

(2010) 09 DEL CK 0013

In the Delhi High Court

Case No : Writ Petition (C) 9502-03 of 2004

Ashutosh Agarwal and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-09-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227, 309
Government of India Promulgated Indian Foreign Service Branch B (Recruitment, Cadre, Seniority and Promotion) Rules, 1964 — Rule 12, 13, 13(1), 13(2), 13(3)

Citation : (2010) 09 DEL CK 0013

Hon'ble Judges : Pradeep Nandrajog, J; Mool Chand Garg, J

Bench : Division Bench

Advocate : R.K. Dhawan and Rahul Grover, for the Appellant; A.K. Bhardwaj, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Vide office memorandum dated 16.07.1956, Ministry of External Affairs, Government of India, constituted "Indian Foreign Service Branch B" (hereinafter referred to as the "Service"). The service consisted of two cadres; namely: general cadre and stenographer cadre and a sub-cadre; namely: Cypher sub-cadre. Various provisions were made in the memorandum for recruitment to posts in various grades. In exercise of power conferred upon it by Article 309 of the Constitution of India, Government of India Promulgated Indian Foreign Service Branch "B" (Recruitment, Cadre, Seniority and Promotion) Rules, 1964 (hereinafter referred to as the "Rules").

2. It may be useful to note the relevant Rules pertaining to recruitment and seniority of the general cadre of the service:

CHAPTER -I

GENERAL

...

3. Composition of the Service - There shall be following Grades in the Indian Foreign Service, Branch "B", and they shall be classified as follows:

Grade Designation Classification Character GENERAL CADRE Grade-I Under Group-A Non- Secretaries at (Gazetted) Ministerial Hqrs. And Second Secretaries in Missions or Posts abroad. Integrated Attaches and Group-B Ministerial Gr.II & III Section (Gazetted) Officers at Hqrs, Vice Consuls and Registrars in Missions or Posts abroad. Grade - IV Assistants at Group-B Ministerial Hqrs. And in (Non- Missions or Gazetted) Posts abroad. Grade-V Upper Group-C Ministerial Divisional (Non- Clerks at Gazetted) Hqrs. And in Missions or Posts abroad. Grade-VI Lower Group-C Ministerial Division (Non- Clerks at or Gazetted) Posts abroad. Chapter - II

Appointments and Promotion to Cadre Posts

...

13. Recruitment to posts in the Integrated Grade II and III of General Cadre:-
1(a) One sixth of the substantive vacancies, in the Integrated Grades II and III of the General cadre shall be filled, by direct recruitment on the results of competitive examinations held by the Commission for this purpose from time to time. The remaining vacancies shall be filled by the substantive appointment of persons included in the Select List for the Integrated Grades II and III of the General Cadre. Such appointments shall be made in order of seniority in the Select List except when, for reasons to be recorded in writing, a person is not considered fit for such appointment in his turn.

Provided that:

- i) the number of vacancies to be filled by the substantive appointment of persons included in the Select List for the Integrated Grades II and III of the General Cadre, in a recruitment year, shall be proportionate to the vacancies to be filled by direct recruitment for that year;
- ii) if sufficient number of candidates are not available for filling up the vacancies in any recruitment year either by direct recruitment or by appointment of persons included in the Select List for the Integrated Grades II and III of the General Cadre, the unfilled vacancies shall be carried forward and added to the number of vacancies of the same mode of recruitment to be filled in next year;
- iii) the unfilled vacancies shall be carried forward for not more than two recruitment years, beyond the year to which recruitment relates, whereafter the vacancies, if any, still remaining unfilled belonging to one mode of recruitment, shall be transferred as additional vacancies for the other mode of recruitment.

...

(2) The Select List referred to in Clauses (a) and (b) of Sub-rule (1) shall be prepared in the following manner:

(i) 33-1/3 percent of the quota for inclusion in the Select List shall consist of persons to be promoted on the basis of a limited competitive examination to be held by the Commission for this purpose from time to time; and

(ii) the rest of the promotion quota for inclusion in the Select List shall consist of persons to be promoted on the basis of seniority subject to the rejection 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.

Provided that if any officer referred to in Clause (ii) is considered for promotion to Grades II and III of the General Cadre in accordance with the provisions of this rule, all persons senior to him in that Grade and belonging to the Scheduled Castes or the Scheduled Tribes, who have rendered not less than four years" approved service in their respective Grades shall also be considered for promotion.

(3) The Controlling Authority shall from time to time, lay down the ratio in which the available vacancies in the Integrated Grade-II and III of the General Cadre shall be filled from Grade IV of the General Cadre and Cypher Assistants of the Cypher Sub-Cadre. This ratio shall be fixed, as far as possible on the basis of the relative strength of the respective cadre posts.

(14) Recruitment to Grade IV of the General Cadre:- (1)(a) 50 percent of the substantive vacancies in Grade-IV of the General Cadre shall be filled by direct recruitment on the results of an open examination held by the Commission for the purpose from time to time and remaining vacancies shall be filled by the substantive appointment of persons included in the Select List for this Grade in the order of seniority in the Select List except when for the reasons to be recorded in writing, a person is not considered fit for such appointment in his turn.

...

(2) The vacancies for inclusion in the Select list referred to in Sub-rule (1) shall be filled by promotion on the basis of seniority-cum-fitness from among employees of Grade-V of the General Cadre who have rendered not less than five years approved service in that Grade....

Chapter - III

Fixation of Seniority

21. General Provisions (1): Persons appointed to the service at the initial constitution shall have the seniority already allotted to them at that time.

(2) Persons appointed to that Grade of the Service at the initial constitution shall be senior to persons appointed to that Grade at the maintenance stage.

(3) Persons appointed to the Service after the initial constitution and up to the

appointed day shall have the seniority already assigned to them by the Controlling Authority.

(4) Notwithstanding the provisions of sub-rule (3) and (4), permanent employees of each Grade shall be ranked senior to persons who are officiating in that Grade.

x x x x

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 order of their relative seniority in their respective Grade. Thereafter the Department 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 order of merit which will determine the seniority of persons on promotion to Grades II & III of the General Cadre.

(ii) Officers substantively appointed to a Grade from the Select List for the Grade and direct recruits shall be assigned seniority inter se according to the quotas of substantive vacancies in the Grade reserved for the appointment of persons included in the Select List and direct recruitment, respectively.

Provided that persons appointed substantively in a Grade in a particular year against the unfilled vacancies brought forward from previous years shall be placed below the last slot, be it for a direct recruit or for an officer included in the Select List as determined on the basis of the rotation of vacancies between direct recruits and persons included in the Select List in that year as illustrated below:

...

