KAMAL KANTI DUTTA AND ORS. A

v.

UNION OF INDIA AND ORS.

April 23, 1980 B

[Y. V. CHANDRACHUD, C.J., N. L. UNTWALIA, P. S. KAILASAM, D. A. DESAI AND E. S. VENKATARAMIAH, JJ.]

Review of Judgments of the Supreme Court of India under Article 137 *of the Constitution read with Order XXL of the Supreme Court Rules,* 1966— *Petitions filed under Article* 32 *of the Constitution indirectly invoking the review jurisdiction and seeking a review of earlier decision of the Courts Held, there is no substance in the request.* C

With a view to improving the Income-tax administration, the Government of India in consultation with the Federal Public Service Commission decided to reconstitute then existing income-tax services, Class I and II. Under the scheme of reorganisation of the services set out in a letter dated September 29, 1944 of the Government of India Finance Department, the central service Class I was to consist of (i) Commissioners of Income-Tax (ii) Assistant Commissioners of Income-Tax; (iii) Income-Tax Officers Grade I and (iv) Income-Tax Officers Grade-II. Thus Income-Tax Officers Class I were to be of two grades, Grade I and II; while Income-Tax Officers Class II were to consist of one grade, namely, Grade III. Clauses (a) to (e) of paragraph 2 of the letter, prescribed the mode of recruitment to the various posts in Class I and Class II. Under Clause (d) recruitment to Class I Grade II was 20% by promotion from Class II, Grade III and 80% by direct recruitment via Indian Audit and Accounts Service etc. examination. Rules regulating recruitment to the Income-Tax Officers (Class I, Grade II) service "liable to alteration from year to year" were published on May 26, 1945, by a resolution of the Finance (Central Revenues) Department. Rule 3 provided that recruitment to Class I, Grade II's service shall be made (1) by competitive examination held in India in accordance with Part-II of the Rules and (ii) by promotion on the basis of selection of Grade III (Class II service, in accordance with Part III of the Rules. By Rule 4 of the Government was to determine, subject to the provisions of Rule 3, the method or methods to be employed for the purpose of filling any particular vacancies, or such vacancies as may be required to be filled during any particular period, and the number of candidates to be recruited by such method. Part III of the Rules called (Recruitment by Promotion) provided by paragraph 21 that "recruitment by promotion shall be made by selection from Grade—III Income-Tax Officers (Class II service) after consultation with the Federal Public Service and that no officer shall have any claim to such promotion as of right". D E F G

By a letter dated January 24, 1950 the Government of India laid down certain rules of seniority: (a) as between direct recruits; (b) as between promotees selected from Class II and (c) as between direct recruits who completed their probation in a given year and the promotees appointed in the same year to Class I. H

A On October 18, 1951 the Government of India addressed a letter to all the Commissioners of Income-Tax titled "Income-Tax Officers, Grade—II (Class—I service)—quota of vacancies filled by promotions" wherein it was outlined that for a period of 5 years in the first instance 66 and 2/3 per cent of the vacancies in Class—I, Grade—II would be filled by direct recruitment by a combined competitive examination and the remaining 33 and 1/3 per cent on the basis of selection by promotion from Grade—III (Class—II service). Any B surplus vacancies which could not be filled by promotion for want of suitable candidates would be added to the quota of vacancies to be filled by direct recruitment. By a letter dated September 5, 1952 the Government of India revised with a retrospective effect the Rules of Seniority which were laid down on January 24, 1950. Rule 1 (f)(iii) as framed on January 24, 1950 which was to the effect that "the promotees who have been certified by the commission in any calendar year shall be senior to all direct recruits who complete C their probation during that year or after and are confirmed with effect from a date in that year or after" was revised on September 5, 1952 as "officers promoted in accordance with the recommendations of the Departmental Promotion Committee before the next sitting of the Departmental Promotion Committee shall be senior to all direct recruits appointed on the results of the examinations held by the Union Public Service Commission during the calendar year in which the Departmental Promotion Committee met during the three D previous years". Rule 1(f)(iv) of the 1952 Rules dealt with a special situation in which an officer initially appointed to Class II service was given seniority in the same manner as a departmental promotee, if subsequent to his passing the departmental examination he was appointed to Class I on the results of the competitive examination. Rule 4 of Chapter IX of the Rules of Promotion of the Central Board of Revenue Office Procedure Manual states that the prescribed minimum service for an officer of Class—I, Grade—II for promotion to E Grade—I is 5 years gazetted service including one year in Class—I, Grade—II. For a promotee from Class—II the minimum period of service for promotion to Class—I, Grade—I would be actually 4 years service in Class—II and one year service in Class—I, Grade—II.

In an appeal arising out of Writ Petition No. 189-D of 1962 filed by one F S. G. Jai Singhani (who is respondent No. 358 in Writ Petition No. 66 of 1974 and respondent No. 5 in Writ Petition No. 4146 of 1978), a constitutional Bench of this Court held : (i) Rules 1(f)(iii) and (iv) of the Seniority Rules framed in 1952 did not violate Articles 14 and 16 since they were based on a reasonable classification; (ii) Rule 4 of Chapter IX of the Central Board of Revenue Office Procedure Manual did not lead to any discrimination as between direct recruits and promotees, since the object of the rule was really to carry out the G policy of Rule 1(f)(iii) of the Rules of Seniority and not allow it to be defeated by the recruitment of 5 years' service in Class—I, Grade—II itself, before a person could be considered for promotion to Class—I, Grade—I; (iii) Rule 4 of the Income-Tax Officers (Class—I, Grade—II) Service Recruitment Rules was a statutory rule to which a statutory duty was cast on the Government to determine the method or methods to be employed for the purpose of filling of the vacancies and the number of candidates to be recruited by each method; H and that though in the letter of the Government of India dated October 18, 1951 there was no specific reference to Rule 4, the quota fixed by that letter must be deemed to have been fixed in exercise of the statutory power given by Rule 4. There was, therefore, no discretion left to the Government of

India to alter that quota according to the exigencies of the situation or to deviate from the quota in any particular year at its own will and pleasure. The quota rule, according to the Court, was linked up with the Seniority Rule and unless it was strictly observed in practice it would be difficult to hold that the seniority rule contained in rule 1(f)(iii) was not unreasonable and did not offend Article 16 of the Constitution. The Court suggested that for future years the roster system should be adopted by framing an appropriate rule for working out the quota between the direct recruits and the promotees and that a roster should be maintained indicating the order in which appointments were made by direct recruitment and by promotion in accordance with the percentages fixed under the statutory rule for each method of recruitment. Thus the direct recruits succeeded substantially in their contentions, the quota rule acquired statutory force, appointments of promotees in excess of the quota became bad and it became obligatory for the Government to prepare a fresh seniority list. Promotees found to have been appointed in excess of the quota admissible to promotees had naturally to go down in the final gradation of seniority.

A B C

On July 15, 1968 the Government prepared a fresh seniority list and filed it in the Supreme Court. That list failed to satisfy promotees as well as direct recruits. Whether this seniority list was correct and in accordance with the mandamus which was issued by this Court in *S. G. Jai Singhani's* case, [1967] 2 S.C.R. 703 came up for consideration in four appeals which were disposed of by a common judgment dated August 16, 1972 reported as *Bishan Sarup Gupta v. Union of India* (first Gupta's case) in [1975] Suppl. S.C.R. 491. The Court was also called upon to examine the correctness of seven principles enumerated in the Government letter dated July 15, 1968 governing seniority. The first principle was accepted as good. The second and the third principles were held to be partially incorrect in so for as they excluded reference to all the promotees of 1952. The Court held that the promotees of 1952 should be referred to in the seniority list whether they are affected or not, the object being the ascertainment of excess promotions. This Court further held that the rule dated October 18, 1951 was not concerned with the Constitution of the cadre but "was concerned with how permanent vacancies were to be filled" and, therefore, the promotees would be entitled to 1/3 of the vacancies in any particular year whether or not there was direct recruitment by competitive examination in that year. This ratio of 2 : 1 between the direct recruits and the promotees could not be made to depend on whether any direct recruits were appointed in any particular year. It, therefore, became essential to determine the actual vacancies in the cadre but the Government put forward the plea even in this case as in *Jai Singhani's*) that it was impossible for them to give the exact figure of vacancies in any particular year. According to the Court, when the quota rule referred to vacancies it was implicit that the vacancies are those which the Government wanted to fill up whatever may be the actual number of vacancies available for being filled up. Any number of posts among the promotees more than 1/3 of the total number of appointments in the particular year was considered to be in excess of the quota available for promotees. The Court rejected the argument that the quota rule which is co-related to vacancies of permanent posts only and not to those in temporary posts. While upholding the weightage allowed under Rule 1(f)(iii) to Class-II officers promoted to Class-I, Grade-II, the Court also held that even after 1956, the Government was entitled by reason of Rule 4 of the Recruitment Rules of 1945 to follow the quota rule of 1951 as a rough guideline, "without going through the trouble of putting the same on record in so many words" and

D E F G H

A that in the normal course the Government was entitled to prepare the seniority list till the end of 1958 in accordance with the quota rule of 1951. In regard to the position after year 1958 the Court came to the conclusion that the quota rule ceased to apply and came to an end on January 16, 1959, when the sanction to upgrade 100 temporary posts in Class-II, Grade-III to Class-I, Grade-II was given by the President. The seniority rule then fell with quota rule. On these considerations the Court held that the seniority B list was valid in regard to promotions made up to January 15, 1959 to the extent that it was prepared on the basis of the quota rule dated October 18, 1951 read with Seniority Rule 1(f)(iii). As a corollary, the Court set aside the seniority list of July 15, 1968 and directed the Government to prepare a fresh seniority list. The List for the years 1955 to January 15, 1959 was directed to be prepared in accordance with the quota rule of 1951 read with Seniority Rule 1(f)(iii). The List to be effective from January C 16, 1959 was directed to be prepared in accordance with the rules to be made afresh by the Government.

On February 9, 1973 the President made rules called the Income-Tax (Class-I) Service (Regulation of Seniority) Rules 1973 under Article 309 of the Constitution giving retrospective effect from January 16, 1969. In pursuance of the liberty reserved to the parties under the Judgment in the *first* D *Gupta's* case the validity of the new seniority rules was challenged by the promotees once again. The challenge was considered and repelled by the Court in *Bishan Swarup Gupta etc.* v. *Union of India and Ors.*, [1975] 1 S.C.R. 104, *second Gupta's* case. When the new list of seniority was prepared by the Government, in accordance with these rules, the Government had on its hand 73 promotees who though appointed earlier between 1956 and 1958 had no quota post, for their absorption. The 73 promotees described as "spill-overs on E January 15, 1959", as also those who were promoted subsequently had to be absorbed in the Service, which could only be done by a special rule framed in that behalf. The new seniority rule contained a formula for the absorption of all promotees with effect from January 16, 1959 in posts allocated to them, it determined their seniority *inter se* and last but not the least it determined their seniority *qua* the direct recruits appointed from 1959. The Court overruled the objection of the '73' spill-over promotees that since in the first *Gupta's* F case the Court had directed that they should be absorbed on a "priority basis", all of them should have been shown in the seniority list as having been appointed on January 16, 1959 *en bloc* and the direct recruits for that year should have been shown thereafter. It was explained that by use of the expression "priority basis" what was meant by the Court was that the position of the spill-over promotees as seniors should not be prejudiced by claims made by later promotees on the ground that since the spill-over promotees were recruited G in excess of the quota, the later promotees whose promotion did not violate the quota rule had higher rights than those 73. The Court further held that, when the 73 spill-over appointments were made, there were no allocated or earmarked posts to which those promotees could have been validly appointed, the ordinary consequence of which would have been their reversion to Class II posts which they originally held. So long as the quota rule was in existence, appointments in excess of the quota, though invalid when made, were atleast H liable to be regularised in subsequent years when vacancies were available to the promotees as a consequence of the quota rule. But once the quota rule ceased to exist on January 16, 1959, any possibility of the excess appointments of the promotees being regularised vanished. It was in order

to overcome this injustice to the promotees, that the new rule was framed by the Government. The new rule was thus not only the direct outcome of the judgment of the Court in the *Ist Gupta case*, but it was founded on the very principles on which the Income-tax Service had been constituted. The Court finally said that it had also to be remembered that promotees appointed from January 16, 1959 onwards were appointed on an officiating or ad-hoc basis with notice that the question of their seniority was still undecided. This circumstance coupled with the absence of clear allocation of posts, made it impossible for the promotees to lay claim to seniority and contend that they were deprived of their natural seniority in violation of Article 16.

