

Damodaran and ors. Vs. Paul and ors.

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Court : Chennai

Decided On : Dec-07-1990

Reported in : (1991)308MLJ1

Appellant : Damodaran and ors.

Respondent : Paul and ors.

Judgement :

Mishra, J.

1. Two appeals, one on behalf of the State of Tamil Nadu, Director General of Police, Inspector General of Police (Law and Order) and Deputy Inspector General of Police, Armed Police, and another on behalf of Damodaran, Ramu, Pandian and Ganapathy, Inspectors of Police, who were impleaded as respondents in W.P.No.3014 of 1986, have been preferred against the order of Venkataswami, J., holding that the appointment of appellants in W.A.No.1623 of 1988 as Inspectors overlooking the claims of the writ petitioners, respondents cannot be sustained and accordingly, the proceedings of the fourth respondent fourth appellant in W.A.No.896 of 1989, dated 5.12.1985, is fit to be set aside.

2. The respondents - writ petitioners, 13 in number, Paul Ponnusamy, Thangaraj, Parameswaran, Chelliah, Kochunni, Subbarayalu, Shanmugha Sadachalam, Kanniappan, Muruganandam, Karuppiah, Rajagopal and Radhakrishnan, in their petition under Article 226 of the Constitution of India, claim that except Thangaraj,

who was regular Sub Inspector of Tamil Nadu Special Police Battalion, they were holding the post of Sub Inspectors, temporarily, that they were eligible for promotion as Inspector, and that they were denied the consideration for such promotion because the concerned authorities on a wrong understanding and application of the Tamil Nadu Special Police Subordinate Service Rules decided to promote the above named four Inspectors. They questioned the promotions stating that the Tamil Nadu Special Police Battalion Force is divided into two categories, one called, the General Category, and the other called the Special Category. After undergoing the procedure of recruitment and selection as constables, after the completion of 10 months basic training, the rules contemplated exercise of option for either the General Category or the Special Category, which consists of Armourer, Band, Radio and Telephone, and Motor Transport. According to them, the Special Category is a unit by itself and training for personnel belonging to Special Category is given at the Regimental Centre, Avadi. So far as the General Category is concerned, according to them, the Constables after serving for three years and after passing the Departmental tests are promoted to the post of Lance Naiks, and thus they are required to put in a service of two years before they are made Naiks. Similarly, to become Havildar from Naik, a Constable in General category is required to put in a minimum of two years of service as Naik, as also for further promotion from Havildar to Assistant Sub Inspector, which post has since been upgraded as Sub Inspector. Because there are a large number of them and there are only limited number of superior posts, they are required to wait for much longer period. The Special Category, however, is not subjected to any such delay, and those who opt for Special Category get accelerated promotions to superior ranks in Special Category and become Sub Inspectors, much in advance than a Constable opting for the General Category. Thus, according to them, those who opt for General Category, although in many cases were/are seniors to those who opted for Special Category, were/are made Sub Inspectors in their due time, much after, and thus much behind those who took/take advantage of accelerated promotions in the Special Category. That is why in their cases, while they were still behind in the rank of Constables or Lance Naik or Naik, the respondents/appellants became Sub-Inspectors.

3. The other aspect to which the writ petitioners advert relates to the duties and responsibilities of the Constables attached to the General Category and the duties and responsibilities attached to the Special Category. They enumerate the duties and responsibilities of the Constables attached to the General Category and Special Category in paragraph 10 of the affidavit and assert that an Inspector in the General Category is the Kingpin of the Battalion as per Standing Order 13 of Tamil Nadu Special Manual which reads as follows:

Inspector-Company Commander-General-Inspectors are generally placed incharge of the active companies and they are called Company Commanders. They should consider themselves the 'King Pin' of the battalion.

Thus, according to the writ petitioners, any promotion given to the Constables, Lance Naiks, etc., in the General Category as Inspector alone will be valid, and not to any person falling in the Special Category, who on account of being in the Special Category enjoyed the benefit of the separate avenue of promotion, until the fourth respondent in his order, on a misinterpretation of the rules, thought that Sub-Inspectors in the General Category as well as Sub-Inspectors in the Special Category constituted a common pool, and thus they ranked as Sub-Inspectors in the common pool in the order of seniority reckoned with effect from the date of continuous officiation, whether temporary or permanent.

