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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

(1) Regn. No. O.A. 1675/1987. DATE OF DECISION: 26.4.1989.

Shri S.N. Bhatnagar & Ors. .... Applicants.

V/s.

Union of India & Ors. .... Respondents.

For the Applicants .... Shri A.K. Sinha, Counsel.

For the Respondents .... Shri P.H. Ramchandani, Sr. Counsel.
Shri M.K. Gupta, Counsel.

(2) Regn. No. O.A. 31/1988.

Shri K.D. Beri & Ors. .... Applicants.

V/s.

Union of India & Ors. .... Respondents.

For the Applicants .... Shri E.X. Joseph, Counsel.

For the Respondents .... Shri P.H. Ramchandani, Sr. Counsel.

Sh. Arvind Gupta, Counsel.

CORAM: Hon'ble Mr. Justice Amitav Banerji, Chairman.
Hon'ble Mr. Kaushal Kumar, Member (A).

(Judgment of the Bench delivered by
Hon'ble Mr. Kaushal Kumar, Member)

JUDGMENT

These two applications have been filed under Section 19 of the Administrative Tribunals Act, 1985 by officers in the Intelligence Bureau, Ministry of Home Affairs, who were promoted from the rank of Assistant to that of Section Officer on seniority-cum-fitness basis. Some of the applicants were subsequently promoted as Assistant Directors also and they have challenged the seniority list of Section Officers issued by the Department on 8th August, 1987. Since the facts giving rise to the two applications are more or less the same and common grounds of law have been raised, it would be convenient to dispose of both the applications through a common judgment.

2. The applicants in O.A. 1675/1987 had joined the Intelligence Bureau as direct recruit Assistants through the Union Public Service Commission in 1957. They were promoted as Section Officers in 1970/71 on seniority-cum-fitness basis through a regularly constituted D.P.C. They were appointed substantively as Section Officers with effect from 1.5.76(in case of applicants No. 2, 3 and 4) and 1.5.1975 (in case of applicant No.1 in O.A. 1675/1987) vide Notification dated 10.3.1979 (Annexure V to the application). This Notification was subsequently revised by another Notification dated 22.3.1985 (Annexure VI) whereby applicants No.1 and 2 in O.A. 1675/1987 were confirmed from 1.5.73 and applicants No.3 and 4 in the said O.A. from 1.5.74. Subsequently another order was issued on 3rd August, 1987 (Annexure I to the application) whereby these applicants were regularised as Section Officer notionally with effect from 1.2.1976 and vide Notification dated 15.9.1987 (Annexure II to the application) again they were shown as regularly promoted with effect from 1.2.1976. After completing 15 years of service, these applicants were promoted as Assistant Director in 1985-86.

3. In the case of the applicants in O.A. 31/1988, they were promoted as Section Officer on different dates in 1978 and 1979, but in the impugned seniority list of 8th August, 1987, their notional dates of promotion were changed to 1976 and 1977. However, these applicants were placed below the Section Officers who were promoted in subsequent years on the basis of Limited Departmental Competitive Examination.

4. In the Intelligence Bureau there are two streams of promotion to the posts of Section Officer from the rank of Assistants, viz., by promotion on seniority-cum-fitness basis and through a Limited Departmental Competitive Examination. The applicants who were promoted as Section

Officers on the basis of seniority-cum-fitness were assigned seniority as Assistants earlier on the basis of the Government of India, Ministry of Home Affairs O.M. dated 22nd June, 1949 on the basis of their length of continuous service, temporary or permanent, in the grade of Assistant. Subsequently, the seniority list of Assistants had undergone a change in the light of the Ministry of Home Affairs O.M. dated 22nd December, 1959 which envisaged fixation of seniority on the basis of confirmation. The said O.M. envisaged that "The relative seniority of persons promoted to the various grades shall be determined in the order of their selection for such promotion: Provided that where persons promoted initially on a temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their promotion, seniority shall follow the order of confirmation and not the original order of merit." In the light of the said O.M. a seniority list was prepared in 1968 wherein the basis adopted for determining seniority was the date of confirmation and on the basis of that seniority list, the applicants in O.A. 1675/1987 were promoted as Section Officers in 1970-71. However, the OM of 1959 came up for consideration before the Supreme Court in Union of India and others Vs. M.. Ravi Varma and others. In the said case, the Supreme Court held that the Office Memorandum dated 22.12.1959 had expressly made it clear that the general principles embodied in the annexure thereto were not to have any retrospective effect and in order to put the matter beyond any pale of controversy it had been mentioned that hereafter the seniority of all persons appointed in the various Central Services after the date of these instructions should be determined in accordance with the general principles annexed hereto." Accordingly, the above ~~xxxx~~, the Supreme Court held that the seniority

