

(1988) 12 CAL CK 0011

In the Calcutta High Court

Case No : Appeal from Original Order No. 1525 of 1984

State of West Bengal and Others

APPELLANT

Vs

Bireswar Chatterjee and Others

RESPONDENT

Date of Decision : 22-12-1988

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(1), 16(4), 226
West Bengal Fire Services Act, 1950 — Section 4

Citation : 94 CWN 151

Hon'ble Judges : M.N. Roy, J; Dilip Kumar Basu, J

Bench : Division Bench

Advocate : Amar Nath Banerjee and Amal Basu Chowdhury, for the Appellant; Shib Lal Bose and Uma Prosad Mukherjee, Tarun Roy, Moloy Kumar Basu, Lakshmi Gupta and Manash Bhunia in F.M.A.T. No. 2114 of 1984, for the Respondent

Final Decision : Dismissed

Judgement

M.N. Roy, J.—This Appeal from original order is directed against the judgment and order dated 3rd May 1984, passed in C.R. No. 9771 (W) of 1980, by a learned Single Judge of this Court, in which the Respondent Nos. 1-25 (hereinafter referred to as the said Respondents), obtained the concerned Rule, for declaring Rule 5 of the Fire Service Recruitment Rules, 1974 (hereinafter referred to as the said 1974 Rules), as framed under Article 309 of the Constitution of India, to be ultra vires Articles 14 and 16 of the Constitution of India and consequently for withdrawal of a proceeding of the seventh Meeting of the Advisory Board held on 18th April 1980, in the office chamber of the Director of West Bengal Fire Service, being Annexure - "A" to the writ petition and also for such order in respect of Annexure - "B" to the writ petition whereby a decision was taken to announce the date, time and venue of the examination for the post of Sub-Officer by the departmental candidates and not to enforce Rule 5 of the said Rules or to act on the basis thereof. In their application against the Annexure as mentioned hereinbefore and it should also be noted that the Rule

was obtained with leave under Rule 11 of the Rules as framed by this Court in respect of the disposal of matters under Article 226 of the Constitution of India. It was the case of the said Respondents, that initially they were appointed as Firemen, which posts have now been redesigned as Fire Operators and after satisfactory service rendered in the said post of Fire Operator for a period varying from 5 to 14 years, they were duly promoted to the post of Leaders. It was also their case that at the time of obtaining the Rule in September 1980, the said respondents were employed as Leaders in the West Bengal Fire Services.

2. They have further stated that their terms of service and conditions of employment included amongst others, Rule 5 of the Fire Service Recruitment Rules, 1955, which is to the following effect:

5. Sub-officer. - Seventy-five per cent of the vacancies in the posts of Sub-Officer shall be filled up by promotion and the rest by direct recruitment. Promotion shall ordinarily be made from the rank of Leader, but Drivers and Telephone Operators, if duly qualified, may be promoted. Promotions and direct recruitment shall be made by the Director by selection on examination and interview held by him. If suitable candidates be not available by promotion to fill up the vacancies, the vacancies so left unfilled shall be filled up by direct recruitment and which has been amended by Rule 5 of the said 1974 Rules in the following manner:

5. Sub-Officer: Seventy five per cent of the vacancies in the posts of Sub-Officer shall be filled up by promotion and the rest by direct recruitment. Promotion shall ordinarily be made from the rank of Leader. But Drivers and Telephone Operators, if duly qualified, may be promoted. Firemen having three years experience may also be promoted if they possess the qualifications prescribed for promotion. Promotions and direct recruitment shall be made by the Director by selection on an examination and interview held by him. If suitable candidates be not available by promotion to fill up the vacancies, the vacancies so left unfilled shall be filled up by direct recruitment. It has been stated that thus, under Rule 5 of the said 1974 Rules, compulsory service in the post of Fireman for 3 years was also the minimum requirement for the post of a Leader.

3. According to the said Respondents the hierarchy of promotion in the West Bengal Fire Services is as under:

- (1) Firemen (Fire Operator) of the salary of Rs.180/- to 350/-
- (2) Leader of the salary of Rs. 330/- to Rs. 425/-
- (3) Sub-Officer of the salary of Rs. 435/- to Rs. 625/- and
- (4) Station Officer of the salary of Rs. 450/- to 675/-.

It was also claimed by the said Respondents that the post of Fireman as re-designated as Fire Operator is filled up by direct recruitment by the Director concerned by selection and the post of Leader is filled up by promotion from the rank of Fireman and if no suitable candidate be available by promotion to fill up

the vacancies then, recourse could be taken to direct recruitment. They have stated that the post of Sub-Officer had been filled up by promotion from the post of Leader on the basis of seniority and eligibility or suitability. It was also their case that under the concerned recruitment Rules and more particularly under Rule 5 it is provided that seventy five per cent of the vacancies in the post of Sub-Officer shall be filled up by promotion and the rest by direct recruitment, apart from providing that promotion shall ordinarily be made from the rank of Leader, but Drivers and Telephone Operators, if duly qualified, may be promoted if they possess the qualifications prescribed for such promotion under the concerned Rule and the promotion and direct recruitment shall be made by the Director concerned, by selection, on an examination and interview held by him. Again it has been provided that if no suitable candidates be available by promotion, vacancies so left unfilled, could be filled up by direct recruitment.

4. The said Respondents had challenged the concerned Rule 5 of the said 1974 Rules to be arbitrary and illegal and according to them from the channel of promotion as indicated above, all categories of post excepting that of Sub-Officer, the provisions for promotion after from the next below, but in the case of promotion to the Sub-Officer there is also provisions for accelerated promotion from the post of Fire Operator to Sub-Officer directly superseding the Leaders in between. As a result thereof, the said Respondents have claimed the Rule as mentioned and quoted hereinbefore, to be arbitrary, illegal and highly discriminatory and they have claimed that by such process the Firemen would be entitled to double promotion and hence they have asserted that inspite of representation duly made to the authorities concerned, they have not received any relief even though under the Rule as mentioned and quoted hereinbefore, Firemen or Fire Operators would be entitled to the selection to the post of Sub-Officers only after putting in three years service in such post, whereas, Leaders after serving a longer period in the post of Firemen or Fire Operators, would be promoted to the post of Leader and in that post also they had already put in service for years as mentioned above. It has also been stated by the said Respondents that the job undertaking duty chart of Leaders are accordingly different and of higher responsibilities than the Firemen or Fire Operators and in fact, the Firemen or Fire Operators are responsible to and under the subject and control the Leaders as they have to work under the supervision of the Leaders. It has also been stated that their pay scales are also different.

5. The said Respondents have asserted that notwithstanding the facts as stated hereinbefore, the Director of Fire Services, who was Respondent No. 3 in the Rule and is one of the appellants, by his Memo No. WBFS/RC-71(24)-2/79 dated 24th May 1980, purported to issue a circular (Annexure "A" to the writ petition) containing a brief summary of proceeding of the meeting of a purported Advisory Committee for recruitment to the West Bengal Fire Services and there from the said Respondents have gathered that the said Advisory Committee would take the interview for selection to the post of Sub-Officer and Leader. The said Respondents have assailed the said notification (Annexure "A" to the writ

petition) inasmuch as, apart from the Director of Fire Services concerned, according to them, nobody else, could form the Advisory Committee or would be empowered to act, as required under the West Bengal Fire Services Act 1950 (hereinafter referred to as the said Act) or to give effect to or function under the same. It was pointed out by the said Respondents that apart from that, the inclusion in the Advisory Committee of three M. L. As Viz Shri Subhas Chakravorty, Md. Nizamuddin and Shri Sunil Basu Roy, belonging to a particular political party in power, for taking interview for selection of the concerned post of Sub-Officer, was improper, irregular, motivated, malafide and they were brought into the said Committee with an ulterior purpose. Hence the said formation of the said Advisory Committee, for the purpose of selection, was claimed by the said Respondents to be not only without jurisdiction but the same was claimed to be absolutely malafide, apart from claiming, that the formation of the said Advisory Committee with those members viz. three M. L. As of a particular political party, was made and intended to make or create under preference, privilege and favour to the staff, belonging to or who are supporters of a particular political party.

