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CENTRAL ADMINISTRATIVE TRIBUNAL,

PRINCIPAL BENCH,

NEW DELHI.

NOTIFICATION OF JUDGEMENTS AND THE JUDGMENT DRAFTS
O.A. Nos. 1121, 1195, 1359, 1368 and 1450 of 1987.

Date of judgment: 10-12-1987.

The judgment O.A. 1121/87 is pronounced to the following Plaintiff

Shri K.N. Mishri and others and **others** vs. **Applicants.**

Notified on 10-12-1987 before a single Judge

Union of India and others and **others** vs. **Respondents.**

Subject to the following notice to the Plaintiff

Vishwa Nath Nigam as **Applicant. (In person)**

Subject to the following notice to the Plaintiff

Union of India and others and **others** vs. **Respondents.**

Subject to the following notice to the Plaintiff

Chet Ram Malawaliya and others and **others** vs. **Applicants.**

Subject to the following notice to the Plaintiff

Union of India and others and **others** vs. **Respondents.**

Subject to the following notice to the Plaintiff

Shri Hari Ram Malik as **Applicant. (In person)**

Subject to the following notice to the Plaintiff

Union of India and others and **others** vs. **Applicants.**

Subject to the following notice to the Plaintiff

Shri Krishan Goel as **Applicant. (In person)**

Subject to the following notice to the Plaintiff

Union of India and others and **others** vs. **Applicants.**

Subject to the following notice to the Plaintiff

Shri Rakesh Tikku, counsel in O.A. 1121/87.

Shri D.C. Vohra, counsel in OA 1359/87.

Shri P.H. Ramachandani, Sr. Standing Counsel

and Shri G.D. Gupta, counsel.

THE HON'BLE JUDGES of the **PRINCIPAL BENCH**

The Hon'ble Shri KAUSHAL KUMAR, **Administrative Member**

and **The Hon'ble Shri G.SREEDHARAN NAIR**, **Judicial Member.**

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Per The Hon'ble Shri G.Sreedharan Nair

It is rather unfortunate that despite the verdicts of the Supreme Court and of this Tribunal which were intended to set at rest the protracted battle between the direct recruits and the departmental promotees to the post of Assistants of the Armed Forces Headquarters Civil Service, the matter is again being dragged on.

The members of the Armed Forces Headquarters Civil Service are governed by the Armed Forces Headquarters Civil Service Rules, 1968, for short 'the Rules', made in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. Recruitment to the grade of Assistants, according to the rules laid down in the third schedule is both by direct recruitment and by way of promotion from Upper Division Clerks and a quota has been fixed for either category. Seniority of the officers is governed by Rule 16. Sub-rule (6) of Rule 16 provides that direct recruits shall be ranked inter se in the order of merit in which they are placed at a competitive examination on the result of which they are recruited, the recruits of an earlier examination being ranked senior to those of a later examination. It is further provided that on confirmation, their inter se seniority shall be regulated in the order in which they are so confirmed. As regards the inter se seniority of direct recruits and departmental promotees, it is provided in Sub-rule (7) that the relative seniority of

direct recruits to a grade and persons appointed to the grade by departmental promotion, shall be regulated in accordance with the provisions in the third schedule. The relevant provision in that behalf in the third schedule is that the relative seniority will be determined according to the rotation of the vacancies between departmental promotees and direct recruits which shall be based on quotas of vacancies reserved for promotion and direct recruitment. Thus, what is envisaged under the Rules is the quota rule of recruitment and the rota rule of seniority interlinking them.

A seniority list of Assistants was drawn up in the year 1977. It was challenged by certain direct recruits before the High Court of Delhi in Civil Writ Petition No.2 of 1978. During the pendency of that petition, there was an amendment to the Rules in the year 1981 on the basis of which a fresh seniority list was drawn up in 1984. This was attacked by the promotee Assistants before the Supreme Court in Writ Petitions 15346 to 15349 of 1984. Those petitions were disposed of by the Supreme Court by order dated 25-4-1985. It is extracted below:-

"The petitioners in these Writ Petitions question the correctness of the seniority list in the cadre of Assistants. The impugned seniority list is dated August 10, 1984. Some of the errors and defects pointed out in the seniority list are such as would render it illegal and invalid in view of the decision of this court in G.S.Lambha & Ors. Vs. Union of India & Ors. 1985 (1) Scale 563. The conclusion in Lambha's case invalidating the seniority list was reached after a review of numerous decisions bearing on the subject

and more particularly three recent decisions in

A.Janardan Vs. Union of India & Ors. (1983) (2)

SCR 936, P.S.Mahal & Ors. Vs. Union of India & Ors.

