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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2037/1998

with

OA 239/2000, OA 1194/1998,
OA 2055/2000, OA 1057/2002
and OA 965/2002

New Delhi this the 17th day of July, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri Govindan S. Tamai, Member (A)
Hon'ble Shri Shankar Raju, Member (J)

(1) OA 2037/1998

Smt. Nirupma Kumar,
Dy. FA&CAO/CN/SC.,
Office of the FA&CAO,
Rail Nilayam, Headquarters,
Secunderabad.

..Applicant

(By Advocate Shri K. R. Sachdeva)

VERSUS

Union of India, through

1. The Secretary, Railway Board,
Rail Bhawan, New Delhi.
2. Principal, Railway Staff College,
Lal Bagh, Baroda
3. Mr. Ravi Nandkeoliyar,
Senior Divisional Accounts Officer,
Danapur Division, Eastern Railway,
Danapur (Bihar)
4. Mr. Amar Kumar Sinha,
Divisional Accounts Officer,
Lucknow Division, North Eastern
Railway (Lucknow)
5. Mr. Jitender Kaira,
Senior Divisional Accounts Officer,
Ajmer Division, Western Railway,
Ajmer.
6. Mr. Mukesh Kumar Singh
Dy. Chief Accounts Officer (General)
Financial Advisor and Chief Accounts
Officer's Office, North East Frontier
Railway, Maligaon, Guwahati (Assam)
7. Ms. Sangeeta Khurana,
Director,
Ministry of Fertilizers,
Super Bazar Complex,
Govt. of India, New Delhi.

8. Mr. Hare Kishan Sahu
 Deputy Financial Advisor and Chief
 Accounts Officer, East Coast Railway,
 Chandershekhpur,
 Bhubaneshwar (Orissa)

9. Ms. Namita Mehrotra,
 Deputy Financial Advisor and
 Chief Accounts Officer, Delhi Metro
 Rail Corporation, NBCC Place, Lodhi
 Road, New Delhi.

10. Ms. Bhuvaneshwari K.
 Deputy Financial Advisor and
 Chief Accounts Officer (Stores)
 C/O Financial Advisor and Chief
 Accounts Officer, Central Railway,
 Mumbai (Maharashtra)

.. Respondents

(By Advocate Sh. E. X. Joseph, learned
 senior counsel with Shri Madhav Panikar)

(2) OA 239/2000

Sanjiv Narain Mathur
 IRAS
 A-1 Sapru Marg,
 Lucknow-226001

.. Applicant

(None for the applicant)

VERSUS

1. Union of India through
 The Secretary, Railway
 Board, Ministry of Railways,
 Rail Bhawan, New Delhi.
2. The Principal,
 Railway Staff College,
 Lal Bagh, Baroda.
3. Shri Sharad Bhatia, IRAS,
 DAO/Jabalpur,
 C/O FA & CAO Central Railway/HQs,
 Bombay VT, Bombay.
4. Shri Vidhya Charan R. Mohan, IRAS
 C/O FA & CAO, Northern Railway HQs
 Baroda House, New Delhi.
5. Ms. Sumana Mohanty, IRAS
 SAO/Construction BBS/S
 C/O FA & CAO, South-Eastern
 Railway HQs, Calcutta.
6. Basant Kumar Singh, IRAS
 SAO/Railway Electrification
 C/O FA & CAO, Core Banapur,
 Bihar.

7. Shri Angshuman Sarkar, IRAS
SAO/G, C/O FA & CAO Eastern
Railway HQs, Howrah.
8. Ms. Radhika Bhir, IRAS
Deputy Manager,
Central for Rail Information
Systems (CRIS) 212, DDA (SFS)
Flat Hauz Khas, New Delhi-16
9. Shri Parrimal Kasliwal, IRAS
DAO/Izatnagar, C/O FA & CAO,
North-Eastern Railway, HQs
Gorakhpur.

.. Respondents

(By Advocate Shri E. X. Joseph, learned
senior counsel with Shri Madhav
Panikar)

↓ (3) OA 1194/1998

V.P. Singh,
S/O late Shri V.N. Singh,
Resident of 27/A, Milling
Tonia, Avenue, Bandaria Bagh,
Lucknow, UP

.. Applicant

(By Advocate Shri K.R. Sachdeva)

VERSUS

1. The Secretary,
Railway Board, Rail Bhawan,
New Delhi.
2. Shri Anurag Jain
3. Shri Nikhil Pandey
4. Shri Manoj Mahajan
5. Shri Sanjay Agarwal
6. Shri Pramod Kumar
7. Shri Satish Kothari
8. Shri Ajay K. Singhal
9. Shri Ajit Sharma
10. Shri Alok Nath Mathur
11. Shri Ravilesh Kumar
12. Shri Amitabh Nigam
13. Shri Randhawa Suhag
14. Shri Jaideep Gupta
15. Shri Satendra V. Singh

16. Shri Ashwani K. Kalia

17. Shri T.G. Singh

18. Shri Anil Kumar Mathur

19. Anil Kumar Shukla

(Through Secretary, Railway Board,
Rail Bhawan, New Delhi)

.. Respondents

(By Advocate Shri E.X. Joseph, learned
senior counsel with Shri Madhav
Panikar)

(4) OA 2055/2000

Shri Chhatrasal Singh
S/O Shri C.P. Singh,
R/O 123, Railway Officers
Colony, Moradabad-244001

.. Applicant

(By Advocate Shri K.R. Sachdeva)

VERSUS

1. Secretary,
Railway Board, Rail Bhawan,
New Delhi.

2. Principal,
Railway Staff College, Lal
Bagh, Vadodra.

3. Shri P. Raveendran,
through General Manager,
Southern Railway, Chennai.

4. Ms. Rajni Bai,

Through General Manager,
Metro Railway, Calcutta.

5. Shri Mukul Jain,
through General Manager,
Central Railway, Mumbai.

6. Shri Mukul Saran Mathur,
Through General Manager
Central Railway, Mumbai.

7. Shri R. Dhananjayulu,
through General Manager,
South Central Railway,
Secunderabad.

.. Respondents

(By Advocate Shri E.X. Joseph, learned
senior counsel with Shri Madhav Panikar)

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(5) OA 1057/2002

1. Shri Vijay Nathawat,
Director/B&S/
RDSO, Manaknagar, Lucknow
New Delhi.
2. Shri R.N. Singh,
54-D, SP Marg Railway Colony.
New Delhi.
3. Shri Sushil Kumar
Sr. Divisional Engineer/Eastern
Railway, Sealdah, W. Bengal

.. Applicants

(By Advocate Shri A.K. Behera)

VERSUS

1. Union of India through
Secretary, Railway Board,
Rail Bhawan, New Delhi.
2. Director,
Indian Railway Institute of Civil
Engineering, Pune.
3. Vinay Singh, IRSE
C/O Director General, RDSO
Lucknow.
4. R.K. 65aE, IRSE,
C/O General Manager,
Western Railway, Mumbai.
5. S.K. Jha, IRSE
C/O General Manager,
Eastern Railway, Calcutta.
6. S.K. Lohia, IRSE
C/O General Manager,
Northern Railway, New Delhi.
7. K.K. Agarwal, IRSE
C/O General Manager,
Northern Railway, New Delhi.
8. M.G. Banga, IRSE
Deputy Secretary,
Ministry of Mines, New Delhi.

.. Respondents

(By Advocate Shri E.X. Joseph, learned
senior counsel with Shri Rajinder
Khatter)

(6) OA 965/2002

1. Shri Harpal Singh
DSE, Patel Nagar Station,
New Delhi.

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2. Yogesh Kr. Mishra,
C-1, 1416, Vasant Kunj,
New Delhi.
3. Veer Narayan
DSE, Bruidge Workshop,
Charbagh, Lucknow
4. Arvind Kr. Singh,
Director/B & S,
RDSO, Lucknow.
5. R. B. Yadav,
Dy. CE/C, N.E. Railway,
Lucknow.

.. Applicants

(By Advocate Shri A. K. Behera)

VERSUS

1. Union of India through
Secretary, Railway Board,
Rail Bhawan, New Delhi.
2. Director
Indian RRaiway Institute of
Civil Engineering, Pune.
3. Rajesh Arora,
C/O G.M. Northern Railways
Baroda House, New Delhi.
4. Pramod Kr. Singh,
C/O G.M. Eastern Railway,
Kolkata.
5. Ravi Mohan Sharma,
C/O GM, Western Railway,
Churchgate, Mumbai.
6. Ashutosh Rankawat,
C/O GM, Western Railway,
Churchgate, Mumbai.
7. Shyam Sunder,
C/O GM, Northern Raiway,
Baroda House, New Delhi.
8. Keshavwani Shirish
C/O GM, North Eastern Railway,
Gorakhpur
9. Amar Prakash Dwidi,
C/O GM, Eastern Raiway,
Koikata.
10. Rajiv Soni,
C/O GM, Nothern Railway,
Baroda House, New Delhi.

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11. Anup Kr. Agarwal
C/O GM, Western Railway,
Churchgate, Mumbai.
12. Girdhari Lal Goel,
C/O GM, Southern Railway.
Chennai.
13. Sanjay K. Garg,
C/O GM, Central Railway, CST,
Mumbai.
14. Anil Kr. Khandelwal
C/O GM, South Central Railway
Secunderabad.
15. Mukesh Kr. Gupta,
C/O GM, Western Railway,
Churchgate, Mumbai.
16. Rajiv Kr. Roy,
C/O GM, Western Railway,
Churchgate, Mumbai.
17. Sharad Kr. Jain,
C/O GM Western Railway,
Churchgate, Mumbai.
18. Rajeev Soni,
C/O GM, Northern Railway,
Baroda House, New Delhi.

.. Respondents

(By Advocate Shri E.X. Joseph, learned
senior counsel with Shri Rajinder
Khatter)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)

Reference to Full Bench has been made by
Tribunal's order dated 18.10.2001 in the two O.A.s,
namely, O.A. 2037/1998 and O.A. 239/2000, where the
Tribunal had disagreed with the earlier order dated
10.9.1999 in Ms. Manisha Sharma & Ors. Vs. Union of
India & Ors. with connected case (O.A. 1659/93 &
O.A. 2141/97). The learned counsel for the parties have
submitted that the writ petition against the judgement
of the Tribunal in this case has been admitted by the
Hon'ble Delhi High Court. However, the High Court has
observed in order dated 23.1.2002 that as the matter is

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pending consideration before the Full Bench, the writ petition was adjourned sine die. Hence, the matter has been placed before a larger Bench and the issue raised is whether in the facts and circumstances of the two cases, the O.A.s warrant judicial interference or not and if so to what extent.

2. We have heard S/Shri K.R. Sachdeva and A.K. Behera, learned counsel for the applicants and Shri E.X. Joseph, learned senior counsel for the respondents. We have also perused the pleadings on record as well as the written submissions given by the learned counsel for the parties which are placed on record. They have referred to the relevant facts and documents mainly in the O.A. filed by Mrs. Nirupma Kumar (OA 2037/1998) and, therefore, we will also refer to the facts in that O.A.

3. The brief relevant facts of the case are that the applicant joined the Indian Railway Accounts Service (IRAS) on the basis of the Civil Services Examination (CSE) held by the UPSC in 1990. On the basis of her ranking and preference given in the application and the number of vacancies in the Indian Administrative Service, she was recommended for appointment to IRAS. Accordingly her merit position as given by the UPSC in that Service was at Serial No.1. The applicant joined the Service on 16.9.1991 and completed her two years probationary training successfully on 10.9.1993. According to the learned counsel for the applicant, she had been promoted to senior scale on the basis of the settled seniority as per the UPSC merit list which was the requirement under the Recruitment Rules when she was promoted to Senior

scale on 21.9.1994. She has submitted that she was subsequently confirmed on 15.9.1995. She has also referred to the promotion order dated 1.10.1997 promoting her to the post of Junior Administrative Grade (JAG). According to her, the Notification published by the Ministry of Railways in the Gazette for 1999 batch of IRAS on 13.1.1997 shows her name at Serial No. 1 and this has settled her seniority in the IRAS, which cannot be unsettled after six years of her joining the Service. The applicant Ms. Nirupma Kumar. has impugned the seniority list issued by the respondents dated 3.12.1997 by which she has been placed at Serial No. 9 whereas, according to her, she should have been placed at Serial No. 1 as per her merit position determined by UPSC. Much emphasis has been placed by the learned counsel for the applicant on the Notification issued by the Railways dated 13.1.1997 which has been published in the Gazette of India. This is a Notification by which the President has appointed the list of probationers in IRAS with effect from the date they had joined the post and the applicant's name has been placed at Serial No. 1. The applicant has contended that the respondents cannot rely on the instructions issued by them on 3.7.1987 in which it has been provided, inter alia, that the Cadre Controlling Authorities were to make suitable amendments so as to provide for the inclusion of marks obtained during probationary training, while drawing up the final seniority list of officers of the same year of allotment as is the case in the IAS Rules. Shri K.R. Sachdeva, learned counsel, has contended that in the circumstances, the amendment of the Recruitment Rules was, therefore, the first step for implementation of such a Scheme which has not been done in this case. He

has contended that the stand taken by the respondents that as per the Recruitment Rules, the Railway Administration did not consider it necessary to amend the Rules but had issued the administrative instructions are not relevant and was totally arbitrary. He has contended that any administrative instructions which are inconsistent with and are contrary to statutory Rules are invalid. He has relied upon the judgement of the Hon'ble Apex Court in **Dr. Rajinder Singh Vs. State of Punjab** (SCC, Civil Appeal No. 2720 of 2001).

