

Supreme Court of India

Col. A. S. Iyer & Ors. Etc vs V. Balasubramanyam & Ors on 24 October, 1979

Equivalent citations: 1980 AIR 452, 1980 SCR (1)1036

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Bench: Chandrachud, Y.V. (Cj), Krishnaiyer, V.R., Untwalia, N.L., Shingal, P.N., Koshal, A.D.

PETITIONER:

COL. A. S. IYER & ORS. ETC.

Vs.

RESPONDENT:

V. BALASUBRAMANYAM & ORS.

DATE OF JUDGMENT 24/10/1979

BENCH:

KRISHNAIYER, V.R.

BENCH:

KRISHNAIYER, V.R.

CHANDRACHUD, Y.V. ((CJ)

UNTWALIA, N.L.

SHINGAL, P.N.

KOSHAL, A.D.

CITATION:

1980 AIR 452 1980 SCR (1)1036

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ACT:

Survey of India (Recruitment from Corps of Engineer Officers) Rules 1950 -Service consisted of Army and Civilian Officers-Seniority and promotional opportunities for Army Officers different from Civilian Officers-Rule if violative of Articles 14 and 16 of the Constitution.

HEADNOTE:

Rule 5 of the Survey of India (Recruitment from Corps of Engineer Officers) Rules 1950 provided that on first appointment an officer would be in the grade of Deputy Superintending Surveyor in Class I Service of the Survey of India and that seniority of military officers inter se will remain the same as in the Army. Sub-rule 5 of this rule provided that among those allotted to the same year, military officers would rank senior to directly recruited civilian officers. Rule 11 of the Rules which dealt with the method of recruitment to Survey of India Class I Service

provided that all recruitments to the Cadre would be 50% from the Corps of Engineer Officers, 25% from promoted Class II civilian officers and 25% from direct recruits by competitive examination through the Union Public Service Commission. These Rules were amended in 1960 and 1970 but the provision relating to military engineers remained the same as in the 1950 Rules.

In a writ petition filed in the High Court, the civilian officers of the service consisting of direct recruits and Class II promotees impugned the validity of the 1950 Rules on the ground that seniority prescriptions were based on irrelevant criteria and that discrimination was writ large in the impugned provisions.

The High Court, accepting the contentions of the civilian officers, struck down certain rules of the 1950 Rules as violative of Articles 14 and 16 of the Constitution. The High Court did not accept the contention of the Government that the nature and character of the work done by the Survey of India was essentially connected with defence purposes because the work done by the Department for the Army was done along with several other services carried on by it, namely, with the development projects, preparation of maps for various Ministries of the Central and State Governments, public sector undertakings and other agencies; assuming that the work was related to defence purposes, civilian officers were employed by the Department to do the same work and during emergencies, civilian officers were called upon to serve in border areas. The Department had civilian budget. For these reasons the High Court came to the conclusion that there was no ground to justify classification made under the impugned Rules between the Army officers and civilian officers because the recruits from the army could not be said to be better qualified than the civilian direct recruits and that there was no justification for adopting any discrimination in favour of the Army officers. The impugned rules were struck down on the ground that there was no reasonable nexus with the object sought to be achieved.

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In appeal to this Court it was contended on behalf of the State that the constitutional mandate of equal treatment applies only to equals and in the case of recruitment to the service the sources of recruitment of Army personnel and civilian entrants are different and remain different; weightage is given only at the time of entry and thereafter officers are treated as equals for all purposes of promotion and the advantage gained by the militarymen is a consequence of the initial advantage of the commissioned service for the purposes of seniority. Assuming that there is a unified cadre, since there exists a rational relation to the object sought to be achieved Article 16 cannot be said to have been violated.

Allowing the appeals,

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HELD: The 1950 Rules are valid in that they have a prominent feature which is basic namely the military nominees do not shed their army service and merge into a new service to undergo partial absorption but preserve a substantial separateness. [1054 B-C]

1. Without the military engineers the Survey of India would become a functional failure in discharging its paramount duties in times of war and peace. The work done by the army wing of the Survey of India is far too important to be played with and such work is best done by that wing. The military recruits are commissioned officers with three to six years of service with certain salary scales and period of service. Giving due weight to these factors rule 5 lays down the criteria for seniority as between the military sector and the civilian sector. For the very efficiency of the Survey of India a substantial Army element is essential. Army engineers are invited into this service not because this department historically belonged to the defence forces but because in hours of crises it cannot minister to one of the major objectives of its creation if it does not have engineers with military training, courage and so on. It is fairly intelligible and basically equitable to allow military engineers credit for commissioned service and protection of already earned higher salaries. [1059 E-H 1060 A-B]

2. To attract engineers into the Survey of India by assuring them all that they were enjoying in their existing service, namely, credit for the years under commission in reckoning seniority and fitment of their salary and other benefits is not discrimination or favoured treatment but justice to those whom, of necessity, the service wants. [1060 C-D]

3. Once it is agreed that at the entrance point the Army engineers are justly given credit for the commissioned service which they carry with them there is no further discrimination while in service on the score that they come from the Corps of Engineer Officers. All that happens thereafter is merely the manifestation of initial advantage of credit for commissioned service. [1061 D-E]

Mohammad Shujat Ali & Ors. v. Union of India & Ors. [1975] 1 SCR 449 at 481; Ram Lal Wadwa & Anr. v. The State of Haryana & Ors. [1973] 1 SCR 608 at 635; State of Punjab v. Joginder Singh [1963] Supp. 2 SCR 169 at 189; S. G. Jaisinghani v. Union of India & Ors. [1967] 2 SCR 703; Ganga Ram & Ors. v. Union of India & Ors. [1970] 3 SCR 481 at 488 referred to.

4. The 1950 Rules bring out certain incidents of service boldly. Notwithstanding the fact that they entered the Survey of India service. the Army
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officers continue to wear Army uniforms, they get notional promotions in the Army provided they pass the requisite Army

tests when they earn corresponding promotions in the Survey of India. They can be recalled by the Army and they continue to be under the control of the Commander-in-Chief. When inefficiency is noticed they can be called back to the Army for being dealt with appropriately. A conspectus of the facts and circumstances governing the service makes it clear that there is no integration of the Army personnel into the Survey Service. Without such complete integration Articles 14 and 16 cannot be invoked. [1064 E-G, 1065 A-B]

5. Whether 25% or 50% induction from military engineers is enough is a matter of policy for which the judiciary has no genius and the administration has a reach of materials and range of expertise, so that Courts must keep out except where rational criteria, or irrelevant factors mala fide motives or gross folly enter the verdict. In the instant case reservation of 50% of Class I service for Army Officers cannot be called irrational, impertinent or improvident. [1065 F-H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1745- 1755 of 1975.

From the Judgment and Order dated 5-9-1975 of the Andhra Pradesh High Court in Writ Petition No. 1269/75 L. N. Sinha, Attorney General for India, E. C. Agarwala and Girish Chandra for the Appellants (In CA 1755/75).

P.P. Rao, M.S. Ganesh, A.K. Ganguli and T.V. S. Narasimhachari for the Appellants in Ca 1754/75.

P. Govindan Nair, A. K. Sen, Bishambar Lal, Miss Munisha Gupta and Mrs. Baby Krishnan for RR 1-2 in CA 1754/75 and CA 1755/75.

The Judgment of the Court was delivered by KRISHNA IYER, J. These two sister appeals have gained access to this Court by certificate under Article 133 and project a 'service dispute' between the Army and civilian wings (both engineers) of the Survey of India. The constitutional missiles used, with success, in the encounter in the High Court by the 'civilians' to shoot down the 'military men's' preferential claims under the relevant service rules, are Articles 14 and 16. And here, in this Court, the Army Wing is fighting back to repulse the civilian wing by defusing the war-head of these two fundamental rights. Military imagery vivifies the litigative havoc when sectors of our public services go to battle against each other, though there is so much else to wage war against in the service of the people.

