

**Central Administrative Tribunal
Principal Bench**

O.A.No.2484/2004

New Delhi, this 1st day of September 2005

**Hon'ble Shri Justice M.A. Khan, Vice Chairman (J)
Hon'ble Shri S.A. Singh, Member (A)**

1. AFHQ Civil Service (Direct Recruits-Gazetted)
Officers Association, through its President
Dr. (Mrs.) Anjula Naib, Director
Financial Planning Directorate
GS Branch, Army Headquarters
Ministry of Defence, South Block
New Delhi-11
2. Brij Bhushan Mohan
Director, AG/DV-2
Army Headquarters, Room No.236
A-Wing, Sena Bhawan, New Delhi-11
3. S. Kasimayan
Section Officer/MS(X)
MS Branch, Army Headquarters
Ministry of Defence, South Block
New Delhi-11

..Applicants

(By Advocate: Shri M.S. Ganeshan senior counsel and Shri George Paracken)

Versus

1. Union of India through
The Secretary to the Govt. of India
Ministry of Defence, South Block
New Delhi-11
2. The Joint Secretary (Training) and
Chief Administrative Officer
Ministry of Defence
'E' Block Hutments
New Delhi-11
3. AFHQ Civilian Officers Association
through Shri RKD Mangal, Secretary
Room No.220A, Financial Planning/Coord
GS Branch, Army HQ, South Block
New Delhi-11
4. AFHQ ACSOs Association
through Shri S.K. Kapoor, Gen Secretary
JD (OA), Naval HQ,
Room No.7, A Block
New Delhi-11

Shri George Paracken

5. AFHQ/ISO SO (DP) Association
through Shri Shekhar Prasad, Gen Secretary
DGAfMS room No.78, M-Block
New Delhi

...Respondents

(By Advocates: Shri T.C.Gupta for respondents 1 & 2, Shri R.Tanwar
respondent 3 in person, Ms. Kiran Suri for respondent 5
none for respondent 4)

ORDER

Justice M.A. Khan:

The present OA is a third round of litigation between the officers belonging to Assistant Civilian Staff Officers (ACSOs) of the Ministry of Defence for inter-e-seniority. This OA is filed by the Direct Recruits (hereinafter 'DRs') Association along with two office members, who are affected by the seniority list drawn by the official respondents and circulated vide letter dated 10.12.2003 (Annexure A-2) pursuant to the order of this Tribunal dated 1.4.2002 passed in OA-1356/97 in the case titled **Smt. Ammini Rajan & others v. Union of India & others** for their rightful position in the seniority list. Private respondents 4 & 5 are the rival Associations of the departmental promoted (hereinafter 'DP') officers.

2. In para 8 of the OA, the applicants seek a relief of declaration that the seniority list (Annexure A-2) and the select lists (Annexures A-1, A-3 & A-4) are *ultra vires* of Rule 10 (1) and 19 (5) (i) and (7) read with III Schedule of the Armed Forces Head Quarters Civil Service Rules, 1968 (for short 'Rules, 1968') and Articles 14 & 16 (i) and (4) read in the light of Articles 46 and 335 of the Constitution of India. They also seek setting aside of the seniority list at Annexure A-5 and eligibility lists at Annexures A-6 & A-7 prepared on the basis of the re-drawn seniority list.

3. There is a chequered history of litigation about the inter-se-seniority between the ACSOs, DRs, and DPs. It began in 1978 by filing of a CWP-3/1978 by three DPs entitled **Shri M.G. Bansal & others v. Union of India & others**. After the constitution of the Central Administrative Tribunal, the said writ petition was transferred to this Tribunal and was registered as TA-356/85, which was decided by the Tribunal on 22.1.1989 by an exhaustive order wherein certain directions were given to the official respondents to prepare the seniority list keeping in mind the findings and the observations

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made therein. In CA-3536/90 (arising out of SLP (Civil) No.11315 of 1989) & CA-3357/90 (arising out of SLP No.4581 of 1990), the Hon'ble Supreme Court remitted the matter back to the Tribunal by order dated 20.7.1990. After re-hearing, the Tribunal disposed of TA-356/85 by an exhaustive order dated 20.11.1992 whereby, inter alia, certain directions were given for re-drawing the seniority list of ACSOs, keeping in mind the observations and the findings made therein. SLP-636/95 filed assailing the Tribunal's order dated 20.11.1992 was dismissed by the Hon'ble Supreme Court by order dated 20.1.1995. Contempt Petitions, being CCP-293/94 & CCP-85/95 filed against the implementation of Tribunal's order dated 20.11.1992 were also dismissed vide order dated 2.6.1995. Thereafter, seven DPs filed OA-1356/97 in the matter titled **Smt. Ammini Rajan & others v. Union of India & others** in 1997. It was decided by the Tribunal by order dated 1.4.2002 in which appropriate directions were given for re-drawing the seniority list of ACSOs. This order was challenged both by the DRs and DPs as well as the official respondents in the respective writ petitions filed by them. The applicants - Association of DRs - filed CWP-4058/2002 titled **AFHQ CS (DRG) Officers Association v. Union of India** in 2002. Some DPs also filed CWP-4458/2002 titled **Shri K.S. Dhingra v. Union of India**. Shri K.S. Dhingra was applicant No.2 in OA-1356/97. The Union of India also challenged the order dated 1.4.2002 in their CWP-6765/02 titled **Shri H.K. Das & others v. Union of India**. Another CWP-62/2003 was filed by a DP, who was applicant No.1 in OA-1356/97. In these writ petitions, several miscellaneous applications were filed for staying the operation of the order of the Tribunal dated 1.4.2002 and giving effect to the seniority list drawn pursuant thereto. But the Hon'ble Delhi High Court has declined their request but had made the action taken and the promotion made in the implementation of the Tribunal's order dated 1.4.2002 and the seniority list drawn subject to the result in the writ petition. All the writ petitions, however, have been bunched for final disposal.

