

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH BANGALORE

DATED THIS DAY THE TWENTYSEVENTH FEBRUARY 1987

Hon'ble Shri Ch. Ramakrishna Rao ... Member (J)
Present Hon'ble Shri P. Srinivasan ... Member (A)

APPLICATION NOS. 33 TO 46/86(T), 47 TO 105/86(T),
106 TO 118/86(T) AND 884/86(T).

1. K. Vema Reddy,
Inspector of Central Excise & Customs,
Central Revenue Building,
Queen's Road, Bangalore-1.
2. R. Ananda Rao,
Inspector of Central Excise,
Office of Central Excise,
Central Revenue Building,
Queen's Road, PB.No. 5400,
Bangalore-1.
3. K. V. Satyanarayana,
S/o K. Venkatakrisnaiah,
Inspector of Central Excise,
Yaswanthpur Range, 161,
1st Main Road, Seshadripuram,
Bangalore-20.
4. L. Ramen, S/o late laxmen,
Inspector of Central Excise,
No. 61, Central Revenue Quarters,
Jayamahal Extension,
Bangalore-46.
5. C. Chandrasekhara, S/o S. Chelvaraj,
Inspector of Central Excise Headquarters
Central Revenue Building, Queen's Road,
Bangalore-1.
6. Vittal Rao Jadhav, S/o Narayana Rao Jadhav,
No. 26, Risaldar Street, Seshadripuram,
Bangalore-20.
7. M. Krishnar, S/o late Murugesu Udaiyer,
No. 28, 11 Cross, Vivekananda Nagar,
Bangalore-33.
8. K. Rama Rao, s/o late K. Anantha Rao,
Inspector of Central Excise,
Office of the Collector of Central Excise &
Customs, Queen's Road, Bangalore-1.
9. Jacob John, s/o late Koshy Chacko,
Inspector of Central Excise
Office of Collector of Central Excise &
Customs, Queens, Bangalore-1.



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A.No. 884/86(T)

10. P.V.John s/o late P.O.Verghese,
Inspector o/c Branch,
Queen's Road, Bangalore -1.
11. R.Narayana Rao,
Inspector of Central Excise, Office of the
Collector of Central Excise, Central Revenue
Building, Queen's Road, P.B.No.5400,
Bangalore-1.
12. K.Doreswami,
Inspector of Central Excise, Office of the
Collector of Central Excise, Central Revenue
Building, Queen's Road, P.B.No.5400,
Bangalore-1.
13. S.Krishna, Inspector of Central Excise,
Office of Central Excise Collector,
Central Revenue Building, Queen's Road, P.B.No.5400,
Bangalore-1.
14. A.V.Shivadas, Inspector of Central Excise, .. (Applicants
Office of Collector of Central Excise, in A.Nos.
Central Revenue Building, Queen's Road, 33 to 46/36(T)
P.B.No.5400, Bangalore-1.
15. K.G.Rameswamy, S/o K.R.Gopelachar,
Inspector of Central Excise,
Yeswanthapur Division, Bangalore.
16. S.V.Govindraja Setty, s/o of Venkatachala Setty,
NO.161, 1st Main Road, Seshadripuram
Bangalore-20.
17. K.C.Kalechar, s/o H.P.Chikkacharya,
No.161, 1st Main Road, Seshadripuram,
Bangalore-20.
18. B.N.Lakshmana Rao, s/o R.Narayanarao,
668/367, O.T.C.Road, Chikpet,
Bangalore-53.
19. M.Annaiah, s/o M.Ananthanarenappa,
II Air Customs Officer, Salar International
Airport, Bombay-99.
20. M.Jeyadevappa, Inspector of Central Excise
(Preventive) Central Excise, Bangalore.
21. B.S.Nagareaj, s/o B.Shammena,
Inspector of Central Excise, Head quarters,
Bangalore.
22. R.Subbaramu, s/o M.Remanna,
Inspector of Central Excise,
Headquarters, Bangalore.
23. P.R.Venkatash, s/o late P.N.Rama Iyengar,
Inspector of Central Excise,
Headquarters, Bangalore.

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24. Laxminarayana, s/o late K.Manjappa,
Inspector of Central Excise,
Headquarters, Bangalore.
25. K.Veeranna, s/o Krishtanna,
Inspector of Central Excise, Headquarters
(Praventive), Bangalore.
26. J.Doddanannaiah, s/o Javareiah,
Inspector of Central Excise & Customs,
Bangalore-20.
27. Frank Sushil Welsley, s/o J.P.Wesley,
Inspector of Central Excise & Customs,
Bangalore-20
28. K.Veerabhadra Rao, Inspector of Central
Excise, Armed Range, Mysore Road,
Bangalore-10.
29. T.N.Gopala Rao, Inspector of Central Excise,
Internal Audit Party 'M', Mysore.
30. K.T.Narayana, s/o late K.I.Thimmappaiah,
Inspector of Customs and Central Excise,
Office of the Superintendent of Central Excise,
Tumkur post, Tumkur.
31. S.S. Patil, s/o Shankara Gowda patil,
Inspector of Central Excise, 'B' Range,
KSR Road, Mangalore-575001.
32. H.Parameshachar, s/o Hiriyannachar,
Inspector of Central Excise, Range 'C',
K.S.R. Road, Mangalore-1.
33. M.MOhaned Ismail, s/o Abdul Rahim,
Inspector of Central Excise,
IDC, Mysore.
34. Anantha Sharma, s/o Ramachandraiah,
Inspector of Central Excise, HQrs Audit Section,
Queen's Road, Bangalore-1.
35. V.S.Seetharaman, s/o V.S.Sanjeeviah,
Inspector of Central Excise,
Bangalore East Dn., Bangalore-1.
36. K.N.Ramachandra, s/o K.Narasimhiah,
Office of the Supdt. of Central Excise,
Range 'C' Sayyajireo Road, Mysore.
37. S.Greenivasa Murthy s/o Subba Bhatta,
Inspector of Central Excise, Desarahelli Range,
Seshadripuram Main Road, Bangalore-20.
38. M.R.K.Sindhe, s/o Madhava Rao,
Inspector of Central Excise, Customs Dn.,
41 Miller Road, Bangalore- 52.
39. S.N.Raju, s/o S.V.Raju, Inspector of Central
Excise, HMT/BEL/NCEP Range, 42, Miller Road,
'B' Vasanthanagar, Bangalore-52.

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40. S.R.Chitgupi, s/o Ranga Rao, Inspector of Central Excise, Training Centre, 3, Union Street, Bangalore-1-
41. M.Nagaraja, s/o C.Mahadeviah, Inspector of Central Excise, I.D.O. Mysore.
42. M.Mohamed-ismail, s/o-Abdai-Rahim, Inspector of
42. A.R.Narasimha Bhan, s/o Raha Singh, Inspector of Central Excise, Mysore.
43. S.John Devadass, s/o B.R.Shettayya, Inspector of Central Excise, I.D.O., Mysore.
44. S.R.Savant, s/o Rama Savant, Inspector of Central Excise, I.D.O., 71 Club Road, Belgaum.
45. C.Vittala Rao, s/o C.Krishna Rao, Inspector of Customs & (Central Excise) Postal Appraising Department, Vasanthanagar, Bangalore-52.
46. K.M.Krishnamurthy, s/o K.Malleshaiah, Inspector of Customs and Central Excise, Customs Division, Bangalore-52.
47. V.N.Padmalgi, s/o Narasimhaiah, Inspector of Central Excise, I.D.O., Hubli.
48. Y.B.Javali, Inspector of Central Excise (Pre) I.D.O. Hubli-32.
49. R.M.Biradi, Inspector of Central Excise, I.D.O., Hubli.
50. D.M.Shaik, Inspector of Central Excise & Customs, Range-A, Hubli.
51. M.D.Aari, s/o D.N.Aari, Inspector of Central Excise (Pre) I.D.O., Hubli.
52. V.Sreenivasan, s/o Venugopal, 50, Maramma Temple St. 8th Cross Malleswaram, Bangalore-3.
53. M.Murugesan, s/o Muniswamy, No.22/4 Milkmen St., Ulsoor P.O., Bangalore-8.
54. K.Narayanan, S/o N.Krishna Rao, No.61, H.H.C.S.Layout, U.C.Road, III Stage, Bangalore-79.
55. Ahamed Pasha, s/o K.V.Fakeer Ahamed, East Division, Bangalore-1.
56. Balasahib B.Kocheri, s/o Bharmappa Kocheri, Inspector of Central Excise, (preventive) I.D.O., Belgaum.
57. Madivalappa.M. Sutagatti, s/o Mallappa, Inspector of Central Excise, I.D.O. Belgaum.

