
(1964) 03 P&H CK 0030
In the Punjab And Haryana At Chandigarh

Jaisinghani (S.G.)

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-03-1964

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 226

Citation : (1967) 1 LLJ 234

Hon'ble Judges : Falshaw, C.J;Mehar Singh, J;Grover, J

Bench : Full Bench

Judgement

Mehar Singh, J.—In this petition under Article 226 of the Constitution, petitioner S. G. Jaisinghani, an Income tax Officer, challenges the constitutional validity of what has been described as the " seniority rule " in regard to Income tax Service, Class I, Grade II, as being, along with the improper implementation of the "quota rule" for recruitment to that service, violative of Articles 14 and 16(1) of the Constitution inasmuch as has thereby been denied equality of opportunity in matters relating to promotion. The original respondents to the petition are the Union of India, the Secretary to the Government of India in the Ministry of Finance, and the Central Board of Revenue, respondents 1 to 3. Subsequently respondents 4 to 126 have been added and those are promotees in the Income tax Service who will be affected by the result of this petition. Another Income tax Officer, B. Gupta, is an intervener in this petition, though he has himself filed a similar petition, which is No. 190-D of 1962.

2. The Income tax Service before the Indian Income tax Act, 1922 (Act 11 of 1922), functioned as a branch and under the control of the Provincial Local Revenue Administration. In consequence of that Act some kind of central control came in existence, but the conditions of service of those who manned the Income tax Service were then modelled on the Local Revenue Administration in each province. Later in 1944 it was decided to reorganize the service. The reorganization scheme appears in Government of India, Finance Department (Central Revenues), letter of 29 September 1944, Ex. B to the petition. It

created, so far as the matters relevant for this petition are concerned, two classes in the Income tax Service, Class I, with Grade I and Grade II, and Class II, with Grade III. Recruitment to Class I, Grade II, Service was to be:

(a) by direct recruitment through a competitive examination, and

(b) by promotion from Class II, Grade III, the ratio prescribed in Para. 2(d) of the letter being 80 per cent by direct recruitment and 20 per cent by promotion from Class II, Grade III Service, with the surplus in the vacancies, in case sufficient number of suitable candidates not being available for promotion, going to direct recruitment.

In the Government of India, Ministry of Finance (Revenue Division), letter of 24 January 1950, Ex. G to the petition, the rules of seniority were laid down. There is no controversy over the rules of seniority inter se between direct recruits as such and promotees as such, the controversy is only confined to the matter of rule concerning combined seniority of direct recruits and promotees. The rule is 1(f)(iii), which reads:

The promotees who have been certified by the Commission in any calendar year shall be senior to all direct recruits who complete their probation during that year or after and are confirmed with effect from a date in that year or after:

Provided that a person initially recruited as Class II Income tax Officer, but subsequently appointed to Class I on the results of a competitive examination conducted by the Federal Public Service Commission shall, if he has passed the departmental examination held before his appointment to Class I Service be deemed to be promotee for the purpose of seniority.

This seniority rule was restated in Annexure A to the Government of India, Ministry of Finance (Revenue Division) letter of 5 September 1952, Ex. II to the petition and it runs thus:

Rule 1(f)(iii).-Officers promoted in accordance with the recommendation of the departmental promotion committee before the next meeting of the departmental promotion committee shall be senior to all direct recruits appointed on the results of the examination held by the Union Public Service Commission during the calendar year in which the departmental promotion committee met and the three previous years.

(iv).-Notwithstanding anything contained in Clause (iii), a Class II Income Tax Officer subsequently appointed to Class I on the results of a competitive examination conducted by the Union Public Service Commission shall, if he has passed the departmental examination held before the appointment to Class I Service, be deemed to be a promotee for the purpose of seniority.

3. This Clause (iv) is almost a reproduction of the proviso to 01. (iii) of the rule in the year 1950, and Clause (iii) has been recast in a somewhat different language though in substance it says what the main body of Clause (iii) of the

rule in 1950 said. The meaning and purport of the rule in 1952 becomes a little more clear when it is read with the language used in the same clause of the rule in 1950. The effect of 01. (iii) of the rule is that a promotee becomes senior to a direct recruit who has completed his probationary period of two years in the very year in which the departmental promotion committee meets recommending the promotion of the promotee. Perhaps these two illustrations, though they are exactly the same but relating to two different periods of four years each, will lend to clarity of the application of Clause (iii) of the rule.

ILLUSTRATION A Year of Year of Year of appointment completion of Departmental Position of Competitive by direct two years" promotion direct Promotees" examination recruitment probation committee met recruitment seniority

1947 1948 ... 1950 Has completed Senior. the three probation. 1948 previous 1949 ... 1951 Has not Do. years. completed 1949 probation. 1950 ... 1952 Do. ... Do. 1950 1951 ... 1953 ... in 1950 ... Do. ... Do.

ILLUSTRATION B

1950 1951 ... 1953 Has completed Senior. the three probation. 1951 previous 1952 ... 1954 Has not Do. years. completed 1952 probation. 1953 ... 1955 Do. ... Do. 1953 1954 ... 1956 ... in 1953 ... Do. ... Do.

4. In these two illustrations one year of 1950 of the competitive examination is common, but, as stated, the Illustrations, though concerning different sets of years, are exactly the same illustrating the application of Clause (iii) of the rule as between the direct recruit recruited in the competitive examination of 1960 in illustration A and in the competitive examination of 1953 in Illustration B, and a promotee recommended by the departmental promotion committee for promotion respectively in the years 1950 and 1953. The promotee is senior to the direct recruit succeeding in the competitive examination of the year in which the promotee was recommended by the departmental promotion committee for promotion and in each illustration the three years above the year (1950 in Illustration A and 1953 in illustration B) in which the direct recruit succeeded in the competitive examination are the three previous years, and it is clear that in each Illustration the direct recruit of the third previous year has completed his two years period of probation in the very year in which the departmental promotion committee met recommending the promotee for promotion. The promotee is, under Clause (iii) of the rule, made senior to this direct recruit thus completing his probationary period in the very year in which the departmental promotion committee met to recommend the promotion of the promotee, though he succeeded in the competitive examination in the year 1947 (Illustration A) and in the year 1950 (illustration 8), the other three below such a direct recruit have by that year not yet completed their period of probation. Obviously they must also become junior to the promotee recommended for promotion by the departmental promotion committee meeting in the year in which the direct

recruit had already completed his period of probation. So the direct recruit who has completed his probationary period in the very year in which the departmental promotion committee met recommending the promotion of a promotee becomes junior to such a promotee and all those direct recruits who by that year have not yet completed their period of probation become junior to such a promotee. The year of recommendation of the departmental promotion committee for entry of Class II Officer in Class I, Grade II Service taken as the basis, leaves the promotee recommended in that year senior to the direct recruit completing probation in that very year. Thus understood the operation of the rule does not sound weighted unduly in favour of a promotee as the use of the words " the three previous years " in the 1952 form of Clause (iii) of the rule may seem to indicate as a first impression.

