

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.1719/2012
M.A. No.1427/2012

Order Reserved on: 15.12.2016

Order pronounced on:20.02.2017

**Hon'ble Dr. K.B. Suresh, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)**

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-Applicants

-Versus-

Union of India & Ors through:

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- 2 The Secretary
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-Respondents

(By Advocate Shri R.N. Singh and Shri A.K. Behera)

O R D E R

Mr. K.N. Shrivastava, Member (A):

This Original Application (OA) has been filed by the applicants under Section 19 of the Administrative Tribunals Act, 1985, praying for the following main reliefs:

“(i) To quash and set aside the order dated 16.05.2012 and declare the action of respondents in giving retrospective seniority to the persons appointed on the basis of LDCE as illegal, arbitrary and violative of

fundamental rights under Article 14 & 16 of the Constitution of India.

ii) To quash and set aside the impugned order dated 02.05.2012 and seniority list dated 17.01.2012 of Section Officers as well as other relevant seniority.

iii) To direct the respondents to fix the seniority of all the Section Officers in the Ministry of External Affairs appointed whether by Departmental Promotion or by LDCE from the date of substantive appointment only in the cadre/Grade and not from the notional date of arising of vacancies.

iv) To declare the action of the respondents in processing or finalizing any panels, including the DPC conducted on 03.05.2012 for promotion of officers from the grade of Section Officers to Under Secretaries as illegal and unjustified."

2. Respondents No.1&2 are official respondents (Ministry of External Affairs), respondent No.3 is Union Public Service Commission (UPSC) and respondent No.4 to 123 are private respondents.

3. The controversy involved in the OA is regarding fixation of inter-se-seniority of Departmental Promotees (DPs), Direct Recruits (DRs) and Limited Departmental Competitive Examination (LDCE) promotees. The applicants belong to the category of DPs. Their main contention is that the inter-se seniority should be fixed from the date of substantive appointment only in the cadre/grade and not

from the notional date of arising of the vacancies from all streams of recruits to the posts of Section Officer.

4. The Ministry of External Affairs has promulgated Indian Foreign Service Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Rules, 1964 (in short, IFS (B) RCSP, Rules) to govern the service conditions of all IFS Group 'B' officers.

4.1 **Approved Service** under the IFS (B) RCSP, Rules is defined as under:

"b) "approved service

" in relation to any Grade means –

i) in respect of an officer recruited directly to that grade, period or period of regular service rendered in that grade, including period or periods of absence during which he would have held a post on regular basis in that grade but for his being on leave or otherwise not being available to hold such post, from the first day of July of year, following the year in which the examination for direct recruitment was held;

ii) in respect of an officer recruited to that grade through departmental examination, period or periods of regular service rendered in that grade including period or periods of absence during which he would have held a post on regular basis in that grade but for his being on leave or otherwise not being available to hold such post, from the first day of July of the year for which such examination was held;

iii) in respect of an officer recruited to that grade on the basis of length of service in the lower grade, period or periods of regular service rendered in that year, including period or periods of absence during which he would have held a post on regular basis in that grade but for his being

on leave or otherwise not being available to hold such post from the first day of July of the year for which recruitment was made:

Provided that where there is a delay of more than ninety days in joining on appointment in any of the cases mentioned in sub clauses (i), (ii) and (iii) above, such delay should not be due to any fault on part of the officers. @@.”

4.2 Rule-13 of IFS (B) RCSP, Rules defines quota for recruitment to the post of Integrated Grades II and III of general cadre, according to which, 20% of the vacancies in a recruitment year are to be filled through LDCE and the remaining 80% by seniority based promotions. The relevant part of this rule is extracted below:

“(i) twenty percent of the vacancies in a recruitment year shall be filled by persons to be promoted on the basis of Section Officers' and Stenographers' (Grade 'B' and Grade-

I) Limited Departmental Competitive Examination to be held by the Commission for this purpose from time to time; and

(ii) eighty percent of the vacancies shall be filled by persons to be promoted on the basis of seniority subject to the rejected of the unfit of the officers of the Grade IV of the General Cadre and Grade II of Cypher Sub-cadre who have rendered not less than eight years of approved service in any one Grade or both the Grades:”

4.3 Regarding fixation of seniority the relevant rule 21 (4) reads as under:

“(4) Subject to the other provisions of this rule, persons promoted or recruited earlier on the basis of earlier selection or recruitment shall be senior to those promoted or recruited on the basis of subsequent selection or recruitment.”

