

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

XXXXXXDELXXX

NEW BOMBAY BENCH

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T.A. No. 119/87

DATE OF DECISION

29.4.1988

Shri M.H.Khan &amp; 17 others Petitioner

Shri Ramrao Adik, Advocate with

Shri P.Janardhanan

Advocate for the Petitioner(s)

Versus

Union of India &amp; Ors. Respondent

Shri M.I.Sethna. Advocate for the Respondent(s)

## CORAM :

The Hon'ble Mr. B.C.Gadgil, Vice Chairman,

The Hon'ble Mr. L.H.A.Rego, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement? - Yes

2. To be referred to the Reporter or not? - Yes

3. Whether their Lordships wish to see the fair copy of the Judgement? / No

4. Whether it needs to be circulated to other Benches of the Tribunal?

Bell.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY.

Tr. Application No.119/87.

1. Shri M.H.Khan,  
Chief Enforcement Officer,  
Enforcement Directorate Field Unit,  
Piyali Phookan Road, Bekha Bari,  
Gauhati.8.
2. Shri S.L.J.Gallyot, Chief Enforcement  
Officer, Zonal Office, Enforcement  
Directorate, Shastri Bhavan, 3rd floor,  
III Block, 35, Haddows Road,  
Madras.600 006.
3. Shri K.A.Kurivila, Enforcement Officer,  
Zonal Office, Enforcement Directorate,  
Shastri Bhavan, 3rd floor, III Block,  
35 Haddows Road,  
Madras.600 006.
4. Shri N.K.Unnithan, Enforcement Officer,  
Bombay Zonal Office, Janmabhoomi Chambers,  
Ist floor, Walchand Hirachand Marg,  
Bombay.1.
5. Shri P.B.Thakur, Enforcement Officer,  
Sub Zonal Office, Enforcement Directorate,  
Building 'B', Stadium House, Navrangpura,  
Ahmedabad.
6. Shri S.K.Chandorkar, Enforcement Officer,  
Bombay Zonal Office, Janmabhoomi Chambers,  
Ist Floor, Walchand Hirachand Marg,  
Bombay.1.
7. Shri B.R.Dalvi, Enforcement Officer,  
Enforcement Directorate, H.Qurs Office,  
6th floor, Lok Nayak Bhavan, Khan Market,  
New Delhi.
8. Shri L.B.Chaukekar, Enforcement Officer,  
Sub Zonal Office, Enforcement Directorate,  
Building 'B', Stadium House, Navrangpura,  
Ahmedabad.
9. Shri R.C.Singh, Enforcement Officer, Bombay  
Zonal Office, Enforcement Directorate,  
Janmabhoomi Chambers, Ist Floor, Walchand  
Hirachand Marg, Bombay.I.
10. Shri L.S.Shetty, Enforcement Officer,  
Enforcement Directorate, Goa Mobile Unit,  
Shanta Building No.11 C, 2nd Floor, St.Inez,  
Panaji, Goa.40301.
11. Shri J.K.George, Enforcement Officer,  
Enforcement Directorate, Zonal Office,  
Shastri Bhavan, 3rd Floor, III Block,  
35 Haddows Road,  
Madras.600 006.
12. Shri Prakash Joseph, Enforcement Officer,  
Enforcement Directorate, Bombay Zonal Office,  
Mittal Chambers, 2nd Floor, Nariman Point,  
Bombay.21.
13. Shri N.A.George, Asstt. Enforcement Officer,  
Enforcement Directorate, sub zonal office,  
Wafa Bhavan, Havoore Road, Calicut.

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14. Shri K.C.Babu, Assistant Enforcement Officer, Bombay Zonal Office, Enforcement Dte., Mittal Chamber, 2nd floor, Nariman Point, Bombay.21.
15. Shri B.J.Pereira, Asstt. Enforcement Officer, Enforcement Dte., Bombay Zonal Office, Janmabhoomi Chambers, 1st Floor, Walchand Hirachand Marg, Bombay.1.
16. Shri P.S.Thakkar, Asstt. Enforcement Officer, Enforcement Dte., Bombay Zonal Office, Mittal Chambers, 2nd Floor, Nariman Point, Bombay.21.
17. Shri S.G.Surve, Asstt. Enforcement Officer, Enforcement Directorate, Bombay Zonal Office, Janmabhoomi Chambers, 1st floor, Walchand Hirachand Marg, Bombay.1.
18. Shri R.Raghunathan, Asstt. Enforcement Officer, Enforcement Directorate, Bombay Zonal Office, Mittal Chambers, 2nd Floor, Nariman Point, Bombay.21.