4. In our view, for a better appreciation of the competing contentions, it would be necessary to advert to the relevant rules. Rule 3 in G.O.Ms.No.2017, Home, dated 21.8.1978 is the rule as to the constitution of the service, and states:

The Service shall consist of the following commissioned, non-commissioned and other officers of the Tamil Nadu Special Police Force,

and mentions in 'Category' the list of Commissioned Officers, Non-Commissioned Officers, and others as they rank, and opposite to it, 'Post of Specialist'. In the Category thus, in the order of their rank, Inspectors and inspectors-Adjutant, Sub Inspectors, Assistant Sub-Inspectors, Havildars including Battalion Quarter master Havildars, Company Quarter master Havildars and Company Havildars Clerks, Naiks, and Constables including Lance Naiks, stand on the one side, and on the

other, Signal Officer (Inspector), Motor Transport Officer, Rebrowning Sub Inspector,

Assistant Transport Officer (Sub Inspector), Assistant Signal Officer (Sub Inspector), Armourer Sub Inspector, Band Sub Inspector, Armourer Havildars, Rebrowning Havildars, Mechanic Havildars in Motor Transport, Radio Havildars in Radio Telegraphy, Bank Havildar, Web Equipment Repairer Havildar, Bank Naiks, Radio Naiks Lance Naik in Radio Telegraphy, Band Lance Naiks, Constables of Radio group, Band Constables, Police Constable Drivers, Police Constable Cobbler, Police Constable Tailor, Police Constable Carpenter, Armourer/Rebrowning Constables, stand in one line. There is an Explanation to this rule which reads thus:

For purpose of promotions, appointments, reversions, transfers, seniority and postings etc., from the rank of Assistant Sub Inspectors to Sub Inspectors, Sub Inspectors to Inspectors and Inspectors to Adjutant Inspectors, the existing Tamil Nadu Special Police Units (Former Special Armed Police I, II and IV and Malabar Special Police I and II Battalions) shall be treated as one Unit.

5. The other relevant rule is Rule 7, which we find has been extracted in the impugned judgment. For convenience we also extract it.

(7) Appointments other than temporary appointments, that is regular appointments: (a) appointments to the posts specified in column (1) of the Table below shall be made in accordance with the method specified in the corresponding entries in column (2) thereof.

THE TABLE
Name of Post Method Method(1)(a) Inspector-(1) (1) Promotion from Inspector.Adjutant: (2) If no qualified and suitable Inspector is available, direct recruitment by transfer from any other service.(b) Inspectors: (1) Promotion from Sub-Inspector.or(2) If no qualified and suitable Sub Inspector is available direct recruitment; of recruitment by transfer from any other service.(c) Inspectors: Promotion from Sub Inspector of(Radio) Radio Group.(d) Motor Transport Officer(Inspector)G.O.Ms.No.1348, Home, dated 30.4.1980 (C.O.F. DIS.No.I51939/Ra-4/79. dated 2.5.1980).

(1) Promotion from Assistant Transport Officer (S.I.) or Sub Inspectors in the regular line who have undergone Motor Transport training at the Central School of Motor Transport Sagar or by transfer of Inspectors in the regular line who have undergone the above training.(2)(a) Sub Inspectors:

(1) Promotion from Assistant Sub Inspectors; or(2) Direct Recruitment; or recruitment by transfer from any other service. Provided that the proportion in which vacancies shall be filled by the method specified in items

(1) and (2) above shall be 1:2 and that if suitable and qualified persons are not available for appointment in vacancies to be filled up by direct recruitment, such vacancies may be filled by promotion. Provide further that during the period during which the proclamation of Emergency under Clause

(1) of Article 352 of the Constitution of India, is in operation, promotion to the post shall also be made from Havildars.(b) Sub Inspectors Armourer/ Promotion from Armourer/Rebrowning : Havildar.(c) Sub Inspector (Transport Group): Promotion from Havildar Mechanic.(d) Sub-Inspector, Promotion from Havildar Radio Radio Group: Group.(3) Assistant Sub Inspector:

(1) Promotion from Havildars, or(2) If no qualified and suitable Havildar is available, direct recruitment or recruitment by transfer from any other service.(a) Havildars (Other than

(1) Promotion from Naiks; or those specified in (b) to

(2) If no qualified and suitable (e) below: recruitment or recruitment by transfer from any other service.(b) Havildar Armourer/

(1) Promotion from Armourer Naiks; Rebrowning:

(2) If no qualified and suitable Armourer Naik is available, promotion from Armourer/Rebrowning police constables.(c) Havildar (Mechanics):

