A

HUNDRAJ KANYALAL SAJNANI ETC.

v.

UNION OF INDIA AND ORS.

MARCH 16, 1990

B [SABYASACHI MUKHARJEE CJ., B.C. RAY, L.M. SHARMA, P.B. SAWANT AND K. RAMASWAMY JJ.]

Indian Income-Tax, 1961/I.T.O. Group A and Group-B—Recruitment Rules 1988 and Seniority Rules, 1973. Sections 116, 117, 118 and 120—Group A and Group B Officers of Income Tax Department—Classification—Whether constitutional—Seniority List of C *1973—Whether valid.*

The main petition has been filed by the Income-tax Officers Group-A, challenging the Seniority Rules of 1973, which were framed by the Department pursuant to the directions given by this Court in an D **earlier case** *B.S. Gupta* **v.** *Union of India,* **[1975] Supp. SCR 491. The circumstances that led to the filing of the instant petitions may be stated thus:**

The Government by virtue of the Rules propounded in its letter dated 29th September 1944, re-organised the Income-tax services into E **Class I and Class II. The said Rules** *inter alia* **laid down that recruitment to the cadre of Income-tax Officers Group-A shall be from two sources i.e. direct recruitment and promotion, the quota for the two being 80% and 20% respectively. In 1945, the Government framed fresh recruitment rules wherein it was provided that the recruitment from the said sources will be made as per the directions of the Government,** F **in effect, keeping the recruitment quotas in abeyance. In September, 1949, the Government framed Seniority Rules and it was laid down that the promotees who had been certified by the Federal Public Commission, in any calendar year, shall be senior to all direct recruits who completed their probation during that year or after and are confirmed with effect from the date in that year or after. In the year 1950, the** G **Seniority Rules were again revised and the concerned Rule 1(f)(iii) was amended. By its letter dated 18.10.1951, the Government revised the quotas of direct recruits and promotees, in that, in the case of direct recruits the quota was reduced from 80% to 66-2/3% while in the case of promotees, the quota was enhanced from 20% to 33-1/3% and also amended the Rule 1(f)(iii) of 1950 Rules. This revision, in effect, gave 3** H **years' weightage in seniority to the promotees. These rules continued to**

operate till 1959. Between 1959 and 1960, 114 posts were upgraded to those of Income Tax Officers Group 'A' and the promotees were appointed to the said posts during that period. A

One Jaisinghani, a direct recruit challenged the constitutional validity of Rule 1(f)(iii) and (iv) of 1952, Seniority Rules by means of a writ petition in the High Court, which gave 3 years' weightage to the promotees in the matter of fixation of their seniority and the implementation of quota. The High Court rejected the writ petition. In appeal, this Court held that the quota having been fixed by the Government in exercise of the powers conferred on it under Rule 4 of the 1945 Rules, the same was valid. The Court also upheld the weightage given to the promotees under the 1952 Rules. The Court further directed that roster system should be adopted by framing an appropriate rule for working out the quota system between the direct recruits and promotees. It may be mentioned that the court gave this direction because it was of opinion that the promotees were in excess of the prescribed quota for each of the years 1951 to 1956, and that they had been illegally appointed. It was therefore directed that the seniority of Jaisinghani and others similarly placed be re-adjusted and the Government should prepare a fresh seniority list in accordance with law. B C D

Pursuant to the direction given by the Court, the government prepared seniority list which was challenged in the Delhi High Court by two separate writ petitions one by B.S. Gupta, a promotee of 1962 and another by M.C. Joshi, a direct recruit. The High Court dismissed the writ petition of Gupta but substantially allowed the one filed by Joshi. In appeal this court by its order dated 16.8.1972 in *Gupta's* case AIR 1972 SC 262, held that seniority list was valid with regard to the promotions made upto January 15, 1959 but the same was not valid for the period thereafter. The court accordingly set aside the list to the extent it concerned the period from 16.1.1959 and directed the Department to prepare a fresh seniority list in accordance with the observations and directions of this Court. The court came to the conclusion that with the upgrading of large number of posts and appointments of the promotees, the quota rule had collapsed and with that seniority rule giving weightage to the promotees had collapsed. The court held that quota rule came to an end on 16.1.1959. In pursuance of the aforesaid direction, the government frame the impugned 1973 Rules and prapared a fresh seniority list on February 1973, giving retrospective effect to the Rules from 15.1.1959. The Government also challenged the quota of direct recruits and promotees, making it 50% for each of them i.e. 1:1. Seniority of officers upto 15.1.59 was fixed as per old Rules and the E F G H

A seniority from 16.1.1959 was fixed as per new rules; 73 promotees though promoted between 1956-58 could not be accommodated under the old rules, their seniority was fixed under the new rules.

In the present petitions, the petitioners contend that this Court gave its direction in *Gupta's* case [1975] 1, SCR 104; because for want B of sufficient material the court had come to the conclusion that the quota for recruitment of direct recruits and promotees had broken down as the promotees were appointed in excess of their entitlement though the requisite material showing the contrary was in possession of the government, which was suppressed. It is asserted by them that the material shows that in fact the appointment of the promotees was short of their quota. Hence they claim that not only the 1973 Rules be set C aside but the appointments of the promotees be made and their seniority be fixed according to the rules prevailing prior of the said Rules. In the connected writ petitions, besides these contentions, validity of amendment of Sec. 117 of the Income Tax Act; and classification of Income Tax Officers in Group A and Group B officers have also been D questioned.

Dismissing the writ petitions this Court held:

HELD: It is clear from the table that the petitioners promotees have calculated the posts in the sanctioned strength not only in Grade E II but also in Grade I Posts when the posts available to them for promotion were only in grade II. Hence, their further calculations of the working strength, the vacancies and the quota available to them in the vacancies and of the dificiencies or the excess in the quota are erroneous. [1009F]

F Even the Government had independently come to the conclusion as early as in 1986 that neither the Rules of seniority nor the Seniority List of 1973 had done injustice to the promotees. In fact, the Rules of 1973 had rised the quota of the promotees from 33-1/3% to 50%. The seniority of the promotees was adjusted upto 15th January, 1959 on the basis of the earlier quota Rule and the Seniority of those who were G appointed later and of those who were found in excess of their quota upto that date, were adjusted according to the new Rule. [1016F-G]

What this Court wanted to convey in the earlier part of its judgment was that when the Government decides to fill in the vacancies, it is not necessary to defer the appointments from one source pending the H appointments from the other source. But that is when the Government

decides to fill in the vacancies and not before it. [1017F]

Power is vested in the legislature to appoint different classes of officers and this carries with it also the power to demarcate their duties, functions and responsibilities. Whether in fact there is such a division of powers, functions and responsibilities or not, has nothing to do with the validity of the power to make the classification. [1019H; 1020A]

The distinction between Group-A and Group-B Officers has been in existence from the very beginning. The distinction has been maintained statutorily with distinct powers and jurisdiction, hierarchical position and eligibility qualifications. The sources of their appointment and the authorities vested with the power to appoint them have also been different. The distinction between the two further has been made on the basis of the class of work and the responsibility entrusted to each. The work which is of more than a routine nature and which involves a detailed investigation either on account of the class of assessees or of the complexities of the returns filed, is entrusted to the officers belonging to Groups Group-A (now Assistant Commissioners) while the assessment work of a summary nature or of returns involving simple transactions is entrusted to Officers belonging to Group-B (now ITOs). [1023C-E]