A.I.R.1984 SC 1291 and O.P.Singla & Anr. Vs. Union of India & Anr. A.I.R. 1984 SC 1995.

At the hearing of these writ petitions when this pertinent fact was pointed out to Mr.B.Datta, learned Sr.Counsel for the Union of India, he requested us to adjourn the matter to obtain appropriate instructions from the Government of India.

Today Mr.Datta informed us that in view of the aforementioned decisions, the Government of

India has decided to review and reconsider the impugned seniority list in the light of the observations and principles enunciated in the aforementioned judgments. The impugned seniority will not be enforced or given effect to till fresh seniority list according to relevant rules and valid principles is drawn up. Rule is made absolute to that effect with no order as to costs.

Panel of promotions will have to be redrawn in the list of the revised seniority list. We order accordingly. All promotions till now made and till new seniority list is drawn up will be subject to the fresh seniority list which should be drawn up within four months from today. Parties are left to bear their own costs."

Pursuant to the directions contained in the aforesaid judgment, a fresh seniority list was prepared in November 1985. Stating that it is tentative, the Government sought clarification from the Supreme Court. However, the petition was dismissed by order dated 28-11-1985 in the following terms:-

"A perusal of the order of this Court (Desai,

Eradi and Khalid, JJ) sought to be reviewed shows that the order was passed on the statement of Mr. Dutta, learned counsel for the Government of India that the Government has decided to review and reconsider the impugned seniority list in the light of the observations and principles enunciated in the aforementioned judgments. The judgments referred to were:

(i) A. Janardhan Vs. Union of India & Ors.

1983(2) SCR p.936.

(ii) P.S. Mahal and Ors. Vs. Union of India & Ors.

AIR 1984 (SC) 1291.

(iii) O.P. Singla and Anr. Vs. Union of India & Anr.

(A.I.R. 1984 (SC) 1595).

(iv) G.S. Mamba & Ors. Vs. Union of India & Ors.

1985 (1) Scale 563.

The order was thus made with full agreement if not at the instance of the Government. In the circumstances, we see no justification for the present petition which is based on the following averment in the petition:-

'In all the aforesaid four decisions of this Court there are varying principles laid down for fixation of seniority. It was difficult to follow them in the facts and circumstances of this case.'

We are surprised at this statement. It is not stated what varying principles laid down in the judgments were, nor is it stated when it was discovered to be so. We have no option but to dismiss these petitions."

Thereupon, the Government prepared a fresh seniority list on

16-1-1986, solely on the basis of the continuous officiation in the grade of Assistants. The applicants in O.A. 1121 of 1987, who

are direct recruits challenged the said seniority list before this Tribunal in O.A.41 of 1986.

the said list was confined to 420 Assistants alone, the promotees filed

O.A.No.79 of 1986 to direct the Government to prepare a

list including the names of all permanent, temporary and

officiating Assistants of the Department. These two O.A.s.

were heard together and was disposed of by a Bench of this

Tribunal consisting of the Hon'ble Chairman and the Hon'ble

Vice-Chairman Shri B.C.Mathur by judgment dated 28-8-1986

reported at page 270 of A.T.R. 1982 (2) CAT. In those

cases, both the direct recruits as well as the promotees

contested the matter in a representative capacity, as is

clear from the statement in the penultimate paragraph of

the judgment. The stand taken up on behalf of the direct

recruits was that the quota and rota rule has not broken down,

the adhoc promotions were necessitated on account of

fortuitous circumstances and not because of the existence

of permanent vacancies and as such the promotees cannot be

deemed to be officiating on a long term basis against

the judgment of the Supreme Court dated 25-4-1985 and as such

continuous officiation in computing their length of service

in the category of Assistants and determining their seniority.

