

Katyani Dayal and Others

Vs

Union of India and Others

K. K. Gupta

Vs

Union of India and Others

Writ Petitions Nos. 147-151 of 1976

(V. R. Krishna Iyer, O. Chinnappa Reddy, R. S. Pathak JJ)

26.03.1980

JUDGMENT

CHINNAPPA REDDY, J. –

1. Several hundred Railway Engineers who should have been busy elsewhere, building bridges, laying or doubling tracks and so on have found themselves in the corridors of this Court in pursuit of the loaves of career. Quite a contingent was present in court anxiously watching the proceedings and listening with rapt attention to every word that fell from counsel and judge. One could not help wondering whether this multi-tiered, 'multi-varna' service-system was itself not productive of a career neurosis, destructive of the very efficiency which it sought to achieve.
2. In this case, as in most other service matters that reach this Court, the questions which arise for consideration relate to classification, confirmation, seniority, promotion etc., questions which appear to agitate the minds of the members of all services. Administrators seeking to find solutions to some of the problems very soon discover that their solutions are no more than illusions and have created other problems. First one party and then another party, all seek the protection of the court. The court is no expert administrator. Lacking expertise, lacking the administrator's access to information there are obvious limitations to what the court may do. The court may at best attempt to solve some basic legal issues. That the court strives to do without disturbing the administrative equilibrium.
3. The service with which we are concerned in this case is the Indian Railway Service of Engineers Class I. While the petitioners claim that they were appointed to this service after selection by the Union Public Service Commission, the respondents allege that the petitioners were appointed as temporary Engineers only, constituting a special class and service by themselves, and were not appointed to the Indian Railway Service of Engineers, Class I at all.
4. It appears that from the time of the first five-year plan towards several important assignments such as the construction of major bridges, new lines, doubling of electrification of existing lines etc. were taken up by the Civil Engineers Department of the Indian Railways. It became necessary to create a number of temporary posts of Class I (Indian Railway Service of Engineers) and Class II Engineers to carry out these works. In 1955 it was estimated that about 200 additional engineers

would be necessary within the next two years to deal with the planning, surveying, estimating and construction of the multitude of the proposed development works. It was not thought possible to meet the additional personnel requirements from existing sources, which were, direct recruitment to Class I on the basis of the results of a competitive examination and promotion to Class II from Class III. Though the conversion of some of the temporary posts into permanent ones might meet part of the requirement it was thought, recruitment through normal channel to such posts would necessarily have to be spread over a period of years so as to avoid 'bunching of officers within particular age group'. It was, therefore decided to recruit, in the first instance, fifty temporary Engineers immediately. Their scale of pay was to be the same as that of the Indian Railway Service of Engineers. The age limit was to be 25 to 35 years so as to attract engineers with practical experience. The appointments were to be normally made on the minimum of the time-scale but persons with previous experience could be fitted into the scale at a higher stage. As the posts were to be temporary, it was decided that an incentive should be given to attract suitable candidates by reserving a proportion of the permanent vacancies in the Indian Railway Service of Engineers each year for being filled by such temporary Engineers. Six vacancies in the Indian Railway Service of Engineers were to be so earmarked annually to start with. The quota could be increased later. On permanent appointment to the Indian Railway Service of Engineers seniority would count from the date of such appointment. Proposals on these lines were conveyed by the Railway Board to the Union Public Service Commission on February 21, 1955 with a request to take steps for the early recruitment of temporary engineers. A formal requisition in the prescribed form was also sent to the Union Public Service Commission. In this form, the post was designated as "Assistant Engineer", the number of posts was mentioned as 50, and, the class of service to which the post belonged was mentioned as "gazetted railway service". Against the heading "whether permanent or temporary", the posts were mentioned as "temporary". Against the column "if the post is temporary please state : (a) when it was sanctioned; (b) the period for which it has been sanctioned and (c) irrespective of the period of sanction how long it is expected to last and whether it is expected to be retained on a permanent basis eventually", it was mentioned that the posts would be sanctioned shortly in connection with a number of projects, that the period would be two years in the first instance but was likely to be extended up to five years and that the employment might continue indefinitely but on a temporary basis. It was specified that the candidates would be eligible to be considered for absorption in permanent vacancies at the rate of six per year. The scale was mentioned as Rs. 350 - 350 - 380 - 380 - 30 - 590 - EB - 30 - 770 - 40 - 850, this being the junior scale of pay of Indian Railway Service of Engineers Class I. It was said that higher initial salary was permissible according to experience and qualifications. The academic qualifications were to be the same as for regular recruitment to Indian Railway Service of Engineers. Against the heading "prospects of promotion to higher post" it was stated that they might be considered for promotion to senior scale posts in the grade of Rs. 600 - 40 - 1000 - 50/2 - 1150 according to the exigencies of service. Similar proposals and 'indents' for recruitment of temporary officers to six other departments of the railways were also simultaneously made.

5. Pursuant to the requisition by the Railway Board, the Union Public Service Commission issued an advertisement inviting applications for "50 posts of Assistant Engineers, Ministry of Railways, Service Class I (Gazetted), posts temporary for two years in the first instance but likely to continue". The minimum educational qualification was stated to be a Degree in Civil Engineering, but an additional qualification of 'about 3 years' experience as a Civil Engineer' was also prescribed. The qualification was relaxable at the discretion of the commission in the case of candidates otherwise well qualified. It was mentioned in the advertisement that the candidates would be eligible 'for being considered for absorption in permanent vacancies at the rate of six per year' and might be considered

'for promotion to senior grade posts in the scale of Rs. 600 - 40 - 1000 - 50/2 - 1150 according to the exigencies of service'. It appears that the reference to Class I in the advertisement was considered by the Railway Board to be a mistake. The Railway Board, therefore, addressed a letter dated October 31, 1955 to the Union Public Service Commission pointing out that in their requisition they had indicated "gazetted railway service" as the service to which recruitment was to be made and that it was not intended that it should be either Class I or Class II. It was also mentioned that statements had been made on the floor of the Lok Sabha and Rajya Sabha that the posts were "temporary" and "neither in Class I nor in Class II". The commission was accordingly requested to issue a suitable correction slip. Thereafter, in the subsequent advertisements issued by the Union Public Service Commission there was no reference to Class I. It was merely mentioned that applications were invited for specified number of posts of "Assistant Engineers (Civil), Ministry of Railways, posts temporary but likely to continue".

6. The petitioners in the various writ petitions who submitted their applications in response to such advertisements, were selected by the Union Public Service Commission, at various times between 1955 and 1964 and were offered appointments as 'Temporary Assistant Engineers' by the Railway Board. Everyone of them was told that the appointment would be on a temporary basis in the scale of Rs. 350 - 350 - 380 - 380 - 30 - 590 - EB - 30 - 770 - 40 - 850. They were also expressly told that the posts to which they were appointed would be neither in Class I nor in Class II service though they were eligible, on completion of three years' service, to be considered along with other Temporary Assistant Engineers for absorption in Class I (junior scale) against vacancies earmarked from time to time for the absorption of Temporary Assistant Engineers in the Indian Railway Service of Engineers Cadre up to a maximum of six per year. They were also expressly informed that in the event of their being selected in Class I service their seniority would count from the date of their permanent appointment to Class I service. They were required to execute service agreements "as applicable to temporary officers". It was also stipulated that in all matters not specifically referred to in the order of appointment, the person appointed would be governed by the provisions of the Indian Railway Establishment Code and the extant orders issued from time to time. The petitioners accepted the terms offered to them and joined duty in the posts to which they were appointed.