By the very nature of the operation involved, the administration has to have the power to classify the work and to appoint personnel with different skill and talent to execute the different types of work. The legislature being mindful of this need has deliberately created the two classes of officers as is evident from the provisions of Section 117 even prior to its present amendment. Even after the amendment the said distinction has been maintained. After 1987 amendment the situation has further changed and the dutes, functions, jurisdiction and powers of the officers have been rationalised clearly demarcating the spheres of work. In an organisation of this kind, with country wide offices dealing with various categories of assessees and incomes, some dislocation functional overlapping and want of uniformity in the assignment of work during some period is not unexpected; and it does appear that during some period, the situation in the Department was out of joint. That is why steps were taken to straighten it out by amending the Income Tax Act and making the rules and issuing the relevant notifications, circulars and orders. [1024B; 1026B-C]

If during this period on account of the exigencies of service, some *ad hoc* appointments of Group B officers were made to Group A posts,

and Grade II or Group B officers were required to perform the same functions and discharge the same duties as Group A officers, they can at best claim the emoluments of Group A officers, but certainly not the equalisation of the two posts of that account. [1026D-E]

S.G. Jaisinghani **v.** *Union of India and Ors.*, **[1967] 2 SCR 703;** *B.S Gupta etc.* **v.** *Union of India and Ors/ etc.*, **[1975] 1 SCR 104;** *Kamal Kanti Dutta and Ors.* **v.** *Union of India and Ors.*, **[1980] 3 SCR 811;** *K.M. Bakshi* **v.** *Union of India*, **AIR 1962 SC 1139;** *Federation of All India Customs and Central Excise Stenographers (Recognised) and Ors.* **v.** *Union of India and Ors.*, **[1988] 3 SCC 91;** *V. Markandeya and Ors.* **v.** *State of Andhra Pradesh and Ors.*, **[1989] 3, SCR 191, referred to.**

ORIGINAL JURISDICTION: Writ Petition Nos. 4146 of 1978 and 546-47 of 1983.

(Under Article 32 of the Constitution of India.)

Rajinder Sachhar, Govind Das, T.S. Krishnamurthy Iyer, A.K. Sanghi, Ravinder Bana, R.B. Misra, Miss A. Subhashini, Bhisamber Lal and Miss Gitanjali Mohan for the appearing parties.

The Judgment of the Court was delivered by

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

W.P. No. 4146 of 1978.

This petition is filed by the promotee Income Tax Officers Group-A seeking to challenge the Seniority Rules of 1973 on the ground that they were framed pursuant to a direction given by this Court in *Bishan Sarup* v. *Union of India & Ors.*, [1975] Suppl. SCR 491 decided on August 16, 1972. According to the petitioners, the said direction was given because for want of sufficient material, the Court had come to the conclusion that the quota for recruitment of the direct recruits and the promotees had broken down as the promotees were appointed in excess of their entitlement in the quota. According to the petitioners, the requisite material showing the contrary was in the possession of the Government but did not come forth, then. The said material shows that in fact the appointments of the promotees were short of their quota. The petitioners, therefore, claim that not only the

Seniority Rules of 1973 should be set aside, but the appointments of the promotees be made and their seniority be fixed, according to the Rules prevailing prior to the said Rules. A

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

B

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

C

In 1945, the Government framed fresh Recruitment Rules for the said cadre of Class-I and Class-II ITOs. Rule 3 of the said Rules reiterated that the recruitment to the said cadre will be from the two sources, viz., direct recruitment and promotion. Rule 4 of the said Rules, however, provided that the recruitment from the said sources D will be made as per the discretion of the Government. This provision had the effect of virtually keeping in abeyance the recruitment quotas for the direct recruits and the promotees laid down in the Recruitment Rules of September 29, 1944.

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

> "(f) The seniority of direct recruits recruited on the results of the examinations held by the Federal Public Service Commission in 1944, and subsequent years, shall be reckoned as follows:
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> G
>
> (i) Direct recruits of an earlier examination shall rank above those recruited from subsequent examination.
>
> (ii) Direct recruits of any one examination shall rank *inter se* in accordance with the ranks obtained by them at that examination. H

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

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

C

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

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

E

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

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

(iii) Officers promoted in accordance with the recommendation of the Departmental Promotion Committee before the next meeting of the Departmental Promotion Committee shall be senior to all direct recruits appointed on the G 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."

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

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

5. One Jaisinghani, a direct recruit challenged the constitutional validity of Seniority Rule 1(f)(iii) and (iv) of 1952 Seniority Rules which had in effect given three years' weightage to the promotees in the matter of fixation of their seniority, and also the improper implementation of the quota by the Government, by filing a writ petition before the Punjab High Court. The High Court rejected the writ petition, and in the appeal filed against the said decision, this Court, by its decision in *S.G. Jaisinghani* v. *Union of India & Ors.*, [1967] 2 SCR 703 held that the quota was fixed by the Government by its letter of October 15, 1951 in exercise of the power given to it under Rule 4 of the Recruitment Rules of 1945 and hence it was valid and proper. The Court also upheld the weightage given to the promotees under the Seniority Rules of 1952. The Court, however, directed that for future years, the roster system should be adopted by framing an appropriate rule for working out the quota between the direct recruits and the promotees, 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 percentage fixed under the statutory Rules for each source of recruitment. The Court gave these directions because the Court came to the conclusion that the promotees were in excess of the prescribed quota for each of the years 1951 to 1956 and onwards, and that they had been illegally so promoted. The Court further held that the appellant Jaisinghani was entitled to a writ commanding the respondents 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 Government-letter of October 18, 1951. The Court, however, made it clear that the said order would not affect such Class-II officers who had been appointed permanently as Assistant Commissioners of Income Tax. B C D E F

6. Pursuant to the direction given by the Court, the Government prepared a Seniority List on July, 15, 1968. This Seniority List was challenged in Delhi High Court in two separate writ petitions, one filed by one B.S. Gupta, a promotee of 1962 and another by one M.C. Joshi, a direct recuit. The Delhi High Court by its decision of July 29, 1970 dismissed Gupta's petition and substantially allowed Joshi's petition and gave directions to prepare a fresh seniority List. Against the G H

A decision in both the petitions, Gupta filed two separate civil appeals. By its decision dated August 16, 1972 in the said appeals in *B.S. Gupta* case (supra) briefly known as 1st Gupta case, this Court held that the Seniority List was valid with regard to the promotions made upto January 15, 1959, since it was prepared on the baisis of the quota rule of October 18, 1951 and the Seniority Rule 1(f)(iii) of 1952 Seniority B Rules. The Court, however, held that the said List would not be valid for the period thereafter. The Court, therefore, set aside the said list to the extent it concerned the period from 16.1.1959 onwards and directed the Department to prepare a fresh seniority list, in the light of the observations made in the judgment. The Court also directed that the seniority list from January 15, 1959 should be prepared in accordance with a seniority rule to be framed afresh by the Government. C The Court observed that the proceedings will have to be kept pending till such seniority list was prepared and filed before the Court. It is necessary to state here that the Court had given the said direction because it had come to the conclusion that with the upgrading of a large number of posts and the appointments of the promotees made to D them, the quota rule had collapsed, and with that, the seniority Rule giving weightage to the promotees had also collapsed. The decision to upgrade 100 posts was taken in January 1959 and the remaining 114 posts in the year 1960. The Court, therefore, held that the quota rule came to an end on January 16, 1959 when sanction to upgrade 100 temporary posts was given by the President and with that went the E seniority Rule.