4. Learned counsel for the applicant has also contended that the instructions issued by the respondents on 3.7.1987 were never brought to the knowledge of the applicant and there was no reference to these instructions in Para 5.2 of the Annexure to the letter dated 31.12.1991 which is the letter of appointment of the applicant. He has contended that the Notification relied upon by the respondents, namely, the Notification dated 25.9.1972, that officers will be governed by the provisions of the Indian Railway Codes as amended from time to time and any other orders in force issued by the Railway Ministry is not correct. According to him, any provision to specifically provide for training to be more effective, has to be added in the Statutory Rules and not by way of such instructions. He has, therefore, contended that the inter-se seniority of Group 'A' Officers, including in the IRAS, is to be determined only by the order of merit in which they were selected by the UPSC as per the general principles of seniority issued by the Ministry of Home Affairs (Department of Personnel) by O.M. dated 22.12.1959. He has contended that all along the

seniority in IRAS has been fixed in the order of merit in the selections held and there was no need to deviate from this principle as laid down in the O.M. dated 22.12.1959. According to him, the DOP&T vide their letter dated 5.8.1986 has also categorically advised the Cadre Controlling Authorities to amend the Rules. In the circumstances, he has very vehemently contended that there was no question of issuing any instructions for providing training and adding these marks for the purpose of inter-se seniority. He has submitted that the respondents have issued the instructions dated 3.7.1987 without consultation with the UPSC and the DOP&T. He has submitted that apart from the Indian Postal Service which had amended the Rules in consultation with the UPSC through the DOP&T, no other Group 'A' Service had done so or introduced the scheme of adding the marks obtained during probationary training. He has, however, submitted that it is not the case of the applicant that the Railways cannot modify their existing probationary rules for making training more effective but that in the present case it has been done in a most illegal manner. He has contended that the respondents' instructions dated 3.7.1987 are in violation of the IRAS Rules, 1966 which Rules have been issued under the proviso of Article 309 of the Constitution where no provision for probation exists. He has, therefore, submitted that as per the settled law, such instructions cannot supersede or amend the statutory Rules which is what has been done in the present case. He has relied on a number of judgements of the Supreme Court, list given in the written submissions. He has contended that they are also violative of the general principles for determining

seniority, which can only be done in terms of the DOP&T instructions of 1986. He has contended that the instructions of 3.7.1987 were also incomplete and contained a number of flaws. He has pointed out that there was no question of personal training for officers of the IRAS and Foundation Course was never done by the Railways as pointed out by the Tribunal's order dated 10.9.1999 in OA 1659/93.

5. Learned counsel has very vehemently submitted that even the above illegal instructions were not properly implemented, as some of the probationers have joined on different dates and have been placed in the impugned seniority list. He has contended that the instructions have been issued without application of mind and the implementation is also invalid as the record of marks had not been sent to the Ministry within six months. He has contended that reliance placed by Tribunal's order dated 18.10.2001 on the parallel scheme applicable to the IAS officers is totally misconceived and not applicable to the IRAS. In the circumstances of the case, he has submitted that the referral order of the Tribunal dated 18.10.2001 is based totally on surmises and conjectures and is more in the nature of a defence of the illegal, arbitrary and unfair action taken by the respondents, by completely sidelining the conclusions arrived at in the earlier order of the Tribunal dated 10.9.1999 in OA 1659/1993 without giving any reasons. He has relied on the observations of the Tribunal in its order dated 10.9.1999 in **Manisha Sharma's** case (supra) that Respondent No. 2 has been given a unfettered discretion to award marks. He has submitted that three lists for 1987, 1988 and 1989

batches were drawn up in the same month, that is in May, 1997 and the list for 1988 batch was given before the 1987 batch of officers which all shows manipulations and malafides on the part of the respondents. He has also submitted that the applicant has completed her probation on 10.9.1993 and the impugned seniority list, altering her inter-se seniority position has been issued only on 3.12.1997 pushing her down from Serial No. 1 to Serial No. 9, on the basis of the training marks which were added to the marks assigned to her on selection by the UPSC. He has contended that in the circumstances, the only possible view which could be taken in the present case is in terms of the earlier order dated 10.9.1999 which had found the implementation of the instructions by the respondents so arbitrary and whimsical which is contrary to the hall-marks rule of Law. Learned counsel had also contended that even the issue referred to the Larger Bench is somewhat vague and in the circumstances of the case judicial interference is not called for.

6. Shri A.K. Behera, learned counsel for applicants in the other O.As has also been heard who has more or less stressed on the same arguments advanced by Shri K.R. Sachdeva, learned counsel, namely, that the respondents have acted in a totally arbitrary and illegal manner.

7. The respondents have controverted the above averments. Shri E.X. Joseph, learned senior counsel has submitted that the inter-se seniority of officers has to be fixed on the basis of the Rules and administrative instructions and not necessarily on the basis of the ranking given by the UPSC. He has

submitted that the ranking given by the UPSC is basically for purposes of appointment. He has submitted that if the rules/administrative instructions have laid down that the inter-se seniority of those appointed will be on the basis of the ranking given by the UPSC, then the ranking given by the UPSC will be the sole basis. However, if the rules/ administrative instructions lay down different principle, then those principles will be the basis for fixation of the inter-se seniority. He has submitted that the ranking given in the notification of the Ministry of Railways dated 13.1.1997 relied upon by the applicant showing the applicant at Serial No. 1 is the ranking given by the UPSC for the purposes of appointment with effect from the date of her joining. This, according to him, is not the seniority list or the original seniority list as submitted by the applicant wherein she has contended that there has been an unsettling of the settled position. He has submitted that the inter-se seniority of IRAS officers of IRAS has been issued vide letter dated 3.12.1997 based on the CSE, 1990, which clearly states that it has been fixed in terms of the Railway Board's letter dated 3.7.1987. He has, therefore, clarified that the inter-se seniority was never fixed on the basis of the UPSC ranking and the first seniority list issued is the one dated 3.12.1997.

8. Learned Senior Counsel has submitted that administrative instructions can fill up the gaps and supplement the statutory rules where they are silent and according to him, the instructions issued by the respondents dated 3.7.1987 are not contrary to the IRAS Rules, 1966. He has also relied on a number of judgements of the Hon'ble Supreme Court, list of which

is given in the written submissions. With regard to the fixation of inter se seniority, he has submitted that whether it should be done on the basis of the UPSC ranking/merit or on the basis of the date of joining or on the basis of a combined method covering the UPSC marks and marks obtained during probationary training is a matter of policy and so long as the policy does not transgress any Statutory Rules or any Constitutional provision, the same cannot be assailed. For these legal propositions also he has referred to a number of judgements of the Hon'ble Supreme Court.

9. He has controverted the submissions of Shri K.R. Sachdeva, learned counsel that the Railway Board's instructions dated 3.7.1987 are illegal and it is only the DOP&T which has power to issue such instructions, by relying on Paragraphs 123 and 124 of the Indian Railway Establishment Code, Vol. I, Government of India (Allocation of Business Rules) framed under the proviso to Article 77 of the Constitution of India and the Ministry of Home Affairs O.M. dated 18.9.1951. He has also contended that it is relevant to note that the Railway Board issued the instructions dated 3.7.1987 after the Ministry of Home Affairs and the DOP&T had taken a decision in 1986 that in fixing seniority of officers, the marks obtained during probationary training should be taken into consideration for which the Rules should be amended and a provision made accordingly. The Railway Board took a decision that administrative instructions were sufficient, instead of amending the Rules in respect of fixing the inter-se seniority as the IRAS Recruitment Rules, 1966 do not provide for the mode of determining inter-se seniority.

between direct recruits. He has relied on Note (k) which was incorporated in the Appendix by way of Amendment dated 22.5.1972 to the IRAS Rules, 1966.

10. In view of the above provisions, learned senior counsel has contended that as there was no specific provision in the Recruitment Rules on the question of inter-se seniority of direct recruits, the Railway Board was competent to issue administrative instructions prescribing the method of inter-se seniority of direct recruits. He has submitted that the usefulness of probationary training has been recognised by the Government and the instructions of 3.7.1987 issued by the Railway Board streamlines the probationary training for making it more effective. He has contended that these instructions do not in any way supplant or violate any statutory rules or Constitutional provisions, as the need for probationary training has been recognised by the Government, which decision is also one of policy. He has referred to para 6.2 of the instructions which lays down that inter-se seniority of Group A probationers of a particular examination batch and of a particular service, on their confirmation to Junior Scale will now be decided on the basis of marks obtained by them during the probationary period and marks obtained by them in the UPSC competition. For this purpose, the merit position would be adjudged on the basis of marks secured out of a maximum marks of 3300 of which the maximum marks of UPSC competition would be 2050 and the maximum marks for performance during probationary period would be 1250. Learned senior counsel has submitted that this principle is totally reasonable, legal and valid and there is an

objective criteria prescribed for grading performance of the probationers during the training. He has submitted that detailed guidelines have been incorporated for providing marks to the examiners to minimise the claims of subjective assessment and, therefore, the instructions have a rational criteria with the object of making the probationary training more effective. The respondents have submitted that detailed marks were assigned to the probationers and communicated to them on the basis of which the total credit was worked out and the seniority in the order of merit was determined by adding the marks obtained in the UPSC competitive examination and the marks obtained during the probationary training. The respondents have contended that the Director's assessment is an important input in the field of training and apart from a few of the probationers, the performance has not undergone a change of more than a few positions and that too only in cases where the probationers persistently neglected the work during the training. Shri E.X. Joseph, learned senior counsel, has submitted that the reference of the Tribunal in the order dated 18.10.2001 to the position obtaining under the IAS Rules is only by way of an illustration and there was nothing wrong in that. In the written submissions, the respondents have controverted the position with regard to the contention of Shri K.R. Sachdeva, learned counsel that the instructions of 3.7.1987 were incomplete as no instructions which were said to follow had, in fact, been issued. They have submitted that at least in two of the above O.As i.e. O.A. 1057/2002 and OA 156/2002, further guidelines which had been issued had been filed which cover the probationary training of Group 'A'

probationers of various Services controlled by the Ministry of Railways, in which the guidelines prescribed that the Directors can give 350 marks. Learned senior counsel has, therefore, submitted that there was no question of any unbridled or arbitrary power which has been invested in the Director in allotting marks to the probationers. With regard to the objection raised by the learned counsel for applicant that the assessment of marks had not been done for the same period, learned senior counsel for respondents has explained that the assessment of comparative merit was not possible as the training was not commenced or completed by all together. According to him, the marks were given on the basis of assessment of each individual probationer just as it is done in the case of any public examination and it was not a question of assessment of comparative merit as done in a DPC selection. He has submitted that the Hon'ble Supreme Court has held in **Union of India Vs. Majji Jangamayya & Ors.** that Administrative instructions if not carried into effect for good reasons cannot confer a right and in **P.C.Sethi Vs. UOI** (1975)4 SCC 67 that a rule cannot be stretched to the point where it has a negative effect and is against public interest. He has submitted that the administrative instructions for assessment of marks of probationers which has a nexus to the object to be achieved are legal and valid. He has submitted that the Rules permitted the probationers to undergo training in the next batch if they have been permitted to appear in the next CSE under the relevant Rules and, therefore, these instructions have to be looked at from that angle also. He has also relied on the judgement of the Hon'ble Supreme Court in **Mohan Kumar Singhania Vs. UOI & Ors.**

(1992 (Supp) 1 SCC 594). The respondents in their written submissions have stated that they shall file, if so directed, the detailed marks obtained by each of the probationers. He has also submitted that the Hon'ble Supreme in a catena of judgements has upheld the procedure of determination of seniority, according to performance in the Departmental Examination and in the circumstances no probationer can claim a vested right in seniority according to the merit obtained by him in the UPSC examination above in spite of his dismal performance during probation or training. He has clarified that the UPSC merit position was for the purpose of entering into Service but seniority and promotion is necessarily to be determined upon performance of the officer during probation and subsequently thereafter as per the rules.

11. With regard to the delay in publishing the seniority list which was admittedly done only in December 1997, though the applicants belong to the 1990 batch and the probationary training was over in the year 1991-1992, the respondents have explained how some delay is inevitable, especially when some probationers joined subsequent batches and the result was declared after some years.

12. Another main contention of the learned senior counsel for the respondents was that the governing principles of seniority were conveyed to the applicant along with her appointment letter and she was fully aware of the importance of marks to be obtained during the probationary training. He has submitted that there is no personal mala fide or arbitrariness in the

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whole exercise of assigning marks and it would not be practicable to place all trainees before the same Director or institute.

13. The revised instructions issued on 9.11.1996 referred to by the learned counsel for the applicant applied to the 1991 batch onwards, in which the instructions regarding the principles governing seniority are the same as those contained in the instructions of 3.7.1987. In the facts and circumstances of the case, Shri E.X. Joseph, learned senior counsel has submitted that the question placed before the Larger Bench may be answered in the negative, namely, that the O.As do not warrant any judicial interference.

14. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties. We wish to record our appreciation of the able assistance rendered by Shri E.X. Joseph, learned senior counsel and Shri K.R. Sachdeva, learned counsel in the matter.

15. Note (k) in the Appendix to the IRAS (Second Amendment) Recruitment Rules, 1972 which is an amendment to the IRAS Recruitment Rules, 1966 provides as follows:

In all matters not specifically provided for the officers including probationers shall be governed by the provisions of the Indian Railway Codes, as amended from time to time, and any other orders in force issued by the Ministry of Railways from time to time.

The IRAS Recruitment Rules, dated 10.12. 1966 (GSR 1861) have been issued under the proviso to Article 309 of the Constitution by the President. These rules provide for the constitution of the Service, methods of recruitment, recruitment by competitive examination/promotion, transfer and other related subjects. The Appendix to the above Rules provides, *inter alia*, that the probationers will be required to undergo a course of training at the Railway Staff College and to pass the tests prescribed by the authorities and also provides that they will receive training at the institutions specified therein, including the National Academy of Administration, Mussoorie. During the period of training if, in the opinion of Government, the work or conduct of any probationer is unsatisfactory, the Government may discharge him. The probationers are also required to pass the 'end of the course test' at the National Academy of Administration failing which their first increment will be postponed.