7. The agreements which the petitioners and others like them were required to execute and which they presumably did execute were in a standard form known as 'Agreement for Temporary Assistant Officers of the Indian Railways'. Paragraph 2 of the standard form and agreement specified that the appointment was in a gazetted post (which is neither in Class I nor in Class II service) on scale Rs. 350 - 350 - 380 - 380 - 30 - 590 - EB - 770 - 40 - 850. Paragraph 5 mentioned that the person appointed would be eligible along with other temporary Assistant Officers "for being considered for absorption in the permanent vacancies in the Class I (junior scale) of the department up to a maximum number of vacancies in a year as may be fixed by the government" and that in the event of his being selected for that service his seniority would count from the date of confirmation. Paragraph 6 recited that he would be considered for appointment to a senior scale post. The agreement provided that in respect of matters for which no provision was made in it, the provisions of the Indian Railway Establishment Code from time to time in force or rules made thereunder shall apply to the extent they were applicable to Temporary Assistant Officers. It was further provided that the decision of the government as to their applicability, interpretation and effect shall be final.

8. It should be mentioned here that though there was no previous Presidential sanction for making appointments to posts which were neither in Class I nor in Class II but merely in 'gazetted service' the matter was rectified and Presidential sanction was subsequently obtained in November, 1956.

This was communicated by the Railway Board to the General Manager of all Indian Railways by letter No. E-55RC-16 (Pt. A) dated November 22, 1956. It was also decided by the President that the Railway Board was the competent authority to appoint Temporary Assistant Officers in the various departments of the Railways. This was mentioned by the Board in letter No. E (GF-P) 56RC-16 (Pt. A) dated December 18, 1957 addressed to General Manager of all Indian Railways.

9. Between the years 1955 and 1964 as many as 553 Temporary Assistant Engineers were appointed after selection by the Union Public Service Commission. Though in their orders of appointment as Temporary Assistant Engineers, the petitioners and others were told that six of them would be absorbed into the Indian Railway Service of Engineers Class I every year, the quota was increased to eight per year in 1957 and fifteen per year in 1961. In 1960 the quota was fixed at "60% of the actual intake of probationers from the CES etc. examinations". Again in 1975 the quota was increased to 25 per year. The net result was that all but 107 Temporary Assistant Engineers were left unabsorbed by the time of the filing of the writ petitions and they too were finally absorbed in 1979 by what was described to us as a 'blanket order'. We were informed that the validity of the absorption on this mass scale is under challenge in some writ petitions filed by members of the Indian Railway Service of Engineers Class I. At this juncture we also find it necessary to mention that the Railway Board decided, on September 17, 1965, that the temporary officers so absorbed into the Indian Railway Service of Engineers should also be given weightage in seniority "on the basis of half the total number of years of continuous service in working posts on Railways prior to their permanent absorption into Class I, subject to a maximum weightage of five years". This, of course, was the result of representations made by the temporary officers. This too we are told is under challenge.

10. The petitioners have filed these writ petitions in a representative capacity purporting to represent all Temporary Assistant Engineers appointed on the recommendation of the Union Public Service Commission, claiming that, in the law, they could only be and were appointed to the Indian Railway Service of Engineers Class I right from the beginning and that the Railway Board was wrong in treating them as belonging to neither Class I and Class II. They claim that they were appointed to temporary posts in the cadre of Indian Railway Service of Engineers Class I and that their seniority has to be reckoned on the basis of their length of continuous service, though they concede that in any given year those appointed on the basis of the results of the competitive examination might be placed above those appointed on the basis of the selection by the Union Public Service Commission. They contend that the Railway Board had no authority to create an unclassified service, as it were, outside the provisions of the Indian Railway Establishment Code. Notwithstanding the requisitions issued by the Railway Board, the advertisements issued by the Union Public Service Commission and the letters of appointment issued to the petitioners, they contend that they are appointed to the cadre of Indian Railway Service of Engineers Class I and to no other service. They contend that they were recruited to Class I Service under Rule 130(d) of the Indian Railway Establishment Code which provides for "occasional admission of other qualified persons on the recommendations of the Union Public Service Commission". They question the vires of the note to Rule 106 which was added by way of amendment in 1956 (Ed. : Sic 1975, see para 45) and which provided that 'Temporary Assistant Officers would not be classified either as Class I or as Class II'. The petitioners claim that the distinction made by the Railway Administration between Assistant Officers recruited on the basis of the results of the competitive examination and the Temporary Assistant Officers recruited on the recommendation of the Union Public Service Commission was discriminatory and offended Articles 14 and 16. They contend that all Assistant Officers formed one class under the Indian Railway Establishment Code. The further classification of Assistant Officers into those that were recruited on the basis of a competitive examination and those that were

recruited on the recommendation of the Union Public Service Commission was a "micro-classification" not permissible under the law. They point out that the minimum academic qualifications and the scales of pay of the permanent engineers and the temporary engineers (for the sake of brevity the Assistant Officers appointed on the basis of the results of the competitive examination may hereafter be described as permanent engineers while those appointed on the basis of the recommendation of the Union Public Service Commission may be described as Temporary Engineers) were identical, the duties and functions were the same and they occupied interchangeable posts. They further allege that, in any case, the right of absorption of six temporary engineers only every year into the Indian Railway Service of Engineers was arbitrary and inequitable. It has resulted in such gross injustice that two decades of service of several of the petitioners was to be counted for nothing.

11. Before proceeding to consider the various contentions raised on behalf of the petitioners it is necessary to make a brief reference to the history, service and legal, of one of the many petitioners. Shri Katyani Dayal was working as an Assistant Engineer in the service of the Punjab Government from 1952 onwards. He was one of those who was selected by the Union Public Service Commission and appointed as a temporary engineer in 1958. He was drawing pay in the junior scale. He crossed the efficiency bar in 1966 and according to him he was thereafter entitled to be considered for promotion to the senior scale to the post of District Officer. He founded his claim on Rule 133(3)(c) on the base that he was an Assistant Officer within the meaning of that expression as then defined by Rule 102(3). As he was not so promoted and as it was proposed, on the basis of some circulars, to promote permanent engineers of four years standing, he filed a writ petition in the High Court of Allahabad claiming that he was entitled to be considered for promotion to officiating post of District Officer. The Railway Board opposed the claim of Katyani Dayal on the ground that he was a Temporary Assistant Engineer and not an Assistant Officer and therefore, not entitled to be promoted in terms of Rule 133(3)(c). The Railway Board's contention was overruled by a learned Single Judge of the High Court and a direction was given to the Railway Administration to consider the claim of the petitioner for appointment in officiating vacancies to the posts of District Officers as soon as vacancies arose. The Railway Administration was directed to ignore the circulars which gave preference to Class I junior scale officers of four years standing or more as against Temporary Assistant Engineers. An appeal filed by the Railway Administration under the letters patent was dismissed by a Division Bench of the High Court. Though the Division Bench dismissed the appeal on August 1, 1974, the Railway Administration did not implement the judgment but instead on December 12, 1976 amended Rules 102(3), 133(3)(c) and (f) and introduced new Rule 102(17) so as to expressly exclude Temporary Assistant Officer [newly defined by Rule 102(7)] from the category of Assistant Officer and thus make him ineligible for promotion to the senior scale under Rule 133(3)(c) and (f).

12. It appears that the status of the Temporary Assistant Engineers recruited on the recommendation of the Union Public Service Commission has been the subject-matter of the decisions of several High Courts. Some of them have been placed before us.