7. In pursuance of the above direction, the Government framed the impugned Seniority Rules of 1973, and prepared a fresh seniority list on February 9, 1973, giving retrospective effect to the said Rules from January 15, 1959. The gist of the 1973 Seniority Rules was that F the seniority of the direct recruits and promotees appointed on and from January 16, 1959 was to be fixed as follows: First promotee and then direct recruit and so on. The result of these Rules was that not only the seniority Rule but also the quota of the direct recruits and the promotees was changed from 66-2/3% and 33.1/3% to 50% and 50% or 1:1. It may be mentioned here that the new seniority list was pre- G pared by fixing the seniority upto 15th January, 1959 according to the old Seniority Rules, and the seniority from 16th January, 1959 on the basis of the new Rules. However, 73 of the promotees who were promoted in excess of their quota between 1956-58 could not be accommodated as per the earlier quota rule, in the list of seniority prepared upto 15th January, 1959, and hence the seniority of the said H 73 promotees was fixed according to the new seniority Rules which

applied to the appointments made from 16th January, 1959. Both the new Rules and the new Seniority List were filed in this Court as per the earlier direction. A

8. The same Shri B.S. Gupta challenged both the validity of the new Seniority Rules of 1973 and as well as the new Seniority List. This Court by its decision dated 16th April, 1974 in *Bishan Sarup Gupta etc. etc.* v. *Union of India & Ors. etc. etc.,* [1975] 1 SCR 104, known as 2nd Gupta case, upheld both the Seniority Rules as well as the Seniority List. B

9. It further appears that one Kamal Kanti Dutta and others had also filed an independent writ petition challenging the Seniority List of February 9, 1973. It was dismissed by this Court by its decision dated 23rd April, 1980 in *Kamal Kanti Dutta & Ors.* v. *Union of India & Ors.,* [1980] 3 SCR 811 upholding the validity of the said Seniority List. While disposing of the said writ petition, this Court made the following observations on which a strong reliance is placed by the present petitioners: C D

> "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,* [1965] 1 SCR 933, 947, 948 that this Court should not review its decisions too readily, as because on merits, we see no justification for reconsidering the judgment 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 contentions. The Report of the Rajya Sabha Committee on petitions shows, as already indicated that the relevant files are still not traceable" E F

That judgment was by a majority with Justice D.A. Desai delivering a dissenting judgment. Since the petitioners here are relying also upon some observations made in the dissenting judgment, we may reproduce them here: G

> "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 H

A necessary material has been placed on record making out a strong case for reconsideration of these decisions."

The Committee referred to in the aforesaid observation is the Rajya Sabha Petition Committee.

B 10. The present petition had also come to be dismissed erroneously along with the Writ Petition of Kamal Kanti Dutta (supra). It was restored for hearing on September 9, 1980.

11. On July 28, 1982, the Parliamentary Committee on Subordinate Legislation published its 12th Report wherein it referred to a letter of February 4, 1976 from the Minister of State for Finance. The C Committee stated that the Seniority Rules of 1973 were unfair and hence they should be scrapped with effect from January 15, 1959 and that fresh equitable seniority rules be framed. The Committee recommended that the artificial distinction between the ITO Group-A and Group-B should be abolished as they were performing identical func- D tions and were working on interchangeable posts. The Committee also recommended the grant of the same weightage in seniority to the promotees from 15th January, 1959 as was available to them before that date. The Committee, further recommended an increase in the quota of promotions from Group-B to Group-A on account of an unprecedented stagnation of Group-B service, as a direct result of the E Seniority Rules of 1973. It does not appear that these recommendations were accepted. We are referring to these recommendations of the Committee because the petitioners have made a reference to them and not because they are legally binding.

12. Thereafter, on February 16, 1983, the accompanying Writ F Petitions, viz., Nos. 546-47 of 1983 were filed challenging (i) the validity of Section 117 of the Income Tax Act, 1961, (ii) the classification of Income Tax Officers in Group-A and Group-B Officers, (iii) the Seniority Rules of 1973 and (iv) the Seniority List prepared on their basis.

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

13. It is further necessary to note that while admitting the H accompanying petitions, the Court had passed the following order:

"Subject to the specific condition that the petitioners shall not be permitted to reopen whatever classification was made in the cadre of ITOs, in the past as also *inter se* seniority between direct recruits and promotees which had been upheld by the decisions of this Court in S.C. Jaisinghani, B.S. Gupta and KK Dutta's case, *rule nisi* limited to the question whether the classifiction of ITOs, into Group-A and Group-B u/s. 117 of the IT Act, 1961 is violative of Articles 14 and 16 of the Constitution. Even if the issue is answered in affirmative, the petitioners will be entitled to the relief, if any, only prospectively for future implementation of the decisions from the date of the judgment in the Petition. This order will not preclude any contention that can and may be raised in the Writ Petition No. 4146/78—*H.K. Sajnani* v. *UOI & Ors.*, to be examined on merits."

14. On May 3, 1983, this Court passed an order in CMP Nos. 13200 and 6762 of 1983 in both the present and the accompanying writ petitions as follows:

"In allowing prayer (i) of CMP No. 6762/83, we direct Writ Petition Nos. 546-47/83 be heard alongwith Writ Petition No. 4146/78 and that the grounds challenging the validity of seniority rule 1973 as taken in Writ Petition Nos. 546-47/83 are allowed to be taken in Writ Petition No. 4146/78 in so far as the prayer (iii) of CMP is concerned, we direct the Government to file a statement in this Court before July 15, 1983 as to the result of the examination of the recommendation of the Committee on Subordinate Legislation and decision and other measures taken by the Government thereon."

15. On February 27, 1985, the Court gave direction to the Government in CMP No. 1903 of 1983 in the present Writ Petition to allow the petitioners inspection of the files relating to the vacancies. The inspection was completed on October 7, 1985 which according to the petitioners shows the following facts: (i) that the relevant record is available and was always available with the Government and that its production was deliberately withheld from this Court, (ii) that the promotions were all within quota and that there was no excess. Rather there was a deficiency in promotions, (iii) that the quota rule was adhered to from year to year right from the year 1951 upto the date of the judgment in the *Ist Gupta case* (supra), (iv) that the quota rule did

not collapse on 15.1.1959, (v) that as required by the exigencies of the service, the quota rule was amended/relaxed in the years 1958 and 1959, (vi) that in applying the quota rule in pursuance of the mandamus, the Government did not follow the principles decided by this Court in *Ist Gupta case* (supra) and committed the following errors:

(a) The Government did not apply the quota to the vacancies existing at a particular point of time. Instead of doing so, it misinterpreted the quota rule of 66-2/3% and 33.1/3% as if it required that a ratio of 2:1 had to be maintained in the cadre of Income Tax Officers and as if there had to be one promottee against evry 2 direct recruits. This erroneous interpretation was applied in clear breach of the principle laid down by this Court in the *Ist Gupta case* (supra).

