
(1976) 08 MP CK 0016

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 230 of 1972

D.R. Jhirad and others

APPELLANT

Vs

State of Madhya Pradesh and others

RESPONDENT

Date of Decision : 26-08-1976

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (1977) MPLJ 55

Hon'ble Judges : S.M.N. Raina, J;M.L. Malik, J

Bench : Division Bench

Advocate : Gulab Gupta, for the Appellant; S.L. Saxena, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Malik, J.

We propose to dispose of the two petitions Nos. 230 of 1972: D.R. Jhirad and two others v. State of Madhya Pradesh and three others and 793 of 1972: Chandrakant Keshavrao Pandey and two others v. State of Madhya Pradesh and nine others by this common order.

Miscellaneous petition No. 230 of 1972 has been filed by Junior Employment Officers (J. E. Os.) and Miscellaneous petition No. 793 of 1972 by senior Statistical Assistants (S. As.). The contest is for promotion to the post of Employment Officer, State Employment Exchange. The contention of the J. E. Os. is that they form a separate category of service and belong to non-ministerial (executive) wing of the Employment Exchange, whereas the S. As. belong to ministerial wing. Though J.E. Os carry the scale of Rs. 190-315 and S. As carry the scale of Rs. 190-320, the nature of job they perform is superior, their responsibilities are greater and, therefore, their status higher than that of the S. As. The S. As. on the other hand contend that they are post-graduates, some of them are triple post-graduates and some even Law Graduates, whereas the J. E.

Os. They are mere graduates and some only matriculates promoted as J. E. Os. They are, therefore, superior to the J. E. Os both in the academic qualifications and in the nature of job they perform. That since 1969, they have also been declared non-ministerial and the Government have recognized them as a superior class to the J. E. Os. If pay-scale is the criterion to judge superiority, they draw Rs. 5 more in the maximum and reach the higher stage quicker than the J.E. Os.

It is an admitted position that the J. E. Os and Senior Statistical Assistants form independent categories. Their cadre strength has been separately determined. They are not inter changeable. Their gradation lists are separate. Not a single instance has been pointed out where a J. E. O. was ported to work as a Senior Statistical Assistant or a Senior Statistical Assistant to work as a J. E. O. While these two categories are separate and independent units, there are L. D. Cs., U. D. Cs. and Statistical Assistants (Junior Scale) who got promoted from their lower scales to higher. The Statistical Assistants (Junior Scale) who carry the pay-scale of Rs. 150-290 and who are mere graduates, get promoted upon post-graduation as Senior Statistical Assistant or as J. E. Os. We are not concerned in these petitions with Statistical Assistants carrying the junior scale, because they are not the persons who could claim eligibility for promotion to the gazetted rank of Employment Officer till they first got promotion in the senior scale or as J. E. Os. The petitioners Jhirad and others (J. E. Os.) tried to create confusion by pleading that the Statistical Assistants could not be equated with them in the matter of promotion because they were to be first promoted as J. E. Os. and the next step was promotion as an Employment Officer. To remove the confusion, the Government came with clarification that never was a Statistical Assistant carrying senior scale promoted as a J. E. Os. It was Statistical Assistant of a junior scale who was either promoted as a J. E. O. or as a Statistical Assistant (Senior scale). The contest in the two petitions is between J. E. Os. and Statistical Assistants of senior scale.

The Madhya Pradesh Employment Service (Gazetted) Recruitment Rules, 1966 came to be formulated under Article 309 of the Constitution and were brought into force with effect from 9-6-1967. Prior to these Rules, there were no definite instructions as to how promotions ought to be made to the posts of Employment Officers. The normal rule was to promote an incumbent from a lower scale to higher scale. But to begin with, only J. E. Os. came to be promoted as Employment Officers. The S. As. were dissatisfied with this and the J. E. Os. had a grievance that though they were performing more responsible job, their pay-scale was slightly inferior to S. As. It appears, the S. As. in the office, because of their higher pay-scale, thought that they were superior to J. E. Os. and were, therefore, slightly disrespectful to them. By letter dated 12th February, 1963 (Annexure "A" in Misc. Petition No. 230/72), the Director of Employment and Training, Madhya Pradesh resolved the question of their status. He said that a J. E. O. was an Executive Officer whereas a Statistical Assistant was a Ministerial Officer. A J. E.O. was, therefore, a superior Officer to a Statistical Assistant

though carrying a lower pay scale. That the Statistical Assistant was subordinate to a J. E. O.

