



denial of notional promotion to the post of Accounts Officer/Assistant Assessor & Collector (AO/AA&C) together with consequential pensionary benefits. The undisputed factual position is that the appellants entered service long prior to the Recruitment Rules, 1996 i.e., way back in 1962 onwards. Prior thereto, the educational qualification of graduation was not prescribed for promotion to the post of AO/AA&C. However, by the Recruitment Rules of 1996, graduation from a recognized university came to be introduced as an essential qualification or requirement for promotion from the cadre of Senior Stenographers.

- 5.** The appellants, being non-graduates, challenged the denial of promotion on the basis of 1996 rules by way of Writ Petition (Civil) No. 3952 of 1996 seeking promotion irrespective of educational qualification and contending that rules of the game cannot be changed retrospectively. During pendency of the writ petition, MCD itself passed Resolution No. 392 dated 09.10.2000 proposing one-time relaxation in educational qualification for non-graduate Superintendents and Senior Stenographers for promotion to the post of AO/AA&C. Since concurrence of UPSC was required, approval was sought and UPSC, by communication dated 27.05.2002, granted approval for one-time relaxation.

- 6.** It is the specific case of the appellants that while such benefit was extended to non-graduate Superintendents, similarly situated non-graduate Senior Stenographers were excluded, though they stood on identical footing. Meanwhile, the Writ petition stood transferred to Central Administrative Tribunal as T.A. No. 548 of 2009, which came to be disposed of by order dated 06.11.2009, whereby the tribunal noticed that the authorities themselves had taken a decision for one-time relaxation and had sought approval thereof. It accordingly directed the respondents to take a final decision on their own proposal for giving promotional avenues to the appellants with consequential reliefs. Since respondents were not complying with the order of the Tribunal, the appellants preferred Contempt petition bearing C.P. No. 603 of 2010 before the Tribunal.
- 7.** However, during pendency of the contempt petition, by order dated 09.05.2011, the respondents rejected the claim of the appellants principally on the ground that no vacancy earmarked for the feeder cadre of Senior Stenographers was available and that the quota stood exhausted. As such the Tribunal closed the contempt proceedings granting liberty to challenge the order dated 09.05.2011. Pursuant to the same, the petitioner preferred O.A. No. 3136 of 2011 before the Tribunal which came to be dismissed *in limine* on 06.09.2011. The subsequent review application bearing

R.A. No. 353 of 2011 also came to be dismissed on 19.10.2011. Aggrieved by the said orders, the appellants filed Writ Petition (Civil) No. 719 of 2012 which came to be dismissed by Impugned Judgement and Order dated 10.01.2019. The High Court proceeded on the reasoning that Resolution No. 392 and UPSC approval did not attain statutory force under Section 480 of the Delhi Municipal Corporation Act, 1957, as no approval of the Central Government followed by Gazette publication had taken place and, therefore, the Recruitment Rules could not be treated as relaxed. Thereafter, the review petition against the Impugned Judgement dated 10.01.2019 also came to be dismissed on 26.02.2019. Aggrieved by the same, the appellants have approached this court by way of present appeal.

- 8.** It is pertinent to note, this Court while issuing notice on 26.07.2019 observed that appellants would only be entitled to notional promotion and consequential benefits, as such, the scope of the present appeal has been confined to examine the said aspect only.
- 9.** Having heard learned counsel for the parties and upon consideration of the material placed on record, we are unable to persuade ourselves to agree with the view taken by the High Court.

- 10.** At the outset, it requires to be noticed that the appellants are not seeking actual promotion to a live post nor are they seeking displacement of any serving officer. Most of the appellants have already retired. The relief sought is confined to notional promotion with consequential fixation of retiral and pensionary benefits. In such a situation, the question of physical vacancy of posts loses much of its rigour. Notional promotion, particularly where the claim is founded upon parity, legitimate expectation and admitted administrative recognition, stands on a different footing than actual appointment against a substantive post.
- 11.** It is also apposite to note that the respondents themselves had accepted the anomaly and had proceeded to cure the same by passing Resolution No. 392. The proposal specifically included Senior Stenographers along with Superintendents. UPSC approval was also obtained for such one-time relaxation. Therefore, once the employer itself acknowledges inequity and initiates corrective action, selective implementation thereof only in favour of one class, namely Superintendents, while excluding another identically situated class, namely Senior Stenographers i.e., the appellants herein, becomes plainly arbitrary and offends Article 14 and 16 of the Constitution of India. This court, not long back, in *Kamal Prasad Dubey v. State of Madhya*

*Pradesh and Others*<sup>1</sup>, while setting aside the order of Madhya Pradesh High Court which denied promotion to a cooperative society employee, held that the refusal to grant relaxation in educational qualification despite granting similar relaxation to other employees was violative of Articles 14 and 16 of the Constitution of India. It was held:

“9.1 The equal treatment came to be denied to the appellant to his discrimination. The facts obtained strikingly attract the tenets of Articles 14 and 16 of the Constitution, to violate the fundamental concept of equality in law and equal treatment in the matters of employment. Substantive justice and real justice is always subserved by applying the doctrine of equality.”

