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CAT/3/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1659 1987
T.A. No.

DATE OF DECISION 31.8.1988

Amrit Lal Petitioner

Mr. D.C. Vohra, Advocate with Mr. Advocate for the Petitioner(s)
Abraham Joseph

Versus

Union of India & Others Respondent

Mr. N.S. Mehta, Advocate for Advocate for the Respondent(s)
Respondent No. 1.

Mr. A. Mariarputham, Advocate for Private Respondents.

CORAM :

The Hon'ble Mr. Justice J.D. Jain, Vice-Chairman.

The Hon'ble Mr. Kaushal Kumar, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? —
4. Whether it needs to be circulated to other Benches of the Tribunal? —

2ND - P. CAT/86-3-12-86-15,000

(Judgement of the Bench delivered by Hon'ble Mr. Justice J.D. Jain,
Vice-Chairman)

(Kaushal Kumar)
Administrative Member

(J.D. Jain)
Vice-Chairman

31.8.88
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,

NEW DELHI

Regn. No. QA 1659 of 1987

Date of Decision:

Amrit Lal S/O Late Shri Kharaiti Lal

R/O C/I-2 Lajpat Nagar, New Delhi

and 15 others

.. ... Applicants

Versus

Union of India through the Secretary,

Department of Personnel & Training

Ministry of Personnel, Public Grievances

and Pension, New Delhi and 6 others

.. Respondents

CORAM:- HON'BLE MR. JUSTICE J.D. JAIN, VICE-CHAIRMAN.

MR. KAUSHAL KUMAR, ADMINISTRATIVE MEMBER

PRESENT: Mr. D.C. Vohra, Advocate with Mr. Abraham Joseph,
Advocate for the applicants.

Mr. N.S. Mehta, Advocate for Respondent No.1.

Mr. A Mariarputham, Advocate for Private Respondents.

JUDGMENT:

(Judgment of the Bench delivered by Hon'ble Mr. Justice
J.D. Jain, Vice-Chairman).

-.-.-.-.

This application under Section 19 of the
Administrative Tribunals Act (for short the 'Act')
brings out before us once again the deep rooted and
perennial controversy with regard to the inter se
seniority of the direct recruits and the promotees
to the Service arising out ^{of} statutory rules providing
for quota and rota for filling up the cadre posts.
The applicants numbering sixteen in this case are
promotee Section Officers belonging to the cadre

OA No. 1659 of 1987:

of Section Officers in the Central Secretariat Service (hereinafter referred to CSS) and they have challenged the eligibility lists for promotion to Grade-I (i.e. Under Secretary to Govt. of India or equivalent) prepared for the years 1983, 1984, 1985, 1986 and 1987. In order to comprehend the nature of controversy raised in the instant case, the relevant rules called the Central Secretariat Service Rules, 1962 (for short the Rules) may be noticed at first. The Rules were framed under the proviso to Article 309 of the Constitution and came into force from October 1, 1962. Under the Rules, the Central Secretariat Service was constituted and as per Rule 3 there are four grades in the Service classified as follows:-

- (i) Selection Grade (Deputy Secretary to the Government of India or equivalent);
- (ii) Grade I (Under-Secretary to the Government of India or equivalent);
- (iii) Section Officers;
- (iv) Assistants.

The first two grades have been combinedly classified as Central Civil Service, Grade 'A' while the other two have similarly been classified together as Central Civil Service, Grade 'B' Ministerial. Posts in the first three grades are gazetted while the posts in the Assistants' Grade are non-gazetted. Rule- 2 of the Rules as corrected upto 30th of November, 1981 defines the following expression as under:-

- (a) xx xx xx
- (b) xx xx xx

(c) "approved service" in relation to any

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(e) "Cadre" means the group of posts in Grades of Section Officer and Assistant in any of the Ministries or offices specified in column (2) of the First Schedule and in all the Offices specified against such Ministry or Office in column (3) of that Schedule;

(f) "Cadre authority" in relation to any cadre means the Ministry or office specified in respect of that cadre in column (2) of the First Schedule;

Note: For the purpose of disciplinary matter, "cadre authority" in relation to any cadre, however, means the Ministry or office, specified in respect of that cadre in column 2 or the office specified in column 3 of the First Schedule.

(g) "Cadre officer" in relation to the Section Officers' Grade or the Assistants' Grade means a member of the Service of the Section Officers' Grade or Assistants' Grade as the case may be, and includes a temporary officer approved for long-term

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appointment to that Grade;

(hh) "Common Seniority List" in relation to any Grade means the seniority list of officers of that Grade serving in all the cadres specified in the First Schedule as on the appointed day and revised from time to time in accordance with the regulations to be framed in this behalf by the Central Government in the Department of Personnel and Administrative Reforms in the Ministry of Home Affairs;

(i)	xx	xx	xx	xx
(j)				
(k)	xx	xx	xx	xx

(l) "long-term appointment" means appointment for an indefinite period as distinguished from a purely temporary or ad hoc appointment, like appointment against a leave or other local vacancy of a specified duration.

(m)	xx	xx	xx	xx
(n)				
(o)				
(oo)				
(p)	xx	xx	xx	xx

(q) "Select List" in relation to the Selection Grade and Grade I or the Section Officers' Grade and the Assistants' Grade means the Select list prepared in accordance with the regulations made under sub-rule (4) of rule 12 or under the regulations contained in the Fourth Schedule, as the case may be;

(r)	xx	xx	xx	xx
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(s) "temporary officer" in relation to any Grade means a person holding temporary or officiating appointment in that Grade on the basis of being regularly approved for such appointment.

It is obvious from the foregoing that there ^{are} ~~separate~~ cadres of the Section Officers having regard to the Ministry/office to which they are allocated and no such thing as ^{All} ~~Secretariat~~ Cadre of Section Officers.

Rule 8 contemplates the initial constitution of each cadre and provides that the permanent and temporary officers of the Section Officers' Grade and the Assistants' Grade in each cadre on the appointed day shall be determined by the Central Government in the Department of Personnel and Administrative Reforms in the Ministry of Home Affairs. Rule 12 makes provision for recruitment to Selection Grade and Grade-I of the Service. However, we shall advert to the same a little later. Rule-13 regulates method of recruitment to the cadre of Section Officers which is very relevant for the disposal of the present application. Rule 13(1) reads as under:-

"One-sixth of the substantive vacancies in the Section Officers' Grade in any cadre shall be filled by direct recruitment on the results of the competitive examinations held by the Commission for this purpose from time to time. The remaining vacancies shall be filled by the substantive appointment of persons included in the Select List for the Section Officers' Grade in that cadre. Such appointments shall be made in the order

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of seniority in the Select List, except when, for reasons to be recorded in writing, a person is not considered fit for such appointment in his turn.

Sub-rule (5) of Rule 13 is to the following effect:

"For the purpose of sub-rules (1) and (2) a Select List for the Section Officers' Grade shall be prepared and may be revised from time to time. The procedure for preparing and revising the Select List shall be as set out in the Fourth Schedule"

The determination of the seniority of the members of the CSS is governed by the provisions contained in Rule 18(3) which lays down--

(a) xx xx x xx xx

(b) xx xx xx xx xx

" (c) The relative seniority of direct recruits to a Grade and persons substantively appointed to the Grade from the Select List for the Grade shall be regulated in accordance with the provisions made in this behalf in the Fourth Schedule"

The Fourth Schedule to the Rules contains the regulations for the constitution and maintenance of the Select Lists for the Section Officers and Assistants Grades of the CSS. Regulation 3 deals with seniority. Clause (3) thereof says that:

"Direct recruits to a grade and persons substantively appointed to the grade from the Select List for the grade shall be assigned seniority inter se according to

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the quota of substantive vacancies in the grade reserved for direct recruitment and the appointment of persons included in the Select List, respectively."

It is thus manifest that the Select List referred to in sub-rule (1) of Rule 13 is drawn up by following procedure specified in Regulation 2 of the Fourth Schedule which provides that additions to the Select List for the Section Officers' Grade in any cadre shall be made keeping in view the existing and anticipated vacancies so as to ensure that one person each by rotation is included from out of the category of persons, namely (a) officers of the Assistants' Grade belonging to that cadre who have rendered not less than eight years' approved service" in that grade and are within the range of seniority in order of their seniority subject to the rejection of the unfit, the range of seniority being defined in Rule 2(oo) and (b) persons selected on the basis of the result of the limited departmental competitive examination held by the Commission from time to time in the order of their merit.

Inter se seniority of direct recruits and promotees in the grade of Section Officers is fixed in accordance with the provisions contained in Regulation 3(3) of the Fourth Schedule. The requirement of the Regulation is that inter se seniority of the direct recruits and persons substantively appointed to the grade from the Select List should be determined in accordance with the quota on the basis of substantive vacancies in the grade reserved for the two categories of officers. (See H.V. Pardasani V Union of India & others, 1985(2) SCC 468)

Rule 12 makes provisions for recruitment to the Selection Grade as also Grade 1. Sub-rule (2) thereof provides:

Vacancies in Grade 1 shall be filled by

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promotion of permanent officers of the Section Officers' Grade who have rendered not less than eight years' approved service in that grade and of permanent officers of the Grade 'A' of the Central Secretariat Stenographers' Service who have rendered not less than eight years' approved service in that grade and have worked as Section Officers for at least a period of two years in accordance with the proviso to Rule 10 and are included in the Select List for Grade 1 of the Service prepared under sub-rule (4).