4. When the present OA-2484/2004 was filed, a Bench of this Tribunal, at the preliminary hearing on 8.10.2004, restrained the official respondents from implementing the impugned orders mentioned in para 9 of the OA. In para 9 (i) of the OA, the applicants have prayed for grant of interim order of stay of the operation and implementation of the orders dated 2.12.2003, 10.12.2003, 12.12.2003, 5.2.2004, 3.3.2004, 15.3.2004 and 30.9.2004 during the pendency of the OA. All these are seniority and the select/eligibility lists for promotion prepared based on the seniority and the eligibility under rules.





5. Since the order of this Tribunal dated 1.4.2002 passed in OA-1356/97 is *subjudice* in a bunch of writ petitions, which have been filed by the disgruntled DRs and DPs and official respondents 1 & 2 before the Hon'ble Delhi High Court, ostensibly it could have been proper that the present OA, which is an offshoot of the decision of the Tribunal dated 1.4.2002, should have waited the result in the writ petition. But despite a 'go-ahead' given by the Hon'ble High Court to the official respondents in the matter of implementation of the order dated 1.4.2002, the order of this Tribunal dated 8.10.2004 passed in the present OA came as an stumbling block and stalled the promotions to the higher post resulting in administrative difficulties. Both DRs and DPs also felt the pinch as, according to them, the writ petition was not likely to be decided soon. The DPs proposed to move for vacation for interim stay order dated 8.10.2004. It was then suggested that instead the present OA may be disposed of on its own merit since the same arguments would be addressed for recall or modification of the interim relief. Here, it will be pertinent to note that certain other OAs have also been filed by the DRs and DPs and the decision on the seniority and select/eligibility lists prepared will have a bearing in those cases also. Conscious that the order passed in the present OA will have to abide by the order of the Hon'ble High Court in the writ petitions in which the order of the Tribunal dated 1.4.2002 is challenged and that the controversy about the inter-se-seniority is finally settled or at least it is settled until the final outcome in the writ petitions and the difficulties faced by the official respondents, DRs and DPs, we proceed to deal with this OA on merit.

6. The applicants have challenged the seniority and select/eligibility lists for promotion on the following grounds:

- i) It is stated that the impugned lists are patently in contravention of the operative directions of the Tribunal in its order dated 1.4.2002 passed in OA-1356/97. The lists are *ultra vires* of Rule 16 (7) read with the III Schedule and Note (2) of Rules, 1968 and also fundamental rights of DRs under Articles 14 and 16 (1) of the Constitution of India, besides being violative of principles of natural justice as they have been drawn without affording an opportunity to them;

- ii) First striking illegality and irrationality of the impugned lists is that the official respondents have rotated officiating DPs, who are still under probation with substantive DRs and ACSOs without indicating that they were appointed against 75% quota of substantive vacancies and if so, from which date. It is stated that as per Rules, 1968, the DPs may be appointed to substantive vacancies in their 75% quota subject to their completing two years' probation satisfactorily but the impugned seniority list would show that the DPs at Sl.Nos. 1051, 1053 and 1054 have been given dates of alleged substantive vacancies, which is clearly prior to their completion of mandatory probationary period of two years. This nullifies the rule required and allocation/appointment of DPs to such artificially contrived substantive vacancies was patently in contravention to Rules, 1968 and flouted and bypassed the order of the Tribunal dated 1.4.2002 since the Tribunal had upheld the *vires* of Rule 16 (7) read with Schedule III. As the provision in the III Schedule annexed to the Rules, 1968 against 75% quota in the case of DPs, the officer has to be appointed first against a temporary vacancy on completion of the probation of two years and subject to the rejection of the unfit he is then appointed against the substantive vacancy in his quota. But in the impugned seniority list, the DPs, who had not completed two years of probation and become eligible for substantive appointment have been rotated against the DRs & ACSOs, which is not in accordance with the directions of the Tribunal in the order dated 1.4.2002.
- iii) The Tribunal in its order dated 1.4.2002 has held that the temporary appointment of the DPs in terms of Note 2 of the Schedule annexed to the Rules, 1968 would not count their total length of service in the grade of ACSOs for the purposes of seniority and promotion to the next higher grade. But while drawing the impugned seniority list, the official respondents have not identified the Note 2 vacancies to block them out. As a result the DPs, who were appointed under Note 2, were accorded the approved service in the grade of ACSOs and granted benefit of service against such substantive vacancies in

the DRs quota. They, as such, got undue benefit of approved benefit of service and seniority, which was impermissible. Moreover, the official respondents at the behest of DPs had tried to break down the quota rota system embodied in Rules, 1968. The impugned lists seek to rotate the DRs with those DPs, who were appointed against temporary posts in the grade of ACSO and placed on probation for a period of two years. Such DPs had not completed their period of probation and were not appointed against substantive vacancies in their own 75% quota, so could not stand on the same plane as substantively appointed DRs and could not be rotated with DRs for determination of their inter-se-seniority as per Rule 16 (7) read with III Schedule of Rules, 1968.

- iv) The official respondents have also avoided framing of the seniority list of DPs substantively appointed to the grade of ACSOs, as envisaged and required by Rule 16 (5) (i). It is only after such a list was prepared and a corresponding seniority list of DRs inter-se under Rule 16 (6) was prepared that a combined seniority list of DPs and DRs giving effect to quota rota could be correctly prepared.
- v) There is a glaring illegality in the impugned list as the dates of occurrence of substantive vacancies in the grade of ACSOs in respect of the DRs, within their quota, has been shown well after the respective dates of joining of the DR officer. DR Officers are always recruited and in the instant case, have been so recruited against substantive vacancies in their quota. They could not have been selected and recruited otherwise. There is invariable gap of one to two years between the date of occurrence of a substantive vacancy in the DR quota and the date of actual joining of the selected DR. This is the precise reason for providing quota rota system in the rules, which is to be strictly adhered to.
- vi) The lists have also deprived SC/ST officers in the grade of ACSO of preferential treatment, especially provided for them under Rules, 1968. So the lists are *ultra vires* the Rule 10 (1) read

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with proviso in III Schedule of Rules, 1968 in relation to promotion to the grade of ACSOs and it is also *ultra vires* the fundamental rights of the DR SC/ST officers under Article 16 (4) read in the light of Articles 46 and 335 of the Constitution of India.

