Class I Service by the following illustration. (Note: This illustration is adopted without reference to the actual strength in the Class I Service). Let us assume that there are 240 Class I posts and out of them 40 are posts of Assistant Executive Engineers. Then there will be in the Class I Service:

40 Assistant Executive Engineers who are graduates

- (because of Rule 6(a) of the Class I Rules).
- 80 Being 50%-of 200-40-160 degree holders (because of Rule S(2) of the Class I Rules).
- 52 Degree holders at the rate of 26 out of 40 from amongst 80 promotees (because of Rule 6 of the Class II Rules).

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Total: 172
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The balance of 28 posts alone will be available for diploma holders. Can it be said that the 28 diploma holders with the minimum length of experience prescribed by clause (b) of Rule 6 of the Class I Rules who are selected by the Public Service Commission on the basis of merit and suitability (see Rule 8(4) of the Class I Rules) and with the educational qualifications they may possess as prescribed by the Class II Rules would dilute the Class I Service so much that the efficiency of the Class I Service would go down to such an extent that the Class I Service will become unequal to the tasks to be performed collectively by the entire Service ? It has also to be noted that if a Class II officer is found wanting in merit and is otherwise unsuitable, he would not be selected by the Public Service Commission. This is not like a nurse in an operation theatre carrying out surgery. Nor is it like a laboratory assistant teaching astrophysics. Who are after all these members of the Class II Service who seek promotion to the cadre of Executive Engineers ? They are all Assistant Engineers who have held the office of a Sub-Division for eight years, Even

490 amongst these diploma holders who are so selected by the Public Service Commission how many can possibly reach even the cadre of Superintending Engineers, let alone the cadre of Chief Engineers in view of their entering the Government service earlier than the direct recruits ? We are of the view that in the circumstances it could not have been the intention of the rule making authority that no person without a degree should be allowed to enter the Class I Service. If the construction placed by the petitioners in the writ petition and the Government is accepted every diploma holder who is an Assistant Engineer would have to retire only as a Class II Officer and cannot hope to become an Executive Engineer till his retirement. If that was the intention, Rule 6(b) of the Class I Rules would have contained necessary words conveying that meaning as it is pointed out earlier. We feel that clause (b) of Rule 6 appears to be exhaustive of the qualifications of the Assistant Engineers who can seek promotion from the Class II Service to the Class I Service. So read Rule 6 of the Class I Rules will read in so far as the promotees are concerned as 'no person shall be appointed to the Service unless in the case of an appointment by promotion has eight years completed service in Class II and has passed the professional Examination of the Department as provided in Rule 15" and clause (a) of Rule 6 should be read as being applicable to the other mode of recruitment.

Our attention is drawn by the learned counsel for the petitioners in the writ petition out of which these appeals arise to the decision in O.P. Bhatia's case (supra) in which a rule similar to Rule 6 of the Class I Rules arose for consideration. That Rule is Rule 6 of the Punjab Service of Engineers, Class I, P.W.D. (Irrigation Branch) Rules, 1964. The relevant part of Rule 6 of the said Irrigation Branch Rules reads as follows:

"6. Qualifications-No person shall be appointed to the Service unless he-

(a) possesses one of the University Degrees or other qualifications prescribed in Appendix of these rules;

Provided that Government may waive this qualification in the case of a particular officer belonging to Class II Service;

(b) in case of an appointment by promotion from Class II Service, has completed in that class of Service, for a period

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of ten years from the commencement of these rules, six years service and after that period eight years services

Provided that if it appears to be necessary to promote an Officer in the public interest, the Government may for reasons to be recorded in writing, either generally or in any individual case reduce the period of six or eight years to such extent as it may deem proper in consultation with the Finance Department.

Explanation-For the purposes of this clause in computing the period of six or eight years any service rendered as a temporary Engineer shall be taken into account..... "

The High Court held in that case that a member of the Class II Service in the Irrigation Branch of the P.W.D. should possess a degree to be eligible to be promoted as an Executive Engineer in the Class I Service in the Irrigation Branch of the P.W.D. The High Court was of the view that the omission of the word 'directly' which was in Rule 7 of the 1956 Rules which were replaced by the Irrigation Branch Rules of 1964 led to the inference that Rule 6(a) of the 1964 Rules was applicable both to the direct recruitment and promotions from the Class II Service. In order to understand the above reason, we have ourselves looked into the said 1956 Rules. Rule 7 of the said 1956 Rules which dealt with only direct appointments to the posts of Assistant Executive Engineers read as follows :

"7. Qualifications for appointment.-No person shall be appointed directly to the Service unless he-

(a) possesses one of the university degrees or other qualifications prescribed in Appendix to these rules;

(b) has in the case of a candidate for appointment on the advice of the Commission passed such competitive examination or such other test as the Commission may prescribe for appointment to the Service; and

(c) has obtained from a Standing Medical Board in the State of Punjab, a certificate of mental and physical fitness as prescribed by the regulations in Appendix C and is considered by the Board to be fit in all respects for active outdoor duty;

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Provided that in the case of officers belonging to the Class II Service the State Government may, after consultation with the Commission, waive the qualifications required by clause (a):

Provided further that other things being equal, preference will be given to a candidate who has himself worked for the cause of national independence or has rendered some outstanding social or public service."

