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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO.481/88

DATE OF DECISION:

12. 11. 90

I.S. DHINGRA & OTHERS

..APPLICANTS

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

SHRI G.D. GUPTA

..COUNSEL FOR THE APPLICANT

SHRI P.H. RAMCHANDANI

..COUNSEL FOR THE RESPONDENTS

CORAM:

HON'BLE SHRI P.C. JAIN, ADMINISTRATIVE MEMBER.

HON'BLE SHRI J.P. SHARMA, JUDICIAL MEMBER.

J U D G E M E N T

(DELIVERED BY HON'BLE SHRI J.P. SHARMA)

The applicants, Assistant Station Engineers/Asstt. Director('E)/Research Officer in All India Radio/Doordarshan belonging to the Indian Broadcasting Engineers Service (I.B.E.S.) jointly filed this application under Section 19 of the Administrative Tribunals Act, 1985 impleading official respondents 1 to 3 and private respondents 4 to 24 who are direct recruits in the same Service. The applicants have challenged the seniority lists circulated by the respondents of I.B.E.S. dated 4.4.1987 as on 1.4.1987.

2. The applicants prayed that the aforesaid seniority list, as on 1.4.1987 circulated vide memo dated 4.4.1987, be quashed and a direction be given to the official respondents to issue revised seniority list of departmental promotees (D.P.) including the applicants

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vis-a-vis the Direct recruits including respondents 4 to 24, on the basis of continuous length of service in I.B.E.S.

3. The facts, in brief, are that the applicants were promoted on various dates in 1982 but most of them have not been shown in the impugned seniority list dated 4.4.1987 (Annexure-B) and as such they are ranked junior to the direct recruits not only of 1983 batch of the I.B.E.S. but also of the subsequent batches, even junior to those D.Rs. who joined in 1987. A perusal of the seniority list would show that right from 1982, all the posts falling in the quota of direct recruits were not filled up in the relevant year and accordingly slots meant for the direct recruits were shown vacant against the posts not filled. These slots have been allowed to the D.R. of subsequent batches of I.B.E.S. although they actually joined the service much later than the applicants and as such, such direct recruits have gained advantage of unintended seniority from the date much before the date of their actually joining the service and have been shown senior to the D.P. irrespective of their having been ⁱⁿ continuous service in the same scale which is violative of Articles 14 and 16 of the Constitution of India and is also arbitrary and unjust.

4. The I.B.E.S. was constituted in 1981 for the posts mentioned in Schedule I to the I.B.E.S. Rules, 1981 (hereinafter called '1981 Rules'). Before the enforcement of these rules, the recruitment was being done in Akashwani and Doordarshan under the 1972 Rules of All India Radio Class I and Class II Engineering Posts Recruitment Rules (hereinafter

called 'the 1972 Rules). Under Rule 6 of 1981 Rules, there was initial constitution of the Service and all those who were placed in the grade of Rs.700-1300 in the 1972 Rules and all the incumbents placed in similar grade and on the same posts under 1981 Rules were deemed to have been appointed as such. After the initial constitution of the service, of junior scale, further maintenance of service was to be done under the provisions of Rule 7. The original Rule 7 of 1981 Rules was amended in 1982 with retrospective effect whereby sub-rule 2 thereof was amended and new sub rule 2 was substituted having three clauses (a), (b) and (c). The other provisions of sub rule 1, 3 and 4 of Rule 7 remained as they were in the original 1981 rules. The substituted rule 7(2) lays down as follows:

"(2) Appointment to Junior Scale shall be made as under:

- (a) 50% of the substantive vacancies in the Junior Scale shall be filled by direct recruitment on the results of a Competitive Examination conducted by the Commission on the basis of the educational qualifications and age limit specified in Schedule II and any scheme of examination that may be notified by Government, in consultation with the Commission from time to time.
- (b) The remaining 50% of the substantive vacancies shall be filled by substantive appointments of officers appointed to the grade against temporary vacancies, under clause (c) given below, on the basis of seniority subject to rejection of unfit on the recommendation of a duly constituted Departmental Promotion Committee for confirmation in the grade as given in Schedule IV.
- (c) All temporary vacancies in the Junior Scale shall be filled by the Controlling Authority by promotion of officers from the relevant field of promotion and the minimum qualifying service as specified in the fourth column against serial no.6 of Schedule III on the basis of selection on merit by a duly constituted Departmental Promotion Committee as provided in Schedule IV."

