

Hundraj Kanyalal Sajnani

Vs

Union of India and Others

S. Ramchandani and Another

Vs

Union of India and Others

Writ Petition Nos. 4146 of 1978 and 546-547 of 1983

(CJI Sabyasachi Mukharji, B. C. Ray, K. Ramaswamy, L. M. Sharma, P. B. Sawant JJ)

16.03.1990

JUDGMENT

SAWANT, J. –

1. These three petitions raise some common issues, and hence they are being disposed of by this common judgment.

Writ Petition No. 4146 of 1978

2. This petition is filed by the promotee Income Tax Officers Group A seeking to challenge the Seniority Rules of 1973 on the ground that they were framed pursuant to a direction given by this Court in Bishan Sarup Gupta v. Union of India decided on August 16, 1972. According to the petitioners, the said direction was given because for want of sufficient material, the court had come to the conclusion that the quota for recruitment of the direct recruits and the promotees had broken down as the promotees were appointed in excess of their entitlement in the quota. According to the petitioners, the requisite material showing the contrary was in the possession of the government but did not come forth, then. The said material shows that in fact the appointments of the promotees were short of their quota. The petitioners, therefore, claim that not only the Seniority Rules of 1973 should be set aside, but the appointments of the promotees be made and their seniority be fixed, according to the Rules prevailing prior

3. The relevant facts necessary to dispose of the petition are as follows :

Pursuant to the Rules propounded in their letter of September 29, 1944, the government reorganised the existing Income Tax services into Class I and Class II. The Rules, among other things, laid down that the recruitment to the cadre of Income Tax Officers - Group A will be from two sources, viz., direct recruitment and promotion, the quota for the two being 80 per cent - 20 per cent respectively.

4. In 1945, the government framed fresh Recruitment Rules for the said cadre of Class I and Class II ITOs. Rule 3 of the said Rules reiterated that the recruitment to the said cadre will be from the two sources, viz., direct recruitment and promotion. Rule 4 of the said Rules, however, provided that the

recruitment from the said sources will be made as per virtually keeping in abeyance the recruitment quotas for the direct recruits and the promotees laid down in the Recruitment quotas for the direct recruits and the promotees laid down in the Recruitment Rules of September 29, 1944.

5. On September 9, 1949, the government framed Seniority Rules. Rule 1 (f) (iii) thereof provided that the promotees who had been certified by the Federal Public Service Commission in any calendar year shall be senior to all direct recruits who completed their probation during that year or after, and are confirmed with effect from the date in that year or after. On January 1, 1950, the Seniority Rules were revised and the aforesaid Rule 1 (f) (iii) was amended as follows :

"1. (f) The seniority of direct recruits recruited on the results of the examinations held by the Federal Public Service Commission in 1944, and subsequent years, shall be reckoned as follows :

(i) Direct recruits of an earlier examination shall rank above those recruited from subsequent examination.

(ii) Direct recruits of any one examination shall rank inter se in accordance with the ranks obtained by them at that examination.

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

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

6. By its letter of October 18, 1951, the government revised the quotas of direct recruits and promotees (which was earlier laid down in their letter of September 29, 1944), from 80 per cent and 20 per cent to 66 2/3 per cent and 33 1/3 per cent. On September 5, 1952 the government also revised further the Seniority Rule 1 (f) (iii) of January 24, 1950 as follows :

"1. (f) The seniority of direct recruits recruited on the results of the examination held by the Federal Public Service Commission in 1944, and subsequent years, shall be reckoned as follows :

(i) Direct recruits of an earlier examination shall rank above those recruited from a subsequent examination.

(ii) Direct recruit of any one examination shall rank inter se in accordance with the ranks obtained by them at that examination.

(iii) Officers promoted in accordance with the recommendation on the Departmental Promotion Committee before the next meeting of the Departmental Promotion Committee shall be senior to all direct recruits appointed on the results of the examinations held by the Union Public Service Commission during the calendar year in which the Departmental Promotion Committee met and the three previous years."

7. It will thus be clear that this revision, among other things, gave to the promotees, a weightage of three years in seniority. These Rules continued to operate till 1959.

8. It appears that between 1959 and 1960, about 114 posts were upgraded to those of Income Tax Officers Group A, and the promotees were appointed to the said posts during the relevant period.

