

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.93/94

Tara Chand Sharma

Date of order: 24-8-1995.

: Applicant

Vs.

Union of India & Ors.*

: Respondents

O.A.No.121/94

R.C.Bairwa

: Applicant

Vs.

Union of India & Ors.*

: Respondents

O.A.No.122/94

Sunil Kumar Garg

: Applicant

Vs.

Union of India & Ors.*

: Respondents

O.A.No.172/94

Smt.Asha Saxena

: Applicant

Vs.

Union of India & Ors.*

: Respondents

Mr.P.V.Calla

: Counsel for applicants

Mr.U.D.Sharma

: Counsel for respondents Nos.1 & 2

Mr.V.K.Mathur

: Counsel for respondent No.6

Mr.S.K.Vyas

: Counsel for respondents Nos.3 to 5

7 to 17 and 19 to 35

CORAM:

Hon'ble Mr.O.P.Sharma, Member(Adm.)

Hon'ble Mr.Ratan Prakash, Member(Judl.).

PER HON'BLE MR.O.P.SHARMA, MEMBER(ADM.).

These four applications involve common points of facts and law and are therefore, disposed of by a Common order.

2. The prayer of the applicants is that the action of the respondents towards making regular appointments of respondents Nos.3 to 35 may be declared illegal and the final seniority list issued vide order dated 12.4.1993 (Annx.A1) in so far as it relates to the above mentioned 33 respondents may be declared

* 1) The Union of India through the Registrar General, (2) The Director, Census Operations, Rajasthan, (3) Shri Kunj Behari Sharma, (4) Shri Gokul Chand Verma, (5) Shri Mahaveer Kumar Jain, (6) Shri Rajesh Kumar Mittal, (7) Shri Arun Kumar Jain, (8) Shri Bhawani Prasad Sharma, (9) Shri Satish Kumar Chaturvedi, (10) Shri Krishna Mohan Khandelwal, (11) Shri Mukesh Kumar Bhargava, (12) Shri Jawana Ram Jat, (13) Shri Shyam Sunder Sharma, (14) Kum. Musum Lata Yadav, (15) Shri Bhawar Lal Kuldeep, (16) Shri Hazari Lal Gupta, (17) Shri Mahendra Kumar Jain, (18) Shri Rajendra Kumar Nagar, (19) Shri Hukum Chand Babodia, (20) Smt.Kamlesh Sharma, (21) Shri Mohan Lal Raiger, (22) Shri Laxmi Narain Meena, (23) Shri Ved Prakash Singh, (24) Shri Mani Kant Sharma, (25) Shri Suraj Mal Tak, (26) Shri Bhura Ram Tarang, (27) Shri Bachitar Singh Purba, (28) Shri Mailash Chand Gupta, (29) Shri Vijay Mohan Mathur, (30) Shri Nemi Chand Kumawat, (31) Shri Narendra Kumar Gupta, (32) Shri Suresh Sharma, (33) Shri Vinod Kumar Gupta, (34) Shri Krishana Kumar Sharma and (35) Shri Madhav Lal Trivedi.

illegal, and these respondents may be placed below the applicants in the seniority list. They have further prayed that communication dated 12.4.1993 (Annex.A2) by which the applicants were informed that their representation in this regard had been rejected, may be quashed.

3. All the four applicants are now working as Computers in the Office of Director of Census Operations Rajasthan, Jaipur. Respondents Nos.3 to 35 are also working as Computers in the Jaipur Office. The dispute basically relates to seniority of the applicants vis a vis that of the respondents. Facts relating to S/Shri Tara Chand Sharma, Sunil Kumar Garg and Smt.Asha Saxena, applicants in O.A.Nos.93/94, 122/94 and 172/94, may be narrated first.

4. In response to an advertisement issued by the official respondents for recruitment to the post of Assistant Compilers scale Rs.260-400, these 3 applicants applied and were selected. However, vide order dated 14.8.1980, they were offered the post of Lower Division Clerk (LDC) instead of that of Asstt.Compilers. They accepted the post of LDC carrying the same scale of pay namely Rs.260-400. Subsequently, they were asked to opt whether they were willing to work as Asstt.Compilers. They opted for being appointed as Asstt.Compilers and were accordingly offered appointments as such vide order dated 11.10.1982 (Annex.A4). (Order dated 11.10.1982, Annex.A4 by which they were offered the post of Asstt. Compiler scale Rs.260-400 shows that they had earlier been appointed as LDCs on ad hoc basis). They were granted quasi-permanent status in 1987. Vide order dated 26.5.1989 (Annex.A5) they were made permanent on the post of Asstt.Compiler, w.e.f. 23.5.89, on the basis of recommendations of DPC.

5. The earlier rules regarding recruitment to the post of Computer were of 1974 and these were amended by rules of 1979, known as 'the Office of the Director of Census Operations,

Rajasthan (Group C & D) Recruitment (Amendment) Rules 1979 (for short the rules of 1979). The rules of 1979 were notified on 9.4.'79 (Annex.A6). As per these rules, the post of Computer scale Rs.330-560/1200-2040 was to be filledup to the extent of 75% of vacancies by promotion and 25% by transfer from other offices, departments, if no promotions are made. There was no provision in these Rules of 1979 for direct recruitment to the post of Computer. As per these Rules of 1979, Assistant Compilers with 3 years regular service were eligible for promotion to the post of Computer. The Rules of 1979 were amended by the Rules of 1984 vide notification dated 7.12.'84 (Annex.A7). These Rules of 1984 provided that the post of Computer is to be filledup by promotion from amongst Asstt.Compilers with 8 years regular service or transfer on deputation and failing both by direct recruitment. The qualifications for direct recruitment were that they should have Degree in Economics or Statistics or Mathematics from any recognised University.

6. Further according to the applicants, as already stated above, the applicants were initially appointed in scale Rs.260-400 on 14.8.1980 after due process of selection as LDCs and were later appointed as Asstt.Compilers. They were eligible for promotion as Computers in accordance with the 1984 Rules. Under these Rules, they were promoted to the post of Computer on the basis of a duly constituted DPC, vide order dated 10.10.'90 (Annex.A8). They were placed on probation for a period of 2 years. Vide order dated 12.4.'93 (Annex.A10), it was certified by the competent authority that these 3 applicants had completed their probation satisfactorily.

