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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

New Delhi, dated the 3rd JUNE

1998

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

O.A. No. 1156 of 1988

1. Shri Zahir Ahmed,
S/o Shri Shabhir Ahmed,
R/o 33/4, Rajpur Road,
Delhi-110054.
2. Shri B.S.Rana,
S/o Shri Sher Singh,
R/o A-25, C.C. Colony,
R.P. Bagh,
Delhi.
3. Shri Jamil Murtaza,
S/o Shri Mohd. Murtaza,
Rajpur Road,
Delhi-110054.
4. Shri G.S.Thanewal,
S/o Shri Man Singh,
R/o 112, Kangra Niketan,
Vikaspuri,
New Delhi-110018.
5. Shri Karnail Chand,
S/o Shri Nand Lal,
R/o 52-E, D.A. Block,
Rajouri Garden Extn.,
New Delhi.

.... APPLICANTS

6. Krishan Chand

.... APPLICANTS

(By Advocate: Shri D.R.Roy for Applicants 1 to 5
Shri D.R.Gupta for applicant No.6)

VERSUS

1. Union of India through
the Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
2. Director,
CPS,
Ministry of Home Affairs,
North Block,
New Delhi.
3. Administrator Delhi
through Chief Secretary,
5, Shamnath Marg,
Delhi.
4. Secretary (Services),
Delhi Administration,
5, Shamnath Marg,
Delhi.

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- 5. Secretary,
UPSC,
Dholpur House,
New Delhi.
- 6. Shri B.L.Sharma,
s/o Shri D.R.Sharma,
1682, Delhi Adminisitration Flats,
Gulabi Bagh, Delhi.
- 7. Shri S.S. Kanawat, ~~S/o Shri S.S. Kanawat~~
S/o Shri Lt. Shri Bhoop Singh,
R/o 2077, Delhi Admn. Flats,
Gulabi Bagh,
Delhi.

... RESPONDENTS

(By Advocate: Shri N.S.Mehta for R-1 to 5
Shri A.K.Behera for R-6 & 7

O.A. No. 1825 of 1993 ✓

- 1. Shri B.L. Sharma,
S/o Shri Des Raj Sharma,
R/o 1682, Delhi Admn. Flats,
Gulabi Bagh, Delhi.
- 2. Shri S. S. Kanawat,
S/o Lt. Shri Bhoop Singh,
R/o 2077, Delhi Admn. Flats,
Gulabi Bagh,
Delhi.

... APPLICANTS

(By Advocate: Shri A.K.Behera)

VERSUS

- 1. Union of India through
the Secretary,
M/o Home Affairs,
New Delhi.
- 2. Secretary,
Ministry Personnel, Public Grievances &
Pensions,
North Block, New Delhi.

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- 3. The Secretary,
UPSC,
Dholpur House,
New Delhi.
- 4. Chief Secretary,
Govt. of NCT Delhi,
5, Shamnath Marg,
Delhi-110054.
- 5. Jt. Secretary (Services),
Govt. of NCT, Delhi,
Delhi
- 6. Shri Durga Dass,
R/o F-IU/47, Pitampura,
Delhi-110034.
- 7. Shri H.C. Makkar,
R/o 22/32, Delhi Admn. Flats,
Rajpur Road,
Delhi-110054.
- 8. Shri Prem Chand,
R/o S-32, Shivaji Park,
New Delhi-110026.
- 9. Shri S.K.V. Shindey,
R/o A-1/61, Ashok Vihar-III,
Delhi.
- 10. Shri O.P. Rajput,
524, Double Storey, Timarpur,
Delhi.
- 11. Shri R.P. Sharma,
E-2/21, Gate No.2,
Shastri Nagar,
Delhi.
- 12. Shri M.N.Malhan,
R/o 14/459, Sunder Vihar,
Outer Ring Road,
New Delhi-110041.

... RESPONDENTS

(By Advocate: Shri N.S.Mehta)

J U D G M E N T

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

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As these two OAs involve common questions of law and fact, they are being disposed of ~~by~~ this common order.

