

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O.A./T.A. NO. 1067 of /19 1995 Decided on : 10.1.1996

Shri Govind Ballabh

... Applicant(s)

( By Shri In Person )

Advocate )

versus

UOI & Ors.

... Respondent(s)

M. Chandrasekharan, ASG  
( By Shri with Shri Madhav Panikar  
& Ramesh Tikku Advocate )

CORAM

THE HON'BLE SHRI S.R. ADIGE, MEMBER (A)

THE HON'BLE ~~MRS.~~ Mrs. LAKSHMI SWAMINATHAN, MEMBER (A)

1. To be referred to the Reporter or not ? Yes
2. Whether to be circulated to other Benches of the Tribunal ? Yes

*Adige*  
(S.R. ADIGE)

Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

O.A. No. 1067/1995

New Delhi this the 10<sup>th</sup> Day of July 1996.

Hon'ble Shri S.R. Adige, Member (A)

Hon'ble Member Smt. Lakshmi Swaminathan, Member (J)

Shri Govind Ballabh,  
Deputy Registrar,  
Central Administrative Tribunal,  
Principal Bench, Faridkot House,  
New Delhi-110 001. .. Applicant

(In Person)

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1. Union of India  
through the Secretary,  
Department of Personnel and Training,  
Govt. of India, North Block,  
New Delhi-110 001.
2. Central Administrative Tribunal,  
through Registrar, Principal Bench,  
Faridkot House,  
New Delhi-110 001.
3. Delhi High Court through  
Registrar,  
Shershah Suri Road,  
New Delhi-110 003.
4. Shri Ramnath Panda )
5. Shri M. Ramachandran )
6. Shri K. Rajaram )
7. Smt. V.P. Kamalamma ) S.No.4 to 10  
all adhoc
8. Shri N.N. Pradeep ) Deputy  
Registrars,
9. Shri V.K.Bawa ) CAT
10. Shri A.K. Ajmani ) Respondents

(By Advocate : Shri M. Chandersekhran,  
ASG with Shri Madhav Panikar for  
Respondent No. 1 and Shri Ramesh  
Tikku, Counsel for Respondent No.2)

## O R D E R

By Hon'ble Shri S.R. Adige, Member (A)

In this application Shri Govind Ballabh, Deputy Registrar, Central Administrative Tribunal, Principal Bench, New Delhi, has sought for the following reliefs:

- i) to quash erroneous guidelines (Ann.A-6 collectively) issued by Respondent No. 2 being contrary to statutory rules and D.O.P.T's instructions/O.Ms;
- ii) to quash letter No. PB/7/1/94-Estt.I, dated 24.1.95 (Ann. A-12) issued by Respondents No. 2;
- iii) to direct respondents to take 26.11.85 as the date of regular appointment of the applicant in Delhi High Court as determined by the Chief Justice, Delhi High Court for all purposes;
- iv) to quash all the DPC proceedings held in June, 1994 for appointment/Selection to the posts of Deputy Registrar in the CAT;
- v) to direct the respondents to assign the applicant appropriate placement in the final seniority list of SO/CO/PS above respondents No. 4 to 10 circulated vide letter No. 1/55/90-Estt. dated 17.5.1994 in accordance with Rule 5(2) of CAT (Gr. 'B' 'C' Misc., posts) Recruitment Rules 1989 read with DOPT Consolidated OM dated 3.7.86;
- vi) to direct respondents to hold fresh/review DPCs for appointment to the posts of Deputy Registrar in the Tribunal according to CAT (Gr.'A' posts) Recruitment Rules 1988 on the basis of appropriate placement of the applicant in the final seniority list of SO/CO/PS(s) as on 1.11.89 as prayed at (v) above;
- vii) to direct the respondents No. 1 & 2 to fill up the 50% posts of Dy. Registrar by promotion first as envisaged in the CAT. (Gr. 'A') Rules, and further absorption of deputationists be taken up only thereafter in consonance with Recruitment Rules;
- viii) Any other or further orders/directions to redress the grievances of the applicant as may be deemed proper in the circumstances of the case with costs.