5. A Class II, Grade III Officer, has to have two years" probation and after that period he has to have three years" service in that class before he is considered by the departmental promotion committee for promotion to Class I, Grade II Service, in other words, he has to have five years" service in Class II before he becomes Qualified for promotion to Class 1, Grade II Service. The basis of promotion is selection on merit (Para. 5, Part B of Chap. 9 of the Central Board of Revenue Manual). In Para. 3 of Part A of the same chapter in this manual, this is what is stated with regard to selection on merits:

Promotion of men by selection from lower grades, giving greater weightage to outstanding qualifications, record of work and ability, rather than to mere seniority, is termed " selection on the basis of merit.

* * * So that selection on the basis of merit is of those who are of outstanding capability in Class II Service. In the three years, after completing two years of probation, officers in Class II, Grade III Service, before they come for consideration by the departmental promotion committee, have done assessment work in the department, it is the record of that work and ability in relation to that which is a consideration for the departmental promotion committee when making selection on merit. The application of Clause (iii) of Rule 1(f) then comes to this: that as against two years of probationary training of a direct recruit to Class I, Grade II Service, is considered the three years" departmental work of a promotee from Class II, Grade III Service, and on consideration of this the promotee is given seniority to the direct recruit completing the period of probation: this is the basis of the rule in Clause (iii) of Rule 1(f) of the seniority rules.

6. The quota for direct recruits was 80 per cent and for promotees 20 per cent in Ex. B of 29 September 1944. In the Government of India, Ministry of Finance (Revenue Division) letter of 18 October 1954, Ex. E to the petition, the ratio was changed to quota of $66 \frac{2}{3}$ per cent for direct recruits and $33 \frac{1}{4}$ per cent for promotees. The petitioner has said that between the years 1945 and 1950 there was recruitment of promotees in excess of the quota, but at the time of arguments reliance was not placed on this. This petitioner further gives these

figures of recruitment for the years 1951 to 1954. These are to be found in Para. 7 of the petition and Ex. F to the petition.

Year of competitive examination	Year of appointment	Vacancies filled by direct recruits	Vacancies filled by promotees
1950	1951	50	...
...	...	...	1952 ... 49
1951	1953	50	38
1952	1954	44	31
-----	-----	144	118
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The petitioner takes appointments made in the years 1952, 1953 and 1954 and points out that the vacancies filled by direct recruits were 94 and by promotees 118. He then divides 94 by 2, arriving at the figure of 47, and deducting it from the figure of 118, he comes to the figure of 71 which he says is excessive recruitment of promotees over and above their quota ratio. This is not correct, but for the moment the matter may be left here.

7. The date of birth of the petitioner is 15 March 1924. He was successful in the competitive examination of 1950. So he was about 26 years of age when he set for the competitive examination. He was appointed to Class I, Grade II Service, on 27 October 1951. His grievance has been that though he was appointed to Class I, Grade II Service, in 1951, by operation of the seniority rule in Clauses (iii) and (iv) of Rule 1(f), combined with excessive recruitment to Class I, Grade II Service, over and above the permissible quota for promotees, he has become junior to 121 promotees, 3 of whom are deemed promotees of the year 1951 under Clause (iv) of Rule 1(i) and 118 of them are promotees of the years 1952, 1953 and 1954, gaining seniority over him under Clause (iii) of the same rule, of the total of one hundred and twenty-one promotees thus senior to him, thirty-seven have already retired. He has challenged the validity of Clauses (iii) and (iv) of Rule 1(f) on the ground that they operate on unjustifiable classification, after entry into Class I, Grade II Service, of direct recruits and promotees, and on the basis of that classification promotees are given seniority over direct recruits, the rules in relation thereto having no rational or reasonable relation to the object sought to be achieved which has been stated in the affidavit on behalf of respondent 1 to have been the creation of a "well-knit service." The operation of the rule has depressed his seniority which has been further depressed by the operation of the quota rule, thus not leaving him with equality of opportunity for promotion along with those who entered Class I, Grade II Service, at the same time. In this way his challenge has been to the seniority rate and the implementation of the quota rule on the basis of violation of Articles 14 and 16(1). The respondents have, of course, opposed the position taken by the petitioner broadly saying that the seniority rule proceeds on a rational and reasonable basis and the quota rule has, at least during the years 1951 to 1954, been to an appreciable extent followed, if not followed, strictly.

8. This petition, along with, a number of other similar petitions by Income tax Officers considering themselves to be somewhat in the same position as the petitioner, came for hearing first before Mahajan and Shamsheer Bahadur, JJ. The learned Judges differed:

(a) on the question of the validity of Clause (iii) of Rule 1(f) of the seniority rules, Mahajan, J., being of the opinion that that rule is valid "to the extent that the promotees of that year will rank senior to the direct recruits of that very year but is ultra vires so far as it supersedes the direct recruits of that year by promotees who come in that class in the next three years," and Shamsheer Bahadur, J., being of the opinion that the rule is invalid as a whole, and

(b) on the question of relief, Mahajan, J., being of the opinion that Rule 1(f)(iii) of the seniority rules being violative of Article 16(1), to the extent as explained by him, must be struck down, and Shamsheer Bahadur, J., being of the opinion that, in spite of Rules 1(f)(iii) and 1(f)(iv) of the seniority rules being not valid, as over a considerable number of years the rule has been followed, promotions in the wake of it have been made, and the promoted officers have made orders, so there should be no interference, for otherwise the result would be considerable reversions and may be the question of the validity of the orders passed by the officers who would be affected will crop up. The learned Judges agreed that the quota rule has not been strictly followed, but again while Mahajan, J., was of the opinion that the excess promotees would not be entitled to seniority under Rules 1(f)(iii) and 1(f)(iv), if I understand right, Shamsheer Bahadur, J., was not inclined to the grant of any such relief. The learned Judges agreed to refer the case to the Full Bench for decision of the matters raised in the case. This is how the petition has come before this Full Bench.

