

(44)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No. 2012/1988
P.A.No.

Date of Decision 25.2.2002

Sh.Gyan Prakash and Ors

Petitioner

Applicant No.1 present in
person.

Advocate for the Petitioner

VERSUS

UOI & Ors

Respondent

Shri R.N.Singh

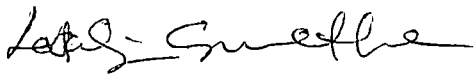
Advocate for the Respondents

Coram:-

Hon'ble Shri S.R.Adige, Vice Chairman (A)
Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman (J)

1. To be referred to the Reporter or not? Yes

2. Whether it needs to be circulated to other
Benches of the Tribunal? No


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

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Central Administrative Tribunal
Principal Bench

OA 2012/1988

New Delhi this the 25 th day of February, 2002

Hon'ble Shri S.R. Adige, Vice Chairman(A).
Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).

1. Gyan Prakash, IES,
B-41, Pushpanjali Enclave,
Pitampura,
Delhi-110 034.
 2. Y. Seshagiri Rao, IES,
Joint Director,
National Buildings Organisation,
New Delhi.
 3. C.S. Rao, IES,
Flat No. 302, Door No.47-3-31,
Sri venkateswara Towers,
5th Lane, Dwaarakanagar,
Visakhapatnam-530016.
 4. S.M.R. Zaidi,
H.No.53, Sector 18,
Indira Nagar,
Lucknow-226016.
 5. R.C. Sharma,
315, Kailash Tower I,
East of Kailash,
New Delhi-110065.
 6. S.M. Krishnamachar, IES,
Labour and Employment Adviser,
Ministry of Labour,
New Delhi.
 7. Gopal Behari,
97-MIG, Prasad Nagar,
New Delhi-110005.
 8. R.K. Prasher,
C-440, Yojana Vihar,
Delhi-110092.
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9. K.M. Balasubramanyam,
Sai Cottage, Near Vijaya Bank,
Outer Circle, Whitefield,
Bangalore-560 066.

... Applicants.

(Applicant No. 1 present in person)

Versus

1. Union of India through Secretary,
Department of Economic Affairs,
Government of India,
New Delhi.
2. Secretary,
Department of Personnel & Training,
Government of India,
New Delhi.
3. Deputy Secretary,
Department of Economic Affairs,
Government of India,
New Delhi.
4. Shri P.L. Aware, IES (Retd.).
5. Dr. S.N. Kaul, IES.
6. Smt. Pushpam Joseph, IES.
7. Shri M.V. Pavate, IES.
8. Shri Kamal Kishore, IES.
9. Shri S.M. Meena, IES.
10. Dr. N.J. Kurian, IES.
11. Dr. V.N. Mishra, IES.
12. Shri L.C. Mahajan, Ex. IES.
13. Shri A.K. Sarkar, IES.
14. Shri S.S. Rawat, IES.

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15. Shri Ramesh Chandra, IES.
16. Shri I.V. Ranga Rao, IES.
17. Dr. T.K. Das, Ex. IES.
18. Dr. M.L. Lakhera, IES.
19. Dr. K.M. Raipuria, IES.
20. Dr. M.S. Bhatia, IES.
21. Shri Sharwan Kumar, IES.
22. Shri J.R. Rao, IES.
23. Shri T.N. Jaitle, IES. ... Respondents.

(By Advocate Shri R.N. Singh)

O R D E R

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

This case has been remitted by the Hon'ble Supreme Court by order dated 25.7.2001, setting aside the earlier order passed by the Tribunal dated 5.12.1994 for reconsideration and redisposal of the O.A. on merits.

2. The applicants in the present O.A. have impugned the seniority list issued by the respondents dated 20.8.1986 which is the seniority list of Grade-I and Grade-II officers of the Indian Economic Service (IES) as on 1.8.1986. The applicants state that they had made representations against this seniority list to which they received no reply. By Notification dated 16.3.1988, officers of IES were promoted to Non-Functional Selection Grade (NFSG) which, according to the applicants, was based on the impugned seniority list of Grade-I officers issued on 20.8.1986. According to the applicants, the wrong fixation of their seniority in the impugned seniority list had greatly prejudiced their service interests and denied

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them promotions to higher grades in comparison with direct recruits. The main issue raised in the O.A. relates to fixation of inter se seniority of promotees and direct recruits in Grades-I and II of IES. The applicants are promotee officers who have all retired from service after filing the O.A. Shri Gyan Prakash, applicant No.1 who has presented the case of the applicants, has submitted that in the circumstances of the case, if the applicants succeed in the O.A. regarding revision of the seniority list in question, they should be considered for higher promotion posts and they would be satisfied to get notional fixation of pay and consequential revision of pensionary benefits on the promoted posts.