- vii) The Tribunal vide its order dated 1.4.2002 required the Department to prepare a single seniority list comprising long term temporary vacancies and purely stop-gap vacancies created against unfilled DR quota substantive vacancies under Note 2 of III Schedule of the Rules, 1968. The official respondents have not identified as to when a promotee is appointed against a Note 2 vacancy, which do not hold either a duty post or are considered to be regular appointees.

7. The official respondents 1 & 2 in their joint counter reply have repudiated the claim of the applicants and have vouchsafed the veracity of the seniority list. They have explained as how the order of the Tribunal has been implemented in letter and spirit and the competing claim of the rival contesting DRs and DPs, including SC/ST has been balanced and taken care of. They also reiterated that the lists prepared are perfectly in conformity with the Rules, 1968 and the orders of the Tribunal dated 20.11.1992 and 1.4.2002.

8. In its separate counter reply, respondent 3, though agreed that the official respondents 1 & 2 have grossly violated the directions of the Tribunal while drawing the seniority list but has lamented that despite umpteen number of judgments/orders of different Courts, including the Apex Court, the exercise carried out by the official respondents has put the entire AFHQ cadre, in which 90% are DPs, in a state of uncertainty shaking their faith in the authorities. This respondent may have to file a separate OA bringing out the infirmities in the implementation and damage done by respondents 1 & 2 in withdrawing the original seniority and nullifying the promotion of the DPs since 1968 in each grade.

9. Respondent No.5 in yet another reply stated that it was not a party to OA-1356/97 but has sought the dismissal of the present OA. It has further stated that since the order dated 1.4.2002 is *subjudice* before the Hon'ble Delhi High Court, the Tribunal has become *functus officio*. It was further stated that

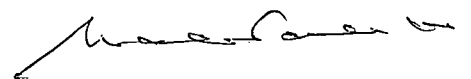
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this respondent, at this stage, was not in a position to make definite averment on the implementation of the Tribunal's order dated 1.4.2002. However, it was stated that since the antedated seniority of DR ACSOs has been dispensed with by the Court in OA-1356/97, consequential changes in the placement of seniority of DR ACSOs and DP ACSOs is bound to occur. Other allegations have also been controverted.

10. In the rejoinder, the applicants have controverted the case pleaded by the respondents and have reiterated their own allegations.

11. We have heard the learned counsel for the parties and also carefully considered the relevant arguments. The applicants have also submitted the written arguments.

12. In the written arguments, the applicants have challenged the impugned seniority, select and eligibility lists more or less on the same grounds, which were set up in the OA. It was submitted that the Tribunal in its order dated 1.4.2002 had directed that the seniority of DRs and DPs should be determined on the basis of the length of continuous officiation in accordance with Rule 16 (7) read with Schedule III of Rules, 1968. In the Schedule, it was laid down that as to how the DRs and DPs are to be appointed in their quota of substantive vacancies provided in sub clauses (a) & (b). The method of rotating the inter-se-seniority between DPs and DRs was also provided in sub para 3. Sub clause (a) of Schedule III laid down two years' probationary period for DPs in their quota of 75% but under sub clause (b) for DRs, who were directly recruited in their 25% quota, two years period was not prescribed for appointing them against their quota. In the arguments, it was brought out that both DPs and DRs were placed on probation for a period of two years. But DPs were initially promoted against temporary vacancies under Schedule III and were put on probation for a period of two years. They were assigned seniority as per Rules 16.5 (ii) in order of their selection for such promotion. Therefore, they become eligible for appointment on promotion to the substantive vacancies only after successful completion of probation period subject to rejection of the unfit and they were to be assigned seniority in the order in which they were so appointed as per Rule 16.5 (i). The applicants have also submitted that para 25 (d) of the order of the Tribunal in M.G. Bansal's case (supra) deals with the situation where an officer was appointed to the grade of ACSO in excess



of his own quota and what treatment was given to him. It essentially dealt with the treatment to be given to Note 2 appointees against DR quota. Therefore, it was erroneous to assume that the Tribunal had waived the period of probation when it directed that if an officer has been promoted within his quota, then it would be the date of his promotion and not the date of confirmation, which would be relevant for officer's seniority. Seniority would be counted from the date he is appointed to such a vacancy as per provision of III Schedule within his own quota. The impugned seniority list included several hundreds of DPs, who are assigned substantive vacancies even before they were eligible to be appointed to substantive vacancies as per III Schedule and as directed by the Tribunal in its order dated 1.4.2002. The contention of respondent 3 that Schedule III contained only quota rule and not rota rule is fallacious, as III Schedule provided quota in substantive vacancies for DRs and DPs in the ratio of 25% & 75% and also rotation of vacancies reserved for them. There was no quota prescribed for DRs filling temporary vacancies as this was exclusively meant for DPs as per this Schedule. The official respondents as such violated the direction of the Tribunal and had given seniority to the DPs before completing two years' probationary period. Moreover, it was submitted, as per the directions of the Tribunal in its order dated 1.4.2002 the vacancies of DRs would be carried forward and the seniority is to be fixed from the year of joining. The indent for recruitment for DRs would only be issued against pre-existing vacancies and after their selection they are to join on a particular post. While redrawing the seniority list, the vacancies are shown to have been occurred after many months of the date of joining of DR officers. The contention of the official respondents that it is only an incidental is untenable in law. While redrawing the single select lists of Assistants, the officers selected against Note 2 vacancies were not identified. The claim of the official respondents that such officers are not included in the seniority list is not true because the DPs earlier appearing in the select lists for the year 1982 for Note 2 vacancies were appearing in the regular select lists for the same year 1982. The official respondents have thus not implemented the directions of the Tribunal and have given undue benefit to the DPs, which was specifically prohibited by the Tribunal in para 105 of the order dated 1.4.2002. Lastly, it was submitted that the official respondents have ignored the provisions relating to the SC/ST officers and have taken away all the constitutional entitlement of the DR SC/ST officers without any valid reason, thereby violating the Tribunal's order dated 1.4.2002.

