

**In the Central Administrative Tribunal**  
**Principal Bench: New Delhi**

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1. OA No.1405/89

Date of decision:24.02.1993.

Shri K. Parameswaran Nair & Others ...Petitioners

Versus

Union of India through the  
Regional Provident Fund  
Commissioner, Kerala & Another ...Respondents

2. OA No.1408/89

Shri Joseph Verghese ...Petitioner

Versus

Union of India & Another ...Respondents

3. OA No.1595/87

Shri H.C. Bajaj ...Petitioner

Versus

Union of India & Another ...Respondents

4. OA No.1596/87

Smt. Usha Monga ...Petitioner

Versus

Union of India & Another ...Respondents

5. OA No.1599/88

Shri R.K. Thapar & Others ...Petitioners

Versus

Union of India & Another ...Respondents

6. T.A. No.43/87  
(C.W.2172/85)

Shri Ashok Mehta & Others ...Petitioners

Versus

Union of India & Another ...Respondents

Coram:-

**The Hon'ble Mr.Justice V.S. Malimath, Chairman**  
**The Hon'ble Mr. I.K. Rasgotra, Member (A)**

For the petitioners

None

For the respondents

Shri H.R. Gupta, Counsel  
(in OA No.1599/88)

Judgement (Oral)  
(Hon'ble Mr. Justice V.S. Malimath, Chairman)

At Bangalore  
In the light of the opinion rendered by the Full Bench in its judgement dated 5.2.1993 in these cases all these Original Applications are allowed and the following directions are issued:-

i) The seniority list of Upper Division Clerks of the Delhi Region and the Kerala Region as on 31.12.1984 shall be recast, following the principles laid down by the Full Bench.

ii) A provisional seniority list shall first be prepared within a period of three months from the date of receipt of the judgement and circulated to all persons likely to be affected by the same, inviting objections giving them reasonable period of not less than one month for that purpose.

iii) After considering the objections received to the provisional seniority list contemplated by the aforesaid directions a final seniority list as on 31.12.1984 of the Upper Division Clerks of the Delhi Region and the Kerala Region shall be prepared and published with utmost expedition.

iv) In the light of the final seniority list prepared following the aforesaid directions review of promotion shall be undertaken with utmost expedition.

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v) Consequential monetary benefits flowing from the review of promotion shall be restricted to the period from the date of pronouncement of the opinion of the Full Bench on 5.2.1993, having regard to the fact that there was uncertainty in regard to the correct principles to be followed in the matter of preparation of seniority list. No costs.

2. Let a copy of this order be placed in all the case files listed together.

(I.K. Rasgotra)  
Member (A)

(V.S. Malimath)  
Chairman

Central Administrative Tribunal  
Principal Bench, New Delhi  
Faridkot House,  
Copernicus Marg,  
New Delhi

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

NO. T-43/87  
(C.W.P. 2172/85)

DATE OF DECISION: 18.4.1991.

SHRI ASHOK MEHTA & ORS.  
REGIONAL PROVIDENT FUND  
COMMISSION & ANR.

APPLICANTS  
VERSUS  
RESPONDENTS

OA NO. 1595/87  
SHRI H.C. BAJAJ  
REGIONAL PROVIDENT FUND  
COMMISSIONER, DELHI

APPLICANT  
VERSUS  
RESPONDENT

OA NO. 1596/87  
SMT. USHA MONGA  
REGIONAL PROVIDENT FUND  
COMMISSIONER, DELHI

APPLICANT  
VERSUS  
RESPONDENTS

OA No. 1405/89  
SHRI K. PARAMESWARAN/  
AND 9 OTHERS  
REGIONAL PROVIDENT FUND  
COMMISSIONER, KERALA

APPLICANT  
VERSUS  
RESPONDENT

OA-1408/89  
JOSEPH VERGHESE  
REGIONAL PROVIDENT FUND COMMISSIONER & ORS. RESPONDENT

VERSUS APPLICANT

OA-1599/88  
SHRI R.K. THAPAR & ORS.  
REGIONAL PROVIDENT FUND COMMISSIONER

APPLICANTS  
VERSUS

RESPONDENT

CORAM:

HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN  
HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANTS : Mrs. Shymala Pappu, Sr. Counsel, Sh. Ajay Aggarwal,  
Sh. R.L. Sethi, Ms. Lily Thomas,  
Shri C.S. Panda, counsel

FOR THE RESPONDENTS : Sh. Ravinder Bhatt, Sh. S.P. Mago,  
counsel.

(Judgement of the Bench delivered by Hon'ble  
Mr. I.K. Rasgotra, Member (A))

OA Nos. T-43/87 (CWP-2172/85), 1595/87, 1596/87,  
1405/89 and 1408/89 filed by Shri Ashok Mehta and 17  
others, Shri H.C. Bajaj, Smt. Usha Monga, Shri K.  
Parameswaran Nair & 9 others and Shri Joseph Verghese  
respectively raise identical issues of law and fact.

