A

PARAMJIT SINGH SANDHU AND ORS. ETC.

v.

RAM RAKHA AND ORS. ETC.

March 22, 1979

B

[P. N. SHINGHAL AND D. A. DESAI, JJ.]

Punjab Police Rules, 1959, *Rules* 3, 6, 8 *and* 10 *Construction of—When appointments to a post are from two different sources, one by promotion and another by direct recruitment according to quota rule, whether the quota rule would operate at both the stages of recruitment and confirmation or at the stage of initial recruitment only.*

C

Deemed confirmation after the expiry of the period of probation and cases when an express order of confirmation is necessary, pointed out.

Under the Punjab Police Service Rules, 1959, recruitment to Punjab Police Service (Deputy Superintendent of Police) is made from two sources, namely 80% by promotion and 20% through direct recruitment. Under Rule 10, seniority in the cadre of Deputy Superintendent of Police is reckoned according to the date of confirmation. Consideration for nomination to Indian Police Service is done according to seniority-cum-merit.

D

Respondents 1 and 2 in C.A. 2903/78 who were promotees to the cadre of Deputy Superintendents of Police in February, 1961 and January, 1961 respectively were not confirmed even though appellants and respondents 5 to 8 who were recruited to the same cadre by direct appointment commencing from May, 1961 to May, 1965 were confirmed. They, therefore, filed a Writ Petition praying for a direction to confirm them in the Punjab Police Service, adhering to the quota rule at the time of confirmation as well. They alleged that as seniority in the cadre of Deputy Superintendent of Police is reckoned under rule 10, according to date of confirmation failure to confirm in the post available to them in breach of the relevant rules, had resulted in the denial of equality of opportunity in public service enshrined in Art. 15 of the Constitution at the time of consideration of their cases for nomination to the Indian Police Service which is done according to seniority-cum-merit.

E

F

Allowing the Writ Petition and directing the State to confirm them, the learned single judge held that the quota rule would operate not only at the time of initial recruitment but also at the time of confirmation, as he was of the opinion that the quota-rule is linked with the seniority rule.

G

Two Letters Patent Appeals, one filed by appellant No. 1 and another by the State, were heard along with another Writ Petition filed by one Ram Rakha urging identical contentions. The Writ Petition was allowed and the appeals were dismissed by a common judgment modifying the direction given by the learned single judge to the extent that the State should consider the case of the Writ petitioners for confirmation afresh according to quota rule and then refix their *inter-se* seniority.

H

Dismissing the appeals, by special leave the Court

HELD : 1. When a first appointment or promotion is made on probation for a specific period and the employee is allowed to continue in the post after the expiry of the period without any specific order of confirmation he should be deemed to continue in his post as a probationer only in the absence of any communication to the contrary in the original order of appointment or promotion or the Service Rules. In such a case, an express order of confirmation is necessary to give the employee a substantive right to the post. From the mere fact that he is allowed to continue in the post after the expiry of the specific period of probation he should not be deemed to have been confirmed. This is so, when the relevant rules permitted extension of the Probationary period for an indefinite time. [592 A—C]

Sukhbans Singh v. *State of Punjab*, [1963] 1 SCR 416, *G. S. Ramaswamy* v. *The Inspector General of Police, Mysore State Bangalore*, [1964] 6 S.C.R. 278; *State of U.P.* v. *Akbar Ali*, [1966] 3 SCR 821; referred to.

2. Where the rules provide for a fixed period of probation with a power in the Government to extend it up to a specific period and not any unlimited period, either by express provision or by necessary implication, at the end of such specified period beyond which the Government had no power to extend the probation, the probationer, if he continues beyond that period, should be deemed to have been confirmed in the post. [592 C—E]

State of Punjab v. *Dharam Singh*, [1968] 3 SCR 1 explained.