3. In the decision reported as G.S. Lamba and Others Vs. Union of India (UOI) and Others, the petitioners therein who were appointed to the post of Assistant in the year 1955 had raised an issue of seniority. Between the years 1976-1979 the said petitioners was promoted from grade IV to integrated grade II and III. On 25.06.1979 the Government of India published a seniority list of officers in the integrated grade II and III of general cadre, which list was objected to by the said petitioners. It was contended by the said petitioners that the said seniority list is violative of the constitutionally guaranteed equality of opportunity in the matter of public service, inasmuch as direct recruits who came into service long after the departmental promotees were regularly promoted to the aforementioned grade have been assigned seniority over the earlier promoted departmental promotees. Before objections taken by the petitioners could be dealt with by the Government another seniority list of the officers in integrated grade II & III of general cadre was published on 30.06.1983, which list was also objected by the said petitioners. Aggrieved by the issuance of the seniority list dated 30.06.1983, the said petitioners filed a writ petition under Article 32 of Constitution of India before Supreme Court. It was contended by the petitioners

therein that the seniority list 30.06.83 suffers from the same vice as the seniority list dated 25.06.79 and is all the more objectionable inasmuch as it leaves blank spaces for future recruits either as direct recruits or by limited departmental examination and who are yet to come into service, to be placed above the promotees like the petitioners, who have already been in service for a long time. The said petitioners contended that the impugned seniority list was drawn up on the principle of rota-quota and results in violation of Articles 14 and 16 of Constitution of India.

4. To be precise, the contention advanced by the said petitioners was that where there is recruitment to a cadre from more than one source and the recruitment has to conform to the quota prescribed for each source, simultaneously interlinking the inter-se seniority in respect of recruits entering service from different sources to the quota for each source, if the quota reserved for any source is not filled in for a long time and the vacancies allotted to the source are carried forward and the latter day recruits from that source are given deemed seniority over the earlier recruits from the other sources, it has the pernicious tendency to accord an undeserved advantage to a latter recruit over the earlier recruit and would be violative of Articles 14 and 16. That if it is held that Rule 25(1)(ii) has precedence over Rule 21, then Rule 25(1)(ii) is unconstitutional, inasmuch as failure to recruit enough number of persons to the extent of the quota reserved for the source within a reasonable time, in the absence of any power to carry forward vacancies available to that source, the rota rule of seniority would be discriminatory in character and would lead to denial of equality in the matter of appointment to public service. It was submitted that in such a situation the rota rule would break down under the weight of massive departure from the quota rule and the seniority rule being inextricably intertwined with the quota rule, if given effect to, would be unjust, unfair and iniquitous and thus would be violative of Article 14.

5. After having examined the relevant rules, the Supreme Court found merit in the contention(s) advanced by the petitioners therein and quashed the seniority lists dated 25.06.79 and 30.06.1983. It was directed that the government shall draw up a fresh seniority list within a period of three months from the pronouncement of the judgment in consonance with the ratio laid down in the judgment. The relevant portion of the decision of the Supreme Court may be extracted and is as under:

12. The service was constituted in 1956. However the statutory rules came into force on May 5, 1964. The Constitution of the service by a memorandum of the Government of India in 1956 was in exercise of the executive powers of the Government of India. The statutory rules came into force from May 6, 1964 and since then the service is governed by the 1964 Rules. Commencing from the advent of 1964 Rules, the recruitment from three sources as actually made may be noticed. Information in this chart is according to averments in para 16 of the petition:

...

With reference to para 16 and the chart in the petition, in the return filed on behalf of the first respondent Government of India it is stated that the chart does not give true and correct picture and was denied. It is stated that the exact figures are given in the chart annexed as Annexure "A" to the return. It reads as under:

Annexure "A"

Para 16.-The figures of recruitment through the different channel given by the petitioners are incorrect and misleading. The correct figures are as given below:

...

Accepting the information as supplied by the respondent Union of India, what strikes one at a glance is that the recruitment from three sources was never according to quota nor according to available vacancies for each source. Record as disclosed does not indicate that the vacancies available to a particular source but not filled in during the relevant period were carried forward.... Indisputably there was large scale departure from the quota rule.

...

14. The first thing to be noticed is that the statutory rules do not provide for carry forward of vacancies occurring in a given year to the next recruitment. The feeble and inaudible plea to justify carry forward of vacancies was non-availability of candidates for filling in vacancies available to a source.

15. It is of some importance to note that the petitioners are members of the service and belong to integrated Grade II and III in the general cadre of IFS "B". They hold substantive posts and there is nothing to show that their promotions when made were either temporary or ad hoc or till such time as a regular recruit is available from the other source according to quota, though their promotions appear to be in excess of the quota available for the source. The quota is related to vacancies. Rule 13(1) which provides for quota clearly recites that one-sixth of the substantive vacancies in the integrated Grade II and III of the general cadre shall be filled in by direct recruitment etc. Therefore, it is undeniable that quota is related to vacancies. If the quota has to be scientifically implemented it would be incumbent upon the first respondent to satisfactorily establish the number of vacancies available every year since the constitution of service; the number of vacancies available according to quota reserved for each source; the recruitment done during the year from that particular source and to state whether all the vacancies allocable to each source were filled in from the concerned source and if not so filled in, whether any recruitment in excess of the quota was made from other sources. It must further be shown whether such excess recruits were given temporary, stopgap or ad hoc promotion subject to availability of candidates from other sources who were entitled to fill in those vacancies and that this was done for a short period and till the candidates, regularly recruited from the sources to

which vacancies were allocated were available to fill in the vacancies held by the recruits in excess of the quota from the other sources. No such information was forthcoming. The only justification offered for not filling in vacancies by recruits from each source according to its quota is that the procedure for direct recruitment as also the procedure for holding limited competitive examination is prolix, time-consuming and dilatory and therefore the recruitment made at a later date from such source could not work to the disadvantage of such recruits by pushing them down below those who were promoted in excess of the quota available to that source.

...

17. It is too late in the day to dispute that it would be open to the Government, while Constituting a service, to provide for recruitment to it from more than one source and also to reserve quota for each source. As a logical corollary, it would equally be open to the Government to provide for seniority rule related to rotation of vacancies. Shortly this is called quota rule of recruitment and rota rule of seniority interlinking them. So far there is no controversy. The contention of the petitioners is that in implementing this rule there has been such large scale deviation that it results in denial of equality to the members of the service similarly circumstanced. It will be presently demonstrably established that where rota rule of seniority is interlinked with quota rule of recruitment, and if the latter is unreasonably departed from and breaks down under its own weight, it would be unfair and unjust to give effect to the rota rule of seniority. To some extent this is not *res integra*. Though some advance has been made on this proposition in later decisions.

...

21. The sum total of the aforementioned three judgments may be freely restated in the telling expression in *A. Janardhana* case which reads as under: (SCC p. 628, para 38)

It is therefore, time to clearly initiate a proposition that a direct recruit who comes into service after the promotee was already unconditionally and without reservation promoted and whose promotion is not shown to be invalid or illegal according to relevant statutory or non-statutory rules should not be permitted by any principle of seniority to score a march over a promotee because that itself being arbitrary would be violative of Articles 14 and 16.

Now proceeding on the assumption that Rule 25(1)(ii) is valid and therefore seniority inter se between recruits from three different sources has to be computed according to the quota by rotating substantive vacancies in the grade reserved for each source, if in actual implementation it creates disparities between persons who are similarly circumstanced and thereby deny equal treatment, the rule would be violative of Article 16. The outcome is not on account of an invidious implementation of the rule but non-implementation of a part of rule for years. The end product as will be demonstrably established is

unjust and unfair and yet this unjust and unfair action is being supported by the Union of India which was responsible for utter inaction in implementing the rule in its letter and spirit and for unreasonably long intervals....