3. Shri Gyan Prakash, applicant No.1, has relied on the judgement of the Supreme Court in *Narender Chadha Vs. Union of India and Ors.* (1986 SCC L&S 226). He also relies on the observations of the Supreme Court in *A. Janardhana Vs. Union of India and Ors.* (AIR 1983 SC 769) and other cases given in the list placed on record. The observations are that "When the promotee was promoted and was rendering service, the direct recruit may be a school~~ing~~ or college going boy. He emerges from the educational institution, appears at a competitive examination and starts challenging everything that had happened during the period when he has had nothing to do with service". His main grievance is that the impugned Annexure A-1 seniority list dated 20.8.1986 has not taken into account the principles laid down in *Narender Chadha's* case (supra). According to him, as per the impugned seniority list of Grade-II officers, a direct recruit officer appointed on 31.7.1981 i.e. Shri I.V. Ranga Rao

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is shown at Serial No. 25 senior to applicant No. 7, Shri Gopal Bihari, who was appointed on promotion on 10.6.1974 and is shown at Serial No. 27. Applicant No. 1 is shown in this list at Serial No. 32 and he was promoted w.e.f. 1.5.1978. Similarly, he has also shown other examples to illustrate the point that officers who have been appointed as Grade-II officers 5 to 6 years earlier than the direct recruit officers have been shown junior to them. The affected direct recruit officers have been impleaded as private respondents. The applicant has submitted that the same position exists in respect of Grade-I officers, for example, Respondents 19, 23 and 18 who are direct recruit officers in Grade-I in 1983 have been placed in seniority list at Serial Nos. 23, 24 and 25 and senior to applicants 1, 4, 5 and 7, who were all promoted in 1982 but placed at serial Nos. 40 to 42 and 44, respectively. In the circumstances, the applicants have prayed that the seniority list of Grade-II and Grade-I officers of IES as on 1.8.1986 and circulated on 20.8.1986 by the impugned order may be revised by giving the promotees seniority in Grade-II from the date of selection ^{over} ~~of~~ the direct recruits based on the principles laid down by the Supreme Court in Narender Chadha's case (supra). Accordingly, after revision of the impugned seniority list, the applicants should be granted promotion to NFSG and other higher posts on the basis of the revised seniority list of Grade-II officers. Shri Gyan Prakash has submitted that since all the applicants as well as the private respondents have since retired from service, such revision of seniority list as well as consequential promotions would result in their getting notional fixation of pay in the higher posts and revision of pensionary benefits. He has also fairly

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submitted that since the private respondents have also retired from the higher posts on being promoted on the basis of the impugned seniority list of 1986, they are not seeking that the respondents should deduct the monetary benefits from the private respondents in any way but only that they may be given the consequential monetary benefits which they had been deprived earlier. 50

4. The applicants have contended that the direct recruitment for the aforesaid posts had not been done on regular basis by the official respondents which has led to the breakdown of the quota rota rule of 3:1 and accordingly, the inter se seniority should have been based on continuous officiation in the grade. The relevant rules applicable to the facts in this case are the Indian Economic Service Rules, 1961 (hereinafter referred to as 'the Rules'). Rule 8 of the Rules provides for future Maintenance of the Service. Under sub-clause (c), clauses (i) and (ii) of this Rule, for Grade-II of IES, 75% of the vacancies of the grade were to be filled by promotion from amongst Grade-III officers who have completed not less than six years of service on a regular basis and 25% of the vacancies were to be filled by direct recruitment through the Union Public Service Commission. The applicants submit that direct recruit officers had exceeded the 25% quota who are placed in the impugned seniority list. Similarly, according to them, the same position prevailed with regard to Grade-I officers which has led to the breakdown of the quota rota rule as the 3:1 formula has not been followed. The details have been mentioned in Paragraph 6.8 of the O.A. In the circumstances, their contention is that having regard to the judgement of the Supreme Court in Narender Chadha's

