

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

ORIGINAL APPLICATION NO. 291/1986

- 1 Hridayarajan S/o. Late D P Bhattacharya
aged about 44 years, R/o 17/44 Katol Road,
CPWD Quarters, Nagpur 440013
 - 2 Miss. Kamla D/o. Late A N Gupta
48 years, R/o. 3/28 Katol Road
CPWD Quarters, Nagpur 13
 - 3 Manik S/o. Late Ajaygopal Mazumdar
43 years, R/o. 33/273 Katol Road,
CPWD Quarters, Nagpur 13
 - 4 Kalipada S/o. Late J L Basu
56 Years, R/o. Type II CPWD Qrs.No.67,
Civil Lines, Nagpur-1
 - 5 Biswapati S/o. Kalipada Mukherjee,
52 years, R/o. Type II CPWD Qrs.No.76
Seminary Hills, Nagpur-6
 - 6 Durgadas S/o. Late Rabindranath Basu
Thakur, 53 years, R/o. Type II
CPWD Qrs. No.158, Seminary Hills,
Nagpur-6
 - 7 Satyendramohan S/o. G C Mahalanobis
51 years, R/o. Type II CPWD Qrs. 342,
Katol Road, Nagpur 13
- Applicants

V/s.

- 1 Union of India, through
Secretary, Department of Statistics,
Ministry of Planning, Patel Bhavan,
Parliament Street, New Delhi
- 2 Chief Executive Officer
National Sample Survey Organisation,
Department of Statistics,
Ministry of Planning, Patel Bhavan,
Parliament Street, New Delhi.
- 3 Director
Data Processing Division,
National Sample Survey Organisation,
25-A Shakespeare Sarani,
Calcutta 700017

Respondents contd.

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- 4 Deputy Director
Administration
Data Processing Division
National Sample Survey Organisation
25-A Shakespeare Sarani,
Calcutta 700017
 - 5 Officer-on-Special Duty,
Data Processing Division,
National Sample Survey Organisation,
NIT Building, West High Court Road,
Gokulpeth, Nagpur 10
 - 6 Satish S/o. Shri N Mehta,
34 years, DPS National Sample Survey
Organisation, NIT Building, Gokulpeth,
Nagpur 1
 - 7 Shailen Kumar Roy
Data Processing Supervisor, NIT Building,
West High Court Road, Gokulpeth,
Nagpur
 - 8 S H Korti, 36 years
Data Processor Supervisor NIT Building,
West High Court Road,
Gokulpeth, Nagpur 10
 - 9 Smt. M M Lanjewar, 37 years,
Superintendent, NIT Building,
West High Court Road,
Gokulpeth, Nagpur 10
 - 10 S K Chowdhury,
D P Supervisor
25A, Shakespeare Sarani,
Calcutta-17
 - 11 Md. Muslim, 52 years,
R/o. D P Centre, National Sample Survey
Organisation, Hans Bhavan, Wing-II,
Bahadurshah Zafar Marg, New Delhi
- Respondents

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

APPEARANCE

Mr. T T Anthony
Advocate for the applicants
Mr. J D Desai(for Mr.M I Sethna)
Counsel for the Respondents

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JUDGMENT

Dated : 31.7.1987

(Per: Shri L H A Rego, Member(A))

This is an application filed under section 19 of the Administrative Tribunals Act 1985("Act"), wherein, the main prayer of the applicants (A) is, that the Final Seniority List ('FSL' for short) as published by respondent(R)-3, on 1.9.1986 (Annexure-16), in respect of the posts of Data Processing Supervisors, in the Survey Design and Research and Data Processing Divisions of the National Sample Survey Organisation ('NSSO' for short), of the Government of India, be quashed, being discriminatory and that R-3, be directed to restore their seniority to them in the said post, in accordance with the criteria outlined by him, in his memo dated 13.12.1978 (Annexure-7). They had also prayed for interim relief, for restraining R-1 to 5, from promoting R-6 to R-11, to the post of Superintendent in the NSSO. The ex parte ad interim order, passed by the Tribunal, granting the relief, was later vacated on 18.11.1986, at the time of admission of the application, on condition, that promotion to the said post of Superintendent, would be subject to the result of this application.

2. The salient background to the case is as follows: Prior to 1.9.1977 (effective from 3.8.1974) the posts of Computing/Machine/Punching Supervisor, formed three distinct and separate cadres, in the same time-scale of pay viz, Rs 425-800, in the Survey Design, Research and Data Processing Divisions of NSSO. With effect from 1.9.1977, these three cadres were amalgamated into a common cadre and re-designated as Data Processing Supervisors ('DPS' for short). Consequently, a Provisional Combined Seniority List ('PSL(I)' for short) for this amalgamated cadre of DPS, was drawn up by R-3, on 13.12.1978 (Annexure-7), as on 1.11.1978, and circulated to all concerned, for submitting their representation, if any, within the date stipulated. The following were the criteria, on which this PSL(I) was drawn up:

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- i) The deemed date of entry of the incumbents, into the earlier 3 distinct and separate cadres, namely that of Computing/Machine/Punching Supervisors, was taken as the basis for seniority.
- ii) ^{de}Where the above date of entry was common, the date of appointment and date of birth (in that order), was taken as the factor for determining seniority.
- iii) The seniority of those appointed ad hoc as DPS, was based on their date of appointment, subject to finalisation by the competent authority.

