
(1974) 04 RAJ CK 0006

In the Rajasthan High Court

Case No : Civil Writ Petition No. 961 of 1973

Brij Vallabh Singh Mehta

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 16-04-1974

Acts Referred:

Citation : (1974) RLW 364 : (1974) WLN 419

Hon'ble Judges : Kan Singh, J

Bench : Single Bench

Judgement

Kan Singh, J.—Shri Brij Vallabh Singh Mehta, who is a member of the Rajasthan Administrative Service to be shortly described as R.A.S. seeks an appropriate writ, direction or order (i) for quashing the appointment of respondent Shri Brahma Dutt Sharma to the selection of the R.A.S. made with effect from 26.12.70, (ii) to ordain the State Government to appoint the petitioner to the selection scale of the R.A.S. vide Shri Brahma Dutt Sharma with effect from 26 12 70, (ii) in the alternative the respondents be directed to get the case of the petitioner reconsidered for appointment to the selection scale by the Departmental Promotion Committee, as there would be one vacancy in the selection grade from 26 12 70 Consequential reliefs are prayed for if any of the above prayers are allowed for directing the Union of India and the State of Rajasthan restraining them from giving effect to the orders of appointments by promotion to respondents Nos. 3 to 32 to the selection grade.

2. Further, if in the meantime any of the respondents Nos. 3 to 32 i" found to have been appointed to the Indian Administrative Service then such order or orders of the appointment be quashed and the Union of India and the State of Rajasthan be directed to reconsider the case of the petitioner for appointment by promotion to the Indian Administrative Service against the vacancy or vacancies existing upto July, 1973. The R.A.S. comprises three scales of pay one is ordinary time scale Rs. 375 850, the next one is known as the senior scale Rs. 700-1200, and the still higher scale is known as the selection grade Rs. 1100-1500 At

present the number of posts in the senior scale are said to be 98 and those in the selection scale are 40. The entry into the ordinary time scale is by direct recruitment through the Public Service Commission as also by promotion from the Tehsildar Service and other connected services and a quota is fixed for promotion and direct recruitment. The entry into the selection grade is for those in the ordinary scale of the R.A.S. I will be referring to the procedure for selection to the senior scale hereinafter. Likewise, entry to the selection grade is from amongst those who are in the senior scale of R.A.S. that again is by a procedure which I will be referring to hereinafter, but I may note that the procedure is the same for entry to the senior scale as for that into the selection grade. There is no dispute about the relative seniority of the petitioner and other respondents so far as the senior scale of R.A.S. is concerned. The Government determined 31 vacancies in the selection grade to be filled in by promotion and constituted a Departmental Promotion Committee, for the year 1970. The Departmental Promotion Committee concluded its proceedings on 28.10.70. The quota for promotion was one-third by the principle of merit alone and two-thirds by the principle of seniority cum-merit. Thus, the Departmental Promotion Committee thought of making recommendations for 20 vacancies out of 31 on the principle of seniority cum-merit and for 11 vacancies on the basis of merit alone. The controversy has arisen on account of Shri Brahma Dutt Sharma being appointed in the selection grade and, therefore, I may make a mention of it here. Shri Brahma Dutt Sharma was a member of the Rajasthan Administrative Service in the senior scale like the petitioner. Shri Brahma Dutt Sharma was senior to him. Shri Brahma Dutt Sharma superannuated on 25.11.70 and when the Departmental Promotion Committee met to formulate its recommendations it felt that as Shri Brahma Dutt Sharma was going to retire in the near future on 25.11.70, an additional name be decided upon. Accordingly, the Departmental Promotion Committee noted down in its minutes that in case Shri Brahma Dutt Sharma were not appointed to the selection grade Shri Matadin be appointed in his place. Then, the Departmental Promotion Committee decided to make recommendations for 32 persons in all including 11 on the principle of merit, but somehow when the recommendations were made the name of Shri Matadin was not included as an extra. On 26.12.70 the Government made appointments to the selection grade on the basis of the recommendations of the Departmental Promotion Committee, but they did not appoint Shri Brahma Dutt Sharma and the reason is obvious that he had already retired when the Government came to make the appointments. The Government, therefore, appointed Shri Matadin to the selection grade. The names of the officers recommended by the D.P.C. on the principle of seniority-cum-merit were contained in the list Appendix A, & the names of 11 persons who were recommended on the principle of merit, were contained in Appendix B. Thereafter it seems that in the meantime the formula as contained in a Government circular on the basis of which the selections to higher time scales were being made, came to be challenged by a writ petition filed by one Shri Guman Singh. That case had a chequered history. The merit formula as contained in the Government circular on the basis of which