There are four provisos to this sub-rule. The second and third provisos which are relevant are to the following effect:

Provided further that no person included in a later Select List shall be eligible to be appointed to the grade until all officers included in an earlier Select List have been appointed.

Provided further that if any person appointed to the Section Officers' Grade is considered for promotion to Grade 1 under this sub-rule, all persons senior to him in Section Officers' Grade who have rendered not less than six years' approved service in that grade, shall also be considered notwithstanding that they may not have rendered eight years' approved service in that grade; provided that the aforesaid condition of six years' approved service shall not apply to a persons belonging to the Scheduled Castes

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or the Scheduled Tribes.

Sub-rule (4) provides that for the purposes of sub-rules (1) and (2) a Select List for the Selection Grade and Grade-I shall be prepared and may be revised from time to time. In Note 2 to sub-rule (5) it has been indicated that "in the case of persons included in the Select List for the Section Officers' Grade 'approved service' for the purpose of this rule shall count from July 1 of the year in which the names of the officers are included in the Select List". In the case of the direct recruits to the Section Officers' Grade, such service shall not count from July 1 of the year following the year of the competitive examination on the results of which they have been recruited provided that where there is a delay of more than three months in the appointment of any candidate, such delay is not due to any fault on his part.

It will thus be seen that promotion to ^{the} grade of Under Secretary is made from amongst the members belonging to the grade of Section Officers and Rule 12 is the relevant rule. In exercise of the powers under Rule 12(4), the Central Government has framed the Central Secretariat Regulations, 1964. Service (Promotion to Grade 1 and Selection Grade) Regulation 5 thereof lays down the procedure for preparation of the annual eligibility lists:

"5. Preparation of the Select List .

A Grade-1

(1) A fresh list for Grade 1 shall be prepared at least once every year if on the 1st July of the year the number of officers already included in the Select List for that Grade is below the strength fixed under Regulation 3(1). For the purpose of preparing the Select List, the Department

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of Personnel and Administrative Reforms in the Ministry of Home Affairs shall obtain from the cadre authorities the names of all eligible officers of the Section Officers' Grade and of Grade A of the Central Secretariat Stenographers' Service included in their respective cadres.

Regulation 5(2)(c) lays down that "officers other than in clauses (a) and (b) shall be arranged in the manner specified below:-

(i) The names of officers appointed to the Section Officers' Grade before the appointed day and included in the Select Lists of Section Officers at the time of initial constitution under para 1 of the Fourth Schedule to the Rules shall be arranged in the order of their seniority as determined before that day. Additions to this list shall be made by including officers appointed to the Section Officers' Grade after the appointed day through the Select List for the Grade, officers appointed on the basis of an earlier Select List being placed above those appointed on the basis of a later Select List. The order of names shall be in the same order as in all the Secretariat Lists issued by the Department of Personnel and Administrative Reforms.

Note: For the purpose of this sub-clause, the Secretariat Select List shall mean the consolidated version of the cadre-wise additions made to each Select List, following the same principles as laid down in paragraph 2 of the Fourth Schedule to the Rules.

(ii) In the list of Section Officers prepared

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under sub-clause (i), the names of those appointed to the Section Officers' Grade as direct recruits on the basis of the combined competitive examinations arranged in the order of merit in the Combined Competitive Examinations, persons appointed on the results of an earlier examination being placed above those appointed on the results of a later examination, shall be interpolated according to the quota in vacancies reserved for direct recruitment at the time of their recruitment."

This Select List is obviously contemplated to cover the entire Secretariat and is, therefore, required to reflect all the Select Lists of the cadres of Section Officers. In this single list of eligible Section Officers the names of directly recruited Section Officers on the basis of combined competitive examinations as arranged in the order of merit in such examinations as the scheme provided, have to be interpolated according to the quota of vacancies reserved for direct recruits at the time of their recruitment. The case of the applicants in short is that the Union of India- respondent No.1 is the Cadre Controlling Authority of the CSS even though the applicants have been allocated to the respondent No.2 viz. the Ministry of Defence and their promotion to Grade 1 is the responsibility and the function of respondent No.1 (UOI) who have to issue all Secretariat common seniority lists vide Rule 2(hh) adverted to above. However, no such common seniority list has ever been issued by Respondent No.1 and they issued

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only

/a yearwise eligibility list. The applicants 1 to 10 were included in the Select List of Section Officers' Grade for the year 1974 and, therefore, their approved service is to count from 1-1-1974 in terms of Note 2 to Rule 12(5). Further applicants 11 to 16 were put in the Select Lists for the year 1975. The said Select Lists were titled "Combined Select List/ All Secretariat Select List of Section Officers' Grade". Thus approved service of the applicants 11 to 16 commenced w.e.f. 1-1-1975 in terms of Note 2 to Rule 12(5) of the CSS Rules. Hence on completion of 8 years of their approved service, they became eligible for promotion to the Grade-I of the CSS during the years 1982 and 1983 respectively. In May, 1983, the respondent No.1 issued and circulated an eligibility list (copy Annexure I). The names of applicants 1 to 10 appeared at Sr. Nos. 343, 371, 379, 410 etc., in the said list while the names of applicants 11 to 16 were placed at Sr. Nos. 533, 557 etc. On the other hand the direct recruits in the Section Officers' Grade, who had appeared in the combined competitive examination conducted by the Union Public Service Commission- respondent No.4 in 1976, and who joined service w.e.f. 1-6-1978, were assigned seniority at Sr. No.4 to 23 and 25 to 32 in the eligibility list of 1983. Thus they adversely affected the seniority of the applicants by stealing a march over them even though they had joined service much later, but unjustifiably made eligible to be promoted to Grade-I of the CSS. Likewise in the subsequent eligibility list for promotion to Grade-I prepared by respondent No.1 in 1984, all directly recruited Section Officers of 1976, 1977, 1978 and 1979 examinations were placed above the applicants, the names of the latter being listed at Sr. No. 208, 235, 243 260 etc, while the names of the directly recruited Section Officers were listed at Sr. Nos. 2 to 19, 21, and 30 to 33 etc.

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A perusal of Annexure 'L' will no doubt show that direct recruits of 1977, who commenced approved service from 1-1-1978, occupied positions from 6 to 19 and 21 i.e. almost consecutively in the said list. Likewise direct recruits of 1979 were assigned seniority at Sr. Nos. 30,33,36 and 38 etc. while the departmental promotees, who had commenced approved service w.e.f. 1-1-1973, were placed below them.

Further contention of the applicants is that the situation became all the more worse on account of quota of the direct recruits being increased from one-sixth to one-fifth by respondent No.1 vide notification dated 10-2-1982 (copy Annexure M). Repeated representations ~~were~~ made by the applicants and other departmental promotees against unjust and unwarranted treatment being meted out to them in the matter of seniority vis-a-vis the direct recruits, fell on deaf ears. On the other hand, vide notification dated 29th of December, 1984 (copy Annexure O) Rule 13 was amended and the following proviso to sub-regulation (3) of Regulation 3 in the Fourth Schedule was added:-

" Provided that persons appointed substantively in the Section Officers' Grade in a particular year against the unfilled vacancies brought forward from previous years shall all be placed below the last slot be it for a direct recruit or for a person included in the Select List, determined on the basis of the rotation of vacancies between direct recruit and persons included in the Select List, in the year, as illustrated in Illustration II"

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The applicants and other promotee Section Officers also represented to Respondent No.2 that there was no justification for carrying forward the vacancies of direct recruits from year- to- year despite the fact that no such provision existed in the Rules. They assert that the slots were kept vacant for later recruits, who were thus given benefit of service when they had not actually rendered service from back date. The applicants have adverted to some of the cadre seniority lists prepared by respondent No.3 in which slots were kept vacant for the direct recruits to be filled later on. They also point out that even after the amendment there was no let up in the situation and the subsequent eligibility lists of 1985, 1986 and 1987 reflected the same position namely that the direct recruits of 1978 and 1979 were accorded seniority over the departmental promotees of 1973/1974 and the extent of advantage thus conferred on the direct recruits increased immensely and the gap between the two categories ranged from 7 to 9 years. Copies of eligibility lists for the years 1985, 1986 and provisional seniority list for the year 1987 are Annexures P, S and W-1. The grievances of the applicants precisely is that they have been pushed down in the matter of seniority from year- to- year because of the carry forward system of vacancies earmarked for direct recruits adopted by respondent No.1. thus conferring an unwarranted, unintended and unjust benefit to the direct recruits. Hence they pray that the respondent No.1 be directed:

- (a) to prepare a common seniority list afresh

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assigning proper seniority to the applicants, independent of the cadre-wise seniority lists, vis-a-vis the direct recruits, who joined the service later than the applicants;

- (b) to follow the principle of continuous officiation in the determination of the seniority of the applicants vis-a-vis the direct recruits because there has been a complete break-down of the quota system and rotational rule of seniority being discriminatory and violative of Article 16 of the Constitution;
- (c) to prepare an eligibility list for promotion to Grade 1 of the CSS containing the names of direct recruits and promotee-Section Officers on year- to-year basis in consonance with statutory rules;
- (d) to release all the direct recruitment vacancies which remained unfilled for two years in favour of the applicants and they ^{be} similarly placed as their colleagues in the Central Secretariat Service in view of amendment dated 29th of December, 1984, and to confer all other consequential benefits including promotion, pay etc. to the applicants after fixation of their seniority in accordance with the principle of continuous officiation.