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5. Rule 8 of 1981 Rules provided for fixing seniority ^{per} as/ directions of Government of India. Rule 9 provided for probation and sub rule 2 of Rule 9 provided that on completion of period of probation or any extension thereof, officers shall if considered fit for permanent appointment, be retained in their appointments on regular basis and be confirmed in due course against the available substantive vacancies, as the case may be. Rule 13 gave the power to the Government to relax the rules.

6. The duty post has been defined in 1981 Rules as any posts whether permanent or temporary, included in Schedule I. There are temporary as well as permanent posts which constitute I.B.E.S. in the junior scale. The quota for the direct recruits is only in the substantive vacancies. There is no quota for direct recruits in the temporary vacancies, appointment to which is made under Rule 7(2)(c) of 1981 Rules. Rule 5 of 1981 Rules defines members of the Service as they were appointed on duty posts under Rule 6 and Rule 7.

7. The contention of the applicants is that the prescribed 50:50 quota between DR and DP utterly failed and so also the rota and the only rule which could be followed for determining interse seniority between the D.R. and D.P. is the continuous length of service. The contention of the applicants is that there is no material difference between the process of recruitment to substantive and temporary vacancies under Rule 7(2)(c), because even such persons who are appointed against temporary vacancies under Rule 7(2)(c) are also members of I.B.E.S. and substantive vacancies have not been defined in the rule itself. However, the concept of the substantive vacancies, according to the applicants

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also covered temporary vacancies of longer duration and a long term vacancy can be there even in a temporary post. Once, therefore, a vacancy is regular and on long ^{term} basis, it is a substantive vacancy even though the post may be temporary. It is said that if the vacancy is substantive, the quota will operate. The vacancies in which the applicants were promoted in all these years since 1982 under 1981 Rules, were regular vacancies and were long term and those vacancies could be described as ^{substantive} vacancies. A temporary vacancy is said to be only of a short duration or otherwise adventitious. According to the applicants, if their promotion was made under Rule 7(2)(c) by taking their vacancies as temporary vacancies, this will not be of any consequence, as the applicants, on the basis of the definition of the duty post as defined in 1981 Rules, and the cadre consisting of both permanent and temporary posts became entitled to be treated as having been promoted against substantive vacancies under Rule 7(2)(b). The applicants, on promotion, were on probation for a period of two years which they completed satisfactorily and the probation period was never extended; so they are entitled to be confirmed in service. The applicants have filed definite orders of the Government showing the date of commencement of probation period of some of the applicants and the date when the said probation period ended, after two years.

8. It is stated by the applicants that the inter-se seniority of DP and DR has been determined on the basis of OM dated 22.12.1959 and the said O.M. in view of the various decisions of the Hon'ble Supreme Court

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P.S. Mahal Vs. Union of India (1), O.P. Singla Vs. Union of India & Others (2), K.N. Mishra Vs. Union of India (3), Dasoola Ram Vs. Union of India (4), G.S. Lamba Vs. Union of India (5) and Narendra Chadha Vs. Union of India (6), regarding determination of interse seniority of D.R. and D.P., is arbitrary, illegal and violative of Articles 14 and 16 of the Constitution of India. The applicants, therefore, prayed for the relief of quashing the impugned seniority list.

9. The official respondents denied the various contentions of the applicants with respect to fixation of seniority. It is stated that the appointment of the applicants was made under Rule 7(2)(c) of 1981 Rules, as it stood amended in 1982. The appointment of direct recruits as well as those who are temporarily appointed to I.B.E.S. against substantive vacancies is made as per Schedule III of I.B.E.S. rules in terms of the provisions laid down in Rule 7(2)(a) and (2)(b) giving 50% of the vacancies to the DR and the remaining 50% vacancies to the DP and fixing the ratio by rotation. The Ministry of Home Affairs in the O.M. dated 22.12.1959 and Rule 8(3) of 1981 ordered that the seniority of D.R. and D.P. after initial constitution of service, shall be determined in accordance with the general instructions issued by the Government in the matter from time to time. Thus, according to the official respondents, the amended seniority list has been drawn up between D.R. and D.P. strictly in accordance with

