

FULL BENCH

Before O. Chinnappa Reddy, S. S. Sandhawalia and M. R. Sharma, JJ.

DEPUTY INSPECTOR GENERAL OF POLICE and another,—
Appellants.

versus

SHAMSHER SINGH, CONSTABLE NO. 731, AMABALA CITY,—
Respondent.

Letters Patent Appeal No. 297 of 1975.

December 16, 1976.

Punjab Police Rules 1934 (as applicable in the State of Haryana) — Rule 13.7—Constitution of India 1930—Article 16—Prescription of maximum age of 30 for promotion of a constable—Whether offends Article 16.

Held, (per majority Reddy and Sharma JJ., Sandhawalia, J. contra) that Article 16(1) of the Constitution of India 1950 guarantees that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. This equality of opportunity is not to be confused with absolute equality. Article 16(1) does not prohibit the prescription of reasonable rules for selection to any employment or appointment to any office. It does not bar a reasonable classification of employees on reasonable basis for their selection. It does not preclude prescription of qualifications for appointment not only of mental excellence such as educational and technical, but also of physical fitness, age, sense of discipline, moral integrity, loyalty to the Constitution and the State etc. The administrative agency is ordinarily the best Judge of the qualifications required for a post and a Court will not interfere with the prescription of such qualifications on the ground of denial of equal opportunity unless there is a flagrant abuse by the agency concerned. In examining the vires of Rule 13.7 of the Punjab Police Rules 1934, it has to be borne in mind that constables enter the police force between the age of 18 and 27 and under this rule they must be selected for promotion, before they attain the age of 30 or not at all. It is true that the prescription of the maximum age of 30 for promotion is bound to result in hardship to a considerable number of constables, who, if not selected, are condemned to stagnation in service for a long period of 28 years. This may necessarily lead to frustration among those who fail to get selected for promotion. On the other hand, the very prescription of the maximum age of 30 for selection for promotion of a constable indicates that the administrative agency responsible for making the rule expects from constables aspiring promotion a display of their talent

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and their talent and their ability from the very commencement of their career. Apparently, the administrative agency is of the view that only those should be selected for promotion that exhibit from the very beginning such qualities as are considered necessary for promotion to higher posts in the police service. It is not as if any one is denied an opportunity of being considered for promotion. Since ordinarily the maximum age for entry into service is 27, every constable has at least one chance of making the grade in order that he may be selected for promotion, the number of chances depending on his age on enlistment as a constable cannot complain that those who have enlisted young have a larger number of chances. No one has a fundamental right to be promoted ; one has only a right to be considered for promotion. The prescription of the maximum age of 30 for promotion of constables to the rank of Head Constables is, therefore, not so unreasonable as to be struck down as offending Article 16(1) of the Constitution. (Paras 13 and 14).

Held, (per Sandhawalia, J. contra) that Article 16 of the Constitution enshrines the fundamental right of equality of opportunity for all citizens in matters relating to employment under the State. It is well settled that this includes not only an equality of opportunity at the stage of appointment but also at the subsequent stages of promotion to higher rank. Now it is plain that rule 13.7 creates a bar against all future promotions for a constable approaching the age of 30 years. The rule draws a sharp line dividing the constables in the police force into two classes for the purposes of promotion, i.e., those above 30 years of age at the time of the commencement of the Lower School Course and those below that age. Whilst the latter class is eligible for the first step of promotion to the head constable and may be to higher ranks thereafter, the other class is perpetually debarred from rising to any higher ranks for the remaining period of their service which would normally extend to nearly 30 years. There is, thus, clear discrimination between those above 30 years and those below it for the purpose of even the first promotion after joining the police force. Moreover rule 12.24 of the Police Rules provides for recruitment from one source up to an age just below 30 years. Rule 12.15, on the other hand, allows and even invites the recruits to join the police force up to 27 years of age and further provides for the relaxation of the age limit both generally and specially. Having once allowed or invited the recruits to join the police force whilst bordering on the age of 30 years, it does not stand to reason for the authority to turn round and say that they would thereafter be ineligible for promotion for the remaining nearly three decades of their service. Rule 13.7 cannot erect a blank and unsurmountable hurdle for promotion in the way of recruits who have been allowed and even invited to enter the police force at ages bordering on 30 years, and still be termed as reasonable. Such a prescription of age coupled, as it necessarily is, with the permissible upperage of recruitment would render the equality of opportunity for promotion to a higher

rank completely illusory. It is not open to the authority to virtually render nugatory the guarantee of Article 16 by the devious method of prescribing an arbitrary age limit for all future promotions in the service. If such an age limit has to be prescribed, it must bear a test on the touch stone of reasonableness. There is no adequate ground or rationale for the prescription of the age of promotion below 30 years when in the present day life a man must be deemed to be in his prime. This prescription, therefore, which either blocks completely any chances of promotion or at best affords one or two opportunities only to the persons enrolled as constables at the permissible age does not satisfy the test of intrinsic reasonableness.

(Paras 28, 30 and 34).

Letters Patent Appeal under clause X of the Letters Patent against the order dated 10th March, 1975 passed by Hon'ble Mr. Justice Rajendra Nath Mittal in Civil Writ No. 5995 of 1974.

H. N. Mehtani, Senior Deputy Advocate General (Haryana).
for the appellants.

T. S. Doabia, Advocate and J. L. Gupta, Advocate as amicus Curiae, *for the respondents.*

JUDGMENT

Judgment of the Court was delivered by—

O. Chinnappa Reddy, J.

(1) In this appeal the vires of a rule prescribing an upper limit of age for promotion from the post of a Constable to that of a Head Constable is in question. In order to appreciate the issues involved in their proper perspective it is necessary to have a brief conspectus of the Rules relating to the recruitment of Head Constables in the States of Punjab and Haryana.

(2) Rule 12.12 of the Punjab Police Rules, 1934, enjoins a duty upon all Gazetted Police Officers to devote special attention to discover and encourage 'men of thoroughly good stamp' to enrol themselves as Constables since 'the standard of performance and the reputation of the whole police force depend above all upon the quality of its constables'. No literacy qualification is prescribed. Rule 12.4 prescribes that recruits shall be of good character. Rule 12.15 prescribes the physical standards of recruits and the limits of age. The lower age limit is 18 but persons who are above 17 may also be recruited subject to the condition that the service rendered

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by them before the age of 18 shall not qualify for pension. The upper limit of age is 25 in the State of Punjab and 27 in the State of Haryana. The Inspector General of Police is empowered to relax the upper age limit in special circumstances. While no literacy qualification is prescribed for Constables, Rule 12-10A makes a special provision for direct enlistment of 'matriculates of good social status and strong family claims' in the selection grade of Constables up to a maximum of ten per cent of the posts in that grade with 'a promise of accelerated promotion if they pass the recruits course with credit'. Rule 12-10A also provides that such officers if they work well will be sent to the Lower School Course directly on their confirmation. The rule further provides that if they fail to pass the recruits course with credit, they would be reverted to time-scale and would not be entitled to accelerated promotion. Rule 12.21 provides for the discharge of a Constable at any time within three years of enrolment if he is found 'unlikely to prove an efficient police officer'.

(3) Rule 19.2 prescribes that recruits shall not be passed into the ranks until they have undergone six months' training and instructions as stipulated. Rule 19.3 provides for examinations at the completion of the training. Certificates of education of the Ist or 2nd class, as the case may be, are required to be inserted in the character rolls of the successful literate Constables. In the case of illiterate Constables, it is provided that they may be passed into the ranks if they are above the average standard in other respects. After passing into the ranks, all recruits are further required, under rule 19.4, to undergo training for six months with the armed reserve. Even thereafter they are required to undergo one month's training annually. Rule 19.3, which is important, provides that Constables with Ist Class Certificate of education shall be given further training specified in the rule for a period of two or three months with the object of selecting suitable candidates for admission to List 'A', that is, a list, required to be maintained by Rule 13.6, of Constables eligible for promotion to the Selection Grade of Constables under Rule 13.5. Rule 19.3 provides for an examination, partly written and partly oral, at the end of the training. The officer conducting the examination has also to report his own estimate of each constable's ability. After considering these reports and the results of the examination the Superintendent of Police has to decide whether a constable can be said to have passed the tests prescribed in the rule.

In making the decision the Superintendent of Police is particularly required to be 'guided by the consideration that the training which will automatically follow from the addition of a Constable to List A has as its object the production of a man fitted for the rank of Head Constable'.