The applicant's case is that he joined the services of the Delhi High Court on 13.8.69 and was appointed as Senior Translator on 2.6.1975. He was appointed as Court Master/Superintendent w.e.f. 26.11.1985 on regular basis as per Delhi High Court rules and continued uninterruptedly. On 8.1.1986 he came on deputation to Central Administrative Tribunal, Principal Bench as Court Officer and the terms of his deputation were extended from time to time in the public interest. By letter dated 9.6.1989 (Annexure A-1), Respondent No. 2, Central Administrative Tribunal through its Registrar called for option for absorption to the post of PS/Sr.P.A. and SO/CO in the CAT, in response to which he consented for absorption, and he alongwith the respondents Nos. 4 to 10 were accordingly absorbed in CAT in public interest. The applicant and respondent No. 10 were absorbed w.e.f. 1.11.1989 vide order dated 14.12.1989 (Annexure A-2) on the basis of the first DPC's recommendation, while respondent Nos. 4 to 9 who exercised their options for absorption after the first DPC met in November, 1989, were absorbed on the subsequent DPC's recommendation held in February 1990. The applicant contends that he and respondent Nos. 4 to 10 all of whom are working as Deputy Registrars on ad hoc basis were considered by the DPC held in June, 1994, for selection to the post of Deputy Registrar and all of them were recommended for selection, but orders regarding regular appointments are yet to issue. He further contends that respondent No. 2 instead of finalising the tentative seniority list circulated on 16.11.1990 showing him at serial number 6, which was drawn up according to rules, issued its own guidelines one after another in 1991, 1992 and 1993, (Annexure 6 colly.)

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allowing the deputationists/absorbers the benefits of service rendered by them in their parent department towards seniority, contrary to the DOPT's own rules and instructions on the subject, prejudicially affecting his rights and conferring certain undue benefits to a particular class. He states that a second tentative seniority list of SOs/COs/PS as on 1.11.1989 was circulated on 25.3.1992 and a third tentative list of CO/PS as on 1.1.1989 was circulated on 14.6.1993. He states further that the final seniority list of SO/CO/PS as on 1.11.1989 was circulated vide letter dated 17.5.1994 (Annexure A-9) in which his name was wrongly shown at serial number 15, and his objections were either rejected summarily or ignored. He states that his correct seniority ought to be as shown in the first tentative list dated 16.11.1990, wherein his position is at serial number 6, whereas by the impugned seniority list dated 17.5.1994 (Annexure A-9) his position has been shown at serial number 15. He states that respondent No. 2 not only contravened the rules governing seniority, but also took 1.8.1986 as the date of his regular appointment in his parent office in the seniority list, instead of 26.11.1985 as determined by the Chief Justice, Delhi High Court. The applicant states that he filed a representation dated 15.8.1994 (Annexure A-11) which was rejected vide communication dated 24.1.1995 (Annexure A-12) compelling him to file this O.A.

3. Respondent Nos. 1 (UOI) & 2 (CAT) have filed their replies, and the stand taken by them is at variance with each other. Respondent No. 3 (Delhi High Court) has also filed a short reply on the limited questions as to

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the date from which the applicant's regular service in the Delhi High Court has to be considered for the purpose of seniority and other service matters. Some of the private respondents 4-10 have also filed their replies, and the applicant his rejoinder to the same.

4. We have heard the applicant Shri Govind Ballabh in person. We have heard Shri M. Chandrasekhar, Additional Solicitor General for Respondent No. 1 and Shri R. Tikku for Respondent No. 2. We have pursued the materials on record and given the matter our careful consideration.

5. The AT Act 1985 was published by Gazette Notification dated 27.2.1985. The CAT (Staff) (Conditions of service) Rules 1985 (Annexure A-3) came into effect, on 31.10.85 <sup>4<sup>th</sup> day of November 1985</sup> <sup>lays down that</sup> Rule of which the conditions of service of the officers and other employees of the Tribunal in matter of pay, allowance, leave, provident fund, age of superannuation, pension and retirement benefits, medical facilities and other conditions of service were to be regulated in accordance with such rules and regulations as were for the time being applicable to the officers and employees belonging to Group 'A', 'B', 'C' and Group 'D' as the case may be of the corresponding scales of pay stationed at those places. By respondents No. 2's letter dated 9.6.1989 addressed to all Benches of CAT (Annexure A-1) calling for options for absorption to the post of PS/Sr.PA and SO/CO in CAT, a copy of draft recruitment rules relating to SOs/COs was enclosed and it was stated that these recruitment rules were likely to be notified during the month. In terms of Rule 5 of those rules, the existing employees working against posts of SOs/COs who