The effect of this circular was that whenever the Employment Officer's chair fell vacant due to absence or illness, the J. E. O. was the person to hold current charge in preference to the Statistical Assistant. The promotions to the posts of Employment Officers came to be made from out of J. E. Os. respondents 3 to 6 were such J. E. Os. promoted in preference to S. As. prior to 1966. The petitioners Statistical Assistants--in Misc. Petition No. 793 of 1972, though senior in length of service to the respondents 3 to 6, who were Junior Employment Officers, could not have challenged their appointments because there were no Rules of Promotion and the Government could make selection from out of any category. It is only after the 1966 Rules came into force that the eligible Statistical Assistants could claim to be considered for promotion to the post of Employment Officer. The petitioners in Misc. Petition No. 793/72, therefore, rightly conceded that the promotions made prior to 1966 were unaffected by the Rules, and they could challenge only those promotions made after 1966 Rules came into force. The grievance was, therefore, confined to promotions of respondents 7 to 9, who had lesser length of service as J. E. Os. than the petitioners as Statistical Assistants. They did not press the petition as against respondent No. 10, who was a Superintendent.

The question of status as between a J. E. O. and a Statistical Assistant did not rest with the letter dated 12-2-1963. It appears, the question was reagitated after the 1966 Rules came into force. The Director had to reconsider the issue. By letter dated 28th June, 1971, the earlier communication dated 12-2-1963 was cancelled. The Director said that the matter as to who should hold the current charge of the Employment Officer in the event of his absence or illness, would depend upon the length of service of a J. E. O. or the Statistical Assistant attached to the unit. They were, as if, persons of equal status and one who had longer service to his credit, was the person entitled to hold the current charge.

The J. E. Os. (Petitioners in Misc. Petition No. 230/72) have a grievance about this letter dated 28th June, 1971. It is Annexure "F" in their petition. They want this communication to be struck down, having brought about equality in status between J. E. Os. and Statistical Assistants and having reduced their chances of promotion to the post of Employment Officer. According to them, they constituted a superior service and were the only persons eligible for promotion as Employment Officers. After their list was exhausted on seniority-cum-merit basis, the Statistical Assistants could be considered. They could not be placed together, nor could a separate combined list be prepared on the basis of length of service for the purposes of promotion. That places them much below in the combined list.

It would be pertinent to reproduce the relevant rules under which the promotions are now being made.

Madhya Pradesh Employment Service (Gazetted) Recruitment Rules, 1966:

Rule 6:--Method of recruitment:--(1) Recruitment to the service, after the commencement of these rules, shall be by the following methods, namely:--

- (a) By competitive examination;
- (b) By selection;
- (c) By promotion of members of the Service as mentioned in Schedule IV, and
- (d) By transfer of persons who hold in a capacity such post in such service as may be specified in this behalf.

Rule 13:--Appointment by promotion:--(1) There shall be constituted a committee consisting of the members mentioned in Schedule IV for making a preliminary selection for promotion of eligible candidates.

- (2) The Committee shall meet at intervals ordinarily not exceeding one year.

Rule 14:--Conditions of eligibility for promotion The Committee shall consider the cases of all persons who on the 1st day of January of that year had completed 3 years of service (whether officiating or substantive) in the post/service mentioned in column 2 of Schedule IV, or any other post or posts declared equivalent thereto by the Government.

Rule 15:-- Preparation of list of suitable Officers:--(1) The Committee shall prepare a list of such persons as satisfy the condition prescribed in Rule 14 above and as are held by the Committee to be suitable for promotion to the service. This list shall be sufficient to cover probable vacancies for the year.

- (2) The selection for inclusion in such list shall be based on merit and suitability in all respects, with due regard to seniority.

(3) The names of the Officers included in the list shall be arranged in order of seniority in the Service as mentioned in column 2, Schedule IV. Provided that any junior officer, who in the opinion of the Committee is of the exceptional merit and suitability, may be assigned in the list a higher place than that of officer senior to him.

- (4) The list so prepared shall be reviewed and revised every year.

(5) If in the process of selection, review or revision, it is proposed to supersede any member of the Service, the Committee shall record its reasons for the proposed supersession.