7. The above is the position regarding applicants S/Shri Tara Chand Sharma, Sunil Kumar Garg and Smt.Asha Sawena. As regards Shri R.C.Pairwa, who has filed O.A.No.121/94, the initial factual position is slightly different. On initial recruitment in

response to the advertisement issued in this regard, Shri Bairwa was appointed to the post of Asstt. Compiler vide order dated 24.4.'80 (Annex.A3) and he joined the said post on 1.5.'80. By order dated 27.3.'84, he was given quasi-permanent status on the post of Asstt. Compiler. Some time in 1989, on the basis of the recommendations of a DPC, Shri Bairwa, was confirmed on the post of Asstt. Compiler vide order dated 26.5.'89 w.e.f. 23.5.'89 (Annex.A5). He was promoted on the post of Computer on ad hoc basis by order dated 31.12.'82 (Annex.A8). He was further promoted on the post of Computer on regular basis on the strength of recommendations of DPC, vide order dated 20.8.'90 (Annex.A10), as a result of which, the applicant who had been promoted on the post of Computer on ad hoc basis vide order dated 31.12.'82 became a regular Computer by this later order. He was to be on probation for a period of 2 years. By order dated 12.4.'93 (Annex.A11) a certificate was issued that he had completed the probation period satisfactorily. Other facts with regard to this applicant are the same as those with regard to the other three applicants mentioned above.

8. Meanwhile during the period for 25.9.'80 to 17.9.'81, respondents Nos.3 to 35 were appointed to the post of Computer by direct recruitment. The position of direct recruits has been discussed in detail by the applicants and their averments are summarised below. At this stage, however, suffice it to say that a provisional seniority list of Computers working in the Jaipur Office was issued vide order dated 3.12.91 inviting objections to the placement therein (Annex.A11). In this list the names of respondents Nos.3 to 35 were placed above those of the applicants. The applicants submitted detailed representations objecting to grant of seniority to respondents Nos.3 to 35 over them, on the ground amongst others that the Registrar General, vide letter dated 19.2.80 had imposed a ban on direct recruitment and despite

this ban, direct recruitments were made and that in the 1979 Rules, there was no provision for direct recruitment to the post of Computers. It was, therefore, pleaded that the appointment of the direct recruits was not under the Rules and they were not entitled to seniority over the applicants who had been promoted on a regular basis on the strength of recommendations of a DPC. Instead of giving due consideration to the representations of the applicants, the respondents issued another provisional seniority list (Annex.A13) dated 22.9.92 which did not alter the position of the applicants vis a vis the respondents Nos.3 to 35. Ultimately a final seniority list vide office order dated 10.4.93 was issued (Annex.A1) by which the position shown in the seniority list dated 22.9.92 (Annex.A13) was made final and the applicants were informed vide communication of the same date (Annex.A2) that their representations in the matter of assignment of higher seniority had been rejected.

9. The facts with regard to respondents Nos.3 to 35, as stated by the applicants are as under. They were appointed on direct recruitment between 25.9.80 to 17.9.81 on the post of Computer. At that time, Rules of 1979 were in force which did not provide for any direct recruitment. The appointment of these respondents to the post of Computer was temporary and on ad hoc basis and it was clarified in the orders of appointment that the appointment to them would not bestow on them any claim for regular appointment and the service rendered by them on ad hoc basis in the grade of Computer would not count for the purpose of seniority and promotion to the next higher grade. Since these respondents were appointed by separate orders, the applicants have not been able to place on record of the appointment orders but a 'sample' order dated 18.3.81 (Annex.A13A) has been placed on record regarding appointment of some of the respondents such as respondents Nos.10, 12, 13 and 14. These respondents could not

therefore be in a better position than the applicants. However, vide Annex.A19 dated 12.11.91, they managed to obtain a recommendation letter from the Dy.Director, addressed to the Registrar General in their favour regarding grant of seniority to them. In this letter, the Dy.Director had sought instructions from the Registrar General, whether final seniority list may be issued according to Annexes.A1 and A2 enclosed with the said letter. Subsequently, order Annex.A17 dated 14.3.91 was passed by the Jaipur Directorate by which with effect from the date of issue of these orders respondents Nos.3 to 35 were declared to be regular on the post of Computer. Thereafter, the Registrar General, addressed a letter dated 9/10.3.'92 to the Directorate at Jaipur on the subject of regularisation against the post of Computer. In this letter which refers to two of the 25 respondents, it was stated that they may be treated as eligible for appointment against the post of Computer and may be regularised after screening their past records and in case they are found fit for regularisation, they may be allowed the benefit of their past ad hoc service for the purpose of seniority and promotion as was done in the case of other ad hoc Computers directly recruited at the time of 1981 Census. The other respondents were also recruited at the time of 1981 Census and thus they were given the benefit of past ad hoc service for the purpose of seniority and promotion once they were regularised after screening their past records. Thus, in terms of the seniority list issued earlier, these respondents became senior to the applicants because they were deemed to be in regular service as Computers from the initial date of their ad hoc appointments between 25.9.1980 and 17.9.1981.

10. The case of the applicants is that grant of seniority to respondents higher than the applicants is contrary to the scheme of the recruitment rules and is against the settled law regarding

grant of seniority. They are aggrieved by orders/letters dated 11/12.3.1991 (Annex.A5), 17.6.91 (Annex.A6), 14.3.91 (Annex.A7), 8.4.92 (Annex.A18) apart from the final seniority list Annex.A1 dated 12.4.93 and letters dated 13.4.93 (Annex.A2) rejecting the representations with regard to their seniority. Since the private respondents' appointments were temporary and on ad hoc basis and in contravention of the Rules, they have no right to the post of Computer. Although, they were regularised from a prospective date namely 14.3.91 (Annex.A7), yet seniority and eligibility for promotion were granted to them from the date of their initial appointment. They had not undergone the regular process of selection through Staff Selection Commission, etc. and they were also not placed on probation. Although, it was stated as per Annex.A15 dated 12/13.3.91 that they were screened before being made regular on the post of Computer, yet there is no Rule regarding regularisation on the basis of any such screening. The final seniority list was issued after ignoring the objections of the applicants. In the circumstances, the respondents were not entitled to higher seniority over the applicants.

11. The official respondents (the Union of India through the Registrar General and the Director Census Operations, Jaipur) have stated in their reply that the appointment of applicants S/Shri Tara Chand Sharma, Sunil Kumar Garg and Smt.Asha Saxena, who were initially appointed as LDCs was on ad hoc basis with no claim for indefinite continuation and no right to regular appointment and with a further stipulation that the services rendered by them on ad hoc basis as LDCs would not count for seniority, promotion, etc. Subsequently, when the post of Asstt.Compilors became available they were appointed on that post on the basis of option exercised by them on a temporary basis with the stipulation that their service as LDCs on ad hoc basis would not count for experience in the cadre of Asstt.Compilors and it was further

stated that their seniority in the cadre of Asstt. Compiler would be fixed below those persons who were already working on the said post. They were appointed on the post of Asstt. Compiler on substantive basis on the recommendations of the DPC only w.e.f. 23.5.1989 vide order dated 26.5.'89. As regards eligibility for appointment on the post of Computer by promotion, as per the Rules of 1974 read with Rules of 1979, an Asstt. Compiler with 3 years regular service was eligible for being considered for promotion to the post of Computer. By the recruitment Rules of 1984, this period of 3 years was substituted by the period of 9 years in that grade. Since these 3 applicants were appointed on the post of Asstt. Compiler vide order dated 11.10.82, they were not eligible for promotion to the post of Computer under the provisions of any of the aforesaid Recruitment Rules.

