

(AP3)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : AT HYDERABAD

RP 76/93 in DA 92/91 &
DAs 1087/93 & 1293/93.

Dt. of Order: 25-11-93,

RP 76/93 in DA 92/91

1. A.V.S.R.Murthy
2. B.S.Rajaiah
3. S.M.Ismail
4. K.Prakasa Rao

....Petitioners

Vs.

1. P.V.Sri Ramachand
LSG Clerk, Building Section,
Office of the Chief Postmaster General,
Hyderabad-1
2. The Union of India rep. by its
Secretary to Govt. of India &
Director General, Posts, Dak Sadan,
Samsad Marg, New Delhi.
3. The Chief Postmaster General,
AP Circle, Hyderabad-1.

....Respondents

* * * *

DA 1087/93.

1. A.V.S.R.Murthy
2. B.S.Rajaiah

Vs.

....Applicants

1. The Union of India rep.
by its Secretary to Govt. of India
& Director General, Posts, Dak
Sadan, Samsad Marg, New Delhi.
2. The Chief Post Master General,
AP Circle, Hyderabad-1.
3. Sri P.V.Sriremachand,
Dy.O.S.-I (HSG-II),
Building Section, Office of the
Chief Postmaster General,
Hyderabad-1.

....Respondents

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....2.



OA 1293/93.

P.V.Srirama Chand

....Applicant

Vs.

1. The Chief Post Master General,
AP Circle, Hyderabad-1.

....Respondent

* * * *

Counsel for the Petitioners : Shri V.Venkateswara Rao
(in RP 76/93)

Counsel for the Applicants : Shri V.Venkateswara Rao
(in OA 1087/93)

Shri K.Sudhakar Reddy,
(in OA 1293/93)

Counsel for the Respondents : Shri K.Sudhakar Reddy for R-1
Shri N.V.Ramana, Addl.CGSC for
RR 2 & 3 (in RP 76/93)

: Shri K.Sudhakar Reddy for R-3
Shri N.R.Devraj, Sr.CGSC for
RR 1 & 2. (in OA 1087/93)

: Shri V.Bhimanna, CGSC
(in OA 1293/93)

* * * *

CORAM:

THE HON'BLE JUSTICE SHRI V.NEELADRI RAO : VICE-CHAIRMAN

THE HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN)

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(R.P.)

R.P.NO.76/93 in OA 92/91; and
OA Nos 1087/93 & 1293/93.

JUDGMENT

(AS PER HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN)

These three proceedings can be conveniently disposed of by the common order. For the sake of convenience, the parties will be referred to as they are ^{arranged} added in O.A.No. 1087/93.

2. The facts which give rise to these proceedings are briefly as under:-

2/3rd vacancies of LSG cadre are filled on the basis ^{postal assistants} of the seniority from among ~~UDGs~~, and 1/3rd vacancies are filled in on the basis of selection by holding competitive examination as per the instructions contained in the letter No.6/2/79-SPB-II, dated 21.10.1981. Prior to the issual of t said proceedings, all the vacancies of LSG cadre were filled by holding qualifying examination. But the limited competitive examination was not held during the years 1981 to 1987 for filling up the 1/3rd quota of the LSG cadre. The 2/3rd quota on the basis of the seniority in the LSG cadre were filled up during the above years. Shri AVSR Murthy (1st applicant) was promoted with effect from 9.7.1985 and Shri B.S.Rajiah (2nd applicant) was promoted with effect from 1.7.1986 in the 2/3rd quota of LSG cadre in 1985 and 1986 respectively.

3. The 1st respondent by the letter No.29-1/TS-DE(P) dated 1.7.1987 (Annexure A-4) issued notification for holding a competitive examination to fill in five vacancies (two in regard to 1984; two in regard to 1986 and one in regard to 1987) towards 1/3rd quota of the LSG cadre. But

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thereafter, the 1st respondent issued the letter No.20-1/88-DE(R) dated 31.8.1987 (Annexure A-6) stating that it was decided to hold the examination on 29.11.1987 against the vacancies for the year 1987 only towards 1/3rd quota of the LSG cadre. The 1st respondent issued the letter dated 8.9.1987 (Annexure A-7) intimating that the question of filling up of the vacancies against the 1/3rd quota in the office where TSOP scheme is not applicable and for which a date for conducting examination was announced as per the letter dated 1.7.1987, has been reexamined, ^{and it} was decided not to hold examination for the vacancies of the year 1982 which could not be filled up for want of qualified candidates and also for the vacancies of 1983 to 1986.

