ANAND PARKASH SAKSENA

v.

UNION OF INDIA & ORS.

December 14, 1967

[K. N. WANCHOO, C.J., R. S. BACHAWAT, J. M. SHELAT G. K. MITTER AND C. A. VAIDIALINGAM, JJ.]

Indian Administrative Service—I.A.S. Extension to States Scheme—Officer in the junior scale of pay if has a right to a post in the senior scale—All India Services (Discipline and Appeal) Rules 1955, *r.* 3*—Filling of posts by non-Cadre officers, if penalty—I.A.S. Recruitment Rules,* 1954, *r.* 4(3), *if bad for excessive delegation—Regulation of Seniority Rules,* 1954, *r.* 3(3)(*b*), *Seniority of Special Recruits Regulation,* 1960, *regulation* 3(3), *if violative of Constitution of India, Arts.* 14, 16.

The Madhya Bharat Cadre of the Indian Administrative Service was constituted in 1951 under the I.A.S. Extension to States Scheme. The Cadre included all senior posts. A number of junior and training posts were provided to be held by officers recruited to the cadre before they acquired the experience and seniority necessary to hold senior posts. The primary source for the initial constitution of the Cadre was the existing incumbents of the State Service. They were selected and included in three Lists. Officers in List I were immediately appointed to the Service. Officers in List II were to be taken in the service only when found suitable and those in List III were not to be absorbed in the service. List II and III officers were counted against senior posts but these posts held by them were excluded from the Cadre for the period they were held by those officers. The Cadre was to be maintained on a permanent basis by direct recruitment by competitive examination and promotion of State Civil Service Officers and twenty-five per cent of the senior posts were reserved for the latter. The Cadre continued to be governed by the Scheme until 1954 when the I.A.S. Recruitment, Seniority Cadre and Pay Rules were made. Rule 9(1) of the Cadre Rules provides for appointment of non-cadre officers to cadre posts, *i.e.* senior posts, if suitable cadre officers are not available and the proviso to the rule preserved the arrangement under the Extension to States Scheme for the holding of cadre posts by non-Cadre officers. Under Rule 9(1) of the Recruitment Rules twenty-five per cent of the senior posts are reserved for persons recruited under rule 8, *i.e.* by promotion of substantive members of the State Civil Service and by selection of those who hold gazetted posts in connection with the affairs of a State. The Special Recruitment Regulations, 1956, made under rule 4 of the Recruitment of Rules, provides for recruitment by promotion to the Service by selection of persons serving in connection with the affairs of a State. In the matter of seniority, the Regulation of seniority Rules, gives a promotee from State Civil Service the year of allotment of the junior-most direct recruit officiating continuously in a senior post earlier than the date of commencement of such officiation by the promotee. The seniority of Special Recruits Regulation, 1960, adopts the formula applicable to promotees for fixing the seniority of those recruited by promotion under the Special Recruitment Regulations.

The petitioner, a direct recruit by competitive examination, was appointed to a junior post in the Service on April 2, 1952. He was originally allotted to the Madhya Bharat Cadre, which along with the former Vindhya Pradesh and Madhya Pradesh Cadres merged in the present

Madhya Pradesh Cadre constituted on November 1, 1956. He was not found suitable to hold a senior post till November 17, 1956, when he was appointed to officiate in a senior post. At the time his appointment to the service there were no vacancies in the senior posts. Vacancies arose before he was appointed to officiate in the senior post and after. Some of the respondents who were officers of the Madhya Bharat and the former Madhya Pradesh State Civil Services were promoted before the integration of the cadres on November 1, 1956 to fill the vacancies against the twenty-five per cent quota and several non-Cadre officers were appointed under r. 9(1) of the Cadre Rules. Vacancies were also filled in by promotion under the Special Recruitment Regulations. In the gradation List published on January 1, 1966 all the respondents were shown as senior to the petitioner.