12. Further, according to them, 37 posts of Computers created for the 1981 Census Operations in the State of Rajasthan were required to be filled-in by the 1979 Rules, i.e. 75% by promotion from the post of Asstt. Compilers and 25% by transfer from other Census Directorates. After exhausting the aforesaid channels of recruitment from eligible Asstt. Compilers, the Registrar General permitted respondent No.2, the Director Census Operations, Rajasthan, to fill up vacant posts of Computers by direct recruitment on purely temporary and ad hoc basis through Employment Exchange, because there was no response from other Directorates for sending their personnel on deputation and because there was an urgent need to fill up these vacancies. The Rules of 1974 read with those of 1979 conferred a power of relaxation of any provisions of these rules and therefore direct recruitment was made in exercise of the said power of relaxation. Therefore, the appointments to the post of Computer made by direct recruitment would be deemed to be appointments made in accordance with the recruitment Rules of 1974 read with those of 1979. The respondents Nos.3 to 35 had been appointed on the basis

of the guidelines issued by the Registrar General, regarding fillingup of short time vacancies in connection with 1981 Census operations under which the direct recruitment was kept to the barest minimum. The guidelines did not provide that if the direct recruits were to be regularised they will have to face the Staff Selection Commission if continued beyond 1982-83. However, the Staff Selection Commission while granting exemption as a special case for making direct recruitments had desired that if the posts were continued beyond 1982-83, such ad hoc appointments would have to be got regularised by the Commission (Annex.R3). Thus door was kept open for getting the services of the direct recruits regularised in case these posts were continued beyond 1982-83. Since these posts had continued beyond 1982-83, the question of regularising the services of such ad hoc appointees to the posts of Computeras, amongst others, had been under the consideration of the Govt. and the Registrar General had called for information from all Directors of Census Operations in India regarding such ad hoc staff with a view to taking up the question of their regularisation (Annex.R4 dated 8.3.83). The Director Census Operations, Rajasthan, vide his letter dated 20.4.83, had furnished the requisite information regarding such ad hoc staff to the Registrar General and the names of the respondents were included therein. Such consideration however, which was in consultation with the Deptt. of Personnel & Training Govt. of India, took time and it culminated in the issue of letter dated 11.3.91 by which guidelines were conveyed regarding regularisation of ad hoc appointees, the respondents Nos.3 to 35 were screened by the Screening Committee constituted in view of the instructions contained in the letter dated 11.3.91 and thereafter, they were regularised.

13. Further according to the respondents, the services of private respondents Nos.3 to 35 have not been regularised with

retrospective effect i.e. from the date of their initial appointments but from the dates of the issue of orders namely 14.3.1991 and 10.3.1992. However, by virtue of the provisions contained in letter dated 11.3.91, these respondents were given benefit of their past ad hoc service for the purposes of seniority and eligibility to promotion to higher scale. The policy laid down in the letter dated 11.3.91 is just, equitable, legal, and constitutional. The fact that the private respondents who were ad hoc employees had rendered about 10 years service had to be considered from a human angle. It was not necessary to place the private respondents on probation as they had already completed 9 to 10 years of service as Computer. Confirmation cannot be the basis of determination of seniority and the length of continuous service in the grade is a valid criterion for determining seniority. The applicants had been promoted as Computer from 16.10.1990 on temporary basis and had put in only about 4 years service and therefore, cannot be considered to be senior to the respondents. The allegation that the respondents had managed their regularisation on the basis of a favourable recommendations from an officer at Jaipur has been denied. The contents of Annex.A19 dated 12.11.91, which is a letter from the then Deputy Director Census Operations, Jaipur, only sought clarifications and directions from the Registrar General and the applicants were not entitled to get possession of that letter in their official capacity. The validity of the order dated 10.3.91 (Annex.A15) to regularise the services of the employees appointed on ad hoc basis from a prospective date and to count their past service for seniority and promotion has been upheld by this Bench of the Tribunal vide order dated 15.12.93 passed as a common order in O.A.No.38/93 - Vijay Kumar Juneja & Anr. Vs. Union of India & Ors and O.A No.58/93 - Heera Lal Mehra & Anr. Vs. Union of India & Ors (Annex.F5).

14. Further according to the respondents, the letter dated 18.2.91 did contain conditions about the regular appointment of the Computer appointed on direct recruitment but it is always open to the government to change the conditions for the benefit of the employees concerned and to remove hardship to the persons concerned.

15. The official respondents have further stated that the representations submitted by the applicants against the provisional seniority list were duly considered by the official respondents in accordance with the instructions issued by the Registrar General of India and the final seniority list dated 12.4.'92 was proper, just and legal.

16. Regarding Shri P.C.Bairwa, one of the four applicants, the facts are slightly different and these have been summarised above. The reply filed by the official respondents in his case deals with those separate facts but it does not make any material difference with regard to the case of Shri Bairwa.

17. On behalf of the private respondents Nos.3 to 35 except respondents Nos.6 and 18, what has been stated in the reply is more or less the same as stated by the official respondents. In addition, however, they have also relied upon the judgment of the Hyderabad Bench of the Tribunal in O.A.No.108/90 - N.P.Shivaprasad Naidu & Ors. Vs. Union of India & Ors. passed on 4.12.90 and have marked it as Annex.B2 by which the applicants in that case who were direct recruits on the post of Computer were directed to be regularised on the said post with all consequential benefits. On behalf of the remaining private respondents, no reply has been filed.

18. During the arguments, the learned counsel for the applicants, apart from reiterating the facts and arguments stated in the applications, stated that facts mentioned in the judgment of the Hyderabad Bench of the Tribunal are different from those

in the present case and therefore the judgment of the Hyderabad Bench of the Tribunal will have no applicability. The persons recruited as Computers at Hyderabad had been given exemption from appearing before the Staff Selection Commission (SSC) whereas the respondents appointed as Computers at Jaipur were to appear before the SSC but the Jaipur office dispensed with that requirement. In this connection, the learned counsel for the applicants specifically drew our attention to Anxx.A20 dated 17.9.80 wherein there is a reference to instruction issued by the Registrar General that for regularisation of such Computers they should pass the examination conducted by the SSC. As regards the judgment of this Bench of the Tribunal in O.A. Nos.38/93 and 58/93 delivered on 15.12.93, the learned counsel for the applicant stated that the points raised by the present applicants were not considered. In that judgment, it was mentioned that the applicants therein were also appointed on ad hoc basis whereas the applicants in the present case were not appointed on ad hoc basis. He cited before us the judgment of the Hon'ble Supreme Court in State of West Bengal & Ors. Vs. Aghore Nath Dey & Ors, JT 1993(2) SC 590 wherein, according to him, it has been laid down that seniority would be counted from the date of regularisation. He next cited the judgment of the Hon'ble Supreme Court in G.P.Doval & Ors. Vs. Chief Secretary, Govt. of U.P & Ors. A.I.R. 1984 SC 1527, wherein the Hon'ble Supreme Court, according to him, held that if appointment is as per rules, then seniority would be reckoned from the date of appointment. He next cited the judgment of the Hon'ble Supreme Court in P.Ganesh Rao & Ors. Vs. State of Andhra Pradesh & Ors. wherein according to him the Hon'ble Supreme Court held that amended Rules can have only prospective application. Therefore, if direct recruitment was provided to the post of Computer in 1984 Rules, it cannot be said that the private respondents were appointed to the post of Computers in accordance with the Rules, when there was no

