
(1982) 11 DEL CK 0028

In the Delhi High Court

Case No : Letter Patent Appeal No. 78 of 1978

H.L. Bhasin and Others

APPELLANT

Vs

A.K. Das and Others

RESPONDENT

Date of Decision : 18-11-1982

Acts Referred:

Citation : (1983) 4 DRJ 206 : (1983) LabIC 1603

Hon'ble Judges : Prakash Narain, J;B.N. Kirpal, J

Bench : Division Bench

Advocate : S.C. Gupta, L.R. GOEL, G.L. Sanghvi, S.P. Mittal and Rekha Sharma, for the Appellant;

Judgement

B.N. Kirpal, J.

(1) This judgment will dispose of L.P.A. No. 78 of 1978 and Civil Writ Petition No. 378 of 1982, wherein the common question which arises is with regard to the validity of the amendment brought about to Rule 9 of the Railway Board Secretariat Service Rules, 1969.

(2) The Government framed the Railway Board Secretariat (Re- organization and Re- enforcement)) Scheme on 7th January, 1958 which provided for recruitment to the post of Assistant in Railways. This scheme was given retrospective effect from 1st December, 1954. The said scheme was drawn; up in line similar to the schemes applicable to the staff of the various other Ministries included provided that the pasts of Assistants would be filed in the following manner:-

A)"50 per cent by nomination by the Ministry of Home Affairs on the results of the examination conducted by the Union Public Service Commission. b) Not less than 25 per cent by promotion of clerks of Railway Board's office provided suitable persons are available. c) up to 25% by recruitment from Railways."

In 1955 about 251 Assistants (175 from the Board and 76 from the Railways) Were working when, in November 1955, examination was held by the Union

Public Service Commission, inter alia, for directly recruiting Assistants in the Railway Board. As a consequence of the said examination, first batch of 23 direct recruits was appointed as Assistants in about October 1956.

(3) The relative seniority of the Assistants, appointed from different sources, was regulated by paragraph 315 of the Railway Board Manual of Office Procedure (1938 Edition). The relevant paragraph of the Manual is as under :-

" RELATIVE Seniority Seniority of candidates when permanent vacancies are filled partly by promotion or transfer from other officers and partly by direct recruitment is determined according as, under the rules, the vacancy to be filled by direct recruitment or that to be filled by promotion or transfer from another officer occurred earlier."

As 50 per cent of the posts of the Assistants had to be filled by direct recruitment, 25 per cent from Railway Board's office and 25 per cent from the Railways, the inter-se seniority of the said Assistants was determined on the basis of U:B:U:R: formula, in a rotational order. In this formula U stands for direct recruits, B stands for promotees from the Board's office and R refers to the Assistants who were drafted from the Railways. Seniority list was prepared by applying this formula. The first such seniority list was published on 27th April, 1964. It appears that some of the Assistants, who were not direct recruits, filed writ petitions in the Supreme Court being civil writ No. 98 to 103 of 1964 challenging the aforesaid rule of seniority. It was, inter alia, contended that the relative seniority of the direct recruits vis-a-vis the promotees should not be fixed on a rotational basis and that the seniority should be fixed with reference to the date of entry into the grade of Assistant. It was also submitted that the Railway Board Secretariat(Reorganisation and Reinforcement) Scheme could not be given retrospective effect from 1st December, 1954. The writ petitions, however, were withdrawn by the petitioners and were dismissed as such.

(4) The aforesaid Railway Board Secretariat(Reorganization and Reinforcement) Scheme was superseded by statutory rules framed under proviso to Article 309 of the constitution known as Railway Board Secretariat Service Rules, 1969. Rule 9 of the 1969 Rules provided for the manner in which recruitment to the next higher grade of section officers from out of the persons Working in Assistant's grade was to be made. The said Rule read as under :--

" RECRUITMENT to the Section Officers" and the Assistants Grades-(1) Subject to the provisions of sub Rule (3), recruitment to the substantive vacancies in the Section Officers" "Grade shall be made on the following basis, namely :- (a) 25 per cent of vacancies by direct recruitment on the results of the combined competitive examination held by the Commissioner, from time to time for recruitment to the Central Service, Class I and Class II ; (b) 75 per cent of vacancies by substantive appointment of persons included in the Select list for the Section Officers" Grade. Such appointments shall be made in the order of seniority in the Select list except when for reasons to be recorded in writing, a

person is not considered fit for such appointment in his turn.