6. It would appear from the statements of the said Respondents that 612 persons were selected by the said Advisory Committee to sit for the departmental examination for promotion to the post of Sub-Officer and out of them, 98 were Leaders and 474 were Firemen or Fire Operators. The Respondents have claimed that such treatment of Fire Operators and Leaders on the same footing was discriminatory and arbitrary inasmuch as, they belonged and still they belong to two categories of employees, discharging different functions and one acting under the other could not be equated together by any stretch of imagination and such equation has given a complete go-by to the general just and clear efficiency, discipline and the legitimate right of the said Respondents to get their due promotion. Under such circumstances, the concerned Rule 5 of the said 1974 Rules purported to treat the Leaders and Five Operators or Firemen on the similar footing, was claimed to be irrational, arbitrary, baseless and hence, it was claimed that such act or actions had contravened Articles 14 and 16 of the Constitution of India and any selection made on the basis of the report of the Advisory Committee so formed, was not only without jurisdiction but such selection was done for some extraneous and oblique consideration. From a reference to Annexure-"A" as mentioned hereinbefore and which is under challenge, it would appear that the Director concerned, who at the relevant time was one Shri K.K. Dasgupta was present along with Shri Subhas Chakraborty M.L.A. and others, where it was decided to start the work of selection of Sub-Officers and Leaders and from another Memo dated 4th September 1980, being No. WBFS/0049 (105), it would appear that the members of the Legislative Assembly, whose names we have indicated earlier, were present in the Advisory Committee and as such, copies of the minutes were circulated to them. In fact, while issuing the Rule, a learned Judge of this Court, had issued orders of injunction the result whereof would be, that pending the hearing of the Rule, no further steps would be taken with regard to

the promotion save and except that if any promotion was to be given, the same should be to the post of Sub-Officer from the Leader or who are serving as Leaders.

7. We have indicated earlier Rule 5 of the Fire Service Recruitment Rules both under 1955 Rules and 1974 Rules, where from it would appear that provisions have been made that seventy five per cent of the post of Sub-Officers shall be filled up by promotion, ordinarily from the rank of Leader, but Drivers and Telephone Operators, if duly qualified, may also be promoted. The Rule in question, has also indicated that Firemen having three years" experience may also be promoted, if they possess the qualifications prescribed for promotion, apart from providing therein, that promotion and direct recruitment shall be made by the Director by selection on examination and interview held by him and under such circumstances, it was claimed that there was or has been provision for appointment of any Selection Committee, more so, a comity consisting of some outsiders including the members of the Legislative Assembly. It has also been indicated that qualifications necessary for the appointment to the post of Sub-Officer by promotion, has been laid down in Schedule-A of the concerned Rules and in case of direct appointment to the post of Sub-Officer, qualification prescribed under Items 2, 9 and 10 under the heading Station Officer and Sub-Officer which are to the following effects:

1.....

2. Must hold a certificate in the First Aid from St. John's Ambulance Association and must be able to instruct in the First Aid.

3.....

4.....

5.....

6.....

7.

8.

9. Must have passed the Matriculation Examination of the Calcutta University or an equivalent examination of a recognised University.

10. Must have the physical measurements prescribed for a Fireman.

11.

should be deemed to be essential and the rest arc desirable. The said Respondents have also stated that a direct recruitment to the post of Sub-Officer shall have to pass a test to be conducted by the Director concerned and qualifications as laid down in Items 1, 3 and 8 of the said Schedule under the concerned heading which are to the following effect:

(1) Must have a certificate for Wearing and Instruction in Breathing Apparatus.

(3) Must have a reasonable knowledge of electricity in relation to fire risks, both from power plant and distribution and must be capable of instructing the personnel in this respect.

(8) Must have a knowledge of hydrant and open water supplies for fire-fighting and good knowledge of hydraulics.

8. Since the reference have been made to Rules 5A, 5B and 5C and so also to Rules 7 and 8 of the said 1974 Rules, not only in the determinations of the learned Trial Judge but also in the proceedings before her, we think that those Rules, should be quoted which are to the following effect

5A. The qualifications for appointment to the post of Sub-Officer by promotion shall be as laid down in Schedule A annexed to these rules. In the case of a direct appointment to the post of Sub-Officer, qualifications prescribed in items (2), (9) and (10) of the said Schedule A are essential and the rest desirable.

5B. A direct recruit to the post of Sub-Officer shall have to pass a test to be conducted by the Director, West Bengal Fire Services, on the qualifications laid down in items (1) and (3) to (8) of the aforesaid Schedule A within a period of one year from the date of appointment. The age-limits for direct recruits shall be as laid down in Schedule B of the said rules.

The rules 5A and 5B shall be deemed to have always had effect as if they had been made on the 4th September, 1952.

5C. Mobilising Officer : The post of Mobilising Officer shall be filled up by promotion from the rank of Telephone Operator. If suitable candidates are not available to fill up all the vacancies by promotion, the vacancies so left unfilled shall be filled up by direct recruitment by selection on an examination and interview held by the Director.

7. Driver (other than Staff Car Driver); The pos of a Driver, not being a Staff Car Driver, shall ordinarily be filled up by direct recruitment by selection oh an examination and interview held by the Director. A Leader or a Fireman, if only qualified, may be promoted to the post. The qualifications and age-limits for appointment to the post shall be as laid down in Schedule A and B annexed to these rules.

8. Leader : The post of Leader shall be filled up by promotion from the rank of Fireman. If suitable candidates be not available by promotion to fill up all the vacancies, the vacancies so left unfilled shall be filled up by direct recruitment. Direct recruitment shall be made by the Director by selection on an examination and interview held by him. The qualifications and age-limits for appointment to the post shall be as laid down in Schedules A and B annexed to these Rules, should also be quoted.

9. The said Respondents, as indicated earlier claimed and contended that the

direct recruit to the post of Sub-Officer shall have to pass a test to be conducted by the Director concerned and that too on the qualifications as laid down in Schedule-A, which we have already indicated. It was claimed that Rules 5A and 5B as quoted hereinbefore, will be deemed to have effect as if they have been made on 4th September 1952 and under those Rules the post of Mobilising Officer shall be filled up by promotion from the rank of Telephone Operators and under Rule 7 as quoted hereinbefore, the post of Driver not being a Staff Car Driver, was ordinarily to be filled up by direct recruitment by selection on an examination and interview held by the Director concerned. Similarly, a Leader or Firemen, if duly qualified may be promoted to that post and under Rule 8 the post of Leader shall be filled up by promotion from the rank of Fireman. Such being the position, it was contended before the learned Trial Judge, by the said Respondents that the post of Fireman which are also known as Fire Operator, are subordinate to the post of Leader inasmuch as the post of leaders are required to be filled up by promotion from the rank of Firemen. The said Respondents have also contended that, apart from the general cases of West Bengal services, the confidential roll has also no part to play in such promotions as are involved in this case and it was their categorical assertion that under the circumstances as depicted hereinbefore, the said Rule 5 to treat the unequal as equals. It was claimed that so far Drivers and Telephone Operators are concerned, they are not under the Leaders inasmuch as under Rule 7 the post of Drivers shall be filled up even by Leaders or Firemen by promotion, if duly qualified. Under such circumstances it was claimed that Drivers do not serve under the Leaders and their posts are not inferior to those of the Leaders and the Drivers according to the said Respondents, rank immediately after the Sub-Officers and above the Leaders and Firemen.

