

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

1. O.A. No. 996/1993
✓ 2. O.A. No. 157/1994
3. O.A. No. 492/1994
4. O.A. No. 629/1994

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New Delhi this the 22nd day of March, 1995.

Hon'ble Mr. Justice S.C. Mathur, Chairman
Hon'ble Mr. P.T. Thiruvengadam, Member (A)

1. O.A. No. 996/1993

1. Shri Amrit Lal,
S/o late Shri Kharati Lal
resident of C-1st-2, Lajpat Nagar,
New Delhi.

Presently working as Under Secretary,
Ministry of Defence,
South Block,
New Delhi.

2. Shri A.P. Pandit,
S/o Shri J.P. Pandit,
resident of 481 Laxmi Bai Nagar,
New Delhi.

Presently working as Under Secretary,
Ministry of Defence,
South Block,
New Delhi.

3. Shri B.P. Singh,
S/o late Shri B.S. Pundhir,
resident of C-4G Flat No. 20-A,
Janakpuri, New Delhi.

Presently working as Under Secretary,
Ministry of Defence,
C II Hutment Block,
New Delhi.

4. Shri Des Raj Sharma,
S/o late Shri Nathu Ram,
resident of 63 South Anarkali Extension,
Delhi-51.

Presently working as Under Secretary,
Ministry of Defence,
Sena Bhawan,
New Delhi.

5. Shri Sachindra Sharma,
S/o Shri Prabhakar Sharma,
Resident of DG-841, Sarojni Nagar,
New Delhi.

Presently working as Under Secretary
Ministry of Defence,
Sena Bhawan,
New Delhi.

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6. Shri S.L. Tripathi,
S/o Shri R.T. Tripathi,
resident of B-18 Raksha Kunj, Pachim Vihar,
New Delhi.

Presently working as Under Secretary,
Ministry of Defence,
Sena Bhavan,
New Delhi.

7. Shri V.J. Menon,
S/o late Shri M.T. Menon,
Resident of B-15/284, Lodhi Colony,
New Delhi.

Presently working as Under Secretary,
Department of Civil Aviation,
Sardar Patel Bhawan,
New Delhi.

8. Shri Subhash Mehtani,
S/o Shri G.D. Mehtani,
resident of 23/208, Lodhi Colony,
New Delhi.

Presently working as Under Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.

9. Shri B.B. Jain,
S/o late Shri F.C. Jain,
Resident of 236 Laxmi Bai Nagar,
New Delhi.

Presently working as Under Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.

10. Shri S. Soundarrajan,
S/o Shri K.G. Srinivasan,
Resident of G-2305, Netaji Nagar,
New Delhi-110 023.

Presently working as Section Officer,
Ministry of Home Affairs,
North Block,
New Delhi.

11. Shri P.R.A. Lalal Das,
S/o late Shri P.A. Rockey,
Resident of 'Lalita Sapna' A 54,
Sector 15, NOIDA-201301.

Presently working as Section Officer,
Department of Company Affairs,
Shastri Bhawan,
New Delhi.

12. Shri U.D. Bhargava,
S/o Shri Yogendra Nath,
Resident of Flat No. 16, Pocket I, Block G,
Naraina Vihar,
New Delhi-110 028.

Presently working as Section Officer,
Union Public Service Commission,
Cholpur House,
New Delhi.

13. Shri Girish Kumar,
S/o Shri Hardyal Shad,
Resident of C-1A, Satyawati Nagar,
Ashok Vihar,
Delhi-110 052.

Presently working as Section Officer,
Department of Civil Aviation,
Sardar Patel Bhawan,
New Delhi.

14. Shri P.P. Singh,
S/o Shri Jagir Singh,
Resident of BJ-24 (West) Shalimar Bagh,
Delhi-110 052.

Presently working as Section Officer ,
Department of Civil Aviation,
Sardar Patel Bhawan,
New Delhi.

15. Shri Jai Prakash,
S/o Shri P.M. Garg,
Resident of AB 55, Mianwali Nagar,
Rohtak Road,
Delhi-110 041.

Presently working as Section Officer with
Department of Industrial Development,
Udyog Bhavan,
New Delhi.

16. Shri O.P. Rastagi,
S/o Shri U.S. Rastagi,
Resident of CC 49A, Hari Nagar,
LIG Flat, New Delhi-110 064.

Presently working as Section Officer,
Department of Bio-Technology,
CGO Complex, Lodi Road,
New Delhi.

17. Shri Sanjiv Chakravorty,
S/o Shri S.B. Chakravorty,
607 Block No. 2, CGO Complex,
Lodi Road, New Delhi-110 003.

Presently working as Section Officer,
Department of Bio-Technology,
CGO Complex, Lodi Road,
New Delhi.

18. Shri Kuldip Singh,
S/o late Shri Jaswant Singh,
Resident of WZ 281 Street No. 16,
P.O. Janakpuri,
New Delhi-110 058.

Presently working as Section Officer,
Department of Civil Aviation,
Sardar Patel Bhawan,
New Delhi.

... Applicants

(By Advocate : Shri Sagar Chand Gupta; and
Shri B.T. Kaul)

Vs.

1. Union of India,
through Secretary,
Ministry of Personnel,
North Block,
New Delhi.

2. Union Public Service Commission,
through its Secretary,
Dholpur House,
Shahjahan Road,
New Delhi.

... Respondents

(By Advocate : Shri Madhav Panikar,

2. O.A. No. 157/1994

1. Shri B.D. Sharma,
S/o Shri S.D. Sharma,
R/o 235 Dhruva Apartments,
Behind Mother Dairy, Delhi.

Presently working as Under Secretary,
Union Public Service Commission,
Dholpur House,
New Delhi.

2. Shri Ram Gopal,
S/o Shri Sahdev Prasad,
Resident of A-23 Raksha Kunj,
Paschim Vihar,
Retired as Under Secretary,
Ministry of Defence,
New Delhi.

3. Shri S.P. Tripathi,
S/o Shri D.P. Tripathi,
Resident of G-114 Rajnagar Palam Colony,
New Delhi.

Presently working as Under Secretary,
Ministry of Defence, South Block,
New Delhi.

... Applicants

(By Advocate: Shri G.D. Gupta;
Shri D.C. Vohra, and Shri O.P. Khokha)

Vs.

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1. Union of India,
through the Secretary to the Govt. of India,
Ministry of Personnel & Training, Pensions
and Public Grievances, Dept. of Personnel and
Training,
North Block,
New Delhi-110 001.
2. Union Public Service Commission,
through its Secretary,
Dholpur House, Shahjahan Road,
New Delhi-110 011.
3. Shri Shashi Bhushan,
Deputy Secretary (WAKAF),
Ministry of Welfare, Room No. 631 'A' Wingh,
Shastri Bhawan,
New Delhi.
4. Shrimati S. Narendra,
Asstt. Financial Advisor (B),
Ministry of Defence, Room No. 21,
South Block,
New Delhi.
5. Shri S.K. Verma,
Under Secretary,
Ministry of Welfare,
Room No. 642 'A' Wingh, Shastri Bhawan,
New Delhi. ... Respondents

(By Advocate: Shri G. Ramaswamy with
Shri Rohit Mathur and
Shri Chandrasekharan, Addl.
Solicitor General)

3. O.A. No. 492/1994

1. Dr. D.B. Singh,
Under Secretary to Govt. of India,
Ministry of Law and Justice,
Room No. 411 'A' Wingh, Shastri Bhawan,
Dr. Rajendra Prasad Road,
New Delhi-110 001. ... Applicant

(In Person)

Vs.

1. Union of India,
through the Secretary,
Ministry of Personnel,
North Block,
New Delhi-110 001.

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2. Union Public Service Commission,
through its Secretary,
Dholpur House,
Shahjahan Road,
New Delhi.

3. Shri Amrit Lal,
Under Secretary,
Ministry of Defence,
South Block,
New Delhi.

4. Shri A.P. Pandit,
Under Secretary,
Ministry of Defence,
South Block,
New Delhi.

5. Shri B.P. Singh,
Under Secretary,
Ministry of Defence,
C II Hutments Block,
New Delhi.

6. Rajinder Mohan,
Assistant Financial Adviser,
Ministry of Defence (Finance),
South Block,
New Delhi.

.... Respondents

(By Advocate : Sh. Madhav Panikar
Sh. D.C. Vohra
Sh. D.P. Khokha .