Sub-rule (5)(a) of Rule 9 reads as under :-

" FOR the purposes of clause (b) of sub-rule (1) and sub rule (2) a Select List for the Section Officers" Grade shall be prepared and may be revised from time to time. (b) the procedure for preparing and revising Select List shall be as set out in the schedule. The Schedule provided the procedure for preparing the select list. The relevant portion of the Schedule was as follows :- "A Section Officers" Grade Maintenance (1) Additions to the Select List for the Section Officers grade after its constitution under regulation I shall be made in such manner as the Central Government in the Ministry of Railways may determine from time to time keeping in view the existing and anticipated vacancies, in equal proportions from. (a) permanent officers of the Assistants Grade who have rendered not less than eight years approved service in that Grade in the order of their seniority subject to the rejection of the unfit ; and (b) persons selected on the results of the limited departmental competitive examinations. "held by the Ministry of Railways (Railway Board) for this purpose from time to time, in the order of their merit. persons of the two categories referred to above shall be included in the Select List by taking alternatively one person from category (a) and one from category (b) so on, in that order. (2) The rules for the limited departmental competitive examinations referred to in clause (1) above shall be as determined by regulations made by the Central Government in the Ministry of Railways in consultation with the Commission."

(5) The 1969 Rules were amended in the year 1971. By this amendment rule 9 was altered to the effect that the quota of direct recruitment was changed from 1/4th to 1/6th of the substantive vacancies in Section Officers" Grade. The remaining vacancies of 84 per cent were required to be filled from three sources in equal proportions. The three sources were :

"(A) permanent officers of the Assistants Grade, who have rendered not less than eight year"s approved service in that Grade and are within the range of seniority, in the order of their seniority, subject to the rejection of the unfit ; (b) permanent officers of the Assistants Grade, with the longest period of continuous service in that grade, and assessed by a selection committee to be set up by the Ministry of Railways on the basis of merit as suitable for inclusion in the Select List for the Section Officers" Grade; and (c) persons selected on the results of the Limited departmental competitive examination held by the Ministry of Railway (Railway Board) from time to time, in the order of their merit. The persons referred to in clauses (a),(b) and (c) shall be included in the Select List in the order of one person from those referred to in clause (a), one person from those referred to in clause (b) and one person from those referred to in clause (c) and so on in that order."

It may here be noted that originally the new class which was introduced was of permanent officers of Assistants Grade "with the longest period of approved

service." The word "approved" was. by later amendment, changed into "continuous "

(6) The effect of this amendment regarding the manner in which the select list was to be prepared was that under clause (a) officers of the Assistants Grade were to be promoted on the basis of seniority, subject to the rejection of the unfit ; Assistants who had the longest service would, under clause (b), be entitled to have the names included in the select list on the basis of merit : and under clause (c) persons could be placed on the select list on the basis of the limited departmental examination.

(7) The direct recruits, by reason of the seniority having been fixed on the basis of U:B:U:R: formula, were aggrieved by the aforesaid amendment which inserted clause (b) as one of the sources of recruitment to the Section Officers' Grade. These direct recruits were senior to a very large number of promotes / transferees by reason of their seniority having been fixed on rotational basis, but they had put in comparatively much lesser number of years of service as Assistants. The said direct recruits, who are respondents Nos. 1 to 51 in the L.P.A., accordingly filed Civil Writ No. 935 of 1972 challenging the validity of the said provision. The main contention in the said writ petition was that the impugned clause (b) nullified the relative seniority of officers which had been fixed earlier on the basis of U:B:U:R: formula, as for the purposes of making promotions under clause (b) a fresh list will have to be prepared on the basis of the length of service. It was also contended in the petition that the main amended provision was violative of Articles 14 and 16 of the Constitution. In this connection the averment was that all Assistants, after they had been recruited from different sources, constituted one class and there upon no classification or difference could be made with regard to further promotion.