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T-43/87 (CWP-2172/85) has been received on transfer under Section 29 of the Administrative Tribunals Act, 1985 from Delhi High Court while the other three applications are filed under Section 19 of the Administrative Tribunals Act, 1985. All the applicants working as Upper Division Clerks (UDCs) in the office of Regional Commissioner of Provident Fund (RCPF) were promoted on the basis of seniority and were assigned inter se seniority with those who were promoted on passing the prescribed qualifying examination on the basis of quota rota principle. The said seniority list was circulated on 31.5.1985. the recruitment to the post of UDC is regulated by the Employees Provident Fund (Staff and Conditions of Service) Regulations, 1962. The grievance of the applicants is that they have been assigned seniority below the UDCs who have been promoted on the basis of departmental examination in the seniority list circulated on 31.5.1985 following the rota quota principle of seniority although they have put in much longer length of service than the examinee promotees. By way of relief they have prayed that the seniority list issued on 31.5.1985 (1985 seniority list) be quashed, as has been done in the case of Mohinder Kumar & Ors. V. Regional Provident Fund Commissioner & Anr. in T-556/86 decided by the Chandigarh Bench of the Tribunal vide their judgement dated 23.1.1987. They further justify the claim for quashing the 1985 seniority list as the SLP (C) 7752/87 filed by the respondents in the Hon'ble Supreme Court, challenging the said judgement of the Chandigarh Bench has been dismissed on 11.8.1987 passing the following order:-

"ORDER"

We see no reason to entertain this Special

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leave petition. One ground in support of this Petition was that there is contrary decision by one of the Benches of the Administrative Tribunal. That difficulty will not continue by refusing to grant leave. We are of the view that the appropriate rule for determining the seniority of the officers is the total length of service in the promotional posts which would depend upon the actual date when they were promoted."

2. OA -1599/88 has been filed by Shri R.K. Thapar and 12 others who had been promoted as UDCs in the examination quota after they had been declared successful in the said examination. the applicants herein are challenging the office orders Nos. 43/1988 and 100/1988 circulated vide No.Adm.6(44)/84/Vol.III/264 dated 18.4.1988 and No. Adm.6(44)/Vol.III/1826 dated 22.6.1988, promoting the promotee UDCs e.g. Mrs. Usha Monga, Shri H.C. Bajaj to the grade of Head Clerk on the basis of the seniority list prepared by the respondents in accordance with the principle of length of service and circulated vide Adm. 6(21) dated 18.4.1988 which was subsequently withdrawn vide circular No. 6(21) part-II dated 27.6.1988 (part-i office order No. 107/88). The applicants herein contend that since the seniority list of April, 1988 has been withdrawn, the promotions of UDCs as Head Clerks made on the basis of April, 1988 seniority list are not longer valid, and should therefore be declared illegal and violative of Articles 14 and 16 of the Constitution of India. They further submit that the only seniority list which holds the field is that of 31.5.1985 and, therefore, the promotion to the next higher grade should be on that basis alone.

3. The four OAs briefly described in paragraph-I and the last OA referred to in paragraph 2 above raise rival claims of seniority. For the purpose of adjudication, however, the issues of law raised in first set of four OAs and fifth OA are identical, we, therefore, propose to deal with these issues through this common judgement.

4. The learned counsel for the applicants in TA-43/87, OA-1595/87, OA-1596/87 and OA-1405/89 placing their reliance on the decision of the Hon'ble Supreme Court dated 11.8.1987 in the case of Mohinder Kumar (supra) pleaded that the seniority of the applicants should be fixed on the basis of the principle of length of service and not on the basis of rota quota principle. It was further submitted that identical issues came up for consideration before the Hyderabad Bench of the Tribunal in OA-490/86 which was disposed of by the Bench on 13th October, 1987 following the decision of the Chandigarh bench in Mohinder kumar (supra) case, as upheld by the Hon'ble Supreme Court in SLP(C) No. 7752/87

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dated 11.8.1987. The learned counsel further drew our attention to the order of the Principal bench dated 19.11.1987 in OA-1595/87 H.C. Bajaj & Ors. (supra), directing the respondents to make:

"appointments in accordance with directions issued on 13.10.1987 by the Hyderabad Bench of the Tribunal in OA-490/87 - Badapati Tulsidas & Ors. v. the Central Provident Fund Commissioner & Another."

The Tribunal further ordered that any promotion so made will be subject to the result of this application. The learned counsel also referred us to the Full Bench judgement of the Tribunal dated 7.8.1989 in the case of R.D. Gupta & Ors. v. UOI & Ors. in OA-1147/88 wherein the Full Bench had held that the observation made by the Supreme Court in its order dated 11.8.1987 while dismissing the SLP in Mohinder Kumar (supra) case was a binding precedent within the meaning of Article 141 of the Constitution. The operative part of the Full Bench judgement reads:-

"(i) the observation made by the Supreme Court in its order dated 11.8.1987 while dismissing the Special Leave Petition filed by the respondents against the Judgment of the Chandigarh Bench of the Tribunal in Mohinder Kumar's case constitutes a binding precedent in the instant case. (ii) The observation made by the Supreme Court in its order dated 11.8.1987 while dismissing the Special Leave Petition in Mohinder Kumar's case, cannot be construed as referring to any general rule or principle of seniority de hors the rules or as laying down any such rule or principle. Its true import and meaning is that inter se seniority of the promotees in the cadre of UDCs is to be

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determined on the basis of their total length of service which will be reckoned from the actual date of their promotion in accordance with the relevant recruitment rules. If an employee has been promoted after the D.P.C. has found him fit for promotion, that period will also count, even if his promotion may be termed as adhoc, or temporary, or officiating. For determining the actual date of promotion, the period during which the employee had been promoted on an ad hoc basis by way of stop-gap arrangement on an ad hoc basis by way of stop gap arrangement de hors the recruitment rules, will, have to be ignored.