4.4 Rule 25 (1) and Rule 25 (6) (ii) deal with inter-se-seniority and the same are extracted below:

“*25.”Seniority inter se of the officers appointed to a Grade from different sources:-

(1) Integrated Grades II & III of the General Cadre : (i) The eligible persons in Grade IV of the General Cadre and Cypher Assistants of the Cypher Sub-Cadre shall be arranged in separate lists in the order of their relative seniority in their respective Grade. Thereafter the Departmental Promotion Committee shall select persons for promotion from each list upto the prescribed quota as indicated in Rule 13 and arrange all the persons selected from the two lists in a consolidated list. The relative seniority of persons in the consolidated list shall be determine according to rotation of vacancies among these two categories based on the prescribed quota for each category.

(ii) The relative seniority of persons -

(a) in the consolidated list referred to in sub-clause (i); and
(b) promoted on the basis of Section Officers' and Stenographers' (Grade 'B' and Grade -I) Limited Departmental Competitive Examination in terms of sub-rule (2) of rule 13 shall be determined according to rotation of vacancies between these two categories based on the quota prescribed for each category as stated in rule 13.”

4.5 The applicant no.1 was promoted to the Section Officer grade on 18.05.2005 whereas applicant no.2 was promoted to that grade on 05.05.2011.

4.6 The impugned Annexure A-1 seniority list of integrated grades II and III of general cadre IFS (B) as on 01.01.2012 covering batches from 2002-03 to 2011-12 was published by the Ministry of External Affairs on

02.05.2012. The applicant no.1 is at serial no.171 and applicant no.2 is at serial no.396 in the seniority list.

5. The main controversy raised in the OA is that the LDCE selectees of the year 2011 have been wrongly placed above the DPs of 2006-07 to 2010-11. The contention of the applicants is that the date of substantive appointment in the cadre/grade should be the sole criteria for fixation of seniority. In support of this contention the learned counsel had relied upon the following judicial verdicts:

i) Judgment of the Hon'ble Supreme Court in the case of **G.S. Lamba and Others v. Union of India and Others**, [(1985) 2 SCC 604];

Held: “Rule 21 (4) and 25 (1) (ii) can be harmoniously read because they operate in two different areas. So read it is clear that a block of recruits in a given year coming from three independent sources may be integrated inter se according to quota and rota. The block in subsequent year would be always junior to the block of recruits in the earlier years.”

ii) Judgment of the Hon'ble Supreme Court in the case of **Central Provident Fund Commissioner and Another v. K. Ravindran and Others**, [1995 Supp. (2) SCC 654];

Held: “Determination of inter se seniority - Persons promoted by virtue of seniority-cum-fitness and persons

promoted by virtue of passing prescribed examination under 75% and 25% quota respectively – CAT rightly directed first to satisfy the 75% quota of the normal promotees and then to place the examinees below them.”

iii) Judgment of the Hon’ble Supreme Court in the case of **V. Sudhakar Rao & Ors. v. U. Govinda Rao & Ors.**, [(2013) 8 SCC 693];

Held: “60. However, the mere existence of a vacancy is not enough to enable an employee to claim seniority. The date of actual appointment in accordance with the required procedure becomes important in such a case. This was so held in State of Uttarakhand v. Dinesh Kumar Sharma, (2007) 1 SCC 683 [followed in Nani Sha v. State of Arunachal Pradesh, (2007) 15 SCC 406] where it was said:

“Another issue that deserves consideration is whether the year in which the vacancy accrues can have any relevance for the purpose of determining the seniority irrespective of the fact when the persons are recruited. Here the respondent's contention is that since the vacancy arose in 1995-96 he should be given promotion and seniority from that year and not from 1999, when his actual appointment letter was issued by the appellant. This cannot be allowed as no retrospective effect can be given to the order of appointment order under the Rules nor is such contention reasonable to normal parlance. This was the view taken by this Court in Jagdish Ch. Patnaik v. State of Orissa [(1998) 4 SCC 456].”

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“64. From the various decisions referred to and from the facts of the case, it is clear that to pass the scrutiny of Article 14 of the Constitution, the seniority of Supervisors should be reckoned only from the date on which they satisfied all the real and objective procedural requirements of the Andhra Pradesh Engineering Service Rules and the law laid down by this Court. This has not happened in the present appeals creating a situation of unreasonableness and unfairness.”

iv) Judgment of the Hon'ble Supreme Court in the case of **B.S. Mathur and another v. Union of India and others**, [(2008) 10 SCC 271];

Held: “47. In view of what has been discussed above, we are of the view that we should not apply the principle of bunching as contained in the above referred O.M. for determining the inter se seniority of the officers of DHJS as by application of the said principle the promotee officers who at the relevant time (i.e. 1995, 1997 and 2000) were still in the lower cadre of DJS would become senior to those direct recruits appointed as Additional District and Sessions Judges much before their promotions in the cadre of DHJS. This is unjust and inequitable.”

v) Judgment of the Hon'ble Supreme Court in the case of **Uttaranchal Forests Rangers' Association & Others v. State of U.P. and Others**, [(2006) 10 SCC 346];

Held: “Nobody can claim any such fortuitous service as approved service or regular service for the purpose of antedating their seniority.”

vi) Order of the Tribunal in OA No.591/2009 with OA No.2981/2009, dated 31.05.2016 in the case of **N.K. Sharma & Ors. v. Union of India & Ors.**,

Held: “163. Even when the unfilled DR vacancies slots are carried forward (for the period of two years), since the RBSS Rules never expressly provided for retrospective grant of seniority even for two years from the date of occurrence of the vacancy, even this carry forward of DR vacancies for two years would not entitle the concerned incumbents for grant of any retrospective

seniority, even for those two years, in view of Para-30 (iv) of the Supreme Court's judgment in **Pawan Pratap Singh & Ors.** (supra), Para-38 of the Supreme Court's judgment in **Uttaranchal Forest Rangers' Assn. (Direct Recruits) & Ors.** (supra), Para-12 of the Supreme Court's judgment in **State of Bihar & Ors v. Akhouri Sachidananda Nath & Ors** (supra), Para-28 of the Supreme Court's judgment in **State of Uttarakhand & Anr. v. Dinesh Kumar Sharma** (supra), and as per the law laid down in **Jagdish Ch. Patnaik & Ors. vs. State of Orissa & Ors.** (supra) in all of which it has been held that retrospective seniority cannot be given on the basis of any retrospective promotion from a date when an employee had not even been born in the cadre, so as to adversely affect all those incumbents who had been appointed validly in the meantime, and it is not a requirement of maintenance of Rota-Quota Rule for antedated seniority to be assigned in any manner, in violation of the law of the land. Further, as we have held in this order, the Rota-Quota Rule had broken down in the case of RBSS due to non-recruitment of any DRs for as many as nine years.

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“166. There is no single universally acceptable concept of interpolation in Service Law or Administrative Law. As has been held by the Hon'ble Supreme Court in the case of **Central Provident Fund Commissioner vs. N. Ravindran** (supra), within the promotees, both the LDCE promotees and the promotees on the basis of seniority-cum-merit, have to be fixed within the DP quota only in the order of their relative seniority in the lower cadre, and a new DR can only come and occupy his post at a position lower than the last substantive appointee to that post, under either the DR quota, or the DP quota, whichever may be the case. Therefore, any interpolation by trying to give antedated seniority or seniority above the persons who are already in the saddle in the SOs cadre is not permissible under law, and all such interpolations carried out by Railway Board in violation of the settled principles of law are declared to be illegal.