O.A. No. 1156/88

2. The five applicants namely S/Shri Zahir Ahmed, B.S. Rana, Jamil Murtaza, G.S.Thanewal and Karnail Chand (SC) claim that they should be deemed to have been promoted to Delhi, Andaman & Nicobar Islands Civil Service Gr. II (DANICS Gr.II) on regular basis from the respective dates of their ad hoc promotion which is as detailed below:

S/Shri

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|---------------------------------|---------|
| 1) Zahir Ahmed (Retd.) | 16.6.80 |
| 2) B.S. Rana (Retd.) | 16.6.80 |
| 3) J. Murtaza | 5.5.80 |
| 4) G.S.Thanewal(Since deceased) | 5.10.83 |
| 5) Karnail Chand (SC) [Retd.] | 29.2.80 |

and assigned appropriate seniority on the basis of their continuous officiation in that grade, with further consequential promotions and other benefits.

3. Recruitment to DANICS is governed by DANICS Rules, 1971 as amended upto 31.12.82. Rule 5(1)(a) of these Rules provides that 50% of the substantive vacancies (prior to the January, 1981

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amendments it was 66.6%) occurring from time to time in the authorised permanent strength of the service shall be filled by direct recruitment, while Rule 5(1)(b) provides that the remaining such substantive vacancies shall be filled by selection in the manner prescribed in Part V of these Rules from amongst officers who are substantively borne on the cadre of Tehsildars employed in the UT of A & N Islands, or officers who are substantively borne on Gr.I of the Subordinate Executive Service or Gr.I Subordinate Ministerial Services of Delhi Admn., and officers who hold substantively any of the posts mentioned in Schedule II Part A or Part B. Part V of these Rules lays down the procedure for selection and Rule 24 under Part V provides that recruitment under Clause 5(1)(b) shall be made on the recommendations of a Selection Committee consisting of the Chairman or a Member of the UPSC as Chairman, and three members including (i) an officer not below the rank of J.S. in Ministry of Home Affairs; (ii) the Chief Secretary of Delhi Admn. and (iii) the Administrator of A&N Islands or Chief Secretary of A&N Islands or any officer in the Ministry of Home Affairs nominated by the Ministry. Rule 14 lays down the conditions of eligibility and the procedure for selection. It provides that the Selection Committee shall consider from time to time the case of officers eligible under Rule 5(1)(b) who have served in the respective cadre posts as the case may be, for not less than two years and prepare a list of

officers recommended for appointment. The seniority of the officers eligible for consideration by the Committee is to be determined by the Central Govt. with due regard to the dates of their appointment on a regular basis to the respective cadre or posts, the pay scales of the post etc. Rule 15 requires the list prepared under Rule 14 to be forwarded by the Central Govt. to the UPSC and to finally approve the list only after taking into account changes if any suggested by the UPSC, and the list thus finally approved is to be in force until a fresh list is prepared in accordance with rules.

4. Part VIII of the Rules provides for officiating appointments. Rule 24 in Part VIII relating to selections for officiating appointments provides that at any time the Central Govt. is of opinion that the number of officers available in the list referred to in Rule 15(4) for appointment to duty posts [defined in Rule 3(c)] is not adequate having regard to the vacancies in such post, it may direct the Committee to consider the case of officers who have officiated for a period of not less than three years as a Tehsildar in A&N Islands or any of the posts included in Gr. I of Subordinate Exe. Service or Gr. I of Sub. Ministerial Service of Delhi Admn. or at any of the posts mentioned in Schedule II Part A or Part B and prepare a

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separate list of officers selected. Selection for inclusion in the list is to be based on merit and suitability with due regard to seniority and Rules 14(3), 14(4) and Rule 15(3) are to apply mutatis mutandis in the preparation of the select list under these rules.