9. On behalf of the intervener Sri N.O. Chatterji urged a preliminary consideration that the learned Judges in the Division Bench having differed under Cl. 26 of the Letters Patent, this Bench could only give decision on the question of difference, which the learned Counsel said is confined to the matter of relief. In this respect he relied upon *Sardar Bibi v. Haq Nawaz Khan* AIR 1934 Lah. 371 (F.B.) which has been followed in *Jyoti Prakash Mitter Vs. The Hon'ble Mr. Justice H.K. Bose*, Chief Justice of High Court, Calcutta, In the present case the learned Judges have not drawn up the question or questions of difference between them. The position was the same in *Sardar Bibi* case AIR 1934 Lah. 371 (F.B.)] (vide supra). This the Full Bench pointed out, was not quite proper in view of Cl. 26 of the Letters Patent, but as the points of difference were found by the learned Judges to be apparent and the counsel for the parties agreed that remission of the case to the Division Bench was unnecessary, so the learned Judges proceeded to hear and dispose of the case. No doubt in the present case the learned Judges in the Division Bench have differed on the question of relief, but the learned Attorney-General very rightly pointed out that the difference is not confined to that matter, the learned Judges having also differed on the validity of Rules 1(f)(iii) and 1(f)(iv) of the seniority rules. This last difference opens up the whole of the case of the petitioner for argument. In the circumstances it was decided to hear the whole of the case, and arguments of the parties have, therefore, proceeded on that basis. No more need be said on this aspect of the matter.

10. The sources of recruitment to Class I, Grade II Services, of Income tax Officers are different, one source being direct recruitment and the other source being promotion from Class II, Grade III Service. The classification thus Inheres in the sources of recruitment. It has been taken as such. No deliberate attempt has been made to classify something where separate categories did not exist. The contention of the petitioner was that that classification should not have been taken into consideration in framing the rules of seniority in order to adjust seniority between the two sources of recruitment. The use of that classification for that purpose, according to him, is not justifiable. Further, to give advantage to promotees over direct recruits on the basis of that classification by Rule 1(f) (iii), he said, has no rational or reasonable relation to the object sought to be achieved which, he pointed out according to Ex. B was "to improve the income tax administration," and According to the affidavit of Sri S.P. Panda, Deputy Secretary in the Department of Revenue, for respondent 1:

was to have a well-knit Class I Service comprising of persons recruited through competitive examination and officers with tried experience and proved merit.

He, therefore, urged that in this manner not only has he, as a direct recruit, been treated with discrimination but that his chances of promotion have been so deferred that he has not equal opportunity for promotion as guaranteed by Article 16(1). In *The General Manager, Southern Railway Vs. Rangachari*, their lordships held that promotion to selection posts is included both under Arts, 16(1) and 16(2) and observed, at p. 41, that:

... It may be relevant to remember that Articles 16(1) and 16(2) really give effect to the equality before law guaranteed by Article 14 and to the prohibition of discrimination guaranteed by Article 15(1). The three provisions form part of the same constitutional code of guarantees and supplement each other. If that be so, there would be no difficulty in holding that the matters relating to employment must include all matters in relation to employment both prior, and subsequent, to the employment which are incidental to the employment and form part of the terms and conditions of such employment.

Sri N. C. Chatterji on behalf of the intervener in this respect made reference to *J. Pandurangarao Vs. Andhra Pradesh Public Service Commission*, their lordships observed:

It is well-settled that though Article 14 forbids class legislation, it does not forbid reasonable classifications for the purposes of legislation. When any impugned rule or statutory provision is assailed on the ground that it contravenes Article 14 its validity can be sustained if two tests are satisfied. The first test 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 of the group; and the second is that the differentia in question must have a reasonable relation to the object sought to be achieved by the rule or statutory provision in question. As the decisions of this Court show, the classification on

which the statutory provision may be founded may be referable to different considerations.

The same view has been expressed in *The State of West Bengal Vs. Anwar Ali Sarkar*, . The learned Counsel also referred to this statement in *State of Punjab and Others Vs. S. Kehar Singh and Others*,

...that a legislature cannot take what might be termed a natural class of persons, split that class in two, and then arbitrarily designate the dissevered factions of the original unit as two classes and thereupon enact different rules for the Government of each.

But this has not happened. In the present case the classification inheres in the two categories which provide sources of recruitment. These cases have been cited in support of the position urged by the petitioner as already stated. The learned Attorney-General in reply said that there are:

- (a) rules for recruitment,
- (b) rules for seniority,
- (c) rules for promotion.

So that the seniority rule is different from the promotion rule. The admitted basis for promotion in Class I from Grade II to Grade I is seniority. The learned Attorney-General, thus, urged that that rule of promotion applied equally to all Income tax Officers in Class I and there was no differential or discriminatory treatment in the application of that rule of promotion in so far as the two categories of direct recruits and promotees manning that service are concerned. Promotion being based on seniority alone, barring an exceptional case when an officer is passed over because of unfitness or questionable conduct, the opportunity for promotion is obviously linked inextricably with the question of seniority. In other words, for all practical purposes seniority in Class I Service settles the question of promotion from Grade II to Grade I in that class. If, therefore, the rule of seniority now under consideration is open to attack on the basis of it being violative of Article 14 or Article 16(1) it obviously will have to be struck down. The learned Attorney-General then addressed on the question whether the rule is reasonable or rational. His position was that a direct recruit on completion of two years' period of probation becomes qualified for confirmation and the date of that qualification has been taken for determining seniority in his case. The promotee from Class II, Grade III Service, joins Class I, Grade II Service, after putting in five years in Class II, Grade III, Service, with the three years' experience of actual working in the department in the matter of assessment, which is the major part of the work in the Income Tax Department. The direct recruit during the period of probation is under training to take over that type of work along with of course other departmental duties. He, therefore, argued that with two years' training experience of the direct recruit on the date he becomes qualified for confirmation after completion of two years'

probationary period is considered three years" working experience of the promotees in the department, particularly in regard to assessment work and on these considerations the promotee is given seniority under Clause (iii) of Rule 1(f) of the seniority rules, which he said is a reasonable and rational basis for the rule having connexion with the departmental requirements and performance of duties.

11. The first approach of the petitioner to this argument was that there was no justification for discounting and not taking into consideration the probationary period undergone by direct recruit. Paragraph 8 (1) of Chap. 7 of the Central Board of Revenue Manual prescribes the nature and scope of the training of a direct recruit during the probationary period of two years. Sub-paragraph (2) of this says that:

the practical training to be given to probationers appointed to the Class II Service of Income tax Officer is also the same, *mutatis mutandis* as for Class I probationers.