As against this, the promotees contended that the fact that

the quota and rota rule has broken down was recognised by

the judgment of the Supreme Court dated 25-4-1985 and as such

the inter se seniority has to be determined on the basis of

continuous officiation. The core of the controversy was

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and the seniority of the grade. These appointments are treated as valid, in the absence of any other specific rule, even under Rule 16(5) which merely lays down that the seniority must be counted from the date of appointment to the grade, must have been given and sent to the concerned authority. In our view, reference to the date of the first officiating promotion appointed and not the date of the promotee which has continued uninterruptedly. That date must be taken as the date on which he was appointed to the grade of Assistant for purpose of sub-rule (5) of Rule 16. Or else even that sub-rule would (not) break down and cannot be given effect to. In our view, seniority in that case of happens this manner would not only conform to the mandate of the Supreme Court but would also be just and equitable."

The summing up of the resultant position by the Hon'ble

Chairman was as follows:-

After the subsequent discussion, it was decided that the

"In sum, the benefit of this long period of service would accrue to all promotees, who have continuously officiated against long term vacancies,

including those against long term vacancies would be those that are not due to short term leave 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 resulted in officiating against such vacancies, it was against long term or substantive vacancies and not

against such vacancies against short term or fortuitous vacancies, the period

of continuous officiation would have to be reckoned for

determining seniority. Whether the vacancies occurred due to long term deputation or long leave due to death, and the officiating against the unauthorised and illegal retirement, resignation, dismissal or removal, or due to

any other cause, 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."

Consequently, it was decided that the list is in consonance with

In the result, holding that "this list is in consonance with the principles laid down by the Supreme Court for reckoning inter se

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seniority between direct recruits and promotees where the quota note (that is to say and rota rule has broken down", all the contentions raised by both the Government and the various associations and trade unions were rejected and O.A.41 of 1986 was even held valid by the Government and the unions and dismissed. In O.A.79 of 1986 on the ground that the seniority list was confined to some members of the grade, the Government however and judicial were directed to draw up a complete seniority list including to (i) applicable to vacancies that were to arise and all members of the grade occupying substantive vacancies which were (continuous) permanent and non-vacant to all other irrespective of whether the vacancies were in temporary or otherwise, while due to the question being no longer in the evidence or permanent post. The Tribunal hastened to add that in accordance with "the seniority must be reckoned giving the benefit of seniority and continuous officiation".

In compliance with the aforesaid judgment of this

in order that this to effect will come into effect, a fresh seniority list was issued by the Government in October, 1986, listing all of successive eligible officers in September 1986 following the principle of continuous officiation which gave priority to those who had continuous officiation. When that list was published, the applicants for leave in O.A.41 of 1986 (preferred Civil Appeal Nos. 3513 and 3514 of 1986) also came before the Tribunal, challenging from the decision of this Tribunal dated 22-8-1986. In those appeals, they highlighted that the principle of continuous officiation was not given to those who had continuous officiation upon which the inter se seniority was directed by the Tribunal to be determined as between direct recruits and promotees. The seniority between direct recruits and promotees conflicts with Sub-rule (6) of Rule 16 of the Rules which is that there shall be no discrimination and that of all relating to the determination of inter se seniority of the direct recruits. Special leave was granted limited to the question and consideration of this question. The appeals were finally disposed of by the order dated 17-2-1987 holding that

"We do not see any conflict between the direction given by the Government in the said order and the Sub-rule (6) of Rule 16 of the Rules."

It was also added:-

National and Regional and State and Central Government

having regard to the fact that the said rule is being challenged
We make it clear that seniority amongst direct recruits

is to be determined in accordance with the said rule and that seniority amongst direct recruits
themselves will be determined in accordance with

the said rule. The said rule is in accordance with the said rule
Sub-rule (6) of Rule 16 of the Rules, but it will not

interfere with and will not affect the seniority of recruits who

have been promoted and will not affect the seniority of recruits who

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have been promoted and will not affect the seniority of recruits who

have been promoted and will not affect the seniority of recruits who

not members in service at the time of the entry of the applicant

have been shown senior to him. It is this identical ground that has been urged in O.A.1368 of 1987 as well. In O.A.1121 of 1987 and in O.A.1359 of 1987 also the main ground of attack against the seniority list is that in fixing the inter se seniority between the promotees and the direct recruits and also in determining the inter se seniority amongst the direct recruits,

