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Date of decision: February 5, 1995

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Applicants

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Respondents

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Shri M.R.Bhardwaj, Advocate



Shri P.P.Khurana, Advocate.

Shri A.K.Sikri, Advocate.

B.S. SEKHON:

Applicants, who were serving as Assistant

Director General in the Department of Telecommunications

at the time of filing the instant Application have
instant

preferred the/ Application seeking the following reliefs:-

- (i) The impugned orders contained in Memo No.4-7/81-SEA, dated 12th June,1981 (Annexure A-1) treating the applicants to have been promoted to the Sr. Time Scale of the Indian P&T Accounts and Finance Service(Group 'A') (for short 'the Service'), again on ad hoc basis with effect from 9th June,1981, arbitrarily ignoring their continuous period of service on ad hoc basis, from October/November,1977 and August,1979, be quashed and set aside.
- (ii) The impugned orders contained in the Notification of February,1987(Annexure A-2) regularising the appointment of the first three applicants in the Senior Time Scale of the Service only from 27 January, 1987 and fixing their inter-se seniority in juxtaposition with that of the direct recruits of 1981 examination who joined the Service in 1982

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be quashed and set aside.

- (iii) Respondent No.1 be directed to count the entire period of ad hoc service rendered by the applicants in the Senior Time Scale of the Service from October/November, 1977 and August, 1979 for purposes of their seniority in that grade and for promotion to the next higher grades with other consequential benefits.
- (iv) Respondent No.1 be further directed to consider the cases of the applicants for promotion to the Junior Administrative Grade of the Service after they have been assigned the right seniority in the Senior Time Scale with back wages and other consequential benefits.

2. The precise grievance agitated by the applicants is the alleged unjust deprivation of the benefit of the service rendered by them on ad hoc basis in the Senior Time Scale of the Service since 1977 and 1979 for purposes of their seniority and promotion to the next higher Grades of the Service and the consequential benefits. Prior to filing the Application, Shri P.K.Adiyodi - applicant No.3 submitted representation dated 11th March, 1987 (Annexure A-5). Vide Memo No. 4-5/87-SEA dated 6-5-87 (Annexure A-6) issued by the Department of Communication (Telecom Board), the aforesaid representation was not acceded to for the reason that the Recruitment Rules for the Service do not permit the same.

3. Shorn off superfluities, the facts germane to the adjudication of the applicants' grievance are:-

Service was initially constituted with effect from 1-9-1972 comprising the following four Grades with the strength indicated against each Grade:-

	<u>Grade</u>	<u>Scale of pay as on 1.9.72</u>	<u>Authorised strength</u>	
			<u>Permanent</u>	<u>Temporary</u>
(1)	Junior Time Scale	Rs.400-950	12	4
(2)	Senior Time Scale	Rs. 700-1250	7	34
(3)	Junior Administrative Grade	Rs. 1300-1600	3	10
(4)	Senior Administrative Grade	Rs.1800-2250	2	-

The Indian Posts and Telegraphs Accounts and Finance Service Class II (Recruitment) Rules, 1972 (for brevity sake called the 'Rules') which came into force w.e.f. 1.9.72 regulate the method of recruitment to the Service at its initial constitution and the maintenance stage.

4. Rule 5 of the Recruitment Rules deals with the initial constitution of the Service. Rule 6(1) provides for method of recruitment to the Service after its initial constitution. As per the said Sub-rule, recruitment after the initial constitution of the Service shall be made by any of the following methods, namely:-

- (a) by a competitive examination held in accordance with the provisions of part III of the Rules.
- (b) by promotion in accordance with the provisions of part IV of the Rules;
- (c) by deputation or transfer in accordance with the provisions of Part V of the Rules.

As per Rule 6(2)(a), fifty percent of the permanent vacancies in the Junior Time Scale of the Service shall be filled by direct recruitment in accordance with the

provisions of Part III of the Rules and the remaining fifty percent permanent vacancies were to be substantive appointment of temporary officers of Junior Time Scale of the Service, who were approved for substantive appointment to that grade in the order of their seniority.