(1) Promotion from Naik Drivers; or(2) If no suitable and qualified Naik Drivers are available, promotion from Constable Drivers, or if no qualified and suitable constable driver is available, direct recruitment by transfer from any other

service.(d) Havildar Radio Group: Promotion from Radio Naiks.(e) Band Havildar:

(1) Promotion from Band Naiks/Band Radio Police Constables; or(2) If no qualified and suitable Band Naik, Band Police Constable is available, direct recruitment or recruitment by transfer from any other service.5 (a) Naiks (other than

(1) Promotion from Lance Naiks; or those mentioned in

(2) If no qualified and Naik is (b) and (c) below): available direct suitable Lance recruitment or recruitment by transfer from any other service.(b) Radio Naik :

(1) Promotion from Lance Naik Radio Group; or(2) If no qualified and suitable Lance Naik is available, promotion from Constable of Radio Group.(c) Band Naik:

(1) Promotion from Band Lance Naik; or(2) If no qualified and suitable Band Naik is available promotion from Band Police Constables.Explanation: If no qualified and suitable member is available for promotion as provided item (b) or (c) then direct recruitment or recruitment by transfer from any other service.6 (a) Lance Naiks:

(1) Promotion from Constables; or(2) Direct recruitment; or(3) Recruitment by transfer from any other service.(b) Lance Naik Promotion from Constables of Radio(Radio Group): Group.(c) Band Lance Naik: Promotion from Band Constables.(d) Constables (Other

(1) Direct recruitment; or than those mention -

(2) Recruitment by transfer from any of in (e) to (h) other service.below:(e) Constable Tailor: Selection from Police Constables or direct recruitment.(f) Constable Carpenter: Selection from Police Constables or direct recruitment.(g) Constable Carpenter/ Selection from Police Constables.Rebrowning:(h) Constable or Radio Selection from Police Constables and by Group transfer of approved probationer from general category,(i) Constable Cobbler: Selection from Police Constables or direct recruitment,(j) Band Constables: Selection from Police Constables or direct recruitment,(k) Constable drivers: Selection from Police Constables

Explanation : The rule relating to reservation of appointment (General Rule 22) shall be applied separately at the time of direct recruitment to the posts mentioned above.

(i) Promotion to the posts of Inspectors-Adjutant. Inspectors, Sub-Inspectors and Assistant Sub-Inspectors shall be made on grounds of merit and ability, Seniority being considered only where merits and ability are approximately equal.

(ii) Such promotion shall be made from a list of qualified candidates suitable for promotion prepared by a promotion Board consisting of the Commandants of all Tamil Nadu Special Police Battalions and such list shall, except in the case of Inspectors-adjutant and Inspectors approved by the Deputy Inspector General of Police, Railways and Armed Police, Madras and in the case of Inspector-Adjutant and Inspectors, such list shall be submitted through the Deputy Inspector General of Police, Railways and Armed Police for approval by the Inspector General of Police. Where candidates in such lists are arranged in the order of preference, promotions shall be made in that order.

(iii) Temporary promotions : (a)(i) 'Where it is necessary in the public interest owing to an emergency which has arisen to fill up immediately a vacancy in a post borne on the cadre of a higher category in a service or class by promotion from a lower category and there would be undue delay in making such promotion in accordance with the rules, the appointing authority may promote a member, otherwise than in accordance with the rules, temporarily, until a member of the service is promoted in accordance with the rules

(ii) No member of the service who does not possess the qualifications, if any, prescribed for the said service class or category shall ordinarily be promoted under item (i);

(b) Where it is necessary to fill up a short vacancy in a post borne on the cadre of a higher category in a service or class by promotion from a lower category and the appointment of the member who is entitled to such promotion under the rules, would involve excessive expenditure on travelling allowance or exceptional administrative inconvenience, the appointing authority may promote any other

member who possesses the qualifications, if any, prescribed for the higher category.

(c) A member temporarily promoted under item (1) of Sub-clause (a) shall, whether or not he possesses the qualifications prescribed for the service, class or category to which he is promoted, be replaced as soon as possible, by the member of the service who is entitled to the promotion under these rules, is available.

(d) Where it is necessary to promote an officer against whom an enquiry into allegation of corruption or misconduct is pending, the appointing authority may promote him temporarily pending enquiry into the charges against him. The competent authority shall have discretion to make regular promotions in suitable cases.