16. From Note (k) of the IRAS Rules, as amended in 1972, it is seen that in all matters not specifically provided for in the Rules, the officers, including probationers are to be governed by the provisions of the Indian Railway Codes and any other orders issued by the Ministry of Railways from time to time. As the IRAS Rules are silent on the fixation of inter-se seniority though they do provide for probationary training, we see no legal bar in the respondents issuing administrative instructions for this purpose. It is settled law that administrative instructions cannot be contrary to or supersede or supplant statutory rules or violate any provisions of the Constitution but can supplement the

Rules where the Rules are silent or where there is no specific provision to the contrary in the Rules (See, for example, **Sant Ram Sharma Vs. State of Rajasthan** (AIR 1967 SC 1910), **Union of India Vs. H.R. Patankar** (1984 (Supp) SCC 359) and **Ex. Capt. K. Bala Subramanian & Ors. Vs. State of Tamilnadu & Ors.** (1991 (1) SCC 708). In the present case, the applicants have relied on the DOP&T O.M. dated 3.7.1986 on the subject of seniority, wherein it has been stated that the relative seniority of all direct recruits is determined by the order of merit in which they are selected for such appointment on the recommendations of the UPSC or other selecting authority, persons appointed as a result of an earlier selection being senior to those appointed as a result of a subsequent selection.

17. Reference has also been made by both the parties to another DOP&T letter dated 5.8.1986 which is a record of the Minutes of the Meeting with regard to the two items discussed there, namely, (i) Recruitment through CSE - Permission to candidates appointed to a Service to reappear in the examination; and (ii) measures for making training more effective. With regard to item No. (ii), the DOP&T had written to the Chairman of the Railway Board, to consider the desirability of amending recruitment rules so as to give weightage to the marks obtained during the institutional training along with marks obtained in the competitive examination in the matter of determining the final seniority of direct recruits. In the facts and circumstances, there is no illegality in the decision taken by the Railway Board to issue administrative instructions to fill the lacuna in the Recruitment Rules

which were silent in the matter of fixation of inter-se seniority. The contention of the learned counsel for the applicant that in the case of the Indian Postal Service, the nodal Ministry had amended the Rules whereas the same has not been done by the Railway Board is not relevant, considering the specific provision contained in Note (k) of the IRAS Rules, 1974, which empowers the Railway Board to issue such orders/instructions from time to time. In this view of the matter, we do not find any illegality in the action taken by the respondents, that is, the Railway Board to issue the instructions dated 3.7.1987 which are not contrary to the suggestions contained in DOP&I letter dated 5.8.1986, that is, calling upon the Railway Board to consider taking steps to give weightage for the institutional training which would be taken together with the marks obtained in the competitive examination while determining the final seniority of direct recruits.

18. The applicant has relied on the Notification issued by the Railway Board dated 13.1.1997, in which it has been stated that the President was pleased to appoint a list of probationers in the IRAS, in which the name of the applicant, Ms. Nirpuma Khosla, has been shown at Serial No.1. The applicant has herself stated that she had joined the Service on 16.9.1991 and has completed two years probation successfully on 10.9.1993. In the letter dated 31.12.1991 issued by the Railway Board, an offer of appointment has been made to the applicant in the IRAS on the basis of her success in the CSE held by the UPSC in 1990, wherein it has been stated that the

conditions of service are laid down in the IRAS (Recruitment) Rules and some of the terms and conditions are also summarised in the annexures, including training, termination of appointment during probation, posting and so on. Para 5.2 of the conditions provides as follows:

5.2 The inter-se seniority of Group A Probationers of a particular examination batch and of a particular service, on their confirmation to Junior Scale, will now be decided on the basis of marks obtained by them during the probationary period and marks obtained by them in the Union Public Service Commission Competition, (or during apprenticeship training for SCRA's).

(emphasis added)

In view of the above facts, the contention of the applicant that she was not aware that probation marks will be added to the marks obtained by her in the UPSC competition for purposes of inter-se seniority, cannot be accepted as she had been informed at the time of her appointment. The DOP&T letter dated 5.8.1986 relied on by the learned counsel for the applicant also relates to the weightage to be given during the institutional training for the purpose of final seniority of direct recruits. In the circumstances of the case, the instructions issued by the Railway Board for the same purpose are neither illegal or arbitrary or contrary to the DOP&T instructions i.e., to give weightage to marks obtained during probationary training. Therefore, the contentions of the learned counsel for the applicant that only the marks obtained in UPSC competition will count for inter-se seniority of IRAS Officers is baseless and untenable and is accordingly rejected.

19. The applicant has relied on the promotion orders i.e. Office Order No. 210/1997 dated 1.10.1997 promoting her to JAG and Office Order No. 160/ 1994 promoting her to Senior Scale, where she was confirmed on 15.8.1995. These orders clearly state that the promotions are on ad hoc basis and cannot, therefore, be considered on regular basis. Therefore, the contentions of the two learned counsel for the applicant to the contrary that she has been promoted twice on regular basis are again without any basis as seen from the records. Accordingly, the contentions and conclusions, if any, to the contrary in the earlier order of the Tribunal have to be rejected as not borne out by the records.

20. We are also unable to agree with the contention of mala fides raised by the learned counsel for the applicant on the ground that the administrative instructions dated 3.7.1987 are impracticable and are flawed. From the relevant documents referred to by the learned senior counsel for the respondents, it cannot be stated that the applicant was not aware that her performance would be evaluated and marks would be awarded for each item of the probationary period and those marks would be added to the UPSC examination marks to determine her inter-se seniority vis-a-vis her batchmates. During the hearing, learned counsel for the applicant himself had submitted that it is not at all the case of the parties that under no circumstances, the probation marks should not be taken into account as done for IAS probationers but what is objected to here is the method. He had contended that with regard to the IAS officers, there were specific Rules governing the

situation which is not the position in the present case.

We are unable to agree with this contention in view of what has been discussed above. The action taken by the Railway Board in the case of IRAS probationers is in terms of the DOP&T letter dated 5.8.1986 and is, therefore, intra vires the Rules and is legal.

21. The marks allotted in UPSC competition and during the probationary period, including 350 marks for Director's assessment cannot also be held to confer arbitrary or unbridled power, as a criteria has been laid down which has been uniformly applied to the concerned individuals. Para 6.2 of the instructions dated 3.7.1987 is relevant. This clearly states that the inter-se seniority of Group 'A' probationers of a particular examination batch and of a particular Service, on their confirmation to junior scale, will be decided on the basis of the marks obtained by them during the probationary period and the marks obtained by them in the UPSC competition. Taking into account these documents, we are unable to agree with the contention of the learned counsel for the applicant that the applicant was not at all aware that the probation marks would count towards the determination of her inter-se seniority with her batchmates of CSE, 1990. Besides, in the appointment order dated 31.12.1991 annexed by the applicant, it is provided in paragraph 5.1 of the annexure that on successful completion of probationary period, the probationers will be eligible for confirmation in the junior scale. It is further provided in paragraph 5.2 reproduced above that the inter-se seniority of Group 'A' probationers of a particular examination batch will be based on the marks

obtained during the probationary period and the marks obtained by them in the UPSC competition. In this context, it is relevant to note the submissions of the learned senior counsel for the respondents that it is only for the first time that the impugned seniority list has been issued dated 3.12.1997 taking into account the relevant Rules and instructions with regard to the inter-se seniority of directly appointed officers of the IRAS, based on the CSE, 1990. While we do agree with the contentions of Shri K.R. Sachdeva, learned counsel that the inter-se seniority list is considerably delayed for which the respondents are to be blamed but that by itself does not give a right to the applicant to contend that her settled position has been unsettled by this list. The inter-se seniority has been settled for the first time in 1997. She cannot also contend that in the circumstances of the case and the relevant Rules and instructions issued by the respondents referred to above, only the marks obtained by her in the UPSC competition will count. In other words, her inter-se seniority cannot be decided only on the basis of the marks obtained in the UPSC competition, ignoring the marks obtained by her and her batchmates during the probationary period. It would not only be against the Government of India policy as contained in the DOP&T letter dated 5.8.1986 relied upon heavily by the applicant's counsel but also against the specific instructions issued by the respondents.

22. We have also carefully considered the other contentions raised by the learned counsel for the applicant regarding mala fides and impracticability of following the instructions dated 3.7.1987. We are

unable to agree with the contentions that detailed marks were not assigned to the probationers under various heads and communicated to her and others, on the basis of which the final seniority list was determined with regard to her and other similarly situated persons. The reference made in Tribunal's order dated 18.10.2001 referring this case to a Larger Bench where the situation obtaining in the IAS cadre regarding taking into account the marks obtained during probationary training has been done can be considered as a matter of illustration. In the circumstances of the case, the contention of Shri K.R. Sachdeva, learned counsel that, Tribunal's order dated 18.10.2001 has been written on the basis of conjectures and surmises is, in our view, uncalled for and is accordingly rejected. The administrative instructions issued by the respondents dated 3.7.1987 have been followed by subsequent instructions and, therefore, they are neither vague nor incomplete nor impracticable, keeping in view also the relevant CSE Rules/Regulations permitting a candidate to appear in a subsequent probation training. These relevant Rules, Regulations and administrative instructions will, therefore, have to be read in a harmonious manner to subserve the intention of the Rules. In this view of the matter, it is possible that the training was neither commenced or completed by all the candidates of CSE 1990 at the same time but we see force in the submissions made by the learned senior counsel for the respondents that the marks were given to the individual probationers on the basis of their own assessment on the basis of which they were placed along with their batchmates. Therefore, the contentions of the learned counsel for the applicant that there was

maia fide and arbitrariness in implementing the impugned instructions as they were not practicable fails and is rejected.

23. It is relevant to note that in the Tribunal's order dated 10.9.1999 in OA 1659/1993, it has been stated that as they had come to the conclusion that the applicant should be restored to her original seniority as per the UPSC competition, it was unnecessary to go into the vires of the impugned instructions dated 3.7.1987. It was further observed that the order is confined only to the applicants and shall not be read as affecting the impugned seniority list with regard to others. With respect, the same principles of law will have to apply to all the concerned persons in a seniority list as it will be in rem, otherwise it could lead to chaos in preparation of the seniority list for a service.

24. Further, in the view that we have expressed above, the administrative instructions issued by the respondents dated 3.7.1987 merely supplement the IRAS Rules, 1966 and have to be read together. Besides, the same principle for determining inter se seniority has to be applied uniformly to the concerned Group 'A' officers. As discussed above, the instructions dated 3.7.1987 which are not contrary to the statutory rules and in fact, are in tune with the policy of the Govt. of India dated 5.8.1986, cannot be held to be ultra vires or illegal. In the circumstances, the provisions of those instructions will apply to the facts of the aforesaid cases for determining the inter-se seniority of Group 'A' probationers in IRAS, which will

be determined on the basis of marks obtained by them during the probationary period and the marks obtained by them in the UPSC competition. We have also considered the other contentions of the learned counsel for the applicants but do not find any merit in the same.

25. In the result, for the reasons given above, the reference is answered in the negative, i.e., that the OAs do not warrant any judicial interference and the same are to be dismissed.

26. In view of the above, the six OAs (O.A. 2037/98, O.A. 239/2000, O.A. 1194/98, O.A. 2055/2000, O.A. 1057/2002 and O.A. 965/2002) are dismissed. No costs.

27. Let a copy of this order be placed in the above referred to OAs.

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

(Govindan S. Tampi)
Member (A)

(Shankar Raju)
Member (J)

ORDER

Govindan S. Tampi, Member (A) :

I have very carefully perused the reasons recorded and the conclusions arrived at in this reference by the Hon'ble Vice Chairman (J). However, with deepest respect, I have to record that I cannot bring myself to agree with the same, as in my humble but steadfast view, the above findings do not represent the proper appreciation of facts and law on the subject. Therefore, I beg to differ from the above findings/order and proceed to record my findings separately.

2. I have before me, the reference to the Full Bench of 18.10.2001 framed by the Division Bench, while disposing of OAs 2037/1998 and 239/2000 which reads as under:-

"To determine whether in the facts and circumstances of these two cases, the OAs warrant judicial interference or not and if so to what extent."

3. Genesis of the reference lies in the difference in the findings recorded and conclusions arrived at by two co-ordinate benches of the Tribunal on identical issues - decision dated 10.9.1999 in OA 1659/1993 filed by Ms. Neelam Sanghi Agarwal, given by the Division Bench comprising Hon'ble Mr. Justice K.M. Agarwal, Chairman and Hon'ble Mr. N. Sahu, Member (A), (as they the were) and decision dated

18.10.2001 in OA 2037/1998 filed by Ms. Nirupama Kumar and OA 239/2000 filed by Sanjiv Narain Mathur, pronounced by ^{A Division Bench of} Hon'ble Mr. S.R. Adige, Vice Chairman and Hon'ble Dr. A. Vedavalli. Member(J) (as they then were). Applicants concerned in all the above OAs are members of the Indian Railway Accounts Service (IRAS for short).

4. A few more OAs have been placed before the Full Bench, all of which concern members of various other Group 'A' Services all of Indian Railways. The communication under challenge in all the OAs is, primarily the Railway Board's letter No.E(Trg) 86(13)/3 dated 3.7.1987. The OAs besides 2037/1998 of Ms. Nirupama Kumar and 239/2000 of Sanjiv Narain Mathur (both IRAS) are, 1194/1998 of V.P. Singh of IRSEE, 2055/200 of Chhatrasal Singh of IRTS and 965/2002 of Harpal Singh as well as 1057/2002 of Vijay Nathawat (both of IRSEI). These OAs are also being disposed of together.

5. Though in the normal course, all the six OAs would call for separate decisions, keeping in mind the fact that only minor differences exist on facts among them and that the main issue for determination is the same, I feel it would suffice to examine in detail only OA 2037/1998, filed by Ms. Nirupama Kumar, as it correctly brings out the points at issue. Besides, it is one of the OAs which has prompted this reference to the Full Bench.