In a writ petition, under Art. 32 the petitioner contended that (i) he had a right to hold a post in the senior scale of pay from April 2, 1952 to November 17, 1956, under the Rules and in the light of this Court's decision in *P. C. Wadhwa* v. *Union of India* and the filling of the vacancies by non-Cadre officers amounted to withholding of promotion and penalty within the meaning of r. 3 of the All India Service (Discipline and Appeal) Rules, 1955; (ii) under the rules seventy-five per cent of the total number of senior posts was exclusively reserved for direct recruits and that in computing the twenty-five per cent quota officers in Lists II and III and special recruits had to be included; (iii) r. 4(3) of the Recruitment Rules which authorised the Central Government to make regulation for special recruitment was bad on the ground of excessive delegation; (iv) r. 3(3)(b) of the Regulation of Seniority Rules, 1954, made unjust discrimination between a promotee and a direct recruit in the matter of seniority by arbitrarily allotting a lower year of allotment to a promotee and therefore violated Arts. 14 and 16 of the Constitution; and (v) regulation 3(3) of the Seniority of Special Recruits, Regulation 1960, offended Arts. 14 and 16 inasmuch as the relevant rules and regulations set up an arbitrary double standard for a special recruit enlisted by promotion.

HELD : Dismissing the petition.

(i) The filling of a vacancy by a non-Cadre officer under r. 9 of the Cadre Rules does not infringe any right of the Cadre officer nor does it amount to withholding of promotion or a penalty within the meaning of r. 3 of All India Service (Discipline and Appeal) Rules, 1955. A Cadre Officer in the junior scale of pay cannot claim a right to fill a vacancy in the senior scale if he is not suitable and no Cadre officer junior to him is promoted to fill the vacancy. The decision in *Wadhwa's* case is distinguishable. That case only decided that the reversion of a Cadre officer while Cadre officers junior to him continued in the senior scale amounted not only to reduction in rank but also to withholding of promotion. Rule 6 A(2) of the Recruitment Rules introduced in 1965 after the decision in *Wadhwa's* case now makes explicit what was always implicit in r. 9(1) of the Cadre Rules.

In the instant case no Cadre Officer junior to the petitioner was promoted to the Cadre post before his promotion on November 17, 1956 and after promotion he was neither reverted nor reduced in rank nor was his promotion withheld. [619 F-H; 620 E-F]

P. C. Wadhwa v. *Union of India*, [1964] 4 S.C.R. 598, distinguished.

(ii) Seventy-five per cent of the senior posts may be filled by recruits other than those recruited by promotion or selection under r. 8 of the Recruitment Rules. Special recruits are appointed against the seventy-five per cent quota and rule 9(3)(b)(iv) added in 1965 makes explicit what was always implicit in r. 9(1) of the Recruitment Rules. Under the Extension to State Scheme officers in Lists II and III were not counted against the twenty-five per cent quota. Rule 9(3)(b)(iii) of the Recruitment Rules make it clear that in computing the twenty-five per cent quota the appoinments of officers in List II will be excluded. [620 G, H]

(iii) Assuming that the doctrine of excessive delegation of Legislative power applies to rules, r. 4(3) does not suffer from the vice of excessive delegation. In making the regulations under the rule the Central Government is to be guided by the exigencies of the service and the advice of the State Governments and the Union Public Service Commission. These authorities are the best judges of the appropriate regulations to be made in the matter [622 A-C]

(iv) Rule 3(3)(b) of the Regulation of Seniority Rules is not violative of Arts. 14 or 16 of the Constitution. The object of the rule is to fix the seniority of the promotees who obtained promotion after long service in the State Civil Service, in relation to direct recruits. The rule attempts to strike a just balance between the conflicting claims of the promotees and direct recruits. [622 F-G]

(v) Regulation 3(3) of the Special Recruits Seniority Regulations is not violative of Arts. 14 and 16. Special recruits are neither direct recruits nor promotees. They form a distinct class. The regulation properly adopts the formula applicable to promotees for fixing the seniority of special recruits enlisted by promotion so that in the matter of seniority all officers recruited from the State Civil Services are placed on the same footing. [623 A-C]

ORIGINAL JURISDICTION : Writ Petition No. 58 of 1967.