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fulfilled the qualifications, experience laid down in the aforesaid rules for the respective posts and who were considered suitable by the DPC would be eligible for absorption/regularisation in the respective grade subject to their exercising options for absorption, and their parent department having no objection. It further provided that in terms of the aforesaid rules, those existing employees who fulfilled the conditions laid down for the post which they were holding in the said category, could either exercise their options for absorption in the Tribunal, or to continue on deputation basis with the Tribunal. On receipt of the aforesaid information, DPC meeting would be convened as per composition laid down in the Recruitment Rules. It was specifically brought to the notice of all concerned that the seniority of all PSs/C0s/S0s irrespective of their benches would be fixed according to the DOP&T OM dated 29.5.1986, which had been incorporated in the consolidated instructions issued by the DPO&T vide their OIM dated 3.7.1986, the relevant extract of which was reproduced as under:

"In the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant recruitment rules provide for "Transfer on deputation/Transfer"), his seniority from the date of absorption. If he has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from:-

- (i) the date he has been holding the post on deputation or; ii) the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department, whichever is later".

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6. All the Benches of CAT were called upon to bring the contents of this letter to the notice of all concerned seeking absorption in the Tribunal and the particulars of the officers seeking absorption were asked to be furnished in the enclosed proforma along with their ACR dossiers as also the recommendations of the Hon'ble Vice Chairman of the Bench concerned not later than 20.6.1989.

7. The Draft Recruitment Rules, enclosed with letter dated 9.6.1989 were subsequently embodied in the CAT (Group 'B', & 'C' Misc. Posts) Recruitment Rules, 1989 (Annexure A-4) which governs the case of the applicant. Rule 2 of those rules prescribes the applicability of the rules to the posts mentioned in Col 1 of the Schedule viz. posts of COs/SOs. The number of such posts is 91 as shown in Col. 2 of that Schedule and these posts are classified in Col.3 as General Central Service Group 'B' Gazetted. The scale of pay is of Rs. 2000-3500(Col.4) and so on. Rule 5 of these Rules which is relevant for our purpose reads as follows:

"Absorption/regularisation of existing employees. (1) Notwithstanding anything contained in the provisions of these rules, the persons holding the posts of Court Officers/Section Officers, Hindi Translator, Assistant, Junior Librarian, caretaker, Upper Division Clerk/ Receptionist/Store keeper and Lower Division Clerk on the date of commencement of the rules either on transfer or on deputation basis or, as the case may be, on direct recruitment basis and who fulfil the qualifications and experience laid down in these rules and who are considered suitable by Departmental Promotion Committee shall be eligible for absorption/regularisation in the respective grade subject to condition that such persons exercise their option for the absorption and that their parent Departments do not have any objection to their being absorbed in the Tribunal.

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(2) The seniority of officers mentioned in sub-rule (1) shall be determined with reference to the dates of their regular appointment to the posts concerned.

Provided that the seniority of officers recruited from the same source and in posts held by them in the parent Department shall not be disturbed.

(3) The suitability of persons for absorption may be considered by a Departmental Promotion Committee.

8. It will also be appropriate to quote here the relevant extract from DOP&T OM dated 29.5.1986, incorporated in their consolidated instructions contained in OM dated 3.7.1986, in the manner in which seniority is to be determined for the purpose of promotion. Paragraph 3.4.1 which is relevant for our purpose reads as follows:

"In the case of a person who is initially taken on deputation and absorbed later (i.e., where the relevant recruitment rules provide for "Transfer on deputation/transfer"), his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent department, such regular service in the grade shall also be taken into account in fixing his seniority subject to the condition that he will be given seniority from -

- the date he has been holding the post on deputation, or
- the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department, whichever is later.

9. The basic question that arises for determination is whether the Tribunal was justified in issuing its impugned guidelines giving the benefit of service to its employees as rendered by them in their respective parent

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cadre/parent department while determining the inter-service seniority of such employees in the Tribunal after the commencement of Central Administrative Tribunal, (Group 'B' and 'C' Misc. posts) Recruitment Rules, 1989.

