

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 31/87
T.A. No.

1987

3-8-88

DATE OF DECISION 3.8.1988

Shri V.P. Mishra

Petitioner

Applicant in person

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Shri M.L. Verma

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice-Chairman(Judicial)

The Hon'ble Mr. S.P. Mukerji, 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? No

S.P. Mukerji
Administrative Member

P.K. Kartha
Vice-Chairman(Judl.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NDW DELHI

Regn. No. OA-31/87

Date of Decision: 3.8.88

Shri V.P. Mishra

.... Applicant.

Versus

Union of India & Ors.

.... Respondents.

For the Applicant

.... In person.

For the Respondents

.... Shri M.L.Verma, Advocate.

CORAM: Hon'ble Shri P.K.Kartha, Vice-Chairman (Judl.)
Hon'ble Shri S.P. Mukerji, Administrative Member.

JUDGEMENT

(Judgement of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice-Chairman).

The applicant who has been working as Assistant Director in the Office of the Central Water Commission (CWC) filed this application under Section 19 of the Administrative Tribunals Act, 1985 against Union of India represented by the Secretary, Ministry of Water Resources, Chairman, Central Water Commission and the Chairman, U.P.S.C., praying, inter alia, that the inter se seniority list of officers in the grade of Assistant Director/Assistant Executive Engineer/ as on 1.6.85 (AD/AEE) circulated by the Office Memorandum dated 12.9.85 and the promotions on the basis of such seniority list should be quashed. He has further prayed that he should be promoted to the grade of Deputy Director on the basis of the revised seniority list and he should be given all consequential benefits from the due date of promotion as Deputy Director.

2. The application was filed in the Tribunal on 29.12.1986. During the pendency of the application, the applicant has been promoted to the grade of Deputy Director with effect from 23.11.1987.

3. The respondents have filed their counter affidavit and the applicant has filed his rejoinder. Both parties have

filed their written submissions and ~~stated~~ that they do not wish to make oral arguments and that a decision may be given on the basis of the pleadings and written submissions.

4. The facts of the case in brief are as follows. The applicant was appointed as Extra-Assistant Director/Assistant Engineer in Central Water Commission through the U.P.S.C. with effect from 1.3.1973 in the pay scale of Rs.650-1200. In accordance with the provisions of Rule 13 of the Central Water Engineering (Class II) Service Rules, 1964, the posts of Extra Assistant Director/Assistant Engineer were required to be filled 100 per cent by promotion from persons working in the Grade of (a) Design Assistants (Engineering), (b) Research Assistant (Engineering) and (c) Supervisors in the ratio of 66-2/3 per cent and 33-1/3 per cent between Graduate Engineers and Diploma Holders. No quota had been prescribed for filling up of the post by direct recruitment. Sub Rule (5) of Rule 13 provides that if suitable officers are not available for promotion, the post may be filled by selection through the U.P.S.C. As pointed out above, the applicant was appointed as Extra Assistant Director/Assistant Engineer through U.P.S.C. with effect from 1.3.1973.

5. The applicant has contended that the combined seniority list of Extra Assistant Directors recruited through U.P.S.C. and promotions made from graduate and diploma holders quota had not been finalised till 1981. Even in the seniority list issued on 1.3.1981, several anomalies exist, thereby depressing the seniority of the applicant by about 30 positions.

On 6. As against the above, the respondents have contended that they brought out seniority lists of Extra Assistant Director/Assistant Engineer as on 1.1.75, 1.4.78, 1.4.79 and 1.3.1981. Copies of the seniority lists have been produced before us. The respondents have contended that there is no anomaly in the seniority list as on 1.3.1981 and that the rank of the applicant at Serial No.163 in the seniority

list is correct.

7. It is pertinent to mention here that the applicant has not indicated in his written submissions as to how the impugned seniority list issued on 1.3.1981 was defective.

8. The applicant alongwith 38 others was promoted to the Grade of Assistant Director on ad-hoc basis on 31.3.78 by Office Order dated 31.3.78, copy of which has been set out in Annexure P9 of the paper-book. In para 1 of the said Office Order it had been stated "that the promotion is on ad-hoc basis for a period of six months with effect from 31.3.78 or from the date they take over charge of the higher post ~~or~~ till regular officers become available, whichever is earlier."