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58. Chennabesappa S.Melikatti, s/o Shivappa,
Inspector of Central Excise,
Range 'B', Belgaum.
59. Dundappa B.Kunkur, s/o Basavanesappa,
Inspector of Central Excise,
Range 'A', Belgaum.
60. Chennappa Patil, s/o Allappa Patil,
Inspector of Central Excise,
Sankeshwar Range, Belgaum.
61. G.D.Cunningham, s/o W.S.Cunningham(late)
Inspector of Central Excise, No.13,
Ganesh Complex, S.C.Road, Bangalore-9.
62. C.Anantharam Singh, s/o A.Chandan Singh,
Air Customs Officer, Air Pool Customs
International Airport, Bombay.
63. R.A.Rashid Khan, s/o A.Habibulla Khan,
Air Customs Officer, No.15/14,
New Airport Colony, Bombay-99.
64. S. Devaraju, s/o R.R.Setteyya,
Air Customs Officer, A-4. Juhu Airport Colony,
S.V.Road, Vileparle, West Bombay-54.
65. M.S.Narasimha Murthy, s/o Subbanna,
Air Customs Officer, Palam Airport,
New Delhi.
66. H.A.Satyanaarayana Swamy, s/o late H.Anjanappa,
Inspector of Central Excise, Kolar.
67. Rafiq Ahmed, s/o Mohammed Yusuf,
Inspector of Central Excise,
Statistics(Hqtrs)., Bangalore.
68. M.S.Ramakrishna, s/o M.S.Greenivasiah,
Inspector of Central Excise, Internal Audit Party 'A'
Headquarters Office, Bangalore.
69. S.B.Kulkarni, Inspector of Central Excise,
Davangere.
70. C.S.Hiremath, Inspector of Central Excise,
Davangere.
71. M.D.Fakruddin, Inspector of Central Excise,
Davangere.
72. L.R.Mirza Iemail, Inspector of Central Excise,
Bangalore-1.
73. K.Nagesh Kamath, s/o Marthanpa Kamath, ..(Applicants
Inspector of Central Excise, PQI, in A.No.47 to
120.D. Mangalore. 105/86(T)

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74. G.Vezir Ahmed, Inspector of Central Excise.
75. Shankareppa Sannabhimappa Abbigari, Inspector of Central Excise.
76. P.B.Cangoji, Inspector of Central Excise, I.D.O. Hubli, Dharwad District.
77. Pundellakappa Hanumeraddi Banavi, Inspector of Central Excise, Dharwad Dist., Dharwad.
78. Nabisahab Mohidin Sab Mulla, Inspector of Central Excise, Lakshmeswar Range, Dharwad District.
79. Mahadev Marthandaran Patil, Central Excise Inspector, Dandeli, Uttara Kannada Dist.
80. R.H.Wadeyer, Inspector of Central Excise, I.D.O. 71, club Road, Belgaum Dist.
81. Chandrakant Vishnu Kopardi, Inspector of Central Excise, Dharwad District, Dharwad.
82. Krishna Gurunath Joshi, Inspector of Central Excise, Dharwad Range, Dharwad District.
83. D.Mahboob Ali, s/o Dadamiyan, Inspector of Central Excise, Old Customs House, Bunder, Mangalore- Dakshine Kannada Dist.
84. M.M.Narayya, s/o M.M.Machaiah, Inspector of Central Excise, Old Custom House, Bunder, Mangalore-Dakshine Kannada Dist.
85. B.Shyam Sunder Rao, s/o Naresinha Rao, Inspector of Central Excise, Killmavu Saden Compound, B.V.Road, Attawa, Mangalore-2, Dakshine Kannada Dist.
86. S.V.Reju, Inspector of Central Excise, ..(Applicants in Udupi, Dakshine Kannada Dist. A.Nos.106 to 118/86(T))
87. S.Periaswamy, s/o late Sukku, .. Applicant in Inspector of Central Excise, A.No.884/86(T), Presently working at I.D.O Mysore.

(Servesri Subramanya Hois, M.T.Kesava
Iyenger, T.Chandrasekhar and G.Chandra
Kumar ...Advocate)

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VS

1. The Union of India, Represented by its Secretary,
Ministry of Home Affairs, New Delhi-1.
2. The Central Board of Excise and Customs,
New Delhi.
3. The Collector of Central Excise and Customs,
Central Revenue Building, Queen's Road,
P.B.No.5400, Bangalore-1.
4. G.Jayapalan, Bangalore-2.
5. U.Ramakrishna, Mysore.
6. B.S.Nanjunda Rao, Mysore.
7. D.R.Siddiyali. Sankeshwar, Belgaum Dist. (1 to 7
Respondents in
A.No.884/86(T)
also)
8. G.B.Joshi, Belgaum.
9. L.K.Kulkarni, Bangalore-1.
10. Y.Sitaran, Bangalore-1.
11. S.Raja Rao Kote, Davangere, Chitradurga Dist.
12. A.S.Nagaraju, Bangalore-39.
13. K.Krishnawarrier, Mangalore-57.
14. P.Parashuram, Bangalore-57.
15. H.N.Joshi, Hubli, Dharwad Dist.
16. D.Raghavendra Rao, Shimoga.
17. M.Neelakantan, Bangalore-1.
18. P.K.Shivananda, Mangalore-57.
19. R.H.Gothe, Hubli, Dharwad Dist.
20. S.P.Parashan, Karwar, Uttara Kannada Dist.
21. N.G.Kottur, Davangere, Chitradurga Dist.
22. D.Dbalash, Raichur, Raichur Dist.
23. G.Subbanna, Bangalore-1.
24. K.Shivashankarai, Davangere, Chitradurga Dist.
25. I.G.Pettanshetty, Sankeshwar, Belgaum Dist.
26. G.Somanna, Bellary.
27. N.J.Udapi, Mangalore.
28. S.V.Sawant, Karwar, Uttara Kannada Dist.
29. P.V.Keshave Murthy, Bangalore-26.
30. D.S.Maggevi, Karwar, Uttara Kannada Dist.
31. N.K.Badgi, Bangalore-1.
32. Smt.Sarojini M. Bangalore.
33. G.D.Pawaskar, Bhetkal, Uttara Kannada Dist.
34. J.S.Kulkarni, Belgaum.
35. M.H.Desai, Bangalore-52.
36. M.Sampangi, Bangalore-1.
37. H.S.Dharmaraj, Mysore.
38. G.M.Kenniker, Hubli, Dharwad District.
39. R.G.Magdur, Harihar, Dharwad District.