10. As stated earlier, the stand of respondent No. 1 (UOI through DOP&T) is at variance with that of respondent No. 2 (CAT), Principal Bench through its Registrar and respondent Nos. 4 to 10 (Private Respondents).

11. The stand of the respondent Number 1 is that DOP&T's letter dated 29.5.1983 as incorporated in their consolidated instructions dated 3.7.1986, and referred to in the Circular dated 9.6.1989 issued by respondent Number 2 made it absolutely clear as to the extent to which the benefit of service in the parent department could be given, and therefore the said Circular dated 9.6.1989 has to be read in the light of the above instructions and seniority of the absorbées determined in accordance with the said instructions. It has further emphasised by respondent Number 1 that the power to issue guidelines on determination of seniority of CAT employees is conferred by Section 13(2) and Section 36(b) of the Act 1985 on the Central Government i.e. respondent No. 1, alone and it is in exercise of that power that respondent No. 1 issued the CAT (Staff) (Conditions of Service) Rules, 1985, paragraph 4 of which has already been extracted above. They emphasise that the deputationists/transferees on absorption in CAT cannot be allowed seniority in respect of the service rendered in the parent department in the light of Rule 5 of the Recruitment Rules (Supra) read with DOP&T OM dated 3.7.1986. It is emphasised that it has

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never been the policy of the Government to give benefit of service rendered in the same/equivalent post in another Organisation for the purpose of seniority, prior to the date of deputation. The Government's instruction on seniority, which are also equally applicable to CAT employees are very clear in this regard. Even Rule 5 CAT(Group 'B' & 'C' Misc. Posts) Recruitment Rules, 1989 also does not provide for counting for counting to service rendered in the same grade in the parent department prior to joining the CAT. The instructions contained in DOP&T OM dated 3.7.1986 provide that the seniority of a person who is initially taken on deputation and subsequently absorbed will normally be counted from the date of absorption. If such a transferee has, however, been holding the same or equivalent grade on regular basis in his parent department, such regular service shall also be taken in account in fixing his seniority subject to the condition that he would be given seniority from the date he had been holding the post on deputation or the date on which he has been appointed on a regular basis in his parent department whichever is later. Respondent No. 1 emphasist that the earliest date from which seniority could be reckoned can be from the date of deputation and not from any date prior to that. Thus, the question of giving benefit of service rendered prior to the date of deputation or prior to the date of setting up of the Tribunal does not even arise, and they state that guidelines issued by CAT from time to time were not only not issued after consulting them, but the CAT had in fact no authority to issue such guidelines. It has also been pointed out that these guidelines, make an artificial distinction between employees appointed after 1.11.1989

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and those appointed before that date which would not be legally tenable, more so when the recruitment rules and Government instructions provide for no such distinction and different sets of seniority guidelines cannot be made applicable to different categories of employees on the same organisation.

12. Respondent No. 2 in their reply admit that in response to the first Draft Seniority List of SOs/COs who were absorbed w.e.f. 1.11.1989 on 14.11.1990, several objections were received alleging that the seniority list was not in accordance with the statutory rules or Recruitment Rules, and upon those objections being found to be genuine, a Committee of 3 Members of CAT was set up upon whose recommendations fresh guidelines were framed which were in consonance with Rule 5(2) of the Recruitment Rules made under Section 13 of the AT Act, to fix the inter-se seniority of SOs/COs/PSs. These guidelines, according to Respondent No. 2 were squarely in conformity with the Recruitment Rules and were meant to give the benefit of service to those officers who were holding regular appointments before their appointments in CAT on deputation and/or equivalent grade in their parent department on regular basis. According to Respondent No. 2 these guidelines were issued by Central Administrative Tribunal for many reasons. Firstly, it is contended that these instructions of Government of India came into existence w.e.f. 3.7.1986, whereas the Tribunal had to decide the question of fixation of seniority of those officers who joined the Tribunal on or before the rules came into existence on 20.9.1989. Secondly, they state that as per the Hon'ble Supreme Court ruling in K.