4. Then the 3rd respondent herein filed OA 92/91 praying for a declaration that the action of the concerned authority in reducing the vacancies of 1/3rd LSG quota and transferring the said vacancies to 2/3rd quota by the orders dated 8.9.1987, ^{and} 15.9.1987 and 21.6.1990 is illegal, arbitrary, unjust and opposed to natural justice and to direct the concerned authorities to ~~promote~~ promote and appoint the applicants in LSG under 1/3rd quota of vacancies with retrospective effect with all consequential benefits. The applicants in OA 1087/93 are not parties to the OA 92/91 which was disposed of on 4.2.1992. The relevant portion of the order in OA 92/91 is as follows:-

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"We are of the view that the applicant should be considered against the vacancy in 1/3rd quota for all years for which he is eligible. In view of the conflicting statements before us, we are not in a position to decide as to which are the years the

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is applicant/eligible for 1/3rd quota. We, therefore, direct the respondents to re-examine the matter. If the applicant is eligible for the other four vacancies in 1/3rd quota pertaining to the years 1984 & 1986, and if he comes within the selected range by virtue of the marks he had secured in the examination, he should be accordingly accommodated against 1/3rd quota vacancies of that relevant year placing Sri K. Siva-prasad, who had secured highest marks than the applicant, may also be suitably decided by the respondents.

11. With the above directions, the application is disposed-of thus no order as to costs."

The 3rd respondent herein, who is the applicant in OA 92/91 filed M.A.No.248/93 for implementation of the order in OA 92/91. The 1st applicant was promoted to the post of Deputy Office Superintendent Grade-II with LSG with effect from 27.1.1993 and later he was promoted to the post of Deputy Office Superintendent Grade-I with effect from 8.2.1993. The 2nd applicant was promoted to the post of Deputy Office Superintendent Grade-II with effect from 8.2.1993. M.A.No.248/93 was disposed of on 22.7.1993. In pursuance of the same, the order No. ST/47-5/VIII/93 dated 12.8.1993 was issued and the relevant portion is as follows:-

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"In pursuance to the judgment pronounced by the CAT, Hyderabad Bench ⁱⁿ the OA No. 92/91 and MA No.248/93 dated 22.7.93, Sri. P.V. Sriramachand, who is deemed to have

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been qualified for appointment against 1/3rd quota vacancies of 1984, is hereby appointed to officiate in LSG in the scale of pay of Rs.1400-40-1800-EB-50-2300 in Circle Office, Hyderabad on regular basis with effect from 20.12.1984 the date from which his immediate senior late R.Subrahmanyam, who was promoted (against 2/3rd quota vacancies of 1984) to the cadre of LSG notionally."

When the 3rd respondent herein was promoted to the post of ~~DeputyxxOfficexSuperxntendxxnt~~ LSG with effect from 20.12.84 he was shown as senior to the applicants 1 and 2 herein and then the 1st applicant was reverted to the post of Deputy Office Superintendent Grade-II and the 3rd respondent herein was appointed as Deputy Office Superintendent Grade-I and the 2nd applicant was reverted to the post of LSG, vide Annexures 11 and 12 dated 12.8.1993 and 20/23.8.1993. OA 1087/93 was filed praying for quashing the memos as per Annexures 11 and 12 by holding them as illegal and arbitrary and unconstitutional and by further holding that the applicants herein are seniors to the 3rd respondent and hence they are entitled to hold the posts of Deputy Office Superintendent Grade-I and Deputy Office Superintendent Grade-II respectively with all consequential benefits such as seniority, promotion and arrears of salary and allowances. The applicants in OA 1087/93 also filed RP 76/93 praying for setting aside the order dated 4.2.92 in OA 92/91.

5. During the pendency of the OA 1087/93, Memo No. was issued ST/47-5/VIII/93, dated 9.9.1993 and the relevant portion

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reads as under:-

"In partial modification of Memo dated 12.8.93, the notional date of promotion of Sri P.V.Sriramchand, to LSG consequent on implementation of the CAT Judgment, shown in this Office Memo of even number dated 12.8.93 as 20.12.84 may please be read as 22.6.1988 which is the date of announcement of the results by the Postal Directorate of the examination in which the official Sri PV Sriramchand qualified and deemed to have been selected.

2. The seniority of the official in LSG will be below late Sri R.Subrahmanyam, the last official selected towards 2/3rd quota of 1984 vacancies and above Sri AVSR Murthy.

3. The other conditions mentioned in the memo dated 12.8.93 will however remain the same."

The same is assailed in O.A.No.1293/93.

