CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH DELHI.

REGN. NO. OA 663/86.

Shri M.P. Verma and others ... Applicants.

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Secretary, Ministry of I & B and others Respondents.

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Hon'ble Mr. B.C. Mathur, Vice-Chairman.
Hon'ble Mr. Ch.Ramakrishna Rao, Member (J).

For the applicants ... Shri C.S. Vaidyanathan with Shri S.R. Setia.

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

(Judgment of the Bench delivered by Hon'ble Mr.Ch. Ramakrishna Rao, Member (J)).

This is an application filed under Section 19 of the Administrative Tribunals Act,1985 (for short, the Act).

The facts giving rise to the application are briefly as follows:

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was provision in the Rules for direct recruitment to the post of Programme Executive upto 75% and the remaining 25% was to be filled up by promotion from amongst Transmission Executives with at least 5 years approved service in the grade. On 22.8.1973, the Rules were amended raising the promotion quota to 50% and reducing quota for direct recruitment from 75% to 50%. This alteration in the quota for direct recruits and promotees was to last only for a period of two years from the date of amendment of xx the Rules i.e. 28.2.1973. It was stated specifically while amending the Rules that all vacancies in the cadre of Programme Executives as on 28.2.1973 which had not been filled up on regular basis would be taken into account. No direct recruitment took place during the years 1968 to 1974. It was only in 1975 that direct recruitment was made. While preparing the seniority list in 1977, 1983 and 1986, the Director General, All India Radio (respondent No.2) adopted the method of rotating vacancies between direct recruits and promotees in the ratio 1:1 by following the instructions contained in the Office Memorandum dated 22.12.1959 issued by the Ministry of Home Affairs. 3. The grievance of the applicants is that the

The grievance of the applicants is that the instructions contained in the aforesaid Office Memorandum became obsolete after pronouncement of judgments by the

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Supreme Court of India in <u>Baleshwar Dass</u> Vs. <u>State of U.P.</u> (AIR 1981 SC 41), <u>A. Janardhana Vs. U.O. I & Ors.</u> (AIR 1983 SC 769) and <u>Narendra Chadha Vs. U.O. I</u> (AIR 1986 SC 638). The representations made by the applicants to respondents 1 and 2 in this behalf did not yield any result. Therefore, the applicants have filed this application.

4. Shri P.H.Ramchandani, learned counsel for the respondents 1 and 2 raises a preliminary objection that the application is barred by laches. The gist of his objection is as follows:

The grievance of the applicants is relatable to the seniority list first published in 1977. subsequent seniority lists brought out in 1983 and 1985 are only up-dated versions of the 1977 seniority list. The applicants are, therefore, precluded from challenging the seniority list dated 1.10.1985. They have not come to this Tribunal with clean hands since they have not referred in the application to the seniority lists of 1977 and 1983 at all but prayed for quashing the seniority list of 1985. Where there is a right, there is a remedy. But the remedy will be lost if the competent forum is not moved at the appropriate time. Only in the rejoinder, the applicants have stated that they represented against the seniority lists of 1977 and 1983. Considerations which governthe applications filed under Articles 226 and 32 of the Constitution are not applicable to cases which

fall under Section 21 of the Act. Even if those considerations are taken into account, there is enormous delay and laches and the application cannot be entertained. The decisions of the Supreme Court on which reliance is placed by the applicants are not applicable to the case of the applicants inasmuch as their seniority was determined long ago in 1977. The mere fact that the applicants were making representations to respondents 1 and 2 will not enable them to get over the bar of limitation. The applicants not having been vigilant about their rights and having sat on the fence cannot be permitted to unsettle the finality attaching to the seniority list of 1977 so as to cause hardship to others whose position in the seniority list has acquired wixe finality and who can legitimately expect their position to remain undisturbed. The application is, therefore, liable to be dismissed on the sole ground of laches.