13. The relevant provisions of the Indian Railway Establishment Code may now be referred to.

14. Rule 102(3) originally defined an Assistant Officer to mean 'a gazetted railway servant drawing pay on the scale applicable to Junior Scale Officers', but 'was not to include a Class II Officer'. By an amendment made on December 31, 1975, the expression was redefined and an 'Assistant Officer' now means a Gazetted Class I Railway servant drawing pay in the junior scale. It does not include a Class II Officer or a Temporary Assistant Officer who is not classified either as Class I or Class II'.

15. Prior to December 31, 1975 "Temporary Assistant Officer" was not defined but by an amendment dated December 31, 1975 "Temporary Assistant Officer" has been defined and now means "a gazetted railway servant drawing pay on the scale applicable to Junior Scale Officers but not classified either as Class I or as Class II Officer".

16. Rule 102(13) defines a 'Railway servant' as meaning a person who is a member of a service or who holds a post under the administrative control of Railway Board, including a person who holds a post in the Railway Board.

17. Rules 105 and 106 to the extent they are relevant are as follows :

105. For the purpose of the rules in this volume the railway services shall be classified as follows -

Gazetted (1) The Railway Services, Class I. (2) The Railway Services, Class II. Non-Gazetted (3) The Railway Services, Class III. (4) The Railway Services, Class IV. (5) The Workshop Staff.##

106. Establishments and categories (including probationers), falling under the services mentioned in Rule 105, are shown below -

CLASS I (1) Posts in the Railway Board; (2) Directors, Joint Directors, Deputy Directors, Assistant Directors, Railway Board and Research, Designs and Standards Organisation, Secretary, Deputy Secretary, Under-Secretary and Section Officers, Grade II, Railway Board; (3) Indian Railway Service of Engineers; (4) Indian Railway Accounts Service; (5) Indian Railway Traffic Service; (6) Indian Railway Service of Mechanical Engineers; (7) Indian Railway Service of Electrical Engineers; (8) Indian Railway Service of Signal Engineers; (9) Indian Railway Medical Service; (10) Indian Railway Stores Service; (11) Senior Revenue Establishment, Indian Railways, comprising such specialist and miscellaneous posts as have been included in Class I e.g., Chemist and Metallurgists (senior scale) and Chief Cashiers (senior scale). CLASS II Gazetted posts not included in Class I. NOTE. - Temporary Assistant Officers will not be classified either as Class I or Class II. CLASS III* * *
* CLASS IV* * * *##

It must be mentioned here that this note to Rule 106 was not there originally but was added in 1956.

18. Rule 107 provides that the prescribed scale of pay admissible to railway servants belonging to Railway Service Class I and Class II shall be as specified in Appendix XIV.

19. Rule 108 may also be extracted here and it is as follows :

108. Sanctioned strength of cadres - Subject to any statutory provision in this regard the strength, including both the number and character of posts of the Railway Services, Class I and II, shall be determined by the Railway Board. General Managers of the Indian Railways may create temporary posts in the Railway Services Class I and Class II, subject to such limits as may be laid down by the Railway Board.

NOTE. - Provided the total number of sanctioned gazetted posts in any grade (Heads of

Departments, Deputy Heads of Departments, District Officers, Assistant Officers are Class II Officers) of the service concerned is not exceeded General Managers are empowered to vary solely in the public interest having regard to changes in the work and responsibilities of the posts concerned (and not in the interest of individual officers), the distribution of posts within that grade for a period not exceeding 12 months.

20. Rule 109 to the extent it is relevant in this case is as follows :

109. The cadres of the services and departments included in Railway Services, Class I and II (other than the Medical Department and specialists posts) on Indian Railways shall be fixed in accordance with the principles stated below :-

(1) Separate cadres be maintained for each Indian Railway

(2) (a) The number of permanent working posts, that is, posts required for ordinary duty on the railway, shall be first determined for each service or department and divided into the following grades :-

(i) Administrative, (ii) District Officers, (iii) Assistant Officers and Class II Services.(b) * * * *##

(c) The number of posts to be allotted to the Assistant Officers' grade shall be calculated with reference to the total number of Administrative and District Officers posts, and shall be so fixed as to allow of a continuous flow of promotion from the Assistant Officers' grade to the higher grade after a given period of service. For this purpose, all the administrative posts, including the general administrative posts, shall be taken into account.

(d) The rest of the posts included in (a)(iii) shall be allotted to the Class II Service.

(c) The total number of the posts thus arrived at for each grade in a department shall form the permanent duty strength of each service or department.

#(3) * * * * *(4) * * * * *##

21. Rule 112 provides that the number of posts sanctioned in each grade in a department shall in no case be exceeded without the sanction of the authority competent to create a post, either permanent or temporary in the grade.

22. Rule 116 prescribes that except as provided in Rule 133 (4) officiating promotion to the Assistant Officers grade or to a higher grade of gazetted Railway servants from Class II service or from the non-gazetted establishment is not permissible.

23. Rule 118(1) provides that the number of gazetted Railway servants on duty in a department shall not exceed the permanent duty strength sanctioned for that department.

24. Rule 125 prescribes that all appointments to a Railway service, Class II shall be made by the President on the recommendation of the Union Public Service Commission from time to time in accordance with the rules framed by them.

25. Rule 129 provides that the rate of normal recruitment shall be determined by the President with reference to the sanctioned strength of a service or department.

26. Rule 130 is important and may be fully extracted here. It is as follows :

130. Method of recruitment - Recruitment to Class I service in the various departments of Railways shall be made through -

(a) competitive examination held in India by the Union Public Service Commission;

(b) promotion of specially qualified gazetted railway servants of the Class II service including officiating gazetted railway servants of the service or department;

(c) in the case of Transportation (Power) and Mechanical Engineering Department, by appointment of candidates as Special Class Apprentices; and

(d) occasional admission of other qualified persons on the recommendation of the Union Public Service Commission.

NOTE. - The quota reserved for permanent promotion from Class II to Class I has been fixed at 33 1/3% of the vacancies in the junior scale, Class I (senior scale in the case of Medical Department).

27. Rule 131 provides that probationers to the Railway Service, Class I shall be required to undergo a period of training as may be prescribed by the President.

28. Rule 132 provides for recruitment to Railway Service, Class II.

29. Rule 133 deals with promotions to gazetted posts. We are concerned with Rule 133(3)(c) and (f) which to the extent relevant was previously as follows :

133. Promotions to gazetted posts -

#(1) * * * *(2) * * * *###

(3) The General Manager may appoint -

#(a) * * * *(b) * * * *###

(c) An Assistant Officer to officiate as District Officer, provided that such a gazetted railway servant who has not passed the efficiency bar may be so appointed only, if -

(i) a gazetted railway servant who has passed the efficiency bar is not available; or

(ii) the vacancy is not expected to exceed three months;

#(d) * * * *(e) * * * *###

(f) substantively an Assistant Officer to the District grade provided such promotions are made in strict order of seniority subject further to the condition that no officer shall be so promoted unless he has rendered not less than ten years of total service and has been declared fit to cross the efficiency bar in the junior scale.

NOTE. - The period of 10 years of total service will also include the two years of training in the case of direct recruits. In respect of promoted gazetted railway servants all those placed in the seniority list above the last direct recruit who fulfills the above condition will receive confirmation in their turn.

These provisions were also amended on December 31, 1975, and they are now as follows :

(c) an Assistant Officer to officiate in the senior scale provided that such an Assistant Officer who has not passed the efficiency bar may be so appointed only, if an Assistant Officer, who has passed the efficiency bar is not available;

#(d) * * * *##

(f) substantively, an Assistant Officer to the senior scale, provided such promotions are made in strict order of seniority subject further to the condition that no officer shall be no promoted unless he has rendered not less than eight years of total service and has been declared fit to cross the efficiency bar in the junior scale.