3. Rule 8 of the Punjab Service Rules, 1959 prescribes a period of probation of two years and the proviso confers power to extend the period of probation by not beyond one year meaning thereby that in any case the Government would not have the power to extend the period of probation beyond a period of three years. [593 A—B]

In this situation, (a) the ratio of *Dharam Singh's case* would *mutatis mutandis* apply and the direct recruits who completed the period of probation of two years and in the absence of an extension of probationary period would be deemed to be confirmed by necessary implication. [593 B—C]

(b) If seniority is to be reckoned from the date of confirmation and if promotees are not confirmed for years together in some cases, while direct recruits who came much later got confirmed and *ipso facto* became senior to the promotees, if quota rule is only applied at the time of initial recruitment, this undesirable result is wholly unavoidable. [593 C—D]

4. Where recruitment to a cadre is from two sources and the Service Rules prescribe quota for recruitment for both sources, a question would always arise, whether the quota rule would apply at the initial stage of recruitment or also at the stage of confirmation. Ordinarily, if quota is prescribed for recruitment to a cadre, the quota rule will have to be observed at the recruitment stage. The quota would then be co-related to vacancies to be filled in by recruitment but after recruitment is made from two different sources they will have to be integrated into a common cadre and while so doing the question of their *inter se* seniority would surface. [593 F-G]

A Seniority is ordinarily determined from the date of entry into cadre on the principle of continuous officiation. Confirmation in a post would ordinarily depend upon such circumstances as satisfactory completion of probationary period, efficiency in the discharge of duty, capacity to discharge functions of the post, availability of permanent vacancy etc. Now, if seniority is to be determined according to the date of confirmation and the quota rule is not made relatable to confirmation in various posts falling vacant in the cadre B it would directly impinge upon the seniority of members of the service. [593 G—H, 594 A]

S. B. Patwardhan and Ors. etc. v. *State of Maharashtra,* [1977] 3 SCR 775 @ 797; referred to.

5. A harmonious reading of rules 3, 4, 6, 8, and 10 makes it clear that the quota rule is operative both at the time of initial recruitment and at the C time of confirmation. The recruitment to Punjab Police Service is from two sources. Recruits from both the sources have to be on probation. Adopting the construction that the proviso to Rule 8(b) permitting a maximum period of probation of three years at the end of which the direct recruit would automatically be confirmed unless his services are dispensed with simultaneously enjoying seniority from the date of such automatic confirmation without applying quota rule at the time of confirmation, would put the pro- D motee to an unintended disadvantage who may be continued in an officiating capacity without confirming him and consequently denying or relegating him down in seniority for years as has happened in the case of respondents 1 and 2. Such an approach would be wholly unreasonable more so when there was not the slightest suggestion that their services were not satisfactory and that the confirmation was denied on any such ground, thereby directly affecting their places in the seniority list. [594 C—F, H]

E If the other view that the quota rule would apply both at the time of recruitment and at the time of confirmation, is adopted rule 10 which provides for seniority according to the date of confirmation would certainly be saved from the vice of unreasonableness. [594 G]

The quota rule is linked up with the seniority rule. Quota rule is linked up with seniority rule because, not the date of entry in service determines F the seniority but the date of confirmation determines seniority. Quota rule being inextricably intertwined with the seniority rule any delinking would render the seniority rule wholly unreasonable. After recduitment, members of the service, though drawn from two different sources—direct recruits and promotees—constitute a single integrated cadre. They discharge identical functions, bear similar responsibilities and, acquire an equal amount of experience in the respective assignments. If quota rule were to be applied G at the stage of initial recruitment and wholly ignored at the time of confirmation the rule would suffer from the vice of unreasonableness and would offend Art. 16, because, in that event, while direct recruits would get confirmation automatically, the promotees would hang out for years as has happened in the case of respondents 1 and 2 and if they are not confirmed they would never get seniority and their chances of being considered for promotion to the higher post would be wholly jeopardised. [595 A—B, C, D—E]

H *S. G. Jaisinghani* v. *Union of India and Ors.* [1967] 2 SCR 703 @ 717 and 718; *S. B. Patwardhan* v. *State of Maharashtra,* [1977] 3 SCR 775 @ 797; followed.