6. It was urged for the applicants in OA 1087/93 that it is open to the authorities to divert the vacancies of 1/3rd quota to 2/3rd quota and hence the order dated 13.8.87 by limiting the competitive examination for only one vacancy is ~~available~~ ^{valid}. The applicants herein had not appeared for the examination held on 29.11.1987 ^{as} and they were promoted to LSG cadre even by that date. Even assu-

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ming ~~thanking~~ that it is not open to the concerned authorities to fill up the vacancies towards 1/3rd quota on the basis of seniority alone, the 3rd respondent has no right to claim that on the basis of his ranking in the examination that was held on 29.11.1987, he should be appointed for one of the vacancies of the years prior to 1987. The 3rd respondent is estopped from challenging the notification dated 13.8.1987 after he appeared for the examination held on 29.11.1987. If it has to be held that the vacancies prior to 1987 towards 1/3rd quota have to be filled up by holding limited competitive examination, separate examination should have been held and the posts towards 1/3rd quota vacancies prior to 1987 should have been filled up. Even though the candidates ^{are} promoted to those vacancies on the basis of the examination that may be held, ~~they~~ latter cannot claim seniority over the employees who were promoted earlier towards 2/3rd quota to LSG cadre on the basis of the seniority, as there is no rota rule. There is no rule to the effect that the employees promoted towards 1/3rd ~~vac~~ quota in LSG cadre have to be given notional promotion from the year in which vacancies had arisen. In the absence of such rule, seniority has to be reckoned from the date on which an employee joined service in ^{The} ~~any~~ cadre and hence the 3rd respondent cannot claim seniority over the applicants in the cadre of LSG when the applicants were promoted long prior to 29.11.1987, the date on which the examination was held and ~~it~~ at which the 3rd respondent and others appeared.

7. The learned counsel for the 3rd respondent urged that with an oblique ^{intention} ~~mettre~~ limited examinations were

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not being held from the years 1982 to 1986 for filling up 1/3rd quota vacancies in the respective years and hence the 3rd respondent was constrained to file OA 92/91 and this Tribunal rightly held that the 3rd respondent herein should be considered for one of the vacancies which had arisen from 1984 to 1986 and it was found that the 3rd respondent was eligible for vacancies of 1984 and as such he was given the notional promotion from 1984. The concerned authority was not justified in issuing the memo dated 9.9.1993 by treating the notional promotion as on 22.6.1988 instead of 20.12.1984 which was correctly given as per the memo dated 12.8.1993.

8. ^{Official} It was urged for the 1st to 3rd respondents herein that as the 3rd respondent was given rank No.2 as per the list dated 22.6.1988, his notional promotion was given from that date and the 3rd respondent cannot claim any notional promotion from the year in which vacancy had arisen. But it is also stated for the 1st to 3rd respondents that as the 3rd respondent was selected towards 1984 vacancy, while the applicants 1 and 2 were selected for 1985 and 1986 vacancies, latter were shown as juniors to the 3rd respondent. ^{Official}

9. Whenever a quota is fixed, rotation does not automatically follow. Unless there is specific provision in the relevant rules in regard to rotation, the concept of rotation cannot be inferred on the basis of mere rule in regard to the quota. The relevant portion of Rule 272-A, sub rule (ii) of Non-Gazetted Officers-P.O. & RMS ^{Rules} ~~lays down~~ as under:-

"(i) xxxx xxxx xxxx xxxx xxxx

(ii) In Post Offices, Returned Letter Offices,

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Railway Mail Service, Foreign Post and the Telephone Monitors' cadre in Telephone Exchanges; promotions to 2/3rds of the Lower Selection Grade posts in the General Line are to be regulated on the same principle but the remaining 1/3rd posts are to be filled on the basis of selection. The General line excludes Sub Divisional Inspectors Postal (including Investigating Inspectors) and Sub Divisional Inspectors of Railway Mail Service and Office Supervisors, Office of Superintendents of Post Offices and Railway Mail Service, the rules for promotion to whose grades are given in Rule 279.1 below.

Note: xxxx xxxx xxxx xxxx xx

Great care should be exercised in calculating the number of vacancies. If any official already in the panel has not been absorbed during the year, he will be absorbed first in the vacancies of the next year and the vacancies for the next year will be correspondingly reduced by the number of approved officials brought forward. Persons to be appointed on the (emphasis is supplied) basis of seniority-cum-fitness will en-block rank senior ~~is~~ to those to be appointed by selection in one calendar year."