(4) Rule 12.10 prescribes that Head Constables shall be appointed by promotion from Selection Grade Constables in accordance with Rule 13.7 and 13.8. While Rule 13.7 and 13.8 prescribe the method of selection and the procedure to be adopted in making promotions to the posts of Head Constables, Rule 13.5 and 13.6 prescribe the method of selection and the procedure to be adopted in promoting Constables to the Selection Grade of Constables. Clauses (1) and (2) of Rule 13.1 prescribe the general considerations for promotion and say that promotion from one rank to another, and from one grade to another in the same rank shall be made by 'Selection tempered by Seniority'. Efficiency and honesty are to be the main factors governing selection. Specific qualification, whether in the nature of training courses passed or practical experience are to be carefully scrutinised in each case. When other qualifications are equal, seniority is to be taken into account. Well-educated Constables having the attributes necessary for bearing the responsibility of upper subordinate rank are to receive accelerated promotion. For the purposes of regulating promotion to the Selection Grade of Constable and the posts of Head Constables, Lists A, B and C are required to be maintained in the manner prescribed by Rules 13.6, 13.7 and 13.8.

(5) Rule 13.5 (1) enumerates the essential qualifications for promotion to the Selection Grade of Constables and Rule 13.5 (2) provides for the promotion of those possessing the essential qualifications in the order of their marking on the system mentioned in the rule, that is, marks being awarded up to a prescribed limit for Education, Courses passed, Professional ability and character. Rule 13.5 (5) reiterates Rule 12.10.A and also provides that Constables of and above the Matriculation Standard of education and having exceptional family claims may be promoted to the Selection Grade immediately on passing their recruits course with credit. Rule 13.6 casts a duty on the Superintendent of Police to maintain List A of Constables eligible under Rule 13.5 for promotion to the Selection Grade of Constables.

(6) Rule 13.7 requires each Superintendent of Police to maintain a list known as List B in two parts—(1) of Selection Grade

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Constables considered suitable for the Lower School Courses and (2) Constables considered suitable for drill and other special courses. As and when vacancies occur for admission to the courses concerned at the Police Training School, selection is made from List B and it has to be approved by the Deputy Inspector General of Police of the range. Seniority in age is ordinarily to be given prior consideration in making such selection irrespective of the date of admission to the list. It is also prescribed that no Constable should be admitted to the list whose age is such that he cannot in the ordinary course be sent to the training school before he attains the age of 30 years. Constables passing the Lower School Course at the Police Training School are considered eligible for promotion to the post of Head Constable. A list of such candidates known as List C is required to be maintained by the Superintendent of Police under Rule 13.8. The list is further required to be scrutinised and approved by the Deputy Inspector General of Police. Rule 13.8 also provides that promotion to the post of Head Constable should be made in accordance with the principles mentioned in clauses (1) and (2) of Rule 13.1, to the provisions of which we have already referred earlier. It is further provided in Rule 13.3 that date of admission to List C shall not be material but the order of merit in which examinations have been passed shall be taken into consideration in comparing qualifications. It is also provided that Selection Grade Constables who have not passed the Lower School Course but are otherwise considered suitable may be promoted as Head Constables up to a maximum of ten per cent of vacancies. This is the rule position in the State of Haryana. In the State of Punjab, Rule 13.7 has been amended and entries in List B are required to be made in order of merit determined by the Departmental Promotion Committee constituted by the Inspector General of Police on the basis of tests in parade, general Law, interview and examination of records. The rule also provides that Constables who are above 30 years of age on the first day of July in the year in which selection is made are not eligible to have their names entered in the list.

(7) Rule 13.9 provides for the promotion of Head Constables to the posts of Assistant Sub-Inspectors and Rule 13.10 provides for the promotion of Assistant Sub-Inspectors to the posts of Sub-Inspectors. Rule 13.14 provides for promotion to various Selection Grades of Sub-Inspectors and Rule 13.15 provides for promotion from the rank of Sub-Inspectors to the rank of Inspectors.

(8) Thus, while both literates and illiterates are enlisted as Constables, there is a special provision for Matriculates of calibre to be enlisted directly in the Selection Grade of Constables with a promise of accelerated promotion if they pass the recruits course with credit. All enlisted Constables undergo a course of training at the end of which there is an examination. Those who pass the examination and obtain a First Class Certificate of education are given further training with the object of selecting candidates for admission to List A, that is list of Constables eligible for promotion to Selection Grade of Constables. At the end of this period of additional training, there is once again an examination and this is avowedly intended to produce 'a man fitted for the rank of Head Constable'. Thereafter again there is a process of selection. Candidates are selected for admission to the Lower School Course and finally promotions to the rank of Head Constables are made in accordance with the general principles contained in clause (1) and (2) of Rule 13.2.

(9) From the above brief survey of the Rules, it appears that the process of selection of Head Constable commences practically simultaneously with the enlistment of recruits as Constables. The scheme of the Rule appears to be to select and appoint Head Constables at a very early age by putting the enlisted recruits through a rigorous training and drill from the very start and choosing the cream of them for promotion as Head Constables. It is as if every one who is enlisted as Constable straightaway becomes a candidate for promotion as Head Constable and undergoes training, tests and examinations at several stages. If, before attaining the age of 30 he emerges successfully through the training, tests and examinations, he is promoted as Head Constable with chances of further promotion as Assistant Sub-Inspector, Sub-Inspector and Inspector. If he does not, he remains as a Constable with chances of promotion into the Selection Grade of Constables and, ordinarily, no more. He may, perhaps, aspire to be promoted under Rule 13.8 or Rule 13.19, which was originally missed by me but which has been noticed by my brother Sharma, J. Rule 13.19 provides for the immediate promotion of Constables who are awarded the President's Police Medal.

(10) In *Kashmir Singh v. Superintendent of Police, Gurdaspur and others*, (1), Pattar, J. struck down that part of Rule 13.7 of the

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Punjab Police Rules (as in force in the State of Punjab) which prescribes that Constable, in order to be eligible to have their names entered in list B should not be above 30 years of age on the first day of July in the year in which the selection is made on the ground that there was violation of Article 16 of the Constitution of India. The learned Judge said:—

“In the State of Punjab, the age of superannuation of a Police Officer/official is 58 years and to debar a Constable from consideration for further promotion for a period of 28 years seems to be unreasonable and an infringement of his fundamental right under Article 16 of the Constitution of India. The restriction of age cannot be provided as it has no nexus to the object to be achieved i.e. promotion of Constables to the post of Head Constable. This provision regarding age is arbitrary as no reason has been shown for its fixation. It violates the rights of the Constables under Article 16 of the Constitution of India and is liable to be struck down.”

The decision of Pattar J., was followed by R. N. Mittal, J. in C.W. No. 5995 of 1974 a case from the State of Haryana. The Deputy Inspector General of Police preferred an appeal against the judgment of Mittal, J. under clause X of the Letters Patent. Narula, C.J. and M. R. Sharma, J. who admitted the appeal referred the case to a Full Bench as they apparently doubted the correctness of the view expressed by Pattar, J. Subsequently however, the view of Pattar, J. was affirmed by Narula, C.J. and Bains, J. in the appeal preferred against the judgment of Pattar, J. under clause X of the Letters Patent. Bains, J. who spoke for the Division Bench observed as follows:—

“I agree with the findings of the learned Single Judge that rule 13.7 (2) is unreasonable and *ultra-vires* Article 16 of the Constitution. The age of superannuation of Constables is 58 years in Punjab and it seems highly unreasonable and arbitrary that the Constables after having attained 30 years of age are debarred from consideration for further promotion for a period of 28 years. Hence this provision regarding age limit is arbitrary as no reason therefor has

been indicated in the rules. Rather this fixation of age limit debarring the Constables for further promotion after they become 30 years of age, would lead to frustration and rusting and will result in inefficiency in the Police Force. In that event the Constables who have crossed 30 years of age, would have no incentive to hard work and honesty because they know that their future career is blocked as they cannot be promoted even to the next rank of Head Constables, what to say of consideration for higher promotion. Thus rule 13.7(2) has no relation with the object to be achieved thereby and goes contrary to Article 16 of the Constitution. The only object to be achieved in Police Force is honesty, hard work and efficiency. I fail to understand how this object can be achieved by blocking the future career of the Constables at the age of 30 years when they have still 28 years of service to go with no incentive. I hold that rule 13.7 (2) so far as it prescribes age-limit at 30 years for the Constables for entry in the list 'B', is unreasonable and *ultra vires* Article 16 of the Constitution."