6. Where recruitment is from two sources and the seniority in the cadre is determined according to the date of confirmation to accord utmost fair treatment a rotational system has to be followed while giving confirmation. The quota rule would apply to vacancies and recruitment has to be made keeping in view the vacancies available to the two sources according to the quota. If the quota rule is strictly adhered to there will be no difficulty in giving confirmation keeping in view the quota rule even at the time of confirmation. A roster is introduced while giving confirmation ascertaining every time which post has fallen vacant and the recruit from that source has to be confirmed in the post available to the source. This system would breakdown the moment recruitment from either source in excess of the quota is made. In fact a strict adherance to the quota rule at the time of recruitment would introduce no difficulty in applying the rule at the time of confirmation because vacancies would be available for confirmation to persons belonging to different sources of recruitment. The difficulty would arise when recruitment in excess of the quota is made and it would further be accentuated when recruits from one source viz. direct recruits get automatic confirmation on completion of the probationary period, while the promotees hang out for years together before being confirmed. [596 F—H, 597 A—B]

Mervyn Coutindo and Ors. v. *Collector of Customs, Bombay and Ors.*, [1966] 2 SCR 600; *A..K. Subraman and Ors.* v. *Union of Indian and Ors.*, [1975] 2 SCR 979; explained and distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 2902-2903 of 1977.

Appeals by Special Leave from the Judgment and Order dated 3-11-1976 of the Punjab and Haryana High Court in Civil Writ Petition No. 6781/74.

Y. S. Chitale, M. N. Phadke and *P. C. Bhartari* (In CA 2903/77) for the Appellants.

G. L. Sanghvi, S. K. Bagga and *Mrs. S. Bagga* for RR 1-2.

R. S. Sodhi for the State of Punjab.

The Judgment of the Court was delivered by

DESAI, J.—These two appeals by special leave arise from a common judgment rendered by the High Court of Punjab & Haryana at Chandigarh in Letters Patent Appeals Nos. 560 and 564 of 1974 and Civil Writ No. 6781/74. The controversy raised in these appeals turns upon the construction of the Punjab Police Service Rules, 1959 ('Service Rules' for short). A few relevant facts as alleged by respondents 1 and 2 in Civil Appeal No. 2903/78 who moved Civil Writ No. 825 of 1972 in the High Court would highlight the problem posed in these appeals.

A Respondents 1 and 2, Gurdip Singh and Dalip Singh, filed a writ petition under Article 226 of the Constitution against the State of Punjab, Inspector General of Police, Punjab, and six others including the present appellants, praying for a direction to confirm them in Punjab Police Service. Respondents 1 and 2 alleged that they were promotees to the cadre of Deputy Superintendent of Police of February, B 1961 and January, 1961 respectively having been brought on 'G' List by an order dated 23rd February 1961 of the State of Punjab and the Inspector General of Police, Punjab, respondents 3 and 4 herein. Appellants and respondents 5 to 8 were recruited to the same cadre by direct appointment commencing from May, 1961 to May, 1965. C The grievance of respondents 1 and 2 in the petition filed by them was that recruitment to Punjab Police Service is made from two sources, namely, 80% by promotion and 20% by direct appointment but this quota rule is not adhered to at the time of confirmation in the service and, therefore, even though they were members of the service since a period earlier to appellants and respondents 5 to 8, they were not D confirmed though the latter were confirmed and as seniority in the cadre of Deputy Superintendent of Police is reckoned under rule 10 according to date of confirmation, the failure to confirm them in the post available to them, in breach of the relevant rules, has denied to them equality of opportunity enshrined in Article 16 of the Constitution to be considered for nomination to Indian Police Service which E is done according to seniority-cum-merit.

The State of Punjab and Inspector General of Police, Punjab, on the one hand and the direct recruits on the other contested the writ petition, *inter alia,* contending that the quota applies at the stage of initial recruitment and not at the time of confirmation and there is F no allegation that the quota rule was violated at the time of initial recruitment. It was further contended that no one can claim to be confirmed as a matter of right and, therefore, the writ petition is misconceived. Direct recruits to the post of Dy. Superintendent of Police, appellants and respondents 5 to 8 further contended that the petitioners were promoted on officiating basis against temporary posts G and as there were no permanent posts available, they could not be confirmed till substantive vacancies in the permanent strength of the cadre were available and till confirmation their seniority having to be reckoned from the date of confirmation, they cannot claim to be senior to the direct recruits on the principle of continuous officiation.