recommendations were made by the Departmental Promotion Committee was struck down and the appointments were quashed by a Single Bench of this Court presided over by me. The Government took a special appeal before a Division Bench of this Court and the judgment of the Single Bench was reversed. Against the judgment of the Division Bench Shri Guman Singh went up in appeal to the Supreme Court and their Lordships of the Supreme Court by their judgment reported as 1971 SLR 799, reversed the judgment of the Division Bench and issued certain directions to the Government for reconsidering the case of Shri Guman Singh. In the light of the observations of their Lordships in this judgment the Government re-constituted the Departmental Promotion Committee and called upon it to review the cases of the R.A.S. officers for promotion to the selection grade. The Departmental Promotion Committee met in October/November, 1972 and reviewed the cases of officers who came to be promoted with effect from 26 12 70 As a result of the review the Departmental Promotion Committee made fresh recommendations to the State Government in the background of the situation obtaining at the time the recommendations were made by the previous Departmental Promotion Committee which met in 1970 On the basis of the recommendations "he State Government passed an order appointing respondents Nos. 3 to 32 in the selection grade of RAS. The pensioner was not amongst those who came to be appointed even as a result of the review. The petitioner contends that the Government could have made appointments on the basis of quota of 1 : 2 as between those selected on the basis of merit as one and those selected on the basis of seniority-cum merit The petitioner's contention is that Shri Brahma Dutt Sharma who had retired on 25.11 70 and was no longer a member of the Rajasthan Administrative Service on 26 12 70, could not have been appointed to the selection grade of the R.A.S. effective from 26 12 70, and if that appointment is taken to be a nullity and thus ignored then there would be one vacancy against the posts declared to be filled in 1970 Learned Counsel points out that 20 persons; were appointed on the principle of seniority-cum-merit and this included Shri Brahma Dutt Sharma & 11 persons were appointed on the basis of merit alone Thus if Shri Brahma Dutt Sharma's name is excluded for all purposes then the result, would be that only 19 persons were appointed on the basis of seniority-cum-merit and this would leave one vacancy against which the petitioner should have been considered. If this vacancy is left unfilled for the year 1970 then the resultant position would be. that the quota rule of appointment on merit and appointments on seniority-cum-merit would be violated. On this premise the petitioner further contends that if the petitioner were appointed against this available one vacancy against the quota of seniority-cum merit then he would rank senior to those who were selected on the basis of merit alone as the rule is that as amongst those who are selected on the basis of seniority-cum merit and on the basis of merit alone, those selected on the basis of seniority-cum-merit will rank senior and will not yield their seniority in the lower cadre to those who come on the principle of merit alone. From this postulate it is further contended that the promotions to the Indian Administrative Service cadre made on the basis of this wrong

assignment of seniority will stand vitiated as the petitioner's case who was senior was not considered by the body which made recommendations for promotion to the Indian Administrative Service. The petitioner has further averred that in May, 1973 the Departmental Promotion Committee was again constituted to select persons for the selection grade of R.A.S. and that committee recommended the petitioner's name as No. 1 on the list and he came to be appointed by the Government to the selection grade with effect from 4 5 73. The petitioner strongly relies on this circumstance that the interval between the two meetings of the Departmental Promotion Committee which reviewed the cases in October/November, 1972 and which made the recommendations in May, 1973 was not much and the petitioner was adjudged suitable for appointment to the selection grade and, therefore, there was no reason to think that if the mistake about Brahma Dutt Sharma's appointment to the selection grade from 26 12 70 were not committed then the petitioner would have been recommended being the (suitable person for such selection to the selection grade.

