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petitioner because of the impugned order. The parties are virtually at par and the case shall be heard and decided on merits. In a situation like this, this Court seldom interferes under section 115, Code of Civil Procedure, for, the law is well settled that even if the order passed by the learned Court below is technically incorrect, the High Court does not interfere on the revisional side, if the order does not result in miscarriage of justice.

(4) For reasons aforementioned, we find no merit in this petition and dismiss the same with no order as to costs. The parties to appear before the learned trial Court on July 28, 1980.

Bhopinder Singh Dhillon, J.—I agree.

N. K. S.

Before S. S. Sandhawalia C.J. and S. S. Kang, J.

HAR NARAIN,—Appellant

versus

RAM LAL and others,—Respondents.

Letters Patent Appeal No. 223 of 1977

July 16, 1980.

Constitution of India 1950—Article 16—Ticket checking staff of the Railways having different channels of promotion—Railway Board evolving uniform policy classifying service into two categories—Employees recruited prior to the decision given the last option to choose their line of promotion while those recruited thereafter to follow the combined channel of promotion—Such classification—Whether violative of Article 16—Railway employee recruited prior to the policy decision exercising option for promotion for a certain channel—Such employee—Whether could be allowed to go back on his option and opt for another line of promotion—Instructions clarifying the policy decision—Whether could be violative as regards the rights of a particular individual.

Held, that the policy decision of the Railway Board settled a long drawn out dispute and therefore provided the water-shed for cutting the Gordian knot of complications which had arisen with regard to the actual application of the channels of promotion. It was, therefore, provided that the persons who joined service prior

to the policy decision would be given the last voluntary option to choose their line of promotion whilst those who joined after that date were in fact deprived of such options and were obliged to follow the combined or the general line of promotion. It was with their eyes open that persons who were members of the service before the policy decision willingly gave their voluntary options to accept a certain channel of promotion and it would no longer lie in their mouth to recant and retrace therefrom the moment any better prospects appear to be available in the other rival channel. It would be thus evident that in the peculiar context the date of the policy decision was the rationale and the underlying premise for giving the persons who were earlier in service an option whilst denying the same for those coming late from that date. It would, therefore, be evident that persons who joined service before the date of the policy decision are treated as one class and fresh entrants thereafter as another. Little quarrel can be made with this classification. It is well settled that discrimination arises only when persons of the same class are treated unequal. Article 16 of the Constitution of India 1950 does not hit a reasonable classification and a classification laid out from the date of the settled policy decision is not in any way arbitrary or unreasonable. It may well be borne in mind that where the facts warrant then even in the same service a distinction or classification has been held to be permissible. (Paras 13 and 14)

Held, that an instruction or statutory provision if it is violative of Article 16 of the Constitution has to be struck down as unconstitutional as a whole and not only as regards its peculiar effect on the rights of a particular individual. (Para 8)

Letters Patent Appeal under Clause X of the Letters Patent of the High Court against the Judgment, dated the 23rd of May, 1977, passed by Hon'ble Mr. Justice Prem Chand Jain in Civil Writ No. 682 of 1973 [Ram Lal versus. The General Manager (P.) Headquarters Office, Baroda House, New Delhi, and others].

M. R. Agnihotri, Advocate for the Petitioner.

N. K. Sodhi, Advocate for respondent No. 1.

JUDGMENT

S. S. Sandhwalia, C.J.

(1) These two appeals under Clause X of the Letters Patent preferred by Har Narain and the General Manager Railways, appellants, are directed against the same judgment of the learned

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Single Judge, whereby he set aside the instructions contained in annexure 'G' only in so far as these adversely affected the rights of Ram Lal respondent and granted him consequential relief. The issues of law and fact arising in these appeals being identical, learned counsel for the parties are agreed that this judgment will govern both of them.