**12.** The plea of absence of vacancy, in the facts of the present case, appears to be an afterthought. The Tribunal’s earlier order dated 06.11.2009 had itself proceeded on the footing that appropriate orders were required to be passed in furtherance of the proposal already initiated. The issue was never one of creation of fresh rights but implementation of a recognized claim. As such, the High Court, in our considered view, placed undue emphasis on Section 480 of the DMC Act while overlooking the true nature of the relief sought. Since the case is not one where the appellants seek rewriting of statutory Recruitment Rules by judicial fiat rather, it concerned enforcement of a one-time equitable

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<sup>1</sup> 2026 SCC OnLine SC 578

relaxation consciously initiated by the employer itself and partially implemented and in this regard, it is well settled that service jurisprudence must not be reduced to mechanical formalism where substantive equality is demonstrably defeated. Where juniors have been promoted, where similarly situated employees have been granted benefit, and where the employer itself has sought relaxation, denial of even notional parity would result in manifest injustice. This court in *State of Karnataka and Others v. C. Lalitha*<sup>2</sup>, and *State of Uttar Pradesh and Others v. Arvind Kumar Srivastava and Others*<sup>3</sup>, while taking note of the service jurisprudence evolved by this court through catena of decisions held that all persons similarly situated should be treated similarly.

- 13.** It is apt and appropriate to note that introduction of a graduate qualification long after entry into service cannot operate so as to permanently extinguish legitimate promotional avenues, particularly when relaxation has been consciously contemplated. Thus, the appellants are entitled to succeed, though the relief must be confined strictly to notional promotion and consequential pensionary benefits without arrears of back wages for the period during which

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<sup>2</sup> (2006) 2 SCC 747

<sup>3</sup> (2015) 1 SCC 347

they did not actually discharge duties of the promotional post.

**14.** Accordingly, the appeal is **Allowed**. The impugned judgment dated 10.01.2019 passed by the High Court of Delhi in W.P. (C) No. 719 of 2012, as well as the orders dated 06.09.2011 and 19.10.2011 passed by the Central Administrative Tribunal, Delhi are set aside. Consequently, the respondents are directed to consider and grant to the appellants notional promotion to the post of AO/AA&C from the date their immediate juniors were promoted which shall be strictly confined for the purposes of fixing seniority, retiral dues and pensionary benefits. It is made clear that the appellants shall not be entitled to any arrears of salary for the promotional post, but only consequential re-fixation of pension and other retiral benefits flowing from such notional promotion. No order as to costs.

**15.** Pending applications, if any, shall stand consigned to records.

.....**J.**  
[ARAVIND KUMAR]

.....**J.**  
[PRASANNA B. VARALE]

**NEW DELHI;**  
**FEBRUARY 03<sup>rd</sup>, 2026.**

ITEM NO.8

COURT NO.16

SECTION XIV

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C)  
No(s).17943/2019

[Arising out of impugned final judgment and order  
dated 10-01-2019 in WPC No.719/2012 passed by the  
High Court of Delhi at New Delhi]

N.K. ARORA & ORS.

Petitioner(s)

VERSUS

MUNICIPAL CORPORATION OF DELHI & ANR.Respondent(s)

IA No. 105890/2019 - EXEMPTION FROM FILING C/C OF  
THE IMPUGNED JUDGMENT

Date : 03-02-2026 This matter was called on for  
hearing today.

CORAM : HON'BLE MR. JUSTICE ARAVIND KUMAR  
HON'BLE MR. JUSTICE PRASANNA B. VARALE

For Petitioner(s) : Mr. R. C. Kaushik, AOR  
Mr. N. D. Dalal, Adv.  
Mr. Alok Kumar, Adv.  
Ms. Rachna Dalal, Adv.  
Ms. Nidhi Dalal, Adv.  
Mr. Tek Chand Naniawat, Adv.

For Respondent(s) : Mr. Ashwani Kumar, AOR  
Ms. Iti Sharma, Adv.  
Mr. Puneet Sharma, Adv.

UPON hearing the counsel the Court made the  
following

O R D E R

Leave granted.

Civil Appeal is allowed in terms of the

signed order placed on the file.

No order as to costs.

Pending applications, if any, shall stand disposed to records.

(NEHA GUPTA)  
COURT MASTER (SH)

(KOMAL)  
COURT MASTER (NSH)