

FULL BENCH

Before S. S. Sandhwalia C.J., S. C. Mital and R. N. Mittal JJ.

SURINDER KUMAR AND ANOTHER—*Petitioners*

versus

STATE OF HARYANA AND OTHERS—*Respondents.*

Civil Writ Petition No. 6549 of 1975

December 15, 1978.

Punjab Excise and Taxation Department (State Service Class III A) Rules 1956—Rules 5, 6 and 13—Rule 6 providing quota system for recruitment to the service—Rotational system for promotion—Whether can be read into the rule.

Held that Rule 6 of the Punjab Excise and Taxation Department (State Service Class III A) Rules 1956 provides that the Government shall determine in what manner it shall fill vacancies in the cadre. It is clear from the language of the rule that discretion has been given to the Government to make recruitment from the sources from which it desires to do so. A restriction, has, however, been put on the Government which is incorporated in the proviso to the said rule. It is, that ratio between the direct recruits and the promotees shall remain half and half and that between the promotees from different sources shall also remain within prescribed limits. This rule does not expressly provide rotational system for promotion. It only incorporates quota for officers from different sources in the service. If the rotational system is to be read in the proviso, then the main rule becomes a dead letter because in that situation no discretion is left with the Government to fill in the vacancies in the way it wants to do. If the proviso to rule 6 is read in the light of the rule, it is evident that the term 'vacancies' in the proviso would mean 'cadre posts'. If the term 'cadre posts' is substituted for the word 'vacancies' then the proviso can be read in conformity with the main rule otherwise not. Again, Rule 13 provides that seniority between members of different cadres is to be reckoned from the date of their joining the posts. In other words, members of the cadre who joined earlier in the vacancies meant for them would be senior to those who joined later. If rotational system is to be read in the quota rule or roster is to be fixed at the time of filling the vacancies then rule 13 loses its significance. The rotational system for promotion, cannot, therefore, be read in the quota rule.

(Paras 5, 7 and 10)

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Petition Under Articles 226/227 of the Constitution of India praying that:—

- (i) a writ in the nature of certiorari quashing the order Annexure 'P-5' so far as it regularises the appointment of the respondents with retrospective effect, be issued ;
- (ii) a writ in the nature of mandamus directing the respondents to frame the seniority list of the Assistant Excise and Taxation Officers, declaring the petitioner's senior to respondents 4 to 64, be issued ;
- (iii) a writ in the nature of mandamus directing the respondents to read the seniority Rules as linked with the quota Rule and fix the seniority on the basis of the rotation of direct recruits and promotees as provided under the Service Rules, according to the principles as laid down by their Lordships of the Supreme Court of India in Jai Singhani's case, be issued ;
- (iv) a writ in the nature of mandamus directing the respondents to consider and promote the petitioner's to the posts of Excise and Taxation Officers from a date prior to the date when any of the respondents 4 to 64, who are junior to the petitioner's, were promoted ;
- (v) the record of the case be ordered to be sent for ;
- (vi) the cost of the petition be awarded to the petitioners ;

It is further prayed that:—

- (a) the condition of attaching original certified copies of the annexures be dispensed with ;
- (b) the condition of issuing notices to the respondents be dispensed with as under the circumstances of the case there is no time left with the petitioners to issue the respondents with notices, as required under the High Court Rules and Orders, because respondent No. 1 has passed the orders on the file and they are likely to be issued at any time ;
- (c) that during the pendency of the writ petition the promotion of respondents 17 to 24 to the posts of Excise and Taxation Officers, be stayed ;

It is further prayed that respondent No. 3 the Haryana Public Service Commission be restrained from granting approval of the regular appointments of respondents 18 to 35, from the back date.

Kuldip Singh, Advocate with R. S. Mongia, Advocate; for the Petitioner.