3. The writ petition has been opposed by the State of Rajasthan. The Union of India or the other respondents have not filed any reply, nor have they appeared at the time of hearing of the writ petition. Which e the State Government has not questioned the facts recaptulated above, it has strenuously contended that there could be no vacancy in 1970 against which the petitioner could lay his claim for consideration. Learned Dy. Govt. Advocate submits that the Departmental Promotion Committee that met in 1970 was required to make recommendations for 20 posts on the basis of seniority-cum-merit and 11 on the basis of merit alone which it had done and as on 28.10.70 when the recommendations were made Shri Brahma Dutt Sharma was in the senior scale of R.A.S. and was entitled to be considered, his name was recommended for appointment and the Departmental Promotion Committee which subsequently met in May, 1972 to review the cases in the light of the judgment in Guman Singh's case could keep only to the foot steps of the previous Departmental Promotion Committee and as that Departmental Promotion Committee had recommended the name of Shri Brahma Dutt Sharma the reviewing Departmental Promotion Committee would likewise recommend the name of Shri Brahma Dutt Sharma and as the appointments had to be made by the Government on the basis of the recommendations made by the Departmental Promotion Committee the Government had made appointment of Shri Brahma Dutt Sharma and, therefore, it cannot be said, argues learned Deputy Government Advocate, that any vacancy remained to be filled up. In the alternative, he contends that even if one vacancy can be said to remain on account of the mistaken appointment of Shri Brahma Dutt Sharma from 26.12.70 then too it was the discretion of the Government to keep the post vacant and not to fill it. Yet again learned Deputy Government Advocate submits tint the vacancy that remained in 1970 could be carried forward to subsequent years and appointments be made against that vacancy effective from subsequent years. In that situation, according to learned Deputy Government Advocate, the petitioner has no right to question the

appointments of respondents Nos. 3 to 32 in the selection grade of R.A.S.

4. It will be convenient to read the relevant rules. The Rajasthan Administrative Service Rules, 1954 were made by the Rajpramukh of Rajasthan in 1954. The "Rajpramukh" as a result of the constitutional changes resulting in the present State of Rajasthan came to be substituted by the term "Governor". Part I of these Rules is general. Part II is about the cadre and there is only one rule in this Part viz., Rule 6 which is as follows:

Rule 6 Strength of the Service : The strength of the Services and the nature of posts therein shall be as specified in Schedule I

Provided:

(i) that Government may revise the Schedule every five years or earlier if necessary; and

(ii) that Government may leave unfilled or hold in abeyance any vacant post without thereby entitling any person to compensation or may create additional temporary posts in the Service, from time to time, as may be found necessary.

Part III deals with recruitment. It provides for two modes of recruitment : one by a competitive examination, and the other by promotion of administrative subordinates and from other categories of services. Rule 7 lays down the sources of recruitment and Sub-rule (2) makes provision for the ratio in which posts in the cadre are to be filled. Rule 9 is about the determination of vacancies and it is as follows:

Rule 9 Determination of vacancies : Subject to the provisions in these rules, Government shall determine at the commencement of every year the number of vacancies anticipated during the following calendar year and the number of persons likely to be recruited by each method.

Part IV lays down the procedure for direct recruitment. Part V is about the procedure for recruitment by promotion. Rule 28 lays down that as soon as it is decided that a certain number of posts shall be filled by promotion, the Special Secretary shall call upon the Heads of Departments concerned and the Board of Revenue to submit the correct and complete list containing names of persons in order of seniority not exceeding 5 times the number of vacancies; such persons should be eligible for promotion under the Rules. The Special Secretary shall then put up their names as also their personal files and confidential rolls before the Committee constituted under Sub-rule (7) which I may read:

Sub-rule (7). A Committee consisting of the Chairman of the Commission as Chairman, the Chairman of the Board, the Head of Department nominated by the Chief Secretary & the Development Commissioner with the Special Secretary as Member Secretary of the Committee (hereinafter called the Selection Committee), shall consider the cases of all the candidates included in the list prepared under Sub-rule (1) interviewing such of them as they consider

necessary, and shall select a number of candidates equal to the number of vacancies in the service likely to be filled by promotion including likely officiating appointments, and shall arrange their names in a list in order of seniority. If any person's name recommended in the previous year is deleted from the select list or a person ignored in the previous year is selected in the subsequent year, reasons for such deletion or addition shall be recorded by the Selection Committee. They shall also select from the remaining candidates a number which shall be 50% of the total number of candidates selected for the first list and shall arrange their names in a supplementary list in order of seniority.

