

S. G. Jaisinghani vs Union Of India And Ors.(With Connected ... on 22 February, 1967

Equivalent citations: 1967 AIR 1427, 1967 SCR (2) 703, AIR 1967 SUPREME COURT 1427

Author: V. Ramaswami

Bench: V. Ramaswami, K. Subba Rao, J.M. Shelat, S.M. Sikri, C.A. Vaidyalingam

PETITIONER:

S. G. JAISINGHANI

Vs.

RESPONDENT:

UNION OF INDIA AND ORS.(With Connected Writ Petition)

DATE OF JUDGMENT:

22/02/1967

BENCH:

RAMASWAMI, V.

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RAMASWAMI, V.

RAO, K. SUBBA (CJ)

SHELAT, J.M.

SIKRI, S.M.

VAIDYIALINGAM, C.A.

CITATION:

1967 AIR 1427

1967 SCR (2) 703

CITATOR INFO :

F 1968 SC 507 (8)

RF 1968 SC 938 (23)

E&D 1970 SC 470 (1,6,12,15,35,36)

RF 1972 SC2516 (15)

E 1972 SC2627 (1,5,12,13,18,21,23)

D 1973 SC1146 (9,10)

RF 1973 SC1168 (6)

RF 1973 SC1425 (14)

RF 1974 SC1618 (1,10)

D 1974 SC1806 (6)

RF 1975 SC2299 (340)

F 1976 SC 490 (57,58,106,208,212)

RF 1976 SC1207 (185)

D 1977 SC 251 (33,36)

RF 1977 SC 757 (33,38,40)

RF	1979 SC1073	(4,13)
R	1980 SC 452	(50)
RF	1980 SC1246	(8)
RF	1980 SC1561	(36)
RF	1980 SC2056	(73)
F	1982 SC 101	(31)
D	1983 SC 769	(21,22,31,38)
D	1984 SC1595	(24,63)
R	1985 SC 617	(4)
D	1985 SC1019	(24)
D	1985 SC1495	(133)
RF	1985 SC1558	(26)
RF	1987 SC2359	(9)
D	1988 SC 268	(26)
RF	1988 SC 654	(7)
RF	1990 SC1106	(5,28)
RF	1990 SC1607	(19)
R	1991 SC 101	(66,276)
RF	1991 SC 212	(2)
RF	1991 SC 537	(37,28,43)

ACT:

Income-tax Service-Seniority Rules, 1952, r. 1(f)(iii) and (iv)Seniority between direct recruits and promotees-If violative of Arts. 14 and 16 of Constitution-Promotion Rules, r. 4-Promotion from Class 1, Grade II to Grade I-Different periods of service for direct recruits and Promotees-If discriminatory-Income-tax Officers (Class 1, Grade II) Service Recruitment Rules, r. 4-Fixation of quota-Duty to follow, it mandatory.

HEADNOTE:

In 1944, the Government of India created two classes of Income-tax Service, namely, Class I service with Grades 1 and 11, and Class 11 service with Grade II. Recruitment to Class I, Grade II was to be made : (a) by direct recruitment through a competitive examination, and (b) by pro. motion from Class 11, Grade III. A Class 11 officer is considered by the Departmental Promotion Committee for promotion to Class 1, Grade II, after 5 years' service in Class 11 (2 years of probation and 3 years as Income tax Officer). In 1951, the ratio between direct recruits and promotees was fixed at 2 : 1, presumably under r. 4 of the Income-tax Officers (Class I,, Grade 11) Service Recruitment Rules. Under r. 1 (f) (iii) of the Seniority Rules, 1952, dealing with seniority between direct recruits, and promotees, a promotee becomes senior to a direct recruit who has completed the probationary period of two years in the very year in which the Department Promotion Committee recommends the officers in Class II for promotion to Class 1. Rule 1 (f)

(iv) deals with a special situation in which an officer initially appointed to Class 11 service is given seniority in the same manner as a departmental promotee, if subsequent to his passing the departmental examination he is appointed in Class I on the results of the competitive examination.

Rule 4 of the Rules of Promotion of the Central Board of Revenue Office Procedure Manual, states, that the prescribed minimum service for an office of Class 1, Grade 11 for promotion to Grade 1 is 5 years gazetted service including 1 year in class I, Grade II for promotion to Grade 1 is 5 years gazetted 11, the minimum period of service for promotion to class I, Grade I, would be actually 4 years service in class II and 1 year service in Class I Grade II. Respondents 4, 5 and 6 were appointed in Class II, Grade III Service in 1947. They and the appellant (who was a direct recruit) were appointed in Class 1, Grade 11 service in 1951 after having successfully completed in the 1950 competitive examination. The three respondents were however shown as seniors to the appellant as "deemed promotees" under r. 1 (f) (iv)

The appellant filed a writ petition in the High Court and contended that (1) r.- 1 (f) (iii) and (iv) of the Seniority Rules and r. 4 of the Promotion Rules were discriminatory and violative of Arts. 14 and 16 of the,
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Constitution, and (2) that during 1951-56 there was excessive recruitment of promotees, in violation of the quota rule prescribing the ratio of 2 : 1.

