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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.

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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

and more particularly three recent decisions in
A. Janardan Vs. Union of India & Ors. (1983 (2) 7
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, 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,

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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. Eamba & 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

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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.As. 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

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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

to the Rules, and is 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

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

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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

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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:-

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"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, 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, ^{It is urged} what 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

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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 ~~which~~ 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:-

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"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 ^{if so} 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 ✓
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 ^{which was} ✓

while dismissing O.A.41 of 1986 is by recognising seniority in a

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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

order of the Supreme Court dated 17-2-1987 has also ~~stated~~ ^{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

direct recruit who has entered the service after ^{Commencement of} 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

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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 continuous officiation of ^{commencement of} such promotee, shall be placed

above ^{such} the promotee, ^{while} necessarily while determining the inter se

seniority of the direct recruits vis-a-vis the promotees, ^{it is inevitable that} these

~~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, ^{is} being placed above the senior-most direct

recruit.

The following illustration will make the position clear:-

Direct Recruits. (Seniority-wise according to Sub-rule(6) of R.16 of Rules.)	Date of joining.	Promotees (Seniority-wise with respect to continuous officiation)	Date of joining.
(1)	(2)	(3)	(4)
R-1	1-12-1980	P.1	30-12-1979
R-2	1-1-1980	P.2	30-12-1979
R-3	16-1-1980	P.3	15-1-1980
R-4	18-3-1980	P.4	18-6-1980
R-5	20-4-1980	P.5	13-9-1980
R-6	16-2-1980	P.6	1-11-1980
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

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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

will also be against 17-2-1987, and 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

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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 recruit 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 senior-most ^{direct} 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

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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, I 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,

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... 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 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.

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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 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 Rules 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

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officialiation 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

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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 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 Officers 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.

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 on 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

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uninterruptedly and that date must be taken as the date on

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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.

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