(8) The main defense to the writ petition came from the Union of India, who was a party to the writ petition, apart from the present appellants who had also been impleaded as respondents in the writ petition. Briefly stated, the case of the Union of India was that the Rules of the Railway Board Secretariat Service were modelled on the Central Secretariat Service Rules, 1962. These 1962 Rules had been amended in 1970 so as to provide for persons to be recruited on the basis of the longest period of continuous service. The longest period of continuous service was defined in the Central Secretariat Service Rules to mean Assistants who had put in 22 years of service. The Ministry of Railways had merely followed the said pattern and had consequently, in the year 1971, amended the Railway Board Secretariat Service Rules, 1969 so as to introduce the clause (B) for officers having "the longest period of continuous service" as being also entitled to be appointed as Section Officers on the basis of merit.

(9) It was contended, on behalf of the Union of India, that there has been no violation of Article 14 or 16 of the Constitution.

(10) At the time of the hearing of the writ petition before the Single Judge the

appellants herein, as well as the Union of India, placed strong reliance on the decision of the Division Bench of this Court in the case of M.R. Ramakrishnan & others v. Union of India & others ILR 1971 (2) Delhi 494. In that case the challenge was to the validity of Clause (b) of the Central Secretariat Service Rules, which was similar to the impugned rule in the present case. The only difference between the two rules was that an Explanation in the form of Note Ii had been added to the Central Secretariat Service Rules which reads as under :

" THE expression "longest period of continuous service" means a continuous service of not less than 22 years in the grade of Assistant as on the 1st July of the year for which additions to the select list are to be made."

(11) This court repelled the argument that the classification sought to be introduced by the amendment was violative of Article 14 of the Constitution. This court held that the amendment to the rule was valid and the same cannot be treated as unreasonable and it had reasonable relation to the object which was sought to be achieved by the rule.

(12) The learned Single Judge, by his judgment dated 1st Sept. 1978 allowed the writ petition. He held that the decision in Ramakrishnan's case (Supra) was not applicable inasmuch as the two rules were different. The difference, according to the Single Judge, was brought about by the aforesaid Note Ii which defines the longest period of continuous service to mean continuous service of not less than 22 years. The division bench authority was distinguished by the learned Judge with the following observations :- "The case in hand is entirely different. The longest period of continuous service has nowhere been defined. From the seniority list it will be seen that the difference between the officers of clause (a) and clause (b) is of 3 to 4 years. In the Railway Secretariat Service there was no such problem as was faced by the Central Secretariat Service. In the Railway Secretariat Service there were no assistants of 22 years service. Nor many had reached the maximum of the grade in 1971. There is no evidence of simmering discontent in the Railway Service such as there was in the Central Secretariat Service. There is no evidence of struggle between youth and age, between those who had put in 8 years of service and those who had 22 years long service to their credit. It is this crisis which led to the appointment of the Co-ordination Committee and the consequent amendment of Central Secretariat Service Rules in 1970 which distinguishes the case in hand from the division bench case. I cannot, Therefore find any intelligible differentia which on rational grounds distinguishes persons grouped in clause (a) from those grouped in clause (b). Nor does the classification bear a reasonable relation to the object sought to be achieved. In fact there was no object to attain. In the Central Secretariat Service Rules there was a positive object. The object was to relieve those who had put in 22 years of service from hardship. The Government wanted to undo the wrong done to those assistants so far as it was possible to do. Such assistants were about a thousand in number. They were to waste out in the next ten years. For far too long, the doors to these positions had been shut to these old hands. The

situation was grave and its remedy difficult. Over the years these difficulties grew and thickened. The Central Secretariat Rules carved out a separate class of Assistants of the

" LONGEST period of continuous service". The division bench held the classification to be valid. Therefore, that object had reasonable relation with the statutory provision that was brought in by the amendment of the rules in 1970."

(13) The Single Judge also held that Union Public Service Commission as well as the Department of Personnel were of the view that the conditions in the Central Secretariat Service and the Railway Board Secretariat were not comparable and, Therefore, the amendment of the rules in the Railway Board Secretariat was not valid. It was finally held that there was no justification for the creation of special class of officers with the longest period of continuous service. It was also noted by the learned Judge that in Ramakrishnan's case the affidavit of the government had explained the reason for the amendment in the rule which was made but, according to the learned Judge, there was no such Explanation justifying the amendment in the present case. By observing that the complaint of denial of equality of opportunity was well founded, the impugned amendment was quashed as being invalid and violative of Articles 14 and 16 of the Constitution. The learned Single Judge also took note of contentions raised before him, by the petitioners therein, that the amended rule had been applied retrospectively. No decision on this point appears to have been given, presumably because the impugned rule was struck down by the single Judge on the ground that it was violative of Articles 14 and 16 of the Constitution.

