
(1971) 05 DEL CK 0012

In the Delhi High Court

Case No : Civil Writ Appeal No. 949 of 1970

M.R. Ramakrishnan and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 27-05-1971

Acts Referred:

Citation : (1971) ILR Delhi 494

Hon'ble Judges : Jagjit Singh, J;H.R. Khanna, J

Bench : Division Bench

Advocate : R.K. Garg, P.P. Rao, K.C. Dua, B.Kirpal and A.B.Saharia, for the Appellant;

Judgement

Jagjit Singh, J.

(1) The petitioners in this case, hundred in number, are permanent officials of the grade of Assistants in the Central Secretariat Service. Petitioner I and petitioners 6 to 100 were directly recruited as Assistants. Petitioners 2 to 5 were not directly recruited as Assistants but are admittedly holding high positions in the seniority list of permanent Assistants.

(2) Through a petition filed by them on August 27, 1970 the petitioners challenged the validity of sub-rule (2) of rule 2 of the Central Secretariat Service (Fifth Amendment) Rules, 1970 to the extent it amended the Fourth Schedule to the Central Secretariat Service Rules, 1962 (hereinafter referred to as "the 1962 Rules").

(3) On September 28, 1970 ten other Assistants of the Central Secretariat Service, who wanted to oppose the writ-petition and claimed that their interests would be adversely affected in the event of the above-mentioned sub-rule being declared ultra-vires, were impleaded as respondents 3 to 12. The Union of India and the Union Public Service Commission were already parties to the case, as respondents 1 and 2.

(4) As by the Central Secretariat Service (Ninth Amendment) Rules, 1970, issued on December 21, 1970, the Fourth Schedule of the 1962 Rules was further amended, the petitioners were allowed to amend their petition. In the amended petition, filed on May 3, 1971 they have confined their attack to clause (b) of sub-paragraph (1) of paragraph 2 of the Fourth Schedule to the 1962 Rules, as amended by the Central Secretariat Service (Fifth Amendment) Rules and the Central Secretariat Service (Ninth Amendment) Rules, 1970. They have asked for quashing of the said clause (b) of sub-para (1) of paragraph 2 of the Fourth Schedule to the 1962 Rules. In the alternative it has been prayed for that the 1962 Rules, as amended in the year 1970, be not applied to the select list for the Section Officers' grade for which certain steps had already been taken before the amendments were made.

(5) The Central Secretariat Service comprises of four grades. Grade (IV) is of Assistants in the scale of pay of Rs. 210-530. Grade Iii is of Section Officers in the scale of pay of Rs. 350-900. During the Second World War and after the partition of the country, due to increased work, a large number of temporary appointments had to be made as Assistants. On July 19, 1948 the Central Secretariat Service(Reorganization and Re-enforcement) Scheme was issued, It was, however, given effect from November 1, 1951. The scheme provided for both initial constitution and future maintenance of the service.

(6) When the Central Secretariat Service(Reorganization and Re enforcement) Scheme was introduced nearly 5,000 persons were working as Assistants. At the initial constitution of the service 1819 Assistants became permanent from November 1, 1951. They were the persons who had already been appointed on a permanent basis. The remaining Assistants were treated as "departmental promoters" and in due course were included in three lists of "Regular Temporary Establishment". These lists were to serve as waiting lists for permanent absorption in the grade against future substantive vacancies arising through wastage or increase in the authorised permanent strength. The three lists were drawn up, one after the other, between the years 1952 and 1959 and covered 1250, 620 and 1448 persons respectively. Persons whose names were included in those lists were confirmed as Assistants in due course.

(7) Two tests were held by the Union Public Service Commission in the years 1950 and 1951, in terms of para 25 of the Central Secretariat Service(Reorganization and Re-enforcement) Scheme. Vacancies in grade Iv not filled at the initial constitution were required to be filled by persons who succeeded in passing the tests which were to be held to enable "temporary qualifables" to qualify permanent absorption in the grade of Assistants. The temporary Assistants who qualifies in these tests and some others who were otherwise eligible were included in a list called the first Regular Temporary Establishment List. To give another chance to such of the temporary Assistants as had not been able to qualify in the earlier tests another test was held in the year 1958 and on the basis of hat test and after including Assistants who were

otherwise eligible he second Regular Temporary Establishment list was issued. Many temporary Assistants still remained who had neither qualified in the tests nor had otherwise become eligible for permanent absorption in the grade Iv of the service. As they had been serving for many years they were also included in a third Regular Temporary Establishment list.

