

(17)

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 2044/97

&

OA No. 153/97

New Delhi, this the 12th day of August, 1998

Hon'ble Shri T.N. Bhat, Member (J)

Hon'ble Shri S.P. Biswas, Member (A)

In the matter of:

OA No. 2044/97

1. Central Engg. Services Class-I (DR),
through its Additional Secretary,
A.K. Sinha s/o Sh. S.C. Prasad,
r/o A. No. 12, M.S. Flats,
Sec. 13, R.K. Puram,
New Delhi.
2. Ashwani Kumar s/o late Sh. Shiv Charan Sharma,
r/o 410, Sector VIII, R.K. Puram,
New Delhi.
3. Umesh Bansal s/o Sh. J.P. Bansal,
r/o F-7, CPWD Sewa Kendra,
Sector 8, R.K. Puram,
New Delhi.
4. Shailendra Singh s/o Sh. Ravindra Baboo,
r/o A-2560, Netaji Nagar,
New Delhi.
5. J.S. Sandhu s/o S.M.S. Sandhu,
R/o C-7/237,
Sector 8, Rohini,
New Delhi.
6. P.K. Dixit s/o Sh. Harswarup Sharma,
c/o I.D. Sharma G I 983,
Sarojini Nagar,
New Delhi.

....Applicants

(By Advocate: Shri K.B.S. Rajan)

Versus

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12.8.98

Union of India through

1. Secretary,
Urban Affairs & Employment,
Nirman Bhawan,
New Delhi.
2. The Director General & Works
CPWD, Nirman Bhawan,
New Delhi.
3. The Secretary,
Department of Personnel & Training,
North Block,
New Delhi.
4. The Chairman,
U.P.S.C.,
Dholpur House,
Shahjahan Road,
New Delhi. ... Respondents

(By Advocate: Shri R.P. Aggarwal)

5. B.K. Singhal s/o late Sh. Jyoti Prashad,
r/o C-11/158,
Yamuna Vihar,
Delhi.
6. S.K. Mittal s/o late Sh. M.L. Mittal,
r/o 24 Raj Nagar,
Delhi.
7. S.K. Jain s/o Shri S.L. Jain,
r/o 4/1712,
Mittal Sadan, Bhole Nath Nagar,
Delhi.
8. R.L. Mohalla s/o Shri Ram Chander Mohalla,
B-32A, Phase II, Ashok Vihar,
New Delhi.
9. S.S. Khanna s/o Shri H.L. Singh Khanna,
r/o E-103, Sarojini Nagar,
New Delhi.
10. H.S. Batra s/o Sh. Tara Singh,
r/o BL-13, L-Block, Anand Vihar,
New Delhi.

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11. Khushinder Mohan
154, Mandakini Enclave,
Kalkaji
New DelhiInterveners

(By Advocate: Shri Sohan Lal & Sh. G.K. Aggarwal)

OA No. 153/97

1. A.P. Gupta
8W96A, Shalimar Bagh,
Delhi.
2. Khushinder Mohan
154, Mandakini Enclave,
Kalkaji
New DelhiApplicants

(By Advocate: Shri G.K. Aggarwal)

Versus

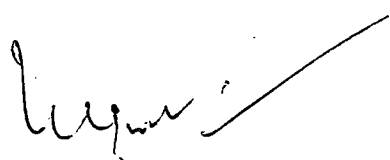
Union of India through

1. Secretary,
Urban Affairs & Employment,
Nirman Bhawan,
New Delhi.
2. The Director General & Works
CPWD, Nirman Bhawan,
New Delhi.
3. The Chairman,
U.P.S.C.,
Dholpur House,
Shahjahan Road,
New Delhi.
4. The CFS-I(DR) Association through
its Secretary,
Nirman Bhawan,
New Delhi.Respondents

(By Advocate: Shri K.C. Diwan)

O R D E R

delivered by Hon'ble Shri T.N. Bhat, Member (J)(-



As identical questions of law and fact are involved in these two cases, these cases are being taken up together and disposed of by this common judgement.