10. There is no doubt that Rule 5 under both the Rules as mentioned hereinbefore, were framed in accordance with or under the provisions of Article 309 of the Constitution of India read with section 4 of the said Act. The said section 4 provided that the State Government may from time to time make general or special orders amongst others for regulating and controlling the powers, duties and functions of the Director concerned and according to the Appellants, Rule 5 as mentioned hereinbefore, has been prescribed in consonance with the provisions as mentioned hereinbefore, viz., Article 309 read with section 4 of the said Act. It was also contended that under Schedule-A qualifications necessary for Station Officers and Sub-Officers and similar qualifications necessary for Telephone Operators, Drivers, Leaders and Firemen, have also been provided, and it was also claimed that those who satisfy such necessary qualifications, would only be considered for promotion.

11. On the question of the Advisory Board, the appellants have claimed that the same has not been abolished but is very much there even today and according to them, the Rules as framed, prescribe, that selection for the promotions must be made by the Director and not with the help of any Advisory Committee or at their recommendations. It was also the categorical and specific claim of the said

Respondents that such promotions must be given by the Director himself on an examination and interview held by him. It was pointed out by them that the first scanning for promotion to the post of Sub-Officers in the instant, case, was done by the Advisory Board and that apart, it would appear that the proceeding was sent to the Selection Committee not only for their information's but also for necessary action only and such action was in accordance with the Rules.

12. The affidavit-in-opposition in the Rule was filed on behalf of Respondent Nos. 1,2 and 3 by said K.K. Dasgupta, who was the Director of West Bengal Fire Services and was made Respondent No. 3 in the concerned Rule. He has stated that apart from the statements recorded hereinbefore posts of large number of Sub-Officers under his directorate were lying vacant and for the purpose of filling up these posts, so also other posts in the West Bengal Fire Services, Recruitment Rules as mentioned hereinbefore, were framed under Article 309 of the Constitution of India read with Section 4 of the said Act. The said deponent has also quoted Rule 5, which we have indicated earlier and has also stated that the qualifications for appointment to the post of Sub-Officers by promotion are laid down in Schedule-A to the said Rules and according to him, there is no provision for relaxation of such qualifications in favour of any-one, whether he is holding the rank of Leader or Driver of Telephone Operator or Fireman.

13. The said deponent has further indicated that the West Bengal Government had formed an Advisory Committee which included amongst others the M.L.As, to help and advise him in different matters, and in which such advice was felt necessary. It would appear that by a resolution dated 28th February 1979, the Government was pleased to set up the Advisory Committee, composed of Sri. S. C. Chatterjee, Director, West Bengal Fire Services and four members viz (1) Sri R. S. Gupta, Re-Director, National Fire Service College, Mugpore, (2) Shri Md. Nizamuddin, M.L.A., Calcutta, (3) Shri Dilip Majumdar, M.L.A., Durgapore and (4) Shri Biren Bose, M.L.A., Siliguri and also, acquitted Shri Santi Bhushan Sengupta, P.A., (Administrative) to the Director, West Bengal Fire Services as the Secretary. In the meeting of election of non-gazetted candidates, which are not filled up on the recommendations of the P.S.C. West Bengal, it was also provided, that the said Committee will function from their Regional Centers viz Calcutta, Durgapore and Siliguri and also Directed that while in acting in Regional Centre of Calcutta, the said Committee will comprise of (1) Shri S. C. Chatterjee, (2) Shri R. S. Gupta and (3) Shri Md. Nizamuddin, whose other particulars have already been indicated earlier. For functioning in the Regional Centre of Durgapore instead of Shri Md. Nizamuddin, the name of Shri Dilip Majumdar, whose particulars have also been indicated, was added Thereafter, by another order dated 9th May 1980, the Governor was pleased to constitute another Advisory Committee with (1) the Director of West Bengal Fire Service as Chairman, (2) Shri M.L. Mullick, Division Fire Officer as Vice Chairman and (3) Shri Subhas Chakraborty, (4) Shri Md. Nazimuddin and (5) Shri Sunil Roy, all members of the West Bengal Legislative Assembly as the members, apart from nominating the P.A. (Administrative) to the Director concerned to act as the Secretary of the said

Committee, to advise the Director in the matter of selection of different categories of posts in connection with the introduction of three shift duty system as well as for filling up of the regular vacancies in West Bengal Fire Service, which are outside the purview of the P.S.C. West Bengal. There were other directions contained in the notification for the functioning of the said Committee. He has stated that he himself was the Chairman of the said Committee and in the meeting of that Committee dated 13th January 1980, it was decided that selection of Sub-Officers and Leaders would be started, first in the Presidency Division in the first phase and programme for holding examination for the purpose of such selection was finalised. According to him, it would appear from the said programme that on three days viz. 3rd May, 1980, 5th May 1980 and 6th May 1980, candidates would be interviewed at 15 places as mentioned in the proceeding of the concerned meeting and on each of those days, interviews would be held at five places. He has also stated that thereafter, on 4th September 1980, he issued a circular stating that it was decided in Senior Officers' conference that the date, time and venue of examination for the post of Sub-Officers by the departmental candidates will be, in terms of the announcement in the said circular and it would also appear from the same, that he himself decided that there will be one officer-in-charge and one officer on special duty in each examination centre and the names of such officers (centerwise) and invigilators were also mentioned in the concerned circular and those officer-in-charges or officers on special duty or invigilators were all officers under his directorate and no outsiders or any M.L.A., who were members of the Advisory Committee, were assigned any duty to conduct the examination in question.

14. The deponent has also agreed that as many as 612 candidates, who had the required qualifications for promotion to the post of Sub-Officers, were named for the concerned examination and interview and it was specific and categorical claims of the said deponent, that none of the outsiders including the M.L.As. participated at the final stage of selection, which was done by him, on the basis of the requirements of the Rules. He has also indicated that the outsiders including the M.L.As, if at all, had participated in the deliberation of the Advisory Committee only up to the matter of fixation of the programme and not thereafter.

15. On the basis of the pleadings before her, the learned Trial Judge has observed that the general duties of Firemen as provided under Schedule A and Rule 5 of the said Rules indicated that they were responsible jointly and severally to the leaders and under the concerned Rules the Firemen are to work and report to the Leaders inasmuch as they were jointly and severally responsible to the Leaders for their work. Hence on the nature of work, it has been observed by the learned Trial Judge, the Firemen do not do the same work of a Leader and under such circumstances, categorizing the two classes in the same level amounted to treating unequal as equals and under such circumstances, it was observed that the concerned Rule 5, enabling the Firemen to be promoted to the post of Sub-Officers was unfair and contrary to the requirements of the

Constitution. As a result thereof, the Rule was made absolute and necessary orders were made.