The High Court rejected the petition.

In appeal to this Court,

HELD : (1) (a). Rule 1 (f) (iii) of the Seniority Rules, 1952, does not violate the guarantee under Arts. 14 and 16. It is not corrected to say that all officers appointed to Class 1, Grade 11 service formed one class and that after the officers have been one once recruited there could be no distinction between direct recruits and promotees. It is really a case of recruitment to the service from two different sources and the adjustment of seniority between them. The concept of equality in- the matter of promotion can be predicated only when the promotees are drawn from the same source. If the preferential treatment of one source in relation to the other is based on the differences between the two sources, and the said differences have a reasonable relation to the nature of the office it can legitimately 1 be sustained on the basis of a valid classification. The reason for the classification in the present case was that the higher echelons of the service should. be filled by experienced officers possessing not only a high degree of ability but also first-rate experience. A rule which gives seniority to outstanding officers with considerable experience, and selected on merit and limiting the promotion to a percentage not exceeding the prescribed limit cannot per se be regarded as unreasonable. The net effect of the

rule is that 3 years of outstanding work in Class II is equated to 2 years of probation in Class I, 'Grade II service, and on a consideration of this aspect of the matter, the promotee is given seniority over a direct recruit completing the period of probation in the same year. [711 E-H; 712 B, E, G-H]

The General Manager, Southern Railway v. Rangachari,, [1962] 2 S.C.R. 586, 596 followed.

(b) Rule 1(f)(iv) is also based on a reasonable classification and do-not offend the guarantee under Art. 14 or Art. 16(1) of the Constitution. [715 D]

The "deemed promotees" we're appointed in Class II, Grade, III service in 1947 and completed 5 years service in that class by the year 1952 and if the Departmental Promotion Committee had then recommended their promotion to Class I, Grade II, each one of them would have become senior to the appellant by the operation of r. 1(f) (iii). Further, if cl. (iv) did not exist there would be no incentive to a promotee of this type to sit for the competitive examination. Also, if the service of the promotees in Class II. Grade III was entirely ignored and if they join Class I, Grade II service as direct recruits, they might become junior to others by the operation of r. 1 (f) (iii). [715 B-D]

(c) Once it is held that r. 1 (f) (iii) of the Seniority Rules is legally valid, the rule of promotion cannot be held to lead to any discrimination as between direct recruits and promotees. The object of the rule of promotion is really to carry out the policy of r. 1-(f) (iii) and not allow it to be defeated by the requirement of 5 years service in Class I, Grade II itself, before consideration for promotion to Class I, Grade I. Otherwise, a promotee certified fit by the Departmental Promotion Committee in 1952-will be senior to the direct recruits who completed their probation in that year, but the seniority would be an empty formality for, if the

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promotee-officer is not allowed to count his period of service in Class II for the purpose of promotion to Grade I. Class I, he will have to wait till 1957 or 1958 to go to Grade I, Class I, while direct 'recruits who completed their probation in 1952 or 1953 could go to Grade I, Class I in 1955 or 1956 counting the 5 years, period from the date on which they were placed on probation, [714 A-D, E-G]

(2) The appellant was entitled to a Writ in the nature of mandamus commanding respondents 1 to 3 to adjust the seniority of the appellant and other officers similarly situated and to prepare a fresh seniority list in accordance with law after adjusting the recruitment for, the period 1951 to 1956 and onwards in accordance with the quota rule. [718-D-E]

Rule 4 of the Income Tax Officers (Class I, Grade II) Service Recruitment Rules is a statutory rule and there is a

statutory duty cast on the Government under this rule to determine the method to be employed for the purpose of filling the vacancies and the number of candidates to be recruited. Having fixed the quota under the rule, there is no discretion left with the Government to alter it according to the exigencies of the situation or to deviate from it, in any particular year, at its own will and pleasure. The absence of arbitrary power is the first essential of the rule of law and discretion, when conferred upon executive authorities, must be confined within clearly defined limits, and their decisions should be made by the application of known principles and rules. The quota rule is linked up with the seniority rule and unless the quota 'rule is strictly observed in practice, it will be difficult to hold that the seniority rule, that is, rule 1(f)(iii) and (iv) of the Seniority Rules, is not unreasonable and does not offend Art. 16. Therefore, the promotees from Class 11, Grade III to Class 1, Grade 11 service, in excess of the prescribed quotas for each of the years 1951 to 1956 and onwards should be held to have been illegally promoted. [717 H; 718 A-D, G-H]

The order will not affect such Class 11 officers who have been appointed permanently as Assistant Commissioners of Income-tax. [718 F]

For the future years Government should adopt the roster system, by framing an appropriate rule for working out the quota between the direct recruits and the promotees and the roster should be maintained indicating the order in which appointment are made by direct recruitment and by promotion, in accordance with the percentage :fixed under the statutory rules [719 F]

JUDGMENT:

CIVIL APPELLATE/ORIGINAL JURISDICTION : Civil Appeal No. 1038 of 1965.