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- (1) AIR 1984 S.C. 1291
 - (2) AIR 1984 SC 1595
 - (3) SLJ Vol. III, 1986 CAT page 1.
 - (4) AIR 1988 SC 1557
 - (5) 1985 (1) SLJ 476
 - (6) 1986 (1) SCR page 211

the provisions of Rule 8(3) of 1981 Rules and O.M. dated 22.12.1959. It is further stated that the quota system has not collapsed as requisitions, after the enforcement of the 1981 Rules, were sent to the U.P.S.C. regularly and on yearly basis as shown below:

| <u>S.No.</u> | <u>Year</u> | <u>Vacancies intimated to U.P.S.C.</u> | <u>Officers allotted by U.P.S.C.</u> | <u>Officers joined.</u> |
|--------------|-------------|--|--|-----------------------------|
| 1. | 1982 | 5 | 5 | 3 |
| 2. | 1983 | 33 | 4 | 1 |
| 3. | 1984 | 18 | 18 | 13 |
| 4. | 1985 | 16 | 10 | 6 |
| 5. | 1986 | 22 | 14 | 2 |

According to the respondents as is evident from the above statement, the required number of DR could not join and this happens in most of the organized services. The slots which are left in the impugned seniority list, are indeed to accommodate the DR who are to join subsequently in the vacancies of their quota of earlier periods. However, the said O.M. of 22.12.1959 was superseded by O.M. dated 7.2.1986 issued by the Department of Personnel and Training and the practice of leaving the slots has been given up but the said oM is to apply to those vacancies which are to be filled up after the date of issue of O.M. dated 7.2.1986. Thus, there shall not be any slots/seniority to the D.R. The present O.A. had been filled by the applicants in 1988 after the O.M. of 1959 had already been superseded and in future, as per illustrations given in O.M. dated 7.2.1986 of Ministry of Home Affairs, no slots will be left. The O.M. dated 7.2.1986 also provided that seniority of officers fixed earlier is not to be disturbed, so the principle of determination of seniority on the basis of continuous length of service is not applicable in this case. It is further stated

that the quota for the promotees in the 1972 Rules was only 40% while in 1981 Rules that quota has been increased to 50%.

10. It is also stated by the official respondents that a permanent post means a post carrying a definite rate of pay sanctioned without limit of time (F.R. 22). Likewise, temporary post means a post carrying a definite rate of pay sanctioned for a limited time (F.R. 30). The orders for continuance of temporary posts are issued on yearly basis but it is not so in the case of permanent posts. All the temporary posts are occupied by officers in temporary capacity. On the other hand, a permanent post can be occupied by an officer in a temporary or in a substantive capacity. The substantive vacancy arises when a permanent post falls vacant. When a temporary post falls vacant, it gives rise to a temporary vacancy. On this basis, substantive vacancies and temporary vacancies are being calculated from time to time. The contention of the applicants that all the vacancies are substantive vacancies is absolutely incorrect. A clear distinction has been drawn in rule 7(2) (a), (b) and (c) about the substantive vacancies and temporary vacancies. The provisions of Schedule III of the I.B.E.S. Rules were found incompatible with Rule 7(2)(c) and so this rule has been deleted by an amendment notified on 14.9.1987, before the filing of the present O.A. It is further contended that those who had completed the period of probation, were promoted only against temporary vacancies and not substantive vacancies as per Rule 7(2)(c) of Rule 1981. The DPs who are promoted under the provisions of Rule 7(2)(c)

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are subsequently given substantive appointments against 50% of the substantive vacancies under rule 7(2)(b). Such a provision does not exist for officers appointed directly through the U.P.S.C. in I.B.E.S. This itself shows a very vital difference between the officers recruited through U.P.S.C. and those promoted against temporary vacancies under rule 7(2)(c). Thus, according to the respondents, the impugned seniority list has been rightly drawn up.

