

(4)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Dated: 10.12.1987.

(1) Regn. No. O.A. 1121 of 1987.

K. N. Mishra & others Applicants.

V/s.

Union of India & others Respondents.

(2) Regn. No. O.A. 1359 of 1987.

Chet Ram Malwaliya &
others Applicants.

V/s.

Union of India & others Respondents.

(3) Regn. No. O.A. 1450 of 1987.

Shri Krishan Goel Applicant.
(In person)

V/s.

Union of India & Another Respondents.

(4) Regn. No. O.A. 1368 of 1987.

Hari Prem Malik Applicant.
(In person)

V/s.

Union of India & Another Respondents.

(5) Regn. No. O.A. 1195 of 1987.

Vishwa Nath Nigam Applicant.
(In person)

V/s.

Union of India & others Respondents.

CORAM: Hon'ble Mr. Kaushal Kumar, Member (A).
Hon'ble Mr. G. Sreedharan Nair, Member (J).

For the applicants Shri Rakesh Tikku, Counsel
in O.A. 1121/87.

Shri D.C. Vohra, Counsel
in O.A. 1359/87.

For the respondents Shri P.H. Ramchandani,
Senior Counsel and
Shri G.D. Gupta, Counsel.

(Judgment delivered by Hon'ble Member (A)
Mr. Kaushal Kumar)

I have gone through the judgment of my learned
brother Shri G. Sreedharan Nair and concur with his
observations in regard to the contentions raised on behalf

(5) of the applicants in O.A. 1359/1987 regarding benefits conferred on members of Scheduled Caste and Scheduled Tribe. I also agree with his observations and findings in respect of O.A. 1195/1987 filed by a promotee Assistant. However, I do not agree with him in so far as interpretation and implementation of the order of the Supreme Court dated 17.2.1987 are concerned for the reasons indicated in the following paragraphs.

2. The applicants in O.A. Nos. 1121/1987, 1359/1987, 1368/1987 and 1450/1987 are all directly recruited Assistants, Assistant Civilian Staff Officers in the Armed Forces Headquarters Civil Service and they have in these applications challenged the seniority list of Assistants of AFHQ Civil Service issued on 8th May, 1987 purported to have been revised in the light of the Supreme Court judgment dated 17th February, 1987.

3. In order to appreciate the various contentions raised and issues involved in this case, it is necessary to go a little into the background and past history of the present litigation. The Armed Forces Headquarters Civil Service Rules, 1968 provide for recruitment and seniority of officers in the Civil Service of the Armed Forces Headquarters. Recruitment to the lowest grade of the Service, namely, the grade of Assistant is made by direct recruitment as well as promotion from the grade of Upper Division Clerks. A seniority list of Assistants was published on 10.8.1984, which was challenged in the Supreme Court through writ petition Nos. 15346-49 of 1984 (N.K. Dhawan & Others v. Union of India & others) by some promotee Assistants. The Supreme Court disposed of these petitions vide order dated April 25, 1985, which is extracted below: -

"The petitioners in these Writ Petitions question correctness of the seniority list in the cadre of Assistants. The impugned seniority list is dated August 10, 1984. Some of the errors and defects pointed out in the seniority list are such as would render it illegal and invalid in view of the decision of this court in G.S. Lambha & Ors. Vs. Union of India & Ors. 1985(1) Scale 563. The conclusion in Lambha's case invalidating the seniority list was reached after a review of numerous decisions bearing on the subject and more particularly three recent decisions in A. Janardan Vs. Union of India & Ors. 1983(2) SCR 936, P.S. Mahal & Ors. Vs. Union of India & Ors., A.I.R. 1984 SC 1291 and O.P. Singla & Anr. Vs. Union of India & Anr., A.I.R. 1984 SC 1995.

"At the hearing of these writ petitions when this pertinent fact was pointed out to Mr. B. Datta, learned Sr. Counsel for the Union of India, he requested us to adjourn the matter to obtain appropriate instructions from the Government of India.

"Today Mr. Datta informed us that in view of the aforementioned decisions, the Government of India has decided to review and reconsider the impugned seniority list in the light of the observations and principles enunciated in the aforementioned judgements. The impugned seniority will not be enforced or given effect to till fresh seniority list according to relevant rules and valid principles is drawn up. Rule is made absolute to that effect with no order as to costs.

"Panel of promotions will have to be redrawn in the light of the revised seniority list. We order accordingly. All promotions till now made and till new seniority list is drawn up will be subject to the fresh seniority list which should be drawn up within four months from today. Parties are left to bear their own costs."

4. In August 1985, the Union of India filed an application in the Supreme Court for directions / modification of the Order dated 25.4.1985. When this application for directions / modification came up for hearing before the Hon'ble Supreme

Court, the Supreme Court while observing that this application sought a review of their earlier Order, dismissed the same. The respondents meanwhile on 27.11.85 proceeded to publish the aforesaid seniority list which was annexed by them with their application for directions / modifications of the order dated 25.4.1985. After considering the representations received in respect of the seniority list published on 27.11.85, the respondent Department notified a new seniority list on 16.1.1986. This seniority list dated 16.1.1986 was challenged before the Tribunal vide O.A. No. 41 of 1986 filed by the direct recruits and O.A. No. 79 of 1986 filed by the promotee Assistants. The Tribunal, vide its judgment dated 22.8.1986 (A.T.R. 1986 (2) C.A.T. 270) dismissed O.A. No. 41 of 1986 (K.N. Mishra and others v. Union of India and others) and allowed O.A. No. 79 of 1986 (N.K. Dhawan and others v. Union of India and others), thereby directing the Respondents No.1 and 2 to draw up a complete seniority list in the light of the judgment of the Tribunal by including the names of the temporary, permanent and officiating Assistants working in the substantive vacancies by giving them the benefit of continuous officiation and also to frame a fresh panel of promotion based on that seniority.

5. The respondent Department, in compliance with the judgment of this Tribunal brought out a new seniority list in September, 1986, which was based on the principle of continuous officiation or length of service in the grade of Assistant and this principle was applied uniformly to the promotee Assistants as also the direct recruits. This list completely ignored the inter-se seniority of direct recruits based on their merit as envisaged in sub-rule 6 of Rule 16 of the AFHQ Civil Service Rules of 1968 which reads as follows: -

"(6) Direct recruits shall be ranked inter-se in the order of merit in which they are placed

at a competitive examination on the results of which they are recruited, the recruits of an earlier examination being ranked senior to those of a later examination. On confirmation their inter-se seniority shall be regulated in the order in which they are so confirmed:

\$SRO 110 dated 5.3.75
(effective from 15.3.75) \$ Provided that the seniority of persons recruited through the competitive examinations held by the Commission -

(i) in whose case offers of appointment are revived after being cancelled, or

(ii) who are not initially appointed for valid reasons but are appointed after the appointment of candidates recruited on the basis of the results of the subsequent examination or examinations,

shall be such as may be determined by the Government in consultation with the Commission."