22. Approaching the matter from a slightly different angle, in our opinion, Rule 21(4) and Rule 25(1)(ii) both can be harmoniously read because they operate in two different areas. Rule 21(4) provides that subject to other provisions of this rule (not all 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. If the expression "selection" refers to those promoted via the select list and the expression "recruitment" refers to those entering service by direct recruitment, in view of Rule 21(4) those who enter service by "recruitment" or "selection" at any time will always necessarily be senior to those promoted or recruited on the basis of a subsequent selection or recruitment. This is what Rule 21(4) provides. In terms it caters to a situation where recruitment or selection is at intervals with a time lag. Vacancies in the cadre or the grade arise every year. Normally the substantive vacancies in the cadre have to be filled in as they occur or within a reasonable time. The process of selection and recruitment must continuously be in operation roughly from year to year. By the impact of Rule 21(4), the selection or recruitment of one year shall have precedence over selection or recruitment of the next year and this is what is known in service jurisprudence as seniority according to continuous officiation in the cadre or the grade which has been statutorily recognised in sub-rule (4) of Rule 21. This is in tune with fair play and justice and ensures equality as mandated by Article 16. Now Rule 25(1)(ii) provides for integrating direct recruits and persons entering via the select list to a grade. It is implicit in Sub-clause (ii) of Rule 25(1) that it would operate at a time when in a given year almost simultaneously or within a measurable distance from each other recruitment is made from all the other sources. To illustrate if in a given year candidates are selected for appointment to the grade by direct recruitment as also by holding the limited competitive examination and giving promotion and if all the three enter the service or the grade at or almost at the same time or within the year and within a reasonable time lag from each other, a question is bound to arise how to integrate all of them entering service from different sources in the common seniority list. Rule 25(1)(ii) caters to this situation and helps in integrating appointees from three sources to be integrated into common seniority list according to quota. Now contrast Rule 25(1)(ii) with Rule 21(4) and the meaning of Rule 25(1)(ii) reveals itself and becomes clear and understandable. 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. This is how Rules 21(4) and 25(1)(ii) can be harmoniously read and it is unquestionable that they operate in two different situations and both have to be given effect to.

23. Now turning to the impugned seniority lists, what the Union of India appears

to have done is that it has applied the quota and rotated the vacancies but where candidates from a particular source were not available, the vacancies were deemed to be kept open (some kind of carry forward) to be filled in by later recruitment from the same source years after the vacancy occurred, but in the meantime the vacancy was filled in presumably by excess recruitment from the other sources. That is clearly either non-implementation of the quota rule or malfunctioning of the quota rule and yet the rota rule is adhered to which is both impermissible under the Rules as well as unjust, unfair and inequitable being violative of Articles 14 and 16.

...

25. The language of Rule 13(1) appears to be mandatory in character. Where recruitment to a service or a cadre is from more than one source, the controlling authority can prescribe quota for each source. It is equally correct that where the quota is prescribed, a rule of seniority by rotating the vacancies can be a valid rule for seniority. But as pointed out earlier if the rule of seniority is inextricably intertwined with the quota rule and there is enormous deviation from the quota rule, it would be unjust, inequitable and unfair to give effect to the rota rule. In fact as held in O.P. Singla case giving effect to the rota rule after noticing the enormous departure from the quota rule would be violative of Article 14. Therefore assuming that quota rule was mandatory in character as pointed out earlier, its departure must permit rejection of rota rule as a valid principle of seniority.

28. Once the promotees were promoted regularly to substantive vacancies even if temporary unless there was a chance of their demotion to the lower cadre, their continuous officiation confers on them an advantage of being senior to the later recruits under Rule 21(4). If as stated earlier by the enormous departure or by the power to relax, the quota rule was not adhered to, the rota rule for inter se seniority as prescribed in Section 25(1)(ii) cannot be given effect to. In the absence of any other valid principle of seniority it is well-established that the continuous officiation in the cadre, grade or service will provide a valid principle of seniority. The seniority lists having not been prepared on this principle are liable to be quashed and set aside....

6. On 02.11.1986, Transfer Application No. 129/85 titled "P.N. Tandon and Ors. v. Union of India and Ors." was decided by the Principal Bench of the Central Administrative Tribunal, New Delhi. The facts of the said case were that between the years 1956-1971 various officers working in Grade v. of the service got promoted to the post of Assistant (Grade IV) in excess of quota prescribed for the promotees in Rule 14 of the Rules, due to which reason they were appointed on ad-hoc basis. Thereafter the services of the said officers got regularized in Grade IV on diverse dates. Some of the said officers filed a writ petition under Articles 226 and 227 of Constitution of India before this Court, inter-alia, contending that the period of service spent by them in Grade IV prior to regularization of their services in said grade be taken into account for the

purposes of fixation of their seniority, which petition got transferred to the Tribunal and got registered as TA No. 129/1985. After placing reliance upon the decisions of Supreme Court reported as G.S. Lamba and Others Vs. Union of India (UOI) and Others, and Narender Chadha and Others Vs. Union of India and Others, it was held by the Tribunal that the said officers are entitled to count their seniority in Grade IV from the date of their continuous officiation in the said grade irrespective of the fact that the said officiation was on ad-hoc basis or in excess of the quota prescribed for promotees in Rule 14 of the Rules.

7. Thus, another seniority list has to be redrawn. On 18.05.1987 a revised seniority list of Assistants was drawn up by the government purporting to be in compliance with the judgment and order dated 02.11.1986 passed by the Tribunal in P.N. Tandon's case (supra) wherein seniority of 196 direct recruits Assistants got pushed down by several notches in the seniority list dated 18.05.1987. Be it noted here that as a result of benefit of ad-hoc officiation granted to the promotees Assistants, 251 promotees Assistants became eligible for promotion to the post of Section Officers.

8. One Karam Singh, an officer who was promoted to the post of Assistant on ad-hoc basis had filed a Writ Petition Bearing No. 2635/1980 titled as "Karam Singh v. Union of India" under Article 32 of the Constitution of India before the Supreme Court, inter-alia, alleging that while drawing up the seniority list of Assistants, the government has not taken into account the period of service spent by him in Grade IV before regularization of his services in said grade. Noting the judgment dated 02.11.1986 passed by the Tribunal in P.N. Tandon's case (supra), vide order dated 11.12.1987, the Supreme Court disposed of the said petition in the following terms:

...By judgment dated 2.11.1986 the Delhi Bench of the Tribunal has set aside the impugned seniority list and has directed that it should be re-drawn up on the basis of the seniority based upon total length of service including continuous officiation irrespective of whether the same was ad hoc or temporary. Counsel appearing for the appellant says that the decision was accepted and has also been implemented. In that view of the matter no direction in the writ petition for quashing of the seniority list or for re-drawing of the seniority list is necessary to be given. We are, however, asked to give a direction that upon the re-fixation of seniority in accordance with the direction of the Tribunal referred to above, consequential benefit should be available to the appellant.... In the case of the petitioner before us who has now retired notional promotion may be granted so that the benefit which would accrue may be worked out....