13. The contention of official respondents 1 & 2 is that in accordance with the Tribunal's order dated 1.4.2002, the seniority of the officers in the grade of ACSOs is to be prepared as per the directions contained in the said order and the order of the Tribunal dated 20.11.1992 in M.G. Bansal's case (supra), which had attained the finality. The DPs are to get seniority from the date when they are promoted in substantive vacancies of their lawful quota and the DR officers from the year in which they joined the service. The DPC for the purpose is to be 1st October to 30th September of the following year. As regards the probation aspect, the same was decided by this Tribunal in para 25 (d) of its order. It has been observed that if an officer has been promoted within its quota, then it would be the date of his promotion and not the date of confirmation, which would be relevant for the officer's seniority. Earlier both DRs and DPs were being placed only in substantive vacancies only on completion of their period of probation, which normally is of two years. But in view of the decision of the Tribunal, these officers are now being adjusted against the substantive vacancies immediately on availability of their quota of substantive vacancies without awaiting their completion of probation. The impugned lists were prepared after hearing the Associations as well as taking their representations into consideration. It is submitted that in the light of the directions of the Tribunal, the DRs are now being placed in the substantive vacancies with reference to age of appointment and the DPs from the date of availability of substantive vacancies in their quota. The applicants now seek to re-agitate the issue, which had already been set at rest by the Tribunal by its order dated 20.11.1992, which had attained finality, so those issues are barred by *res judicata*. It has been strongly denied that DRs are being rotated with DPs against temporary vacancies and it was asserted that DPs have been placed on seniority list only on availability of their quota of substantive vacancies and not with reference to dates of their temporary vacancies for determining inter-se-seniority between DRs and DPs. These respondents have first identified the substantive vacancies of each quota and then fixed their seniority by placing both the categories in their slot of substantive vacancies. The DRs have been plotted into their slot of substantive vacancies with reference to their year of joining, arranging them in order of their rank position in the UPSC examination in terms of Rule 16 (6). It is in accordance with the directions of the Tribunal dated 1.4.2002. Furthermore, it is submitted that although unfilled vacancies of DR quota of previous year, which were carried forward, the DRs have to be placed only

in the DR slots available in the year in which they join since they could not be placed in the slots of previous years in the light of the Tribunal's directions. Therefore, plotting of a DR against a slot of a later date to his actual joining is merely incidental and did not in any manner contravene the Tribunal's directions in the matter. It was emphatically denied that any vacancies in the DR quota were utilized for temporary promotion while preparing the select list. According to these respondents, they have drawn the seniority and the select lists scrupulously in accordance with the directions of the Tribunal.

14. The applicants in the present OA are impugning the seniority list dated 10.12.2003 and 3.3.2004, which are Annexures A-2 & A-5, the select lists of Assistants dated 2.12.2003 and 5.2.2004, which are Annexures A-1 & A-4, the eligibility list of ACSOs dated 12.12.2003 and 15.3.2004 at Annexures A-3 & A-6 and the select list of ACSOs dated 30.9.2004 at Annexure A-7. These lists are prepared by the official respondents 1 and 2 for implementing the directions of the Tribunal given in its order dated 1.4.2002 in OA-1356/97. The operative portion of the order reads:-

"132. No other contention was raised before us. So in view of our discussion above, OA is disposed of with the following directions:

(i) Impugned orders Annexure A-1 and A-2 are quashed. The respondents are directed to determine the seniority between the direct recruits and promotees regularly appointed/promoted within their respective quota by counting the length of continuous officiation in the grade of ACSO from their respective appointment to the substantive vacancies within their quota in accordance with the Rule 16 (7) of the AFHQ Rules and Schedule III of the Rules. In the case of promotee ACSO, the length of continuous officiation in the grade will be determined from the date when they are promoted in substantive vacancies in their lawful quota. In case of direct recruits ACSO, their seniority shall be determined from the year in which they joined the service. While determining seniority, respondents are directed to adhere to the DPC year in case of promotee officer and to retain as 1st October to 30th September of the following year as provided in the rules/regulations.

(ii) Respondents are further directed to prepare single select list in a year for the ACSO grade and they cannot resort to two separate lists for the purpose of merely identifying the Note II Schedule III vacancies as the rules do not envisage for the same.

(iii) Respondents are further directed that the vacancies of DR quota may be carried forward but while determining the seniority

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the slots of the vacancies left unfilled by the DR quota shall not be carried forward for the purpose of determining seniority.

(iv) It is further directed that after finalizing the seniority list, the department shall prepare eligibility lists for the purpose of promotion to the next higher grade.

(v) These directions may be implemented within a period of 6 months from the date of receipt of a copy of this order. No costs."