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6. The applicant in OA 2037/1998 (Ms. Nirupama Kumar), who cleared the Civil Services Examination, 1990, with the All India merit position/rank of 173, was allotted Indian Railway Accounts Service (IRAS), which she had opted for. She was placed at Sl. No. 1 in a batch of 22 probationers for that year. After clearing her Foundation Course in Lal Bahadur Shastri National Academy of Administration (LBSNAA), Mussoorie, she had her institutional training in Railway Staff College (RSC), Vadodara. She was originally allocated to Northern Railway but her allocation was changed to South Central Railway, on her request, while she was in RSC, Vadodara. She performed creditably during the probation by clearing all the departmental examinations in the first time itself. She was appointed to the Senior Scale on 10.9.1993 in Hyderabad and was confirmed on 15.9.1993. Thereafter on 1.10.1997 she was promoted on ad hoc basis to the post of Deputy Financial Advisor (Construction) in Junior Administrative Grade (JAG) on 1.10.1997. All these while, she had been shown at Sl. No. 1 in her batch, including in the list published by the Railway Board, as recently as on 31.1.1997. Later in the year, Railway Board's communication No. E(01)1/97/SR-66/12 dated 3.12.1997 - Seniority list - was circulated to her, showing that her seniority position in her own batch was changed from one(1) to nine(9). This downwards revision in seniority was described by the respondents as having emanated from Railway Board's letter No. E(Trg)86(3)/3 dated 3.7.1987, directing that inter se seniority of the

probationers/officers would be determined on the basis of the marks obtained by them during the probationary training as well as in the UPSC's competitive examination. The present OA is directed against the orders dated 3.7.1987 and 3.12.1997.

7. It is alleged that the respondents were attempting to distort the applicant's position in the merit list fixed in terms of the competitive examination conducted by the UPSC, a constitutional body charged with the responsibility of recommending candidates for the senior bureaucracy of the country. Respondents' letter dated 3.7.87, which is in a nature of executive instructions had never been shown to the applicant. The applicant's appointment was in terms of Indian Railway Accounts Service Rules, 1966, framed under Article 309 of the Constitution. These statutory rules cannot be overridden by executive instructions. Without amending the RRs in consultation with the UPSC, the attempt was being made by the respondents to depress the applicant's seniority. In the absence of any specific provision in RRs governing the inter se seniority, it must be determined by the general principles/guide-lines on the subject i.e. on the basis of the order of merit in which the candidates are selected for appointment on the recommendations of the UPSC. Not having been made privy to the contents of the Railway Board's letter dated 3.7.1987, the applicant was naturally shocked at the loss of seniority which was granted to her at the time of initial appointment. This showed total absence of

transparency on the part of respondents. Interestingly, this lack of transparency is multiplied by the fact in that at no stage during her probationary training, she was informed of the marks allotted to her. In fact, the applicant is not aware of the said marks even now. Since she had been kept totally in the dark about the marks obtained by her. She had naturally expected that her performance was always upto the mark and was thus deprived of the opportunity to seek correction, if felt warranted. While in the Civil Services Examination conducted by the UPSC, each of the candidates is intimated his/her marks in all the papers, including the interview, soon after the result is announced, thus making the whole process of placement, impartial, transparent and objective, as against the measures adopted by the present respondents. Thus on the basis of the marks reportedly awarded during the training - amounting to 1/3 of the total marks - the applicant, who was the topper of her batch at the time of recruitment, found herself pushed down and superseded by as ~~as~~ many as ¹ eight persons, as shown in the chart below:-

Name	UPSC RANK	Assigned Seniority in 1990	Revised seniority batch
9. Nirupama Khosla(Kumar)	173	1	9
1. Ravi Nandkeolyer	392	6	1
2. Amar Kumar Sinha	450	13	2
3. Jitender Kalra	446	11	3
4. Mukesh Kumar Singh	449	12	4
5. Ms. Sangeeta Arora(Khurana)	433	8	5
6. Hare Kishan Sahu	284	4	6
7. Namita Kapoor(Mehrotra)	442	10	7
8. Ms. Bhuvaneshwari	269	3	8

8. Out of the eight individuals referred above, six, including who has been placed at the top of the seniority list, had been ranked more than 200-250 places below the applicant in the CSE-1990. This showed that the marks allocated to her during the institutional training had totally distorted the position. This was so in spite of the fact that nothing at all had been communicated to her at any time of any fall in standards in her performance. The applicant, obviously apprehends that some foul play had occurred. In the probationary training at RSC, Vadodara, for which 1250 marks have been allocated, with 300 marks each ^{type} being allocated for foundation/induction, training in professional institution and departmental examination, with 350 marks being earmarked for assessment by Professor Training Accounts. However, this does not include any marks for the Foundation Course at the LBSNAA which is totally surprising. Besides marks awarded on projects, village studies are excluded from computation and evaluation of field studies are not given to Zonal officers, but retained with RSC. To top it all, 350 marks, which constitute a major position is kept within the sole discretion of the Director, with no system to monitor, which can be easily manipulated. Unlike in the UPSC, where 300 marks earmarked for assessment of personality is assigned by the experts in their chosen fields. in the Railway Staff College, the assessment is permitted to be done by the Director or the Professor in charge. In the instant case, the fact that the considerable

time of as many as four years, after the completion of probation, had been taken for refixing the inter se seniority points to the malafide of the respondents and the manipulation adopted by them. It is further pointed out that three of the probationers, who had been placed above her and had joined the service and training one year later and had undergone training with the next batch. Clearly, therefore, there ^{is} ~~is~~ no comparative/uniform evaluation. Even otherwise, in terms of extant rules, those who were permitted to join training later were to be placed at the bottom of the list for the batch. This has also not been done. The settled principle, as far as seniority in service is concerned, is the merit determined in terms of the competitive examination conducted by the UPSC. In the absence of any provision in the concerned RRs, the general principles/guide-lines for determination of seniority cannot be overlooked. As detailed in presidential notification dated 13.1.1997, the basis for allotment of the applicant to the zonal Railways and her promotion to the senior scale of IRAS has to be on the basis of the seniority in terms of note (ii) in para IV (Recruitment by Promotion) of IRAS Recruitment Rules and para 209(c) of IREC. Whenever such a seniority is sought to be upset, it would have to be notified, objections, if any, had to be invited and considered. None of the above has been done in the instant case.

9. As pointed above, the directions ^{or} and conditions of service of IRAS officers are governed by IRAS RRs

dated 10.12.1966 and any administrative instructions not consistent with the above would have to be treated as invalid. DOP&T had, following the Inter Ministerial meeting of all the Cadre Controlling authorities of service held on 13.6.1986, considered the aspects of permitting candidates appointed to any of the group 'A' Services to appear for the examination once again and of making probationary training more effective and purposeful. Cadre Controlling authorities were, therefore, requested to make suitable amendments in their RRs so as to provide for addition of marks obtained in the Probationers final examination and Director's assessment to the marks obtained in the IIPSC examination - for determination of inter se seniority. The respondents have apparently taken this action without amending the RRs and making the provision statutory. This was totally an arbitrary position to have been adopted. Further, letter dated 3.7.1987, of the Railways was an administrative order applicable to eight services in the Railways only, which, as per Board's instructions of 15.9.1992, did not even include IRAS, for which separate instructions were to follow. Therefore, the said instructions could not have been made applicable to the applicant. Subsequently, directions were issued on 5.11.1996 and 21.11.1996. Obviously, instructions have been issued for IRAS probationers in supersession of the instructions of 3.7.1987, without any reference to the letters of 15.9.1992 and 5.11.1996. Implementation of the contents of the letter dated 3.7.1987 in the case of probationers of

1990 on 3.12.1997, after it has been superseded, is illegal and questionable. Further, the mode of evaluation adopted was highly suspect and delay of as many as six years was clearly malafide. The applicant, whose career graph has been totally disturbed, had represented to the respondents against the injustice done to her, which had fallen on deaf ears and hence, the OA.

10. The grounds raised in the OA are as below:-

- (a) executive instructions of the Board cannot over-ride or supplant the statutory rules or general principles for determination of the seniority, a fact overlooked by the respondents;
- (b) Railway Board's instructions on 3.7.1987, had been incorrectly and improperly given the force of rules, to determine but depress the seniority of the applicant;
- (c) downward revision of the position of the applicant in the seniority list after six years and that too without notice was in clear violation of principles of natural justice;
- (d) the applicant had not been given any chance at any time to improve her position, if her performance according to the respondents during the probation had not been satisfactory;

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(e) till date the marks on the basis of which the seniority position has been changed have not been divulged;

(f) concentration of a substantial percentage of marks in one individual's hands, increases the scope for subjectivity, all the more so as the performance in the Foundation course of LBSNAA, which is a compulsory component of probationers training, has not been taken into consideration;

(g) 350 marks in the hands of Director can create havoc in the career of the probationers;

(h) as the training has been done in RSC, about 650 marks are in the hands of Director, meaning thereby that 50% of the mark can be manipulated by him and that too without any system of review and acceptance; and

(i) system lacks transparency and objectivity;

11. In the above circumstances, the OA should be allowed is what the applicant pleads.

12. Shri. K.R. Sachdeva, learned counsel appearing on behalf of the applicant reiterated the pleadings, during the oral submissions as below:-

(a) The applicant ranked 173 of 940 candidates, who cleared CSE-1990, was allocated IRAS, and was placed

at serial No.1 in the Service. This was in accordance with General Principles of seniority, contained DOP&T's consolidated instructions of 3.7.1986 and she remained to be at that position through-out her training at LBSNAA, Mussoorie, RSC, Vadodara and on posting thereafter in South Central Railway. This was her settled position, even in the presidential notification dated 13.1.1997. Suddenly thereafter her 'settled' position had been disturbed by the revised seniority list of 3.12.1997, placing her at serial no.9 which was not even communicated to her directly;

(b) Sudden loss in seniority for the applicant four years after the completion of probation and that too without any notice was illegal and improper;

(c) Railway Board's instructions of 3.7.1987, on the basis of which the revision in seniority is brought about has never been communicated to the applicant. There is no reference to the same in para 5.2 of the Annexure of letter dated 3.12.1991, the offer of appointment, and the applicant had only been advised that she would be governed by IRAS Rules, which did not contain any reference to revision of seniority. Besides, the said document dated 3.7.1987, in para 10.3 had indicated that in the case of Probationers of TRAS/IRPS, marks on Director's assessment will be awarded by the Principal RSC, Vadodara, based on the performance of the probationers for which separate instructions will follow. No such instructions have been brought on record, as yet and the assessment, if

any, ordered without reference to any guiding principles should be discarded;

(d) DOP&T's instructions dated 5.8.1986 on which the Railway Board's letter dated 3.7.1997 is based, deals with permission to be granted to those who are already selected to a Group 'A' service to have their training deferred so as to enable them to improve their chances and measures to be adopted for making the probationary training more effective and purposeful by directing that the marks obtained during the probationary training be also included in the computation for determining the inter se seniority. And this was to be done by amending the rules. There is no indication whatever that the RRs were so amended, despite DOP&T's repeated reminders. The stand taken by the Railways is that the same was not called for. Respondents were, therefore, attempting to supplant RRs by administrative instructions. The same has no validity at all and cannot, therefore, be binding. As pointed out by the Hon'ble Supreme Court in the cases of P.D. Aggarwal and others vs. State of U.P. and Others, (1987) SCC 662, State of Haryana, etc. etc. vs. Shamsher Jang Bahadur, etc. etc., (1972) 2 SCC 188 and Ex. Capt. K. Balasubramanian and others vs. State of Tamil Nadu and Another, (1991) 2 SCC 708, the executive instructions can only supplement the statutory provision and cannot be supplant or replace the same. What is being attempted by the respondents, vide letter of 3.7.1987, is the supplanting of the general instructions of determination of seniority.

This is not a case of filling up the gap but one of replacement. The instructions cannot take place of the rules. In fact DOP&T ~~of~~ had been repeatedly asking the respondents about the amendment of the RRs, which they have in their wisdom chosen not to do. The administrative instructions issued by the respondents are not rules and the same cannot be accepted as valid.

It is not denied that the Government as the fountain head of the authority, can direct about changes in the administrative policies and these are not liable to be interfered with in the course of judicial review. However, where such changes of policies are formulated, the same shall be done in the proper way by amending the rules and not by issuance of executive instructions through back door. Respondents have done just the same, in spite of being repeatedly advised by the DOP&T. Interfering with such incorrect action would not amount to sitting in judgment with Government's policy as is being alleged by the respondents.

(e) Respondents had taken a view that as IRAS Recruitment Rules did not specifically refer to the principles governing inter se seniority of the members of the same examination and same batch, no need existed for amending the RRs and what was required by them could be facilitated by issuance of administrative instructions. This is not correct. They had conveniently forgotten that there is no gap to be

filled, in as much general principles determining the seniority existed vide DOP&T's OM No. 22011/7/87-Estt (D) dated 3.7.1986. The general instructions of the nodal Ministry could not have been interfered with unless the RRs were changed in consultation with that Ministry and the UPSC. No such consultation had taken place, making the entire process bad in law.

(6) In IRAS, an old and established service, seniority had always been fixed in the order of merit in the selection held by Federal Public Service Commission (before independence) and UPSC (after independence). Any deviation therefrom called for consultation with and clearance from the Commission, as laid down by Home Ministry's OM No. 9-11/55/RRs dated 22.12.1959. No such consultation is found to have been undertaken and the respondents have decided the whole issue on their own.

(9) The manner of regulation of the probationary period and evaluation of the performance of the IRAS probationers/ officers and subsequent regulation of the terms and conditions of their service having been detailed in the Annexure to the IRAS Rules, any modifications ordered therein should have been by way of suitable amendment to the rules, which have not been carried out. Contents of the impugned letter dated 3.7.1987 being in consistent with the rules cannot be accepted as valid or given effect to.

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(h) The averment that what is good enough for IAS is good enough for IRAS and other Railway services cannot be accepted, as there is a considerable difference in the respective training pattern of services. Except for the Foundation Course at LBSNAA, no component of probationers' training is common for IAS and Central Services like IRAS. The entire gamut of training schedule of the IAS is governed by IAS Probationers Rules, 1954, and all the probationers have their probationary training together. Besides, training of IAS probationers is a homogenised affair, making assessment easy and practical, unlike in the case of other services. Among all the Central Services, only the Indian Postal Service had adopted the recommendations of DOP&T and had brought in the change by amending in the RRs and notifying it. The same has also been incorporated in UPSC's CSE-1997 advertisement onwards. This was the only correct step to have been taken, which the respondents have failed to do. Therefore, they cannot adopt the plea that IAS/IPS probationary training has a similar practice.