9. In Karam Singh's case (supra), an issue was also raised with respect to direct recruits Assistants who, it was claimed wrongly got promoted as Section Officers on the basis that the period of service spent by the promotee Assistants in Grade IV prior to regularization of their services in said grade was not to be reckoned for the purposes of fixation of their seniority, which issue was dealt with by Supreme Court in the following terms:

...Counsel appearing for the respondents suggests that in calling upon the Union of India to give effect regarding conferment of consequential benefits, we should indicate that if as a result of the preparation of the seniority list in accordance with the decision and review of the promotions which would follow as a consequence, promotees in the higher grades are likely to be reverted, such officers may not be reverted and should continue in the higher posts by creating supernumerary posts to the extent as may be necessary. Such a direction appears to have been given by this Court in a similar situation in *Narender Chadha and Others Vs. Union of India and Others*, We suggest to government that while complying with the direction for extending the consequential benefits to the appellant upon re-drawing of the seniority list, it should keep in mind this principle in view and give effect to our order....

10. On 12.02.1988, Original Application No. 762/87 titled as "P.N. Tandon and Ors. v. Union of India and Ors.", which application was filed by the applicants of P.N. Tandon's case (supra) and hereinafter may be referred to as P.N. Tandon (1), was filed seeking promotion, payment of arrears of pay and other consequential benefits upon re-fixation of their seniority in terms of judgment dated 02.11.1986 passed by the Tribunal in P.N. Tandon's (1) case (supra). This Original Application, which we may call P.N. Tandon(2) was disposed of by the Tribunal in the following terms:

(a) The applicants should be considered for promotion to the grade of Section Officers from the date their promotions so considered and if found suitable in accordance with the rules, should be given promotion w.e.f. the dates their juniors were to be promoted.

(b) The applicants, if promoted to the Grade of Section Officers, should be given arrears of pay and allowances with retrospective effect by creating supernumerary posts, if necessary.

(c) The arrears of pay and allowances, if any, should be paid within a period of three months from the date of communication of this order.

(d) The applicants should reckon their service as Section Officers from the date of their respective promotion, if any, for the purpose of eligibility for promotion as Under Secretary or equivalent grade.

(e) The seniority on the applicants in the grade of Section Officers should be reckoned on the basis of their retrospective promotion, if allowed as above, and they should be considered for promotion as Under Secretary or equivalent grade in accordance with the rules from the date their juniors in the grade of Section Officers were so considered

(Emphasis Supplied)

11. In order to implement the aforesaid directions issued by the Tribunal in P.N. Tandon (1)'s case (supra), various office orders were passed by the government on 12.05.1988. Two of such office orders were, that 196 direct recruits Assistants

who were held wrongly to be promoted to the post of Section Officer were assigned new date of promotion to the post of Section Officer, which date was naturally subsequent to their earlier date of promotion; and that 251 promotee Assistants who ought to have been promoted to the post of Section Officer on a date which was earlier to the date on which they were actually promoted were given the benefit of deemed promotion from an earlier date.

12. On 16.03.1993, Original Application No. 837/86 titled as "K.J. Francis v. Union of India" was decided by the Tribunal. In the said case, applicants who got promoted to the post of Under-Secretary were reverted to the post of Section Officer on the basis of a seniority list of Section Officers drawn up by the Government, which list was challenged by the applicants before the Tribunal. It was contended by the applicants that while preparing the impugned seniority list, the government has not correctly followed the ratio of law laid down by the Supreme Court in G.S. Lamba's case (supra) inasmuch as the date when an officer "actually" joined a post has been taken as the date of continuous officiation. After examining the judgment of Supreme Court in G.S. Lamba's case (supra), it was held by the Tribunal that the date of continuous officiation is dependent upon the date of selection of an officer for a particular post and not the date when the officer "actually" joins the said post. Thus, the Tribunal further directed the government to draw a fresh seniority list of the Section Officers.

13. Vide office memorandum dated 16.09.1993 Ministry of External Affairs, Government of India issued a seniority list of the Section Officers. The relevant portion of the said memorandum reads as under:

...2. Placement of officers in this Seniority List for the years 1970 to 1980 and 1985 to 1991 is based on the principle of "Continuous Officiation" as stipulated in the Supreme Court judgment in the case of G.K. Lamba and Ors. v. Union of India Writ Petition Nos. 13248-13257 of 1983 decided on 6/11/85, as also the Central Administrative Tribunal's decision in the case of K.J. Francis and Ors. v. the Union of India OA 837 of 1986 decided on 16/3/93 and in consonance with Rule 21(4) of the IFS (B) RCSP rules except for the beneficiaries of the judgment of CAT in TA No. 129/85 (P.N. Tandon and Ors. v. U.O.I.) and the judgment of the Supreme Court in Writ Petition No. 2635 (Karam Chand and Ors. v. the UOI)

3. Placement of Officers in this Seniority List for the years 1981 to 1984 is in accordance with rule 25(1) of the IFS (B) RCSP rules....

(Emphasis Supplied)

14. An interesting feature of the seniority list now drawn up was that the some direct recruits Assistants who were senior to some promotee Assistants in the Seniority List dated 18.05.1987 of the Assistants were shown as junior to the said promotee Assistants. This happened because of cumulative effect of benefit of ad-hoc officiation granted to 251 promotee Assistants vide judgment dated 02.11.1986 passed by the Tribunal in P.N. Tandon (1)"s case and the revised date of promotion assigned to 196 direct recruits Assistants vide office order

dated 12.05.1988 passed by the government.

15. Let us illustrate. Suppose A was directly appointed to the post of Assistant on 01.01.1980. B, an officer working in grade-V of the service got promoted to the post of Assistant on 01.01.1981 in excess of the quota prescribed for the promotees in Rule 14 of the Rules. A got promoted to the post of Section Officer on 01.01.1984. By virtue of the judgment dated 02.11.1986 passed by the Tribunal in P.N. Tandon's (1) case (supra), the seniority of B to the post of Assistant is to be reckoned from 01.01.1981. Furthermore, the seniority of A to the said post gets pushed down by several notches, due to which reason he becomes eligible for promotion to the post of Section Officer only on 01.01.1987. By virtue of office order dated 12.05.1988, B is deemed to have been promoted to the post of Section Officer on 01.01.1986 whereas A is assigned new date of promotion to the post of Section Officer i.e. 01.01.1987. Due to the aforesaid, B becomes senior to A in the seniority list dated 16.09.1993 of Section Officers despite the fact that he was junior to A in the seniority list of Assistants.

16. Feeling aggrieved by the seniority list dated 16.09.1993 of the Section Officers, some direct recruits Assistants filed Original Application No. 201/89 titled "M.S. Rao and Ors. v. Union of India and Ors." before the Tribunal. In view of the discrepancy occurring in the seniority list dated 16.09.1993 noted by us in para 14 above and explained in para 15 above, vide judgment dated 03.06.1994 the Tribunal quashed the seniority list dated 16.09.1993 and directed the government to draw up a fresh seniority list of Section Officers on the basis that direct recruit Assistants who were senior to promotee Assistants in the seniority list dated 18.05.1987 of the Assistants should continue to remain senior to such promotee Assistants in the seniority list of Section Officers. The relevant portion of the judgment of the Tribunal reads as under:

12. In spite of a number of opportunities given to the respondents they could not clearly explain as to how the juniors in the seniority list of Assts have been given regular promotion as Section Officers earlier to the applicants. There was absolutely no explanation coming forth. We have been given no assistance other than what had been put in writing and repeated perusal of these does not convince us that the promotions to the post of Section Officers has been made strictly as per the seniority list of Assistants issued in May 1987.

