CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

25

O.A.Nos. 60/88, 463/90, 524/90, 663/90, 1085/90 & 938/91

New Delhi this the 8th Day of April, 1994.

Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman
Hon'ble Mr. B.N. Dhoundiyal, Member(A)

OA 60/88

1. Sh. P.C. Bhardwaj,
508, Alipur,
Delhi-36.

2. Sh. M.L. Kukreja,
A-498, Kalkaji,
New Delhi.

3. Sh. Badrul Islam,
233 Zakir nagar,
Okhla,New Delhi.

4. Sh. Balbir Singh Saini,
I-7, Sriniwas Puri,
New Delhi.

5. Sh. Narinder Kr. Sharma,
1020, Gulabi Bagh,
Delhi-7.

6. Sh. J.S. Besoya,
130-A, Vill. Garhi,
New Delhi-65.

7. Sh. C.N. Solanki,
74/Sec-II, Sadiq Nagar,
New Delhi.

8. Sh. R.S. Rana,
Vill.&P.O. Bijwasan,
New Delhi-61.

9. Sh. Mahesh Dutt,
G-127, Sriniwaspuri,
New Delhi-65.

10. Sh. Damodar Pandey,
G-215, sriniwaspuri,
New Delhi-65.

11. Sh. Kashmiri Lal,
11,C-C, Staff Flats,
Upper Bela Road,
Delhi-54.

12. Sh. K.C. Tiwari,
A-136, Yusaf Sarai,
New Delhi.

13. Sh. Umar Singh,
Vill. Nangal Dewat,
P.O. Gurgaon Road Dairy,
Delhi-37.

14. Sh. K.N. Sharma,
1461, Gulagi Bagh,
New Delhi-7.

15. Sh. B.K. Gupta,
4/5160, Krishan Nagar,
Karol Bagh,
New Delhi-5.

16. Sh. Ajit Singh,
V.&P.O. Chandpur,
Delhi-84.

17. Sh. J.M.L. Kaushik,
72, Bhim Gali,
Vishwas Nagar,
Delhi-32.

18. Sh. S.S. Lal Tyagi,
Vill.&P.O. Holambi Kalan,
Delhi.

19. Sh. V.P. Yadav,
Opp.Hastsal,
Delhi-59.

20. Sh. D.S. Singhal,
41, Vill.& P.O. GHONDA,
Delhi-53.

21. Sh. J.S. Verma,
1509, Gulabi Bagh,
Delhi-7.

22. Sh. Mahinder Singh,
116, Saini Enclave,
Delhi-92.

23. Sh. Prehlad Singh,
85, V&P.O. Basant Nagar,
New Delhi-57.

24. Sh. Prem Singh,
1209, Babarpur Road,
Rohtash Nagar, Shahdara,
Delhi-32.

25. Delhi Admn. Executive Staff
(Non-Gazetted) Welfare Association
through its President,
Rattan Lal Kaushik,
WZ-207-C, Sadh Nagar II,
St.No.15E, Palam Colony,
New Delhi-45.

Applicants

(Sh. S.C. Gupta, Sr.Counsel with Sh. M.K. Gupta, counsel)

versus

1. The Lieutenant Governor of Delhi,
through Chief Secretary,
Delhi Administration Offices,
5, Sham Nath Marg,
Delhi.

2. Chief Secretary,
Delhi Administration Flats,
5, Sham Nath Marg,
Delhi.

3. Secretary (Services),
Delhi Administration Offices,
5, Sham Nath Marg,
Delhi.

Respondents

(By advocate Mrs. Avnish Ahlawat, counsel)