Explanations : For the purposes of this Sub-rule and Sub-rule (11), the seniority inter-se of two or more administrative subordinates of different categories shall be determined by the length of service of each. In case of the date of appointment as an administrative subordinate being the same their seniority shall be in the following order:

1. Assistant Sales Tax Officer
2. Inspector, Registration & Stamps
3. Regional Inspector, Local Bodies
4. Tehsildar
- 5 Assistant Regional Transport Officer
6. Inspector (Grade I) Excise & Taxation
7. Inspector (Grade I) Devasthan

Provided that a person who is not placed in the select list in one year but is brought into select list in a subsequent year, he- shall be placed lower in the select list than all persons selected in previous years.

Then even for promotion there are two modes: one mode is based on the principle of seniority-cum merit, and the other is on the basis of merit alone, I may read Rule 28B in this behalf:

Rule 28.B. Promotion by selection on basis of Merit:

(1). Appointment by promotion to posts in the Service shall be made by selection, strictly on the basis of merit and on the basis of Seniority-cum-merit in proportion of 1:2.

Provided that if the appointing authority is satisfied that suitable persons are not available for appointment by promotion strictly on the basis of merit in a particular year, appointment by promotion on the basis of seniority-cum-merit may be made in the same manner as specified in these rules.

(2). Selection strictly on the basis of merit shall be made from amongst persons who are otherwise eligible for promotion under these rules; the number of

eligible candidates to be considered for the purpose shall be ten times the total number of vacancies to be filled in on the basis of merit and seniority-cum-merit provided such number is available; where the number of eligible candidates exceeds ten times the number of vacancies, the requisite number of senior most persons shall be considered for the purpose.

Provided that for the first promotion in the same cadre (from a lower grade to a higher grade) against the merit quota, only such of the persons shall unless a higher period is prescribed elsewhere in these rules, be eligible who have put in not less than six years service in the lower grade of the cadre.

(3) Except as otherwise expressly provided in this rule, the procedure prescribed for selection to the post on the basis of seniority-cum-merit shall, so far as may be, followed in making selection strictly on the basis of merit,

(4) The Committee shall prepare a separate list of candidates selected by it on the basis of merit and shall arrange their names in order of preference.

(5) Where consultation with the Commission is necessary, the list prepared by the Committee shall be forwarded to the Commission by the appointing authority along with the personal files and confidential rolls of all persons whose names have been considered by the Committee.

(6) The Committee shall consider the lists prepared by the Committee along with other documents received from the appointing authority and unless any change is considered necessary, shall approve the lists and if the Commission considers it necessary to make any change in the lists received from the appointing authority the Commission shall inform the appointing authority of the changes proposed and the appointing authority, after taking into account the comments if any, may approve the lists finally with such modifications as may, in his opinion, be just and proper.

(7) Appointment shall be made by the appointing authority taking persons out of the list finally approved under the preceding Sub-rule in the order in which they have been placed in the list.

(8) Among persons appointed in the same class, category or grade of posts during the same year, persons appointed on the basis of seniority-cum-merit shall rank senior to those appointed by promotion on the basis of merit; the seniority inter-se of persons appointed in the same class, category or grade of posts by promotion strictly on merit shall, without regard to the order of preference, be determined as if such persons had been appointed by promotion on the seniority-cum-merit.

(9) The provisions of this rule shall have effect notwithstanding anything to the contrary contained in any other provisions of these rules.

Explanation.-For the purpose of determining the number of vacancies to be filled on either basis under Sub-rule (1), the following cyclic order shall be followed

from year to year.

The first by merit, the next two by seniority cum-merit, the next one by merit, the next two by seniority-cum-merit, the cycle to be repeated.