9. One Jaisinghani, a direct recruit challenged the constitutional validity of Seniority Rule 1 (f) (iii) and (iv) of 1952 Seniority Rules which had in effect given three years' weightage to the promotees in the matter of fixation of their seniority, and also the improper implementation of the quota by the government, by filing a writ petition before the Punjab High Court. The High Court rejected the writ petition, and in the appeal filed against the said decision, this Court, by its decision in *S. G. Jaisinghani v. Union of India* held that the quota was fixed by the government by its letter of October 15, 1951 in exercise of the power given to it under Rule 4 of the Recruitment Rules of 1945 and hence it was valid and proper. The court also upheld the weightage given to the promotees under the Seniority Rules of 1952. The court, however, directed that for future years, the roster system should be adopted by framing an appropriate rule for working out the quota between the direct recruits and the promotees,

10. Pursuant to the direction given by the court, the government prepared a Seniority List on July 15, 1968. This Seniority List was challenged in Delhi High Court in two separate writ petitions, one filed by one B. S. Gupta, a promotee of 1962 and another by one M. C. Joshi, a direct recruit. The Delhi High Court by its decision of July 29, 1970 dismissed Gupta's petition and substantially allowed Joshi's petition and gave directions to prepare a fresh seniority list. against the decision in both the petitions, Gupta filed two separate civil appeals. By its decision dated August 16, 1972 in the said appeals in B. S. Gupta case briefly known as 1st Gupta case, this Court held that the Seniority List was valid with regard to the promotions made upto January 15, 1959, since it was prepared on the basis of the quota rule of October 18, 1951 and the Seniority Rule 1 (f) (iii) of 1952 Seniority Rules. The court, however, held that the said list would not be valid for the period thereafter. The court, therefore, s

11. In pursuance of the above direction, the government framed the impugned Seniority Rules of 1973, and prepared a fresh seniority list on February 9, 1973, giving retrospective effect to the said Rules from January 15, 1959. The gist of the 1973 Seniority Rules was that the seniority of the direct recruits and promotees appointed on and from January 16, 1959 was to be fixed as follows : first promotee and then direct recruit and so on. The result of these Rules was that not only the seniority rule but also the quota of the direct recruits and the promotees was changed from 66 2/3 per cent and 33 1/3 per cent to 50 per cent and 50 per cent of 1 : 1. It may be mentioned here that the new seniority list was prepared by fixing the seniority up to January 15, 1959 according to the old Seniority Rules, and the seniority from January 16 1959 on the basis of the new Rules. However, 73 of the promotees who were promoted in excess of their quota between 1956-58 could not be accommodated as per the earlier quota rule,

12. The same Shri B. S. Gupta challenged both the validity of the new Seniority Rules of 1973 and as well as the new Seniority List. This court by its decision dated April 16, 1974 in *Bishan Sarup Gupta v. Union of India* known as 2nd Gupta case, upheld both the Seniority Rules as well as the Seniority List.

13. It further appears that one Kamal Kanti Dutta and others had also filed an independent writ petition challenging the Seniority List of February 9, 1973. It was dismissed by this Court by its

decision dated April 23, 1980 in Kamal Kanti Dutta v. Union of India upholding the validity of the aid Seniority List. While disposing of the said writ petition, this Court made the following observations on which a strong reliance is placed by the present petitioners : (SCC p. 55, para 55)

"In the light of the materials now placed especially the files which were withheld from the court and the committee, the only view that I express is that enough compelling and necessary material has been placed on record making out a strong case for reconsideration of these decisions."

14. The Committee referred to in the aforesaid observations the Rajya Sabha Petition Committee.

15. The present petition had also come to be dismissed erroneously along with the writ petition of Kamal Kanti Dutta. It was restored for hearing on September 9, 1980.

16. On July 28, 1982, the Parliamentary Committee on Subordinate Legislation published its Twelfth Report wherein referred to a letter of February 4, 1976 from the Minister of State for Finance. The Committee stated that the Seniority Rules of 1973 were unfair and hence they should be scrapped with effect from January 15, 1959 and that fresh equitable seniority rules be framed. The Committee recommended that the artificial distinction between the ITO Group A and Group B should be abolished as they were performing identical functions and were working on interchangeable posts. The Committee also recommended the grant of the same weightage in seniority to the promotee from January 15, 1959 as was available to them before that date. The Committee further recommended an increase in the quota of promotions from Group B to Group A on account of an unprecedented stagnation of Group B service, as a direct result of the Seniority Rules of 1973. It does not appear that these recommendations were accepted. We are refer

17. Thereafter, on February 16, 1983, the accompanying writ petitions, viz., Nos. 546-547 of 1983 were filed challenging (i) the validity of Section 117 of the Income Tax Act, 1961, (ii) The classification of Income Tax Officers in Group A and Group B officers, (iii) the Seniority Rules of 1973, and (iv) the Seniority List prepared on their basis.