A narration of facts falling within a short compass will unfold the real issue, revolving round the salary, seniority and de facto promo-

tional disparity inter se, which has sparked off the forensic war. The Union of India, one of the appellants, supports the stand of the military sector of the Survey Service, if we may so designate it. A survey of the story of this conflict suggests the sombre thought that unending litigation, affecting the public services with inevitable impact on morale and efficiency, is becoming an epidemic in courts even among strategic cadres and sensitive sectors-a matter almost for consternation which surely must kindle a search for constitutional alternatives for resolution of service questions without large numbers of civil servants being locked in long-drawn-out legal struggles. Does the experience of 30 years under the Constitution indicate that, save where fundamental constitutional issues arise, Whitley councils, Service Tribunals and other specialised adjudicatory agencies, with the imprimatur of finality, are a more pragmatic mechanism of Service Justice ?

The factual setting, sufficient to unravel the constitutional contention, may now be delineated. Both the appeals against the judgment of the High Court of Andhra Pradesh cover the same subject matter, although one of them is by the Central Government and the other by the members of the Survey of India from among the Defence personnel, and both have been resisted on the same basis by the civilian recruits to the Service. A common judgment will dispose of both the cases but we must begin from the very beginning to get a hang of the controversy.

The genesis of the Survey of India, its life before birth, its genetic composition and hereditary characteristics, mould the structural engineering of the Service and, therefore, have a bearing on the issues debated before us both sides. While the High Court has, to some extent, slurred over the chronicle, both sides have heavily stressed before us the saga of the Survey of India, each to lend strength to its point of view. So, a peep into the bicentennial biography of the Survey of India is a necessary exercise as a starting point. To blink at history is to lose the living link with the Past and to stumble in the Present. Yet strangely, none such, i.e. history of the Service to serve as a lucid background is given in their statement by either party, save incidentally. Unfortunately, the fine and fruitful art of presenting a luscious written brief is still in the long Indian Year of the Infant and we have to cull out and piece together materials which should have been set out as a scenario of meaningful development. If the High Court has gone wrong the blame must fall in part on the Central Government which could and should have projected the story of the Survey of India, its functional complexion and recruitment rationale instead of leaving judges to run around the corridors of padded paper books or launch on speculative surmises. The State, the largest and resourceful and most affected public litigant, leaves much to be desired in the written presentation of its cases. The other parties fare no better, though. And instalments of additional information during the progress of the hearing has had to make-do for a comprehensive unfoldment. Better late than never ! The story of the Survey of India has been narrated in its brief autobiography, 'Our Department', produced on the eve of its bicentennial in 1967. This department was born during the days of Lord Clive under happy Army stars, had a military upbringing and, in its brilliant career, achieved lustrous exploits. Starting from an accident of history-the request of a historian, Robert Orme, to an East India Company administrator, Lord Clive, for a map of Bengal-the Survey of India sprang to life in embryonic form when Major Rennel was appointed to execute this survey and, thereafter, was cradled by the Army but spread out to become a dynamic department and development instrument in the decades ahead. In war and in peace, in building the nation and defending its security, in 'civilian' ventures and military operations the Survey of India has become a

National Service in the role of adviser on survey data and kindred adventures. Indeed, almost all ministries of the Central Government and many States have used the services of the Survey of India during the several Five-Year Plans. Look before you leap' becomes in development terms, survey before you start, and so it is that in 1967 this great department of strategic importance is able to write its story and conclude:

"25. In short, in its ever increasing sphere of vast, diverse and widely scattered work, Survey of India has built up a unique reputation both within the country and outside as a sound, distinguished, and great Survey Organisation of the world, progressively marching forward. expanding, adapting and modernising itself and continuing its contributions to science, security and development.

The personnel of Survey of India can legitimately take pride in the fact that they belong to this ancient and great organisation, to whom a noble, rich and priceless heritage has been bequeathed-inspiring and beckoning them to greater heights of achievement, honour and glory."

When the history of Free India comes to be written the proud contribution of the Survey of India may be printed in bold and bright characters because almost every Department of governmental activity with welfare potential has the imprint of the Survey of India at some stage or the other, as disclosed in the various materials which have come into our hands, through counsel, in the course of their submissions. The flattering fact that the tallest peak in the World, Mount Everest, was named after the eminent Surveyor General Sir George Everest shows that even in the geological discovery of India, this Department has had a hand. The different dimensions and directions in which the Survey of India has served the nation and science as a whole are perhaps a fall- out of its adventurous alliance with military activity.

During British days, it was not an accident that the Survey of India was under the Army. It was an inalienable companion of conquest and consolidation of defence and development-a versatile genius which was put to greater good in the era of Freedom and After.

"12. It is perhaps not so well known that the work of the Survey of India has special significance in matters of country's defence. The Survey of India has to organise surveys and work well ahead to provide maps at the right time and of the right places where campaigns might be fought in war.

The Chinese threat along the northern borders of the country since 1959 necessitated diverting immediately a very large potential of the Department to carry out the work of special topographical surveys for defence purposes in one of the most inhospitable and rugged terrains of the world-an assignment which cost the Department many precious lives and many years of hard work.

The bulk of military survey and mapping requirements are met by Survey of India. Though the military survey service exists, it is small and has insufficient personnel,

who carry out limited technical work and such staff duties as army requires in peace time.

13. There have, thus, been many occasions for the Survey of India to be commended for its work for defence and development in war and peace, and for providing the basic knowledge of the land for all its users."

The Surveyor General, for reasons of functional importance, is also the Director of Military Survey. Topographical Mapping states:

"When corrections and additions to maps of military importance are suggested by the Director, Military Survey, they should, as a general rule, be accepted by the Survey of India."

It is necessary to notice the role of the Survey Department under the Director of Military Survey who is also the Surveyor General thus bringing out the interlacing of activity. Obviously, there is not merely sensitivity and confidentiality but also a high degree of skill which cannot be relaxed and an instant sense of discipline, which cannot be liberalised, in view of the fact that military operations of national significance depend, in part, on the Survey of India and its service. While it is fair to emphasise that considerable peace-time developmental work is rendered by this Department, its adventurous spirit of climbing mountains, penetrating wilderness and entering into forbidden regions cannot be minimised. Lt. Col. Sandes writing on 'The Military Engineer in India' states:

"History has shown that there is something in the training which the Survey of India, imparts to its officers which makes them peculiarly valuable in war. Their work develops not only self-reliance and initiative, but a sense of responsibility. Everything centres on the example set by the leader of an isolated party. As a rule, he is the only European in the small country. He must have powers of organisation and observation: courage, determination and endurance. In the ordinary course, he must be precise to the point of pedantry, never satisfied with unchecked work and abhorring the smallest error; yet at other times he must fling theory and practice to the winds to improvise means of rapid reconnaissance when danger threatens."

The Military history which has moulded the character of this Department has relevance and so we quote again Lt. Col. Sandes:

"As the war spread, the survey officers from India were scattered over the face of the earth; some on military duty with engineer units other flash-spotting, sound-ranging and triangulating in France and Belgium: and others again reconnoitering and surveying in any or all of three continents. They worked in Salonika, North and South Russia, Italy Gallipoli, East Africa, Mesopotamia, Egypt, Syria, Persia, and on the shores of the Caspian. One commanded a brigade in North Russia, another led a Persian army. Ten officers of the Survey of India were killed in Action, or died on service, during the Great War, and thirteen were wounded. Many casualties occurred

in the lower ranks. Such were the contributions of the Department towards victory in the greatest struggle of all time. They form a fitting climax to its record in the frontier wars of India."

If we may sketch a few lines to indicate the trait of the Corps of Indian Engineers with a view to illumine the points canvassed before us, we have to refer to the book by Major Verma and Major Anand. The authors state:

"Before the war, Military Survey as such did not exist; though for generations past, Survey of India had provided detachments for practically every military campaign or expedition. But these parties were considered to be civilian, including their military officers-in-command, and they were only attached to the Army for supplies and transport. Even in the First World War (1914-18), Survey of India detachments went out and worked in Macedonia, Mesopotamia and Persia. But at no time before 1940 did India have any military units like the Field Survey Companies or Battalions. Between the wars, survey and mapping for the Army was done by the Survey of India, which except for the Artillery Survey Section, Royal Artillery, was the sole military survey agency. It had a semi-military tradition, the Surveyor General held the rank of a Brigadier and his principal officers were Royal Engineers with specialist survey qualifications. There was no survey representation at GHQ."