provision for appointment by direct recruitment to the post of Computer in the 1979 Rules. He concluded by saying that the applicants are not seeking quashing the appointment of the respondents as Computers regardless of the irregularities committed by the official respondents in appointing them but they are seeking only seniority over the private respondents in view of the position that the grant of seniority to them from the date of their initial appointment by ignoring their ad hoc service was irregular.

19. The learned counsel for the official respondents Nos.1 & 2, began by explaining the set up of the Census organisation and referred to instructions Anxx.R2 dated 4.6.80 issued by the Registrar General, wherein no objection had been granted to the Director of Census Operations, Rajasthan for making direct recruitment on the post, amongst others, of Computer but purely on temporary and ad hoc basis, if the vacancies cannot be filled-up on a regular basis in accordance with the Recruitment Rules. As per the Recruitment Rules of 1979, vacancies of Computers were to be filledup by promotion to the extent of 75% and by transfers on deputation etc to the extent of 25% but a large number of vacancies arose in connection with the 1981 Census operations and persons were not available to fill-up the vacancies of Computers in accordance with the Recruitment Rules of 1979. Although, there was no provision in the Rules of 1979 for making any direct recruitment to the post of Computer yet there was no bar to such recruitment either. There was thus a gap in the Recruitment Rules which could be filled-up by executive instructions which in this case were contained in Anxx.R2, referred to above. The learned counsel for the official respondents cited the following rulings to show that executive instructions can be issued to fill-up gap in Rules, etc.

- i) 1992(1) SLJ 75 SC Comptroller and Auditor General of India

Vs. Mohan Lal Mehrotra & Ors.

ii) 1991(1) SLJ (CAT) 211 Full Bench Decision, Dr. Bhupinder Singh, IPS Vs. Union of India & Ors.

iii) 1979 SLJ 278 SC District Registrar, Palghat & Ors. Vs. N.B. Koyyakutty.

iv) V.C. David & Anr. Vs. State of M.P, Full Bench Case, 1995

(30) ATC 6

The instructions contained in Annx.R2 can be taken as supplementing the rules by providing for direct recruitment on the post of Computer. It can also be taken as a direction regarding relaxation of the Rules by providing for direct recruitment on the post of Computer. Further according to him, Annx.A15 dated 11/10/3.91 was a policy decision taken in consultation with the Deptt. of Personnel & Training, to provide for regularisation of services of direct recruit ad hoc Computers from a prospective date after screening on the basis of the assessment of their Annual Confidential Report. It has further been laid down in the said Annexure that the ad hoc service rendered by such Computers may be allowed to be counted for the purpose of seniority as well as eligibility for promotion to the higher grades. The direct recruits had undergone a written test and an interview before their appointment and there was screening of their Confidential Records before they were regularised. Therefore, according to the learned counsel for the official respondents, there was no difference between the applicants' promotion and regularisation on the one hand and appointment and regularisation of the respondents on the other hand. As regards counting of ad hoc service for the purpose of seniority, the learned counsel for the official respondents cited the following judgments in support of his argument that such service could be counted for seniority:

i) Narender Chadha & Ors. Vs. Union of India & Ors. 1986(1)

SLJ 287 SC.

ii) Direct Recruit Class-I Engineers Officers' Association & Ors. Vs. State of Maharashtra & Ors. 1990(2) SLJ 40 SC.

iii) Keshav Chandra Joshi & Ors. Vs. Union of India & Ors. 1991(2) SLJ 42 SC.

According to the learned counsel for the official respondents, the case of the private respondents falls within the proposition (A) laid down in Direct Recruit Class-II Engineers Officers' Association's case. In this judgment, the principle laid down in the case of Narendra Chadha has also been upheld by the Hon'ble Supreme Court. If the principle laid down in the judgment of the Hon'ble Supreme Court in Aghore Nath Dey's case is applied, the case of the applicants falls within proposition (A) of the Direct Recruit Class-II Engineers Officers' Association's case as also proposition (B). He concluded by stating that Annex. E5, which is the judgment dated 15.12.93 of this Bench of the Tribunal is a judgment in rem and therefore it has to be followed. In this judgment, the Tribunal has held that respondents (direct recruits) would be senior to the applicants as they were appointed earlier though their orders of regularisation were passed on 14.3.'91, whereas the orders of regularisation of the applicants were passed in January 1991. The import of the judgment is that since the direct recruits were initially appointed on an earlier date and were subsequently regularised, they would rank senior to the applicants as reckoned from the date of their appointment.

20. The learned counsel for the private respondents Nos. 3 to 35, except respondents No. 6 and 18, stated that the applicants as well as the respondents were initially appointed on ad hoc basis. In this connection, he drew attention to order Annex. M which is the order of appointment of 3 of the applicants excluding Shri P.C. Bairwa, which shows that they were initially appointed as

LDCs on ad hoc basis. The Staff Selection Commission had granted exemption in respect of direct recruit Computers from the process of selection as prescribed by it. Further, according to him even as Asstt. Compilors, the appointments of the applicants were temporary in nature and these also should have been through the Staff Selection Commission, but were not through SSC. Thus the applicants were in no better position than the respondents. It is a settled position that if initial appointment itself is irregular, subsequent promotion would also be irregular. This initial deficiency or irregularity in appointment of 3 of the applicants as LDCs makes their all subsequent appointments and promotions irregular. In the judgment of Hyderabad bench of the Tribunal (Annx.R2 annexed to the reply of the private respondents) facts are almost identical to those of the present case, and therefore, that judgment is applicable in the present case also. In the said judgment, the Tribunal had directed that the services of direct recruit Computers should be regularised and they should be granted all consequential benefits such as seniority, etc. The learned counsel for the private respondents further stated that Annx.R4 annexed to the reply of the official respondents shows that the process of regularisation of respondents was initiated in 1983. The regularisation was eventually done in 1991 for no fault of the private respondents. The delay in regularisation was administrative in nature for which the respondents could not be faulted. Therefore, in terms of para 13 of the Direct Recruit Class-II Engineers Officers' Association's case, their appointments were in the nature of stop-gap arrangements upto 1983 but not thereafter. Finally, he stated that neither the applicants nor the private respondents had been appointed as Computers through the process of selection by the Staff Selection Commission, whereas the private respondents had superior educational qualifications as they were

graduates in different fields.