3. The applicants figured in this PSL(I). They were promoted as DPS, ad hoc, after 1.9.1977 (i.e., the date ^{de}from which, the above 3 cadres were amalgamated) for want of recruitment rules. On 22.12.1978 (Annexure-8), R-4 issued a corrigendum to the effect, that the incumbents from S.No.35 to S.No.105, in PSL(I), be treated as "ad hoc appointees".

4. As some points were raised in the meanwhile, in regard to the above principles of determination of seniority, they were got clarified by R-3 and as a result, he drew up a Provisional Combined Revised Seniority List of DPS, on 16.5.1980 (Annexure-9, reproduced by the applicants in part, excluding the name of the respondents) as on 15.5.1980, (PSL(II), for short), in place of PSL(I), (corrected as aforementioned) and circulated the same, to all concerned, for representation, if any, by a specified date. All the applicants appeared in PSL(II), as also R-6 to 9 (direct recruits to the post), who were placed above the former. The names of R-10 and 11 (promotees), did not, however, appear therein, although their names had figured in PSL(I). Counsel for the respondents states, that R-6 to 9 were assigned seniority in PSL(II), in accordance with the principle of rotation of vacancies, between promotees and direct recruits, as laid down in the Recruitment Rules, for the post of DPS. These Recruitment Rules, known as the National Sample Survey Organisation Data Processing Division and Survey Design and Research Division (Data Processing Supervisor) Recruitment Rules, 1978 ("Rules" for short), were framed by the Government of India,

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under Article 309 of the Constitution, on 27.4.1978, (Annexure-12) and are said to have been notified in the Official Gazette on 13.5.1978.

5. The Final Combined Seniority List of DPS ('FSL(I)' for short) was circulated by R-3 on 26.4.1982 (Annexure-10, partly reproduced by the applicants) wherein, R-6 to 9 and all the applicants, appear. The applicants were said to have represented against PSL(II). Counsel for the respondents states, that the same stood rejected, on the publication FSL(I), on 26.4.1982.

6. When the 3 separate cadres, namely that of Computing/Machine/Punching Supervisors, were merged into one and redesignated as DPS, from 1.9.1977, there were 34 employees, who were absorbed from the Indian Statistical Institute ('ISI' for short) of the Government of India, in the above 3 respective cadres on and from 1.6.1972. Sixteen more persons were employed by the Government of India, in these 3 cadres, after 1.6.1972, but prior to amalgamation and redesignation of these cadres as DPS. Thereafter, pending framing of the Rules, a number of persons were appointed as DPS, on ~~an~~ ^{an} ad hoc basis. In PSL(I), the incumbents appointed prior to 1.9.1977, as Computing/Machine/Punching Supervisors redesignated as DPS, were shown en bloc, senior to those appointed ad hoc subsequently. By a corrigendum dated 22.12.1978 (Annexure-8), R-4 had stated, that all persons from S.No.35 to S.No.105, in PSL(I), (presumably promoted after 1.6.1972), were deemed to have been promoted on an ad hoc basis.

7. Both in PSL(II), as well as in PSL(I), all persons appointed/promoted as Computing/Machine/Punching Supervisors, after 1.6.1972 but before 1.9.1977, were deemed as appointed/promoted to the post of DPS, ab initio. The direct recruits were assigned seniority, in accordance with the Rules, which came into effect on 13.5.1978 i.e., before PSL(II) was issued on 16.5.1980.

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8. One Shri M L Zutshi, who held the post of Computing/Data Processing Supervisor, in the same Organisation, viz., the NSSO, had filed an application on 23.12.1985 (bearing OA No. 61/1985), before the Principal Bench of the Tribunal at New Delhi, challenging the impugned Seniority List, (wherein his period of officiation, in the post of DPS, between 17.8.1974 to 5.12.1977, was ignored as being ad hoc) with a prayer, that the Seniority List be quashed and his seniority restored, with effect from 17.8.1974. The Principal Bench held in that case, that the selection and promotion of Shri Zutshi as DPS, was ^{to} not irregular or ad hoc, in any manner and allowed the application, with a direction to the respondents, to quash the impugned Seniority List and to restore the seniority to Shri Zutshi, on the basis of his continuous officiation, as Computing/Data Processing Supervisor, with effect from 17.8.1974.

9. In the light of the above judgment in Shri Zutshi's case, R-3 sought to revise FSL(I), issued on 26.4.1982. He issued on 22.7.1986 (Annexure 13) afresh, a Provisional Combined Seniority List of DPS as on 23.12.1985 (PSL(III)), in cancellation of FSL(I), from S.No.32 onwards and circulated the same ^{to} to all concerned, inviting representations, if any, ^{by} within a stipulated date. This PSL(III) was based on the following criteria:

- i) The seniority of the ex-ISI employees, who were absorbed in the post of Computing/Machine/Punching Supervisors (redesignated as DPS, consequent to amalgamation of these cadres with effect from 1.9.1977) was determined, with regard to the deemed date of entry in any of these 3 cadres.
- ii) Where the deemed date of entry in any of these 3 cadres was the same, a person who was older in age, was assigned higher seniority.
- iii) The seniority of employees appointed in the above 3 cadres from 1974, ^{to} ~~til~~ the date of amalgamation and redesignation of these cadres as DPS viz., 1.9.1977, was fixed in chronological order of the meetings of

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the Departmental Promotion Committee (DPC), in which they were selected for the post and in the order of their names, as appearing in the respective Select Lists.