Again "For the Department, the military responsibilities in 1938-39 were:-

- (a) Liaison with the Armed Forces on survey and mapping.
- (b) Provision of maps required by the Defence Services, covering India, Burma, Afghanistan and Iran.
- (c) In the event of a war, to provide and equip firstly two Fd Survey Companies and two Survey HQs for service in the NWFP, and secondly one Survey Report (admn.)
- (d) To carry out annually a small amount of training in military survey."

In many Circles, Directors of the Survey of India have been Office Advisers to the 'Commander-in-Chief' and the work done by this Department has had in many cases military meaning. This was reflected in the past in the officer situation and personnel complexion. Class I Officers were all military men while Class II men were civilian graduates. Brig. Wheeler, writing of the officer situation in British India, summed up thus:

"Perhaps the greatest single factor affecting military organisation was that whereas there were nearly 60 military officers in 1925, there were only 30 in 1939; to train a civilian to be sound and efficient soldier takes a considerable time, to train a non-survey soldier to become an efficient surveyor, much longer, very much longer."

The military commitments of the Survey of India in the World War II made it a strategic instrument invisible to the lay but invaluable to the esoteric.

We have pressed this part of the career of the Survey of India to knock out the impression that its military component is purely a concession to the historical staffing pattern and the lack of avenues for promotion to Army engineers. It is an in-built necessity of the department in national interest. We agree with counsel for the respondents, Sri Govindan Nair, that the early history of the Survey of India as a child of the Army cannot become an obsession to distort or debunk the enormity of its purely developmental undertakings. It is a Civil Service which serves in national reconstruction all the time, but, at the call of the country, is ready to switch to Defence, risk anywhere and do surveys as commanded. We must set our sights right about the civil and military range of the versatile department and not swallow the brash version that it is all 'brass'. Its bearing on the conclusions in the case is that the court should not blindly accept all the preferences to the Army recruits as against their civilian brethren under the impression that everything in the Survey of India is Defence operation and civilian must therefore accept the crumbs as shudras of the Service. No! Most of its work is peace-time activity of a fundamental, though invi-

sible character to promote development in its multitude and magnitude and, indeed, in its panoramic magnificence.

But we cannot get away from the historic fact-not merely the fact of history-that the Survey of India is, first and foremost, an instrument of military strategy for the defence of the country although its talents are not allowed to grow into thistles but to serve wherever needed. If competing demands come, it opts for and is therefore geared to Defence goals. That is its first charge and, in that sense, it is Defence-oriented, has an Army bias and cannot afford to ignore the indispensability of a military component. The history of a nation is never written by the military but its history ceases to be, if its reserves of military manpower cannot be mobilised for active duty at an instant's notice. The Survey of India, with its signal service to the planned progress of the people, has a tryst with national security and an everyday commitment to the country's defence requirements. This may look over-drawn but embeds a core of truth cardinal to the issue in the case-why weightage to the 'uniformed' recruits as against their counterparts in 'mufti'?

Let us thus place accent on what is essential but not miss what exists as a reality. From this angle, a legal raconteur may re-tell the story slightly differently.

The Army in British India had, as one of its strategic operations, to undertake the survey of the interior and frontier of the country and had, therefore, under it a department wholly manned by military personnel. After Independence and the enactment of the Constitution, this military limb separated from the Defence Forces, was constituted into a Civil Service with the Surveyor General at the apex and a hierarchy below of triple components together making up the Class I service. The Service, in its new dimensions, was manned by civilian and military personnel due to functional imperatives. The entry into the service was at the point of Deputy Superintending Surveyors, save for a category of promotees from Class II, with provision for spiralling up to higher positions. The posts were filled according to Rules framed under the proviso to Art. 309 on a 50: 50 basis, as

between Army engineering personnel dovetailed into the Survey of India and civilians recruited or promoted or otherwise appointed.

We miss the service perspective if we do not take a functional glimpse at the operational scale and range of the Survey of India. What was a wholly military department previously reincarnated as the Survey of India, with a civilian inter-mix, retained its meta-military personality, functionally and personnel-wise. In budgetary classifica-

tion and administrative charge, the Survey of India was a member of the Agriculture Ministry, of the Education Ministry and currently, perhaps, correctly belongs to the Ministry of Science and Technology which is pervasive enough to embrace Defence and Development. It is not right to regard this Service as a 'uniformed' service, for it is ambidextrous. But that is not really decisive of the issue before us. What we have to understand is not so much its genetic transmigration as such or pedigree table but the nature of the service the Survey of India is expected to render, its basic functional characteristics, operational capabilities, futuristic uses and, consequentially, its meaningful personnel policy and the conditions of service dictated by the compelling necessities of these demands on the Service. In brief, the emphasis is not on the administrative pigeonhole in which the Survey is placed for secretariat or budgetary purposes, nor on its lineage, nor, indeed on the label 'civil' or 'Defence' but on the nature of its duties and the relevant pattern of manpower and, most importantly, the concrete conditions of recruitment and principal career requirements while in service, having regard to the strategic essence of the goals the Service must sub-serve. So viewed, the Survey of India is army oriented. Not merely because of heredity but markedly because of the nation's potential demands and perennial expectations from this specialised Service, not merely in emergency but to be always on the qui vive. We gather from the affidavit of the Senior Director, on behalf of the Union of India, that the army component is an inalienable requirement of the Survey of India if it is to fulfil its role. He swears:

"Some of the reasons for corps of Engineers being one of the sources of recruitment are as follows:

- (a) Survey of India may need mobilisation in the event of any emergency of war.
- (b) The Corps of Engineer Officers in Survey of India form the nucleus around which mobilisation can take place quickly.
- (c) The small element in the Army cannot cater for training and experience, and hence Corps of Engineer Officers are kept in Survey of India which provides the ideal ground for training and experience of these officers during peace so as to keep them fully competent technically in the event of a war or emergency.

In order to maintain an adequate balance between military and civilian officers, and to attract the higher type of Corps of Engineer Officers to the Survey of India, 50% of the total number of posts in the Class I Cadre were earmarked for the Corps of Engineer Officers." What, then, is the *raison d'être* of this department ?

War means advance into or withdrawal from territory. Operations involve identification of topography, climatology, environmentology, location of defence positions, marking of marching and retreating positions and artillery targets and paratroop landing positions, keeping secret strategic centres and sealing them off as out of bounds-and a host of other surveys invaluable informational and immediately available for national defence. It is obvious that if this be the functional relevance of the Survey of India, some divisions of it have to be fighting fit, always on the alert, ready to rush to the risk zones and technically capable of teaming with the ground forces in seasons of emergency and occasions of external aggression, before and after. The Survey of India must be geared to the goal of national security if it is to justify itself in a large country of extensive mountain frontiers, border disputes, history of hot war, interior defence lines and military routes. Of course, our imperial masters could afford, at the expense of people's welfare, to keep such a department as a section of the Armed Forces, idle for long stretches of time but keeping their tools sharp for eventualities. Free India could not. Naturally, the country's leaders, entrusted with gubernatorial responsibilities in this behalf, hit upon a golden mean of forming a separate Survey of India, no more a wing of Army. The object was understandable. A permanent yet considerable number of technical personnel virtually idle during peace time was a luxury. Nevertheless, an instrument was forged which preserved the military mood of active duty but expanded and expended its sophisticated expertise during years of peace on national needs of other Ministries or States' requirements. It reflected the duo-dexterous roles and mosaic of manpower in its recruitment policy. Unique functional imperatives demand unique service anatomy as an administrative experiment in the Darwinian art of survival of the fittest. We see nothing strange in this unorthodox composition, although attempts to interpret the new scheme by familiar Service moulds may mislead, as has happened in the High Court.

The Senior Director with reference to current conditions, deposes as affiant of the Central Government:

"Reasons for seniority and pay protection for the Corps of Engineer Officers are as follows:-

(a) They suffer due to lack of higher opportunities of promotion to Brig. Major General, Lt. General and General by their volunteering for the Survey of India.

(b) They can utmost expect to get military pension as a Colonel but not as Brig. and higher which are substantially higher.