H The writ petition came up before a learned single Judge of the High Court who was of the opinion that the quota rule is linked with the seniority rule and in order to give a reasonable interpretation and

in order not to make the seniority rule unreasonable, upon a proper construction it must be held that the quota rule would operate not only at the time of initial recruitment but also at the time of confirmation. In reaching this conclusion the learned single Judge relied upon two decisions of this Court in *S. G. Jaisinghani* v. *Union of India & Ors.*,(1) and *Mervyn Coutindo & Ors.* v. *Collector of Customs, Bombay & Ors.*, (2) and some other decisions of other High Courts. The learned single Judge accordingly gave a direction that the writ petitioners, respondents 1 and 2 herein, should be confirmed. Two appeals being Letters Patent Appeal No. 560/74 by the present appellant 1 and Letters Patent Appeal No. 564/74 by the State of Punjab and the Inspector General of Police, Punjab, were preferred. One Rakha Ram filed Civil Writ No. 6781/74 raising identical contentions and this writ petition was referred to the Division Bench before which the aforementioned two Letters Patent Appeals came up for hearing The Court by a common judgment disposed of all the three matters. Both the Letters Patent Appeals were dismissed and Civil Writ No. 6781/74 by Ram Rakha was allowed, but the direction given by the learned single Judge was modified to the extent that the State of Punjab and Inspector General of Police, Punjab, should consider the cases of writ petitioners 1 and 2 for confirmation and to fix their seniority afresh according to the quota rule. The present two appeals arise from this common judgment preferred by the direct recruits. It may be mentioned that neither the State of Punjab nor the Inspector General of Police, Punjab, have questioned the decision of the High Court though at the hearing of these appeals Mr. R. S. Sodhi appeared for the State of Punjab and supported the contentions canvassed on behalf of the appellants.

As the main controversy turns upon the construction of rules 3, 6, 8 and 10 of the Service Rules it would be advantageous to get a clear picture of the relevant rules. The Service Rules provide for constitution, recruitment, qualifications for being members of the service, probation, pay, seniority and discipline of the members of the Service. Rule 3 provides that the Service shall comprise of the posts specified in Appendix 'A' to the Service Rules. Designation of the Post in Appendix 'A' is shown to be Deputy Superintendent of Police and the strength of the cadre is shown as 66. The State Government, under rule 5, is the appointing authority to the Service. Rule 6 provides for method of recruitment from two different sources, viz., 80% by promotion from the rank of Inspectors and 20% by direct recruitment. It also prescribes eligibility qualification for promotees. Sub-

(1) [1967] 2 SCR 703.
(2) [1966] 2 SCR 600.

A rule (2) of rule 6 provides that appointment by promotion shall be made by he Government from Inspectors brought on List 'G' and the method of drawing up of List 'G'. Sub-rule (3) provides that direct appointment to the Service shall be made upon the result of a competitive examination conducted by the Punjab Public Service Commission
B ('Commission' for short) and further confers power on the Government in consultation with the Commission to frame necessary rules relating to examination. Rule 7 prescribes qualifications of physical fitness. Rule 8 provides that members of the Service shall be on probation for two years which shall include the period of training at the Police Training School, Phillaur, and in the districts and in the
C case of members recruited by promotion the Government may by a special order in each case permit periods of officiating appointment to the Service to count towards the period of probation. There is a proviso to the rule which enables the Government to extend the period of probation by not more than one year. Rule 9 provides for pay of members of the Service. Rule 10 provides for seniority of members to be
D reckoned by the date of confirmation in the Service.