6. This seniority list was again challenged before the Supreme Court through a special leave petition No. 3513-14 of 1986 and the same was disposed of by the Supreme Court on 17th February, 1987. The order of the Supreme Court is extracted below: -

"At the time of granting special leave this Court limited the appeal to the question "whether the principle of continuous officiation upon which the Central Administrative Tribunal has directed inter-se seniority to be determined as between direct recruits and promotees to the posts of Assistant Grade IV of the service conflicts with sub-rule 6 of Rule 16 of the Armed Forces Headquarters Civil Service Rules 1968 which relates to determination of inter-se seniority of the direct recruits".

"On a perusal of the order of Administrative Tribunal we find that what was decided by the High Court was only the question of seniority vis-a-vis the direct recruits and not the question of seniority of the direct recruits amongst themselves. That question was left open. The tribunal observed that Sub-rule 6 of Rule 16 laid down that direct recruits shall be ranked inter-se in the order of merit in

which they were placed at the competitive examination on the results of which they were recruited, the results of an earlier examination being ranked senior to those of later examination. The tribunal also recorded that there was no quarrel about this in the petition. Later the tribunal observed that if there is any discrepancy in fixation of the seniority amongst the direct recruits themselves, it is always open to them to make their representation and for the Government to rectify the errors, if any, without, however, affecting the seniority of promotees who have been declared seniors to the direct recruits on account of their continuous officiation. We do not see any conflict between the direction given by the Tribunal and sub-rule 6 Rule 16 of the Armed Forces headquarters Civil Service Rules 1968. We make it clear that seniority amongst direct recruits themselves will be determined in accordance with sub-rule 6 of Rule 16 of the Rules but it will not affect the seniority of the promotees in any manner which has to be determined on the basis of continuous officiation. Subject to this observation, the appeals are dismissed. No costs. Interim Orders are vacated."

7. In compliance with the aforesaid judgment of the Supreme Court, respondents No.1 and 2 notified a new seniority list in May, 1987, which has been impugned in these petitions before us. It may be pointed out that the Supreme Court, vide its Order dated 10.8.1987, while disposing of Miscellaneous Petition Nos.12965-66 of 1987 (filed by K.N. Mishra & Ors.) which sought clarification of the order of the Supreme Court dated 17.2.1987, directed as under: -

"The petitioners will be at liberty to move the tribunal for vindicating their grievances, if any, that our order has not been implemented. CMPS & W.P. are accordingly disposed of."

8. In the revised seniority list now published in May, 1987, inter-se seniority of direct recruits, as determined by the UPSC according to their merit, has been

scrupulously maintained irrespective of their dates of joining and the seniority of direct recruit Assistants has been integrated with that of promotee Assistants. The names of promotee Assistants have also been shown strictly in accordance with their dates of joining after promotion. However, in integrating the direct recruit Assistants with the promotee Assistants, the date of joining of the seniormost direct recruit has been taken into account and he has been placed immediately below the promotee Assistant who joined earlier than him and all other direct recruit Assistants have been placed below the seniormost direct recruit in the order of their inter-se seniority. This has resulted in making many direct recruit Assistants, who had joined much earlier than the seniormost direct recruit Assistant below the promotee Assistants who joined much later than those direct recruit Assistants. In other words, in maintaining the inter-se seniority of direct recruit Assistants under sub-rule 6 of Rule 16, the seniority of many direct recruits has been submerged and suppressed with reference to the dates of joining and the length of continuous officiation of the promotee Assistants. The point for consideration in these applications is whether this is warranted by the direction of the Supreme Court as contained in the order dated February 17, 1987.

9. It is contended by the learned Counsel Shri P.H. Ramchandani for respondents No.1 and 2 and the learned counsel Shri G.D. Gupta for the promotee Assistants, that this is strictly in accordance with the direction of the Supreme Court to the effect "We make it clear that seniority amongst direct recruits themselves will be determined in accordance with sub-rule 6 of Rule 16 of the Rules but it will not affect the seniority of the promotees in any manner

which has to be determined on the basis of continuous officiation. Subject to this observation, the appeals are dismissed." (emphasis supplied)

10. On the other hand, learned counsel Shri Rakesh Tikku and Shri D.C. Vohra for the applicants contend that the aforesaid directions of the Supreme Court do not envisage that while maintaining the inter-se seniority of direct recruits in accordance with their merit or rank, they should be placed much below the promotee Assistants who had in fact joined as Assistants much later than some of the applicants who are direct recruits. By way of illustration, it was pointed out that a direct recruit Assistant Shri A.K. Popli, at Sl. No. 2100 on page 105 of the impugned seniority list who joined on 2.8.80 has been shown below a promotee Assistant Shri J.S. Nanray at Sl. No. 2023 on page 102 of the seniority list. Shri J.S. Nanray had joined on 6.8.80 i.e., later than the direct recruit Assistant Shri A.K. Popli. The glaring distortion in adjusting the seniority of direct recruit Assistants vis-a-vis promotee Assistants with reference to their dates of joining is further highlighted by the following chart as brought out on pages 16-17 of O.A. No. 1359/1987: -

<u>Sl. No. in the impugned seniority list</u>	<u>Name of the applicant & his date of joining (direct recruits)</u>	<u>Sl. No. of the promotee Assistants shown as senior although they joined later.</u>
857	Chet Ram Malawalia 13.4.72	779 to 848 (Joined between 5.10.72 and 12.3.73).
1066	Rameshwar Tanwar 1.10.74	986 to 1040 (Joined between 11.10.74 and 3.01.75).
1643	Mohinder Singh 24.12.77	1050 to 1061 (Joined between 30.1.75 and 07.4.75). 1472 to 1483 (Joined between 30.12.77 and 31.12.77 (AN)). 1499 to 1624 (Joined between 10.02.78 and 31.10.78 (AN)).

<u>Sl. No. in the impugned seniority list</u>	<u>Name of the applicant & his date of joining</u>	<u>Sl. No. of the promotee Assistants shown as senior</u>
2835	Lal Routhang 13.4.82	2720 to 2831 (Joined between 26.5.82 and 10.9.82)
		2703 to 2708 (Joined between 17.8.82 and 18.8.82)
		2608 to 2680 (Joined between 2.8.82 and 16.8.82).

11. It is pointed out by the learned counsel Shri D.C. Vohra that direct recruits of 1978 have been placed not only below the promotee Assistants of 1978, but also below Assistants who were promoted in 1979 and had joined much later than direct recruit Assistants of 1978. He contends that this is not warranted either by the rules or the directions of the Supreme Court in the judgment dated 17.2.1987. The learned counsel for the applicants argued that the observations of the Supreme Court that determination of seniority amongst the direct recruits in accordance with sub-rule 6 of Rule 16 should not affect the seniority of the promotees in any manner which has to be determined on the basis of continuous officiation, has to be interpreted so as to give a harmonious meaning and construction while implementing the principle of seniority based on continuous officiation or length of service in a particular grade. This principle is applicable as much to the direct recruits as the promotees while keeping intact the inter-se seniority of direct recruits in accordance with their merit. It is argued that the principle of seniority based on continuous officiation is not a prerogative to be extended only to the promotees; this is also to be applied to direct recruits to the extent possible while maintaining their inter-se seniority in accordance with sub-rule 6 of Rule 16. In this connection,

reliance is placed on the observations of the Supreme Court in G. S. Lamba and Others v. Union of India and Others (1985 (2) S.C.C. 604). In the said case, the question was one of seniority between direct recruits and promotees to the Indian Foreign Service Branch 'B'. Rule 21(4) of the Indian Foreign Service Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Rules, 1964 provided for fixing of seniority and reads as follows: -

"21. (4) Subject to the other provisions of this rule, persons promoted or recruited earlier on the basis of earlier selection or recruitment shall be senior to those promoted or recruited on the basis of subsequent selection of recruitment."