Rule 16:--Consultation with the Commission:--The list prepared in accordance with Rule 15 shall then be forwarded to the Commission by the Government alongwith--

- (i) The records of all persons included in the list.
- (ii) The records of all members of the Service as mentioned in column 2, Schedule IV who are proposed to be superseded by the recommendations made

in the list;

(iii) The reasons as recorded by the committee for the proposed supersession of any member of the service, and

(iv) The observation of the Government on the recommendation of the Committee.

Rule 17:--Select lists: -- (1) The Commission shall consider the list prepared by the Committee along with the other documents received from the Government, and unless it considers any change necessary, approve the list.

(2) If the Commission considers it necessary to make any changes in the list received from the Government, the Commission shall inform the Government of the changes proposed and, after taking into account the comments, if any, of the Government, may approve the list finally with such modifications, if any, as may in its opinion be just and proper.

(3) The list as finally approved by the Commission shall form the Select list for promotion of the members of the Service as mentioned in column 2, Schedule IV to the service as mentioned in column 3, Schedule IV.

(5) The Select list shall ordinarily be in force until it is reviewed or revised in accordance with Sub-rule (4) of Rule 15.

Provided that in the event of a grave lapse in the conduct of performance of duties on the part of any person included in the Select list, a special review of the Select List may be made at the instance of the Government and the Commission may, if it thinks fit, remove the name of such person from the Select List.

Rule 18: Appointment to the Service from the Select List:-- (1) Appointments of the officers included in the Select List to posts borne in the cadre of the Service shall follow the order in which the names of such officers appear in the select list.

Provided that where administration so require, a person whose name is not included in the Select List or who is not next in order in the Select List, may be appointed to the service if the Government is satisfied that the vacancy is not likely to last for more than three months.

(2) It shall not ordinarily be necessary to consult the Commission before appointment of person whose name is included in the Select List to the Service unless during the period intervening between the inclusion of his name in the select list and the date of the proposed appointment there occurs any deterioration in his work, which, in the opinion of the Government, is such as to render him unsuitable for appointment to the service.

Schedule IV

It cannot be disputed that classification of service and fixing cadre strength of such service rest entirely on the discretion of the Government. Where separate

gradation lists, as in the present case, are maintained, the incumbents of one list cannot claim superiority over the incumbents of the other list. They belong to separate categories and are selected on different qualifications. They have different standards of efficiency and the Government knows how best their services can be utilised and what avenues should be made available to them for promotion. The Government chose to keep the classification of J. E. Os. and S. As. water-tight. They were not inter-transferable. A Statistical Assistant of senior scale was never posted as J. E. O. and a J. E. O. as Statistical Assistant. It is difficult to conceive why a J. E. O. should call himself superior to Statistical Assistant or vice versa. If any claim is made on the basis of superiority by either, it must fail. The Director had created a situation by his letter dated 12-2-1963 whereunder the J. E. Os. felt that they were a superior class. That misunderstanding has been removed by subsequent letter dated 23-6-1971. The Government has now declared that they are treating J. E. Os. and Statistical Assistants of Senior scale of equal status, particularly in the matter of promotion as Employment Officer. The question is, are there valid grounds for claiming preference for one group against the other? Pay-scales of the two groups are almost alike. If one group carries on field work, the other group is academically more qualified. Earlier the job of Statistical Assistant was considered ministerial. But by notification dated the 21st November, 1969, he has been brought in the category of non-ministerial employees. Any difference in the status which the word "ministerial" carried, has been removed.

The Government have all the same retained the two categories separate. They have not integrated the employees of the two categories into one integrated cadre. Their inter se seniority in their respective cadres has been maintained. What the Government chose to do in 1966 Rules was to make three sources available for appointment by promotion to the post of Employment Officer and those sources were: (i) The Superintendent, (ii) The Statistical Assistants and (iii) The J. E. Os. It was for the Government to determine, having regard to requirements and needs, how best the post of Employment Officer could be filled. The separate classes from which appointment could be made and the pre-requisite conditions of eligibility for such appointments depended on the will of the appointing authority. The Court could not substitute its judgment for that of the master in these matters unless there was an apparent discrimination or injustice.

Judicial scrutiny can therefore extend only to the consideration whether the classification rests on a reasonable basis and whether it bears nexus with the object in view. It cannot extend to embarking upon a nice or mathematical evaluation of the basis of classification, for were such an inquiry permissible, it would be open to the Courts to substitute their own judgment, for that of the Legislature or the rule-making authority on the need to classify or the desirability of achieving a particular object. The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, .