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40. K.T.Naik, Ankola, Karwar District.
41. N.G.Hebbeli, Bangalore-1.
42. G.N.Kulkarni, Bangalore-25.
43. C.V.Belankar, Bangalore.
44. D.Abdul Rehman, Hospet, Chitradurga Dist.
45. K.Sudhindra Rao, Bangalore-1.
46. C.Rajagopala, Karwar, Uttara Kannada Dist.
47. P.K.Joshi, Bangalore-1.
48. F.Thomas Paul, Belgaum.
49. F.B.Sambrani, Dharwad.
50. N.R.Kagalkar, Bhadrevathi, Shimoga Dist.
51. P.Viswanathan, Bangalore.
52. V.B.Bengari, Hubli, Dharwad Dist.
53. H.N.Bhandari, Malpe, Udipi Taluk, Dak, Kannada Dist.
54. D.C.Gudihal, Dharwad Dist.
55. K.N.Shantaveerappa, Bangalore-1.
56. B.B.Pandit, Honnawar, Uttara Kannada Dist.
57. R. Ranganathan, Mysore.
58. M.N.Subba Rao, Tumkur.
59. G.Loganathan, Bangalore-1.
60. U.A.Shashisekhar, Bangalore-20.
61. R.P.Kidwalkar, Belgaum.
62. Y.N.Prasad, Bangalore-1.
63. G.Veeranna, Gadagi, Dharwad Dist.
64. T.S.Tendulkar, Karwar, Uttara Kannada Dist.
65. M.R.Jokathi, Dandeli, Uttara Kannada Dist.
66. M.Kannappa, Holenarsipur, Hassan District.
67. K.S.Chandrasekhar, Bangalore.
68. B.P.Naik, Kushalnagar.
69. S.I.Doddamani, Jamkhandi, Bijapur Dist.
70. M.P.Naik, Harihar, Dharwad Dist.
71. J.B.Madtha, Mangalore-57.
72. S.G.Paschapur, Bidar.

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73. M.B.Khanapur, Bangalore-1.
74. M.Shankaraiah, Bellary.
75. M.C.Srinivasa, Bangalore 20.
76. K.S. Ankli, Gokak, Belgaum Dist.
77. D.S.Kagalkar, Sirsi, Uttara Kannada Dist.
78. D.N.Neginhal, Mysore. ... Respondents.

(Respondents 4 to 78 are all majors and working as
Inspectors of Central Excise at the Respective
Places mentioned against their names)

(Shri M.S. Padmarajaiah, Dr.M.S.Nagaraj
and Shri Siran Javali ... Advocates)

These applications came up before the Court
and Hon'ble Shri P.Srinivasan, Member(A), made the
following:

O R D E R

These are three composite applications by 36
applicants and one individual application which were originally
filed as writ petitions before the High Court of
Karnataka and have since been transferred to this
Tribunal under Section 29 of the Administrative Tribunals
Act, 1935. All of them involve a common issue, namely,
the determination of inter se seniority in the cadre of
Inspector of Central Excise in the charge of the Collector
of Central Excise, Bangalore, of persons recruited to that
cadre through three separate channels, namely, by promotion
from sub Inspectors of Central Excise, by Promotion from
ministerial ranks (Upper Division Clerks) and by direct
recruitment in the open market. Departmental candidates
with the requisite qualifications could also compete for
direct recruitment and indeed some of the direct recruits
impleaded herein belong to that category. All the
applicants are promoters from the ranks of Sub Inspector

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of Central Excise, while the respondents are mostly promotees from the ministerial ranks and a few directly recruited Inspectors of Central Excise. All the parties to the litigation agree that these applications can be conveniently disposed of by a common order. Hence this order.

2. As mentioned above, there are 87 applicants in all before us. They were represented by four counsel, namely, Sarvaswari Subramanya Jeis, M.T. Kesava Iyengar, T. Chandrasekhar and G. Chandra Kumar. There are 78 respondents altogether of whom three are the Government of India and its officials and the remaining 75 are individuals who are likely to be affected one way or the other by the course of this litigation. The Government of India and its officials were represented by Shri M.S. Padmarajaiah, Senior Standing Counsel. Dr. M.S. Nagaraj and Shri Kiran Javali appeared for some of the respondents; while three of the respondents, namely, Shri Shanti Veerappa, Shri Rajrao Kete and Shri V.B. Bangari, addressed us personally. The matter was heard on six days when several documents were filed and a long list of judicial decisions cited by rival counsel.

3. We now turn to the facts giving rise to the present litigation.

4. Recruitment and seniority rules in pursuance of Article 309 of the Constitution in respect of posts of Inspectors of Central Excise were notified for the first time on 2-6-1979. Prior to that date, these matters were regulated by Executive Orders. The applicants who were all Sub Inspectors of Central Excise (SI) earlier, were promoted as Inspectors of Central Excise during the years 1970 to 1973. They were, therefore, governed for the purposes of recruitment and seniority, by Executive Orders

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issued from time to time in the form of letters or instructions or orders by the Ministry of Finance (the Ministry for short) or by the Central Board of Excise and Customs (the Board). The right of Government (Respondents 1 to 3) to regulate these matters by Executive Orders in the absence of statutory rules notified in pursuance of Article 309 of the Constitution has not been challenged in these applications. This, in our opinion, is as it should be in view of the observations of the Supreme Court in P.C. SETHI VS. UNION OF INDIA, 1975 SCC L&S 203 and in other cases. Nor has it been urged that the Executive Orders in force during the period under consideration, by themselves, violated any article of the Constitution. On the other hand, it is only the manner in which the rules embodied in these Orders were implemented that has come under attack. We will notice this as we go along.

5. During the years 1966 to 1973, the position, broadly speaking, was that recruitment to posts of Inspectors of Central Excise was to be made from more than one source, quotas being fixed for each source of recruitment. Seniority was to be regulated by rotation of vacancies between recruits from the different sources according to their respective quotas. There was some controversy in this regard which we shall refer to in due course. The quota system of recruitment was, however, relaxed on three occasions, in terms of Ministry's letters dated 28-10-1966, 18-6-1970 and 22-7-1972 by which posts of SIs were upgraded to those of Inspectors. These upgraded posts were to be filled in exclusively by promotion of existing SIs subject to their being found fit for promotion. The rules of recruitment in force at the relevant time (providing for quotas from different sources) were specifically relaxed for this purpose.