of those persons who had been appointed prior to 22.12.1959 should be determined on the basis of length of service and not the date of confirmation. Following the decision of the Supreme Court in Ravi Varma's case, the Andhra Pradesh High Court in writ petition No.7060 of 1973 (D.P. Sastry and N. Kamleswara Rao Vs. Union of India and others) wherein the applicants in O.A. 1675/1987 were made respondents No.10, 12, 13 and 14, directed the Department to restore the original seniority of the petitioners in the writ petition before them as fixed prior to the issue of the Office Memorandum of the Ministry of Home Affairs dated 22.12.1959 with consequential benefits. In pursuance of the directions of the Andhra Pradesh High Court, the respondents issued a revised seniority list of Assistants on 28.1.1976. This list was challenged in Civil Writ Petition No.638/76 in the Delhi High Court. The said petition was dismissed by the learned Single Judge. However, the petitioners preferred an appeal (LPA No. 6/78) before a Division Bench of the Delhi High Court. The Division Bench of the Delhi High Court vide its judgement dated 19.12.1980 allowed the appeal, set aside the judgment of the Single Judge and held that the posts of Assistants which existed on 1.2.1954 had to be filled by persons who were eligible in terms of paragraph 15 of the Reorganisation Scheme of 1955 effective from 1.2.1954. The Division Bench also gave some other ancillary directions resulting in the disturbance of the seniority of the respondents who had been working in the Intelligence Bureau. By the date of the said judgment the said respondents had put in more than 25 years of service as Assistants in the Intelligence Bureau. Aggrieved by the decision of the Division Bench, the Union of India as well as the officials, who had been appointed prior to the date on which the writ petitioners were appointed filed two appeals by special leave before the Supreme Court

(Civil Appeals No. 2925-26 of 1981). The Supreme Court vide its judgement dated September 30, 1986 allowed the appeals, set aside the judgment of the Division Bench of the High Court and dismissed the writ petition filed in the High Court. Their lordships of the Supreme Court further directed that all the promotions made in the Intelligence Bureau shall be reviewed in accordance with the impugned seniority list dated January 28, 1976. As a result of this, the applicants in O.A. 1675/1987, who were actually promoted in 1970/71 as Section Officers were assigned notional seniority of 1976 as Section Officer and the applicants in O.A. 31/1988 who were actually promoted as Section Officers on different dates in 1978/1979 were assigned notional dates of promotion of 1976/1977 as Section Officer in the impugned seniority list of Section Officers dated 8th August, 1987. Further, in reviewing the promotions and issuing the impugned seniority list of 8th August, 1987, the respondent department further interpolated the names of those Section Officers who were promoted on the basis of the Limited Departmental Competitive Examination as per quota rule in-between those Section Officers who were promoted on seniority-cum-fitness basis on the rotational principle of 1:1. Thus, it will be seen that in reviewing the promotions made to the posts of Section Officer on the basis of seniority list issued on 28.1.1976, whereas the applicants in O.A. 1675/1987 lost their seniority as Section Officer, they having been assigned notional seniority of 1976 as against their actual promotions in 1970-71, the applicants in O.A. 31/1988 gained in the matter of notional seniority, their notional dates of promotion having been advanced to 1976/1977, although they were actually promoted in 1978/1979. However, the applicants in both the O.A.s were adversely affected by the interpolation of Section Officers promoted on the basis of the Limited Departmental Competitive Examination on the principle of rota and quota.

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5. The reliefs prayed for by the applicants in O.A. 1675/1987 are as follows: -

(a) quash the orders dated 3rd of August, 1987 and Sept. 15, 1987 issued by Respondents vide order No.16/CIII/87 (5).

(b) restore the actual and regular date of promotion as Section Officer for all purpose including seniority from the date of officiation.

(c) The Seniority list dated 8th August, 1987, as circulated be quashed and set aside with a direction to revise it according to length of service in terms of prayer (a) & (b) above.

(d) pass any such other order, orders, as this Hon'ble Tribunal deems fit and proper in the circumstances of the case.

6. The reliefs prayed for by the applicants in O.A. 31/1988 are as follows: -

(i) Quashing, setting aside and striking down of the Memorandum No.4/Seniority/(CC)/86(3)-660 dated 8.8.87 and seniority list annexed to the same;

(ii) Grant of directions/orders to the respondents No.1 and 2 directing them to re-determine the seniority of the applicants and the examinee-promotees on the basis of the length of service as Section Officer and to issue a fresh seniority list on the basis of such re-determination and to grant the applicants further promotions and all other due service benefits on the basis of such re-determination of seniority;

(iii) Grant of any other relief which this Hon'ble Tribunal deems appropriate and necessary in the facts and circumstances of the case; and

(iv) Grant of cost of this application to the applicants.

