

Pran Krishna Goswami & Ors vs State Of West Bengal And Ors on 24 April, 1985

Equivalent citations: 1985 AIR 1605, 1985 SCR (3) 914, AIR 1985 SUPREME COURT 1605, 1985 LAB. I. C. 1257, (1985) 2 LAB LN 1043, 1985 SCC (SUPP) 221, 1985 SCC (L&S) 857

Author: O. Chinnappa Reddy

Bench: O. Chinnappa Reddy, R.S. Pathak, R.B. Misra

PETITIONER:

PRAN KRISHNA GOSWAMI & ORS.

Vs.

RESPONDENT:

STATE OF WEST BENGAL AND ORS.

DATE OF JUDGMENT 24/04/1985

BENCH:

REDDY, O. CHINNAPPA (J)

BENCH:

REDDY, O. CHINNAPPA (J)

PATHAK, R.S.

MISRA, R.B. (J)

CITATION:

1985 AIR 1605 1985 SCR (3) 914

1985 SCC Supl. 221 1985 SCALE (1) 1024

CITATOR INFO :

RF 1986 SC 638 (12)

F 1987 SC 424 (24)

ACT:

West Bengal Services (Determination of Seniority) Rules
1981. Rules 4, 5 and 6 :

Promotees and Direct Recruits-Seniority-Fixation of-
Seniority among promotees-Date of joining-Seniority between
promotees and direct recruits- Year of joining.

Civil Services:

Seniority-Fixation of-Direct Recruits and Promotees
Service Rules- Absence of-General principle is seniority
determined on basis of continuous officiation in non-
fortuitous vacancies.

HEADNOTE:

The appellants joined the State Police Force as Constables, were promoted as Assistant Sub-Inspectors of Police, and later as officiating Sub-Inspectors of Police and confirmed as Sub-Inspectors. In the meanwhile, a large number persons were directly recruited as Sub-Inspectors, and also confirmed. All these persons were ranked above the appellants in the seniority list.

In writ petitions to the High Court, the appellants contended that their seniority must be reckoned from the date of their continuous officiation as sub Inspectors, and that they were never considered for promotion to the next higher post of Inspector of Police, because of their delayed confirmation, and of the insistence of the Rules that they should be confirmed as Sub-Inspectors of Police before they could be considered for promotion to the post of Inspector of Police and that the offending Rule be quashed. The State supported the claim of the appellants to seniority on the basis of continuous officiation, but the direct recruits contested the writ petition.

The High Court refused to recognise the claim of the appellants to seniority from the dates of their continuous officiation, on the ground that their promotion as officiating Sub-Inspectors of Police could only be considered as promotion to posts outside the cadre. It further held, that their seniority could only be reckoned from the date of their confirmation, and that the rule pres-

cribing confirmation as Sub-Inspector as a condition precedent for promotion to the Post of Inspector of Police was not invalid.

Allowing the Appeals,

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HELD: 1. The three appellants are entitled to have the benefit of their continuous officiating service as Sub-Inspectors of Police counted for seniority as Sub-Inspectors of Police. A writ will issue, directing the state to re-fix the seniority of the appellants and other officers similarly situated. [939 F]

2. It is not undisputed, that in the absence of Rules to the contrary, regulating the question of seniority between 'direct recruits' and the 'promotees' the general principle to be implied and followed to determine seniority is to base it on continuous officiation in non-fortuitous vacancies. [929B]

In the instant case, the officiating Sub-Inspectors of Police were obviously appointed to officiate in permanent or temporary vacancies in the existing subordinate ranks of the Calcutta Police, governed by the same Rules and Regulations as other Sub-Inspectors of Police, drawing the same pay and discharging the same duties. There was not and there could never be any question of officiating Sub-Inspectors

constituting a different cadre, class or category by themselves. [934G-H]

3. Rule 4 of the West Bengal Services (Determination of Seniority) Rules, 1981 which deals with seniority amongst direct recruits, broadly provides that their relative seniority shall be according to the cadre of merit when they are selected at the same examination persons appointed on the basis of an earlier examination taking precedence over those appointed on the basis of a later examination. It further provides that where seniority has not been previously determined it shall be determined according to the actual date of joining. Rule 5 deals with determination of seniority of promotees and provides that seniority of a person appointed to any post, cadre or grade shall be determined from the date of joining such post, cadre or grade, which by Rule 3 (vi) means the date of continuous officiation in the post, cadre or grade. Rule 6 prescribes that the relative seniority between a promotee and a direct recruit shall be determined by the year of appointment or promotion of each in the post, cadre or grade irrespective of the date of joining, and that the promotees shall be en-bloc senior to the direct recruits of the same year. Rules 4, 5 and 6 constitute a single scheme and if read together the scheme becomes clear. While date of joining is important to decide the question of seniority amongst promotees, it is the year of joining that is relevant when the question of relative seniority is to be determined between promotees and direct recruits. If direct recruits are appointed and promotees are promoted in the same year, all promotees are to take precedence over the direct recruit, irrespective of the actual date of their joining but as amongst the promotees themselves, the seniority is to be based on the date of joining. That is the true and appropriate construction of Rules 4, 5 and 6, and that was what the State Government wanted to do and was done.

[935 F-H ;936 A-C]

916

Ganga Ram v. Union of India, [1970; 3 SCR 481, Katyani Dayal v. Union of India [1980], 3 SCR 139, distinguished.

S.B Patwardhan v. State of Maharashtra, [1977] 3 SCR 775 Baleshwar Dass v. State of UP. [1981] 1 SCR 449; A. Janardhana v. Union of India, 1983 3 SCC 601, O.P. Singla, - . Union of India, AIR 1984 SC 1595; G.S. Lamba & Ors. v. Union of India, [1985] 3 SCR 431, B.S. Gupta v. Union of India, [1975] SUPP SCR 491; A.K. Subramana v. Union of India, [1973] 2 SCR 979; P.S. Mahal v. Union of India. AIR 1984 SC 1291; referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 400-401 of 1984 From the Judgment and Order dated 15 7.1983 of the Calcutta High Court in C.R. No. 7979 (W) Of 1981.