(i) Probationer's assessment has an element of institutional training and for IRAS such an institution arose only in 1992 when National Institute of Financial Management was set up for all accounts services. Therefore, on this aspect RSC's assuming jurisdiction on this aspect, was faulty, more so, as the marks obtained in the Foundation Course at LBSNAA have not been included for determination of the seniority.

(j) The instructions contained in letter dated 3.7.1987 were flawed and invalid, but their implementation was worse. The instructions envisage that the training of all the probationers of a particular batch for a particular year shall commence and culminate at the same time. This has not happened in the present case. In fact three of the probationers, who were originally junior to the applicant in terms of UPSC ranking, but had managed to get placement above the applicant by the revised seniority list, were those who had taken training one year later i.e. with the next batch, as they were preparing for the competitive examination year after to improve their chances. It means that the applicant and those individuals were not uniformly or comparatively assessed which was necessary when the performance of the probationers during the training was taken as the yardstick for determination of the inter se seniority.

(k) The probationers in services like TAS are governed by directions that their seniority is determined by the performance during training as well. And the pattern and manner adopted in those services is so transparent and fair, with the probationers being made aware during the course of training itself or immediately thereafter their position, in terms of the marks obtained by them in each component of the training so that they can make attempts to improve their performance. No such fairness or transparency was exhibited by the respondents. The applicant has

not been informed at any stage of her training, the marks obtained by her during the training. Even now she is not aware of the same. The only intimation she ever got was that she had cleared all the papers during the training vide respondents' letter No. IRAS/CT/Relief-90 dated 10.09.1993. The plea taken by the respondents is that the marks would have been displayed on the Notice Board or would have been communicated to the probationers. Records do not show so. In the case of the applicant, it is all the more serious as those who had gone above her, on the basis of the alleged higher marks obtained during the probationary training, were those who were below her by as many as 200 to 300 positions in the UPSC merit ranking. It is, therefore, surprising that, how, such a vast difference arising from marks originally assigned could have been overtaken by the marks obtained during probationary training, except by manipulation.

(2) The illegal Scheme adopted by the Railways, but not supported in law, had vested in the Director/Principal of RSC, Vadodara, such an unbridled power with which he/she can manipulate marks according to his choice. This power was being exercised without any check. It was the position when the applicant was undergoing training. It was only as late 1996 instructions were issued as to monitor and/or regulate the Director's assessment marks. This also was highly arbitrary. Shri. Sachdeva also pointed out that it was not the case of the applicant that the respondents as

Cadre Controlling Authority cannot amend the rules for fixation of seniority, but that the same, however, has to be done in the proper and in the correct manner and in accordance with the law established, which they had not done.

(m) The inordinate delay committed by the respondents in revising the seniority list and their failure to communicate the marks of the probationers training makes it clear that the results were manipulated. In Ms. Manisha Sharma's case (OA 1659/1993), the Tribunal in its decision had observed that "even without going into the legality and validity of the impugned administrative instructions, the implementation is so arbitrary and whimsical that it does not conform to openness and fairplay and transparency which are hall marks of rule of law". The above observations would apply to the applicant's case as well.

13. The OA in the above circumstances should be allowed by setting aside the impugned instructions dated 3.7.1987 with consequences like the cancellation of the illegal revised seniority list, restored of the seniority of the applicant, etc., pleaded Shri Sachdeva..

14. Shri A.K. Behra, appearing for the applicants in two of the OAs endorsed Shri Sachdeva's arguments.

15. The points raised in the applicant's pleadings are hotly contested by the respondents. Their objections ^{are} summarised as below:-

(a) As IRAS Recruitment Rules, 1966 do not provide for any procedure for fixing inter se seniority, recourse to Railway Board's instructions contained in letter No.E(Trg.) 86(3)/3 dated 3.7.1987 has been taken resulting in the issuance of the impugned seniority list vide communication No.E(0)/1/97/SR-66/12 dated 3.12.1997. The same has been correctly issued, and based on the Board's instructions issued in terms of the DOP&T's guide-lines to make probationers training more effective and purposeful. Merit list drawn by the UPSC is relevant only for purpose of determining the eligibility for appointment to a particular service and is not relevant for fixing seniority in service.

(b) It is not correct that the applicant has not been informed that marks obtained by her during the probationers training would be counted for the purpose of inter se seniority. A copy of the appointment order issued by the Ministry of Railway No.91/E(GR)I/10/1 dated 31.12.1991 states that inter se seniority of Group 'A' probationers for a particular service on their confirmation to a junior scale will be decided on the basis of marks obtained by them during the probation period and the marks obtained by them in the UPSC examination. This has duly been accepted by the applicant while joining the post.

(c) Application is barred by time, as the challenge in this OA is directed on the letter dated 3.7.1987 after

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12 years. Before the issuance of letter dated 3.12.1997, there was no seniority list for probationers of 1990 and, therefore, the applicant's plea that her *inter se* seniority had been incorrectly disturbed cannot be accepted. Further, her promotion to JAG post was not made on the basis of seniority but it was only an ad hoc arrangement ordered within the zone and it did not confer any right on her.

(d) Letter dated 13.1.1991 was just intimation to the candidates about their joining IRAS and it was not a seniority list, which was issued for the first time only on 3.7.1987. In terms of para K of the Appendix to IRAS Rules, 1986, the respondents were competent/empowered to issue orders and instructions about fixation of *inter se* seniority, as the Recruitment Rules did not specifically provide for the same. Therefore, the instructions of 3.7.1987 are not inconsistent with the rules.

(e) The instructions on 3.7.1987 for fixation of *inter se* seniority which are in a form of administrative order had been circulated to all including the applicant. However, the applicant had come with a pre-occupied mind (sic) that her position in merit list prepared by the UPSC was the basis of seniority. It was for her to enquire and find out, if her understanding was correct or not. Marks obtained by the probationers during their training were displayed at the notice board. As on 3.12.1997, there was no seniority list of IRAS probationers of 1990 batch and

consequently there was no disturbance in the seniority list as alleged by the applicant. Better performance of a probationer during the training would affect his/her seniority positively and conversely lower performance would affect seniority adversely. Out of the total 3300 marks forming the basis of seniority marks allocated to probationer's training are 1250, as against 2050 for the UPSC examination. Probationers training marks are allocated to seven components of training which would avoid any subjective assessment. In fact, the Director's assessment marks work out to only 140 which comes to nearly 4% of the total marks. This could not be considered as excessive centralisation. Therefore, the application's apprehension that undue advantage was given to those probationers who were ranked below her in the Civil Service Examination, ^{and vice versa} by training marks was incorrect.

(f) The fact that the applicant had not been given any warning or reprimand during the training did not mean that she had fared better and/or ^{if} others had fared poor.

(g) DOP&T had not conveyed any decision, making Foundation Course at LBSNAA compulsory. Besides as the RSC, Vadodara itself runs a Foundation Course, the marks obtained at LBSNAA have not been taken into consideration. This was the proper course to have been taken.

(h) Detailed instructions have been issued for making the training effective and for maintaining standard of

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objectivity in evaluation. Para 10 of the instructions of 3.7.1987 lays down guide-lines for awarding marks by the Director and also in the field training. This will show that the element of subjectivity has been fully eliminated. Besides, Principal, RSC was an officer of the rank and seniority of General Manager and, therefore, the assessment given at that level has to be accepted, more so as he would have taken into consideration all the relevant aspects.

(i) The applicant has never been at no. 1 (one) in the seniority list of IRAS probationers of 1990 examination batch and letter dated 13.1.1997, which is a appointment notification, showing her at serial No. 1, was not a seniority list at all. Respondents agree that there has been some delay in issuing the seniority list, but it had occurred due to various germane reasons, including the filing of certain OAs challenging the vires of the 1987 letter.

(j) All those candidates who are permitted by the DOP&T to abstain from training with their batchmates and are allowed to take up training with the next batch did not suffer any loss in seniority, as has been held by the Hon'ble Supreme Court. The applicant, therefore, cannot claim any relief against those who joins subsequently on this count. In the case of those individuals also their training marks are correctly added with the marks obtained from the UPSC and the same is in accordance with rules.

(k) The practice of adding marks obtained during the probation is not a new phenomenon but something which obtains in IAS and IPS from the very beginning. This has been brought into the Railway service with the impugned communication of 3.7.1987. Thus, it is only an extension of principle already adopted by the Government in similar situations

(l) As the applicant was never at serial no. 1 (one) in the seniority list in the service and her position was correctly given only at serial no. 9, there was no need to have issued any notice, including objections from the applicant in the matter of seniority. Her promotion made on the ad hoc basis in between by the concerned Zonal General Manager, did not at all give her any seniority in the service and her seniority was assigned to her for the first time only on 3.12.1997.

(m) DOP&T directions mentioned only about the desirability of amendment of the RRs but as it was found that RRs were silent on the aspect of fixation of any seniority, respondents felt that no amendment was called for. Instructions dated 3.7.1987 had squarely covered the issue and nothing further remained to be done.

(n) The applicant's plea that in terms of the Board's instructions of 15.9.1992, the instructions of 3.7.1987 were made not applicable in her case was wrong.

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(o) Board's instructions on 5.11.1996, 21.11.1996 and 15.9.1992 were not applicable to the applicant and the applicant was only attempting to mislead the Tribunal.

(p) The applicant was fully aware of the conditions of service and had with open eyes joined the service and cannot, therefore, take the issue that she has been kept in dark to her cost and prejudice.

16. The grounds raised in the OA are also stoutly opposed by the respondents in the above manner. According to them, the seniority list issued on 3.12.1997, was the only seniority list in respect of officers of 1990 batch and, therefore, there was no question of inviting any objection. The marks obtained by the candidates during the training are displayed at the notice board of the institute and it was for the applicant to obtain the same. Director's assessment was absolutely fair, just and proper and no element of subjectivity or arbitrariness had crept into it. Further out of 3300 total marks, the Director's assessment comes only to 10% and in this instant case, the assessment had been given by the Director himself. Senior and expert officers from various Railways were deployed to evaluate the papers and take the viva voce and, therefore, to state that the entire authority is centralised in one person was wrong. The respondents added that obtaining oral feed back was proper as "no written report for assessment purposes were specified as such an assessment would become subjective". It was clear from the above that

the respondents had acted correctly by issuing the circular of 3.7.1987 for adding the marks obtained during the probation training to the marks obtained in the competitive examination, for fixing the seniority and by issuing the impugned seniority list. It is reiterated that the only seniority list ever issued was on 3.12.1997 and, therefore, the applicant's allegation that her seniority has been depressed was not at all correct. OA, therefore, deserved to be dismissed, with costs according to the respondents.

17. All the above pleadings were forcefully reiterated during the oral submissions by Sh. E. X. Joseph, learned Senior Advocate for the respondents.

18. Sh. Joseph pointed out that the genesis of the issue was the suggestion by the Deptt. of Personnel and Training to all Cadre Controlling Authorities of Services to make probationary training more effective and useful. Once selected by the UPSC, the recruits tended to become easy going and on account of the security of tenure granted, their performance became lackadaisical and attitudes indolent. It was to act as an antidote to this malady, DOP&T thought of overhauling the system, by bringing in the marks obtained during probationary training also for the purposes of redetermining the seniority. Railways, respondents in this case, fell in line by the issuance of the letter No. E (Trg) 86 (13)/3 dated 3-7-87. Keeping in mind the above, a seniority list has been

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issued by the respondents on 3.12.1997, in respect of the IRAS Probationers of CSE-1990, wherein the applicant is placed at Sl. no.9. The applicant's grievance is against these communications. Applicant is aggrieved that the seniority position obtained by her through UPSC competition has been depressed and that too by wrong methods and procedure, which, according to Shri Joseph, Senior Advocate, are imaginary grievances.

19. The point for determination in the OA according to Sh. Joseph, would be :

- (a) whether the rank given by the UPSC in the competitive examinations is relevant for fixing the inter se seniority in the batch;
- (b) whether administrative instructions can act as rules or substitute for rules;
- (c) whether the applicant had been aware of the changed procedure;
- (d) whether the instructions gave unfettered or unbridled power to the RSC; and
- (e) whether adequate protection was inbuilt in the system, to guard against subjectivity.

20. On all the counts applicant's case would fail, according to learned Senior Advocate. Sh. Joseph

pointed out that the merit position obtained by a candidate in the UPSC's examination cannot be relevant for all time to come as far as seniority is concerned. Only if the relevant rules and instructions relating to service prescribe that UPSC ranking is relevant for fixing inter se seniority, it can be termed as so. UPSC merit position has only a limited role and the same is confined to original appointment to service or allocation to a service. But once that stage is crossed, inter se seniority is determined on the basis of rules and/or instructions, meant for the purpose. The applicant has, according to learned Senior Advocate, misconceived the issue and taken the offer of appointment of 31.12.1991, as her seniority list or original seniority list. This was wrong as the first seniority list issued in her case was the impugned list of 3.12.1997. As the IRAS Recruitment Rules are silent on the mode of determination inter se seniority, the instructions issued on the subject by the Railways will hold the field. Guide-lines on general principles of seniority, relatable to the rank obtained in the entrance examination are no longer relevant and the instructions issued by the respondents have to form the basis for determining the seniority. Shri Joseph pointed out that in a number of decisions the Hon'ble Apex Court has upheld the validity the procedure for determination of seniority, according to the performance in the depttl. examination, as in UP Basic Shiksha Parishad vs. Hari Deo Mani Tripathi (1993 (1) SLR 15, Maheesh Kumar Aggarwal vs. Director General of Police & Anr. (1996

(2) SCC 20), M.P.Chandoria's case (1996 (11) SCC 173) and Pushpa Aggarwal Vs. UPSC & Ors. (1999 (9) SCC 184). Further, it was pointed out that no probationer can claim a vested right in seniority according to the merit determined by the UPSC, inspite of his/her dismal performance during probation or training or thereafter. UPSC ranking was relevant only for the entry and thereafter it is to be fixed in terms of the criteria to be adopted by the Govt. in their prerogative.