Thus the Class II Officer has had exactly the same probationary training at least three years before he comes to join Class I Service, so that when considering the question of adjusting seniority between a promotee from Class II to Class I, and a direct recruit recruited to Class I, the period of probation of both is taken into consideration. The argument of the petitioner would mean that a direct recruit's period of probation should be taken into consideration but that of the promotee be Ignored, though the nature and scope of the probationary training in either class is the same. This consideration urged by the petitioner does not thus advance his case.

12. Secondly, the petitioner contended that it is not true that a Class II Officer does the same work as a Class I Officer, in fact he does less important and inferior work. In support of this he first referred to *Kishori Mohanlal Bakshi Vs. Union of India*, , in which a Class II Officer had claimed denial of equal opportunity under Article 16(1) on the ground that as he was doing the same work as a Class I Officer, he was entitled to same opportunity for promotion along with Class I Officer. This was negated by their lordships pointing out that there was no denial of equality of opportunity as between citizens holding posts in different grades in Government service. Another contention by the petitioner In that case was that there was discrimination between Class I and Class II Officers inasmuch as though they do the same kind of work, their pay-scales are different, and hence there is violation of Article 14, was also rejected. In particular in relation to this case the petitioner made reference to Ex. I with his affidavit-in-reply. Exhibit I is a copy of an affidavit filed by an Under Secretary in the Ministry of Finance (Revenue Department) in *Kishori Mohanlal Bakshi Vs. Union of India*, in which he stated that:

So far as the nature of work and the duties are concerned, it is a matter of administrative arrangement, but normally Class I Officers are entrusted with

more onerous duties than Class II ... I further deny that the nature of work performed by him (the petitioner in that case and the burden of responsibility shouldered by him are Identical with those in Class I Service. It is submitted that Class I Officers are recruited from persons" who have shown much higher proficiency in the examination held for selection of Class I Service and it is only those persons who could be considered for appointment as Assistant Commissioners. I further say that there have been occasions when a Class II Officer is entrusted with a work of higher responsibility in the interest of administration or for ascertaining his efficiency for being promoted to Class I Service, but merely because of the work done by him, no person is entitled to claim as of right a post in Class I Service.

The petitioner contended that this affidavit shows that the quality of experience in Class II Service is no consideration that can be made the basis of giving seniority to a promotee on entry in Class I, Grade II Service. But even that affidavit clearly says that there have been occasions when Class II Officers have been entrusted with work of higher responsibility in the interest of administration or for ascertaining efficiency for being promoted to Class I Service. It is this type of Class II Officer who obtains promotion on the recommendation of departmental promotion committee with which the only consideration that has to prevail is that of merit. So that the statement in that affidavit is obviously not helpful to the argument of the petitioner. The petitioner also referred to Ex. 32 with his affidavit-in-reply, which is an extract from the report of the Direct Taxes Administration Inquiry Committee to show that while a Class I Officer is expected to complete in a year 250 units in Grade I and 150 units in Grade II, a Class II Officer is only expected to complete 70 units in a year. The object of this was to show that the Class II Officer was expected to do less work, but then somewhat similar disparity appears between the two grades of Class I also. These considerations urged by the petitioner, to my mind, proceed on a misconception, for what he has been attempting to do is to indicate the comparison between the work done by Class I Officers as against the work done by class II Officers. Actually the comparison is for the matter of rational and reasonable nature of the seniority rule between the experience of a direct recruit in the training period of probation and the experience of a Class II Officer who is selected on merit for entry in Class I. The Deputy Secretary in the Revenue Department of the Finance Ministry in his affidavit on behalf of respondent 1, Para. 16, says that:

nor is it correct to say that a Class II Officer was doing an inferior kind of work, in fact many of Class II Officers were doing same work ordinarily allotted to Grade I or Grade II Officers of Class I.

Again, the same Deputy Secretary in his second affidavit as a reply to the affidavit-in-reply of the petitioner, Para. 42, says that:

the promotees have always been in charge of regular work of Income tax Officers while the direct recruits, though nominated to the service, have to undergo training during the period of probation. They are not posted directly as Income

tax Officers the moment they are selected for appointment in the service.

In the same affidavit he also states....

I deny that the responsibility and nature of work of Class II Officers are far inferior to those of Income tax Officers, Class I.

In their affidavit most of the promotees who have been impleaded as respondents to this petition have clearly stated that before they were considered for promotion to Class I Service, they were actually doing the work of Class I Officers. With the affidavit of respondent 34 is annexure II giving a list of Class II Officers who held same charges as Class I Officers while they were still in Class II Service. So that the claim of the petitioner that the promotee from Class II Service to Class I Service does inferior work and that it is not reasonable to take into consideration his experience of actual work in the department while in Class II Service, does not merit any consideration. It has already been pointed out that promotion from Class II Service to Class I Service is only on one consideration and that is selection on merit. So when such a selection is made the promotee is considered to be a person of exceptional merit, fit in every respect for Class I Service, and that on the basis of the quality and nature of his work in the department while in Class II Service.

In the fourth place, In Para. 43 of his affidavit-in-reply, the petitioner says that the promotee on being promoted to Class I Service has the advantages of status, increase of pay and prospects for promotion exemption from the competitive examination, and absence of risk of demotion or reversion due to absence of any period of training and probation, but all these advantages to the promotee flow from the very fact of his promotion. So far as the last of these considerations is concerned, a promotee at least three years before he comes to be considered for promotion to Class I Service has already undergone the same type of training during the probationary period as a Class I Officer.

13. Fifthly, the petitioner laid stress on the question of age saying that the promotees of the same age as his, as shown in Ex. I to the petition, on entry to Class I Service have become senior to him. The rules regulating recruitment to Income tax Officers, Class I, Grade II Service, are Ex. C to the petition, and Rule 11 provides that a candidate for a competitive examination to sit in that examination must not have attained the age of 24 on the date prescribed for this purpose in the notice issued by the Union Public Service Commission. It has been shown that the petitioner took the competitive examination at the age of 26. This he probably did under some relaxation of the rule relating to requirement of age for such an examination. It is obvious that two years' delay will substantially affect the seniority of any officer entering a service. In Ex. 1, one hundred and eighteen promotees are listed which the petitioner claims are all of the same age as his. In fact only eight at Nos. 59, 71, 79, 80, 86, 98, 108 and 112 are promotees who are either of his age or a little younger, but all other promotees in the list are older than the petitioner. In All India Station Masters' and

Assistant Station Masters" Association, Delhi v. General Manager, Central Railway AIR 1960 S.C. 364 the very same consideration was urged in support of a similar argument as urged by the petitioner, and their lordships observed at p. 386, Para. 4:

Assuming, however, the position to be as stated in the petition (that man of younger age became senior in consequence of the rule of promotion), that may only evoke some sympathy...but does not in any way affect the decision of the question whether Article 16(1) of the Constitution is contravened by this channel of promotion.