(8) Regarding future maintenance of the service the Central Secretariat Service" Reorganization and Re-enforcement) Scheme had provided that one out of every four vacancies will be filled, Ministry-wise, by promotion from the ministerial grades below the rank of Assistant and the remaining three vacancies will be pooled for the Central Secretariat as a whole and filled from among successful candidates at competitive Ministerial Service examinations. Somehow no direct recruitment was made till the year 1954. Even when direct recruitment was started in the year 1955 the quota of direct recruits was reduced to 50 per cent in order to enable a larger number of departmental promotees to be absorbed against permanent vacancies. The number of persons taken as direct recruits on the basis of examinations held in July and November 1955, July 1957 and April and May 1958 was 1465. Four hundred and thirteen more persons were recruited as Assistants on -the results of six annual examinations held after the coming into force of the 1962 Rules.

(9) The authorised permanent strength of the Assistants" grade has been gradually increasing. It was 1,819 on November 1, 1951 and came to be 4,000 by the beginning of the year 1958. When the 962 Rules came into force the authorised permanent strength stood at 4,250.

(10) By the Ministry of Home Affair's Office Memorandum No. 30/ 44/48-Appfs. dated June 22, 1949, para 8, instructions were issued for determining seniority of Assistants who had been confirmed in vacancies arising up to October 22, 1950 and had been included in the permanent strength of the service;. In view of the problem of fixing seniority of displaced Government servants a decision was, however, taken that as a general rule seniority of persons employed in any particular grade should be determined on the basis of the length of service in that grade as well as service in an equivalent grade irrespective of whether the letter was under the Central or Provincial Government in India or Pakistan.

(11) The rule of length of service in the grade was not applied in fixing the relative inter-se seniority of confirmed direct recruits, and Assistants who were in due course made permanent from the three lists of Regular Temporary Establishment. The matter was considered in the year 1958-1959 and it was decided to fix seniority in the following order:-

"(I)Persons appointed to Grade Iv at the initial constitution; (ii) Persons included in the First Regular Temporary Establishment: (iii) Direct Recruits of July 1955 examination; (vi) Direct recruits of November 1955 examination; (v) (a) Direct recruits of July 1957 and subsequent competitive examinations appointed in April 1958 and thereafter, and (b) Persons in the second and subsequent Regular

Temporary Establishment lists of Assistants, in alternate positions, according to the roster of vacancies allotted for direct recruits and departmental candidates in the ratio of 50:50 which was effective from 1-1-1958 onwards."

(12) In the seniority list of Assistants, therefore, the persons who were included in the third Regular Temporary Establishment list were ranked junior not only to those who were included in the first and the second Regular Temporary Establishment lists but also to direct recruits of 1955 and 1957 competitive examinations. In the affidavit of Shri M. K. Vasudevan, Under Secretary in the Department of Personnel, Cabinet Secretariat, filed on behalf of the Union of India in opposition to the petition, it was stated that on the ad-hoc seniority so fixed a seal of finality was put by rule 18(1) of the 1962 Rules. That sub-rule provided that the relative seniority of members of the service appointed to any grade before the appointed day was to be regulated by their relative seniority as determined before that day. The "appointed day" was October 1, 1962.

(13) As already mentioned grade III of the Central Secretariat Service is that of Section Officers. Except the vacancies in the grade of Section Officers which are filled as a result of direct recruitment the remaining vacancies are filled by appointment of persons included in the select list for Section Officers' grade. The procedure for preparing and revising the select list was set out in the Fourth Schedule to the 1962 Rules.

(14) SUB-PARAGRAPH (1) of paragraph 2 of the Fourth Schedule to the 1962 Rules originally provided that additions to the select list for the Section Officers' grade shall be made in such numbers as the cadre authority 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 in that cadre who have rendered not less than eight years' 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; and (b) persons selected on the result of the limited departmental competitive examinations held by the Union Public Service Commission for this purpose, from time to time, in the order of their merit.

Persons of the two categories referred to above were to be included in the select list by taking alternately one person from category (a) and one from category (b) and so on in that order. A proviso to the said sub-paragraph further contained a provision that for period of five years the additions to the select list in any cadre shall be made from the following categories, namely: -

(A) permanent officers of the Assistants' Grade in that cadre 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) (i) persons selected on the result of the limited annual departmental competitive examination, and (ii) equal number of such of the left-over candidates of the Assistant Superintendents (Regular Temporary Establishment) examinations held in 1959 and 1960, as may

be declared eligible for inclusion in the select list after the coming into force of the rules, in accordance with the special orders to be issued in this behalf by the Ministry of Home Affairs in consultation with the Commission.