The point that arises ~~fixx~~ is as to whether the emphasised portion spells out the rule of rota. It does merely indicate that if ~~more posts are appointed, under two quotations~~

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the employees are ~~assumed~~ promoted in the same quotas in the same year, then those who were promoted towards 2/3rd quota ~~maximum~~ will be seniors to those who were promoted in towards 1/3rd quota. If it was to be the rule of rotation, it could have been stated that for every cycle of three, the first two should be from 2/3rd quota and the third should be from 1/3rd quota. Even Shri K. Sudhakar-Reddy who appeared for the 3rd respondent had not seriously urged that if found, it has to be held that rota rule was incorporated in the quota rule. Even the clarification in regard to the point No.3 as per the DGP&T letter No. 6/40/76/SPBII dated 8.3.1978 does not support the contention for the 3rd respondent that in case of promotion in ~~later~~ year ^{vacancy of} in regard to 1/3rd quota incorporated in a particular year is given in the later year, the said promotee should be given notional promotion from the year in which the relevant vacancy had arisen. The said point and the clarification which is as under:-

Point: How will the seniority of officials approved for promotion against 1/3rd quota of LSG vacancies inter-se-and vis-a-vis the officials approved for promotion against 2/3rd quota of LSG vacancies be fixed?

Clarification: The officials approved for promotion on the basis of seniority-cum-fitness against 2/3rd quota of LSG vacancies (arising) in a particular calendar year will en-bloc rank senior to those approved for promotion by selection against 1/3rd quota of such vacancies in that year as already provided in Rule 272-A(ii) of P&T Manual Volume VI. The inter-se seniority of

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officials approved for promotion against 1/3rd selection quota of LSG vacancies prior to 4.10.77 will be fixed on the basis of their merit positions assigned by the D.P. and the inter-se-seniority of those approved for promotion against such LSG vacancies after 4.10.77 will be fixed in the order of their seniority positions in the Circle Gradation List of Time Scale Clerks, Sorters, etc."

The said classification merely states that in case of promotions in regard to both the quotas are made in the same year, promotees of 2/3rd quota en-bloc will be senior to the promotees of 1/3rd quota. Neither the learned counsel for the 3rd respondent nor the learned standing counsel for the officials respondents had drawn our attention to any other rule or circular whereby it can be either stated that rota rule is incorporated in regard to the promotion to the cadre of LSG or that in case of promotion to any of the quotas in the later year in regard to the vacancies of earlier year, notional promotion has to be given from the year in which the relevant ~~vacancy~~ vacancy had arisen.

10. The fundamental rule in regard to seniority is that one who joins later will be junior to one who joins earlier in the cadre. If any deviation therefrom is found necessary, there should be a specific rule to that effect. ~~Ex~~ One of the well known deviations is in regard to the inter-se seniority of direct recruits. Interse seniority as among direct recruits is on the basis of merit ranking. Such ranking will ~~be~~ not be of any importance, if it is ^{not} relevant

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for fixation of seniority. At times one who is in lower rank may join early while one who is in higher rank may join later. In such case, the ranking and ~~it is~~ not the date of joining that is relevant for fixation of inter-se seniority as among direct recruits. Similarly, when the promotions are on the basis of seniority-cum-suitability, the seniority in the lower cadre will reflect in ^{fixation of} the seniority after promotion and in such case also, the date of joining in the promoted post is not relevant for fixing seniority. Similarly, when there is ~~any~~ quota ^{rule} and if the employees belong to one quota may be seniors to those who belong to the ~~other~~ quota even in ^{case} where the former joining later than the employees belonging to the other quota if the employees belonging to the other quota are in excess of their quota by the time the employees belonging to the former quota joined. Such situation generally happens in regard to the cadres which have to be filled in by direct recruitment and promotion. Generally, the process for filling up the posts by direct recruitment takes longer time than the process for filling up the posts by promotion. If promotees in excess of their quota are promoted, they have to ~~maximize~~ give place to the direct recruits when they join. The question as to whether the promotees were promoted in excess of their quota has to be considered on the date on which direct recruits join service. As such, a promotee even if he is in continuous service without break may happen to be junior to the direct recruit who may join service later ~~maximize~~ if on the date of his joining the direct promotion was not in ^{his} slot. There are ~~are~~ well recognised exceptions to the basic rule that one who joins service

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later will be junior to one who joins earlier. There is no need to further elaborate the point in view of the judgment of the Supreme Court in "JT 1993(5) SC 185 (Bhey Ram Sharma and others Vs. Haryana State Electricity Board and others)." ^{whatever} It was held as under in para 5 of the ~~said~~ judgment:-

"It is almost settled that while determining the inter se seniority amongst officers recruited from different sources or between officers appointed by the same process at different times, the date of entering in the service is relevant. A person who enters in the service first shall rank senior unless there is some rule providing otherwise which can be held to be consistent with Articles 14 and 16 of the Constitution."