Dr. Chitaley followed by Mr. Phadke, urged that the vires, validity or reasonableness of rule 10 having not been challenged, it was not open to the High Court to put upon rules, 6, 8 and 10 a construction on the supposed unreasonableness of rule 10 if it is interpreted by
E giving the language therein used its ordinary grammatical meaning. The High Court applied the quota rule even at the stage of confirmation to avoid the vice of unreasonableness which, in the opinion of the High Court, would be implicit in rule 10 if any other view were taken.

F

The rules provide for constitution of Service and the Service shall comprise of the posts specified in Appendix 'A' to the rules. At the relevant time the sanctioned strength of the Service was 66 posts. There is a proviso to rule 3 which enables the Government to make additions to or reductions in the number of such posts whether per-
G manently or temporarily. Rule 6 which provides for method of recruitment in terms says that recruitment to the Service shall be made : (i) 80% by promotion from the rank of Inspectors; and (ii) 20% by direct appointment. Thus there is recruitment to the Service from two independent sources, viz., promotion and direct recruitment. Once recruitment to any given cadre is from two sources
H obviously after recruitment is made from two sources they have to be integrated into one cadre which also necessitates providing for their *inter se* seniority. Rule 10 provides that the seniority of the

members of the Service shall be determined by the date of confirmation in the Service. There is a proviso to rule 10 which is not material for the present discussion. A

On behalf of the promotees it was contended that if seniority is to be reckoned from the date of confirmation in the Service, confirmation must be made available to recruits from both the sources, viz., promotees and direct recruits. It was further contended that if on satisfactory completion of probation a direct recruit is confirmed or is deemed to be confirmed and a promotee who can be continued in an officiating capacity for any length of time without considering his case for confirmation, promotees would be put at a serious disadvantage because for further promotion or what is styled as nomination to Indian Police Service, seniority-cum-merit being the criterian and the basic cadre being the cadre of Deputy Superintendent of Police from which nomination is to be made, their case would not come up for consideration as they are not confirmed. They pointed out that in 1971 their names were recommended by Deparmental Committee set up for the purpose but the State Government turned down their names on the only ground that they were not confirmed. It is clear from Rule 8 that both promotees and direct recruits would be on probation for two years and in case of promotees the Government may by special order in each case permit periods of officiating appointments to the Service to count towards the period of probation. Clause (b) of rule 8 provides that the services of a member recruited by direct appointment may be dispensed with by the Government on his failing to pass the final examination at the end of his period of training or on his being reported on, during or at the end of his period of probation, as unfit for appointment. There is a proviso at the end of sub-rule (b) which reads as under : B C D E F

> "Provided that the Government may, if it deems fit, extend the period of probation by not more than one year."

There is some controversy between the parties whether the proviso is to operate as proviso to rule 8(a) and 8(b) both or only to rule 8(b). G

It was contended on behalf of the direct recruits that once a specific period of probation is fixed and a fetter is put on the power of the Government to extend probation only by a specific period, at the end of such extended period either the service of the direct recruit is to be dispensed with on the ground that he was unfit for appointment or if he is continued thereafter he must be deemed to have been confirmed and the date next after the day of expiry of his ordinary or H

A extended period of probation would be the date of his confirmation. This Court has consistently held that when a first appointment or promotion is made on probation for a specific period and the employee is allowed to continue in the post after the expiry of the period without any specific order of confirmation he should be deemed to continue in his post as a probationer only in the absence of any communication to the contrary in the original order of appointment or promotion or the Service Rules. In such a case an express order of confirmation is necessary to give the employee a substantive right to the post and from the mere fact that he is allowed to continue in the post after the expiry of the specific period of probation it is not possible to hold that he should be deemed to have been confirmed. This view was taken in *Sukhbans Singh* v. *State of Punjab*(1); *G. S. Ramaswamy* v. *The Inspector General of Police, Mysore State, Bangalore*(2); and *State of U. P.* v. *Akbar Ali*(3). This view was founded upon the relevant rules which permitted extension of the probationary period for an indefinite time. In fact there was no negative rule in these cases prohibiting the Government from extending the probationary period beyond a certain maximum period. However, where the rules provide for a fixed period of probation with a power in the Government to extend it up to a specific period and not any unlimited period, either by express provision or by necessary implication, at the end of such specified period beyond which the Government had no power to extend the probation, the probationer if he continues beyond that period, should be deemed to have been confirmed in the post. This Court in *State of Punjab* v. *Dharam Singh*(4); after taking into consideration rule 6(3) of the Punjab Educational Service (Provincialised Cadre) Class III Rules, 1961, which provided for either dispensing with the services of the person appointed to the post on probation if his work was found to be unsatisfactory or to extend the period of probation for such period as may be deemed fit or revert him to his former post if he was promoted from some lower post, provided that the total period of probation including the extensions if any, shall not exceed three years, held that the Service Rules fixed a certain period of time beyond which the probationary period cannot be extended and if an employee appointed or promoted to a post is allowed to continue in that post after completion of the maximum period of probation without an express order of confirmation he cannot be deemed to continue in that post as a probationer by implication. In such a case the Court held it is permissible to