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Madhavan Vs. Union of India AIR 1987 SC,2291 the service rendered by the Officer before being absorbed while holding the same or equivalent grade in his parent department had to be counted for fixation of seniority. The third reason given is that whenever there is a conflict on a subject between the executive instructions and the statutory rules, the latter shall prevail and the guidelines are in accordance with the statutory rules. It is averred that the Central Administrative Tribunal has its Benches all over the country, and these Benches came into operation on different dates. People were taken on deputation in the Tribunal according to need and necessity. If a Bench was notified later, then the officers to man that Bench were appointed after the officers appointed to Benches which came into operation earlier, and to deny the benefit of service to these officers who were taken later solely on the ground that they joined later, was not justified, as joining the Tribunal later was specifically with a purpose. According to Respondent No. 2, to follow GOIs instructions and not the Recruitment Rules, would mean that apart from violation of these rules, an act would be done against the interest of a particular class of officers who had joined the Tribunal later, between of the later operation of some of the Benches, which would be contrary to the rudimentary principles of service law and would also be a violation of the Hon'ble Supreme Court's ruling in Madhavan's case (supra). It is contended that these guidelines issued by the Tribunal, which are in conformity with the provisions of the Recruitment Rules are intended only to protect the interests of officers holding the same and equivalent grades in their parent department on regular basis, and



not to deny them benefit of such service. Otherwise, these guidelines are no different from the GOIs own instructions in this behalf and it is argued that it would be against all rules of service jurisprudence, if a Government servant holding a particular post is transferred to the same or equivalent post in another Government Department, and the period of his regular service in the post before his transfer is not taken into consideration in computing his seniority in the transferred post.

13. Many of the private respondents have also filed their reply, in which they have broadly speaking supported the stand taken by Respondent No. 2.

14. The applicant has also filed his rejoinder to the same, in which he has challenged the stand taken by Respondent No. 2 and the private respondents and has reiterated the contents of his O.A.

15. Before examining the main issue, namely vires of CAT's impugned guidelines, we may touch upon the question as to the date from which the applicant may count his regular service in the Delhi High Court which is also one of the reliefs claimed. The Registrar Delhi High Court's letter dated 6.5.1994 (Annexure R-1) states clearly that the applicant, Shri Govind Ballabh, after having qualified the test for the post of Superintendent/Court Master was first appointed as Officiating Court Master w.e.f. 26.11.1985 and in view of his continuing appointment since then he has to be considered in the regular service w.e.f. 26.11.1985 for purpose of seniority and other service



matters. No material has been shown to us by any of the parties in this O.A. to challenge the contents of this letter dated 6.5.1994, and under the circumstances the applicant Shri Govind Ballabh has to be considered in regular service as Court Master in Delhi High Court w.e.f. 26.11.1985 for purposes of seniority and other service matters, wherever relevant.

16. Coming to the vires of CAT's impugned guidelines our attention has been invited to the Hon'ble Supreme Court's order dated 15.1.1996 in Civil Appeal No. 2277-2278 of 1996 Union of India & Ors. Vs. G. Venket Reddy & Ors wherein while setting aside the CAT PB order granting regularisation of service even in respect of the period of ad hoc service, the Hon'ble Supreme Court had noticed the contents of Note II in CAT's letter dated 11.7.1991 to the effect that the service rendered in the Tribunal prior to the promulgation of the Recruitment Rules would be deemed to be regular service in that grade even if the appointment was made on ad hoc basis. Their Lordships were pleased to hold that the Administrative Department for CAT being the Department of Personnel, only that department could issue such administrative orders, and from the subsequent letter dated 21.4.1993 they noticed that those earlier orders were revised and Note II was withdrawn on Govt. instructions.

17. That CAT themselves realised that the impugned guidelines were not in accordance with law is borne out by the contents of the Deputy Registrar (Estt.) CAT's letter dated 5.5.1995 (Annexure R-III) addressed to the Registrar



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/Deputy Registrar of all dutying Benches of CAT on the subject of fixation of seniority of staff which is reproduced below:

"I am directed to say that the seniority guidelines issued by the CAT, Principal Bench vide letter of even number dated 1.11.90 as amended from time to time and last amendment issued vide letter of even number dated 21.4.93 have been examined in detail. It has been decided, with the approval of the Hon'ble Chairman to withdraw the seniority guidelines subject to the condition that the seniority which has already been finalised/settled in respect of employees who were permanently absorbed under Rule 5 of the Recruitment Rules will not be unsettled or revised.