Appeal from the judgment and order dated the March 11, ' 1964 of the Punjab High Court, Circuit Bench at Delhi in Civil Writ Petition No. 189-D of 1962.

AND WRIT PETITION No. 5 OF 1966.

Petition under Art. 32 of the Constitution of India- for the enforcement of fundamental rights.

The appellant appeared in person (in C.A. No. 1038 of 1965).

S. V. Gupte, Solicitor-General, N. S. Bindra, R. Ganapathy Iyer, R. H. Dhebar and R. Thiagarajan, for respondents Nos. 1-3.

A K. Sen, N. S. Bindra,-R. Ganapathy Iyer and R. Thiagarajan, for respondent No. 4.

A. K. Sen, R. Ganapathy Iyer and R. Thiagarajan, for respondents Nos. 5 and 6.

M. N. Shroff for L.N. Shroff, for respondents Nos. 12, 22, 25, 28, 29, 38, 40, 43, 54, 79, 86, 107 and 117. Niren De, Addl. Solicitor-General, R. Ganapathy Iyer and R. Thiagarajan, for respondents Nos. 20, 116 and 123. The respondent No. 34 appeared in person. R. Gopalakrishnan, Bishamberlal Khanna and H. K. Puri, for intervener.

H. R. Gokhale, A. S. R. Chari, A. N. Sinha, J. B. Dadachanji, O. C. Mathur and Ravinder Narain, for the petitioner (in W. P. No. 5 of 1966).

S. V. Gupte, Solicitor-General, N. S. Bindra, R. Ganapathy Iyer, R. H. Dhebar and R. Thiagarajan, for respondents Nos. 1-4.

S. V. Gupte, Solicitor-General, R. Ganapathy Iyer, and R. Thiagarajan, for respondents Nos. 6, 7, 9, 12-17, 19, 22, 24, 26, 30, 31, 35, 37, 41, 42-50, 52-61, 63, 64, 66, 68-70, 72-74, 80, 82-85 87, 91, 95 and 96.

A. S. R. Chari, R. Gopalakrishnan, Bishamberlal Khanna and H. K. Puri, for intervener.

The Judgment of the Court was delivered by Ramaswami, J.

This appeal is brought, by certificate, from the judgment of the High Court of Punjab dated March 11, 1964 dismissing the Writ petition of the appellant Civil Writ No. 189-D of 1962. In his petition under Art. 226 of the Constitution, the appellant, S. G. Jaisinghani, challenged the constitutional validity of what has been described as the "seniority rule"

in regard to Income-tax Service, Class 1, Grade 11 along with the improper implementation of the "quota" recruitment to that Service as infringing the guarantee of Arts. 14 and 16(i) of the Constitution. The original respondents to the petition were the Union of India, Secre-

tary to the Government of India in the Ministry of Finance and the Central Board of Revenue-respondents 1 to 3. Subsequently, respondents 4 to 126 were added and those are promotees in the Income-Tax Service who will be affected by the result of the petition.

In order to improve the Income Tax administration the Government of India, on September 29, 1944, reconstituted and classified the existing Income-Tax Services as Class I and 11. The re-organisational scheme provided for recruitment of Income-Tax Officers, Class I Grade 11 Service partly by promotion and partly by direct recruitment. The re-organisational scheme was set out in Government of India, Finance Department (Central Revenues) letter dated September 29, 1944 (Ex. B). It

created two classes of Income-Tax Service, Class I with Grade I and Grade 11 and Class 11 Service with Grade 111. Recruitment to Class I Grade 11 Service was to be made : (a) by direct recruitment through a competitive examination, and (b) by promotion from Class It Grade III, the ratio prescribed in paragraph 2(d) of the letter being 80% by direct recruitment and 20% by promotion from Class 11 Grade III Service, and in case sufficient number of suitable candidates was not available for promotion, surplus vacancies would be filled by direct recruitment. In Government of India, Ministry of Finance (Revenue Division) letter dated January 24, 1950 (Ex. G to the writ petition), the rules of seniority were laid down. These rules laid down-the principle for determination of seniority (a) as between direct recruits recruited on the result of the combined competitive examination; (b) as between promotees selected from Class 11 and (c) as between the direct recruits who complete their probation in a given year and the promotees in the same year for appointment to Class 1. These rules were revised on September 5, 1952 by the Government of India, Ministry of Finance, Revenue Division, letter No. F. No. 58(3)-Ad. IT150, dated September 5, 1952. The relevant rule, viz., rule I (f) as framed in 1950 was as follows "The seniority of direct recruits recruited on the results of the examinations held by the Federal Public 'Service Commission in 1944, and subsequent years shall be reckoned as follows :-