13. In view of the above it would be fit and proper to direct the respondents to recheck the dates of regular promotion as Section Officers of the applicant's vis-?-vis the other promotees Assistants and it has to be ensured that May 1987 seniority list of Assistants is correctly followed. It is needless to add that while doing this the guidelines given in the second case of Tandon vide order dated 12-2-1988 have to scrupulously followed....

17. Thereafter, Ministry of External Affairs, Government of India, issued a revised seniority list of Section Officers purporting to be in compliance with the judgment dated 03.06.1994 passed by the Tribunal in M.S. Rao's case, vide office

memorandum dated 28.06.1994. The relevant portion of the said memorandum reads as under:

...3. Placement of officers in this Seniority List for the years 1970 to 1980 and 1985 to 1991 is based on the principle of "Continuous Officiation" as stipulated in the Supreme Court judgment in the case of G.K. Lamba and Ors. v. Union of India Writ Petition Nos. 13248-13257 of 1983 decided on 5/11/85 as also the Central Administrative Tribunal's decision in the case of K.J. Francis and Ors. v. the Union of India OA 837 of 1986 decided on 16/3/93 and in consonance with Rule 21(4) of the IFS (B) RCSP rules.

4. Placement of Officers in this Seniority List for the years 1981 to 1984 is in accordance with Rule 25(1) of the IFS (B) RCSP rules....

(Emphasis Supplied)

18. In the meantime, somewhere in the year 1991, some direct recruits Assistants who got wrongly promoted to the post of Section Officer and were given protection from reversion by Supreme Court in Karam Singh's case (supra) from being reverted to the post of Assistant, filed Original Application Bearing No. 2338/91 titled "M.P. Singh and Ors v. Union of India and Ors." before the Tribunal, inter-alia, contending that in view of judgment dated 02.11.1986 passed by the Tribunal in P.N. Tandon (1)'s case, their seniority to the post of Section Officer should be reckoned from the date when they were actually appointed on the said post and not from the date their services to the post of Section Officer was regularized by the government, which application was dismissed by the Tribunal vide judgment dated 09.02.1996. The relevant portion of the judgment of the Tribunal reads as under:

13. In the first place, the applicants cannot compare themselves with the applicants in the Tandon cases. They (i.e. the applicants in Tandon cases) are declared senior by virtue of the judgment in their cases. They have been found to be entitled for retrospective promotion in place of the applicants who had been promoted in the past. Therefore, their service in the supernumerary posts is their rightful due and it has necessarily to be counted for seniority. That is not the position of the applicants. They occupy supernumerary posts to avoid reversion. In the circumstance, they held the post only by virtue of the compassionate order passed by the Supreme Court to avoid reversion.

14. There is no doubt that their earlier promotion was on a regular basis but that was on the basis of the pre-revised seniority list of Assistants wherein they were shown as seniors to a number of promote Assistants. However, that seniority list was directed to be recast by the Tribunal in Tandon case No. 1. In the revised seniority list of Assistants (Annexure A-5) the applicants are far below in the list and became disentitled to hold the promotion post and faced reversion. In the normal course, the applicants and other similarly situated could have been reverted when these judgments came to be implemented on 12.5.1988. In other words, their earlier promotion was treated a mistake based on a wrongly

prepared seniority list. In the light of the revised seniority list, they would have been reverted with all its consequences i.e. reduction to the post of Assistant, break in service as Section Officers for purpose of seniority. That was prevented in part by the Supreme Court's order. They cannot get any advantage out of that order for counting the earlier service, now found to be unauthorized, for the purpose of reckoning seniority. That order of the Supreme Court only prevented their reversion as Assistants and protects their pay and allowances as Section Officers and no more....

19. Be it noted here that an application seeking review of the aforesaid judgment passed by the Tribunal in M.P. Singh's case (supra) was filed, which application was dismissed vide judgment dated 04.10.1996.

20. In continuation of the seniority list dated 28.06.1994, a further seniority list of the Section Officers was issued by Ministry of External Affairs, Government of India on 04.10.1996.

21. The very next year i.e. in the year 1997, one M.S. Mandhaiya, a promotee Section Officer, filed Original Application No. 306/1997 titled "M.S. Mandhaiya v. Union of India and Ors." before the Tribunal challenging the validity of the seniority list dated 28.06.1994 of the Section Officers on the ground that the government ought to have determined seniority of Section Officers in respect of the years 1981-1984 on the basis of principle of continuous officiation contained in Rule 21(4) of the Rules on the basis of rota-quota rule contained in Rule 25(1) of the Rules. Vide judgment dated 17.08.2000, the Tribunal dismissed the aforesaid application, primarily on the ground that since recruitment to the post of Section Officers pertaining to the years 1981-1984 was done in accordance with the quota prescribed for each source of recruitment in Rule 13 of the Rules, the seniority of Section Officers in respect of said years has to be determined on the basis of rota-quota rule contained in Rule 25(1) of the Rules. The relevant portion of the judgment of the Tribunal reads as under:

7. The respondents submit that even the Hon"ble Supreme Court has observed that in their opinion Rule 21(4) and Rule 25 can be harmoniously read because they operate in two different areas. Rule 25(1) has never been struck down in any of the judgments cited by the applicant. The contention of the applicant that the seniority should be determined solely on the basis continuous officiation is not in line with the provisions of rules. It can be determined on the basis of rota-quota also. Rule 21(4) of the IFS (B) Rules cannot be implemented in isolation. It has to be implemented in consonance with Rule 25(1)(ii) of the IFS (B) RCSP Rules. As such, no relief can be granted to the applicant.

11. In the present case, the applicant was promoted departmentally. He was not an ad hoc promotee on continuous officiation. The applicant's seniority, therefore, has to be reckoned with reference to the seniority of those who were promoted departmentally vis-?-vis those who were recruited directly and those who were promoted through limited departmental examination as per their

respective quota. Since Rule 21(4) is only a general provision providing a guideline and Rule 25(1)(ii) is specific, the respondents have followed Rule 25(1)(ii) as the rota-quota rule was implemented for the block period of 1981-84. Both the provisions have to be read harmoniously. As there was no violation of the rota-quota during 1981-84, the respondents have rightly applied Rule 25....

....

13. ...His original seniority as Assistant on 18.5.1987 has not been disturbed. His seniority has been depressed because of the implementation of various judgments including the judgment in the case of M.S. Rao and ors and because of the rota-quota rule followed as per Rule 25(1) of the IFS "B" Rules....

(Emphasis Supplied)

22. In the year 1999 a few Section Officers filed Original Application No. 567/1999 titled "Sanjay Vyas and Ors. v. Union of India and Ors." before the Tribunal challenging the validity of the seniority lists dated 28.06.1994 and 04.10.1996 of the Section Officers, on the ground that while reckoning the seniority of the direct recruit Assistants who got wrongly promoted to the post of Section Officer and were protected by the judgment of Supreme Court in Karam Singh's case (supra), the government could not take into account the period spent by such officers on the post of Section Officer prior to regularization of their services and has thus violated the directions issued by the Tribunal in its judgment dated 09.02.1996 passed in M.P. Singh's case (supra).