The petitioners who were promotee Income-Tax Officers Class-I, Grade-II prayed for reconsideration of these three decisions *S. G. Jai Singhani* v. *Union of India and Anr.*, [1967] 2 S.C.R. 703; *Bishan Swarup Gupta* v. *Union of India and Ors.*, (*First Gupta's case*), [1975] Suppl. S.C.R. 495; *Bishan Swarup Gupta etc.* v. *Union of India and Ors.*, (*Second Gupta's case*), [1975] 1 S.C.R. 104 and to the extent *S. G. Jai Singhani's* case is relied upon in *Union of India* v. *Malji Jangamayya etc.*, [1977] 2 S.C.R. 28, on the following grounds :

1. The Conclusion that Rule 4 of the Income-Tax Officers (Class-I, Grade-II) Service Recruitment Rules is statutory and, therefore, the quota prescribed by the Government of India for recruitment to Income-Tax Officers Class-I, Grade-II in exercise of the power conferred by Rule 4 would be statutory, proceeds on an assumption not warranted by the provisions of law bearing on the point and if both Rule 4 and the quota presumably prescribed in exercise of the power conferred by Rule 4 are not shown to be statutory, the foundation of which the edifice in *S. G. Jai Singhani's* case rests is knocked down because it can be demonstrably established that neither rule 4 nor the quota prescribed thereunder was stautory in character but was at best an administrative instruction.

2. After the Court on an interpretation of the quota rule held that the quota was related to vacancies arising in the grade every year, the conclusion reached did not conform to this finding but accommodated the so-called inability (now shown to be factually incorrect) of the Government of India to give information to the Court about the vacancies in the grade every year with the result that the whole calculation of spill-over is vitiated.

3. The mandamus issued in *Jai Singhani's* case was misinterpreted by the Government because even if the quota was statutory it was operative only between 1951 and 1956 but the Government interpreted the mandamus to be operative beyond 1956 and upto 1967 which misinterpretation has been pointed out in the *first Gupta's* case.

4. In the *first Gupta's* case while holding that the mandamus directing to treat the quota statutory beyond 1956 was not justified yet till January 16, 1959, the Court itself indirectly accepted the quota rule as a guideline and treated that there was a spill-over of 73 promotees. If Rule 4 was not statutory and consequently the quota prescribed in exercise of the power which had outlived its prescribed span of life in 1956 could not be brought in to treat any appointment as invalid on the ground that there was no allocated post for those appointees treated as spill-over because under Rule 4 itself the Government had power to determine the method or methods to be employed for the purpose of

A filling in particular vacancies or such vacancies as may be required to be filled in during any particular period and the number of candidates to be recruited by each method.

5. The action of the Government of upgrading 214 posts between 1959 and 1962 from Class-II, Grade-II to Class I, Grade II was not open to question as at that stage there was no quota rule and Rule 4 enabled the Government to B make recruitment from either of the two sources in exercise of its executive power. In regard to the *second Gupta's* case the Court introduced quota rule retrospectively by the back door which is impermissible and its operation manifestly establishes its utter unfairness inasmuch as a direct recruit nor any where in the department or may be a student may secure a march-over a promotee which has been working in Class-I, Grade-II.

C Dismissing the petitions the Court,

HELD: Per Chandrachud, C.J. (On behalf of N. L. Untwalia, P. S. Kailasam, E. S. Venkataramiah, JJ. and himself). (*Majority view*)

1. A consideration of certain historic facts in this case makes it clear that there is no substance in the request made for a review of the decisions in *Jai Singhani* v. *Union of India and Ors.*, [1967] 2 S.C.R. 703; *Eishan Swarup* D *Gupta* v. *Union of India and Ors.* (*1st Gupta's case*) [1975] supplementary S.C.R. 491; *Bishan Swarup Gupta* v. *Union of India & Ors.; Second Gupta's* case [1975] 1 S.C.R. 104 and *Union of India* v. *Malji Jangamayya* [1977] 2 S.C.R. 28. [840 E-F]

For nearly a decade after 1950, appointments of promotees were made far in excess of the quota available to them. So long as the quota rule operated, it was possible to regularise their appointments when posts within their quota E became available in later years. But a somewhat unprecedented situation arose by the upgrading of Class II posts to Class I grade II—100 of them on January 16, 1959 and 114 on December 9, 1960. This massive upgrading of posts brought about a collapse of the quota rule. Subsequent absorption in posts which became available for being filled up later really means regularisation of appointments, which is possible provided there is no excessive deviation from the quota rule. [840 G-H, 841 A]

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It is true that no blame can be laid at the doors of the promotees on the score that they were appointed in excess of the quota available to them. Perhaps, their appointments must even have enabled the administration to tide over administrative stale-mate. But the tough problem which the administration has to face is that whereas it is necessary to recognise and protect the claims of promotees who were appointed in excess of their quota, G it is equally necessary to ensure that the direct recruits do not suffer an undue set-back in service on account of the appointments of promotees. The conflicting claims of the two components of Service, both having an importance of their own, have therefore to be reconciled. It was with that object that the rules have been modified from time to time. The judgments rendered by this Court in the aforesaid four cases show, without a shadow doubt, how every effort was made to ensure that no hardship or injustice is caused to the pro- H motees merely because their appointments exceeded their quota. [841 A-C]

2. It is not correct to say that the judgment in *Jai Singhani* was based on a concession or that the Court felt compelled to draw the particular conclusions

therein because of the inability or refusal of the Finance Ministry to produce the relevant files. The Court adopted what it considered in the circumstances to be a satisfactory and scientific method of ascertaining the number of vacancies available for being filled up. It came to the conclusion that the number of actual appointments should determine the number of vacancies available which was a perfectly legitimate conclusion to draw. In the grey area where service rules operate, more than one view is always possible to take without sacrificing either reason or commonsense but the ultimate choice has to be necessarily conditioned by several considerations ensuring justice to as many as possible and injustice to as few. There was no error in the conclusion in *Jai Singhani* that Rule 4 of the Recruitment Rules was a statutory rule Subsequent decisions would show that there was hardly any dispute between the parties, at later stages at any rate, that Rule 4 was a statutory rule. [841 D-G]

3. No doubt, the promotees should not be penalised for the mere reason that those of them who were appointed after January 16, 1959 were appointed on an officiating or *ad hoc* basis and had clear notice that the question of their seniority was still undecided. The circumstances attendant upon their appointments cannot, however, be wholly overlooked in determining whether the constitutional constraints have been over-stepped. [841 H, 842 A]

4. It is not safe to test the constitutionality of a service rule on the touch stone of fortunes of individuals. No matter with what care, objectivity and foresight a rule is framed, some hardship, inconvenience or injustice is bound to result to some members of the service. The paramount consideration is the reconciliation of conflicting claims of two important constituents of Service, one of which brings fresh blood and the other mature experience. [842 A-C]

5. Though the promotees submitted in the *Second Gupta* case that the new seniority rule was unfair to them, they were unable to put forward any rational alternative. On the contrary the counter-affidavit dated August 31, 1973 filed in the *Second Gupta* case by Shri Mehra, the Deputy Secretary Finance, shows the fullness with which the Government had consulted all possible interests while framing the impugned rules of seniority. The gamut of reasonable possibilities is fairly covered by the four alternatives referred to in Shri Mehra's affidavit. The inconveniences and disadvantages flowing from the first three alternatives would be far greater than those flowing from the fourth. That is why the choice ultimately fell on the fourth alternative under which the seniority between promotees and direct recruits was fixed alternately on a roster system, vacancies being equally divided between promotees and direct recruits, for the entire period from 1959 up-to-date. The observation of the Court in the *Second Gupta's* case at page 119 shows how difficult it is to solve the jig-saw puzzle of service disputes. [842 C-H]

6. The report of the 'Committee on petitions' of the Rajya Sabha, howsoever, sincerely motivated and fully drawn cannot be given the importance which the promotees seem to attach to it. In paragraph 16 of its Report the Committee does refer to certain files but those files appear to contain some notings in regard to the direct recruitment only. The Committee has given a table of comparative appointments in paragraph 19 of its Report but it had to speculate on an important aspect of the matter, as is shown by its own language, that the table shows the number of direct recruits which the Government wanted to take and "on the basis of which the promotees *must have been given promo-*

A *tions".* If indeed the relevant files were produced before the Committee, it would not have expressed its sense of deep shock and resentment at the disappearance of the files. Further para 32 of the Report shows that the Committee had to grope in the dark and indulge in a certain amount of speculation on matters under its consideration. In the circumstances it has done as good a job as a Committee can and no fault need to found with it. But nevertheless the said Committee's report cannot displace the Court's judgments.

B [842 H, 843 A-C]

Even on merits there is no justification for considering the judgments already rendered by this Court inasmuch as no fresh facts were brought to notice by way of discovery of new and important evidence which would justify reconsideration of the decisions already rendered by this Court after the most careful examination of the competing contentions. The report of the Rajya C Sabha Committee on petitions shows that the relevant files are still not traceable. [843 E-F, G-H, 844 A]

Per Desai, J. (contra)

1. While, no doubt, the Supreme Court has constitutional power to review its decision, it is a power to be sparingly exercised because any such review has the tendency to unsettle questions which may have been finally determined. D The Supreme Court does not lightly undertake review of its decisions more especially where conflicting claims have been settled by the decision of this Court and the whole gamut may have to be gone through over again on a reconsideration of the decision. While exercising inherent power to reconsider and review its earlier decision, the Suprme Court would naturally like to impose certain reasonable limitations and would be reluctant to entertain plea for reconsideration and review all its earlier decisions, unless it is satisfied that E there are compelling and substantial reasons to do so. It is general judicial experience that in matters of law involving questions of construing statutory or constitutional provisions, two views are often reasonably possible and when judicial approach has to make a choice between the two reasonable possible views, the process of decision making is often very difficult and delicate.

[846 A-B, 847 C, G-H, 848 A-B]

F In deciding whether a review is necessary, when two views are possible it would not necessarily be an adequate reason for such review and revision to hold that though the earlier view is reasonably possible view the alternative view which is pressed on the subsequent occasion is more reasonable. The Court's discretion should be guided by such consideration whether in the interest of public good or for any other valid or compulsive reason it is necessary that the earlier decision should be revised. [848 B-C]

G *Sajjan Singh* v. *State of Rajasthan,* [1965] 1 S.C.R. 931; *Keshav Mills Co. Ltd.* v. *Commissioner of Income Tax, Bombay North,* [1965] 2 S.C.R. 908 & 921; *Manganese Ore (India) Ltd.* v. *The Regional Assistant Commissioner of Sales Tax, Jabalpur,* [1976] 3 S.C.R. 99 applied.

2. *Jai Singhani* case proceeds on a concession that Rule 4 and the quota prescribed by the Government referable to the power conferred by Rule 4 were H statutory in character. [848 D-E]

Income-tax service was reconstituted on September 29, 1974. The Government of India classified the existing income-tax service as Class I and Class II.