Rule 25(1)(ii) reads as follows: -

"Direct recruits to a grade and persons substantively appointed to the grade from the select list for the grade shall be assigned seniority inter se according to the quotas of substantive vacancies in the grade reserved for direct recruitment and the appointment of persons included in the select list, respectively."

In the aforesaid case, the Supreme Court observed as follows: -

"22. Approaching the matter from a slightly different angle, in our opinion, Rule 21(4) and Rule 25(1)(ii) both can be harmoniously read because they operate in two different areas. Rule 21(4) provides that subject to other provisions of this rule (not all rules) persons promoted or recruited earlier on the basis of earlier selection or recruitment shall

be senior to those promoted or recruited on the basis of subsequent selection or recruitment. If the expression 'selection' refers to those promoted via the select list and the expression 'recruitment' refers to those entering service by direct recruitment, in view of Rule 21(4) those who enter service by 'recruitment' or 'selection' at any time will always necessarily be senior to those promoted or recruited on the basis of a subsequent selection or recruitment. This is what Rule 21(4) provides. In terms it caters to a situation where recruitment or selection is at intervals with a time lag. Vacancies in the cadre or the grade arise every year. Normally the substantive vacancies in the cadre have to be filled in as they occur or within a reasonable time. The process of selection and recruitment must continuously be in operation roughly from year to year. By the impact of Rule 21(4), the selection or recruitment of one year shall have precedence over selection or recruitment of the next year and this is what is known in service jurisprudence as seniority according to continuous officiation in the cadre or the grade which has been statutorily recognised in sub-rule (4) of Rule 21. This is in tune with fair play and justice and ensures equality as mandated by Article 16. ..."

12. Again in Narender Chadha and others v. Union of India and others (A.T.R. 1986 S.C. 49), where also the question of integration of seniority of direct recruits vis-a-vis promotees to Grade IV of Indian Economic Service / Indian Statistical Service was involved, the Supreme Court

made the following observations: -

"Having given our anxious consideration to the submissions 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 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 direction shall be applicable only to officers who have been promoted till now."

13. It is contended by the learned counsel for the applicants that both in the case of G. S. Lamba as well

as Narender Chadha, the principle laid down by the Supreme Court for determining seniority of direct recruits vis-a-vis promotees to a particular grade is that direct recruits or promotees of a particular year shall rank senior to direct recruits and promotees of a subsequent year. This principle recognises that seniority shall be based on the length of service or continuous officiation while at the same time, the inter-se seniority of direct recruits is to be maintained in accordance with their merit. The Supreme Court specifically referred to G.S. Lamba's case while disposing of writ petitions No.15346-49 of 1984 (N.K. Dhawan & Ors. v. Union of India & Ors.), vide order dated 25th April, 1985 and as such, the directions now given by the Supreme Court on February 17, 1987 have to be read and interpreted in the context of their earlier observations in the order dated 25th April, 1985 and the ratio decidendi in the cases of G.S. Lamba and Narender Chadha.

14. On the other hand, the learned counsel for the promotee respondents Shri G.D. Gupta contends that the decision given by the Supreme Court in the case of G.S. Lamba was with reference to statutory rules 21 and 25 of the Indian Foreign Service Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Rules, 1964 and similarly the decision in the case of Narender Chadha was given in the context of a specific statutory rule 9-C of the Indian Economic Service / Indian Statistical Service Rules, 1961. In the case of AFHQ Civil Service Rules, there is no statutory rule corresponding to Rule 21(4) of the Indian Foreign Service Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Rules, 1964 or Rule 9-C of the Indian Economic Service / Indian Statistical Service Rules, 1961 and, therefore, the direct recruits / promotees of a particular year need not necessarily be placed above direct recruits / promotees of a subsequent year.

15. Respondents No.1 and 2 in this case, while integrating the seniority of the direct recruits vis-a-vis promotees after the judgment of this Tribunal dated 22nd August, 1986 in K.N. Mishra v. Union of India had ignored and given a complete go by to the inter-se seniority amongst the direct recruits themselves in accordance with their merit or rank based on Rule 16(6) and determined the seniority of all irrespective whether the person was a direct recruit or promotee with reference to his date of joining only. This was obviously not correct since the inter-se seniority amongst direct recruits themselves, who are selected on the basis of a competitive examination and assigned ranks according to merit cannot be made dependent on the fortuitous circumstance of a direct recruit joining earlier or later than another direct recruit and, therefore, the Supreme Court directed that inter-se seniority of direct recruits must be maintained in accordance with their merit, as envisaged by Rule 16(6). The Supreme Court also observed that they did not see any conflict between the directions given by the Tribunal for fixing seniority in accordance with the principle of continuous officiation and sub-rule 6 of Rule 16 of the Armed Forces Headquarters Civil Service Rules, 1968. Does this mean that the principle of length of service or continuous officiation for determining seniority of direct recruits vis-a-vis promotees has to be given a complete go by as has been done in the seniority list now impugned in these applications? The seniority of direct recruits vis-a-vis the promotees has been made dependent on the date of joining of the seniormost direct recruit. It is quite possible that the seniormost direct recruit is able to join after a considerable time for various reasons viz., that if he is an existing Government servant, he may not be relieved from his earlier office, or

he may be undergoing training and would like to join after completion of the training, or his medical examination and issue of fitness certificate is delayed, or there may be inordinate delay in the verification of his character and antecedents, etc. The fortuitous circumstance of the seniormost direct recruit joining quite late as compared to the dates of joining of other direct recruits of his batch, has resulted as has been demonstrated in the present case in suppressing and submerging the seniority of other direct recruits of the same batch (who joined much earlier than the seniormost direct recruit) in relation to the promotees who joined much later and this, in effect, is a complete departure from the principle of determining seniority on the basis of continuous officiation in so far as the direct recruits are concerned. Even though the observation of the Hon'ble Supreme Court in G. S. Lamba's case may have been made in the context of statutory rules 21 and 25 of the Indian Foreign Service Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Rules, 1964, they also observed that "the selection or recruitment of one year shall have precedence over selection or recruitment of the next year and this is what is known in service jurisprudence as seniority according to continuous officiation in the cadre or the grade which has been statutorily recognised in sub-rule (4) of Rule 21. This is in tune with fair play and justice and ensures equality as mandated by Article 16".