15. For appreciating these directions, it would be appropriate to state briefly the salient findings of the Tribunal in its order dated 1.4.2002. It was held that DPC year would be from 1st October to 30th September of the following year and bifurcation of the select list for ACSOs grade was disapproved. It was held that preparation of two separate lists would cause serious prejudice to those officers, who were promoted against vacancies of Note 2 of Schedule III because in that event those officers would have to face screening twice, which is against the regulation. With regard to the counting of approved service rendered by the appointees under Note 2 of the Schedule of Rules, 1968, the view of the Tribunal was that the point was settled in the order of M.G. Bansal's case (supra) and was being re-agitated, which was not permissible. Anyhow the Tribunal emphasized that the appointments against Note 2 vacancies would get birth in their substantive vacancies in their own quota as per the directions given in M.G. Bansal's case (supra) and further, such DPs could not have been said to have rendered service on duty post as they were not permanent, nor were they holding temporary post, but were holding the post only as a stop-gap arrangement. The Tribunal took note of the view taken in M.G. Bansal's case (supra) that it was not a case of breaking down of quota but was a case of distortion of quota. The Tribunal observed that there was inherent provision in the rules to carry forward the vacancies in DR quota as observed by the Tribunal in M.G. Bansal's case (supra). So the DPs could not claim any restructuring of quota to carry forward the vacancies meant for DRs since no provision was available in the service rules itself. The Tribunal observed that even otherwise the Note 2 of Schedule III of Rules, 1968 also empowers to permit carry forward the vacancies. The Tribunal rejected the contentions that DR ACSOs working under the DPs cannot be shown senior. It was held that the DPs, who were promoted to the post of CSO on the basis of seniority, which they were having at the relevant time in the grade of ACSOs, since the basis of seniority in the lower grade of ACSOs has been changed, they would have to bear with the consequential effect. The Tribunal

also held that the DPs and DRs, who have joined in a particular year, their seniority should be assigned as per their quota to the extent upto which DRs were available. Thereafter all DPs would be bunched together at the bottom seniority of that year and in the next year the DRs appointed against carry forward vacancies in their quota, would be placed below the last promotee of the previous year and their seniority would be rotated with the promotees in the next year in the same manner. The Tribunal relying upon the findings in M.G. Bansal's case (supra) held that there was no break down of rota quota rule.

16. Viewed in the light of the above findings and observations of the Tribunal, the directions given in para 32 of the order dated 1.4.2002 were clear and unambiguous. The inter-se-seniority of DRs and DPs, who were appointed to the substantive posts within their respective 75% and 25% quotas, was to be determined on the basis of the length of continuous officiation in the grade of ACSOs in accordance with Rules 16 (7) of the Rules, 1968 read with Schedule III annexed thereto. The Tribunal further clarified that the length of continuous officiation in the grade would be determined from the date when the DPs are promoted against the substantive vacancies within the limits of their quota of 75%. As regards the DRs, their seniority would be determined from the year in which they had joined the service but while determining the seniority, the official respondents 1 and 2 were to adhere to DPC year in the case of DPs retaining 1st October to 30th September of the following year. Further direction was that the single select list in a year for the ACSOs grade and not two lists, would be prepared for the purpose of merely identifying Note 2 of III Schedule vacancies. The Tribunal also directed that the 25% DR quota vacancies would be carried forward but the appointees to the vacancies would not be given antedated seniority against the previous years unfilled vacancies in the DR quota. Lastly, the eligibility list was directed to be prepared on the basis of the final seniority list.

17. Concededly, the official respondents 1 & 2 have prepared only single list in a year and have dispensed with two separate lists, which were prepared after the order in M.G. Bansal's case (supra). Further, they have also adhered to DPC year as from 1st October to 30th September of the following year for determining the seniority of ACSOs.

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18. The moot question is whether the seniority list impugned in the OA has been drawn in conformity with the aforesaid directions. It will be advantageous if a few rules, which have been referred to during the course of the arguments, are also reproduced. The copy of Rules, 1968 is filed as Annexure A-8. Rule 2 defines "Approved Service" in relation to any Grade, as the period or periods of service in that Grade rendered after selection, according to prescribed procedure for long-term appointment to the grade. "Authorised permanent strength" in relation to any Grade meant the strength of permanent posts in that Grade against which the substantive appointments could be made. The words "Existing Grade" defined as a grade specified in Column (1) of the table below Clause (b) of sub-rule (2) of rule 9 and existing immediately before the appointed day. Expression "Long-term appointment" meant appointment for an indefinite period as distinguished from purely temporary or ad hoc appointment. The word "Probationers" was defined as a DR appointed to a grade on probation in or against a substantive vacancy. The words "Temporary Officer" in relation to any grade meant a person holding a temporary or officiating appointment in that grade on the basis of his being regularly approved for such appointment.

19. Rule 12 of the Rules, 1968 provided that a substantive vacancy may be filled temporarily in accordance with the provisions governing appointments to temporary vacancies in the relevant grade until it is filled in accordance with the provisions governing substantive appointments. Rule 13, which related to the probation period prescribed two years probation period for every DR commencing from the date of his appointment. It further provided that every person other than a DR would also be put on probation for a period of two years from the date of such appointment. Sub-rule 2 to Rule 15 stated that the probationers, who had held a lien on a post under the Government or any State Government, may be reverted in such post at any time in any of the circumstances specified in sub rule (i), i.e., on the basis of his performance or conduct during the probation or he is considered unfit for further retention in the service. In sub-rule 3 of the said rule, it is stated that the probationer, who is not considered suitable for confirmation at the end of the period of probation or at the end of the extended period of probation, would be discharged or reverted. Rule 16 concerns the seniority. Sub-rule 5 to sub-rule 7 being relevant are extracted below:

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"(5) Except as provided, in sub-rule (7), the seniority of persons appointed to any Grade after the appointed day shall be determined in the following manner, namely"-

- (i) Permanent Officers:- The seniority inter-se of officers substantively appointed to the Grade after the appointed day shall be regulated in the order in which they are so appointed;
- (ii) Temporary Officers:- The seniority inter-se of temporary officers appointed to the Grade after the appointed day shall be regulated in the order of their selection for such promotion.

(6) Direct Recruits shall be ranked inter-se in the order of merit in which they are placed at a competitive examination on the results of which they are recruited, the recruits of an earlier examination. On confirmation, their inter-se seniority shall be regulated in the order in which they are so confirmed.

* Provided that the seniority of persons recruited through the competitive examinations held by the commission-

- (i) in whose cases offers of appointment are revived after being cancelled, or
- (ii) who are not initially appointed for valid reasons but are appointed after the appointment of candidates recruited on the basis of the results of the subsequent examination or examinations.

shall be such as may be determined by the Government in consultation with the Commission.