4. O.A. No. 629/1994

1. Shri Surjit Singh,
Under Secretary,
Freedom Fighters Division,
Ministry of Home Affairs,
Lok Nayak Bhawan,
New Delhi.

2.. Shri Labh Singh Chane,
Deputy Land and Development Officer,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi.

3. Shri Suresh Pal,
Under Secretary,
Planning Commission,
Yojana Bhawan,
New Delhi.

4. Shri S.K. Verma,
Under Secretary,
Ministry of Welfare, Shastri Bhawan,
New Delhi.

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5. Shri M.C. Luther,
Under Secretary,
Ministry of Steel,
Udyog Bhawan,
New Delhi.
6. Shri B.S. Negi,
Under Secretary,
Ministry of Industry,
Udyog Bhawan,
New Delhi.
7. Dr. Tarsem Chand,
Research Officer,
Planning Commission,
Yojana Bhawan,
New Delhi.
8. Shri S.L. Meena,
Under Secretary (Vigilance),
Department of Post,
Dak Bhawan,
New Delhi.
9. Shri Ramu Gupta,
Section Officer,
Ministry of Mines,
Shastri Bhawan,
New Delhi.

... Applicants

(By Advocate: Shri A.K. Behra,
Shri Rohit Mathur)

Vs.

1. Union of India,
through the Secretary,
Ministry of Personnel,
North Block,
New Delhi.
2. Union Public Service Commission through its
Secy, Dholpur House, Shahjahan Road, New Delhi.
3. Amrit Lal, Under Secy., Ministry of Defence,
South Block, New Delhi.
4. A.P. Pandit, Under Secy, Ministry of Defence,
South Block, New Delhi.
5. B.P. Singh, Under Secy, Ministry of Defence
C-II Hutments, New Delhi.
6. Rajender Mohan, A.F.O., Ministry of Defence,
South Block, New Delhi.

(BY Advocate: Shri Madhav Panikar
Shri D.C. Vohra
Shri O.P. Khokha .

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O R D E R

Hon'ble Mr. Justice S.C. Mathur, Chairman -

The dispute in this bunch of Original Applications filed under Section 14 read with Section 19 of the Administrative Tribunals Act, 1985 (No. 13 of 1985), for short Act, relates to seniority of Section Officers in the Central Secretariat Service, for short CSS, governed by the Central Secretariat Service Rules, 1962, for short Rules, framed in exercise of the power conferred by the proviso to Article 309 of the Constitution. The contending parties are officers directly recruited to the post and officers promoted to the post from the post of Assistant.

2. The present is not the first litigation between the two groups of Section Officers. The litigation has history which will be referred to hereinafter. In the last round of litigation which went upto the Hon'ble Supreme Court, their Lordships have in their order dated 13.7.1990 passed in SLP (Civil) Nos. 15250, 14964, 16610 of 1988 connected with Writ Petition No. 14/89 noted that public officers were more in Court than in their offices and had hoped that the litigation before them would be final between the parties. In that hope the cases before their Lordships were kept pending and directions were issued to the Government for updating/modifying the seniority list. In compliance with those directions, the Central Government in the Ministry of Personnel issued Memorandum dated 29.1.1993 annexing therewith what is claimed to be "Common seniority list of Section Officers updated to 1.7.1990 for purpose

of promotion to Grade I of CSS in compliance of the Supreme Court's order dated 18.8.1992ⁿ. This seniority list is the subject-matter of the present litigation. The promotees and the direct recruits both find fault with this list. Thus, the litigation goes on and the hope of their Lordships is belied. Officers of the Government continue to throng the Court room.

3. Applications numbered 196/1993 and 157/1994 have been filed by the promotee officers while the applications numbered 492 and 529/1994 are on behalf of the directly recruited Section Officers. As indicated hereinabove the dispute of seniority has history. A few pages of this history deserve reading, but first the structure of the service and the rules governing it may be seen.

4. The CCS is broadly classified into two categories:

- (1) Central Civil Service Group A; and
- (b) Central Civil Service Group B (Ministerial).

The former category comprises - (i) Selection Grade (Deputy Secretary to the Government of India or equivalent), and (ii) Grade I (Under Secretary to the Government of India or equivalent), and the latter comprises - (i) Section Officers Grade, and (ii) Assistants Grade. The lowest grade in the service is that of Assistant. There are two sources of recruitment to this grade - (i) Direct through Union Public Service Commission, for short Commission and (ii) promotion from Officers of the Upper Division Grade. The quota for each source is 50% (See Rule 13).

5. The next higher grade is Section Officer. For appointment to this Grade also there are two sources -

(27) (1) direct through Commission and (2) promotion through Assistant Grade. Earlier one-sixth of the vacancies were to be filled by direct recruitment and the remaining by promotion (See Rule 13). By notification dated 10.2.1982 the proportion has been changed; one-sixth has been replaced by one-fifth. Section Officers grade is the feeder channel for promotion to the next higher Grade I which comprises the post of Under Secretary to the Government and equivalent post. Recruitment to Grade I is made exclusively by promotion from two sources viz., - (i) Section Officers and (ii) Permanent Officers of Grade A of the Central Secretariat Stenographers' Service. In the present case we are not concerned with the latter source and therefore no further reference is required to be made about that source. The post next higher to Grade I (Under Secretary) is the Selection Grade which comprises the post of Deputy Secretary and equivalent post. In the present case no further reference is required to be made in respect of the post of Deputy Secretary and the equivalent post, as the dispute is confined to promotion to the Under Secretary Grade.

6. As mentioned above Section Officers Grade is the feeder channel for promotion to the post of Under Secretary. For promotion to this post, it is necessary that there should be proper fixation of seniority of officers in the section Officers Grade. Fixation of seniority therefore became a contentious issue leading to rounds of litigation. A peep into this litigation has become necessary because it was argued on behalf of one group that the controversy

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raised in the present proceeding is no longer open, the same having been settled finally by the orders of the Supreme Court in the earlier litigations. Let us examine these litigations, the controversies raised^{thoroin} and the judgements passed by Their Lordships.

7. In the year 1983, a list of promotees and directly recruited Section Officers was prepared by the Administration. This list, it appears, was claimed to be seniority list. Its legality was challenged by some promotee Section Officers, including H.V. Pardasani through petitions under Article 32 of the Constitution in which certain provisions of the Statutory Rules were also alleged to be ultravires of the Constitution. The claim of the petitioners was that quota had failed as direct recruitment had not been made in several years and therefore seniority could not be fixed by applying the rota rule prescribed in Statutory Rules and had to be fixed from the date of continuous officiation in the Grade. By judgement and order dated 12.3.1985⁽¹⁾ these petitions were dismissed by a three Judge bench. Some observations made by Their Lordships bear reproduction. Regarding the scheme prescribed in the Rules for fixation of inter se seniority between direct recruits and promotees, it is observed in paragraph 12 (AIR) - "The Rules make detailed provision for giving effect to the quota rule and

1. AIR 1985 S.C. 781 = 1985 Lab. I.C. 654 = (1985) 2 SCC 468 - H.V. Pardasani etc., Vs. Union of India and Others.

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since officers are drawn from two different sources, provision has also been made for fixing their inter se seniority. The scheme does not appear to be arbitrary and we are, therefore, of the view that the Rules and Regulations intended to give effect to the Scheme are not ultravires of either Article 14 or Article 16 of the Constitution". Rejecting the petitioners' claim that quota rule had not been implemented and direct recruit vacancies of several years were not filled, it has been observed in paragraph 13 "there is no material to support the contention that the vacancies have not been filled up by following the prescribed quota". (emphasised). Again in paragraph 14 it is stated "on a reference to the chart we are satisfied that the quota rule has been implemented while drawing up the eligibility list in accordance with Rule 5(2)(c)(i) and (ii)." Thus, material grounds on which the fixation of seniority was challenged by the promotees were negatived. However, in the penultimate paragraph of the judgement suggestion was made to the Central Government "to streamline the Scheme by a review of the Rules and Regulations so that rancour and heart burning in the officers may be reduced to the inevitable minimum in the matter of implementation."