7. Two questions arise for determination in these applications, namely,

(1) whether the review of all promotions on the basis of seniority list of Assistants dated 28.1.1976 was in accordance with the directions of the Hon'ble Supreme Court as given in the judgement dated 30th September, 1986; and

(2) whether the interpolation of examinee promotees and assignment of seniority to them in the seniority list of Section Officers issued on 8.8.1987 was in accordance with the scheme of Reorganisation regulating promotion to the rank of Section Officer.

8. As regards the first question, we have to go into the genesis of the preparation of the seniority list of Assistants as finalised on 28.1.1976. As pointed out in earlier paragraph of this judgement, some Assistants who had joined service in the Intelligence Bureau much earlier than the four applicants in O.A. 1675/1987 were shown junior to them since the principle adopted by the Department for determination of inter-se seniority was not the length of continuous service in the grade of Assistant as contemplated by the Ministry of Home Affairs O.M. dated 22.6.1949, but with reference to the date of confirmation in accordance with the instructions issued by the Ministry of Home Affairs in December, 1959. Two of these Assistants had filed a writ petition No. 7060 of 1973 in the Andhra Pradesh High Court. The Andhra Pradesh High Court in its judgement dated 27.11.1974 observed as follows: -

"The only question is whether the revision of the settled seniority of the petitioners as Assistants in accordance with the principles laid down in the Ministry of Home Affairs's Office Memorandum No.30/44/48 dated 22.6.1949, based on a Memorandum issued by the first respondent on 22.12.1959 in No. 9/11/55 R.P.S. dated 22.12.1959 giving retrospective effect to the said Memorandum

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is a legal and valid one. This question is no longer res integra. It has been decided by the Supreme Court in Union of India Vs. Ravi Varma (I) A.I.R. 1972 Supreme Court 670, Khanna, J., Speaking for the Court observed as follows: -

"The Office Memorandum dated December, 22 1959 however, expressly, made it clear, that the general principles embodied in the Annexure thereto were not to have retrospective effect. In order to put the matter beyond any pale of controversy, it was mentioned that 'hereafter the seniority of all persons appointed to the various Central Services after the date of these instructions should be determined in accordance with the general principles annexed hereto. It is, therefore, manifest that except in certain cases with which we are not concerned, the Office Memorandum dated December 22, 1959 and provisions laid down in the annexure thereto could not apply to persons appointed to the various Central Services before the date of that Memorandum".

"It is not disputed by the learned standing counsel for the Central Government that this decision applies to the facts of the case. The seniority of the petitioners in the seniority list of Assistants prepared prior to the issue of Office Memorandum of the Ministry of Home Affairs dated 22.12.1959 has, therefore, to be restored. A mandamus will, therefore, issue to respondents 1 to 3 directing them to restore the original seniority of the petitioners fixed prior to the issue of the Office Memorandum of the Ministry of Home Affairs dated 22.12.1959 with consequential benefits. ..."

9. It was in pursuance of the above judgement of the Andhra Pradesh High Court (filed as Annexure VIII in O.A. 1675/1987) that a revised seniority list of Assistants was prepared and notified on 28.1.1976. This seniority list became the subject-matter of litigation in the Delhi High Court and finally the matter came up before the Supreme Court in Civil Appeals Nos. 2925-26 of 1981 (K.R. MUDGAL & ORS. Vs. R.P. SINGH & OTHERS). The

following observations made by the Supreme Court in its judgement dated September 30, 1986 (filed as Annexure R-I to the counter-affidavit on behalf of Respondents No.1 and 2 in O.A. 1675/1987 are relevant: -

"At the outset it should be stated that it is distressing to see that cases of this kind where the validity of the appointments of the officials who had been appointed more than 32 years ago is questioned are still being agitated in courts of law. A Government servant who is appointed to any post ordinarily should at least after a period of 3 or 4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity. .....