2. The applicants in OA No. 2044/97 are working as Executive Engineers (E.Es. for short) having been promoted from the stream of Assistant Executive Engineers (AEEs, for short). According to the recruitment rules of 1954 the feeder grades for promotion to the post of E.Es. in the Central Engineering Service Class-I are those of A.F.Fs, who are directly recruited, ~~and~~ ^{and} A.Es. There is also a dispute among the officers of the A.Fs cadre some of whom are graduate engineers while the others are only diploma holders. Although initially there was no provision for promotion of diploma holders, the rules were later amended in the year 1977 and diploma holders of outstanding ability were also made eligible. Litigation ensued, as according to the graduate engineers the diploma holders had been promoted even though they were not considered to be of outstanding ability. However, in this OA we are not concerned with the inter-se seniority dispute between the two groups of A.Es. In the instant OA the A.E.Es have assailed the decision of the respondents to divert as many as 430 posts of E.Fs

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(Civil) falling under the promotion quota which would ordinarily go to the A.E.s seeking promotion. These posts have now been diverted to the quota meant for A.E.s, both degree holders as well as diploma holders. According to the applicants, this move of the respondents will adversely affect their chances of promotion. It needs to be mentioned here that a large number of A.E.s have already been promoted to the post of E.E.s in excess of their quota, though on ad hoc basis, for the reason that adequate number of A.E.s were not available at the relevant time. It is also frankly conceded by the learned counsel for the applicants in this OA that even at present there are not many A.E.s available so that they could be considered for promotion against their own quota. However, the applicants' case is that if the A.E.s are promoted on a regular basis in excess of their quota now the future prospects of the A.E.s for their promotion and also fixation of their seniority would get adversely affected. Relying upon the judgements of the Apex Court in A.K. Subraman (AIR 1975 SC 483), P.S. Mahal (AIR 1984 SC 1291) and R.L. Bansal (1992 (Suppl.) (2) SCC 318) the applicants seek the relief of setting aside the orders of the respondents diverting the vacancies from the quota of A.E.s to that of A.E.s. They have further sought

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✓ direction that no A.E. promoted as E.F. otherwise than within his own lawful quota be given seniority on the basis of his ad hoc service against the quota meant for A.E.Es.

✓ 3. The respondents have, in their detailed written statement, taken the plea that the respondents are within their rights to relax the recruitment rules as a one time measure and to divert 430 vacancies from the quota of A.E.Es to that of A.Es. In this regard the respondents have cited the non-availbaility of A.F.Es for promotion as the reason for granting this relaxation in consultation with the concerned Ministry. It is further stated that till the promulgation of the recruitment rules of 1996 as many as 430 vacancies had accumulated from the unfilled quota of A.E.Es and A.Es had been granted ad hoc promotions for this reason. Prior to those rules the recruitment rules which were applicable were those of 1954. It is admitted that the Hon'ble Supreme Court had in the case of Sh. J.N. Goel & Ors. (Civil Appeal No. 5363 of 1990), reported in JT 1997 (1) SC 451, held that the vacancies which arose prior to the enforcement of 1996 rules would be governed by the 1954 rules. It is, however, further averred that since there was a direction by the Apex Court in

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that case that regularisation of all ad hoc promotees should be made as per 1954 rules it became necessary for the respondents to make available adequate number of vacancies for their regularisation after getting approval from the Department of Personnel & Training on 10.4.1997. The regularisation was proposed to be considered for the years 1994-95, 1995-96 and 1996-97. The details of vacancies given by the respondents are as follows:-

Year	By relaxation of AFE quota	By relaxation of AF quota	Total
1994-95	170	12	182
1995-96	170	34	204
1996-97 (Upto 28th Oct., 96)	090	04	094
	430	50	480

4. According to the respondents, there is acute frustration among E.Es for promotion from A.Es stream because they are required to work on ad hoc basis for unduly long periods of about 10-15 years before they are promoted on regular basis against their own quota vacancies and, therefore, a strong need had arisen to relax the quota rules.