(emphasis supplied)

This observation is of universal applicability for determination of seniority in cases where the quota and rota rule has broken down and it is in this background that the direction of the Supreme Court in their order dated 17th February, 1987 has to be read, interpreted and implemented. It is true that while keeping intact the inter-se seniority of direct recruits in accordance with Rule 16(6) and integrating them

with the promotees in drawing up a common seniority list, the principle of seniority based on continuous officiation will have to be sacrificed or compromised with to some extent either in the case of promotees or direct recruits. It is to be seen how far this principle can be salvaged or retrieved so as to do least damage to the interest of promotees as also that of the direct recruits. In case the date of joining of the seniormost direct recruit is taken as the crucial date for purpose of integration, there are bound to be distortions in the seniority of other direct recruits who joined earlier and are placed below the promotees who joined later. On the other hand, if integration of seniority of direct recruits and promotees is done with reference to the earliest date when a direct recruit of a particular batch joined, it is possible that some of the promotees who joined earlier than this date will become junior to direct recruits of that particular batch who joined on a later date. In the absence of any statutory rule providing for placement of direct recruits / promotees of a particular year above the direct recruits / promotees of a subsequent year, the only reasonable basis for providing a fair, just and equitable basis, as required by Article 16 would be that the integration of seniority of direct recruits and promotees is done with reference to the date of joining of the earliest direct recruit of a particular batch and not with reference to the date of joining of the seniormost direct recruit. This earliest date would certainly be a date when any direct recruit, including the seniormost direct recruit, could have joined in point of time keeping in view the exigencies and formalities required to be completed for joining the post. This ensures that the seniority of the promotees determined on the basis of continuous officiation is not affected in any manner amongst themselves and also vis-a-vis direct

recruits to the extent that they do not become senior to all direct recruits who had joined earlier to them. If in following this principle, some promotees become junior to direct recruits who joined later than them, it would be a direct consequence of maintaining the inter-se seniority of direct recruits in accordance with Rule 16(6) and not as offending the principle of seniority based on continuous officiation.

16. It has been argued by the learned counsel for the respondents that the only interpretation which can be given to the direction of the Supreme Court that the seniority of the promotees which has to be determined on the basis of continuous officiation will not be affected in any manner is that under no circumstance a promotee is to be placed junior to a direct recruit who has joined later than him. This interpretation will give benefit to promotees, which is perhaps much beyond what can be reasonably inferred or interpreted from the direction of the Supreme Court if seen in the context of their earlier direction in the judgement dated 25th April, 1985 and the observations made in G. S. Lamba's case.

17. A promotee who joins on a particular date having become junior to a direct recruit, who has joined earlier than him, has also necessarily to be junior to other direct recruits who are senior to the particular direct recruit who had joined earlier than him irrespective of the dates of joining of those other senior direct recruits. There is no reason why the direct recruits of a particular batch should suffer in the integration of their seniority vis-a-vis promotees merely because the seniormost direct recruit of their batch happens to join later than any of them for any reason. An equitable basis in the absence of a statutory rule for integration of seniority of promotees with direct recruits on the principle of continuous officiation is

[Signature]

provided only with reference to the notional date of joining of the direct recruit who joins first in point of time. There is no rule or principle which lays down nor does the judgement of the Supreme Court direct that this notional date has necessarily to be the date of joining of the seniormost direct recruit of a batch. In fact, if the date of joining of the seniormost direct recruit is taken into account for purposes of integration and this happens to be a date later than the dates when some other direct recruits joined, it gives a complete go by to the principle of seniority based on continuous officiation in so far as direct recruits are concerned. A promotee can claim seniority over a direct recruit of a particular batch only with reference to the earliest date of joining of a direct recruit and not with reference to the dates of joining of other direct recruits who become senior to promotees who joined earlier, not because of their dates of joining but by virtue of Rule 16(6).

18. In view of the above discussion, the impugned seniority list issued in May 1987 is liable to be quashed. The same has to be redrawn in compliance with the directions of the Supreme Court given on 17th February, 1987 so as to maintain the inter-se seniority of direct recruits intact as required under Rule 16(6) while integrating them with the promotees on the basis of the earliest date of joining by any direct recruit of a particular batch and not with reference to the date of joining of the seniormost direct recruit of the said batch.

19. In the result while O.A. No.1195/87 (Vishwa Nath Nigam v. Union of India and others) is dismissed, the other petitions (No. O.A. 1121/1987, O.A. 1359/1987, O.A. 1450/1987 and O.A. 1368/1987) have to be partly allowed as per directions given in the preceding paragraph.

RAUSHAL KUMAR
MEMBER (A)
10.12.1987.

62

CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

O.A. Nos. 1121, 1195, 1359, 1368 and 1450 of 1987.

Date of judgment: 10-12-1987.

O.A. 1121/87:

Shri K.N. Mishra and others ... Applicants.

vs.

Union of India and others ... Respondents.

O.A. 1195/87:

Vishwa Nath Nigam ... Applicant. (In person)

vs.

Union of India and others ... Respondents.

O.A. 1359 of 1987:

Chet Ram Malawliya and others ... Applicants.

vs.

Union of India and others ... Respondents.

O.A. 1368/87:

Shri Hari Ram Malik ... Applicant. (In person)

vs.

Union of India and others ... Respondents.

O.A. 1450 of 1987:

Shri Shri Krishan Goel ... Applicant. (In person)

vs.

Union of India and others ... Respondents.

For applicants:

Shri Rakesh Tikku, counsel in O.A. 1121/87.
Shri D.C. Vohra, counsel in OA 1359/87.

For respondents:

Shri P.H. Ramachandani, Sr. Standing Counsel
and Shri G.D. Gupta, counsel.

CORAM:

The Hon'ble Shri KAUSHAL KUMAR, Administrative Member
and

The Hon'ble Shri G.SREEDHARAN NAIR, Judicial Member.

8

Per The Hon'ble Shri G.Sreedharan Nair)

It is rather unfortunate that despite the verdicts of the Supreme Court and of this Tribunal which were intended to set at rest the protracted battle between the direct recruits and the departmental promotees to the post of Assistants of the Armed Forces Headquarters Civil Service, the matter is again being dragged on.

The members of the Armed Forces Headquarters Civil Service are governed by the Armed Forces Headquarters Civil Service Rules, 1968, for short 'the Rules', made in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. Recruitment to the grade of Assistants, according to the rules laid down in the third schedule is both by direct recruitment and by way of promotion from Upper Division Clerks and a quota has been fixed for either category. Seniority of the officers is governed by Rule 16. Sub-rule (6) of Rule 16 provides that direct recruits shall be ranked inter se in the order of merit in which they are placed at a competitive examination on the result of which they are recruited, the recruits of an earlier examination being ranked senior to those of a later examination. It is further provided that on confirmation, their inter se seniority shall be regulated in the order in which they are so confirmed. As regards the inter se seniority of direct recruits and departmental promotees, it is provided in Sub-rule (7) that the relative seniority of

direct recruits to a grade and persons appointed to the grade by departmental promotion, shall be regulated in accordance with the provisions in the third schedule. The relevant provision in that behalf in the third schedule is that the relative seniority will be determined according to the rotation of the vacancies between departmental promotees and direct recruits which shall be based on quotas of vacancies reserved for promotion and direct recruitment. Thus, what is envisaged under the Rules is the quota rule of recruitment and the rota rule of seniority interlinking them.