the benefit of continuous officiation has to be given. The

grievance projected is that the applicants have been deprived of the benefit of their continuous officiation and have been shown to be junior to certain promotees who were promoted

subsequent to the date of appointment/selection of the

applicants. This is alleged to be violative of Article 14 of

the Constitution of India. In

the Constitution of India. (O.A.1359 of 1987, yet another

ground has been put forward that in preparing the impugned

seniority list none of the instructions to be followed as

regards the candidates belonging to Scheduled Caste and Scheduled

Tribe has been complied with and as such there is a violation of

Articles 16(4), 46 and 335 of the Constitution.

By way of reply, respondents 1 and 2, namely the Union of

India and the Chief Administrative Officer, Ministry of Defence,

have stated in their reply that while preparing the seniority list

pursuant to the order of the Supreme Court dated 17-2-1987,

in order to comply with the directions contained therein, four

different modes were attempted and after working them out, it was

found that the only method for effective compliance with the

order was to determine the date of joining of the senior-most

direct recruit and then to rank the other direct recruits below

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him with reference to their place in the merit list in accordance with Sub-rule (6) of Rule 16 of the Rules and to integrate the direct recruits with the direct recruits and the

promotees with reference to the date of appointment of the

senior-most direct recruits. It is pointed out that these

applicants had to be brought down as they were juniors in rank

position vis-a-vis other direct recruits of the same examination.

On behalf of the promotees also, the same contention has been

taken up. It is emphasised that pursuant to the order of the

Supreme Court ~~seniority~~ among the direct recruits will have

to be determined in accordance with Sub-rule (6) of Rule 16 of the

Rules, but that shall not affect the seniority of the promotees

vis-a-vis the direct recruits, which has to be determined on the

basis of continuous officiation of the promotees.

It is emphasised that the real scope of the enquiry that can be

embarked upon by this Tribunal has to be referred to. It is to be

noted that when the impugned seniority list was published the

applicants in O.A.1121 of 1987 approached the Supreme Court for

clarification of its order dated 17-2-1987. It was stated in

the petition (copy of which is at Annexure G in O.A.1121 of 1987)

that in view of the direction of the Supreme Court the respondents/

authorities were left with no choice in the matter of fixation of

inter se seniority between the direct recruits and the promotees.

It was prayed that as the working out of the said direction has

resulted to their detriment "some via media solution causing least

injury/prejudice to both parties have to be amicably worked out in

the interest of justice, equity and sense of fair play". This

petition was disposed of by the Supreme Court by order dated 10-8-1987

which is as follows:-

"The petitioners will be at liberty to move the
Commission of Audit Office and no such claim of compensation will be
admissible before the Commission of Audit if (a) it is held that
that our order has not been implemented".

and to mandamus to establish and prosecute all the pending cases

In view of the aforesaid order of the Supreme Court the jurisdiction

of the Commission of Audit to decide such a claim of compensation

of this Tribunal on this matter, in my view, is very restricted.

order of award of compensation as being disregarded as not being implemented

By the order, the Supreme Court has indicated, though impliedly,

that the Government were held to be subject to such compensation

that the order dated 17-2-1987 has necessarily to be implemented.

order and jurisdiction based on such a claim of compensation will be limited to

What the Tribunal can look into is only whether there has been

any lapse on the part of the Government to implement the order

of the Supreme Court, and to consider what amount

of the Supreme Court, and to vindicate the grievance, if any, of the

and to hold that (a) disallowed claim of compensation will not

applicants on that score. There is no case for the applicants

claim of compensation and that the claim of compensation will not

that the order of the Supreme Court dated 17-2-1987 has not been

and no compensation will be held to be subject to such compensation

implemented. They have also no case that the implementation has not

been done in accordance with the direction of the Supreme Court.

the seniority list issued by way of

But their only grievance is that in implementing the order, prejudice

and hardship suffered by certain applicants who have been denied

has been caused to them, as certain promotees who have joined

and hardship suffered by certain applicants who have joined

service in the grade of Assistants after their entry in the grade

and seniority and compensation will be given to them who

are shown senior to them. As such, the simple question that arises is

whether the said circumstance will be a ground for this Tribunal

order as applied in O.A.41 of 1986 (a) which is held to

to interfere with the seniority list, prepared well in accordance

with the directions contained in the order of the Supreme Court.