(c) They lose other perquisites like house rent, concessional electricity and furniture facilities, concessional Form 'D' facilities, and many other concessions.

Unless therefore, they are given protection of seniority and pay in order to partly compensate their losses, no Corps of Engineer Officer would ever volunteer for the Survey of India. These were the considerations for the seniority and pay protection for Corps of Engineer Officers.

Even if, for argument's sake, it is admitted that preferential treatment is given to Corps of Engineer Officers (which it is not), it is done under the rules which have been framed based on the differences between the various sources of recruitment, and the said differences have a reasonable relation to the nature of the office to which recruitment is made. Thus, the appointment, and terms and conditions of the Corps of Engineer Officers can legitimately be substantiated on the basis of valid classification."

At this point we must eye at close quarters the Survey of India (Recruitment from Corps of Engineer Offices) Rules, 1950. Primarily, it relates to the recruitment from the Corps of Engineer Officers. The relevant part of Rule 2 runs thus:

"2. Recruitment: A Corps of Engineer Officer for appointment to the Survey of India should at the time of appointment normally have not less than three and not more than six years commissioned service, but this rule may be relaxed in exceptional cases. Corps of Engineer Officers shall apply for appointment to the Survey of India to the Military Secretary, through the Engineer-in-Chief, who will transmit the applications to the Surveyor General. The Surveyor General will maintain a list of such applicants, as, after making the due enquiries, he considers to be suitable for appointment. When a military post falls vacant and the Military quota has not been filled the Surveyor General shall nominate an Officer or Officers from the above list."

This Rule postulates a military quota which takes us straight to Rule 11:

"11. Method of recruitment to Survey of India Class I Service.

All future recruitment to the Survey of India Class I Cadre will be as follows:

1. From Corps of Engineer Officers 50%
2. From promoted Class II Civilian Officers 25%
3. From direct recruits by competitive exami-

nation through the U.P.S.C. 25% The military recruits to Class I Service enter the Deputy Superintending Surveyor's (hereinafter referred to as D.S.S.) position in the Service from where they rise on promotion as Superintending Surveyors (hereafter referred to as SS) Deputy Directors and Director, the top post being of Surveyor General. These promotion posts are available for all categories of entrants as has been clarified in the later set of Rules called 'The Survey of India (Class I Recruitment) Rules, 1960.' Before we part with the 1950 Rules, it is necessary to place accent on some aspects of the military officers and their career in the Survey of India. Their sojourn in this new Department is not an exit from the Army but a long furlough, as it were. For all practical purposes, they retain their military position and

remain under military control and are liable to be called back for regular army service. It is a kind of provisional adoption into a different family but with the ties in the natural family kept in-tact.

A Corps of Engineer Officer will be qualified for recruitment only if he is in commissioned service for between three and six years. Then he is to go through a two- year period of probation during which he is to pass tests. If he is not good, he gets back to military duty and even if he makes good, he has an option to revert to military employment. Even after confirmation, the officer may revert during the first 20 years of commissioned service on his own request. Even thereafter, with the approval of the Government he may revert permanently to military duty, save in the case of those who fall under Rule 4(c). If an officer retires from the army that will involve retirement from the Survey of India too, save in the case of those who are Colonels or Lt. Colonels, covered by Rule 4(c), and retires from the army only for the reason that they have attained the requisite age limit. Such persons under Rule 4(d) may continue in the Survey of India until the age of superannuation from civil employment. It is important to note that an officer may be reverted permanently to military duty if he is no longer needed in the Survey of India on account of reduction in strength or unsatisfactory work. He may also be reverted temporarily to military duty for grounds given in Rule 4(f).

Another remarkable rule is Rule 8 which speaks of wearing military uniform while in civil employment if the incumbent is willing to observe the courtesies due to military officers of superior ranks. Rule 9 is extremely significant and reads thus:

9. Military Promotion: A military officer in the Survey of India is expected to keep himself efficient as an army officer and will have to pass such promotion examinations, etc. as may be laid down for other military officers of his rank and corps; such military confidential reports will be submitted on him as may be required by the military authorities. Military Confidential Reports will be initiated and submitted in accordance with the procedure laid down in Special Army Order 24/S/51 as amended from time to time. Military officer in the Survey of India will be considered for military substantive promotion in turn with others in their corps and their fitness for such promotion will be judged by their confidential reports. After completing his normal period as a Lt. Colonel an officer will be eligible for promotion to full Colonel and above provided that:

- (i) he is a substantive Director or above in the Survey of India;
- (ii) there is a vacancy in the number of posts for full Colonel and above reserved for military officers in the Survey of India.

Rule 10 is also meaningful because the army officers in the Survey of India when they rise to higher positions get equivalent rise in the Army. There are a few more aspects which perhaps may complete the story but the thrust of the submissions made by the learned Attorney General on the strength of these rules is that the Army Engineers are not integrated with or incorporated into the Survey of

India Class I Service in toto. There is a partial assimilation but a substantial separation persists. Once an Army Engineer, always an Army Engineer, is the gist. Absent integration, Art. 14 is out of bounds-such is the cumulative effect of the Service Rules, 1950 according to the learned Attorney General. We will presently examine his claim which has been rejected by the High Court.

Indeed, the pivotal point of this case is perhaps the nature of the Service with special reference to Articles 14 and 16, viz., the integration of the two sources into a common pool and the impermissible de facto bifurcation of the two strands in promotional streams in the years ahead. Also, the myth of Defence needs and consequent preferences for military recruits. The High Court rightly formulated the crucial question when it stated:

Thus, the bone of contention of the respondents is that the very nature of the work undertaken and done by the Survey of India is related to Defence purposes and the officers recruited from the army engineering corps are specially trained for this purpose. This, according to the respondents, is the reasonable connection between the classification and the object that is sought to be served in recruitment to Class I service of the Survey of India.

The conclusions reached by the High Court also deserve to be set down at this place to facilitate a clear understanding of our approach and the basic finding of fact reached by the High Court. The respondents have heavily relied upon this finding and have legitimately lashed the appellants' plea as unrepresentable in the face of this finding of fact. The learned Judges observed:

This claim, however, is not made out before us. We have already referred to the various affidavits filed by the parties. In the original counter affidavits filed by respondents, the stand taken is that because the rules provide for special privileges, they are being given to the army personnel and so the equality concept is not violated. That is really begging the question. When the petitioners complain that the rules made in this behalf violate the equality concept as enunciated in Articles 14 and 16, it would be futile to reply to that argument by saying that the rules so provide. In the later affidavits some attempt is sought to be made to point out that the nature of the work carried on by the Survey of India department is essentially connected with Defence of India and that the officers recruited from the Army Corps of Engineers are specially trained for this purpose. On the basis of the material placed before us, we are not inclined to accept that the work done by the Survey of India department is essentially of the nature and character required for defence purposes. It may be that along with several other surveys carried on by this Department, it does survey work which is useful to the Defence department. From the affidavits and the other material placed before us, it could be seen that the survey work done by the department is mostly concerned with the development projects and preparation of maps for various Ministries, State Governments, public sector projects and other civilian agencies. The annexure filed along with the additional reply affidavit filed by the petitioners show that the Survey of India is a national survey organisation. It appears to have surveyed quite a large number of development projects during the three plan periods. The

department might have prepared some maps useful for the Defence purposes. But that is only part of the work and incidental to the nature of the survey it carries on. Its work does not appear to be Defence oriented. The survey done by the department is utilised by several departments of the Central and State Governments, public sector projects and other civilian agencies. It is, therefore, making a tall claim to say that the survey is essentially of Defence nature. Further, there is nothing to show that even if the work related to Defence purposes the civilian officers are not employed or engaged. Thus, the Survey of India appears to be a civilian department with a civilian budget. Further, whenever there is an emergency there is nothing which prevents or bars the Government of India from calling upon the civilian officers also to serve on the border. It is the stand of the petitioners that if 25 army personnel belonging to the Survey of India were called to the border area in 1962 war, as many as 70 civilian officers belonging to Class I and Class II categories were called to work in the same area. They also assert that just like the Defence department uses some maps prepared by the Survey of India, the Forest Department, G.S.I., P.W.D. etc., also use the maps. So we are not inclined to hold that the nature of the survey and work carried on by the Survey of India department is largely defence oriented.