(e) A member promoted under Sub-clause (a), (b) or (d) shall not be regarded as a probationer in the higher category or be entitled by reason only of such promotion to any preferential claim to future promotion to such higher category. The services of a member promoted under Sub-clause (a), (b) or (d) shall be liable to be terminated by the appointing authority at any time without notice and without any reason being assigned.

(f) If such a person is subsequently promoted to the higher category in accordance with the rules, he shall commence his probation if any, in such category from the date of such subsequent promotions or from such earlier date as the appointing authority may determine. He shall also be eligible to draw increments in the time scale of pay applicable to him from the date of commencement of his probation, but shall not be entitled to arrears of pay unless otherwise ordered by the State Government.

Subject to the provisions of F.R.30, there shall be paid to a member promoted under Sub-clause (a), (b) or (d) either his substantive (sic) pay or the pay of the lowest grade or the (sic) minimum pay in the time scale of pay, as the (sic) case maybe, applicable to the Higher category, (sic) whichever is higher.

(h) A probationer in a category carrying a lower scale of pay who is promoted temporarily under Sub-clause (a) or (b) to a category I carrying a higher scale of pay in the service I shall be entitled to count towards his probation in the former category the period of duty I performed by him in the latter category during which he would have held a post in the former I category but for which temporary promotion.

(c) Promotions in all categories upto Assistant Inspector shall be treated as Unit-wise anal combined Seniority on the Range basis foil promotion from Assistant Sub-Inspector and upwards. In respect of temporary battalions all promotions ordered in the temporary batlall lions upto Assistant Sub-Inspector in respecil of the personnel on other duty from permanent battalion may be regularised by the permanent unit, only if the individual is due foil such promotion had been continued in the parent unit. Otherwise his promotions ir (sic) the temporary battalions will be purely on temporary basis.

(d) The posts of specialists mentioned in Rule 3 shall constitute separate categorises from those of non-specialists and promotion to the former shall be made independent in each category subject to the provisions of Sub-rules (b)and(c).

Radio Telegraphy Group: Appointments to the posts of Police Constables to the. Radio Group shall be made in the order fixed on the basis of the results of the examination referred to in Rule 16(3) by transfer from the general category of Police Constables who have put in a total service of not less than two years and appointment for other posts in the groups shall be made by promotion from a lower to higher category from among the qualified operators in the Signal Branch.

Constables may be selected for appointment by transfer from general category. It shall however be open to the competent authority to transfer any person at any time on administrative grounds from the Signal Branch to the respective company from where he was selected for appointment by transfer.

6. We shall make our analysis of the rules afore-quoted for the purpose of finding out whether there is any basis to sustain the grievance of the writ petitioners or

not, and thus to decline to interfere with the judgment or conversely to find out whether the promotions given to the above-named four appellants as Inspectors have rightly been held to be invalid in the impugned judgment. It appears, however, that there are rules (not disputed) showing how in the General Category a certain person will be promoted from the post of Constable to that of Lance Naik or Naik or Sub-Inspector, and how in the Special Category such promotion will be given. In the impugned judgment, such rules have been quoted to come to the conclusion that the Sub-Inspectors of Special Category are treated separately from Sub Inspectors of General Category. It is not necessary, however, to refer to all such rules, as we find that there is hardly anything to disagree with the view that the Sub Inspectors of Special Category constitute a separate Group from Sub Inspectors of General Category. It is, however, not the end, but the starting point of controversy between the parties. Having so remained separate, after exercising option for Special Category those who were in Special Category continue and keep their identification as belonging to the Special Category in the Radio Group, Motor Transport Group and similar groups and earn their - promotions in accordance with the methods of appointment envisaged in Rule 7 above. Those who were in the General Category are not permitted by the rule, except in the exceptional cases indicated therein to claim any competition with or consideration along with, persons falling in the Special Category. They move step by step from Constable to Naik, Havildar and Sub Inspector. Rule 7 above, however, identifies Inspectors and Inspectors (Radio) as separate groups, and provides that Sub Inspectors can be promoted as inspectors, and if no qualified and suitable Sub Inspector is available, direct recruitment or recruitment by transfer from any other service can be resorted to, and the post of Inspector (Radio) can be filled in by promotion from Sub Inspector of Radio Group. With respect to Motor Transport Officer (Inspector), the rule says:

Promotion from Assistant Transport Officer (S.I.) or Sub Inspectors in the regular line who have undergone Motor Transport Training at the General School or Motor Transport Sagar or by transfer of Inspectors in the regular line who have undergone the above training.