and finally the answer will be given on this after due consideration

I have no hesitation to hold that the answer has to be in the

negative. I have no hesitation to hold that the answer has to be in the

negative. I have no hesitation to hold that the answer has to be in the

and the answer will be given on this after due consideration

In appreciating the controversy, it will be useful to

and the answer will be given on this after due consideration

bear in mind that the cardinal principle on the basis of which

and the answer will be given on this after due consideration

the earlier seniority list was struck down by the Supreme Court

and the answer will be given on this after due consideration

which was held to

in its decision dated 25-4-1985 and reiterated by this Tribunal

and the answer will be given on this after due consideration

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

and the answer will be given on this after due consideration

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and the seniority rule will be observed in the cadre, grade or service on the basis of continuous officiation to avoid any discriminatory effect on the existing quota rule of recruitment.

where the quota rule of recruitment has broken down and the existing or existing quota need to be reviewed, the seniority rule will be observed.

the quota rule of seniority is interlinked with the quota rule.

changes for service benefit differences can be discussed further on this.

to the direction that was given by this Tribunal that if
there is any discrepancy in fixation of the seniority among the
direct recruits themselves, it is always open to them to make
their representation and for the Government to rectify the

errors, if any, without however affecting the seniority of
promotees who have been declared seniors to the direct recruits on
account of their continuous officiation. In the face of these

clear statements no seniority list can be prepared wherein a
commencement of direct recruit who has entered the service after the continuous
officiation of a promotee can be placed above the promotee.

The ranking of the direct recruits inter se is governed by

Sub-rule (6) of Rule 16 of the Rules, according to which the date of joining of service is irrelevant, for, it has to be done before confirmation in the order of merit in which they are placed at the competitive examination, and after confirmation in the order in which the confirmation is made. So much so, there is every possibility of a direct recruit who is the senior-most

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in a batch in the list prepared in accordance with the Sub-rule,
actually joining service on a date subsequent to the date of
joining of his juniors. But, when it has been uniformly recognised
that no direct recruit who has actually joined service subsequent
to the continuous officiation of ~~such~~ ^{Such} promotee, shall be placed
above the promotee, ~~necessarily~~ while determining the inter se
seniority of the direct recruits vis-a-vis the promotees, there
is the possibility of the promotee who has started continuous
officiation before the senior-most direct recruit actually
joined the service, but only after the date of joining service of a
junior direct recruit, ~~being~~ placed above the senior-most direct
recruit.

It is not necessary that you have seen these solitaires and the

The following illustration will make the position clear:-

the more you know and the easier it becomes to use it.

Direct Recruits. Date of Promotees Date of

(1)	(2)	(3)	(4)
-1	1-12-1980	P.1	30-12-1979
-2	1-1-1980	P.2	30-12-1979
-3	16-1-1980	P.3	15-1-1980
-4	18-3-1980	P.4	18-6-1980
-5	20-4-1980	P.5	13-9-1980
-6	16-2-1980	P.6	1-11-1980
-7	26-6-1980		

е първият етап от този път към изпълнение на обещаните задачи.

In fixing the inter se seniority of these direct recruits

and promotees when the direction given by the Supreme Court in its
opinion before ad hoc committee of 22 October 1973.

order dated 17-2-1987 is complied with, the fixation will be as
you requested or would otherwise consider possible in the particular case.

follows:-

MR is a source of epoxides, which is also shown in (a) scheme.

1) P.1
 2) P.2
 3) P.3
 4) P.4
 5) P.5
 6) P.6
 7) R.1
 8) R.2
 9) R.3
 10) R.4
 11) R.5
 12) R.6
 13) R.7

Only by such a fixation can the promotees P.1 to P.6 all of whom started continuous officiation before R.1, the senior-most