V/s.

1. The Secretary, Department of Revenue, Ministry of Finance, Central Sectt., North Block, New Delhi.
2. The Secretary, Cabinet Sectt., Rashtrapathi Bhavan, New Delhi.
3. The Secretary, Ministry of Personnel & Training, North Block, New Delhi.
4. The Director of Enforcement, Enforcement Directorate, 6th Floor, Lok Nayak Bhavan, Khan Market, New Delhi.
5. Shri A.K.Roy, Chief Enforcement Officer, Enforcement Directorate, Delhi Zonal Office, 6th Floor, Lok Nayak Bhavan, Khan Market, New Delhi.
6. Shri M.M.Sharma, Chief Enforcement Officer - Retired.
7. Shri Gurbachan Singh, Enforcement Officer, Enforcement Field Unit, SB 109, Lalkhoti, Tonk Road, Bapunagar, Jaipur.
8. Shri J.S.Luther, Enforcement Officer, Enforcement Directorate, H. Qrs. Office, 6th Floor, Lok Nayak Bhavan, Khan Market, New Delhi.
9. Shri A.K.Narang, Enforcement Officer, Enforcement Directorate, H.Qrs. Office, 6th Floor, Lok Nayak Bhavan, Khan Market, New Delhi.

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10. Shri J.C.Mehta, Enforcement Officer, Enforcement Directorate, Delhi Zonal Office, 6th Floor, Lok Nayak Bhavan, Khan Market, New Delhi.
11. Shri K.C.Rustogi, Enforcement Officer, Enforcement Directorate, H.Qtrs. Office, 6th Floor, Lok Nayak Bhavan, Khan Market, New Delhi.
12. Shri K.V.Ananthakfishnan, Enforcement Officer, Enforcement Directorate Sub Zonal Office, TC/10/110, Satya Mangalam, Trivandrum.
13. Shri R.N.Madan, Enforcement Officer, Enforcement Directorate, Delhi Zonal Office, 6th Floor, Lok Nayak Bhavan, Khan Market, New Delhi.
14. Shri V.P.Gogia, Enforcement Officer, Enforcement Directorate, Delhi Zonal Office, 6th Floor, Lok Nayak Bhavan, Khan Market, New Delhi.

... Respondents.

Coram: Hon'ble Vice Chairman, Shri B.C.Gadgil, Hon'ble Member(A), Shri L.H.A.Rego.

Appearance

Shri Ramrao Adik with Shri P. Janardhanan Advocates for the applicants

Shri M I Sethna, Couns&l for Respondents.

JUDGMENT:

(Per Shri B.C.Gadgil, Vice Chairman) Dated: 29.4.1988

Writ Petition No.216 of the file of the High Court of Judicature at Bombay is transferred to this Tribunal for decision. The dispute is regarding the validity or otherwise of the Directorate of Enforcement Officer and Assistant Enforcement Officer (Class III) Posts Recruitment Rules 1971 (1971 Rules, for short) and the subsequent amendments carried out therein.

2. There is an establishment known as Directorate of Enforcement, to which certain posts such as: Assistant Enforcement Officer (AEO), Enforcement Officer (EO) and Chief Enforcement Officer (CEO) are attached. In addition to these posts there are also certain other posts known as (i) Junior Stenos/UDCs

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(ii) Senior Stenos/Assistants/HeadClerks (SSAH)

(iii) Superintendents. The 1971 Rules provide for recruitment to the posts of AEO, EO and CEO. The posts of AEO are to be filled in by direct recruitment (50%), deputation (30%) and transfer (20%). The Junior Stenos and UDCs with 5 years of service are eligible for appointment to the post of AEO, by transfer within the 20% quota if they ~~would~~ pass the prescribed examination. In the present litigation we are not concerned with these rules regarding recruitment to the posts of AEO. What is challenged is a part of the 1971 Rules relating to recruitment to the posts of EO and CEO.