S. C. Mohunta, A.G. with Naubat Singh, Sr. D.A.G., for the Respondent.

K. S. Kundu, Advocate, for Respondent No. 20.

J. L. Gupta, Advocate, for Respondent Nos. 18 and 23.

H. L. Sibal, Sr. Advocate with R. P. Sawhney, for Respondent No. 45.

R. P. Sawhney, Advocates, for Respondent No. 24.

R. P. Bali, Advocate.

R. N. Mittal, J.

(1) The petitioners and respondent Nos. 4 to 64, are Assistant Excise and Taxation Officers in the State of Haryana and are governed by the Punjab Excise & Taxation Department (State Service Class III-A) Rules, 1953 (hereinafter referred to as the Rules). There are three sources of recruitment to the posts of Assistant Excise & Taxation Officers — first, by competitive examination; secondly, by promotion from the cadres of Excise Inspectors and Taxation Inspectors; and thirdly, by transfer of members of ministerial establishment of the Excise & Taxation Department. For the facility of reference, I shall refer to the first category as 'direct recruits' and the latter two categories as 'promotees'. The petitioners are direct recruits whereas respondent Nos. 4 to 64 are promotees.

(2) After reorganisation of the erstwhile State of Punjab, 42 posts of Excise and Taxation Officers were allotted to the State of Haryana against which 36 officers were allocated — 5 direct recruits and 31 promotees. Recruitment continued to be made from amongst Inspectors and ministerial establishment to the Service from time to time but no direct recruitment was made till June, 1972. From November, 1966 till 1972, the strength of the cadre was raised at different times and it became 97 in the year 1972. Against the aforesaid posts, 68 promotee officers and 29 direct recruits were working. It is averred that on June 10, 1975, respondent Nos. 18 to

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35 were regularised,—*vide* order of the even date (Annexure P. 5) by respondent No. 1, with retrospective effect from the dates, when they were originally appointed against the vacancies which were at that time reserved for the direct recruits. The order has been challenged by the petitioners on the ground that the private respondents were appointed on purely temporary basis till direct recruits were made available and that they cannot be given benefit of service of the period when they were occupying the posts which fell to the quota of the direct recruits. It is pleaded by the petitioners that in the present case the quota rule is linked with rotational system. They claim that they are senior to respondent Nos. 4 to 64 and want their seniority to be fixed accordingly. Separate returns have been filed on behalf of the state and some of the private respondents controverting the stand taken by the petitioners.

(3) It is contended by the learned counsel for the petitioners that Rule 6 of the Rules, which relates to appointment to the service, provides quota rule. According to him if rotational system is not read with quota rule, the rule becomes meaningless. He vehemently argues that even the language of Rule 6 clearly shows that rotational system should be read into quota rule. On the other hand, the learned counsel for the respondents argue that quota rule can stand independently of rotational system. They further argue that rotational system is not provided in Rule 6 and therefore, it cannot be read in it. They submit that if the Rule making Authority wanted that rotational system should be read in Rule 6, it would have provided so. In the present case, according to them, it would be erroneous to import rotational system in Rule 6.

(4) Before examining the contentions of the learned counsel, it will be proper to refer briefly to the relevant provisions in the Rules. Rule 5 relates to the method of recruitment, Rule 6 to appointment to the service and Rule 13 to determination of seniority. Rule 5 provides that the members of the service shall be recruited: (a) by promotion from the cadre of Excise Inspectors and Taxation Inspectors; (b) by transfer of members of the ministerial establishment of the Excise and Taxation Department and (c) by competitive examination. Rules 6 and 13 are relevant for the purpose of deciding the present writ petition. These read as follows:—

6. *Appointment to the Service.*—When any vacancy occurs or is about to occur in the Service, Government shall determine in what manner it shall be filled:

Provided that 50% of the vacancies shall be filled by direct appointment 25% by promotion of Taxation Inspectors, 12½% by promotion of Excise Inspectors and 12½% by transfer of members of the ministerial establishment of the Excise & Taxation Department."

"13. *Seniority*.—The seniority *inter se* of members of the service in each cadre shall be determined by the length of continuous service on a post in that cadre of the service :

Provided that in case of members appointed directly the order of merit determined by the Commission shall not be disturbed in fixing the seniority and persons appointed as a result of an early selection shall be senior to those appointed as a result of a subsequent selection.