21. On the admissibility of administrative instructions taking the place of statutory rules, Sh. Joseph pointed out that while the Govt. cannot amend the statutory rules by administrative instructions, if the rules are silent on any point, the Govt. can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already filed (as brought out in the cases of Sant Ram Sharma Vs. State of Rajasthan (AIR (1967) SC 1910), Union of India Vs. H.R.Patankar (1984 supp. SCC 359) and State of Gujarat Vs. Akhilesh C. Bhargava, relied upon in Ex. Capt. K.Balasubramaniam & Ors. Vs. State of Tamilnadu (1991 (2) SCC 708). It is indicated that the respondents had taken steps to issue the impugned directions of 3.7.1987 in furtherance of the advice of the DOP&T to make probationary training in Group 'A' services effective and qualitatively better. This was in public interest. And it was in pursuance of a public policy for which the Govt. was the best judge. Such a

policy formulation cannot be called in question, as long as action is legal, as shown in G.B. Mahajan Vs. Jalgaon Municipal Council (1991 (3) SCC 91), Director, Lift Irrigation Corporation Vs. Parvat Kiran Mohanty (1991 (2) SCC 295)/(1995) 16 ATC 467, K. Naganji Vs. State of A.P. (1985) 1 SCC 523/AIR 1985 SC 551 etc. Respondents have only acted correctly. As IRAS Recruitment Rules did not provide for determining the seniority. Railways issued impugned administrative instructions dated 3-7-87 and the same was validly done. The instructions were meant to supplement and not to supplant the RRs and therefore they were validly incorporated. No amendment was felt necessary by the Railways and as the instructions were only supplementing RRs, they have the same effect as the RRs.

22. Para 6.2 of Respondents' letter dated 3.7.1987 clearly provided that inter. se. seniority of a probationer/officer will now decided on the basis of the marks obtained by them during the probationary period as indicated above and marks obtained by them in the UPSC competition. This was a provision introduced as an administrative measure and its being not inconsistent with the rules, there was no reason it could not be adopted. The plea raised by the applicants against the above arrangement had no basis.

23. The next point raised by the respondents is that the applicant, was very much aware of the new scheme when she joined the service. The offer of appointment

dated 31.12.91, stated that "the conditions of service are laid down in the Recruitment Rules for Indian Railway Accounts Service and that he would be governed by those Rules. Some of the terms and conditions are, however, summed in the annexure for your guidance". Para. 5.2 of the annexure stated that the "inter se seniority of Group 'A' Probationer of a particular examination batch and of a particular service on their confirmation to junior scale, will now be decided on the basis of marks obtained by them during the probationer period and marks obtained by them in the Union Public Service Commission Competition." The applicant cannot therefore take a plea that she was unaware of the above and, therefore, she was immune from the operation of the above condition, argued Shri Joseph.

24. Respondents further stated that the instruction referred above did not give unbridled power or authority. RSC Vadodara and its Director/Principal while had the final say in the assessment of the Probationers Training Schedule, the same are bridled by instructions issued from time to time. The marks allotted were for all components of training and evaluation was always by a team of ~~service~~ experts in the service, who have been given detailed guide-lines to follow. Adhering to the same would ensure that nothing irregular takes plea and/or that subjectivity in assessment is reduced. The applicant could not therefore raise this plea.

25. Learned counsel for the respondents was specifically asked about the delay in issuing the impugned seniority list dated 03.12.97, when he stated that the Probationers Training took two years and the evaluation of the training though examination, field work etc.. took considerable time. ^{The answer w.} ² ^{W/N.} This would become ready about five to six months after the training. At time, it went up to two years. This was natural and, therefore, the alleged delay did not amount to much. On being asked to comment as para 3 of the Scheme, necessitating the commencement and culmination of training for all ^{the probationers} ~~marks~~ of a batch together, Shri Joseph said that it was not of significance. This condition was almost impracticable to execute and therefore could be omitted.

26. Marks were given on the basis of the performance of each individual probationer just as it is done in the case of any public examination. It was not a question of comparative evaluation as is done in a DPC for selection. The learned Senior Advocate relied upon the decision of the Hon'ble Supreme Court in UOI and Ors. Vs. Maji Jaghmaya 1977 (1) SCC 606 stating that administrative instruction if not carried into effect for sound reasons cannot confer a right and P.C. Sethi vs. UOI (1975) 4 SCC 67, to the effect that a rule cannot be stretched to the point when it has negative effect and is against the public interest.

27. Shri Joseph, learned senior advocate also referred to the points raised in the Tribunal's orders

dated 10.9.1999 in OA 1659/1993 and OA 2141/1997 passed by the Division Bench comprising Hon'ble Justice Agarwal and Hon'ble Shri Sahu and indicated that the findings recorded were not correct and not sustainable. On the other hand, he averred out that the findings recorded by the Division Bench consisting of Hon'ble Shri. Adige and Hon'ble Dr. Vedavalli had examined the position correctly and carefully and the same deserved to be endorsed.

28. In fine, learned Senior Advocate stated that the applicant has not made out any case at all and the actions of the respondents were totally correct, legal and had full sanction of law. The respondents' action, therefore, deserved to be fully endorsed and the OA be dismissed. The action of the respondents having been found to be proper and legal and reasonable, did not at all warrant any interference from the Tribunal. He reiterated that the applicant was misguided in believing that she was placed at serial no.1 in her batch and that she was wrongly divested of the same by the action of the respondents. The merit position, if any, obtained in the UPSC competition is only marginally relevant and just for the purpose of appointment and allocation of service, keeping in mind the preference. Thereafter the seniority is to be determined only on the basis of the orders or instructions in force which alone had taken place in this case. No cause of action had, therefore, occurred to the applicant.

29. Shri Joseph, pointed out that the arguments raised, in respect of OA 2037/1998 as above, were equally applicable to the other five OAs also, as the applicants concerned, were group 'A' officers of Railways though in other organised service like IRTS, IRSE, IRSEE. The instructions of the Railways of 3.7.1987 directing that the marks obtained during the probationers trainings would have to be added to the marks obtained in the UPSC competition applied to the above services as well and the seniority of the concerned applicants also had been fixed accordingly. The findings of the OA 2037/1998 would be automatically reflected in the other OAs also, argued Shri Joseph.

30. Replying on behalf of the applicant, Shri K.R. Sachdeva, learned counsel reiterated his arguments with specific reference to the points raised by Shri Joseph. He averred that what the respondents were attempting by the impugned illegal instructions was to circumvent the requirement of consulting the UPSC, a constitutional body charged with recommending candidates for appointment to Group 'A' posts in higher bureaucracy of the country. This was invidious and had to be stopped. Shri. Sachdeva also invited the attention of the Tribunal to the specific points raised in Shri. Sahu's order⁰, while disposing of the OAs filed by Manisha Sharma and Neelam Sanghi Aggarwal. He sought that the same be endorsed. On the other hand, according to him, the findings recorded in referral order by Hon'ble Shri. Adige, did not merit acceptance.

31. While fully endorsing Shri Sachdeva's pleas, Shri A.K. Behra, learned counsel for the applicant in other two OAs, added that in spite of the issuance of Railways' instructions on 3.7.1987, the applicant had been given the service benefit keeping in mind the seniority up to the level of senior scale and JAG. This point had been duly noted in Shri Sahu's order for Division Bench in Manisha Sharma's OA. The respondents letter dated 5.11.1998 clearly indicated indicated that this change over was only in respect of probationers of CSE 1991 onwards and not to probationers like the applicant. Even otherwise, this change of heart had come after five years after the completion of probation which meant that there is an attempt to unsettle the settled position. Further, Shri Behra pointed out that whenever instructions are issued on a specific subject, they would have to be accepted together and fully and not in part, according to the respondents personal choice. While the respondents were insisting that the marks obtained during probationers training had to form the basis along with marks obtained in the UPSC examination in determining the inter se seniority, they have conveniently departed from the requirement in that circular itself that training should be commenced and culminated together. The respondents arguments that this requirement was not to be insisted upon as it was unpracticable showed that the respondents were only concerned about the policy of pick and choose, which has no place in administrative jurisprudence.

32. Shri Behra also pointed out 350 marks in the hands of Director or the HOD out of total 1250 marks earmarked for training assessment was substantially a high percentage and there being no guide-lines or parameters indicated for the mode of assessment the same could be comfortably manipulated as was seen to have been done in the case of Manisha Sharma. That being the case to state that the marks for assessment by the Director or Principal was not substantial was false. Every step taken by the respondents in this matter was malafide and manipulative and only the timely interference by the Tribunal can render justice to the applicants, in the circumstances, urges Shri Behra..

33. I have given careful and anxious deliberation on all the points raised by the contesting parties and have also gone through the orders passed by the two Division Benches as well as the findings recorded by the Hon'ble Vice Chairman (J), in this reference.

34. The undisputed facts in this OA, as brought out on records, are that the applicant (Ms. Nirupama Kumar), who cleared Civil Service Examination, 1990, with the all India merit position of 173 and allocated to IRAS and placed at serial no.1 in the batch, had found herself being placed at serial No.9 in the impugned seniority list issued on 3.12.1997, i.e., below eight others. Except for Ms. Bhuvaneshwari, originally placed at serial no.3 and Shri Hare Krishan Sahu originally at serial No.4, six others who have

gained places above her, are those who were ranked more than 200 position below her in the UPSC's merit list. It is her allegation that her 'settled' seniority in the batch which was at serial no.1 has been revised downwards by the respondents improperly and incorrectly to her detriment. According to the respondents, the above allegation has no basis at all as the respondents had acted correctly and no injustice had been done to her.

35. To my understanding of the issue, the points, which call for determination, are as below:-

- (i) Whether the rank/merit assigned by the UPSC in the competitive examination is relevant for fixing the inter se seniority amongst officers of the same batch of the same year;
- (ii) Whether the administrative instructions can replace the provisions in the rules or substitute for rules for determining seniority;
- (iii) Whether the applicant had been put on notice about the change of procedure in evaluation for determination of the seniority;
- (iv) Whether the instructions ordering the changes gave unfettered and gave unbridled power to the training institute or vested the Principal or Director with unlimited authority to act as they chose;

(v) Whether the respondents are entitled to change the procedures according to their choice;

(vi) Whether the probationers should be kept informed of their performance during training, the assessment of which are crucial for determination of their seniority; and

(vii) Whether any time schedule at all has to be adhered to by the training institute for changing the seniority of the probationers.

36. The origin of the whole issue is traced to the meeting held by the DOP&T on 13.6.1986 with all Cadre Controlling Authorities of various Group 'A' services. The Government was agitated about the development that over the years probationers' training was losing the attention it normally should get, and once selected by the UPSC and allocated a service, the probationers buoyed up with the sense of security of tenure tended to become unconcerned and casual in the attitude towards the training. Further, quite a few of those, who are selected to one service, seek to improve their chances, on account of which, while attending the training normally, they were spending most of the period in preparation for next examination. The Government, while exempting those seeking to take the examination once again, from taking up training with their batchmates, also deemed it necessary to make the probationary training more effective and purposeful. DOP&T, therefore, indicated that it would be in the

fitness of thing to consider the feasibility of including the marks obtained during probationary training also for a purpose of determining the inter se seniority of probationers in a batch. The Cadre Controlling Authorities were, therefore, advised by the DOP&T by its letter dated 5.8.1996 to give effect to the same by amending the necessary RRs for the purpose. Indian Railways undertook the exercise by issuance of letter dated E (Trg.) 86 (13) / 3 dated 3.7.1987 for the purpose. In para 6.2 of the circular, it was indicated that "inter se seniority of Group 'A' probationers of a particular examination batch and of a particular service, on their confirmation to Junior Scale, will now be decided on the basis of marks obtained by them during the probation period, and indicated above, and marks obtained by them in the UPSC competition". The impugned seniority list dated 3.12.1997, placing the applicant at serial no. 9, has been issued, according to the respondents, in terms of the above instructions.

37. Civil Service Examinations are conducted year after year by the UPSC, the constitutional body created for the purpose for selecting candidates to man the higher echelons of the Civil Service, UPSC, on the basis of the marks obtained by the candidate. his/her relative merit position, preferences etc. allocates the individual to a particular service. Such allocation is based primarily on the relative merit position of the candidate in the examination,

the only exception being reservation granted to the categories of candidates entitled for the same. The accepted principle is that the relative seniority of all direct recruits is determined by the order of merit in which they are selected for such appointment on the recommendations of the UPSC, as ordained by the DOP&T's OM No. 22011/7/86/Estt. (D) dated 3.7.1986. This position is inviolate and can be changed only in consultation with UPSC, through DOP&T, as brought out in the Ministry of Home Affairs OM No. 9-11/55 RPS dated 22.12.1959, which is still in force. It could, therefore, be changed, if the RRs in respect of any service, which are issued following the above consultation permits or provides for the same. It is, therefore, clear that the relative position of seniority can change only on the basis of change in the rules. The administrative instructions issued cannot make any inroad into this settled position. The applicant had been advised as far back as on 31.12.1991 that her conditions of service are laid down in the RRs for the Indian Railway Accounts Service and that she shall be governed by the said rules. This was, however, changed by the impugned order and the sanctity as well as the inviolability of the rank or the merit position granted by the UPSC has been taken away. The learned counsel for the applicant had pointed out that this should not have been done while according to the learned counsel for the respondents, there was nothing wrong in it. The latter felt that the rank/merit given by the UPSC was of only limited or marginal relevance and that it was

meant only for the purpose of original appointment or allotment to a particular service. According to him, once the allotment has been made, the rank or the merit on the basis of which the said allotment has been given becomes not relevant and that maintenance of inter se seniority will be on the basis of rules (read 'instructions') issued for the purpose. In this case, learned Senior Advocate for the respondents has stated that as the administrative instructions of 3.7.1987 issued by the respondents, in para 6.2., enumerated the mode for redetermination of seniority, the UPSC's original ranking has ceased to be of any relevance. In fact he has gone even to record that the applicant did not at all have any seniority position till the impugned order was issued placing her at serial no. 9. This, according to him, was the first and the only seniority list. He had further stated that as the IRAS Recruitment Rules did not specifically provide for determination of inter se seniority, what has been issued by Railway Board's circular of 3.7.1987 has become the authority. This is not correct. In the absence of any specific directions on the determination of the seniority in the RRs, the general guide-lines issued by the nodal Ministry and contained in DOP&T's OM dated 3.7.1986 holds the field, meaning thereby that UPSC's ranking/merit position/rank above would be relevant. This cannot be overlooked. Neither the point raised by the respondents' counsel nor the opinion expressed by the Division Benches which issued the referral orders would appear to be acceptable in this context.