The scheme provided for recruitment of income-tax officers Class I grade II partly by promotion and partly by direct recruitment. The scheme was set out in the Government of India Finance Department (Central Revenues) letter dated September 29, 1944. The quota prescribed therein has undergone a revision at a later date. The rules being Pre-constitution Rules, their source must be traced to the Government of India Act, 1935. Section 241 of the 1935 Act made provision for recruitment and conditions of service. Section 241 makes it clear that the power to make appointments in the case of service of Federation and posts in connection with the affairs of the Federation was conferred on the Governor-General or such person as he may direct. The power to make rules in this behalf was conferred by sub-section 2 on the Governor-General or by some person or persons authorised by the Governor-General to make the rules for the purpose. But, the rules were not made either by the Governor-General or such person authorised by him. The rules were made by the Finance Department and no material was placed to show that the persons or the persons who made the rules were authorised by the Governor-General, under Section 241(2) of the 1935 Act in this behalf. The assumption made, therefore, that Rule 4 of the Rules are statutory and that the quota prescribed in exercise of the power conferred by Rule 4 must be statutory is ill-founded. This knocks out the entire foundation of the judgment of this Court in *Jai Singhani's* case because this Court proceeded to hold that as the quota was statutory, any recruitment made in excess of the quota in any given year would be invalid and at best can be regularised by relegating such excess appointments to the quota next year. If Rule 4 and the quota referable to the power conferred by Rule 4 were not statutory but were merely executive instructions, its violation would not render any appointment in excess of it invalid but at best would be irregular and in this case on a plain reading of Rule 4 it would not even be irregular. [848 G-H, 849 A-E]

3. In *P. C. Sethi & Ors.* v. *Union of India & Ors.* this Court held that in the absence of any statutory rules it was open to the Government in exercise of its executive power to issue administrative instructions with regard to constitution and reorganisation of service as long as there is no violation of Articles 14 and 16 of the Constitution. If the present Rule 4 enables the Government to prescribe method to be employed for the purpose of filling in any particular vacancy or such vacancies as may be required to be filled in during any particular period and the number of candidates to be recruited by each method and if the so-called quota is not statutory but merely a guideline, the Government whenever making appointments would be acting in exercise of power conferred by Rule 4 which leaves it to the discretion of the Government to decide from what source recruitment should be made and what must be the quantum of vacancies that must be filled in at a given point of time and such appointment could not be said to be invalid. [849 E-H]

Alternatively, even if the assumption made in *Jai Singhani's* case that Rule 4 and the quota referable to the exercise of power conferred by Rule 4 is unquestionable yet when this Court held that the quota is related to the vacancies, the decision proceeding on an incorrect plea that the information about the number of vacancies in a year is not available, is unsustainable for two reasons, namely, (1) that the files are now produced; (2) in the absence of information about the vacancies available the Court could not have invalidated any appointment on the assumption that appointment from the source of promotees was in excess of the quota. [850 A-B]

A On a plain reading of Rules 3, 4 and 5, it is clear that the quota was related to vacancies and at one stage that was accepted. On this finding unless the fact situation is clearly established showing vacancies year to year it would be impossible to hold that in any year there was excess in either source. Suppose there were 90 vacancies in a year and the quota was 66-2/3 for direct recruits and 33 1/3 for promotees it would be open to the Government to promote 30 persons irrespective of the fact whether 60 direct recruits have become available or not. The assumption made that the recruitment made in a given year from both the sources would furnish information about the vacancies in a year would lead to a rather unfair conclusion inasmuch as the action of the Government in acting in a certain manner without due regard to the quota rule would work hardship on appointees even though on a correct calculation of vacancies the appointments may be valid and legal. [850 C-E]

C 4. The Government understood the mandamus issued in *Jai Singhani's* case as covering the whole period from 1951 to 1967. When this was questioned in the *First Gupta's* case this Court held that the quota rule *proprio vigore* operated between 1951 to 1956 and if there were promotions in any year in excess of the quota, those promotions were merely invalid for that year but they were not invalid for all time and they could be regularised by being D absorbed in the quota for the later years. So adjusting the quota at any rate up to 1956, the quota rule on its own strength evaporated because it was to be in operation for a period of five years and no fresh quota rule was issued by the Government. Therefore, after 1956 Rule 4 remained in force in all its rigour and was not hedged in by any quota. Rule 4 permitted the Government to make recruitment from either source without fettering its discretion by any quota rule which it was not bound to prescribe. On January 16, 1959 E Government in the Ministry of Finance informed the Commissioners of Income-tax that the President had sanctioned the upgrading to Class I of one hundred temporary posts of Income-Tax Officers Class II. On December 19, 1960 there was further upgrading of 114 posts from Class II to Class I. Between 1959 and 1962 these 214 posts were filled in by promotees. Now in the *First Gupta's* case, this Court held even though the quota expired in 1956 yet the Government of India adopted it as a guideline. May be it may be so. But, F it cannot be said that any appointment in breach of the guideline neither statutory nor even having the fragrance of any executive instruction becomes invalid more so, when the Government had power to make appointment from either source uninhibited by any quota rule under Rule 4. Yet the Court found that between 1956 and 1959 when one hundred posts came to be upgraded there was a spill-over of 73 persons and because of the huge departure from guidelines the weightage rule giving seniority to the promotees by 2 to 3 years was crushed G under its own debris. Again, Rule 4 is overlooked or by-passed when saying that there was a spill-over of 73 promotees between 1956 and 1959, nor could it be said that the upgrading of 214 posts and filling them up by promotees would be in any way even irregular much less invalid because Rule 4 enables the Government to draw from either source. [851 A-G]

H 5. In the *Second Gupta's* case in view of the decision in the *First Gupta's* case, a fresh seniority rule was prepared and it was made retroactive from January 16, 1959. It, *inter alia,* provides that the relative seniority amongst the promotees and the direct recruits shall be in the ratio of 1 : 1 and the same shall be so determined and regulated in accordance with a roster main-

tained for this purpose which shall follow the following sequence, namely, promotee; direct recruit, promotee; direct recruit etc. This method of roster undoubtedly introduces a quota by the back door. Once a roster is introduced promotee direct recruit, promotee direct recruit etc. even if some promotees have come in a bulk and if at a later date some direct recruits are appointed in bulk while preparing roster an earlier date-promotee will have to yield his place to a later date direct recruit. Bluntly translated it means that the direct recruit who was never in service when promotee was promoted probably he may be a student, he may not have even passed the competitive examination, yet he may come into the picture challenge one who has already been serving in the department for a number of years. To illustrate in the new seniority list prepared by the Government pursuant to the order made by this Court in the *First Gupta's* case and upheld by this Court in the *Second Gupta's* case a promotee of 1962 will have to yield his place to a direct recruit of 1966.

[851 G-H, 852 A-D]

6. Service jurisprudence hardly permits a situation where a man not in service comes and challenges something which has been done much before he came into service and gets such an advantage which on the face of it appear to be unfair. But apart from this, even in 1959 there was no quota rule and assuming that the old service rule giving weightage to the promotees crushed under weight of large number of promotees being promoted it would not be open to the Government to so prepare a fresh seniority list which cannot be given effect to unless a roster is introduced which introduces quota by the back door and which is so unfair in its operation that promotees of 1962 will have to yield place to direct recruits of 1966. Under the old weightage rule promotees were given weightage for service of 2 to 3 years over direct recruits because direct recruits were unable to undertake regular assessment work for a period of 2 to 3 years when they were more or less under training while promotees have been doing this work for a number of years and whose experience is reflected in the weightage. The whole thing now appears to be in the reverse gear in that an uninitiated direct recruit takes precedence over an experienced promotee. The unfairness of the new rule is writ large on the face of the record. [852 E-H]

7. The fresh seniority rule violates another important rule well-recognised principle in the service jurisprudence that in the absence of any valid rule of seniority date of continuous officiation provides a valid rule of seniority. This rule is completely crucified upon two unsustainable assumptions that a quota rule having guideline sanction is made imperative in character and assumed to be in force between 1956 and 1959, and that even though Government in exercise of power conferred by Rule 4 for its own necessity promoted 214 promotees to the upgraded post, yet they must yield to some future direct recruits who may come to the department at a later date. This Court sustained the decision holding that these were *ad hoc* appointments and there are no regular posts for these promotees. This approach wholly overlooks the fact and the force of Rule 4. [853 A-C]

8. Certainty and continuity demand that this Court should not reopen settled decisions or reopen closed questions unless under compelling necessity. It may be that the fate of Income-Tax Officers promotees and direct recruits may rest with the three decisions of this Court. Unfairness to some of them may itself not provide a good and compelling reason for reopening and reconsidering the decisions. [853 C-D]

A *Jai Singhani* and the *Two Gupta cases* are being quoted, times without number before this Court for the principles enunciated therein. These decisions, therefore, affected subsequent decisions of this Court as well as the High Courts and some of the principles enunciated in these three cases stand in sharp contrast to other decisions of this Court and in fact this Court itself felt it necessary to warn that it may become necessary to reconcile these conflicting decisions. The three decisions are incorrect in the light of the materials now placed, especially the files which were withheld from the Court and the Committee. A strong case has been made out for reconsideration of these decisions. [853 E-F, 854 C-D]

N. D. Chauhan & Ors. v. *State of Rajasthan & Ors.* [1977] 1 S.C.R. 1037 and 1053 referred to.

C ORIGINAL JURISDICTION : Writ Petition Nos. 66/1974 & 4146/1978.

(Under Article 32 of the Constitution)

V. M. Tarkunde, J. N. Haldar, Rathin Dass and *A. K. Sanghi,* for the Petitioners in WP 66/74.

D *Dr. Y. S. Chitale, Mukul Mudgal* and *B. R. Aggarwal* for the Petitioners in WP No. 4146/78.

S. N. Kackar, Sol. Genl. *R. N. Sachthey, E. C. Agarwala* and *Miss A. Subhashini* for RR 1-3 in WP 66 and RR 1-2 in WP 4146.

Ram Panjwani, Raj Panjwani, S. K. Bagga and *Mrs. S. Bagga* for E R. 4 in WP 4146 and Intervener (Gujjar Mal.).

Ram Panjwani, Bishamber Lal, Raj Panjwani and *Vijay Panjwani* for the R. 6 in WP No. 4146 and R. 358 in WP 66.

Yogeshwar Prasad and *Mrs. Rani Chhabra* for the R. 7 in WP 4146.

F *A. K. Sanghi* for the Interveners (Hari Narain and L. S. Chakravarty).

The Judgment of Y. V. Chandrachud, C.J., N. L. Untwalia, P. S. Kailasam and E. S. Venkataramiah, JJ. was delivered by Chandrachud, C.J. D. A. Desai, J. gave a dissenting Opinion.

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CHANDRACHUD, C. J.—The disputes between promotees and direct recruits in various departments of the Government seem to have no end. No sooner does one round of litigation come to a decision than is another round started by one party or the other, sometimes alleging, as in these Writ Petitions, that important facts and circumstances were H not taken into consideration in the earlier proceedings either because they were suppressed or because, though cited, they were overlooked or misunderstood. A virtual review is thus asked for, opening flood

gates to fresh litigation. There are few other litigative areas than disputes between members of various services *inter se*, where the principle that public policy requires that all litigation must have an end can apply with greater force. Public servants ought not to be driven or required to dissipate their time and energy in court-room battles. Thereby their attention is diverted from public to private affairs and their *inter se* disputes affect their sense of oneness without which no institution can function effectively. The constitution of Service Tribunals by State Governments with an apex Tribunal at the Centre, which, in the generality of cases, should be the final arbiter of controversies relating to conditions of service, including the vexed question of seniority, may save the courts from the avalanche of writ petitions and appeals in service matters. The proceedings of such Tribunals can have the merit of informality and if they will not be tied down to strict rules of evidence, they might be able to produce solutions which will satisfy many and displease only a few. There are always a few whom nothing can please.

A B C

The three petitioners in Writ Petition No. 66 of 1974 are all promotees. Petitioner No. 1, Kamal Kanti Dutta, was appointed as an Inspector of Income-tax on December, 7, 1950 and after passing the departmental examination he was promoted an Income-tax Officer, Class II on June 21, 1954. On January 1, 1966 he was promoted as Income-tax Officer, Class I, which post he was holding on the date of the petition, February 8, 1974. Petitioners 2 and 3, Bikash Mohan Das Gupta and Sushil Ranjan Das, were promoted as Inspectors of Income-tax in April, 1955. The former was promoted as I.T.O., Class II in December, 1957 and as I.T.O., Class I, in May, 1971 while the latter was promoted as I.T.O., Class II, in August, 1973.

D E

Respondents 1 to 5 to the petition are the Union of India, Secretary to the Ministry of Finance, the Central Board of Direct Taxes, Secretary to the Ministry of Home Affairs and the Union Public Service Commission respectively. Respondents 6 to 357 who were recruited directly as I.T.Os., Class I, were appointed on probation as Class I Officers after Petitioner No. 1 was promoted to that cadre on January, 1, 1966. Respondents 280 to 357 were appointed on probation as I.T.Os., Class I, after Petitioner No. 2 was promoted to that cadre in May 1971.

F G

Respondent No. 358, S. G. Jaisinghani, who was recruited directly as I.T.O., Class I, in 1951 was holding the rank of Assistant Commissioner of Income-tax on the date of the petition. He was posted at the relevant time as the Deputy Director of Investigation, New Delhi. Respondent 359, Mohan Chandra Joshi, who was recruited directly as I.T.O., Class I, in 1953 was also holding a similar rank and was

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working as Deputy Secretary, Ministry of Defence, Government of India.