In the present case, we see no discrimination or injustice if the Government chose to select the Employment Officers from the three categories. The Superintendents post was no doubt superior and carried better scale of pay than the S. As. and the J. E. Os., but the other two categories were at par and could not claim superiority one over the other. Besides, as laid down in *Md. Usman and Others Vs. State of Andhra Pradesh and Others*, , the doctrine of equality is not violated where unequals are treated as equals for appointment to a higher post provided there is good reason for doing so and larger interests of services are served.

It follows, therefore, that the two petitions must be dismissed. One Service could not claim superiority over the other nor could they object to selection of Employment Officers being made out of the three separate classes. It is again true that the promotions already made before the Rules of 1966 came into force could not be challenged. The Rules operated in future and governed the future right of promotion.

During the course of arguments, we were given to understand that though the Recruitment Rules of 1966 had come into force with effect from 9-6-1967, appointments came to be made in 1969 on ad hoc basis without reference to the Departmental Promotion Committee. The Departmental Promotion Committee made the Selection for the first time in 1971. An integrated list of eligible candidates (Annexure R-12 in Miscellaneous petition No. 793 of 1972) was forwarded to the Departmental Promotion Committee. They considered the first thirty candidates and selected 19 out of them. The question arose whether the Rules contemplated the preparation of this integrated list and whether the D. P. C. could exclude from consideration all eligible candidates.

Rule 14 makes all persons eligible for consideration who on the 1st day of January of that year had completed 3 years of service (whether officiating or substantive) in the post of J. E. O. or Statistical Assistant (senior scale) or Superintendents. The D. P. C. ought to have considered the cases of all eligible candidates, and then have prepared a list under Rule 15. The Criterion for selection is merit and suitability with due regard to seniority.

What the Rules seem to contemplate is that the three classes have to be shown separately in order of seniority. They could not be merged into an integrated cadre.

The Rules do not say that selection must be made from each category in some definite ratio, or that any quota was fixed for such categories or that the alternative system should be adopted. Since the selection was to be made primarily on the basis of merit, the D. P. C. could select any person of any category, but before doing so, all persons senior to the person selected had to be considered. Is it then possible that the D. P. C. while making selection could eliminate completely either category, being of the view that the other category was superior in all respects? Could the D. P. C. sitting in the following year

reverse the order if they were so inclined?

What this Court feels is that for want of definite directions in the Rules, the selections will not have any uniform standard or pattern. Rule 15 (3) is also of little guidance. Supposing a Superintendent, a J. E. O. and a Statistical Assistant are selected, how should they be arranged in the Select List? Who should have precedence over the other? If all of them belonged to one category, they could be arranged in the list in order of their seniority in that category. But if they belonged to different classes and were equally meritorious, how should they be arranged?

The Rules, therefore, require amendments. Some definite directions have got to be given. Presently, the D. P. C. has gone by the integrated list, treating all the three categories alike, and arranging them in order of their length of service on equivalent post. The first thirty were considered and a Select List was prepared. We see nothing wrong in this mode of selection. The Rules do not seem to have been contravened. Even if separate lists of eligible candidates of each category were sent to the D. P. C., they could consider the cases in order of length of service and the result would have been the same as reached by them by picking out the first thirty of the integrated list. We would not, therefore, disturb the selection. But all the same, we would desire the D. P. C. to scrutinize the entire list of eligible candidates and then see whether the list they prepared under Rule 15 needed any modification. At the same time, let the Government give an authoritative interpretation of the Rules by saying that the Rules contemplated the selection to be made on the basis of merit, having regard to length of service on the post of J. E. O. or the Statistical Assistant, Senior Scale, as the case may be, both categories having been declared equivalent in all respects. If this interpretation does not correctly carry out the policy of the Government as seems to have been understood by the D. P. C. let that be made clear.

We are told that the petitioners D.R. Jhirad and Ichharam Shukla in Miscellaneous petition No. 230 of 1972 have already been promoted as Employment Officers. The third petitioner Madan Mohan Dubey is likely to be considered in the next meeting of the D. P. C. respondent C.K. Pandey has been reverted for some misdemeanor or inefficiency. The question ultimately would be for re-fixation of seniority in the promoted cadre. That can be done after the Rules are suitably amended. In the other petition, the three petitioners have already been promoted as Employment Officers. C.K. Pandey, as said above, stands reverted. He has challenged his reversion order in a separate petition. The question in the second petition is again one of assigning them proper seniority in the promoted cadre. That the Government can any time regularise if the earlier appointments were made in contravention of Rules.