Persons of these categories were to be included in the select list by taking alternately one person from category (a) and two persons from combined list of persons of category (b), prepared by the Central Government in the Ministry of Home Affairs each year in consultation with the Union Public Service Commission in the order of the names in that list.

(15) By the Central Secretariat Service (Fifth Amendment) Rules, 1970 the Fourth Schedule was amended by substituting the following sub-paragraph for sub-paragraph (1) of paragraph 2 :-

"(1) Additions to the Select List for the Section Officers' Grade in arts cadre shall be made in such numbers as the cadre authority 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 in that cadre who have rendered not less than eight years' 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; permanent officers of the Assistants' Grade with the longest period of approved service in that Grade, on an all-Secretariat basis, and assessed by a Selection Committee to be set up by the Ministry of Home Affairs on the basis of merit as suitable for inclusion in the Select List for the Section Officers' Grade; and (c) (i) persons selected on the results of the limited departmental competitive examinations, held by the Commission, from time to time, in the order of their merit; and (ii) an equal number of such of the left-over candidates (if any) of the Assistant Superintendents (Regular Temporary Establishment) Examination held in 1960, as may be declared eligible for inclusion in the Select List in accordance with the special orders to be issued in this behalf by the Ministry of Home Affairs in consultation with the Commission; Provided that when the number of candidates available under clause (c)(ii) is less than that available under clause (c)(i) the deficiency shall be made up by taking candidates from clause (c)(i)."

Persons from clauses (a), and (b) and (c) referred to above, were to be included in the select list by taking alternately two persons from those referred to in clause (a) two persons from those referred to in clause (b) and two persons from the combined list of those referred to in clause (c), prepared by the Ministry of Home Affairs on each occasion in consultation with the Union Public Service Commission, in the order of the names in that list.

(16) It will be noticed that by the Central Secretariat Service (Fifth Amendment) Rules, 1970 a new clause (b) was added which made permanent Assistants with "the longest period of approved service in that grade" eligible for inclusion in the select list to the permitted extent on the basis of merit as assessed by a selection committee. On December 21, 1970 there was further amendment of

the Fourth Schedule to the 1962 Rules. In clause (b) of sub-paragraph (.1) of paragraph 2 for the word "approved" the word "continuous" was substituted and three notes were added. For purposes of this ease it is only necessary to refer to note (II), which is as follows:---

"NOTEII.-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."

Thus clause (b) of sub-paragraph (1) of paragraph 2 of the Fourth Schedule to the 1962 Rules, in its amended form, now reads:-

"(B)permanent officers of the Assistants Grade with the longest period of continuous service in that grade, on an all-Secretariat basis and assessed by a Selection Committee to be set up by the Ministry of Home Affairs on the basis of merit as suitable for inclusion in the Select List for the Section Officers" Grade."

Further the expression longest period of continuous service" was assigned the meaning of "continuous service of not less than 22 years in the Grade of Assistants as on the 1st July of the year for which additions to the Select List are to be made". The revised grade of Assistants being Rs. 210-10-270-15-300-EB-15-450-- EB-20-530, the maximum of the grade can be reached with a service of twenty-two years. Normally Assistants with not less than 22 years service in the grade have already reached the maximum of the grade or may be drawing pay at a stage only a little lower than the maximum.

(17) The grievance of the petitioners is that by the amendments made in the Fourth Schedule to the 1962 Rules an altogether new source of selection for the select list of Section Officers" grade was created providing for one-third of the additions to the list to be made from the category of permanent officers of the Assistants" grade with continuous service of not less than 22 years in the grade of Assistants. This separate category was alleged to be "discriminatory, unreasonable and arbitrary" and, Therefore, to be violative of articles 14 and 16(1) of the Constitution.