23. Vide judgment dated 10.01.2001, the Tribunal disposed of the aforesaid Original Application in the following terms:

...9. The main grievance of the applicants appears to be that the respondents taking cover under the judgment delivered by the Tribunal in M.S. Rao's case (supra) on 3.6.1994 have issued the impugned seniority list in a hurried manner on 28.6.1994, in which they have favoured Shri M.P. Singh with substantive benefit of seniority which has been disallowed by the Tribunal in its order dated 9.2.1996. It is unfortunate that these specific averments in paragraphs 4(xiii-xv) have nowhere been countered by the respondents in their reply.... It is also noticed from the facts mentioned above that while in the seniority list issued by the respondents on 16.2.89, the date of regular appointment of Shri M.P. Singh has been shown as 28.12.1987 and he is placed at Serial No. 249, the applicant No. 1's appointment is shown as 14.10.1987 and placed at Serial No. 230. This position has been reversed in the seniority list issued by the respondents on 28.6.1994 following the judgment in M.S. Rao's case (supra) given on 3.6.1994.... However, one of the main contentions of the applicants in M.P. Singh's case (supra) was that their services in supernumerary posts should count for the purposes of seniority but that contention had not found favour with the Tribunal. The same contentions has been reiterated by the applicants in Paragraph 4 (xiii-xv), to which the respondents have not filed any specific reply. In the facts and circumstances of the case and particularly noting the fact that

the respondents have not given any specific reply to the averments made by the applicants, they ought to have reviewed/considered the seniority lists issued by them on 28.6.1994 and 4.10.1996 in the light of the judgment of the Tribunal in M.P. Singh's case (supra) which admittedly they have not done. We hasten to add that this does not mean that the earlier judgments of the Tribunal are being reviewed or commented upon as they have become final and are required to be followed by the respondents....

11. In the above facts and circumstances of the case, the O.A. is disposed of as follows:

(i) the respondents are directed to review/recheck and reconsider the impugned seniority lists of the Section Officers in Grade-II and III of IFS(B), taking into account the relevant judgments, including those mentioned above and in particular the order of the Tribunal dated 9.2.1996 in M.P. Singh's case (supra) which has become final and binding with reference to the earlier seniority lists dated 28.6.1994 and 4.10.1996;

(ii) The respondents shall issue a general notice to all concerned persons who are likely to be affected by a change in the aforesaid seniority lists and afford them a reasonable opportunity to present their case, and if need be by giving them a personal hearing;

(iii) The respondent shall issue a final seniority list in the aforesaid cadre as early as possible and in any case within six months from the date of receipt of a copy of this order in accordance with relevant law, rules and instructions on the subject.

24. Vide office memorandum dated 20.07.2001 issued by the Ministry of External Affairs, Government of India, a revised seniority list of Section Officers was issued purporting to be in accordance with the judgment dated 10.01.2001 passed by the Tribunal in Sanjay Vyas's case (supra). The relevant portion of the said office memorandum reads as under:

In its judgment dated 10th January, 2001 in OA No. 567 of 1999 (Sanjay Vyas and Ors. v. Union of India and Ors.), the Principal Bench, New Delhi of the Hon'ble Central Administrative Tribunal (CAT) had directed as under:

...

4. Taking into account the Court/CAT judgments and the rules, relevant to the seniority of SOs in MEA and keeping in view the position that has emerged with regard to various points/issues raised in the submissions in response to the "general notice" (as set out in Annexure - I), the seniority list of SOs in MEA has been re-drawn and the same is enclosed as Annexure-II to this Office Memorandum. The following "basic" criteria has been adopted in re-drawing the seniority list.

(i) Continuous officiation applied uniformly

Seniority of all Section Officers, including DP SOs appointed in the years 1981-84, LDE SOs appointed on the basis of LDEs conducted in the years 1981-84 and DR SOs recruited on the basis of CSEs 1981 to 1984, has been determined in accordance with the principle of "continuous officiation".

(ii) Year of recruitment

For the purpose of determining an officer's seniority, his/her recruitment year has been determined as under:

(a) For DP SOs, the year for which the Departmental Promotion Committee was held and recommended the promotions, has been taken as the year of recruitment.

(b) For LDE SOs, the year for which the examination was held has been taken as the year of recruitment.

(c) For DRs, the year in which the result of the examination was declared by the UPSC has been taken as the year of recruitment....

A vacancy for which a candidate through desired mode of recruitment is not available in the recruitment year in which the vacancy arose, has not been carried forward for that mode of recruitment. In other words, the rota principle of determining seniority has not been applied...

(iii) Date of continuous officiation

For the purposes of seniority, for the SOs recruited through different modes but belonging to same recruitment year, the date of continuous officiation has been determined as under:

(a) In case of DP SOs, the date of Departmental Promotion Committee (DPC) has been taken as date of continuous officiation.

(b) In case of LDE SOs, the date of declaration of result has been taken as the date of continuous officiation. However, their year of recruitment is the year for which the examination is held.

(c) In case of DR SOs the only plausible date prior to the date of joining which can be reasonably taken as the date of continuous officiation is the date of announcement of result by the UPSC.... Thus in case of DR SOs, Year of Recruitment is the year of announcement of result and the Date of Continuous Officiation is the date of announcement of the result....

(Emphasis Supplied)

25. Aggrieved by the aforesaid memorandum dated 20.07.2001 issued by the government, some officers who were directly recruited to the post of Section Officer between the years 1981-1984 filed two Original Applications Nos. 956/2002 and 1388/2002 titled "Manju and Ors. v. Union of India and Ors." and "Subashini and Ors. v. Union of India and Ors." respectively. The main grievance

of the applicants in O.A. No. 956/2002 was that the government has committed an illegality in fixing the seniority of the Section Officers for the years 1981-1984 on the basis of the principle of "continuous officiation" contained in Rule 21(4) of the Rules instead of "rota-quota" rule prescribed in Rule 25(1)(ii) of the Rules whereas in O.A. No. 1388/2002 it was mainly urged that while fixing "year of recruitment" the government has discriminated between direct recruit Section Officers and limited competitive examination Section Officers, for in respect of limited competitive examination Section Officers "year of recruitment" has been taken as year of examination whereas in respect of direct recruit Section Officers "year of recruitment" has been taken as the year of declaration of result.

26. Vide order dated 04.12.2002 a Division Bench of the Tribunal referred the aforesaid applications to a Larger Bench of the Tribunal. The question formulated by the Division Bench for the consideration of the larger Bench reads as under:

It is not in controversy that there are two judgments of this Tribunal taking contradictory views one dated 17.8.2000 in OA 306/97 and other dated 10.1.2001 in OA 567/99. Since contradictory judgments on certain points involved in these OAs have been passed, it would be appropriate that the matter is referred to a Larger Bench.

27. After considering the judgments passed by the Tribunal in Mandhaiya and Sanjay Vyas's cases (supra), vide judgment and order dated 01.04.2003 it was held by the Full Bench of the Tribunal that there is no conflict between the said two decisions as they operate in different fields. The relevant portion of the decision of the Full Bench of the Tribunal reads as under:

22. In view of the above legal position as quoted by the learned author, now we proceed to examine whether both of these judgments can be reconciled.