(11) The correctness of the view expressed by Pattar, J. and by Narula, C.J. and Bains, J. is canvassed before us now.

(12) Before entering upon a discussion of the vires of the impugned rule, it is as well to remember the oft administered admonition (by Course to themselves) that in interpreting and applying the equality clauses of the Constitution, dogmatic and doctrinaire approach should be avoided and the Constitution should be expounded as a living instrument concerned with the governance of men and affairs in a practical way. Hence the presumption in favour of the constitutionality of a law; hence the rule that a party complaining of the unconstitutionality of law should establish it; hence the weight given by Courts to legislative and administrative wisdom when it becomes necessary to determine the reasonableness of law; hence the duty of the Court to discover, wherever they might be, if they exist, reasons to sustain a law rather than to defeat it. It is needless to refer to any case law on these well known principles.

(13) Article 16(1) guarantees that there shall be equality of opportunity for all citizens in matters relating to employment or

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appointment to any office under the State. This equality of opportunity is not to be confused with absolute equality. Article 16(1) does not prohibit the prescription of reasonable rules for selection to any employment or appointment to any office. It does not bar a reasonable classification of employees on reasonable basis for their selection. It does not preclude prescription of qualifications for appointment, not only of mental excellence such as educational and technical, but also of physical fitness, age, sense of discipline, moral integrity, loyalty to the Constitution and the State, etc. The administrative agency is ordinarily the best Judge of the qualifications required for a post and a Court will not interfere with the prescription of such qualifications on the ground of denial of equal opportunity unless there is a flagrant abuse by the agency concerned. For example if possession of a degree of the Andhra University is prescribed as a qualification for appointment in the State of Punjab or if the age of 18 is prescribed as the maximum age for entry into a service while the minimum educational qualification prescribed is the M.A., degree, the Courts may readily infer that the qualifications have been prescribed with a view to favour an individual or a limited class of persons and strike down the rule prescribing the qualifications. But if a rule prescribes the age of 25 as the maximum age for entry into service and an M.A. degree as the minimum qualification, no one can grumble and complain of a denial of equal opportunity.

(14) In examining the vires of the rule before us, it is to be borne in mind that constables enter the police force between the ages of 18 and 27 and under the rule, broadly speaking, they must be selected for promotion, before they attain the age of 30 or not at all. It is true that the prescription of the maximum age of 30 for selection for promotion is bound to result in hardship to a considerable number of constables, who, if not selected, are condemned to stagnation in service for a long period of 28 years. This may necessarily lead to frustration among those, who fail to get selected for promotion. On the other hand, the very prescription of the maximum age of 30 for selection for promotion of a constable indicates that the administrative agency responsible for making the rule expects from constables aspiring promotion a display of their talent and their ability from the very commencement of their career. Apparently, the administrative agency is of the view that only those should be selected for promotion that exhibit from the very beginning such qualities as are considered necessary for promotion to higher posts in the police

service. That, as already explained appears to be the scheme of the rules. It is not as if any one is denied an opportunity of being considered for promotion. Since ordinarily the maximum age for entry into service is 27, every constable has at least one chance of making the grade in order that he may be selected for promotion, the number of chances depending on his age on enlistment as a constable. A person, who enlists as a constable cannot complain that those who have enlisted young have a larger number of chances. No one has a fundamental right to be promoted; one has only a right to be considered for promotion. No one has a fundamental right to have a minimum number of so many chances to be considered for promotion. That depends entirely on the age of entry into service. Those, who join service late cannot claim that they should have as many chances of being considered for promotion as those that join service young. We have already pointed out how under the scheme of the rules, every recruit who enlists himself as a constable is straightaway to be treated as a candidate for promotion and how the process of selection of a Head Constable commences more or less simultaneously with the enlistment of a recruit as a constable. True, a constable must languish in the inferior post for 28 years if he is not selected for promotion, but if the administrative agency thinks, having regard to the onerous duties and responsibilities of the police force and the special qualities of endurance and leadership required of its members, that a member of that force aspiring promotion should at all times, from the beginning to the end of his career, be in top form, as it were, can it be said that, the administrative agency has laid down an unreasonable rule? If the administrative agency thinks that ability and other qualities of leadership should be discovered as early as possible and fostered, can any legitimate exception be taken to it? Can it be said that the administrative agency has acted with total unwisdom in preferring youth to middle age in the matter of first promotion from the post of constable to Head Constable so that those that are promoted are young enough to have further chances of making good in the service and climbing higher up the ladder? Can it be said that the administrative agency was wholly unwise in enabling merited police officers to move as rapidly up the promotion ladder as their merit deserves, when selection for promotion is made primarily on the basis of merit. In considering the reasonableness of a rule prescribing a qualification for promotion, the undesirable effect on those that are not selected for promotion is not the only matter to be considered. Equally important are the other considerations mentioned by us above, touching upon

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the efficiency of the service in the superior posts, in particular relation to the special responsibilities of the police force and the qualities required of its members. The learned Single Judge, who decided *Kashmir Singh v. The Supdt. of Police, Gurdaspur*, (1) and the Division Bench which affirmed his judgment took into account the single factor that prescription of too low an upper limit of age for promotion would lead to frustration among the unselected members of the force and eschewed all other factors from consideration. We think that they were not right in doing so. If the other factors, which are as patent and important as the factor taken into account by the learned Single Judge and the Division Bench, are also considered, we cannot say that the prescription of the maximum age of 30 for promotion of constables to the rank of Head Constables is so unreasonable as to require to be struck down as offending Article 16(1) of the Constitution.

(15) The matter may be looked at from another angle. If appointments to the rank of Head Constables are to be made by direct recruitment only, and those already enlisted as constables are not allowed to apply, they cannot complain on that account of any denial of equal opportunity since it would always be open to them to resign and seek appointment as Head Constables by direct recruitment. If an upper limit of age is prescribed, no one can complain. Again, if Head Constables are to be appointed by direct recruitment and enlisted constables are also allowed to compete with others for direct appointment, the enlisted constables cannot complain that the upper limit of age is fixed so low that some of them may not have more than one or two chances to compete. They cannot do so for the simple reason that the rule regarding upper limit of age applies to every one who seeks appointment as Head Constable. Should it make any difference merely because all appointments to the rank of Head Constable are to be made by promotion and a low upper limit of age is prescribed which may greatly limit the number of chances of promotion available to some of the enlisted constables. We do not see why and how it should make any difference. Any rule which prescribes limits of age as qualification for appointment, whether by direct recruitment or by promotion, is bound to result in the elimination of some aspirants and reduce the chances of others. On that account alone the rule cannot amount to a denial of equal opportunity when the rule applies equally and is not deliberately designed to advance the cause of a few.

(16) In the course of the discussion at the bar, a reference was made to *Gurdev Singh v. The State of Punjab*, (2). In that case, the Supreme Court was concerned with the vires of a rule enabling the State to compulsorily retire a permanent public servant at the end of ten years of his service, although there was another rule which prescribed a proper age of superannuation. The Supreme Court took the view that termination of the service of a permanent public servant under such a rule, though called compulsory retirement, was in substance, removal under Article 311 (2). They struck down the rule on the ground that it contravened the provisions of Article 311 (2). This case is of no assistance to the respondents. The question whether the rule contravened Article 16 of the Constitution was not before the Supreme Court at all. Reference was also made to *Mohammad Shujat v. Union of India* (3), where a rule prescribing a quota for Graduates and non-Graduates for promotion was struck down on the ground that the rule offended Article 16 of the Constitution. We are not faced with any rule prescribing a quota. The last part of Rule 13.8 which enables the promotion of Selection Grade constables who have not passed the Lower School Course as Head Constables up to a maximum of 10 per cent of vacancies is not a quota-rule at all, but a limited concession given to Selection Grade Constables who have not passed the Lower School Course, but who are otherwise considered suitable.

(17) In the result, we consider that *Kashmir Singh v. The Superintendent of Police, Gurdaspur and The Superintendent of Police, Gurdaspur v. Kashmir Singh* were wrongly decided. The appeal is, therefore, allowed and the civil writ petition is dismissed. There will be no order as to costs.