2. Ram Lal, respondent-writ petitioner, who belongs to the schedule castes, joined Railway service as a Ticket Collector Grade 1 on June 17, 1957 in the grade of Rs. 60—130. The promotional posts to which the respondent could aspire were those of the Ticket Collectors Grade II in the grade of Rs. 150—240 or as Travelling Ticket Examiner in the grade of Rs. 130—212. It is the admitted stand that prior to July 12, 1962, the method of promotion to these higher posts was to the effect that the concerned Divisional Personnel Officer could call upon the Ticket Collectors to exercise their option if they would like their future advancement in the channel of the higher grade of Ticket Collectors or as Travelling Ticket Examiners. On respondent Ram Lal's own showing even after 1962 he expressly exercised his option to choose the channel of Travelling Ticket Examiners in the grade of Rs. 130—212 and was holding the said post when he preferred the writ petition. It was his claim that the posts of Travelling Ticket Examiners and Ticket Collectors were equivalent and a joint seniority list for the purpose of future promotions was being maintained in which respondent Ram Lal was shown as senior to the appellant Har Narain. It was pointed out that Har Narain appellant was appointed as Ticket Collector on 1st September, 1962, whilst the respondent had been so appointed much earlier.

3. Now, it seems to be the common case that the tangled issue of an integrated channel of promotion applicable both to the Ticket Collectors and the Travelling Ticket Examiners of the entire Railways remained under examination of the authorities for a considerable time. To resolve the same, the Railway Board after an indepth examination ultimately issued the instructions, annexure 'E', dated the 12th July, 1962 precisely prescribing the procedure, the manner and the number of options to be followed thereafter. It appears that some doubts nevertheless remained about the application of annexure 'E' and it was then that the Railway Board issued the necessary clarification thereto,—*vide* the impugned policy letter, annexure 'G', dated 31st of July, 1968.

4. Again it is not in dispute that even subsequent to the aforesaid clarification,—*vide* annexure 'G', respondent Ram Lal duly exercised his option for the channel of promotion on his own volition. However, a post of senior conductor in the pay scale of Rs. 250—380 which was required to be filled in by a member of the Scheduled Castes later fell vacant and respondent Ram Lal wanted to lay claim thereto. It was his grievance that by annexure 'G' his purported right to exercise another option with regard to the channel of promotion was taken away and consequently his claim to the vacant post was negatived and, therefore, the said policy letter was violative of Article 16 of the Constitution. As a necessary relief the writ petitioner (respondent Ram Lal) claimed that he must be sent to a promotional course, passing of which was a pre-requisite for selection to the post of the conductor and he further challenged the detailing of Har Narain appellant to qualify in the said course.

5. The learned Single Judge held that the distinction sought to be drawn,—*vide* annexure 'G' between the members of the Service who joined before July, 1962, and those employed thereafter was not sustainable so far as they affect the rights of the writ-petitioner. The writ petition was, therefore, allowed and consequent relief of sending Ram Lal respondent to the Zonal Training School, Chandausi, was directed by excluding Har Narain appellant therefrom. The operative and the concluding part of the learned Single Judge's judgment is in the following terms:—

"I am, therefore of the opinion that the instructions so far as they affect the right of the petitioner of being considered before respondent No. 3 for the selection grade of Senior Conductor, is discriminatory in nature and thus violative of Article 16 of the Constitution. For the reasons recorded above, I allow this petition with costs, set aside the instruction contained in Memo. No. 522 E/15 (Sic.), dated July 31, 1968, copy annexure 'G' so far as the same adversely affect the rights of the petitioner and order No. 843 E/89 PIA, dated November, 1972, copy annexure 'H' by which respondent No. 3 was sent to qualify for the promotional course, and direct the official respondents to send the petitioner to attend the course in Zonal Training School, Chandausi, and consider him for promotion to the higher post of Senior Conductor in the grade of Rs. 250—380."

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6. At the very threshold, Mr. M. R. Agnihotri, learned counsel for the appellant highlighted the fact that the learned Single Judge had not struck down annexure 'G' *in toto*, but merely held that it was bad only insofar as it affected the rights of respondent Ram Lal. Counsel pointed out that neither was any case made out in the writ petition nor has it been held that annexure 'G' was void as a whole in view of the alleged infraction of Article 16. On these premises Mr. Agnihotri had forcefully sought to assail the judgment on the ground that either the impugned letter annexure 'G' was violative of Article 16 and, therefore null and void or it was valid *qua* all persons. It was submitted with great vehemence that the said instructions could not be violative of Article 16 so far as they affect the right of the petitioner only because the very essence of the rule of discrimination is that it would render the whole of the action or the provision unconstitutional.