A seniority list of Assistants was drawn up in the year 1977. It was challenged by certain direct recruits before the High Court of Delhi in Civil Writ Petition No.2 of 1978. During the pendency of that petition, there was an amendment to the Rules in the year 1981 on the basis of which a fresh seniority list was drawn up in 1984. This was attacked by the promotee Assistants before the Supreme Court in Writ Petitions 15346 to 15349 of 1984. Those petitions were disposed of by the Supreme Court by order dated 25-4-1985. It is extracted below:-

"The petitioners in these Writ Petitions question the correctness of the seniority list in the cadre of Assistants. The impugned seniority list is dated August 10, 1984. Some of the errors and defects pointed out in the seniority list are such as would render it illegal and invalid in view of the decision of this court in G.S.Lambha & Ors. Vs. Union of India & Ors. 1985 (1) Scale 563. The conclusion in Lambha's case invalidating the seniority list was reached after a review of numerous decisions bearing on the subject

S

and more particularly three recent decisions in

A.Janardan Vs. Union of India & Ors. (1983 (2)

SCR 936, P.S.Mahal & Ors. Vs. Union of India & Ors.

A.I.R.1984 SC 1291 and O.P.Singla & Anr. Vs. Union of India & Anr. A.I.R. 1984 SC 1995.

At the hearing of these writ petitions when this pertinent fact was pointed out to Mr.B.Datta, learned Sr.Counsel for the Union of India, he requested us to adjourn the matter to obtain appropriate instructions from the Government of India.

Today Mr.Datta informed us that in view of the aforementioned decisions, the Government of India has decided to review and reconsider the impugned seniority list in the light of the observations and principles enunciated in the aforementioned judgments. The impugned seniority will not be enforced or given effect to till fresh seniority list according to relevant rules and valid principles is drawn up. Rule is made absolute to that effect with no order as to costs.

Panel of promotions will have to be redrawn in the list of the revised seniority list. We order accordingly. All promotions till now made and till new seniority list is drawn up will be subject to the fresh seniority list which should be drawn up within four months from today. Parties are left to bear their own costs."

Pursuant to the directions contained in the aforesaid judgment, a fresh seniority list was prepared in November 1985. Stating that it is tentative, the Government sought clarification from the Supreme Court. However, the petition was dismissed by order dated 28-11-1985 in the following terms:-

"A perusal of the order of this Court (Desai,

Eradi and Khalid, JJ) sought to be reviewed shows that the order was passed on the statement of Mr.Dutta, learned counsel for the Government of India that the Government has decided to review and reconsider the impugned seniority list in the light of the observations and principles enunciated in the aforementioned judgments. The judgments referred to were:

(i) A.Janardhan Vs.Union of India & Ors.
1983(2) SCR p.936.

(ii) P.S.Mahal and Ors. Vs.Union of India & Ors.
AIR 1984 (SC) 1291.

(iii) O.P.Singla and Anr. Vs.Union of India & Anr.
(A.I.R.1984 (SC) 1595).

(iv) G.S.Bamba & Ors. Vs.Union of India & Ors.
1985 (1) Scale 563.

The order was thus made with full agreement if not at the instance of the Government. In the circumstances, we see no justification for the present petition which is based on the following averment in the petition:-

'In all the aforesaid four decisions of this Court there are varying principles laid down for fixation of seniority. It was difficult to follow them in the facts and circumstances of this case.'

We are surprised at this statement. It is not stated what varying principles laid down in the judgments were, nor is it stated when it was discovered to be so. We have no option but to dismiss these petitions."

Thereupon, the Government prepared a fresh seniority list on 16-1-1986, solely on the basis of the continuous officiation in the grade of Assistants. The applicants in O.A.1121 of 1987, who

are direct recruits challenged the said seniority list before this Tribunal in O.A.41 of 1986. Since the said list was confined to 420 Assistants alone, the promotees filed O.A. No.79 of 1986 to direct the Government to prepare a list including the names of all permanent, temporary and officiating Assistants of the Department. These two O.A.s. were heard together and was disposed of by a Bench of this Tribunal consisting of the Hon'ble Chairman and the Hon'ble Vice-Chairman Shri B.C.Mathur by judgment dated 28-8-1986 reported at page 270 of A.T.R. 1982 (2) CAT. In those cases, both the direct recruits as well as the promotees contested the matter in a representative capacity, as is clear from the statement in the penultimate paragraph of the judgment. The stand taken up on behalf of the direct recruits was that the quota and rota rule has not broken down, the adhoc promotions were necessitated on account of fortuitous circumstances and not because of the existence of permanent vacancies and as such the promotees cannot be deemed to be officiating on a long term basis against substantive vacancies so as to be given the benefit of continuous officiation in computing their length of service in the category of Assistants and determining their seniority. As against this, the promotees contended that the fact that the quota and rota rule has broken down was recognised by the judgment of the Supreme Court dated 25-4-1985 and as such the inter se seniority has to be determined on the basis of continuous officiation. The core of the controversy was

whether in drawing up the impugned seniority list, the Government had followed the instructions contained in the judgment of the Supreme Court dated 25-4-1985 correctly, and had applied the right principles. The four judgments of the Supreme Court to which pointed reference was made in its order dated 28-11-1985, namely, A.Janardhan Vs. Union of India, P.S.Mahal and Ors Vs. Union of India & Ors., D.P.Singla and Anr. Vs. Union of India & Anr. and G.S.Lamba & Ors. Vs. Union of India & Ors. were all considered by this Tribunal and it was declared that "the principle of taking into account the period of continuous officiation in determining seniority of promotees where quota rota rule has broken down which is established in service law must be given effect to". This finding was arrived at after considering whether appointment to the cadre of Assistant by way of direct recruitment and by way of promotion was done strictly/at least substantially in accordance with the quota and rota rule envisaged by schedule-~~III~~

✓ ~~65~~ the Rules, and in arriving at the conclusion that it was not so done. It was also based on the finding that the rota rule of seniority is inextricably linked up with the quota rule.

✓ It is ~~also~~ pertinent to refer to the following extract from the judgment:-

"When clothed with these overriding powers, appointment by way of promotions made from select list between 1968-69 and 1980-81 during which period the quota and rota rule had broken down, must be deemed to have been made in exercise of the power of relaxation of rules vested in the Government and such appointments must be treated as valid. Once

these appointments are treated as valid, in the absence of any other specific rule, even under Rule 16(5) which merely lays down that the seniority must be counted from the date of the appointment to the grade, must have reference to the date of the first officiating promotion of the promotee which has continued uninterruptedly. That date must be taken as the date on which he was appointed to the grade of Assistant for purpose of sub-rule (5) of Rule 16. Or else even that sub-rule would (not) break down and cannot be given effect to. In our view, seniority in this manner would not only conform to the mandate of the Supreme Court but would also be just and equitable."

The summing up of the resultant position by the Hon'ble Chairman was as follows:-

"In sum, the benefit of this long period of service would accrue to all promotees, who have continuously officiated against long term vacancies, and long term vacancies would be those that 'are not for a few days or a few months or are otherwise adventitious'. Irrespective of whether the posts were temporary or permanent, so long as the promotion was against long term or substantive vacancies and not against short term or fortuitous vacancies, the period of continuous officiation would have to be reckoned for determining seniority. Whether the vacancies occurred due to long term deputation or long leave due to death, retirement, resignation, dismissal or removal, or due to promotion regular, ad hoc, officiating or otherwise, and whether the deputationists or promotees hold a lien or not, the benefit of continuous officiation would accrue to promotees against such vacancies."