S. S. Sandhawalia—

(18) I have the privilege of perusing the succinct judgment recorded by my learned brother Reddy J. I would not have carried my doubts to the length of dissent, but for the fact that I am inclined to the view that rule 13.7 of the Punjab Police Rules, 1934 (as applicable in the State of Haryana) operates so harshly as to deny a police constable the chance of even a single promotion to the next higher rank in the later part of his service tenure which might well extend to nearly 30 years.

(2) A.I.R. 1964 S.C. 1585.

(3) 1974 (2) S.L.R. 508.

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(19) The facts are not in dispute and, indeed, are hardly relevant. The sole issue is the constitutionality of that part of rule 13.7 which prescribes that no constable shall be admitted to List 'B' whose age is such that he cannot in the normal course be sent to the Training School before he attains the age of 30 years. The relevant part of rule 13.7 of the Punjab Police Rules (hereinafter called 'the Rules') is in the following terms:—

"13.7 List B (in Form 13.7) shall also be maintained by each Superintendent of Police and shall be divided into two parts:—

- (1) Selection grade constables considered suitable as candidates for the Lower School course at the Police Training School.
- (2) Constables (selection or time-scale) considered suitable for drill and other special courses at the Police Training School.

Selection shall be made from this list as vacancies occur for admission to the courses concerned at the Police Training School, provided that no Constable shall be considered eligible for any such course until the entry of his name in list 'B' has been approved by the Deputy Inspector-General of the Range. Ordinarily seniority in age shall be given prior consideration in making such selections, irrespective of the date of admission to the list, and care must be taken that a constable borne on the list is not allowed to become over-age for admission to the school before being selected. The restrictions on admission to the lower school course and Instructors' courses at the Police Training School limit the conditions for admission to List B. *No constable shall be admitted to that list whose age is such that he cannot in the normal course be sent to the Training School before he attains the age of 30 years.*

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The succeeding rule 13.8 of the Rules prescribes for the maintenance of a list (List C) of all constables who have passed the lower school course at Phillaur and are eligible for promotion to head constables. It is from this list only that promotions to the rank of head constables are to be made in accordance with the principle of selection tempered by seniority prescribed in rule 13.1 of the Rules. Reading the two rules 13.7 and 13.8 together it is manifest that a constable, who fails to secure admission to the eligibility list 'B' in such time that in normal course he may enter the Training School before the age of 30 years, would thereafter be bereft of all chances of promotion for the rest of his service career. Admittedly, the age of retirement of a constable under the Rules is 58 years. Therefore, the impugned part of rule 13.7 plainly provides that if a constable fails to gain a place in the eligibility list by the age of 28 or 29 years at best he would thereafter forfeit for ever any chance of promotion to a higher rank for the remaining 30 years of his service. The spinal question, therefore, is whether this arbitrary prescription of age is violative of the guarantee enshrined in Article 16 of the Constitution of India.

(20) Since the validity of the prescription of age by virtue of rule 13.7 is under challenge it is first necessary to ascertain the true practical effect of this provision when read in conjunction with the other relevant rules. These provide for two distinct sources of recruitment to the rank of a constable in the police force. Rule 12.15 is the first and apparently the general provision which, as amended in the State of Haryana, prescribes the upper limit of recruitment to be 27 years of age. However, even this prescription is relaxable by the Inspector-General in special circumstances to be recorded by him and this would apparently apply to all classes of recruits. There is, however, a special provision which appears to be mandatory in the shape of note 2 to this rule which reads as follows:—

“Note 2.—Upper age limit shall be relaxable in case of Scheduled Caste, Scheduled Tribes, Backward Classes and ex-servicemen recruits in accordance with the instructions issued by the State Government in this behalf from time to time.”

What appears to be of significance in the general and the special rules for relaxation noticed above is the fact that these do not

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prescribe even an upper-age-limit for such relaxation and it is left entirely to the discretion of the Government whilst issuing the relevant instructions or to the Inspector-General to relax the age-limit, as the case may be.

(21) The second source of recruitment to which our pointed attention was drawn is contained in rule 12.24 of the Rules. This provides for the enlistment of ex-soldiers and reservists of the Cavalry and Infantry regiments of the Indian Army and the normal prescription of age for these classes under sub-clause (b) of sub-rule (1) and sub-rule (2) is to be below 30 years. Eligibility is also accorded under this provision for re-enlistment of the former Constables of the force itself or of the police forces of other States who may have sought their discharge earlier. The normal prescription of the maximum age of 30 years, however, is relaxable also in cases of ex-Punjab Police Officers, ex-soldiers and ex-members of the police force of other States subject to their satisfying the qualifications of physical and mental fitness. Leaving out of consideration this special exemption of age (which is entirely discretionary with the Inspector-General of Police in exceptional cases), it is plain that this rule permits the enlistment of ex-soldiers of the Indian Army and its Cavalry and Infantry reservists as also the former members of the police force up to the age of 30 years.

(22) Having noticed the maximum age-limit for entry into service as a Constable it is worth recalling that the fresh recruits do not straightaway pass into the ranks but have to undergo six months training as stipulated by rule 9.2 of the Rules. Thereafter, rule 19.3 provides for an examination of the recruits by an officer appointed by the Superintendent of Police who would award marks in each of the subjects taught in the earlier training course. Provision is also made for the grant of certificates based on the educational proficiency of the recruits. Rule 19.13 then prescribes further training varying from two to three months with the object of selecting suitable Constables for admission to List 'A' maintained under rule 13.6 for being awarded the selection grade. The combined effect of these rules appears to be that for a period of a little less than a year after joining, a Constable virtually remains under training for future duties.

(23) Though the word 'probation' is not used in the context of the post of a Constable the end result appears to be the same by virtue of rule 12.21 of the Rules, which is in the following terms:—

"12.21. A Constable who is found unlikely to prove an efficient police officer may be discharged by the Superintendent at

any time within three years of enrolment. There shall be no appeal against an order of discharge under this rule."

It is plain from the above that during the first three years of his service, a Constable has no fixity of tenure and this period is virtually a period of probation. This position was not seriously disputed on behalf of the appellant-State and it is the more so by virtue of the fact that as a matter of settled administrative practice, a Constable is confirmed only after a period of three years, i.e. when he moves out of the ambit of discharge under rule 12.21.

(24) Now it was not disputed before us that the appointing authority for a Constable in the police force is the Superintendent of Police of the relevant district and ordinarily a Constable would serve within that jurisdiction only. The seniority of Police Constables is thus intra-district only and this is apparent from a reference to rule 12.26 which provides for an inter-district transfer as an exceptional measure with the sanction of the Deputy Inspector-General of the Range. A new entrant in the rank of a Constable has, therefore, to compete with his other colleagues in his district to secure a place in the eligibility list 'B'. It was pointed out at the bar that in actual practice each district is allocated a fixed number of seats for eligible Constables to be sent therefrom to the Lower School Course at the Police Training School, Phillaur. Rule 13.7 itself provides that the limitation of seats in the Lower School Course would govern the conditions for admission to list 'B' and that ordinarily seniority in age shall be given prior consideration in making such a selection irrespective of the date of appointment to the list in order to avoid the Constables becoming over-age for admission to the course. It is thus plain that a Constable of even exceptional merit may be prevented from securing entry to the Lower School Course before the age of 30 years owing to circumstances entirely beyond his control. And if he misses what may sometimes be a solitary chance available to him, then he would become over-age thereafter and be debarred from any further promotion for his remaining 30 years of service in the police force.

(25) The guarantee of equality of promotion in practical terms here has to be necessarily viewed from the view-point of the permissible upper age limit for recruitment to the rank of Constable. The rules permit and provide for (if not invite) the enlistment of Constables up to the ages of 27 and 30 years from the two sources of recruitment. They further provide for the relaxation of age limits

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either in special cases or as a matter of of legal mandate in the case of the Scheduled and Backward Classes. Now so far as the source of recruitment under rule 12.24 is concerned, it is obvious that a Constable enlisted thereunder at the permissible age of 30 years has not the remotest chance of promotion for the rest of his career because of the bar created by rule 13.7. Similarly, under rule 12.15 which provides for the relaxation of age limits in cases of all categories of recruits by the Inspector-General, a Constable entering service with such a relaxation would face a complete blockage of promotion thereafter. Note 2 to rule 12.15 appears to provide for a mandatory relaxation of age with regard to Scheduled Castes, Scheduled Tribes and Backward Classes, with the result that all Constables enlisted under the benefit of this provision would be later denied all chances of promotion. Even as regards the general category of recruits entering service at the permissible age of 27 years, their chances of making the grade for list 'B' are extremely slim, if not altogether non-existent. It has to be kept in mind that his first year of service is virtually confined to a training period whilst the following two would be probationary within which he could be discharged at any time. Even though he may be possessing exceptional merit, a Constable may be blocked from being brought on List 'B' by such fortuitous circumstances as the limitation of seats allotted to the district, the Constables senior in age being already in the queue for promotion therein and further by the very limitation of the number of seats available for the Lower School Course at the Police Training School, Phillaur, itself.