7. Be it said to the credit of the learned counsel for the respondent Mr. N. K. Sodhi, that he frankly conceded that he was unable to sustain the judgment of the learned Single Judge holding merely that the instructions, annexure 'G' so far as they affect the right of the respondent Ram Lal only are discriminatory and no more. He candidly submitted that either annexure 'G' or in any case the specific portion thereof would be void as a whole and *qua* all persons and not merely as regards respondent Ram Lal. Having so conceded Mr. Sodhi was pushed into a corner in vainly submitting that in the present appeals we should now strike down annexure 'G' without any limitation and not merely keep its alleged discriminatory effect confined as the learned Single Judge had.

8. We are afraid that on the aforesaid virtually admitted position the judgment under appeal would become unsustainable. Once it is conceded (as it unreservedly has been) that an instruction or statutory provision if it is violative of Article 16 of the Constitution has to be struck down as unconstitutional as a whole and not only as regards its peculiar effect on the rights of a particular individual then it would be obvious that the operative part of the learned Single Judge's judgment cannot be upheld.

9. As regards the prayer of Mr. Sodhi that we should now hold annexure 'G' as wholly void, we find an insurmountable hurdle in his way. It is conceded that Ram Lal respondent had neither filed

any cross-appeal nor preferred any cross objections in the two Letters Patent appeals now before us. Therefore, in the appeals preferred by these appellants any order even more adverse to them than the one challenged can hardly be passed. Further the judgment of the learned Single Judge would show that he did not (and it has been forcefully contended on behalf of the appellant that on the materials before him, in fact he could not) hold the instructions as a whole to be void. In these appeals, therefore, we find neither any justification nor perhaps competence to give the curious relief which at this stage is sought on behalf of the respondent by Mr. Sodhi.

10. Though the matter can thus be disposed of on the aforesaid short ground we would, however, not wish to rest ourselves wholly on the concession of the learned counsel for the respondents or on the *prima facie* inability to pass orders more adverse to the appellants than the one by which they are aggrieved. We had invited the learned counsel for the respondent to assail, annexure 'G', on the ground of its being wholly void because of its infraction of article 16 of the Constitution. No meaningful argument could be raised by him to show as to how the innocuous clarification or at best the modification of the earlier policy letter issued by the Railway Board itself by annexure 'G' would be in conflict with the rule of equality before law or its other facet of the equality of employment under Article 16. The sole argument advanced by the learned counsel was that the distinction sought to be drawn betwixt persons who had joined the service before the 12th of July, 1962, or thereafter did not have any rational basis. This contention appears to have found some favour with the learned Single Judge.

11. Herein we are regretfully unable to agree that the classification made,—*vide* annexures 'E' and 'G' is unsustainable. The resume of facts given earlier would indicate (and the matter is otherwise not in dispute) that the tangled complications which had arisen with regard to the channels of promotion for persons holding different designations and performing different duties though in the similar grades of Railway Service and the thorny issue raised thereby remained under consideration at all levels, and appears to have been the subject of serious unrest and representations by the employees themselves. The matter had ultimately to be carried to the highest authority at the level of the Railway Board and to bring

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In uniformity they ultimately took the policy decision on July 12, 1962, laying down as follows,—vide annexure 'E':—

“Northern Railway, Headquarter’s office, Baroda House,
No. 561|E|92 (Dup) New Delhi.
upgrading (Eic.).

Dated 12th July, 1962.

The Divisional Superintendents,
Northern Railway,
Delhi, Allahabad, Moradabad, Lucknow, Ferozepore,
Bekaner and Jodhpur.

Subject: Upgrading of posts of TC Rs. in P. S. Rs. 200—300.

Reference: Your replies to this office letter No. 561 E/82 (Eic),
dated 21st November, 1961.