have started continuous officiation before R.1, the senior-most

recruit entered service, be given the benefit of their

continuous officiation. If, on the other hand, as is sought for by

the applicants the seniority list is drawn up by fixing P.1 and P.2

alone above R.1, the resultant position will be as follows:-

1) P.1
2) P.2 and R.1

3) R.1

4) R.2

5) P.3

6) R.3

7) R.6 and R.4

8) R.4

9) R.5

10) P.4

11) R.7

12) P.5

13) P.6

If the list is drawn in this manner, the promotees P.3 to P.6

will be junior to P.1 and P.2 and R.1

all of whom have started continuous officiation earlier than the

date of joining of the

direct recruit R.1 will become juniors to him. Such a consequence

cannot be tolerated as it will be clearly violative of the declaration made by this Tribunal

in the judgment in O.A.41 of 1986 that "so far as substantive

measures are to be implemented and to be adopted, the

vacancies are concerned, promotees who have continuously officiated

and entered continuous officiation before the date of the judgment

in such vacancies should get the benefit of their continuous

and uninterrupted continuous officiation in reckoning their seniority", which declaration

has been affirmed by the Supreme Court in its order dated

17-2-1987, and the direction given by the Supreme Court itself in

the said order that the "seniority amongst direct recruits themselves

will be determined in accordance with Sub-rule (6) of Rule 16 of the

Rules, but it will not affect the seniority of the promotees in

any manner which has to be determined on the basis of continuous

officiation". No doubt, by drawing up the seniority in the

first

manner, the promotee P.3 who started continuous officiation only

Some 90 days after R.4 and R.5 became senior to those recruits
on 15-1-1980 becomes senior to the direct recruit R.2 who
entered service on 1-1-80 and whose seniority to R.2 and R.3
entered service earlier. So also the promotee P.4 who started
direct to officer and became senior to R.2 and R.3 because
continuous officiation only after the direct recruits R.3 to R.5
and R.6 joined service. Then senior to R.1 and R.2 and R.3
joined service, and the promotees P.5 and P.6 who started continuous
officiation on 15-1-1980 when R.7 joined service.
R.7 joined service on 15-1-1980 becomes senior to
officiation only after the direct recruit R.7 joined service,
and senior to all direct recruits drafted after R.7 except R.2
become senior to those direct recruits. This is a consequence

that directly flows from the fixation of seniority of direct recruits inter se under Sub-rule (6) of Rule 16 of the Rules, and fixing the inter se seniority of the direct recruits vis-a-vis the promotees without affecting the seniority of the promotees in any manner which has to be determined on the basis of continuous officiation, as ordained by the Supreme Court by its order dated

17-2-1987. If on account of the fact that a particular promotee
etc. has no guidelines to conduct his/her work it may be ill

has started continuous officiation only after a junior in a batch
serves for 10 months. After that, he is promoted to the next level.

has started continuous officiation only after a junior in a batch
of direct recruits has entered service, in case the senior-most

direct recruits in the batch had joined only subsequently, the

date of joining being after the commencement of the continuous
employment according to Regulation 304, Rule 26(2)(a).

officiation by the promotee, ~~by~~ placing the promotee below the

junior direct recruit will have the effect of depriving the
recruiters of a valuable and highly trained pool of soldiers?

promotee the benefit of continuous officiation vis-a-vis the
police and the public and to facilitate their work.

senior-most recruit. & if such a course was resorted to by the
11th Inf. Regt. it would be the 11th Inf. Regt. No. 3381-6-71

Government in preparing the seniority list, it will be a clear
affirmative action" and said that this was not

violation of the direction of the Supreme Court. As has been

stated earlier, in view of the limited scope of enquiry by this Commission for 1947-48 and little of any useful

Tribunal, if it is established by respondents 1 and 2 that the
respondents 1 and 2 are not guilty of any offence under the
Immigration Act, the Immigration and Refugee Protection Act, or the
Refugee Protection Act.

impugned seniority list is in implementation of the order of the

Supreme Court and is in consonance with the direction, the attack

the quality of grade or service operates. As such, though the first applicant joined service long before the 4th applicant he has been rightly placed junior to the 4th applicant in view of the ranking in the merit list.

Now coming to the integration of the promotees, it is seen that all promotees who started continuous officiation from 16-11-1979 till 31-10-1980 have been placed above the 4th applicant, as the latter had joined only on 31-10-1980. No promotee who has

started continuous officiation after 31-10-1980 has been placed

above the 4th applicant. However, those promotees at Serial Nos. 2023 to 2096 have started continuous officiation only after the 3rd applicant joined service, and those at Serial Nos. 1960 to 2096

started continuous officiation only after the 1st applicant joined service. In the impugned seniority list, they have been shown as seniors to the 3rd applicant and the 1st applicant respectively.