18. The last two reliefs claimed in the said petitions are common to the present petition and hence they will be disposed of along with the judgment in the present case. The first two reliefs and the reliefs claimed incidental thereto will be dealt with separately.

19. It is further necessary to note that while admitting the accompanying petitions, the court had passed the following orders :

"Subject to the specific condition that the petitioners shall not be permitted to reopen what ever classification was made in the cadre of ITOs, in the past as also inter se seniority between direct recruits and promotees which had been upheld by the decisions of this Court in S. C. Jaisinghani, B. S. Gupta and K. K. Dutta cases, rule nisi limited to the question whether the classification of ITOs, into Group A and Group B under Section 117 of the Income Tax Act, 1961 is violat of Articles 14 and 16 of the Constitution. Even if the issue is answered in affirmative, the petitioners will be entitled to relief, if any, only prospectively for future implementation of the decisions from the date of the judgment in the petition. This order will not preclude any contention that can and may be raised in the Writ Petition No. 4146 of 1978 - H. K. Sajnani v. UOI to be examined on merits."

20. On May 3, 1983, this Court passed an order in C. M. P. Nos. 13200 and 6762 of 1983 in both the present and the accompanying writ petition as follows :

"In allowing prayer (i) of C. M. P. No. 6762 of 1983, we direct Writ Petition Nos. 546-47 of 1983 be heard along with Writ Petition No. 4146 of 1978 and that the grounds challenging the validity of Seniority Rules, 1973 as taken in Writ Petition Nos. 546-47 of 1983 are allowed to be taken in Writ Petition No. 4146 of 1978 insofar as the prayer (iii) of CMP is concerned, we direct the government to file a statement in this Court before July 15, 1983 as to the result of the examination of the recommendation of the Committee on Sub ordinate Legislation and decision other measures taken by the government thereon."

21. On February 27, 1985, the court gave direction to the government in C. M. P. No. 1903 of 1983 in the present writ petition to allow the petitioner inspection of the files relating to the vacancies. The inspection was completed on October 7, 1985 which according to the petitioners shows the following facts : (i) that the relevant record is available and was always available with the government and that its production was deliberately withheld from this Court, (ii) that the promotions were all within quota and that there was no excess. Rather there was a deficiency promotions, (iii) that the quota rule was adhered to from year to year right from the year 1951 up to the date of the judgment in the 1st Gupta case, (iv) that the quota rule did not collapse on January 15, 1959, (v) that as required by the exigencies of the service, the quota rule was amended/relaxed in the years 1958 and 1959, (vi) that in applying the quota rule in pursuance of the mandamus, the government did not follow the principles decide

(a) The government did not apply the quota to the vacancies existing at a particular point of time. Instead of doing so, it misinterpreted the quota rule of 66 2/3 per cent and 33 1/3 per cent as if it required that a ratio of 2 : 1 had to be maintained in the cadre of Income Tax Officers and as if there had to be on promotee against every 2 direct recruits. This erroneous interpretation was applied in clear breach of the principle laid down by this Court in the 1st Gupta case.

(b) Another error committed by the government in applying the quota rule in violation of the principles decided by this Court in the 1st Gupta case was that the substantive vacancies in the temporary posts which were a regular part of the cadre and which eventually became permanent were not taken into account while applying the quota, with the result that the account while applying the quota rule, with the result that the promotees were denied their share in such vacancies. The most harmful thing done by the government was that it did not take into account substantive vacancies in temporary posts till 1963 for applying the quota rule and worked out the excess in promotions ignoring such vacancies. But, they started taking into account those very vacancies for direct recruitment from 1963 onwards. If such vacancies were taken into account prior to 1963 and the quota rule was applied to them, there would have been no excess in promotions as was erroneously worked out. On the contrary, there was a deficiency in

(c) The promotees were not given their full quota even in the permanent vacancies which should have been given to them irrespective of whether the direct recruitment was made in full. There was underutilisation of quota of direct recruits with the result that the promotees were denied their legitimate share even in permanent vacancies. In

these circumstances, the actual appointments were taken as vacancies and were bound to result inevitably into excess of promotions.

22. On the basis of these facts, which according to the petitioners were revealed in their inspection, their case is that their allegation, that the relevant files were available and yet were not produced before the court and the further allegation that there were no excess promotions were borne out. This shows that the direction given in the 1st Gupta case to frame new rules and, hence, the new Seniority Rules of 1973 framed pursuant to these directions, were unwarranted, unjust and illegal.