5. Rule 25 relates to officiating appointments to duty posts of the service and is extracted in full:

- (1) If a member of the Service is not available for holding a duty post, the post may be filled on an officiating basis:
 - (a) by the appointment of an officer included in the list referred to in Sub-Rule (4) of Rule 15 or
 - (b) if no such officer is available by the appointment of an officer included in the list prepared under Rule 24.
 - (2) Notwithstanding anything contained in these rules, if the exigencies of public service so require, a duty post for which a member of the Service is not available may be filled on an officiating basis by the appointment with prior consultation with the Commission of an officer belong to a State Civil Service on deputation for such period or periods ordinarily not exceeding three years as the Central Govt. may consider necessary.
 - (3) Notwithstanding anything contained in these rules, where appointment to a duty post is to be made purely as a local arrangement for a period not exceeding six months, such appointment may be made by the Administrator from persons who are included in the list prepared under sub-rule (4) of Rule 15 or Rule 24 or who are eligible for inclusion in such a list.
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(4) Any appointment made under sub-rule (3) shall be reported by the Administrator to the Central Govt. forthwith.

5. The orders appointing applicants to DANICS issued by Services Dept. of Delhi Admn. (and not by Central Govt.) are available on record. In respect of Applicant Zahir Ahmed the order is dated 2.6.80 (P. 157 of OA) and states that in exercise of powers conferred under Rule 25(3) DANICS Rules, 1971 the Administrator, Delhi is pleased to appoint applicant Zahir Ahmed, belonging to DASS Gr. I Executive and working as Tehsildar D.C.'s Office against the duty post of Sales Tax Officer in DANICS on an emergent basis for a period of six months from the date of assumption of charge or till further orders whichever is earlier. The order makes clear that this appointment would not entitle him to claim any right for regular appointment or for seniority or for appointment to that or any other equivalent post under Delhi Admn. on this basis and was further subject to the final decision in CWP No. 500/79 pending in Delhi High Court. A copy of the same was also marked to the Secretary, MHA, New Delhi.

6. In applicant B.S.Rana's case no such appointment order is on record, but in applicant J. Murtaza's case the relevant order is dated 26.4.80 (P. 155 of OA) and states that the Chief Secretary, Delhi Admn. is pleased to appoint

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applicant J. Murtaza belonging to DASS Gr. I, and who is on the approved panel for appointment to the duty post of DANICS and who is holding the post of Tehsildar in D.C.'s office to the newly created temporary duty post of Election Officer under Rule 25(3) DANICS Rules, 1971 on emergent basis for a period of four months or till further orders whichever is earlier. The order makes clear that the appointment would not entitle him to claim any right for regular appointment or seniority or for appointment to any other equivalent post under the Administration. A copy of the order was endorsed to the Secretary, MHA, New Delhi.

7. In respect of Applicant G.S.Thanewal the order is dated 4.10.83 (P.160 of OA), while in respect of applicant Karnail Chand (SC) the order is dated 29.2.80 (P. 153 of OA), both of which more or less follow the same lines as the other appointment orders referred to above.

8. There is however no doubt that after these appointments were made applicants were continued against these posts in DANICS and even received increments till they were eventually appointed on regular basis to DANICS Gr. II w.e.f. 3.9.90 (except applicant Shri B.S. Rana who who in the mean time had superannuated in April, 1990) in accordance with DANICS Rules vide

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Home Ministry's Notification dated 4.9.90 (Ann. R-II). Later on by Home Ministry's Notification dated 21.7.94 (Ann. A-17) applicants B.S. Rana, Jamil Murtaza and Zahir Ahmed were shown as having been regularly appointed to DANICS Gr. II from an earlier date viz 20.10.83. From the statement filed along with respondents' additional affidavit dated 4.11.96 (Ann. R-III) applicants S/Shri B.S.Rana, Jamil Murtaza and Zahir Ahmed were shown to have been interpolated with the Direct Recruits of 1982 batch; applicants G.S.Thanewal with DR of 1984 batch and applicant Karnail Chand (SC) with DR of 1985 batch in accordance with Rule 29 DANICS Rules, which provides for rotation of vacancies between Direct Recruits and promotees.

9. Applicants while not denying that their initial appointment to duty posts in DANICS under Rule 25(3) on the dates mentioned in Para 2 above was on ad hoc basis, assert that regular vacancies were available at that time against which they could have been appointed on regular basis, but respondents did not convene DPC meetings on yearly basis after 1973 which was violative of rules, unjustified and arbitrary. It has been emphasised that applicants had physically occupied those posts and continued uninterruptedly till they were eventually appointed to DANICS on regular basis and even received increments, and their ad hoc appointment have therefore all the

characteristics of regular appointment and is covered by Proposition (B) of the Hon'ble Supreme court's ruling in Direct Recruits Class II Engineering Officers Association Vs. State of Maharashtra (1990) 2 SCC 715.