It is mentioned by the counsel for the respondents that the applicant had not established her seniority position. It has even been pointed out that she was never at position no. 1, which finding, on the facts of the case, is totally unacceptable. The candidate occupying no. 173 in the UPSC ranking list is shown at serial No. 1 in the appointment letter followed by those having rank below in the descending order. This is not disputed. It is, therefore, clear that the applicant's position no. 1 in her batch was fully accepted at the time of her joining. To say that, this seniority position is immaterial and ceases to have any relevance, once the original posting is made is not acceptable. Unless and until, it is proved that the applicant's seniority position has been altered by a legally executed process, the same cannot be changed and she would have to be retained at her number given by the UPSC. Senior Advocate for the respondents was at considerable pains to hold that the applicant had not established that she was at number one(1) position in the batch and her averment to the contrary was a misconception. This plea is totally wrong and not based on facts. The respondents have not been able to rebut her position of merit/rank (173) fixed by the UPSC competitive examination. They have also not been able to show as to whether there was anyone in her batch in IRAS in that year, who was placed above her in the UPSC ranking. That being the case, her position as number one(1) in the batch remained unquestioned and the same could not have been

disturbed or revised downwards by any illegal measure as the respondents have attempted to do.

38. Further it is noticed that the Scheme introduced by the Railways, vide their letter dated 3.7.1987; has no binding force as it has not become part of the RRs. Introduction of the Scheme flows from the direction/instructions of the DOP&T following the meeting of all cadre controlling authorities held on 13.6.86 and DI letter dated 5.8.86, addressed to the chairman, Rly Bd. The letter specifically advises them to consider the desirability of amending RRs so as to give weightage to the marks obtained during the institutional training along with marks obtained in the Competitive Examination in the matter of determining the final seniority of direct recruits. The respondent have not at all acted, as desired by the DOP&T in this regard. In fact it is on record that the DOP&T had desired the Railways, vide their letters No. 13018/1/93-AIS(I) on 24.9.93 and 1.10.93 to intimate them the action taken in this regard. and forward a copy of the amended rules. Obviously DOP&T the nodal Minister had desired that amendment to the RRs was a must. The response from the Railways is available in their letter No. AAD/CO2 dated 11.6.98, addressed to the applicant wherein it is stated that "since the Recruitment Rules for IRAS do not provide the procedure for fixation of inter se seniority it has not been considered necessary amend them." This is rather a strange reasoning to be adopted by the respondents, who have time and again in their counter

affidavits in other matters, asserted that their actions are in furtherance of the directions of the nodal ministries - DOP&T or Department of Expenditure. It is, therefore, clear that the so called administrative instructions dated 3.7.1987 cannot act as a substitute for the RRs and they cannot, therefore, replace the general principle for determination of seniority fixed by UPSC.

39. According to the respondents, they were correct and proper in having brought out the change in the scheme, as they were authorised to do so in terms of note (k) in the recruitment rules introduced on 22.5.1972. The said provisions read as below:-

"In all matters not specifically provided herein, the officers including probationers shall be governed by the provisions of the Railway Code as amended from time to time and any other orders in force issued by the Ministry of Railways from time to time".

Respondents point out that as IRAS RRs do not have any specific provision for determination of inter seniority, the impugned instructions, have been issued. What they state is that they were only supplementing the already existing the instructions or filling the gaps. This explanation cannot be purchased. The question of filling the gaps or providing supplementary material would arise, only if such a gap exists to be filled. No such gap does exist. True it is that the IRAS RRs do not specifically provide for determination of seniority.

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The reason for the same obviously is that the instruction of the nodal ministry - DOP&T and MHA - on the same settled as far back as in 1959 and reiterated on 3.7.1986 hold the field. The same reads as below:

"The relative seniority of all direct recruits is determined by the order of merit in which they are selected for such appointment on the recommendations of the UPSC or other selecting authority, personnel appointed as a result of a subsequent selection".

It is thus clear that the criterion for determination of inter se seniority has already been fixed by the nodal ministry, which was binding on all the Ministries/Deptts. including Railways. Respondents could not have made any deviation therefrom unless the general principles were got amended by making provisions in the recruitment rules (RRs), in consultation with DOP&T and UPSC. As noted above no such consultation has taken place and the respondents have on their own chosen to amend the general instruction of the nodal ministry by administrative instructions. This is what is shown upon by the Hon'ble Supreme Court, by directing in a number of decisions, including that of P D Agarwal & Anr Vs State of UP & Ors, Ex. Capt. K. Balasubramanian, State of Haryana Vs Shamsher Jung Bahadur (supra). The instructions of 3.7.87, issued by the Railway Board cannot therefore seek to supplement or replace the instructions of the nodal Ministry or the IRAs RRs. Being inconsistent with them they are also invalid. The said instructions would therefore have to fail. All actions taken in pursuance thereof have to follow suit"

40. On the aspect as to whether the applicant had in fact been put on notice about the change in the criterion for determination of inter se seniority, respondents seek to place reliance upon para 5.2 to the annexure to the offer

of appointment No. 91/E(GR)I/10/1 dated 31.12.1991, which reads as follows:-

"5.2 The inter-se seniority of Group A Probationers of a particular examination batch and of a particular service, on their confirmation to Junior Scale, will now be decided on the basis of marks obtained by them during the probationary period and marks obtained by them in the Union Public Service Commission Competition. (or during apprenticeship training for SCRAs).

There is no reference whatsoever that this condition was relatable to the instructions issued by the Railway Board on 3.7.1987. It is seen that the applicant has been specifically told in para 2 of the letter that "the conditions of service are laid down in Recruitment Rules for the Indian Railway Accounts Service and you will be governed by these rules. Some of the terms and conditions are, however, summarised in the annexure for your guidance." It is obvious, therefore, that any condition which was not part of the Recruitment Rules could not have found a place in the instructions and their incorporation was bad. As for the determination of inter-se-seniority, general guide-lines of DOP&T of 3.7.1986 existed, if any, deviation was made therefrom, the applicant should have been put on notice. Respondents have failed to do so.

41. There has been no communication on the record that at any time during the training the applicant was informed about her performance as a probationer or her deficiency in the training schedule. She ^{has} ₂ found to have clear all the departmental examination in the first attempt itself and at the end of the probation, she has been communicated that she has cleared all the papers. This clearance certificate has been issued in 1993, when all the marks obtained by the probationers

would have been available with the respondents themselves. No action had been taken ^{to minimize} by them, and, therefore, they cannot take plea that the applicant was aware of the Scheme and it was, therefore, for her to find for herself and the respondents have no duty.

42. When it is brought out that the instructions issued by the Railway Board on 3.7.1987 were themselves not valid, not having been made into a part of the RRs or not having been cleared by the UPSC, the various elements in the Scheme themselves would be shown as improper. Still, in the interest of justice, the aspect of the powers vested in the training institute is being examined. It is seen that out of total marks of 3300, forming the basis for the determination of inter-se-seniority, the marks earmarked for the training schedule is shown at 1250 with UPSC marks at 2050 roughly, the marks given to the training institute works out to 1/3. that too without considering the marks obtained in the Foundation Course from LBSNAA which is also considered essential requirement of the training schedule. While it is true that evaluation of RSC training has been divided into seven components of the aspects of training, all those elements are not equally taken into consideration and Director or HOD is being given excessive power for purpose of assessment. It is seen that 350 marks are earmarked for the assessment of the Director/Probationers Training Controlling Officer. More than 25% training element is controlled by the Director while para 10.3 of the Scheme refers to HOD

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assessment. it is stated that in the case of probationers marks against this column would be awarded by the Director based on the performance of the probationers for which the instructions will follow. No such instructions are brought on record. The learned Senior Advocate for the respondents has stated that absence of such instructions would not vitiate the proceeding in any way as the Director is an officer of a rank of General Manager and he has in day-to-day touch with the probationers. In other words, according to the respondents, Director cannot do any wrong! Nothing has been brought on record to show that the Director or the Training Controller in respect of the probationers had maintained indication of performance to periodically monitor the performance of the probationers. This would clearly show that unfettered or unbridled power are vested in Director which could have been used by him in favour or against the probationers, as the case may be, if he so chose. Still, plea by the learned counsel for the respondents and the opinion expressed both in the referral order and the findings in the Hon'ble Vice Chairman (J)'s orders are that the Scheme does not place too much of power in the hands of the Training Institute. My finding is otherwise.

43. I observe that para 3 of the Railway Board's letter dated 3.7.1987 on the probationers training envisages that all the probationers of a batch and year will commence and complete their training together. so as to ensure simultaneous and uniform

treatment in assessment. This essential feature is a non-starter in the present system as all the probationers have not joined the training together. In fact three of the Probationers who have gained seniority over the applicant, joined the training only in 1992, i.e. one year after others in the batch took training. Therefore, it was highly doubtful that the performance of all those in the Batch, could have been assessed together and uniformly. Those who have been exempted from training along with their batchmates, so as to enable them to improve their chances, have been given the benefit of assessment on the basis of a different training. Learned Senior Advocate for the respondents did not rule out the above. In fact he pointed out that the requirement of having training for all in the same batch was an administrative impracticability and, therefore, insistence thereupon was not called for. He even sought to project his proposition saying that the above requirement regarding the training together should be given up, relying upon the decision in the case of Maia Jaghmaya (supra). According to him, the assessment of an individual probationer was with reference to his merit and it was not a comparative assessment at all. I do not agree. What the learned Senior Advocate meant was that even when they insist that their ^{criteria} scheme should be adopted for fixing the seniority, on the basis of marks obtained during training, one need not insist that all the persons should be trained and assessed together. To elucidate his plea he stated that persons who pass out the same

public examination in the same subject from different Universities are not assessed together. This plea has no basis at all. It is very likely that different standards of evaluation and markings would be present in different Universities, but in a single test, to which those from different backgrounds are called all have to be treated alike. And this is the requirement of equality. The assessment has to be comparative among all the probationers, as the result of the assessment has a bearing on their career. The point at issue here is is that assessments made by different individuals, at different periods are thrown together to arrive at merit and seniority which is bad. According to the respondents, even in respect of the same scheme, they would adopt only what is convenient to them and the applicant, have only to fall in time. It, to my mind, is rather a tall order. Respondents, if they so choose, can help those who opt for training later, as they have the advantage of the knowledge of marks granted to others earlier. It is thus a clear case of "Heads I win, tails you lose". Can this be fair administration?

44. Another point that had come up during the hearing is about the communication of marks obtained during the Probationary training. The applicant has affirmed throughout, that the marks obtained by her during the probationary training have never been communicated to her till date. In reply the learned Senior Advocate has indicated that, it must have been communicated and that therefore the averment by the applicant cannot be

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correct. The same however is not borne out on record.

Letter No. E(Trg)189 (221/7 dated 26.7.90. deals with revaluation of answersheets and preservation of records, whereunder it is indicated that "records of marks awarded to the Probationers during various facts of training should be preserved permanently after their publication on notice board and communication to the Probationers" The only report on communication of results is the letter No. IRAS/CT/Relief-90 dated 10.9.93. issued by the Railway Staff College, Baroda-4 which reads as under:

"No. IRAS/CT/Relief-90

Dated: 10.09.93

The FA & CAOs,

Western Railway, Churchgate, Bombay-20
Eastern Railway, Fairlie Place, Calcutta
Northern Railway, Baroda House, New Delhi
Southern Railway, Park Town, Madras-3
Central Railway, Bombay V.T.
South Eastern Railway, Garden Reach,
Calcutta
North Eastern Railway, Gorakhpur
North East Frontier Railway, Guwahati
Chittaranjan Locomotive Works, Chittaranjan

Sub: Completion of Centralised Training of
IRAS Probationers of 1989/90 exam
batch

Ref: 1. Rly. Bd.'s letter No. 91/E(GR)I/I/
10/1 dt. 31.12.91

2. Rly. Bd.'s letter No. 91/E(GR)I/I/
10/1 dt. 20.7.92

The Railway Board vide their letter referred to above has directed Mrs. Nirupama Kumar, IRAS probationer of 1990 batch to the Railway Staff College for training. She has joined the Staff College for training on 23.12.91 and is now due to be relieved having completed the stipulated period of Probationary training on the Railways. The Railways allotted to her is Northern Railway.* The details of the examination in which she has appeared and the results of the same are given below for ready reference:

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Founda- Induction Ph. I Ph. II Dept. Dept. Dept.
tion Course Course Exam. I Exam. II Exam. III

Cleared Cleared Cleared Cleared Cleared Cleared Cleared

The LPCs of the Probationer is duly audited and has been handed over to her. The salary for the month of August 1993 has been drawn by the Staff College and the same may be drawn from September 1993 at your end. The Probationer is being relieved from the Staff College in the afternoon of 10.09.93 with instructions to report to you for further instructions on 13.09.93.

sd/- 10.9.93
(Mrs. P. Babber)
Prof. Trg. A/cs
for Principal

* Note transferred to South Central Railway vide Railway Board's letter No. 93/E(GR)T/10/5 dt. 26.8.93"

45. It only states that the applicant had cleared all papers. This communication would have been issued only after the respondents had with them all the marks obtained by the applicant. However, in the affidavit filed by the respondents on 23.5.2001, it is indicated as such "It is confirmed that all probationers, including IRAS Probationers are apprised of the marks obtained by them in various examinations conducted at Rly Staff college. The Provisions of Board's letter No. E(Trg) S.i.g(22)/7 dated 26.7.1990 are thus being fulfilled.