Upon the pleadings as they stand, the two petitions must be dismissed, The Government will take note of our observations in paras 13 to 19 in order that they make the Rules more explicit and policies clearer, and accordingly regularise the appointments and seniority in the promoted cadre.

There shall be no order as to costs. Security amount be refunded to the petitioners.

Post script --I have perused the opinion of Raina J. In paras. 13, 14 and 15 of the order drafted by me, I had expressly stated that the Rule did not contemplate preparation of a list as if the three categories formed as integrated cadre. I would agree that such a list (Annexure R-12 in Miscellaneous petition No. 793 of 1972) deserved to be quashed as suggested by Raina J. in para. 12 of his opinion.

RAINA J.--1. I agree with my learned brother in respect of a number of his conclusions; but it appears that some of the grievances of the petitioners are genuine and it would be necessary to issue certain directions to the Government in order to remedy them.

The facts of the case have been stated in the order of my learned brother and it is not necessary to reproduce them here. The Statistical Assistants and the Junior Employment Officers are two distinct branches of the same service, namely, the Madhya Pradesh Employment Service, Class III (Non-Gazetted) and, therefore in accordance with the proviso to Rule 10 of the Madhya Pradesh Civil Services (General Conditions of Service) Rules, 1961 it is obligatory on the part of the Government to prepare separate gradation lists for each branch. It was not disputed before us that there are separate gradation lists of the Junior Employment Officers and the Statistical Assistants, as would appear from Annexure B in Miscellaneous Petition No. 230 of 1972.

The two rival petitions--One by some of the Junior Employment Officers and the other by some of the Statistical Assistants were filed because each branch of service felt that it had a superior claim for promotion as Employment Officers. The recruitment to the post of Employment Officer by promotion from amongst the Statistical Assistants and the Junior Employment Officers is governed by the Madhya Pradesh Employment Service (Gazetted) Recruitment Rules, 1966 (hereinafter referred to as "the Rules"). Rule 6 of the Rules provides for recruitment to the service, inter alia, by promotion of the members of the services as mentioned in Schedule IV. The relevant part of Schedule IV is reproduced below:

Schedule IV (See rule 13)

It is clear from Rule 14 of the Rules and Schedule IV thereto that every Junior Employment Officer/Statistical Assistant and Superintendent, who has completed three years of service in the post /service mentioned in column 2 of Schedule IV is eligible for promotion as Employment Officer and he is entitled to be considered for such promotion by the Committee constituted under Rule 13.

Since it is open to the Government to make recruitment to a particular service or post from such source as it considers proper, neither the Junior Employment Officers nor the Statistical Assistants can claim to be exclusively entitled to such promotion, particularly in view of the aforesaid Rules. It is not necessary to cite

any authority for this proposition because it is well established and has been accepted by learned counsel for both the sides. Interpretation and application of the Rules has, however, created certain problems which learned counsel for both the sides placed before us.

In view of the expression "post/service" in Rule 14 of the Rules it was urged that the persons promoted from lower ranks, such as Lower Division Clerks and Upper Division Clerks, to the post of Statistical Assistant or Junior Employment Officer could count their entire service for the purpose of this rule and, therefore, even though a directly recruited Junior Employment Officer or Statistical Assistant, who had been in service for two years, would not be eligible for promotion as Employment Officer under Rule 14, a promoted officer of either category, who had worked on the post of Statistical Assistant or Junior Employment Officer, as the case may be, only for a year, would be eligible if his total length of service was more than three years. I do not think such a construction of Rule 14 is permissible if we carefully read it with Schedule IV. Although the words "post/service" are mentioned in the alternative in Rule 14, where certain posts are specified in column 2 of Schedule IV, the word "service" must be wholly ignored because in that case it would not be applicable. Thus, if Rule 14 is properly construed, when read with Schedule IV, it simply means that three years of service in either of the posts, namely. Junior Employment Officer and Statistical Assistant and/or Superintendent is essential for eligibility to be promoted as Employment Officer.