Sub-rule (8) of the above may be specially noticed. It lays down that amongst persons appointed in the same class, grade or post during the same year, persons appointed on the basis of seniority-cum-merit shall rank senior to those appointed by promotion on the basis of merit alone and the seniority inter se between persons appointed by promotion strictly on the merit shall, without regard to the order of preference, be determined as if such persons had been appointed on the principle of seniority-cum merit. Part VII deals with appointment, probation and confirmation of officers. Rule 32 is about the appointment to senior posts and it runs as follows:

Rule 32 (1) Appointment to senior posts.--Appointment to senior scale and selection grade posts shall be made by Government from amongst the members of the service on the basis of merit and seniority-cum-merit in the ratio of 1 : 2 on the recommendations of a Committee which shall consist of the following:

(1) Chairman, Rajasthan Public Service Commission or a Member nominated by him. Chairman (2) Chairman, Board of Revenue Memher (3) Commissioner, Development Department Memher (4) Special Secretary to Government in the Memher Appointments Department. Secretary

(2) Except as provided in this rule, the procedure and the principles for selection by merit shall, in so far as it may apply, be the same as provided in Rule 28-B. For selection by seniority-cum merit the Committee shall consider the cases of all the persons eligible for promotion by examining their Confidential Rolls and personal files lad interviewing such of them as they may deem necessary, and shall select a number of candidates equal to the number vacancies likely to be filled by promotion by seniority cum-merit.

Provided:

(1) That appointment to the senior or selection grade post m be made by Government by appointing thereto temporarily a person eligible for appointment by promotion to the service under the provisions of these rules.

(2) No appointment made under proviso (i) above shall be continued beyond a period of one year without referring it to the Commission for their concurrence and shall be terminated immediately on their refusal to concur.

5. It will be observed from the above that appointments to posts which includes senior scale and selection grade posts have to be made the basis of merit and seniority-cum-merit in the ratio of 1:2. Thus the scheme of the Rules appears to be some what like this: Accordinng to Rule 9, the Government is bound to determine at the commencement of every year the number of vacancies anticipated during the following calender year and also the number of persons

likely to be recruited by each method. Thus, it is the number of vacancies or posts that are determined for a particular year that will furnish the basis for allocation of the quota as between the persons who are promoted on the basis of merit alone and those who are promoted on the basis of seniority-cum-merit. As between persons promoted in the same year the rule is that those promoted on the basis of seniority cum-merit shall rank senior to those promoted on the basis of merit alone and as between themselves the persons promoted on the basis of merit alone shall maintain their inter-se seniority in the lower grade. It seems that the intention of the rule making authority was that the period within which the vacancies are to be counted for allocation of quota is one calendar year. Even if the vacancies for some reason or the other are not filled in during that particular year in which they had occurred the allocation of vacancies for purposes of the quota between those promoted on the basis of merit alone and those promoted on the basis of seniority-cum-merit has to be done year-wise. The vacancies for a number of years cannot be lumped up and then allocated because that may result in disparities and may affect seniority of some persons. In this light let us now examine the present case.

6. In the year 1970 the number of vacancies declared to be filled in by promotion was 31 for the selection grade, out of them 11 were to be filled in on the principle of merit alone and 20 on the basis of seniority-cum-merit. These selections came to be reviewed as a result of Guman Singh's case decided by the Supreme Court and the Departmental Promotion Committee was constituted in 1972. It reviewed the position in the light of the situation obtained in 1970 when the first Departmental Promotion Committee met. What is remarkable, however, is that in 1970 the Government did not appoint Shri Brahma Dutt Sharma by their order dated 28.12.70 for the simple reason that he had retired and instead they appointed Shri Matadin thus keeping the number of those appointed on the basis of seniority-cum-merit at 20. In 1972, the reviewing Departmental Promotion Committee recommended the name of Shri Brahma Dutt Sharma and the justification is said to be that the matter had to be reviewed in the light of the situation obtaining in October, 1970 when the first Departmental Promotion Committee made its recommendations. This time, however, the Government appointed Shri Brahma Dutt Sharma in the selection grade with effect from 28.12.70 and 19 others thereby keeping the number at 20. Learned Deputy Government Advocate tries to justify the action of the reviewing Departmental Promotion Committee on the ground that as the first Departmental Promotion Committee had recommended the name of Shri Brahma Dutt Sharma, the reviewing Departmental Promotion Committee could not have done otherwise because at the time the first Departmental Promotion Committee met Shri Brahma Dutt Sharma was in service. For justifying the appointment order of the State Government passed on the recommendations of the reviewing Departmental Promotion Committee the learned Dy. Government Advocate submits that the Government had no discretion in the matter of appointment as they were bound to make appointments on the basis of the