O A.No.463/90

1. Sh. V.K. Bansal,
S/o Sh. Ram Saran Dass,
House No.11, Sarojini Park,
Shakti Nagar,
Delhi.

2. Sh. N.K. Sharma,
S/o Sh. G.L. Sharma,
1076/71, Deva Ram Park,
Trinagar, Delhi.

3. Sh. Rajesh Bhardwaj,
S/o Sh. R.N. Bhardwaj,
Flat No.5, Sector-VII,
R.K. Puram Market,
New Delhi.

4. Sh. B.K. Parchure,
S/o Sh. D.N. Parchure,
1409, Nangal Rai,
New Delhi.

5. Sh. M.L. Sirodhi,
S/o Sh. Sukhdev Singh,
2787, Opp. M.C. Primary
School, Idgah Road,
Delhi.

6. Sh. M.K. Dass,
S/o Sh. H.S. Dass,
Sector I,831,R.K. Puram,
New Delhi.

7. Sh. Anil Bhatnagar,
S/o Sh. S.R. Bhatnagar,
7/A-3/119, Rohini, Delhi.

8. Sh. Ved Parkash,
S/o Sh. Keshav Dev,
Flat No.25, Akash Kunj,
Sector IX,Rohini,Delhi

9. Sh. R.K. Jain,
SN 190,
Pitam Pura.
Delhi.

10. Sh. R.S. Dahiya,
Inspector,
Food & Supplies,
2 Underhill Road,
Delhi.

Applicants

(Sh. S.C. Gupta, Sr.Counsel with Sh. M.K. Gupta, counsel)

versus

1. The Lieutenant Governor of Delhi,
through the Chief Secretary,
Delhi Administration Office,
5-Sham Nath Marg,
New Delhi.

2. Chief Secretary,
Delhi Administration Offices,
5-Sham Nath Marg,
Delhi.

3. Secretary (Services),
Delhi Administration Offices,
5-Sham Nath Marg, Delhi.

4. Union of India,
through the Secretary,
Ministry of Home, North Block,
New Delhi. Respondents

(By advocate Mrs. Avnish Ahlawat)

OA 524/90

1. Sh. Nand Lal singh,
S/o Sh. Gian Chand,
R/o C-248, Delhi Admn.Flats,
Timarpur,Delhi-7. Applicant

(By advocate Sh. B.S. Charya)

versus

1. Delhi Administration,
5, Alipur Road, Delhi
(through its Secretary).

2. The Secretary(Services),
Delhi Administration,
5, Alipur Road, Delhi.

3. The Commissioner,
Food Supplies & Consumer,
Delhi Administration,
2-Under Hill Road, Delhi.

4. Sh. Tek Chand, ASTO,
C/o Commissioner Sales Tax,
Vikas Bhawan, I.P. Estate,
New Delhi.

5. Sh. Joginder Singh, ASTO,
C/o Commissioner Sales Tax,
Vikas Bhawan, I.P. Estate,
New Delhi-2.

(By advocate Mrs. Avnish Ahlawat)

OA-663/90

1. Sh. Ishwar Singh,
   S/o Sh. Ram Singh,
   RL-L/57-58,Roshan Pura Extn.,
   Najafgarh, New Delhi.

2. Sh. Dinesh Kumar Mittal,
   S/o Sh.R.L. Mittal,
   118-G, St.No.7, Krishna Nagar,
   Safdarjung Enclave,
   New Delhi.

3. Sh. N.P. Joshi,
   S/o Sh.S.N. Joshi,
   947, Kalyan Vas,
   Delhi.

4. Sh. Kalyan Singh Meena,
   S/o Sh. Jagdish Chand Meena,
   R/o Qr.No.197/2, R.P.F. Line,
   Old Rohtak Road, New Delhi.