(iii) The decision of the Hyderabad Bench of the Tribunal dated 13.10.1987, in the case of Badapati Tulsidas to the extent that it relied upon and followed the decision in Mohinder Kumar's case, and the observation of the Supreme Court in its order dated 11.8.1987 was right but the reference to and reliance upon the decision of the Supreme Court in A.N. Pathak's case by the Tribunal was not correct as, in our opinion, the principle for determining inter se seniority, between direct recruits and promotees which was in issue in A.N. Pathak's case, cannot be applied to determining the inter se seniority of two categories of promotees which was in issue before them, as it is before the Full Bench."

5. It will be apparent that the foundation of the case of the applicants rests on the decision of the

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Chandigarh Bench of the Tribunal in the case of Mohinder Kumar & Ors. (supra), as upheld by the order of the Hon'ble Supreme Court dated 11.8.1987 and the decision of the Full Bench of the Tribunal in R.D. Gupta & Ors. (supra) case. It is, therefore, necessary to examine the judgement of the Chandigarh Bench of the Tribunal. The Chandigarh Bench observed:

"3. The applicants joined service in the office of the Regional Provident Fund Commissioner, Chandigarh as Lower Division Clerks in 1973. They were promoted as Upper Division clerks (ad hoc) on 6.4.1976, 3.6.1976, 9.9.1976, respectively. They were made regular Upper Division Clerks on 11.5.1978. Respondents Nos.2 to 49 were promoted to the post of Upper Division Clerks during 1979 and 1980 on the basis of a Competitive Examination held by the department under the Regulations. The seniority lists of Upper Division Clerks circulated by the Regional provident Fund Commissioner, Chandigarh under Annexure P-4 and P-5 have been prepared on the assumption that the applicants are promotees and Respondents Nos. 2 to 49 are direct recruits, thus allotting 50 percent quota to promotees and 50 per cent to direct recruits.

4. In the Recruitment Rules for the posts in question appearing in the Third Schedule to the Employees Provident Fund (Staff and Conditions of Service) Regulations, 1962, the following has been stipulated: "1. The qualifications prescribed for the posts in the Organisation shall be as laid down in the appendix to the Schedule. (The prescribed qualifications

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will not, however, apply when members of the Staff employed in the Organisation are promoted to higher posts in the Organisation provided that persons promoted on the basis of seniority or on the basis of merit should have put in at least three years' service in the post from which promotion is made."

Appointments to the following posts shall be made by promotion to the extent indicated in respect of each category of posts on the recommendation of the Departmental Promotion Committee:

S.No.	Post	Quota to be reserved for departmental promotion.	Next lower grade from which promotion is to be made.
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8.	Upper Division Clerks (Regional Office).	50%	Promotion of Lower Division Clerks including Steno-typists, Telephone or Telex Operators in Regional Office on a regional basis on the basis of seniority subject to the rejection of the unfit.
		50%	Promotion of Lower division Clerks including Stenotypist, Telephone or Telex Operators in the Regional Office on the result of a Competitive Examination restricted to existing Lower Division Clerks including Steno-typists, Telephone or Telex Operators of the Region".

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5. The learned Counsel for the applicants stated that it is obvious from the above provisions of the Third Schedule to the Regulations that 100 per cent posts of Upper Division Clerks in the Department are to be filled by way of promotions; 50 per cent are to be filled on the basis of seniority subject to the rejection of the unfit and the remaining 50 per cent also by way of promotion of Lower Division Clerks and also Stenotypists, Telephone or Telex Operators) on the result of a Competitive Examination restricted to the existing Lower Staff in the Department. There is no element of direct recruitment involved in filling the posts of Upper Division clerks. The applicants were promoted to the posts of Upper Division Clerks on regular basis in 1978 on the basis of their seniority. Respondents Nos. 2 to 49 were promoted to the posts of Upper Division Clerks during 1979 and 1980 on the basis of Competitive Examination held by the Department under the provisions of items 8 of the Third Schedule to the Recruitment Rules, referred to above.

"Respondents No.1 has fixed the seniority of the applicants vis-a-vis Respondents Nos. 3 to 49 on the basis of para 7 of the Notification dated 1.11.1962 giving the general principles for determining seniority as persons employed in the Department vide Annexure P/2. The relevant paragraph Nos. 6 and 7 of this Notification read as follows:-

"6. Promotees:

- i) The relative seniority of persons promoted to various grades shall be determined in the order of

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their selection for such promotion; provided that where person promoted initially on a temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their promotion, seniority shall follow the order of confirmation and not the original order of merit;

ii) Where promotions to grades are made from more than one grade, the eligible persons shall be arranged in separate lists in the order of their relative seniority in their respective grades. Thereafter, the Departmental Promotion Committee shall select persons for promotion from each list up to the prescribed quota and arrange all the candidates selected from different lists in a consolidated order of merit which will determine the seniority of the persons on promotion to the higher grade."

"7. Relative seniority of direct recruits and promotees

The relative seniority of direct recruits and of promotees shall be determined according to the rotation of Mandamus directing the respondent No.1 to declare the applicants senior to Respondent Nos. 2 to 49 and to reframe the seniority list showing the applicants senior be issued. It was still further prayed that the promotions/confirmations of Respondents No.2 and 49 made during the pendency of the Writ Petition on the basis of illegal seniority lists be declared a nullity and Respondent No.1 be directed to reconsider the cases of promotions/confirmations on the basis of fresh seniority list to be prepared."

"9. The learned Counsel for Respondent No.1 stated that the applicants were appointed as Upper Division Clerks under Notification shown at Annexures R/1 to R/5.