- iv) Where the Select Lists for appointment to the different posts, were drawn up by the DPC on the same date, the seniority of the employees, was fixed with reference to the date of their joining respective posts and where this date was the same, the person older in age, was assigned higher seniority, without however disturbing the inter se seniority in either case.
- v) Those employees who were promoted to the posts of Computing/Machine/Punching Supervisors, prior to 3.8.1974 (i.e., the date of publication of the NSSO (Data Processing Division and Survey, Design and Research Division) Class-III (Non-Ministerial Posts), Recruitment Amendment Rules, 1974, in the Official Gazette) were assigned seniority from 3.8.1974.
- vi) The direct recruit to the post of Computing Supervisor, was assigned seniority in accordance with the rotation of vacancies, as specified in the Recruitment Rules for that post.
- vii) All those promoted as DPS after amalgamation and redesignation of the above 3 cadres were assigned seniority, in chronological order of the meetings of the DPC, in which they were selected and in the order of their names as appearing in the Select Lists.

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viii) Those who were promoted as DPS on an ad hoc basis, between 5.12.1977 (i.e., the date on which a Provisional Seniority List was issued - vide O.A. No. 61/1985 pertaining to Shri Zutshi, referred to above) and 12.5.1978, were assigned seniority with effect from 13.5.1978, (i.e., the date of publication of the Rules in respect of the post of DPS in the Official Gazette).

ix) Those appointed as DPS, by direct recruitment, were assigned seniority, according to rotation of vacancies, as specified in the Rules.

10. In PSL(III), the employees at Sr.Nos. 1 to 31 were those, who were absorbed in Government Service from the ISI, as Computing/Machine/Punching Supervisors on and from from 1.6.1972, while those at Sr. Nos. 32 to 47, were persons appointed in these three categories of posts thereafter.

11. R-10 and R-11, who were promotees, were assigned seniority in the order of their names, as appearing in the relevant Select List, which is said to have become valid, for regular appointment, on 13.5.1978, i.e., the date on which, the Rules were notified in the Official Gazette. Both these promotees respondents, accepted the promotion offered to them but they requested for a posting at Calcutta and New Delhi respectively. Their request was granted by the competent authority, and they resumed duty in their posts, on 3.6.1978 & 1.5.1978 respectively. Their seniority was, therefore, not disturbed.

13. The applicants are said to have represented to R-3 on 28/29.7.1986 (Annexure 14), against PSL(III), particularly in regard to showing the direct recruits (R-6 to R-9), above them and requested to grant their seniority, with due regard to the date of their empanelment by the DPC and the actual date of their joining duty in the post of DPS. This representation was rejected by R-4 on 11.8.1986 (Annexure 14-A), for the reasons stated therein. The Final Combined Revised Seniority List of DPS as on 23.12.1985 ('FSL(II)' for short) was issued by R-3 on 1.9.1986 (Annexure 16) without change,

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aggrieved by which, the applicants have approached this Tribunal for redress. We were informed, that A-4 has since retired and that R-9 has withdrawn, being no longer interested in the application. The learned counsel, Shri Anthony and Shri J D Desai, represented the applicants and R-1 to 5 respectively. Among R-6 to 8 and 10 and 11, only R-6 and 8 were present. R-1 to 5 have filed their reply. R-6 to 8 too, have filed a composite reply. The applicants have filed a rejoinder to the reply of R-1 to 5.

14. Before we go into the merits of the case, the following data, in regard to relevant service particulars and rankings of both the applicants (excluding A-4) as well as R-6 to 11 (excluding R-9), condensed in the form of tabular statements, would greatly facilitate, a comparative picture at a glance and quicker and better appreciation of the important points urged by both sides, to advance their case.

I: SERVICE PARTICULARS

S.No. of A&R	Whether P or DR	Dates with reference to the post of DPS pertaining to				
		empanel- ment by the DPC	Order of appoint- ment.	Actual joining	Regularisation Initial	Final
(1)	(2)	(3)	(4)	(5)	(6)	(7)
A 1	P	03.11.77	02.12.77	19.01.78	19.01.78	13.5.78
2	P	03.11.77	02.12.77	19.01.78	19.01.78	13.05.78
3	P	03.11.77	02.12.77	22.12.77	22.12.77	13.05.78
5	P	09.01.78	01.02.78	27.02.78	27.04.78	13.05.78
6	P	09.01.78	01.02.78	27.02.78	27.04.78	13.05.78
7	P	09.01.78	21.03.78	22.04.78	27.04.78	13.05.78
R 6	DR	05.08.79	14.09.79	21.09.79	27.04.78	21.09.79
7	DR	05.08.79	14.09.79	21.09.79	27.04.78	21.09.79
8	DR	05.08.79	14.09.79	21.09.79	27.04.78	21.09.79
10	P	03.11.77	02.12.77	30.06.78	24.01.81	30.06.78
11	P	03.11.77	02.12.77	01.05.78	24.01.81	13.05.78

Abbr.: 'A' means Applicant
'R' means Respondent
'P' means Promotee
'DR' means Direct Recruit.