In Writ Petition No. 4146 of 1978 the Petitioner, Hundraj Kanyalal Sajnani, was appointed directly on the recommendation of the Union Public Service Commission as I.T.O., Class II (Trainee) on July 1, 1947. After successfully completing the period of probation, he passed the departmental examination for I.T.Os. in July 1950. In 1959-60 he was promoted as I.T.O., Class I, and was confirmed in that cadre with effect from December 9, 1960. He was promoted as an Assistant Commissioner of Income-tax with effect from December 17, 1969.

Respondents 1 to 3 to that petition are the Union of India, the Chairman of the Central Board of Direct Taxes and the Union Public Service Commission respectively. Respondents 4 to 8 are B. D. Roy, S. G. Jaisinghani, M. C. Joshi, B. S. Gupta and M. Jangamayya respectively. These officers have figured in certain well-known decisions of this Court, as a result of which their names have become household words in service jurisprudence. In fact, Shri B. S. Gupta figures in two cause-titles known as 'the first Gupta case' and the 'Second Gupta case'. Respondents 4, 7 and 8 are Assistant Commissioners of Income-tax while respondents 5 and 6 are working as Deputy Directors of Investigation.

It will be difficult to appreciate the nature of the relief sought in these Writ Petitions without a proper understanding of the history of the litigation leading to these petitions. That history is quite checkered. One of the principal grievances of the petitioners is that some of the previous decisions rendered by this Court are erroneous and that some have not been properly understood and interpreted while framing rules of seniority. That makes it necessary to refer to the previous proceedings leading to the present controversy.

With a view to improving the income-tax administration, the Government of India, in consultation with the Federal Public Service Commission, decided to reconstitute and classify the then existing Income-tax Services, Classes I and II. The scheme of reorganisation of the Services was set out in a letter dated September 29, 1944 of the Government of India, Finance Department (Central Revenues), which was sent to all the Commissioners of Income-tax. The Central Service, Class I was to consist of (1) Commissioners of Income-tax, (2) Assistant Commissioners of Income-tax, (3) Income-tax Officers, Grade I and (4) Income-tax Officers, Grade II. The Central Service, Class II comprised Income-tax Officers, Grade III. Thus Income-tax Officers, Class I were to be of two grades, Grades I and II, while Income-tax

Officers, Class II, were to consist of one grade, namely, Grade III. Clauses (a) to (e) of paragraph 2 of the aforesaid letter prescribed modes of recruitment to the various posts in Class I and Class II. Clause (d) which prescribed the mode of recruitment to the post of Income-tax Officer, Class I, Grade II, said :

> Recruitment to Grade-II will be made partly by promotion and partly by direct recruitment. 80 per cent of the vacancies arising in this Grade will be filled by direct recruitment via the Indian Audit & Accounts and Allied Service Examination. The remaining 20 per cent of vacancies will be filled by promotion on the basis of selection from Grade III (Class II Service), provided that suitable men upto the number required are available for appointment. Any surplus vacancies which cannot be filled by promotion for want of suitable candidates will be added to the quota of vacancies to be filled by direct recruitment via the Indian Audit and Accounts etc. Services examination.

Rules regulating recruitment to the Income-tax Officers (Class I, Grade II) Service, "liable to alteration from year to year", were published on May 26, 1945 by a resolution of the Finance Department (Central Revenues). Rule 3 provided that recruitment to Class I, Grade II Service shall be made (i) by competitive examination held in India in accordance with Part II of the Rules and (ii) by promotion on the basis of selection from Grade III (Class II Service) in accordance with Part III of the Rules. By rule 4, the Government was to determine, subject to the provisions of rule 3, the method or methods to be employed for the purpose of filling any particular vacancies, or such vacancies as may require to be filled during any particular period, and the number of candidates to be recruited by each method. Part III of the Rules called 'Recruitment by Promotion' provided by paragraph 21 that recruitment by promotion shall be made by selection from among Grade III Income-tax Officers (Class II Service) after consultation with the Federal Public Service Commission and that no officer shall have any claim to such promotion as of right.

By a letter dated January 24, 1950 the Government of India laid down certain rules of seniority (a) as between direct recruits, (b) as between promotees selected from Class II, and (c) as between direct recruits who completed their probation in a given year and the promotees appointed in the same year to Class I.

On October 18, 1951, the Government of India addressed a letter to all the Commissioners of Income-tax on the subject 'Income-tax Officers,

A Grade II (Class I Service)—quota of vacancies filled by promotion'. The letter says :

> The Government of India have had under consideration the question of increasing the proportion of vacancies reserved for promotion from Class II Income-tax Officers in Class I. It
B has been decided in consultation with the Union Public Service Commission and in modification of para 2(d) of the Finance Dept. (Central Revenues) letter No. 195-Admn. (IT)/39 dated the 29th September, 1944 that for a period of five years in the first instance 66/2-3% of the vacancies in Class I, Grade II, will
C be filled by direct recruitment via combined competitive examination and the remaining 33⅓% by promotion on the basis of selection from Grade III (Class II Service). 'Any surplus vacancies which cannot be filled by promotion for want of suitable candidates will be added to the quota of vacancies to be filled by direct recruitment.

D By a letter dated September 5, 1952, the Government of India revised with retrospective effect the rules of seniority which were laid down on January 24, 1950.

Rule 1(f)(iii) as framed on January 24, 1950 read thus :

> The promotees who have been certified by the Commission
E in any calendar year shall be senior to all direct recruits who complete their probation during that year or after and are confirmed with effect from a date in that year or after.

The rule as revised on September 5, 1952 read thus :

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

G Rule 1(f)(iv) of the 1952 Rules dealt with a special situation in which an officer initially appointed to Class II service is given seniority in the same manner as a departmental promotee, if subsequent to his passing the departmental examination he is appointed in Class I on the results of the competitive examination.

H Rule 4 of Chapter IX of the "Rules of Promotion of the Central Board of Revenue Office Procedure Manual states, that the prescribed

minimum service for an officer of Class I, Grade II for promotion to Grade I is 5 years gazetted service including 1 year in Class I, Grade II. For a promotee from Class II, the minimum period of service for promotion to Class I, Grade I, would be actually 4 years service in Class II and 1 year service in Class I, Grade II.

In 1962, S. G. Jaisinghani (who is respondent No. 358 in Writ Petition No. 66 of 1974 and respondent No. 5 in Writ Petition No. 4146 of 1978) filed Civil Writ No. 189-D of 1962 in the High Court of Punjab under Article 226 of the Constitution, challenging the validity of the seniority rules in regard to Income-tax Service, Class I, Grade II as also the actual implementation of the 'quota' rule, as infringing Articles 14 and 16(1) of the Constitution. Promotees who were likely to be affected by the decision of the Writ Petition were added as respondents 4 to 126 to that Petition. Jaisinghani who was recruited directly as an Income-tax Officer, Class I (Grade II), raised four principal contentions :

(i) Rule 1(f)(iii) of the seniority rules as framed in 1952 was based upon an unjustifiable classification between direct recruits and promotees after they had entered Class I, Grade II Service. On the basis of that classification, promotees were given seniority over direct recruits of the same year *and with weightage of three previous years.* All officers appointed to Class I, Grade II Service formed one class and after being recruited to that class, no distinction could be made between direct recruits and promotees.

(ii) Rule 1(f)(iv) was discriminatory because though the petitioner, Jaisinghani, qualified in the same competitive examination of 1950 for appointment to Class I, Grade II Service as respondents 4, 5 and 6 to that petition, they were treated as senior to him by the operation of the artificial rule by which they were regarded as "deemed promotees", since they were appointed to Class II, Grade III Service in 1947. All the four of them were appointed to Class I, Grade II Service in 1951 and therefore the period of service put in by respondents 4, 5 and 6 in Class II, Grade III Service cannot be counted for fixing their seniority vis-a-vis the petitioner.

(iii) Rule 4 of Chapter IX of the 'Central Board of Revenue Office Procedure Manual' leads to discrimination as between direct recruits and promotees; and that

(iv) during the years 1951 to 1956, there was excessive recruitment of 71 promotees, in violation of the quota rule of 2 : 1 contained in Government of India's letter dated October 18, 1951. The quota fixed by that letter must be deemed to have been fixed in exercise of the statutory power given by rule 4 of the Income-tax Officers (Class I, Grade II) Service Recruitment Rules published on May 26, 1945.

A full Bench of the Punjab High Court, Circuit Bench, Delhi, rejected the writ petition, holding that the principles for determining seniority between direct recruits and promotees laid down in rules 1(f)(iii) and (iv), 1952 were not discriminatory, that the quota rule announced by the Government of India were merely a policy statement and had no statutory force, that departure from the quota rule did not give rise to any justiciable issue and that the promotion rule governing promotions from Class I, Grade II to Class I, Grade I was not discriminatory and ultra vires of Articles 14 and 16 of the Constitution.

In appeal, a Constitution Bench of this Court held that rules 1(f)(iii) and (iv) of the seniority rules framed in 1952 did not violate Articles 14 and 16 since they were based on a reasonable classification and that rule 4 of Chapter IX of the 'Central Board of Revenue Office Procedure Manual' cannot be held to lead to any discrimination as between direct recruits and promotees, since the object of the rule was really to carry out the policy of rule 1(f)(iii) of the Rules of Seniority and not allow it to be defeated by the requirement of five years service in Class I, Grade II itself, before a person could be considered for promotion to Class I, Grade I. On the question of excessive recruitment of promotees from 1951 to 1956 in violation of quota rule, the Court had directed the Secretary of the Finance Ministry, during the hearing of the appeal, to furnish information regarding the number of vacancies which had arisen from year to year from 1945 onwards, the nature of the vacancies—permanent or temporary—the chain of vacancies and such other details which were relevant to the matters pending before the Court. In his affidavit dated January 31, 1967 Shri R. C. Dutt, Finance Secretary, said that he was not able to work out, in spite of his best endeavours, the number of vacancies arising in a particular year. However, a statement, Ex. E. was furnished to the Court showing the number of officers recruited by the two methods of recruitment to Class I Service during the relevant years. The Court found that it was not clear from Shri Dutt's affidavit whether the quota rule was followed strictly for the years in question and noted that in the absence of figures of permanent vacancies in Class I, Grade II, for the relevant years, the Solicitor General was unable to say to what extent

there had been deviation from that rule. Rejecting the submission of the Solicitor General that the quota rule was merely an administrative direction, the Court held that rule 4 of the Income-tax Officers (Class I, Grade II) Service Recruitment Rules was a statutory rule under which a statutory duty was cast on the Government to determine the method or methods to be employed for the purpose of filling the vacancies and the number of candidates to be recruited by each method; and that, though in the letter of the Government of India dated October 18, 1951 there was no specific reference to rule 4, the quota fixed by that letter must be deemed to have been fixed in exercise of the statutory power given by rule 4. There was therefore no discretion left with the Government of India to alter that quota according to the exigencies of the situation or to deviate from the quota, in any particular year, at its own will and pleasure. The quota rule, according to the Court, was linked up with the seniority rules and unless it was strictly observed in practice it would be difficult to hold that the seniority rule contained in rule 1(f)(iii) was not unreasonable and did not offend Article 16 of the Constitution. The Court expressed its conclusion thus :

> We are accordingly of the opinion that promotees from Class II, Grade III to Class I, Grade II Service in excess of the prescribed quotas for each of the years 1951 to 1956 *and onwards* have been illegally promoted and the appellant is entitled to a writ in the nature of mandamus commanding respondents 1 to 3 to adjust the seniority of the appellant and other officers similarly placed like him and to prepare a fresh seniority list in accordance with law after adjusting the recruitment for the period 1951 to 1956 *and onwards* in accordance with the quota rule prescribed in the letter of the Government of India No. F. 24(2)-Admn. I.T./51 dated October 18, 1951. We, however, wish to make it clear that this order will not affect such Class II Officers who have been appointed permanently as Assistant Commissioners of Income Tax. (emphasis supplied).

The Court suggested that for future years the roster system should be adopted by framing an appropriate rule for working out the quota between the direct recruits and the promotees and that a roster should be maintained indicating the order in which appointments are made by direct recruitment and by promotion in accordance with the percentages fixed under the statutory rule for each method of recruitment.

In Writ Petition No. 5 of 1966 filed by Mohan Chandra Joshi under Article 32 of the Constitution, a similar mandamus was issued by the Court. Mohan Chandra Joshi, like Jaisinghani, was recruited directly

A as Income-tax Officer, Class I, Grade II, with the only difference that he was appointed in 1953 while Jaisinghani was appointed in 1951.