8. Prior to the pronouncement of the above judgement the Rules had been amended by notification dated 29.12.1984. The above judgement does not make any reference to that amendment from which it may be inferred that it was not brought to the notice of Their Lordships. The amendment was to take effect from 1.7.1985.



9. On the same day viz., 12.3.1985 Their Lordships dismissed another bunch of Writ petitions filed by certain promotee Assistants (Karam Pal and Others) against the fixation of their seniority vis-a-vis direct recruits and the select list prepared for promotion to Section Officers Grade. They had also desired fixation of seniority from the date of continuous officiation in the grade. On the plea that quota rule had not been observed and therefore rota could not be implemented as the two went hand in hand. Their plea was negatived, Their Lordships noticing that in 22 years since the enforcement of the rules direct recruitment had not been held only in two years and therefore quota rule had substantially been complied with. This judgement⁽²⁾ also does not refer to the amendment notified on 10.2.1985. Some significant observations made in this judgement also bear reproduction. In paragraph 18 at P-779 (AIR) it is observed "unless there is any serious failure in implementing the Rule and grave injustice is done to some individual or to a group of officers, we do not think it would be proper to interfere with the working of the scheme and dislocate the inter se seniority of the officers in these grades. No malafides have been pleaded nor has any grave injustice been established in the writ Petition Hair-splitting arguments, if accepted, might indicate that some of the petitioners have not been promoted to the grade of Section Officers as and when due. We are of the view that if there has been substantial compliance in implementing the scheme under the Rules, judicial interference is not called for."

2. AIR 1985 SC 774 = 1984 Lab. I.C. 592 = (1985) 2 SCC 457
Karam Pal and Others Vs. Union of India and Others.

10. In the years 1984, 1985, 1986 and 1987 eligibility lists were prepared for promotion to Grade I (Under Secretary and equivalent). This gave rise to the second round of litigation. Amrit Lal and other promotee Section Officers filed O.A. No. 1659 of 1987 at the Principal Bench of the Tribunal asserting that there was no common seniority list of Section Officers working in various Ministries and Departments of the Government but there were Ministry or Department-wise seniority lists from which the eligibility lists had been prepared and in the said seniority lists in various recruitment years slots were kept vacant on account of non-availability of direct recruits and names of direct recruits appointed much later than the appointment of promotees were filled in those slots which resulted in depression of seniority of the promotees. In other words, it was pointed out that unfilled vacancies of one recruitment year were carried forward to subsequent years and gaps between the appointment of promotees and the direct recruits whose names were subsequently introduced in the slots at times ranged from 7 to 9 years. On these facts the claim of those applicants was that the quota rule had failed and therefore fixation of seniority by rotation of vacancies could not be resorted to and seniority could be determined only by the rule of continuous officiation in the grade; the Ministry or department-wise seniority lists which were prepared on the basis of quota-rota rule were thus defective and since the eligibility lists were based on the defective seniority lists, the former also

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suffered from legal infirmity. The applicants pressed that a common secretariat level seniority list based on the principle of continuous officiation in the grade of Section Officers was required to be prepared before preparing the eligibility list for promotion to the post of Under Secretary and equivalent posts. They pointed out the prejudice which the promotee Section Officers were suffering on account of the faulty procedure adopted by the administration in preparing the Ministry or department-wise seniority list and thereafter the eligibility list for Grade I. After pointing out the prejudice they prayed for the grant of following reliefs:-

- a) "to prepare a common seniority list afresh assigning proper seniority to the applicants, independent of the cadre-wise seniority lists vis-a-vis the direct recruits, who joined the service later than the applicants;
- b) to follow the principle of continuous officiation in the determination of the seniority of the applicants vis-a-vis the direct recruits because there has been a complete break-down of the quota system and rotational rule of seniority being discriminatory and violative of Article 16 of the Constitution;
- c) to prepare an eligibility list for promotion to Grade I of the CSS containing the names of direct recruits and promotee Section Officers on year to year basis in consonance with statutory rules; and
- d) to release all the direct recruitment vacancies which remained unfilled for two years in favour of the applicants and they similarly be placed as their colleagues in the Central Secretariat Service in view of amendment dated 29th of December, 1984, and to confer all other consequential benefits including promotion, pay etc. to the applicants after fixation of their seniority in accordance with the principle of continuous officiation."

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11. The above Original Application was contested on behalf of the Union of India and certain directly recruited Section Officers. The anchorsheet of their defence was that the facts and issues raised in the case had already been decided and settled by the Supreme Court in H.V. Pardasani (Supra) and the application was barred by the principle of *res judicata*. It was also pleaded that the judgement of the Supreme Court was binding upon the Tribunal under Article 141 of the Constitution and therefore the Tribunal was not competent to deal with the issues now raised. The Tribunal by its judgement dated 31.8.1988⁽³⁾ held that preparation of eligibility list was an annual exercise and publication of each list gave rise to fresh cause of action. It further held that the judgement of the Supreme Court in Pardasani's case was final in respect of 1983 eligibility list as that list was specifically under challenge in that case but it was not final in respect of the lists of 1984, 1985, 1986 and 1987. The lists of these four years were found to violate the principle of equality enshrined in Articles 14 and 16 of the Constitution and were accordingly quashed. with direction to the Union of India to recast the lists reckoning seniority on the basis of continuous length of approved service.

(3) 1991(1) ATJ (CAT) 283 Amrit Lal Vs. Union of India, Principal Bench, New Delhi.

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In view of Rule 12(2) the Bench declined to direct the Union of India to give benefit of the entire period of continuous efficiation; the benefit was confined to the period of approved service as defined in the Rules. The Bench has noticed that there was large scale deviation in the observance of the quota rule. It is on this basis that instead of directing the Government to prepare list by applying the quota-rota rule, the Bench directed counting of seniority with effect from the date of commencement of approved service.

12. Against the above judgement of the Tribunal Special Leave Petitions were preferred before their Lordships of the Supreme Court along with applications for Interim Orders. On 30.8.1988 their Lordships directed that the parties shall maintain status quo and there will be no reversion of the petitioners in the meantime. It was further directed that if any promotion was given that will be subject to the result of the matter pending before their Lordships. At some stage of the proceedings their Lordships felt that there did not exist a seniority list of Section Officers and therefore they directed the Union of India to draw up such a list. This fact is recorded in the Order of the Supreme Court dated 13.7.1990. Such a list was prepared and their Lordships were informed about it. Thereafter their Lordships passed an Order on 13.7.1990 relevant portion of which

reads as follows:

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"On March 12, 1985, a three Judge Bench of this Court delivered judgment in two cases: (1) Dharam Pal and Ors. Vs. Union of India & Ors. (1985 (3) SCR 271) and (2) H.N. Pardasani & Ors etc. Vs. Union of India & Ors. (1985 (3) SCR 286). These decisions related to the working out the Central Secretariat Service Rules of 1962 and dealt with the dispute of inter se seniority between direct recruits and promotees in the Central Secretariat Service. It is not disputed that while deciding these cases, this Court took into account the position, as it is existed upto 1983. In one of the Judgments the Court indicated that the Central Government would do well to streamline the scheme by review of the rules and regulations in order to avoid rancour and heart-burning in the Officers. Pursuant to these observations of the Court, on 29th of December, 1984, a set of amendments were brought to the Rules and the scheme has been streamlined. These rules of 1984 December were made effective from 1st of July, 1985.

Inspite of the decisions of this Court referred to above, some of the promotee Officers in this cadre went before the Central Administrative Tribunal raising a fresh dispute on what may be said to be a covered, field. The Tribunal had the handicap of a binding judgment in the field; yet on the basis of materials placed before it, it came to conclusions partly different from what had been reached by this Court and rendered a judgement which is impugned before us in this group of cases.

We have heard parties at considerable length in the month of January this year

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and thereafter when we were satisfied that the representation made to this Court on earlier occasion that there existed a seniority list was perhaps not correct, we called upon the Union of India to draw up such a list and for that purpose we adjourned the proceedings for a considerable period of time, it is not disputed that with the assistance of both the sides such a list has now been drawn up.