(7) 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 made in this behalf in the Third Schedule."

20. As per Rule 16, the inter-se-seniority of the permanent officers appointed against the substantive post is to be regulated in the order in which they were so appointed and the inter-se-seniority of temporary officers is to be regulated in the order of their selection for such promotion. The inter-se-seniority of the DRs shall be as per the order of merit in the competitive examination and on confirmation their inter-se-seniority would be regulated in the order in which they are so confirmed. The relative seniority of DRs and DPs appointed to the grade would be as provided in III Schedule. The III Schedule, so far as it related to the post of ACSOs grade, being relevant, is reproduced below:

[1]	[2]	[3]	[4]	[5]
Assistant Civilian Staff Officer (Group B Gazetted)	Rs. 650-30-710-35-880-40-1000-EB-40-1200. An officer of Assistant promoted to the Grade of Assistant Staff Civilian Staff Officer shall be allowed a minimum initial pay of Rs.710/- in this scale.	<p><u>Substantive vacancies</u></p> <p>(a) Substantive appointments to 75% of substantive vacancies in the Grade shall be made in the order of seniority of temporary officers of the Grade, who have completed the period of probation satisfactorily, subject to the rejection of the unfit.</p> <p>(b) 25% of the substantive vacancies shall be filled by direct recruitment on the basis of combined competitive examination held by the commission for recruitment to the Central Services, Group A/B Assistant Civilian Staff Officers so recruited shall be confirmed in the manner as indicated in Rule 14.</p> <p>The relative seniority of the above categories of officers shall be determined according to the rotation of vacancies between departmental promotees and direct recruits which shall be based on the quotas of vacancies reserved for promotion and direct recruitment.</p> <p><u>Note:</u></p> <p>(1) Reservation of vacancies against the quota reserved for direct recruitment for Scheduled Castes and Scheduled Tribes and released Emergency Commissioned Officers and Short Service Regular Commissioned Officers shall be in accordance with the rules and orders issued by the Government from time to time.</p> <p>(2) <u>Substantive vacancies</u> at (b) may be filled temporarily by promotion from amongst Assistants on the basis of selection. Such promotions shall be terminated when the nominees of the Commission become available to fill the substantive vacancies.</p>		2 years

21. 75% quota of the vacancies in the post of ACSOs is to be filled in by DPs and 25% by appointment of the DRs by competitive examination. The inter-se-seniority of the DPs and the DRs shall be determined according to the rotation of vacancies between them, which would be based on the quotas or vacancies reserved for promotion/direct recruitment, i.e., 75% and 25% respectively. Due regards to the rules and orders issued by the Government

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from time to time for filling up the vacancies in the quota reserved for DR from the categories of Scheduled Casts and Scheduled Tribes and released Emergency Commissioned Officers and Short Service Commissioned Officers would also be given. Note 2 appointment is one of the bone of contentions between the parties. It allowed filling of unfilled vacancies in DR quota from amongst the Assistants, the feeder grade to ACSOs, on the basis of selection. But such promotion would terminate when a nominee of the UPSC became available to be appointed against the substantive vacancy. In other words, such appointment against DR vacancies are not to be on regular or permanent basis but shall be a short-term appointment with no right to the regularization against the DR vacancies to which he is appointed.

22. As per this Schedule, there may be four categories of DPs:

- (i) DPs, who have been substantively appointed against the substantive vacancies in 75% quota vacancies of ACSOs reserved for them,
- (ii) DPs, who have been promoted temporarily against substantive vacancies within 75% quota vacancies of ACSOs reserved for DPs, who were required to be put on probation for two years and on completion of such probation period and on their not being rejected as unfit were to be confirmed against the substantive vacancies; and
- (iii) DPs who were temporarily promoted in short-term/temporary vacancies in the ACSOs grade within 75% quota and are appointed on ad hoc basis etc.
- (iv) Temporary promotions of Assistants made by selection process against unfilled DRs vacancies in ACSOs till a DR nominated by the UPSC becomes available to man that post.

23. While the first three categories promotions are against 75% vacancies in the grade of ACSOs, permanent and temporary, the 4th category is a short-term vacancy against 25% DR quota. Such appointees cannot be appointed on permanent basis against the substantive vacancies in the 25% DR quota.

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But if substantive vacancies within 75% DP quota become available, such a promotee could be appointed or his appointment could be continued as a temporary appointment against a substantive vacancy within DPs' 75% quota. The Schedule does not provide that such an officer shall first have to be reverted and then again promoted on temporary basis to be appointed as per clause (a) of Column 3 of the Schedule. Furthermore, the seniority of the temporary appointment or promotion under clause (a), as per the directions of the Tribunal in its order dated 1.4.2002, would be counted from the date he was appointed in the temporary capacity against a substantive vacancy. Only DPs appointed under clause (a) would find their place in the seniority list. Temporary promotion made as per Note 2 of the Schedule would not be counted as an appointment under clause (a) and they would not figure in the seniority list. However, categories (iii) & (iv) officers, who have vacancies for their temporary appointment against substantive post available within 75% DPs quota, may be appointed/promoted under clause (a) and their service counted for the purpose of seniority from the date of such promotion under clause (a). A temporary officer, indeed, would be put on probation of two years as provided in the rules, if a substantive vacancy is available for him. All those who have completed the period of probation satisfactorily and have not been reverted back during the probation period would be deemed to have been appointed against the substantive vacancies within 75% DPs quota. No officer, who is appointed on promotion under clause (a), would be put on probation if no substantive vacancy is available within 75% quota.