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5. As already indicated, two groups of employees who have been promoted as E.Es from the stream of A.Es sought intervention in this O.A. Both these groups of A.Es seeking regular promotion as E.Es, have a dispute among themselves but they are one in opposing the O.A. They have supported the pleas raised by the official respondents in this case and have stated that in the circumstances and facts of the case, relaxation of the quota rule was the only solution as there were no A.E.Es available who could be promoted to fill up the quota reserved for them. Relying upon the relaxation clause existing in the rules, the interveners have stated that the impugned action of the respondents should be deemed to be under that rule which permits relaxation.

6. Another plea raised is that the applicants have no cause of action as they are already working as E.Es and they seem to be concerned only with their future chances of further promotion to the post of Superintending Engineer and Chief Engineer.

7. We may state that although there are no specific orders impleading the intervenors as party-respondents, we have allowed the learned

By your order

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counsel for the intervenors to make their submissions. We may also state that in the various interlocutory orders the intervenors have also been described as respondents. However, it needs to be further mentioned that the connected OA, being OA No. 153/97, has been filed by Shri K.P. Gupta and Khushinder Mohan who have also sought intervention in this OA, through Shri G.K. Aggarwal, Advocate.

8. That leads us to OA 153/97 which has been filed by the aforesaid two applicants, who had joined the Central Engineering Service Group 'B' through a Combined Engineering Services Examination and were later promoted on ad hoc basis as F.Es in group 'A' of the said service. They have continued to work as E.Es, though on ad hoc basis, for a number of years and are, therefore, seeking regularisation of their services as E.Es "ever since the date of their initial appointment in the grade of E.E. with the seniority since that date and consequential retrospective and prospective benefits including promotion to higher post". It is claimed by them that since the power of relaxation vests with the Central Government under Rule 25 of the recruitment rules, the promotion of the applicants to the cadre of E.E. should be deemed to have been in relaxation of the rules. Quoting from rules 4

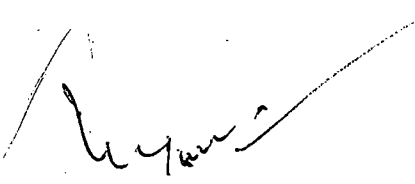
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and 25 of 1954 rules and rule 25 of the 1996 Rules the applicants in this OA contend that their promotion should be deemed to be on regular basis.

9. The respondents in that OA have resisted the claim of the applicants on the ground that since there were various disputes relating to the interse seniority in the feeder grades, promotions to the post of E.Es have been made on ad hoc basis ever since 1972 and now those ad hoc promotions are sought to be regularised from the year 1994 onwards by holding yearwise DPCs. Reliance is also placed upon the judgements of Apex Court in the case of P.S. Mahal (supra) in which there was a direction that the seniority between A.Es and A.E.Es regularly promoted within their respective quotas shall be determined by the length of continuous officiation and that the seniority list should be prepared accordingly.

10. At the same time it is contended that the decision in P.S. Mahal's case is not applicable to the applicants as they were promoted as E.Es on ad hoc basis prior to that judgement.



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11. We have heard the learned counsel for the parties and intervenors at length and have perused the material on record.

12. The inter-se dispute between the EEs promoted from the streams of AEEs and AEs is not new. There are several reported judgements on this point and we may quote from the observations of the Apex Court in P.S. Mahal & Ors. vs. Union of India [AIR (1984) SC 1291, to give a history of this dispute:

"This writ petition marks yet another round of litigation between two groups of Executive Engineers in Central Public Works Department of the Ministry of Works & Housing, Government of India, one group consisting of promotees from the grade of Assistant Executive Engineers and the other consisting of promotees from the grade of Assistant Engineers. The dispute between these two groups in regard to seniority has been going on for quite some time and it has created considerable discord and bitterness between these two groups which must inevitably affect the efficiency of the Service. It is really a matter of regret that the Central Government should not have been able to bring these two groups together and evolve a commonly agreed formula acceptable to both sides. We hope that our decision in this writ petition will finally ring the curtain down on this unfortunate controversy and both groups of Executive Engineers will accept the decision ungrudgingly without any rancour or resentment and

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wholeheartedly engage themselves in the nation building tasks entrusted to them".