(18) In the alternative it was urged that as the amending rules by which the impugned clause (b) of sub-paragraph (1) of paragraph 2 of the Fourth Schedule was inserted were prospective in operation, the new clause could not be applied to the additions to the select list which had already been decided upon to be made. In that connection it was urged by the petitioners that they had reliably learnt that in the beginning of the year 1970, before the impugned clause (b) was inserted the authorities had determined that about 300 additions would be made to the select list for the Section Officers" grade. Another fact mentioned by them was that as a result of a limited departmental competitive examination held in December, 1959, 339 candidates were declared successful, including petitioners I and 6 to 50 and only their confidential reports remained to be assessed before final selection and inclusion in the select list. It was further stated in the petition that petitioners I and 6 to 50 were hopefully looking

forward to the inclusion of their names in the select list against 50% of the additions which had been determined to be made thereto and that petitioners 2 to 5 were also expecting inclusion in the select list against the remaining quota of 50% for senior Assistants. The creation of a new category for purposes of select list for the Section Officers grade was alleged to have come in the way of their chances of promotion. It was as well averred that when the final result of the 1969 examination was declared after assessment of the confidential reports only forty-seven Assistants were selected. The selection so made was stated to have established that retrospective effect had been given to the amendments made to the Fourth Schedule.

(19) On behalf of the Union of India it was denied that in the beginning of the year 1970 the cadre authorities had determined that about 300 additions would be made to the select list for the Section Officers" grade. It was stated that in the Notification by the Union Public Service Commission regarding the 1969 limited departmental competitive examination there was no reference to any particular number of vacancies or any particular quota or percentage of vacancies having been reserved for the successful candidates of the examination. On the other hand the Notification made it clear that the number if persons to be included in the select) list for the Section Officers grade of the result of the examination would be within the competence of the Government to decide and no candidate would have any claim, as a matter of right, for inclusion in the select list on the basis of his performance in the examination. The contention that any retrospective effect was given to the amendments made in the Fourth Schedule was strongly controverted.

(20) According to the affidavit of Shri M. K. Vasudevan the seniority assigned to Regular Temporary Establishment Assistants vis-a-vis direct recruits was not fixed strictly in accordance with the rules and Therefore, the problem of ad-hoc seniority and resultant grievances of the departmental Assistants raised through several representations were referred to a co-ordinating committee of four Joint-Secretaries and the classification on the basis of longest period of continuous service was introduced on the recommendations of that Committee. In the affidavit it was also mentioned as under :--

"THE Committee examined the question at great length and came to the conclusion that the seniority assigned to Regular Temporary Establishment Assistants vis-a-vis direct recruits was not strictly in accordance with the rules obtaining at the relevant time. This had also greatly depressed their promotion prospects to the next higher grade of Section Officers. The aggrieved Assistants were quite advanced in age and some of them have retired already while a good number have reached the maximum of the pay scale and got stuck up at that stage. The problem may be stated to cover only about a thousand Assistant who had put in long service and who will waste out in the course of the next ten years. While it will not be possible to reverse the seniorities already fixed without creating further repercussions, the Committee felt that the crux of the problem

related mainly to the lack of promotion prospects. To meet the genuine grievances of the aggrieved Assistants, the Committee recommended that in the Select Lists for Section Officers Grade, a quota of vacancies may be allocated to the new category of Assistants with longest service in that grade for the next ten years within which period this category of Assistants may be expected to waste out. It was also suggested by the Committee that selection may be made on all-Secretariat basis strictly in order of merit. The recommendation of the Co-ordinating Committee seemed to be a practicable and reasonable way to remedy the grievances of the aggrieved category of Assistants."

(21) Regarding the classification added on the basis of longest period of continuous service the stand taken on behalf of the Union of India was that it was in no way illegal being directly relatable to the object to the classification viz. an effective and efficient performance of the duties and obligations of service as Section Officers". It was also urged that length of service naturally reflects the long experience which distinguishes officers with long service from others not belonging to that category.

(22) Shri R. K.. Garg, learned counsel turn the petitioners, contended that the limited departmental competitive examination of July 1969 was obviously held with the knowledge and approval of the Government and, Therefore, the Government while making the Central Secretariat Service (Fifth Amendment) Rules, 1970 could not have intended that the amending rules would cover the selections to be made on the basis of the said examination. The following paragraph from the judgment of the Supreme Court, in the case of B.N. Nagarajan and Others Vs. State of Mysore and Others, , was particularly relied upon :--

"MR.Nambier sought to impeach the appointments on another ground. He said that the appointments violated Mysore Public Works Engineering Department Services (Recruitment) Rules, 1960, dated December 3, 1960, because the appointments were made on October 31,1961, and according to him, these appointments had also to be made under the statutory rules made on December 3, 1960. We are unable to sustain this contention because it took about two years for the Public Service Commission to publish notifications, interview candidates and recommend names for appointment. The whole procedure having been followed, it could not have been the intention of the Government while framing the rules to cover appointments made in pursuance of the recommendations of the Public Service Commission made in November 1960 after interviewing candidates in October 1960."