Para 2 of the office order stipulated that "the promotion of the above mentioned officers to the post of Assistant Director/Assistant Executive Engineer in the Commission will be in the nature of a purely local arrangement and will not confer on them any right for claiming seniority for promotion to the grade of Assistant Director/Assistant Executive Engineer in the Central Water Commission on ~~a~~ regular basis."

9. The applicant has stated that he continued to work as Assistant Director from 31.3.78 without any ~~break in~~ service. He drew annual increments also and was never reverted. He was appointed to the post of Assistant Director on regular basis with effect from 9.8.1982.

10. The applicant has contended that no seniority list of Assistant Directors was published from the year 1981 to 1984. However, the seniority list was published in September, 1985 wherein the applicant's position was shown below the Assistant Directors recruited through the U.P.S.C. later than 31.3.1978. The said seniority list has been

given in Annexure P17 of the paper-book. The applicant has contended that inter se seniority between the DPC and UPSC ~~recruited~~ Assistant Directors was fixed wrongly on the principle of rotation of vacancies even though quota failed from March, 1975 to August, 1982.

11. As against the above, the respondents have contended that the seniority list published in September, 1985 was prepared in accordance with the general principles for determining of seniority in the Central Services contained in the Annexure to the Ministry of Home Affairs O.M. No. 9/11/55-RPS dated 22.12.1959. Para 6 of the Annexure to the said Office Memorandum provides that "the relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancy between the direct recruits and promotees which shall be based on the quota of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules."

12. The respondents have referred to the provision of the Central Water Engineering (Group A) Services Rules, 1982 which came into force from 10.4.1982. Rule 7 of the said rules provided that 60% of the vacancies are to be filled by direct recruitment and 40% by promotion. Prior to 10th April, 1982 appointment to the Central Water Engineering (Group A) Services was regulated by the Central Water Engineering (Class I) Service Rules, 1965, according to which 60 per cent of the vacancies were to be filled by direct recruitment, 25 per cent by promotion and 15 per cent by deputation. Since officers coming on deputation were not to be assigned any seniority, the seniority list in respect of Assistant Directors/Assistant Engineers consisted of direct recruits and promotees only. According to para 6 of the Annexure to the Ministry of Home Affairs O.M. dated 22.12.59,

the relative seniority of direct recruits and promotees is to be determined according to rotation of vacancies between the direct recruits and the promotees which is based on the quota of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules. According to the said general principles of seniority, the vacancies earmarked for a particular quota did not lapse. All the officers including promotees/direct recruits have been assigned the correct position in the seniority list of Assistant Directors/Assistant Engineers as on 1.6.1985.

13. The respondents have further stated that the general principles for determining the seniority of various categories of persons employed in the Central Services were reviewed by the Department of Personnel and Training in their O.M. No.35014/2/80-Estt.(d) dated 7.2.1986. According to the O.M. dated 7.2.86, the practice of keeping the slots for direct recruits/Assistant Executive/Assistant Directors/Assistant Engineers in the seniority list as on 1.6.85 will have to be left vacant till the direct recruits/Assistant Directors from Combined Engineering Services Examination 1986 joined the Commission as the recruitment action for direct recruits in the grade of Executive/Assistant Director/Assistant Engineer through the Combined Engineering Service Examination 1986 was initiated prior to the issue of the O.M. dated 7.2.1986. The respondents have added that while following the said general principle of seniority, where there was delay in direct recruitment or promotion or where enough number of direct recruits or promotees did not become available, the slots meant for particular quota which could not be filled up, were required to be left blank and when direct recruits or promotees become available through later examinations or selections, such persons occupied the vacant slots,

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thereby became senior to persons who were already working in the grade on regular basis. In the case of AD/AEE in the CWC, enough number of direct recruits did not become available through Combined Engineering Service Examination conducted by the U.P.S.C. and the slots meant for them have been left vacant in the said seniority list. Thus the seniority list of ADs/AEEs drawn as on 1.6.1965 and circulated vide CWC's Memo No.15/3/84-E-III, dated 12.9.1985 was in order. Promotions made to the grade of Deputy Director/Executive Engineer on the basis of the said seniority list in the grade of AD/AEE as on 1.6.85 were also in order.