11. The private respondents 4 to 24 have also filed the reply stating therein almost the same facts as given out by the official respondents. It is stated that when the D.R. vacancies could not be filled up at the ensuing recruitment, but were filled in later, the respondents did no more than to follow the rules in adjusting the appointees on the basis of their relevant seniority in the vacancies existing in their quota and further operating the rotation rule while preparing the combined seniority list. The respondents have given an illustration that in the year 1982, only 5 posts were reported to U.P.S.C. while, there were 152 departmental promotions to temporary posts. In the year 1983, 33 vacancies were reported to U.P.S.C. In the year 1984, 18 vacancies were reported to U.P.S.C. and there were 154 departmental promotions to temporary posts. The respondents have alleged that in the years 1985, 1986 and 1987, 15, 22 and 83 vacancies were respectively reported to U.P.S.C. Thus, only 181 vacancies were reported to U.P.S.C. during the period 1982 to 1987 while there were 306 departmental promotions to temporary posts. Thus, excess number of DPs already had an advantage of unearned and irregular promotions and

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now, they cannot get the benefit of seniority from the date of temporary appointment to I.B.E.S. junior scale. The seniority has to be determined, according to the private respondents, both according to quota and rota rules.

12. We have heard the learned counsel for the parties at length and have gone through the records of the case. The first contention of the learned counsel for the applicants is that the vacancies which are designated as temporary vacancies are in fact substantive in nature for the purpose of Rule 7(2)(b). In S.B. Patwardhan Vs. State of Maharashtra, AIR 1977 SC 2051, the Supreme Court held that all other things being equal the continuous officiation in the non-fortuitous vacancies has to receive due recognition in fixing seniority between the persons who are recruited from different sources, so long as they belong to the same cadre discharging similar functions and bear the same responsibilities. Again, in Baleshwar Dass Vs. State of U.P. AIR 1981 SC page 42, there was only one rule of recruitment to both the permanent and temporary posts in the cadre and their Lordships of the Supreme Court observed as follows:

"We must emphasise that while temporary and permanent posts have great relevancy in regard to the career of Government servants, keeping posts temporary for long, sometimes by annual renewals for several years, and denying the claims of the incumbents on the score that their posts are temporary makes no sense and strikes us as arbitrary, especially when both temporary and permanent appointees are functionally identified. If, in the normal course, a post is temporary in the real sense and the appointee knows that his tenure cannot exceed the post of longevity, there cannot be anything unfair or capricious in clothing him with no rights. Not so, if the post is for certain departmental or like purpose,

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declared temporary, but it is within the ken of both the Government and the appointee that the temporary posts are virtually long-lived. It is irrational to reject the claim of the 'temporary' appointee on the nominal score of the terminology of the post. We must also express emphatically that the principle which has received the sanction of this Court's pronouncements is that officiating service in a post is for all practical purposes of seniority as good as service on a regular basis. It may be permissible, within limits, for Government to ignore officiating service and count only regular service when claims of seniority come before it, provided the rules in that regard are clear and categorical and do not admit of any ambiguity and cruelly arbitrary cut-off of long years of service does not take place or there is functionally and qualitatively, substantial difference in the service rendered in the two types of posts. While /executive power of the State or its legislative power under proviso to Article 309, even so, such rules have to be reasonable, fair and not grossly unjust if they are to survive the test of Articles 14 and 16."

/Rules regulating conditions of service are within the

13. As per the definition of the Duty post in 1981 Rules, it means any post whether permanent or temporary included in Schedule I of 1981 Rules. Schedule I also mentions 197 temporary posts in junior scale. The learned counsel for the applicants pointed out that the temporary vacancies of longer duration are of the nature of substantive vacancies. The learned counsel has referred to various citations from the case of Shri O.P. Singla Vs. Union of India and Ors., AIR 1984 SC page 1595. In the O.P. Singla' case which was of Delhi Higher Judicial Service there were temporary as well as permanent posts. Rules 16 and 17 of the Delhi Higher Judicial Service Rules provided for mode of recruitment for temporary as well as substantive vacancies of the promotees. Their Lordships held that temporary posts continuing for years together being of longer duration are of the nature of substantive vacancies. The holders of these substantive posts may be temporarily appointed but as there has been

no reversion of the holders of temporary posts, so their continuing on temporary posts is analogous to occupying posts in substantive capacity. The vacancies which are created or are caused due to the incumbents going on deputation for a considerable period are of substantive nature if they continued for a longer period. The substantive vacancies are, therefore, likely to take place both in permanent and temporary posts. Such a view has been taken by the Hon'ble Supreme Court in Bishan Sarup Gupta Vs. Union of India & Ors. AIR 1974 SC 1618. Again, in P.S. Mahal Vs. Union of India and ors., AIR 1984 SC page 1295, the Hon'ble Supreme Court held in case of vacancies caused by officers going on deputation ^{if} and there is a continuous process than such vacancies are substantive vacancies of coming and going in those vacancies. In view of the above, the learned counsel for the applicants has made out that though a vacancy may have the nomenclature of a temporary vacancy yet if it continues for a sufficiently long period, that is, for years together, then it is a substantive vacancy. 1981 Rules do not give a positive definition of a substantive vacancy. In view of this, it is held that a temporary vacancy of longer duration also comes within the purview of substantive vacancy as discussed above.