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II. RANK IN VARIOUS SENIORITY LISTS AS DPS

	PSL(I)	PSL(II)	FSL(I)	PSL(III)	FSL(II)
A-1	80	79	79	85	39
2	84	83	83	91	43
3	85	84	84	92	44
5	90	89	89	97	48
6	91	90	90	98	49
7	95	94	94	102	53
R-6 DR	-	--	--	57	23
7 DR	-	--	--	67	28
8 DR	-	--	--	77	34
10(P)	104	??	??	71	32
11(P)	103	??	??	90	42

Abbr.: PSL(I) means, the Provisional Combined Seniority list of DPS, as on 01.11.1978, published on 13.12.1978 (Annexure-7)

PSL(II) means, the Provisional Combined Revised Seniority List of DPS as on 15.05.80, published on 16.05.198 (Annexure-9).

FSL(I) means, the Final Combined Seniority List of DPS as on 31.01.1982, published on 26.04.1982 (Annexure-10).

PSL(III) means, the Provisional Combined Revised Seniority List of DPS, as on 23.12.85 published on 22.07.1986 (Annexure-13).

FSL(II) means, the Final Combined Revised Seniority List of DPS, as on 23.12.1985 published on 01.09.1986 (Annexure-16).

NB.: In FSL(II), the names of all employees, who either retired or demitted office or were promoted to higher grades on regular basis, on or before 23.12.1985, were excluded; hence the discrepancy in rankings, between PSL(III) and FSL(II).

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15. Opening his defence, Shri Anthony, Learned Counsel for the applicants, vehemently pleaded, that A-1 to 3 and A-5 to 7 were empanelled by the DPC, for selection to the post of DPS, on 3.11.1977 and 9.1.1978 respectively earlier than R-6 to 8 (direct recruits); that their order of appointment to this post was 2.12.1977, in the case of A-1 to 3, 1.2.1978 in the case of A-5 and A-6 and 21.3.1978 in the case of A-7, which dates were earlier, than the corresponding date viz., 14.9.1979 in regard to R-6 to 8; that the actual dates of resuming duty in the post of DPS, was 19.1.1978 in the case of A-1 and 2, 22.12.1977 in the case of A-3, 27.2.1978 in the case of A-5 and 6 and 22.4.1978 in the case of A-7, which were earlier than those, in the case of R-6 to 8 (21.9.1979) and of R-10 (3.6.1978) and R-11 (1.5.1978); that according to the Office Order dated 26th June/2nd July, 1981 of R-3 (Annexure-11), the dates of initial regularisation of A-1 and 2 were 19.1.1978, of A-3, 22.12.1977 and A-5 to 7, 27.4.1978, which were earlier than that of R-10 and 11, which was 24.1.1981 in the case of both and therefore, A-1 to 7 (except A-4), ought to be assigned higher seniority, in the post of DPS, than R-6 to 11 (excluding A-9).

16. Shri Anthony, next invited our attention to para XII of Appendix 29 captioned "Procedure for making promotions and functioning of the DPCs" on pp.557 and 558 of CHAUDHARI'S COMPILATION OF THE CIVIL SERVICE REGULATIONS VOL.III (APPENDICES) ("Chaudhari's Manual" for short). The relevant part of this para reads thus:

"1. The panel drawn up by the DPC would normally be valid for one year. In any case, it should cease to be in force, on the expiry of a period of one year and six months or when a fresh panel is prepared, whichever is earlier.

2. The date of commencement of validity of the panel will be the date on which the DPC meets. In case the panel requires partially or wholly, the approval of the Commission, the date of validity of the panel, would be the date of the letter of the Commission, communicating their approval to the panel."

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17. Shri Anthony contended, that R-10 and R-11, were empanelled by the DPC for the post of DPS, on the same date viz., 3.11.1977, as in the case of A-1 to 3, but they resumed duty later than all the applicants, namely on 36.1978 and 1.5.1978 respectively. He laid emphasis on the direction of R-3 in para-1 of his Office Order dated 212.1977 (Annexure-1), which reads, that the officials concerned "are promoted as DPS, with effect from the date of their joining the post at the places of posting" He also referred to the direction in para-2 of the said Office Order, that those who refused promotion, would lose their seniority and would not be considered for promotion for a period of 6 months. He, therefore, pleaded, that in view of the above facts and circumstances, R-10 and 11 could not steal a march over the applicants in seniority, though he admitted, that R-1 and R-11 were seniors to the applicants, in the equivalent feeder cadre of Data Processing Assistants, immediately below the grade of DPS, by virtue of their earlier date of appointment in this feeder cadre.

18. Shri Anthony pointedly referred to the Office Orders dated 26th June/2nd July 1981 (Annexure-11) and 21/23rd March, 1981 (Annexure-15), passed by R-3, in regard to officiation of the applicants and others, on a regular basis, in the posts of DPS, and asserted, that the dates of officiation on a regular basis in this post, were unequivocally indicated in both these references and at no point of time, was it stated by R-3, that these dates were conditional. Consequently, by virtue of earlier dates of officiation in the posts of DPS, as compared to the R-6 to 8 and 10 and 11, the applicants, he maintained, had a legitimate claim for seniority over the former.