B C D E F G H

(1) [1963] 1 SCR 416.
(2) [1964] 6 SCR 278.
(3) [1966] 3 SCR 821.
(4) [1968] 3 SCR 1.

draw an inference that the employee allowed to continue in the post on completion of the maximum period of probation has been confirmed in the post by implication. Rule 8 of the Service Rules prescribes the period of probation of two years and the proviso confers power to extend the period of probation by not beyond one year meaning thereby that in any case the Government would not have the power to extend the period of probation beyond a period of three years. In this situation the ratio in *Dharam Singh's case* (supra) would *mutatis mutandis* apply and it will have to be held that the direct recruit who completed the period of probation of two years and in the absence of an extension of probationary period, would be deemed to be confirmed by necessary implication. Respondents 5 to 8 direct recruits have accordingly been confirmed on expiry of the period of probation of two years. Now if seniority is to be reckoned from the date of confirmation and if promotees are not confirmed for years together in some cases, to wit, respondents 1 and 2 who were promotees of February and January, 1961 respectively, were not confirmed till they filed the writ petition in 1972 while direct recruits who came much later got confirmed and *ipso facto* became senior to the promotees, if quota rule is only applied, as is contended on behalf of the appellants and the State of Punjab, at the time of initial recruitment, this undesirable result is wholly unavoidable.

Mr. G. L. Sanghi learned counsel for the interveners and the promotees contended that the framers of the rule could not have intended to accord such a discriminatory treatment to the promotees in whose favour the quota is as big as 80% of the total strength.

Where recruitment to a cadre is from two sources and the Service Rules prescribe quota for recruitment for both sources a question would always arise whether the quota rule would apply at the initial stage of recruitment or also at the stage of confirmation. Ordinarily, if quota is prescribed for recruitment to a cadre, the quota rule will have to be observed at the recruitment stage. The quota would then be co-related to vacancies to be filled in by recruitment but after recruitment is made from two different sources they will have to be integrated into a common cadre and while so doing, the question of their *inter se* seniority would surface. Seniority is ordinarily determined from the date of entry into cadre on the principle of continuous officiation. Confirmation in a post would ordinarily depend upon such circumstances as satisfactory completion of probationary period, efficiency in the discharge of duty, capacity to discharge functions of the post, availability of permanent vacancy, etc. Now, if seniority is to be determined according to the date of confirmation and the quota rule

A is not made relatable to confirmation in various posts falling vacant in the cadre it would directly impinge upon the seniority of members of the service. In a slightly different form this question came before this Court in *S. B. Patwardhan & Ors. etc.* v. *State of Maharashtra & Ors.*,(1) in which vires of rule 8(iii) of 1960 Rules were questioned. B Rule 8(iii) of the 1960 Rules provided that probationers recruited directly to the Bombay Service of Engineers Class II Cadre in any year shall, in a bunch, be placed senior to promotees confirmed during that year. Striking down this rule as violative of Article 16 this Court held that the rule leaves the valuable right of seniority to depend upon the mere accident of confirmation.