(14) The persons who were adversely affected by the aforesaid decision, and who were respondents in the writ petition, have filed the present Letters Patent Appeal challenging the correctness of the said decision. Some other persons, who were similarly situated, and have put in number of years as Assistants have also filed C.W. 378/82. The prayer in the writ petition is that the Union of India should be directed to make promotions on the basis of the length of service and they should give effect to the amendment which was made to the rules. According to the petitioners they were not party to the earlier writ petition and as such they are not bound by the decision of the single Judge. As the points involved in the two cases were identical, the writ petition was admitted for hearing before a Division Bench and is being disposed of by a common judgment.

(15) The appeal came up for hearing on 25th September, 1979. This Court noticed that in the affidavit on behalf of Railways it had been stated that the impugned amendment to the Rules had been issued after the Railways had given detailed consideration to the matter. The affidavit, however, did not set-out the details of the particulars as to what was considered by the Railways which " persuaded it to amend the rules. The Court accordingly directed the Central Government and the Ministry of Railways and Railway Board to place before the court the relevant record where the question of amendment to the Rules of 1969

had been considered leading up to the issue of the impugned Rules. At the time of hearing of this case Governmental records were produced in Court. An opportunity was granted to both the parties to inspect the record, if they so desired.

(16) SHRIS.C.GUPTA, on behalf of the appellants, has contended that the learned single Judge fell in error in holding that the present case was distinguishable from Ramakrishnan's case (supra). It was contended that there was no basis to support the so-called distinction between the two cases, which distinction was sought to be spelt out by the learned single Judge in the passage quoted hereinabove.

(17) It appears that the learned single Judge, at the final of hearing of the writ petition, did not have the benefit of the file of the respondents which contained the decision for the amendment of the Rules. The affidavit of the Government did not clearly spell out the facts, circumstances and the reasons which were considered by the Government and which persuaded it to amend the Rules..

(18) The reasons given by the learned single Judge, which are contained in the passage quoted above, for distinguishing the case of the Railway Assistants from that of the Assistants belonging to the Central Secretariat Service, are similar to the points which were raised by the Union Public service Commission and the Department of Personnel in their communication to the Ministry of Railways" whereby they did not approve the proposed amendment. The said points raised by the Department of Personnel were" summarised and dealt within the note dated 25th January, 1971 on the file of the Railway Board. The relevant points raised by the Commission and the Department of Personnel and the comments of the Department in the said note are as follows -r- "Points raised by the Our Comments U.P.S.C, (Railways). (a)..... (b)..... (c) That in the Central Secretariat As pointed out in our comments at 68/c, even Secretariat Service. Assistants within the Railway Board the question of seniority long, period of service had of various categories of Assistants was under contention that their senior consideration for a very long time and it was seniority had not been fixed previously only in 1964 that this was settled in conclusively and no such consideration with the U.P.S.C. According to this contention has been advanced in decision the seniority in the grade of Assistants the case of Assistants with was fixed on the principle of rotation (1 for long years of service in the U.P.S.C., 1 for Rly. Board Assistants, 1 for Railway Board. U.P.S.C. and 1 for Railway Assistants) and, in view of this, even those Assistants from among staff in the Board's office who had been regularly selected and officiating continuously from 1951 onwards were given very low positions in the Seniority List, since they were absorbed only against 25% of the vacancies as against 50% as admissible in their case prior to 1-12-54 i.e. prior to the introduction of the Railway Board Secretariat Service Scheme. When the Seniority List was finalised in April, 1964, some of these Assistants filed a writ petition in the Supreme Court, contesting the list. Though the Supreme Court did not accept the writ