So this argument of the petitioner does not affect the question of the reasonable or rational nature of the rule of seniority.

14. Sixthly, the petitioner has taken the stand that promotees were first promoted to temporary posts in Class I Service, while he and other direct recruits like him were appointed against substantive vacancies, and so the promotees appointed to temporary posts in Class I could not have seniority over direct recruits appointed against substantive vacancies, but this has been denied in the affidavit of the Deputy Secretary on behalf of respondent 1. In this connexion the further stand of the petitioner was that the promotee officers were appointed in officiating capacity as is clear from Ex. 14 to his affidavit-in-reply. There is a note at the end of this notification that the officiating appointments were from 1 January 1952 to 30 April 1953 and the petitioner stressed that such short appointments could not be considered for the matter of seniority. In the main body of the notification it is stated that the officers listed in it have been promoted on officiating basis until further orders and the two dates given in the note to the notification were probably meant only for reconsideration of these cases after their work had been seen in the new positions. The petitioner then pointed out that he has been adversely affected and so also the other direct recruits like him by the fact that promotees appointed in officiating capacity in Class I, Grade II Service, were promoted to Grade I in the same class of service without being confirmed in Grade II. The learned Attorney-General, however, referred to Ex. 6 to the affidavit-in-reply of the petitioner, which is letter of 11 July 1945 from the Deputy Secretary to the Government of India in the Finance Department (Central Revenue) to all Commissioners of Income tax, and in Para. 3 of this it is stated that:

the new Class I Service of Income tax Officers will be treated as one cadre...Nor will specific posts be ear-marked for inclusion in Grade I or Grade II ;

and this gives a complete answer to this argument of the petitioner because if Class I is one cadre, obviously confirmations in it can take place at any time. There is this note to Para. 4 in Part B of Chap. 9 of the Central Board of Revenue Manual:

Note.-The Union Public Service Commission has ruled that the promotion to Class I. Grade I, of Officiating Income tax Officers, Class I, Grade II, whose retention

in that grade has been approved by the departmental promotion committee would also be in the nature of promotion from Income tax Officer, Class II, Grade III, to Income tax Officer, Class I, Grade I, and require consultation with the Commissioner, even though the promotion from Income tax Officer, Class I, Grade II, to Class I, Grade I, is made on the basis of seniority-cum-fitness without reference to the departmental promotion committee. Appointments to Class I, Grade I, should, therefore, be referred to the Commission for approval so long as the officers have not been confirmed in the Class I, Grade II post.

The note negatives the argument of the petitioner that a promotee officiating in Class I, Grade II, cannot be promoted to Grade I of that class and for the first time confirmed in that grade. There was then the eighth objection on the side of the petitioner that even those who were promoted in 1954 have become senior to him. In Para. 14 of the petition he says that such persons have been shown senior to him on the basis that their promotion was recommended by the departmental promotion committee which met in 1953, but he says that he has reasons to believe that the committee actually met in 1954. This was denied in the Deputy Secretary's affidavit on behalf of respondent 1. In spite of this the petitioner came forward in his affidavit-in-reply, Para. 57 (d), to say:

I verily believe that no business was conducted by the departmental promotion committee that had met in November 1953...

To this again the reply of the Deputy Secretary in his second affidavit is that the Income tax Officers promoted to Class I in 1954 were approved for promotion by the departmental committee that met in November 1953. So that this insistence by the petitioner is without basis. In the ninth place the petitioner said that Rules 1(f)(iii) and 1(f)(iv) is an administrative rule and is not part of his conditions of service which are to be found in Exs. B, C and E with his petition. Exhibit B is the scheme of reorganization in which the question of seniority is not considered, Ex. C relates to rules in regard to recruitment to Income tax Service, Class I, Grade II, in which again the question of seniority is not dealt with ; and Ex. E merely deals with the question of quotas of recruitment for direct recruits and promotees. If this stand of the petitioner were correct, he is governed by no rule of seniority as a condition of his service. As a logical consequence of this approach the petitioner further contended that to his case the rate of seniority applicable will be what he called " natural rule of seniority." This at least has not been quite clear to me. It is common knowledge with those who have had anything to do with service rules of various services that seniority may proceed on the basis of age or merit list or confirmation or the like consideration. Which one of such considerations would be a natural rule of seniority according to the conception of the petitioner, is not quite clear. In the present case the consideration in settling seniority between the category of direct recruits and the other category of promotees is not the actual date of confirmation, but the date of qualifying for confirmation in the case of direct recruits and the date of entry in an officiating capacity in Class I Service in the case of promotees. This is as

reasonable a basis as any of the others referred to above. In the affidavits of the Deputy Secretary for respondent 1, it has been explained that the rules of seniority have been made in consultation with Union Public Service Commission and with the concurrence of the Ministry of Home Affairs. So the petitioner cannot get away in this manner from the rule of seniority as laid down in Annexure A with Ex. H to the petition. This very rule is reproduced as a rule of seniority in the Central Board of Revenue Manual at p. 297 as item 2 to Para. 11 in Chap. 10. There is no doubt that this rule of seniority is a part of the conditions of service of Income tax Officers in Class I, Grade II, and the petitioner has no escape from it at least not on this consideration urged by him. The last argument of the petitioner in this connexion was that not only has a promotee many other advantages in consequence of his promotion to Class I, Grade II Service, but along with gaining seniority he has been given a further advantage of consideration of his five years' service in Class II, Grade III Service, for promotion from Class I, Grade II, to Class I, Grade I Service. Paragraph 4 of Part B in Chap. 9 of the Central Board of Revenue Manual says that the prescribed minimum service for Class I, Grade II Officer, in the matter of promotion to Grade I of that class is five years' gazetted service Including one year in Class I, Grade II. So that actually four years' service in Class II, Grade III, and one year's service in Class I, Grade II, is the minimum period of service for promotion to Class I, Grade I Service, for a promotee. This has really not to do anything directly with Rule 1(f)(iii) of the rules of seniority, but, to my mind, the object of this is to give effect to that rule and not allow It to be defeated by the requirement of five years' service before consideration for promotion from Class I, Grade II, to Class I, Grade I. Turning back to illustrations A and B given above, explaining Rule 1(f)(iii) of the seniority rules, if years of competitive examinations from 1948 to 1953 are taken, the years of appointments of direct recruits succeeding in these examinations are from 1949 to 1954 and the years of completion of two years' probationary period are from 1951 to 1956. The departmental promotion committee in the combined illustration say met in 1953. A promotee recommended by it in that year would be senior to a direct recruit taking competitive examination in that very year, that is to say 1953, and the three previous years, 1950 to 1952, are the years relating to those who were appointed in 1951 to 1953. Obviously to the promotee recommended in 1953, those appointed in the years 1949 and 1950 will be senior. Now those appointed in the years 1951, 1952 and 1953, will complete their five years' service in 1956, 1957 and 1958, respectively. The promotee who has been recommended in 1953 will be joining Class I, Grade II, in 1964 and will be completing his five years' service in that grade in 1959. This means that those direct recruits who were appointed in 1951, 1952 and 1953, completing their five years of service in Class I, Grade II, in the years 1956, 1957 and 1958, respectively, shall have done so before the promotee recommended in 1953 completes his five years of service in Class I, Grade II, by 1959. It has been shown that direct recruits appointed in the years 1951, 1952 and 1953 are of the 1950, 1951 and 1952 competitive examinations, the three years previous to 1958 in which the