We have again heard counsel appearing on the two sides and even allowed oral arguments to be addressed by an intervenor in person. This Court has repeatedly noticed the fact that public Officers are more in Court than in their offices. With a view to doing complete justice to the matter and being assured by counsel on either side and the representatives who have filled our Court hall that if a seal be given to this litigation, our expectation that Government business shall now be carried on and not litigation hereafter, we have agreed to make this further order providing certain guidelines for updating/modifying the list which was drawn up as referred to above.

We are of the opinion that with a view to doing complete justice to the situation, the December, 1984 Rules should be made operative from 1.7.1984 instead of 1.7.1985. These Rules have now a limited provision of carry-forward of vacancies to be filled up by direct recruits and that is a two year period. The entitlement to substantive recruitment to the cadre is on an eight year period of qualifying service. Entitlement as qualified Officers in the field is one matter and recruitment into the cadre on substantive basis is another. It may

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be noted that 20% is reserved for the direct recruits and the remainder is available to the promotees.

We do not consider it appropriate to dispose of the matter now and leave the litigant again to come in some form. Therefore, we adjourn these proceedings by two months and require the Union Government to update/modify the list scrupulously following every provision of the relevant rules and the regulations and place the list for consideration of the Court on the adjournment date. A copy of the list as prepared may be served on counsel for either side a week in advance so that they would be in a position to make their representations on that date." (Emphasis supplied)

The specific direction of Their Lordships was to update/modify the list scrupulously following every provision of the ^{relevant} rules and regulations and to place it before the Court. The updated/modified list was submitted to Their Lordships along with the affidavit dated 5.9.1990 of Shri.C.S. Birzada, Under Secretary in the Department of Personnel in which he explained the position of rules and the manner in which the list had been prepared. The list bore the heading "Common seniority list of Section Officers for the purpose of inclusion in the select lists of Grade-1 of Central Secretariat Service in accordance with Regulation 5(2)(c)(i) & (ii) by implementing the amendment dated 29.12.1984 with effect from 1.7.1984." Against this seniority list objections were filed by certain persons but before these objections could be disposed of the matter again



came up before their Lordships on 20.8.1991 when the Special Leave to Appeal was granted and the case was directed to be listed for final disposal expeditiously. The Appeals were finally disposed of by their Lordships by Order dated 18.8.1992. Material portion of the order reads as follows:

"Accordingly, we direct the Union of India to finalise the seniority list within three months from today on proper consideration of the objections. No promotion to the post of Under Secretary shall be made pending finalisation of the list except, as submitted by the Attorney General, in regard to the Scheduled Castes and the Scheduled Tribes. No promotion so far made on temporary basis shall be disturbed until and subject to the decision of the competent authority in regard to the seniority list.

If the employees are aggrieved in any manner by reasons of the final list which will be prepared by the Government, it will be open to them to challenge the said list before the Central Administrative Tribunal. In the event of such challenge, it will be open to the Tribunal to make any such interim order as it may consider appropriate. The Tribunal shall dispose of the matter finally as quickly as possible."

13. The so-called final seniority list was issued alongwith Office Memorandum dated 29.1.1993. In the Office Memorandum the method of fixation of seniority has been explained. This is the list which is under challenge in the present proceedings.

14. In the aforesaid Office Memorandum, it is stated thus:-

In its order of February 1990, the Supreme Court had desired that a Common Seniority List (CSL) of Section Officers (SOs) for purposes of promotion to Grade I of Central Secretariat Service be prepared in accordance with

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Regulation 5(2)(c)(i) and (ii) of the Central Secretariat Service (Promotion to Grade I & Selection Grade) Regulations, 1964 (Promotion Regulations 1964). The Rules and Regulations did not explicitly spell out the method to be followed for preparing the CSL of SOs. The inter se seniority of promotee and directly recruited SOs at all Secretariat level is reflected in the Eligibility List (EL) prepared in accordance with Regulation 5(2)(c)(i) and (ii) of Promotion Regulations, 1964. Such an EL was prepared in the year 1983 and was approved by the Supreme Court in Pardasani's case. This list combined the names of promotee and directly recruited SOs in a manner which reflected the seniority on all - Secretariat basis, of all SOs eligible for promotion in the year 1983. Since the Supreme Court wanted the CSL of SOs to be prepared in accordance with Regulation 5(2)(c)(i) and (ii) of Promotion Regulations, 1964, 1983 EL was taken as the base after excluding the names of 66 officers who belonged to the Central Secretariat Stenographers Service. In this manner, the EL of 1983 became the base CSL. This list contained the names of SOs directly recruited through Civil Services Examination of 1976 (CSE), Scheduled Castes and Scheduled Tribes directly recruited SOs of CSE 1978 and promotees from Select Lists upto 1975. It did not contain the names of general category direct recruits of CSE 1977 and 1978;

their number respectively was 32 and 26.

SC/ST Officers of 1978 CSE were to be placed below the general category directly recruited SOs of CSE 1977 and 1978. Accordingly, their names were added to the base CSL, placing them above the directly recruited SC/ST SOs of CSE 1978. This brought into existence the base CSL containing 689 names. To this list were added the names of promotees of Select Lists of 1976, 1977, 1978, 1979,

1980, 1981 and 1982. Only promotees upto 1982 batch had become eligible for promotion by 1.7.1990 and therefore the names of promotees of subsequent Eligibility Lists have not been included as the CSL was required to be updated upto 1.7.1990 only. Direct recruits of CSE 1979, 1980 and 1981 have been interpolated at every sixth place after every five promotees, in accordance with the quota rule then prevailing which was 1/6th for direct and the remaining for promotion. With effect from 10.2.1980, the quota for direct recruits became 1/5th and accordingly direct recruits of CSE 1982 and 1983 have been interpolated at every fifth place after every four promotees.

15. The Office Memorandum then proceeds to explain the manner in which the backlog of vacancies in both the streams has been dealt with. The backlog covers two periods (i) pre 1.7.1984 and (ii) post 1.7.1984. Prior to 1.7.1984, there was no provision sanctioning the carry forward of unfilled vacancies of any year

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to subsequent years. With effect from that date, provision was made by the amendment in rules effected in 1984 whose operation was advanced to 1.7.1984 under the direction of the Supreme Court. In respect of the pre 1.7.1984 period, it is stated, as on that date, there was a backlog of 62 vacancies in the direct stream comprising 46 at the end of 1982 and shortfall of 16 in direct recruitment on the basis of CSE 1983. In accordance with the quota then prevalent, 62 direct recruits were entitled to be interpolated with 248 (62 x 4) promotees. To abolish backlog, 248 promotees have been placed together in a bunch after the last direct recruit of CSE 1983. In this manner, the number of SOs brought on the CSL swells to 1629.

16. Regarding the post 1.7.1984 period, it is stated in the Office Memorandum that in the year 1984 there were 30 vacancies in the direct stream against which only 21 joined, resulting in a shortfall of 9. The 21 who joined were interpolated with the promotees in the ratio of 1 : 4 and against the shortfall of 9, 36 promotees were placed in a bunch and 9 unfilled vacancies were carried forward. The same procedure was followed in the years 1985, 1986, 1987, 1988 and 1989. In the year 1985, there were 18 vacancies in the direct stream. Against this, 16 joined resulting in a shortfall of 2. The 16 who joined were interpolated with promotees in the ratio mentioned herein and 8 promotees were placed in a bunch below them, the two shortfall vacancies being carried forward to the next year. In the year

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1986, direct recruit vacancies were 27 against which 15 joined, resulting in a shortfall of 12. The 15 who joined were interpolated with promotees in the same manner and thereafter 48 promotees were placed in a bunch, the shortfall of 12 being carried forward to the succeeding year. In the year 1987, recruitment is in excess of direct recruitment vacancies of that year; against 16 vacancies, recruitment is of 18. The excess recruitment of 2 is against the 2 carry forward vacancies of 1985. After interpolating 16 direct recruits with promotees in the manner mentioned hereinbefore, 9 promotees have been placed in a bunch against the carry forward vacancies of 1984 which being in the third year have been diverted to the promotees. The 2 direct recruits who joined against the carry forward vacancies have been placed below the said 9 promotees. The 9 carry forward vacancies of 1984 thus get abolished. The 2 carry forward vacancies of 1985 also get filled. Now there are no carry forward vacancies of 1984 and 1985. Now there are 12 direct recruit vacancies of 1986 only. In 1988 also, recruitment is in excess of the vacancies of that year, the vacancies being 20 and recruitment being of 24. The excess 4 were recruited against the carry forward vacancies of 1986; as already noticed there was a shortfall of 12 in that year. The shortfall gets reduced to 8. The 20 who were recruited against the vacancies of that year have been interpolated with promotees and thereafter 4 recruited against the carry forward vacancies have been placed. In the year 1989, there is no excess recruitment, the vacancies being 23 and recruitment being of 13, resulting in a shortfall

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of 10. The list ends with the juniormost promotee of 1982, as the batch of 1982 was the last batch which became entitled to promotion by 1.7.1990.