- (i) Direct recruits of an earlier examination shall rank above those recruited from subsequent examination.
- (ii) Direct recruits of any one examination shall rank inter se-, in accordance with the ranks obtained by them at that examination.
- (iii) The promotees who have been certified by the Commission in any calendar year shall be senior to all M2Sup. CI/67-16 direct recruits who complete their probation during that year or after and are confirmed with effect from a date in that year or after.

Provided that a person initially recruited as Class 11 Income-tax Officer, but subsequently appointed to Class I on the results of a competitive examination conducted by the Federal Public Service Commission shall if he has passed the departmental examination held before his appointment to Class I Service, be deemed to be promotee for the purpose of seniority."

The rule, as revised in, 1952 was to the following effect.

"The seniority of direct recruits recruited on the results of the examinations held by the Federal Public Service Commission in 1944, and subsequent years shall be reckoned as follows

- (i) Direct recruits of an earlier examination shall rank above those recruited from a subsequent examination.

(ii) Direct recruits of any one examination shall rank inter se in accordance with the ranks obtained by them at that examination;

(iii) Officers promoted in accordance with the recommendation of the, ' Departmental Promotion Committee before the next meeting of the Departmental Promotion Committee shall be senior to all direct recruits appointed on the results of the examinations held by the Union Public Service Commission during the calendar year in which the Departmental Promotion Committee met and the three previous years.

(iii) Notwithstanding anything contained in clause (iii).a Class 11 Income-tax Officer subsequently appointed to Class I on the results of a Competitive Examination conducted by the Federal Public Service Commission shall, if he has passed the Departmental Examination held before his appointment to Class I Service be deemed to be a promotee for the purpose of seniority."

Clause (iv) of the 1952 Rule is almost a reproduction of the proviso to clause (iii) of the rule framed in 1950 and clause (iii) has been recast in somewhat different language, though in substance it contains what the main body of clause

(iii) of the Rule of 1950 stated. The effect of clause

(iii) of 1952 Rule is that the promotee becomes senior to the direct recruit who has completed a probationary period of two years in the very year in which the Departmental Promotion Committee meets recommending the officers in Class 11 for promotion to Class 1. The following illustrations clarify the application of the rule Illustration 'A'

----- Year of Year Year Depart- Position Promo-

Competitive Exam.	of appoint- ment by direct recruit ment tion	of comple- tion of 2 years' proba- tion	mental promo- tion Com- mittee met	of direct recruit	tees seniority
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1 2 3 4 5 6

----- 1947 the three 1948 1950 Has completed Senior
previous probation.

years.

1948	1949	1951	Has not completed Do.
			probation.
1949	1950	1952	Has not completed
			probation.
1950	1951	1953	1950 Do. Do.

Illustration 'B'

1950 the three	1951	1953	Has com-	Senior
previous			pleted pro-	
years.bation.				
1951	1952	1954	Has not Do.	
			completed	
			probation.	
1952	1953	1955	Do.Do.	
1953	1954	1956	in 1953 Do. Do.	

A Class 11 Officer when directly recruited had to be on probation for two years during which period he had to undergo a course of theoretical and practical training and should pass a departmental examination for being confirmed. After a minimum period of three years of work as Income-tax Officer (after his probation of two years) he is considered by the Departmental Promotion Committee for promotion to Class 1. That is to say that he has to have a minimum service of 5 years in all in Class II before he is qualified for being considered for promotion to Class I, Grade 11 Service. Clause (iv) of rule 1(f) deals with a special situation in which an officer initially appointed to Class 11 Service is given seniority in the same manner as a departmental promotee if subsequent to his passing the departmental examination in Class 11 he is appointed to Class I on the results of the combined competitive examination held by the Union Public Service Commission.

On October 18, 1951 the recruitment quotas of 80% and 20% under the re-organisation scheme dated September 29, 1944 were revised. Under the revised recruitment quota rule 66- 2/3% of the vacancies in Grade 11 Class I would be filled by direct recruitment and the remaining 33-1/3% by promotion from Grade III Class 11 Service. Any surplus vacancies which could not be filled by promotion for want of suitable candidates were to be added to the quota of vacancies to be filled by direct recruitment.

Rule 4 of the Rules of Promotions at page 251 of the Central Board of Revenue Office Procedure Manual has also been the subject-matter of controversy in this appeal and is set out below.