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case (supra), the inter-se seniority list of direct recruits and promotees have to be determined from the date of their appointments as laid down in Rule 9-C of the Rules, that is in the case of direct recruits from the dates when they were recommended by the UPSC for appointment and in the case of promotee officers from the dates they were included in the select list for promotion to that grade. This, according to them, is the only correct interpretation of the Rules so that the anomalies mentioned above of an officer, for example, promoted in 1974 being placed below an officer recruited seven years later in 1981 will not arise and, hence, the impugned seniority list has to be revised according to the dates of their appointments. (51)

5. Only the official respondents 1-3 have filed the reply and there is no reply by the private respondents. According to them, the relevant Rules for determination of inter-se seniority between promotees and direct recruits recruited under Rule 8 of the Rules is governed by the provisions contained in Rule 9 (A) (7) (i) and (ii), sub-clauses (a) to (c). In their additional affidavit dated 6.9.1994, they have stated that the information given by the applicants in paragraph 6.8 of the O.A. is incorrect, having regard to the provisions of the Rules applicable at the relevant time. Shri R.N. Singh, learned counsel has submitted that what Rules will be applicable to the facts of this case regarding inter-se seniority of direct recruitment and promotee officers will be governed by Rule 9-A sub-rule (7), (i) and (ii), (a) to (c) and not Rule 9-C, as contended by the applicants. Learned counsel has contended that the determination of inter-se seniority

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between such officers is to be governed by the quota rota principle as contained in Rule 9-A of the Rules, which is on seniority and which has been correctly followed by the respondents. The respondents have stated that on account of various factors such as non-availability of candidates with qualifications and experience, the UPSC did not recommend any candidate for appointment to either Grade-I or II of IES till 1980. When the direct recruit candidates became available in 1980 or 1981 according to them, they occupied slots of 1985 or subsequent years under the quota rota principle. Learned counsel has submitted that under normal circumstances, a direct recruit will be placed below the junior most promotee officer. However, the promoted officer shall not be deemed to have been appointed on regular basis if he holds a vacancy which has arisen by virtue of a deputation or a series of deputations not exceeding three years on the date of appointment of the direct recruit. He has also contended that the judgement in Narender Chadha's case (supra) is applicable only to the initial level i.e. Grade-IV of IES and not Grade-I and Grade-II officers. The respondents have stated that the dates of appointment of officers promoted before 1986 became irrelevant and it was for this reason that the dates of appointment to Grade-II and Grade-I of IES officers were not indicated. Learned counsel has submitted that now also, the dates of appointment of the promotee officers are not being indicated in the seniority list because they are not readily available because of the period involved in this case which is about 20 years. They have also submitted that the seniority lists of Grade-I and Grade-II followed the earlier seniority list as on 1.1.1982 and according to them, the inter-se seniority between their

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officers have been correctly determined on the basis of the provisions of the Rules. In 1987, the Rules were amended so as to make the posts of Grade-I to be filled exclusively by promotion. 53

6. We have heard Shri Gyan Prakash, applicant No. 1 in reply who has reiterated his arguments, relying on the judgement in Narender Chadha's case (supra) which was delivered on 11.2.1986. He has emphasised that this case itself dealt with the officers of IES. He has submitted that the applicants were recruited and promoted in accordance with the recruitment Rules and they were never reverted, So after the judgement of the Supreme Court in the above case has been implemented, which resulted in Grade-IV officers being promoted to Grade-III, Grade-II and Grade-I and even to selection grade, only the date of appointment as laid down in Rule 9C should be followed as the quota rota rule has broken down.

7. The Hon'ble Supreme Court vide order dated 25.7.2001 had after referring to the Notification dated 16.3.1988 issued by the respondents remitted the case to the Tribunal for reconsideration and redisposal of the case on merits and not on the ground that the claim has become stale. By Notification dated 16.3.1988, Grade-I officers have been given the benefit of NFSG from the dates mentioned therein.