NOTE. - The period of eight years of total service will also include the two years of training in the case of direct recruits. In respect of promoted gazetted railway servants all those placed in the seniority list above the last direct recruit who fulfills the above condition will receive a confirmation in their turn.

30. Rule 139 makes provision for the making of recruitment rules and the note to Rule 139 provides that in the case of recruitment to gazetted posts, the rules should be published in the Gazetted of India in the section allotted to statutory rules and orders.

31. Rule 144 obliges every railway servant to execute an agreement with the President of India at the time of his substantive appointment and further provides that those appointed for a limited period may also be required to executed such agreements.

32. Rule 2003(3) defines cadre as meaning 'strength of a service or a post of a service sanctioned as a separate unit'.

33. Rule 2003(22) defines a permanent post as meaning a post carrying a definite rate of pay sanctioned without limit of time.

34. Rule 2003(29) defines a temporary post as meaning a post carrying a definite rate of pay sanctioned for a limited time.

35. Rule 2003(30) defines a tenure post as meaning a permanent post which an individual railway servant may not hold for more than a limited period.

36. Rule 2003(31) defines time-scale of pay and whole of it may be extracted here :

(31) (a) Time-scale pay means pay which, subject to any conditions prescribed in these rules, rises by periodical increments from a minimum to a maximum. It includes the class of pay formerly known as progressive.

(b) Time-scales are said to be identical if the minimum, the maximum, the period of

increment and the rate of increment of the time-scales are identical.

(c) A post is said to be on the same time-scale as another post on a time-scale if the two time-scales are identical and the post on a cadre, or a class in a cadre or class having been created in order to fill all posts involving duties of approximately the same character or degree of responsibility, in a service or establishment or group of establishments; so that the pay of the holder of any particular post is determined by his position in the cadre or class, and not by the fact that he holds that post.

37. The earlier narrated facts show that for quite several years it was distinctly understood by the appointing authority as well as the persons appointed that those who were appointed as Temporary Assistant Engineers on the basis of the selection made by the Union Public Service Commission did not belong either to Class I or to Class II of the Indian Railway Service of Engineers. It was understood that they would be eligible for being considered for absorption in the Indian Railway Service of Engineers Class I in an annual quota reserved for such absorption and that their seniority would be reckoned thereafter from the date of their confirmation in Class I. It was also understood that they would be eligible for being considered for promotion to officiating posts in the senior scale. This position in regard to their status was made clear, without the possibility of a shadow of doubt, in the letters of appointments issued to them and the agreements which they were required to execute. Considerable argument was advanced on the question whether a service not contemplated by the Indian Railway Establishment Code could be created and whether appointments of gazetted railway servants not falling in Class I or Class II and therefore falling outside the provisions of the Indian Railway Establishment Code could be made. The submission was that the Indian Railway Establishment Code did not contemplate a class of service which did not belong either to Class I or Class II, and that every gazetted railway servant has to belong either to Class I or Class II and the question whether the posts to which appointments were made belonged to Class I or not had to be determined with reference to the minimum educational qualifications prescribed for the post, the scales of pay, the functions and duties etc. It was submitted that notwithstanding the clear assertion in the letters of appointment and the agreements, the petitioners must, in law, be considered to have been appointed to the Indian Railway Service of Engineers Class I and to no other service.

38. Article 53 of the Constitution vests the executive power of the Union in the President, to be exercised by him either directly or through officers subordinate to him in accordance with the Constitution. Article 73(1)(a) stipulates that the executive power of the Union shall extend "to the matters with respect to which Parliament has power to make laws". "Union Public Services and all-India Services" are included in item 70 of the Union List (List I of the Seventh Schedule) enumerating the matters with respect to which Parliament has the exclusive power to make laws. The proviso to Article 309 of the Constitution makes it competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the Parliament to regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union.

39. The inevitable sequitur from these constitutional provisions is that the President acting directly or through officer subordinate to him, is free to constitute a service (with as many cadres as he chooses), to create posts without constituting a service or to create posts outside (the cadres of) the constituted services. The President (or the person directed by him) may, or again, if he so chooses he may not, make rules regulating the recruitment and conditions of service of persons appointed to

such service or posts. He is also free to make or not to make appointments to such services or posts. Nor is it obligatory for him to make rules of recruitment etc. before a service may be constituted or a post created or filled. But if there is an Act of Parliament or a rule under the proviso to Article 309 on the matter, the executive power, under Articles 53 and 73, may not be exercised in a manner inconsistent with or contrary to such Act or rule (vide *B. N. Nagarajan v. State of Mysore* ((1966) 3 SCR 682, 668 : AIR 1966 SC 1942 : (1967) 1 LLJ 698); *State of Kerala v. M. K. Krishnan Nair* ((1978) 2 SCR 864 : (1978) 1 SCC 552 : 1978 SCC (L&S) 76)).

40. So, the previous existence of the Indian Railway Service of Engineers and the rules made for recruitment to that service do not bar the constitution of another service or the creation of posts outside the cadres of the Indian Railway Service of Engineers. That, precisely, was what was done in 1956 and subsequent years up to 1965. The administrative expedience and exigence of the time required the creation of temporary posts outside the cadres of the Indian Railway Service of Engineers. The circumstances and the reasons necessitating the creation of these posts of Temporary Engineers were fully set out in the 'letters of indent' addressed by the Railway Board to the Union Public Service Commission, the details of which have already been mentioned by us in paragraph 4 supra. The posts so created were not to be confused with the posts in the cadre of the Indian Railway Service of Engineers Class I notwithstanding that the scale of pay and the duties were to be the same. That the posts were not to be treated as in Class I or in Class II of the Indian Railway Service of Engineers was expressly mentioned and clarified in the requisitions made by the Railway Board to the Union Public Service Commission and the correspondence which ensued between the Railway Board and the Union Public Service Commission. It was also made clear in the letters of appointment and the agreements required to be executed by the persons appointed. Though to start with there was no Presidential sanction for the creation of the posts of Temporary Assistant Officers in the various departments of Indian Railways, which were neither in Class I nor in Class II but merely in gazetted service, the matter was soon rectified by the grant of Presidential sanction for the posts in November 1956 and by the President further specifying the Railway Board as the authority competent to make appointments of such temporary Assistant Officers. This is apparent from the letter No. E-55RC-16 (Pt. A) dated November 22, 1956 and letter No. E (GF-P) 56 RC-16 (Pt. A) dated December 12, 1956 to which we have referred in paragraph 8 supra.

41. The posts of Temporary Assistant Officers were thus created and appointments made, under valid authority and outside the existing cadres of the Indian Railway Service of Engineers. The letters of "indent", the advertisement the letters of appointment and the agreements show that the Temporary Assistant Officers appointed in his fashion after selection by the Union of Public Service Commission were to be a source of recruitment to the Indian Railway Service of Engineers Class I. It was so understood from the inception by the persons appointed as well as the Railway Administration. In fact subsequent absorption into the Indian Railway Service of Engineers was the sugar, if one may use such an expression, held out to those seeking appointment as Temporary Assistant Officers. Year by year a few Temporary Assistant Officers were indeed absorbed into the Indian Railway Service of Engineers after selection by a Departmental Promotion Committee and be it noted, not automatically on the basis of seniority. If Temporary Assistant Officers were to be a source of recruitment to the Indian Railway Service of Engineers Class I, we do not see how any Temporary Assistant Officer could possibly be under any misapprehension that he was appointed to the Indian Railway Service of Engineers Class I or could claim that he was appointed to such service.