"The Andhra Pradesh High Court by its judgment dated 11.11.1974 on the basis of the decision in Ravi Verma's case (supra) held that the senicrity of respondents 7 and 36 should be fixed on the basis of the 1949 Office Memorandum. On the basis of the judgment in Ravi Verma's case (supra) and the decision of the High Court of Andhra Pradesh referred to above, the seniority list of the Assistants in the Intelligence Bureau was again revised for correcting the error committed earlier and a draft partial seniority list was issued on 16.6.1975 proposing to revive the earlier list dated 22.12.1959. In this seniority list the respondents in the writ petition, who were working as Assistants at the time of the reorganisation and were governed by the 1949 Office Memorandum were shown as seniors to the petitioners who had filed the writ petition in accordance with the position in the 1958 senicrity list. The petitioners filed objections to the said seniority list. Their objections were not accepted and a seniority list was issued in January, 1976 showing the officials who had been impleaded as respondents in the writ petition as seniors to the petitioners in the writ petition. In the writ petition the petitioners questioned the validity of the above seniority list published in January, 1976.

"The respondents in the writ petition raised a preliminary objection to the writ petition stating that the writ petition was liable to be dismissed

on the ground of laches. Although the learned Single Judge and the Division Bench have not disposed of the above writ petition on the ground of delay, we feel that in the circumstances of this case the writ petition should have been rejected on the ground of delay alone. (emphasis supplied) The first draft seniority list of the Assistants was issued in the year 1958 and it was duly circulated amongst all the concerned officials. In that list the writ petitioners had been shown below the respondents. No objections were received from the petitioners against the seniority list. Subsequently, the seniority lists were again issued in 1961 and 1965 but again no objections were raised by the writ petitioners, to the seniority list of 1961, but only the petitioner No.6 in the writ petition represented against the seniority list of 1965. We have already mentioned that the 1968 seniority list in which the writ petitioners had been shown above the respondents had been issued on a misunderstanding of the Office Memorandum of 1959 on the assumption that the 1949 Office Memorandum was not applicable to them. The June 1975 seniority list was prepared having regard to the decision in Ravi Verma's case (supra) and the decision of the High Court of Andhra Pradesh in the writ petitions filed by respondent Nos. 7 and 36 and thus the mistake that had crept into the 1968 list was rectified. Thus the list was finalised in January, 1976. The petitioners who filed the writ petition should have in the ordinary course questioned the principle on the basis of which the seniority lists were being issued from time to time from the year 1958 and the promotions which were being made on the basis of the said lists within a reasonable time. For the first time they filed the writ petition in the High Court in the year 1976 nearly 18 years after the first draft seniority list was published in the year 1958. Satisfactory service conditions postulate that there should be no sense of uncertainty amongst the Government servants created by the writ petitions filed after several years as in this case. It is essential that any one who feels aggrieved by the seniority assigned to him should approach the court as early as possible as

otherwise in addition to the creation of a sense of insecurity in the minds of the Government servants there would also be administrative complications and difficulties. Unfortunately in this case even after nearly 32 years the dispute regarding the appointment of some of the respondents to the writ petition is still lingering in this Court. In these circumstances we consider that the High Court was wrong in rejecting the preliminary objection raised on behalf of the respondents to the writ petition on the ground of laches. ..."

The operative part of the judgement runs as follows: -

"We feel that in the circumstances of this case, we should not embark upon on an enquiry into the merits of the case and that the writ petition should be dismissed on the ground of laches alone.

"We accordingly allow these appeals, set aside the judgment of the Division Bench of the High Court and dismiss the writ petition filed in the High Court. We also direct that all the promotions made in the Intelligence Bureau shall be reviewed in accordance with the impugned seniority list dated January 28, 1976. There shall be no order as to costs."

10. In implementing the above judgement of the Supreme Court, what respondents No. 1 and 2 did was to start from the very inception when the Assistants had joined service and to review not only those promotions to the rank of Section Officer which were made after 1976 but also those which had been made earlier. They proceeded on the basis as if no promotions had been made earlier and worked out the notional dates of promotions assuming as if the seniority list of 1976 had been operative from the very inception when the concerned incumbents had joined the cadre of Assistants in the Intelligence Bureau. We are of the view that the judgement of the Supreme Court did not give this mandate to the Department. Learned counsel for the respondents No. 1 and 2, Shri P.H. Ramchandani was at pains to emphasise that the