A similar view was also said to have been taken by a Division Bench of this Court in S. S. Iyer and others v. Union of India and others (Civil Writ No. 927 of 1968 decided on April 19, 1971)(i). Reference was as well made to an old English decision, *The Queen v. Griffiths* (1891) 2 Q.B. 145, in which it was held that the effect of section 26 of the Bankruptcy Act, 1890 was not retrospective so as to render liable to conviction for offences under sub-sections 13, 14 and 15 of

section 11 of the Debtors Act, 1869, a person who committed the acts specified in those sub-sections before the coming into force of the Bankruptcy Act.

(23) The above cases are distinguishable. In the present case there was no determination before the Central Secretariat Service (Fifth Amendment) Rules 1970 were made regarding the number of additions that were to be made to the select list of Section Officers grade. There seems to be no real basis for the averment that in the beginning of the year 1970 it had been decided that about 300 additions would be made to the select list. In the Notification issued by the Union Public Service Commission it was stated in unambiguous terms that the number of persons to be included in the select list for the Section Officers grade on the result of the limited departmental competitive examination was entirely within the competence of the Government to decide. The assessment of the records of the persons who had qualified in the written test had yet to be made. It cannot, Therefore, be said by any stretch of imagination that the Government while additions to the select list for Section Officers grade on the basis of making the amendment to the Fourth Schedule intended that the limited departmental competitive examination held in July 1969 would not be governed by the amended provisions.

(24) Application of the provisions of the amended Fourth Schedule to the final selection made after the Central Secretariat Service (Fifth Amendment) Rules, 1970 had come into force did not, in the circumstances of the present case, amount to giving retrospective effect to the amendment. The final selection was made on August 20, 1970 and in the results announced on that date as many as four of the petitioners were selected for their names being placed on the select list for Section Officers' grade. The contention that the amended provisions of the Fourth Schedule were given retrospective effect or that these could not possibly apply to the persons who appeared in the limited departmental competitive examination held in 1969, Therefore, fails.

(25) It was next urged by Shri Garg that the classification introduced by clause (b) of sub-paragraph (1) of paragraph 2 of the Fourth Schedule to the 1962 Rules was not a reasonable classification and was violative of articles 14 and 16(1) of the Constitution. It was submitted that the object of the classification was merely to indirectly upset the existing seniority of Assistants so as to help officials who were less meritorious and had either failed to qualify or did not appear in the suitability tests held by the Union Public Service Commission in the years 1950, 1951 and 1958.

(26) Article 14 of the Constitution does not forbid classification. It was held by the Supreme Court in *State of Mysore and Another Vs. P. Narasing Rao*, that when an 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 test 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. It was further laid down that articles 14 and 16 form part of the same constitutional code of guarantees and supplement each other and hence article 16(1) does not bar a reasonable classification of employees or reasonable test for their selection, and there is no denial of equality of opportunity unless the person who complains of discrimination is equally situated with the person or persons who are alleged to have been favored. Similarly in another case recently decided by the Supreme Court, *Ganga Ram and others v. Union of India and others* (1970 S.L.R. 755) (4), *Dua. J.* made the following observations .-

""Mere production of inequality is not enough to attract the constitutional inhibition because every classification is likely in some degree to produce some inequality. The State is legitimately empowered to frame rules of classification for securing the requisite standard of efficiency in services and the classification need not be scientifically perfect or logically complete. In applying the wide language of Arts. 14 and 16 to concrete cases of doctrinaire approach should be avoided and the matter considered in a practical way, of course, without whittling down the equality clauses. The classification, in order to be outside the vice of inequality, must, however, be founded on an intelligible differentia which on rational grounds distinguishes persons grouped together from those left out. The differences which warrant a classification must be real and substantial and must bear a just and reasonable relation to the object sought to be achieved. If this test is satisfied then the classification cannot be hit by the vice of inequality."

(27) It does appear from the affidavit filed on behalf of the Union of India that the fixation of seniority of Regular Temporary Establishment Assistants, particularly of the third list, was considered to have caused hardship and in introducing the new classification one of the objects may have been to undo the wrong to such Assistants. For judging the validity of the impugned classification, however, it has to be seen whether it fulfills the two tests referred to in the case of *Narasinga Rao*.