2. All benches are requested to fix the inter-se-seniority of their Non-Gazetted staff in accordance with relevant recruitment rules and general Principles of seniority as laid down in DOP&T OM No. 22011/7/86-Estt(D) dated 3.7.86 as amended from time to time."

18. As the Respondent No. 2 themselves by their above letter have withdrawn their impugned guidelines on the subject of fixation of seniority of staff, what remains for adjudication is whether they are justified in imposing the condition that the seniority which has already been finalised/settled in respect of employees who were permanently absorbed under Rule 5 of the Recruitment Rules, would not be unsettled or revised.

19. As mentioned earlier the justification given by respondent No. 2 for these impugned guidelines is to protect the interest of those officers who may have had a longer period of regular service in their parent department than others, but who joined a Bench of CAT on a later date owing to the fact that the said Bench itself came into operation on a later date. In support of this justification, it is contended that these impugned

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guidelines are in accordance with the Recruitment Rules which are statutory in character and where there is a conflict between DP&T's existing instructions and the recruitment rules, the latter would prevail. This support has been elaborated in Respondent No. 2's DO letter dated 30.9.95 (issued after the guidelines were withdrawn by letter dated 5.5.95) addressed to Respondent No. 1 a copy of which was produced before us and is taken on record in paragraph 12 of, which the words "date of regular appointment to the posts" concerned occurring at the end of Rule 5(2) CAT (Group 'B' & 'C' Misc. Post) Recruitment Rules, 1989 has been interpreted to mean posts in the parent department. The argument advanced is that Rule 5(1) speaks of only "absorption/regularisation of existing employees" and does not speak of regular appointment of existing employees and therefore the absorption/regularisation under Rule 5 cannot be equated with regular appointment, and that being so "the date of regular appointment" has to refer to a date other than the date of absorption in the Tribunal, which can only be the date of appointment in the parent department. It is also argued that as all the "existing employees" were absorbed on the same date i.e. 1.11.89 that will be the relevant date for determining their seniority and hence to determine the order in which their seniority will be determined, <sup>the</sup> has necessarily to fall back upon the date of their regular appointment in their parent department. The proviso to Rule 5(2) has been invoked in support of this argument.

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20. We would observe here that if respondent No. 2 were convinced about the legal correctness of the impugned guidelines, they themselves would not then have withdrawn the same by letter dated 5.5.1995 extracted above.

<sup>1</sup> Manifestly it is because they were satisfied that these guidelines were not legally sustainable that they withdrew them. In our view these guidelines were not sustainable for the reasons contained in the succeeding paragraphs.

21. Rule 5 of the Recruitment Rules relates to the absorption/regularisation of existing employees. These employees under Rule 5(1) may be holding the post of COs/SOs etc. in CAT on the date of commencement of the Rules either on transfer, or on deputation, or on direct recruitment basis, and provided they fulfilled the qualifications and experience laid down in the Rules and were considered suitable by DPC would be eligible for absorption/regularisation (emphasis supplied). Thus Rule 5(1) covers all the methods of recruitments specified in Column 11 of the Schedule viz. direct recruitment, transfer and deputation but speaks only of eligibility for absorption/regularisation. If the persons concerned are absorbed /regularised, the question of determination of their seniority would arise. This would be determined under Rule 5(2) and the determination would be with reference to this date of their regular appointment to the posts concerned (emphasis supplied). In the context in which the words "posts concerned" have been used, it can only mean posts in the Tribunal, because in Rule 5(1) which precedes Rule 5(2) there is no reference to posts in the parent department. The use of the word 'posts' in plural can only refer to the various posts of COs/SOs,