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

(c) The promotees were not given their full quota even in the permanent vacancies which should have bee given to them irrespective of whether the direct recruitment was made in full. There was under utilisation of quota of direct recruits with the result that the promotees were denied their legitimate share even in permanent vacancies. In these circumstances, the actual appointments were taken as vacancies and were bound to result inevitably into excess of promotions.

16. On the basis of these facts, which according to the petition-

ers were revealed in their inspection, their case is that their allegation, that the relevant files were available and yet were not produced before the Court and the further allegation that there were no excess promotions were borne out. This shows that the direction given in the *Ist Gupta case* (supra) to frame new rules and, hence, the new Seniority Rules of 1973 framed pursuant to these directions, were unwarranted, unjust and illegal.

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

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

19. While these petitions were pending, the Government on January 24, 1988 amended the Income Tax Act, 1961 with effect from April 1, 1988 and, among other things, changed the designation of Income Tax Officers and Assistant Commissioners as follows:

	Pre-Amendment	*Post-Amendment*
(a)	Income Tax Officers (Group-B)	Income Tax Officers
(b)	Income Tax Officers (Group A)	Assistant Commissioners
(c)	Assistant Commisioners	Deputy Commissioners

The amendment also substituted Sections 116, 117, 118 and 120 with

effect from the same date, i.e., April 1, 1978 and authorised the Central Board of Direct Taxes to issue notifications authorising Chief Commissioners and Commissioners of Icome Tax to classify the work of newly designated Income Tax Officers and Assistant Commissioners, and to provide for the jurisdiction of the Income Tax Officers and Assistant Commissioners on the basis of quantum of income. According to the petitioners, this was done to destroy the cause of action Writ Petition Nos. 546-47 of 1983.

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

21. It will thus be apparent that the whole foundation of the case of the petitioner-promotees in the present petition is that the Seniority Rules of 1973 were made by the Government pursuant to the direction of this Court in the *Ist Gupta case* (supra) on August 16, 1972 and that direction was given by this Court because on the basis of the material produced by the Government, this Court had come to the conclusion that the promotees were promoted in excess of their quota. According to them, however, the new material which they have discovered shows that in fact there were not only no excess promotees but in fact there was a shortfall in their promotions as per their entitlement in the quota.

22. Both on behalf of the Government as well as the respondent-Union of India and the direct recruits, it is pointed out to us that the so-called new material produced on behalf of the petitioner-promotees far from proving their allegation, supports the conclusion to which this Court had arrived at in the *Ist Gupta case* (supra). In this connection, it is pointed out that admittedly, there were at the relevant time Class-I and Class-II posts of Income Tax Officers corresponding to Group-A and Group-B posts. Class-I or Group-A consisted of Grade-I and Grade-II Officers whereas Class-II or Group-B consisted of Grade-II Officers. Group-B Officers were entitled to be promoted first to Group-A Grade-II posts. Hence, the vacancies available for promotion to the promotees which ought to be taken into consideration at any point of time are the vacancies in Grade-II posts of Class-I or Group-A. However, it is obvious from page 32 of Volume-II of their petition, that the petitioner-promotees have taken into consideration vacancies not only in Grade-II posts but also in Grade-I posts to show

that in fact not only they were not promoted in excess but their promotions were short of the vacancies which were available to them in their quota. We may reproduce herein below the relevant table of the sanctioned strength, the vacancies, the quota for promotees, the actual number of promotions made and their deficit or excess in the quota since 1951 to 1958 as calculated by the petitioners on the said page 32. According to the petitioners, the figures in the table are taken from the newly discovered files:

VACANCY POSITION FROM 1951— 1958

Year	Sanctioned strength Grade I	Grade II	Total	Working Strength Gr. I	Gr. II	Total	Vacancies	Quota of promotions	Actual No. of promotions	Deficit (−) or Excess (+)
1951	216	+ 200 =	416	77 +	98 =	175	241	80	–	
1952	224	+ 221 =	445	83 +	113 =	196	249	83	49	(−) 34
1953	224	+ 221 =	445	130 +	129 =	259	186	62	38	(−) 24
1954	224	+ 221 =	445	169 +	157 =	326	119	40	31	(−) 9
1955	224	+ 221 =	445	154 +	217 =	371	74	25	24	(−) 1
1956	224	+ 221 =	445	187 +	214 =	401	44	15	25	(+) 10
1957	287	+ 248 =	535	224 +	184 =	408	127	42	26	(−) 16
1958	290	+ 248 =	538	213 +	202 =	415	123	41	28	(−) 13

97—10 = 87 Net Deficiency

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

Das, Counsel for the Government is prepared on the basis of the very same figures on page 32 of the Writ Petition. It, now, forms an annexure to the additional affidavit dated 23rd January, 1990 filed by one Ravi Kumar, Under Secretary, Department of Revenue, Ministry of Finance. The table is as follows:

Year	Sanctioned strength Grade II Class I	Working Strength Gr. II Cl. I	Vacancies	Quota of promotion 33%	Actual promotion as stated at 32	Excess
1951	200	98	102	34		
1952	221	113	108	36	49	13
1953	221	129	92	31	38	7
1954	221	157	64	21	31	10
1955	221	217	4	1	24	23
1956	221	214	7	2	25	23
1957	248	184	64	22	26	4
1958	248	202	46	15	28	13
						93

24. The figures shown in the above table are self explanatory. Confronted with these figures, the petitioners came out with another chart the relevant extract of which is as follows:

Year	Total Vacancies Sanctioned strength in Gr. II	Working strength in Gr. II	Vacancies in Gr. II	Quota	Direct Recruits Actuals	Excess/ shortage	Quota	Promotees Actual promotions	Excess/ shortage
1	2	3	4	5	6	7	8	9	10
1952	221	113	108	72	33	(−) 39	36	49	(+) 13
1953	221	129	92	61	28	(−) 33	31	38	(+) 7
1954	221	157	64	43	52	(+) 9	21	31	(+) 10
1955	221	217	4	3	53	(+) 50	1	24	(+) 23
1956	221	214	7	5	48	(+) 43	2	25	(+) 23
1957	248	184	64	43	27	(−) 16	21	26	(+) 5
1958	248	202	46	31	99	(+) 68	15	28	(+) 13
			385	258	340	+ 82	127	221	+ 94

By producing this chart the attempt of the petitioners, is to show that the direct recruits were appointed in excess of their quota to the extent of 82 during the relevant period. The interesting feature of this chart, however, is that the petitioners admit that they were also appointed in excess of their quota during the period to the extent of 94 as against 93 shown in the chart prepared on behalf of the respondent Union of India (the difference of one being on account of the calculation of the excess as 5 for the year 1957 as against 4 calculated by the respondents for the same year). On the basis of this chart, it is contended that in view of the fact that both direct recruits and promotees were appointed in excess of their quota, it could not be said that the quota had broken down.

25. In the first instance, the chart prepared by the petitioners themselves shows that the conclusion which was arrived at by this Court in the *Ist Gupta case* that the promotees were appointed in excess of their quota is correct, and demolishes the very foundation of their case in the present petition namely, that the newly discovered material shows that not only they were not appointed in excess of their quota, but were in fact short of it. Secondly, assuming that their figures of the appointment of direct recruits during the relevant period are correct (since so far, it was never their contention that the direct recruits were appointed in excess of their quota and, therefore, the respondents had no opportunity to meet it), that only strengthens the conclusion of this Court in the Ist Gupta case that the quota-rule had broken down. The quota-rule does not collapse only when the appointments from one source alone are disproportionately deficient or in excess.