13. However, it appears that the dispute still continues and it has not been possible for the Central Government to evolve a commonly agreed formula acceptable to both the sides.

14. To begin from the beginning, we may refer to the judgement of the Apex Court in A.K. Subraman vs. Union of India (ATR 1975 483). Although there were several earlier judgements from the Apex Court relating to the inter-se dispute between the EFs from the two streams, we find that A.K. Subraman (Supra), deals precisely with the question that arises in the instant case. In that case some of the petitioners were confirmed AEs and were promoted to officiate as EFs in Class - I of the Central Engineering Service between the years 1956-59 on the recommendation of a properly constituted DPC and had been working as EFs in C.P.W.D.. However, they had been promoted prior to their confirmation as AEs. The respondents in that case had been initially recruited as AEs in Class I of the Service and were promoted to the grade of EFs between 1957-1966. The other petitioners were recruited directly to Class-II (A.Es) as they had

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failed to qualify in the competitive examination for recruitment to Class-I and they were confirmed AEs in the grade-II. They had also been promoted to officiate in the grade of EEs in grade-I.

15. Under the Rules framed in 1954 the quota for promotion between directly recruited AEs and the promotees from Class-II initially was in the ratio of 75% and 25% but was later altered to 62-2/3% and 33-1/3% in 1955 and with effect from April 1, 1972 the percentage came to be fixed at 50:50% for a period of seven years which, we are told, was later extended by another four years.

16. The principal grievance of the petitioners before the Apex Court in that case was against the seniority list as on 1.7.1971 where the petitioners in those cases had been shown junior to the respondents No. 4 to 66. According to the petitioners, notwithstanding that they were recruited by promotion to officiate in the grade of EEs regularly as a result of selection by the DPC, and had been working in that capacity for nearly 13 years, they were not considered for promotion to the still higher grades in Class-I, namely, Superintending Engineer, Chief Engineer etc. while the AEs recruited several years after the

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petitioners had been held to be senior to them and some of those AEEs had been promoted to the next higher grades ignoring the claims of the petitioners.

17. After hearing the parties the Apex Court laid down the following principles:-

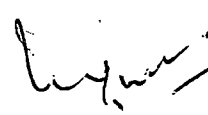
"29. To summarise the conclusions -

(1) When Assistant Engineers (Class-II) are initially appointed in a regular manner in accordance with the rules to officiate as Executive Engineers, their seniority in service in Grade I will count from the date of their initial officiating appointment in Class I provided their initial officiating appointment as Executive Engineers was within their quota.

(2) Their seniority will not be reckoned from the date of their future confirmation in Class-I.

The above principle is, however, subject to one reservation, namely, if an Assistant Engineer before his confirmation in Class-II were appointed to officiate in Class I in the grade of Executive Engineer, although within his quota, his seniority will count only from the date of his confirmation in Class II as permanent Assistant Engineer notwithstanding his earlier officiating appointment as Executive Engineer.

(3) The quota rule will be enforced at the time of initial recruitment, in an officiating capacity, to the grade of Executive Engineer and not at the time of confirmation.



(4) The quota rule will be enforced with reference to vacancies in all posts, whether permanent or temporary, included in the sanctioned strength of the cadre (except such vacancies as are purely of a fortuitous or adventitious nature) and the operation of the quota rule will not depend upon the availability or non-availability of Assistant Executive Engineers for appointment as Executive Engineers. The non-availability of Assistant Executive Engineers for recruitment to the grade of Executive Engineer will not postpone the regular recruitment of the Assistant Executive Engineer as Executive Engineers within their quota.

(5) Once the Assistant Engineers are regularly appointed to officiate as Executive Engineers within their quota they will be entitled to consideration in their own rights as Class I Officers to further promotions. Their "birth marks" in their earlier service will be of no relevance once they are regularly officiating in the grade of Executive Engineer within their quota.

(6) If Assistant Engineers are recruited as Executive Engineers in excess of their quota in a particular year they will be pushed down to later years for absorption when due within their quota".