3. Under the 1971 Rules the posts of EO's are to be filled in by promotion from among AEOs (50%), by deputation from other Departments (30%) and by transfer (20%) from amongst the Assistants and Senior Stenographers in the Department, subject to their passing the requisite examination. Initially, the quota for ~~as to~~ deputation and transfer was limited 40% and 10% respectively, which was later enhanced to 20%, by the amendment of 1974. This increase however has no relevance for the purpose of deciding the controversy. The next higher post is that of CEO. The recruitment rules provide that 75% of the posts are to be filled in from amongst the EO's and Superintendents and the remaining 25% by deputation. At this juncture we may, in a nutshell, state, as to how the above mentioned feeder posts of Senior Stenos, Assistants, HC's and Superintendents are filled in. A Junior Steno/UDC with 5 years of service is promoted as Sr. Steno/Assistant/HC (SSAH). No examination is prescribed for the same. SSAH with 5 years of service is eligible for promotion as Superintendent. No examination

is prescribed for this promotion, also

4. Applicants Nos.1 to 11 are EO<sub>s</sub> who were initially appointed as AEO<sub>s</sub> as direct recruits. Thereafter, they were promoted as EO<sub>s</sub>. Applicants Nos. 12 to 18 too are AEO<sub>s</sub> directly recruited. The applicants contend, that part of the recruitment rules which permits appointment by transfer of 25% of posts amongst the SSAH is bad. Their other contention is that the provision for appointment on transfer of the Superintendents to the post of CEO is equally bad. Though a number of contentions have been raised in the application, all of them have not been pressed before us, and hence we would consider only those points which have been argued on behalf of the applicants and respondents.

5. The applicants contend that the duties of the EO<sub>s</sub> are of an executive nature under the Foreign Exchange Regulation Act (FERA). The EO<sub>s</sub> are required to collect intelligence relating to the violation of FERA and thereafter to carry out searches and seizures of incriminating documents and articles. They are also required to arrest the offenders and then proceed further in the matter. The applicants further contend, that the SSAH are expected to carry out only ministerial duties and therefore, the provision under the Rules for filling in of 20% posts, from among such ministerial posts is unfair, unjust and discriminatory to the other branch viz. the officers performing executive work. It was alleged that it was strange and anomalous that SSAH who are required to work as subordinates to the AEO<sub>s</sub> should be considered eligible for promotion as EO<sub>s</sub>. In substance the applicants' contention is that the SSAH are basically not suitable and qualified to hold the posts of EO<sub>s</sub> which calls for professional expertise and acumen, which they lack, as essentially they are

required to perform ministerial duty in the organisation in distinct contrast with the duty of EO<sup>s</sup>, which is executive in nature.

6. The second challenge to the recruitment rules is that the Superintendents with three years of service are considered eligible for promotion as CEO. The reason is the same viz. that the basic duty of the Superintendent is ministerial and as such he does not possess the professional acumen and expertise required in the executive sphere. It is for this reason, the applicants contend, that the post of CEO ought to be filled in only from the feeder post of EO.

7. At this juncture, we may also state that the applicant has cited some instances SSAH with 5 years of service being promoted <sup>as</sup> EO<sup>s</sup> in preference to AEOs with about 9 years of service or field experience. However, it is material to note that the main basis for challenging the rules, is ~~on the ground~~ that the impugned part of the rules is inequitable, unjust and unfair as it tends to give hostile treatment to the AEOs.

8. The respondents have resisted the claim. The Deputy Director of Enforcement Shri Solanki has filed an affidavit in reply, which is from page 114 onwards of the compilation. He clarifies therein that though a specific quota is apportioned for the deputationists, for the posts of EO and CEO, these posts are filled in by promotion from among AEOs and EO<sup>s</sup> respectively. As far as 20% quota on transfer, meant for the ministerial staff is concerned, he states that only such of the ministerial staff, found suitable for the executive cadre are promoted as EO. Shri Solanki further elucidates that SSAH are required to pass a departmental examination as prescribed by the manual. He denies that the said examination is a nominal one. The manual stipulates that the written examination

consists of three Papers as detailed below:

Paper I : Foreign Exchange Regulations and Customs Law (without books)

Paper II : Administration (with books)

Paper III : Law (with books)