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8. We have carefully re-considered the pleadings and the submissions made on behalf of the applicant and the learned counsel for the respondents on merits of the case, as directed by the Hon'ble Supreme Court in the aforesaid order.

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9. Both the parties have referred to and relied on Narender Chadha's case (supra) which deals with the fixation of seniority of officers who belong to IES Grade-IV under the Rules. It was ~~held~~^{observed} that "We are aware that the view we are taking may upset the inter se seniority between those promotees who were in the Select Lists of 1970, 1982 and 1984 and those who were included later on or who have not been included at all till now." Paragraph 25 of the judgement in this case specifically refers to Grade-IV officers who have been promoted to several posts in Grade-IV which was held to be contrary to the Rules. In the circumstances, the Supreme Court held:

"....Even those promotees who have been selected in 1970, 1982 and 1984 shall be assigned seniority with effect from the date on which they commenced to officiate continuously in the posts prior to their selection. For purposes of seniority the dates of their selection shall be ignored. The direct recruits shall be given seniority with effect from the date on which their names were recommended by the Commission for appointment to such grade or posts as provided in clause (a) of Rule 9-C of the Rules. A seniority list of all the promotees and the direct recruits shall be prepared on the above basis treating the promotees as full members of the Service with effect from the dates from which they are continuously officiating in the posts. This direction shall be applicable only to officers who have been promoted till now. This is the meaning of the direction given by the court on February 1, 1984 which stated, 'we wish to make it clear that there is no question of any rotation system being applied under the Rules, as they exist now. All appointments shall be made hereafter in accordance with the Rules and the seniority of all officers to be appointed hereafter shall be governed by Rule 9-C of the Rules'.

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(Emphasis added).

10. In A. Janardhan's case (supra), it was held that "a direct recruit who comes into service after the promotee was already unconditionally and without reservation promoted and whose promotion is not shown to be invalid or illegal according to relevant statutory or non-statutory rules should not be permitted by any principle of seniority to score a march over a promotee because that itself being arbitrary, would be violative of Arts. 14 and 16".

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(Emphasis added)

10. It is relevant to note that after detail examination of the relevant Rules, the Tribunal vide its order dated 5.12.1994, which has later been set aside by the order of the Supreme Court dated 25.7.2001, had noted that the applicants have not denied that the inter-se seniority in the impugned 1986 list is no different from the seniority assigned in 1982 and 1983. The respondents have contended that in Narender Chadha's case (supra), the Supreme Court did not quash the provisions of Rule 9A of the Rules. The relevant portion of the Rules dealing with inter-se seniority in Grades-I, II and III of the persons who have been appointed to the Service under Rule 8, is sub-rule (7) of Rule 9A which is reproduced below:

"9A. Seniority:- (1) The seniority of an officer appointed under the provisions of sub-rule (3A) of rule 7, rules 7A, 8 and 10 on or after the

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commencement of the Indian Economic Service (Amendment) Rules, 1973 shall be determined in the manner hereinafter provided.

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(2) to (6) x x x x x

"(7) (i) Where a person is appointed to grade I or grade II or grade III under the provisions of rule 8, he shall, subject to the provisions of clause (ii), be placed below the juniormost officer who had been appointed on a regular basis to the grade concerned.

(ii) The inter-se seniority of persons appointed to grade I or grade II or grade III under the provisions of rule 8 shall be determined in the following manner, namely:-

(a) a direct recruit to any grade shall be placed below the juniormost promoted officer who had been appointed on a regular basis to that grade on or before the date of appointment on a regular basis of such direct recruit;

Provided that the assignment of seniority to such promoted officers over direct recruits shall be restricted to the number remaining after subtracting the number of direct recruits appointed on a regular basis on that date from the number of regular vacancies, which have arisen since the date of appointment of the last direct recruit which are required to be filled up under the provisions of rule 8;

Provided further that for the purpose of determining the seniority of a promoted officer in relation to a direct recruit the promoted officer shall not be deemed to have been appointed on a regular basis if he holds a vacancy which has arisen by deputation or a series of deputation not exceeding three years on the date of appointment of the direct recruit notwithstanding that by an order subsequent to the date of appointment of the direct recruit, the total period of deputation is extended beyond three years.