The application is vehemently resisted by the respondents No.1 to 4. Some direct recruits were also allowed to be impleaded as respondents, but they were not allowed to file a counter-affidavit separately because of

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the constraint of time in view of the directions issued by the Supreme Court for time bound decision of this case. The anchorsheet of ^{their} defence is that the facts and issues in controversy sought to be raised by the applicants in the instant case having been already decided and settled by the Supreme Court in H.V. Pardasani V. Union of India and others, 1985(2) SCC 468, the instant application is barred by ^{the} principle of Res judicata. They assert that this Tribunal is also bound by the judgment of the Supreme Court in Pardasani case under Article 141 of the Constitution. They further assert that the present application raises identical issues that were raised in Pardasani case and even the period involved is the same. Hence the binding character of the Supreme Court ^{judgment} in that case cannot be overlooked. The petitioners in Pardasani case belonged to the Select Lists of Section Officers for the years 1972 to 1976 and they filed the petitions under Article 32 of the Constitution in a representative capacity for and on behalf of all similarly situated Section Officers working in various Ministries/Departments and offices in the Government of India in which they had sought the following reliefs:-

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- (a) quashing the eligibility list for promotion to Grade-I for the year 1983 by deleting the direct recruits at Sr. Nos. 4 to 23, 25 to 32, 113, 116 etc.;
 - (b) to prepare a fresh Select List for Grade I of CSS on the basis of length of service as Section Officers and
 - (c) to prepare a combined seniority of all Section Officers of the CSS.

The petitioners therein had also challenged the vires of Regulation 3(3) in the Fourth Schedule providing for rotation of vacancies in accordance with the prescribed

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quota and Note 2 appearing under Rule 12(5). However, the challenge was repelled by the Supreme Court and it was held that:

"Regulation 3(3) of the Fourth Schedule provides that inter se seniority of direct recruits and promotees shall be according to the quota of substantive vacancies in the grade reserved for direct recruits and promotees respectively. The Rules make detailed provision for giving effect to the quota rule and since officers are drawn from two different sources, provision has also been made for fixing inter se seniority. The scheme does not appear to be arbitrary and we are, therefore, of the view that the Rules and the Regulations intended to give effect to the scheme are not ultra vires either Article 14 or Article 16 of the Constitution. We may reiterate that the petitioners have not questioned the quota rule itself and if they had, for the reasons we have indicated both here and in the judgment of the connected matters, the objection would have been of no avail!"

They further point out that inter se seniority of direct recruits vis-a-vis promotees is governed by Rule 18(3) and Regulation 3(3) and the eligibility list for promotion to Grade-1 of CSS is prepared in accordance with Regulation 5(2)(c)(i) and (ii). Both the said Rule and Regulations have been upheld by the Supreme Court in H.V. Pardasani case and the eligibility list so prepared stood the test of judicial scrutiny in that case.

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Further, according to them, this very eligibility list of 1983 was under challenge before the Supreme Court. After scrutiny, the Supreme Court upheld its correctness. Their Lordships observed that:-

"In course of arguments, the petitioners' Counsel contended by relying on the feature that a bunch of direct recruits has been placed above a group of promotees by operation of the quota rule and that the fixation of seniority was arbitrary. It was pointed out by the learned Additional Solicitor-General appearing for the Union of India and Mr. Shanti Bhushan appearing for other respondents that the submission was misconceived. In this list of eligible officers, names of many who had already retired or had been promoted to other grades had not been shown. The working chart placed before us reflected the actual position. On a reference to the chart, we are satisfied that the quota rule has been implemented while drawing up the eligibility list in accordance with Regulation 5(2)(c)(i) and (ii). It was further explained that certain names which were not found in the eligibility list of 1982 appear in the list for the following year on account of the fact that on the completion of six years of service such names have been brought in as those officers became qualified for inclusion."

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Further, according to the respondents, the cadrewise seniority is an irrelevant consideration for promotion to Grade-I. It is ^{the} All Secretariat Eligibility List for promotion to Grade-1 of CSS, which is prepared in accordance with Regulation 5(2), which has a bearing on the point in issue and the same having been upheld by the Supreme Court, this Tribunal is debarred from going into the question over again. They tried to demonstrate that cadrewise seniority of a Section Officer may be totally different from his seniority ^{the} in All Secretariat Eligibility List because cadrewise seniority lists are maintained for a limited purpose like confirmation etc. only. According to them, the table drawn in the counter would show that if cadrewise seniority were to be taken into consideration for promotion to Grade-1, the seniority of the promotee Section Officers amongst them will undergo a substantial change. They justify the keeping of the slots vacant for direct recruits on the ground that quotas for both direct recruits and promotees are sacrosanct and are to be scrupulously followed as per the Statutory Rules. Reliance in this behalf has been placed on the decision in Sonal Sihimappa Vs. State of Karnataka, AIR 1987 SC 2359. They explain that the notification dated 29-12-1984 issued by the respondent No.1 abolished third proviso to Rule 12(2) of CSS Rules, 1962 which provided that if a person was to be considered for promotion, all persons senior to him were also to be considered provided they had put in six years of approved service notwithstanding that they had not completed eight years of approved service. Consequently no general category recruit was considered for promotion to Grade-I during the years 1985 and 1986. This, according to the respondents, was to the benefit of the promotee Section Officers. They assert that the

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following observations of the Supreme Court clinch the issue against the applicants:-

"Considerable argument was advanced in support of the petitioners' stand that in giving effect to the scheme prejudice has been caused to the petitioners. It is appropriate to take note here of the fact that the inter se seniority of the direct recruits and promotees in each of the cadres of Section Officers has not been challenged before us. Such fixation has been made years back. In the absence of challenge to such fixation, the consequential process of drawing up of Select List depending upon such seniority for promotion to Grade 1 (post of Under-Secretary) would not be open to challenge. The scheme contemplates drawing up of a combined list from out of the cadres of Section Officers and to entertain a challenge at this stage would naturally affect the respective seniority lists in the cadres and would involve many officers who have not been made parties to this proceedings. This Court has taken the view in many decided cases that if there is a quota rule to implement question of length of services becomes an irrelevant consideration (see *Mervyn Court Collector of Customs, Bombay*; *K.N. Chauhan State of Gujarat and P.S. Mahal V Union of India*). A number of decisions were cited on behalf of the petitioners, a reference to all of which is made in the connected judgment viz. *Union of India and others V. Union of India* and *Union of India V. Union of India* SCC 457. As pointed out by us there

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the case of A Janardhan and P.S. Mahal, this Court proceeded on the footing that there had been a breakdown in the enforcement of the quota rule. Once the quota rule fails, the rota can no longer be enforced without causing prejudice to officers with longer periods of service in the cadre. So we do not think that the ratio of those cases can be applied in the case before us where there is no material to support the contention that the vacancies have not been filled up by following the prescribed quota."

We may at the outset steer clear of plea of Res judicata raised by the Respondents, which is of preliminary nature. It is now well settled that the scope of the principle of Res judicata is not confined to what is contained in Section 11 CPC, but is of ^a more general application. The doctrine of Res judicata is ^a doctrine of wide import and Section 11 of the CPC is not exhaustive of it. ~~The highest~~ authority is of the view that the principle of Res judicata may not be confined to the limited provisions of the Code of Civil Procedure, the basic principle underlying the doctrine of Res judicata being that there should be finality in litigation and that a person should not be vex-ed twice over in respect of the same matter. In State of U.P. Vs. Nawab Hussain, 1977(2) SCC 806 following Devi Lal Modi Vs. Sales Tax Officer, Ratlam, 1965(1) SCR 686, it was held "that the principle of estoppel per rem judicatam is a rule of evidence. This doctrine is based on two theories: (i) the finality and conclusiveness of judicial decisions for the final termination of disputes in the general interest of the community as a matter of public policy, and (ii) the interest of the individual that he should be protected from multiplication of litigation. It, therefore, serves not only a public, but also a private purpose by obstructing

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the reopening of matter which has once been adjudicated upon. It is thus not permissible to obtain a second judgment for the same civil relief on the same cause of action, for otherwise the spirit of contentiousness may give rise to conflicting judgments of equal authority, lead to multiplicity of action and bring the administration of justice into disrepute. It is the cause of action which gives rise to an action that is why it is necessary for the Courts to recognise that a cause of action which results in a judgment must lose its identity and vitality and merge in the judgment when pronounced. It cannot, therefore, survive the judgment, or give rise to another cause of action on the same facts. This is what is known as the general principle of res judicata."