5. Shri C.S. Vaidyanathan, learned counsel for the applicants strenously contends that/preliminary objection has no force. His submissions in this behalf may be epitomised as follows:

The seniority list published in 1977 is provisional in nature inasmuch as the Memo dated 29.12.1977 accompanying it calls upon the various stations/offices and the concerned officers to bring to the notice of respondent No.2 any omissions/discrepencies within one month from

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the date of issue. It is also stated in the said Memo that some places were left blank since some of the direct recruits/promotees were yet to join duty as Programme Executive, and due to this the seniority list was likely to undergo changes. The Memo dated 7.10.1983 accompanying the seniority list published in 1983 was also similarly worded. Since no Memo was issued subsequently confirming the finality of the seniority list as published, it means and implies that those 2 seniority lists continued to remain provisional until the seniority list was In contrast to the Memos published on 1.10.1985. which accompanied the seniority list published in 1977 and 1983, there is no mention in the Memo dated 1.10.1985 accompanying the seniority list published on that day about any likelihood of the list undergoing a change. In view of this, it should be taken that the seniority list dated 1.10.1985 is the final list and as a result of the publication of the said list, the earlier seniority lists dated 29.12.1977 and 7.10.1983 have lost their identity and have become merged with the seniority list dated 1.10.1985. It is not obligatory on the part of his clients to challenge a provisional seniority list and as such, the issue of laches does not arise in this case. The dispute is really

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between the applicants on the one hand and respondents 3 to 92 on the other and in view thereof the Central Government should have adopted a neutral posture. is for respondents 3 to 92 to putforward their case and since they have not entered appearance and contested. application, it means that they have no grievance to ventilate. The O.M. dated 4.7.1986 on the subject of refixation of the seniority of the applicants refers only to the Government's decision on merits which was being awaited and there is no whisper of the claim being barred by limitation. The representations made by his clients to respondents 1 and 2 from time to time will have the effect of saving the bar of limitation, if any. Even otherwise Section 21 of the Act does not operate as a bar to the present application. There are 95 posts of Assistant Station Director and 39 posts of Station Director (OG) lying vacant and respondents 3 to 92 will not be prejudiced on account of promotion of the applicants. these respondents will be reverted and that may be the reason for their non-appearance. The question of unsettling rights of respondents 3 to 92 does not arise since the revision of the seniority list dated 1.10.1985 is necessitated on account of the rulings of the Supreme Court. The preliminary objection is, therefore, legally unsustainable.

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necessary to refer to some of the decisions cited at the Bar. The principle on which relief is refused to the petitioner on the ground of laches or delay is that the rights which have accrued to others by reason of the delay in filing a petition should not be allowed to be disturbed unless there is reasonable explanation for the delay as held in TILOKCHAND MOTICHAND Vs. H.R. MUNISHI ((1969) 2 S.C.R. 824).

The same principle has been reiterated in R.N.BOSE Vs.

UNION OF INDIA((1970) 2 S.C.R. 697) in the following words:

"It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion affected a long time ago would not be set aside after the lapse of a number of years".

These two decisions were noticed in RAMACHANDRA SHANKAR

DEODHAR AND ORS Vs. THE STATE OF MAHARASHTRA AND ORS

(1974 (1) SLR 470). The following observations in that decision are note-worthy:

"The promotions being provisional, they have not conferred any rights on those promoted and they are by their very nature liable to be set at naught, if the correct legal position as finally determined, so requires. We were also told by the learned counsel for the petitioners, and that was not controverted by the learned counsel appearing on behalf of the State Government, that even if the petitions were allowed and the reliefs claimed by the petitioners granted to them, that would not result in the reversion of any Deputy Collector or officiating Deputy Collector to the post

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of Mamlatdars/Tahsildars; the only effect would be merely to disturb their inter se seniority as officiating Deputy Collectors or as Deputy Collectors.".

Thus petition will not be hit by laches if it can be demonstrated that none would be visited with reversion and the effect of the Court's judgment would be merely to disturb their inter se seniority.