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The specific conditions applicable to their appointment as ad hoc Upper Division Clerks were as follows:-

"AD HOC APPOINTMENTS:

ii) That the promotion being on a purely temporary and ad hoc basis will not confer any right on them to claim seniority for promotion to the post of Upper Division Clerk on a long term (regular) basis in future and will not prejudice the claim for promotion of other eligible persons, if any.

iv) That in the event of their regularisation in the seniority quota at any time, they would be placed on probation in accordance with the provisions of the Staff Regulations and their seniority vis-a-vis those promoted against Merit-quota would be regulated in accordance with the rotation of vacancies between the two categories.

UPON REGULARISATION.

4. the seniority of the above officials in the post of Upper Division Clerk will be determined in accordance with the Seniority Rules and the priority of their places in the Recruitment Roster."

10. The learned counsel for the Respondents states that in view of the above conditions of their appointment as Upper Division Clerks, the applicants are estopped from claiming seniority over Respondents Nos. 2 to 49. It was also stated that those appointed to the posts of Upper Division Clerks as a result

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of the Competetitive Examination are categorised as direct recruits by the Central Provident Fund Commissioner as communicated in his communication to the Regional Provident Fund Commissioner. It is, therefore, denied that there is no element of direct recruitment involved in filling the posts of Upper division Clerks. It was added that the inter-se seniority of the applicants and Respondent Nos. 2 to 49 has been fixed strictly in accordance with the rotational principles laid down in para 7 of the general principles governing the seniority (vide Annexure P/2). Thus the allegations that the applicant are senior to Respondent No.2 to 49 are baseless. Respondents 2 to 49 categorised as direct recruits for the purpose of determining seniority vis-a-vis those who are promoted on the basis of seniority such as the petitioners. consequently, none of the seniority lists is liable to be quashed. Further, Lower Division Clerks appointed as Upper Division Clerks as a result of the departmental examination are far more meritted than those appointed as such on the basis of seniority alone. Thus, the relative seniority of the petitioners and Respondents is to be fixed under para 7) and not para 6) of the General Principles for determining seniority. It was stated that for administrative reasons, the departmental examinations were not regularly held annually for some time but these were held in April, 1979 and in June, 1980. The seniority of the candidates who passed the examination was governed by the principle of rotational basis referred to in para 7 of the General principles for governing the seniority quoted above.

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11. The learned Counsel for private Respondents No.2 to 49 stated that the applicants are estopped to challenge the fixation of seniority in view of the clear stipulation in their promotion order to the effect "that in the event of their regularisation in the seniority quota at any time, they would be placed on probation in accordance with the provisions of the Staff Regularisations and their seniority vis-a-vis those promoted against merit quota would be regulated in accordance with the rotation of vacancies between the two categories."

It was further stated that the Central Provident Fund commissioner, new Delhi, letter dated 3rd July, 1986 (page 95 of the paper-book) addressed to the Regional Provident Fund Commissioner, Punjab explains background of the Staff Regulations from 1962 onwards. When the Staff Regulations were framed in 1962 they provided for two channels of appointment to post in all the cadre upto Assistant Provident Fund Commissioner (Grade-II) except in the cadre of UDCs, namely the direct recruitment and departmental promotion on the basis of seniority subject to rejection of unfit. Direct recruitment was provided in the cadre of UDC by amending regulation by Central Board of Trustees with the approval of Central Government and was notified on 30th September, 1967. The same continued till 1966 in the cadre of Head Clerk and P.F.1 (Grade III) and in the UDC cadre iii) 1971 when direct recruitment in certain intermediary cadres like U.D.C., Head Clerk and P.F.I (Grade II) were substituted by the departmental examination by the Central Board of Trustess with the approval of Central

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Government published in the Gazette under G.S.R. No.1528 dated 30.9.1967 and G.S.R. No. 38 dated 28.12.71. As a result of this substitution, the position in relation to seniority i.e. attributable to a direct recruit is being assigned to the examination qualified promotees for having stepped in that place. It was further argued that a bare reading of the regulation clearly shows that when the appointment/promotion to a particular post is to be made from two different ways than the principal envisaged under Regulation 7 is to be followed and not Regulation 6. Once the above mode of seniority has been accepted by applicants, they cannot challenge the same now.

12. We have heard the learned Counsel for both the parties and examined in great detail the papers of the case. It is seen that the Recruitment Rules of the Organisation, which deal with a number of posts (from head Clerk to Peons/Jamadars etc.) clearly stipulate the source of recruitment for each post i.e. by direct recruitment or by promotion from lower level; Under Serial No.8 of the Recruitment Rules (Third Schedule), for the Upper Division Clerks, 100 per cent is shown by promotion; 50 per cent by promotion of Lower Division Clerks including Steno-typists, Telephone Operators or Telex Operators on the basis of seniority subject to the rejection of the unfit and 50 per cent by promotion of L.D.Cs including Steno-typists, Telephone or Telex Operators on the basis of a competitive examination. Thus, there is no mention of any direct recruitment for the posts of Upper Division Clerks. Incidentally, it will not be out of place to refer to the amendment to the Recruitment Rules made in November, 1984 so far as the posts of Upper Division Clerks are concerned.