The facts which are relevant in the case that was decided by the Supreme Court in the above judgment are as under:-

An Advertisement dated June 30, 1967 was published by the Haryana State Electricity Board inviting applications for the post of Assistant Engineers Class-II (Electrical) and Apprentice Engineers (Electrical). One of the conditions prescribed in regard to the Apprentice Engineers was that those who were selected as Apprentice Engineers will be considered for appointment to the post of Assistant Engineer Class-II ~~xxxxxxxx~~ after completion of six months Apprenticeship, on the basis of their work and conduct. After completion of training in terms of the advertisement,

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the appellants therein were appointed as Assistant Engineers Grade-II with effect from 1.1.1969. Another advertisement dated 14.7.1968 had been published by the said Board for filling up the posts of Assistant Engineer Class-II and pursuant to the said advertisement, the Respondents 2 to 29 therein were selected and appointed between October and December 1968 as Assistant Engineers Class-II. As the Respondents 2 to 29 ~~XXXXXX~~ were appointed to the posts of Assistant Engineer Class-II earlier to the date from which the appellants therein were appointed to the said posts, former were shown as seniors to the latter. But it was urged for the appellants therein that as the period of apprenticeship is only for six months, their appointments should be given with effect from the date on which they completed six months training and if so done they will be seniors to the Respondents 2 to 29 therein. But the said contention was repelled by observing that in the advertisement, it was specifically mentioned that the period of apprenticeship ^{could} ~~would~~ be extended upto the maximum of three years. While advertizing to the relevant facts, it was held therein that, "it is well known that while determining seniority of an officer, the date of his appointment is more important factor than the date of his joining." It is another exception to the basic principle that one who joins earlier will be senior to the one who joins later." That question does not arise here for in this case the dates of appointment and the dates of joining in the cadre of LSG are ~~XXXXXX~~ earlier to the dates of appointment or the date of joining in that cadre. But in view of the ^{of officers} ~~of LSG~~

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principle enunciated therein that unless there is a rule which is ^{not} inconsistent with Articles 14 and 16 of the Constitution, the date of joining into service or the cadre is the criterion for fixing seniority. The said judgment supports the case for the applicants herein for as already observed, ^{There is} ~~neither the rule or circular contrary~~ to the basic principle was referred to during the arguments in these proceedings. That one who is appointed earlier to one who is appointed later.

11. 1989(10) ATC (SC) 593 (State of Maharashtra Vs. Jagannath Achyut Karandikar) was referred to for the 3rd respondent to urge that the incumbent should not be penalised for Government lapses, and ^{as} the factum of not conducting the limited examination for filling 1/3rd quota vacancies in 1984 was due to the fault of the authorities and as the 3rd respondent was eligible to appear for the said examination in 1984, he should not suffer for the delay in conducting the limited examination in regard to the same and as such the concerned authority by the order dated 12.8.1993 had rightly given notional promotion to the 3rd respondent in December 1984 by placing him below those who were promoted towards 2/3rd quota in that year. The Maharashtra Government Subordinate Service Rules, 1951 1955 and 1962 had come up for consideration in the case referred to in (1989) 10 ATC (SC) 593. Those rules stipulate that pass in the departmental examination was a condition precedent for promotion from the post of UDC to the post of Superintendent. Those rules also state that each employee has three chances for taking examination and they must be availed within four years (vide 1962 rules). But one of the rules is also a rule ^{having} to the effect that the examination will be held ^{every} ~~once in~~ a year. The promotion is on the basis of seniority subject to the pass in the departmental examination. If one fails to pass within four years referred to, contd....