petition, the fact remains that they continue to nurse their grievances and the provisions of an avenue for promotion for them would go a way in giving them a measure of satisfaction. These staff are not eligible to appear in limited departmental competitive examination because they are already overaged. (Age Limit 40 years.). (d) Though all the Assistants concerned have not reached the maximum of the Assistants' pay having long period of service scale, the fact remains that they have already reached the maximum put in a number of years of service extending to of the Assistant's pay scale about 20 years in the same grade and are likely and there is no substantial to remain in the same pay scale till retirement. difference in the total service - It is felt that a stage of stagnation should be vice in the Assistant's Grade reckoned to have been reached if a person is rendered by the officers be- forced to remain in one grade, even without longing to different category -reaching the maximum of the grade, for such categories if some remedial steps long periods and the concerned staff in this office become necessary to avoid are all in this position. The suggestion of the stagnation at the Assistants' commission that a Selection Grade of the Assis 214 level, the introduction of a tants' Grade may be introduced will not meet Selection Grade of Assis the requirement of the case, because Selection tants may be considered. Grade will have to be necessarily in the non gazetted cadre and the maximum of any grade in the non-gazetted cadre cannot be appreciably higher than the present maximum of the Assistants' Grade namely Rs. 530.00. The argument that the difference in the total service in the Assistants' Grade rendered by officers belonging to different categories is not substantial is also not correct. From the category of direct recruits, in our side, as many as 29 Assistants belonging to the 1956 and 1959 batches are officiating as Section Officers by virtue of their seniority whereas promotees appointed as early as in 1951-53 are still grouping their way to reach such a position. In fact, as things stand at position. In fact, as things stand at present, a bulk of them will retire in the Assistants' Grade itself. On the civil side, it is understood that against 800 or so directly recruited as Assistants in 1955-56, hardly a handful of about 20 to 25 have been promoted s

" IN endorsing the course of action suggested in para 9 above, I would like to reiterate what has been stated in para 4 of my D.O. letter at S.No. 20 Shri Uma Shankar, Joint Secretary, Department of Personnel. As mentioned therein, the Railway Board Secretariat has been constituted on the same lines as the Central Secretariat Service. The need for a separate Service arose because there was no interchangeability between the staff of the Railway Board and those of Services controlled by the Ministry of Home Affairs. Apart from the original Railway Board Secretariat Service having been patterned on the lines of the Central Secretariat Service, we have also been adopting amendments made by them from time to time. In view of conditions which justified the fifth amendment to the Central Secretariat Service Rules existing on our side as well (as brought out in para 8 of the above note), Board and M.R, may approve of the issue of the proposed modification to the Railway Board Secretariat Service Rules." The proposals

contained in the aforesaid note were thereafter approved by the Members of the Board and by the then Minister for Railways, Shri Gulzari Lal Nanda.

(19) The perusal of the aforesaid note of the Railway Board clearly shows that there was in effect no distinction between the Assistants belonging to the Central Secretariat Service and the Railways. In case of both the Services the problem of stagnation was identical. It was with a view to obviate the hardship which was being suffered by the staff, who had been in Service as Assistants for a number of years, that the impugned amendment was made in the Rules. The object for the amendment is clearly brought out in the said nothings, and the facts stated therein also show that the reasons given by the learned single Judge for distinguishing the present case from that of Ramakrishnan's case (supra) were not well-founded. The facts now revealed show that the difference between the officers eligible under clauses (a) and (b) of the Rules was more than 3 to 4 years. There was stagnation in the Railways as well as in Central Secretariat Service; though in the Railways there were no Assistants of 22 years service but nevertheless there were Assistants who had put in 20 years of service and most of them had little hope of being promoted as Section Officers ; there was also simmering discontent in the Railways and there was struggle between youth and age. Furthermore, the mere fact the U.P.S.C. and the Department of Personnel did not agree with the proposed amendment is not relevant because, even in the case of Central Secretariat Service, the U.P.S.C. and the Department of Personnel had not agreed to the amendment made to the Rules of that Service.

(20) The aforesaid note also shows what was the object which was sought to be attained by the amendment. The object was to relieve stagnation amongst officers who had put in a large number of years as Assistants and had no hope of promotion to the higher grade. In our opinion, the mere fact that a provision similar to note 2, which had been added to the Central Secretariat Service Rules which defined the longest period of continuous service to mean continuous service of not less than 22 years in the grade of Assistants, was not incorporated in the impugned Rule is of no consequence. The present case cannot be distinguished from Ramakrishnan's case (supra) as the two sets of Rules are in *pari materia* .