14. The applicant has contended that he was depressed in the seniority position in the grade of Extra Assistant Director by about 30 positions. In view of this his position in the Assistant Directors grade also came to be depressed by about 75 positions. No DPC for promotion from the post of Extra Assistant Director to Assistant Director was conducted between 19.3.75 to 9.8.1982. Hence the DPC quota remained unfilled even though vacancies of Assistant Directors were available throughout this period. However, the U.P.S.C. quota posts were filled during this period. All the DPC quota posts were reckoned to have been filled only from 9.8.82 i.e. the date of conducting DPC for promotion to the Grade of Assistant Director and the applicant also was given this date of regularisation. Added to this, the continuous officiation of the applicant in the grade of Assistant Director since 31.3.78 was also not reckoned in fixing this seniority and the rotation principle was wrongly applied. This resulted in adjusting the applicant alongwith the UPSC recruits to the post of Assistant Director joining subsequent to 31.3.1978. The position, according to the seniority list of Assistant Directors as on 12.9.1985, was that the applicant who was Assistant Director since 31.3.1978 was shown junior to Assistant

Directors who joined in 1983, 1984 and 1985 through the U.P.S.C. Based on such an incorrect seniority list of Assistant Directors as on 12.9.1985, further promotions to the grade of Deputy Director were made during 1986 and onwards.

15. The applicant has also contended that in accordance with Rule 26(2) of the Central Water Engineering (Class I) Service Rules, 1965, half of his EAD grade service should have been reckoned as equivalent service in A.D. Grade for purpose of eligibility for promotion to the grade of Deputy Director. Rule 26(2) of the 1965 Rules reads as follows:

"26(2) No officer shall be eligible for promotion under sub-rule (1), unless he has rendered service for not less than $4\frac{1}{2}$ years in the grade of Assistant Director (Engineering) or Assistant Executive Engineer or Research Officer (Engineering).

Provided that field experience at a suitable level shall be an additional qualification for promotion under this rule and such experience may be made an essential qualification in consultation with the Service Commission if and when Government deems it necessary to do so;

Provided also that service in the grade of Extra Assistant Director (Engineering) or Assistant Engineer or Assistant Research Officer (Engineering) to the extent of one-half of each completed year subject to a maximum of $2\frac{1}{2}$ years shall be treated as service in the grade of Assistant Director (Engineering) or Assistant Executive Engineer or Research Officer (Engineering) for computing the prescribed length of service in the latter grade in the case of officers of the Central Water Engineering (Class II) Service appointed to the Service under Part III or Part VI of these rules or under rule 25 for the purpose of eligibility for promotion under this rule."

16. As against the above, the respondents have contended that the seniority list of EAD/AE as on 1.3.1981 was drawn in accordance with the principles laid down in the Ministry of Home Affairs O.M. dated 22.9.1959 and was correct. They have also contended that half of the service rendered in the grade of EAD/AE was not required to be computed towards eligibility for promotion to the grade of Deputy Director/

Executive Engineer in C.W.C. They have relied upon the provisions contained in the Central Water Engineering (Group A) Service Rules, 1982 which were promulgated on 10.4.1982. The Central Water Engineering (Group A) Service Rules, 1965 relied upon by the applicant was repealed by the 1982 Rules. According to the 1982 rules, the minimum qualifying service for promotion to the grade of Deputy Director is that the officer in the junior scale should have rendered four years regular service in the junior scale (i.e. AD/AEE).

17. We have carefully gone through the records of the case. The main issue arising for consideration is whether the seniority list of Assistant Directors as on 12.9.1985 (Annexure P17 of the paper-book) is legally in order. The stand of the respondents is that it has been correctly drawn up in accordance with the general principles for fixing of seniority laid down in the Ministry of Home Affairs O.M. dated 22.12.1959. In the written submissions of the respondents, they have, however, referred to a subsequent decision taken by the Department of Personnel and Training according to which the general principles of seniority issued by the Ministry of Home Affairs on 22.12.1959 were modified and an office memorandum was issued on 7.2.1986. This O.M. refers to the manner of determination of seniority as laid down in the OM dated 22.12.1959 and the practice followed thereunder for fixation of seniority between direct recruits and promotees. The slots meant for direct recruits or promotees which could not be filled up were left vacant and when direct recruits or promotees became available through later examinations or selections, such persons occupied the vacant slots, thereby became senior to persons who were already in the grade on regular basis. In some cases, where there was short-fall in direct recruitment