(b) as between direct recruits recommended by the Commission on different occasions, a direct recruit recommended earlier shall be placed above a direct recruit recommended later, and as between direct recruits recommended on the same occasion, a direct recruit placed higher in the Commission's recommendation shall be placed above the direct recruit placed lower.

(c) as between promoted officers recommended for promotion on different occasions, a promoted officer whose promotion was recommended earlier by the Selection Committee shall be placed above a promoted officer recommended earlier, and as between promoted officer whose promotion was

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recommended on the same occasion, a promoted officer placed higher in the Select List shall be placed above a promoted officer placed lower".

(emphasis added)

11. Rule 9C of the Rules relied upon by the applicants provides as follows:

9C. Date of Appointment: The date of appointment of a person to any grade or post on a regular basis shall:-

(a) In the case of a direct recruit to any grade or post be deemed to be the date on which he was recommended by the Commission for appointment to such grade or post, as the case may be, and

(b) In the case of promoted officer to any grade or post be the date on which he was included in the Select List for promotion to that grade or post as the case may be, or the date on which he was appointed to the grade of post as the case may be, whichever may be later".

12. From the above quoted Rules, namely, Rule 9A(7) and Rule 9C, it is seen that ~~while~~ the clauses (i) and (ii) of sub-rule 7 of Rule 9A deal with inter-se seniority of persons appointed to Grades-I, II and III of the Service under Rule 8 of the Rules and the manner in which this should be done, Rule 9C deals with the date of appointment of a person to any grade or post on a regular basis i.e. for a direct recruit and a promotee who is placed in the Select List.

13. Respondents have contended that the judgement in Narendder Chadha's case (supra) was applicable only to the initial level i.e. Grade-IV level of IES in which it was directed that all officers who were holding Grade-IV IES posts on ad hoc basis in the participating Ministries/Departments should be inducted into the service

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From the date of their continuous officiation. According to the respondents, all the applicants in the present case belong to the category of initial constituents who had been later promoted as Grade-II and Grade-I of IES. The judgement of the Apex Court was pronounced in this case on 11.2.1986. It is not denied even now by the applicants that the provisions contained in Rule 9A of the Rules were not quashed or set aside by the judgement of the Supreme Court in Narender Chadha's case (supra). The provisions of Rule 9A deal with fixation of inter-se seniority between direct recruits and promotees but for reasons best known to the applicants they have not challenged the validity of this Rule, although they have contended that this Rule is based on quota and rota system. So long as the quota and rota principle is to be maintained, then the inter-se seniority of the officers has to be fixed in accordance with the provisions of Rule 9 A of the Rules, which provides a certain formula. It will be relevant to mention that during the detail re-hearing of the case on merits, applicant Shri Gyan Prakash, has only emphasised that the date of appointment as mentioned in Rule 9C is the determining factor for fixation of inter-se seniority and not Rule 9A (7) as according to him the rota quota rule of 75% to 25% has not been maintained. A perusal of the representation of one of the applicants, Shri R.C. Sharma applicant No.5, shows that he has been appointed as Joint Director, Grade-II IES w.e.f. 19.8.1977 vide order dated 19.8.1977 and his name figures at Serial No. 108 of the seniority list of IES Officers Grade-I and Grade-II, circulated by respondents' letter dated 14.10.1977. In the seniority list circulated vide O.M. dated 5.11.1981, Shri Sharma has stated that his name was placed at Serial No. 79 but he was "shocked to note"

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that many direct recruits have been put senior to him in the list. According to the reply filed by the respondents, all the nine applicants in the present application belong to the category of initial level officers, i.e. Grade-IV level who had already been promoted to Grades-I and II of IES before the judgement in Narender Chadha's case (supra) was pronounced in 1986. According to the respondents, the applicants have also been promoted to these grades, as per the directives of the Supreme Court and the entire seniority list of Grade-IV officers was recast and promotion of some of the officers was declared supernumerary.