As per clause (b) of the aforesaid sub-rule, temporary vacancies in the Junior Time Scale of the Service were to be filled by promotion in accordance with the provisions of Part IV of the Rules.

Rule 17 of the Recruitment Rules contained in part IV thereof is in the following terms:-

"After the initial constitution of the Service, appointment to various grades shall be made as follows:-

- (i) Junior Time Scale: Appointment by promotion to the Junior Time Scale in the Service shall be made by selection on merit from amongst officers of the Posts & Telegraphs Accounts and Finance Service Class II, with not less than seven years' approved service in the grade on the recommendations of a duly-constituted Departmental Promotion Committee and in consultation with the Commission.
- (ii) Senior Time Scale: Appointment to the Senior Time Scale in the Service shall be made by promotion of officers in the Junior Time Scale, with not less than 5 years' service in the grade, in the order of seniority subject to the rejection of the unfit.

Provided that officers of the Posts &

Telegraphs Accounts and Finance Service, Class II, including those promoted to Junior Time Scale under clause (i) may be allowed to officiate in the Senior Time Scale till such time as officers of the Junior Time Scale are available for regular promotion to Senior Time Scale.

(iii) Junior Administrative Grade: Appointment to the Junior Administrative Grade in the Service shall be made by selection on merit from amongst officers of the Senior Time Scale in the Service with not less than five years' approved service in the grade on the recommendation of a duly-constituted Departmental Promotion Committee.

(iv) Senior Administrative Grade: Appointment to the Senior Administrative Grade in the Service shall be made by selection on merit from amongst officers of the Junior Administrative Grade of the Service, with not less than five years approved service in the Grade, on the recommendation of a duly-constituted Departmental Promotion Committee.

5. All the applicants were appointed to the Junior Time Scale and Senior Time Scale simultaneously on purely temporary and ad hoc basis and subject to the

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decision that may be taken in the Special Civil Application No.3054 of 1976 filed by non-gazetted Postal Audit Association Nagpur in the High Court of Judicature at Bombay(Nagpur Bench). Applicants No.1 to 3 were so appointed vide orders dated 13th October,1977 (Annexure A-3) and applicant No.4 vide orders dated 16th August,1979(Annexure A-4). The aforesaid orders also stipulated that the appointment of the officers specified therein in the Junior Time Scale and Senior Time Scale on ad hoc basis will not bestow on them any claim for regular appointment to these grades, nor will the service so rendered by them in these grades count for the purpose of seniority in the grade or for promotion to the next higher grade.

6. It is not in dispute that the meeting of the Departmental Promotion Committee was actually held in April/May, 1981. All the applicants were recommended by the DPC held in April/May, 1981. Consequent to the applicants' selection, P&T Board issued orders dated 12th June,1981 (Annexure A-1) appointing the applicants simultaneously to the Junior and Senior Time Scales of the Service again on an ad hoc basis with the following rider:-

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"the date of effect of orders for promotion to the Senior Time Scale in respect of officers who are already officiating in Senior time Scale on ad hoc basis shall also be 9.6.1981".

7. The salient grounds on which the applicants have impugned Annexure A-1 are:

(i) Denial of benefit of the period of service rendered by them from October/November 1977 and August,

1979 in the Senior Time Scale of the Service, on ad hoc basis, for purposes of their inter-se seniority in that grade and for promotion to the next higher grade is grossly arbitrary, discriminatory and violative of Articles 14 & 16 of the Constitution.

(ii) The initial appointment of the applicants simultaneously to the Junior and the Senior Time Scales was made on an ad hoc basis pending selection of the applicants by a duly constituted Departmental Promotion Committee. For the abnormal administrative delay in convening the meeting of the DPC, the applicants should not be made to suffer in the matter of their regular appointment to the Senior Time Scale and consequential benefits for seniority in that grade and promotion to the next higher grades.