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The SIs so promoted to the upgraded posts on each of the three occasions were to be placed en bloc in the seniority list. Apart from these upgraded posts, all other vacancies of Inspectors were to be filled in from more than one source; the ratio of recruitment (quotas) and the consequent rotation of vacancies for the purpose of seniority - if that be eventually held to be the applicable principle - as between the different sources of recruitment prevalent from time to time were as follows:-

<u>Vacancies arising</u>		<u>Quotas</u>
From 27-9-1966 to 23-7-1971	-	2 promotees from the ranks of SIs; 1 promotee from ministerial ranks, i.e. Upper Division Clerks(UDCs)
From 24-7-1971 to 31-7-1972	-	2 SI promotees; 1 UDC promotee; 1 Direct recruit (DR)
After 31-7-1972	-	3 DRs : 1 UDC promotee

Thus, the Ministry's letters dated 28-10-1966, 18-6-1970 and 22-7-1972 upgrading posts of SIs into those of Inspectors which were to be filled in exclusively by SIs found fit for promotion in relaxation of the prevailing rules of recruitment formed three watersheds between periods of operation of the quota rule of recruitment. The letter of 22-7-1972 spells out in detail how the seniority of officials recruited to the upgraded posts (para 2(iii) of the letter) should be regulated vis-a-vis those promoted or directly recruited to the vacancies existing immediately before the upgradation (para 2(ii) of the letter) or arising after the upgradation (para 2(iv) of the letter). It will be useful to reproduce the relevant paragraph - para 2(v) - of the said letter here for two reasons; firstly, the applicants - SI promotees - appointed to the upgraded posts referred to in the said letter - complain that the principles adumbrated in para 2(v) have not been properly applied and secondly these principles

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could be called into aid for solving similar problems of inter se seniority arising out of the earlier upgradations (by Ministry's letters dated 28-10-1966 and 18-6-1970):

"(v) Officers appointed to the post of Inspector of Central Excise (OG) in accordance with sub-para (ii) above will rank en bloc senior to the officers appointed in accordance with sub-para (iii) & (iv) above, the inter se seniority of the officers appointed in accordance with the existing procedure, i.e. as per the roster position. Officers appointed in accordance with sub-para (ii) above will be determined in accordance with the existing procedure i.e. as per the roster position. Officers appointed in accordance with sub-para (iii) above will en bloc rank senior to the officers appointed in accordance with sub-para (iv) above. The inter se seniority of the officers appointed in accordance with sub-para (iii) above will be in the order of their inter se seniority in the grade of Sub-Inspector and the inter se seniority of the officers appointed in accordance with sub-para (iv) above will be determined in accordance with the general orders on the subject as per the roster position."

As mentioned earlier, the respondents in these applications were either UDC promotees or ORs. They were appointed as Inspectors of Central Excise during the years 1971 to 1973 within the quota available to them. The dates of their appointment to (or to put in differently, the period of their continuous officiation in) the cadre of Inspectors vis-a-vis the applicants have figured prominently in this controversy as furnishing another basis for determining seniority in preference to the "rota" principle. We will have occasion to examine this later in this order.

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6. The cadre of Inspectors of Central Excise is not an all India cadre. Seniority lists of persons in that cadre are prepared from time to time in the charge of each Collector of Central Excise separately and circulated by the Collector concerned. Promotions to the next higher post of Superintendent of Central Excise, Group B, within each Collectorate are made from Inspectors of that Collectorate in the order of their seniority, subject of course to their being considered fit for promotion by the Departmental Promotion Committee. Along with his letter dated 8-4-1973 (Annexure E to Applications 33 to 46/86), the Collector of Central Excise, Bangalore, circulated a seniority list of Inspectors of Central Excise. The criterion adopted in preparing this list was said to be the date of appointment to the cadre whether by promotion (from SIs or UDCs) or by direct recruitment. It appears that a large number of representations were received by the Collector of Central Excise from UDC promotees and DRs complaining that they should have been given higher positions of seniority by rotating the vacancies between recruits from different sources in the ratio of quotas in force from time to time. Thereafter, the Collector circulated another seniority list as on 1-1-1977 under his letter dated 29-10-1977 (Annexure F to Applications 33 to 46/86); we are concerned in this case only with Part II of this list in which all the applicants and respondents find a place. All SIs of the Bangalore Collector's charge (5 of them being applicants before us) who were promoted to the 43 upgraded posts of Inspectors created as a result of Ministry's letter dated 18-6-1970 (Annexure B to Applications 33 to 46/86) referred to earlier, were placed in this seniority list in a block from Serial No. 13 to Serial No. 55. Similarly, all SIs (18 of them being applicants in the present litigation) promoted to the 27 upgraded posts of Inspectors created in the said charge as a result of Ministry's letter dated

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22-7-1972 (Annexure D to applications 33 to 46/86) were placed in a block at S.Nos. 253 to 279; actually 28 posts of Inspectors were created by upgradation in the Bangalore charge on this last occasion, but only 27 SIs were promoted, but we need not go into this in the present order. The seniority of persons appointed to vacancies (i) which were in existence before the upgradation of posts by Ministry's letter of 18-6-1970, or (ii) which arose after this upgradation and before the next upgradation by Ministry's letter of 22-7-1972, and (iii) which arose after this second mentioned upgradation, i.e. after 31-7-1972, was fixed by rotation of vacancies between the different sources of recruitment in accordance with the quotas in force at the relevant time. In this way, UDC promotees and DRs as a class (75 of them impleaded as respondents here) came to occupy relatively higher positions of seniority in the list as on 1-1-1977 than they did in the earlier seniority list of 1973 at the cost of the applicants taken as a whole. The same principles of seniority as in 1977 were followed in subsequent gradation lists put out by the Collector of Central Excise, Bangalore. Annexure Q to applications 33 to 46/86 is one such list: issued by the Collector of Central Excise, Bangalore, on 1-2-1982, it purports to list out, in the order of seniority, Inspectors of Central Excise eligible for being considered for promotion to the next cadre of Superintendent of Central Excise, Group B. The applicants want us to quash Annexures F and Q to application Nos. 33 to 46/86 and, in effect, to restore the seniority list of 1973 (Annexure E) or rather, the principles on which Annexure E has been compiled.

7. We may at this stage dispose of the contention urged on behalf of the respondents 1 to 3 by Shri Padmarajaiah that these applications should be dismissed on the ground of laches. Even though the seniority list as on 1-1-1977,

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brought out on 29-10-1977 upset the relative seniority of Inspectors for the first time to the disadvantage of the applicants and the like, the real effect of this revised seniority came to be felt when the list of Inspectors eligible for promotion as Superintendent of Central Excise (Annexure Q) was issued on 1-2-1982. These applications having been filed as writ petitions in 1982 cannot, therefore, be considered belated.

8. The arguments put forward by Shri Subramanya Jeis, learned counsel for the applicants against the seniority lists at Annexures F and Q ran as follows:

81 In the impugned lists, UDC promotees and DRs who constitute the respondents were placed above SI promotees (who are the applicants) who were actually appointed as Inspectors earlier. Ministry's letters dated 18-6-1970 and 22-7-1972 by which posts of SIs were upgraded had clearly stated that the existing rules of recruitment - ^{fixing} according to quotas from different sources - were being relaxed and the upgraded posts were to be filled up exclusively from one source, i.e. by promotion from SIs. Therefore, the principle of seniority by rotation of vacancies which was posited on the quota system of recruitment had no application to the upgraded vacancies. The concept of upgradation, Shri Jeis argued, excluded the concept of promotion and quotas had relevance only to promotion. The legal position in this regard stood concluded by the decision of the Supreme Court in the first B.S. GUPTA CASE AIR 1972 SC 2627. As for vacancies which arose before and after each of the upgradations of 1970 and 1972, appointments to the quota vacancies available to UDCs and DRs were made long after the appointments to the corresponding quota vacancies available to the SI promotees and therefore, the "rota" principle of seniority could not be applied to these vacancies also. The preeminence of continuous officiation as a factor in determining relative seniority of

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recruits from different sources was stressed by the Supreme Court in N.B. CHAUHAN'S CASE (AIR 1977 SC 251), S.B. PATWARDHAN'S CASE (AIR 1977 SC 2051) and in the minority judgment of Desai J in KAMAL KANTI DUTTA'S CASE (AIR 1980 SC 2056). These decisions had been followed in Janardhana's case AIR 1983 SC 769 and by the Delhi Bench of this Tribunal in K.N.MISHRA'S CASE, reported at page 270 of ADMINISTRATIVE TRIBUNAL REPORTER, September 86 issue. Therefore in so far as the impugned lists placed the respondents who were appointed later above the applicants who were appointed earlier, they deserved to be struck down as violative of Articles 14 and 16 of the Constitution.