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in two or more consecutive years, this resulted in direct recruits of subsequent years taking seniority over some of the promotees with fairly long years of service already to their credit. In the O.M. issued on 7.2.86, it has, therefore, been stated that this matter had come up for consideration in various court cases. The matter was also discussed in the National Council. It was, therefore, decided that in future while the principle of rotation of quotas will still be followed for determining the inter-se seniority of direct recruits and promotees, the present practice of keeping vacant slots for being filled up by direct recruits of later years, thereby giving them unintended seniority over promotees who are already in position, would be dispensed with. Thus, if adequate number of direct recruits do not become available in any particular year, rotation of quotas for purpose of determining seniority would take place only to the extent of the available direct recruits and the promotees. In other words, to the extent direct recruits are not available, the promotees will be bunched together at the bottom of the seniority list, below the last position upto which it is possible to determine seniority on the basis of rotation of quotas with reference to the actual number of direct recruits who become available. The unfilled direct recruitment quota vacancies would, however, be carried forward and added to the corresponding direct recruitment vacancies of the next year (and to subsequent years where necessary) for taking action for direct recruitment for the total number according to the usual practice. Thereafter, in that year while seniority will be determined between direct recruits and promotees, to the extent of the number of vacancies for direct recruits and promotees as determined according to the quota for

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for that year, the additional direct recruits selected against the carried forward vacancies of the previous year would be placed en-block below the last promotee or direct recruit as the case may be, in the seniority list based on the rotation of vacancies for that year. The same principle holds good in determining seniority in the event of carry forward, if any, of direct recruitment or promotion quota vacancies (as the case may be) in the subsequent years.

18. The O.M. dated 7.2.1986 has given an illustration as to the manner in which the seniority has to be determined between the direct recruits and promotees under the new system. The illustration is as follows: -

"Where the Recruitment Rules provide 50% of the vacancies in a grade to be filled by promotion and the remaining 50% by direct recruitment, and assuming there are 10 vacancies in the grade arising in each of the years 1986 and 1987 and that 2 vacancies intended for direct recruitment remained unfilled during 1986 and they could be filled during 1987, the seniority position of the promotees and direct recruitments of these two years will be as under: -

	1986	1987
1.	P1	9.
2.	D1	10.
3.	P2	11.
4.	D2	12.
5.	P3	13.
6.	D3	14.
7.	P4	15.
8.	P5	16.
		P1
		D1
		P2
		D2
		P3
		D3
		P4
		D4
		P5
		D5
		D6
		D7"

19. Para 7 of the O.M. dated 7.2.86 provides that the orders contained therein shall take effect from 1.3.86. However, it has been stipulated that seniority already determined in accordance with the existing principles on the date of issue of this order will not be reopened. In respect of vacancies for which recruitment action has already been taken, on the date of issue of this order

either by way of direct recruitment or promotion, seniority will continue to be determined in accordance with the principles in force prior to the issue of this O.M.

20. The admitted factual position in the instant case is that the applicant who was promoted to the grade of Assistant Director on ad hoc basis with effect from 31.3.78 continued to work in that post without any break in service and was appointed to that post on regular basis with effect from 9.8.1982. The recruitment rules provided that 60 per cent of the vacancies are to be filled by direct recruitment and 40 per cent by promotion. However, the DPC quota remained unfilled between 19.3.75 to 9.8.1982 during which period no DPC for promotion from the post of Extra Assistant Director to Assistant Director was conducted. Vacancies of Assistant Director were available during this period. The UPSC quota were filled during this period. All the DPC quota posts were reckoned to have been filled only from 9.8.1982.

21. In the facts and circumstances of the case, we are of the opinion that as the quota/rota rule has broken down, the principle of continuous officiation should be adopted for determining the seniority, as has been laid down in a catena of decisions of the Supreme Court.

22. The legal position is that it would be open to the Government to provide for recruitment to a service from more than one source and to reserve quota for each source. It would also be open to the Government to provide seniority rule related to rotation of vacancies. Where rota rule of seniority is interlinked with quota rule of recruitment, the latter is unreasonably departed from and breaks down under its own weight, it would be unfair and unjust to give effect to the rota rule of seniority. The relevant judicial pronouncements in this regard may be briefly recalled.