5. Sh. P.K. Dabas,
   S/o Sh. Dharam Singh,
   Vill. Kanjhawala,
   Delhi-8.

6. Sh. Mahesh Kumar Gupta,
   S/o Sh. Om Prakash Gupta,
   120/A-3/7, Rohini,
   Delhi-85.

7. Sh. S.C. Chadha,
   S/o Sh. D.R. Chadha,
   R/o B-9, Panchwalia,
   Azadpur, Delhi.

8. Sh. R.K. Nagpal,
   S/o Sh. Nand Lal,
   35/15, WSest Patel Nagar,
   New Delhi.

9. Sh. Ram Dev,
   S/o Sh. D.N. Bharwaj,
   Vill.&P.O. Naya Bans,
   Delhi.

10. Sh. S.K. Bhardwaj,
    S/o Sh. D.N. Bhardwaj,
    R/o WZ-36, Palam Village,
    Delhi.

11. Sh. B.D. Dhar,
    S/o Lt.S.K. Dhar,
    R/o C-55, Vikas Puri,
    New Delhi.

12. Sh. K.K. Anand,
    S/o Lt.Sh. M.S. Anand,
    R/o A-88, Usmanpur,
    Seelampur, Delhi.

13. Sh. Trilochan Singh,
S/o Sh. Kirpal Singh,
R/o 205 MIG, Pocket-B,
Phase IV, Ashok Vihar,
Delhi.

14 Sh. S.K. Walia,
S/o Sh. Lt. Sh. Kirpal Singh,
R/o C-42,Shakti Nagar Extn.,
Ashok Vihar, Phase-III,
Delhi-52.

15. Sh. A.K. Bhattacharya,
S/o Lt.Sh. Sh. M.S. Anand,
A-88, St.Jain Dharamshala,
Usmanpur,Seelampur,
Delhi.

16. Sh. Dohan Singh,
S/o Sh. Niranjan Singh,
28/104, Kasturba Nagar,
Shahdra,Delhi.

17. Sh. Azad Singh,
S/o Sh. Bakshi Ram,
68-A/GG-2, Vikaspuri,
Delhi.

18. Sh. Suraj Mal,
S/o Sh. Birdhi Chand,
1495, Gulabi Bagh,Delhi.

19. Sh. Tej Prakash,
S/o Sh. Hardwari Lal,
424, Kalyan Vas,Delhi.

20. Sh. Ved Prakash,
Gen.Sec.,
Delhi Admn. Executive Staff,
Delhi Admn.Subordinate Service.

21. Sh. N.K. Vashisht,
173, Sector-4, Faridabad.

22. Sh. Vishamber Singh,
1156, Kalyan Vas,Delhi.

23. Sh. J.S. Kadiyan,
357, Nangloi,Delhi.

24. Ms. Laxmi Sharma,
3563, Kucha Daya Ram,
Chauri Bazar,Delhi.

25. Sh. Shankar Dev,
Vill. Saidubrabad,
Mehrauli,Delhi.

Applicants

(Sh. S.C. Gupta, Sr. Counsel with Sh. M.K. Gupta)

versus

31

1. The Lt. Governor of Delhi,
through the Chief Secretary,
Delhi Administration Office,
5-Sham Nath Marg, New Delhi.

2. Chief Secretary,
Delhi Administration Offices,
5-Shamnath Marg, Delhi.

3. Secretary (Services),
Delhi Administration Offices,
5-Sham Nath Marg,Delhi.

4. Union of India,
through the Secretary,
Ministry of Home,
North Block,
New Delhi.

Respondents

(By advocate Mrs. Avnish Ahlawat)