promotee was recommended, and consequently Junior to the promotee. So if the promotee was not given credit of his four years' service in Class II, Grade III, towards counting five years' qualifying period for promotion from Grade II to Grade I of Class I Service, one of the two results' must follow:

(a) that in spite of the examinees of the years 1950 to 1952 appointed in the years 1951 to 1953, having completed their five years' qualifying service in 1956 to 1968, respectively, they will have to wait at least another one year for the senior man to complete his qualifying period of five years in 1959 so that the senior man is not, in spite of the rule of seniority, denied the benefit of his seniority but in effect made to become junior with the result of giving him first seniority with one hand and then taking it away with the other and also giving him an opportunity for a grievance of the type which the petitioner is urging of not having equality of opportunity in the matter of promotion in spite of the existence of the seniority rule, or

(b) that the senior man, the promotee recommended in 1953, loses his seniority.

On the other hand, if the promotee is not required to put in at least one year's qualifying service in Class I, Grade II, his qualifying service completes in 1954 as soon as he joins Class I, Grade II, having done five years in Class II, in which case he will come for consideration for promotion to Class I, Grade I, not only simultaneously with his appointment in Class I, Grade II, but also before the 1949 examinee (direct recruit) appointed in 1950, who completes his five years in 1955 and his otherwise senior to the promotee recommended in 1953. With one year service in Class I, Grade II, the promotee recommended in 1953, joining his appointment in Class I, Grade II, in 1954, becomes qualified for promotion to Class I, Grade I, in 1955, and that is the very year in which his senior, the direct recruit of the competitive examination of 1949, joining in 1950, becomes qualified for that very promotion. As between the two, of course seniority being the basis of this promotion, the senior, that is to say, the direct recruit of the competitive examination of 1949, joining in 1950, will have first consideration for promotion from Class I, Grade II, to Class I, Grade I. Thus, taking into consideration the promotee's four years' service in Class II along with one year's service in Class I, Grade II, for the purpose of promotion to Class I, Grade I, is just giving effect to the rule of seniority.

15. It was considered at one time that should two persons sit in the competitive examination, say in 1950, and while one of them qualifies for direct entry into Class I, Grade II Service, and the other only for entry into Class II, Grade III Service, the latter will subsequently by operation of Rule 1(f)(iii) become senior to the former. This is not correct. The officer joining Class I, Grade II, shall have completed his five years in 1955 for promotion to Class I, Grade I. The officer in Class II, Grade III, similarly shall have completed his five years, in 1955, for consideration of the departmental promotion committee to recommend him for appointment to Class I, Grade II. Assuming that the departmental promotion committee meets in 1956 and does recommend him, he will be senior to the

direct recruit who sat for the departmental examination in 1956, and those in the three previous years which then are 1953, 1954 and 1955. But the direct recruit whose position is being considered had been successful in the competitive examination of 1950 and joining Class I, Grade II, in 1951, shall have completed his probationary period in 1953. By the time the promotee comes up, the direct recruit shall have at least one year's seniority over him if not two.

16. In this connexion, the only other grievance of the petitioner to which reference may be made is that there have been promotions from Class I, Grade I, resulting from the seniority settled under Rule 1(f)(iii) of the seniority rules and that not only those promotions were not justified because the seniority rule itself is not valid but that the promotions were made by an order of the Board of Revenue and not by the Government. This last averment of the petitioner has been denied in the affidavits of the Deputy Secretary for respondent 1, and it has been stated that the Board of Revenue has merely notified the promotions which have in fact been made by the Government. Promotions from Class I, Grade I, are by selection and the rule of seniority does not come into consideration except that for higher promotions obviously the personnel considered Ia from Class I, Grade I. So that if the rule is followed, the petitioner can hardly take exception to such promotions made by selection.

17. On behalf of the intervener Sri N. C. Chatterjee laid considerable stress on the minority opinion delivered by Shah, J., in *State of Punjab Vs. Joginder Singh*, . In that case, briefly stated, what happened was that on a certain date the Punjab State took over all the local bodies' schools, and on that date there were already existing schools run by the State. Having taken over the local bodies' schools, it proceeded to frame rules dividing the teachers of the already existing State cadre and those taken over from the local bodies into two cadres, namely, the State cadre and the provincialized cadre. The last was a diminishing cadre. The percentage of promotion to selection grade was fifteen per cent. Its operation was that as the provincialized cadre continued to diminish, chances of promotion from it decreased and at the same time as the State cadre continued to grow, the chances of promotion in it increased. The main question was whether on taking over the local bodies' schools the State had or had not integrated the teachers of those schools with the teachers of the already existing State schools. In the High Court it was held that there had been integration and the promotion rule made unjustified classification to enable it to work to the detriment of the provincialized cadre and to the Immense advantage of the small State cadre which was to grow. The rule with regard to promotion was struck down under Article 16(1), On appeal to the Supreme Court the majority of their lordships upset the decision of the High Court finding that there had been no Integration of the two types of teachers, but the minority were of the view that there had been integration. On this view that there had been integration and a rule of promotion operated discriminately, this is what Shah, J., observed at pp. 926 and 927:

We are in the circumstances unable to hold that between the members of the State cadre and the "provincialized" cadre there was any valid basis for classification so as to justify a differential treatment between their members inter se for the purposes of promotion without infringing the constitutional guarantee of equality of opportunity in the matter of employment.