It is, therefore, to be seen whether several pleas and issues raised in the former litigation viz. H.V. Pardasani were identical to those raised in the instant case and whether the decision given therein would operate as res judicata so as to bar the present application. The aforesaid writ petitions (copy Annexure-II to the Counter) would show that the petitioners therein were promotee Section Officers having been promoted during the years 1972 to 1976. In para 3 of the petition they sought leave of the Court to file the said petition in a representative capacity for and on behalf of similarly situated Section Officers working in the various Ministries and Departments/ Offices in the Government of India. However, it is not known whether such permission was, in fact, accorded or not. We may, at best, presume that it was accorded and nothing more. The petitioners sought following reliefs therein:-

"quashing the list of persons prepared by the

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respondents, who according to the respondents, are in the zone of consideration for the preparation of Select List for 1983 for appointment to Grade -1 of the CSS;

(ii) issuing of a direction to prepare the list of Section Officers eligible for consideration for the preparation of the Select List for Grade-1 of CSS on the basis of length of approved service as Section Officers.

(iii) for quashing Rule 13(5) and regulation 3(3) of the Fourth Schedule and other Rules and Regulations of the Central Secretariat Service Rules, 1962 in so far as the said Rules and Regulations provide for the placement of direct recruit Section Officers appointed years after the promotees over the promotees and as senior to the promotees!

As already observed, the Supreme Court upheld the vires and the validity of Rule 13(5) as well as the Regulation 3(3) specifically. Even otherwise, it held that the Rules made detailed provision for giving effect to the quota rule and since the officers were drawn from two different sources, the provision had also been made for fixation of their inter se seniority. The scheme did not appear to be arbitrary and the Rules and Regulations were held not to be ultra vires either Article 14 or 16 of the Constitution. Indeed the Supreme Court reaffirmed the principle that in the absence of any special provision regulating determination of seniority, length of continuous

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service in any particular grade would be the basis for determining seniority in that grade and said that "the legal position is equally settled that if a rule prescribes a method of fixation of inter se seniority, the normal practice would not apply and the rule shall prevail obviously subject to its constitutionality." It further observed that "once the quota rule fails, the rota can no longer be enforced without causing prejudice to officers with longer periods of service in the cadre". However, their Lordships declined to apply the ratio of the decisions in A Janardhana V. Union of India, 1983 (3) SCC 601 and P.S. Mahal V. Union of India, 1984 (4) SCC 545 on the ground that there was not material to support the contention that the vacancies had not been filled up by following the prescribed quota. The Supreme Court also observed that "it is appropriate to take note here of the fact that inter se seniority of the direct recruits and promotees in each of the cadres of Section Officers had not been challenged before us. Such fixation has been made years back. In the absence of challenge to such fixation, the consequential process of drawing up of Select List depending upon such seniority for promotion to Grade-1 (post of Under-Secretary) would not be open to challenge. The scheme contemplates drawing up of a combined list from out of the cadres of Section Officers and to entertain a challenge at this stage would naturally affect the respective seniority lists in the cadres and would involve many officers, who had not been made parties to this proceeding". In the ultimate analysis, therefore, the writ petitions were dismissed.

It is true that in the present case the applicants have challenged the correctness of the

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cadre seniority list and have also brought out clearly the fact that there has been large scale deviation from ^{the} rule of quota and slots meant for direct recruits were carried forward in order to accommodate future direct recruits and thus giving them the ^{un-}intended seniority over promotee-Section Officers. No such pleas were specifically raised in H.V. Pardasani case even though a general prayer claiming the seniority on the basis of continuous officiation in service was made. It would further appear that there was not ^{an} iota of evidence to establish mass deviation from the principle of quota resulting in breakdown of rule of quota. However, the applicability of doctrine ^{of} res judicata cannot be over-ruled on that account in as much as the principle of constructive res judicata will be attracted in such a case. As held by the Supreme Court in Devi Lal Modi, on considerations of public policy to prevent multifariousness of legal proceedings between the same parties, the rule of constructive res judicata postulates that if a plea could have been taken by a party in a proceeding between him and respondent, he could not be permitted to take that plea against the same party in a subsequent proceeding which is based on ^{the} same cause of action and that the said rule applies also where the prior proceeding is a writ proceeding. Hence the mere fact that these pleas were not raised in H.V. Pardasani, would not oust the applicability of the doctrine of res judicata. It may also be pertinent to observe that ^{the} doctrine of res judicata would also be applicable where in the previous litigation, all persons, who had the same interest as the applicants, were litigating in a representative capacity. Reference in this context be made with advantage to Ahmad Adam Sait and others V.



M.E. Makhri and others, AIR 1964 (1) SC 107. However, as already noticed, it is not clear from the record as to whether permission to file the writ petition in the representative capacity was actually granted by the Supreme Court to H.V. Pardasani and other petitioners therein. On the assumption, however, that it was granted, we are inclined to hold that the decision of the Supreme Court ⁱⁿ so far as the eligibility list of 1983 is concerned, must be held to be final and conclusive so as to preclude afresh challenge by the applicants to the same. However, we are of the considered view that the aforesaid decision cannot operate as a bar to the challenge on the part of the applicants ^{the} to subsequent eligibility lists inasmuch as every eligibility list which is bound to be an annual exercise under the rules gives rise to a fresh cause of action to those aggrieved thereby. Thus the applicants are entitled as of right to challenge the subsequent eligibility lists for promotion to Grade-1 of CSS. on grounds other than those pressed into service in the former litigation. As observed earlier, there was no challenge to the cadrewise seniority lists and there was no material on record to establish that there was large scale deviation in implementing the rule of quota. The contention of the applicants now is that the vacancies falling in the quota of the direct recruits each year were not filled in toto and the balance vacancies were carried-forward from year-to-year on a large scale resulting in the appointment of a large number of ^{recruits} direct ^{carried forward} to the resultant/vacancies. No such carry-forward was permissible or envisaged in the rules and as such the Government had no authority or power to do so. Surely this can be a valid ground for attacking the eligibility lists for the year 1984 and onwards.

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It may be pertinent to notice here that in the working chart brought to the notice of the Hon'ble Judges of the Supreme Court in H.V. Pardasani case, the names of the applicants did not figure at all. The Supreme Court having recognised the fact that the cadre seniority lists have a bearing in the ultimate preparation of eligibility lists on All Secretariat basis, we are of the view that this ground of challenge cannot be washed away on the ground of res judicata. It is settled law that:

"a decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it"

See, in this behalf, State of Orissa V. Sudhansu Sekhar Misra & others, AIR 1968 SC 647. Looked at the matter from this angle, the plea of constructive res judicata will not be attracted to challenge ^{to} the correctness and validity of the eligibility lists of 1984 and subsequent years especially ^{the} one prepared in 1987, which is directly in question. Hence we ^{decide} this issue accordingly.

As far as the contention of the learned Counsel for the respondents that under Article 141 of the Constitution of India, the law declared by the Supreme Court is binding on the parties, we may simply say that the question is no longer res integra. See, in this context, M/S Shenoy and Co., V. Commercial Tax Officer, Bangalore and others, 1985(2) SCC 512, wherein it was ^{held} that the judgment and order of the Supreme Court would be binding not only on the particular parties therein, but on all the concerned parties, who had moved the High Court under Article 226. ^{observed} The Supreme Court/

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"to contend that this conclusion applies only to the party before this Court is to destroy the efficacy and integrity of the judgment and to make the mandate of Article 141 illusory". Hence there can be no shadow of doubt that the decision of the Supreme Court in Pardasani on the vires and legality of Rules and Regulations will be binding on all concerned including the applicants in the instant case. Indeed the applicants have not challenged the legality and vires of the Rules or the Regulations as a ground for seeking the reliefs prayed for.

The next question and perhaps the most crucial question which falls for determination in this case is whether there has been due compliance with the provisions of Rule 18 sub-rule (3)(ii)(i)(c) read with sub-regulation (3) of Regulation 3 embodied in the Fourth Schedule, which as stated above, regulates the relative seniority of direct recruits to a grade and persons substantively appointed to the grade from the Select List for the grade. The submission of the learned Counsel for the applicants precisely is that the provisions of Rule 13⁽¹⁾ prescribing quota for different sources from which recruitment is made to the grade of Section Officers not having been strictly adhered to and the slots meant for the direct recruits having been reserved for being filled in subsequent years; as and when the direct recruits were available for filling those vacancies, the eligibility list, which as stated above, is an annual exercise for promotion to Grade-1 of the Service, has been distorted out of all proportions and the direct recruits although appointed years after the promotee Section Officers, have stolen a march over them in the matter of seniority.