24. As regards 25% DR quota, all these vacancies would be filled in by the nominees of the UPSC, who are selected in the competitive examination. The vacancies against substantive DR posts would not be utilized for regular or permanent appointment of the category mentioned in clause (a) or Rule 2. As per the direction of the Tribunal, the unfilled vacancies in DR 25% quota in a particular DP year would be carried forward to the next DP year. Schedule III also provides the manner in which the inter-se-seniority of the DPs and DRs is to be determined. It will be by rotation based on quota of vacancies reserved for DP and DR, i.e., 75% and 25% respectively. As per the order of the Tribunal dated 1.4.2002, the rota quota rule provided under this Schedule has not broken down. The Schedule has also adequately taken care of the vacancies, which are reserved for reserved categories, like SC and ST, etc. Such reservation would be in accordance with the extant rules and orders issued by the Government from time to time.

25. Having analyzed the rules and directions of the Tribunal in its order dated 1.4.2002, now let us examine the contentions raised by the applicants.

26. The applicants have vociferously contended that the official respondents have not identified the temporary appointment of ACSOs made in accordance with Note 2 of Schedule to the Rules, 1968 and have counted them also as DPs and given them position in the impugned seniority list. It has been emphatically contested by the official respondents 1 and 2. The applicants have not been able to point out any person in the seniority list, who, according to them, is an appointee under Note 2 of the Schedule. It may happen that a person is initially promoted temporarily against a DR vacancy in accordance with Note 2 or promoted in category (iii) aforesaid and after a substantive vacancy within 75% DP quota becomes available, he is appointed and his promotion is regularized as temporary promotion in clause (a) of Schedule, then none of the rules and the directions of the Tribunal in the order dated 1.4.2002 say that he would not be so appointed/counted as a temporary appointee within 75% DP quota. Of course, he has to be adjusted and accommodated within 75% quota reserved for DPs.

27. The contention of the applicants that the impugned seniority list included several hundreds of DPs, who have been assigned substantive vacancies even before they became eligible to be appointed to the substantive vacancies as per clause (a) of III Schedule and the directions of the Tribunal in its order dated 1.4.2002, to our considered view, seemed to have been raised on account of not properly appreciating the import of the provision of the Schedule and understanding the directions of the Tribunal. The appointment under clause (a) of the Schedule could be made by promotion on temporary basis against (i) substantive vacancies and (ii) temporary vacancies. But the temporary DPs could be put on probation only against a substantive vacancy and not temporary vacancy. On successful completion of the probation and on not being rejected as unfit, the DP so promoted temporarily against the substantive vacancy within 75% DP quota would get substantive appointment against the substantive vacancy. The temporary appointees against temporary vacancies within 75% quota reserved for DPs would be put on probation as and when a substantive vacancy becomes available for permanent and substantive appointment. The official respondents have to distinguish and identify these two categories of

temporary promotions in clause (a) of the Schedule. For determining the seniority of the temporary appointee, who had completed the probation period successfully and not reverted to the post on which he had lien and had been appointed against the substantive vacancy within 75% DP quota, his length of service would be counted from the date on which he was initially appointed. The period of his temporary appointment, which has been followed by his permanent absorption, cannot be excluded from counting it in fixation of seniority. It is the direction of the Tribunal in its order dated 1.4.2002. The DRs are required to put on probation of two years as required under Rule 13 of Rules, 1968. They shall be appointed substantively only on successful completion of the probation period. But once the probation period is completed and he is appointed against the vacancy reserved for 25% DR quota, his seniority would be counted from the date on which he had initially joined the service. Arguments that clause (b) of the Schedule does not require successful completion of the probation as a condition precedent to the confirmation, to our view, has no force. The confirmation is to be made in the manner provided in Rule 14. Rule 14 has clearly provided that a probationer who is appointed to any Grade has to pass the prescribed tests and complete his probation period to the satisfaction of the appointing authority. Only thereafter he would be eligible for confirmation in the grade. In is in no way different from the provision made in clause (a). In fact, sub-rule (2) to Rule 13, which related to the probation, has provided that even a DP when appointed to a grade would be on probation for a period of two years from the date of such appointment. This is reflected in clause (a) also.

28. The official respondents in their counter reply have categorically denied that a person, who is not eligible, has been included in the seniority list. However, while preparing the seniority list as per the directions of the Tribunal, some adjustments had to be made to determine the inter-se-seniority. One such situation has been pointed out by the applicants in para 5.2 of the OA in which a table has been given where three promotees have been appointed in March, 1979 against the substantive vacancies, which became available in March, 1980. Similar situation has been pointed out in para 5.7 where three DRs, who were appointed on 1.3.1977, have been appointed against the substantive vacancies from 24th April, 1st May and 1st August of 1977, i.e., much after the date of their actual joining. The official respondents in their counter reply have pleaded helplessness for

such anomalies but contend that they had to perform a difficult job of balancing the competing claims in the light of the Rules as interpreted and directions given in the Tribunal's orders.

29. Learned counsel for applicants has vociferously argued that while framing the seniority list, the official respondents have pitted the DRs who are recruited and appointed against a substantive vacancies falling in 25% quota, against the DPs, who are promoted temporarily under clause (a) of III Schedule of Rules, 1968 and in the process, those DPs, who have their substantive appointment in the feeder post of Assistants, are given seniority over the substantively appointed DRs, which is neither in accordance with the rules, nor is in conformity with the order of the Tribunal dated 1.4.2002. This Tribunal in para 132 of its order dated 1.4.2002 had made amply clear that the continuous officiation of a DP against a substantive vacancy in the grade of ACSOs falling within 75% quota would count towards the seniority of the DP. To elucidate, it was observed that in the case of a DP ACSO, "the length of continuous officiation in the grade will be determined from the date when they are promoted in substantive vacancies in their lawful quota". In other words, it was neither an intention nor was a direction of the Tribunal that the length of the service of the DPs would be counted only from the date they were appointed in substantive capacity within their quota of 75%. Nobody officiates ^{is he} against substantive vacancy after his permanent appointment or confirmation to the post he occupies. The direction of the Tribunal, as such, was that the length of continuous officiation of a DP appointed even on temporary basis, who is put on probation and is not rejected being unfit followed by his substantive appointment against the vacancy, which is available within 75% quota reserved for DPs, would be counted towards seniority. To put it differently, continuous service of a person who is promoted from the feeder cadre to the post of ACSOs temporarily against a vacancy in a substantive post falling within the quota of 75% reserved for DPs and who is subsequently absorbed/appointed in substantive capacity would be counted from the date he had joined in a temporary capacity. Same is the position with the DRs. They are put on probation of two years similar to the two years probation, which preceded the substantive appointment of a DP in clause (a) of III Schedule. The seniorities of the DR would be counted from the date of their joining the service and the commencement of their probation.