17. The Office Memorandum ends with explaining from the omission. the list of the names of promotee SOs who have either retired or resigned or expired before completion of the qualifying service of eight years while including the names of such officers in the direct stream. It is admitted that this could result in some benefit to the promotee SOs but the provisional list has not been disturbed as no specific objection has been received from the directly recruited SOs against the procedure adopted.

18. We have now to see (1) whether the impugned list is what it professes to be, (2) whether the said list, has, in fact, ~~been~~ prepared in the manner it is claimed to have been prepared, and (3) whether the assignment of seniority position therein is in accordance with the rules, regulations and the law.

19. The impugned list bears the heading "Common Seniority List of Section Officers updated to 1.7.1990 for Purpose of Promotion to Grade I of CSS....."

The question for consideration is whether the impugned list is a seniority list or ^{an} eligibility list.

A seniority list is a permanent document. It contains the names of all persons belonging to a service or holding a post in a particular grade at a particular point of time. To this list, additions are made when appointments are made from time to time, either

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through direct recruitment or by promotion. The nature of the document, however, remains permanent. As against this an eligibility list is not a permanent document. It is prepared to identify persons who are eligible to be considered for appointment to the higher post or service. Once appointment is made to that post or service, the list becomes redundant. The eligibility list is, therefore, temporary in character.

20. A service rule may require a qualifying service for eligibility to be considered for promotion. A person although senior will not find his name in the eligibility list if he has not put in the requisite number of years in the grade or service. A seniority list cannot, therefore, be equated with an eligibility list. There may not be any distinction between a seniority list and an eligibility list where no qualifying service is prescribed for eligibility to promotion to the higher post. In such a situation, a seniority list can be treated as eligibility list also and vice-versa.

21. In para 15 of the office memorandum, there is reference to completion of eight years' qualifying service. From this, it is apparent that the rules relevant to the post in question prescribe a minimum qualifying service for eligibility to promotion to the higher post. Accordingly, in the case on hand, the distinction between seniority list and eligibility list will have to be maintained.

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22. That the impugned list is not a seniority list is apparent from its title also. It uses the expression "for purpose of promotion to grade I". Obviously the list has been prepared keeping in view the criterion of minimum qualifying service. Those who do not fulfil the criterion have been excluded.

23. In view of the above, we are of the opinion that it is a misnomer to describe the impugned list as a seniority list. It is only an eligibility list.

24. There was some argument at the Bar that the assignment of seniority in the impugned list is not in accordance with the profession made in the office memorandum. It is not necessary to go into this question as the validity of the list will depend on answer to the question whether it has been prepared in accordance with the rules, regulations and the law or otherwise. If the answer is in the affirmative, it will have to be confirmed even though it is contrary to the profession. Similarly, it may have to be quashed if the answer is in the negative even though it has been prepared in accordance with the profession made in the office memorandum. We may accordingly proceed to consider the rules, regulations and the law.

25. The Central Secretariat Service (CSS) of which the posts of Section Officer and Under Secretary are constituents is governed by the Central Secretariat Service Rules, 1962 (Rules) mentioned hereinabove. A brief reference to the Rules and the Service has been made earlier. A detailed examination may now be made of both.



26. The composition of the Service is mentioned in Rule 3 of the 1962 Rules. Broadly, the Service is classified into two groups - (1) Central Civil Service Group 'A' and (2) Central Civil Service Group 'B' Ministerial. Group 'A' includes two grades - (i) Selection Grade and (ii) Grade I. In the former are included the post of Deputy Secretary to the Government of India and equivalent posts, and in Grade I are included the post of Under Secretary to the Government of India and equivalent posts. In Group 'B' are included - (i) posts of Section Officers' Grade and (ii) Assistants' Grade. Sub-rule (3) declares the posts in the Assistants' grade as non-gazetted and the remaining posts as gazetted. Rule 4 lays down that there shall be a single combined gradation list in respect of officers of the selection grade and grade I for all the ministries or offices specified in column (2) of the First Schedule to the Rules, and for the officers specified against such ministries or offices specified against such ministries and offices in column (3) of that Schedule. The First Schedule contains names of ministries and offices to whom the Rules apply. From Rule 4 it is apparent that for officers holding Group 'A' posts there has to be a single gradation list irrespective of the ministry or office they may be posted in. In other words, the gradation or seniority list of Group 'A' officers is maintained at all-Secretariat level. Rule 5 provides that a separate cadre in respect of the Section Officers' grade and Assistants' grade shall have to be constituted for each ministry or office specified in

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column (2) of the First Schedule and all the offices specified against such ministry or office in column (3) of that Schedule, and officers of these grades in each cadre shall be borne on a separate gradation list drawn-up for that cadre. From this it follows that after recruitment to the Central Secretariat Service, the officers are allocated to various ministries and their subordinate offices and the officers allocated to any ministry and its subordinate offices constitute a cadre separate from the rest and for this cadre, a separate gradation list is to be drawn. In other words, the seniority of officers of Group 'B' posts is cadre-wise or ministry-wise. The term "cadre" is defined in Rule 2 (e) to mean, "the group of posts in the Grades of Section Officer and Assistant in any of the Ministries or Offices specified in column (2) of the First Schedule and in all the Offices specified against such Ministry or Office in Column (3) of that Schedule." The term "Ministry" is defined in Rule 2(m) to mean, "a Ministry in the Government of India and includes a Department of a Ministry or other Office specified in column (2) of the First Schedule." The term "Grade" is defined in Rule 2 (k) to mean, "any of the Grades specified in rule 3." The term "Common seniority list" has been defined in clause (hh) as follows :-

" "Common seniority list" in relation to any Grade means the seniority list of officers of that Grade serving in all the cadres specified in the First Schedule as on the appointed day and revised from time to time in accordance with the regulations to be framed in this behalf by the Central Government in the Department



of Personnel and Administrative Reforms in the Ministry of Home Affairs."

In view of these definitions and the position of rule discussed herein it may be said that while seniority of officers of Group 'A' is determined grade-wise, that of officers of Group 'B' is determined cadre-wise. Since the post of Section Officer falls in Group 'B' it is apparent that the seniority list of Section Officers is also required to be maintained cadre-wise and not grade-wise.

27. Recruitment to Section Officers' grade is dealt with in Rule 13 (1) which reads as under :-

"(1) One-sixth of the substantive vacancies in the Section Officers' Grade in any cadre shall be filled by direct recruitment on the results of the competitive examinations held by the Commission for this purpose from time to time. The remaining vacancies shall be filled by the substantive appointment of persons included in the Select List for the Section Officers' Grade in that cadre. Such appointments shall be made in the order of seniority in the Select List except when for reasons to be recorded in writing, a person is not considered fit for such appointment in his turn."

With effect from 19.2.1982, the term "One sixth" has been replaced by the term "One fifth". The term "Select List" has been defined in Rule 2 (q) as follows :-

" "Select List" in relation to the Selection Grade and Grade I or the Section Officers' Grade and the Assistants' Grade means the Select List prepared in accordance with the regulations made under sub-rule (4) of rule 12 or under the regulations contained in the Fourth Schedule, as the case may be."