M.K. Ramamurthi, B. Datta, Rishi Kesh, Badri Prasad and Pudiserry for the Appellants.

S.N. Kacker, H.K. Puri, D.N. Mukharjee, J.R. Das and D.R. Sinha for the Respondents.

The Judgment of the Court was delivered by CHINNAPPA REDDY, J. The wars of the Roses go on. How else is one to describe the perpetual battles waged between the 'direct-recruits' and the 'promotees' ? This time the front is the Calcutta Police, the posts are those of Sub- Inspectors of Police and the question is the same old one of seniority. Petitioners 1 and 2, who joined the Calcutta Police as Constables in November 1947 were first promoted as Assistant Sub-Inspectors of Police and later, on August 6, 1951, as officiating Sub-Inspector of Police. They were confirmed as Sub-Inspectors of Police on January 1, 1975. In the meanwhile, a large number of persons were directly recruited as Sub-Inspectors of Police and also confirmed as such, All of them are now ranked above the petitioners in the seniority list, and the petitioners, therefore, have a natural grievance. They claim that as laid down by a series of decisions of this court, their seniority must be reckoned from the date of their continuous officiation as Sub- Inspectors of Police. Petitioner No.3, we may mention, was promoted as officiating Sub-Inspector of Police on September 6, 1975, but the precise date of his confirmation is not available from the record. Apart from the claim to seniority, the petitioners also alleged that they were never considered for promotion to the next higher post of Inspector of Police because of their delayed confirmation and because of the insistence of the Rules that they should be confirmed as Sub-Inspectors of Police before they could be considered for promotion to the post of Inspector of Police. they want the offending rule to be quashed. Other reliefs were claimed in the writ petition filed by them in the High Court, but we are not now concerned in this appeal with those other reliefs. While the State of West Bengal appeared to support the claim of the appellants to seniority on the basis of continuous officiation, the direct-recruits contested the writ petition in the High Court. The High Court refused to recognise the claim of the appellants to seniority from the dates of their continuous officiation on the ground that their promotion as officiating Sub-Inspectors of Police could only be considered as promotion to posts outside the cadre. The High Court held that their seniority could only be reckoned from the date of their confirmation. The High Court further held that the rule prescribing confirmation as Sub-Inspector as a condition precedent for promotion to the post of Inspector of Police was not invalid. The 'promotee' Sub-Inspectors have preferred this appeal by special leave of the court under Art. 136 of the Constitution.

It is necessary now to refer to the various recruitment and seniority rules made from time to time under the powers conferred by the statute. Rule 2(b) of the Recruitment Rules for the Subordinate Ranks of the Calcutta Police, 1936 provided that twenty five per cent of the vacancies shall be filled by promotion of Assistant Sub-Inspectors and Sergeants and the rest by direct recruitment. Rule 2(f) prescribed the qualification for outside candidates meaning thereby direct-recruits. What is important to be noted is that they were required to be Graduates of a University. Rule 2(g) prescribed the qualifications for departmental candidates and it is necessary to extract the whole of it, which is as follows:-

"(g) Qualifications for departmental candidates-

On the first of June, nominations shall be called for from all District Officers of Assistant Sub-Inspectors and Sergeants fit for promotion to the rank of Sub-Inspectors. Nominees shall have had at least 3 years' service as Ser-

geant or Assistant Sub-Inspector, be less than 40 years of age and normally have passed one of the following examination.

(1) Matriculation or the Indian Army Special Certificate of Education, (2) Junior Cambridge, (3) First Class Army Certificate, or have, in the opinion of the Selection Board, other wise attained a satisfactory educational standard. They shall sit in a preliminary departmental test examination at the Calcutta Police Training School. The names of all nominees who pass that examination shall be submitted to the Selection Board. The candidates shall have-

(i) a good record of service, and

(ii) a good social position;

The Judge of this should be the Selection Board. Note-On passing out of the Calcutta Police Training School officers shall remain on probation prior to confirmation.

Rule 2 (j) which applied both to outside and departmental candidates was as follows:-

"(j) Qualified Candidates shall be summoned before a Selection Board consisting of the Commissioner of Police, the Deputy Commissioner of Police, Head quarters.' a District Deputy Commissioner, and an Assistant Commissioner of Police. The Selection Board shall make the final selections for appointment."

The Probation Rules for the Subordinate Ranks of the Calcutta Police, 1936 prescribed that for Sub-Inspectors, the period of probation of a person directly recruited or of an officer who was promoted from a lower rank shall be two years counting from the date of his joining the Calcutta Police Training School. While Rule 2 sub-rule 3 provided that persons directly recruited shall draw the minimum pay in the time-scale of Sub-Inspectors through the period of their probation. Rule 2 sub-rule 4 provided that promoted officers shall draw the minimum pay in the time scale of Sub-Inspectors, subject to the condition that they shall count towards increment, officiating and temporary service in that rank rendered prior to their appointment as probationers and also their probationary period or any part thereof and draw increment that may fall due to them during the period of their probation. It was further stipulated that a probationer shall be confirmed on the termination of his probationary period unless the Deputy Commissioner in charge of a District shall during the period of probation make an order extending this period of probation or discharging him from service or reverting him to his substantive rank. An order of extension of probation was not to extend beyond one year, except with the sanction of the Commissioner of Police.

By an order dated December 16, 1940, it was provided that when determining the relative seniority of probationary Sub-Inspectors in the Calcutta Police, the following principles were to be observed:

"(1) Departmentally appointed Sub-Inspectors will be senior to direct recruits of the same year and will be graded inter se according to the date of their confirmation in the rank of Assistant Sub-Inspector.