(21) An effort was made by the learned counsel for the respondents to show that the decision of this Court in Ramakrishnan's case, if it was held that it applies to the present case, did not lay down good law. It was contended that the impugned clause (b) was violative of Articles 14 and 16 of the Constitution. The submission was that there was in fact no valid object in view which necessitated the making of an amendment and the object, if any could not be regarded as a rational object. According to the learned counsel, the object of framing the Rules can only be to provide excellence of service and the unamended Rules did provide for this as promotions which were made on the basis of seniority gave an avenue of promotion to persons who were younger in age and also to experienced Assistants.

(22) In our opinion there is no merit in this contention. As would be evident from what has been noticed above, the object of the Government in amending the Rules was to try and give redress to those Assistants who had been working as such for a large number of years. There were no promotional avenues open to a large number of Assistants who were stagnating as Assistants for nearly 20 years. If the Rules were not amended most of such Assistants would have retired without having had an opportunity of being considered for promotion as Section Officers. Such stagnation would ultimately lead to the Assistants being disgruntled and inefficient. It, Therefore, became necessary to amend the Rules with a view to provide them with an opportunity of being considered for promotion to the next higher grade of Section Officers.

(23) It is true that one of the objects which has to be kept in view while framing Service Rules is to ensure that the efficiency of the service should increase and the best available man should be selected. When the Rules were originally framed the intention of the Government apparently was that recruitment to the posts of Section Officers should be made from amongst experienced Assistants and also from these Assistants who were directly recruited and were, thus, comparatively in younger age. The seniority list of Assistants had to be maintained on rotational basis. Clause (a) of the Rules provided for promotion being made purely on the basis of seniority. The Government had anticipated that the effect of making promotion from the seniority list would be that equal number of direct recruits and departmental promotees would be appointed as Section Officers under clause (a) of the Rules. In actual practice this ratio of 50-50 was not retained. The reason was obvious. Due to the advanced age, a large number of promotee Assistants retired, and the points vacated by them in the seniority list were not filled by other promotee officers. Over a number of years the number of direct recruits who were promoted under clause (a) of the Rules were much more than the promotees. During the course of arguments Sh. S.C, Gupta, learned counsel for the appellants, brought to our notice the fact that under clause (a) of the Rules, 91 Assistants had been promoted who were direct recruits. On the other hand, only 40 Assistants belonging to the B and R Category were promoted under that clause. This showed that but for the amendment to the Rules experienced Assistants who had put in a number of years of service would have had no opportunity of being appointed as Section Officers. This would have adversely affected the efficiency of work in Section Officers' Grade. The parity of 50-50 while making promotions to the grade of Section Officers between the category and the B & R category on the other hand has now been maintained only by reason of promotions having been affected under the impugned clause (b). The first direct recruit who was taken in as an Assistant was placed at Serial number 14 in the 1972 seniority list. A statement of 248 persons (from Serial Nos. 14 to 261 of the said seniority list) shows that under clauses (a) and (b) of the Rules 128 direct recruits were promoted as Section Officers. On the other hand, under clauses (a), (b) and (c) 54 persons belonging to B category and 66 persons belonging to the R category were so

promoted. Out of this, under clause (b) 38 officers belonging to B and R category were promoted. It is evident, Therefore, that if impugned clause (b) had not been inserted then the number of persons belonging to the category, who would have been promoted as Section Officers, would have been much larger than the officers belonging to the B & R category. It is the B and the R category officers who were mere experienced. The experienced officers had little chance of - promotion as Section Officers. Therefore, in order to ensure that experienced officers were promoted as Section Officers, it became imperative that impugned clause (b) was inserted in the Rules.

(24) From the aforesaid discussion it must follow that the object of inserting clause (b) in the Rules was a rational and a valid object and the said amendment was made in the interest of the efficiency of service.