The grievance of the applicants is based on this. But, when the

fact that the senior-most, namely the 4th applicant, joined only

continuous officiation prior to 31-10-1980 is taken into account, if those promotees who started

continuous officiation prior to 31-10-1980 are not placed above the

4th applicant, those promotees at Serial Nos. 1960 onwards will have to

forfeit their period of officiation ranging up to a period of

eight months. The preparation of a seniority list in that manner

will amount to a patent violation of the recognition of the principle of continuous officiation, and declaration that no

direct recruit shall steal a march over a promotee who has

started continuous officiation prior to his joining the service.

Besides, the list will not be in conformity with the latest direction

of the Supreme Court in the matter.

in the seniority list and similarly, in O.A.1359 of 1987, the first applicant is at Serial No.857 in the impugned seniority list. His date of joining service is 13-4-1972. As he is ranked 320 in accordance with his merit, the direct recruit at Serial No.849 Shri B.S. Nanda is ranked 255, though he joined only on 17-3-73, nearly a year later. Later, he has been shown senior, in accordance with Sub-rule (6) of Rule 16 of the Rules. Similarly, the direct recruits at Serial Nos.774 to 778, 850 and 852 to 856 are also shown above him though they have joined only later. In preparing the integrated seniority list, the Commission has followed the principle of placing only those promotees who had started continuous officiation prior to 17-3-1973, the date of joining of Shri B.S. Nanda, have been kept below and shown above him. Such promotees are at Serial Nos.779 to 848. Of course, as they started continuous officiation only after the first batch in which the applicant joined service. But, if they are placed below the first batch, naturally they will be below Shri B.S. Nanda as well, all the more and the result will be that a direct recruit who has joined service only 2 or 3 months after they started continuous officiation is placed positioned ~~below~~ the ~~new~~ ~~above~~ them, giving a false impression that he has joined earlier.

Similarly, in O.A.1368, the applicant in O.A.1368 is at Serial No.2106 in the impugned seniority list. He is ranked No.252 of the 1978 batch. He joined service only on 27-2-1980, as the 4th applicant in O.A.1121 of 1987 who is at rank 37 of the 1978 batch joined only on 31-10-1980, in accordance with Sub-rule (6) of Rule 16 of the Rules. Hence he has been placed in the seniority list below the former. As stated earlier, the promotees who started continuous officiation from 16-11-1979 till 31-10-1980 had to be placed above the 4th applicant in O.A.1121 of 1987. Hence the grievance of the applicant in O.A.1368 of 1987 that some of the promotees who started continuous

of the list. In fact, the applicants have been shown senior to him and as such the seniority list is unsustainable cannot be

accepted. For the same reason, the complaint of the applicant in

O.A.1450 of 1987 has also to be turned down. He is at Serial

No. 2125 in the impugned seniority list, though he joined service

on 20-5-1980, his ranking is only at No. 365 of the 1978 batch and

as such he also has necessarily to be junior to the 4th applicant

in O.A.1121 of 1987.

The applicants in O.A.1359 of 1987 have raised another

ground for attacking the seniority list. As stated earlier, the

first three applicants in that case belong to Scheduled Caste

and the 4th applicant to the Scheduled Tribe. The ground urged

is that in the matter of fixation of seniority, the relevant rules

concerning conferring benefits on members of Scheduled Caste and Scheduled

Tribe have not been adhered to. In the application, they have

referred to five Official Memoranda issued by the Government, in

support of the plea. The answer of respondents 1 and 2 is that

there are no Government orders giving benefit to candidates belonging

to Scheduled Caste and Scheduled Tribe in the matter of fixation

of seniority and that the seniority of directly recruited employees

belonging to such categories has to be determined in the same manner

as applicable to others belonging to general category.

The first O.M. referred to by the applicants is dated

22-4-1970. It deals only with the maintenance of model

rosters when there are reserved vacancies for Scheduled Caste

and Scheduled Tribe. The next O.M. dated 12-3-1984 deals only with

the principle of reservation in confirmation for candidates belonging

to Scheduled Caste and Scheduled Tribe. It is significant to note

the legal basis for the said reservation is not required in cases

where the initial appointment is made against substantive vacancies.