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Under this amendment, there will be three sources of recruitment for the post of Upper Division Clerk as follows:-

- (i) 50 per cent by promotion of L.D.Cs including Telephone or Telex Operators based on seniority subject to the rejection of the unfit;
- (ii) 25 per cent by promotion of L.D.Cs, including Telephone or Telex Operators on the result of a departmental qualifying examination restricted to the existing L.D.Cs who possess the educational qualifications prescribed, namely Matriculation or equivalent and have completed one year of service in the Cadre of L.D.Cs.
- (iii) 25 per cent by direct recruitment; Provided that serving L.D.Cs including Telephone or Telex Operators shall also be entitled to direct recruitment if they possess the educational qualification prescribed for direct recruitment (namely Bachelor's Degree of a recognised University)"

13. Thus it can be inferred that for the recruitment of U.D.Cs. in the Organisation, the principle of direct recruitment as such was introduced only after the amendment in November, 1984, who would be educationally better qualified than the promotees, and the principle of rotational seniority under para 7 of the General Principles of seniority can be considered to be applicable in their case.

14. During the discussions on the case, the learned Counsel for the Respondents agreed, that the 50 per cent posts filled by promotion through departmental examination cannot really be categorised as "direct recruits." He, however, considered the problem as too intricate to be solved by just changing the classi-

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fication at this stage, particularly since the practice of classifying these promotees as direct recruits has been in existence for a long time. He felt that it is really necessary that the Department should now make appropriate Rules to meet the situation and regulate the seniority of the employees.

15. We also examined the question in the context of the length of service, educational qualifications etc. of two groups of U.D.Cs. cadre envisaged in the Recruitment Rules. It is seen that prior to the amendment of the Recruitment Rules in November, 1984, there was absolutely no difference in their educational qualifications nor was any minimum length of service prescribed for appearing in the competitive examination which was open to the serving L.D.Cs. The syllabus of the departmental examination was also perused and it was seen that out of the three subjects carrying 100 marks each, two subjects had nothing to do with the knowledge of the Departmental Rules and Regulations namely, General English and Essay and General Knowledge/Elementary Book keeping and Arithmetic. Only one subject carrying 100 marks related to Fundamental and Supplementary Rules, Employees Provident Fund Act, etc. whereunder it was stipulated that the "questions of elementary nature" would be asked. It is also seen that no record of service of the persons was gone through to determine merit before allowing the candidates to appear in the departmental examination. Thus granting seniority on the basis of rotational principles to promotees through the above departmental examination would give them undue advantage over promotees under the first category who would be far senior to them in the L.D.C.s Cadre.

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It was enough that L.D.Cs. passing the Departmental Examination would get earlier promotion than the U.D.Cs. cadre but given them seniority over the seniormost L.D.Cs. in the Cadre by applying the principle 7 of the General Principles of seniority would be granting them undue benefit to them which is not envisaged in the rules. Incidentally, in some departments of the Central Government, like the Audit and Accounts Department, candidates who pass the departmental competitive examination are granted promotion to the Section Officer's Grade, which is a supervisory grade but the examination is of a really high standard and is not comparable with what is prescribed in the Provident Fund Commissioner's Organisation."

"17. Thus in the present case promotees on the basis of departmental examination who belong to the LDCs cadre cannot be termed as direct recruits and they belong essentially to the same category as promotee from the L.D.C.s cadre, who were promoted to the U.D.C's cadre on the basis of seniority-cum-fitness.

As a matter of fact the promoted U.D.Cs. whether on the basis of examination or on the basis of seniority cannot be classified as direct recruits since all of them are promotees from the L.D.Cs cadre. The promotee U.D.Cs who have got promotion by qualifying departmental examination do not become 'direct recruits' just because the Central Provident Fund Commissioner has chosen to call them as such in his letter addressed to the Regional Provident Fund Commissioner. In fact the phrase 'direct recruit' is well understood in service law and it is difficult to agree that

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an administrative authority can categorise "promotees" as "direct entrants" just to suit administrative convenience. The argument regarding estoppel does not appear to be valid since the conditions as regard seniority incorporation in the promotion orders of the applicants were not statutory conditions."

6. It will be observed from the above that the Chandigarh Bench did not accept the argument that the direct recruitment in the intermediary cadre like UDC was substituted by the Central Board of Trustees with the approval of the Central Government published in the Gazette under G.S.R. No.1528 dated 30.9.1967 and G.S.R. No.38 dated 28.12.1971. This view was further sought to be fortified by relying on the amendment to the Recruitment Rules notified in November, 1984 regulating recruitment to the post of UDC viz. 50% by promotion of LDCs; 25% by promotion of LDCs declared successful in the departmental qualifying examination and 25% by direct recruitment. The Bench appears to have come to the inference that the element of direct recruitment was introduced only in the amended Recruitment Rules in 1984 and that the <sup>will become applicable</sup> rotational principle of seniority/only when the element of direct recruitment was introduced and that the examination promotees cannot be deemed to be direct recruits. In that view of the matter the Chandigarh Bench considered that LDCs who were promoted on the basis of the seniority subject to the rejection of the unfit and LDCs promoted on the basis of their being successful in the departmental qualifying examination as belonging to the same gene. The promotions on the basis of seniority subject to the rejection of unfit and on the basis of departmental examination thus came to be equated and consequently,

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rota-quota rule of seniority was held to be not applicable. The Bench was of the view that rota-quota principle can be applied only where there is an element of direct recruitment. It cannot be given effect to where both the sources of recruitment in the category of UDC emanate from the existing LDCs irrespective of the fact that first source of promotion is by promotion subject to the rejection of unfit and the second by examination. We also observe that the examination is open to all the LDCs.