16. Mr. Banerjee, appearing for the appellants, pointed out to about the formation of the concerned Advisory Committee and so also the provisions of the said Rules, as framed under Article 309 of the Constitution of India read with section 4 of the said Act. He agreed that the Director concerned had the right and duty to make selection in this case, on examination and interview. He in his usual fairness of course stated that the Advisory Committee was formed in the manner as indicated earlier but such Committee, as indicated earlier, had not participated at the final stage of the selection and interview but they had participated only upto the preliminary stage, when tests were directed to be taken so also for holding interview, examination and making the selection. In fact, he claimed that the Director concerned has not really acted on the advice of the Advisory Committee, which amongst others, was composed of the three M.L.As, whose names have been mentioned hereinbefore.

17. There after, it was contended by him that under the said 1974 Rules provisions have been made, whereby all the three categories of employees have been made eligible for selection, subject to the availability and possession of other qualifications. On a reference to the records as produced and more particularly to Book No. 1, Mr. Banerjee pointed out that no effective steps could be taken at that stage, when Md. Nizamuddin was the only outsider present and in fact, interview of Sub-Officers did not take place. Then on a reference to Book No. 2 of the records as produced, Mr. Banerjee agreed that outsiders present in the meeting was Shri Subhas Chakraborty, a member of the Legislative Assembly and in this meeting, only directions were given to the Director concerned, to arrange for written test of Fire Operators. But, he stated that from a reference to the records, it would appear that no effect could be given to the minutes of the said meeting, as the proceeding became pending in this Court and effect to minutes of the said meeting could only be given, after the concerned order of variation was obtained from this Court. In fact, he has stated that the concerned notification was issued after the modificatory order from this Court and the interview and examination was held thereafter, when and where the members of the Legislative Assembly had nothing to do and in fact, they had not participated in such interview and selection. Such being the position, according to Mr. Banerjee the point of presence of the outsiders in the Advisory Committee would have no force and he claimed and contended that since the outsiders as alleged, had not participated in the matter of selection, the said Respondents cannot succeed. He also claimed that since the interview and examination were held in terms of the Rule 5 of the said 1974 Rules, there was also no question of unequal being treated as equals.

18. While on the above point, Mr. Banerjee also referred to a decision dated 5th July 1983 made in C.O. No. 6715(W) of 1983 (Sudip Kumar Chakraborty & Ors. v. The State of West Bengal & Ors). by another learned Judge of this Court. It

was pointed out by Mr. Banerjee on a reference to that determinations that points similar to those as raised in this case also came up for consideration before the said learned Judge and he has observed that there has been no question of treating unequal as equals in case of open examination and interview, which incidentally was claimed by Mr. Banerjee to be the same case here.

19. Mr. Roy, appearing for the Added Respondents, stated that his clients were originally recruited as Fire Operators and they are entitled to the post of Leaders and not to the post of Sub-Officers. While on the question of the Advisory Committee or the participations made therein, by outsiders including the three M. L. As, he could not of course deny or dispute that in the said Advisory Committee outsiders including the three M.L.As had participated, but he claimed that even such participation had no direct or indirect effect on the question of promotion as in this case since such promotions were given on the basis of interview and selection made by the Director himself. According to him under the amended Rules the Director concerned had the authority to judge the compete and, on the question of the presence of the outsiders including the 3 M.L.As, he reiterated that such presence had caused or occasioned no prejudice. In support of his submissions, he referred to the case of Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, . It would appear that in that case in or about April 1979, the college issued a notice inviting applications for admission to the first semester of the B.E. course in various branches of engineering and the notice set out the above admission procedure to be followed in granting admission for the academic year 1979-80. The petitioners in the writ petitions applied for admission to the first semester of the B.E. course in one or the other branch of engineering and they appeared in the written test and which was held on 16th and 17th June, 1979. The petitioners were thereafter required to appear before a Committee consisting of three persons for viva test and they were interviewed by the Committee. The case of the petitioners was that the interview of each of them did not last for more than 2 or 3 minutes per candidate on an average and the only questions which were asked to them were formal questions relating to their parentage and residence and hardly any question was asked which would be relevant to any of the four factors for which marks were allocated at the viva voce examination. When the admissions were announced the petitioners found that though they had obtained very good marks in the qualifying examination, marks awarded to them at the viva voce examination were very low and candidates who had much less marks at the qualifying examination, had succeeded in obtaining very high marks at the viva voce examination and thereby managed to secure admission in preference to the petitioners. The petitioners filed a chart showing by way of comparison the marks obtained by the petitioners on the one hand and some of the successful candidates on the other at the qualifying examination, in the written test and at the viva voce examination. This chart shows beyond doubt that the successful candidates whose marks are given in the chart had obtained fairly low marks at the

qualifying examination as also in the written test, but they had been able to score over the petitioners only on account of very high marks obtained by them at the viva voce examination. The petitioners feeling aggrieved by this mode of selection filed the present writ petitions challenging the validity of the admissions made to the college on various grounds. Some of these grounds stand concluded by the recent decision of this Court in *Miss. Nishi Maghu and Others Vs. State of Jammu and Kashmir and Others*, and they were therefore not pressed us. Of the other grounds only one was canvassed and we examined it in some detail and admission was to be made on the basis of certain allocation of marks and the Supreme Court has observed that the procedure adopted by the Society in question in granting admissions cannot be regarded as arbitrary only because it refused to take into account marks obtained by candidates at qualifying examination, but chose to regulate admissions by relying on entrance test, apart from holding that the allocation of as high a percentage as 33 1/3 of the total marks for the oral interview should be regarded as infecting the admission procedure with the vice of arbitrariness and selection of candidates made on the basis of such admission procedure cannot be sustained. Under the existing circumstances, allocation of more than 13% of the total marks for the oral interview would be arbitrary and unreasonable and would be liable to be struck down as constitutionally invalid.

20. However, the Supreme Court refused to exercise its discretion in setting aside the selections made, in the instant case, for the academic year 1979-80, after the lapse of a period of about 18 months, since to do so would be to cause immense hardship to those students in whose case the validity of the selection cannot otherwise be questioned and who have nearly completed three semesters and moreover, even if the petitioners are ultimately found to be deserving of selection on the application of the proper test, it would not be possible to restore them to the position as if they were admitted for the academic year 1979-80, which has run out long since. It was claimed and contended by Mr. Roy that there has been in the instant case no cogent and legal evidence establishing that the participation of the outsiders including the three M.L.As had really effected the selection. He submitted that such allegations would at best be mere suspicion/doubt which is not to be considered enough to set-aside the selection. According to him cogent materials would be necessary and it should be led through legal evidence, if at all, for setting aside the selection in the instant case and that too on the allegations as made. He contended that such allegations have not been brought home through and legal evidence.

21. It was also claimed and contended by Mr. Roy that promotees in the instant case, are acting for four years. In fact, he pointed out that 98 Leaders and 65 Operators have also been promoted, even though their numbers were much more and that fact would alone be enough to show and establish, that no undue preference was given to the Fire Operators.

22. While on the question of participation by the Advisory Committee and the

manner of proof necessary and suspicion cannot take place of proof, Mr. Roy referred to the case of *E.P. Royappa Vs. State of Tamil Nadu and Another*, where it has been indicated that the burden of establishing mala fides is very heavy on the person who alleged it. The allegations of mala fides are often more easily made than a proved and the very seriousness of such allegations demands proof of a high order of credibility, apart from holding amongst others that where the petitioner who was officiating in the key post of Chief Secretary to Tamil Nadu Government was first transferred by the Chief Secretary to Tamil Government was first transferred by the Chief Minister to the post of Deputy Chairman State Planning Commission and then to the post of Officer on Special Duty in the larger interests of the administration and it was not shown that the action of the Chief Minister was arbitrary or mala fide or that the posts to which he had been transferred were in any way inferior in status and responsibility to the post of Chief Secretary the petitioner could not challenge the orders of transfer as violating Articles 14 and 16.