7. Extremely belated petitions will not normally be entertained by High Courts. Thus in K.R. MUDGAL & ORS Vs. R.P. SINGH & ORS (ATR 1987 (1) S.C. 1), the petitioners filed the writ petition questioning the seniority list issued in 1958 on the basis of which promotions were made for nearly 18 years. The Supreme Court observed:

"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. It is unfortunate that in this case the officials who are appellants before this Court have been put to the necessity of defending their appointments as well as their seniority after nearly three decades. This kind of fruitless and harmful litigation should be discouraged."

Likewise in <u>G.C. GUPTA & CRS</u> Vs. <u>N.K.PANDEY & ORS</u>

(JT 1987 (2) SC. 448) the petitioners filed a writ

petition 17 years after determination of their

seniority vis-a-vis the respondents and it was held

by the Supreme Court that such delay would amount to

unjust deprivation of the rights of the appellants

which had accrued to them meanwhile. Thus inordinate delay

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will prove fatal to a petition filed under Article 226 of the Constitution.

made by a Government servant to *** competent authorities will have the effect of saving his claim from the bar of limitation, we may usefully refer to the decision of the Supreme Court in HARYANA STATE ELECTRICITY BOARD Vs. THE STATE OF PUNJAB & HARYANA AND OTHERS (AIR 1974 SC 1806) wherein it was observed by the Supreme Court:

"On the question of laches various representations and petitions which B.K. Puri had been making consistently were referred to by the High Court and it was considered that it was not a case where relief could be declined on the ground of laches or delay. The High Court quashed the order dated June 27,1963 confirming B.K.Puri in Class I with effect from April 7,1957 and issued a writ of Mandamus to consider the case for confirmation in Class I with effect from September 1,1956 or a date earlier than that and refix his seniority vis-a-vis respondents 3 to 9 in Class I and that of Executive Engineers in the light of interpretation of Rule 7-A as given in the judgment. It may be mentioned that this interpretation was that same as has been accepted by us as correct in the connected appeal i.e. C.A. 456 of 1970."

9. We may also refer to the decision of the Supreme Court in ARUN KUMAR CHATTERJEE Vs. SOUTH EASTERN RAILWAY AND OTHERS (1985 (1) SLR 500)

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wherein it was observed:

We have set out the facts at some length.

It would appear from these facts that there
was no delay, much less inordinate delay,
on the part of the appellant in filing the
petition under Art.226 of the Constitution
for the protection of his right as to inter-se
seniority. Earlier, he had made three,
representations to the departmental authorities
in the matter without any redress." (Emphasis supplied)

- Thus representations if made and pursued diligently with the competent authorities can be invoked for xxx xxxxxx the purpose of explaining lackes and delay.
- Applying the legal position enunciated decisions of the Supreme Court cited supra, to the present case, where does the applicants stand? They made representations to the Director General, All India Radio (respondent No.2) regarding the norms adopted for fixation of seniority of promotees vis-a-vis the direct recruits in preparing the seniority list in 1977 which were turned down by Memo dated 12.5.78. They pursued the matter by representing afresh to the Secretary, Ministry of Information and Broadcasting (respondent No.1) on 10.7.1978. No communication was, however, received in response to the said representation. When the seniority list was prepared and circulated on 1.7.1983, representation was again made on 11.8.1983 and the same was followed up by another representation on 4.4.1985 seeking redress in the matter of assigning

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the proper seniority to the applicants. Thereafter the fresh seniority list dated 1.10.1985 was published and circulated among all concerned including the applicants. In that context the applicants represented again on 25.11.1985 drawing attention to their earlier representation and seeking relief. While it is true that the applicants did not pursue vigorously their claim for seniority after the seniority list was published in 1977, the fact remains that they revived their representations when the seniority list was republished in 1983 and before any reply could be received from respondents 1 and 2, the seniority list was again published in 1985 against which they made representations which were ultimately turned down. Táking an integrated view of the seniority lists published in 1977, 1983 and 1985 and the representations made by the applicants from time to fime, we find it difficult to hold that the claim of the applicants has become stale or there has been any laches in filing the application. We are really not concerned in this case with laches but with the question whether the application satisfies the requirements of Section 21 of the Act. We, therefore, overrule the preliminary objection and proceed to consider whether this application has been filed within the period prescribed by the Act.