Provided further that in the case of two or more members appointed on the same date, their seniority shall be determined as follows:—

... .."

(5) The main question that arises for determination is whether rotational system is to be read in the quota rule. Rule 6 provides that the Government shall determine in what manner it shall fill the vacancies in the cadre. It is clear from the language of the Rule that discretion has been given to the Government to make recruitment from the sources from which it desires to do so. A restriction has, however, been put on the Government which is incorporated in the proviso to the said rule. It is, that ratio between the direct recruits and the promotees shall remain half and half and that between the promotees from different sources shall also remain within prescribed limits. Rule 6 does not expressly provide rotational system. It only incorporates quota for officers from different sources in cadre of the service.

(6) Mr Kuldip Singh has strenuously argued that the rule does not provide quota in the cadre of the service but it provides quota at the time of filling the vacancies. He submits that if the rule is to be read in this way than rotational system is to be adhered to otherwise quota rule becomes redundant. In support of his argument he has laid emphasis on the term 'vacancies' in the

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proviso and submitted that if the intention of the Government was to maintain the quota in the cadre, then the term 'cadre post' would have been used in place of the term 'vacancies' in the proviso.

(7) I have given a thoughtful consideration to the argument of Mr. Kuldip Singh but do not find any substance in it. If the proviso is to be read as Mr Kuldip Singh wants to read it, then the main Rule becomes a dead letter because in that situation no discretion is left with the Government to fill in the vacancies in the way it wants to do. It is a well-settled principle of interpretation that the Court should give the proviso a restricted meaning so as to bring it within the ambit of the rule itself. If a proviso can be given two interpretations, the Court should prefer that one which brings it within the purview of the rule. A proviso is designed to qualify the rule and has no independent existence apart from it. Therefore, the proviso is to be construed in the light of the rule and not the rule in the light of the proviso. If, in the present case, the proviso to Rule 6 is read in the light of the Rule, it is evident that the term 'vacancies' in the proviso would mean 'cadre posts'. If the term 'cadre posts' is substituted for the word 'vacancies' then the proviso can be read in conformity with the main rule otherwise not. The intention of the framers of the Rules is clear from the language of the rule, that they wanted to provide quota in the cadre.

(8) The above view also gets support from a reading of Rule 13, which relates to seniority. It provides that the *inter se* seniority of the members of the service in each cadre shall be determined by the length of continuous service on the post in that cadre of the service. The rule shows that seniority between members of different cadres is to be reckoned from the date of their joining the posts. In other words the members of the cadre who joined earlier in the vacancies meant for them would be senior to those who joined later. If rotational system is to be read in quota rule or roster is to be fixed at the time of filling the vacancies, then Rule 13 loses significance. It is an established principle of interpretation of statutes that different rules should be read harmoniously. Rule 6 and Rule 13 cannot be read harmoniously, unless these are read in the above mentioned way. I am, therefore, of the view that rotational system cannot be read in quota rule as provided in Rule 6.

(9) In the aforesaid view I am fortified by the observations in *N. K. Chauhan v. State of Gujarat* (1) and *Narender Singh Rao v. State of Haryana* (2). In *N. K. Chauhan's case* (supra), Krishna Iyer, J. speaking for the Court observed thus:—

“Now we move on to the more thorny question of quota and rota. Shri Garg urges that the rotational mechanics is implicit in the quota system and the two cannot be de-linked. To shore up this submission he relies on what he propounds as the correct command of the rule of ‘quota’.

* * * *

The counter-view put forward by Shri Parekh, for the appellants, is that quota and rota are not indissolubly wedded and are separate and separable. In the present case, according to him it is an error to import ‘rota’ where the rule has spelt out only ‘quota’ as a governing principle.