26. It was then contended on behalf of the petitioners that the Government's method of working out the vacancies was wrong. It is not necessary for us to go into this allegation and to find out the correct way of working out the vacancies. This is so because firstly, the petitioners have come to this Court by the present petition on the basis of the vacancies worked out by the Government but which vacancies according to the petitioners, were suppressed. Secondly, their own chart shows that the vacancies were worked out by the Government by deducting the annual working strength from the sanctioned strength, every year. The quota of the promotees shown by the petitioners in their chart is further on the basis of the vacancies so arrived at and is not on the basis of the appointment of the direct recruits as is alleged by them which allegation is the basis of their other contention in the petition. Thirdly, it is to be remembered that in the present petition it

A is the petitioners' contentions that the new figures of the deficiencies in the promotions have been worked out by the petitioners on the basis of the notings made in the missing files which were not available at the time this Court decided the *Ist Gupta case* (supra). Hence, even assuming that these notings have an intrinsic evidentiary value to prove the annual vacancies available on the relevant dates, the petitioners' B contentions stand disproved even on the basis of the said notings. Lastly, and this according to us is an equally damaging fact as far as the petitioners' present case is concerned, the figures of the sanctioned strength and the vacancies which are worked out by this Court in the *Ist Gupta case* (supra) are almost identical with the figures shown by the petitioners themselves in their new chart with only a negligible difference at some points. This fact strikes at the very root of the C present petition because the only ground on which the petitioners have approached this Court by way of this petition is that the figures of the annual vacancies were suppressed by the respondents from this Court and it is this suppression which had led this Court to come to the conclusion that the promotees were in excess of their quota and to give D a direction to frame the new Seniority Rule and to prepare the fresh Seniority List. The so called new material, on the other hand, proves that the directions given in the *Ist Gupta case* (supra) were based on proper calculations and were justified.

27. It is also not correct to say that this Court had given the E direction in question only because there was an absence of material to show the annual vacancies in a year. This is clear from the following passage in the decision in the *Ist Gupta case* (supra) at pp 501-502:

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

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the quota rule refers to vacancies it is implicit in the rule that the vacancies are vacancies which the Government wants to fill, whatever may be the actual number of vacancies. The actual appointments are, therefore, in the absence of any evidence to the contrary, the correct measure of the vacancies which the Government wanted to fill. *From that point of view also* it will be permissible to proceed on the footing that the actual appointments represent the actual vacancies which the Government wanted to fill. For example, if in the year 1953, 53 posts were filled by direct recruits and 38 by promotees the total vacancies sought to be filled would be 91 in which case the promotees would be entitled to 30 vacancies. That is how the Government has proceeded to determine the excess for each year from 1953 to 1957 as shown at Annexure 'N' (p. 26 Vol. I in C.A. No. 2060(n) 1971). In our opinion the procedure adopted by the department in determining the excess number of promotees appointed in the several years is substantially correct. Annexure 'N' begins with the year 1953. It should begin with the year 1952 and not 1953. Indeed the 5 year period starts from 1951 and ends with 1956 but since there was no promotion in 1951 the quetion of excess in that year does not arise. For the purposes of the mandamus the seniority list will have to be resettled from the year 1952 showing not merely the excess from the years 1953 to 1956 but from 1952 to 1956. At the end of 1956 the progressive total of the excess over the quota will be known and this excess, as already pointed out, is liable to be absorbed in the quota of the years succeeding 1956."

(Emphasis supplied)

This is apart from the fact that as we have shown earlier, in fact the actual vacancies worked out by the Court approximated the actual appointments. And in any case, the quota for the promotees worked out on the basis of the said vacancies and the calculation of the excess of promotions on the basis of the said quota was very nearly correct and the so called new material would not have made any difference to the conclusion which was arrived at in that case.

28. The other contention of the petitioners, namely, that while calculating the vacancies, the Government had calculated only the permanent posts and not the temporary posts has also no substance in it. It is not suggested that the figures of the sanctioned and the working

A strength of and the vacancies in Grade-II posts of Group-A (Class-I) shown by the petitioners on page 32 of their petition or in the new chart do not include temporary posts. What is more, in fact in the *Ist Gupta case* (supra) one of the contentions of the direct recruits was that the quota rule shold relate to vacancies only in permanent posts and not temporary posts. That contention was not accepted in that B case either by the promotees or the Government. The court also pointed out in that case that there was nothing in the Rules of 1945 or the quota Rule of 1951 which said that the vacancies must be vacancies in permanent posts. The Court observed that indeed the whole cadre had consisted of permanent and temporary posts for years, and there was a difference between permanent vacancies in permanent and temporary posts on the one hand and the permanent and temporary C posts on the other. It was also pointed out that all the direct recruits from 1948 onwards were initially appointed against temporary posts. The Court had, therefore, rejected in that case the direct recruits' contention that the vacancies referred to in the quota Rule were vacancies only in the permanent posts. This shows that the Govern- D ment had always counted the vacancies both in the permanent and the temporary posts and the promotees had accepted this as a fact then. There is no material placed before us to show that this was not so then. On the contrary, whatever material the petitioners have annexed to their petition and to which our attention was invited shows that in fact the Government had always calculated the vacancies on the basis of E the sanctioned strength of both the permanent and temporary posts. We may refer only to two Annexures in this connection. The extract from File No. 20(22)56/Ad. VI which is Annexure 7 on page 125 of the petition shows that as on Ist July, 1956 the total sanctioned strength of Grade II posts of ITO (Class I) were calculated as 248 consisting of 207 permanent and 41 temporary posts. So also the nothing from File No. F 22/4/58/Ad. VI which are Annexure 11 on page 155 of the petition mention the actual strength of Grade-II posts of ITO (Class I) as 248 which consists of 207 permanent and 41 temporary posts. Both the charts produced by the petitioners which we have discussed earlier show the sanctioned strength of the said cadre for the years 1957 and 1958 each as 248. The vacancies and the quota of the direct recruits G and promotees have also been worked out by the petitioners on the basis of this strength in both the said charts. This material, therfore, belies the petitioners' contention that the Government had not taken into consideration the temporary posts for working out the vacancies during the relevant period.

H In his affidavit dated January 31, 1967 filed in *Jaisinghani* case

(supra), Shri R.C. Dutta, the then Finance Secretary had further clearly stated that the vacancies were calculated with reference to the following information: (i) addition to cadre strength, temporary or permanent as the case may be, and (ii) vacancies arising during a particular period as a result of death, retirement, promotion, resignation, removal etc. of the officers in particular posts. This has been the stand of the respondent-Union of India from the beginning, and beyond making a bare allegation to the contrary, the petitioners have not placed any material in support of their said contention. The Chart produced by them on the contrary proceeds on the footing that the vacancies in both the temporary and the permanent posts had to be calculated.