21. The counsel for the private respondent No.6 relied upon the arguments advanced on behalf of the official respondents and the private respondents represented by Shri S.K.Vyas, to support his case. None appeared for respondent No.18.

22. Shri P.V.Calla appearing for the applicants, stated by way of rejoinder to the submissions of the learned counsel for the respondents that the admitted position/^{was} that there was no express provision for direct recruitment in the 1974 Rules as amended by 1979 Rules and that such express provision appeared for the first time in the 1984 Rules. Shri Bairwa was promoted as Computer in 1982, whereas other 3 applicants were promoted as such in October 1990. The respondents Nos.3 to 35 were appointed as Computers from 19.2.81 onwards (Annex.A18A). Orders regularising the respondents as Computer were passed after the applicants had been appointed as Computers on a regular basis. Therefore, the private respondents could not be given a better status or higher seniority than the applicants. As regards the argument of Shri S.K.Vyas that the status of the applicants is no better than that of the private respondents, he stated that this has no meaning because private respondents have not yet been confirmed on the post of Computers, whereas the applicants have been declared to have completed the period probation satisfactorily. Also 3 of the 4 applicants were called to appear in the selection test for Asstt.Complibor which they passed but on selection were offered the post of LDCs, for no fault of theirs. However, one of the applicants, Shri P.C.Bairwa, was directly appointed as Asstt. Complibor. Thus, it could not be said that the applicant had an inferior status compared to the private respondents.

23. We have heard the learned counsel for the parties, have perused the records and the judgments cited before us. The essential facts which emerge with regard to the position of the

applicants is that 3 of them except Shri Bairwa were initially appointed as LDCs on ad hoc basis, and were subsequently appointed as Asstt. Compilers vide Anxx.A4 dated 11.10.'82 on a temporary basis, whereas Shri E.C.Bairwa was appointed as Asstt. Compiler directly vide order dated 24.4.'80 (Anxx.A3). All the 4 applicants were declared permanent as Asstt. Compilers vide order dated 26.5.'89 (Anxx.A5) and were promoted as Computers on a temporary basis vide order dated 10.10.'90 (Anxx.A8) except Shri Bairwa who was promoted as such on ad hoc basis on 31.12.'82 and on regular basis on 20.8.'90. All the applicants were declared to have completed their probation successfully vide order dated 12.4.'93 (Anxx.A10). As regards the private respondents, they were appointed as Computers on direct recruitment basis vide order dated 18.2.'81 (Anxx.A18A) and other orders subsequently passed, on temporary and ad hoc basis, with no claim to indefinite continuance, no claim for regular appointment and with a rider that the services rendered by them on ad hoc basis will not count for seniority and promotion to higher grade. Subsequently by order dated 14.3.'91 (Anxx.A17), the private respondents were declared as regular w.e.f. the date of issue of those orders. By order dated 17.6.'91, all the Directors of Census Operations were informed that although the services of the ad hoc appointees are being regularised for a prospective date, their seniority in respective grades and also eligibility for promotion to the next higher grade would count from the date of their initial appointment on ad hoc basis. In other words, it was clarified in the said letter, that all the benefits relating to seniority, promotion, etc. will accrue to them as if their services have been regularised w.e.f. the date of their ad hoc appointment (Anxx.A16). On 20.8.'90 and 10.10.'90, when the applicants were promoted as Computers on a regular basis, the private respondents were still working as Computers on ad hoc basis without any order of regularisation or counting of their past ad hoc service for seniority, etc, being issued. The orders of their regularisation were issued in March '91 and the orders regarding *giant of*

benefit of past ad hoc service for seniority was issued on 17.6.91. Thus at least on the date of their appointment as Computers, the applicants were to be treated as Computers appointed on a regular, though temporary, basis. However, in our view, the initial appointments of 3 of the applicants as LDCs on ad hoc basis would not detract from their position as Computers as on 10.10.90. On 10.10.90, the private respondents were ad hoc Computers. Question is whether the subsequent orders passed regularising them by order dated 14.3.91 and granting them seniority from a retrospective date by letter dated 17.6.91 should be allowed to improve their position retrospectively and put them on a better footing than the applicants. This is the essential issue to be decided by us.

24. The judgments of the Jaipur and Hyderabad Benches of the Tribunal have been relied upon by the respondents in support of their case. Both these judgments relate to seniority of employees in the office of the Director of Census Operations. All the facts relating to the judgment of Jaipur Bench of the Tribunal are not clear from the judgment itself but there is an observation in para 12 of the said order that both the applicants and the respondents were ad hoc employees and both continued in employment for a long time on ad hoc basis against the rules or against the circulars (emphasis supplied). However, as far as the present case is concerned, the applicants were appointed as Asstt. Compilers in October 1983 or earlier on a regular basis whereas the private respondents were appointed as Computers on ad hoc basis in February 1981 and thereafter. But the latter continued to be ad hoc till orders regularising their services were passed on 14.3.91. Thus, it would not be proper to follow the decision in the judgment of the Jaipur Bench of the Tribunal. As regards the judgment of the Hyderabad Bench of the Tribunal, this was rendered on applications filed by direct recruit Computers who were recruited more or less in the same manner in

which the Computer-respondents in the present applications were recruited. Their claim before the Tribunal was that they had rendered long years of service as ad hoc Computers and therefore they deserved to be regularised. The government had replied that their case for regularisation was under process. However, the Tribunal directed that since those applicants had been regularly working under the respondents, they were entitled to regularisation in service as Computers with effect from their initial appointment. Hence, directions were issued to the respondents to declare that all the applicants were entitled to regularisation on their service as Computers with effect from the date of their initial appointment. There was a further direction that all consequential benefits such as seniority should be conferred on them. It does not appear from this judgment that there were any private respondents in this case i.e. other employees who were to be affected by the seniority to be granted on the basis of the directions of the Tribunal. In the case decided by the Hyderabad Bench the seniority was yet to be granted and particularly the question of seniority of the direct recruit Computers to be regularized on the directions of the Tribunal vis a vis the promotee Computers, if any, was yet to be determined. It is not known if the seniority of promotee Computers would be affected by the seniority granted to the direct recruit Computers in terms of the judgment of the Tribunal. An issue arises before a Court of Law only when it is raised by an affected party. In the judgment of the Hyderabad Bench of the Tribunal, the promotee Computers had not appeared as affected parties. Also the direction of the Tribunal regarding grant of seniority to direct recruit Computers is in general terms and such grant of seniority need not necessarily be at the expense of promotee Computers. Therefore, in our view, this judgment will also be of no help to the respondents' case. The

issues arising in the present application did not seem to have arisen in the application decided by the Hyderabad Bench of the Tribunal. We are, therefore, of the view that this judgment also will have no applicability in the present case.