Petition under Article 32 of the Constituton of India for the enforcement of the Fundamental Rights.

N. C. Chatterjee, A. N. Sinha, S. Balakrishnan and *K. B. Rohtage*, for the petitioner.

Niren De, Solicitor-General, V. A. Seyid Muhammad and *R. H. Dhebar* for *R. N. Sachthey*, for respondent No. 1.

B. Sen and *I. N. Shroff*, for respondents Nos. 2 to 18.

The Judgment of the Court was delivered by

Bachawat, J. The petitioner is a member of the Indian Administrative Service having been appointed to a junior post therein on April 2, 1952 on the basis of a competitive examination held by the Union Public Service Commission in the year 1951. He completed his probation on October 2, 1953. He was originally allotted to the Madhya Bharat Cadre of the Indian Administrative Service which along with the former Vindhya Pradesh and Madhya Pradesh cadres, merged in the present Madhya Pradesh cadre of Indian Administrative Service constituted on November 1, 1956.

He was appointed to officiate in a senior post on November 17, 1956. In the gradation list published on January 1, 1966, his number is 70. In this writ petition under Art. 32 of the Constitution he claims that (a) he had the right to hold a post in the senior scale of pay from April 2, 1952 up to November 17, 1956 under the relevant rules read in the light of the decision in *P. C. Wadhwa* v. *Union of India*(1) and that (b) he is entitled to a higher place in the gradation list. He asks for the issue of appropriate writs declaring his rights and giving him consequential reliefs.

The Madhya Bharat cadre of the Indian Administrative Service was constituted on June 1, 1951 under the Indian Administrative Service Extension to States Scheme. The cadre included all senior posts. A number of junior and training posts were provided, to be held by officers recruited to the cadre before they acquired the experience and seniority necessary for holding senior posts. The initial constitution of the cadre was made from (1) the existing incumbents and (2) emergency recruits. The existing incumbents were considered to be the first and primary source of recruitment. They were selected by a Special Recruitment Board and divided in three lists. Officers in List I were considered fit for immediate appointment to the Service. Officers in List II were to continue to hold their present posts, their work was to be watched for 5 years and were to be absorbed in the Service as and when they were found fit. Officers in List III were to hold their present posts or posts of equivalent rank until they retired but they were not to be absorbed in the Service. The posts held by officers in Lists II and III were excluded from the cadre for the period during which they were held by those officers. The cadre was to be maintained on a permanent basis by (a) direct recruitment on the result of the competitive examination and (b) promotion from amongst officers of the State Civil Service. As in the case of the Provincial cadres, 25 per cent of the senior posts were earmarked for promotion of officers of the State Civil Service.

On June 1, 1951, the number of senior posts in the Madhya Bharat cadre was 25. On selection by the Special Recruitment Board, 6 officers were placed in List I and were appointed to the Service from January 1, 1951. Four officers were placed in List II and 11 officers were placed in List III and they continued to hold their posts under the Extension to States Scheme. The remaining 4 senior posts were held by 4 emergency recruits. On April 2, 1952, there was thus no available vacancy for the petitioner in the senior posts. As a matter of fact, 2 direct recruits senior to the petitioner were in the junior scale of pay.

(1) [1964] 4 S.C.R. 598.