29. Much has also been made of the fact that the Parliamentary Committee on Subordinate Legislation had, as pointed out above, recommended the reconsideration of the Seniority Rules and the Seniority List of 1973, as allegedly they had done injustice to the promotees. Apart from the fact that the said recommendations have not legally binding effect, they were also not accepted by the Government. In his letter of October 31, 1976 addressed to the Chairman of the Committee on Subordinate Legislation, the then Minister of Finance had stated as follows:

> "I have gone through the Eighth Report of the Committee on Subordinate Legislation submitted to the Lok Sabha on 7th May, 1986.
>
> 2. I am afraid, however, there is hardly any scope for the Government to take any significant action in the matter as the alleged grievances of the promotee-officers of the Income-tax Department are unreal and imaginary. In the past, the prospects, position and power enjoyed by the promotees happened to be better only because of a systematic and persistent violation of Rules. The said violation of Rules itself led to prolonged litigation which repeatedly went upto the Supreme Court. It was finally laid to rest in *B.S. Gupta's* case when the Supreme Court approved the Seniority Rules, 1973 and Seniority List. These Rules and the Seniority List were prepared in accordance with the Supreme Court's own directive and were approved by it after giving ample opportunities to both the sides to present their case. These Rules were declared by the Supreme Court to be 'just and fair'. It is significant that

A the promotees themselves admittedly could not propose a better alternative. The Seniority Rules, therefore, call for no change.

3. As for quota, originally the promotees were given ony 20% of the Group 'A' vacancies. Unfilled vacancies were B to be carried over as part of direct recruitment quota for the subsequent year. The intention obviously was to maintain certain standard of quality in the personnel sanctioned to the service. Between 1951 to 1958 the quota was raised to 1/3rd in favour of the promotees. In 1973, the promotion quota was raised to 30% which is the highest in any service under the Central Government.

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

The letter is annexed to the additional Affidavit of *Ravi Kumar* (supra).

It will thus be seen that even the Government had independently F come to the conclusion as early as in 1986 that neither the Rules of Seniority nor the Seniority List of 1973 had done injustice to the promotees. In fact, the Rules of 1973 had raised the quota of the promotees from 33-1/3% to 50%. The seniority of the promotees was adjusted upto 15th January, 1959 on the basis of the earlier quota Rule and the seniority of those who were appointed later and of those who G were found in excess of their quota upto that date, were adjusted according to the new Rules.

30. Two other contentions advanced on behalf of the petitioners on the basis of the alleged new material were that firstly, while calculating the vacancies in the post of Grade-II Officers in Group-A, H the vacancies in all the posts above the said post were not taken into

account, and secondly, the number of vacancies should not have been equated with the number of posts the Government filled but should have been calculated on the basis of their actual existence. According to the petitioners, if both these factors had been taken into consideration at the time of the decision in the *Ist Gupta case* (supra), the Court would not have found promotees in excess of their quota. To some extent these contentions are interlinked.

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

The second contention need not even be considered in the present case, for as has been pointed out earlier, the actual vacancies approximated the appointments made during the relevant period. Hence, whether the quota was calculated on the basis of the actual vacancies or on the basis of the appointments made, it would have made no difference to the conclusion that this Court had arrived at in the *Ist Gupta case* (supra) that the promotions were in excess of the quota. What is more, even this argument has been answered by this Court in that case as shown above, and we see no reason to differ from the view taken there on the point. There appears to be an obvious confustion on the part of the petitioners with regard to what this Court has stated in the earlier part of the judgment in the *Ist Gupta case* (supra). Read with the passage which we have quoted from the said judgment, what this Court wanted to convey in the earlier part of the judgment was that when the Government decides to fill in the vacancies, it is not necssary to defer the appointments from one source pending the appointments from the other source. But that is when the Government decides to fill in the vacancies and not before it.

31. In the result, we find no substance in the petition and dismiss the same. The Rule stands discharged. In the circumstances, however, there will be no order as to costs.

WRIT PETITION NOS. 546-47 OF 1983.

32. As stated earlier while narrating the facts of the earlier petition, these petitions are filed by two Income Tax Officers for them-

selves and as the representatives of the All India Federation of Income Tax Gazetted Service Association. The Federation represents all the Group-B ITOs and all ITOs in Group-A, Assistant Commissioners and Commissioners promoted from Group-B. Among the parties to the petitions is respondent No. 4—the Indian Revenue Service Association representing directly recruited Group-A Officers and Assistant Commissioners and Commissioners promoted from directy recruited Group-A ITOs.

33. The main grievance of the petitioners is that the classification of ITOs into two classes, namely, Group-A and Group-B is discriminatory and violative of Articles 14 and 16 of the Constitution because (a) the classification is not made on an intelligible differentia and (b) the differentia has no relationship to the object sought to be achieved by the Income Tax Act, 1961 inasmuch as the Officers belonging to the two Groups do identical work and perform identical functions. It is also the contention of the petitioners that their work and posts are interchangeable, and in practice they form one cadre. By maintaining the differentiation, allege the petitioners, the Government in effect is denying equal opportunity, equal pay and equal status to Officers doing identical work and performing identical functions. To attack the classification, the petitioners had also challeged the constitutional validity of Section 117 of the Income Tax Act, 1961 before its amendment by the Direct Tax Laws (Amendment) Act, 1987. After the amendment of the said section by the amending Act of 1987, they have amended their petition and have challenged not only the amended provision of the said section but also the amendment made to Section 116, 118 and 120, and the Recruitment Rules of 1988 and the notifications, circulars and orders issued pursuant thereto. The attack against the amended sections and the Rules of 1988, notifications etc. is on the ground that they are violative of Articles 14 and 16 of the Costitution. In addition, they have also challenged the amended provisions on the ground that they are *mala fide* and are enacted to destroy the cause of action in their petition. In this context, they have also attacked the Seniority Rules and Seniority List of 1973.

34. In support of their contention that the amended provisions of the Act are *mala fide* they contend that by amending the Act, the Government took the power to itself to frame the new Recruitment Rules of 1988 and to issue the relevant notifications, circulars and orders whereby the classification of the Income Tax Officers in Class-I and Class-II could be justified. In this connection, it is pointed out that it is by virtue of these new powers that the Government for the first

time got an authority to demarcate the jurisdiction of the powers of Class-A and Class-B ITOs and thus to justify the said classification. In the absence of the amendment and the Rules, Notifications, Circulars and Orders issued pursuant thereto, the said classification was unjustifiable in law and was liable to be struck down. It is, therefore, also contended that the said classification assuming it is justified, can only act prospectively from 1st April, 1988 from which date it is brought into operation, and would not justify the classification of Officers prior to the said date, and hence those Officers who belonged to Group-B on the day prior to the coming into operation of the amended provisions, should be treated as belonging to Group-A.