recommendations of the Departmental Promotion Committee. Thus, according to him, no vacancy could be available in the year 1970. Now, the reviewing Departmental Promotion Committee was certainly justified in reconsidering the cases for promotion in the light of the situation obtaining at the time the first Departmental Promotion Committee made its recommendations, but that does not mean that it should ignore the realities. To test the argument let us suppose any of the candidates recommended by the first Departmental Promotion Committee were to die in the meantime, though one would not wish that, is the reviewing Departmental Promotion Committee still required to recommend the name of such dead person for appointment? The answer is emphatically "No" and the learned Deputy Government Advocate has nothing to say against this. The position cannot be otherwise in the case of a person who has already retired from service, Shri Brahma Dutt Sharma having retired from service on 25.11.70 it is absurd to think that the Departmental Promotion Committee meeting in the year of grace 1972 should make a recommendation for his promotion to the selection grade of RAS. which is to be effective from 26.12.70. Even if for one reason or the other the reviewing Departmental Promotion Committee was persuaded to recommend the name of Shri Brahma Dutt Sharma, the Government had little justification for appointing Shri Brahma Dutt Sharma in the selection grade of the R.A.S. from 26.12.70 on which date Shri Brahma Dutt Sharma was no longer in service. It is good that the Government respect the recommendations of the Departmental Promotion Committee, but it will not be showing any disrespect to such recommendations if it were to refuse to accept the recommendation in the case of a person who was no longer in service on the date from which appointment was to be given to him in the selection grade. Thus the conclusion is irresistible that the appointment of Shri Brahma Dutt Sharma in the selection grade effective from 26.12.70 when he had already retired was null and void and has to be ignored for all purposes. The inevitable result of this is that as against the 20 vacancies declared to be filled in on the principle of seniority cum-merit the Government had filled in only 19 such vacancies and one vacancy remained for the year 1970. Learned Deputy Government Advocate relied on Rule 6 for his argument that it was within the discretion of the Government to leave unfilled or held in abeyance any vacant post. This is a general provision and it does empower the Government to fill or not to fill any vacancy, but whenever it decides to do so it cannot go against the provisions of other relevant rules. Here, in exercising their discretion under Rule 6 the Government would not be entitled to contravene the provisions regarding the percentage or the quora rule. The proportion for those appointed on the basis of merit alone and those appointed on the basis of seniority-cum-merit is 1 : 2. If the Government were allowed to leave this vacancy unfilled then the result would be that against the vacancies for the year 1970, 19 persons were appointed on the principle of seniority cum merit and the number of persons appointed on the basis of merit alone could not have exceeded half the number. Therefore, ignoring the fractions number of persons who could be appointed on the basis of merit alone could be only 10, The principle is that if one person is appointed on merit

against a vacancy then the next two vacancies are to be filled in on the basis of seniority-cum-merit and the roster has to go on like that from year to year. There is thus no doubt in my mind that the Government was required to fill all the 20 vacancies for the year 1970 and not leave one vacancy unfilled for that year. The petitioner was promoted to the selection grade as a result of the recommendations of the Departmental Promotion Committee which met within a few months of the reviewing Departmental Promotion Committee. In its recommendations, his name was kept at No. 1 by that Departmental Promotion Committee in the list of those who were recommended for appointment on the basis of seniority-cum-merit. The Government had accepted those recommendations and appointed the petitioner in the selection grade with effect from May, 1973. In other words, in between the appointments made by the Government in pursuance of the recommendations of the reviewing Departmental Promotion Committee and the appointments made in pursuance of the recommendations of the Departmental Promotion Committee in May, 1973, no person was appointed to the selection grade. In this context the contention of the learned Counsel for the petitioner cannot be dismissed out of hand that were that vacancy not wrongly taken to have been filled in by the appointment of Shri Brahma Dutt Sharma, the petitioner would have been appointed to the selection grade. Nevertheless it is not the function of this Court to assume the role of the reviewing Departmental Promotion Committee that met in 1972. What it would have done or what it would not have done regarding this 20th vacancy to be filled in on the basis of seniority-cum-merit is a matter of speculation, but it cannot be gainsaid that if the petitioner were selected against this vacancy in the year 1970 then he would have ranked senior to Shri Ganpat Rai Sharma, respondent No. 5, Shri Daulat Singh Kothari, respondent No. 6, Shri M.L. Kakkar, respondent No. 7, Shri B.B. Raj, respondent No. 8, Shri Rajendra Pal Singh, respondent No. 9, Shri Prahlad Rai Sharma, respondent No. 27, Shri Moongalal Surekha, respondent No. 28, Shri Laxmichand Gupta, respondent No. 29, Shri Arjun Raj Bhandari, respondent No. 30, Shri Munna Lal Goyal, respondent No. 31 and Shri Ob Prakash Joshi, respondent No. 32, who were promoted on the basis of merit alone. As regards the remaining respondents, the petitioner can have no grievance because they were selected on the principle of seniority-cum-merit and were senior to the petitioner in the senior scale of R A S. officers.