- (1) The question of having an integrated channel of promotion applicable to TCRs/TTEs over the entire Railway has been under-examination in this office for a considerable time. It has now been decided by the Railway Board that the following procedure should be introduced with immediate effect.
- (2) Promotion to Rs. 80—160 (PS) and Rs. 100—185 (PS) should be made on the basis of combined seniority of the TCRs and TTEs. Those who have already exercised their option for TCRs for TTEs. cadres, may be given opportunity of opting once again at the time when they are due for promotion to the higher grade. No option need be given to fresh entrants who will have to follow the combined channel of promotion. Those who exercise fresh option for the combined channel of promotion will not be given another opportunity for option at the time of promotion to Rs. 200—300 (PS) whereas those who follow the combined channel of promotion without having been given an option up to Rs. 100—185 (PS) will be given an option at the stage of promotion to Rs. 200—300 (PS).
- (3) It will be observed that as a result of introduction of the integrated channel of promotion it will not be necessary to work out the percentage of higher grade posts in

grade 200—300 (PS) and above on the basis of respective cadres for TCRs and TTEs. The higher grade posts will now be worked out on the combined strength of these two cadres. The actual distribution of such posts between the two cadres, however, will be dependent on worth of charge and administrative convenience.

(4) Please ensure immediate implementation of these orders."

Now the significant thing is that no challenge whatsoever to the aforesaid policy decision,—*vide* annexure 'E' was even remotely raised in the writ petition or before the learned Single Judge and for that matter before us. Mr. Sodhi, learned counsel for the respondents even when pointedly asked conceded that he had no quarrel with the policy laid down,—*vide* annexure 'E'.

12. It would appear that in its actual application, the policy decision annexure 'E' itself posed certain problems and representations were made by the ticket checking staff with regard to its precise application. This was finally resolved by the Railway Board's policy letter,—*vide* impugned annexure 'G' which also calls for notice *in extenso* :—

"NORTHERN RAILWAY

Headquarter Office : Baroda House, New Delhi.

No. 522-E|15 (EIC).

Dated 31st July, 1968.

Subject: Channel of promotion of Ticket Checking Staff.
Representation from Ticket Checking Staff.

Reference : Your letter No. 758-E/15011 P2, dated
17th July, 1968.

In terms of instructions contained in this office letter No. 61E|92|DUP| (EIC), dated 12th July, 1962 no option need be given for fresh entrants who will have to follow the combined channel of promotion.

In view of the above, the ticket collectors|who were appointed prior to 12th July, 1962 may be given promotions according

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to the options subject to proviso that they will not be given another chance at the time of promotion of grade 250—380 (AS).”

It may be pointedly noticed that Mr. Sodhi has no quarrel with paragraph No. 1 of the afore-quoted annexure. The sole grievance is sought to be made against the second paragraph thereof.

13. It would be evident from the above as also from the contents of annexure 'E' that the policy decision settled a long drawn out dispute and, therefore, provided the water-shed for cutting the Gordian knot of complications which had arisen with regard to the actual application of the channels of promotion. It was, therefore, provided that the persons who joined service prior to July 12, 1962, would be given the last voluntary option to choose their line of promotion whilst those who joined after that date were in fact deprived of such options and were obliged to follow the combined or the general line of promotion. It was with their eyes open that persons who were members of the service before July 12, 1962 willingly gave their voluntary options to accept a certain channel of promotion and it would no longer lie in their mouth to recant and retrace therefrom the moment any better prospects appear to be available in the other rival channel. It would be thus evident that in the peculiar context the date of the policy decision, namely, July 12, 1962 was the rationale and the underlying premise for giving the persons who were earlier in service an option whilst denying the same for those coming late from that date. It would, therefore, be evident that annexure 'G' treats the persons who joined service before the date of the policy decision on July 12, 1962 as one class and the fresh entrants thereafter as another. In our view, little quarrel can be made with this classification. The respondent, Ram Lal, therefore, belonged to one class whilst appellant-Har Narain, having joined service on September 1, 1962, belonged to the class of fresh entrants. It is well settled that discrimination arises only when persons of the same class are treated unequally. Article 16 of the Constitution of India does not hit a reasonable classification and with respect we are unable to hold that a classification laid out from the date of considered policy decision is in any way either arbitrary or unreasonable. It is virtually the admitted position so far as respondent-Ram Lal, and the persons belonging to his class, namely, entrants to the service prior to July 12, 1962 are concerned, they are being treated equally by the instructions. Therefore, so far as this class is concerned, annexure 'G' as also