Only best among the LDCs take the examination with a view to move over to the fast track to seek accelerated promotion.

The Chandigarh Bench further observed that the departmental examination comprised the following:-

- i. General English and Essay;
- ii. General Knowledge/Elementary Book Keeping and Arithmetics;
- iii. Fundamental and Supplementary Rules;
- iv. Employees Provident Fund Act, etc.

The above syllabus was considered in the perspective of the departmental examination conducted by the Audit and Accounts Department for promotion to the level of Section Officer which is a supervisory grade. The Bench considered that Audit and Accounts "examination is of a really high standard and is not comparable with what is prescribed in the Provident Fund Commissioner Organisation."

Admittedly, two examination are not comparable as the former is meant to test the skill and mental equipment of the LDCs while the latter is meant for testing the knowledge and skill gained by virtue of service rendered

over a longer period of time in the office rules and regulations etc. for the post of a Senior Supervisor. There has to be a substantial qualitative difference between the two sets of examination.

7. We may perhaps gainfully look into the genesis of the scheme of departmental examination. The scheme of Limited Departmental Competitive Examination was initially mooted by the First Central Pay Commission and was later came to be articulated by the Second Pay Commission vide paragraph 19 Chapter XLV of the Report as under:-

"Moreover there is at present hardly any scope of promotion from a lower service in one functional group of services to a higher service in another group. For instance, an officer in Class II of the Income Tax or Audit Service, cannot, once he is past the age of 24 years, enter the Indian Administrative Service. We made enquiries whether promotion by this kind of special competitive examinations was in vogue in any country, and we are informed that one-fifth of the vacancies in the Administrative Class in the United Kingdom is reserved for recruitment through a limited competition examination is not of the academic type; it is the same as for Method II recruitment to the Administrative Class from young graduates. In France also, half the admissions to the National School of Administration are reserved for persons already in the public service, who are between the ages of 24-30 and have put in at least 4 years' service. The admissions are made on the result of a competitive examination similar to, but not identical with, the competitive examination for

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(15) university graduates. There are elements in both British and French systems which might in combination be suitable in Indian conditions.

The Union Public Service Commission holds a combined competitive examination every year for recruitment to the all-India and Class I, and also some Class II, Central Services. A proportion of the vacancies-perhaps about 10 per cent.--in these services may be set apart to be filled by another examination to be conducted by the Commission for serving civil servants. The age-limits may be between 24-30, and the qualifying service may be 5 years. It should be an essential part of the scheme that only those who are nominated by their Departments should be permitted to take the examination; and the criteria for departmental nominations should be not only good work and good conduct, but also exceptional promise."

The intent of introducing such a scheme was, therefore, to provide an opportunity to the brighter youngmen who might have missed the bus and who had the mental calibre and personal qualities for rendering service at the higher levels not only to achieve their ambition but to be of greater use to the nation. The Pay Commission observed that the criterion for departmental nominations for the limited competitive examination should not only be good work and good conduct but also exceptional promise.

More or less similar suggestion was later made by the Administrative Reforms Commission in its report on Personal Administration vide paragraph 18 of Chapter-V. The Administrative Reforms Commission further recommended

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that:-

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"18. Further, to provide opportunities for exceptionally talented persons to quickly move into higher levels, we suggest that officers who are less than, say, 35 years of age and who have put in a minimum number of six years of service in any capacity should be allowed to have one, and only one, chance at the open competitive examination irrespective of the number of chances they might have taken earlier. Such persons should, of course, fulfil the conditions relating to educational qualifications."

The seedling planted by the First and Second Pay Commissions and nurtured by the Administrative Reforms Commission was eloquently articulated in the report of the Third Pay Commission when they stated:-

"We feel that it would be advantageous to establish a system for enabling the brighter employees in the Class II and Class III to get into the next higher class quicker than the normal processes of promotion would permit. Such a system would entail introducing a larger number of limited competitive examinations for promotion from Class III to Class II and from Class II to Class I. To accommodate the system of accelerated promotions, it might in certain cases be necessary to increase the existing promotion quota. These matters were considered in some detail by the Second Pay Commission,\* and more recently, by the Administrative Reforms Commission.\*\* Both of them suggested concrete measures and we do not wish to go over the same ground again....." "It is not also our intention

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that standards of recruitment should be diluted merely to open up promotion avenues. In our view, no impairment in the efficiency of the public services should be countenanced. Persons from the lower levels should be promoted only if they are found fit for discharging the duties of the higher posts efficiently. While we would readily agree to relaxation in age for serving employees to compete with outsiders in open recruitment, we would not favour relaxations either in educational or technical qualifications, or, in the standards of the trade tests. In advocating the system of limited competitive examinations we have in mind the need to improve the promotion prospects of the relatively younger sections of the employees, as we feel that they would be more adaptable to the needs of the higher posts, and would have greater potential for self-improvement than their older colleagues."