(iii) The rider extracted hereinabove is wholly uncalled for. It wipes out the service of the applicants rendered in the Senior Time Scale from October/November, 1977 and August, 1979 and is the result of colourable exercise of the power. The same is arbitrary, illegal and violative of the principles of natural justice.

B The orders of February 1987 (Annexure A-2) regularising the appointment of the first three applicants to the Senior Time Scale with effect from 27-1-87 are alleged to be arbitrary, violative of the principles of natural justice and discriminatory.

(iv) Fixation of applicants' inter-se seniority in the Senior Time Scale in juxtaposition with that of the direct recruits to the Junior Time Scale of the Service, appointed to the Service in 1982 on the result of the

competitive examination held by the Commission in 1980 completely ignoring more than 9 years of continuous service rendered by the applicants in the Senior Time Scale is highly arbitrary, discriminatory and is violative of all cannons of justice.

(v) Direct recruits had not even joined the Service on the dates when the applicants had been appointed to the Senior Time Scale of the Service. Determining of the inter-se seniority of the applicants with direct recruits of 1981 examination is irrational, anomalous, arbitrary, discriminatory and wholly uncalled for.

(vi) Rule 6(2)(a) of the Recruitment Rules which arbitrarily debars the bulk of the departmental promotees officers holding temporary posts, who discharge the same duties and functions as discharged by the substantive members of the Service from the benefits of their temporary service for the purposes of their seniority in the Senior Time Scale and consequential promotion to the next higher grades gives unbridled and arbitrary powers to respondent No.1 to ignore the service rendered by the departmental promotees officers, is liable to be struck down as violative of the fundamental rights guaranteed to such promotees officers by Articles 14 and 16 of the Constitution.

also

8. Union of India - respondent No.1 as the private respondents have resisted the Application on merits as well as on the ground of its being barred by limitation.

8. Respondent No. 1's case on merits as set out in the counter is that the statement that the applicants were understood to have been declared suitable for simultaneous appointment to the Junior Time Scale and Senior Time Scale of the Service by the D.P.C. on regular basis is not correct. The applicants were working as Assistant Accounts Officers and were promoted alongwith certain other officers simultaneously to both Junior Time Scale and Senior Time Scale to Group-A of the Service on purely temporary and adhoc basis till further orders subject to the following stipulations contained in orders dated 13.10.1977 (Annexure A/3) pertaining to applicants 1 to 3 and order dated 16.8.79 (Annexure A/4) pertaining to Applicant No. 4:-

(a)
"The promotion to Junior Time Scale is on purely adhoc and temporary basis until further orders."

"(b) The appointment of the officers in the Sr. Time Scale of the Service is on purely temporary and adhoc basis and until further orders."

"(c) The aforesaid promotion and appointment are subject to the decision in special civil application No.3054 of 1976 filed by Non Gazetted Postal Association, Nagpur in the High Court at Bombay (Nagpur Bench)."

"(d) The appointment in the Junior Time Scale and Senior Time Scale on adhoc basis will not bestow on the appointees any claim for regular appointment to these grades, nor will

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the Service so rendered by them in these grades count for the purpose of seniority in the grade or for promotion to the next higher grade."

The respondent has stated the background to the case as under:-

A general policy decision was taken by the Govt. of India to relieve the Comptroller and Auditor General of India from the responsibility of compiling the Accounts of various Departments of the Govt. of India and to transfer the same to the concerned Departments. Initially an Ordinance was issued by the Govt. of India, which was later on replaced by the Departmentalisation of the Union Accounts (Transfer of Personnel) Act, 1976 (No. 59 of 1976). As a result of the above policy and coming into force of the Act, the entire work of the postal Accounts which was earlier under the office of the Accountant General Posts and Telegraphs was taken over by the Posts and Telegraphs Department. The Accounts work of the Telecom. Wing was taken over by the Department from Audit much earlier viz. from 1968 in phases upto 1970.