18. The above principles are very much relevant for resolving the contentious issues in the instant case.

19.. Reverting back to P.S. Mahal's Case (Supra), it is important to note the observations relating to applicability of A.K. Subraman's judgement (Supra). It was held that when the

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Hon'ble Supreme Court had in the aforesaid judgement laid down in so many words that the inter-se seniority of E.Es promoted from the grade of AEs and AEEs upto 11.12.1974 must be held to be governed by the rule of length of continuous officiation and the Government of India had been directed by a writ of the court to amend and revise the seniority list of 1st July, 1971 on the basis of this rule of seniority, the effect of the decision of that case could not be set at naught and the binding character of the writ issued against the Government of India could not be abrogated by the mere promulgation of the Rules of 1976 with retrospective effect from 10th December, 1974 i.e. one day prior to the date of decision. Needless to say that the Apex Court held the aforesaid rules of 1976 to be of no consequence so far as amendment and revision of the seniority list of 1st July, 1971 was concerned.

20. Proceeding further, the Apex Court held in P.S. Mahal that quota rule in the Central Engineering Service (Class I) Recruitment Rules, 1954 would be attracted whenever there were a long term vacancy in the grade of E.E. and this would include even those vacancies which arose on account of an E.E. going on deputation elsewhere. More importantly, it was held that if a vacancy so

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arising was from the quota of AEEs it would continue to belong to the quota of AEEs and could be filled only by AEE, if the quota rule is to be strictly observed in relation to a vacancy arising as a consequence of the death or retirement of an irregularly promoted AE to that post. The vacancy so arising would have to be filled up by an AEE at a subsequent date. Similarly, while pushing down EEs promoted from the grade of AEs in excess of their quota and adjusting them within their quota in a subsequent year, the Government must treat them as absorbed from the date when a vacancy in that year arises in the quota of AEs and not on a notional basis from 1st January of that year, as had been urged by the EEs who had been promoted from the stream of AEs.

21. It was further held by the Apex Court that the Govt. deliberately resorted to the policy of under-recruitment of AEEs because according to the Government it would not be possible to recruit enough officers in class I junior scale to fill up the quota at EEs level as it would worsen the promotion prospects of the direct recruits to Class I and make the Service totally unattractive. The following observations made in para 36 of the judgement make this position even more clear:

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"There can be no doubt that the failure to recruit AEEs in sufficient numbers, so that when vacancies in the grade of EEs allocable to the quota of AEEs arose from year to year, there would be AEEs available for promotion to fill such vacancies, was responsible for the gross distortion which took place in the cadre of EEs over the years."

22. In the result, the Hon'ble Supreme Court struck down rule 2 (iii) and 2(iv) of the Rules of 1976 as being violative of Articles 14 & 16 of the Constitution and directed that the seniority between AEs and AEEs regularly promoted within their respective quota must be determined by the length of continuous officiation in service in the grade of EEs, subject to the qualification that in case of AEs the length of continuous officiation shall be reckoned from the date when their promotion is regularised by absorption within their lawful quota. Thus, quite clearly, those AEs who had been promoted on officiating basis or even on ad hoc basis to the post of EEs outside or in excess of their quota would get the benefit of their service as EEs only from the date when their promotions were regularised by absorption within their lawful quota.

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23. It may, however, be noted that the judgements in A.K. Subraman and P.S. Mahal (supra) do not throw much light on the question as to whether the Government has the power to change the percentage of quota or to scrap altogether the quota of one of the streams. Learned counsel for the respondents and the learned counsel for the intervenors have taken us through the judgement of the Apex Court in J.N. Goel & Ors. Vs. Union of India & Ors., reported in JT 1997 (1) SC 451 to support their plea that AEs can legitimately seek regularisation from the dates they were promoted even on ad hoc basis. We have carefully gone through the judgement (supra) and find that the Apex Court in that case was dealing with the inter-se dispute between the graduate AEs and diploma holder AEs. The Apex Court held that according to proviso to Rule 21 (3) - actually it should be Rule 23 (3) - diploma holders were eligible for being considered for promotion to the post of EE and the aforesaid proviso was neither arbitrary nor violative of Articles 14 & 16 of the Constitution. It was further held that promotion of non-graduate AEs made till the enforcement of 1996 Rules were valid as per the aforesaid proviso to Rule 23 (3) but that diploma holder AEs promoted on ad hoc basis will have to be regularised in accordance with 1996 Rules.