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Rule 2 (q) itself does not prescribe the method of preparing select list. For that Fourth Schedule to the Rules has to be consulted and the regulations framed under Rule 12 (4). Rule 13 (2) deals with filling of temporary vacancies in the Section Officers' grade in any cadre. It provides that such vacancies shall be filled by appointment of persons included or approved for inclusion in the select list for the Section Officers' grade in that cadre. It also provides that the vacancies remaining unfilled thereafter shall be filled in equal proportion from amongst the officers of the Assistants' grade who have rendered not less than eight years' approved service in the grade and are within the range of seniority on the basis of seniority subject to the rejection of the unfit and from among the officers of the Assistants' grade in that cadre with the longest period of continuous service in that grade on the basis of length of service subject to rejection of the unfit. Sub-rule (5) lays down that for the purpose of sub-rules (1) and (2) a select list for the Section Officers' grade shall be prepared and the same may be revised from time to time. The procedure for preparing and revising the select list, it is stated, shall be as set-out in the Fourth Schedule. Although Rule 13 reserves one-sixth or one-fifth of substantive vacancies in Section Officers' grade to be filled by direct recruitment, it does not ^{specifically} provide that unfilled vacancy or vacancies shall be carried forward to the subsequent year or years.

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28. Rule 12 deals with recruitment to selection grade and grade I. Sub-rule (2) provides that "Vacancies in Grade I shall be filled by promotion of permanent officers of the Selection Grade who have rendered not less than eight years' approved service in that grade... and are included in the Select List for Grade I of the Service prepared under sub-rule (4)." Second proviso to this sub-rule lays down that "no person included in a later Select List shall be eligible to be appointed to the Grade until all officers included in an earlier Select List have been appointed." The third proviso mentions, "if any person appointed to the Section Officers' grade is considered for promotion to Grade I under this sub-rule, all persons senior to him in Section Officers' Grade who have rendered not less than six years' approved service in that grade, shall also be considered notwithstanding that they may not have rendered eight years' approved service in that Grade; provided that the aforesaid condition of six years' approved service shall not apply to person belonging to the Scheduled Caste or Scheduled Tribes." The term "approved service" which has been used in Rule 13 as well as in Rule 12 has been defined in Rule 2 (c) as follows :-

" "approved service" in relation to any Grade means the period or periods of service in that Grade rendered after selection, according to prescribed procedure, for long-term appointment to the Grade, and includes any period or periods during which an officer would have held a duty post in that Grade but for his being on leave or otherwise not being available for holding such post."

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This clause uses two expressions - "duty post" and "long-term appointment". The former has been defined in clause (j) and the later in clause (1) of Rule 2. These clauses read as follows :-

"(j) "duty post" in relation to any Grade means a permanent or temporary post of that Grade and shall, in relation to Grade I and the Section Officers' Grade, include the posts specified in columns (2) and (3) respectively of the Second Schedule in respect of the offices specified in column (1) of that Schedule;"

"(1) "long-term appointment" means appointment for an indefinite period as distinguished from a purely temporary or ad hoc appointment, like appointment against a leave or other local vacancy of a specified duration;"

Sub-rule (2) (a) of Rule 12 deals with filling up of vacancies in Grade I by members of the Scheduled Castes and Scheduled Tribes through limited departmental competitive examination to be conducted by the Union Public Service Commission. Sub-rule (3) lays down that substantive appointments to selection grade and grade I shall be made in the order of seniority of temporary officers of the respective grades except when for reasons to be recorded in writing, a person is not considered fit for such appointment in his turn. Sub-rule (4) contemplates preparation of select list for the selection grade and grade I. Such list may be revised from time to time. The procedure for preparing the select list may be prescribed through regulations made by the Central Government in the Department of Personnel and Administrative Reforms in the Ministry of Home Affairs. The proviso to the sub-rule requires

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consultation with the Union Public Service Commission while prescribing the regulations and also while finalising the select list. Sub-rule (5) deals with appointment against temporary vacancies.

29. Rule 13-A deals with recruitment to Section Officers' and Assistants' grade on ad hoc basis. Rule 14 provides for filling substantive vacancies on temporary basis. Rules 15 and 16 deal with probation and confirmation respectively, and Rule 17 deals with discharge or reversion of probationers. Rule 18 deals with determination of seniority. Sub-rule (1) of Rule 18 provides that relative seniority of members of the Service appointed to any grade before the appointed day shall be regulated by their relative seniority as determined before that day. The term "appointed day" has been defined in Rule 2 (b) to mean, "the date on which these rules come into force." Accordingly, sub-rule (1) deals with determination of seniority of officers appointed to any grade prior to the enforcement of the 1962 rules. Sub-rule (3) deals with determination of seniority of officers appointed to any grade after the appointed day. Clause I of sub-rule (3) deals with determination of seniority of officers belonging to the selection grade and grade I with which we are not concerned. Clause II deals with determination of seniority of Section Officers' and Assistants' grade. It provides as follows :-

"II. SECTION OFFICERS' AND ASSISTANT'
GRADE

(i) Permanent Officers.—(a) Direct recruits shall be ranked inter se in the order of merit in which they are placed

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at the competitive examination on the results of which they are recruited, the recruits of an earlier examination being ranked senior to those of a later examination :

Provided that the seniority of persons recruited through the Competitive Examinations held by the Commission —

- (i) in whose case offers of appointment are revived after being cancelled, or
- (ii) who are not initially appointed for valid reasons but are appointed after the appointment of candidates recruited on the basis of results of the subsequent examination or examinations.

shall be such as may be determined by the Central Government in the Department of Personnel and Administrative Reforms in the Ministry of Home Affairs in consultation with the Commission.

(b) Persons appointed substantively to the Grade from the Select List for the Grade shall be ranked inter se according to the order in which they are so appointed.

(c) The relative seniority of direct recruits to a Grade and persons substantively appointed to the Grade from the Select List for the Grade shall be regulated in accordance with the provisions made in this behalf in the Fourth Schedule.

(ii) Temporary or Officiating Officers.— Persons included in the Select List for the Grade shall rank inter se in the order in which they are included in the Select List and shall rank senior to all other temporary officers in the Grade who shall rank inter se in the order in which they are approved for long-term appointment to the Grade :

Provided that an officer included in the Select List who refuses at any time to be appointed to the Grade for reasons acceptable to the appointing authority, shall, on his appointment to the Grade at any time thereafter, be placed immediately after the officer who was last appointed to that Grade from the Select List." (Emphasis supplied)

Rule 18 is a comprehensive rule for determination of seniority of all members of Central Secretariat Service. Clause II (i) (c) of sub-rule (3) deals with determination of relative seniority of direct recruits

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to a grade and persons substantively appointed to the grade from the select list. Rule 18 itself does not lay down the procedure for determination of such seniority. It provides that the determination shall be made in accordance with the provision contained in the Fourth Schedule. Fourth Schedule contains regulations for the constitution and maintenance of the select lists for the Section Officers' and Assistants' grades of the CSS. Regulation 2 provides that additions to the select lists for the Section Officers' grade in any cadre shall be made in such a manner as the cadre authority may determine from time to time keeping in view the existing and anticipated vacancies so as to ensure that one person each by rotation is included from out of the categories of persons mentioned in clauses (a), (b) and (c) of regulation 2 (1). In clause (a) are mentioned officers of the Assistants' grade who have rendered not less than eight years' approved service in that grade and are within the range of seniority, in the order of their seniority, subject to rejection of the unfit. The proviso to this clause lays down that if any person appointed to the Assistants' grade is considered for promotion to the Section Officers' grade in any cadre under the clause, all persons senior to him in the Assistants' grade in that cadre who have rendered not less than five years' approved service in that grade shall also be considered for promotion notwithstanding that they may not have rendered eight years' approved service in that grade. The requirement of five years' approved service is, however, dispensed with in respect of

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persons belonging to the Scheduled Castes and Scheduled Tribes. In clause (b) are mentioned officers of the Assistants' grade with the longest period of continuous service in that grade on all-Secretariat basis and assessed by the selection committee to be set-up by the Department of Personnel on the basis of merit as suitable for inclusion in the select list for Section Officers' grade. Clause (c) mentions persons selected on the result of the limited departmental competitive examination held by the Commission from time to time in order of their merit. Regulation 3 deals with seniority. Clause (1) of this regulation is not relevant for the purpose of the present case as it deals with officers appointed prior to the appointed day. Clause (2) deals with determination of inter se seniority of officers included in the select list prepared under Regulation 2. Clause (3) deals with assignment of seniority between direct recruits and persons substantively appointed to the grade from select list. It reads as follows :-

"(3) Direct recruits to a Grade and persons substantively appointed to the Grade from the Select List for the Grade shall be assigned seniority inter se according to the quotas of substantive vacancies in the Grade reserved for direct recruitment and the appointment of persons included in the Select List, respectively :

Provided that persons appointed substantively in accordance with the provisions of sub-rule (6) of rule 13 to the Grade from Select List in any cadre in any year, against direct recruitment vacancies for which direct recruits are not available shall be placed en bloc below the last direct recruit appointed in the year irrespective of the quotas reserved for direct recruits and persons included in the Select list." (emphasised).