23. The petitioners further contend that the principle that the vacancies mean those the government wants to fill is not compatible with the principle laid down in the 1 Gupta case that the promotees should get their share of the quota irrespective of whether the direct recruit quota is filled, or not. But in the present case, the contrary has happened, viz., the promotees' quota is calculated on the basis of the appointments of the direct recruits causing thereby injustice to the promotees by depriving so many of them of their chances of promotion which were otherwise available.

24. It is also the contention of the petitioners that in fact, there were vacancies and the government wanted to fill those vacancies. This is evidenced by the fact that when new posts were created for the purpose of assessment work, the direct recruits were not available and hence, the promotions were made from Group B to Group A, and even Group B officers were appointed against Group A posts and they performed identical functions as of Group A officers. This contentions has also a bearing on the issue involved in Writ Petitions Nos. 546-47 of 1983 and we will deal with it in that context, later.

25. While these petitions were pending, the government on January 21, 1988 amended the Income Tax Act, 1961 with effect from April 1, 1988 and among other things, changed the designation of Income Tax Officers Assistant Commissioners as follows :

Pre-Amendment Post Amendment

(a) Income Tax Officers Income Tax Officers (Group B)

(b) Income Tax Officers Assistant Commissioners (Group A)

(c) Assistant Commissioners Deputy Commissioners

The amendment also substituted Sections 116, 117, 118 and 120 with effect from the same date, i. e., April 1, 1978 and authorised the Central Board of Direct Taxes to issue notifications authorising Chief Commissioners and Commissioners of Income Tax to classify the work of newly designated Income Tax Officers and Assistant Commissioners, and to provide for the jurisdiction of the Income Tax Officers and Assistant Commissioners on the basis of quantum of income. According to the petitioners, this was done to destroy the cause of action in Writ Petitions Nos. 546-47 of 1983.

26. On May 12, 1988, the government framed new Rules of Recruitment, among other things, providing for quota of 50 percent each to the promotees and direct recruits. In consequence, an application for amendment of Writ Petitions Nos. 546-47 of 1983 was filed raising additional grounds.

27. It will thus be apparent that the whole foundation of the case of the petitioner-promotees in the present petition is that the Seniority Rules of 1973 were made by the government pursuant to the

direction of this Court in the 1st Gupta case on August 16, 1972 and that direction was given by this Court because on the basis of the material produced by the government, this Court had come to the conclusion that the promotees were promoted in excess of their quota. According to them, however, the new material which they have discovered shows that in fact there were not only no excess promotees but facts there was a shortfall in their promotions as per their entitlement in the quota.

28. Both on behalf of the government as well as the respondent Union of India and the direct recruits, it is pointed out to us that the so called new material produced on behalf of the petitioner-promotees far from proving their allegation, support the conclusion to which this Court arrived at in the 1st Gupta case. In this connection, it is pointed out that admittedly, there were at the relevant time Class I and Class II posts of Income Tax Officers corresponding to Group A and Group B posts, Class I or Group A consisted of Grade I and Grade II officers whereas Class II or Group B consisted of Grade III officers. Group B officers were entitled to be promoted first to Group A Grade II posts. Hence, the vacancies available for promotion to the promotees which ought to be taken into consideration at any point of time are the vacancies on Grade II posts of Class I or Group A. However, it is obvious from page 32 of Volume II of their petition, that the petitioner-promotees have taken into consideration vacancies

#VACANCY POSITION FROM 1951-1958-----

Year	Sanctioned Vacancies	Quota of Class I	Actual promoted as Grade II	Working strength Grade II	Excess strength	Deficiency
1951	216 + 200 = 416	77 + 98 = 175	241	80	136	136
1952	224 + 221 = 445	83 + 113 = 196	249	83	166	166
1953	224 + 221 = 445	130 + 129 = 259	186	62	333	333
1954	224 + 221 = 445	169 + 157 = 326	119	40	326	326
1955	224 + 221 = 445	154 + 217 = 371	74	25	371	371
1956	224 + 221 = 445	187 + 214 = 401	44	15	401	401
1957	287 + 248 = 535	224 + 184 = 408	127	42	408	408
1958	213 + 202 = 415	123 + 41 = 164	28	13	164	164
Net deficiency-----						

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29. It is clear from above table that the petitioner-promotees have calculated the posts in the sanctioned strength not only in Grade II posts but also in grade I posts when the posts available to them for promotion were only in Grade II. Hence, their further calculations of the working strength, the vacancies and the quota available to them in the vacancies and of the deficiencies or the excess in the quota are erroneous. On behalf of the government, the following calculations have been made for the relevant period from 1951 to 1958 on the basis of the actual vacancies in the sanctioned strength of the Grade II posts of the Group A (Class I). These calculations show that in fact during the said period, the promotees were promoted to Grade II posts of Group A (Class I) in excess to the extent of 93. Therefore, the deficiency of 97 which they have shown in their appointments during the said period is obviously wrong. The said table first handed over to us by Shri Gobind Das, counsel for the government is prep