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There is also an observation in para 8 of the judgement that 1996 rules having come into force w.e.f. October 29, 1996 and those Rules being prospective in operation the promotions made prior to the making of the aforesaid Rules would be governed by the 1954 rules and, therefore, the question regarding the validity of the proviso to Rule 23 (3) of the 1954 Rules have to be considered. As already mentioned, the aforesaid proviso was held to be valid.

24. We also find on going through para 15 of the judgement (supra) that the respondents had passed some orders in 1994 whereby regular appointments had been made to the cadre of EEs from amongst AEs, both degree holders as well as diploma holders.

25. From the aforesaid judgement we do not find any support for the contention of the applicants in this O.A. that the quota fixed under the 1954 Rules could in no case be altered. On the contrary, we find that the quota initially fixed for AEEs and AEs has been altered quite frequently and this much is also admitted by the applicants in the O.A. In para 4.3 of the O.A. the applicants have stated that from 25.8.1949 to 6.9.1955 the quota was

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fixed in the ratio of 3:1 which was changed from 7.9.1955 to 31.3.1972 to 2:1 and again from 1.4.1972 to 31.3.1984 to 1:1 and from 1.4.1984 to 28.10.1996 to 2:1 and eventually from 29.10.1996 onwards it has been changed to 1:2 in accordance with the new recruitment rules.

26. That leads us to the question raised by the intervenors and relating to the provisions contained both in the 1954 rules as well as 1996 rules by which the Government has the power to relax the rules. It is contended by both the learned counsel for the two groups of intervenors as well as by the learned counsel for the official respondents that since a situation has arisen where a large number of ad hoc promotees were to be regularised who had been promoted in excess of their quota but no candidate from the AEs quota was available, the respondents had validly diverted 430 posts for the purpose of granting relaxation in the case of the promotees from the AEs quota. It is further urged before us that in diverting the vacancies as aforesaid the respondents must be presumed to have relaxed the quota rules by virtue of the powers vested in the Government under the relevant provisions. This argument, though attractive, is not convincing, for the simple reason that such a

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plea has been taken before us for the first time and does not appear to have been ever canvassed before the Apex Court when the earlier cases came to be considered by that Court. Furthermore, there should under the relevant rules be a specific order and that too in consultation with the Union Public Service Commission for relaxing any of the rules with respect to any class or category of persons. This was so even under the 1954 rules. Being aware of the inherent weakness of the stand taken by the intervenors, Mr. G.K. Aggarwal appearing for them has pressed into aid the judgement of the Apex Court in Narender Chadha vs. Union of India, reported in 1986 (2) SCC 157. However, the facts of that case are distinguishable from those of the instant case. In that case a finding of fact had been recorded that there was a deliberate massive departure from quota rule and there were also rules conferring power of relaxation on the Government and it was in these circumstances that the Apex Court held that the quota rule must be assumed to have been relaxed. What is more important to note is that in the case before the Apex Court (supra) the ad hoc promotees had been allowed to continue for long years without their promotions being challenged. In the instant case, as already observed, the seniority/promotion of the persons belonging to the stream of AEs has

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been challenged not once but several times in the past and it can by no stretch of reasoning be held that ad hoc promotions have been allowed to continue without being challenged. The learned counsel also relied upon some observations made in Direct Recruit Class-II Engineering Officers' Association vs. State of Maharashtra, reported in (1990) 2 SCC 715, wherein it was held that in the case of non-observance of a quota rule or deviation therefrom it should be presumed that power of relaxation conferred by those rules has been exercised. But on a closer examination of the facts of that case we find that appointment on ad hoc basis made not in accordance with the rules was not held to be such as could confer on the appointee any right to seniority. It was held that where the initial appointment is only ad hoc and not according to rules the officiation in such a post cannot be taken into account for considering the seniority and even while confirming the view taken in Narender Chadha's case (Supra) the five Members Bench of the Apex Court held that the experience on such appointment cannot be equated with the experience of a regular employee, because of the qualitative difference in the appointment and that to equate the two would be to treat two unequals as equals which would violate the equality clause. After going