This clause uses the term "Grade" and not "Cadre".

From this, it would appear that it lays down principle for determination of seniority in the grade and not cadre. Grade would ^{cover} all Section Officers posted in whatever Ministry or office under the Ministry. Thus, it lays down the principle for preparation of common seniority list in Section Officers' grade.

30. Regulation 3 appears under the heading "B Assistant' Grade". At first blush, this creates the impression that the rule of seniority prescribed therein relates to the Assistants' Grade and not Section Officers' Grade. This impression is removed on a look at sub-regulation(2) which speaks of Regulation 2. Regulation 2 deals with Section Officers' Grade. Accordingly, the rule of seniority prescribed in Regulation 3 covers the Assistants' Grade as also the Section Officers' Grade. Regulation 3 also gets incorporated into Rule 18(3) II(i)(c) by virtue of the language contained in the Rules. Rule 23 confers power on the Department of Personnel and Administrative Reforms in the Ministry of Home Affairs to make regulations for giving effect to the Rules. Rule 25 reserves power in the department to issue general or special directions to remove difficulties in the operation of any of the provisions of the Rules. Rule 25 confers power in the Central Government in the Ministry of Home Affairs (Department of Personnel and Administrative Reforms) to relax any of the provisions of the Rules with respect to any class or category of persons or posts.

31. The above was the position obtaining upto 1.7.1984. With effect from that date, the Rules and the Regulations were amended and for the first time specific provision was made for carrying forward of unfilled vacancies of one year to subsequent years. The amendment was made through Notification No.5/8/80 CS-I dated 29.12.1984. By clause 1(2), the amendments were sought to be effective from 1.7.1985. However, as already noticed, their Lordships made them effective from 1.7.1984.

32. The amending Rule adds the following two provisos to sub-rule(1) of Rule 13:

" Provided that the number of the vacancies to be filled by the substantive appointment of persons included in Select List for the Section Officers' Grade in a recruitment year

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in a cadre, shall be proportionate to the vacancies reported by that cadre to the Department of Personnel and Administrative Reforms to be filled by direct recruitment for that year.

Provided further that if sufficient number of candidates are not available for filling up the vacancies in a cadre in any year, either by direct recruitment or by appointment of persons included in the Select List for Section Officers' Grade, the unfilled vacancies shall be carried forward and added to the number of vacancies of the same mode of recruitment to be filled in the next year. Further, such unfilled vacancies shall also be carried forward for not more than two recruitment years, beyond the year to which the recruitment relates, whereafter the vacancies, if any still remaining unfilled, belonging to one mode of recruitment shall be transferred as additional vacancies for the other mode of recruitment."

It adds a proviso to sub-rule (2) also which is ^{as} follows:-

" Provided that if any person appointed to the Assistants' Grade is considered for promotion to the Section Officers' Grade in any cadre under this rule, all persons senior to him in the Assistants' grade in that cadre and belonging to the Scheduled Castes or the Scheduled Tribes who have rendered not less than four years' approved service in that Grade shall also be considered for promotion."

The Fourth Schedule is also amended. The proviso to

Regulation (2)(1)(a) is substituted as follows:-

"Provided that if any person appointed to the Assistants' Grade is considered for promotion to the Section Officers' Grade in any cadre under this clause, all persons senior to him in the Assistants' Grade in that cadre and belonging to the Scheduled Castes or the Scheduled Tribes who have rendered not less than four years' approved service in that Grade shall also be considered for promotion."

A proviso has been added to sub-regulation (3) of Regulation 3 in the following terms:-

" Provided that persons appointed substantively in the Section Officers' Grade in a particular year against the unfilled vacancies brought forward from previous years shall all be placed below the last slot, be it for a direct recruit or for a person included in the Select List, determined on the basis of the rotation of vacancies between direct recruits and persons included in the Select List, in that year, as illustrated in Illustration-II".

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Consequential amendment is addition of the word "further" after the word "provided" to the existing proviso to sub-regulation (3) of Regulation 3. In this manner, the newly added proviso becomes the 1st proviso and the existing proviso becomes the second proviso. To clarify the manner of preparing the seniority list, more illustrations have been added.

33. The above position clearly brings out that statutory rules existed for preparation of common seniority list of officers in the Section Officers' Grade prior to 1.7.1984 and also after that date. The statement in the Office Memorandum, therefore, that "the rules and regulations do not explicitly spell out the method to be followed for preparation of common seniority list of Section Officers," is, in our opinion, not correct. This is an infirmity in the Office Memorandum.

34. The rules discussed above show that the criterion for preparation of seniority list and merit list or eligibility list is not identical. Therefore, one list cannot be equated with the other. We have held hereinabove that the list attached to the Office Memorandum cannot be treated as seniority list; it can at best be treated as eligibility list or select list. In view of the position reflected in the rules, seniority is not irrelevant in preparing the eligibility list or select list. We may, therefore, proceed to examine whether in preparing the impugned list, rules of seniority contained in the above statutory rules have been followed or not. This is necessary because the specific direction of their Lordships in the order dated 13.7.1990 is to follow "every provision of the relevant rules and the regulations." But before doing this, it will be desirable to summarize the position of rules and regulations.

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35. Rule 13 (1) speaks of appointment against substantive vacancies and Rule 13 (2) speaks of appointment against temporary vacancies. Thus, rules contemplate appointment against permanent as well as against temporary vacancies. While Rule 13 (1) fixes quota for direct recruitment, Rule 13 (2) does not fix any such quota. From this it would appear that no direct recruitment can be made against temporary vacancies. This conclusion is re-enforced by the provision contained in Rule 13 (2) which prescribes the manner of filling up temporary vacancies. These temporary vacancies can be filled only by officers whose names appear in the select list. Select list contains names of insiders only and not outsiders. Clauses (a) and (b) of Rule 13 (2) mention insiders who may be appointed against temporary vacancies. Rule 13 (5) requires preparation of select list for purposes of sub-rule (1) as well as for purposes of sub-rule (2). The list prepared under sub-rule (1) contains names of insiders who may be appointed against substantive vacancies and also against temporary vacancies and the list prepared under sub-rule (2) contains names of insiders who may be appointed against temporary vacancies only.

36. Rule 6 (1) speaks of permanent strength of various grades of the Service at the time of enforcement of the rules. This permanent strength is mentioned in the Third Schedule. Third Schedule mentions only permanent posts; it does not mention temporary posts. However, sub-rule (3) authorises the cadre authority to make temporary additions to a cadre from time to time as it may deem necessary. In view of this provision, a cadre may comprise temporary posts as well as permanent posts. Since the posts created under sub-rule (3) of Rule 6 would be of temporary nature,

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vacancies in those posts will also be of temporary nature. Such vacancies cannot be equated with substantive vacancies referred to in Rule 13 (1).