* * * *

Here again we are not disposed to hold, having special regard to the recent decision of this Court cited before us, that ‘quota’ is so interlocked with ‘rota’ that where the former is expressly prescribed, the latter is impliedly inscribed. Let us logicise a little. A quota necessarily postulates more than one source of recruitment. But does it demand the manner in which each source is to be provided for after recruitment, especially in the matter of seniority? Cannot quota stand independent of rota? You may fix a quota for each category but that fixes the entry. The quota methodology may itself take many forms—vacancy-wise ratio, cadre composition-wise proportion, period-wise or number-wise regulation. Myriad ways can be conceived of. Rotational or roster system is a commonly adopted and easily understood method of figuring out the placement of officers on entry. It is not the only mode in the code and cannot be read as an inevitable consequence. If that much is logical, then what has been done here is

(1) AIR 1977 S.C. 251.

(2) 1978 (1) S.L.R. 284 (F.B.)

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legal. Of course, Shri Garg's criticism is that mere 'quota' is not viable without provision for seniority and, if nothing more is found in the rule, the quota itself must be understood to apply to each post as and when it falls to be filled. If exigencies of administration demand quick posting in the vacancy and one source (here direct recruitment) has gone dry for a while, then the proper course is to wait for a direct recruit and give him notional date of entry as of the quota vacancy and manage to keep the wheels of government moving through improvised promotions, expressly stripping such ad hocist of rights flowing from temporary occupancy. We have earlier dealt with the same submission in a slightly different form and rejected it. Nothing more remains to be said about it.

* * * *

The quota rule does not inevitably, invoke the application of rota rule. The impact of this position is that if sufficient number of direct recruits have not been forthcoming in the years since 1960 to fill in the ratio due to them and those deficient vacancies have been filled up by promotees, later direct recruits cannot claim "deemed" dates of appointment for seniority in service with effect from the time, according to the rota or turn, the direct recruits' vacancy arose. Seniority will depend on the length of continuous officiating service and cannot be upset by later arrivals from the open market save to the extent to which any excess promotees may have to be pushed down as indicated earlier."

(10) It may be mentioned here that Mr Kuldip Singh placed reliance on *Jaisinghani v. Union of India* (3). While noticing that case the learned Judge observed as follows:—

"*Jaisinghani* (A.I.R. 1967 S.C. 1427) (Supra) which has had a die-hard survival through *Bishan Sarup Gupta v. Union of India*, (1975) Supp. SCR 491=(AIR 1972 SC 2627) and *Union of India v. Bishan Sarup Gupta* (1975) 1 SCR 104=(AIR 1974 SC 1618) [if one may refer to the two cases flowing out of *Jaisinghani* (supra) in that fashion], has

(3) A.I.R. 1967 S.C. 1427.

been referred to by both sides at the bar. It was relied on by Mr Garg for the strong observation of Ramaswami, J., that the absence of arbitrary power is the first essential of the rule of law upon which our constitutional system is based. He has also drawn attention to the suggestion made in that decision to the government that for future years the roster system should be adopted by framing an appropriate rule for working out the quota between direct recruits and the promotees.....". We may straightaway state that our Constitutional system is very allergic to arbitrary power but there is nothing arbitrary made out in the present case against the government. The second observation in *Jaisinghani* (supra) is of a suggestion that for future years the roster system linking up quota with rota, may well be adopted by government. It is not the interpretation of any existing rule nor laying down of a rule of law, so much so we cannot have any guideline therefrom to apply to the present case. The Government could no doubt, if it is so thought expedient, frame a specific rule incorporating the roster system so as to regulate seniority. But we should not forget that seniority is the manifestation of official experience—the process of metabolism of service, over the years, of civil servants, by the Administration and, therefore, it is appropriate that as far as possible he who has actually served longer benefits better in the future. Moreover, the search for excellence receives a jolt from the rule of equality and the State is hard put to it in striking a happy balance between the two criteria without impairment of administrative efficiency. Broadly speaking, the Court has to be liberal and circumspect where the area is tricky or sensitive, since administration by court writ may well run haywire."