In the result, holding that "this list is in consonance with the principles laid down by the Supreme Court for reckoning inter se

(30)

seniority between direct recruits and promotees where the quota and rota rule has broken down", all the contentions raised by the direct recruits were rejected and O.A.41 of 1986 was dismissed. In O.A.79 of 1986 on the ground that the seniority list was confined to some members of the grade, the Government were directed to draw up a complete seniority list including all members of the grade occupying substantive vacancies irrespective of whether the vacancies were in temporary or permanent post. The Tribunal hastened to add that "the seniority must be reckoned giving the benefit of continuous officiation".

In compliance with the aforesaid judgment of this Tribunal, a fresh seniority list was issued by the Government in September 1986 following the principle of continuous officiation. When that list was published, the applicants in O.A.41 of 1986 preferred Civil Appeal Nos.3513 and 3514 of 1986 from the decision of this Tribunal dated 22-8-1986. In those appeals, they highlighted that the principle of continuous officiation upon which the inter se seniority was directed by the Tribunal to be determined as between direct recruits and promotees conflicts with Sub-rule (6) of Rule 16 of the Rules relating to the determination of inter se seniority of the direct recruits. Special leave was granted limited to the consideration of this question. The appeals were finally disposed of by the order dated 17-2-1987 holding that "We do not see any conflict between the direction given by the Tribunal and Sub-rule (6) of Rule 16 of the Rules."

It was also added:-

"We make it clear that seniority amongst direct recruits themselves will be determined in accordance with Sub-rule (6) of Rule 16 of the Rules, but it will not affect the seniority of promotees in any manner which has to be determined on the basis of continuous officiation".

Though the appeals were dismissed, it was subject to the aforesaid observation. In view of the judgment of the Supreme Court, the Government had to prepare a fresh seniority list and accordingly they came out with a revised list on 8-5-1987. It is the said seniority list that is under challenge in these applications.

O.A.1121 of 1987 is by four direct recruits. O.A.1368 and 1450 of 1987 are by two other direct recruits. O.A.1359 of 1987 is by four direct recruits of whom the first three belong to the Scheduled Caste and the fourth to the Scheduled Tribe. O.A.1195 of 1987 is by a promotee complaining that he has not been placed in proper position in the seniority list vis-a-vis the third respondent therein, who is also a promotee. In O.A.1450 of 1987, there is a prayer for review of the earlier judgment of this Tribunal in O.A.41 and 79 of 1986. The said prayer on the face of it cannot be maintained as O.A.41 of 1986 was pursued before the Tribunal in a representative capacity on behalf of the direct recruits and the matter was taken up in appeal before the Supreme Court and there is ~~also~~ the verdict of the Supreme Court. The other point that is raised in O.A.1450 of 1987 is that as per the impugned seniority list, ~~the~~ promotees who were

not members in service at the time of the entry of the applicant have been shown senior to him. It is this identical ground that has been urged in O.A.1368 of 1987 as well. In O.A.1121 of 1987 and in O.A.1359 of 1987 also, the main ground of attack against the seniority list is that in fixing the inter se seniority between the promotees and the direct recruits and also in determining the inter se seniority amongst the direct recruits, the benefit of continuous officiation has to be given. The grievance projected is that the applicants have been deprived of the benefit of their continuous officiation and have been shown to be junior to certain promotees who were promoted subsequent to the date of appointment/selection of the applicants. This is alleged to be violative of Article 14 of the Constitution of India. In O.A.1359 of 1987, yet another ground has been put forward that in preparing the impugned seniority list none of the instructions to be followed as regards the candidates belonging to Scheduled Caste and Scheduled Tribe has been complied with and as such there is a violation of Articles 16(4), 46 and 335 of the Constitution.

By way of reply, respondents 1 and 2, namely the Union of India and the Chief Administrative Officer, Ministry of Defence, have stated in their reply that while preparing the seniority list pursuant to the order of the Supreme Court dated 17-2-1987, in order to comply with the directions contained therein, four different modes were attempted and after working them out, it was found that the only method for effective compliance with the order was to determine the date of joining of the senior-most direct recruit and then to rank the other direct recruits below

him with reference to their place in the merit list in accordance with Sub-rule (6) of Rule 16 of the Rules and to integrate the promotees with reference to the date of appointment of the senior-most direct recruits. It is pointed out that these applicants had to be brought down as they were juniors in rank position vis-a-vis other direct recruits of the same examination. On behalf of the promotees also, the same contention has been taken up. It is emphasised that pursuant to the order of the Supreme Court ~~that~~ seniority among the direct recruits will have to be determined in accordance with Sub-rule (6) of Rule 16 of the Rules, but that shall not affect the seniority of the promotees vis-a-vis the direct recruits, which has to be determined on the basis of continuous officiation of the promotees.

At this stage, the real scope of the enquiry that can be embarked upon by this Tribunal has to be referred to. It is to be noted that when the impugned seniority list was published the applicants in O.A.1121 of 1987 approached the Supreme Court for clarification of its order dated 17-2-1987. It was stated in the petition (copy of which is at Annexure G in O.A.1121 of 1987) that in view of the direction of the Supreme Court the respondents/authorities were left with no choice in the matter of fixation of inter se seniority between the direct recruits and the promotees. It was prayed that as the working out of the said direction has resulted to their detriment "some via media solution causing least injury/prejudice to both parties have to be amicably worked out in the interest of justice, equity and sense of fair play". This petition was disposed of by the Supreme Court by order dated 10-8-1987 which is as follows:-

"The petitioners will be at liberty to move the Tribunal for vindicating their grievance, if any, that our order has not been implemented".

In view of the aforesaid order of the Supreme Court the jurisdiction of this Tribunal on this matter, in my view, is very restricted.

By the order, the Supreme Court has indicated, though impliedly, that the order dated 17-2-1987 has necessarily to be implemented.

What the Tribunal can look into is only whether there has been any lapse on the part of the Government to implement the order of the Supreme Court, and to vindicate the grievance, if any, of the applicants on that score. There is no case for the applicants that the order of the Supreme Court dated 17-2-1987 has not been implemented. They have also no case that the implementation has not been done in accordance with the direction of the Supreme Court.

The seniority list issued by way of l
But their only grievance is that in implementing the order, prejudice has been caused to them, as certain promotees who have joined service in the grade of Assistant after their entry in the grade are shown senior to them. As such, the simple question that arises is whether the said circumstance will be a ground for this Tribunal to interfere with the seniority list, prepared well in accordance with the directions contained in the order of the Supreme Court.

I have no hesitation to hold that the answer has to be in the negative.

In appreciating the controversy, it will be useful to bear in mind that the cardinal principle on the basis of which the earlier seniority list was struck down by the Supreme Court in its decision dated 25-4-1985 and reiterated by this Tribunal while dismissing O.A.41 of 1986 is by recognising seniority in a

cadre, grade or service on the basis of continuous officiation where the quota rule of recruitment has broken down and the rota rule of seniority is interlinked with the quota rule.