* * * Once the district board and municipal board school teachers were taken over by the Government of Punjab and an amalgamated educational service was evolved, any special provision relating to promotion depending solely upon the source of recruitment and upon no other ground seriously affected the rights of the members of the "provincialized" cadre to promotion, and infringed Article 16, Clause (1), of the Constitution. It may be noticed that for promotion to the higher grade the conditions in respect of both the State cadre and the "provincialized" cadre are the same, namely, that the teacher must be a matriculate and must have put in service for five years in the Education Department. Therefore, persona not possessing the prescribed educational qualifications admitted to the district board and municipal boards as teachers will have no right to promotion.

18. Sri Chatterjee stressed that even the learned Judges in majority did not dissent from this statement of law and if their lordships had come to the conclusion that there had been integration the case would have been decided according to this opinion. This is probable. But 16 is apparent that the facts of that case are not the same as of the present case. There the view of the minority was that on integration of the two categories of teachers, both of which had initially been recruited from different sources many years earlier, a rule of promotion operated to the detriment of one category. In the present case there is no question of integration and of any subsequent rule of promotion operating to the detriment of one category as against another on the categories having been recruited many years earlier. Here is a question of recruitment to Class I, Grade II Service, of Income tax Officers and the adjustment of seniority as between the two categories. So that *State of Punjab Vs. Joginder Singh*, is not of assistance in the decision of the present case.

19. The present, to my mind, is not a case of classification of one service into two classes for the purposes of promotion with the promotion rule operating to the disadvantage of one of the two classes. It is a case of recruitment to service from two different sources and then adjustment of seniority as between the recruits from those sources, so that Article 14 is not directly attracted. Assuming for a moment that that article is attracted, it is immediately apparent that the classification proceeds on an obviously intelligible difference of recruitment by competitive examination and recruitment by promotion. The rule of seniority proceeds on a rational and reasonable basis having connexion with the performance of the departmental duties in Class I, Grade II Service, to which recruitment is made. So that even on this consideration the petitioner has no case in relation to Article 14. In so far as Article 16(1) is concerned, the position of the two

categories of recruits at the initial stage has been explained. The direct recruit joins Class I, Grade II Service, and undergoing a training period of probation for two years becomes qualified for confirmation. The promotee having already undergone the very same training during the period of probation in Class II, Grade III, joins Class I, Grade II, with three years' experience of assessment and working of the department. He is selected by the departmental promotion committee on his having evinced capabilities for promotion to Class I, Grade II, by his performance of departmental duties. So that at the time the direct recruit qualifies for confirmation after two years' period of probation and the promotee joins Class I, Grade II, their training for the probationary period is equal and the same, but the promotee has the additional consideration in his favour of having done assessment work and other departmental work for three years on the showing of proficiency in which his promotion comes to be recommended. This is a reasonable and rational consideration as basis of Rule 1(f)(iii) of the seniority rules to make the promotee senior to the direct recruit qualified for confirmation on the date of the promotee joining Class I, Grade II Service. How this is said to be arbitrary and not justified, is not clear. The attempt of the petitioner to play on the quality of experience of the promotee which is the basis of the rule, has not been successful. Once the conclusion is that this rule has a reasonable and rational basis and particularly having regard to the departmental duties, there can be no question of denial of equal opportunity for promotion by its operation so far as the petitioner or those placed like him are concerned. So the conclusion is that Rule 1(f)(iii) of the seniority rule is not violative of Art. 16 of the Constitution.

20. In regard to Rule 1(f)(iv) of the seniority rules, there are only three respondents- respondents 4, 5 and 6-who have come to be promoted as "deemed promotees" under this clause of the rule. Each one of them was appointed in Class II, Grade III Service, in 1947, and was appointed in Class I, Grade II Service, in 1951, on having successfully competed in the competitive examination, obviously in the year 1950, the same year in which the petitioner was successful. He also joined Class-I, Grade II Service, in 1951. These three respondents are senior to the petitioner and the objection of the petitioner is that while they qualified in the same competitive examination they have become senior to him because of the operation of this artificial rule as they are "deemed promotees," otherwise they would have remained junior to him. The learned Attorney-General pointed out, and I think with every justification, that each one of these respondents having been appointed to Class II, Grade III Service, in 1947, completed his five years' service in that class by 1952, and if the departmental promotion committee met in 1953, as it actually did meet, and recommended their promotion to Class I, Grade II Service, each one of them would have become senior to the petitioner by operation of Clause (iii) of Rule 1(f). So that on facts as they stand these respondents would anyhow have been senior to the petitioner under Rule 1(f)(iii). That is why Mahajan, J., in his opinion points out that the validity of Clause (iv) is determined by the validity of

01. (iii) of Rule 1(f). Apart from this the learned Attorney-General further urged that if a rule like this did not exist, there would be no incentive to those in Class II, Grade II, to take the competitive examination. Obviously, he said that if a promotee of this type even after having been successful in the competitive examination was to take chance of promotion through the departmental promotion committee along with others with him in Class II, Grade II, there would be no idea in his sitting for the competitive examination. On the other hand, if his service in Class II, Grade III, is entirely ignored and he joins Class II, Grade II, as a direct recruit, he might well find himself becoming junior to those whom he left behind in Class II, Grade III, by operation of Rule 1(f)(iii). So that the operation of C1. (iv) of the rule in favour of these three respondents has not really adversely affected the petitioner once it is held that Rule 1(f)(iii) is a valid rule and not open to challenge under Articles 14 and 16(1),