Hindi Translator, Assistants etc. enumerated in Rule 5(1). If the Rule making authority had intended that seniority should be determined by the length of service in the parent department irrespective of all other considerations, surely they would have said so explicitly. As mentioned above, Rule 5(1) took care of all 3 methods of recruitment viz. direct recruitment, transfer and deputation and the inter-se-seniority of the candidates absorbed/regularised upon being found eligible and suitable, was to be determined with reference to the dates of their regular appointment to the posts concerned, meaning the posts in the Tribunal. The Rule making authority visualised a situation where <sup>problem in fixing</sup> seniority may arise between persons recruited from the same source and working in the parent department. Here the term 'Source' can only mean what is defined in Col. 12 of the schedule i.e. Central/State Government/High Courts/Subordinate Courts. The proviso to Rule 5(2) laid down that the seniority of officers recruited from the same source and (emphasis supplied) in posts held by them in the parent department was not to be disturbed, which can only mean that where two persons were recruited from a single source (i.e. Central Government or State Government or High Court or Subordinate Court and their parent department was the same (i.e. Department of Personnel & Training), it is then and only then, that, the seniority which they brought with them would not be disturbed. In all other cases the seniority would be determined with reference to the date of their regular appointment to the posts in the Tribunal.

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22. The question may then arise that if all the existing employees were absorbed on the same date i.e. 1.11.1989 although by different orders, how then is their inter-se-seniority to be determined. In the absence of anything in the Recruitment Rules themselves to answer this point, we would necessarily have to fall back on DP&T's OM dated 3.7.1986 extracted in paragraph 8 above and in respect of deputationists (applicant as well as respondents 4 to 10 are deputationists) who were holding the same or equivalent grade on regular basis in their parent department, determine their inter-se-seniority from the date they were holding the posts on deputation or the date from which they were appointed on a regular basis to the same or equivalent grade in their parent department whichever is later.

23. In our view that is the only way in which the provisions of Rule 5 of the CAT (Group B&C Misc. Post) Recruitment Rules 1989 can be harmoniously interpreted with DP&T's instructions dated 3.7.1986 on the subject and CAT's impugned guidelines which serve counter to the same are therefore not in accordance with law.

24. We would add that it is only this interpretation which can obviate results which would otherwise be quite extraordinary in grant of seniority to persons in CAT from a date even prior to the inception of CAT on 1.11.1985; or two sets of principles for determination of seniority one laid down by DP&T and the other by CAT; or a distinction wholly invidious between employees absorbed on or before 1.11.1989 and those absorbed thereafter.

25. We would further add that when Respondent No. 2 have themselves withdrawn their impugned guidelines they cannot invoke the Hon'ble Supreme Court's ruling in Madhavan case (Supra) in defence of the action taken by them under those guidelines; nor can they withdraw those guidelines by their letter dated 5.5.1995 but in that same letter state that seniority already finalised/settled in terms of those guidelines in respect of employees who were permanently absorbed under Rule 5 of the Recruitment Rules, would not be revised or reviewed. If seniority has been determined in accordance with the guidelines issued by an authority which are not in accordance with law, and which are themselves withdrawn by the authority which issued them, the seniority thus determined has to be revised/reviewed.

26. In the facts and conspectus of this case, therefore this O.A. succeeds and is allowed. The impugned guidelines issued by the CAT (Annexure 6 colly.) which are contrary to the statutory rules and the DOP&T 's instructions/O.Ms are quashed and set aside and the respondent's letter dated 24.1.1995 (Annexure A-12) is also quashed and set aside. The DPC held by respondent No. 2 in June 1994 for selection to the posts of Deputy Registrars based upon the seniority list, prepared in accordance with the impugned guidelines, is also quashed and set aside. Accordingly, the respondents are directed to hold a review DPC for promotion to the posts of Deputy Registrar, within three months from the date of receipt of the copy of this judgment on the basis of seniority list prepared in accordance with the relevant statutory rules, the DOP&T's instructions and in accordance with law. Till

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such promotions ~~promotions~~ are made on the basis of the recommendations of the Review DPC, in the Administrative interest, the status quo in regard to persons holding the posts of Deputy Registrars in any of the Benches of the Central Administrative Tribunal, whether ~~on~~ <sup>on</sup> ad hoc basis or otherwise, shall be maintained.

27. Parties will bear their own costs.

Lakshmi Swaminathan  
(Smt. Lakshmi Swaminathan)

Member (J)

A. Adige  
(S.R. Adige)

Member (A)

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