"Income-tax Officer, Class I (Grade 1)- Promotions to this grade are made from the grade of Income-tax Officers Class 1, Grade II. The promotions are made on the basis of seniority subject to fitness, and not by selection. Normally promotions from Class II are made to Grade 11 of Class I only in the first instance. However, in the initial

stages of the re-organisation of the Income- tax Services, several senior officers were promoted direct from Class 11 to Class 1, Grade 1, but such promotions will not ordinarily take place in future.

NOTE.-The Union Public Service Commission has ruled that the promotion to Class 1, Grade I of officiating I.T.O s., class 1, Grade 11- whose retention in that grade has been approved by the Departmental Promotion Committee would also be in the nature of promotion from I.T.O., Class 11, Grade III to I.T.O., Class 1, Grade I and require consultation with the Commission, even though the promotion from I.T.O., Class 1, Grade 11 to Class 1, Grade I is made on the basis of seniority cum-fitness without reference to the Departmental Promotion Committee.

Appointments to Class I, Grade I should, therefore, be referred to the Commission for approval so long as the officers have not been confirmed in the Class 1, Grade II post.

Basis of promotion is seniority-cum-fitness and prescribed minimum service is five years gazetted service including one year in Class 1, Grade II."

The Full Bench of the Punjab High Court rejected the writ petition of the appellant holding that the principles for determining seniority between direct recruits and promotees laid down in rule 1(f)(iii) and (iv), 1952 were not discriminatory and there was no infringement of Arts. 14 and 16(1) of the Constitution. It was also decided by the Full Bench that the quota rule announced by the Government of India was merely a policy statement and had no statutory force and departure from the quota did not give rise to any, justiciable issue. It was further observed that the ,promotion rule from Class I, Grade II to Class 1, Grade I was not discriminatory and ultra vires of Arts. 14 and 16 of the Constitution.

The first question to be considered in this appeal is whether rule 1(f)(iii) of the seniority rules as framed in 1952 violates the guarantee under Arts. 14 and 16 of the Constitution. It was contended on behalf of the appellant that the impugned rule was upon an unjustifiable classification between direct recruits and promotees after they had entered into. Class 1, Grade 11 Service and on the basis of that classification promotees are given seniority with weightage over direct recruits of the same year and three previous years. It was contended that there was a discrimination between officers of Class 1, Grade 11 Service after their recruitment and the actual working of the rule kept on pushing down the direct recruits and postponing their chances of promotion to higher posts in Class I Service. It was submitted that all officers appointed to Class 1, Grade II Service formed one class and after the officers have been once recruited there could be no distinction between direct recruits and promotees. In other words, it was contended that the promotees and direct recruits became one class immediately on entry and thereafter there cannot be any class within that class. ,We are unable to accept the contention of the appellant as correct. In our opinion, it is not right to approach this problem as if it is a case of classification of one service into two classes for the purpose of promotion, and as the promotion rule operation to the disadvantage of one of the two classes. It is really a case of recruitment to the Service from two different sources and then adjustment of seniority between the recruits coming from the two sources. So far as Art. 16(1) is concerned, it cannot be said that the

rule of seniority proceeds on an unreasonable basis. The reason for the classification is the objective of filling the higher echelons of the Income Tax Service by experienced officers possessing not only a high degree of ability but also first-rate experience. Having regard to the particular circumstances of this case, we are of opinion that the seniority rule is not unreasonable when read with the quota rule which provides for a special reservation of a small percentage of posts for the promotees who are selected by a special Committee, which determines the fitness of the candidates for promotion after they have put in at least three years of service as Income-tax Officers. A rule which gives seniority to outstanding officers with considerable experience, and selected on merit and limiting the promotion to a percentage not exceeding the prescribed limit cannot per se be regarded as unreasonable. As we have already pointed out, the direct recruits joining Class 1, Grade II Service have to undergo a period of two years training and thereafter they become qualified for confirmation. A promotee having already undergone the very same training during the period of probation of Class II, Grade III, joins Class 1, Grade II with three years period of assessment and working experience of the Income-tax Department. It is necessary to add that the selection of a promotee to Class I is based on merit and great weightage is given by the Departmental Promotion Committee to outstanding qualifications, record of work and the ability of the candidate, so that those who come to Class 1, Grade II are officers who have shown outstanding capability as Income-tax Officers in Class II Service. The statement in Annexure 2 of the affidavit on behalf of respondents 1 to 4 in Writ Petition No. 5 of 1966 shows that the standards of selection are very stiff inasmuch as a very small proportion of officers considered for selection is actually promoted. The net effect of rule 1(f)(iii) therefore is that three years of outstanding work in Class II is equated to two of 'probation in Class I Service and on consideration of this aspect of the matter the promotee is given seniority over a direct recruit completing the period of probation in the same year.