42. It is not possible to accept the submission that they must be considered to have been appointed under Rule 130(d) of the Indian Railway Establishment Code which provides for occasional

admission of other qualified persons on the recommendation of the Union Public Service Commission merely because by were selected for appointment by the Union Public Service Commission, their scale of pay was the same as the of the Class I Junior Scale Officer of the Indian Railway Service of Engineers and their duties were the same. There were special reasons for recruiting Temporary Assistant Officers outside the cadres of the Indian Railway Service of Engineers and when it was admittedly and avowedly so done, and when right through such officers were merely treated as a source of recruitment to the Indian Railway Service of Engineers, it would not be permissible for us to hold that the Temporary Assistant Officers were recruited to the cadre of the Indian Railway Service of Engineers Class I.

43. One of the submissions of the petitioners was that whatever the Railway Board might be asserting now or might have asserted even from the inception, factually, the Temporary Assistant Officers were appointed to temporary posts borne on the cadre of Indian Railway Service of Engineers Class I and not to any ex-cadre posts. It was submitted that the posts to which appointments were made were not temporary posts in the sense that they were posts of short duration; they were posts which admittedly were likely to continue indefinitely and even made permanent. The appointments could, therefore, have only been made to temporary posts borne on the cadre of the Indian Railway Services of Engineers. We do not think that there is any substance in these submissions. It is no doubt true that a cadre may consist of permanent as well as temporary posts and there may be permanent vacancies in permanent as well as temporary posts borne on the cadre. But it does not follow that appointments stated to be made to posts outside the very service and therefore necessarily outside the cadre must be considered to be made to temporary posts borne on the cadre on the cadre merely because the posts were likely to continue indefinitely and did so continue. We do not see how we can ignore the very purpose of the scheme of recruitment of Temporary Assistant Officers which was to recruit Temporary Assistant Officers outside the existing service and cadres to meet the anticipated requirements of certain special projects. Even in the requisition made in the prescribed form by the Railway Board to the Union Public Service Commission it was mentioned "the posts will be sanctioned shortly in connection with a number of projects". It was not mentioned that the posts were already borne on the cadre of the Indian Railway Service of Engineers. Our attention was invited to the Annual Administrative Reports where, it was said, no distinction was made between classified and unclassified service. We do not think that these reports are of the slightest help. The reports merely refer to appointments temporary as well as permanent, made in the gazetted service by direct recruitment. Gazetted railway services must include both the Indian Railway Service of Engineers and the Gazetted railway service constituted by the Temporary Assistant Officers. Therefore, be merely taking into account the number of Temporary Assistant Officers for the purpose of calculating the total number of persons appointed to gazetted railway service it cannot conceivably be said that Temporary Assistant Officers were appointed to cadre posts in the Indian Railway Service of Engineers. Our attention was also invited to the classified lists of officers published by the Railway Board. This list takes the case of the petitioners no further. There is nothing in the list to indicate that persons who were appointed as Temporary Assistant Officers were appointed to posts borne on the cadre of Indian Railway Service of Engineers. On the other hand under the column "Date of appointment to Class" no entry is made against the names of any of the Temporary Assistant Officers who had not yet been absorbed into the Indian Railway Service of Engineers. We were also referred to the reports of the Administrative Reforms Commission where it is said : "In the Railways there is a sizeable number of unclassified posts equivalent to Junior Class I and only a small number of them are taken each year into the regular service". This statement does not support the case of the petitioners that they were appointed to posts borne on the cadre of Indian Railway Service of Engineers. Far from it. Passages from the

reports of the Central Pay Commission were also read out to us to emphasise that the posts have continued over the years indefinitely. If posts were initially created and sanctioned for short periods, we do not see how the subsequent continuance of the posts indefinitely would make persons appointed to the posts members of the regular service, namely, the Indian Railway Service of Engineers Class I.

44. Considerable argument was advanced on the question of the 'status' and the effect of the 'note' found below Rule 106. It was said that the note did not form part of the rules made by the President under the proviso to Article 309 of the Constitution and therefore it could not amend the other statutory rules. The note was neither declaratory nor explanatory and was of no effect whatever. We think that the argument regarding the 'status' and the effect of the note is of no real relevance. The note merely states an existing fact known to all concerned. It was known that posts of Temporary Assistant Officers in gazetted railway service who were not to be classified 'either as Class I or as Class II' had been sanctioned by the President who had designated the Railway Bench as the authority competent to make appointments to those posts. The note below Rule 106 merely stated this fact. With or without the note, the Temporary Assistant Officers would still not be classified either as Class I or Class II. Their classification outside Class I and Class II was not dependent on the note but on the Presidential action in regard to the creation of the posts.

45. This is perhaps an appropriate stage for referring to the amendments, introduced in 1975, to the Indian Railway Establishment Code. The expression 'Temporary Assistant Officers', which was not previously defined in the Railway Establishment Code, was sought to be defined by new clause 17 of Rule 102 to mean a "a gazetted railway servant drawing pay on the scale applicable to junior scale officers but not classified either as Class I or as Class II Officer". The expression Assistant Officer was redefined so as not to include a Temporary Assistant Officer who was not 'classified either as Class I or as Class II'. Apart from the principal submission that the 1975 amendments were violative of Articles 14 and 16 of the Constitution, it was submitted that the amendments were prospective in nature and did not affect the petitioners all of whom had been appointed as Temporary Assistant Officers long prior to the 1975 amendment. We do not think that the amendments have any effect one way or the other on the status of the Temporary Assistant Officers. What was always well known to the Temporary Assistant Officers and the Railway Board and what was the inevitable result of the Presidential sanction or the creation of posts which were not to be classified either as Class I or Class II, was made explicit in the Indian Railway Establishment Code also by the introduction of these amendments. This became necessary because in the writ petition filed by Katyani Dayal, the Allahabad High Court, while appearing to hold that Temporary Assistant Officers belonged neither to Class I nor to Class II service, held that they came within the then existing definition of 'Assistant Officer' so as to entitle them for promotion under Rule 133 of the Indian Railway Establishment Code. We are afraid it was the use of the expression 'Temporary Assistant Officer' that has led to considerable confusion. The expression 'Temporary Assistant Officer' was coined to describe the new post created for the first time in 1955. The expression was not used to signify officers temporarily holding the posts of Assistant Officers in the several established railway services. For instance a Class II Assistant Engineer who is temporarily promoted to hold the post of an Assistant Engineer Class I may be described as a Temporary Assistant Officer but he certainly would not be a 'Temporary Assistant Officer' appointed to any of the posts specially created by the President which were neither in Class I nor in Class II. The word 'Temporary' in the expression 'Temporary Assistant Officer' was not used to qualify the words Assistant Officer. The whole of the expression was intended to describe the particular post, which was neither in Class I nor Class II, which was created in 1955. There would not have been confusion and it would have been much happier if instead of the expression Temporary Assistant Officer some other expression

such as Special Assistant Officer or Special Assistant Engineer had been chosen. We are of the view that the Allahabad High Court was not justified in looking at the amended definition of 'Assistant Officer' in isolation and concluding that the expression 'Assistant Officer' included Temporary Assistant Officer because Temporary Assistant Officer was also a gazetted railway servant who drew the junior scale of pay. The definition of Assistant Officer was not to be read in isolation in that manner. It should have been read conjunctively with Rules 105, 106 and 108. A reference to Rule 105 would show that for the purposes of the rules in the Indian Railway Establishment Code, railway services were to be classified into Class I, Class II, Class III, Class IV and workshop staff Rule 106 specified the appointment and categories falling under the services mentioned in Rule 105. Rule 108 required the Railway Board to fix the strength of the Railway Services, Class I and II. There could therefore, be no question of an officer not falling within the class, category or cadre specified in Rules 105, 106 and 108 claiming to be an 'Assistant Officer' within the meaning of that expression. A person recruited to the post of Temporary Assistant Officer not classified as Class I or Class II Officer could not claim to belong to the class, category or cadre specified in Rules 105, 106 and 108 and was, therefore, not an Assistant Officer within the meaning of that expression even before the 1975 amendment.