Prior to the take over of the Postal Accounts work by the Department, the promotion of Class -II of the P&T Accounts and Finance Service was being made in accordance with the P&T Accounts and Finance Service Class II Recruitment Rules, 1968 (for short 1968 Rules).

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However, the personnel who were transferred from the Audit Department to the P&T Department at the time of take over of Postal Accounts work, were to be given certain special concessions and privileges and so they were not merged with the mainstream of the then existing P&T Accounts and Finance Service Class II. Two sets of statutory rules of recruitment were framed viz. Indian Posts and Telegraphs Accounts and Finance Service, Telecom. Wing, Group 'B' (Recruitment) Rules, 1980 and Indian Posts and Telegraphs Accounts and Finance Service, Postal Wing Group 'B' (Recruitment) Rules, 1980. Although these rules were issued in 1980, they were given retrospective effect from 1.4.1976. The P&T Accounts and Finance Service, Group 'A' was common to both the Services. Suitable amendments had to be made to rule 17 of the Indian P&T Accounts Finance Service Class I (Recruitment) Rules, 1972 to provide for the promotion of Officers recruited in the Department under the Indian P&T Accounts and Finance Service Postal Wing Group 'B' (Recruitment) Rules, 1980. The vacancies in the Junior Time Scale of the Indian P&T Accounts and Finance Service Group 'A' were to be shared between the officers of the P&T Accounts and Finance Service, Postal Wing, Group 'B' and the P&T Accounts and Finance Service, Telecom. Wing Group 'B' and this ratio had to be filled. Due to these problems which necessitated the

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~~which necessitated~~ the framing of separate recruitment rules for Group 'B' services and amendments of the existing rules for Group 'A' of the P&T Accounts and Finance Service, no meeting of the Departmental Promotion Committee could be held after 1976 till April, 1981. However, during this period some Accounts Officers were appointed on purely ad-hoc and temporary basis to the posts of Chief Accounts Officers under the proviso to Rule 17(ii) of the Indian P&T Accounts and Finance Service Class-I (Recruitment) Rules, 1972 which permitted the P&T Accounts and Finance Service Class II Officers to officiate in the Senior Time Scale till such time as Officers of the Junior Time Scale become available for regular promotion. But this did not confer on them any right for being continued in that grade nor for counting the service for seniority. This position was made clear in the appointment order itself vide para 5 of the P&T Board's Memo No. 4-8/77-SEA, dated 13.10.77 attached as Annexure A.3 to this Application. Such appointments are fortuitous in nature necessitated by circumstances prevailing and cannot be claimed to confer on such officers any right for regular promotion or seniority. Their regular promotion to the grade would have to be considered by the D.P.C. in accordance with the Recruitment Rules. After stating the background the respondent has averred that applicants were

promoted to Junior Time Scale on regular basis w.e.f. 9.6.81 on the basis of the recommendations of duly constituted D.P.C. vide orders dated 12.6.81 and their appointment in Sr. Time Scale continued on adhoc basis. Rule 6(2)(b) of the Recruitment Rules permit temporary vacancies in the Jr. Time Scale of the Service to be filled in by promotion in accordance with the provisions of part IV of the Rules. 50% of permanent vacancies and all temporary vacancies are to be filled in by promotion of departmental officers. It is further stated by the respondent that appointment to the Senior Time Scale in the Service could be made by promotion of the officers in the Junior Time Scale with not less than 5 years (reduced to 4 years vide notification dated 10.3.86), of service in the grade in the order of seniority subject to the rejection of the unfit. The D.P.C. which met on 27.1.87 considered the case of Shri K. Chandrasekaran - Applicant No. 2 and other officers who had completed 4 years service in the Junior Time Scale for promotion to Senior Time Scale on regular basis. Applicants No. 1 to 3 were promoted on regular basis from that date. Applicant No. 4 had not become eligible for being considered for promotion to Senior Time Scale on regular basis as his senior direct recruit officer had not completed the prescribed length of service of 4 years