167. As regards the pleadings trying to make out a distinction between “**approved service**”, and “**regular service**”, it is clear that under law only the service rendered on the basis of

substantive appointment can ever be called “**approved service**”, or “**regular service**”, and any previous service against the post, by whatever name it may be called *ad-hoc*, or temporary, or in-charge etc. would entitle the incumbents to the associated salary and allowances, but would still remain fortuitous, and as all such previous service in that Cadre/Grade outside or over and above the quota would always be fortuitous, as was held by the Hon’ble Supreme Court in Para-37 of **Uttaranchal Forest Rangers’ Assn. (Direct Recruits) & Ors.** (supra), nobody can claim any such fortuitous service as “**approved service**”, or “**regular service**”, for the purpose of ante-dating their seniority.”

vii) Order dated 25.08.2009 in TA No.84-HR-2009 of Chandigarh Bench of this Tribunal in the case of **Diwan Chand & Ors. v. Union of India & Ors.**:

Held: “16. In A. Janardhan Vs. Union of India, AIR 1983 SC 769 it has been held that where the rule provides for recruitment from two sources and simultaneously prescribes quota, unless there is power to relax the rule any recruitment in excess of quota from either of the sources could be illegal and the excess recruits unless they find their place by adjustment in subsequent years in the quota, would not be members of the service. If the power is conferred on government to make recruitment in relaxation of the rules, any recruitment made contrary to quota the rule would not be invalid unless it is shown that the power of relaxation was exercised malafide.”

17. In H.V. Pardasani Vs. Union of India, AIR 1985 SC 781 it has been held that in the absence of any special provision regulating determination of seniority, length of continuous service in any particular grade would be the basis for determining seniority in that grade. The compulsion of the rule goes to the extreme extent of making government keep the vacancies in the quota of the direct recruits open and to meet the urgent needs of administration by creating ex-cadre posts or making ad-hoc appointment. However, if a rule prescribes a method of fixation of inter se seniority, the normal practice would not apply and the rule shall prevail, obviously subject to constitutionality.”

18. In **Central Provident Fund Commissioner & Anorther Vs. N. Ravindran & Others**, 1995 (8) SLR, page 827, the

question was about fixation of seniority of those promoted to the next higher post – quota of 75% and 25% prescribed for persons promoted by virtue of seniority-cum-fitness and those promoted by virtue of having passed prescribed examination respectively. It was held that both categories have to be treated as belonging to one single class of promotees and promotion, is to be made by first satisfying the 75% quota of those entitled by seniority-cum-fitness rule and then the 25% of those entitled by passing examination to be placed below the said 75%.

19. In **State of Jammu & Kashmir & Others vs. Javed Iqbal Balwan & Others**, 2009 (2) SCT, page 594, it was held

that direct recruits cannot claim seniority from the date prior to their appointments when they were not even borne in the cadre/service. Plea that the direct recruits are entitled to seniority from the date of post fell vacant in the quota for direct appointments, was rejected. In **B.S. Mathur & Another Vs. Union of India & Others**, JT 2008 (11) 193, it was held that if inter-se-seniority is finally decided by applying the principle of continuous length of service, it may bring an end to litigation between the officers of two groups. Therefore, the principle of “continuous length of service” should be applied for determined the inter-se seniority of the officers of Delhi High Judicial Service appointed up to the year 2006. In case of officers appointed on the same date, **whether direct appointees or promotees, the seniority should be fixed on the principles as stated in OA Dated 3.7.1989, since it cannot be determined on the basis of length of service alone in the case of appointment from two different sources on the same date** (emphasis supplied).