12. Section 21 of the Act, in so far as it is relevant, reads as follows:

"21. Limiation.- (1) A Tribunal shall not admit an application,-

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- (a) in a case where a final order such as is mentioned in clause (a) of subsection (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;
- (b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.
- (2) Notwithstanding anything contained in sub-section (1), where-
- (a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and
- (b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or , as the case may be, clause (b), of sub-section (l) or within a period of six months from the said date, whichever period expires later."

The present case is governed by the non-obstante clause embodied in sub-section (2) of Section 21 of the Act extracted above. The seniority list for 1983 was issued on 15.7.1983 and the same was revised on

7.10.1983 by replacing pages from page No.55 onwards.

The applicants made their representation on 11.8.1983 and followed up by a reminder dated 4.4.1985 for which there was no reply. The present application has been filed on 14.8.1986 i.e. within three years from the date of the seniority list published on 15,7.1983 and the representation made on 11.8.1983. The applicants have also challenged the seniority list published on 1.10.1985 by making representations on 30.10.1985, 15.2.1986 and 17.4.1986 (Annexure VI to the application) and these representations were turned down by respondent No.2 on 4/8.4.1986 and 4.7.1986. Thereafter the applicants filed this application on 14.8.1986.

13. Shri Ramchandani submits that inter se position among applicants and respondents in the seniority list published in 1977 remain the same in the seniority list published subsequently in 1983 and 1986. During the course of hearing he has filed a chart indicating the position assigned to the applicants and the respondents in the seniority list published in 1977,1983 and 1985 in support of his submission. Shri Vaidyanathan, however, submits that many changes have been introduced in the seniority list published in 1983 and 1985 compared to the seniority list first published in 1977. As an instance in point, Shri Vaidyanathan referred to the position occupied by respondent No.41 (Shri B.K.Sarkar) as shown in the comparative chart filed on behalf of the respondents. Shri Ramchandani explains such changes as attributable to the rectification of anomlies which might/taken place in fixing inter se seniority. Be that as it may, the fact remains that some changes have appeared in the list published in 1983 and 1985 compared to the list published in 1977 and in view thereof, we find it difficult to accept the submission of Shri Ramchandani that the seniority list published in 1983 and 1985 are only updated versions of the seniority list as published in 1977.

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- We, therefore, hold that the application has 14. been filed within the period prescribed by Section 21 of the Act so far as the seniority list of 1983 and 1985 are concerned. Regarding the seniority list published in 1977, we notice that it is provisional in nature and constitutes the basis for the subsequent list published in 1983 which is also provisional in nature. Thus, both being inter-twined, the one cannot be dissociated from the other and the seniority list of 1977 should also be taken into account for testing the correctness / seniority list published in 1983 and 1985. In taking this view we are following the dictum of the Supreme Court in Roshan Lal Vs. R.B. Mohan Singh Oberai, AIR-1975-S.C.-824 that in construing the provisions concerning limitation 'a liberal touch' must be given since it deprives the remedy of one who has a right. We, therefore, hold that the application is within time.
- 15. On the question of laches, delay and limitation several decisions were cited besides those referred to by us above. We do not consider it necessary to deal with these decision since they have no direct relevance to the facts of this case.
- 16. Turning to the merits of the case, 4 questions arise for consideration:
- (i) Whether there has been a break down of the quota rota provision relating to promotees and direct recruits embodied in the rules;

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- (ii) Whether the applicants are entitled to claim the benefit of continuous officiation in the post of Programme Executive prior to their regularisation for the purpose of determining their seniority;
- (iii) Whether the applicants are entitled to claim the benefit of the rulings of the Supreme Court in A.Janardhana's case and the subsequent rulings and
- (iv) Whether paragraph 7 of the O.M. dated 7.2.1986 issued by the Department of Personnel and Training making the O.M. effective from 1.3.1986 is legally unsustainable and liable to be struck down.