(28) It was urged before us by *Shri Garg* that as a matter of fact in the fixation of seniority the aggrieved party could be the direct recruits and not the persons who had got into the service through the second and the third Regular Temporary Establishment lists of Assistants. The general rule as contained in the Ministry of Home Affairs Office Memorandum dated June 22, 1949 for determining seniority in a particular grade on the basis of length of service in the grade was stated not to be applicable to Assistants. It, however, seems unnecessary, for purposes of this case, to go into the question whether in fixing the seniority of Assistants any hardship was caused either to the direct recruits or to those who became members of the service as Assistants through the second and the third Regular Temporary Establishment lists.

(29) To the prescribed extent .persons selected on the results of the limited departmental competitive examinations held by the Union Public Service

Commission, from time to time, are entitled to be included in the select list for Section Officers" grade. In the year 1963 for the limited departmental competitive examination Assistants with not less than five years and not more than ten years service and who were not more than 40 years of age were eligible. In the year 1965 the eligibility requirements were the same. For the examination held in 1969 the minimum continuous service of not less than five years and age of not more than 40 years was required but there was no restriction that the service should not exceed any particular limit.

(30) Even according to the petitioners and their learned counsel the classification of Assistants for the select list for Section Officers" grade based on limited departmental competitive examination was valid and a rational one. If so, we see no cogent reason why the classification of Assistants who have not less than 22 years continuous service and from whom selections are to be made on merit based on the assessment of their service record is not equally valid and national.

(31) Rules of classification for securing the requisite standard of efficiency in the Section Officers" grade could be made by the Government. The classification of Assistants with not less than 22 years of continuous service in the grade of Assistants is based on an intelligible differentia. The time span of Assistants" grade also being 22 years, persons with not less than 22 years continuous service in the Assistants grade have not only long experience but normally are drawing the maximum or nearly the maximum of the grade. Selection of such persons to the prescribed extent based on their relative merit has to be regarded to have nexus to the object sought to be achieved, which is to select the most suitable persons for the grade Iii service. It is not relevant that these Assistants had either not appeared or had failed to qualify in the tests held in the years 1950, 1951 and 1958 for purposes of the first and the second Regular Temporary Establishment lists. On account of their long experience these officials can certainly be considered to be eligible for posts of Section Officers and out of them the selection is on the basis of merit determined by a selection committee whose chairman is an officer of the rank of Secretary to the Government of India and the members are of the rank of Joint-Secretaries to the Government of India. One of the conditions of eligibility for the limited departmental competitive examination ,on the basis of which most of the petitioners and direct recruits hope to be selected for the select list of Section Officers" grade, is a minimum service of five years and age not exceeding 40 years. If a minimum service limit and an upper age limit can be considered reasonable for making a selection through examination. fixation of length of service for making a selection by evaluation of confidential records cannot, it seems to us, be treated as unreasonable or infringing the concept of equality before law.

(32) Shri Garg made reference to certain cases. In *Mervyn Coutindo and Others Vs. Collector of Customs, Bombay and Others*, as the source of recruitment of Principal Appraisers was only from the grade of Appraisers, it was held that the normal rule applied and a person promoted to the higher grade got his seniority

in that grade according to the date of promotion subject to his being found fit and being confirmed in the higher grade after the period of probation was over. It was further held that there was no question of reflecting in the higher grade the seniority of the grade from which promotion was made to the higher grade. In *Roshan Lal Tandon Vs. Union of India (UOI)*, their Lordships of the Supreme Court observed that once direct recruits and promotees are absorbed in one cadre they form one class and cannot be discriminated for purposes of future promotion. That case was not of a reasonable classification for securing the requisite standards of efficiency in higher posts. Similarly *S.K. Ghosh and Another Vs. Union of India (UOI) and Others*, has no analogy to the facts of the present case. In that case the Supreme Court was dealing with the seniority of Directors on promotion from a Class I service. It was laid down that once a member of the Class I service in the time scale was selected for promotion to the grade of Director and was given seniority over another officer selected later the seniority so determined could not be made dependent on the seniority in the time scale. Obviously none of these cases can be of any help of the petitioners.

(33) Such of the petitioners or other Assistants who may fall within the new classification introduced by clause (b) of sub-paragraph (1) of paragraph 2 of the Fourth Schedule to the 1962 Rules would also be entitled to its benefit and no discrimination is involved. In our opinion the fresh classification is not violative of articles 14 and 16 of the Constitution.

(34) The petitioners are not entitled to any relief. The petition is, Therefore, dismissed, but with no order as to costs.