23. In A. Janardhana Vs. Union of India, AIR-1983-SC-769, the Supreme Court had to consider the validity of rules of seniority which were applicable to the Military Engineering Services. The recruitment to the service was made from two sources, directly and by promotion. The applicant was a promotee of 1962 who could find a place in the seniority list only in 1989 when it would be time for him to retire. The Supreme Court observed: -

"In other words after having rendered service in a post included in service, he is hanging outside the service, without finding a berth in service, whereas direct recruits of 1976 have found their place and berth in the service. This is the situation that stares into one's face while interpreting the quota-rota rule and its impact on the service of an individual. But avoiding any humanitarian approach to the problem, we shall strictly go by the relevant rules and precedents and the impact of the Rules on the members of the service and determine whether the impugned seniority lists is valid or not. But, having done that we do propose to examine and expose an extremely undesirable, unjust and inequitable situation emerging in service jurisprudence from the precedents namely, that a person already rendering service as a promotee has to go down below a person who comes into service decades after the promotee enters the service and who may be a schoolian, if not in embryo, when the promotee on being promoted on account of the exigencies of service as required by the Government started rendering service. A time has come to recast service jurisprudence on more just and equitable foundation by examining all precedents on the subject to retrieve this situation." (at page 775)

24. The Court further observed that the rule continuous officiation or the length of service or the date of entering in service and continuous uninterrupted service thereafter should be taken as the relevant criteria.

The following observations contained in the judgement are pertinent: -

"It is well recognised principle of service jurisprudence that any rule of seniority has to satisfy the test of equality of opportunity in public service as enshrined in Art. 16. It is an equally well recognised canon of service jurisprudence that in the absence of any other valid rule for determining inter se seniority of members belonging to the same service, the rule of continuous officiation or the length of service or the date of entering in service and continuous

uninterrupted service thereafter would be valid and would satisfy the tests of Art.16." (at page 781)

25. The Court further observed as follows: -

"It is, therefore, time to clearly initiate a proposition that a direct recruit who comes into service after the promotee was already unconditionally and without reservation promoted and whose promotion is not shown to be invalid or illegal according to relevant statutory or non-statutory rules should not be permitted by any principle of seniority to score a march over a promotee because that itself being arbitrary would be violative of Articles 14 and 16." (at page 786)

26. In P.S.Mahal Vs. Union of India, AIR 1984 SC 1291, there had been enormous deviation from the quota rule on account of massive under-recruitment of Assistant Executive Engineers. This had led to grave distortion. The Supreme Court observed that it would be difficult in such a situation to see how the rotational rule of seniority could be applied consistently with the mandate of equality enshrined in Article 14 of the Constitution. It was observed that "the rotational rule of seniority must obviously break down when there is such massive departure from the quota rule regularly from year to year leading to continuously increasing deficiency in promotions of Assistant Executive Engineers and corresponding excess in promotion of Assistant Engineers." (at page 1322)

27. The Court observed that the seniority between Assistant Engineers and Assistant Executive Engineers regularly promoted within their respective quota must be determined by the length of continuous officiation in service in the grade of Executive Engineers, subject to the qualification that in the case of Assistant Engineers the length of continuous officiation shall be reckoned from the date when their promotion is regularised by absorption within their lawful quota.

28. The Supreme Court in P.S.Mahal⁵ referred to its earlier decision in Chauhan Vs. State of Gujarat, ^{case 31} N.K. O~

AIR 1977 SC 251 and S.B. Patwardhan Vs. State of Maharashtra, AIR 1977 SC 2051, wherein the Court had adopted the principle of length of continuous officiating service as the criterion for the purpose of determining the seniority. The following observations are relevant: -

"To the same effect we find the observations of Krishna Iyer, J., speaking on behalf of the Court in Chauhan v. State of Gujarat, (1977) 1 SCR 1037: (AIR 1977 SC 251), where the learned Judge said at page 1057 of the report:

"Seniority, normally, is measured by length of continuous officiating service - the actual is easily accepted as the legal." Chandrachud, J., as he then was, also reiterated the same principle when he said in S.B. Patwardhan v. State of Maharashtra, (1977) 3 SCR 775 at p.800: (AIR 1977 SC 2051 at p. 2068), that "all other factors being equal, continuous officiation in a non-fortuitous vacancy ought to receive due recognition in determining rules of seniority as between persons recruited from different sources, so long as they belong to the ~~same~~ cadre, discharge similar functions and bear similar responsibilities" (at page 1310)

29. In O.P. Singla & Another Vs. Union of India & Others, AIR 1985 SC 1595, the majority examined the effect of enormous departure in the matter of recruitment to the Delhi Higher Judicial Service according to quota and its shadow over the inter-linked seniority. The Court observed that there is no inherent infirmity in prescribing a quota for appointment of persons drawn from ~~different~~ sources and in working out the rule of quota by rotating the vacancies as between them in a stated proportion. However, instances are not unknown wherein though the provision of Rule or a Section is not invalid, the manner in which that provision is implemented in practice leads to the creation of disparities between persons who, being similarly circumstanced, are entitled to equal treatment.