Even at this stage, we may refer to the High Court's view about the historical background of this Service:

It is, further, stated by the respondents that the historical background also supports recruitment of as much as 50% of Class I officers from the army engineering corps. Some reports are sought to be relied on in this connection. This argument overlooks the fact that we are not concerned with the situation as it obtains in Independent India and not in British India. It is true that some attempts have been made after attainment of Independence to attract officers from the army engineering corps into Survey of India department. But as in 1950, 1960, 1962 and 1974 Rules generally show, the work done by the department is essentially civilian in character. The impugned rules will have to be examined in the light of the circumstances that are now prevailing ever since Independence and not on the so-called historical background which has, in any case, become archaic.

In regard to the special training given to the army personnel which is said to justify the classification, it appears to us that this claim is not tenable. If the army personnel are given training in field engineering for 9 months and for 3 years in the Military Engineering College, Kirki, the qualifications required for direct recruitment of civilians are no less valuable. Largely, only engineering graduates are recruited directly. They have equal engineering experiences. Further, it does not appear that the army officers had been given any survey training when they were in the army services. It is not, therefore, possible to say that the recruits from the army are better qualified than the civilian direct recruits. The promotees from Class II have, behind them a very long experience of not less than one decade in the work undertaken by the Survey of India department. With this long experience of survey work,

particularly belonging to this department behind them, we do not see any justification for their being discriminated against in favour of army officers. We are not, therefore, prepared to accept that the army personnel in the Survey of India department have had any longer or better training required for Survey of India than either the direct recruits or promotees from Class II service to Class I service. The latter two categories appear to be as qualified and as experienced as the army officers to carry out the work of Survey of India. The only conclusion that is possible from the above discussion is that this classification made under the impugned rules between the army personnel and the civilian personnel has no reasonable connection with the object that is sought to be served.

We demur. Why ? The 1950 Rules, in our view, have two prominent features which are basic. The first one which we have already emphasised is that the military nominees do not shed their army service and merge into a new Service but undergo a partial absorption and preserve a substantial separateness. The second feature, which is perhaps more hurtful to the civilian sector, turns on Rule 5 which provides for seniority. The rule runs thus:

5. Seniority.-(1) On first appointment an officer will be in the grade of Deputy Superintending Surveyor (Formerly Assistant Superintendent) in Class I Service of the Survey of India.

(2) The seniority of military officers inter se will remain the same as in the Army.

(3) The seniority of military officers vis-a-vis directly recruited civilian officers will be determined by the year of allotment which will depend:

(i) in the case of military officers, on the date of first commission including ante-date, if any; and

(ii) in the case of directly recruited civilian officers, on the date of appointment ante-dated by two years.

(4) Civilian officers directly recruited on the results of any one examination will be junior to those recruited on the results of earlier examinations and senior to those recruited on the results of later examinations, the seniority inter se of those recruited in any one year being determined according to the order of merit in which they are placed by the Union Public Service Commission in the qualifying examination. (5) Among those allotted to the same year, military officers will rank senior to directly recruited civilian officers.

Rule 5A deals with promotion-officiating and substantive. A qualifying two-year probation and a further three years' service are a sine qua non for substantive promotion. But officiating promotions are open to all the officers, preference being given to those who have done more years of actual survey work, regardless of seniority. Even officiating posting needs the qualifying service of two

years and three years, earlier referred to. In this regard, the Class II officers who are directly promoted as S.S. have a definite advantage over the military men. But when it comes to confirmation in substantive promotion posts, the military personnel opting into the Survey of India get the advantage of Rule 5 which bestows on them the added benefit of the period of service from the date of first commission in the Army which may be anything between three to six years as against two years of ante-dated service which the civilian officers are entitled to tack on.

The 1960 Rules also require to be examined before we proceed to a discussion. Rule 3 speaks of the sources of recruitment or appointment Direct recruitment of qualified candidates, promotion or transfer from another service, appointment from the Corps of Engineer Officers of the Ministry of Defence and, rarely, admission of other qualified persons-these are the methods of entry into the service. A direct recruit must be a graduate with Mathematics or the holder of an Engineering Degree (there are other alternatives which are of minor significance). Rule 20A, which was an amendment made in 1965, insists that every person in the Service, appointed after the 1965 amendment, "shall be liable to serve in any defence service or post connected with the defence of India, for a period of not less than four years", including the training period. This, incidentally, emphasises the military adaptability expected of the Service. Rule 22 is important:

22. Seniority-(a) On the first appointment an officer will be in the grade of Deputy Superintending Surveyor (formerly Assistant Superintendent) in class I Service of the Survey of India.

(b) The seniority of military officers inter-se will remain the same as in the Army.

(c) The seniority of military officers vis-a-vis directly recruited civilian officers will be determined by the year of allotment which will depend :

(i) in the case of military officers, on the date of first commission including ante-dated if any; and

(ii) in the case of directly recruited civilian officers, on the date of appointment ante-dated by two years.

(d) The relative seniority of all direct recruits shall be determined by the order of merit in which they are selected for such appointment on the recommendations of the Union Public Service Commission, persons appointed as a result of an earlier selection being senior to those appointed as a result of a subsequent selection.

(e) Among those allotted to the same year, military officers will rank senior to directly recruited civil officers.

Another rule which must be mentioned for a complete understanding is to the effect that Class II officers, when promoted to Class I, are directly appointed as S.S. and, therefore, can skip the lower position of D.S.S.

In 1970, the promotional scheme was slightly modified, but the thrust of the argument that military engineers enjoyed an advantage remained.

The attack made by the civilian wing, consisting of two groups, namely, direct recruits and Class II promotees, is against three key rules of the 1950 Scheme, viz., Rules 5, 5A and 11 and, of course, their corresponding 1970 provisions based on Arts. 14 and 16 and the High Court has substantially acceded on the basis that seniority prescriptions are based on irrelevant criteria and arbitrariness is writ large in some of the impugned provisions. The Court has struck down Rules 22B, 22E of the 1960 Rules and Rules 5(2), 5(3), 5(5), 7 and 11 of the 1950 rules. However, the Court has circumspectly declined to open the Pandora's box and restricted the refixation of seniority and review of promotions "only from the date of the filing of the writ petition viz. 5-3-1974, because if we do it from a back date, it would be unsettling the promotions that had already been given before a challenge is made by the petitioners."

This comprehensive narration is sufficient to inaugurate a discussion on the merits of the contentions after a formulation of the critical issues.

The points urged by the learned Attorney General are two fold. Neither Art. 14 nor Art. 16 is violated because the Army recruits and the civilian entrants do not march into a common pool within the service of the Survey of India. There are two sources or streams which flow into the Service but remain immiscible layers. Since the Constitutional mandate of equal treatment applies only to equals, it cannot apply to the given situation. Secondly, assuming there is a united cadre, even then Art. 16 cannot invalidate the weightage for seniority assigned to the military recruits, since sensible supportive discremen, having a rational relation to the object of the Service exists and that is sufficient panacea to cure the infirmity of differential treatment. He further pressed that it was perfectly permissible, having regard to the different sources, to prescribe a weightage at the time of the entry into the Service. And, in the present case, the weightage is only at the time of entry into the Service. Thereafter, they are treated as equal for all purposes of promotion and what manifest advantage is derived by the military men in their career is a consequence of the initial addition of the commissioned service for the purposes of seniority.

These positions have been contested by Sri Govindan Nair, for the respondents, who has further argued that it is not proper for this Court to upset a finding of fact by the High Court unless there be something palpably erroneous on the face of the judgment. This is true and we should not slightly interfere save where there is grave error. Before we discuss these points, we must clear the ground regarding the necessity of the military presence in the survey Service. We have already quoted from the affidavit on behalf of the Union of India, which gives condensed reasons for induction of army engineers into the Survey of India. That terse statement crystallizes all that we have stated at some length earlier in this judgment.

An S.O.S. and the Survey of India must go into action maybe in the war-torn area, maybe for post-truce measurements. More military survey literature was placed in our hands by the learned Attorney General, making up for earlier defaults, to drive home the point that multifarious though the Survey's operations are, it does discharge duties secret, sensitive and strategic for Defence

requirements which necessitate the maintenance of an Army Engineering component willy-nilly.