8. It was in pursuance of these suggestions/recommendations that the concept of Limited Departmental Competitive Examination came to be established and found its way in the recruitment rules of the various departments for a large number of intermediary posts in the Central Government. The object of the scheme of limited departmental competitive examination without any ambiguity is to provide fast track promotional avenue to relatively younger employees who had earlier missed the bus for a variety of reasons to enable them to of greater service to the nation. It would be a negation of the intent of the scheme of providing accelerated promotion to the deserving

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employees who have worked hard and passed the departmental qualifying examination, if they have to await for their promotion in the order of seniority based on the date of joining or the rank obtained in the initial recruitment examination. The negation of the intent of the limited departmental examination would thus not only lead to greater frustration but would also perhaps place premium on inefficiency. There is no doubt that the departmental examinees are not direct recruits. Nor in fact the Recruitment Rules provide for direct recruitment. The recruitment rules provide for recruitment to the post of UDC 50 per cent by promotion subject to the rejection of unfit and 50 per cent from among those who qualify in the departmental examination. There is no element of direct recruitment in the statutory rules. But this does not mean that the LDCs who qualify in the departmental examination cannot be given the benefit due to them in terms of the recruitment rules, as is given to the direct recruits. Their qualifying in the examination proves that they are men of greater promise, greater ability and higher potential. They are better equipped to shoulder higher responsibilities leading to the improvement in the efficiency of administration.

The argument seems to be that for rota quota rule of seniority, it is necessary to have an element of direct recruitment. To our mind the question is not whether there should be an element of direct recruit for rotation of vacancies but whether the rotation of vacancies should depend on the mode and of recruitment to the grade.

9. In this context it is of interest to consider the provisions of recruitment to the Lower Division Grade in terms of the Central Secretariat Clerical Service Rules, 1962 is made from the following sources:-

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12. Recruitment to the Lower Division Grade of the Service.--(1) Vacancies in the Lower Division Grade shall be filled in the following manner, namely:-

"(a) Ten per cent of the vacancies in each cadre may be filled by appointment, by promotion, of Group D employees (borne on regular establishments) working in the Ministries, and Offices participating in the Central Secretariat Clerical Service, in the following manner, namely:--

(i) Five percent of the vacancies may be filled on the basis of qualifying examinations held for this purpose by the Staff Selection Commission; and

(ii) Five percent of the vacancies may be filled on the basis of seniority, subject to the rejection of the unfit, from amongst those Group 'D' employees who are within the range of seniority prescribed by the Department of Personnel and Administrative Reforms and are educationally qualified for appointment as Lower Division Clerk i.e. who have passed the Matriculation or an equivalent examination of a recognised Board or University;

Provided that if sufficient number of persons do not become available, the vacancies shall be filled in the manner prescribed in clause (b).

Provided further that if more of such employees than the number of vacancies available under this clause qualify at the said examination, such excess employees shall be considered for filling the vacancies arising in the subsequent years so that the employees qualifying at an earlier examination are considered before those who qualify at a later examination."

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(b) Ninety per cent of the vacancies or such higher percentage as may be determined by the Central Government in the Department of Personnel and Administrative Reforms in the Ministry of Home Affairs in accordance with the proviso to clause (a) shall be filled by direct recruitment on the basis of competitive examination held for the purpose by the Staff Selection Commission...."

The inter se seniority of the persons recruited through the above modes is regulated as under:-

"(i) Those appointed under clause (a) (i) of sub-rule (1) of rule 12 shall rank inter se in the order in which their names are arranged in a single list by the Staff Selection Commission on the basis of their seniority in the parent Group D post, the employees holding posts in a higher grade to rank senior to those in the lower grade.

(ii) Those appointed under clause (a) (ii) of sub-rule (1) of rule 12 shall rank inter se in the order of their seniority in the lower grade.

(iii) The inter se seniority of persons referred to in items (i) and (ii) above shall be in the ratio of 1:1 that is to say that the persons in these categories shall be arranged by taking alternatively one person each from amongst the categories of persons specified in items (i) and (ii) above respectively.

(iv) Those appointed under clause (b) of sub-rule (1) of rule 12 shall rank inter se in the order of merit in which they are placed at the competitive examinations on the results of which they are recruited, the recruits of an earlier competitive examination being ranked senior to later examination.

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(v) The inter-se seniority of persons referred to in items (i), (ii) and (iv) above shall be regulated according to the quotas fixed for each of the two groups, in accordance with a roster maintained by each Cadre Authority, starting with one person referred to in item (ii) above, followed by one from item (i) and 18 from item (iv) and so on."

In accordance with the Third Schedule to the said rules promotion to the Grade of UDC is regulated as

under:-

"1. Constitution.--The Select List for the Upper Division Grade in each cadre on its initial constitution under rule 7 shall be determined by the Department of Personnel and Administrative Reforms in the Ministry of Home Affairs.

2. Maintenance.--(1) Subject to the provisions of Clause (2) of this regulation, additions to the Select List in any cadre after its constitution under regulation 1 shall be made in such numbers as the cadre authority may determine from time to time, keeping in view the existing and anticipated vacancies, and the proportion of 3 : 1 from --

(a) Officers of the Lower Division Grade in that cadre who have rendered not less than eight years' approved service in the grade and are within the range of seniority in that grade subject to the rejection of the unfit.

Provided that where an officer of the Lower Division Grade is rejected as unfit, the reasons for such rejection shall be recorded in writing and communicated to the officer concerned; and (b) members of the Lower Division Grade selected on the results of the limited departmental competitive

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examinations held by the Staff Selection Commission for this purpose from time to time in the order of their merit.

Persons of the two categories referred to above being included in the Select List by taking alternatively three persons from category (a) and one person from category (b) above, and so on, in that order."

It is clear from the above that even though there is no element of direct recruitment in the category of UDC in the Select List the names of those who are considered for promotion on the basis of seniority subject to the rejection of unfit and those who come through limited departmental examination are arranged on the rotational principle of seniority. In the circumstances there is little reason to find fault with the application of rotational principle of seniority in the case of UDCs in the offices of Regional Commissioner of Provident Fund on the pattern obtaining for intermediate post where there is an element of direct recruitment.