20. In **AFHQ/ISOs Sos (DP) Association & Others Vs. Union of India & Others**, 2008 (2) SCT, Page 98, it was held

that direct recruits could not claim appointment from the date of vacancy in their quota before their selection. The respondents have also placed reliance on certain judgments to claim that rota quota rule can be followed for determination of seniority.

21. The sum total of the above discussed judgments is that if there is quota provided in the rules for recruitment to by

different methods to posts i.e. by way of promotion on seniority-cum-fitness basis and recruitment by way of promotion through Limited Departmental Examination or for that matter direct recruitment, in a particular proportion or quota which in this case happens to be 75:25, and recruitment takes in a single process, then it is practical, possible and permissible to follow the rule of rotation of vacancies for fixation of inter-se seniority of incumbents appointed through both the sources. However, if the selection does not take place in a single process and promotees join their duties after getting promotion but persons under Limited Departmental Examination quota or direct recruitment get selected after few months or years, they cannot be allowed to claim that they should be granted seniority from the date of occurrence or year of vacancy. However, it has been made clear that quota has to be maintained. If promotees category gets appointed in excess of quota, such surplus quota persons are to be adjusted on availability of vacancies their own quota. But if there is relaxation in quota by a conscious decision in terms of the rules and regulations and incumbents are appointed under such relaxed quota, then they would get seniority from the date of their appointment. In the facts of this case we find that the decision in the case of **Central Provident Fund Commissioner & Another Vs. N. Ravindran & Others** (supra) is applicable. In that case also ratio of 75:25 between promotees one group belonging to seniority-cum-fitness basis and other group belonging to Examination was involved. It was held that both categories have to be treated as belonging to one single class of promotees and promotion is to be made by first satisfying the 75% quota of those entitled by seniority-cum-fitness rule and then the 25% of those entitled by passing examination to be placed below the said 75%. In this case, the applicants have pleaded specifically that the vacancies were available within their own quota of 75% and unless such quota is satisfied, recruitment to 25% quota could not be made. In the present case same situation has arisen. Thus, we are of the view that since applicants were promoted under 7% quota in 2000 whereas persons under 25% quota were promoted after 4 years after qualifying the LDCE, therefore, private respondents cannot claim seniority vis a vis 75% quota promotees. Position would have been different had promotion under 75% and 25% LDCE Examination, been made in one slot in same year. Then for

obvious reason they have to be given seniority according to the ratio if any fixed under relevant rules or instructions as applicable. Since the question of determination of seniority of thousands of employees is involved, the only solution which appeals to the reason is that the seniority may be fixed on the basis of date on which one becomes member of the service particularly when recruitment is not made in one process and not on hypothetical basis, as has been done while issuing impugned seniority lists."

6. The official respondents no.1 & 2 in their reply have submitted as under:

i) It has been clarified by DoPT (Annexure R-1) that vacancies filled on the basis of the LDCE are not unfilled vacancies which are carried forward as according to it vacancy can only be considered carry forward vacancy if attempt made to fill this vacancy does not fructify. In cases where LDCE, provided in statutory recruitment rules is delayed or results are delayed, such vacancies can only be considered against the year in which it occurred and as is not a carry forward vacancy. Even otherwise LDCE is structured in such a manner that persons who qualify the exam do not get the appointment in the same recruitment year unlike departmental promotions which is a relatively shorter administrative process. The provision of 'approved service' in the statutory rules (Annexure R-2) is a

safeguard against any adverse impact in the matter of seniority/eligibility service for promotion to higher grades in the event of delay in holding of exam/DPC, delay in declaration of results. Accordingly, the officers appointed through promotion or LDCE are to be assigned seniority as per the vacancy year or the recruitment year. Seniority is not an isolated concept and relates to length of regular service rendered by a person counted from the point of his/her entry to a grade. Since regular service as defined in the Rules both in case of promotees and LDCE appointees is counted from 1st July of the year for which examination is held/recruitment is made, the seniority can only commence from the vacancy year and not from any later year.