(25) It was next contended that once there has been a merger into a single cadre of officers from two different sources than thereafter there can be no further classification amongst them. In this behalf strong reliance was placed on the decisions of the Supreme Court in *State of Mysore Vs. M.H. Krishna Murthy and Others*, and *Roshan Lal Tandon Vs. Union of India (UOI)*, . In *Krishna Murthy's* case, by Mysore State Accounts Services (Recruitment) Rules two different units of the Accounts Services, namely, Public Witness .D. Accounts Unit and the Local Fund Audit Unit were integrated into one single cadre. Both the Units came under a common administrative control. The impugned rule fixed the cadre strength in such a way that the promotional chances of the rest while two units was not the same. The Supreme Court held that once the two Units had been integrated subsequently the two units could not be treated differently for the purpose of promotional opportunities. In *Roshan Lal Tandon's* case recruitment to post of Train Examiners in Grade D was made by promotion and by direct recruitment. The impugned rule there however, provided that the existing apprentices Train Examiners should first be accommodated en-block in the next higher grade, namely, grade C up to 80% of the vacancies without undergoing any test. The balance 20% of the vacancies were made available to the other category of Train Examiners. It was in such circumstances that the Supreme Court held that once absorption of promotees and direct recruits had been made into a single cadre thereafter there could be no discrimination between them for the purposes of further promotion.

(26) In our opinion the ratio of the aforesaid cases is not applicable to the present case. In *Kishna Murthy's* and *Roshan Lal Tandon's* cases (supra) the distinction between persons recruited from two different sources was sought to be maintained for the purposes of further promotion, even after those persons had been absorbed in a single cadre. This is not the case here. The impugned rule is not referable to direct recruits or to promotees. All Assistants who have the longest years of service, irrespective of the fact as to whether they were appointed as Assistants on promotion or by direct recruitment, are eligible for being considered under clause (b). No preferential treatment is given by the

impugned rules to the promotees as such. If direct recruits having sufficient length of service exist in the cadre of Assistants they would also be eligible for being considered for promotion under clause (b). This is one reason why the aforesaid two cases decided by the Supreme Court are not applicable to the facts of the present case.

(27) Further more, the Supreme Court in the case of *State of Mysore and Another Vs. P. Narasing Rao*, has held that Articles 14 and 16 do not bar a reasonable classification of employees or reasonable tests for their selection. If the validity of a rule is challenged on the ground of its being violative of Article 14 or Article 16 of the Constitution then the validity of the rule can be sustained if two tests are satisfied. The first is that the classification on which it is founded must be based on an intelligible differentia which distinguishes persons or things grouped together from others left out and, the second test is that the differentia must have a reasonable relation to the object sought to be achieved by the rule or statutory provisions in question. Applying this principle, the Supreme Court observed in *Narasinga Rao's* case that Articles 14 and 16 do not preclude the Government from laying down qualifications for the post in question. In the present case, both the tests laid down by the Supreme Court are satisfied. By the impugned rule the classification which is alleged to be created is between those group of persons who have put in long years of service vis a-vis others who have not. This classification, to our mind, is clearly based on an intelligible differentia, and those Assistants who have put in long years of service can be clearly distinguished from those who have not so served for a number years. The object of amending the rule is really to provide for efficiency in the higher grade of service, and one of the important factors in providing for efficiency is that experienced officers should also be promoted, irrespective of their position in the seniority list which is prepared by applying the rotational formula. Experience is achieved by the number of years which an officer has put in. By the impugned rule opportunity is given to experienced persons to be considered for promotion. Apart from giving an opportunity to the experienced persons to be promoted, the impugned rule also has a salutary effect of removing disgruntlement amongst those Assistants who have put in a large number of years and who could not foresee being promoted to the next higher grade by reason of their low seniority leading to loss of interest in the work.

(28) Viewed from another angle, it appears to us that what has really been done by enacting the impugned rule is to provide for an additional eligibility condition. As held in *Narasinga Rao's* case (supra), Articles 14 and 16 of the Constitution do not preclude the Government from laying down different qualifications for the posts in question. In the present case, prior to the amendment of the rules, promotion to the Section Officers' Grade could be made either on the basis of seniority (under clause (a) of the rules) or on the basis of the limited departmental examination (under clause (b) unamended, now amended clause (c) of the Rules). These two clauses, in the way, laid down the eligibility condition for being appointed to the next higher post. Persons who passed the limited

departmental examination became eligible for being promoted as Section Officers against the quota reserved for them just as persons who are placed high-up in the seniority list were also eligible for being promoted as Section Officers against the quota reserved for them. By the impugned, amendment, a third manner of promotion has been provided which lays down a different eligibility condition. The new eligibility condition or qualification which is required is that the person should have long years of service.