This backdrop serves to highlight the issues on which we may turn the focus. We may now enter the area of encounter. What was a thoroughbred Military Engineering Corps suffered a metamorphosis by 1950 when a new set of rules of recruitment, composition and conditions of service, consistent with the new vision, rainbow of responsibilities and switch over to civilian departmentalisation, was brought about.

A critical dissection of the present set-up yields the result: While army engineers are definitely needed and are not expendable, the civilian accent on developmental work and the like justifies opening up the Service to recruits and promotees, non-military in source. Guided by this flexible realism and acting under the proviso to Art. 309 of the Constitution, the President of India has made Rules in 1950 to regulate the recruitment and conditions of service of the army personnel coming into the Survey of India. The anatomy of the 1950 Rules is important. It reserves 50% for the military Engineers by way of entitlement quota out of the total number to be recruited over a year as D.S.S. The other 50% was to have been divided equally between civilian recruits from the open market and the Class II officers. But, by an amendment of 1965, a modification was made to the effect that the promotees from Class II would enter the Class I Service directly as S.S. and not as D.S.S. Thus, the total number of vacancies each year at the D.S.S. level has to be filled by recruitment in the proportion of 50 and 25. To illustrate for clarity, if there are 75 DSS vacancies in a given year, 50 of them are reserved for military nominees and the remaining 25 are filled up by direct recruitment from the civilians. The expression 'recruitment' definitely means enlisting anew into a Service and so it may be taken that the army engineering quota is 50 out of the 75 and the remaining 25 belong to the civilian recruits.

By way of contrast, the members of the Class II Service have a quota of 25% but that proportion is to be worked out, in terms of the extant rule, not based on the number of vacancies at the S.S. level but by a calculation of the total number of posts at the S.S. and higher levels in the Service. The total number of S.S., Deputy Directors and Directors will be added up and 25% thereof will be recruited by promotion from Class II Service. The recruitment is only to the posts of Superintending Surveyors although the number to be so promoted is based upon totalling up the various posts at and above the S.S. level.

The total number of vacancies at the DSS level for each year shall be divided in the ratio of 2: 1 (50% for the Army Corps and 25% for direct recruits). The 50% reserved for the army corps shall be available to be filled by those candidates. The 25% seats to be filled by direct recruits shall be filled only by such recruits. Even if enough direct recruits are not available they will not be filled by the army nominees but shall be kept vacant to be carried forward and filled in later years by such direct recruits. A reasonable period for the carry forward scheme will be 3 years, not more. Likewise, military vacancies at the DSS level each year shall be filled only by such nominees. If enough such hands are not available, a similar procedure of carry forward will govern. For the SS posts 25% belongs to promotees from Class II officers. The total number will be worked out by adding all the posts of SS, Deputy Directors and Directors and Surveyor General and allotting one-fourth of it as the quota for Class II promotees for appointment as SS. Such is the reasonable interpretation of the

rule.

Now we come to the bitter bone of contention between the parties. Why should the 50% of military recruits be given a special weightage ? Should not all entrants into the DSS be treated alike without being afforded a handicap in the race? We see no difficulty in upholding this weightage, once we accept the reality that the military portion of the Survey is a compelling factor for national defence. We hold, on a study of the materials already adverted to, that sans they army engineers the Survey of India will become a functional failure in discharging its paramount duties in times of war and in spells of peace, defence spreads beyond hot war or cold war and sustains the sense of security by a state of ever readiness. There is enough literature to establish that the work done by the army wing of the Survey is far too important to be played with and such work is best done by that wing.

The military recruits, as has been already observed, are commissioned officers with 3 to 6 years of service. They have a certain salary scale and period of service when they are baptised into the Survey of India. Giving due weight to these factors, Rule 5 lays down the criteria for seniority as between the military sector of recruits and the civilian counter-parts. What needs to be appreciated is that for the very efficiency of the Survey of India, a substantial army element is structurally essential. Army engineers are invited into this Service not because this department historically belonged to the Defence Forces but because it cannot minister to one of the major objectives of its creation if it does not have engineers with military training, aptitude, courage, discipline and dare-devilry in hours of crisis. The necessity of the Survey, not opportunity to the armymen, has determined the need to attract and, therefore, to allot a quota in the upper echelons, viz., Class I, for military engineers. This, in turn, has desiderated the offer of reasonable terms and conditions for army men to join the Survey of India. The military engineers belong to the Corps of Engineer Officers. They are commissioned officers with service of 3 to 6 years before coming into the Survey which needs, not raw engineers, but men with some experience. They have prospects and scales of pay in the Defence Department. Why should they look at the Survey if on entry they are to lose their commissioned service and begin the rat race with civilian freshers? Why should they suffer pay cut by walking into the Survey of India? It is, therefore, fairly intelligible and basically equitable to allow military engineers credit for commissioned service and protection of already earned higher salaries.

The reasoning is simple. The functional compulsions of the Survey of India require army engineers to be inducted, say half its Class I strength. These engineering officers have to possess some years of experience. How, then, can they be attracted into the Survey except by assuring them what they were enjoying in their existing service, viz., credit for the years under commission in reckoning seniority and fitment of their salary at a point in the scale of Class I officers so that, by way of personal pay or otherwise, a cut may be obviated. This is not discrimination or favoured treatment but justice to those whom, of necessity, you want and must, therefore, pay what they were being paid in the Army and give service credit for the years on commission because you need men with specified years of commissioned service. To equate them with unequal civilian freshers is precisely the Procrustean exercise which is unconstitutional equality anathematised by Article 14.

Let us eye the issue from the egalitarian angle of Articles 14 and 16. It is trite law that equals shall be treated as equals and, in its application to public service, this simply means that once several

persons have become members of one service they stand as equals and cannot, thereafter, be invidiously differentiated for purposes of salary, seniority, promotion or otherwise, based on the source of recruitment or other adventitious factor. Birth- marks of public servants are obliterated on entry into a common pool and our country does not believe in official casteism or blue blood as assuring preferential treatment in the future career. The basic assumption for the application of this principle is that the various members or groups of recruits have fused into or integrated as one common service. Merely because the sources of recruitment are different, there cannot be apartheidisation within the common service.

The case of the Army engineers is not that they should be given 'ethnic' preference in official life because of military superiority. They merely plead that unequals should not be forced into equality without regard to their rights. They are unequal because their 3 to 6 years of commissioned service cannot be wished away when brought into the service shoulder to shoulder with raw recruits. Secondly, their salaries are higher and that should not be forfeited as punishment for entering the Survey Service. Not that the salary difference must be perpetuated but that at the point of entry into service their commissioned service and personal pay should be protected. The Service Rules safeguard both these—a just gesture without which many army engineers may not care to respond and the 'efficiency' factor of the Survey Service will fail in their absence.

The learned Attorney General also adopted the precedentially sanctified route of escape from the magnetic field of Articles 14 and 16, that if the two sources of entry never really flowed into a homogenised sangam but remained the Ganga and the Jamuna, no question of equality arose. A common pool where the plurality meets is a necessary postulate for the application of the equalist mandate. Here the army engineers, it is apparent from the rules, essentially continue to be army men but wear pro tempore Survey apparel, to be doffed any time specified in the rules themselves. Resultantly, the military and civilian members remain immiscible layers save for some purposes. The condition of integration of men from the divergent sources being absent, rulings have held Art. 16 is out of the way. Once it is agreed or found that at the entrance point the army engineers are justly given credit for the commissioned service which they carry with them, there is no further discrimination while in service on the score that they come from the Corps of Engineer Officers. All that happens thereafter is merely a manifestation of initial advantage of credit for commissioned service. For this reason, we negative the case of discrimination.

The relevant rulings not to burden but to brighten the points urged, may be referred to. In B. S. Gupta's case⁽¹⁾ where Art. 16 was agitated in a battle between promotees and direct recruits, one facet of Service Jurisprudence was illumined. We excerpt:

When considering this point it must be clearly understood that this Court is not concerned with Govt.'s policy in recruiting officers to any service. Government runs the service and it is presumed that it knows what is best in the public interest. Government knows the calibre of candidates available and it is for the Government to determine how a particular service is to be manned—whether by direct recruits or by promotees or both and, if by both, what should be the ratio between the two sources having regard to the age factor, experience and other exigencies of service.