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The enormity^{of} ~~resultant~~ prejudice can be gauged by the simple fact that all the direct recruits are selected for promotion to Grade-1 of the Service i.e. Under-Secretaries' Posts as soon as they complete the prescribed years of service, which was six years in the case of the direct recruits prior to the amendment of the Rules vide notification dated 29th of December, 1984 and become eligible for promotion, whereas the promotee Section Officers have been rotting for over 12-15 years for being brought on the Select List even though they become eligible for promotion to Grade- 1 on completion of eight years of approved service. This anomaly and yawning gap between two components of the same Service viz. Section ^{Grade} Officers/has been widening from year-to-year and the situation at present is so unbearable that the gap between the seniority of the direct recruits and the promotees has touched an astounding period of 9/10 years as would be clear from a glance at the eligibility lists for the years 1984 onwards, the eligibility list for 1983 being specifically excluded from consideration because of the verdict of the Supreme Court in Pardasani case.

The Annexure-L is a copy of the eligibility list for selection to Grade- 1 of the Service for the year 1984. All the directly recruited Section Officers of 1976, 1977, 1978 and 1979 examinations have been placed therein above the applicants, although they were promoted to the grade of Section Officers on the strength of Select Lists for the years 1974 and 1975. Their names appear at Sr. Nos. 208, 235, 243, 260, 272, 283, 322, 332, 341, 344, 377, 398, 455, 470, 492 and 497 as compared to the names of the aforesaid direct recruit Section Officers, who are listed at Sr. Nos. 2 to 19, 21, 30, 33, 36, 38, 41, 45, 47, 50, 53, 55, 58, 62 and 63 (Sr.No. 30 onwards being SC/ST candidates). This yawning gap between the seniority of two categories

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of Section Officers has been ascribed to mal- functioning and improper implementation of the quota rule for recruitment to the grade of Section Officers.

It may be pertinent to notice here that vide notification dated 10th of February, 1982 (copy Annexure-M) the quota of direct recruits was increased from one-sixth to one-fifth for recruitment to the grade of Section Officers. Since the quota in the temporary vacancies earmarked for ^{the} "length of service" candidates was abolished, the same was proportionately distributed amongst the Assistants and the persons selected on the results of limited departmental competitive examinations in addition ^{to the direct recruits}. Further, vide the Central Secretariat Service (Second Amendment) Rules, 1984, which came into force ^{on} 1-7-1985, the eligibility period of service of the direct recruits for promotion to Grade-I of the Service was brought at par viz. 8 years with that of the promotee- Section Officers. However, an advantage was conferred on the Section Officers belonging to the Scheduled Cates/Scheduled Tribes in that they became eligible after rendering not less than four years approved service in that grade. Accordingly, in the eligibility list for promotion to Grade-1 for the year 1985 only the SC/ST Section Officers of 1981 batch became eligible on rendition of four years of approved service for promotion to Grade-1 and no general category direct recruit became eligible during the year 1985 (see Annexure -P). Likewise in the eligibility list for 1986 (copy Annexure-S) only the Scheduled Caste/Scheduled Tribe direct recruit Section Officers of 1982 batch could become eligible and no general category direct recruit Section Officer became eligible. This certainly gave an advantage to the promotee Section Officers for two years in the matter

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of promotion to Grade-1, in that the general category direct recruits to the grade of Section Officers had to wait for two years more as a sequel to the aforesaid amendment. At the same time the glaring fact which stares one in the face is that all batches of direct recruit Section Officers were invariably promoted to Grade-1 as soon as they completed six years of approved service as Section Officers because of their vantage position in the cadre seniority lists vis-a-vis the promotee-Section Officers. It was indeed rarely that a direct recruit of a particular batch had to wait for more than the period of qualifying service for eligibility for promotion. This circumstance alone speaks volumes for inequitable and unjust working of the quota/rota rule in the instant case.

Now that the direct recruits of 1978 batch whose approved service had commenced w.e.f. 1-7-1979, have completed 8 years of minimum qualifying service all of them have been enbloc placed senior to the applicants and other promotee-Section Officers whose approved service had commenced w.e.f. 1-7-1974. Significantly the direct recruits of even 1981, 1982 and 1983 batches have been assigned ^{higher} seniority in Annexure W-1 than the applicants. This simply shows that the latter are destined to be doomed. Indeed an analytical scrutiny of the provisional eligibility list (copy Annexure W-1) would show that most of the promotee Section Officers had retired while some of them, who were rather lucky, were promoted to Grade-I in 1983 Select List thus clearing the deck for direct recruits of 1978 batch etc. This is certainly a disturbing state of affairs.

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As mentioned above, the contention of the applicants is that extreme distortion of the cadre seniority lists (All Secretariat common seniority list of Section Officers having been never prepared as not required by the rules) of various Ministries is due to non implementation of quota rule in respect of the direct recruits and carry forward of the unfilled vacancies in the quota of direct recruits from year-to-year thus bestowing an undeserved and unintended benefit on the direct recruits, who naturally stole^a march over the applicants even though latter had been promoted to Grade Section Officers' years before them. In order to demonstrate this position, the applicants furnished a chart depicting how unfilled vacancies for direct recruits were carried forward^{from} year-to-year from 1974 onwards. We produce the chart hereunder:-

Year	Vacancies			Ratio of DR/Total vacancies	Actual No. of DRs who joined	Carry forward of vacancies
	Total	DPS	DRs			
1974	462	384	78	1/6th	21	57
1975	342	285	57	1/6th	23	34
1976	246	204	42	1/6th	12	30
1977	465	387	78	1/6th	27	51
1978	342	285	57	1/6th	17	41
1979	438	365	73	1/6th	38	35
1980	300	251	49	1/6th	21	28
1981	269	223	46	1/6th	25	21
1982	305	244	61	1/5th	19	42
1983	367	294	73	1/5th	23	50
1984	230	184	46	1/5th	16	30

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They have also pointed out to the anomalous position in the placement of the promotee Section Officers and direct recruits as reflected in the cadre seniority lists on account of the policy of the respondents of keeping slots vacant for direct recruits and in placing the direct recruit Section Officers from various examinations during the years 1976, 1978, 1979 and 1980 above the applicants and other promotee-Section Officers of the years 1974-75 etc. One such chart appears in para 33 of the application which shows that the slots at Sr. No. 77, 81, 86, 90 and 97 of the cadre seniority lists were kept reserved for direct recruits to be filled later on when such recruitment was made. Annexure-K, which is a copy of the seniority list of Section Officers transferred under IFA system to Ministry of Defence w.e.f. 1-7-1973, certainly corroborates this contention.

The respondents on the other hand ^{have} furnished a chart dated 25th May, 1988 showing the ^{number of} vacancies and the number of direct recruits earmarked for direct recruits/nominated against such vacancies from 1974 onwards. The said chart is of no assistance in determining whether there was, in fact, short-fall in filling up yearwise vacancies prescribed in the quota of direct recruits because the mere fact of nominations made by the UPSC in respect of all the vacancies occurring in a particular year would not imply that all the persons so nominated actually joined service. Therefore, we issued a direction to the respondents vide our order dated 26th May, 1988 to furnish further information as stated therein. Thereupon the respondents supplied the following information vide their affidavit

dated 5th of July, 1988:-

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Year	Total No. of substantive vacancies in respect of 30 cadres.	For Deptt. promotees in respect of 30 cadres.	for DRs in respect of 30 cadres.	No. of DRs joined in 30 cadres.
1973	168	141	27	26
1974	157	131	26	41
1975	153	135	18	8
1976	204	170	34	31
1977	205	170	35	23
1978	194	166	28	36
1979	173	144	29	23
1980	176	155	21	24
1981	253	212	41	20
1982	181	146	35	36
1983	157	126	31	13
1984	134	107	27	20

This information has been compiled from 30 out of 33 cadres of CSS.

On a mere juxtaposition of this chart with their earlier chart dated 25.5.1988, it clearly emerges that the number of vacancies falling to the quota of the direct recruits yearwise stands considerably reduced in their subsequent chart and the possibility of the same having been done with a view to reduce the number of carry-forward vacancies from year-to-year as vehemently alleged by the Applicants, cannot be ruled out. The explanation sought to be furnished by the Respondents is that the second chart relates to substantive posts in the cadre of Section Officers and, therefore, the number stands reduced. Faced with this situation, the Applicants have compiled the following chart, based on the material culled from annual reports of the Department of Personnel and Training for the years 1973 onwards. They have also filed photostat copies of the said reports (Annexures 2 to 14) to substantiate their contention:-

Year of examination	Year of recruitment	DR-quota of substantive vacancies.	DRs who joined various cadres.	Vacancies carried forward.
1973	1974	44	26	18
1974	1975	65	41	24
1975	1976	22	8	14

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1976	1977	47	23	24
1977	1978	50	36	16
1978	1979	66	23	43
1979	1980	66	24	42
1980	1981	51	20	31
1981	1982	48	36	12
1982	1983	81	13	68

We have perused some of the annual reports and find that the number of vacancies earmarked for direct recruits in the annual combined competitive examinations does not tally with the figures furnished in the subsequent chart by the Respondents whereas it does tally with the figures furnished in the previous chart. For instance, according to the annual reports, 44 Section Officers were recruited on the basis of the combined competitive examination for IAS etc. held in 1973 whereas the corresponding number shown in the subsequent chart is only 26. Further Annexure-II shows that 65 vacancies were proposed to be filled up by direct recruitment on the basis of 1974 examination. However, the figure given in the subsequent chart is only 26. According to Annexure III (i.e. report for the year 1976-77) 22 officers only were recruited directly on the basis of the examination held in 1975. The corresponding figure given in the subsequent chart is only 8. Having regard to these glaring discrepancies we are not convinced that the information supplied by So, we are left with no option; but to the Respondents is authentic and credible, assume the information supplied by the Applicant in their affidavit dated 12th July, 1988 to be substantially correct. A mere glance at the said chart would show the massive departure from the prescribed quota of vacancies meant for the direct recruits from year-to-year. If the said chart were to be believed, the number of direct recruit vacancies carried forward from 1973 to 1982 comes to an astounding total of 296. Apparently there has

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been violent departure from the quota prescribed for direct recruits from year to year with the result that by filling of slots reserved for direct recruits ^{of subsequent} in a particular year by direct recruits/years and assigning them higher seniority, the seniority of the promotee Section Officers has been enormously suppressed and depressed.