9. In addition viva voce is prescribed. The confidential service reports are assessed initially he states, to decide finally the eligibility of the incumbent. Shri Solanki further clarifies, that the department makes no invidious distinction between the executive and ministerial branches, and that each of these branches have a characteristic role of their own to play with attendant responsibility to discharge. It is contended that <sup>in</sup> the Enforcement Directorate, even the ministerial staff is posted in sections dealing with investigation, intelligence, appeal, prosecution, recovery of penalty etc. and that they even accompany the executive officers for searches etc. Shri Solanki states that the post of Assistant carries a pay scale of Rs.425-800 in contrast to Rs.425-600 of the post of AEO. According to him the pay scales themselves reveal that the post of Assistant is higher than that of AEO. Of course these are unrevised pay scales prior to the recommendations of the IVth Central Pay Commission (IV CPC, for short). Subsequent to the recommendations of the IV CPC, there has been a further revision with certain adjustments inasmuch as the post of Senior Steno and HC carry a pay scale of Rs.1400-2600 as compared to that of AEO which is Rs.1640-2900. Thus on the whole, subsequent to the recommendations of IV CPC the pay scales of the posts in question are practically on par. It was denied that the SSAH and HCs work under the AEO. The contention is that both the AEO as well as SSAH work together under the Assistant Director.

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10. As far as that part of the recruitment rules under which the Superintendent is considered eligible for the post of CEO is concerned, Shri Solanki elucidates, that the incumbent has to complete 10 years of service on a minimum, for the purpose and by this long efflux of time he is well acquainted with FERA. He also clarifies that these Superintendents are considered by the DPC for promotion to the post of CEO and, that only those found suitable are promoted to the post of CEO. He further states that the unrevised pay scale of Superintendent was Rs.725-900 as compared to Rs.650-960 of the E.O. and subsequent to the recommendations of the IV CPC the pay scales of both the cadres are equal. Shri Solanki also states that the CEOs do not all necessarily perform executive duty but some of them work as Head of Office, Drawing and Disbursing Officer and Controlling Officer.

11. It was contended by Shri Adik learned counsel for the applicants, that the 1971 Rules were unjust, unfair and were violative of the equality clause under the Constitution as they tend to discriminate the executive staff against the ministerial staff in the matter of promotional avenues, in the executive cadre of EOs and CEOs. It is principally on this ground that the recruitment rules are challenged.

12. Shri Sethna learned counsel for the respondents countered the contention of Shri Adik as not according with facts. In the first place, he argued that the 1971 Rules which provided for promotion of ministerial staff to the concerned posts by transfer were in existence for as long as 12 years before filing of the present application and had therefore stood the test of time. He pointed out that prior to 1971, the 1969 Rules were in force, wherein too, the provision for promotion of ministerial staff was similar. He therefore

contended that this provision was actually in effect, as long back as from 1969 onwards and therefore it would be too late in the day for the applicants to contend, that these rules are bad.

13. In order to fortify his contention, he relied upon the decision of the Supreme Court in BALESHWAR DASS V STATE OF U.P. (1980 SCC (L&S) 531) wherein it is held that ordinarily rules acted upon for two decades can ~~not~~ be held to be invalid particularly when recruitment is being made thereunder.

14. In our opinion there is much substance in this contention of Shri Sethna. Ordinarily we would be loath to interfere with the pertinent recruitment rules unless it is shown to us, that the impugned provision is so grossly unreasonable and patently inequitable so as to warrant its being struck down.

15. It would be necessary to examine the contention of Shri Adik, as to whether the impugned recruitment rules are unreasonable, discriminatory, unjust or inequitable. It has been stated by Shri Solanki that the ministerial staff who would be fit for promotion, would not have any promotional channel, beyond, to the post of Superintendent and that the provision for the impugned promotional quota to the ministerial staff was specifically made with a view to provide such channel. He also avers that the said impugned provision has been made, as the Government cannot be oblivious of the service interests of its employees. This aspect would undoubtedly be relevant and a provision made to achieve this object and purpose, would ordinarily be good, unless it is shown that the provision is grossly unjust, inequitable or arbitrary.