(2) The seniority of directly recruited Sub-Inspectors will be in accordance with their position in the final examination at the Police Training School."

In supersession of this order, a further order was issued on December 14, 1960 laying down the principles to be followed in determining the relative seniority of probationary Sub-Inspectors of the Calcutta Police. The principles were as follows:-

"(1) The seniority of departmentally promoted and directly recruited Sub-Inspectors will be determined in accordance with the dates of their probationary appointment in the rank.

(2) Where a departmentally promoted Sub-Inspector and a directly recruited Sub-Inspector are appointed on probation with effect from the same date, the departmental officer will be senior to the direct recruit, provided they undergo training at the Police Training College the same year.

(3) The seniority of the directly recruited Sub-Inspectors will be in order of their position in the final examination held at the Police Training College and that of the departmentally promoted officers be in accordance with their position in the approved list of officiating Sub-Inspectors, fit for confirmation in the rank of Sub-Inspector."

In 1962, the Calcutta and Suburban Police (subordinate ranks recruitment, conditions of service and discipline) Rules were made. Schedule I prescribed the method of recruitment, qualifications for appointment including age and conditions of service. Paragraph 2 of the Schedule dealt with Sub-Inspectors not belonging to the Armed Branch and to the extent it is relevant, is extracted below:

"Sub-Inspectors not belonging to the Armed Branch

2. (1) Method of recruitment: Recruitment in the rank of Sub-Inspector shall be made each year in the month of January. Twenty-five per cent of the vacancies shall be filled by promotion of Assistant Sub-Inspectors and the remaining vacancies shall be filled by direct recruitment.

(2) For filling up vacancies by promotions candidates shall be selected on the basis of merit only. (3) (a) For filling up vacancies by direct recruitment applications from outsiders shall be invited through the Press in the 1st week of August.....

(b).....

(c).....

(4) Qualifications for outside candidates-The candidates shall-

(i) be graduates of one of the Indian universities;

(ii)

(iii)

(iv)

(v)

(5) Qualifications for departmental candidates- On the first day of June every year nominations shall be called for from all Deputy Commissioners of Assistant Sub-Inspectors fit for promotion to the rank of Sub-Inspector. Nominees shall have had at least 3 years of service as Assistant Sub-Inspector, be less than 40 years of age and normally have passed one of the following examinations:

(a) Matriculation, School Final or Higher Secondary Examination or the Indian Army Special Certificate of Education Examination:

(b) Junior Cambridge Examination;

(c) First class Army Certificate Examination;

or have, in the opinion of the Selection Board referred to insub-rule (7), otherwise attained a satisfactory educational standard. They shall be required to sit in a preliminary departmental test examination. The names of all nominees who pass that examination shall be submitted to the said Selection Board. The candidates shall have in the the opinion of the said Selection Board a good record of service, Note-Selected candidates shall have to undergo a course of training in the Police Training College. On passing out of the Police Training College, officers shall remain on probation prior to confirmation. (6)

(7) Qualified candidates shall be summoned before a Selection Board consisting of the Deputy Commissioner, Headquarters, a Divisional Deputy Commissioner and an Assistant Commissioner of Police. Appointment shall be made of candidates included in an approved list of candidates prepared on the recommendation of the Selection Board.

(8)

Paragraph 19 of Schedule I deals with the probation of Sub Inspectors and to the extent necessary it is extracted below:-

"Sub-Inspectors

19. 1) The period of probation of a person directly recruited as a Sub-Inspector shall be two years counting from the date of leaving the Police Training College and that of an officer promoted as a Sub-Inspector from a lower rank shall be one year counting from the date of joining the Police Training College on such promotion.

(2)

(3) Promoted Sub-Inspectors shall draw the grade pay in the time-scale of Sub-Inspectors, subject to the condition that they shall count towards increment officiating and temporary service in that rank rendered prior to their appointment as probationers and also their probationary period or any part thereof and draw increment that may fall due to them during the period of their probation. A probationer Sub Inspector shall be confirmed on the completion of his probationary period unless the Deputy Commissioner, Headquarters, shall make an order extending his period of probation or discharging him from service or reverting him to his substantive rank. Any order for such extension of the probationary period or reversion or discharge shall indicate grounds on which the order is made. Such an order of extension shall not ordinarily extend the period of probation beyond one year. For extension for any Period beyond one year, the sanction of the Commissioner shall be obtained. (4) (a) The training period of promoted Sub-

Inspectors shall be one year, of which the first six months shall be spent in the Police Training College. The training period of direct recruits as Sub- Inspectors shall be two years of which one year shall be spent in the Police Training College.

(b) The initial pay of direct recruits as Sub- Inspectors when posted to the Police Training College shall be Rs. 200 per mensem, the minimum of the time scale of pay of Sub-Inspectors. (c) such part of the training period of direct recruits as Sub-Inspectors as is spent in the Police Training College, namely, one year, shall be exclusive of the probationary period and count towards increment of pay.

(d) The training period of promoted Sub-Inspectors shall count towards increment of pay."

In 1967, the Police Regulations, Calcutta were framed under section 3 of the Calcutta Suburban Police Act, 1866 and section 9 of the Calcutta Police Act. Chapter XV dealt with method of recruitment, qualifications for appointment including age and conditions of service. Paragraph 3 of Chapter XV dealt with Subinspectors not belonging to the Armed Branch. To the extent necessary, paragraph 3 is extracted again:

"3. Sub-Inspectors not belonging to the Armed Branch:

(1) Method of recruitment-Recruitment in the rank of Sub-Inspector shall be made each year in the month of January. One-third of the vacancies shall be filled by

promotion of Assistant Sub-Inspectors, and the remaining vacancies shall be filled by direct recruitment.