46. We now came to the principal submission made to us namely that the classification of Temporary Assistant Officers separately from the Indian Railway Service of Engineers Class I was discriminatory and had no nexus to the object to be achieved namely efficiency of service and was, therefore, violative of Article 14 and 16 of the Constitution. It was argued that the minimum academic qualification for the posts of 'Temporary Assistant Officer' was the same as that prescribed for entry into the Indian Railway Service of Engineers Class I, the scale of pay of 'Temporary Assistant Officer' was the same as that of a Class I Officer of junior scale, the functions and duties were similar and on all matters not expressly provided, the Temporary Assistant Officers like Class I Officers were to be governed by the provisions of the Railway Establishment Code and the rules made thereunder. There was no much identity on all vital and important matters that the classification of 'Temporary Assistant Officers' outside the Indian Railway Service of Engineers Class I was arbitrary. It led to all manner of discrimination in the matter of advancement in service, seniority promotion etc. The unfairness of it all was sought to be graphically demonstrated by pointing out how after twenty years of service Temporary Assistant Officers continued to be Temporary Assistant Officers while Class I officers recruited much later were placed much higher than them in order of seniority and had risen to much higher positions in the service. Another limb of the argument on the question of discrimination was that all Assistant Officers whether they were permanent Assistant Officers or Temporary Assistant Officers constituted a single cadre and it was permissible to further classify them on the basis of the manner of their recruitment, namely, by competitive examination or by selection by the Union Public Service Commission. Part of this submission has already been met by us and we have shown how Temporary Assistant Officers are not Assistant Officers within the meaning of that expression in the Indian Railway Establishment Code.

47. It is true that the minimum educational qualification for the post of Temporary Assistant Officer was the same as that for recruitment to the Indian Railway Service of Engineer Class I. It is true that the scale of pay is the same, and the functions and duties are the same. It is also true that except to the extent provided, the Temporary Assistant Officers were also subject to the provisions of the Indian Railway Establishment Code and the rules made thereunder. But, there are certain fundamental differences between two classes which cannot be ignored and which demand attention. To begin with, the object of recruitment to the Indian Railway Service of Engineers is to provide of officers of the highest quality to meet the requirements of all posts in the service including senior

administrative posts. Rule 109(2)(c) of the Indian Railway Establishment Code, extracted earlier, expressly, provides that the number of posts to be allotted to the Assistant Officers' grade shall be calculated with reference to the total number of administrative and District Officers' posts, and shall be so fixed as to allow of a continuous flow of promotion from the Assistant Officers' grade to the higher grades after a given period of service. For this purpose all the administrative posts including the general administrative posts are required to be taken into account. On the other hand the object of recruiting Temporary Assistant Officers was to meet specific requirements of various projects with a prospect of promotion in a temporary capacity to a senior scale post and absorption into the Indian Railway Service of Engineers Class I. They were not to be members of the Indian Railway Service of Engineers but were to be a source of recruitment to the Indian Railway Service of Engineers. Thus the very appointments of Temporary Assistant Officers were to temporary posts outside the cadre and outside the recruitment rules of the Indian Railway Service of Engineers Class I and the very nature of this tenure was precarious, whereas Class I Officers recruited on the basis of a result of competitive examination were appointed to cadre posts strictly in accordance with the recruitment rules.

48. Next and equally important, is the fundamental qualitative difference, linked with the method of recruitment. True, the minimum educational qualification is the same. But, those who are recruited directly to the Indian Railway Service of Engineers Class I are subjected to stiff and competitive, written and personality tests. Only the very best can aspire to come out successful. The Temporary Assistant Officers were not subjected either to a written or to a personality test but were selected on the basis of an interview by the Union Public Service Commission. In addition to the minimum educational qualification, three years' experience as a Civil Engineer was also prescribed. Thus while brilliance was the beacon light which beckoned those aspiring to become members of the Indian Railway Service of Engineers Class I, it is replaced by experience in the case of those wanting to be Temporary Assistant Officers. Again the appointing authority in the case of Indian Railway Service of Engineers Class I is the President while the appointing authority in the case of the Temporary Assistant Officers was the Railway Board, no doubt, pursuant to the authority given by the President. Different courses of training were prescribed for the Indian Railway Service of Engineers and the Temporary Assistant Officers. For the Indian Railway Service of Engineers the training is an intensive and comprehensive and designed to equip them for higher posts in the Department too, while the training for Temporary Assistant Engineers was a brief six months' training intended merely to equip them for carrying out the specific jobs. In the matter of terms and conditions of service, while the provisions of the Indian Railway Establishment Code are fully applicable to the Indian Railway Service of Engineers Class I, those provisions are applicable to 'Temporary Assistant Officers' to the extent there is no specific provision in their letter of appointment and agreement.

49. Keeping in mind these similarities and dissimilarities, let us examine the legal position. We cannot do better then to refer to the decisions cited at the Bar, not all, but a few illustrative cases.

50. In *State of Punjab v. Joginder Singh* (1963 Supp 2 SCR 169, 191, 192 : AIR 1963 SC 913 : (1961) 1 SCJ 627), the question arose, whether the constitution by the State of two services consisting of employees doing the same work but with different scales of pay or subject to different conditions of service such as promotional opportunities was violative of Articles 14 and 16 of the Constitution. The argument based on the postulate that equal work must receive equal pay was repelled by quoting the following observations from an earlier decision of the court in *Kishori Mohanlal v. Union of India* (AIR 1962 SC 1139 : 44 ITR 532) :

The only other contention raised is that there is discrimination between Class I and Class II Officers inasmuch as though they do the same kind of work their pay scales are different. This, it is said, violates Article 14, of the Constitution. If this contention had any validity, there could be no incremental scales of pay fixed dependent on the duration of an officer's service. The abstract doctrine of equal pay for equal work has nothing to do with Article 14. The contention that Article 14 of the Constitution has been violated therefore, also fails.

The second postulate that if there was equality in pay and work there must be equal conditions of service was rejected as unsound. It was observed at pages 191-192.

If, for instance an existing service is recruited on the basis of a certain qualification, the creation of another service for doing the same work, it might be in the same way but with better prospects of promotion cannot be said to be unconstitutional, and the fact that the rules framed permit free transfers of personnel of the two groups to places held by the other would not make any difference. We are not basing this answer on any theory that if a government servant enters into any contract regulating the conditions of his service he cannot call in aid the constitutional guarantees because he is bound by his contract. But this conclusion rests on different and wider public grounds, viz., that the government which is carrying on the administration has necessarily to have choice in the constitution of the services to man the administration and that the limitations imposed by the Constitution are not such as to preclude the creation of such services. Besides, there might, for instance, be temporary recruitment to meet an exigency or an emergency which is not expected to last for any appreciable period of time. To deny to the government the power to recruit temporary staff drawing the same pay and doing the same work as other permanent incumbents within the cadre strength but governed by different rules and conditions of service, it might be including promotions, would be to impose restraints on the manner of administration which we believe was not intended by the Constitution.