10. On the other hand official respondents assert that as per DANICS Rules, till 1980 two slots used to be allotted to the Direct Recruits in the seniority roster and one to the promotees, but from 1981 amendments onwards, the DRs and the promotees used to get one slot each. Appointment against vacancies reserved for DRs were made every year as officers were nominated by the DP&T through the C.S.E., but promotee officers could not be appointed every year on account of non-convening of Selection Committee Meetings for various administrative reasons, which resulted in slots meant for them remained vacant for long periods. Thus the Selection Committee met for filling up of DANICS Gr. II quota vacancies for the year 1973 to 1982 met in August/Sept. 1983 and when its recommendations became available in Sept. 1983 and the recommended officers were notified, the promotees were filled in the slots lying vacant in the seniority roster from 1973 onwards. Further more due to a large intake of promotee officers in those years, the promotees included in the 1981 and 1982 panels got interpolated with the 1984 Direct Recruits and

some 1985 Direct Recruits. These recommendations were themselves subject to the outcome of the CWP No. 566/76 pending before the Delhi High Court (S.S. Gutam Vs. UOI) which was later transferred to CAT, P.B. and renumbered as T.A. No. 235/85 and ultimately disposed of by order dated 17.9.87 whereby the impugned seniority list dated 26.9.74 of DASS Gr. I was quashed and directions were issued for its redrawal. Respondents state that the aforesaid seniority list was revised by respondents' letter dated 19.11.89. The next meeting of the Selection Committee to make appointments for filling up vacancies against the promotion quota for the years 1983 to 1989 could take place only in June-Aug. 1990, because the delay was on account of litigationⁱⁿ the matter of seniority in the feeder cadre. The names of the officers recommended by June-August 1990 Selection Committee including the applicants (except Shri B.S.Rana who had meanwhile superannuated) were notified to DANICS Gr. II vide MHA Notification dated 4.9.90 w.e.f. 3.9.90 (Ann. A-11), and were interpolated with the vacant slots in the seniority list. However, consequent to the revision of seniority in the feeder grade of DASS Gr.I applicants S/Shri Rana, J. Murtaza and Z. Ahmed gained in seniority which was reflected in the MHA subsequent Notification dated 21.7.94 (Supra) and they were interpolated with DRs of 1982 batch, while applicant Shri G.S.Thanewal was

interpolated with Direct Recruits of 1984 batch and applicant Shri Karnail Chand with DRs of 1985 batch as already noticed in Para 8 above.

12. The stand of the private respondents is that applicants cannot be given seniority from a date prior to their appointment into DANICS on regular basis. This contention has been pressed separately by them in O.A. No. 1825/93 and will be discussed in that O.A.

10. We have heard applicants' counsel S/Shri D.R. Rai and D.R. Gupta as well as official respondents' counsel Shri N.S. Mehta. We have also heard Shri A.K. Behera for pvt. respondents (applicants in O.A. No. 1825/93). Parties have also filed detailed written submissions which are taken on record. Rulings referred to by them have been listed at the end of the judgment. We have given the matter our careful consideration.

11. In Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra (1990) 2 SCC 715 the Hon'ble Supreme Court while summing up has held

(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 his confirmation.

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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 position 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 rules, the period of officiating service will be counted.

12. The above summary has been elaborated upon in Para 13 of the aforesaid judgment, relevant portions of which read thus

".....The principle for deciding inter se seniority has to conform to the principles of equality spelt out by Articles 14 and 16. If an appointment is made way of stop-gap arrangement, without considering the claims of all the eligible available persons and without following the rules of appointment, the experience on such appointment cannot be equated with the experience of a regular appointee, because of the qualitative difference in the appointment. To equate the two would be to treat two unequals as equal which would violate the equality clause. But if the appointment is made after considering the claims of all eligible candidates and the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules made for regular substantive appointments, there is no reason to exclude the officiating service for purpose of seniority. Same will be the position if the initial appointment itself is made in accordance with the rules applicable to substantive appointments as in the present case. To hold otherwise will be discriminatory and arbitrary. This principle has been followed in innumerable cases and has been further elaborated by his Court in several judgments including those in Baleshar Das Vs. State of U.P. and Delhi Water Supply & Sewage Disposal Committee Vs. R.K. Kashyap with which we are in agreement. In Narender Chadha Vs. UOI the officers were promoted although without following the procedure prescribed under the rules, but they continuously worked for long periods of nearly 15-20