19. He relied on various rulings of the Supreme Court to help substantiate his stand, that on the principle of rota and quota, the applicants were senior to R-6 to 11 (excluding R-9) The ratio of the judgment in these cases, in so far as it is relevant to the case before us, is as follows:

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(1) AIR 1983 SC 769 (JANARDHAN - V - UNION OF INDIA & ORS.)

- a) A direct recruit, who comes into service after the promotee was already unconditionally and without reservation promoted and whose promotion is not shown to be invalid or illegal, according to relevant statutory or non-statutory rules, should not be permitted by any principle of seniority, to score a march over a promotee, because that itself being arbitrary would be violative of Articles 14 and 16. However, any enunciation of the general principle on the lines indicated above, would necessitate reconsideration of the same.
- b) The quota rule is linked with the seniority rule; if the first breaks down or is illegally not adhered to, giving effect to the second would be unjust, inequitable and improper.

(2) AIR 1984 SC 1291 (P.S. MAHAL & ORS. - V - UNION OF INDIA & ORS.):

- a) The rotational rule of seniority is inextricably linked up with the quota rule and if the quota rule is not strictly implemented and deviation therefrom is large, regularly from year to year, it would be grossly discriminatory and unjust, to give effect to the rotational rule of seniority.
 - b) The rule of seniority based on rotation of vacancy, according to the quota prevailing at the time, would be constitutionally acceptable, if the quota rule were strictly implemented barring minor deviations.
 - c) When there is a quota rule governing recruitment to a cadre, it is not necessary, that there should be any particular rule of seniority. Government may in its wisdom, adopt an appropriate rule of seniority, which may be based on length of continuous officiation or may follow a roster, in keeping with the quota rule, so that seniority may be determined according to the rotation of vacancies under the quota rule. But, whatever be the rule of seniority adopted by Government, it must satisfy the test of equality, construed in Article 14 and 16 of the Constitution.
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d) There is no inherent vice in the quota rule being operated through the rotational rule of seniority.

(3) AIR 1986 SC 638 (NARENDRA CHADHA & ORS. - V - UNION OF INDIA & ORS.):

In this case, the Supreme Court observed that it was now well-settled, that it is permissible to Government to recruit persons from different sources to constitute a service and that it was open to reserve a quota for each source. The rules of recruitment framed on these lines were perfectly legitimate and quite consistent with Articles 14 and 16 of the Constitution.

(4) AIR 1987 SC 716 (A.N. PATHAK & ORS. - V - SECRETARY TO GOVERNMENT OF INDIA, MINISTRY OF DEFENCE & ANR.):

The promotees come into service, not by any fortuitous circumstance, but they form an integral part of the regular cadre, entitled to all benefits by the length of their service. The rules enabling the authorities to fill in vacancies for direct recruits as and when recruitment is made, marring the chances of promotion of those already in service, cannot but be viewed with disfavour. If the authorities desire to adhere to the rules strictly, all that is necessary is to be prompt in making direct recruitment. Delay in this regard, should not visit the promotees, with adverse consequences, denying them the benefit of their service.

20. Summing up, Shri Anthony urged, that in the light of the above rulings of the Supreme Court, the longer period of service rendered by the applicants and the earlier date of regularisation of their service, as compared to R-6 to 8 (direct recruits) in particular, could not be overlooked while determining their seniority on the principle of rota and quota.

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21. Shri J D Desai, Learned Counsel for R-1 to R-5 spearheaded his attack, on the ground of limitation. He submitted, that the applicants had at no time challenged, through a statutory appeal, the seniority assigned to R-6 to 9, on the basis of the quota rule, over them, either ^{at} at the time of issue of PSL(II) on 16.5.1980 or of FSL(I) on 26.4.1982 and, therefore, they cannot do so at this far too belated stage, as they were affected by estoppel and waiver, apart from being barred by limitation under Section 21 of the Act. Shri Anthony countered the same on the ground, that FSL(I) issued on 26.4.1982 was partially cancelled by R-3, as late as on 22.7.1986 (Annexure-13). He invited our attention in particular, to para-2 of Annexure-13, which inter alia states, that FSL(I) published on 26.4.1982, in so far as it relates to the officials, listed from Serial No. 32 onwards therein, is cancelled and, therefore, ^{as} ^{he said,} the cause of action for the applicants, arose in the application before us, on 22.7.1986, if not later, from the date of actual receipt of Annexure-13 by the applicants. The present application was filed before this Tribunal on 22.9.1986 and, therefore, according to Shri Anthony, the applicants are not hit by the bar of limitation, waiver or estoppel as alleged by Shri Desai. This submission of Shri Anthony we find is well-founded and, therefore, we reject the contention of Shri Desai, that the application suffers from the infirmity of limitation, waiver or estoppel.