A In September 1954, the Central Government framed the I.A.S.
Cadre Rules, 1954, I.A.S. Recruitment Rules, 1954, I.A.S. Pay
Rules, 1954 and I.A.S. Regulation of Seniority Rules, 1954 in
exercise of its powers under s. 3(1) of the All India Services Act,
1951. These rules were amended from time to time. Under
r. 2(a) of the Cadre Rules, a cadre officer means a member of the
B Indian Administrative Service. Under r. 2(b), a cadre post
means a senior cadre post under the State Government. Under
r. 3, an I.A.S. cadre is constituted for each State or group of
States. Under r. 4, the strength and composition of each cadre
is determined by regulations made by the Central Government.
Rule 8 provides that "Save as otherwise provided in these rules,
C every cadre post shall be filled by a cadre officer." Rule 9(1)
provides that "A cadre post in a State may be filled by a person
who is not a cadre officer if the State Government is satisfied (a)
that the vacancy is not likely to last for more than three months;
or (b) that there is no suitable cadre officer available for filling
the vacancy." If a person other than a cadre officer is appointed
to a cadre post for a period exceeding three months, the fact shall
D be reported to the Central Government who may, on receipt of
the report, direct the State Government to terminate his appoint-
ment and if he is likely to fill a cadre post for a period exceeding
six months, the Central Government must seek the advice of the
Union Public Service Commission and in the light of its advice,
give suitable directions to the State Government. It was provided
E that r. 9 would not affect the existing arrangements made by the
Central Government in connection with the Governments of Part
B States and the State of Vindhya Pradesh at the time of the initial
constitution of the cadre for certain cadre posts to be filled by
non-cadre officers.

F Rule 3 of the I.A.S. Recruitment Rules, 1954 gives the cons-
titution of the service. Rule 4 specifies the methods of recruit-
ment. Sub-rule (1) of r. 4, as amended, provides that "Recruit-
ment to the Service, after the commencement of these rules, shall
be by the following methods, namely: (a) by a competitive
examination; (aa) by selection of persons from among released
Emergency Commissioned Officers and Short Service Commis-
G sioned Officers, commissioned in the Armed Forces of the Union
after the 1st November, 1962; (b) by promotion of substantive
members of a State Civil Service; (c) by selection, in special
cases from among persons, who hold in a substantive capacity
gazetted posts in connection with the affairs of a State and who
are not members of a State Civil Service." Sub-rule (3) of r. 4
H provides that "Notwithstanding anything contained in sub-rule
(1), if in the opinion of the Central Government the exigencies of
the service so require, the Central Government may, after consul-
tation with the State Governments and the Commission, adopt

such methods of recruitment to the Service other than those specified in the said sub-rules as it may by regulations made in this A behalf prescribe." Rule 6 provides that no appointment to the Service shall be made except after recruitment by one of the methods specified by r. 4 Rules 6A(2) introduced with effect from September 24, 1966 after the decision in *P. C. Wadhwa's* case[1] provides that "A direct recruit in the junior time-scale B of pay shall be appointed to a post in the senior time-scale of pay if, having regard to his length of service, experience, and performance in the junior time-scale of pay, the State Government is satisfied that he is suitable for appointment to a post in the senior time-scale of pay." Rules 7, 7A, 8(1) and 8(2) deal with the four methods of recruitment C specified in r. 4 and empowers the Central Government to make appropriate regulations. Rule 8(1) deals with recrutiment by promotion of substantive members of the State Civil Service. Rule 8(2) deals with recruitment by selection in special cases from amongst persons who hold, in a substantive capacity, gazetted posts in connection with the affairs of the State and who are not members of the State Civil Service. Rule 9(1), as amended, pro- D vides *inter alia* that "the number of persons recruited under rule 8 in any State or group of States shall not, at any time, exceed 25 per cent of the number of" senior posts in relation to that State or group of States. Rule 9(3)(b) provides that "for the purpose of determining the percentage specified in sub-rule (1)(b) the following category of officers shall be excluded namely :— (i) E officers of a State Civil Service appointed to the Service under the Emergency Recruitment Scheme otherwise than against the 25 per cent quota; (iii) officers of a State Civil Service appointed to the Service from List II, prepared by the Special Recruitment Board under the Indian Administrative Service (Extension to States) Schemes; (iv) officers of a State Civil Service appointed to F the Service under the Indian Administrative Service (Special Recruitment) Regulations, 1956." Rule 9(3)(b)(iv) was added on October 15, 1965.

The I.A.S. (Special Recruitment) Regulations, 1956 were made under r. 4(3) of the Recruitment Rules. Regulation 3 provides that special recruitment will be made (a) by direct recruit- G ment by selection and (b) by promotion to the Service by selection of persons serving in connection with the affairs of the State. Regulations 8 and 9 adopt for the purposes of special recruitment the regulations for appointment by competitive examination, promotion and selection made under rules 7, 8(1) and 8(2) of the Recruitment Rules with appropriate modifications.