Thus, while there is a specific mention of two groups Radio and Motor Transport, and their specialisation is recognised as a separate group or class of persons who will qualify for promotion as Inspectors, (Radio) or Motor Transport Officer, there is nothing indicated whether a Sub Inspector, Armourer/Rebrowning, will have any avenue of promotion as a special Category or not. It appears that after maintaining a closed cadre upto the level of Sub Inspector, Armourer/Rebrowning, the rule placed them in common pool of general category of Sub Inspectors for any future and further promotion because for promotion as Inspectors, what is required is that one should be a Sub-Inspector, and it cannot be said that a Sub Inspector/Armourer/Rebrowning, is not a Sub Inspector for purposes of promotion as Inspector. This view finds further support from a reading of the provision for promotion of Assistant Transport Officer (S.I.) as Motor Transport Officer (Inspector) wherein since there is a specialist post of Motor Transport Officer, it is recognised that such promotion will be made available to Assistant Transport Officer (S.I.) or Sub Inspector to the regular line who have undergone Motor Transport training at the Central School of Motor Transport Sagar or by transfer of Inspectors in the regular line who have undergone the above training. In other words, promotion as Motor Transport Officer (Inspector) has been left open for general category of Inspector also, provided he has undergone the requisite training, that is to say, Motor Transport Training. Since there is no further specialist post available above the rank of Sub-Inspectors in the other categories, they evidently are left in a common pool of Sub Inspectors, and thus no distinction is maintained insofar as promotion from Sub Inspectors to Inspectors is concerned between the General Category and Special Category, except in the case of Inspectors (Radio).

7. The facts which are not in dispute are: The writ petitioners-respondents were senior to the respondents-appellants in the rank of Constables; While the respondents-appellants Inspectors became Sub Inspector (Armourer), the writ petitioners were still behind them in lower ranks of Naiks or Havildars, but before the respondents-appellants Inspectors were selected and promoted as Inspectors, the writ petitioners-respondents had also become Sub Inspectors in the General Category. In other words the respondents-appellants Inspectors were holding their respective posts of Sub Inspectors Armourer from before the writ petitioners-

respondents became Sub Inspectors in the General Category. The question before us, therefore, are, (1) whether the Sub Inspector Armourer and Sub Inspector in the General Category together constitute a common pool from which promotion to Inspector will be made (2) If Sub Inspector Armourer and Sub Inspector in the General Category constitute a common pool, whether Sub Inspector Armourer vis-a-vis Sub Inspector in the General Category will reckon his seniority with reference to the original appointment as Constable irrespective of the promotions already earned and their becoming Sub Inspector Armourer much before those who were in the General Category.

8. There can hardly be any dispute to the proposition that a right to be considered for promotion is a fundamental right guaranteed to every citizen that there cannot be a valid discrimination in the matter of future promotion among the persons of one category, class or group or else it would violate Articles 14 and 16(1) of the Constitution of India and that any denial of promotion without any just or valid cause would violate Articles 14 and 16(1) of the Constitution of India: Vide *Brij Mohan Singh v. State of Punjab and Ors.* 1968 S.L.R. 723; *Roshan Lal v. Union of India* (1967) 1 S.L.R. 832; *State of Mysore v. Krishna Murthy* : (1973) ILLJ42SC ; *State of I & K v. T.N. Khoza* : (1974) ILLJ121SC ; *Teerth Narain v. State of Bihar* : AIR 1987 SC1195 and *Council of Scientific & Industrial Research v. K.G.S. Bhatt* : (1990) ILLJ246SC .

9. Learned Counsel for the appellants has contended before us that once it is conceded or found that the writ petitioners and the respondents-appellants Inspectors constitute a common pool, it will no doubt be just to suggest that they must reckon their respective seniority from the date of their continuous officiation in the rank concerned, because any attempt to deny such a position in the gradation list of Sub/Inspector will amount to a suggestion that they would be deemed to be promoted only after those who ranked senior to them in the lower service or cadre were/are promoted. A right accruing in favour of a person by dint of appointment or promoting to a higher rank must always be recognised to exist in him or her continuously without any interruption if the service stands uninterrupted, or the service is not fortuitous. According to learned Counsel, it is not in dispute that the respondents-appellants Inspectors were duly promoted as Sub Inspectors

Armourer before any of the writ petitioners respondents was promoted as Sub Inspector and thus in case of any equation between the respondents appellants Inspectors and the writ petitioners-respondents in the rank of Sub Inspector, their inter se seniority must reckon with effect from the date of the continuous officiation in the rank of Sub Inspector. That will completely, according to learned Counsel, answer any contention of the writ petitioners-respondents for any position higher than the respondents-appellants Inspectors in the category of Sub Inspectors. Any other interpretation will be in the teeth of ArticleS 14 and 16(1) of the Constitution of India.