(2) For filling up vacancies by promotion candidates shall be selected on the basis of merit with due regard to seniority, (3)(a)

(b)

(c)

(4) Qualifications for candidates for direct recruitment-

The candidates shall-

(i).....

(ii) be graduates of one of the Indian Universities.

(iii)

(iv)

(v)

(vi)

(5) Qualified candidates shall be required to appear for an interview before a Selection Board consisting of the Deputy Commissioner, Headquarters, and two other Deputy Commissioners nominated by the Commissioner. Appointment shall be made of candidates included in an approved list of candidates prepared on the recommendation of the Selection Board.

(6)

(7) Qualifications for departmental candidates-

Nominations shall be called for as and when necessary from all Deputy Commissioners of all Assistant Sub-Inspec.

tors fit for promotion to the rank of Sub-Inspector. A Nominees shall have had at least three years of service as Assistant Sub-Inspector and normally have passed one of the following examinations:-

(a) Matriculation, School Final or Higher Secondary Examination or the Indian Army Special Certificate of Education Examination,

(b) Junior Cambridge Examination;

(c) First Class Army Certificate Examination; or have, in the opinion of the Selection Board, referred to in Sub-rule (8) below otherwise attained a satisfactory educational standard.

They shall be required to sit in a departmental examination the procedure and syllabus for which shall be such as may be determined by the Commissioner.

(8) The names of all nominees who pass that examination shall be submitted to the Selection Board. The candidates shall have in the opinion of the Selection Board, good records of service. The Selection Board shall consist of Deputy Commissioner, Headquarters, and two other Deputy Commissioners nominated by the Commissioner. (9) Candidates must have passed the departmental examination completely before they are interviewed by the Selection Board. Candidate shall be eligible for the examination referred to above after they are confirmed in the rank of Assistant Sub-Inspector.

Note. Selected candidate (both direct recruits and departmental) shall have to undergo a course of training in the Police Training College. (10) An officiating Sub-Inspector having completed two years' continuous service in the rank and on completion of the required course of training shall be eligible for appearing before the Selection Board concerned for inclusion of his name in the panel of officiating Sub-Inspector fit for confirmation in the rank of Sub Inspector."

Paragraph 46 may also be extracted here:

(1) The period of probation of a person directly recruited as a Sub-Inspector or a Sub-Inspectress shall be two years counting from the date of leaving the Police Training College or School, as the case may be, and that of an officer promoted as a Sub-Inspector or Sub-Inspectress from the lower rank shall be one year counting from the date of his or her appointment on probation. Such part of the training period of direct recruit as Sub-Inspectors or Sub-Inspectress as is spent in the Police Training College or School, namely, one year, shall be exclusive of the probationary period and count towards increment of pay. (2)

(3) Promoted Sub-Inspectors including Sub-

Inspectresses shall draw the grade pay in the time scale of Sub-Inspectors, subject to the condition that officiating and temporary service in that rank rendered prior to their appointment as probationers and also their probationary period or any part thereof shall count towards increment and they shall draw increment that may fall due to them during the period of their probation. A probationary Sub-Inspector or Sub-Inspectress shall be confirmed on the completion of his or her probationary period unless the Deputy Commissioner, Head-quarters, shall make an order extending his or her period of probation or discharging him or her from service or in the case of a promoted Sub-Inspector or Sub-Inspectress reverted him or her to his or her substantive rank. Any order for such extension of the probationary period or reversion or discharge shall indicate grounds on which the order is made. Such an order of extension shall not exceed the period of probation

beyond one year in the case of a direct recruit and six months in the case of a promotee. For extension of any period beyond one year or six months, as the case may be, sanction of Government shall be obtained."

In 1981 the West Bengal Services (Determination of Seniority) Rules were made and it is not disputed before us that these rules are applicable to the Calcutta Police. Rule 3 (iv) defines "post", "cadre" or "grade" as meaning any post, cadre or grade in connection with the affairs of the State of West Bengal. Rule 3 (vi) says, "date of Joining"

shall be reckoned from the date of continuous officiation in a post/cadre or grade. Rules 4, 5 and 6 which deal with 'Determination of seniority of direct recruits', 'determination of seniority of promotees, and relative seniority of direct recruits and promotees, are important and have to be extracted in full. They are as follows:

"4. Determination of seniority of direct recruits. The relative seniority of all persons appointed directly through competitive examination or interview or after training or otherwise shall be determined by the order of merit in which they are selected for such appointment on the recommendation of the Commission or other selecting authority, persons appointed on the result of an earlier selection being senior to those appointed on the result of a subsequent selection:

Provided that where appointment of persons initially made otherwise than in accordance with the relevant recruitment rules is subsequently regularised in consultation with the Commission, where necessary, seniority of such persons shall be determined from the date of regularisation and not from the date of appointment. The inter-se-seniority amongst such persons shall however, depend on the date of appointment of each such person in the department or office concerned:

Provided further that if any person selected for appointment to any post does not join within two months of the offer of appointment, his seniority shall count from the date on which he joins the post unless the appointing authority for reasons to be recorded in writing condones the delay.

Note-(1) A list of candidates for the purpose of selection for appointment shall be prepared in all cases by the selecting authority, when there will be recruitment in a single process of selection Or more than one person.

(2) Where the inter-se-seniority amongst several persons has not been determined prior to the coming into force of these rules; such seniority shall, on the coming into force of these rules, be determined on the basis of actual date of their joining. When the date of joining of all such persons is the same, seniority shall be determined on the basis of date of birth, person retiring earlier being adjudged as senior. When the date of birth is the same, seniority shall be determined on the basis of total marks obtained by each in the examination, passing of which is the qualification prescribed for recruitment to the particular cadre or grade.