its predecessor annexure 'E' operate uniformly. In such a situation the invoking of Article 16 of the Constitution of India or any allegation of discrimination, with respect appears to us as uncalled for.

14. In the aforesaid context it may also well be borne in mind that where the facts warrant then even in the same service a distinction or classification has been held to be permissible. What deserves highlighting here is that in the present case the service consisted of many branches of varying designations and though the grades may be equivalent, the duties are wide-rangingly different. Nevertheless even in cases where the duties are identical and the designations are the same, it is possible to draw a line without the action being discriminatory. Reference in this context may be made to the well known Tracers case reported as *State of Mysore v. Narsinga Rao* (1). Therein within the same service the classification was sought to be based on the educational qualifications, namely, those who were Matriculates as against others who were non-matriculates, it was held as follows:—

“* * * The provisions of Article 14 and of Article 16 do not exclude the laying down of selective tests, nor do they preclude the Government from laying down qualifications for the post in question. Such qualifications need not be only technical but they can also be general qualifications relating to the suitability of the candidate for public service as such. It is, therefore, not right to say that in the appointment to the post of Tracers the Government ought to have taken into account only the technical proficiency of the candidates in the particular craft. It is open to the Government to consider also the general educational attainments of the candidates and to give preference to candidate who have better educational qualifications besides technical proficiency of a Tracer.”

Again in *State of Jammu and Kashmir v. Triloki Nath Khosa* (2), it was specifically held that in particular for the purposes of promotion a classification could be made within the same service in the following words:—

“We are therefore of the opinion that though persons appointed directly and by promotion were integrated into a common

(1) A.I.R. 1968 S.C. 249.

(2) A.I.R. 1974 S.C. 1.

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class of Assistant Engineers, they could, for purposes of promotion to the cadre of Executive Engineers, be classified on the basis of educational qualifications. The rule providing that graduates shall be eligible for such promotion to the exclusion of diploma-holder does not violate Articles 14 and 16 of the Constitution and must be upheld."

15. It may then be highlighted that the admitted position herein is that no Act or statutory rules governed the question of the channels of promotion in the service. The matter was merely one of policy issued from time to time by the Railway Board. Indeed, it was from the said policy letters alone that the respondent-Ram Lal, seeks to claim some semblance of right with regard to the exercise of options. No statutory right is at all involved. Even Mr. Sodhi conceded that the Railway Board would be at perfect liberty to withdraw a policy letter issued earlier under its authority or to vary, amend or even override the same subject to the qualification that such action was not discriminatory in nature. Viewed in the larger perspective the Railway Board indeed would be the best judge of the administrative exigencies of a widely variegated service and the channels of promotion which should be made available to its employees. That the matter had become replete with difficulties is evident from the various representations made by the staff itself and the fact that these remained under prolonged consideration and thereafter the policy decision having been evolved,—*vide* annexure 'E', further clarification thereof was made,—*vide* annexure 'G'. In such a situation it is well settled that unless there is a blatant violation of the rules of equality the presumption of constitutionality has to be given weight and interference in matters in which two reasonable views are possible, would not perhaps be called for.