7. Now the question is what appropriate relief could be allowed to the petitioner in the circumstances. The petitioner has claimed the relief that the Government be directed to promote him against the remaining vacancy of 1970. In *State of Mysore and Another Vs. Syed Mahmood and Others*, their Lordships of the Supreme Court held that the High Court can issue a writ to State Government compelling it to perform its duty and to reconsider the cases of Government servants on merits, but it cannot issue a writ directing the State Government to promote them with retrospective effect. While setting aside the order of the High Court directing the State Government to promote the petitioners in that case their Lordships observed as follows:

We are of the opinion that the State Government should be directed at this stage to consider the fitness of Syed Mahmood and Bhao Rao for promotion in 1959. If on such examination the State Government arbitrarily refuses to promote them, different consideration would arise. The State Government would upon such consideration be under a duty to promote them as from 1959 if they were then fit to discharge the duties of the higher post and if it falls to perform its duty, the Court may direct it to promote them as from 1959.

It thus appears that the proper course is to direct the State Government to reconsider the case for promotion of the Government servant and it is only when the State Government refuses to reconsider such a case that a positive order for promoting him can be passed by the Court,

8. In *State of Mysore v. G.R. Seshadri and Ors.* 1974 (1) SLR 407 their Lordships of the Supreme Court reiterated this principle and held that the High does not possess the power to direct notional promotion from a back date. Their Lordships pointed out that the judiciary cannot promote or demote officials, but may demolish a bad order of the Government or order reconsideration on correct principles. Their Lordships added that basically it is in Government's discretionary power, fairly exercised to promote a Government servant. If the rule of promotion is one of sheer seniority it may well be that promotion is a matter of course. On the other hand, if seniority-cum-merit is the rule, promotion is problematical.

9. In the present case the rule of promotion is seniority-cum-merit and, therefore, the proper direction to be issued in the case would be one for reconsidering the case of the petitioner along with cases of those similarly situated. The Government shall reconstitute the Departmental Promotion Committee who shall consider the case of the petitioner and others, if any, against the vacancy of 1970 quota viz, one out of the 20 (proposed to be filled in 1970) and if the petitioner is considered suitable for promotion then the Government shall appoint the petitioner in the selection grade of R.A.S. with effect from 26.12 70 like other 19 already appointed. If the petitioner is so appointed then the Government shall assign seniority to the petitioner above those who were appointed by promotion on the basis of merit alone against the 1970 vacancies. Now if this comes about then the respondents Nos. 1 and 2 shall consider the case of the petitioner for promotion to the I.A.S. Cadre vis-à-vis the respondents Shri Ganpat Rai Sharma, respondent No. 5, Shri Daulat Singh Kothari, respondent No. 6, Shri M.L. Kakkar, respondent No. 7, Shri B.B. Raj, respondent No. 8, Shri Rajendra Pal Singh, respondent No. 9, Shri Prahlad Rai Sharma, respondent No. 27, Shri Moongalal Surekha, respondent No. 28, Shri Laxmichand Gupta, respondent No. 29, Shri Arjun Raj Bhandari, respondent No. 30, Shri Munnalal Goyal, respondent No. 31 and Shri Om Prakash Joshi, respondent No. 32, and if the petitioner is found fit then to make consequential orders. The Government shall convene the Departmental Promotion Committee within a period of two months.

10. The parties are left to bear their own costs.