37. In view of the above discussion, the direct recruits will have to be confined to the quota assigned to them under Rule 13 (1). Against all the remaining vacancies, only promotees will have to be adjusted. Appointment made by promotion against a vacancy falling within the quota reserved for direct recruitment on account of non-availability of a direct recruit shall be referable to Rule 13 (2). The rules do not contemplate holding of direct recruitment every year or at stated intervals. They contemplate holding of competitive examination for the purpose of direct recruitment from time to time. Accordingly, it is left to the discretion of the cadre controlling authority to decide when a direct recruitment shall be held. When the said authority decides to hold direct recruitment it will have to ascertain the total number of substantive vacancies available at that time. It will then allocate certain number of vacancies for direct recruitment according to the quota rule prevailing at that time. If the Commission sends names to the extent of the number determined, they will be appointed. If the direct recruits in required number are not available and there is short fall, the unfilled vacancies of direct stream prior to 1.7.1984 will lapse immediately and after 1.7.1984 they will lapse in the third recruitment year. In the two recruitment years they will be carried forward. Prior to 1.7.1984, the unfilled vacancies of direct stream shall be filled first by promotion of officers in the select list prepared under Rule 13 (1) and in the absence of such

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officers by promotion of officers in the select list prepared under Rule 13(2); the unfilled vacancies shall not be carried forward to the subsequent recruitment. This procedure will be followed each time a direct recruitment is held. The same procedure will have to be followed in the post-1.7.1984 period with the difference that unfilled vacancies of direct stream at any recruitment shall not lapse immediately at the close of the recruitment. They will be carried forward to two subsequent recruitments; they will lapse at the third recruitment. In the intervening period promotions may be made to the unfilled vacancies in the manner provided for in Rule 13(2). These promotees may have to be reverted, if need be, on the availability of direct recruits for appointment against their quota, if in the meantime they cannot be adjusted against the promotees' quota. If any promotee is not reverted at the time of third recruitment, he will be deemed to have been substantively appointed to the post with effect from the date he became due for reversion. This position is re-enforced because of the provision contained in Rule 15 which deals with placement of direct recruits on probation and promotees on trial. Rule 15(1) says that every direct recruit shall initially be appointed on two years' probation from the date of appointment and sub-rule(2) provides that a direct recruit shall, when first appointed to a grade, be on 'trial' for a period of two years from the date of such appointment. Sub-rule(3) provides for extension as well as curtailment of the periods mentioned in sub-rules (1) and (2). However, with regard to extension a limit of one year is fixed beyond which extension cannot be granted. After the third year, the extension can be granted only when it is necessitated by reason of departmental or judicial proceedings against

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the officer. Select list under Rule 13 (2) is prepared on the same criterion on which the list under Rule 13 (1) is prepared, namely, seniority subject to rejection of the unfit. In the circumstances, we are of the opinion that there will be no justification for ^{not} treating such promotees promoted after 1.7.1984 [✓] who are continuing in Section Officers' grade even after [✓] three years and even after direct recruitment has been held, as substantively appointed.

38. Having noticed the position in the rules as to when an appointment can be treated as substantive, we may pass on to consider the method of determining seniority prescribed in the Regulations. Regulation 3 (3) contemplates determination of seniority between direct recruits and substantively appointed promotees. In other words, promotees who cannot be said to have been appointed substantively, are excluded from being brought on the seniority ^{list.} [✓] Between the direct recruits and the promotees the assignment of seniority is according to the quota prescribed in the rules. The question for consideration is whether the quota prescribed for direct recruits is relatable to the sanctioned strength of the grade or to the substantive posts available at the time a direct recruitment is held.

39. Neither Rule 13 (1) nor any other Rule obligates the cadre controlling authority to hold direct recruitment every year or at stated intervals. When a direct recruitment will be held is left to the discretion of the cadre authority. In other words, until the cadre authority decides to hold direct recruitment, it is open to the appointing authority to fill up all vacant posts by promotion from the select list. The quota prescribed in

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Rule 13(1) will, therefore, have to be confined to the number of substantive vacancies available at the time the cadre authority decides to hold direct recruitment. Out of the vacancies available at that time, vacancies to the extent of the quota prescribed will be reserved for direct recruitment. If direct recruits become available to the extent of the required number they will be appointed and in the seniority list their names will be interpolated with the promotees in accordance with the prescribed quota. If direct recruits are not available in required number, the unfilled vacancies will be filled by promotion from the select list and these promotees will have to be placed at the bottom of the last appointee appointed by rotation of vacancies. Whenever a direct recruitment is held the same procedure will be adopted. Since the rules do not contemplate carry forward of vacancies before 1.7.1984, no slot shall be maintained for direct recruits on account of non-availability at the direct recruitment. This procedure will have to be followed till 1.7.1984 when the rule of carry forward was introduced. After 1.7.1984, the carry forward rule will have to be enforced in interpolation of direct recruits and promotees. An officer of the select list who is appointed in post-1.7.1984 period against a vacancy in the direct stream, will have to wait for a maximum of three recruitment years for commencement of the period from which his seniority will be counted. His ad hoc appointment will become substantive only from that date. Earlier, he had the prospect of being reverted.

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40. The above is the legal position for determination as to which appointment is substantive and how the substantive appointees from both the streams are to be interpolated in the seniority list. Now it remains to be decided whether the assignment of seniority in the impugned list is by following the procedure mentioned hereinabove. Admittedly, in the pre-1.7.1984 period assignment of seniority was not done in the manner mentioned hereinbefore. In the post-1.7.1984 period the assignment of seniority appears to have been done in the said manner. However, the incorrect determination of seniority in the pre-1.7.1984 period vitiates the determination of seniority in the post-1.7.1984 period also. Accordingly, neither the office memorandum can be sustained nor the list attached thereto by whatever name it may be called — seniority list, eligibility list or select list.

41. A large number of authorities were cited by the learned counsel for the parties, primarily to press the argument that where the quota rule has failed, seniority can be determined only by the date of continuous officiation. These authorities do not require examination as despite the finding of failure of quota recorded by this Tribunal in Amrit Lal's case (supra), their lordships directed preparation of seniority list by following the Rules and the Regulations. The mode for determination of seniority mentioned hereinabove accords with the Rules and the Regulations.

42. Apart from the above, the law on the subject of determination of seniority has been settled by the decision of their lordships in Direct Recruit Class II Engineering Officers' Association & Ors. vs. State of Maharashtra & Ors.

(AIR 1990 SC 1607). The following principles apart from others, have been laid down :-

- (1) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. Accordingly, where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority;
- (2) If the initial appointment is not made by following the procedure laid down by the rule but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted;
- (3) When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly;
- (4) If it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down;
- (5) Where the quota rule has broken down and the appointments are made from one source in excess of the quota but are made after following the procedure prescribed by the rules for appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date; and

(b)

- (6) Where the rules permit the authorities to relax the provisions relating to the quota, ordinarily a presumption should be raised that there was such relaxation when there is a deviation from the quota rule.

43. On behalf of some of the applicants it was submitted that the issues raised in the present case stand concluded by the judgment of their lordships in Pardasani's case (supra) and they are no longer open to challenge. It is now admitted position that what was under challenge in Pardasani's case was not seniority list but only eligibility list. It appears from the judgment of their lordships that their lordships were of the opinion that a seniority list should precede preparation of select list because in preparation of select list, seniority plays an important role. It may be that the assignment of seniority of the officers brought in the select list produced in Pardasani's case also suffered from the defects pointed out hereinabove, but that select list has attained finality and no promotions made on the basis of that list can be nullified. All those promotions will remain in tact even if the seniority position of those promotees is altered in the seniority list which may be prepared now in pursuance of our present judgment.

44. In view of the above, all the Original Applications are allowed and the Office Memorandum dated 29.1.1993 together with the list annexed thereto is hereby quashed. The Central Government will publish draft seniority list prepared in the manner hereinabove indicated within four months from today. Objections against this list may be preferred within one month of the publication of the list. The final seniority^{list} will be prepared within the next three months. During the intervening period, ad hoc promotions to

Grade I may be made on the basis of the list annexed to the Office Memorandum dated 29.1.1993. In the appointment/promotion order, it will be specifically mentioned that the same is ad hoc and is subject to the publication of the final list in pursuance of the present judgment. Any person who is found to have been promoted contrary to the list, which will now be finalised, shall be reverted forthwith. Till the list is finalised, no reversions will be effected. The Government will embark upon the exercise of preparing Select List for promotion to Grade only after finalising the seniority list. The list approved in Pardasani's case shall remain intact. Promotions made from that list shall not be disturbed despite alteration of seniority position of those officers in the list which will now be prepared. There shall be no order as to costs.

(P. T. Thiruvengadam)
Member (A)

(S. C. Mathur)
Chairman

SNS
/as/

Attested
Suresh Kumar
22/3/92
CCJ

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