23. On a perusal of the judgment of M.S. Mandhiaya's case in OA 306/97, we find that it has in unambiguous terms followed the rule of continuous officiation for determining the seniority barring the block of 4 years from 1981 to 1984 when quota-rota rule was implemented and Rule 25(1)(ii) was applied. This judgment was rendered after following various judgments such as G.S. Lamba, K.J. Francis, P.N. Tandon, Karam Singh and others.

24. The judgment given in Sanjay Vyas case (OA 567/99) has confined only to the point of counting of period spent by an officer on supernumerary post and this judgment too has held that in M.P. Singh case the main contentions of the applicant is that their services in supernumerary post should count for the purpose of seniority had not found favour with the Tribunal. So while disposing of the OA, the directions were given to re-check and reconsider the impugned seniority list taking into account the relevant judgments including those mentioned in the body of the order particularly in M.P. Singh's case which had become final and binding. Thus probably the Tribunal was of the view that in the impugned seniority list there were certain officers who have been given the benefit of counting of period spent on supernumerary post so it is only in that

context the respondents were asked to recheck and reconsider the impugned list.

25. Even while giving the directions the Court had directed the respondents to recheck/review and reconsider the impugned seniority lists taking into account the relevant judgments including M.S. Rao's case, P.N. Tandon's case, Karam Singh's case and Ors. The court also observed that we hasten to add that this does not mean that the earlier judgments of the Tribunal are being reviewed/commented upon as they have become final and are required to be followed by the respondents. This observation of the court clearly goes to show that while delivering the judgment in OA 567/99 the Tribunal did not intend to review or comment upon any previous judgment as the same had become final and are required to be followed by the respondents. Similarly, Mandhaiya's case has also become final. Moreover, in Madhaiya's case, the Tribunal had followed the earlier judgments in Karam Singh's case, Lamba's case, K.J. Francis's case, P.N. Tandon-II's case and Ors. So by necessary implication, the Tribunal in OA 567/99 had affirmed the earlier judgments and did not overrule or differ with any of the earlier judgments. Hence, the earlier judgments still hold the field on the principle of determination of seniority. We have to interpret as if the judgment given in OA 567/99 has been confined to only one issue, i.e. of the counting of the period of service when an employee held the post on supernumerary post.

26. Thus, we are of the considered view that there is no conflict in both these judgments. This Tribunal had only affirmed the principle of law that the principle of continuous officiation is applicable for determining the seniority barring the application of 4 years from 1981-84. In Sanjay Vyas (supra) the only principle which had been laid down is that the period spent by an officer on supernumerary post would not be counted for determining the seniority, thus both these judgments are reconcilable and accordingly we answer the question as follows:

The answer to the question is in the negative, as both these judgments are reconcilable, as observed above.

27. Accordingly, the case may be placed before the respective Benches for further proceedings in accordance with law.

(Emphasis Supplied)

28. Vide judgment and order dated 30.05.2003, the Tribunal dismissed the aforesaid two applications challenging the memorandum dated 20.07.2001 issued by the government. It was held by the Tribunal that in light of directions issued by the Tribunal in Sanjay Vyas's case (supra) to undertake a comprehensive review of the seniority list of the Section Officers, the government was fully justified in rechecking/reviewing the earlier seniority lists of the Section Officers regarding the application of rota-quota rule for fixing the seniority of the Section Officers for the years 1981-1984; in view of the fact that government had not filled vacancies which had arisen to the post of Section Officer for the years 1981-1984 in accordance with quota prescribed for each

source of recruitment, no fault can be found with the decision of the government while fixing the seniority of the Section Officers on the basis of principle of "continuous officiation" as contained in Rule 21(4) of the Rules for the same is in accordance with the ratio laid down by the Supreme Court in G.S. Lamba's case (supra) and the decision of the government for fixing the year of declaration of result as the "year of recruitment" of direct recruits Section Officers is legal and valid as the same is in consonance with Rules 12 and 21(4) of the Rules.

29. At this stage, it is most significant to note some portions of the judgment of the Tribunal:

4. Needless to state that the applications as such have been contested by the respondents particularly the Union of India. It has been pointed out that the revised seniority list has been approved only in accordance with the directions of the Tribunal. The year-wise recruitment of Section Officers for these years from 1970 has been shown to be:

Year DPs LD DRs Es 1970-71 28 - - 1971-72 32 19 - 1972-74 35 30 - 1974-75 -
- 14 1975-76 39 15 04 1976-77 27 05 08 1977-78 53 05 05 1978-79 36 19 03
1979-80 42 18 03 1980-81 100 15 06 1981-82 22 12 03 1982-83 101 12 02
1983-84 25 26 04 1984-85 - 14 05 1985-86 117 16 07 1986-87 06 11 -
1987-88 18 31 - 1988-89 04 04 - 1989-90 13 15 - 1990-91 17 11 - 1991-92 20
10 - 1992-93 18 10 - 1993-94 17 09 - 1994-95 41 24 - 1995-96 20 02 -
1996-97 18 08 - 1997-98 28 08 - 1998-99 11 05 - 1999-00 14 04 - 2000-01 12
06 -

From the aforesaid, it has been pointed that recruitment has not been proceeded according to the prescribed quota in any year since 1970. Even from 1981-1984, the ratio of recruitment from the three sources was:

Prescribed DRs DPs LDEs ratio 04 14 07 1981-82 04 30 16 1982-83 04 202 24
1983-84 04 25 26 1984-85 04 - 11

Thus, there was a normal departure from the prescribed quota for those years....

16. ...In the present case the fact which was not in dispute before us was the figures provided by the respondents pertaining to the recruitment of direct recruits, departmental promotees and Limited Departmental Examination. A perusal of the same indicated that the quota rule was not followed for the years 1981-84. Once it was not followed, the admissions so made are held to be erroneous in the previous litigations.

(Emphasis Supplied)

30. Aggrieved by the judgment and order dated 30.05.2003 passed by the Tribunal, the petitioners have filed the above-captioned petitions under Articles 226 and 227 of Constitution of India.

31. During the hearing, following 5 submissions were advanced by the learned Counsel for the petitioners:

A That there was no occasion for the government to review/re-check the seniority list(s) of the Section Officers with respect to application of rota-quota rule while fixing the seniority of Section Officers for the years 1981-1984. It was argued that the Tribunal failed to appreciate that under the garb of the directions issued by the Tribunal in Sanjay Vyas's case (supra), the government had upset the position settled by the Tribunal in various decisions, particularly in Mandhaiya's case, and the memorandum dated 16.09.1993 and 28.06.1994 issued by the government regarding the application of rota-quota rule for fixing the seniority of the Section Officers for the years 1981-1984 inasmuch as the only direction given by the CAT in Sanjay Vyas's case (supra) was to re-check/review the seniority of the Section Officers limited to the aspect of reckoning of supernumerary service of the direct recruits Assistants who wrongly got promoted to the post of Section Officer, which position stood clarified by the judgment of the Full Bench.