We shall deal with these questions seriatim.

V.BALASUBRAMANYAM AND OTHERS (AIR 1980 SC 452)

the Supreme Court while considering the provisions in the Survey of India (Recruitment from Corps of Engineer Officers) Rules (1950) observed:

"The total number of vacancies at the DSS level for each year shall be divided in the ratio of 2:1 (50 per cent for the Army Corps and 25 per cent for direct recruits). The 50 per cent reserved for the army corps shall be available to be filled by those candidates. The 25 per cent seats to be filled by direct recruits shall be filled only by such recruits. Even if enough direct recruits are not available they will not be filled up by the army nominess but shall be kept vacant to be carried forward and filled in later years by such direct recruits. A reasonable period for the carry forward scheme will be 3 years, not more."

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AND OTHERS (AIR 1985 SC 1558) the Railway Administration defaulted to make direct recruitment of Divisional Medical Officers during the years 1973 to 1977.

Commenting on this, the Supreme Court observed:

"In the present case, there was no direct recruitment upto 1977 for certain administrative reasons, and no observance of the quota system embodied in the prevailing Rules. The Assistant Medical Officers were pressed into service, promoted as Divisional Medical Officers and were alone responsible for assuming the burden and discharging the functions and duties of those posts during all the years until direct recruitment was made. It would be grossly unjust and discriminatory in the circumstances to require them to be junior to direct recruits brought in some years later."

Thus a delay of 4 years was held in this case to result in the break down of the quota-rota Rule.

- that during the years 1968 to 1974 recourse was not taken to direct recruitment. The applicants say that even from 1964 onwards there was no direct recruitment but even taking it to be so from 1968, it is clear that for a period of six years appointment of direct recruits was not made in accordance with the rules. We, therefore, hold that there has been a break down of the quota_rota Rule.
- 18. We shall now deal with ** question. No. (ii)
 The Notification relating to the initial appointment

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of the first applicant reads as follows:

"Govt. of India Directorate General: All India Radio New Delhi-1, the 21st July,1971.

NOTIFICATION

No.S(101)/6-SI: The Director General, All India Radio, hereby appoints Shri M.P.Verma, Transmission Executive, All India Radio, Patna as Programme Executive, All India Radio, Ranchi on an ad hoc basis with effect from the 21st June,1971 until further orders.

Sd/- (Shanti Lal)
Deputy Director of Administration
for Director General *.

Notifications relating to the appointment of the other applicants is stated to be on the same lines. The issue for determination is whether the initial appointment was made purely on ad hoc basis or whether it is in the nature of officiating or temporary appointment to a permanent post of Programme Executive in the cadre. In our view the appointment is not a typical ad hoc type of appointment tenable for 3 months or 6 months. The words used in the Notification are 'until further orders'. This means and implies that the appointee can work even beyond six months or one year which is not possible in the case of ad hoc appointee unless extended from time to time. No such extensions have been made in the case of the applicants and they have continuously officiated as Programme Executive from 21.6.1971 until they were regularised on 15.11.1974. The Supreme Court has held in the case of Baleshwar

Dass supra:

"... Therefore, the point from which

service has to be counted is the commencement of the officiating service of the Assistant Engineers who might not have secured permanent appointment in the beginning and in that sense may still be temporary, but who, for all other purposes, have been regularised and are fit to be absorbed into permanent as posts/and when they are vacant.

In view of this clear pronouncement by the Supreme Court, the applicants are entitled to claim the benefit of continuous officiation in the post of Programme Executive prior to their regularisation for the purpose of determining their seniority.

19. We now turn to question No. (iii). The decision in A.Janardhana's case cited supra was rendered by the Supreme Court on 26.4.1983. The seniority list of 1977 which was itself provisional in nature was published on 15.7.1983 and flater revised on 7.10.1983. While doing so, respondents 1 and 2 should have taken note of the ratio of the land-mark judgment of the Supreme Court in A.Janardhana's case. We are saying so because under Art. 141 of the Constitution of India, the law declared by the Supreme Court has binding force.