22. Shri Desai, next sought to rebut each of the contentions raised by Shri Anthony, in defence of the applicants. Repelling the claim of the applicants, that they be assigned seniority over R-6 to 8 and R-10 and 11, by virtue of earlier dates of (i) empanelment by the DPC for the post of DPS, (ii) of joining in that post and (iii) regularisation therein, Shri Desai clarified, that as long as an incumbent, did not refuse the promotion offered to him, consequent to his empanelment by the DPC, his empanelment does not become invalid. In the case of R-10 and 11 (both promotees) he pointed out, that they were empanelled by the DPC on 3.11.1977 for the cadre of DPS and were posted to Nagpur. As they had some difficulty in regard to their posting, they had requested for an alternative posting, which request

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was granted by the competent authority and accordingly R-10 joined on 30.6.1978 at Calcutta and R-11 joined on 1.5.1978 at New Delhi. A-1 to 3 and R-10 and 11, were empanelled by the DPC on the same date namely 3.11.1977 but the latter actually joined their posting, about 4 to 5 months later, as compared to the former, for the reasons aforementioned. Besides R-10 and 11, were not empanelled anew by the DPC, for the post of DPS, at its next meeting held on 9.1.1978. This apart, as conceded by Shri Anthony, R-10 and 11, were senior to the applicants, in the immediately lower equivalent feeder cadre of Data Processing Assistants. R-10 and 11, had not declined the promotion offered to them, in the post of DPS but had only requested for an alternative posting which was granted by the competent authority and this entailed some lapse of time before they finally joined as DPS, at the approved place of posting. In view of the above facts and circumstances, the applicant cannot claim seniority over R-10 and 11, on the untenable premise, relied upon by their Counsel, with reference to para-2 of Annexure-1 (forfeiture of seniority by not availing of promotion) and para-~~XII~~ of Choudhary's Manual - vide paras 16 and 17 supra, and, therefore, we uphold the contention of Shri Desai.

23. As regards the contention of Shri Anthony, that the applicants should be assigned seniority over R-6 to 8 and R-10 and 11, on the basis of their earlier date of initial regularisation, in the post of DPS, Shri Desai refuted the same on the score, that the applicants could not have been appointed regularly to the post of DPS, in the absence of the Rules, which actually came into effect from 13.5.1978.

24. As for the plea of Shri Anthony, that the applicants were appointed on a regular basis, for which he relied on Annexures 11 and 15 (vide para 18 supra), Shri Desai averred, that this was an inadvertent error on the part of R-3 (and the same had also crept in, in some of the PSLs and FSLs as well), as the appointments could not have been regularised, in the absence of the Rules. He submitted, that the applicants could not take

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undue advantage of the patent inadvertent error, which Government subsequently rectified, along with other errors and omissions, in the light of the judgment rendered by the Principal Bench of this Tribunal in OA No.61/1985 and published a revised Final Combined Seniority List (FSL(II)) for the cadre of DPS, on 1.9.1986. He pointed out, that the criteria outlined therein, for fixation of relative seniority between the direct recruits and the promotees, were just and equitable and did not in any manner violate the principles of equality, outlined in Articles 14 and 16 of the Constitution.

25. With regard to the various rulings of the Supreme Court relied upon by Shri Anthony, to buttress his contentions, that seniority of the applicants was not correctly determined, on the principle of rota and quota, in accordance with the dicta of the Supreme Court, as relevant to the case before us - vide para 19 supra- Shri Desai opposed that contention, on the ground, that the cases therein, were clearly distinguishable from the one before us, as there was no rupture or breakdown of this principle, either by way of the quota having been exceeded or the rotation of vacancies within the prescribed quota for each of the streams, namely that of direct recruits and the promotees, having been delayed inordinately.

26. To reinforce his argument, Shri Desai relied upon the very same ruling namely, AIR 1986 SC 49 (NARENDRA CHADHA & ORS. - V - UNION OF INDIA & ORS.) cited by Shri Anthony - vide para 19(3) supra. He also referred to AIR 1986 SC (KARAM PAL - V - UNION OF INDIA) wherein, it was observed, that in the absence of serious failure in implementing the relevant rules, there was no ground to interfere, with the inter se seniority of the officers, in the grades concerned.

27. Shri Desai then explained, the manner in which the inter se seniority between the applicants and R-6 to 8 and 10 and 11, was fixed in FSL(II), on the principle of rotation of vacancies, within the quota prescribed for promotees and the direct recruits, under the Rules and showed to us the relevant Seniority List.

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28. The post of DPS according to the Rules (Annexure-12), is a non-selection post and the method of recruitment under them, is (a) 90% by promotion failing which by direct recruitment and (b) 10% by direct recruitment, failing which, by promotion. This, in fact, was the quota prescribed under the Rules, for each of the two streams to the cadre of DPS viz., the promotees and the direct recruits. Shri Desai pointed out, that R-3 had judiciously and discreetly adopted the roster system, in units of ten, for rotating the posts between the promotees and the direct recruits, taking due care to ascertain, that one stream did not secure undue advantage over the other in this regard, as this had a close bearing on their seniority.

29. At this point, R-8 intervened and referred to para-7, on page 6 of the joint reply filed by R-6, 7 and 8 on 6.10.1986 before the Tribunal, wherein, a reference is made to the instructions contained in the Annexure, to Official Memorandum dated 12.12.1959 of the Union Ministry of Home Affairs, in regard to the general principles, for determination of relative seniority, between the direct recruits and the promotees. These instructions read as under:

"Relative Seniority of Direct Recruits and Promotees:

This is determined according to the rotation of vacancies between direct recruits and promotees. A roster should be maintained based on the reservation for direct recruitment and promotion in the Recruitment Rules. Suppose 50% of the vacancies are reserved for promotion and 50% for direct recruits, each direct recruit shall be ranked below a promotee. When the quota of vacancies is 75% for promotion and 25% for direct recruitment, each direct recruit should be ranked in seniority below 3 promotees."