Thus the direct recruits succeeded substantially in their contentions. the quota rule acquired statutory force, appointments of promotees in excess of the quota became bad and it became obligatory for the Govern-
B ment to prepare a fresh seniority list. Promotees found to have been appointed in excess of the quota admissible to promotees had naturally to go down in the final gradation of seniority.

The aforesaid decision was given by this Court on February 2, 1967. But, in spite of the mandamus issued by it, Government did not
C prepare a fresh seniority list for over a year, which led to the filing of a contempt petition by Jaisinghani and Joshi. Those proceedings were dismissed by this Court on November 6, 1968. In the meanwhile, on July 15, 1968, the Government prepared a fresh seniority list and filed it in this Court. That list failed to satisfy promotees as well as direct recruits.

D Two writ petitions were filed in the Delhi High Court to challenge the fresh seniority list : one by B. S. Gupta, a promotee of 1962 and the other by M. C. Joshi, a direct recruit who had succeeded in the earlier round of litigation in this Court. These writ petitions were heard by two separate Benches of the Delhi High Court. Writ Petition No. 196 of 1970 filed by B. S. Gupta was dismissed whereas Writ Petition
E No. 550 of 1970 filed by M. C. Joshi was substantially allowed. Setting aside the seniority list, the High Court gave a direction that another seniority list be prepared in the light of its judgment.

The decision of the Delhi High Court in the aforesaid two writ petitions was challenged in this Court in four appeals : one by B. S. Gupta
F against the dismissal of his writ petition and the other three by (i) the Government, (ii) M. C. Joshi and (iii) 5 promotees. In all these appeals, the only question or consideration was whether the seniority list prepared on July 15, 1968 was correct and in accordance with the mandamus issued by this Court in *Jaisinghani* v. *Union of India and Ors.*(1). These appeals were heard together and were disposed of by
G a judgment dated August 16, 1972 which is reported in *Bishan Sarup Gupta* v. *Union of India and Ors.*(2).

While preparing the seniority list the Government understood the mandamus issued in *Jaisinghani*(1) as covering the entire period from 1951 to 1967. For doing that it could not be blamed, since the man-
H damus issued in *Jaisinghani*(1) directed the Government to adjust the

(1) [1967] 2 S.C.R. 703.
(2) [1975] Suppl. S.C.R. 491.

seniority of various officers for the period 1951 to 1956 "and onwards", though the argument regarding excessive recruitment of the promotees was confined to the years 1951 to 1956. Palekar, J. speaking for the Court in *Bishan Sarup Gupta* (Supra) observed in the first instance that this Court could not possibly have in mind a seniority list which took in promotees after 1956 and that therefore under the mandamus issued by this Court, appointments of promotees in excess of the quota could only be taken into consideration in relation to the period 1951 to 1956. The reason for the use of the words "and onwards" was explained to be that Government should be able to push down excess promotions to later years in order that such promotions could be absorbed in the lawful quota available for later years.

In *Bishan Sarup Gupta*---the Court was called upon to examine the correctness of seven principles enumerated in the Government letter dated July 15, 1968 governing seniority. The first principle was accepted as good. The second and the third principles were held to be partially incorrect in so far as they excluded reference to all the promotees of 1952. The Court held that the promotees of 1952 should be referred to in the seniority list whether they are affected or not, the object being the ascertainment of excess promotions.

The fourth principle set out in the letter of July 15, 1968 which is important for our purpose reads thus :

> In view of the difficulty in working out the vacancies arising in each year the total number of direct recruits and promotees in each year have been taken into account for the purpose of implementing the quota rule.

This Court held that the rule dated October 18, 1951 was not concerned with the constitution of the cadre but "was concerned with how permanent vacancies were to be filled" and therefore the promotees would be entitled to 1/3 of the vacancies in any particular year whether or not there was direct recruitment by competitive examination in that year. This ratio of 2 : 1 between the direct recruits and the promotees could not be made to depend on whether any direct recruits were appointed in any particular year. It therefore became essential to determine the actual vacancies in the cadre but even in *B. S. Gupta* the Government put forward the plea that it was impossible for them to give the exact figure of vacancies in any particular year. Counsel who appeared for the promotees in that case filed a chart marked Annexure I which, according to him, showed the correct number of

A vacancies in the particular years. The Court, however, found it impossible to determine the actual vacancies on the basis of the figures given in that chart. In the circumstances, the Court considered it reasonable to accept the number of appointments made in the particular years as substantially representing the actual vacancies available for being filled up. One of the reasons which the Court gave in support of this conclusion was that when the quota rule referred to vacancies, it was implicit that the vacancies are those which the Government wanted to fill up, whatever may be the actual number of vacancies available for being filled up. Thus, if in the year 1953, 53 posts were filled by direct recruits and 38 by promotees, the total number of vacancies which were intended by the Government to be filled in would be 91. Promotees would be entitled to hold 1/3 of these namely, 30. 8 promotees therefore could be said to have been appointed in excess of the quota available for promotees. This was in fact what the Government had done while preparing the fresh seniority list, though it had wrongly calculated the vacancies with effect from the year 1953 instead of doing so w.e.f. the beginning of the year 1952. There were no promotions in 1951 and therefore, the question of appointment of promotees in excess of their quota did not arise for that year.

The argument advanced on behalf of the direct recruits that the quota rule should be co-related to vacancies in permanent posts only and not to those in temporary posts was rejected by the Court.

The Court upheld the 5th principle under which Class II Officers promoted to Class I, Grade II, were allowed weightage under rule 1(f)(iii).

The Court then considered the question whether the quota rule could be applied after the year 1956. It held that even after 1956, the Government was entitled by reason of rule 4 of the Recruitment Rules of 1945 to follow the quota rule of 1951 as a rough guideline, "without going to the trouble of putting the same on record in so many words". The Court observed that if the rule is followed as a guideline, a slight deviation from the quota would be permissible but if there was an "enormous deviation", other considerations may arise. Taking into consideration the relevant circumstances, the Court came to the conclusion that in the normal course the Government was entitled to prepare the seniority list till the end of 1958 in accordance with the quota rule of 1951.

In regard to the position after the year 1958, the Court came to the conclusion that the quota rule ceased to apply and came to an end on January 16, 1959 when the sanction to upgrade 100 temporary posts in

class II, grade III to class I, grade II was given by the President. The seniority rule then fell with the quota rule. On these considerations it was held that the seniority list was valid in regard to promotions made upto January 15, 1959 to the extent that it was prepared on the basis of the quota rule dated October 18, 1951 read with the seniority rule 1(f) (iii).

This position made it necessary for the Court to consider as to how the inter se seniority between the direct recruits and the promotees was to be fixed after January 16, 1959, if the seniority rule 1(f)(iii) ceased to be operative from that date. Several suggestions were made to the Court with a view to evolving a fair and just seniority rule. The Court declined to be drawn into any such exercise and preferred to leave it to the Government to devise a fair and just seniority rule, if necessary, in consultation with the U.P.S.C. As a corollary, the Court set aside the seniority list of July 15, 1968 and directed the Government to prepare a fresh seniority list. The list for the years 1955 to January 15, 1959 was directed to be prepared in accordance with the quota rule of 1951 read with seniority rule 1(f)(iii). The list to be effective from January 16, 1959 was directed to be prepared in accordance with rules to be made afresh by the Government.

Principles (6) and (7) did not survive for consideration separately in view of the position mentioned above.

The Court kept the proceedings pending on its file to enable the Government to prepare a fresh seniority list in the light of the directions given by it within six months from the date of the order. Liberty was given to the parties to apply to the Court after the list was filed.

The judgment in *B.S. Gupta* (supra) was given on August 16, 1972. On February 9, 1973, the President made rules called the Income-tax (Class I) Service (Regulation of Seniority) Rules, 1973. These Rules were made under Article 309 of the Constitution and were given retrospective effect from January 16, 1959. In pursuance of the liberty reserved to the parties under the judgment in *B.S. Gupta*, the validity of the new Seniority Rules was challenged by the promotees. That challenge was considered and repelled by this Court in *Bishan Sarup Gupta etc.* v. *Union of India & Ors. etc. etc.*,(1) the *2nd Gupta case*.

Rule 3 of the new Seniority Rules of 1973 reads thus :

"3. Seniority of Officers—The seniority of the Income-tax Officers in the Class I service shall be regulated as from the

(1) [1975] 1 S.C.R. 104.

A date of commencement of these rules in accordance with the provisions hereinafter contained namely :—

(i) the seniority among the promotees inter se shall be determined in the order of selection for such promotion and the officers promoted as a result of any earlier selection
B shall rank senior to those selected as a result of any subsequent selection;

(ii) the seniority among the direct recruits inter se shall be determined by the order of merit in which they are selected for such appointment by the Union Public Service Commission
C and any person appointed as a result of an earlier selection shall rank senior to all other persons appointed as a result of any subsequent selection; and

(iii) the relative seniority among the promotees and the direct recruits shall be in the ratio of 1 : 1 and the same
D shall be so determined and regulated in accordance with a roster maintained for the purpose, which shall follow the following sequence, namely :—

(a) promotee;
(b) direct recruit;
(c) promotee;
E (d) direct recruit; and so on".

When the new list of seniority was prepared by the Government in accordance with these rules, the Government had on its hands 73 promotees who, though appointed earlier between 1956 and 1958, had no quota posts for their absorption. The 73 promotees, described
F as "spillovers on January 16, 1959" as also those who were promoted subsequently had to be absorbed in the Service, which could only be done by a special rule framed in that behalf.

The method adopted in the preparation of this list was, according to Palekar, J., who spoke again for the Constitution Bench in the *2nd Gupta case*,
G "simple enough", though the wording of the rule "is not happy". The simple method adopted by the Government was like this : The seniority list from serial No. 1 to serial No. 485 relating to the period from 1951 to January 16, 1959 was prepared in accordance with the quota rule read with the seniority rule which prevailed until January 16, 1959. At serial numbers 486 to 1717 are officers
H who had to be accommodated from January 16, 1959 in accordance with the new seniority rules. Since under rule 3 (iii), the first post in the roster has to go to a promotee and the next to a direct recruit,

serial No. 486 goes to a promotee, serial No. 487 to a direct recruit and so on. Promotees whose ranking is below serial No. 485 are either out of the 73 spillovers as on January 1959, or are those who were appointed later. Thus, the new seniority rule contains a formula for the absorption of all promotees with effect from January 16, 1959 in posts allocated to them, it determines their seniority inter se and last but not the least, it determines their seniority *qua* the direct recruits appointed from 1959.

The Court over-ruled the objection of the 73 spillover promotees that since, in the *1st Gupta case*, the Court had directed that they should be absorbed on a "priority basis", all of them should have been shown in the seniority list as having been appointed on January 16, 1959 *en bloc* and the direct recruits for that year should have been shown thereafter. It was explained that by the use of the expression "priority basis", what was meant by the Court was that the position of the spillover promotees as seniors should not be prejudiced by claims made by later promotees on the ground that since the spillover promotees were recruited in excess of the quota, the later promotees whose promotion did not violate the quota rule had higher rights than those 73.

The principal contention of the promotees in the *2nd Gupta case* was this : As the quota rule collapsed on January 16, 1959 the spillover promotees as also those who were promoted thereafter must be deemed to have been validly appointed in accordance with rule 4 of the Recruitment Rules of 1945. Since there was no seniority or quota rule in existence for determining the seniority of promotees *que* the direct recruits, the natural seniority linked with the earlier date of appointment must be respected. It could not be altered to the detriment of the promotees since to do so would violate Article 16 of the Constitution. This contention was rejected by the Court on the ground that when the 73 spillover appointments were made, there were no allocated or earmarked posts to which those promotees could have been validly appointed, the ordinary consequence of which would have been their reversion to Class II posts which they originally held. So long, as the quota rule was in existence, appointments in excess of the quota, though invalid when made, were at least liable to be regularised in subsequent years when vacancies were available to the promotees as a consequence of the quota rule. But once the quota rule ceased to exist on January 16, 1959, any possibility of the excess appointments of the promotees being regularised vanished. It was in order to overcome this injustice to the promotees, that the new rule was framed by the Government. The new rule was thus not only the direct outcome of the judgment of the Court in the *1st Gupta case*,

A but it was founded on the very principles on which the Income-tax Service had been constituted. The Court finally said that it had also to be remembered that promotees appointed from January 16, 1959 onwards were appointed on an officiating or ad-hoc basis with notice that the question of their seniority was still undecided. This circumstance, coupled with the absence of clear allocation of posts, made it B impossible for the promotees to lay claim to seniority and contend that they were deprived of their natural seniority in violation of Article 16.