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years on the posts without being reverted. The period of their continuous officiation was directed to be counted for seniority as it was held that any other view would be arbitrary and violative of Articles 14 & 16. There is considerable force in this view also. We, therefore, confirm the principle of counting towards seniority the period of continuous officiation following an appointment made in accordance with the rules prescribed for regular substantive appointments in the service."

13. In the instant case applicants can secure the relief prayed for in Para 2 above if they can establish that they come within Proposition (A) or Proposition (B) of the Direct Recruits' case (Supra).

14. We have already noticed that the applicants' initial appointment letter clearly shows that they were appointed on the dates mentioned in Para 2 above not by the appointing authority, i.e. Home Ministry, GOI but by the Administrator, Delhi Admn. as a purely emergent local arrangement under Rule 25(3) DANICS Rules. The rules applicable to substantive appointment as contained in Rule 5(1)(b) in Part III and Rule 13 & 16 of Part V of DANICS rules were not followed at the time of this initial appointment, which prescribe an elaborate procedure of selection. No materials have been shown to us to establish that UPSC's approval was sought in respect of these initial appointments and neither were any materials shown to us to indicate that there was any assessment of merit and suitability by any

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duly authorised body as required under Rule 24 DANICS Rules at that time. It is also apparent that these emergent appointments to DANICS were made by Administrator, Delhi Admn. without any reference to, or coordination with, the Administrator, A&N Islands on a purely local basis although Tehsildars of A&N Islands also constituted a feeder cadre for DANICS. Indeed, in 1980 when many of the applicants were appointed to DANICS on the aforesaid emergent basis, they were not even substantive appointees in DASS Gr. II let alone substantive appointees in DASS Gr. I which is the feeder cadre for promotion to DANICS. They were appointed to permanent posts in DASS Gr. II only by order dated 4.9.81 (Ann. II) and for instance applicants ^{A/An} Murtaza and Rana were confirmed in DASS Gr. I only by order dated 19.5.92, (Page 163 of OA) ~~and~~ although both the aforesaid orders took effect retrospectively.

15. Applicants could have claimed the benefit of Proposition (A) in the Direct Recruits' case (Supra) if they could have succeeded in establishing that their initial appointment on the dates mentioned in para 2 above was fully in accordance with rules, but the foregoing discussion shows that it was not so. They could have claimed the benefit of Proposition (B) of the aforesaid judgment, if they could have established that these appointments were made after

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considering the claim of all the eligible candidates (including those from A&N Islands) but the foregoing discussion shows that it was also not so. Under the circumstances the benefit of Proposition (B) is also not available to them. Applicants' case is therefore squarely hit by the corollary to Proposition (A). This legal position does not change even if applicants' grievances were conceded that regularisation to DASS Gr. I should have been done well in time and meetings of the Selection Committee to make regular appointments to DANICS Gr. II from amongst the promotion quota, should have been held at regular intervals as per rules and not after such long gaps. Neither does the legal position get altered merely because consequent to the aforesaid emergent appointments being made on those DANICS duty posts, applicants were continued without interruption and even received increments till they were eventually regularised by Govt. of India's Notification dated 3.9.90 as modified by Notification dated 21.7.94.

16. In fact if applicants had any grievance against their emergent appointment to DANICS w.e.f. the dates mentioned in Para 2 above, they should have raised the same immediately, but they did not do so, from which it is clear that the terms and conditions of their appointment under Rule 25(3) was acceptable to them. Indeed, if

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applicants are given seniority in DANICS Gr. II w.e.f. the dates mentioned in Para 2 above it would do violence to the seniority list of DANICS Gr. II and alter the seniority of a number of officers both promoted and directly recruited, relative to applicant's own seniority, none of whom have been impleaded and given an opportunity of being heard. Further more, it would have the effect of upsetting the DASS Gr. I feeder category seniority as well as the seniority of applicants in DASS Gr. I relative to the other feeder cadres e.f. Tehsildars of A & N Islands Admn.