As far as the dispute in these cases is concerned, the latest affirmed order of the Supreme Court dated 17-2-1987 has also ~~affirmed~~ this principle, and has directed that though the seniority among the direct recruits themselves is to be determined in accordance with Sub-rule (6) of Rule 16 of the Rules, it will not affect the seniority of the promotees in any manner which has to be determined on the basis of continuous officiation. (emphasis supplied). The Supreme Court has also referred with approval to the direction that was given by this Tribunal that if there is any discrepancy in fixation of the seniority among the direct recruits themselves, it is always open to them to make their representation and for the Government to rectify the errors, if any, without however affecting the seniority of promotees who have been declared seniors to the direct recruits on account of their continuous officiation. In the face of these clear statements no seniority list can be prepared wherein a commencement of direct recruit who has entered the service after the continuous officiation of a promotee can be placed above the promotee. The ranking of the direct recruits inter se is governed by Sub-rule (6) of Rule 16 of the Rules, according to which the date of joining of service is irrelevant, for, it has to be done before confirmation in the order of merit in which they are placed at the competitive examination, and after confirmation in the order in which the confirmation is made. So much so, there is every possibility of a direct recruit who is the senior-most

in a batch in the list prepared in accordance with the Sub-rule, actually joining service on a date subsequent to the date of joining of his juniors. But, when it has been uniformly recognised that no direct recruit who has actually joined service subsequent to the commencement of a continuous officiation of such promotee, shall be placed above the promotee, necessarily while determining the inter se seniority of the direct recruits vis-a-vis the promotees, there is inevitable that is the possibility of the promotee who has started continuous officiation before the senior-most direct recruit actually joined the service, but only after the date of joining service of a junior direct recruit, being placed above the senior-most direct recruit.

The following illustration will make the position clear:-

<u>Direct Recruits.</u> (Seniority-wise according to Sub-rule(6) of R.16 of Rules.)	Date of joining.	<u>Promotees</u> (Seniority-wise with respect to continuous officiation)	Date of joining.
(1)	(2)	(3)	(4)
R-1	1-12-1980	P.1
R-2	1-1-1980	P.2
R-3	16-1-1980	P.3
R-4	18-3-1980	P.4
R-5	20-4-1980	P.5
R-6	16-2-1980	P.6
R-7	26-6-1980		

In fixing the inter se seniority of these direct recruits and promotees when the direction given by the Supreme Court in its order dated 17-2-1987 is complied with, the fixation will be as follows:-

- 1) P.1
- 2) P.2
- 3) P.3
- 4) P.4
- 5) P.5
- 6) P.6
- 7) R.1
- 8) R.2
- 9) R.3
- 10) R.4
- 11) R.5
- 12) R.6
- 13) R.7

Only by such a fixation can the promotees P.1 to P.6 all of whom have started continuous officiation before R.1, the senior-most direct recruit entered service, be given the benefit of their continuous officiation. If, on the other hand, as is sought for by the applicants the seniority list is drawn up by fixing P.1 and P.2 alone above R.1, the resultant position will be as follows:-

- 1) P.1
- 2) P.2
- 3) R.1
- 4) R.2
- 5) P.3
- 6) R.3
- 7) R.6
- 8) R.4
- 9) R.5
- 10) P.4
- 11) R.7
- 12) P.5
- 13) P.6

If the list is drawn up in this manner, the promotees P.3 to P.6 all of whom have started continuous officiation earlier than the ~~the date of joining of the~~ direct recruit R.1 will become juniors to him. Such a consequence will be clearly violative of the declaration made by this Tribunal in the judgment in O.A.41 of 1986 that "so far as substantive vacancies are concerned, promotees who have continuously officiated in such vacancies should get the benefit of their continuous officiation in reckoning their seniority", which declaration has been affirmed by the Supreme Court in its order dated 17-2-1987, and ~~will also be against~~ the direction given by the Supreme Court itself in the said order that the "seniority amongst direct recruits themselves will be determined in accordance with Sub-rule (6) of Rule 16 of the Rules, but it will not affect the seniority of the promotees in any manner which has to be determined on the basis of continuous officiation". No doubt, by drawing up the seniority in the ~~first~~ manner, the promotee P.3 who started continuous officiation only

(38)

on 15-1-1980 becomes senior to the direct recruit R.2 who entered service earlier. So also the promotee P.4 who started continuous officiation only after the direct recruits R.3 to R.5 joined service, and the promotees P.5 and P.6 who started continuous officiation only after the direct recruit R.7 joined service, become senior to those direct recruits. This is a consequence that directly flows from the fixation of seniority of direct recruits inter se under Sub-rule (6) of Rule 16 of the Rules, and fixing the inter se seniority of the direct recruits vis-a-vis the promotees without affecting the seniority of the promotees in any manner which has to be determined on the basis of continuous officiation, as ordained by the Supreme Court by its order dated 17-2-1987. If on account of the fact that a particular promotee has started continuous officiation only after a junior in a batch of direct recruits has entered service, ^{where} in case the senior-most direct recruits in the batch had joined only subsequently, the date of joining being after the commencement of the continuous officiation by the promotee, by placing the promotee below the junior direct recruit will have the effect of depriving the promotee the benefit of continuous officiation vis-a-vis the direct senior-most recruit. If such a course was resorted to by the Government in preparing the seniority list, it will be a clear violation of the direction of the Supreme Court. As has been stated earlier, in view of the limited scope of enquiry by this Tribunal, if it is established by respondents 1 and 2 that the impugned seniority list is in implementation of the order of the Supreme Court and is in consonance with the direction, the attack

against the same on the ground that it is violative of Article 14 of the Constitution cannot be sustained before this Tribunal. As the mode of preparation of the integrated seniority list of the direct recruits and promotees in the grade of Assistant has been already laid down by the Supreme Court, it cannot accede to the submission of counsel of the applicants that some other mode of integration may be laid down by this Tribunal so as to ameliorate the hardship that is stated to have been caused to some of the direct recruits.

The counsel of respondents 1 and 2 has produced a copy of the impugned seniority list wherein the promotees and the direct recruits are separately indicated. From that list it is seen that of the applicants in O.A.1121 of 1987 who belonged to the 1978 batch, the 4th applicant is at Serial No.2097, the 2nd applicant is at Serial No.2100 and the 3rd applicant is at Serial No.2109. The 4th applicant joined service only on 31-10-1980. Hence though the 3rd applicant joined on 2-8-1980 and the first applicant on 26-2-1980, as regards their inter se seniority, the 4th applicant is above the other two, for, he has secured the 37th rank, while the 3rd applicant has secured only the 156th rank and the first applicant only the 282nd rank. In view of the specific provision regarding the fixation of inter-se seniority among the direct recruits contained in Sub-rule (6) of Rule 16, there is no merit in the plea of the applicants that the principle of continuous officiation has to be applied as regards them also. It is only in the absence of any other rule of seniority that determination of seniority on the basis of principle of continuous officiation in a cadre,

grade or service operates. As such, though the first applicant joined service long before the 4th applicant he has been rightly placed junior to the 4th applicant in view of the ranking in the merit list.