30. After taking note of Rules 16 and 17 of the Delhi Higher Judicial Service Rules, 1979, the Supreme Court observed in Singla's case as follows:

"Promotees who were appointed under Rule 16 have

been officiating continuously without a break as Additional District & Sessions Judges for a long number of years. It is both unrealistic and unjust to treat them as aliens to the Service merely because the authorities did not wake up to the necessity of converting the temporary posts into permanent ones, even after some of the promotees had worked in those posts from five to twelve years." (at page 1605)

It was found as a fact that the provision prescribing the quota of direct recruitment and promotees was put in cold storage for a long time. After noticing this ugly fact, the majority proceeded to observe as under :

"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 junior to the direct recruits who were appointed five to ten 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 atleast must fail them not." (at page 1605-1606)

31. In G.S.Lamba Vs. Union of India, 1985(1)SLJ 476, the Supreme Court dealt with the question whether appointment of departmental promotees in excess of the quota prescribed by the rules would be illegal and invalid and whether such promotions or the service rendered by them on such irregular promotions should be ignored for the purpose of computing the seniority or such appointments could be valid on the ground that the rules empowered the Government to relax any provision of the service Rules. The Court observed as follows: -

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"Therefore assuming there was failure to consult the Union Public Service Commission before exercising the power to relax the mandatory quota rule and further assuming that the posts in Integrated Grade II and III were within the purview of the Union Public Service Commission and accepting for the time being that the Commission was not consulted before the power to relax the rule was exercised yet the action taken would not be vitiated nor would it furnish any help to Union of India which itself cannot take any advantage of its failure to consult the Commission. Therefore it can be safely stated that the enormous departure from the quota the 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

as held by this Court in N.K. Chawla and Ors v. State of Gujarat. Therefore, the promotion of the promotees was regular and legal both on account of the fact that it was made to meet the exigencies of services in relaxation of the mandatory quota rule and to substantive vacancies in service."

(at page 696)

32. After taking note of the earlier decisions on the subject, the Supreme Court in Lamba's case enunciated the principle as follows: -

"Where recruitment to a service or a cadre is from more than one source, the controlling authority can prescribe quota for each source. It is equally correct that where the quota is prescribed, a rule of seniority by rotating the vacancies can be a valid rule for seniority. But as pointed out earlier if the rule of seniority is inextricably intertwined with the quota rule and there is enormous deviation from the quota rule, it would be unjust, inequitable and unfair to give effect to the rota rule. In fact as held in O.P. Singla's case, giving effect to the rota rule after noticing the enormous departure from the quota rule would be violative of Art. 14. Therefore, assuming that quota rule was mandatory in character as pointed out earlier, its departure must permit rejection of rota rule as a valid principle of seniority."

(at page 693)

33. In Narender Chadha Vs. Union of India, AIR 1986 SC 638, the Supreme Court referring to its earlier decisions in the case observed that even a person promoted in violation of the rules and working for more than 15 years, the entire period of his officiation should be counted for the purpose of seniority vis-a-vis the direct recruits. The following observations made by the Supreme Court are pertinent: -

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"It is now well-settled that it is permissible for the Government to recruit persons from different sources to constitute a service. It is also open to it to prescribe a quota for each source. Rules of recruitment framed on the above lines are perfectly legitimate and quite consistent with Arts. 14 and 16 of the Constitution. It is also true that when the Rules of recruitment prescribe recruitment from different Services in accordance with the specified quota the Government is bound to appoint persons to the Service concerned in accordance with the said Rules. The seniority of persons recruited from different sources will have to be regulated accordingly. So far there can be no controversy. But we are faced in this case with the problem of resolving conflicts which have arisen on account of a violent departure made by the Government from the Rules of recruitment by allowing

those who were appointed contrary to the Rules to hold the posts continuously over a long period of time. The question is whether after such a long period it is open to the Government to place them in seniority at a place lower than the place held by persons who were directly recruited after they had been promoted, and whether it would not violate Arts. 14 and 16 of the Constitution if the Government is allowed to do so. Promotions of officers have been made in this case deliberately and in vacancies which have lasted for a long time."

.....