for promotion to the Senior Time Scale. Controverting the contention about the fixation of inter se seniority of the applicants alongwith direct recruit officers being against canons of natural justice, arbitrary, discriminatory and illegal, respondent has averred that the orders regarding fixation of inter-se seniority between the promotee officers and direct recruits were made strictly in accordance with the orders contained in DOP's letter No. 7900/Dir.(E)/62, dated 23.10.82. According to the respondent, the services rendered by the applicants in the Junior Time Scale or Senior Time Scale on adhoc basis cannot be taken into account for the purpose of their seniority in that grade as also ^{for} promotion to the next higher grade and that the action of the respondents does not violates Articles 14 and 16 of the Constitution. The action of the respondents in appointing the applicants to the Senior Time Scale on adhoc basis contained in Memo. of even number dated 12.6.81 as also of promotion of Applicants No. 1 to 3 on regular basis with effect from 27.1.87 is legal, in accordance with the Service Rules and is not violative of principles of natural justice. The applicants were fully aware that they would not be entitled to the benefit of counting of service for any purpose at the time of accepting the offer of promotion to Senior Time Scale and the determination of their inter-se seniority with direct recruits is quite in order and in accordance with the Service Rules.

9. Private respondents have apart from raising the preliminary objection about the O.A. being barred by time have also raised objection regarding the non maintainability of the Application for the reason that the applicants have not availed of the remedies as per the provisions of Section 20 of the Administrative Tribunals Act, 1985 (for short the Act). On merits, the aforesaid respondents say that the decision of the Tribunal dated 6.3.87 (referred to in the representation Annexure A/5) in the seniority case of the officers belonging to Central Information Service (CIS) is not relevant to the case of the applicants. The circumstances in the two cases are not similar. Applicants were not even eligible for regular promotion to the Senior Time Scale as per the provisions of the Recruitment Rules on the date on which they were appointed to the Senior Time Scale on purely temporary and adhoc basis. Stating that they had been recruited directly to Group-A of the Service through UPSC on the basis of IAS etc./Civil Services examination held from year to year as specified at pages 97 and 98 of the Paper book, respondents have stated that applicants have impleaded only direct recruits mentioned at Sr. Nos. 2, 3, 8, 13, 18, 21, 26, 32 and 40 referred to the aforesaid pages and that it is only appropriate and fair that other direct recruits are also impleaded as respondents

and given due opportunity to defend their case.

The other pleas raised by these respondents are that promotion ~~being~~ 100% on Selection basis at the time of promotion of the applicants to the Junior Time Scale, S/Shri A.N. Dureja, K.S. Kanan, and O.P. Malhotra who were junior to the applicants had superseded them. As per Rule 6(1) of the Recruitment Rules, after the initial constitution of the Service, further recruitment to the Service, at its maintenance stage, is made by any of the following methods:-

- a) By direct recruitment through competitive examination to be held in accordance with the provisions of Part III of the Recruitment Rules by the UPSC (Rules 8 to 16).
- b) In accordance with the provisions of Part IV of the Recruitment Rules (Rule 17).
- c) By deputation or transfer in accordance with the provisions of Part V of the Recruitment Rules (Rule 18).