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through the judgements cited at the Bar we find that in the case of N.K. Chauhan Vs. State of Gujrat reported in (1977) 1 SCC, 308 some guidelines have been issued which may be of some help to decide the question in controversy in the instant case. It has been held as follows:

- "(a) The quota system does not necessitate the adoption of the rotational rule in practical application. Many ways of working out quota prescription can be devised of which rota is certainly one.
- (b) While laying down a quota when filling up vacancies in a cadre from more than one source, it is open to Government, subject to tests under Article 16, to choose a year or other period of the vacancy by vacancy basis to work out the quota among the sources. But once the Court is satisfied, examining for constitutionality the method proposed, that there is no invalidity, administrative technology may have free play in choosing one or other of the familiar processes of implementing the quota rule. We, as judges, cannot strike down the particular scheme because it is unpalatable to forensic taste.
- (c) Seniority, normally, is measured by length of continuous, officiating service - the actual is easily accepted as the legal. This does not preclude a different prescription, constitutionality tests being satisfied.
- (d) A periodisation is needed in this case to settle rightly the relative claims of promotees and direct recruits. 1960-62 forms period A and 1963 onwards forms period B. Promotees regularly appointed during period A in excess of their quota, for want of direct recruits (reasonably sought but not secured and because

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tarrying longer would injure the administration) can claim their whole length of service for seniority even against direct recruits who may turn up in succeeding periods.

- (e) Promotees who have been fitted into vacancies beyond their quota during the period B - the year being regarded as the unit - must suffer survival as invalid appointees acquiring new life when vacancies in their quota fall to be filled up. To that extent they will step down, rather be pushed down as against direct recruits who were later but regularly appointed within their quota."

27. The cumulative effect of the facts and circumstance emerging from the discussion above is that the respondents can certainly alter the ratio of the quota fixed for AEEs and AEs and it is not necessary to make promotion only on ad hoc basis. Even regular promotion can be granted in case a person from the stream of AEEs is not available. But in that case the promotee would have to be pushed down in his seniority when a person from the quota of AEEs becomes available later and is promoted. A wholesale diversion of all the available posts without issuing a specific order for relaxation and that too after consulting the UPSC is not envisaged either under the 1954 rules or the 1996 rules, though admittedly the respondents have the power to alter from time to time the ratio of the quota, as they had admittedly been doing in the past.

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28. As regards the inter-se dispute between the graduate AEs and the diploma holders we are not called upon to go into this question as that would amount to raising disputes which do not arise in this O.A. We, therefore, refrain from expressing any view on this question. Suffice it to say that this matter appears to have already been adjudicated upon in J.N. Goel's case.

29. In view of what has been held and discussed above, we allow O.A. No. 2044/97 and quash the order by which 430 posts have been diverted for being filled up from the quota of AEs and to be utilised against the vacancies arising in the years 1994-1995, 1995-1996 and 1996-1997 (upto 28th October, 1996). We, however, make it clear that it shall be open to the respondents to alter the ratio of the quota in exercise of powers of relaxation under the 1954 rules, which were in force till 28th October, 1996, in accordance with those rules. They shall also have the power to regularise the services of the AEs promoted on ad hoc basis in excess of their quota if no person belonging to the AEs quota was available at the relevant time or is not available even now. There shall, however, be a condition that if subsequently such a candidate

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becomes available and is actually promoted, inter-se seniority shall be fixed by appropriately pushing down the person who had been promoted in excess of the quota.

30. O.A. 153/97 is also disposed of in terms of the above order. There shall be no order as to costs.

(S. P. Biswas)
Member (A)

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(T. N. Bhat)
Member (J)

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