"But we, however, make it clear that it is not our view that whenever a person is appointed in a post without following the Rules prescribed for appointment to that post, he should be treated as a person regularly appointed to that post. Such a person may be reverted from that post. But in a case of the kind before us where persons have been allowed to function in higher posts for 15 to 20 years with due deliberation it would be certainly unjust to hold that they have no sort of claim to such posts and could be reverted unceremoniously or treated as persons not belonging to the service at all particularly where the Government is endowed with the power to relax the Rules to avoid unjust results." (at page 645)

34. In Narender Chadha's case the Supreme Court directed that all persons who were promoted to several posts contrary to the rules, as having been regularly appointed to the said posts and they be assigned their seniority in the cadre with effect from the dates from which they were continuously officiating in the said posts.

35. Reference may also be made to the judgement of this Tribunal in K.N. Mishra and Others Vs. Union of India and Others, A.T.R. 1986(2) C.A.T. 270 and in Sudershan Kumar & Another Vs. Union of India & Others, A.T.R. 1987(1) C.A.T. 538 where the aforesaid decisions of the Supreme Court have been followed.

36. The Supreme Court has viewed with disfavour the rules enabling the authorities to fill in vacancies for direct recruits as and when the recruitment is made and thereby destroying the chances of promotion to those who are already in service. In A.N. Pathak Vs. Secretary to the Government, Ministry of Defence, AIR 1987 SC 716 at 719, the Supreme Court has observed that "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 making appointment by direct recruitment should not visit the promotees with adverse consequences denying them the benefits of their service." The Supreme Court again followed its earlier decision in Lamba's case and other previous cases.

37. In the recent case of Nirmal Kumar Choudhary and Others Vs. State of Bihar and Others, AIR 1988 SC 394 at 396, the Supreme Court again reiterated the proposition that in the absence of any other valid rule for determining inter se seniority of members belonging to the same service, the rule of continuous officiation or the length of service or the date of entering in service and continued uninterrupted service thereafter would be valid and satisfy the tests of Article 16 of the Constitution. This view was reiterated by the same Court in one of the lastest judgements in Desoola Rama Rao and anr. Vs. State of Andhra Pradesh and Others, (1988) 7 ATC 441 at 444.

38. In the instant case, the respondents have produced before us the seniority list of officers of Central Water Commission in the grade of Extra Assistant Director/Assistant Engineer as on 1.1.1975, 1.4.78, 1.4.79 and 1.3.1981. The applicant has given the relevant extracts of the seniority list (in annexure P-XVII at pages 59 to 67) of Assistant Directors as on 12.9.1985 (the impugned seniority list). On a perusal of the seniority list from 1978 onwards, it will be seen that the applicant alongwith several others have been shown as officiating Assistant Directors on ad hoc basis. The dates from which these officers began their continuous officiation in the grade of Assistant Director have not been indicated in any of these lists. It is also relevant to point out that Rule 13 of the Central Water Engineering (Group A) Service Rules, 1982, provides that where the Government is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing, and in consultation with the

Commission, relax any of the provision of these rules with respect to any class or category of persons. There is force in the contention of the applicant that in the light of the aforesaid judicial pronouncements, the seniority in a cadre grade or service should be determined on the basis of continuous officiation. As the DPC quota remained unfilled between 19.3.75 to 9.8.1982, we are of the opinion that the quota/rota rule had broken down in this case and, therefore, the principle of continuous officiation should be adopted for determining the seniority in the grade of Assistant Directors.

39. In the result, the impugned seniority list of Assistant Directors issued on 12.9.1985 is quashed. The respondents are directed to draw up a fresh seniority list as on 1.6.85 of Assistant Directors by adopting the principle of determining seniority on the basis of continuous officiation including ad hoc continuous service followed by regular appointment rendered by the applicant and others similarly situated, in the grade of Assistant Director during the aforesaid period (1975-82). The seniority list should be finalised after giving adequate notice to all concerned for objections, if any, within a period of three months from the date of communication of this order.

40. On the basis of the revised seniority list, the applicant and others similarly situated should also be considered in accordance with relevant rules and orders, for promotion to the grade of Deputy Director from the dates their juniors were so considered. The applicant if promoted will also be entitled to all consequential benefits. There will be no order as to costs.

S.P. Mukerji
S.P. Mukerji
(S.P. Mukerji)
Administrative Member

P.K. Kartha
P.K. Kartha
(P.K. Kartha)
Vice Chairman (Judl.)