(26) With the greatest respect to my learned brother Reddy, J., he has not taken notice of the virtual negation of any opportunity of promotion to constables enrolled at the permissible age under rule 12.24. He has not taken of a similar result ensuing in the case of constables in whose favour the limitation of age is relaxed, either generally or exceptionally under rule 12.15. This provision for relaxation could not have been meant to take away with one hand what it gives with the other. A relaxation of age provided by the rules would not envisage such penal consequences so as to debar the constables so enrolled from further promotion for the rest of their service career. But, even as regards the general category of recruits entering at the age of 27 years. Reddy, J., has rightly observed—

“* * *. It is not as if anyone is denied an opportunity of being considered for promotion. Since ordinarily the maximum age for entry into service is 27, every constable has

atleast one chance of making the grade in order that he may be selected for promotion, the number of chances depending on his age on enlistment as a constable."

(27) The crucial issue, therefore, is whether the total negation of all chances of promotion to constables entering service at the permissible age under rule 12.24, to all constables in whose favour the age limit has been duly relaxed, and affording at best a single chance of promotion (which also may be subject to numerous vagaries already noticed) to a constable enrolled at the permissible age of 27 years, can pass the acid test of reasonable classification.

(28) Article 16 of our Constitution enshrines the fundamental right of equality of opportunity for all citizens in matters relating to employment under the State. It is now well settled by precedent that this includes not only an equality of opportunity at the stage of appointment but also at the subsequent stages of promotion to higher rank. Now it is plain that rule 13.7 creates a bar against all future promotions for a constable approaching the age of 30 years. The rule draws a sharp line dividing the constables in the police force into two classes for the purposes of promotion, i.e., these above 30 years of age at the time of the commencement of the Lower School Course and those below that age. Whilst the latter class is eligible for the first step of promotion to the head constable and may be to higher ranks thereafter, the other class is perpetually debarred from rising to any higher ranks for the remaining period of their service which would normally extend to nearly 30 years. There is thus clear discrimination between those above 30 years and those below it for the purpose of even the first promotion after joining the police force. Rule 13.7 divides the same class of constables in the police force into two distinct segments on the ground of age alone. Therefore, it treats employees in the same class unequally for the purpose of promotion. In legal terminology, therefore, the question is whether this division of the constables of the police force into two distinct classes on the ground of age rests on a reasonable classification or not. As my learned brother Reddy, J., points out Article 16, however, does not prescribe any rule of doctrine or absolute equality amongst civil servants. Undoubtedly it permits the treating of different classes differently provided a twin qualification is satisfied. Firstly, that the purported division or distinction is based on an

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intrinsically reasonable criterion and secondly that this has a direct nexus with the object to be achieved. We have, therefore, to determine whether the prescription of age for promotion under rule 13.7 satisfied this twin test.

(29) It is obvious that the issues of discrimination and of reasonable classification do arise. I do not propose to elaborate this aspect of the matter because the learned counsel for the appellant fairly and firmly conceded that it is for this Court to determine whether the prescription of age herein was reasonable and further whether it was related to the avowed object or improving the efficiency and integrity of the police force. However, I am not basing myself entirely on the concession of the learned counsel because there is no paucity of precedent (to which reference is made hereafter) on the point that the prescription of age both for the purpose of initial appointment and for the purpose of subsequent promotion has to cross the test of reasonableness.

(30) The issue here has to be necessarily examined from the viewpoint of the permissible age limit for recruitment to the rank of a constable. Rule 12.24 provides for recruitment from one source up to an age just below 30 years. Rule 12.15, on the other hand, allows and even invites the recruits to join the police force up to 27 years of age and further provides for the relaxation of the age limit both generally and specially. Having once allowed or invited the recruits to join the police force whilst bordering on the age of 30 years, then does it stand to reason for the authority to turn round and say that they would thereafter be ineligible for promotion for the remaining nearly three decades of their service? Can rule 13.7 erect a blank and unsurmountable hurdle for promotion in the way of the recruits who have been allowed and even invited to enter the police force at ages bordering on 30 years, and still be termed as reasonable? I am of the view that such a prescription of age coupled, as it necessarily is, with the permissible upper age of recruitment would render the quality of opportunity for promotion to a higher rank completely illusory. I believe that it is not open to the authority to virtually render nugatory the guarantee of Article 16 by the devious methods of prescribing an arbitrary age limit for all future promotions in the service. If such an age limit has to be prescribed, it must bear a test on the touchstone of reasonableness.

(31) The first thing that meets the eye here is that the Rules indicate no principle or rationale for irrevocably fixing the age of the first promotion from the rank of a constable at so low a level as 30 years against the background of the fact that they permit recruitment to this very rank bordering on that age. Even as regards a constable recruited under the general category at the age 27 years, he seems at best to have a single chance to secure a place on list 'B'. The learned counsel for the appellant was repeatedly pressed to pin-point anything in the Rules which may give an indication or an explanation as to why for the 'very first promotion in the police force, a period of no more than one or two years should be given to a constable joining the force at a permissible age and failing that, he be condemned thereafter to stagnate in the same rank for the remaining period of his service. I have noticed that the learned counsel for the appellant signally failed to provide even a plausible answer.

(32) Not finding anything in the Rules or in the instructions framed thereunder to support this prescription of age, I had invited the learned counsel for the appellant to independently advance any rationale for so harsh and in any case so stringent a rule as this. I recollect that no reason could be given apart from the glaring fact that the rule-makers had in their wisdom prescribed this age under rule 13.7. To my mind, the mere fiat of the framers of the Rules cannot be final in the face of the constitutional guarantee under Article 16.

(33) In fairness to the learned counsel for the appellant, one must notice that he did rather half-heartedly suggest a reason for the prescription of so low an age for promotion, which also finds a passing reference in the return of the respondent-State. It was sought to be argued that the training in the Lower School Course requires strenuous and hazardous physical exercise and, therefore, men above 30 are sought to be excluded therefrom. So far as the alleged hazards are concerned, I am unable to see how these would differentiate between a man of 29 years and another senior to him by two or three years in age. Nor is one able to appreciate as to how a man in the prime of his life at 30 years is to be dubbed either as physically disabled or in any way mentally incapable of being even considered for a rank no higher than that of a head constable in the police force. It has to be prominently borne in mind that list 'B' is after all merely an eligibility list from which subsequent

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selection for head constables is to be made on the basic criterion of seniority-cum-merit. To exclude a constable from being even so considered at the age of 30 years would border on suggesting that at that age, the constables start approaching physical or mental senility. However, the learned counsel for the appellant could not and did not advocate that at the age of 30 years, a constable would be rendered unworthy of promotion because of any physical or mental handicaps. This is plain on the face of it from the fact that the police force does retain its constables even till their late fifties upto the superannuation age of 58 years. Similarly, head constables also retire at the same age. It is obvious that in the higher rank of a head constable, the duties to be performed would be less strenuous and less hazardous and if a constable in the force is allowed to go up to 58 years, then there is greater reason that he can serve in the next higher rank with equal capacity and vigour. Therefore, one fails to see why for the purposes of promotion alone, an unsurmountable hurdle is to be put in the way of a constable at the age of 30 years (when probably he would have no more than two or three years' service in the police force) for his very first promotion. The learned counsel for the appellant was unable to bring to our notice any rule in the whole gamut of Service Law which either provides that a man shall be blocked in the same rank after entering service at the permissible age or at best he may have no more than one or two chances in the very first two or three years of his service and thereafter be blocked from future promotion. It could not be pointed out to us as to what is so peculiar about the duties of the rank of a head constable that persons entering the same after the age of 30 years would be either unable or handicapped to perform the same. Indeed, any such inference is plainly negatived by rule 13.8(2) which permits promotion of selection grade constables long after the age of 30 to the rank of head constable.