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he loses his seniority and as and when he passes the said examination later, he would be promoted. Thus, if one passes within four years referred to and even if he fails in two earlier chances, he does not lose his seniority. It so happened that in some of the years, departmental examinations were not held and as such some of the UDCs could not pass within four years and they could not avail ~~themselves~~ three chances during the relevant period. The Supreme Court held that when such UDCs passed within third attempt by appearing in the departmental examination ^{immediately} which was next held ~~after~~ the expiry of four years, and if such UDCs would have chance of appearing for all the three examinations within the period of four years referred to, if the examinations are held, then such UDCs will not lose seniority and their seniority in the cadre of UDC should reflect in the cadre of Superintendent also ~~as~~ on their promotion. While arriving at the said decision, it was observed that no employee should suffer for the inaction of the Government in not holding the departmental examination every year. The question which had arisen therein is as to whether as per the relevant rules, an employee loses the seniority in the promoted category in case of not passing when their not passing was due to the ~~lapse~~ ^{lack} of the Government in not conducting the examinations. But this is not ~~the~~ ^{the} case where the 3rd respondent is senior to the applicants in the lower category of Postal Assistants from which promotional avenue is to LSG. When there is no rule of rota, one cannot claim seniority from the date on which vacancy had arisen. ~~In such case~~, ^{Then} one cannot claim seniority from the year in which vacancy had arisen when the limited examination in regard to that vacancy was conducted in the later year.

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12. Even (1993) 25 ATC 270 (Tushar Kanti Bhattacharya and others Vs. Union of India and others), the order of the Central Administrative Tribunal, Calcutta Bench, does not support the contention for the 3rd respondent. Therein, the ~~xx~~ scope of Explanation 3 to Rule 3(3) of Indian Police Service (Appointment by Promotion) Rules, 1956 was considered. There was delay on the part of an officer who was selected to IPS in joining office as there was delay in relieving him from that post. In view of the relevant rules therein, it was observed that even though such contingency was not contemplated as per the Explanation 3 to Rule 3(3), still it is observed that a Government servant should not ordinarily be made to suffer on account of lapsus ^{lapses} on the part of the administration and hence it is stated that the date of selection and not the date of joining that is relevant for fixing seniority. In this case the 3rd respondent was selected in 1988 for promotion to the post of LSG while the applicants 1 and 2 were promoted to the said category even in 1985 and 1986 respectively. The question as to whether the seniority has to be reckoned from the date on which the vacancy had arisen had not fallen ~~xx~~ for consideration in the above case.

13. 1993 (1) ATR (CAT) 352 (Kulbhushan Batra and another Vs. Union of India) is ~~xx~~ another decision which is relied upon for the 3rd respondent. Therein it was held that when the recruitment rules are amended, the ^{extant} rules as on the date of vacancy are applicable and hence the case of the employees who were eligible as per the ^{vacancy which had arisen before amendment} unamended rules ~~xx~~ should be considered for the post even

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though ~~xxxxx~~ they are not eligible as per the amended rules and one who is eligible as per the amended rules ~~should not be considered for that vacancy~~ when he was not eligible as per the unamended rules. ^{those vacancies} ~~while~~ laying down the said principle, it was stated that the applicants therein shall be considered to the posts which had fallen ^{vacant} prior to amendment of the rules, as they were eligible as per the unamended rules and they shall be promoted from the dates they became eligible with all consequential benefits. But the question of inter-se seniority had not arisen in that case that was dealt with by the Principal Bench in the case referred to. Further, it is the case where a representation was being made by the concerned employees for consideration for promotion to the posts of PROs even before the rules were amended. We feel that in the circumstances of the case, the direction for promotion from the date the concerned employees had become eligible was given and we cannot accede to the contention that the said Bench has laid down as principle that the promotion has to be given from the date on which they became eligible ^{The date on which vacancy arose}. One of the points which had arisen for consideration in T.A.No.108/86 on the file of this Bench is the effect of the delay in issuing the order of appointment to a candidate who was in the approved select list. Whether in such a case ² one who was appointed after the date of the said select list and ^{earlier to} the date on which 'A' who was in the select list was appointed should be held as senior. When it was stated that the delay in giving appointment to the 'A' in the select list was due to the general ^{actions} action, it was observed that the delay in promotion in public interest cannot be allowed to have adverse effect on the applicants and hence 'A' was held to be senior to 'B' ('A' was promotee while

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'B' was direct recruit). In view of the facts therein, it was held that the date of the approved list should be taken as the basis for fixing seniority. Even if the date of select list ~~which~~ in which the 3rd respondent is ranked 2 is taken as the basis, he will be junior to the applicants 1 and 2 for they were promoted to the cadre of LSG even earlier to the date of the select list containing the name of the 3rd respondent. Hence, even that judgment is not ~~helpful~~ ~~applicable~~ for supporting the contention for the 3rd respondent.