17. Under the circumstances this O.A. warrants no interference.

18. During hearing and in the written submissions it has been submitted on behalf of Shri Karnail Chand (SC) that respondents had not followed the reservation rules while promoting him to DANICS. It is stated that applicant had moved M.A. No. 2576/96 in this O.A. seeking direction to respondents to recast the seniority list in the light of the instructions providing for reservation for SC/ST in promotions after quashing the seniority list, and notice had been ordered to be issued to respondents but they did not file any reply nor produced the reservation roster and

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hence this submission of applicant Karnail Chand must be deemed to have been accepted. We note that this particular claim was not raised when the O.A. was originally filed and in the written submissions it has been stated that this claim has been made in an M.A. For proper adjudication of this particular claim some foundation should have been laid but that has not been done. Unless applicant laid some foundation in support of this particular claim, with reference to the number of reserved vacancies in promotion quota in previous years; the number in 1980; and applicant's own seniority relative to other reserved category promotees in 1980 no effective adjudication of this claim is possible. Accordingly we leave this particular claim for adjudication open, granting permission to applicant Shri Karnail Chand to claim it separately with respondents, if so advised, in accordance with law.

19. Subject to Para ²18 above, this O.A. is dismissed. No costs.

O.A. No. 1825/93

20. Applicants impugn the seniority list dated 27.4.94 to the extent that it fixes the seniority of the promotee officers regularly appointed to Grade II of DANICS on 3.9. 90 over

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and above the Direct Recruit Officers including the applicants appointed to Grade II of DANICS prior to 3.9.90 with all consequential benefits.

21. Applicant No.1 was directly appointed to Grade II of DANICS on 1.5.87 and the applicant No.2 on 2.5.88. They contend that subsequent to appointment of Applicant No.1, respondents issued a final seniority list as on 1.1.88 (Ann. A-2) fixing the seniority of Direct Recruits including applicant No.1 vis-a-vis promotee officers in which a few slots were left blank probably for filling up the promotees in the said year. It is further stated that subsequent to issue of seniority on 1.1.88, respondents issued another list dated 14.2.94 (Ann. A-4) in which applicants were shown junior to certain promotee officers although the said promotee officers do not find place in the earlier seniority list dated 1.1.88 as they were not appointed to DANICS Grade II on regular basis at that point of time. It is contended that these promotee officers were regularly appointed to DANICS vide Notification dated 4.9.90 (Ann. A-5) w.e.f. 3.9.90 and were therefore appointed in DANICS Gr. II much after the applicants, despite ^{which} ~~that~~ applicants were shown junior to them in the provisional list dated 14.2.91.

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22. In this connection reliance is placed on DOPT O.M. dated 7.2.86 in support of their contention that respondents' action in placing the promotee officers who were regularly appointed to Gr. II of DANICS w.e.f. 3.9.90 senior to applicants, who were directly recruited in the years 1987-88 is illegal, arbitrary and malafide.

23. Respondents both official and private have filed their replies, in which they challenge the O.A. Official respondents, after inviting attention to relevant provisions of DANICS Rules, in this O.A. also aver that normally Selection Committee meetings should have been convened in UPSC every year for filling up vacancies in the promotion quota, but no Selection Committee meeting could be convened after 1983 till 1990 due to the dispute in the seniority of DASS Gr. I, which was settled in 1989 and as such the Selection Committee meeting was convened in 1990 in which a yearwise panel was prepared for filling up vacancies from the year 1983 to 1989. It is ~~stated~~^{stated} that the number of vacancies in each year from 1983 to 1989 were equal to number of Direct Recruits who were taken from 1983 to 1989 through Civil Services Exam. The officers recommended by the Selection Committee in 1990 were appointed to the DANICS Gr. II w.e.f. 3.9.90 and were placed in the vacant slot in the seniority roster of DANICS. Most of these officers were already

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officiating against DANICS posts purely on ad hoc basis for years together and could not be appointed to DANICS on regular basis due to non-convening of Selection Committee for 7 years on account of disputes in DASS Gr. I. They were therefore naturally entitled to seniority from the date they were otherwise recommended by the Selection Committee for appointment to DANICS Gr. II, had the Selection Committee meeting been convened regularly. Reliance in this connection has been placed on the Hon'ble Supreme Court's ruling in P.S. Mahal Vs. UOI AIR 1984 SC 1291.