23. On the question, if the amendment in question is ultra vires, Mr. Roy referred to the said 1974 Rules and so also the provisions of the other Rule of 1955, para 5 of the said 1974 Rules has been struck down by the learned Trial Judge, on the basis of the findings as indicated earlier. The only change by way of addition/incorporation of the provisions "Firemen having three years" experience may also be promoted if they possess the qualifications prescribed for promotion" has been made by the said 1974 Rules or the other Rules of 1955. In fact, on a reference to those additions/incorporations, Mr. Roy claimed that thus only Firemen have been included in the field of choice and again, such addition/incorporation would not given them any privilege over the other category of employees as involved, as they would have to compete with others for the purpose of selection and they have not also been given any advantage for their character of employment as Firemen. Mr. Roy, in short claimed and contended that by such incorporation/addition, the field of choice has only been enlarged and the question of promotion of the Firemen would arise and come into play or would only be acquired by them after three years. It was pointed out further by Mr. Roy that under the 1955 Rule and so also in the said Rules of 1974, drivers have been given the same benefit/advantage as that of the presently added/incorporated Firemen. But strangely enough such incorporation has not been challenged and for that reason, he also claimed the challenge as thrown now, to be not bonafide, Para 7 of the 1955 Rules deals with Drivers and lays down that the post of Driver shall ordinarily be filled up by direct recruitment by selection on examination and interview held by the Director. A leader or a Firemen, if duly qualified, may be promoted to the post. The qualifications and age-limits for appointment to the post shall be as laid down in Schedule as A and B annexed to these rules. The provisions in respect of the Drivers under the said 1974 Rule are in paremeteria with the 1955 Rules. Mr. Roy pointed out that there has neither been any challenge to the said para 7 nor any question has been raised with regard to the same or the effect thereof.

24. Mr. Roy further contended, on the basis of the facts of the case that there is no question of any discrimination and in fact, according to him this case is certainly not one of a case between unequal as claimed. In support of his submissions on the question of equals and unequal. Mr. Roy relied on the case of *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, . The issue for consideration was whether persons drawn from different sources are integrated into one class, can they be classified for purposes of promotion on the basis of their educational qualifications? The Respondents, who were Diploma Holders in Engineering, filed in the High Court of Jammu & Kashmir a petition under Article 226 of the Constitution to challenge the validity of certain Service Rules framed by the Government of Jammu & Kashmir. A learned Single Judge dismissed the petition but in appeal a Division Bench of the High Court took the view that the impugned rules were violative of Articles 14 and 16 of the Constitution. The correctness of that view is challenged by the State of Jammu and Kashmir in this appeal by special leave. It would appear that the Respondents, who were serving in different branches of the Engineering Service of the appellants, were appointed as Assistant Engineers between 1960 and 1966 by promotion from the Subordinate Engineering Service. Their conditions of service were then governed by the rules published, under Order no. 1328-C of 1939. The relevant terms of the Rules have been incorporated in the judgment. The Rule also provided that appointments by transfer (that is, by promotion) to the cadre of Divisional Engineers (now known as Executive Engineers) could be made only from the cadre of Assistant Executive Engineers. Promotions to the cadre of Assistant Engineers could, in turn, be made only from the cadre of Supervisors in the Subordinate Service. Recruitment by transfer was to be made "on the basis of merit, ability and the previous record of the candidates, seniority being considered only in case of equality of merit, ability and excellence of record". The scale of pay admissible to the Assistant Engineers was 300-20-500.

It would appear that in 1952 the appellants undertook a general revision of pay scales and framed "Jammu and Kashmir Civil Services (Revised Pay) Rules", which were gazetted on August 6, 1962. Rule 12 divided the Assistant Engineers into two categories, date wise. Those appointed prior to August 1, 1960 were placed in Grade II, regardless of whether appointments to the posts of Assistant Engineers were made directly or by promotion and whether the incumbents held a degree or a diploma. Those in Grade I were put in the pay scale of 300-700 while those in Grade II were put in the scale of 250-600. Officers in Grade II were entitled to go into Grade I after completing two years' service, subject to the availability of vacancies and a further revision of scales was effected under the "Jammu and Kashmir Civil Services (Revised Pay) Rules, 1968" which were gazetted on February 27, 1968. Under Rule 1 (IIB)(i), Assistant Engineers were granted a new pay scale of Rs.300-30-540- EB-35-610-QB-35-700, but it was provided that the "QB at Rs. 610/- will not be crossed by Assistant Engineers with Diploma Course". This rule was challenged by the respondents in so far as it denied to them an opportunity to cross the qualification bar and then came the

"Jammu and Kashmir Engineering (Gazetted) Service Recruitment Rules, 1970", gazetted on October 12, 1970. These rules provide for appointments to the gazetted posts in various branches of the Engineering service of the appellants and supersedes the old rules on the subjects. By Rule 3(f) "promotion" is defined to mean promotion from one class, category or grade on the basis of merit and efficiency, seniority being considered only when merit was equal. Under the Schedule annexed to these Rules, recruitment to the cadre of Executive Engineers and to those only, it was provided that only those Assistant Engineers would be eligible for promotion who possessed a bachelor's degree in engineering or held the qualification of A.M.I.E., Sections A & B and who had put in at least 8 years service in the J & K Engineering (Gazetted) Service. This is the second of the two Rules impugned in this appeal.

The Respondents claimed that under the rules of 1939, Assistant Engineers were entitled to be promoted to the higher cadre on the basis of their merit and record and no distinction was made between degree-holders and diploma-holders for the purposes of such promotion. The discrimination made by the impugned rules between degree-holders and diploma-holders was arbitrary and capricious because academic or technical qualifications could be germane only at the time of recruitment. For purposes of promotion, efficiency and experience alone must count. Respondents further contended that once the Government appointed candidates with different academic or technical qualifications to the same cadre, having the same pay scale and similar duties, such candidates would form one class and they cannot be further classified for purpose of promotion on the basis of their educational qualifications. The impugned rules, according to the respondents, brought about a reduction in rank, deprived them at equal opportunity in the matter of promotion and were violative of Articles 14 and 16 of the Constitution of India. Finally, the respondents contended by their petition that it was not competent to the Government to change the service conditions unilaterally to the disadvantage of its employees as to deprive them of their vested right or promotion by giving retrospective effect to the rules. It would also appear that the appellants, by their counter affidavit, traversed these averments thus, it was within the competence of the Government to grant a higher pay scale to persons with higher educational qualifications. Under the Rules of 1968 a higher slab of pay was sanctioned for Assistant Engineers and the qualification bar was imposed so as to exclude diploma - holders with a view to ensuring administrative efficiency in the Engineering Service. Under the Rules of 1970, the Governor had laid down the method of recruitment and had prescribed qualifications for appointment of various categories of posts in the engineering department keeping in view the nature of duties and responsibilities attached to those posts. Classification, for purpose of promotion, on the basis of educational qualification has an intelligible differentia and was therefore not violative of the constitutional provisions of equality. Lastly, the appellants disputed that the application of the Rules to existing employees made the Rules "Retrospective" in any sense and on rejection of their contentions, a learned Single Judge had