H

Rule 3 of I.A.S. (Pay) Rules, 1954 prescribes the scales of pay admissible to the members of the Service. The junior scale is

(1) [1964] 4 S.C.R. 598.

A Rs. 400-400-500-40-700-EB-1000 (18 years). The senior scale is Rs. 900 (6th year or under)-50-1000-60-1600-50-1800 (22 years). The selection grade is Rs. 1800-100-2000. Rule 4(1) provides that the initial pay of a direct recruit shall be fixed at the minimum of the junior time-scale. Rule 4(2) provides that the pay of a member of the Service in the junior time-scale shall
B on appointment to a post on the senior time-scale, be fixed at the corresponding stage of the senior time-scale as shown in Sch. 1. The two scales of pay are given in Sch. 1 in parallel columns against the years of service. The increments, withholding of increments and grant of advance increments are regulated by rules 5, 6 and 7.

C Rule 3(1) of I.A.S. (Regulation of Seniority) Rules, 1954 provides that every officer shall be assigned a year of allotment. Rule 3(3)(a) provides *inter alia* that the year of allotment of an officer appointed to the Service after the commencement of these rules, shall be—where the officer is appointed to the Service on the results of a competitive examination, the year following the year
D in which such examination was held." Rule 3(3)(b) provides that the year of allotment of an officer shall be "where the officer is appointed to the Service by promotion in accordance with sub-rule (1) of rule 8 of the Recruitment Rules, the year of allotment of the junior-most among the officers recruited to the Service in accordance with rule 7 of those rules who officiated continuously in a senior post from a date earlier than the date of commencement
E of such officiation by the former." The proviso to r. 3(3)(b) lays down that "the year of allotment of an officer appointed to the Service in accordance with sub-rule (1) of rule 8 of the Recruitment Rules who started officiating continuously in a senior post from a date earlier than the date on which any of the officer recruited to the Service in accordance with rule 7 of those Rules so
F started officiating shall be determined *ad hoc* by the Central Government in consultation with the State Government concerned." Rule 5A authorises the making of regulations for fixing the seniority of special recruits. Rule 6 provides for preparation of a gradation list of all officers borne on the cadre arranged in order of seniority.

G Regulation 3 of the I.A.S. (Seniority of Special Recruits) Regulation, 1960 made under r. 5A of the Regulation of Seniority Rules fixes the seniority of special recruits. Rule 3(3) provides that "In the case of officers recruited by promotion from the State Civil Service under clause (b) of regulation 3 read with regulation 9 of the Indian Administrative Service (Special
H Recruitment) Regulations. 1956, the year of allotment shall be fixed in accordance with the provisions of clause (b) of sub-rule (3) of rule 3 of the Indian Administrative Service (Regulation of Seniority) Rules, 1954."