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16. On merits we do not find that the above provision is liable to be struck down as contended by the applicants. It is true that 20% posts are to be filled in by transfer from the staff which is mainly on the ministerial side. However, we are not persuaded to accede to the contention of the applicants, that there is a water-tight compartment between executive and the ministerial cadres in regard to their career advancement. We have already referred to the affidavit of Shri Solanki, which reveals that the ministerial staff also participates in the executive work of the Directorate. Secondly the Jr. Stenos and the UDCs have to put in 5 years of service for becoming eligible for promotion as SSAH. The promotional avenue to the post of E.O. does not become available to them immediately thereafter. It is only after they put in another 5 years of satisfactory service and acquit themselves in the prescribed examination as detailed in paragraphs 8 and 9 ~~in the examination for the promotion to~~ above. It ill-behaves the applicant to contend that this examination is just a ~~farce~~ or is nominal. On the contrary a critical analysis of the syllabus prescribed for the three Papers reveals that the test is competitive and of high standard as it covers the salient provisions of the various relevant Acts. Besides close association of the ministerial staff with the ~~composition~~ <sup>complexities</sup> of working of the organisation particularly in the field, gives them the required insight and knowledge. In this background we are not convinced by the argument that the SSAH are totally ignorant of <sup>the</sup> duties to be performed by the Enforcement Officer, as to warrant an inference that these feeder posts, have no rational ~~basic~~ <sup>basic</sup> for promotion to the post of EO.

17. We have earlier observed that the pay scales of the two feeder posts viz. AEO and SSAH were

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practically <sup>the</sup> same. The scheme of earmarking 20% of the posts for promotion to the post of EO from among SSAH, <sup>has</sup> ~~the~~ stood the test of time as it has weathered a long span of well over a decade, before the filing of the present application in the High Court of Judicature, Bombay. The Department did not feel throughout this long period, that SSAH promoted to the post of EO, were not equal to the duty and responsibility entrusted to <sup>the</sup> them. On the contrary its experience has been, that the SSAH has by and large acquitted itself creditably in the post of EO. Taking into account all these factors, we are unable to accept the contention of Shri Adik that providing promotional avenues to SSAH, for the post of EO, is in any manner unfair, unjust or unreasonable. In fact, that provision conduces to harmony and building up the morale of the ministerial cadre by providing to it <sup>and</sup> reasonable <sup>and</sup> legitimate avenues of promotion and this is in administrative interest and efficiency. We therefore, reject the contention of the applicants, that the provision of 20% transfer quota in the rules in favour of SSAH is in any way bad.

18. We have earlier observed, that the applicants have challenged the provision of an avenue of promotion, in the next higher post, to the ministerial cadre under which Superintendents with 3 years of service are considered eligible for promotion to post of CEO. We have observed that for this purpose the incumbent has to put in at least 13 years of service. The rationale is evident from the fact that he has to put in 5 years of service as Jr. Steno/UDC, for becoming SSAH and thereafter he has again to put in 5 more years of service, to be eligible for promotion as Superintendent. As Superintendent, he has to put in 3 years of service. In this reckoning we need to take into account the fact, that there may be cases of an LDC, who has put in some

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years of service before his promotion as UDC. Besides there may be employees who would not be able to earn promotion as SSAH or Superintendent immediately on completing the requisite 5 years of service in the feeder post. It is thus apparent that not infrequently, the employees in the ministerial cadre have to put in quite a long period of service well over the requisite minimum of 5 years to earn promotion. While we may not attach much importance to this factor at the same time, we cannot wholly ignore the same.

19. Thus an employee in the ministerial cadre becomes Superintendent after being associated with the organisation for a long period which would not be less than 13 years. Shri Adik pointed out the probability of a Junior Steno or UDC not qualifying for promotion to the post AEO on account of his not passing the requisite examination but of gravitating to the post of SSAH on promotion solely on the criterion of seniority and merit in the ministerial cadre. He also referred to the likelihood of such SSAH not passing the prescribed examination to qualify for promotion to the post of EO but nevertheless his reaching the post of Superintendent by virtue of his seniority and merit in the ministerial cadre. Shri Adik elaborated that a person who did not pass the prescribed examination at any stage to qualify for promotion to a post in the executive stream may ultimately climb the ladder upto the stage of Superintendent in the ministerial stream and from there get a springboard to leap to the post of CEO in the executive stream. This he said would be the height of anomaly & ineptitude ~~he said~~. He, therefore, contended that the provision in question was arbitrary, unreasonable and unjust.