9. Shri Jeis then drew our attention to the case of K.C.VIDYAN VS UNION OF INDIA 1979 (3) SLR 156. In that case, an Inspector of Central Excise in the charge of the Collector of Central Excise, Cochin, who, like some of the applicants before us, was an SI promotee to the rank of Inspector of Central Excise in an upgraded vacancy, had challenged the higher seniority accorded to UDC promotees over him, though the latter had been appointed as Inspectors after him. A single Judge of the Kerala High Court upheld this challenge; this decision had been confirmed by a Division Bench of the same High Court and the matter had not been carried to the Supreme Court by respondents 1 to 3 (i.e. the Government) who were also respondents before the Kerala High Court or, for that matter, by ^{any of the} ~~another~~ respondents representing the UDC promotees. The Collector of Central Excise, Cochin, had implemented the decision of the Kerala High Court in his charge by suitably recasting the seniority of Inspectors of Central Excise. There could not be different rules of seniority in the different Collectorates as the Central Excise department was one all over the country.

10. Shri M.T.Kesava Iyengar, learned counsel, appearing for the applicant in Application No. 46 (Shri A.V.Shivadas)

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conceded that respondents 1 to 3 had not applied the "rota" rule of seniority to the upgraded vacancies of Inspectors. Sub Inspectors promoted on each occasion in 1970 and 1972 to such posts had indeed been placed in two separate blocks in the impugned seniority list of 1977 as well as in the list at Annexure Q. But according to Shri Iyengar, the quota rule had been relaxed on one more occasion in favour of promotion exclusively from SIs and that was by a letter dated 22-10-1971 from the Under Secretary of the Board to the Collector of Central Excise, Bangalore. He filed a copy of this letter during the course of the hearing and took us through its contents. According to him, 84 posts of Inspectors mentioned in this letter were released from the operation of the quota system to be filled in exclusively by promotion of SIs and therefore, all SIs so promoted should have been placed in one block in the seniority list. But respondents 1 to 3 had inserted recruits from other sources between these SI promotees in the impugned seniority list as on 1-1-1977 by invoking the rota rule of seniority which was clearly inapplicable. In this way, 52 SI promotees appointed as Inspectors by an order dated 8-11-1971 (most of whom joined by 11-11-1971) were made to alternate positions of seniority in the ratio of 2:1 with 26 UDC promotees, a majority of whom joined only on 6-12-1971 i.e. about a month later. 18 more SI promotees appointed by the same order (dated 8-11-1971) shared the next 36 vacancies with 9 UDC promotees, seven of whom joined on 6-12-1971 and one on 24-3-1973 and 9 direct recruits who joined duty in August 1982 in the order of 2:1:1, which were the quotas then in force. 14 more SI promotees (completing a total of 84 appointed to the upgraded posts, according to Shri Iyengar) who joined as Inspectors in December 1970 and January 1971 had to share seniority positions in the same order with UDC promotees who joined in March-April 1973 and direct recruits who joined in August 1972. In the result,

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UDC promotees and DRs were shown as senior to SI promotees who had joined as Inspectors as much as a year and 4 months earlier in some cases. As against this, Shri Iyengar contended, all the 84 SI promotees should have been placed in one bloc above all the UDC promotees and DRs with whom they have been made to alternate positions of seniority in the impugned list of 1-1-1977.

11. Shri Iyengar contended that while prescribing quotas for recruitment from different sources, the Ministry or the Board had not provided that seniority should be regulated by rotation of vacancies in the ratio of the quotas. The impugned seniority list of 1-1-1977 (Annexure F) refers to the Board's letter dated 22-12-1967 for invoking the principle of rotation in respect of persons appearing at Serial No.56 onwards while the said letter of 22-12-1967 talked only of recruitment and not of seniority. Shri Iyengar drew our attention to Ministry's letter dated 22-7-1972 which, in para 2(ii), provides for filling up vacancies of Inspectors existing immediately before 1-8-1972 (the date on which the upgradation of 28 posts as a result of that letter was to take effect) in accordance with the recruitment rules existing prior to the issue of that letter i.e. the quota rule of 2:1:1 between SI promotees, UDC promotees and DRs; the said para did not prescribe a rule of seniority by rotation of these vacancies in the same ratio. Therefore, respondents 1 to 3 erred in fixing the seniority of UDC promotees and DRs who were appointed long after 1-8-1972 above SI promotees appointed earlier, purporting to rotate the vacancies existing prior to 1-8-1972. Referring to the reply to the applications filed by the 17th respondent in applications No.33 to 46 (Shri M.Nilakantan) Shri Iyengar refuted the contention that UDC promotees who joined as Inspectors on 6-12-1971 were fully eligible for promotion as Inspectors on 8-11-1971 itself

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i.e. when the applicants claiming seniority over them were promoted, and they (the UDC promotees) would also have been promoted on 11-11-1971 if the viva voce test for UDCs had not been delayed by a few days. Shri Iyengar contended that when the SI promotees were promoted by order dated 8-11-1971, there were no UDCs qualified for promotion in their quota: without going through the viva voce test they could not be said to have become qualified. It is true they underwent the viva voce test within 20 days of the promotion of the SI promotees of November 1971, but the fact remains that they were actually selected for promotion after their SI counterparts. Even a short delay in recruitment from the quota of UDCs vis-a-vis promotion of SIs meant a breakdown of the quota system of recruitment and therefore inter se seniority among them should have been fixed on the basis of continuous officiation.

12. According to Shri Iyengar, there could have been no vacancies of Inspectors existing immediately before 1-8-1972, to which UDC promotees or DRs could lay claim under the quota system in force at the time. Therefore respondents who were UDC promotees or DRs appointed as Inspectors after 31-7-1972 could not be adjusted against pre-1-8-1972 vacancies (because such vacancies did not exist) and on that basis shown as senior to the applicant-SI promotees appointed to the upgraded posts of Inspectors created by Ministry's letter dated 22-7-1972, particularly when the latter had joined as Inspectors earlier than the former and had continuously officiated in these posts longer. Therefore 16 DRs and 9 UDC promotees appointed as Inspectors after 1-8-1972 should have been placed below and not above the 27 SI promotees appointed to upgraded posts which came into existence on 1-8-1972. Annexures F and G which placed the said UDC promotees and DRs above the 27 SI promotees to the pre-1-8-1972 posts therefore deserved to be quashed.

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13. Shri G. Chandra Kumar appearing for applicant in No.684/86 adopted the arguments of Shri Subramanya Jeie and relied on the decision of the Kerala High Court in K.C. Vijayan's case 1979(3) SLR 156.