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According to Sub-rule (2) of Rule 6 of the Recruitment Rules, 50% of the permanent vacancies in the Junior Time Scale are to be filled by direct recruitment and the remaining 50% are to be filled by substantive appointment of temporary officers of Junior Time Scale who are approved for substantive appointment to that grade in the order of their seniority. According to sub-rule 2(b) of Rule 6, the temporary vacancies in the Junior Time Scale are to be filled by promotion in accordance with the provisions of Part IV of the

Rules. Vide Rule 21(2), the seniority of the members of the Service in each grade shall be determined in accordance with the general orders regulating seniority of Govt. employees issued by the Govt. from time to time. Referring to OM No. 9/11/55-RPS, dated 22.12.1959 (copy Annexure R/1) including the general principles laid down therein, subsequent clarifications and the background to the constitution of the Service as also to the amendment of the rules vide notification dated 13.9.80, it has been averred that the applicants were approved for regular appointment to the Junior Time Scale of Group A Service by the appointing authority only on 9.6.81 pursuant to the recommendations of the DPC which met in April/May, 1981. They had been appointed simultaneously to the Junior Time Scale and Senior Time Scale on purely temporary and adhoc basis in 1977/79 ^{C. and} had no right to continue in the Junior Time Scale without being approved by the D.P.C. Such appointments could not be termed to have been made merely pending holding of the meeting of the D.P.C. They could be terminated any time on availability of the approved candidates for appointment on regular basis in accordance with the provisions of Recruitment Rules. The applicants could be considered by the D.P.C. only after they fulfilled the eligibility condition prescribed in Rule 17(ii) of the Recruitment Rules. Applicants' appointments vide Annexures A/3 and A/5 were fortuitous and did not confer on them any

right for being continued in Junior/Senior Time Scale posts, nor for counting the service in those grades on adhoc basis for the purpose of fixation of seniority or for promotion to the next higher grade. It is further stated by the respondents that the action of the department is not in any way violative of the principles of natural justice, discriminatory, arbitrary, illegal or unjustified. The same is strictly in accordance with the Recruitment Rules and conditions of service governing P&T Accounts and Finance Service Officers and is not infractive of Articles 14 and 16 of the Constitution.

10. We have heard fairly lengthy arguments addressed by the learned counsel for the parties and have also given our earnest consideration to the pleadings, documents on record and the authorities cited at the Bar.

11. It would appear to be appropriate to deal at the very outset with the preliminary objections raised by the respondents. So far as the preliminary objection based on the provisions of Section 20(1) of the Act is concerned, the same is difficult to be sustained. This is so, as for one thing, the Application has already been admitted on 25.5.87. For another, applicants did not have any statutory remedy in respect of redressal of their grievances agitated in the

instant O.A. This preliminary objection is, therefore, hereby repelled.

12. As regards the plea of limitation, the challenge to the order dated 12.6.81 (Annexure A/1) which order the applicants seek to get quashed and set aside^U, is ex-facie and hopelessly barred by limitation. The cause of action for assailing Annexure A/1 arose as far back as June, 81 i.e. even prior to the period of 3 years preceding the establishment of the Tribunal. In such a case as this, the Tribunal even lacks jurisdiction and competence^{even} to condone the delay. The plea of limitation in respect of relief claimed vide Clause (i) of para 27 of O.A. is, therefore, hereby upheld. The challenge to the order of February, 87 (Annexure A/2) is, however, within limitation in that the instant Application has been filed well within the period of limitation prescribed by Section 21 of the Act. The Application in so far as it seeks to assail Annexure A/2 is, thus, held to be not barred by limitation. In regard to the plea for impleading other direct recruits set up by Respondents No. 2 to 10, it may be stated that even according to the respondents' own plea the other direct recruits could be termed to be proper parties^{only}. In any case Respondents No. 2 to 10 are direct recruits and can in a way be said to represent direct recruits. The other direct

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recruits would not ^{thus} appear to be necessary parties ^{ing} for justifying non suit/ of the applicants / their failure to implead the remaining direct recruits.