C

The recruitment to Punjab Police Service is from two sources. Recruits from both the sources have to be on probation. Adopting the construction as canvassed for and on behalf of direct recruits that the proviso to rule 8(b) permitting a maximum period of probation of three years at the end of which the direct recruit automatically be D confirmed unless his services are dispensed with simultaneously enjoying seniority from the date of such automatic confirmation without applying quota rule at the time of confirmation, would put the promotee to an unintended disadvantage who may be continued in an officiating capacity without confirming him and consequently denying or relegating him down in seniority for years as has happened in the case of res- E pondents 1 and 2. Appellants who were recruited to the Service after respondents 1 and 2, came to be confirmed at the end of two years' period of probation while respondents 1 and 2 were not confirmed after more than 11 years of officiating service and there it not the slightest suggestion that the services of respondents 1 and 2 were F not satisfactory and that the confirmation was denied on any such ground thereby directly affecting their place in the seniority list. Such an approach would be wholly unreasonable.

Now, if the other view is taken that the quota rule would apply both at the time of recruitment and at the time of confirmation, rule 10 which provides for seniority according to the date of confirmation G would certainly be save from the vice of unreasonableness. Is such a construction possible? One need not stretch the language to bring about the desired result but in this case upon a harmonious reading of rules 3, 6, 8 and 10, the conclusion is inescapable that quota rule is operative both at the time of initial recruitment and at the time of H confirmation. If the rule of seniority were one otherwise than according to date of confirmation it would not have become necessary to

(1) [1977] 3 S.C.R. 775 at 797.

apply the quota rule at the stage of confirmation but in this case the quota rule is linked up with the seniority rule and unless the quota rule is strictly observed in practice it will be difficult to hold that the seniority rule is not unreasonable and does not offend Article 16 (see *S. G. Jaisinghani's* case (supra) at pp. 717 and 718). Quota rule is linked up with seniority rule because, not the date of entry in service determines the seniority but the date of confirmation determines seniority and, therefore, quota rule is inextricably intertwined with the seniority rule and any delinking would render the seniority rule wholly unreasonable. Any other view would lead to the most undesirable result wholly unintended by the framers of the rule. It must be remembered that after recruitment, members of the service, though drawn from two different sources—direct recruits and promotees—constitute a single integrated cadre. They discharge identical functions, bear similar responsibilities and acquire an equal amount of experience in the respective assignments. In this background in *S. B. Patwardhan's case* (supra) this Court held that if the promotees are treated with an evil eye and an unequal hand in the matter of seniority as was done under rule 8(iii), the rule would suffer from the vice of unreasonableness and would offend Article 16 and it was actually struck down. An exactly identical situation would follow here if quota rule is applied at the stage of initial recruitment and wholly ignored at the time of confirmation because in that event while direct recruits will get confirmation automatically, the promotees would hang out for years as has happened in the case of respondents 1 and 2 and if they are not confirmed they would never get seniority and their chances of being considered for promotion to the higher post would be wholly jeopardised. To avoid this utterly unconsciounable outcome the construction we have put on rule 8 would be in consonance with justice and reason.

A B C D E F

It may be pointed out that where recruitment is from two sources and the seniority in the cadre is determined according to the date of confirmation, to accord utmost fair treatment a rotational system has to be followed while giving confirmation. The quota rule would apply to vacancies and recruitment has to be made keeping in view the vacancies available to the two sources according to the quota. If the quota rule is strictly adhered to there will be no difficulty in giving confirmation keeping in view the quota rule even at the time of confirmation. A roster is introduced while giving confirmation ascertaining every time which post has fallen vacant and the recruit from that source has to be confirmed in the post available to the source. This system would breakdown the moment recruitment from either source in excess of the quota is made. In fact a strict adherence to the quota

G H

A rule at the time of recruitment would introduce no difficulty in applying the rule at the time of confirmation because vacancies would be available for confirmation to persons belonging to different sources of recruitment. The difficulty arises when recruitment in excess of the quota is made and it is further accentuated when recruits from one source, to wit, in this case direct recruits get automatic confirmation on completion of the probationary period while the promotees hang out for years together before being confirmed. In *Mervyn Coutindo's* case (supra) this Court in terms said that rotational system of fixing seniority meaning thereby confirmation followed by seniority does not offend equality of opportunity in Government service and recruitment not following the fixed quota rule need not be a ground for doing away with rotational system.