14. Shri M.S. Padmarajaiah, learned Senior Standing Counsel for respondents 1 to 3, explained to us the principles on which the impugned seniority list as on 1-1-1977 had been prepared. None of the present applicants were promoted against any of the upgraded posts created in the Karnataka charge by the Ministry's letter dated 28-10-1966. Vacancies arising after that upgradation were to be filled up by promoting SIs and UDCs in the ratio of 2:1. The criterion of inter se seniority adopted in the 1973 seniority list based on continuous officiation in the cadre was not considered appropriate in the background of the quota system of recruitment that was being followed, and the Ministry of Home Affairs Office Memorandum dated 22-12-1959. Where recruitment is made from different sources, according to fixed quotas, determination of inter se seniority as between recruits from the different sources by rotation of vacancies had been upheld by the Supreme Court ⁱⁿ on several decisions as reasonable and not violative of Article 14 and 16 of the Constitution. Government had, therefore, deliberately decided to apply the rotational principle of seniority by executive action (which was permissible when statutory rules had not been notified) to recruits from the two sources appointed to vacancies of Inspectors which arose before the upgradation ordered in Ministry's letter dated 18-6-70 and which were to be filled up in the ratio of 2:1 by promotion from SIs and UDCs. In this way, Part II of the seniority list as on 1-1-1977 begins with 2 SI promotees followed by one UDC promotee, the same cycle repeating itself thereafter till Serial No.12. None of the applicants who are SI promotees figure in the list up to Serial No.12 as none of them were appointed against vacancies of Inspectors which

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arose prior to the upgradation of posts ordered by Ministry's letter of 18-6-1970; on the other hand, respondents 4 to 7, being UDC promotees appointed against these vacancies in the quota available to them were accorded 4 out of the 12 top positions in the list. Thereafter, 43 SI promotees promoted as Inspectors in the upgraded vacancies created by Ministry's letter dated 18-6-1970 appear at Serial Nos. 13 to 55 in one block. Five of the applicants are included in this block. No recruits from any other source had been interposed between them. In respect of vacancies arising after the appointment of these 43 SI promotees, the quota system of recruitment was resumed: persons appointed to these vacancies had therefore been arranged in the list from Serial No. 56 onwards in a repetitive order of 2 SI promotees followed by one UDC promotee till Serial No. 178. Serial No. 179 onwards represent vacancies arising on and after 23-7-1971 when direct recruitment was revived. Therefore the repetitive order of seniority from Serial No. 179 is 2 SI promotees followed by one UDC promotee followed by one direct recruit till Serial No. 252. Sixtythree of the applicants appointed against quota vacancies available to SI promotees and seventyone respondents representing for the most part UDC promotees and some direct recruits appointed against quota vacancies available to them were adjusted in this way from Serial No. 56 to 252. Thereafter, 27 SI promotees appointed against the upgraded posts of Inspectors created by Ministry's letter dated 22-7-1972 have been placed in one block from Serial No. 253 to 279; 18 of the applicants appear among them. Finally one of the applicants who was not found fit for promotion in the upgraded posts created by Ministry's letter of 22-7-1972 and was promoted later was fixed in the list at Serial No. 287 in accordance with the date of his promotion.

15. Shri Padmarajaiah conceded that there had been some delay in filling up quota vacancies available to UDCs

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and direct recruits as compared to the appointment of SI promotees in the corresponding vacancies available to them, but that did not mean that the quota system of recruitment had broken down. For instance, 45 of 75 respondents who were UDC promotees were appointed against their quota and joined as Inspectors on 6-12-1971. 45 out of the 87 applicants were promoted against the corresponding vacancies available to SIs and they joined as Inspectors on 11-11-1971 or thereabout. The slight delay of less than a month in filling up the UDC quota was due to the reason that the DPC for selecting UDCs had to be held somewhat later than the DPC for SIs. This could not be held against the UDC promotees to deny them their proper seniority in accordance with the quota rule. Repelling the contention of Shri Subramanya Jais, he pointed out that SIs appointed against upgraded posts had all been placed together as one block in the seniority list and recruits from other sources had not been placed between them. Vacancies existing before the upgradation of posts ordered by Ministry's letter dated 22-7-1972 falling in the quota of UDCs and DRs were no doubt filled up after the promotion of SIs to the upgraded posts. This again was due to administrative reasons. The process of direct recruitment to these posts was initiated in August 1971 itself and written test held in February 1972. The viva voce test was held on 16-7-1972 and the final list drawn up on the same day. Therefore, there was nothing wrong in adjusting the 18 direct recruits (15 of them respondents here) so selected in the quota vacancies available to them above SI promotees appointed against the 27 upgraded posts created with effect from 1-8-1972 by Ministry's letter dated 22-7-1972 (18 of them being applicants before us). In the cases of the other respondents also, their dates of appointment were not so much delayed vis-a-vis the appointment of SI promotees like

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the applicants as to deny them their rightful seniority on the principle of rotation of vacancies and bring them down as suggested by the applicants by taking into account their actual dates of appointment. Shri Padmarajaiah strongly refuted Shri Iyengar's claim that 84 posts of Inspectors were upgraded to be filled up exclusively by promotion of SIs in the letter dated 22-10-1971 from the Under Secretary of the Board. They were quota vacancies available to SIs and therefore these promoted against these vacancies had to be adjusted in the seniority list along with recruits from other sources in the ratio of their respective quotas. Shri Padmarajaiah also repelled Shri Iyengar's contention that there were no quota vacancies for UDCs and direct recruits available prior to the upgradation of posts with effect from 1-8-1972 by Ministry's letter of 22-7-1972. Out of a sanctioned strength of 506 Inspectors as on 31-7-1972, 474 were actually in position and 32 posts were vacant, 17 in the quota of direct recruits, 11 in the quota of UDCs and 5 in the quota of SIs. 17 direct recruits taken against these vacancies who joined as Inspectors after 1-8-1972 were therefore allotted pre-1-8-1972 vacancies above the upgraded SIs of 1-8-1972 and given seniority by rotation of vacancies as explained earlier. The quota rule of recruitment had been substantially adhered to and so the rota rule of seniority was rightly applied. He also refuted Shri Iyengar's contention that there was no rule of seniority by rotation of vacancies. Recruitment and seniority were being regulated at the material time by Executive Orders and the rota rule of seniority was also applied in practice by Executive action and this was done deliberately. Only if there was no rule of seniority either notified under Article 309 of the Constitution or actually followed in practice by Executive Orders could the rule of continuous officiation apply. The contention of the applicants in this regard, according to Shri Padmarajaiah, had no merit.

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16. Dealing with the judgement of the Kerala High Court in K.C.VIJAYAN'S CASE, Shri Padmarajaiah pointed out that no definite principle of seniority can be drawn from that decision. In that case, the attention of the Court had not been drawn to the existence of the quota rule of recruitment during the material time and the corresponding rota rule of seniority that was being applied. The Kerala High Court had held that SI promotees to the upgraded posts should appear in the seniority list en bloc and also that inter se seniority of recruits from different sources should be determined on the principle of continuous officiation. So far as the first part of that ruling is concerned, SI promotees to the upgraded posts in Karnataka charge had been placed en bloc without recruits from any other source intervening between them. Since the existence of the quota rule of recruitment and the application of the rota rule of seniority was not brought to the attention of the Kerala High Court, their decision, to the extent that it directed seniority to be fixed on the basis of continuous officiation, cannot be taken as laying down the ^{or correct} ~~current~~ position in law on the facts of the present case. Therefore, neither the decision of the Single Judge in VIJAYAN'S CASE nor the decision of the Division Bench concluded the matter. In further support of his contention, Shri Padmarajaiah drew our attention to another decision rendered by a single Judge of the same Court on 24-2-1982 in O.P.No.1585/82P filed by Smt.Ganagadevi, a UDC promoted to the post of Inspector. The learned Judge observed that the earlier decision of the Division Bench did not prevent the authorities from assigning earlier notional dates of promotion to UDC promotees and on that basis treating them as senior to SI promotees whose actual dates of promotion were earlier. The learned Judge thus in effect kept open the question of seniority between SI promotees and UDC promotees.