30. Shri Desai showed us the relevant Seniority List in which the vacancies were rotated on the above principle in units of ten, as the percentage quota of posts apportioned between promotees and direct recruits was 90% and 10% respectively, subject to what is clarified in para-28 supra. The above Seniority List showed, that promotees were considered first for apportionment of the first nine vacancies in the posts of DPS and the

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tenth post was allotted to the direct recruit and so on, in that sequence, till the sanctioned posts were exhausted in a year. Shri Desai submitted, that this was the most equitable and just mode possible, to help regulate seniority by the principle of rotation of posts, within the stipulated quota, between the direct recruits and the promotees and, therefore, the applicants should have no grievance on this account. In the end he asserted, that the application was bereft of merit and, therefore, be rejected.

31. R-8 who was present, averred, that he had nothing further to add, as all material points were covered by Shri Desai. R-6 who was present, concurred with R-8.

32. We have heard this matter in extenso, for three days at a stretch, from 20.7.1987 to 22.7.1987, bestowed the utmost thought on the elaborate pleadings of both sides and examined carefully, the documentary evidence, as also the other material placed before us. The cardinal points that need to be resolved in this case are as under:

Points

- i) Whether the applicants can claim seniority over R-6 to 8 (direct recruits) by virtue of their earlier dates of (i) empanelment by the DPC for the post of DPS; (ii) joining in this post; and (iii) initial regularisation in this post?
- ii) Whether the inter se seniority, between the applicants and the direct recruits in particular, was correctly determined under the Rules, in accordance with rota and quota principle? and
- iii) Whether the applicants can claim seniority over R-10 and 11 (promotees) on the premise, that they did not avail of their promotion in time?

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33. We now proceed to examine each of these three main points and give our findings thereon:

Point(i)

Whether applicants can claim seniority over R-6 to 8 (direct recruits) by virtue of the earlier dates of (i) empanelment by DPC for the post of DPS; (ii) joining in this post; and (iii) initial regularisation in this post?

Annexure-I (2.12.1977), Annexure-5 (1.2.1978) and Annexure-6 (21.3.1978) reveal, that the applicants were promoted on an ad hoc basis, to the post of DPS. Rules for this post actually came into effect on 13.5.1978, when they were notified in the Official Gazette. Shri Desai contended, that the applicants could not have been regularised in the post of DPS earlier than 13.5.1978 i.e., the date on which the Rules came into force. Consequently be averred, that the Office Order issued by R-3 on 26th June/2nd July, 1981 (Annexure-11), assigning dates of regular appointment to the applicants, earlier than the aforesaid date namely, 13.5.1978, when the Rules came into force, was erroneous. This error was later rectified and the applicants were regularised in the post of DPS, with effect from 13.5.1978. To us, this explanation seems plausible and we are persuaded to accept the same.

Point(ii)

Whether the inter se seniority between the applicants and the direct recruits in particular, was correctly determined under the Rules, in accordance with rota and quota principle?

We are informed by Shri Desai, that the posts of DPS to be shared between the promotees and the direct recruits in the unified cadre, pertained to the year 1978 and these were apportioned in the ratio of 90:10 respectively between them, according to the Rules.

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The quota within these limits was neither exceeded by either of these ^{de} streams nor was there a breakdown in the rota-quota system, as the posts meant for the direct recruits, were filled in, barely within a year from the date of their selection and scarcely within two years, from the date, regular posts were available to be filled in, by direct recruitment. It needs to be realised, that while the promotees were ready at hand, to be considered for appointment to the posts in question, some reasonable time was necessary, to fill in the posts earmarked for the direct recruits, after completing the necessary procedural formalities. We notice, that the concerned authorities had initiated action in this regard on 27.7.1978, and endeavoured to complete the process of selection and appointment of the direct recruits with fair expedition and they in fact did so. In view of this factual background, there is no warrant to infer, that the rota-quota system of filling in the posts available in 1978, within the quota specified in the Rules, was thrown out of gear, so as to give cause to the applicants, to claim seniority over the direct recruits.

The quota prescribed under the Rules not having been exceeded, in respect of direct recruits as well as the promotees, and the same having been filled in, with reasonable despatch, the question that remains to be resolved is, as to whether the method adopted in rotating the vacancies between the direct recruits and promotees, within the quota, respectively earmarked for them under the Rules, which had an intimate bearing on their seniority, was judicious and proper.

The following permutations and combinations seem feasible at first sight, in rotating the vacancies in the posts of DPS, between the promotees and direct recruits, in the percentage quota ratio of 90:10, as prescribed in the Rules, so as to help determine their inter se seniority:

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- i) Apportioning the total number of posts in a year outright, in terms of the above percentage quota ratio, placing the promotees en bloc, over the direct recruits and vice versa, and
- ii) Apportioning the above posts in smaller units say of tens, in a phased sequence, giving precedence to the promotees over the direct recruits, and rotating the posts in that sequence, till all of them are filled in and vice versa.