The relevant provisions of the parallel Cadre, Recruitment, Pay and Regulation of Seniority Rules of the Indian Police Service were considered by this Court in *P. C. Wadhwa* v. *Union of India*(1). There, the appellant was a member of the Indian Police Service. He joined the Service in 1952 and was confirmed in 1953. In 1958 he was promoted to officiate in the senior time-scale as Additional Superintendent of Police at Ferozepore in place of the permanent incumbent who was on leave. In July 1964, he was served with a charge-sheet and he submitted a reply. Before the enquiry started he was reverted to his substantive rank of Assistant Superintendent of Police. The reversion was not due to the return of the permanent incumbent from leave or deputation or for any administrative reason. Other officers junior to him continued to officiate in the senior scale while he was reverted. His personal file revealed a note by the Senior Superintendent of Police to the effect that a regular enquiry into his conduct would take a long time and it was advisable to revert him. He was not given any opportuntiy of showing cause against the action taken against him. He filed a writ petition in the High Court asking for the issue of a writ quashing the order of reversion. The High Court dismissed the petition. On appeal, this Court set aside the order of the High Court and allowed the petition. This Court held that the reversion was made in contravention of Art. 311 of the Constitution. The majority held that the reversion was by way of punishment and amounted to reduction in rank and withholding of promotion on grounds which may be summarised thus : There is only one cadre in the Indian Police Service. A person in the junior time-scale of the Service is as much a cadre officer as one holding a post in the senior time-scale or a post above the time-scale. The transition of a member of the Service from one scale to another does not depend upon selection or the consideration of the comparative merits of the officers in the junior scale *inter se* but only upon a consideration of his seniority. Mudholkar, J. said that "the whole scheme of the rules indicates that a person borne on the junior scale of pay has a right to hold a post on the senior scale of pay depending upon the availability of a post and his seniority in the junior scale of pay." The learned Judge added : "Despite the fact that he holds a certain rank in the gradation list persons who also belong to the Indian Police Service and who were recruited to it subsequent to him have continued to hold or have been appointed to hold posts carrying salary in the senior scale. This would itself indicate that the action taken against him was by way of penalty or punishment. For, he has not only been reduced in rank but his promotion to the senior scale has also been withheld."

(1) [1964] 4 S.C.R. 598.

In this background, the petitioner says that he was deprived of his right to hold a senior post during the period from April 2, 1952 up to November 17, 1956. We have found already that on April 2, 1952 there was no available vacancy in the senior post to which he should be appointed. The Madhya Bharat Cadre continued to be governed by the Extension to States Scheme until September 1954 when the Cadre, Recruitment, Pay and Regulation of Seniority Rules were made. The proviso to r. 9 of the Cadre Rules preserved the existing arrangements under the I.A.S. Extension to States Scheme for the holding of certain cadre posts by non-cadre officers. On June 24, 1955, the strength of the Madhya Bharat cadre was revised and increased to 46. Respondents Nos. 14, 15 and 16 belonged to the Madhya Bharat State Service. Respondent No. 14 was appointed on June 24, 1955 and respondents Nos. 15 and 16 were appointed on April 25, 1956 to senior posts against vacancies in the 25 per cent quota. Several non-cadre officers were appointed to fill vacancies in the senior posts under r. 9 of the Cadre Rules. The petitioner was not found suitable to fill a vacancy in a senior post until November 17, 1956.

The petitioner contends that (1) he had the absolute right to be appointed to a vacancy in the senior posts on and after April 2, 1952, (2) the filling of the vacancies by non-cadre officers on the ground that he was not suitable was an infringement of his right and amounted to withholding of promotion and a penalty within the meaning of r. 3 of the All India Services (Discipline and Appeal) Rules, 1955, (3) 75 per cent of the total number of senior posts was reserved exclusively for direct recruits and (4) in computing the 25 per cent quota under r. 9(1) of the Recruitment Rules officers in Lists II and III and special recruits should be included. These contentions must be rejected.

Vis a vis another cadre officer junior to him, a cadre officer in the junior scale of pay has the right of promotion to a post in the senior scale on the ground of seniority. This right is infringed if the junior cadre officer is promoted to fill a vacancy in the senior scale, while he continues to hold a post in the junior scale of pay. But he cannot claim the right to fill the vacancy if he is not suitable and no cadre officer junior to him is promoted to fill the vacancy. An officer in the junior scale of pay has no right to a senior post as soon as he joins the Service. He may be appointed to a senior post only when he is found suitable having regard to his length of service, experience and performance in the junior scale of pay. Rule 6A(2) of the Recruitment Rules now makes explicit what was always implicit in r. 9 of the Cadre Rules.