21. The only other matter that remains for consideration is the quota rule. There has been no argument with regard to the operation of this rule in the years 1945 to 1950, though in the petition the petitioner has alleged that in those years also there was excessive recruitment than the quota rule provided for promotees. Those were years before the Constitution and the petitioner cannot be heard to say what happened in those years. Apart from this, it has been made clear in the affidavit of the Deputy Secretary for respondent 1. and in the affidavit of respondent 34. that those were formative years in which the reorganization of the department was being completed and the initial period of reorganization lasted up to 1950, This is probably the reason way this period was not the subject of argument on the side of the petitioner. The argument has only been confined to the years 1951 to 1954. The petitioner having taken only three years, 1952 to 1954, has attempted to show by a wrong manner of calculation an exaggerated figure of recruitment of seventy-one promotees in excess. Even if the figures are taken for those three years and the Intake from both sources is added and then divided by three the excess number of promotees recruited only comes to forty-six. But if it is taken for all the four years from 1951 to 1954, it just comes to an excess of about thirty-one in the quota of promotees. At the same time it is not quite clear how the petitioner is taking the aggregate of these four years. Each year should be considered separately to see how far and to what extent the quota rule has or has not been complied with. That is what their lordships observed in T. Devadasan Vs. The Union of India (UOI) and Another, though that was a case of reservation in favour of scheduled castes and scheduled tribes. In the year 1951 there was no appointment of a promotee to Class I, Grade II, though there were fifty appointments of direct recruits. The grievance should be on the side of the promotees. In 1952 there was no recruitment of direct recruits, but forty-nine promotees were taken in, here the grievance obviously is on the side of direct recruits. In the year 1953 fifty direct recruits were appointed and thirty-eight promotees, with an excess of about nine in favour of the promotees. In 1954, forty-four direct recruits were appointed and thirty-one promotees, with an excess of six in favour of the promotees.

Considered year wise, the grievance on the side of the petitioner would appear not to be substantial. However, the "petitioner probably takes these years together and the accumulative effect of recruitment in these years with the idea to show that the excess recruitment of promotees over these years has led to the promotees recruited in excess also becoming senior to him. The figures for the four years, 1951 to 1954, show excess number of promotees to be about thirty-one, and the figure is not seventy-one as the petitioner has represented. All the same there has been excess of promotions of promotees above the quota. The quota rule is an administrative guidance to the department to recruit from two different sources in the proportion stated in the rule as nearly as may be having regard to the exigencies and circumstances connected with the Income tax Department. Respondent 34 in his affidavit points out that in the years of the last war and, subsequent to that there were new statutes imposing new taxes, the administration of which immediately necessitated the availability of senior officers in Class I, Grade II. The department could not possibly sit idle to wait for the result of competitive examination and had to go ahead with the work including the new taxation work and thus there were circumstances in which it became necessary to have immediate recourse to recruits in Class I, Grade II, and those were available by promotion. There is substance in this approach. In any case, in my view, the so-called quota rule is a rule of mere administrative guidance for the department though, of course, the departmental authorities are expected to adhere to it as nearly as practicable, in the circumstances prevailing. At this stage it may be pointed out that in the rules regulating recruitment to Class I, Grade II Service, Ex. 0 to the petition, Rule 4 provides that the

Government shall determine the method or methods to be employed for the purpose of filling in particular vacancies or such vacancies as may require to be filled during any particular period, and the number of candidates to be recruited by each method.

This rule supports the view that the quota rule is no more than mere administrative direction. Assuming that the quota rule is in the nature of a statutory rule, it is obvious that its arithmetical fulfilment or application at any given time must be impractical. A rule which cannot be complied with exactly but can only be complied with substantially is not an imperative rule but is directory. So even if the quota rule is supposed to be a rule in the nature of a statutory rule, it is a directory rule, of which substantial compliance will do. In this case, in view of the excess promotions of promotees over and above the promotes quota as shown and in view of the circumstances to which reference has been made by respondent 34 in his affidavit in regard to new taxation legislation and the immediate demand in consequence of it of new officers, it appears that the rule has been substantially complied with. The petition was filed by the petitioner on 25 April 1962 and he is questioning the application of this rule starting with a period of ten years earlier in 1951. Surely he cannot be heard to make a grievance in this respect after the lapse of so many years, particularly in the case of the application of a rule which in the nature of filings is merely a directory rule.

22. With the affidavit of respondent 34, dated 17 August 1963, is Annexure R-6, which is a memorandum, dated 27 October 1963, circulating seniority list of Income tax Officers, Class I, Grade II, as on 1 August 1953, based obviously, both on the operation of seniority rules 1(f)(iii) and 1(f)(iv) and the recruitment on the basis of the quota rule as it had actually been done by then, inviting the attention of the officers concerned to point out mistakes in the list for rectification. The petitioner filed his petition, as stated, on 25 April 1962, something like nine years after the circulation of the seniority list. He had waited for nine years to challenge his position in it on the ground of the invalidity of the seniority rules 1(f)(iii) and 1(f)(iv) and the non-implementation of the quota rule. This delay would disentitle him to the exercise of discretion in his favour by this Court under Article 226. It was urged by the petitioner that there has been violation of his fundamental rights under Articles 14 and 16(1) and that the delay as it has been should be ignored. The learned Attorney-General referred to B. Venkataramana Vs. The State of Madras and Another, pointing out that although their lordships struck down the communal Government order as infringing the fundamental right guaranteed to the petitioner in that case under Articles 16(1) and 16(2), but in spite of that, in the circumstances of the case, relief was refused to the petitioner. The petitioner in that case had been denied fundamental right of employment because of the communal Government order and he was denied relief by their lordships because there were still some vacancies available for which the petitioner's application could be considered on merits without reference to the communal Government order. The case on facts, of course, is not parallel to the present case, but if the question of grant or otherwise of relief as claimed by the petitioner to him had arisen, the principle underlying the decision might well have weighed against the petitioner. The fact is that the petitioner remained quiescent in the seniority list for something like nine years.

23. Although the seniority of the petitioner has to some extent been affected by recruitment not consistent with the quota rule, however, the real cause of the depression of his seniority seems to be not so much compliance of the seniority rule and some deviation from the quota rule but the group or block recruitment of direct recruits and promotees. The blocks are apparent from the seniority list which is Annexure R-6 to the affidavit of respondent 34. The petitioner does not seem to have made grievance in this respect, but there is Annexure 23 with the affidavit of the President of the Indian Revenue Service (Income tax) Association, which is a memorandum by the Ministry of Home Affairs and in this it is stated that where the question is of recruitment on the basis of quotas, the rotation of the quotas should be followed. At the time of the hearing the petitioner produced a chart prepared by him showing that under the quotas as given in Ex. E of 18 October 1951, every third officer appointed to Class I, Grade II Service, should be a promotee, the other two being direct recruits. The group or block recruitment to this service, however, does not invalidate the seniority rules 1(f)(iii) and 1(f)(iv). This is something which is a matter that the department has to

take into consideration for it might be faced with circumstances when it may not be possible to strictly adhere to the rotation of quotas. However, this has not been the substance of the grievance of the petitioner.

24. The consequence is that the petition fails and is dismissed. The parties are, however, left to their own costs.

Falshaw, C.J.

25. I agree.

Grover, J.

26. I agree.