10. Learned Counsel for the writ petitioners-respondents, however, has contended that the Court should not recognise entry of Sub Inspector Armourer in the general pool of Sub Inspector for promotion as Inspectors, because, as stated above, they earn their promotions only because they had opted for a Special Category and never had the taste either of the rigorous training schedules of the General Category or the waiting time contemplated in the rules. According to learned Counsel as recognised in the impugned judgment, the Special Category should always be treated separately and their inclusion in the group of eligible persons for promotion as Inspector in the General Category is in violation of the Scheme of rules constituting the service as well as Arts.14 and 16(1) of the Constitution of India.

11. Learned Counsel has drawn our attention to three judgments of the Supreme Court, the first being *Om Prakash Sharma v. Union of India* : AIR 1985 SC1276 . Three Departments under the control of a Divisional Electrical Engineer, had three separate offices, but the clerical staff such as Clerks, Senior Clerk, Head Clerk and Chief Clerk of all the three departments were borne on a common seniority list till August 31,1956. Effective from September 1,1956, these three departments under the control of the Divisional Electrical Engineer were separated from each other on the introduction of the divisionalization in the railways. These three departments became three independent units, and in the matter of staff each devised its separate seniority list. All the three original departments trifurcated on August 31, 1956, however, were reamalgamated in the matter of staff, and a common seniority list was introduced in respect of all the four cadres which were

prior to September, 1959, on a common seniority list. Pursuant to the amalgamation common seniority list was drawn up, purporting to be the combined seniority list of the Railway Administration. Validity of the said seniority list was impugned in the appeal before the Supreme Court on the ground that when the three departments had a common seniority list, the appellants were senior to respondents, but after trifurcation and reamalgamation, those who belonged to erstwhile workshop staff and who were amalgamated with the staff of the Chief Electrical Engineer obtained accelerated promotion because of easy availability of vacancies, consequently, when reamalgamation was introduced and when all reverted to the common seniority list, the respondents scored a march over the appellants because of a fortuitous event. The Supreme Court said,

The appellants have an iron clad case. The facts, not disputed, to summarise briefly are that under the Divisional Electrical Engineer, there were three separate departments under his administrative control. Members of the Staff of three departments were borne on a common seniority list. In other words they were deemed to belong to one office in the matter of seniority and promotion. This is not only not disputed but the averment to that effect in Para 6 of the petition has been admitted in the counter-affidavit filed on behalf of the Railway Administration. It is again admitted that the three appellants since their entry into service were senior to respondents Nos.3 to 6. For the administrative convenience the Railway Administration trifurcated the cadres. In other words, three units were separated from each other which resulted in each unit having its own seniority list and the common seniority list became irrelevant from the date of the trifurcation. The Unit No.2 called the workshop was amalgamated with the office of the Chief Electrical Engineer, Bombay. That is not controverted. Respondents Nos.3 to 6 belonged to the administrative staff in the department styled as the workshop, the result of the trifurcation and the amalgamation of the workshop with the Bombay Office was that the workshop staff including Respondents Nos.3 to 6 were taken over on the seniority list maintained by the Bombay office. It is admitted that an account of availability of vacancies in the Bombay Office respondents Nos.3 to 6 got some accelerated promotions in the cadre of head clerks. Surprisingly after a span of 23 years, Railway Administration reconsidered its earlier decision and detached the workshop staff from the office of the Chief Electrical Engineer, Bombay and

brought it back to Jhansi and three former departments under Divisional Electrical Engineer were amalgamated. In other-words situation ante as on August 31,1956 was restored, and members of the staff were brought on common seniority list cadrewise. This factual averment is unambiguously admitted. Consequent upon amalgamation in 1979 a fresh common seniority list was drawn up in which cadrewise respondent No.3 was shown senior to appellants 1 and 2 and respondents Nos.5,6 and 9 were shown senior to appellant No.3. Obviously when the amalgamation took place, respondents Nos.3 to 6 could not score a march over erstwhile seniors on any valid principle of seniority. This would unquestionably be denial of equality under Article 16 of the Constitution. It may be that they might have enjoyed' some accelerated promotion when workshop staff was amalgamated with the Bombay Office. But when they were repatriated and reamalgamated with original two offices and brought back on the common seniority list, they must find their original place qua the appellants. This is not a case where appellants were passed over at the time of selection or denied promotion on the ground of unsuitability. In such a situation status quo ante has to be restored. Obviously respondents Nos.3 to 6 will be below the appellants and any other view to the contrary would be violative of Article 16 as it would constitute denial of equality in the matter of promotion. Therefore, the seniority list drawn up on a principle contrary to what is discussed herein would be bad in law and deserves to be quashed.