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directions of the Supreme Court envisaged review of all the promotions in accordance with the impugned seniority list dated 28.1.1976 and, therefore, even those promotions which had been made prior to 1976 were required to be reviewed. We feel that this would be too wide a view of the interpretation of the directions given by the lordships of the Supreme Court. The operative part of the judgement has to be interpreted in the light of the observations made in the body of the judgment and the operative part cannot be taken in isolation ignoring the context in which the direction was given. In the judgement, the lordships have emphasised that uncertainty and insecurity in the matter of service should not be allowed to linger on indefinitely and such matters have to be given quietus after lapse of time. When their lordships were clearly of the view that the writ petition filed in the Delhi High Court against the impugned seniority list of January 1976 should have been dismissed on the ground of laches alone, how can it be assumed that promotions to the rank of Section Officer which had been made six to seven years prior to the date when the seniority list was issued were also intended to be reviewed in accordance with the judgement dated September 30, 1986. These persons had already worked as Section Officer for nearly 16 years, having been promoted in 1970/71 and were also confirmed in those posts and the implementation of the judgement in the manner in which it has been done is based on the erroneous assumption that the benefit of continuous length of service in the higher post for six to seven years was intended to be wiped out by the direction given in the operative part of the judgement of the Supreme Court. These officers were promoted on the basis of a seniority list which was operated and followed by the Department at a time when promotions were made. The promotions were made in accordance with the principle of seniority-cum-fitness through a regularly constituted DPC and were followed by substantive appointments.

There is a catena of decisions by the Supreme Court followed by this Tribunal in various judgements holding that where ad-hoc appointment or promotion is followed by regularisation or confirmation, the entire period of service should count for purposes of seniority etc. The review of all promotions directed by the Hon'ble Supreme Court has, in our view, to cover only those promotions which were made after 28.1.1976 and were not in accordance with the seniority list of Assistants made in January, 1976. Once the seniority list of January 1976 had come into force, it had necessarily to be seen whether any Assistants ranked senior in the seniority list of January 1976 had remained not promoted even though their juniors in the said seniority list already stood promoted. In such cases, it would be but fair and equitable that those seniors should also be deemed to have been promoted from the dates their juniors had been promoted earlier. It was in this context that the Supreme Court had given, to our mind, a direction to review all promotions in accordance with the seniority list dated January 28, 1976 and not to upset promotions which had been made 15 to 16 years prior to the judgement delivered by the Supreme Court on September 30, 1986. As such, we are clearly of the view that whereas relegating the applicants in O.A. 1675/87 to notional seniority of 1976 was wrong and illegal, not warranted by the judgement of the Supreme Court, the assignment of deemed seniority to applicants in O.A. 31/88 from the dates their juniors were promoted was correct and in accordance with the judgement of the Supreme Court.

11. We now address ourselves to the second issue involved in this case regarding interpolation of examinees in the seniority list of Section Officers as notified in August, 1987. For this, we have to refer to the Reorganisation Scheme in regard to ministerial posts in the Intelligence Bureau issued vide letter dated 17th August, 1955, filed as Annexure R-III to the counter-

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affidavit on behalf of respondents No.1 and 2 in O.A. 31/1988. Para 17 of the said Scheme deals with recruitment and promotion to the posts of Section Officer as also assignment of seniority. Para 17 runs as follows: -

"17. Grade III: - Section Officer

a) The future recruitment in the Grade of S.O. should be made mainly by promotion. Occasional recruitment to this Grade is, however, permitted for special reasons, e.g. where a candidate is considered suitable by reason of specialised qualifications. Direct recruitment in such cases should be reported to the Ministry of Home Affairs for the information of the Union Public Service Commission.

b) Promotion of Grade IV Assistants to this Grade should be made in two ways (except for the number of posts specifically reserved in consultation with the MHA and the UPSC for Stenographers of the Bureau at the future maintenance stage of the service):-

i) By seniority subject to the rejection of the unfit, and

ii) Through a test which should be open to (i) Assistants who have rendered not less than five years continuous service after regular appointment to the grade (ii) Grade II officers of the Intelligence Bureau Stenographers' Service who have rendered not less than 5 years continuous service after regular appointment to the grade of Stenographers Grade II(3)/Est(C)/74(10)-Pers. I dated 31.7.1975).

iii) The filling up of the vacancies will be in equal proportion by the two methods indicated above.

iv) The inter-se seniority of Section Officers shall be determined as under: -

A) Section Officers who have been appointed on the basis of grading approved by the Govt. of India, vide this Ministry's letter No.25/35/54-P. III dated 6th October, 1955, will rank senior to those appointed subsequently and their inter se seniority should be fixed on the basis of the order in which their names are arranged in the grading list;

B) Vacancies arising subsequent to the absorption of the graded persons will be filled by the following two categories

1) Persons who have been promoted on the basis of seniority cum-fitness; and

*The grades II and III of the IB Ministerial Service (Reorganisation) Scheme 1955 were merged into a single grade of Section Officers vide MHA Order No. 3/6/61-PIII dt. Sept. 1961.