14. 1981 Rules described different modes of appointment to a temporary vacancy and to a substantive vacancy. The Rules as amended in 1982 make it clear that 50 per cent of the vacancies are to be filled by direct recruitment and 50 per cent of the substantive vacancies are to be filled up from the officers appointed to the grade against temporary vacancies under Rule 7(2)(c) by the Departmental Promotion Committee for confirmation in the grade as given and detailed in Schedule IV of

1981 Rules. For appointment to a temporary vacancy in the junior scale the DPC for promotion will consider departmental candidates as laid down in Rule 6(2) of 1981 Rules. Thus, those who are appointed under Rule 7(2)(c) must be Assistant Engineers of AIR, Doordarshan excluding those working in Civil Construction Wing, with three years regular service in the grade as given in Schedule III to 1981 Rules and the DPC consists of a Member of U.P.S.C. as Chairman, Joint Secretary, Ministry of Information and Broadcasting and Engineer-in-Chief. Those already appointed as temporary engineers in Junior scale have to be considered for substantive appointment under Rule 7(2)(b) and like the direct recruits who are taken in their quota under Rule 7(2)(a) of 1981 Rules. The applicants have filed the memos by which some of the applicants were placed on probation and also the orders showing the period when the probation stood completed under Rule 9(2) of the 1981 Rules. These officers shall be confirmed in due course on the availability of permanent vacancies. It is, therefore, clear that only those Assistant Engineers who are qualified to be considered for confirmation can be appointed - under Rule 7(2)(b) and not those Assistant Engineers who are appointed temporarily under Rule 7(2)(c). The quota was applied to only those who are appointed under Rule 7(2)(b). The constitution of the Selection Committee and the DPC under Rule 7(2)(b) and 7(2)(c) of the 1981 Rules are different while in the case of

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Shri O.P. Singla (Supra) the appointment was in consultation and recommendation of the High Court to the cadre of Additional District and Sessions Judge in Delhi Higher Judicial Service either in temporary or in substantive vacancy. So, there was no material difference between the mode of appointment in those two categories. However, there is material difference in 1981 Rules for the appointment to a temporary post under Schedule III and to a substantive post under Schedule IV of the 1981 Rules. The contention of the learned counsel for the applicants that the mode of appointment to both temporary and substantive posts is similar, therefore, has no force.

15. The learned counsel for the applicants argued that the rule of continuous officiation in the service is to be adopted for relative seniority between the DR and DP, of course, within their quota. It has been further pointed out by the learned counsel for the applicants that the quota prescribed 50:50 has broken down considerably and this violent departure from the quota rule in the present case is analogous to the reported case of K.N. Mishra Vs. Union of India and Ors. reported in 1986 ATJ page 473. The learned counsel pointed out on the basis of the chart that in none of the years from 1982 to 1986 the prescribed number of direct recruits were coming forth and as such, the promotees occupied places which were meant for direct recruits. In 1982, 1983, 1984, 1985 and 1986 only 3, 1, 13, 6 and 2 direct recruits joined respectively while, the number of vacancies which was intimated to the U.P.S.C. in the relevant years was 5, 33, 18, 16 and 22 respectively. Where there is a departure from the quota the rota rule cannot apply. The learned counsel