Examining the facts of the case before them the court noticed that the two services started as independent services, the qualifications prescribed for entry into each were different the method of recruitment and the machinery for recruitment were different and they continued as different services and were never integrated into one service. The court said at page 193 :

If they were distinct services, there was no question of inter se seniority between members of the two services, nor of any comparison between the two in the matter of promotion for founding an argument based upon Article 14 or Article 16(1). They started dissimilarly and they continued dissimilarly and any dissimilarly in their treatment would not be a denial of equal opportunity, for it is common ground that within each group there is no denial of that freedom guaranteed by the two Articles.

51. In *State of J. & K. v. Triloki Nath Khosa* ((1974) 1 SCR 771, 790, 792 : (1974) 1 SCC 19, 40, 42 : 1974 SCC (L&S) 49) a rule which provided that only those Assistant Engineers who possessed a degree in Engineering would be eligible for promotion as Executive Engineers and which totally denied any opportunity for promotion to Assistant Engineers who were diploma holders was challenged as infringing the fundamental rights guaranteed by Articles 14 and 16 of the Constitution. Under the rules, recruitment to the cadre of Assistant Engineer was to be made by direct recruitment of degree holders in Civil Engineering or by transfer of degree or diploma holders who had served as Supervisors for a period of not less than five years. The argument was that degree holders and diploma holders having been integrated into a common class of Assistant Engineers, there was no justification for the classification for promotion to the post of Executive

Engineer. The court upheld the rule and held that the classification of Assistant Engineers into degree holders and diploma holders could not be said to rest on any unreal or unreasonable basis. Classification made with a view to achieving administrative efficiency in the Engineering Service was clearly correlated to higher educational qualifications since higher educational qualifications was at least presumptive evidence of higher mental equipment. Educational qualification was always recognised as a safe criteria for determining the validity of classification. The earlier decisions of the court in *Roshan Lal Tandon v. Union of India* ((1968) 1 SCR 185 : AIR 1967 SC 1889 : (1968) 1 LLJ 576) and *Mervyn Coutinho v. Collector of Customs, Bombay* ((1966) 3 SCR 600 : AIR 1967 SC 52 : (1967) 1 LLJ 749), were distinguished on the ground that they were cases where direct recruits and promotees who were fused into a common stream of service were sought to be treated differently by reference to the consideration that they were recruited from different sources whereas in the case before the court the classification rested fairly and squarely on the consideration of educational qualifications. It was pointed out that the earlier cases did not rule out a classification on a basis other than that they were drawn from different sources. However, while upholding the validity of the rule Chandrachud, J. (as he then was) and Krishna Iyer, J. uttered words of caution and it is upon these words of caution that the petitioners rely. Chandrachud J., said at page 790 : (SCC p. 40, para 51)

But we hope that this judgment will not be construed as a charter for making minute and microcosmic classifications. Excellence is, or ought to be, the goal of all good governments and excellence and equality are not friendly bedfellows. A pragmatic approach has, therefore to be adopted in order to harmonize the requirements of public services with the aspirations of public servants. But let us not evolve, through imperceptible extensions, a theory of classification which may subvert, perhaps submerge, the precious guarantee of equality. The eminent spirit of an ideal society is equality and so we must not be left to ask in wonderment : What after all is the operational residue of equality and equal opportunity ?

Krishna Iyer, J., said at page 792 : (SCC p. 42, para 57)

Mini-classifications based on micro-distinctions are false to our egalitarian faith and only substantial and straightforward classifications plainly promoting relevant goals can be constitutional validity. To overdo classification is to undo equality.

52. In *Mohd. Shujat Ali v. Union of India* ((1975) 1 SCR 449, 481 : (1975) 3 SCC 76 : 1974 SCC (L&S) 454), one of the questions which arose for consideration was whether the distinction made between graduate Supervisors and non-graduate Supervisors and the allocation, to these categories, of three and one vacancies respectively out of every four vacancies in the next higher promotional posts was violative of Articles 14 and 16 of the Constitution. After quoting with approval the observations of Chandrachud, J. (as he then was), and Krishna Iyer, J., in *State of J. & K. v. Triloki Nath Khosa* ((1974) 1 SCR 771, 790, 792 : (1974) 1 SCC 19, 40, 42 : 1974 SCC (L&S) 49) Bhagwati, J., observed at page 491 : (SCC p. 107, para 28)

To permit discrimination based on educational attainments not obliged by the nature of the duties of the higher post is to stifle, the social thrust of the equality clause. A rule of promotion which, while conceding that non-graduate Supervisors are also fit to be promoted as Assistant Engineers, reserves a higher quota of vacancies for promotion for graduate Supervisors as against non-graduate Supervisors, would clearly be calculated to destroy the guarantee of equal opportunity.

After saying so much the court, however upheld the rule which made the differentiation between

graduate and the non-graduate Supervisors on the ground that the differentiation had not been made for the first time by the impugned rule and graduate Supervisors had always been treated as a distinct and separate class and the two were never integrated into one class. Since the two categories of Supervisors were never fused into one class, it was held, there was no question of unconstitutional discrimination on the ground of differential treatment being to them.

53. In *S. B. Patwardhan v. State of Maharashtra* ((1977) 3 SCR 775 : (1977) 3 SCC 399 : 1977 SCC (L&S) 391) the question concerned a formula of seniority. Direct recruits and promotees, though drawn from two different sources, constituted in that case, a single integrated cadre. They discharged identical functions, bore similar responsibilities and acquired an equal amount of experience in their respective assignments. Yet, the formula provided that probationers recruited during any year shall in a bunch be treated as senior to promotees confirmed in that year. While the formula gave to the direct recruits the benefit of even the one year's period of training and another year's period of probation for the purpose of seniority, it denied to promotees the benefit of their long and valuable experience. There was no intelligible ground for the differentiation, bearing nexus with efficiency in public service. Confirmation was one of the inglorious uncertainties of government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies, and it was on confirmation that the promotees' seniority was made to depend. The formula was struck down by the court. Reliance was placed on the decision of the court in *A. K. Subraman v. Union of India* ((1975) 2 SCR 979 : (1975) 1 SCC 319 : 1975 SCC (L&S) 36), where it had been held, while interpreting rules relating to Central Engineering Service Class I, that though in cases where recruitment was made from different sources a quota system could be validity applied, the quota rule was to be enforced at the time of initial recruitment to the post of officiating Executive Engineer and not at the time of their confirmation. The court had further observed that there was a well recognised distinction between promotion and confirmation and that the tests to be applied for the purpose of promotion were entirely different from those that had to be applied at the time of confirmation.