Shri V.M. Tarkunde who appears on behalf of the petitioners in Writ Petition No. 66 of 1974 has made a fresh challenge to the new C seniority list prepared in pursuance of the rules dated February 9, 1973 the validity of which was upheld by this Court in the *2nd Gupta case* (Supra). According to the learned counsel, the decision in *Jaisinghani* (Supra) suffers from the following three infirmities :

(i) It was assumed in that case that the appointments of pro- D motees were in excess of the quota available to them because the relevant files were not made available to the Court, nor indeed was the necessary data placed before the Court, even though during the hearing of the appeal the Court had asked the Secretary of the Finance Ministry to furnish information in that behalf. In the absence of such E information, the Court made an assumption which was unjustified, that the total number of vacancies available for promotees was equal to the total number of appointments actually made. If, for example, 10 direct recruits and 20 promotees are appointed in a particular year it cannot be assumed either that only 30 vacancies are F available for being filled up in that year or that only 30 appointments are intended to be made by the Government during that year. The proper inference for the Court to draw, in the absence of material which ought to have been produced by the Government, was that if appointments were to be made of direct recruits and G promotees in the proportion of 2 : 1, and if 20 promotees were in fact appointed, the Government desired to appoint 40 direct recruits but could only appoint 10, probably because of the non-availability of suitable candidates for direct recruitment.

H (ii) It was wrongly assumed or held that rule 4 of the Income-tax Officers (Class I, Grade II) Service Recruitment Rules was a statutory rule.

(iii) It was wrongly assumed that 100 posts in Class II, Grade III, and 114 posts in the same cadre which were upgraded as Class I, Grade II posts on January 16, 1959 and December 9, 1960 respectively were exclusively allotted to promotees and were in fact filled in by the appointment of promotees.

In regard to the decision in the *2nd Gupta case* (Supra) it is contended that the decision suffers from the following infirmities :

(i) It was wrongly held therein that the 73 spillover promotees as on January 16, 1959 could not be given priority *en bloc*, even though it was directed in the judgment in the *1st Gupta Case* (supra) that they should be dealt with on a "priority basis".

(ii) It was wrongly held that 214 promotees were appointed in excess of the quota available to the promotees.

(iii) The conclusion that no distinction can be made between promotees and direct recruits once they belong to a common cadre was erroneous, as a result of which the promotees were unjustly deprived of their right to weightage.

(iv) The provision in rule 3 (iii) of the new Rules of seniority of 1973 that direct recruits and promotees will be appointed in the ratio of 50 : 50 cannot work to the advantage of the promotees because the measure of 50 percent is fixed by the new rules in relation to the actual appointments made, whereas the old proportion of 2 : 1 was in relation to the actual number of vacancies available for being filled in.

Learned counsel has demonstrated with the help of some of the instances in the new seniority list, as to how promotees have been treated unfairly and unjustly in comparison with direct recruits. One such instance is that a direct recruit, Hrushikesh Mishra, who was appointed on July 3, 1966 is placed at serial No. 1001 while one of the petitioners, Kamal Kanti Dutta, who was appointed six months earlier on January 1, 1966 is placed at serial No. 1318. Another instance cited is that of a promotee, V. R. Hiremath, who was appointed on March 1, 1956 but is placed at serial No. 486, the first 485 officers having been ranked according to the quota rule read with the seniority rule which prevailed till January 16, 1959. Hiremath, it is contended, not having been appointed in excess of the quota should have been given his seniority, on account of the three years' weightage, with effect from March 1, 1953. In the process, he has lost a benefit spread

A over not only three but six years, because his ranking has been made according to the new rule in relation to the date January 16, 1959.

These contentions were adopted by Dr. Y.S. Chitale who appears on behalf of the petitioner H.K. Sajnani in Writ Petition No. 4146 of 1978. It may be mentioned that in Writ Petition No. 66 of 1974 B of K.K. Dutta and others which was filed on February 8, 1974 no demand was made for the review of the decisions earlier given by this Court on the points under consideration. The request for review of those decisions was made for the first time by the petitioners by paragraph 3 of their supplementary affidavit in rejoinder which was filed in this Court in April 1978. By paragraph 45 of his Writ Petition, C which was filed on June 27, 1978 Sajnani did contend that the aforesaid judgments be reviewed since they were wrongly decided. Sajnani asked by paragraph 51 of his petition, and so did the petitioners in the companion petitions asked by their supplementary rejoinder, that the decision of this Court in *Union of India v. M. Jangamayya*(1) should also be reviewed.

D In his writ petition, Sajnani has cited several specific instances in support of his contention that under the new seniority rules, the promotees have been treated with an evil eye and an uneven hand. His complaint is that direct recruits who are "15 years junior in age and 15 years junior in experience had been placed above him"; and that E the seniority list dated April 15, 1978 of Assistant Commissioners of Income-tax, which is the basis of further promotion to the post of Commissioner of Income-tax, does not include his name at all, though he has been working as an Assistant Commissioner ever since 1969 when he was selected by the competent authority with the concurrence of the U.P.S.C., after putting in 22 years of service as an I.T.O., out F of which 10 years' service was rendered in Class I itself. Sajnani also prays that the seniority list dated April 15, 1978 for the cadre of Assistant Commissioners be set aside as violating Articles 14 and 16(1) of the Constitution.

In addition to these grounds which are pressed upon us for reviewing our decisions in *Jaisinghani*, *1st Gupta case*, *2nd Gupta case* and G *Jangamayya*, (supra) the petitioners have placed strong reliance on the findings of the 49th Report of the Committee on Petitions of the Rajya Sabha, which was presented on January 9, 1976. A full text of that Report is extracted at pages 242 to 363 of the compilation filed by the writ petitioners in this Court.

H It appears from that report that at the sitting of the Rajya Sabha held on the 23rd August, 1974, Shri Kali Mukherjee, M.P., presented

(1) [1977] 2. S.C.R. 2.8

a petition signed by Shri R.C. Pandey, General Secretary, All India Federation of Income-tax Gazetted Services Associations, New Delhi, praying for the repeal of the Income-tax Officers (Class I Service) (Regulation of Seniority Rules, 1973) and for the framing of fresh seniority rules in lieu thereof. The Committee heard the representatives of (i) promotees on whose behalf the petition was presented to the Rajya Sabha; (ii) the Ministry of Finance and (iii) the direct recruits who were represented by the Indian Revenue Service Association. After going through the evidence, the memoranda and the files supplied by the Ministry of Finance the Committee observed :

> ".....the Department from 1944 till today has been working in a very haphazard, irregular and unscientific way. They made policies, rules, etc. and then went on deviating from them to suit certain exigencies. Instead of meeting the new situation or the demands of the Department in a scientific or rational way, *ad-hocism* prevailed. This led to litigation for nearly two decades. Since the year 1944, the Department has made so many commissions and ommissions in its long working, thereby it has provided arguments to both the direct recruits and promotees which have been advocated by them forcefully. This has created bitterness and a picture of civil war in the Department. It would facilitate our understanding if we look at the various points, like vacancies, quota, seniority, weightage, confirmations, recruitments or promotions to temporary and permanent vacancies, etc. in a proper perspective."

The Committee examined the files produced before it by the Ministry, expressed its sense of "shock" at the plea of the Ministry that files of vital matters were not traceable and concluded that the new seniority rules of 1973 should be scrapped. The Committee recommended, *inter alia, :*

> "The entire concept of a common seniority list should be given up. The existing common seniority list of 1973 be replaced by two sets of seniority lists consisting of direct recruits and promotees respectively, on the basis of the dates of their appointment. The integration of the two channels which may be turned into two cadres should not be done at the level of I.T.Os. but after the level of Assistant Commissioners."

The Committee hoped that with the separation of the two seniority lists, the controversy of *inter se*, seniority will be resolved and the hardship caused to the 434 officers promoted between 1956 to 1966 will be relieved. The Committee made certain calculations according to which, the correct number of spill-over promotees as on Jan-

A uary 16, 1959 was 15 and not 73. Observing in paragraph 7(i) that the Parliament owes responsibility in service matters too and that the executive is answerable to the Parliament for its actions, the Committee concluded its Report with the observation :

> ".....if necessary, a special law could be enacted and incorporated in the Ninth Schedule of the Constitution so that no further scope is left for disputes and litigation and the Department would start functioning as an efficient and well-knit unit and fulfil its intended role in combating the evils of black-money and tax evasion and ensuring the stability and progress of our country."

C It is not necessary to go into complications arising out of the random placement of statutes, rules and notifications in the 9th Schedule, but we do hope that, some day, the promised millannium will come.

The Solicitor General and the other learned counsel who appear for the respondents resisted with great stoutness the attempt of the D petitioners to reopen decisions rendered by this Court in disputes between promotees and direct recruits of the Income-tax Service. The respondents contend that everyone of the arguments now presented before us has been already considered carefully in the earlier decisions and the petitioners' demand for review is only yet another attempt to retrieve a lost cause. The learned Solicitor General also E pressed upon us the need for treating the matter as closed. Reviews, he contends, should not be granted save in exceptional circumstances and at any rate, he says, no solution in service matters can ever satisfy both the promotees and direct recruits in an equal measure.

Having considered these rival submissions carefully we are of the F opinion that there is no substance in the request made on behalf of the petitioners for a review of the decisions in *Jaisinghani*, *the 1st Gupta case*, the *2nd Gupta case* and *Jangamayya* (supra).

Certain historic facts have to be borne in mind while considering the points raised before us. It is necessary to recall that for nearly a G decade after 1950, appointments of promotees were made far in excess of the quota available to them. So long as the quota rule operated, it was possible to regularise their appointments when posts within their quota became available in later years. But a somewhat unprecedented situation arose by the upgrading of Class II posts to Class I, Grade II,—100 of them on January 16, 1959 and 114 on December 9, 1960. H This massive upgrading of posts brought about a collapse of the quota rule. Subsequent absorption in posts which become available for being filled up later really means regularisation of appointments, which is

possible provided there is no excessive deviation from the quota rule. We quite appreciate that no blame can be laid at the doors of the promotees on the score that they were appointed in excess of the quota available to them. Perhaps, their appointments must even have enabled the administration to tide over administrative stalemate. But the tough problem which the administration has to face is that whereas it is necessary to recognise and protect the claims of promotees who are appointed in excess of their quota, it is equally necessary to ensure that the direct recruits do not suffer an undue set back in service on account of the excessive appointments of promotees. The conflicting claims of the two components of Service, both having an importance of their own, have therefore to be reconciled. It was with that object that the rules have been modified from time to time. The judgments rendered by this Court in matters which the petitioners want to be reopened show, without a shadow of doubt, how every effort was made to ensure that no hardship or injustice is caused to the promotees merely because their appointments exceeded their quota.

A B C

It is not correct to say that the judgment in *Jaisinghani* (supra) was based on a concession or that the Court felt compelled to draw the particular conclusions therein because of the inability or refusal of the Finance Ministry to produce the relevant files. The Court adopted what it considered in the circumstances to be a satisfactory and scientific method of ascertaining the number of vacancies available for being filled up. It came to the conclusions that the number of actual appointments should determine the number of vacancies available which, with great respect, was a perfectly legitimate conclusion to draw. In the grey area where service rules operate, more than one view is always possible to take without sacrificing either reason or commonsense, but the ultimate choice has to be necessarily conditioned by several considerations ensuring justice to as many as possible and injustice to as few. We also find it impossible to hold that there was any error in the conclusions in *Jaisinghani* (supra) that rule 4 of the Recruitment Rules was a statutory rule. Subsequent decisions would show that there was hardly any dispute between the parties, at later stages at any rate, that rule 4 was a statutory rule.

D E F G

The other objections raised against the judgments in the various cases partake more or less of the same character and must be overruled for similar reasons.

We appreciate that the promotees should not be penalised for the mere reasons that those of them who were appointed after January 16, 1959 were appointed on an officiating or ad-hoc basis and had clear notice that the question of their seniority was still undecided. The

H

A circumstances attendant upon their appointments cannot, however, be wholly over-looked in determining whether the constitutional constraints have been over-stepped.