24. In so far as the promotions to Gr. I of DANICS is concerned attention has been invited to Rule 31(5) DANICS Rules which provides that an officer with minimum 8 years of service in Gr. II shall be eligible for consideration for appointment to Selection Grade provided that where a person is considered for such appointment all persons senior to him in Gr. II shall also be considered irrespective of the fact whether or not they fulfil the minimum of eight years service.

25. It is stated that the 1985 batch of directly recruited ^{officers} interpolated with the promotee officers became due for promotion to Selection Grade of DANICS in June, 1993 and under normal circumstances, they should have been appointed to DANICS in June, 1993 itself after completion of 8

years of service, as adequate number of posts for their appointment in Selection Grade were available. They could not be appointed to Selection Grade from the date they became eligible for such appointment as the seniority list of DANICS had not been finalised. It was only in May, 1994 that a meeting of Selection Committee could be convened for appointment of these officers to Selection Grade of the Service and it is stated that the delay occurred was due to non-availability of a final seniority list of DANICS earlier. As such official respondents deny the allegation that they are rushing to effect promotions on the basis of final seniority list which is under challenge, and point out that the CAT, P.B. had already passed orders on 13.9.93 in O.A. No. 1825/93 that promotions made would be subject to the decision of the O.A. as such there is no illegality or malafide action in making promotions to DANICS Selection Grade based on the impugned seniority list.

26. Official Respondents have emphasised that the promotee officers were officiating against DANICS posts on ad hoc basis on the date the applicants joined DANICS through CSE and as such they have every right to be placed senior to applicants because they had been recommended by UPSC against vacancies pertaining to the year earlier than the year in which applicants joined

DANICS as Direct Recruits. It is also emphasised that by assigning vacant slots in the seniority list of 1.1.88, the principle of rota-quota system has been maintained and the spirit of Rule 5 of DANICS Rules also provides that the direct recruits and promotees should be rotated in the ratio of 1:1. It is emphasised that if the prayer of the applicants were allowed, the rota-quota system would totally collapse and irreparable damage would be caused to the promotee officers for no fault of theirs, merely because the Selection Committee could not be convened by respondents due to one reason or the other for which the promotee officers cannot be penalised. It is also emphasised that if the applicants' prayer were allowed it would result in unlawful benefits to the direct recruits and it will go against the spirit of DP7T's O.M. dated 7.2.86 which was issued primarily to safeguard the interest of promotee officers and that O.M. does not envisage a situation of the type which has occurred in DANICS.

27. Private respondents have also filed their reply in which reliance has been placed on the Hon'ble Supreme Court's ruling in A.N. Pathak Vs. Ministry of Defence (AIR 1987 SC 716) and Narender Chadha's case 1986 SCC (L&S) 226. It has been emphasised that promotees of 7 to 11 years continuous service prior to grant of so called

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'regularisation' on 3.9.90 cannot simply be wished away in the manner as prayed for by applicants. It has been further pointed out that as many as 53 persons who are proper and necessary parties have not been impleaded, and it is emphasised that the O.A. is barred by limitation. It is emphasised that the Direct Recruit officers appointed at later point of time cannot steal a march over the promotee officers on the phpothetical grounds for regularisation.

28. Applicants in their rejoinder to the replies filed by official respondents as well as private respondents have denied respondents and broadly reiterated the contents of the O.A.

29. We have heard applicants' counsel Shri Behera as well as Shri N.S.Mehta for official respondents and Shri D.R. Gupta for private respondents.