20. In our view, it would be improper to decide on such hypothesis, the question as to whether the provision

is unjust, unreasonable or inequitable. We have to take into account the entire gamut of facts and ~~relates~~<sup>relates</sup> and not base the decision on stray incidents which may be exception to the rule. As the saying goes "a lone swallow does not make the summer ". There may be instances where Junior Stenos/UDCs may pass the prescribed examination to qualify for promotion to the post of AEO within the 20% quota earmarked but ~~they~~<sup>they</sup> may not secure promotion to that grade, for want of a vacancy. An incumbent in the SSAH may acquit himself in such an examination, but may not become EO for the self-same reason. Thus the contingency of such incidents cannot be overruled. There is substance in the contention of the respondents that employees in the ministerial cadre who have become Superintendents without passing such examination, may or may not be found suitable by the DPC for promotion as CEO, in the executive cadre. What is required to be examined is, as to whether an employee who has put in the minimum of 13 years of service in the ministerial cadre (which cannot be said to be a short spell) can be said to be so inexperienced for and alien to the duties and responsibilities required to be shouldered by him as CEO in the executive cadre, ~~as~~<sup>as</sup> to be considered ineligible for that post, specially when ~~on~~<sup>in</sup> the course of his career he has had fair opportunity to acquaint himself with the salient aspects of the executive nature of work in the Department. It was contended by Shri Sethna that all the incumbents in the post of CEO are not necessarily required to carry out only executive functions. Shri Solanki states in his affidavit that certain CEOs work as Head of the Office or as Drawing and Disbursing Officer or as Controlling Officer. In this context,

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therefore, the contention of Shri Adik that the Superintendent promoted to the post of CEO would not be able to discharge his duties and responsibilities as desired, does not ring true. Besides, Shri Solanki stated in his affidavit, that there are many examples where officers from the ministerial cadre transferred on promotion to the executive cadre have proved their excellence on account of their long association with the organisation in regard to its executive as well as ministerial functions. We are, therefore, not inclined to accept the contention of the applicants that the Superintendents in the ministerial cadre are ineligible for promotion as CEOs. The impugned provision in the recruitment rules, in our view, is therefore quite reasonable and equitable.

22. It was strenuously urged by Shri Adik by citing some incidents that the impugned recruitment rule creates a flagrant anomaly in the respective cadres. It was contended that SSAH who had put in lesser years of service in that cadre as compared to the length of service rendered in another feeder post, namely that of AEO, have been promoted as EO<sub>s</sub> earlier than such AEO<sub>s</sub>. However, in our view, that aspect would not be relevant if the recruitment rules prescribing 20% quota for transfer of SSAH <sup>are</sup> ~~is~~ legal and valid. If the quota is valid, there may be such examples as mentioned by the applicants. But they would not be relevant. It is a common phenomenon in service matters that when there are two feeder posts for a certain cadre with a requisite quota

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stipulated for each of them, a person in one feeder post may secure promotion with a shorter length of service as compared to his counterpart in another feeder post.

23. Reliance was placed by Shri Adik on the decision of the Supreme Court in the case of O.P. SINGLA v. UNION OF INDIA (AIR 1984 SC 1595). The main question before the Supreme Court was about inter se seniority, between promotees and direct recruits. Rule 8(2) which was impugned before the Supreme Court provided, that the seniority of direct recruits be determined in the order of rotation of vacancies between them. In paragraph 25, the Supreme Court observed as follows:

"25. However, instances are not unknown wherein, though the provision of a rule or a section is not invalid, the manner in which that provision is implemented in practice leads to the creation of disparities between persons who, being similarly circumstanced, are entitled to equal treatment."

Reliance was also placed on the following observation of the Supreme Court in paragraph 34:

"34. It was held by this court in that case that all other facts being equal, continuous officiation in a non fortuitous vacancy ought to receive due recognition in fixing seniority between persons who are recruited from different sources, so long as they belong to the same cadre, discharge similar functions and bear the same responsibilities."

The Supreme Court held that the seniority be counted on the basis of continuous officiating service. In

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our opinion, this decision of the Supreme Court is of little avail in resolving the controversy before us.

24. The applicants have prayed for some incidental relief on the basis, that the impugned provisions in the recruitment rules are bad. They have prayed that the order dated 12.8.1982 promoting respondents Nos. 5 & 6 to the post of CEO be struck down. It is material to note, that for promotion to the post of CEO, a combined seniority list of EOs and Superintendents is drawn up on the basis of their length of service and merit in the respective feeder posts. Respondents Nos. 5 & 6 were thus senior to the applicants in the said combined seniority list and on that basis, were rightly eligible for being considered for promotion to the post of CEO.