rejected the petition and on appeal, the said determination was reversed by a Division Bench holding inter alia amongst others that though it was open to the Government to make a reasonable classification of its employees, where the employees were grouped together and integrated into one unit without reference to their qualifications, they formed a single class in spite of initial disparity in behalf of their educational qualifications and no discrimination could thereafter be made between them on the basis of such qualifications; that the discrimination made under the Rules of 1968 between diploma-holders and degree-holders was unconstitutional and that having prescribed a diploma or degree in engineering with practical experience as a minimum qualification for entry into service, it was not open to the Government to prescribe higher, educational qualifications for promotion from the cadre of Assistant Engineers to that of Executive Engineers. The main judgment was delivered by Mufti Bahuddin J. who confined his view to vice attaching to the rules by reason of their retrospectively. The learned Chief Justice, by a concurring judgment, stuck down the rules for all time. They were, according to him, bad in so far as they applied to existing employees and would be bad if applied to those who may join the cadre in future. The respective submissions of the parties have also been indicated in the judgment and we indicate some findings as under :

i) Article 16 of the Constitution which ensures to all citizens equality of opportunity in matters relating to employment is but an instance or incident of the guarantee of equality contained in Article 14. The concept of equal opportunity undoubtedly permeates the whole spectrum of an individual's employment of gratuity and pension. But the concept of equality has an inherent limitation arising from the very nature of the constitutional limitation arising from the very nature of the constitutional guarantee. Equality is for equals. That is to say that those who are similarly circumstanced are entitled to an equal treatment; (ii) Since the constitutional code of equality and equal opportunity is a character for equals, equality of opportunity in matters of promotion means an equal promotional opportunity for persons who fall, substantially, within the same class. A classification of employees can therefore be made for first identifying and then distinguishing members of one class from those of another; (iii) Classification, however, is fraught with the danger that it may produce artificial inequalities and therefore, the right, to classify is hedged in with salient restraints; or else, the guarantee of equality will be submerged in class legislation masquerading as laws meant to govern well marked classes characterized by different and distinct attainments. Classification, therefore, must be truly founded on substantial differences which distinguish persons grouped together from those left out of the group and such differential attributes must bear a just and rational relation to the object sought to be achieved (iv) Judicial scrutiny can therefore extend only to the consideration whether the classification rests on a reasonable basis and whether it bears nexus with the object in view. It cannot extend to embarking upon a nice or mathematical evaluation of the basis of classification, for were such an inquiry permissible it

would be open to the courts to substitute their own judgment for that of the legislature or the rule-making authority on the need to classify or the desirability of achieving a. particular object and (v) any service reform must embrace every hierarchy or none at all. It is often impossible or at any rate inexpedient to reach and remedy all forms of evil, wherever present. Reform must begin somewhere if it has to begin at all and therefore, the administrator who has nice and complex problems to solve must be allowed the freedom to proceed tentatively step by step, which we feel to be relevant and which were also specifically referred by Mr. Roy. On the basis of the determination in that case, it is thus clear that the Court can interfere if there is no principle according to which classification is made or if such principle as adopted is arbitrary. The only matter which Article 16(4) covers is provision for reservation of appointments in favour of backward class of citizens. The said clause should be strictly construed and in such a manner that does not render the provisions of Article 16(1) nugatory or illusory. Such doctrine of equalities or equal opportunity as indicated in Article 16(1) should be reconciled in such a way that Article 16(4), while serving the cause of backward and deficient classes must not reasonably encroach upon the field of equality. So the Court can interfere where the percentage of reservation is not reasonable having regard to the employment opportunities of the general public to the cadre of service in question of the entire State, the strength of the different communities, the extent of their backwardness and the like.

25. The answer of Mr. Roy on the submissions of Mr. Shib Lal Bose that in this case unequal have really been treated as equals was in the negative and in support of his submissions on the point, he referred to the unreported judgment of G.N. Ray. J. dated 5th July 1983 in the case of Sudip Kumar Chakraborty & Ors. v. State of West Bengal & Ors, (supra), after supplying the copies of the same to his adversaries. In fact, as pointed out by Mr. Banerjee earlier, the points as involved in this case, were in issue in that case. From the said determination, it would appear that the relevant facts in that case were that a writ petition was moved challenging the advertisement No. 50/82 issued by the Public Service Commission for filling up the posts in the West Bengal Civil Services (Executive) by selection in special cases for the former feeder post/services to the erstwhile West Bengal Junior Civil Services, apart from challenging a resolution dated 22nd December 1982 as issued by the Secretary to the Government of West Bengal, Home Personnel and Administrative Reform Department whereby the Governor was pleased to direct that 200 vacancies in the promotion quota of the said West Bengal Civil Services (Executive) would be filled up by special selection from the feeder posts/services from the erstwhile West Bengal Junior Civil Services and the existing feeder posts/services for the unified West Bengal Civil Services (Executive) subject to such limitations as indicated in the Rules.

26. It was contended by the petitioners in that Rule that the West Bengal Civil Services (Executive) Recruitment Rules 1978, was framed under Article 309 of the Constitution of India and that Rules came into force from 1st March 1974.

The learned Judge has pointed out that it appeared that Rule 4 of the concerned Recruitment Rule provides for method of recruitment to the services and clause (a) of that Rule provides for direct recruitment on the basis of the results of the West Bengal Civil Services (Executive) and allied services examinations. He has also pointed out that clause "B" provides for proportion from the feeder posts/services as mentioned in that clause and clause "C" provides for selection as special case from amongst persons mentioned in that clause, It has also been pointed out by the. learned Judge that it would appear that on 22nd December 1982, in exercise of the powers conferred by the proviso to Article 309, the said Recruitment Rules were amend and clause "C" of Rule 4(1) and the proviso there under was substituted by the concerned amendment and it further appeared that Rule 8 of the Recruitment Rules was also amended. The learned Judge has quoted in extenso clause "C" and clause 8 as mentioned hereinbefore and has pointed out that it was contended before him by the petitioners that the Recruitment Rules as amended provides for selection in special cases only, from those persons who have been holding the feeder posts amended Rule 491(c) read with amended Rule 8 and proviso there under for special selection from the holders of the concerned posts with a benefit that services rendered in the probations/feeder services/posts will be reckoned for computing the qualified period ft was also contended that contrary to the above provisions, the State Respondents and so also the West Bengal Public Service Commission had made/published the concerned resolutions and circulars to the effect that Government Servants holding other posts and/or posts belonging to junior Land Reforms Services would also be eligible to sit for the examinations for the special selection. On such, it was contended that the resolutions and the advertisements as made and issued were improper, apart from contending that Government servants holding other posts and/or post of Junior Land Reforms Service would be eligible to hold or sit for the examinations for selection in special cases as provided in clause "C" of Rule 4(1) and as such, the concerned resolution and the advertisement should be struck down as void, improper, illegal and irregular. We are not indicating the others submissions as made on behalf of the petitioners before the learned Judge but it would appear that Mr. Roy who is appearing for the Respondents before us also appeared for the Respondent State Government in that proceedings and submitted that the amendment clause "C" of Rule 4(1) clearly provides for that the selection should made from amongst persons who have been holding any posts or service in the State Government and who are not otherwise eligible and/or qualified for promotion to the cadre of the West Bengal Civil Services (Executive) as made be determined by the State Government consultation with the Public Service Commission. He claimed that the case under consideration, the State Government had consulted with the West Bengal Public Service Commission and on such, the resolution and the advertisement as made, was framed and published, providing for selection as a special case and not by normal channel of promotion from the holders of certain posts referred in the advertisement. It was further submitted by him that by the amendments in question, the State Government had opened the chances for selection as a

special case to some meritorious Government servants, who could compete in the selection tests and thus get a chance of accelerated promotion although they may be holding some posts being inferior posts, could not be considered for promotion to the West Bengal Civil Services (Executive) in the normal channel and although they belonged to the cadre from which selection to the said promotion posts is permissible. It was also submitted by him that amended Rule 3 provides that in case of holders of other posts who have determined by the State Government in consultation with the Public Service Commission eligible, for in special cases, they must complete six years" service in the West Bengal feeder services/posts and by the proviso in question, the services rendered in the provirus feeder services/posts should be reckoned for computing the minimum qualifying service.