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14. The next contention for R-3 is that if the Limited Departmental Examination ^{were} conducted in 1984, he would have been selected for the vacancy in that year and as Siva Prasad who got the first rank in the examination held on 29-11-1987 was not eligible for 1984, he alone should be considered for the said vacancy and he should not be allowed to suffer for the inaction of the concerned authority for not holding the examination in 1984. But it is stated for the applicant that as they were already promoted to the LSG cadre even by 1986, there was no occasion for them to appear for the examination held on 29-11-1987, and if the said examination was held in 1984, they too would have appeared as they were eligible and it cannot be stated that R-3 would have got ranking higher than the ranking of applicants 1 & 2 in such examination. Even the applicants herein were eligible for limited Departmental Examination if conducted in 1984 towards 1/3 quota. It cannot now be adjudged as to whether the applicants would have performed better than R-3, or R-3 would have performed better than the applicants in such competitive examination, for all of them have not appeared together in any one such limited

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Departmental examination. It is not a case where the applicants had not appeared for the examination held on 29-11-1987 on the grounds that they were diffident about their performance; but it is a case where there was no need for them to appear for the examination held on 29-11-1987 as it was notified for only one vacancy of 1987 and as the applicants were promoted to the cadre of LSG in the earlier years. If R-3 is held as senior to the applicants 1 and 2 on the basis of his ranking in 1987 examination, it will be arbitrary for the applicants had not the opportunity of appearing for the said examination. It would have been different if the said examination was notified in regard to 1984 vacancy also.

15. Further, it is not a case where R-3 had chosen to make a representation in 1984 or in any year till the Select list of 1988 on the basis of 1987 examination was published requesting the concerned authority to hold 1984 examination for ~~vacancy of 1984~~ immediately. No material is placed to show that with a view to cause prejudice to R-3, the Limited examination were held in 1984 or in the later years till 1987. Further, R-3 had not chosen to challenge the letter dated 31-8-1987 when it was stated therein that the examination held on 29-11-1987 was in regard to 1987 vacancy only for 1/3rd quota of LSG cadre. On the other hand he appeared for the said examination and it is not known that if he were to be given the first rank whether it would have been contended that the selection should be treated in regard to 1984 vacancy. Thus, there is force in the plea of estoppel also. We are advertising to the above contention for the applicants only in order to consider whether there is any equity in favour of R-3 in claiming the seniority over the applicants on the basis of

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his second rank in the second list prepared on the basis of the results in the examination held on 29-11-1987 which was notified only in regard to 1987 vacancy, and we are not adverting to the same for consideration of the pleas raised in RP.76/93 in OA.92/91. We feel that in the light of the Circumstances, above, the contention for R-3 that equity is in his favour accused cannot be ascertained. It is a case where R-3 kept quiet even after the applicants were promoted to LSG cadre even by 1986 and he had come up with OA.92/91 only when he could not get promotion in 1/3rd quota on the basis of select list of 1988. It is a case where R-3 had come up with OA.92/91 only after the applicants had not the necessity to appear for the examination held on 29-11-1987.

16. We ~~already~~ referred to the Judgement of Supreme Court in JT 1993(5) SC 185 (Bhey Ram Sharma & others vs. The Haryana State Electricity Board and others) wherein it was ~~had~~ stated that the seniority to be fixed on the basis of the date of joining unless there is a contra-rule which is ~~consisted~~ with Articles 14 and 16 of the Constitution of India. We already observed that ~~no~~ such contra-rule or circular or OM was referred to for the respondents. Even equity is not in favour of the applicants. The order dated 4-2-1992 in OA.92/91 does not refer to the date from which R-3 herein i.e. the applicant in OA.92/91 had to be promoted. There is no direction in the order dated 22-7-1993 in MA.248/93 about the date from which the R-3 herein i.e. the applicant in OA.92/91 had to be given promotion in cadre of LSG. But by order dated 12-8-1983, the R-3 was given promotion to the cadre of LSG from 20-12-1984 by placing him as Junior to those who were promoted on 2/3 quota in 1984. Later by memo dated 9-9-1993, styled as "Corrigendum" it was stated that the date 20-12-1984 should read as 22-6-1988.

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Thus the promotion was given with effect from the date of announcement of results in regard to the examination held on 29-11-1987. But even thereafter, memo dated 12-8-1983 promoting R-3 to the post of Deputy Office Superintendent Grade I and ~~referring~~ the first applicant to the post of DOS-Grade II, and also ~~referring~~ the second applicant to the post of LSG was not set aside. But the fact that there was also delay in filing the reply for the official respondents in OA.1087/93 also suggested that they felt some difficulty in appreciating the true purport of the direction as per Order dated 4-2-1992 in OA.92/91.