From the above observations, it is clear that *Jaisinghani's case* (supra) is distinguishable and Mr Kuldip Singh cannot derive any benefit from it. In *Narender Singh Rao's case* (supra), P. C. Jain, J., speaking for the Full Bench after taking into consideration the observations in *N. K. Chauhan's case* (supra) held that rotational system if not provided in the rules cannot be read in the quota rule. It may be relevant to state that the learned Judge noticed *Baljit Singh Sandhu v. Gurdip Singh and others* (4), referred to by Mr Kuldip

(4) LPA 560 of 1974 decided on 3rd November, 1976.

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Singh and observed that it was of no assistance in arriving at a conclusion that rotational system should impliedly be read in the quota rule. From the above cases, it is evident that unless rotational system is provided in the rules it cannot be interlinked with quota system.

(11) It is then contended by Mr Kuldip Singh that the promotees appointed against vacancies meant for direct recruits should be pushed down to a place where they could be appointed to the vacancies in their quota. He referred to *A. K. Subraman v. Union of India* (5), wherein similar view was taken by their Lordships of the Supreme Court. In that case promotion to the post of Executive Engineer was from two sources, namely, from Assistant Engineers and Assistant Executive Engineers. The vacancies of Executive Engineers were filled from one source. It was observed by Goswami, J., speaking for the Court that if having regard to the exigencies of the situation, the two vacancies belonging to the quota of Assistant Executive Engineer had to be filled in by Assistant Engineers for want of availability of eligible Assistant Executive Engineers, the appointment of the Assistant Engineers to fill in such two vacancies would be irregular, because that would be outside their quota and in that event they would have to be pushed down to later years when their appointment can be regularised as a result of absorption in their lawful quota for those years. In the return of the State similar position has been taken. It is categorically stated in the return that respondent Nos. 18 to 35 were appointed on *ad hoc* basis against the posts meant for direct recruits because they were not available but subsequently some posts for the quota of the Promotees became available and they were appointed against those posts. It is further stated that for the purposes of seniority of the said respondents the date from which they were adjusted against the vacancies in their quota was taken into consideration and not the period prior to that during which they remained as Excise and Taxation Officers on *ad hoc* basis against the posts meant for direct recruits. In view of the above situation a note has been given in the seniority list that the seniority would be determined after the decision with regard to adjustment of *ad hoc* Excise and Taxation Officers promoted prior to the appointment of direct recruits against the regular posts of promotees of their quota had been taken.

(12) Mr. Kuldip Singh learned counsel for the petitioners, in view of the stand taken by the Government had not elaborated the point. It is not disputed that the final seniority list has not been prepared. The Government while preparing the seniority list will take into consideration the observations made in *A. K. Subraman's case* (supra).

(13) It is lastly argued by Mr Kuldip Singh that the seniority had not been determined by the Government correctly. He challenges the order of the Haryana Government Annexure P-5. As already stated, it is not disputed, that the final seniority list has not been prepared. In the absence of relevant facts, it will not be possible to deal with this matter in this case. The Government shall, however, fix the seniority after taking into consideration the observations made above. It will also be proper for the Government to hear the parties before finally determining their seniority.

(14) For the reasons recorded above the writ petition fails and the same is dismissed with no order as to costs.

S. S. Sandhawalia, C.J.—I agree.

S. C. Mital, J.—I agree.

H.S.B.

FULL BENCH

Before S. S. Sandhawalia, C.J., P. C. Jain and S. C. Mital JJ.

JINDAL STRIPS LIMITED—*Petitioner.*

versus

INCOME TAX OFFICER, CENTRAL CIRCLE III, MAYUR
BHAWAN, NEW DELHI AND ANOTHER—*Respondents.*

Civil Writ Petition No. 1501 of 1977

December 6, 1978.

Income Tax Act (XLIII of 1961)—Sections 2(14), (22 A), 55A and 133 (6)—Section 55A—Whether meant exclusively for Part 'E' of Chapter IV dealing with 'capital gains'—Valuation of an asset accepted