(29) It was then contended that the relative seniority which is fixed on the U.B.U.R. formula is disturbed as a result of the impugned rule and the chances of promotion are postponed and, Therefore, Article 14 is violated. There is no merit in this submission. Merely because relative seniority, which is fixed on the rotational principle, is not followed for the purposes of making promotion cannot be a ground for quashing the impugned rule. The seniority is relevant for the purposes of making promotions under clause (a). Just as the same is not relevant for the purposes of making promotions on the basis of the limited departmental examination, similarly it is not relevant for the purposes of making promotions from amongst officers having the longest length of service. If the twin tests laid down in Narasinga Rao's case are satisfied, which would have the effect of upholding the validity of the impugned rule, then the mere fact that the impugned rule would adversely affect persons senior in the seniority list cannot be a ground for holding that the impugned rule is violative of Article 14. There is nothing to prohibit the Government from laying down a manner for promotion in disregard of the seniority of the officers concerned. For example, recruitment rules do provide for promotions being made by selection on merit. In such cases seniority is not relevant and what is material is the comparative merit of the eligible candidates. Similarly, in the present case under clause (b) seniority has no relevance and what is material is merit of officers who have the longest years of service.

(30) It was lastly contended that retrospective operation has been given to the impugned clause (b) and that is illegal. According to the petitioners, prior to the coming into force of the amendment rules, a panel of 15 persons to fill up 15 vacancies out of the then existing 30 vacancies had been prepared and the remaining 15 vacancies had been earmarked for successful candidates of the limited departmental examination which was to be held in due course. It is alleged that vide an office order dated 26th June, 1972 the Railway Board directed that all the 15 vacancies which occurred over and above 30 vacancies should be filled by promotion under clause (b). In other words 30 vacancies which had arisen prior to the amendment of the rules and 15 vacancies which occurred after the amendment were directed to be clubbed together and were equally divided for purposes of promotion amongst the three categories. According to the petitioners the 15 vacancies which occurred subsequent to 23rd November, 1969 should have been divided equally amongst the three categories.

(31) The petitioners have made the aforesaid submission on the premise that

select list in respect of 15 persons had already been prepared vide office order No. 38 of 1966 dated 13-12-1966 (in respect of three persons) and Office Order No. 67 of 1969 (in respect of 12 persons) According to the respondents the office order No. 67 of 1969 did not by itself constitute a select list as defined in the rules. In any case, all the vacancies which had not been regularly filled by Assistants included in the select list as on the date from which the amended rules came into effect, had to be filled on the basis of the amended rules. After the rules were amended in 1971 a fresh select list was prepared in 1973 and in the preparation of that select list obviously the amended rules had to apply. The select list was of 45 persons. In any case, there is nothing to show in the writ petition as to which of the petitioners have suffered as a result of the so-called retrospective operation being given to the rules. All the petitioners have been promoted as Section Officers, and even if it be assumed that some irregularity has been committed in applying the said rules, we do not think it proper to exercise our jurisdiction under Article 226 of the Constitution in setting that irregularity right, especially when it has not been shown as to what prejudice or harm has been suffered.

(32) For the aforesaid reasons the appeal and Civil Writ No. 378 of 1982 are allowed. The order of the learned single Judge is set aside and Civil Writ No. 935 of 1972 is dismissed. We were informed that after the judgment of the learned single Judge no promotions were made under clause (b). As the validity of clause (b) has been upheld by us the Government would be free to make promotions under clause (b) with effect from the date when they stopped making such promotions. The parties are, however, left to bear their own costs. Prakash Narain.C.J-We have pronounced judgment in this case today soon after pronouncement, Mr. R.K. Kaura, respondent No. 77 in the writ petition prays for grant of fitness to appeal to the Supreme Court. We are unable to grant the request because for one Mr. Kaura could not be fully aware as to the reasons which we have given in our decision in this case and secondly our reliance is on decisions of Supreme Court and, Therefore, no question of law of general importance arises for being decided by the Supreme Court. We Therefore, dismiss his oral application.