It was, however, contended that in *A. K. Subraman & Ors. etc.* v. *Union of India & Ors.*,(1) this Court in terms has held that when recruitment is from two sources and the quota rule is enforced, the same will have to be enforced at the time of initial recruitment in officiating capacity and not at the time of confirmation. It was, therefore, said that it would be contrary to settled law to hold that quota rule will also operate at the time of confirmation. Now, the observation of the Court is in the context of Central Engineering Service (Class I) Recruitment Rules, 1954, which came up for interpretation before the Court in that case. The recruitment was from three different sources, viz., by competitive examination, by promotion and by transfer. Rule 4 provided that 75% of the vacancies in the grade of Executive Engineer Class I shall be filled by promotion of Assistant Executive Engineers Class I, the rest of the vacancies being filled by promotion and/or by transfer in accordance with Parts IV and V of the Rules respectively. The general seniority rule which was held applicable in that case was that seniority should be determined on the basis of length of service in that grade or a service in an equivalent grade irrespective of whether the latter was under Central or Provincial Government in India or Pakistan. It is in the context of these rules the question whether the quota rule should be applied at the stage of initial recruitment or confirmation came up for consideration. Unlike the rule in the present case seniority was not dependent on confirmation but seniority was dependent upon continuous officiation in the cadre. In this background this Court held that the quota has to be enforced at the time of initial recruitment in officiating capacity and not at the time of confirmation. The situation in the case under discussion is materially different. Therefore, it cannot be said that ignoring the

(1) [1975] 2 S.C.R. 1975.

rule a proposition of universal application has been laid down that whenever there is a quota prescribed for recruitment to a cadre it can only apply at the time of initial recruitment and not at the time of confirmation. Everything will depend upon the whole body of rules and harmonious construction has to be put upon the rules so as to avoid the possibility of a rule becoming unreasonable. This Court while saying in *Subraman's* case (supra) that quota rule has to be adhered to and enforced at the time of initial recruitment re-affirmed the observation in *Mervyn Coutindo's* case (supra) that there is no inherent invalidity in introduction of quota system and to work it out by rule of rotation. When it is said that the confirmation shall follow the quota rule it is in terms being stated that the rotational system should be followed at the time of confirmation so as to make quota rule effective and seniority rule reasonable because all the three are interlinked. Undoubtedly, the decision in *Subraman's* case was in terms affirmed in *Patwardhan's* case (supra) but the scheme of rules in *Patwardhan's* case (supra) was more or less similar to the one that was examined by this Court in *Subraman's* case.

Mr. Sanghi also urged that the language of Rule 8(a) would unmistakably show that members of Service recruited from either source would be on probation for a period of two years and this would imply that promotees would also be on probation for a period of two years. Approaching the matter from this angle he further urged that proviso to rule 8(b) which permits extension of probation only by one year without expressly referring to direct recruits would govern both promotees and direct recruits and in that view of the matter promotees would also be deemed to be confirmed on the expiry of period of probation. This contention overlooks the latter Part of rule 8(a) which provides that in case of promotees the Government may by special order in each case permit periods of officiating appointments to the Service to count towards the period of probation. It appears that both promotees and direct recruits to Service would be on probation. But the latter part of rule 8(a) comprehends Inspectors being promoted on officiating basis. Unless there is a temporary addition to the strength of the cadre such officiating appointment by promotion would not make the promotee a member of the service in view of Rule 3. In order to avoid any injustice to such promotees the Government may make an order to treat officiating service to count towards probation. In the absence of such order the officiating service would not count towards probation and such appointment would not make the promotee a member of the service. In that event his case would not be covered

A by the proviso to rule 8(a). Therefore, the contention cannot be accepted.

The High Court was, therefore, right in concluding that the quota rule would operate at both the stages. Accordingly both these appeals fail and are dismissed but in the circumstances of the case with no B order as to costs.

S. R. *Appeals dismissed.*