(34) To sum up this aspect of the matter, I have been unable to detect any adequate ground or rationale for the prescription of the age of promotion below 30 years when in the present day life a man must be deemed to be in his prime. Therefore, this prescription, which either blocks completely any chances of promotion or at best affords one or two opportunities only to the persons enrolled as constables at the permissible age, appears to me as not to satisfy the test of intrinsic reasonableness.

(35) The second test of there being a reasonable nexus with the object to be achieved has equally to be satisfied. Admittedly, the purpose of the framing of these Rules is to add to the efficiency and the integrity of the police force. Does that object get advanced in any manner by blocking the vast majority of its enrolled police constables from all further promotion at the age of 20 or 25 years? Indeed, it is far from so. The rule, in fact, becomes a rule of stagnation and frustration for the larger body of the enrolled constables. It would leave them without any incentive or hope of promotion for the rest of their service. I am unable to see how this stringent (as I am inclined to say even harsh) provision has any nexus with improving the efficiency or the integrity of the police force as a whole. Indeed, it tends to deny to the vast majority of the police constables the chance of even a single promotion for over three decades of service either totally or to give one under conditions which virtually render the same illusory. This aspect is picture-quely noted by my learned brother Reddy, J., in the following words:—

“It is true that the prescription of the maximum age of 30 years for selection for promotion is bound to result in hardships to a considerable number of constables who, if not selected, are condemned to stagnation in service for a period of 28 years. This may necessarily lead to frustration in those who fail to get selected for promotion.”

With respect, I would say that a rule of stagnation which condemns the substantial part of the police force to hardship and frustration is plainly unreasonable because harshness or oppressiveness is but another facet of the same. If the rule is oppressive and in actual practice results in patent harshness, then it is for the propounders thereof to show that it is patently reasonable and is basically related to the avowed object of advancing the efficiency and integrity of the force as a whole. That, as I have already noticed, the appellant has been plainly unable to do. I am, therefore, of the view that the rule apart from being not intrinsically reasonable does not further satisfy the second test of having a nexus with the obvious object and purpose of the Punjab Police Rules and indeed tends to run counter thereto.

(36) On principle, therefore, I must hold that the relevant part of rule 13.7 draws an arbitrary line betwist the same class of constables on the ground of age alone for the purposes of promotion

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almost immediately at the stage of their joining the police force at the legally permissible age. It is, therefore, discriminatory and violative of Article 16 being not based on a classification which may be termed as reasonable.

(37) As the judgment itself would show, two things seem to have weighed heavily with my learned brother Reddy, J., in upholding the vires of the rule which as he himself notices entails serious hardship. The first amongst these appears to be the rule of the presumption of constitutionality. As a canon of construction, there can possibly be no two opinions about the same. What, however, deserves highlighting herein is the fact that the Punjab Police Rules including the challenged one were framed more than 40 years back in a pre-constitution and pre-independence era. Nothing even remotely analogous to Article 16 or the principles contained therein was then a part of the law either in India or in England. As a well-known, British jurisprudence conditioned by the concept of the monarchy has the basic doctrine of the civil servant holding office during the pleasure of the Crown ingrained therein. Any legal guarantee for the concept of the equality of opportunity in matters of employment by the State and even further for the purposes of subsequent promotion, was, therefore, basically alien to it. The present Police Rules in the early 1930s were, thus, framed against a background of the existing colonial and imperial Police statutes. Therefore, as regards pre-Constitution legislation, which was enacted at a time when there were no corresponding provisions of the law in existence, and in particular, the present Police Rules can hardly attract in strictness the rule of the presumption of constitutionality. Can one reasonably presumed that a rule must be deemed to have been framed in consonance with the Constitution which far from being in existence at the relevant time was not even at the stage of contemplation? Therefore, what might have been unhesitatingly acceptable 40 years ago under the colonial and imperial rule may not now necessarily be sustainable in view of the Fundamental Rights now guaranteed to the citizens by the Constitution.

(38) In the well-known case *Ram Krishna Dalmia v. Justice S. R. Tendolkar* (4), Chief Justice Dass, amongst others, enunciated the following principle:—

“That while good faith and knowledge of the existing conditions on the part of a Legislature are to be presumed, if

(4) A.I.R. 1958 S.C. 538.

there is nothing on the face of the law or the surrounding circumstances brought to the notice of the Court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain, individuals or corporations to hostile or discriminating legislation.”

Applying the above in the context of the rules contained in the Railways Establishment Code, Gajendragadkar, J., speaking for the majority observed as follows in *Moti Ram Deka v. North Eastern Frontier Railway* (5) :—

“ Applying these two principles, it is difficult to understand on what ground employment by the Railways alone can be said to constitute a class by itself for the purpose of framing the impugned Rules. If considerations of administrative efficiency or exigencies of service justify the making of such a rule, why should such a Rule not have been framed in the Post and Telegraph Department to take only one instance. The learned Additional Solicitor-General frankly conceded that the affidavits filed by the Railway Administration or the Union of India afforded no material on which the framing of the Rule only in respect of one sector of public service can be justified. What has happened is that a provision like Rs. 148 (3) or Rs. 149 (3) was first made by the Railway Companies when employment with the Railways was a purely commercial matter governed by the ordinary rules of contract. After the Railways were taken over by the State, that position has essentially altered, and so, the validity of the Rule is now exposed to the challenge under Article 14. Therefore, we are satisfied that the challenge to the validity of the impugned Rules on the ground that they contravene Article 14 must also succeed.”

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I am consequently of the view that the presumption of constitutionality is of no great aid to the appellant in the present case.

My learned brother has then opined that the administrative agency is a good judge of its needs and, therefore, its view should be accorded considerable weight and respect. I entirely agree. However, he proceeds further to hold:

“Can it be said that the administrative agency has acted with total unwisdom in preferring youth to middle age in the matter of first promotion from the post of constable to Head Constable so that those that are promoted are young enough to have further chances of making good in the service and climbing higher up the ladder? Can it be said that the administrative agency was wholly unwise in enabling merited police officers to move as rapidly up the promotion ladder as their merit deserves when selection for promotion is made primarily on the basis of merit.”

With great humility I say that this approach, if adhered to strictly, would tend to virtually erode the admitted power of the Court to determine the reasonableness or otherwise of a classification made by the Legislature or the Executive. It is plain that these bodies would hardly ever frame a rule or a law which would not be based on some reason, good, bad or indifferent. If their subjective satisfaction about a rule or a law is not to be interfered with, unless it is totally unwise or utterly unreasonable, then perhaps the scope of the examination of the validity of all such legislation would be rendered almost illusory. The mere satisfaction of the administrative agency on the point of classification would, thus, become virtually conclusive. Therefore, I am of the view that if it is once found by a court of law that the twin tests prescribed against the vice of discrimination are not satisfied, then it is not for the Court to travel further to enquire into the degree of its unreasonableness or to necessarily hold that it is totally unwise or wholly unreasonable.

(39) So far it appears to be settled law that the Courts are the ultimate arbiters in applying the twin tests that the classification made by the statutory authority is founded on an intelligible differentia

and further that this differentia has a rational relation with the object sought to be achieved. This test is an objective one to be applied with the cold dictates of logic. It cannot and should not be the mere subjective satisfaction of the administrative agency or, for that matter, of the executive or the legislature, to classify citizens for any reason which they may choose to think fit. The test is, indeed, an open and objective test by the Court and not merely a subjective or a presumed reasonableness of the administrative agency. A provision challenged in a court of law on the ground of discrimination has to withstand the test of reasonableness under the full glare of a logical analysis. As has been said in another context, rationality is also not a cloistered virtue and propounders of a rule, when assailed, should be in a position to sustain the same openly and candidly before the Court. That, in my view, the appellants have not been able to do in regard to the provision under challenge.

(40) Adverting inevitably to precedent, reference may first be made to *Mohammad Shujat Ali & others v. Union of India*, 3 (supra) wherein the administrative agency had chosen to prescribe an educational qualification for the purpose of promotion to higher rank which was under challenge. After adverting to three earlier decisions of the Court, Bhagwati J., speaking for the Bench observed :

“But from these decisions it cannot be laid as an invariable rule that whenever any classification is made on the basis of variant educational qualifications, such classification must be held to be valid, irrespective of the nature and purpose of the classification or the quality and extent of the differences in the educational qualifications. It must be remembered that life has relations not capable always of division into inflexible compartment. The moulds expand and shrink. The test of reasonable classification has to be applied in such case on its peculiar facts and circumstances.”

and further

“To permit discrimination based on educational attainments not obliged by the nature of the duties of the higher post is to stifle the social thrust of the equality clause.”