(3) In so far as the determination of relative seniority Of persons selected either by the Commission or by other selecting authority for appointment to different posts in the same grade with different qualifications such as posts of Assistant Professors in History, Economics, Physics, Chemistry, etc., is concerned, seniority shall be determined from the date of joining.

5. Determination of seniority of promotees- (1) Seniority of person appointed on promotion to any Post, cadre or grade shall be determined from the date of joining such post, cadre or grade. (2) When there will be appointment in a single process of selection of more than one person the; relative seniority of persons so appointed shall be determined by the order in which they are selected for such promotion.

(3) Persons appointed on the result Or an earlier selection shall be senior to those appointed on the results of a subsequent selection.

(4) Where promotions to a post, cadre or grade are made from more than one post, cadre or grade, the relative seniority of the promotees from different posts, cadre or grades shall be according to the order of merit determined by the commission or the selecting authority, if such posts, cadets or grades do not come within the purview of the commission.

Note 1-A list of candidates for the purpose of selection for promotion shall be prepared in all cases by the selecting authority when appointments are made on promotion in a single process of selection of more than one person.

Note 2-Where the inter-se-seniority amongst several persons has not been determined prior to the coming into force of these rules, such seniority shall, on the coming into force of these rules, be determined on the basis of date of joining. When the date of joining of such person is the same, seniority in the promotion post, cadre or grade shall follow the seniority in the lower feeder post, cadre or grade.

6. Relative seniority of direct recruits and promotees-

1. The relative seniority between a promotee and a direct recruit shall be determined by the year of appointment or promotion of each in the post, cadre or grade irrespective of the date of joining.

2. The promotees shall be en-bloc senior to the direct recruits of the same year."

A certain amount of confusion has been created by the reliance placed by the High Court upon the decisions of this Court in *Ganga Ram v. Union of India*(1) and *Katyan Dayal v. Union of India*.(2) We wish to make it clear, straightaway, that neither of (1) [1970] 3 SCR 481.

(2) [1980] 3 SCR 139.

these cases has any application to the facts of this case, as we shall presently explain.

The proposition is now undisputed, and, indeed none of the Counsel who appeared before us disputed it, that in the absence of Rules to the contrary regulating the question of seniority between 'direct-recruits' and the 'promotees', the general principle to be implied and followed to determine seniority is to base it on continuous officiation in non-fortuitous vacancies. In the case of S. B. Patwardhan v. State of Maharashtra (1) Chandrachud, CJ. Observed:

"We, however, hope that the Government will bear in mind the basic principle that if a cadre consists of both permanent and temporary employees, the accident of confirmation cannot be an intelligible criterion for determining seniority as between 'direct-recruits' and the 'promotees'. All other factors being equal, continuous officiation in a non-fortuitous vacancy ought to receive due recognition in determining rules of seniority as between persons recruited from different sources, so long as they belong to the same cadre, discharge similar functions and bear the same responsibilities."

In Roleshwar Dass v. State of U. P.(2), Krishna Iyer, J. had occasion to observe:

We must emphasise that while temporary and permanent posts have great relevancy in regard to the career of Government servants, keeping posts temporary for long, sometimes by annual renewal for several years, and denying the claims of the incumbents on the score that their posts are temporary makes no sense and strikes us as arbitrary, especially when both temporary and permanent appointees are functionally identified. If, in the normal course, a post is temporary in the real sense and the appointee knows that his tenure cannot exceed the post in longevity, there cannot be anything unfair or capricious in clothing him with no rights. Not so, if the post is, for certain departmental or like purposes, declared temporary, (1) [1977] 3 S.C.R. 775 (2) [1981] 1 S.C.R. 449.

but it is with in the ken of both the Government and the appointee that the temporary posts are virtually long lived. It is irrational to reject the claim of the 'temporary' appointee on the nominal score of the terminology of the post. We must also express emphatically that the principle which has received the sanction of this Court's pronouncements is that officiating service in a post is for all practical purposes of seniority as good as service on a regular basis. It may be permissible, within limits, for Government to ignore officiating service and count only regular service when claims of seniority come before it, provided the rules in that regard are clear and categorical and do not admit of any ambiguity and cruelly arbitrary cut-off of long years of service does not take place or there is functionally and qualitatively, substantial difference in the service rendered in the two types of posts While rules regulating conditions of service are within the executive power of the State or its legislative power under proviso to Article 309, even so, such rules have to be reasonable, fair and not grossly unjust if they are to survive the test of Arts. 14 and 16." To the same effect in A. Janardhana v. Union of India,(1), D. A. Desai, J. Observed:

".. In other words, after having rendered service in a post included in the service, he is hanging outside the service, without finding a berth in service, whereas direct recruits

of 1976 have found their place and berth in the service. This is the situation that stares into one's face while interpreting the quota-rota rule and its impact on the service of an individual. But avoiding any humanitarian approach to the problem, we shall strictly go by the relevant Rules and precedents and the impact of the Rules on the members of the service and determine whether the impugned seniority list is valid or not. But, having done that we do propose to examine and expose an extremely undesirable, unjust and inequitable situation emerging in service, jurisprudence from the precedents namely, that a (1) [1983]3 SCC 601.

person already rendering service as a promotee has to go down below a person who comes into service decades after the promotee enters the service and who may be a schoolian, if not in embryo, when the promotee on being promoted on account of the exigencies of service as required by the Government started rendering service. A time has come to recast service jurisprudence on more just and equitable foundation by examining all precedents on the subject to retrieve this situation." These cases were quoted with approval by Chandrachud, C.J. and one of us (Pathak, J.) in O.P. Singla v. Union of India⁽¹⁾. In that case as a result of the application of Rules 16 and 17 of the Delhi Higher Judicial Service Rules, the quota and rota' Rule ceased to apply and the question arose what was the criterion to be adopted to determine the seniority between 'direct recruits' and 'promotees'. Chandrachud, C.J. and Pathak, J. Observed:

Since the rule of 'quota and rota' ceases to apply when appointments are made under Rr. 16 and 17, the seniority of direct recruits and promotees appointed under those Rules must be determined according to the dates on which direct recruits were appointed to their respective posts and the dates from which the promotees have been officiating continuously either in temporary posts created in the service or in substantive vacancies to which they were appointed in a temporary capacity, G.S. Lamba & Ors. v. Union of India,⁽²⁾ there was a break down of the 'quota-rota' Rule as it had not been followed. The problem was how seniority to be determined between direct recruits and promotees. D.A. Desai, 1. with whom Khalid, J. agreed after noticing the decisions in B.S. Gupta v. Union of India⁽³⁾. A.K. Subramana v. Union of India.⁽⁴⁾ P.S. Mahal v. Union of India, Janardhana v. Union of India, O.P. Singla v. Union of India (Supra) observed .

(1) AIR [1984] SC. 1595.

(2) [1985] 3 S.C.R. 431.

(3) [1975] SUPP. SCR 401.

(4) [1979] 2 SCR 979.

"In the absence of any other valid principle of seniority it is well-established that the continuous officiation in the cadre, grade or service will provide a valid principle of seniority. The seniority lists having not been prepared on this principle are liable to

be quashed and set aside."

We may now refer to the two decisions of this Court upon which reliance was placed by the High Court. In *Ganga Ram v. Union of India* (1), the question arose with regard to the validity of a provision of the Indian Railways Establishment Manual according to which amongst Clerks Grade I who had been promoted from the rank of Clerks Grade II after passing the prescribed qualifying examination, those who had been promoted earlier because they had passed the examination earlier, were, nevertheless required to take their place in the seniority list after those who were promoted later because they had passed the examination later if the latter happened to be senior in Grade II. In other words, notwithstanding their actual dates of commencement of continuous officiation, promotees to Grade I carried with them their seniority in Grade II. The Rule was challenged on the ground of discrimination. It was said that in the case of direct recruit to Grade I seniority was reckoned from the date of appointment to Grade I whereas in the case of promotees amongst themselves their seniority was based on their seniority in Grade II. This argument was repelled by this Court on the ground that direct recruits and promotees constituted different classes and the classification was sustainable. It was said that promotion to Grade I was guided by the consideration of seniority-cum-merit and it was, therefore, difficult to find fault with the provision which placed in one group all those Grade II clerks who had qualified by passing the examination. The fact that the promotees from Grade II who had OFFICIATED for some time were not given the credit of that period when a permanent vacancy arose also did not attract the prohibition contained in Arts. 14 and 16. It did not constitute any hostile discrimination and was neither arbitrary nor unreasonable. It applied uniformly to all Grade II clerks who had qualified and become eligible. The onus, it was said, was on the petitioners to establish discrimination. The difference emphasized on behalf of the petitioners, it was finally observed, was too tenuous to form the basis of a serious argument. It will be seen that the case was not concerned at all with the rival claim of direct recruits and promotees - A.I.R. 1984 SC. 1291 themselves. The comparison with direct recruits was only for the purpose of advancing the claim that since amongst direct recruits seniority was reckoned in a particular way, there was no reason why the same principle should not be adopted in the case of promotees also instead of the principle of basing seniority in Grade I on seniority in Grade II. We do not think that this case is of any avail to the II direct recruits in the present case.

In *Katyani Dayal Y. Union of India*, in order to meet some special requirements of new situations created by new projects, some new posts of temporary Assistant Officers, were created under a special scheme. These Temporary Assistant Officers belonged neither to class I nor to class II service, though on completion of three years service it was declared that they could be considered for absorption in Class I, Junior Scale. The temporary Assistant Officers filed a writ petition claiming that they were appointed to the Indian Railway Service of Engineers Class I right from the beginning and that the Railway Board was wrong in treating them as belonging to neither class I nor class II. The court held that the service comprising the Temporary Assistant Officers and the Indian Railway Service of Engineers Class I started separately and never become one. The objects of their recruitment were dissimilar and the appointing authority was not the same. The training that was imparted was also unlike. The very tenure of the Temporary Assistant Officers was precarious and their immediate aspiration was only to be absorbed into the Indian Railway Service of Engineers Class I. These distinctive features marked out the Temporary Assistant Officers as a Class apart from

the Indian Railway Service of Engineers Class I and therefore there was no question of entitlement of equal rights with the later. Of course, once they were absorbed into the Indian Railway Service of Engineers they would be entitled not to be treated differently thereafter. Their seniority would ordinarily be reckoned from the date of their absorption into the Railway service of Engineers, as promised in their letters of appointment. It was further pointed out that there was a fundamental qualitative difference, linked with the method of recruitment. Though the minimum educational qualification was the same, those who were recruited directly to the Indian Railway Service of Engineers Class I were subjected to stiff and competitive, written and personality tests. Only the very best could aspire to come out successful. The Temporary Assistant Officers were not subjected either to a written test or to a personality test but were selected on the basis of an interview by the Union Public Service Commission. In addition to the minimum educational qualification, three years' experience as a Civil Engineer was also prescribed. Thus while brilliance was the beacon light which beckoned those aspiring to become members of the Indian Railway Service of Engineers Class 1, it was replaced by experience in the case of those wanting to be Temporary Assistant Officers. Again the appointing authority in the case of Indian Railway Service of Engineers Class I was the President while the appointing authority in the case of temporary assistant Officers was the Railway Board, no doubt, pursuant to the authority given by the President. Different courses of training were prescribed for the Indian Railway Service of Engineers and the Temporary Assistant Officers. For the Indian Railway Service of Engineers the training was an intensive and comprehensive one designed to equip them for higher posts in the Department too while the training for Temporary Assistant Engineers was a brief six months' training intended merely to equip them for carrying out the specific jobs. In the matter of terms and conditions of service, while the provisions of the Indian Railway Establishment Code were fully applicable to the Indian Railway Service of Engineers Class 1, those provisions were applicable to 'Temporary Assistant Officers' to the extent there was no specific provision in their letter of appointment and agreement.