The relevant law on the subject is well-settled. Under Art. 16 of the Constitution, there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State or to promotion from one office to a higher office thereunder. Article 16 of the Constitution is only an incident of the application of the concept of equality enshrined in Art. 14 thereof. It gives effect to the doctrine of equality in the matter of appointment and promotion. It follows that there can be a reasonable classification of the employees for the purpose of appointment or promotion. The concept of equality in the matter of promotion can be predicated only when the promotees are drawn from the same source. If the preferential treatment of one source in relation to the other is based on the differences between the said two sources, and the said differences have a reasonable relation to the nature of the office or offices to which recruitment is made, the said recruitment can legitimately be sustained on the basis of a valid classification. Dealing with the extent of protection of Art. 16(1) of the Constitution, this Court observed in *The General Manager, Southern Railway v. Rangachari*(1) "It would be clear that matters relating to employment cannot be confined only to the initial matters prior to the act of employment. The narrow construction would confine the application of Art. 16 (1) to the initial employment and nothing else; but that clearly is only one of the matters relating to employment. The other matters relating to employment would inevitably be the provision as to the salary and periodical increments therein, terms as to leave, as to gratuity, as to pension and as to the age of superannuation.- These are all matters relating to employment and they are, and must be deemed to- 'be included in the- expression matters relating to employment' in Art. 16(1). What Art. 16(1) guarantees is equality of opportunity to all citizens in

respect of all the matters relating to employment illustrated by us as well as to an appointment to any office as explained by us. The three provisions Art. 16(1), Art. 14 and Art. 15(1) form part of the same constitutional code of guarantees and supplement each other. If that be so, there would be no difficulty in holding that the matters relating to employment must include all matters in- relation to employment both prior, and. subsequent, to the employment which are incidental to the employment and form part of the terms and conditions of such employment."

This Court further observed in that case "Art. 16(2). prohibits, discrimination and thus assures the effective enforcement of the fundamental right, of equality of opportunity guaranteed by Art. 16(1). The words, in respect of only employment used in Art. 16(2) must, therefore, include all matters relating to employment as specified in. Art. 16(1). Therefore, we are satisfied that promotion to selection posts is. included both under Art. 16(1) and (2)."

We next proceed to consider the argument of the appellant that the rule of promotion from I Income-tax Officers Class 1, Grade II to Class 1, Grade I is discriminatory in character. It was contended, that while a direct recruit has to put in 5 years as Income Tax Officer Class 1, Grade II, a promotee officer gets into Grade 1 with a minimum of one year's service in Class I, Grade 11, the other four years being counted in Class II, Grade III. It was I [1962] 2 S.C.R. 586, 596-598.

therefore submitted that the rule operated against the direct recruit in a discriminatory manner. In our opinion, there is no substance in the contention of the appellant. Once it is held that the rule of seniority enacted in rule 1(f)(iii) is legally valid, the rule of promotion i.e., rule 4 of Ch. IX of the Central Board of Revenue Office Procedure Manual cannot be held to lead to any discrimination as between direct recruits and promotees. Rule 4 states that the prescribed minimum service for Class 1, Grade 11 Officer in the matter of promotion to Grade I of that Service is five years gazetted service including one year in Class 1, Grade 11. For a promotee therefore the minimum period of service for promotion to Class I, Grade I is actually 4 years service in Class 11, Grade III and one year service in Class 1, Grade 11. The object of the rule is really to carry out the policy of rule 1(f) (iii) of the Rules of Seniority and not allow it to be defeated by the requirement of five years service in Class 1, Grade 11 itself before-consideration for promotion to Class I, Grade

1. The promotee is placed senior to a direct recruit who completes probation in the year in which the promotee is selected by the Departmental Promotion Committee. If it should be laid down that the past service as Income-tax Officer in Class 11 is not to be counted, then rule 1(f)(iii) would be nullified, because directly recruited officers junior to the promotees would go to Grade I earlier than the promotee officers. For example, a promotee certified fit by the Departmental Promotion Committee in 1952 will be senior to the direct recruits who complete their probation in that year. And if it is to be laid down that the promotee officer shall not count his period of service in Class 11 for the purpose of promotion to Grade 1, Class I he will have to wait till 1957 or 1958 to go to Grade 1, Class 1, while direct recruits who completed their probation in 1952 or 1953 would have gone to Grade 1, Class I in 1955 or 1956, counting the five years period from the date on which they were placed on probation. To remove this anomaly the promotion rule has been framed and we are unable to accept the argument of the appellant that there is any discrimination in the working of this rule. The rule of promotion is inextricably linked with the rule of weightage and seniority in Grade