30. The principal point for adjudication in this case is whether the official respondents were entitled to grant the private respondents seniority from a date prior to their regular appointment to DANICS Gr. II w.e.f. 3/9/90. In our view respondents were legally entitled to do so, because if they were not, the rota-quota system which is part and parcel of the DANICS Rules would completely break down. There is merit

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in the contention of the official respondents that DP&T's O.M. dated 7.2.86 which was issued in an entirely different context, cannot be used by the applicants to frustrate the application of rota-quota principle, which is embedded in the DANICS Rules as noticed above. Furthermore the ruling of the Hon'ble Supreme Court in P.S.Mahal's case (Supra) lays down the principle that in case of officers who are holding higher post on ad hoc basis, on their regular promotion to those post, they should be allowed seniority w.e.f. the date they could have been promoted on regular basis within their lawful promotion quota and hence this ruling also supports the action taken by the official respondents.

31. Under the circumstances the private respondents having been given seniority in DANICS through the application of the rota-quota principle, which is embedded in the DANICS Rules itself and thus having become senior to applicants who were directly recruited and joined DANICS prior to them, the impugned seniority list dated

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27.4.94 warrants no judicial interference and hence this O.A. is dismissed.

32. These two O.As are disposed of in terms of Paragraphs 19 and 31 above. No costs.

33. Various rulings/judgments relied upon by the parties are as below:

Relied upon by Shri D.R.Roy

1. P.S. Mahal Vs. UOI 1984 (4) SCC 545
2. Narinder Chadha & Ors. Vs. UOI
AIR 1986 SC 638
3. A.N. Pathak Vs. Secretary, Ministry of Defence
AIR 1987 SC 715
4. S.L. Kaul & Ors. Vs. Secretary, Ministry of
Information & Broadcasting AIR 1989 SC 1808
5. R.K. Gupta Vs. UOI in CP-5/91 in OA-177/86 CAT,
Bombay.
6. UOI Vs. H.C. Bhatia 1995 (1) ATJ SC 293
7. Jai Singhani Vs. UOI AIR 1967 SC 1427
8. V.K. Sangal Vs. UOI 1995 (3) SLJ 143
9. B.S. Gupta Vs. UOI AIR 1972 SC 2627

Relied upon by Shri D.R. Gupta

- Hand Book on
1. Swamy's/seniority & promotion p. 123
 2. Ram Sewak Prasad Vs. State of U.P.
AIR 1991 SC 1818
 3. 1991 Suppl. 1 SC 198
 4. G.C. Pillai & Ors. Vs. UOI & Ors.
ATR 1990 (1) CAT 118
 5. R.K. Sabharwal Vs. State of Punjab
(1995) 2 SCC 745
 6. Dr. B.K. Agarwal Vs. State of U.P. & Ors.
1995 (3) SLJ SC 5
 7. UOI & Ors. Vs. Basant Lal
1992 (1) SLJ SC 190
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- 8. UOI Vs. S.S. Uppal & Anr. 1996 (1)SCSLJ 225
- 9. K. Mahadevan Vs. UOI & Ors. 1987 (4) ATC
- 10. UOI Vs. S.D. Gupta 1996 (1) SC SLJ 509
- 11. 1997 (1) SCSLJ 497
- 12. J.N. Goel Vs. UOI 1997 (1) SC 45

Relied upon by Shri Behera

- 1. UOI Vs. S.S. Uppal 1996 (1) SCSLJ 225
- 2. 1979 (4) SC 507
- 3. S.P. Shukla Vs. State of U.P. 1986 Suppl. SCC 185
- 4. M.A. Khan Vs. State of M.P. 1990 (4) SCC 24
- 5. 1989 Suppl. (1) SCC 615 para 5
- 6. Direct Recruits' case 1990 (2) SCC 715
- 7. 1995 (1) ATJ 293
- 8. Sukhija's case 1994 (26) ATC 779
- 9. Aghore Nath Dey's case 1993 (3) SCC 371
- 10. 1990 (14) ATC 263
- 34. Let a copy of this judgment be placed in each case record.

(DR. A. VEDAVALLI)
- MEMBER (J)

(S.R. ADIGE)
VICE CHAIRMAN (A)

/GK/

~~Section Officer
Central Administrative Tribunal
Principal Branch, New Delhi~~

Anand Kumar
Section Officer
Central Administrative Tribunal
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