In regard to the individual instances cited before us as exemplifying the injustice caused to the promotees, it is not safe to test the B constitutionality of a service rule on the touchstone of fortunes of individuals. No matter with what care, objectivity and foresight a rule is framed, some hardship, inconvenience or injustice is bound to result to some members of the service. The paramount consideration is the reconciliation of conflicting claims of two important constituents of Service, one of which brings fresh blood and the C other mature experience.

The counter-affidavit dated August 31, 1973, filed in the *2nd Gupta case* (supra) by Shri Mehra, Deputy Secretary, Ministry of Finance, shows the fullness with which the Government had consulted all possible interests while framing the impugned rules of seniority. D The gamut of reasonable possibilities is fairly covered by the four alternatives referred to in Shri Mehra's affidavit. The inconveniences and disadvantages flowing from the first three alternatives would be far greater than those flowing from the 4th. That is why the choice ultimately fell on the 4th alternative, under which the seniority between promotees and direct recruits was fixed alternately on a roster system, vacancies being equally divided between promotees and direct E recruits, for the entire period from 1959 up-to-date. Though the promotees submitted in the *2nd Gupta case* (supra) that the new seniority rule was unfair to them, they were unable to put forward any rational alternative, a fact which is noted at page 119 of the Report. That led the Court to remark :

F

> "They are indeed pleased with the increase in the promotional chances. But they are sore that the artificial rule of seniority which gave them weightage, has been removed. They do not dispute that by the increase in their ratio in Class I service, a larger number of Class II officers will, in course of time get a G chance to be appointed by promotion as Assistant Commissioners. But they are sorry that their chances to be promoted to posts higher than that of the Assistant Commissioner are now retarded by the removal of the weightage."

This shows how difficult it is to solve the jig-saw puzzle of service H disputes.

The Report of the 'Committee on Petitions' of the Rajya Sabha, howsoever sincerely motivated and fully drawn, cannot be given the

importance which the promotees seem to attach to it. It is urged that the findings of the Committee are authentic because the Finance Ministry had made the relevant files available to it. We do not think that this argument is well-founded. In paragraph 16 of its Report, the Committee does refer to certain files but those files appear to contain some notings in regard to the direct recruitment only. The Committee has given a table of comparative appointments in paragraph 19 of its Report, but it had to speculate on an important aspect of the matter, as is shown by its own language, that the table shows the number of direct recruits which the Government wanted to take and "on the basis of which the promotees *must have been given promotions*". (emphasis supplied). If indeed the relevant files were produced before the Committee. it would not have expressed its sense of deep shock and resentment at the disappearance of the files. We share the concern of the Committee which is expressed in paragraph 32 of its Report, thus :

> "It is strange that many of the files which could probably have thrown light on the question of excess promotion, are reported 'missing' or 'not available'. The conclusion is inescapable that these losses of files are far from being accidental. We can only conclude that important information was deliberately withheld from the Supreme Court as well as from the Committee. Had the Committee been allowed access to the file relating to the Seniority Rules framed in 1973, we could have known some more facts".

This shows that the Committee, too, had to grope in the dark and indulge in a certain amount of speculation on matters under its consideration. In the circumstances, it has done as good a job as a Committee can and we desire to find no fault with its Report. But we cannot accept the submission pressed upon us by the petitioners that the Committee's Report must displace our judgments.

It shall have been noticed that we have refused to reconsider our decisions not so much because of the view taken in the various cases cited by the learned Solicitor General, like *Sajjan Singh* v. *State of Rajasthan*,[1] that this Court should not review its decisions too readily, as because, on merits, we see no justification for reconsidering the judgments already rendered by this Court. No fresh facts are brought to our notice, by way of discovery of new and important evidence, which would justify reconsideration of the decisions already rendered by this Court after the most careful examination of the competing

(1) [1965] 1 S.C.R. 933, 947, 948.

A contentions. The report of the Rajya Sabha Committee on Petitions shows, as already indicated, that the relevant files are still not traceable.

The petitions are accordingly dismissed but there will be no order as to costs.

B

DESAI, J.—I have carefully gone through the Judgment prepared by My Lord the Chief Justice but I regret my inability to agree with the same.

The history, chronology of events, contentions canvassed and the C three decisions of this Court disposing of the contentions have been so succinctly drawn up in the main judgment that its repetition would merely be an idle formality. I would, therefore, straightaway deal with the points raised in these petitions.

The petitioners who are promotee Income Tax Officers Class I, D Grade II, pray for reconsideration of the three decisions specifically *S.G. Jaisinghani* v. *Union of India & Ors.*(1) *Bishan Sarup Gupta* v. *Union of India & Ors.*(2) ('1st Gupta case' for short) and *Bishan Sarup Gupta etc. etc.* v. *Union of India & Ors. etc. etc.*(3) ('2nd Gupta case' for short), and to the extent the first mentioned case is relied upon in *Union of India etc.* v. *Malji Jangamayya etc.*,(4) on the following E grounds :

1. The conclusion that rule 4 of the Income Tax Officers (Class I, Grade II) Service Recruitment Rules is statutory and, therefore, the quota prescribed by the Government of India for recruitment to Income Tax Officers Class I, F Grade II in exercise of the power conferred by rule 4 would be statutory, proceeds on an assumption not warranted by the provisions of law bearing on the point and if both rule 4 and the quota presumably prescribed in exercise of the power conferred by rule 4 are not shown to be statutory, the foundation on which the edifice in *Jaisinghani's*(1) case G rests is knocked out because it can be demonstrably established that neither rule 4 nor the quota prescribed thereunder was statutory in character but was at best an administrative instruction.

(1) [1967] 2 S.C.R. 703.

H (2) [1975] Suppl. S.C.R. 491.

(3) [1975] 1 S.C.R. 104.

(4) [1977] 2 S.C.R. 28.

2. After the Court on an interpretation of the quota rule held that the quota was related to vacancies arising in the grade every year, the conclusion reached did not conform to this finding but accommodated the so called inability (now shown to be factually incorrect) of the Government of India to give information to the Court about the vacancies in the grade every year with the result that the whole calculation of spill over is vitiated.

3. The mandamus issued in *Jaisinghani's* case was misinterpreted by the Government because even if the quota was statutory it was operative only between 1951 and 1956 but the Government interpreted the mandamus to be operative beyond 1956 and upto 1967 which misinterpretation has been pointed out in the *first Gupta case.*

4. In the 1*st Gupta case* while holding that the mandamus directing to treat the quota as statutory beyond 1956 was not justified yet till January 16, 1959, the Court itself indirectly accepted the quota rule as a guideline and treated that there was a spill over of 73 promotees. If rule 4 was not statutory and consequently the quota prescribed in exercise of the power which had outlived its prescribed span of life in 1956 could not be brought in to treat any appointment as invalid on the ground that there was no allocated post for those appointees treated as spill over because under rule 4 itself the Government had power to determine the method or methods to be employed for the purpose of filling in particular vacancies or such vacancies as may be required to be filled in during any particular period and the number of candidates to be recruited by each method.

5. The action of the Government in upgrading 214 posts between 1959 and 1962 from Class II, Grade III to Class I. Grade II was not open to question as at that stage there was no quota rule and rule 4 enabled the Government to make recruitment from either of the two sources in exercise of its executive power. In upholding the seniority rules in 2*nd Gupta case* the Court introduced quota rule retrospectively by the back door which is impermissible and its operation manifestly establishes its utter unfairness inasmuch as a direct recruit not any where in the Department or may be a student may secure a march over a promotee who has been working in Class I, Grade II.

A While no doubt this Court has constitutional power to review its decision, it is a power to be sparingly exercised because any such review has the tendency to unsettle questions which may have been finally determined. In fact, learned Solicitor-General appearing for the Union of India warned us that the credibility of this Court is at stake if it goes on re-opening and reviewing propositions which have been finally determined by this Court. Whose credibility is at stake would be presently pointed out because the examination of this ugly aspect could have been spared if such a contention was not canvassed. Repeatedly the Government of India kept back material from this Court filing affidavit after affidavit showing its inability to provide such important information on which the decision of the Court would turn even though it can now be demonstrably established that such material and information was with the Government. If the Government of India had not withheld such material information which has been rather adversely commented upon not by the Court but by the Legislature, the credibility of the department would be exposed. Reference may be made in this connection to the 49th Report of Committee on Petitions presented on January 9, 1976, to Rajya Sabha Secretariat, set up to dispose of a petition filed by one R.C. Pandey, General Secretary, All India Federation of Income Tax Gazetted Services Associations, praying for repeal of the Income Tax Officers (Class I Service) (Regulation of Seniority) Rules, 1973, and for the framing of fresh seniority rules in lieu thereof. While disposing of this petition, the observation pertinent to the point under discussion may be extracted:

> "The Committee is shocked at the pleas of loss of vital records taken by the administration. In response to the Committee's requests relating to important files the administration has taken a similar plea. The Committee asked for a file which could possibly show the correct position on the question whether the 80 : 20 quota during the period 1945-50 was really operative. The file is reported missing. Another file reported missing is that relating to the framing of the recruitment rules, 1945. The file relating to Shri R.C. Dutt's affidavit (filed in Jaisinghani's case) is also not available. Even the very recent file relating to the framing of Seniority Rules, 1970, is reported as 'not available'. On our insistence they have produced a thick sheaf of papers said to be 'reconstructed file'. It is strange that many of the files which could probably have thrown light on the question of excess promotion, are reported 'missing' or 'not available'. The conclusion is inescapable that these losses of files are far from being accidental. *We can only*

conclude that important information was deliberately withheld from the Supreme Court as well as from the Committee".

(emphasis supplied)

On these observations the credibility submission would not only stand squarely answered, but need not deter us from going into the points made in these petitions.

However, this Court does not lightly undertake review of its decisions, more especially where conflicting claims have been settled by a decision of the Court and the whole gamut may have to be gone through over again on a reconsideration of the decision. The approach of the Court on a plea of reconsideration has been spelt out in *Sajjan Singh* v. *State of Rajasthan*,(1) where a plea for reconsideration of the decision of this Court in *Sri Sankari Prasad Singh Deo* v. *Union of India & State of Bihar*,(2) was repelled observing as under :

> "It was, however, urged before us during the course of the hearing of these writ petitions that we should reconsider the matter and review our earlier decision in *Sankari Prasad's* case. It is true that the Constitution does not place any restriction on our powers to review our earlier decisions or even to depart from them and there can be no doubt that in matters relating to the decision of constitutional points which have a significant impact on the fundamental rights of citizens, we would be prepared to review our earlier decisions in the interest of public good. The doctrine of *stare decisis* may not strictly apply in this context and no one can dispute the position that the said doctrine should not be permitted to perpetuate erroneous decisions pronounced by this Court to the detriment of general welfare. Even so, the normal principle that judgments pronounced by this Court would be final, cannot be ignored and unless considerations of a substantial and compelling character make it necessary to do so, we should be slow to doubt the correctness of previous decisions or to depart from them".

Similarly, in the *Keshav Milis Co. Ltd.* v. *Commissioner of Income Tax, Bombay North*,(3) it was held that while exercising inherent power to reconsider and review its earlier decisions this Court would naturally like to impose certain reasonable limitations and would be reluctant

(1) [1965] 1 S.C.R. 931

(2) [1952] S.C.R. 89

(3) [1965] 2. S.C.R 908 at 921.

to entertain plea for reconsideration and review of its earlier decisions, unless it is satisfied that there are compelling and substantial reasons to do so. It is general judicial experience that in matters of law involving questions of construing statutory or constitutional provisions, two views are often reasonably possible and when judicial approach has to make a choice between the two reasonably possible views, the process of decision-making is often very difficult and delicate. In deciding whether a review is necessary when two views are possible it would not necessarily be an adequate reason for such review and revision to hold that though the earlier view is a reasonably possible view, the alternative view which is pressed on the subsequent occasion is more reasonable. The Court's discretion should be guided by such consideration whether in the interest of public good or for any other valid or compulsive reasons it is necessary that the earlier decision should be revised. This view was re-affirmed in *Manganese Ore (India) Ltd.* v. *The Regional Assistant Commissioner of Sales Tax, Jabalpur.*(1)

Bearing these principles in mind, it is necessary to examine whether a case for reconsideration of the three earlier decisions is made out by the petitioners or not.

Jaisinghani's case proceeds on a concession that rule 4 and the quota prescribed by the Government referable to the power conferred by rule 4 were statutory in character. This is borne out by the observation of the Court which may be extracted :

> "It is not disputed that rule 4 of the Income Tax Officers, Class I, Grade II Service Recruitment Rules is a statutory rule and there is a statutory duty cast on the Government under this Rule to determine the method or methods to be employed for the purpose of filling the vacancies or number of candidates to be recruited by each method".