15. A perusal of Rule 9A of the Rules shows that the principle of inter-se seniority of the officers is not based simply on the quota rota rule of the induction of promotees and direct recruits based on 75% and 25% or 3:1 formula contained in Rule 8(c) for Grade-II officers which is the contention of the applicants. Under Rule 9A (7), ^{have been made} elaborate and specific provisions for persons appointed to Grades-I, II and III, which is a modification of the ordinary quota rota rule for fixing the inter-se seniority of these officers. For example, a definite number of promotees will be en bloc placed in the seniority list above direct recruits instead of following the 3:1 rotation; the direct recruits appointed within their quota will be placed en bloc below the promotees referred to above, whose number is to be determined under proviso one after subtracting persons appointed on regular basis on that date from the number of regular vacancies which have arisen since the date of appointment of the last direct recruit. There is a second proviso to sub rule (7) of Rule 9A which provides that for the purpose of determining inter-se seniority in

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relation to a direct recruit, the promotee officers shall not be deemed to have been appointed on a regular basis if he holds a vacancy arising by way of deputation or a series of deputations not exceeding three years on the date of appointment of the direct recruit. It is seen that this Rule for determining the inter-se seniority between the direct recruits and promotee officers has been existing in the IES Rules from 1961 and has not been challenged or set aside in any judgment earlier. It is also relevant to note that even in the present case, the applicants have not challenged the validity of this Rule which admittedly has been followed by the respondents in issuing the impugned Seniority list of Grade-II and Grade-I officers of IES appointed under Rule 8 as on 1.8.1986. The applicants have not in any way established from any documents on record and neither is it their case that the principle laid down in Rule 9A for determining inter-se seniority between the promotee and direct recruit officers in the Service has not been followed by the respondents.

16. In the facts and circumstances of the case, the contention of the applicants that Rule 9A of the Rules cannot apply to their case to determine inter-se seniority, on the ground that there is a breakdown of the quota rota rule, which is de hors the provisions of the Rules itself, cannot be accepted on merits. Apart from Rule 8 which lays down the quota of 3:1 for appointment/recruitment in Grades-II and I at the relevant time, the Rules themselves provide a specific formula for fixation of inter-se seniority between the officers, where there is a modification of the ordinary quota rota rule. The applicants have failed to show how this particular formula

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of quota and rota provided in Rule 9A (77) has been violated (61) but only submit that 3:1 quota of promotees to direct recruits has not been followed. In the facts and circumstances, we are unable to accept the contentions of the applicants that to determine inter-se seniority the date of appointment as prescribed in Rule 9C is the only Rule that can apply to the present case on the assumption that the quota rota rule has failed.


17. The applicants have relied on Janardhan's case (supra) and Narender Chadha's case (supra) and have repeated the argument in the facts of the case, that the direct recruits "cannot steal a march over them." However, they have not challenged the validity of Rule 9A of the Rules. In the above facts and circumstances of the case, the respondents following the formula laid down in Rule 9A of the Rules in fixing the inter-se seniority of promotees and direct recruits cannot be faulted or held to be against the Rules. Accordingly, there appears to be no justification to set aside the seniority list of Grade-II and Grade-I officers published by them on 20.8.1986, showing their seniority as on 1.8.1986. Accordingly, the promotion of officers to NFSG by Notification dated 16.3.1988 based on the seniority list as on 1.8.1986 is in accordance with the provisions of the Rules at the relevant time and does not require any change. Incidentally, the respondents have stated that the seniority list of Grade-II and Grade-III of IES officers as on 1.8.1986 has followed the earlier seniority list of 1.1.1982 based on the formula contained in the Rules before amendment in 1987. The contentions of the applicants that the quota rota rule has failed can be accepted provided they have established ~~it~~


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that the methodology of fixing ^{the} inter-se seniority as provided in Rule 9A has ^{not been followed. Re} failed. The cases relied upon by the applicants would also not assist them as we are of the view that there is no break down of the quota rota rule as prescribed in the Rules. In the peculiar facts and circumstances of the case, we do not consider it necessary to give liberty to the applicants to challenge the IES Rules, 1961. at this stage, as admittedly all the applicants and private respondents have since retired from the Service on superannuation and the Rules have also been amended in 1987. Therefore, in the facts and circumstances of the case, there is no merit in this application to justify any interference in the matter.

18. In the result, for the reasons given above, O.A. fails on merits and is accordingly dismissed. No order as to costs.


(Smt. Lakshmi Swaminathan)
Vice Chairman(J)


(S.R. Adige)
Vice Chairman (A)

'SRD'