Under r. 9(1) of the Cadre Rules, a senior cadre post may be filled by a non-cadre officer if there is no suitable officer available for filling the vacancy. Similar provision is to be found in paragraph 3 of the memorandum regarding constitution of the Indian Administrative Service and paragraph 5 of the Indian Civil Administrative Cadre Rules, 1950. The appointment of a non-cadre officer to a cadre post under r. 9(1) of the Cadre Rules is a temporary arrangement which may be terminated at any time when the Government finds a cadre officer suitable for filling the vacancy. Until the cadre officer is found suitable, a non-cadre officer may be appointed to fill the vacancy in a post in the senior scale of pay. The cadre officer has no right to fill the vacancy if he is not suitable. The filling of the vacancy by a non-cadre officer under r. 9 does not infringe any right of the cadre officer nor does it amount to a withholding of promotion or a penalty within the meaning of r. 3 of the All India Services (Discipline and Appeal) Rules, 1955.

The decision in *P. C. Wadhwa's* case(1) is distinguishable. There, a cadre officer in the junior scale of pay was promoted to officiate in a post in the senior scale of pay and was thereafter reverted to his substantive post while other cadre officers junior to him continued to officiate in posts in the senior scale of pay. As against cadre officers junior to him, he had the right to hold the post in the senior scale of pay. The reversion while cadre officers junior to him continued in the senior scale amounted to not only reduction in rank but also withholding of promotion. This is all that *P. C. Wadhwa's* case(1) decided. The fact in the present case are entirely different. The petitioner was not suitable to fill the vacancies in the senior posts and non-cadre officers were appointed to fill the vacancies under r. 9 of the Cadre Rules. No cadre officer junior to the petitioner was promoted to the cadre post before his promotion on November 17, 1956. Nor was he reverted after his promotion, while officers junior to him continued to hold senior posts. The petitioner was not reduced in rank nor was his promotion withheld. He had no right to fill a vacancy in the senior posts or to draw salary in the senior scale between April 2, 1952 and November 17, 1956.

There is no merit in the contention that 75 per cent of the total number of senior posts is reserved exclusively for direct recruits. Under r. 9(1) of the Recruitment Rules, the number of persons recruited to senior posts under r. 8 of the Recruitment Rules by promotion or by selection cannot exceed 25 per cent of the total number of senior posts. The remaining 75 per cent of the senior posts may be filled by other recruits. Special recruits under r. 4 of the Recruitment Rules are appointed against the 75 per cent quota. Their appointments are not counted against the 25 per cent quota reserved for persons recruited under r. 8.

(1) [1964] 4 S.C.R. 598.

Rule 9(3)(b)(iv) now expressly provides what was already implicit in r. 9(1).

Paragraph 4(iv) of the I.A.S. Extension to States Scheme provided that the posts held by officers included in Lists II and III would be excluded from the cadre for the period they were held by those officers and would revert to the cadre as and when they ceased to be required for that purpose. The posts held by the officers in List III were excluded from the cadre until they retired and were not counted against the 25 per cent quota. The posts held by the officers in List II pending absorption in the service were excluded from the cadre. They were absorbed in the service as and when they were found fit. Rule 9(3)(b)(iii) provides that in computing the 25 per cent quota the appointments of officers from List II will be excluded.

There were vacancies in the 25 per cent quota which were filled up by promotion of respondents Nos. 14, 15 and 16 from the Madhya Bharat State Service. Respondents Nos. 4, 6, 11, 12, 13, 17 and 18 were from the former Madhya Pradesh State Service. Some of them were promoted to the Indian Administrative Service against the 25 per cent quota in the State cadres before the integration of the cadres on November 1, 1956. No appointments were made between November 1, 1956 and November 17, 1956 when the petitioner was appointed to officiate in a senior post Other respondents were appointed after November 17, 1956. None of the appointments is open to any challenge. It is surprising that the petitioner seeks to challenge the appointments after a long lapse of time. He has not given any adequate explanation as to the delay in filing the writ petition.

The petitioner next challenges the seniority assigned to the respondents. In the gradation list, all the respondents are shown as senior to him Respondents Nos. 10, 11, 12 and 13 are special recruits and their seniority has been fixed under Regulation 3(3) of the I.A.S. (Seniority of Special Recruits) Regulation, 1960 read with r. 3(3)(b) of the Regulation of Seniority Rules, 1954. The other respondents are promotees and their seniority has been fixed under r. 3(3)(b) of the Regulation of Seniority Rlues and the proviso thereto.