has relied on G.S. Lamba Vs. Union of India (1985) 1 S.L.R. page 687. Here the question before the Hon'ble Supreme Court was of seniority of promotees and direct recruits as integrated grade II and III. There was no implementation of quota rule and where there is malfunction of the quota rule the rota rule cannot be adhered to and its application will be arbitrary, unfair and inequitable being violative of Articles 14 and 16 of the Constitution. In S.C. Budh Vs. Union of India (1987) 1 S.L.R. page 734 CAT Principal Bench observed that when normal seniority rules or orders become inoperative because of collapse of quota and rota system then counting of ad hoc officiation for purposes of seniority is permissible. Similar view was taken in G.P. Dobal Vs. Chief Secretary, Government of U.P. (1984) 2 S.L.R. page 555, where it has been held that if there is no binding rule of seniority then length of continuous officiation is a valid principle of seniority. Again, in D.K. Mitra Vs. Union of India (1985) 2 S.L.R. page 791, it has been held that there was no ground for detaining confirmation of petitioners merely because quota reserved for direct recruits was not being filled up. The same situation had arisen in Delhi Higher Judicial Service case, O.P. Singla Vs. Union of India (supra).

16. Confirmation cannot be a criterion for fixing seniority and it has been held so in S.B. Patwardhan Vs. State of Maharashtra, AIR 1988 SC page 2051 (supra).

The observations made in the judgement are as follows:

"The Government should bear in mind that if a cadre consists of both permanent and temporary employees the accident of confirmation cannot be an intelligible criteria for determining seniority as between DR and DP. All other factors being equal, continuous officiation in a non-fortuitous vacancy ought to receive due recognition in determining rules of seniority as between persons recruited from different sources, so long as they belong to the same cadre, discharge similar functions and bear similar responsibilities."

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17. The view taken by the Hon'ble Supreme Court in S.B. Patwardhan's case (supra) has been upheld in a recent judgement of Direct Recruits Class II Engineering Officers Association Vs. State of Maharashtra and ors. reported in JT. 1990 page 264 and the Hon'ble Supreme Court summarised the findings in para 44 of the judgement and the relevant portion of the same is as follows:

"44. To sum up, we hold that:

(a) 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 confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop gap arrangement, the officiation in such a post cannot be taken into account for considering the seniority

(b) If the initial appointment is not made by following the procedure laid down by the rules 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.

(c) 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 orginarily be followed strictly.

(d) 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 irresistable that the quota rule had broken down.

(e) 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 the appointment, the appointees should not be pushed down

below the appointees from the other source inducted in the service at a later date.

- (f) 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 where there is a deviation from the quota rule.
- (g) The quota for recruitment from the different sources may be prescribed by executive instructions, if the rules are silent on the subject.
- (h) If the quota rule is prescribed by an executive instruction, and is not followed continuously for a number of years, the inference is that the executive instruction has ceased to be operative."

18. The question whether the quota and rota failed in the appointments of DR is the subject of deeprooted controversy. On the one hand it is contended that the Recruitment Rule came w.e.f. 1981 and there has been each year Direct recruitment by intimating the number of vacancies to the U.P.S.C. It may not be possible for each of such selected DR to join. However, the chart at p.9 does show that from 1982 to 1986 each year the DR joined. The formula of carry over of the unfilled vacancies has been in vogue in view of the instructions issued by the D.O.P. So according to the learned counsel for D.R. the quota has not failed. The learned counsel Shri G.D. Gupta for D.P. hotly convassed that by not getting the required number of D.R. in each year the quota itself collapsed as the unfilled vacancies may have been occupied by the D.Ps.. The respondents did not file any specific chart of year-wise break up of vacancies of DR & DP and the promotions effected to them. In any case, since the learned counsel Sh.G.D.Gupta

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has argued by a statement at the bar that he only pressed the argument of the reckoning of the seniority of DP within their quota, so the controversy of failure of quota remained only of academic interest. Thus only such DPs can therefore get the seniority reckoned from the date they got vacancy in their quota and as well they themselves were duly qualified for appointment to substantive vacancy under Rule 7(2)(b) as per the Rules.

19. In view of the above discussion the seniority list dated 1.4.1987 is hereby quashed. The official respondents are directed to draw up a fresh seniority list as on 1.4.1987 of the jr. scale officers of the I.B.E.S. adopting the principle of continuous officiation in the DP quota in the jr. scale/on the lines indicated in the body of the judgement and based on direct recruits Class II Engg. Officers Association Vs.State of Maharashtra & Others. The aforesaid list be finalised after giving opportunities to all concerned within six months from the date of the communication of this order.

Parties are left to bear their own costs.

J. P. Sharma
(J.P. SHARMA)
MEMBER(J)

12.11.90

P. C. Jain
(P.C. JAIN)
MEMBER (A)