17. To sum it up, it has to be stated that unless there is a rule/circular/OM, the length of service from the date of joining had to be considered as relevant for fixation of seniority. It is not mere case where there is no rule/circular/OM whereby R-3 can claim seniority of R-3 over the applicants, when the order of appointment and also the date of joining in the cadre of LSG are later than the dates of appointments and the date of joining of the applicants in the cadre of LSG. There is no equity in favour of R-3 to claim seniority over the applicants in the cadre of LSG. When the applicants are seniors to R-3 in the cadre of LSG, the former have to be considered for promotion to DOS Grade II and from there to DOS Grade I before R-3 is considered for the same. Accordingly, Memo No.3T/47-5/VIII/93 dated 12-8-1993 whereby notional promotion to the cadre of LSG to R-3 was given from 20-12-1984, and the memo dated 20-8-93 vide No.ST/4-7/Dy.OS-I/93 whereby R-3 was promoted to DOS Grade I and the first applicant was reverted as DOS Grade II and the second applicant was reverted as LSG are liable to be set aside. But as the Chief Postmaster General AP Circle's memo/Corrigendum No.ST/47-5/VIII/93 dated 9-9-93 whereby the

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date of promotion of R-3 to the cadre of LSG was given with effect from 22-6-1988, the question of setting aside the memo dated 12-8-1993 whereby R-3 was given promotion to the cadre of LSG with effect from 20-12-1984 does not arise.

18. As we ~~held~~ that the applicants are seniors to R-3 in the cadre of LSG and as the corrigendum/memo dated 9-9-93 also discloses that the promotion of R-3 to the cadre of LSG is of a date later ~~on~~ to the date of promotion ~~of~~ the applicants, the applicants have no ~~locus-standi~~ ^{cause of action} to challenge the memo dated 12-8-1993 ~~as~~ ^{after it was} corrected by memo dated 9-9-1993.

As we ~~held~~ that R-3 is junior to the applicants in the cadre of LSG and as the corrigendum i.e. the memo dated 9-9-93 is consistent with our above ~~view~~, the OA.1293/93 wherein the said corrigendum is challenged is liable to be dismissed.

19. Thus, when the ultimate order i.e. the memo dated 12-8-1993 as amended by 9-9-1993 which was passed in implementation of order ~~in~~ OA.92/91 does not cause prejudice to the applicants in OA.1087/93, they cannot be held as parties affected as per the order dated 4-2-1992 in OA.92/91 and as such they have no locus-standi to file ~~an~~ RP in OA.92/91 and accordingly it is liable to be dismissed. As such we do not propose to express any ~~views~~ in regard to the various contentions raised in RP.76/93.

20. In the result, the OA.1293/93 is dismissed. Memo dated 12-8-1993 as modified by memo/corrigendum dated 9-9-93 is confirmed. Order dated 20-8-93 promoting R-3 (Sri P.V. Sri Rama Chand) to the post of DOS Grade I and reverting the first applicant (Sri A.V.S.R. Murthy) to the post of DOS Grade II and ~~also reverting~~ the second applicant (Sri B.S. Rajaiah) as LSG is set aside. The applicants 1 & 2 in OA.1087/93 have to be repromoted to the posts of DOS Grade I

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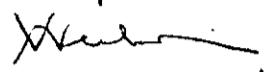
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and DOS Grade II respectively from the date on which they were actually reverted, and they are entitled to consequential benefits in regard to arrears of pay, seniority etc.

21. RP.76/93 is dismissed. No costs.



(R. Rangarajan)
Member (Admn.)



(V. Neeladri Rao)
Vice Chairman

Dated : November 25, 1993

Dictated in the Open Court


Deputy Registrar (J)

vsn
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To

1. The Secretary to Govt. of India and Director General, Posts, Dak Sadan, Sansad Marg, Union of India, New Delhi.
2. The Chief Postmaster General, A.P.Circle, Hyderabad.
3. One copy to Mr. V. Venkateswara Rao, Advocate, CAT.Hyd.
4. One copy to Mr. K. Sudhakar Reddy, Advocate, CAT.Hyd.
5. One copy to Mr. N. V. Ramana, Addl.CGSC.CAT.Hyd.
6. One copy to Mr. V. Bhimanna, Addl.CGSC.CAT.Hyd.
7. One copy to Library, CAT.Hyd.
8. One spare copy.
9. *One copy to Mr. N.R. Devulapu, Case CAT, CGSC*

pvm

*25th Nov
PVR 6/11/93*