Of course in paragraph 5 of the O.M. cases where appointment to a

grade is being made partly by direct recruitment and partly by

promotion are dealt with and it is provided that in such cases

as regards direct recruits reservation will be applicable to

the drawing up of the seniority list. The reliance placed only

on the O.M. dated 25-3-1970 is also not helpful to the applicants, for,

it deals only with the carrying forward of reserved vacancies. In

the O.M. dated 20-4-1961, which is the fourth one that is referred to

in the application, and was relied upon by counsel of the applicants

in O.A.1359 of 1987, it is specifically provided that amongst the

permanent officers of a grade, their seniority will follow the

order of their confirmation. This is exactly what has been

provided for in Sub-rule (6) of Rule 16 of the Rules. In the

last O.M. mentioned in the application, namely the one dated

12-9-1968, also, the aforesaid principle has been reiterated.

It has been clearly laid down in O.M. dated 24-5-1974 issued

by the Department of Personnel and Administrative Reforms that the

rosters are intended to be an aid to determining the ~~xx~~ number of

vacancies to be reserved and are not meant to be used for determining

the order of appointment or seniority. It is a recognised principle

that after confirmation, the Scheduled Caste/Scheduled Tribe Officers

shall rank senior to temporary officiating officers of the grade,

but amongst the permanent officers of the grade, their seniority

will only follow the order of their confirmation.

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parties are entitled to do so. As far as applicants in O.A.1359 of 1987 are concerned, it is too late in the day to complain about the discriminatory and disparate treatment shown at the initial stage in the order in which they have been confirmed - indeed no such grievance exists save that the grievance of such an order in which they have been projected in the application - as it is evident that the order was given years back.

It follows that the ground of attack on the impugned seniority list based on the alleged privileges as members of

the Scheduled Caste and the members of Scheduled Tribes from the Scheduled Caste/Scheduled Tribe by the applicants in O.A.1359 of 1987 has to be overruled.

The result is that none of the grounds of attacks by the 3rd respondent therein who was appointed on 29-12-1980 in the direct recruits, namely the applicants in O.A.Nos.1121, 1359, 1368 and 1450 of 1987 can be sustained.

In O.A.1195 of 1987, the applicant who is a promotee and whose date of birth and serial number is 2268 in the impugned seniority list based on the alleged privileges as members of the Scheduled Caste and the members of Scheduled Tribes from the Scheduled Caste/Scheduled Tribe by the applicants in O.A.1359 of 1987 has assailed the seniority list on the short ground that

the 3rd respondent therein who was immediately below him in rank in the 1980 Seniority list was appointed on 29-12-1980 in the select list for promotion to the grade of Assistant,

which has been shown above at Serial No.2206. The attack is devoid

of reasonable cause and arbitrary discrimination and is untenable of merit as it is not disputed that the 3rd respondent

started continuous officiation in the grade on 29-12-1980

and had passed an interview and was appointed on 29-12-1980 whereas the applicant commenced his service in the grade

on 05-01-1981 and was appointed on 29-12-1980 whereas the date of appointment

in O.A.41 of 1986, it was specifically held that even under

the present circumstances Rule 16(5) of the Rules which merely lays down that the

seniority must be counted from the date of appointment to

the grade must have reference to the date of the first

and final salary and officiating promotion of the promotee which has continued

uninterruptedly and that date must be taken as the date on

which he was appointed on the grade of Assistant for the purpose of Sub-rule (5) of Rule 16. It was also pointed out that determination of seniority in this manner would not only conform to the mandate of the Supreme Court (in its order dated 24-5-1985), but would also be just and equitable. In the aforesaid judgment, a mandate was given to Government to give effect to the principle of taking into account the period of continuous officiation in determining the seniority of promotees (vide pages 290 and 291 of 1986 ATR Vol.2). Besides, in its order dated 17-2-1987, the Supreme Court had also recognised this principle that the seniority of the promotees has to be determined on the basis of continuous officiation.

In the result, all these applications are dismissed.

(G.SREEDHARAN NAIR)
Member (J)

S.V.