There is no parallel in the facts of the above case with the facts of the instant case. It is clear that it was open to each constable to opt, and thus go for specialisation at his option. It is not possible to accept that because there is an option, there should also be contemplation of continuity of the original inter se seniority irrespective of any promotion or not in the specialist category. A substantive rank created on account of promotion cannot be termed to be a fortuitous event. Promotions depended not on any whim or caprice or just on account of a situation created because of a bifurcation of a cadre, but on account of a legitimate choice made by those who opted to go for specialisation. By not opting for specialisation, those who decided to remain in the general category cannot say they did not know that in case vacancies become available in the specialist category, those who have gone to the specialist category may earn advance promotion and thus get a

march over them.

12. The other case relied upon is Union of India v. Ansusekhar Guin : AIR 1989 SC377 , in which the well recognised concept,

Counting continuous length of service for fixation of seniority is a well-accepted rule when the service rule does not prescribe a mode of fixing inter se seniority.

has been reiterated, and applied to the facts of the said case. The case before the Supreme Court was one between regular employees and those who had been appointed on ad hoc or temporary duties. A suit had arisen how to reckon their seniority. The Supreme Court reiterated the of repeated rule once again and pointed out that irrespective of the nature of the appointment, except fortuitous appointments, seniority is reckoned with effect from the date of continuous officiation.

13. The third case cited is Jagdish Prasad Sinna v. Bhagwat Prasad : (1989)IILLJ476SC . That was a case in which at the time of appointment itself, Higher Secondary Teachers were placed in a higher scale of pay, and thereafter amalgamated in the Upper Division of the Subordinate Educational Service created under the statute. The Higher Secondary Teachers as well as the Secondary Teachers were accordingly placed in the Seniority/Gradation list. Later, however, the State Government issued a notification effecting a separate cadre for Higher Secondary Teachers and Secondary Teachers of the Upper Division of the Subordinate Education Service, and enjoined a separate Gradation List for Higher Secondary Teachers and a separate list for the Secondary Teachers. The said rule was challenged before the High Court. The High Court concluded.

We have referred to the judgment of the Supreme Court in K.S. Vora v. State of Gujarat : AIR 1987 SC2348 , only to illustrate that the courts have at no time ignored the interest of the employees and questioned the authority of the State to frame rules in terms of the Proviso to Article 309 of the Constitution of India, but the courts have always taken notice of the fact that those who stood together and fell in line to proceed further have to be provided all opportunities in respect of their avenues of promotion alike without breaking that order, so that one who ranks

higher in the grade may not go down in due course of service. It is in the context that we have no hesitation in holding that rules in the notification dated 18.11.1985 are ultra vires Articles 16(1) and 14 of the Constitution.

Quoting the above passage and some more from the judgment of the High Court, the Supreme Court has observed,

In course of hearing of the matter, counsel for the State was not able to dislodge the conclusion that bifurcation was the outcome of an attempt to provide quick promotional avenues to those who were lower down in the joint cadre and would not have come within the range of consideration for promotional benefits but by bifurcation became entitled to such benefits. The High Court, in our opinion, rightly found fault with such action.

This case is quite different on facts. If the principles stated therein are applied, it has to go against the writ petitioners-respondents. The rule is not in doubt. The moment there is any attempt to deny the benefit of a position in the rank held by a certain person, Articles 14 and 16(1) of the Constitution are attracted. The case on hand is quite different. Herein, it was not the fault of the respondents-appellants Inspectors that they earned their promotion in their specialist category. They earned, because they were found qualified for such promotions. It appears that they earned substantively, and that is why they were given promotion to higher ranks as well. We also find from the rules aforementioned that promotion from one cadre to another in the service is not a routine promotion and is not dependent upon seniority only. The rule envisages that promotion is given on merit, and thus seniority is only one of the considerations. Having earned their respective promotions, when the respondents-appellants Inspectors came to the rank of Sub Inspector Armourer, they could not have been left to stagnate, and since the rule envisaged a common pool, and they were thus put in the common pool, they could not have been placed below those, or in anticipation of those, who were in a lower rank without being promoted. They must be placed for the purpose of inter se seniority in the rank of Sub Inspector either effect from the date they became Sub Inspectors. That inter se seniority in the lower rank will have no effect on the inter se seniority in the superior rank is such a well settled principle that no authority for

that purpose is needed.