13. Adverting to merits, it would be ^{and} appropriate as also expedient to refer to/ extract, where-ever necessary, the provisions of the Rules. The expression "approved service" has been defined by clause (b) of Rule 2 in relation to any grade of the Service to mean the period or periods of Service in that grade rendered after selection for a long termed appointment in that grade and includes any period or periods referred to in the aforesaid clause. Part II of the Rules provides for method of recruitment after the initial constitution of the Service. As per Rule 6(1) , recruitment to the Service after the initial constitution is to be made by any of the following methods:-

- a) By competitive examination held in accordance with the provisions of Part III of the Rules.
- b) By promotion in accordance with the provisions of Part IV of the Rules.
- c) By deputation or transfer in accordance with the provisions of Part V of the Rules.

As envisaged by Rule 6(2), the recruitment to the Junior Time Scale of the Service is to be made, 50% of the permanent vacancies are to be filled

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by direct recruitment and the remaining 50% permanent vacancies are to be filled by substantive appointment of temporary officers of Junior Time Scale of the Service who are approved for substantive appointment to that grade in the order of their seniority. As per Clause (b) of Rule 6(2), temporary vacancies in the Junior Time Scale are to be filled by promotion in accordance with the provisions of Part IV of the Rules. Rule 17(i) lays down the method of appointment by promotion to the Junior Time Scale and Senior Time Scale respectively. The clauses (i) and (ii) of Rule 17 read thus:-

"17- After the initial constitution of the Service, appointment to various grades shall be made as follows:-

(i) Junior Time Scale: Appointment by promotion to the Junior Time Scale in the Service shall be made by the selection on merit from amongst officers of the Posts & Telegraphs Accounts and Finance Service Class-II, with not less than seven years' approved service in the grade on the recommendations of a duly constituted Departmental Promotion Committee and in consultation with the Commission.

(ii) Senior Time Scale: Appointment to the Senior Time Scale in the Service shall be made by promotion of officers in the Junior Time Scale with not less than 5 years in the grade, in the order of seniority subject to the rejection of the unfit.

provided that officers of the Posts & Telegraphs Accounts and Finance Service Class II, including

those promoted to Junior Time Scale under clause (i) may be allowed to officiate in the Senior Time Scale till such time as officers of the Junior Time Scale are available for regular promotion to Senior Time Scale."

The provision for determination of the seniority is contained in Rule 21(2) of the Rules. The same reads thus:-

"Rule 21(2) - The seniority of the members of the Service in each grade shall be determined in accordance with the general orders regulating seniority of Govt. employees issued by the Govt. from time to time."

14. In support of the claim for counting the service rendered by the applicants in the Junior Time Scale and the Senior Time Scale with effect from the date, the applicants were appointed to the Junior Time Scale and Senior Time Scale simultaneously vide orders Annexures A/3 and A/4, the learned counsel for the applicants contended that applicants are entitled to the benefit of the service rendered by them. The rider^{in the orders} to the effect that service rendered by the applicants in the aforesaid grades will not count for the purpose of seniority in the grade is infractive of Articles 14 and 16(1) of the Constitution and that the decision of the respondents for not accepting the applicants' ^{said} claim, contained in

Annexure A/6 is not in conformity with the decisions rendered by the Supreme Court as also the Tribunal in different cases. Another point made by the learned counsel was that the delay in holding the D.P.C. can not prejudice the applicants' claim as the aforesaid delay is entirely due to the indifference and the remissness on the part of the authorities concerned. The learned counsel for the respondents countered by submitting that the applicants' appointments vide Annexures A/3 and A/4 were not made in accordance with the Recruitment Rules. The posts in question are selection posts in which there is an element of supersession. Applicants had also been superseded. These appointments were made in the background detailed at page 83 and 84 of the counter (which was elaborated by the learned counsel for the respondents). The appointments were purely on adhoc and stop-gap arrangement and were valid. The authorities relied upon by the learned counsel for the applicants are distinguishable and do not assist the applicants. The learned counsel for the official respondents added that the case of officers of CIS, relied upon by the applicants in their representation, is also clearly distinguishable. It would bear repetition to state that promotion of the applicants to the Junior Time Scale and Senior Time Scale vide