27. On consideration of the submissions as made, the said learned Judge was of the view that there was substance in the contentions of Mr. Roy and according to him, under Rule 4(1)(c) read with Rule 8, even the holders of any posts or service which will be determined by the State Government in consultation with the Public Service Commission, may be treated as eligible candidates for the purpose of selection as a special case provided they have completed qualifying service in terms of the concerned Rules and the proviso there under. The learned Judge has further said that the Government servants cannot challenge the vires of the service Rules simply on the ground that the chances of their promotion have been reduced by any change in the condition of service. On the basis of the submissions as made before him, the learned Judge was further of the view that the concerned Rules or the provisions as indicated hereinbefore, were not discriminatory or offending the Articles 14 and 16 of the Constitution of India. Those provisions, in view of their character, were found by the learned Judge in that case to be not illusory, but according to him they were just, due and proper, because he was of the view that for those Rules or the provisions, everyone will get the necessary chance of promotion in the normal channel and to the extent of their quota and furthermore, when holders of other posts cannot be considered for such normal promotion but for meritorious Government Servants chances have been created by amending the concerned Rules and the provisions and that too for accelerated promotion through selection by the competitive examinations as a special case, the learned Judge was also of the view that in equity the petitioners before him could not complain about injustice or hardship and by the concerned proceedings the petitioners before him should not be permitted to disallow others to compete with them, in the open competitive examination for selection as a special case and outside normal channel of promotion.

28. Before dealing with the submissions of Mr. Shaibal Bose, the learned Advocate for the Respondents, in this. Appeal, we must nave it On record, that he pointed out that there was or has been no provision for information of an. Advisory Committee either under the said Act or under the said 1974 Rules or any. Rules, and such Committee was formed with the M.L.As belonging to the

ruling party, with the object, intention and purpose of giving preference or showing favours to candidates belonging to such party and in any event, the. for matron of such Committee, before not provided for. or being contrary to the provisions of the said 1974. Rules the acts done or actions taken, even on the basis of the advise of such unauthorised body, was neither proper nor legal. Mr. Bose in fact, contended that under the said 1974 Rules, the Director alone, was to make the selections after interview and examination held by him and not which the aid and assistance of such Advisory Committee, as framed. He categorically stated that even if the examination was held by the Director, the members of the said Advisory Committee participated at the interview stage and such participation by them, rendered the selection as purported to have been made, a nullity and void altogether.

29. We have earlier indicated the channel of promotion and Mr. Bose contended that for the post of Sub-officers, the promotions channel, under the said 1974 Rules, was thus open to the Leaders only. We have also quoted earlier, the provisions of Rule 5 of the said 1974 Rules and Mr. Bose wanted to establish his submissions as mentioned hereinbefore, relying on the import of the work "ordinarily" as mentioned therein. He of course, in his usual fairness agreed that even if the Drivers and Telephone Operators, if duly qualified, may be promoted, the Firemen cannot get the promotion and the amendment of the said Rule 5, by incorporating the terms that "Fireman having three years experience may also be promoted, if they possess the qualifications prescribed for promotion", was bad, void, illegal and irregular and as such. Firemen who are admittedly unequal with his clients have been given some advantages, which should be deemed to be contrary to the provisions of the Constitution of India.

30. To establish that the Firemen are not equals of the Leaders, Mr. Bose stated that they were and are always under the Leaders or subordinate to them, on a reference to the West Bengal Fire Service Manual and more particularly to the provisions, laying down the "General Duties of a. Fireman" and more particularly to sub-Rule 5 (h),(i) and (k), which provisions according to him, would be enough to hold that Firemen at all material times were and still they are responsible to the Leaders and as such, they will be, according to him, deemed to be subordinates to the Leaders, Mr. Bose submitted that the determinations in Ajoy Hasia's case (supra), will have no application in the facts of this case when the case before us were one of treating unequal with equals. Similarly, Mr. Bose contended that the case of E.P. Royappa (supra), will also have no application in this case, on the basis of the challenges as thrown viz. here party, to help and assist the Director concerned, in the matter of making the selection in the matter of public employment. In fact, it was the specific and categorical submission of Mr. Bose that the present case or the procedure as sought to be followed was hit by Article 16 of the Constitution of India.

31. While on his submissions on the formation of Advisory Board with the members having such political character as indicated earlier, Mr. Bose contended

that even if there is such power to form or constitute the said Board, the authorities concerned, having regard to political motivation and machination, should have in all fairness or in answer to their obligations to act duly and fairly, formed the concerned Board, not with the persons, who admittedly have affiliation to the ruling party or any political party alone. On the other hand, he suggested that such Board, if at all, should have been formed with persons having independent character or at least in a representative manner i.e. having due representation, if necessary, to all the political parties or if at all, at least having due care to the representation of other available parties, who admittedly represents substantial number of electors. Such submissions of Mr. Bose, cannot be said to be without any basis, substance or justification. We feel, that when in the facts and circumstances of the case, the authorities concerned were dealing with or were required to deal with matters of public appointments, they should have seen or in future they should see that only representatives of a particular party, in this case the ruling party alone, are not appointed/selected or nominated, because in matters of public employments as in this case or for any matters of public employment, fairness in action is required and such attitude will be absent or is not expected to be present or acted upon, if the appointees are only selected from a particular party or the ruling party, as in this case and if such appointments or nomination of the members of the concerned Board are made, even if they act duly or bonafides in the matter of selection, some doubts may be thrown to such acting. We feel that the selection of the Advisory Board, in a case of the present nature, after taking due care to the facts as indicated above and also with the specific object should be made so that there is no need or any occasion to doubt the bonafides of their acting"s or that there is no occasion to doubt the absence of the required fairness. We thus feel and indicate that future appointment of the members of the concerned Advisory Board should be made with due caution and also having regard to the observations as made by us.