OA-1085/90

1. Sh. Ishwar Singh,
S/o Sh. Sukhlal,
R/o Suraj Nagar,
Azadpur,Delhi-33.

2. Sh. R.N. Tyagi,
S/o Sh. Saguma Singh,
R/o 88, Kalyan Vas Khichripur,
Delhi-92.

3. Sh. Balwan Singh,
S/o Sh. Jai Lal,
R/o 15, Rajpur Road,
Delhi-54.

4. Sh. H.L. Sharma,
S/o Sh. Hir Singh,
R/o RZ-12, Old Roshanpura Extn.,
Block-B, Najafgarh,
New Delhi-43.

5. Sh. Sukhbir Singh,
S/o Sh. Munshi Ram,
R/o 53, Vill. Kirari,
P.O. Nangloi,
Delhi-41.

6. Smt. Veeran Sharma,
W/o Sh. S.K. Sharma,
R/o 661/C, Delhi Admn.Flats,
Timarpur, Delhi-7.

7. Sh. R.S. Raghav,
S/o Sh. B.S. Raghav,
R/o A-487, Shastri Nagar,
Delhi-52.

8. Sh. B.R. Bansal,
S/o Sh. Manohar Lal,
E/o 943, Gulabi Bagh,
Delhi-7.

32-

9. Sh. Hargian Singh,
S/o Sh. Kartar Singh,
R/o 581, Village and P.O.Nangloi,
Delhi-41.

10. Sh. Rattan Lal Kaushik,
S/o sh. Maman Chand,
R/o WZ-207C, Sadh Nagar-II,
Palam Colony,
New Delhi-6.

11. Delhi Administration,
Executive Staff (Non-Gazetted),
Welfare Association(Regd.),
through its President,
Sh. R.L. Kaushik.

12. Sh. Baldev Raj Chopra,
S/o Sh. Des Raj Chopra,
Inspector Grade-III,
Office of the Commissioner
of Excise, 2 Battery Lane,
Delhi.

13. Sh. N.S. Bhardwaj,
S/o late Sh. Hoshiar Singh,
Inspector Grade-III,
Office of the Controller Weights
& Measures, C.P.O. Buildingh,
Kashmeri Gate,Delhi.
R/o 1458, Gulabi Bagh, Delhi. Applicants

As Sh J.P. Verghese
(~~Sh S.C. Gupta~~, Sr.Counsel with ~~Sh. M.K. Gupta~~, counsel.)

versus

1. The Lt.Governor of Delhi,
through the Chief Secretary,
Delhi Administration Office,
5, Sham Nath Marg,
New Delhi.

2. Chief Secretary,
Delhi Administration Office,
5, Sham Nath Marg,
New Delhi.

3. Secretary(Services),
Delhi Administration Office,
5, Sham Nath Marg,
New Delhi.

4. Union of India,
through the Secretary,
Ministry of Home Affairs,
North Block,
New Delhi. Respondents

(By advocate Mrs. Avnish Ahlawat)