To be fair to the respondents, they have not ~~minced~~ matters in this respect and they have candidly conceded that the unfilled vacancies falling in the quota of the applicants were carried-forward as vacant slots were to be filled later on by direct recruits of subsequent years. This is how they have tried to ~~justify~~ their action.

"As pre Regulation 5(2(c))(ii) the direct recruits are to be interpolated in the consolidated version of all Secretariat Select List of promotee Section Officers according to the quota of vacancies reserved for direct recruitment at the time of their recruitment. While the promotee Section Officers are appointed against temporary as well as permanent vacancies, the direct recruit Section Officers are appointed only against substantive vacancies. Therefore, the contention of the applicants that they had been substantively appointed against long term vacancies is not correct. It is also not correct to say that they have been pushed down in the seniority list by the direct recruits of later years. This is because even if the direct recruits do not join after the offer is made to them, the points

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are kept reserved for them and only against the points meant for the promotees, the promotees are placed. Hence there is no question of pushing down the seniority of the promotee Section Officers by the direct recruits of later years."

Still worse, the respondents admit that consequent upon the amendment of CSS Rules w.e.f. 10-2-1982 vide which the quota reserved for direct recruits was enhanced from one-sixth to one-fifth of the substantive vacancies and as per^{the} instructions vide O.M.No. 1/3/84-CS(I) dated 27-6-1984, a new recruitment roster was started after 10-2-1982 in respect of the appointments made in the grade of Section Officers. All the vacant slots in the old roster were brought on the new roster started w.e.f. 10-2-1982 and reapportioned among the direct recruits and promotees in accordance with the provisions of the Rules. The direct recruit Section Officers who had already joined Ministry of Defence after 10-2-1982 and allotted seniority in the seniority list issued as on 1-8-1983, according to pre-amended rules, were subsequently allotted revised positions ^{the} in/new recruitment roster. Consequently, the seniority of direct recruit Section Officers, who had joined after 10-2-1982 underwent a change. Evidently, it is tantamount to giving virtually retrospective effect to the amendment of 1982 inasmuch as the vacant slots meant for direct recruits in the pre-amended roster were brought on^{to} the new roster started consequent upon the amendment in the quota of direct recruits. Nothing more could have been done by the respondents in implementing so faithfully the quota and

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rota rule to the utter advantage of the direct recruits and of course to the colossal detriment of the applicants.

By a long catena of the decisions of the Supreme Court, the law is now well settled that when recruitment is made from two or several sources, there is no inherent invalidity in introduction of quota system and to work it out by a rule of rotation. The existence of quota and rota rule by itself will not violate Article 14 or Article 16 of the Constitution. However, it is unreasonable implementation of the same, which may, in a given case, attract the frown of the equality clause. See A.K. Subraman V Union of India, 1975(1) SCC 319, A Janardhana V Union of India & others, 1983(3) SCC 601, O.P.Singla V Union of India & others, 1984(4) SCC 450, P.S. Mahal and others V Union of India & others, 1984 (4) SCC 545, G.S. Lamba and others V Union of India & others, 1985(II) SCC 604, Narender, Chadha and others V. Union of India and others A.I.R.1986 SC 638 and A.N. Pathak and others V Secretary to the Government, Ministry of Defence and another, 1988 SCC (L&S)370. Even in Pardasani case (supra) the Supreme Court while observing that "this Court has taken a view in many decided cases that if there is a quota rule to implement, the question of length of service becomes an irrelevant consideration," said that "as pointed out by us therein, in both the cases of A. Janardhana and P.S. Mahala (supra), this Court proceeded on the footing that there had been a breakdown in the enforcement of the quota rule. Once the quota rule fails, the rota can no longer be enforced without causing prejudice to the officers with longer periods of service in the cadre.

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We do not think that the ratio of those cases can be applied in the case before us where there is no material^{to}/support the contention that the vacancies have not been filled by following the prescribed quota!"

Obviously sufficient material does exist in the instant case to support the contention of the applicants that the vacancies have not been filled up by following the prescribed quota faithfully. In G.S.Lamba too, it was noticed that "the impugned seniority lists have been drawn up rotating vacancies for each source and if no recruitment is made from that source in a given year, the place in the list ^{per} available to the source as/rotation is kept open and a later recruit at any distance of time from that source will be assigned that place over persons who are already recruited from other sources and would be working in the substantive vacancies. The net effect of a drawn-up seniority list in this manner is that a promotee in a given year even within its quota may go down to a much later direct recruit as the place in rotation is kept open for him without limitation of time. This is the crux of the matter."

Their Lordships then demonstrated the inequity of the method thus adopted in filling up the slots reserved for direct recruits of a particular year by direct recruits of subsequent years and observed:

"The disturbing feature is that when direct recruitment will be made at some future date after June 30, 1983, the first vacant place at Sr. No. 170 would be assigned to the first in the list of direct recruits and even though

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he would enter the service for the first time somewhere after June 30, 1983 he would be senior to the departmental promotee holding a substantive post at Sr No. 171"

Their Lordships following A Janardhana, P.S. Mahal, A.K. Subraman and O.P. Singla (supra) held that:

"The emerging situation would be in pari materia with what was found by this Court in A. Janardhana case and O.P. Singla case and the reasons therein mentioned will mutatis mutandis apply for quashing the seniority list for the selfsame reason."

It was, however, contended by the respondents- Union of India and others that Rule 13(1) of the Indian Foreign Service Branch 'B' (Recruitment, Cadre, seniority and promotion) Rules, 1964, which was germane to the decision of the said case, being mandatory in character, any appointment in excess of the quota in any year would render the excess appointees as irregularly appointed and they would not become members of the service and hang outside the service, and can be demoted. It was urged that once recruits are available from the source for which the quota was prescribed, the promotees in excess of their quota can and must be replaced by later entrants and that such excess promotees have to be demoted, but to save them from this harsh situation, the Courts have evolved a rule that they may be pushed down and

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and regularised in subsequent years. This indulgence, it was urged, would not be claimed as a matter of right and therefore such excess promotees could not claim seniority over recruits from other sources who may have come at a later date. Reliance was placed in this context on two decisions of the Supreme Court in S.G. Jaisinghani V Union of India, AIR 1967 SC 1427 and Bishan Sarup Gupta V Union of India, 1975(3) SCC 116. However repelling the said contention, their Lordship observed: "These two decisions are of little help in view of the later decisions directly on the point and discussed above." Accordingly the seniority was quashed.

Likewise in A.N. Pathak and others (supra) it was noticed that in the seniority list (Annexure-C to the writ petition therein) places, 4, 6, 8, 10, 12 and 14 were kept vacant and the said places were to be filled in when direct recruits came. Thus they would steal a march over those, who had entered the service earlier and the latter would be pushed down in the list. Quashing the seniority list, their Lordships held:

"We are of the view that the grievance of the petitioners is justified in law. The rules enabling the authorities to fill in vacancies for direct recruits as and when recruitment is made and thereby destroying the chances of promotion to those who are already in service cannot but be viewed with disfavour. If the authorities want to adhere to the rules strictly all that is necessary is to be prompt in making the direct recruitment. Delay in

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making appointments by direct recruitment should not visit the promotees with adverse consequences, denying them the benefit of their service."

Their Lordships also quoted with approval, the following observations of Madon J speaking for a Three Judge Bench of the Supreme Court in G.K.Dudani and Others v. S.D.Sharma and Others, 1986 Supple. SCC 239:-

" The promotees come into service, not by any fortuitous circumstances but they form an integral part of the regular cadre entitled to all benefits by the length of their service."

In view of these direct authorities on the point in issue, the impugned eligibility lists are liable to be quashed except of course that for the year 1983.