16. Even at the cost of some repetition, it may be highlighted that annexure 'E', the original policy letter of the Railway Board dated July 12, 1962, was at no stage whatsoever challenged or assailed on behalf of respondent-Ram Lal. Indeed, Mr. Sodhi's own stand was that this annexure did not in the least suffer from the vice of unconstitutionality. Once that is so, we are unable to see how a mere clarification or at the worst a modification of the earlier policy letter would be violative of Article 16 of the Constitution of India. Learned counsel for the respondent was unable to show any blatant conflict between annexure 'E' and annexure 'G', which was merely an addendum to the former. Even here the first paragraph of annexure 'G' was conceded to be innocuous and the sole quarrel

sought to be raised was against the contents of the second paragraph which runs as follows:—

“* * *

In view of the above, the ticket collectors, who were appointed prior to 12th July, 1962 may be given promotions according to the options subject to proviso that they will not be given another chance at the time of promotion to grade 250—380 (AS)”.

17. Now, the significant thing incorporated in annexure ‘E’ and ‘G’, which have necessarily to be read together is the fact that they merely gave an option to the employees seeking their preference for the channel of promotion which best suited their interest. This would obviously depend on many things, viz., upon the number of persons senior to different employees in a particular line, their own ages, qualifications and prospects, as also the predilection and preference for a particular line along with many other impoundables of which the particular public servant alone could be aware. Now a voluntary exercise of a right of option given by the authority cannot easily appear to us as one which would be violative of the rule of equality. In fact it vests a large discretion in the employees to choose whatever suits their interest best. It was not disputed before us that in a variegated service, as instruction of a policy letter confining persons to a particular channel of promotion at their own option would neither be discriminatory nor in any way violative of any fundamental right. Indeed such provisions or seeking of options are common in service law. That being so, where merely an option is given to an employee to choose a particular line of promotion and the latter at his own volition had exercised the said option, then he may well be stopped to recant from the same and to claim afresh option merely because at a later stage it may seem to serve his interest better.

18. For the aforesaid reasons, we are unable to hold that the innocuous paragraph No. 2 of annexure ‘G’ is in any way violative of Article 16 of the Constitution of India generally or with any special reference to the rights of respondent-Ram Lal.

19. Lastly the particular set of facts would equally indicate that respondent-Ram Lal has in no way been treated unfairly. On his own showing, he had joined service long before July 12, 1962.

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Even in the limited class of scheduled castes employees, six persons namely; Amar Nath, Babu Ram, Swarn Chand, Labh Singh, Harnek Singh and Gian Chand were senior to him as is clearly indicated by annexure R/6 to the written statement. All these persons had also duly exercised their option for a particular line of promotion. The respondent-Ram Lal himself,—*vide* annexure R/2 was called upon to exercise his option on February 26, 1969, long after the clarification,—*vide* Annexure 'G', dated July 31, 1968; had been issued. He in fact did exercise his option,—*vide* annexure R/3 and clearly said that he would opt for the Special Ticket Examiner's grade of Rs. 130—212. Thereby he confined himself to a line of promotion with his eyes open and by his own volition under annexure 'G' itself. Clearly, he cannot therefore, now make serious grievance about the same. The appellant-Railway appears to be right in its stand in paragraphs 6, 7 and 8 of the additional affidavit of Shri R. P. Chopra, Assistant Personnel Officer to the effect that respondent-Ram Lal, when exercising his option on March 3, 1969 should have known that by restricting himself to one category, he could not at the future time claim the post of the selection grade in the other two categories of the Senior Conductors or Head Ticket Collector. It is further evident from the Return that even the Scheduled Castes candidates senior to respondent-Ram Lal, who had so exercised their option are similarly confined to the channel of promotion they had chosen and have not been allowed to claim either the selection grade or the higher post in the other categories. It would thus appear that respondent-Ram Lal having duly exercised an option under the very same policy letters and having secured the benefit thereof would now avariciously claim another option when it seems to serve his interest better. We are, therefore, of the view that if he along with others of his class even though senior to him have been prevented from doing so by a uniform policy adopted by the Railway Board, then the said action cannot be called discriminatory either *qua* the whole class or individually as regards respondent-Ram Lal.

20. Concluding that annexure 'G' does not in any way violate Article 16 of the Constitution of India either generally or in any limited context, we would allow both these appeals set aside the order of the learned Single Judge, and consequently dismiss the writ petition preferred by the respondent-Ram Lal. There will however, be no order as to costs.

N. K. S.