B That the impugned judgment of the Tribunal of upholding the decision of the government of reckoning the seniority of the Section Officers for the years 1981-1984 on the basis of principle of "continuous officiation" contained in Rule 21(4) of the Rules is patently illegal as the same runs contrary to an earlier judgment rendered by a co-ordinate Bench of the Tribunal in Mandhaiya's case (supra) wherein it was held that the seniority of the Section Officers for the years 1981-1984 should be reckoned on the basis of rota-quota rule contained in Rule 25(1)(ii) of the Rules. To further buttress the said submission, learned Counsel pointed out that a perusal of the judgment of the Full Bench of the CAT shows that the judgment of the Tribunal in Mandhaiya's case (supra) had attained finality. It was argued that the differing view taken by the Tribunal in the impugned judgment in clear contradiction to an earlier judgment rendered by a co-ordinate bench amounts to judicial impropriety.

C That the recruitment chart submitted by the government to the Tribunal to demonstrate that the recruitment to the post of Section Officer between the years 1981-1984 was not in consonance with the quota prescribed for each source of recruitment under Rule 13 of the Rules was not a correct chart.

To quote from the written submissions submitted by the learned Counsel for the petitioner: "The chart furnished by the Ministry was not a "recruitment chart based on actual vacancies" as prescribed in the Rules. The chart rather showed number of SOs from different streams in the Seniority list of 2001 resulting from placement of DR SOs in wrong years (as per Ministry's arbitrary criteria) and of DP SOs whose Supernumerary service was counted for seniority. It may be emphasized that this very seniority list of 2001 was disputed in Manju's case and hence cannot be used to show break down of quota rule."

D That while passing the impugned judgment the Tribunal did not attach due importance to the ratio of law laid down by the Supreme Court in the decision reported as Arvinder Singh Bains Vs. State of Punjab and Others, wherein it was held that "rota and quota must necessarily be reflected in the seniority list and

any seniority list prepared in violation of rota and quota is bound to be negated".

E That the Tribunal failed to appreciate that the decision of the government of adopting different criteria for determination of "year of recruitment" for direct recruit and limited departmental examination Section Officers has resulted in discrimination between direct recruit and limited departmental examination Section Officers and is thus violative of Article 14 of Constitution of India.

32. The submission advanced by the learned Counsel for the petitioners that while implementing directions passed by the Tribunal in Sanjay Vyas's case (supra) of reviewing/rechecking the seniority list(s) of Section Officers, the government could not have reviewed the seniority list with respect to application of rota-quota rule for fixation of seniority of the Section Officers for the years 1981-1984 is totally misplaced.

33. The seniority of an officer cannot be fixed in isolation. Change in seniority of one officer is bound to affect the seniority of some of his counterparts. Any change in a seniority list will cause a ripple effect. The instant case is a classic example of the aforesaid principle. For instance, when seniority of 251 promotee Assistants got revised in view of judgment of the Tribunal in P.N. Tandon (1)'s case (supra), the seniority of 196 direct recruits Assistants was adversely affected.

34. In M.P. Singh's case (supra) it was directed by the Tribunal that service rendered by direct recruits Assistants who got wrongly promoted as Section Officers on supernumerary posts should not be reckoned for the purposes of fixation of their seniority. However, in Sanjay Vyas's case (supra) the Tribunal noted that despite the ratio laid down in M.P. Singh's case (supra), while drawing seniority lists dated 28.06.1994 and 04.10.1996, the government has reckoned the service rendered by Section Officers on supernumerary posts for the purposes of fixation of their seniority and thus it directed the government to re-check/review the seniority lists of the Section Officers. The aforesaid review/re-check of the seniority lists resulted in change of seniority of some promotee Section Officers which in turn changed the number of promotee Section Officers recruited in a particular year. In that view of the matter, the government was well-justified in determining whether the change in one source of recruitment to the post of Section Officer has led to substantial departure from the quota prescribed for each source of recruitment under Rule 13 of the Rules. And when it was found that the quota rule for recruitment has broken down in a particular year it was perfectly legal for the government not to give effect to rota rule for the purposes of fixation of seniority and reckon the seniority of the Section Officer on the basis of principle of "continuous officiation" in view of ratio laid down by Supreme Court in G.S. Lamba's case (supra). Therefore, the implementation of the directions passed by the Tribunal in Sanjay Vyas's case (supra) itself led to review/re-check of the seniority lists of the Section Officers regarding application of rota-quota rule for the purposes of fixation of seniority of Section Officers for the years 1981-1984.

35. Whether the decision in Mandhaiya's case (supra) precluded the Tribunal from taking a view in the instant matters that the seniority of the Section Officers for the years 1981-1984 is to be reckoned on the basis of "continuous officiation" instead of "quota-rota" rule?

36. A perusal of the relevant extract of the judgment in Mandhaiya's case (supra) noted by us in the foregoing paragraph 21 above evidences that in the said case the Tribunal proceeded on the assumption that the recruitment to the post of Section Officers, for the years 1981-1984, was made in accordance with quota prescribed for each source of recruitment under Rule 13 of the Rules, which assumption was subsequently found to be incorrect in the decision which is impugned.

37. It is trite that a judgment based on an erroneous assumption of fact or of law cannot be treated as a precedent. Therefore, there was no predicament in the way of the Tribunal to hold that the seniority of the Section Officers for the years 1981-1984 is to be reckoned on the basis of "continuous officiation" instead of "quota-rota" rule contained in Rule 25(1)(ii) of the Rules.

38. As regards the contention that the recruitment chart submitted by the government to the Tribunal was incorrect, suffice would it be to state that we do not find even a whisper in the impugned decision pertaining to the contention regarding the correctness of the said recruitment chart. On the contrary, the impugned judgment records that the figures contained in the recruitment chart in question were not disputed. In that view of the matter, the petitioners cannot be allowed to turn around and contend that the recruitment chart in question was incorrect. Besides, in what manner the chart is incorrect has not been highlighted even before us.

39. As regards the decision of the Supreme Court in A.S. Bains's case (supra), a perusal thereof reveals that the said case is entirely distinguishable from the present case. In the said case, despite provisions in the relevant recruitment rules prescribing application of rota-quota rule for the purposes of fixation of seniority, the government was not implementing the rule. It was in that context certain pertinent observations were made by the Court regarding the application of rota-quota rule for the purposes of fixation of seniority. The Court therein was not concerned with the issue of breakdown of quota-rota rule as in the present case.

40. This takes us to the last submission advanced by the learned Counsel for the petitioners.

41. Whether the government has correctly fixed the "year of recruitment" in respect of direct recruits and limited competition examination Section Officers?

42. Rule 13(1)(a) of the Rules provides that one sixth of the substantive vacancies, in the Integrated Grades II and III of the General cadre shall be filled, by direct recruitment on the results of competitive examinations held by the

Commission, whereas Rule 13(2)(ii) stipulates that 33-1/3 percent of the quota for inclusion in the Select List of Integrated Grades II and III shall consist of persons to be promoted on the basis of a limited competitive examination. Rule 13 thus provides that the appointment of a direct recruit Section Officer is to be made on the declaration of his results whereas a limited competitive examination Section Officer is to be appointed on the basis of limited competitive examination. Having regard to the aforesaid distinction made in Rule 13 regarding the recruitment of direct recruit and limited competitive examination Section Officers, no fault can be found in the decision of the government in prescribing different criteria for fixing "year of recruitment" of direct recruit and limited competitive examination Section Officers.

43. Finding no infirmity in the view taken by the Tribunal we dismiss the writ petitions but make no order as to costs.