That brings us to the second limb of the Respondents' argument namely that the Select List for promotion to Section Officers' Grade is firstly prepared to fill up the vacancies on temporary basis under Rule 13(2) and it is only when substantive vacancies are to be filled yearwise by the direct recruits as well as from the promotees as per rules that the temporary promotees are inducted in the Service against the substantive vacancies. Since there is no provision for appointment of direct recruits against temporary vacancies the question of the inter se seniority of direct recruits vis-a-vis does not arise at this stage. Hence their total length of service cannot be reckoned while determining their seniority vis-a-vis the direct recruits as they would have naturally served for some years as Section Officers against the temporary posts before they are appointed substantively to the Service. Explaining the manner in

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which the recruit^{ment} is made to the Section Officers' Grade, it is stated that one-fifth substantive vacancies (earlier one sixth) are filled by direct recruits through Civil Services Examination and the remaining 80% substantive vacancies are filled from amongst the temporary Section Officers included in the Select List. The Select List for the Section Officers' Grade is prepared as under:-

- "(i) 50% of the temporary vacancies in the Grade of Section Officers are filled through Departmental Examination open to Assistants and Grade-C of CSSS (Central Secretariat Stenographers Service) Officers;
- (ii) Remaining 50% of the temporary vacancies in the Grade of Section Officers are filled on the basis of seniority of Assistants in a cadre. Persons in the Select List are included in equal proportion through the two modes mentioned above".

Thus, according to them the promotion to the cadre of Section Officers is initially made on temporary basis out of the Select List. Later on when substantive vacancies arise, Section Officers from the Select Lists are appointed as per their quota and direct recruit is made against direct recruitment quota. By the time, a directly recruited Section Officer joins service, the promotee has already put in some service, but both of them are interpolated as per regulation 3(3) of the Fourth Schedule on the

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basis of rotation of vacancies in the quota prescribed and their inter se seniority is determined on the basis of their substantive appointment to the grade. They assert that the aforesaid Regulation having been upheld by the Supreme Court, no exception can be taken to the same by the applicants.

On bestowing our careful thought and consideration on the point in issue we think that the expression "substantive vacancies in the grade" has not been construed by the respondents in the light of the latest pronouncement of the Supreme Court in several of its decision viz Baleshwar Dass V State of U.T. 1980(4) SCC 226, O.P. Singla Vs Union of India, 1984(4) SCC 450 and G.K. Dudani Vs S.D. Sharma, 1986 (Supple) SCC 239. The legal position that emerges from these authorities is that a temporary post can be held in a substantive capacity and all persons holding substantive posts or temporary posts in substantive capacity are members of the Service. In Singla Case (supra) the ambit, scope and impact of Rules 16 and 17 of Delhi Higher Judicial Service Rules which empower the Administrator of U.T of Delhi to create temporary posts in Delhi Judicial Service and fill the same in consultation with the High Court from amongst the members of the Delhi Judicial Service as also fill substantive vacancies in the service by making temporary appointments thereto from amongst the members of the Delhi Judicial Service, fell for consideration. Chief Justice Chandrachud (as his Lordship then was) Observed:

"The pre-requisite of the right to inclusion in a common list of seniority is that all those who claim that right must, broadly

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bear the same characteristics. The mere circumstances that they hold posts which carry the same designation will not justify the conclusion that they belong to the same class. Persons who are appointed or promoted on an ad hoc basis or for fortuitous reasons or by way of a stopgap arrangement cannot rank for purposes of seniority with those who are appointed to their posts in strict conformity with the rules of recruitment, whether such latter class of posts are permanent or temporary....

.. ..

Thus, persons belonging to the Delhi Judicial Service who are appointed to temporary posts of Additional District and Sessions Judges on an ad hoc basis or for fortuitous reasons or by way of stopgap arrangement, constitute a class which is separate and distinct from those who are appointed to posts in the Service in strict conformity with the rules of recruitment. In view of this, the former class of promotees cannot be included in the list of seniority of officers belonging to the Service.

It is however difficult to appreciate how in the matter of seniority any distinction can be made between direct recruits who are appointed to substantive vacancies in the Service on the recommendation of the High Court under Rule 5(2) and the promotees who are appointed in consultation with the High Court to posts in the Service under Rules 16 and 17. Rule 16 provides for the appointment

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of promotees to temporary posts in the Service, while Rule 17 provides for appointment of promotees to substantive vacancies in the Service on a temporary basis. Promotees who are appointed to the Service under either of these two Rules must be considered as belonging to the same class as direct recruits appointed under Rule 5(2)

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Therefore, no distinction can be made between direct recruits on one hand and promotees appointed to the Service on the other in the matter of their placement in the seniority list. Exclusion from the seniority list of those promotees who are appointed to posts in the Service, whether such appointment is to temporary posts or to substantive vacancies in a temporary capacity, will amount to a violation of the equality rule since, thereby persons who are situated similarly shall have been treated dissimilarly in a matter which constitutes an important facet of their career".

His Lordship further observed:

"In these circumstances, it will be wholly unjust to penalise the promotees for the dilatory and unmindful attitude of the authorities. It is not fair to tell the promotees that they will rank as juniors to direct recruits who were

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appointed five to 10 years after they have officiated continuously in the posts created in the Service and held by them, though such posts may be temporary. This Court, at least, must fail them not!"

The importance of the decision in Baleshwar Dass case(supra) lies in the meaningful interpretation of the words 'substantive capacity' Krishna Iyer J (as his lordship then was) in his own charismatic and picturesque language observed:

"If in the normal course, a post is temporary in the real sense and the appointee knows that his tenure cannot exceed the post in longevity, there cannot be anything unfair or capricious in clothing him with no rights. So if the post is, for certain departmental or like purposes, declared temporary, but it is within the ken of both the government and the appointee that the temporary posts are virtually long-lived. It is irrational to reject the claim of the 'temporary' appointee on the nominal score of terminology of the post. We must also express emphatically that the principle which has received the sanction of this Court's pronouncements is that officiating service in a post ^{is} ~~for~~ ^{all} practical purposes of seniority as good as service on a regular basis."

We may also notice the following dictum laid down by the Supreme Court in G.S. Lamba case (supra):-

Once the promotees were promoted to substantive vacancies even if temporary unless there was a chance of their demotion.

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to the lower cadre, their continuous officiation confers on them an advantage of being senior to the later recruits under Rule 21(4) (emphasis ours). If as stated earlier by the enormous departure or by the power to relax, the quota rule was not adhered to, the rota rule for inter se seniority as prescribed in Section 25(i)(ii) cannot be given effect to. In the absence of any other valid principle of seniority it is well established that the continuous officiation in the cadre, grade or service will provide a valid principle of seniority. The seniority lists having not been prepared on this principle are liable to be quashed and set aside."

We may also advert in this context to the decision of the Principal Bench of this Tribunal in K.N. Mishra and Others V. Union of India & Others, 1987(2) ATC 104 in which after taking into consideration the above mentioned authorities, the learned Chairman speaking for the Bench held:

" 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 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

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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 A. Janardhana (supra), it was held that:

"Where the quota rule is linked with the seniority rule, if the first breaks down or is legally not adhered to, inequitable and improper. Therefore, once the quota rule was wholly relaxed to suit the requirements of service and recruitment made in excess of the quota for the promotees and the minimum qualification rule for direct recruits is held to be valid, no effect can be given to the seniority rule enunciated in para 3(iii) which is wholly interlinked with the quota rule and cannot exist apart from it on its own strength."

It may be pertinent to notice here that under the rules 'approved service' in relation to any grade means period of service in that grade rendered after selection according to prescribed procedure for long term appointment to the Grade. As seen above, a 'Cadre Officer' has been defined to mean in the Section Officers' Grade relation to a member of the Service of the Section Officers' Grade including a temporary officer approved for long-term appointment to that Grade. Now 'long-term appointment' implies appointment for an indefinite period as distinguished from a purely temporary or adhoc appointment like appointment against a leave or other local vacancy of a specified duration. Further, a temporary officer means a person holding temporary or officiating appointment in a Grade on the basis of being regularly approved for such appointment. It is thus clear that a long term appointment of a

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promotee shall constitute ^{him} a Cadre Officer, provided of course that his appointment is in accordance with the Rules. Reference in this context may also be made to DP&AR OM No. 21/13/75-CS(1) dated 29th of March, 1976 on the subject of principles for fixation of authorised permanent strength of decentralised grades of the Central Secretariat Service which will naturally include Section Officers' Grade. According to the said OM the following should be taken into consideration in fixing authorised permanent strength of the decentralised grades and their sum (total) should be fixed as authorised permanent strength:

Para 2.

- (a) All permanent posts;
- (b) All temporary posts which have been in existence for three or more years and have been surveyed by the Internal Financial Advisor concerned and are likely to be made permanent.
- (c)

Further clause 3 of the said OM clarifies that three years old temporary posts mentioned in para 2(b) when included in the authorised permanent strength are to be treated as converted into permanent ones and substantive appointments can be made against them.

Applying this criteria to the so-called temporary posts in the grade of Section Officers, there can be no shadow of doubt that they constitute a part and parcel of the authorised permanent strength of the Service. It is nobody's case that the said posts are of a short duration or the appointment of the appointees thereto was fortuitous or as a stop-gap arrangement or adventitious. Further, it is nobody's case that any of the promotee Section Officers included in the eligibility lists in question was ever reverted.