Commissions and Committees appointed by the Government may indeed give useful advice but ultimately it is for the Government to decide for itself.

In the next place we have to remember that it would be wrong to pronounce adversely upon the new seniority rule merely because of its impact on the fortunes of any particular individual officer. Nor will it be correct to point that an individual officer 'A' would have fared better if the old quota rule and weightage rule had been restored.(1) We have to take an overall view to determine whether the rule now framed by the Government to determine seniority is just and fair.(2) A total conspectus does not persuade us that anything grossly unfair has been perpetrated.

Absent fusion into one integrated service, Art. 16 is not attracted, in a proposition entrenched by precedents. In Shujat Ali's case,(3) this Court pithily put it:

The two categories of Supervisors were thus never fused into one class and no question of unconstitutional discrimination could arise by reason of differential treatment being given to them.

We have read Shelat, J's observations in Wadhwa's case(4) to reinforce our view:

The principles on which discrimination and breach of Arts. 14 and 16 can be said to result have been by now so well settled that we do not think it necessary to repeat them here once again.

To sum up the position, the two services were from as early as 1937 and before separate. At no stage, even after provincialisation was decided upon and the principles of its implementation were drawn up there was any integration of the two. In fact, after considering the alternatives which the Government had before it, it opted, on consideration of difficulties of integration, for the alternative of keeping the two separate.(5) No principle under Art. 14 or Art. 16 is involved if such an integration was not brought about, for, considering the past history of the two services and the differences existing between them, Government could not be required to fuse them into one upon any principle emanating from the two Articles.(1) Going backwards still further, we find Ayyangar, J. in Joginder Singh(2) emphatically enunciating the same proposition:

If, as we hold, there was no integration (and integration has no meaning unless it is complete, for there is no such thing as partial integration) either expressly or by necessary implication, it would follow that it was not the impugned rules that created the two distinct cadres but that they existed independently of the rules and the only charge that could be laid against the rules in this respect was that they failed to effect an integration.

If the government order of September 27, 1957, did not integrate them into a single service, it would follow that the two remained as they started as two distinct services. If they were distinct services, there was no question of inter se seniority between members of the two services, nor of any comparison between the two in the matter of

promotion for founding an argument based upon Art. 14 or Art. 16(1). They started dissimilarly and they continued dissimilarly and any dissimilarity in their treatment would not be a denial of equal opportunity, for it is common ground that within each group there is no denial of that freedom guaranteed by the two articles.(3) Likewise, in Jaisinghani,(4) the same note has been struck. To pursue precedents beyond a point is a tiring adventure which reaches a point of no return. It is too late to upset settled law save where the point of extravaganza is reached. Here such a situation is yet to come.

Again, Sri Govindan Nair's submission suffers damage from the following observations in Ganga Ram's(5) case.

The direct recruits and the promotees like the petitioners in our opinion, clearly constitute different classes and this classification is sustainable on intelligible differentia which has a reasonable connection with the object of efficiency sought to be achieved.

The distinction between direct recruits and promotees as two sources of recruitment being a recognised difference, nor obnoxious to the equality clauses, the provisions which concern us cannot be struck down on the ratio of this decision.(1) Let us examine the facts briefly to see whether the fundamentals of constitutional equality are followed in the Service scheme. The army engineers remain in 'uniform' as it were but wear a Survey of India overcoat. They do not merge or fuse into a single integrated service with the civilian recruits but remain as an immiscible layer of the Class I Service, the other layer being the civilians. The two wings remain close but separate, not one homogenised family, as the various rules eloquently proclaim.

The Army engineers are formally part of the Survey of India but factually retain the vital pattern of life of the army and close nexus with their official prospects, conditions and control as if they had continued in the Army. The 1950 Rules bring out the following incidents of service boldly. Notwithstanding their having left the Corps Engineer Officers Service and entering the Survey Service, they continue to wear uniforms, they get notional promotions in the Army when they earn corresponding promotions in the Survey of India. More significantly, they secure Army promotions only if they pass the requisite army tests ab extra. They can be recalled by the Army and, for a certain period, they themselves may opt back to the army. They continue to be broadly under the control of the Commander-in-Chief and when inefficiency is noticed, they can be called back to the army for being dealt with appropriately. They have to undergo the regular periodical drills in the army and their disciplinary control is not divested from the Army Chiefs. There are many other such details, the cumulative impact of which is that they have two masters, as it were; they are in two Services, as it were; they are under two parents-natural and adopted. This is a unique pattern where the Army members remain with one foot in the Army and the other in the Survey of India. A conspectus of the facts and circumstances governing the service convinces us that there is no total integration of the Army personnel into the Survey Service. They are in it and yet out of it. This is what we may call a sui generis Service and indubitably it can be asserted that they have not fully fused into a common pool. Absent such complete integration, Article 14 or 16 cannot be invoked.

The present case plainly falls in the hands-off zone and so the court must leave the injustice, if any, to be corrected, if needed, by other processes. Our exploration has revealed that the Survey of India is a civilian department rendering varied services to non-Defence spheres of the Central Government and to State Governments. So its composition cannot be reasonably confined to military personnel only. But critical Defence-oriented work is also done, not only in seasons of national emergency but also during peace spans. The border line between national security by the Defence forces and developmental projects by civil services is becoming obsolete. Defence is not only on the battle front but also in the strategic rear, in the farms and factories, in efficient supplies and essential services, in mapping second lines of defence and routes of troop movements, all of them having to be executed on a war footing. Wings which can be mobilised at instant's notice, forces which will build with blitz speed, have to be in the sheath to be drawn out like a sword on an alarm signal. More than all, as earlier elaborated, the tasks of the Survey for the Defence are in times of Emergency top priority items. So a sizeable section of men with army background, and military aptitude, with quick reflexes and familiar with Defence team work, must be kept in reserve all the time. It follows that a good proportion of Army engineers are a 'must' for the Survey. It is enough to have 25% or 50% from military engineers a matter of fine-tuning of policy for which the judiciary has no genius and the Administration has a reach of materials and range of expertise so that Courts must keep out, save where irrational criteria, irrelevant factors, mala fide motives or gross folly enter the verdict.

Have any such invalidatory infirmities been established by the challengers here ? If the induction of the army engineers has a nexus with the *raison d'être* of the Survey of India, the exact dosage needed to be drawn from that source for functional adequacy is not susceptible of judicial measurement. If gross exaggeration is indulged in to boost the military component or non-existent or illusory requirements are invented for the same purpose, taking for granted judicial gullibility or jurisdictional exile, the Court will call the bluff. But here 50% of Class I services, from a historical need-based or other approach, cannot be called irrational, impertinent or improvident.

Likewise, the award of the length of commissioned services in the Army as service in the Survey of India cannot be dismissed as arbitrary or irrelevant. The necessity to attract such officers is a factor. The reality of their engineering experience on commission cannot be wished away. The value of such experience for the Survey of India with Defence commitments argues itself. Whether such services should be given credit wholly or at all in the new Service is more a matter of pragmatic wisdom beyond the bounds of irrationality, arbitrary fancy or departmental quasi-nepotism. It is difficult to dislodge the rules, fixing the quota and grafting of service while on Army Commission on to the Survey of India service, as favoured treatment devoid of rational foundation. If you need such army commissioned engineers-and the Survey for its success wants them-you have to pay the fair price, not ransom. That is all there is to it.