OA-938/91

33

1. Sh. L.S. Verma,
S/o Sh. L.P. Singh,
R/o C-15, Shiva Enclave,
A-4, Paschim Vihar,
New Delhi-57.

2. Sh. S.M. Kataria,
S/o Sh. Sis Ram,
R/o 770/1, Ward-21,
Madan Puri,Gurgaon,
Haryana.

3. Sh. K.L. Nagpal,
S/o Sh. Ram Lal,
R/o 16-A, DDA Flats,
Basant Enclave,
New Delhi.

4. Sh. Azad Singh,
S/o Sh. Nafe Singh,
R/o C-7/480, Sultan Puri,
Delhi.

5. Sh. P.P. Sikri,
S/o Sh. M.R. Sikri,
R/o K-101,West Patel Nagar,
New Delhi.

6. Sh. R.K. Rohilla,
S/o Sh. Jug Lal,
R/o 134, Ext.II, Nangloi,
Delhi.

7. Sh. Tara Chand,
S/o Sh. Bhagwan Singh,
R/o Vill.&P.O. Rampur,
Distt. Sonipat,Haryana.

8. Sh. A.K. Sharma,
S/o late Sh. Pyare Lal,
R/o II 1131, Lajpat Nagar,
New Delhi.

9. Sh. C.R. Vats,
S/o late Sh. Tek Chand,
R/o H.No.16,Vill.&P.O.Mundka,
Delhi.

10. Sh. Vijay Anand,
S/o Sh. L.C. Sharma,
R/o 299, Mall Road,
Delhi.

11. Sh. Balbir Singh,
S/o Sh. H.L. Lekhraj,
R/o 3811 David Street,
Darva Dani, New Delhi.

12. Sh. Mor Singh,
S/o Sh. Chhotey Lal,
R/o H.No.3890,G.B. Road,
Delhi.

-34-

13. Sh. Harish Kumar,
S/o Sh. Suraj Mal,
R/o 237, Gautam Nagar,
Meerut Road,
Ghaziabad.

14. Sh. I.C. Saini,
S/o Sh. Mool Chand,
R/o 232, Kishan Pura,
Sonipat,Haryana.

15. Sh. Gian Chand,
S/o late Sh. Sukh Ram,
R/o Village Chauma,
P.O Karter Puri,
Distt.Gurgaon.

16. Sh. R.N. Vats,
S/o late Sh. Nanva Ram,
R/o 141, Vill.&P.O.Mundka,
Delhi.

17. Sh. Raj Singh,
S/o late Sh. Nanva Ram,
R/o 107, Vill. Dhaka,
Delhi.

18. Sh. D.C. Premi,
R/o 50, Patpar Ganj,
Delhi-92.

19. Sh. Dilip Kr. Rodhey,
S/o late Sh. H.L. Rodhey,
R/o 683, Sector XII,
R.K. Puram,New Delhi.

20. Sh. P.S. Dhaiya,
S/o Sh. Chandgi Ram,
R/o 25/21, Punjabi Bagh Extn.,
New Delhi.

21. Sh. B.S. Sharma,
S/o Sh. M.C. Sharma,
R/o 489, Kalyan Vas,
Delhi.

22. Sh. M.R. Sharma,
S/o Sh. Rati Ram,
R/o T-50, Mool Chand Colony,
Adarsh Nagar, Delhi.

23. Sh. Rajinder Kumar,
S/o Sh. Madan Lal,
R/o WZ 667/12-A, Nangloi,
Delhi-34.

24. Sh. Arun Bahadur,
S/o Sh. A.N. Bahadur,
R/o 168, Raj Park,Sultanpur,
Delhi.

25. Sh. Arvind Kumar Gupta,
S/o Sh. Rajinder Parshad,
R/o D-17A, Anand Vihar,
Delhi-92.

26. Sh. Bhopal Singh,
S/o Sh. Rumal Singh,
R/o 346, Kalyan Vas,
Delhi.

27. Sh. Arun Kumar Gupta,
S/o Sh. Salek Chand,
R/o 1/11418 Subhash Park Ext.
Naveen Shahdra, Delhi.

28. Sh. Rakesh Bhattnagar,
S/o Sh. D.P. Bhattnagar,
R/o 1373, Kalyan Vas,
Delhi.

29. Sh. Iswar Singh,
S/o Sh. Sukh Lal,
R/o WZ 207-C, Sad Nagar-II,
Palam Colony,
New Delhi-45. Applicants.

(Sh. S.C. Gupta, Sr.Counsel with Sh. M.K. Gupta, counsel)

versus

1. The Lt. Governor of Delhi,
through the Chief Secretary,
Delhi Administration Offices,
5, Sham Nath Marg,
New Delhi.

2. Chief Secretary,
Delhi Administration Office,
5, Sham Nath Marg,
Delhi.

3. Secretary(Services),
Delhi Administration Office,
5, Sham Nath Marg,
Delhi.

4. Union of India,
through the Secretary,
Ministry of Home Affairs,
North Block,
New Delhi. Respondents

(By advocate Mrs. Avnish Ahlawat)

ORDER

delivered by Hon'ble Mr.B.N. Dhoundiyal, Member(A)

1. The issues raised in these O.As. relate to merger of Executive and Ministerial Wings of Delhi Administration Subordinate Services. There have been

rounds of litigation in the Delhi High Court, the Supreme Court and this Tribunal as a result of which Rule 26 of the DASS Rules 1967 has been amended more than once. The latest amendment of that rule notified on 19.5.1989 is now under challenge.