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Therefore the proper test to be applied here was whether the principle of seniority by rotation of vacancies adopted by respondents 1 to 3 was a valid principle in the facts and circumstances of this case not offending any article of the Constitution, without reference to the decision of the Kerala High Court relied upon by the applicants. The quota system of recruitment having been operated in respect of the vacancies other than the upgraded vacancies and not having broken down at any stage, fixation of seniority by rotation of vacancies in the ratio of the quota fixed for each source of recruitment was a perfectly valid one and therefore the challenge to the seniority lists at Annexures F and Q should be rejected.

17. Dr. M.S. Nagaraj, appearing for one of the respondents adopted the arguments of Shri Padmarajaiah. His client who was a UDC was promoted as Inspector as a result of a DPC meeting held on 4-12-1971. The applicants who claimed seniority above him on the basis of continuous officiation were promoted by order dated 8-11-1971. It was a fortuitous accident that these applicants were appointed about 20 days prior to his client. Promotion of SIs to the post of Inspector was on the basis of seniority-cum-fitness, while promotion of UDCs to posts of Inspectors was by selection. Because of this, the DPC for promotion of UDCs had to include a representative of the Central Board of Excise and Customs while the DPC for promotion of Inspectors could consist of persons locally available in Bangalore. There was a slight delay in holding the DPC for UDCs till a representative of the Board could come. Otherwise, his client was qualified for promotion even when the applicants claiming seniority over him were promoted. If the DPC for promotion of UDCs had been held along with the DPC for promotion of SIs, his client would also have been promoted on the same day as the complaining applicants. His client cannot be made to suffer

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for the fortuitous circumstance, over which he had no control, of his DPC being held a few days later. Moreover, a few days' delay in making selection from one source of recruitment compared to another source of recruitment cannot be taken as representing a breakdown of the quota system leading to the abandonment of the rota rule of seniority. There was no violent departure from the quota rule of recruitment as in Janardana's case or in Narendra Chauda's case. In fact in one order dated 19-8-1971 by which 13 SIs like the applicants were promoted as Inspectors, it was stated that their seniority would be fixed after promoting ministerial candidates in their quota. This clearly showed that there was no intention at any time on the part of the Government to abandon the quota system of recruitment. He, therefore, pleaded that the impugned seniority list based on the principle of rotation of vacancies except in regard to the upgraded vacancies should be upheld and the applications dismissed.

18. Shri Kiran Javali, appearing for nine respondents, adopted the arguments of Shri Padmarajaiah and Dr. Nagaraj.

19. We have given anxious thought to the arguments advanced by all the learned counsel before us. We have carefully perused all the documents furnished in the course of these proceedings and the various rulings cited at the Bar. Considering the fact that this litigation is essentially between two large groups of persons aspiring for advancement in their career, we devoted considerable time to consider the rival contentions with more than ordinary care, with reference to the decided cases and the numerous facts presented before us.

20. Shorn of details, the main point at issue here is, whether the rota principle of seniority adopted by respondents 1 to 3 in fixing inter se seniority between recruits from different sources was really the right principle to be adopted. We have already stated that till 1979, no statutory rules of recruitment and seniority in respect of Inspectors of Central Excise had been notified and that during the period with which

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we are concerned in this litigation, Executive Orders held the field. It is well settled that recruitment and seniority can be regulated by Executive Orders in the absence of statutory rules provided that the Executive Orders themselves do not offend any article of the Constitution. Indeed, there is no dispute that recruitment to the posts of Inspectors during the period 1970 to 1973 was to be made from different sources according to fixed quotas prevalent from time to time. The detailed position in this regard prevalent from time to time has been set out earlier in this order. The existence of a quota system of recruitment does not necessarily mean that the rotational principle of seniority should be applied. In N.K.CHAUHAN'S CASE 1977 SCC (L&S) 127, the Supreme Court set out its conclusions in para 32 of the Judgement at page 143 of the report. Their Lordships stated, inter alia, that "the quota rule does not, inevitably, invoke the application of the rota rule". In the present case, the respondent-Government did adopt the rota rule of seniority as consistent with the quota rule of recruitment; both the rules were adopted by Executive action. In N.K.CHAUHAN'S CASE, there was a Resolution of the Government referred to as the "1941 Resolution" which specifically called for fixation of seniority according to the date of appointment, which led the Court to observe that "seniority, normally, is measured by length of continuous, officiating service - the actual is easily accepted as the legal. This does not preclude a different prescription, Constitutionality tests being satisfied." (page 147 of the report). It is clear from this that the rule of continuous officiation was favoured by the court in that case on "the matrix of the special facts and rule therein". In PATWARDHAN'S CASE 1977 SS (L&S) 391, the court was not really concerned with the quota system of recruitment or the

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reta rule of seniority. There the question was whether confirmation in a grade should be the criterion for determining seniority in that grade. However, the court made the following observation in the course of its judgement:

"All other factors being equal, continuous officiation in a non-fortuitous vacancy ought to receive due recognition in determining rules of seniority as between persons recruited from different sources...."

It will be immediately noticed that the Court laid down only a qualified proposition viz. that continuous officiation would receive due recognition, all other factors being equal. In his minority judgement in K.K. DUTTA'S CASE, 1980 SCC (L&S) 485, D.A. DESAI, J, referred to an "important rule well recognised in the service jurisprudence that in the absence of any valid rule of seniority date of continuous officiation provides a valid rule of seniority." The learned Judge did not say that continuous officiation is the only valid rule of seniority. It would come into operation in the absence of any other valid rule. Moreover, this observation should be read in the context of the earlier observation of His Lordship regarding the reta rule of recruitment:

"Bluntly translated it means that the direct recruit who was never in service when promotee was promoted, probably he may be a student, maybe he may not have even passed the competitive examination, yet may come into the picture and challenge one who has already been serving in the Department for a number of years."

In other words, where the reta rule of seniority leads to startling results, i.e. where a person recruited many years later becomes senior to another recruited that many years earlier, there is much to be said for the rule of continuous officiation. The facts in Janardana's case were that due to exigencies of service, rules providing for quotas from different sources had to be relaxed and yet the reta rule

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of seniority was sought to be applied. The court observed that the result of doing so was that a person recruited to the post in question in 1962 would become junior to another person recruited in 1978 by applying the rota rule. Even after noticing this "traumatic effect", their Lordships derived the principle of continuous officiation in that case only from the rules governing recruitment and seniority placed before them which conferred a discretion on the Government to make recruitments from either source. In G.S.LAMBA'S CASE 1985 SCC (L&S) 491 the court noticed that there had been a large deviation from the quota rule of recruitment and therefore held that the rota rule of seniority could not be applied as between recruits from different sources. At the same time, it was recognised that when the quota system of recruitment was in operation, the rota rule of seniority would be perfectly valid. Adherence to the quota rule need not be with mathematical precision, but a substantial compliance with that rule would justify the rota rule of seniority being applied. We may conclude this review with the observations of the Supreme Court in a very recent judgement delivered in ASHOK GULATI & ORS VS B.S.JAIN & ORS 1986(2) SCALE 1062 (para 13 at page 1068 of the report):

"We are not aware of any principle or rule which lays down that the length of continuous officiation service is the only relevant criterion in determining seniority in a particular cadre or grade, irrespective of any specific rule of seniority to the contrary. It is necessary to emphasise that the principles laid down in the two leading cases of N.K.CHAUHAN AND S.B. PATWARDHAN, reiterated in BALESWAR DASS' case and subsequently followed in several decision are not an authority for any such proposition....These authorities nowhere lay down that the same principle i.e. the length of continuous officiation must be the sole guiding factor and the only criterion in determining seniority of such ad-hoc employees vis-a-vis direct recruits."