The petitioner challenges the vires of r. 4(3) of the Recruitment Rules under which the Central Government framed the Special Recruitment Regulations. The Recruitment Rules were made under s. 3 of the All India Services Act, 1951. In *D. S. Garewal v. The State of Punjab and Another*(1), this Court held that s. 3 was not bad on the ground of excessive delegation of legislative power. The petitioner submits that r. 4(3) of the

(1) [1959] Supp 1 S.C.R.

Recruitment Rules is bad on the ground of excessive delegation of legislative power. Assuming that the doctrine of excessive delegation of legislative power applies to rules, we think that r. 4(3) does not suffer from the vice of excessive delegation. Rule 4(3) authorities the Central Government to make regulations for special recruitment. In making the regulations, the Central Government is to be guided by the exigencies of the service and the advice of the State Governments and the Union Public Service Commission. These authorities are the best judges of the appropriate regulations to be made in the matter. In the light of their expert knowledge they can adapt for this purpose the existing regulations for other methods of recruitment with suitable modifications or make other appropriate regulations having regard to the exigencies of the service. As a matter of fact, the Special Recruitment Regulations 1960 framed under r. 4(3) have adapted for the purposes of special recriutment the regulations for recruitment by competitive examination, promotion and selection with appropriate modifications.

The petitioner next contends that r. 3(3)(b) of the Regulation of Seniority Rules makes unjust discrimination between a promotee and a direct recruit in the matter of seniority by arbitrarily assigning a lower year of allotment to a promotee and is violative of Arts. 14 and 16 of the Constitution. This contention is devoid of merit. The seniority of direct recruits *inter se* and promotees *inter se* is fixed by r. 4. The object of r. 3(3)(b) is to fix the seniority of the promotees in relation to direct recruits. The promotees obtain promotion after long service in the State Civil Services. From the point of view of the promotee, his seniority should be counted from the date of his joining the State Civil Service. From the point of view of the direct recruit the seniority of the promotee should be counted from the date of his appointment to the Indian Administrative Service. Rule 3(3)(b) attempts to strike a just balance between the conflicting claims. It gives the promotee the year of allotment of the junior-most direct recruit officiating continuously in a senior post earlier than the date of commencement of such officiation by the promotee. If no direct recruit was officiating continuously in a senior post on an earlier date, the seniority of the promotee is determined *ad hoc*. In our opinion, the rule is not arbitrary or discriminatory and is not violative of Arts. 14 and 16 of the Constitution.

The petitioner next challenges the validity of Regulation 3(3) of the Special Recruitment Seniority Regulations, 1960 on the ground that it offends Arts. 14 and 16 of the Constitution. According to the petitioner, the relevant rules and regulations have set up an arbitrary double standard for a special recruit enlisted by promotion because Regulation 3(3) of the Special Recruit-

A ment Seniority Regulations read with r. 3(3)(b) of the Regulation of Seniority Rules treats him as a promotee for the purpose of seniority while r. 9(3)(b)(iv) of the Recruitment Rules treats him as a direct recruit for the purpose of recruitment. There is no substance in this contention. Special recruits form a distinct class. They are neither direct recruits nor promotees. Rule B 9 of the Recruitment Rules does not treat them as direct recruits. Regulation 3(3) of the Special Recruits Seniority Regulations properly adopts the formula applicable to promotees for fixing the seniority of special recruits enlisted by promotion, so that in the matter of seniority all officers recruited from the State Civil Service are placed on the same footing. The regulation is not C arbitrary nor violative of Arts. 14 and 16 of the Constitution.

The seniority of the respondents was fixed in accordance wtih Regulation 3(3) of the Special Recruitment Seniority Regulations, r. 3(3)(b) of the Regulation of Seniority Rules and the proviso thereto, and is not open to any challenge.

D The writ petition is dismissed. There will be no order as to costs.

Y.P. *Petition dismissed.*