35. We are not impressed by this contention. In the first instance, the presumption underlying this contention is that the provisions of the Act prior to its amendment by the amending Act of 1987 did not permit such classification, which presumption is patently incorrect. While the provisions of sub-section (1) of Section 117 prior to its amendment gave power to the Central Government to appoint, among others, the Income Tax Officers of Class-I service, the provisions of sub-section (2) thereof vested power in the Commissioner to appoint as many ITOs of Class-II service as might be sanctioned by the Central Government. It was, however, contended that in spite of these clear provisions of sub-sections (1) and (2) of the unamended Section 117, they had to be read down to deny the power to appoint ITOs of Class-II or Group-B. This was so because, according to the petitioners, the provisions of Sectios 116, 118 and 124 as they stood then, only referred to Income Tax Officers as one class and did not make a distinction between them as Class-I and Class-II Officers. In the first instance, it is an elementary rule of the interpretation of Statutes that no provision of a statute should be read as redundant. No reason is ascribed by the petitioners to ignore the specific provisions of Section 117(1) and (2) except that the two classes of officers mentioned therein were not referred to in the other provisions of the Act. Secondly, when the legislature had made a special provision for the two classes vesting in two different authorities the power to appoint them, it must be presumed that the legislature had a definite objective in view. While making the provision for Class-II ITOs, the legislature seemed to be aware of the fact that there may be different categories of assessees and assessments requiring different standards of equipment, skill and talent to deal with them, and it was therefore necessary to invest the Central Government with the power to appoint and to sanction the appointment of the different classes of officers to meet the requirement. This power vested by the legislature to appoint different classes

of officers carried with it also the power to demarcate the duties, functions and responsibilities of the two. Whether in fact there is such a division of powers, functions and responsibilities or not, has nothing to do with the validity of the power to make the classification. If in spite of such classification, the different classes in fact exercised the same powers and performed the same duties and functions, it may invite abolition of the classification. But it cannot invalidate the power to classify. Hence, we are not impressed by the contention that the legislature had no power to classify the Income Tax Officers into two classes under the unamended provisions of the Act.

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

37. Coming now to the second contention which is the main foundation of the present petitions, namely, that the Officers of the two classes in fact perform the same functions and duties, and exercise the same powers and have the same jurisdiction and, therefore, there is no justification for the said classification, it is first necessary to examine the facts relied upon by the petitioners in support of this contention. According to the petitioners, the Officers of the two classes were always performing the same duties and function, and exercising the same power and jurisdiction. Their posts were also interchangeable. In fact, many of the Officers belonging to Group-B functioned as Officers belonging to Group-A. Even after the amendment, which has demarcated the jurisdiction of the two classes on the basis of income, the basic function of making the assessment remain the same and there is no change in the nature of job performed by them. It is also submitted that once a case comes under the jurisdiction of an Income Tax Officer, the Officer continues to exrcise his jurisdiction over the said case even if in subsequent years the same assesee files a return of higher income. Hence, the very classification of Officers based on the return of income is totally arbitrary and violative of the petitioners' fundamental rights under Articles 14 and 16 of the Constitution. It is

further pointed out that in fact the number of regular promotions from Group-B to Group-A during the period 1973 to 1982 were only 585 as against the *ad hoc* promotions of 1197 during the same period. Similarly, during the period 1982 to 1985, the numbr of regular promotions were 262 as against the further *ad hoc* promotions of 200 during the same period. This shows that the Income Tax Officers of Group-B were doing the work of Officers belonging to Group-A in a large number though on an *ad hoc* basis. This further shows that although there was a need for regular promotion of the Officers from Group-B to Group-A, the Government was using Group-B Officers in a large number to perform the duties of Group-A Officers without giving them regular promotion and was thus maintaining an artificial distinction between the two groups without justification.

38. As has been stated in the affidavit filed on behalf of respondents 1 & 2, although both Group-A and Group-B Officers have equal powers, the ITOs of Group-A are generally placed in-charge of important wards and cases carrying higher responsibilities, whereas the Officers belonging to Group-B are normally entrusted with less important wards and cases. A large majority of them have to deal with summary assessments only. It is further pointed out that under the Act, prior to its amendment of 1987, the power to appoint the Officers belonging to Group-A, i.e. Class-I was vested in the Central Government while the power to appoint Officers belonging to Group-B, i.e., Class-II was vested in the Commissioner of Income Tax. The same distinction in the appointing authorities continues even after the amendment. The Assistant Commissioner, i.e., the former ITOs of Group-A are appointed by the Central Government whereas the power to appoint Income Tax Officers, i.e., the former Group-B Officers, can be vested by the Central Government in the Board or a Director General or a Chief Commissioner or a Director or Commissioner. The respondents further deny that there was ever an interchangeability of the two posts, and contend that they always remained separate. They point out that in fact, the post of Group-A. Officers has two grades, i.e., Grade-I and Grade-II. Grade-II post of Group-A has always been a promotional post for Group-B Officers. Their scales of pay have also been different and have been fixed keeping in view the distinction between the two Groups which belong to two different cadres. This Court had in fact in *K.M. Bakshi* v. *Union of India,* AIR 1962 SC 1139 gone into the matter pertaining the distinction between the two Groups of Officers, and had upheld the said classification.

39. There is further no dispute that the posts of Income Tax

A Officer Group-A junior scale or Grade-II, are filled 50% by direct recruitment through the Civil Service Examination held by the Union Punblic Service Commission and 50% by promotion on the basis of selection by the Departmental Promotion Committee from Income Tax Officers Group-B who have rendered not les than 5 years' service in that post. The appointments to the posts of Income Tax Officers B Group-B are made 100% by promotion from Income Tax Inspectors who belong to Grade-C or Class-III service. The appointment to the posts of Income Tax Inspectors are made 33-1/3% by direct recruitment and 66-2/3% by promotion from the lowr group of Class-C service. The result has been that the present strength of about 2,500 ITOs of Group-B consists of all but 185 promotees (who were recruited *ad hoc* only in one year, i.e., in 1969) from the lower Group-C C posts. What is more, as pointed out above, the Income Tax Officers Group-B, and Income Tax Officers Group-A junior scale, belong to two different cadres and not to the same cadre of Income Tax Officer. Hence those who joined the lower Group-C service cannot claim equality in conditions of service with Group-A Officers who are either D recruited directly on the basis of the Civil Services Examination or are promoted from Group-B on the basis of seniority-cum-merit.

40. It is also pointed out on behalf of the respondents that after changing the designation of the Income Tax Authorities and designating the former ITOs of Group-A and Group-B as Assistant Commis-E sioners and ITOs respectively, their jurisdictions have been regulated. The basic principle followed in demarcating the jurisdiction of the two classes of Officers is the quantum of the return of income/loss as on 1st April of the Financial Year. If the return of income/loss is of Rs.5 lakhs and above, it goes to the Deputy Commissioner; if of Rs.2 lakhs and above but below Rs.5 lakhs, it goes to the Assistant Commissioner F (i.e., the former Group-A Officers); and if it is below Rs.2 lakhs, it goes to the Income Tax Officers (the former Group-B Officers). It is also pointed out that the Government has since issued a notification on March 30, 1988 making the Income Tax Officers and Tax Recovery Officers subordinate to the Assistant Director or Assistant Commissioner. Further, whereas Assistant Commissioners of Income Tax G (former ITOs of Group-A) are now empowered to writ off a sum upto Rs.1,000 if they are convinced that the amount is irrecoverable, in similar circumstances, the ITOs, i.e., former Officers belonging to Group-B, are empowered to writ off an amount upto Rs.500 only. When the assessment is made under sub-section (3) of Section 143 or Section 147 for the relevant assessment year, the power to issue notice H under Section 148 is vested only in an Assessing Officer of the rank of

Assistant Commissioner or Deputy Commissioner. Section 274(2) of the Act prescribes monetary limits regarding the powers of the Income Tax Officer and Assistant Commissioner for imposing penalty. That provision shows that Income Tax Officer (i.e., the formr Group-B Officer) has authority to impose penalty upto Rs. 10,000, whereas the Assistant Commissioner (former Group-A Officer) has the authority to impose penalty upto Rs.20,000 without the prior approval of the Deputy Commissioner.