It was on those facts and circumstances that it was held that there was no discrimination directed against the temporary Assistant Officers. We are unable to see how this case can possibly help the direct recruits in the present case. It was suggested that the officiating Sub-Inspectors of Police who had been promoted from the rank of Assistant Sub-Inspectors were appointed to posts outside the cadre as in *Katyani Dayal's* case and it was this argument that found favour with the High Court. There is no basis whatsoever for the supposition that there was any new cadre or any new class of posts created by the Government, known as officiating Sub-Inspector of police. The officiating Sub-Inspectors of Police were obviously appointed to officiate in permanent or temporary vacancies in the existing subordinate ranks of the Calcutta Police, governed by the same Rules and regulations as other Sub-Inspectors of police, drawing the same pay and discharging the same duties. There was not and there could never be any question of officiating Sub-Inspectors constituting a different cadre, class or category by themselves.

The next question is whether the Rules regulating the recruitment, seniority etc. of Sub-Inspectors of Police in the Calcutta Police make any departure from the general principle laid down in the whole series of cases commencing with *Patwardhan* to which we have already referred. Earlier we have set out in great detail all the relevant rules in force from time to time. We do not find anything in any of the rules indicating an intention to depart from the general principle. *Shri S. N. Kacker*,

learned counsel for the direct recruits invited our attention to Rule 6 of the West Bengal Services (Determination of Seniority) Rules, 1981 and asked us to read it in the light of Rule 3 (vi) which defines 'date of joining' and stipulates that date of joining shall be reckoned from the date of continuous officiation in a post/cadre or grade. Rule 6 (i) provides that relative seniority between a promotee and a direct recruit shall be determined by the year of appointment or promotion of each in the post, cadre or grade irrespective of the date of joining and Rule 6 (2) provides that the promotees shall be en-block senior to the direct recruits of the same year. The submission of Shri Kackar was that 'date of joining' as defined in Rule 3 (vi) was expressly made irrelevant by Rule 6 (1) for the purpose of determining Seniority between a promotee and a direct recruit and it meant that the period of continuous officiation was not to be taken into account in determining relative seniority between promotees and direct recruits. The argument though superficially attractive lacks substance. A perusal of Rule 4 and 5 makes the position clear. Rules 4, 5 and 6 constitute a single scheme. Now Rule 4 which deals with seniority amongst direct recruits, broadly, provides that their relative seniority shall be according to the cadre of merit when they are selected at the same examination persons appointed on the basis of an earlier examination taking precedence over those appointed on the basis of a later examination. Rule 4 further provides that where seniority has not been previously determined it shall be determined according to the actual date of joining Rule 5 deals with determination of seniority of promotees and broadly again, provides that seniority of person appointed to any post, cadre or grade shall be determined from the date of joining such post, cadre or grade. which we know from Rule 3 (vi) means the date of continuous officiation in the post, cadre or grade. Then comes Rule 6 which prescribes that the relative seniority between a promotees and a direct recruit shall be determined by the year of appointment or promotion of each in the post, cadre or grade irrespective of the date of joining and that the promotees shall be en-block senior to the direct recruits of the same year Now, if Rules 4, 5 and 6 are read together the scheme becomes clear. While date of joining is important to decide, the question of seniority amongst promotees, it is the year of joining that is relevant when the question of relative seniority is to be determined between promotees and direct recruits. If direct recruits are appointed and promotees are promotee in the same year, all promotees are to take precedence over the direct recruit, irrespective of the actual date of their joining but as amongst the promotees themselves, the seniority is to be based on the date of joining. That according to us is the true and appropriate construction of Rules 4, 5 and 6. We are indeed very happy to note that this is precisely what the West Bengal Government wanted to do and it was done with a view to give effect to the judgments of this Court. Paragraph 5 (II) the affidavit of Nirupom Som, Commissioner of Police, Calcutta, is worth extracting and it is as follows :-

"5 (1)....."

5 (II) With effect from 11. 3. 81, the West Bengal Services (Determination of Seniority) Rules, 1981 were promulgated under Article 209 of the Constitution. These rules were made following the judgment of the Hon'ble Supreme Court in the Patwardhan v. State of Maharashtra case (AIR 1977 SC 2051). Previously the seniority was determined under provisions laid down in the Finance Department Memo No. 568-F dated 20. 2. 68. Prior to 20.2.68, there was no codified principles, the respective Departments following principles that might be different in different departments.

" (b) The Hon'ble Supreme Court made observations, inter-alia as follows in the aforesaid case:-

(i) The vice of the seniority rule (with determines seniority between direct recruits and promotees from the date of confirmation) is that it leaves the valuable right of seniority to depend upon the mere accident of confir- mation. That under Article 14 and 16 of the Constitution is impermissible and therefore, we must strike down the said rule as being unconstitutional."

"(ii) We do not want to take upon ourselves task of framing rules of seniority. That is not the function of this Court and frankly it lacks the expertise and data-to do so. We, however, hope that the Government will bear in mind the basic` principles that if a cadre consists of both perma- nent and temporary employees, the accident of confirmation cannot be an intelligible criterion for determining seniority as between direct recruits and promotees. All others factors being equal continuous officiating in a non fortuitous vacancy ought to receive due recognition in terminating rules of seniority as between person recruited from different sources, so long as they belong the same cadres discharge similarly functions and bear similar res- ponsibilities."