25. We have therefore to decide the present case on the basis of the facts relating to these four applicants and the private respondents and on the basis of the arguments advanced and the law as laid down by the Hon'ble Supreme Court.

26. Admittedly, the Rules of 1974 read with amendments of 1979 did not provide for direct recruitment of Computer. Rules of 1979 are only amendment rules which amended certain provisions of 1974 Rules, which were also placed before us during the arguments and which have been taken on record as Court Document-1. Thus the Rules of 1974 and of 1979 have to be read together. The learned counsel for the official respondents had drawn our attention during the arguments to item 7 of the Rules which provided that where the Central Govt. is of the opinion that it is necessary or expedient to do so it may, by order, for reasons to be recorded in writing, relax any of the provisions of these Rules with respect to any class or category of persons or posts. Therefore, it was argued, the government was deemed to have relaxed the relevant provision to provide for direct recruitment of Computer in view of the power to relax the rule conferred on the Central Govt. Undoubtedly there is a power conferred on the Central Govt. to relax the provisions of these Rules. Question however arises whether relaxation could include within its ambit the power to do away with a particular rule altogether or to introduce a new rule. There is a mode of appointment to the post of Computer provided in the Rules and it does not include direct recruitment. A new category, of direct recruitment, was sought to be introduced into these Rules by exercising the power of relaxation, if the learned counsel for the respondents is to be

believed. This provision, in our view, cannot be said to be a mere relaxation of the Rules but it amounts to providing for a new mode of recruitment altogether. We, therefore, cannot accept the view that provision for direct recruitment was made in relaxation of the powers conferred on the Central Govt, regarding relaxation of any provision of the Rules. Moreover, the power to relax the Rules would be with regard to an existing provision whereas direct recruitment is a new provision or a new mode of appointment altogether. In these circumstances, we hold that direct recruitments to the post of Computers could not be said to have been made by exercising the powers to relax any of the provisions of the Rules. Therefore, appointment of Computers on a direct recruitment basis in February 1981 and onwards and before the introduction of the provision regarding direct recruitment in 1984 Rules was de hors the Rules existing at the relevant time.

26. It was also argued by the learned counsel for the official respondents that there was in any case a gap in the Rules regarding direct recruitment inasmuch as there was neither a provision authorising direct recruitment nor a provision banning it. Therefore, the government could issue executive instructions to fill up this gap in the Rules. Judgments were cited in support of this view. We accept the position that the gap in the Rules can be filled up by executive instructions. Question however is, whether nonprovision of direct recruitment in the 1974 Rules read with amendments of 1979 was a gap. To argue that the absence of such a provision was a gap in the Rules would stretch the definition of a gap too far. We have already held above that in the absence of the provision of direct recruitment in 1974 Rules read with the amendments of 1979 introducing direct recruitment would mean introducing a new provision altogether. By the same logic, therefore, it cannot be said that the absence of this provision was a gap which could be filled up. There was provision

of direct recruitment to various other posts mentioned in the Rules of 1974 read with the amendments of 1979 but there was no such provision with regard to direct recruitment on the post of Computer. This omission in our view was deliberate. It is significant to note that in the 1974 Rules there was a specific provision for direct recruitment to the post of Computer to the extent of 25% of vacancies and this provision for direct recruitment was omitted by the 1979 amendments to the Rules. Hence on no account can it be argued that the provision of direct recruitment was either by the method of relaxation of the provisions of any of the existing Rules or it was with a view to filling up any gap in the Rules. This re-enforces our view that the appointment of Computers on direct recruitment basis was not in accordance with the Rules. We, therefore, hold accordingly.

27. We may now consider the various judgments cited before us to determine whether it was proper for the respondents to count the ad hoc service rendered by the private respondents for seniority in the post of Computer, after regularising their services in March 1991. The judgment in Direct Recruit Class-II Engineers Officers' Association's case lays down certain conclusions regarding determining seniority. The first two conclusions as stated in para 44 of the above mentioned judgment of the Hon'ble Supreme Court which are directly relevant here are reproduced below:

"(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the

procedure laid down by the rules but the appointed continues in the post uninterruptedly till the regularisation of his service in accordance with the rules the period of officiating service will be counted."

The decision in Direct Recruit Class-II Engineers Officers' Association's case was delivered by a five Judges Bench of the Hon'ble Supreme Court. This decision and particularly the two conclusions referred to above were further interpreted by the Hon'ble Supreme Court in the case of Aghore Nath Dey & Ors. The brief and relevant facts of the case of Aghore Nath Dey were that 40% of the vacancies in the permanent posts of Asstt.Engineers were to be filled up by direct recruitment on the basis of results of a competitive examination to be conducted by the West Bengal Public Service Commission, 40% by selection from amongst directly recruited temporary Asstt.Engineers, who had rendered 2 years satisfactory service on selection to be made by the West Bengal Public Service Commission and 20% by promotion of confirmed Overseers Estimators. The private respondents in the appeals before the Hon'ble Supreme Court were those who had been appointed as Asstt.Engineers on ad hoc basis and their initial ad hoc appointment was extended periodically upto 26.2.1980. The Govt. took a decision on 26.2.80 to regularise their service as Asstt.Engineers without their being selected for regular appointment by the Public Service Commission. They were absorbed as temporary Asstt.Engineers and under a rule framed under Article 209 of the Constitution their seniority as temporary Asstt.Engineers was reckoned from 26.2.1980. It was further provided that all persons appointed regularly in accordance with the Rules prior to 26.2.'80 as Asstt.Engineers would rank above the ad hoc appointees so absorbed from 26.2.'80. The private respondents in the appeals before the Hon'ble Supreme Court wanted that their seniority should be reckoned not only from

26.2.'80, as had been done, but from the date of their initial ad hoc appointment made temporarily. The Govt. had rejected their claim of seniority with effect from the date of their initial ad hoc appointment. The Hon'ble Supreme Court analysed the conclusions (A) and (B) laid down in the Director Recruit Class-II Engineers Officers' Association's case and held that conclusion (B) cannot cover cases which are expressly excluded by conclusion (A). As per Conclusion (A), to enable seniority to be counted from the date of initial appointment and not from the date of confirmation, the incumbent of the post has to be initially appointed "according to rules", and corollary to conclusion (A) states that where the initial appointment is ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such posts cannot be taken into account for considering the seniority. Thus, according to the Hon'ble Supreme Court, conclusion (A) expressly excludes the category of cases where the initial appointment is only ad hoc and not according to rules, being made only as a stop-gap arrangements. The Hon'ble Supreme Court held that the case of the private respondents in the appeal before them squarely fell within the corollary set out in conclusion (A). The Hon'ble Supreme Court also examined the question whether the case before them also fell within conclusion (B) and held that conclusion (B) cannot include within its ambit those cases which are expressly covered by conclusion (A), since the two conclusions cannot be read in conflict with each other. The Hon'ble Supreme Court also examined the question regarding the category of cases which would be covered by conclusion (B), excluding therefrom the cases covered by the corollary to conclusion (A). The Hon'ble Supreme Court held that conclusion (B) was added to cover a different kind of situation wherein the appointments are otherwise regular, except for the deficiency of certain procedural requirements laid down by the Rules. In such cases, the deficiency in the procedural requirements has to be