41. The material placed on record by the respondents, thus, shows that the distinction between Group-A and Group-B Officers has been in existence from the very begining. The distinction has been maintained statutorily with distinct powers and jurisdiction, hierarchical position and eligibility qualifications. The sources of their appointment and the authorities vested with the power to appoint them have also been different. The distinction between the two further has been made on the basis of the class of work and the responsibility entrusted to each. The work which is of more than a routine nature and which involves a detailed investigation either on account of the class of the assessees or of the complexities of the returns filed, is entrusted to the Officers belonging to Group-A (now Assistant Commissioners) while the assessment work of a summary or routine nature or of the assessees filing routine returns or returns involving simple transactions is entrusted to Officers belonging to Group-B (now ITOs). Although, therefore, apparently the outfit of the function and its procedural part is the same, in practice the assessments differ from assessees to assessees, summoning different degrees of knowlege, application of mind, resourcefulness, acumen and talen to scrutinize them. Hence, merely because sometimes, on account of the exigencies of work the Officers belonging to Group-B were entrusted with the work of the Officers of Group-A, it cannot be claimed that the two posts are of an equal rank. The handling of the higher category of work may entitle an Officer of the lower rank to emoluments of the higher post. But that cannot obliterate the distinction between the two posts. To accept the plea of the petitioners to equate the two posts or to merge them on that account, is to negate the whole statutory scheme and also to ignore the fact that the Group-B post (i.e., the present post of the ITO) is an intermediate post between that of the Income Tax Inspector and the Group-A post (i.e, the present post of Assistant Commissioner) which is a promotional post for Officers belonging to Group-B. The Group-A post is further a selection post and the promotee has to satisfy certain qualifications to be eligible for being considered for the said post. The two posts, therefore, always belonged to

two different cadres carrying different scales of pay and other service conditions. Thus, this is not a case of the two posts being equal in status or of belonging to the same class. The distincton between the two is ordained by the Statute and is necessary for its proper implementation. By the very nature of the operation involved, the administration has to have the power to classify the work and to appoint personnel with different skill and talent to execute the different types of work. The legislature being mindful of this need has deliberately created the two classes of officers as is evident from the provisions of Section 117 even prior to its present amendment. Even after the amendment the said distinction has been maintained. The fact that this distinction has all along been real and not nominal is clear from the difference in the power and jurisdiction statutorily vested in the two classes of Officers. Hence, the intention of the legislature to have the two classs of Officers to discharge different types of work is *manifest* and in practice the distinction has always been maintained. It is only when the exigencies of the work required that some officers belonging to Group-B were promoted on *ad-hoc* basis to the posts of Group-A officers. Such exigencies occur in every organisation, and to cope up with them the authorities have to improvise. That, however, cannot equate the two unequal posts.

42. The very same argument for equating these two classes of Officers was advanced in *K.M. Bakshi* v. *Union of India,* (supra). It was pointed out by this Court in that case that the Income Tax services were reconstituted by an order of the Government of India dated September 29, 1944, and later on in 1953, Section 5 of the Income Tax Act was amended to give effect to this reconstitution. One of the features of the reconstitution was that in place of one class of Income Tax Officers two classes came into existence, namely, Class-I and Class-II ITOs. Class-I Officers were eligible to be promoted to the higher post of Commissioners and Assistant Commissioners, and Class-II Officers could obtain such promotion only after having first reached the status of Class-I Officers. A percentage of the vacancies in the posts of Class-I Officers was to be filled by promotion of Class-II Officers, and the rest by direct rectuitment. It was also pointed out that Class-I post being a promotional post for Class-II Officers, the two posts were not equal. Dealing with the argument of eual pay for equal work, the Court pointed out that if that argument were to be accepted literally, even the incremental scales of pay fixed dependent upon the duration of an Officer's service could not be justified. It appears that in that case the Court was called upon to deal with a bland assertion that the two posts were equal and it was not contended that

the duties and functions discharged by them were equal in nature and hence the Court had no occasion to deal with the said contention. We have already pointed out above that there is a difference in the nature, scope and responsibility of the duties entrusted to the two Officers justifying the differentiation. This is apart from the fact that the matter has now been set at rest by the Rules, notifications, circulars and orders which have been issued demarcating clearly the functions and jurisdiction of the two.

43. As has been held in *Federation of All India Customs and Central Excise Stenographers (Recognised) & Ors.* v. *Union of India & Ors.*, [1988] 3 SCC 91 the differentiation in two classes can be justified on the basis of "the nature and the type of the work done ..... The same amount of physical work may entail different quality of work, some more sensitive, some requiring more tact, some less—it varies from nature and culture of employment. The problem about equal pay cannot always be translated into a mathematical formula. If it has a rational nexus with the object sought for ..... a certain amount of value judgment of the administrative authorities who are charged with fixing the pay-scales has to be left with them and it cannot be interfered with by the Court unles it is demonstrated that either it is irrational or based on no basis or arrived *mala fide* either in law or in fact". The Court there found that in the light of the averments made and the facts pointed out, it was not possible to say that the differentiation there was based on no rational nexus with the object sought to be achieved. The Court noted that the differentiation was justified on the dissimilarity of the responsibility, confidentiality and the relationship with public etc. though there was similarity in the functional work. The court further observed there that often the difference in the functions and the responsibilities is a matter of degree and the administration is required to make a value judgment while classifying the posts and fixing the different conditions of service for them. So long as the value judgment is made *bona fide*, it is not questionable. The same view has been reiterated by this Court in *V. Markendeya & Ors.* v. *State of Andhra Pradesh & Ors.*, [1989] 3 SCC 191.

44. At the cost of repetition, we may state that in the present case the distinction between the two posts is made by the statute itself and that distinction has been in existence since long. The appointing authorities of the two posts are different. In fact, the Group-A post (the present post of the Assistant Commissioner) had two grades, viz., Grade-I and Grade-II, and Grade-II post was a promotional post for

officers belonging to Group B (the present ITO). The nature of work entrusted to the two classes of posts, the responsibility which goes with it and the power and jurisdiction vested in them vary. The mere fact that some Group B officers are capable of performing the work of Group-A officers and in fact on some occasions in the past they were appointed *ad hoc* or otherwise, to discharge the work of Group A officers cannot equate the two posts. Such a demand, to say the least, is irrational for if this contention is accepted, in no organisation the hierarchy of posts can be justified. After the 1987 Amendment, further, the situation has changed and the duties, functions, jurisdiction and power of the officers have been rationalised clearly demarcating the spheres of work of the two. In an organisation of this kind, with contrywide offices dealing with various categories of assessees and incomes, some dislocation, functional overlapping and want of uniformity in the assignment of work during some period is not unexpected; and it does appear that during some period, the situation in the Department was out of joint. That is why steps were taken to straighten it out by amending the Act and making the rules and issuing the relevant notifications, circulars and orders. If during this period on account of the exigencies of service, some *ad hoc* appointments of Group B officers were made to Group A posts, Grade-II or Group-B officers were required to perform the same functions and discharge the same duties as Group-A officers, they can at best claim the emoluments of Group A officers, but certainly not the equalisation of the two posts on that account.

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

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

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

Y.Lal Petitions dismissed.