" (c) In the light of the aforesaid observations of the Hon'ble Supreme Court the provisions in Finance Department Memo no. 568-F dated 20. 2. 68 were examined in Consultation with the law officers of Government and the public service commission. The West Bengal Service (Determination of Seniority) Rules 1981 were promulgated with effect from 11. 3. 81 after due observance of all formalities and considering all aspects of the matter."

Again in paragraph 10 it was said, "10... I submit that in the instant case it can hardly be disputed that both the direct recruits as well as the promotees Sub-Inspectors of Police form one class. They are both known by the same designation, they have the same scales of pay, they discharge the same functions, and the posts held by them arc interchangeable. Thus there is nothing to show that the two groups are kept apart, and both are merged together in the same class. It is not competent to the Government thereafter to discriminate between directly recruited Sub-Inspectors and promotee Sub-Inspectors in the matter of further promotion to the posts of Inspectors, as that would be violation of Article 16 of the Constitution. It is submitted that the rule of pro motion is inextricable linked with the rule of weightage and seniority in the lower grade. There is a well recognised discrimination between promotion and confirmation and the tests to be supplied for the purposes of promotion are entirely different from those that had to be applied at the time of confirmation. Though drawn from two different sources, the direct recruits and promotees constitute in the instant case a single integrated cadre. They discharge in dential functions, bear similar responsibilities and acquire an equal amount of experience in their respective aignment. The superseded principles for Determination of Seniority denied to the promotees the benifit of their long and valuable experience. If there was some intelligible grounds for this differentiation being nexus with efficiencies in public services, it might perhaps have been possible to sustain such a classification. Confirmation is one of the inglorious uncertainties of Government Service depending

within an efficiency of the incumbent nor on the availability of substantive vacancies. The vice of the seniority rule (which determines seniority between direct recruits and promotees) from the date of confirmation is that it leaves the valuable right of seniority to depend upon the mere accident of confirmation. that under Article 14 and 16 of the constitution, is impermissible. If a cadre consist of both permanent and temporary employees, the accident of confirmation cannot be an intelligible criterion for determining seniority as between direct recruits and promotees. All other facts being equal continuous officiating in a non-fortuitous vacancy ought to receive due recognition in determining rules of seniority as between persons recruits from different sources, so long as they belong to the same cadre discharge similarly functions and bear similar responsibilities."

We think it is needless to further dilate on this topic except to express our appreciation of the stand taken by the West Bengal Government in these paragraphs.

The final submission of Mr. Kacker was that the appellants had never appeared at the prescribed examination, had never been called before the Selection Board and had never been sent to the Police Training College. They had never gone through the selection process prescribed by the Rules and could not therefore have been validly appointed as Officiating Sub-Inspectors of Police or confirmed as Sub- Inspectors of Police. The appellants, at least two of them, have been officiating as Sub-Inspectors of Police since almost three decades and even confirmed as Sub- Inspectors of Police for a decade. We are afraid it is rather late in the day for Mr. Kacker to raise this question at almost the final stages of a long drawn out battle. It is true that in their writ petition in the High Court, the appellants made the barest of allegations in regard to their process of selection which they went through before they were promoted to the rank of Sub-Inspectors of Police. They had said, "After passing the departmental examination for pro motion to the rank of Sub-Inspector, your petitioners were declared fit for promotion to the rank of Sub-Inspector and your petitioners Nos. 1 and 2 were promoted to the rank of Sub-Inspector on the 6th August, 1957 while your petitioner No. I was promoted to the rank of Sub-Inspector on the 8th September, 1975 "

Even this bare allegation was not properly denied in the counter filed by the respondents and that was never seriously put in issue. At the conclusion of the hearing we called upon the State of West Bengal to produce all the relevant records pertaining to the service careers of the three appellants but we do not purpose to wait for them. Enough for us to do justice is it appears from the records now before us. We think that the three appellants are entitled to have the benefit of their continuous officiating service as Sub-Inspectors of Police counted for seniority as Sub-Inspectors of Police. A writ will, therefore, issue directing the respondents to re-fix the seniority of the appellants and other officers similarly situated in accordance with what we have said above. A further question was raised by the appellants regarding the validity of the paragraph 1 (iii) of the Police Regulation, Calcutta, 1967 which provides that directly recruited Sub-Inspectors shall be eligible to sit for the departmental examination to qualify themselves for promotion after their confirmation and on completion of 7 years' service, including temporary service in their rank. On the other hand, they complain that the rule provides that department Sub-Inspectors who have been so appointed by promotion shall be eligible to sit for

the examination after their confirmation in the rank of Sub-Inspectors provided that their total length of service as Sub-Inspector is not less than 7 years . Seemingly, the rule appears to treat both the direct recruits and promotees on the same footing, but it was submitted by a learned counsel for the petitioners that in practice the rule works harshly on the promotees because of the 'inglorious' uncertainty of the confirmation of the promotees. It was said that the date of confirmation of a promotee was so incurably uncertain, compelling a promotee to wait for more than a decade for confirmation and thus he will not be eligible to appear for the qualifying examination for promotion as Inspector of Police even though he has completed 7 years of continuous officiating service as Sub-Inspector of Police. There appears to be some legitimate scope for grievance on this question because of the vagaries of dates of confirmation of promotees, but we are not inclined to examine this question in the present case as petitions 1 and 2 made no efforts to qualify themselves for promotion by appearing in the examination after their confirmation in 1975 even though they had already completed 7 years of service. In the case of the 3rd petitioner, he had not even completed 7 years' service by the date of the filing of the writ petition and we are told that he had also now retired from service. In the circumstances, we do not think it necessary to examine this question. The appeal is, therefore, allowed in the manner and to the extent indicated. Such other benefits to which the appellants are entitled under the judgment of the High Court will remain unaffected. The appellants will get their cost, which we quantify to Rs. 5, 000.

N. V. K.

Appeals allowed.