11. If in the rule of promotion the service in Grade III is not to be taken into account, seniority in Grade 11 would be an empty formality. In regard to rule 1(f)(iv) of the Seniority Rules, there are only three respondents i.e., respondents 4, 5 and 6 who have been promoted as "deemed promotees" under this clause of the rule. Each one of them was appointed in Class 11, Grade III Service in 1947 and was appointed in Class 1, Grade II Service in 1951 after having successfully competed in the competitive examination of the year 1950, the same year in which the appellant was successful. The appellant also joined Class 1, Grade 11 Service in 1951. The three respondents have been shown as senior to the appellant in the seniority list. The objection of the appellant is that while they qualified in the same competitive examination, they had become senior to him because of the operation- of the artificial rule by which they are treated as "deemed promotees"; otherwise they would have remained junior to him. On behalf of these respondents it was argued by Mr. Bindra that they had been appointed to Class 11, Grade III Service in 1947 and completed 5 years service in that class by the year 1952 and if the Departmental Promotion Committee met in 1953, as it actually did meet, and if it recommended their promotion to Class I, Grade 11, each one of them would have become senior to the appellant by the operation of cl. (iii) to rule 1(f). There was also the further consideration that if rule 1(f)(iv) did not exist there was no incentive to a promotee of this type to sit for the competitive examination. It should also be taken into account that if the service of the promotees in Class 11, Grade III is entirely ignored and if they join the Class 1, Grade 11 Service as direct recruits they might well find themselves becoming junior to those who were left behind in Class II, Grade III Service by the operation of rule 1(f)(iii). We are accordingly of the opinion that rule 1(f)(iv) is based on a reasonable classification and does not offend the guarantee under Art. 14 or Art. 16(1) of the Constitution.

We proceed to consider the next question arising for consideration in this appeal, viz., the allegation of the appellant that there was excessive recruitment of promotees in violation of the quota rule. Rule 3 of the Income-tax Officers (Class 1, Grade 11) Service Recruitment Rules is to the following effect "The Service shall be recruited by the following methods

(i) By competitive examination held in India in accordance with Part 11 of these Rules.

(ii) By promotion on the basis of selection from Grade HI (Class 11 Service) in accordance with Part III of these Rules."

Rule 4 reads "Subject to the provisions of Rule 3, Government shall determine the method or methods to be employed for the purpose of filling any particular vacancies, or such vacancies as may require to be filled during any particular period, and the number of candidates to be recruited by each method."

Rule 5 states "Vacancies in the Service which are filled otherwise than by promotion shall be apportioned between the various communities in India in accordance with the provisions of the Government of India (Home Department) Resolution No. F. 14/17-B/33-Ests. dated the 4th July, 1934 (regarding communal representation in the services) and No. 23/5/42-Ests. (S) dated. the 11th August, 1943 (regarding representation of Scheduled Castes in the Services) and the supplementary instructions connected therewith."

In the letter of the Government of India dated September 29, 1944 (Ex. B to the writpetition of the appellant) it is stated that the recruitment to Grade 11 of Class I will be made partly by promotion and partly by direct recruitment and that "80% of the vacancies arising in the Grade will be filled by direct recruitment through the Indian Audit and Allied Services Examination and the remaining 20% vacancies will be filled on the basis of promotion by selection provided suitable number of men 'are available for promotion". It was also stated in the letter that if there are any vacancies which could not be filled by promotion for want of suitable candidates, these will be added to the quota of vacancies to be filled by direct recruitment. The quota was altered by the Government of India subsequently in their letter dated October 18, 1951 (Ex. E to the writ petition). In this letter the Government of India , said that. they had decided in consultation. with the Union Public Service Commission that for a period of five years, in the first instance, 66-2/3 % vacancies in Class 1, Grade 11 will be filled by direct recruitment and the remaining 33-1/3 % vacancies on the basis of promotion and any surplus vacancies which cannot be filled for want of suitable candidates will- be added to the quota of vacancies to be filled by direct recruitment. „There has been no argument, in this case, with regard- to the operation of the rule between the years 1945 and 1950, though in the petition the appellant has alleged that in those years also there were excessive recruitments of promotees. It appears from the affidavit of respondent No. 1 that these were formative years of the Income Tax Service and re-organisation of the Department was being completed and the initial period of re- organisation lasted up till 1950. The argument was confined to the years 1951 to 1956. According to the appellant, there was excessive recruitment of 71 promotees more than the figure permitted by the quota rule. In the judgment under appeal the High Court has examined the matter and found that the excess number of promotees was 31 for the four years 1951 to 1954. During the hearing of the appeal we had ordered the Secretary of the Finance Ministry to furnish the number of vacancies which had arisen from year to year from 1945 onwards, the nature of the vacancies- permanent or temporary and the chain of vacancies and such other details which are relevant to the matters pending before this Court. In his affidavit dated January 31, 1967 Mr. R. C. Dutt said that he was not able to work out, in spite of his best endeavours the number of vacancies arising in a particular year. However, a statement, Ex. E, was furnished showing the number of officers recruited by the two methods of recruitment to Class I Service during the relevant years

Year	UPSC Exam. recruits datesClass	War Service candi-	Officers selected from
1951		50	
1952			49
1953		52	38
1954		44	30
1955		45	24
1956			25-

----- It "is not clear from the affidavit of Mr. R., C. Dutt whether the quota rule was strictly followed for the years in question. In the counter-affidavits of respondents 1 to 4 in Writ Petition No. 5 of 1966 there is however an assertion that the quota rule "has 'been substantially complied with."