25. We were told that during the pendency of this application, some more Superintendents have been promoted to the post of CEO. There cannot be any valid reason to challenge this promotion inasmuch as those promotees were seniormost in the combined seniority list prepared for the purpose of determining promotion to the post of CEO.

26. The applicants have challenged the order dtd. 12.11.1982 promoting Respondents Nos. 7 to 14 to the post of E.O. This challenge is on the basis that the impugned recruitment provision, is not properly implemented, ~~though that provision was assumed to be true.~~ On page 225 of the compilation, we see a

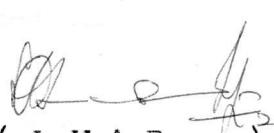
list (roster) of EO's, based on the rota-quota system. In the second column therein, it is mentioned whether the promotion is on the basis of "promotion quota" or "transfer quota". The name of the concerned EO is, shown in Column 3 ibid. It was contended by Shri Adik, that the employees at Sl.No. 7 Shri S. Krishnamachari, 16 Shri K Y Rane, 18 Shri K S Achutha, 19 Shri S K Basu 20 Shri Islam Hussain, 21 Shri P. Vishwanathan and 22 Shri A K Banerjee, have been shown under the quota mentioned for promotees, though in fact they were never AEOs, so as to merit such promotion. He further contended, that these persons were from the feeder post of SSAH and consequently column No. 2 should have mentioned them as having been appointed against "transfer quota". If this was done, he pleaded, there was no occasion for the Department to promote Respondents Nos. 7 to 14 against the transfer quota.

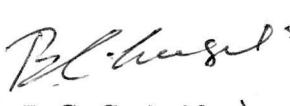
27. We had asked Shri Sethna to produce before us the relevant service data of these employees at Sl.Nos. 7 Shri S. Krishnamachari, 16 Shri K Y Rane, 18 Shri K S Achutha, 19 Shri S K Basu, 20 Shri Islam Hussain, 21 Shri P. Vishwanathan, 22 Shri A K Banerjee on page 25 of the compilation. Accordingly, he produced certain relevant documents, which are taken on record. We had then informed him that it was desirable, that the department produced a summary of that record after taking into account the controversy. On 28.4.1988, the Department produced such a summary, <sup>and</sup> indicating the conclusions based thereon. This has been taken on record. The summary along with the conclusions produced on 28.4.1988 shows that employees at Sl.Nos. 16 Shri K Y Rane, 18 Shri K S Achutha, 19 Shri S K Basu, 20 Shri Islam Hussain, 21 Shri P. Vishwanathan and 22 Shri A K Banerjee were promoted against the 'transfer quota'.  
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Consequently, there was a mistake in the roster where they were shown against the 'promotion quota'. As far as, the employee at Sl.No. 7 Shri S. Krishnamachari is concerned, the respondents have stated in the summary that the required information is not readily forthcoming. In view of this position, we pass the following order.

ORDER

28. The application is partly allowed. The roster drawn up by the Department should be modified by treating Sl.Nos. 16 Shri K.Y. Rane, 18 Shri K S Achutha, 19 Shri S K Basu, 20 Shri Islam Hussain, 21 Shri Vishwanathan and 22 Shri A K Banerjee as from 'transfer quota'. They are further directed to verify as to whether Sl.No. 7 Shri S. Krishnamachari is promoted against the 'transfer' or promotion quota'. If it is found that he is also promoted against 'transfer quota', the roster would need to be modified, as a consequence. If the roster does not permit such modification, the respondents are directed to pass appropriate orders about Respondents Nos. 7 to 14 when they are promoted against the 'transfer quota'. These orders will depend upon the question as to whether they are eligible for such promotion against 'transfer quota' in the background that Sl.Nos. 7 Shri S. Krishnamachari, 16 Shri K Y Rane, 18 Shri K S Achutha, 19 Shri S K Basu, 20 Shri Islam Hussain, 21 Shri P. Vishwanathan and 22 Shri A K Banerjee though shown against the 'promotion quota', are in fact from the 'transfer quota'. Subject to this observation as regards the roster, the claim made by the applicants is dismissed. Parties to bear their own costs of this application.

  
( L H A Rego )  
Member (A)

  
( B C Gadgil )  
Vice Chairman