#-----Year Sanctioned Working  
Vacancies Quota of Actual pro- Excessstrength Strength promoti- motion asGrade II  
Grade II ions 33 stated atClass I Class I percent 32-----

1951	200	98	102	34	1952	221	113	108	36	49	13	1953	221	129	92	31				
1954	221	157	64	21	31	10	1955	221	217	4	1	24	23	1956	221	214	7	2	25	23
1957	248	184	64	22	26	4	1958	248	202	46	15	28	13	----- 93##						



In the absence of any material which gives us the actual vacancies in a year we think that in order to implement the mandamus as far as it can possibly be done it would be reasonable to accept the figures of appointments in those year as substantially representing the actual vacancies. There is also a subsidiary reason why those figures may reasonably be accepted. It is true that the quota rule refers to vacancies but the vacancies are those vacancies which the government wants to fill. It is the prerogative of the government reflected further in Rule 4 referred to above whether any vacancy may be filled at all or not. even if there are 100 vacancies in a particular year the government is not bound to fill all those vacancies. It may fill only 90 of them and nobody can insist that the government shall fill up all the vacancies. Therefore when the quota rule refers to vacancies it is implicit in the rule that the vacancies are vacancies which the government wants to fill whatever may be the actual number of

34. This is apart from the fact that as we have shown earlier in fact the actual vacancies worked out by the court approximated the actual appointments. And in any case the quota for the promotions worked out on the basis of the said vacancies and the calculation of the excess of promotions on the basis of the said quota was very nearly correct and the so called new material would have made any deference to the conclusion which was arrived at in that case.

35. The other contention of the petitioners namely that while calculating the vacancies the government had calculated only the permanent posts and not the temporary posts has also no substance in it. It is not suggested that the figures of the sanctioned and the working strength of and the vacancies in Grade II posts of Groups A (class I) shown by the petitioners on page 32 of their petition or in the new chart do not include temporary posts. What is more in fact in the 1st Gupta case one of the contentions of the direct recruits was that the quota rule should relate to vacancies only in permanent posts and not temporary posts. That contention was not accepted in that case either by the promotions or the government. The court also pointed out in that case that there was nothing in the Rules of 1945 or the quota Rule of 1951 which said that the vacancies must be vacancies in permanent post. The court observed that indeed the whole cadre had consisted of permanent and temporary posts for years and there was a di

36. In his affidavit dated January 31, 1967 filed in Jaisinghani case Shri R. C. Dutta, the then Finance Secretary had further clearly stated that the vacancies were calculated with reference to the following information (i) addition to cadre strength temporary or permanent as the case may be and (ii) vacancies arising during a particular period as a result of death retirement promotion resignation removal etc. of the officer in particular post. This has been the stand of the respondent Union of India from the beginning and beyond making a bare allegation to the contrary the petitioner have not placed any material in support of their said contention. The chart produced by them on the contrary proceeds on the footing that the vacancies in both the temporary and the permanent post had to be calculated.

37. Much has also been made of the fact that the Parliamentary Committee on Subordinate Legislation had as pointed out above recommended the reconsideration of the Seniority Rules and the Seniority List of 1973 as allegedly they had done injustice to the promotions. Apart from the fact that the said recommendations have no legally binding effect they were also not accepted by the government. In his letter of October 31, 1976 addressed to the Chairman of the Committee on Subordinate Legislation the then Minister of Finance had stated as follows :

I have gone through the Eighth Report of Committee on Subordinate Legislation submitted to the Lok Sabha on May 7, 1986.

2. I am afraid however there is hardly any scope for the government to take any significant action in the matter as the alleged grievances of the promote officers of the Income Tax Department are unreal and imaginary. In the past the prospects position and power enjoyed by the promotes happened to be better only because of a systematic and persistent violation of rules. The said violation of rules itself led to prolognd litigation which repeatedly went up to the Supreme Court. It was finally laid to rest in B., S. Gupta case when the Supreme Court approved the Seniority Rules 1973 and Seniority List. These Rules and the Seniority List were prepared in accordance with the Supreme Court own directive and were approved by it after giving ample opportunities to both the side to present their case This Rules were declared by the Supreme Court to be just and fair. It is significant that the promotes themselves admittedly could not propose a better alternative. The Seniority Rules therefore call for no change.