30. Though the applicants in their OA have repeatedly contended that the DPs, who were appointed against a vacancy reserved for DRs in accordance with Note 2 for a temporary period or as a stop-gap arrangement, have also been included in the seniority list drawn by the official respondents, this fact has been disputed by the respondents. In fact, this Tribunal in its order dated 1.4.2002 had observed that the seniority in the grade of ACSOs was to be prepared as per the directions of the Tribunal in its order dated 20.11.1992 in M.G. Bansal's case (supra), which had attained finality. The DPs were to get seniority from the date when they were promoted in substantive vacancy of their lawful quota and the DRs from the year in which they joined the service. In para 25, it was observed by the Tribunal that period of officiation outside their quota of either the DRs or the DPs will not count for their seniority. It was stated that if an officer had been promoted within his quota, then it would be the date of his promotion and not the date of confirmation, which would be relevant for the officer's seniority.

31. It will also be pertinent to note here that it is not a case of any of the parties that any DP promoted temporarily against a temporary vacancy in the cadre of ACSOs (category (iii) abovementioned) has been given placement in the seniority list. In fact, there does not seem to be such category of DPs. Conversely, the whole thrust of the arguments of the applicants was that Note 2 of Schedule III appointees have been given position in the seniority list whereas as per the directions of the Tribunal and the provisions of Rules, 1968, they should have been excluded from the list.

32. Another contention of the applicants is that DRs were recruited and appointed against a clear substantive vacancy within their quota and, therefore, giving them seniority from a date, which is after their actual appointment in the service, is illogical and also in contravention of the rules. The Tribunal in its order dated 1.4.2002 regarding determination of the seniority of DRs had directed that in the case of DR ACSOs, their seniority would be determined from the year in which they had joined the service. It was further directed that the vacancies of DR quota will be carried forward but while determining the seniority, the slots of vacancies left unfilled by the DR quota would not be carried forward for the purpose of determining the seniority. As per this direction, firstly the DRs were to be given seniority in the DP year in which they joined service and secondly, they were not to be

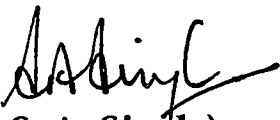
given seniority against the unfilled vacancies of previous years. Further direction was that the inter-se-seniority of the DPs and the DRs would be determined on the basis of the rotation of quota. If the quota of the vacancies between DPs and the DRs is to be rotated in a particular DP year, some anomalies like the one pointed out by the applicants, may occur. What is relevant is not the date of the vacancy against which a particular DR or DP is considered for determining the seniority but it is important that no DP, who was appointed after the date on which a DR was appointed against the substantive vacancy available for him is placed in a position above him in the seniority list. It is not submitted that a DP, who was appointed in officiating/temporary or substantive capacity under clause (a) within DPs quota after the appointment of a DR as per quota rule was shown senior to the DR ACSO. As such, though unfilled vacancies in DR quota of previous year are to be carried forward, the DRs are to be placed in DR slots available only from the date they joined the service since they cannot be placed in a slot of previous year in the light of the Tribunal's directions and given retrospective seniority. According to the official respondents, giving position to a DR against a slot of a later date to his actual joining, was merely incidental and occurred while implementing the directions of the Tribunal. We do not find that this could be said to be not in accord with the directions of the Tribunal, so long as it had not made any DP, who ought to have been junior on the basis of the date of his joining under clause (a) of III Schedule, given position in the seniority list above the DR on the basis of the date of his actual joining in the service. According to the official respondents, some of the DRs have been given slot earlier to the date of their actual joining and some have been given a slot on a subsequent date. Since the seniority of the DRs is to be determined on the principle of rota quota and their rank position in the UPSC examination, and also with reference to their year of joining as per the directions of the Tribunal, their actual date of joining does not become of much relevance.

33. The Tribunal in its order dated 20.11.1992 in TA-356/85 has also directed that various Office Orders, instructions and rules relating to the reservation of the vacancies for SC/ST and other reserved categories had been kept in mind but the reservation would remain only at the time of appointment and not in the matter of seniority inter-se of the DRs and DPs. Rules, 1968 have also provided that the temporary vacancies of CSO grade would be filled from the feeder cadre of ASCOs on the basis of selection and

that if any ASCO is considered for promotion to the grade of CSO, all persons senior to him in that grade belonging to the SC/ST, who have rendered not less than four years approved service in that grade would also be considered for promotion. No rules/instructions, which give reservation to SC/ST etc. in the matter of appointment, has been violated while determining the inter-se-seniority between the DPs and DRs.

34. Therefore, a careful consideration of the facts of the case, Rules, 1968, the directions of the Tribunal dated 20.11.1992 in TA-356/85 and dated 1.4.2002 in OA-1356/97, we are of the considered view that the seniority list drawn by the respondents in this case does not suffer from any legal infirmities. It is not infirm for the reasons stated in the OA. The select/eligibility lists have been prepared on the basis of this seniority list. When the final seniority list is in order, no other infirmity has been pointed out in the select/eligibility lists also.

35. Accordingly, we do not find any merit in the OA. It is accordingly dismissed leaving the parties to bear their own costs.


(S. A. Singh)
Member (A)


(M.A. Khan)
Vice Chairman (J)

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