ii) The Union Public Service Commission in terms of aforesaid 'approved service' provisions and similar provision in statutory rules of other cadres viz. Central Secretariat Service, Railway Board Secretariat Service etc. conducts examination for filling vacancies under exam quota for a particular recruitment year, irrespective of actual date of holding the exam. It decides the eligibility of the candidates

for appearing in the exam. Assessment period of Annual Confidential Reports with reference to the year for which examination is held and not the year in which examination is held. Accordingly, it selects candidates for inclusion in the Select List for the recruitment year for which it holds the exam.

iii) Similarly in case of departmental promotions as has been clarified by DOPT, seniority is assigned as per the recruitment year for which vacancies they have been promoted since approved service in their respect as provided in rule 2 (b) (ii) of the IFS (B), RCSP, Rules is reckoned from 1st July of the year for which recruitment was made. Accordingly, in the seniority list of Section Officers issued on 17.01.2012 the departmental promotees (DP) officers figuring at S. Nos.160-169 in the said list have been assigned seniority from recruitment year 2004 since their recruitment was made for the vacancies of 2004 though their actual joining is in the year 2005. The DPs figuring at S.NO.193-195-196,198-199,201-202,204-205,207-209 in this list have been assigned seniority of the year 2005, though their actual joining is in the year 2006.

Similarly, DPs figuring at S.No.223-224,226-227,229-230,232-233 in the same list have been assigned seniority of the year 2006 though their actual joining is in year 2007. There are similar instances wherein DPs have been assigned seniority for the years 2007 and 2008 respectively while their actual date of appointment was in the subsequent years.

iv) Rule 13 of IFS (B), RCSP, Rules provides ratio of DPs, LDCE promotees as 80:20 and Rule 25 decides inter-se-seniority of DPs and LDCE promotees.

v) Even when promotions are delayed due to some reasons, DPs will get seniority from the vacancy year. In this situation, LDCE promotees of later years will not become senior to the DPs in the meanwhile.

vi) This Hon'ble Tribunal in OA No.567/1999 – **Sanjay Vyas & Others v. Union of India** directed the official respondents (MEA) to re-work out the seniority as per the ratio of law laid down by the Hon'ble Apex Court in **G.S. Lamba** (supra) and other court orders. Accordingly, seniority list has been worked out of officers of integrated

Grade-II and III (Section Officers of General cadre of IFS 'B' vide OM dated 20.07.2001 (Annexure R-5).

vi) The basic principles followed in the preparation of the seniority list are as under:

(a) Recruitment Year:

For DPs, the recruitment year is the year when the DPC was held, for LDCE promotees, recruitment year is the year when the examination was held, for DRs the recruitment year would be reckoned from 1st July when the examination was held.

(b) Continuous Officiation:

As per Rule 25 of IFS (B), RCSP, Rules, for DPs continuous officiation is from the date of DPC, for LDCE promotees, continuous officiation is from the date of declaration of the results and for DRs, continuous officiation is the date of announcement of the results.

(c) Placement in the Seniority:

Irrespective of the mode of recruitment, date(s) of continuous officiation is in chronological order and has

been taken for placement in the seniority of all the officers recruited from different streams.

6.1 The official respondents have thus contended that the issue of inter-se seniority has been settled once in for all.

6.2 Coming to the individual cases of the applicants, the official respondents have stated in their reply that the applicant no.1 belongs to the recruitment year 2011-12, whereas the officers mentioned in para-4.5 of the OA are LDCE promotees of the years 2003-04, 2004-05 and 2006-07. It is further stated that applicant no.1 never represented against the seniority list issued vide OM dated 15.01.2007, which in fact was prepared as per the directions of this Hon'ble Tribunal in OA-2034/2006. It is further contended that the seniority list has been prepared and published every year thereafter. The applicants never questioned nor represented against the seniority list in all these years.