Now coming to the integration of the promotees, it is seen that all promotees who started continuous officiation from 16-11-1979 till 31-10-1980 have been placed above the 4th applicant, as the latter had joined only on 31-10-1980. No promotee who has started continuous officiation after 31-10-1980 has been placed above the 4th applicant. However, those promotees at Serial Nos. 2023 to 2096 have started continuous officiation only after the 3rd applicant joined service, and those at Serial Nos. 1960 to 2096 started continuous officiation only after the 1st applicant joined service. In the impugned seniority list, they have been shown as seniors to the 3rd applicant and the 1st applicant respectively. The grievance of the applicants is based on this. But, when the fact that the senior-most, namely the 4th applicant, joined only on 31-10-1980 is taken into account, if those promotees who started continuous officiation prior to 31-10-1980 are not placed above the 4th applicant, those promotees at Serial Nos. 1960 onwards will have to forfeit their period of officiation ranging up to a period of eight months. The preparation of a seniority list in that manner will amount to a patent violation of the recognition of the principle of continuous officiation, and declaration that no direct recruit shall steal a march over a promotee who has started continuous officiation prior to his joining the service. Besides, the list will not be in conformity with the latest direction of the Supreme Court in the matter.

Similarly, in O.A.1359 of 1987, the first applicant is at Serial No.857 in the impugned seniority list. His date of joining service is 13-4-1972. As he is ranked 320 in accordance with his merit, the direct recruit at Serial No.849 Shri B.S.Nanda who is ranked 255, though he joined only on 17-3-73, nearly a year later, has been shown senior, in accordance with Sub-rule (6) of Rule 16 of the Rules. Similarly, the direct recruits at Serial Nos.774 to 778, 850 and 852 to 856 are also shown above him though they have joined only later. In preparing the integrated seniority list only those promotees who had started continuous officiation prior to 17-3-1973, the date of joining of Shri B.S.Nanda, have been shown above him. Such promotees are at Serial Nos.779 to 848. Of course, they started continuous officiation only after the first applicant joined service. But, if they are placed below the first applicant, naturally they will be below Shri B.S.Nanda as well, and the result will be that a direct recruit who has joined service months after they started continuous officiation is placed above them.

The applicant in O.A.1368 is at Serial No.2106 in the impugned seniority list. He is ranked No.252 ~~as~~ of the 1978 batch. Though he joined service only on 27-2-1980, as the 4th applicant in O.A.1121 of 1987 who is at rank 37 of the 1978 batch joined only on 31-10-1980, in accordance with Sub-rule (6) of Rule 16 of the Rule he has been placed in the seniority list below the former. As stated earlier, the promotees who started continuous officiation from 16-11-1979 till 31-10-1980 had to be placed above the 4th applicant in O.A.1121 of 1987. Hence the grievance of the applicant in O.A.1368 of 1987 that some of the promotees who started continuous

officiation only after he entered service have been shown senior to him and as such the seniority list is unsustainable cannot be accepted. For the same reason, the complaint of the applicant in O.A.1450 of 1987 has also to be turned down. He is at Serial No.2125 in the impugned seniority list, though he joined service on 20-5-1980, his ranking is only at No.365 of the 1978 batch and as such he also has necessarily to be junior to the 4th applicant in O.A.1121 of 1987.

The applicants in O.A.1359 of 1987 have raised another ground for attacking the seniority list. As stated earlier, the first three applicants in that case belong to Scheduled Caste and the 4th applicant to the Scheduled Tribe. The ground urged is that in the matter of fixation of seniority, the relevant rules conferring benefits on members of Scheduled Caste and Scheduled Tribe have not been adhered to. In the application, they have referred to five Official Memoranda issued by the Government, in support of the plea. The answer of respondents 1 and 2 is that there are no Government orders giving benefit to candidates belonging to Scheduled Caste and Scheduled Tribe in the matter of fixation of seniority and that the seniority of directly recruited employees belonging to such categories has to be determined in the same manner as applicable to others belonging to general category.

The first O.M. referred to by the applicants is dated 22-4-1970. It deals only with the maintenance of model rosters when there are reserved vacancies for Scheduled Caste and Scheduled Tribe. The next O.M. dated 12-3-1984 deals only with the principle of reservation in confirmation for candidates belonging to Scheduled Caste and Scheduled Tribe. It is significant to note

that in paragraph 4 of the said O.M. it is stated that fresh reservation at the time of confirmation is not required in cases where the initial appointment is made against substantive vacancies. Of course in paragraph 5 of the O.M. cases where appointment to a grade is being made partly by direct recruitment and partly by promotion are dealt with and it is provided that in such cases as regards direct recruits reservation will be applicable to confirmation. There is nothing in the said O.M. relating to the drawing up of the seniority list. The reliance placed on the O.M. dated 25-3-1970 is also not helpful to the applicants, for, it deals only with the carrying forward of reserved vacancies. In the O.M. dated 20-4-1961, which is the fourth one that is referred to in the application, and ~~was~~ relied upon by counsel of the applicants in O.A.1359 of 1987, it is specifically provided that amongst the permanent officers of a grade, their seniority will follow the order of their confirmation. This is exactly what has been provided for in Sub-rule (6) of Rule 16 of the Rules. In the last O.M. mentioned in the application, namely the one dated 12-9-1968 also, the aforesaid principle has been reiterated.

It has been clearly laid down in O.M. dated 24-5-1974 issued by the Department of Personnel and Administrative Reforms that the rosters are intended to be an aid to determining the ~~the~~ number of vacancies to be reserved and are not meant to be used for determining the order of appointment or seniority. It is a recognised principle that after confirmation, the Scheduled Caste/Scheduled Tribe Officer shall rank senior to temporary officiating officers of the grade, but amongst the permanent officers of the grade, their seniority will only follow the order of their confirmation.

E

As far as applicants in O.A.1359 of 1987 are concerned, it is too late in the day to complain about the order in which they have been confirmed - indeed no such grievance has been projected in the application - as it has been done years back.

It follows that the ground of attack on the impugned seniority list based on the alleged privileges as members of the Scheduled Caste/Scheduled Tribe by the applicants in O.A.1359 of 1987 has to be overruled.

The result is that none of the grounds of attack by the direct recruits, namely the applicants in O.A.Nos.1121, 1359, 1368 and 1450 of 1987 can be sustained.

In O.A.1195 of 1987, the applicant who is a promotee and who is at Serial No.2268 in the impugned seniority list has assailed the seniority list on the short ground that the 3rd respondent therein who was immediately below him in the select list for promotion to the grade of Assistant, has been shown above at Serial No.2206. The attack is devoid of merit as it is not disputed that the 3rd respondent started continuous officiation in the grade on 29-12-1980 whereas the applicant commenced his service in the grade only on 5-1-1981. In the judgment of this Tribunal in O.A.41 of 1986, it was specifically held that even under Rule 16(5) of the Rules which merely lays down that the seniority must be counted from the date of appointment to the grade must have reference to the date of the first officiating promotion of the promotee which has continued uninterruptedly and that date must be taken as the date on

which he was appointed on the grade of Assistant for the purpose of Sub-rule (5) of Rule 16. It was also pointed out that determination of seniority in this manner would not only conform to the mandate of the Supreme Court (in its order dated 24-5-1985), but would also be just and equitable. In the aforesaid judgment, a mandate was given to Government to give effect to the principle of taking into account the period of continuous officiation in determining the seniority of promotees (vide pages 290 and 291 of 1986 ATR Vol.2). Besides, in its order dated 17-2-1987, the Supreme Court had also recognised this principle that the seniority of the promotees has to be determined on the basis of continuous officiation.

In the result, all these applications are dismissed.

(G.SREEDHARAN NAIR)
Member (J)

S.V.