20. In A. Janardhana's case the Supreme Court

held:

initiate a proposition that a direct recruit who comes into service after the promotee was already uncondionally and without reservation promoted and whose promotion is not shown to be invalid or illegal according to relevant statutory or non-statutory rules should not be permitted by any principle of seniority to score a march over a promotee because that itself being arbitrary would be violative of Articles 14 and 16..."

The legal position has been restated by the Supreme

Court in Narendra Chadha's case as follows:-

"Having given our anxious consideration to the submission made on behalf of the parties and the peculiar facts present in this case we feel that the appropriate order that should be passed in this case is to direct the Union Government to treat all persons who are stated to have been promoted in this case to several posts in Grade IV in each of the two services contrary to the Rules till now as having been regularly appointed to the said posts in Grade IV under rule 8(1) (a)(ii) and assign them seniority in the cadre with effect from the dates from which they are continuously officiating in the said posts. Even those promotees who have been selected in 1970, 1982 and 1984 shall be assigned seniority with effect from the date on which they commenced to officiate continuously in the posts prior to their selection. For purposes of seniority the dates of their selection shall be ignored. The direct recruits shall be given seniority with effect from the date on which their names were recommended by the Commission

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for appointment to such grade or post as provided in Clause(a) of rule 9-C of the Rules. A seniority list of all the promotees and the direct recruits shall be prepared on the above basis treating the promotees as full members of the Service with effect from the dates from which they are continuously officiating in the posts." (Emphasis supplied).

While dealing with question No.(i) we have held that quota-rota rule broke down in 1968 when no steps for recruitment from the open market were taken. It was only in 1974 that the steps were taken. Consequently, the officers promoted to the post of Programme Executive prior to 1974 will not be governed by the provision relating to quota-rota embodied in the rules and their seniority will have to be reckoned from the date of their continuous officiation in the post to which they were promoted.

- 21. The applicants are, therefore, entitled to claim the benefit of the decisions of the Supreme Court cited Supra.
- 22. In conclusion, we would like to touch briefly on the plea put forwarded by Shri P.H.Ramchandani that it would cause hardship to respondents 3 to 92 if at this late stage the seniority list of 1977, which is the basis for the seniority list of 1983 and 1985, is to be revised. Such a plea was raised in O.P.Single Vs. Union of India (1984 (4)SCC 450) and the Supreme Court held that these considerations should not prevail in cases where provisions of the Rules as well as of the Constitution

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have to be given effect to. As already held by us, there was a break down of the quota-rota Rule and this was not taken into account in preparing the seniority list of 1977. This error was perpetuated in the seniority list issued in 1983 and 1985. It is also pertinent in this connection to take note of the observations made by the Supreme Court in the case of Ramachandra Shankar Deodhar and Ors. extracted in paragraph 6 supra from which it appears that the Supreme Court allowed the petitions since no reversion of anyone officiating as Dy. Collector would take place and only a change in the inter se seniority of officiating Dy.Collectors would result. In the present case it is brought to our notice that there are several posts of Assistant Station Director and Station Director (OG) lying vacant and none of the respondents will have to face reversion if the application is allowed. We are not, therefore, impressed by the plea of hardship.

23. In view of our discussion in the foregoing, we direct respondents 1 and 2 to grant seniority to the applicants over respondents No.3 to 92 by giving them the benefit of continuous service as Programme Executive from various dates set—out in Annexure I to the application and to consider the case of the applicants for promotion on the aforesaid basis with all consequential benefits. Respondents 3 to 92 shall not face reversion. The above directions shall be complied with on or before 31.3.1988.

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24. In the result, the application is allowed.

Parties shall bear their own costs.

(Ch.Ramakrishna Rao) Judicial Member

(B.C. Mathur) {
Vice Chairman