3. As for quota originally the promotes were only 20 per cent of the Group A vacancies Unfilled vacancies were to be carried over as part of direct recruitment quota for the subsequent year. The intention obviously was to maintain certain standard of quality in the personnel sanction to the service. Between 1951 to 1958 the quota was raised to one third in favour of the promotes 1973 the promotion quota was raised to 30 percent which is the highest in any service under the Central Government.

4. The question of weightage is inextricably linked with that of quota. The weightage allowed to the promotes earlier was in view of the low quota of 20 percent or 33 1/2 percent available to them at that time. When the Rule were revised and the quota of promote was enhanced to 50 percent weightage given in the matter of promotion was simultaneously with drawn. The Supreme Court itself upheld its abolition and observed that the promotes could not after obtaining the benefit of a higher percentage of recruitment to Class I service legitimately object to the abolition of weightage enjoyed formerly in the matter of seniority.

38. The letter is annexed the additional affidavit of Ravi Kumar (supra)

39. It will thus be seen that even the government had independently come to the conclusion as early as in 1986 that neither the Rules of Seniority nor the Seniority List 1973 had done injustice to the promotes. In fact the Rules of 1973 had raised the quota of the promotes from 33 1/3 per cent to 50 per cent. The Seniority of the promotes was adjusted up to January 15, 1959 on the basis of the earlier quota rule and the seniority of those who were appointed latter and of those who were found in excess of their quota up to that date were adjusted according to the new Rules.

40. Two other contention advanced on behalf of the petitioners on the basis of the alleged new material were that first while calculating the vacancies in the post of Grade II officers in Group A the vacancies is all the posts above the said post were not taken into account and secondly the number of vacancies should not have taken into account and secondly the number of vacancies should not have been equated with the number of posts the government filled but should have been calculation on the basis of their actual existence. According to the petitioners if both these factors had been taken into consideration at the time of the decision in the 1st Gupta case the court would not have found promotes in excess of their quota. To some extent these contentions are inter linked.

41. The first contention proceeds firstly on the basis that the nothings in the relevant files made by the officer concerned have an intrinsic evidentiary value to prove the actual vacancies in the different categories and secondly presumes that the number of vacancies as calculated in Grade II posts of Group A there did not already reflect the vacancies in the higher posts. In the absence of sufficient material before us it is not possible to accept such presumption.

The second contention need not even be considered in the present case for as has been pointed out earlier the actual vacancies approximated the appointments made during the relevant period. Hence whether the quota was calculated on the basis of the actual vacancies or on the basis of the appointments made it would have made no difference to the conclusion that this Court had arrived at in the 1st Gupta case that the promotions were in excess of the quota. What is more even this argument has been answered by this Court in that case as shown above and we see no reason to differ from the view taken there on the point. There appears to be an obvious confusion on the part of the petitioner with regard to what this Court has stated in the earlier part of the judgment in the 1st Gupta case. Read with the passage which we have quoted from the said judgment what this court wanted to convey in the earlier part of the judgment was that when the government decides to fill in the vacancies it is not necessary to diffe

43. In the result we find no substance in the petition and dismiss the same. The rule stands discharged. In the circumstances however there will be no order as to costs. Writ Petition Nos. 546-47 of 1983.

44. As stated earlier while narrating the facts of the earlier petition. these petitions are filed by two Income Tax Officer for themselves and as the representatives of the All India Federation of Income Tax Gazetted Service Association. The Federation represents all the Group B ITOs and all ITOs in Group A, Assistant commissioner and Commissioners promoted from Group B Among the parties to the petitions is respondent 4 - the Indian Revenue Service Association representing directly recruited Group A officers and Assistant Commissioners and Commissioners promoted from directly recruited Group A ITOs.

45. The main grievance of the petitioners is that the classification of ITOs into two classes namely Group A and Group B is discriminatory and violative of Article 14 and 16 of the Constitution because (a) the classification is not made on an intelligible differential and (b) the differential has no relationship to the object sought to be achieved by the Income Tax Act 1961 inasmuch as the officers belonging to the two groups do identical work and perform identical functions. It is also the contention of the petitioners that their work and posts are interchangeable and in practice they form on cadre. By maintaining the differentiation alleged the petitioners the government in effect is denying equal opportunity equal pay and equal status to officers doing identical work and performing identical functions. To attack the classification the petitioners had also challenged the constitutional validity of Section 117 of the Income Tax Act 1961 before its amendment by the Direct Tax Laws (Amendment) Act 198, 7 they