2) Persons who have qualified in the Assistant Superintendent Examination held by U.P.S.C.

A combined list will be drawn up by taking one officer alternately from each of the two categories (1) and (2) above and seniority of each officer will be determined in accordance with his position on the combined list." (emphasis supplied)

12. From the above, it is seen that the Scheme envisaged preparation of a combined list by taking one officer alternately from each of the two categories, namely, those who have been promoted on the basis of seniority-cum-fitness and those who have qualified in the Limited Departmental Competitive Examination held by the UPSC and it was from this combined list that appointments were to be made to the posts of Section Officers and assignment of seniority was also to be done in accordance

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with the position of the persons in the combined list.

13. The learned counsel for the applicantsin O.A. 31/88 Shri E.X. Joseph vehemently contended that in the present case not only the quota rule had been violated inasmuch as examinees of later years were shown and adjusted in the seniority list against slots of earlier years in-between Section Officers who had been promoted in earlier years on the basis of seniority-cum-fitness, but the appointments/ promotions themselves were not in accordance with the instructions inasmuch as no combined list was drawn up. If no combined list was drawn up and the promotions were not made in accordance with the provisions of the scheme, the principle of rota could not be applied for determining seniority. Shri Joseph also referred to the judgement of the Chandigarh Bench of this Tribunal dated 23rd January, 1957 in O.A. T-556/1986 (Mohinder Kumar & Others Vs. Regional Profident Fund Commissioner & Others) wherein the point at issue was regarding inter-se seniority between Upper Division Clerks, 50% of whom were to be promoted from the rank of Lower Division Clerks including Steno-typists etc. and 50% through Competitive Examination restricted to departmental incumbents in lower categories. The rule of relative seniority of direct recruits and of promotees envisaged assignment of seniority according to the rotation of vacancies between direct recruits and promotees based on the quota of vacancies reserved for direct recruitment and promotion. The Chandigarh Bench of the Tribunal held that the promotees on the basis of departmental examination who belonged to the L.D.C. cadre could not be termed as direct recruits and they belonged essentially to the same category as promotees from the L.D.Cs. cadre, who were promoted to the U.D.C.s cadre on the basis of seniority-cum-fitness. The Chandigarh Bench held that they were all promotees and, therefore, the rule of rota and quota regarding assignment of seniority as between promotees and direct recruits was not applicable.

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The said judgment of the Chandigarh Bench was upheld by the Supreme Court and the Special Leave Petition No.7274/87 was dismissed by an order dated 11.8.1987.

14. The judgement of the Chandigarh Bench is not applicable to the facts of the present case since in that case there was a specific rule regulating seniority between promotees and direct recruits and it was held that promotees recruited through the Limited Departmental Examination could not be treated or categorised as direct recruits. In the present case under our consideration, there is no such rule or provision in the Scheme. What the scheme envisages is that the combined list from which promotions are to be made should include names alternately of those selected on the basis of seniority-cum-fitness and those who qualify in the Limited Departmental Competitive Examination.

15. It is undisputed that the applicants in the present case who were promoted on the basis of seniority-cum-fitness and the third party respondents who were promoted on the basis of Limited Departmental Competitive Examination were not promoted on the basis of a combined list as envisaged by para 17, clause (b)(iv)(B) of the Scheme. The scheme which was enforced through administrative instructions has subsequently been adopted through a Notification dated 25th November, 1988 issued under the proviso to Article 309 of the Constitution. It provides that anything done or any action taken under the letter dated 17th August, 1955 through which the Scheme was issued, shall be deemed to have been done or taken under the rules notified on 25th November, 1988. The said scheme also contains a provision for relaxation. Since the promotions to the posts of Section Officers were not made from a combined list as envisaged by para 17(b)(iv)(B), it has to be taken that there was a deemed relaxation from the provisions of the Scheme.

16. Even assuming that the promotions were made in accordance with the provision of the Scheme, we have to

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examine whether the rota rule was observed in the present case. In this connection, we would like to refer to the following chart wherein the names of the five applicants in O.A. 31/1988 are shown as 'Promotee' and in the 1987 seniority list, they have been placed below the 'Examinees' of later years, appointed three to six years later than them:

Name	Present Rank	Date of continuous Officiation as Section Officer	Date of notional promotion as Section Officer on review after Supreme Court Judgment	1972	1978	1982	1987	Remarks
(i)	(ii)	(iii)	(iv)	(v)	(vi)	(vii)	(viii)	(ix)
S/Shri								
I.P. Bhatia	Assistant Director	30.11.79	-	-	-	-	160	152 Examinee
D.N. Srivastava	Section Officer	13.1.78 (Ad-hoc)*	1.2.76	-	-	-	111	153 Promotee
A. Muthuswamy	Section Officer	31.12.81	-	-	-	-	178	169 Examinee
K.D. Beri	Section Officer	7.9.79 (Ad-hoc)*	23.5.76	-	-	-	137	170 Promotee
S. Chandrashekaran	Section Officer	30.12.82	-	-	-	-	-	185 Examinee
M.S. Gogia	Section Officer	16.10.79 (Ad-hoc)*	6.6.77	-	-	-	145	186 Promotee
K.K. Chandra	Section Officer	5.1.83	-	-	-	-	-	187 Examinee
P. Nagaratnam	Section Officer	19.12.79 (Ad-hoc)*	6.6.77	-	-	-	147	188 Promotee
Harish Chandra	Section Officer	30.1.83	-	-	-	-	-	189 Examinee
M.G. Mehrotra	Section Officer	18.12.79 (Ad-hoc)*	11.8.77	-	-	-	-	190 Promotee

* Seniority was subject to regularisation of ad hoc promotions.

17. Learned counsel Shri Arvind Gupta appearing for the third party respondents in O.A. 31/1988 and Shri M.K. Gupta appearing for the third party respondents in O.A. 1675/87 contended that the quota and rota rule could not be considered as having broken down in the present case inasmuch as promotions of the concerned persons were not made either in excess of quota

or in relaxation of rules. In this connection, Shri Arvind Gupta relied on the observations of the Supreme Court in A. Janardhana v. Union of India and others (AIR 1983 S.C. 769) and G.S. Lamba and others v. Union of India and others (AIR 1985 S.C. 1019). He also referred to the judgement of the Supreme Court in Sonal Sihimappa v. State of Karnataka and others (AIR 1987 S.C. 2359) and drew attention to the following observation made in the said case: -

"19. In a precedent-bound judicial system binding authorities have got to be respected and the procedure for developing the law has to be one of evolution. It is not necessary for disposal of these matters before us to go into that aspect except noticing the existence of distortion in the field. The rationalisation of the view in a way known to law is perhaps to be attempted some day in future. In the present batch of cases the law being clear and particularly the mandate in the rule being that when recruitment takes place the promotee has to make room for the direct recruit, every promotee in such a situation would not be entitled to claim any further benefit than the advantage of being in a promotional post not due to him but yet filled by him in the absence of a direct recruit. One aspect which we consider relevant to bear in mind is that the promoted officer has got the advantage of having been promoted before it became his due and is not being made to lose his promotional position. The dispute is confined to one of seniority only. The advantage received by the promotee before his chance opened should be balanced

against his forfeiture of claim to seniority. If the matter is looked at from that angle there would be no scope for heart-burning or at any rate dissatisfaction is expected to be reduced so far as the promotees are concerned."

18. Learned counsel Shri Ramchandani, appearing for respondents No.1 and 2 also contended that there was no break-down of the quota rule and in this connection relied on the judgment dated 28.5.1987 delivered by the Principal Bench of this Tribunal in O.A. 33/1985 (Shri Ram Vishwanathan and others v. Union of India and others). He drew attention to the following observation made in the said judgement: -

> "..... It was on account of the wholesale relaxation of the quota rule during the period of ten years that in Janardhana's case it was held that there is a break down of the quota rule. In P.S. Mahal's case, there was an enormous deviation from the quota rule for about quarter of a century. In G.S. Lamba's case, there was no direct recruitment from 1965 to 1972 and even for the later years only an indent was placed and no recruitment was done and during all these years a large number of persons were promoted. The facts are totally different here, and as such the applicants cannot derive assistance from the decisions in the aforesaid cases."

19. On the other hand, Shri Joseph, counsel for the applicants in O.A. 31/88 urged that the judgement of the Supreme Court in Sonalsinimappa v. State of Karnataka & Ors. (AIR 1987 SC 2359) is not applicable to the present case as in that case the promotions had taken place in excess of the quota for promotion and also for the reason that the quota had been laid down by statutory rules. Both these aspects do not apply in the present case.