2. O.A. Nos. 60/88 (25 applicants), 463/90 (10 applicants), 663/90 (25 applicants), 1085/90 (13 applicants) and 938/91 (29 applicants) have been filed by the members of the Executive Cadre of Delhi Administration Subordinate Service. O.A.No.524/90 has been filed by Shri Nand Lal Singh of Ministerial Cadre, who is aggrieved by his non-promotion to Grade-I of DASS cadre. In all these O.As., Rule 26 of the Delhi Administrative Service Rules (Amendment), notified on 19.5.1989 has been challenged. Also, under challenge are the transfer orders passed on the assumption that the integration of executive and ministerial cadre has already taken place.

3. The services of the applicants were governed by the Delhi Administration Subordinate Service, Rule 1967 (hereinafter called the 1967 Rules), which also incorporate the Delhi Administration (Seniority) Rules, 1965 (hereinafter called the 1965 Seniority Rules). Under 1967 Rules, two separate services were created, one called the Delhi Administration Subordinate Ministerial Service and the other Delhi Administration Subordinate Executive Service. On 4.12.1980, the administration decided to merge these two services and while deciding to do so, Rule 26 of the 1967 Rules relating to fixation of seniority was also amended. These amendments were challenged and a Division Bench of Hon'ble High Court by its order dated

13.5.1982 (CWP No.1345 of 1980 and others) upheld the administration's powers to merge the two services, but quashed and struck down the amended Rule 26. An S.L.P. filed in the Supreme court was dismissed, thus making the judgement of the High Court of Delhi final. Several applications were filed in this Tribunal raising a number of issues relating to seniority and promotions which were disposed of by judgement dt. 23.7.1987 in O.A.No. 561 and 67 of 1986, and O.A.No.275 of 1987. The amended Rule 26 was struck down on the grounds of its unworkability, vagueness in regard to certain aspects and adoption of different principles for determining seniority prior to 4.12.1980. The seniority list of Grade-II (Ministerial) issued on 6.1.1986 for the period from 10.2.1967 to 3.12.1980 based on the amended Rule 26 was also quashed. However, promotions made on the basis of the seniority list dt. 6.1.1986 to Grade-I were not disturbed. It was also held that the integrated seniority list of Grade-II after amalgamation of executive and ministerial cadre issued on 9.1.1987 could not survive. It was also held that the preparation of the integrated seniority list will have to be effected in three stages, first, in preparing list under Rule 6 which provides for different modes of recruitment, secondly, integration of list prepared under Rules, 5,6 and 19 in a particular grade separately for the two wings of the service, and, thirdly, integration of the seniority list of the Ministerial and Executive cadres in a particular grade. These orders were challenged in the Supreme Court who by their order dated 30.8.1988 dismissed the SLPs but ruled that the 1985 amendment to Rule 26 is prospectively valid and does not stand in the way of grant of reliefs to the respondents. On 19.5.1989, the 1967

Rules were again amended and new Rule 26 was introduced. The applicants have challenged the latest amendment to Rule 26 on the ground that stagewise preparation of the lists was not adhered to and the amendments again introduced vagueness and arbitrariness in spelling out as to how the integration is to be brought about. According to them transfers and promotions made under these rules are patently illegal and any such orders can only be passed after merger of the two cadres. Promotions from lower grades to higher grades are being made without following any consistant policy and taking some officials from the Executive cadre and some from the Ministerial cadre, without first bringing out any integrated seniority list into existence. There is no valid seniority list of Grade-II (Executive) or of Grade-II (Ministerial) officers appointed after 4.12.1980 nor is there any integrated seniority list of the two cadres. There are 629 posts of Grade-II (Executive) and 1146 of Grade-II (Ministerial) and the present incumbents can be allowed to continue holding these posts till a valid integrated seniority list is prepared. The applicants have also contended that right upto 1985, the Delhi Administration continued to make separate recruitment for the two services and it was only in 1986 that common recruitment of Grade-II of these two services commenced.