7. The private respondents in their reply have stated that as per Rule 13 of the IFS (B), RCSP, Rules the ratio of

DPs and LDCE promotees is 80:20. It is further submitted that as per Rule 21 (4) of IFS (B), RCSP, Rules, persons promoted or recruited earlier on the basis of earlier selection or recruitment shall be senior to those promoted or recruited on the basis of subsequent selection or recruitment. It is further averred that inter-se seniority of officers appointed to a grade from different sources is governed by Rule 25 of IFS (B), RCSP, Rules.

7.1 The private respondents have further argued that the judgment of this Hon'ble Tribunal in **Diwan Chand** (supra) is not applicable as the rules in the instant case are not silent. As a matter of fact, Rule 25 specifically deals with the issue of inter-se seniority.

8. Arguments of the learned counsel for the parties were heard on 15.12.2016.

9. We have given our thoughtful consideration to the arguments of the learned counsel for the parties and have also perused their pleadings and documents annexed thereto. Admittedly, the seniority list finalized in the year 2007 had never been challenged by the applicants. Their

plea that since no promotion was made pursuant to the said seniority list and hence they did not choose to challenge it, cannot be accepted as a valid argument. The official respondents were directed by this Tribunal in OA No.567/1999 – **Sanjay Vyas & Others** (supra) to re-work out the seniority list in terms of the ratio of law laid down by the Hon’ble Apex Court in **G.S. Lamba** (supra) and in terms of various court orders. Accordingly, the respondents published the revised seniority list of integrated grade-II and III of Section Officers of general cadre of IFS ‘ B’ as on 01.07.2001 vide Annexure R-5 OM dated 20.07.2001. Thereafter, as directed by this Tribunal vide order dated 24.03.2007 in OA No.2034/2006 [**Somnath Chatterjee v. Union of India & Another**], the seniority list was again revised and published vide Annexure R-6 dated 26.06.2007. In its order in OA No.2034/2006, the Tribunal had directed that for revising the seniority list, besides keeping in mind the basic principles laid down by the Hon’ble Apex Court in **G.S. Lamba** (supra) and in other Court orders, the mandatory application of rota and quota must also be done, as observed by the Hon’ble Apex Court

in **Arvinder Singh Bains v. State of Punjab & Others**, [JT 2006 (11) SC 553].

10. Thereafter, the seniority list has been published every year. The applicants have chosen to challenge the seniority list much belatedly in the year 2012 through the medium of this OA, which cannot be allowed. The Hon'ble Apex Court in **B.S. Bajwa & Another v. State of Punjab & Others**, [JT 1998 (1) SC 57] has held that the question of seniority should not be reopened after the lapse of a reasonable period, as it results in disturbing the settled position, which is not justifiable. Paragraph 6 of the said judgment reads as under:

“6. Having heard both sides we are satisfied that the writ petition was wrongly entertained and allowed by the single Judge and, therefore, the judgments of the Single Judge and the Division Bench have both to be set aside. The undisputed facts appearing from the record are alone sufficient to dismiss the writ petition on the ground of latches because the grievance made by B.S. Bajwa and B.D. Gupta only in 1984 which was long after they had entered the department in 1971-72. During this entire period of more than a decade they were all along treated as junior to the order aforesaid persons and the rights inter se had crystallised which ought not to have been re-opened after the lapse of such a long period. At every stage the others were promoted before B.S. Bajwa and B.D. Gupta and this position was known to B.S. Bajwa and B.D. Gupta right from the beginning as found by the Division Bench itself.”

11. In view of the ratio of law laid down by the Hon'ble Apex Court in **B.S. Bajwa** (supra) and in the light of the discussions in the pre-paras, we are of the view that the applicants have no case and their OA is devoid of any substance and merit. Accordingly, we dismiss the OA.

12. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Dr. K.B. Suresh)
Member (J)

‘San.’