"Whether or not displaying / communicating of marks to the IRAS Probationers of 1990/91 batches though displaying on the Notice Board was actually effected, cannot be said at this stage but as per practice and convention, these Probationers would have been kept apprised of the Results".

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Obviously, the marks, inspite of being available had not been communicated. as at that time it was only sufficient to indicate that the candidate had cleared the paper, and the marks were not relevant for determining or disturbing inter se seniority (My personal knowledge of Group A Services (except in IAS) also is that marks obtained during the probationary period are not communicated but that the probationers are informed that they have cleared the papers). Once the marks obtained during the training are made the basis of refixation of seniority, propriety and fairness demand that they are communicated. Denial of the same would be unjust. Here the respondents have used the non-communication of the marks to the cost and prejudice of the applicant. It is significant that the relative marks obtained by the candidates in the instant OA had not been made available for Tribunal's perusal in spite of the undertaking given by the learned Senior Advocate for the respondents in his written submissions dated 21.5.2003 and my directions for the same, given in the Court. Possibly after the ^{faux pas made} ~~unhappy experience~~ in Manisha Sharma's OA No. 1659/1993, wherein marks were produced before the Tribunal, respondents chose not to risk further. The only inference one can draw is that the respondents had exhibited an avoidable secrecy which aids only subjectivity.

46. It is seen that the applicant from 1990 batch had joined service in 1991 and had completed her period of probation in 1993. She had been given the posting

with clearance of all papers which means that the department was very much aware of the marks obtained by her at the relevant time, as pointed out above. And this is clearly six years after the so called instructions of 1987 had come into being. Still the department had not chosen to take any action and the applicant was promoted and confirmed and only four years later the respondents thought of passing order revising the seniority list. There is no justification for such a delay. Learned Senior Advocate for the respondents was at considerable pains explaining that the probationers have a two years' training and evaluation thereof takes normally six months to one year and some times even two to three years. Pendency of some IAs challenging the circular was also the reason for delay. The same cannot at all be accepted. The fact that for more than four years, the respondents have kept silence on the issue makes it clear that they have acted in a motivated and capricious manner.

47. In view of my observations foregoing, I am fully convinced that the merit position/rank obtained in UPSC examination cannot be overlooked or cast aside, as done by the respondents, except by a legal process of amendment of RRs; the instructions of 3.7.1987 cannot override RRs; the applicant had not properly been put on the alert on the changed criterion; the tardy implementation of faulty instructions have made them worse by non-adherence to combined training schedule, by non-communication of the results/ marks

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and by inexplicable and probably motivated/delay.
Proceedings throughout have been vitiated and
decisions emanating thereupon would have to be
declared invalid.

48. Learned counsel from both sides have relied upon a number of decisions of the Hon'ble Apex Court in support of the propositions, they had canvassed. They have also been ^{duly} considered by me while recording my findings as above.

49. In the above context, it would also be necessary and relevant for me to refer to the contradictory decisions of the two Division Benches of the Tribunal, which in fact have led to this Full Bench reference. OAS No. 1659/1993 (Ms. Manisha Sharma & Ors.) and 2141/99 (Ms. Neelam Sanghi Aggarwal) were allowed by the Tribunal on 10.9.99 and the applicants whose seniority was depressed by the respondents were directed to be restored to their original position as fixed by the UPSC ranking. The Tribunal did not pass any order on the vires of the instructions of 1987 as they found that "implementation so arbitrary and whimsical that it does not conform to openness, fairplay and transparency which are hallmarks of rule of law". The premises on which the Tribunal arrived at the above findings are as below;

i.1 basic condition of implementation of the scheme had not been adhered to in that all the probationers of the batch did not commence and complete their training, whereby uniform assessment was lost;

iii Principal, Railway Staff College has been given unfettered discretion, which he had apparently used improperly, playing havoc with the careers of the probationers;

iii marking of the probationers ^{purview} preference was faulty and the marks were not at all communicated during any phase of the training, leading to suspicion of manipulation. Besides, the practice of oral feedback was strange;

iv) assessment by the Head of the Department was arbitrary and did not conform to instructions and HoD had arrogated to herself all the powers;

v) while earlier promotions from JTS to STS was ordered, UPSC marking was adhered to, inspite of the marks of the probationary training being available and therefore the change of heart after six years was highly suspect and violative of the provisions of article 14 of the Constitution; and

vi) the whole exercise was couched in unwholesome secrecy and needless subjectivity and lack of fairness.

49. In view of what has been observed by me, in paras supra, I fully agree with and abide by the ^{above} findings of the learned coordinate bench. The Bench had, in a cogent and totally unassailable manner, enumerated the various pitfalls in the procedure adopted by the

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respondents. I totally share the concern and righteous indignation expressed by the Bench. The only aspect that Bench did not consider was the vires of the scheme. as even without it, on facts and record, which showed acute tardiness in implementation. they could dispose of the same and grant relief to the applicant.

51. I have already expressed myself on the validity of the scheme in paras 38 & 39 supra and have held that the instructions of 3.7.1987 were not legal and deserved to be declared invalid.

52. On the other hand another Bench of the Tribunal took the contrary view, on 18.10.01, while disposing of OAs 2037/98 (Ms. Nirupama Kumar) and 239/2000 (Sanjiv Narain Mathur) (the OA now under consideration by the Full Bench). The reasoning which formed the basis for the above are noted below;

a) the position assigned by the Union Public Service Commission only reflected the merit position and not seniority position;

b) the Railway Ministry instructions of 3.7.87 cannot be considered inconsistent with the IRAS recruitment rules, in view of the absence of any specific reference in the rules as to determination of inter se seniority of the members in any particular batch;

c) the allegation that the letter dated 3.7.87 was an incomplete document as it did not specify guide-lines for assessment by the Director did not amount to much

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and merely because no instructions did follow in respect of the marks to be awarded under HoD's assessment after issue of letter dated 3.7.1987 in respect of IRAS Probationers of CSE 1990, it cannot be held that marks awarded under this head in respect of applicant and her batchmates of CSE 1990 was illegal and arbitrary unless it is specifically established as such, more so as the HoD/Principal was a very senior person of the rank of the General Manager, Railways.

d) the applicant had not proved what exactly was her seniority position before it was allegedly 'changed'.

Even if vide DOP&T's instructions of 3.7.86 on general principles, the order of merit obtained in UPSC examination in which appointments are ordered was to be the basis of seniority, DOP&T themselves have considered the desirability of changing the criterion by amending the RRs. Merely because RB were not charged, respondents cannot be faulted or the instructions issued cannot be interfered with,

e) what is good and legal for IAS cannot be described as otherwise for other services like IRAS;

f) the applicant had been duly informed about the changed criterion in the annexure to cadre authority's letter of appointment dated 31.12.91;

g) the omission to include the marks obtained for the foundation course was neither illegal nor arbitrary;

h) there is a strong presumption of correctness and bonafide of govt. action which operates through a larger impersonal organisation whose action should not be lightly interfered with unless it is violative of Articles 14 and 16; and

i) applicant cannot complain that she has not been informed about her performance periodically, so that she could improve herself, if it was so required, as this was the position relating to all the batchmates and no prejudice had been caused to her.

53. With utmost respect I have to record that the above findings are based on the presumption that Govt. will do no wrong and therefore the action of the respondents should be interfered only with due care and caution. This presumption, if accepted blindly would mean that there would not be any grievance, for any government servant at all. It would be an ideal situation, which in fact it is not. Incorporation of conditions affecting the seniority and career of the applicants by way of executive instructions, failure to communicate marks, failure to keep the probationers posted about their performance, disturbance to the seniority, unbridled powers vested in the HOD are all brushed aside as being not relevant or made out as being accepted, for the applicant was fully aware of the conditions. It is also stated no prejudice has been caused by non-communication of performance as all are equally placed. This does not stand to reason as only those who have been hurt by the decisions adverse.

to them, having been taken at their back would complain and not those who have gained. There is an attempt to gloss over all the mistakes of the respondents, which I find difficult to share.

54. As would be observed, all the points raised and decided in favour of the respondents in the referral order, have been discussed in detail, ^{and rejected} by me in paras 37 & 49 supra.

55. Findings recorded and conclusions arrived at by Hon'ble Vice Chairman (J), while considering the reference to the Full Bench, have closely followed the findings and conclusions of the Division Bench that passed the referral order dated 18.10.2001. Obviously, my findings are at variance with the same.

56. In conclusion, I am fully convinced that the respondents action was illegal and characterised by arbitrariness, unwholesome secrecy and total lack of transparency directed against hapless employees. My sense of justice and fairplay militates against the entire exercise shrouded in secrecy and not based in law. It cannot be countenanced by any judicial mind. Therefore, I hold that the decision of the Division Bench dated 10.9.1999 in OAS 1659/1993 and 2141/1997 deserves to be endorsed and the findings of the Division Bench dated 18.10.2001 while disposing of OA-2037/98 and OA-239/2000 cannot be accepted. I order accordingly.

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58. In view of my findings foregoing, my answer to reference is that the OAs under reference (and the other OAs placed along with them) call for judicial interference in the interest of justice.

58. Following the above, I hold that Railway Board's letter No.E (Trg. 186(13)/3 of 3.7.1987 contents of which are in consistent with the Recruitment Rules are held as ultra vires RRs. The same^{is} quashed and set aside, along with all actions initiated thereunder. Resultantly, I allow the OA Nos. 2037/1998, 239/2000. 1194/1998, 2055/2000, 1057/2002 and 965/2002. The orders challenged in all the OAs revising the seniority position of the applicants on the basis of the Railway Board's instructions of 3.7.1987 are quashed and set aside. The respondents are directed to restore to the applicants their original positions in the seniority list, fixed in terms of UPSC examination ranking on merit with all consequential benefits. This exercise shall be completed within four months from the date of receipt of a copy of this order. No costs.

59. Before parting with the OAs, I would like to place on record my deep appreciation for the excellent assistance provided by learned counsel appearing for both sides. On this aspect, I fully endorse Hon'ble Vice Chairman's views. Both Shri K.R. Sachdeva and Shri. A.K. Behra, explained lucidly the facts in the OAs viz-a-viz the law on the point. Besides, Shri Sachdeva also provided a handy compilation of all the

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materials to facilitate the Tribunal's work. Shri E.X. Joseph, learned Senior Advocate, assisted by Shri Madhav Panikar and Rajinder Khatter, sincerely endeavoured to project the case of the respondents before the Bench. That they failed in their attempt, is no reflection on their superb advocacy but only on the weakness of the case, they were called upon to champion. I am thankful to all of them.

(GOVINDAN S. TAMPI)
MEMBER (A)

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Mr. Shanker Raju, Member (J):

On careful perusal of the reasons recorded and conclusions arrived at pertaining to the reference by the Hon'ble Vice-Chairman (J), with utmost respect I disagree. However, I agree with the conclusions arrived at by the separate order recorded by the Hon'ble Member (A). I also endorse the view expressed by the Bench in OA-1659/93.

2. Hon'ble Member (A) in his order has meticulously dealt with all the aspects of the matter, including the vires of the instructions issued by the Railway Board on 3.7.1987. These instructions are neither valid nor had been made part of the recruitment rules and were also not cleared by the UPSC.

3. In so far plea of limitation is concerned, one of the grounds raised by respondents to oppose these OAs is concerned, though offer of appointment dated 31.12.81 mentions about the inter-se-seniority to be assigned to Group 'A' probationer of a particular examination batch and of a particular service on their confirmation to junior scale to be on the basis of marks obtained during the probationary period as well as the merit in UPSC. However, expressly no reference has been made to the instructions of Railway Board dated 3.7.87. A Note appended in paragraph-2 of the letter refers to conditions of service laid down in the recruitment rules for the IRAS the condition of seniority not forming part of the recruitment rules and guidelines of DOPT dated 3.7.86 in vogue for determination of inter-se-seniority, failing to put applicant on notice is a serious lacuna. Moreover,

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I am also of the view that applicants had no seniority position till they have been placed in the list, which according to them was the seniority list. In absence of any specific direction on determination of seniority and as by the impugned order the seniority which was on the basis of merit and in terms of OM dated 3.7.86 having been disturbed to the detriment of applicants has given them a right to agitate and a cause of action to maintain the present OAs within the stipulated period under the Rules, particularly when vires of 1987 instructions which was the basis of alteration in their seniority to their detriment is a cause of action within the limitation. Even otherwise not having been in service before 1930, they could not have challenged it earlier. Accordingly, the objection of the respondents is over-ruled. The OAs are within limitation

4. In so far as DOPT letters dated 24.9.93 and 1.10.93 to give weightage to the marks during the institutional training along with marks obtained in competitive examination in the matter of determination of final seniority of direct recruits is concerned, the stand taken by the respondents was that since the recruitment rules for IRAS do not provide procedure for fixation of inter-se-seniority it has not been considered necessary to amend them. This is a totally irrational approach. Although any administrative instruction which supplement the rules and is not contrary to it has the force of law, in the instant aforesaid case as reflected from the reasonings given by Hon'ble Member (A) the criterion followed is neither transparent nor fair and just. The instructions of 3.7.87 cannot over-ride the recruitment rules and not being approved by the UPSC the instructions of DOPT issued in 1959 as well as 1986 which laid down

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criteria for determination of seniority to a direct recruit taking into reckoning his merit position should have been followed.

5. In my considered view, nothing precluded the respondents from making suitable amendments pertaining to determination of seniority, in accordance with law to incorporate as an essential the institutional training as an integral part which has an object sought to be achieved cannot be lost sight of.

6. In the result in agreement with the conclusions arrived at by the Hon'ble Member (A) letter dated 3.7.87 is declared as ultra vires and is accordingly quashed and set aside. All the OAs are allowed. Respondents are directed to restore to applicants their original positions in the seniority list fixed in terms of UPSC examination ranking on merit with all consequential benefits within the time limit prescribed by Hon'ble Member (A).

S. Raju
(Shanker Raju)
Member (J)