4. Mainly, the following reliefs have been claimed:-

(i) To quash the Notification dated 19.5.1989 issued by the Dy. Secretary (Services) whereby Rule

26 has been added to the Delhi Administration, Subordinate Services (First Amendment) Rules, 1989. (in all the O.As.);

(ii) To quash order dated 14.2.1990 issued by the Deputy Secretary (Services) wherein certain transfers and postings of Grade-II officials have been orders (O.As. No. 464/90, 663/90 and 1085/90);

(iii) To quash order dated 30.3.1990 issued by the Delhi Administration, the Administration has sought to order transfer/postings of some of the applicants (O.A.No.938/91).

(iv) To quash the seniority list of Grade-II circulated vide order dated 20.10.1989 ; (OA 524/90;

(v) To quash the order dated 13.2.1990 whereby 84 incumbents have been appointed, ignoring the applicant (OA No.524/90);

(vi) To maintain and implement 40 point roster for reserved candidates for SC/ST while drawing up the seniority list of Grade-II and

Grade-I and not to revert the applicant from the post of Food and Supplies Officer (OA-524/90); and

(vii) To quash order dated 18.12.1987 whereby certain transfer and posting of Grade-II officials have been orders (OA-60/88).

5. On 11.4.1990, an interim order was passed in O.A. 463/90 to the effect that there will be no stay as regards the promotions from the posts of Grade-III to Grade-II of Delhi Administration Subordinate Service made by orders dated 14.2.1990. However, the respondents were restrained from posting the applicants to any Ministerial post though they would have liberty to post them in any of the posts on the executive side. Similar stay order was granted in OA 663/90 on 12.4.90. Another order was passed on 24.4.91 in O.A.No.938/91, directing the respondents to maintain status quo as regards the transfers from Executive to Ministerial cadre and vice versa.

6. In the counters filed by the respondents, the main averments are these. The rules of 1967 provided three cadres of recruitment in the Ministerial, Executive cadre, namely, (i) by promotion on the basis of seniority/suitability (ii) by direct recruitment through open competitive test and (iii) by promotion through limited departmental test. The

41

vacancies to be filled through each mode of recruitment were also to be filled by rotation. The principle of rotation system could not be strictly followed due to various reasons and there was back-log of vacancies to be filled by direct recruitment and through competitive departmental test. When appointments were made through these methods, the officials appointed at a later date were given placement in the seniority list above the officials appointed earlier by promotion. In pursuance of the provisions of Rule 26 notified on 19.5.1989, the department undertook a fresh preparation of the seniority lists. The final seniority list of officials appointed prior to 4.12.1980 to Grade-I (Executive cadre) was notified on 6.10.1989 and the Ministerial cadre on 4.12.1980. The inter-se-seniority was notified on 10.11.1989. The final seniority of the officials appointed prior to 4.12.1980 to Grade-II (Executive) and Grade-II (Ministerial) were notified on 23.6.2989 and 22.6.1989 retrospectively. The inter-se-seniority list, all officials appointed of the subordinate service was notified on 20.10.1989. The integrated seniority list of Grade-II is the basis for selection of officials for further promotion to Grade-I of the subordinate service. The question of merger of the Ministerial and Executive cadre has already been settled by the judgement of High Court dt. 13.5.1982 in the case of Sh. G.R. Gupta and Others Vs. Union of India & Others (CWP No.1345/80). The administration is within its right to effect the transfer of these employees from one department to another department and

also from one post to another post. It is not claimed by the applicants that their pay and allowances have been adversely affected by such transfers.

7. We have gone through the records of the case and heard the learned counsel for the parties. It was agreed that as the transfer orders integrated seniorirty lists and promotions were dependent on the validity of 1989 amendment of Rule 26, this was the main issue for adjudication. However, similar issues were raised in O.A.No.1407/92 and O.A.No.1714/92 in the case of Sh. Suraj Mal & Ors. and Sh. Azad Singh Vs. Union of India & Ors. decided by this Tribunal on 21.12.1992. The following observations made in para-27 of the aforesaid judgement are relevant in the case before us also:-