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(41) The aforesaid ratio applies equally if one substitutes the educational qualifications in the said case with the qualification of age in the present one. I have shown earlier that the mere crossing of the age of 30 years would not render a person unfit or unable to perform the duties of a head constable. Indeed, the later part of Rule 13.8 permits the promotion of a Selection Grade Constable to Head Constable, irrespective of any qualification of age. Therefore, the qualification of age is not obliged in any way by the nature of the duties in the rank of a Head Constable. To interpose this qualification of age only in the path of a constable for promotion has equally the effect of stifling the thrust of Article 16.

(42) I have pointed out earlier that out of the vast range of Service statutes, the learned counsel could not pinpoint even a single one where a civil servant was to be barred from further promotion, in the prime of his life at 30 years on the consideration of age alone. No considerations of administrative efficiency or exigencies of service could be pointed out on behalf of the appellant which would justify the making of such a rule in the police force alone. A similar question arose before their Lordships in *Moti Ram Deka's case*, (5 supra) where the vires of rule in the Railway Establishment Code were under challenge. Apart from holding that the said rule infringed the provisions of Article 311, their Lordships noticed the fact that no other branch of public service contained such a rule for its civil servants. They proceeded to hold that there were no considerations of administrative efficiency or exigencies of service so peculiar to the Railways which could justify the framing of such an exceptional rule and held it violative of the 'equality' clause. The same rationale, to my mind, is equally attracted in the present case.

(43) In *A. Noronha vs. The State of Mysore and others*, (6), the qualification of age at as high a level as 52 years for promotion to the rank of Deputy Superintendent was challenged. Hegde J., speaking for the Bench, narrowly upheld that rule in the special context of the case where the age of superannuation was only 55 years. It was observed that the only rationale behind it may be that public interest would not be served if the official to be promoted to a post turns out to be a mere bird of passage having no interest in office to which he was promoted. Can it be said that a Constable with 28 years more

(6) A.I.R. 1966 Mysore 267.

of service in the Police force would be a mere bird of passage if promoted to the next higher rank of Head Constable ?

(44) Within this Court there has so far been a virtual unanimity on the point of such an arbitrary prescription of age. In *Ram Labhaya, Assistant Sub-Inspector of Police, and others v. The State of Punjab and others*, (7), the issue before Tuli, J., was identical and pertained to the prescription of the age of 40 years for Head Constables for being brought on List 'D' for further promotion to the rank of A.S.I. Adverting to the relevant case law, it was held as follows:—

“In the State of Punjab, the age of superannuation of a police officer is 58 years and to debar a person from consideration for further promotion for a period of 18 years seems to be wholly unreasonable and an infringement of his Fundamental Right under Article 16 of the Constitution.

and again,

I, therefore, hold that the prescription of the age of 40 years for the Head Constables on attaining which they are debarred from being considered for the promotion course for Head constables under rule 13.9 of the amended rules, is unconstitutional and has to be struck down.”

The aforesaid view was challenged on behalf of the State in a Letters Patent Appeal. However, Mahajan and Suri, JJ., who constituted the Bench dismissed L.P.A. No. 437 of 1972 (*The State of Punjab etc. v. Jai Kishan Khanna*) on the 25th of September, 1973. Leave to appeal to the Supreme Court was declined and the State did not prefer any further appeal and the said judgment had thus become final.

(45) As regards this particular provision in rule 13.7, the prescription of age herein was held to be unconstitutional by Pattar, J. in *Kashmir Singh Constable and others vs. The Superintendent of Police, Gurdaspur*, (1) (supra). This judgment was unhesitatingly affirmed by Chief Justice Narula and Bains, J., with the following observations,—*vide* (8).

(7) 1972 S.L.R. 775:

(8) 1975 (2) S.L.R. 116.

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“The age of superannuation of constables is 58 years in Punjab and it seems highly unreasonable and arbitrary that the constables after having attained 30 years of age are debarred from consideration for further promotion for a period of 28 years. Hence this provision regarding age limit is arbitrary as no reason therefor has been indicated in the rules. Rather this fixation of age-limit debarring the constables for further promotion after they become 30 years of age, would lead to frustration and resrusting and will result in inefficiency in the Police Force. In that event, the constables who have crossed 30 years of age, would have no incentive to hard work and honesty because they know that their future career is blocked as they cannot be promoted even to the next rank of Head Constables, what to say of consideration for higher promotion. Thus, rule 13.7(2) has no relation with the object to be achieved thereby and goes contrary to Article 16 of the Constitution. The only object to be achieved in Police Force is honesty, hard work and efficiency. I fail to understand how this object can be achieved by blocking the future career of the constables at the age of 30 years when they have still 28 years of service to go with no incentive. This bar or restriction on the age is unintelligible as no object will be achieved by framing these rules. The bar has been placed on a constable at such an early stage of his life that it has denied him the chance of any promotion during the last 28 years of his service career. This, at any rate, has no nexus with the object to be achieved thereby.

I, unhesitatingly, agree with the aforesaid observations. In passing, it deserves notice that the Supreme Court Leave application against the aforesaid judgment was also dismissed and the State apparently did not choose to carry the matter any further by way of special leave.

Both on principle and on precedent I hold that the judgment of the learned Single Judge is unexceptionable. The appeal is without merit and is hereby dismissed. The parties are left to bear their own costs.

M. R. Sharma, J.

(46) Rule 13.7 of the Punjab Police Rules relating to the preparation of List 'B' prepared for selection of candidates for admission to

courses at the Police Training School, *inter-alia*, provides that "no constable shall be admitted to that list whose age is such that he cannot in the normal course be sent to the Training School before he attains the age of 30 years." In *Kashmir Singh's case* (supra), Pattar, J., held that this rule was violative of the Constitution inasmuch as it was arbitrary and had no nexus with the object sought to be achieved, i.e., the promotion of Constables to the posts of Head Constables. Following this judgment, the learned Judge who heard this case in Chambers allowed the petition. The State of Haryana has come up in appeal with a prayer that the constitutional validity of this rule should be upheld and the judgment rendered by the learned Judge in Chambers be set aside.

(47) Article 16 guarantees equality of opportunity for all citizens in matters relating to employment under the State. It is settled law that equality of opportunity has not only to be afforded to a citizen at the time of his initial entry into service, but he is entitled to the same equality even at the later stages of his service career including promotions etc. However, it is open to the State to make a reasonable classification of candidates for recruitment to the services, as also for their subsequent promotions to the higher rank. Where the State makes suitable rules as to classifications etc. for the selection of candidates for appointment or promotions, the action of the State based on such rules cannot be held to be violative of the principle of equality laid down in this Article. The reason is obvious because, such rules are applicable to all the candidates desirous of joining the service or those who, already being in service, have an eye on further promotions. In order to see whether the rule-making authority has made a proper classification or not or whether the classification made has any nexus with the object which the rule-making authority sought to achieve or not, it becomes necessary to examine the nature of service, the duties which it is called upon to perform, and other peculiar characteristics relevant to the service. In this connection, I could do no better than to draw upon the statutory rules for having a peep into the mind of the rule-making authority.

(48) The police force is charged with the duties of detection of crimes, maintenance of law and order, and the rendering of such service to the community as it is called upon to render from time to time. In the words of rule 12.12 the standard of performance and reputation of the whole police force depends above all upon the quality of its

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constables." It is precisely for this reason that the rules emphasise recruitment of candidates of good character having reasonably good standard of education and physique, apart from an aptitude to serve the force. The rules also provide that the constables on recruitment should be subjected to rigorous training in drill before they are allowed to join the ranks. Adequate provisions have been made in the rules for the promotions of constables to the ranks of Head Constables, Assistant Sub-Inspectors of Police, Sub-Inspectors of Police etc. Since the selection at the lowest rung of the ladder have to be made out of a vast number, the rules have to make the competition quite stiff. In the words of rule 13.1(1), "promotions from one rank to another, and from one grade to another in the same rank, shall be made by selection tempered by seniority. Efficiency and honesty shall be the main factors governing selection. Specific qualifications, whether in the nature of training courses passed or practical experience, shall be carefully considered in each case. When the qualifications of two officers are otherwise equal, the senior shall be promoted....." Sub-rule (2) provides : "It is necessary, therefore, that well-educated constables, having the attributes necessary for bearing the responsibilities of upper subordinate rank, should receive accelerated promotion so as to reach that rank as soon as they have passed the courses prescribed for, and been tested and given practical training, in, the ranks of constable and head-constable."