The Solicitor-General on behalf of respondents 1, 2 and 3 submitted that the quota rule was merely an administrative direction to determine recruitment from two different sources in the proportion stated in the rule and a breach of that quota rule was not, a justiciable issue. The Solicitor-General said that there was, however, substantial compliance with the quota rule. But in the absence of figures of permanent vacancies in Class 1, Grade II for the relevant years the Solicitor-General was unable to say to What extent there had been deviation from the rule. We are unable to accept the argument of the Solicitor-General that the quota rule was- not legally binding on the Government. It is not-disputed that rule 4 of the- Income-tax Officers (Class 1, Grade II) Service Recruitment Rules is a statutory rule and there is a statutory duty cast on the Government under this rule to, determine the method or methods to be employed for the purpose of filling the vacancies and. the number of candidates to be recruited by each method. In the letter of the Government of India dated October 18, 1951 there is no specific reference to rule 4, but the quota fixed in their letter must be deemed to have been fixed by the Government of India in exercise of the statutory power given under rule 4. Having fixed the quota in that letter under rule 4, it is not now open to the Government of India to say that it is not incumbent upon it to follow the quota for each year and it is open to it to alter the quota on account of the particular situation (See para 24 of the counter affidavit of respondents 1 to 3 in Writ Petition No. 5 of 1966). We are of opinion that having fixed the quota in exercise of their power under rule 4 between the two sources of recruitment, there is no discretion left with the Government of India to Alter that quota according to the exigencies of the situation or to deviate from the quota, in any particular year, at its own will and pleasure. As we have already indicated, the quota rule is linked up with the seniority rule and unless the quota rule is strictly observed in practice, it will be difficult to hold that the seniority rule i.e., rule 1(f)(iii) & (iv), is not unreasonable and does not offend Art. 16 of the Constitution. We are accordingly of the opinion that promotees from Class II, Grade III to Class 1, Grade II Service in excess of the prescribed quotas for each of the years 1951 to 1956 and onwards have been illegally promoted and the appellant is entitled to a writ in the nature of mandamus commanding respondents I to 3 to adjust the seniority of the appellant and other officers similarly placed like him and to prepare a fresh seniority list in accordance with law after adjusting the recruitment for the period' 1951 to 1956 and onwards in accordance with the quota rule prescribed in the letter of the Government of India No. F. 24(2)-Admn. I.T./51 dated October 18, 1951. We, however, wish to make it clear that this order will not affect such Class 11 Officers who have been appointed permanently as Assistant Commissioners of Income Tax. But this order will apply to all other officers including those who have been appointed Assistant Commissioners of Income Tax provisionally pursuant to the orders of the High Court. In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule

it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicey-"Law of the Constitution"-Tenth Edn., Introduction ex). "Law has reached its finest moments", stated Douglas, J. United States v. Wunderlick⁽¹⁾, "when it has freed man from the unlimited discretion of some ruler..... Where discretion ; absolute, man has always suffered". It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of John Wilkes⁽²⁾, "means sound discretion guided by law. It must be governed by rule, not by humour : it must not be arbitrary, vague and fanciful." We should also like to suggest to the Government that for future years the roster system should be adopted by framing an appropriate rule for working out the quota between the direct recruits and the promotees and that a roster should be maintained indicating the order in which appointments are made by direct recruits and by promotion in accordance with the percentages fixed under the statutory rule for each method of recruitment.

For these reasons we allow this appeal in part and order that a writ in the nature of 'Mandamus' should be granted to the appellant to the extent indicated above. There will be no order as to costs in this appeal.

The questions arising for determination in this case are similar in character to the questions which have been the subject-matter of consideration in Civil Appeal No. 1038 of 1965. For the reasons given in that case, we hold that this petition should be allowed and a writ in the nature of mandamus under Art. 32 of the Constitution should be granted commanding respondents 1 to 3 to adjust the seniority of the petitioner and other officers similarly placed like him and to prepare a fresh seniority list in accordance with law after Adjusting the recruitment for the period 1951 to 1956- and onwards in accordance with the quota rule prescribed in the letter No. F. 24(2) Admn. I.T./51 dated October 18, 1951 of the Government of India. There will be no order as to costs.

V.P.S. Petition allowed.

Appeal allowed in part.

(1)342 U.S. 98.

(2)(1770) 4 Burr. 2528 at 2539.