The above Rule did not contain any reference to recruitment by promotion from the Class II Service to the

post of Executive Engineer. The promotion to the cadre of Executive Engineers was dealt with by Rule 15 of the said 1956 Rules. Sub-rule (7) of Rule 15 of the said 1956 Rules read as under.

"15. (7) A member recruited by promotion from Class II. Service, who is reported to be fully qualified to hold charge of a Division will be promoted as Executive Engineer on completing 10 years qualifying service as in sub-rule 4 above, but such promotion shall not establish the right to be placed in charge of a Division or draw pay in the senior scale of pay unless a Divisional charge is available."

Clause (4) of Rule 15 of the said 1956 Rules laid down the method of determining ten years of service in the Class II Service as follows.

"15. (4) In the case of members promoted from the Punjab Service of Engineers, Class II, the equivalent length of Service shall determine the seniority. This will be worked out as under:-

- (a) Service in the Punjab Service of Engineers, Class I Full
- (b) Service in the Punjab Service of Engineers, Class II 0.8
- (c) Service as Temporary Engineer 0.64
- (d) Service as officiating Sub-Divisional officer or Assistant Design Engineer (Non-gazetted) 0.4"

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There was no insistence upon the qualification of a degree in the said 1956 Rules in the case of promotees from the Class II Service. When the 1964 rules of the Irrigation Branch, Class I were promulgated, the pattern of the Rules was changed. While doing so, in the new Rule 6, the word 'directly' which was in the old Rule 7 was no doubt omitted but the new Rule 6 referred to both kinds of appointment, namely, direct recruitment and promotion from the Class II Service. It was not a case of just reproducing the old Rule 7 and omitting one word therefrom but the introduction of a new Rule 6 with a different structure. The High Court also appears to have overlooked while relying upon Rule 9 of the Irrigation Branch Rules of 1964 that the proviso to Rule 6(a) of the said Rules was applicable only to a Class II officer who wanted to get into the Class I Service by direct recruitment as provided in the Explanation to Rule 2(7) of the Irrigation Branch Rules which corresponded to the Explanation to Rule 2(7) of the Class I Rules with which we are concerned. The High Court has not examined the Irrigation Branch Rules as fully as we have examined the Class I Rules. The judgment of the High Court is very cryptic. We do not agree with its conclusion that a degree is a pre-requisite for being promoted from the Class II Service to the Class I Service for the reasons we have already given above.

In these cases the State Government having first construed that Rule 6 of the Class I Rules required that a promotee should also have a degree, tried to relax that condition by making orders relaxing it as it found that its construction had led to unjust results. It did not make any attempt to reconsider its interpretation of Rule 6 even when the matter came up before the High Court. It only tried to justify the order of relaxation but ultimately failed in its attempt. It is only in this Court that the question of interpretation of Rule 6 of the Class I Rules was raised.

It is indisputable that if the Government wishes to appoint only holders of degrees to the Class I Service, it

may do so by promulgating appropriate Rules. That power is beyond question and it is not, therefore, necessary to refer to those decisions which lay down that classification on the basis of educational qualifications of officers belonging to a cadre for purposes of promotion to a higher cadre is permissible. The question, however, in these cases is whether the Class I Rules as they now exist debar the promotion of an Assistant Engineer in the Class II Service who does not possess a degree to the cadre of Executive Engineers even when he satisfies the requirements of clause (b) of Rule 6 of the Class I Rules and is selected by the Public

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Service Commission. Our answer is in the negative.

Since Rule 6(a) of the Class I Rules is not applicable to the Class II officers who are to be promoted to the Class I Service, the question whether the order of relaxation made in the case of the promotes is validly passed or not becomes immaterial. We, therefore, set aside the judgment of the High Court and dismiss the writ petition filed before the High Court. Since we have disposed of these appeals on a ground different from the ground urged before the High Court, we express no opinion on the validity of the order of relaxation

For the foregoing reasons, the appeals are allowed but in the circumstances of the cases without any order as to costs.

S. R.

Appeals allowed.

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