cured at the first available opportunity and the appointee must continue in the post till regularisation in accordance with the rules. The Hon'ble Supreme Court held that the claim of the private respondents in the appeal before them for treating their entire period of service prior to 26.3. '90 as regular service for the purpose of seniority was untenable. The further claim that their initial ad hoc appointment must be treated as having been made in accordance with the Rules since the selection by an alternative mode, namely by a Committee of 5 Chief Engineers was resorted to on account of the emergency, cannot be accepted. Since these appointments on ad hoc basis were not regularised in accordance with the provisions of the rules even subsequently, the initial ad hoc appointment could not be treated to have been made according to the applicable rules.

27. When we view the facts of the case before us in the light of the facts in Aghore Nath Dey's case read with conclusions (A) and (B) of Direct Recruit Class-II Engineers Officers' Association's case, we find that these two judgments have a direct applicability to the case before us. As far as the private respondents are concerned, they were initially appointed on ad hoc basis without regard to the provisions of the Rules under which direct recruitment was not provided. There was a further requirement that eventually if they were to be continued beyond 1982-83, they had to be cleared through the procedure of the Staff Selection Commission. This requirement was dispensed with when they were regularised in March 1991. They were regularised on the basis of screening for which there was no provision in the Rules. It cannot therefore be said that their initial appointment was regular in the same manner in which the appointment of applicants to the post of Computer was. In Aghore Nath Dey's case, seniority was granted to ad hoc Asstt. Engineers with effect from the date of their regularisation and they were not satisfied

with that seniority and wanted it from the date of their initial ad hoc appointment which was earlier than the date from which they were regularised. The private respondents in the case before us were granted seniority from a date much earlier i.e. about 10 years earlier, than the date of their regularisation and w.e.f. the date of their initial ad hoc appointment. This was clearly irregular if viewed in terms of the principles laid down in Direct Recruit Class-II Engineers Officers' Association's case and Aghore Nath Dey's case, by the Hon'ble Supreme Court.

28. We have carefully perused the judgments of the Hon'ble Supreme Court in G.P.Daval's case and P.Ganesh Rao's case, ~~delivered by the Hon'ble Supreme Court~~ and we find that these two judgments do not have any direct applicability to the cases of the applicants. The learned counsel for the respondents relied upon the judgment of the Hon'ble Supreme Court in Keshav Chandra Joshi's case, which in our view does not help the respondents. As stated by the Hon'ble Supreme Court in para 16 of the judgment in V.Sreenivas Reddy's case discussed below, the ratio of Keshav Chandra Joshi's case is that seniority is to be counted from the date on which appointment is made to the post in accordance with the rules. The learned counsel for the official respondents also relied upon the judgment of the Hon'ble Supreme Court in Narender Chadha's case. With regard to this judgment, the Hon'ble Supreme Court observed in para 20 of the judgment in Aghore Nath Dey's case that Narender Chadha's case cannot be construed to apply to cases where the initial appointment was not according to rules. Respectfully following these observations of the Hon'ble Supreme Court, we hold that Narender Chadha's case would not be applicable to the case before us.

29. We may now refer to the judgment of the Hon'ble Supreme Court in V.Sreenivasa Reddy and Ors. Vs. Govt. of Andhra Pradesh & Ors, (1995) 29 ATC SC 495.

30. Appellants in this case were temporarily appointed as Asstt. Executive Engineers between 6.3.'80 and 19.5.'80 under rule 10(a)(i)(1) of the Andhra Pradesh State and Subordinate Services Rules by the Chief Engineer to the A.P.Panchayat Raj Engineering Service. Rule 10(a)(i)(1) as aforesaid provided that where it is necessary in the public interest to fill emergently a vacancy in the post borne on the cadre of a service class or category and if the filling of such vacancy in accordance with the rules is likely to result in undue delay, the appointing authority may appoint a person temporarily otherwise than in accordance with the said rules. Under sub-rule (iv) of Rule 10(2) such temporary appointee shall not be regarded as a probationer in such service, class, or category or be entitled by reason only of such appointment to any preferential claim to future appointment to such service, class or category. Under Rule 23(a), if such temporary appointee is subsequently appointed to any service etc. in accordance with the rules, he shall commence his probation from the date of subsequent appointment or such earlier date as the appointing authority may determine. On the basis of notification issued by the A.P. Public Service Commission in 1981, candidates regularly selected by the PSC had become available for appointment as Asstt. Executive Engineers and were so appointed on 14.5.'84 and were put on probation under Rule 5 of the aforesaid Rules. Earlier by O.M dated 29.8.1983 the Govt. directed regularisation of services of temporary appointees appointed between 10.8.'79 and 5.3.82 without subjecting them to any test, from the date subsequent to the last regular candidates appointed from the list of successful candidates drawn up by Andhra Pradesh PSC based on the examination held or from the date of their temporary appointment whichever is late. The Chief Engineer, Panchayat Raj vide proceeding dated 11.6.'84, exercising the power under the said OM dated 29.8.'83 regularised the temporary

service of the appellants with the rider that they shall not be entitled to seniority as Asstt. Executive Engineers on the basis of their regular appointment and given seniority from the date of their initial appointment. Subsequently the Govt. accepted the plea of the PSC candidates that they were entitled to be ranked senior to the temporary appointees, as the former had been appointed on 14.5.'84 and the latter became members of service only on their regularization on 11.6.'84 and therefore temporary appointees (appellants) were placed below PSC candidates. The appellants challenged the Govt's action before the Andhra Pradesh Administrative Tribunal which however rejected their plea. Hence, the appeal of the temporary appointees before the Supreme Court.

31. The Hon'ble Supreme Court observed that the temporary appointees were not appointed on the basis of selection by PSC and therefore their appointments were made otherwise than in accordance with the Rules and therefore they cannot be members of service unless they are appointed to the service in accordance with the Rules. The PSC candidates became members of the service from the date they started discharging the duties of the post borne on the cadre. The Hon'ble Supreme Court further observed as under:

"14. It is now well settled law that appointment/promotion must be in accordance with the Rules, direct recruitee takes his seniority from the date on which he starts discharging the duty of the post borne on the cadre while a temporary appointee appointed de hors the rules or on ad hoc basis or to a fortuitous vacancy gets seniority from the date of regular appointment."