The observation of Bhagwati, J. ^{as he then was} (as ~~he~~ then was) in AIR 1984 SC 1291 (P.S. MAHAL & ORS. - V - UNION OF INDIA & ORS.) - vide para 19(2) supra, - seems apposite in this context. Yet another observation as under, in (1977) 1 SCC, 308, 310 & 311 (N.K. CHAUHAN - V - STATE OF GUJARAT) admirably crystallises the import of the rota-quota principle and its implication on seniority inter se between direct recruits and promotees:

" 'Quota' is not so interlocked with 'rota', that where the former is expressly prescribed and the latter is impliedly inscribed. The quota methodology may itself take many forms - Vacancy-wise ratio, cadre composition-wise proportion, period-wise or number-wise regulation. Myriad ways can be conceived of. Rotational or roster system is a commonly adopted and easily understood method, of figuring out the placements of officers on entry. It is not the only mode in the code and cannot be read as an inevitable consequence. If exigencies of administration, demand quick posting in the vacancy and one source, say of direct recruitment, has gone dry for a while, then the proper ^{cause} is to wait for a direct recruit and give him notional date of entry, as of the quota vacancy and manage to keep the wheels of Government moving, through improvised promotions, expressly stripping the ad hocist, of rights flowing from temporary occupancy."

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"While laying down a quota, when filling up vacancies in a cadre, from more than one source, it is open to Government, subject to tests under Article 16 of the Constitution to choose a "year" or other period, or vacancy by vacancy basis, to work out the quota among the sources. But once the Court is satisfied, examining for constitutionality, the method proposed, that there is no invalidity, administrative technology may have free play, in choosing one or other of the familiar processes of implementing the quota rule."

In (1966)3 SCR 600, (MERVYN COUTINHO - V - COLLECTOR OF CUSTOMS), it was held, that the principle of equality of opportunity enshrined in Article 16(1), is not violated by following the rotational system of fixing seniority in a cadre, half of which consisted of direct recruits and the other half, of promotees and the rotational system by itself, working in this way, could not be said to deny equality of opportunity, in Government service.

Shri Desai explained to us, the manner in which the vacancies in the posts of DPS were rotated in the instant case, between the direct recruits and the promotees, in operating the quota prescribed under the rules, through maintenance of a roster - vide paras 28 to 30 supra. He also showed us the relevant Seniority List. We notice, that in keeping with the above observations of the Supreme Court, R-3 has in the circumstances, adopted the most optimum and judicious method, of rotating the vacancies in the posts of DPS, within the quota prescribed under the Rules, for promotees and direct recruits, within a smaller unit of ten, giving precedence to the promotees, with due regard to the predominantly higher quota ratio of 90% earmarked for them, under the Rules. Thereby, neither cadre is allowed to secure undue or over-riding benefit of seniority, to the detriment of the other. In our view, the administration has

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exercised due prudence and discretion in implementing this administrative technology (or ingenuity), to ensure, that the equality clause enshrined in Article 14 of the Constitution, is not violated. Besides, the criteria outlined by R-3, in his Office Memorandum dated 22.7.86 (Annexure-13) for the determination of seniority inter se, between the direct recruits and the promotees appear to us just and reasonable.

All the vacancies pertained to one and the same year namely 1978 and those meant for direct recruits were filled in, with reasonable despatch. The rota-quota system, therefore, did not undergo a rupture. All the rulings of the Supreme Court, relied upon by Shri Anthony - vide para 19 supra - have thus little relevance, to the case of the applicants, in the light of the facts discussed above and are of little avail to them. We, therefore hold, that FSL(II) (Revised), published on 1.9.1986 (Annexure-16) by R-3, in respect of the posts of DPS, on the basis of the above principles and criteria is legal, valid and proper.

Point (iii)

Whether the applicants can claim seniority over R-10 and 11 (promotees), on the premise, that they did not avail of their promotion in time?

R-10 and 11 who were promotees were senior to the applicants in the equivalent cadre of Data Processing Assistants, the feeder cadre immediately next below that of DPS, as admitted by Shri Anthony. They had not declined the promotion to the post of DPS offered to them, consequent to their empanelment for this post by the DPC on 3.11.1977, as alleged by Shri Anthony, but had only requested for an alternative posting, in place of Nagpur, on account of certain difficulties, and this request of theirs, is said to have been granted by the competent authority. In the process, they joined their post a few months later as compared to the applicants. Viewing the matter as a whole, in the light of the above facts and circumstances, we see no merit in the contention of the applicants, that R-10 and 11, forfeited seniority on this account and, therefore, are junior to them.

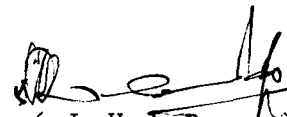
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34. Before we part with this case, we cannot but help remark, that this rigmarole of a plethora of seniority lists, revised and amended now and again, leaving the incumbents in a quandary, could have been easily avoided, if the administration was a little more diligent and circumspect in regard to service matters of its employees.

35. In the result, the application fails and is liable to be dismissed. We, therefore, dismiss this application. No order as to costs.



(B C Gadgil)
Vice-Chairman



21. 7. 1987
(L H A Rego)
Member (A)