(49) It is a matter of common knowledge that constables younger in age are in a better position to be moulded into capable other ranks and non-gazetted officers. For performing duties of higher ranks, members of the police force are expected to know more of proper methods of investigation into crimes and knowledge of law. Barring some insignificant exceptions, men of comparatively younger age are more likely to become proficient in these arts. It is precisely for this reason that the rule-making authority has laid down that constables beyond the age of 30 years and head-constables beyond the age of 40 years should not be sent to the Training School for passing tests which qualify them for still further promotions. The provisions of these rules have to be considered in the background of the character of the force, for, apart from continuously receiving higher education in the art of policing, the members of the force have also to perform strenuous duties for which they have, on occasions, to draw upon the last ounce of their physical energy.

(50) My learned brother O. Chinappa Reddy, J. has made a very clear analysis of the rules on the subject and it could be presumptuous on my part to cover that field all over again. I, however, wish to emphasise that even those constables, who are able to get their names entered on List 'B' and who are unable to attend to the training course, are not debarred from getting promotion for all times to come, for rule 13.8(2) also provides that, "Selection grade constables who have not passed the Lower School Course at the Police Training School, but are otherwise considered suitable may, with the approval of the Deputy Inspector-General, be promoted to head constable up to a maximum of ten per cent vacancies." Besides, rule 13.21 lays down that the Inspector-General of Police may, if he considers it expedient relax the provisions of chapter 13 with respect to any class of persons. This provision is designed to deviate hardship in a given case. If the Inspector-General of Police comes to form an opinion that a large number of good and efficient constable or constables have not been able to attend the Course because of advanced age he can invoke this rule and grant an exemption even in an individual case. see in this connection *Shri Desh Bandhu Gupta v. The State of Punjab and others* (9).

(51) The aforementioned provision apart, Chapter XV of the Police Rules lays down an exhaustive procedure for rewarding the members of the police force for conspicuous acts in relation to the performance of their duties. Such rewards can be won even by the constables who have not been brought on List 'B'. The members of the force who show exemplary courage and perform a deed of valour can be awarded the President's Police and Fire Services Medal or the Police Medal. Rule 13.19(1) lays down that a constable receiving a medal of the first category shall be promoted as Head constable in the first vacancy which occurs in the district in which he is serving, and a constable receiving the medal of the second category shall be promoted to the selection grade as provided in Police Rule 13.19(2).

(52) In other words, apart from the recruitment of matriculates of good social status and strong family claims who are recruited under rule 10-A with a promise of accelerated promotion if they pass the recruits' course with credit and the constables who are in a position to get regulated promotion before they attain the age of 30 years,

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the rules do provide that selection grade constable be promoted under the provisions of rule 13.8(2) or 13.21. The rules also provide that constables, who are able to win the President's Police and Fire Services Medal, shall be promoted as Head Constables in the first vacancy which occurs in the district regardless of their other attainments. In this view of the matter, it would not be proper to assume that once a constable is not able to attend the training course up to the age of 30 years, all avenues of promotion are barred to him. As already indicated, the police force has to perform a variety of duties. If a constable has not been able to do well in one respect for getting higher promotion, it is still possible for him to show his worth to his superiors for getting further promotion. Those, who join this service late or those who do not secure requisite proficiency for being sent to the training course while they are still below the age of 30 years, have only to blame themselves. They have no legitimate cause for being frustrated, because they joined the service with open eyes and knew full well that their service career would be governed by a particular set of rules. Frustration on their part would only be justified if the service rules are applied in a discriminatory manner and in that case, there is nothing which debars them to approach this Court for proper redress. In any event, if comparatively younger Constables do make the grade and are still not promoted, they would also have a cause to be frustrated. If frustration can be avoided by judicial interpretation of Rules, 1 would certainly like to opt for the case of the younger men in the Service. The three methods of promotion of constables to the rank of head-constable mentioned above are based on an intelligible differentia. The accelerated promotion is promised to those who are matriculates normal promotion or regulated promotion is promised to those, who form the bulk of the class, and promotion is also promised to those, who are unlucky to attend the course up to the age of 30 years if they are able to satisfy the higher authorities of their worth or if they are able to perform deeds of conspicuous valour in the course of their service.

My learned brother O. Chinnappa Reddy, J. has rightly pointed out that a presumption of constitutionality also attaches to the statutory rules. I would further like to add that even if the basis of classification is unsuccessfully defended by the State on one particular basis, it does not debar the Court to consider the matter for itself for finding out whether the classification is proper or not. If on such a consideration the Court comes to the conclusion that

the classification made tends to introduce a sense of healthy competition in the service or otherwise tends to improve it, the Court will not be justified to strike down the rule as violative of Article 16. The area of judicial scrutiny in such matters is extremely limited, because the rule-making authority is presumed to know its own requirements and if on a proper examination or scrutiny, the rule appears to be reasonable, it is not the function of the Courts to strike it down. While examining the validity of a rule, the Court has to consider it both from the point of a view of a public servant affected by it and generally administrative convenience.

(53) In *Ram Sharan v. The Deputy Inspector-General of Police and others* (10), three-tier system prevailing in police force in the State of Rajasthan was challenged as being discriminatory on grounds of Articles 14 and 16(1) of the Constitution. The Court observed:—

“But it is urged that this has to be balanced against considerations of efficiency which have led to the evolving of the three-tier system of promotion already referred to and therefore, the system should not be struck down, simply because at times it may happen that a junior head constable may get promotion while a senior head constable in another range may have to wait. Balancing the various considerations mentioned above, therefore, it seems to us that the system in force in the State of Rajasthan evolved as it has been for the efficiency of the police in the State as well as for administrative convenience cannot be said of itself to deny equality before the law or to deny equality in the matter of employment in public service, even though at times it may happen, because of the system that a junior head Constable in one range may get promotion as officiating Sub-Inspector while in another range a senior head-constable may have to wait for some time. We are, therefore, not prepared to strike down this system, as denying equality before the law or denying equality in the matter of employment in the public service, simply on the ground of these possible cases of hardship.”

On a parity of reasoning if a police constable, either because of his earlier entry into service or because of his ability to attain the

(10) A.I.R. 1964 S.C. 1559.

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requisite standard within a short space of time is able to secure admission to the training course on the basis of which he receives further promotion, it cannot be said that the promotional system introduced in the rules is violative of Article 16.

(54) In *Sukhnandan Thakur v. State of Bihar and others* (11), it was laid down that it is open to the administrative authority to lay down qualifications not only of mental excellence, but also physical fitness, sense of discipline, moral integrity and loyalty to the State for a particular service. The same view was taken in *K. M. Sugatha Prasad and others v. State of Kerala and others* (12).

(55) For the reasons mentioned above, I am in entire agreement with the view expressed by my learned brother O. Chinnappa Reddy, J., that rule 13.7, which lays down an upper age limit of 30 years for a police constable for being brought on List 'B' which entitles him to be sent for admission to the course at the Police Training School, is *intra vires* the Constitution of India. I would accordingly allow this appeal and withdraw the writ issued by the learned Judge in Chambers, but in the circumstances leave the parties to bear their own costs.

N. K. S.

FULL BENCH

Before O. Chinnappa Reddy, Bhopinder Singh Dhillon and Harbans Lal, JJ.

BIMLA DEVI.—Appellant.

versus

SINGH RAJ, SON OF DASONDHI RAM,—Respondent.

First Appeal From Order No. 109-M of 1973

December 17, 1976.

Hindu Marriage Act (XXV of 1955)—Sections 9, 13 (1-A) (ii) and 23 (1) (a)—Spouse failing to obey decree for restitution of conjugal rights—Whether can seek divorce under section 13 (1-A) (ii)—Such spouse—Whether taking advantage of his or her own wrong.

(11) A.I.R. 1957, Patna, 617.

(12) A.I.R. 1965, Kerala, 19.