"The applicant has challenged rule 26 substituted in 1989 giving retrospectivity. It was also stated by the Learned Counsel for the applicant that the principle of nomination referred to in para 26(i)(a) of the Amendment Rules, 1989 (Supra) goes against the principle of actual length of service. As regards the retrospectivity, we find that the amendment to rule 26 inregard to Rules 1967 and in 1985 was also not treated as valid for the period prior to 1985. The Rule of 1967 could not either continue to be applicable till 1985 in view of the legal objection to the observance of rota quota rule, as held in various petitions

43

and O.As. Therefore, an amendment rule had to cater for the principle of determination of seniority for the period prior to 12th July, 1985. this being inescapable, we do not see any good ground for quashing the amendment rule of 1989. Further, it is neither uncommon nor illegal that when a senior is left out wrongly on correction or finalisation of a seniority list and a junior is promoted, the date is to be adjusted according to the date of appointment of the junior. So, while the principle of length of service was treated as dertermining feature of seniority, the Learned Counsel for the respondents said that the clause regarding nomination was also incorporated if for any very valid reasons a person having secured higher merits in the select list was nominated/appointed later and the date of nomination/appointment of their immediate junior was to be assumed as the date of nomination/appointment. On amalgamation of two cadres and on correction of seniority lists consequential effects on promotion also had to be taken care of and the cases of left-out seniors had to be protected. We, therefore, see no good ground to quash rule 26 as in the Delhi Administration Subordinate Service (First Amendment) Rules, 1989. The preamble to these rules

clearly indicates the background against which these amendments were made to take care of various judgements of the Apex Court/High Court and the Tribunal."

8. In view of the aforementioned judgement of this Tribunal, the counsels for the applicants confined their arguments to justifying a case for a reference to the larger bench or to point out certain distinguishing features. Our attention was drawn to the following observations of the Hon'ble Supreme Court in their order dt. 30.08.1988:-

"Rule 26 which came into force from July, 1985 recognised the principle of seniority to be computed on the basis of total length of service. Therefore, when this court made the order on 12.2.1988, it found that since the practice of total length of service being the determinative feature for seniority has been accepted, even without the rule, there was no justification to strike down the rule and the Rule was, therefore, said to be made applicable prospectively from July, 1985. There is no quarrel with that position by any of the parties."

9. It was contended that the 1989 amendment to Rule 26 was contrary to these directions of the Supreme Court and the Tribunal's judgement dt. 21.12.1992 should be reconsidered by a larger bench. However, in their order dt. 12.2.1988, another bench of the Hon'ble Supreme Court had clearly stated that they did not propose to interfere with the directions regarding promotion and regularisation contained in subparagraphs 3 and 4 of paragraph 49 of the Tribunal's decision." Subpara 4 of para 49 of this Tribunal's judgement reads as under:-

> "The regularisation, made as per Order No.F.3(4)/85-JSC, dated 6.1.1986, which are based on continuous officiation from the date of their appointment in the grade shall stand."

10. Rule 26(i)(a) of 1989 relating to fixation of seniority of promotees and direct recruits as well as Rule 26(3)(b) relating to preparation of integrated seniority list are based on the date of appointment in a particular grade. It cannot, therefore, be said that the impugned amendments are contrary to what has been held by the Supreme Court.

11. We see no reason to differ from the judgement dt. 21.12.1992 of a Bench of this Tribunal in O.A.No.1407/92 (Sh. Suraj Mal & Ors.). We, therefore, reiterate the directions given in para 28 of the above judgement. We have also noted that this matter is likely to come up before the Hon. Supreme Court in SLP's. The

respondents shall have to review the transfer, promotion and other incidental orders in the light of final outcome of these cases. Hence we refrain from passing any order on other reliefs claimed in these applications.

12. The O.As. are disposed of with the above directions.

13. No order as to costs.

(B.N. Dhoundiyal)
Member(A)

(S.K. Dhaon)
Vice-Chairman

/vv/

Attested true copy
Advocate
Co. Cl
1 & 104/94
C.A.T. N.D.