20. In K.N. Mishra and Ors. v. Union of India & Ors. (A.T.R. 1986 (2) CAT 270), a Bench of this Tribunal analysed the various decisions of the Supreme Court in regard to determination of seniority when the quota and rota rule has broken down. The judgement refers in detail to the observations of the Supreme Court in B.S. Gupta v. Union of India (A.I.R. 1972 S.C. 2627), A.K. Subraman v. Union of India (A.I.R. 1975 S.C. 483), P.S. Mahal v. Union of India (A.I.R. 1984 S.C.1291), A. Janardhana v. Union of India (AIR 1983 S.C. 769), O.P.Singla v. Union of India (AIR 1984 S.C. 1595), D.R. Nim v. Union of India

(1967 (2) S.C.R. 325 : A.I.R. 1967 S.C. 1301), S.C. Jaisinghani v. Union of India (A.I.R. 1977 S.C. 1427), G.S. Lamba v. Union of India (A.I.R. 1985 S.C. 1019), N.K. Chauhan v. State of Gujarat (A.I.R. 1977 S.C. 251), and S.B. Patwardhan v. State of Maharashtra (A.I.R. 1977 S.C. 2051). We do not consider it necessary to analyse those decisions again in this case. However, we would like to refer to the observations of the Supreme Court in A.N. Pathak and others v. Secretary to the Government, Ministry of Defence and another (A.I.R. 1987 S.C. 716), which are as follows: -

"13. We do not think it necessary to refer to the various decisions rendered by this Court on this question. In the cases of A. Janardhana v. Union of India, AIR 1983 SC 769, O.P. Singla v. Union of India, (1985) 1 SCR 351: (AIR 1984 SC 1595) and in G.S. Lamba v. Union of India, AIR 1985 SC 1019, length of service was given due importance in dealing with promotions and seniority. In the case of Narender Chadha v. Union of India, to which one of us was a party, it was held that to treat continuous officiation of one officer as temporary would be arbitrary and violative of Arts. 14 and 16. In G.K. Dudani v. S.D. Sharma, a three Judge Bench of this Court, Madon, J. speaking for the Bench, approved the settled principle noted above. The promotees come into service, not by any fortuitous circumstances but they form an integral part of the regular cadre entitled to all benefits by the length of their service.

"14. The learned counsel for the respondents found it difficult to justify the validity of the rules and the lists in the light of the various decisions of this Court which have consistently leaned in favour of the promotees based on their length of service and seniority, in cases where there was

inordinate delay in making direct recruitment. He tried to justify the inequity saying that the new rules have tried to rectify it. We are not satisfied with this explanation since that is little consolation to the petitioners. We are of the view that the grievance of the petitioners is justified in law. The rules enabling the authorities to fill in vacancies for direct recruits as and when recruitment is made and thereby destroying the chances of promotion to those who are already in service cannot but be viewed with disfavour. If the authorities want to adhere to the rules strictly all that is necesary is to be prompt in making the direct recruitment. Delay in making appointments by direct recruitment should not visit the promotees with adverse consequences, denying them the benefits of their service." (emphasis supplied)

21. The facts of the present case clearly show that the appointment of the applicants and the third party respondents was not made from a combined list as envisaged by the provisions of the Scheme. These can be considered as having been made only in relaxation of the provisions of the Scheme. Further even though the promotions from either category or stream viz., seniority-cum-fitness or Limited Departmental Competitive Examination were not in excess of quota, there was a departure from the principle of quota inasmuch as examinees shown in the impugned seniority list had qualified in examinations held three to six years later than the dates of promotion of those who had been promoted on the basis of seniority. It could be that some of the examinees were not even qualified or eligible to take examination in the years of their assigned seniority or might have failed in the examination held in those earlier years. The rota rule of seniority

cannot be applied in the present case since the quota principle had not been followed at the time when promotions were made as envisaged by the provisions of the Scheme. The only just and fair principle for determining seniority in the circumstances of the case would be the date of continuous officiation in the post of Section Officer.

22. In view of the above discussion, both the applications are allowed with the direction that the impugned seniority list issued in August 1987 is quashed to the extent that it assigns the applicants in O.A. 1675/1987 notional seniority of years later than the dates when they were actually promoted to the posts of Section Officers and further to the extent that it assigns seniority to the examinee respondents above the applicants in both the O.A.s on the rotational principle. The respondents who were promoted on the basis of the Limited Departmental Competitive Examinations shall be assigned seniority with reference to the applicants on the basis of the dates of their actual appointment / promotion. A fresh seniority list of Section Officers shall be issued within a period of three months from the date of this judgement keeping in view the above directions. There shall be no order as to costs.

(KAUSHAL KUMAR)
MEMBER(A)

(AMITAV BANERJI)
CHAIRMAN

26.4.1989.

Central Administrative Tribunal
Principal Bench, New Delhi

"CERTIFIED TRUE COPY"
Dt.....

ANIL SRIVASTAVA)
Section Officer
Central Administrative Tribunal
Principal Bench, New Delhi