10. The learned counsel appearing in OA-1699/88 brought to our notice the judgement of the Madras Bench of the Tribunal in OA-600/89 - V.Varadharajan v. Central Provident Fund Commissioner & Ors. wherein the Tribunal had dealt with the promotion of UDCs to the grade of Head Clerks where the vacancies are filled 75% on the basis of seniority and 25% on the basis of qualifying examination. Relying on the decision of the Ernakulam Bench of the Tribunal, the Madras Bench directed the respondents to refix the seniority of the applicants in the light of the judgement in OA-623/88 of the Ernakulam Bench. The direction of the Ernakulam Bench was that "the applicants therein should be promoted with retrospective effect from

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the date of occurrence of the vacancies in the post of Head Clerk against the quota meant for examination passed candidates."

These two judgements run contrary to the judgement of the Chandigarh Bench of the Tribunal and the Hyderabad Bench of the Tribunal.

11. The next important point which was raised before us by the learned counsel for the applicants in the first four OAs was that the contention of the R.K. Thapar and others in favour of rota quota principle as existing prior to the Supreme Court's decision really amounts to a prayer for review of the said decision of the Hon'ble Supreme Court's which has been held to be binding precedent by the Full Bench judgement of the Tribunal in the case of R.D. Gupta (supra). It was, therefore, submitted that while it may be open to the applicants to make a prayer directly to the Hon'ble Supreme Court in appropriate proceedings to reconsider its view, it was not open to the applicants to ask the Tribunal to undertake this review.

12. We are, however, of the view that the order of the Hon'ble Supreme Court in SLP(C)-7752/87 in Mohinder Kumar's (supra) case should not be an obstacle in reconsidering the issues raised in the present batch of OAs in view of the judgement of the Constitution Bench of the Hon'ble Supreme Court as their Lordships have gone into the matter of inter se seniority in the Direct Recruit Class-II Eng. Officers' Ass. v. State of Maharashtra & Ors. JT-1990 (2) SC-264 taking into consideration all the earlier decisions.

Their Lordships in summing up the position in this regard have held that:-

"(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation."

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

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

(C) When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly.

(D) If it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down.

(E) Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date.

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(F) Where the rules permit the authorities to relax the provisions relating to the quota, ordinarily a presumption should be raised that there was such relaxation when there is a deviation from the quota rule.

(G) The quota for recruitment from the different sources may be prescribed by executive instructions, if the rules are silent on the subject.

(H) If the quota rule is prescribed by an executive instruction, and it is not followed continuously for a number of years, the inference is that the executive instruction has ceased to remain operative.

(I) The posts held by the permanent Deputy Engineers as well as the officiating Deputy Engineers under the State of Maharashtra belonged to the single cadre of Deputy Engineers.

(J) The decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinised for finding out any possible error. It is not in the interest of Service to unsettle a settled position. (Para 47)"

13. Having heard the learned counsel of both the parties it is our understanding that the promotees considered on the basis of seniority subject to the rejection of unfit would be deemed to be promoted according to the rules only after the Departmental Promotion Committee (DPC) has recommended them for promotion. Similarly, the examination passed candidates would become eligible for consideration for promotion to

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the grade of UDC in their own quota from the date the results are declared. The recruitment from both the sources has to be within the limits of the quota prescribed in the statutory rules unless the quota rule is not followed continuously for a number of years.

The law laid down in the case of the Direct Recruit Class-II Eng. Officers' Asss. (supra) by the Hon'ble Supreme Court will apply with equal force wherever there is recruitment from more than one source. The phrase more than one source does not necessarily mean that one of the sources has to be by direct recruitment. It can be as in the present case promotion by seniority and promotion through the limited departmental competitive examination. These two modes also constitute two different sources of recruitment to the grade of UDC.

The significance of the Hon'ble Supreme Court's observation in the Direct Recruit Class-II's (supra) case in clause (J) above to the effect that "it is not in the interest of service to unsettle a settled position" also cannot be lost sight of.

In view of the above discussions and the conflicting judgements of the various Benches of the Tribunal we are of the view that this matter should be referred to a larger Bench of the Tribunal to settle the issues arising from perpetual rivalry for seniority in service between the two groups. We, therefore, frame the following issues for the decision of the larger Bench:-

- a) Whether the officers promoted on the basis of seniority subject to the rejection of unfit and those promoted on the basis of being declared successful in the departmental qualifying examination should be treated as promotees and assigned seniority in accordance with the principle of seniority on the basis length of service;

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- b) whether the rota quota principle of seniority is applicable only in the grades where there is an element of direct recruitment;
- c) whether the judgement in Mohinder Kumar & Ors. (supra) of the Hon'ble Supreme Court shall constitute a binding precedent (as held by the Full Bench of the Tribunal in R.D. Gupta's (supra) case), in the face of the judgement of the Constitution Bench of the Hon'ble Supreme Court in the Direct Recruit Class-II-Engg.-Officers's Ass. (supra); and
- d) whether it will be advisable to unsettle the seniority fixed on the basis of the rota quota principle in the two groups of recruitees to the grade of UDC at this point of time, as the same would have far-reaching unsettling effect in managing the cadre of not only of the UDCs but also the posts in the higher grades.

(I.K. RASGOPTRA) 18/4/91

MEMBER (A)

(AMITAV BANERJI)

CHAIRMAN

'SKK'