"15. It is settled law by the judgment of the Constitution Bench in Direct Recruit Class-II Engineers Officers Association Vs. State of Maharashtra that appointment in accordance with rules is a condition precedent to count seniority. Temporary or ad hoc or fortuitous appointments etc. are not appointments in

accordance with the rules and the temporary service cannot be counted towards the seniority. See Delhi Water Supply & Sewage Disposal Committee Vs. R.K.Kashyap, Masood Akhtar Khan Vs. State of M.P, D.N.Agrawal Vs. State of M.P, State of T.N Vs. E.Paripoornam, Excise Commissioner, Karnataka Vs. V.Sreekanta."

"16. In Keshav Chandra Joshi Vs. Union of India, the seniority was to be counted from the date on which appointment was made to the post in accordance with the rules. The previous temporary service should be considered to be fortuitous. In Union of India Vs. S.K.Sharma, this Court held that the approval of the UPSC for continuation in ad hoc post for the purpose of granting pay & allowances would not amount to regular appointment and ad hoc services cannot be counted for determining seniority by the selection by UPSC vide Vijay Kumar Jain Vs. State of M.P. In Keshav Chandra Joshi case this Court held that employee would become a member of service only from the date of his appointment according to rules. In A.N.Sehgal Vs. Raje Ram Sheoran, this Court held that where statutory rules link seniority with confirmation seniority cannot be fixed according to length of service and confirmation to a post borne on the cadre is a condition to get seniority. In the State of West Bengal Vs. Aghore Nath Dey, it was held that if ad hoc service is followed by regular service, the benefit of ad hoc service is not admissible if the appointment was in violation of rules. In D.N.Agrawal Vs. State of M.P, it was held that seniority cannot relate back to the date of temporary appointment".

32. The Hon'ble Supreme Court further held in this judgment that the temporary appointees though have the insignia of appointment under Rule 10(a)(i)(l), yet they are not members of the service until they are duly appointed and their services subsequently regularised, they get a date later to regular candidates, appointed in accordance with the Rules. The Hon'ble

Supreme Court also tested the validity of the appellants' contention on grounds of equity and held that the temporary appointees cannot be put on a higher pedestal over the PSC candidates who stood the test of merit and became successful and secured ranking according to the merit in the approved list of candidates prepared by the PSC. Hence the Hon'ble Supreme Court dismissed the appeals of temporary appointees.

33. The position emerging from the above mentioned judgment of the Hon'ble Supreme Court has been examined in detail because in our view this judgment has a direct application in the matters before us. There, the question was regarding the relative seniority between the PSC appointees, who were selected by a regular process of selection in accordance with the rules, and the temporary appointees appointed *de hors* the rules. In the case before us, the question is of relative seniority between the regularly selected promotee candidates and the temporary direct recruits appointed on *ad hoc* basis *de hors* the Rules. Therefore, in our view, the ratio of the above judgment of the Hon'ble Supreme Court will fully cover, and apply to, the controversy in the matter before us. Since the direct recruits were initially appointed on *ad hoc* basis *de hors* the rules and their appointments were regularised from 14.3.91, they could not be given seniority from a retrospective date, i.e. from the date of their initial *ad hoc* appointment so as to be treated as senior to the applicants who had been appointed to the post of Computer on a regular basis on dates earlier than the date from which the respondent direct recruit Computers were regularised.

34. In the above judgment of the Hon'ble Supreme Court all the other judgment on the subject have been considered. We are of the view, after an analysis of the various judgments of the Hon'ble Supreme Court on the subject that the case of the respondents falls under corollary to conclusion (A) of the Direct Recruit

Class-II Engineers' Officers' Association's case and therefore, the private respondents cannot be given seniority in the post of Computer from the initial date of their appointment on ad hoc basis. We also have carefully considered all other submissions made by the respondents but we find no force therein. Maybe there was an urgent need to fillup vacancies of Computers and therefore, ad hoc recruitment de hors the rules was resorted to but that fact would not entitle the private respondents to seniority over the regularly appointed promotee Computers. Also no permanent exemption was granted from Staff Selection Commission in so far as the regularisation of private respondents was concerned as is evident from Anxx.P4 dated 10.3.'83, being the letter from the Registrar General to Directors of Census Operations which states that it was the requirement of Staff Selection Commission that the appointment of ad hoc appointees can be regularised only through Staff Selection Commission. No doubt a process of screening was adopted before regularising their services but there was no provision in the Rules for regularisation on the basis of screening. In this connection the observations of the Hon'ble Supreme Court in Aghore Nath Dey's case relating to regularization of services of the ad hoc appointees in that case on the basis of selection by an alternative mode namely a Committee of 5 Chief Engineers, are relevant. That process of selection was not considered as acceptable (para 26 above). Respectfully following the judgment of the Hon'ble Supreme Court, we hold that the process of regularisation on the basis of the screening of the records of private respondents cannot be considered to be a process of regular appointment in accordance with the Rules. Even though the process of regularisation was resorted to in consultation with the Deptt. of Personnel & Training, yet that fact would not entitle the private respondents to higher seniority over the regular appointees to the post of Computer in accordance with the

Recruitment Rules. The fact that the private respondents had completed 10 years of ad hoc service and therefore, their cases were entitled to be considered from a human angle calls for no particular comments but grant of seniority from the date of their initial appointment on ad hoc basis and that too over the regularly appointed Computer cannot be justified even on this account.

35. The issue requires to be discussed from the point of view of equity as well. In this connection, we may refer to the factual position analysed in para 23, above. As stated in the aforesaid para, on 10.10.90, the private respondents were still ad hoc Computers and it was only by orders dated 14.3.91 passed subsequently that they were granted seniority from a retrospective date. Thereby the position of the applicants who were already functioning as Computers on a regular basis on 10.10.90, was affected. It was not proper to allow the direct recruit Computers who were only ad hoc appointees to steal a march over the regularly appointed Computers who on the date of their regular appointment had a superior position to those of ad hoc direct recruit Computers. Apart from the legal considerations discussed above, in the light of the judgments of the Hon'ble Supreme Court, we hold that even on the ground of equity, the private respondents are, therefore, not entitled to a higher seniority than the applicants.

36. In view of the above discussion, the facts and circumstances of the present case and after carefully considering all the arguments put forward on behalf of the respondents, we hold that the respondents Nos. 3 to 35 cannot be granted higher seniority than the applicants, although their regularisation on the post of Computer is not questioned in view of the fact that the applicants themselves have not called in question the regularisation of ad hoc Computers from the date from which

orders of their regularisation were passed. We, therefore, set aside the final seniority list issued vide order dated 12.4. '93 (Annex.A1) in so far as it grants higher seniority to respondents No.3 to 35 over the applicants and direct that a fresh seniority list should be drawn in which these respondents are placed below the applicants. We also quash the communication dated 12.4. '93 (Annex.A2) by which the applicants were informed that their representations with regard to their seniority had been rejected. The applications are allowed accordingly with no order as to costs.

(Ratan Prakash)

Member (Judl.).

(O.P. Sharma)

Member (Adm.).