On the contrary, it is manifestly clear from the eligibility lists in question that they have been continuously serving in the Section Officers' Grade since their induction in the Service and commencement of their approved service w.e.f. 1-7-1974/1-7-1975. Hence there is absolutely no justification or reason to deny the benefit of seniority to the applicants for the entire period of their continuous officiation on the posts of Section Officers. In this view of the matter, therefore, the stand taken by the respondents is totally fallacious and contrary to the latest dictum laid by the Supreme Court in the aforesaid judgments.

The learned Counsel for the respondents has placed reliance on V.B. Badami V State of Mysore AIR 1980 SC 1561 and Sonal Sihimappa V State of Karnataka and others, AIR 1987 SC 2359 besides of course certain other authorities adverted to in the latter decision in support of their contention that appointment of promotee- Section Officers on temporary basis to the grade of Section Officers did not confer any right on them to claim the benefit of their entire officiation inasmuch as under law they were ^{liable to be} /reverted as soon as the vacancies reserved for the direct recruits were later on filled in. No doubt in Sonal Sihimappa case (supra), their Lordships held:

"Where appointment to the promotional post was made in excess of the quota the mandate in R. 17, General Recruitment Rules

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takes place the promotee has to be make room for the direct recruit, every promotee in such a situation would not be entitled to claim any further benefit than the advantage of being in a promotional post not due to him but yet filled by him in the absence of a direct recruit. The advantage received by the promotee before his chance opened should be balanced against his forfeiture of claim to seniority. In this view, it cannot be said that quota for direct recruits could be carried forward for a maximum period of three years and not beyond. Decision of Karnataka High Court is reversed."

However, it may be noticed that the aforesaid view was based on Rule 17(c) of the Karnataka Civil Services (General Recruitment) Rules, 1977 which specifically laid down that "a candidate temporarily promoted under this sub-rule shall not have any preferential claim for regular promotion and also shall not count the period of service in the promoted post for seniority; he shall also revert to his original post on the expiry of one year or on the appointment of a direct recruit whichever ^{is} earlier..." Their Lordships took the view that the scheme in the Rules of 1977 clearly indicated that the transgression of the quota rule was a deviation of a temporary nature and was intended to be balanced in good time especially ^{direct recruits} when / were duly confirmed against permanent posts in their cadre. Significantly their Lordships also adverted to the decision in G.S. Lamba (supra), but they distinguished the same on the

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ground that the Court characterised the promotion to be regular keeping in view the power of Government to relax the provisions of the rules. It is thus crystal clear that the view expressed by the Supreme Court in ~~xxxxxx~~ Sonal Sihimappa (supra) was founded on two aspects (i) mandate of the specific rule itself and (ii) absence of any power of ~~relaxation of~~ ^{the} Rules with the Government. The Supreme Court found that the decision in V.B. Badami case was binding on them both as a precedent as well as under Article 141 of the Constitution. Under the circumstances the said decision is of no avail to the respondents in the instant case. In G.S. Lamba too, the Supreme Court noticed that Rule 29(a) of IFS Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Rules, 1964 conferred power to relax any of the provisions of the said Rules. So, advertent to A Janardhana case (supra), the Supreme Court held:

"When the question again came up in A Janardhana case, the Court held that if direct recruitment was made in relaxation of the relevant rules, the same reasons will mutatis ~~et~~ mutandis apply to hold that promotions in excess of quota were given by relaxing the rules. It is, therefore, reasonable to believe in this case that though the quota was mandatory it was not adhered to by exercising the power of relaxation both qua persons and posts."

A contention was raised that it was not permissible to ~~infer~~ that promotions in excess of quota were made by relaxing the quota rules because the posts in integrated grades II and III were within the purview of the Union Public Service Commission and proviso

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to Rule 29(a) mandates that the power to relax is hedged in with a condition that it can be done after consultation with the Commission, but there was nothing to show that the Commission was ever consulted. Repelling this contention, their Lordships held that Article 320(3)(c) of the Constitution being only directory, the same did not confer any right on the public servants so that the absence of consultation or irregularity in consultation did not afford a cause of action in a Court of law. Observed their Lordships:

"Therefore, it can be safely stated that the enormous departure from the quota rule year to year permits an inference that the departure was in exercise of the power of relaxing the quota rule conferred on the controlling authority. Once there is power to relax the mandatory quota rule, the appointments made in excess of the quota from any given source would not be illegal or invalid, but would be valid and legal ..

.."

It may be noticed that vide notification dated 30th March, 1986, an amendment was made to the Rules and the following provision relating to relaxation of rules was inserted:-

"25(a) Power to relax: Where the Central Government in the Ministry of Home Affairs (Department of Personnel and Administrative Reforms) is of the opinion that it is necessary or expedient to do, it may, by order for reasons to be recorded in writing, and in consultation

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with the Commission, relax any of the provision of these rules with respect of any class or category of persons or posts."

The above rule empowering the Government to relax any of the provisions of the rules in consultation with the Commission is in para-materia with ^{The} one contained in G.S.Lamba's case. So, there is no reason why the same presumption, as drawn in G.S.Lamba's case (supra) that the relevant service rule had been relaxed while making appointments of promotees in excess of their quota, be not drawn in the instant case. Indeed the instant case stands on a much higher footing inasmuch as the temporary posts sanctioned herein form part of authorised permanent strength of the Service. They are of long duration and, therefore, promotion of the Applicants on the basis of Select Lists for the grade of Section Officers having been, for all intents and purposes, regularly made, there is no reason why their continuous officiation on the posts should not be held to be legal and valid. Reference in this context be also made to Narender Chadha and Others v/s Union of India and Others - A.I.R. 1986 SC 638.

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The oft quoted observations of Chandrachud C.J. (as his Lordship then was) in S.B. Patwardhan and another V. State of Maharashtra and others, 1977(3) SCC 399 may also be pertinently noticed here. Said his Lordship:

" Instead of adopting an intelligible differentia, Rule 8(iii) leaves seniority to be determined on the sole touchstone of confirmation which seems to us indefensible. Confirmation is one of the inglorious uncertainties of government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies. A glaring instance widely known in a part of our country is of a distinguished member of the judiciary who was confirmed as a District Judge after he was confirmed as a Judge of the High Court."

Hence the confirmation by itself should not tilt the balance in favour of the direct recruits for determination of inter se seniority of the applicants vis-a-vis them.

To sum up, therefore, we hold that while the decision of the Supreme Court in H.V.Pardasani and Others v/s Union of India & Others (supra) operates as res judicata, so far as the eligibility list of Section Officers for promotion to Grade-I of the CSS ^{for the year 1983} is concerned, the bar of res judicata cannot be invoked qua the eligibility lists for the subsequent years viz. 1984 onwards especially the last eligibility list of 1987. We, therefore, hold that the quota and rota rule has not been strictly adhered to and there has been enormous deviation in implementing the quota prescribed for the

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direct recruits by not filling all the vacancies for direct recruits on year-wise basis. Thus, the Respondents have been wrongly carrying forward the unfilled vacancies meant for direct recruits by keeping the slots open to be filled up later on by direct recruits appointed on the basis of subsequent competitive examination. This has resulted in grave prejudice to the promotee Section Officers in the matter of their seniority for the purpose of consideration for promotion to the next higher grade viz. Under Secretary's grade in the service. Thus, non-implementation/malfunctioning of the quota and rota rule has resulted in miscarriage of justice to the promotee Section Officers who have had to wait for 12 to 15 years before being brought on the eligibility list. This alarming situation which is bound to be inequitable and unjust to the promotee Section Officers has, therefore, to be remedied. As already noticed, the legal position in this respect is well settled namely that when rule of quota breaks down, effect cannot be given to rule of rotation either, without serious prejudice to the promotee Section Officers. Hence recourse has to be taken to the residuary rule of continuous officiation.

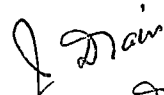
Consequently, we quash the impugned eligibility lists for the years 1984, 1985, 1986 and 1987 as being violative of principle of equality enshrined in Articles 14 and 16 of the Constitution of India and direct the Respondents to recast the eligibility lists for the said years especially the eligibility list for the year 1987 in accordance with the principle of continuous officiation reckoning the seniority of

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both direct recruits as well as the promotee Section Officers on the basis of continuous officiation with effect from the dates their respective 'approved service' commenced. We do not think that having regard to the specific rule 12(2) which provides for induction of Section Officers in the eligibility list on their having rendered not less than 8 years approved service in that grade, we should opt for the date of continuous officiation of the direct recruits as well as the promotee Section Officers in the grade of Section Officers. That will not be strictly in conformity with the rule mentioned above when there is no justification for departing from the same.

The Respondents are directed to prepare fresh eligibility lists as directed above and in the light of observations made above within four months from the date of receipt of this order. Under the circumstances, no order is made as to costs.


(Kaushal Kumar)
Administrative Member.


(J.D. Jain)
Vice-Chairman
31.8.88.

August 31, 1988.