32. The above findings of ours would be enough and sufficient, if our ultimate analysis of the records, which were produced before us by Mr. Banerjee viz. File No. WBFS/RC72(26)-2/29, containing the minutes of the selection, the minutes of the Advisory Committee and so also records regarding (1) the interview for the post of Sub-officers (Departmental candidates) which was held on 5th May 1988 under the chairmanship of Sri K.K. Das Gupta (Director W.B.F.S.), in respect of "B" Division of the Fire Stations, (2) records regarding the Interview of Sub-officers (Departmental Candidates) held on 3rd June, 5th June and 6th June 1988 at the Fire Stations at Kharagpur, Beharampore, Krishnagar and Ranaghat under the chairmanship of the said Shri Das Gupta, (3) records regarding the interview for the post of Sub-officers (Departmental Candidates) held at different Fire Stations under "C" Division, by the said Shri Das Gupta as the chairman, (4) records regarding the interviews held for the same posts at different Fire Stations on 10th and 12th May 1988 under the chairmanship of the said Shri Das Gupta, the records regarding the interviews held by the said Shri Das Gupta on

13th May 1988 at different Fire Stations under "E" Divisions on 13th May 1988, (5) the records regarding the interview of the same type of officers under the Fire Stations "F" Divisions, held on 18th May 1988 by the said Shri Das Gupta, (6) records regarding the interview of such type of officers of the different Fire Stations under the said Division held by Shri Das Gupta on 13th May 1988, (7) records regarding the interviews held under the chairmanship of the said Shri Dasgupta in respect of Fire Stations under the "C" Division, and (8) those relating to the interviews held by the said Shri Das Gupta in respect of the Fire Stations under "H" Divisions of the concerned employees amongst others, we hold that the said Advisory Board had really taken part or participated in the actual selection of the candidates. We were also shown the evaluation-sheets, showing the mark allotted to or obtained by the successful candidates. The inspection of the above records were also taken by all concerned. We have not been able to find out or were not shown any manipulation in these records. It was Mr. Bose's specific and categorical submission, in addition to his submissions on unequal being treated as equals and the case is hit by the provisions of Article 16 of the Constitution of India that the formation of the concerned Advisory Board was without jurisdiction and as such, the participation or the acting of the members of the said Board, has made the entire selection void abinitio.

33. Apart from the records as indicated hereinbefore, we were also shown the other records viz. Book Nos. 1 and 2, on the question of selection of the members of the Advisory Board, which are under challenge. On consideration of these records and reading and scanning them, we find that, even though the concerned gentlemen, belonging to the ruling political party were appointed as members of the said Board, yet they have not really taken any effective part in the matter of actual selection of the candidates, which was done under the chairmanship of Shri K. K. Das Gupta, the Director of West Bengal Fire Services and these members, only took part at the preliminary stage i.e. in the matter of selecting the venue of the examinations, to hold the interviews, and the dates for holding them and not in the matter of or at the time of actual selection. Such being the position, we feel, subject to the observations above, regarding the manner in which the Advisory Board should be formed, that the selection of the concerned members of the Board has not materially vitiated the selections in this case, as they have not, as indicated earlier, taken part or participated in the actual deliberations or selection of the candidates. We further and again keep it on record that if these selected members had made any deliberation in the matter of actual selection, we would have certainly set aside such selection. If necessary, we shall hereafter indicate the reasons of our findings as above in details.

34. Let us now consider the other points as raised and urged in this case, the relevant particulars whereof have been indicated earlier, We have also indicated earlier the number of applicants from the respective groups of Leaders, Firemen or Fire operators out of the total number of applicants as selected and which was 612. The treatment of Pin. Operators and Leaders on the same footing. was

claimed to be discriminatory, arbitrary and bad for the reasons as stated earlier and more particularly since and according to Mr. Bose, such treatment to the Fire operator, who were unequal with the Leaders was not appropriate and more particularly when, these two classes of employees were not similarly placed and there were differences in the manner of their appointments and the duties they are required to discharge. Mr. Bose claimed that Rule 5 of the said 1974 Rules, purporting to treat the two class of employees, who were not similarly placed in any manner whatsoever, was irrational, arbitrary, baseless and void and the same thus contravened the provisions of or the safeguards under Articles 14 and 16 of the Constitution of India. The other limb of Mr. Bose's submissions in support of the case was that the Firemen and Fire Operators, who were juniors to the Leaders, should not have been equated with the Leaders. He, of course indicated that Drivers and Telephone Operators, were and are not under the Leader It is true that the duties and jobs performed by the Leaders and Firemen or Fire Operators are different. Under the Rule under challenge, the Firemen or Fire Operators, because of their nature of employment are not to get the promotions with the Leaders as a matter of course. But, they would get such opportunity for consideration in case they can duly complete, comply with and satisfy the other stipulations. Because of such restrictive chance or opportunity and since they could not claim to be so considered for promotion automatically, we feel that the submissions on equality and equal protection or opportunity as put forward by Mr. Bose would not be of any avail or much assistance. It should also be noted that the Firemen or Fire Operators under the said 1974 Rules would entitled to be considered for the necessary selection, subject to the availability of posts and possession of the required and necessary qualifications. It should also be noted that the promotions in this case were given, on the basis of interviews and selection made by the Director of West Bengal Fire Services himself and under the said 1974 Rules, he was competent and duly authorised in that behalf.

35. We have indicated earlier, the way and in the manner in which the outsiders concerned, if at all, had participated and so far then participation in the actual selection, there was no legal evidence before us and if at all, there has been some suspicion over such participation by them On the basis of the determinations in Ajoy Hasia's case (supra) such or mere suspicion would not be enough to influence the Court in the matter of its decision or to set aside the selection as made. We do not agree with Mr. Bose that the said decision has no application in this case. In fact, the allegations on the point, as put forward by the writ petitioner/Respondents, have not been brought home duly or through any legal evidence

36. We have indicated earlier the relevant promises of the two Rules as under consideration in this case and we have also shown the changes as incorporated in the 1955 Rules by the said 1974 Rules. Really, the Firemen only have been brought into the arena of competition or the field of choice and such incorporation would not ensure to any benefit or advantage to the Firemen or

Fire Operators and that too for their character of employment, since they would be required, as a condition precedent, for the purposes of the necessary selection, compete with the Leaders on fulfilling certain terms and stipulations. It should be noted that under both the Rules as mentioned earlier, Drivers have been given the same benefits like that of the Firemen or Fire Operators as involved in this case, but the writ petitioner i.e. the Leaders have not challenged such incorporation and as such, the present challenge, as claimed by Mr. Roy may not be bonafide.

37. On the basis of the facts of the case, the circumstances relating to the selection as made and our findings on them, that this is not strictly a case of treating unequal with equals and such findings of ours would be amply supported on the basis of the determinations in the case of *The State of Jammu and Kashmir v. Triloke Nath Khosa* (supra). While on the submissions as made at the Bar on the question of unequal being treated as equals, the observations as made by G.N. Ray, J. in the case of *Sudip Kumar Chakraborty & Ors. v. State of West Bengal & Ors.* (supra), can also be looked into and appropriately applied in this case.

38. In fine we hold that the policy sought to be followed in this case of selection was wholesome. In fact, there was no restriction imposed and even if there were or are some restrictions, they were reasonable. The said 1974 Rule which incorporated or brought the Firemen or Fire Operators in the field of competition, on fulfilling certain terms, was not also unreasonable. In fact, in the 1955 Rules, the field of choice was between the three classes or groups and by the said 1974 Rules, another category or class viz. Firemen or Fire Operators, on fulfilling certain conditions have been added. The classification as made, as stated earlier, was not unjust. When such justification has been challenged, the onus was on the Leaders to establish the same by cogent and legal evidence. But they have failed to discharge such onus duly. The classification as sought to be made in our view, should also be deemed to be reasonable as that would expect to improve the efficiency of the service which is urgently needed.

39. For the views as above, we feel that this Appeal should be allowed. We order accordingly. The judgment and order as made by the learned Trial Judge are thus set aside. There will be no order as to costs. We must also keep it on record that these was a cross objection being F.M.A.T. No. 2144 of 1984 filed and Mr. Moloy Kumar Basu, appearing in support of the same, elected not to press the same. The said Appeal is thus dismissed for non prosecution. There will be no order as to costs.