14. The above view finds support from a judgment of the Supreme Court in A.K. Ghosh v. Union of India : [1968]3SCR631 . In that case, the petitioners were shown as being seniors to respondents in the time scale of Class I Postal Service. They were selected for promotion to the grade of Directors of Postal Services. The respondents were also later on appointed to such posts. The Government sought to disturb the order of seniority in the grade of Directors to the prejudice of the petitioners^ the ground that their seniority while in the time scale was wrongly determined. The Supreme Court held that though the Government could justifiably revise their seniority in timescale of Class I service, it could not so revise their order of seniority in the grade of Directors and that such an action by the Government was arbitrary and liable to be struck down as violating Article 16 of the Constitution. Thus, the appellants who had earned their promotion and become Sub Inspectors Armourer, merely because they were juniors as Constables at their initial appointment in the service cannot be made junior to those who became Sub Inspectors in due course, but after the appellants had become Sub Inspectors. There is bound to be some play in the points as in the course of service, not on fortuitous, but on account of the system that has been evolved, some may receive better opportunities of promotion and some may suffer, for want of vacancies or otherwise availability of the avenue of promotion. The case pleaded before us by the writ petitioners-respondents, if accepted, will give rise to either of the two consequences, viz., that the Sub Inspector Armourer will have no opportunity of being promoted as Inspector in the service or a Constable opting for the service as Armourer will earn all promotions upto the level of Sub Inspector in the category or group of Armourer, but shall wait for his promotion until a Constable in the general line who was senior on account of his earlier recruitment as Constable also becomes Sub Inspector and is considered for promotion. We have already noticed the rules. We have no hesitation in holding that for the purpose of promotion to the post of Inspector, the special category of Sub Inspector Armourer has been merged with the category of Sub Inspector in the general category. A Sub Inspector Armourer thus has been provided with the avenue of promotion as Inspector in the general category. This alone will ensure that those who opted for the special category of Armourer are not made to stagnate as Sub Inspectors,

while in all other categories, a further promotion as Inspector is available. Any interpretation otherwise will be violative of Article 16(1) of the Constitution of India. We also do not subscribe to the view that since the Sub Inspector Armourer has to be considered for promotion as Inspector in the General category, the original seniority as Constable should alone be adhered to between the general category Sub Inspectors and the Sub Inspector Armourer. This will not only make the specialisation a cause of loss of seniority to the Sub Inspector Armourer, but also deny to him his right to be considered for promotion as Inspector at least until such time any junior to him is still below the rank of Sub Inspector in the general category. A rule which shall cause harm instead of good, a rule which shall deny instead of promoting, cannot be accepted as a rule of justice. Thus viewed Sub Inspector Armourer must rank interchangeably with Sub Inspector in general category and reckon seniority in the order of continuous officiation as Sub Inspector, whether in general category or in the specialist category of Sub Inspector Armourer. We are not impressed by the argument that there will be denial of equality of opportunity, if Sub Inspector Armourer is not made to wait until those in the general category who were senior to him also become Sub Inspectors, and until then they are considered for promotion, he is not considered for promotion. We have already noticed that there was equal opportunity, are so long the rules hold the field, there shall be equal opportunity to exercise the option after recruitment as constable, and those who avail the opportunity and go to the special category thus do not in any manner cause any discrimination. It is well-settled that starting from a common point in service, employees may take two different routes until they again meet at a further point and from there proceed together. The rule that we have noticed exactly conforms to this method of treating persons recruited in the service together or one after the other.

15. To sum up, the appellants and the writ petitioners respondents were in the same pool of Sub Inspectors when they were considered for promotion. They ranked in that order of seniority which, in the absence of the rules, has to be applied, that is to say, reckoned with effect from their continuous officiation as Sub Inspector. Since the appellants were seniors to the writ petitioners-respondents, there has been no violation of any right of the writ petitioners respondents by the promotion granted to the appellants. The judgment by the learned single Judge

holding otherwise is not sustainable.

16. In the result, the appeals are allowed. The order of the learned single Judge is set aside, and Writ Petition No.3014 of 1986 is dismissed. There shall, however, be no order as to costs.

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