54. In *H. S. Verma v. Secretary, Ministry of Shipping & Transport* ((1979) 4 SCC 415, 427, 428 : 1980 SCC (L&S) 19 : (1980) 1 SCR 209 : (1980) 1 LLJ 20), the facts were somewhat peculiar. Certain persons were directly recruited to the Engineering Service of the Ministry of Shipping and Transport (Roads Wing) as a result of a written competitive examination. Certain other persons were also directly recruited but by interview through the Union Public Service Commission, although such a method of selection was not contemplated by the rules. In 1966 a rule was added providing for selection by interview through the Union Public Service Commission. The 1966 Rule was held not to be retrospective in some writ petitions filed in the Delhi High Court by the persons who had been recruited as a result of written competitive examination. The High Court while holding that the amendment was not retrospective did not hold that those appointed prior to 1966 by the interview method were not regularly appointed. Instead, the High Court held that they were appointed and promoted to ex cadre posts. In 1973 a notification was issued by the government to the effect that the officers appointed by the interview method must be deemed to have been inducted into the service as temporary officers in 1966. Later in 1976 the government decided to set up two services to be called the Central Engineering Service (Roads), Group 'A' comprising of officers appointed by the method of examination and the other the Central Engineering Pool, Group 'A' comprising of officers appointed by the method of interview. Officers of both the services were eligible to be promoted to certain posts called "isolated posts". Appointment to the 'isolated posts' were to be made by selection or promotion, as the case may be, on the recommendation of a Departmental Promotion Committee from an integrated list of officers to be drawn up on the basis of the length of their continuous service in their respective grades. The officer appointed by the method of interview

assailed the rules contending that though they were appointed to their posts long before the officers appointed by the method of competitive examination, they would rank much below the latter in the list of seniority and would consequently be denied promotional opportunities to highest posts. Having regard to the very complicated nature of the facts, the court after the discussion with the learned counsel appearing for the various parties and the government made an order, which they thought was best and just in all the circumstances of the case. While issuing the directions certain observations were made. It was said at page 427, para 30 :

... We are unable to accept the contention that persons holding similar posts and having similar responsibilities to discharge can be classified into different categories for the mere reason that some of them were recruited directly by the interview method and some were recruited directly on the result of a competitive examination. Were it permissible to make such classifications, ingenuity may suggest the nature of curriculum in different years as the basis of classification. If subjection to different kinds of tests as a condition of eligibility produces qualitative difference in the ability of persons recruited to similar posts, it may perhaps become necessary to limit the promotional opportunities, in regard to the relatively higher posts, to those whose abilities are remarkably higher. But, it is nobody's case and the government has made no grievance that the petitioners who were appointed by the interview method are in any way inferior in ability, efficiency or educational qualifications to those who were appointed after a written competitive examination. In the matter of experience too, the petitioners are in no way inferior to the contesting respondents.

The court however, took care to add : (SCC p. 427, para 33 and p. 428, para 34)

Though classification which proceeds merely on the basis that certain persons were recruited after going through one test and certain others after going through another test would be unscientific, it cannot be said on the facts of the instant case that there can be no valid basis or justification for classifying the various officers of the Roads Wing into a separate categories. As we have stated earlier, the appointments of some of the petitioners and some of the respondents were made in violation of the rules which were in force at the relevant time. It is in respect of that class of persons that the Delhi High Court was driven to hold that they must be deemed to have been appointed to ex-cadre posts

But the fact remains that persons who were appointed contrary to the rules but to ex-cadre posts were taken initially for purposes of certain projects to which we have already referred. Their precarious tenure was continued from time to time but that will not furnish justification for treating them on the same footing as others whose appointments were made strictly in accordance with the rules and who were appointed to posts borne on the cadre of the Central Engineering Service. A division of these two classes of officers into separate categories will remove possible injustice to those who were appointed to cadre posts in that their promotional opportunities will not be blocked or hindered by ex-cadre officers who were recruited on a large scale to meet an urgent necessity. Such a classification will also minimise the injustice which would otherwise have been caused to those who were appointed to ex-cadre posts.

55. We have referred, without comment, to a few earlier decisions of this Court and quoted the observations of learned Judges therein. These decisions and the observations extracted therefrom

illustrate and emphasise that there are and there can be no absolutes when we consider claims to justice on complaints of inequality. The marxian ultimate of a classless society, however laudable that may be, is evidently not what is sought to be achieved by Articles 14 and 16 of the Constitution. The goal is a limited one. It is equality among comparables. A necessary but not necessarily cynical implication of equality among comparable is the permissibility of reasonable classification, having nexus with the object to be achieved. So, it was said that if two services started started and continued dissimilarly, though they apparently discharged similar duties, they were not comparable services so as to furnish a basis for the claim to equality (*State of Punjab v. Joginder Singh* (1963 Supp 2 SCR 169, 191, 192 : AIR 1963 SC 913 : (1961) 1 SCJ 627). But, if in the same service there were two sources of recruitment to the same posts, a classification based solely on source of recruitment was not permissible (*Roshan Lal Tandon v. Union of India* ((1968) 1 SCR 185 : AIR 1967 SC 1889 : (1968) 1 LLJ 576), and *Mervyn Coutinho v. Collector of Customs, Bombay* ((1966) 3 SCR 600 : AIR 1967 SC 52 : (1967) 1 LLJ 749)). This was also the principle of the decision in *S. B. Patwardhan v. State of Maharashtra* ((1977) 3 SCR 775 : (1977) 3 SCC 399 : 1977 SCC (L&S) 391). Even so, Chandrachud, J., (as he then was), Krishan Iyer, J., and Bhagwati, J., had to recognise, even if reluctantly, that even among the members of the same service, a classification based otherwise than on mere source of recruitment such as educational qualification was at times permissible. But necessary words of caution against making 'minute and microcosmic' classification were uttered (*State of Jammu & Kashmir v. Triloki Nath Khosa* ((1974) 1 SCR 771, 790, 792 : (1974) 1 SCC 19, 40, 42 : 1974 SCC (L&S) 49), and *Mohammad Shujat Ali v. Union of India* ((1975) 1 SCR 449, 481 : (1975) 3 SCC 76 : 1974 SCC (L&S) 454)). Chandrachud, J. (as he then was), however drew the line when among members of the same service a classification was sought to be made between those who had been recruited on the basis of results of a competitive examination and those who had come in by the method of interview. But, here again he felt constrained to say that those who were appointed to ex-cadre posts outside the rules and whose tenure was therefore precarious could not claim to be treated on the same footing as those who were appointed strictly in accordance with the rules and to posts borne on the cadre of the service (*H. S. Verma v. Secretary, Ministry of Shipping & Transport* ((1979) 4 SCC 415, 427, 428 : 1980 SCC (L&S) 19 : (1980) 1 SCR 209 : (1980) 1 LLJ 20)).

56. If we now look at the facts of the case before us, we find that the service comprising the Temporary Assistant Officers and the Indian Railway Service of Engineers Class I started separately and never became one. The objects of their recruitment were different as explained earlier, the methods of recruitment were dissimilar and the appointing authority was not the same. The training that was imparted was also unlike. The very tenure of the Temporary Assistant Officers was precarious and their immediate aspiration was only to be absorbed into the Indian Railway Service of Engineers Class I. These distinctive features marked out the Temporary Assistant Officers as a class apart from the Indian Railway Service of Engineers Class I and therefore, there was no question of entitlement of equal rights with the latter. Of course, once they were absorbed into the Indian Railway Service of Engineers they would be entitled not to be treated differently thereafter. Their seniority would ordinarily be reckoned from the date of their absorption into the Indian Railway Service of Engineers, as promised in their letters of appointment. No doubt these officers merited something more than the 'long wait' at the portals of the Indian Railway Service of Engineers. The Railway Board however, appears to have tried to make the 'long wait' a little less tedious by giving them weightage of half of their length of service as Temporary Assistant Officers, subject to a maximum of five years. We wish to say nothing about the validity of such weightage as we understood it is in question elsewhere.

57. Though we are denying the claim of the petitioners to equality because of the history, origin,

and structure of the services and the existing legal position in relation thereto, we do not wish to be understood as saying that there is anything 'doctrinaire' in the principles of 'equal pay for equal work' and 'equal work'. They are not goals to be scoffed at. It may be that in the present societal context the goals appear to be distant. But they are goals worthy of attainment and let us hope, with no overtones of cynicism, that these goals will be achieved in the not too distant future.

58. All the writ petitions and applications for the grant of special leave are dismissed but without any order as to costs.

</html