21. Applying the principles laid down by the Supreme Court to the facts of this case, what do we find? The Executive Orders provided for recruitment from different

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sources according to quotas prescribed from time to time. A careful look at the impugned seniority list shows that recruitment was actually made according to the quotas whenever the quota system was in force, i.e. apart from appointments to the upgraded posts. There were some delays in making promotions in the UDC's quota or from the direct recruitment quota, but these delays were not such as to suggest a substantial deviation from the quota rule of recruitment. As many as 45 of the 75 respondents who were UDC promotees joined duty as Inspectors between one to six months after 55 of the applicants appointed against the corresponding quota of SIs and their inter se seniority has been fixed by applying the rota rule. 17 direct recruitment respondents appointed against quota vacancies available to them existing as on 31-7-1972 were appointed in August 1972, but the recruitment process started in August 1971 when departmental candidates were asked to give their names and written tests were held in February 1972. The delay in their recruitment from the date the vacancies in their quota arose was less than a year and it was due to administrative reasons. We see nothing wrong in their being adjusted in the pre-1-8-1972 vacancies by applying the rota rule. In N.K.CHAUHAN'S CASE, Krishna Iyer J. observed that it was open to the Government to choose "a year or other period" as a unit to operate the quota system. In COL.A.S.IYER VS. V.BALASUBRAMANIAM, 1980 SCC(L&S), the Judgement of the Court was delivered by the same Judge and his Lordship opined that a reasonable period in which to operate the quota system of recruitment along with the concomitant "rota" rule of seniority would be three years. In other words, if the interval of time between recruitment from two or three sources is not unreasonably long, - as it was in JANARDANA'S CASE, or LAMBA'S CASE, or NARENDRA CHEDDA'S CASE - the rota rule of seniority can be applied

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as between recruits from the different sources. In the present case, for the most part, the delay is less than a year, in fact less than a month as far as 25 out of 75 respondents are concerned. In a few cases, the delay is about a year and a half which is by no means unreasonable. Quota vacancies - 18 belonging to direct recruits and 9 to UDC promotees - arising prior to 1-8-1972 were filled up at the end of August or beginning of September 1972 in the case of direct recruits and about six to nine months later in the case of UDC promotees and they were all placed above SI promotees to the upgraded posts created with effect from 1-8-1972. But for administrative delays, these vacancies would have been filled up well before 1-8-1972; the delay is not such that conferring seniority on these UDCs and direct recruits appointed in August 1972 or March-April 1973 respectively over SI promotees appointed in later 1971 or in 1972 would shock the conscience. As pointed out by the Supreme Court in KARAM PAL AND ORS VS UNION OF INDIA AND ORS 1985 SCC (L&S) 471 mathematical precision cannot be expected in these matters and what is expected is substantial compliance. The following observations of the Supreme Court in para 18, page 479 of the report, have particular relevance to the facts of this case also:-

"No mala fides has been pleaded nor has any grave injustice been established in the writ petitions. At the most a case of improper working of the scheme with reference to some of the officers had been alleged We are of the view that if there has been substantial compliance in implementing the scheme under the Rules, judicial interference is not called for."

The contention of Shri Iyengar that there was no rota rule in operation for determining the seniority, in our opinion, is also not correct. The rota rule of seniority was actually enforced by Executive Orders and that was how the impugned seniority list came to be prepared. In the absence of any other rule either statutory or by virtue of an earlier Executive Order,

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the Government had every right to adopt the rota rule, as consistent with the quota rule of recruitment which has, in our opinion, been substantially complied with, slight delays in recruitment as between the different sources, not constituting a departure from the quota. We agree with the learned counsel for the respondents that the 84 posts mentioned in the letter dated 22-10-1972 were not up-graded posts reserved for SI promotees exclusively but only represented their share of the vacancies under the quota system operating at the time. There is no doubt in our mind that the Government deliberately operated the rota rule of seniority by Executive action along with the quota rule of recruitment. We are also satisfied that there were vacancies in the quota of UDCs and direct recruits as on 31-7-1972 against which UDC promotees and direct recruits appointed after 1-8-1972 could be adjusted by applying the rota rule. The principles of inter se seniority as between appointees to vacancies arising before and after the upgradations ordered in Ministry's letters dated 22-7-1972 vis-a-vis SIs appointed to the upgraded vacancies were reasonable and could be applied on the earlier occasions also and that is what has been done. We find no infirmity in this either. We do not agree with the contention of Shri Iyengar that these principles were not properly applied.

22. These applications, as already explained, have challenged the seniority lists at Annexures F and G to Applications 33 to 46 on the ground that the application of the rota rule of seniority was discriminatory and that seniority should have been fixed on the basis of continuous officiation in the cadre. For the reasons set out above, we see no merit in this challenge. We, therefore, reject it.

23. We may now refer to the judgement of the Kerala High Court in K.C.VIJAYAN'S CASE delivered by the Single Judge and the order of the Division Bench dismissing an appeal

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against that judgement. As pointed out by learned counsel for the respondents, it does not seem to have been brought to the notice of the learned Judges that there was a quota system of recruitment prevailing at the time and that therefore the rota rule of seniority was being applied. Both the Single Judge and the Division Bench therefore proceeded on the view that the only principle of seniority applicable was that of continuous efficiation. If their attention had been drawn to the fact that there was a rota rule of seniority consciously applied by respondents in view of the quota rule of recruitment prevalent from time to time, the decision may have been different. It is significant to note that in the order of the Division Bench, it is observed that notional dates of promotion had not been given to UDC promotees leading to the inference that if such notional dates had been given and these dates were prior to the appointment of SI promotees, the former would rightly be senior to the latter. It was on the basis of this observation that in the subsequent judgement in O.P.1585 of 1982 GANGADEVI VS UNION OF INDIA AND ORS, a single Judge of the same High Court suggested that the petitioner Smt.Gangadevi, a UDC promotee could make a fresh representation to the Central Govt. regarding her seniority and the Union of India could dispose of her representation on merits. He thus indicated that Smt.Gangadevi could be assigned an earlier notional date of promotion and on that basis given seniority over K.C.Vijayan. The application of the rota rule of seniority produces the same result when a person recruited from one source is adjusted against a vacancy which arose a few months earlier, (the vacancy being available to the source of recruitment to which he belongs) and is thereby made senior to another appointed earlier to a corresponding quota vacancy available to a different source of recruitment. In other words, the appointment of the former official dates back to the time when the vacancy to which he was promoted became available by the application of the principle of rotation and that is his notional date of promotion. Therefore,

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when upholding the impugned seniority lists and the rota rule of seniority followed therein, we have also, in effect, recognised the right of Government to assign national dates of appointment to recruits from different sources and regulate their seniority accordingly as was done by the Kerala High Court. The only difference is that, in our opinion, where the rota rule of seniority is operated, no separate order is required assigning national dates of appointment.

24. After the conclusion of the hearing in this case, some of the applicants have filed written submissions on 25-2-1987 praying that we should take into account a decision of the Supreme Court briefly reported in the Deccan Herald of 14th February 1987. Normally we would have ignored such submissions made after the hearing had closed. However, as reference is made to a judgement of the Supreme Court, we perused the newspaper cutting filed with the written submissions carefully, the full text thereof not being available. We find that in that case, the rules of recruitment were challenged and that the facts therein are also not in pari materia with those of the present applications. The views expressed by us above therefore remain unaffected.

25. In the result, the applications are dismissed.

Parties to bear their own costs.



Sd/-
(Ch. Ramakrishna Rao) 27/2/87
Member (J)

Sd/-
(P. Srinivasan) 27/2/87
Member (A)

'True Copy'

B. V. Venkatasubramanian
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE
16/6