46. In Support of their contention that the amended provisions of th Act are mala fide they contended that by amending the Act the government took the power to itself to frame the new Recruitment Rules of 1988 and to issue the relevant notifications circulars and orders whereby the classification of the Income Tax Officers in Class I and Class II could be justified. In this connection it is pointed out that it is by virtue of this new powers that the government for the first time got an authority to demarcate the jurisdiction of the power of Class A and Class B ITOs and thus to justify the said classification. In the absence of the amendment and the rules notifications circulars and

orders issued pursuant thereto the said classification was unjustifiable in law and was liable to be struck down. It is therefore also contended that the said classification assuming it is justified can only act prospectively from April 1, 1988 from which date it is brought into operation and would not justify the classification

47. We are not impressed by this contention. In the first instance the presumption underlying this contention is that the provisions of the Act prior to its amendment by the amending Act of 1987 did not permit such classification which presumption is patently incorrect. While the provisions of sub section (1) of Section 117 prior to its amendment gave power to the Central Government to appoint as many ITOs of class II service as might be sanctioned by the Central Government. It was however contended that in spite of these earlier provisions of sub section (1) and (2) of the unamended Section 117 they had to be read down to deny the power to appoint ITOs of Class II or Group B. This was so because according to the petitioners the provisions of Section 116, 118 and 124 as they stood then only referred to Income Tax Officer as one class and did not make a distinction between them as class I and Class II officers. In the first instance it is an elementary rule of the interpretation of statutes that no provisions of

48. If therefore the legislature had itself classified the officers into two grades or categories and given the power to the government to appoint and/or to sanction their appointments as the case may be under the unamended provisions of the Act it can hardly be argued that the amending Act was passed mala fide to destroy the cause of action in the present petitions. This is apart from the fact that no legislation can be challenged on the ground that it is mala fide. Hence the challenge to the amended provisions of the Act and the rules, notifications, circulars and orders issued pursuant to it must fail. It is not further suggested that the rules, notifications, circulars, orders etc. are ultra vires of the Act. There is therefore no merit in this attack.

49. Coming now to the second contention which is the main foundation of the present petitions namely that the officers of the two classes in fact perform the same functions and duties and exercise the same powers and have the same jurisdiction and therefore there is no justification for the said classification it is first necessary to examine the facts relied upon by the petitioners in support of this contention. According to the petitioners the officers of the two classes were always performing the same duties and functions and exercising the same power and jurisdiction. Their posts were also interchangeable. In fact many of the officers belonging to Group B functioned as officers belonging to Group A. Even after the amendment which has demarcated the jurisdiction of the two classes on the basis of income the basis function of making the assessment remains the same and there is no change in the nature of job performed by them. It is also submitted that once a case comes under the jurisdiction of an Income Tax

50. As has been stated in the affidavit filed on behalf of respondent 1 and 2 although both Group A and Group B officers have equal powers the ITOs of Group A are generally placed in charge of important wards and cases carrying higher responsibilities whereas the officers belonging to Group B are normally entrusted with less important wards and cases. A large majority of them have to deal with summary assessment only. It is further pointed out that under the Act prior to its amendment of 1987 the power to appoint the officers belonging to Group A i. e. Class I was vested in the Central Government while the power to appoint officer belonging to Group B i. e. Class II was vested in the Commissioner of Income Tax. The same distinction in the appointing authorities continues even after the amendment. The Assistant Commissioner i. e. the former ITOs of Group A are appointed by the Central Government whereas the power to appoint Income Tax Officers i. e. the former Group B officers can be vested by the Central Gov

51. There is further no dispute that the posts of Income Tax Officer Group A Junior scale or Grade II are filled 50 per cent by direct recruitment through the Civil Services Examination held by the Union Public Service Commission and 50 percent by promotion on the basis of selection by the Department promotion Committee from Income Tax Officer Group B who have rendered not less than 5 years service in that post. The appointments to the posts of Income Tax Officer Group B are made 100 per cent by promotion from Income Tax Inspectors who belong to Grade C or Class III service. The appointments to be the post of Income Tax Inspectors are made 33 1/3 per cent by direct recruitment and 66 2/3 per cent by promotion from the lower group of Class C service. The result has been that the present strength of about 2500 ITOs of Group B consists of all but 185 promotes (who were recruited ad hoc only in one year i. e. in 1969) from the lower Group C post. What is more as pointed out above the Income Tax Officers Group B a

52. It is also pointed out on behalf of the respondents that after changing the designation of the income tax authorities and designating the former ITOs of Group A and Group B as Assistant Commissioner and ITOs respectively their jurisdiction have been regulated. The basis principle followed in demarcating the jurisdiction of the two classes of officers is the quantum of the return of income/loss as on April 1 of the financial year. If the return of income loss is of Rs. 5 lakhs and above it goes to the Deputy Commissioner if of Rs. 2 lakhs and above but below 5 lakhs it goes to the Assistant Commissioner (i. e. the former Group A officers) and if it is below 2 lakhs it goes to the Income Tax Officers (the former Group B officers) It is also pointed out that the government has since issued a notification on March 30, 1988 making the Income Tax Officer and Tax Recovery Officers subordinate to the Assistant Director or Assistant Commissioner. Further whereas Assistant Commissioners of Income Tax (former ITOs