Income Tax Service was reconstituted on September 29, 1944. The Government of India classified the existing Income Tax Service as Class I and Class II. The scheme provided for recruitment of Income Tax Officers Class I, Grade II partly by promotion and partly by direct recruitment. The scheme was set out in the Government of India, Finance Department (Central Revenues) letter dated September 29, 1944. The quota prescribed therein has undergone a revision at a later date. It thus appears that the rules were pre-Constitution Rules and, therefore, their source must be traced to the Government of India Act, 1935 ('1935 Act' for short). Section 241 of the

(1) [1976] 3 S.C.R. 993.

1935 Act made provision for recruitment and conditions of service. A bare perusal of the section would show that the power to make appointments in the case of service of Federation and posts in connection with the affairs of the Federation was conferred on the Governor-General or such person as he may direct. The power to make rules in this behalf was conferred by sub-s. (2) on the Governor-General or by some person or persons authorised by the Governor-General to make the rules for the purpose. On an examination of the rules under discussion no material was placed on record to show that the rules were made either by the Governor-General or such person as authorised by him. As pointed out a little while ago, the rules were made by the Finance Department and no material was placed to show that the person or the persons who made the rules were authorised by the Governor-General under s. 241(2) of the 1935 Act in this behalf. The assumption made, therefore, that rule 4 of the Rules was statutory and that the quota prescribed in exercise of the power conferred by rule 4 must be statutory, is ill-founded. This knocks out the entire foundation of the judgment of this Court in *Jaisinghani's* case because this Court proceeded to hold that as the quota was statutory any recruitment made in excess of the quota in any given year would be invalid and at best can be regularised by relegating such excess appointments to the quota next year. If rule 4 and the quota referable to the power conferred by rule 4 were not statutory but were merely executive instructions, its violation would not render any appointment in excess of it invalid, but at best would be irregular and in this case on a plain reading of rule 4 it would not even be irregular.

In *P.C. Sethi & Ors.* v. *Union of India & Ors.*,(1) this Court held that in the absence of any statutory rules it was open to the Government in exercise of its executive power to issue administrative instructions with regard to constitution and reorganisation of service as long as there is no violation of Articles 14 and 16 of the Constitution. If the parent rule 4 enables the Government to prescribe method to be employed for the purpose of filling in any particular vacancy or such vacancies as may be required to be filled in during any particular period and the number of candidates to be recruited by each method and if the so called quota is not statutory but merely a guideline, the Government whenever making appointment would be acting in exercise of power conferred by rule 4 which leaves it to the discretion of the Government to decide from what source recruitment should be made and what must be the quantum of vacancies that must be filled in at a given point of time and such appointment could not be said to be invalid.

(1) [1975] 3 S.C.R. 201.

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Alternatively, even if the assumption made in *Jaisinghani's* case that rule 4 and the quota referable to the exercise of power conferred by rule 4 is unquestionable yet when this Court held that the quota is related to the vacancies, the decision proceeding on an incorrect plea that the information about the number of vacancies in a year is not B available, is unsustainable for two reasons, namely, (1) that the files are now produced; and (2) in the absence of information about the vacancies available the Court could not have invalidated any appointment on the assumption that appointment from the source of promotees was in excess of the quota. On a plain reading of rules 3, 4 and 5 it appears crystal clear that the quota was related to vacancies C and at one stage that was accepted. On this finding unless the fact situation is clearly established showing vacancies year to year it would be impossible to hold that in any year there was in excess in either source. Suppose there were 90 vacancies in a year and the quota was 66-2/3 for direct recruits and 33-1/3 for promotees, it would be open to the Government to promote 30 persons irrespective of the D fact whether 60 direct recruits have become available or not. The assumption made that the recruitment made in a given year from both the sources would furnish information about the vacancies in a year would lead to a rather unfair conclusion inasmuch as the action of the Government in acting in a certain manner without due regard to the quota rule would work hardship on appointees even though E on a correct calculation of vacancies the appointments may be valid and legal.

The mandamus issued in *Jaisinghani's* case was as under :

F "We are accordingly of the opinion that promotees from class II, grade III to class I, grade II service in excess of the prescribed quotas for each of the years 1951 to 1956 and onwards have been illegally promoted and the appellant is entitled to a writ in the nature of mandamus commanding respondents 1 to 3 to adjust the seniority of the appellant and G other officers similarly placed like him and to prepare a fresh seniority list in accordance with law after adjusting the recruitment for the period 1951 to 1956 and onwards in accordance with the quota rule prescribed in the letter of the Government of India No. F.24(2)-Admn. I.T./51 dated October 18, 1951. We, however, wish to make it clear that this order will not affect H such class II Officers who have been appointed permanently as Assistant Commissioners of Income-Tax. But this order will apply to all other officers including those who have been ap-

pointed Assistant Commissioners of Income Tax Provisionally pursuant to the orders of the High Court". A

The Government understood the mandamus as covering the whole period from 1951 to 1967. When this was questioned in the 1st *Gupta* case, this Court held that the quota rule *Proprio vigor* operated between 1951 to 1956 and if there were promotions in any year in excess of B the quota those promotions were merely invalid for that year but they were not invalid for all time and they could be regularised by being absorbed in the quota for the later years. So adjusting the quota at any rate upto 1956, the quota rule on its own strength evaporated because it was to be in operation for a period of five years and no fresh quota rule was issued by the Government. C Therefore, after 1956 rule 4 remained in force in all its rigour and was not hedged in by any quota. Rule 4 permitted the Government to make recruitment from either source without fettering its discretion by any quota rule which it was not bound to prescribe. On January 16, 1959, Government in the Ministry of Finance informed the commissioners of Income Tax that the President had D sanctioned the upgrading to class I of 100 temporary Posts of Income Tax Officers, Class II. On December 19, 1960, there was further upgrading of 114 posts from class II to class I. Between 1959 and 1962 these 214 posts were filled in by promotees. Now, in the *Ist Gupta case* this court held that even though the quota rule expired in 1956, E yet the Government of India adopted it as a guideline. May be, it may be so. Does any appointment in breach of the guideline neither statutory nor even having the fragrance of any executive instruction become invalid more so when the Government had power to make appointment from either source uninhibited by any quota rule under rule 4 ? Yet the Court found that between 1956 and 1959 when 100 F posts came to be upgraded there was a spillover of 73 persons and because of the huge departure from guidelines the weightage rule giving seniority to the promotees by 2-3-years was crushed under its own debris. Again, with respect it must be confessed that rule 4 is overlooked or bypassed when saying that there was a spillover of 73 promotees between 1956 and 1959. Nor could it be said that the G upgrading of 214 posts and filling them up by promotees would be in any way even irregular much less invalid because rule 4 enables Government to draw from either source.

In the 2*nd Gupta case* in view of the decision in 1*st Gupta case* a fresh seniority rule was prepared and it was made retroactive from H January 16, 1959. If, the *inter alia,* provides that the relative seniority amongst the promotees and the direct recruits shall be in the ratio of

A 1 : 1 and the same shall be so determined and regulated in accordance with a roster maintained for the purpose, which shall follow the following sequence, namely :

(a) Promotee;

(b) direct recruit;

B

(c) promotee,

(d) direct recruits, and so on.

This methed of roster undoubtedly introduces a quota by the back door. Once a roster is introduced promotee direct rucruit, promotee C direct rucruit etc. even if some promotees have come in a bulk and if at a later date some direct recruits are appointed in bulk, while preparing roster an earlier date promotee will have to yield his place to a later date direct recruit. Bluntly translated it means that the direct recruit who was never in service when promotee was promoteed, probably he may be a student. May be he may not have even passed the com- D petitive examination, yet he may come into the picture and challenge one who has already been serving in the Department for a number of years. To illustrate, in the new seniority list prepared by the Government pursuant to the order made by this Court in the *1st Gupta case* and upheld by this Court in *2nd Gupta case* a promotee of 1962 will have to yield his place to a direct recruit of 1966. With utmost hesita- E tion I must say that service jurisprudence hardly permits a situation where a man not in service comes and challenges some thing which has been done much before he came in to service and gets such an advantage which on the face of it appears to be unfair. But apart from this, even in 1959 there was no quota rule and assuming that the old F service rule giving weightage to the promotees crushed under that weight of large number of promotees being promoted, it would not be open to the Govenment to so prepare a fresh seniority list which cannot be given effect to unless a roster is introduced which introduces quota by the back door and which is so unfair in its operation that promotees of 1962 will have to yield place to direct recruits of 1966. Now G under the old weightage rule promotees were given a weightage for service of 2-3 years over direct recruits because direct recruits were unable to undertake regular assessment work for a period of 2-3 years when they were more or less under training while promotees have been doing this work for a number of years and their experience is reflected in the weightage. The whole thing now appears in the reverse H gear in that an uninitiated direct recruit takes precedence over an experienced promotee. The unfairness of the new rule is writ large on the face of it.

This rule violates another important rule well recognised in the service jurisprudence that in the absence of any valid rule of seniority date of continuous officiation provides a valid rule of seniority. This rule is completely crucified under two unsustainable assumption that a quota rule having guideline sanction is made imperative in character and assumed to be in force between 1956 and 1959, and that even though Government in exercise of power conferred by rule 4 for its own necessity promoted 214 promotees to the upgraded posts yet they must yield place to some future direct recruits who may come to the department at a later date. This Court sustained the position holding that these were *ad hoc* appointments, and there were no regular posts for those promotees. This approach wholly overlooks the effect and the force of rule 4.

Certainty and continuity demand that this Court should not reopen settled decisions or reopen closed questions unless under a compelling necessity. It may be that the fate of Income Tax Officers, promotees and direct recruits, may rest with the three decisions of this Court. Unfairness to some of them may itself not provide a good and compelling reason for reopening and reconsidering the decisions. Therefore, if that were the only point for our consideration I would have unhesitatingly agreed with the decision rendered by My Lord the Chief Justice. But there is a further compelling necessity which impels me to pen these few lines.

Jaisinghani and the two *Gupta cases* are being quoted times without number before this Court for the principles enunciated therein. These decisions, therefore, affect subsequent decisions of this Court as well as the High Courts. And some of the principles enunciated in these three cases stand in sharp contrast to other decisions of this Court and in fact this Court itself felt it necessary to warn that it may become necessary to reconcile these conflicting decisions. In this connection reference may be made to *N. K. Chauhan and Ors.* v. *State of Gujarat and Ors.*,(1) where this Court after referring to two sets of decisions charting two different courses, observed as under :

> "After all, we live in a judicial system where earlier curial wisdom, unless competently over-ruled, binds the Court. The decisions cited before us start with the leading case in *Mervyn Coutindo & Ors. v. Collector of Customs, Bombay* (2) and close with the last pronouncement in *Badami* v. *State of Mysore and Ors.*(3) This time-span has seen dicta go zigzag but we see no difficulty

(1) [1977] 1 SC.R. 1037 at 1053.
(2) [1966] 3 S.C.R. 600.
(3) [1976] 1 S.C.R. 815.

A in tracing a common thread of reasoning. However, there are divergencies in the ratiocination between *Mervyn Coutindo* (supra) and *Govind Dattatray Kelkar and Ors.* v. *Chief Controller of Imports and Exports and Ors.*, (1) *On the one hand and S. G. Jaisinghani v. Union of India* (*supra*) *Bishan Sarup Gupta* v. *Union of India* (supra) *Union of India and Ors.* v. *Bishan Sarup* B *Gupta* (3), *and A. K. Subraman and Ors.* v. *Union of India* (2) on the other, especially on the rota system and the year being regarded as a unit, that this Court may one day have to harmonize the discordance unless Government wakes up to the need for properly drafting its service rules so as to eliminate C litigative waste of its servants' energies".

It is not for a moment suggested and I say so with utmost respect that the aforementioned three decisions are incorrect. In the light of the materials now placed especially the files which were withheld from the Court and the Committee the only view that I express is that enough compelling and necessary material has been D placed on record making out a strong case for reconsideration of these decisions. Accordingly, in my view the present two petitions deserve to be placed before a larger Bench to be constituted by the Hon'ble Chief Justice of India.

E ORDER

In view of the majority opinion the Writ Petitions are dismissed with no order as to costs.

S. R. *Petitions dismissed.*

(1) [1967] 2 S.C.R. 29.
(2) [1975] 2 S.C.R. 979.