Sri Govindan Nair, with assertive argument, gave us anxious moments when he pleaded for minimum justice to the civilian elements. He said that the impugned rules were so designed, or did so result in the working, that all civilians, recruit or promotee, who came in with equal expectations like his military analogue, would be so outwitted at all higher levels that promotions, even in long official careers would be hopes that sour into dupes and promises that wither away as teasing

illusions. In effect, even if not in intent, if a rule produces indefensible disparities, whatever the specious reasons for engrafting service weightage for the army recruits, we may have had to diagnose the malady of such frustrating inequality. After all, civilian entrants are not expendable commodities, especially when considerable civil developmental undertakings sustain the size of the service. And their contentment through promotional avenues is a relevant factor. The Survey of India is not a civil service 'sold' to the military, stamped by war psychosis. Nor does the philosophy of Art. 14 or Art. 16 contemplate de jure classification and de facto casteification in public services based on some meretricious or plausible differentiation. Constitutional legalistics can never drown the fundamental theses that, as the thrust of Thomas's case(1) and the tail-piece of Triloki Nath Khosa's case(2) bring out, equality clauses in our constitutional ethic have an equalising message and egalitarian meaning which cannot be subverted by discovering classification between groups and perpetuating the inferior-superior complex by a neo- doctrine. Judges may interpret, even make viable, but not whittle down or undo the essence of the Article.

This tendency, in an elitist society with a dischard caste mentality, is a disservice to our founding faith, even if judicially sanctified. Subba Rao J. hit the nail on the head when he cautioned in *Lachhman Das v. State of Punjab*:(1) The doctrine of classification is only a subsidiary rule evolved by courts to give a practical content to the said doctrine. Overemphasis on the doctrine of classification or an anxious and sustained attempt to discover some basic for classification may gradually and imperceptibly deprive the article of its glorious content. That process would inevitably end in substituting the doctrine of classification for the doctrine of equality; the fundamental right to equality before the law and the equal protection of the laws may be replaced by the doctrine of classification. The quintessence of the constitutional code of equality is brought out also by Bose, J. in *Bidi Supply Co. case*(2) The truth is that it is impossible to be precise, for we are dealing with intangibles and though the results are clear it is impossible to pin the thought down to any precise analysis. Article 14 sets out, to my mind, an attitude of mind, a way of life, rather than a precise rule of law. It embodies a general awareness in the consciousness of the people at large of something that exists and which is very real but which cannot be pinned down to any precise analysis of fact save to say in a given case that it falls this side of the line or that, and because of that decisions on the same point will vary as conditions vary, one conclusion in one part of the country and another somewhere else; one decision today and another tomorrow when the basis of society has altered and the structure of current social thinking is different. It is not the law that alters but the changing conditions of the times and article 14 narrows down to a question of fact which must be determined by the highest Judges in the land as each case arises.

The constitutional goal is to break down inequalities steadily between man and man, whether based on status or talent. Masses of men have suffered so long from social suppressions and environmental inhibitions and to deliver them out of such stratification and petrification came the message of social justice, blowing like winds of change, with an accent on distributive justice ensured by the rule of real equal opportunity. This basic mandate of equality cannot be subverted by the pragmatic plea of classified equality without robbing Arts. 14 to 16 of their spiritual kernel in the process of decoding. Status to values must wither away in the march to the constitutional goals. Every Article of Part III is an article of faith of our nation and is the formal expression of a moral-spiritual mandate, not a string of words whose meaning of meanings can be played with by

intellectual exercises favouring the Establishment. The paramount law is value-loaded. Our freedom is in peril if equality is by judicial reconstruction, a refined validation of inequality. Princes shall be treated equally but pariahs will continue where they are-Why? because Art. 14 means only equality among equals, a self-evident statement without solemn pronouncement. Mr. Justice Subba Rao in Lachhman Das's case⁽¹⁾ warned against this pernicious potential. We pollute our cultural stream if we narrow the flow of constitutional equality to the little trickle of equals being made equals. The dynamic demand of levelling up unequals to the level of the higher brackets is non- negotiable albeit gradual.

This caveat is sounded in the last paragraph of the majority judgment in Triloki Nath⁽²⁾ and is writ large in the whole of the concurring minority judgment. It binds.

But we hope that this judgment will not be construed as a charter for making minute and microcosmic classifications. Excellence is, or ought to be, the goal of all good government and excellence and equality are not friendly bed- fellows. A pragmatic approach has therefore to be adopted in order to harmonize the requirements of public services with the aspirations of public servants. But let us not evolve, through imperceptible extensions, a theory of classification which may subvert, perhaps submerge, the precious guarantee of equality. The eminent spirit of an ideal society is equality and so we must not be left to ask in wonderment. What after all is the operational residue of equality and equal opportunity?

The point Sri Govindan Nair made from Triloki Nath⁽³⁾ is, on principle, well taken but on facts, fallacious. The learned Attorney General, in the last instalment of information furnished in the course of his reply, did convince us that no such disaster as was painted did or would befall unless we take a myopic view.

If we had been satisfied that the end-product of the provision (Rule 5) was a manipulation of continued seniority, beyond allowance for some differences, a perpetual suppression of the civilian wing and a back-door entry into and occupancy of all higher positions by the military men, it might have been a mockery of equality. But the story is that some advantage is secured by the military recruits which is intended and justified. Certainly, in the promotional scale this will be reflected. But no monopoly of all promotions vests in the commissioned recruits. It is a case of fluctuating fortunes, inevitable in interlacing two sets of people coming from two sources with different backgrounds and assets. As expressed earlier, rigid or relentless equalisation of divergent categories who have been brought into one Service is the Procrustean bed process, contrary to democratic social dynamics.

In the first few years, the army wing had a better deal but in the next spell the civilian wing more than made up. In the next span some change occurs and a projection into the decade ahead shows that the civilians will outnumber the army men at the next two tiers. Maybe, the Surveyor General may continue to be a 'uniformed' engineer. We do not see the pathetic picture held out by counsel and the differences we do notice are distances away from the creation of class legislation. We do not strike down the rule as constitutionally obnoxious.

Sri Govindan Nair drew our attention to Pay Commission Reports which had strongly recommended fair treatment to the civilian wing by making the higher positions realistically accessible to them. Prima facie, there is some grievance if promotions at the top are totally sealed off, not in law but in fact. And simmering discontent of a whole wing is no small matter. Maybe, when the apex is occupied always by a 'brass' boss the working of the rules and of the department may be tilted. We do consider that recommendations of the Pay Commission deserve Central Government's early attention. Flexible provisions for promotion to higher positions which will not make the department lop-sided, or vertical division of the civilian and military wings without injury to integrity and efficiency may meet the needs of equality. Policy is for the Executive, not the Judicative wing. We find no unconstitutionality but discontent should not be neglected in good government.

A measure of agreement, with marginal differences in the interpretation of the rules, emerged in the course of the debate. We may as well set it down to avoid future doubt. The learned Attorney General stated, with a view to silence the grievance of the respondents, that for promotions beyond Superintending Surveyor, even officiating S.S. are considered. It is not right to contend, he said, that only on confirmation they are considered for promotion as Deputy Directors. Indeed, the learned Attorney General pointed out that many Deputy Directors have been only officiating SSs. We accept this as correct. If the officiating SSs are also included for higher promotion based on merit the wind of inequity is, pro tanto, taken out of the civilian sails.

Likewise, it is useful to clarify, in the light of the 1965 amendment to the Rules providing for Class II officers being promoted straight as SS (not DSS), that the recruitment to the DSS vacancies each year and to the SS by promotion from Class II each year shall be as explained earlier.

Sri Govindan Nair, apprehending adverse winds in reversal of the High Court's conclusion, raised fresh contentions which he was not permitted to put forward because they were new and urged only in the Supreme Court. Creative thinking is good, if it dawns in good time; for, according to our processual law, arguments unborne on the record in the High Court have no chance as a post-script in the Supreme Court. For instance, he urged that commissioned officers governed by the Army Act could not be governed by any other Service Rules. So much so, the 1950 Rules, being a deviation from the Army Rules, were invalid. We illustrate but not exhaust and, in any case, do not investigate.

The social philosophy of our fundamental law is a perennial flow, rising and falling, rushing to push out obstructing rocks and slowing to erode a doctrinal distortion, the power being geared to the good of the people in terms of Justice, social economic and political. From this futuristic standpoint, every decision of the Supreme Court is the focal point of the battle of the tenses, of social change versus social stability. We leave these seminal issues for future consideration when they more directly demand decision. Enough unto the day is the evil thereof.

We allow the appeals but intricate constitutional questions when decided by this Court to declare the law under Art. 141 should be an exception to the conventional rule of costs following the event, unless other circumstances warrant. So no costs.

P. B. R.

Appeals allowed.