Annexures A/3 and A/4 were made purely on adhoc basis with the clear stipulation that the same will not bestow on them any claim for regular appointment to these posts nor will the service so rendered by them would count for the purpose of seniority in the grade^{or} for promotion to the next higher grade. Since it is not in dispute that the DPC was held only during April/May, 1981, promotion of the applicants to the Junior Time Scale as also to the Senior Time Scale vide Annexures A/3 and A/4 can not be deemed to be an appointment in accordance with the provisions of Rule 17(i) and (ii) of the Recruitment Rules; since the post in the Junior Time Scale as also in Senior Time Scale of the Service are selection posts and the same are to be filled up on the basis of the recommendations of the DPC. That apart, having regard to the background and circumstances of the case as detailed at pages 83 and 84 of the counter filed by Respondent No. 1, the aforesaid appointments would seem to be fortuitous. We may add that it is by now well settled and as ruled by the Constitution Bench of the Apex Court / in the land mark judgment rendered in the Direct Recruit Class II Engineering Officers' Association and others V. State of Maharashtra & others¹ it is only the appointment according to rules which has to be considered for the purpose of counting seniority and that if the initial appointment

1. JT 1990(2) S.C. 264

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which is only adhoc and not according to rules and made as a stop-gap arrangement, the officiation in such post can not be taken into account for purposes of reckoning seniority. It can also not be gain said that the proposition that subsequent appointment made in accordance with rules and on regular basis can not relate back to the date of appointment on adhoc basis and as a stop gap arrangement so as to confer benefit of counting the service prior to the regular appointment for purposes of seniority also admits of little doubt. Since the matter stands clinched by the aforesaid decision rendered by the Constitution Bench of the Apex Court, it is scarcely necessary to refer to different authorities relied upon by the learned counsel for the applicants. It may all the same be stated that Narender Chadha and others Vs. Union of India and others² is clearly distinguishable for the reasons, firstly, that the quota and rota had broken down and the adhoc appointments were continued for 15 to 20 years. We may add that it is not the applicants' case that the quota and rota had broken down in the instant case. The case of D.R. Nim, IPS Vs. Union of India³ was a case wherein the stop-gap arrangement had lasted for 8 years and the aforesaid case was decided in the light of the statutory rules viz. Indian Police Service (Regulation of Seniority) Rules, 1954. The decision of the

2. A.F.R. 1986 S.C. 49

3. 1967 SLR 221.

principal Bench rendered on September 5, 1990 in OA 1783/88 titled "Harpal Singh Vs. Union of India & others" went on its peculiar facts which are distinguishable from those of the present case. The decision of the Tribunal dated 6.3.87 rendered in T-1250/85 in the case titled "S.C. Kacktwana and others Vs. Union of India and others also does not assist applicants as the facts in that case were far dis-similar as compared to those of the instant case. In view of the foregoing, and the fact that the validity/vires of the rules has not been challenged, we entertain little doubt on the point that the aforesaid claim of the applicants which is so to say the main claim, is not sustainable. The relief claimed by the applicants for counting the entire period of adhoc service rendered by them in the Senior Time Scale from October/November, 1977 and August, 1979 for purpose of their seniority in the instant case as also for promotion to the next higher grade does not merit acceptance. The same would hold good about the relief seeking consideration of applicants' case ^{on the said basis} for promotion to the Junior Administrative Grade of the Service. The aforesaid relief could be accepted only if the applicants' claim for assigning seniority as prayed were to be accepted.

15. In view of all what has been said and discussed here-in-above, the Application fails.

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Consequently, the Application is hereby rejected.

No costs.

C. C.
(P.C. JAIN)
ADMINISTRATIVE MEMBER

B. S. Sekhon
(B.S. SEKHON)
VICE CHAIRMAN
2-2-93

*Pravised by the undersigned today
in the open court.*

C. C.
5/2/93
(P.C. Jain)
Member (A)