53. The material placed on record by the respondents thus shows that the distinction between Group A and Group B officers has been in existence from the very beginning. The distinction has been maintained statutorily with distinct power and jurisdiction hierarchical position and eligibility qualifications. The sources of their appointment and the authorities vested with the power to appoint them have also been different. The distinction between the two further has been made on the basis of the class of work and the responsibility entrusted to each. The work which is of more than a routine nature and which involves a detailed investigation either on account of the class of the assessee or of the complexities of the returns filed is entrusted to the officers belonging to Group A (now Assistant Commissioners) while the assessment work of a summary or routine nature or of the assessee filing routine return or returns involving simple transactions is entrusted to officers belonging to Group B (now ITOs). Althou annot equate the two unequal posts.

54. The very same argument for equating these two classes of officers was advanced in *K. M. Bakshi v. Union of India*. It was pointed by this Court in that case that the income tax service were reconstituted by an order of the Government of India dated September 29, 1944 and later on in 1953 Section 5 of the Income Tax Act was amended to give effect to this reconstitution. One of the features of the reconstitution was that in place of one class of Income Tax Officers two classes came into existence namely, Class I and Class II ITOs. Class I officer were eligible to be promoted to the higher post of Commissioners and Assistant Commissioners and Class II ITOs. Class I officers were eligible to be promoted to the higher post of Commissioner and Assistant Commissioner and Class II officers could obtain such promotion only after having reached the status of Class I officers. A percentage of the vacancies in the posts of Class I officers was to be filled by promotion of Class II officers and the rest by direct recru

55. As has been held in *Federation of All India Customs and Central Excise Stenographers*

(Recognised) v. Union of India the differentiation in two classes can be justified on the basis of (SCC pp. 104-05 para 11). the nature and the type of the work done. The same amount of physical work may entail different quality of work some more sensitive some requiring more tact, some less it varies from nature and culture of employment. The problem about equal pay cannot always to be transacted into a mathematical formula. If it has a rational nexus with the object sought for a certain amount of value judgment of the administrative authorities who are charged with fixing the pay scale has to be left with them and it cannot be interfered with by the court unless it is demonstrated that either it is irrational or based on no basis or arrived mala fide either in law or in fact.

The court there found that in the light of the averments made and the facts pointed out it was not possible to say that the differentiation there was based on no rational nexus with the object sought to be achieved. The court noted that the differentiation was justified on the dissimilarity of the responsibility confidentially and the relationship with public etc. though there was similarity in the functional work. The court further observed there that often the difference in the functions and the responsibilities is a matter of degree and the administration is required to make a value judgment while classifying the posts and fixing the different conditions of service for them. So long as the value judgment is made bona fide it is not questionable. The same view has been reiterated by this Court in V. Markendeya v. State of Andhra Pradesh.

56. At the cost of repetition we may state that in the present case the distinction between the two posts is made by the statute itself and that distinction has been made in existence since long. The appointing authorities of the two posts are different. In fact the Group A post (the present post of the Assistant Commissioner) had two grade viz Grade belonging to Group B (the present ITO). The nature of work entrusted to the two classes of post the responsibility which goes with it and the power and jurisdiction vested in them vary. The mere fact that some Group B officers are capable of performing the work of Group A officers and in fact on some occasions in the past they were appointed ad hoc or otherwise to discharge the work of Group A officers cannot equate the two posts. Such a demand to say the least is irrational for if this contention is accepted in no organisation the hierarchy of post can be justified. After the 1987 Amendment, further, the situation has changed and the duties functions jurisdic

57. Since the alleged equality of posts was the foundation of the other contentions raised in the petitions the said contentions must also fail and need not be dealt with separately. The contentions which are common to the earlier petition have already been dealt with.

58. In the circumstances we find no substance in these petitions. These petitions are therefore dismissed and the rule granted in each is discharged with no order as to costs.

59. Before parting with these petitions, we cannot help observing that although the issues raised in all these petitions were set at rest by this Court conclusively earlier the petitioners though it necessary to tax the precious time of the court by approaching it once again on grounds which were least justified. We hope and trust that this decision puts a final lid on the alleged grievances of the petitioners and no new pretext are found hereafter to rake up the same contentions under other garbs.

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