Learned counsel for the Junior Employment Officers submitted that even if the aforesaid construction is accepted, Statistical Assistants would get an advantage over the Junior Employment Officers in the matter of promotion as Employment Officer because no distinction is made between Junior Statistical Assistants and Senior Statistical Assistants in Schedule IV. The scale of Junior Statistical Assistants is lower than that of the Junior Employment Officers, and some of them are even promoted as Junior Employment Officers. It would, therefore, not be proper to equate Junior Statistical Assistants with Junior Employment Officers for the purpose of promotion as Employment Officer. When this was brought to the notice of the learned Government Advocate, he made it clear by amending the return that by Statistical Assistants the Government meant only the Senior Statistical Assistants and not the Junior Statistical Assistants; and we must accept this construction of the rule by the Government in view of Rule 20 of the Rules. It is, therefore, clear that Statistical Assistant in Schedule IV means only Senior Statistical Assistant.

The next question that arises is in what manner the rival claims of the Senior Statistical Assistants and the Junior Employment Officers should be considered for promotion as Employment Officers in accordance with the Rules. In Miscellaneous Petition No. 230 of 1972 the petitioners, who are Junior Employment Officers, made a grievance of the instructions issued by the Director of Employment and Training vide his letter, dated 18th June 1971, regarding inter

se seniority of the Statistical Assistants and the Junior Employment Officers and prayed that the said instructions be quashed because they are inconsistent with Rule 13 of the Rules. The instructions, however, relate to ad hoc promotions for purposes of stop gap arrangements until regular promotions are made in accordance with the Rules. It is, therefore, not necessary to strike down the aforesaid instructions which are only for a limited purpose, namely, appointment in short term vacancies.

The real grievance of the Junior Employment Officer in Miscellaneous Petition No. 230 of 1972 is that the Department has prepared an integrated seniority list of the Junior Employment Officers and the Statistical Assistants on the basis of the total length of service vide Annexure R-12 in M. P. No. 793 of 1972 and promotions to the post of Employment Officers are being made on the basis of seniority in accordance with this list. The learned Government Advocate did not dispute the fact that this list was furnished to the Selection Committee constituted under rule 13 of the Rules and it considered only the top thirty employees at the time of promotion to the post of Employment Officer, with the result that the petitioners were excluded from consideration even though they were eligible under Rule 14. No one can claim promotion as of right; but each member of the service, who is eligible for promotion, is entitled to be considered by the Selection Committee under the said rule. This is a valuable right and since this right has been denied to the petitioners, it would be proper to direct that the Selection Committee should be furnished with three separate gradation lists of eligible candidates one of Superintendents, another of Junior Employment Officers and a third of Statistical Assistants, there being no justification for clubbing them together and preparing an integrated seniority list for purposes of promotion to the post of Employment Officer. As pointed out above, preparation of such a list is not at all warranted by the Rules. From rule 14 it is clear that the intention of the Government is to provide for promotion to the post of Employment Officer from the three distinct branches of service, namely, the Superintendents, the Statistical Assistants and the Junior Employment Officers, who form three distinct categories, and, therefore, it would not be proper to put them in one single gradation list on the basis of their length of service in such posts.

The gradation list (Annexure R-12) must, therefore, be quashed and the Director of Employment and Training should be directed to submit three separate gradation lists of the three categories of officers to the Selection Committee for promotion as Employment Officers.

I entirely agree with my learned brother that the posts of Junior Employment Officers and those of Statistical Assistants of senior scale are of equal status and one cannot be treated as superior to the other; but so long as the Government does not take decision to integrate the two classes of posts in a single branch of service, their gradation lists must be kept separate.

Although it appears that the petitioners in Miscellaneous Petition No. 230 of 1972

were excluded from consideration by the Selection Committee for no good reason, we find no justification for striking down the promotions already made on the basis of the recommendation of the Selection Committee because we do not know whether the petitioners would have actually been selected by the Committee in preference to those who were actually selected. However, the petitioners are entitled to be considered for promotion at the next meeting of the Selection Committee; and, in fact, as pointed out by my learned brother, some of them have already been promoted on ad hoc basis pending their selection by the Selection Committee.

Thus, in my view, the combined gradation list (Annexure R-12) in Miscellaneous Petition No. 793 of 1972 is liable to be quashed; and it is expected that in future promotions to the post of Employment Officer will be made strictly in accordance with the Rules in the light of the observations made above. In other respects both the petitioners are liable to be dismissed.

ORDER--

Per Raina and Malik, J.

In view of the separate opinions recorded by us, the petitions are hereby dismissed.

There shall be no order as to costs.